

CIVIL PROCEDURE SYLLABUS
REQ 7102.02, Fall 2024 (4 credits)
Professor Vesilind

Class: T/R/F, 8:30 – 9:45 am Oakes 012	Professor Pamela Vesilind
Course Canvas site	pvesilind@vermontlaw.edu
Office hours/practice question sessions: T, 11:20 am – 12:35 pm Oakes 107	Office: Waterman 204
Individual or group meetings also by appointment (schedule by email)	

COURSE DESCRIPTION

This course is the “litigation playbook” for initiating, defending against, or intervening in a civil lawsuit in United States District Court. Judicial system laws and civil procedure rules addressed in this course is drawn from:

- (1) the Federal Rules of Civil Procedure (herein “FRCP” or “Rules”);
- (2) 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.

“**Procedure**” is the “**how**” of litigation. In your Torts and Contracts courses, you will be studying the “what” of litigation – as in “what claim will the plaintiff make against the defendant?” The best civil litigation attorneys give thorough consideration to procedural choices, as they can have profound strategic, ethical, and economic impacts on their client’s likelihood of success.

Students will develop a working knowledge of the tools of civil litigation—pleadings and motions—and learn how to use the procedural rules strategically throughout the entire litigation process, from conceptualizing a complaint through appealing a final judgment.

Finally, civil procedure law reflects societal values, governmental policies, and historical inequalities. 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 proficient in:

- The conceptual and practical complexities of the dual court system model (federal and state courts)
- Reading civil procedure opinions and identifying their critical components
- Subject matter jurisdiction (original and supplemental)
- Removal and remand
- Personal jurisdiction: due process and state long-arm statutes; 5 methods to establish
- Venue: statutory considerations and balancing tests.
- Notice requirements under federal and state law
- Pleadings and motions practice
- Rule 11 obligations and sanctions
- The scope of discovery; tools of discovery
- Federal court choice of law
- Joinder of claims and parties
- Pre-trial dismissals, including voluntary dismissal and summary judgment
- Jury demand and selection
- Dismissal motions at trial and post-trial: judgment as a matter of law; motion for new trial; set aside verdict
- Claim preclusion

REQUIRED TEXTS (available at Barrister's Bookstore)

[J. Glannon, et al., CIVIL PROCEDURE: A COURSEBOOK](#) (Wolters Kluwer) – 4th edition. For most first-year students, the printed format is vastly superior to the e-book format.

[J. Glannon, et al., CIVIL PROCEDURE: RULES, STATUTES, AND OTHER MATERIALS 2023](#) (Wolters Kluwer).

PRINTED VERSION REQUIRED. NO EXCEPTIONS. Editions from 2020 - 2022 are acceptable alternatives, if they are generally free of highlighting and writing.

HOW TO USE THE CLASS CANVAS SITE

This class uses a Canvas site (<https://vermontlaw.instructure.com>), accessed using your VLGS login and password. All communications, assignments, reference materials, and links to podcasts and videos, will be posted on this site. The Canvas site is where you should go to learn about specific class assignments. This syllabus is merely is a roadmap of the material we will cover. The materials are divided into **Modules**.

General Course Information and Materials

Module 1: Subject Matter Jurisdiction

Module 2: Removal and Remand

Module 3: Notice

Midterm (materials and instructions to prepare)

Module 4: Personal Jurisdiction

Module 5: Venue

Module 6: The Pleadings Phase and Motions Practice; Rule 11

Module 7: Joinder

Module 8: Supplemental Jurisdiction

Module 9: The *Erie* and *Hanna* doctrines

Module 10: Discovery

Module 11: Voluntary and Involuntary Dismissals

Module 12: Jury demand and jury selection

Module 13: Motions at trial and post-trial

Module 14: Post-trial procedural issues

Final Exam Prep

The modules contain materials and questions for each of the 28 individual class meetings. Here you will find discussion questions about the most important cases in your readings, and practice questions for you to test your understanding of the material prior to class. You will also find important statutes, regulations, and other documents that may be referenced in your reading. And for anyone interested in digging deeper into a particular subject, there are supplemental materials. You are welcome to contribute an article or other resource about the topic.

Preparing for Class

We will be moving through the material expeditiously. Do your best not to fall behind. If you are finding it difficult to keep up (or catch up), ask for help – from me, from your TAs, or from ASP mentors.

For each class, I recommend preparing in this order:

1. Watch or listen to short lectures.
 - For most classes, you will find a short video or audio lecture to introduce you to the concepts in that section. These recordings include the essential rules and principles.
2. Read assigned materials

- Locate and read any rules or statutes assigned for that class, in your Supplement.
- Read in your coursebook or from materials 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 (page and paragraph). For this reason—if for no other – it would be foolish to rely on Quimbee or other canned case brief as a substitute for reading the case. Reading and briefing cases is time-consuming, but less so if you put in the hard work now.

3. Prepare answers to any case discussion questions; complete practice problems and check your answers.

IMPORTANT: I will not be able to cover in class everything in your class prep assignments. You will still be responsible for this material unless I tell you otherwise.

GRADING

1. **MID-TERM EXAMINATION** (Monday, September 24) on Subject Matter Jurisdiction; Removal and Remand (20%). Closed-book; one hour, in class. Multiple choice and essay question.
2. **DEFENSE ATTORNEY PROJECT** (10%)
Preparation and informed participation are critical components of this class.
3. **FINAL EXAMINATION**, cumulative for the semester (70%)
Closed-book; three hours. The exam may include multiple choice, short answer, and essay questions.

Preparation for class includes preparing answers to posted discussion questions and applying what you have learned to practice problems designed to help you assess your own your understanding of the material. You may complete the questions with your study partner or group.

Please arrive on time and prepared to contribute to class discussions. The classroom should be a safe space for you to work up the courage to ask questions and express uncertainty. If you're confused, I guarantee that others in the class also are confused.

I may "cold call" on students. If I call on you and you are not prepared, you should expect to be called on in the following one or two classes. I may also take volunteers. If you are a frequent contributor to class discussion, you might not always be called on to speak.

Please show respect for your colleagues. Put your phone away. Refrain from checking email and social media, or doing anything else that will undermine your own success and distract others around you. Our class is 75 minutes, and we'll use every bit of it. Unless you have a compelling reason to leave during class, don't.

We will not always agree with one another, and that it is a good thing. Respect the contributions of your classmates. It is my job to keep the classroom discussion "on track," and I ask that you trust me to do so. If you find a student's question irrelevant or tangential, I may see value in it.

ACCOMMODATIONS

VLGS seeks to accommodate students with disabilities on an individual basis. Individual students are given reasonable and necessary accommodations based on specific information and assessment data documented by a professional from outside the School who, in the judgment of the School, is qualified to provide such information and assessment. For more information on the accommodations process, please see the [Student Handbook, Disability Policy and Procedures](#), which begins on page 151.

Associate Dean Lisa Ryan directs the accommodations process, and the Registrar implements it. I am not informed about student accommodations, and you are under no obligation whatsoever to share this information with your professors.

NOTE TAKING

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.

ATTENDANCE

Come to class. Students who miss a disproportionate number of classes sabotage their success. If you must miss class, for whatever reason, you will be responsible for all material covered in any class you miss. Under VLGS Academic Regulations II.A.1.b, there are no “excused” or “unexcused” absences, and you do not need to seek permission to miss class. Instead, students may be absent from up to 20% of regularly scheduled classes. Over a semester of 42 class meetings, this comes to no more than eight (8) absences before you will be withdrawn from the course. I will note attendance, but you are responsible for keeping up with your own attendance record.

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 typically for working through practice problems and answering questions that you weren't able to ask during class. TUESDAYS, 11:20 – 12:35 (Oakes 107). These sessions are entirely optional.

I am also available by appointment. Please email me.

TEACHING ASSISTANTS (TAs)

Several fabulous teaching assistants – all students who performed well in this course – will be available to you throughout the semester. TAs may help you with the questions assigned for class and with the general substantive material. See the [Canvas site](#) for more information.

ACADEMIC SUCCESS PROGRAM (ASP)

ASP, available to every VLGS student, offers skill-building through workshops, one-on-one consultation, and mentoring by upper-level students. For assistance with this course, you should meet with mentors designated by ASP as Vesilind Civ Pro. ASP also maintains a library of study aids and supplemental materials for your specific needs. [Visit ASP](#). They are on the third floor of Waterman Hall.

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.

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.

Schedule

This is an overview only. All class assignments and other materials are on [the Canvas site](#).

Topic	Supplement reading	Canvas class #
Introduction to the American Court Systems, State and Federal Introduction Structure of Federal Court System Subject Matter Jurisdiction Overview Sources of Civil Procedure Regulation	U.S. Const., Article III, § 1 and § 2 28 U.S.C. sections on p. 34 casebook (skim)	Class 1 (8/27)
I. Subject Matter Jurisdiction A. Diversity Subject Matter Jurisdiction 1. Diversity of Citizenship Requirement The domicile/citizenship test for individuals - <i>Gordon v. Steele</i> The "complete diversity" rule (<i>Strawbridge v. Curtiss</i>)	28 U.S.C. § 1332(a)	Class 2 (8/29)
The domicile/citizenship test for entities corporations - <i>Hertz Corp. v. Friend</i> non-corporate entities	28 U.S.C. § 1332(c)	Class 3 (8/30)
2. Amount in Controversy Requirement The "good faith claim" test – <i>Diefenthal v. CAB</i> The aggregation of claims rule 3. Comparing jurisdictional scope (Constitution vs. federal law)	28 U.S.C. § 1332(a)	Class 4 (9/3)
Review and practice problems: 28 USC § 1332		Class 5 (9/5)
B. Federal Question Jurisdiction in Federal Court The well-pleaded complaint rule <i>Louisville & Nashville Railroad Co. v. Mottley</i>	28 U.S.C. § 1331 28 U.S.C. § 1338	Class 6 (9/6)
State law claims involving substantial questions of federal law <i>Gunn v. Minton</i>	28 U.S.C. § 1331	Class 7 (9/10)
C. Supplemental Jurisdiction <i>Exxon Mobil Corp. v. Allapattah Services</i> (in Canvas)	28 U.S.C. § 1367(a)	Class 8 (9/12)
II. Removal and Remand Concurrent jurisdiction and other standards for removal Removal procedural rules Remanding (back to state court) <i>Avitts v. Amoco Production Co.</i>	28 U.S.C. § 1441 28 U.S.C. § 1445 28 U.S.C. § 1446	Class 9 (9/13) Class 10 (9/17)
MIDTERM REVIEW		Class 11 (9/19)
III. Notice When is notice technically proper? Under federal rule (FRCP 4), under the state rule - <i>Cherry v. Spence</i> (in Canvas) When is notice constitutionally proper? (Canvas)	FRCP 4 FRCP 5 FRCP 12(b)(4)-(5)	Class 12 (9/20)
MIDTERM		Class 13 (9/24)

<p>IV. 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></p>	<p>Due Process clause in US Constitution, Amend. V and XIV FRCP 12(b)(2)</p>	<p>Class 14 (9/26)</p>
<p>A. Specific personal jurisdiction (“SPJ”) State long-arm statutes The modern test for specific personal jurisdiction: # 1. <u>Defendant made purposeful contacts with the forum state</u> <i>McGee v. Int’l Life Insurance</i> <i>World-wide Volkswagen v. Woodson</i> #2. Plaintiff’s claim arises out of Defendant’s contacts with the forum state. (class 17) # 3. <u>Jurisdiction comports with traditional notions of fair play and substantial justice</u> (Brennan’s dissent in <i>WWVW v. Woodson</i>)</p>		<p>Class 15 (9/27)</p>
<p>#1 (cont’d) – the search for purposeful contacts Can a contract be a “purposeful contact” with a state? <i>Burger King v. Rudzewicz</i> #2 Plaintiff’s claim arises out of Defendant’s forum state contacts</p>		<p>Class 16 (10/1)</p>
<p>#1 (cont’d) – the search for purposeful contacts What if defendant’s product was in the “stream of commerce” <i>J. McIntyre Machinery, Ltd. v. Nicastro</i></p>		<p>Class 17 (10/3)</p>
<p>B. General personal jurisdiction General personal jurisdiction over corporate entities <i>Daimler AG v. Bauman</i></p>		<p>Class 18 (10/4)</p>
<p>C. Waiver D. Consent E. Notice (or “gotcha!”) jurisdiction (<i>Pennoyer</i> revisited)</p>		<p>Class 19 (10/8)</p>
<p>V. Venue 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></p>	<p>28 U.S.C. § 1391 28 U.S.C. § 1404</p>	<p>Class 20 (10/10)</p>
<p>C. Dismissal or transfer from an improper venue D. Dismissal from a proper venue when a foreign venue is better <i>Piper Aircraft</i></p>	<p>28 U.S.C. § 1406 FRCP 12(b)(3)</p>	<p>Class 21 (10/21)</p>
<p>Fall Break - no class on Tuesday, October 15</p>		
<p>VI. The Pleading Phase and Motions Practice A. Complaint 1. Pleading rules before the Federal Rules of Civil Procedure 2. <i>Conley</i> notice pleading under FRCP 8 3. How the defendant uses FRCP 12(b)(6)</p>	<p>FRCP 3 FRCP 7, 8(a) FRCP 12(b)(6)</p>	<p>Class 22 (10/17)</p>
<p>4. Heightened pleading for special types of claims under FRCP 9 5. Plausible pleading under FRCP 8 <i>Ashcroft v. Iqbal</i></p>	<p>FRCP 9 FRCP 8(a)</p>	<p>Class 23 (10/18)</p>

B. Answering the Complaint – types of defenses 1. <i>Elemental defense</i> : responding to allegations 2. <i>Affirmative defense</i> : Raising affirmative defenses 3. <i>Procedural defense</i> : using the FRCPs	FRCP 8(b); (c)	Class 24 (10/22)
Not Answering the Complaint Default Judgment	FRCP 55 FRCP 60(b)	Class 25 (10/24)
C. Motions Practice 1. Defending party’s motions to dismiss 2. The Rule 12 Waiver Trap 3. Computation of time	FRCP 12(b)(1)–(6) FRCP 12(e)–(h) FRCP 6	Class 26 (10/25)
D. Amending Pleadings 1. Without leave of court 2. With leave of court, during or after trial 3. Amending claims or defenses after the limitations period	FRCP 15	Class 27 (10/29)
E. Attorney Conduct and Sanctions (Rule 11)	FRCP 11	Class 28 (10/31)
VII. Joinder of Claims and Parties Permissive joinder of claims Consolidate or sever trials Permissive joinder of parties Misjoinder & nonjoinder of parties	FRCP 18 FRCP 42 FRCP 20 FRCP 21	Class 29 (11/1)
Compulsory & permissive counterclaims Crossclaims	FRCP 13(a)-(c) FRCP 13(g)	Class 30 (11/5)
Third-party claims (impleader) Add’l claims against impleaded parties	FRCP 14	Class 31 (11/7)
VIII. Supplemental Jurisdiction and Joinder Joinder rules do not confer SMJ Supplemental Jurisdiction limits	FRCP 82 28 U.S.C. § 1367	Class 32 (11/8)
IX. The Erie & Hanna Doctrines A. History and Necessity <i>Black & White v. Brown & Yellow</i> <i>Erie v. Tompkins</i> <i>Hanna v. Plumer</i>		Class 33 (11/12)
B. Modern application <i>Walker v. Armco Steel</i> <i>Shady Grove Orthopedics v. Allstate Insurance</i>		Class 34 (11/14)
X. Discovery A. Scope of Discovery	FRCP 26	Class 35 (11/15)
B. Tools of Discovery	FRCP 27-30; 33-36	Class 36 (11/19)
C. Motion to Quash and Motion to Compel; Sanctions	FRCP 37	Class 37 (11/21)
XI. Voluntary and Involuntary Dismissals A. Summary Judgment (relationship to discovery process)	FRCP 56	

XI. Voluntary and Involuntary Dismissals (cont'd) A. Summary Judgment (cont'd) B. Voluntary and Involuntary Dismissal under FRCP 41	FRCP 56 FRCP 41	Class 38 (11/22)
XII. Jury demand and jury selection (voir dire)	FRCP 38, 39, 47, 48	Class 39 (11/26)
XIII. Civil procedure motions at trial (and shortly after trial) A. Trial process B. Motion to dismiss: Judgment as a Matter of Law; Renewed JMOL	FRCP 50	
Thanksgiving Break – no class on Nov 28, 29		Class 40 (12/3)
C. Motion for a New Trial D. Motion for a partial new trial (remittitur)	FRCP 59	Class 41 (12/5)
XIV. Post-trial procedural issues A. Motion to set aside judgment B. Claim preclusion	FRCP 60	Class 42 (12/6)
Final Exam Review		TBD