

CONTENTS

<i>Preface</i>	<i>xix</i>
<i>Acknowledgments</i>	<i>xxi</i>

CHAPTER 1

The Federal Court System: Structure and Themes	1
A. The Federal Court System in Historical Perspective	1
1. The Federal Courts in the Constitutional Generation	1
a. The Articles of Confederation	2
b. Establishing a National Court and Discretion for Congress to Create Lower Federal Courts	3
c. A Limited Historical Record of the Framers' "Original Intentions"	5
d. Public Debates After the Constitutional Convention	6
e. Ratification	8
f. Judicial Federalism and the Continued Existence of State Courts	8
g. The Judiciary Act of 1789	9
2. The Development and Growth of the Federal Court System	10
B. The Federal Courts Today and Tomorrow	12
1. The Evolving Judicial Role	13
2. Improving Federal Court Systems Through Judicial Independence	14
C. Recurring Themes and Questions	15
1. Federalism	15
2. Separation of Powers	16
3. Parity	17
4. Judicial Review in the Context of Limited Jurisdiction	18
<i>Marbury v. Madison</i>	19

CHAPTER 2

Justiciability and the Judicial Function	29
A. A Reference Problem	29
B. Context and Background	31
C. The Law and Problems	33

1. The Prohibition on Advisory Opinions	33
2. Standing	34
a. The Constitutional and Prudential Parameters of Standing	35
<i>Clapper v. Amnesty International USA</i>	39
<i>Hollingsworth v. Perry</i>	53
<i>United States v. Windsor</i>	61
b. Focus: Traditional Standing versus Special Solicitude Standing for States	77
c. Classic Standing Analysis Revisited	80
d. Focus: Generalized Grievance Prohibition and Standing as a Citizen and Taxpayer	81
<i>Hein v. Freedom from Religion Foundation, Inc.</i>	82
3. Ripeness	97
<i>Abbott Laboratories v. Gardner</i>	98
4. Mootness	102
<i>DeFunis v. Odegaard</i>	104
5. Political Question	110
<i>Nixon v. United States</i>	111
D. Some Additional Problems	124

CHAPTER 3

Congressional Control of Federal Jurisdiction and Decisionmaking

	127
A. A Reference Problem	127
B. Context and Background	130
1. Constitutional Text	130
2. The Framers' Debate	131
3. Interbranch Tension	131
4. Competing Approaches to Congressional Jurisdictional Role	132
5. The Role of Federalism	133
C. The Law and Problems	134
1. Control of Jurisdiction	134
a. The Supreme Court's Appellate Jurisdiction	136
<i>Ex parte McCardle</i>	136
<i>Ex parte Yerger</i>	140
b. The Inferior Federal Courts	146
<i>Sheldon v. Sill</i>	147
<i>Yakus v. United States</i>	150
<i>Battaglia v. General Motors Corp.</i>	158
2. Control of Decisionmaking	167
<i>United States v. Klein</i>	168
<i>Plaut v. Spendthrift Farm, Inc.</i>	175

<i>Bank Markazi, aka Central Bank of Iran v. Peterson</i>	191
D. Some Additional Problems	206

CHAPTER 4

Allocation of Jurisdiction to Non-Article III Tribunals 209

A. A Reference Problem	209
B. Context and Background	211
C. The Law and Problems	212
1. Assignment of Judicial Business to Non-Article III Tribunals	212
<i>Northern Pipeline Construction Co. v. Marathon Pipe Line Co.</i>	212
a. Legislative or Article I Courts	228
b. Article III Adjuncts	232
c. Administrative Agencies	234
<i>Commodity Futures Trading Commission v. Schor</i>	236
<i>Stern v. Marshall</i>	247
2. Assignment of Non-Article III Matters to Article III Courts	264
a. Assignment of Non-Judicial Tasks to Article III Courts	264
b. Assignment of the Adjudication of Cases to Article III Courts	
Outside the Scope of the Jurisdictional Grants in Article III	265
D. Some Additional Problems	266

CHAPTER 5

Arising Under Jurisdiction 269

A. A Reference Problem	269
B. Context and Background	271
C. The Law and Problems	273
1. The Constitutional Scope of Arising Under Jurisdiction	273
a. The Basic Rule	273
<i>Osborn v. Bank of the United States</i>	273
b. What Is the Limit to Arising Under Jurisdiction?	281
<i>Textile Workers Union of America v. Lincoln Mills of Alabama</i>	281
2. The Statutory Scope of Arising Under Jurisdiction	289
a. Where (and How) to Look: The Well-Pleaded Complaint Rule	290
<i>Louisville & Nashville Railroad Co. v. Mottley</i>	290
b. What to Look For	295
<i>American Well Works Co. v. Layne & Bowler Co.</i>	296
<i>Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing</i>	304
<i>Gunn v. Minton</i>	309
c. Where (and How) to Look Redux: Declaratory Judgments	320
<i>Franchise Tax Board of the State of California v. Construction Laborers Vacation Trust for Southern California</i>	322
D. Some Additional Problems	333

CHAPTER 6	
Augmenting Federal Courts' Power Through the Exercise of Supplemental and Removal Jurisdiction	337
A. A Reference Problem	337
B. Context and Background	340
1. Augmenting the Jurisdiction of Federal Trial Courts	340
2. Plan of Coverage	341
a. Supplemental Jurisdiction	341
b. Removal Jurisdiction	342
C. The Law and Problems	342
1. Supplemental Jurisdiction	342
a. The Constitutional Foundation of Supplemental Jurisdiction	342
<i>United Mine Workers of America v. Gibbs</i>	344
b. The Emerging Importance of Congressional Intent	348
<i>Finley v. United States</i>	350
c. Congress Responds to the Court	358
d. Integrating Supplemental Jurisdiction and Federal Procedural Rules	360
e. Counterclaims and Supplemental Jurisdiction—a Constitutional Borderland?	366
<i>Sparrow v. Mazda American Credit</i>	366
f. The Consequences of Dismissal Under Section 1367(c)	378
2. Removal Jurisdiction	380
a. Removal Under 28 U.S.C. §1441 (a)	382
b. Removal Under 28 U.S.C. §1441 (c)	383
c. Regulating the Removal of Diversity Actions	385
d. Other Removal Statutes	390
D. Some Additional Problems	391
 CHAPTER 7	
The Eleventh Amendment and State Sovereign Immunity	395
A. A Reference Problem	395
B. Context and Background	398
C. The Law and Problems	400
1. The Foundations and Scope of Constitutional State Sovereign Immunity	400
a. The Historical Backstory to Modern Doctrine	400
<i>Hans v. Louisiana</i>	401
b. What Entities Are Entitled to Sovereign Immunity from Suit in Federal Court?	413
2. Ways to Avoid State Sovereign Immunity from Suit in Federal Court	414
a. The State: Waiver of Immunity and Consent to Suit	415
b. The Plaintiff: Suits Against State Officials	417
<i>Ex parte Young</i>	417
<i>Edelman v. Jordan</i>	427

c. The Congress: Abrogation of Immunity	438
<i>Fitzpatrick v. Bitzer</i>	438
<i>Seminole Tribe of Florida v. Florida</i>	443
3. A Return to the Scope of Constitutional State Sovereign Immunity: Expansion and Some Surprising Retrenchment at the Dawn of the Twenty-first Century	471
<i>Central Virginia Community College v. Katz</i>	473
D. Some Additional Problems	486

CHAPTER 8

The Special Case of Section 1983 491

A. A Reference Problem	491
B. Context and Background	494
1. Recurring Themes and New Themes	495
2. Plan of Coverage	496
C. The Law and Problems	497
1. When Do Violators of Federal Law Act “Under Color of” State Law?	497
<i>Monroe v. Pape</i>	498
2. Under What Circumstances Are Individuals Sued Under Section 1983 Immune from Damages?	508
<i>Harlow v. Fitzgerald</i>	509
<i>Anderson v. Creighton</i>	519
3. Under What Circumstances Are Individuals Sued Under Section 1983 Absolutely Immune from Suit?	529
<i>Bogan v. Scott-Harris</i>	529
<i>Buckley v. Fitzsimmons</i>	534
4. Under What Circumstances Are Government Entities Liable for Damages Under Section 1983?	540
<i>Monell v. Department of Social Services</i>	541
<i>Pembaur v. City of Cincinnati</i>	554
<i>City of St. Louis v. Praprotnick</i>	562
<i>City of Canton v. Harris</i>	567
5. Which Constitutional Rights Are Enforceable Under Section 1983?	576
<i>Zinermon v. Burch</i>	582
6. Which Federal Statutory Rights Are Enforceable Under Section 1983?	592
<i>Gonzaga University v. Doe</i>	593
7. When May a Party Recover Attorneys’ Fees in a Section 1983 Suit?	596
<i>Buckhannon Board & Care Home, Inc. v. West Virginia</i>	
<i>Department of Health & Human Resources</i>	599
8. Does Section 1983 Law Vary When Applied by a State Court?	606
D. Some Additional Problems	608

CHAPTER 9**Protecting State Courts from Interference by Federal Courts**

	611
A. A Reference Problem	611
B. Context and Background	614
1. Tension in the Exercise of Jurisdiction by Federal and State Courts	614
2. Plan of Coverage	616
C. The Law and Problems	617
1. The Anti-Injunction Act	617
a. What the Act Prohibits	618
b. Express Exceptions to the Act	619
<i>Mitchum v. Foster</i>	620
c. Exceptions to the Act to Protect Federal Court Jurisdiction or Judgments	624
<i>Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers</i>	628
2. <i>Pullman</i> Abstention	632
<i>Railroad Commission of Texas v. Pullman Company</i>	633
<i>England v. Louisiana State Board of Medical Examiners</i>	638
3. <i>Younger</i> Abstention	642
<i>Younger v. Harris</i>	643
a. <i>Younger</i> Abstention, Standing, and Anticipatory Federal Relief	651
<i>Steffel v. Thompson</i>	651
b. <i>Hicks v. Miranda</i> and a “Race to the Court”	656
c. <i>Younger’s</i> Impact on Federal Court Suits Seeking Damages	660
d. <i>Younger</i> Abstention and State Civil Proceedings	661
<i>Trainor v. Hernandez</i>	663
4. Other Forms of Abstention	676
a. “ <i>Burford</i> ” Abstention	676
b. <i>Colorado River</i> Abstention	678
<i>Colorado River Water Conservation District v. United States</i>	679
5. A Final Note on “Full Faith and Credit”	687
D. Some Additional Problems	689

CHAPTER 10**Federal Courts’ Power to Make Federal Law**

	691
A. A Reference Problem	692
B. Context and Background	693
1. The Common-Law Tradition in the Framers’ Era	693
2. The Political Struggle over the Role of Common Law in Early Federal Courts	695
3. The Continuing Role for Common Law in Federal Courts	697
4. Plan of Coverage	699

C. The Law and Problems	700
1. From <i>Swift</i> to <i>Erie</i>	700
<i>Erie Railroad Co. v. Tompkins</i>	705
2. Enclaves of Federal Common-Lawmaking Power Derived from Constitutional Jurisdiction and Structure	711
a. Admiralty	712
b. Disputes Between States	714
c. Foreign Relations	714
3. An Enclave of Federal Common Law to Protect the Proprietary Interests of the United States	715
<i>Clearfield Trust Co. v. United States</i>	717
<i>United States v. Kimbell Foods, Inc.</i>	722
<i>Boyle v. United Technologies Corp.</i>	733
4. Congressional Directives on Choosing the Applicable Rule of Decision	742
a. Preempting, Saving, and Adopting State Law	742
b. Express Authorization of Federal Common Lawmaking	743
c. Implied Authorization of Federal Common Lawmaking	744
5. Federal Court Authority to Develop Remedial Provisions for the Enforcement of Federal Statutes	747
a. Statutes of Limitation	748
b. Implied Causes of Action	749
6. Federal Court Authority to Develop Constitutional “Common-Law” Rules	761
a. Before <i>Bivens</i>	762
b. From <i>Bivens</i> to <i>Carlson</i>	765
<i>Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics</i>	765
c. The Contraction of Implied Constitutional Remedies After <i>Carlson</i>	781
<i>Ziglar v. Abbasi</i>	786
d. Concluding Observations on <i>Bivens</i> Remedies	795
D. Some Additional Problems	795

CHAPTER 11

The Original Jurisdiction of the Supreme Court and Appellate Jurisdiction in the Federal Courts 799

A. A Reference Problem	799
B. Context and Background	801
C. The Law and Problems	801
1. Supreme Court Original Jurisdiction	801
2. Supreme Court Appellate Review	804
a. Review of Final Judgments of a State’s Highest Court	806
<i>Martin v. Hunter’s Lessee</i>	807

<i>Cox Broadcasting Co. v. Cohn</i>	820
<i>Murdock v. City of Memphis</i>	830
<i>Michigan v. Long</i>	840
b. Review of Lower Federal Court Decisions	848
3. Inferior Federal Courts and the <i>Rooker-Feldman</i> Doctrine	849
<i>Rooker v. Fidelity Trust Co.</i>	850
<i>District of Columbia Court of Appeals v. Feldman</i>	851
D. Some Additional Problems	860
 CHAPTER 12	
Habeas Corpus	863
A. A Reference Problem	863
B. Context and Background	866
1. English Historical Origins and Uses of the Writ	866
2. Early American Experience with Habeas Corpus	867
3. Chapter Goals and Plan of Coverage	869
C. The Law and Problems	869
1. Habeas Corpus and Federal Executive Detention	871
a. The 2004 Trilogy: <i>Rasul</i> , <i>Padilla</i> , and <i>Hamdi</i>	873
b. 2006: <i>Hamdan v. Rumsfeld</i> , 548 U.S. 557 (2006)	876
c. 2008: <i>Boumediene v. Bush</i> , 553 U.S. 723 (2008)	877
<i>Boumediene v. Bush</i>	877
2. Habeas Corpus and State Court Detention	910
a. Some Historical Background	911
b. The Law Under AEDPA	913
<i>Coleman v. Thompson</i>	922
<i>Teague v. Lane</i>	942
<i>Terry Williams v. Taylor</i>	961
<i>Michael Williams v. Taylor</i>	990
D. Some Additional Problems	1007
 Appendix A: Transcript of Articles of Confederation	1013
Appendix B: Constitution for the United States of America	1021
Appendix C: Selected Statutes	1037
 <i>Table of Cases</i>	<i>1069</i>
<i>Index</i>	<i>1077</i>