

Civil Procedure
Syllabus Fall 2023 Version v. 1.1
Prof. H. Tomás Gómez-Arostegui

Section:	Time:	Room:
Blue Pod	Mondays & Wednesdays 1:20 – 3:15 pm	3

Contact Info and Office Hours: My office is on the middle floor of the Legal Research Center, at the very end of the hall. My phone number is 503-768-6816, and my e-mail is tomas @ lclark.edu. I have in-person office hours, but am also generally available to meet with students on Zoom for office hours. I have an electronic whiteboard that I can use, which works really well on Zoom.

In person: Mondays 3:20 pm - 4:20 pm Wednesdays 9 am - 10 am	Online via Zoom: I'm generally available on Fridays and most weekends too. Just reach out to set up a time to Zoom with me.
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Required Materials: (1) **Casebook:** A. BENJAMIN SPENCER, CIVIL PROCEDURE: A CONTEMPORARY APPROACH (West, 6th ed. 2021); (2) **Rules Book:** Federal Rules of Civil Procedure, available on our course website. The book does a good job of reproducing the Rules as we study them, but you can also look at the Rules book. With about a month left in the semester, I will provide you a PDF copy of the Rules where I have highlighted the Rules (and some statutes) that I believe are fair game for the exam. And (3) **Supplementary Material and Handouts:** I will also post some material on our course website: https://law.lclark.edu/faculty/h_tomas_gomez_arostegui/civil-procedure/ [WEB]. Some of the things I post are part of your assigned reading. Other things I post are simply handouts. All postings will remain available for download throughout the semester. I generally assume that students will bring their laptops to class and will download the WEB materials or handouts, but if you want me to bring a hardcopy of handouts to class, let me know. I will take a hardcopy count on the first day of class.

Reading Assignments: The syllabus may be revised as we progress throughout the course, depending on our progress, but I like to stick to it. You are responsible for all the assigned materials, whether discussed or not, but I consider the material we discuss in class to be the most important (see below).

Outlines from Former Students: In preparing for the exam, students will sometimes use outlines written by my former students. I urge you not to use them. These outlines often misstate the law, may cover material that we did not cover, omit material that we did cover, or rely on older handouts that I have since updated in a material way. Besides, it is important for you to do your own work. In my experience, students who crib in whole or in part from prior outlines tend to do poorly on the exam.

Other Materials: You do not need to consult other materials to do well in this class. Nevertheless, students often ask for my thoughts on additional materials. For one, do not use Quimbee. And I would not buy any commercial outlines of Civil Procedure. The following are not required, and you should feel comfortable to come see me first with questions, but they are useful as alternative sources should you want to review information on *material we are covering in class* on your own. First, included with your casebook (if purchased new) are a number of online study guides and problems written by our casebook author. These guides are available as an online, password-protected resource. Second, there

are other study aids available in or through the library both in print and online. I have found that in the first half of the semester it is a better use of your time to re-read an assignment rather than going to a secondary source for help. **You can still “crush” my exam without picking up any secondary materials.** But if you must, I recommend these:

“Mini”-Hornbook:

GENE R. SHREVE ET AL., UNDERSTANDING CIVIL PROCEDURE (6th ed. 2018)

Traditional Hornbook:

RICHARD D. FREER, CIVIL PROCEDURE (5th ed. 2021 or 4th ed. 2017)

Study Guide with Questions and Answers:

JOSEPH W. GLANNON, EXAMPLES & EXPLANATIONS: CIVIL PROCEDURE (9th ed. 2023 or 8th ed. 2018)

Scope and Purpose of Course: Civil Procedure covers the procedural rules governing civil litigation in federal court. You will study personal jurisdiction, subject-matter jurisdiction, venue, vertical choice of law (*Erie* doctrine), pleading, joinder, discovery, summary judgment, trials, and post-trial motions. You should distinguish this class from your other first-year substantive law classes in that civil procedure is derived mostly from rules, statutes, the Constitution, and interpretations thereof. Courses like torts, property, and contracts are common-law courses, where the relevant legal principles find their source and development primarily in the decisions of judges, not statutory codifications or rules. As a result, although you will consider many cases in civil procedure, most of those cases will be interpreting and applying formally adopted procedural rules, statutes, or constitutional provisions.

Attendance: To take attendance, I will be using the smartphone app EZCheck.me, which is described in a separate document. I will not impose any grade penalties for poor attendance, but the school might otherwise discipline you, and a student who misses a lot of class will typically perform poorly on the exam. In truth, no one should be missing even a single class of Civil Procedure or any other first-year course if one can help it. If you are late or plan to leave early, you should not mark yourself as present unless you have consulted with me first. Marking yourself as present is a representation that you plan to attend the entire session, and that representation is subject to the Honor Code.

Cold calling: I will call on people without prior notice of any kind. If you feel uncomfortable with public speaking, please reach out to me and we can chat about ways to ease you into this necessary exercise. If someone else has been called on and is answering a question, please keep your hands down.

Recording the Class: The law school records all our classes. Recording of classes by students is prohibited. If you would like to view a recording of a session, please email me and I will send you the link. I will release up to four class-session recordings to a student—which the student cannot share with classmates. If I discover you have shared a recording with another student, both students will receive an F in the course. **This is my one hard rule.** Anything beyond four recordings will require an accommodation from the Office of Student Accessibility of our parent institution (access@lclark.edu). The main reason I am stingy with recordings is because I have found over the years that relying on them is a poor substitute for being in class. And even if a student has gone to the class, if recordings are freely available afterward, students may find themselves tuning out during class, knowing that they

can simply review videos later. Recordings then tend to pile up toward the end of the semester, and from what students have told me, and what I have seen on the system, they don't have time to review them. Ultimately, that could result in students not paying much attention during class, with a view to catching up with the recordings, but then never actually catching up—a bad recipe. This happens even with the limited number of recordings I make available; students typically won't even review one.

Class participation or lack thereof does not affect your grade. We all have good days and bad days. Note that you have the right to have all your questions answered, but not always during our class sessions. Sometimes time constraints or questions from other students (particularly those I may not have heard from as much) may take precedence.

Internet Use: Unless you obtain permission from me beforehand, use of the Internet on any device during class (including web surfing, email, Facebook, Slack, Twitter, texting, or otherwise PM'ing each other) is prohibited. You are permitted during class to use the Internet to access and save class notes on the cloud, to use EZCheck.me, to access our Civil Procedure webpage (see above), and to access Westlaw/Lexis to look up opinions or terms in legal dictionaries that relate to what we are discussing during class. I and your classmates demand your undivided attention.

Seating: Sit wherever you like on the first day of class. I will circulate a seating chart after everyone has taken their seats. You will then have to sit in the same seat for the remainder of the semester. I'll take an image of the seating chart and email it to everyone so you can refer to it as needed.

Class Breaks: I ordinarily take a 5-10 minute break in the middle of class.

Student Privacy: Because our classes are recorded, conversations you have with me (and sometimes your classmates) just before classes start, during breaks, or just after class ends, are likely to be picked up and recorded. So it is best to discuss matters of a personal nature outside of those time periods.

Final Exam: Your grade for the course will be based on a 3-hour examination at the end of the semester. The exam will be closed book—no materials whatsoever. The exam will be partly multiple choice, and partly true/false. No long or short essay questions. The subjects I will test you on include only: (1) material that I assigned for reading *that we discussed in class*, and (2) material that I raise in class that was not part of the assigned reading but *that I have stated in class is fair game on the exam*.

Review Session: We will have a review session at the end of the semester where I will answer any questions you may have about the materials or the exam.

Accommodations—Disability and Religious Practices: Students who have a disability, as defined by the Americans with Disabilities Act, may seek an accommodation through the Office of Student Accessibility (access@lclark.edu), which is located on the undergraduate campus. Students whose religious practices may impact their academic schedule, may seek accommodation through Associate Dean for Student Affairs Libby Davis (eadavis@lclark.edu). For questions regarding any type of accommodation, please contact Associate Dean Libby Davis.

Class & Day	Topics [Approx. Total Pages for Class Session]	Notes
[01] 8/28 Mon	[20pp + 10pp to skim] I. Background Reading [skim 7–16] II. Personal Jurisdiction A. Background and Traditional Bases of Personal Jurisdiction [17–18; WEB: Personal Jurisdiction before <i>International Shoe</i> (1945)] B. Modern Personal Jurisdiction Doctrine [32–40]	SKIP: § c on p 39
[02] 8/30 Weds	[26pp] C. Specific Personal Jurisdiction 1. Long-Arm Statutes [40–43] 2. Applying Minimum Contacts [52–57; 64(f.)–66; 74–80; 101–110; 117(a.)]	SKIP: §§ c. & d. on p 52; Brennan dissent on p 57; Alito concurrence on p 110
[03] 9/6 Weds	[25pp] D. General Personal Jurisdiction [128–141] E. Power Over Property [152(b.)] F. Tag/Transient Jurisdiction [154–164]	SKIP: hypos on p 152; § b on p 164
[04] 9/11 Mon	[20pp] G. Consent [165–172; WEB: Excerpt of <i>Mallory v. Norfolk Southern Railway</i> (2023)] H. Rule 4 [173–177]	SKIP: ¶ “Consent by Estoppel” on p 172; § c. on p 175; § e. on p 177
[05] 9/13 Weds	[21pp] III. Subject Matter Jurisdiction A. Introduction [217–219] B. Diversity [219–229, 233(3.)–243]	SKIP: ¶ “Class Actions” on p 226; ¶ “As the court in <i>Del Vecchio</i> ” on p 241; § f. on p 243
[06] 9/18 Mon	[19pp] C. Federal Question [243(B.)–244, 246–259] D. Supplemental Jurisdiction [259–260; 266(3.)–269; 287(e.)–288]	SKIP: § 1. on p 244; Hypo 3.8 on p 269

[07] 9/20 Weds	E. Removal to Federal Court [289–299] IV. Venue A. Venue [305–318]	[24pp] SKIP: ¶ “Finally, plaintiffs” on pp 293–294; “Take Note” on p 299; ¶ “If the federal court” on p 299; § e. on p 316
[08] 9/25 Mon	B. Pendent Venue & Subseq. Joined [323(a.)–325] C. Change of Venue [326–345]	[21pp] SKIP: ¶ “With respect to claims governed” on p 324; § c. on p 325; § d. on p 338
[09] 9/27 Weds	V. <i>Erie</i> Doctrine A. Pre- <i>Erie</i> [359–365] B. <i>Erie</i> [365–377]	[19pp] SKIP: ¶ “Perspective & Analysis” on p 375
[10] 10/2 Mon	C. Development of <i>Erie</i> [377, 388(f.)–393] D. Rules Enabling Act and Modern <i>Erie</i> [394–400, 402(a.)–412, 415(a.)–417, 430(c.)]	[25pp] SKIP: § c. on p 403; § b. on p 416
[11] 10/4 Weds	VI. Pleading and Responses A. Historical Background [433–436] B. The Complaint [436–455]	[22pp]
[12] 10/9 Mon	_. The Complaint (cont.) [455–474]	[20pp]
[13] 10/11 Weds	C. Service of Process [199–209, 210(b.)–212, 213(f.)] D. Responding to the Complaint [474–484, 488(b.)–489(b.), 490(d.)–491(d.)]	[24pp] SKIP: § a. on p 209
[14] 10/16 Mon	E. Amending the Pleadings [492–518]	[27pp] SKIP: § d. on pp 498–499

[15] 10/18 Weds	F. Truthful Allegations [518–536] [18pp]	
[16] 10/23 Mon	G. Joinder of Claims [539–546, 547(a.)–553] [20pp] H. Party Joinder 1. Permissive Party Joinder [553–554] 2. Third-Party Practice [560(2.)–566, 567(c.)–568(c.)] 3. Compulsory Joinder [WEB: Compulsory Joinder Analysis]	SKIP: Friendly concurrence on p 546; “Food for Thought” on p 552; §§ a. and b. on p 566
[17] 10/25 Weds	VII. Discovery [17pp] A. Relevance [645–646] B. Discovery Devices [708(C.)–723]	Only expect you to know basics of discovery devices
[18] 10/30 Mon	C. Discovery Disputes [724–750] [27pp]	
[19] 11/1 Weds	VIII. Disposition without Trial [16pp] A. Default Judgment [753–764] B. Involuntary & Voluntary Dismissals [764–767] C. Offers of Judgment [784(c.)–785]	SKIP: “Take Note” on p 762; ¶ “Should plaintiffs” on p 767
[20] 11/6 Mon	D. Summary Judgment [797–806; 810(a.)–819] [19pp]	
[21] 11/8 Weds	IX. Trials [25pp] A. Trial by Jury [823–836, 838(2.)–850]	
[22] 11/13 Mon	B. Role of the Jury [850(3.)–858] C. Selecting the Jury [859–868] D. Phases of a Trial [868–869] [18pp]	
[23] 11/15 Weds	E. Judicial Control of the Verdict [869–893] [25pp]	

[24] 11/20 Mon	F. Instructions and Verdicts [893–897] G. New Trials [897–906] H. Relief from Judgment [914–918]	[17pp]
[25] 11/22 Weds	X. Judgments and Appeals A. Enforcing Judgments [936(3.)–938] B. Appellate Review [939–953]	[16pp]
[26] 11/27 Mon	REVIEW SESSION	