

# U.C. Hastings College of the Law

## CONSTITUTIONAL LAW SPRING 2012

Professor John D. Leshy

### General Information and Syllabus

**Class Time and place:** Tuesdays, 8:30 to 9:30 AM, Thursdays, 8:30 to 10:40 AM, Classroom B, 198 McAllister Bldg.

**Reaching me:** My office is #382, 200 McAllister. Email: [leshyj@uchastings.edu](mailto:leshyj@uchastings.edu) Phone: 565-4726.

**Office hours:** I am usually available Monday afternoon 2-5 P.M., and often available at other times during the week. It is best to email me in advance to arrange a specific time to talk.

**Final exam:** A 3-4 hour open-book exam, probably a combination of essay and multiple choice. More details to follow toward semester's end. Essay questions and model answers from past exams will be posted on my faculty website.

**Grading:** Final grade based primarily on the final exam, but I reserve the right to make a half-grade adjustment up or down (e.g., B+ to A-) to reflect extraordinary contributions to class discussion or extraordinary disinterest. Downward departures will be based on chronic failure to participate in class discussion and/or to attend class without excuse.

**Assigned text:** Choper, Fallon, Kamisar and and Shiffrin, Constitutional Law (11<sup>th</sup> Ed. 2011, West). I apologize for its heft and price, but I've found it is the most teachable book in a crowded (and generally hefty and expensive) field. (The good news is it's a brand-new edition and should have a decent resale value on the used market.) There is a 2011 Supplement, but I do not assign it.

**Laptops prohibited:** I do not permit the use of laptops in the classroom in this course. I have found that many students simply cannot resist the distraction of web-surfing and otherwise using them for non-class purposes, to the detriment of themselves and others. I understand the inconvenience this can create for note-taking, but several semesters of experience, including positive feedback from many students, convince me the benefits of banning laptops outright outweigh this cost, and are superior to any alternative control method.

**Clickers:** I use clickers in the classroom. Several academic studies report excellent results with the use of this simple technology, and students and I have found it helpful in classes over the last couple of years. Before the first class, please buy a clicker at the Hastings Bookstore. The new

clickers are \$45; used are \$33.75. The bookstore will buy it back from you for roughly half price when you no longer need it. More of my colleagues are using this technology, so your small investment should be useful for the next three years. I will require you to show me show clickers in the first class, so please comply.

The way it works, for those of you unfamiliar with it, is that I will occasionally (perhaps 3 times per class hour) show powerpoint slides with questions and multiple choice answers. You will signal your answer through your clicker. I will close the balloting, and the cumulative results for the entire class are revealed on the screen. N.B.: It is all anonymous; responses by individuals are not recorded or revealed, to me or anyone else. Sometimes I will give you a minute or two to discuss the issue with students around you, and then take a revote. (Studies show this can be an effective learning technique.) Usually we will have a general discussion of the issue posed by the question and the answers. The clicker questions are, in other words, used to organize a good deal of the material for class discussions.

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The assignments below are set out in the order in which we will cover them. The first week's assignments are specifically indicated below. We will take up succeeding assignments in order.

**Reading Assignments:** We will generally proceed through most of the first three chapters in order, and then cover selected parts of chapters 4, 5, 10, 11, and 12.

The exact class day we take up specific material will depend upon our pace. I will indicate at the end of each class session approximately what I expect to cover at the next session or two. I may make some (relatively minor) adjustments in coverage during the semester, also depending on our pace.

I will provide you with 3-4 **handouts** over the course of the semester, and I will also post electronic versions on the course website. The first handout is available now on the website, and will shortly be in the bookstore. You should read the material in the handouts that are keyed to the assigned materials in the text as a matter of course – I do not separately indicate those pages in the assignments below.

These handouts serve several purposes:

- (1) They pose questions for you to consider as you do the reading. I recommend you read the questions before, and again after, you read the cases and other assigned materials. I draw heavily upon them in posing questions to you in class, although I will not slavishly follow them. And some of the questions raised in the handout will be posed to you in class for “clicker” answers.
- (2) They occasionally contain some assigned supplementary reading material. For example, the first handout has about 16 pages of introductory background material on the

Constitution, and about a dozen pages on Franklin Roosevelt’s “court-packing” plan.

(3) They may sometimes make adjustments in the reading assignments from what is in this syllabus. **The assignments in the handout control over those in this syllabus in the event of conflict.**

For all these reasons, you should pay careful attention to the handouts. In the past, most students report that they found them very helpful.

The reading assignments below are specific; when pages are assigned, read all cases, notes and other materials on those pages unless otherwise directed. Generally speaking, you should read everything in the text on the assigned topic unless the handout says to omit it. If the handout says to omit a case, you should read any notes before and after it, unless otherwise directed.

The notes in the textbook often contain citations to other materials. You are **not** expected to read these additional materials, although sometimes they may be helpful if you’re having trouble grasping the topic at hand.

To give you an idea of what I expect you to get out of this course, I am including “learning outcomes” after the reading assignments.

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### **Assignments**

The text of the U.S. Constitution is found in Appendix B of the casebook, pp. 1757-1772. You should look over it by the end of the first week of class, and also read the general background on the Constitution in the first 17 pages of Handout # 1. We will not be covering much of the constitutional text in this class, as much of it is fairly straightforward. Instead, we will focus on some particular parts or sections. But it is important to have a sense of how it is organized and structured, and what big issues were debated at the Constitutional Convention in 1787.

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#### **TOPIC ONE: THE NATURE AND SCOPE OF JUDICIAL REVIEW (Chapter 1) (1 week)**

**Class One:** Section 1, pp. 1- 29 (with some minor adjustments noted in Handout #1).

**Class Two:** Section 2-4, pp. 29-61. (We will take up Section 5 of this chapter at the end of the course, in connection with Chapter 12.)

#### **TOPIC TWO: NATIONAL LEGISLATIVE POWER (Chapter 2) (about 3 weeks)**

We will read the entire chapter (pp. 55-175), plus some supplementary material in Handout #1 on FDR's court-packing plan and materials covering the property clause (including excerpts from Kleppe v. New Mexico) and federal power over Indians.

**TOPIC THREE: DISTRIBUTION OF FEDERAL POWERS - SEPARATION OF POWERS (Chapter 3) (about 2 weeks)**

We will read the entire chapter, pp. 151-261, and materials in Handout #2.

**TOPIC FOUR: STATE POWER TO REGULATE (Chapter 4) (with Topic Five, about 3 weeks)**

We will read the Introduction and Section 1, pp. 263-69, but follow the assignments thereafter in Handout #3, as we will then cover only very selected cases and notes in Section 2 (269-322). We will cover sections 3-4, pp. 322-35, plus some further material from section 2, and parts of section 5, pp. 335-46.

**TOPIC FIVE: SUBSTANTIVE PROTECTION OF ECONOMIC INTERESTS (Chapter 5)**

We will cover sections 1-3, 347-84, and the note on impairing obligations of contracts on pp. 392-95.

**TOPIC SIX: STATE ACTION (chapter 10) (with Topic Seven, about 3 weeks)**

We will read the entire chapter (1588-1645), except for a few omissions noted in the Handout #3.

**TOPIC SEVEN: CONGRESSIONAL ENFORCEMENT OF CIVIL RIGHTS (Chapter 11)**

We will read the entire chapter (1646-99) except for a few omissions noted in Handout #3.

**TOPIC EIGHT: LIMITATIONS ON JUDICIAL POWER AND REVIEW (Chapter 12) (about one week)**

We will read the entire chapter (1701-43) except for some omissions noted in Handout #3; plus, in connection with Section 1, we will read Section 5 of Chapter 1, pp. 51-54.

## Constitutional Law I - Learning Outcomes

At the end of the course, students should be able to

(A) articulately describe the basic framework and structure of U.S. government: the layers – the national and state (and local) governments - and the institutions or branches (legislative, executive, judicial, at each level).

(B) explain, using concrete examples, how the distinctive roles of each of these layers and institutions, and their interactions with each other and with the private sector, are controlled by constitutional principles and precedent, with special focus on the various powers of Congress and the President.

(C) demonstrate a basic understanding of the substance of most important structural constitutional issues, including the dormant commerce clause and the state action doctrine, including explaining how they arise in relation to the constitutional text, and articulating, with concrete examples, how the Supreme Court has addressed them.

(D) develop and articulate arguments for how the structural components of the constitution should be interpreted in particular settings, marshaling reasons and judicial precedents to support particular results.

(E) recognize and describe, in an understandable way, the basic limits on the role of the courts in enforcing and applying the constitution, expressed through justiciability doctrines like political question, standing, and mootness/ripeness.