AMERICAN CONSTITUTIONAL LAW I
POS 4603 - FALL 2013
3.0 Credit Hours

ADJUNCT PROFESSOR JONATHAN SUH, ESQ.

GENERAL INFORMATION

(1) Office Location & Office Hours:

I do not maintain a UCF-office location. All messages should be referred either through the Political Science Department; via email to Jonathan.Suh@ucf.edu. Please, no need for any formalities – feel free to address me by Jon or Jonathan.

(2) Required Texts:

***Constitutional Law for a Changing America: Institutional Powers and Constraints,* by Lee Epstein & Thomas G. Walker (8th Edition)** – including any supplemental card that allows for online access for recent case law. If any cases cannot be found in-text, they are either easily found via the interwebs or their locations are mentioned herein.

Constitution of the United States of America

(3) Optional Texts:

Additional readings will be announced and/or distributed in class. In particular, these readings will focus on rulings from the most recent Supreme Court term(s), and articles regarding civil rights, liberties and other relevant constitutional matters.

For example:
http://www.nytimes.com/2012/12/31/opinion/lets-give-up-on-the-constitution.html?ref=opinion

Please also keep abreast of the current news regarding major constitutional or legal issues. As you know, the Supreme Court heard several major cases last term.

(4) Grading System:

Mini-Exam: **10%**
Mid-Term Essay Examination: **30%**

Final Examination: **40%**
Class Participation and Attendance: **20%**

Please note the potential significance of classroom attendance and participation. Ultimately, **20%** of the overall course grade will rely upon these factors. Therefore, it is highly recommended that serious effort be dedicated to participating in any and all interactive review of reading assignments, and in-class discussion topics. I am serious – your final grade will be impacted by your class participation or lack thereof.

It is expected that every assigned case will be properly briefed prior to class. Students will be properly briefed prior to class. Students will be ***randomly*** selected to discuss various cases. The class is not meant to replicate the exact trauma depicted in Scott Turow's classic "1L," but a small dosage of uncertainty may be healthy. You may choose to complete such on large index cards, divided into the following sections:

(a) *Case Name and Year;*
(b) *Name of the Supreme Court Justice authoring the Opinion of the Court;*
(c) *Facts;*
(d) *Issues;*
(e) *Holding(s);*
(f) *Rationale;*
(g) *Significant Concurrences and/or Dissents.*

Trust me: your case brief should not exceed the space provided on a large index card.

There will be three (3) examinations: a mini-exam (multiple choice); a mid-term exam; and a final exam. It is anticipated that this method is consistent with a scheme adopted by law school professors. Similarly, the mid-term and final exams will likely be entirely essay. The final exam will incorporate not only subjects from the second half of the course, but potentially earlier course principles. By all means, students are expected to be original, even innovative in their answers to examination questions. Critical thinking skills are key to success in this course.

I do award grades based upon a +/- scale. However, I do so in a way that I believe will benefit the individual student. I will generally award plus (+) grades (e.g., B+, C+), when students meet those particular averages. I will only give minus (-) grades when a student falls (by perhaps a few-tenths of a percentage point) to the next lower grade but perhaps merits consideration for something more. For example, if a student averages 79.8 for his/her course grade, I am willing to consider 'bumping' the grade up from a C+ to

a B-. Grades during the semester will be given in class. Your final grade will be posted through traditional means.

(5) Make-up Exam Policy:

Students will not be allowed to make-up any exams without my prior permission.

COURSE DESCRIPTION

Constitutional law addresses the contents of the U.S. Constitution and the interpretation of those contents. We will look at the organization of the U.S. Government (i.e. the distribution and execution of those powers); and the relations between the Government and persons under its jurisdiction (i.e., under the Bill of Rights). Under our system, the chief problems of constitutional law center on the basic matter of judicial review, on relations between and among the three (3) branches of government, on the federal system's distribution of powers between the federal and state governments, and on the restrictions or limitation on government in either procedural or substantive (e.g., due process) contexts.

This course is primarily for the beginning student in constitutional law.

How does constitutional law relate to the study of political science? You will tell me, and hence the student shall become the teacher.

Alexis de Tocqueville: "Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question." *Democracy in America*, Phillips Bradley ed. (New York: Vintage 1945), V. 1: 290.

COURSE OBJECTIVES

The objective of this course is to introduce you to the important role that the United States Constitution has in orienting American politics and governance. With this end in mind, we will explore the Constitution, its various interpretations, and the role of the judiciary in constitutional application, examples of the influence it has had on the function of government, and the case law that has emanated from its interpretation. The focus of this course is more than the memorization of cases and constitutional principles. Hopefully, this class will contribute to the development of your analytical and reasoning skills; the strengthening of your reading comprehension; the expansion of your vocabulary and verbal

expression; the improvement of your writing skills; and the heightening of your personal expectations and discipline.

TENTATIVE COURSE OUTLINE
**** Cases Listed Are Not All-Inclusive ****
**** Scheduling is Subject to Change at Professor's Sole Discretion ****

Thursday, August 22

- Introduction to the U.S. Constitution
- Understanding the U.S. Supreme Court
- Institutional Authority
- The Supreme Court in Jeopardy?

Thursday, August 29

Class Cancelled Due to Handegg

Of course, there's still reading assigned:

Chapter 2 – The Judiciary

Establishment of the Federal Judiciary/Judicial Review

- *Marbury v. Madison*
- *Martin v. Hunter's Lessee*
- *Eakin v. Raub*

Constraints on the Judicial Power: Article III

- *Ex parte McCardle*
- *Hamdan v. Rumsfeld*
- *Baker v. Carr*
- *Nixon v. U.S.*
- *Flast v. Cohen*
- *Hein v. Freedom From Religion Foundation, Inc.*
- *Elk Grove Unified School District v. Newdow* (look on interwebs)
- *Massachusetts v. EPA* (look on interwebs)
- *Summers v. Earth Island Institute* (look on interwebs)

Thursday, September 5

Chapter 3 – The Legislature

Congressional Authority over Internal Affairs: Institutional Independence & Integrity

- Powell v. McCormack
- U.S. Term Limits, Inc. v. Thornton
- Gravel v. U.S.

Sources and Scope of Legislative Powers

- *McCulloch v. Maryland*
- *McGrain v. Daugherty*
- *Watkins v. U.S.*
- *Barenblatt v. U.S.*
- *U.S. v. Curtiss-Wright Export Corp.*
- *South Carolina v. Katzenbach*
- *NAMUDNO v. Holder* (via the interwebs)

Thursday, September 12

Chapter 4 – The Executive

Article II: Basic Considerations

- *Bush v. Gore*

The Contours of Presidential Power

- *In re Neagle*

Domestic Powers of the President

- *Clinton v. City of New York*
- *Morrison v. Olson*
- *Myers v. U.S.*
- *Humphrey's Executor v. U.S.*

Thursday, September 19

The 'Am I Getting It' Mini-Exam

Domestic Powers of the President (continued)

- *U.S. v. Nixon*
- *Mississippi v. Johnson*
- *Nixon v. Fitzgerald*
- *Clinton v. Jones*
- *Ex parte Grossman*
- *Murphy v. Ford*

The President and Foreign Policy

- *U.S. v. Curtiss-Wright Export Corp.*

Thursday, September 26

Chapter 5 – The Separation of Powers System in Action

Domestic Powers

- *Mistretta v. U.S.*
- *I.N.S. v. Chadha*

- *Bowsher v. Synar*

Presidential Power During War and National Emergencies

- *The Prize Cases*
- *Ex parte Milligan*
- *Ex parte Quirin*
- *Korematsu v. U.S.*
- *Youngstown Sheet & Tube Co. v. Sawyer*
- *Dames & Moore v. Regan*
- *Hamdi v. Rumsfeld*
- *Rasul v. Bush*
- *Hamdan v. Rumsfeld*
- *Boumediene v. Bush*

Thursday, October 3

***Mid-Term Essay Examination* (Due Date: October 17, 2013 by 6:00 p.m. EST, via email or hand delivery in class)**

REVIEW

Thursday, October 10

Chapter 6 - Federalism

The Doctrinal Cycle of Nation-State Relations

- *McCulloch v. Maryland*
- *Dred Scott v. Sandford*
- *Hammer v. Dagenhart*
- *U.S. v. Darby Lumber*
- *National League of Cities v. Usery*
- *Garcia v. San Antonio Metropolitan Transit Authority*
- *N.Y. v. U.S.*
- *Printz v. U.S.*

Thursday, October 17

The Eleventh Amendment

- *Alden v. Maine*

New Judicial Federalism

- *Michigan v. Long*

National Preemption of State Laws

- *State of Missouri v. Holland*
- *Crosby v. National Foreign Trade Council*
- *Pennsylvania v. Nelson*

Thursday, October 24

Chapter 7 – The Commerce Power

Foundations of the Commerce Power

- *Gibbons v. Ogden*

The Supreme Court and the New Deal

- *NLRB v. Jones & Laughlin Steel Corp.*
- *Wickard v. Fillburn*

Limits on Commerce Power: The Republican Court Era

- *U.S. v. Lopez*
- *U.S. v. Morrison*
- *Gonzalez v. Raich*
- *National Federation of Independent Business v. Sebelius*

Thursday, October 31

CATCH-UP DAY/OPEN
Any new reading material will be provided in advance

Thursday, November 7

CATCH-UP DAY/OPEN
Any new reading material will be provided in advance

Thursday, November 14

Pre-Final Q&A and In-Class Review

***<u>Final Essay Examination</u>* (Due Thursday, November 28, 2013, at 6:00PM)**

<u>Thursday, November 21</u>

Class <u>Cancelled</u> Due to Handegg

<u>Thursday, November 28</u>

LAST DAY OF CLASS

CONSTITUTIONAL LAW STUDENT'S CODE OF PERSONAL RESPONSIBILITY

Above all, this course encompasses the following fundamental aspects of personal responsibility:

· **Commitment:** the level of dedicated action(s) you continue to take after your enthusiasm for an enterprise stops.

· **Accountability:** taking full responsibility for your actions by owning up to the negative or failed results, taking action to make up for it to the person(s) you let down, and learning what you did wrong so that it doesn't occur again.

· **Maturity:** how well you are able to resist an irresistible impulse and instead have and exercise judgment and do the reasonable thing. In the brain we refer to this as exercising one's executive function.

· **Honesty:** this is simply telling the truth according to the facts as you understand them. You know honesty is best, when you tell a lie. Pathological liars lie whenever they are trying to get their way and take advantage of a situation. Compulsive liars lie both when they are trying to get their way and when they are trying to get out of facing the consequences of their actions.

· **Forthrightness:** this is coming forward and telling the truth and revealing untruths that you become aware of. It is believing and following Justice Louis Brandeis' words: "Sunlight is the greatest disinfectant."

· **Character:** what you do when you are frustrated, angry, annoyed, afraid and/or bored and nobody is watching and your chance of getting caught is close to nil.

· **Sacrifice:** what you do unto others who will not (immediately) be able to pay you back by doing unto you.

· **Compassion:** what you *feel* unto others who will not be able to do more than say, "Thank you."

· **Thinking ahead and planning:** overcoming the aversion to anything that causes you to forego immediate gratification.

· **Listening:** and then pausing to consider what you've heard before rejecting it, tuning out or competing with it (a skill every generation needs to learn).

FINAL COURSE NOTES:

I AM REASSURING YOU, IN THE BODY OF THIS SYLLABUS, OF MY REASONABLE AVAILABILITY THROUGHOUT THE SEMESTER. I MAKE GREAT EFFORTS TO BE CONTINUOUSLY AVAILABLE FOR STUDENT QUESTIONS AND CONCERNS. IT IS INCUMBENT UPON YOU TO ASK QUESTIONS AND SEEK ASSISTANCE. THIS COURSE IS ABOUT SELF-RESPONSIBILITY AND LEARNING TO EXERCISE CRITICAL THINKING AND ADVANCED WRITING SKILLS. PLUS, I DO NOT READ MINDS.

I CONDUCT REVIEW SESSIONS FOR BOTH THE MIDTERM AND FINAL EXAMS. THIS OCCURS ON THE SAME EVENING AS THE DISTRIBUTION OF THE EXAMS. THESE REVIEWS WILL NOT UNLOCK THE KEYS TO THE UNIVERSE, NOR WILL THEY SUBSTITUTE FOR SELF-STUDY AND PREPARATION.

I DO NOT NEGOTIATE GRADES. I COMMIT TO GRADING EACH PAPER FAIRLY. HOWEVER IMPRESSED I MAY BE WITH YOUR COGENT ARGUMENTS, YOUR GRADE WILL BE CONTINGENT UPON YOUR ASSESSED EFFORTS.

I DO AWARD EXTRA CREDIT. THE EXTRA CREDIT WILL BE AWARDED FOR ALL EXAMS WITH ME DECLARING TO WHICH EXAM ANY EXTRA CREDIT WILL BE ASSIGNED. I REQUIRE ACTUAL PROOF IN ORDER TO AWARD SUCH EXTRA CREDIT. THIS SEMESTER, EXTRA CREDIT WILL BE APPLIED AS FOLLOWS:

- ***BLOOD/PLATELET DONATION OR FOUR (4) HOURS OF APPROVED, NON-POLITICAL, COMMUNITY SERVICE WORK – 5 POINTS EXTRA CREDIT VALUE ON MINI-EXAM;***
- ***POTENTIALLY, ATTENDANCE AT A CAMPUS EVENT(S) TO BE LATER DESIGNATED – 5 POINTS EXTRA CREDIT VALUE (I WILL DETERMINE WHICH PARTICULAR EXAM SUCH CREDIT CAN BE APPLIED).***

I WILL AWARD NO MORE THAN 10-12 POINTS OF EXTRA CREDIT PER EXAM. EXTRA CREDIT IS PROVIDED TO STUDENTS IN LIEU OF ANY GRADE CURVE. I DO NOT CURVE EXAM GRADES – I ALLOW FOR EARNED STUDENT EXTRA CREDIT TO SERVE IN PLACE OF A CURVE. I HIGHLY RECOMMEND DOING THE EXTRA CREDIT – IT IS EASY AND THERE IS NO EXCUSE FOR NOT GIVING YOURSELF THIS BUFFER.

FINALLY, I RESERVE THE ABSOLUTE RIGHT TO CHANGE THE SCHEDULE (AND DIRECTION) OF THE COURSE, WITHOUT NOTICE. ANY CHANGES TO THE SCHEDULE WILL BE COMMUNICATED TO YOU BY ME (OR MY DESIGNATED REPRESENTATIVE) PROMPTLY DURING CLASS. YOUR CONTINUED ENROLLMENT IN THIS COURSE CONSTITUTES YOUR IMPLICIT CONSENT TO ALL TERMS AND CONDITIONS STATED HEREIN.