

POLS 4335.01 CONSTITUTIONAL LAW II¹

Semester: Spring 2018
 Time: TuTh: 2:00-3:20
 Room: CHSS 232
 Professor: Dr. John C. Domino
 Office: CHSS 475
 Office Hours: Tuesdays and Thursdays from 11:00-12:30 or by appointment
 E-mail: pol_jcd@shsu.edu (best way to contact me)
 Phone: 936/ 294-1463

A. COURSE DESCRIPTION:

Constitutional law is the interpretation and application of the Constitution by the United States Supreme Court. Constitutional Law Part I (POLS 4334) focuses on individual rights and liberties. In this course we focus on the area of constitutional law concerned largely with defining the scope and limits of governmental power. We ask: “What is the scope of the power or legitimate ‘reach’ of the three branches of the federal government?” “What powers are reserved to the states?” “Are there limits on the government’s power to regulate economic activity among persons and confiscate property?” This course will immerse students in this body of case through reading, briefing cases, and class discussion.

B. COURSE OBJECTIVES:

- Learn the facts, constitutional questions, outcomes of the landmark rulings of the Supreme Court and, thus, develop an understanding of the proper scope of governmental powers and state-federal relations.
- Understand the principles and logic underlying the significant rulings the United States Supreme Court.
- Read and comprehend the reasoning of the Court as set forth in actual Court opinions and summarize in legal briefs the complex language and logic of the justices.
- Help strengthen students’ ability to think critically, speak and write clearly and coherently on the assigned cases and materials.

C. REQUIRED TEXT:

Schultz, Vile, and Deardorf, *Constitutional Law in Contemporary America, Volume 1*. West Academic Publishing, 2017. ISBN 978-1-68328-558-8

**It is the student’s responsibility to obtain the book by the beginning of the second week of classes. I did not place a copy of the book on reserve. I do not have books to give or loan to you, nor do I have influence over any bookstores.*

¹ Course schedule, dates and requirements are subject to reasonable revision per professor’s discretion

D. COURSE REQUIREMENTS:

1. Exams: Four essay exams: three “midterms” and a final. You must have a valid excuse (with documentation) to take a make-up exam.

2. Case Briefing: Since our daily discussions and exams will be based on the opinions of the Supreme Court, you will brief a large number of opinions. Brief and hand in all opinions (1-2 pages, 10 point max) on the syllabus. The briefs will be turned in on the day that they are covered in class. Students are expected to use the briefs as a basis for participation and exam prep.

Final grade: Based on an average of five grades: four exams and the case briefing grade.

90-100= A

80-89= B

70-79= C

60-69= D

0-59= F

All grades and assignments will be posted on BlackBoard

E. TEACHING METHOD:

1. Happily, I do not take a lecture approach in this class, but rather a modified case-method approach used in law school.
2. In other words, heavy class participation is the norm. Students are all expected to have read and briefed the cases before class and to be prepared to answer the professor's questions as well as raise questions on their own. Exams will be drawn from class discussions and independent reading. *In many ways, every class is a study session for the exams.*
3. I use a seating chart and will call on you.
4. ***Note on workload: This is a very rigorous and challenging 4000-level course, probably requiring more hours and effort than most other courses you have taken. The nature of the material and pedagogy (teaching method) makes it so. Read the syllabus carefully so that you fully understand my expectations.***

F. COURSE POLICIES:

Attendance/Absences:

We need you! This course will not work without you, as it is taught using a form of the Socratic Method. Regular attendance is necessary and required. A student will be allowed five unexcused absences in this course. Beyond that, five points will be taken off the student's final grade for each additional *unexcused* absence. I post absences on Blackboard.

Tardiness:

Please do not come to class late. If you are more than 10 minutes late do not come in and disturb the class -- see me after class or before the next class.

Academic Dishonesty:

According to University Academic Policy Statement 810213 and the Faculty Handbook:

"All students are expected to engage in all academic pursuits in a manner that is above reproach. Students are expected to maintain complete honesty and integrity in the academic experiences both in and out of the classroom. Any student found guilty of dishonesty in any phase of academic work will be subject to disciplinary action. The University and its official representatives may initiate disciplinary proceedings against a student accused of any form of academic dishonesty including, but not limited to, cheating on an examination or other academic work which is to be submitted, plagiarism, collusion and the abuse of resource materials."

Plagiarizing, purchasing research papers, copying answers from another student's exam, using case briefs from a previous class, collaborating on briefs, cutting and pasting anything from the web, or using unauthorized notes or "cheat sheets" (including blue books containing pre-existing answers) during an exam constitutes academic dishonesty and will result in swift disciplinary action by the professor/university. This action will take the form of failing that exam or the entire course and a letter to the appropriate university officials. *Evidence of cheating behavior may be photographed.*

By registering for this class you agree to abide by the policies set forth in this syllabus.

Conduct:

The First Amendment prevails in this class. However, a student who engages on any behavior or language in the classroom that intentionally or unintentionally disrupts the learning process and, thus, "impedes the mission of the university," will be asked to leave the class and may be

reported to the Dean of Students for disciplinary action in accordance with written university policy. Silence and pack away all cell phones. *Ringling cell phones and texting during class is disruptive behavior; as is inappropriate (nonacademic use) use of notebook computers. For every three texts in class I will deduct 10 points from your final grade.*

see <https://www.shsu.edu/students/guide/dean/codeofconduct.html>.

G. UNIVERSITY POLICIES:

Students with Disabilities: *Any student with a disability that affects his/her academic performance should contact the Office of Services for Students with Disabilities in the SHSU Lee Drain Annex (telephone 936-294-3512, TDD 936-294-3786) to request accommodations.* No accommodation can be made until you register with the above office.

Religious Holidays

University policy states that a student who is absent from class for the observance of a religious holy day shall be permitted to take an examination or complete an assignment scheduled for that day within a reasonable time after the absence. Said student shall not be penalized for that absence. A student desiring to absent himself/herself from a scheduled class shall present to the professor a written statement concerning the religious holy day.

Visitors in the Classroom

Unannounced visitors to class must present a current, official SHSU identification card to be permitted into the classroom. They must not present a disruption to the class by their attendance. If the visitor is not a registered student, it is at the instructor's discretion whether or not the visitor will be allowed to remain in the classroom.

Instructor Evaluations

Students will be asked to complete a course/instructor evaluation online IDEA form toward the end of the semester. On a designated class period students will bring electronic devices to class and use said devices to complete the IDEA survey. A graduate assistant will be there to assist.

For a complete listing of the university policies, see:

<http://www.shsu.edu/dept/academic-affairs/documents/aps/students/811006.pdf>

H. DAILY BRIEFING ASSIGNMENT:

1. Briefing and discussing briefs in class is the foundation of this course. It is a modified form of Socratic Method used in law schools.

2. Brief and hand in all cases listed

3. I will make daily/weekly assignments in class and on Blackboard. For example, for the second week of class I might assign Ex Parte Milligan for Wednesday and Korematsu for Friday. On those days we will discuss those cases and you will turn in your briefs. Please do not hesitate to contact me if you are unsure of which cases are due.

4. Since it is not possible to record all 40 or so brief grades on Bb, I keep a written spreadsheet of grades. You should keep all returned briefs as well.

5. **Late briefs** are not accepted unless prior arrangements are made. You cannot receive full credit for late briefs.

6. Always bring your brief to class.

7. Do not email me your briefs.

8. Do not come to class late because of “printer drama” in the lab.

9. Always bring your book to class.

10. Lastly, always, always use your own words when writing your brief. Cutting and pasting from the web or copying another's brief is plagiarism. I read these briefs very carefully. I am extremely familiar with the justices' opinions and words. Very Important: Read the Court's actual opinion and not some "expert's" interpretation of the court's ruling. Your brief must be in your own words and be based on the justices' own words. If you use Wikipedia, some blog, someone's brief, or some other source I will give you a 0 on that brief and a warning for the first violation. For the second violation you will get a 0 for the entire semester's brief grade. Third violation I will give you a 0 for the course. If I see a sentence or passage that I suspect is not in your words then the above consequences apply. You may use short block quotes from the justices in quotation marks.

How to Brief a Court Opinion (Use this Template)

Legal scholars, law practitioners, and law students brief Supreme Court opinions. For you the brief is what you will use for class discussions and exam preparation (It is impossible to use a conventional approach to studying in this course -- that is, just read and underline your book prior to the exam). A brief forces you to read the case thoroughly and provides you with a permanent abridged record of the case.

So, how does one brief a case? Be sure to include the Roman numeral and heading.

I. Case name and citation: (e.g., *Domino v. U.S.*, 391 U.S. 145 (1999)).

II. Facts of the case: A brief statement of the circumstances that brought about the case. Be sure to identify the parties and the lower court rulings.

- A. Following a trail of unusual weed-like material to Domino's garage, DEA agents entered said garage without a warrant and found a bale of marijuana.
- B. Domino was convicted in a federal district court (Houston) but appealed to the U.S. Court of Appeals (5th Cir.) on the grounds that the government conducted a warrantless, and, thus, unconstitutional search. The appellate court upheld the trial court's verdict.
- C. Domino appealed on a writ of certiorari to the U.S. Supreme Court.

III. Constitutional or legal questions/issues: This is often the most challenging parts of the brief. These questions or issues can be ascertained by reading the facts and reasoning of the Court.

- A. Does the Fourth Amendment require a warrant in every instance?
- B. Did the agents have probable cause to believe that a controlled substance was in the garage?
- C. Is probable cause sufficient to allow for a warrantless search?
- D. What conditions must exist in order to justify a warrantless search?

IV. Holding /Ruling of the Court: A statement of the Court's ruling. Did the Court affirm or reverse the decision of the lower court?

- A. The lower court ruling was reversed (5-4,6-3,7-2, 8-1, 9-0).

V. Reasoning of the Court: Why did the Court rule as it did? What justification does it provide? Which justice wrote the opinion?

- A. **(example for illustration only)** Writing for the majority, Justice X reasoned that the Fourth Amendment does not require a warrant in every instance (*Smith v. Jones*, 1952). There are a number of exceptions that the Court has allowed in the past (Cite relevant cases if Court does so).The agents had probable cause, but since there was no evidence that the controlled substance was going to be moved or destroyed before they could get a warrant (thus, allowing an exception to the warrant requirement), the agents needed to obtain a warrant. The Fourth Amendment demands a uniform and reasonable rationale for a search; if none exists, then the government could go house to house randomly until it found something incriminating (*Sneak v. Crook*, 1964).

VI. Separate Opinions:

- A. **Dissenting**, Justices A, B, and C believed that the lower court rulings should be upheld and that the majority places too great a burden on law enforcement.
- B. **Concurring**, Justice T agreed with the majority's ruling but disagreed with its application of *Sneak*.

How long? Purpose?

Students have always asked me: "How long should a brief be?" Your brief should be *about* 1 to 1.5 typed pages (depending on the opinion). It should contain enough information to use not only for class discussion but for exam prep.

I. OUTLINE OF COURSE (all due dates are posted on Blackboard)

Note on course organization: The course and the book are organized somewhat differently. Using the table of contents or table of cases find the case listed on the syllabus in the book and read it and any accompanying author commentary.

Introduction to Course:

Objectives:

- Learn about the course expectations.
- Introduction to case briefing and online research methods: How to find court rulings.
- The Power and Operations of the United States Supreme Court
- Modes of constitutional interpretation: How justices interpret and apply the provisions of the Constitution.
- Using oral argument (Oyez.com) to help understand the constitutional question.

1. Presidential Power: Read Art. II of the U.S. Const.

Objective:

- Understand the Court's rulings on the scope and limits of Presidential power during times of war and peace, including executive agreements and executive privilege.

Cases:

- 1) Ex Parte Milligan
- 2) Korematsu v. U.S
- 3) Youngstown Sheet and Tube v. Sawyer
- 4) U.S. v. Curtis-Wright Export Corp.
- 5) Dellums v. Bush
- 6) Dames & Moore v. Regan
- 7) U.S. v. Nixon
- 8) Clinton v. Jones
- 9) Boumediene v. Bush
- 10) Murphy v. Ford

FIRST EXAM

2. Power of Congress. Read Art. I of the U.S. Const.

Objective:

- Understand the Court's rulings on enumerated and implied legislative powers, including the scope of national regulatory power, commerce powers and the power to delegate power the other branches.

- 11) McCulloch v. MD
- 12) Gibbons v. Ogden
- 13) Heart of Atlanta Hotel v. U.S.
- 14) Schechter Poultry v. U.S.
- 15) U.S. v. Lopez
- 16) J.W. Hampton v. U.S.
- 17) South Carolina v. Katzenbach
- 18) INS v. Chadha
- 19) Clinton v. City of NY

SECOND EXAM

3. Judicial Power: Read Ducat chap. 1; and Art. III of the U.S. Const.

Objective:

- Understand the Court's rulings on the origins, scope, limits, and examples of judicial power/judicial review.

- 20) Marbury v. Madison
- 21) Eakin v. Raub (brief only Justice Gibson's dissenting opinion)
- 22) Ex Parte McCardle
- 23) Muskrat v. U.S.
- 24) Baker v. Carr
- 25) City of Boerne v. Flores
- 26) Obergefell v. Hodges
- 27) Caperton v. Massey Coal Co.

THIRD EXAM

4. Power of the Government to Regulate Economic Liberty and Property Rights: Read Amendments V and XIV of the U.S. Const.

Objective:

- Understand the Court's rulings on economic liberty and property rights are protected by the Constitution and how said rights are balanced with the government's power of regulatory power and eminent domain.

28) Slaughterhouse Cases

29) Munn v. Illinois

30) Lochner v. New York

31) Muller v. Oregon

32) West Coast Hotel v. Parrish

33) Penn Central Transportation Co. v New York

34) Lucas v. South Carolina Coastal Council

35) Kelo v. City of New London

FINAL EXAM: