

CIVIL PROCEDURE I Syllabus
REQ 7102.02, Fall 2023 (3 credits)
Vesilind

Mon/Wed, 9:55 – 11:10 am
Oakes Hall 007 (Hanna)

[Course Canvas site](#)

Practice Question Sessions: Friday, 9:55-11:10am
Additional meetings by appointment

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COURSE DESCRIPTION

This course, along with Civil Procedure II, is the “litigation playbook” for initiating, defending against, or intervening in a civil lawsuit in United States District Court. Civil procedure law 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.

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.

Civil Procedure law also reflects societal values, governmental policies, and historical inequalities. Therefore 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.
- Reading civil procedure opinions and identifying their critical components.
- Responding to questions in class and on assessments, without the use of study aids.
- Completing multiple choice and essay questions with civil procedure-based fact patterns.

- Subject matter jurisdiction – original and supplemental jurisdiction.
- Removing a case to federal court and remanding a case back to state court.
- Personal jurisdiction: U.S. Constitution’s Due Process clauses and state long-arm statutes; specific and general personal jurisdiction; waiver, consent, and notice jurisdiction.
- Venue: statutory considerations and balancing tests.
- Notice requirements under federal and state law.
- Pleadings – drafting and amending.
- Motions practice.
- Rule 11 obligations and sanctions.

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 a roadmap of the material we will cover. The materials are divided into **Modules**.

- Module 1: General Course Information and Materials
- Module 2: Subject Matter Jurisdiction
- Module 3: Removal and Remand
- Module 4: Midterm (materials and instructions to prepare for the Oct. 2 in-class quiz)
- Module 5: Personal Jurisdiction
- Module 6: Notice
- Module 7: Venue
- Module 8: Pleadings
- Module 9: Motions Practice
- Module 10: Attorney Conduct & Sanctions
- Module 11: Final Exam Preparation

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. If you'd like to contribute an article or other resource about the topic, I welcome your suggestions.

Preparing for Class

We will be moving through the material expeditiously. Please do not fall behind. If you do fall behind, seek help in catching up. 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
 - a) Locate and read any rules or statutes assigned for that class, in your Supplement.
 - b) 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. 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. Reading and briefing cases is time-consuming, but it will become easier once you know what to look for.

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

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** (Monday, October 2) on Subject Matter Jurisdiction; Removal and Remand (20%). Closed-book; one hour, in class. Multiple choice and essay questions.
2. **FINAL EXAMINATION**, cumulative for the semester (75%)
Closed-book; three hours. The exam may include multiple choice, short answer, and essay questions.
3. **PREPARATION AND PARTICIPATION** (5%)
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 and applying what you have learned to practice problems designed to help you assess your own your 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. Answers and explanations will be posted to Canvas. I will review the questions in office hours or in class (if time permits). Your teaching assistants will also be available to help you with practice questions.

Good faith attempts to complete practice problems will be counted towards the Preparation and Participation points (5%). They will not be graded individually.

Participation in class includes arriving to class on time, 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.

I will “cold call” on students for most discussions about cases. 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 and the Professor. Do yourself a favor and put your phone away. Please refrain from checking email and social media, playing games, shopping, or anything else that will not only undermine your own success but distract others around you.

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, for everyone. Please allow the conversation to continue because it , particularly when you do not agree with them. Please refrain from side conversations when others are speaking.

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.

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, 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 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.

OFFICE HOURS and APPOINTMENTS

I would like to see you outside of class, and I consider this an important part of my job. On most **Fridays from 10:00 – 11:00 am (location TBD)**, I will work through practice questions posted for the module, and take questions from anyone who attends. These sessions are entirely optional. I am also available by appointment, and will post possible meeting times on the Canvas site. My office is Waterman 204, on the second floor. Enter Waterman through the door outside of Oakes 107.

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 VLS 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.

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

This is an overview only. All class assignments and other materials are on [the Canvas site](https://vermontlaw.instructure.com/course/1671).
<https://vermontlaw.instructure.com/course/1671>

Topic	Supplement reading	Canvas class number
Introduction to the American Court Systems, State and Federal Sources of Civil Procedure Regulation	U.S. Const., Article III, § 1 and § 2	Class 1 (8/28) <i>See below</i>
I. Subject Matter Jurisdiction		Class 1 (8/28)
A. Diversity Subject Matter Jurisdiction	28 U.S.C. § 1332(a)	
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 Of corporations - <i>Hertz Corp. v. Friend</i> Of non-corporate entities	28 U.S.C. § 1332(c)	Class 2 (8/30)
2. Amount in Controversy Requirement The "good faith claim" test Aggregation of Claims rule 3. Comparing jurisdictional scope (Constitution vs. federal law)	28 U.S.C. § 1332(a)	Class 3 (9/6)
B. Federal Question Jurisdiction in Federal Court The well-pleaded complaint rule - <i>Louisville & Nashville Railroad Co. v. Mottley</i> State law claims involving substantial questions of federal law - <i>Gunn v. Minton</i>	28 U.S.C. § 1331 28 U.S.C. § 1338	Class 4 (9/11) Class 5 (9/13)
C. Supplemental Jurisdiction	28 U.S.C. § 1367	Class 6 (9/18)
D. Class Action Subject Matter Jurisdiction	28 U.S.C. § 1332(d)	Class 7 (9/20)
II. Removal and Remand		
Concurrent jurisdiction and other standards for removal	28 U.S.C. § 1441	Class 8 (9/25)
Removal procedural rules	28 U.S.C. § 1445	Class 9 (9/27)
Remanding (back to state court)	28 U.S.C. § 1446	
MID-TERM		Class 10 (10/2)

<p>III. Personal Jurisdiction</p> <p>Summary of Basic Principles Background and Evolution Presence Jurisdiction - <i>Pennoyer v. Neff</i> Early-to mid 20th c. Pers. Juris. <i>International Shoe v. Washington</i></p>	<p>Class 11 (10/4)</p>
<p>A. Specific personal jurisdiction (“SPJ”) State long-arm statutes The modern test for specific personal jurisdiction:</p> <ol style="list-style-type: none"> 1. Defendant’s contacts with the forum state <ol style="list-style-type: none"> a. Foreseeable & purposeful contacts (<i>McGee v. Int’l Life Insurance; World-wide Volkswagen v. Woodson</i>) b. Contacts as a party to a contract (<i>Burger King v. Rudzewicz</i>) c. Contacts as an actor on the stream of commerce (<i>J. McIntyre Machinery, Ltd. v. Nicastro</i>) 2. Plaintiff’s claim arises out of Defendant’s contacts with the forum state (<i>Ford Motor Co. v. Mont. 8th Jud. Dist. Ct.</i>) 3. Jurisdiction comports with traditional notions of fair play and substantial justice 	<p>Class 12 (10/11)</p> <p>Class 13 (10/16)</p> <p>Class 14 (10/18)</p>
<p>B. General personal jurisdiction General principles General personal jurisdiction over corporate entities (<i>Daimler AG v. Bauman</i>)</p>	<p>Class 15 (10/23)</p>
<p>C. Waiver (<i>Mallory v. Norfolk Southern Railroad</i>)</p> <p>D. Consent</p> <p>E. Notice (or “gotcha!”) jurisdiction (<i>Pennoyer</i> revisited)</p>	<p>Class 16 (10/25)</p>
<p>IV. Notice When is notice technically proper? Under federal rule (FRCP 4) and under the state rule (<i>Cherry v. Spence</i>)</p>	<p>FRCP 4</p> <p>Class 17 (10/30)</p>
<p>V. Venue</p> <ol style="list-style-type: none"> 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 	<p>28 U.S.C. § 1391</p> <p>28 U.S.C. § 1404</p> <p>28 U.S.C. § 1406</p> <p>Class 18 (11/1)</p> <p>Class 19 (11/6)</p>

<p>VI. The Pleading Phase</p> <p>A. Complaint</p> <ol style="list-style-type: none"> 1. Pleading rules before the Federal Rules of Civil Procedure 2. <i>Conley</i> notice pleading under FRCP 8 3. <i>Iqbal/Twombly</i> plausible pleading under FRCP 8 (<i>Ashcroft v. Iqbal</i>) 4. Jury demand 	<p>FRCP 7, 8(a) FRCP 12(b)(6)</p> <p>FRCP 38</p>	<p>Class 20 (11/8)</p> <p>Class 21 (11/13)</p>
<p>B. Answering the Complaint</p> <ol style="list-style-type: none"> 1. Responding to allegations (affirm; deny; neither) 2. Raising affirmative defenses 3. Jury demand <p>B. Not Answering the Complaint The Default Judgment process (default; entry of default; entry of a default judgment)</p>	<p>FRCP 8(b); (c)</p> <p>FRCP 55; FRCP 60(b)</p>	<p>Class 22 (11/15)</p> <p>Class 23 (11/20)</p>
<p>C. Motions Practice</p> <ol style="list-style-type: none"> 1. Defending party's motions to dismiss 2. The Rule 12 Waiver Trap 	<p>FRCP 12(b)(1) – (6); FRCP 12(e) – 12(h)</p>	<p>Class 24 (11/22)</p> <p>Class 25 (11/27)</p>
<p>D. Amending Pleadings</p> <ol style="list-style-type: none"> 1. Without leave of court 2. With leave of court, during or after trial 3. Amending claims or defenses after the limitations period 	<p>FRCP 15</p>	<p>Class 26 (11/29)</p>
<p>E. Attorney Conduct and Sanctions (Rule 11)</p>	<p>FRCP 11</p>	<p>Class 27 (12/4)</p>
<p>Review Pleadings and Motions Practice</p>	<p><i>Above</i></p>	<p>Class 28 (12/6)</p>