

Civil Procedure (Section No. 12561; Course No. 5406)
Professor Lonny Hoffman
Fall 2018 Course Details and Syllabus

Course Description

In this class we will study the procedural laws that apply to lawsuits filed in state and federal courts. Although a lawsuit is one means by which disputes are resolved, it turns out to be one that is rarely used. Far more often, disputes are resolved without litigation, or not resolved at all. But when someone does file a lawsuit, there are rules that govern everything about it: from the procedures that apply to a suit's commencement all the way through to those that bear relevance at the end of a case, which sometimes (though not very often) is the trial. Over the entire arc of the semester, we will study these rules closely to learn what they are and how they work, and how persuasive legal arguments can be constructed around them. Our study of procedure will also examine an array of professionalism issues, both ethical and strategic, that litigators—that is, the people who bring and defend lawsuits—regularly face. Attentiveness to both the doctrinal law and the practical application of that law by lawyers will be a recurrent approach we will take.

Course Materials

You do not have to buy a casebook for this class. Instead, I've prepared course materials for you (listed as "CM" in the syllabus below). These materials, saved in searchable .pdf format, are available for you to download from [this link](#) from my UHLC webpage.

You also will need access to the procedural rules and statutes that govern federal civil cases. One option is to buy the rulebook that I've reserved in the UH bookstore: West Publishing: FEDERAL RULES OF CIVIL PROCEDURE, 2018-2019 EDUCATIONAL EDITION, ISBN: 9781640209343. (Other published versions of rulebooks will also do if you find one elsewhere for less. Just be aware that you need a rulebook published no earlier than January 2016.)

An alternative to buying any book is to access the rules and statutes online. One good site is <http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure>. The rules are also available here: <http://www.law.cornell.edu/rules/frcp/>. Current statutes can be found in numerous places, such as www.law.cornell.edu/uscode/text. Another good site for statutes is <http://uscode.house.gov/search/prevcode.shtml>. It provides links both to the current version of the U.S. Code, as well as to prior enacted versions (which is helpful when you are interested in seeing a prior version of the statute).

Class Schedule

This class meets on Mondays, Tuesdays, and Wednesdays from 10:30-11:45 in Room TUII240.

Classroom Time

We will use classroom time in a number of different ways. On some days, we will follow a traditional lecture or question-and-answer format. The best preparation for these class days is just to read the assigned material carefully before we meet. On other class days we will go over specific practice problems that are in your course materials. You will get the most out of these classes by preparing the problems in advance. As the syllabus indicates, you are required to turn in some problems before class to your assigned teaching assistant. Other problems are for you to work on your own; we'll discuss these together in class. Of course, the more you put into all the problems, the more you will get out of the class time we spend going over them.

Attendance and Participation

You must attend at least 80% of the classes. I may lower a final grade or take other appropriate disciplinary action (up to entering a failing grade) if it is determined that a student is absent from more than 20% of the classes. I treat the sign-in sheet that I circulate each class period as presumptive evidence that you were there (or not there). Since we have 38 regularly scheduled classes, this means you should not miss more than 8 class sessions. School rules allow me to improve a student's grade by as much as one-third of a letter grade based on class performance (e.g., from B to B+). Keep in mind that in-class performance is based on the overall quality, not quantity, of your participation. Typically, only a handful of students earn this participation increase. On rare occasions, I've reduced a student's grade for failure to attend or participate.

If we end up having to cancel a regularly scheduled class for any reason, I will let everyone know in advance by email.

Grading

The final examination is on November 30, 2018. It will be a take-home, open-book exam comprised of two medium-length essay questions (worth 80% of the final exam grade) and 20 multiple-choice questions (worth the remaining 20% of the exam grade). You may not consult with anyone else about the exam once the exam period has started. Most of my past exams are available from [this link](#) from my UHLC webpage. We also will be working many practice exam problems throughout the semester to help you prepare for the final. I will give you more details about the exam during the semester.

The Teaching Assistant Program for this Course. I use a unique teaching assistant program in this class that the vast majority of my former students have told me they find very helpful. We are fortunate to have several teaching assistants who will be working with us this semester. I will introduce all of them and discuss the teaching assistant program in depth when we meet the first week of school.

Academic support at the Law Center. There are lots of support options here. Four of the best, I think, are:

1. The Legal Writing Center (which can help on writing and studying generally). Go to: <http://www.law.uh.edu/lrw/legal-writing.asp>.
2. Talking with your professors and the teaching assistants assigned to your classes. That's what we are here for.
3. The 1L mentoring program. All of you have both a faculty mentor and an upper level student mentor through this program. If you aren't sure who those folks are, feel free to ask me and I'll help you figure it out.
4. Joining a student organization. Can be both enriching for law school and a good source of academic support. A list of all organizations is here: <http://www.law.uh.edu/organizations/homepage.asp>. If you have trouble linking to a group, Kristan Withers, the Law Center's liaison for the student organizations, may be able to help. Her email is kdwithers@central.uh.edu.

Other kinds of support. Law school can be stressful for many reasons. But you aren't alone if you are dealing with stressful issues, no matter how big or small they may feel. At the Law Center, in the broader university, and through the State Bar, there are a number of different sources of support if you need it.

1. Of course, you are always welcome to come see me. But, if you'd rather talk to someone else, Dean Sondra Tennessee in Student Services is another resource. She's been helping students for many years. Her office is located in the Office of Student Services, which is across from the student commons. Her email is stennessee@central.uh.edu; her phone is (713) 743-2182.
2. The university's Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling (713) 743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus. Their webpage can be accessed here: http://www.uh.edu/caps/outreach/lets_talk.html.
3. Finally, the State Bar has an amazing group called Texas Lawyers' Assistance Program (TLAP; web address is <https://www.tlaphelps.org/>) that "provides

confidential help for lawyers, law students and judges who have problems with substance abuse and/or mental health issues.” Students can call (24 hours a day/7 days a week) to get help with mental health and substance abuse issues. The number is (800) 343-8527.

Contact Information and Office Hours. My office is BLB 124, which is in the faculty suites on the first floor of BLB. Everyone is welcome to come by during my office hours (Tuesdays and Wednesdays from 12:00-1:00 pm) or, if you prefer, you can always call or email in advance to schedule an appointment at another convenient time. My office phone is (713) 743-5206; my email is lhoffman@uh.edu. My assistant is Lillian White. Her phone is (713) 743-7674; her email is lawwhite@central.uh.edu.

Course Outline and Syllabus

You can use this course outline and syllabus as a roadmap for where we will be going during the semester. The dates are estimates of when we will get to this material. To help you plan in advance, heavier-than-usual reading assignments are listed **in bold**.

<p>Class #1- Aug 20</p> <p>I. Introduction to Civil Procedure</p> <p>A. Introduction to the Course and Overview of Course Themes</p> <p><u>Powerpoint slides to accompany Class #1-3</u></p>	<p>In advance of class read:</p> <ul style="list-style-type: none"> · Mary Brigid McManamon, <i>The History of the Civil Procedure Course: A Study in Evolving Pedagogy</i> (CM 1-6), article publicly available at http://works.bepress.com/mary_brigid_mcmanamon/1/ <p>(Clarifying Note: when I list how you can publicly access a source, I do not mean you need to go to the link. You are only responsible for reading the excerpted pages that are included in the CM. I'm just giving you the link in case you want to read more than the excerpt.)</p> <ul style="list-style-type: none"> · Paul MacMahon, <i>Proceduralism, Civil Justice and American Legal Thought</i> (CM 7-8), article publicly available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2279153 · Lonny Hoffman, <i>A Parting Reprise</i> (CM 9-23), article publicly available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=898240 · Stephen Shapiro, <i>Teaching First-Year Civil Procedure and Other Introductory Courses by the Problem Method</i> (CM 24-26), article publicly available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1426113 · Federal Judicial Center, <i>The U.S. Legal System: A Short Description</i> (CM 27-30), article publicly available at http://www.fjc.gov/public/pdf.nsf/lookup/U.S._Legal_System_English07.pdf/\$file/U.S._Legal_System_English07.pdf · Suggested (optional) additional assignment in advance of Aug 22 class: Watch <i>Full Faith and Credit</i>, video by Columbia Law Review students, at http://www.youtube.com/watch?v=0XgObo75Y0Q (warning: if this were a movie, it would surely be given an R rating).
<p>Class #2- Aug 21</p> <p>B. How Lawyers Use Procedure as Strategy; American Reliance on Private Enforcement of Law</p>	<p>In advance of class read:</p> <ul style="list-style-type: none"> · Charles Adams, <i>World-Wide Volkswagen v. Woodson – The Rest of the Story</i> (CM 31-38) (permission granted by author to use). · Burbank, Farhang and Kritzer, <i>Private Enforcement</i> (CM 39-45), article publicly available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2325579

<p>Class #3- Aug 22 (note: for this class we will meet from 9:00-10:15 am, rather than our regularly scheduled class time)</p> <p>C. Adoption of the Rules, and Rulemaking</p>	<p>In advance of class read: (Note: I have bolded the reading assignment for this class to indicate that it is heavier than usual; not so much because of the number of pages you have to read, but because of the density of subject matter covered):</p> <ul style="list-style-type: none"> • Subrin, <i>How Equity Conquered Common Law: The Federal Rules of Civil Procedure in Historical Perspective</i> (CM 46-58), article publicly available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2084735 • Thomas Main, Traditional Equity and Contemporary Procedure (CM 59-63) article publicly available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=421320 • Mulligan and Staszewski, The Supreme Court's Regulation of Civil Procedure; Lessons from Administrative Law (CM 64-65), article publicly available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1897864 • Coleman, One Percent Procedure, (CM 66-70), article publicly available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2795232
<p>Class #4- Aug 27</p> <p>II. The Civil Lawsuit</p> <p>A. Notice Pleading</p> <p>Powerpoint slides to accompany Class #4-7</p>	<p>In advance of class read:</p> <ul style="list-style-type: none"> • Notice Pleading Questions for Discussion (CM 71) • Fed. R. Civ. P. 8 and 9 • <i>Swierkiewicz</i> Opinion and Plaintiff's Complaint (CM 72-88). Note: you can skim through the complaint; it's included mostly for illustrative purposes. • Adam Steinman, <i>The Rise and Fall of Plausibility Pleading</i> (CM 89-93), article publicly available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2753142 • <i>Ashcroft v. Iqbal</i> (CM 94-111) <p>Suggested (optional) video to watch on pleading standards: http://www.youtube.com/watch?v=e9nn-bhcBp0</p>

<p>Class #5- Aug 28</p> <p>(continue prior discussion of notice pleading)</p>	<p>In advance of our class read:</p> <ul style="list-style-type: none"> · Sinnar, <i>The Lost Story of Iqbal</i> (CM 112-25), article publicly available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2883638 · <i>Coleman v. John Moore Services</i> (CM 126-28) · <i>Kidwell v. Digital Intelligence Systems</i> (CM 129-32) · <i>Guzman v. Hacienda Records and Recording Studio</i> (CM 133-34) <p>· Discuss in class Practice Problem for Notice Pleading- Problem #1 (CM 135). You will not turn in any answer; we will just work the problem together in class.</p>
<p>Class #6- Aug 29</p> <p>(continue prior discussion of notice pleading)</p>	<p>In advance of class:</p> <ul style="list-style-type: none"> · I will assign roles for arguing Practice Problem For Notice Pleading- Problem #2 (CM 136). You will not turn in any answer <p>Suggested (optional) additional reading:</p> <ul style="list-style-type: none"> · Arthur Miller, <i>From Conley to Twombly to Iqbal: A Double Play on the Federal Rules of Civil Procedure</i>, 60 Duke L. J. 1 (2010), article publicly available at http://scholarship.law.duke.edu/dlj/vol60/iss1/1/ · Lonny Hoffman, <i>Rulemaking in the Age of Twombly and Iqbal</i>, article publicly available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2123325
<p>Sep 3 – no class</p>	<p>Labor Day</p>

<p>Class #7- Sep 4</p> <p>B. Motions, Answers and Affirmative Defenses</p> <p>1. Defendant's Answer and (some) Rule 12 Motions: Rules 12(b)(6), 12(c) and Rule 12(e)</p>	<p>In advance of class read:</p> <ul style="list-style-type: none"> · Read Rules 8(b) and 8(c), 12(b)(6), 12(c) and 12(e) · Read Defendant's Answer from <i>Madrigal v. Kerry, Inc.</i> (CM 137-39). Note: Just skim; this is for illustrative purposes only; and · Prepare Exercise on Timing and Waiver (CM 140). You do not need to turn anything in. Prepare only for class discussion purposes.
<p>Class #8- Sep 5</p> <p>2. Rule 11: Certifications and Sanctions</p> <p>Powerpoint slides to accompany Class #9</p>	<p>In advance of class read:</p> <ul style="list-style-type: none"> · Rule 11 Questions to Discuss (CM 141-42) · Fed. R. Civ. P. 11 and text of advisory committee notes accompanying 1983 and 1993 amendments · H.R. 720, The Lawsuit Abuse Reduction Act of 2017 (CM 143-45) · Excerpt from Lonny Hoffman, <i>The Case Against the Lawsuit Abuse Reduction Act of 2011</i> (CM 146-63), article publicly available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1807123
<p>Sep 10 – no class</p>	<p>And we won't need to make up this class because we take advantage of an optional extra five minutes for every class period in the semester. Over the course of the semester, that extra few minutes translates into more than one additional class period.</p>
<p>Class #9- Sep 11</p> <p>C. Amendments</p> <p>Powerpoint slides to accompany Class #10-12</p>	<p>In advance of class read:</p> <ul style="list-style-type: none"> · Rule 15 Questions to Discuss (CM 164) · <i>On Track Innovations v. T-Mobile</i> (CM 165-74) · <i>Spencer v. Wal-Mart</i> (CM 175-77) · Susan Hauser, <i>The 2009 Amendment to Federal Rule 15(a)(1) – A Study in Ambiguity</i> (CM 178-97), article publicly available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1929795

<p>Class #10- Sep 12</p> <p>(continue prior discussion of amendments)</p>	<p>In advance of class read:</p> <ul style="list-style-type: none"> • <i>Anderson v. Bondex</i> (CM 195-98) • <i>Krupski v. Costa Crociere</i> (CM 199-216) • Robert Lusardi, <i>Rule 15(c) Mistake: The Supreme Court in Krupski...</i>, (CM 217-223), article publicly available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1971291
<p>Class #11- Sep 17</p> <p>(note: this class will start at 1:00 pm instead of our regular class time)</p> <p>(continue prior discussion of amendments)</p>	<p>In advance of class:</p> <ul style="list-style-type: none"> • Prepare Practice Problem for Amendments (CM 224-25). Turn in your answer to your TA before class. In advance of class, I will assign roles for arguing the problem together in class.
<p>Class #12- Sep 18</p> <p>D. Joinder of Claims and Parties; and Counterclaims and Cross-Claims</p>	<p>In advance of class read:</p> <ul style="list-style-type: none"> • Rules 13, 14, 18, 19, 20 and 23 • <i>Compass Exploration v. B-E Drilling Co.</i> (CM 226-28) • Mary Kay Kane, <i>Original Sin and the Transaction in Federal Civil Procedure</i> (CM 229-33), article publicly available at http://librarysource.uchastings.edu/repository/Kane/76TexLRev1723.pdf • <i>Kedra v. City of Philadelphia</i> (CM 234-39) • Douglas McFarland, <i>Seeing the Forest for the Trees</i> (CM 240-47), article publicly available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1957388 <p>In advance of this class, prepare Problem on Joinder and Amendments (CM 248). You will not turn in anything, and we will not assign any role plays. We will work the problem together in class.</p>
<p>Class #13 - Sep 19</p> <p>Pre-Litigation Issues</p>	<p>Special guest instructor for this class: Kevin Feeney, Senior Vice President, Chief Legal Officer and Secretary American Air Liquide Holdings, Inc.</p> <p>Readings to be provided</p>

Class #14- Sep 24	In advance of class:
III. Personal Jurisdiction, Venue, and Related Issues	<ul style="list-style-type: none"> • Personal Jurisdiction Questions to Discuss (CM 250-251) • Read <i>Pennoyer v. Neff</i> (CM 252-259) • Read Wendy Collins Perdue, <i>What's "Sovereignty" Got To Do With It? Due Process, Personal Jurisdiction, and the Supreme Court</i> (CM 260-263), article publicly available at https://scholarship.richmond.edu/law-faculty-publications/473
A. Introduction to Personal Jurisdiction: the Traditional Conception of Jurisdiction	<p>Suggested (optional) short video to watch about personal jurisdiction: https://youtu.be/QBpz-mQ2QeQ</p>
Class #15- Sep 25	In advance of class, read:
B. The Evolution of the Constitutional Personal Jurisdiction Doctrine	<ul style="list-style-type: none"> • <i>International Shoe v. Washington</i> (CM 264-270) • Excerpt from Lonny Hoffman, <i>The Case Against Vicarious Jurisdiction</i> (CM 271-272), article publicly available at https://ssrn.com/abstract=893652
C. Long Arm Statutes and Other Non-Constitutional Limits on Judicial Jurisdiction	<ul style="list-style-type: none"> • <i>Gray v. American Radiator</i> (CM 273-278) • Ohio Long Arm Statute (CM 279) • Rule 4(k)(1)(a); and • Prepare Practice Problem for Personal Jurisdiction (CM 280-281). Your assignment is to focus only on the long arm part of the question, not the constitutional part, as we will discuss in class. You will not turn in any answer; we will work the problem together in class. <p>Suggested (optional) short video to watch (fun video): https://youtu.be/e6L90oN4ppY</p>

<p>Class #16- Sep 26</p> <p>D. The Modern Test for Constitutional Amenability to Suit</p> <p>1. General Jurisdiction</p> <p>Powerpoint slides to accompany Class #18</p>	<p>In advance of class, read:</p> <ul style="list-style-type: none"> • Excerpt from Adam Steinman, <i>Jurisdiction: Defining State Courts' Authority</i> (CM 282-283), article publicly available through Pound Civil Justice Institute, https://perma.cc/4QRN-KZ6D • <i>DaimlerChrysler v. Bauman</i> (CM 284- 294)
<p>Class #17- Oct 1</p> <p>2. Specific Jurisdiction: Intentional Wrongs and Contract Cases</p> <p>Powerpoint slides to accompany Class #19-20</p>	<p>In advance of class, read:</p> <ul style="list-style-type: none"> • <i>Burger King v. Rudzewicz</i> (CM 295-302) • <i>Walden v. Fiore</i> (CM 303-316)
<p>Class #18- Oct 2</p> <p>(continue prior discussion of constitutional limits on personal jurisdiction)</p>	<p>In advance of class, go back to and prepare Practice Problem for Personal Jurisdiction (CM 280-281), focusing only on the constitutional amenability part of the question. Turn in your answer to your TA before class. In advance of class, I will assign roles for arguing the problem together in class.</p>

<p>Class #19- Oct 3</p> <p>3. Specific Jurisdiction: Product Liability Cases</p> <p>Powerpoint slides to accompany Class #21</p>	<p>In advance of class, read:</p> <ul style="list-style-type: none"> • <i>World-Wide Volkswagen case v. Robinson</i> (CM 317-321) • Questions to Think About in Advance of Reading <i>McIntyre</i> (CM 322) • <i>McIntyre v. Nicastro</i> (CM 323-343) • Adam Steinman, <i>The Lay of the Land: Examining the Three Opinions in J. McIntyre...</i> (CM 344-350), article publicly available at https://ssrn.com/abstract=2049896
<p>Class #20- Oct 8</p> <p>E. Jurisdiction by Consent</p> <p>F. Constitutional Requirements for Notice</p> <p>Powerpoint slides (SOP and Notice) to accompany Class #22</p> <p>Powerpoint slides (PJ Summary) to accompany Class #22</p>	<p>In advance of class, read:</p> <ul style="list-style-type: none"> • Jurisdiction By Consent, and Notice - Questions to Discuss (CM 352) • <i>Carnival Cruise Lines v. Shute</i> (CM 353-60) • Buxbaum, The Interpretation and Effects of Permissive Forum Selection Clauses Under U.S. Law (CM 361-367), article publicly available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3170936. • <i>Jones v. Flowers</i> (CM 368-374) • Fed. R. Civ. P. 4; and • Prepare Notice Practice Problem (Fall 2007 exam question) (CM 375). You do not need to turn anything in; prep only for discussion purposes.

<p>Class #21- Oct 9</p> <p>G. Mandatory Arbitration Provisions</p>	<p>In advance of class read:</p> <ul style="list-style-type: none"> • Bureau of Consumer Financial Protection- Summary of Proposed Rule 12 CFR 1040 (CM 376-383) • Adam Levitin, CFPB Arbitration Rulemaking – and Potential FSOC Veto (CM 384-385), available at http://www.creditslips.org/creditslips/2017/07/cfpb-arbitration-rulemaking.html
<p>Class #22- Oct 10</p> <p>H. Venue</p>	<p>In advance of class read:</p> <ul style="list-style-type: none"> • Venue, Transfer and Forum Non Conveniens- Questions to Discuss (CM 386) • 28 U.S.C. § 1391; and • Prepare Venue Problems (CM 387). You do not need to turn anything in; prep only for discussion purposes.
<p>Class #23- Oct 15</p> <p>I. Transfer of Venue</p>	<p>In advance of class read:</p> <ul style="list-style-type: none"> • 28 U.S.C. §§ 1404, 1406 • <i>Atlantic Marine Constr. v. U.S. District Court</i> (CM 388-404) • Suggested (optional) short video to watch on venue transfers (Note: this video was created by Prof Angela Upchurch (Capital Univ) for her Procedure students): https://youtu.be/E8M8CkYIHDg
<p>Class #24- Oct 16</p> <p>J. Forum Non Conveniens</p> <p>Powerpoint slides to accompany Class #26-27</p>	<p>In advance of class read:</p> <ul style="list-style-type: none"> • <i>Piper</i> Questions (CM 405) • <i>Piper Aircraft</i> (CM 406-413)

<p>Class #25- Oct 17</p> <p>(continue prior discussion of FNC)</p>	<p>In advance of class prepare Practice Question for FNC (CM 414). Turn in your answer to your TA before class. In advance of class, I will assign roles for arguing the problem together in class.</p> <ul style="list-style-type: none"> Optional suggested reading: Excerpt from Lonny Hoffman, <i>Forum Non Conveniens in Federal Statutory Cases</i>, article publicly available at https://ssrn.com/abstract=898854
<p>Class #26- Oct 22</p> <p>IV. Subject Matter Jurisdiction and Related Issues</p> <p>Diversity Jurisdiction</p>	<p>In advance of class read:</p> <ul style="list-style-type: none"> Subject Matter Jurisdiction Questions to Discuss (CM416-418) <i>Mas v. Perry</i> (CM 419-421) <i>Hertz v. Friend</i> (CM 422-434) Read H.R. 725, Innocent Party Protection Act (CM 435-438) U.S. Const. Article III, §2; 28 U.S.C. §1332
<p>Class #27- Oct 23</p> <p>B. Federal Question Jurisdiction</p> <p>Powerpoint slides to accompany Class #29-30</p>	<p>In advance of class, read:</p> <ul style="list-style-type: none"> U.S. Const. Article III, §2; 28 U.S.C. §1331 <i>Louisville & Nashville R.R. Co. v. Mottley</i> (CM 439-440) <i>Grable v. Darue Eng.</i> (CM 441-51)

<p>Class #28- Oct 24</p> <p>(continue prior discussion of federal question jurisdiction)</p>	<p>In advance of class prepare Practice Question for Federal Question Jurisdiction (CM 452). Turn in your answer to your teaching assistant before class. In advance of class, I will assign roles for arguing the problem together in class.</p> <p>Optional suggested reading: Excerpt from Lonny Hoffman, <i>Intersections of State and Federal Power: State Judges, Federal Law and the “Reliance Principle”</i>, 81 TUL. L. REV. 283 (2006), article publicly available at https://ssrn.com/abstract=886725</p>
<p>Class #29- Oct 29</p> <p>C. Supplemental Jurisdiction</p>	<p>In advance of class read:</p> <ul style="list-style-type: none"> • <i>UMW v. Gibbs</i> (CM 453-455) • <i>Exxon Mobil Corp. v. Allapattah Services, Inc</i> (CM 456-474) • 28 U.S.C. §1367
<p>Class #30- Oct 30</p> <p>(continue prior discussion of supplemental jurisdiction)</p>	<p>In advance of class prepare:</p> <ul style="list-style-type: none"> • Supplemental Jurisdiction Hypotheticals (CM 475). You do not need to turn anything in; prep only for discussion purposes. • Practice Problem on Supplemental Jurisdiction (to be distributed). You do not need to turn anything in; prep only for discussion purposes.
<p>Class #31- Oct 31</p> <p>Optional: Special costume dress up. We’ve just got to: we’re studying <i>Erie</i>, for our 31st class of the semester, on Halloween</p>	<p>In advance of class read:</p> <ul style="list-style-type: none"> • <i>Erie Railroad v. Tompkins</i> (CM 490-493) • 28 U.S.C. §§ 1652, 2071, 2072 • Adam Steinman, <i>What is the Erie Doctrine?</i> (CM 494-500), article also publicly available at https://ssrn.com/abstract=1115336

<p>Class #32- Nov 5</p> <p>V. The Choice of Law Problem in Federal Court: Federal or State Law</p> <p>D. Removal</p>	<p>In advance of class, read:</p> <ul style="list-style-type: none"> • 28 U.S.C. §§ 1441, 1446 • <i>Martin v. Franklin Capital</i> (CM 476-484); and • Prepare Removal Problems (CM 485-489)
<p>Class #33- Nov 6</p> <p>VI. Discovery</p> <p>A. Introduction to Discovery and Overview of Discovery Mechanisms</p> <p>B. Special Consideration of Electronic Discovery</p> <p>C. Powerpoint slides to accompany Class #35-36</p>	<p>In advance of class read (in this order):</p> <ul style="list-style-type: none"> • Discovery Questions to Discuss (CM 502) • Rules 26 and Rule 16(b) • Rules 27, 30, 31, 33, 34, 35, 36, and 37 <p>Then read:</p> <ul style="list-style-type: none"> • Popov and Noble, <i>The State Court Litigator's Guide to Discovery in Federal Court</i> (CM 503-509), article available with permission of Litigation Section, State Bar of Texas • Withers and Latin, <i>Living Daily With Weekley Homes</i> (CM 510-512), article available with permission of Litigation Section, State Bar of Texas • Raymond, <i>Tackling E Discovery on a Budget</i> (CM 513-516), article available with permission of Litigation Section, State Bar of Texas

<p>Class #34- Nov 7</p> <p>D. What Do We Know About Discovery Use and Abuse</p> <p>Recent Amendments to Discovery Rules</p>	<p>In advance of class, read:</p> <ul style="list-style-type: none"> · Hoffman, Examining the Empirical Case for Discovery Rule Reform in Texas (CM 517-530) · Campbell, New Rules, New Opportunities (CM 531-537) · Hershkoff, Hoffman, et al, Feb 5, 2014 Joint Comments to Standing Committee (CM 538-549) · Greg Joseph, The New Law of Electronic Spoliation (CM 550-557)
<p>Nov 12-14</p>	<p>No class</p>
<p>Class #35- Nov 19</p> <p>VII. Judgment As A Matter of Law: Summary Judgment</p> <p>Because I had originally said we weren't going to have class this day, your absence is excused if you can't make it.</p>	<p>In advance of class read:</p> <ul style="list-style-type: none"> · Hittner and M. Hoffman, <i>Notable Issues in Summary Judgment Practice</i> (CM 568-70) · <i>Celotex v. Catrett</i> (CM 571-74) · <i>Scott v. Harris</i> (CM 575-87) <p>Fed. R. Civ. P. 56</p>

<p>Class #36 – Nov 20</p> <p>(continue prior discussion of summary judgment and wrap up of semester)</p> <p>Because I had originally said we weren't going to have class this day, your absence is excused if you can't make it.</p>	<p>In advance of class:</p> <ul style="list-style-type: none"> · Read <i>Tolan v. Cotton</i> (CM 588-98) • Prepare Practice Question on Summary Judgment (CM 599). You will not turn in an answer. Prepare the problem only for class discussion purposes.
<p>Class #37- Nov 26</p>	<p>Final Exam Review</p>
<p>November 30</p>	<p>Final Exam: I will email the exam to all students at 8:00 am. You must deliver a paper copy of your exam answers to my executive secretary, Lillian White, by 4:00 pm.</p>