

CONSTITUTIONAL LAW

Professor Rock Pring

M, W, & Th 2:45-3:55 pm

Spring Semester 2009

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COURSE RULES & INFORMATION

- Course Coverage:** This is an introduction to **Constitutional Law** – our country’s most fundamental and important body of law. This is the law that “*constitutes*” or establishes a country’s government and legal system – simultaneously giving the government operating powers and limiting those powers to protect our individual rights and liberties. Constitutional Law covers a multitude of subjects and arises in every legal practice. We cannot explore every issue, but will cover enough for a solid foundation for the bar exam and future practice. We start with **government power** (the separation of powers of the judicial, executive, and legislative branches and the allocation of power between national and state/local government levels) and conclude with select **individual rights and liberties** (substantive due process, equal protection, etc.).
- Course Goals:** Our goals are to learn (1) how our constitutional-legal-political system really works and (2) how to solve the Constitutional Law issues found in so many typical client transactions. Having personally practiced Constitutional Law for all sides at one time or another – government, business, and civil liberties interests – I can attest that few fields generate the disputes, biases, value conflicts, and polarization of this one. That is part of its magic. It will be very important in this class to respect each others’ differing values, deal with them professionally, and be open to learning from all viewpoints.
- Texts:** (1) **Choper, et al., Constitutional Law: Cases - Comments - Questions** (West, 10th ed., 2006) (“CB” in Class Assignments below) (available at the DU Bookstore). Be sure to get the 10th ed. – not the old 2001 9th ed, which is years behind.

(2) **Same, 2008 Supplement** (paperback). Check for every class..

(3) **Xerox Readings** (“X” below) (equally important – automatically read with correspondingly numbered CB pages - e.g., with CB 14 read X 14.1 and 14.2) (to be available in the “Con Law” basket by the door to my office – Room 407H).
- Grading:** The final grade will be a combination of a final exam (90% - see “Final Exam” below), plus class participation (10% - see “Class Participation” below). The SCOL rules require the median grade for this class to be a B. In the unlikely event that a student’s class preparation or participation is seriously deficient, I reserve the right to take that into account non-anonymously in grading.
- Class Participation:** Lawyers agree that verbal skills are as important as written skills in

the practice of law, so I expect everyone to participate in class discussions. To ensure as much equal opportunity as possible, I will use both random call-on and volunteering. I expect you to be prepared – if you are not, say so when called on. Being prepared means (1) having done the reading and (2) made an effort to understand it sufficiently to engage in a professional discussion about it. (Do not notify me before class that you are unprepared or going to be absent, and don't wait until the last weeks of class to participate since the opportunities will be limited then.)

Class participation will be non-anonymously graded: A = multiple well-prepared contributions of substance; C = some contributions of some substance; F = unprepared, frequent absences, and/or nil or poor contributions; B and D will not be used. The grade is not simply based upon the number of times you speak in class. Warning: This 10% of the grade is enough to move grades a letter grade up or down. A participation grade is a subjective judgment, but a professional one, designed to give you an early indication of how practicing professionals will rate your ability to communicate your legal advice to clients, attorneys, judges, and others. The grades will not be computed until the end of the semester, so do not ask for interim evaluation, and they are not subject to debate any more than such peer judgments are in the real world.

6. **Final Exam:** There will be one on-line, open-book, no-collaboration final exam. It will be available for 24 hours on the Registrar's Office's on-line exam site and returned there. It will consist of legal problems based on actual professional practice, will be anonymously graded, and will comprise 90% of the course grade. It will rely solely on the class readings and discussions and not on any library, internet, or other outside research. The no-collaboration rule will be in effect throughout the 24 hours of the exam, so study groups are advised to complete all their work together and finalize all contacts by the end of the last day of reading period, Sunday May 3.

7. **Final Exam Review:** I urge you to come in and review your graded exam after grades are posted. With it, you will be provided a Review Folder containing the questions, a grading explanation, and anonymous copies of some of the best answers from this class. With this review system, a professor conference is seldom needed. If you do wish to schedule a conference, I am happy to meet with you, but be aware that the College of Law Rules forbid a professor changing a grade after it is reported, except for a mathematical or other nonjudgmental error.

8. **Seating Chart:** By the second class, please select a seat and sign for it on the seating chart. Given the participation format, my copy of the seating chart is controlling – a person not on it (or on it, but repeatedly not in that exact seat) will not have his/her final exam graded and will receive a final course grade of F. If you wish to change your seat during the semester, feel free, but be sure to advise me to change my copy of the seating chart.

9. **Office Hours:** Set office hours are frequently overcrowded, at inconvenient times, or conflicted out for you. Just stop by – I'll be honest if I can't meet – or call or email me with good times for you. You are welcome, and I look forward to it.

10. **TWEN & Email:** Sign up on our course's TWEN site ASAP. Be sure to check your email

regularly.

11. **Study Groups:** Feel free to form study groups, share notes, work together on outlines, etc. But note that during the exam period the “no consultation” rule is in effect, so plan to complete your substantive work together before the start of exams on May 4.

12. **Honor Code:** The Honor Code applies to all aspects of this course. Even a suspicion of a violation requires a report to the Honor Board, without notice.

CLASS ASSIGNMENTS

<u>Date</u>	<u>Topic</u>	<u>Read – and be prepared to discuss</u>
M 1/12/09	<u>INTRODUCTION TO THE CONSTITUTION</u>	CB 1595-1609 X 1.1-.8

GOVERNMENT POWERS

JUDICIAL POWER

W 1/14	1. Judicial Review	CB 1-22 X 8.1-.3, 22.1-.3
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Th 1/15	“ “ “	CB 316-321, 22-26 X 23.1, 26.1
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M 1/19	NO CLASS – Martin Luther King Jr. Holiday - Why do we celebrate it? Click on http://en.wikipedia.org/wiki/Martin_Luther_King,_Jr.	
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W 1/21	2. Limits on Judicial Review	
	a. Political Questions	CB 26-41
	b. Congressional Regulation of Judicial Power	CB 41-48 X 48.1-.2

NATIONAL LEGISLATIVE POWER

Th 1/22	1. Sources and Nature	CB 55-65
	2. The Commerce Power	
	a. Early (Limiting) Cases	X 65.1 CB 65-77

M 1/26	Video: PBS's <i>"Liberty! The American Revolution: Are We To Be A Nation?"</i>	
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W 1/28 & Th 1/29	NO CLASSES	
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Week of 2/2	2. The Commerce Power (continued)	
	b. The "New Deal" and the Emergence of the Modern Commerce Power	CB 77-87
	c. Protection of "Non-Commerce" Interests with the Commerce Power	CB 87-111 X 103.1-.2, 111.1

Week of 2/9	3. Intergovernmental Immunities	CB 128-150, X 140.1
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SEPARATION OF POWERS: EXECUTIVE POWER

1.	President's Actions Affecting Congressional Powers	
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- a. Domestic Matters X 151.1, CB 151-162
- b. International Affairs and War Powers CB 162-172

Week of 2/16 c. "The War on Terror" CB 172-179, X 179.1, S 3-12

- 2. Congressional Actions Affecting the President's Powers
 - a. The (Non-)Delegation Doctrine CB 180-184
 - b. Legislative and Line-Item Vetoes CB 185-195
 - c. Appointment and Removal Powers CB 195-208
 - d. Executive Privilege, Immunity, and Impeachment CB 208-220

Week of 2/23 **STATE POWER TO REGULATE**

- 1. The "Dormant" Commerce Clause CB 221-260, 286
X 222.1, 227.1, 233.1, 260.1
- 2. Interstate Privileges and Immunities CB 275-282

Week of 3/2 **PROTECTION OF ECONOMIC INTERESTS**

- 1. Substantive Due Process CB 292-323
- 2. Contract Clause CB 353-360 X 360.1
- 3. Takings CB 323-353
X 331.1, 350.1

INDIVIDUAL RIGHTS / LIMITS TO GOVERNMENT POWER

Week of 3/9 **INTRODUCTION** CB 1603-1609, 316-318
X 1609.1-.2, 316.1

PROCEDURAL DUE PROCESS CB 555-566, 569-570,
576-581

SUBSTANTIVE DUE PROCESS

- 1. Rights of Privacy-Autonomy-Personhood CB 376-391
. . . and fill out the form on X 379.1 X 379.1, 391.1
to fully understand the different Justices' positions

Week of 3/16 NO CLASSES – Spring Break Week

Week of 3/23 2. Abortion Rights CB 392-401, 422-448
S 19-27
. . . and fill out forms on X 393.1 & 422.1 X 393.1-.3, 422.1, 448.1
to fully understand the different Justices' positions

- 3. Sexuality Rights CB 489-522, 1261 (Note 3)
X 489.1, 520.1
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Week of 3/30 **EQUAL PROTECTION**

1. Traditional Rationality Standard of Review CB 1178-1194
X 1178.1, 1181.1,
1187.1, 1193.1

 2. Strict Scrutiny for “Suspect Classes”
 - a. Racial and Ethnic Discrimination CB 1194-1226
X 1194.1-.3, 1205.1-.2,
1211.1-.2, 1221.1-.3
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- Week of 4/6
- b. Affirmative Action (“Benign”
or “Reverse” Discrimination”) CB 1261-1285; S 57-68
X 1285.1-.2

 - c. Gender Discrimination CB 1298-1330
X 1298.1-.2, 1312.1,
1328.1-.2

Th 4/9 NO CLASS – Passover

- Week of 4/13
3. Strict Scrutiny for “Fundamental Rights” CB 1363-1364, 1429-1442

X 1442.1

THE “STATE ACTION” REQUIREMENT

Do only cases at
CB 1443-1447, 1452-1454,
1466-1474, 1478-1486,
1491-1494.
X 1493.1

Week of 4/20 **STANDING** CB 1544-1582

M 4/27 Last class: TBA

M 5/4 **FINAL EXAM**

The final exam will be available on-line from the Registrar’s Office and can be taken during the 24-hour period from 8:00 am on Monday May 4 through 8:00 am on Tuesday May 5.
