

Syllabus—Constitutional Law

Law 509, Section 001

Professor Dawson

Course Time and Room:

Monday and Wednesday, 9:00-10:10, and Friday 10:00-11:10, Room 202 (except as noted on weekly schedule below)

Professor's Information:

Professor Edward Dawson

Office #240; email: edawson@siu.edu

Office Hours/ Availability:

My office hours are Monday and Wednesday from 10:15-12:15. During office hours, I will be available to take your questions unless I let you know in advance that I will be out on a particular day. You are welcome to come by during office hours to ask questions without making an appointment. You may also request an appointment outside office hours by sending me an email; I am generally in my office most days when I am not teaching class or in a meeting. You can also send me questions by email, but I may ask you to come by if the question isn't easily answered by email. I check email regularly during business hours (9 am-5pm Mon. through Fri.); outside those times I may not respond the same day.

Required Course Materials:

- Charles Shanor, *American Constitutional Law: Structure and Reconstruction* (6th ed.)
- Shanor supplement, available on TWEN and also at this weblink:
 - https://3668083.app.netsuite.com/core/media/media.nl?id=3484679&c=3668083&h=4d3cca031ad73ef5a08&_xt=.pdf
- Paul McGreal, *et al.*, *Questions and Answers: Constitutional Law* (Carolina Academic Press, 3d ed.) .
- Supplemental readings, as noted below and posted on TWEN

Course Overview:

This course covers federal constitutional law, including the constitution's structure, the powers of each of the branches of the federal government, the constitutional relation between the federal government and the States, and some of the rights conferred by the Constitution on individuals. In particular, we will cover individuals' rights to Due Process and Equal Protection, but will not cover rights such as First Amendment rights (covered in the separate First Amendment course) or the rights of criminal suspects and defendants (covered in the Criminal Procedure courses). In addition to learning the constitutional texts and judicial decisions and doctrines, we will also consider and discuss different modes of constitutional interpretation and how those modes can lead to different interpretations of a particular constitutional text.

Learning Objectives:

At the end of this course, a student should be able to:

- Explain the fundamental course themes of divided powers, enumerated powers, the federal division of sovereignty, and the rights of individuals, and discuss these themes with reference to

- specific constitutional provisions, cases, and doctrines covered in class.
- Be able to answer bar-style multiple-choice questions and write bar-style essay answers on topics covered on the constitutional law section of the Multistate Bar Exam
 - You can see the topics covered on the MEE and MBE in constitutional law [here](#) and [here](#) .
 - Orally explain cases and doctrines covered in the class, through practice via call and individual and group problem solving.
 - Express and explain a sophisticated understanding of how legal doctrine develops over time through a line of precedents, and how doctrine may change due to changes in composition of the Supreme Court.
 - Be able to understand, explain, and apply to a hypothetical issue different modes of constitutional interpretation.

Reading:

For each class, you are expected to do the assigned reading, and I will ask you questions about the reading in class according to the call policy described below. The reading will primarily be from the casebook and supplement; there will also sometimes be additional reading material posted on TWEN, as noted on the weekly schedule below. Reading material posted on TWEN is required and “fair game” for call in class.

Class Attendance:

You are allowed eight absences for this course. Since the material for this course is challenging, I recommend you not miss class unless it is truly necessary. If you maximize your absences, it can affect your participation grade. If you are at or near the absence limit but feel that extraordinary circumstances account for your absences, you can see me and explain. As described in the call policy in the next section, being unprepared in class can count as an absence.

The school of law’s attendance policy is available at this link:

https://law.siu.edu/_common/documents/rules-code/attendance-19-20.pdf

It explains, among other things, the penalties for exceeding the absence limit, which can include a grade reduction or withdrawal from the course.

Call and Attentiveness Policy:

I will call on students using a random call list. **Call will be “truly random,”** which means that I will use note cards to call randomly on students each class rather than working off one random list until everyone has been called on. So, you should be prepared to be called on for every class, with the one exception that I will not call on any person two classes in a row. You may “note out” before class by giving me a note or telling me that you are not prepared to be on call; noting out counts as an absence. If I call on you and you are unprepared or have not done the reading, I will mark you as absent for that class, the absence will count towards the limit for the semester, you will lose points on your participation grade, and you will remain on call. If you are absent on a day when I would have called on you, I will call on you during the next class you are present; you will not be penalized if you are prepared when I call on you then.

If I observe that whatever you are doing on your computer or other electronic device is distracting other students, I will warn you once by email and if I observe it again will disallow your use of the computer or other device during class.

Recording Policy:

Classes will be recorded; the recordings will be available. To access a recording of a class, email me the request. Watching a recording of a class does not count as being present for class unless necessary to accommodate a disability or unless you request and receive my advance approval.

Grades:

Your grade will be determined by a combination of your class participation (10%), your performance on a midterm (20%) and your performance on the final exam (70%). Grades for the course will be assigned and curved based on the law school grading policy, which is available at https://law.siu.edu/_common/documents/rules-code/grading-system-19-20.pdf

Your participation score will be based on how attentive you are in class, how you perform when called on in class, and your degree of effort when we discuss problems or conduct group exercises in class. As for call, if you are able to accurately summarize the facts, holding, and reasoning of a case, and to answer the questions in the notes in the casebook, or to explain specifically why you have trouble answering them, I will consider you prepared. If you are unprepared when called on you will lose a point from your participation grade; if you are unprepared a second time you will lose 2 points, 3 points for the third time, and so on.

If you are absent on a day when I would have called on you, I will call on you during the next class you are present; you will not be penalized if you are prepared when I call on you then.

You do not have to volunteer to speak or ask questions outside of class to get full points for participation; you do have to complete the assignments, be prepared when you are called on, and participate in or complete during class the exercises we will use to build understanding of the material.

The midterm will be on Wednesday, October 9, during the normal class period. The final exam will be on Thursday, December 12, at 8:15 am. It will consist of one or more essays and several multiple-choice questions. The final exam will be cumulative, that is, it will cover material from the entire semester.

Plagiarism and Collaboration

The midterm and final exam in this class are closed-book and no outside sources or collaboration with other students are allowed during the assessments. But, you are welcome to collaborate with your fellow students in preparing for the midterm or final in any way you like.

Workload Expectations:

The American Bar Association standards for accrediting law schools define “a “credit hour” as an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time.” This is a 4-credit hour class, meaning that

we will spend three 70-minute blocks of time together each week. The amount of assigned reading and out of class preparation should take you at least 2 hours for each class session and 8 hours for the week. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a total of 12 hours per week (4 in class and 8 preparing for class) on course-related work.

TWEN Page:

There is a TWEN page for this course, and you should sign up for it. On that page I will post course documents such as this syllabus, handouts, and any powerpoint slides I use in class. I will also post supplemental reading and problems on the TWEN page.

Weekly Schedule and Outline:

In class we will discuss constitutional text, cases interpreting the text, the rules and doctrines established by the cases, the policy reasons for the rules, and the interpretive methods used by the Court to arrive at its holdings. We will also work problems and exercises to confirm understanding of the material.

Below is a list of the reading assignments and topics for each course session. The sessions are organized within an outline format that is intended to give you an overview of how each session fits into the larger structure of the course. I may adjust the assignments may change depending on how fast we move through the material; I will give you advance notice of changes and update the syllabus as we go. I may also assign additional reading or distribute problems to be worked in advance of class. If I do I will give you advance notice in class and post the material on TWEN in advance of the day for which it is assigned.

In the schedule below, “Shanor” means the Shanor textbook, and “Supplement.” means the 2019 supplement to the textbook. “Q&A” means the McGreal, et al. book. For a few classes, there is also a supplemental reading that I have prepared that I will post on TWEN.

I. Introduction to Constitution and Course

1) Monday, August 19

Topics: Introduction to the Course and the Constitution; Overview of Constitutional History

Reading:

- Syllabus
- Shanor pp. xxv-p.9; 770-770 (appendixes A & B)

II. The Judicial Power and Its Limits; Judicial Methods of Interpreting the Constitution

Q&A Info: The multiple choice questions corresponding to the material we cover in Part II are in the Q&A book at pp. 1-19 (questions) and 163-191 (answers). I suggest you try and review them as we go, then look through them again in advance of the midterm and final.

2) Wednesday, August 21

Topic: Judicial Review of Federal and State Laws

Reading:

- Shanor pp. 16-37; xxxii (Article III)

3) Friday, August 23

Topic: Modes of Constitutional Interpretation

Reading:

- Shanor pp. 37-57
- Come prepared to identify in *Heller* different modes (theories) of constitutional argument used by the majority and dissenting opinions

4) **Monday August 26**

Topics: Congress's Power to Limit Judicial Power

Reading:

- Shanor pp. 57-75

5) **Wednesday August 28**

Topics: Justiciability—Judge-made Limits on Judicial Power

Reading:

- Shanor pp. 76-94
- Shanor Supplement pp. 2-6 (*Rucho v. Common Cause*)

III. Separation of Powers

Q&A info: The multiple choice questions corresponding to the material we cover in Part III are in the Q&A book pp. 19-39 and answers at pp. 185-227. I suggest you try and review them as we go, then look through them again in advance of the midterm and final.

6) **Friday, August 30**

Topic: Executive Power and Role of Congress; Executive Power over Domestic Affairs

Reading:

- Shanor pp. 101-120

Monday, September 2—No Class, Labor Day

7) **Wednesday, September 4**

Topic: Executive Power over Foreign Relations

Reading:

- Shanor pp. 120-138

8) **Friday, September 6**

Topics: Presidential Privileges and Immunities

Reading:

- Shanor pp. 138-150
- Excerpts from Mueller Report, posted on TWEN (Vol. II pp. 1-2, 168-182)
- **Optional:** If you want to read the 2000 Department of Justice opinion memo explaining why DOJ thinks the Constitution prohibits prosecuting a sitting President, that memo is available here:
 - https://www.justice.gov/sites/default/files/olc/opinions/2000/10/31/op-olc-v024-p0222_0.pdf

9) **Monday September 9**

Topic: Legislative Power

Reading:

- Shanor pp. 150-175

10) Wednesday September 11

Topic: Legislative Power pt. II

Reading:

- Shanor pp. 175-183
- Supplement pp. 12-17 (*Lucia v. SEC*)

11) Friday September 12

Topic: Separation of War Powers;

Reading:

- Shanor pp. 184-196

IV. Congress's Article I Powers

Q&A info: The multiple choice questions corresponding to the material we cover in Part III are in the Q&A book at Q&A pp. 41-73 (questions) and 229-273 (answers). I suggest you try and review them as we go, then look through them again in advance of the midterm and final.

12) Monday September 16

Topic: Necessary and Proper Clause; Intro to Commerce Clause

Reading:

- Shanor pp. 197-220

13) Wednesday September 17

Topic: Commerce Clause pt. II

Reading:

- Shanor pp. 212-236

14) Friday September 19

Topic: Commerce Clause pt. III; Taxing Power

Reading:

- Shanor pp. 236-257

15) Monday September 23

Topic: Spending Power; Treaty Power

Reading:

- Shanor pp. 257-274

16) Wednesday September 25

Topic: Federalism Limits on Article I Powers—Tenth Amendment

Reading:

- Shanor pp. 274-294

17) Friday September 27

Topic: Limits on Article I Powers—Tenth Amendment Cont'd; Eleventh Amendment

Reading:

- Supplement pp. 18-25 (*Murphy v NCAA*)
- Shanor pp. 294-305

V. Federalism's Limits on the States

18) Monday September 30

Topic: Article I Limits (Contracts Clause); Protection of Federal Institutions; Preemption

Reading:

- Shanor pp. 309-331

19) Wednesday October 2

Topic: Dormant Commerce Clause

Reading:

- Shanor pp. 337-358

20) Friday, October 4

Topic: Dormant Commerce Clause (cont'd); State Privileges and Immunities

Reading:

- Shanor pp. 358-381

21) Monday, October 7

Topic: Catch-up as needed; Review and Practice for Midterm

Reading: TBA

22) Wednesday, October 9

MIDTERM EXAM

VI. Fourteenth Amendment—Introduction and Framework

Q&A Info: The material corresponding to this part is the multiple choice questions at Q&A pp. 73-107 (questions) and 275-331 (answers). I suggest you try and review them as we go, then look through them again in advance of the final.

23) Friday, October 11

Topics: 14th Amendment—Background; State Action Doctrine

Reading:

- Shanor pp. 382-399

24) Monday, October 14

Topic: State Action Doctrine (cont'd)

Reading:

- Shanor pp. 399-417

25) Wednesday, October 16

Topic: 14th Amendment Privileges or Immunities Clause

Reading:

- Shanor pp. 417-432

VII. Due Process

Q&A Info: The material corresponding to this part is the multiple choice questions at Q&A pp. 73-107 (questions) and 275-331 (answers). I suggest you try and review them as we go, then look through them again in advance of the final.

26) Friday, October 18

Topic: Procedural Due Process

Reading:

- Shanor pp. 433-453

27) Monday, October 21

Topic: Substantive Due Process pt. I

Reading:

- Shanor pp. 453-471

28) Wednesday, October 23

Topic: SDP pt. II: "Incorporation" of Enumerated Rights; Unenumerated Rights

Reading:

- Shanor pp. 471-492

29) Friday, October 25

Topic: SDP pt. III: Unenumerated Personal Rights (abortion)

Reading:

- Shanor pp. 492-508, 515-523

30) Monday, October 28

Topic: SDP pt. IV: Unenumerated Personal Rights (family; sexual orientation)

Reading:

- Shanor pp. 523-543

31) Wednesday, October 30

Topic: SDP pt. V: Unenumerated Personal Rights cont'd (sexuality, death)

Reading:

- Shanor pp. 543-561

VIII. Equal Protection

Q&A Info: The material corresponding to this part is the multiple choice questions at Q&A pp. 107-125 (questions) and 331-359 (answers). I suggest you try and review them as we go, then look through them again in advance of the final.

32) Friday, November 1

Topic: Introduction to Equal Protection; Rational Basis Review

Reading:

- Shanor pp. 567-581

33) Monday, November 4

Topic: Equal Protection and Race pt. I

Reading:

- Shanor pp. 581-601

34) Wednesday, November 6

Topic: Equal Protection and Race pt. II

Reading:

- Shanor pp. 601-611; 621-631

35) Friday, November 8

Topic: Equal Protection and Race pt. III

Reading:

- Shanor pp. 631-651

36) Monday, November 11

Topic: Equal Protection and Gender

Reading:

- Shanor pp. 651-666

37) Wednesday, November 13

Topic: Equal Protection and Gender pt. II

Reading:

- Shanor pp. 666-674
- Supplemental reading, available on TWEN

38) Friday, November 15

Topic: Equal Protection and “Fundamental Rights”

Reading:

- Shanor pp. 674-699

39) Monday, November 18

Topic: Rational Basis “Plus”

Reading:

- Shanor pp. 711-736

40) Wednesday, November 20

Topic: Semester Review

Assignment: Submit at least one review question about the material from the entire semester by the beginning of class on Wednesday. If you submit at least one question, you will get a bonus

point towards your final grade

41) **Friday, November 22**

Topic: Semester Review

Emergency Procedures:

Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT's website at www.bert.siu.edu, Department of Safety's website www.dps.siu.edu (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

Disability Support Services:

Disability Support Services provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. <http://disabilityservices.siu.edu/>. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar's Office to ensure the School of Law provides the proper classroom and examination accommodations.

Saluki Cares:

The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-5714, or siucares@siu.edu, <http://salukicare.siu.edu/index.html>. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618-453-3135.