

**SUBJECT:** Constitutional Law

**LOCATION:** 209

<b>TAUGHT IN:</b>	<b>CREDITS:</b>	<b>MODULE NO.</b>	<b>MODULE ORGANISER</b>
L.2	20	LEG 211 and	Martin Kavěna LL.B., B.C.L.
SEM. III – IV		LEG 212	

**RECOMMENDED PRIOR KNOWLEDGE:** LEG 101

### **METHODS OF ASSESSMENT**

Upon registration in the course, class attendance is mandatory. No more than 4 absences over 2 semesters will be allowed, with the exception of absence caused by your illness or illness of a family member for whom you are responsible (a standard doctor's note must be provided). An unsubstantiated late arrival or early departure from class of more than 20 minutes is an absence. You will receive a Fail grade if you exceed the number of unexplained absences.

Your grade will consist of two class presentations, one in each semester, (10%), one mid-term paper (30%) and one final exam (60%).

### **TEACHING AND LEARNING STRATEGIES**

The module runs for three hours a week for 30 weeks over 2 semesters. Of these 30 weeks, 27 are teaching, two are mid-term break, and the final week is reserved for the final exam. The module will be taught by lectures, practical exercises and discussions.

Format:

- Reading of materials and cases
- Classroom lectures
- Classroom discussions

### **MODULE AIMS**

To enable students to:

- attain a general understanding of the role of constitutional norms in legal systems and their impact on national and international law (and vice-versa)
- understand the main issues which arise in interpreting constitutional provisions in various constitutional systems and the role played by courts
- attain a general understanding of the content of constitutionally protected rights and freedoms
- understand the main issues which arise in the application of such rights and freedoms by courts and in the interpretation of the meaning of such rights by constitutional courts and the wide variety of rights which may be constitutionally protected
- appreciate the constitutional aspects of current political issues: the detention of prisoners at Guantanamo Bay, the ratification by states of the Rome Statute of the International Criminal Court, the non-ratification by EU states of the Treaty Establishing a Constitution for Europe etc.

### **INDICATIVE CONTENT**

Fall Class 1, 2	<b>Part I: Introduction to the Study of Constitutional Law</b> <u>Chapter I: The Nature and Characteristics of Constitutional Law [2]</u> Section A: Is it Law or Is it Politics? [2] Section B – The Different Senses of Constitutional Law [3] Section C – Sources of Law – Constitution as the Ultimate Source [6] Section D – The Origins of a State's Constitution [7] Section E – Specific Features of the Constitutional Text and Norms [7] Section F – Principles and Rules [8] Section G – Constitutional Law in Authoritarian or Totalitarian Regimes [10] Section H – Materials and Cases [11]
Fall Class 3	<b>Part II: The Structure of Government: Horizontal and Vertical Separation of Powers [21]</b> <u>Chapter II: The Separation of Powers [22]</u>

	Section A - Introduction [22] Section B - General Constitutional Provisions on the Separation of Powers [25] Section C – Readings on the Separation of Powers [26] Section D – Other Models of the Separation of Powers [39]
Fall Class 4 and 5	<u>Chapter III – Federalism [41]</u> Section A – Introduction [41] Section B – Federalism in the USA – legislative authority [44] Section C – Federalism in the Federal Republic of Germany [64] Section D – Pre-Emption [75]
Fall Class 6	<b>Part III: Judicial Enforcement of the Constitution: The Characteristics, Scope and Limits of Constitutional Review [78]</b> <u>Chapter IV – Three Systems of Constitutional Review: American, European &amp; Commonwealth [79]</u> Section A – Introduction to Constitutional Review [79] Section B – The American Model of Constitutional Review [81] Section C – The European System of Constitutional Review [90] Section D – Other Systems of Constitutional Review [98]
Fall Class 7	<u>Chapter V – Canons of Interpretation [107]</u> Section A – Special Interpretive Principles to Uphold the Supremacy of the Constitution [107] Section B – General Constitutional Principles [124]
Fall Class 8 and 9	<u>Chapter VI – The Contours of Constitutional Review [129]</u> Section A – Standards of Review [129] Section B – Doctrines on the Limits of Judicial Authority [141] Section C – Authority and Finality of Judicial Views on Constitutional Matters [155]
Fall Class 10 and 11	Part IV: Characteristics of Constitutional Systems [160] Chapter VII: Additional Sources of Constitutional Law [161] Section A - The Status and Impact of International Law in Constitutional Orders [161] Section B – Constitutional Custom [173]
Fall Class 12	<u>Chapter VIII: The Rule of Law [178]</u>
Fall Class 13	Class Presentations
Fall Class 14	Review and Practice Exam
Spring Class 1	<b>Fundamental Rights</b> Introduction [reader 1-5] - Introductory discussion: source of constitutionally protected rights and freedoms - Constitutional law vs. pre-existing historical legal regimes - The role and competences of the constitutional court
Spring Class 2	Overview of fundamental rights and constitutional complaints [6-31] - Historical overview, enforcement of human rights in the absence of constitutional protection - Constitutional complaints
Spring Class 3	Habeas Corpus, the right to human dignity and personhood [32-48, 56-58]
Spring Class 4	Right to property [49-55]
Spring Class 5 and 6	Right to equality and the prohibition of discrimination [59-93]
Spring	Freedom of expression and speech [94-135]

Class 7	
Spring Class 8	Freedom of religion [136-166]
Spring Class 9	Class Presentations
Spring Class 10	Application of fundamental rights [167-216] <ul style="list-style-type: none"> <li>- Horizontal application of fundamental rights</li> <li>- Uniform application of fundamental rights by different courts in one state</li> <li>- Fundamental rights and private law</li> </ul>
Spring Class 11	<b>Current Issues in Constitutional Law</b> Constitutional law, Terrorism and War Crimes <ul style="list-style-type: none"> <li>- The right to due process – decisions of the U.S. Supreme Court regarding <i>Guantanamo Bay</i> prisoners</li> <li>- Head of state immunity, the right of citizens not to be extradited abroad:</li> <li>- Ratification of the Rome Statute of the International Criminal Court</li> <li>- Head of State immunity and the U.K. House of Lords <i>Pinochet</i> decision</li> <li>- Implementation of the European Arrest Warrant</li> </ul> International law and amnesties granted under national law
Spring Class 12	Supranational constitutional law: <ul style="list-style-type: none"> <li>- the European Constitution – treaty or constitution?</li> <li>- international treaties, EU law – a competition for supremacy over constitutional law?</li> </ul>
Spring Class 13	Review Class
Spring Class 14	Final Exam

### LEARNING OUTCOMES

On successful completion of the module, students will be expected to:

- be familiar with the main types of constitutional normative orders and systems
- be familiar with the main types of constitutionally protected fundamental rights
- be able to critically comment on methods of interpretation and application of constitutional rules by courts and evaluate different approaches taken by courts
- be able to critically comment on whether a particular limitation on a fundamentally protected right could be considered to be legitimate, according to established doctrines of constitutional interpretation (i.e. to understand the analytic approach employed in balancing fundamental rights against one another and against other interests),
- be familiar with current constitutional law issues in relation to fundamental rights and international and European law.

### TEXTBOOK

- Special AAU Reader for Constitutional Law and Constitutional Law II
- Special AAU Supplement for Constitutional Law

### RECOMMENDED READING

- **Constitutional law** of the European Union / Koen Lenaerts ; Piet Van Nuffel ; edited by Robert Bray. -- 2nd British ed. -- London, UK : Sweet & Maxwell, 2005. -- clii, 969 p., incl. Index ISBN 0-421-88610-2
- **Constitutional law** and politics Volume One : struggles for power and governmental accountability / David M. O'Brien. -- 2nd ed. -- New York, NY : W. W. Norton & Company, 1995. -- xxii, 838 p. ISBN 0-393-96610-0
- **Constitutional law** and politics Volume Two : civil rights and civil liberties / David M. O'Brien. -- 2nd ed. - - New York, NY : W. W. Norton & Company, 1995. -- xxxii, 1565 p. ISBN 0-393-96611-9