

# FEDERAL COURTS IN THE 21ST CENTURY: CASES AND MATERIALS

# LexisNexis Law School Publishing Advisory Board

---

**Paul Caron**

*Charles Hartsock Professor of Law*  
University of Cincinnati College of Law

**Olympia Duhart**

*Professor of Law and Director of Lawyering Skills & Values Program*  
Nova Southeastern University, Shepard Broad Law School

**Samuel Estreicher**

*Dwight D. Opperman Professor of Law*  
*Director, Center for Labor and Employment Law*  
NYU School of Law

**Steven I. Friedland**

*Professor of Law and Senior Scholar*  
Elon University School of Law

**Joan Heminway**

*College of Law Distinguished Professor of Law*  
University of Tennessee College of Law

**Edward Imwinkelried**

*Edward L. Barrett, Jr. Professor of Law*  
UC Davis School of Law

**Paul Marcus**

*Haynes Professor of Law*  
William and Mary Law School

**John Sprankling**

*Distinguished Professor of Law*  
McGeorge School of Law

**Melissa Weresh**

*Director of Legal Writing and Professor of Law*  
Drake University Law School

# FEDERAL COURTS IN THE 21ST CENTURY: CASES AND MATERIALS

---

Fourth Edition

**HOWARD P. FINK**

*Isadore & Ida Topper Professor of Law Emeritus  
Moritz College of Law, The Ohio State University*

**THOMAS D. ROWE JR.**

*Elvin R. Latty Professor of Law Emeritus  
Duke University School of Law*

**MARK V. TUSHNET**

*William Nelson Cromwell Professor of Law  
Harvard Law School*

ISBN: 9780769865089 (print)  
Looseleaf ISBN: 9780769865096  
ISBN: 9780327189831 (eBook)

This publication is designed to provide authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender and the Matthew Bender Flame Design are registered trademarks of Matthew Bender Properties Inc.

**Library of Congress Cataloging-in-Publication Data**

**Fink, Howard P.**

**Federal courts in the 21st century : cases and materials / Howard P. Fink, Isadore & Ida Topper Professor of Law Emeritus, Moritz College of Law, The Ohio State University; Thomas D. Rowe, JR., , Elvin R. Latty Professor of Law, Duke University School of Law; Mark V. Tushnet, William Nelson Cromwell Professor of Law, Harvard Law School. -- Fourth edition.**

pages cm

Includes index.

ISBN 978-0-7698-6508-9

**1. Courts--United States. 2. Federal government--United States. 3. Jurisdiction--United States. 4. Judicial power--United States. I. Rowe, Thomas D., 1942- II. Tushnet, Mark V., 1945- III. Title. IV. Title: Federal courts in the twenty-first century.**

KF8719.F425 2013

347.732--dc23

2013026112

Copyright © 2013 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved.

No copyright is claimed by LexisNexis or Matthew Bender & Company, Inc., in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material may be licensed for a fee from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

**NOTE TO USERS**

To ensure that you are using the latest materials available in this area, please be sure to periodically check the LexisNexis Law School web site for downloadable updates and supplements at [www.lexisnexis.com/lawschool](http://www.lexisnexis.com/lawschool).

Editorial Offices  
121 Chanlon Rd., New Providence, NJ 07974 (908) 464-6800  
201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200  
[www.lexisnexis.com](http://www.lexisnexis.com)

MATTHEW  BENDER

# DEDICATION

---

For my grandchildren: Adam Jacob Hamilton, Noah Charles Hamilton, Sara Miriam Hamilton and Sophie Kate Hamilton

— Professor Fink

For four generations: Mom, Susan, Sarah, and Ellie

— Professor Rowe

To my family

— Professor Tushnet



# *SPECIAL ALERT*

---

This Special Alert deals with important decisions handed down after the main text was completed in May 2013.

(1) The Supreme Court addressed issues of Article III standing in two cases involving gay rights.

a. *United States v. Windsor*, 570 U.S. \_\_\_, 2013 U.S. LEXIS 4921 (June 26, 2013), dealt with the constitutionality of the Defense of Marriage Act (DOMA). Windsor sought an estate-tax exemption for an inheritance from her spouse, whom she had married in Canada. When it was denied, she paid the tax and filed suit in the federal district court. The administration took the position that DOMA was unconstitutional and as required by statute notified Congress of that position. A group of House lawmakers, known in the litigation as BLAG, was permitted to intervene in the district court to defend the statute. The district court and then the court of appeals held the statute unconstitutional. BLAG continued in the litigation as permissive intervenors through the Supreme Court. The Supreme Court granted certiorari. With neither party defending DOMA's constitutionality, the Court appointed an amicus curiae to argue that the Court lacked jurisdiction over the case.

Justice Kennedy, writing for five members, held that Windsor clearly had Article III standing when she filed her lawsuit, and that the government's continuing refusal to pay the refund until the Supreme Court rendered a decision on the merits gave her a "real and immediate" economic injury sufficient to provide continuing Article III standing. The only remaining question, he continued, was whether the case should be dismissed on "prudential" standing grounds, described as "more flexible." One consideration bearing on prudential standing was the extent to which the merits had in fact been vigorously presented to the Court. "BLAG's sharp adversarial presentation of the issues satisfies the prudential concerns that otherwise might counsel against hearing an appeal from a decision with which the principal parties agree." The Court then held DOMA unconstitutional.

Justice Alito, while dissenting on the merits, would have held that BLAG had Article III standing, as representative of congressional interests in upholding a lawfully enacted statute when the executive branch refused to do so. Justice Scalia, joined by the Chief Justice and Justice Thomas, dissented from the standing holding (with Justices Scalia and Thomas, but not the Chief Justice, dissenting from the holding on the merits as well). For Justice Scalia, "Windsor's injury was cured by the judgment in her favor." "Article III requires not just a plaintiff (or appellant) who has standing to complain but an opposing party who denies the validity of the complaint. . . . (Relegating a jurisdictional requirement to 'prudential' status is a wondrous device, enabling courts to ignore the requirement whenever they believe it 'prudent' — which is to say, a good idea.)"

Would a holding that an Article III case or controversy was absent when the executive took the position that a statute was unconstitutional in effect give the executive a second chance to veto the statute? (A more accurate version of this question is, Would doing so give a President elected after the statute was signed by a predecessor President a chance to exercise an effective veto, and indeed one that Congress could not override?) Justice

Scalia emphasized that, in that event, “The matter would . . . [be] left, as so many matters ought to be left, to a tug of war between the President and the Congress, which has innumerable means (up to and including impeachment) of compelling the President to enforce the laws it has written.”

(b) *Hollingsworth v. Perry*, 570 U.S. \_\_\_, 2013 U.S. LEXIS 4919 (June 26, 2013), was a challenge to the constitutionality of a voter-initiated amendment to California’s constitution that barred gay marriage. A federal district court held the initiative unconstitutional. The state officials named as defendants in that lawsuit accepted the judgment and declined to appeal. Proponents of the initiative were permitted to intervene and, after some complex procedural maneuvers, the California Supreme Court held that, “[i]n a postelection challenge to a voter-approved initiative measure, the official proponents of the initiative are authorized under California law to appear and assert the state’s interest in the initiative’s validity and to appeal a judgment invalidating the measure when the public officials who ordinarily defend the measure or appeal such a judgment decline to do so.” Writing for a majority that included Justices Scalia, Ginsburg, Breyer, and Kagan, Chief Justice Roberts held that the initiative’s proponents did not have Article III standing.

The proponents argued, among other things, that the California Supreme Court’s decision implied that they were authorized by the state to “act “as agents of the people” of California.” The Chief Justice responded, “that Court never described petitioners as ‘agents of the people,’ or of anyone else. . . . All that the California Supreme Court decision stands for is that, so far as California is concerned, petitioners may argue in defense of Proposition 8. This ‘does not mean that the proponents become de facto public officials’ . . . .” Relying on the RESTATEMENT (THIRD) OF AGENCY, he wrote:

[T]he most basic features of an agency relationship are missing here. Agency requires more than mere authorization to assert a particular interest. “An essential element of agency is the principal’s right to control the agent’s actions.” 1 RESTATEMENT (THIRD) OF AGENCY § 1.01, Comment f (2005) (hereinafter RESTATEMENT). Yet petitioners answer to no one; they decide for themselves, with no review, what arguments to make and how to make them. Unlike California’s attorney general, they are not elected at regular intervals — or elected at all. No provision provides for their removal. . . . “If the relationship between two persons is one of agency . . . , the agent owes a fiduciary obligation to the principal.” 1 RESTATEMENT § 1.01, Comment e. But petitioners owe nothing of the sort to the people of California. Unlike California’s elected officials, they have taken no oath of office. . . . They are free to pursue a purely ideological commitment to the law’s constitutionality without the need to take cognizance of resource constraints, changes in public opinion, or potential ramifications for other state priorities.

Justice Kennedy, joined by Justices Thomas, Alito, and Sotomayor, dissented.

Under California law, a proponent has the authority to appear in court and assert the State’s interest in defending an enacted initiative when the public officials charged with that duty refuse to do so. The State deems such an appearance essential to the integrity of its initiative process. Yet the Court today concludes that this state-defined status and this state-conferred right fall short of meeting



federal requirements because the proponents cannot point to a formal delegation of authority that tracks the requirements of the Restatement of Agency. But the State Supreme Court’s definition of proponents’ powers is binding on this Court. And that definition is fully sufficient to establish the standing and adversity that are requisites for justiciability under Article III of the United States Constitution.

In my view Article III does not require California, when deciding who may appear in court to defend an initiative on its behalf, to comply with the RESTATEMENT OF AGENCY or with this Court’s view of how a State should make its laws or structure its government. The Court’s reasoning does not take into account the fundamental principles or the practical dynamics of the initiative system in California, which uses this mechanism to control and to bypass public officials—the same officials who would not defend the initiative, an injury the Court now leaves unremedied.

Does the Court’s holding mean that Article III imposes limits on interests created by state law (or by federal statute) to confer standing? Consider in this connection the treatment of the “procedural injury” claim in *Lujan v. Defenders of Wildlife* and the treatment of the claim about denial of access to information in *Federal Election Commission v. Akins*. Which does the interest created in the initiative’s proponents more closely resemble? Consider as well the possibility that California’s Supreme Court offered reasons, of a sort typical of the common law, for developing a special rule of agency law in connection with ballot initiatives, sometimes enacted over the opposition of the officials generally authorized to defend the constitutionality of state statutes. Why should Article III limit a state court’s power to develop the law of agency in such a manner?

(2) The Third Circuit has settled the disagreement within the Eastern District of Pennsylvania, described in Note 1 of the Notes and Questions on Citizenship for Diversity Purposes in Chapter 8, § 8.01[D], over whether GSK’s conversion to an LLC with its sole member, GSK Holdings, arguably based in Delaware should mean that it is not a Pennsylvania citizen and can thus remove diversity cases filed against it in state court in Pennsylvania. The panel unanimously held that it was the sole member’s citizenship that counted for purposes of determining the LLC’s citizenship and that the LLC was not a citizen of Pennsylvania, even though GSK LLC remained headquartered in Pennsylvania. The panel majority found that, on the facts, GSK Holdings was a citizen of Delaware, while a concurring colleague regarded GSK Holdings’ “nerve center” as being in England. The LLC can therefore remove diversity cases filed against it in Pennsylvania state courts. *See Johnson v. SmithKline Beecham Corp.*, \_\_\_ F.3d \_\_\_, 2013 U.S. App. LEXIS 11501 (3d Cir. June 7, 2013).



# FOREWORD TO FOURTH EDITION

---

In this edition we have tried to produce a leaner book with tighter focus on the areas usually covered in upperclass courses on Federal Courts or Federal Jurisdiction. The biggest change is that we have largely eliminated the material in two previous chapters on Aggregative Procedure, mostly covering class actions, and on Expanding and Restricting Complex Federal Litigation, covering the likes of various joinder devices, venue and forum non conveniens, and multidistrict litigation. We saw intellectual and practical merit in those chapters, but these areas seem better covered in separate courses devoted to Advanced Civil Procedure or Complex Civil Litigation.

We have retained some of the materials from the deleted chapters. A new Chapter 11 on Doctrinal and Statutory Restrictions on Federal Jurisdiction Related to State-Court Litigation, placed right after the chapters on federal courts' statutory jurisdiction, covers the abstention doctrines and the Anti-Injunction Statute, 28 U.S.C. § 2283, previously treated in the complex-litigation chapter. And earlier coverage in the class-actions chapter of the Class Action Fairness Act of 2005 (CAFA) now is part of a new section at the end of Chapter 8 on Diversity and Alienage Jurisdiction. The new section is devoted to the three forms of minimal-diversity federal-court jurisdiction presently on the books — statutory interpleader; the Multiparty, Multiforum Trial Jurisdiction Act of 2002; and CAFA. Additionally, coverage of venue, forum non conveniens, and transfer remains in Chapter 12.

The chapters covering areas affected by the Jurisdiction and Venue Clarification Act of 2011 (JVCA), particularly Chapter 8 on Diversity and Alienage Jurisdiction and Chapter 10 on Removal, have been extensively revised to take account of the many (and positive) changes made by the JVCA. Chapter 8 also has a new principal case, *Hertz Corp. v. Friend*, in which the Supreme Court settled a circuit split over interpretation of a corporation's "principal place of business" for diversity purposes. We have, of course, included updating notes and case summaries throughout the book.

Finally, the book has a new, concluding Chapter 18 on Federal Jurisdiction in Time of War and in an Age of Terrorism. This chapter's principal case is the Supreme Court's major 2008 decision in *Boumediene v. Bush* on habeas corpus for alien enemy detainees at the United States military base at Guantánamo Bay, Cuba. The chapter brings together themes from several aspects of the course — the role of the federal courts, separation of powers, the permissibility of "jurisdiction-stripping" legislation, the use of non-Article III federal tribunals, and suspension of the writ of habeas corpus. Included are background on the use of military commissions in United States history; discussion of executive, judicial, and legislative responses to the attacks of September 11, 2001; the *Boumediene* case itself; and developments since that decision. We hope that this chapter will provide a suitable, even exciting, capstone for the course.



# FOREWORD TO THIRD EDITION

---

Much has happened to our country and to the world since the publication of the Second Edition of this casebook five years ago. As in previous eras, crises and political developments affect the federal courts. Sometimes they are battlegrounds themselves; sometimes events cause political controversy over the expansion or contraction of federal jurisdiction. In these past five years, America has been waging a “war on terror” and a war in Iraq. We have also seen political battles over the role of class actions and the use of habeas corpus. We have seen a thrust to move more business cases and mass-tort and mass-disaster cases, which often involve primarily state law, into the federal courts through the use of “minimal” diversity.

Thus the chapters that have been most significantly revised include those dealing with class actions, habeas corpus, and Article I courts. We have also broken out the material on implied rights of action into a separate chapter, added a new chapter on federal common law, and added an Epilogue on the Military Commissions Act of 2006 and the suspension of habeas corpus for alien enemy combatants. A section has been added dealing with attempts to try “foreign enemy combatants” before military commissions. In other chapters, we have revised and updated materials to reflect current developments, recent cases, and important law review articles.

More than ever, we cling to the theory with which this casebook and its predecessors began more than twenty years ago. That is that there is no “plain meaning” to Article III or to statutes defining federal jurisdiction and those creating federal rules of procedure. Concepts like due process, habeas corpus, the right to jury trial, Article I and Article III courts, abstention, class actions, and jurisdiction are, in final analysis, all judicial constructs, ever subject to the winds of change. (The foreword to the first edition of this book, reprinted *infra*, contains fuller discussion of these themes.)

Shortly before this edition went to press, the Supreme Court adopted amendments — mostly meant to be purely stylistic — to the entire Federal Rules of Civil Procedure. The changes take effect December 1, 2007, unless Congress intervenes, which seems unlikely. We have tried to replace old rule text with new wherever we quote rule language (as opposed to when an opinion we are quoting itself quotes a rule), but given time pressures we cannot guarantee that we caught every place where we should have made a change. We note, and take at least some comfort in, the Committee Note accompanying each restyled rule that the changes are meant to make the rules “more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.



# FOREWORD TO SECOND EDITION

---

The foreword to the first edition of this casebook, set out next, still encapsulates the philosophy of the book — we continue to reject the notion that there is a fixed meaning of the words of the constitutional provisions and statutory enactments that control the power of the federal courts. The meaning of the words of the Constitution and federal statutes evolves over the years with new court interpretations and new statutory enactments. This evolution also occurs with regard to judicial decisions setting the role of the Article III courts and their relationship to Article I courts and judges and to administrative agency determinations. Thus in the long run, the law is what the courts find that Congress intended in new legislation.

And in many areas the law has changed dramatically even since the first edition of this casebook was published in 1996. The emphasis in this revision is on the areas where there has been dramatic or even evolutionary change. The developments in certain areas, such as the Eleventh Amendment limitations on federal-court jurisdiction and Congressional power, the scope of federal habeas corpus, the legal rights of immigrants and prisoners, and the appellate jurisdiction of the federal courts, have been substantial in the courts and in Congress. Much has occurred with regard to class actions and in the uncertain relationship between the procedure of the federal courts and state law.

We have been able to include reference to the most recent developments, such as lawsuits brought under a law passed by Congress to center litigation arising out of the September 11, 2001 terrorist attack in the Southern District of New York, and the Act of Congress precluding judicial review of the location of the World War II memorial on the National Capital Mall.

Every chapter has been substantially revised to bring it up to date with the latest cases and legislation. But we know that this is only the current slice of a continually evolving organism called the federal court system.





# FOREWORD TO FIRST EDITION

---

As its title implies, we have prepared an entirely new casebook with a view to what are the primary uses of the federal courts and the primary problems of federal jurisdiction as we enter the new century.

The progenitor of this casebook was Fink and Tushnet, *Federal Jurisdiction: Policy and Practice*, first published in 1984. The assumption of that book was that federal court jurisdiction was an ever-changing product of judicial interpretation of the Constitution and of the federal statutes. It postulated that what we mean by federal judicial power is actually the current resolution of two sets of constitutional issues:

- (1) the proper allocation of power between branches of the federal government — characterized as “separation of powers”; and
- (2) the proper allocation of powers between state government and federal government — characterized as “federalism.”

The earlier casebook rejected the notion that there is a fixed meaning to the constitutional provisions or that there are any “right answers” in the cases construing the Constitution and the Judicial Code.

But the world of scholarship and the processes of legislation and judicial decision do not stand still. We believe it is time once again to rethink the subject in light of the marvelous scholarship that has occurred in recent years in this field, the new laws that Congress has enacted, and the continual revision of the subject by the Supreme Court and the lower federal courts.

We began by asking ourselves: What will be the most important purposes to which the federal courts are likely to be put as we begin the new century? What unique qualities does a national court system offer for solving problems of litigation whose magnitude was unimaginable a decade or two ago, and which will involve more and more disputes transcending the borders of nations as well as the states of the Union and which will be among companies, persons, and transactions with international ties? Moreover, we asked, what stresses will there be on the federal court system caused by the creation of so many new federal statutory rights and benefits, as well as the making of more and more conduct subject to federal criminal sanction?

Of course, we have not abandoned the belief that mastering the issues of federalism and separation of powers is fundamental to understanding today’s and tomorrow’s federal jurisdiction. Thus, *Federal Courts in the 21st Century* is the first casebook to discuss the 1996 legislation limiting habeas corpus and death-row appeals and the Supreme Court’s decision interpreting this legislation in *Felker v. Turpin*, 517 U.S. 1182 (1996). It is also the first casebook to discuss the Supreme Court’s new view of the Eleventh Amendment and of Congress’s power to waive states’ sovereign immunity in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996).

But the more far-reaching change in the new casebook is its extensive treatment of what we call “aggregative litigation” — multi-party, multi-claim litigation that is often national or international in scope. We think that the organization of the federal courts and their depth of resources make them uniquely capable to handle class actions and mass-

tort and other complex litigation cases. There is extensive discussion of the latest cases in this area, including *Castano v. American Tobacco Co.*, 84 F.3d 734 (5th Cir. 1996); *In re Rhone-Poulenc Rorer Inc.*, 51 F.3d 1293 (7th Cir.), *cert. denied*, 516 U.S. 867 (1995); *Georgine v. Amchem Products, Inc.*, 83 F.3d 610 (3d Cir. 1996), [*aff'd sub nom. Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997)]; and *In re Asbestos Litigation*, 90 F.3d 963 (5th Cir. 1996).

In addition, we believe that the federal courts will certainly continue to be the primary forum for handling national constitutional litigation. We have discussion of the latest cases interpreting Article III's case and controversy requirements as limits on access to the federal courts. And we have discussion of the evolving role of the federal courts in limiting actions of state governments and state officials. Moreover, we believe the federal courts will continue to be the only forum in which judicial review can be had of actions of federal administrative agencies. We have significant discussion of this subject.

Just as we literally were about to go to press, President Clinton signed the Federal Courts Improvement Act of 1996, which raised the amount in controversy requirement in diversity and alienage cases to over \$75,000, made changes in the removal statute, and changed the method of appeal in civil cases tried by the consent of the parties before a United States Magistrate Judge.

In light of the immediate attention to the subject, it hardly now seems likely that Congress is about to abolish diversity jurisdiction in the near future. The importance of diversity and alienage jurisdiction may well, in fact, increase. They may continue to be the source of jurisdiction over national cases based on state law or on the law of foreign countries or involving foreign nationals.

We provide substantial discussion of issues of federal venue, transfer and law applied in diversity and alienage cases because of this continued importance and in recognition that these subjects more and more are being given short shrift in curtailed civil procedure courses in the first year.

An entirely new area, which was hardly mentioned in the earlier federal courts casebooks, is the threat to the predominance of Article III courts and Article III judges — constitutionally life tenured and protected from salary reduction — from escalating reliance by Congress on other forums to resolve federal rights. Given the volume of litigation caused by federalizing so many rights — such as protection of battered women — and the volume of federal criminal cases with which Article III courts have to deal — such as drug prosecutions — there is an increasing impulse to place more judicial power outside of the Article III courts and into legislative courts or administrative agencies whose judges do not have constitutional tenure protection. There is also

continuing pressure to use more adjuncts to Article III courts — such as magistrate judges and bankruptcy judges — to do the day-to-day work of federal courts. We explore what constitutional issues this tendency will raise. Thus we will stress, more than in other casebooks, issues of distribution of power *within* the federal court system itself, and indeed see the federal system as a much more complex organization than was portrayed in earlier casebooks.

We have tried to present these issues in a straight-forward and approachable fashion, using our own exposition when that is the simplest and most easily grasped, and the

edited text of cases when they present the best summary of the issues. We think that the book, which runs to under 1,000 pages — and is much more compact than most other current casebooks — is entirely usable in one semester.



# Summary Table of Contents

Chapter 1	THE STRUCTURE OF FEDERAL JURISDICTION . . . . .	1
Chapter 2	THE JUDICIAL ROLE: THE JUSTICIABILITY DOCTRINES . . . . .	35
Chapter 3	CONGRESS’S POWER TO REGULATE JURISDICTION .	179
Chapter 4	THE POTENTIAL REACH OF FEDERAL JURISDICTION . . . . .	211
Chapter 5	USING THE FEDERAL COURTS TO REGULATE STATE GOVERNMENT: THE BASIC CONCEPTS . . . . .	245
Chapter 6	IMPLIED RIGHTS OF ACTION: “CONSTITUTIONAL” AND STATUTORY . . . . .	287
Chapter 7	THE STATUTORY FEDERAL-QUESTION JURISDICTION . . . . .	319
Chapter 8	DIVERSITY AND ALIENAGE JURISDICTION . . . . .	351
Chapter 9	SUPPLEMENTAL JURISDICTION . . . . .	401
Chapter 10	REMOVAL . . . . .	427
Chapter 11	DOCTRINAL AND STATUTORY RESTRICTIONS ON FEDERAL JURISDICTION RELATED TO STATECOURT LITIGATION . . . . .	457
Chapter 12	THE PLACE OF TRIAL, THE LAW APPLIED, AND CHOICE OF LAW IN THE FEDERAL TRIAL COURTS . . . . .	507
Chapter 13	FEDERAL COMMON LAW . . . . .	609
Chapter 14	ALLOCATION OF AUTHORITY BETWEEN LIFETENURED FEDERAL JUDGES AND OTHER ADJUDICATORS, AND BETWEEN COURTS OF EXCLUSIVE AND COURTS OF CONCURRENT JURISDICTION . . . . .	627
Chapter 15	FEDERAL APPELLATE JURISDICTION: COURTS OF APPEALS AND THE SUPREME COURT . . . . .	671
Chapter 16	INTERJURISDICTIONAL PRECLUSION . . . . .	711
Chapter 17	FEDERAL HABEAS CORPUS FOR STATE PRISONERS .	727
Chapter 18	FEDERAL JURISDICTION IN TIME OF WAR AND IN AN AGE OF TERRORISM . . . . .	787



# TABLE OF CONTENTS

<b>Chapter 1</b>	<b>THE STRUCTURE OF FEDERAL JURISDICTION . . . . .</b>	<b>1</b>
§ 1.01	INTRODUCTION TO THE COURT SYSTEM . . . . .	1
[A]	The Structure of the Federal Courts . . . . .	5
[B]	The Differences between Federal and State Courts . . . . .	6
	Richard H. Fallon, Jr., <i>The Ideologies of Federal Courts Law</i> . . . . .	10
	Michael L. Wells, <i>Rhetoric and Reality in the Law of Federal Courts: Professor Fallon’s Faulty Premise</i> . . . . .	17
	Notes and Questions . . . . .	19
	Judith Resnik, <i>Rereading “The Federal Courts”: Revising the Domain of Federal Courts Jurisprudence at the End of the Twentieth Century</i> . . . . .	20
	Notes and Questions . . . . .	23
§ 1.02	FEDERAL JURISDICTION . . . . .	24
[A]	A Brief History of Federal Jurisdiction . . . . .	24
[B]	Alternative Structures of Federal Jurisdiction . . . . .	27
[C]	The Future of Federal Jurisdiction . . . . .	29
	Thomas E. Baker, <i>A View to the Future of Judicial Federalism: “Neither Out Far Nor In Deep”</i> . . . . .	30
	Notes and Questions . . . . .	32
<b>Chapter 2</b>	<b>THE JUDICIAL ROLE: THE JUSTICIABILITY DOCTRINES . . . . .</b>	<b>35</b>
§ 2.01	INTRODUCTION . . . . .	35
§ 2.02	THE POLITICAL QUESTION DOCTRINE . . . . .	37
	<i>Walter Nixon v. United States</i> . . . . .	37
	Notes and Questions on the Political Question Doctrine . . . . .	45
§ 2.03	STANDING . . . . .	55
	Introductory Notes and Questions on Standing, the Concept of Injury, and Public Actions . . . . .	55
[A]	The Modern Concept of Injury; Causation and Redressability . . . . .	58
	<i>Allen v. Wright</i> . . . . .	58
	Notes and Questions on the Concept of Injury . . . . .	73
[B]	Standing and Political Questions . . . . .	78
	<i>Clapper v. Amnesty International USA</i> . . . . .	78
	Notes and Questions on <i>Clapper</i> . . . . .	88
[C]	The Modern Public Action: “Generalized Grievances” . . . . .	89
	<i>Lujan v. Defenders of Wildlife</i> . . . . .	89
	<i>Federal Election Commission v. Akins</i> . . . . .	101

---

**TABLE OF CONTENTS**

	Significant Standing Decisions Since <i>Akins</i> . . . . .	105
	Notes and Questions . . . . .	108
[D]	Third-Party Standing . . . . .	124
	<i>Singleton v. Wulff</i> . . . . .	124
	Notes and Questions on Third-Party Standing . . . . .	131
§ 2.04	RIPENESS . . . . .	136
	Background Notes and Questions on Ripeness and the Problem of Advisory Opinions . . . . .	136
	<i>Aetna Life Insurance Co. v. Haworth</i> . . . . .	137
	Notes and Questions on Ripeness and Declaratory Judgments . . . . .	141
	<i>Renne v. Geary</i> . . . . .	145
	Notes and Questions on Ripeness, Standing, and Prudential Justiciability Doctrines . . . . .	155
§ 2.05	MOOTNESS . . . . .	159
[A]	General Considerations . . . . .	159
	<i>Defunis v. Odegaard</i> . . . . .	159
	Notes and Questions on Mootness . . . . .	163
[B]	Mootness and Class Actions . . . . .	168
	<i>United States Parole Commission v. Geraghty</i> . . . . .	168
	Notes and Questions on Mootness and Class Actions . . . . .	176
<b>Chapter 3</b>	<b>CONGRESS’S POWER TO REGULATE JURISDICTION . . . . .</b>	<b>179</b>
§ 3.01	INTRODUCTION: TEXT AND HISTORY . . . . .	180
§ 3.02	REGULATING LOWER-COURT JURISDICTION . . . . .	182
	<i>Sheldon v. Sill</i> . . . . .	182
	Notes and Questions on Congress’s Power to Regulate Lower-Court Jurisdiction . . . . .	183
§ 3.03	REGULATING SUPREME COURT JURISDICTION . . . . .	192
	<i>Ex Parte McCordle</i> . . . . .	193
	Notes and Questions on <i>McCordle</i> ’s Significance . . . . .	194
	<i>United States v. Klein</i> . . . . .	194
	Notes and Questions on Constitutional Limits on Jurisdiction-Stripping Legislation . . . . .	198
<b>Chapter 4</b>	<b>THE POTENTIAL REACH OF FEDERAL JURISDICTION . . . . .</b>	<b>211</b>
§ 4.01	CONGRESS’S POWER TO CONFER SUPREME COURT JURISDICTION . . . . .	211
	<i>Martin v. Hunter’s Lessee</i> . . . . .	211
	Notes and Questions on Congress’s Power to Confer Jurisdiction on the	



---

**TABLE OF CONTENTS**

Supreme Court . . . . . 223

§ 4.02 CONGRESS’S POWER TO CONFER DISTRICT COURT  
 JURISDICTION . . . . . 225

*Osborn v. Bank of the United States* . . . . . 225

    Notes and Questions on Congress’s Power to Confer Jurisdiction on Lower  
 Federal Courts . . . . . 230

§ 4.03 CONGRESS’S POWER TO “CONFER” JURISDICTION ON STATE  
 COURTS . . . . . 236

*Howlett ex rel. Howlett v. Rose* . . . . . 236

    Notes and Questions on Congress’s Power to “Confer” Jurisdiction on State  
 Courts . . . . . 242

    Concluding Note . . . . . 243

---

**Chapter 5                    USING THE FEDERAL COURTS TO REGULATE STATE  
 GOVERNMENT: THE BASIC CONCEPTS . . . . . 245**

---

§ 5.01 STATE SUSCEPTIBILITY TO SUIT: THE ELEVENTH AMENDMENT  
 AND RELATED DOCTRINES . . . . . 245

    [A] Historical Background . . . . . 246

    [B] Early Interpretations . . . . . 247

*Hans v. Louisiana* . . . . . 248

        Notes and Questions on the Eleventh Amendment . . . . . 252

§ 5.02 AVOIDING THE ELEVENTH AMENDMENT BY SUING A STATE  
 OFFICIAL . . . . . 261

    Introductory Note . . . . . 261

*Ex Parte Young* . . . . . 261

    Notes and Questions on *Ex Parte Young* . . . . . 266

§ 5.03 REGULATING STATE GOVERNMENTS THROUGH § 1983 ACTIONS: A  
 BRIEF CASE STUDY . . . . . 271

*Monroe v. Pape* . . . . . 272

    Notes and Questions on § 1983 . . . . . 276

---

**Chapter 6                    IMPLIED RIGHTS OF ACTION: “CONSTITUTIONAL”  
 AND STATUTORY . . . . . 287**

---

§ 6.01 IMPLIED “CONSTITUTIONAL” RIGHTS OF ACTION . . . . . 287

*Bell v. Hood* . . . . . 287

    Notes and Questions on *Bell v. Hood* and Implied “Constitutional” Rights  
 of Action . . . . . 291

*Bivens v. Six Unknown Named Agents of Federal Bureau of  
 Narcotics* . . . . . 291

    Notes and Questions . . . . . 295

§ 6.02 IMPLIED STATUTORY RIGHTS OF ACTION . . . . . 300

*Cannon v. University of Chicago* . . . . . 301

---

**TABLE OF CONTENTS**

	Notes and Questions on Implying Private Rights of Action . . . . .	314
<b>Chapter 7</b>	<b>THE STATUTORY FEDERAL-QUESTION JURISDICTION . . . . .</b>	<b>319</b>
	Problem . . . . .	319
§ 7.01	BASIC CONSTITUTIONAL AND STATUTORY TEXTS . . . . .	319
§ 7.02	FEDERAL-QUESTION JURISDICTION AND THE “WELL-PLEADED COMPLAINT” RULE . . . . .	320
	Introductory Notes . . . . .	320
§ 7.03	THE OUTER BOUNDARY OF THE STATUTORY “ARISING UNDER” JURISDICTION . . . . .	322
	Introductory Note . . . . .	322
	<i>Grable &amp; Sons Metal Products, Inc. v. Darue Engineering &amp; Manufacturing</i> . . . . .	325
	Notes and Questions . . . . .	330
§ 7.04	THE “WELL-PLEADED COMPLAINT” RULE AND DECLARATORY JUDGMENTS . . . . .	332
	Introductory Note . . . . .	332
	<i>Franchise Tax Board v. Construction Laborers Vacation Trust</i> . . . . .	334
	Notes and Questions on <i>Franchise Tax Board</i> . . . . .	344
<b>Chapter 8</b>	<b>DIVERSITY AND ALIENAGE JURISDICTION . . . . .</b>	<b>351</b>
	Problem . . . . .	351
§ 8.01	DIVERSITY JURISDICTION . . . . .	352
[A]	Basic Constitutional and Statutory Texts . . . . .	352
[B]	Background and the Abolition-Retention Controversy . . . . .	353
	Report of the Federal Courts Study Committee . . . . .	353
	Notes and Questions on the Abolition-Retention Controversy . . . . .	358
[C]	The Complete-Diversity Requirement and Its Workings . . . . .	360
[D]	Citizenship Determinations . . . . .	362
	<i>Hertz Corp. v. Friend</i> . . . . .	362
	Notes and Questions on Citizenship for Diversity Purposes . . . . .	365
[E]	The Domestic-Relations and Probate Exceptions . . . . .	368
[F]	Amount in Controversy . . . . .	369
	Notes and Questions on Amount-in-Controversy Requirements . . . . .	369
§ 8.02	ALIENAGE JURISDICTION . . . . .	373
[A]	The Complete-Diversity Rule in Alienage Cases . . . . .	374
[B]	The Resident-Alien Proviso . . . . .	376
[C]	Citizenship of Foreign Corporations Doing Business in the United States and Domestic Corporations Doing Business Abroad . . . . .	377
§ 8.03	SPECIALIZED MINIMAL-DIVERSITY JURISDICTIONS . . . . .	378

---

**TABLE OF CONTENTS**

[A]	Statutory (and Rule) Interpleader . . . . .	379
	<i>State Farm Fire &amp; Casualty Co. v. Tashire</i> . . . . .	383
	Notes and Questions on <i>Tashire</i> and Federal Interpleader . . . . .	388
[B]	Multiparty, Multiforum Jurisdiction . . . . .	392
[C]	The Class Action Fairness Act . . . . .	394
<b>Chapter 9</b>	<b>SUPPLEMENTAL JURISDICTION . . . . .</b>	<b>401</b>
	Note on the Constitutionality of § 1367(D) . . . . .	404
§ 9.01	BASIC OPERATION . . . . .	405
	<i>Palmer v. Hospital Authority</i> . . . . .	405
	Notes . . . . .	414
§ 9.02	SUPPLEMENTAL PARTIES IN DIVERSITY CASES . . . . .	417
	Introductory Notes . . . . .	417
	<i>Exxon Mobil Corp. v. Allapattah Services, Inc.</i> . . . . .	418
	Note and Questions . . . . .	426
<b>Chapter 10</b>	<b>REMOVAL . . . . .</b>	<b>427</b>
§ 10.01	THE RIGHT OF REMOVAL . . . . .	427
	Notes on Removal Jurisdiction . . . . .	428
§ 10.02	SHAM OR NOMINAL NONDIVERSE DEFENDANTS — THE PETE ROSE LITIGATION . . . . .	429
	<i>Rose v. Giamatti</i> . . . . .	429
	Further Notes and Questions on Removal Jurisdiction . . . . .	435
§ 10.03	PROCEDURE FOR AND AFTER REMOVAL . . . . .	439
	Notes on Removal Procedure . . . . .	441
	Introductory Note on the “Voluntary-Involuntary” Rule . . . . .	443
	<i>Jenkins v. National Union Fire Insurance Co.</i> . . . . .	444
	Further Notes and Questions on Removal Procedure . . . . .	448
§ 10.04	SPECIAL PROBLEMS OF REMOVAL IN FEDERAL-QUESTION AND CIVIL RIGHTS CASES . . . . .	452
[A]	Cases Involving Federal-Question Claims Joined with Nonremovable Claims . . . . .	452
[B]	Civil Rights Removal . . . . .	454
<b>Chapter 11</b>	<b>DOCTRINAL AND STATUTORY RESTRICTIONS ON FEDERAL JURISDICTION RELATED TO STATE-COURT LITIGATION . . . . .</b>	<b>457</b>
§ 11.01	ABSTENTION . . . . .	457
	Introductory Notes . . . . .	457
	Notes and Questions on the Abstention Doctrines . . . . .	461
	<i>Younger v. Harris</i> . . . . .	465

---

**TABLE OF CONTENTS**

	Notes and Questions on <i>Younger</i> Abstention . . . . .	472
	Concluding Problem . . . . .	478
§ 11.02	THE ANTI-INJUNCTION STATUTE . . . . .	478
	Introductory Note . . . . .	478
[A]	Expressly Authorized by Congress . . . . .	479
	<i>Mitchum v. Foster</i> . . . . .	479
	Notes and Questions on the Anti-Injunction Statute . . . . .	485
[B]	Necessary in Aid of Its Jurisdiction . . . . .	486
	<i>In re Joint Eastern &amp; Southern District Asbestos Litigation</i> . . . . .	486
[C]	To Protect or Effectuate Its Judgments . . . . .	491
	<i>Chick Kam Choo v. Exxon Corp.</i> . . . . .	491
	Notes and Questions on the Exceptions to the Anti-Injunction Act . . . . .	497
	Notes and Questions on Other Statutory Restrictions . . . . .	502
<b>Chapter 12</b>	<b>THE PLACE OF TRIAL, THE LAW APPLIED, AND CHOICE OF LAW IN THE FEDERAL TRIAL COURTS . . . . .</b>	<b>507</b>
§ 12.01	INTRODUCTION . . . . .	507
	Notes and Questions . . . . .	508
§ 12.02	THE LAW APPLIED TO FEDERAL DIVERSITY, ALIENAGE, AND SUPPLEMENTAL JURISDICTION CLAIMS . . . . .	509
[A]	Initial Interpretation of the Rules of Decision Act . . . . .	509
	<i>Swift v. Tyson</i> . . . . .	509
	Notes and Questions . . . . .	511
[B]	Developments in the Years from <i>Swift</i> to <i>Erie</i> . . . . .	514
	<i>Erie Railroad Co. v. Tompkins</i> . . . . .	516
	Notes and Questions . . . . .	523
[C]	The Relationship of <i>Erie</i> to Expansive Views of Federal Law . . . . .	528
	<i>Guaranty Trust Co. v. York</i> . . . . .	530
	Notes . . . . .	535
[D]	The Impact of <i>Erie</i> and <i>York</i> upon Procedure in the Federal Courts . . . . .	536
	<i>Sibbach v. Wilson &amp; Co.</i> . . . . .	536
	Notes and Questions . . . . .	541
[E]	Developments from <i>York</i> to <i>Hanna</i> . . . . .	542
	<i>Byrd v. Blue Ridge Rural Electric Co-operative</i> . . . . .	543
	Notes and Questions . . . . .	546
	<i>Hanna v. Plumer</i> . . . . .	546
	Notes and Questions on <i>Hanna</i> . . . . .	553
	<i>Burlington Northern Railroad v. Woods</i> . . . . .	554
	Notes and Questions on <i>Burlington Northern Railroad</i> . . . . .	557
[F]	The Future of <i>Erie</i> , the Federal Rules, and Congressional Legislation . . . . .	562

---

**TABLE OF CONTENTS**

[G]	The Court's Latest Attempt to Reconcile <i>Erie</i> with <i>Hanna</i> . . . . .	563
	<i>Semtek International Inc. v. Lockheed Martin Corp.</i> . . . . .	563
	Notes and Questions . . . . .	569
§ 12.03	SUBJECT-MATTER JURISDICTION, SERVICE OF PROCESS, VENUE, FORUM NON CONVENIENS, CHOICE OF LAW, AND TRANSFER IN THE FEDERAL DISTRICT COURTS . . . . .	571
[A]	Subject-Matter Jurisdiction and Service of Process in Federal Actions .	571
	Note on Priority Among Decisions on Subject-Matter Jurisdiction, Personal Jurisdiction, and the Merits of the Case . . . . .	573
[B]	Venue in Actions in the Federal District Court . . . . .	574
	Note to §§ 1390 and 1391 . . . . .	576
	Note on the World Trade Center Disaster Litigation . . . . .	578
[C]	Forum Non Conveniens, Transfer, and Law Applied in Federal Actions . . . . .	579
	Introductory Note . . . . .	579
	<i>Piper Aircraft Co. v. Reyno</i> . . . . .	579
	Notes on <i>Piper Aircraft</i> . . . . .	587
[D]	Transfer from One Federal District to Another and Choice of Law . . . .	589
	Introductory Notes on Transfer . . . . .	589
	Introductory Notes on Choice of Law in the Federal Courts . . . . .	591
	<i>Ferens v. John Deere Company</i> . . . . .	593
	Notes and Questions on Transfer, Choice of Law, and Law Applied . . . . .	605
<b>Chapter 13</b>	<b>FEDERAL COMMON LAW . . . . .</b>	<b>609</b>
	<i>Boyle v. United Technologies Corp.</i> . . . . .	611
	Notes . . . . .	616
<b>Chapter 14</b>	<b>ALLOCATION OF AUTHORITY BETWEEN LIFE- TENURED FEDERAL JUDGES AND OTHER ADJUDICATORS, AND BETWEEN COURTS OF EXCLUSIVE AND COURTS OF CONCURRENT JURISDICTION . . . . .</b>	<b>627</b>
	Problem . . . . .	630
§ 14.01	THE INTERPLAY AMONG ARTICLE III COURTS, ARTICLE I COURTS, AND ADMINISTRATIVE AGENCIES: THE FUTURE OF THE FEDERAL COURTS . . . . .	631
[A]	<i>Crowell v. Benson</i> and the Relation of Article I Adjudicators and Tribunals to Article III Courts . . . . .	631
[B]	Modern Attempts to Deal with the Issues of Article III Courts and Non- Article III Adjudicators and Tribunals . . . . .	634
	<i>Thomas v. Union Carbide Agricultural Products Co.</i> . . . . .	634
	Note on Developments Since <i>Thomas</i> . . . . .	642

---

**TABLE OF CONTENTS**

§ 14.02 THE MERGER OF THE THEORIES INVOLVING ARTICLE III, THE SEVENTH AMENDMENT, AND THE PUBLIC-RIGHTS DOCTRINE . . . . . 643

*Granfinanciera, S.A. v. Nordberg* . . . . . 645

Notes and Questions on *Granfinanciera* and the Right to Jury Trial . . . 649

Notes and Questions on Present Article I Courts and Adjuncts and Their Relationship to Article III Courts . . . . . 653

Concluding Notes and Questions . . . . . 660

§ 14.03 THE *TIDEWATER* PROBLEM — CAN ARTICLE I POWERS BE CONFERRED ON ARTICLE III COURTS? . . . . . 663

§ 14.04 THE RELATIONSHIP OF ARTICLE III FEDERAL COURTS TO ADMINISTRATIVE AGENCIES . . . . . 664

Notes and Questions . . . . . 665

§ 14.05 THE DISTINCTION BETWEEN EXCLUSIVE AND CONCURRENT FEDERAL JURISDICTION . . . . . 668

  

**Chapter 15 FEDERAL APPELLATE JURISDICTION: COURTS OF APPEALS AND THE SUPREME COURT . . . . . 671**

---

§ 15.01 APPELLATE JURISDICTION OF UNITED STATES COURTS OF APPEALS OVER DECISIONS OF FEDERAL DISTRICT COURTS . . . 671

[A] Overview and Statutory Basis . . . . . 671

Notes on Section 1291 and Section 1292 . . . . . 672

[B] The Collateral-Order Doctrine . . . . . 673

*Firestone Tire & Rubber Co. v. Risjord* . . . . . 673

Notes . . . . . 678

[C] Possible Reform of Federal Appealability Definitions? . . . . . 680

§ 15.02 SUPREME COURT APPELLATE JURISDICTION . . . . . 682

[A] Introduction . . . . . 682

[B] Jurisdiction to Review Cases from the United States Courts of Appeals . . . . . 683

Notes on Section 1254 . . . . . 683

[C] Review of State-Court Decisions . . . . . 684

[1] Finality . . . . . 685

*Cox Broadcasting Corp. v. Cohn* . . . . . 685

Notes and Questions . . . . . 691

[2] Reviewability . . . . . 693

[a] Introduction . . . . . 693

[b] Limitation to Federal Issues . . . . . 693

[c] The Doctrine of Adequate and Independent State Grounds . . . . . 695

[i] Exceptions — Questionable “Adequacy” . . . . . 696

[ii] Unclear “Independence” — The Rule of *Michigan v. Long* . . . . 697

*Michigan v. Long* . . . . . 697

---

**TABLE OF CONTENTS**

	Notes and Questions on <i>Michigan v. Long</i> . . . . .	703
[3]	No Direct Review of State-Court Decisions by Lower Federal Courts; the <i>Rooker-Feldman</i> Doctrine . . . . .	707
<b>Chapter 16</b>	<b>INTERJURISDICTIONAL PRECLUSION . . . . .</b>	<b>711</b>
§ 16.01	INTRODUCTION . . . . .	711
[A]	The Bases of the Law of Interjurisdictional Preclusion . . . . .	711
[1]	The Full Faith and Credit Clause . . . . .	712
[2]	The Full Faith and Credit Statute, 28 U.S.C. § 1738 . . . . .	712
[3]	The Decisional Law of Former Adjudication . . . . .	714
§ 16.02	CLAIM AND ISSUE PRECLUSION FROM STATE ADJUDICATION IN FEDERAL CIVIL RIGHTS LITIGATION . . . . .	716
	<i>Migra v. Warren City School District Board of Education</i> . . . . .	716
	Notes and Questions . . . . .	720
§ 16.03	OTHER FEDERAL-STATE PRECLUSION ISSUES . . . . .	722
[A]	Federal-Court Judgments on State-Law Claims . . . . .	722
[B]	Preclusive Effect for State-Court Judgments in Exclusive-Federal- Jurisdiction Cases? . . . . .	724
§ 16.04	CODA: INTERJURISDICTIONAL PRECLUSION IN PRINCIPLE AND IN PRACTICE . . . . .	725
<b>Chapter 17</b>	<b>FEDERAL HABEAS CORPUS FOR STATE PRISONERS . . . . .</b>	<b>727</b>
§ 17.01	INTRODUCTION AND HISTORICAL BACKGROUND . . . . .	727
§ 17.02	STATUTORY BASIS . . . . .	732
§ 17.03	OVERVIEW OF THE MAIN TYPES OF LEGAL ISSUES AND CONTROVERSIES ABOUT THE FUNCTION OF HABEAS . . . . .	733
[A]	Summary of the Main Types of Issues in Habeas Litigation . . . . .	733
[1]	Prerequisites . . . . .	733
[2]	Waiver . . . . .	734
[3]	Scope of Claims Cognizable . . . . .	734
[B]	Controversies About the Function and Scope of Federal Habeas Corpus for State Prisoners . . . . .	735
§ 17.04	PREREQUISITES . . . . .	738
[A]	Custody . . . . .	738
[B]	Exhaustion of Presently Available State Remedies . . . . .	739
[C]	Second or Successive Petitions . . . . .	742
	Notes and Questions . . . . .	742
§ 17.05	WAIVER — THE EFFECT OF PROCEDURAL DEFAULTS . . . . .	744
	<i>Coleman v. Thompson</i> . . . . .	748
	Notes and Questions . . . . .	753

---

**TABLE OF CONTENTS**

§ 17.06	SCOPE OF CLAIMS COGNIZABLE . . . . .	754
	<i>Teague v. Lane</i> . . . . .	758
	Notes and Questions on Post- <i>Teague</i> Developments . . . . .	765
	Notes and Questions on <i>Teague</i> . . . . .	769
§ 17.07	STANDARDS OF REVIEW — DEFERENCE TO STATE-COURT DECISIONS . . . . .	770
	<i>Williams v. Taylor</i> . . . . .	772
	Notes and Questions on <i>Williams v. Taylor</i> . . . . .	779
§ 17.08	SPECIAL PROVISIONS FOR HABEAS CORPUS PROCEDURES IN CAPITAL CASES . . . . .	782
<b>Chapter 18</b>	<b>FEDERAL JURISDICTION IN TIME OF WAR AND IN AN AGE OF TERRORISM . . . . .</b>	<b>787</b>
§ 18.01	BACKGROUND . . . . .	787
§ 18.02	PROBLEMS ARISING FROM DETENTION OF, AND THE ATTEMPTED USE OF MILITARY COMMISSIONS TO TRY, “UNLAWFUL ENEMY COMBATANTS” . . . . .	790
§ 18.03	THE LANDMARK DECISION IN <i>BOUMEDIENE v. BUSH</i> AND ITS AFTERMATH . . . . .	793
	<i>Boumediene v. Bush</i> . . . . .	794
	Notes and Questions . . . . .	810
	<b>TABLE OF CASES . . . . .</b>	<b>TC-1</b>
	<b>INDEX . . . . .</b>	<b>I-1</b>