

## **Federal Jurisdiction (Law # 6930)**

Professor Merritt McAlister

Fall 2018

### **Syllabus**

**1. Materials.** Our casebook is LOW, JEFFRIES AND BRADLEY, FEDERAL COURTS AND THE LAW OF FEDERAL-STATE RELATIONS (9th ed.). In preparing for this course, I have drawn from Professor Erwin Chemerinsky's excellent treatise on Federal Jurisdiction (7th ed.). You are not required to use the treatise, but you may find it a useful resource.

**2. Class Meetings.** Our class will meet on Mondays and Wednesdays from 1:00 pm to 2:15 pm in Room 270.

**3. Office Hours.** I will hold office hours on Wednesdays from 2:30 pm to 4:30 pm. You are welcome to drop by then or anytime my door is open. Feel free to email me to arrange a time to meet, especially if my office hours are inconvenient for you. You should also feel free to schedule a time to meet during my office hours to reserve the amount of time you need and to eliminate wait time. If I need to reschedule my office hours for any reason, I will leave a note on my door. I encourage you to talk with me about anything class- or law-school related. I also know a thing or two about clerkships, law-firm jobs, cooking, and chocolate Labs.

**4. Contact Information.** My office is in Room 343, and my office telephone number is 352.273.0981. My e-mail address is [mcalister@law.ufl.edu](mailto:mcalister@law.ufl.edu). Please do not hesitate to contact me regularly throughout the semester.

**5. Course Objectives and Student Learning Outcomes.** This course explores issues central to the exercise of judicial power in the federal system. Our focus is on the constitutional dimensions of federal judicial power—including, among other things, the ability of federal courts to hear particular cases, to render decisions, and to make law. Together with Professor Rush's Federal Courts class, this course will provide a thorough introduction to issues that arise frequently and uniquely in a federal court practice.

By the end of this course, you should be able to: (1) identify the scope and limits of federal law-making by federal courts, especially as to remedies for the violation of federal rights; (2) describe the circumstances in which the Supreme Court and lower federal courts may review state-court decisions; (3) describe and apply the most significant justiciability limits on disputes in federal courts; (4) identify the bases for "arising under" federal question jurisdiction; (5) outline significant issues in federal habeas corpus litigation; (6) distinguish and apply common federal abstention doctrines.

Throughout, the focus of our inquiry will be on the intricate separation-of-powers dance between Congress and Article III courts and the delicate federalism balance between federal and state courts. In that regard, this course is essentially a constitutional law course that will enable you to articulate persuasive structural constitutional arguments. Not only are the issues relevant to modern practice, but the rigor of the course will sharpen your analytical reasoning skills.

**6. Class Assignments.** At the end of this syllabus, you will find a Course Reading Map, which is a list of assignments by subject matter. The Reading Map itself may provide you with a useful organizational tool. Each assignment corresponds roughly to one class period. We will sometimes discuss one assignment over two days or I may ask you to read two assignments for one class. I will confirm the next assignment at the end of class, but if you miss class, you should prepare the next class assignment. You should spend your reading time focused on the main cases assigned, and you may devote less time to the case notes. (The case notes often provide more detail on cases discussed in the lead case or provide helpful context.)

**7. Class Preparation and Participation.** Meaningful and thorough class preparation is essential to success in this course, which covers a range of difficult material. Consistent with the American Bar Association Standard 310, you should expect to spend six hours per week preparing for this three-hour course.

I expect each student to come to class prepared, which means you have analyzed the assigned material and reviewed your notes from the previous class. If you are not prepared on any given day, please tell me at the beginning of class that you need a “free pass” for that day. You are allowed three free passes in this course without any impact on your grade. Failure to be prepared for class on more than three separate occasions may lower your grade by one-third of a point (e.g., from a B to a B-).

Excellent class participation may raise your grade. The quality, and not the quantity, of your participation is what matters to me. I encourage you to offer thoughtful comments or questions semi-regularly (i.e., in at least half of our classes), while remaining engaged in classroom discussion and demonstrating classroom leadership (i.e., drawing others into the conversation). I will reward excellent participation by raising your grade by one-third of a point (e.g., from a B+ to an A-) or by using excellent participation to differentiate among students with the same grade to achieve a curve (should this course have more than 15 students, as UF Law’s policies require).

**8. Class Attendance.** I will measure class attendance solely by the sign-in sheet, and it is your responsibility to sign-in and/or initial that sheet at the beginning of

class. Be aware that it is a serious violation of the Academic Honesty policy to sign in other people or to have others sign you in.

An absence from class for any reason will count as a “free pass.” You thus are permitted three absences without any impact on your grade. Please note that if, for example, you miss two classes and use one free pass for lack of preparation, then you will be out of free passes. Use your free passes wisely.

Missing four or more classes may result in a reduction of your grade by one-third of a point (e.g., from a B to a B-). Failure to attend six or more classes (i.e., more than 20% of our scheduled classes), will result in your being barred from taking the final exam in this course.

You do not need to tell me why you are missing class or need a free pass. If, however, you expect to be absent from class more than three times due to a family emergency or medical situation, please notify me. Observance of a University-recognized religious holiday does not count as an absence and will not count against your available free passes. Accordingly, please notify me of such absences.

**9. Electronic Devices.** You may use a computer or tablet in class to take notes. Unless you have permission from me, you may not use a cell phone during class for any reason. Permission will only be given for extraordinary circumstances (e.g., a loved one with serious medical condition). I expect you to be professional and respectful of the classroom environment and not use electronic devices for other purposes. I reserve the right to reconsider my electronic device policy to preserve the classroom environment.

**10. Exam.** The exam will be an open-book, open-notes take-home exam that is designed to take three hours to draft. Once you open the exam packet, however, you will have 24 hours to complete the exam. The exam will be due by Wednesday, December 13 at 5:00 pm.

**11. Grading.** Your grade in this class will be based on the final exam, subject to the provisions of Sections 7 and 8, above. The Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

| Letter Grade  | Point Equivalent |
|---------------|------------------|
| A (Excellent) | 4.0              |
| A-            | 3.67             |
| B+            | 3.33             |
| B             | 3.0              |

|                     |      |
|---------------------|------|
| B-                  | 2.67 |
| C+                  | 2.33 |
| C<br>(Satisfactory) | 2.0  |
| C-                  | 1.67 |
| D+                  | 1.33 |
| D (Poor)            | 1.0  |
| D-                  | 0.67 |
| E (Failure)         | 0.0  |

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

**12. Accommodations.** Students requesting accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

**13. Student Course Evaluations.** You may provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations are usually open during the last three weeks of the semester, but you will receive notice of the specific times when the evaluations are open.

**14. Academic honesty.** Academic honesty and integrity are fundamental values of the UF Law School community. You should be sure that you understand and comply with the UF Student Honor Code, available at <https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>, and the Law School's application of it, available at <https://www.law.ufl.edu/life-at-uf-law/officeof-student-affairs/additional-information/honor-code-and-committee/honor-code>.

**Federal Jurisdiction Course Reading Map**  
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**I. Judicial Power of the Federal Courts:** “The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress from time to time ordain and establish.” Const., art. III, § 1.

**A. Judicial Power to Create Federal Law**

1. The *Erie* Doctrine, pp. 1-8, 10-21 & 30-33
2. The Rules Enabling Act and the Substance/Procedure Problem, pp. 734-758
3. Federal Law in State Court, pp. 39-44 & 51-65
4. Law Governing the Rights and Duties of the United States, pp. 115-132
5. Law Governing the Rights and Duties of Private Parties, pp. 132-154
6. Implied Rights of Action to Enforce Statutes, pp. 156-60 & 170-179
7. Implied Rights of Action to Enforce Constitutional Rights, pp. 182-193 & 197-207

**B. Federal Review of State-Court Decisions**

**i. Supreme Court Review of State-Court Decisions**

8. Power to Review State Court Decisions, pp. 77-94 & 767-774
9. Adequate and Independent State Grounds Doctrine, pp. 99-113

**ii. Habeas Corpus**

10. Scope of Habeas Corpus Review, pp. 927-943
11. Retroactive Application of New Constitutional Rights, pp. 944-961
12. Antiterrorism and Effective Death Penalty Act (AEDPA), pp. 963-964, 968-980, & 986-989
13. Procedural Bar, Timeliness, and Exhaustion, pp. 992-1002, 1007-1010, & 1017-1028

14. Actual Innocence, pp. 1030-1046

**II. Cases and Controversies: “The judicial power shall extend to all cases . . . arising under this Constitution, the laws of the United States . . . [and] controversies . . . between citizens of different states,” Const. art. III, § 2.**

**A. Judicial Power Over Cases and Controversies**

15. Constitutional Requirements of Standing, pp. 280-295 & 297-303

16. Statutory Standing (*Lujan*), pp. 307-326

17. Standing to Appeal, pp. 363-391

18. Ripeness, pp. 406-420

19. Mootness, pp. 420-443

**B. Subject-Matter Jurisdiction of the Federal Courts**

20. Federal Question Jurisdiction: “Arising Under,” pp. 652-672

21. Preemption as a Basis for Jurisdiction, pp. 682-700

22. Supplemental Jurisdiction, pp. 709-732

**C. Declining to Exercise Jurisdiction**

23. *Younger* Abstention, pp. 807-826

24. Applying *Younger*, pp. 827-844

25. Comity Doctrine, pp. 844-860

26. *Pullman* and *Burford* Abstention, pp. 861-877

27. Concurrent Litigation Abstention (*Colorado River* and *Rooker-Feldman*), pp. 879-896