COURSE RULES & INFORMATION

1. **Course Coverage:** This is an introduction to Constitutional Law – our most fundamental and pervasive body of law. This is the law that "constitutes" or establishes the government and legal system of a country, state, or city. It simultaneously gives the government operating powers while limiting those powers to protect our individual human rights. Con Law covers a multitude of subjects and arises in every legal practice. We cannot explore every issue, but will cover a solid foundation for the bar exam and your future practice. We start with *government power* (the complex balancing of powers between the judicial, executive, and legislative branches and between the national and state/local government levels). We conclude with select *individual rights and liberties* (due process, equal protection, etc.).

2. **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’ very differing values, deal with them professionally, and be open to learning from all viewpoints.


   (2) *Same, 2009 Supplement* (paperback, at DU Bookstore). For every class, automatically check the Supplement under the pages covered in this Syllabus for that class to get the latest cases. Important cases are marked “ S” below.

   (3) **TWEN Course Materials** (on TWEN). Also, for every class, automatically check TWEN’ s Course Materials link for “ Additional Readings” – read the pages corresponding to the CB pages in the Syllabus for that class - e.g., with CB 1 read TWEN pages 1.1-1.7.

4. **Grading:** The final grade will consist of the final exam (90% - see “ Final Exam” below), plus class participation (10% - see “ Class Participation” below). SCOL rules require the median grade for this class to be a B. In the unlikely event that a student’s preparation or participation is seriously deficient, I reserve the right to take that into account non-anonymously in grading.
5. **Class Participation:** Verbal skills are as important as written skills in the practice of law, so everyone is expected to participate in class discussions. To ensure as much equal opportunity as possible, I will use row and random call-on, plus 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 do not 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 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. This 10% of the grade is enough to move final 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 posted on the Registrar’s Office’s on-line exam site and returned there. It will be available from 9:00 am Monday May 10 to 9:00 am Tuesday May 11 and may be taken during any 10-hour (or less) consecutive period during that time. The exam 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 availability of the exam, so study groups are advised to complete all their work together and finalize all contacts before Monday May 10.

7. **Final Exam Review:** I urge you to review your marked and graded exam in the Registrar’s Office after grades are posted. 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 peer-review system, a professor conference is unlikely to be needed. If you do want to discuss your exam, I am happy to do so, but be aware that the SCOL Rules prohibit a professor from changing a reported grade, except for a nonjudgmental error (like math).

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:** Professors’ 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 days and 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 for updates, lesson changes, etc.

11. **Study Groups:** Feel free to form study groups, share notes, and work together. But note that during the time the exam is available the “no consultation” rule is in effect, so plan to complete your substantive work together before 9:00 am Monday May 10.

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

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<th>Date</th>
<th>Topic</th>
<th>Read – and be prepared to discuss</th>
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<td>W 1/13/2010</td>
<td><strong>INTRODUCTION TO THE CONSTITUTION</strong></td>
<td>CB 1595-1609 TWEN 1.1-.7</td>
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### GOVERNMENT POWERS

#### JUDICIAL POWER

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<th>Th 1/14</th>
<th>1. Judicial Review</th>
<th>CB 1-22 TWEN 8.1-.3, 22.1</th>
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<td>Tu 1/19</td>
<td>“ ”</td>
<td>CB 316-321, 22-26 TWEN 23.1, 26.1</td>
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<td>W 1/20</td>
<td>2. Limits on Judicial Review</td>
<td>CB 26-41</td>
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<tr>
<td></td>
<td>a. Political Questions</td>
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<td>b. Congressional Regulation of Judicial Power</td>
<td>CB 41-48</td>
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#### NATIONAL LEGISLATIVE POWER

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<th>Th 1/21</th>
<th>1. Sources and Nature</th>
<th>CB 55-65</th>
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<td>2. The Commerce Power</td>
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a. Early (Limiting) Cases  

Tu 1/26
Video: PBS’ s “Liberty! The American Revolution: Are We To Be A Nation?”

W 1/27
Guest Speaker: Prof. Bob Hardaway  
- The Second Amendment
Xerox of Prof. Hardaway’s article (to be provided)
S 32-42

Th 1/28
Guest Speaker: Assoc. Dean & Prof. Fred Cheever
Select pp. from his casebook
- Art. IV, § 3, cl. 2: The Public Lands Clause  
Natural Resources
(to be provided)

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
   TWEN 103.1, 111.1

Week of 2/9
3. Intergovernmental Immunities  
CB 128-150, TWEN 140.1

SEPARATION OF POWERS: EXECUTIVE POWER

1. President’s Actions Affecting Congressional Powers

a. Domestic Matters  
   TWEN 151.1
   CB 151-162, S 2-3

b. International Affairs and War Powers  
   CB 162-172

Week of 2/16
2. “The War on Terror”  
   CB 172-179, 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
   TWEN 222.1, 227.1, 233.1, 260.1
   S 13-15
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
   TWEN 360.1
3. Takings CB 323-353
   TWEN 350.1

INDIVIDUAL RIGHTS / LIMITS TO GOVERNMENT POWER
Week of 3/9 INTRODUCTION CB 1603-1609, 316-318
   TWEN 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 TWEN 379.1 to fully understand the different Justices’
   TWEN 379.1, 391.1 positions
Week of 3/15  NO CLASSES – Spring Break Week

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Week of 3/23

2. Abortion Rights  CB 392-401, 422-448
   - and fill out forms on TWEN 393.1 & 422.1 TWEN 393.1-.3,
   422.1, 448.1
   to fully understand the different Justices’ positions

3. Sexuality Rights  CB 489-522, 1261 (Note 3)
   TWEN 489.1, 520.1

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Tu 3/30  NO CLASS – Passover

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W 3/31 & Th 4/1

**EQUAL PROTECTION**

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

2. Strict Scrutiny for “Suspect Classes”
   a. Racial and Ethnic Discrimination  CB 1194-1226
      TWEN 1194.1-.3, 1205.1-.2,
      1211.1-.2, 1221.1-.3

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Week of 4/6

57-68

b. Affirmative Action (“Benign”  CB 1261-1285; S
   or “Reverse” Discrimination”)  S 65-76
   TWEN 1285.1-.2

c. Gender Discrimination  CB 1298-1330
   TWEN 1298.1-.2, 1312.1,
Week of 4/13  3.  Strict Scrutiny for “Fundamental Rights”  CB 1363-1364, 1429-1442
       TWEN 1442.1

   THE “STATE ACTION” REQUIREMENT
   Do only cases at
   CB 1443-1447, 1452-
   1454,
   1466-1474, 1478-1486,
   1491-1494, TWEN 1493.1

Week of 4/20 STANDING  CB 1544-1582
   S 83-85

Tu  4/27 Last class: TBA

W 4/28 All-Class Makeup Day – if necessary

M 5/10-11  FINAL EXAM

The final exam will be available on-line from the Registrar’s Office and can be taken during any
consecutive 10-hour (or less) period from 9:00 am on Monday May 10 through 9:00 am on
Tuesday May 11.