

Syllabus for Federal Courts
Prof. Kumar, Fall 2020
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Overview

Federal Courts is the study of the judicial branch as an institution. The topics in the class touch on issues of civil procedure, administrative law, constitutional law, and public international law. This class will focus on the power struggles between federal courts and several other institutions, including Congress, the executive branch, and state courts, and foreign courts. This class covers some material (under the topics of constitutional law and civil procedure) that is tested on the Uniform Bar Exam.

Casebook: Low, Jeffries, Bradley, Federal Courts and the Law of the Federal-State Relations (9th ed).

Note that you do NOT need to purchase the 2020 supplement. A copy of this casebook is on reserve in the library.

Attendance Policy

I will take attendance via Zoom. Please note that you are responsible for managing your absences from class and ensuring that your total number of absences does not exceed the threshold for the class. An absence is an absence, regardless of the reason, except for those covered by the University and Law Center religious holiday policy. Students who exceed six absences will be reported to the Associate Dean, and may be dropped from the class or have their final grade lowered.¹

If you need to miss a single class, please do not e-mail me. Rather, e-mail a friend to see what you missed. Do let me know, however, if you need to miss several classes in a row.

Class Preparation

This class will utilize a partially flipped classroom. Each class will have a reading assignment and a 15-20 minute pre-lecture (available on the Lexis class website) that you should listen to prior to class. The pre-lecture will generally contain black-letter law and provide context for the cases. It may be helpful to listen to the pre-lecture before doing the reading. Note that actual class time may consequently be a little shorter. There will not be a pre-lecture for the first day of class.

Class Website

A class website has been set up on Lexis. Go to www.lexisnexis.com/lawschool and log in (using your UH Lexis ID). In the top right-hand screen, click "Training," then click "Add Course" from the drop-down menu. Look for Kumar, then add "2020 Federal Courts." Note that pre-lecture and lecture recordings, handouts, the current syllabus, and old exams will all be posted there. If you have any trouble accessing the class website, contact our Lexis representative Billy Saqr (billy.saqr@lexisnexis.com). If you are a transfer student who doesn't have a UHLC Lexis account, send Billy an e-mail from your UHLC e-mail account, and he can set you up.

Participation

Students with poor class participation will have their final grade dropped by 1/3 of a letter grade. The decision to drop a grade for participation is at my discretion and is non-negotiable. A drop in class participation can result from unpreparedness when your panel is on call and/or not participating during group work. Note that

¹ An absence during a scheduled make-up class will not count towards the six-absence limit.

if you are absent when your panel is on-call, you need to contact me to make it up by temporarily serving on another panel.

In rare circumstances, a student may go up a 1/3 of a letter grade for making a substantial contribution to the class. Note that volunteering every class does not constitute a substantial contribution—quality, not quantity matters!

Attendance via Zoom

This class will be taught via this Zoom link: <https://uhlc.zoom.us/j/94339751244> (password: SCOTUS20). To participate, there are several requirements that must be met:

- You must be logged in with a computer (not a phone) with your video camera turned on and microphone muted (note: the class will be set up to mute you automatically upon entry). Video must stay on for the entire class.
- When your panel is on call, you need to have a headset that works (i.e., the ear buds + microphone that typically come with a cellphone) and may NOT rely on your computer's built-in microphone.
- You must identify yourself with your first and last name in the Zoom videoconferencing software.
- Do your best to present yourself professionally in the video stream, both in attire and in conduct.
- You must be able to fulfill your responsibilities if your panel is on call, even if you are taking the class pass/fail.
- If you have to leave Zoom for more than fifteen minutes during the lecture, you will be counted as absent.

Video Recordings of Lectures

I will record all of the lectures and upload them to the class website. These recordings are for class preparation purposes only, and they are not to be reproduced or redistributed in any manner. Note that recordings sometimes fail or are lost before they can be uploaded. Also, occasionally sensitive material will be discussed that will not be recorded. Please note that you do not have authorization to make your own recordings of class lectures.

Assessment Method

The final exam will be an open book and open notes (i.e., you can bring any printed materials, including commercial outlines). The format will be essay questions. Citing cases or material that we did not cover will cause your answer to be marked down.

Learning Outcomes

From taking this course, students will be able to understand the role of the judiciary, the scope of the judiciary's powers, the relationship between federal courts and other courts, and the requirements to litigate in federal court. Students will also be able to engage in legal analysis and reasoning, problem-solving, and written and oral communication relating to federal courts

Names and Pronouns

Chosen names and preferred pronouns (including non-binary ones such as they/them/their) must be respected in my classroom. Please feel free to reach out to me at any time if you want to make me aware of your chosen name or preferred pronoun, or if you have concerns about how I or your classmates address you.

Law School During the Pandemic

Our goal for the semester will be to do our best. Some days, that may mean volunteering to take the first case for your panel. Other days, that may mean muting yourself while your partner takes a conference call in the

same room or while your child has a meltdown. You will almost certainly hear and see my cat, Siegfried (who is our honorary teaching assistant). Your dog/cat/child/partner/roommate may join us inadvertently from time to time. All of this is fine—we will do our best. I realize that this will be a stressful time for many of you—know that my (virtual) door is open to you.

Mandatory Notices from the University:

- Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let’s Talk” program, a drop-in consultation service at convenient locations and hours around campus. www.uh.edu/caps/outreach/lets_talk.html
- Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Center for Students with DisABILITIES. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor’s recordings for their own studying and notetaking. Instructor’s recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.
- Due to the changing nature of the COVID-19 pandemic, please note that the instructor may need to make modifications to the course syllabus and may do so at any time. Notice of such changes will be announced as quickly as possible through the class website.

Reading

Each class will cover one square bullet point worth of material. All page numbers refer to the 9th edition of the casebook, unless otherwise noted. For the last day of class, there will be a review based on questions submitted in advance.

A. The Power of Federal Courts to Create Federal Law

Often when we think about creating law, we think of Congress passing legislation. But there are many ways in which federal courts can create binding rules.

- **Class 1. Federal Common Law: Rights and duties of the U.S.** 115–132

All first-year students learn that under *Erie v. Tompkins*, that federal courts do not possess the power to create federal common law. And yet, courts may sometimes create and apply federal common law to protect federal interests. This reading looks at the use of federal common law in situations in which the U.S. government or its officers are a party to the lawsuit.

- **Cases:** Clearfield Trust Co. v. U.S.; U.S. v. Little Lake Misere Land

- **Class 2. Federal Common Law: Rights and duties of private parties.** 132–154

Courts will sometimes apply federal common law to protect federal interests, notwithstanding the fact that the U.S. government is not a party to the lawsuit.

- **Cases:** Boyle v. United Technologies Corp.; Empire Healthchoice Assurance v. McVeigh

- **Class 3. Implied Right of Action to Enforce Federal Statutes.** 156–181

Statutes will sometimes create an express cause of action providing third parties with the ability to sue. But in some circumstances, courts are willing to imply a cause of action. As the Supreme Court has become more conservative, however, it has expressed an unwillingness to do so.

- **Cases:** Cannon v. University of Chicago [focus on dissent]; Alexander v. Sandoval; Stoneridge Investment Partners v. Scientific-Atlanta

- **Class 4. Right to Enforce Constitutional Rights.** 182–197, 208–212, 28 U.S.C. §§ 1331 and 1442

No such statute provides individuals with a cause of action against the federal government when a federal officer violates someone's constitutional rights. Consequently, the Supreme Court has implied a cause of action permitting individuals to sue for damages. However, as the Supreme Court has become more conservative, it has dramatically narrowed the availability of such implied actions.

- **Case:** Bivens v. Six Unknown Named Agents

- **Class 5. Customary International Law & the Alien Tort Statute.** 214–216 (N.1–3), 217–218 (N.5), 225–241 (skim Scalia CIP), 248–260.

This class looks at to what extent can the court hear cases involving violations of customary international law. *Sosa* and *Kiobel* both look at actions brought under the Alien Tort Statute. *Kiobel* introduces the presumption against extraterritoriality. This material overlaps with Public International Law.

- **Cases:** *Sosa v. Alvarez-Machain* (I won't call on anyone for the Scalia CIP); *Kiobel v. Royal Dutch Petroleum*

B. Justiciability

Courts have limits on when they can exercise their authority. The party litigating before the court must have constitutional standing and must meet the zone of interests test. The issue being litigated must be ripe, and

cannot be moot. Moreover, the court will decline to hear political questions—issues that the court believes is better left to another forum. This part of the class overlaps a little with administrative law.

- **Class 6. Judicial Review, Introduction to Standing.** 263–279
Marbury v. Madison will be a case that is familiar to all of the JD students. We cover it again, because it sets up a number of major themes for the semester, including separation of powers, public rights versus private rights, and political questions.
 - **Case:** Marbury v. Madison
- **Class 7. Constitutional Standing.** 280–303
Standing is a doctrine in which the court determines whether a particular person is the right party to bring a case before the court. It dates back only to the 1930s, when first Democrats tried to protect New Deal agencies from challenges, and later conservatives tried to block people seeking to compel agencies to regulate. To meet constitutional standing, one must show injury, causation, and redressability.
 - **Cases:** Allen v. Wright; Clapper v. Amnesty Int'l
- **Class 8. Statutory Standing.** 307–326
In addition to having constitutional standing, a party seeking to sue under a statute must also meet statutory standing. We will be focusing on a narrow part of this issue: if Congress expressly grants plaintiffs with the right to sue, how does that impact constitutional standing requirements
 - **Cases:** Lujan v. Defenders of Wildlife; Spokeo v. Robins
- **Class 9. Ripeness.** 406–420
Under the doctrine of ripeness, the court considers whether it would be premature for it to intervene. It deals with the situation in which there may be an article III “case” at some later point in time, but there is not one yet. This issue frequently arises when a party is seeking pre-enforcement review of a statute. Note that the line between ripeness and constitutional standing is fuzzy.
 - **Cases:** United Public Workers v. Mitchell; Poe v. Ullman
- **Class 10. Mootness.** 420–443
Mootness occurs when a controversy initially existed at the time the lawsuit was filed, but is no longer “live” due to a change in law, change in the status of the parties involved, or due to an act of one of the parties that dissolves the dispute. Note that there are some exceptions to mootness.
 - **Cases:** DeFunis v. Odegaard; Genesis Healthcare Corp. v. Symczyk
- **Class 11. Introduction to Political Questions.** 462–470, 472–486
Political questions arise when a case involves an issue that is best left to a politically accountable branch of government. Such cases are not appropriate for judicial resolution, even where standing, ripeness, and other criteria are satisfied.
 - **Cases:** Nixon v. U.S.; Zivotofsky v. Clinton
- **Class 12. The Political Question of Gerrymandering.** 470–472, excerpt of *Rucho v. Common Cause* (will be distributed on class website)
Gerrymandering is the drawing of state and federal electoral district lines to maximize “safe” seats for the party that is in control of the state government. Outside of states that have indep. district commissions, the

controlling political party gets to draw the district. It is widely practiced in states in which one party controls the government.

- **Case:** Rucho v. Common Cause

C. Congressional Control of Federal Courts

This section of material will explore how Congress can control federal courts, such as by limiting federal court jurisdiction to hear certain cases or by giving Article I tribunals jurisdiction over certain cases.

- **Class 13. Limits to Federal Jurisdiction.** 487–507, skim 507–515
Congress has control over inferior federal courts, given Congress has the power to abolish them. But there is a split among justices regarding Congress’s ability to control the Supreme Court and its appellate jurisdiction.
 - **Cases:** Ex Parte McCordle; Webster v. Doe
- **Class 14. Power to Expand Federal Jurisdiction.** 548–564, 567–573, 28 U.S.C. §§ 1331, 1442, 2679
Protective jurisdiction is jurisdiction that Congress gives to federal courts jurisdiction over a state law issue, generally over concerns of hostility towards a federal instrumentality or legislative policy. Although the Supreme Court once broadly embraced this, it has since back away from the doctrine.
 - **Cases:** Osborn v. Bank of U.S., Textile Workers Union v. Lincoln Mills; Verlinden v. Central Bank of Nigeria; Guitierrez de Martinez v. Lamagno
- **Class 15. International Tribunals.** 619–643
This class touches on public international law, looking at whether the decisions of international tribunals bind U.S. federal courts, when the United States is party to a treaty authorizing the tribunal to act.
 - **Case:** Medellín v. Texas

D. Subject Matter Jurisdiction

Federal courts have the power to hear only certain kinds of claims. Unlike personal jurisdiction, subject matter jurisdiction cannot be waived. These classes will cover material that was introduced in civil procedure.

- **Class 16. Supplemental Jurisdiction.** 709–732, 28 U.S.C. §§ 1332, 1367, 1441
This class looks at the interplay between diversity and supplemental jurisdiction, and the Supreme Court’s interpretation of § 1367 in light of its pre-1990 common law.
 - **Cases:** Exxon Mobil Corp. v. Allapattah Services; Owen Equipment v. Kroger
- **Class 17. Finality and Appellate Review.** 760–774, 28 U.S.C. § 1257
28 U.S.C. § 1257 empowers the U.S. Supreme Court to review state court judgments, but only “final judgments or decrees.” However, what constitutes a final judgement is not defined. Although the Supreme Court has said that a “final” judgment is one that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment,” tricky cases can sometimes arise.
 - **Cases:** ASARCO, Inc. v. Kadish; Cox Broadcasting Corp. v. Cohn

E. Abstention

A federal court will decline to hear a case if it intrudes on the power of another court—whether that be a state court or a foreign court.

- **Class 18. Grant-Vacate-Remand (GVRs), Younger Abstention.** 774–784, 807–826, 28 U.S.C. §§ 2201, 2202, 2106, 2283

Generally, federal courts may not enjoin a pending state criminal prosecution on the ground that the prosecution violates constitutional rights, nor may they issue declaratory relief to the same effect.

- **Cases:** *Lawrence v. Chater*, *Younger v. Harris*
- **Class 19. Younger (cont.) & Pullman Abstention.** 827–840; 861–872
There are several exceptions to *Younger* abstention. We will also talk about *Pullman* abstention, in which a federal court stays a case to permit a state court to resolve an unsettled question of state law, because the resolution of the state-law question might permit the federal court to avoid the need to decide a difficult constitutional question.
 - **Cases:** *Steffel v. Thompson*; *Hicks v. Miranda*, *Railroad Comm’n of TX v. Pullman*
- **Class 20. Other Abstention Doctrines.** 872–874, skim 874–878, read 879–890, and 896–906
Under *Burford* abstention, a federal court declines to hear a diversity case, because the federal court deciding the case would disrupt state’s effort to establish coherent policy in an area of law. *Colorado River* abstention is based on comity between different U.S. court systems. International comity abstention (thus far, only recognized by courts of appeal) occurs when a federal court declines to hear a case due to parallel litigation in a foreign court.
 - **Cases:** *Burford v. Sun Oil*; *Colorado River Water Conservation District v. U.S.*; *Royal and Sun Alliance Ins. Co. of Ca. v. Century Int’l Arms, Inc.*

F. State Sovereign Immunity and the Eleventh Amendment

The sovereign immunity doctrine recognizes that when states chose to join the United States, they retained certain attributes of their former independence, including the right to not be sued without consent. The 11th Amendment generally limits private actions against states and state agencies. However, there are a number of carve-outs that we will discuss.

- **Class 21. Methods of Avoiding State Sovereign Immunity.** 1095–1105; 1111–1123, 11th Amendment
The 11th Amendment blocks “any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State,” and sovereign immunity also bars any suit brought by a citizen against the citizen’s state. However, *Ex Parte Young* provides a work-around, allowing a plaintiff to sue a state employee in the employee’s official capacity for prospective relief.
 - **Case:** *Ex Parte Young*; *Edelman v. Jordan*
- **Class 22. Congressional Abrogation of Sovereign Immunity.** 1140–64; skim 1164–71
Congress may abrogate state sovereign immunity legislatively, but only via § 5 of the 14th Amendment.
 - **Cases:** *Seminole Tribe of Florida v. Florida*; *Alden v. Maine*
- **Class 23. Abrogation of State Sovereign Immunity Under 14th Amendment § 5, Constitutionally Required Remedies in State Court.** 1189–1214
The Supreme Court has limited Congress’s ability to abrogate state sovereign immunity by requiring “congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end.”
 - **Cases:** *City of Boerne v. Flores*; *Coleman v. Court of Appeals of MD*

G. 42 U.S.C. § 1983

Section 1983 was created under the Civil Rights Act of 1871 (also known as the Ku Klux Klan Act) and was intended to combat racial violence by state officials, including the police. In some ways, it is now far more expansive, allowing for cash damages from state and municipal officials who violate constitutional rights. But the court-developed doctrine of qualified immunity has severely limited the number of § 1983 cases that go to trial, leading to some calls for its repeal or modification.

- **Class 24. Under Color of Law.** 1235–1256, 42 U.S.C. § 1983
 - **Case:** Monroe v. Pape
- **Class 25. Official Immunities.** 1256–1274, 1300–1313
 - **Cases:** Scheuer v. Rhodes; Harlow v. Fitzgerald; Monell v. Dept. Social Services
- **Class 26. For What Wrongs?** 1366–1389
 - **Case:** Paul v. Davis

Last day of class: Review. Please e-mail questions and topics for the review in advance.