

LAW 222: FEDERAL COURTS AND THE FEDERAL SYSTEM
UNIVERSITY OF CALIFORNIA BERKELEY SCHOOL OF LAW, SPRING 2014

SYLLABUS

Professor Tyler
atyler@law.berkeley.edu
Office: Simon 794

Course Description:

This course studies the role of the federal courts in the federal system. This is an advanced course in public law, judicial administration, and constitutional litigation. The course will cover the following topics (among others): the power of Congress to regulate the jurisdiction of the Supreme Court and lower federal courts; non-Article III courts; the case or controversy requirement; doctrines of sovereign and individual immunity; choice of law in the federal courts and federal common law; Supreme Court review of state court judgments; federal habeas corpus; and, time permitting, the Suspension Clause and related issues from the War on Terrorism.

Required Materials:

HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM (6th ed. 2009) (Fallon, Manning, Meltzer & Shapiro, eds.) ("H&W")

HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM (Supplement 2013) (Fallon, Manning, Meltzer & Shapiro, eds.) ("Supp.")

Additional materials to be posted, including course problems. Note that you will need access to a current version of the Judicial Code, the Federal Rules of Civil and Criminal Procedure, and the Supreme Court Rules. (Westlaw/Lexis access should suffice.) The Constitution may be found at the start of the textbook.

Reference Materials:

In the past, some students have found Erwin Chemerinsky's **FEDERAL JURISDICTION** (6th ed. 2011) to be a useful reference book for this course.

I have asked the library to put on reserve copies of the Hart & Wechsler text, supplement, Chemerinsky's Federal Jurisdiction, and **FEDERAL COURTS STORIES** (V. Jackson and J. Resnik eds., 2009), which tells the stories of many leading cases.

I have also posted a pdf of the relevant casebook pages for the first two assignments on the bcourse page for this course. Because I have posted the pages in pdf and the H&W text is on reserve at the library, I expect everyone to come prepared for the first class whether or not you have purchased the text yet.

Class Schedule & Office Hours:

This class meets Tuesdays and Thursdays from 11:20-12:35 p.m. in Room 140.

I will hold office hours on Tuesdays from 2:05-3:35 p.m. I am available to meet otherwise by appointment. Just email me to make an appointment.

Course Requirements:

I expect every student to attend class and come prepared to participate in the class discussion of the assigned reading. Regular class attendance and participation is a requirement for passing the course. If there is an occasion during the semester when you are unable to prepare for class, please provide me with a note via email in advance of class so that I do not call on you. Your grade will be based primarily on the final exam.

A four-hour in-class final exam will be given at the end of the semester. The exam will be open book, subject to the following rules: students may access any hard copy print materials brought with them (e.g., books, notes, outlines), but no electronic materials saved on their computers or similar devices.

Classes may not be recorded in any manner without my permission.

Assignments:

One assignment will not necessarily correspond with one class period. I will try to inform you ahead of time which material will be covered in which classes. When an assignment implicates the Constitution, Judicial Code, or Federal Rules, please review the relevant provision(s) prior to class.

For the first class, please prepare assignments 1 and 2A. This assignment includes a substantial amount of background reading, which may be read quickly. For the second class, please prepare assignment 2B. The handouts for assignments 2A and 2B are posted on the bcourse page.

I will also make regular use of the course web page to post announcements and class problems. It is therefore important that you check the course page regularly. More often than not, the class problems will serve as a basis for class discussion of the relevant material. They are also good models for the kinds of questions I tend to ask on the final exam.

OVERVIEW OF TOPICS

I. THE FEDERAL JUDICIAL SYSTEM AND THE FEDERAL JUDICIAL POWER

- A. Background: The Origins and Structure of the Federal Judicial System
- B. The Nature of Federal Judicial Power
- C. A Primer on the Case or Controversy Requirement

II. CONGRESSIONAL CONTROL OF FEDERAL AND STATE COURT JURISDICTION

- A. Congressional Power to Control the Federal Judicial Power
- B. Congressional Power to Allocate Adjudicative Power to Federal Tribunals Other Than Article III Courts
- C. Federal Authority and State Court Jurisdiction

III. SUPREME COURT REVIEW OF STATE COURT DECISIONS

- A. Background: The Business of the Supreme Court and the Certiorari Policy
- B. Jurisdiction to Review State Court Decisions
- C. A Primer on the Relationship of State and Federal Law

IV. COLLATERAL FEDERAL HABEAS CORPUS REVIEW

- A. Introduction: Collateral Federal Habeas Corpus Jurisdiction
- B. Issues Cognizable on Collateral Federal Habeas Corpus

V. SUITS CHALLENGING (PRIMARILY STATE) GOVERNMENT ACTION

- A. Introduction: The Idea of Sovereign Immunity and the Sovereign Immunity of the United States
- B. State Sovereign Immunity and the Eleventh Amendment
- C. Suits Against State Officers
- D. Official Immunity

VI. FEDERAL COMMON LAW

A. Introduction: The Sources and Existence of Federal Common Law

B. The “New” Federal Common Law

VII. THE SUSPENSION CLAUSE, MILITARY TRIBUNALS, AND RELATED ISSUES ARISING OUT OF THE WAR ON TERRORISM (time permitting)

A. Habeas Corpus and Executive Detention

B. The Use of Military Commissions During Wartime

ASSIGNMENTS: Part I

I. THE FEDERAL JUDICIAL SYSTEM AND THE FEDERAL JUDICIAL POWER

A. Background: The Origins and Structure of the Federal Judicial System

Assignment 1:

U.S. Const. Art. III; Art. IV, § 1; Art. VI, cl. 2

Background: H&W 1-36, 41-47 [skip footnotes]

B. The Nature of Federal Judicial Power

Assignment 2A:

H&W 50-58

H&W 80-83

Handout 1: Who Decides?

Assignment 2B:

H&W 58-72 [through Note 1];

H&W 75 [start at Note 6] - 80

Handout 2: The Statute Involved in *Marbury v. Madison*

C. A Primer on the Case or Controversy Requirement

1. Standing to Sue

Assignment 3A:

H&W 100-101

H&W 113-139 [omit Note 6, H&W 126-127]

Supp. 11-12 [Passage for insertion to p. 122, substitute for ¶ (4)(a)(iv)]

Assignment 3B: Recent Cases

Supp. 5-6 [Passage on *United States v. Windsor*]

Supp. 7-11 [Passage on *Summers v. Earth Island Institute*, *Monsanto v. Geertson Seed Farms*, *Clapper v. Amnesty International*]

Supp. 12-13 [Passage on *United States v. Windsor*]

Supp. 15-16 [Passage on *Summers v. Earth Island Institute*]

Supp. 16-17 [Passage on *Hollingsworth v. Perry*]

2. The Political Question Doctrine

Assignment 4:

H&W 222-248

II. CONGRESSIONAL CONTROL OF FEDERAL AND STATE COURT JURISDICTION

A. Congressional Power to Control the Federal Judicial Power

Assignment 5:

H&W 275-297 [through ¶ 3] [*omit top two paragraphs in text on p. 278]

Assignment 6:

H&W 300-324

Supp. 41-42 [Passage for insertion to p. 303, new ¶ (4)]

B. Congressional Power to Allocate Adjudicative Power to Federal Tribunals Other Than Article III Courts

Assignment 7:

Background: H&W 36-41

H&W 324-330 [through Note 1]

H&W 332 [Note 4] - 339

H&W 349-357

Supp. 43-48 [Passage listed for insertion to p. 363, on *Stern v. Marshall*]

Handout 3: Making Sense of the Distinction Between Public and Private Rights

C. Federal Authority and State Court Jurisdiction

Assignment 8:

H&W 383-394; 398-408 [top]

Handout 4: Discussion Questions

Assignment 9:

H&W 408-417 [bottom]

Supp. 50-51 [Passage for insertion to p. 414, new ¶ (3)(c)]

III. SUPREME COURT REVIEW OF STATE COURT DECISIONS

A. Background: The Business of the Supreme Court and the Certiorari Policy

Assignment 10A:

Skim: H&W 1462-1466

28 U.S.C. §§ 1254, 1257

Supreme Court Rule 10

B. Jurisdiction to Review State Court Decisions

Assignment 10B:

H&W 431-458

Handout on Martin v. Hunter's Lessee

C. A Primer on the Relationship of State and Federal Law

Assignment 11:

H&W 458-475 [bottom], 496-500