**FEDERAL COURTS**

**Law 6302-23350**

University of Florida Levin College of Law

Fall 2020

Professor Merritt McAlister

Pronouns: she/her/hers
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Zoom Personal Meeting Room: <https://ufl.zoom.us/j/3085718560>

**Syllabus**

**1. Overview.** This course explores the complex role of the federal courts in our constitutional system. It considers substantive and procedural doctrine that has developed to address the tension among three competing constitutional values: (1) the separation between the judiciary and (primarily) the legislative branches of government; (2) the balance between federal and state (court) power; and (3) the protection and redressability of federally-created individual rights.

Our approach to this course is decidedly practice based. That means, in each class we will work through problems, drilling down on the best arguments for each side as if we were litigators. We also will consider how a judge might approach particular issues, especially with a mind toward future cases; we’ll consider why courts adopt certain rules and standards and how doctrine develops and shifts over time.

**2. Required and Optional Materials.** Our casebook is Jonathan R. Siegel, Federal Courts (2d ed. 2019).

You may use the first edition, but you are responsible for ensuring that you read any added material, which is described in the preface to the second edition: <http://www.jsiegel.net/casebook/preface/>. The casebook has a case law, constitutional, and statutory supplement available for free here: <http://www.jsiegel.net/publications/Supp2020-2021FINAL.pdf>. You will occasionally be required to read from the supplement.

In preparing for this course, I have drawn from Professor Erwin Chemerinsky’s excellent treatise, Federal Jurisdiction (7th ed.). You are not required to use the treatise, but you may find it helpful.

**3. Class Meetings.** Students may attend our class either in person or via Zoom (based on your election before the semester began). For the first two weeks of class (that is, until Labor Day), we will meet (either in person or synchronously via Zoom) on Mondays from 1:30 pm to 2:25 pm in HH 180, on Tuesdays from 1:25 pm to 2:50 pm in HH 283/284 (live) and HH-285-D (remote), and on Wednesdays from 1:00 pm to 2:25 PM in HH 283/284 (live) and HH-285-D (remote). **Beginning with Labor Day (a recognized school holiday), we will discontinue meeting on Mondays and meet only on Tuesdays and Wednesdays.** You will be required to watch short video lectures throughout the semester that will comprise the additional instructional time.

For students attending via Zoom, the link for the Zoom session for our class meetings will appear in the course’s Canvas page and on your Canvas calendar; it will be the same meeting link throughout the semester.

**4. Contact Information.** My e-mail address is mcalister@law.ufl.edu. E-mail is usually the best way to reach me, and please do not hesitate to contact me regularly throughout the semester. If you need to reach me urgently, you may text or call 404.861.7619. My Zoom Personal Meeting Room, which is where I will hold all student meetings, is <https://ufl.zoom.us/j/3085718560>.

**5. Office Hours.** Individual office hours are held virtually each week by appointment. For the first three weeks, office hours are on Thursdays from 1:00 pm to 3:00 pm. After Labor Day (and consistent with our other schedule changes), Office Hours are 1:20 pm to 3:20 pm on Mondays. You may sign up for a 20-minute slot through your Canvas calendar. Office hours are held in my Zoom personal meeting room: <https://ufl.zoom.us/j/3085718560>.

If I need to reschedule my office hours for any reason, I will make an announcement in class and change the available appointments through Canvas. Outside of office hours, I am happy to meet by appointment at other times; please e-mail me to arrange. 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, wine, and raising Lab puppies.

**6. Canvas.** I will use Canvas to communicate all relevant class information, including to make available video lectures, distribute in-class discussion problems, and to administer participation/comprehension quizzes. The Zoom information for my office hours and our regular class meetings are available through our course’s Canvas page as well. Canvas is your friend.

**7. Course Objectives and Student Learning Outcomes.** By the end of this course, you should be able to: (1) develop arguments that are helpful to the government/defendant and the plaintiff on issues of standing, immunity (qualified, absolute, and sovereign), redressability of constitutional rights against government actors, and habeas corpus; (2) critique and develop federalism and separation of powers arguments that inform whether federal courts provide a federal forum (including for Supreme Court review) and/or afford a federal remedy; (3) predict the circumstances in which federal courts will create federal law, provide a federal remedy, and/or apply/borrow state law; and (4) compare different approaches to congressional control of federal court jurisdiction.

**8. Course Reading Map.** 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. I have noted in brackets the cases of most importance in each assignment, but you are responsible for all of the reading. Approximately half of the topics we will cover in this course are also tested on the Florida Bar Exam (mostly the Multi-State Bar Exam portion), and I have highlighted those topics in brackets.

Each assignment corresponds to one class period, as indicated. Some of our material may spillover into the next class hour; some material is interconnected. Know that part of your preparation includes reviewing your notes from the prior class. I reserve the right to remove assignments from our planned reading map depending on how quickly we move through the material.

**9. Asynchronous Course Content.** This course has synchronous and asynchronous content. **You are required to watch short lecture videos each week, which are posted by 12:00 pm on Sunday.** These videos are instructional time. There will be approximately 45 minutes’ worth of videos to view each week (required to make up 605 minutes of instructional time for the 11 days of Mondays we will miss). Most videos will address material that we will discuss in the next class to ensure that we begin our discussion with a firm grasp of foundational concepts. I will also record a weekly “recap” lecture that underscores key concepts discussed that week.

**10. Reading Quizzes.** Before each scheduled class meeting as described in Section 3, you must complete a short online quiz to test basic comprehension of the reading material. I suggest you complete the quiz after you have both read the material and watched the relevant video.You will access these quizzes through the “Quiz” tab on Canvas; they are also part of the Modules for each major section of our course. This quiz will also provide you with an opportunity to identify areas of trouble where you’d like more discussion during in-class time to ensure comprehension.

**11. In-Class Hypotheticals and Section Assignments.** When we meet in person and synchronously through Zoom, we will focus on discussion of hypotheticals, big-picture questions, and, to a lesser extent, case explications. It is your responsibility to come to class prepared to apply the rules discussed in the reading. I will take questions at the beginning of every class.

To guide your reading, by Friday at 5:00 pm each week, I will post on Canvas any hypothetical problems and/or reading/discussion question that we may discuss related to the covered material. You must be prepared to discuss these problems in class.

Each hypothetical problem will direct a third of the class to play a particular role in our discussion: government/defense attorney, attorney for the plaintiff, or judge. For example, you’ll want to develop arguments that support dismissal of a claim if you are counsel for the defense/government. If you are the court, you’ll want to consider the implications of different rulings and how different judicial ideologies may inform your approach to a particular question.

It is your responsibility to consider the hypotheticals and questions posed from the point of view of your assigned role. These roles are assigned based on your membership in Section X, Y, or Z. **Students who participate by Zoom are in Section Z. Students who attend in person and whose last names begins with A through L are in Section X; students who attend in person and whose last names begin with M through Z are in Section Y.**

**12. Class Preparation, Participation, and Experience.** Consistent with the American Bar Association Standard 310, you should expect to spend at least **eight hours** per week preparing for this four-hour course.

I have high expectations for the learning environment we create together. I rely heavily on classroom discussion to explicate cases and concepts and apply those frameworks to new problems. I expect each of you to attend class prepared. Preparation includes completing the assigned reading, watching the related short video lecture, thinking through the posted hypothetical problems and/or discussion questions, reviewing notes and/or reading material from the prior class, and watching the short weekly recap video.

I have an on-call policy that may be more rigorous than other upper-level courses. To ensure meaningful participation from all class members and to help you build lawyering skills, I will cold-call students using an on-line list randomizer to generate a cold-call list for each week. I will not call on the same student in consecutive class periods, and your section mates may assist you in class.

If for some reason you are not prepared on one of your on-call days, please email me (mcalister@law.ufl.edu) at least 10 minutes before class. Please do not abuse that policy. **If I call on you and you are not prepared for class and you have not notified me of your lack of preparation in advance, I reserve the right to reduce your grade by one-third of a point (e.g., from a B to a B-).** Do not tempt fate; notify me in advance of your lack of preparation.

**13. Class Attendance.** I record attendance using an Airtable form that automatically records the date and time you submit the form. I will display a QR Code and provide a website link for the form at the beginning of class. You must scan this QR code on a smartphone, or type in the relevant website address on your computer, to record your attendance. **You must record your attendance within 3 minutes of the start of our scheduled class time to be counted as present for class.** The form will also invite you to raise a question from the last class or the reading if you have one.

**If you are not present more than six times during the semester, I will lower your final grade by at least one-third of a point (e.g., from a B+ to a B).** I also reserve the right to refuse to let any student take the final exam if he, she, or they miss more than 8 of our scheduled classes.

You do not need to tell me why you are absent. If, however, you expect to be absent from class more than six 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. Accordingly, please notify me of such absences.

**14. Electronic Devices.** A computer and/or smartphone is necessary to complete this course. For those attending remotely, a computer with a webcam (preferred) or a smartphone with the Zoom application (less preferred) is essential. Should you have any internet or connectivity issue in class, you may watch the recording of the class, which I make available to all students. **You must leave your webcam on at all times during class.** Do not use your computer for any non-class related purpose during class. For those students attending in person, a computer and/or a smartphone is necessary to record attendance and access polling software.

**15. Evaluation.** Your final grade has three components: completion of reading quizzes, which counts for 10%; a mid-term exam, which counts for 20%; and a final exam, which counts for 70%.

You will receive full credit for completion of the reading quizzes provided you complete at least 20 of the assigned quizzes. I will deduct 10% of your quiz score for each missed quiz if you complete fewer than 20 assigned quizzes. For example, you would receive 9 points out of 10 points for this component of your grade if you complete only 19 quizzes; if you complete only 10 or fewer quizzes, you will receive no points for this portion of your grade. I do not grade the substance of the quizzes; what matters is that you complete them for at least 20 classes.

Both exams will be open-book, open-note take-home exams. I will discuss the format of the exam in class. The midterm will cover Section I of the Course Reading Map.

Exceptional participation will be considered to set the curve and, rarely, to adjust final grades by no more than 1/3 of a point if I determine that your exam grade does not reflect your classroom contributions and engagement with our course. Grade adjustments based on participation are the exception, not the norm.

**16. Grading**. Your grade in this class will be based on the midterm and final exams and class participation, as described in Sections 12, 13, and 15, 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:

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

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

**17. 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.

**18. Student 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 email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

**19. 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>.

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**I. The Power of and Constraints on Article III Courts**

1. **Congressional Control of Federal Jurisdiction {BAR EXAM TOPIC}**
2. **August 24 Class:** Intro to Article III & Traditional Doctrine—U.S. Const. Art. I, § 8, cl. 9; Art. III; Art. VI, cl. 2 [in online supplement] & Siegel, pp. 223–227 [*Sheldon* & *McCardle*]
3. **August 25 Class:** External & Internal Constraints—Siegel, pp. 228–244 [*Klein* & *Martin v. Hunter’s Lessee*; read notes after *Hunter’s Lessee* with care]
4. **August 26 Class:** Congressional Power to “Channel” Jurisdiction & Interpreting Jurisdiction-Stripping Statutes—Siegel, pp. 244–255 [*Yakus*, *Johnson*]
5. **Justiciability and Requirements for Getting into Federal Court [BAR EXAM TOPIC]**
6. **August 31 Class:** The “Private Rights” v. “Public Rights” Dichotomy—Siegel, pp. 18–19 [Note 2]; Intro to Standing—the Foundation—Siegel, pp. 47–58 [*Frothingham* & *Tenn. Elec. Power*]
7. **September 1 Class:** Standing to Sue: The Modern Injury Doctrine, Causation & Redressability—Siegel, pp. 61–84 [*Sierra Club*, *Richardson*, & *Simon*]
8. **September 2 Class:** Statutory Injuries & Zone of Interests—Siegel, pp. 85–97, 122–138 [*Havens Realty*, *Lujan*, *Air Courier* & *Nat’l Credit*]
9. **September 8 Class:** Probabilistic Injuries & Mootness/Ripeness—Siegel, pp. 100–108, 156–167, 180–189 [*Lyons*; *DeFunis*; *Abbott Labs*; *Toilet Goods*]
10. **September 9 Class:** The Political Question Doctrine—Siegel, pp. 202–214 & supplement pp. 4–17 [*Nixon* & *Rucho* [in supplement]]
11. **Congressional Control of State Court Jurisdiction [BAR EXAM TOPIC]**
12. **September 15 Class:** When States *May*, *Must*, and May *Not* Hear Federal Cases—Siegel, pp. 307–333 [*Yellow Freight Sys.*, *Testa*, & *Dice*, & *Tarble’s Case*]
13. **The Law Applied in Cases in Federal Court [BAR EXAM TOPIC]**
14. **September 16 Class:** *Swift* & *Erie* & Choice of Law—Siegel, pp. 341–359 [*Swift*, *Erie*, & *Klaxon*]

1. **September 22 Class:** Substance v. Procedure—Siegel, pp. 369–394 [*Hanna* & *Shady Grove*]
2. **September 23 Class:** Borrowing State Law and Areas Where Federal Common Law Applies—Siegel, pp. 395–402 [*Agency Holding*]; 406–426 [*Clearfield Trust*, *Kimbell Foods*, & *Boyle*]
3. **September 29 Class:** Implied Rights of Action, Siegel—pp., 434–453 [*Cort*, *Sandoval*]
4. **Substantive Claims and Defenses in Federal Court**

**A. State Sovereign Immunity [BAR EXAM TOPIC]**

1. **September 30 Class:** The Nature of the Limit of Sovereign Immunity—Siegel, pp. 603–627 [*Hans* & *Atascadero*]
2. **October 6 Class:** Avoiding State Sovereign Immunity—Siegel, pp. 637–657 [*Ex parte Young*, *Edelman*]
3. **October 7 Class:** Congressional Abrogation of State Sovereign Immunity—Siegel, pp. 663–692 [*Seminole Tribe* & *Florida Prepaid*]

**B. Suing State and Federal Officers**

1. **October 13 Class:** Actions Against Federal Officers (a/k/a *Bivens* Actions)—Siegel, pp. 705–731 [*Bivens* & *Ziglar*]
2. **October 14 Class:** Actions Against State Officers: Section 1983 and its Scope—Siegel, pp. 732–747; 760–69 [*Monroe* & *Monell*]
3. **October 20 Class:** Official Immunity: Absolute and Qualified Immunity—Siegel, pp. 770–792 [*Stump*, *Harlow v. Fitzgerald*] [BAR EXAM TOPIC]

**C. Judicial Federalism**

1. **October 21 Class:** The Anti-Injunction Act and *Pullman* Abstention—Siegel, pp. 796–825 [*Kline*, *Mitchum*, & *Pullman*]
2. **October 27 Class:** *Younger* Abstention—Siegel, pp. 837–859 [*Younger* & *Steffel*]
3. **October 28 Class:** Supreme Court Review of State Court Decisions—Siegel, pp. 879–882, 905–909, 920–929 [*Fox Film*, *Michigan v. Long*] [BAR EXAM TOPIC]

**D. Habeas Corpus**

1. **November 3 Class:** Habeas Corpus for Persons Held Pursuant to a Criminal Conviction: Basic Principles & Prerequisites—Siegel, pp. 976–992 [*Brown*]
2. **November 4 Class:** Cognizable Habeas Corpus Claims—Siegel, pp. 992–1009 [*Stone*, *Herrera*]
3. **November 11 Class:** Claims Based on “New” Rules—Siegel, pp. 1009–1023 [*Teague*]
4. **November 17 Class:** Standard of Review for Habeas Corpus Claims—Siegel, pp.1024–43; 28 U.S.C. §§ 2244, 2254 (in online supplement) [*Terry Williams*]
5. **November 18 Class:** Procedural Default—Siegel, pp. 1043–1063 [*Wainwright*]

**MANDATORY REVIEW SESSION BY ZOOM ON NOVEMBER 24 DURING REGULARLY SCHEDULED TIME** (will provide option to receive credit for attendance if watched before the end of reading period).