1. **Syllabus:** Reading assignments are set forth in this syllabus. During the semester, there will be alterations, deletions and additions. Changes will be announced in class.

2. **Text:** In the interest of reducing your costs, or at the very least the costs to students over the longer term, the case book that we will be using this year is *Federal Courts: Cases and Materials*, by Jonathan Siegel, 2nd edition, Aspen Casebook Series/Wolters Kluwer (aka “the red one”). Each of my prior sections of Federal Courts used a book known as Hart & Wechsler’s Federal Courts. For a variety of reasons, but most particularly the cost to you, especially relative to a three-credit course, I have decided to make this change. The good news is that, after much thought, I have concluded that this change will ultimately redound to the benefit of students. The bad news (for you at least) is that there may be a bit of turbulence in transition, but I certainly hope to minimize that.

3. 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).

4. **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. I am especially serious about preparation and participation for this particular class. That is to say that there is almost zero point in staying in this course if you are not committed to embracing the rigor. Participation will technically count for up to 25% 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 well impact your grade.

5. **TWEN:** There will be a TWEN page for this course. 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 and to e-mail the class, so be sure to register for it.

6. **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 me 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.

7. **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.

8. **Office**: I will determine 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.

9. 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.

10. The learning objectives for this course are innumerable. Most prominently, the course offers the opportunity to increase your understanding of jurisdictional, political, and separation of powers questions that animate our democracy, and particularly our courts. Students should gain an understanding of the legal process school and the ways in which sources of law may be used to advance normative positions.

11. All of the foregoing learning objectives are in addition to Performance Indicators and Examples indicated in the Hofstra Law handbook. To wit: Substantive rules of law and policies – The first-year curriculum (Contracts, Civil Procedure, Torts, Property, Criminal Law, and Constitutional Law I); upper-division required courses (Constitutional Law II, Evidence, and Professional Responsibility); an advanced knowledge of the rules and policies in at least one area of substantive law covered in Hofstra Law’s elective curriculum. Preparation for the bar examination – Sufficient courses covering subjects typically tested on the bar examination. Sources of law and the process of law creation and evolution - The roles and differing characteristics of sources of law (common law, legislation, administrative regulations, treaties, and judicial interpretation of legislation, regulations, treaties and constitutions); the processes through which law is made and changed and how those processes differ from one source of law to another; the different roles that state and federal law play in the process of lawmaking; and at least some of the leading perspectives on the analysis of law (economic, comparative, empirical, historical, jurisprudential).
I. Marbury and the Nature of the Federal Judicial Function
pp. 3-middle of page 26
Marbury v. Madison & Notes and Questions
Cooper v. Aaron
[Skim] Jackson’s veto message & Lincoln’s First Inaugural Address
[Skim] Notes on judicial supremacy

Optional Contemporary Critique of Judicial Supremacy: linked here

II. Congressional Control of Jurisdiction
pp. 223-249
Sheldon v. Sill
Ex parte McCardle
United States v. Klein
Battaglia v. GM (2d Cir)
Martin v. Hunter’s Lessee
Henry Hart, Charles Black & Herbert Wechsler weigh in
Yakus v. United States
Note- Justice Story (to be distributed)
pp. 256-271 [Skim] Northern Pipeline Construction v. Marathon Pipe Line

III. Congressional Control of State Court Jurisdiction
pp. 305-307; 309-317; 319-323; 325-329
Excerpt from Federalist No. 82
Notes on Taftlin v. Levitt pp 309-311
Testa v. Katt & Notes following through p 317
    Note within Testa each of the following:
    Claflin v. Houseman
    Mondou v. New York
Note on McKnett v. St. Louis & SF Ry. (316)
[Skim] Dice v. Akron, Canton & Youngstown Railroad
Tarble’s Case
    Note within Tarble’s Case each of the following:
    Ableman v. Booth/United States v. Booth

IV. Direct Federal Review of State Court Decisions
pp. 879-908; 917-927
Introductory Notes (certiorari, appeal etc…)
Martin v. Hunter’s Lessee (again!)
Federalist No. 82 (again!)
Murdock v. City of Memphis
Fox Film v. Muller
Note on Herb v. Pitcairn (907)
Staub v. City of Baxley
V. Federal Common Law
pp. 341-394; 406-426
Review/refresh, largely as background with which I will assume we are all familiar, the Erie line of cases beginning with Swift (on 342) and going through Shady Grove
Clearfield Trust v. United States
[Skim] United States v. Kimbell Foods
Boyle v. United Technology
Note on Federal Common Law vis-à-vis criminal cases (433) & Hudson & Goodwin

- in the international context
Banco Nacional de Cuba v. Sabbatino (to be distributed)
Sosa v. Alvarez-Machain (to be distributed)
Hernandez v. Mesa (to be distributed)

What about implied rights of action?
Cort v. Ash
Alexander v. Sandoval

Remedies for Constitutional Violations
pp. 706-716
Bivens v. Six Unknown Agents of Federal Bureau of Narcotics
Egbert v. Boule (Decided June, 2022, to be distributed)

Is the “Major Questions Doctrine” Federal Common Law?
Contemporary Critique linked here

VI. Federal Question Jurisdiction
(largely refresher of CivPro so scope of this unit flexible/TBD based on semester flow)

VII. Actions Against Governments and Their Officials
Federal
pp. 551; 558; 561-577; 580
Notes on specified pages above
United States v. Lee
Youngstown Sheet & Tube (excerpt)
Note on Problems with Traditional Method

State
pp. 589-612
Chisolm v. Georgia
The response: Amendment XI
The ensuing debate
Hans v. Louisiana

Methods of Avoiding State Sovereign Immunity
pp. 637-654; 660-661
Ex parte Young
Edelman v. Jordan
[Lecture-based mentions of Post-Reconstruction bond cases]
Pennhurst State School & Hospital v. Halderman

Contemporary Critique/Analogy of Texas SB8 to Ex Parte Young linked here

Congressional Abrogation of State Sovereign Immunity
pp. 663-middle 666; 667-680
Note on Congressional Power to Abrogate,
Fitzpatrick v. Bitzer
Seminole Tribe of Florida v. Florida

If Congress can abrogate under §5; we need to understand limits on §5
pp. 680-690
Florida Prepaid
Notes following esp. re: Kimel v. Florida Bd. of Regents, Nevada v. Hibbs, Tennessee v. Lane
Suits Against States in State Courts
pp. 692-top 702
Alden v. Maine,

VIII. Official Suits and Official Immunity
pp.705-706; 719-730; 756
Ziglar v. Abbasi (shades of Bivens anyone?)
Against State Officers
pp. 732-747
42 U.S.C. § 1983
Monroe v. Pape
Notes (756) on Golden State Transit v. Los Angeles; Gonzaga Univ. v. Doe
Proper defendants under § 1983
pp. 760-767
Monell v. Dept. Social Services of City of NY

Brief mention (via lecture) of absolute immunity (cases like Stump v. Sparkman for those who wish to read further)

IX. Intersystem Relationships:
Abstention Doctrines & Related Restrictions on Federal Jurisdiction
pp. 793-814
The Anti-Injunction Act
Kline v. Burke Construction Company
Atlantic Coast Line R.R. v. Brotherhood of Locomotive Engineers
Mitchum v. Foster

Abstention’s Greatest Hits
pp. 816-820; 825-832 (top); 837-847
Railroad Comm’n of Texas v. Pullman
Burford v. Sun Oil Co.
Louisiana Power & Light v. City of Thibodaux
Introductory Note on Younger Abstention
Younger v. Harris

Misc.
Intro (via lecture) to the brand name that is the Rooker-Feldman Doctrine

**Flex:** 1-day “tour” of Habeas?

**Periodically interspersed topical changes of pace/discussion starters**


http://bostonreview.net/philosophy-religion-law-justice/aziz-z-huq-bostock-v-blm


https://www.npr.org/2021/07/26/1020786560/a-lawsuit-against-jan-6-rally-speakers-forces-dojo-to-consider-whos-legally-immun

https://www.bloomberg.com/opinion/articles/2021-08-04/biden-s-rebuff-to-supreme-court-on-eviction-ban-will-backfire