CIVIL PROCEDURE
Professor Adam Steinman
Fall 2018

Course Description:

As the name suggests, this course is about the procedure that governs civil litigation. But you might also think of it as a course about courts. How do people, companies, or other entities use courts to obtain justice? How do people, companies, or other entities defend themselves when judicial remedies are sought from them? Once a case is initiated in court, how does it proceed to an ultimate decision or resolution? Which courts can hear and decide a particular case, and how might a case move from one court to another?

In tackling these issues, we will focus on civil cases rather than criminal cases. (Think Erin Brockovich, not Law & Order.) Civil cases are often about money: one side is seeking monetary relief from another. But civil cases can also seek injunctive relief (an order from the court requiring one side to take some legally-required action) or declaratory relief (an order declaring what the parties’ legal rights are). The substantive basis for a civil claim can be just about anything: contract, tort, property, civil rights, constitutional rights, laws governing consumer protection, the environment, finance, health and safety, product liability—to name a few. This class will cover the procedural framework that generally applies regardless of the particular substantive claims and defenses a given case might involve.

There is no single “law of civil procedure” that governs all courts throughout the United States. Although there is a great deal of overlap and similarity, each state’s judicial system has its own rules of civil procedure, and the federal judiciary has its own rules of civil procedure. Our focus—as with nearly all law schools during the 1L year—will be on civil procedure in federal courts. Federal courts exist in all states, and federal courts throughout the country follow the rules we’ll be covering. It is also worth noting that federal civil procedure is now a subject on the Multistate Bar Examination, which is part of nearly every state’s bar exam.
Required Materials:

*Casebook*:

FRIEDENTHAL, MILLER, SEXTON & HERSHKOFF, CIVIL PROCEDURE, CASES AND MATERIALS, Compact 12th Edition for Shorter Courses (West 2018)*

*Supplement*:

FRIEDENTHAL, MILLER, SEXTON & HERSHKOFF, 2018–2019 CIVIL PROCEDURE SUPPLEMENT FOR USE WITH ALL PLEADING AND PROCEDURE CASEBOOKS (West 2018)

*TWEN*:

Additional materials will be posted on this course’s webpage on The West Education Network (TWEN). I will also use TWEN to post announcements and to contact the class via email. You will be given information about how to access TWEN during the orientation week.

Attendance & Participation:

You are required to attend class, to prepare for class by reading and thinking about the assigned material, and to participate in class discussions. If you are unable to attend or participate in class on a particular day, please let me know in advance. My telephone, email, and office information are listed above.

This course is subject to the Law School’s attendance policy, which is available in the Student Handbook (http://www.law.ua.edu/students/handbook.pdf). In accordance with that policy, I will keep a class attendance sheet. A student may miss class only for good cause, such as (1) sickness which disables the student from attending class or poses a significant threat to the health of others; (2) sickness of, or accident involving, a spouse or dependent, which requires the student to be with the spouse or dependent; (3) an accident which necessarily prevents the student’s attendance in class; (4) the death of a family member or friend; (5) an interview for a summer clerkship or for a permanent position after graduation, if the interview cannot reasonably be scheduled to avoid conflict; (6) a meeting or event at which the student must appear as a representative of the law school; or (7) other good cause as is warranted under the circumstances. Deadlines for activities or other course assignments do not constitute good cause for missing class. A student who is absent for any reason from more than three class hours per semester credit hour in a course may be dropped from the roll or not allowed to sit for the exam and receive an “F” for the course. This is the equivalent of about three weeks of classes. Please consult the Student Handbook for additional details.

Grading & Final Examination:

Your grade in this course will be based on an in-class final examination, which is scheduled for Tuesday, December 11, 2018, at 9:00 a.m. The exam is closed book, but it will include a handout containing the relevant rules, statutes, and constitutional provisions. That handout will be the only source you may consult during the exam. We will discuss the exam in greater detail as the semester proceeds.

* Be sure you have the Compact 12th edition (the last numbered page is p.900). If your book has over 1300 pages, you have the wrong one.
Schedule Changes:

It may be necessary for me to cancel or reschedule class sessions during the course of the semester. I will provide as much advance notice as possible.

As of the date of this installment of the syllabus, the plan is that we will not meet on the following dates:

- Thursday, October 11
- Friday, October 12
- Thursday, October 18
- Friday, October 19
- Friday, November 16

As of the date of this installment of the syllabus, the plan is that we will hold additional, rescheduled class sessions on the following dates:

- Monday, September 24, at 10:45–noon in our usual class room
- Monday, October 15, at 9:20–10:35 a.m. in our usual class room.
- Monday, November 19, at 9:20–10:35 a.m. in our usual class room.

Additional Information & Policies:

**ADA Accommodations:** The Law School is committed to meeting the needs of students with physical, learning, and other disabilities, and provides appropriate accommodations and services tailored to each person’s specific requirements. The Law School’s administration and the University’s Office of Disability Services work together to help individuals with disabilities achieve and maintain individual autonomy. Students with disabilities are encouraged to contact the Office of Disabilities Services so that the individual’s needs for support services can be evaluated and accommodated in a timely manner. If you have any questions, please contact Associate Dean Grace Lee at glee@law.ua.edu.

**Conduct:** All students are expected to be honorable and to observe standards of conduct appropriate to a community of scholars. University policies, the Law School Honor Code, and other appropriate policies, will be followed in the event of misconduct.

**Diversity:** The University is committed to providing an atmosphere of learning that is representative of a variety of perspectives. In this class, you will have the opportunity to express and experience cultural diversity. Individuality and creative expression are welcome. Take advantage of these opportunities in your own work, but also learn from the information and ideas shared by others.

**Electronic devices:** Cellphones, smartphones, and similar devices must be off during class. You may not send or receive calls, text messages, instant messages, or the like during class unless some special circumstances (an imminent birth, for example) justify leaving your
phone on—in which case you should notify me in advance. Someone whose use of such an electronic device interferes with the classroom learning experience may be asked to leave class and will be considered absent for that day.

**Laptops & Internet:** Laptops are permitted in class only for taking notes and for viewing websites or other documents that I have asked you to access as part of our class discussion. You may not use your laptop for any other purpose during class. Someone whose laptop use interferes with the classroom learning experience may be asked to leave class and will be considered absent for that day. Laptops must be set up before class starts.

**Recording devices:** The use of recording devices in class is prohibited without my prior written permission. I give permission only for disability-related purposes or for unavoidable absences. You may not record class simply because you believe it will aid your studying.

**A Brief Word About Study Guides and Hornbooks:**

Students sometimes ask me about study guides or hornbooks for civil procedure. Such outside materials are not necessary for this class. All of the content you are responsible for is in the assigned material or will be covered during our class discussions. While I know that some of the assigned material may be difficult to grasp on first read, my personal opinion is that it is more valuable to spend time carefully reading (and re-reading) the assigned material than to seek out study guides or hornbooks. But I also understand that different students learn differently. For students who find such outside sources helpful, I have listed Glannon’s *Civil Procedure Examples & Explanations* (8th ed. 2018) as an optional resource for this class. However, I do not intend to discuss that book in class. Again, reading the assigned material and paying attention to our class discussions will give you everything you need to succeed in this course.

If you do decide to use *Examples & Explanations* or any other outside source, please keep the following in mind: First, study guides and hornbooks can often over-simplify things—suggesting clear answers when, in fact, the law is more complex and open-ended. Understanding any area of the law (and doing well in this class) requires understanding where there are gray areas. Second, a major skill one should develop during law school is how to learn the law from the legal sources themselves: judicial decisions, rules, statutes, etc. Lawyers need to be able to use and understand these primary sources in order to research, advise, and advocate. Closely reading the decisions, rules, and statutes that are assigned for this class—and using them, rather than outside guides, to learn civil procedure—is an important way to develop and enhance those skills.
Reading:

• I will post on TWEN (in the Reading & Discussion section) which parts of the syllabus we will cover during each class session. I will usually post discussion questions for each class session as well.

• The page numbers listed below are for the Casebook. Unless otherwise indicated, read all of the assigned pages, which will usually include not only the designated case, but also material preceding the case, Notes & Questions after the case, shorter summaries or excerpts from other cases, and additional material.

• “Supp.” refers to rules, statutes, constitutional provisions, and other materials contained in the Supplement.

• “TWEN” refers to material posted in the Additional Course Materials section of the TWEN website.

I. Introduction

1-8: Various Introductory Materials
31-34: A Note on Remedies

II. Personal Jurisdiction

A. Early Development of Personal Jurisdiction

27-28: The Judgment and its Enforcement
37-48: Pennoyer v. Neff
Supp.: U.S. Constitution, Article IV, Section 1, 1st sentence; U.S. Constitution, Amendment XIV, Section 1, 2nd sentence*
48-50: Expanding the Bases of Personal Jurisdiction; Hess v. Pawloski
Supp.: New York Civil Practice Law & Rules 302(a) (page 242); Rhode Island General Laws Annotated § 9-5-33(a) (page 245)

B. Refining the Minimum Contacts Analysis

TWEN: Map (the Structure of the Federal Judiciary)
71-81: World-Wide Volkswagen Corp. v. Woodson
81-83: Keeton v. Hustler Magazine, Inc.
83-87: Burger King Corp. v. Rudzewicz

* Relevant provisions of the U.S. Constitution appear on pages 187-190 of the supplement.
III. Notice & Service

A. Constitutional Notice Requirements
157-169: Mullane v. Central Hanover Bank & Trust Co.

B. Serving Process Under the Federal Rules
Supp.: FRCP 4(c), (d), (e), (f), (h), (m)
169-178: The Mechanics of Giving Notice

IV. Subject Matter Jurisdiction (The Basics)

A. Introduction
197-199: Subject-Matter Jurisdiction of State Courts
Supp.: 28 U.S.C. § 1441(a)**

B. Federal Diversity Jurisdiction
Supp.: U.S. Constitution, Article III, Section 2
200-205: Introductory Reading on Diversity Jurisdiction
Supp.: 28 U.S.C. § 1332(c)
205-212: Mas v. Perry (stop before heading 5 on p.212)

* The Federal Rules of Civil Procedure appear on pages 10-151 of the supplement. These will be referred to as “FRCP” for the rest of the syllabus.
** Relevant provisions of Title 28 of the U.S. Code appear on pages 190-237 of the supplement.
214-219: A.F.A. Tours, Inc. v. Whitchurch
219-221: Exceptions to Diversity Jurisdiction

C. Federal Question Jurisdiction
Supp.: U.S. Constitution, Article III, Section 2
221-223: Introductory Reading on Federal Question Jurisdiction
223-225: Osborn v. Bank of the United States
225-230: Louisville & Nashville R. Co. v. Mottley
230-235: Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing

V. Venue & Forum Non Conveniens

A. Venue
257-260: Introductory Readings
Supp.: 28 U.S.C. § 1390(a), (c); 28 U.S.C. § 1391(a)-(d)
265-266: Venue in the Federal Courts

B. Transfer of Venue
266-269: Transfer of Venue in the Federal Courts (Notes 1-4, 6-8)
TWEN: Smith v. Colonial Penn Insurance Co.

C. Forum Non Conveniens
271-282: Piper Aircraft Co. v. Reyno (including Notes 1-3 & 5)

D. Enforcing Forum Selection Clauses
122-124: Consent by Contract
TWEN: Atlantic Marine Construction Co. v. U.S. District Court

VI. Pleading

A. A Brief History of Pleading
351-353: Introductory Material on Pleading
353-356: Cook, Statements of Fact in Pleading Under the Codes; Gillispie v. Goodyear Service Stores

B. Modern Pleading – The Complaint
Supp.: FRCP 8(a), 8(d), 8(e), 9(b), 12(b)(6), 84 (abrogated)
Supp.: Form 11 (abrogated), Form 18 (abrogated) *

356-361: Conley v. Gibson; Swierkiewicz v. Sorema N.A.
TWEN: Excerpt from Marcus, 86 COLUM. L. REV. 433 (1986)
404-406: Motion to Dismiss for Failure to State a Claim
361-372: Bell Atlantic Corp. v. Twombly
Supp.: Complaint in Bell Atlantic v. Twombly (pp. 356-368), emphasis on the paragraphs cited in the opinion)
372-387: Ashcroft v. Iqbal
Supp.: First Amended Complaint in Ashcroft v. Iqbal (pp. 369-379, emphasis on the paragraphs cited in the opinion)
387-388: Erickson v. Pardus
Supp.: Complaint in Erickson v. Pardus (pp. 380-386)
388-389: Forms of Pleadings; Alternative and Inconsistent Statements
Supp.: FRCP 9(b)

C. Responding to the Complaint
Supp.: FRCP 12; 6(b)(1); 8(b), (c); 15(a)(1)
398-399: Introductory Material
153-154: Headings 1 & 2
253: Notes 1 & 2
406-411: Answering the Complaint
TWEN: King Vision Pay Per View, Ltd. v. J.C. Dimitri’s Restaurant, Inc.

D. Amendments to Pleadings
Supp.: FRCP 15(a)-(b)
412-416: Amendments; Beeck v. Aquaslide ‘N’ Dive Corp.

E. Deterring Frivolous Pleadings
Supp.: FRCP 11(a)-(b); (c)(1), (3)-(5)
427-430: Note on Rule 11 (including Notes 1-2)

VII. Discovery

A. Introduction
563-564: Introductory Material
Supp.: FRCP 27(a)(1), (3)
564-569: In re Petition of Sheila Roberts Ford
Supp.: FRCP 26(b)(1), (2)
569-577: Fassett v. Sears Holdings Corp.

B. Mandatory Disclosure & the Discovery Plan
Supp.: FRCP 26(a)(1)(A), (C), (E); 26(d)-(g); 29(b)
577-581: Various Readings
C. Requested Discovery

Supp.: FRCP 30(a); 30(b)(1), (3)-(4), (6); 30(c)(2); 30(d); 31; 32(d)(3) 581-585: Depositions; Polycast Technology Corp. v. Uniroyal, Inc.; Deposition Upon Written Questions  
Supp.: FRCP 33  
585-588: Interrogatories to Parties; Cable & Computer Technology, Inc. v. Lockhead Saunders, Inc.  
Supp.: FRCP 34; 45(a)(1); 45(c)(1), 45(d)(1), (e) 588-592: Discovery and Production of Property  
Supp.: FRCP 35  
592-599: Physical and Mental Examinations; Schlagenhaus v. Holder  
Supp.: FRCP 36  
599-601: Requests to Admit

D. Exemptions from Discovery

Supp.: FRCP 26(b)(3); 26(b)(5); 45(d)(2) 601-612: Hickman v. Taylor  
612-621: Privileges & Work Product; Upjohn Co. v. United States

E. Enforcement of Discovery Rules

Supp.: FRCP 26(c); 37(a)-(d) 623-626: Judicial Supervision of Discovery

VIII. Adjudication Without Trial

A. Summary Judgment

Supp.: FRCP 56; U.S. Constitution, Amendment VII  
653-661: Various Readings; Adickes v. S.H. Kress & Co.  
661-670: Celotex Corp. v. Catrett  
679: Note on the Timing of a Rule 56 Motion

Stay tuned for Syllabus Part 5. Lots more still to come, including:

- More on Adjudication Without Trial  
- Trial & Post-Trial Motions  
- Multiple Claims & Parties  
- Advanced Subject Matter Jurisdiction  
- Effects of Judgments  
- And more...