

CIVIL PROCEDURE I (Req 7102.1)

Vermont Law School – Fall 2022

Dean Beth McCormack

Syllabus & Schedule

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Class: Tuesdays and Thursdays, 8:30-9:45 in Oakes 007

Office Hours: Tuesdays, 11:30am-1:30 starting September 6, but not on September 20, and by appointment.

Class TAs: TBA

INTRODUCTION AND OVERVIEW

This course, along with Civil Procedure II, will generally cover the process of civil litigation in the federal courts of the United States. We will survey questions that face attorneys and clients who seek to initiate or defend against a federal lawsuit. We will examine the Federal Rules of Civil Procedure (the “Fed. R. Civ. P.”), Title 28 of the United States Code, the Constitution, and Supreme Court opinions construing this law. Beyond learning procedural law, we will examine strategic, ethical, professional, and economic considerations that arise in civil litigation. Specifically, this semester, we will cover what I call the big three: Subject Matter Jurisdiction, Personal Jurisdiction and Venue, as well as Pleading. This class will also provide practice in answering essay and multiple-choice questions for the bar exam.

REQUIRED MATERIALS

Glannon, Joseph, et al, Civil Procedure: A Coursebook. Fourth Edition. (Wolters Kluwer 2021) ISBN: 978-1-5438-2625-8. Beware: Glannon released the Fourth Edition about a year ago; if you are attempting to buy this book used, the Third Edition is not identical to the Fourth Edition and all page number assignments will be for the Fourth Edition.

Glannon Supplement (2021), although earlier editions of the Supplement work fine too.

GRADING

Your grade will be based on a closed book mid-term exam (25%) and a closed book final exam (75%). This class will be graded on a B curve. Especially good classroom participation – quality not quantity – may result in a half-grade increase to your final grade. These increases are rare. By contrast, especially poor participation may result in a half-grade decrease to your final grade.

SUPPLEMENTAL MATERIALS

A number of commercial treatises and study aids for Civil Procedure are available. Professor Arthur Miller's Civil Procedure audio lectures are very helpful. I also recommend the below three publications. You should check the Library and the ASP Library for these before purchasing them.

Glannon, CIVIL PROCEDURE: EXAMPLES & EXPLANATIONS (Wolters Kluwer)

Glannon, THE GLANNON GUIDE TO CIVIL PROCEDURE (Wolters Kluwer)

Spencer, ACING CIVIL PROCEDURE (Thomson West)

USEFUL WEB SITES:

<http://www.uscourts.gov> (this website has links to the Federal Rules, and to all the federal courts including the Second Circuit Court of Appeals and the Federal District Court of Vermont)

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

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

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

CLASS ATTENDANCE, CLASS DISCUSSION & PREPARATION

Class attendance is mandatory. Vermont Law and Graduate School Academic Regulation II.A. provides that a student will receive a grade of F-Wd if they are absent from 20% of regularly scheduled classes. The Academic Regulations permit individual professors to set a higher requirement (but not a lower requirement) and for this class you will receive a grade of F-Wd if you are absent from more than three regularly scheduled classes. You are required to monitor your own compliance with this policy. Two tardies equals one unexcused absence. I consider 8:31 am as tardy.

If additional absences are due to a health issue or some other extraordinary circumstance beyond your control, contact Vice Dean for Students Brennan as a withdrawal or medical leave may be appropriate. Contact Associate Dean of Diversity, Equity, and Inclusion Ryan for any accommodation request. You can review our accommodations policy [here](#).

I expect students to be prepared for class and will call on you at random. If you are not prepared on a particular day, you may "pass." If you pass, however, you must select whom I will call on instead of you and your participation grade may suffer. Class discussion, including responding to questions asked by me and points made by your classmates, is an essential component of my class.

Audio Class recordings and a copy of any Power Point I use will be available after class on our Canvas site.

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 forbidden, unless I indicate otherwise. Texting during class is also prohibited.

FLIPPED CLASSROOM

About every other week, we will flip the Classroom. This means that all students will need to watch a prerecorded lecture and do the reading before attending the live session for their Group. If it is not your Group's session, you should not attend; the same content will be delivered in each session. Students with last names from A through Londono will be Group 1331 and students with last names from Lucey through Z will be Group 1332. Please pay attention to the Syllabus about whether this is Group or All Class meeting.

TEACHING ASSISTANTS AND ACADEMIC SUCCESS

We have five students available as Teaching Assistants: They will be available to discuss the material covered in class. Please also consult the [Academic Success Web Site](#) for other resources to help you including a list of ASP Workshops. Students who take advantage of ASP Workshops and Resources tend to be the most successful in my class.

COURSE WEBSITE

Our course website is on Canvas; you will be automatically enrolled. I will use the site to communicate with you, post relevant materials, and occasionally prompt and continue class discussions.

ASSIGNMENTS

I will cover about 40 pages of material per week. *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. This is the best way to consolidate the materials and to give you a sense of whether you are understanding the readings. When you have read this part of the syllabus, please email me with the subject "Syllabus" to let me know. The first one to do so will win an amazing prize. 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.

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 courts;
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 careful reading, discussion, responses to objective questions without study aids, and the completion of problems that require you to spot and analyze civil procedure issues in a fact pattern.

AMENDMENTS TO THE SYLLABUS

Any Amendments to the Syllabus will be made in writing.

FRAME FOR CIVIL PROCEDURE I

- I. Subject Matter Jurisdiction
 - A. Federal Question Jurisdiction (1331)
 - B. Diversity Jurisdiction (1332)
 1. Citizenship of Persons
 2. Complete Diversity Rule
 3. Citizenship of Corporations and Other Entities
 4. Amount in Controversy Requirement; Aggregating Claims
 - C. Removal (1441)
 1. Standard
 2. Procedure
- II. Personal Jurisdiction
 - A. Introduction and Evolution
 - B. Specific Jurisdiction
 - C. General Jurisdiction
- III. Venue
 - A. Generally (1391)
 - B. Transfer and Dismissal (1404 and 1406)
 - C. Forum Non Conveniens
- IV. Pleading
 - A. Complaints

1. History of Pleading
 2. Current Standard of Pleading: Plausible Pleading
 3. Care and Candor in Pleading (Rule 11)
- B. Responding to the Complaint
1. Default
 2. Rule 12 Motions
 - a. Omnibus Motion Rule
 - b. Rule 12 Waiver Trap
 3. Answering
- C. Amending Pleadings

READING & ASSIGNMENT SCHEDULE

CLASS	ASSIGNMENT	AGENDA
WEEK 1		
Tuesday, August 30	Read Course Syllabus and Schedule; Glannon 3-13; Article III (Glannon Supplement)	Introduction and Overview; Article III
		Subject Matter Jurisdiction
Thursday, September 1	Read 13-19; 91-108; Read 28 U.S.C. sec. 1331 (Glannon Supplement)	Introduction to Subject Matter Jurisdiction & Federal Question Jurisdiction
WEEK 2	Read 28 U.S.C. sec. 1332(a)-(c); Glannon 43-61	Watch Lectures 1 and 2: Diversity of Citizenship – Citizenship of Persons and the Complete Diversity Rule
Tuesday, September 6		Group 1331 Only

Thursday, September 8		Group 1332 Only
WEEK 3		
Tuesday, September 13	Read Glannon 61-89	Citizenship of Corporations and Amount in Controversy; Aggregating Claims
Thursday, September 15		Review Subject Matter Jurisdiction
WEEK 4	Read 28 U.S.C. 1441(a)-(b), 1446, 1447; Glannon 127-144	Watch Lecture 3: Removal
Monday, September 19	Happy Constitution Day!	Attend Constitution Day Celebration in Chase at 5 pm
Tuesday, September 20		Group 1332 Only
Thursday, September 22		Group 1331 Only
WEEK 5		
Tuesday, September 27	No assignment	Jurisdiction and Removal Review; Practice Essay Question
		Personal Jurisdiction

Thursday, September 29	U.S. Const. Amend. XIV; Glannon 147-164	Intro to Personal Jurisdiction
WEEK 6		
Tuesday, October 4		In Class Midterm
Thursday, October 6	Glannon 164-178; 185-200	Personal Jurisdiction: The Modern Approach & Specific Jurisdiction
WEEK 7		
Tuesday, October 11		NO CLASS: FALL RECESS
Thursday, October 13	Reading TBD	Guest Lecture Personal Jurisdiction: President Smolla
WEEK 8		
Tuesday, October 18	Read Glannon 218-234; Review Video on Midterm	Personal Jurisdiction: Stream of Commerce
Thursday, October 20	Read Glannon 251-270	General Jurisdiction and PJ Review
		Venue
WEEK 9	28 U.S.C. sec. 1391, 1404,	

	1406; Glannon; 369-398	Watch Lectures 4 and 5: Introduction to Venue and Transfer and Dismissal of Venue
Tuesday, October 25		Group 1331 Only
Thursday, October 27		Group 1332 Only
WEEK 10		
Tuesday, November 1	Venue Practice Quiz (to be done before class, posted on Canvas on Friday 10/28); Glannon 398-415	Forum Non Conveniens; Review Venue
Thursday, November 3	Glannon 429-449	Pleading Introduction to Pleading
WEEK 11	Glannon 459-475	Watch Lecture 6: Heightened Pleading and Plausible Pleading
Tuesday, November 8		Group 1332
Thursday, November 10		Group 1331
WEEK 12		
Tuesday, November 15	Read Glannon 529-552; Fed. R. Civ. P. 11	Rule 11 and Sanctions

		Responding to the Complaint
Thursday, November 17	Glannon 477-479, 489-505; Fed R. Civ. P. 12	Default and Motions to Dismiss
WEEK 13		
Tuesday, November 22		Waiver Trap and Omnibus Motion Rule Review and Practice
Thursday, November 24		NO CLASS - THANKSGIVING
WEEK 14	Glannon 505-519; Fed. R. Civ. P. 8(b)-(c); Fed. R. Civ. P. 15, Glannon 553-567	Watch Lectures 7 and 8; Answering the Complaint and Amending Pleadings
Tuesday, November 29		Group 1331
Thursday, December 1		Group 1332
WEEK 15		
Tuesday, December 6		Practice Questions
Thursday, December 8		Final Review and Course Evaluations