

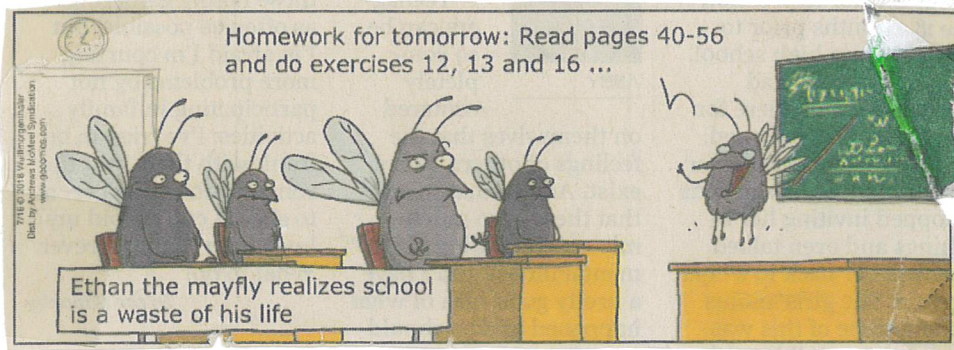
# PROCEDURE SYLLABUS—PROFESSOR CRUMP—FALL 2021

Welcome to Civil Procedure! This is a difficult, challenging course, but it also is a wonderful, exciting course, one that will repay the hard work you and I will put into it.

This is a list of readings from the casebook and other sources. The list is not exhaustive. There will be certain other readings and projects, including certain individual projects, and it may at times become necessary to deviate from the syllabus. I will attempt to let you know sufficiently in advance if this occurs.

**IMPORTANT:** Certain readings are set out in CAPITAL letters. These cases or readings are to be emphasized. Others are in lower case; this indicates that our treatment of the case will be by lecture, and it accordingly indicates that you should not concentrate on that case as heavily as upon other readings. I hope that this device will help you manage the reading better!

<b>Class 1</b>	<b>SECTION I: OVERVIEW</b> <ul style="list-style-type: none"><li><input type="checkbox"/> TEXT &amp; PROBLEMS (1-16)</li><li><b>A. Jurisdiction</b><ul style="list-style-type: none"><li><input type="checkbox"/> TEXT (16)</li><li><input type="checkbox"/> 28 USC 1332</li><li><input type="checkbox"/> STRAWBRIDGE V. CURTISS (17) &amp; NOTES</li><li><input type="checkbox"/> TEXT (18)</li><li><input type="checkbox"/> SAMPLE BRIEF (19)</li><li><input type="checkbox"/> WYMAN V. NEWHOUSE (19) &amp; NOTES</li><li><input type="checkbox"/> Course Objectives (<b>Handout</b>, 4)</li><li><input type="checkbox"/> On Teaching Civil Procedure (<b>Handout</b>, 11-12)</li></ul></li><li><b>B. Pleadings</b><ul style="list-style-type: none"><li><input type="checkbox"/> 3 Complaints (<b>Handout</b>, 5)</li><li><input type="checkbox"/> RULE 8(a), (d)(1)</li><li><input type="checkbox"/> TEXT (21)</li><li><input type="checkbox"/> Bell v. HCR Manor Care Facility (22) (Note the lower case title. See above.)</li><li><input type="checkbox"/> NOTES (23)</li></ul></li></ul>
<b>Class 2</b>	<ul style="list-style-type: none"><li><input type="checkbox"/> Appendix to § 1.04 (26-32) &amp; Notes</li><li><input type="checkbox"/> Litigation Problem No. 1 (<b>Handout</b>, 6-8)</li><li><b>C. Discovery</b><ul style="list-style-type: none"><li><input type="checkbox"/> Rule 26(b)(1)</li><li><input type="checkbox"/> Note on Methods and Note on Breadth (33)</li><li><input type="checkbox"/> ROLLINS V CONE DISTRIBUTING (33) and notes</li><li><input type="checkbox"/> Notes 1, 4 (36)</li></ul></li><li><b>D. Summary Judgment</b><ul style="list-style-type: none"><li><input type="checkbox"/> RULE 56(a)</li><li><input type="checkbox"/> Text (37)</li><li><input type="checkbox"/> WARREN V. MEDLEY (37)</li></ul></li><li><b>E. Trial</b></li></ul>



You're not a mayfly. But your time is valuable too.

I have set up the Syllabus the way it is because (1) this way, you're assigned readings item by item, (2) this method means that you read only the most valuable materials and not "everything from page x to page y," (3) this way, I make myself do a zero-based evaluation of every assigned reading, and (4) by watching the capitalized and non-capitalized items, you can concentrate less heavily on some readings.



You will receive a lot of messages in law school implying that all you have to do is reason on the basis of policy.

It isn't true. It really, really isn't true. Like Dilbert, you often have to be able to read it as it is, including the precise text of it, whether it seems sensible to you or not. Projection of your sense of how it ought to be can lead to bad mistakes.

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- FEIN V. PERMANENTE MEDICAL GROUP (40) & NOTES
  - Fein v. Permanente Medical Group (43)al

**F. Taking the Case from the Jury; Appeal**

- Text (45)
- Litigation Document (46)
- Jordan v. Iverson Mall (47)
- Notes 1,4 (49)
- Text on Appellate Court (49) (omit case & notes)
- Litigation Problem No. 2 (Handout, 9)

**SECTION II: JURISDICTION OVER PERSONS AND PROPERTY; SERVICE; VENUE**

**A. Basic Concepts: Territoriality and Consent**

- Text (51)
- U.S. Const. Amend. 14, due process clause only
- Problem A (52) (read only; analyze later, at end of chapter)
- Text (53)
- Pennoyer v. Neff (53)(hard to read; don't worry. Class will make sense of it.)
- NOTES (56)
- Grace v. MacArthur (57)(just for some humor)
- HESS V. PAWLOSKI (57) & NOTES

**Class 3**

**B. The Contacts—Fairness Test**

- INTERNATIONAL SHOE V. WASHINGTON (60) & NOTES

**C. The Purposeful Availment / Reasonable Anticipation Tests**

- Text (63)
- Hanson v. Denckla (64)(hard to read; class will make sense of it)
- Text (65)

**D. Specific and General Jurisdiction**

- Text (68)
- McGee v. Int'l Life (68)
- Perkins v. Benguet (69) & NOTES
- FORD MOTOR COMPANY V. MONTANA COURT(Handout, near end)

**E. Putting It All Together—and Introducing the “Essentially at Home” Limit**

- BURGER KING CORP. V. RUDZEWICZ (70) & notes
- Note on Rejection of Stream of Commerce (76)
- Text on the At-Home Limit (81)
- DAIMLER AG V. BAUMAN (83) & notes 1-2

**F. State Long-Arm Statutes**

- TEXT & STATUTE (91)
- GRAY V. AMERICAN RADIATOR (92) & NOTES
- TEXT & STATUTES (96)
- Hall v. Helicopteros (96) & NOTES 1-2

**G. In Rem Jurisdiction: The Three-Way Nexus**

- TEXT ON LEGITIMATE USES; Text on Abuses (98-99)
- SHAFFER V. HEITNER (99) & NOTES 1, 2, 5

**Class 4**

**H. “Tag” Jurisdiction: Serving a Nonresident Within the Forum**

- Burnham v. Superior Court (106)

**I. Jurisdiction by Consent, by Contract (Forum Selection Clauses), or by Broader Federal Rules**

- Notes 1, 2, 4 (111)
- Carnival Cruise Lines Inc. v. Shute (112)
- Note 2 (113)
- Note on Rule 4(k) (113)

**J. Challenging Personal Jurisdiction**

- Reconsider Wyman v. Newhouse (114)
-

- Text (115)
- RULE 12 (b),
- RULE 12(h)(1)
- HARKNESS V. HYDE (116)

**K. Compliance with Rules for Service of Process**

- RULE 4, rule 5(a)(1),(b),(d)(1)
- LEIGH V. LYNTON (121) & NOTES
- NOTE ON SERVING CORPORATIONS (124)
- Note on Exact Compliance (126)
- Butler v. Butler (127)
- Note on Waiver (128)
- NOTES 1-3 (130)

**L. Venue and Venue Transfer; Forum Non Conveniens**

- 28 USC 1391(b),(d), 1400(b), 1404(a), 1406
- PROBLEM C (135)
- Note on Transfer (137)
- ATLANTIC MARINE CONSTRUCTION V. DISTRICT COURT (137)
- NOTE ON TWO KINDS OF PLACES (140)
- Text (143) on Forum Non Conveniens (omit Piper case)
- Note 3 (147)

**M. Return to Chapter Summary Problem (52) and Analyze**

- WORKSHEET FOR ANALYZING CHAPTER SUMMARY PROBLEM (Handout 14)
- Text, Some concepts in Logic (Handout 15)
- CHAPTER SUMMARY PROBLEM (FIGURE OUT ANSWERS) (52)
- Text on How to Answer the Chapter Summary Problem (150)
- REAL LIFE AS A LAWYER: FINANCIAL JUDGMENT ABOUT FORUM CONTESTS (227) (don't worry too much about not knowing how)

**Class 5**

**N. Improving the System**

- TEXT AND PROBLEMS (152-55)

**O. The Anatomy of a Forum Contest**

- LITIGATION DOCUMENT EXAMPLE 2.1 (155-177); WE SHALL CONSIDER EACH DOCUMENT AND EACH SET OF NOTES

**SECTION III: SUBJECT MATTER JURISDICTION**

- Text (179)
- Problem A (180) – read now; analyze at end
- Section 3.02 (state courts) (181-184) (but omit the Lekse and Allexdex cases)
- Text on Federal Claims / Defenses in State Courts (185)

**A. “Arising Under” Jurisdiction (Or Federal Question Jurisdiction)**

- 28 USC 1331
- U.S. Const. Article III, § 2
- Text (188)
- PROBLEM B (189)
- LOUISVILLE & NASHVILLE R. CO. V. MOTTLEY (189) & Notes 1, 2, 4
- Reconsider Paragraph 4 (Jurisdiction) in earlier Wytinger case (27)

**Class 6**

**B. Diversity Jurisdiction**

- 28 USC 1332
- U.S. Const. Article III, § 2
- Strawbridge v. Curtiss (198)
- MAS V. PERRY (198)
- TEXT (200)
- NOTES (201)
- Hertz Corp. v. Friend (203)
- Grupo Dataflux v. Atlas Global (204)

- PROBLEM C (205)
- Reconsider Paragraph 1 (Jurisdiction) in earlier George Miller Co. case (159)

**C. Supplemental Jurisdiction**

- Text (209)
- 28 USC 1367(a), (c)
- Text (210)
- UNITED MINE WORKERS V. GIBBS (210) & NOTES 1-2
- Litigation Document Example 3.2 (212), including order cited (31)

**D. Removal: The Defendant's Key to the Federal Courthouse**

- 28 USC 1441 (a),(b)
- 28 USC 1445
- 28 USC 1446
- 28 USC 1447
- PROBLEM D, PARTS A-C (218)
- Text (219)
- CATERPILLAR INC. V. LEWIS (219) & NOTES 1, 2, 3, 5
- Note on Persistence of Issues (Handout, near end)
- Texas Brine Co. v. American Arbitration Ass'n (Handout, near end)

**E. Return to Chapter Summary Problem (180) and Analyze**

- CHAPTER SUMMARY PROBLEM (FORMULATE ANSWERS) (180)
- Text on How to Answer the Chapter Summary Problem (227)
- Real Life as a Lawyer (227)
- Also, Consider Problem (Snake Inc. v. Tumm) when reviewing (Handout 19)

**F. Improving the System**

- TEXT, NOTES, AND QUESTIONS (229-236) (but omit note 2 under C at 236)

**IMPORTANT: WATCH THE FIRST VIDEO BY THIS TIME!!**

**Class 7**

**SECTION IV: THE ERIE DOCTRINE**

**A. State Substantive Law in Federal Courts**

- Text (237)
- 28 USC 1652
- ERIE RR V. TOMPKINS (239)

**B. Federal Procedural Law**

- 28 USC 2071, 2072
- Text (246)
- Note on Cases that Created the Five Approaches (Handout 30-31)
- Text (254)
- HANNA V. PLUMER (254) & NOTES 1, 3
- PROBLEM B (263)

**C. Choice of Law**

- Text (284)
- PENNINGTON V. DYE (265)
- Klaxon Co. v. Stentor Co. (265)
- NOTES 1-2 (268)
- PROBLEM C (267)

**SECTION V: PLEADINGS**

**A. Common Law and Code Pleading; Equity; Functions of Pleadings**

- Read text (276-288) in summary fashion; However, CONCENTRATE ON NOTES 1-2 (279), NOTES 1-2 (282), AND MESSICK V. TURNAGE (288) AND BE READY TO DISCUSS THEM IN CLASS
- Text on Modern State Pleading (289)
- Problem A (290) (read now; analyze at end)

**B. Standards for the Federal Complaint**

- RULES 7, 8(a),(d)(1); 10
- Note on "Notice Pleading" (291)

	<input type="checkbox"/> Dioguardi v. Durning (292)
<b>Class 8</b>	<input type="checkbox"/> NOTES (295) <input type="checkbox"/> Conley v. Gibson (294) <input type="checkbox"/> Notes (295) <input type="checkbox"/> BELL ATLANTIC V. TWOMBLY (270) <input type="checkbox"/> NOTES (300) <input type="checkbox"/> ASHCROFT V. IQBAL (302) & NOTES <input type="checkbox"/> Chapman v. Yellow Cab (305)(bad fallout from Twombly-Iqbal) <input type="checkbox"/> PROBLEM B (307) <input type="checkbox"/> Partridge v. Two Unknown Police Officers (308) <input type="checkbox"/> RULE 12(b),(e),(f) <input type="checkbox"/> RULE 8(a) <input type="checkbox"/> Text (309) <input type="checkbox"/> FOX V. LUMMUS CO. (310) & NOTES <input type="checkbox"/> RULE 9(b),(c),(g) <input type="checkbox"/> HAYWOOD V. MESSAGE ENVY (313) <input type="checkbox"/> Notes on Special Damages (315)
<b>Class 9</b>	<b>B. (Cont.)</b> <input type="checkbox"/> Lambert v. Southern Counties Gas Co. (317) <input type="checkbox"/> Faulkner v. Ft. Bend Independent School District (318) & Notes 1-3 <input type="checkbox"/> Litigation Document Example (320) and document referred to there (159-60) <b>C. Defendant's Pleadings (Admissions; Denials; Affirmative Defenses)</b> <input type="checkbox"/> RULE 8(b),(c),(d); 12(a),(h) <input type="checkbox"/> Text (320) <input type="checkbox"/> Text (321) <input type="checkbox"/> WHITE V. SMITH (322) & NOTES <input type="checkbox"/> Text (325) <input type="checkbox"/> Jones v. Department of Corrections (325) <input type="checkbox"/> Problem C (327) <input type="checkbox"/> NOTES (327) <input type="checkbox"/> Litigation Document Example (329) and document referred to there (175) <b>D. Certifications and Sanctions</b> <input type="checkbox"/> RULE 11 <input type="checkbox"/> TEXT (331) <input type="checkbox"/> Eastway Constr. Corp. v. City of New York (332)("Old" Rule 11) <input type="checkbox"/> Notes (333-35) <input type="checkbox"/> Text (335) <input type="checkbox"/> HADGES V. YONKERS RACING CORP. (336) & NOTES <input type="checkbox"/> Muhamad v. Wal-Mart (337) <input type="checkbox"/> PROBLEM D (339) <input type="checkbox"/> Note on Other Sanctions (340) <input type="checkbox"/> Chambers v. Nasco (341) <input type="checkbox"/> Note (341) <b>E. Amendment</b> <input type="checkbox"/> RULE 15(a),(b),(c) <input type="checkbox"/> BEECK V. AQUASLIDE 'N' DIVE CORP (343) & NOTES <input type="checkbox"/> Note on Relation Back (346) <input type="checkbox"/> Krupski v. Costa Crociere (347) <b>F. State Court Pleadings</b> <input type="checkbox"/> Text and Case on Texas Pleadings (349-51) <b>G. Improving the Rules of Pleading</b> <input type="checkbox"/> TEXT AND PROBLEMS (355)
<b>Class 10</b>	<b>H. Return to Chapter Summary Problem (290) and Analyze</b> <input type="checkbox"/> CHAPTER SUMMARY PROBLEM (FORMULATE ANSWERS) (290)

- Text on How to Answer the Chapter Summary Problem (354)

**I. Appendix of Sample Pleadings (Texas)**

- Litigation Document Example 5.3 (357), and also go to the web address set out there) CONCENTRATE ON THE NOTES AND QUESTIONS AND BE READY TO DISCUSS THEM IN CLASS

**SECTION VI: MULTIPLE PARTIES AND CLAIMS**

- Text & Diagrams (359-65)

**A. Counterclaim and Cross-Claim**

- RULE 13(a),(c)
- CAVANAUGH V. WESTERN MD. RY. CO. (365) & notes 1, 3, 6

**B. Third-Party Claims (or “Impleader”)**

- RULE 14(a)(1)
- Text (339)
- NOTES 2 & 3 ON BARAB V. MENFORD (373)

**C. Permissive Joinder; Consolidation, Separate Trial and Severance**

- RULE 20(a)
- Grogan v. Babson Bros. (374)
- NOTE 1 (345)
- rules 18(a), 42, 21
- Notes on Severance, Consolidation, Separate Trial (377)

**D. Intervention, Interpleader, Class Actions, and Multidistrict Litigation**

- RULE 24(a),(b)(1)
- Text (387)
- RULE 22
- 28 USC 1335(a)

**Class 11**

**D. (cont.)**

- Text (361)
- STATE FARM FIRE & CAS CO. V. TASHIRE (393) & Notes 1, 3, and 4
- Text on Rule 23 (class actions) (398)
- RULE 23
- PROBLEM A (400)
- Eisen v. Carlisle & Jacquelin (402)
- 28 USC 1407
- NOTES (406)

**SECTION VII: DISCOVERY AND DISCLOSURE**

- Text (415)
- Problem A (416) (read now; analyze at end)
- Text (417-20)
- PROBLEM B (421)
- PROBLEM C (421)
- Morris, Strategy of Discovery (421)
- NOTES (429)

**A. Scope of Discovery: “Relevant(?)”, “Proportional,” “Not Privileged”**

- RULE 26(b)(1),(2)(c)
- Note on Breadth (430)
- CAIN V. WAL-MART (431) and Notes

**Class 12**

**A. (cont.)**

- Text (436)
- PROBLEM D (439)

**B. Work Product; Discovery of Experts**

- Text (442)
- RULE 26(b)(3)
- BANK OF THE ORIENT V. SUPERIOR CT. (445) (right result, bad reasoning)
- NOTES (447)

- RULE 26(b)(4)
- AGER V. JANE C. STORMONT HOSP. & TRAINING (448)

**C. Protective Orders and Confidentiality Agreements**

- RULE 26(c)
- NOTES ON CENTURION INDUSTRIES V. WARREN STEURER (453)
- Problem F (456)
- Notes (457)

**D. Mechanics of the Discovery Devices**

- DEPOSITIONS:
  - RULES 28(a), 29, 30(a) to d(1), 31(a)(1)-(2)
  - Sun Capital Partners v. Twin City (469)
  - NOTES (470-73)
  - Litigation Document Example 7.2 (473)(and also, go to the web site cited there and read Groce, Checklist & NOTES, Advice to a Client, and Sample Deposition in Carpenter v Jim Dandy Foods & NOTES)

**Class 13**

**D. (cont.)**

- INTERROGATORIES:
  - RULE 33
  - JACKSON V. SCHOOL DISTRICT (474) & Note on Effects (476)
  - Sargent-Welch Scientific Co. v. Ventron Corp. (476) & Notes
  - Note on Interrogatories in Practice (478), including documt referred to (165)
  - SEITZ ARTICLE (478)
- REQUESTS FOR ADMISSION:
  - RULE 36
  - TREVINO V. CENTRAL FREIGHT LINES, INC. (480) & NOTES
  - Note on Admissions in Practice (484), including documt referred to (163)
- REQUESTS FOR PRODUCTION:
  - RULE 34, RULE 45(d), RULE 26(b)(2)(B)
  - Note on how to read the case (485)
  - MAJOR TOURS INC V. COLOREL (486)
  - Note on Sanctions (489)
  - Notes (490)
  - Problem G (492)
  - Harris and Ball Article (493-95)
- MOTIONS FOR PHYSICAL AND MENTAL EXAMINATION (RULE 35)

**E. The Duty to Supplement; Use of Discovery**

- RULE 26(e) (duty to supplement)
- RULE 32(a)(1-4,6) (use of deposition at trial limited to opponents, unavailable witnesses, impeachment, or completeness; many states avoid imposing such a limit)
- Frechette v. Welch (502)

**F. Self-Initiated Disclosures, Presumptive Limits, etc.**

- TEXT (460)
- RULES 26(a), 30(a)(2), 30(d)(1), 33(a)
- HARRIMAN V. HANCOCK COUNTY (460) & NOTES

**Class 14**

- Litigation Document Example 7.1 (469), and also go to the web site cited there and read the materials. (BE READY TO DISCUSS THE NOTES THERE.)

**G. Discovery Certifications, Conferences, Abuse, and Sanctions**

- Text (504)
- RULE 26(f)(1-3)
- RULES 26(g) AND 37
- Note on Rules (504)
- Roesberg v. Johns-Manville (505) & Notes 1-2
- LEW V. KONA HOSPITAL (508) & NOTES 1, 2, 5



- 
- Note on Sanctions in Practice (511) and also review the document cited there (168)

**H. Return to the Chapter Summary Problem (416) and Analyze**

- CHAPTER SUMMARY PROBLEM (FORMULATE ANSWERS) (416)
- Text on How to Answer the Chapter Summary Problem (513)

**I. Real Life as a Lawyer**

- What Do You Do Against a “Rambo” Lawyer? (513)

**J. Improving the Discovery Rules**

- Text on Texas State Discovery Rules (512)
- TEXT AND PROBLEMS (515)

**SECTION VIII: PRETRIAL CONFERENCES AND CASE MANAGEMENT**

**A. Pretrial Conferences and Orders**

- RULE 16
- Bell Atlantic v. Twombly (520) & Notes 1, 3
- UNITED STATES V. FIRST BANK OF CIRCLE (521) & Notes 2, 3, 4
- Litigation Document Example 8.1 (525) and read the cited web site contents

**B. The Scheduling Order and Its (Difficult) Amendment**

- Rule 16(b)(1), (3), (4)
- KANTSEVOY V. LUMENR LLC (535) & Notes

**C. Real Life as a Lawyer**

- How Can I Manage This Chaotic Schedule? (544)

**D. Judges and Magistrate Judges as “Managers”**

- Text & Notes (526-27)
- Kothe v. Smith (530) & Notes
- RULES 72, 73(a)
- Notes 1-2 (533)

**Class 15**

**E. Docket Control and Case Flow Management**

- Rules 6(a)(1), 40
- OATES V. OATES (534) & NOTES
- TEXT & NOTES ON DIFFERENTIAL MANAGEMENT (539)
- Karubian v. Security Pacific Bank (541) & Note 1

**SECTION IX: THE PERSONAL DIMENSION OF LITIGATION (“THE LITIGATOR’S LIFE”)**

- APPENDIX ON THE PERSONAL DIMENSION (881-906, END OF BOOK)  
(Important Note: This Appendix is about what to avoid. Students sometimes consider these materials “depressing.” They’re not; they just tell you that there are important things to avoid, if you want to find satisfaction in practicing law!)

**SECTION X: SUMMARY JUDGMENT, DISMISSAL, AND DEFAULT**

**A. Judgment on the Pleadings**

- Rule 12(c)
- Text (547)

**B. Summary Judgment**

- RULE 56
- Warren v. Medley (549) & NOTES
- FIGURE 9A (550)
- Problem A (551) (read now; analyze at end)
- Text on How to Read the Case (552)
- CELOTEX CORP. V. CATRETT (553) & NOTES 1,2
- McNeil v. Sunoco (559) & Notes 1-2

**Class 16**

**C. Dismissal**

- RULE 41(a),(b)

**D. Default**

- RULE 55

- 
- BUTNER V. NEUSTADTER (563) & Notes

**E. Return to Chapter Summary Problem (551) and Analyze**

- CHAPTER SUMMARY PROBLEM (FORMULATE ANSWERS) (551). You will need to visit the web site cited there (SUMMARY JUDGMENT DOCUMENTS).
- How to Answer the Chapter Summary Problem (566)

**SECTION XI: TRIAL**

**IMPORTANT: WATCH SECOND VIDEO BY THIS TIME!**

- Text (570-72)
- Problem A (572) (read now, analyze at end)

**A. Right to Trial by Jury**

- U.S. CONST. AMEND. VII
- RULE 38
- TEXT (573)
- DAIRY QUEEN INC. V. WOOD (577)

**B. Demand and Waiver of the Right**

- RULE 39, 81(c)
- Text (587)
- LEWIS V. TIME INC. (588) & Notes 2-3 (602)

**C. Jury Selection**

- NOTES 1-2 (594)
- 25 USC 1861
- RULE 47
- Text (596)
- FLOWERS V. FLOWERS (597)
- Cortez ex rel. Estate v. HCCI-San Antonio (599) & Notes (overrules Flowers)

**Class 17**

**C. (cont.)**

- McDonough Power Equip. Inc. v. Greenwood (601) and notes
- NOTE ON BATSON (603)
- NOTES ON HOW TO PRESENT (606)
- Note 1 and Note 2 on Whichmann v. United Disposal (609)
- Text on State Protection (611)
- Litigation Document Example 10.1 (611), and go to the web site cited there to read  
The ARTICLE ON ATTORNEY TACTICS, the VOIR DIRE IN PENZOIL V. TEXACO, and the JURY STUDY IN PREPARATION FOR TRIAL

**D. Opening Statements**

- Text (611)

**E. Evidence and “Proof”**

- FED. RULES OF EVIDENCE 801(c), 803(6), 803(8)
- Text (613-617)
- OWENS V. REPUBLIC OF SUDAN (617) & NOTES
- Guetersloh v. CIT Corp. (620) & NOTES

**F. Jury Argument**

- Text (630)
- Brokopp v. Ford Motor Co. (633) & Notes 1-2

**G. Jury Instructions; Verdicts**

- RULE 49; RULE 51(c)(1) and (d)
- TEXT (637)

**Class 18**

**G. (cont.)**

- Text on how to read the case (639)
- MCLAUGHLIN V. FELLOWS GEAR SHAPER CO. (639) (Note: Please understand – (1) the jury questions; (2) the conflicting answers; (3) what the district court did; (4) what the court of appeals did; and (5) why the dissent says

it's wrong) & NOTES

**H. Trial to the Court Without a Jury**

- Text (654)

**I. Return to Chapter Summary Problem (572) and Answer**

- CHAPTER SUMMARY PROBLEM (FORMULATE ANSWERS) (572).
- How to Answer the Chapter Summary Problem (655)

**SECTION XII: DIRECTED VERDICT AND POST-TRIAL MOTIONS**

- Text (661)
- Text on Judgment on the Verdict (663)

**A. Judgment as a Matter of Law**

- Problem B (663)
- Text (664)
- REEVES V. SANDERSON PLUMBING CO. (625)
- MOTIONS (46) (back in Chapter 1)

**Class 19**

**A. (cont.)**

- RULE 50(a)
- RULE 50(b)
- Reconsider *McLaughlin v. Fellows Gear Shaper Co.* (668)(couldn't file post-verdict Motion for JML because no motion during trial)
- NOTES 1,3 (668)
- Notes on Procedural Aspects (670)
- Note on Requirements (671)

**B. New Trial**

- RULE 59(a)(1), (b)
- Text (672)
- CONWAY V. CHEMICAL LEAMAN TANK LINES INC.* (678) & NOTES
- Text (683)
- Experience Hendrix, LLC v. Hendrixlicensing.Com* (683) & Note 1
- Figure 11A (686)

**C. Rule 60 Motions and Relief From Judgments**

- RULE 60
- Text (693)
- Note on *Metlyn Realty Case* (698)
- Text on Setting Aside Default (700)

**SECTION XIII: APPEALS**

**A. Scope of Appellate Review**

This material is to be covered by lecture, but read sufficiently so that you understand the harmless error, cured error, preservation, and discretion doctrines.

- McDonough v. Greenwood* (703) & Note 1
- Notes on Preservation (707)
- Trial Court's Discretion (to be covered by lecture)
- Anderson v. Bessemer City* (708) & Note 3

**B. Appellate Procedure**

- Fed. R. App. P. 3(a), (c), 4(a), 8, 10(a),(b), 28, 30(a), 31(a), 32(a),(b) (read sufficiently to have general awareness of their contents)
- BOWLES V. RUSSELL* (712) & Notes 1, 4
- RULE 62(d)
- Texaco Inc. v. Pennzoil Co.* (725) & Notes 1-2
- Text (717)

**Class 20**

**C. Appealable Orders**

- 28 USC 1291
- NOTES 1-3 ON FINAL J. RULE (719)
- Read the following material sufficiently to understand lecture:
  - Notes 5-6 (720)

- 28 USC 1292(a),(b)
- Rule 54(b)
- Sears, Roebuck & Co. v. Mackey (721) (Rule 54(b))
- Northeast Ohio Coalition v. Blackwell (723) (injunctions)
- Notes 1-2 on Discretionary Appeals (726)
- 28 USC 1651
- Kerr v. District Court (726) (mandamus)

**D. The Supreme Court—To Be Covered by Your Reading**

- Text (728-29)

**SECTION XIV: REMEDIES, JUDGMENTS, AND THEIR ENFORCEMENT**

**A. Seizure: Attachment, Garnishment, Sequestration, Replevin, etc .**

- RULE 64
- Kheel Article (758)
- Fuentes v. Shevin (759) & Notes
- MITCHELL V. W.T. GRANT CO. (764) & NOTE 1
- Note on Provisional Remedies; Note on Damages (766-67)

**B. Temporary Restraining Orders**

- RULE 65(a)
- WEBER ARTICLE (768)
- PROBLEM B (771)

**C. Damages (Compensatory and Punitive)**

- Memphis Comm. Schl. Dist. v. Stachura (771) & Notes 2-3
- HAWTHORNE INDUS. INC. V. BALFOUR MACLAINE (775) & NOTES
- PROBLEM C (777) (This problem is much harder than it looks. Read the jury instruction [really read it] and count all of its required elements.)
- Smith v. Wade (778)

**D. Injunctions and Other Equitable Remedies**

- Text (783)
- MIDCON CORP. V. FREEPORT-MCMORAN INC. (784) & NOTES 1-2
- PROBLEM D (790)
- Text, Notes & Questions (790-94)

**Class 21**

**E. Declaratory Judgments**

- 28 USC 2201-2202
- rule 57
- Text (795)

**F. Attorney's Fees and Interest**

- Note 3 on City of Riverside v. Rivera (797)
- Text (798)

**G. Enforcement of Judgments by Execution and Sale**

- GRIGGS V. MILLER (800) & NOTES
- Guardian Loan Co. v. Early (802) & Notes
- RULE 69(a)
- Text on Federal Rules (804)

**H. Other Enforcement Devices (To Be Covered Primarily by Lecture, Plus Discussion of Problems)**

- JUDGMENT LIENS: Text (805); Note 2 (806); PROBLEM E (806)
- POST-JUDGMENT GARNISHMENT: United States v. Bankas (807) & Notes
- TURNOVER ORDERS: Text (808); Note on In re Brecheisen (811); PROBLEM F (811)
- RECEIVERSHIP: RULE 66; Ypsilanti v. Kircher (811) & Notes; PROBLEM G (813)
- DISCOVERY IN AID OF ENFORCEMENT: Text (813)
- CONTEMPT & ARREST: Belitz v. Belitz (814) & Notes
- INTERSTATE ENFORCEMENT: Text (815)

## SECTION XV: ALTERNATIVE METHODS OF DISPUTE RESOLUTION

### A. Types of ADRs, the Case For and Against

- Text (820-30but omit Problem A); EMPHASIZE FISS ARTICLE (828) & NOTES 1-3 (828); PROBLEM B (830)
- Problem C (831)
- “Don’t Try” by Gross & Syverud (831) & NOTES 1-2 (832)

### B. Negotiation

- Dorsaneo & Crump Article (835) & Notes
- Problem D (840)

### C. Settlement Agreements

- Text (850)
- PROBLEM F (850)
- Spector v. K-Mart Corp. (850) & NOTES
- Note 2 containing Runyan v. NCR Corp. (854)

## Class 22

### C. (Cont.)

- Litigation Document 15.1 (854), and settlement agreement cited there (176)
- TEXT [C] (855)
- TEXT [D] (856)

### D. Arbitration and Related Procedures

- Text (860)
- PROBLEM F (861)
- Sprinzen v. Nomberg (861) & NOTES
- TEXT (863-64)
- UNDERWRITERS AT LLOYD’S V. FLORIDA DEPT (865) & NOTES

### E. Mediation and Other Advisory Procedures (To Be Covered Primarily By Lecture, Plus Discussion of Problems)

- Text, Notes, Etc. (870-79) (including mediation, mini-trials, court-annexed arbitration, and summary jury trials) (omit Rules and Notes at 876-77)

## SECTION XVI: RES JUDICATA, COLLATERAL ESTOPPEL, AND RELATED PRECLUSION DOCTRINES

### A. Res Judicata (Claim Preclusion)

- Text (731)
- Notes 1-2 (735-36)

### B. Collateral Estoppel

- Text on Collateral Estoppel (738)
- Cromwell v. County of Sac (739)

**IMPORTANT: WATCH THE THIRD VIDEO BY THIS TIME!**

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Notes from University of Houston:

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](http://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.

[http://www.uh.edu/caps/outreach/lets\\_talk.html](http://www.uh.edu/caps/outreach/lets_talk.html)

## Class Policies

Welcome to the Course in Civil Procedure! This is a wonderful subject to study: fascinating, challenging, and practical. It also is among the most difficult courses in law school, but at the same time, it is among those in which your hard work is most likely to be rewarded when you practice law.

It is necessary to implement policies or rules for such a class. Therefore, please understand the businesslike tone of the following items.

1. *You Need Not Communicate with the Professor Concerning the Reasons for Your Absences.* If you are absent, I always assume you have a good reason. As long as you comply with the law school's attendance requirements, I don't need to know the reason. Exception: See Item 12 below!
2. *You Need Not Communicate with the Professor Concerning Your Unpreparedness.* If you are unprepared on a given day when I happen to call on you, my approach is to go ahead and call on you. The (relatively mild) sanction for occasional unpreparedness is that you must stand up and admit it. For this and other reasons, I request that you not inform me about unpreparedness. I assume (and I think your classmates assume) that even good students may be unprepared occasionally. (I may, however, call on you again in the near future, and I do begin to take unpreparedness more seriously if it occurs repeatedly.)
3. *It Is Your Responsibility to Read Forward in the Casebook so as to Be Prepared for Class.* Unless I otherwise indicate, we shall go straight through the syllabus. There will be a few occasions when we shall deviate, and I'll try to let you know about that well in advance.
4. *Hold Up Your Hand Before Talking; Realize that the Professor Can't Always Recognize Everyone and Must Determine When We Must Move Along.* This will be a large class, and there is no responsible way to teach it without covering a lot of ground. I have to consider the need to cover the material and the need to bring a variety of students into the discussions. Therefore, please hold up your hand before speaking out. Please understand if we have to cut off discussion and move on.
5. *Stand Up and SPEAK LOUDLY When You Are Called On.* Every student must speak loudly enough for everyone else to hear. Conversely, one of the skills you should learn is how to stand up in a group of people and speak extemporaneously and persuasively on difficult subject matter. One of the habits that will most annoy your classmates is speaking so that they have to strain to hear you.
6. *And You Will Be Required, In this Class, to Speak in Class, Without Excuses.* No one should be in law school who has too much stage fright to answer questions in class. Thus, avoidance techniques will not work. I expect you to take a position and answer questions about it. If you aren't sure, try! And keep trying. Repeated avoidance may affect your grade.
7. *Out of Class Assignments.* Every student, at some point during the course, will be given a practical, out-of-class assignment that will involve document preparation, preparing an oral trial-related presentation, or the like. These outside assignments will culminate in a simulated jury trial.
8. *Reading The Story of a Civil Suit: Dominguez v. Scott's Food Stores (Light Blue Paperback).* At certain points in the course, we shall use the light blue paperback book, *The Story of a Civil Suit*, in addition to the casebook. We shall read and discuss the full *Dominguez* book.
9. *Reviews.* Three times during the semester, I shall furnish reviews of material covered up to the time of each review.

10. *Practice Examination; Final Examination; Grading.* Sometime about the middle of the semester, we'll have a practice examination. It will be announced in advance and will not count toward your grade in any way. It probably will be administered outside class time. Your grade for the course will be determined by an anonymous final examination and will be based on a curve, which in turn will conform approximately to the law school average for first-year classes. At appropriate times during the semester, I'll try to help you to know what to expect and how to take law school exams. The examination probably will be 3 hours rather than 4. In addition, repeated unpreparedness (as well as avoidance) may affect your grade.
11. *Attendance.* It is required that you comply with the law school's attendance requirements, which mandate 80% attendance. Attendance will be taken every class period. I also do notice consistent, prolonged absences and on occasion, when students' failure to attend has been obvious, I have felt it necessary to drop them from the course.
12. *Double Absences on Days of, or Within Two Days of, a Legal Writing Assignment Turn-In Date, Subject to Liberal Excuse.* There is one attendance issue that raises a sensitive problem. The Lawyering Skills and Strategies course involves various deadlines for turning in assignments. I began to notice a couple of years ago that on these dates and within two days before, large numbers of students missed class to concentrate on their writing assignments alone. There are several disadvantages from this behavior. First, it means that a large percentage of the class needs catch-up work in later class meetings. Repetition of the most basic issues becomes necessary. This is unfair to students who have attended regularly. Second, this course is equally important, and it is a four-hour, one-semester course. Third, the absences result from poor time management, and time management is essential to good lawyering.

Therefore, I have decided to count all absences on the day an LSS assignment is due, and those on the two days preceding each deadline, as double absences. One absence on these days counts as two. This rule is subject to a liberal excuse policy: a double absence can be excused if you tell me of a reason not involving LSS and obtain my agreement. This policy will be liberally administered. That is, I will liberally agree to excuses unrelated to the LSS course if you present them to me. I hope that this policy will provide the needed incentive without being too heavy-handed. After all, it should be possible to get the job done if you plan your time, and this is an essential lawyering skill.

13. *Seating Chart.* Please sit in your assigned seat. Even if you come in late or leave early for emergency reasons, occupy your assigned seat.
14. *Disability.* Any student with a disability requiring accommodation should explain both to the professor (except as to the exam, for which accommodation is to be arranged through the law school administration).

## **SPECIAL NOTICES REGARDING VIDEOCONFERENCING SOFTWARE AND RECORDING OF CLASS SESSIONS**

For any student using the classroom's internet videoconferencing capability for synchronous distance education via remote presence, there are a number of requirements you, as the student, must meet: (i) you must be connected to the internet videoconference when class starts; (ii) your computer must have a working video camera and quality audio capability, joining by audio-only due to your lack of video capability may be treated as an absence (you may need an external mic or headset for sufficient audio quality); (iii) if your computer is a laptop, you must not be distracted by traveling or other activities when you join the internet videoconference; (iv) you may not join the class session internet videoconference from a phone; (v) you must listen closely and speak loud and clear, as hearing students speak in the class room and classmates ability to hear the remote presence student may not be optimal; (vi) you must identify yourself with your class roll name in the internet videoconferencing software; (vii) you must present your face and upper body area professionally in the video stream, eating "on-camera" is not a professional presentation; (viii) you must be able to fulfill your responsibilities if called on to discuss a case or course materials; and (ix) you must manage the "mute button" when remote to keep a professional demeanor.

The Law Center will record class sessions with audio and video for the sole and limited educational purpose of allowing students to stream the recorded sessions for review or to enable students who missed a class to hear the class presentation. Any recordings created will be deleted and destroyed shortly after the final exam for the class. There is a chance that your contributions to class discussion, whether voluntary or while on call, may be included in the recording. Your continued registration in this class indicates your acquiescence to any such incidental recording for the purposes described above. Historically under pre-pandemic Law Center practice, the decision whether to record a class was with the instructor unless a UH-mandated student accommodation was in play. However, for HyFlex courses under the ABA waiver and UH policy, the Law Center is administratively requiring the recording of the class sessions for the course. The uses of such recordings will be limited to the purposes for which the HyFlex approach has been implemented.