**JUDICIAL DECISIONMAKING SEMINAR**

University of Florida Levin College of Law
Professor Merritt McAlister

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**Syllabus**

**1. Overview.** This course asks: What decides legal cases? Some say the answer is: the law. This course asks whether that is always true; or, rather, whether the judicial process involves features beyond the application of law to facts. Consider, for example, the dynamics of decisionmaking by multimember appellate courts. Does it matter who is assigned a case or will the majority bargain to the same outcome, regardless? How might other pressures—e.g., caseload and court structure—influence decisionmaking? Does the identity, ideology, or experience of a judge matter? If it does, should that influence judicial selection? This course will examine these and other questions like them. In law school, these issues often receive consideration only at the margins, as you focus on learning doctrinal rules. Our primary focus, instead, will be the behavior of judges and how judges affect legal outcomes and shape legal institutions.

**2. Required Materials.** Our casebook is Friedman, et al., Judicial Decision-Making (1st ed. 2020).

**3. Class Meetings.** Our class will meet on Thursdays from 12:55 to 2:55 via Zoom (for those attending online) and in-person in HH 285D.

**4. Office Hours.** Individual office hours are held virtually each week by appointment only. My office hours are Mondays from 2:30 pm to 4:30 pm and Wednesdays from 1:00 pm to 3:00 pm. You may sign up for a 20-minute slot (or more, as needed) through your Canvas calendar (“Find an Appointment” link). 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 adjust the available office hours through Canvas. Outside of office hours, I am happy to meet by appointment at other times; please e-mail me to arrange. I also maintain an open-door drop-in policy: if my door is open, I am available. 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 Labrador Retriever puppies.

**5. 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>.

**6. Canvas.** I will use Canvas to communicate all relevant class information. The Zoom information for my office hours and our regular class meetings are available through our course’s Canvas page as well. You must submit your reaction papers by 10:00 am on Thursdays each week through Canvas using the “Quiz” tab. Canvas is your friend.

**7. Course Objectives and Student Learning Outcomes.** By the end of this course, you should be able to: (1) describe current debates over drawing the line between “law” and “policy”; (2) evaluate claims over whether and how judicial individuality matters in deciding cases; (3) describe how different case management schemes and caseload pressures influence judicial decisionmaking and court structure; (4) explain judicial hierarchy (courts above and below) and describe how that structure affects decisionmaking; (5) describe different judicial selection schemes and their respective pros and cons; and (6) evaluate the role of public opinion in judicial decisionmaking.

**8. Class Assignments and Reaction Papers.** 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 to one class period. I reserve the right to remove assignments from our planned reading map depending on how quickly we move through the material. Note that one class period will be devoted to brief oral presentations of your essays.

**At least 10 times a semester (meaning, you may skip *two* weeks) by 10:00 am on the day of our class (Thursdays), you are required to submit a short “reaction paper” that responds in some form or fashion to the reading; these should be approximately 250 words (that’s neither a limit nor a minimum but a guide).**

In your reaction piece, you should feel free to raise questions; you may identify a topic or issue that you’d like to discuss further; you may respond to the reading with your own thoughts or answer one of the questions that the reading itself raises. Use these reactions to prepare for class and focus on what you’d most like to discuss.

Reaction pieces should be submitted through the “Quiz” feature on Canvas. Each week will have a single essay prompt that allows you to respond; you may either type directly into the text response box or upload a file in response. Again, you must complete 10 of these throughout the semester (there are 12 class days of reading).

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

I have high expectations for the learning environment we create together. I expect each of you to attend class prepared. Preparation includes completing the assigned reading, reviewing notes and/or reading material from the prior class, and drafting your reaction pieces prior to class.

**10. Class Attendance.** Attendance will be recorded using UF Law school-wide attendance tracking for the Spring 2021 semester. **If you are not present three times or more during the semester, I may 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 submit a final paper if he, she, or they miss five 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 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. Accordingly, please notify me of such absences.

**11. Electronic Devices.** You may not use your cellphone in this class. You may use a computer or tablet in class for classroom purposes if you wish, though studies suggest that students learn better through taking handwritten notes.

I expect you to be professional and respectful of the classroom environment and not use electronic devices for any other purpose. I reserve the right to reconsider my electronic device policy to preserve the classroom environment.

Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.

**12. Evaluation.** Your final grade in this course is based on classroom participation (25%), which includes your daily participation (10%), completion of at least 10 reaction papers (10%), and your oral presentation on your essay (5%) (described below), and an essay (75%).

Although I am open to considering other types of essays, I suggest you consider an essay that follows one of the following approaches:

1. **Critical Literature Review.** This type of essay will critically review a literature related to judicial decisionmaking (your casebook is a good starting place). The essay should contain a clear thesis, a discussion of what we know (or, perhaps, don’t know), and the implication of that knowledge on legal practice. The essay might also contain a discussion of the normative implications of the literature—that is, it may advance an argument as to how the system or a judge should or should not behave or operate.
2. **Case Analysis.** This kind of essay will contain an analysis of a set of cases (usually in a single area of the law), through the lens of our judicial decisionmaking framework. This essay should also have a clear thesis statement, and you should select an area of the law that will allow you to fully and robustly analyze how the caselaw implicates judicial decisionmaking concerns.
3. **Original Empirical Research.** This essay will involve some original research conducted by you. The essay will be written as research notes, which situate the research question within contemporary research on a particular question, explain the research design, and—using existing or original data—conduct suitable statistical analysis.

Each student must submit to me via email, by **12:00 pm on Thursday, February 11, 2021**, a one or two paragraph description of the essay you plan to undertake. I will schedule appointments with each student to discuss your proposed topic. You will be required to submit a detailed outline of your paper to me by **12:00 pm on Thursday, March 4, 2021**, and I will provide written feedback on your outline and will be available to meet with students as needed. On **Thursday, March 18, 2021**, you will present a brief oral sketch of your essay in class. At least a 75% draft of your essay will be due by **Monday, April 19, at 11:59 pm**. I will return those drafts with written comments by **Friday, April 23 at 12:00 pm**. Your final essay is due by **11:59 pm on Thursday, May 6, 2021**.

If you are using this seminar paper to fulfill the Advanced Writing Requirement, your essay should be approximately 25 pages, double-spaced, with 12-point font. If you are not using this seminar paper to fulfill the AWR, your paper should be approximately 20 pages, double-spaced, with 12-point font. Either way,your paper should be of professional quality, with citations conforming to Bluebook format for law review articles. I suggest you not use Times New Roman font; I prefer Garamond, Georgia, or Century Schoolbook. Please put footnotes at the bottom of the page rather than at the end of the paper.

**13. Grading**. Your grade in this class will be based on the final exam and participation, as described in Sections 8, 9, 10, and 12, 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>.

**14. 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.

**15. 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/>.

**16. 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>.

**17. COVID-19 Related Practices.** Many students will have face-to-face instructional sessions to accomplish the student learning objectives of this course. In response to COVID-19, the following policies and requirements are in place to maintain your learning environment and to enhance the safety of our in-classroom interactions. I may take noncompliance into account when grading students or determining if a student may remain in the course.

• You are required to wear approved face coverings at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution. You also will no longer be permitted on the UF Law campus. Finally, Dean Inman will also report your noncompliance to the relevant state board of bar examiners.

• This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between students. Please do not move desks or stations.

• Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class.

• Be mindful of how to properly enter and exit the classroom. Practice physical distancing to the extent possible when entering and exiting the classroom.

• If you are experiencing COVID-19 symptoms (https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html), please do not come to campus or, if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions about when you are able to return to campus. (See https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/.)

• Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work. (See https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/).

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UF Law Spring 2021

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1. **Introduction**
2. What Decided *Brown v. Board of Education*?: An introduction to how and why judges make the decisions they do, pp. 1–49 (skim the introductory materials on 1–5)
3. **Judges and the Law**
4. The Limits of Law: Legal Formalism v. Legal Realism, pp. 51–63, the Scope of Law’s Indeterminacy, pp. 63–81, and What Makes Cases “Hard,” pp. 81–93
5. The Identity of the Judge: Testing the Attitudinal Model, pp. 95–133, & Modeling Judicial Preferences, pp. 133-150
6. The Identity of the Judge (cont’d): Measuring Judicial Preferences, pp. 150–166, Beyond Partisanship, Politics & Voting: Demographic Characteristics, pp. 166–181, and What to Make of All This, pp. 181–197
7. Setting the Judicial Agenda: The Power of Attorneys, pp. 251–284, and Judicial Agenda-Setting, pp. 300–321
8. **The Structure of the Legal System**
9. Limits on Judicial Capacity: Caseload Pressures and Ripple Effects, pp. 364–424
10. Judging in a Hierarchical System: Introduction to Hierarchy and Stare Decisis, pp. 425–437; Explaining the Hierarchy (skim, pp. 438–447); Hierarchy in a Principal Agent Model, pp. 447 –476
11. The Role of “Precedent”: Why do Lower Courts Obey Precedent? and Tools of Reviewing Courts, pp. 476–505; and Strength and Scope of Precedent, pp. 505–523
12. Judging on a Collegial Court, Pros and Cons of Collective Decisionmaking, pp. 525–561; and Strategic Incentives, pp. 584–612
13. **Law in a Democratic System**
14. Judging in a System of Separated Powers, Introduction (skim, pp. 651–658); Lily Ledbetter Story, pp. 658–671; Separation of Powers and Constitutional Interpretation, pp. 697–733
15. Judicial Selection: What do we want from judges and how can we reform the selection systems? pp. 788–830
16. The Role of Public Opinion in Judging: Why and how does public opinion influence courts, pp. 838–69, and how courts affect public opinion, pp. 892–918