

Syllabus
Constitutional Law
Fall 2018
TWH 1:00-2:10, Room 345
Professor Darren Hutchinson
Associate Dean for Faculty Development &
Stephen C. O’Connell Chair

Course Description

This course examines issues related to the United States system of constitutional governance. This course will cover three principal areas: (1) structure of government; (2) substantive due process; and (3) equal protection.

Due to the magnitude of the subject matter, it is impossible to cover every issue related to Constitutional Law in a single course. Indeed, at many United States law schools, Constitutional Law is taught as a five-credit, two-semester course. This course will not address several important substantive areas, including the First Amendment, Criminal Procedure, and Administrative Law. Many courses in the upper-level curriculum, however, focus on these areas, and students are strongly encouraged to pursue these avenues of advanced study.

Course Learning Outcomes

Although the subject matter of this first-year survey course is necessarily limited, this class will, nevertheless, provide students with the analytical skills needed to examine general questions of Constitutional Law. By taking this course, students will learn to identify when hypothetical or actual factual scenarios involving the judicial process, legislation, and executive action implicate questions of Constitutional Law. Students will also learn how decisions by the Supreme Court, lower federal courts, state courts, presidents, and by Congress and state lawmakers contribute to the development of Constitutional Law. This class will equip students with the skills needed to provide written and oral legal analysis regarding Constitutional Law in legal-practice settings. Students will learn about the complexity and evolutionary nature of Constitutional Law and the factors—including precedent and social and political considerations—that influence Supreme Court decisions.

Requirements and Grading

Grading in this class is based on the final examination. Students who type their exams must use the exam software provided by the law school. The final examination for this class is scheduled to take place on December 8 at 8:30 am. Professor Hutchinson will provide more details about the final exam as the semester progresses.

The mandatory grade distribution for law school courses is posted on the College of Law website. Grading in this course will adhere to those standards. Furthermore, to calculate student grade-point averages, the College of Law utilizes the following system: A, 4.0; A-, 3.67; B+, 3.33; B, 3.0; B-, 2.67; C+, 2.33; C, 2.0; C-, 1.67; D+, 1.33; D, 1.0; D-, 0.67; E (Failure), 0.0.

As required by the American Bar Association, official policy of the College of Law, and Professor Hutchinson, *all* students must regularly attend and actively participate in class discussions. Effective lawyering involves a substantial amount of oral and written analysis. Accordingly, class participation is critical for your development as an attorney. Professor Hutchinson will call on students during class. Therefore, students must prepare to discuss the materials. Professor Hutchinson reserves the right to raise or lower student grades to reflect the value of class participation. Students who engage in exemplary and relevant class discussion—not talking for the purpose of talking—could receive a grade boost. Students who are repeatedly unprepared to discuss class materials or who have multiple absences—could receive a grade deduction. Multiple unexcused absences will reflect poorly upon the quality of a student’s class participation.

Periodically, Professor Hutchinson will make class announcements and distribute supplemental reading materials via email. Thus, it is imperative that students regularly check their email for class announcements. Students can ask questions of Professor Hutchinson by email. Please include the phrase “CONSTITUTIONAL LAW STUDENT” in the subject line of any email sent to Professor Hutchinson. Professor Hutchinson’s email address is: Hutchinson@law.ufl.edu.

Laptop and Internet Usage

Students should not use the Internet for activities unrelated to class while class is in session. Although most students believe that they can use the Internet free of detection, this is typically a self-delusion. Regardless, students who spend a substantial amount of time online during class will inevitably miss important substantive issues. Surfing, chatting, Facebooking, Tweeting, Googling, and other web-based fun should not take place during class. Failure to refrain from such activity can result in a lowering of your grade or a revocation of laptop privileges.

Students should also resist the temptation to use their laptops to take dictation of class discussion. Lawyers spend a lot more time and money preparing for their careers than court reporters and other transcription providers. Rather than taking dictation, students should listen to understand the substance and logical flow of the discussion. These are the important matters that should go into outlines. If Professor Hutchinson quotes standards from cases, please turn to the appropriate pages in the textbook for the precise language. Also, students should always quote doctrine from cases in their case outlines. Courts typically quote precedent in written opinions and during oral arguments, and lawyers quote precedent in their briefs and other legal documents. Do not simply summarize the doctrine. Quote the actual language and summarize it as well. This will reinforce your learning of the material.

Course Materials

Readings for this course are contained primarily in the following text: Kathleen M. Sullivan & Noah Feldman, Constitutional Law (Nineteenth Edition). Students should also purchase any available supplement to this text. Also, Professor Hutchinson will inevitably assign readings from handouts or from reserve materials during the course of the semester.

Reading Assignments

A tentative list of reading assignments for the course is posted below. The reading list, however, is not etched in stone, and the actual weekly assignments might diverge from those listed on the syllabus. Often, current events, including new Supreme Court decisions, can lead Professor Hutchinson to alter the content of the reading list. In addition, the pace of the class will depend upon the students' level of comprehension and the flow of class discussion. Please keep pace with any modifications to the reading list during the semester.

Also, please note that syllabus only reflects the readings that Professor Hutchinson anticipates having the time to cover. The last four class sessions do not have pre-assigned readings. This will allow extra time to discuss assigned reading materials should the class fall behind of the intended schedule.

Unless otherwise noted, all assignments refer to the Sullivan & Feldman text. Students must complete all of the assigned readings. Do not neglect to read the notes following and preceding the cases in the textbook. Information contained in the notes can serve as the basis for final exam questions. Students must also fully read the opinions, including all concurring and dissenting opinions. Concurring and dissenting opinions might also serve as the basis for final exam questions.

Please give yourself adequate time to read the cases. Constitutional Law cases are quite dense. They include a lot of historical, political, and theoretical issues not typically found in other areas of law. As a result, even very short cases can require substantial time to read and understand fully. The American Bar Association requires that law professors assign two hours of work for every 50 minutes of class time. Following this standard, you should spend about 3-4 hours studying and preparing for each class. This time allotment, however, is simply a ballpark estimate. Until you become knowledgeable about Constitutional Law and learn how to read cases "like lawyers," you undoubtedly will need to commit even more time to your studies.

Taping of Class Sessions

Class attendance and participation, as stated above, can affect a student's final grade—positively or negatively. Extraordinary circumstances might occur, however, that prevent class attendance. Fortunately, technology permits the taping of class sessions. This technology, however, is not intended to replace in-class instruction. As such, Professor Hutchinson will only tape classes if the Office of Student Affairs determines that a student has a valid basis for missing class and that classes should be recorded. Professor Hutchinson will record any make-up classes or review sessions.

Course Aids

The textbook, class discussions, lectures, and supplemental readings assignments contain all the materials students need to perform excellently in this class. Furthermore, Professor Hutchinson is available during office hours (see below) to clarify issues that students have difficulty understanding. Nevertheless, students often wish to supplement these avenues to learning with commercial outlines. Among the available commercial materials, Professor Hutchinson

recommends that students purchase Erwin Chemerinsky, Constitutional Law: Principles and Problems. Chemerinsky's hornbook has proven quite useful to law students to bolster their understanding of Constitutional Law. The hornbook, however, cannot replace class attendance and reading the textbook. Students should only utilize supplements *after* they have completed and analyzed the readings on their own. This will strengthen your ability to engage in legal reasoning.

Diagnostics

Professor Hutchinson might occasionally provide diagnostic materials—including hypotheticals modeled after typical exam questions, short-answer questions, or multiple choice/true-or-false questions to test student knowledge of course materials. Professor Hutchinson will hold review sessions to explain answers to any hypothetical problem sets. Although completion of these materials will not count toward your final grade, students who fail to work through diagnostic materials tend not to perform as well on the final exam as those who make the effort.

Office Hours

Professor Hutchinson is happy to meet with students outside of class. Professor Hutchinson will hold formal office hours on Wednesdays from 2:30-4:30. Professor Hutchinson is also available to meet with students by appointment, if they need to do so outside of regular office hours. Students can also stop by for an unscheduled "walk-in meeting," and Professor Hutchinson will meet with them if his schedule allows him to do so. Professor Hutchinson's office is located at HH 333.

Contact Information

Students can best reach Professor Hutchinson at: dissenting_justice@live.com or Hutchinson@law.ufl.edu. Please include "CONSTITUTIONAL LAW STUDENT" in the subject line of any email sent to Professor Hutchinson.

Professionalism

Please note that law school prepares students for a highly respected and important profession. Constitutional Law often touches upon controversial and hotly contested issues. This, in fact, makes Constitutional Law a very enjoyable subject to teach and study. Debates inside and outside of class, however, must retain the high level of professionalism and mutual respect associated with legal education. Also, classes must always provide a safe space for the airing of all opinions. Accordingly, students must show respect to their colleagues and to Professor Hutchinson.

Furthermore, persons from all identities and backgrounds—including race, sexual orientation, economic status, national origin, physical ability, sex, religion, and ideology—should feel free and will be required to participate in class discussions. Finally, students should tailor their comments around legal doctrine and empirical studies, rather than bald assertions of truth or "common sense." Constitutional Law often becomes more provocative than other classes, but the quality of discussion must remain just as professional as the discourse that occurs in those subjects.

Accommodation for Students With Disabilities

Students requesting accommodation for disabilities must first register with the Office of Student Affairs. Accommodations are not retroactive, therefore, students should contact the Office of Student Affairs as early in the semester as possible.

Honor Code

Academic honesty and integrity are fundamental values of the University community. Students should read and make sure that they understand the UF Student Honor Code, which is available at: <https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>.

Constitutional Law
Professor Darren Hutchinson
Course Outline

I. Introduction and Constitutional Structure of Government

WEEK ONE

Aug. 14

Introduction: The Constitution and the Articles of Confederation

Read: Articles of Confederation, The Constitution of the United States of America, Related Handouts (see emailed and posted assignment)

Aug. 15

The Supreme Court's Authority and Role

Judicial Review: 1-16.

Aug. 16

Judicial Review, continued: 16-34

WEEK TWO

Aug. 21

Case or Controversy Requirements: Advisory Opinions, Standing, Ripeness and Mootness: 34-60; Supplement pp. 1-2

Aug. 22

Political Question Doctrine: 60-76

Aug. 23

Federalism: History and Principles

Location of Sovereignty in the Federal System: 77-95

WEEK THREE

Aug. 28

Sovereignty, continued: 95-101;

Limits of the Necessary and Proper Clause: 101-09;

Values Served by Federalism: 109-14

Aug. 29

Commerce Power and Its Federalism-Based Limits

Commerce Power Before the New Deal: 115-24;

Commerce Power and the New Deal: 124-31

Aug. 30

Commerce Power After the New Deal: 131-42;
Contemporary Commerce Clause: 142-51

WEEK FOUR

Sept. 4

Contemporary Commerce Clause, continued: 151-71

Sept. 5

Tenth Amendment as an External Constraint on Federal Commerce Power: 171-86

Sept. 6

National Taxing and Spending Powers and Their Federalism-Based Limits
Taxing Power: 195-204

WEEK FIVE

Sept. 11

Spending Power: 204-25

Sept. 12

Separation of Powers
Executive Assertions of Power: 303-12
Executive and Domestic Policy: 312-21

Sept. 13

Executive Authority Over Foreign and Military Affairs: 322-30;
Congressional Authority to Restrain and Enable the Executive: 381-94

WEEK SIX

Sept. 18

Executive Privilege and Immunity: 424-39 (omit Note f)

Sept. 19

Individual Rights Before the Civil War: 441-48
The Post-Civil War Amendments: Handout; 449-56

II. Constitutional Rights: Due Process and Liberty

The Post-Civil War Amendments and the “Incorporation” of Fundamental Rights

Sept. 20

Post-Civil War Amendments, continued: 456-62;

The “Incorporation” of the Bill of Rights Through the Due Process Clause: 462-82

WEEK SEVEN

Sept. 25

Due Process

Substantive Due Process and Economic Liberties: 483-502. NOTE: *Carolene Products*, footnote 4, on pp. 501-02 is very important.

Sept. 26

Economic Liberty, continued: 502-08;

Right of Privacy

Childbearing and Contraception: 508-19

Sept. 27

Abortion: 520-41

WEEK EIGHT

Oct. 2

Abortion, continued: 541-44; Supplement pp. 3-7

Oct. 3

Marriage and Family: 544-51;

Sexuality: 551-53; 561-72

Oct. 4

Contemporary Cases: Same-Sex Marriage/Marriage Equality: 581-90

WEEK NINE

Oct. 9

Refusal of Medical Treatment and Physician-Assisted Suicide: 590-602

Oct. 10

Right to State Protection & Positive Rights: Handout

III. Equal Protection

Oct. 11

Rational Basis, 643-52

Racial Discrimination: 658-73

WEEK TEN

Oct. 16

Strict Scrutiny of Racial Discrimination: 673-82

Discriminatory Impact: 682-92

Oct. 17

Discriminatory Impact, continued: Handout

Oct. 18

Remedial Usage of Race/Affirmative Action: 693-712

WEEK ELEVEN

Oct. 23

Remedial Usage of Race, continued: 712-35

Oct. 24

Remedial Usage of Race, continued: 735-46; Supplement pp. 9-14

Oct. 25

Sex Discrimination

Historical Treatment: 756-69

WEEK TWELVE

Oct. 30

Contemporary Application/Stereotypes v. "Real Differences": 69-86

Oct. 31

Sex-Based Discrimination: Intent v. Impact: 786-89

Sex-Based Affirmative Action: 741-45

Nov. 1

Alienage: 793-98

Mental Disability, Age, Poverty: 798-805

Nonmarital Children: Handout

WEEK THIRTEEN

Nov. 6

Sexual Orientation: Handout; 553-60

Nov. 7

Sexual Orientation, continued: Handout; 572-80

Nov. 8

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WEEK FOURTEEN

Nov. 13

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Nov. 14

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Nov. 15

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