

TEXAS SOUTHERN UNIVERSITY

Course Name	Course 510 Term and Ye		Term and Year: Fall 2021	
Civil Procedure				
Class Time	Tuesday and Thursdays 10:00 am -11:15 am.			
Class Location	Room 208, Second Floor of TMSL			
Professor	Ana M. Otero			
Office Hours	Monday 11-1:30 pm; Tuesday 11:30-1:00 pm; Thursday 11:30-1:00 pm and by			
	appointment. These office hours might change given Covid requirements. In that			
	event, we will meet on Zoom.			
	I will accommodate students with scheduling conflicts.			
Professor Email	ana.otero@tmslaw.tsu.edu	Instructor Phone	r 713.313.7351	
Preferred	Email / Blackboard	TA Name	e Jennifer Mendiola-Hooker	
Methods of	/TWEN	& Email		
Contact	/IWEN	& Ellian	Jililooker09@icioud.com	
Blackboard	Please contact TSU IT department.			
Help				

Course Description			
Course Purpose	This course covers modern civil procedure in the United States with emphasis on pretrial 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. b. Removal. c. Venue d. Personal jurisdiction e. 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.
Learning Objectives	Objectives and competencies for this course are listed in the weekly assignments below.

Material			
Textbooks	1 Civil Procedure: A Coursebook, Joseph W. Glannon, Andrew M. Perlman, and Peter Raven-Hansen, 4 th Edition. (Wolters Kluwer)		
	2. A Student's Guide to the Federal Rules of Civil Procedure, Baicker-McKee (Thomson-West) (Latest edition 2021-2022) or any book that contains the Federal Rules of Civil Procedure and selected provisions from the United States Code, Title 28. (Latest edition)		
	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.		
	Both Glannon's casebook and the Student's Guide have new editions. I strongly suggest that you purchase the latest editions of these books as we will be using them for one year. The books might also be available for rent.		
Other Suggested Materials	The Power of Procedure: The Litigation of Jones v. Clinton, Nan D. Hunter, (Aspen Publishers).		
Required Technology	A PC will be allowed in the classroom for the sole purpose of viewing the books, handouts and note taking. This is a privilege that may be lost if misused.		

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 several 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 I will review and discuss during 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 (approximately 10 out of the 500 points allotted) are earned through the recital of assigned cases, and participation in class and tutorials.

<u>TWEN quizzes:</u> There will be a number of <u>mandatory</u> 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.

Course Outline	
Overview / Course Responsibilities	I will use Blackboard for exams, posting announcements, and emails; TWEN for practice quizzes, and Zoom for office hours, when
	necessary. All announcements will be sent through Blackboard. Checking your email is an integral part of this class, and it's my key method of communication. Please act accordingly.

Reading Assignments

I will assign the cases before class to specific students. A document containing the case assignments will be posted later.

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 several post-judgment motions.

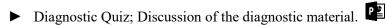
► After Chapters 1 and 2 you should:

- 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 SYSTEM

Overview of the Uniform Bar Exam. 8-17

8-19



Exercise #1 discussion

> 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.

Pleading Overview: PowerPoint presentation.



Objectives and competencies – Subject Matter Jurisdiction:

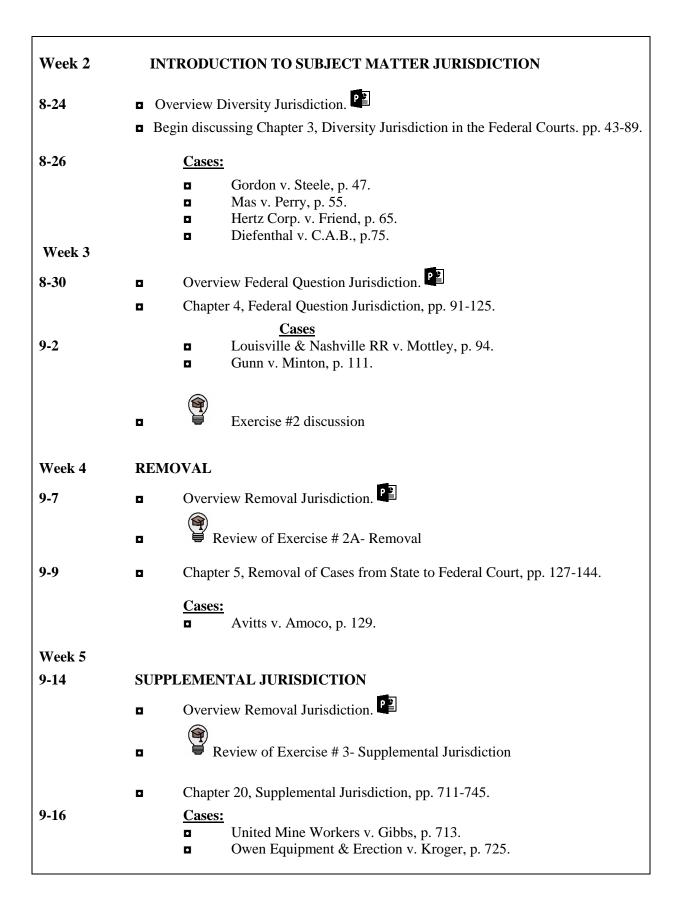
Federal courts must have subject matter jurisdiction over the types of cases before them, and as we have already learned, federal courts are courts of limited jurisdiction. Congress authorized jurisdiction in federal district courts "of all civil actions arising under the Constitution, laws, or treaties 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, and 20 you should:

- 1. Be familiar with all pertinent sections of Title 28 of the U.S. Code.
- Understand diversity jurisdiction. 2.
- 3. Understand federal question jurisdiction.
- Understand the "well-pleaded" complaint and the essential federal requirement. 4.
- 5. Understand supplemental and removal jurisdiction.



▶ **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 6 INTRODUCTION TO PERSONAL JURISDICTION

- 9-21 Overview Personal Jurisdiction.
 - Review of Exercise # 4- Personal Jurisdiction.
 - Chapter 6, The Evolution of Personal Jurisdiction, pp. 147-178.
- 9-23 Cases:
 - Pennoyer v. Neff, p. 150.
 - International Shoe v. State of Washington, p. 165.

Week 7 PERSONAL JURISDICTION (continued)

9-28 and 30 Chapter 7, Specific *In Personam* Jurisdiction, pp. 179-250.

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)

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.
- **10-7** 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.

<u>Cases</u>

- 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 9 VENUE & FORUM NON CONVENIENS

10-12 Overview Venue.

Review of Exercise # 5- Venue.

10-14 Chapter 11 − Basic Venue: Statutory Allocation of Cases Within A Court System, p. 369-385.

Week 10 VENUE & FORUM NON CONVENIENS

10-19 and 21 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 11 INTRODUCTION TO PLEADING

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10-26 and 28



Review of Exercise # 6 Pleading

Chapter 14, Basic Pleading, pp. 421-476. Pages 420-449 will be covered cursorily.

Cases:

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

Week 12 PLEADING – (continued)

11-2 Review of Exercise # 7 Responding to 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 13 PLEADING - RULE 11 and AMENDMENTS (continued)

11-9

11-4

Review of exercise on Rule 11.

Chapter 15, Care and Candor in Pleading, pp.529-552.

Cases

11-11

- Hays v. Sony Corp. of America, p. 527.
- Hunter v. Earthgrains Co. Bakery, p. 537.
- Sussman v. Bank of Israel, p. 544.

Week 14	0	Review exercise on amending the pleadings.
11-16	Chapter 16, Amending Pleadings, pp. 553-598. Most of this section will be covered through exercises and questions.	
		<u>Cases:</u>
	•	Beeck v. Aquaslide 'N' Dive Corp., p. 559.
11-18	Revie	w for final and uniform exam.
LAST DAY OF CLASS: TUESDAY, NOVEMBER 23, 2021		

Essential Policies:	
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.
Cell phones	The use of cell phones or any other electronic device (except for PCs) in the classroom during class is <u>strictly</u> prohibited. All electronic devices must be turned off during class.

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Attendance Policy	You must be at your desk when class begins. Please refrain from coming to class late or departing during class instruction. It can be very disruptive. Please advise me before class if there is an emergency.
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.
Computers in the classroom	You are welcome to use a laptop or tablet in this class as long as it contributes to your learning. This class, once again, is discussion-based. Thus, I expect you to listen to one another and participate in classroom discussions actively. If you cannot contribute to the discussion or are otherwise distracted by your computer, cell phone, or table, I will ask that you refrain from using it in class. There will be some class sessions where we will use technology together, and in those instances, all students should make arrangements to bring a laptop or tablet to class. If you have any questions or concerns, please be in touch with me
Accommodations Policy	Accommodations/Excused from Graded Quizzes or Tests, etc. 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. • Students requesting accommodations may do so through the Office of Student Affairs.
Title IX Policy	Texas Southern University is committed to fostering a safe learning environment. As a professor, one of my responsibilities is to help create a safe learning environment in class. Texas Southern University and Federal Regulations (Title IX) policy prohibit discrimination based on sex, and this includes sexual harassment, sexual violence and misconduct, dating violence, domestic violence, and stalking. Texas Southern University understands that these incidents can undermine a student's academic success. Thus, the University encourages students who have experienced sexual conduct prohibited by university policy to report these incidents when they happen to the University's Title IX Coordinator or University Confidential Resource so that the student can get the help they may need. It is my goal that you feel able to share information related to your life experiences in classroom discussions, in your written work, and one-to-one meetings. I will seek to keep the information you share private to the greatest extent possible. However, I also have a mandatory responsibility to notify the University's Title IX Coordinator

	when I become aware of incidents of prohibited conduct that violate the University's Title IX policy. Students may speak confidentially to the University Counseling Center. Please feel free to visit their website www.tsu.edu/ucc for more information about their services. Also, students may speak with the University's Title IX Coordinator by calling 713.313.1371 or emailing titleix@tsu.edu.			
Fall Semester 2021	FALL SEMESTER 2021 (SEVE	NTY D	AYS OF CLA	ASSES)
Academic Calendar	Orientation	N	Ionday-Friday	August 9-13, 2021
	First Day of Class	N	Monday August 16,	
	Last Day to ADD/DROP	Vednesday	August 18, 2021	
	Labor Day (NO CLASSES)		Ionday	September 6, 2021
	Purge of all unpaid course selectio	ons V	Vednesday	September 15,2021
	Mid Term Examinations	N	1on – Fri	October 11-15, 2021
	Last Day to Drop a Class	F	riday	November 5, 2021
	Last Day of Classes	Т	uesday	November 23, 2021
	First Year Professors' Grades due T		uesday	November 23, 2021
	Reading Period	V	Ved	November 24, 2021
	Thanksgiving Holiday Thurs –	F	riday	November 25-26, 2021
	Reading Period S	Sat- Sun		November 27-28, 2021
	Final Examinations M	Ionday -	- Friday	November 29-Dec. 10, 2021
	Commencement Exercises Saturday December 11, 2021			