**FEDERAL COURTS**

**Law 6302-23350**

University of Florida Levin College of Law

Fall 2023

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 Curtis A. Bradley, Tara L. Grove, John C. Jeffries, Jr., & Peter W. Low, Low & Jeffries’ Federal Courts and the Law of Federal-State Relations (10th ed. 2022). I have downloaded the 2023 supplement memo into Canvas. You should consult that resource for each class, as well, to see any updates to the assigned reading.

To the extent you may need further assistance learning and absorbing this challenging material, I suggest Professor Erwin Chemerinsky’s excellent treatise, Federal Jurisdiction (8th ed. 2021). You are not required to use the treatise, but you may find it helpful. I used it as a resource in the first few years of teaching this material.

**3. Class Meetings.** Our class meets on Mondays and Wednesdays from 9:00 am to 10:25 in HH 355C. Please do not attend class if you are feeling ill; all students 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. If you need to reach me more urgently, you may call 352.273.0603.

**5. Drop-in Hours/Appointments.** I will hold regular drop-in hours on Mondays from 4:00 pm to 6:00 pm. I am happy to meet at other times as well if those hours are not convenient for you. To schedule a meeting outside of my drop-in hours, please email Suzy Heinbockel at heinbockel@law.ufl.edu.

**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 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. More generally, it is my hope and expectation that this course will deepen your critical reasoning skills and your ability to analyze issues from different perspectives.

**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. 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 posted on Canvas.

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. I will re-run the on-call list each Monday.

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.** Class attendance is essential to success in this course. Although some exceptions for illness, family events, or religious holidays are understandable, students should make every effort to attend class. Indeed, the ABA requires that all law schools ensure that students attend class and suggests that absences in excess of 15% should render a student ineligible to receive credit for the course. If you foresee missing more than three classes, please contact Suzy Heinbockel at heinbockel@law.ufl.edu. She will schedule a one-on-one meeting at which we will discuss your situation.

**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. 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.

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.

I define quality participation for these purposes in multiple ways. For example, quality contributions may be those that reflect exceptional preparation, offer substantive ideas, build on preceding class discussions, move discussion forward to generate new insights, demonstrate the ability to persuade others or challenge conventional wisdom, relate a personal experience in a way that illuminates the ideas being discussed, or build upon the insights of other classmates. Please do not confuse high quantities of participation with quality participation. Good listening is vital for quality participation. I will evaluate negatively any comments that are disrespectful or dismissive of others.

**13. UF Law Standard Syllabus Policies.** Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations may be found here: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>.

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**(Remember to consult with 2023 Memo for any additions to required reading.)**

**Introduction: Judicial Review and the Federal Court System**

1. **Monday, August 21.** *Marbury v. Madison* and Notes, pp. 1-17

**I. Congressional Control of the Federal Courts**

1. **Power to Limit Federal Court Jurisdiction**
2. **Wednesday, August 23.** *McCardle* and the Traditional View, pp. 19-37
3. **Monday, August 28.** Competing Views and Hypothetical 1 on Canvas, pp. 37-48
4. **Wednesday, August 30.** Control over Rules of Decision and Judgments, *Plaut*, *Miller*, and *Klein*, and related Notes,pp. 50-68 & 70-74 & 76-82.
5. **Power to Create Non-Article III Courts**
6. **Wednesday, September 6.** *Northern Pipeline* and Notes, pp. 158-177
7. **Monday, September 11.** *Stern v. Marshall*, pp. 177-198

**II. Justiciability**

1. **Article III Standing**
2. **Wednesday, September 13.** *Allen v. Wright*, pp. 211-228
3. **Monday, September 18.** Notes on the Constitutional Requirements of Standing and Hypothetical 2 on Canvas, pp. 228-240.
4. **Special Issues in Standing**
5. **Wednesday, September 20. Statutory Standing:** *Lujan* and Notes, pp. 242-264
6. **Monday, September 25. Legislative and State Governmental Standing:** *Coleman*, *Raines*, and Notes, pp. 281-299
7. **Wednesday, September 27. Ripeness & Mootness**, pp. 301-323
8. **Political Question Doctrine**
9. **Monday, October 2.** Intro Notes & *Zivotofsky*, pp. 323-343
10. **Wednesday, October 4.** *Rucho* *v. Common Cause* and Hypothetical 3 on Canvas, pp. 343-363

**II. Choice of Law in the Federal System**

1. **The *Erie* Doctrine**
2. **Monday, October 9.** *Erie* and *Klaxon* and Notes, pp. 451-469, 470-72, & 479-81
3. **Federal Common Law**
4. **Wednesday, October 11.** *Clearfield Trust, Boyle*, andNotes, pp. 573-74 & 581-603
5. **Implied Rights of Action and Damages Remedies**
6. **Monday, October 16.** *Alexander v. Sandoval*, pp. 619-629, and skim pp. 604-619 as background (noting that this is the old approach and *Sandoval* is governing law)
7. **Wednesday, October 18.** *Bivens* Actions, pp. 631-645
8. **Monday, October 23.** *Wilkie* and Hypothetical 4 on Canvas, pp. 646-665

**III. Section 1983**

1. **State Official Action and Section 1983**
2. **Wednesday, October 25.** *Monroe v. Pape* and Notes, pp. 841-860
3. **Official Immunities and Governmental Liability**
4. **Monday, October 30.** Absolute and Qualified Immunity and Hypothetical 5 on Canvas, pp. 860-886
5. **Wednesday, November 1.** Governmental Liability & *Monroe v. Pape*, pp. 902-918 & 939-955
6. ***Younger* Abstention**
7. **Monday, November 6.** *Younger* and *Steffel*,pp. 1032-1068 (you may skim notes)

**IV. State Sovereign Immunity**

1. **Eleventh Amendment**
2. **Wednesday, November 8.** *Ex parte Young*, pp. 1139-53 & 1154-56
3. **Prospective vs. Retrospective Relief**
4. **Monday, November 13.** *Edelman* and *Hyatt*, pp. 1157-80
5. **Consent and Congressional Abrogation**
6. **Wednesday, November 15.** *Seminole Tribe v. Florida*, pp. 1185-1214
7. **Enforcing the Fourteenth Amendment**
8. **Monday, November 20.** *Coleman v. Court of Appeals* and Hypothetical 6 on Canvas, pp. 1225-50