



TEXAS SOUTHERN UNIVERSITY  
THURGOOD MARSHALL SCHOOL *of* LAW

# CIVIL PROCEDURE

COURSE NO. 510/SECTION 4

FALL - 2017

## PROFESSOR ANGA

## THE PROFESSOR

**NAME:** Professor Anga

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**LOCATION:** Suite 231A

**OFFICE HOURS:** Monday and Wednesday  
1:00 pm. – 4:00 p.m.  
(All other times by appointment only)

### MY TEACHING PHILOSOPHY:

My teaching philosophy is very simple, if I teach, the 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 analysis of the law. I strive to bring the subject matter alive for the students. I invite everybody to the party that is class. However, students cannot attend if they fail to bring something, if they have failed to do their part of reading the rules and covering the assigned readings. Only when they have done their part can I clear up any confusion they may have with the material. It's a partnership and I promise to carry out my part of the partnership.

## 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) or any book that contains the Federal Rules of Civil Procedure and selected provisions from the United States Code, Title 28.

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.

**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

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

- Discovery –
- Disposition Without Trial (Default, Dismissals, and Summary Judgment) E
- 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) There will be periodic tests given over the materials to ensure students master the material.

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



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**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. 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:

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



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Tutorials: There will be a number of tutorials. These will be announced in class.

## **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.)

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.

## **POLICIES & PROCEDURES**

### **CLASS ETIQUETTE**

#### **No laptops or cell phones in the class**

All electronic gadgets must be turned off. These gadgets are distracting and take away from the classroom learning environment.

# ACADEMIC CALENDAR



## THURGOOD MARSHALL SCHOOL OF LAW

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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.

TMSLAW REGISTRAR  
Approved 5/31/2017

## 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.



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**Week 1**

**INTRODUCTION TO CIVIL PROCEDURE AND THE  
AMERICAN LEGAL**

- Chapter 1, An Introduction to American Courts, pp. 3-15;  
Chapter 2, A Description of the Litigation Process and Sources of  
Procedural Law,
- Pleading

► **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 Chapter 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.



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**Week INTRODUCTION TO SUBJECT MATTER JURISDICTION**

- Begin discussing Chapter 3, Diversity Jurisdiction in the Federal Courts, pp. 33-71.

**Cases:**

- Gordon v. Steele,
- Mas v. Perry,
- Hertz Corp. v. Friend
- Diefenthal v. C.A.B.,

**Week SUBJECT MATTER JURISDICTION**

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

**Cases**

- Louisville & Nashville RR v. Mottley,
- Gunn v. Minton,

**Week REMOVAL AND SUPPLEMENTAL JURISDICTION**

- Review of exercise on Removal and Supplemental Jurisdiction
- Chapter 5, Removal of Cases from State to Federal Court,

**Cases:**

- Avitts v. Amoco,

- Chapter 20, Supplemental Jurisdiction,

**Cases:**

- United Mine Workers v. Gibbs,
- Owen Equipment & Erection v. Kroger,
- Exxon Mobil Corp. v. Allapattah,



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► **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 Part IV. Venue 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 VENUE & FORUM NON CONVENIENS**

- **Begin discussion on Venue, Chapter 11, pp. 367-332.**

**Cases:**

- Uffner v. La Reunion Francaise,

**Week VENUE & FORUM NON CONVENIENS**

- Chapter 12, Challenges to Venue: Transfers and Dismissals,

**Cases:**

- Macmunn v. Eli,
- Piper Aircraft Company v. Reyno,



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► **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 7-10 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 INTRODUCTION TO PERSONAL JURISDICTION**

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

**Cases:**

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



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

- ▣ Chapter 7, Specific In Personam Jurisdiction,

Cases:

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

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

- ▣ Chapter 8 - Other Constitutional Bases for Personal Jurisdiction,

Cases:

- ▣ Daimler AG v. Bauman,
- ▣ Shaffer v. Heitner,
- ▣ Burnham v. Superior Court,

**Midterm exam on Friday, October 20, 2017**

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

- ▣ Chapter 9 - Long Arm Statutes,
- ▣ Chapter 10- Constitutional Requirement of Notice and Methods of Service,

Cases:

- ▣ Bensusan Restaurant Corp. v. King,



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- ▶ **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 INTRODUCTION TO PLEADING**

- ▣ Review of an exercise on pleading.
- ▣ Chapter 13, Basic Pleading,  
I will cover cursorily pp. 361-383

**Cases:**

- ▣ Leatherman v. Tarrant County Narcotics,
- ▣ Ashcroft v. Iqbal,



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**Week PLEADING – (continued)**

- 11-6**
- ▣ Review of an exercise on answering the complaint
  - ▣ Chapter 14, Responding to the Complaint (or Not?)

**Cases:**

- ▣ Virgin Records America, Inc. v. Lacey
- ▣ Matos v. Nextran, Inc.
- ▣ Hunter v. Serv-Tech, Inc.
- ▣ Reis Robotics USA, Inc. v. Concept Industries, Inc.
- ▣ Ingraham v. United States,

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

- 11-13**
- ▣ Review of an exercise on Rule 11.
  - ▣ Chapter 15, Care and Candor in Pleading,

**Cases**

- ▣ Hays v. Sony Corp. of America,.
- ▣ Hunter v. Earthgrains Co. Bakery,
- ▣ Sussman v. Bank of Israel,



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- Review exercise on amending the pleadings
- Chapter 16, Amending Pleadings,

Cases:

- Beeck v. Aquaslide 'N' Dive Corp.,

► **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.

► **After Chapter 17 you should:**

1. Know FRCP 13, 14, 18, 19, 20, 21, 22, 23, and 24.
2. Know joinder of multiple parties.
3. Know the difference between affirmative defenses, counterclaims, and crossclaims, and how the joinder rules applies.
4. Know the difference between interpleader and intervention.
5. Understand statutory interpleader -28 U.S.C. §1335.
6. Understand class actions.
7. Understand how to answer exam questions in joinder.

**Week**            **JOINDER OF CLAIMS AND PARTIES**

- Review of an exercise on joinder of claims and parties
- Chapter 17, Joinder of Claims and Parties,

**Week**            Joinder of Claims and Parties (continued)

**11-27**            Cases:

- Hohlbein v. Heritage Mutual Insurance Co.,
- King v. Blanton,
- Erkins v. Case Power Equipment,



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**LAST DAY OF CLASS THURSDAY, NOVEMBER 30, 2017**



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