

CIVIL PROCEDURE

COURSE NO. 502/SECTION 1

FALL - 2017

PROFESSOR KATHERINE VUKADIN

THE PROFESSOR

NAME: Katherine T. Vukadin

TELEPHONE: (713) 313-7395

EMAIL: kvukadin@tmslaw.tsu.edu

LOCATION: Suite 231J

OFFICE HOURS: To be determined once students' schedules are established.

REQUIRED TEXTS

1. *Civil Procedure: A Coursebook*, Joseph W. Glannon, Andrew M. Perlman, and Peter Raven-Hansen (Wolters Kluwer), Third Edition.
2. *A Student's Guide to the Federal Rules of Civil Procedure*, Baicker-McKee (Thomson-West) (latest edition).
3. *Law in a Flash: Civil Procedure Part I*, Emanuel (Wolters Kluwer) 2011 edition. The flash cards are a required element of the course. You will be quizzed on questions in the flash cards. If you have any problem obtaining the flash cards, you may check out a box from me and make copies of them until you can obtain your own. Please plan ahead so you can study these cards.

Suggested supplements:

1. *Civil Procedure Examples and Explanations*, Glannon (Wolters Kluwer)
2. *Acing Civil Procedure*, A. Benjamin Spencer. Thomson West (Second Edition).
3. *A Civil Action*, Jonathan Harr (Vintage Publishers). This book provides a view of civil procedure in context.

COURSE DESCRIPTION & OBJECTIVE

DESCRIPTION:

COURSE DESCRIPTION AND OBJECTIVES

Civil Procedure covers the process of litigation and the rules of procedure that govern this process. Through a discussion of the federal rules of procedure it analyzes 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 prior to filing a civil action: personal and subject matter jurisdiction and venue. Civil procedure makes up a significant portion of the bar exam. Therefore, **mastery of this material is an urgent matter** for your success on the bar exam and beyond.

OBJECTIVE:

CLASS OBJECTIVES

The class will be taught using five 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) Quizzes: We will have regular quizzes to reinforce the material.
- 3) Summaries: Starting in the second week of class, you are asked to provide a handwritten summary of each section of assigned reading.
- 4) A mid-term
- 5) A final

At the end of the spring semester, you will be tested over the material taught in the fall as well as in the spring.

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

GRADING

GRADES

Quizzes: 380 points

Reading summaries: 80 points

Participation: 40 points

Further information on Quizzes: Unless otherwise announced, all quizzes will be cumulative. This means that you can expect the material from each quiz to appear on each subsequent quiz. In this way, you will keep the material in mind throughout the year.

Further information on Summaries: Starting in Week 2, you are asked to prepare a handwritten summary of each reading assignment. Please place it in the accordion file during the week that the reading is assigned. **It is your responsibility to put your summaries in your assigned numbered file.**

Please make sure your name, file number, and date are on the first page of each summary. In addition, please staple each summary separately. If you do not follow these steps, you may not receive credit.

You can turn in your summaries on any day of the class week that they are assigned. For example, you may turn in all summaries on Friday for that week. Friday is the deadline, and late summaries are not accepted. Each summary is worth three points, up to a maximum of 81 points. Your summary should include each major issue and point made in the reading. If the reading includes a case, you should summarize or brief that case in whatever format you prefer.

Tutorials: There will be a number of tutorials. These will be announced in class and posted on the TWEN calendar. These are intended to help you with the quizzes!

ACCOMMODATIONS

Students requesting accommodations may do so through the Office of Student Affairs. Please do so before the first quiz.

PARTICIPATION, ATTENDANCE & PROFESSIONALISM

ATTENDANCE

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

TWEN

Please locate and join the class TWEN. This is the way that I will communicate with you.

PROFESSIONALISM

In keeping with the professional school environment, students should remember to respect their classmates and the Professor at all times. Please refrain from excessive side conversations or other distracting conduct. **Please do not come and go from class unless having a personal bathroom or medical emergency. If you do so, I will counsel you individually, make an announcement to the class, and then deduct participation points.**

READING SCHEDULE

Week 1 INTRODUCTION TO CIVIL PROCEDURE AND THE AMERICAN LEGAL SYSTEM.

8/21/17

- ▣ Class 1: Introduction to class
- ▣ Class 2: Case book (CB) pp. 3-19

- **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. A party may also appeal.

- **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 2: INTRODUCTION TO SUBJECT MATTER JURISDICTION

9/4/17

■ **Introduction to Subject Matter Jurisdiction:**

- Class 2: CB pp. 21-38
- Class 3: CB pp. 41-52

Week 3 - SUBJECT MATTER JURISDICTION

9/11/17

- Class 1: CB pp. 52-59
- Class 2: CB pp. 59-75
- Class 3: CB pp. 75-85

► **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. In addition, 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 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 crossclaim 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.

Week 4 – SUBJECT MATTER JURISDICTION

9/18/17

- Class 1: Review previous week, quiz, problems & exercises
- Class 2: pp. 85-93
- Class 3: pp. 93-108

Week 5 – FEDERAL QUESTION JURISDICTION & REMOVAL

9/25/17

- ▣ Class 1: Review previous week, quiz, problems & exercises
- ▣ Class 2: pp. 108-125
- ▣ Class 3: pp. 127-144