Civil Procedure is about the law and procedure that govern the civil litigation process in federal court. The subject is vast and we cannot possibly cover it all in a single semester, but we will study a number of the most fundamental concepts, including: personal jurisdiction; subject matter jurisdiction; venue; vertical choice of law (the Erie Doctrine); pleading; joinder; discovery; adjudication without trial; and preclusion.

You will find Civil Procedure to be quite different from your other first-year substantive law courses insofar as it is derived primarily from rules, statutes, the Constitution, and judicial interpretations thereof. Unlike Torts, Property, or Contracts, which deal with the substance of the law, Civil Procedure provides the tools for enforcing or defending the legal rights or claims that arise from that substance. Although we will read numerous cases, much of our focus will be on the careful analysis, interpretation, and application of procedural rules, statutes, and constitutional principles in the context of a civil lawsuit in federal court.

The following materials are required for this course:

3. Additional materials will be distributed in class and/or made available for general pick-up from my assistant Nikki Clarke (Rusk Hall, Room 318) or electronically through GAVEL.

Computer use is prohibited during class. You are not permitted to utilize a laptop computer or any other electronic or wireless device during class for any purpose, including taking notes.

Cell phones, smartphones, and other wireless devices must be silenced or turned off prior to the beginning of class and may not, under any circumstances, be used during class.

The assignments for this course are listed below in the intended order of coverage. Each assignment is tentative, and may be changed by prior announcement in class. Throughout the course, I will refer to assignments by their numbers, and will endeavor to provide you with sufficient prior notice of the ones that we will cover in a given class session.

Class participation is very important for this course, and I expect everyone to be fully prepared to discuss the assigned reading for each class meeting. If for some unavoidable reason you are not prepared on a particular day, you must inform me of this by placing a handwritten note on the podium before class begins. Such “unprepared” notifications are to be used only in exceptional circumstances.
**Attendance** – Under the ABA Standards for Law Schools, regular class attendance is required. Attendance will be taken during each class meeting, and along with participation, may be considered in determining final grades. There are no excused absences. You are allowed a **maximum of 6 total absences**. Exceeding that number will jeopardize your ability to take the final exam in this course.

**Tardiness is not permitted.** If you are late for class, whatever the reason, consider yourself absent. **Do not enter the classroom once class has commenced.** We will begin promptly at 9:30, based on the clock in the classroom.

**Final Exam** – The final exam will be **closed book** and **closed notes**. This means that you will not be permitted to consult your Casebook, class notes, outlines, or any other outside materials during the exam, except for your FRCP Supp., which you will be allowed to reference. The exam will consist of a combination of multiple-choice and essay questions. I will provide you with more information about the exam later in the semester.

**ASSIGNMENTS**

I. **Introduction and Overview**

A. What is Civil Procedure?

1. Casebook: pp. 1-18
   FRCP Supp.: Rules 1-3

2. Handout: *Lemon v. Combs* (available on GAVER)

II. **Personal Jurisdiction**

*Learning Objectives* — At the end of this section you should be able to: (1) identify the locations in which a court could acquire personal jurisdiction over a party in a given case; (2) determine whether a selected forum has personal jurisdiction over a party; and (3) effectively argue for and against the existence of personal jurisdiction in any individual case.

A. Historical Roots of Personal Jurisdiction

3. Traditional Bases of Personal Jurisdiction—Casebook: pp. 19-31
   (*Pennoyer*)


B. Modern Personal Jurisdiction Doctrine

5. *Casebook*: pp. 35-44 (*International Shoe*)
C. Specific Jurisdiction: Applying the Minimum Contacts Analysis


7. Minimum Contacts: The Constitutional Authority for Personal Jurisdiction
   (a) Casebook: pp. 48-58 (McGee; Hanson)
   (b) Casebook: pp. 59-70 (World Wide Volkswagen)
   (c) Casebook: pp. 75-89 (Calder; Burger King)
   (d) Casebook: pp. 89-111 (Asahi; Nicastro)

8. Modern Challenge: Personal Jurisdiction Based on Internet Contacts—Casebook: pp. 111-22 (Young)

D. Alternatives to Specific Jurisdiction


11. Transient Jurisdiction & Consent—Casebook: pp. 147-68 (Burnham; Carnival Cruise Lines)

E. Personal Jurisdiction in the Federal Courts


III. Subject Matter Jurisdiction

Learning Objectives — At the end of this section you should be able to: (1) determine the existence of federal subject matter jurisdiction in an action; (2) determine the citizenship of a party for purposes of evaluating diversity jurisdiction; and (3) determine whether a claim filed in state court may be removed to a federal court and if so, whether that claim should be remanded to state court.

Introduction and Overview


A. Diversity Jurisdiction

    FRCP Supp.: 28 U.S.C. § 1332(a)-(c)

    FRCP Supp.: 28 U.S.C. § 1332(a)
B. Federal Question Jurisdiction

16. Background and the Constitutional Standard—Casebook: pp. 221-24 (Osborn)
17. The “Well-Pleaded” Complaint Rule—Casebook: pp. 224-30 (Mottley)

C. Supplemental Jurisdiction

19. Introduction and the Constitutional Standard—Casebook: pp. 239-45 (Gibbs)
20. Pendent and Ancillary Jurisdiction after Gibbs—Casebook: pp. 245-46 (Aldinger; Owen; Finley)
22. Interpretive Difficulties with § 1367—Casebook: pp. 250-71 (Exxon Mobil)

D. Removal Jurisdiction

   FRCP Supp.: 28 U.S.C. § 1441(a)-(c)

IV. Venue

Learning Objectives — At the end of this section you should be able to: (1) identify districts in which venue would be proper; (2) determine whether venue is proper in a selected district; (3) recognize whether an action can and should be transferred to another district; (4) effectively argue for and against the transfer of an action to another district; and (5) determine the law applicable to claims that are properly transferred to another district.

A. Original Venue

25. The Basic Venue Rules—Casebook: pp. 287-301
   FRCP Supp.: 28 U.S.C. § 1391(a)-(d)
B. Change of Venue


27. Standards for Venue Transfers—Casebook: pp. 325-31 (Smith; Philip Morris)

C. Forum Non Conveniens

28. Casebook: pp. 332-46 (Piper Aircraft)

V. The Erie Doctrine: State law in Federal Courts

Learning Objectives — At the end of this section you should be able to:
(1) determine whether federal or state law applies to various claims and legal issues in a federal court action; and (2) effectively argue for and against the application of federal or state law to any given claim or legal issue in a federal court action.

A. Introduction and Applicable Law Prior to Erie

29. Casebook: pp. 347-53 (Swift)

B. Establishing the Erie Doctrine

30. Casebook: pp. 353-67 (Erie)

C. Development of the Erie Doctrine

31. Casebook: pp. 367-80 (York)
32. Casebook: pp. 380-86 (Byrd)

D. The Rules Enabling Act and the Modern Erie Doctrine

33. Casebook: pp. 386-99 (Hanna)
   FRCP Supp.: 28 U.S.C. § 2072

34. Casebook: pp. 413-27 (Shady Grove) [READ ONLY]

Part Two of the Syllabus will be handed out later in the semester.