**Constitutional Law, Spring 2022**

**Professor John Stinneford**

**Syllabus**

**Law # 5501**

**Sections 2B and 3A**

**4 Credits**

**Course Description**

This is a course about constitutional law. We will cover three major topics: separation of powers, federalism, and individual rights. “Separation of powers” describes the division of the powers of the national government among three branches: the legislature, the executive, and the judiciary. “Federalism” describes the division of power between the national government and the states. “Individual rights” describes the liberties that are protected against the national and state governments (e.g., the rights to due process of law and equal protection of law).

There is far more constitutional law than we could cover in a single course. I am 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 That kind of constitutional law knowledge would be quickly out of date, and if you need it in practice you can always look it up in a treatise.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 Constitution 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 and understand the constitutional text and judicial opinions governing various aspects of constitutional law.

• Understand and articulate the major types of constitutional argument.

• Identify constitutional issues in given fact patterns and work through their solutions using the relevant legal rules.

**Required Text**

The casebook for this class is Paulsen, Calabresi, McConnell, Bray & Baude, The Constitution of the United States (4th ed. 2021). 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. Section 3A will meet from 9:15-10:30 a.m. in Holland Hall 285B, and Section 2B will meet from 10:45 a.m.-12:00 p.m. in Holland Hall 382. The final exam schedule may be found at: https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/exam-schedules. Please note that it is subject to change.

**Office Hours**

My office hours are on Tuesdays from 3:30-5:30 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 after the first two weeks of 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: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>.

**Accommodations For Students With Disabilities**

Students with disabilities who experience learning barriers and would like to request academic accommodations should connect with the Disability Resource Center (https://disability.ufl.edu/). It is important for students to share their accommodation letter with their instructor and discuss their access needs as early as possible in the semester.

**Health and Wellness Resources**

* *U Matter, We Care*: If you or someone you know is in distress, please contact [umatter@ufl.edu,](mailto:umatter@ufl.edu) 352-392-1575, or visit [U Matter, We Care website](https://umatter.ufl.edu/) to refer or report a concern and a team member will reach out to the student in distress.
* *Counseling and Wellness Center*: [Visit the Counseling and Wellness Center website](https://counseling.ufl.edu/) or call 352-392-1575 for information on crisis services as well as non-crisis services.
* *Student Health Care Center*: Call 352-392-1161 for 24/7 information to help you find the care you need, or [visit the Student Health Care Center website](https://shcc.ufl.edu/).
* *University Police Department*: [Visit UF Police Department website](https://police.ufl.edu/) or call 352-392-1111 (or 9-1-1 for emergencies).
* *UF Health Shands Emergency Room / Trauma Center:* For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; [Visit the UF Health Emergency Room and Trauma Center website](https://ufhealth.org/emergency-room-trauma-center).

**Basic Needs Assistance**

Any student who has difficulty accessing sufficient food or lacks a safe place to live is encouraged to contact the Office of Student Affairs.  If you are comfortable doing so, you may also notify me so that I can direct you to further resources.

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**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: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>.

**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.

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, or type the attendance “password” in the online system. 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**

Cellular telephones should not be used during class and ringers should be silenced.

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

**Computer Usage**

You may use a laptop to take notes, prepare your outline, and take exams. Please do not surf the web, send emails or IMs, look up old crushes on Facebook, shop for autographed Tim Tebow photos on EBay, or generally mess around on your computer. Such conduct is unprofessional, and shows a lack of respect for your classmates and me. Such conduct may result in a grade reduction as discussed in the “class participation” section, above.

**Student Evaluations**

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at https://gatorevals.aa.ufl.edu/students/. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via https://ufl.bluera.com/ufl/. Summaries of course evaluation results are available to students at https://gatorevals.aa.ufl.edu/public-results/.

**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 (19-23, 1697-1703, 23-32)

2. The Constitution (1-15, 33-44)

Separation of Powers

3. Introduction to separation of powers (45-62)

4. Legislative power: specificity and delegation (86-95; supp. 3-16)

5. Legislative power: Legislative procedure, bicameralism and presentment (106-130)

6. Legislative power: The power of the purse (130-148)

7. Executive power: The Appointment Power (166-179)

8. Executive power: Supervisory and Removal Powers (245-250, 196-214)

9. Executive power: Removal power cont’d (214-245)

10. Judicial power: Judicial review (372-397)

11. Judicial power: Departmentalism and judicial supremacy (397-416)

12. Judicial power: The case or controversy requirement (416-429)

Federalism

13. Introduction to federalism (461-484)

14. The Second Bank of the United States (484-508)

15. The Commerce power (508-528)

16. The Commerce power, continued (528-550)

17. The Commerce and Necessary & Proper Clauses (550-570)

18. The 10th Amendment (570-595)

19. The taxing and spending powers (603-628)

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

(628-659)

Individual Rights

21. Introduction to the Bill of Rights (813-830)

22. Introduction to the Reconstruction Amendments (1275-1290)

22. Proposing the 14th Amendment (1290-1312)

23. Early cases: Slaughter-House and Strauder (1313-1337)

24. Civil Rights Cases and Yick Wo (1337-1355)

25. Plessy and Segregation (1371-1390)

26. Brown and Desegregation (1355-1372, 1381)

27. Brown II, Loving, and Washington v. Davis (1405-1424)

28. Affirmative Action (1424-1446)

29. Sex discrimination (1463, 1472-1495)

30. Due process and the rise of substantive due process (1507-top of 1513, 1552-1569)

31. The fall and rise again of substantive due process (1569-1593)

32. Abortion and Roe (1593-1608)

33. Abortion and Casey (1608-1640)

34. The Methodology of Substantive Due Process (1640-1676)

35. Congressional Enforcement Power (1676-1696)