



TEXAS SOUTHERN UNIVERSITY  
THURGOOD MARSHALL SCHOOL *of* LAW

# CIVIL PROCEDURE

COURSE NO. 510/SECTION 4

SPRING - 2018

## PROFESSOR ANGA

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## THE PROFESSOR

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**LOCATION:** Suite 231A

**OFFICE HOURS:** Monday and Wednesday  
11:00 a.m. – 12:00 p.m. and 2:00 p.m. - 3:00 p.m.  
(All other times by appointment only)

## 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:

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

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

## 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 have a midterm, quiz and final 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 cover the topics listed below:

<b>Subject Matter Topics</b>
Subject matter Jurisdiction (Federal subject-matter jurisdiction (federal question, diversity, supplemental)
Removal
Venue/Forum Non Conveniens
Personal Jurisdiction
Pleadings
Joinder
Discovery
Disposition Without Trial (Verdicts & Judgments
Erie
Trials
Jury
Appeals

Tutorials: There will be a number of tutorials. Tutorials are mandatory.



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**ACCOMMODATIONS**

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

**PARTICIPATION, ATTENDANCE & PROFESSIONALISM**

**ATTENDANCE**

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

**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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**POLICIES & PROCEDURES**

**CLASS ETIQUETTE**

**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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**ADJUSTED READING SCHEDULE**

**Week 1:**                    **JOINDER- Recap of key points.**  
**January**

**Monday, Martin Luther King Holiday – No class.**

**Week 3:**                    **Chapter 18 Complex Joinder:**  
**January 22**                    Joinder Rule 19(a), (b)  
   Intervention of Right Rule 24(a)  
   Permissive Intervention Rule 24(b)  
   Interpleader Rule 22  
   Statutory Interpleader 28 U.S.C. § 1335

**Cases:**

- Torrington Co v. Yost
- Grutter v. Bollinger

**Week 4:**                    **DISCOVERY – Introduction.**  
**January 29**                    ■ Overview of the rules.  
   ■ **Chapter 21, Informal Investigation, and the Scope of  
Discovery**

**Cases:**

- Gaylard v. Homemaker
- Tucker v. American International Group
- Hickman v. Taylor,





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**Week 5:**

February 5

- **Chapter 22, DISCOVERY TOOLS**, pp. 823-869.
- Review and discuss the rules governing:
  - Duty to Disclose R. 26
  - Persons Before Whom Depositions May Be taken R. 28
  - Stipulations About Discovery Procedure R. 29
  - Oral Depositions R. 30
  - Written Depositions R. 31
  - Using Depositions in Court Proceedings R. 32
  - Interrogatories R. 33
  - Producing Documents, ESI, Tangible Things, R. 34
  - Physical and Mental Examinations R. 35
  - Requests For Admissions R. 36
  - Failure To Make Disclosures... Sanctions R. 37
  - Subpoena R. 45

**Cases:**

- Flores v. Southern Peru Copper Corp.
- Zubulake v. UBS Warburg, LLC,
- Sacramona v. Bridgestone/Firestone, Inc.

**Week 6:**

February 12

- **Chap. 23, DISCOVERY CONTROL AND ABUSE**, pp. 871-889
- Review and discuss the rules governing:
  - Certification of Discovery R. 26(g)
  - Protective Order R. 26(c)
  - Conference of the Parties, Planning for Discovery R. 26(f)

**Cases:**

- Chudasama v. Mazda Motor Corp.

- ▶ **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



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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. In some cases, discovery reveals strengths and weaknesses about a case and 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



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4. Understand electronic discovery and protected materials.
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 7: Finalize Discovery.**

- February 19
- Review practice exercises.

### **Week 8: Chapter 27 DISPOSITION WITHOUT TRIAL, pp. 1003-1043**

- February 26
- Review and discuss the rules governing:

- Default Judgments R. 55
- Dismissals R. 41
- Summary Judgments R. 56
- Offer of Judgment R. 68

#### Cases:

- In Re Bath & Kitchen
- Slaven v. City of Salem
- Celotex Corp. v. Catrett

- **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, settlement, pre-trial conferences, and summary judgment.

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.



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► **After this exercise you should:**

1. Know FRCP  
Dismissal of Action R. 41  
Default Judgment R. 55  
Summary Judgment R. 56  
Offer of Judgment R. 68
2. Be able to identify the difference between default and summary judgment.
3. Be able to identify voluntary and involuntary dismissals.
4. Understand the purpose of the pre-trial conferences.

**MIDTERM EXAMINATIONS (MARCH 5-9)**

**Week 9: Chapter 26 PRETRIAL CASE MANAGEMENT, pp. 987-1002**

- March 5
- Brief discussion of pre-trial conferences and judicial orders.  
Pre Trial Conference R.16

**Cases:**

- J.F. Edwards Construction Co. v. Anderson Safeway
- Davey v. Lockheed Martin Corp.

► **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.



**Week 10:                    SPRING BREAK (MARCH 12-16)**

**Week 11**

March 19                    **Chapter 28 RIGHT TO JURY TRIAL, pp. 1045-1077**

- 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. Overview of the empanelment of a trial jury: its composition, qualifications, excuses, and objections to the jurors. Voir dire: purpose, scope of the examination of jurors, and proper questions and comments.

**Cases:**

- Dairy Queen, Inc. v. Wood
- Curtis v. Loether



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► **Objectives and competencies:**

► **After this exercise you should know:**

1. Right to Jury Trial R. 38  
Trial by Jury R. 39,  
Scheduling Cases for Trial R. 40  
Testimony Under Oath R. 43  
Objections to Court Ruling or Order R. 46  
Selecting Jurors R. 47  
Number of Jurors: Verdict R. 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: Chap. 29 Judgment as a Matter of Law(Directed Verdict & JNOV) pp. 1079 1107**

March 26

**Cases:**

- ▣ Pennsylvania Railroad Co. v. Chamberlain
- ▣ Lane v. Hardee's Food Systems, Inc

AND

**Week 13: Chapters 30 & 31Controlling the Jury, pp. 1109-1134 and New**

April 2

**Trial And Relief from Judgment, pp. 1135-1165**

**Cases:**

- ▣ Hardin v. Ski Venture, Inc.
- ▣ Turyna v. Martam Construction Co.
- ▣ Trivedi v. Cooper
- ▣ Wilson v. Vermont Castings, Inc.



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► **Objectives and competencies:**

► **After this exercise you should:**

1. Know FRCP  
Special Verdict: General Verdict R. 49  
Judgment As A Matter of Law R. 50  
Instructions to the Jury R. 51  
Entering Judgment R. 58  
New Trial: Altering or Amending A Judgment R. 59
2. Understand the path of a trial, including:
  - 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:** Chap. 24 and 25 STATE LAW IN FEDERAL COURTS:  
April 9 **ERIE DOCTRINE AND CHOICE OF LAW**, pp. 893-984

**Introduction to the Erie Doctrine.**

**Cases:**

- Black and White Taxi Cab
- Erie R.R. v. Tompkins, 304 U.S. 64 (1938).
- Guaranty Trust Co. of New York v. New York
- Hanna v. Plumer



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► **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: Chapter 32 APPEALS, pp. 1169-1214**

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

Cases:

- ▣ MacArthur v. University of Texas Health Center
- ▣ In Re Recticel Foam Corp. (Mandamus)

► **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.





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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 16: COMPLETE LECTURE MATERIALS AND REVIEW OF MATERIAL**  
**April 23**

**Last Day of Class Wednesday, April 25, 2018.**