

CIVIL PROCEDURE I
REQ 7102.02, Fall 2021 (3 credits)
Pamela Vesilind

SYLLABUS

Mon/Wed, 9:55 – 10:10 am
Oakes Hall TBD
[Course Canvas site](#)
Office hours: TBD

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COURSE DESCRIPTION

This course, along with Civil Procedure II, is the “playbook” for initiating, or defending against, a civil lawsuit in the federal courts of the United States. Civil procedure law is a combination of: (1) the Federal Rules of Civil Procedure (herein “FRCP” or “Rules”); (2) various provisions of the U.S. Constitution; (3) federal statutes in Title 28 of the U.S. Code; and (4) Supreme Court interpretations of the previous three sources of law. Students will develop a working knowledge of the tools of civil litigation—pleadings and motions—and learn how to use the procedural rules tactically throughout the entire litigation process, from conceptualizing a complaint through appeal of a final judgment. Far more than a litigation playbook, civil procedure law also reflects societal and governmental values, so we will also consider the various interests served by these rules, and their impact on equitable access to justice.

LEARNING OUTCOMES

By the end of Civil Procedure I, students will be conversant in:

- conceptual and practical complexities of the dual court system model;
- subject matter jurisdiction, including removal and remand;
- personal jurisdiction: U.S. Constitution’s Due Process clauses and state long-arm statutes;
- venue: statutory considerations and balancing tests;
- notice: proper statutory elements and constitutional considerations; and
- pleadings and pre-trial motions.

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

- reading civil procedure opinions and identifying their critical components;
- responding to questions in class and on assessments, without the use of study aids; and
- completing multiple choice and essay questions with civil procedure-based fact patterns.

REQUIRED TEXTS (available at Barrister's Bookstore)

[J. Glannon, et al., CIVIL PROCEDURE: A COURSEBOOK](#) (Wolters Kluwer)

The new Fourth Edition (2021) is preferred. With some minor inconveniences, you may use the Third Edition. If you buy a used Third Edition, find one that has few markings or highlights. The printed format, as opposed to the e-book format, is more suitable for 1L students.

[J. Glannon, et al., CIVIL PROCEDURE: RULES, STATUTES, AND OTHER MATERIALS 2021](#) (Wolters Kluwer). The printed paperback version is required (not the e-book format).

PREPARING FOR CLASS & USING THE CLASS CANVAS SITE

This class uses a Canvas site for all communications and postings (<https://vermontlaw.instructure.com>). You will receive an email with an invitation to join the site, which you will need to act on to obtain access to the site. All assignments and reference materials, and links to podcasts and videos, will be posted here.

Preparing for Class

We will be moving through the material expeditiously. Please do not fall behind. For each class, I recommend preparing in this order:

1. Short lectures

Review the short video or audio lecture(s) posted for that specific section. These short lectures include the most important rules and principles, which will be further developed in your readings.

2. Readings

Most readings will be from your coursebook, but occasionally I will assign readings that are posted to the Canvas site. Brief your cases. If you are called on to discuss a case in class, I will ask you to reference the text of the opinion in your coursebook. For this reason, if for no other, you should not rely on Quimbee or other canned case brief as a substitute for reading the case.

3. Questions and practice problems

Answer any questions or practice problems posted for this section. We will review them in class. Completion of these questions goes toward the Preparation and Participation portion of your final grade (described *infra*, p. 3).

Organization of Canvas site

On the Canvas course site, you will see the materials divided into **Modules**.

- Module 1: Subject Matter Jurisdiction
- Module 2: Removal and Remand
- Module 3: Personal Jurisdiction
- Module 4: Notice
- Module 5: Venue
- Module 6: Pleadings

Each module contains individual class assignments, including important statutes, regulations, and other documents that may be referenced in your reading. I will also post supplemental (optional) materials for anyone interested in digging deeper into a particular subject. If you'd like to contribute to these materials, please feel free to send it to me. I welcome your suggestions.

GRADING

Grades will be determined based on the following:

1. **MID-TERM EXAMINATION**, one hour, Subject Matter Jurisdiction; Removal and Remand (10%)
2. **FINAL EXAMINATION**, cumulative for the semester (80%)

The mid-term exam and final exam will be closed book, and may include multiple choice, short answer, and essay questions.

3. **PREPARATION AND PARTICIPATION** (10%)

Preparation for class may involve answering discussion questions or applying what you have learned to one or more practice problems in the multiple choice, short answer, or essay format. These are designed to help you assess your own understanding of the material. You may answer these at your own speed, using your notes. If you want to complete the questions with your study partner or group, do it. The purpose of these questions is to get you to work with the concepts. Your completion of these short assessments will count towards your final grade; your performance on them will not. We will review the answers in class. Your teaching assistants will also be available to discuss these problems.

Participation in class includes attending class and being prepared for to contribute to class discussions. It also means working up the courage to ask questions or express uncertainty. If you need further explanation, I can guarantee you that others in the class are also confused.

This course will be graded on a “B” average curve, the recommended average grade for first-year courses (VLS Academic Regulations, II(C)(6)).

ATTENDANCE

Come to class.

Excused absences are due to serious illness, personal emergency, or religious observance, with notice provided through the Registrar (registrar@vermontlaw.edu) or to me directly, within a reasonable time of the absence.

Unexcused absences are absences that do not meet the definition of “excused absences.” Chronic late arrivals will result in an unexcused absence. You are allowed two unexcused absences without penalty. A third unexcused absence will negatively impact your Participation grade and may result in a written warning from your professor. Any unexcused absence subsequent to the written warning will result in a grade of *Fail / Withdrawal*. This statement constitutes the notice required by VLS Academic Regulation X.A.1 (a) & (b) (2020). The American Bar Association requires all accredited law schools to track class attendance

Whether your absence is excused or unexcused, you will be responsible for all material covered in any class you miss.

OFFICE HOURS and APPOINTMENTS

I would like to see you outside of class, and I consider this an important part of my job. I will post regular office hours for “drop-in” visits, but I also available by appointment. My office is Waterman 305, which is on the top floor of one of the buildings connected to Oakes Hall. Enter Waterman through the door outside of Oakes 107.

NOTETAKING

I strongly encourage you to [take notes by hand](#), even [if you typically use a laptop](#). Mounting evidence supports the theory that handwriting class notes enhances learning and retention, because it requires you to distill and summarize the important points and helps you to develop critical listening skills. I will attempt to keep a pace in class that gives you time to write what you need. If you absolutely must type your notes, please *resist typing everything I say*. I am not so interesting as to warrant transcription.

TEACHING ASSISTANTS (TAs)

Several fabulous teaching assistants – all students who performed well in this course – will be available to you throughout the semester. TAs are available to help you with the questions assigned for class and with the general substantive material. Please also take advantage of my office hours and availability for individual appointments.

ACADEMIC SUCCESS PROGRAM (ASP)

ASP, available to every VLS student, offers skill-building through workshops, one-on-one consultation, and mentoring by upper-level students. At least one of the ASP mentors was also a Civ Pro All-Star. ASP features a library of study aids and supplemental materials for your specific needs. They are the best. I mean it. Visit ASP [HERE](#).

STUDY AIDS

Many commercial treatises, study aids, and online apps are available for Civil Procedure. Publishers market to students like you by exploiting your anxieties and insecurities. You do not need these aids to do well in this course. They may even inhibit your learning. Chosen wisely, the right study aids may provide clarity or context for a particularly challenging concept. Not sure what you need? The Academic Success Program is the best place to start, and they have many study aids available for your use. Ask for assistance in choosing materials that match your learning style. For example, if you learn well by listening, audio lectures may be useful; or, if you learn by discussing a topic with someone else, work with a study partner.

Some tips:

- Don't rely on an outline created by another student or "expert." This is the classic rookie mistake. Learning to make your own outline, one that is tailored to your particular needs, is critical to the learning process.
- Check the publication date to avoid relying on outdated study aids.
- Don't rely solely on a study aid's analysis. For example, Glannon's [Examples & Explanations](#) is helpful and entertaining, but the "explanation" format does not fully apply the fact pattern to the law.
- If you find yourself falling behind or hitting a rough patch, resist the impulse to stock up on study guides, flash cards, audio lectures, and canned outlines.

SCHEDULE

For the latest information on class materials, go to the relevant Module on the Canvas course site.

"Coursebook" = Perlman, Glannon, Raven-Hansen, Civil Procedure: A Coursebook (Fourth Edition)

"Supplement" = Perlman, et al., Civil Procedure: Rules, Statutes, and Other Materials (2021-2022)

Date	Topic	Casebook Reading	Supplement
MODULE 1: Subject Matter Jurisdiction			
30 Aug.	Introduction to the American Court Systems Summary of the Basic Principles Introductory Comments The State Court System The U.S. [Federal] Court System Sources of Civil Procedure Regulation The Substance of Procedure and Social Justice Subject Matter Jurisdiction (introduction)	p. 19 pp. 3 – 12 pp. 33 – 39 pp. 12 – 18	U.S. Constitution, Article III, § 1 and § 2
1 Sept.	Subject Matter Jurisdiction 1. “Diversity” Subject Matter Jurisdiction Diversity of Citizenship Requirement The domicile test <i>Gordon v. Steele</i> The “complete diversity” rule (<i>Strawbridge v. Curtiss</i>) <i>Mas v. Perry</i>	pp. 43 – 61	28 U.S.C. § 1332
8 Sept.	State Citizenship of Corporations and other Entities <i>Hertz Corp. v. Friend</i>	pp. 61 – 74	28 U.S.C. § 1332(c)
13 Sept.	Amount in Controversy Requirement The "good faith claim" test Aggregation of Claims rule Diversity Subject Matter Jurisdiction: Comparing the Constitution’s definition with Congress’s statutory definition	pp. 74 – 84 pp. 84 – 88	
15 Sept.	2. Federal Question Jurisdiction in Federal Court Summary of Basic Principles The <i>Mottley</i> Well-Pleaded Complaint Rule <i>Louisville & Nashville Railroad Co. v. Mottley</i>	p. 125 pp. 91 – 102 (stop at IV); 105 (n.4) – 108	28 U.S.C. § 1331

20 Sept.	State law claims involving substantial questions of federal law <i>Gunn v. Minton</i>	pp. 108 – 125	
MODULE 2: Removal and Remand			
22 Sept.	Removal and Remand Summary of Basic Principles Concurrent Jurisdiction The standard for removal The procedure for removal	pp. 143 – 44 pp. 127 – 43	28 U.S.C. § 1441 28 U.S.C. § 1445 28 U.S.C. § 1446
27 Sept.	In-class review of 28 U.S.C. § 1332 and § 1331 Subject Matter Jurisdiction; Removal and Remand under 28 U.S.C. §§ 1441, 1445, and 1446.		
29 Sept.	MID-TERM		
MODULE 3: Personal Jurisdiction			
4 Oct.	Personal Jurisdiction Summary of Basic Principles Background and Evolution Presence Jurisdiction - <i>Pennoyer v. Neff</i> Early-to mid 20th c. Personal Jurisdiction <i>International Shoe v. Washington</i>	pp. 177 – 78 pp. 147 – 48 video lecture pp. 161 – 77	
6 Oct.	1. Specific personal jurisdiction (“SPJ”) Summary of Basic Principles <i>McGee v. International Life Insurance</i>	pp. 249 – 50 pp. 179 – 84	
8 Oct. FRIDAY 10:00 am	<i>Samuel Kerson v. Vermont Law School</i> Hearing for VLS Motion for Summary Judgment U.S. District Court for the District of Vermont Judge Crawford Oakes 109-110 (courtroom)	attend if you are able	
11 Oct.	Fall break		
13 Oct.	SPJ: the modern <i>contacts</i> test <i>World-wide Volkswagen v. Woodson</i>	pp. 184 – 204	
18 Oct.	SPJ: <i>contacts</i> via contract	pp. 204 – 16	

	<i>Burger King v. Rudzewicz</i> State long-arm statutes	pp. 309 – 17	
20 Oct.	SPJ: <i>contacts</i> in a stream of commerce <i>Asahi Metal Industry . Superior Court of California</i>	pp. 216 – 34	
25 Oct.	SPJ: <i>the arises out of</i> element <i>Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.</i> Claims that <i>arise out of</i> internet-based contacts <i>Personal Jurisdiction: A New Age of Internet Contacts</i>	pp. 234 – 39 excerpt from <i>Ford</i> ; pp. 1 – 15	
27 Oct.	2. General personal jurisdiction <i>Daimler AG v. Bauman</i>	pp. 251 – 70	
1 Nov.	Personal jurisdiction established through: 3. Transient presence (gotcha!) <i>Burnham v. Superior Court</i> 4. Consent 5. Waiver	pp. 288 – 307	
MODULE 4: Notice (Service of Process; Process)			
3 Nov.	Notice 1. When is notice constitutional? <i>Mullane v. Central Hanover Bank</i> The relationship between notice and personal jurisdiction	pp. 329 – 43 pp. 363 – 65	5th and 14th A. Due Process clauses
8 Nov.	2. When is notice procedurally proper? Under the federal rule (FRCP 4) Under the state rule	pp. 343 – 63	Rule 4
MODULE 5: Venue			
10 Nov.	Venue 1. Identifying proper venue(s)	pp. 369 – 85	28 U.S.C. § 1391
15 Nov.	2. Transfer from a proper venue to a <i>better</i> proper venue <i>MacMunn v. Eli Lilly</i> 3. Dismissal for improper venue	pp. 387 – 98	28 U.S.C. § 1404 28 U.S.C. § 1406
17 Nov.	4. Dismissal from a proper venue for <i>forum non conveniens</i> <i>Piper Aircraft Co. v. Reyno</i>	pp. 398 – 417	

MODULE 6: Pleading			
22 Nov.	Pleading – the Complaint <ol style="list-style-type: none"> History of pleading <i>Conley</i> notice pleading under FRCP 8 <i>Doe v. Smith</i> The heightened pleading requirement under FRCP 9 <i>Leatherman v. Tarrant County</i> 	lecture/ppt pp. 441 – 56	FRCP 7, 8, 9 FRCP 12(b)(6)
24 Nov.	<ol style="list-style-type: none"> <i>Iqbal/Twombly</i> plausible pleading under FRCP 8 <i>Ashcroft v. Iqbal</i> 	pp. 456 – 75	
29 Nov.	Responding to the Complaint (or not) <ol style="list-style-type: none"> The Default Judgment process (default; entry of default; entry of a default judgment) Rule 12 Motion Practice The Rule 12 Waiver Trap 	pp. 477 – 79 <i>Lacey</i> case summary pp. 484 – 88 pp. 488 – 98 <i>Hunter</i> case summary pp. 501 – 05	FRCP 55 FRCP 12(b); (e); (f) FRCP 12(g); (h)
1 Dec.	Answering the Complaint <ol style="list-style-type: none"> Responding to allegations (affirm; deny; neither) Raising affirmative defenses 	[alternative reading]	FRCP 8(b); (c)
6 Dec.	Care and Candor in Pleading (Rule 11 sanctions)	pp. 529 – 51	FRCP 11
8 Dec.	Amending Pleadings <ol style="list-style-type: none"> Without leave of court With leave of court, during or after trial Amending claims or defenses after the limitations period <i>Bonerb v. Richard J. Caron Fdtn.</i> Adding parties after the limitations period <i>Krupski v. Costa Crociere S.P.A.</i> 	pp. 555 – 57 pp. 574 – 97	FRCP 15
TBD	FINAL EXAM REVIEW		
TBD	FINAL EXAM		