

**CIVIL PROCEDURE SYLLABUS**  
**Fall 2012 (evening)**  
**Prof. Bruhl (aabruhl@central.uh.edu)**

Welcome to Civil Procedure. In most of your other law school classes, you will learn about substantive law, i.e. what rights and duties people have, how people can structure their legal relationships, etc. In this class, we will focus on how those substantive rights and duties are vindicated and enforced in the civil courts, with particular emphasis on the federal district courts.

**COURSE MATERIALS**

The required texts for this course are:

- Freer & Perdue, *Civil Procedure: Cases, Materials, and Questions* (Lexis, 6th ed. 2012) (either hardbound or loose-leaf version);
- *Federal Rules of Civil Procedure* (LexisNexis, 2012-2013 ed.).

They are available in the UH Law bookstore.

Additional materials such as recent cases and actual court documents will be posted on TWEN (the Westlaw bulletin board service).

Optional materials: Some people benefit from using study aids or other supplemental materials. Whether to purchase such additional materials is up to you; you are not required to use them, and I will not use them in class. However, on the first day of class I will mention a few study aids that I think are better than others.

**COURSE REQUIREMENTS AND OBJECTIVES**

*Exam* – Your grade will be based primarily on a scheduled final exam. The test is open book/open notes in that you may use the casebook, the Federal Rules of Civil Procedure booklet, extra readings I post on TWEN, your class notes, handouts from class, and your outline (including an outline you make as part of a group). You may not use any other material (including commercial outlines or study aids, the internet, etc.).

*Class participation* – Participation in class discussion is necessary both for your own understanding of the material and for the benefit of your classmates. I may increase your grade by one notch for outstanding participation and lower it for failing to participate adequately or for consistently being unprepared for class.

*Drafting exercises* – There will be a few required drafting exercises. For example, you will draft a complaint and an answer. These exercises are considered part of class participation; as noted above, your grade can be lowered for participating inadequately, and that includes failing to make a good-faith effort to complete these exercises.

*Practice exams and exam preparation* – I will distribute a practice midterm to help you get an idea of what law school exams are like and to check on how well you are learning the material. The practice midterm will not be part of your grade, but I will show you sample answers that will help you evaluate your performance. If you want to meet with me individually, I will go over your answers with you.

Sample final exams will be available to help you prepare for the final exam.

*Attendance policy* – Regular attendance (at least 80%) is required as a matter of ABA and Law Center policy, and you can be dropped from the course for failing to meet this minimum.

*Learning objectives* – The objectives of the course are for you to understand the key rules and doctrines of civil procedure, to be able to produce basic litigation documents, to appreciate the ethical and professional issues that arise in connection with civil procedure, and to be able to integrate the information you learn in this class with other practical and analytical skills necessary to the practice of law.

### OFFICE HOURS

You are welcome and indeed encouraged to come to my office (BLB, 1st floor) to discuss the course material, especially if you are having difficulty. Official office hours will be posted, but I am glad to talk to you whenever I am here, which is most of the time.

### READING ASSIGNMENTS/COURSE TOPICS

The readings from the casebook refer to many of the Federal Rules of Civil Procedure and some jurisdictional statutes. **When the casebook assignment discusses a certain rule or statute, you should also read that rule or statute in your Federal Rules of Civil Procedure booklet and be prepared to discuss it.**

Some of the reading assignments include material outside of the assigned textbooks, such as actual court documents or recent cases that illustrate developments in the law. These materials will typically be distributed on TWEN in advance of the relevant class session.

At a few points during the semester I will recommend that you complete online quizzes produced by CALI, <http://www.cali.org/>. These exercises are optional and will not be part of your grade, but I recommend them because I think they will be helpful to you.

Unless I advise otherwise, we will cover one of the assignments below per class session. Assignments are subject to change.

[CB = Freer & Perdue casebook]

- #1 Introduction/background.  
CB: 1-19.

### **Personal jurisdiction**

- #2 Constitutional limits on personal jurisdiction: historical background and *Pennoyer v. Neff*.  
CB: 21-32.
- #3 Modern approaches to personal jurisdiction: *International Shoe*.  
CB: 32-44.
- #4 Modern approaches, cont'd: *World-Wide Volkswagen*; long-arm statutes.  
CB: 44-60, 139-41 (stop with note 3 on p. 141).
- #5 Modern approaches, cont'd.  
CB: 61-77; *Clemens v. McNamee* (5th Cir. 2010) [TWEN].
- #6 Modern approaches, cont'd: recent developments in “stream of commerce” scenarios.  
CB: 77-94.
- #7 General vs. specific jurisdiction; jurisdiction by consent.  
CB: 95-106.
- #8 *In rem* and *quasi-in-rem* jurisdiction; transient presence.  
CB: 106-27.

### **Notice and Opportunity To Be Heard**

- #9 Notice; service of process.  
CB: 143-61.

\*Drafting exercise: We will pretend you are suing me for violating the federal Fair Housing Act by refusing to rent you an apartment on the basis of your sex. You will fill out a couple of the forms that are used to initiate a lawsuit. You can find these forms on the website of the U.S. District Court for Southern District of Texas, <http://www.txs.uscourts.gov/district/formsfees/>. In filling out these forms, do not include personal information like addresses and phone numbers.

1) Everyone will fill out the Civil Cover Sheet and bring it to class.

2.a) If your last name starts with A-L, fill out the Summons and bring it to class. (Do not complete the Proof of Service page, but bring that with you too.)

2.b) If your last name starts with M-Z, fill out the “Notice of a Lawsuit and Request to Waive Service of a Summons” form and bring it to class; also bring the “Waiver of Service of Summons” form, but you don’t need to fill that out.

- #10 Opportunity to be heard; interim relief.  
CB: 162-76; FRCP 64 & 65; skim Texas Civil Practice and Remedies Code ch. 61,  
available at <http://www.statutes.legis.state.tx.us/>.

### **Subject Matter Jurisdiction**

- #11 Introduction to federal subject matter jurisdiction; diversity jurisdiction: determining citizenship of individuals.  
CB: 177-91; *W. Va. Univ. v. Rodriguez* Notice of Removal [TWEN].
- #12 Diversity jurisdiction, cont'd: determining citizenship of entities, amount in controversy.  
CB: 191-214.
- #13 Federal question jurisdiction: *Mottley* and the well-pleaded complaint.  
CB: 214-22.
- #14 Federal question jurisdiction, cont'd.  
CB: 222-33; *Minton v. Gunn* (Tex. 2011) [TWEN].
- #15 Removal to federal court.  
CB: 233-39; *Spamhaus* Notice of Removal and *Clemens v. McNamee* Notice of Removal [TWEN];  
\*Drafting Exercise: Using materials I will give you, draft a Notice of Removal and bring it to class with you.

### **Venue**

- #16 Where is venue proper?  
CB: 241-52.
- #17 Change of venue (transfer).  
CB: 252-58; *In re Volkswagen of America, Inc.* (5th Cir. 2008) [TWEN].
- #18 Forum non conveniens.  
CB: 258-71.
- #19 \*\*\*Practice exam. We will spend one day of class going over answers.\*\*\*  
As preparation for the practice exam, I recommend that you complete the CALI computer exercise called "Jurisdiction and Venue."

## **Pleadings**

- #20 The complaint: background and traditional understandings.  
CB: 283-97; Forms 11 & 13 (in your rules booklet); *Shives v. Sample* [TWEN].
- #21 The complaint, cont'd: recent developments (*Bell Atlantic v. Twombly* and *Ashcroft v. Iqbal*).  
CB: 297-311.
- #22 The complaint, cont'd: review of hypotheticals and sample complaints; dismissal under Rule 41.  
CB: 311-24;  
Handout with pleadings hypotheticals [TWEN];  
*Riches v. Vick* Complaint, *Clemens v. McNamee* Original Petition, *Lenz v. Universal Music* Second Amended Complaint, and *Branham v. Dolgencorp* Amended Complaint [all on TWEN] (You don't need to read these four documents carefully; just look them over and bring them to class.);  
CB: 325-28.
- #23 \*Drafting exercise – Working in pairs, each of you will draft a complaint and an answer. We will go over your documents in class.
- #24 Defendant's response: motions to dismiss under Rule 12.  
CB: 328-29, then go back to the prior chapter for 273-80.
- #25 Defendant's response: the answer; default judgments.  
CB: 330-37; *Lenz v. Universal Music* Answer and *Branham v. Dolgencorp* Answer [TWEN]. (You should bring the complaints in these two cases with you too.)
- #26 Amended pleadings (Rule 15).  
CB: 337-46.
- (Note: Now that we have covered Rules 12 and 15, I recommend that you do the CALI computer exercise called "Waiver Under Rule 12.")
- #27 Rule 11 sanctions.  
CB: 346-51, 358-59; *Marlin v. Moody Nat'l Bank* (5th Cir. 2008) [TWEN].

## **Discovery**

- #28 Overview; discovery tools.  
CB: 361-76. (Note: This reading refers to a great many rules concerning discovery. You can skim the various rules rather than worrying about all the details. In class, we will cover a few highlights regarding the various discovery tools and then will do the *World-Wide Volkswagen* exercise described at the bottom of p. 368.)

- #29 Privilege and work product doctrine.  
CB: 388-404.

### **Adjudication, With and Without Trial**

- #30 Summary judgment.  
CB: 487-501.
- #31 Summary judgment, cont'd.  
CB: 501-08;  
Excerpt from *Scott v. Harris* (2007) [TWEN] – be sure to watch the videotape cited in footnote 5 of the Court's opinion; then read the blog post at [http://www.concurringopinions.com/archives/2008/01/how\\_should\\_cour.html](http://www.concurringopinions.com/archives/2008/01/how_should_cour.html).
- #32 Judgment as a matter of law; new trial.  
CB: 508-33.

### **Choice of Law (The Erie doctrine)**

- #33 *Erie Railroad v. Tompkins*.  
CB: 535-48.
- #34 Applying the *Erie* doctrine: *Byrd v. Blue Ridge* and *Hanna v. Plumer*.  
CB: 548-70.
- #35 Additional *Erie* complexities; review of *Erie*.  
*All Plaintiffs v. All Defendants (In re Lease Oil)* (5th Cir. 2011) [TWEN]; CB: 605-11.

### **Preclusion**

- #36 Claim preclusion.  
CB: 613-32.
- #37 Issue preclusion.  
CB: 632-49 [give special attention to the Sally and Joe hypotheticals in the reading].
- #38 By whom can preclusion be asserted? (The mutuality problem).  
CB: 649-65.

## **Scope of Litigation – Joinder and Supplemental Jurisdiction**

- #39 Claim joinder by plaintiffs.  
CB: 667-69, 671-79.
- #40 Party joinder by plaintiffs.  
CB: 679-91. (In connection with this material, you might find it useful to use the interactive tool on supplemental jurisdiction available at <http://demonstrations.wolfram.com/SupplementalJurisdiction/>. To get it to work, you will have to download the free Wolfram CDF Player file. I will show you how it works in class.)
- #41 Claim joinder by defendants: counterclaims and cross-claims.  
CB: 692-704.
- #42 Joinder of additional parties: impleader under Rule 14(a).  
CB: 704-19.