

## **CIVIL PROCEDURE II (Req 7102.2)**

Vermont Law School – Spring 2023

Dean Beth McCormack

### **Syllabus & Schedule**

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Class: Mondays and Wednesdays, 9:55-11:10 am in Oakes 012

Office Hours: Tuesdays, 3:30-5 pm, walk in (except not March 17 or April 4) – or email [jyirka@vermontlaw.edu](mailto:jyirka@vermontlaw.edu) for an appointment. Include in your email a few times that you are available.

Class TAs: TBD

### **INTRODUCTION AND OVERVIEW**

This course will continue our coverage of the process of litigation in the federal courts of the United States. We will survey questions that attorneys and clients face as they 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, we will look at joinder of parties and claims, supplemental jurisdiction, discovery, summary judgment, jury trials, Rule 50 motions and claim and issue preclusion.

### **REQUIRED MATERIALS**

Glannon, Joseph, et al, Civil Procedure: A Coursebook. Fourth Edition. (Aspen)  
ISBN: 978-1-4548-8142-1.

Any current version of the Federal Rules of Civil Procedure.

### **GRADING**

Your grade will be based on a mid-term exam (25%) and a final exam (75%). Both exams are completely closed book – no notes, textbook or rules are permitted. This class will be graded on a B curve. A student who is unprepared for class may receive a one increment decrease to your final grade (i.e., from a B to a B-).

## **SUPPLEMENTAL MATERIALS**

Many commercial treatises and study aids for Civil Procedure are available. Many students find that Professor Arthur Miller's Civil Procedure audio lectures are helpful. The following three publications may also be helpful. Check the ASP (Academic Success Program) Lending Library or the main library before buying these books:

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 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 & PREPARATION**

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 can pass. If you pass, however, you must select whom I will call on instead of you and your grade may suffer. The Socratic Method is an essential part of the learning process in Civil Procedure 2; if you are not called on, you should think about how you would answer the questions I ask the student who is called on.

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 or your phones during class is forbidden, unless I indicate otherwise.

Under our academic regulations, a student may not be absent for more than 20 percent of our classes, which for this class is 4 classes. If you miss more than 4 classes, you will automatically receive an F-Wd for the class. If you need to miss more than 4 classes due to an illness or disability, please contact Associate Dean Lisa Ryan to discuss whether you qualify for an accommodation. Typically, the accommodation for a student who needs to miss more than 20% of classes due to illness or disability is a withdrawal from the class or medical leave. You can learn more about accommodations by clicking [accommodations policy](#)

I will have Teams running passively for each class. If you need to miss a class, you may observe on Teams. Please note that virtual attendance does not count as attending class; you will still be marked as absent. I also will not be able to take questions on Teams or involve you in class discussions. Audio recordings will be available after class on Canvas.

Two tardies equals one absence. You are late at 9:56.

### **FLIPPED CLASSROOM**

Several times a semester we will flip the classroom. This means that all students will need to watch a prerecorded lecture before attending the live session for your group. If it is not your Group's session, you should not attend; the same content will be delivered in each session. Students with official first names from A through Kimberly will be in Group 1331 and students with official first names from Kirpa through Z will be Group 1332. Please pay attention to the Syllabus about whether this is a Team or an All Class meeting.

### **PRELIMINARY BAR SESSIONS**

Civil Procedure 2 is a 2-credit class in a 3-credit timeslot so we will not meet every class period. We will have two preliminary bar sessions in our Civ Pro class time, however. Attendance at these sessions is mandatory.

### **TEACHING ASSISTANTS AND ACADEMIC SUCCESS MENTORS**

We have several students serving as Teaching Assistants. Our TAs will have weekly office hours and workshops to discuss the material covered in class. Please also contact Katrina Munyon about other resources available from the Academic Success Program.

### **COURSE WEB SITE**

Our course website is on Canvas. I will use the site to communicate with you, post relevant

materials, and occasionally prompt and continue class discussions. There will also be a Teams link available for each class, but as noted, attending by Teams does not count for attendance.

### **ASSIGNMENTS**

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. This is the best way to consolidate the materials and to give you a sense of whether you are understanding 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.

### **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;
5. Practice bar style multiple choice and essay questions.
6. Recognize ethical issues that may arise when representing a client in civil litigation.

These outcomes will be achieved through careful reading, oral presentation, responding 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 II**

- I. Joinder of Claims and Parties

- II. Supplemental Jurisdiction
- III. Discovery
- IV. Disposition without Trial – Summary Judgment
- V. Trial
- VI. JNOV and Directed Verdict
- VII. Claim and Issue Preclusion

**READING & ASSIGNMENT SCHEDULE**

CLASS	ASSIGNMENT	AGENDA
Monday, January 16		NO CLASS – MLK DAY
Wednesday, January 18	Read Glannon pp. 601-617; Fed R. Civ. P. 18(a) & 20	Introduction to Joinder
Monday, January 23	Read Glannon 617-638; Fed. R. Civ. P. 13 & 14(a)	Joinder Continued – Counterclaims, Crossclaims, and Impleader
Wednesday, January 25		Joinder Review
	Read 28 U.S.C. sec. 1376; Glannon 711-739; Watch Spring Panopto Video 1	Supplemental Jurisdiction
Monday, January 30		Group 1332
Wednesday, February 1		Group 1331

Monday, February 6		Supplemental Jurisdiction Review
Wednesday, February 8	Glannon 749-774; Fed. R. Civ P. 26(a)(1) & (g)	Introduction to Discovery
	Glannon 799-830; Fed. R. Civ. P. 33-36, 37(b)(2)(A) -(C); Glannon 831-838; 845-846; 849-858; Watch Spring Panopto Video 2	Basic Techniques of Discovery and Controlling Discovery
Monday, February 13		Group 1331
Wednesday, February 15		Group 1332
Monday, February 20		Review for Midterm
Wednesday, February 22		MIDTERM (Joinder, Supplemental Jurisdiction, Discovery)
	Read Glannon 980-1003; Fed. R. Civ. P. 56; Watch Spring Panopto Video 3	Introduction to Summary Judgment
Monday, February 27		Group 1332

Wednesday, March 1		Group 1331
Monday, March 6		NO CLASS – SPRING BREAK
Wednesday, March 8		NO CLASS – SPRING BREAK
Monday, March 13		PRELIMINARY BAR SESSION
Wednesday, March 15	Read Glannon 1003-1015	Continue to Discuss Summary Judgment
Monday, March 20		Summary Judgment Review
Wednesday, March 22	Read Glannon 1042-1052	July Trials and Introduction to ADR
	Read Glannon 1053-1081; Read Rule 50; Watch Spring Panopto Videos 4 and 5	Directed Verdict and JNOV
Monday, March 27		Group 1331
Wednesday, March 29		Group 1332

	Glannon 1189-1205	Claim Preclusion
Monday, April 3		REQUIRED PRELIMINARY BAR SESSION
Wednesday, April 5		NO CLASS
Monday, April 10	Glannon 1223-1244	Issue Preclusion
Wednesday, April 12	Panopto Video 6 on Introduction to Erie Doctrine	Preclusion Review; Discussion of Erie Doctrine
Monday, April 17		Make Up Day
Wednesday, April 19		NO CLASS
Monday, April 24		NO CLASS
Wednesday, April 26		Course Evaluations; Final Review Session