

Procedure – Fall 2023 Semester
Course Details and Syllabus
Professor Lonny Hoffman
Section No. 12292; Course No. 5406
Date: Nov 10, 2023



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 that litigators regularly face, including ethical ones.



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).



Well-being and Support. In addition to helping facilitate your learning of the course content, I also put a priority on promoting student well-being in the classroom. This is reflected in the brief mindfulness and other well-being practices I'll share with you and, more broadly, in how I try to foster healthy engagement with this course and with law school.

It's also worth noting here that there are lots of academic support options available to you at UHLC, including:

1. **Teaching assistants.** In this class, we are very fortunate to have six(!) teaching assistants. You will be assigned to an individual teaching assistant but all are available to you if you need help.
2. **Me.** I list my office hours below but here I'm just emphasizing that I am a source of academic support for all students in this class.
3. **1L Mentoring program.** All of you have both a faculty mentor and an upper-level student mentor through this program. If you aren't sure who those folks are, feel free to ask me and I'll help you figure it out.
4. **UHLC's Legal Writing Center.** This academic support option is open to everyone. They offer help on writing and studying. For more, go to: <http://www.law.uh.edu/lrw/legal-writing.asp>.
5. **Student organizations.** Finally, you should consider joining a student org. This 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 kdwithers@central.uh.edu.

Beyond academic support, you also have several other sources of support. Law school can be stressful; 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.



Class Schedule and Format—and a (limited) online Zoom option. This class meets in person on Tuesdays from 6:00-7:45 pm and Thursdays from 6:00-7:15 pm. I will also have a Zoom option for you to attend class virtually if there are exceptional circumstances that make it hard for you to attend in person. Attending class virtually is an acceptance alternative to being in person. However, if you think you will want to attend virtually, you need to email me in advance to ask permission and whether you will be able to attend virtually depends on how much advance notice you gave, relative to your need. Also keep in mind that, unless you have a special accommodation from the Office of Student Services, you are not permitted to attend more than five classes virtually. Finally, bear in mind that if you are attending class virtually, my expectation is that you will attend with your video on. 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.



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 28 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.



Grading. You will have a couple of graded exercises during the semester that are worth, collectively, 10% of your final grade for the course. The final examination will be an open book exam comprised of one medium-length essay question and one shorter essay question (collectively worth 70% of your final grade), and (no more than ten) 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.). Note that most of my past exams are available from this link on my UHLC webpage.



USE OF AI PROGRAMS USING LARGE LANGUAGE MODELS LIKE CHATGPT

I'm sure you are aware that there have been significant recent advances in artificial intelligence programs that use large language models, such as ChatGPT. You are also surely aware that this is a developing technology and that there are already plenty of sobering stories of people who got burned when they relied on AI. *See, e.g., Sara Merken, New York Lawyers Sanctioned for Using Fake ChatGPT Cases in Legal Brief*, June 26, 2023, available [here](#). Nevertheless, for this class you may use any artificial intelligence program, subject to the expectations that I list below.

Before I get to those expectations, it may be worth saying that no one needs to use AI and for this class I would strongly counsel and encourage you not to use it for any assignments that you turn in (or even for any practice problems that you work up for yourself). Why? For one simple but powerful reason: whatever short-term benefit you think you might garner by having AI write your work for you, in the long run you will be far better prepared for the practice of law if you fully engage with the written assignments on your own. That said, if you do decide to use an AI program for an assignment that you turn in, here are my requirements:

1. If you use an AI program in any way in writing your paper, you must specify in a separate cover letter exactly how you used it.
2. If you use an AI program to produce narrative text that you include in your paper (whether you use the AI-produced text verbatim or modify it in any way), you should include the original AI-produced text as a separate attachment to your submitted paper.
3. Using an AI program without fully disclosing your use as described in the previous two points will result in a grade reduction (potentially as much as an F for the paper) and could also constitute an Honor Code violation.
4. Finally, your paper will be graded exactly as if you had written it yourself. That is, there will be no penalty, benefit, or excuse connected with using an AI program. If your paper contains errors, they will be treated as your errors.



Accessibility and Accommodations [the first paragraph below is university-approved language]. The University of Houston complies with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, pertaining to the provision of reasonable academic adjustments/auxiliary aids for disabled students. In accordance with Section 504 and ADA guidelines, UH strives to provide reasonable academic adjustments/auxiliary aids to students who request and require them. If you believe that you have a disability requiring an

academic adjustments/auxiliary aid, please contact the Justin Dart Jr. Student Accessibility Center (formerly the Justin Dart, Jr. Center for Students with DisABILITIES).

If you require any support services, you may contact Ms. Samantha Ary, Academic Records Coordinator. Ms. Ary is located in room 44A TU-II in the Office of Student Services suite, and she can be reached at sary@central.uh.edu or (713) 743-7466. Requests for accommodation that involve graded assignments must be directed to Ms. Ary and should be made as soon as possible to allow adequate time to document and to process the request. If you observe religious or cultural holidays that will coincide with synchronous class sessions or conferences, please let me know as soon as possible, so that we may make arrangements.



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.

Inclusivity. 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 **Myriah Howard**. Her phone is (713) 743-1895; her email is mdhowar4@central.uh.edu.



Recording of Class. Students may not record or livestream all or any part of class or make/distribute screen captures. If you have or think you may have a disability such that you need to record class-related activities, please contact the Justin Dart Jr. Student Accessibility Center. If you have an accommodation to record class, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. 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. [Note to students: I'll record all class sessions on the Zoom platform and will make those recordings available to everyone in the class.]



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 – Tues., Aug 22</p> <p>Goals for class: 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. 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</u> about the course, including all expectations that I have for students. <p>In addition to these broad topics relating to the class itself, we will also begin discussing</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 clients’ objectives. The discussion is meant to be very practical, to make vivid and more concrete why procedure is important and how it is used. 	<p style="text-align: center;">In advance of class, read:</p> <p>Paul Carrington, <i>Teaching Civil Procedure</i> (CM pp.1-13), available here *(see note at bottom of this page);</p> <p>Lonny Hoffman, <i>A Parting Reprise</i> (CM pp. 14-28), article publicly available here; and</p> <p>Charles Adams, <i>World-Wide Volkswagen v. Woodson – The Rest of the Story</i> (permission granted by author to use) (CM pp. 29-38)</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 24</p> <p>Goals for class: In this class we'll finish our discussion of procedure as strategy. As previously noted, the primary learning objective for this portion of class is for students to see how lawyers actually use procedure to advance their clients' objectives.</p> <p>The rest of class will be devoted to discussing major recurring themes in this course.</p>	<p style="text-align: center;">In advance of class, read:</p> <p>Federal Judicial Center, <i>The U.S. Legal System: A Short Description</i> (CM pp. 39-42), article publicly available here; and</p> <p>Bookman and Shanahan, <i>A Tale of Two Civil Procedures</i> (CM 43-56), article publicly available here.</p>
<p style="text-align: center;">Optional: Friday, Aug 25 at 12:00 pm</p> <p>This is an optional session. It does not count against your class attendance. I'll record the session for you to view later if you want to. The main purpose of offering this session is just to check in with everyone after the first week of law school. How did the first week go? What early challenges are you encountering?</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>

Class #3 – Tues., Aug 29

Goals for class: This class is 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:

· Modern procedure and its historical antecedents. 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

· Sources of procedural law and rulemaking. 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.

Finally, as part of our class discussion, students will also gain a general awareness and understanding of the *Erie* doctrine.

[Note: Because it's still early in the semester and hard to have a sense of perspective, I note that this is a denser (and lengthier) reading assignment than usual; you'll likely need to engage for longer with the material. But don't be discouraged; this reading load is unusual for our class.]

In advance of class, read:

Subrin, *How Equity Conquered Common Law: The Federal Rules of Civil Procedure in Historical Perspective* (CM pp. 57-69), article publicly available [here](#);

Thomas Main, *Traditional Equity and Contemporary Procedure* (CM pp. 70-74), article publicly available [here](#);

Mulligan and Staszewski, *The Supreme Court's Regulation of Civil Procedure: Lessons from Administrative Law* (CM pp. 75-76), article publicly available [here](#);

Paul MacMahon, *Proceduralism, Civil Justice and American Legal Thought* (CM pp. 77-91), article publicly available [here](#); and

Erie v. Tompkins RR (CM pp. 92-97)

Suggested additional (optional) reading:

Adam Steinman, *The Rise and Fall of Plausibility Pleading*, article publicly available [here](#)

Samuel Bray, *The Parable of the Forms*, article publicly available [here](#)

Sinnar, *The Lost Story of Iqbal*, article publicly available [here](#)

<p style="text-align: center;">Class #4 – Thurs., Aug 31</p> <p>Goals for class: 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. By the end of 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>	<p style="text-align: center;">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. 98-114). [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. 115-24)</p> <hr/> <p>In class, we’ll discuss Practice Problem for Notice Pleading- Problem #1 (CM p. 150). You will not turn in any answer; we will just discuss the problem together in class. This assignment is not graded.</p>
<p style="text-align: center;">Optional: Friday, Sept 1 at 12:00 pm</p> <p>Optional session to review material covered this week. I’ll record the session and post the recording.</p>	<p style="text-align: center;">No reading</p>

Class #5 – Tues., Sept 5

Goals for class: In this class we dig deeper into pleading sufficiency standards. In addition to the Supreme Court cases we've already read, this class asks you to read four lower court cases that applied the Supreme Court's decisions. By the end of class, 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).

In advance of class, read:

Swason v. Citibank. (CM pp. 125-32)

Coleman v. John Moore Services (CM pp. 133-35);

Kidwell v. Digital Intelligence Systems (CM pp. 136-39);
and

Kap Holdings v. Marcone (CM pp. 140-49)

In class we'll discuss Practice Problem for Notice Pleading- Problem #2 (CM p. 151). 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 #6 – Thurs., Sep 7</p> <p>Goals for class: 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. By the end of class, 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. 152-54); and</p> <p>Prepare Exercise on Timing and Waiver (CM p. 155). 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 8 at 7:45 am</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 #7- Tues., Sep 12</p> <p>Goals for class: Discuss Rule 15(a). By the end of class, students should be able to articulate when a party needs permission to amend and what standards apply.</p>	<p style="text-align: center;">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. 156-62); and</p> <p>Read <i>Spencer v. Wal-Mart</i> (CM pp. 163-65); and</p> <p>Read <i>Cage v. Harper</i> (CM pp. 166-68)</p>

<p>Class #8 – Thurs., Sep 14</p> <p>Goals for class: Discuss Rule 15(c).</p> <p>By the end of 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, prepare:</p> <p>Watch pre-recorded video on Rule 15(c);</p> <p>Read <i>Buerman v. Witkowski</i> (CM pp. 169-74);</p> <p>Read <i>Waynesborough Country Club v. Diedrich Niles Bolton Architects</i> (CM pp. 175-78); and</p> <p>Practice Problem for Amendments (CM pp. 179-80). 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. 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>Optional: Friday, Sept 15 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>No reading</p>

<p style="text-align: center;">Class #9 – Tues., Sep 19</p> <p>Goals for class. In the first part of class, we'll examine the various rules that define the scope and size of a case. By the end of 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 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. 181-83);</p> <p>Read <i>Kedra v. City of Philadelphia</i> (CM pp. 184-89); and</p> <p>Prepare practice problem on joinder and amendments (CM p. 190). You will not turn anything in. We will work the problem together in class. This assignment is not graded.</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;">Class #10 – Thurs., Sep 21</p> <p>Goals for class: We turn to Rule 11. By the end of 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>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, read:</p> <p>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>Excerpt from Lonny Hoffman, <i>The Case Against the Lawsuit Abuse Reduction Act of 2011</i> (CM pp. 191-208), article publicly available here</p> <hr/>

<p>Optional: Friday, Sept 22 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>No reading</p>
<p>Class #11 – Tues., Sep 26</p> <p>Goals for class: In this class our focus is on the law of personal jurisdiction. By the end of 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 <i>International Shoe</i> is the foundational case. Students should also be able to differentiate between statutory and constitutional amenability to suit.</p> <p>Note: 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.</p>	<p>In advance of class:</p> <p>Watch pre-recorded videos, Personal Jurisdiction Video Nos. 1 and 2, available on my Procedure webpage;</p> <p>Read <i>International Shoe v. Washington</i> (CM pp. 209-18); and</p> <p>Read Ohio, California, and Texas long arm statutes (CM pp.219-23).</p> <hr/> <p>Suggested additional (optional) reading/video:</p> <p>Wendy Collins Perdue, <i>What's "Sovereignty" Got To Do With It? Due Process, Personal Jurisdiction, and the Supreme Court</i>, article publicly available here</p> <p>Lonny Hoffman, <i>The Case Against Vicarious Jurisdiction</i>, article publicly available here</p> <p>Short video to watch (fun video): https://youtu.be/e6L90oN4ppY</p>

<p style="text-align: center;">Class #12 – Thurs., Sep 28</p> <p>Goals for class: 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. By the end of class, students should be able to (i) see the broad doctrinal differences between general and specific jurisdiction, and (ii) begin to comprehend when a defendant is constitutionally amenable to jurisdiction for claims unrelated to its contacts in the forum.</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. 224-34)</p>
<p style="text-align: center;">Optional: Friday, Sept 29 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 #13 – Tues., Oct 3</p> <p>Goals for class: In this class we take a deeper dive into specific jurisdiction. By the end of class, students should have a starting comprehension of the constitutional test for specific jurisdiction. Students should also be able to articulate, using <i>Ford's</i> 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>[Note: I am aware that over the prior weekend you have a significant homework assignment for LSS. To help you manage your time, I suggest putting most of your reading focus on the <i>Burger King</i> and <i>Ford</i> cases, just skimming (at least for now) <i>Walden</i> and <i>BMS</i>. You can also expect that I'll likely lecture more than usual.]</p> <p style="text-align: center;">In advance of class, read:</p> <p><i>Burger King v. Rudzewicz</i> (CM pp. 235-47);</p> <p><i>Walden v. Fiore</i> (CM pp. 248-61);</p> <p><i>Bristol Myers Squibb v. Superior Court of California</i> (CM pp. 262-78); and</p> <p><i>Ford v. Montana Eighth...</i> (CM pp. 279-311)</p> <hr/> <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, <i>The Lay of the Land: Examining The three Opinions in J. McIntyre...</i>, full text available here</p>
<p style="text-align: center;">Class #14 – Thurs., Oct 5</p> <p>Goals for class: This is our last class on the constitutional limits of personal jurisdiction. By the end of class, 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 (to be distributed). 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>No optional review session this Friday. I remain available for small group or one-on-one discussions. Just email me to schedule a time for that.</p>	<p style="text-align: center;">No reading</p>

<p style="text-align: center;">Class #15 – Tues., Oct 10</p> <p>Goals for class: This class is primarily devoted to forum selection clauses. By the end of 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 style="text-align: center;">In advance of class, read:</p> <p>Read <i>Carnival Cruise Lines v. Shute</i> (CM pp. 312-20);</p> <p>Read Pamela Bookman, <i>The Arbitration-Litigation Paradox</i> (CM pp. 321-27), publicly available here; and</p> <p>Prepare forum selection clause problem from the first essay question, Fall 2020 exam; available on my webpage. For ease of reference, the exact link is here: https://www.law.uh.edu/faculty/lhoffman/fall2021/Civ%20Pro%20Final%20Exam%20Fall%202020.pdf). 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 #16 – Thurs., Oct 12</p> <p>Goals for class: In this class our focus is on constitutional and non-constitutional requirements for providing notice through formal service of process. By the end of 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. 328-36);</p> <p>Read Fed. R. Civ. P. 4 (just skim)</p>
<p style="text-align: center;">Optional: Friday, Oct 13 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 #17 – Tues., Oct 17</p> <p>Goals for class: In this class we turn to venue, starting with statutory requirements for laying venue. By the end of this part of class, 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. By the end 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 as to <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. 337). 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. 338-44); and</p> <p>Read <i>Atlantic Marine Constr. v. U.S. District Court</i> (CM pp. 345-61)</p>
<p style="text-align: center;">Class #18 – Thurs., Oct 19</p> <p>Goals for class: In this class we examine forum non conveniens. By the end of 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. 362-75)</p>
<p style="text-align: center;">Optional: Friday, Oct 20 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 #19 – Tues., Oct 24</p> <p>Goals for class: This class concludes our discussion of FNC. By the end of 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 #20 – Thurs., Oct 26</p>	<p style="text-align: center;">No reading</p> <p style="text-align: center;">Class time devoted to review/practice of FNC</p>
<p style="text-align: center;">Optional: Friday, Oct 27 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;">No class on Tues., Oct 31</p>	<p style="text-align: center;">No reading</p>

<p style="text-align: center;">Class #21 – Thurs., Nov 2</p> <p>Goals for class: This class focuses on subject matter jurisdiction, focusing on diversity and alienage jurisdiction. By the end of 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. 376-78);</p> <p>Read <i>Hertz v. Friend</i> (CM pp. 379-91);</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;">Class #22 – Tues., Nov 7</p> <p>Goals for class: This class continues focusing on subject matter jurisdiction by looking at the second major category of Article III subject matter jurisdiction: federal question jurisdiction. By the end of class, students should have a basic understanding of the constitutional and statutory requirements for federal subject matter jurisdiction and the related doctrine of substantial federal question jurisdiction.</p>	<p style="text-align: center;">In advance of class:</p> <p>Review Notes/Questions on Federal Question Jurisdiction (to be distributed);</p> <p>Read U.S. Const. Article III, §2; 28 U.S.C. §1331;</p> <p>Read <i>Louisville & Nashville R.R. Co. v. Mottley</i> (CM pp. 392-94);</p> <p>Read <i>Grable v. Darue Eng.</i> (CM pp. 395-402); and</p> <p>Prepare Practice Question on the substantial federal question doctrine (CM p. 403). 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 #23 – Thurs., Nov. 9</p> <p>Goals for class: Work practice problem together on diversity and federal question jurisdiction</p>	<p style="text-align: center;">No reading</p>

<p>Optional: Friday, Nov. 10 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>No reading</p>
<p>Class #24 – Tues., Nov 14</p> <p>Goals for class: This class focuses on supplemental jurisdiction. By the end of 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>In advance of class:</p> <p>Read 28 U.S.C. §1367;</p> <p>Read <i>UMW v. Gibbs</i> (CM pp. 410-14);</p> <p>Read <i>Exxon Mobil Corp. v. Allapattah Services, Inc</i> (CM pp. 415-31); 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>Class #25 – Thurs., Nov 16</p> <p>No class</p>	
<p>Class #26 – Tues., Nov 21</p> <p>Goals for class: In this class, we'll complete our discussion of supplemental jurisdiction (as needed). From there, we'll turn our attention to the statutory authority to remove a case from state to federal court. By the end of 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>Note: With recognition of the upcoming holiday, we will hold this class remotely. We will not meet in-person]</p> <p>In advance of class:</p> <p>Read 28 U.S.C. §§ 1441, 1446;</p> <p>Read <i>Martin v. Franklin Capital</i> (CM pp. 404-09); 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>Optional: Friday, Nov 24 at 12:00 pm</p> <p>Notwithstanding the holiday, I'm willing to hold an optional review session—but if you plan to attend, please email in advance. (I don't want to schedule something if no one is going to participate.) If we have a session, I'll record and post it.</p>	<p>No reading</p>
<p>Class #27 – Tues., Nov 28</p> <p>Goals for class: This class focuses on discovery options in federal court and on the attorney-client privilege and work product doctrine. By the end of class, students should have a basic understanding of the relevant discovery rules and doctrines.</p>	<p>In advance of class read:</p> <p>Read (just skim) Rules 16(b), 26, 27, 30, 31, 33, 34, 35, 36, and 37;</p> <p>Read <i>Hickman v. Taylor</i> (CM pp. 432-42);</p> <p>Review Discovery Practice Exercises (CM p. 443-44). You will not turn in an answer. Review the problems in advance of class, but no need to prepare anything.</p>
<p>Class #28 – Tues., Nov 28</p> <p>Goals for class: This class focuses on summary judgment doctrine. By the end of class, students should have a very high-level, general understanding of the federal summary judgment rule.</p>	<p>In advance of class read:</p> <p>Fed R. Civ. P. 56;</p> <p><i>Celotex v. Catrett</i> (CM pp. 445-52);</p> <p><i>Scott v. Harris</i> (CM pp. 453-59)</p> <p><i>Tolan v. Cotton</i> (CM pp. 460-66)</p>
<p>Saturday, Dec. 9 at 9:00 am</p> <p>Optional exam review session</p>	<p>Your property exam is on December 6. I will hold an optional exam review session for Procedure on Dec 9. Between your Property exam and this review session (i.e., on December 7 and 8), I strongly encourage you to compile a list of questions you want to ask about your Procedure exam.</p>

Final Exam – Tues., Dec 12 6:00-10:00 pm

The final exam will be an in-person examination. The exam is an open book exam comprised of one medium-length essay question and one shorter essay question (collectively worth 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.

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