

**Federal Courts
Spring 2012**

*MWF 9:10 am -10:10 am
Room 217*

*Prof. Jeff Dobbins
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*Office: 503-370-6652 (Carnegie Room 209)
(Office Hours 10:30-12:00 MWF)*

Materials

Required:

1) Peter W. Low & John C. Jeffries, Jr., *FEDERAL COURTS AND THE LAW OF FEDERAL-STATE RELATIONS* (Foundation Press, 6th ed., 2007). [Indicated by: L&J pp ___-___.]

Supplemental (on reserve or in the library)

Erwin Chemerinsky, *FEDERAL JURISDICTION* (5th ed. 2007) (on reserve). The 2003 edition is a passable substitute, but there is new information in a number of areas; even this edition is creeping out of date.

For particular topics that you find confusing or on which you would like more information, consider reviewing the relevant sections of the following publications:

Wright, Miller & Cooper, *FEDERAL PRACTICE AND PROCEDURE*
MOORE'S FEDERAL PRACTICE

Course Goals

This course is about the scope of federal court jurisdiction and the relationship between federal courts and the states. By the end of the course, you should have developed a sophisticated understanding of the extent and limits of federal court jurisdiction, as well as of the control that the legislative and executive branches exercise over those courts. You should also have developed a well-rounded understanding of the means and methods of communication between federal courts and state government, and the ways in which federal courts relate to state courts and state governmental officers.

Attendance and Participation

The law school attendance policy applies. However, your presence in and preparation for class will affect your eligibility (and whether you ultimately receive) a half-point grade increase (i.e., B to B+) or decrease (i.e., B- to C+) for class participation (or the lack thereof). Unless you take a "pass" (see 2. below) I expect everyone to be prepared for class and to participate in the discussion.

1. Attendance. You are eligible for a half-point grade increase for participation only if you miss fewer than six classes. Even then, such an increase is awarded only for exceptional participation. If you miss five or more classes, you are no longer eligible for the half-point increase (though your participation is always greatly appreciated!). Unique exceptions can be managed by Dean Santos.

2. Preparation. Come prepared for every class. If you are called upon and not prepared, your grade may be reduced by a half grade. You may have up to five "free passes" if you inform me, by note or email, prior to the beginning of the class that you are unprepared (no explanations necessary). If I get a note I won't expect your participation. Free passes are not affected by absences; you can miss four classes and then take four free passes and still receive an increase in your final grade (though if you take that many passes you'd best be quite exceptional!).

Feedback & Office Hours

I welcome feedback at any time (anonymous or otherwise) about the amount and nature of work in the class, about what topics you do and don't understand, as well as about my own approach in trying to teach those topics.

If you have any comments or questions at all, please don't hesitate to contact me by email (best) or in person (office hours, noted above, are the best time, though I'm often around otherwise).

Reading Schedule

You will be able to find the full course reading schedule on the class's WISE website; initial assignments for the class are below. I will also occasionally post supplemental material on the class's WISE site, so you should make sure you can access it (go to wise.willamette.edu).

I. CHOICE OF LAW IN THE FEDERAL SYSTEM**1/9** 1. *Federal or State Court; State Law in Federal Court*

First Class Discussion: Come to class prepared to discuss why you might (a) want to and / or (b) be obligated to litigate a case in federal, as opposed to state, court. What incentives would lead you to recommend federal vs. state court participation to a client? If you are permitted to choose between federal and state court, are you "forum shopping?" If so, is there anything wrong with that – whether for your client or for the legal system generally?

Hopefully, the principles of *Erie* and *Klaxon* are familiar to you from your Civil Procedure classes, but they are a good entrée to themes presented in the course. What is the best interpretation of the Rules of Decision Act's language: "law of the several states"? After reading the facts of *Ferens*, what do you think the outcome should be (if you want, you can read what it was at 30-32).

Reading: ▪ L&J pp. 1- 14, 19-30.
 ▪ Federal Judiciary Act §§ 34 (also known as the
 "Rules of Decision Act," 28 U.S.C. § 1652, L&J p. B-28).

1/11 2. *Substance vs. Procedure*

We jump ahead a little to handle the problems that flow from *Erie* – in particular, the question of how to resolve a given clash between federal and state law approaches in a given case. It sounds simple to distinguish between substance and procedure, but as we shall see, it's not.

Reading: ▪ L&J pp. 629-53 (*Hanna v. Plumer*)

Remaining Reading Assignments can be found on Reading Chart, the first page of which is attached to this Syllabus.

Table of Readings

DATE	TOPIC	LOW & JEFFRIES	OTHER	COMMENTS / ISSUES
<u>I. CHOICE OF LAW IN THE FEDERAL SYSTEM</u>			Please see discussion topics / starting questions on syllabus.	
1/9	1. <i>Federal or State Court; State Law in Federal Courts</i>	1-14, 19-30	Federal Judiciary Act § 34 (28 U.S.C. § 1652), p. B-28	
1/11	Substance vs. Procedure; <i>Hanna</i>	629-653		
1/13	2. <i>Federal Law in State Courts</i>	30-52, 55-58		
1/16	2. <i>Cont'd</i> ; 3. <i>Review of State Court Decisions</i>	58-64; 68-83		
1/18	3. <i>Review of State Court Decisions (ct'd)</i>	83-105	Fictional decision on remand in <i>Bush v. Gore</i>	
<u>II. THE POWER OF FEDERAL COURTS TO CREATE FEDERAL LAW</u>				
1/20	1a. <i>Creation of Federal Common Law</i>	126-142		
1/23	1b. <i>Creation of Federal Common Law</i>	142-164	<i>Boyle</i>	
1/25	2. <i>Creation of Implied Rights of Action</i>	164-177		
1/27	3. <i>Rights of Action to Enforce Constitutional Rights</i>	177-193	<i>Stoneridge Inv.</i>	
1/30	4. <i>Rights of Action to Enforce Constitutional Rights</i>	193-226	Skim <i>Schweiker v. Chilicky</i>, pp. 203-215	
2/1	5. <i>Customary International Law (II)</i>	226-241		
2/3	5. <i>Customary International Law (II)</i>	241-264		