
CIVIL PROCEDURE
Syllabus – Fall 2021
Professor Peter N. Salib
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Meetings: Monday, Tuesday, and Wednesday 10:30 a.m. – 11:45 a.m. 240 BLB

Readings and Materials: The primary text for this course is William H.J. Hubbard, CIVIL PROCEDURE: AN INTEGRATED APPROACH (2021). You may use either the print or the electronic version; whichever you prefer. I may also post short readings to the course website, as appropriate.

You do not need to read anything beyond the assigned materials to do well in the class, nor do I encourage it. Some students, however, find treatises and study aids useful. Some such aids are very bad and should be avoided. If you feel that you need supplemental explanations, I recommend Charles Alan Wright & Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE, available on Westlaw, or Joseph Glannon, CIVIL PROCEDURE: EXAMPLES & EXPLANATIONS (2018). Note, however, that the law is complex and changes all the time, so these texts may not be correct or up-to-date on every topic we cover.

Class Preparation: I have made an effort to keep the assigned readings to a manageable length for each class. Every assignment, however, requires close reading and therefore will take significant time to complete properly. You will find that the writing style is often unfamiliar, the terminology is new, and the content dense. The success of the course depends on your good-faith effort to prepare for each class by studying the readings.

There is a tendency among students to take interest in the cases but neglect reading the Rules and statutes that have been assigned. I advise strongly against this approach.

Examination and Grading: There will be a take-home, open-book but word-limited exam at the end of the quarter. Your grade will be based on this examination.

Attendance is required. Due to administrative requirements, excessive absences may render you ineligible to receive credit for the course.

Class participation is essential for both you and your classmates to learn the material. It is therefore also required. I will call on students every day to discuss the assigned material. If, for any reason, you are not prepared for class, I ask that you let me know by email in advance. Life happens, and one or two unprepared days are acceptable. However, persistent failure to prepare may affect your grade.

Classroom Confidentiality: I find that class discussion is most productive when students feel free to try out positions with which they (or others) may not agree and to test the assumptions underlying their own (or others') views. In fact, I will often

ask students to argue positions with which they may disagree. Proficiently deploying such arguments for clients' benefit is literally lawyers' job! For these reasons, class discussion is strictly "off the record." Outside of the classroom, you may not attribute any statements made in class to any of your classmates. And any audio or visual recording of class is prohibited.

Office Hours: My office hours will Mondays and Tuesdays from noon to 1:00 p.m. As this is lunch time, I hope you will feel free to bring food or snacks to my office hours. I am also happy to correspond by email, as well as to set up alternative meeting times, should they be necessary.

Syllabus: Unless otherwise noted, all readings listed below in the Syllabus are required for this course. The final exam will test only the content of the class lectures and discussion and the *required* readings for this course. The listed page numbers may include notes, questions, and other text preceding or following the listed case; this text is part of the assigned reading.

This class will meet 37 times during the Fall Term (plus one additional half-hour review session) and the topics on the syllabus are numbered accordingly.

Please note that this is a **preliminary** syllabus. I will announce any deviations in class and follow up—either with an email or by posting a revised syllabus to the course website—as necessary.

Teaching Assistants: We have two wonderful teaching assistants in our class this term. They will hold office hours, host review sessions, and provide feedback on practice problems. They are:

Madeline Burns (mcburns@CougarNet.uh.edu)

Adriana Young (atyoung2@CougarNet.uh.edu)

PRELIMINARY MATTERS

1. Introduction Aug. 23	<i>Capron v. van Noorden</i> U.S. Const., Art. III § 2	6–8 861
2. Preliminary Relief; Notice Aug. 24	<i>Winter v. NRDC</i> Rule 65 U.S. CONST., Am. V, XIV §1 <i>Mullane v. Central Hanover Bank</i>	30–44 104–05 79 121–28
3. Notice (cont.) Aug. 25	<i>Green v. Lindsey</i> <i>Jones v. Flowers</i> Rule 4	130–35 136–45 154–55
4. Opportunity to Be Heard Aug. 31	<i>Fuentes v. Shevin</i> <i>Connecticut v. Doehr</i>	82–95 96–101

DEFINING THE DISPUTE

5. Prologue Sep. 1	Noll, <i>A Reader's Guide to Pre-Modern Procedure</i> Rules 2–3, 7, 8(a), (d)–(e) <i>Dioguardi v. Durning</i> <i>Conley v. Gibson</i>	162–70 175–77 182–84 186–90
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6. <i>Twiqbal</i> Sep. 8	<i>Bell Atlantic Corp. v. Twombly</i> <i>Ashcroft v. Iqbal</i>	192–205 207–19
7. Life After <i>Twiqbal</i> Sep. 13	<i>Johnson v. City of Shelby</i> <i>In re Text Messaging Antitrust Litig.</i> <i>Swanson v. Citibank, N.A.</i>	221–22 224–27 228–37
8. Beyond Plausibility Sep. 14	Rule 8(d) <i>McCormick v. Kopmann</i> Rule 11 <i>Brown v. Ameriprise Financial Services, Inc.</i> Intro. Note on Heightened Pleading	253 254–57 260–61 262–71 271–72
9. Responding to the Complaint; Amendment Sep. 15	Rule 8(b)-(c) Rule 12 <i>Bowers v. Mortgage Elec. Reg. Sys.</i> <i>Perez v. Gordon & Wong Law Group</i> Rule 15 <i>Global Tech. & Trading v. Tech Mahindra</i> <i>Beeck v. Aquaslide 'N' Dive Corp.</i>	281–82 284–86 288–91 292–95 297–98 299–302 302–06
DISCOVERY		
10. Rules Sep. 20	Rules 26, 30, and 33–37 (rules only) <i>Mancia v. Mayflower Textile Services</i>	319–46 348–60
11. Privilege and Work Product Sep. 21	<i>SodexoMAGIC, LLC v. Drexel University</i> <i>Upjohn Co. v. United States</i> <i>Hickman v. Taylor</i>	386–89 390–96 398–409
12. Privilege and Work Product (cont.) Sep. 22	Rule 26(b) FRE 502 <i>In re Abilify Products Liability Litigation</i> Note on Privilege Logs, Redaction, and the Crime-Fraud Exception	411–12 431–32 419–29 433–36

ADJUDICATION WITHOUT TRIAL

13. Summary Judgment		
Sep. 27	Rule 56 <i>Mueller v. Swift</i>	564 565–78
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14. Summary Judgment (cont.); Other Pre-Trial Dispositions		
	Intro. Note on the <i>Celotex</i> Trilogy	578–81
	<i>Celotex Corp. v. Catrett</i>	584–90
	<i>Scott v. Harris</i>	613–21
Sep. 28	Rule 41	312–13
	Rules 54(c), 55, 60	310–11
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TRIAL		
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15. Jury Trial		
	U.S. Const., Am. VII	474
	Rules 38–39	475–77
	<i>Curtis v. Loether</i>	480–83
Sep. 29	<i>Chauffeurs, Teamsters and Helpers</i>	484–91
	<i>Colgrove v. Battin</i>	511–18
	Rule 48	521–22
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16. Jury Selection		
	Rule 47 and 28 U.S.C. § 1870	536–37
	<i>Edmonson v. Leesville Concrete Co.</i>	538–47
Oct. 4	<i>J.E.B v. Alabama</i>	547–56
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17a. Judicial Control over the Verdict		
	Rules 50, 59, and 61	627–28, 630, 634
Oct. 5	<i>Neely v. Martin K. Eby Constr. Co.</i>	306–312
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FINALITY AND APPEAL

17b. Finality

Oct. 5

28 U.S.C. §§ 1291 and 1292(a)–(b)
Liberty Mutual Ins. Co. v. Wetzel

669, 676–77
678–83

18. Collateral Orders

Oct. 6

Cohen v. Beneficial Indus. Loan Corp.
Mohawk Industries, Inc. v. Carpenter
Microsoft I and II

685–87
688–98
701–04

SETTLEMENT

**19. Settlement
and ADR**

Oct. 11

Settlement
ADR

1311–20

PRECLUSION AND JOINDER

20. Preclusion

Oct. 12

*Rose v. Election
Commissioners*
Rush v. City of Maple Heights
Cromwel v. County of Sac

738–42
744–51
754–57

**21. Preclusion (cont.);
Joinder**

Oct. 13

Bernhard v. Bank of America
Parklane Hosiery Co. v. Shore
Rules 13–14, 18–21, and 24

759–63
768–73
714–21

22a. Representation

Oct. 18

Taylor v. Sturgell
Hansberry v. Lee

776–87
789–94

CLASS ACTIONS

22b. Class Actions	Rule 23	802–10
Oct. 18		
23. Class Actions (cont.)	<i>In re Whirlpool</i>	812–24
Oct. 19	<i>Wal-Mart Stores, Inc. v. Dukes</i>	831–50
SUBJECT MATTER JURISDICTION		
24. Introduction and Diversity Jurisdiction	U.S. Const., Art. III	860–63
Oct. 20	28 U.S.C. §§ 1331, 1332	863–64
	<i>Strawbridge v. Curtiss</i>	872
	<i>ConnectU v. Zuckerberg</i>	877–83
	<i>Ceglia v. Zuckerberg</i>	85–89
25. Diversity Jurisdiction (cont.)	<i>Hertz Corp. v. Friend</i>	892–900
Oct. 25	<i>Lincoln Benefit Life v. AEI</i>	902–09
	<i>A.F.A. Tours, Inc. v. Whitchurch</i>	912–18
	<i>Freeland v. Liberty Mutual Fire Insurance</i>	919–22
26. Federal Question Jurisdiction	<i>Osborn v. Bank of the United States</i>	925–32
Oct. 26	(plus intro. Note)	934–36
	<i>Louisville & Nashville RR v. Mottley</i>	947–55
	<i>Gunn v. Minton</i>	
27. Removal Jurisdiction	28 U.S.C. §§ 1441, 1446, and 1447	984–85, 87–88, 90
Oct. 27	<i>St. Paul Mercury Indemnity v. Red Cab Co.</i>	992–97
28. Removal Jurisdiction (cont.)	<i>Caterpillar Inc. v. Lewis</i>	998–1004
Nov. 1	<i>Grupo Dataflux v. Atlas Global Group</i>	1005–13
29. Supplemental Jurisdiction	28 U.S.C. § 1367	956–57
Nov. 2	<i>Exxon Mobil Corp. v. Allapattah Services</i>	962–80

PERSONAL JURISDICTION

30. Prologue	<i>Pennoyer v. Neff</i>	1019–26
Nov. 3	<i>Hess v. Pawloski</i>	1029–31
	<i>International Shoe Co. v. Washington</i>	1034–39
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31. Specific Jurisdiction	<i>World-Wide Volkswagen Corp. v. Woodson</i>	1043–54
Nov. 8	<i>J. McIntyre Machinery, Ltd. v. Nicastro</i>	1059–73
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32. Specific and General Jurisdiction	<i>be2 LLC v. Ivanov</i>	1123–27
Nov. 9	General Jurisdiction	1092–93
	<i>Goodyear Dunlop Tires Ops. v. Brown</i>	1107–12
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VENUE AND TRANSFER		
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33. Venue and Transfer	28 U.S.C. §§ 1390 and 1391	1168–69
Nov. 10	<i>Gulf Oil Corp. v. Gilbert</i>	1171–77
	28 U.S.C. §§ 1404 and 1406	1178–79
	<i>Piper Aircraft Co. v. Reyno</i>	1180–90
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THE <i>ERIE</i> PROBLEM		
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34. A Brooding Omnipresence	<i>Swift v. Tyson</i>	1209–13
Nov. 15	<i>Erie Railroad Co. v. Tompkins</i>	1214–24
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35. An Irrepressible Myth	<i>Ruhlin v. New York Life Ins. Co.</i>	1235–36
Nov. 16	<i>Sibbach v. Wilson & Co.</i>	1258–63
	Rules Enabling Act, 28 U.S.C. § 2072	1253–54
	<i>Cohen v. Beneficial Indus. Loan Corp.</i>	1256–62
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36. An Untidy Denouement	<i>Hanna v. Plumer</i>	1264–73
Nov. 17	Postscript on <i>Erie</i> and Horizontal Choice of Law	1301–03
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37. Wrap-Up	TBD	
Nov. 29		
