**Constitutional Law, Spring 2018**

**Professor John Stinneford**

**Syllabus**

**Law # 5501**

**4 Credits**

This is a course about constitutional law. We will cover three major topics: separation of powers, federalism, and individual rights. “Separation of powers” refers to how the powers of the national government are divided among three branches: the legislature, the executive, and the judiciary. “Federalism” refers to how power is divided between the national government and the states. “Individual rights” is a term for the liberties that are protected against the national and state governments (e.g., the right not to have life, liberty, or property taken away without due process).

There is far more constitutional law than we could cover in a single course. I am therefore not trying to give you a snapshot of all of constitutional doctrine at the present moment. That kind of constitutional law knowledge would be quickly out of date, and if you need it in practice you can always look it up in a treatise. Instead, the goals of this course are: (1) for you to become familiar with the Constitution itself, including what it says and what it leaves undecided; (2) for you to learn some of the landmark decisions in our constitutional tradition, including important precedents both inside and outside the courts; and (3) for you to develop your skills in making and evaluating constitutional arguments, which include appeals to text, structure, historical purpose, precedent or practice, and policy. As you will discover, constitutional arguments must appeal to specific kinds of authority to work effectively.

We may discuss questions you feel strongly about. After all, the Constitution stirs more passions than the law of estates in land. That’s good. And so is disagreement. Disagreement has been part of our constitutional tradition from the very beginning. So I encourage you to say what you think in class. As you do so, remember that a critical part of a lawyer’s training is to learn to listen to, consider, and respond to any argument or point of view. So be willing to understand the views of others. Be willing to defend your own views. Be willing to persuade others. Be willing to change your mind.

We will be learning about and discussing the Constitution we have, and also the Constitutions we could have. It might be helpful to think of this as a two-step process. First, we could think about what the Constitution says: how it allocates power, who gets the final say, what rights it declares and protects, and so on. Second, we could think about whether what it says is good. Is this the best way to allocate power? Is this who should have the final say? Are these the rights it should declare and protect? It isn’t always a rigid two-step process. It’s more like a useful heuristic, a kind of logical order to our analysis. So think about what the Constitution says—try to postpone the evaluation until you’ve thought through what it says—and then assess it. Pulling apart these two questions will make you a better student of the Constitution and a better attorney.

Student learning outcomes:

By the end of this course, students will be able to:

• Read the constitutional text and judicial opinions concerning constitutional law, discern the doctrinal rules derived from these sources, and relate them to other opinions and other areas of doctrine.

• Understand concepts underlying debates about the Constitution, including federalism, separation of powers, enumerated powers, equal protection, and due process.

• Make structural and rights-based arguments about the scope and limitations on governmental power contained in the United States Constitution.

Required Text

The casebook for this class is Paulsen, Calabresi, McConnell, Bray & Baude, The Constitution of the United States (3d ed. 2016). Other handouts or materials may be assigned during the semester. You may access supplemental materials and view other course related information on the course TWEN page. You are required to register on TWEN by the end of the drop/add period for the semester.

Classes

Classes will be held on Tuesdays, Wednesdays, and Thursdays from 1:00-2:10 p.m. in Room 285B. The final exam is tentatively scheduled for May 4 at 8:30 a.m.

Office Hours

My office hours are on Wednesdays from 2:15-4:15 p.m., and by appointment. While you should feel free to stop by without an appointment during office hours, I recommend that you make an appointment to reserve the amount of time that you need, and eliminate wait time. If you are unable to meet with me during my regularly scheduled office hours please send me an e-mail and I’ll be happy to arrange another mutually convenient time.

Contact Information

My office is in Room 379 and the telephone number is (352) 273-0959. My e-mail address is [jstinneford@law.ufl.edu](mailto:jstinneford@law.ufl.edu). I encourage you to contact me regularly during the semester and to ask any questions that you may have about the course or even more generally about the practice of law.

Grading

Your final course grade will be based principally on a final exam (90%), and will be subject to modification based upon course participation and attendance as described below.

After course grades have been posted, if you wish to review your exam I will make your exam available along with a model answer. If you wish to speak to me after you have reviewed your exam, you may do so in the fall semester. For further information on the University’s grading policies and calculation of grade points please see <http://www.registrar.ufl.edu/catalog/policies/regulationgrades.html>.

Policy related to Make-up exams or other work

The law school policy on delay in taking exams can be found at: <http://www.law.ufl.edu/students/policies.shtml#12>.

Statement related to accommodations for students with disabilities

Students requesting classroom accommodation must first register with the Office of Disability Resources.  The UF Office of Disability Resources will provide documentation to the student who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation.

University Policy on Academic Misconduct

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at http://www.dso.ufl.edu/students.php.

Information on UF Law grading policies

Grade Points Grade Point Grade Point

A (Excellent) 4.0 C+ 2.33 D- 0.67

A- 3.67 C (Satisfactory) 2.00 E (Failure) 0.0

B+ 3.33 C- 1.67

B (Good) 3.00 D+ 1.33

B- 2.67 D (Poor) 1.00

The law school grading policy is available at: <http://www.law.ufl.edu/students/policies.shtml#9> .

Class Preparation, Participation, and Attendance

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Constitutional Law has 4 “classroom hours” of in-class instruction each week, requiring at least 8 hours of preparation outside of class.

Your grade may be significantly affected (up to one full letter grade) by your class participation. In evaluating your class participation, I take into account a number of considerations, including the professionalism and courtesy you display in class, your preparedness in class, and your class attendance. I do not reward students for being relatively talkative; nor do I punish students for being relatively quiet. I do, however, expect everyone to be familiar with the material assigned for a given day, and prepared to discuss it in class if called upon.

Class Attendance

Students are expected to attend class, to be prepared, and to participate in class discussions.  It is your responsibility to locate and initial the sign-in sheet for each class session. By signing your initials, you affirm that you are physically present in class during that class period. It will be considered a violation of the course rules and the Honor Code to falsely indicate that you were present in class, or to assist a classmate in such misrepresentation.

Pursuant to ABA guidelines, students who have six (6) or more absences will be barred from taking the final exam, and will automatically fail this course. Three to five absences may result in a reduction of your grade as described above, in the section describing grade adjustments for course participation. Absences necessitated by religious holidays are exempted by this policy, so long as you give me advance notice of your absence. More generally, if you are concerned that you may come close to the limit on absences, it is a good idea to keep me informed as to what’s going on, so that we can explore whether some accommodation is possible.

Recording Devices and Cell Phones

Use of any recording devices (including audio and/or video) is not permitted in the classroom without my express permission. Cellular telephones should not be used during class, and ringers should be silenced.

Computer Usage Prohibited

You may not use a laptop, tablet, cell phone, or other electronic device in class.

Assignments

Below are the expected reading assignments for the course. Please note that this plan is subject to change. I reserve the right to modifythe assignments from time to time, and to utilize additional handouts and materials. All assignments are from the required texts, unless otherwise noted.

As a general rule, for each class you should read the next entry in the list of readings. That general rule will have plenty of exceptions, because some of the assignments will turn out to require multiple classes, but I will mention the exceptions as we go along.

Introduction

1. Before the Constitution (19-34, 1673-1679)

2. The Constitution (1-15, 35-46)

3. The Alien and Sedition Acts: a case study in constitutional powers

and rights (46-68)

Separation of Powers

4. Introduction to separation of powers (69-86)

5. Legislative power: specificity and delegation (86-103)

6. Legislative power: the composition of Congress (103-125)

7. Executive power: foreign affairs (176-182, 269-298)

8. Executive power: war (300-311 through note 3, note 6 on 314, 315-

324)

9. Judicial power: advisory opinions and standing (365-370, 413-419

through note 4)

10. Judicial power: sovereign immunity (448-462) and Erie (Supp.)

Federalism

11. Introduction to federalism (463-470)

12. The First Bank of the United States (470-486)

13. The Second Bank of the United States (486-509)

14. The commerce power (510-525)

15. The commerce power, continued (525-529, 533-547)

16. Commandeering (582-596, 1244, 1247-1248)

17. The taxing and spending powers (597-603, 609-619, 621-629)

18. Synthesis: the commerce, taxing, and necessary and proper powers

(629-659)

19. Inherent powers? (660-680; in Jefferson’s Draft of the Kentucky

Resolutions, point 2 on 54)

Individual Rights

20. Introduction to the Bill of Rights (809-811, 815-816, 1204-1212

through note 3)

21. Introduction to the Reconstruction Amendments (1249, 1264-

1284)

22. The Slaughter-House Cases (1284-1309)

23. Plessy and Segregation (1336-1354)

24. Brown and Desegregation (1355-1372, 1381; four opinions from

WHAT BROWN V. BOARD OF EDUCATION SHOULD HAVE SAID)

25. Sex discrimination (1440-1462)

26. Due process (1476-1483, 1490-1496 through note 1, 341-348

through note 1)

27. Substantive due process (1519-1536)

28. Substantive due process, continued (1536-1560)

29. Substantive due process, continued (1560-1575)

30. Substantive due process, continued (1576-1607)