

UNIVERSITY OF FLORIDA, LEVIN COLLEGE OF LAW

LEGISLATIVE POWER—A Compressed Course **Judge Adam Tanenbaum**

Post-Summer 2023

Course Number: LAW 6930-36EC Room: HOL 360

Class Meeting Times: Monday through Thursday, 9:00 a.m. to 12 noon
Friday, 9:00 a.m. to 11 a.m.

Office Hours: I will be available by appointment. I also plan to remain in the classroom for in-person discussions between 12 noon and 1 p.m. on Monday through Thursday (August 14 through 17, 2023). You also will be able to reach me by phone or e-mail at any time if you are having difficulties with, or simply want to clarify your understanding of, any of the materials covered in the reading or in class. I will provide a phone number in class. In the meantime, my e-mail addresses are a.tanenbaum@ufl.edu and tanenbauma@flcourts.org.

Required Course Materials: There is no textbook required or utilized. Any readings will be provided digitally through Canvas, or will be available online for free. For lengthier court opinions that are assigned, I will upload pre-highlighted PDFs to Canvas.

Course Website: I will maintain and update the course site on Canvas, where there will be class modules containing the reading assignments and PDFs of many of the assigned reading materials. You are responsible for reviewing the course site on Canvas frequently for updates regarding this course.

Course Description: In this course, we will explore the nature and scope of the power vested in the Legislature by the Florida Constitution and how that power differs from powers vested in the other two branches of state government. We also will consider the difference between the “vested” legislative power of the Florida Constitution with the “enumerated” legislative power of the U.S. Constitution. Along the way, we will cover the extent to which there are constitutional limits on the Legislature’s otherwise plenary policymaking authority, and how the legislative branch competes with the executive and judicial branches to assert the full scope of their respective powers on various fronts. Indeed, we will discuss how that

competition comes to a head in the courtroom in constitutional litigation. Finally, we will talk throughout about litigation fundamentals and strategy and research and writing techniques; and you will have opportunities to engage with examples in which the legislative branch has sought to protect and enforce the legislative prerogative in the courts.

There is no textbook. Instead, we will read and discuss various court opinions and court filings; occasionally, we will read from secondary sources and excerpts from historical documents and writings. By reading this material closely and critically—along with coming to class prepared and eager to participate—you will continue to develop your ability to dissect legal analyses as a lawyer and to utilize that material creatively and persuasively as an advocate.

Student Learning Outcomes: By the end of this course, students will be able to

1. Define what the “law” is in Florida, and distinguish between the constitution and statutes on the one hand; and rules, policies, and court decisions, on the other.
2. Define what sovereign “power” is, and describe the political philosophy that underlies and the mechanics behind the vesting and exercise of legislative power.
3. Explain the theory behind legislative supremacy and how it interfaces with provisions of the Florida Constitution that relate to vesting, de-vesting, re-vesting, and separation of powers.
4. Describe the historical diminution of state legislative power vis-à-vis the federal legislative and judicial powers.
5. Compare and contrast legislative power with both executive and judicial power, and describe the tensions between the exercise of legislative power and the exercise of the other two powers, including through the “administrative state.”
6. Identify creative methodologies for the projection of Florida’s legislative power outside the legislative process.

Class Schedule: This is a compressed course. As stated up top, we will meet on Monday through Thursday (August 14 through August 17) from 9 a.m. to 12 noon, and Friday (August 18) from 9 a.m. to 11 a.m.

Attendance: This is a compressed course. Attendance in class is required by both the ABA and the Law School. Attendance will be taken at each class meeting and is mandatory. Missing more than one class hour may result in a reduction of your final grade. Missing more than two class hours may result in a failing grade or no credit for the course. Excessive tardiness may also result in a grade penalty. A student who fails to meet the attendance requirement will be dropped from the course. The law school's policy on attendance can be found at [here](#).

Per ABA Standard 310, it is expected that you will spend two hours preparing outside of class for every hour of in-class instruction.

Etiquette/Communication Courtesy: All members of the class are expected to follow rules of common courtesy in all e-mail messages, threaded discussions, chats and in class discussions. Please do not disparage or discourage others' views and participation.

Observance of Religious Holidays: UF Law respects students' [observance of religious holidays](#).

- Students, upon prior notification to their instructors, shall be excused from class or other scheduled academic activity to observe a religious holy day of their faith.
- Students shall be permitted a reasonable amount of time to make up the material or activities covered in their absence.
- Students shall not be penalized due to absence from class or other scheduled academic activity because of religious observances.

University Policy on Academic Misconduct: UF students are bound by The Honor Pledge, which states: "We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: 'On my honor, I have neither given nor received unauthorized aid in doing this assignment.'" The Honor Code (<https://sccr.dso.ufl.edu/policies/student-honor-code-student-conduct-code/>) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with the instructor.

University Policy on Accommodating Students with Disabilities: Students requesting accommodation for disabilities should register first with the Office of the Dean of Students (<https://disability.ufl.edu/>). The Office of the Dean of Students will provide documentation to the student who then must provide this documentation to the instructor when requesting accommodation. You must submit this documentation prior to submitting assignments or taking quizzes or exams. Because any accommodation is not retroactive, students should contact the Office of the Dean of Students as soon as possible in the semester for which they are seeking an accommodation.

Academic Honesty: Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Law Honor Code located [here](#). The UF Law Honor Code also prohibits use of artificial intelligence, including, but not limited to, ChatGPT and Harvey, to assist in completing quizzes, exams, papers, or other assessments.

Class Recordings: All classes will be recorded via Mediasite for students who must miss class for health reasons. The Office of Student Affairs will work with faculty to determine when students may have access to these recordings, and the recordings will be password protected. It is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

Online Course Evaluations: Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens and can complete evaluations through the e-mail they receive from GatorEvals in their Canvas course menu under GatorEvals, or via <https://ufl.bluer.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

Grading: You will be graded based primarily on a writing assignment (short-answer questions) to be due two weeks after the last day of class. The writing assignment will be graded based on the following matrix: Mastery of subject matter—70%; Quality of writing and efficacy of idea organization and presentation—20%; Accuracy, proofreading, following instructions—10%. Moreover, in each class, I will keep track of who participates, who participates robustly, and who participates not-at-all. At the end of the course, each student's overall, relative participation during class will be factored into the final grade. The end-of-course writing

assignment will count 85% toward the course grade; participation will count 15% toward the course grade.

The Levin College of Law's mean and mandatory distributions are posted on the College's website, and this course adheres to that posted grading policy, available [here](#).

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 (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

COURSE SCHEDULE

Day	Topic	Sub-topics
1	Philosophy of Legislative Power	<ul style="list-style-type: none">• Historical Origins• Define “Power” and “Law”• Vesting—Full and Partial• Legislative Supremacy• Compare and Contrast with Other Powers
2	Limits on Legislative Power	<ul style="list-style-type: none">• Inherent Limits (Vesting Theory and Rationality)• Extrinsic Limits (Constitutional, Procedural)• Horizontal and Vertical Limits (Structural)
3	Separation and Competition of Powers	<ul style="list-style-type: none">• Separation of Powers• Non-delegation Principles• The Executive Power, the Administrative State, and the Quasi-Powers
4	Legislative Prerogatives and Immunity	<ul style="list-style-type: none">• Investigations• Individual Legislators/Representatives• Litigation and Departmentalism
5	War Stories and Review	<ul style="list-style-type: none">• Confessions of a Legislative General Counsel• Recap• Questions

Disclaimer: This syllabus represents my current plans and objectives. Those plans may need to change to enhance the class learning opportunity. Such changes, communicated clearly, are not unusual and should be expected.