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

Course Time and Room:
Tuesday and Thursday, 9:00-10:15, Room 108 (except as noted on weekly schedule below)

Professor's Information:
Professor Edward Dawson
Office #240; email: edawson@siu.edu

Office Hours/ Availability:
My office hours are Monday through Wednesday from 2:30-4:00. During office hours, I will be available to take your questions unless I let you know in advance that I will be out on a particular day. You are welcome to come by during office hours to ask questions without making an appointment. You may also request an appointment outside office hours by sending me an email; I am generally in my office most days when I am not teaching class. 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 email regularly during business hours (9 am-5pm Mon. through Fri.); outside those times I may not respond the same day.

Required Course Materials:
• Erwin Chemerisnky, Federal Jurisdiction (7th ed 2016)
• Supplemental readings and problems as posted on the course’s TWEN page or linked to on this syllabus. This will include problems that you will need to prepare before class, statutory provisions not available in the text, and excerpts from recent (post 2016) Supreme Court cases that are relevant to our topics.

Suggested Course Materials:
For students who like to use a supplement, I recommend Laura Little, Federal Courts: Examples and Explanations (3d ed.). Since our main casebook is itself a treatise, I don’t think the supplement is necessary but that is my recommendation if you feel you want to purchase one.

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, separation of powers, and our federal system of dual sovereignty. 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, preparing assignments for class, listening to lecture, answering in-class questions, and participating during class in discussion, problem solving, group exercises, and writing exercises.

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 subject matter 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.
• 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 due to 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 Chemerinsky treatise Federal Jurisdiction (7th 3d. 2016); there will also sometimes be additional reading material posted on TWEN, as noted on the weekly schedule below.

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. As described in the call policy in the next section, being unprepared in class can count as an absence.

The school of law’s attendance policy is available at this link: http://law.siu.edu/_common/documents/rules-code/attendance-rules-ay17-18.pdf

It explains, among other things, the penalties for exceeding the absence limit, which can include a grade reduction or withdrawal from the course.

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. I will try to circulate before each class, at least 24 hours before class, the questions that I expect you to be prepared to discuss in class each day. I expect you, if called on, to be able to answer those questions or to tell me specifically why you couldn’t figure out an answer.

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. Being unprepared when called upon will also affect your class participation grade, as explained in the grading section below. So, the advantage of noting out is that it will not affect your grade in the course, unlike being called on and not being prepared.

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 or other device is distracting other students, I will warn you once by email and if I observe it again will disallow your use of the computer or other device during class.

**Recording Policy:**

Classes will be recorded; the recordings will be available by request. To access a recording of a class, email me the request and I will authorize IT to send you the link. Watching a recording of a class does not count to satisfy an absence unless necessary to accommodate a disability or unless you request and receive my approval.

**Assignments and Problems:**

The syllabus lists a number of assignments that I will post on TWEN and expect you to complete before class and turn in at the beginning of class. Each of these counts towards your class participation grade, as described on the syllabus below. We may also have in class problems that we will use for discussion or group exercises.

**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 60%, and class participation will count for 20%. 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-ay17-18.pdf](http://www.law.siu.edu/_common/documents/rules-code/grading-rules-ay17-18.pdf)

The midterm will be on Thursday, March 8th, 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.

The final exam will be on Friday, May 2, 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 completion of the assignments as listed on the weekly schedule below, performance on call, and your participation in class discussion and group exercises.

There are 10 assignments on the weekly schedule, you will get 1 point for completing each of them. You will have to turn the assignment in at the beginning of the class to receive credit; if you prefer to email it I must receive the email before class starts for you to receive credit. You do not have to get all of the answers right to get credit; my standard for credit will be whether your submission demonstrates that you read the assigned material and made a sincere effort to answer the questions.
posed. The remaining 10 participation points will be based on how attentive you are in class, how you perform when called on in class, and your degree of effort when we discuss problems or conduct group exercises in class. As for call, if you are able to answer the questions I’ve circulated in advance of class, or to explain specifically why you have trouble answering them, I will consider you prepared. If you are unprepared when called on you will lose a point from your participation grade; if you are unprepared a second time you will lose 2 points, 3 points for the third time, and so on.

If you are absent on a day when I would have called on you, I will call on you during the next class you are present; you will not be penalized if you are prepared when I call on you then. If you are absent and unable to turn in one of the assignments listed below, you may be allowed to turn it in for credit outside of class if you notify me and request permission in advance of the class that you miss.

You do not have to volunteer to speak or ask questions outside of class to get full points for participation; you do have to complete the assignments, be prepared when you are called on, and participate in or complete during class the exercises we will use to build understanding of the material.

**Plagiarism and Collaboration**

You are welcome to collaborate in preparing for class, in working on the assignments that are due for certain classes as noted on the weekly schedule, and in discussing and giving answers to various, group exercises we may do in class. Collaboration means working together to answer questions, or comparing one’s own answers against another student’s answers. It is not ok for one student to copy another student’s answers for an assignment or for students to divide up an assignment and copy each other’s answers to the other parts. Doing either of those things would be considered by me to be an honor code violation by both the copier and by the person whose answers were copied.

The exams in this class are closed-book and no outside sources or collaboration with other students are allowed.

**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. I will also post supplemental reading and problems on the TWEN page.
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. If 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, “FJ” means the Chemerinsky treatise. The treatise presents an overview of the subject matter, with attention to leading cases. In class we will discuss the rules, the policy reasons for the rules, and some of the leading cases. We will also work problems and exercises to confirm understanding of the material.

I. Introduction to Course and Course Themes

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

1. Tuesday, January 16, 2018

   Topics: Introduction to the Course and Procedures; Federal Judicial Power’s Origins and Limits

   Reading:
   - Syllabus
   - FJ pp. 1-19; 1037-1046 (original constitution)

2. Thursday, January 18, 2018

   Topic: Structure and history of Article III courts; intro to justiciability; ban on advisory opinions

   Reading:
   - FJ pp. 20-54; 1044-45 (Article III)

II. 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.

3. Tuesday, January 23, 2018

   Topic: Standing, pt. I – injury

   Reading:
   - FJ pp. 55-77
   - Excerpt from Spokeo v. Robins, posted on TWEN
4. **Thursday, January 25, 2018**  
**Topics:** Standing, pt. II – causation, redressibility, third-party standing and generalized grievances  
**Reading:**  
- FJ pp. 78-106

5. **Tuesday, January 30, 2018**  
**Topics:** Advanced Issues in Standing; Ripeness; Mootness  
**Reading:**  
- FJ pp. 112-154

6. **Thursday, February 1, 2018**  
**Topic:** Political Question Doctrine; Wrapup on Justiciability  
**Reading:**  
- FJ 157-183  
**Assignment #1:**  
- Justiciability review problems, to be posted on TWEN

III. Congress’s Power 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.*

7. **Tuesday, February 6, 2018**  
**Topic:** Congress’s power to control jurisdiction of Supreme Court  
**Reading:**  
- FJ pp. 185-208; 1044-45; 1055-56 (stop after 28 U.S.C §1257)

8. **Thursday, February 8, 2018**  
**Topics:** Congress’s power to control jurisdiction of lower federal courts and state courts  
**Reading:**  
- FJ pp. 208-232; p. 1046 (Article VI, 2d paragraph—Supremacy Clause)  
- Excerpt from *Bank Markazi v. Petersen*, to be posted on TWEN  
**Assignment #2:**  
- Problems on Congressional control over jurisdiction, to be posted on TWEN

9. **Tuesday, February 13, 2018**  
**Topic:** Congress’s power to assign disputes to non-Article III courts, pt. 1  
**Reading:**  
- FJ pp. 233-262
10. Thursday, February 15, 2018
Topic: Congress’s power to assign disputes to non-Article III courts, pt. 2
Reading:
• FJ pp. 263-284
Assignment #3:
• In class, we will write a practice essay based on the material on non-Article III courts, focusing on the material on use of non-Article III courts to resolve disputes between private parties.

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, and the removal of claims from state to federal court based on the existence of federal subject matter jurisdiction over a case.

11. Tuesday, February 20, 2018
Topic: Intro to subject matter jurisdiction; federal question jurisdiction
Reading:
• FJ pp. 285-318; 1044 (Art. III §2); 1061 (28 U.S.C. §1331)
Assignment #4: Federal question jurisdiction problems, to be posted on TWEN

12. Thursday, February 22, 2018
Topics: Diversity jurisdiction
Reading:
• FJ pp. 318-344; 1044 (Art. III §2); 1061-62 (28 U.S.C. §1332)
Assignment #5: Diversity jurisdiction problems, to be posted on TWEN

13. Tuesday, February 27, 2018
Topics: Supplemental Jurisdiction and Removal; Brief review on venue
Reading:
• FJ pp. 366, 370-372, 375-387; 1069-74 (read 28 U.S.C §§ 1367, §1441, and §§1446-1448; glance at the titles of §§1442-1445)
• Supplemental reading: venue statutes, posted on TWEN
Assignment #6: problems on supplemental jurisdiction, removal, and venue, to be posted on TWEN

V. Applicable Law in Federal Courts

This unit covers issues relating to the substantive law that applies in federal court litigation. We first review the rules federal courts use to determine what substantive laws apply in diversity suits. We then cover the federal courts’ power to make “federal common law”—substantive legal rules for resolving federal questions when no federal statute provides substantive rules of decision, or when no federal statute provides a federal cause of action.
14. Thursday, March 1, 2018
Topic: Choice of law in diversity cases; personal jurisdiction overview and review

Reading:

15. Tuesday, March 6, 2018
Topic: Catch-up, review, practice problems, and consolidation
Assignment #7:
- Prepare an outline of the material that we covered for the first half of the semester
- Prepare questions about materials for semester so far or about exam structure or exam taking

16. Thursday, March 8, 2018
MIDTERM EXAM:
The midterm will cover material through class #14

SPRING BREAK= March 10-March 18

17. Tuesday, March 20, 2018
Topic: Federal Common Law

Reading:
- FJ pp. 389-420, 1067 (28 U.S.C §1350)

18. Thursday, March 23, 2018
Topic: Eleventh Amendment, pt. I

Reading:
- FJ pp. 429-458
19. Tuesday, March 27, 2018  
Topic: Eleventh Amendment, pt. II  
Reading:  
• FJ pp. 458-488

20. Thursday, March 29, 2018  
Topic: Eleventh Amendment pt. III  
Reading:  
• FJ pp. 488-508  
Assignment #8: Eleventh Amendment Problems, to be posted on TWEN

21. Tuesday April 3, 2018  
Topics: Suing governments and government officials in federal court  
Reading:  
• Short summary on federal-court suits against state and federal officials, to be posted on TWEN

VII. Supreme Court and Appellate Jurisdiction  
We return to the topic of jurisdiction to cover the jurisdiction of the United States Supreme Court to review the judgments of lower federal courts and of state courts. We will also briefly cover the appellate jurisdiction of the United States Courts of Appeals.

22. Thursday April 5, 2018  
Topics: Supreme Court and appellate jurisdiction, pt. I  
Reading:  
Assignment #9: Go to a website that lists and describes the cases on the Supreme Court’s docket for the current term (October Term 2017), such as https://www.oyez.org/cases/2017 or http://www.scotusblog.com/case-files/terms/ot2017/. Pick one case from this term, and answer the questions about that case on the problem sheet that I will post on TWEN.

23. Tuesday, April 10, 2018  
Topic: Supreme Court and appellate jurisdiction, pt. II  
Reading:  
• FJ pp. 726-30, 741-758, 761-775, 1056-57 (28 U.S.C. §§1291, 1292 (a) & (b))

VIII. Federalism Limits on Federal Court Suits  
In this final unit we cover statutory and judge-made limits on the federal courts’ power to interfere with state sovereignty, especially proceedings of state 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. We will study statutory limits on federal courts’ power to enjoin cases pending in state court, and judge-made limits on federal courts’ power to hear cases that threaten to intrude on state interests or seek to enjoin or interfere with state court proceedings.
24. Thursday, April 12, 2018  
**Topic:** Anti-Injunction Acts  
**Reading:**  

25. Tuesday, April 17, 2018  
**Topic:** Abstention, pt. I  
**Reading:**  
- FJ pp. 829-854, 866-68, 871-879

26. Thursday, April 19, 2018  
**Topic:** Abstention, pt. II (abstention to avoid interfering with state court proceedings  
**Reading:**  
- FJ pp. 879-911  
**Assignment #10:** Abstention problems, to be posted on TWEN

IX. **Wrap Up and Review**

27. Tuesday, April 24, 2018  
**Topic:** This class is reserved in case we have a guest speaker and/ or need to catch up at the end of the semester. If neither of those things happens, we may use it to extend our coverage of abstention, or for extended review of the material prior to the exam

28. Thursday, April 26, 2018  
**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.