COURSE NUMBER & COURSE NAME: Constitutional Law II (3)  8632

ESSENTIAL PREREQUISITE(S): Constitutional Law I (3)  8631

DESIRABLE PREREQUISITE(S): None

METHOD OF GRADING AND APPRAISAL OF STUDENT FOR GRADE: Grades will be based upon a final examination that is either multiple-choice, essay, or a combination of both. Class participation may also count toward a student’s grade, but only positively. (That is, a few students may receive a slight “bump” in their grade for participation.)

SUMMARY DESCRIPTION OF COURSE: This course primarily concerns constitutional law issues dealing with the structure of government and balance of powers between government entities. It provides students with an understanding of current doctrine in these areas and places pivotal decisions of the Supreme Court in historical and political context. The topics covered include: the constitutional role and powers of Article III courts, the powers of Congress (with extensive coverage of the commerce power), the powers and immunities of the executive branch, presidential authority during wartime, the separation of powers, the Tenth Amendment, the “dormant” commerce clause, procedural due process, ex post facto laws, and the process of constitutional amendment.

COURSE BOOK(S):


RECOMMENDED:

COURSE MATERIALS: See attached syllabus.

RELEVANCY OF COURSE FOR CAREER PURPOSES: The course will foster a solid understanding of essential constitutional principles. Every lawyer should possess a working knowledge of the restrictions on, and structure of, government power in our federalist system.

RELEVANCY OF COURSE FOR MO/MULTI-STATE BAR EXAMINATION: Constitutional Law questions on the Missouri Bar Exam are drawn primarily from the subject matter of this course. Constitutional Law II is, therefore, essential to effective bar examination.
Constitutional Law II

Fall Term 2008
Professor Kris W. Kobach

Required texts:


Additional readings indicated below (available on TWEN) can be downloaded from the course website on Westlaw’s TWEN (The West Education Network) system. Please go to www.lawschool.westlaw.com and register yourself for the course, or it is available in Roo Prints in the law library.

Course objectives:

This course concerns the structure of the American constitutional system, the powers allocated to the three branches of the federal government, and the relationship between the federal government and the states. The course provides students with an understanding of current doctrine in these areas and places pivotal Supreme Court decisions in historical and political context. Accordingly, the course presents constitutional law not as a static list of rules, but as an evolving body of caselaw. At the same time, it seeks to foster a solid understanding of essential constitutional principles.

Grading and course requirements:

Grades will be based upon a final examination that is part multiple-choice, part essay questions. Class participation may also count toward a student’s grade, but only positively. (That is, a few students will receive a slight “bump” in their grade for participation.) All students should be prepared to discuss the readings on the topic covered in a particular class session.

The topic numbers that follow will not correlate exactly with class sessions. Some class session will deal with more than one topic. Others will only partially cover a topic. The cases that are mentioned specifically below are those on which class discussions will focus. Students are, however, also expected to be familiar with other cases included in the assigned readings.
I. THE ROLE OF THE COURTS

(1) **Introduction**
Theories of constitutional democracy. The premise of delegated powers. Policing the boundaries between the branches of government and between state and federal power. Review of *Marbury v. Madison* and Ch.J. Marshall’s assertion of the power of judicial review.
- GS 1-30.

(2) **Congressional definition of federal judicial power**
*Ex Parte McCord* and congressional control over federal jurisdiction.
- Excerpt from *Hamdan v. Rumsfeld*.

(3) **Supreme Court authority to review state court judgments**
*Martin v. Hunter’s Lessee*.
- GS 15-19.

(4) **The standing requirement**
- GS 32-47.
- Excerpt from *Warth v. Seldin*.

II. THE POWERS OF CONGRESS

(5) **The sources and nature of the national legislative power**
- GS 60-81.
- Federalist 10.

(6) **Early commerce power doctrine**
- GS 82-89.

(7) **The child labor saga—a constitutional struggle in microcosm**
- GS 89-91, 150-153.

(8) **The court-packing showdown and the “switch in time”**
- GS 91-103.
- FDR’s Fireside Chat of 4 March 1937.

(9) **The broad scope of the modern commerce power**
- GS 103-06.

(10) **Has the revolution arrived?**
*United States v. Lopez, United States v. Morrison* and *Gonzales v. Raich*.

(11) **The taxing power and the spending power**
III. THE POWERS OF THE EXECUTIVE

(12) Lincoln’s suspension of the writ of habeas corpus
The case of the copperhead conspirator.
   - GS 262-68.
   - Excerpt from Ex parte Milligan.

(13) Military Tribunals
   Ex parte Quirin, Hamdi v. Rumsfeld, and Hamdan v. Rumsfeld.
   - GS 268-91.
   - Excerpt from Ex parte Quirin;
   - Federal Register, “Dentention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism.”

(14) Implied executive authority
When can the president act without explicit constitutional or statutory authority? Youngstown Sheet & Tube Co. v. Sawyer
   - GS 244-53.

(15) Executive privilege and immunities
   - GS 320-38.

IV. THE SEPARATION OF POWERS

(16) The conflict between legislative and executive powers
   - Federalist 51.

(17) Congressional concession of power to the executive
   The line-item veto. Clinton v. New York.
   - GS 301-06.

(18) Justiciability
   - GS 49-59.

V. STATE REGULATION

(19) The dormant commerce clause—early conceptions
   The unexercised commerce power of Congress as a barrier to action by the states. Willson v. Blackbird Creek Marsh Co., Cooley v. Board of Wardens of the Port of Philadelphia.
   - GS 174-84.

(20) The modern dormant commerce clause—facial discrimination against out-of-staters
   - GS 184-96.
   - Excerpt from Granholm v. Heald.

(21) The modern dormant commerce clause—protectionist purpose and effect


(22) The “market participant” exception

*Reeves v. Stake* and *South—Central Timber Dev. v. Wunnike*.

- GS 202-06.
- *Reeves v. Stake*.

(23) The Privileges and Immunities Clause of Article IV

*United Bldg. & Constr. Trades v. Camden* and *Supreme Court of New Hampshire v. Piper*.

- GS 222-29.

VI. THE TENTH AMENDMENT

(24) Mere truism or real restriction?

How exactly does the Tenth Amendment protect federalism in our constitutional framework? Supreme Court vacillation in *National League of Cities v. Usery* and *Garcia v. San Antonio Metropolitan Transit Authority*.

- GS 127-34.

(25) Commandeering state governments—an emerging line of caselaw?


- GS 134-49.

VIII. OTHER CONSTITUTIONAL ISSUES

(26) Ex post facto laws

- *Harisiades v. Shaughnessy*;
- *Lindsey v. Washington*;
- *California Dep’t of Corrections v. Morales*;
- Cynthia Scanlon, “The Domestic Violence Act.”