

**CIVIL PROCEDURE II**  
**REQ 7105.02**  
Professor Sean F. Nolon

Spring 2018 - 2 credits  
Tuesday & Thursday 2:10-3:25  
Oakes 007

100 Debevoise Hall  
Office hours: T & Th 3:45pm- 4:45pm  
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This course will generally cover the process of litigation in the federal courts of the United States. We will survey questions that face the lawyer and client who seek to initiate, or who must defend against, a federal lawsuit. We will examine the Federal Rules of Civil Procedure (the “FRCP”), Title 28 of the United States Code (the “Judicial Code”), the United States Constitution, and Supreme Court opinions construing them. Beyond learning procedural law, we will examine strategic, ethical, professional, and economic considerations pertinent to United States civil litigation. We will start by looking at how to initiate a case in federal court, responsive pleadings, summary judgment, settlement, the joinder of parties and claims, and the discovery of facts.

**Student Learning Outcomes**

At the end of this course, students will be able to:

1. Demonstrate knowledge of substantive legal doctrine fundamental to civil litigation in federal trial court;
2. Apply legal analysis skills to hypothetical fact patterns involving issues related to federal civil litigation;
3. Employ critical reading techniques to extract relevant facts, law, and policy from cases and other materials related to the procedures of civil litigation
4. Practice learning independently and as part of a group; and
5. Recognize ethical issues that may arise when representing a client in the course of civil litigation.

These outcomes will be achieved through experiences designed to develop skills in careful reading, oral presentation, responding to objective questions without study aids, and the completion of problem sets that spot civil procedure issues in a fact pattern and then analyze those issues.

Attached to this syllabus is a list of competencies that Vermont Law School strives to instill in all of its graduates and an indication whether students in Civil Procedure II will be exposed to, practice, or become competent in the designated competency.

## **Activities Designed to Promote Information Literacy**

I encourage you to go beyond the written materials and to use secondary materials to master the concepts and ideas that we will be studying. A couple of prominent examples are listed below under the heading "Supplementary Materials." There are useful materials available through the CALI exercises available on TWEN. I may reference those on occasion.

### **Texts You Must Purchase**

Glannon, Joseph, et al, CIVIL PROCEDURE: A COURSEBOOK. Third Edition. (Aspen)  
ISBN: 978-1-4548-8142-1.

Friedenthal, et al, *2017-2018 SUPPLEMENT FOR USE WITH ALL PLEADING AND PROCEDURE CASEBOOKS (SELECTED STATUTES) 2017 Edition* (West Academic)

### **Supplementary Materials**

A number of commercial treatises and study aids for Civil Procedure are available. I have no problem with their use but cannot vouch for their usefulness. Some former students have told me that Professor Arthur Miller's Civil Procedure audio lectures are very helpful. I have also heard some good things about the following three publications, but have not myself spent any significant time with any of them:

Glannon, CIVIL PROCEDURE: EXAMPLES & EXPLANATIONS (Aspen)

Glannon, THE GLANNON GUIDE TO CIVIL PROCEDURE (Aspen)

Spencer, ACING CIVIL PROCEDURE (Thomson West)

In the library, there are also at least two important multi-volume civil procedure treatises of which you might turn for a comprehensive and scholarly treatment of any civil procedure question you might wish to research:

Wright & Miller, FEDERAL PRACTICE AND PROCEDURE

James, Hazard & Leubsdorf, MOORE'S FEDERAL PRACTICE

### **USEFUL WEB SITES:**

<http://www.uscourts.gov> (this site has links to the Federal Rules, and to all the federal courts including the 2<sup>nd</sup> Circuit and the Vermont district court)

<http://www.supremecourtus.gov> (U.S. Supreme Court)

<http://www.scotusblog.com> (An excellent blog)

<https://www.vermontjudiciary.org> (Vermont courts)

## **Classroom Attendance and Participation**

Class attendance is mandatory. I will circulate a sign-in sheet for each class that it is your responsibility to sign. If at all possible, you should clear absences with me in advance. If it is not possible to advise me in advance that you will be missing class, you should contact me as soon as possible thereafter so that your absence will not be regarded as unexcused. Unexcused absences will affect your final grade and, if repeated, will be reported to the administration in accordance with school policy. Please note that, under ABA regulations, you may be barred from taking the final examination if you miss more than 20% of your classes in a semester.

I expect students to be prepared for class and will call on you at random. If, for an appropriate reason, you are not prepared on a particular day, you can elect to pass. Especially good classroom participation – in terms of quality and not quantity – may result in a half-grade increase to your final grade. (Only about 10% of the class can expect this.) By contrast, especially dismal participation may result in a half-grade decrease to your final grade.

I would strongly encourage you to [take notes by hand, even if you typically use a laptop.](#) Handwriting slows down your thought process and forces you to develop your critical listening skills. The use of the internet or email during class is inappropriate and discouraged, unless I indicate otherwise.

## **Academic Success Mentors**

Our Academic Success Program has made two students available as mentors. Kathryn Steffy and Noah Greenstein will have weekly office hours and workshops to discuss the material covered in class. For further information, please contact Katrina Munyon about the dates for these workshops and for other resources available at the Academic Success Program.

## **Exams and Grading**

Your grade will be based on a mid-term exam, a final exam and participation in class. In mid-semester (date to be determined based on other scheduled midterms), I will give a graded, in-class mid-term exam. The mid-term will be worth 25% of your grade. Finally, I will give an in-class final exam at the end of the semester during our scheduled finals slot worth 75%.

Pursuant to school policy, this class will be graded on a B curve.

## **Course Web Site**

I have put together a course web site on The West Education Network ("TWEN"). I will use the site to communicate with you, post relevant materials, sign-up sheets, and prompt and continue class discussions. You **must** register on TWEN and should pay attention when you receive an email from me through the web site.

## **Assignments**

Since this is a 2-credit course, we will have 19 class meetings over the 14-week semester. I will cover about 20 pages of material per class. *You should read the text of any Rule or Statute cited in the casebook as you do your reading.* I encourage you to WRITE OUT your answers to the questions posed in the text. In my view, this is the best way to consolidate the materials and to give you a sense of whether you are getting what you need to get out of the readings.

You should also build in a few minutes prior to class to review your notes and answers – especially if you get ahead of the class in your reading.

**The following schedule is subject to adjustment as the semester proceeds.**

### **I. PLEADING YOUR CASE**

#### **A. Starting the Lawsuit**

1. A History of Pleading. Glannon 419-441; FR 7,8, 10, 12(a)-(b)
2. Heightened Pleading. Glannon 441-453; In “Course Materials”: Conley v. Gibson and **one** of the four complaints in the “Complaints” folder. You can choose the complaint based on a topic you are interested in.
3. Plausible Pleading. Glannon 453-473; In “Course Materials” The Ancient of Days v. Pope Francis

#### **B. Care and Candor – Truthfulness – in Pleading**

4. Rule 11 and Sanctions. Glannon 525-543, 554-556; FR 11

#### **C. Responding to the Complaint**

5. Default and Motions to Dismiss. TBD
6. Answering and Amending the Complaint. TBD
7. Problem Set

### **II. DISPOSITION WITHOUT TRIAL**

8. Summary Judgment. TBD
9. Summary Judgment. TBD

### **III. NON-LITIGATION DISPUTE RESOLUTION**

10. Resolving Disputes Without Litigation.
11. Mid-Term Exam

#### **IV. JOINDER OF PARTIES AND CLAIMS**

- 12. Joining Plaintiffs' Claims and Joining Parties. TBD
- 13. Counter Claims and Impleader. TBD
- 14. Complex Joinder. TBD

#### **V. SUPPLEMENTAL JURISDICTION**

- 15. The Origins of Supplemental Jurisdiction. TBD
- 16. Codifying Supplemental Jurisdiction. TBD

#### **VI. DISCOVERY**

- 17. Scope of Discovery. TBD
- 18. Required Disclosures and Basic Discovery Techniques. TBD
- 19. Problem Set

## Attachment – Vermont Law School's Core Competencies

Course Name: **Civil Procedure II**

**E**=exposed to

**P**=practiced (includes being exposed to)

**C**=become competent (includes being exposed to and practicing)

- =not addressed in the course

**I. Knowledge:** Each VLS graduate must demonstrate an understanding of each of the following:

- A. Structure, components, and function of the US legal system **E**
- B. Principles and requirements of professional ethics **E**

**II. Skills:** Each VLS graduate must demonstrate the ability to effectively perform the following:

- A. Problem Solving
  - 1. Identify and understand client issues and goals **E**
  - 2. Recognize and strategize around factual and legal uncertainty **P**
- B. Legal Analysis & Reasoning
  - 1. Identify, navigate, and apply relevant legal principles and rules of common law, statutes, and regulations to different factual situations **P**
  - 2. Anticipate, evaluate, and rebut opposing arguments **P**
- C. Legal Research
  - 1. Use strategies and technologies to retrieve and evaluate cases, statutes, legislative history, secondary sources and other materials effectively and efficiently **E**
- D. Written and Oral Communication
  - 1. Express ideas clearly orally and in writing
    - a. Organize and present legal analysis in writing -
    - b. Draft clear, well-analyzed objective and persuasive legal documents -
    - c. Attribute appropriately and effectively, including proper use of citation -
    - d. Explain concepts clearly orally in formal and informal presentations **P**
  - 2. Interview clients, witnesses, non-legal professionals, or others -
  - 3. Counsel clients -
  - 4. Timely and appropriate communicate in a range of professional settings, including presentations, written correspondence (including email), and phone calls -
- E. Cross-cultural Communication

1. Identify cultural, gender, race, class, socioeconomic, or other barriers to effective communication with clients -

**III. Values.** Each VLS graduate must understand the professional commitment to act consistently with justice, fairness, and ethics as demonstrated through the following:

- A. Ability to identify the moral and ethical responsibilities of lawyers to clients, the profession, and the community **P**
- B. Ability to act with Professionalism
  1. The ability to work respectfully with opposing parties/counsel **P**