

Federal Courts

Federal Courts

Cases and Materials on Judicial Federalism and the Lawyering Process

FOURTH EDITION

Arthur D. Hellman

SALLY ANN SEMENKO ENDOWED CHAIR
UNIVERSITY OF PITTSBURGH SCHOOL OF LAW

David R. Stras

ASSOCIATE JUSTICE
MINNESOTA SUPREME COURT

Ryan W. Scott

PROFESSOR OF LAW
INDIANA UNIVERSITY MAURER SCHOOL OF LAW

F. Andrew Hessick

PROFESSOR OF LAW
UNIVERSITY OF NORTH CAROLINA SCHOOL OF LAW



CAROLINA ACADEMIC PRESS
Durham, North Carolina

Copyright © 2017
Carolina Academic Press, LLC
All Rights Reserved

ISBN 978-1-53100-149-0
eISBN 978-1-53100-150-6
LCCN 2017942688

Carolina Academic Press, LLC
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

To Diana, Jeffrey, Matthew, and Melissa, ADH

To Heather, Brandon, and Benjamin, DRS

To Cameron, RWS

To Carissa, Hattie, and Dorothy, FAH

Contents

Preface to the Fourth Edition xxi

Preface to the First Edition xxv

Part One

The Constitutional Framework and the Federal Courts

Chapter 1 · The Federal Judicial System	3
A. Development of the System	3
[1] The Constitution	3
[2] The Judiciary Act of 1789	4
[3] Evolution of the Structure	5
[4] Evolution of the Jurisdictional Arrangements	6
B. Selection of Judges	8
Rachel Brand, <i>A Practical Look at Federal Judicial Selection</i>	9
Statement of Thomas Z. Hayward, Jr., on Behalf of the American Bar Association	12
Note: The Appointment of Federal Judges	14
<i>Republican Party of Minnesota v. White</i>	15
Note: Federal and State Judicial Selection	20
C. The “Province and Duty of the Judicial Department”	20
<i>Marbury v. Madison</i>	20
Note: <i>Marbury</i> and the Federal Courts	28
Chapter 2 · The Judicial Power Under Article III	31
A. Party-Based Heads of Jurisdiction	31
Note: The “ <i>Tidewater</i> Problem”	32
Note: “Minimal” Diversity	33
B. Federal Question Jurisdiction: Foundation Cases	36
<i>Cohens v. Virginia</i>	37
Note: <i>Cohens</i> and Federal Question Jurisdiction	39
<i>Osborn v. Bank of the United States</i>	40
Note: <i>Osborn</i> , <i>Planters Bank</i> , and Federal Question Jurisdiction	46
Note: Removal Based on a Federal Question	47
C. The Boundaries of Federal Question Jurisdiction	50

	<i>Verlinden B.V. v. Central Bank of Nigeria</i>	50
	Note: The Implications of <i>Verlinden</i>	54
	Note: Jurisdiction Based on Congressional Charters	55
	<i>Mesa v. California</i>	57
	Note: Suits Against Federal Officers	61
	Problem: Suits Against Diplomats' Insurers	61
	Problem: Nuclear "Incidents" and Liability Claims	62
	Problem: Danger Invites Rescue — and Also Removal?	63
Chapter 3 · Justiciability and the Case or Controversy Requirement		65
A.	Standing	66
	[1] The Basic Doctrine	66
	<i>Allen v. Wright</i>	66
	Note: Standing and <i>Allen</i>	80
	Note: Taxpayer Standing	82
	[2] Standing Under Congressional Statutes	85
	<i>Lujan v. Defenders of Wildlife</i>	86
	Note: Congress's Role in Standing	97
	Problems: Standing	101
	[3] Prudential Standing	102
	Note: Prudential Limitations on Standing	102
	<i>Singleton v. Wulff</i>	104
	<i>Kowalski v. Tesmer</i>	110
	Note: More on Third-Party Standing	117
	Problem: A Lawsuit by a Non-Custodial Parent	119
	Note: The "Zone of Interests" Test	119
B.	Ripeness	121
	<i>Doe v. Bush</i>	121
	Note: Ripeness	126
	<i>Poe v. Ullman</i>	126
	Problem: A Preenforcement Challenge to Voter Registration Laws	135
C.	Mootness	136
	<i>Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.</i>	137
	Note: <i>Laidlaw</i> and the Voluntary Cessation Exception	143
	Problem: Injunctive Relief Under the ADA	145
	Note: The Exception for Cases "Capable of Repetition, Yet Evading Review"	146
	Note: Mootness and the Class Action Exception	148
	Note: The Collateral Consequences Exception	150
	Problem: A Settlement — with a Contingent Payment	151
D.	The Political Question Doctrine	151
	<i>Nixon v. United States</i>	152
	Note: The Political Question Doctrine	163

Problem: A Suit Against a Terrorist Organization	167
--	-----

Part Two

The Role of Federal Law in State-Court Litigation

Chapter 4 · State Courts in a Federal System	171
A. Supreme Court Review: Foundations	171
<i>Martin v. Hunter's Lessee</i>	172
Note: <i>Martin</i> and the Constitutionality of Section 25	177
Note: The Judiciary Act Amendments of 1867	178
<i>Murdock v. City of Memphis</i>	179
Note: <i>Murdock</i> , The Act of 1867, and the Constitution	185
B. Removal of Cases from State to Federal Court	186
Note: Federal-Question and Diversity Jurisdiction	187
C. Federal Claims and State-Court Standing	188
Note: <i>ASARCO</i> and Constitutional Litigation	188
Chapter 5 · Supreme Court Review of State-Court Decisions	191
A. Evolution of the Statutory Jurisdiction	191
Note: Operation of the Certiorari Jurisdiction	192
Note: Dismissals “For Want of a Substantial Federal Question”	193
Note: “The Highest Court of a State”	194
Problem: Discretionary Review in the State’s Highest Court	194
B. The Relation Between State and Federal Law	195
[1] The Basic Doctrine	195
<i>Fox Film Corp. v. Muller</i>	195
Note: The Adequate and Independent State Ground Doctrine	197
Note: The Federal and Non-Federal Grounds in <i>Fox Film</i>	199
[2] Adequacy of State “Substantive” Grounds	199
<i>Indiana ex rel. Anderson v. Brand</i>	200
Note: State and Federal Law in <i>Anderson</i>	204
Note: Antecedent and Remedial State-Law Grounds	204
Problem: Property on a Tidal Canal	207
Problem: <i>Anderson</i> on Remand	208
[3] Adequacy of State Procedural Grounds	209
<i>James v. Kentucky</i>	210
Note: <i>James v. Kentucky</i> and Its Antecedents	213
Note: Discretionary State Procedural Rules	221
Problem: A “Lynch Mob Atmosphere?”	224
Note: Laying the Groundwork for Supreme Court Review	225
Problem: “Inadequate” Assistance of Counsel	226
[4] Independence of State Grounds and the Rule	
of <i>Michigan v. Long</i>	227
<i>Michigan v. Long</i>	228
Note: “Over-Reading” by State Courts	235

	Note: The <i>Long</i> Presumption	238
	<i>Pennsylvania v. Labron</i>	240
	Note: <i>Labron</i> and <i>Kilgore</i> on Remand	243
	Problem: “Squarely Within State Law”?	244
C.	The Requirement of a “Final Judgment”	246
	<i>Cox Broadcasting Corporation v. Cohn</i>	247
	Note: Finality in Section 1257 and Section 1291	254
	Note: The First, Second, and Third <i>Cox</i> Categories	254
	Problem: The Fruits of a Backpack Search	258
	Note: The Fourth <i>Cox</i> Category	258
	Problem: Objection to Territorial Jurisdiction	262
Chapter 6	· Litigating Federal Claims in State Courts	263
A.	The Power of State Courts to Hear Federal Claims	263
	<i>Tafflin v. Levitt</i>	263
	Note: Rebutting the Presumption of Concurrent Jurisdiction	269
	Note: Exclusive Jurisdiction and Intellectual Property Rights	270
	Note: Reverse Exclusivity?	271
	Note: Suits Against Federal Officers	272
B.	The Duty of State Courts to Hear Federal Claims	273
	<i>Haywood v. Drown</i>	273
	Note: The Obligation to Hear Federal Claims	281
	Note: <i>Haywood</i> and Its Implications	285
	Problem: A Title VII Claim in State Court	286
C.	State Law and the Enforcement of Federal Rights	287
	<i>Johnson v. Fankell</i>	287
	Note: Preemption of State Law and the FELA Cases	291
	Note: Preemption of State Law and Section 1983	294
	Note: “Substance” Versus “Procedure”?	297
	Problem: A Prisoner’s Medical Claim	298
	Problem: Forum Selection Strategy	299

Part Three

The Power of the Federal Courts to Formulate Rules of Decision

Chapter 7	· The <i>Erie</i> Doctrine and the Obligation of Federal Courts to Follow State Law	303
A.	Foundations of the Doctrine	303
	<i>Swift v. Tyson</i>	303
	Note: Section 34 and <i>Swift v. Tyson</i>	306
	<i>Erie R. Co. v. Tompkins</i>	307
	Note: The Decision in <i>Erie</i>	314
	Note: The Opinion in <i>Erie</i>	314
B.	Identifying and Ascertaining the Applicable State Law	316
	<i>Klaxon Co. v. Stentor Electric Mfg. Co.</i>	317

	Note: The <i>Klaxon</i> Rule	318
	Note: Ascertaining State Law	319
	Problem: An “Open and Obvious” Hazard	321
	Note: Certification of State-Law Issues	322
C.	State Law and Federal-Court Procedure	323
	[1] “Substance” and “Procedure”: Foundations	323
	Note: The Rules Enabling Act	323
	Note: <i>Guaranty Trust</i> and the “Outcome Determinative” Test	326
	Note: “Only Another Court of the State”	328
	Note: <i>Byrd v. Blue Ridge</i>	330
	[2] The <i>Hanna</i> Bifurcation	333
	<i>Hanna v. Plumer</i>	333
	Note: The Opinion in <i>Hanna</i>	338
	<i>Walker v. Armco Steel Corporation</i>	340
	Note: <i>Walker</i> and <i>West</i>	343
	Note: Rulemaking Under the Enabling Act	345
	Note: Enabling Act Rules and Federalism Concerns	346
	Problem: Evidence Rule 402 and State Law	348
	[3] Renewed Controversy: <i>Shady Grove</i>	349
	<i>Shady Grove Orthopedic Associates v. Allstate Insurance Co.</i>	349
	Note: The Implications of <i>Shady Grove</i>	365
	Problem: State Antitrust Actions in Federal Court	367
	Problem: Summary Judgment and the Standard of Care	368
	[4] “Unguided <i>Erie</i> ” Choices	368
	<i>Chambers v. NASCO, Inc.</i>	368
	Note: <i>Chambers</i> and Unguided <i>Erie</i> Choices	371
	Note: <i>Gasperini, Semtek</i> , and the “Unguided <i>Erie</i> Choice”	373
	Problems: Asbestos Litigation Reform Measures	376
Chapter 8	Federal Common Law	379
A.	Rights and Duties of the United States	379
	<i>Clearfield Trust Co. v. United States</i>	379
	Note: The Law Governing the Rights and Obligations of the United States	381
	<i>United States v. Kimbell Foods, Inc.</i>	384
	Note: Uniformity or Borrowing?	389
	Problem: Ejecting the Post Office	391
	Note: The <i>Standard Oil</i> Case	392
B.	Implied Remedies for Statutory Violations	394
	Note: The <i>Rigsby</i> Era	395
	<i>J. I. Case Co. v. Borak</i>	397
	Note: “To Make Effective the Congressional Purpose”	399
	Note: <i>Cort v. Ash</i> and the Four-Factor Test	400
	Note: From <i>Cannon</i> to <i>Sandoval</i>	403
	<i>Alexander v. Sandoval</i>	406

	Note: The Implications of <i>Sandoval</i>	415
	Note: <i>Sandoval</i> and Section 1983	415
	Problem: Unordered Merchandise	416
	Note: Interstitial Issues	417
	Note: Remedies and Standards of Liability	421
C.	Other Matters of National Concern	424
	<i>Kohr v. Allegheny Airlines</i>	424
	Note: The “Predominant” Federal Interest in “Aviation”	428
	<i>Miree v. DeKalb County</i>	428
	Note: The “Radiations” of Federal Government Transactions	433
	<i>Boyle v. United Technologies Corporation</i>	434
	Note: The Implications of <i>Boyle</i>	446
	Problems: Suits Against Government Contractors	447
	<i>Atherton v. FDIC</i>	448
	Note: Federal Common Law after <i>Atherton</i>	452
D.	Implied Remedies for Violation of Constitutional Rights	452
	<i>Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics</i>	453
	Note: The <i>Bivens</i> Cause of Action	458
	<i>Minnecci v. Pollard</i>	459
	Note: <i>Minnecci</i> and the Future of <i>Bivens</i>	465
	Problem: <i>Bivens</i> and Religious Discrimination	468

Part Four

The Jurisdiction of the Federal District Courts

Chapter 9 · Challenges to Jurisdiction	473	
A. The “Mansfield Rule”	473	
	<i>Mansfield, Coldwater & Lake Michigan Ry. Co. v. Swan</i>	473
	Note: The “Mansfield Rule”	476
	Note: Appellate Scrutiny and Collateral Attack	477
	Problem: What’s Wrong with this Picture?	478
	Problem: Deliberate Concealment of Jurisdictional Facts	478
B. Jurisdiction and Merits	479	
	Note: Threshold Requirements and Subject-Matter Jurisdiction	479
	Problem: “But He Wasn’t a Participant!”	482
	Note: The Frivolous Federal Claim	483
C. Choosing Among Threshold Grounds	484	
	Note: “Hypothetical Jurisdiction” and the <i>Steel Co.</i> Case	484
	Note: Personal and Subject-Matter Jurisdiction	486
	Note: Other Threshold Issues	487
	Problem: The “Enrolled Bill Rule”	489
	Problem: A Doomed Claim and the <i>Steel Co.</i> Rule	490

Chapter 10 · The “Federal Question” Jurisdiction	491
A. The “Well Pledged Complaint” Rule	491
<i>Louisville & Nashville Railroad Co. v. Mottley</i>	491
Notes and Questions: The Aftermath of <i>Mottley</i>	493
Note: <i>Gully</i> and the “Merely Possible” Federal Question	493
Problem: A Medical-Device Products Liability Suit	495
B. The State-Created Cause of Action with a Federal “Ingredient”	495
<i>American Well Works Co. v. Layne & Bowler Co.</i>	495
Note: <i>American Well Works</i> and the “Holmes Test”	497
<i>Smith v. Kansas City Title & Trust Co.</i>	497
Note: <i>Smith</i> and <i>Moore</i>	499
Note: <i>Franchise Tax Board</i> and <i>Merrell Dow</i>	500
<i>Grable & Sons Metal Products, Inc. v. Darue</i>	
<i>Engineering & Manufacturing</i>	502
Note: <i>Smith</i> and <i>Grable</i>	509
<i>Gunn v. Minton</i>	510
Note: Clarifying <i>Grable</i> — and Narrowing It?	516
Problem: A Wrongful Discharge Claim	517
Problem: Another <i>Smith</i> Case	518
Problem: Fiduciary Duty and Antitrust Law	519
Note: <i>Christianson</i> and Claims versus Theories	519
C. Preemption, Removal, and “Artful Pleading”	522
<i>Beneficial National Bank v. Anderson</i>	522
Problem: Property Damages in an Interstate Move	528
<i>Felix v. Lucent Technologies, Inc.</i>	529
Note: ERISA and Federal-Question Removal	536
Note: A Wrong Without a Remedy?	539
Problem: An On-the-Job Injury	540
Problem: ERISA and Medical Negligence	541
<i>Rivet v. Regions Bank of Louisiana</i>	542
Note: <i>Rivet</i> and “Artful Pleading”	544
Problem: Discharge of a Salesman	546
D. Jurisdiction over Declaratory Judgment Actions	546
Note: The <i>Skelly Oil</i> Case	547
<i>Franchise Tax Board of California v. Construction Laborers</i>	
<i>Vacation Trust for Southern California</i>	549
Note: Declaratory Judgments, <i>Franchise Tax Board</i> ,	
and the <i>Shaw</i> Footnote	556
Problem: Adopting a Highway	558
Problem: A Medical Provider’s Lien	558
E. Supplemental Jurisdiction	559
<i>United Mine Workers of America v. Gibbs</i>	560
<i>City of Chicago v. International College of Surgeons</i>	563
<i>Lyon v. Whisman</i>	568

	Note: The Supplemental Jurisdiction Statute	573
	Problem: A Disappointed Ex-Employee	574
	Note: Tolling and Supplemental Claims	575
Chapter 11 · Diversity Jurisdiction		577
A.	Corporations and Other Entities as Parties	578
	<i>Carden v. Arkoma Associates</i>	578
	Note: Artificial Entities as Parties	586
	Note: <i>Carden</i> Reaffirmed	588
	Problem: A Suit Against a “Professional Corporation”	589
	<i>Hertz Corp. v. Friend</i>	589
	Note: Determining a Corporation’s “Principal Place of Business”	596
B.	The Amount in Controversy Requirement	598
	<i>Ericsson GE Mobile Communications, Inc. v. Motorola Communications & Electronics, Inc.</i>	598
	Note: Whose Viewpoint?	602
	Note: The “Non-Aggregation Rule”	604
	Problem: A Pipeline across Blackacre	607
	Note: Indexing the Amount in Controversy	608
	Note: Supplemental Jurisdiction in Diversity Cases	608
Chapter 12 · Special Problems of Removal Jurisdiction		611
A.	Introduction	611
	Note: The Statutory Framework	612
	Note: A Presumption Against Removability?	613
B.	Federal-Question Removal and State-Law Claims	614
[1]	Supplemental Jurisdiction	615
	<i>City of Chicago v. International College of Surgeons</i>	615
	Note: Authority to Remand State-Law Claims	615
	<i>Payne v. Parkchester North Condominiums</i>	617
	Note: Removal and “Manipulative Tactics”	620
	Problem: Discord in the Police Department	621
[2]	Unrelated State-Law Claims and Federal-Question Removal	622
	Note: Goodbye to the “Separate and Independent Claim” Provision	622
	Problems: Applying Rewritten § 1441(c)	624
C.	Diversity Jurisdiction, Removal, and Litigation Strategy	626
[1]	The Amount-in-Controversy Requirement	626
	Note: Removal and the Amount in Controversy	626
	Note: Litigating the “Preponderance” Standard	628
	Problem: “Disabling” Injuries from a Television Set	631
	<i>Rogers v. Wal-Mart Stores, Inc.</i>	634
	Note: Stipulations and the Amount in Controversy	637
	Note: Authorizing Recovery-Limiting “Declarations”	640

[2]	The Complete-Diversity Requirement	642
	<i>Filla v. Norfolk Southern Railway Company</i>	642
	Note: “Fraudulent Joinder”	645
	Note: The “Fraudulent Joinder Prevention Act”	647
	Problem: An End Run Around the Forum Defendant Rule?	649
[3]	The One-Year Limitation and the New “Bad Faith” Exception	650
	Note: Modifying the One-Year Rule	650
	<i>Shorraw v. Bell</i>	652
	Note: Applying the “Bad Faith” Exception	656
	Problems: Is This “Bad Faith” Under § 1446(c)(1)?	657
[4]	Joinder of Parties After Removal	658
	Note: Applying 28 U.S.C. § 1447(c)	658
	Problem: Joining the Insurance Agent	660
D.	Some Procedural Aspects of Removal	661
[1]	The Timing of Removal	661
	Note: The Deadline for Removal	662
	<i>Rossetto v. Oaktree Capital Management, LLC</i>	663
	Note: Untimely or Premature?	668
	Note: Removal in Multiple-Defendant Cases	669
[2]	Motions to Remand	670
	Note: The Timing of Motions to Remand	671
[3]	Appellate Review of Remand Orders	672
	Note: <i>Thermtron</i> and Its Discontents	672
	Note: Merits-Related Jurisdictional Rulings	675

Part Five Challenging State Official Action

Chapter 13 · State Sovereign Immunity	679
Introductory Note	679
A. Origins and Early Interpretation of the Eleventh Amendment	679
Note: <i>Chisholm</i> and Its Aftermath	680
<i>Hans v. Louisiana</i>	682
Note: <i>Hans v. Louisiana</i>	686
B. Enforcing the Constitution Through Suits Against State Officers	687
[1] Suits for Injunctions	687
<i>Ex parte Young</i>	687
Note: The Significance of <i>Ex parte Young</i>	694
[2] Suits for Damages	697
<i>Edelman v. Jordan</i>	697
Note: <i>Ex parte Young</i> and <i>Edelman</i>	705
Problems: The Eleventh Amendment and Permissible Remedies	707
C. Congressional Power and State Sovereign Immunity	708
<i>Seminole Tribe of Florida v. Florida</i>	708

	Note: The Source of State Sovereign Immunity After <i>Seminole Tribe</i>	726
	Note: Congressional Abrogation of State Sovereign Immunity After <i>Seminole Tribe</i> and <i>Alden</i>	732
D.	Consent and Waiver by the State	738
	Note: State Consent and State Waiver of Immunity	738
E.	The Future of the Immunity	741
	[1] Injunctive Relief: The Scope of the <i>Ex parte Young</i> Exception <i>Virginia Office for Protection and Advocacy v. Stewart</i>	741 742
	Note: <i>VOPA v. Stewart</i> and the Future of <i>Ex parte Young</i>	752
	[2] Damages Actions and Congress's Spending Power	752
	[3] Recap: Exceptions to State Sovereign Immunity	755
F.	Sovereign Immunity in Litigation	756
	[1] Sovereign Immunity and Jurisdictional Doctrines	756
	[2] Sovereign Immunity and Removal	757
Chapter 14 · The Section 1983 Cause of Action		759
A.	Conduct "Under Color of" State Law	760
	<i>Monroe v. Pape</i>	760
	Note: The Impact of <i>Monroe v. Pape</i>	768
B.	Section 1983 and Constitutional Claims	771
	[1] State Tort Law, State of Mind, and Section 1983	771
	[2] Exhaustion and Section 1983	775
C.	Section 1983 and Statutory Claims	777
	<i>Maine v. Thiboutot</i>	777
	Note: The Aftermath of <i>Thiboutot</i>	782
	<i>Gonzaga University v. Doe</i>	783
	Note: "Unambiguously Conferred Rights"	791
	Problem: A "Right" to Transport Firearms?	794
	Note: The " <i>Sea Clammers</i> " Doctrine	795
D.	Governmental Liability	800
	<i>Monell v. Department of Social Services of the City of New York</i>	800
	Note: The Aftermath of <i>Monell</i>	806
	Note: Identifying a Municipal "Policy"	809
	Note: <i>Canton</i> and Failure to Train	813
	Note: <i>Iqbal</i> and "Supervisory Liability"	816
	Problem: Conditions of Confinement	819
	Problem: A Nurse with a Deadly Touch	820
E.	Official Immunities	821
	[1] Absolute Immunity	822
	[2] Qualified Immunity	823
	<i>Harlow v. Fitzgerald</i>	824
	Note: Qualified Immunity after <i>Harlow</i>	828

Note: Qualified Immunity, General Standards, and “Unique Facts”	831
Note: Litigating Qualified Immunity and the “Order of Battle”	833
Problem: A Taser Too Far?	838
Note: Qualified Immunity and Intercircuit Conflicts	838
Chapter 15 · Federal Habeas Corpus	841
A. Introduction to Federal Habeas Corpus	841
[1] History and Purposes of the Writ	841
[2] Federal-Court Review of State Court Judgments of Conviction	842
B. The Scope and Standard of Review on Collateral Attack	845
[1] Cognizable Claims	845
<i>Withrow v. Williams</i>	847
Note: Constitutional Claims Cognizable in Habeas	856
[2] Retroactivity of New Rules of Constitutional Law	858
<i>Teague v. Lane</i>	858
Note: <i>Teague</i> and “New Rules”	867
Note: The <i>Teague</i> Exceptions	869
[3] The Effect of AEDPA	873
<i>Harrington v. Richter</i>	874
Note: Unreasonable Applications of Clearly Established Federal Law Under AEDPA	882
[4] Successive and Abusive Petitions	887
C. State Processes and Federal Habeas Review	887
[1] Exhaustion of State Remedies	888
[2] Effect of State Procedural Default	891
<i>Wainwright v. Sykes</i>	891
Note: Procedural Foreclosure of Constitutional Claims and the “Cause and Prejudice” Standard	900
[3] Harmless Error	904
[4] State-Court Factfinding	905
D. The Relevance of Innocence	906
<i>Herrera v. Collins</i>	906
Note: The Role of Innocence	918
Note: “Innocence” and Procedural Default	919
E. The Suspension Clause and “Adequate Substitutes” for Habeas Corpus	925
Part Six	
Systemic Issues in Federal Litigation	
Chapter 16 · Parallel Proceedings in State and Federal Court	929
A. Injunctions Against Suits in State Court	930
<i>Atlantic Coast Line Railroad Company v. Brotherhood of Locomotive Engineers</i>	930

	Note: The Anti-Injunction Act and Its Exceptions	937
	Note: “Expressly Authorized” Exceptions	938
	Note: “Necessary in Aid of Jurisdiction”	943
	Note: The “Relitigation” Exception	944
	Note: Other Issues Under the Anti-Injunction Act	946
	Note: Other Acts Prohibiting Federal Injunctions	947
B.	Abstention Doctrines	948
	[1] <i>Pullman</i> Abstention	948
	<i>Railroad Commission of Texas v. Pullman Co.</i>	948
	Note: The Rationale of <i>Pullman</i> Abstention	950
	Problem: An Anti-Loitering Ordinance	952
	[2] <i>Burford</i> Abstention	953
	<i>Quackenbush v. Allstate Insurance Company</i>	953
	Note: <i>Burford</i> Abstention	962
	[3] <i>Younger</i> Abstention	963
	<i>Younger v. Harris</i>	963
	Note: Equitable Restraint and <i>Younger</i> Abstention	970
	Note: <i>Younger</i> and Threatened Prosecutions	973
	Note: The Timing of the Federal and State Proceedings	975
	<i>Sprint Communications, Inc. v. Jacobs</i>	975
	Note: The Extension of <i>Younger</i> Beyond Criminal Proceedings	980
C.	Deference to State Proceedings	982
	<i>Colorado River Water Conservation District v. United States</i>	982
	Note: Deference to Parallel State Proceedings	988
	Note: Federal Declaratory Judgment Suits	990
	Problem: Parallel Age Discrimination Suits	993
D.	Implied Subject-Matter Exclusions from Federal Jurisdiction	994
	[1] The Domestic Relations Exception	994
	[2] The Probate Exception	996
	<i>Marshall v. Marshall</i>	996
	Note: Reining in the Probate Exception	1000
	Problem: A Quarrel Over Probate Property	1001
Chapter 17 · Inter-System Preclusion and the Rooker-Feldman Doctrine		1003
A.	Federal Courts and the Preclusive Effect of State-Court Judgments	1003
	<i>Migra v. Warren City School District Board of Education</i>	1003
	Note: Preclusion in Federal Courts	1008
	Problem: Section 1983 Damages Following a State	
	Mandamus Action	1010
B.	The <i>Rooker-Feldman</i> Doctrine	1011
	<i>Exxon Mobil Corp. v. Saudi Basic Industries Corp.</i>	1011
	Note: Parties, Preclusion, and the <i>Rooker-Feldman</i> Doctrine	1016
	<i>Mo’s Express, LLC v. Sopkin</i>	1019

Note: Developments in the <i>Rooker-Feldman</i> Doctrine after <i>Saudi Basic</i> and <i>Lance</i>	1024
Problem: Religious Land Use and <i>Rooker-Feldman</i>	1026
Problem: A Section 1983 Suit Challenging a Biased Judge	1027
Chapter 18 · Appellate Review in the Federal System	1029
A. Review of “Final Decisions” of the District Courts	1029
<i>Mohawk Industries, Inc. v. Carpenter</i>	1030
Note: The Collateral Order Doctrine	1036
B. Review of Interlocutory Orders of the District Courts	1039
[1] Appeals as of Right	1039
Note: Appellate Review of Injunction Orders	1040
[2] Discretionary Appeals	1043
Note: Discretionary Review Under §1292(b)	1043
<i>Cole v. United States District Court for the District of Idaho</i>	1045
Note: Mandamus and Appellate Review	1051
Problem: Finality, Mandamus, and the Political Question Doctrine	1053
Part Seven	
The Constitutional Framework Revisited	
Chapter 19 · Congressional Power to Curtail the Jurisdiction of the Federal Courts	1057
A. The Appellate Jurisdiction of the Supreme Court	1058
<i>Ex Parte McCardle</i>	1059
Note: The Implications of <i>Ex Parte McCardle</i>	1063
<i>United States v. Klein</i>	1066
Note: The Import of <i>Klein</i>	1070
Note: “External” Limitations	1070
Note: The “Essential Functions” Thesis	1071
Note: The “Marriage Protection Act”	1073
Problems: The “Constitution Restoration Act”	1074
B. The Jurisdiction of the Federal District Courts	1075
<i>Sheldon v. Sill</i>	1075
Note: Congress and the Lower Federal Courts	1077
<i>Webster v. Doe</i>	1078
Note: Eliminating Jurisdiction over Constitutional Claims	1085
Problem: Removing Jurisdiction over “Abortion-Related” Cases	1085
Problems: The “Pledge Protection Act”	1086
Chapter 20 · Congressional Power to Control Judicial Decision Making	1089
<i>United States v. Klein</i>	1090
<i>Plaut v. Spendthrift Farm, Inc.</i>	1090

Note: Congress and the Exercise of “Judicial Power”	1106
<i>Bank Markazi v. Peterson</i>	1108
Note: Congress’s Power to Control Decisionmaking After <i>Bank Markazi</i>	1118
Problem: Save Mount Rushmore	1118
Note: The Import of <i>Dickerson</i>	1119
Problem: The Constitution Restoration Act	1120
Note: The Judicial Conduct Act	1121
Problem: The Constitutionality of AEDPA	1122
Chapter 21 · Non-Article III Courts and Judges	1125
<i>Stern v. Marshall</i>	1126
Note: The Decisions in <i>Northern Pipeline</i> and <i>Stern</i>	1143
Note: <i>Crowell v. Benson</i> and Administrative Agencies	1144
Note: The Decisions in <i>Stern</i> and <i>Schor</i>	1145
<i>Wellness International Network, Ltd. v. Sharif</i>	1146
Note: Consent and Structural Protections	1156
Problem: Mandatory Arbitration in Bankruptcy	1157
Note: Magistrate Judges in the Federal Judicial System	1157
Appendix A · The Constitution of the United States	1159
Appendix B · The Justices of the United States Supreme Court, 1946–2015 Terms	1173
Table of Cases	1177
Index	1193

Preface to the Fourth Edition

In the Preface to the First Edition (reprinted immediately following), we explained our basic approach in writing a new Federal Courts casebook. We would build on the traditional model of the Federal Courts course—a model that focuses on issues of federalism, separation of powers, and institutional competency—but would place equal emphasis on a second component: giving students the grounding they need to be effective lawyer-litigators. In this Fourth Edition, we continue that approach, but we have made a number of changes in implementing it. These changes have been prompted by new decisions from the Supreme Court, a desire to fine-tune the book’s organization, and a commitment to reduce the size of the casebook. The result, we think, is a leaner book that will be a more effective tool for teaching.

New decisions. In the four years that immediately preceded the Third Edition, the Supreme Court issued a number of decisions that changed or significantly clarified the law. The last four years have not been as eventful, but four decisions seemed important enough to include in this Fourth Edition. Each replaces a case in the Third Edition. In addition, we use a district court decision to illustrate the lower courts’ application of the 2011 law establishing a “bad faith” exception to the one-year rule for removal of diversity cases.

Of the Supreme Court decisions, *Gunn v. Minton* (Chapter 10) stands out because it is the Court’s most recent opinion on a basic and recurring issue of Federal Courts law: the scope of the statutory “arising under” jurisdiction. The case confirms a four-part test for “incorporated federal question” jurisdiction in the district court, and it largely displaces the controversial decision in *Merrell Dow v. Thompson*, a principal case in all prior editions of the casebook.

Gunn narrowed the scope of federal jurisdiction, but another new decision, *Sprint Communications v. Jacobs* (Chapter 12), moves in the opposite direction. The Court made clear that *Younger* abstention applies only in three “exceptional” circumstances, and that the pendency of an action in state court is generally “no bar to proceedings concerning the same matter in the Federal court having jurisdiction.”

Two new decisions addressed the scope of Congress’s power under Article III. In *Bank Markazi v. Peterson* (Chapter 20), the Court rejected arguments that Congress violated the separation of powers by purporting to change the law for, and directing a particular result in, a single pending case. And in *Wellness Int’l v. Sharif* (Chapter 22), the Court recognized Congress’s power to assign a broad class of cases to non-Article III tribunals based on the parties’ consent.

The small number of new principal cases may appear surprising, but we emphasize 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.

Fine-tuning the book's organization. Federal Courts has a reputation as a difficult course. One way of combating this, as we suggested in the Preface to the First Edition, is through structure—a structure that organizes the various topics into larger, well-defined units of study. We think that the seven-part structure used in the first and subsequent editions of the casebook is sound, and we have retained it in this edition. But within that framework we have made three modest changes suggested by experience.

First, Part Two, dealing with the role of federal law in state-court litigation, has been divided into three chapters rather than two. Chapter 4 now presents an overview of the topic, including the foundational cases on Supreme Court review of state-court decisions and an introduction to removal jurisdiction. This arrangement permits greater flexibility in teaching this topic; it also calls attention to the different routes Congress has taken in vesting the Article III judicial power over diversity and federal-question cases. As part of the reorganization, we have taken the opportunity to make Chapter 5 a more manageable size. This was a very large chapter in prior editions; in this edition, we have omitted matters of detail and nuance that are out of sync with the casebook's basic approach.

Second, we have moved the materials on the Court's various abstention doctrines into a single chapter on parallel proceedings in state and federal courts, now Chapter 12. Thus, the Anti-Injunction Act, the abstention doctrines, *Colorado River*, and *Brillhart* are now all treated in the same chapter. This arrangement has the additional benefit of enabling students to assess how the various statutory and decisional limitations on federal jurisdiction affect the different classes of cases heard by federal courts.

Third, the materials on federal district courts as a forum for challenges to state official action now precede the chapters on systemic issues in federal litigation. This change facilitated the reorganization of the abstention materials in Chapter 12, but it also accords with the emphasis placed on this subcategory of federal-question cases by many Federal Courts teachers.

Streamlining and trimming. Federal Courts intersects and overlaps with many other courses in the law school curriculum—Constitutional Law, Civil Procedure, Remedies, and Civil Rights in particular. Partly because of this overlap, Federal Courts courses differ greatly in their coverage. Accommodating those differences requires a large casebook. Nevertheless, we concluded that we could reduce the size of the book considerably while continuing to offer a range of coverage options and maintaining the depth of treatment. We have done this primarily in three ways.

First, we have dropped or truncated some topics that few if any teachers covered—Supreme Court review of state-court decisions on “incorporated federal law,” state courts as a forum for challenging state official action, and federal common law on “interstitial” issues in the litigation of federal causes of action.

Second, we eliminated principal cases in the Third Edition that have not led to continuing litigation and debate, and those that have not had the predicted impact on the evolution of federal courts doctrine. A good example is *Hein v. Freedom From Religion Foundation* (formerly in Chapter 3).

Third, we gave Note treatment to older cases that remain relevant but in limited ways that do not require principal-case treatment. Examples include *Jefferson v. City of Tarrant* (Chapter 5), *Stewart Organization, Inc. v. Ricoh Corp.* (Chapter 7), and *Caterpillar, Inc. v. Williams* (Chapter 10).

* * *

There has been only one change in the membership of the Supreme Court since publication of the Third Edition: Justice Antonin Scalia died unexpectedly early in the 2015 Term. At this writing, his seat remains vacant. Appendix B provides an updated table of the Justices.

* * *

The most significant changes in the casebook can be seen on the title page. Provost Lauren Robel (Indiana University-Bloomington), one of the two founding authors of the book (along with Professor Hellman), is no longer listed as an author, but her contributions to structure, content, and approach remain throughout the casebook, and all of the authors acknowledge her significant role in the design of the book. In another milestone, the Fourth Edition introduces two new authors who have infused new ideas and different perspectives into the casebook. Professor Hellman and Justice Stras welcome Professor Ryan Scott of Indiana University Maurer School of Law and Professor F. Andrew Hessick of the University of North Carolina School of Law and express appreciation for their substantial contributions to this Fourth Edition.

* * *

In preparing this new edition, we have continued the approach followed by the three prior editions. 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. Professor Hessick would like to thank Professor Carissa Hessick. Professor Scott thanks his research assistants, Kevin LeRoy and Trevor Waliszewski. Justice Stras would like to thank his law clerks for their assistance in keeping him fresh on developments in federal jurisdiction while he continues to serve as a state Supreme Court Justice.

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.