

FEDERAL COURTS
SPRING 2009 (WEEKDAY)

PROFESSOR ALLEN BLAIR

Regular Office Hours

Tuesday 11:00 – 12:00; 1:00 – 2:00
Thursday 11:00 – 12:00; 1:00 – 2:00

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One of the consequences of federalism is a legal system that derives from both the Nation and the states as separate sources of authority and is administered by state and federal judiciaries, functioning in far more subtle combinations than is readily perceived. The resulting legal problems are the subject of this [class].

HENRY M. HART, HERBERT WECHSLER, ET. AL., HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM IX (5TH ED. 2003).

Introduction

This course has a deceptively simple title. Although there are only a few seminal themes at the core of it – the concern for recognizing and appropriately balancing state sovereign autonomy; the concern for separation of powers at the federal level, while recognizing a dominant role for Congress; and the concern for defining institutional competence – the Federal Courts course intriguingly blends constitutional law, civil procedure, legal and political philosophy, history, current affairs, politics and civil rights law.

Goals

In a nutshell, this semester, we will examine the jurisdiction of the federal courts, analyzing constitutional and statutory provisions, as well as judicially-created doctrines, that shape and limit the role that federal courts play in our system of government.

At a minimum, in this course we will address the following broad topics:

- ♦ ***What*** – Claims can be heard in federal courts?

By the end of this course, you will understand not only the constitutional reach of federal court jurisdiction but also congressional power to control that jurisdiction (and control the decisions that federal courts make). Additionally, you'll understand, in detail, the current statutory reach of federal court jurisdiction.

- ♦ ***Where*** – Can (and should) lawsuits be heard?

Over the course of the semester, you will learn when state courts have the power and the duty to hear federal claims. You will also learn, in detail, about Supreme Court review of state court decisions, antisuit injunctions, removal and venue changes, and the so-called abstention doctrines.

- ♦ **Who** – Can be sued in federal courts?

Over the course of the semester, you will learn about suits challenging actions by states, state subdivisions and their offers as well as suits challenging federal actions. Additionally, you will learn about sovereign immunity and official immunities.

- ♦ **When** – Does state (or Federal) law apply?

Finally, during the semester, you will revisit the scope and application of *Erie* as well as federal common law.

Required Texts

- FEDERAL COURTS: CASES AND MATERIALS ON JUDICIAL FEDERALISM AND THE LAWYERING PROCESS (2005) (“Casebook”).
 - 2008 Casebook Supplement
- JUDICIAL CODE SUPPLEMENT: TITLE 28 AND RELATED STATUTES (2008 version)

Additional Texts

I will be posting a number of cases, law review articles, and handouts that you will need to read over the course of the semester. These materials will be available through TWEN. Additionally, if you are looking for a great supplemental text, I recommend Erwin Chemerinsky's *Federal Jurisdiction*. The bookstore should have a few copies available.

Preparation and Participation

This is an exciting time to take this class because there has been a lot of recent debate about, as Hart and Weschler might say, “what courts are good for—and are not good for.” Because this is an upper-level elective course, I trust that everyone in this class truly wants to be here. Accordingly, I am excited to share many energetic discussions during the course of the semester. Although this is not a seminar, I hope that it will often feel like one. Please come prepared, and please be ready to contribute meaningfully.

Attendance

Being in class is important. Missing more than three classes will constitute excessive absence for purposes of the Law School's attendance policy. If a conflict arises and it looks like you will miss more than three days, please let me know as soon as possible. I will endeavor to make reasonable accommodations to folks who have personal, religious, or other conflicts and let me know about such conflicts in a timely manner.

TWEN

You will need to register for this course's page on TWEN as soon as possible. In addition to posting future groups of reading assignments on TWEN (and any alterations to those assignments), I will also be posting handouts, cases, and preparation questions that are designed to help you focus on key information and concepts in the reading assignments. Additionally, I will post extra materials, including any PowerPoint slides that I show in class and mandatory or optional law review articles to read.

Computer Use Policy

You may use laptop computers or other electronic devices in class to take notes and access course-related materials. You should not use your laptop or electronic devices for other purposes.

Grading and The Exam

Your grade this semester will be based on a final examination (70%) and two short papers (30%).

The Final Examination

The final examination will be a three-hour self-scheduled exam. We will discuss the structure and format of the examination in more detail as the semester progresses.

Short Papers

Over the course of the semester, you will need to turn in two short papers (1,500 – 2,000 words each). You will be able to choose a topic for these papers from several options, which will be made available to you during no later than January 26. The first paper will be due no later than March 6. The second paper will be due no later than April 24.

Reading Assignments

Rather than trying to predict how quickly we will move through the entire semester, I will only try to predict the first eight assignments. (I will distribute another bundle of assignments by week two.)

You will see that I do not expressly assign readings out of the supplement. ***You should, however, review any statutes or Rules Civil Procedure relevant to the assigned readings.*** If a case, for instance, turns on an interpretation of 28 U.S.C. § 1331, then I will expect that you have, as part of your preparation for the class, read and considered § 1331.

Additionally, for many classes, I will email, several days before the class, a short list of preparation questions or hypotheticals that you should review for ten to twenty minutes before the class. I will then make these questions or hypotheticals available on TWEN.

1. Introduction and the Selection of Judges

Casebook 3 – 27

Additionally, spend about 20 minutes exploring the American Judicature Society's webpage (<http://www.judicialselection.us/>), which discusses methods of judicial selection in the states as well as efforts to reform selection processes. Pay particular attention to the Reform Efforts section.

Handout: Ginsburg Article

Handout: Obama and the Supreme Court

2. The Province and Duty of the Judicial Department

Casebook 28 - 37

Handout: Background on the Constitutional Convention

3. Congressional Power to Curtail Federal Court Jurisdiction

Casebook 1269 - 1285

Handout: Portions of Hart's Dialogue

Handout: Jurisdiction Stripping Articles

4. Congressional Power to Curtail Federal Court Jurisdiction, Cont'd

Casebook 1285 – 1304 (*please make sure to read pages 147 – 148 in the textbook supplement*)

5. Congressional Power to Curtail Federal Court Jurisdiction, Cont'd

Casebook 1305 – 1340 (*please make sure to read pages 148 – 150 in the textbook supplement*)

Handout: Jurisdiction Stripping Hypos

6. The Judicial Power Under Article III

Casebook 39 - 57

Handout: Refresher on Federal Question Jurisdiction History and Policy

7. The Judicial Power, Cont'd

Casebook 58 - 82

8. Cases and Controversies

Casebook 83 - 104