

FEDERAL COURTS
Law 6302-23350
University of Florida Levin College of Law
Fall 2022

Professor Merritt McAlister
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Syllabus

1. Overview. This course explores the complex role of the federal courts in our constitutional system. At bottom, our core question is: why *federal* courts? What do we need them for and what role should they play in a system of divided government? It's ultimately a course about the limits of federal courts to remedy wrongs. Some of those limits are self-imposed, while others are imposed by the Constitution or by Congress. You'll learn that federal courts can't solve all the problems we have with government (both state and federal), and why courthouse doors sometimes close. The flipside is equally important: we'll consider how to maneuver within the system to open doors, how to think through these limitations and to access (and stay in) federal courts. These are often complex questions, but they reflect core debates about the constitutional power of the federal court system, the role of courts vis-à-vis the other branches of government (that is, the executive and the legislative branches), and the relationship between federal courts and the default and most widely used court system (that is, the state court system).

2. Required and Optional Materials. Our casebook is RICHARD H. FALLON, JR., JOHN F. MANNING, DANIEL J. MELTZER, AND DAVID L. SHAPIRO, HART & WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM (7th ed. 2015) and its 2022 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. Our class meets on Mondays and Wednesdays from 10:30 am to 11:55 am in HH 355B. Please do not attend class if you are feeling ill; in such case, you will have access to a video recording of class.

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. My office is HH 329, and the phone is 352.273.0981.

5. Office Hours. I will be available for in-person office hours in my office in HH 329 from 1:00 pm to 2:00 pm on Mondays and from 12:00 pm to 1:00 pm on Wednesdays. I am happy to meet at other times as well if those hours are not convenient for you. Please email me to arrange another in-person or virtual appointment. If I need to reschedule my office hours for any reason, I will make an announcement in class.

6. Canvas. I will use Canvas to communicate all relevant class information, including to make any additional material like classroom hypothetical problems available to students.

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), and the redressability of constitutional rights against government actors; (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, and provide a federal remedy; 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. All notations to “H&W” are to *Hart & Wechsler*, which is our casebook; Hart & Wechsler were the original authors of this classic authority, which defined the field of federal courts.

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. Class Preparation, Participation, and Experience. Consistent with the American Bar Association Standard 310, you should expect to spend at least **six hours** per week preparing for this three-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, reviewing notes and/or reading material from the prior class, and considering any practice problems or questions posted on Canvas. Please note that I will make use of practice problems occasionally in class, and I will make these available on Canvas prior to class, even though they do not appear on the reading map. Other times I may distribute questions in class.

I have an on-call policy that may be more rigorous than other upper-level courses. I will use a list randomizer to identify those who are “on-call,” and I will call on students from that list in that order. I will strive to call on multiple students each class—and sometimes many students—but, admittedly, I will occasionally have a longer dialogue with a single student when I believe it is important to work a particular dialogue to completion. Once I have completed the on-call list, I will re-run it. Thus, once you have been called on, you will not be called on again until I re-run the list, and I’ll announce in class when we have completed the list.

If for some reason you are not prepared, 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.

10. Class Attendance. I record attendance using the law school's online course attendance system. **If you are not present more than five 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 7 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.

11. Electronic Devices. A computer and/or smartphone is necessary to complete this course. It is necessary both for class participation and to record your attendance. I will use interactive polling software during class, and I will expect you to participate in these polls. Do not use your computer for any non-class related purpose during class. I reserve the right to amend my electronic device policy if I observe students using computers for non-classroom related purposes.

12. Class Recording Policy. The Office of Student Affairs will continue to record all classes via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will determine when students may have access to these recordings, and the recordings will be password protected. These recordings will be retained only for a short period of time and it is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

13. Evaluation. A final exam will count for 100% of your grade, subject to modification for exceptional participation (as discussed below). It will be an open-book, open-note take-home exam that you may take during any continuous six-hour period during the exam period. I will discuss the format of the exam in class, and I will post the coversheet with instructions for the exam at least one week prior to the beginning of the reading period. Past exams will be made available through Canvas.

At your election, you may also complete an optional, ungraded mid-term exam that I will review at your request. I will be available to meet with students to discuss that optional mid-term should they wish to do so, but it will not be graded nor count towards your final grade in this course. Completing the mid-term exam is entirely optional.

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.

14. Grading. Your grade in this class will be based on final exam and class participation, as described in Sections 9, 10, and 13, 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 (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: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>. The law school policy on exam delays and accommodations can be found here: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>.

15. 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.

16. 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/>.

17. 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>.

18. Changing your name on class roll. It is important to the learning environment that you feel welcome and safe in this class; and that you are comfortable participating in class discussions and communicating with me on any issues related to the class. If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise. I would like to acknowledge your preferred name, and pronouns that reflect your identity. Please let me know how you would like to be addressed in class, if your name and pronouns are not reflected by your UF-rostered name. I welcome you to the class and look forward to a rewarding learning adventure together.

You may also change your “Display Name” in Canvas. Canvas uses the “Display Name” as set in myUFL. The Display Name is what you want people to see in the UF Directory, such as “Ally” instead of “Allison.” To update your display name, go to one.ufl.edu, click on the dropdown at the top right, and select “Directory Profile.” Click “Edit” on the right of the name panel, uncheck “Use my legal name” under “Display Name,” update how you wish your name to be displayed, and click “Submit” at the bottom. This change may take up to 24 hours to appear in Canvas. This does not change your legal name for official UF records.

19. Diversity, equity, and inclusion in the classroom. As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions.

As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class section, I encourage each of us to:

- commit to self-examination of our values and assumptions
- speak honestly, thoughtfully, and respectfully
- listen carefully and respectfully
- reserve the right to change our mind and allow for others to do the same
- allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers

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I. Getting into Federal Court

A. Standing to Sue

1. **Monday, August 22.** Introduction to Standing/Plaintiff's Standing, H&W, pp. 101-117 (*Fairchild & Allen* through note 2)
2. **Wednesday, August 24.** Core Standing Requirements, H&W, pp. 117-127 (Injury in fact, Causation, and Redressability); & H&W Supp., pp. 10-15 (includes addition to 5(d) on *California v. Texas*) (read cases in notes and footnotes with care and pay attention to distinctions)
3. **Monday, August 29.** Taxpayer & Legislator Standing, H&W, pp. 127-132 & H&W Supp. 16-20 (*AIRC, Va. House of Delegates, & Gill*) (read cases in notes with care and pay attention to distinctions)
4. **Wednesday, August 31.** Modern Standing Doctrine and Congressional Power to Regulate Standing, H&W, pp. 132-146 (*Lujan*)
5. **Wednesday, September 7. [CLASS HELD VIA ZOOM]** Modern Standing Doctrine and Congressional Power to Regulate Standing, H&W, pp. 146-151, 155-56 (notes 2 & 5); H&W Supp., pp. 21-26 (*Spokeo & TransUnion*)
6. **Monday, September 12.** Mootness, H&W, pp. 195-204 (*DeFunis* through note 5), H&W Supp., pp. 40-42 (*N.Y. State Rifle*) & Ripeness, H&W, pp. 212-222 (*United Pub. Workers & Abbott Labs* through note 2) & 232-234 (*Lions* in notes 2, 3 & 4)
7. **Wednesday, September 14.** Political Questions, H&W, pp. 237-48 (*Nixon*), H&W Supp., pp. 46-59 (*Rucho* through note 5)
8. **Monday, September 19. Hypothetical Day.** Come to class prepared to discuss and analyze hypotheticals posted on Canvas. You are encouraged, but not required, to outline or draft answers to facilitate the discussion.

B. Congressional Control of the Distribution of Judicial Power Among Federal and State Courts

9. **Wednesday, September 21.** Congressional Regulation of Federal Jurisdiction, H&W, pp. 295-307 (*Sheldon & McCardle* & intro notes); be sure to read Article III of the U.S. Constitution.
10. **Monday, September 26.** Power of Congress to Limit Jurisdiction of Federal Courts, H&W, pp. 307-312 (through note 4), 314-322 (to end of note 2)

11. **Wednesday, September 28.** Preclusion of All Judicial Review, H&W, pp. 323-333 (*Klein* and *Battaglia*, to end of note 4), & H&W Supp. 67-69 (cases applying *Klein*; pay attention to distinctions)
12. **Monday, October 3. Hypothetical Day.** Come to class prepared to discuss the hypothetical(s) posted on Canvas. You are encouraged, but not required, to outline or draft answers to facilitate the discussion.

II. What Happens in Federal Court

A. The Law Applied in Civil Actions in the District Courts

13. **Wednesday, October 5.** Federal Common Law, H&W pp. 643-645 (*Clearfield Trust*); 657-661 (*Kimbell Foods*); & 665-674 (*Boyle*)
14. **Monday, October 10.** Implied Causes of Action, H&W, pp. 733-744 (*Sandoval* through note 3) & 762-769 (*Bivens*)
15. **Wednesday, October 12.** *Bivens* Today, H&W Supp. 100-105 (*Ziglar*, *Hernandez v. Mesa*, and *Egbert*); and Hypothetical Day (posted on Canvas)

B. Suits Challenging State Official Action

16. **Monday, October 17.** The Eleventh Amendment and State Sovereign Immunity, H&W, pp. 905-922 (*Hans* and notes)
17. **Wednesday, October 19.** *Ex parte Young* Doctrine, H&W, pp. 922-35 (*Young*)
18. **Monday, October 24.** The Future of *Ex parte Young*, H&W Supp., pp. 116-129 (*Whole Women's Health*).
19. **Wednesday, October 26.** Congressional Power to Abrogate State Immunity from Suit, H&W, pp. 939-962 (*Seminole Tribe* through note 4(f); pay special attention to Note 4)
20. **Monday, October 31.** Federal Statutory Protection Against State Official Action (Section 1983), H&W, pp. 986-994 (*Monroe*); and Section 1983's basic requirements, pp. 994-1004 (pay special attention to *Monell*)
21. **Wednesday, November 2.** Official Immunity, H&W, pp. 1030-1039 (*Harlow* through note 1); 1043-1051 (notes 3 to 7)
22. **Monday, November 7. Hypothetical Day.** Come to class prepared to discuss the hypothetical(s) posted on Canvas. You are encouraged, but not required, to outline or draft answers to facilitate the discussion.

C. Judicial Federalism

23. **Wednesday, November 9.** Statutory Limitations on Federal Court Jurisdiction (Anti-Injunction Act, H&W pp. 1068-79 & 1081-87 (*Atlantic Coastline & Mitchum* through note 1 and notes on statutory exceptions))
24. **Monday, November 14.** *Pullman* Abstention, H&W, pp. 1101-06 (*Pullman*) & 1113-1115 (notes 1 & 2), & 1116-1119 (note 5)
25. **Wednesday, November 16.** *Younger* Abstention, H&W, pp. 1127-1135 (*Younger*) & 1144-1153 (*Steffel*)
26. **Monday, November 21. Review Session.**