Course Name: Civil Procedure

Course 510

Term and Year: Fall 2020

CRN

Class Time: This is a synchronous class which means that you will need to be online at the following times: M, W, F, 8:00 am-9:00 am. The class sessions will be held via Blackboard.

Class Location: Blackboard. Please click on the day's session to enter the classroom.

Professor: Ana M. Otero

Office Hours: Each section will be divided into “Firm Groups” of approximately 4 students. I will hold virtual office hours on Mondays and Wednesdays at assigned times for each Firm Group. Students with scheduling conflicts will be accommodated. Individual office hours will also be accommodated upon request.

Email: ana.oterotmslaw.tsu.edu

Instructor Phone: 713.313.7351

Preferred Methods of Contact: Email / Blackboard / TWEN

TA Name & Email: Andrea Villareal, a.villareal2638@student.tsu.edu

Blackboard Help: For Blackboard troubleshoots dial Dr. Claiborne at 713.313.4853

Course Description

Course Purpose: This course covers modern civil procedure in the United States with emphasis on pre-trial procedure under the Texas and Federal Rules. The content includes constitutional and statutory aspects of jurisdiction (including personal and subject-matter jurisdiction), the “Erie” doctrine, and procedural rules of pleading, joinder of parties, joinder of claims, discovery, and pretrial motions.

Civil Procedure is a one-year course. The fall semester will cover the following areas:

- a. Federal Subject Matter Jurisdiction, including Supplemental Jurisdiction and Removal.
- b. Venue
- c. Personal Jurisdiction
- d. Introduction to Pleading (Federal Rules of Civil Procedure 7-15)

In the spring semester, we will cover the following topic areas:

- a. Joinder
- b. Discovery
- c. Disposition Without Trial (Default, Dismissals, and Summary Judgment)
d. Erie
   e. Juries
   f. Trials
   g. Appeals

**Importance of this syllabus**
Beyond ground rules, my contact information, reading assignments, office hours, and grading, this syllabus contains particular items that constitute an integral part of the course. These items include the objective of the course, student learning outcomes, specific competencies, and probing questions on all assigned material. It is your responsibility to read these items carefully every week. This syllabus is a teaching tool, and you should use it in planning your reading and ensuring that you are well prepared for class. You should use this syllabus:

- to glean class policies, ground rules, and contact information;
- to understand my expectations;
- as a roadmap for your studies and to prepare for the class;
- to self-reflect about your understanding and knowledge of the legal principles and governing rules.

<table>
<thead>
<tr>
<th>Learning Objectives</th>
<th>Objectives and competencies for this course are listed in the weekly assignments below.</th>
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<th>Material</th>
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I strongly suggest you purchase the Baicker-McKee book as it’s annotated with commentaries and additional sources that are exceedingly helpful in understanding the federal rules and statutes. That said, this is not mandatory; any rule book that contains the most recent enactment of the Federal Rules of Civil Procedure and the selected provisions of Title 28 will do.


| Required Technology | Due to the nature of this course, you will need access to a computer to participate in online classes via Blackboard. **You will be required to have a camera that must remain on throughout class.** |
Some quizzes will be taken using a **RESPONDUS LOCKDOWN BROWSER (RLDB)** that must be downloaded to your computer. Tablets and Ipads are not compatible with the RLDB. More instruction will be provided about this later.

**Grading**

The grade for Civil Procedure will be as follows: my grade, which constitutes fifty percent of the total grade; and, the “uniform” exam at the end of the fall semester, which constitutes the other fifty percent of the total grade.

My portion of the grade is derived from your quizzes, essays, other graded exams, and participation. I allocate 500 points to the fifty percent of my portion of the grade, so that, for example, our first quiz is worth 50 points; together all graded material will be worth 500 points.

**Quizzes (including a quiz that will be designated as a midterm).**

After every major topic, there will be a quiz. Quizzes are composed of multiple choice and true/false questions. Some of the quizzes will be open-book, meaning you may use all the materials provided in this class, including your casebook. That said, because these quizzes are time-sensitive, they require you to be fully familiar with handouts and cases so that you can answer most of the questions unaided by your materials. Each quiz will be assigned a specific point value, which will be announced before the administration of the quiz.

There may also be a take-home quiz covering information on the federal courts.

**Essays**

There will be a number of timed graded essays. Essays will be assigned a portion of the 500 points – generally, 10-20 points per essay. The turnaround for essays will be within a week, and your answers will contain extensive feedback. I will also provide you with a grading rubric or a sample answer which will be reviewed in class.

The purpose of the essays is to test your understanding of the legal concepts, and hone your legal analysis and communication skills.

It is my goal in this class to awaken your mind so that it becomes keen and inquiring; to give you an opportunity to become not just a good legal writer, but a skillful writer. Like any other craft, legal writing requires practice, love, and attention. Perfecting this craft is a life-long pursuit, but it is my hope that through various exercises we will do in this class, you will begin the process.

**Final Exam**

The final exam is cumulative and may include a take-home essay. The final exam is closed book.

**Participation points**
Participation points are earned through the recital of assigned cases, as well as your class participation.

**TWEN quizzes:** There will be a number of mandatory quizzes posted on TWEN during the semester. These will be announced in class and by email. Completion of the TWEN quizzes counts as participation points.

<table>
<thead>
<tr>
<th>Course Outline</th>
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<tbody>
<tr>
<td><strong>Overview / Course Responsibilities</strong></td>
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<tr>
<td>I will use Blackboard, TWEN, and Bluejeans Video Conferencing for office hours.</td>
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<tr>
<td>All announcements will be sent either through TWEN or Blackboard.</td>
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<tr>
<td>Checking your email is an integral part of this class, and it’s my key method of communication. Please act accordingly.</td>
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<tr>
<th>Reading Assignments</th>
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<tr>
<td><strong>The cases will be assigned before class to specific students. That document will be posted later.</strong></td>
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<tr>
<td><strong>Objectives and competencies:</strong> In order to fully understand federal civil procedure, it’s imperative to know the structure of the state and federal courts, as well as the myriad rules and regulations that govern the many aspects of litigation.</td>
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<tr>
<td>Every state has its own court system. The types of cases that can be heard in state courts are established by state legislatures and states’ constitutions. The U.S. Constitution provides for a separate federal court system, and the categories of cases that the federal courts can hear are established by federal statutes.</td>
</tr>
<tr>
<td>Federal litigation commences with the filing and service of pleadings, followed by an intensive phase of discovery, motions, and investigation, culminating in pre-trial proceedings and ultimately a trial. Most litigation, however, does not end in trial; most cases settle or are resolved by dismissal or summary judgment.</td>
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<td>Discovery, the process of gathering and exchanging information to prepare for trial or to attempt to settle, dominates litigation practice, and can often be a source of heated contention and abuse.</td>
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<td>If a case does not settle, it proceeds to trial. In that event, it may be tried to the court or to a jury. While the federal rules of civil procedure govern primarily the litigation process, the federal rules of evidence predominate during trial proceedings.</td>
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<tr>
<td>Even after a judgment has been entered, the case is not over since the losing parties may file a number of post-judgment motions.</td>
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<td><strong>After Chapters 1 and 2 you should:</strong></td>
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<tr>
<td>1. Know the difference between the two American Court Systems: state and federal.</td>
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<td>2. Know the structure of the federal and state courts.</td>
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<td>3. Have a fundamental understanding of general principles of subject matter jurisdiction.</td>
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<td>4. Be familiar with the sources of civil procedure regulation.</td>
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<td>5. Have a basic understanding of the litigation process.</td>
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Week 1

INTRODUCTION TO CIVIL PROCEDURE AND THE AMERICAN LEGAL SYSTEM

8-10

► Overview of the Uniform Bar Exam
► Diagnostic Quiz; Discussion of the diagnostic material.
   □ Exercise 1
   □ Chapter 1, An Introduction to American Courts, pp. 3-19;
     Chapter 2, A Description of the Litigation Process and Sources of Procedural Law, pp. 21-38.
   □ Pleading Overview: PowerPoint presentation.

► Objectives and competencies – Subject Matter Jurisdiction: Federal courts must have subject matter jurisdiction over the types of cases before them, and as we have already learned, federal courts are courts of limited jurisdiction. Congress authorized jurisdiction in federal district courts “of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. 1331. Also, Congress has enacted specific statutes authorizing federal district courts to hear causes of actions relating to certain areas of federal law. These chapters explore the federal courts’ limited jurisdiction, pertinent statutes, and landmark cases. In particular, they explore the two predominant types of subject matter jurisdiction: diversity and federal question.

Federal courts often assume jurisdiction of a case based on the removal statutes, which authorize defendants sued in state court to remove certain cases to federal court, that is, to take the case out of the state court and refile it in federal court. The rationale for allowing removal is that the defendant should have the same option as the plaintiff to choose a federal court to hear a case that is within federal subject matter jurisdiction.

Federal cases often assert multiple claims, some that support original federal jurisdiction, and others that do not. For example, a plaintiff may sue a non-diverse defendant on a federal claim and a state claim. In a diversity case, a defendant may counterclaim for less than the jurisdictional amount, bring in a third party defendant from the same state, or assert a state law cross-claim against a codefendant from the same state. Before enactment of 28 U.S.C.§ 1367, the supplemental jurisdiction statute, such claims were analyzed as either pendent claims or ancillary claims depending on their posture in the case. Today, both types of added claims are referred to as supplemental claims.

► After Chapters 3-5, you should:

1. Be familiar with all pertinent sections of Title 28 of the U.S. Code.
2. Understand diversity jurisdiction.
3. Understand federal question jurisdiction.
4. Understand the “well-pleaded” complaint and the essential federal requirement.
5. Understand supplemental and removal jurisdiction.
Week 2  INTRODUCTION TO SUBJECT MATTER JURISDICTION

8-17  Exercise #2


  Cases:
  - Gordon v. Steele, p. 44.
  - Mas v. Perry, p. 53.
  - Hertz Corp. v. Friend, p. 62.
  - Diefenthal v. C.A.B., p.76

Week 3  SUBJECT MATTER JURISDICTION

8-24  Chapter 4, Federal Question Jurisdiction, pp. 91-125.

  Cases
  - Louisville & Nashville RR v. Mottley, p. 94.
  - Gunn v. Minton, p. 111.

Week 4  REMOVAL AND SUPPLEMENTAL JURISDICTION

8-31  Review of exercise on Removal and Supplemental Jurisdiction

- Chapter 5, Removal of Cases from State to Federal Court, pp. 127-144.

  Cases:
  - Avitts v. Amoco, p. 129.

- Chapter 20, Supplemental Jurisdiction, pp. 730-772.

  Cases:
  - Exxon Mobil Corp. v. Allapattah, p. 759.

► Objectives and competencies: Before a federal trial court may exert personal jurisdiction over a defendant, it must satisfy the due process standard of the 5th and 14th Amendments of the Constitution. This requirement must be met for each defendant. The 14th Amendment bars a state from depriving a person of life, liberty, or property without due process of law, that is, without a basically fair procedure.

If it’s a court that’s doing the depriving - by entering a judgment against a person and forcing her to pay it – basic fairness requires that the defendant have some relationship to the state
where the court sits that will make it fair to conduct the litigation. In civil procedure, this means that the court must have a basis to exercise personal jurisdiction.

Although the Federal Rules of Civil Procedure control many aspects of a civil suit in a district court, the Rules do not contain all the elements that must be satisfied before the suit can be prosecuted successfully. Concepts of jurisdiction and venue are of great importance in the litigation process, but for the most part these elements are not discussed in the rules. These chapters review the pertinent sections of Title 28 and a number of landmark cases that have marked the evolution and application of personal jurisdiction in the federal courts.

► After Chapters 6-10 you should:

1. Be familiar with the pertinent statutory laws that govern personal jurisdiction.
2. Understand the historical roots of the doctrine.
3. Understand the modern personal jurisdiction doctrine.
4. Understand the differences between general and specific jurisdiction.
5. Understand the alternatives to specific jurisdiction.
6. Understand how to answer personal jurisdiction bar exam questions.
7. Understand the long arm statute and the constitutional bases for service.

Week 5 INTRODUCTION TO PERSONAL JURISDICTION

9-7 □ Review of exercise on Personal Jurisdiction.
□ Chapter 6, The Evolution of Personal Jurisdiction, pp. 147-178.

Cases:
□ Pennoyer v. Neff, p. 150.

Week 6 PERSONAL JURISDICTION (continued)

9-14 □ Chapter 7, Specific In Personam Jurisdiction, pp. 179-248.

Cases:
□ World Wide Volkswagen v. Woodson, p. 185.
□ Asahi Metal Industry v. Superior Court, p. 216.
Objectives and competencies – Venue: The requirement of venue sets the appropriate federal districts in which a particular case should be heard. Requirements to satisfy venue are additional to the jurisdictional prerequisites. Thus, even if a plaintiff satisfied both kinds of jurisdiction, the case might still be dismissed if venue was lacking. For certain specific causes of action, Congress has enacted special venue statutes.

A defendant, however, may want a case heard in another judicial district. To achieve this purpose, a defendant will file motions to change venue. There are generally two types of venue-motions. First, and most obviously, a defendant can make a motion that the case was filed in an improper venue. The second type of motion contends that the venue chosen by the plaintiff is not improper, but that there is a more appropriate federal district.

Forum non conveniens is a doctrine that allows a court to dismiss a case so that it can be filed in a more convenient forum. A forum non conveniens dismissal is premised on the assumption that the plaintiff can, in fact, refile the case in a foreign venue.

After Chapters 11 and 12 you should:

1. Understand the pertinent statutes under Title 28 of the U.S. Code.
2. Understand venue and transfer of venue.
3. Understand forum non conveniens.
Week 9  VENUE & FORUM NON CONVENIENS
10-5  Review of exercise on Venue.
      Begin discussion on Venue

Cases:
      Uffner v. La Reunion Francaise, p. 377.

Week 10  VENUE & FORUM NON CONVENIENS
10-12  Chapter 12, Challenges to Venue: Transfers and Dismissals, pp. 385-416.

Cases:

► Objectives and competencies: Pleadings communicate the nature of the lawsuit, define and shape the issues, furnish a basis for the evidence, and provide a foundation for res judicata. A pleading sets forth either an affirmative claim for relief or a response to a claim for relief. When drafting pleadings, the parties should comply with federal and local rules. The rules do not require the pleadings to detail the facts or plead legal theories. A complaint must give the defendant fair notice of what the plaintiff’s claim is and the grounds on which it rests.

In responding to the complaint, the defendant has many choices. A defendant can respond to a complaint by doing nothing, and risking the entry of a default judgment, by moving to dismiss under Rule 12, or by answering.

► After Chapters 13 and 14, you should:
1. Demonstrate knowledge of the Federal Rules that govern pleadings: FRCP 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 15, and 55.
2. Know the six stages of litigation: investigative, pleading, discovery, pre-trial, trial and appeals, and how the FRCP apply to each of the stages.
3. Demonstrate knowledge of how a civil action is commenced, and the various steps in the pleading stage of litigation.
4. Understand notice pleading and the sufficiency of the complaint under the Federal Rules.
5. Know the heightened pleading requirement.
6. Demonstrate knowledge of the various ways of responding to a complaint and familiarity with Rule 12 motions.
7. Know the process of amending pleadings and the applicable rules.
8. Have a working knowledge of answering exam questions in the area of pleadings.
Week 11  INTRODUCTION TO PLEADING

10-19  □  Review pleading exercise.
       □  Chapter 14, Basic Pleading, pp. 419-473.
       I will cover cursorily pp. 419-446.

   Cases:
   □  Leatherman v. Tarrant County Narcotics, p. 449.
   □  Ashcroft v. Iqbal, p 457.

Week 12  PLEADING – (continued)

10-26  □  Review of an exercise on answering the complaint
       □  Chapter 14, Responding to the Complaint (or Not?),
       pp.475 - 524.

   Cases:
   □  Virgin Records America, Inc. v. Lacey, p. 477.
   □  Reis Robotics USA, Inc. v. Concept Industries, Inc., p. 505.
   □  Ingraham v. United States, p. 511.

►  Objectives and competencies: Care and candor in federal court litigation are policed
   by rules of professional conduct, Rule 11, statutes, the inherent power of the courts to
   control litigation, and legal malpractice law.

Rule 11 defines a form of legal malpractice based on an objective negligence standard. Before
presenting any paper to a district court, the presenter must undertake an inquiry into the law
and the evidence that is reasonable under the circumstances. Presenting a paper certifies that it
has a proper purpose; that its claims, defenses, and other legal contentions have a legal basis;
and that its factual contentions have evidentiary support under Rule 11.

►  After Chapter 15, you should:
   1.  Know Rule 11 and demonstrate knowledge of its application.
   2.  Be familiar with the procedure for presenting a Rule 11 motion.
Week 13  PLEADING - RULE 11 and AMENDMENTS (continued)

11-2
11-4
- Review of an exercise on Rule 11.
- Chapter 15, Care and Candor in Pleading, pp.525-558.

Cases:
- Hays v. Sony Corp. of America, p. 527.

- Review exercise on amending the pleadings.
- Chapter 16, Amending Pleadings, pp. 559-602.
Most of this section will be covered through exercises and practice questions.

Cases:

LAST DAY OF CLASS: WEDNESDAY, NOVEMBER 4, 2020

<table>
<thead>
<tr>
<th>Essential Policies:</th>
<th>To ensure things run as smoothly as possible, please read and adhere to the following norms.</th>
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<tbody>
<tr>
<td>Blackboard Protocol</td>
<td>- Enter the session at least 5 to 10 minutes before class begins. Take time to attend to any technical matters and have all class materials on hand.</td>
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<tr>
<td></td>
<td>- If you experience technical difficulties, use the “dial-in” option to attend via phone. That way, you do not miss class and you can attend to your technical difficulties after class ends.</td>
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<tr>
<td></td>
<td>- Test your microphone before class begins. Then, MUTE YOUR MICROPHONE. Do not share your microphone unless you are called on by me to do so.</td>
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<tr>
<td></td>
<td>- TURN OFF YOUR VIDEO SHARING. Unless I notify you otherwise in advance of class, you will not need to share your video.</td>
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<tr>
<td></td>
<td>- Use the “raise your hand” feature if you have a question. If I call on you to ask your question aloud, you may unmute your microphone to do so.</td>
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</table>
- If I do not call on you to ask your question aloud, please type your question in a private message to me (not a chat to everyone) and I will get to your question as soon as possible, likely before the end of class. I will video all classes and they will be available in my course session about two hours after I record the class.

### My Teaching Philosophy

My teaching philosophy has evolved during my thirty years of teaching in the legal profession. It is partly grounded on the words of the Lebanese poet, Khalil Gibran: “The teacher who is indeed wise does not bid you to enter the house of his wisdom but rather leads you to the threshold of your mind.”

I am thoughtful and passionate about my teaching. I teach by example, so I strive to be diligently prepared and to challenge students to excel. I am mindful that each student learns differently, so my teaching style evolves to meet the needs of my students. I believe that repetition and reinforcement of the legal concepts are pivotal in learning the law, so I provide different teaching tools to accomplish this goal. Above all, I strive to ensure that students fully understand the foundational principles so that their learning is meaningful and effective.

As I reflect on my years of teaching I find that my mission is rooted on three principles: to spark enthusiasm for learning; to create a positive learning environment; and, to infuse professionalism and compassion in my students.

Through the years, I have learned much from my students. I am humbled by their determination to succeed and their dedication to the task. I care about my students, and I believe that all of them can become successful lawyers. But being a lawyer is a huge responsibility and I strive to ensure that my students will be ethical and competent practitioners.

### Attendance Policy

Students are required to attend classes consistent with the format of the enrolled course. For 100% online courses, both the American Bar Association and the Law School rules obligate the professor to obtain assurance that the person who logs into the course online participates in class, takes quizzes and exams, and engages fully in class. **Professors may require attendance to be contingent upon confirmation of identity via webcam or require webcams to remain on for the entire class period.**

Class attendance will be taken via ROLL CALL by me at the start of class. If you are not present by the end of the ROLL CALL, or if you log in late, then you will be considered ABSENT. Extenuating circumstances can be submitted to me via email within 24 hours of the event.

### Professionalism

**Students are expected to demonstrate professionalism by adhering to the course policies and procedures explained in this syllabus.**
In keeping with the professional school environment, students should remember to respect their fellow classmates and the Professor at all times. Please refrain from engaging in distracting conduct while in online class. Please remember to turn refrain from using your cell phones UNLESS you are using it to call into the ZOOM class meeting.

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<tr>
<th>Accommodations Policy</th>
<th>Accommodations/Excused from Graded Quizzes or Tests, etc.</th>
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<tbody>
<tr>
<td>An “accommodation” is defined for these purposes as any student request for deviation from the time, date, or circumstances under which scheduled graded assignments are administered. Students must apply to and be granted WRITTEN accommodation by the DEAN’S OFFICE if he/she will not be in attendance for any graded assignment or test (e.g., graded quiz and midterm/final exams). Once granted, the professor must receive official confirmation from the DEAN’S OFFICE of any ALTERNATIVE DATES or accommodated changes that have been granted to the student. All requests for ACCOMMODATIONS must be handled by the Dean’s office rather than by the professor. ORAL CONVERSATIONS made with EITHER the professor or the DEAN’S OFFICE, ARE NOT BINDING.</td>
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<td>• Students requesting accommodations may do so through the Office of Student Affairs.</td>
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<tr>
<th>Calendar</th>
<th>FALL SEMESTER 2020 (Modified 13-Week Schedule)</th>
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<tbody>
<tr>
<td>Orientation</td>
<td>Mon-Fri</td>
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<tr>
<td>First Day of Class</td>
<td>Monday</td>
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<tr>
<td>Last Day to ADD/DROP</td>
<td>Wednesday</td>
</tr>
<tr>
<td>Labor Day (NO CLASSES)</td>
<td>Monday</td>
</tr>
<tr>
<td>Purge of all unpaid course selections</td>
<td>Monday</td>
</tr>
<tr>
<td>Mid Term Examinations</td>
<td>Mon – Fri</td>
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<tr>
<td>Last Day to Drop a Class with grade of</td>
<td>Friday</td>
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<tr>
<td>Last Day of Classes</td>
<td>Wednesday</td>
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<td>First Year Professors’ Grades due</td>
<td>Wednesday</td>
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<tr>
<td>Reading Period (NO CLASS)</td>
<td>Thurs- Sun</td>
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<tr>
<td>Final Examinations</td>
<td>Mon – Thu</td>
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<tr>
<td>Commencement Exercises</td>
<td>Saturday</td>
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