

**CIVIL PROCEDURE I**  
**REQ 7102.02, Fall 2022 (3 credits)**  
**Pamela Vesilind**

**SYLLABUS**

Mon/Wed, 9:55 – 10:10 am  
Oakes Hall 007  
[Course Canvas site](#)

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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) – 4th edition  
I recommend the printed format, as opposed to the e-book format, for most 1L students.

[J. Glannon, et al., CIVIL PROCEDURE: RULES, STATUTES, AND OTHER MATERIALS 2022](#) (Wolters Kluwer). Editions from 2020 and 2021 are acceptable alternatives, if they are generally free of highlighting and writing. 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 (<https://vermontlaw.instructure.com>). Use your VLS login and password. All communications, assignments, 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

If any are posted, begin with the videos or audio lecture(s) for that specific section. These short lectures include the most important rules and principles, which will be further developed in your readings.

#### 2. Readings

Begin by reviewing any rules or statutes in your supplement.

Most readings will be from your coursebook. Occasionally, readings will be posted on 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 none 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.

### 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
- Module 7: The Right to a Jury Trial

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

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

1. **MID-TERM EXAMINATION** on Subject Matter Jurisdiction; Removal and Remand (10%). Closed-book; one hour, in class.
2. **FINAL EXAMINATION**, cumulative for the semester (80%)  
Closed-book; three hours. The exam may include multiple choice, short answer, and essay questions.
3. **PREPARATION AND PARTICIPATION** (10%)  
Preparation and informed participation are critical components of this class. I reserve the right to award positive or negative class participation points based on timely class attendance and participation.

**Preparation for class** includes preparing answers to posted discussion questions or applying what you have learned to one or more practice problems designed to help you assess your own understanding of the material. Practice problems may be answered at your own speed, with or without the aid of your notes. You may complete the questions with your study partner or group. Completion of these short assessments will count towards your final grade. I will review the answers in office hours, or in class if time permits. Your teaching assistants will also be available to help you with these assignments.

**Participation in class** includes attending class and being prepared to contribute to class discussions. It also means working up the courage to ask questions and express uncertainty. If you’re confused, I guarantee that others in the class also are confused. If I call on someone in class and they are not prepared, they should expect to be called on in the following two classes, and they may be counted as absent.

## ATTENDANCE

Come to class. Students who miss a disproportionate number of classes sabotage their success.

Under VLGS Academic Regulations,<sup>1</sup> there are no “excused” or “unexcused” absences, and you do not need to seek permission to miss class. The regulations permit students to be absent from up to 20% of regularly scheduled classes. Over a semester of 28 class meetings, this comes to no more than five (5) absences before the withdrawal requirement is triggered. I will note attendance, but you are responsible for keeping up with your own attendance record. If you must miss class, for whatever reason, you will be responsible for all material covered in any class you miss.

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### <sup>1</sup> Section II.A.1 - Regular Attendance

- a. Students are required by Vermont Law School and by the [American Bar Association] to maintain regular and punctual attendance in all classes. Students are also required to complete all hours for clinical work, externship work, law review and journal work, and independent research and directed study projects.
- b. Students who are absent from twenty (20%) percent of the regularly scheduled classes or who fail to complete required hours for other work shall be automatically withdrawn from the course with a grade of F-Wd. . . . Instructors will notify the registrar’s office of any student who misses more than the allowed classes.

## OFFICE HOURS and APPOINTMENTS

I would like to see you outside of class, and I consider this an important part of my job. Office hours are optional, and will be set near the start of the semester. I am also available by appointment; please email me. My office is Waterman 305, on the top floor. 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](#). Handwriting class notes enhances learning and retention, by requiring one to distill and summarize important points, while developing critical listening skills. Classes will be recorded to give you an opportunity to review any missed material, and I will attempt to keep a pace in class that allows for handwritten notes. 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. At least two of our TAs keep office hours as ASP mentors (below).

## 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. ASP also maintains a library of study aids and supplemental materials for your specific needs. [Visit ASP](#).

## 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? ASP (above) 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](#) can be extremely helpful in explaining a concept, but the answers to the example problems do not 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 of Topics

All class preparation assignments and other materials are on the Canvas site.

Topic	Supplement
<b>Introduction to the American Court Systems, State and Federal</b> Sources of Civil Procedure Regulation	U.S. Const., Article III, § 1 and § 2
<b>I. Subject Matter Jurisdiction</b>	28 U.S.C. § 1332(a)
A. “Diversity” Subject Matter Jurisdiction	
1. 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>	
Citizenship of Entities	28 U.S.C. § 1332(c)
Of corporations - <i>Hertz Corp. v. Friend</i>	
Of non-corporate entities	
2. Amount in Controversy Requirement	28 U.S.C. § 1332(a)
The "good faith claim" test	
Aggregation of Claims rule	
3. Comparing jurisdictional scope: the Constitution versus federal law	
B. Federal Question Jurisdiction in Federal Court	28 U.S.C. § 1331
The well-pleaded complaint rule - <i>Louisville &amp; Nashville Railroad Co. v. Mottley</i>	
State law claims involving substantial questions of federal law - <i>Gunn v. Minton</i>	
C. Supplemental Jurisdiction (part 1)	28 U.S.C. § 1367
<b>II. Removal and Remand</b>	
Concurrent jurisdiction and other standards for removal	28 U.S.C. § 1441
Removal procedural rules	28 U.S.C. § 1445
Remanding (back to state court)	28 U.S.C. § 1446
<b>MID-TERM</b>	
<b>III. Personal Jurisdiction</b>	
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>	
A. Specific personal jurisdiction (“SPJ”)	
Evolving standards - <i>McGee v. International Life Insurance</i>	
State long-arm statutes	

<p>The modern test:</p> <ol style="list-style-type: none"> <li>1. Defendant's contacts with the forum state <ol style="list-style-type: none"> <li>a. Foreseeable &amp; purposeful contacts - <i>World-wide Volkswagen v. Woodson</i></li> <li>b. Contacts as a party to a contract - <i>Burger King v. Rudzewicz</i></li> <li>c. Contacts as an actor on the stream of commerce – <i>Asahi Metal Industry Superior Court of California</i></li> </ol> </li> <li>2. Plaintiff's claim arises out of Defendant's contacts with the forum state – <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>)</li> <li>3. Comports with traditional notions of fair play and substantial justice</li> </ol>	
<p><b>B. General personal jurisdiction</b>  General principles  General personal jurisdiction over corporate entities - <i>Daimler AG v. Bauman</i></p>	
<p><b>IV. Notice</b>  A. When is notice constitutional? - <i>Mullane v. Central Hanover Bank</i>  The relationship between notice and personal jurisdiction  B. When is notice technically proper?  Under the federal rule (FRCP 4)  Under the state rule</p>	<p>5th and 14th A. Due Process clauses   FRCP 4(a), (b), (c)(1)-(2), (d), (e)(1)-(2); (h); (m)</p>
<p><b>V. Venue</b>  A. Identifying districts in which venue is proper  B. Transfer from a proper venue to a <i>better</i> proper venue – <i>MacMunn v. Eli Lilly</i>  C. Dismissal or transfer from an improper venue  D. <i>Forum non conveniens</i> dismissal a non-U.S. venue would be better – <i>Piper Aircraft Co. v. Reyno</i></p>	<p>28 U.S.C. § 1391  28 U.S.C. § 1404  28 U.S.C. § 1406</p>
<p><b>VI. Pleading</b>  <b>A. Complaint</b>  <ol style="list-style-type: none"> <li>1. Pleading rules before the Federal Rules of Civil Procedure</li> <li>2. <i>Conley</i> notice pleading under FRCP 8</li> <li>3. <i>Iqbal/Twombly</i> plausible pleading under FRCP 8 - <i>Ashcroft v. Iqbal</i></li> </ol> </p>	<p>FRCP 7, 8  FRCP 12(b)(6)</p>
<p><b>B. Responding to the Complaint (or not) - Motions</b>  <ol style="list-style-type: none"> <li>1. The Default Judgment process  (default; entry of default; entry of a default judgment)</li> <li>2. Rule 12 Motion Practice</li> <li>3. The Rule 12 Waiver Trap</li> </ol> </p>	<p>FRCP 55   FRCP 12(b); (e); (f)  FRCP 12(g); (h)</p>
<p><b>C. Answering the Complaint</b>  <ol style="list-style-type: none"> <li>1. Responding to allegations (affirm; deny; neither)</li> <li>2. Raising affirmative defenses</li> </ol> </p>	<p>FRCP 8(b); (c)</p>
<p><b>D. Care and Candor in Pleading (Rule 11 sanctions)</b></p>	<p>FRCP 11</p>
<p><b>E. Amending Pleadings</b></p>	

<ol style="list-style-type: none"> <li>1. Without leave of court</li> <li>2. With leave of court, during or after trial</li> <li>3. Amending claims or defenses after the limitations period - <i>Bonerb v. Richard J. Caron Fdn.</i></li> <li>4. Adding parties after the limitations period - <i>Krupski v. Costa Crociere S.P.A.</i></li> </ol>	FRCP 15
<p><b>VII. The Right to a Jury Trial</b> U.S. Constitution, Seventh Amendment</p>	