

**Spring 2023 Federal Courts**  
**Prof. Kumar (skumar@central.uh.edu)**  
Administrative Assistant: Harold Bradford (hpbradfo@central.uh.edu)

## OVERVIEW

Federal Courts is the study of the judicial branch as an institution. This class includes material relating to civil procedure, constitutional law, and public international law. It will focus on the power struggles between federal courts and institutions such as Congress, the executive branch, and state courts, and foreign courts. This class covers some constitutional law and civil procedure materials that are tested on the Uniform Bar Exam.

## CASEBOOK

The assigned casebook is Low, Jeffries, Bradley, Federal Courts and the Law of the Federal-State Relations (9th ed). **Please be aware that the assigned 9th edition is NOT the most recent edition of the casebook!** Nevertheless, new copies will continue to be available in the bookstore and online (both print and electronic versions) through West. A 15% discount from West is available with the code WAHOUSTON. There should also be used copies available online. A copy of this casebook should be on reserve in the library.

## ATTENDANCE POLICY

For each class, you will sign in with your first and last name [using this online form](#). You may not sign into class unless you attend at least one hour of class. It is an honor code violation to sign in for somebody else or to sign in when you did not attend at least one hour of class. Note that I will cross-check this information against Zoom attendance records. If you forget to sign in, please immediately contact my assistant Harold Bradford and let him know. 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. If you have questions about how many absences that you have, please contact Harold Bradford and copy me. 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.

If you need to miss one class, please do not e-mail me (unless you are scheduled to be on-call). 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.

## TEACHING ASSISTANT

This class will have a teaching assistant—3L Sarah Smati (slsmati@uh.edu). She will hold office hours (in addition to my own) and will be able to give you individualized feedback on practice problems.

## CLASS PREPARATION

This class will utilize a partially flipped classroom. Beginning with the second class, there will be a narrated powerpoint (available on the 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.

## CLASS WEBSITE

A class website is now available on Lexis. The website contains pre-lectures for each class, handouts, the current syllabus, and old exams. It will also contain audio recordings of classes. I will post instructions for connecting to the class via Zoom prior to the first day of class. All announcements for the class will be posted onto the class website, so please sign up early in the semester. If you do not have a UH Lexis account, please contact our Lexis rep, Adriana Ramirez, for assistance: [adriana.ramirez@lexisnexis.com](mailto:adriana.ramirez@lexisnexis.com).

## **PARTICIPATION**

Each student will be assigned to a panel before the second class. Students with poor class participation will have their final grade dropped by 1/3 of a letter grade. This includes missing class when one's panel is on-call (and failing to promptly contact me to make it up). 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 and not paying attention in class, even if you are within the six-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.

## **ZOOM**

This class will be taught via Zoom. The meeting information will be distributed to all registered students a few days before the first class. 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 Zoom meeting will be set up to mute you automatically upon entry). Video generally needs to stay on for the entire class. If you have circumstances that make it difficult to keep video on, please discuss them with me ahead of time (or send me a message on Zoom). If you need to use both your phone and your computer to connect, that is not a problem.
- When your panel is on call, try to use a headset and find a quiet location to attend class. Please try to avoid using your computer's built-in audio, because the sound quality tends to be low and it picks up more background noise.
- You must identify yourself with your first and last name in the Zoom videoconferencing software. This is extremely important, given that I will cross-check the sign-in sheet against the Zoom attendance log.
- Please do your best to present yourself professionally, both in attire and in conduct.

## **AUDIO RECORDINGS OF LECTURES**

Audio recordings of class will be posted to the class website. They 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. You may not make your own recordings of class lectures.

## **ASSESSMENT METHOD**

Your grade in the class will be based on a remote-administered exam. The exam will be open book and open notes. The format of the exam will be essay and short answer, and there will be a word limit. Citing cases that we did not cover will cause your answer to be marked down. You may not copy and paste materials onto your exam. During the exam, you may not use help from another person or from artificial intelligence.

## **OFFICE HOURS**

Zoom office hours will be held Tuesdays 3:30-4:30pm.

## **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 must be respected in my classroom. Please reach out to me if you want to make me aware of your chosen name or preferred pronoun, or if you have any concerns.

### Reading

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. In-class problems should be read in advance, but don't need to be worked in advance unless otherwise specified.

#### **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 (Jan. 18). 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 (Jan. 23). Federal Common Law: Rights and Duties of Private Parties.** 132–154, Problem 1.  
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 (Jan. 25). 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 the dissent]; Alexander v. Sandoval; Stoneridge Investment Partners v. Scientific-Atlanta
- **Class 4 (Jan. 30). Enforcing Constitutional Rights Against Federal Officers.** 182–197, 208–212; 2022 Supplement (available on class website) pp. 2–3 (Egbert v. Boule); 28 U.S.C. §§ 1331 and 1442; Problem 2 (if time).  
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

#### **B. 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 5 (Feb. 1). Under Color of State Law.** 1235–1250; 42 U.S.C. §§ 1983, 1343(3); Problem 3.

- **Case:** Monroe v. Pape
- [No class February 6]
- **Class 6 (Feb. 8). Official Immunities.** 1250–1274; 42 U.S.C. § 1988; Volokh Conspiracy blog post: <https://reason.com/volokh/2021/07/02/justice-thomas-takes-another-shot-at-qualified-immunity/>; ABA blog post: [https://www.americanbar.org/groups/public\\_education/publications/insights-on-law-and-society/volume-21/issue-1/qualified-immunity/](https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-21/issue-1/qualified-immunity/)
  - **Cases:** Scheuer v. Rhodes; Harlow v. Fitzgerald
- **Class 7 (Feb. 13). Government Liability & Non-Constitutional Rights Enforceable under § 1983.** 1300–1316, 1425–1432; Problem 4 (work in advance if you have time).
  - **Cases:** Monell v. Dept. Social Services; Middlesex County v. Nat’l Sea Clammers; Smith v. Robinson; Gonzaga University v. Doe

### C. 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 8 (Feb. 15). Failure to Train as Official Policy, Judicial Review, Introduction to Standing.** 1362–1366, 263–279.

Marbury v. Madison is a case that is familiar to all law 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 the political question doctrine.

  - **Case:** City of Canton v. Harris; Connick v. Thompson; Marbury v. Madison
- **Class 9 (Feb. 20). Standing.** 280–303, 322 n.6 (Spokeo v. Robins).

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.

  - **Cases:** Allen v. Wright; Clapper v. Amnesty Int’l, Spokeo v. Robins
- **Class 10 (Feb. 22). Standing (cont.), Ripeness.** *TransUnion v. Ramirez* (excerpt); 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:** *TransUnion v. Ramirez*; *United Public Workers v. Mitchell*; *Poe v. Ullman*
- **Class 11 (Feb. 27). Mootness.** 420–443, Problem 5.

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 12 (March 1). Introduction to Political Questions.** Problem 6; 462–470, 472–486, Problem 6. 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 13 (March 6). Gerrymandering.** 470–472; excerpt of *Rucho v. Common Cause*. Optional Texas gerrymandering articles: <https://www.texasmonthly.com/news-politics/texas-gerrymandering-2021/>; <https://fivethirtyeight.com/videos/texas-may-have-the-worst-gerrymander-in-the-country/>

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*

#### D. 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 14 (March 8). Limits to Federal Jurisdiction.** 487–507.

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 McCardle*; *Sheldon v. Sill*; *Webster v. Doe*
- **Class 15 (March 20). 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 16 (March 22). Power to Create Non-Article III Courts.** Read 573–574, 580–585, 589–608.

In addition to Article III courts, courts can also be organized under Article I of the Constitution. The line between an Article I and Article III court, however, can often be fuzzy.

  - **Cases:** *Northern Pipeline Const. v. Marathan Pipeline*, *Commodity Futures Trading Comm. v. Schor*; *Granfinanciera v. Nordberg*; *Stern v. Marshall*
- **Class 17 (recorded as make-up). 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* (2008)

### E. 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 18 (March 27). Arising Under Jurisdiction.** 647–668; 28 U.S.C. §§ 1331, 1441, 1446.  
This class looks at the scope of § 1331 “arising under” jurisdiction and considers when cases can be removed to federal court.
  - Cases: *Merrell Dow Pharma. v. Thompson*; *Grable & Sons v. Darue Engineering*; *Gunn v. Minton*
- **Class 19 (March 29). Supplemental Jurisdiction.** 709–732; 28 U.S.C. §§ 1332, 1367, Problem 7.  
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 20 (April 3). Finality and Appellate Review.** 760–774; 28 U.S.C. § 1257, Problem 8.  
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*

### F. 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 21 (April 5). 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*; *Dombrowski v. Pfister*; *Younger v. Harris*; *Mitchum v. Foster*
- **Class 22 (April 10). Younger (cont.) & Pullman Abstention.** 827–840; 861–872, Problem 9.  
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 23 (April 12). 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.*

## G. 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 24 (April 17). 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 25 (April 19). Congressional Abrogation of State Sovereign Immunity.** 1140–64; skim 1164–71; read 2022 Supplement pp. 6–8 (available on class website)  
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* (I won’t call on anyone for this case); *Torres v. Texas Dept. of Public Safety*
- **Class 26 (April 24). Abrogation of State Sovereign Immunity Under 14th Amendment § 5, Constitutionally Required Remedies in State Court.** 1189–1214; 14th Amendment.  
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*; *Nev. Dept. of Human Res. v. Hibbs*, *Coleman v. Ct of Appeals of MD*

**Class 27. Review (April 26).** Please e-mail questions and topics for the review in advance.

## SYLLABUS NOTICES THAT UHLC REQUIRES [Updated: Jan. 10, 2023]

- **Counseling and Psychological Services.**
  - ◆ 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 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.
  - ◆ The Texas Lawyers’ Assistance Program (“TLAP”) also supports law students who are dealing with stress, anxiety, depression, substance abuse, and other mental health problems. You can reach TLAP at any time at 1-800-343-8527. TLAP’s website includes a page with links to sources about mental health that are of interest to law students: <https://www.tlaphelps.org/law-students>.
- **Anti-Discrimination and Sexual Misconduct Policies**
  - ◆ UHLC and the University of Houston are committed to maintaining and strengthening an educational, working, and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, a confidential reporting process is available to you. For more information, please refer to the University System’s Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08.
  - ◆ Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty and other University employees are required to report to the University any information received regarding sexual misconduct as defined in the policy. Due to this reporting requirement, faculty members and other employees are not a confidential resource. The reporting obligations under the sexual misconduct policy extends to alleged conduct by University employees and students.

## SYLLABUS NOTICES THAT UH REQUIRES [Updated: Jan. 10, 2023]

- COVID-19 Information. Students are encouraged to visit the University’s [COVID-19](#) website for important information including diagnosis and symptom protocols, testing, vaccine information, and post-exposure guidance. Please check the website throughout the semester for updates.
- Reasonable Academic Adjustments/Auxiliary Aids. The University of Houston complies with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, pertaining to the provision of reasonable academic adjustments/auxiliary aids for disabled students. In accordance with Section 504 and ADA guidelines, UH strives to provide reasonable academic adjustments/auxiliary aids to students who request and require them. If you believe that you have a disability requiring an academic adjustments/auxiliary aid, please contact [the Justin Dart Jr. Student Accessibility Center](#) (formerly the Justin Dart, Jr. Center for Students with DisABILITIES).
- Recording of Class. 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 [Justin Dart, Jr. Student Accessibility Center](#). 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.