The materials for this course are (1) R. Fallon, D. Meltzer & D. Shapiro, HART AND WECHSLER’S THE FEDERAL COURTS AND THE FEDERAL SYSTEM (5th ed); (2) the 2004 Supplement to the casebook; (3) The Judicial Code and Rules of Procedure in the Federal Courts (2004) or some equivalent source with the basic statutes from Title 28; and (4) problems posted on Blackboard.


Office hours are generally Friday from 1-3 p.m. and by appointment. My office is in Vanderbilt 334. You can reach me by phone at 86285 or by e-mail at helen.hershkoff@nyu.edu. Erica Tate, my administrative assistant, sits in Vanderbilt 336. You can reach her by phone at 86617 or by e-mail at tatee@juris.law.nyu.edu.

We have 28 scheduled classes. I am likely not able to attend class on March 23. I have tentatively scheduled a make-up for Tuesday, March 29, 1:05 – 1:55 p.m., in Room 220. As a related matter, the syllabus lists 27 reading assignments. I suggest that you stay one assignment ahead of where we ended the last class.

Finally, please sign the seating chart on the first class. If you decide to drop the course, let me know and I will remove your name. Thanks.
Reading Assignments

I. The Nature of the Federal Judicial Function

1. Introduction: Casebook, pp. 55-73 (Please read for the first class.)

2. Standing: Casebook, pp. 114-141 (through Paragraph (6)); Supplement, p. 5 (Page 140)

3. Mootness: Casebook, pp. 199-208 (through Paragraph (4)); 239 (Paragraph (2))-242 (through second full paragraph)

4. Political Question Doctrine: Casebook, pp. 244-257 (through Paragraph (4); 265 (Paragraph (1))-267.

II. Congressional Control of the Distribution of Judicial Power


6. Power to Limit Federal Court Jurisdiction: Casebook, pp. 337-352 (through Paragraph (2)); 357 (Section E)-361; 375 (Paragraph (c))-377 (through Paragraph (7)(c)).

7. State Court Jurisdiction: Casebook, pp. 25-28; 418-443.


III. Federal Review of State Court Decisions

A. Direct Supreme Court Review


10. Independent and Adequate State Grounds: Casebook, pp. 494-517; Supplement, p. 23 (Page 517)

11. Procedural Default: Casebook, pp. 541-559; 564-565; Supplement, pp. 25-26 (Pages 564-565)

B. Collateral Review on Federal Habeas Corpus
12. Federal Relitigation in State Criminal Cases: Casebook, pp. 1284-1289; 1296-1302 (top Note); 1302-1325

13. New Law and Retroactivity: Casebook, pp. 73-75 (through last full paragraph); 1325-1353; Supplement, pp. 78-80

IV. Federal Common Law

14. Defining Primary Obligations: Casebook, pp. 630-636; 685-686; 690-698

15. Federally Created Proprietary Rights: Casebook, pp. 709-721 (through Paragraph 5)

16. Inspired by Federal Statutes: Casebook, pp. 723-729 (through Paragraph (6); 730 (Introductory Note); Customary International Law: Casebook, pp. 743-758; Supplement, pp. 29-33

17. Remedies for Federal Constitutional Violations: Casebook, pp. 793-825

V. Federal Question Jurisdiction

18. Statutory Background and Constitutional Basis: Casebook, pp. 826-831; 832-855; Supplement, p. 36 (Page 847)

19. Casebook, pp. 856-862; 521-523 (through Paragraph 3(c)); 863-886; 741 (Section D)- 743.

VI. Suits Challenging State Official Action

20. The Eleventh Amendment: Casebook, pp. 944-947 (through Paragraph (3)); 950-957; 973-987

21. Suits against State Officers: Casebook, pp. 987-1000

22. Congressional Abrogation: Casebook, pp. 1004-1039; Supplement, pp. 41-44


VII. Judicial Federalism: Limitations on District Court Jurisdiction or Its Exercise


27. Equitable Restraint: Casebook, pp. 1213-1258