

CIVIL PROCEDURE II

PROFESSOR THOMAS B. BENNETT

SPRING 2021

Welcome back. I hope you had a safe and restful winter break.

I. GOALS AND EXPECTATIONS

A. *What You Will Learn*

Last semester, you mastered the Rules. You learned about the life cycle of a civil suit in federal court from start to finish, from chose in action to judgment. Now you know what belongs in a complaint, how to analyze a motion to dismiss, what evidence suffices to survive a motion for summary judgment, and how to determine the preclusive effect of a prior judgment.

You also saw how the Rules drawn upon deeper values, most notably due process. Our civil justice system aims at the ideal that every litigant should get one, but only one, chance to air her claims in court. Most often, that principle demands notice and an opportunity to be heard. But as we have seen, striking the appropriate balance between accuracy and efficiency requires constant tradeoffs—tradeoffs embedded in nearly every Rule in the book.

This semester we will take a step back and focus on two prior questions. First, which court or courts are competent to decide a given dispute? This is the question of *jurisdiction*, the power of a court to proceed to judgment. Without proper jurisdiction, a putative judgment isn't worth the paper it's printed on. To issue a valid judgment, then, a court must have jurisdiction over both the *parties* and the *subject matter* of the dispute.

Second, which body of law should a court of competent jurisdiction apply once it has agreed to hear a case? Our system of judicial federalism often tasks federal courts with deciding disputes traditionally governed by ordinary common law. Should federal courts deciding such cases make their own common law, or should they instead apply substantive state law? And how do the Rules we learned last semester fit into that question? This is the nub of the *Erie* doctrine, a vexing choice-of-law puzzle that forces us to confront the role of federal courts in a constitutional order that prizes both federalism and the separation of powers.

As with last semester, we will at times turn our gaze upward to high theory or downward to the doctrinal details. We must not lose sight of either, as we can learn much about the political theory undergirding our system of judicial federalism by focusing on how courts have disposed of narrow legal questions. And a proper resolution of complex edge cases requires a deeper understanding of the larger aims of our civil justice system.

I look forward to exploring these fascinating and complex topics with you.

B. Preparing for Class

There will be reading assigned 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 warning during class. I understand that at times you will be unable to prepare for class. In those cases, you should email me no later than 8am 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 hurt your final grade. I will set aside time during each class session for questions. I ask you to hold most questions for those times.

II. COURSE MATERIALS

As in the fall, many of our readings will be in STEPHEN C. YEAZELL & JOANNA C. SCHWARTZ, *CIVIL PROCEDURE* (10th ed. 2018). We will also continue to rely on the supplement containing the Federal Rules of Civil Procedure along with relevant statutory and constitutional provisions.

I will also be posting a coursepack containing additional materials on Canvas. Copies of the coursepack may be acquired for a modest printing fee through the bookstore. If you prefer to use the coursepack electronically or to print your own, you may do that instead.

III. COMMUNICATION, ACCOMMODATION, AND PIVOT PLAN

A. Class Meetings

Our class meets Mondays and Wednesdays in Room 7 from 9:00am to 9:50am. Please be on time. If you need to enter or leave the room while class is in session, please do so as quietly as possible. We will use the same seating chart as in the fall. For your reference, it is available on Canvas. Please sit in your assigned seat.

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 should continue to wear a mask and take appropriate health precautions. Please be considerate of those around you and comply with all local and University regulations about public health.

C. Technology

1. Class Recordings

I will simulcast every class on Zoom. The link is 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.)

I will also record each class. If you can neither attend class nor participate by Zoom, you should watch the recording as soon as possible, and before the next class session. Watching the recorded class is an imperfect substitute for real-time participation. Even so, the recorded classes may be useful for review purposes.

2. Electronic Devices

Please do not use a laptop without permission. If you are participating by 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.

I recognize that some of you may feel more comfortable taking notes on a laptop. If that is the case, you may speak to me about permission to use a laptop or other electronic device. I will grant permission to use laptops liberally.

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 say that 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 semester. If that happens, we will meet at our regular time by Zoom, as we did in the fall.

IV. ASSESSMENT

Your score on the midterm and final exams will determine most of your grade in this course.

A. Midterm

You will take the midterm at the end of our unit on personal jurisdiction and will cover all the material on the spring syllabus to that point. The midterm 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. If possible, I will administer the exam in person. If, on the other hand, we pivot to a fully online format, I will administer the exam remotely (as in the fall). In either event, the exam will be open note and open laptop, meaning that you can use any printed or electronic materials, including the internet. You should not discuss your exam with anyone else before you have handed it in. Failure to abide by this rule may lead to a lower grade or automatic failure.

V. READING ASSIGNMENTS

A. Personal Jurisdiction

1. Origins

Casebook pp. 62–66 (constitutional framework)

Casebook pp. 67–77 (*Pennoyer v. Neff*)

2. Long-Arm Statutes

Coursepack pp. 2–6 (*Hess v. Pawloski*)

Coursepack pp. 6–7 (Mo. Rev. Stat. § 506.500)

Coursepack pp. 7–12 (*Missouri ex rel. PPG Indus., Inc. v. McShane*)

3. The Modern Framework: Minimum Contacts

Casebook pp. 77–86 (*International Shoe*)

Casebook pp. 88–99 (*Shaffer v. Heitner*)

Casebook pp. 148–55 (*Burnham v. Superior Court*)

4. Specific Personal Jurisdiction

Casebook pp. 86–88 (*McGee v. Int'l Life Ins. Co.*, *Hanson v. Denckla*)

Casebook pp. 99–109 (*World-Wide Volkswagen Corp. v. Woodson*) (stop after note 2)

Coursepack pp. 13–20 (*Calder v. Jones, Keeton v. Hustler*)
Coursepack pp. 20–39 (*Burger King v. Rudzewicz, Asahi Metal Indus. Co. v. Superior Court*)
Casebook pp. 111–21 (*J. McIntyre Mach., Ltd. v. Nicastro*)
Coursepack pp. 39–43 (*Walden v. Fiore*)

5. General Personal Jurisdiction

Coursepack 44–60 (*Perkins v. Benguet Consolidated Mining Co. Helicopteros v. Hall*)
Casebook pp. 128–33 (*Goodyear Dunlop Tires Operations, S.A. v. Brown*)
Casebook pp. 133–39 (*Daimler AG v. Bauman*)

6. Notice

Casebook pp. 163–72 (*Mullane v. Cent. Hanover Bank & Trust Co.*)

7. Consent

Casebook pp. 158–63 (*Carnival Cruise Lines, Inc. v. Shute*)
Casebook pp. 195–99 (*Atlantic Marine Constr. Co. v. U.S. Dist. Ct.*)

8. Personal Jurisdiction and Class Actions

Casebook pp. 140–48 (*Bristol-Myers Squibb Co. v. Superior Court*)
**Ford Motor Co. v. Montana Eighth Judicial District*

9. Personal Jurisdiction of Federal Courts

Casebook pp. 158–63
Fed. R. Civ. P. 4(k)
Coursepack pp. 61–63 (Letter from Prof. A. Benjamin Spencer to Hon. John D. Bates, Chair, Advisory Committee on Civil Rules)

B. Subject-Matter Jurisdiction

Casebook pp. 205–208

1. Federal Question

U.S. Const., Art. III, § 2
Coursepack pp. 65–66 (*Osborn v. Bank of the United States*)
28 U.S.C. § 1331
Casebook pp. 209–213 (*Louisville & Nashville R.R. v. Mottley*)

Coursepack pp. 67–75 (*American Well Works Co. v. Layne & Bowler Co.*,
Smith v. Kansas City Title & Tr. Co., *Merrell Dow Pharms. Inc. v.*
Thompson)

Coursepack pp. 76–91 (*Grable & Sons Metal Prods., Inc. v. Darue Eng'g &*
Mfg. Gunn v. Minton)

2. Diversity of Citizenship

Coursepack p. 92–94 (*Strawbridge v. Curtis*)

28 U.S.C. § 1332(a)–(c)

Casebook pp. 218–20

Coursepack pp. 94–97 (*Mas v. Perry*)

Casebook pp. 225–29 (*Hertz Corp. v. Friend*)

Casebook pp. 229–32

3. Supplemental

Casebook pp. 232–35

Coursepack pp. 98–112 (*United Mine Workers of America v. Gibbs*, *Aldinger*
v. Howard)

Coursepack pp. 112–29 (*Owen Equip. & Erection Co. v. Kroger*, *Finley v.*
United States)

28 U.S.C. § 1367(a)

Coursepack pp. 130–38 (*Exxon Mobil Corp. v. Allapattah Servs., Inc.*)

4. Removal

28 U.S.C. § 1441(a)–(c)

28 U.S.C. § 1447

28 U.S.C. § 1453

Casebook pp. 241–49 (*Caterpillar, Inc. v. Lewis*)

28 U.S.C. 1332(d)

Casebook pp. 844–50 (*Standard Fire Ins. Co. v. Knowles*)

C. *Venue, Transfer, and Forum Non Conveniens*

1. Venue & Transfer

Casebook pp. 181–83

28 U.S.C. §§ 1391, 1404, 1406

2. *Forum Non Conveniens*

Casebook pp. 187–95 (*Piper Aircraft v. Reyno*)

Coursepack pp. 140–50 (*Iragorri v. United Techs. Corp.*)

D. The Erie Doctrine: Ascertaining Applicable Law

1. State Law in Federal Courts

Casebook pp. 255–67 (*Erie R.R. v. Tompkins*)
28 U.S.C. § 1652

2. Ascertaining State Law

Coursepack pp. 152–55 (*Klaxon Co. v. Stentor Elec. Mfg. Co.*)

3. Federal Supremacy

Coursepack pp. 156–66 (*Stewart Organization, Inc. v. Ricoh Corp.*)

4. Identifying Conflict

Casebook pp. 267–81 (*York, Byrd, Hanna*)

5. Accommodating State Law

Coursepack pp. 167–82 (*Gasperini v. Center for Humanities, Inc.*)
Coursepack pp. 183–210 (*Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*)

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?UnivofMissouriSystem&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.