



TEXAS SOUTHERN UNIVERSITY
THURGOOD MARSHALL SCHOOL *of* LAW

CIVIL PROCEDURE

COURSE NO. 510/SECTION 2

SPRING - 2018

PROFESSOR ANA OTERO

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THE PROFESSOR

NAME: Ana M. Otero

TELEPHONE: (713) 313-1025

EMAIL: aotero@tmslaw.tsu.edu

LOCATION: Suite 236A

OFFICE HOURS: Monday and Wednesday
11:00 a.m. – 12:00 p.m. and 1:00 p.m.- 3:00 p.m.
Thursday: 1-2:30 pm.

(All other times by appointment only)

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 each of them can become a successful lawyer. But being a lawyer is a huge responsibility and I strive to ensure that my students will be ethical and competent practitioners.

COURSE BOOKS & MATERIAL

REQUIRED TEXTS

1. *Civil Procedure: A Coursebook*, Joseph W. Glannon, Andrew M. Perlman, and Peter Raven-Hansen (Wolters Kluwer)(Aspen Custom Book by Prof. Ana M. Otero (Spring 2016).
2. *A Student's Guide to the Federal Rules of Civil Procedure*, Baicker-McKee (Thomson-West)(latest edition) or the Federal Rules of Civil Procedure and selected provisions from the United States Code, Title 28.

Suggested supplements:

1. *The Power of Procedure: The Litigation of Jones v. Clinton*, Nan D. Hunter (Aspen Publishers).
2. *Acing Civil Procedure*, A. Benjamin Spencer. Thomson West (Second Edition).

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

Beginning this term, Civil Procedure is a one-year course. This semester we will cover the following areas:

- Federal Subject Matter Jurisdiction, including Supplemental Jurisdiction and Removal.
- Venue
- Personal Jurisdiction
- Pleading
- Joinder

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

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

CLASS OBJECTIVES

The class will be taught using four primary 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) Exercises. There will be practice exercises to review before each assigned chapter. These exercises provide guidance in approaching the material, pose pertinent questions, and summarize the glossary of new terms that may be unfamiliar to you. The exercises will be posted on TWEN and should be reviewed before reading the pertinent assigned materials.
- 3) Quizzes: After the completion of each assigned section, there will be a **mandatory** quiz posted on TWEN. The quizzes are designed as review and reinforcement. They are open-book. By email, I will notify you when the quizzes open and close. Generally, the quizzes remain open for one to two days. ***You***



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may not print the quiz questions. I will consider it a violation of the Honor Code to do so.

- 4) Emails: I use the TWEN email to clarify concepts, and to provide additional information. As will be expected of you in a law firm, you are required to review the emails regularly, and I suggest that you print them and incorporate them into your notes. Some of the explanations provided in the emails may appear in the quizzes.

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

STUDENT LEARNING OUTCOMES

The student learning outcomes are included with each week's assignment in the following pages.

GRADING

The grade for the full one-year course is divided into two parts: my grade, which constitutes fifty percent of the total grade; and the grade for the final comprehensive exam offered at the end of the spring semester, which constitutes the other fifty percent. Each semester I will allocate 500 points to my quizzes and exams for a total of 1000 possible points at the end of the spring semester for my portion of the grade.

The comprehensive exam at the end of the spring semester is composed of 60 multiple-choice questions. Unless otherwise advised, the questions will be divided as follows:

Subject Matter Topics	Approximate Number of Questions
Subject matter Jurisdiction (Federal subject-matter jurisdiction (federal question, diversity, supplemental)	10
Removal	4
Venue/Forum Non Conveniens	4
Personal Jurisdiction	10
Pleadings	10
Joinder	4
Discovery	6
Disposition Without Trial (Verdicts & Judgments	5
Erie	1
Trials	2
Jury	3
Appeals	1



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Quizzes: There will be a number of mandatory quizzes posted on TWEN during the semester. These will be announced in class and posted on the TWEN calendar. Points earned will count as a portion of the participation points awarded at the end of the semester.

Tutorials: There will be a number of tutorials. These will be announced in class and posted on the TWEN calendar.

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, other graded assignments; and for the midterm; and,**
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.

ATTENDANCE

Class attendance and participation are mandatory. (See Students Rules of Matriculation for details on absences and grade reductions.)

TWEN

Most of my supplemental materials will be posted on TWEN. It is an integral component of this class. You should review my TWEN page as soon as possible and become familiar with the recent postings. The "Exercises," for example should be read before the assigned material and the class discussion. Make sure to read the "General Instructions" handed out the first day of class.

To use TWEN, you need a WESTLAW password and access to the WEB. Whenever you are accessing TWEN, make sure to have the technical support number available so you can contact them with any problems you may have. That number is 1.800.486.4876.

CALENDAR: I will post all class announcements on the calendar. Please check the TWEN calendar on a regular basis for notices and announcements regarding quizzes, tutorials, etc.

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.



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TEXAS SOUTHERN UNIVERSITY ACADEMIC CALENDAR 2017 – 2018

FALL SEMESTER 2017 (SEVENTY DAYS OF CLASSES)

Orientation	Monday-Friday	August 14-18, 2017
First Day of Class	Monday	August 21, 2017
Last Day to ADD/DROP	Friday	August 25, 2017
Labor Day (NO CLASSES)	Monday	September 4, 2017
<i>Purge of all unpaid course selections</i>	Thursday	September 20, 2017
Mid Term Examinations	Mon – Fri	October 16-20, 2017
VETERANS DAY (NO CLASSES)	Friday	November 10, 2017 (tentative)
Thanksgiving Holiday	Thurs – Fri	November 23-24, 2017
Last Day of Classes	Thursday	November 30, 2017
Last Day to Drop a Class	Thursday	November 30, 2017
First Year Professors' Grades due	Thursday	November 30, 2017
Reading Period (NO CLASS)	Friday - Sunday	December 1-3, 2017
Final Examinations	Mon –Fri	December 4 -Dec. 15, 2017
Commencement	Saturday	December 16, 2017

SPRING SEMESTER 2018 (SEVENTY DAYS OF CLASSES)

School Opens	Tuesday	January 2, 2018
First Day of Class	Monday	January 8, 2018
Last Day to ADD/DROP	Friday	January 12, 2018
M L K Holiday (No Classes)	Monday	January 15, 2018
<i>Purge of all unpaid course selections</i>	Wednesday	February 7, 2018
President's Day Holiday (No Classes)	Monday	February 19, 2018
Mid Term Examinations	Mon – Fri	March 5– 9, 2018
Spring Break	Mon – Fri	March 12 – 16, 2018
Good Friday (No Classes)	Friday	March 30, 2018
Last Day of Classes	Wednesday	April 25, 2018
Last Day to Drop a Class	Wednesday	April 25, 2018
First Year Professors' Grades due	Wednesday	April 25, 2018
Reading Period (No Classes)	Thur. – Sun	April 26 - 29, 2018
Final Examinations	Mon- Fri	April 30 – May 11, 2018
Hooding Ceremony	Friday	May 11, 2018
Commencement	Saturday	May 12, 2018

Please note that the calendar events and /or dates are subject to change.

POLICIES & PROCEDURES

CLASS ETIQUETTE

No laptops in the classroom

A 2006 study conducted by Winona State University found a negative relationship between laptop use and student learning. “Recently, a debate has begun over whether in-class laptops aid or hinder learning. While some research demonstrates that laptops can be an important learning tool, anecdotal evidence suggests more and more faculty are banning laptops from their classrooms because of perceptions that they distract students and detract from learning. The current research examines the nature of in-class laptop use in a large lecture course and how that use is related to student learning. Students completed weekly surveys of attendance, laptop use, and aspects of the classroom environment. Results showed that students who used laptops in class spent considerable time multitasking and that the laptop use posed a significant distraction to both users and fellow students. Most importantly, the level of laptop use was negatively related to several measures of student learning, including self-reported understanding of course material and overall course performance.”

<https://www.winona.edu/psychology/media/friedlaptopfinal.pdf>

Cell phones

The use of cell phones in the classroom during class is strictly prohibited. Please shut off all your electronic devices.

Attendance

Please refrain from coming to class late or departing during class instruction. It can be very disruptive.



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READING SCHEDULE

Week 1: JOINDER- Recap of key points and final PPT presentation.

January 8

DISCOVERY – Introduction.

- ❑ Overview of Rule 26.
- ❑ Discovery Exercise posted on TWEN to review after discussion of cases and chapters.

Week 2:

January 15

Monday, Martin Luther King Holiday – No class.

- ❑ Finalize assigned joinder problems and practice exercises.
- ❑ Overview of the rules of discovery: Rules 26-37.

Week 3:

January 22

- ❑ Chapter 21, Informal Investigation, and the Scope of Discovery, pp.605-636.

Cases:

- ❑ Hickman v. Taylor, p. 619.
- ❑ Chapter 23, Discovery Control and Abuse, pp. 675-688.

Week 4:

January 29

Cases:

- ❑ Flores v. Southern Peru Copper Corp., p. 638.
- ❑ Zubulake v. UBS Warburg, LLC, p. 651.

- ❑ Chapter 22, Discovery Tools, pp. 637-674.

Cases:

- ❑ Chudasama v. Mazda Motor Corp., p. 676.



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- **Objectives and competencies:** The discovery process is the stage between pleading and trial where the parties to a suit obtain and preserve information regarding their case. The modern discovery process is a relatively new part of the litigation process and is unique in American law. Historically, the trial itself was the primary fact-finding part of the litigation process. Any pre-trial fact-finding occurred by parties employing their own investigations without conferring with the opposing party. As a result, parties would often show up at the first day of trial not knowing exactly what legal theory or evidence the opponent would use during trial. The modern American discovery process virtually ensures that the trial itself will have no surprises. At the end of the process, both parties will have collected from each other or third parties all or most of the evidence they will need to support their side of the case. Furthermore, each side will have a good idea of exactly how the opponent will present their case. More complicated cases can last years before the trial stage begins.

Modern discovery serves many purposes:

- To avoid prejudicial surprise
- To narrow and clarify the issues between the parties.
- To provide all parties with full knowledge of the facts so they can prepare for trial.
- To prevent delays at trial and conserve scarce judicial resources.

During the discovery period parties are compelled to negotiate and confer with one another, so they can obtain information. Discovery also allows parties to resolve or eliminate some, if not all, of the factual disputes presented in the parties' pleadings. Interrogatories, depositions, and requests to produce or admit may uncover information that was disputed in the pleadings, making the trial more efficient or even unnecessary. The discovery process reveals strengths and weaknesses about the case and may force the parties to withdraw or settle a suit.

The discovery process can dredge up information that may not be directly on point, but may lead to the discovery of information relevant to the case. Discovery also preserves evidence that may otherwise not be available at trial.

The discovery rules provide the permissible methods for obtaining evidence from parties and nonparties.

- **After Chapters 21-23 you should:**

1. Know FRCP 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 45.
2. Know the various discovery devices, timelines, and procedures.
3. Understand privilege and work-product protection
4. Understand electronic discovery and protected materials.



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5. Understand requests for disclosures, depositions, interrogatories, requests for production of documents, physical or medical examinations, and request for admissions.
6. Understand discovery sanctions.
7. Understand how to answer exam questions in discovery.

Week 5: Finalize Discovery.

- February 5** Review practice exercises.

Week 6: DISPOSITION WITHOUT TRIAL

- February 12** Exercise #12, Disposition Without Trial
Review and discuss the rules governing:

- Default Judgments
- Dismissals
- Judgment as a matter of law
- Summary Judgments

Material will be covered through review of the rules, lectures, in-class exercises, essay problems, and practice multiple choice questions. Cases for discussion will be assigned.

Week 7: Disposition Without Trial (continued)

February 19

Week 8: Disposition Without Trial (continued)

February 26

- **Objectives and competencies:** The vast majority of actions filed in federal court are disposed without trial. However, they do involve many judicial decisions. This chapter explores default and default judgments, voluntary and involuntary dismissals, case management, and summary judgment.



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A plaintiff may voluntarily dismiss without court order simply by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment – or by stipulation of all the parties.

Summary judgment is a device to dispose of a claim or defense on the merits without trial. But parties are entitled to try factual disputes whether or not they have asked for a jury. Therefore, summary judgment is only available when there is no genuine dispute of material fact, and the movant shows that on the undisputed facts, he is entitled to judgment as a matter of law. The court must ascertain whether there is a genuine dispute of material fact, but does not decide any disputes. The court does not weigh the evidence or assess credibility and must resolve doubts in favor of the nonmoving party.

► **After this exercise you should:**

1. Know FRCP 40, 41, 42, 55, 56, 68.
2. Be able to identify the difference between default and summary judgment.
3. Be able to identify voluntary and involuntary dismissals.

Week 9: PRETRIAL CASE MANAGEMENT

- March 5**
- Brief discussion of pre-trial conferences and judicial orders.
 - Material will be covered through review of the rules, lectures, in-class exercises, essay problems, and practice multiple choice questions.

► **Objectives and competencies:** FRCP 16 gives the trial judge the power to control pretrial matters and to assist in settling cases. With a view to narrowing the issues and to disposing of other matters to aid the disposition of the case, the rule itself lists specific purposes for the conference:

1. expediting disposition of the action;
2. establishing early and continuing control so that the case will not be protracted because of lack of management;
3. discouraging wasteful pretrial activities;
4. improving the quality of the trial through more thorough preparation; and
5. facilitating settlement.

This list, however, is not exhaustive. The court may consider many other matters including the necessity for further conferences, method of jury selection, requested preliminary instructions to



the jury, specification of theories of claims and damages, identification of all witnesses, and specific disclosures.

FRCP 16 is divided into five parts, governing scheduling of the conference, attendance and matters for consideration, pre-trial orders and sanctions.

► **After this exercise you should:**

1. Know FRCP 16.
2. Understand the purpose of the pre-trial conference.
3. Understand the matters for consideration at the pre-trial conference, the orders the judge may enter, as well as the sanction for failure to comply with the orders.
4. Understand the role of alternative dispute resolution.

► **Wednesday, March 7, Midterm Exam.**

Midterm will cover only the material covered during the Spring semester up to this date.

Week 10:

March 12-16 SPRING BREAK

Week 11:

March 19 JURY TRIAL RIGHT

- ▣ The Seventh Amendment right to jury trial.
- ▣ The distinction between “legal” and “equitable” matters.
- ▣ Functional and public policy factors affecting the right to jury trial.
- ▣ Procedure for protecting the jury trial in FRCP 38.
- ▣ The availability of jury trial and litigation strategy.

Overview of the right to a jury trial. Discussion of its historical perspective and its current use.

- ▣ Material will be covered through review of the rules, lectures, in-class exercises, essay problems, and practice multiple choice questions.

Overview of the empanelment of a trial jury: its composition, qualifications, excuses, and objections to the jurors.



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Voir dire: purpose, scope of the examination of jurors, and proper questions and comments.

- ▶ **Objectives and competencies:** The purpose of jury selection is to seat a fair and impartial jury. Jury selection includes assembling the panel and conducting voir dire. The phrase “voir dire” is French for “to speak the truth.” Voir dire is the process through which potential jurors from the venire are questioned by either the judge or a lawyer to determine their suitability for jury service. This section will examine the purpose of the jury trial, as well as the qualifications, exemptions, and exclusions for jurors. Additionally, this

- ▶ **After this exercise you should:**
 1. Know FRCP 38, 39, 40, 43, 46, 47, and 48.
 2. Understand the proceedings of a jury trial.
 3. Understand the historical perspective of the right to a jury
 4. Understand the legal concepts that govern the empanelment of a jury.

Week 12: TRIAL

March 26

Introduction of legal concepts governing a trial: pre-trial motions, the path of the trial, order of proceedings, requests for jury instructions, closing arguments and the verdict.

- Material will be covered through review of the rules, lectures, in-class exercises, essay problems, and practice multiple choice questions.

Week 13: Trial (continued)

April 2

- ▶ **Objectives and competencies:** A relatively small number of lawsuits will actually proceed all the way to trial; most will settle through an alternative dispute resolution, or by mutual agreement of the parties. This section examines the trial process and explores the various pre-trial and post-trial motions raised by the parties, as well as the general path of the trial through to the verdict and entry of final judgment.

- ▶ **After this exercise you should:**
 1. Know FRCP 49, 51, and 58.
 2. Understand the path of a trial, including:



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- opening statements;
- plaintiff's case-in-chief;
- mid-trial motions;

- defendant's case-in-chief;
- request for jury instructions;
- closing arguments;
- administration of jury instructions;
- jury deliberation;
- the verdict; and
- post-trial motions.

Week 14: ERIE DOCTRINE AND CHOICE OF LAW

April 9 Introduction to the Erie Doctrine.

- Material will be covered through review of the rules, lectures, in-class exercises, essay problems, and practice multiple choice questions.

Case Assignment:

Erie R.R. v. Tompkins, 304 U.S. 64 (1938).

► **Objectives and competencies:** The Erie doctrine is a fundamental legal doctrine in civil procedure. It mandates that a federal court must apply state substantive law in diversity jurisdiction cases. The name derives from the Supreme Court's decision in *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938).

► **After this exercise you should:**

1. Understand the Erie doctrine and its application to current cases.
2. Understand the tests that are invoked by the application of the Modern Erie doctrine, including, the substance-versus-procedure test, and the outcome-determination test.

Week 15: APPEAL

April 16 Overview of the appellate process, pertinent legal terminology, and the standards of review.



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► **Objectives and competencies:** Appellate review is available in the federal courts. Generally, the right to appeal is a right to a single appeal at the conclusion of the case. But in some instances, an interlocutory appeal will be allowed.

The Supreme Court is the highest court in the United States. There are 13 appellate courts that sit below the U.S. Supreme Court, and they are called the U.S. Courts of Appeals. The 94 federal judicial districts are organized into 12 regional circuits, each of which has a court of appeals. The appellate court's task is to determine whether or not the law was applied correctly in the trial court. Appeals courts consist of three judges and do not use a jury.

A court of appeals hears challenges to district court decisions from courts located within its circuit, as well as appeals from decisions of federal administrative agencies.

In addition, the Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals in specialized cases, such as those involving patent laws, and cases decided by the U.S. Court of International Trade and the U.S. Court of Federal Claims.

An appeal is available if, after a trial in the U.S. District Court, the losing side has issues with the trial court proceedings, the law that was applied, or how the law was applied. Generally, on these grounds, litigants have the right to an appellate court review of the trial court's actions.

The reasons for an appeal vary. However, a common reason is that the dissatisfied side claims that the trial was conducted unfairly or that the trial judge applied the wrong law, or applied the law incorrectly. The dissatisfied side may also claim that the law the trial court applied violates the U.S. Constitution or a state constitution.

► **After this exercise you should:**

1. Understand the role of the appellate courts and the pertinent terminology that governs appellate proceedings.
2. Understand the rarity of appeals.
3. Understand the unitary appeal rule – one appeal at the end of the case.
4. Understand the standards of review.
5. Know the jurisdictional statutes and rules.

Week 15: REVIEW OF MATERIAL

April 23

Last Day of Class Wednesday, April 25, 2018.



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