

FEDERAL COURTS

Professor Hirsch

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TR 2:10-3:25 p.m.

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This course's primary focus will be the jurisdiction and operation of the United States Courts. Initially, we will examine issues of justiciability—that is, whether the plaintiff or case are suitable for court review. We will then look at Congress's constitutional authority to control the jurisdiction of federal courts. Next, we will address the United States Supreme Court's review of state supreme court decisions and consider the scope of federal question jurisdiction. We will then turn to issues of federalism, in particular constitutional limitations on federal courts' jurisdiction over suits against states and federal courts' own unwillingness to intrude on state court proceedings via the doctrine of abstention. We will finally examine federal common law, including issues such as whether or not to consider international law, and take a brief look at current issues in habeas law.

We will spend additional time—particularly at the end of the course—on controversial issues that are now, or soon will be, in flux. There are numerous significant federal court issues currently at stake, particularly involving executive authority in its attempt to combat terrorism. Thus, it is likely that I will need to notify you quickly of alterations to the reading assignments. I will rely heavily on e-mail for such changes, as well as other important information, so please check your e-mail regularly to ensure that you receive any last minute updates.

EVALUATION

There will be two components to your final grade: (1) a three-hour, open-book final exam and (2) class participation.

1. Final Exam

The final, in-class, exam will be three hours and open book. My intent is for the exam to incorporate topics discussed in class as much as possible (no guarantees that I will succeed). The questions will be in essay form and will focus not only on the more traditional legal principles addressed in the readings, but also on more general policy and regulatory issues related to these principles that we have discussed in class.

2. Class Participation

Although I will not take attendance, I expect you to be in class and to be prepared. Intelligent participation in class discussions is important, and I will call on people without advance notice. If you are unprepared for a class, informing me *before* you are called on will generate a far more sympathetic ear. I will add or subtract points to final grades to reflect participation levels at both extremes.

ASSIGNMENTS

Text:

1. Low & Jeffries, FEDERAL COURTS AND THE LAW OF FEDERAL STATE RELATIONS, (LJ), required
2. Chemerinsky, FEDERAL JURISDICTION, optional
3. Addendum/Handouts

Class 1 **Introduction To The Federal Court System**
(01/08) Chemerinsky 1-19; 22-23 (Control of Docket & Enlargement of
Jurisdiction); 33-40
(Handout available on third floor, in faculty office area)

Class 2 **Justiciability:**
(01/10) **Standing**
LJ 355-379

Class 3 **Justiciability:**
(01/15) **Standing**
LJ 388-414

- Class 4**
(01/17) **Justiciability:**
Ripeness
LJ 426-440
- Class 5**
(01/22) **Justiciability:**
Mootness
LJ 440-459
- Class 6**
(01/24) **Justiciability:**
Political Question
LJ 459-474;
Padilla v. Rumsfeld, 352 F.3d 695 (2d Cir. 2003), *reversed* 542 U.S. 426 (2004) (Addendum)
- Class 7**
(01/29) **Congressional Control Over Judicial Authority:**
Power to Limit Federal Jurisdiction
LJ 235-254
- Class 8**
(01/31) **Congressional Control Over Judicial Authority:**
Power to Limit Federal Jurisdiction
LJ 254-262;
Pub. L. 109-3 (Schiavo); *Schindler v. Schiavo*, 404 F.3d 1270 (11th Cir. 2005) (en banc) (Addendum)
- Class 9**
(02/05) **Congressional Control Over Judicial Authority:**
Power to Allocate Judicial Functions to Non-Article III Courts
LJ 286-313
- Class 10**
(02/07) **Congressional Control Over Judicial Authority:**
Power to Allocate Judicial Functions to Non-Article III Courts
LJ 313-329;
Detainee Treatment Act of 2005, H. R. 1815-344 (Addendum)
Hamdan v. Rumsfeld, 126 S. Ct. 2749 (2006) (Addendum, pp. 20-23)
- Class 11**
(02/12) **Supreme Court Review of State Court Decisions**
LJ 73-79; 84-102
- Class 12**
(02/14) **Supreme Court Review of State Court Decisions**
LJ 103-122 (*Bush v. Gore*)
- Class 13**
(02/18) **Federal Question Jurisdiction:**
Statutory Background; Pendant Jurisdiction
LJ 477-493

- Class 14**
(02/21) **Federal Question Jurisdiction:**
Preemption Jurisdiction
LJ 493-512
- Class 15**
(02/26) **Suits Against States:**
Development of Eleventh Amendment Jurisprudence
LJ 927-945
- Class 16**
(02/28) **Suits Against States:**
Development of Eleventh Amendment Jurisprudence
LJ 946-966
- Class 17**
(03/04) **Suits Against States:**
Abrogation of State Sovereignty Under Article I
LJ 966-968 (stop before note 4); 970-992
- Class 18**
(03/06) **Class Cancelled**
- Class 19**
(03/11) **Suits Against States:**
Abrogation of State Sovereignty Under Article I
LJ 969 (note 5); 993-1005
Central Virginia Community College v. Katz, 546 U.S. 356 (2006)
(Addendum)
- Class 20**
(03/13) **Suits Against States:**
Abrogation of State Sovereignty Under the 14th Amendment
LJ 1005 (note 5)-1024
- Spring Break**
(03/18 & 03/20)
- Class 21**
(03/25) **Suits Against States:**
Abrogation of State Sovereignty Under the 14th Amendment
LJ 1024 (Note 3)-1033; 1037-1047
- Class 22**
(03/27) **Abstention (Court Imposed Limits on Jurisdiction):**
General Abstention Principles
LJ 637-648
Hamdan v. Rumsfeld, 126 S. Ct. 2749 (2006) (Addendum, pp. 31-32)
- Class 23**
(04/01) **Abstention (Court Imposed Limits on Jurisdiction):**
***Pullman* Abstention**
LJ 648-662

- Class 24**
(04/03) **Abstention (Court Imposed Limits on Jurisdiction):**
***Younger* Abstention**
LJ 662-682
- Class 25**
(04/08) **Abstention (Court Imposed Limits on Jurisdiction):**
***Younger* Applied to Civil Actions; Anti-Injunction Act**
LJ 709-716; 721-736
- Class 26**
(04/10) **Federal Common Law**
LJ 124-138; 156-159
- Class 27**
(04/15) **Federal Common Law**
LJ 138-156
- Class 28**
(04/17) **Federal Common Law:**
International Law As Federal Common Law
LJ 222-233;
Sosa v. Alvarez-Machain, 542 U.S. 692 (2004) (Addendum)
Hamdan v. Rumsfeld, 126 S. Ct. 2749 (2006) (Addendum, pp. 45-47)
- Class 29**
(04/22) **Habeas Corpus & Other Special Issues Implicated in the**
Enemy Combatant Cases
Rasul v. Bush, 542 U.S. 466 (2004) (Addendum)
Boumediene v. Bush, No. 06-1195 (forthcoming 2008)
- Class 30**
(04/24) **Review**