Greetings, and welcome to law school. I look forward to our shared study of civil procedure this year.

I. GOALS AND EXPECTATIONS

A. What You Will Learn

Civil procedure is at once both fine art and low culture: Matisse and Marvel, Van Gogh and Van Damme, Tchaikovsky and Tiger King. It is low culture because civil procedure is often concerned with the mundane, everyday details of litigating civil disputes. It will teach you when you must file your brief, where you can file your lawsuit, and how to make a motion for summary judgment. From this angle, civil procedure is practical and rule driven. Though this side of civil procedure is indispensable in practice, it is also responsible for the subject’s undeserved reputation as dry, technical, and dull. Perhaps that reputation would be deserved if civil procedure’s domain were limited to technical minutiae.

Yet civil procedure also sounds in a higher key, one that forces us to confront fundamental questions about fairness, economic justice, efficiency, sovereignty, and democracy. Skillful use of civil procedure has led to landmark developments in the law. Brown v. Board of Education, for example, started as a class action civil suit filed in federal court. Conversely, the monstrous decision in Dred Scott v. Sandford sought to embed white supremacy in the law under the guise of civil procedure.

Whether you want to practice personal injury law, advise insurance companies, pursue impact litigation to reform prisons or the police, or check government tyranny through the courts, civil procedure will give you both the practical tools and the theoretical frame to pursue those goals. And even if you end up never litigating a single case, civil procedure is essential because it sets fundamental rules for our society. Nearly all our social, political, and economic life happens in the shadow of those rules.

To encompass procedure’s high and low aspects, our course of study will at various times look up or down. You will be expected to learn the Federal Rules of Civil Procedure and the cases that elaborate on their meaning. This study of numbered rules may at times seem mundane. But to truly understand the Rules, you must also embrace the competing theories that give rise to disagreements about how to apply them to individual cases.

Procedure is also an opportunity to learn skills that you can apply in your other courses. For example, you will encounter procedural issues in torts and contracts. Learning well what a motion for summary judgment is will help you in those classes as well. Similarly, much of the reading for this course will be opinions issued by federal courts in general and the Supreme Court in particular. We will therefore learn the essential skills of reading a case, understanding how judges apply rules and statutes to specific facts, and how they grapple with prior cases.
B. Preparing for Class

There will be assigned reading for every class. You should do the reading and be prepared to talk about it in class. Sometimes, when the material is dense or difficult, you will have to read it more than once. Thorough preparation for every class is essential to learning this material. For that reason, class participation may factor into your final grade.

I will call on students without advance warning during class. I understand that there may be times when you were not able to prepare for class. In those cases, you should email me no later than noon on the day of class. If you do so, I will not call on you that day. If you are unprepared for class and have not emailed me in advance, it may negatively affect your final grade. There will be a designated block of time at the end of each class session for questions. Outside of that window, I will not take questions or comments from students who are not on call.

II. COURSE MATERIALS

Most of the readings for the course will be taken from STEPHEN C. YEAZELL & JOANNA C. SCHWARTZ, CIVIL PROCEDURE (10th ed. 2018). It is available through the bookstore or wherever fine books are sold. Used copies should be widely available.

Additionally, you should acquire a recent statutory supplement that contains the Federal Rules of Civil Procedure along with relevant statutory and constitutional provisions. The supplement that accompanies our casebook—STEPHEN C. SCHWARTZ & JOANNA C. SCHWARTZ, FEDERAL RULES OF CIVIL PROCEDURE WITH SELECTED STATUTES (2019 ed.)—is also available through the bookstore. However, if you would like to save money by printing your own statutory supplement, I have also uploaded a free version onto Canvas.

III. COMMUNICATION, ACCOMMODATION, AND PIVOT PLAN

A. Class Meetings

Our class meets Mondays and Wednesdays in Room 7 from 9:00am to 10:30am. Please be on time. If you need to enter or leave the room while class is in session, please do so as quietly and unobtrusively as possible.

If I need to cancel a class session for any reason, we will schedule a make-up session as soon as possible.

B. Illness, Face Coverings & Social Distancing

I cannot stress this enough: if you are not feeling well or have any symptoms of illness, do not come to class. Alternative modes of attendance and participation are described below.

You must wear a face covering while in class. I will also be wearing a face covering. Failure to wear a face covering may result in disciplinary action. Please sit at your assigned seat and maintain a safe distance of at least six feet from your classmates.
Please be considerate of those around you and comply with all local and University regulations regarding public health.

C. Technology

1. Class recordings

Every class will be broadcast on Zoom. The link will be provided on Canvas. If you cannot be present in the classroom for any reason, the best alternative is to participate in the Zoom meeting for class in real time. If you are participating in the Zoom meeting, you should be prepared to be called on just as you would be if you were in the classroom. Please make your best effort to turn on your video, and please change your display name to be your first and last name. (It will be a pleasant surprise if pets, children, or other guests make an appearance.)

Each class will also be recorded. If you cannot attend class nor participate via Zoom, you should watch the recording as soon as possible, and certainly before the next class session. Watching the recorded class is an imperfect substitute for real-time participation. Nevertheless, the recorded classes may be useful for purposes of review.

2. Electronic devices

Laptops will not be allowed in the classroom absent special permission. You should take notes by hand. Please do not use your phone or other electronic devices during class. If you are participating via Zoom, I encourage you to take notes by hand just as you would in the classroom, leaving your computer or other device to act solely as a Zoom terminal.

D. Office Hours

I will be holding office hours virtually this semester. On Tuesdays from 2-3pm and Thursdays from noon-1pm, I will be available at the following Zoom link: https://umsystem.zoom.us/my/tommybennett. The password is “MIZ.”

If you need to contact me for any reason, feel free to email me at thomas.bennett@missouri.edu. If you email me a question, I may share your question and my answer with the entire class. If you would not like me to share your question, or you would like your identity to remain anonymous, please indicate as much in your email to me.

E. Pivot Plan

Circumstances outside my control may force this course to pivot to a fully online format during the course of the semester. I have planned for this contingency. If we go fully online, we will meet at our regular time via Zoom, and I will supplement our online meetings with short videos, which I will post to Canvas, that you can view at your leisure.

IV. Assessment

Your grade will be determined primarily based on a mid-term and a final exam.
A. Midterm

The midterm will be given at the end of our unit on pleading and will cover all the material on the syllabus to that point. It will be a take-home issue spotting exam and will comprise 25% of your grade before adjustment for class participation. You may use any materials you like to prepare your answer except that you may not discuss it with anyone else, whether or not they are in the class.

B. Final Exam

The final exam will be comprehensive and will comprise the remaining 75% of your unadjusted grade. Unless we pivot to an online format, the exam will be administered in person. It will be open note but closed laptop, meaning that you can use printed materials but not the internet or materials from your hard drive. If, on the other hand, we pivot to a fully online format, the exam will be open laptop, meaning you can access materials on your hard drive but not the internet.

In all events, you should not discuss your exam with anyone else before you have handed it in. Failure to abide by this rule may result in a lower grade or automatic failure.

V. READING ASSIGNMENTS

A. The Need for Tradeoffs

   Fed. R. Civ. P. 1
   Avista materials (on Canvas)

2. Case Study #2: Walker v. City of Birmingham
   DAVID LUBAN, LEGAL MODERNISM 218–20 (1994) (excerpt on Canvas)
   Walker materials (on Canvas)
   “A Call for Unity” (link on Canvas)
   “Letter from Birmingham Jail” (link on Canvas)

B. What Is Procedure?

1. How Much Procedure Is Due?
   U.S. Const. amend. XIV, § 1
   U.S. Const. amend. V
   Lassiter v. Department of Social Services (on Canvas)
Brooke D. Coleman, Lassiter v. Department of Social Services: Why Is It Such a Lousy Case?, 12 NEV. L.J. 591 (on Canvas)
Jones v. Flowers (on Canvas)

2. The Stakes of Procedure
   Casebook, pp. 1–5, 289–91

3. Incentives To Litigate
   Casebook, pp. 293–307
   Casebook, pp. 307–24
   Casebook, pp. 332–57

C. Pleading & Motions To Dismiss

1. The Complaint
   FRCP 2, 3, 7, 8(a) & (d), 10
   Casebook, pp. 361–62, 365–81, 407–08
   Casebook, pp. 382–397
   FRCP 9
   Casebook, pp. 397–402
   Casebook, pp. 402–07

2. Service
   FRCP 4
   Review Jones v. Flowers (on Canvas)

3. Responding to the Complaint
   FRCP 8(b) & (c), 12, 55, 60(b)
   Casebook, pp. 421–35

4. Amending Pleadings
   FRCP 15
   Casebook, pp. 437–50
   Krupski v. Costa Crociere (on Canvas)

5. Ethical Limitations
   FRCP 11
   Casebook, pp. 409–21
D. Discovery

1. Introduction
   Casebook, pp. 455–61

2. Timing and Types of Discovery
   FRCP 16, 26(a)(1), (d), (e) & (f)
   Casebook, pp. 461–70
   FRCP 26(a)(2)
   Casebook, pp. 502–04
   FRCP 27-32
   Casebook, pp. 471–75

3. Limits on Discovery
   FRCP 26(b)(1), (c)
   Casebook, pp. 478–92
   FRCP 26(b)(4)–(5), FRCP 45(d)(2)
   Casebook, pp. 492–507

4. Ensuring Compliance & Controlling Abuses
   FRCP 37, 26(b)(2) & (g), & 45(c)
   Casebook, pp. 507–18

E. Avoiding Trial

1. Default, Dismissal & Failure To Prosecute
   FRCP 55, 41
   Casebook, pp. 523–532

2. Negotiated Alternatives
   Casebook, pp. 532–50

3. Arbitration
   Casebook, pp. 550–68

4. Summary Judgment
   FRCP 56
   Adickes v. S. H. Kress & Co. (on Canvas)
   Casebook, pp. 569–88
   Scott v. Harris (on Canvas)
   Scott v. Harris video (link on Canvas)
F. Trial

1. Introduction
   Casebook, pp. 593–94

2. Juries
   U.S. Const. amend. VII
   FRCP 38, 39
   Casebook, pp. 606–12

3. Directed Verdicts & New Trials
   FRCP 50
   Casebook, pp. 626–56

G. Appeal

1. Introduction
   Casebook, pp. 661–62

2. Scope
   FRCP 61
   Casebook, pp. 691–99

H. Respect for Judgments

1. Claim Preclusion
   Casebook, pp. 703–32

2. Issue Preclusion
   Casebook, pp. 735–55

I. Aggregation

1. Joinder
   FRCP 13, 18, 19, 20, 21, 42
   Casebook, pp. 777–79, 782–99, 802–12

2. Non-Parties & Judgments
   Hansberry v. Lee (on Canvas)
   Casebook, pp. 819–824
3. Class Actions
   FRCP 23
   Casebook, pp. 829–37, 850–67
   Casebook, pp. 867–83

VI. COVID-19

Please note: the following statement was written by University administration and is required to be included in this syllabus. Please comply with all University rules and regulations.

1. Decreasing the Risk of COVID-19 in Classrooms and Labs

   MU cares about the health and safety of its students, faculty, and staff. To provide safe, high-quality education amid COVID-19, we will follow several specific campus policies in accordance with the advice of the Center for Disease Control and Boone County health authorities. This statement will be updated as information changes.

   If you are experiencing any COVID-related symptoms, or are otherwise feeling unwell, do not attend in-person classes and contact your health care provider and/or student health immediately. COVID symptoms include: fever greater than 100.4 or chills; cough, shortness of breath or difficulty breathing; fatigue; unexplained muscle or body aches; headache; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; diarrhea.

   We will all wear face coverings while in the classroom, unless you have a documented exemption due to a disability or medical condition.

   We will maintain a 6-foot distance from each other at all times (except in specific lab/studio courses with other specific guidelines for social distancing).

   We will enter the classroom and fill the room starting at the front, filing all the way across a row. When class ends, we will exit the row nearest to the door first; the instructor or TA will give the signal for the next row to exit, in the same manner.

   In any small section or lab class that requires them, additional measures will be listed in the syllabus and be mandatory for class participation.

   Online office hours will be available for all students.

   This course may be recorded for the sole purpose of sharing the recording with students who can’t attend class. The instructor will take care not to disclose personally identifiable information from the student education records during the recorded lesson.

   Compliance with these guidelines is required for all; anyone who fails to comply will be subject to the accountability process, as stated in the University’s Collected Rules and Regulations, Chapter 200 Student Code of Conduct.

   If an instructor has concerns about how a student is following COVID-19 policies and protocols, please report those concerns to the Office of the Dean of Students. You can fill out a COVID Safety Measures Reporting Form here: https://cm.maxient.com/reportingform.php?UnivolMissouriSystem&layout_id=38
By taking the above measures, we are supporting your health and that of the whole Mizzou community. Thank you in advance for joining me and your peers in adhering to these safety measures.