

Constitutional Law I Syllabus
Fall 2009

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Class: 1:10-2:20 Wednesday, Thursday, and Friday, Room 65

Office Hours: 11:05-12:10 Wednesday, 9:00-10:00 Thursday and Friday, and by appointment.

Course Description: Constitutional Law I covers the basic constitutional design of American government, with a focus on governmental powers and the role of the Supreme Court in interpreting the Constitution. Among other things, we will study judicial review, the powers of Congress and the President, and the role of the states in our federal system of government.

Course Materials: Our casebook is Gregory E. Maggs & Peter J. Smith, *Constitutional Law: A Contemporary Approach*. You should also purchase the 2009 supplement to the casebook that covers the cases from the October 2008 Term of the Supreme Court. The outline below shows the pages we will cover in the casebook and supplement and the order in which we will cover them. I will try and put the next day's reading assignment on TWEN, but the default rule is to stay about 25 pages ahead of where we ended the previous class. I also reserve the right to assign additional materials, especially if we move through the material more quickly than anticipated.

Although a secondary source is not strictly necessary to understand the material in this class, one exceptional hornbook is Erwin Chemerinsky, *Constitutional Law: Principles and Policies* (3d ed. 2006). Another is John E. Nowak & Ronald D. Rotunda, *Hornbook on Constitutional Law* (7th ed. 2004). Either might be helpful if you encounter some concepts in the course that you do not understand.

Examination: The grade in this class will be determined by an **8-hour open book "take-home" essay examination**. The examination will cover all assigned readings, with a substantial emphasis on the material specifically discussed in class. The final examination is scheduled for **December 18, 2009**. The examination will have a word limit that will be strictly enforced.

Class Participation: You must do all assigned readings and be prepared to contribute in class. The material in this class is very difficult, so being prepared every day will be indispensable to your success in this course. I will call on students randomly over the course of the semester. It should be an extraordinary circumstance that causes you to miss, or to be unprepared for, class. If you need to miss a class or are unprepared on a particular day, you must let me know ahead of time by e-mail.

I do reserve the right to adjust any grade upward by up to two incremental grades (e.g., B+ to A) for exceptional class participation, and to adjust any grade downward by that same amount for excessive absences or tardiness, and/or poor class participation. Please be respectful to your classmates and *arrive on time* for class. You will be counted absent for the day if you do not arrive in time for the beginning of class.

TWEN: You are required to sign up on the TWEN page for this course. I will use this page to make announcements about upcoming classes and possibly to make supplementary assignments. I will also answer questions on the TWEN page if they are posted in the "discussion" section. Please

check TWEN on a regular basis.

Scheduling: We will meet for 70 minutes of class on three days per week, which I realize is somewhat unconventional for a three-credit hour course. This schedule was selected to accommodate institutional and personal needs, and will allow us to complete all the required class time for this course in just eleven weeks, or approximately 32 class periods.

I may find it necessary to cancel several class periods during the course of the semester for personal or institutional reasons. Even if several such classes are canceled, it is very unlikely (though not guaranteed) that we will need to schedule make-up classes over the course of the semester. I am already scheduled to be at a conference on October 15 and 16, so I can say in advance that those class periods will be canceled. In the event that we find ourselves with extra class periods at the end of the semester, I will just cancel those remaining classes or hold a review session on one or more of those days.

Course Outline and Reading Assignments: (A refers to appendix A at the back of the casebook, and S refers to the 2009 Supplement)

I.	<u>Introduction to the Constitutional Law (Week 1)</u>	<u>Assignment</u>
A.	The Constitution (particularly Articles I, II, and III)	1391-1411
B.	Historical Setting and Organization of the Constitution	1-15
C.	Methods of Constitutional Interpretation	15-25
II.	<u>The Role of Federal Courts in Interpreting the Constitution (Weeks 1, 2, & 3)</u>	
A.	The Power and Scope of Judicial Review <i>Marbury v. Madison</i> <i>Martin v. Hunter's Lessee</i> <i>Cooper v. Aaron</i>	51-76
B.	The "Case or Controversy" Requirement <i>Muskrat v. United States</i>	89-94
C.	Standing <i>Allen v. Wright</i> <i>Lujan v. Defenders of Wildlife</i> Hypothetical on the Nuclear Regulatory Commission	94-111
D.	The Political Question Doctrine <i>Nixon v. United States</i>	82-89
E.	Congressional Power to Control Jurisdiction <i>Ex Parte McCordle</i> Hypothetical: The Pledge Protection Act	115-120
F.	Summary of Judicial Power	121-25

III. Congress's Powers (Weeks 3, 4, 5, & 6)

- A. A Framework for Analysis 127-45
McCulloch v. Maryland
- B. The Commerce Clause: Before the New Deal 145-63
Gibbons v. Ogden
United States v. E.C. Knight Co.
Shreveport Rate Case
Hammer v. Dagenhart
- C. The Commerce Clause: After the New Deal 167-76
NLRB v. Jones & Laughlin Steel Corp.
United States v. Darby
Wickard v. Filburn
- D. The Commerce Clause: The Modern View 183-210
United States v. Lopez
United States v. Morrison
Gonzales v. Raich
- E. The Taxing Power 210-14
Child Labor Tax Case
- F. The Spending Power 216-26
United States v. Butler
South Dakota v. Dole
- G. Constitutional Limitations on Federal Legislative Power 235-64
New York v. United States
Printz v. United States
Hypothetical: Federal Missing Children Database
Alden v. Maine
- H. Summary of Legislative Power 264-66

IV. The Powers of the Presidency (Weeks 6, 7, & 8)

- A. The Limits of Presidential Power 365-78
Youngstown Sheet & Tube Co. v. Sawyer
- B. Foreign Affairs 378-86, 391-96
United States v. Curtiss-Wright Export Corp.
Dames & Moore v. Regan
- C. Presidential Powers and the War on Terror 397-421
Hamdi v. Rumsfeld
Hamdan v. Rumsfeld
- D. Executive Privilege and Immunity 421-28, 434-41

United States v. Nixon
Clinton v. Jones

V. Separation of Powers (Weeks 8, 9, & 10)

- A. The Non-Delegation Doctrine 445-55
Whitman v. American Trucking Ass'n
- B. The Legislative Veto 455-66
INS v. Chadha
- C. Bicameralism and Presentment 467-73
Clinton v. New York
- D. Congressional Control over Executive Officials 474-75, 485-507
Bowsher v. Synar
Morrison v. Olson
- E. Summary of Separation of Powers 514-517

VI. Federalism (Weeks 10 & 11)

- A. Preemption and the Supremacy Clause 267-75
Hines v. Davidowitz (on TWEN)
Silkwood v. Kerr-McGee Corp.
Hypothetical Regarding Agricultural Commodities
- B. Dormant Aspects of the Commerce Clause (if we have time) 275-82, 284-88,
291-99, 304-15,
322-33
Gibbons v. Ogden
Cooley v. Board of Wardens
Dean Milk Co. v. City of Madison
Hughes v. Oklahoma
Southern Pacific Co. v. Arizona
Kassel v. Consolidated Freightways Corp.
Philadelphia v. New Jersey
South Central Timber Development, Inc. v. Wunnicke
United Haulers Ass'n v. Oneida-Herkimer Solid Waste
- C. Summary of Federalism 357-61

VII. Review for Final Examination (Week 11)

