Civil Procedure covers the process of civil litigation. Two themes unite the course material: First, how can society best provide a just and fair process for dispute resolution? Second, how should society allocate decision-making and dispute-resolution authority among various institutions, including courts and legislatures, state courts and federal courts, and among various states?

The course is divided into four units. Unit I introduces the basic elements of the civil justice system, the principal institutions in civil dispute resolution, and the major concepts and themes that will arise throughout the course. Unit II focuses on the question of which courts can be used for what types of litigation, examining the issues of personal jurisdiction, subject matter jurisdiction, and venue. Unit III covers pleading and pretrial procedure, including the filing of the complaint, the various responsive pleadings and motions that a defendant may file, the joinder of claims and parties, discovery of the facts, and pretrial dispositions. Unit IV treats the binding effect of judgments.

Civil procedure should make you sensitive to the human impact of legal procedure, and to the political, social, and ethical issues in the practice of law. We will consider carefully the conceptual issues that are at the heart of procedure: the value of process, the relationship between procedural and substantive law, the roles of various decision-makers in the legal system, and the relationship between procedural systems and particular conceptions of fairness and justice.

Course Materials

The required texts for the course are

2. Federal Rules of Civil Procedure 2004 (Foundation) (“FRCP”)
3. Photocopied supplemental materials (“PM”)
As you know, in law school you must learn to read a case and to use cases as authority. Accordingly, I have noted the names of the principal cases on the syllabus next to the pages of the assigned reading where they appear. Another of the skills you must acquire in the first year of law school, and in civil procedure especially, is that of reading and interpreting a statute. Statutes and rules are as important, if not more so, than cases, and they are often harder to read. The relevant statutes are mainly found in the FRCP book although some are in the Photocopied Materials. Please read them carefully.

There are other sources you may wish to consult for clarification. They are not required, and, given the price of textbooks, I cannot in good conscience encourage you to buy additional books. However, the first two books are recommended. The last two are good resources but aren’t worth buying because they are expensive and you can read them in the library. Copies of each of the following are on reserve in the library. If you have difficulty finding the library’s copies at a convenient time, I’m happy to loan you my copy of each of these to take home with you for a few days.


This book is a favorite among students, especially for the material we cover in Units II and III, so if you’re going to buy a study aid, this is the one to get. It contains briefer explanations of doctrine than the two treatises listed below, but it has very useful problems to test your knowledge and your ability to apply the doctrines we learn in class to the facts of hypothetical cases. Students find this book exceedingly helpful in mastering the most important law school skill -- applying the legal rules we learn in class to the facts of hypothetical problems.

Clermont, *Civil Procedure Stories* (Foundation 2004).

This book tells the stories behind the leading cases in the field of civil procedure. Each story is written by a scholar who is an expert on the case. The chapters explain how the cases were litigated, the combination of clever tactics and fortuity that led the cases to become the great cases, and something about the lives of the people involved. I note on the syllabus which chapter corresponds to the material we cover in a given assignment. If you find civil procedure inaccessible and want to know why these cases matter or if you find it interesting and want to do more reading, this is a good source.


If you need explanation of the doctrine, its background, or its nuances, either of these is a good treatise. You are welcome to ask me during or after class for further explanation of any material we cover, but if you would like to seek alternative or additional explanation of the material, treatises are helpful.

Law school examinations test your knowledge and analytic skill in a different way than most undergraduate courses or graduate courses in other disciplines. Many students who do poorly on their first set of law school exams do so because they are unfamiliar with what law school exams expect. This book is a useful and easy-to-read explanation of how knowledge and analytic ability are tested in law school.

**Course Method and Evaluation**

Classroom time will consist of lectures (by me, mostly) and discussion (by you, mostly). The content of lectures and discussions will be considered fair game for the final examination.

I expect students to attend class regularly and to participate in class discussions. Class participation (both quality and quantity) is counted in the final grade to the maximum extent permitted by Law School policy. Believing that students are adults and will speak when they have something to say, I prefer volunteers. I will, however, call on students when I think the discussion will benefit from it. I don’t mind if a student passes once in awhile when called on, but I am likely to follow up with that student in the next class to be sure that he or she is not falling behind. Attendance at class is mandatory, and an unreasonable number of absences will result in ineligibility to take the final examination and, therefore, no credit for the course.

Regrettably, but unavoidably, students will be graded largely on the basis of an examination given at the end of the semester. The examination will be composed entirely of essay questions and will be open-book and open-note. A copy of my examinations from years past, along with explanations of how I graded answers, are included in the Photocopied Materials (see Tab 17).

An optional mid-semester practice exam will be distributed after we complete Unit II. Students are strongly encouraged to take the practice examination. I will provide written comments on each student’s practice exam that will give you an idea of the grade you might receive for such an answer, but the practice exam will not count in the determination of your grade for the course.

A required exercise on writing a complaint will be distributed early in Unit III. It will be due in early November. Students will work in groups to draft a complaint, which is the initial pleading that is filed to institute litigation. I will provide written comments on each complaint. Although the complaint exercise is required, I will not grade them.
ASSIGNMENTS

UNIT I
Introduction:
The System and the Participants

A. The Choice of System

1. Introduction: the goals of procedure

Photocopied Materials (“PM”) Tabs 1 & 2: Problem for Class Discussion; Summers, “Evaluating and Improving Legal Processes”

2. The methods of dispute resolution: litigation compared to various forms of alternative dispute resolution

Ides & May (“IM”) 24-33 (Emeronye v. CACI International)
PM Tab 3: “Why Litigate” and Fiss, “Against Settlement”

[This is a long assignment so allow plenty of time. We will discuss it two class periods; first we will look at alternative dispute resolution, and the following class will focus on the structure of adjudication. Nevertheless, it makes sense to do the reading in one chunk as the material is conceptually related.]

3. The structure of adjudication

IM pp. 1-24

Statutes/Rules:
28 U.S.C. §§ 2071-2073 (pp. 706-707 in FRCP)
FRCP 1-2 (p. 27 in FRCP)

4. The system of litigation: the adversary system and the attorney

IM 38-40
PM Tab 4 and Tab 5: “The Adversary System” and Lassiter v. Dept. of Social Services

Optional: The Story of Lassiter (Civil Procedure Stories ch. 14)
B. The Adjudicatory System: Who Participates and What Do They Gain?

5. When is the system available and what does it provide? The concepts of remedy and cause of action

PM Tab 6 & 7: The concepts of remedy and cause of action; types of remedies; Georgia High School v. Waddell; Coleman v. Garrison

Statutes/Rules:
- FRCP 65

UNIT II
What Court?

A. The Location of the Court and Parties: Personal Jurisdiction

6. Due process limits I: from physical presence to minimum contacts

IM 49-51, 63-67, 73-82 (International Shoe)

Statutes/Rules:
- CCP 410.10 (FRCP p. 738)
- N.Y. Judiciary Law § 140-b (FRCP p. 738)

7. Due process limits II: minimum contacts and contracts

IM 82-106 (Hanson v. Denckla; Burger King)

8. Due process limits III: minimum contacts and unintentional effects

IM 111-134 (World-Wide Volkswagen; Asahi Metal)

9. Due process limits IV: minimum contacts and intentional effects

IM 134-146 (Kulko v. Superior Court; Calder v. Jones; Panavision)

10. Due process limits V: general and specific jurisdiction, relatedness and reasonableness

IM 147-163; 173-177 (Perkins v. Benguet Mining; Helicopteros; Asahi (again))
11. Due process limits VI: Presence of property in the forum state
   IM 67-69 (review); 180-194 (Shaffer v. Heitner)
   **Optional:** The Story of Shaffer (Civil Procedure Stories ch. 3)

12. Due process limits VII: Service while physically present in forum state
   IM 195-204 (Burnham v. Superior Court)

13. Consent to jurisdiction and challenging personal jurisdiction
   IM 210-214

14. Notice and service of process
   IM 217-227; 231-239; 249-251 (American Institute of CPAs; Mullane)
   **Statutes/Rules:**
   FRCP 4 & 5

**B. The Subject of the Suit: Subject Matter Jurisdiction**

15. The concept of subject matter jurisdiction
   IM 283-286
   **Statutes/Rules:**
   U.S. Const. Art. III
   28 U.S.C. §§ 1331, 1332, 1338, 1343, 1653

16. The subject matter jurisdiction of the federal courts I: Federal questions
   IM 286-310 (Merrell Dow; Louisville & Nashville RR v. Mottley)
   **Statutes/Rules:**
   28 U.S.C. §§ 1331, 1343, 1345, 1346

17. The subject matter jurisdiction of the federal courts II: Diversity of citizenship
   IM 310-345 (Lundquist; Tubbs; Eze; Coventry)
   **Statutes/Rules:**
   28 U.S.C. § 1332
18. The law applied by federal courts in diversity cases I: The *Erie* doctrine

IM 433-447 (*Erie RR v. Tompkins*)
Statutes/Rules:
Optional: The Story of *Erie* (*Civil Procedure Stories* ch. 1)

19. The law applied by federal courts in diversity cases II: Federal statutes and the supremacy clause

IM 447-455 (*Stewart Org. v. Ricoh*)
Statutes/Rules:
U.S. Const. Art. VI (the Supremacy Clause)

20. The law applied in diversity cases III: The Federal Rules of Civil Procedure

IM 466-484 (*Sibbach v. Wilson; Hanna v. Plumer; Walker v. Armco*)
Statutes/Rules:

21. The law applied in diversity cases IV: Federal procedural common law

IM 484-498 (*Guaranty Trust v. York; Byrd v. Blue Ridge*)
IM 456-465 (*Boyle v. United Technologies*)

22. Putting it all together: two *Erie* flow charts and review problems

IM 519-520
Handout

23. The subject matter jurisdiction of the federal courts III: supplemental jurisdiction

IM 345-363 (*UMW v. Gibbs; Owen v. Kroger*)
PM Tab 9 (*Exxon Mobile v. Allapattah Servs.*)
Statutes/Rules:
28 U.S.C. § 1367
Optional: The Story of *Owen v. Kroger* (*Civil Procedure Stories* ch. 2)

24. The subject matter jurisdiction of the federal courts IV: removal jurisdiction

IM 363-383 (*McCurtain County Prod. Corp.; Eastus v. Blue Bell*)
Statutes/Rules:
28 U.S.C. §§ 1441, 1446, 1447, 1448
FRCP 81(c)
C. The Location of the Court: Venue

25. Determining, challenging, and transferring venue

IM 385-409; 415-424 (First of Michigan; Smith v. Colonial Penn; Piper Aircraft v. Reyno)
Statutes/Rules:
28 U.S.C. §§ 1391, 1392, 1404, 1406, 1631
Optional: The Story of Piper (Civil Procedure Stories ch. 5)

UNIT III
Pleadings and Pre-Trial Procedure

A. Pleading the Facts and Law

26. The pleading system – Introduction: Common law, code and notice pleading

IM 521-537; 540-555 (Bockrath v. Aldrich Chemical; Dioguardi v. Durning)
Statutes/Rules:
FRCP 3, 7, 8(a), 8(e), 9, 10, 15

27. The pleading system – Initiating the lawsuit. The complaint and the ethics of pleading

IM 555-563 (Leatherman v. Tarrant County)
IM 40-47 (Mendez v. Draham)
Sample Complaint (Handout)
Statutes/Rules:
FRCP 11

Complaint Drafting Exercise (handout)

28. The pleading system – Defending the lawsuit

IM 564-578 (King Vision; Northrop; Kirksey)
Sample answer and motion to dismiss (Handout)
Statutes/Rules:
FRCP 8, 12, 13, 55
B. Discovery of the Facts

29. The scope of discovery

**Statute/Rule:**
FRCP 26
**Optional:** The Story of Hickman (Civil Procedure Stories ch. 8)

30. The mechanisms of discovery

IM 615-626; 634-639 (Advance Financial)
PM Tab 10 (skim the discovery requests and responses)
**Statutes/Rules:**
FRCP 26-36

31. Discovery abuse

PM 11 (Stewart, “Kodak” from The Partners; “Heads We Win, Tails You Lose”; Hazard & Vetter, “Discovery and the Adversary Process”)
**Statutes/Rules:**
FRCP 37

C. Who and Whom to Sue? Joinder of Claims and Parties

32. Joinder of Claims

IM 647-662 (Burlington Northern RR; Hart v. Clayton-Parker) [counterclaims]
IM 668-677 (Rainbow Management; Harrison v. M.S. Carriers) [cross-claims]
**Statutes/Rules:** FRCP 13, 14, 18, 42(b)

33. Joinder of Parties I: Permissive Joinder

IM 684-702 (Stromberg; Shoot; Hartford Steam Boiler)
**Statutes/Rules:**
FRCP 18, 20, 42(b)

34. Joinder of Parties II: Joinder of Third Parties under Rule 14

IM 702-706 (Walkill)
**Statutes/Rules:**
FRCP 14
35. Joinder of Parties III: Intervention

IM 710-723 (Great Atlantic & Pacific; American Honda Motor Co.)

Statutes/Rules: FRCP 24

36. Joinder of Parties IV: Class Actions

IM 759-766 (Hansberry v. Lee)
IM 775-787 (Chandler v. Southwest Jeep)
IM 795-804 (Marisol A. v. Giuliani)
IM 831-845 (Hanlon v. Chrysler Corp.)

Statutes/Rules
FRCP 23
PM Tab 12 “Class Action Fairness Act of 2005”

Optional: The Story of Hansberry (Civil Procedure Stories ch. 6)

D. Decisions on the Merits Without Trial: Summary Judgment

37. Summary Judgment

IM 857-884; 895-96 (Anderson v. Liberty Lobby; Celotex v. Catrett)
PM Tab 13 (James & Hazard, “Some Basic Concepts in the Procedural System”)
PM Tab 14 & 15 (Adickes v. Kress; Arnstein v. Porter)

Statutes/Rules: FRCP 56

UNIT IV
The Binding Effect of Judgments

38. Claim preclusion

IM 1093-1112; 1114-1126 (Porn v. National Grange; LA NAACP v. LAUSD; Federated v. Moitie)

Statutes/Rules: Rule 60(b)

39. Issue preclusion

IM 1138-1163 (Commissioner v. Sunnen; Lumpkin v. Jordan; Cunningham v. Outten)
40. Preclusion in litigation with same, different and multiple parties

IM 1126-1138 (Richards v. Jefferson County; South Central Bell v. Alabama)
IM 1167-1177 (Bernhard v. Bank of America; Parklane Hosiery v. Shore)
PM Tab 16 (Martin v. Wilks)
Optional: The Story of Parklane Hosiery (Civil Procedure Stories ch. 11)

CONCLUSION

41. Reflections on procedure and on learning a profession

PM Tab 17 (Rogovin, “Something Can Be Done”; Mark Twain, Life on the Riverboat)

FINAL EXAMINATIONS IN CIVIL PROCEDURE

PM Tab 18