

Advanced Constitutional Law

Law 7570

Professor Douglas Spencer
University of Connecticut

Fall 2019

Class room

CHASE 110

Thursday 9:30a-12:30p

Contact

Office: 312 Hosmer

E-mail: douglas.spencer@uconn.edu

Office Hours: Wednesday 10-11a

Thursday (by appointment)

Course Description

This course will focus on constitutional law questions related to the separation of powers between the federal government and the states, and between individual branches of the federal government itself. We will consider how the text of the Constitution helped to shape these “structural” aspects of American government and, perhaps more importantly, how jurisdictional disputes not explicitly addressed by the Constitution have been resolved. We will read a variety of primary texts (the Constitution, judicial opinions, federal and state statutes, Executive Orders, and OLC opinions) as well as important secondary texts (law review articles, opinion editorials) to guide our discussions. As will become clear rather quickly, many current disputes over the horizontal and vertical separation of powers have no clean resolution under the law, although strong norms have developed over time.

Course Objectives

1. To familiarize you with the fundamental premises and design of the constitutional system and government of the United States.
2. To expose you to the guiding principles and applicable doctrines of the structural issues in constitutional law.
3. To cultivate your ability to identify latent constitutional issues.
4. To equip you with the intellectual tools necessary to properly conceptualize and analyze constitutional issues.
5. To foster an informed perspective on the nature and limits of constitutional judicial decision-making.

Required Text

Readings for the course will be posted on the course TWEN site. There is no required casebook for the course; all of the cases that we will read are accessible via Westlaw/Lexis (or other online sources). You are welcome to use your 1L casebook if you still own it and the cases we read are in it.

TWEN

In addition to course readings, you will be able to find a copy of the syllabus and my slides (when I use them) on the course TWEN site. I will also post announcements about the reading schedule and other matters related to the course via TWEN.

Classroom Rules and Expectations

The principal expectation is that you will be prepared and participate in the class discussion. Class attendance and participation are important parts of this course and will factor into your grade.

I want to try something new this year – **no laptops after the first 10-15 minutes of class**. I want your experience in this course to be as immersive as possible and while I think laptops make it easier to keep and organize notes and outlines, I know (from personal experience) that laptops make it easy to get distracted. Laptops also facilitate the common law student pitfall or transcribing class discussions instead of engaging with them. Thus, I will spend the first 10-15 minutes of each class providing a summary of the key takeaway points from our previous class. You are permitted to use your laptops during this review period, if you choose.

Grading

Course grades will be based on the following breakdown:

Response Paper #1	20%
Response Paper #2	20%
Final exam	50%
In-class participation	10%
<hr/>	
Total	100%

Response Papers

Key skills that students should develop in law school are the ability to critically assess and write analytically. Toward these goals, you will be required to write two response papers (1,500 words each) to law review articles and their related case(s). For each response paper you will need to read at least one article and incorporate discussions from the relevant case law. You are welcome to focus on one issue across the cases and article, or a number of issues in the cases and article. A suggested way to structure the response paper is to: (1) Briefly describe the part of the argument or aspect of the reading that you plan to address; (2) **Take a position.** Do you agree or disagree with the particular argument? Partially? Completely? If you disagree, why do you disagree? And what is your proposed alternative argument/framework/approach?; (3) Support your position with reasoning (derived from the case law, discussions in class, hornbook analysis of cases, etc.); (4) Identify potential counter-arguments and respond to them. The first response paper will be due via TWEN by 11:59 p.m. on October 24. The second response paper will be due via TWEN by 11:59 p.m. on November 21. **Extensions will be granted only in exceptional cases that receive approval from the Dean of Students.**

Final Exam

The final exam will be a 24-hour take-home exam, which you will have the option to take at any point during the exam period. Students who will perform well on the exam will be able to:

1. Identify issues.
2. Apply doctrine or rules to the issue.
3. Make an argument that is not conclusory (every argument should include a “because” or something similar).
4. Identify and consider counter-argument(s).
5. Explain why argument is still valid in light of the counter-argument(s).

Students With Disabilities

According University of Connecticut policy, the university “is committed to achieving equal educational opportunity and full participation for persons with disabilities.” Assurance of equal educational opportunity rests upon legal foundations established by the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. By federal law, a person with a disability is any person who (1) has a physical or mental impairment; (2) has a record of such impairment; or (3) is regarded as having such an impairment which substantially limits one or more major life activities such as self-care, walking, seeing, hearing, speaking, breathing, or learning.” All students with disabilities are entitled to a learning environment that provides for reasonable accommodation of their disabilities. Any student who requires

special accommodations due to a disability should contact the Director of Student Services, Jennifer Cerny, at (860) 570-5244 or jennifer.cerny@uconn.edu. For more information regarding the accommodations process at UConn Law, you may also visit the Disability Services website at <https://www.law.uconn.edu/student-life-resources/student-services/disability-services>.

Class Cancellations

Class will be cancelled only if absolutely necessary. If it becomes necessary to cancel class, students will be notified by email. A banner will also be added to the Law School's website (<http://law.uconn.edu>). If the weather is inclement, students should call the Law School hotline at (860) 570-5145. Note that the University will send general announcements via text to those who have registered for the notification service at alert.uconn.edu. Individual students who are not comfortable driving in the existing weather conditions may exercise their discretion not to do so.

Course Outline

We will cover the following topics in order, unless current events give priority to a certain topic. I will announce all reading assignments for the following week (and any other changes to the schedule) via TWEN.

1. Federalism
 - (a) Spending Clause & Sanctuary Cities
 - (b) Commerce Clause
 - (c) 10th Amendment and Limits on Congressional Power Over States
 - (d) Limits on State Power (e.g., preemption, dormant commerce clause)
 - (e) State Sovereignty
2. Separation of Powers
 - (a) Executive privilege
 - (b) Immunity for government officials
 - (c) Justiciability (standing, ripeness, mootness, political question)
 - (d) Congressional Oversight Power(s)
 - (e) Appointment & Removal
 - (f) Emergency Powers
 - (g) Delegation Doctrine & the Administrative Procedures Act