Syllabus--Federal Courts
Law 534, Section 001
Professor Dawson

Course Time and Room:
Tuesday and Thursday, 9:30-10:45, Room 251 (except as noted on weekly schedule below)

Professor's Information:
Professor Edward Dawson
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Office Hours/ Availability:
My office hours are Monday through Wednesday from 3:00-4:00. You are welcome to come by during office hours with questions without making an appointment. You may also request an appointment outside office hours by sending me an email. You can also send me questions by email, but I may ask you to come by if the question isn't easily answered by email. I check my email regularly during business hours (9 am-6 pm Monday through Friday); outside of those times I may not respond the same day.

Required Course Materials:
• Wright, Oakley and Bassett, Federal Courts: Cases and Materials (13th ed. 2013)
• Mullenix, Redish, and Vairo, Understanding Federal Courts and Jurisdiction (2d ed. 2015)

Course Overview:
This course focuses on federal jurisdiction and procedure, and issues of federal-state relations that arise in federal court. It combines advanced civil procedure and advanced constitutional law topics relating to the judicial branch, the separation of powers, and our federal system of government. Some topics may be familiar to you from civil procedure or constitutional law; others will be new. You will learn about these topics by reading the assigned texts, lecture, in-class questions, class discussion, problems, group exercises, and written assignments.

Learning Objectives:
At the end of this course, a student should be able to:
• Explain the fundamental course themes of limited jurisdiction, separation of powers, and federalism, and discuss these themes with reference to specific cases, statutes, and doctrines covered in class.
• Master the fundamentals of federal-court jurisdiction by learning the relevant constitutional provisions, statutes and judicial doctrines, and applying the rules to analyze whether there is federal jurisdiction in a hypothetical case.

1 On this syllabus, highlighting identifies clickable hyperlinks.
• Be able to answer bar-style multiple-choice questions and write bar-style essay answers on topics covered on the civil procedure and constitutional law sections of the Multistate Bar Exam including justiciability, jurisdiction, federal common law, state sovereign immunity, and state-federal relations.
  
  o You can see the topics covered on the MEE and MBE in civil procedure and constitutional law here and here.

• Orally explain cases and doctrines covered in the class, through practice via call and individual and group problem solving.

• Express and explain a sophisticated understanding of how legal doctrine develops over time through a line of precedents, and how doctrine may change with changes in composition of the Supreme Court.

• Understand and explain how the doctrines covered in the course can arise in federal court practice, and how the rules may be used strategically and tactically for litigation advantage.

Reading:

For each class, you are expected to do the assigned reading, and I will ask you questions about the reading in class according to the call policy described below. The casebook is the Wright, Oakley book (13th ed. 2013) and its 2016 supplement. In this case book, the footnotes contain a lot of important material (of the type that is often in the “notes and questions” section in other casebooks) so you should read the footnotes closely. Material in these notes is fair game for the exam. The Mullenix book is a treatise that provides background and context and also lays out the black-letter rules in a straightforward way. For some of the topics we cover, it will be the main source for the topic. Material assigned from that book is also fair game for the exam.

Class Attendance:

You are allowed six absences for this course. Since the material for this course is challenging, I recommend you not miss class unless it is truly necessary. If you maximize your absences, it can affect your participation grade. If you are at or near the absence limit but feel that extraordinary circumstances account for your absences, you can see me and explain. Finally, as described in the call policy in the next section, being unprepared in class can count as an absence.

Call and Attentiveness Policy:

I will call on students using a random call list—once you have been called on you won’t be eligible to be called on again until I have been through the entire list. You may “note out” before class by giving me a note or telling me that you are not prepared to be on call; noting out counts as an absence. If I call on you and you are unprepared or have not done the reading, I will mark you as absent for that class, the absence will count towards the limit for the semester, and you will remain on the call list.

If I observe that you appear to be using a computer or phone during class for non-class activities, I will warn you once by email and after that may deduct from your participation score. If I observe that whatever you are doing on your computer is distracting other students, I will warn you once by email and if I observe it again will disallow your use of the computer during class.
Recording Policy:
The course sessions will not be recorded except as needed for disability accommodation.

Assignments and Problems:
We will have several problems that we may work as group exercises or individual written assignments. Some I will distribute before class and ask you to prepare answers in advance. Others I will give to you in class and ask you to write or explain an answer on the spot. These problems will not be graded, but your completion and participation can affect your class participation grade.

Grades:
Your grade will be determined by a combination of your performance on a midterm, your performance on the final exam, and your class participation. The midterm will count for 20% of your grade, the final for 70%, and participation will count for 10%. Grades for the course will be assigned based on the law school grading policy, which is available at http://www.law.siu.edu/_common/documents/rules-code/grading-rules-ay16-17.pdf

The midterm will be on Thursday, March 9th, during the normal class period, and will consist of one essay and several multiple-choice questions. I will provide you individual feedback on your essay answers as well as an opportunity to meet with me to discuss your answer. If your answer falls below a certain score, I will require you to meet with me and attending that meeting will be a condition of receiving credit in the course.

The final exam will be on Friday, May 5, at 1:15-4:15 PM. It will consist of one or more essays and several multiple-choice questions. The final exam will be cumulative, that is, it will cover material from the entire semester.

Your participation score will be assessed based on your record of attendance, your attentiveness during class, your performance when called on, your performance on any problems or exercises for the class, your willingness to volunteer or engage in dialogue, and your willingness to ask questions to clarify material you do not understand. You do not have to volunteer to speak or ask questions outside of class to get full points for participation; you do have to be prepared when you are called on and participate in or complete exercises and problems during class.

Workload Expectations:
The American Bar Association standards for accrediting law schools define “a “credit hour” as an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time.” This is a 3-credit hour class, meaning that we will spend two 75-minute blocks of time together each week. The amount of assigned reading and out of class preparation should take you about 3 hours for each class session and 6 hours for the week. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a total of 9 hours per week (3 in class and 6 preparing for class) on course-related work.

TWEN Page:
There is a TWEN page for this course, and you should sign up for it. On that page I will post course documents such as this syllabus, handouts, and any powerpoint slides I use in class.
Weekly Schedule and Outline:

Below is a list of the reading assignments and topics for each course session. The sessions are organized within an outline format that is intended to give you an overview of how each session fits into the larger structure of the course. I may adjust the assignments may change depending on how fast we move through the material; I will give you advance notice of changes and update the syllabus as we go. I may also assign additional reading or distribute problems to be worked in advance of class. When I do I will give you advance notice in class and post the material on TWEN in advance of the day for which it is assigned.

In the schedule below, “W&O” means the main Wright and Oakley casebook, “W&O Supp.” means the 2016 supplement to the casebook, and “Mullenix” means the *Understanding Federal Courts* treatise. I have included the pages assigned for each class so you can see which days have heavier reading loads.

I. Introduction

*Introduction to the course and course procedures. Overview of the course themes of limited jurisdiction, separation of powers, and federalism. Examination of Article III, the source of federal judicial power, and what it says about federal judges and jurisdiction.*

1. Tuesday, January 17, 2017
Topics: Introduction to the Course and Procedures; Federal Judicial Power’s Origins and Limits
Assignment:
- W&O pp. 4-8, 11-13 (8 pp)
- Mullenix pp. 3-10, 713-14 (10 pp.)

II. Congress’s Control Over Federal Court Jurisdiction

*Article III makes the federal courts a separate branch of government, but gives Congress various powers to establish and limit the jurisdiction of federal courts—that is, to decide what kind of federal courts there will be, and what disputes those courts can hear. In this part of the course we examine Congress’s powers and the limits of those powers.*

2. Thursday, January 19, 2017
Topics: Congress’s Power Over (1) Lower Courts’ Jurisdiction; (2) Supreme Court Jurisdiction; (3) Assigning Non-Article III Work to Article III Judges
Assignment:
- W&O pp. 8-11, 1004-1008 (9 pp.)
- Mullenix pp. 11-40, 42-47 (36 pp.)
III. Justiciability

“Justiciability” describes a set of doctrines that federal courts have developed to limit themselves to only hearing real “cases and controversies.” These doctrines are rooted in Article III and separation of powers, and are judge-made, not statutory (i.e., Congress-made). In this part we examine these justiciability doctrines.

4. Thursday, January 26, 2017
Topics: Overview of Justiciability; Standing
Assignment:
- W&O Supp. pp. 18-47 (30 pp.)
- Mullenix pp. 73-96 (24 pp.)

5. Tuesday, January 31, 2017
Topic: Advanced Issues in Standing; Ripeness, Mootness
Assignment:
- W&O pp. 64-74 (11 pp.)
- Mullenix pp. 97-122 (26 pp.)

6. Thursday, February 2, 2017
Topic: Political Question Doctrine; Wrapup on Justiciability
Assignment:
- W&O pp. 14-22 (9 pp.)
- W&O Supp. pp. 1-17 (18 pp.)
- Mullenix pp. 122-145 (23 pp.)

Tuesday, February 7, 2017—no class on this day. This class will be made-up for by a video makeup as mentioned towards the end of the syllabus.

IV. Jurisdiction

Jurisdiction is a court’s power to hear a lawsuit. Because federal courts have limited jurisdiction, for a lower federal court to have subject matter jurisdiction over a case it must be both within the constitutional limits of Article III and within the coverage of a federal jurisdictional statute. In this part we cover the two most often used jurisdictional statutes—federal question and diversity. We also cover supplemental jurisdiction, which is the power of federal courts to hear some state-law claims when raised in the same suit as federal claims, briefly review review the material on personal jurisdiction covered in Civil Procedure, and conclude by examining how courts determine whether they have jurisdiction and appellate jurisdiction of the federal circuit and United States Supreme Court.
A. Federal Question Jurisdiction

7. Thursday, February 9, 2017  
**Topic:** Introduction to Jurisdiction; Federal Question Jurisdiction pt. 1  
**Assignment:**  
- W&O pp. 108-117, 125-132, 164-169 (23 pp.)  
- Mullenix pp. 193-206, 212-216, 226-229, 713, 715 (52 pp.)

8. Tuesday, February 14, 2017  
**Topic:** Advanced Federal Question Jurisdiction: state claims raising federal law issues, declaratory judgment suits, preemption  
**Assignment:**  
- W&O pp. 134-139, 156-163 (14 pp.)  
- W&O Supp. pp. 50-60 (11 pp.)  
- Mullenix pp. 216-226; 229-241 (24 pp.)

B. Diversity Jurisdiction

9. Thursday, February 16, 2017  
**Topic:** Diversity Jurisdiction pt. 1—Intro to diversity, “complete diversity,” time of determining diversity, collusive and fraudulent attempts to create diversity, do we need diversity jurisdiction at all?  
**Assignment:**  
- W&O pp. 170-179, 222-235 (24 pp.)  
- Mullenix 147-167 (20 pp.)

10. Tuesday, February 21, 2017  
**Topic:** Diversity Jurisdiction, pt. 2—Determining Citizenship for Diversity Purposes, Judge-Made Exceptions to Diversity  
**Assignment:**  
- W&O pp. 180-197 (18 pp.)  
- W&O Supp. pp. 60-63 (4 pp.)  
- Mullenix pp. 167-182 (16 pp.)

11. Thursday, February 23, 2017  
**Topic:** Diversity Jurisdiction, pt. 3—Jurisdictional Amount in Controversy  
**Assignment:**  
- W&O pp. 236-259 (24 pp.)  
- Mullenix pp. 182-191 (10 pp.)

C. Supplemental Jurisdiction

12. Tuesday, February 28, 2017  
**Topic:** Supplemental Jurisdiction  
**Assignment:**  
- W&O pp. 263-268, 286-289, 314-326 (23 pp.)  
- Mullenix pp. 243-269 (27 pp.)
D. Personal Jurisdiction

13. Thursday, March 2, 2017
Topic: Personal Jurisdiction
Assignment:
- Excerpts from recent Supreme Court decisions on personal jurisdiction, to be posted on TWEN.
- Mullenix pp. 351-376, 714 (27 pp.)

E. Determining Jurisdiction; Appellate and Supreme Court Jurisdiction

14. Tuesday, March 7, 2017
Topic: Procedure for and Power of Determining Jurisdiction; Appellate Jurisdiction and Supreme Court Review
Assignment:
- W&O pp. 457-464, 979-992, 1009-1012, 1025-1031, 1040 (34 pp.)

15. Thursday, March 9, 2017
MIDTERM EXAM: The midterm will cover material through class #13 (Personal Jurisdiction)

SPRING BREAK: March 14 and March 16, 2017

V. Removal and Venue

While jurisdiction is about whether a federal court can hear a case, removal and venue are both about which court will hear a case. Removal is a defendant's right to bring some cases out of state court into federal court. We will cover which cases are removable and the procedures for removing and challenging removal. Venue is about which federal court is the right location to hear a case. We will cover the rules for where venue is proper, and the rules for changing venue (1) when a case is filed in an improper venue, and (2) when a case is filed in a proper venue but another venue is more “convenient.” We will also briefly cover the related doctrine of “forum non conveniens,” which allows dismissal when suit is filed in an inconvenient place.

A. Removal

16. Tuesday, March 21, 2017
Topic: Removal pt. 1—Concept of Removal, Requirements for Removal
Assignment:
- W&O pp. 327-332, 347-369, 376-379 (33 pp.)
- Mullenix pp. 271-308 (37 pp.)

17. Thursday, March 23, 2017
Assignment:
- W&O pp. 385-407 (23 pp.)
- Mullenix pp. 320-349 (32 pp.)
18. Tuesday, March 28, 2017
Topic: Venue, pt. 1 – Venue Rules
Assignment:
- W&O pp. 408-426 (18 pp.)
- Mullenix pp. 379-400 (21 pp.)

19. Thursday, March 30, 2017
Topic: Venue pt. 2—Changing Venue, Forum Non Conveniens
Assignment:
- W&O pp. 415-416, 426-439 (16 pp.)
- W&O Supp. pp. 65-74 (10 pp.)
- Mullenix pp. 401-430, 436-448 (43 pp.)

VI. Federal-State Relations in the Federal Courts

The Constitution sets up a system of dual sovereignty in which the federal government and federal law are supreme, but States are independent sovereigns with their own court systems. Federal and state courts operate in parallel, and federal courts are available forums to sue States and State officials for violating federal law. This system leads to federal-state conflicts that often play out in federal courts. In this part, we cover constitutional, statutory, and judge-made limits on the federal courts’ power to interfere with state sovereignty—specifically, limits on their power to enjoin cases pending in state court, to hear cases that are connected to cases that are or should be in state court, and to assert jurisdiction over States and State officials.

20. Tuesday, April 4, 2017
Topics: Introduction to Federalism Issues; Federal Law in State Court; the Anti-Injunction Act
Assignment:
- W&O pp. 469-496 (28 pp.)
- Mullenix pp. 481-526, 710-713 (50 pp.—read pp. 481-495, review pp. 495-526 as needed to understand the Vendo case)

21. Thursday, April 6, 2017
Topics: Tax Injunction Act; Abstention pt. 1—Pullman & Burford abstention
Assignment:
- Excerpt from Direct Marketing Assoc. v. Brohl (on TWEN)
- W&O pp. 578-594, 602-606 (22 pp.)
- Mullenix pp. 530-558 (29 pp.)

22. Tuesday, April 11, 2017
Topic: Abstention pt. 2—Younger Abstention; Abstention Procedures
Assignment:
- W&O pp. 607-641 (35 pp.)
- Mullenix pp. 558-577, 590-595 (26 pp.)
23. Thursday, April 13, 2017
Topic: Federal Court Suits Against States and State officers pt. 1--the 11th Amendment, State Sovereign Immunity, and the Ex Parte Young exception
Assignment:
- W&O pp. 503-512, 536-551 (26 pp.)
- Mullenix pp. 597-640 (44 pp.)

24. Tuesday, April 18, 2017
Topic: Federal Court Suits Against States and State officers pt. 2—Exceptions to Sovereign Immunity: Waiver/Consent and Abrogation; Court-imposed Limits on Congress’s Power to Abrogate
Assignment:
- W&O pp. 513-536, 560-576 (40 pp.)
- Mullenix pp. 640-656 (17 pp.)

VII. The Law Applicable in Federal Courts

In the last substantive part of the course, we examine the law that applies in federal courts. In diversity cases, after Erie held that there is no federal general common law, federal courts must apply state substantive law. We briefly examine how federal courts apply state law in diversity cases. In most federal question cases, the courts apply particular federal constitutional provisions or statutes. However, in a few limited categories of cases, federal courts can still make “federal common law,” and we briefly examine those areas.

25. Makeup class—Topic: Application of State Law in Federal Court (Erie doctrine)
This will be a video makeup that will be posted online. The lecture and reading will review and reinforce the coverage of the Erie doctrine from civil procedure.
Assignment:
- Mullenix pp. 657-696 (40 pp.)

26. Thursday, April 20, 2017
Topic: Federal Common Law
Assignment:
- W&O pp. 809-823, 835-846, 859-860 (30 pp.)
- Mullenix pp. 697-710 (13 pp.)

VIII. Wrap Up and Review

27. Tuesday, April 25, 2017
This class is kept vacant in case during the semester we have a guest speaker, or get behind on the material and need to adjust the schedule.

28. Thursday, April 26, 2017
Topic: Semester Review
Emergency Procedures:

Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT’s website at www.bert.siu.edu, Department of Safety’s website www.dps.siu.edu (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

Disability Support Services:

Disability Support Services provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. http://disabilityservices.siu.edu/. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar’s Office to ensure the School of Law provides the proper classroom and examination accommodations.

Saluki Cares:

The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453–5714, or siucares@siu.edu, http://salukicares.siu.edu/index.html. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618–453–3135.