

**FEDERAL COURTS**  
**Spring 2015**  
**Judge Rosenthal & Professor Bruhl**

*What is this course about?*

This is above all a course about power. This course deals with *whether* and *when* a federal court may decide a question more than it deals with *how* it will decide. The whether and the when are frequently as important as the how.

The course covers a number of topics concerning federal jurisdiction, federal judicial power, and the relationship between the federal and state courts. The course material is organized around three main themes: (1) the federal courts' proper role in the national government (separation of powers); (2) the proper relationship between the federal courts and state courts (judicial federalism); and (3) methods of enforcing federal rights against government officials. Specific topics include: advanced aspects of federal question and diversity jurisdiction, including supplemental jurisdiction and removal; justiciability doctrines such as standing, ripeness, mootness, and political questions; abstention doctrines; Section 1983 suits; the 11th Amendment and state sovereign immunity; habeas corpus; and federal appellate jurisdiction.

*Who should take this course, and why?*

The course is especially relevant for future litigators as well as those who hope to serve as judicial clerks in the federal or state courts. It is also valuable for those who are interested in constitutional law and the structure of our government (a topic of particular relevance during a time in which our basic governmental institutions appear to be under strain).

Beginning in 2015, federal civil procedure will be tested on the Multistate Bar Examination, which is one component of the Texas Bar Examination. (See announcement here: [www.ncbex.org/home/multistate-bar-examination-news/](http://www.ncbex.org/home/multistate-bar-examination-news/).) Therefore, this course should help you prepare for portions of the bar exam.

**Course Materials**

The required texts for this course are:

Redish, Sherry & Pfander, *Federal Courts*, 7th edition (West, ISBN: 9780314204424); and

Redish, Sherry & Pfander, *2014 Supplement to Federal Courts* (West, ISBN: 9781628100983).

Occasionally there will be additional readings, such as recent court opinions or handouts that will be distributed on TWEN.

**Course Requirements and Objectives**

*Grading and requirements* – Your grade will be based primarily on a scheduled final exam. We will provide you with practice questions to help you study. The test is open book in that you may use the assigned textbooks, extra materials we distribute on TWEN, your class notes, handouts from class, and outlines prepared by you (including as part of an outline group), all in

hardcopy form. You may not bring commercial outlines, treatises, or any other material or outline you did not help create. If you have a question about what is permitted, ask us well in advance of the exam.

Participation in class discussion is necessary both for your own understanding of the material and for the benefit of your classmates. We may increase your grade one step (e.g., B+ to A-) for outstanding participation or lower it one step for failing to participate adequately or for consistently being unprepared for class.

There will be one or more short drafting exercises. These are considered part of class participation; as noted above, your grade can be lowered for inadequate participation, and that includes failing to make a good-faith effort on these exercises.

*Attendance* – Regular attendance (at least 80%) is required as a matter of ABA and Law Center policy. You may be dropped from the course for failing to comply with that requirement. We treat the sign-in sheet circulated at the beginning of each class session as presumptive evidence that you were present (or not).

*Laptops and other electronics* – Students are permitted to use laptops, tablets, and the like for taking notes or for other class-related purposes, but such devices are not to be used for other purposes during class. Students are not permitted to record class sessions.

*Learning objectives* – The objectives of the course are for you to learn the leading doctrines of federal courts law; for you to gain an appreciation of the role of the federal courts within our system of federalism and separated powers; and for you to integrate the information you learn in this course with other practical and analytical skills necessary to the practice of law.

### **Office Hours**

Professor Bruhl (BLB 1st floor) will post regular office hours, but you may make an appointment if you cannot make those hours. You are also welcome to drop in without an appointment any time he is around. Judge Rosenthal will be available to meet with students after class or at any other mutually agreeable time and is also readily available by e-mail.

### **Course Topics/Initial Set of Reading Assignments**

<u>Class #</u>	<u>Topic and reading</u>
1	Introduction to Federal Courts. Judicial review and <i>Marbury</i> . pp. 1-18.  <b>I. Justiciability doctrines</b>
2	Standing: the Article III requirement. pp. 18-39; Supp. pp. 1-2, 5-7.
3	Standing, cont'd: congressional power to confer standing; prudential standing. pp. 60-66;

Edited versions of *FEC v. Akins*, *Justice v. Hosemann*, and  
*Lexmark v. Static Control Components* [all posted on TWEN].

4 Mootness and ripeness.  
pp. 66-81; Supp. pp. 7-8;  
Edited version of *Poe v. Ullman* [TWEN].

5 Political question doctrine.  
pp. 81-92; Supp. pp. 8-9.  
Review of justiciability doctrines.  
Edited version of *Comer v. Murphy Oil* [TWEN].

## II. Selected topics in subject matter jurisdiction

6 Overview of subject matter jurisdiction.  
“Federal subject matter jurisdiction review” handout [TWEN];  
Article III of the Constitution [in casebook Appx. A];  
28 U.S.C. §§ 1251, 1253, 1254, 1257 1331, 1332(a)-(c), 1367,  
1441(a)-(b) [in casebook Appx. B, except for 1332 and 1441, for which  
consult Supp. Appx. B<sup>1</sup>];  
Handout on judicial caseloads [TWEN].

7 Congressional expansion of diversity jurisdiction: the Class Action Fairness Act  
of 2005.  
28 U.S.C. §§ 1332(d), 1453 [in Supp. Appx. B];  
Handout on CAFA [TWEN];  
Edited version of *Miss. ex rel. Hood v. AU Optronics* [TWEN].

8 Federal question jurisdiction: federal-ingredient cases.  
pp. 787-95; Supp. pp. 25-32;  
Materials on the Houston same-sex benefits case [TWEN].

9 Topics in removal jurisdiction: fraudulent joinder and complete preemption.  
pp. 877-86;  
*Mumfrey v. CVS*; *Edwea, Inc. v. Allstate Insurance* [both posted on TWEN].

10/Feb. 23 Special guest speaker. Topic: Themes in judicial federalism.  
[Details and readings will be announced. Date is subject to change.]

11/Date TBA Notice of Removal drafting exercise.  
Students will draft a notice of removal, and the instructors will provide  
feedback. Materials to be distributed on TWEN.

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<sup>1</sup> Congress recently amended some of the jurisdiction and venue statutes, including sections 1332 and 1441. For those statutes, use the 2014 Supplement, which has the amended versions.

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Readings for the remainder of the semester will be announced at a later date. The remaining topics will be as follows:

**III. Enforcing federal rights against state officials (42 U.S.C. § 1983)**

- basic requirements for liability / meaning of “under color of state law”
- municipal liability
- individual officers and official immunities

**IV. Judicial federalism**

- various abstention doctrines (*Younger*, *Burford*, *Pullman*, etc.)
- Anti-Injunction Act
- intersystem preclusion

**V. State sovereign immunity and the Eleventh Amendment**

**VI. Remedies against federal officials for violating constitutional rights (*Bivens*)**

**VII. Brief overview of habeas corpus**