

FEDERAL COURTS AND THE FEDERAL SYSTEM
Professor Sample
Fall 2013

1. **Syllabus:** Reading assignments are set forth in this syllabus. The class-by-class breakdowns represent approximations. During the semester, there will be alterations, deletions and additions. Any changes will be announced in class.
2. **Texts:** The case book that we will be using is the 6th edition of Hart & Wechsler's The Federal Courts and The Federal System. Optional commercial materials may be helpful or harmful depending on the manner in which they are used. For now, the critical point is that relying on outside sources *instead* of the course materials — especially in this particularly challenging course — is to follow a well-worn path to the destinations of delusion (first) and disaster (second).
3. **Preparation & Participation:** You are expected to read and think about the assigned material before each class. Likewise, you are expected to contribute to the classroom discussions on both a voluntary and involuntary basis. I will call on you. Participation will formally count for up to 15% of your grade. As a practical matter, most students who attend regularly and are prepared will get the same or very close to the same participation grade. That said, attendance, preparation and participation that either distracts from or genuinely contributes to the entire class's learning experience may impact your grade at the margins.
4. **TWEN:** There is (or, depending on technical hurdles and the timing of when you read this syllabus, soon will be) a TWEN page for this course. It is very important that you sign up for the page, as I will use it periodically to communicate with the entire class. To register (1) go to lawschool.westlaw.com (2) click on TWEN (3) choose "add course" and add this course. My understanding is that even if you were in my section in the fall semester, you will need to do this again. Once you have registered you will have the ability to engage in substantive discussions with your fellow students. I will also use TWEN to post course materials. I encourage you to use the TWEN list serve to discuss substantive matters relating to the course. I may monitor these discussions as a matter of interest, but will not be intervening as a matter of course.
5. **Attendance:** You certainly should not miss more than four sessions. Accommodations may be made in truly compelling circumstances. In the event you believe yourself to be in such circumstances, you should send an e-mail to my assistant, Sharisse Carter, within twenty-four hours of your absence. I will do nothing respecting these issues until late in the semester. At that point, I will review the file of anyone with more than two sessions (four hours) of missed class and will forward the file to the Office of Student Affairs possibly resulting in denying you credit for the course. All of the above pertains only to the bare minimum floor for attendance. Regular, on-time attendance, however, is the expectation – and one that I aim to reward with a compelling learning experience.

6. **Laptops:** You are allowed to use your laptops for note-taking purposes. Using laptops for other purposes (chatting, emailing, surfing, gaming) is prohibited, mostly because it is distracting for those around you.
7. **Office:** I will determine and announce my office hours based on various factors early in the semester. The best way to reach me is via e-mail (james.sample@hofstra.edu). You may also drop by at any time and, time permitting, I'll be glad to speak with you.
8. We will almost certainly make adjustments to the reading assignments below based on various factors during the semester but the assignments indicate our default presumption and/or points of departure. I have noted on this syllabus, the specific readings for the first two class sessions. Thereafter, we will proceed through the assignments in the order they are listed, but some modules will take longer than others — sometimes out of interest and sometimes out of struggle — we will adjust accordingly.

Syllabus (Redacted Version; Annotated Version of Same Begins on Page 4)

- I. Marbury and the Nature of the Federal Judicial Function
 1. Casebook pp. 49-80 (please read for the first class)
- II. Congressional Control of the Distribution of Judicial Power
 2. Casebook pp. 275-294
 3. Casebook pp. 294-314 (through Para. 2), 320-324, 337-339 (Mendoza-Lopez)
 4. Casebook pp. 383-394, 398-408; incl. excerpts from Federalist, No. 82, p. 383
 5. Casebook pp. 408-429
- III. Direct Federal Review of State Court Decisions
 6. Casebook pp. 431-58
 7. Casebook pp. 458-496
 8. Casebook pp. 496-513 (through (6))
- IV. Federal Common Law
 9. Casebook pp. 558-564 (mid); 607-644
 10. Casebook pp. 644-650; 665-685
 11. Casebook pp. 716-742

V. Federal Question Jurisdiction

12. [Background: Casebook pp. 743-748]; Casebook pp. 381-383 (Tidewater Problem); 749-773

13. Casebook pp. 774-8006

14. Casebook pp. 800-815

VI. Actions Against State Officials

15. Casebook pp. 841-852 (mid); 873-881 (top);885 (note (d))

16. Casebook pp. 886-902

17. Casebook pp. 900-928

18. Casebook pp. 928-941

19. Casebook pp. 942-972 (top); 994-1003 (top)

VII. Judicial Federalism: Limits on District Court Jurisdiction or Its Exercise

20. Casebook pp. 1013-1041

21. Casebook pp. 1057-1083

22. Casebook pp. 1083-1128

VIII. Advanced Problems in Judicial Federalism: Res Judicata and Other Issues

23. Casebook pp. 1311-1334

24. Casebook pp. 1334-1353

IX. Flex TBD

Annotated Syllabus – Fed Courts 2012

I. Marbury and the Nature of the Federal Judicial Function

1. Casebook pp. 49-80 (please read for the first class)

Marbury v. Madison,

Note – Historical Background,

Note – Jurisdictional Holdings,

Note – Arguments for Judicial Review,

Note – Function of Adjudication,

Supreme Court and the Models,

Discretion, Prudence, and the Judicial Function

II. Congressional Control of the Distribution of Judicial Power

2. Casebook pp. 275-294

Note – Sources of Congressional Power over Jurisdiction,

Note – Historical Limits on Federal Court Jurisdiction,

Note – Constitutional Controversy,

Note – Residual Jurisdiction in State Courts,

Note – The Parity Debate,

Sheldon v. Sill,

Ex parte McCardle,

Note- Exclude Cases from Lower Federal Courts,

Note- Justice Story,

Note- Internal and External Restraints,

Note- The Norris LaGuardia Act,

Lauf v. Shinner,

Truax v. Corrigan,

3. Casebook pp. 294-314 (through Para. 2), 320-324, 337-339 (Mendoza-Lopez)

Note—Power over Supreme Court’s Appellate Jurisdiction, p. 294

Excerpts from the Dialogue,

Klein,

Constitutional Avoidance,

Note – Power to Withdraw all Federal Jurisdiction,

Note – Preclusion of State and Federal Court Jurisdiction,

Battaglia,

Note – Preclusion of Review and Rights to Remedies,

Developments since the Dialogue,

Note – Apportioning Jurisdiction among Federal Courts,

Emergency Price Control Courts,

Yakus,

Mendoza-Lopez,

4. Casebook pp. 383-394, 398-408; incl. excerpts from Federalist, No. 82, p. 3832

Excerpts from Federalist No. 82,

Tafflin v. Levitt, p.
Note on Congressional Exclusion of State Court Jurisdiction,
Tarble's Case,
Note on State Court Proceedings against Federal Officials,
State Jurisdiction in Other Proceedings against Federal Officials (mandamus, damages,
specific relief, injunctions),

5. Casebook pp. 408-429
Testa v. Katt,
Claflin v. Houseman,
Note on Obligation of State Courts to Enforce Federal Law,
Prigg v. Pennsylvania,
Mondou,
McKnett,
Valid Excuses, p. Herb v. Pitcairn; Mayfield,
Felder,
Tenth Amendment,
Dice v. Akron,
Note on Substance and Procedure,
Note on FELA,

III. Direct Federal Review of State Court Decisions

6. Casebook pp. 431-58
Note on Statutory Provisions, p.
Martin v. Hunter's Lessee, p.
Note on Attacks upon the Jurisdiction,
Note on Enforcement of the Mandate,
Murdock v. City of Memphis,
Note on Murdock,
Note on Original v. Appellate Jurisdiction,
Note on Murdock and Erie,
Note on Antecedent v. Distinct State Law Grounds,

7. Casebook pp. 458-496
Note Interstitial Character of Federal Law,
Fox Film Corp. v. Muller,
Preliminary Note on Independent and Adequate State Ground,
Michigan v. Long,
Note on Review of State Decisions Upholding Claims of Federal Right,
Note on Ambiguous State Decisions,
Note on State Incorporation or Reference to Federal Law,
Indiana ex rel. Anderson v. Brand,
Note on Federal Protection of State-Created Rights,
The Contract Clause, 3
Due Process and Takings Clauses,
Liberty Interests,

Presidential Elections

8. Casebook pp. 496-513 (through (6))

Cardinale v. Louisiana,
Note on Presentation and Preservation of Federal Questions,
Staub v. City of Baxley,
Note on the Adequacy of State Procedural Grounds
IV. Federal Common Law

9. Casebook pp. 558-564 (mid); 607-644

Erie,
Note on the Rationale of the Erie Decision,
United States v. Hudson & Goodwin,
Note on Common Law Crimes,
Clearfield Trust Co. v. United States,
Introductory Note on the Existence, Sources, and Scope of Federal Common Law,
Note on Choice of Law Governing Legal Relationships of U.S.,
Note on Theories of Statutory Interpretation,
Intro. Note on Private Litigation involving Proprietary Interests Created by the U.S.
Boyle v. United Technology,
Note on Choice of Law in Private Lit. Involves Federally Created Interests,

10. Casebook pp. 644-650; 665-685

Note on Preemption,
Banco Nacional de Cuba v. Sabbatno,
The Alien Tort Statute,
Sosa v. Alvarez-Machain,

11. Casebook pp. 716-742

V. Federal Question Jurisdiction

12. [Background: Casebook pp. 743-748]; Casebook pp. 381-383 (Tidewater); 749-773

Note on Statutory Development,
Note on the Tidewater Problem,
Note on the Purposes,
Osborn v. Bank of the United States,
Textile Workers Union v. Lincoln Mills,
Note on the Scope of the Constitutional Grant and Protective Jurisdiction,
Bankruptcy,
Verlinden B.V. v. Central Bank of Nigeria,
Mesa v. California,
Some Testing Cases: Diplomatic Relations, Clean Air Act, Air Transportation Safety,
—Sue and be Sued|| Clauses, 4

13. Casebook pp. 774-8006

American Well Works Co. v. Layne & Bowler Co.,

Note on —Arising Under Jurisdiction and the Cause of Action Test,
Smith v. Kansas City Title & Trust,
Merrell Dow Pharmaceuticals Inc. v. Thompson,
Note on Disputes over Land Originally Owned by the U.S.,
Note on Simple v. Refined Jurisdictional Rules,
Empire Healthchoice Assurance, Inc. v. McVeigh,
Grable & Sons Metal Prods., Inc. v. Darue Engineering & Mfg.,

14. Casebook pp. 800-815

Introductory Note on the Federal Declaratory Judgment Act,
Skelly Oil Co. v. Phillips Petroleum Co.
Note on the Jurisdictional Significance of the Declaratory Judgment Act,
Franchise Tax Board of California v. Construction Laborers Vacation Trust,
Further Note on Declaratory Judgment Act,
Note on Federal Complaints Asserting State Law Are Preempted,
Shaw,
Note on Removal Statutes,
Avco,
Metropolitan Life Ins. Co. v. Taylor,
Beneficial National Bank, p.

VI. Actions Against State Officials

15. Casebook pp. 841-852 (mid); 873-881 (top);885 (note (d))
Note on Foundations of Sovereign Immunity,
United States v. Lee,
Governor of Georgia v. Madrazo,
Hans v. Louisiana,
Note on the Origin, Meaning, and Scope of the Eleventh Amendment,
Note on literal reading of the Amendment,
Note on the Diversity Interpretation,
Note on Federal Court Suits against State Agencies and Local Governments,

16. Casebook pp. 886-902

Ex parte Young,
Note on Ex parte Young,
Party of record rule,
Post-Reconstruction bond cases,
Further Note on the Availability of Relief in Suits Against State Officers,
Edelman v. Jordon,
Milliken v. Bradley,
Note on Attorney's Fees,
Quern and Green, 5
Relevance of Indemnification Agreements,
Note on the Pennhurst Case,

17. Casebook pp. 900-928

Note on Congressional Power to Abrogate,
Seminole Tribe of Florida v. Florida,
Fitzpatrick v. Bitzer,
Florida Prepaid,
City of Boerne v. Flores,
United States v. Morrison,
Kimel v. Florida Bd. of Regents,
Alabama v. Garrett,
Note on Consent to Suit in Federal Court,
United States v. Georgia,
Nevada Dept' of Human Resources v. Hibbs,
Tennessee v. Lane

18. Casebook pp. 928-941
Note on Alden v. Maine,
Nevada v. Hall,
Franchise Tax Board of California v. Hyatt

19. Casebook pp. 942-972 (top); 994-1003 (top)
Federal Constitutional Protection against State Official Action,
Home Telephone & Telegraph Co. v. City of Los Angeles,
Note on the Scope of Fed. Constitutional Protection against Unauthorized State Action,
Barney v. City of New York,
Siler v. Louisville & N.R. Co.,
Snowden v. Hughes,
Fed. Statutory Protection Against State Official Action Herein of 42 U.S.C. § 1983
Monroe v. Pape,
Note on § 1983: An Overview,
Inyo County v. Paiute-Shoshone Indians,
Note on § 1983 as a Remedy for the Violation of a Federal Statute,
Note on Officers' Accountability in Damages for Official Misconduct, (esp. absolute immunity & immunities associated with the judicial process)
The Absolute Immunity of Legislators & the President

VII. Judicial Federalism: Limits on District Court Jurisdiction or Its Exercise

20. Casebook pp. 1013-1041
Kline v. Burke Construction Company,
Note on Coordination of Overlapping State Court and Federal Court Jurisdiction,
Atlantic Coast Line R.R. v. Brotherhood of Locomotive Engineers,
Mitchum v. Foster,
Note on the Anti-Injunction Act, 6
Note on the Relitigation Exception,
Parsons Steel,
Questions of Coverage,

21. Casebook pp. 1057-1083

Railroad Commission of Texas v. Pullman Co.,
Note on Abstention in Cases Involving a Federal Question,
Note on Procedural Aspects of Pullman Abstention,
Note on Burford and Thiboudaux Abstention,
San Remo Hotel, L.P. v. City and County of San Francisco,

22. Casebook pp. 1083-1128

Younger v. Harris,
Note on Younger v. Harris and the Doctrine of Equitable Restraint,
Douglas v. City of Jeannette,
Dombrowski,
Samuels v. Mackell,
Steffel v. Thompson,
Huffman v. Pursue, Ltd.,
Ellis v. Dyson,
Hicks v. Miranda,
Further Note on Enjoining State Criminal Proceedings,
Doran v. Salem Inn, Inc.,
Note on Further Extensions of the Equitable Restraint Doctrine,
Trainor v. Hernandez,
New Orleans Public Service, Inc. v. Council of City of New Orleans,
Judice v. Vail,
Pennzoil Co. v. Texaco, Inc.,
Middlesex County Ethics Comm. v. Garden State Bar Ass'n,
Rizzo v. Goode,

VIII. Advanced Problems in Judicial Federalism: Res Judicata and Other Issues

23. Casebook pp. 1311-1334

Introduction and Note on the Res Judicata Effect of Federal Judgments,
United States v. Mendoza,
Note on Res Judicata in Federal Government Litigation,
Allen v. McCurry,
Kremer v. Chemical Const. Corp.,
ASARCO Inc. v. Kadish,
Marrese v. American Academy of Orthopaedic Surgeons,
University of Tennessee v. Elliott,
Matsushita Elec. Indus. Co. v. Epstein,
San Remo Hotel, L.P. v. City and County of San Francisco,

24. Casebook pp. 1334-13537

Introductory Note on the Impact of 28 U.S.C. § 1257 on a Subsequent Civil Action in a
Federal District Court,
Exxon Mobil Corp. v. Saudi Basic Industries Corp.,
Note on the Rooker-Feldman Doctrine,

IX. Flex TBD