Federal Courts

Cases and Materials on Judicial Federalism and the Lawyering Process

FOURTH EDITION

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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).

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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.

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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.

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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.

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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.