

CONSTITUTIONAL LAW – I

Spring 2011

Professor Kahn

Office Hours: TBA

Office Phone: x2648

jkahn01@gw.hamline.edu

This course will introduce students to constitutional interpretation, including doctrines and competing philosophies, and the framework of state and federal government under the Constitution. It includes the historical background of the drafting and interpretation of the Constitution, the development of the Supreme Court as an institution, the powers of the three branches of the federal government and of the states, and the structure of the Constitution, all as interpreted by the Supreme Court.

Readings:

The casebook for the course is: Curtis, Parker, Douglas, and Finkelman, *Constitutional Law in Context. Vol. 1, 3d Edition* (Carolina Academic Press). All page references in the syllabus assignments are to this book, unless otherwise noted.

Resources:

There are several serviceable hornbooks available in the library. Perhaps the most accessible and up to date is Erwin Chemerinsky, *Constitutional Law: Principles and Policies*. There is also Laurence Tribe's classic *American Constitutional Law* (2d ed. 1988). It is excellent, dense, and sophisticated. Nowak and Rotunda also have a very solid hornbook that is more up to date: *Constitutional Law*. There are of course, numerous commercial outlines available. These can be useful if you find one that works well with your own style of study. Be careful, however, to use these as *supplements to* not *replacements for* the readings.

There are numerous web sites beyond Westlaw and Lexis that have useful resources. The Legal Information Institute at Cornell University School of Law is particularly good. It can be accessed at www.law.cornell.edu. A very interesting multimedia site devoted exclusively to the U.S. Supreme Court is www.oyez.org. It is worth a visit.

Class Participation: The course is organized around fostering student discussion of the cases we read each class, therefore your regular attendance is essential. Every student will be responsible for presenting at least one case in class. These cases will be assigned in advance.

Classroom Etiquette: The classroom environment must be conducive to learning for all students. Proper conduct in the classroom is intended to encourage everyone to participate in, to derive benefit from, and ultimately to enjoy the class. It is perfectly acceptable and indeed professionally required that you demand professional behavior of your classmates in and out of class.

Technological devices, in particular, can be distracting to your classmates and me and

thus undermine that goal. Accordingly, during class, in addition to usual courtesies, refrain from text-messaging and email; using cell phones, pagers, or any other communication device; refrain from displaying wallpaper, screen savers, or other material on your laptop computer screen that can reasonably be expected to offend or distract your classmates.

- Behavior which interferes with the learning ability of your classmates will be sanctioned accordingly.

Attendance Policy: Attendance is important and required by the ABA and Hamline University School of Law. If a student is absent (for any reason) more than 5 times this semester, it is **his or her responsibility** to contact the professor to determine whether the work can be made up or whether some other arrangement such as a grade change or withdrawal from the course is more appropriate. Failure to consult with the professor promptly about make-up work or other alternatives after a sixth (6) absence may constitute grounds for withdrawal from the course.

Grading: Your course grade will be derived primarily from your final exam. Class participation may count as a “plus” factor in cases where grades are on a particular borderline. Failure to participate in class will *not* count against you so long as you each make a good faith effort in your assigned class case presentations.

Final Exam: The Final Exam will be *limited open book*. This means you may bring in the casebook and any other assigned materials. You may also bring in any notes or outlines that *you yourself* have written. This does not include other materials that you have simply copied. You may bring in notes that have been prepared cooperatively with other students. You may not bring in commercial outlines or any other such materials not assigned in class.

THIS SYLLABUS IS SUBJECT TO REVISION

Introduction to American Constitutional Law and the Courts

1/19: Basic Documents:
pp. 3-21

1/21: Constitutional Interpretation
pp. 21-38

- 1/24: Judicial Review - I
pp. 309-330
- 1/26: Judicial Review – II
pp.331-343
- 1/28: Scope of Judicial Review; Justiciability - I
pp. 348-350; 357-367
- 1/31: Justiciability – II
pp. 367-385
- 2/2: Standing - I
pp. 386-405
- 2/4: Standing – II
pp. 405-415
- 2/7 Standing III
pp. 415-425, 428-436

THE POWERS OF CONGRESS

- 2/9: Implied Congressional Power
pp. 64-81
- 2/11: Commerce Clause – I
pp. 97-116
- 2/14: Commerce Clause - II
pp. 124-139
- 2/16: Commerce Clause - III
pp. 143-156
- 2/18: Commerce Clause – IV
pp. 156-179
- 2/21: Commerce Clause – V
pp. 179-199
- 2/23: Commerce Clause – VI
pp. 199-217
- 2/25: Other Powers
pp. 225-239

THE ROLE OF THE PRESIDENT

- 2/28: Scope of Executive Power
pp. 439 - 454; 462-465
- 3/2: President as Commander in Chief
465-476
- 3/4: Appointments and Executive Privilege - I
pp. 479-497

SPRING BREAK

- 3/14: Appointments and Executive Privilege – II
pp. 497-506

LIMITS ON FEDERAL POWER

- 3/16: 10th Amendment - I
pp. 249-253; 263-273
- 3/18: 10th Amendment – II
pp. 273-283
- 3/21: 11th Amendment
pp. 284-304

LIMITS ON STATE POWER

- 3/23: Dormant Commerce Clause – I
pp. 540- 549
- 3/25: Dormant Commerce Clause – II
pp. 549-561
- 3/28: Dormant Commerce Clause – III
pp. 573-590
- 4/1: Dormant Commerce Clause – IV
pp. 591-605
- 4/4: Article IV Privileges and Immunities
pp. 610-620

INCORPORATION

4/6: pp. 627-640

4/8: pp. 691-708

4/11: pp. 709-721

4/13: pp. 721-742

SUBSTANTIVE DUE PROCESS

4/15: Introduction
pp. 787-809

4/18: Economic Rights – I
pp. 809-817

4/20: Economic Rights – II; Social Rights - I
pp. 827-844

4/22: Privacy - I
pp. 848-868

4/25: Privacy – II
pp. 868-890

4/27: Privacy – III
pp. 890-912

4/29: Privacy - IV
pp. 926-937

5/2: Privacy - V
pp. 944-958.

5/3: Review