

FEDERAL JURISDICTION

LAW 602-2

FALL 2021

MARTIN LEVY

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THE PROFESSOR

NAME: Martin Levy

TELEPHONE: 713.313.7368

EMAIL: mlevy@profmlevy.com; martin.levy@tmslaw.tsu.edu

LOCATION: 221-B

OFFICE HOURS: MWF: 11-1
(All other times by appointment only)

NOTE FROM THE PROFESSOR:

Information concerning this course, including syllabus, changes in class meeting, and questions from students, etc., will be available on the internet at:

1. WWW.PROFMLEVY.COM
2. TSU Blackboard

COURSE BOOKS & MATERIAL

MATERIALS:

Text: Currie, *Federal Courts*, 4th. Ed., West.

Current Supp. to the same. (If available)

Recommended: Wright, *Federal Courts*, West. (Treatise)

Handouts by instructor.

COURSE DESCRIPTION, LEARNING OBJECTIVES & STUDENT LEARNING OUTCOMES

A study of the procedure practice and procedure under the Federal Rules of Civil Procedure. This course focuses on: 1) the relationship between the federal judiciary and executive and legislative branches of the federal government; and 2) the relationship between the federal courts and the states. The topics covered include Congressional power to control federal court jurisdiction, constitutional and statutory limitations on subject-matter jurisdiction, sovereign and official immunity, abstention, equitable restraint, and other limitations, on the exercise of federal court jurisdiction, the Erie Doctrine, and federal common law. This course may be taken in the second or third year.

GRADING

There will be a comprehensive final examination. The instructor reserves the right to have a "mid-term" examination, with its relative weight to be announced at that time. Please note that the Instructor reserves the right to hold additional examinations as may be deemed necessary. Students will be notified of the value of these exams at said time.

ACCOMMODATIONS

Accommodation will be provided and administered as dictated by the Dean's office. If you require accommodation please provide approval and guidelines from the Dean's office.

PARTICIPATION, ATTENDANCE & PROFESSIONALISM

Because verbal articulation of ones' ideas is an essential commodity in the practice of law, class participation is encouraged. With such in mind both the quality and quantity of class participation will be evaluated and applied as an *added* value of up to **two (2)** points in determination of your final grade. Further to such, the Instructor may assign specific class sessions for students participation, which may be applied as up to 10% of the "Professor's" final grade.

ATTENDANCE: Will be applied as required for a 3 hour class via a sign-in roll sheet disseminated at the commencement of class.

POLICIES & PROCEDURES

All policies and procedures relative to this course are articulated in the Law School Student Rules. All such rules will be complied with by both students and the Instructor.

**TEXAS SOUTHERN UNIVERSITY THURGOOD MARSHALL SCHOOL OF LAW
ACADEMIC CALENDAR FALL 2021**

FALL SEMESTER 2021 FALL SEMESTER 2021 (SEVENTY DAYS OF CLASSES) Orientation Monday-Friday August 9-13, 2021 First Day of Class Monday August 16, 2021 Last Day to ADD/DROP Wednesday August 18, 2021 Labor Day (NO CLASSES) Monday September 6, 2021 Purge of all unpaid course selections Wednesday September 15, 2021 Mid Term Examinations Mon – Fri October 11-15, 2021 Last Day to Drop a Class Friday November 5, 2021 Last Day of Classes Tuesday November 23, 2021 First Year Professors' Grades due Tuesday November 23, 2021 Reading Period Wed November 24, 2021 Thanksgiving Holiday Thurs – Fri November 25-26, 2021 Reading Period Sat- Sun November 27-28, 2021 Final Examinations Monday - Friday November 29-Dec. 10, 2021 Commencement Exercises Saturday December 11, 2021

Please note that the calendar events and /or dates are subject to change.

READING ASSIGNMENTS

CHAPTER II - Federal Question and Admiralty Cases

Section I: Identifying Federal Question Cases

- Introduction..... 139-140
- *Osborne v. Bank of U.S.*..... 140-147
- ***Textile Workers v. Lincoln Mills*** [Note 4]..... 147 (H)
353 U.S. 448 (1957)
- Notes 1,2,..... 147
- *Louis. & Nash. R.R. v. Mottley*..... 149-151
- *Skelly Oil Co. v. Phillips*..... 151-153
- Notes 1,2..... 153
- Notes 1,5,6..... 155-158
- *T.B. Harms v. ELISCU*..... 160-164
- Notes 1,2,4..... 164-165
- *Smith v. K.C. . Title & Trust* [Note 1]..... 174
- *Franchise Tax Board v. Construction Laborers* [N1,2]..... 156-157
- *Merrell Dow v. Thompson*..... 166-174
- *Verlinden v. Cental Bank of Nigeria*[Note 5]..... 148-149
- Notes 2,3,5..... 175-177
- ***Grable v. Darue, 125 S.Ct. 2363 (2005)***
- Exclusive Jurisdiction [Notes 1,2,3,5]..... 179-182
- Removal [Notes 7,8]..... 183-184
- Obligation to Provide Forum [Notes 11,12]..... 185-188

Section 2. The Scope of a "Case"

- *Finley v. United States*..... 188-194
- Pendent Jurisdiction [Notes 1-9]..... 194-200
- ***City of Chicago v. International College of Surgeons,***
522 U.S. 156 (1997)
- ***Raygo v. Regenst, 534 U.S. 533 (2002)***

Section 3. Maritime Cases

- "Read only" assignment..... 200-226

CHAPTER III THE DIVERSITY JURISDICTION

Section 1. The Determination of Citizenship

- *Sadat v. Mertes*..... 231-238
- Notes 1,2,3,4,5,6,7,8..... 238-241
- Notes 1,2,3,..... 242-244

Section 2. "Complete" Diversity and Ancillary Jurisdiction

- *Strawbridge v. Curtiss*.....244-245
- Notes 1,2,3..... 245-247
- *Treines v. Sunshine Mining*..... 247-249
- Notes 1,2,3..... 249-251
- *Owen Equipment v. Kroger*..... 251-257
- Notes 1,2,3,4..... 258-260
- ***Exxon Mobile v. Allapattah Services, 125 S.Ct. 2611 (2005)***
- *American Fire v. Finn*..... 260-264
- Notes 1,2,3,4,5,6,8..... 264-267

Section 3. Corporations and Other Associations

- *Carden v. Arkoma Associates*.....267-272
- Notes 1,2,4,5,6,7..... 267-274
- *Kelly v. U.S. Steel*.....274-278
- ***Hertz v. Friend, __ US __, 130 S.Ct. 1181 (2010)***
- Notes 1,2,3,4,5,7..... 278-280
- *Majewski v. N.Y. Central R.R.*..... 281-282
- *Diesling v. Vaughn Wood Products*..... 282-284
- Notes 1,4..... 284-287
- *Smith v. Sperling*..... 287-292
- Notes 1,3,6,7..... 292-294

Section 4. The Jurisdictional Amount

- *Snyder v. Harris*..... 294-299
- Notes 3,4,5,6,7,8,9,10..... 301-309
- ***Exxon Mobile v. Allapattah Services, 125 S.Ct. 2611 (2005)***

Section 5. The Place of Trail

- Venue/Service: Notes 1,2,3,4,5,6,7,8,10,11..... 309-314
- Transfer: Notes 1,3,4,5,6,7,8,9,10..... 314-320
- S. Ct./ Original: Notes 1 through 11-[R],12..... 320-328

Section 1. The Erie Problem

- *Erie R.R. v. Tompkins*..... 327-332
- Notes 5,6..... 334-336
- *Guaranty Trust Co. v. York*..... 326-339
- *Hanna v. Plumer*..... 339-344
- Notes 1,2,3,4,5,6,..... 344-347
- *Klaxon v. Stentor Electric*.....347-349

Section 2. The Federal Common Law

- *Clearfield Trust v. U.S.*..... 353-354
- *Bank of America v. Parnell*..... 354-356
- *Banco Nacional De Cuba v. Sabbatino*..... 356-359
- Notes 1,2,3,4,6,7,8,9,..... 353-364
- *Transamerica v. Lewis*..... 370-376
- Notes 3,4,5,6,7..... 376-379

Section 3. Remedies Against Government Officials

- *Monroe v. Pape*..... 379-385
- Notes 1,2,3,4,5,6,7..... 385-390
- *Monell v. Dept. of Social Servies*.....390-397
- Notes 1,2,3,4,5,6,7,8,9..... 397-401
- *Bivens v. Six Unknown Named Agents of F.B.I.* 401-409
- Notes 1,4,5,6,7..... 409-415

Section 4. Federal Law in the State Courts

- "Read Only" 426-432

CHAPTER V SOVEREIGN IMMUNITY

Section 1. The Eleventh Amendment

- *Hans v. Louisiana*.....433-440
- Notes 4,5,6,8..... 440-444
- *Ex Parte Young*.....444-447
- *Edelman v. Jordan*..... 447-452
- Notes 3,4,5,6,7..... 452-455
- Notes 2,3,4,6,7,8,9..... 455-460
- *Fitzpatrick v. Bitzer*..... 460-465
- ***Seminole Tribe v. Florida, 517 U.S. 44 (1996)***
- ***Florida Prepaid Postsecondary Education Expense Board v.***

College Savings Bank And United States, 527 U.S. 627 (1999)

- **Kimel v. Florida Board of Regents, 120 S.Ct 621 (2000)**
- **U.S. v. Morrison, 120 S.Ct. 1740, (2000)**
- **Board of Trustees of Univ. of Ala. v. Garrett, 531 U.S. 356, 121 S.Ct. 955 (2001)**
- **FMC v. SCSPA, 535 U.S. 743 (2002)**
- **Lapides v. Board of Regents, 535 U.S. 613 (2002)**
- **Verizon v. PSC of Maryland, 535 U.S. 635 (2002)**
- **Nevada Department of Human Resources v. Hibbs, 528 U.S. 721 (2003)**
- **Tennessee v. Lane, 124 S.Ct. 1978 (2004)**
- **U.S. v. Georgia, 126 S.Ct. 877 (2006)**
- **Coleman v. Court of Appeals of Maryland, 132 S.Ct. 1327 (2012)**
- Notes 1,2,4,4,5,6..... 465-468
- Notes 1,2,3,4..... 468-471

Section 2. Official and Congressional Immunities

- *Harlow v. Fitzgerald*..... 474-479
- Notes 1,2,3,4,5,6..... 479-484

CHAPTER VI ABSTENTION AND SUCH

Section 1. Pullman Abstention and Certification

- *R.R. Commission v. Pullman*..... 485-488
- *England v. Louis. St. Bd. of Medical Examiners*..... 488-491
- Notes 1,2,3,4,5,6,7..... 491-497

Section 2. State Administrative Agencies and Taxes

- *Buford v. Sun Oil*..... 497-502
- Notes 1,2,3,4..... 503-506
- *Fair Assessment in Real Estate v. McNary*..... 506-511
- Notes 1,2,4,5,8,9..... 511-514

Section 3. Injunctions Against Suit

- *Mitchum v. Foster*..... 514-520
- Notes 1,4,5,7,9,10,11..... 520-528
- *Younger v. Harris*..... 528-534
- Notes 1,3,4,6,7,9..... 534-540
- *Steffel v. Thompson*..... 540-547
- Notes 1,4,5,6,7,9..... 547-551
- Notes 1,2,3,4,5,6,7 "Read Only"..... 551-556

- **Smith v. Bayer Corp., 131 S.Ct. 2368 (2011).**

Section 4. Pending Actions and Other Problems

- *Colorado River District v. U.S.*..... 556-563
- Note 4..... 567-568
- Notes 1 through 8, "Read Only" 568-572
- *Exxon Mobil v. Saudi Basic Indus., 126 S.Ct. 990 (2005)*

CHAPTER VII APPELLATE AND COLLATERAL REVIEW

Section 1. Direct Appellate Review

- Independent/Adequate Grounds "Read Only"..... 573-587
- *Cox Broadcasting v. Cohn*.....587-592
- Notes 1,2,4,5,6,7,8,9,10,11,12..... 592-600
- Notes 1 through 7, "Read Only" 600-608

Section 3. Habeas Corpus and Post Conviction Review

- *Wainwright v. Sykes*..... 608-618
- Notes 1,2,3,5,6,7,8,9,12..... 618-625
- Notes 1 through 6, "Read Only"..... 625-629
- *Preiser v. Rodriguez*..... 633-639
- Notes on Exhaustion: 6,7,8..... 641-642
- *Jones v. Cunningham*.....643-646
- *Peyton v. Rowe*..... 647-650
- Notes on Custody: 1,2,3,4,7,8..... 650-654

CHAPTER I CONGRESS, FEDERAL COURTS, ETC.

Section 5. Judicial Power Outside Article Three

- *Northern Pipeline v. Marathon*..... 114-125
- Notes on Legislative Courts..... 125-128
- *National Mutual Ins. v. Tidewater*..... 128-136
- Notes 1,5,6,7..... 136-138
- ***Stern v. Marshall, 131 S.Ct. (2011),***

"Read Only" materials are assigned for student review, materials will only be summarized for in-class discussion. Examination will only cover "Read Only" materials discussed in class.

IMPORTANT NOTE: This Case Book is updated by citation to more recent decisions. It is **most important** that the student coordinate these materials into the text as detailed above.



THURGOOD MARSHALL SCHOOL OF LAW

COVID-19 INFORMATION SHEET

HEALTH AND SAFETY ON CAMPUS

1. Students are expected to continuously self-screen for the symptoms of COVID-19. The Center for Disease Control has a list of COVID-19 symptoms: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>. If you begin to show symptoms, notify your professor and leave the classroom. Limit contact with other individuals on campus and contact your healthcare provider for further guidance.
2. If, before coming to campus, a student starts exhibiting any symptoms of COVID-19 or does not feel well, the student should not attend class in person. The student should immediately notify the Assistant Dean for Student Development (virgie.mouton@tmslaw.tsu.edu) and attend classes online.
3. Students who have been sick with COVID-19 symptoms, tested positive for COVID-19, or have been potentially exposed to someone with COVID-19 should attend classes online until they are cleared by their healthcare provider. The following is taken from the TSU & Coronavirus FAQs, <http://www.tsu.edu/about/administration/marketing-and-communications/coronavirus/faqs.html>:

Those who have recently traveled internationally or believe they have been exposed to the virus and are experiencing influenza-like illness, with fever greater than 100.3, and symptoms, including cough, body aches, severe sore throat or runny nose, should seek medical attention, especially if symptoms worsen.

Students should contact TSU Health Services (713-313-7173) and identify themselves as having flu-like symptoms to obtain further recommendations and guidance. Students should also consult with their regular health care provider or seek treatment at a local health center if they are overseas. Please call ahead to your health care provider to notify them of the reason for your visit.

For additional information about COVID-19, including signs and symptoms, transmission and risk of exposure, and what to do if you are exhibiting symptoms, please refer to the resources section. The CDC's website and Texas Department of State Health Services (DSHS) will also issue guidance for those planning to travel or who have recently returned.

4. While on campus and in classrooms, students should observe the rules for social distancing, social health etiquette, and general cleanliness.
 - a. Students should practice hand hygiene, cough etiquette, and general cleanliness.
 - b. Students should maintain at least 6 feet separation in all directions from other individuals.
 - c. Face coverings (over the nose and mouth) are required for all students. Students without a face covering will not be allowed to enter the classroom. Students with an approved exemption and who notify their professor before the start of class may be allowed to wear a face shield instead of a face mask.
 - d. Students should wash or disinfect their hands before each class and after any physical interaction with other persons in the classroom.
 - e. Students should maintain classroom cleanliness. Students should create a clean classroom environment by putting away unnecessary personal items and cleaning their seating area intermittently.
 - f. Students should not expect to enter the Law Building on a day other than the designated day for in-person attendance for an enrolled course. Entry will be permitted only if administration can determine that the maximum occupancy for COVID-19 social distance protocol has not been exceeded.
 - g. Students who do not comply with the rules for social distancing, social health etiquette, and general cleanliness may be subject to discipline up to expulsion from law school.

ATTENDANCE POLICY

5. Students are required to attend classes consistent with the format of the enrolled course.

- a. Hybrid – instruction for courses in this format is delivered in person and simultaneously online. Enrolled students are divided into groups and required to attend weekly in-person classes on the weekday(s) predetermined by administration for the designated group. Students may only attend in-person classes on the administration-determined day to ensure that all enrolled students are guaranteed a physical seat for the class. Other class days for the week are to be attended online. Students who have COVID-related health and safety concerns in attending in-person classes must obtain a remote-instruction waiver from the Office of Student Affairs. The waiver can be requested for the entire semester or temporary, based upon the personal circumstance of the affected student.
- b. Online – instruction for courses in this format is delivered 100% online.
- c. For the 100% online course and the hybrid course online instruction component, both the American Bar Association and the Law School rules obligate the professor to obtain assurance that the person who logs into the course online, participates in class, takes quizzes and exams, and engages in collaborative exercises, is the student enrolled in the course. Without being limited to the following methods of attendance verification, professors may require attendance to be contingent upon confirmation of identity via webcam or require webcams to remain on for the entire class period.