

Readings in American Law: Supreme Court Practice in the 19th Century (395-001) — Spring 2016 (3 credits)

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Classes: (Limited to 10 students.) We will meet on Mondays 9:00 a.m. to 11:50 a.m. [room tba]. The class is scheduled to meet until 11:40 a.m. but we will meet until 11:50 a.m. to make up for the fact that we will not meet during the week of March 21. Office hours by appointment.

Purpose and sketch of the course: In this seminar you will spend most of your time doing four things: (1) most weeks, reading one 19th-century U.S. Supreme Court case (occasionally two cases), and the associated passages in a contemporary treatise; (2) most weeks, taking a weekly quiz about what you've read; (3) taking turns (that is, once every three or four weeks or so) writing and presenting very short (500- to 1,000-word) micro-research-papers about interesting jurisdictional and procedural matters in the reading; and (4) talking about what you have read, researched, and written. What is the point of studying a bunch of old law stuff like this? In fact, there are at least three points: (1) to practice the healthy skepticism and intellectual initiative that should be parts of every lawyer's professional reading habits; (2) to enjoy one of the most enriching of lawyerly activities — reading about law and then probing its meaning and function with engaged colleagues; and, finally and not least importantly, (3) to develop some useful points of reference for your own understanding of modern law and lawyering, and a sense of trends in the development of legal institutions and law practice. In other words, this course is an opportunity to develop not only your skills in legal research, analysis, and presentation but also your skills as collaborator-in-law. There is a lot of reading, and pre-class thinking and research, but if you like those activities you will like this course, because there isn't much else required (the quizzes and micro-papers are pretty easy for anyone who does a good job of reading and preparing for discussion). To learn more, read this: Gregory F. Jacob, *Using History to Teach Students How to be Lawyers*, 53 Am. J. Legal History 493 (2013).

Assignments: Please do the assigned reading and come to class prepared to be quizzed on it and to discuss it, and do outside research to support your contributions to the discussion. Make no mistake, as heavy as the assigned reading may feel sometimes, doing that reading is only the first half of your mission. The second half is to engage every week in some investigation of the context and quality of the reading material. So, as you read, note points — legal points, and factual points directly related to legal issues in the reading — where you want to know more or feel a bit skeptical. Then follow up — do some research to satisfy your curiosity and be prepared to share the results with the rest of us. Feel free to share your discoveries in an appropriate way, perhaps by (a) emailing them to your instructors and classmates, or (b) bringing handouts to class. Do not overdo it — you need not come up with anything big or groundbreaking. We just want short, interesting additions — clever or dull, exotic or mundane — that will help all of us understand what we're reading. And do not underdo it — you do need to be prepared. Remarks unsupported by reference to specific passages in the reading or specific research findings will be rejected — cut off as politely as possible. Think about it this way: This is a meeting of professionals where you must share your expertise, not a book club where you may share your casual or unsupported observations. Some of your research contributions will be formalized in the micro-papers mentioned above. On the first day of class we will establish a schedule under which students will take turns delivering micro-papers — two members of the class deliver papers each week. The deadline for micro-papers will always be 9:00 p.m. Eastern Time on the Sunday before the class session in which we will be discussing the reading that prompted the research. As should be obvious, you must read pages 3-171 of the Tomlins book before the semester begins. It will make interesting break reading.

Texts:

The United States Supreme Court: The Pursuit of Justice (2005) (Christopher Tomlins, ed.)

Alfred Conkling, *A Treatise on the Organization, Jurisdiction and Practice of the Courts of the United States* (5th ed. 1870)

United States Reports, volumes 37, 39, 51, 53, 56, 58, 60, 66, 74

Buy or borrow the Tomlins book. You will need it for the first class session and it will probably be useful thereafter. Cheap copies are available at abebooks.com. The Conkling book is available free to all at the Internet Archive (make sure you select the correct edition!) and the *U.S. Reports* are available free to you at HeinOnline. (If you do not know how to use these online resources, ask a reference librarian.) You can buy rather expensive print editions if you like. Whether you opt for free online or not-free print, you should get the texts soon and start reading, because the quizzing begins on the first day of class. Also, since much of our time together will be devoted to discussion of the assigned reading and the micro-papers, you must bring them to class. On paper or on a laptop or an e-reader is fine. Failure to bring the current reading, the week's micro-papers, and your notes to class will affect your class participation grade. An asterisk (*) next to an assignment means a quiz will be given on it on that date.

*Jan. 11: Tomlins, pages 3-171

*Jan. 25: U.S. v. Bromley, 53 U.S. 88 (1851); Conkling, pt. 1, ch. 4 (pages 25-32)

*Feb. 1: Beebe v. Russell, 60 U.S. 283 (1857); Conkling, pt. 1, ch. 4, s. 5 (pages 36-38)

*Feb. 8: Holmes v. Jennison, 39 U.S. 540 (1840); Conkling, pt. 1, ch. 4, s. 6 (page 39)

*Feb. 15: Henderson v. Tennessee, 51 U.S. 311 (1851); Conkling, pt. 1, ch. 4, s. 7 (pages 39-44)

Feb. 22: no new reading

*Feb. 29: Kanouse v. Martin, 56 U.S. 198 (1854); Conkling, pt. 1, ch. 4, s. 8 (pages 44-49)

*Mar. 14: Silliman v. Hudson River Bridge Co., 66 U.S. 582 (1862) & U.S. v. Rosenburgh, 74 U.S. 580 (1869); Conkling, pt. 1, ch. 5 (pages 702-07) & pt. 1, ch. 6 (pages 92-100)

*Mar. 28: Stafford Cases, 58 U.S. 275 & 283 (1855); Conkling, pt. 1, ch. 4, s. 10 (pages 56-59)

*Apr. 4: Rhode Island v. Massachusetts Cases, 37 U.S. 657 & 755 (1838); Conkling, pt. 2, ch. 1 (pages 307-22)

Apr. 11: no new reading

*Apr. 18: TBA

For each class session, please:

- (a) Read, take notes, research, and think about the assigned material. Stay an assignment or two ahead of schedule, just in case.
- (b) Leave all electronics outside the classroom or, if you must bring them with you, keep them stowed during class. There is just one exception to this rule: You may use a laptop or e-reader to access the readings, your notes, and your classmates' micro-papers, but only if your gadget is not connected to the internet. Using an internet-connected gadget during class will affect your class participation grade. This means, of course, that you should prepare discussion notes for class ahead of time.
- (c) Note and follow in-class instruction. If you miss a class you must get notes from a classmate. Make arrangements in advance as a precaution against unanticipated absences. There is a strong tradition in law of sharing notes with colleagues in need. Be a part of it.
- (d) Look up words you do not know. Use a good dictionary or two. Words that are interesting or important are good quiz candidates.

Grades: Your grade is based on closed-book quizzes and participation. Quizzes count for 1/3 of the grade. A quiz consisting of a few (eight or ten or so) straightforward questions about the assigned reading is given at the start of most classes in which we discuss new material. They are designed merely to determine whether you have, in fact, done the reading and paid attention. They are easy for anyone who has done the reading but not for someone who has not. There are no make-ups: miss a class in which a quiz is administered, miss that quiz. Skipping class to avoid a quiz can be costly for two reasons: (1) grades are based mostly on participation and someone who is absent will find it hard to participate, and (2) if a student takes all quizzes, the lowest quiz score is excluded from final grade calculations. Participation counts for 2/3 of the grade. Let us be clear about this up front: The evaluation of participation is largely subjective, which means that if you do not like your participation grade there will be no basis for challenging it. Having said that, you are unlikely to get a bad grade if you come to every class prepared to make useful contributions, do in fact make them, and respectfully listen to and comment on the contributions of others. (Micro-papers are not graded separately. They are included in the participation grade.) It is because of those expectations that there is an electronics restriction for this course. No one can google whatever we are talking about and then read something off a screen, passing it off as his or her own thought. All of us must read and reflect and do a little bit of our own research before class in order to be sure we have something useful to share. What a wonderful thing! Caution: Hesitate before making a decision about enrolling in this course if you hope (due, for example, to success in a moot court competition) or expect (due, for example, to out-of-town travel) to have a schedule that conflicts with this course. In this course there is no substitute for participation, and a before- or after-class private chat with an instructor about what will or did go on in class is no substitute for an absence that deprives your classmates of your contributions to our work together. So, generally speaking, the more class sessions you miss the lower your grade will be, and a failure to attend the number of class sessions required by our school's regulations (they are available on the school website, and you are responsible for knowing and following them) will make you ineligible for course credit.

Intellectual property: The lead instructor owns all course content, regardless of form. You may share copies of that content with classmates during the course, but other than that you must keep all of it in any format to yourself forever. Recording of class sessions: Is forbidden.

I have read and do understand the rules of this course, and I know that following those rules is an important part of class participation. I will abide by all of them. Name (print): _____ Signature (scribble): _____ Date: __/__/__