

# CIVIL PROCEDURE

COURSE NO. 510/SECTIONS 1 & 4

FALL - 2021

PROFESSOR ANGA

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## THE PROFESSOR

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**LOCATION:**

**OFFICE HOURS:** Tuesday & Thursday 3:15-4:15 p.m.

(All other times by appointment only)

### MY TEACHING PHILOSOPHY:

My teaching philosophy is very simple, if I teach, students will learn. My class approach is holistic. I believe the better I am prepared as a teacher, the better I can prepare my students. From the first day of class, I inform the students that they are attorneys and must learn to answer questions based on sound application of the law to the facts. I strive to bring the subject matter alive for the students. I invite everybody to the party that is class. However, students cannot comprehend the material if they fail to do their part of reading the rules and covering the assigned readings. Only when students have done their part can I clear up any confusion about the material. It's a partnership and I promise to perform my part of the partnership. I invite you to do the same.

## COURSE BOOKS & MATERIAL

### REQUIRED TEXTS

1. *Civil Procedure: A Coursebook*, Joseph W. Glannon, Andrew M. Perlman, and Peter Raven-Hansen (Wolters Kluwer)
2. *A Student's Guide to the Federal Rules of Civil Procedure*, Baicker-McKee (Thomson-West) (Latest edition)

### Recommended Text

Acing Civil Procedure, A. Benjamin Spencer

### **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.

**Please note that failure to have your books and be prepared for class will count against your participation grade.**

# COURSE DESCRIPTION & OBJECTIVE

## COURSE DESCRIPTION

Civil Procedure covers the process of litigation in the federal courts. Through an examination of federal procedural rules, statutes, and cases, it examines the seven basic stages of litigation: investigative, pleadings, discovery, pre-trial, trial, post-trial, and appeal. It also involves the study of the most important determinations that must be made before filing a civil action: personal and subject matter jurisdiction, and venue.

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

- **Federal Subject Matter Jurisdiction, including Supplemental Jurisdiction and Removal.**
- **Venue**
- **Personal Jurisdiction**
- **Introduction to Pleading (FRCP 7-15, including a brief overview of default judgments and joinder)**

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

- Joinder
- **Discovery**
- **Disposition Without Trial (Default, Dismissals, and Summary Judgment)**
- **Erie**
- **Juries**
- **Trials**
- **Appeals**

## CLASS OBJECTIVES

The class will be taught using three components:

- 1). Class lecture and discussion based on the casebook, *Civil Procedure: A Coursebook*, selected provisions of the United States Code, the Federal Rules of Civil Procedure, and pertinent handouts.
- 2). Periodic tests given over the materials to ensure students master the material.
- 3). There will be a number of **mandatory** tutorials.

**THIS SYLLABUS IS NOT A CONTRACT AND IS SUBJECT TO CHANGE WITH OR WITHOUT NOTICE.**

## **GRADING**

The grade for Civil Procedure will be as follows: Professor's score, 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 three exams (10% each) a final (20%) and class participation. Some exams will be taken using RESPONDUS LOCKDOWN BROWSER (RLDB) that must be downloaded on your computer. Tablets and iPads are not compatible with the RLDB. All assessments in my class are cumulative and closed book. I will periodically check outlines to make sure you are reviewing and understanding the rules.

Through my teaching, interaction with the class, testing, and your preparation for the class, you **will** understand Civil Procedure.

### **Participation points**

Participation points are earned through answering question and participating in class.

**Tutorials:** There will be tutorials for this course. Tutorial times and dates will be announced in class and by email.

## **EXAM NUMBERS**

The use of multiple exam numbers not only protracts the grading process, but also causes confusion in the recording process, which could be detrimental to your grade.

**You should use only two (2) exam numbers in my class:**

1.     **one number for the quizzes (including the midterm),**
2.     **one number for the final.**

**Unless I have explicitly authorized it, the use of multiple exam numbers, will cause you to have 5 points deducted from the final grade. Please act accordingly.**

## **ACCOMMODATIONS**

Students requesting accommodations may do so through the Office of Student Affairs.

### **Participation, Attendance & Professionalism**

Class attendance and participation are mandatory. (See Students Rules of Matriculation for details on absences and grade reductions.) Row is taken at the beginning of each class. If you miss the row, it is your responsibility to make sure you are marked present at the end of class. Allowing students to attend class after the row has been taken is a privilege. I will revoke the privilege for will permIf I cannot see your face during class, you will be marked absent. Therefore, please make sure your camera is on and your face, not a picture, is displayed.

### **TWEN**

I will post the syllabus on TWEN and BlackBoard. Assignments, handouts, and emails will be through TWEN. Please add my course to your list of TWEN courses.

### **PROFESSIONALISM**

In keeping with the professional school environment, students should remember to respect their fellow classmates and the Professor at all times. Please refrain from excessive side conversations or other distracting conduct. The learning environment must be conducive to everybody.

## **POLICIES & PROCEDURES**

### **CLASS ETIQUETTE**

I expect everyone to be civil and professional. If you have a question raise your hand and I will acknowledge you. There should be no side bar conversations during the lecture. To create an environment conducive to learning students must be respectful. Any behavior that disrupts the learning environment is prohibited.

#### **Cell phones**

The use of cell phones in the classroom during class is strictly prohibited. All electronic devices, other than the one you are using for class, must be turned off during class.



**TEAS SOUTHERN UNIVERSITY THURGOOD MARSHALL SCHOOL OF LAW  
ACADEMIC CALENDAR FAL-2021**

**FALL SEMESTER 2021**

Orientation	Monday–Friday	August 9–13, 2021
<b>First Day of Class</b>	<b>Monday</b>	<b>August 16, 2021</b>
Last Day to ADD/DROP	Wednesday	August 18, 2021
<b>Labor Day (NO CLASSES)</b>	<b>Monday</b>	<b>September 6, 2021</b>
<i>Purge of all unpaid course selections</i>	Wednesday	September 15, 2021
<b>Mid Term Examinations</b>	<b>Monday–Friday</b>	<b>October 11–15, 2021</b>
Last Day to Drop a Class	Friday	November 5, 2021
Last Day of Classes	Tuesday	November 23, 2021
First Year Professors' Grades due	Tuesday	November 24, 2021
Thanksgiving Holiday	Thurs-Fri	November 27-28, 2021
<b>Reading Period (NO CLASS)</b>	<b>Thurs-Sun</b>	<b>November 27-28</b>
Final Examinations	Mon–Thu	Nov 29–Dec. 10, 2021
Commencement Exercises	Saturday	December 11, 2021

**SPRING SEMESTER 2022 (SEVENTY DAYS OF CLASSES)**

**\*\*TBA**

## **Four Step Study Method For All Classes -Remember This?**

### I. Prepare for Class

- Pre-Read for Context
- Read Cases
- Brief/Brief-Brief/ Take notes, etc.

### II. Attend Class

- Take proper notes
- Participate either explicitly (i.e. by commenting in class) or implicitly (i.e. by actively engaging the dialogue and answering/criticizing other's answers in your head).

### III. Review After Class/Cumulative Review

- End of week, together with Step IV.
- Create outline, continue to update adding new concepts and rules.
- Self-teach the law: Review notes; use hornbooks; work with study group, etc.
- Then, memorialize this maximum understanding for future use.
- The point is *to teach yourself* the law in this step.

### IV. Test Yourself: Objective Self -Assessment

- Prove to yourself that you really do understand the law
- Use MCQs or your own materials to test your understanding of the subjects covered in steps I-III.
- If you get about 7/10 or more right, you likely understand the subject and can move on.
- If you get 5-6/10 or below, you need to return to Step III and eliminate areas of misunderstanding.

## READING ASSIGNMENTS

- ▶ **Objectives and competencies:** 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.

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.

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.

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.

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.

Even after a judgment has been entered, the case is not over since the losing parties may file a number of post-judgment motions.

- ▶ **After Chapters 1 and 2 you should:**

1. Know the difference between the two American Court Systems: state and federal.
2. Know the structure of the federal and state courts.
3. Have a fundamental understanding of general principles of subject matter jurisdiction.
4. Be familiar with the sources of civil procedure regulation.
5. Have a basic understanding of the litigation process.

## Week 1

### INTRODUCTION TO CIVIL PROCEDURE AND THE AMERICAN LEGAL

8-16

► An Overview- [Civil Procedure: The Life of a Case](#) Youtube

- Chapter 1, An Introduction to American Courts, pp. 3-19;  
Chapter 2, A Description of the Litigation Process and Sources of Procedural Law, pp. 21-39.

► **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 and 20 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**

**8-23**

- Begin discussing Chapter 3, Diversity Jurisdiction in the Federal Courts. pp. 41-90.

### **Cases:**

- Gordon v. Steele, p. 47.
- Mas v. Perry, p. 55.
- Hertz Corp. v. Friend, p. 65.
- Diefenthal v. C.A.B., p.75

## **Week 3 SUBJECT MATTER JURISDICTION**

**8-30**

- 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**

**9-6**

- 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.

**Week 5**

- Chapter 20, Supplemental Jurisdiction, pp. 711-745.

**9-13**

### **Cases:**

- United Mine Workers v. Gibbs, p. 713.
- Owen Equipment & Erection v. Kroger, p. 725.
- Exxon Mobil Corp. v. Allapattah, \*\*\*

► **Objectives and competencies:** Before a federal trial court may exert personal jurisdiction over a defendant, it must satisfy the due process standard of the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the Constitution. This requirement must be met for each defendant. The 14<sup>th</sup> 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 6**      **INTRODUCTION TO PERSONAL JURISDICTION**  
**9-20**

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

Cases:

- ▣ Pennoyer v. Neff, p. 150.
- ▣ International Shoe v. State of Washington, p. 165.

**Week 7**      **PERSONAL JURISDICTION (continued)**

- 9-27**      ▣ Chapter 7, Specific In Personam Jurisdiction, pp. 179-248.

Cases:

- ▣ McGee v. International Life Insurance, p. 180.
- ▣ World Wide Volkswagen v. Woodson, p. 185.
- ▣ Burger King v. Rudzewicz, p. 205.
- ▣ Asahi Metal Industry v. Superior Court, p. 218.

## **Week 8      PERSONAL JURISDICTION (continued)**

**10-4**

- ▣ Chapter 8 - Other Constitutional Bases for Personal Jurisdiction, pp. 251-308.

### Cases:

- ▣ Daimler AG v. Bauman, p. 255.
- ▣ Shaffer v. Heitner, p. 274.
- ▣ Burnham v. Superior Court, p. 289.

## **Week 9      PERSONAL JURISDICTION (continued)**

**10-11**

- ▣ Chapter 9 - Long Arm Statutes, pp. 309-327

### Cases:

- ▣ Bensusan Restaurant Corp. v. King, p. 318.
- ▣ Chapter 10- Constitutional Requirement of Notice and Methods of Service, pp. 329-365.

### Cases

- ▣ Mullane v. Central Hanover Bank & Trust Co., p. 331.
- ▣ Baidoo v. Blood-Dzraku, p. 352.

► **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 10 VENUE & FORUM NON CONVENIENS** [Civil Procedure -Venue by Prof. Ben Spencer](#) YouTube

- 10-18**
- ▣ Review of exercise on Venue.
  - ▣ Begin discussion on Venue  
Chapter 11 – Basic Venue: Statutory Allocation of Cases Within A Court System, p. 369-385.

**Cases:**

- ▣ Uffner v. La Reunion Francaise, p. 377.

**\*\*\*Midterm- TBA**

**Week 11 VENUE & FORUM NON CONVENIENS**

- 10-25**
- ▣ Chapter 12, Challenges to Venue: Transfers and Dismissals, pp. 385-417.

**Cases:**

- ▣ MacMunn v. Eli, p. 391.
- ▣ Piper Aircraft Company v. Reyno, p. 398.

- **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 12 INTRODUCTION TO PLEADING**

- 11-1**
- ▣ Review pleading exercise.
  - ▣ Chapter 14, Basic Pleading, pp. 421-476.  
I will cover cursorily pp. 420-449.

**Cases:**

- ▣ *Leatherman v. Tarrant County Narcotics*, p. 451.
- ▣ *Ashcroft v. Iqbal*, p 459.

**Week 13 PLEADING – (continued)**

- 11-8**
- ▣ Review of an exercise on answering the complaint
  - ▣ Chapter 14, Responding to the Complaint (or Not?), pp.477 - 527.

**Cases:**

- ▣ *Virgin Records America, Inc. v. Lacey*, p. 479.

- ▣ Matos v. Nextran, Inc., p. 489.
- ▣ Hunter v. Serv-Tech, Inc., p. 499.
- ▣ Reis Robotics USA, Inc. v. Concept Industries, Inc., p. 506.
- ▣ Ingraham v. United States, p. 513.

- ▶ **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 14 PLEADING - RULE 11 and 15 AMENDMENTS (continued)**

- 11-15**
- ▣ 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.
- ▣ Hunter v. Earthgrains Co. Bakery, p. 537.
- ▣ Sussman v. Bank of Israel, p. 544.

- ▣ Review exercise on amending the pleadings.
- ▣ Chapter 16, Amending Pleadings, pp. 553-598.  
Most of this section will be covered through exercises and practice questions.

#### Cases:

- ▣ Beeck v. Aquaslide 'N' Dive Corp., p. 565.

- ▶ **Objectives and competencies** if one plaintiff asserts a single claim against one defendant, and that is the entire scope of the lawsuit, there is no issue raised about joinder of claims and parties. Seldom, is litigation that simple. Modern joinder provisions are

constructed to foster a complete resolution of all claims, involving all of the players to the same transaction or occurrence that raise common issues of law or fact. Joinder rules repeatedly sound the theme of transactional relationship. Running parallel with the transactional analysis is a cardinal rule of the federal system: Every claim against each party must be supported by an independent ground of subject matter jurisdiction, or by the discretionary principles of supplemental jurisdiction.

► **Chapter 17-Lecture Rules 13, 14, 15**

1. Know FRCP 13, 14, 15,
2. Know joinder of multiple parties.
3. Know the difference between affirmative defenses, counterclaims, and cross claims.

**Week 15**  
**11-22-**

**EXAM OR REVIEW**

**FINAL EXAM-Date to be determined**

**LAST DAY OF CLASS TUESDAY, NOVEMBER 23, 2021**

♥♥♥♥♥♥♥♥

**WEEKEND TUTORIALS WILL BE ANNOUNCED AS THE SEMESTER  
PROGRESSES.**