

Course Number: ED 503
Constitutional Law and its Application to DoD Security
Defense Security Service
Center for Development of Security Excellence

Sample Course Syllabus*

Course Description/Overview:

This course develops a practical understanding and critical thinking skills related to both the Constitutional foundational authorities that are the basis of many Department of Defense (DoD) Security responsibilities, and the limits of those authorities, which constrain DoD Security action. This course will provide the student with tools for identifying Constitutional issues that may arise during the course of developing or implementing DoD Security policy so that the issues can be anticipated and averted through proper planning.

The course will rely primarily on the legal case study method as a learning strategy for understanding key principles of Constitutional law. Case law provides insight into how actual Constitutional controversies are resolved and can have a binding effect on the resolution of subsequent cases, so the case study method helps judges, lawyers, and students understand the law and predict the outcome of future cases. Recognizing that potential DoD Security issues may arise or already exist but have not yet been tested in the courts, other methods, such as using hypotheticals or studying scholarly articles, will also be employed.

Constitutional law deals with both the interpretation and implementation of the United States Constitution. Given that the Constitution is the foundational document of our form of government, it is concerned with many of the most fundamental relationships to our society, including those among the three branches of the Federal government (Executive, Legislative, and Judicial), the relationship between the Federal government and State governments, and the relationship between Federal/State governments and the individual, expressed in individual rights.

Constitutional law sets forth the organizational principles upon which the Nation's common defense, and laws and regulations have been built. Ultimately, it establishes the important parameters within which the Federal government's public officials must operate.

Each branch of the Federal government is a co-equal and is free to interpret the Constitution. Yet since the early days of our Republic, courts have been viewed as the ultimate arbiters of the law, and the Constitution as the nation's foundational law has been no exception. Thus in order for us to better understand Constitutional law and the important parameters it establishes, we must be able to not only understand the contextual provisions of the Constitution itself, but also understand how that document has been interpreted by courts generally and the United States Supreme Court in particular, which sits at the apex of the Federal court system.

*Sample syllabus is subject to change each semester.

The course will examine the origins of, distribution of, and limitations upon, government authority under the Constitution of the United States. It will include the study of the Executive, Legislative, and Judicial action; the powers and limitations of the President and Executive branch of government; and the powers and limitations of Congress. The course will also address the exercise of Congressional power and judicial protection against abuse of Government power in violation of rights, liberties, privileges, or immunities conferred by the Constitution.

The course provides students with both a general introduction to Constitutional law and a targeted examination of Constitutional issues that are apt to arise within the context of DoD Security. Accordingly, the course provides a graduate-level introductory overview of the Constitution as interpreted by the courts, and exposure to recent issues that, although they may be unresolved by the courts or may not yet have arisen within a judicial context, may nonetheless significantly impact the policies and practices of the DoD Security community.

While this course is largely legal in nature, it is geared toward students with non-legal backgrounds.

Credits: This course is designed to be the equivalent of three semester hours. Accreditation is pending.

Prerequisite: None

Student Learning Objectives/Outcomes:

This course is designed to enable students to:

1. **Demonstrate** an understanding of and ability to interpret and apply key terms and provisions of the U.S. Constitution and selected Constitutional case law.
2. **Identify, describe and assess** basic Constitutional issues that may arise in hypothetical situations.
3. **Analyze** selected legal case law of Constitutional significance:
 - **Discuss** key Constitutional issues raised by the court
 - **Identify and describe** key operative facts relied upon by the court
 - **Identify and explain** key rationale used by the court
 - **Summarize** the key holding of the case
 - **Distinguish** the case's legal and policy implications

4. For selected subject areas of recently heightened significance to the DoD Security community (including those of Personnel Security, detention in various contexts, insider threats, WikiLeaks-type scenarios, and electronic communications):
 - **Distinguish** Constitutional issues that may arise from each;
 - **Analyze** both the legal and policy implications for DoD Security from Constitutional issues identified; and
 - **Analyze** societal and other factual or legal trends that may have a bearing on future Constitutional interpretations of these subjects.

5. **Analyze** the relationship between Security professionals and Government attorneys with regard to formulation and implementation of DoD Security policy:
 - **Discuss** the relationship between the Security professional and the government attorney;
 - **Identify and explain** points at which the appropriate government attorney advice should be sought;
 - **Identify and describe** the government attorney's key responsibilities;
 - **Identify and develop** mutual expectations between the security professional and the government attorney;
 - i. **Discuss** the Security professional's ethical obligations that remain throughout the process; and
 - ii. **Analyze** in a selected hypothetical or actual case with significant DoD Security interest, whether alternative advice or action by either policy professionals or government attorneys could have mitigated or averted significant negative consequences for national security.

Delivery Method:

To make the course as meaningful as possible to the Security professional, Part I of this two-part course presents a survey of Constitutional law with the objective of identifying and applying key provisions of the Constitution relating to government structure and civil liberties. Part II addresses Constitutional issues that may arise in connection with clusters of policy or problem subjects identified by DoD Security professionals as important to the Security community. We will drill down into these issues with a purpose of not simply learning the state of the law, but understanding the potential Constitutional issues that may be implicated. Since Constitutional law and DoD Security policy change over time, a student's heightened sensitivity of Constitutional legal reasoning can help him or her anticipate potential Constitutional roadblocks, and therefore prevent DoD Security policy and implementation from encountering them.

The course will consist of the following:

- Readings as directed
- Online responses to weekly Discussion Questions
- Replies to posts of other students
- Feedback and comments from the professor
- Part I Examination consisting of an objective test
- Essay Assignment covering the survey part of the course
- Final, comprehensive Essay Assignment

The assigned and recommended course readings will include both authoritative sources (e.g., the Constitution; Supreme Court decisions; DoD publications, Government Accountability Office, and other policy documents), implementation readings (e.g., Executive Orders, DoD directives seeking to fulfill the requirements of authoritative documents), and scholarly sources including books and law review articles. Students are expected to read the assigned readings before posting electronic responses in the weekly discussion area in the Sakai Collaborative Learning Environment (CLE). Students will be asked to discuss and debate responses by critically analyzing and responding to at least two other students' responses each week.

This is a graduate-level course in Constitutional law for non-law students. Students who enter the course may have little or no previous law-related course experience. Therefore, while we expect the student to learn many Constitutional topics, we do not expect our students to be able to cover the same ground as their law school counterparts, nor to have the same technical legal analytical skills.

General Course Requirements:

By enrolling and participating in this course, students agree to comply with the following terms and conditions of the course:

- 1. Honor Policy: Students agree in good faith to conform to the instructions and restriction of this course, including but not limited to instructions given regarding exams, assignments, essays, and discussion questions. Students agree that if their postings to discussion questions are late, that they may not read other students posts or the instructor's posts until after they have made their own initial posts.**
- 2. After reading the syllabus, students will send a message in SAKAI to the instructor indicating that they have read and fully understand it.**
- 3. Assignment Schedule**
 - Generally, students' Initial Posts to the weekly Discussion Questions will be due no later than Wednesday at midnight (EST). Since the Initial Posts are graded, students are expected to apply their greatest effort and quality of thought to them. Students with duty hours during a regular Monday-Friday workweek are**

encouraged to begin working on the upcoming new Lesson the weekend before the new weekly lesson begins.

- **Students may not collaborate with other persons on the initial response to the Discussion Questions.**
- Students will be required to reply to two other students' Initial Posts. These Reply Posts will be due no later than Friday at midnight (EST). Replies should be used as an opportunity to challenge others' positions and present different perspectives grounded in good reasoning and support.
- In the first week, the student should
 - Go to the Forum area, select the Week 1 discussion, and submit a personal introduction, as per the instructions there.
 - Turn to the Assignment section, where he or she will see the first week's discussion question and where the student will submit a response. Subsequent week's responses to discussion questions will be submitted in appropriate weeks' Forum areas.
- Unless permission is obtained from the instructor beforehand, students must not submit Initial Posts or Reply Posts in a particular week's discussion area before the particular week of discussion. For example, a response to the Week 3 discussion question should not be posted during Week 2. There is a dynamic aspect to the course, with each week building on the next, and this would circumvent this purpose.
- During weeks with Essay Assignments or exams instead of Discussion Questions, essays will be due no later than Wednesday at midnight (EST).
- Generally, students are expected to meet the above requirements, including due dates and times, unless prior approval is obtained from the instructor after the student has provided justification via the Sakai message system 24 hours in advance of the due time/date. After the first lesson, absent exigencies, a student who does not comply with a deadline without providing good justification beforehand may expect an appropriate deduction in points for the assignment. This policy does not apply to unexpected TDYs or unexpected deployments, emergencies, or other unforeseen events that may interfere with timely participation. When a personal or family urgent issue arises, contact the instructor through SAKAI immediately and request an extension with a date/time certain request for the extension along with a sufficient written explanation to justify the extension. Due date/time extensions for these situations will be at the instructor's discretion. For regular TDYs, unless compelling circumstances are shown, students are expected to keep up their participation in the course, consistent with the fact that online learning is accessible virtually anywhere. This course has a demanding schedule and course policies are designed to keep the student on track and moving through the course in a timely manner, but is flexible, recognizing life's demands. Since the course is structured around weekly discussions, it will be critical for students to keep up with the readings and to participate in class.

4. Responses to other Students

- Each student will be required to reply/respond to two other students' Initial Posts in each weekly discussion area. In these Reply Posts, students are required to address their classmate by name. Also, a student should place his or her name at the bottom of the posting.
- A key aim is to develop a stimulating back-and-forth discussion, taking advantage of insights and expertise that exist among the students. If students read through all of the discussion threads, take the time to reflect, and then provide a thoughtful reaction to their classmates' Initial Posts, students will find the course to be an enriching experience.
- The instructor may comment on a student's initial response to a discussion question and/or the student's responses to other students' posts, but the Reply Posts are not evaluated for the course grade.

5. Citations

In discussion question Initial Posts, Reply Posts, and Essay Assignments, if a student paraphrases an author's work, he or she is required to use proper source citation. If the student uses another author's actual language, quotation marks around the language should be used. If the student has questions about proper attribution, he or she should consult *The Chicago Manual of Style, 16th Edition*. Students may prefer to use the *Air University (AU) Style and Author Guide*, which is based on *The Chicago Manual of Style*, yet is less comprehensive and contains military-related terms. The *AU Style and Author Guide* is available in the course Resources in the Collaborative Learning Environment (CLE) in the Readings subfolder. Or you can download the Guide from

<http://www.au.af.mil/au/awc/awcgate/style/styleguide.pdf>.

Legal cases should be cited in the following general manner:

1. Put the citation in the sentence immediately after the reference.
2. Use this sequence of information for the citation: Volume Number - Reporting System – Case's first page – Specific page if a direct quote or paraphrasing from a page – Case year

Here is an example of a general citation to a case:

An important case having a bearing on the Court's interpretation of treaties, foreign affairs, and federalism is *Missouri v. Holland*. *Missouri v. Holland*, 252 U.S. 416 (1920).

Here is an example of citation to a specific page in a case:

In *Missouri v. Holland*, Justice Holmes said "If the treaty is valid there can be no dispute about the validity of the statute under Article I, Section 8 as a necessary and proper means. . ." *Missouri v. Holland*, 252 U.S. 416, 432 (1920).

If you cite a case again in the same discussion, you may use an abbreviated case name and page. Here is an example of an abbreviated citation from the same case as the previous example:

Missouri at 432.

5. Classes with more than 12 students will be divided into two groups. Unless specified otherwise, a student should reply to discussion threads only within his or her assigned group.
6. The Sakai CLE system will be the primary method that the instructor and the student will communicate with each other on a one-on-one basis.
7. Students are required to keep a hardcopy of all their Initial Posts and Essay Assignments in the event there is a problem with the Sakai CLE or another software problem.

Incorporation of Feedback:

The course instructor will provide multiple opportunities for students to provide constructive feedback on course delivery and content over the period of the course. Students will be afforded the opportunity to provide written feedback following each assignment, to include general feedback on the course, or specific feedback on an individual assignment. Online feedback is also encouraged throughout the course, either through email or a course web forum.

Students will receive feedback from the instructor within his replies to student posts in the weekly Discussion Question forums. The instructor will provide feedback approximately once per week to students on an individual basis, and the instructor will provide written feedback to the students on all assignments.

Grading:

The following provides a breakdown of how students' performance in the course will be evaluated:

Class Participation based on Initial Posts 35%

Part I Exam Objective

Test 5% Essay

Assignment 25% Part II

Exam 35%

Participation and Essay Assignments:

1. Class Participation/Initial Posts (35%):

Grading of class participation will be based only on each student's Initial Posts, which are responses to Discussion Questions. Reply Posts, although required, will not be graded. This approach provides students with more freedom to express themselves in the replies and to further actively engage in a process of open discussion. Grading of the Initial Posts will be guided by an examination of whether the posts:

- Are directly responsive to the Discussion Question(s) posed by the instructor
- Demonstrate thinking skills that go beyond merely restating the material learned in the course, for example, showing an ability to synthesize the material and that the student can apply the assigned reading to new situations and new contexts
- Take a well-articulated position
- Support the student's position with good reasoning
- Demonstrate an ability to stimulate further discussion
- Show proper source citation and formatting

2. Part I Exam:

Students will have approximately one week to complete the Part I Exam, as specifically determined by the instructor. The Part I Exam will consist of two parts covering the survey part of the course. Students may not collaborate with other persons on either part of the exam. If the score on either the Test or Essay Assignment is below 80% he or she must carefully reevaluate his or her approach and discuss with the instructor strategies for improvement.

a. Test (5%)

There will be a multiple choice and true/false examination on the first part of the course covering the first half of the course, which focuses on understanding the Constitution.

b. Essay Assignment (25%)

There will be an Essay Assignment on a topic assigned or approved by the instructor. A grading rubric is included at the end of this section.

3. Part II Exam: Essay Assignment (35%)

There will a comprehensive Essay Assignment on a topic assigned by the instructor. Students may not collaborate with other persons on the essay assignment. A grading rubric is included at the end of this section. Students will have approximately one week to complete the Part II Exam, as specifically determined by the Instructor.

Grading Scheme:

Letter grades will be assigned according to the following scheme.

A	93.00 – 100.00%
A-	90.00 – 92.99%
B+	87.00 – 89.99%
B	83.00 – 86.99%
B-	80.00 – 82.99%
C	70.00 – 79.99%
D	60.00 – 69.99%
F	less than 60.00%

Individual graded assignments with a score lower than 80% are acceptable; however, a student's final grade at the end of the semester must be 80% or higher to pass the course.

A final numeric (percentage) score for each student who completes the class and the dates of attendance will be recorded in the student's training record in CDSE's Security Training, Education and Professionalization Portal (STEPP) learning management system. The record in STEPP will also indicate that students who achieve a final score of 80% or higher passed the course.

Course Textbook:

The textbook *National Security Law, Fifth Edition* by Stephen Dycus, Arthur L. Berney, William C. Banks and Peter Raven-Hansen, (New York: Wolters Kluwer Law & Business, 2011) will be relied upon for various parts of the course, but there is no single textbook available that addresses all instructional needs for this class. Consequently, there will be assigned readings identified from multiple print and online resources. Almost all of the readings, such as Supreme Court cases, acts of Congress, Presidential Directives, and articles, will be available in the Resources section of the Collaborative Learning Environment (CLE), in the Cases or Readings folders. Links to readings on the web will be provided in the course. Others may not be available and will need to be purchased through a commercial source. Students should acquire all texts and sources before the course begins.

Essay Grading Rubric

The following guidelines will be used for grading Essay Assignments in this course.

Knowledge – Content 60%	Points ___/60
<p>All key elements of the assignment are covered. Student demonstrates a complete understanding of concepts presented in course material and also:</p> <ul style="list-style-type: none"> • Is comprehensive and accurate (no factual errors) • Is insightful and reflective • Develops a central theme or idea • Displays active engagement • Demonstrates the ability to analyze the ideas of others) 	<p>Comments:</p>
Presentation – Writing and Style 25%	Points Earned ___/25

<p>Tone is appropriate to the content and assignment.</p> <p>Organization is logical; thesis is clear.</p> <p>The introduction includes a clear thesis and previews main points of the paper/essay</p> <p>The body:</p> <ul style="list-style-type: none"> • Develops thesis • Includes clearly stated main points • Is comprehensive and accurate (no factual errors) • Is insightful and reflective • Effectively uses details, examples and/or analysis <p>The conclusion flows from the body of the paper and reviews main points of the paper/essay.</p> <p>Grammar:</p> <ul style="list-style-type: none"> • Grammar, structure, spelling and punctuation are correct • Sentences are well-structured, complete, clear, and concise <p>Topic and transition sentences are utilized and organize/maintain the flow of thought</p>	<p>Comments:</p>
<p>Administrative 15%</p>	<p>Points Earned ___/15</p>
<p>Completed within the prescribed time limits</p> <p>Conforms to prescribed word limits</p> <p>Conforms to any additional instructions provided</p> <p>Includes appropriate formatting: title page, tables, appendices, reference page, etc. in accordance with assignment administrative guidelines</p> <p>Citations are used where required and comply with the assignment administrative guidelines</p> <p>Bibliography is complete and complies with <i>AU Style Guide</i> or <i>The Chicago Manual of Style</i>.</p>	<p>Comments:</p>
<p>Total = 100%</p>	<p>Points Earned ___/100</p>
<p>Summary/Additional Comments:</p>	

Course Outline:

The following outlines the 16-week course agenda.*

Lesson/ Week	Dates	Topic	Assignment	Due Date** (Midnight ET)
1		Overview; Pre-Constitutional Framework, Constitutional Framework, Some Early Cases; and How to Brief Constitutional Case Law	Complete required readings Submit to the instructor through the Assignment link in the course materials in the Collaborative Learning Environment. Do not send the brief to other students.	
2		An Introduction to the Separation of Defense / National Security powers	Complete Required Readings Participate in Weekly Discussion	
3		The President's Defense/National Security Powers	Complete Required Readings Participate in Weekly Discussion	
4		Introduction to the Congressional National Security Powers	Complete Required Readings Participate in Weekly Discussion	
5		Courts' Defense / National Security Powers	Complete Required Readings Participate in Weekly Discussion	
6		Federal-State Relations	Complete Required Readings Participate in Weekly Discussion	
7		Bill of Rights, Part I	Complete Required Readings Participate in Weekly Discussion	
8		Bill of Rights, Part II	Complete Required Readings Participate in Weekly	

			Discussion	
9		<p>Part I and Part II of the Mid-Term Exam</p> <p>Exam will be available for viewing 7 days prior to the due date.</p>	<p>Online Test and Essay Exam</p> <p>Part I is available at the Tests and Quizzes tab link on left side of screen. Be careful you may submit your exam only once. Part II is available in the Assignments tab link on the left side of the screen.</p>	
10		Personnel Security	<p>Complete Required Readings</p> <p>Participate in Weekly Discussion</p>	
11		Detention	<p>Complete Required Readings</p> <p>Participate in Weekly Discussion</p>	
12		Insider Threats	<p>Complete Required Readings</p> <p>Participate in Weekly Discussion</p>	
13		Constitutional Issues Raised by WikiLeaks	<p>Complete Required Readings</p> <p>Participate in Weekly Discussion</p>	
14		Constitutional Issues Raised by Advanced Communications Technologies	<p>Complete Required Readings</p> <p>Participate in Weekly Discussion</p>	
15		Resolving Constitutional Issues within the DoD Security Environment: Professional Ethics and the Roles of the DoD Security Professional and the Lawyer	<p>Complete Required Readings</p> <p>Participate in Weekly Discussion</p>	
16		Final Exam will be available for viewing 14 days before due date	<p>Essay Exam</p> <p>Submit to the instructor through the Assignment link in the course materials</p>	

			in the Collaborative Learning Environment.	
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* The syllabus is subject to change.

** Initials Posts are due Wednesday at midnight ET and responses to other students' posts are due Friday midnight ET. During the weeks when there are no discussion questions, the products are due as follows: (briefs/assignments/exams/essays) Lesson 1 brief and the Lesson 9 Mid-Term Exam are due Wednesday midnight ET in the week of their respective lessons. The Final exam is due Sunday of the last day of Lesson 16. The Midterm Exam will be available to student 7 days prior to the due date. The Final Exam will be available to students 14 days prior to the due date.