

**CIVIL PROCEDURE I
LAW 502 / SECTION 1
FALL 2019**

PROFESSOR STEWART

SYLLABUS & COURSE GUIDELINES

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THE PROFESSOR

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TELEPHONE: 713-313-1393 (Please note that TMSL does not permit outgoing/return calls to non-Houston area codes; thus, it may be best to contact me in person or via email)

OFFICE HOURS: Mondays, 12:00-2:20 p.m.; Tuesdays & Thursdays, 12:30-1:20 p.m. (except when modified by email or in-class announcement)*

OFFICE LOCATION: Room 236C

NOTE FROM THE PROFESSOR

Welcome to law school! I look forward to working with you this year. Please read the following course information carefully and keep this document handy throughout the semester, as you are responsible for all of the information contained herein. You will need to return to this document frequently in order to be prepared for class and understand grading guidelines.

Also, please note that it is not necessary for you to make an appointment to meet during office hours, although it is recommended because I do take appointments for your convenience and can therefore only meet with walk-in students during times that have not been reserved by other students. Please do not hesitate to contact me to set up a meeting, whether it is just to introduce yourself or to resolve any questions or concerns you may have. I am delighted to have visitors, and am happy to speak with you about our course specifically or law school in general—I am here to help in any way I can! The best way to contact me for a meeting is via email.

*These office hours are tentative; they will be in effect during the first few weeks of class but are subject to change once tutorial and committee meeting schedules are established. Such changes, if any become necessary, will be announced in class or via email and posted to the course TWEN page.

COURSE MATERIALS

I. REQUIRED: There are two required textbooks to purchase for this course:

- (1) **CIVIL PROCEDURE: A COURSEBOOK (3rd Edition) by Glannon, Perlman, & Raven-Hansen** (published by Wolters Kluwer). A used copy should be fine, but I highly recommend purchasing either a bound version or a loose-leaf version of the text, as studies have shown that students and attorneys alike retain more information by reading cases in hard copy.
- (2) **A STUDENT'S GUIDE TO THE FEDERAL RULES OF CIVIL PROCEDURE (current edition) by Baicker-McKee & Janssen** (published by Thompson West), OR any book that contains the Federal Rules of Civil Procedure and selected provisions from the United States Code, Title 28 (latest edition).

I highly recommend getting the Baicker-McKee text to fill this role, as it is annotated with commentaries that will help you understand the federal rules and statutes as you study; however, any book that contains the most recent enactments of the Federal Rules of Civil Procedure and Title 28 provisions will be sufficient for classroom use.

II. OPTIONAL STUDY AIDS & REFERENCE TOOLS:

Because Civil Procedure is a central part of the law school curriculum, there are many study aids and reference materials available. Study aids are directed at law students, and often contain both sample problems and advice on taking torts exams. Reference materials, on the other hand, provide clear “hornbook” or “black letter” explanations of legal principles. Students often ask me which of these I recommend, should they need additional help once we have moved past a topic in the classroom. I have ordered the sources below in each category roughly according to the strength of my recommendation, but all will provide helpful information if you find that you need additional help.

A. Civil Procedure-Specific Study Aids*

- (1) Center for Computer-Assisted Legal Instruction (CALI), Library of Lessons on Civil Procedure (containing numerous online, interactive tutorials on topics that we cover, ranging from approximately 15 to 90 minutes completion time, available for free on our course TWEN page).

*Please note there are also study aids of *general* application for the first year that you are likely to find helpful due to their provision of multiple-choice questions and answers. STEVEN FINZ & ALEX RUSKELL, *STRATEGIES AND TACTICS FOR THE FINZ MULTISTATE METHOD* (5th ed.), is a popular example. However, because these study aids test your knowledge of various first-year subjects under the presumption that you have completed the entire first-year course, the questions (and their answer choices) often test your knowledge of more issues than you will have covered at most early points in the fall semester. I would therefore highly recommend starting with the aids listed here and focusing on *topic-specific* questions for the topics we are studying in Civil Procedure this semester before moving on to *course-specific* questions such as those in the Finz book.

(2) A. BENJAMIN SPENCER, ACING CIVIL PROCEDURE (4th ed.) (published by West Academic)|

(3) JOSEPH W. GLANNON, CIVIL PROCEDURE (Examples & Explanations Series) (8th ed.) (published by Wolters Kluwer)

B. Civil Procedure Reference Materials

(1) WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE (edition varies by volume) (Thompson West, continuously updated via supplement). This is the gold standard for any and all questions about federal rules and procedure. This is an extremely expensive multi-volume set of texts that students typically would not purchase but can be found in law libraries and referred to topically as needed.

(2) FRIENDENTHAL, KANE & MILLER, CIVIL PROCEDURE (5th ed.) (Hornbook Series) (West 2016). This is a single-volume hornbook with reasonably comprehensive coverage of the process of civil procedure, likely sufficient for most issues. However, it is current only through the publication date, so it does not address amendments to Rules 5, 23, 62, and 65.1 that were put into effect December 1, 2018.

COURSE DESCRIPTION & LEARNING OBJECTIVES

I. COURSE DESCRIPTION

Civil Procedure provides an introduction to the rules that govern civil lawsuits. By taking a close look at federal procedural rules, statutes, and cases, we will learn the principles that dictate how, when, and where civil litigation takes place. As you will see from the cases we will study, knowledge of the rules can make the difference between winning, losing, or even being in court at all.

Over the course of the next two semesters, we will study the most important determinations that must be made prior to filing a civil action—personal and subject matter jurisdiction and venue, which dictate a litigant’s selection of the forum in which a case will proceed—and we will examine the seven basic stages of litigation: investigative, pleadings, discovery, pre-trial, trial, post-trial, and appeal.

This semester, we will cover the following topics:

- Federal subject matter jurisdiction, including supplemental jurisdiction and removal
- Venue
- Personal jurisdiction
- Pleading
- Introduction to discovery

In the spring semester, we will cover:

- Discovery
- Disposition without trial (default, dismissals, and summary judgment)
- *Erie* doctrine
- Juries
- Trials
- Appeals

The class will be taught using four primary components:

- (1) Class lecture and discussion based on the casebook, *Civil Procedure: A Coursebook*, the Federal Rules of Civil Procedure, selected provisions of the United States Code, and pertinent handouts or presentation slides.
- (2) Email and TWEN postings: I will send emails and post additional materials via TWEN on occasion to clarify concepts and provide additional information or practice opportunities. As will be expected of you in a law firm or practice setting, you must review these emails and related postings regularly. I suggest that you print and incorporate these materials into your notes, as information from these sources may appear in quizzes or on exams.
- (3) Quizzes and other assignments: We will have periodic (largely unannounced) quizzes to reinforce the material you are working with. You may have a pop quiz at any time on the reading you have been asked to do or testing concepts we have

already covered, so you should assume that all quizzes are cumulative. Quizzes are a component of the class preparedness and participation portion of your grade; thus, if you are not in class for a pop quiz, you cannot make it up. In addition, you will occasionally be assigned other short writing or analysis exercises. Some of these will be optional; others will constitute a portion of your participation grade. *See* Part II.B.1 below.

- (4) Exams: We will have a midterm and a final exam in this course. *See* Grading, *infra* p. 10.

II. LEARNING OBJECTIVES

My goal for this course is to help you develop the critical knowledge, legal skills, and personal practices that will help you achieve success as lawyers. Accordingly, **I have high expectations for your performance. I have these expectations because I know that you can do the work, and I will be here to coach you through the process. I will demand a lot from you because my primary job is to prepare you as professionals while having you learn as much about understanding, applying, and analyzing the law of civil procedure as possible.**

At the end of the course, you should be able to show me in writing and orally how lawyers solve problems in the area of civil procedure — what rules and principles they use, how they apply them to new facts, and how they use those facts to make arguments to judges or juries. Listed below are the key learning objectives for this course. They can be roughly divided into substantive objectives, skills objectives, and values objectives. These general objectives are discussed below. In addition, specific learning objectives corresponding to Parts I-VII of your textbook are incorporated within the Syllabus of Required Readings at the end of this document.

A. Substance, Skills, and Values Objectives

1. Substantive Objectives: Over the course of this semester (and next, when Civil Procedure II continues the content of this course), you will learn the key pieces of the substantive law of civil procedure, by reading about, analyzing, and discussing:

- (1) the rules, statutes, and “hornbook” or “black-letter” law governing the topics listed in the Course Description of Part I above;
- (2) how the principles of civil procedure have developed and the policies that support its framework of rules and authority; and
- (3) the basic methodologies by which courts address matters of civil procedure.

2. Skills Objectives: You will also learn the following skills, which will assist in your meeting the course’s substantive objectives:

- (1) how to read and think critically (this is a law student’s **most important** skill—I cannot emphasize this enough!) so as to understand and evaluate rules, statutes, cases, and other sources of law by identifying the elements of that source of law (e.g., with a case, the procedural facts, legally relevant facts, issues, holding, reasoning, policies, rules, and disposition) and synthesizing related sources;
- (2) how to speak and write effectively to communicate your views and knowledge;
- (3) how to identify legal issues in both simple and complex fact situations;

- (4) how to recognize relevant facts and determine what facts you still need to know in order to resolve legal questions; and
- (5) how to use your understanding of rules, statutes, and “hornbook” or “black-letter” law to predict the answers to legal questions.

3. Values Objectives: In the legal field, your work ethic and reputation are critical to your ability to practice successfully. For various reasons that we will discuss over the course of the semester, you must keep a sharp focus on these values from the day that law school begins. Your reputation will follow you everywhere you go, so ensuring that you are well respected among your colleagues, professors, and other present or future members of the legal community is paramount. Thus, in this course we will also practice how to:

- (1) cultivate and demonstrate respect for students, staff, faculty, and visitors (the latter of whom often include judges, potential employers, alumni, and other members of the legal community);
- (2) develop cooperative approaches to problem solving, collaborative work, and written and oral exchanges;
- (3) develop an on-going investment in one’s professional development;
- (4) identify ethical issues by examining how they have arisen in the context of civil procedure; and
- (5) demonstrate honesty, responsibility, judgment, self-motivation, hard work, and critical self-reflection.

B. Assessment of Objective Acquisition

You will be assessed on your acquisition of information from this course and the attainment of these objectives both during the course of the class itself, in tutorial and review sessions, and, at the end of the semester, in a final assessment conducted by the school. These assessments are described below.

1. In-course Assessment: In our class meetings and tutorials, you will encounter a variety of exams, quizzes, short writing exercises, group analysis exercises, in-class and take-home assessment exercises, and in-tutorial assessment exercises that are specifically designed to assess the learning outcomes described above. Each assessment tool utilized during the semester will test you on the substantive and skills objectives described above. For instance, these tools will evaluate your ability to read critically; synthesize and think insightfully, practically, and creatively; and communicate your analysis effectively. You will be expected to be able to accommodate for the fact that there is uncertainty in legal reasoning, and that legal analysis only begins, and does not end, with an ability to identify the applicable rule of law. Generally, the various assessment tools will evaluate your core knowledge and understanding of the basic rules of civil procedure, as well as your ability to *apply* those rules to new sets of facts in order to evaluate legal issues and problem-solve.

In order to facilitate this process, you will have a tutor for this course, Blue McCreary, who will assist us with assessing your progress and helping us meet the learning objectives described above. In September, Blue will begin holding weekly tutorial sessions during which you will practice applying what you have learned. These tutorials will meet for 50

minutes per week at a place and time to be determined. Attendance at the tutorial sessions is required, as your tutor and I cannot validly assess where the class stands on its understanding of particular issues without full participation. Intervention efforts to assist individual students will also not be effective if students are absent from tutorials. Moreover, because your course participation grade depends in part upon your participation in tutorials as well as in class, you should plan to attend each week unless I announce otherwise in class or via email.

From time to time, we may also hold review sessions in addition to your weekly tutorial and class sessions. Attendance at review sessions is voluntary unless otherwise notified, but it is highly recommended and will allow me to guide the class as a whole to address weaknesses identified in our various assessments. In addition, from time to time I may give practice exams in sessions outside of our normal meeting time. Attendance at practice exams is voluntary; however, these provide valuable self-assessment opportunities and course participation credit may be awarded to those completing the exams.

2. Post-course Assessment: In addition to the assessment tools used in the course, the law school has adopted a uniform examination policy for all first-year doctrinal courses, as a result of which you must take a comprehensive, cumulative final examination on the civil procedure topics outlined in our Syllabus at the end of the semester. This examination will be the same for all sections of Civil Procedure, and your grade on the law school's comprehensive exam will constitute 50% of your overall course grade.

GRADING

Civil Procedure I is a three-credit course. Your final grade in Civil Procedure I will be determined after the end of the exam period. It will be determined by your **classroom raw score** (which counts for 50% of the overall grade) and the score you receive on the **comprehensive 1L Civil Procedure exam** for the fall semester (which accounts for the other 50%), a description of the scoring of which may be found in the Student Rules and Regulations. Your combined score from these two components is then professionally scaled by a third party and assigned a letter grade subject to the 1L curve for doctrinal courses, which is also described in the Student Rules and Regulations. I do not receive your individual scores for the comprehensive exam before your grade is assigned, nor do I assign your letter grade; my role in grading is only to submit your classroom raw score to the administration at the end of the semester.

The raw score for the classroom 50% of your grade will be calculated on a 500-point scale and will be based on (a) your performance on exams, and (b) your preparedness, participation, and performance in class, on quizzes, on miscellaneous in-class and take-home assignments, and in tutorial sessions, divided as follows:

- 10%* based on your preparedness, participation, and performance in class, on quizzes and assignments, and in tutorials
- 10%* based on your score or scores on your midterm exam
- 30%* based on your score on your final exam

Please note that due to the difficulty of law school, grading is typically not done on the traditional 100-point scale that you have likely previously encountered, which easily translates into standard U.S. letter grades. Instead, grades are (essentially) earned based on the total points you accumulate throughout the semester and how those point totals compare to the point totals of your peers, subject to the 1L curve. This may bear little relationship to the percentage of points you received out of the total points on a given assignment or exam. For example, you may receive 240 out of a possible 300 points on an exam. While your score mathematically would be 80%, this does not translate to a “B” or any other predetermined letter grade. A raw score of 240 in such circumstances could end up being something akin to an “A” (if the top scores clustered around the low-to-mid 200s) or it could be more like a “C” (if a large percentage of students scored in the high 200s).

To ease some of the anxiety and confusion that an unfamiliar grading methodology such as this may cause, after your exams are graded, I will provide you with the high and low scores and an average or median in order to help you assess your performance. I may also occasionally provide similar data for raw quiz scores; however, the total value of each quiz will depend on the number of quizzes given throughout the semester, which will be determined (for pedagogical purposes) depending on class preparedness and participation.

* Please understand that while I certainly do not anticipate altering these percentages and make them known to you well in advance in order to help you gauge the relative weight of various assessments and help you plan your semester, I reserve the right to modify these percentages should extraordinary or unexpected circumstances arise. These could be circumstances that make timely testing impossible, such as additional administrative changes to course requirements or curricula, a hurricane or other natural disaster, or circumstances that render their application unfair or unwise, such as the discovery of cheating or the unexpected disturbance of an exam that renders its results questionable.

ACCOMMODATIONS

If you require any examination or classroom assistance accommodations, please fill out the necessary forms with the Assistant Dean for Student Development **immediately**. Requests for minor accommodations (such as for front-row seating or laptop use for e-readers due to visual, hearing, or other impairments) may also be addressed to me directly.

Exam accommodations can require several weeks' processing and appropriate medical paperwork, which is why your Orientation Checklist addresses these requirements (and does so in all caps, in bold). Your prompt attention to these matters will allow the law school to accommodate you after it has been made aware of your situation. Please note that per the Accommodations Information student handbook, requests for accommodations *other than for exams* should be made in August or as the need arises. Because we will be taking quizzes within the first few class sessions, please begin your paperwork immediately, should your authorization for accommodations encompass the taking of quizzes.

Also, please contact Dean Mouton (Student Affairs) if you require any special accommodations regarding any of your assignments or exams in this course, including, but not limited to, due date extensions, typists, readers, etc. You must contact Dean Mouton before the related assignment is due or exam is scheduled in order to receive such accommodations.

Finally, please provide me with a copy of any granted accommodations as soon as they may be awarded to you in writing. Thereafter, if you will be taking an exam with testing accommodations, please **contact me separately at least one week in advance of any scheduled exam** so that we may arrange a mutually convenient time with the Dean's office for your testing and so that I can ensure that your examination materials are delivered to the Dean's office in a timely fashion.

ATTENDANCE, PARTICIPATION, & PROFESSIONALISM

I. ATTENDANCE

Under American Bar Association rules, 80% attendance is required to allow you to sit for your final exam, and per the TMSL Student Rules and Regulations, **you will be permitted no more than five (5) absences this semester.** Please note that under these guidelines, **absence is defined as a failure to attend class or a failure to be present at the commencement of class.** Due to the accreditation implications of class attendance, regardless of my personal views on the issue, these rules must be enforced; therefore, please consider each class mandatory and save permitted absences for unexpected emergencies.

Attendance will be taken at the beginning of class and will be conducted in as expedient a manner as possible. I am required to mark you absent if you are not in your seat at its scheduled start time, so please make every effort to be on time. Please also take note that per the Student Rules and Regulations, if you exceed the permitted number of absences in this course, your grade may be lowered (by the administration) by up to two full letter grades. This means that depending on the current policies of the administration, such reductions can occur wholly outside of my discretion, based simply upon an administrative review of rosters. Please consult the Student Rules and Regulations for additional information on absences and grading.

Please also note that **you are required to track your own absences.** While I take attendance each day, I do not collate the results until the end of the semester. **It is your responsibility to know whether you have attended class and whether you arrived on time,** just like it will be your responsibility to track your billable hours in the practice of law. You would not ask a client to tell you how much time you spent working on a memo or brief; similarly, you should not ask your professors how many classroom hours you have missed or attended.

Finally, **it is not necessary for you to explain the reason for an absence (to me).** Why you missed a particular class only becomes an issue if you exceed the permitted number of absences. Thus, if unforeseen circumstances result in an absence, you should collect and keep any relevant documentation that demonstrates such circumstances, so that you can present this information to the Office of the Dean for administrative consideration in the event you exceed the permitted number of absences. Assuming you do not, there is no reason to present this information to anyone. **If, however, you anticipate exceeding the permitted number of absences or otherwise anticipate needing accommodations due to illness or unexpected emergency, please contact Dean Mouton as soon as possible;** she will be the one to let me know what accommodations will be granted depending on your circumstances.

II. PARTICIPATION & PROFESSIONALISM

A. THE PROCESS OF PREPARATION AND COURSE OUTLINING

In order to participate effectively in class, you must come prepared to discuss and/or be quizzed on the assigned material. This means that at a minimum, you should read, analyze, and brief all assigned cases and consider all problems assigned before the applicable class session

You may analyze and brief each case by examining it from the perspective of whatever case briefing method works best for you. This could be either the briefing method you learned during orientation or in your LP course, some combination of the two, or a method of your own invention. Whatever method you choose, make sure that you identify at least the case's: **(i) essential substantive facts, (ii) legal issues, both in their substantive and procedural contexts** (e.g., if the case is an appeal, what legal error of the trial court is the appellant raising?), **(iii) holding on the issue raised, as well as any broader statements of legal doctrine on which the court relies**, and **(iv) reasoning used to reach the result**, which will likely rely on some combination of law and fact, but can vary from being quite general to very fact-specific.

It is not unusual to need to read each principal case three times at first: once (without your pens or highlighters or whatever other materials you may find that you like to use) to get an overall view of the facts and issues; a second time, to brief it; and a third time to review before class, reflect on your brief, and firm up your understanding of the facts and issues. This will be time-consuming at first, but will get easier as you go if you invest the time in learning to read and brief critically up front. Within a few weeks, you will be well-prepared even just reading your cases twice, if you learn to read critically and carefully. Even when briefing has become easy, however, please remember that **reviewing the case and your brief or other notes before class is critical**: few of us can remember for long the kind of detail that law school requires us to deal with without refreshing our recollection, especially with as many courses and tutorial sessions as you attend each week.

You will find that in order to do well in first-year law school courses, one must read with far greater attention than is typically devoted to the things that we read on a daily basis. A single word or phrase in a legal opinion may reveal the lynchpin of a court's reasoning, and noticing subtle phrasing or juxtapositions of concepts can be critical to your ability to apply a case's teachings to new situations. As a result, reading and even briefing or taking notes in a mechanical way (regardless of how long it takes) will not guarantee adequate preparation. Instead, it is important to think actively about the cases and materials you are reading and what you are writing.

To help with this, with respect to cases, try to ask yourself questions like this as you prepare:

- What issues are really before the court, and does it leave any of them unanswered?
- What happened in the trial court and what was wrong there, according to the appellant?
- What were the arguments that the plaintiff and defendant relied upon below and on appeal? If these are not spelled out, consider what these must have been.
- How did the court resolve the issues before it, and was the reasoning it used persuasive? Will it stand the test of time, or did it raise new problems?
- Should the case have been decided differently? If so, how? With an entirely different outcome? On the basis of different reasoning? On the basis of reasoning offered by a concurrence or dissent? Why?
- Is the decision sound from a social, moral, or economic policy perspective?

Most importantly, **force yourself to articulate the legal principle or principles for which you think the case has been selected for your review**, even if the court does not do so for you. You should **use these concepts, from day one, to build an outline of the principles of law** that

govern the issues that we will study. Creating an overall outline of the function of the law of civil procedure will help you understand how its pieces work together, which will be essential for your ability to spot issues on an essay exam and even to untangle multiple issues that overlap in multiple-choice questions stemming from complex hypotheticals. We will study issues more or less one by one, but keeping track of how they interrelate as you go, and refining your understanding of the whole of civil procedure as you make your way through the course, is something you should do beyond preparing for an individual session or a week's reading.

Think critically, too, about the rules and statutes you are reading, as well as the questions posed in your casebook. While there isn't always a "right" answer to a question posed by your text, you should be prepared to discuss the issues raised by such questions in a thoughtful and reasoned manner and apply what you have learned from the rules, statutes, cases, and notes to new hypotheticals in class.

In general, the more you question yourself about the rules, statutes, cases, and notes you encounter, the more you will anticipate ahead of time what we may discuss in class and thus benefit from the discussion that we have. You should recognize that **this type of mental questioning and anticipation of questions that may arise is something that you will engage in throughout your career both as law students and as attorneys**, who do things like prepare for depositions, draft contracts, negotiate transactions, present witnesses, and get ready for meetings with clients or judges all by anticipating the questions that may arise as a result of the task at hand and the materials that have been researched or reviewed in preparation for that task. In this way, law school prepares you for practice. It can be very easy to lose sight of this ultimate goal when your focus in school is often on learning the letter of the law for your exams or even for the bar, but it is important to take a long view of your life as a future attorney even while devoting intense focus to individual subjects along the way. It may be hard to imagine now, but once you are engaged in practice, you will see that the value of your experience in your law courses was in the *methods of practice* you developed, not in the specific information you obtained and studied for such courses or their exams (which can almost always be researched).

As you read and prepare for class, think not only about the words you are reading, but stop to reflect about the context of what you are reading as well. The slow modification of the rules of procedure over time and the interpretation of the constitutional principles underpinning many of them are molded powerfully by economic, social, cultural, and technological forces. This means that external considerations find their way into the language of the rules and opinions you will read. Judges and legislators may or may not acknowledge these considerations explicitly—in fact, many times, they do not—but rules and judicial opinions are rarely drafted in a vacuum. As you read, try to identify policy considerations in the rules, statutes, and cases and consider how lawyers may use those policy considerations in the arguments that they make.

Likewise, as you read more cases, cross-check these with the relevant rules and statutes, and begin to review your notes from each class in order to work on your outline of the law, be cognizant of the effort that judges and legislators have devoted to trying to develop rules of process and procedure with sufficient generality to lend stability and predictability to the law by allowing cases with similar facts to be decided similarly. Part of the challenge of acquiring good legal analysis and reasoning skills is learning to recognize how rules of law emerge from specific

factual circumstances, which allows you to make arguments about why such rules should or should not govern new sets of factual circumstances. This process of interpreting statutory rules and arguing from precedent by analogizing to and distinguishing cases will be the primary focus of your first-year experience. You will quickly find that it is not enough simply to know the law; *applying* the law to new situations is key.

Please note that the assignments in the Syllabus of required readings that appears at the end of this document are listed under the day or week of class for which I anticipate they should be prepared. Where possible, I have broken down the weeks' readings into a reading schedule that should be prepared for each class session, but in all likelihood, this schedule will need to be adjusted as we proceed throughout the semester, because it is impossible to foresee our daily pace with certainty in advance. How far we get each day will be determined by a number of factors, such as how many questions are asked, what in-class and in-tutorial assessments reveal about how the class as a whole grasps a new concept or idea, and what assignments or exams may be upcoming. As a result, please make sure to check your email and class postings regularly for updates, and keep abreast of classroom handouts.

Please bring your casebook, any class handouts or reading supplements, and your own briefs and notes to class each day.

B. THE ROLE OF PROFESSIONALISM IN CLASS PARTICIPATION AND PREPARATION

Now that you have come to professional school, the concept of professionalism will take on new meaning in an abundance of ways. Obviously it goes without saying that at all times, you must behave respectfully toward your fellow colleagues. In the classroom environment, this includes refraining from side conversations, checking your cell phone, entering or exiting the room, or other distracting conduct during instruction periods. Likewise, please keep your conversations focused on the issues at hand when engaging in group work or other in-class exercises, and remain quiet unless it is your turn to speak during classroom instruction.

Even the most collegial comment or good-natured whisper made to one classmate can be very difficult for others (particularly auditory learners) to tune out during a lecture or while focusing on a group project, and may thereby result in your perfectly well-intentioned side conversation having the unintended effect of placing one of your colleagues at a disadvantage for learning. Likewise, even a silent walk out to the restroom and back into the classroom can inadvertently disrupt a visual learner's attention. Accordingly, **please print all homework before class, use the restroom before or after class, keep cell phones and other electronic devices put away during class unless I have specifically authorized their use, and please do not leave the classroom once instruction has begun, except in cases of emergency.**

Just as keeping a professional demeanor is essential in the classroom, professionalism also plays an important role in preparation for class. Bear in mind that our coverage of the material listed in the Syllabus is important not only for your ability to do well on my in-course assessments, but also for your ability to do well on the comprehensive and uniform civil procedure examination given to all 1Ls at the end of the semester, which accounts for 50% of your course grade; **accordingly, your commitment to arriving to class fully prepared and able to engage in**

informed discussion is critical to our keeping pace as a section. Both your classmates and I will be depending upon you for this professional contribution. If I have to spend time rehashing material with which you should already be familiar, if you are not paying attention in class and I have to repeat myself, or if you are otherwise not fully prepared when you arrive each day, you will be wasting not only your time and my time, but also that of your peers, with whom you have entered into what may be some of the most challenging months of your legal careers. As you will quickly find, time is one of the most—if not *the* most—valuable commodities a practicing lawyer has, and the relationships you form in law school with your colleagues and professors will translate directly into opportunities: not only opportunities for study partners and lasting friendships, but also longer-term opportunities for client referrals, recommendations, practice partnerships, and other future business endeavors that could be critical to your success as attorneys. While you may be used to achieving academic success on your own, you will find few attorneys (even among solo practitioners) who have not achieved lasting success in part due to the relationships they formed with other attorneys. While law school may look to you like a competitive process, if you take a long view—of the semester, of the year, of law school, and most importantly, for your career—you will see that your collective progress and willingness to collaborate is as important as your own individual dedication.

So please, arrive prepared and ready to work collectively, not competitively, and save questions not related to our course (or those that are based on what you know is a lack of preparedness) for office hours or your own social time. If you are called upon and have not prepared, indicate as much rather than trying to guess your way around reading you have not even attempted. While wasting the classroom time of a colleague or group of your colleagues at this stage in your career may feel insignificant from where you stand today, I can assure you that your colleagues will not forget the impression you make from this day forward.

C. THE IMPORTANCE OF KEEPING A PROFESSIONAL MINDSET—FOR YOURSELF

Please keep in mind that the work in law school is VERY different than most of the other academic work you have likely done before. You may find that despite creating a schedule and preparing diligently for class, our discussion consistently seems to turn to issues other than those you had identified as being the important ones in the cases you read. It is easy to get disillusioned—in Civil Procedure or in any of your first-year classes—when you come out of the class feeling more confused than you did when you went in (a common feeling!), but do not let this happen to you. It is normal at first to be challenged by identifying the important pieces of a statute or a case (especially the older ones). Statutes and cases aren't written for first-year, first-semester law students; they're written for practicing lawyers and judges. Many are inherently complex, but others are simply poorly written! Critical reading of the law is a skill that must be developed like any other. It is one that will be incredibly important to your success, but it is one that you should expect to take some time. You will find, slowly, that if your commitment to professionalism and preparedness is strong and you continuously review what we have done, this will become easier for you; so please, do not be alarmed if what happens in class at first does not meet with your expectations.

You may also find that because reasonable minds can differ, and because our time together is limited, your (valid) interpretation of a rule or case simply may not have been voiced in class.

You may also have insights that others do not, including your professors. Such is not to say that you cannot be confused, but it is often worthwhile and rewarding to determine which of these may be the case. If you feel that you have devoted significant thought to a particular case or statutory provision and still do not understand it after we have discussed it in class and after you have reviewed your materials, try to put your finger on exactly what it is that you aren't understanding and ask about it! If you have exercised true professionalism and put in the effort to understand the material up front and have reflected upon it after our discussion, then it is unlikely that your question will be coming from left field. In fact, others may have the same question as well.

To understand how the professionalism you adopt for yourself and practice in your interactions with others will translate into the professionalism expected of practicing Lawyers in Texas, consider reviewing "The Texas Lawyer's Creed: A Mandate for Professionalism," *available at* https://www.legalethictexas.com/Downloads/Texas-Lawyers-Creed/Texas_Lawyers_Creed.aspx

D. PREPARATION TIME

It is difficult to say exactly how much time you will need for class preparation because each person's needs are different. A typical rule of thumb is that once you are comfortable with reading statutory provisions and legal opinions, you will likely need at least three hours of preparation for each class meeting; however, you may find that this varies widely over the course of the semester and as your critical reading skills improve. This estimate includes reading your casebook and rule book, briefing the cases, reviewing and consolidating prior notes, creating outlines, and completing practice CALI questions or other practice questions.

What this means is that planning ahead and working in the evenings and on the weekends will be critical to your ability to keep up. **Your success as a law student will depend on budgeting your time carefully and sticking to the schedule you have laid out for yourself.** If you are struggling with where to begin, talk to your 2L and 3L colleagues about what has worked for them. I have found that those students who do consistently well and end up at the top of their classes are not always those to whom the law comes most easily, but those who exhibit a consistent drive to push forward. **These students prioritize well, invest time in planning, and do not make excuses or procrastinate.**

The simple visual of creating a study schedule that blocks out, for each week, the hours you spend in the classroom and in your tutorials, the time you should spend preparing for each class, and, to the extent you can plan for them, your other known obligations, will help you understand how very little time you actually have with which to work and how critical it is that you respect the time you have blocked out and stick to the schedule you have planned for yourself. You will find that the ongoing details of daily life (such as eating, sleeping, traveling to and from school, shopping for necessities, doing laundry, and taking care of obligations to family members) and unexpected events (such as illness, inclement weather, and technology failures) consume just about *all* of the time that is not already blocked out on your calendar for your law school obligations, so the idea that you can get "caught up" when you have actively chosen to

procrastinate is not much of a reality. Recognizing the need for and charting and sticking to a steady course for your first year in law school will work wonders for your individual success.

If you do not already keep a calendar or appointment book or utilize calendaring software with which you are comfortable, free online calendaring tools (like that available with a google account) can help you chart such a course, and such tools have the advantage of being able to be synced with computers, smartphones, ipads, or other tablet devices. Should you find that you need reminders to keep yourself on track, you can set up such tools to notify you via email, text, or other alert on your preferred device. Whatever organizational method you choose, I recommend you devote attention to it immediately, as you will soon be consumed with making it day-to-day in law school.

E. USING COMMERCIAL OUTLINES AND CANNED BRIEFS TO PREPARE – A WARNING

If you prepare for class diligently as described above; log onto our course TWEN site regularly to check for materials, updates, or notifications; attend each class session, review session, and tutorial; and pay attention to the discussions that take place in class, you should do well in the course. However, I understand that law school can be overwhelming and that some students take a measure of comfort in having a commercial outline of the law or a study aid of some sort to help them see how a topic fits in the overall law of civil procedure. I have found that in an effort to create such comfort, many students become more overwhelmed by having numerous study aids for each subject, and some end up spending precious preparation time consulting numerous guides on a *superficial* level instead of doing the sort of slow, attentive, reasoned thinking through the assigned materials that will get them where they need to be.

As a result, I would recommend that you make your own outline, and that if you feel the need to turn to a secondary source, you consult one of the quality Reference Materials listed on p. 5 of this document. If you nevertheless decide to refer to a commercial outline, please be very cautious! Often these oversimplify the law, and sometimes they get it wrong. More importantly, though, reliance on commercial outlines eradicates the benefits of learning to read statutes and cases carefully and deriving principles of law from them on your own in order to apply these to new fact situations. It is this distillation and application process that is the heart of what lawyers do, and you cannot learn to apply the law effectively simply by memorizing or referring to abstract principles that have been pre-distilled into legal rules in an outline.

Additionally, creating your own outline of the law is the task that will cause you to think through the doctrine as a whole in a way that solidifies your understanding and thus prepares you for your exams. If you are not actively involved in thinking this through, you will miss identifying the relative importance of the relationships between concepts and developments in the law. Much of what you will learn from the processes in which law school is designed to engage you will be something that you never reduce to writing and thus cannot appear in commercial outlines. Skipping this important step will therefore be detrimental to your success, not necessarily as a law student or a bar examinee, but as an attorney.

In summary, **if you do decide to consult a commercial outline, do so as a *check* on your own work, rather than in place of it.** If an outline organizes the material differently than you do,

consider why, and whether your organizational method may be equally good or better. If you have questions about why yours may differ from others that you see, do not doubt yourself and simply revert to the work of the commercial outliner; instead, come to office hours with your questions and we can discuss them together. Only in this way will you gain the understanding you need in order to carry your skills beyond the exam and into the practice of law.

With respect to briefing, you should read and brief the cases in your casebook yourself. I respectfully request that you not utilize “canned” briefs at all (e.g., Casenotes, Legalines), whether marketed as “tied” to your casebook or not. **In order to become competent attorneys, you simply cannot avoid learning to read and analyze cases, regardless of whether you can pass the bar or your classes by studying pre-digested materials.** Think about this: there are no “canned” briefs for any of the cases you will need to read or rely upon in practice! How will you do the research to advise a client if you have not yet begun to master case analysis in the first year of law school? **You will begin doing real work for real clients that depends on your practiced ability to read and analyze cases as early as your first year or first summer—**whenever your first internship or clerkship begins! Because reliance on canned briefs will not be an option in just a few short months, do not let it be an option now. If that isn’t motivation enough, be aware that such summaries are often not only insufficient, but can also be wrong.

F. THE LOGISTICS OF CLASS PARTICIPATION

Everyone should plan to participate in class discussions, though obviously not everyone will have the chance to speak every day. Often I will call on several people during a class period, at random, though I may also open the discussion up to volunteers. I may ask you to give a brief of a case and then ask follow-up questions, I may brief part of a case myself and then ask questions, or I may go directly to a question or hypothetical that explores the rules or cases you have read without any overview. If illness or emergency has prevented you from being fully prepared, please notify me before class. **Each student may have two “pass” days during the semester on which he or she is excused from participating altogether. Please, however, inform me in advance of class if you wish to take one of your pass days.**

If you are fully prepared and I ask a question that is unclear, please ask me to rephrase it. In the course of our discussions, I may press you to clarify your statements, justify conclusions, or respond to additional questions. Please understand that this questioning is not intended to unnerve you! Its purpose is to encourage you to think carefully, in the way in which you will as a practicing lawyer. It is important to become comfortable with these sorts of exchanges, as all attorneys use similar reasoning and engage in conversations about legal doctrine with other attorneys, whether you end up as a litigator, as a negotiator or working on transactions, or in some other capacity in the legal community. Now is our time to practice and hone these skills, and as intimidating as it may seem at times, I assure you I have but one aim: helping you become the best lawyers you can be.

You will find as you begin to read statutes and cases that sometimes a rule or a party’s argument or position feels “wrong” to you, and it may be difficult if not impossible for you to support that rule or adopt that party’s reasoning as your own. This is a common experience, and forcing yourself to consider such “wrong” arguments to the very best of your ability is part of becoming

a lawyer. Thus, I will expect you to be able to give arguments not only for a position that you think is “right,” but also for positions with which you may vehemently disagree. Please do not be surprised if I ask you to give an argument for a position you abhor. If a case went up on appeal, it was typically because there were what (at least at the time) were considered to be credible legal positions for both sides of the dispute. Part of our work will be to learn to elucidate those arguments in as persuasive a manner as possible.

Of course, sometimes no matter how well you see both sides of a dispute from the comfort of your home (or your seat in class on a day where you’ve already spoken a great deal), sometimes the most obvious things can slip from your mind, especially when you feel put on the spot. Please be sensitive to the possibility that someone who is being questioned may be feeling this way, even if you are not. Classroom discussions may get heated, and you may find yourself in disagreement with other students on policy issues or down interpretive lines, but in keeping with the earlier admonishments on professionalism, neither classroom discussion nor classroom silences should result in any behavior that is rude, condescending, or unbecoming to future attorneys.

Additionally, while I aim to leave discussion sufficiently free that you discover key points on your own and feel ownership in lessons learned, I must exert a certain amount of control over each day’s class discussion to ensure that you are exposed to key points of law and to ensure that everyone does not become confused by a discussion that runs too long or too tangentially. If you had points you wished to discuss that we did not have time for or questions that you were unable raise in class, please make an appointment to see me during office hours and we can explore these together. Likewise, I will endeavor to start class and end it on time each day we meet. In return, **please do not begin to pack up while others are still engaged in class discourse.** Additionally, please be sensitive to the fact that another course may be meeting in our room directly after ours, which may impact my ability to answer individual questions after class inside the classroom. If that is the case, please let me know that you would like to speak with me in the hall or email me for an appointment and bring any questions you may have to office hours.

Finally, the classroom environment must be conducive to learning for all students. Distractions made possible by advances in technology often undermine that goal. Accordingly, during class, in addition to the usual courtesies, please disable sounds on cell phones and refrain from using cell phones and other electronic devices during classroom instruction, unless I have directed you to do so in order either to answer questions posed by an instant polling opportunity or for the purpose of completing group work or taking notes (which I strongly recommend you do by hand in any event (see “Notetaking,” below) rather than on a laptop or other electronic device).

Misuse of technology during class (e.g., texting, surfing the internet, watching videos, etc.) may result in a number of consequences. **I reserve the right to remove students engaging in such misuse from class, to mark such students absent, and/or to seek the students’ withdrawal from the course with or without a failing grade.** In addition, misuse that risks the exposure of harassing materials or imagery to other students will result in loss of all course participation points and, at my discretion, notification to the bar of the state(s) to which you apply for admission after matriculation.

G. NOTE-TAKING

It is likely that your previous academic experiences depended somewhat, if not heavily, on detailed note-taking while in class. Figuring out the professor's views on the topic of the course and highlighting key points made in class on exams is often a sure road to success in undergraduate school. Most of your first-year doctrinal courses in law school are different, though. If you treat class time as an opportunity to write down everything you think you'll need to know and sort through it later, you will almost surely have trouble when it comes time for exams.

How could this be? There are a few reasons. First, much of what you would ordinarily write down in a lecture situation in college you will already have written down on your own as you read and briefed cases for class and then used those briefs to outline the law. This is one reason why bringing your case briefs and notes to class each day is important—if you are well prepared, you should be able to annotate these as we go in order to enhance the final product you will use when studying and reviewing. Without your own briefs and notes, however, you may be tempted to focus your efforts during class on the largely mechanical task of gathering information in written form rather than understanding the information that is being discussed in a meaningful way. I will post any PowerPoint slides or materials used in class for discussion purposes on TWEN after class for your later reference, so writing down the material covered there is not necessary and will take your focus away from class discussion. Therefore, **avoid writing frantically; rather, make selective notes on your own briefs and notes during class. Then after class, use the PowerPoint postings in order to review the day's material and add to your own Torts outline.**

Second, while some students benefit from taking notes as a way to maintain a high level of attention during class, keep in mind that law school exams will not be testing your ability to recite rules and doctrines! Rather, the exams will test your ability to *apply* the law to ambiguous fact patterns, which is part of what we will be doing in class and what you will be practicing in your tutorials. Thus, focusing during class time on memorializing every detail of what was said in a discussion or on what you believe my opinions might be on various aspects of civil procedure will not be the best use of your energy.

Instead, make an effort to be actively engaged in class, regardless of whether you are speaking. Listen to and think about what is happening in the discussion, and reflect upon the work you did in preparation for class as we proceed, and how it may differ from what is taking place in the day's conversation and why. Note-taking should be a thoughtful and selective process. Making note of changes you might need to make in your own briefs or outlines is likely to be useful, as is noting questions posed in class, which will often help you see what was significant about a case if you did not grasp it when you read it in preparation for our discussion. Again (and I cannot reiterate this enough!), take time after class to review your briefs and notes and make modifications to your outline while your thoughts are fresh. These sorts of informed, thoughtful notes are likely to be far more useful than the jumble of information you are likely to write down if trying to create a verbatim record of what happened in class on any given day.

Moreover, critical listening and note-taking skills such as these are skills you will use throughout your career as an attorney. While you can find commercially-prepared outlines for law students and may receive assignments in law school in excruciating detail (especially in Lawyering Process!), in your real life as a practicing attorney, the law you need to know is rarely laid out for you in condensed form and assignments are not likely to come to you in writing with every potential pitfall accounted for.

You will find that from the moment you start working in the legal field, unless you are require accommodations for a hearing disability, you will need to be prepared to take good notes on the basis of things that you hear, even if your learning preference isn't for auditory information. This will be the case for lawyering tasks requested directly by clients as well as tasks given to you by or shared with colleagues. Other than for the simplest and most direct tasks, in most cases, it is more time- and cost-efficient for your client or colleagues to reveal what is at issue orally (on the telephone or in person) rather than for that person to write out the specifics of what he or she is concerned with and send it to you. At other times, you won't have any specific question posed or instruction given to you at all, but will have to create your own focused agenda based on discussions that occurred in meetings or on conference calls you attended. In all of these cases, the key to producing work product as an attorney, intern, or summer clerk that is on point (and in many cases, accordingly compensable!) is paying close attention and listening in an involved way to the relevant discussion, and then making careful notes as you go along about the key questions raised by your clients or colleagues that you can later reflect on as you go about solving whatever problem has come your way. Thus, this is the process you should begin, as a law student, in order to prepare for exams and for your career.

ACADEMIC CALENDAR



TEXAS SOUTHERN UNIVERSITY THURGOOD MARSHALL SCHOOL OF LAW ACADEMIC CALENDAR 2019–2020

FALL SEMESTER ACCELERATED (TURBO) COURSE

First Day of Accelerated Summer	Monday	August 5, 2019
Last Day to Add/Drop Classes	Monday	August 5, 2019
Last Day of Classes	Friday	August 16, 2019

FALL SEMESTER 2019 (SEVENTY-ONE DAYS OF CLASSES)

Orientation	Monday–Friday	August 12–16, 2019
First Day of Class	Monday	August 19, 2019
Last Day to ADD/DROP	Wednesday	August 21, 2019
Labor Day (NO CLASSES)	Monday	September 2, 2019
<i>Purge of all unpaid course selections</i>	Wednesday	September 18, 2019
Mid Term Examinations	Monday–Friday	October 14–18, 2019
Last Day to Drop a Class	Friday	November 8, 2019
Last Day of Classes	Tuesday	November 26, 2019
First Year Professors' Grades due	Tuesday	November 26, 2019
Reading Period (NO CLASS)	Wednesday	November 27, 2019
Thanksgiving Holiday	Thursday–Friday	November 28–29, 2019
Reading Period (NO CLASS)	Saturday–Sunday	November 30–December 1, 2019
Final Examinations	Monday–Friday	December 2–December 13, 2019
Commencement Exercises	Saturday	December 14, 2019

SPRING SEMESTER 2020 (SEVENTY DAYS OF CLASSES)

School Opens	Thursday	January 2, 2020
First Day of Class	Monday	January 13, 2020
Last Day to ADD/DROP	Wednesday	January 15, 2020
M L K Holiday (NO CLASSES)	Monday	January 20, 2020
<i>Purge of all unpaid course selections</i>	Friday	February 7, 2020
Mid Term Examinations	Monday–Friday	March 9–13, 2020
Spring Break	Monday–Friday	March 16–20, 2020
Spring Break (University Closed)	Wednesday–Friday	March 18–20, 2020
Last Day to Drop a Class	Thursday	April 9, 2020
Good Friday (NO CLASSES)	Friday	April 10, 2020
Last Day of Classes	Tuesday	April 28, 2020
First Year Professors' Grades due	Tuesday	April 28, 2020
Reading Period (NO CLASSES)	Wednesday–Thursday	April 29–April 30, 2020
Simulated Bar Exam*	Friday	May 1, 2020 (<i>tentative</i>)
Reading Period (NO CLASSES)	Saturday–Sunday	May 2–May 3, 2020
Final Examinations	Monday–Friday	May 4–May 15, 2020
Hooding Ceremony	Friday	May 15, 2020
Commencement Exercises	Saturday	May 16, 2020

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

Updated August 6, 2019

POLICIES & PROCEDURES

I. GENERAL POLICIES

Refer to the Thurgood Marshall School of Law's [Student Rules and Regulations Handbook](#).

II. MAKE-UP AND SUPPLEMENTAL SESSIONS

There may be times when it is necessary to schedule make-up sessions or supplemental classes that cannot be held during our regularly scheduled class hour. If you have ongoing commitments outside the hours of 8 a.m. to 6 p.m. Monday-Friday, please let me know within the first week of school so that I will be able to take this into account when scheduling such sessions; otherwise, I will assume you can attend. Times for these sessions will be announced in class or via email.

III. EXAM NUMBER POLICY

In order to maintain your anonymity during the grading process, all exams will be submitted with only an exam number, issued by the Student Records Office. Inclusion of your name (rather than or in addition to your exam number) on any exams will result in the loss of all credit for that exam. We will also use exam numbers for in-class scan-tron quizzes (for ease of grading) and for any quizzes or assignments with original written answers. However, multiple-choice quizzes taken online via TWEN or assignments submitted for participation purposes only will not require exam numbers. This will allow me the occasional opportunity to see how you are performing as individuals and to recommend interventions where possible.

Please note that use of the proper exam number is critical. Failure to use the proper exam number will result in a reduction of points toward the preparedness and participation portion of your grade and could result in your receiving a zero on that quiz, exam, or assignment if the Records Office is unable to ascertain your identity on the basis of the exam number you did use. Thus; please keep your exam number stubs and label them so that you will know which number you are using for which course or exam!

Additionally, 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. Because of this, you must use only three (3) exam numbers in this course:

1. ONE initial number that you will use for both:
 - a. any quizzes or other assignments *prior to the midterm* that require the use of an exam number AND
 - b. your midterm exam;
2. a SECOND, new number that you will use for any quizzes or other assignments *between the midterm and the final* exam that require the use of an exam number; and
3. a THIRD, new number that you will use for the final exam only.

Unless I have explicitly authorized your use of an additional number, the use of more than two exam numbers will result in a 10-point reduction of your classroom raw score.

IV. EXAM AND QUIZ POLICIES & PROCEDURES

A. EXAMS

Because your learning in the course will be cumulative, the material over which you will be tested with each exam will be cumulative and will therefore increase in scope throughout the semester. This is to prepare you for the comprehensive exam at the end of the semester that will constitute 50% of your overall course grade, which is also cumulative. **Our midterm will include an essay, whereas our final will be a wholly multiple-choice exam.**

I have included estimated exam dates in the syllabus at the end of this document; however, I will announce final dates, times, and locations for exams (some of which may be conducted at times other than our normal class meeting time) when tutorial and other schedules are finalized for the semester and as I am able to obtain rooms for any exams that may need to be administered outside of our regular meeting times.

Post-exam reviews may be held as a group in class, in tutorials, or in review sessions. You may also review the results of exams with me in my office hours for a period of two weeks after the reporting of an exam grade, during which time I will retain your exam. After that time, per the Student Rules and Regulations, exams are to be submitted to the Office of the Dean. Please ensure that if you make an appointment to review an exam with me, you (a) keep that appointment as scheduled, and (b) comport yourself appropriately during the review. Understand upon your arrival that the review process is to assist in your learning from the results of the assessment, and that all grades assigned as a result of the assessment are final; there will be no negotiations regarding revisions, except to correct any mathematical or clerical errors in computing the final score.

B. QUIZZES

Quizzes may be either topical *or* cumulative in scope and may be announced *or* unannounced. Accordingly, keeping abreast of your readings, maintaining a high quality course outline, and—most importantly—**engaging in systematic and regular review will be critical to your success.** We will have several quizzes over the course of the semester.

As described in the Course Description on p. 7, **quizzes are a component of the in-class preparedness and participation portion of your grade; thus, if you are not in class for a pop quiz, or if you arrive late and a quiz has already begun, you cannot make up the quiz for that day.** However, if an emergency will prevent you from taking a *pre-announced* quiz or from meeting the deadline for an online quiz, it may be possible to receive *advance* permission from Dean Mouton to make such a quiz up by following the procedures outlined *supra* in Accommodations, page 11. If you receive such accommodations, please let me know as soon as possible.

V. EMAIL PROCEDURE

I welcome your questions by email and will respond to them as time permits. Because I am teaching a full half of the 1L entering class, the quantity of email in my inbox can get overwhelming if students send messages hastily or without forethought. Thus, I ask that in your email, you consider identifying what steps you have taken to attempt to solve the problem or answer your specific question yourself, as well as what you think the answer might be, even if you are uncertain.

Many times, the answer to a question may be found in the Course Guidelines or Syllabus, instructions from class, or in emails from me sent via TWEN. Please be sure to check these resources and/or consult TWEN or your colleagues who may have the information you need before sending a question merely because it is convenient for you to do so (e.g., “I left my book at home, so can you tell me what pages I was supposed to read for today’s class?”). Remember, all of law school is training for eventual practice; if you would not send to a partner in your law practice an email of the sort you are considering sending to one of your professors, you should likewise not send such a message to your professors either. That said, please do not hesitate to send thoughtful questions, suggestions, or comments, and I will address them as I am able.

In that regard, I tend to respond fairly promptly to email; thus, if you have emailed me and have not heard from me within 24 hours, this is a good indicator that something may have gone wrong. In that event, please first go back and consider whether your emailed inquiry perhaps ought to have identified the steps you took on your own and your suspected answer, as suggested above. If it does not, please re-send your message with such information. If you have already done so, however, please try to reach me by alternative means (before or after class or by office phone) and let me know that you have sent me something that has not reached me. It is not unusual for my TMSL email address to experience periods of slowing, and in such events we may need to communicate via an alternative mechanism if time is of the essence for your needs.

VI. NOTICE REGARDING POTENTIAL CHANGES—NOT A CONTRACT

These Course Guidelines and Syllabus are subject to change with or without notice and are not a contract.

SYLLABUS OF REQUIRED READING ASSIGNMENTS

As noted above, the assignments listed below are indicated under the day or week of class for which they should be prepared. Due to the interactive nature of the law school classroom, it is difficult to predict, much less promise, exactly what material we will be covering on a specific date many weeks into the future. As a result, I will likely issue updated reading syllabi as we progress, adapting our coverage to strengthen our weaknesses and to fit our collective needs. **Thus, please consider this only a guideline and watch carefully for announcements regarding changes to the reading schedule.**

Please note that although we will typically cover 50-60 pages of reading each week, some days' reading assignments will be substantially longer than others because they comprise a topic or series of cases that should be read and considered *together*, but which will take us more than one class period to review in detail. Thus, the readings required for a particular day will not always correspond neatly with that day's discussion, and often you will have read a bit ahead of where our class discussion ends. However, **although this means that we will not necessarily discuss each case that is assigned to be prepared for a particular day on that same day (and some cases we may not discuss at all in class), it is important to try to read the materials in the groupings that are identified in the syllabus** even if you anticipate that we will not cover a particular case or two in an assigned reading set during our next class, so that you are digesting the material *topically*, rather than day-by-day.

I also expect that you will get better and faster at reading the law as the semester progresses; thus, you will find that some of the reading assignments closer to the end of the year are longer than those toward the beginning of the semester.

Considering these issues, it is critical that you keep an eye on the anticipated schedule so that you can budget an appropriate amount of time for each week's assigned readings. My recommendation is to read for the entire week ahead, leaving the evening before class meets (or the morning thereof) simply for review of those cases it looks like we'll get to in particular.

One benefit of reading topically is that it will assist you in the outlining process. As you may notice, the basic topical outline of your syllabus corresponds roughly with the way in which the material is presented in your text, with some additional information and reorganization included here and there to help guide your understanding. This textbook-based outline can thus provide a useful starting point for your own course outline. Make an effort each week to review your briefs and notes and update your own growing outline, and at the end of each Roman-numeraled Part of your text, review the corresponding topic-specific Objectives and Learning Outcomes that are embedded in the syllabus below.

As we progress, when changes are made, I will update this syllabus of readings and post the updates on TWEN so that you will have a running account of what you are responsible for over the course of the semester.

Preparation Due Date	<u>Estimated Schedule of Civil Procedure Topics</u> (Please Keep Abreast of Updates!)	Pages to Prepare
	<u>Week 1</u>	
	<p style="text-align: center;"><u>PART I – INTRODUCTION</u></p> <p>Objectives: In order to fully understand 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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>If a case does not settle, it proceeds to trial, where 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.</p> <p>Even after a judgment has been entered, the case is not over since the losing parties may file a number of post-judgment motions and parties may appeal.</p> <p>Learning Outcomes: After Chapters 1 and 2 you should:</p> <ul style="list-style-type: none"> • know the differences between and structures of the American state and federal court systems • have a fundamental understanding of general principles of subject matter jurisdiction • be familiar with the sources of civil procedure regulation • have a basic understanding of the litigation process 	
Class 1 (8/20)	<p>Ch. 1 An Introduction to American Courts</p> <p>A. The Federal and State Court Systems</p> <p>B. General Principles of Subject Matter Jurisdiction</p>	3-19

Class 2 (8/22)	Ch. 2 The Litigation Process and Sources of Procedural Law <ul style="list-style-type: none"> A. Intro to the Process of Civil Litigation <ul style="list-style-type: none"> ○ Pleadings ○ Early Motions Practice ○ Discovery ○ Conferences ○ Summary Judgment Motions ○ Trial ○ Post-Trial Motions ○ Appeal ○ Preclusive Effects on Later Litigation B. Sources of Civil Procedure Regulation 	21-38
	<u>Week 2</u>	
	<p style="text-align: center;"><u>PART II – SUBJECT MATTER JURISDICTION</u></p> <p>Objectives: Federal courts must have jurisdiction over the subject matter of the cases before them, and as we have learned, federal courts are courts of limited jurisdiction. Congress has 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. The chapters in Part II 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 also sometimes assume jurisdiction of cases based on removal statutes, which authorize defendants sued in state court to take certain cases out of state court and have them heard in federal court.</p> <p>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 the 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. We will jump a bit ahead in the text to study these before proceeding to Part III.</p> <p>Learning Outcomes: After Chapters 3-5 and 20, you should:</p> <ul style="list-style-type: none"> • be familiar with all pertinent sections of Title 28 of the U.S. Code • understand diversity jurisdiction • understand federal question jurisdiction <p><i>(cont’d on next page...)</i></p>	

	<ul style="list-style-type: none"> • understand the “well-pleaded complaint” and the essential federal requirement • understand supplemental and removal jurisdiction 	
Class 3 (8/27)	Ch. 3 Diversity Jurisdiction in the Federal Courts A. State Citizenship of Individuals: The Domicile Test B. The Complete Diversity Rule C. State Citizenship of Corporations and Other Entities	41-74
Class 4 (8/29)	Ch. 3 Diversity Jurisdiction in the Federal Courts (cont’d) D. The Amount-in-Controversy Requirement E. Aggregation of Claims F. Constitutional Scope of Diversity Jurisdiction v. Statutory Grant	75-90
	<u>Week 3</u>	
Class 5 (9/3)	Ch. 4 Federal Question Jurisdiction A. Constitutional Scope B. Statutory Scope: The Well-Pleaded Complaint Rule C. The Creation Test for “Arising Under” Federal Law D. State Law Claims Involving Substantial Federal Questions E. Article III and SCOTUS Jurisdiction	91-125
Class 6 (9/5)	Ch. 4 Federal Question Jurisdiction (cont’d) Ch. 5 Removal of Cases from State to Federal Court A. Concurrent Jurisdiction of State and Federal Courts B. Removal Standard C. Procedure for Removal and Remand	no new readings 127-144
	<u>Week 4</u>	
Class 7 (9/10)	Ch. 20 Supplemental Jurisdiction A. Related State Law Claims in Federal Court B. Constitutional Framework for Supplemental Jurisdiction C. The Need for Statutory Authority D. Supplemental Jurisdiction under 28 U.S.C § 1367	729-772
	<u>PART III – PERSONAL JURISDICTION</u> Objectives: This Part introduces the large and often complex topic of personal jurisdiction. Before a federal trial court may exert personal jurisdiction over a defendant, it must satisfy the due process standards of the 5th and 14th Amendments of the U.S. 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 (or in other words, without a basically fair procedure). <i>(cont’d on next page...)</i>	

	<p>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 such that it is fair to conduct the litigation. In civil procedure, this means that the court must have a basis to exercise personal jurisdiction.</p> <p>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. The chapters in Part III 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.</p> <p>Learning Outcomes: After Chapters 6-10 you should:</p> <ul style="list-style-type: none"> • be familiar with pertinent statutory laws that govern personal jurisdiction • understand the historical roots of the doctrine • understand the modern personal jurisdiction doctrine • understand the differences between general and specific jurisdiction • understand the alternatives to specific jurisdiction • understand how to answer personal jurisdiction bar exam questions • understand long arm statutes and the Constitutional bases for service 	
Class 8 (9/12)	<p>Ch. 6 The Evolution of Personal Jurisdiction</p> <p>A. Early History: <i>Pennoyer</i></p> <p>B. Doctrinal Evolution of <i>Pennoyer</i></p>	147-164
	<u>Week 5</u>	
Class 9 (9/17)	<p>Ch. 6 The Evolution of Personal Jurisdiction (cont'd)</p> <p>C. The Modern Era of Personal Jurisdiction: <i>International Shoe</i></p> <p>Ch. 7 Specific <i>In Personam</i> Jurisdiction</p> <p>A. The Test for Specific Jurisdiction: <i>World-Wide Volkswagen</i></p>	<p>164-178</p> <p>179-201</p>
Class 10 (9/19)	<p>Ch. 7 Specific <i>In Personam</i> Jurisdiction (cont'd)</p> <p>B. The Test for Specific Jurisdiction (cont'd): <i>Burger King</i></p> <p>C. Personal Jurisdiction in Federal Court</p>	201-214
	<u>Week 6</u>	
Class 11 (9/24)	<p>Ch. 7 Specific <i>In Personam</i> Jurisdiction (cont'd)</p> <p>D. Stream of Commerce Problems: <i>Asahi</i></p>	214-233

Class 12 (9/26)	Ch. 7 Specific <i>In Personam</i> Jurisdiction (cont'd) E. The “Arises Out of” Element F. Personal Jurisdiction in the Internet Age Ch. 8 Other Constitutional Bases for Personal Jurisdiction A. General <i>In Personam</i> Jurisdiction: <i>Daimler</i>	233-248 249-268
	<u>Week 7</u>	
Class 13 (10/1)	Ch. 8 Other Constitutional Bases for Personal Jurisdiction (cont'd) B. <i>In Rem</i> and <i>Quasi in Rem</i> Jurisdiction: <i>Shaffer</i> C. “Transient Presence” Jurisdiction: <i>Burnham</i> D. Consent and Waiver	268-305
Class 14 (10/3)	Ch. 9 Long Arm Statutes A. Constitutional v. Statutory Limits on Personal Jurisdiction B. Interpreting Long Arm Statutes C. Long Arm Provisions in Federal Courts	307-325
	<u>Week 8</u>	
Class 15 (10/8)	Ch. 10 Constitutional Due Process Requirements: Notice and Service A. The Constitutional Standard for Adequate Notice: <i>Mullane</i> B. Implementing Due Process: Statutes and Rules Governing Service C. Service of Process in State Courts D. The Relation of Service of Process to Personal Jurisdiction	327-363
	<u>PART IV – VENUE</u> Objectives: This Part introduces the concept of venue, which refers to the particular court within a court system where a plaintiff can file a lawsuit. Requirements to satisfy venue are additional to the jurisdictional prerequisites. Thus, even if a plaintiff satisfies 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. In addition, a case may be dismissed on grounds of <i>forum non conveniens</i> , a doctrine that allows a court to dismiss a case so that it can be filed in a more convenient forum. A <i>forum non conveniens</i> dismissal is premised on the assumption that the plaintiff can, in fact, refile the case in a foreign venue.	

	Learning Outcomes: After Chapters 11 and 12 you should: <ul style="list-style-type: none"> • understand the pertinent statutes under Title 28 of the U.S. Code • understand statutory venue and transfer of venue concepts • understand the common law power of <i>forum non conveniens</i> 	
Class 16 (10/10)	Ch. 11 Venue: Statutory Allocation of Cases within a Court System <ul style="list-style-type: none"> A. The General Federal Venue Statute B. The Meaning of “Resident” under Subsection (1) C. The Meaning of “Substantial Part” under Subsection (2) D. The Fallback Provision E. Specialized Venue Statutes 	367-384
	<u>Week 9 – MIDTERMS WEEK</u>	
Class 17 (10/15)	TENTATIVE DATE FOR MIDTERM EXAM—Good Luck!	no new readings
Class 18 (10/17)	TENTATIVE DATE FOR REVIEW OF MIDTERM EXAM	no new readings
	<u>Week 10</u>	
Class 19 (10/22)	Ch. 12 Challenges to Venue: Transfers and Dismissals <ul style="list-style-type: none"> A. Statutory Transfers and Dismissals in Federal Court B. Common Law Dismissals: <i>Forum Non Conveniens</i> C. Transfers and Dismissals in State Court 	385-416
	Ch. 13 Basic Pleading (see objectives and learning outcomes below) <ul style="list-style-type: none"> A. Introduction to Pleading 	419-421
	<u>PART V – PLEADING</u> <p>Objectives: Part IV marks a shift in our studies away from the early forum-selection-based topics of jurisdiction and venue and toward the filing of a lawsuit itself. Pleadings communicate the nature of the lawsuit, define and shape the issues, furnish a basis for the evidence, and provide a foundation for precluding the re-litigation of issues or claims.</p> <p>A pleading sets forth either an affirmative claim for relief or a response to a claim for relief. When drafting pleadings for federal court, the parties must comply with federal and local rules. The rules generally 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.</p> <p>In responding to the complaint, the defendant has many choices. For instance, 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. Chapter 14 aims to introduce us to these decisions. There are also circumstances under which pleadings can be amended. Chapter 16</p>	

	<p>will introduce us to those.</p> <p>In addition, there are care and candor requirements for proceeding in court, which we will encounter in Chapter 15. These are policed by rules of professional conduct, Rule 11 of the FRCP, statutes, the inherent power of the courts to control litigation, and legal malpractice law.</p> <p>As we will see, Rule 11 in particular 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.</p> <p>Learning Outcomes: After Chapters 13-16 you should:</p> <ul style="list-style-type: none"> • know the Federal Rules that govern pleadings: FRCP 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 15, and 55 • know the six stages of litigation: investigative, pleading, discovery, pre-trial, trial and appeals, and how the FRCP apply to each of the stages • know how a civil action is commenced, and the various steps in the pleading stage of litigation • understand notice pleading and the sufficiency of the complaint under the Federal Rules • understand the heightened pleading requirement (<i>cont'd on next page...</i>) • understand the various ways of responding to a complaint and familiarity with Rule 12 motions • understand Rule 11 and its application • be familiar with the procedure for presenting a Rule 11 motion • understand the process of amending pleadings and the applicable rules 	
Class 20 (10/24)	<p>Ch. 13 Basic Pleading</p> <p>A. Notice Pleading</p> <p>B. Heightened Pleading “With Particularity”</p>	427-453
	<u>Week 11</u>	
Class 21 (10/29)	<p>Ch. 13 Basic Pleading (cont'd)</p> <p>C. Plausible Pleading</p> <p>Ch. 14 Responding to the Complaint (or Not)</p> <p>A. Doing Nothing—the Default Option</p>	<p>453-473</p> <p>475-486</p>
Class 22 (10/31)	<p>Ch. 14 Responding to the Complaint (or Not) (cont'd)</p> <p>B. Moving to Dismiss—Rule 12 Motion Practice</p> <p>C. Further Pleading</p>	486-524

	<u>Week 12</u>	
Class 23 (11/5)	Ch. 15 Care and Candor in Pleading A. Reasonable Inquiry B. Good Faith Arguments for Changes in the Law C. Proper Purpose D. Procedure for Rule 11 Sanctions	525-558
Class 24 (11/7)	Ch. 16 Amending Pleadings A. Amending Without Leave B. Amending Before Trial with Leave C. Amending During and After Trial with Leave	559-580
	<u>Week 13</u>	
Class 25 (11/12)	Ch. 16 Amending Pleadings (cont'd) D. Amending Claims or Defenses after the Limitations Period Ch. 17 Joinder of Claims and Parties A. Joinder of Multiple Claims under the Federal Rules B. Joinder of the Parties to the Original Action	580-603 607-623
	<u>PART VI—JOINDER OF CLAIMS AND PARTIES</u> Objectives: This Part introduces us to the concept of joinder. If one plaintiff asserts a single claim against one defendant, and that is the entire scope of a lawsuit, then there is no issue of joinder. But 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. Learning Outcomes: After Chapters 17 and 18 you should: <ul style="list-style-type: none"> • know FRCP 13, 14, 18, 19, 20, 21, 22, 23, and 24 • understand joinder of multiple parties • know the difference between affirmative defenses, counterclaims, and crossclaims, and how the joinder rules apply • know the difference between interpleader and intervention • understand statutory interpleader, 28 U.S.C. § 1335 • be familiar (by lecture, exercise, or handout) with the concept of a class action under Rule 23 	
Class 26 (11/14)	Ch. 17 Joinder of Claims and Parties C. Counterclaims under the Federal Rules D. Crossclaims Against Co-parties E. Joinder by Defending Parties: Impleader under Rule 14 F. Asserting Additional Claims under Rule 14	624-646

	<u>Week 14</u>	
Class 27 (11/19)	Ch. 18 Complex Joinder A. Joinder of Parties Under Rule 19 B. Intervention Under Rule 24 C. Interpleader	647-683
Class 28 (11/21)	<u>***TENTATIVE*** FINAL EXAM</u> (Depending on our pace and the possibility of unforeseen schedule changes, we may end up needing this day to wrap up loose ends, but <u>please calendar this as a potential exam date until further notice.</u>)	no new readings
	<u>Week 15</u>	
Class 29 (11/26)	<u>LIKELY FINAL EXAM OR REVIEW OF FINAL EXAM</u> (If we wrap up the semester in time to take the final on 11/21, we will use this date to review the final. However, it is not unusual to fall a day behind, so <u>calendar this as a potential exam date until further notice.</u>)	no new readings
Holiday (11/28)	HAPPY THANKSGIVING!	
	<u>Week 16 or 17</u>	
DATE & TIME TBA	UNIFORM 1L CIVIL PROCEDURE EXAM PLEASE SEE THE OFFICIAL TMSL EXAM SCHEDULE FOR THE DATE, TIME, AND LOCATION OF THE UNIFORM EXAM (not yet published as of the initial date of this Syllabus)	ROOM TBA