

CIVIL PROCEDURE II
REQ 7105.02, Spring 2020 (2 credits)
Pamela Vesilind

Mon. & Weds., 9:55 – 11:20
January 11 – 27, virtual (Zoom)
February 1 – on, Oakes Hall TBD

Office hours TBD (virtual)
Waterman 305
802-831-1023(o); 919-949-5884(c)

COURSE DESCRIPTION

This course, along with Civil Procedure I, surveys procedural choices made by lawyers representing clients in civil actions in the federal courts of the United States. These procedural choices merit thorough consideration by the civil litigator, as they can have profound strategic, ethical, and economic impacts on a client’s likelihood of success. We will use federal statutes in Title 28 of the U.S. Code, the Federal Rules of Civil Procedure (“FRCP”), and common law interpretations of these laws. Through a series of practicum assignments, you will apply concepts from this semester and from Civil Procedure I, to perform the work of attorneys.

LEARNING OUTCOMES

By the end of this course, students should have knowledge of:

- How the U.S. judicial system was conceptualized to provide litigants access to justice, and ways in which its evolution has impacted this goal.
- Conceptual and practical complexities of the U.S. court system, including horizontal (state systems) and vertical (dual federal and state systems) components.
- The law controlling civil litigation, including pleadings and motions; discovery strategies; choice of law; joinder of claims and parties, and the formation of class actions; jury selection and instruction; claim and issue preclusion; and appeals.
- How a civil litigant’s success or failure can turn on their attorney’s relative fluency with the procedural rules.

Over the course of the semester, students will become proficient in:

- Careful reading of civil procedure cases and reciting their critical components;
- Responding to questions in class and on assessments without the use of study aids; and
- Drafting and editing various pleadings and motions that develop a strategic application of civil procedural law.

REQUIRED TEXTS

J. Glannon, *et al.*, Civil Procedure: A Coursebook, Third Ed. (Aspen) (ISBN 9781454881421)
J. Glannon, *et al.*, Civil Procedure: Rules, Statutes, and Other Materials 2020 (Wolters Kluwer)
Matthew Desmond, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (available online and at Barristers)

The Course web site is on Canvas. <https://vermontlaw.instructure.com> and you will receive an email invitation to join this course. I will use Canvas to communicate with you, post relevant materials, and prompt or continue class discussions. Virtual classes will be held over Microsoft Teams or Zoom. Links to upcoming class meetings and recorded past classes will be posted here as well. The Canvas Civ Pro course site will have the most current course information.

ATTENDANCE

Class attendance is required, whether virtual or residential. Absences from virtual classes resulting from religious observance, serious illness, and personal emergency are excused if notice is given to the Professor directly or through the Registrar within a reasonable time of the absence. Excused absences will not affect your grade unless they are excessive. Absences from residential classes are permissible if you are experiencing symptoms of illness. You will receive more explicit guidance on this from VLS.

Unexcused absence from more than two classes will affect your grade. A third unexcused absence will result in a written warning. Unexcused absence from a fourth class will result in a grade of F.Wd (Fail / Withdrawal). This statement constitutes the notice required by VLS Academic Regulation X.A.1 (a) & (b) (2020).

See Civ Pro I syllabus for information on Supplementary Materials; Useful Web Sites; Academic Success Program

GRADING

25% of the final grade will be based on case study assignments drawing on concepts learned in Civ Pro I and II.

75% of the grade will be based on the results of a final exam. The two-hour final exam will be closed book.

I reserve the right to raise or lower a final grade to reflect superior or inferior class preparation and professionalism.

COURSE SCHEDULE

This schedule is subject to minor changes due to outside forces. You should use the [Canvas Civ Pro course site](#) for the most accurate assignment information.

DATE	TOPIC	MATERIALS
1/11	Amending Pleadings Amending with or without leave of court Before trial (with leave of court) During and after trial After the limitations period (“relation back”) <i>Bonerb v. Richard J. Caron Foundation</i> (W.D.N.Y. 1994) <i>Krupski v. Costa Crociere, S.p.A</i> (2010)	pp. 559 – 63; 580 – 603 FRCP 15(a)(1)(A)-(B) FRCP 15(a)(2) FRCP 15(b), (c)
1/13	Rule 11 – An attorney’s duty of care and candor in pleading Requirement and meaning of a signature Reasonable inquiry of law and fact under the circumstances Good faith arguments for changes in the law <i>Hunter v. Earthgrains Co. Bakery</i> (4th Cir. 2002) Sanctions for Suits Filed for Improper Purpose (on Canvas) Motions and Sanctions Strategic Lawsuits Against Public Participation (SLAPP suits)	pp. 525 – 43 FRCP 11(a) FRCP 11(b) <i>Katz v. Looney</i> (W.D. Ark. 1990) pp. 554 – 58; FRCP 11(c) Canvas class site
1/18	Rev. Martin Luther King, Jr. Day	
1/20	Joinder of Claims and Parties Permissive joinder of related & unrelated claims Permissive joinder of parties (Πs and Δs) to the original action Joinder rules do not confer subject matter jurisdiction Misjoinder and nonjoinder of parties <i>Hohlbein v. Heritage Mutual Insurance Co.</i> (E.D. Wis. 1985) Counterclaims, compulsory and permissive <i>King v. Blanton</i> (N.C. App. 2012)	pp. 607 – 32 FRCP 18(a) FRCP 20(a) FRCP 82 FRCP 21 FRCP 13(a)-(c)
1/25	Crossclaims: compulsory and permissive Impleader (third-party claims) Additional claims against impleaded parties	pp. 632 – 35; FRCP 13(g) pp. 635 – 42; FRCP 14(a)(1)-(2) pp. 642 – 46; FRCP 14(a)(3)
1/27	Required Joinder of Parties Intervention of Required Parties Intervention of Right and Permissive Intervention <i>Grutter v. Bollinger</i>	pp. 647 – 58; FRCP 19(a) pp. 658 – 69 (stop at n.6) FRCP 24(a)-(b)

2/1	Class Actions Due Process Requirements <i>Hansberry v. Lee</i> (1940) Class Certification, General Requirements <i>In re Teflon Products Liability Litigation</i> (S.D. Iowa, 2008) Jurisdiction and Conduct	pp. 685 – 711; 722 – 27 FRCP 23(a) 28 U.S.C. § 1332(d)
2/3	Supplemental Jurisdiction <i>United Mine Workers v. Gibbs</i> (1966) <i>Owen Electric & Erection Co. v. Kroger</i> (1978)	Recorded lecture pp. 729 – 51
2/8	28 U.S.C. § 1367 Problems on pp. 752-57 <i>Exxon Mobile Corp. v. Allapattah Services and Ortega v. Star-Kist Foods, Inc.</i> (2005)	pp. 751 – 72
2/10	Discovery Scope of Discovery and Work Product Required Disclosures & Basic Techniques <ol style="list-style-type: none"> a. Discovery sequencing b. Interrogatories c. Requests for Production d. Depositions 	FRCP 26 pp. 775-76; 786-89; 794-98; pp. 823-24; 830-39
2/15	continued	p. 853 – 60; 871 – 85 (stop @ 3)
2/17	Dispositions without trial Voluntary Dismissals (“notice dismissal”) Involuntary Dismissals Summary Judgment <i>Slaven v. City of Salem</i> (Mass. 1982) Moving for Summary Judgment	pp. 1003 – 23 FRCP 41(a); 12(c); 12(d) FRCP 41(b); 12(b) FRCP 56(a)-(c)
2/22	Responding to Summary Judgment <i>Celotex Corp. v. Catrett</i> (1986)	pp. 1024 – 43; FRCP 56
2/24	ASP Session: <i>What is the Bar?</i> (same class time; virtual; look for Teams invitation from ASP)	
3/1 and 3/3	no class	

3/8	Choice of Law: The Erie Doctrine <i>Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab & Transfer Co.</i> <i>Erie Railroad Co. v. Tompkins</i> (1938) Applying <i>Erie</i> : Federal Judges Making "Erie Guesses" to State Common Law	pp. 893 – 916
3/10	Applying <i>Erie</i> to State Procedural Law <i>Klaxon v. Stentor Electric</i> (1941) Exceptions to <i>Erie</i> in the national interest <i>United States v. Standard Oil of California</i> (1947) Applying <i>Erie</i> : What is "Substantive" versus "Procedural"? <i>Guaranty Trust Co. of New York v. York</i> (1945) <i>Byrd v. Blue Ridge Rural Electric Cooperative</i> (1958) <i>Hanna v. Plumer</i> ("Hanna I" and "Hanna II")	pp. 917 – 22 p. 923 recorded case summaries and case notes
3/15	<i>Walker v. Armco Steel</i> <i>Shady Grove Orthopedic v. Allstate Insurance</i>	pp. 952 – 79 (stop at n.6)
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3/22	ASP Bar Session: <i>Essay Writing</i>	
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3/24	The Right to a Jury Trial U.S. Constitution, Seventh Amendment	pp. 1045 – 46 Case summary: <i>Dairy Queen</i> pp. 1057 – 77
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3/29	Juries Rulings on the Admissibility of Evidence Jury Instructions Jury Verdicts	pp. 1109 – 34
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3/31	Judgment as a Matter of Law Directed Verdict Motions Renewed Motions for Judgment as a Matter of Law (aka JNOV)	pp. 1079 - 1108 FRCP 50(a) FRCP 50(b)
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4/5	ASP Bar Session - virtual: <i>Multistate Practice Test (MPT)</i>	
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4/7	New Trial & Relief from Judgment	pp. 1135 – 1165; FRCP 59, 60
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4/12	ASP Bar Session - virtual: <i>Multistate Bar Exam (MBE)</i>	
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4/14	Appeals Reviewability Appealability and the Finality Principle	pp. 1169 – 92
4/19	The Collateral Order Doctrine Final by Direction: FRCP 54(b) Exceptions to the Finality Principle Interlocutory Appeal	pp. 1192 – 1214 28 U.S.C. § 1292(a)

4/21	Claim Preclusion	pp. 1215 – 31; 1241 (V.) - 1247
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4/26	Issue Preclusion	pp. 1249 – 74
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REVIEW

FINAL EXAM