

**CIVIL PROCEDURE SYLLABUS**  
**Fall 2014**  
**Prof. Bruhl (aabruhl@central.uh.edu)**

Welcome to Civil Procedure. In most of your other law school courses, you will learn about substantive law, i.e. what rights and duties people have, how people can structure their legal relationships, etc. In this course, 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:

1. Freer & Perdue, *Civil Procedure: Cases, Materials, and Questions* (Lexis, 6th edition, 2012). Students may purchase either the hardbound edition (ISBN: 9780769847429) or the loose-leaf version (ISBN: 9780769847368).
2. *Federal Rules of Civil Procedure* booklet (LexisNexis, 2014-15 edition, ISBN: 9781630436032). Alternatively, students may purchase a used copy of the 2013-14 edition of the LexisNexis *Federal Rules of Civil Procedure* booklet (ISBN: 9780769876658). The relevant material has not changed, so either of these two editions is fine.
3. You should also download the 2014 Update to the casebook, which is available for free on the LexisNexis website at <http://www.lexisnexis.com/store/images/Supplements/3515-2014Supplement.pdf>.

Additional reading materials, such as recent cases and actual court documents, will be posted from time to time on TWEN. (TWEN is the Westlaw bulletin board service, which you will be able to access once you receive your Westlaw ID numbers.)

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 material I post on TWEN, your class notes, handouts from class, and your outline (including an outline you make as part of a group), all in hardcopy form. You may not use any other material (including commercial outlines or study aids, the internet, etc.) during the exam. If you have a question about what materials are allowed, ask well before the exam.

**Class participation** – Participation in class discussion is necessary both for your own understanding of the material and for the benefit of your classmates. At my discretion, I may increase your grade by one notch (e.g., B+ to A-) for outstanding participation (judged primarily

by quality, not quantity). Typically, a handful of students will earn this adjustment. In rare cases, I may lower a grade by one notch for failing to participate adequately or for consistently being unprepared for class.

**Drafting exercises, quizzes, etc.** – There will be a few required drafting exercises (e.g, you will draft a complaint, an answer, and a notice of removal), quizzes, and the like. These items are considered part of class participation; as noted above, your grade can be lowered for inadequate participation, and that includes failing to make a good-faith effort on these exercises. In addition, skills developed in the drafting exercises will be tested on the final exam.

**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 and answers will be available (through TWEN) 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. We have 40 regularly scheduled class sessions, so this means you should not miss more than 8 of them. I treat the sign-in sheet that I circulate at the beginning of each class session as presumptive evidence that you were present (or not).

**Laptops and other electronics** – Students are permitted to use laptops, tablets, and the like for taking notes or for other class-related purposes, but such devices are not to be used for other purposes during class. Students are not permitted to record class sessions.

**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 several 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.

**Relation to bar exam** – Beginning in February 2015, federal civil procedure will be tested on the Multistate Bar Examination, which is one component of the Texas Bar Examination. (See announcement here: [www.ncbex.org/home/multistate-bar-examination-news/](http://www.ncbex.org/home/multistate-bar-examination-news/).) Therefore, this course should help you prepare for the bar exam. The Texas Bar Examination also covers state civil procedure; you can learn more about state civil procedure in additional courses in your 2L and 3L years.

## OFFICE HOURS

You are welcome and indeed encouraged to come to my office (BLB, 1st floor) to discuss the course material. My official office hours are M 115-230pm, T 230-400pm & Th 1030-1130am, but I am glad to talk to you other times as well.

## 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 discusses a certain rule or statute, you should 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, recent cases that illustrate developments in the law, or videos. Where necessary, these materials will be distributed on TWEN in advance of the relevant class session.

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

CB = Freer & Perdue casebook

Update = 2014 Update to casebook

- #1 Introduction to Civil Procedure.  
CB: 1-19.

### **Personal jurisdiction**

- #2 Constitutional limits on personal jurisdiction: historical background and *Pennoyer v. Neff*.  
CB: 21-32. (Some additional detail on the factual background of *Pennoyer v. Neff*, which you might find helpful in understanding the case, can be found here: <http://courses.washington.edu/civpro03/assignments/PerduePennoyer.doc>. The link takes you to a short excerpt from an article about the case.)
- #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 (and Update p. 5), 139-41 (stop with note 3 on p. 141).
- #5 Modern approaches, cont'd.  
CB: 61-77; *Walden v. Fiori* (2014) [TWEN].
- #6 Modern approaches, cont'd: recent developments in “stream of commerce” scenarios.  
CB: 77-94; *Ainsworth v. Moffett Engineering* (5th Cir. 2013) [TWEN].
- #7 General vs. specific jurisdiction; jurisdiction by consent.  
Update pp. 5-14, CB: 100-06.
- #8 *In rem* and *quasi-in-rem* jurisdiction; transient presence.  
CB: 106-27.

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

#9 Notice and service of process; provisional remedies.

CB: 143-62. (*Connecticut v. Doeher*, which starts on p. 163, will be covered today by lecture; you do not need to read that case.)

**\*Drafting exercise:** Suppose that you represent an artist whose federal copyright I have infringed by posting the copyrighted work on the internet. 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 real addresses and phone numbers.

1) Fill out the Civil Cover Sheet (as best you can, given what you know) and bring it to class.

2) Fill out the Summons and bring it to class. (Do not complete the Proof of Service page, but bring that with you too.)

3) 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.

Note that the documents you are filling out in items 2 and 3 above are ordinarily alternatives. That is, you would use the summons for formal service of process but you would use the waiver form if the defendant will waive formal service. But for purposes of this exercise, I am having you fill out both.

## **Subject Matter Jurisdiction**

#10 Introduction to federal subject matter jurisdiction; diversity jurisdiction: determining citizenship of individuals.

CB: 177-91; *W. Va. Univ. v. Rodriguez* Notice of Removal [TWEN].

#11 Diversity jurisdiction, cont’d: determining citizenship of entities, amount in controversy. CB: 191-214 (and Update pp. 16-17).

#12 Federal question jurisdiction: *Mottley* and the well-pleaded complaint. CB: 214-22.

#13 Federal question jurisdiction, cont’d. CB: 222-33; *Gunn v. Minton* (2013) [TWEN].

#14 Removal to federal court. CB: 233-39 (and Update p. 18); *Mumfrey v. CVS Pharmacy* (5th Cir. 2013) [TWEN]; *Clemens v. McNamee* Notice of Removal and *Branham v. Dolgencorp* Notice of Removal [TWEN].

**\*Drafting Exercise:** Using materials I will post on TWEN, draft a Notice of Removal and turn it in via TWEN. Due date to be announced.

## Venue

- #15 Where is venue proper?  
CB: 241-52.
- #16 Change of venue (transfer).  
CB: 252-58 (and Update pp. 19-20); *In re Volkswagen* (5th Cir. 2008) [TWEN].
- #17 Forum non conveniens.  
CB: 258-71. (Please read *Piper* carefully. We can use the complicated procedural history of that case to review much of the material we have covered so far.)

**\*\*\*A practice midterm exam covering much of the material above is posted on TWEN. We will spend one day of class (class #19) going over answers.\*\*\***

## Pleadings

- #18 The complaint: background and traditional understandings.  
CB: 283-97; Forms 11 & 13 (in your rules booklet); *Shives v. Sample* [TWEN].
  - [#19] We will spend this day going over your **practice midterm exam**, so bring your answers with you. No other reading assignment for this day of class.
  - #20 The complaint, cont'd: recent developments (*Bell Atlantic v. Twombly* and *Ashcroft v. Iqbal*).  
CB: 297-311.
  - #21 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, *De Leon v. Perry* Complaint, and *Branham v. Dolgencorp* Complaint and Amended Complaint [all on TWEN] (You don't need to read these complaints carefully; just look them over and have them available during class.);  
CB: 325-28.
- \*Drafting exercise** – Working in pairs, each of you will draft a complaint and an answer. The deadlines for completing your documents will be announced as the exercise approaches.
- #22 Defendant's response: motions to dismiss under Rule 12.  
CB: 328-29, then go back to the prior chapter and read pp. 273-80. (Note: Rule 12 is one of the most important and most complicated rules. You will need to read it very carefully in order to answer the questions on pp. 275-76.)

- #23 Defendant's response: the answer; default judgments.  
CB: 330-37; *Baron v. Tauch* (5th Cir. 2014) [TWEN]; *De Leon v. Perry* Answer and *Branham v. Dolgencorp* Answer [TWEN]. (As with the complaints in class #21, you can quickly skim these two documents and then we will look at them more carefully during class. You should have the complaints in these two cases with you too.)
- #24 Amended pleadings (Rule 15).  
CB: 337-46.
- #25 Rule 11 sanctions.  
CB: 346-59.

### **Discovery**

- #26 Overview; discovery tools.  
CB: 361-76 (and Update p. 21). Two notes on this assignment:
- 1) 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.
  - 2) Page 21 in the 2014 Update refers to proposed amendments to the discovery rules. Those amendments, if finally approved, would take effect December 2015. You don't need to worry about applying the proposed amendments for purposes of your exam this semester, but you should be aware of the likely changes for purposes of your future careers.
- #27 Privilege and work product doctrine.  
CB: 388-404.

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

- #28 Summary judgment.  
CB: 487-501.
- #29 Summary judgment, cont'd.  
CB: 501-08 (and Update pp. 22-24);  
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).
- #30 Jury selection.  
CB: 460-87 (and Update p. 22)

- #31 Judgment as a matter of law; new trial.  
CB: 508-33.

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

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

### **Preclusion**

- #35 Claim preclusion.  
CB: 613-32; *Comer v. Murphy Oil USA, Inc.* (5th Cir. 2013) [TWEN].
- #36 Issue preclusion.  
CB: 632-42. (Give special attention to the Sally and Joe hypotheticals in the reading.)
- #37 Mutuality of estoppel: Which parties does the judgment bind and benefit?  
CB: 642-65.

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

(In connection with the joinder unit, you might find it helpful to use the interactive tool on supplemental jurisdiction available at <http://demonstrations.wolfram.com/SupplementalJurisdiction/>.)

- #38 Claim joinder by plaintiffs; party joinder by plaintiffs.  
CB: 667-69, 671-91.
- #39 Claim joinder by defendants: counterclaims and cross-claims.  
CB: 692-704.
- #40 Joinder of additional parties: impleader under Rule 14(a).  
CB: 704-19 (and Update p. 27).

### **Final exam**

December 5, 9am-1pm. See first page of syllabus for more information, and see TWEN for sample exams and answers.