FEDERAL COURTS:
CASES AND MATERIALS
ON JUDICIAL FEDERALISM
AND THE LAWYERING
PROCESS
Third Edition
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DEDICATION

To Diana, Jeffrey, Matthew, and Melissa, ADH
To Jesse E. Eschbach, LKR
To Heather, Brandon, and Benjamin, DRS
PREFACE TO THE THIRD EDITION

The fundamental principles of Federal Courts do not change from year to year or even from decade to decade. *Marbury, Osborn, Ex parte Young, Mansfield, Erie,* and other landmarks still stand. But Supreme Court decisions and Congressional enactments can change the law that lawyers and judges apply in everyday practice; they can also stimulate new thinking about the constitutional values and legislative judgments that underlie the law of Federal Courts.

That is what has happened in the short period since the second edition of this Casebook was published. Four Terms of Court have intervened, and each has brought a number of important rulings on Federal Courts issues. In addition, late in 2011 Congress enacted the Federal Courts Jurisdiction and Venue Clarification Act of 2011 (JVCA), the most far-reaching package of revisions to the Judicial Code since the Judicial Improvements Act of 1990. It is no exaggeration to say that in the course of these four years the landscape of Federal Courts law has been significantly reshaped.

*Out With the Old, In With the New*

Because so much has changed, much of the material in the Third Edition replaces the corresponding material in the Second. Particularly noteworthy are the revisions made by the JVCA to the law governing removal of cases from state to federal court. Accordingly, in Chapter 11, new material replaces more than half of the chapter’s contents. And because the JVCA resolved many of the issues that were open at the time of the Second Edition, we have been able to introduce students to other aspects of removal jurisdiction that previously were not covered at all.

In other chapters, seven new principal cases replace cases included in the Second Edition. This is more than a matter of keeping the book up to date; often the new decisions have led us to rethink and reorganize material that has not been superseded.

For the first time in many years, the Supreme Court addressed fundamental issues under the Rules Enabling Act and the Rules of Decision Act — and divided sharply, with a 4-1-4 split on the standard for determining when state law should be applied, notwithstanding an arguably conflicting Federal Rule. The new decision, *Shady Grove Orthopedic Associates v. Allstate Ins. Co.*, is included as a principal case in Chapter 6. Moreover, informed by the debate within the Court, we undertook a substantial reorganization of the chapter. As part of this revision, two earlier cases, the venerable *Guaranty Trust* and the more recent *Semtek*, are now treated in Notes.

Chapter reorganization also resulted from the decision in *Stern v. Marshall* (Chapter 22). The case involved the seemingly mundane question whether a bankruptcy court could enter final judgment on a state-law counterclaim brought by the debtor. The Supreme Court held that it could not, because the case involved the exercise of “the judicial power of the United States,” and under the Constitution Congress could not “confer [that] power on entities outside Article III.” The majority and dissenting opinions in *Stern* revisit many of the arguments made by the plurality and the dissent in *Northern Pipeline*, a principal case in the Second Edition. Now the chapter begins with *Stern,*

v
which replaces Northern Pipeline as a principal case.

Another case in which the Justices debated the import of existing precedents is Haywood v. Drown (Chapter 4) on the obligation of state courts to hear federal claims. The 5-4 decision clarifies the 1990 ruling in Howlett v. Rose and arguably goes beyond it in curtailing the power of states to close their courts to federal causes of action. Howlett was a principal case in the Second Edition; we have replaced it with Haywood.

Two new decisions represent continuations of well-recognized patterns. In Minneci v. Pollard, the Court once again declined to recognize a Bivens remedy for violations of constitutional rights under color of federal law. Minneci replaces Correctional Services Corp. v. Malesko in Chapter 7. And in Mohawk Industries, Inc. v. Carpenter, the Court again restricted the availability of immediate appeals under the collateral order doctrine (Chapter 14). Mohawk replaces Cunningham v. Hamilton County, Ohio, and Digital Equipment Corp. v. Desktop Direct, Inc., both included in the Second Edition.

In contrast, a good illustration of a law-changing decision is Hertz Corp. v. Friend (Chapter 10), on the meaning of “principal place of business” in the diversity jurisdiction statute. At a single stroke, and without dissent, the Court wiped out half a century of divergent law in the lower courts, including the Fifth Circuit decision that was included in the Second Edition.

Finally, another unanimous ruling repudiated the Seventh Circuit’s Bridgestone/Firestone decision on the “relitigation exception” to the Anti-Injunction Act. In Smith v. Bayer Co. (Chapter 12), the Eighth Circuit relied on Bridgestone/Firestone in holding that the exception applied, but the Supreme Court disagreed, emphasizing that the statutory provision “authorizes injunctions [against state-court proceedings] only when a former federal adjudication clearly precludes a state-court decision.” The Third Edition therefore replaces Bridgestone/Firestone with Smith v. Bayer Co.

Other Revisions

A large and important component of federal court litigation today involves challenges to state official action. These cases implicate a wide range of jurisdictional and remedial doctrines that play no part in the ordinary run of civil litigation. How much attention to give these doctrines in a Federal Courts course, and how to present them, are difficult questions that almost every teacher will answer differently.

Our approach in this Casebook has been to concentrate on the doctrines that seem to be of greatest interest from a Federal Courts perspective. That approach has led us to add three new cases to the Third Edition, one on state sovereign immunity, one on qualified immunity, and one on federal habeas corpus.

In Virginia Office for Protection and Advocacy v. Stewart (Chapter 15), Justice Scalia wrote for a 6-2 majority, holding that Ex parte Young allows a federal court to hear a lawsuit for prospective relief against state officials brought by another agency of the same State. Chief Justice Roberts, for himself and Justice Alito, insisted that “the Court’s novel expansion of Ex parte Young is inconsistent with the federal system established by our Constitution.”

In Pearson v. Callahan (Chapter 16), the Court repudiated the much-criticized rule of Saucier v. Katz and held that a court evaluating an assertion of qualified immunity in a section 1983 damages action no longer must decide whether the facts alleged by the plaintiff suffice to state a constitutional claim; rather, the court may simply determine that
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the constitutional right at issue was not “clearly established” at the time in question. In deciding the case, the Court self-consciously addressed the role of federal courts in enforcing federal constitutional norms against state actors. To make room for Pearson, we omitted the section on attorney’s fees in § 1983 cases, a topic that is largely unconnected to the other topics in the chapter.

Finally, in Harrington v. Richter (Chapter 18), the Court restated and arguably strengthened the “deference” due to state courts when federal courts consider habeas corpus petitions filed by state criminal defendants challenging their convictions based on alleged violations of the federal Constitution. To make room for Richter, we have omitted portions of the opinions in Williams v. Taylor that later decisions have largely bypassed.

Several other decisions of the four Terms are treated in Notes. We have also added new Problems on a variety of topics, including justiciability, the Anti-Injunction Act, supervisory liability under § 1983, jurisdiction-stripping, and the Rooker-Feldman doctrine.

To avoid enlarging the book unnecessarily, we compressed some cases and omitted materials that few instructors covered. For example, in Chapter 5, Lee v. Kemna — on the adequacy of state procedural grounds to bar Supreme Court review (or federal habeas corpus) — is now treated in a Note.

Given the extent of the revisions in this Third Edition, it is worth emphasizing that we have not replaced older cases simply because a new decision has come down on the same topic. When an existing case presents the issues in a way that makes for an effective classroom experience, we have kept it, even though a more recent case might add an interesting new wrinkle.

One other point deserves mention. Although the Third Edition is considerably larger than the Second Edition, it is not substantially longer. The explanation is that the publisher has reformatted the pages so that there is less text on each page. Hopefully this will make the text more readable. But it does make for a larger book.

The 2009 Term was the first for Justice Sonia Sotomayor and the last for Justice John Paul Stevens; the 2010 Term was the first for Justice Elena Kagan. Appendix B provides an updated table of the Justices.

In preparing this new edition, we have continued the approach followed by the two prior editions. (See the Preface to the First Edition, reprinted immediately following.) First, we have concentrated on the main lines of doctrinal development and their implications for future disputes. In doing so, we have emphasized elements of litigation strategy and the practical application of Federal Courts doctrines and rules as well as the underlying policy and institutional competence issues.

Second, we have edited the cases with a relatively light hand. We have also attempted to keep the decisions readable; thus, some brackets and internal quotation marks have been omitted from quoted material within cases.

The authors express their appreciation to the staff of the University of Pittsburgh School of Law Document Technology Center for dedicated efforts in preparing the
manuscript. Provost Robel also thanks her research assistants, Simone Malinowski, Graham Rehrig, and Daniel Huntley; Justice Stras also thanks his law clerks, David Couillard and Peter Farrell.

ADH, LKR, DRS
PREFACE TO THE FIRST EDITION

This book is the product of our rethinking of what a Federal Courts course should accomplish in the twenty-first century. The traditional course focuses on issues of federalism, separation of powers, and institutional competency. That focus provides a powerful intellectual model for organizing the materials that make up the field of study, and we have built on its insights. But the traditional model falls short in giving students the grounding they need to be effective lawyer-litigators.

Lawyers are goal-oriented. From their perspective, the American system of judicial federalism is important because it sets up four possible goals: getting into federal court; staying out of federal court; gaining the benefit of federal law; or avoiding the detriment of federal law. This book concentrates on providing the doctrinal and practical education that will enable lawyers to identify and pursue these goals effectively in the service of their clients, while assuring that they understand the underlying tensions and issues that will shape the law in the future. The emphasis of the book as well as its organization flows from this principle.

Emphasis. As one would expect, there is a core of material that is common to all Federal Courts casebooks. However, there is also wide latitude for differences in emphasis. Two major themes set this book apart from others.

First, we provide a comprehensive and unified treatment of the litigation of federal questions in state courts. To appreciate the issues involved in choosing between federal and state court, a lawyer must have an understanding of how federal questions are litigated in a state judicial system. In Part Two, we give sustained and systematic attention to the role of state courts as a forum for litigation of federal issues.

Second, the book is grounded in the realities of litigation today, rather than the assumptions that prevailed during the Civil Rights Era. Of particular importance is the strong tendency of defendants in civil litigation to prefer federal over state court. As a consequence of this development, the statutory device of removal now occupies a central place in litigation strategy. It is no accident that during the last 20 years virtually all of the Supreme Court’s decisions on district court jurisdiction have come in cases in which the plaintiff has challenged the defendant’s removal of the suit from state to federal court. This casebook treats removal pervasively, with an emphasis on the issues that dominate litigation practice today.

Features. In many law schools, Federal Courts has a reputation as a difficult course. This is not surprising; to some degree, difficulty is inherent in the subject. But the authors believe that the law of Federal Courts can be made understandable without sacrificing either depth or the intellectual rigor that is the hallmark of this area of study. Three features of the book promote this goal.

First, the book concentrates on the main lines of development and their implications for future disputes rather than traveling down every byway of doctrinal refinement. Major cases are set forth in full or in extended excerpts. The note material is extensive, but without a proliferation of citations to lesser cases that would only distract students from the important points. Nor is there a profusion of bibliographic references to secondary
sources. In short, the book aims for depth rather than detail.

Second, to enable students to understand difficult material, it is essential that the various topics be organized into larger, well-defined units of study. The organization of a Federal Courts casebook should not simply reflect considerations of convenience; it should serve a pedagogical purpose. To that end, the organization of this book reflects a functional, task-oriented approach. For example, one task lawyers undertake is that of litigating federal questions in a state court. Part Two of the book presents the material relevant to that task. Another task is that of persuading a federal court to apply a rule of decision other than state law — the default law in our system of limited national government. That is the subject of Part Three. Another task is that of using federal court as a forum for challenging state official action. In Part Six, that task receives unified treatment.

Third, in addition to cases, notes, and questions, the book makes use of problems. Not all topics lend themselves to the problem method, but many do. The problems in the various chapters have been carefully designed to zero in on (a) points settled by the cases students have read; and (b) questions left unanswered or falling between precedents. Many are based on recent cases that did not go to the Supreme Court.

The best way to get a feel for the book’s approach is to peruse the Table of Contents. We particularly invite attention to the sequence of topics, which has been carefully designed to reinforce learning. At the same time, the material has been subdivided into numerous smaller units to allow for maximum flexibility in choice of coverage.

Editing of cases. Cases have been edited for readability and as teaching tools; they should not be used for research purposes. Omissions are indicated by brackets or ellipses; alterations are indicated by brackets. Most footnotes have been omitted; however, footnotes in opinions and other quoted material retain their original numbers. Citations to cases other than those in the Casebook have generally been deleted. Brackets and internal quotation marks have been omitted from quoted material within cases. Lengthy paragraphs have sometimes been broken up to promote readability. References to “petitioner” and “respondent” have sometimes been replaced with party names or positions in the lower court.
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