

# CIVIL PROCEDURE I

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

## GOALS AND EXPECTATIONS

### **What You Will Learn**

Civil procedure is at once both fine art and low culture: Matisse and Marvel, Van Gogh and Van Damme, Bach and *The Bachelor*. 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.

### **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.

## COURSE MATERIALS

Many 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. YEAZELL & 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.

Finally, I have prepared several supplemental cases and readings that will be posted to Canvas. Readings on Canvas are marked below.

## COMMUNICATION AND ACCOMMODATION

### **Class Meetings**

Our class meets Mondays, Wednesdays, and Fridays in Room 6 from 12:00pm to 12:50pm. 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. During the first class, I will pass around a seating chart. Once you have chosen a seat, please continue to sit there for the remainder of the semester.

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

### **Illness**

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. Please be considerate of those around you and comply with all local and University regulations regarding public health.

### **Technology**

Every class will be broadcast live 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. (It will be a pleasant surprise if pets, children, or other guests make an appearance.)

Each class will also be recorded. If you can neither 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.

I recommend that you consider *not* using a laptop to take notes. I encourage you to take notes by hand, particularly if you have never done so. If you decide that a laptop is best for you, you may use it. Please do not use a laptop (or any other electronic device) for any other purpose than to view materials for class or to take notes.

### **Office Hours**

My office hours this semester are from 4:15 to 5:15 on Mondays and Wednesdays. Please also feel free to email me to schedule another time to meet outside of my normal office hours. I encourage you to attend office hours.

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.

## ASSESSMENT

Your grade will be determined based on class participation and a final exam. There will also be a practice midterm, given out shortly after we complete our unit on pleading. This midterm exam will be ungraded, but there will be a review session to discuss it.

### **Class Participation**

Class discussion is a critical part of this course. We will all be worse off if each of you does not assume responsibility for sharing in the project of learning together. For that reason, 10% of your grade will be determined by your class participation. The main thing you should do to ensure a good participation mark is to do the assigned reading and come prepared to discuss it.

### **Final Exam**

The final exam will be comprehensive and will comprise the remaining 90% of your unadjusted grade. You may use any resources you wish during the exam (notes, outlines, casebook, hornbook, Westlaw, Wikipedia, the Hitchhiker's Guide to the Galaxy, tea leaves, ailuromancy, brute force, sheer luck, etc.), subject to the restriction that you may not discuss the exam with any other person before you have handed it in. Failure to abide by this restriction may result in a lower grade or automatic failure.

## READING ASSIGNMENTS

### **I. The Need for Tradeoffs**

#### A. Case Study #1: Avista Mgmt. Inc. v. Wausau Underwriters Ins. Co.

Fed. R. Civ. P. 1

Alan B. Morrison, *The Necessity of Tradeoffs in a Properly Functioning Civil Procedure System*, 90 OR. L. REV. 993, 993–96 (2012) (excerpt on **Canvas**)

*Avista* materials (on **Canvas**)

B. Case Study #2: Walker v. City of Birmingham

DAVID LUBAN, LEGAL MODERNISM 218–20 (1994) (excerpt on **Canvas**)  
*Walker* materials (on **Canvas**)

**II. What Is Procedure?**

A. 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**)  
*Hamdi v. Rumsfeld* (on **Canvas**)

B. The Stakes of Procedure

Casebook, pp. 1–5, 289–91

C. Incentives To Litigate

Casebook, pp. 293–324  
Casebook, pp. 332–57

**III. Pleading & Motions To Dismiss**

A. Service

FRCP 4  
*Mullane v. Central Hanover Bank & Tr. Co.* (on **Canvas**)  
*Jones v. Flowers* (on **Canvas**)

B. The Complaint

FRCP 2, 3, 7, 8(a) & (d), 10  
Casebook, pp. 361–62, 365–81, 407–08  
*Bell Atl. Corp. v. Twombly* (on **Canvas**)  
*Ashcroft v. Iqbal* (on **Canvas**)  
FRCP 9  
Casebook, pp. 397–407

C. Ethical Limitations

FRCP 11  
Casebook, pp. 409–21

D. Responding to the Complaint

FRCP 8(b) & (c), 12, 55, 60(b)

Casebook, pp. 421–35

E. Amending Pleadings

FRCP 15

Casebook, pp. 437–50

*Krupski v. Costa Crociere* (on **Canvas**)

**IV. Discovery**

A. Introduction

Casebook, pp. 455–61

B. 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

C. 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

D. Ensuring Compliance & Controlling Abuses

FRCP 37, 26(b)(2) & (g), & 45(c)

Casebook, pp. 507–18

**V. Avoiding Trial**

A. Default, Dismissal & Failure To Prosecute

FRCP 55, 41

Casebook, pp. 523–532

B. Negotiated Alternatives

Casebook, pp. 532–50

C. Arbitration

Casebook, pp. 550–68

D. 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**)

**VI. Trial & Appeal**

A. Trials

Casebook, pp. 593–94

U.S. Const. amend. VII

B. Appeals

Casebook, pp. 661–62

FRCP 61

**VII. Respect for Judgments**

A. Claim Preclusion

Casebook, pp. 703–32

B. Issue Preclusion

Casebook, pp. 735–55

**VIII. Aggregation**

A. Joinder

FRCP 13, 18, 19, 20, 21, 42

Casebook, pp. 777–79, 782–99, 802–12

B. Non-Parties & Judgments

*Hansberry v. Lee* (on **Canvas**)

Casebook, pp. 819–824

C. Class Actions

FRCP 23

Casebook, pp. 829–37, 850–67

Casebook, pp. 867–83