

Procedure – Fall 2022 Semester
Course Details and Syllabus
Professor Lonny Hoffman
Section No. 12428; Course No. 5406
(Aug 19, 2022 draft)



Course Description. In this class we will study the procedural laws that apply to lawsuits filed in state and federal courts. When a suit is filed, formal rules 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. 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.



Course Materials. You do not have to buy a casebook for this class. I’ve prepared course materials for you (listed as “CM” in the syllabus below). These materials, saved in.pdf format, are available electronically at [this link](#) on my UHLC webpage. We can also mail you a hard copy of the materials before the semester starts. Just email me to let me know that you want a hard copy and where it should be mailed.

You also will need access to the procedural rules and statutes that govern federal civil cases, but again there's no need to buy anything as the rules and statutes are all available 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 and Format. This class meets on Wednesdays from 6:00-7:20 pm and Thursdays from 6:00-8:00 pm. All required classes will be conducted virtually using the Zoom platform. I also expect to offer some voluntary in-person opportunities to get together (dates TBD). These will mostly be social gatherings, not to study procedure.



Class Design. Before each class, there will be assigned readings for you to do. For many classes, you will also watch a prerecorded short video (or videos) that I've made to help introduce the subject. And I will frequently also distribute discussion questions to think about after having read the material and watched the videos. Finally, on a few occasions, you will have assignments involving mock exam questions (some of which you will turn in; others you won't).

By having students do all this work in advance of class, we'll be able to use our group time together much more effectively. Classroom time will be primarily devoted to two activities: (1) working through and discussing practice problems that directly link to the final exam; and (2) addressing any questions in a more flexible and inviting format. My approach is informed by a style of teaching that's often referred to as the "flipped classroom" model. The core idea is that students end up being much more actively engaged with the material, transforming our class time into something that feels more inviting and interesting to you, rather than relying on more traditional classroom lecture or Socratic question-and-answer formats.



Attendance and Participation. You must attend at least 80% of the classes. Since we have 27 regularly scheduled classes, you must attend at least 22 class sessions. 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. 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.



Video on. My expectation is that you will attend all Zoom class sessions with your video on. This will help me confirm who is in attendance (and so avoids any need for a sign-in attendance sheet). It also gives me have a sense of class engagement and helps to promote a more robust online community. If you know in advance that there's some reasonable reason why you do not want (or cannot) join with video, I expect that you'll notify me in advance. Of course, there may be technical glitches from time to time; I understand that. But if that happens, I expect that you'll do your best to correct the problem before our next class. If I notice that you are not following these expectations, I may reduce your participation grade. If you need help with any technical issues, let me know or reach out to our IT team by emailing them at lawcomputerhelp@central.uh.edu or calling (713) 743-2260.



Recording of Class. All classes are recorded through Zoom and those recordings will be added to my Procedure webpage each week. Students may use instructor's recordings for their own studying and notetaking. You do not have permission to share these recordings with anyone. And you may not record all or part of class on your own or livestream all or any part of class or take screen captures. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action. If you have or think you may have a disability such that you need to record class-related activities, please contact the Center for Students with DisABILITIES.



Grading. You will have a couple of graded exercises during the semester that are worth a small percentage (10%) of your final grade for the course. The final examination will be an open book exam comprised of two medium-length essay questions (70% of your final grade), and multiple-choice questions (the remaining 20% of your final grade). Note that most of my past exams are available from this link on my UHLC webpage.

4. Joining a student organization. Can be both enriching for law school and a good source of academic support. Here's a list:<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 kdwith@central.uh.edu.

Other kinds of support. Law school can be stressful, though of course it doesn't have to be. But if it begins to feel that way to you, know that you aren't alone, no matter how big or small the issues you face 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. At the Law Center. Of course, you are always welcome to come see me. Another resource here at UHLC is Monica Mensah, Assistant Dean for Student Affairs. Her office is located in the Office of Student Services, across from the student commons. Her email is mebuckne@central.uh.edu; her phone is (713) 743-6247.

2. The University of Houston's Counseling and Psychological Services (CAPS) can help students who are having difficulties managing anxieties, 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 (web address is <https://www.tlaphelps.org/>). TLAP "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.



Chosen Names, Preferred Pronouns, and Inclusivity. In my classroom, you certainly have the right to be addressed by your preferred name and pronoun—and that includes any non-binary pronouns, such as they/them/theirs, ze/zir/zem, etc. Rosters do not list gender or pronouns so if you have specific preferences, please just let me know.

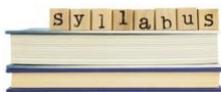
Diversity and Inclusion. This is an inclusive learning space; all are welcome. If you feel like your class performance is impacted in any way by your experiences inside or outside of class, please reach out to me. I want to be a resource for you. If you feel more comfortable speaking with someone besides me, Monica Mensah, Assistant Dean for Student Affairs Student Services, is an excellent resource (contact info above). You can also bring any issues negatively impacting UHLC's openness to diversity and inclusion to the Law Center's Diversity and Inclusion Committee. You can contact the committee directly at UHLCD&I@uh.edu.

Anti-Discrimination and Sexual Misconduct Policies [the following is university-approved language]. UHLC and the University of Houston are committed to maintaining and strengthening an educational, working, and living environment in which students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, a confidential reporting process is available to you. For more information, please refer to the University system’s Anti-Discrimination Policy webpage, Anti-Discrimination Policy, Sexual Misconduct Policy webpage, and Sexual Misconduct Policy.

Under the University Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.



Office Hours/Contact Information. I will have two types of office hours this semester. I will always have regular office hours by Zoom that anyone can join. My regular office hours are on Wednesdays and Thursdays from 7:30-8:30 am. (I intentionally scheduled these as early morning meetings on the theory that it may be easier for many of you to meet before work.) I am also available on Fridays at noon. It’s a good idea to email or text me in advance if you plan on attending office hours. Beyond these times, I am also available by special appointment to meet by Zoom or to talk by phone. Just email me in advance to schedule a separate appointment. My contact information is: Email: lhoffman@uh.edu; office phone: (713) 743-5206. My executive assistant is **Jessica Rodriguez**. Her phone is (713) 743-6407; her email is jestrad2@central.uh.edu.



Course Syllabus and Outline of Daily Class Schedule. Beginning on the next page is the course syllabus and outline of the daily class schedule. In the left column, I detail what we will cover on a day-by-day basis in each class period. This column also lists the learning objectives for each class—basically, what knowledge, skills, or other outcomes I’m aiming for you to develop. These can be useful to review closely because they may give you a clearer understanding of what we’re studying and what I intend for you to get out of each class. By closely following the descriptions of the class material and learning objectives, you can see what I intend for students to learn and may be able to better follow how your work outside of class links to what we’re covering in class.

The right column lists every homework assignment that you will need to complete before each class. It also flags all graded and ungraded assignments that you will do over the course of the semester.

Course Syllabus and Outline of Daily Class Schedule

Class Material and Learning Objectives	Daily Assignments
<p style="text-align: center;">Class #1 – Wed., Aug 24</p> <p>My goals for this first class are to cover key orienting information about the course, including:</p> <ul style="list-style-type: none"> · <u>What’s this course about?</u> It makes sense to start with discussing the kind of topics that we’ll cover and how those various topics relate to one another. Basically, think of this as the first (of several) discussions to try to get a sense of the overall forest, a bigger picture perspective about the entire class before we dive into specific subjects. · <u>Why is procedure important?</u> This discussion will highlight what makes procedure intellectually interesting, as well as what makes it practically relevant to lawyers. (Note that we’ll spend much more time in this and the next class talking more about procedure’s practical relevance.) · <u>Why is procedure hard and what can be done about it?</u> From the very outset, it’s important to have a sense of what makes this class challenging so you can begin to think constructively about what you can do to succeed in overcoming these challenges. What kinds of learning strategies will work for you? What kind of support is available? · <u>Misc. housekeeping about the course</u>, including all expectations that I have for students. <p>In addition to these broad topics relating to the class itself, we will also begin our discussion of</p> <ul style="list-style-type: none"> · <u>Procedure as strategy, focusing on the article about the <i>World-Wide Volkswagen</i> case.</u> The goal here is for students to start to develop a sense of how lawyers use procedure to advance their client’s objectives. The discussion is meant to be very practical, to make vivid and more concrete why procedure is important and how it is used. Note: we’ll certainly continue this discussion in the next class. 	<p style="text-align: center;">In advance of class:</p> <p>Read Mary Brigid McManamon, <i>The History of the Civil Procedure Course: A Study in Evolving Pedagogy</i> (CM pp. 1-6), article publicly available here* (see note at bottom of this page);</p> <p>Read Paul MacMahon, <i>Proceduralism, Civil Justice and American Legal Thought</i> (CM pp. 7-8), article publicly available here;</p> <p>Read Lonny Hoffman, <i>A Parting Reprise</i> (CM pp. 9-23), article publicly available here;</p> <p>Read Federal Judicial Center, <i>The U.S. Legal System: A Short Description</i> (CM pp. 24-27), article publicly available here; and</p> <p>Read Charles Adams, <i>World-Wide Volkswagen v. Woodson – The Rest of the Story</i> (permission granted by author to use) (CM pp. 28-37)</p> <hr/> <p style="text-align: center;">Suggested additional (optional) video to watch:</p> <p><i>Full Faith and Credit</i>, video by Columbia Law Review students, available here. A fun introduction to this class that also gives you a sense of the shared journey you are about to take.</p> <hr/> <p>* When I provide a link in this syllabus for how to publicly access a source, I don’t mean that you are required to go to the link. You are only responsible for reading the excerpted pages that are included in the course materials. If you want to read more than the required excerpt, the link I provide to the entire reading allows you to do so.</p>

<p style="text-align: center;">Class #2 – Thurs., Aug 25</p> <p>In this class we'll finish our discussion of procedure as strategy. After that, the rest of class will be devoted to discussing modern procedure's historical antecedents and sources of procedural law. Here are more details about those two topics, with my pedagogic goals spelled out so students can know what I'm hoping they will learn:</p> <ul style="list-style-type: none"> · <u>Modern procedure and its historical antecedents.</u> The goal here is to help students gain an understanding of the ways that our current procedural regime was inspired by older regimes and the ways that it was intentionally designed to be different. Note that this isn't just an academic exercise of studying history for history's sake. One recognized method for gaining insight into what legal drafters intend is to compare the words they're using now with earlier language that they chose not to use again or to modify; and · <u>Sources of procedural law and rulemaking.</u> The goal here is to help familiarize students with where procedural law comes from—i.e., the various rules and laws that make up procedure that we'll be studying. That's important because there are more sources of law in this class than in many other classes. Understanding the various sources of procedural law helps clarify the rationales courts invoke for construing the laws that they must apply. 	<p style="text-align: center;">In advance of class:</p> <p>Read Subrin, <i>How Equity Conquered Common Law: The Federal Rules of Civil Procedure in Historical Perspective</i> (CM pp. 38-50), article publicly available here;</p> <p>Read Thomas Main, <i>Traditional Equity and Contemporary Procedure</i> (CM pp. 51-55), article publicly available here; and</p> <p>Read Mulligan and Staszewski, <i>The Supreme Court's Regulation of Civil Procedure: Lessons from Administrative Law</i> (CM pp. 56-57), article publicly available here</p>
<p style="text-align: center;">Optional: Friday, Aug 26 at 4:00 pm</p> <p>Optional session to discuss challenges and advice about starting law school. I'll record the session and post the recording.</p>	<p>I have a list of law school study resources on my webpage: https://www.law.uh.edu/faculty/lhoffman/procedure.asp</p> <p>You may also want to check out Zero-L, Harvard's online course for incoming students. Here: https://online.law.harvard.edu/</p> <p>Finally, I strongly encourage everyone to purchase <i>The Happy Lawyer</i>, a short book by Nancy Levit and Douglas Linder. It's an invaluable resource to consult before, during, and after law school. As of this summer, it was \$4.14 at Better World Books. See here: https://www.betterworldbooks.com/product/detail/Happy-Lawyer---Making-a-Good-Life-in-the-Law-9780195392326</p>

<p>Class #3 – Wed., Aug 31</p> <p>In this class we'll begin discussing pleading sufficiency standards. We read the default federal rule on pleading (Rule 8) that applies, unless a more specific rule or statute exists.</p> <p>Goals for class: Students should begin to understand what pleading requirements are and why (and when) they matter, and to be able to articulate the broad outlines of the modern pleading sufficiency test. Students should also begin to form an understanding that while Rule 8 is the primary source of pleading standards, its meaning will be guided by judicial application and interpretation.</p> <hr/> <p>Class format: For the first portion of class, I'll meet with half the class while the other half works in smaller sub-groups, each led by a teaching assistant. In advance, I'll distribute discussion questions for the small groups. For the second part of class, we flip this so everyone has a chance to meet with me and work in smaller groups. Why this format? Over the years, I've observed that this material is harder to grasp using a traditional class format. My aim with this alternate format is to facilitate more active learning of the material.</p> <hr/> <p>[Note that we won't have class on Thurs, Sept 1. Since we already are scheduled over the entire semester to meet for more minutes than the ABA requires, we aren't required to have a make-up class. I will be offering an optional review session on Friday, Sept 2 (see next entry, below). I'll be offering more of these optional review sessions throughout the semester.]</p>	<p>In advance of class:</p> <p>Watch all three notice pleading videos, available on my Procedure webpage;</p> <p>Read Fed. R. Civ. P. 8 and 9;</p> <p>Read <i>Swierkiewicz</i> Opinion and Plaintiff's Complaint (CM pp. 58-74). [Note: you can skim through the complaint; it's included mostly for illustrative purposes.]; and</p> <p>Read <i>Ashcroft v. Iqbal</i> (CM pp. 75-84)</p> <hr/> <p>In class, we'll discuss Practice Problem for Notice Pleading- Problem #1 (CM p. 121). You will not turn in any answer; we will just work the problem together in class. This assignment is not graded.</p> <hr/> <p>Suggested additional (optional) reading:</p> <p>Adam Steinman, <i>The Rise and Fall of Plausibility Pleading</i>, article publicly available here</p> <p>Samuel Bray, <i>The Parable of the Forms</i>, article publicly available here</p> <p>Sinnar, <i>The Lost Story of Iqbal</i>, article publicly available here</p>
<p>Optional: Friday, Sept 2 at 12:00 pm</p> <p>Optional session to review material covered on Wed., Aug 31's class. I'll record the session and post the recording.</p>	<p>No reading</p>

Class #4 – Wed., Sept 7

In this class we dig deeper into pleading sufficiency standards by looking at three lower court cases that applied the Supreme Court’s decisions in *Twombly* and *Iqbal*. We also read a recent brief that offers one perspective on the complexities of the lower court case law surrounding *Twombly* and *Iqbal*.

Goals for class: by discussing a pleading mock exam problem, students should (i) gain a deeper understanding of pleading sufficiency standards; and (ii) start to learn how to compose a coherent, logically organized legal analysis, a critical skill for essay exams in law school (indeed, for all litigation writing).

Class format: for the first 20 minutes or so, we’ll break into smaller sub-groups, each led by a teaching assistant or me. The groups will role play the assignment by arguing for the plaintiff or defendant in the practice problem (roles to be assigned). For the remainder of class, we’ll reconvene to debrief about the exercise and to go over a partial model answer to the problem.

Once again (as was the case with Class #3), instead of using a traditional class format, I employ this alternate format because it helps facilitate more active learning of the material.

In advance of class:

Read *Coleman v. John Moore Services* (CM pp. 85-87);

Read *Kidwell v. Digital Intelligence Systems* (CM pp. 88-91); and

Read *Petition for Writ of Certiorari in Audubon Imports v. Bayerische* (CM pp. 92-120) [Note: you can mostly just skim; this brief gives one articulate perspective on the state of pleading law around the country.]

[Additional note: the Court denied the petition (meaning, it decided not to hear the case) on June 21, 2022. Denying the petition doesn’t necessarily mean that at least four justices weren’t convinced by the petition’s arguments (it takes four justices to grant cert). The Court might decide to deny cert for other reasons, including that the justices weren’t convinced that this case was the best one for the Court to address the legal issues raised.]

In class we’ll discuss Practice Problem for Notice Pleading- Problem #2 (CM p. 122). You will not turn in any answer; we will just work the problem together in class. However, I would strongly encourage you to write out your answer, at least in outline form or, better still, as a narrative. This will help you compare your answer against the partial model answer that I’ll circulate. This assignment is not graded.

Suggested additional (optional) reading:

Arthur Miller, *From Conley to Twombly to Iqbal: A Double Play on the Federal Rules of Civil Procedure*, 60 Duke L. J. 1 (2010), article publicly available at <http://scholarship.law.duke.edu/dlj/vol60/iss1/1/>

Lonny Hoffman, *Rulemaking in the Age of Twombly and Iqbal*, article publicly available [here](#)

<p style="text-align: center;">Class #5 – Thurs., Sep 8</p> <p>In this class, we’ll discuss pre-answer motions, answers, and affirmative defenses. The focus here is on the options that a defending party has after being sued.</p> <hr/> <p>Class format: For the first part of class, we’ll meet in smaller sub-groups, each led by a teaching assistant or me. After the small group exercises, we’ll reconvene to debrief about the problems and to talk more broadly about the options a defendant has after being sued.</p> <p>Goals for class: By working through the exercises on timing and waiver, students should gain a deeper understanding of the timing and waiver requirements for pre-answer motions, answers, and affirmative defenses. More broadly, students should begin to comprehend how to apply multiple, interconnected rules.</p>	<p style="text-align: center;">In advance of class:</p> <p>Watch pre-recorded video on Defendant’s answer and timing/waiver, available on my Procedure webpage;</p> <p>Read Rules 8(b) and 8(c), 12;</p> <p>Read Defendant’s Answer from <i>Madrigal v. Kerry, Inc.</i> (just skim) (CM pp. 123-25); and</p> <p>Prepare Exercise on Timing and Waiver (CM p. 126). This assignment counts toward your overall class participation; it is not individually graded. You must turn in your answers before class begins by emailing them to your TA. To receive satisfactory participation credit, your answer must be received before 6:00 pm.</p>
<p style="text-align: center;">Optional: Friday, Sept 9 at 12:00 pm</p> <p>Optional session to review material covered in class this week. I’ll record the session and post the recording.</p>	<p style="text-align: center;">No reading</p>

<p>Class #6- Wed., Sep 14</p> <p>In the first half of class, we'll examine Rule 15(a).</p> <p>Class format: Our discussion will be primarily focused on Rule 15(a) and the two lower court cases, which are illustrative of various ways that courts interpret and apply Rule 15(a).</p> <p>Goals for class: Students should be able to articulate when a party needs permission to amend and what standards apply.</p> <hr/> <p>The second half of class focuses on Rule 15(c).</p> <p>Class format: we'll focus our discussion primarily on the rule and the two lower court cases, which are illustrative of how courts apply Rule 15(c)(1)(B).</p> <p>Goals for class: Students should be able to articulate whether, if a party has timely filed its original claim, it can add another claim that would otherwise be barred by limitations.</p>	<p>In advance of class:</p> <p>Watch pre-recorded video on Rule 15(a), available on my Procedure webpage;</p> <p>Read Rule 15;</p> <p>Read <i>On Track Innovations v. T-Mobile</i> (CM pp. 127-33); and</p> <p>Read <i>Spencer v. Wal-Mart</i> (CM pp. 134-36)</p> <hr/> <p>Watch pre-recorded video on Rule 15(c);</p> <p>Read <i>Buerman v. Witkowski</i> (CM pp. 137-42);</p> <p>Read <i>Waynesborough Country Club v. Diedrich Niles Bolton Architects</i> (CM pp. 143-46); and</p> <p>Prepare Practice Problem for Amendments (CM pp. 147-48). Before class, turn in your answer by email to your TA. I will assign roles for arguing the problem together in class. This assignment counts toward your overall class participation; it is not individually graded. To receive satisfactory participation credit, your answer must be received before 6:00 pm.</p>
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<p style="text-align: center;">Class #7 – Thurs., Sep 15</p> <p>In the first part of class, we’ll examine the joinder of claims and parties, including counterclaims and crossclaims.</p> <p>Class format: Our discussion will be focused on the various rules that define the scope and size of a case. The two lower court cases that we read are illustrative of how courts apply some of these joinder rules. Time permitting, we’ll work another practice problem together.</p> <p>Goals for class: students should be able to articulate when the rules permit (or require) that multiple claims be brought in the same case; when multiple parties can sue together—and when they must sue together; and what happens if all parties or claims can’t be joined in the same case.</p> <hr/> <p>In the second part of class, we discuss Rule 11.</p> <p>Goals for class: students should be able to articulate Rule 11’s certification requirements for all parties and their lawyers and the sanctions that can be imposed if those requirements aren’t met.</p> <p>Class format: We don’t read any Rule 11 cases. Instead, our focus is on the rule itself, along with the advisory committee notes. Note: our focus on the notes might make you wonder why we didn’t also read any notes that relate to other rules we’ve previously read. The short answer is we could have. A slightly longer answer is that because the committee’s discussion of Rule 11 has been more robust, its notes arguably shed helpful light on Rule 11’s language. That said, this class serves as a useful reminder that you should remember to consult all relevant sources.</p>	<p style="text-align: center;">In advance of class:</p> <p>Watch pre-recorded video on joinder of claims and parties, available on my Procedure webpage;</p> <p>Read Rules 13, 14, 18, 19, 20 and 23;</p> <p>Read <i>Compass Exploration v. B-E Drilling Co.</i> (CM pp. 149-51);</p> <p>Read <i>Kedra v. City of Philadelphia</i> (CM pp. 152-57); and</p> <p>Prepare practice problem on joinder and amendments (CM p. 158). You will not turn anything in. We will work the problem together in class. This assignment is not graded.</p> <hr/> <p>Read Rule 11 and text of advisory committee notes accompanying 1983 and 1993 amendments (advisory committee notes are available in several places, including here); and</p> <p>Read Excerpt from Lonny Hoffman, <i>The Case Against the Lawsuit Abuse Reduction Act of 2011</i> (CM pp. 159-76), article publicly available here</p> <hr/> <p style="text-align: center;">Suggested additional (optional) reading:</p> <p>Mary Kay Kane, <i>Original Sin and the Transaction in Federal Civil Procedure</i>, article publicly available here</p> <p>Douglas McFarland, <i>Seeing the Forest for the Trees</i>, article publicly available here</p>
<p style="text-align: center;">Optional: Friday, Sept 16 at 12:00 pm</p> <p>Optional session to review material covered in class this week. I’ll record the session and post the recording.</p>	<p style="text-align: center;">No reading</p>

Class #8 – Wed., Sep 21

In this class our focus is on the law of personal jurisdiction. In some important ways, our study of this subject will feel like a significant pivot from what we had been doing until now, which was studying procedural law that derives from specific rules. In this class, we begin to study procedural law that is sourced from judicial interpretation of statutes and the U.S. Constitution.

Another significant difference that you'll notice in terms of your study experience of this material is that until this point we've largely focused on a small number of cases, most of which have been illustrative lower court decisions. With our study of personal jurisdiction, we'll be reading several important Supreme Court cases that, collectively, reflect the evolving doctrine of personal jurisdiction.

Class format: We'll focus our discussion primarily on constitutional amenability—which we primarily consider in our discussion of *Pennoyer* and *Shoe*. We will also talk briefly about statutory amenability to suit. For this latter subject, we read three state long arm statutes.

Goals for class: students should be able to articulate traditional doctrinal conceptions of personal jurisdiction and to comprehend the traditional doctrine's evolution into the modern jurisdictional test, for which *International Shoe* is the foundational case. Students should also be able to differentiate between statutory and constitutional amenability to suit.

In advance of class:

Watch pre-recorded videos, Personal Jurisdiction Video Nos. 1 and 2, available on my Procedure webpage;

Read *International Shoe v. Washington* (CM pp. 177-86); and

Read Ohio, California, and Texas long arm statutes (CM pp.187-91).

**Note that Shoe is the main case we'll focus on so put most of your reading effort on it.*

Suggested additional (optional) reading/video:

Wendy Collins Perdue, *What's "Sovereignty" Got To Do With It? Due Process, Personal Jurisdiction, and the Supreme Court*, article publicly available [here](#)

Lonny Hoffman, *The Case Against Vicarious Jurisdiction*, article publicly available [here](#)

Short video to watch (fun video):
<https://youtu.be/e6L90oN4ppY>

<p style="text-align: center;">Class #9 – Thurs., Sep 22</p> <p>In this class, turn our attention to the two types of personal jurisdiction recognized by the modern doctrinal test, known as general jurisdiction and specific jurisdiction.</p> <p>Goals for class: students should gain an understanding of when a defendant is constitutionally amenable to jurisdiction for claims unrelated to its contacts in the forum. There’s much more complexity to the specific jurisdiction test so in this initial extended discussion of specific jurisdiction, my goals are for students to (i) to see the broad doctrinal differences between general and specific jurisdiction, and (ii) to begin to comprehend the modern test for determining the limits of jurisdictional power when a claim is related to or arises out of the defendant’s forum contacts.</p> <p>Class format: For the first half of class, we’ll discuss general jurisdiction. In the second half of class, we turn to specific jurisdiction. We’ll continue our discussion of specific jurisdiction in the next two classes.</p>	<p style="text-align: center;">In advance of class:</p> <p>Watch pre-recorded video, Personal Jurisdiction Video No. 3, available on my Procedure webpage; and</p> <p>Read <i>DaimlerChrysler v. Bauman</i> (CM pp. 192-202)</p> <hr/> <p>Read <i>Burger King v. Rudzewicz</i> (CM pp. 203-15);</p> <p>Read <i>Walden v. Fiore</i> (CM pp. 216-29); and</p> <p>Read <i>Bristol Myers Squibb v. Superior Court of California</i> (CM pp. 230-46)</p>
<p style="text-align: center;">Optional: Friday, Sept 23 at 12:00 pm</p> <p>Optional session to review material covered in class this week. I’ll record the session and post the recording.</p>	<p style="text-align: center;">No reading</p>

<p style="text-align: center;">Class #10 – Wed., Sep 28</p> <p>This class continues with specific jurisdiction.</p> <p>Goals for class: Students should have a deeper comprehension of the constitutional test for specific jurisdiction. Students should also be able to articulate, using <i>Ford</i>'s analysis, how we determine whether a claim is sufficiently related to a defendant's forum contacts to be treated as a specific jurisdiction case. Finally, students should be able to articulate how the facts of <i>Nicastro</i> (at least as construed by the majority and concurrence opinions in <i>Nicastro</i>) are arguably quite different from the facts in <i>Ford</i>.</p> <p>Class format: For the first portion of class, I'll meet with half the class while the other half works in smaller sub-groups, each of which will be led by a teaching assistant. In advance of class, I'll distribute discussion questions for the small groups. For the second portion of class, we flip this so everyone has a chance to meet with me and to work in smaller groups.</p>	<p style="text-align: center;">In advance of class:</p> <p>Read <i>Ford v. Montana Eighth...</i> (CM pp. 247-79); and</p> <p>Read <i>J. McIntyre Machinery, Ltd. v. Nicastro</i> (CM pp. 280-306)</p> <p>[note: this reading assignment is longer than usual]</p> <hr style="width: 30%; margin: 20px auto;"/> <p style="text-align: center;">Suggested additional (optional) reading</p> <p>Borchers, Freer, and Arthur: <i>Ford Motor Company v. Montana Eighth Judicial District Court</i>: Lots of Questions, Some Answers, full text available here</p> <p>Adam Steinman, The Lay of the Land: Examining The three Opinions in <i>J. McIntyre...</i>, full text available here</p>
<p style="text-align: center;">Class #11 – Thurs., Sep 29</p> <p>This is our last class on the constitutional limits of personal jurisdiction.</p> <p>Class format: For the first part of class, we'll break into smaller sub-groups, each led by a teaching assistant or me. The groups will role play the assignment by arguing for the plaintiff or defendant in the practice problem (roles to be assigned). For the remainder of class, we'll reconvene to debrief about the exercise and to summarize personal jurisdiction doctrine.</p> <p>Goals for class: Working the practice problem together should help students be able to synthesize all our prior discussions of personal jurisdiction doctrine.</p>	<p style="text-align: center;">In advance of class:</p> <p>Prepare Practice Problem for Personal Jurisdiction (CM pp. 307-08), focusing only on the constitutional amenability part of the question. This assignment is graded (worth 5% of the final grade). You must turn in your answers before class begins by emailing them to your TA. To receive full credit, your answer must be received before 6:00 pm.</p>
<p style="text-align: center;">Optional: Friday, Sept 30 at 12:00 pm</p> <p>Optional session to review material covered in class this week. I'll record the session and post the recording.</p>	<p style="text-align: center;">No reading</p>

<p style="text-align: center;">Class #12 – Wed., Oct 5</p> <p>This class is primarily devoted to forum selection clauses.</p> <p>Goals for class: Students should be able to articulate why the analysis that lawyers and courts must follow in deciding if there is valid jurisdiction by consent is not governed by the constitutional amenability test from <i>Shoe</i> and its progeny. Students also should be able to articulate the relevant test. Students should also have a rudimentary understanding of mandatory arbitration but our primary focus is on <i>Carnival Cruise Lines</i> and its discussion of the enforceability of forum selection clauses.</p> <p>Class format: We will work the practice problem together. We'll likely begin with the role play problem, doing that in smaller sub-groups led by the teaching assistants and me. Thereafter, for the remainder of class, we'll reconvene to debrief about the exercise and discuss the rest of the doctrinal subjects covered by the reading.</p>	<p style="text-align: center;">In advance of class, read:</p> <p>Read <i>Carnival Cruise Lines v. Shute</i> (CM pp. 309-17);</p> <p>Read Pamela Bookman, <i>The Arbitration-Litigation Paradox</i> (CM pp. 318-24), publicly available here; and</p> <p>Prepare forum selection clause problem (to be distributed). You will not turn anything in. We will work the problem together in class. This assignment is not graded. In advance of class, I will assign roles the problem.</p>
<p style="text-align: center;">Class #13 – Thurs., Oct 6</p> <p>In this class our focus is on constitutional and non-constitutional requirements for providing notice through formal service of process.</p> <p>Class format: We'll discuss <i>Jones v. Flowers</i>, the leading case on notice in the modern era. We'll also discuss the practice problem to help deepen understanding of the material.</p> <p>Goals for class: Students should be able to articulate the differences between constitutional and non-constitutional notice requirements for notice and be able to describe and apply the constitutional test. Finally, Students should also have a basic understanding of Rule 4.</p>	<p style="text-align: center;">In advance of class:</p> <p>Watch pre-recorded video on constitutional and non-constitutional notice requirements, available on my Procedure webpage;</p> <p>Read <i>Jones v. Flowers</i> (CM pp. 325-33);</p> <p>Read Fed. R. Civ. P. 4 (just skim); and</p> <p>Prepare notice pleading problem (to be distributed). You do not need to turn anything in; prep for discussion purposes only. This assignment is not graded.</p>
<p style="text-align: center;">Optional: Friday, Oct 7 at 12:00 pm</p> <p>Optional session to review material covered in class this week. I'll record the session and post the recording.</p>	<p style="text-align: center;">No reading</p>

<p style="text-align: center;">Class #14 – Wed., Oct 12</p> <p>In this class we turn to venue, starting with statutory requirements for laying venue.</p> <p>Class format: We will study venue requirements through our study of § 1391 and the problems.</p> <p>Goals for this part: Students should be able to articulate what purpose venue serves separate from personal jurisdiction and articulate the federal venue requirements under §1391. Students should also begin to comprehend how to parse a detailed statutory scheme and to carefully apply its requirements.</p> <hr/> <p>The second part of class is on transfer of venue.</p> <p>Class format: We'll focus on the most important federal general venue provision, §1404, and by reading the most recent major venue transfer decision, the <i>Atlantic Marine</i> case.</p> <p>Goals for this part of class: Students should be able to (1) articulate and apply the transfer test under §1404; and (2) be able to comprehend what makes the transfer issue in <i>Atlantic Marine</i> distinctive and to articulate how the case's test grafts onto the forum selection clause enforceability that we've previously studied.</p>	<p style="text-align: center;">In advance of class:</p> <p>Watch pre-recorded video on venue and transfer, available on my Procedure webpage;</p> <p>Read 28 U.S.C. §1391; and</p> <p>Prepare Venue Problems (CM p. 334). You do not need to turn anything in; prep only for discussion purposes. This assignment is not graded.</p> <hr/> <p>Read 28 U.S.C. §§1404, 1406;</p> <p>Read <i>Dariz v. Republic Airline</i> (CM pp. 335-41); and</p> <p>Read <i>Atlantic Marine Constr. v. U.S. District Court</i> (CM pp. 342-58)</p>
<p style="text-align: center;">Class #15 – Thurs., Oct 13</p> <p>In this class we examine forum non conveniens.</p> <p>Class format: For the first portion of class, I'll meet with half the class while the other half works in smaller sub-groups, each led by a teaching assistant. For the second part of class, we flip this so everyone has a chance to meet with me and work in smaller groups.</p> <p>Goals for class: Students should have an understanding of when a case can be dismissed based on FNC doctrine and of the test used to decide whether dismissal should be granted.</p>	<p style="text-align: center;">In advance of class:</p> <p>Watch pre-recorded video on FNC, available on my Procedure webpage; and</p> <p>Read <i>Piper Aircraft v. Reyno</i> (CM pp. 359-72)</p>
<p style="text-align: center;">Optional: Friday, Oct 14 at 12:00 pm</p> <p>Optional session to review material covered in class this week. I'll record the session and post the recording.</p>	<p style="text-align: center;">No reading</p>

<p style="text-align: center;">Class #16 – Wed., Oct 19</p> <p>This class concludes our discussion of FNC.</p> <p>Class format: for the first 20-30 minutes or so, we'll break into smaller sub-groups, each led by a teaching assistant or me. The groups will role play the assignment by arguing for the plaintiff or defendant in the practice problem (roles to be assigned). For the remainder of class, we'll reconvene to debrief about the exercise and will go over a partial model answer to the problem.</p> <p>Goals for class: Students should be able to articulate when FNC is a potential available basis for dismissal and properly analyze when a motion to dismiss should be granted.</p>	<p style="text-align: center;">In advance of class:</p> <p>Prepare FNC practice problem (to be distributed). Before class, turn in your answer by email to me. In advance of class, I will assign roles for arguing the problem together in class. This assignment is graded (worth 5% of the final grade). You must turn in your answers before class begins by emailing them to your TA. To receive full credit, your answer must be received before 6:00 pm.</p> <hr/> <p style="text-align: center;">Suggested additional (optional) reading:</p> <p>Excerpt from Lonny Hoffman, <i>Forum Non Conveniens in Federal Statutory Cases</i>, article publicly available here</p>
<p style="text-align: center;">Class #17 – Thurs., Oct 20</p> <p>This class focuses on subject matter jurisdiction, focusing on diversity and alienage jurisdiction.</p> <p>Class format: For the first portion of class, I'll meet with half the class while the other half works in smaller sub-groups, each led by a teaching assistant. The practice problems will focus our discussions. For the second part of class, we flip this so everyone has a chance to meet with me and work in smaller groups.</p> <p>Goals for class: Students should be able to (i) differentiate subject matter from personal jurisdiction and (ii) articulate the constitutional and statutory limits of div/alienage jurisdiction.</p>	<p style="text-align: center;">In advance of class:</p> <p>Review Notes on Diversity Jurisdiction (to be distributed);</p> <p>Read <i>Mas v. Perry</i> (CM pp. 373-75);</p> <p>Read <i>Hertz v. Friend</i> (CM pp. 376-88);</p> <p>Read U.S. Const. Article III, §2; 28 U.S.C. §1332; and</p> <p>Prepare practice problems on diversity/alienage jurisdiction (to be distributed). You do not need to turn anything in; prep only for discussion purposes. This assignment is not graded.</p>
<p style="text-align: center;">Optional: Friday, Oct 21 at 12:00 pm</p> <p>Optional session to review material covered in class this week. I'll record the session and post the recording.</p>	<p style="text-align: center;">No reading</p>

<p style="text-align: center;">Class #18 – Wed., Oct 26</p> <p>This class continues focusing on subject matter jurisdiction by looking at the second major category of Article III subject matter jurisdiction: federal question jurisdiction.</p> <p>Class format: For the first portion of class, we'll begin discussing federal question jurisdiction by considering the constitutional and statutory requirements and focusing on the <i>Mottley</i> case. For this first part of class, we'll likely utilize the small group format.</p> <p>The latter portion of class will be devoted to the related, but unique, doctrine of substantial federal question jurisdiction. For that discussion, <i>Grable</i> is the primary case we read and we'll work the practice problem together as one class.</p>	<p style="text-align: center;">In advance of class:</p> <p>Review Notes/Questions on Federal Question Jurisdiction (to be distributed);</p> <p>U.S. Const. Article III, §2; 28 U.S.C. §1331;</p> <p><i>Louisville & Nashville R.R. Co. v. Mottley</i> (CM pp. 389-91);</p> <p><i>Grable v. Darue Eng.</i> (CM pp. 392-99); and</p> <p>Prepare Practice Question on the substantial federal question doctrine (CM p. 400). You do not need to turn anything in; prep only for discussion purposes. This assignment is not graded.</p> <hr/> <p style="text-align: center;">Suggested additional (optional) reading:</p> <p>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 here</p>
<p style="text-align: center;">Class #19 – Thurs., Oct 27</p> <p>This class focuses on the statutory authority to remove a case from state to federal court.</p> <p>Class format: For the first portion of class, I'll meet with half the class while the other half works in smaller sub-groups, each led by a teaching assistant. The practice problems will focus our discussions. For the second part of class, we flip this so everyone has a chance to meet with me and work in smaller groups.</p> <p>Goals for class: Students should be able to answer all the removal practice problems so that they have a solid grasp of the various statutory provisions that relate to removal.</p>	<p style="text-align: center;">In advance of class:</p> <p>Read 28 U.S.C. §§ 1441, 1446;</p> <p>Read <i>Martin v. Franklin Capital</i> (CM pp. 401-06); and</p> <p>Prepare Removal practice problems (to be distributed). You do not need to turn anything in; prep only for discussion purposes. This assignment is not graded.</p>
<p style="text-align: center;">Optional: Friday, Oct 28 at 12:00 pm</p> <p>Optional session to review material covered in class this week. I'll record the session and post the recording.</p>	<p style="text-align: center;">No reading</p>

<p style="text-align: center;">Class #20 – Wed., Nov 2</p> <p>This class focuses on supplemental jurisdiction.</p> <p>Class format: Our discussion of supplemental jurisdiction in this class will proceed with all of us together, as we focus on some of the supplemental jurisdiction problems.</p> <p>Goals for class: Students should be able to articulate the constitutional and statutory authority for supplemental jurisdiction; understand the evolution of the law from common law doctrine to its statutory enactment; and have a basic understanding of how the statutory scheme operates.</p>	<p style="text-align: center;">In advance of class:</p> <p>Read 28 U.S.C. §1367;</p> <p>Read <i>UMW v. Gibbs</i> (CM pp. 407-11);</p> <p>Read <i>Exxon Mobil Corp. v. Allapattah Services, Inc</i> (CM pp. 412-28); and</p> <p>Review Supplemental Jurisdiction practice problems (to be distributed). You do not need to turn anything in; prep only for discussion purposes. This assignment is not graded.</p>
<p style="text-align: center;">Class #21 – Thurs., Nov 3</p> <p>This class concludes our discussion of supplemental jurisdiction.</p> <p>Class format: For the first portion of class, I'll meet with half the class while the other half works in smaller sub-groups, each led by a teaching assistant. The remaining practice problems that we didn't cover in the last class will focus our discussions. For the second part of class, we flip this so everyone has a chance to meet with me and work in smaller groups.</p> <p>Goals for class: Students should be able to answer the supplemental jurisdiction problems so that they have a solid grasp of the subject. Additionally, working through the statutory scheme provides students another opportunity to practice the skill of parsing a detailed statute and carefully applying its requirements.</p>	<p style="text-align: center;">In advance of class:</p> <p style="text-align: center;">No additional reading; continue practice problems for supplemental jurisdiction</p>
<p style="text-align: center;">Optional: Friday, Nov 4 at 12:00 pm</p> <p>Optional session to review material covered in class this week. I'll record the session and post the recording.</p>	<p style="text-align: center;">No reading</p>

<p style="text-align: center;">Class #22 – Wed., Nov 9</p> <p>This class discusses <i>Erie R.R. Co. v. Tompkins</i>.</p> <p>Class format: I will mostly lecture on this topic.</p> <p>Goals for class: Students should have a rudimentary understanding of the doctrinal law that has developed to address the choice of law problem that can arise when a case is in federal court based on diversity jurisdiction.</p>	<p style="text-align: center;">In advance of class read:</p> <p>Read <i>Erie Railroad v. Tompkins</i> (CM pp. 429-34); and</p> <p>Read 28 U.S.C. §§ 1652, 2071, 2072</p> <hr/> <p style="text-align: center;">Suggested additional (optional) reading:</p> <p>Adam Steinman, <i>What is the Erie Doctrine?</i>, article available here</p>
<p style="text-align: center;">Class #23 – Thurs., Nov 10</p> <p>This class focuses on discovery options in federal court and on the attorney-client privilege and work product doctrine.</p> <p>Class format: The first part of class will be devoted to discovery options in federal court. I will mostly lecture on this topic. The latter part of class will focus on the attorney client privilege and work product doctrine.</p> <p>Goals for class: students should have a basic understanding of the relevant discovery rules and doctrines.</p> <hr/> <p>Note: I am aware that Graded Legal Memo for LSS is due tomorrow and so I plan to mostly lecture on most of the material. Time permitting, we may be able to have a more engaging discussion relating to discovery best practices.</p>	<p style="text-align: center;">In advance of class read:</p> <p>Read Rules 16(b), 26, 27, 30, 31, 33, 34, 35, 36, and 37 (just skim);</p> <p><i>Hickman v. Taylor</i> (CM pp. 435-445);</p> <p>Prepare Discovery Practice Exercises (CM p. 446-47). You will not turn in an answer. Review the problems in advance of class, but no need to prepare anything. This assignment is not graded.</p>
<p style="text-align: center;">Note: I am not available on Friday, Nov 11 for our regular optional review session</p>	

<p style="text-align: center;">Class #24 – Wed., Nov 16</p> <p>This class focuses on summary judgment.</p> <p>Class format: For the first portion of class, I'll meet with half the class while the other half works in smaller sub-groups, each led by a teaching assistant. For the second part of class, we flip this so everyone has a chance to meet with me and work in smaller groups.</p> <p>Goals for class: Students should be conversant with the federal summary judgment rule and common law applications of the rule pertaining to the movant and non-movant's evidentiary burdens of proof.</p>	<p style="text-align: center;">In advance of class read:</p> <p>Read Fed R. Civ. P. 56;</p> <p>Read <i>Celotex v. Catrett</i> (CM pp. 448-55);</p> <p>Read <i>Scott v. Harris</i> (CM pp. 456-62); and</p> <p>Read <i>Tolan v. Cotton</i> (CM pp. 463-69)</p>
<p style="text-align: center;">Class #25 – Thurs., Nov 17</p> <p>This class concludes our discussion of summary judgment.</p> <p>Class format: for the first 20 minutes or so, we'll break into smaller sub-groups, each led by a teaching assistant or me. The groups will role play the assignment by arguing for the plaintiff or defendant in the practice problem (roles to be assigned). For the remainder of class, we'll reconvene to debrief about the exercise and will go over a partial model answer to the problem.</p> <p>Goals for class: Students should now be proficient in working a summary judgment problem that requires consideration of whether the movant and non-movant's evidentiary burdens of proof have been met.</p>	<p style="text-align: center;">In advance of class:</p> <p>Prepare Practice Question on Summary Judgment (to be distributed). You will not turn in an answer. Prepare the problem only for class discussion purposes. This assignment is not graded.</p>
<p style="text-align: center;">Class #26 – Wed., Nov 30</p> <p>Summary and review of class subjects/themes</p> <p>[Note that we will not have class on Thursday, Dec 1 because I'm aware that your Graded Contract assignment for LSS is due on December 2. Instead, we will meet again for our last class on Saturday, December 3 from 12-2 pm (see below). The class is entirely devoted to exam review.]</p>	<p style="text-align: center;">Reading to be assigned</p>
<p style="text-align: center;">Class #27 – Sat., Dec 3 from 12-2 pm</p> <p>Class will be devoted to exam review.</p>	<p style="text-align: center;">No additional reading</p>

Final Exam – Wed., Dec 7

The final exam will be a six-hour take-home examination. The exam is an open book exam comprised of two medium-length essay questions (70% of your final grade), and multiple-choice questions (20% of your final grade). (The remaining 10% of your final grade is based on the two graded assignments that you completed during the semester.)

More details about exam, including the exam instruction sheet, will be distributed before the final.