

Supplemental Information for Caldeira and Lempert,
“Agenda Control on the Hughes Court, OT 1939”

Issue Codes, Areas, and Categories. Codes are numbered below. Areas are in bold caps. Categories are defined at end of document.

Note (on Criminal Law): we use a combination of Songer and Spaeth to identify “type of crime” which should always be coded. We also code at least one procedural or constitutional issue.

CRIMINAL LAW

type of crime

150 abortion and contraception
151 alcohol
152 arson
153 assault
154 bank robbery
155 business regulations by government, criminal violations
156 conspiracy (cf. 112)
157 escape from custody
158 false statements (cf. 171)
159 financial (incl. securities, embezzlement; cf. 155, 161, 164)
160 firearms
161 fraud (incl. mail fraud)
162 gambling
163 immigration (cf. 370)
164 internal revenue (cf. 960, 970, 975, 979)
165 Mann Act, White Slave Act
166 morals charges (other than gambling or obscenity)
167 murder
168 narcotics
169 obstruction of justice
170 obscenity or pornography
171 perjury (cf. 158)
172 rape
174 theft (cf. 175)
175 theft, auto
176 war crimes
177 civil rights, violations of or conspiracy to, ala US v.
 Cruikshank, not necessarily racial
178 customs
179 miscellaneous
181 bribery or misuse of funds in relation to government (cf. 444)

procedural or constitutional issue

- 010 involuntary confession
- 013 habeas corpus (cf. 704)
- 016 search and seizure
- 020 contempt of court
- 021 self-incrimination (other than as pertains to 023)
- 023 self-incrimination, immunity from prosecution
- 030 right to counsel (cf. 381-382)
- 040 cruel and unusual punishment, death penalty (cf. 106)
- 041 cruel and unusual punishment, non-death penalty
- 050 line-up
- 060 discovery of evidence and inspection
- 070 double jeopardy
- **extra-legal** jury influences: no question
 - regarding the right to a jury trial or to a speedy trial (these belong in 190 and 191, respectively); the focus, rather, is on the fairness to the accused when jurors are exposed to the influences specified
 - 101 prejudicial statements or evidence
 - 102 contact with jurors outside courtroom
 - 103 jury instructions
 - 104 voir dire
 - 107 pretrial publicity
 - 109 miscellaneous
- 110 confrontation (right to confront accuser, call and cross-examine witnesses)
- **subconstitutional** fair procedure (criminal cases) (cf. 381-388).
 - 111 confession of error
 - 113 entrapment
 - 114 exhaustion of remedies
 - 115 admissibility of evidence
 - 116 sufficiency of evidence
 - 118 statutes of limitation
 - 119 miscellaneous
- 120 Federal Rules of Criminal Procedure, including application of the Federal Rules of Evidence in criminal proceedings.
- 130 statutory construction of criminal laws: these codes, by definition, exclude the constitutionality of these laws (including claims of failure to charge an offense, etc)
- 190 jury trial (right to, as distinct from 101-109)
- 191 speedy trial
- 197 due Process claim in criminal case
- 198 due Process claim brought for conviction upon perjured testimony
- 199 miscellaneous criminal procedure (cf. 504, 702)

CIVIL RIGHTS

- 210 voting (cf. 250, 341.)
- 212 ballot access (of candidates and political parties)
- 220 racial discrimination (other than as pertains to 221-222)
- 221 desegregation, schools
- 222 employment discrimination, except alienage (272), gender (284)
- 230 sit-in demonstrations (against race discrimination; cf. 451)
- 250 reapportionment
- 261 debtors' rights: e.g., garnishment (cf. 381-388)
- 272 employability of aliens (cf. 371-376)
- 283 sex discrimination
- 321 illegitimates, rights of: typically inheritance and survivor's benefits, and paternity suits
- 341 residency requirements: durational, plus discrimination against nonresidents

- military (cf. 441, 705)
 - 360 conscientious objector
 - 361 draftee, or person subject to induction (not 360)
 - 362 active duty (not 360)
 - 363 veteran.

- 370 immigration and naturalization, civil (incl. deportation)

- Indigents (cf. 311-312): procedural protections for indigents because of their indigency. Typically in matters pertaining to criminal justice.
 - 381 appointment of counsel (cf. 030)
 - 382 inadequate representation by counsel (cf. 030)
 - 383 payment of fine
 - 384 costs or filing fees
 - 385 U.S. Supreme Court docketing fee
 - 386 transcript
 - 387 assistance of psychiatrist
 - 388 miscellaneous

- 391 Civil rights acts, liability under (cf. 617,1619): tort actions involving liability that are based on a civil rights act, e.g. Sec 1983.
- 392 miscellaneous civil rights (cf. 701, 393-397)

INDIANS

- 393 Indians, miscellaneous (other than 394-397)
- 394 Indians, state jurisdiction over
- 395 Indians, individual rights
- 396 Indians, sovereignty
- 397 Indians, federal regulation of

FIRST AMENDMENT

401 First Amendment, miscellaneous/residual (cf. 703)
411 commercial speech, excluding attorneys which is 544
415 libel, defamation: defamation of public officials and public and
private persons
416 libel, privacy: true and false light invasions of privacy
421 legislative investigations: concerning "internal security" only
422 federal internal security legislation: Smith, Internal Security,
and related federal statutes, regulations, and orders
430 loyalty oath or non-Communist affidavit
435 security risks: denial of benefits or dismissal of employees for
reasons other than failure to meet loyalty oath requirements
444 campaign spending (cf. 650): financing electoral costs other than
as regulated by the Taft-Hartley Act.
451 protest demonstrations
455 free exercise of religion
461 establishment of religion
471 obscenity, state (cf. 706): constitutional claim only
472 obscenity, federal-constitutional claim only

DUE PROCESS

501 due process, miscellaneous (cf. 431-434, 618): the residual
code for cases that do not in locate in 502-508
502 due process, hearing or notice (other than as pertains to
503 or 504); hearing may be statutorily based.
503 due process, hearing, government employees
504 due process, prisoners' rights
505 due process, impartial decision maker
506 due process, jurisdiction (long-arm jurisdiction; jurisdiction
over non-resident litigants) (cf. 741, 742, 851, 940).
507 due process, takings clause, or other non-constitutional
governmental taking of property.
508 Trading with Enemies Act

PRIVACY

531 privacy (cf. 150, 416, 700).

ATTORNEYS

542 attorneys' fees
544 commercial speech, attorneys (cf. 411)
546 admission to a state or federal bar, disbarment, and attorney
discipline (cf. 430)
548 admission to, or disbarment from, Bar of the U.S. Supreme Court
549 attorneys, miscellaneous

LABOR/UNIONS

- 553 arbitration (in the context of labor-management or employer-employee relations) (cf. 653)
- 555 union antitrust: legality of anticompetitive union activity
- 557 union or closed shop: includes agency shop litigation
- 559 Fair Labor Standards Act
- 561 Occupational Safety and Health Act
- 563 union-union member dispute (except as pertains to 557)
- ___ labor-management disputes
 - 575 bargaining
 - 576 employee discharge (not necessarily union)
 - 577 distribution of union literature
 - 578 representative election
 - 579 antistrike injunction
 - 580 labor-management dispute: strikes
 - 581 jurisdictional dispute
 - 582 right to organize (incl. employer-dominated unions)
 - 583 picketing
 - 584 secondary activity
 - 585 no-strike clause
 - 586 union representatives
 - 587 union trust funds (cf. 621)
 - 588 working conditions
 - 589 miscellaneous dispute
- 599 miscellaneous union

ECONOMIC ACTIVITY

- 601 antitrust, US government
 - 602 antitrust, private
 - 603 antitrust, state government (except in the context of 605 and 555)
 - 605 mergers
 - 608 bankruptcy, municipal (except in the context of 975)
 - 609 bankruptcy, corporate
 - 610 bankruptcy, farm
 - 611 bankruptcy, personal
 - 612 state workers' compensation laws
 - 613 employer liability for worker injuries, under state law (common or statutory)
 - 617 liability, nongovernmental
 - 1614 torts or claims against government corporations
 - 1615 torts or claims by government corporations
 - 1616 claims against government: suits arising from a contractual relationship (loosely construed) between party and government; (cf. 507, 623, 639, 1614, 1619).
 - 1617 claims by government; (cf. 507, 623, 639, 1615).
 - 1618 government benefits, miscellaneous. (Rule: pro-gov't is C.)
 - 1619 tort actions against government or governmental officials, misc. By definition torts exclude suits arising from a contractual relationship (see 1616). Includes suits not authorized by statute; (cf. 391, 623, 1614).
 - 621 Qui Tam actions on behalf of government.
 - 622 Jones Act; Federal Longshoremen's and Harbor Workers, etc.
 - 623 FELA.
 - 624 War Risk Insurance.
 - 625 labor standards in federal contracting, including prevailing wage
 - 631 state regulation of business (cf. 910, 911)
 - 635 national banking regulations
 - 636 securities, federal regulation of.
 - 638 natural resources - environmental protection (cf. 933, 934)
 - 639 federal public lands (regs., quiet title, etc; cf. 507, 638).
 - 652 zoning: constitutionality of such ordinances, or restrictions on owners' or lessors' use of real property
 - 653 arbitration (other than as pertains to labor-management or employer-employee relations (cf. 553)
 - 656 federal consumer protection: e.g., under the Food, Drug and Cosmetic Act
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- _____ patents and copyrights
 - 660 patent, US
 - 661 patent, private action
 - 662 copyright
 - 663 trademark
 - 664 patentability of computer processes
 - 665 trade secrets

- _____ federal transportation regulation
 - 671 railroad
 - 672 water transportation (goods or people)
 - 673 truck, or motor carrier
 - 674 pipeline (cf. 685)
 - 675 airline

- _____ federal utilities regulation(cf. 935)
 - 681 electric power
 - 682 nuclear power
 - 683 oil producer
 - 684 gas producer
 - 685 gas pipeline (cf. 674)
 - 686 radio and television (cf. 687)
 - 687 cable television (cf. 686)
 - 688 telephone company

- 691 federal alcohol regulation
- 699 miscellaneous economic regulation (cf. 1001-1010)

ECONOMIC ACTIVITY, "LEGACY CODES"

- 1001 real property
- 1002 personal property
- 1003 contracts
- 1007 wills and estates
- 1008 commercial transactions
- 1009 mining claims and rights
- 1010 securities, private litigation
- 1011 marriage and property disputes
- 1012 tenant land-lord
- 1013 insurance claims
- 1014 oil or gas leases

ADMIRALTY AND MARITIME

- 1030 admiralty, personal injury; not including torts/claims against US
- 1031 admiralty, seamen's wages
- 1032 admiralty, damages from collisions
- 1033 admiralty, contracts, charter contracts
- 1034 maritime, insurance
- 1035 maritime liens
- 1038 admiralty, miscellaneous
- 1039 maritime law, miscellaneous
- 1040 admiralty, (injury because of) unseaworthiness
- 1041 admiralty, (injury due to lack of) maintenance and cure
- 1042 admiralty, other seamen's injury
- 1043 admiralty, limitation of liability

JUDICIAL POWER

- 700 comity, criminal
- 712 comity, civil
- 715 assessment of costs or damages: as part of a court order
- 717 Federal Rules of Civil Procedure, including application of the Federal Rules of Evidence, the Federal Rules of Appellate Procedure in civil litigation, and Circuit Court Rules
- 721 judicial review of administrative agency's or administrative official's actions and procedures
- 731 mootness (cf. 806)
- 741 venue (i.e., which of several possible courts is appropriate for the case; excludes controversies over diversity) (cf. 742, 857)
- 742 diversity: whether there is diversity jurisdiction
- 800 standing to sue

- judicial administration (jurisdiction of the federal courts or of the Supreme Court) (cf. 753)
 - 851 jurisdiction or authority of federal district courts (i.e., whether any DC has jurisdiction; excludes cases about w/er there is diversity jurisdiction) (cf. 741, 742).
 - 852 jurisdiction or authority of federal courts of appeals
 - 853 Supreme Court jurisdiction or authority on appeal from federal district courts or courts of appeals (cf. 753)
 - 854 Supreme Court jurisdiction or authority on appeal from highest state court
 - 855 jurisdiction or authority of the Court of Claims
 - 856 Supreme Court's original jurisdiction
 - 857 review of non-final order; i.e., allegation that the decision below is not a final judgment or decree, or that it is an interlocutory judgment (cf. 753)
 - 858 change in state law (cf. 755)
 - 859 federal question (cf. 752)
 - 860 ancillary or pendent jurisdiction
 - 861 extraordinary relief
 - 862 certification (cf. 864)
 - 865 collateral estoppel or res judicata
 - 866 interpleader
 - 867 untimely filing
 - 868 Act of State doctrine
 - 869 miscellaneous
- 899 miscellaneous judicial power

FEDERALISM

- 900 federal-state ownership dispute
- 901 federal-state land dispute
- 910 federal pre-emption of state court jurisdiction
- 911 federal pre-emption of state legislation or regulation (cf. 631)

— national supremacy: in the context of federal-state constitutional conflicts involving the general welfare, supremacy, or interstate commerce clauses, or the 21st Amendment. Distinguishable from 910 and 911 because of a constitutional basis for decision.

- 930 commodities.
- 931 intergovernmental tax immunity
- 932 marital and family relationships and property, including obligation of child support
- 933 natural resources (cf. 638)
- 934 pollution, air or water (cf. 638)
- 935 public utilities (cf. 681-688)
- 936 state tax (cf. 976)
- 939 miscellaneous
- 940 full faith and credit
- 941 *Erie v Tompkins*: federal court interpretation of state law where state court has spoken
- 949 miscellaneous federalism (cf. 294, 701-708, 712, 754-755, 854, 858, 860)

INTERSTATE RELATIONS

- 950 boundary dispute between states
- 951 non-real property dispute between states
- 959 miscellaneous interstate relations conflict

TAXATION

- 960 federal income taxation (except as pertains to 970 and 975): typically under provisions of the Internal Revenue Code
- 970 federal taxation of gifts, personal, and professional expenses
- 971 federal estate tax
- 972 federal excise tax
- 975 priority of federal fiscal claims: over those of the states or private entities
- 976 state tax (cf. 931, 936)
- 979 miscellaneous federal taxation (cf. 931)

MISCELLANEOUS

- 980 legislative veto
- 989 miscellaneous

Issue Categories.

1030-1043: Admiralty

608-611: Bankruptcy

617, 1001-1014: Common Law

150-181: Criminal

501-508: Due Process

625, 635, 636, 638, 656, 671-699: Federal Business Regulation

960-975, 979: Federal Tax

1614-1617, 1619: Government Claims

622, 623: Jones Act/FELA

553-590: Labor

660-665: Patents Copyrights and Trademarks

700-899: Procedure

631: State Business Regulation

612, 613: State Labor

976: State Tax

All others: Residual