

CIVIL PROCEDURE I--FALL 2019

Course Information and Tentative Syllabus

Professor Larry Dessem

I. Classes. Our class will meet on Monday, Tuesday, and Wednesday from 11:00 to 11:50 in Room 5. Our first class will be on Monday, August 14 and our last class of the semester will be on Tuesday, November 19. Because students will do an out-of-class court visit, we will not meet on Wednesday, November 20.

II. Contact Information. I welcome your questions, and I encourage you to raise those questions during our class periods so that your colleagues can benefit from both the questions and my responses. I'm always happy to talk with students after class—to either address your question(s) or to schedule a mutually convenient time to talk. I also can be reached on my office telephone number (882-7066), my home telephone number (256-6825), or by email (dessemrl@missouri.edu). My law school office is Room 335.

III. Disability Accommodations. If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share, or if you need to make arrangements in case the building must be evacuated, please see either Registrar Denise Boessen (Room 203) or Associate Dean David Mitchell (Room 206) as soon as possible. To request academic accommodations (for example, a note taker), students also must register with the Office of Disability Services (<http://disabilityservices.missouri.edu>), S5 Memorial Union, 573-882-4696. This is the campus office responsible for reviewing documentation provided by students requesting academic accommodations and for accommodations planning in cooperation with students and instructors, as needed and consistent with course requirements. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

IV. Intellectual Pluralism. The Law School welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this course may address concerns to either myself, one of the law school deans, or the University Director of the Office of Student Rights and Responsibilities (<http://osrr.missouri.edu>). All students will have the opportunity to submit an anonymous evaluation of this course and the instructor at the end of the course.

V. Attendance and Participation. I consider class attendance and participation to be extremely important and believe that not only your success, but the success or failure of our class, will depend, in part, upon the preparation and participation of each student in the class. For this reason, I expect any student who will not be present in class, or who will not be prepared to participate, to present me with the motion for extension of time which is posted on the class TWEN site. I also reserve the right to impose upon students who, without a valid excuse, do not attend class or are not prepared to participate all sanctions permitted by the School of Law.

VI. Laptop Prohibition in Daily Classes. Although students will be permitted to use laptops for typing their final examinations, they will not be permitted to use these for daily class note taking. Studies have shown that, even when laptops are used only for note-taking, their use results in a different level of processing of the class material and lesser retention of that material. E.g., Mueller & Oppenheimer, “The Pen Is Mightier Than the Keyboard: Advantages of Longhand Over Laptop Note Taking,” 25 *Psychol. Sci.* 1159, 1166 (2014) (“The studies we report here show that laptop use can negatively affect performance on educational assessments, even—or perhaps especially—when the computer is used for its intended function of easier note taking.”); Eisenstat, “A Game Changer: Assessing the Impact of the Princeton/UCLA Laptop Study on the Debate of Whether to Ban Law Student Use of Laptops During Class,” 92 *U. Det. Mercy L. Rev.* 83 (2015) (applying the Mueller/Oppenheimer study to the law school context).; Sovern, “Law Student Laptop Use During Class for Non-Class Purposes: Temptation v. Incentives,” 51 *U. Louisville L. Rev.* 483 (2013) (describing the extent to which laptop use distracts law students, especially in upper-level courses).

VII. Class Preparation. I will expect that each student has carefully read all of the day's assigned text material and has come to class prepared to discuss both that material and any questions or problems contained in that material. In reading the text, you should check out citations to rules and statutes highlighted in the textual material. These questions and problems will often provide the basis for class discussion, and you may be asked to provide and explain your answer to the class. Please be sure to bring both your text and the Federal Rules supplement with you to each class.

I highly recommend that you "brief" each case that you are assigned to read. The particular format of case briefing that you use is not as significant as your diligence in actually briefing the cases. The purpose of case briefing should be to organize your study and sensitize you to the facts of each case, as well as to the procedural posture and issues presented by each case. Your study of civil procedure also will be helped if you consider the procedural posture of the cases that you study in your other first-year courses. The great bulk of the cases that you study in your first year are appellate decisions, and it should help sharpen your understanding of civil procedure to consider just how each particular case reached the appellate courts in the posture that it did.

VIII. Texts. The texts for this course are Dessem, *Civil Procedure: Representing Clients in Civil Litigation* (2016) and Spencer, *Federal Civil Rules Supplement: 2019-2020*.

In addition to this material, you may find it helpful to consult other civil procedure reference works during the course of the semester. These books are on reserve at the Law Library.

Glannon, *Civil Procedure: Examples and Explanations* (8th ed. 2018). This paperback contains short discussions of much of the material that we will cover this semester, as well as hypothetical questions and explanatory answers. The final portion of the book consists of the discussion of a hypothetical civil case, which is used to show "the Rules [of Civil Procedure] in Action."

Glannon, *The Glannon Guide to Civil Procedure* (4th ed. 2018). In contrast to Glannon's *Civil Procedure: Examples and Explanations*, this paperback's focus on teaching civil procedure is through multiple-choice, rather than essay, questions. You will have a multiple-choice question in class each week, and your final examination will consist of both essay and multiple-choice questions.

Erichson, *Inside Civil Procedure: What Matters and Why* (3rd ed. 2017). This succinct paperback hornbook addresses major topics in civil procedure through standard text, sidebars, frequently asked questions, and chapter summaries, and it includes diagrams to illustrate specific civil procedure concepts.

Friendenthal, Kane & Miller, *Civil Procedure* (5th ed. 2015). This is one of the better, and most exhaustive, one-volume civil procedure treatises. The book achieves a nice balance between the theoretical and practical and contains many case citations.

Hazard, Leubsdorf & Bassett, *Civil Procedure* (6th ed. 2011). This civil procedure treatise tends to focus more on theoretical aspects of civil procedure rather than on the day-to-day, more routine, problems that the civil practitioner may encounter.

Shreve, Raven-Hansen & Geyh, *Understanding Civil Procedure* (6th ed. 2018). This treatise does a good job of comprehensively covering its subject matter in a single and clearly written volume.

Wright & Kane, *Law of Federal Courts* (8th ed. 2016). The focus of this well-established one-volume treatise is on the Federal Rules of Civil Procedure, which makes it most useful for the second semester of civil procedure.

Wright & Miller, *Federal Practice and Procedure*. This is the most extensive civil procedure authority, and I highly recommend it for any in-depth research in the area of either civil procedure or federal courts. It is particularly good concerning the Federal Rules of Civil Procedure. This multi-volume treatise can be searched as a full text or browsed as an electronic book in Westlaw's FPP database.

Moore, *Moore's Federal Practice*. This is the other major multi-volume civil procedure treatise. While it may not be as helpful or exhaustive as Wright & Miller, in certain areas, such as the finer points of federal jurisdiction, it can be quite useful. This treatise can be searched as a full text or browsed as an electronic book within Lexis (by going from the main Lexis screen to Legal/Area of Law - By Topic/Litigation/Treatises & Analytical Materials/Matthew Bender(R)/Moore's Federal Practice - Civil).

In addition to the above treatises, there are several West "Nutshell" books on library reserve that deal with civil procedure. These are much abridged versions of a full length treatise, but some students find them helpful in organizing and studying a course. Kane, *Civil Procedure in a Nutshell* (8th ed. 2018) contains a general overview of civil procedure (similar to the more extensive treatment contained in the same author's *Civil Procedure* hornbook). In addition,

Mulligan, *Federal Civil Jurisdiction in a Nutshell* (2nd ed. 2019) is addressed to the jurisdictional aspects of civil procedure that are covered in the first semester. Finally, Dessem, *Pretrial Litigation in a Nutshell* (6th ed. 2016) is more focused on the Federal Rules of Civil Procedure that are the primary concern of Civil Procedure II.

While there are several commercial civil procedure outlines which attempt to organize and summarize the basic civil procedure course, I strongly recommend that you compile your own outlines (either by yourself or in a study group). Read the assigned text for each day and attempt to solve any problems or questions on your own before resorting to any supplemental texts. The final examination will be based exclusively upon the material discussed in class and in your texts and will not presuppose outside research or knowledge of any material beyond the written assignments or our classes.

IX. Grading. Your grade in this class will be based upon (1) a series of weekly quizzes and (b) a closed-book final examination. At the beginning of the first class each week (starting on August 26), a quiz may be given at the first part of the class hour. The single multiple-choice questions that will be asked will be worth two points each. There will be ten questions asked over the course of the semester, but only a maximum of 16 points can be earned based upon these quizzes. These quizzes will cover only material from the previous week's classes, and your combined point total on these quizzes will count for approximately 10% of your total grade in this course (with the remainder of your grade being determined by the final examination).

The final examination will contain both essay and multiple-choice questions. These questions may relate to any of the material covered in the course this semester. **As with the bar examination, your final examination will be totally closed book. You may not bring with you into the exam any material, nor may you access the Internet or the hard drive of your computer during the examination if you answer the exam questions on your laptop.**

In computing your final grade, I will add the total number of points that each student has earned on his or her quizzes and final examination and then assign a grade based upon the Law School's grading scale.

Another requirement that each student must successfully complete during the semester is to observe court proceedings with someone else in the class and turn in, by our class on October 7, a page describing what you saw and your reactions to what you saw. A posting on the course TWEN site, "Court Observation Requirement," further describes this requirement.

X. Academic Integrity. Academic integrity is fundamental to the activities and principles of a university. All members of the academic community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The academic community regards breaches of the academic integrity rules as extremely serious matters. Sanctions for such a breach may include academic sanctions from the instructor, including failing the course for any violation, to disciplinary sanctions ranging from probation to expulsion.

The School of Law's Honor Code applies to all work done in this course. When in doubt about the Honor Code or about plagiarism, paraphrasing, quoting, collaboration, or any other action that may raise questions of academic integrity, please see me.

XI. Course Discussion and Privacy. University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in section 200.015 of the Collected Rules and Regulations. In this class, students may not make audio or video recordings of course activity, except students permitted to record as an accommodation under section 240.040 of the Collected Rules. All other students who record and/or distribute audio or video recordings of class activity are subject to discipline in accordance with provisions of section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.

Those students who are permitted to record are not permitted to redistribute audio or video recordings of statements or comments from the course to individuals who are not students in the course without the express permission of the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline in accordance with provisions of section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.

XII. Learning Outcomes. In this course students will:

- Learn about the systems of state and federal civil procedure in the United States;
- Develop the ability to apply the law of civil procedure in an examination setting;
- Develop the analytic reasoning ability to apply civil procedure rules and other governing law;
- Understand the basic policy issues concerning the law of civil procedure; and
- Develop the rudimentary ability to make strategic decisions within the civil litigation system

Assessment in this course will be both formative (in daily class questioning and through weekly multiple-choice quizzes) and summative (by a final examination).

XIII. Suggestions. I am interested in constructive criticism concerning this course, and I hope that you will share your thoughts with me as the semester progresses. If you have not understood a particular point, chances are that other students could profit from further explanation.

CIVIL PROCEDURE -- FALL 2019

Tentative Course Syllabus

Professor Larry Dessem

The following is a tentative course syllabus for Civil Procedure I. While there undoubtedly will be changes in the specific day-to-day classes, I will attempt to stay as close to this syllabus as circumstances permit. All assignments in our textbook presuppose study and discussion of the corresponding material in the 2019-2020 *Federal Rules Supplement*.

Week	Coverage
August 19	Introduction. At our first class meeting on August 19, the class will interview John Leonard, who would like to sue PepsiCo seeking a military jet fighter. On August 20 and 21, we will discuss the course of a civil action, the reading and briefing of cases, and the case of <i>Leonard v. PepsiCo</i> , finishing Chapter 1 (pages 1-45).
August 26	The Initiation of the Lawsuit. As we will on each Monday, we will start our class on August 26 with a one-question quiz on the prior week's material. We then will consider Sections I, II, and III of Chapter 2, pages 47-65), involving the Federal Rules of Civil Procedure and Rule 11 of the Federal Rules. In our next two classes this week, we will consider pleading under the Federal Rules of Civil Procedure (pages 65-93).
September 2	The Initiation of the Lawsuit. Although we will not meet on Monday (Labor Day), we will finish Chapter 2 this week, with a consideration of pleading practice, allocation of pleading burdens, and amended and supplemental pleading (pages 93-121).
September 9	Subject-Matter Jurisdiction. After an initial quiz, we will begin Chapter 3, concerning subject-matter jurisdiction (covering Sections I and II(A) of that chapter, concerning federal-question jurisdiction, pages 127-35). In our next two classes this week, we will cover Sections II(B) ("arising under" federal-question jurisdiction) and III (federal diversity jurisdiction), pages 136-65.
September 16	Subject-Matter Jurisdiction - Personal Jurisdiction. After our Monday quiz, we will consider supplemental jurisdiction (Section IV, pages 165-86). On Tuesday and Wednesday this week, we will conclude subject-matter jurisdiction with a consideration of the removal of actions from state to federal court and then begin Chapter 4 (discussing Sections I and II (A) and (B) concerning the constitutional requirement of notice), pages 186-204, 209-223.
September 23	Personal Jurisdiction. After Monday's quiz, we will continue our discussion of Chapter 4 this week, discussing notice and service of process under Rule 4 of the Federal Rules (Section II(C) – (D) of Chapter 4, pages 223-35). On Tuesday and Wednesday, we will discuss state long-arm statutes (Chapter 4, Section II(A), pages 235-41) and the classic case of <i>Pennoyer v. Neff</i> (pages 241-53).

September 30	Personal Jurisdiction and Venue. This week we will conclude our discussion of personal jurisdiction (pages 254-320) and then consider venue (pages 320-339).
October 7	Venue and Erie Railroad. Your court observation sheets are to be turned in by Monday, October 7. See the separate sheet on the course TWEN site describing this assignment. We will finish Chapter 4 this week, focusing on forum non conveniens and transfer within the federal courts (pages 339-356). During our October 9 class, we will take a ride on the Erie Railroad (pages 361-375)!
October 14	Erie Railroad. We will consider the development of the <i>Erie Railroad</i> doctrine, reading through Section II(E) of Chapter 5 (pages 375-422).
October 21	Erie Railroad and Party Joinder. This week we will continue and conclude our discussion of <i>Erie Railroad</i> and discuss federal common law – finishing Chapter 5 (pages 423-453). Then we will discuss party joinder (pages 459-480).
October 28	Claim Joinder, Interpleader, Intervention and Class Actions. This week we will finish Chapter 6, covering claim joinder, interpleader, and intervention (pages 480-510). We then will start Chapter 7, concerning class actions (pages 515-531).
November 4	Class Actions. We will continue our study of class actions this week, considering the statutory requirements for class actions, Rule 23, class action settlements, and contracting out of class actions (pages 531-594).
November 11	Class Actions and Responses to the Complaint. We will conclude our consideration of class actions and Chapter 7 this week and then begin Chapter 9's discussion of responses to the complaint (pages 675-692).
November 18	Responses to the Complaint. This week we will finish Chapter 9 concerning responses to the complaint (pages 692-714). In our final class, on November 19, we will talk about the final examination and our course this semester.