

Civil Procedure
Syllabus Fall 2025 Version v. 1.0.1
Prof. H. Tomás Gómez-Arostegui

Section: Blue **Time:** Tuesdays & Thursdays 10:05 am – 12:00 pm **Room:** 4

Contact Info and Office Hours: My office is on the middle floor of the Legal Research Center (same floor as the Cafeteria), 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 for Civ Pro and am also 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. I am also open of course to setting up other times for in-person meetings.

Civ Pro Tuesdays: 12:00 - 1:20 pm¹ **Online via Zoom:** I'm generally available
In-Person: Thursdays: 12:00 – 1:20 pm on Fridays and most weekends too. Just reach
out to set up a time to Zoom with me.

Required Materials: (1) **Casebook:** A. BENJAMIN SPENCER, CIVIL PROCEDURE: A CONTEMPORARY APPROACH (7th ed. 2025); (2) **Rules and Statutes:** The casebook does a good job of reproducing the Federal Rules of Civil Procedure and relevant statutes as we study them. Nevertheless, I will provide you a PDF where I have highlighted the FRCPs (and relevant statutes) that I believe are fair game for the exam. And (3) **Supplementary Material and Handouts:** I will also post material on our course website: https://law.lclark.edu/faculty/h_tomas_gomez_arostegui/civil-procedure/ [WEB]. Some are part of your assigned reading. Others are more or less optional handouts. All will remain available for download during the semester. I generally assume students will bring their laptops to class and will download the WEB materials ahead of time, but I also will project them on the screen in the classroom.

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 also 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.

Uniform Learning Objectives Across All Civ Pro Sections:

Explain the general structure of state and federal judicial systems, including the hierarchy of judicial authority and the relationship between state and federal courts in a federal system;

¹ I occasionally will have to cancel Tuesday office hours due to a faculty meeting. If that happens, I will let everyone know during class.

Articulate the difference between common law, statutes, and civil rules of procedure; apply this understanding to specific fact situations.

Demonstrate ability to use core statutory and rule interpretation tools to analyze and apply statutes and rules.

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. After the first class, I'll take an image of the seating chart and email it to everyone so you can refer to it as needed.

Reading Assignments: 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).

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 your own on *material we are covering in class*. First, included with your casebook (if purchased new) are study guides and many review problems. These guides are available as an online, password-protected resource. You can use the multiple-choice questions in particular to review the material we cover. And, second, there are other study aids available in or through the library both in print and online. **You can still “crush” my exam without picking up any secondary materials.** 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. But if you must, I recommend these (in addition to the online multiple-choice question database):

Traditional Hornbook:

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

“Mini”-Hornbook:

GENE R. SHREVE ET AL., UNDERSTANDING CIVIL PROCEDURE (7th ed. 2024 **or** 6th ed. 2018)

Study Guide with Questions and Answers:

JOSEPH W. GLANNON, EXAMPLES & EXPLANATIONS: CIVIL PROCEDURE (9th ed. 2023 **or** 8th ed. 2018) [This *might* be available online for free through our law library, I am not sure, so check before buying. And a copy should be on reserve as well in the library.]

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. A few weeks into the semester, I will hold a special bonus Zoom session on how to outline a course.

Attendance: Under the American Bar Association accreditation standards, law schools must require regular and punctual class attendance. At Lewis & Clark, regular attendance is crucial for academic

success and for your full engagement in the learning process. Compliance with this standard not only upholds our law school's commitment to academic excellence but also emphasizes the importance of discipline and accountability as you develop the habits necessary for success in the legal profession.

You may miss up to two (2) classes per semester without any academic penalty. Exceptions to the two-absence limit will be granted only in extenuating circumstances such as medical issues (e.g., a migraine headache, stomach illness, or contracting a contagious illness such as the flu or COVID), family emergencies (e.g., childcare issues or the illness of a family member), or other unexpected occurrences (e.g., car trouble, an unavoidable work conflict, or a job interview that cannot be scheduled at a different time). Absences due to extenuating circumstances will count as excused absences. Excused absences do not count against your two (2) permitted absences. For each additional unexcused absence beyond the two (2) permitted, the Registrar will reduce your grade by one grade step (e.g., from a B to a B-). If you accumulate more than five (5) unexcused absences, you will be subject to administrative removal from the course.

Associate Dean of Students Libby Davis (eadavis@lclark.edu) will determine if an absence is excused. If you are going to miss class beyond the two-absence limit (or within the two-absence limit if you want the absence to be excused), please submit an excuse request form to Dean Davis in advance of the absence or as soon as possible after class, and include the reasons for your absence. The form may be found here: <https://law.lclark.edu/live/forms/1833-excused-absence-request-form>. You are responsible for obtaining any missed lecture notes or assignments.

To take attendance, all 1L professors will be using the smartphone app EZCheck.me, which is described in a separate document. If you encounter technical issues with EZCheck, please contact Dean Davis.

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. Arrive on time; coming late is disruptive.

Cold Calling and Class Participation: 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. If you are unprepared on a particular day, please let me know before class starts and I will not call on you. But you get only two cold-calling passes.

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.

Recording the Class: Recording of classes by students is prohibited. The law school records all our classes for students who have an accommodation from the Office of Student Accessibility necessitating that they access the recordings. I do not freely distribute recordings to students, as they are for students with a disability accommodation. Moreover, making recordings widely available to anyone can stifle conversations in class. But if Dean Davis officially excuses an absence, she will make the video of that session available to you. Students who receive access to a recording are not permitted to share or view

that recording with others. Sharing or viewing a recording with another student will result in both students receiving an F in the course and an Honor Code violation. Neither I nor Dean Davis distribute recordings for unexcused absences. You will need to get class notes from a classmate.

Internet Use: Unless you obtain permission from me beforehand, use of the Internet on any device during class (e.g., web surfing, email, Facebook, Slack, Twitter, texting, or otherwise PM'ing each other) is prohibited. It distracts you and your classmates, and we demand your undivided attention. You are permitted during class to use the Internet to access and save class notes on the cloud, use EZCheck.me, access our Civ Pro webpage (see above), and access Westlaw/Lexis to look up opinions or terms in legal dictionaries that relate to what we are discussing during class. Using any source to provide briefs of the cases we are covering is counterproductive and prohibited. Do your own work.

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 an 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 was not part of the assigned reading but *that I have raised in class and stated in some form is fair game on 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] 8/26 Tues	[20pp + 11pp to skim] I. Background Reading [SKIM 7–18] II. Personal Jurisdiction A. Background and Traditional Bases of Personal Jurisdiction [19–20; <u>WEB</u> : Personal Jurisdiction before <i>International Shoe</i> (1945)] B. Modern Personal Jurisdiction Doctrine [35–44]	SKIP: § c. on p 43

[02] 8/28 Thurs	[25pp] C. Specific Personal Jurisdiction 1. Long-Arm Statutes [44–47] 2. Applying Minimum Contacts [58–63; 74–80; 103–112 (stop before “C”); 121(a.)–122(a.)]	SKIP: Brennan dissent on p 63
[03] 9/2 Tues	[26pp] D. General Personal Jurisdiction [134–144; 147–149] E. Power Over Property [160(b.)] F. Tag/Transient Jurisdiction [162; <u>WEB</u> Excerpt of <i>Burnham v. Superior Court</i> (1990)]	SKIP: hypo on p 160
[04] 9/4 Thurs	[21pp] G. Consent [163–172; <u>WEB</u> : Excerpt of <i>Mallory v. Norfolk Southern Railway</i> (2023)] H. Rule 4 [173–177]	SKIP: ¶ “Consent by Estoppel” on pp 171–172; § c. on pp 175–176; § e. on p 177
[05] 9/9 Tues	[23pp] III. Subject Matter Jurisdiction A. Introduction [221–223] B. Diversity [223–233, 239(3.)–250]	SKIP: Take Note boxes on pp 228 & 229; ¶ “Class Actions” on pp 230–231; § e. on p 233; ¶ “As the court in <i>Del Vecchio</i> ” and Food for Thought box on p 249
[06] 9/11 Thurs	[22pp] C. Federal Question [251(B.); 254–269] D. Supplemental Jurisdiction [269–270; 278(3.)–280; 301(e.)–302(e.)]	SKIP: ¶ “Is the well-pleaded” on p 257; ¶ “The Declaratory Judgment Act” on pp 258–259; FYI box on p 264; § b. on p 268

[07] 9/16 Tues	E. Removal to Federal Court [302–314] IV. Venue A. Venue [319–334]	[26pp] SKIP: ¶ “Finally, plaintiffs” on p 308; Take Note box on p 314; ¶ “If the federal court” on p 314; § e. on p 332
[08] 9/18 Thurs	B. Pendent Venue & Subseq. Joined [340(a.) (first paragraph only); 341(b.)–342(b.)] C. Change of Venue [342(B.)–363]	[22pp] SKIP: § c. on p 342; § d. on pp 356–357
[09] 9/23 Tues	V. Erie Doctrine—Vertical Choice of Law A. Pre- <i>Erie</i> [379–385] B. <i>Erie</i> [385–399]	[20pp] SKIP: Perspective & Analysis box on pp 396–397
[10] 9/25 Thurs	C. Development of <i>Erie</i> [399(C.)–400(C.), 412(f.)–418] D. The Two Modern Approaches to Vertical Choice of Law [418–426, 427(a.)–431, 444 (first paragraph only); <u>WEB</u> : Excerpt of <i>Albright v. Christensen</i> (2022)] E. Horizontal Choice of Law [458(c.)–459(c.)]	[22pp] SKIP: Harlan concurrence on p 426; § c. on p 429
[11] 9/30 Tues	VI. Pleading and Responses A. Historical Background [463–466] B. The Complaint [466–487]	[24pp]
[12] 10/2 Thurs	_. The Complaint (cont.) [487–509]	[22pp]
[13] 10/7 Tues	C. Service of Process [202–213, 214(b.)–217, 218(f.)] D. Responding to the Complaint [509–521, 525(b.)–526(b.), 527(d.)–528(d.), 529(e.) (first paragraph only)]	[25pp] SKIP: § a. on pp 213–214; § e. on p 217
[14] 10/9 Thurs	E. Amending the Pleadings [530–559; 559(e.) (first paragraph only)]	[28pp] SKIP: Practice Pointer on p 536; § d. on p 537

[15] 10/14 Tues	F. Truthful Allegations [560–581]	[20pp]	
[16] 10/16 Thurs	G. Joinder of Claims [583–586, 592(a.)–595; 597(3.)–598] H. Joinder of Parties 1. Permissive Party Joinder [598(B.)–599] 2. Third-Party Practice [607(2.)–613, 615(c.)–616(c.)] 3. Compulsory Joinder [<u>WEB</u> : Compulsory Joinder Analysis]	[15pp]	SKIP: Food for Thought on p 594; § c. on p 595; Food for Thought box on p 598; §§ a. and b. on p 613
[17] 10/21 Tues	VII. Discovery A. Relevance [701–703] B. Discovery Devices [774–792]	[19pp]	I only expect you to know the basics (“what is a _____”) of discovery devices; so this should be a laid-back read
[18] 10/23 Thurs	C. Discovery Disputes [792–821]	[27pp]	
[19] 10/28 Tues	VIII. Disposition without Trial A. Default Judgment [825–838] B. Involuntary & Voluntary Dismissals [839–842]	[18pp]	SKIP: Take Note box on p 835; ¶ “Should plaintiffs” on p 842
[20] 10/30 Thurs	C. Summary Judgment [877–887; 892(a.)–902]	[20pp]	SKIP: Take Note box on p 895
[21] 11/4 Tues	IX. Trials A. Trial by Jury [<u>WEB</u> : Historical Perspective on the Law / Equity Divide; 905–919, 922(2.)–928; 933(a.)–936]	[30pp]	SKIP: Brennan dissent on p 928
[22] 11/6 Thurs	B. Role of the Jury [936(3.)–943] C. Selecting the Jury [945–954] D. Phases of a Trial [954(5.)–955]	[18pp]	

[23] 11/11 Tues	E. Judicial Control of the Verdict [956–977]	[18pp]	
[24] 11/13 Thurs	F. Instructions and Verdicts [985(2.)–989] G. New Trials [990–1000] H. Relief from Judgment [1009(4.)–1014]	[17pp]	SKIP: Food for Thought on p 996
[25] 11/18 Tues	X. Judgments and Appeals A. Enforcing Judgments [1034(3.)–1036] B. Appellate Review [1037–1053]	[16pp]	SKIP: Take Note on p 1043; § f. on pp 1047–1048
[26] 11/20 Thurs	REVIEW SESSION AND EXAM TIPS		