



TEXAS SOUTHERN UNIVERSITY
THURGOOD MARSHALL SCHOOL *of* LAW

CIVIL PROCEDURE
LAW 510 (SECTION 4)
FALL 2019

PROFESSOR MICHAEL C. JAMES, J.D., LL.M.

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THE PROFESSOR: WHO AM I?

NAME: Michael C. James

EDUCATION:

LL.M., University of Virginia School of Law, Charlottesville, VA, 2009

J.D., University of Washington School of Law, Seattle, WA, 2001

B.S., Prairie View A&M University, Prairie View, TX, 1996

BAR ADMISSIONS: Admitted to the State Bars of Texas and Connecticut

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OFFICE HOURS: Tuesday and Thursday TBA and via appointment

MY TEACHING PHILOSOPHY:

Welcome aboard! In addition to being an attorney, I possess a combined fifteen years of teaching experience at the high school, undergraduate and law school levels of our educational system. I greatly enjoy the vocation of teaching and always strive to enhance the ability of my students to become better “consumers of knowledge.” To that end, I like to encourage a scholarly dialogue during class whenever possible. Given the technical nature of Civil Procedure, some disquiet on your part is totally expectable; however, if you put in the time studying the materials I provide and reading the assigned caselaw, I can guarantee that you will achieve a solid grasp of this subject. This will be critical for your professional development as an attorney because, as I will often state during class, the American legal system places much more emphasis on procedural law (i.e., Civil Procedure) than it does on substantive law (i.e., Torts, Contracts, Property, etc.)!

Wherever possible, I will seek to engage the class in a thoughtful discussion pertaining to various relevant topics. Keeping abreast of the latest events (Legal and Political) will allow you to more seriously participate in class discussions on current affairs, cases and controversies. It is up to you to decide whether you want to read news sources in print or on the Internet. As students of law, you should monitor current events (both domestic and international) by reading a national daily newspaper (e.g., *The Washington Post* or *The New York Times*), a major local newspaper (i.e., *The Houston Chronicle*), or a weekly news journal (e.g., *Time*, *U.S. News & World Report*, or *Newsweek*). Additionally, you should also consult the following websites regularly to stay abreast of current case law and judicial trends: www.law.cornell.edu (Cornell Univ. Legal Information Institute, recent SCOTUS Opinions), <https://caselaw.findlaw.com/court/us-supreme-court> (FindLaw’s SCOTUS Database), and www.supremecourtus.gov (official website of SCOTUS).

COURSE BOOKS & MATERIALS

REQUIRED TEXTS

Civil Procedure: A Coursebook, Joseph W. Glannon, Andrew M. Perlman, and Peter Raven-Hansen (Wolters Kluwer)(latest edition).

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.

RECOMMENDED RESOURCES

In addition to WestLaw and Lexis-Nexis (which are always great resources), Cornell University Law School maintains an excellent online repository of both the Federal Rules of Civil Procedure (<http://www.law.cornell.edu/rules/frcp>) and also the United States Code (<http://www.law.cornell.edu/uscode/text>). These resources are **FREE**, and I find them to be exceptionally useful.

Additional readings will occasionally be required and will be announced and/or distributed during class or via TWEN.

Note: Failure to have your books and be prepared for class will count against your grade (professionalism points).

COURSE DESCRIPTION & OBJECTIVE

During the Fall 2019 Semester, this course will meet in Room 106 on Tuesdays and Thursdays from 11:00 AM to 12:15 PM and accounts for three credit hours.

COURSE DESCRIPTION

Civil Procedure is the rules-based process by which litigation unfolds in any court system. 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.

This course serves as a primer on civil procedure. Special emphasis will be placed on the procedural framework of contemporary litigation, the corresponding rules that govern all civil actions, as well as the critical constitutional principles that underlie this vital area of law. During the fall semester, we will explore the following topics: Subject Matter Jurisdiction (including Supplemental & Removal Jurisdiction), Personal Jurisdiction (including Notice & Service of Process), Basic Venue, Basic Pleading (including Pre-Trial Dispositions & Defaults/Default Judgments), Joinder of Claims/Parties and an introduction to the Discovery Process.

CLASS OBJECTIVES

The class will be taught using three primary components:

- 1) **Class Lectures:** Our discussions will be based on the casebook, *Civil Procedure: A Coursebook*, selected provisions of the United States Code, the Federal Rules of Civil Procedure, and pertinent PowerPoints distributed via TWEN.
- 2) **Review Problems & Exercises:** There will be practice problems/exercises designed to reinforce each topic. These exercises provide guidance in approaching the material, pose pertinent questions, and summarize the concepts. These will be distributed via TWEN and reviewed during your tutorial sessions.
- 3) **Homework Assignments and Quizzes:** I will assign occasional homework and/or quizzes on the topics that we cover. These activities will occur either during class or via TWEN.

THIS SYLLABUS IS NOT A CONTRACT AND IS SUBJECT TO CHANGE.

STUDENT LEARNING OUTCOMES

The student learning outcomes are included with each week's assigned coverage (see below).

GRADING

Your grade for Civil Procedure will be calculated as follows: (1) my portion of your final grade, which constitutes fifty percent of your final semester grade, and (2) your grade on the Uniform Exam given at the end of the semester, which constitutes the other fifty percent of your final semester grade.

My portion of the grade will be derived from the sum of your professionalism points and your scores on the quizzes and/or homework assignments and two graded exams given during the semester. **I will allocate an aggregate of 1000 possible points for these items.** In sum, my portion of your final semester grade will be based on the following metrics: “professionalism” points for class and tutorial attendance/participation, quizzes and/or homework assignments (20% or 200 points), the Midterm Exam (40% or 400 points) and the Final Exam (40% or 400 points).

The exams, homework assignments and/or quizzes will all test your knowledge and understanding of the rules/concepts of civil procedure and their application to a hypothetical set of facts. Generally, these assessments will be composed of either MBE-style multiple-choice questions, MEE-style essay questions and/or short-answer questions which will require you to apply an appropriate rule/concept to a hypothetical set of facts and predict an outcome. You will receive a model answer/grading rubric following each homework assignment/quiz.

My exams are closed-book and will be comprised of MBE-style multiple-choice questions and MEE-style essay questions. The Midterm Exam will be on Thursday, October 17, 2019 and the Final Exam will be on Thursday, November 21, 2019.

Tutorials: There will be multiple tutorial sessions throughout the semester. These will be announced in class and via email.

EXAM NUMBERS

The use of multiple exam numbers not only prolongs the grading process, but also causes tons confusion in the grade recording process, which could be detrimental to your grade. Therefore, do not accumulate a ludicrous amount of exam numbers (two different numbers will suffice for the entire semester)! **For my course, you will only need to utilize an exam number for the two actual exams that I administer, i.e., one exam number for the Midterm Exam and one additional exam number for the Final Exam, that’s it!**

ACCOMMODATIONS

Reasonable Accommodation & Disabled Students: “TSU adheres to federal and state law that prohibits discrimination in programs for students with disabilities. When the disability is documented, a notice will be given to all instructors.” **Students with any disabilities should contact the university’s Office of Disability Services and/or the law school’s Office of Student Affairs.** Make certain that you personally discuss this situation with me promptly in order to arrange for any appropriate accommodations that will become necessary as the semester proceeds.

ATTENDANCE & CONDUCT

Be on time! Barring exceptional circumstances which you have discussed with me, do not come to class late or depart the class early.

Attendance is NOT optional! Per the Law School’s attendance policy, students are expected to attend all classes unless you are prevented from doing so by severe medical or other unexpected trauma. Absences will affect your course grade adversely (See Student Rules and Regulations and the Students Rules of Matriculation for details on absences and corresponding grade reductions).

Should a medical or other urgent situation arise, inform me A.S.A.P. Do not sit back and allow time to elapse and expect me to make arrangements for you at the end of the semester. If you have a problem that you know will intrude on your studies, speak to me about it as early as you can. Remember, I am here to help you learn, not to further hinder you, but you must handle your affairs in a professional manner.

Extraneous web surfing is disallowed during class. If you own a cellular telephone or pager, you must NOT have it operating during any class session; otherwise, you risk being asked to leave class if it rings. Similarly, use of personal computers for activities unrelated to our course is prohibited.

Unprofessional conduct will not be tolerated during class or any tutorial sessions.

WESTLAW TWEN

Most of my supplemental materials will be posted on TWEN. It is an integral component of this class and you must be a registered user of the TWEN page. You should regularly review my TWEN page and stay abreast of any postings. To use TWEN, you need a WESTLAW password and access to the WEB. Contact Westlaw TWEN technical support at (800) 486-4876 for assistance with any technical problems that you encounter.



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PROFESSIONALISM

You are bound by the Thurgood Marshall School of Law Student Rules and Regulations of Texas Southern University, Thurgood Marshall School of Law's Honor Code, and my specific rules. Perhaps more important than adhering to the rules, please be mindful that professionalism implies a respect and courtesy for others in the classroom. In keeping with the professional school environment, students should always remember to respect their fellow classmates and their teachers. Additionally, please refrain from side conversations or other distracting conduct. I expect all students to maintain the highest standards of professionalism in the classroom, in the university community, and in related public settings.

Academic Honesty Policy Statement

“Students must maintain a high standard of honesty in their academic work. They should avoid all forms of academic dishonesty, **especially the following: Plagiarism, Collusion, Cheating and Impersonation.**” **Any violations of the honesty policy will result in immediate course failure.**

Statement of Non-Discrimination

“Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color, or national origin in programs or activities receiving federal financial assistance. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in educational programs or activities that receive federal financial assistance. It is the policy of Texas Southern University not to discriminate on the basis of race, color, national origin, or sex in its educational programs, activities, or employment.”

Counseling Center

The University Counseling Center is available to help you maximize your health and effectiveness at home, school or work. Through this program, you receive confidential, personal support for a wide range of issues, from everyday concerns to serious problems. Their offices are located in the Student Health Center Building. Their phone number is (713) 313-7804.



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ACADEMIC CALENDAR 2018 – 2019

FALL SEMESTER 2019 (SEVENTY-ONE DAYS OF CLASSES)

Orientation	Mon.-Fri.	Aug. 12-16, 2019
First Day of Class	Monday	Aug. 19, 2019
Last Day to ADD/DROP	Wednesday	Aug. 21, 2019
Labor Day (NO CLASSES)	Monday	Sept. 2, 2019
<i>Purge of all unpaid course selections</i>	Wednesday	Sept. 18, 2019
Midterm Examinations	Mon. – Fri	Oct. 14-18, 2019
Last Day to Drop a Class	Friday	Nov. 8, 2019
Last Day of Classes	Tuesday	Nov. 26, 2019
First Year Professors’ Grades due	Tuesday	Nov. 26, 2019
Thanksgiving Holiday	Thurs – Fri	Nov. 28-29, 2019
Reading Period (NO CLASS)	Wed – Sun	Nov. 27-Dec. 1, 2019
Final Examinations	Mon – Fri	Dec. 2-Dec. 13, 2019
Commencement Exercises	Saturday	Dec. 14, 2019

SPRING SEMESTER 2020 (SEVENTY DAYS OF CLASSES)

School Opens	Thursday	Jan. 2, 2020
First Day of Class	Monday	Jan. 13, 2020
Last Day to ADD/DROP	Wed	Jan 15, 2020
M L K Holiday (No Classes)	Monday	Jan. 20, 2020
<i>Purge of all unpaid course selections</i>	Friday	Feb. 7, 2020
Midterm Examinations	Mon – Fri	Mar. 9– 13, 2020
Spring Break	Mon – Fri	Mar. 16 – 20
Spring Break (University Closed)	Wed-Fri	Mar. 18- 20
Last Day to Drop a Class	Thursday	Apr. 9, 2020
Good Friday (No Classes)	Friday	Apr. 10, 2020
Last Day of Classes	Tuesday	Apr. 28, 2020
First Year Professors’ Grades due	Tuesday	Apr. 28, 2020
Reading Period (No Classes)	Wed – Thur	Apr 29 - 30, 2020
Simulated Bar Exam*	Friday	May 1, 2020 (tentative)
Final Examinations	Mon- Fri	May 4 – May 15, 2020
Hooding Ceremony	Friday	May 15, 2020
Commencement	Saturday	May 16, 2020

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



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SEMESTER TOPICAL COVERAGE & READING SCHEDULE

WHAT IS CIVIL PROCEDURE???

- ▶ **Objectives and competencies:** In order to fully understand federal civil procedure, it is 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.

Our country has two different court systems. The types of cases that can be heard in state courts are established by state statutes, state common law and state 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 common law and the U.S. Constitution. State court systems possess much broader subject matter jurisdiction than the federal courts.

Federal and state litigation both commence 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 a trial; most cases settle or are resolved by some sort of pre-trial disposition (e.g., 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 sanctionable abuse.

If a case does not settle, it proceeds to trial. In that event, it may be tried to the court (the judge) 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 and even appeal the trial court's final judgment.

- ▶ **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 SYSTEM

8-20

- ▶ Overview of the Texas Bar Exam & the Uniform Bar Exam
- ▶ Topical coverage.
 - Chapter 1, An Introduction to American Courts, pp. 3-19;
 - Chapter 2, A Description of the Litigation Process and Sources of Procedural Law, pp. 21-38.
 - Overview of Constitutionalism and the American Judicial System.

▶ **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. Additionally, 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, these two chapters cover the two predominant types of federal subject matter jurisdiction: diversity and federal question jurisdiction.

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, 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 2 INTRODUCTION TO SUBJECT MATTER JURISDICTION

8-27 Review Activity

- Begin discussing Chapter 3, Diversity Jurisdiction in the Federal Courts. pp. 41-90.

Cases:

- Gordon v. Steele, p. 44.
- Mas v. Perry, p. 53.
- Hertz Corp. v. Friend, p. 62.
- Diefenthal v. C.A.B., p.76

Week 3 SUBJECT MATTER JURISDICTION

- 9-3**
- Chapter 4, Federal Question Jurisdiction, pp. 91-125.

Cases

- Louisville & Nashville RR v. Mottley, p. 94.
- Gunn v. Minton, p. 111.

Week 4 REMOVAL AND SUPPLEMENTAL JURISDICTION

- 9-10**
- Review Activity.
 - Chapter 5, Removal of Cases from State to Federal Court, pp. 127-144.

Cases:

- Avitts v. Amoco, p. 129.
- Chapter 20, Supplemental Jurisdiction, pp. 730-772.

Cases:

- United Mine Workers v. Gibbs, p. 731.
- Owen Equipment & Erection v. Kroger, p. 743.
- Exxon Mobil Corp. v. Allapattah, p. 759.

► **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



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constitutionally fair process. 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 5 INTRODUCTION TO PERSONAL JURISDICTION

- 9-17**
- ▣ Review Activity.
 - ▣ Chapter 6, The Evolution of Personal Jurisdiction, pp. 147-178.

Cases:

- ▣ Pennoyer v. Neff, p. 150.
- ▣ International Shoe v. State of Washington, p. 165.

Week 6 PERSONAL JURISDICTION (continued)

- 9-24**
- ▣ Chapter 7, Specific In Personam Jurisdiction, pp. 179-248.

Cases:

- ▣ McGee v. International Life Insurance, p. 180.
- ▣ World Wide Volkswagen v. Woodson, p. 185.
- ▣ Burger King v. Rudzewicz, p. 206.
- ▣ Asahi Metal Industry v. Superior Court, p. 216.



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Week 7 PERSONAL JURISDICTION (continued)

10-1

- Chapter 8 - Other Constitutional Bases for Personal Jurisdiction, pp. 249-305.

Cases:

- Daimler AG v. Bauman, p. 253.
- Shaffer v. Heitner, p. 272.
- Burnham v. Superior Court, p. 287.

Week 8 PERSONAL JURISDICTION (continued)

10-8

- Chapter 9 - Long Arm Statutes.

Cases:

- Bensusan Restaurant Corp. v. King, p. 316.
- Chapter 10- Constitutional Requirement of Notice and Methods of Service, pp. 327-362.

Cases

- Mullane v. Central Hanover Bank & Trust Co., p. 329.
- Baidoo v. Blood-Dzraku, p. 350.

► **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.



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► **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

- 10-15**
- ▣ Review Activity.
 - ▣ Begin discussion on Venue
Chapter 11 – Basic Venue: Statutory Allocation of Cases Within A Court System, p. 367-384.

Cases:

- ▣ Uffner v. La Reunion Francaise, p. 377.

10-17 MIDTERM EXAM

Week 10 VENUE & FORUM NON CONVENIENS

- 10-22**
- ▣ Chapter 12, Challenges to Venue: Transfers and Dismissals, pp. 385-416.

Cases:

- ▣ MacMunn v. Eli, p. 389.
- ▣ 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.



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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

- 10-29**
- ▣ Review Activity.
 - ▣ Chapter 14, Basic Pleading, pp. 419-473.
I will cover cursorily pp. 419-446.

Cases:

- ▣ Leatherman v. Tarrant County Narcotics, p. 449.
- ▣ Ashcroft v. Iqbal, p 457.

Week 12 PLEADING – (continued)

- 11-5**
- ▣ Review Activity.
 - ▣ Chapter 14, Responding to the Complaint (or Not?),
pp.475 - 524.

Cases:

- ▣ Virgin Records America, Inc. v. Lacey, p. 477.
- ▣ Matos v. Nextran, Inc., p. 487.
- ▣ Hunter v. Serv-Tech, Inc., p. 497.
- ▣ Reis Robotics USA, Inc. v. Concept Industries, Inc., p. 505.
- ▣ Ingraham v. United States, p. 511.

- **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.



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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)

- 11-12**
- ▣ Review Activity.
 - ▣ Chapter 15, Care and Candor in Pleading, pp.525- 558.

Cases

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

- ▣ Review Activity.
- ▣ Chapter 16, Amending Pleadings, pp. 559-602.
Most of this section will be covered through exercises and practice questions.

Cases:

- ▣ Beek v. Aquaslide 'N' Dive Corp., p. 565.

- **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.



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► **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 14 JOINDER OF CLAIMS AND PARTIES

- 11-19**
- ▣ Review Activity.
 - ▣ Chapter 17, Joinder of Claims and Parties, pp. 607-646.

Cases:

- ▣ Hohlbein v. Heritage Mutual Insurance Co., p. 615.
- ▣ King v. Blanton, p. 625.
- ▣ Erkins v. Case Power Equipment, p. 636.

11-21 FINAL EXAM

Week 15

LAST CLASS DAY REVIEW – TUESDAY, NOVEMBER 26, 2019