Syllabus for Federal Courts
Prof. Kumar, Fall 2016
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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, state courts, and foreign courts.


- Note that you do NOT need to purchase the 2016 supplement
- If you use an older edition of the book, you do so at your own risk.

Attendance Policy

You should attend class sessions and arrive on time. If you arrive late, out of respect for the other students and the class environment, please try to minimize the disturbance.

I will take attendance by distributing a roll sheet at the beginning of each class. Each student should personally initial by his or her name for that class session. It is your responsibility to insure that you have initialed the roll sheet before you leave the classroom each day. Students who do not sign the role sheet are deemed to have been absent. You may not sign the role sheet if you miss more than 15 minutes of class. Doing so is an honor code violation.

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 (6) absences will be reported to the Associate Dean and will be dropped from the class.

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

Participation

I will call on students, both to discuss cases and to comment on the issues we are discussing. If you are unable to prepare for a particular class, be sure to indicate so on the Pass Sheet, which will be at the podium. You may pass twice without any negative effect to your final grade.

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 a combination of unpreparedness, not paying attention in class, and absences (even if you are within the five-absence limit).

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!
Class Website

On the first week of class, a class website will be set up on Lexis. To enroll, follow the following steps:

- Go to www.lexisnexis.com/lawschool and sign in with your custom ID and password
- Once on the home page, under "Learning LexisNexis">"Class Preparation," select the “Access Web Courses” link. Web Courses will open in a separate page
- Click on the red “Courses” tab at the top of the page
- Under “Course Catalogue,” Click the “University of Houston” link
- Scroll down the list to find “2016 Federal Courts” with Professor Kumar as the instructor
- Click the “Enroll” button

If you have any questions on accessing the class website, contact our Lexis representative Billy Saqr (billy.saqr@lexisnexis.com).

Please access the class website early in the semester. This is where I post recordings of lectures, updated syllabuses, and handouts. Do not wait until two weeks before finals.

Audio 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. Having lectures recorded is a privilege. If there is ever a class where more than 20% of the class is absent (excluding poor weather and make-up classes), the lecture will not be recorded.

Grading

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 a mix of short answer and essay questions. There will be a word limit on the essay portion of the exam.

Office Hours: Tuesdays, 1:30pm-3pm (shared with administrative law)

I encourage everyone to come to office hours, whether to talk about class material, career goals, or anything else. If you have a question outside of office hours, feel free to e-mail me. Please do not stop by my office outside office hours without e-mailing me first to check my availability—sometimes I am busy preparing for another class or working on research.

Miscellaneous Class Policies

- **First Names.** I call on students by first names, because it is the only way I’ll ever learn your first name.
- **Socratic Method.** I will randomly call on students to discuss cases. To do this, I will shuffle a deck of index cards that you fill out on the first day and select a card. This means if you get called on one class, you can still be called on the following class. Or your card may never come up.
- **Volunteering and Class Participation.** Students are always welcome to volunteer to discuss cases. Students can also make comments and ask questions in class.
- **Laptop Use.** Use of laptops is permitted, with the caveat that studies indicate students learn more when they handwrite notes. Although I do not prohibit web surfing, if your behavior becomes distracting to other students or to me, you will risk a 1/3 letter grade drop for poor participation.
Reading
Each class will cover one square bullet point worth of material. Please note this material is tentative and it will be updated prior to the first day of class.

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.

- **Federal Common Law: Rights and duties of the U.S.** p. 103–118
  - Case: *U.S. v. Little Lake Misere Land*
- **Federal Common Law: Rights and duties of private parties.** p. 119–137
  - Case: *Boyle v. United Tech.*
- **Implied Right of Action to Enforce Federal Statutes.** p. 140–149; 153–163
  - Cases: *Cort v. Ash; Stoneridge Investment Partners v. Scientific Atlanta*
- **Right to Enforce Constitutional Rights.** p. 167–187
  - Case: *Bivens v. Six Unknown Named Agents*
- **Customary International Law: the Alien Tort Statute.** p. 197–201, 207–222 (skip n.3), 223–227
  - Case: *Sosa v. Alvarez-Machain*
- **The Presumption Against Extraterritoriality.** *Aramco* handout; p. 228–240;
  - Cases: *Kiobel v. Royal Dutch Petroleum, EEOC v. Arabian American Oil Co. (Aramco)*

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.

- **Judicial Review.** p. 241–254
  - Case: *Marbury v. Madison*
- **Constitutional Standing**
- **Zone of Interests**
- **Ripeness**
- **Mootness**
- **Political Questions**

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.

- **Limits to Federal Jurisdiction; Power to Regulate Federal Rules of Decision and Judgments.**
  - Case: *Ex parte McCardle, Plaut v. Spendthrift Farm*
- **Power to Expand Federal Jurisdiction.**
- **Non-Article III Courts**
- **International Tribunal**
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.

- Federal Question Jurisdiction
- Finality and Appellate Review

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.

- Younger Abstention
- Pullman and Burbford Abstention
- Concurrent Litigation; International Comity Abstention

F. State Sovereign Immunity and the Eleventh Amendment
The Eleventh Amendment limits private actions brought against states in federal court.

- Nature of the Limitation
- Consent and Constitutional Abrogation

Section 1983 was created under the Civil Rights Act of 1871 and was originally passed to combat racial violence by state officials. It is now far more expansive, allowing for cash damages from state and municipal officials who violate constitutional rights.

- Under Color of Law
- Official Immunities
- Governmental Liability