

CIVIL PROCEDURE

Fordham Law School
Prof. Howard Erichson
Spring 2023

Casebook: H.M. Erichson & J.M. Glover, *Civil Procedure* (1st ed. 2021)

Rules & Statutes: *Federal Civil Rules Booklet* (2023 ed.)

Welcome to Civil Procedure! Unlike most of your other law school courses, Civil Procedure does not focus on substantive rights and duties. Rather, this course focuses on the process by which legal rights, duties, and remedies are determined when disputes arise. We will examine questions such as: How does a plaintiff bring a lawsuit? How does a defendant respond? How do parties gather information? What are the roles of judge and jury? Can a single lawsuit include multiple claims and parties? Which courts decide which disputes? In other words, we will spend the semester examining the processes of the civil justice system itself, rather than the substantive legal norms administered by that system.

Learning Outcomes

These are the learning outcomes I expect you to achieve by the time you complete this course:

1. Identify, analyze, and apply principles of procedural law relating to the civil litigation process, including pleadings, discovery, pretrial, trial, joinder, and preclusion.
2. Identify, analyze, and apply principles of law relating to forum choice, including subject matter jurisdiction, personal jurisdiction, venue, and choice of law.
3. Think strategically about how lawyers use procedural law on behalf of clients in litigation.
4. Think critically about procedural policy and the relationship between process and justice.

In addition to these primary learning outcomes, I intend for this course to help you achieve additional objectives. These include seeing how lawyers use legal processes to address clients' problems; identifying procedural issues and their relationship to issues of fact and substantive law; reading and applying rules and statutes; identifying ethical implications of lawyers' work in the litigation context; seeing connections between the litigation process and various forms of inequity in society; and understanding the relationship between litigation and other modes of dispute resolution. I will do my best to help you achieve these outcomes, and you should keep these goals in mind as you work through the cases, as you engage in each class session, and as you review and synthesize the material throughout the semester.

Course Information & Policies

- **Contact Information:** My e-mail is erichson@law.fordham.edu, my phone is 646-312-8233, and my office is 7-114.
- **Office Hours:** Office hours are Wednesdays 4:45-5:45 p.m. in Room 7-114.
- **Attendance:** Class attendance is required. If you are unable to attend class for any reason, please e-mail me in advance to let me know that you will be absent.
- **Reading:** You are required to complete the assigned reading for each class prior to the session. By reading each case carefully in advance of class, you will be prepared to use each class session to take your understanding to a higher level.
- **Class Participation:** During class, I call on students to discuss cases and readings. I do not grade class participation, but I consider it a valuable part of the learning process. If you are unprepared for a particular class, or if the facts or issues of a particular case hit too close to home and you would rather not be called on to discuss that case, or if you just need me not to call on you on a particular day for any reason whatsoever, please e-mail me in advance to let me know.
- **Classroom & Zoom:** Our classes are in person in Room 3-02, but if public health or any other circumstances require a shift to Zoom, we will use this link: <https://fordham.zoom.us/j/82825608404?pwd=TXc3UnZOczl6ODl6U3p6eGc3WncxQT09> (the link should be all you need, but just in case, the meeting ID is 82825608404 and the passcode is FLS). On Monday, Feb. 6, we will use Zoom because I will be in Chicago. On that date, you may use our usual classroom (media services will set up Zoom with our classroom screen and cameras) or, if you prefer, use your own device from anywhere.
- **Recording:** Our classes are recorded. The recordings are posted to the course page on Echo360, which you can access through LawNet.
- **Sensitive Materials:** This course involves cases about a wide range of disputes. Materials about disputes can be painful to read and discuss, not always in predictable ways, but especially when they hit close to home based on personal experiences. If any material is triggering or otherwise personally difficult for you, please feel free to contact me (or have Student Affairs contact me, if you prefer) so that I can make accommodations. I will work with you to make sure that nothing interferes with the quality of your learning.
- **Exam:** Grades will be based on a closed-book final examination. The exam will require you to apply your knowledge and understanding of civil procedure. Topics covered on the exam may include everything in the assigned readings and everything discussed during class.

Readings

The reading assignments for each class session are listed below. I will inform you in class if there are any changes to the assignments during the semester. Any non-casebook readings will be available on the TWEN website for the course.

1. Introduction
 - Chapter 1, pp. 1-32
2. Pleadings: Complaint
 - Chapter 2, pp. 33-66
3. Pleadings: Defendant's Response; Amendment
 - Chapter 2, pp. 70-99
4. Pleadings: Ethical Constraints
 - Chapter 2, pp. 99-118
5. Discovery: Discovery Tools, Relevance, Proportionality (on Zoom)
 - Chapter 3, pp. 119-141
6. Discovery: Privilege, Work Product, Implementation, Enforcement
 - Chapter 3, pp. 141-172
7. Pretrial: Summary Judgment
 - Chapter 4, pp. 173-98
8. Pretrial: Default, Dismissal, and Case Management
 - Chapter 4, pp. 198-224
9. Joinder: Claims Joinder, Permissive Party Joinder, Compulsory Party Joinder
 - Chapter 7, pp. 295-321
10. Joinder: Impleader, Intervention, Interpleader
 - Chapter 7, pp. 321-340
11. Joinder: Class Actions & Multi-District Litigation
 - Chapter 7, pp. 341-366
12. Trial (with Judge Gardephe)
 - Assignment TBA

13. Judgments: Claim Preclusion
 - Chapter 8, pp. 367, 386-410
14. Judgments: Issue Preclusion
 - Chapter 8, pp. 410-438
15. Subject Matter Jurisdiction: Federal Question Jurisdiction
 - Chapter 9, pp. 443-459
16. Subject Matter Jurisdiction: Diversity Jurisdiction
 - Chapter 9, pp. 459-479
17. Subject Matter Jurisdiction: Supplemental Jurisdiction, Removal
 - Chapter 9, pp. 479-505
18. Personal Jurisdiction: The Story Begins
 - Chapter 10, pp. 507-535
19. Personal Jurisdiction: Case-Linked Jurisdiction
 - Chapter 10, pp. 535-539, 546-571
20. Personal Jurisdiction: All-Purpose Jurisdiction, Consent, Service
 - Chapter 10, pp. 571-83, 591-612
21. Personal Jurisdiction: The Story Continues
 - *Ford Motor Co. v. Montana Eighth Judicial Dist.* (U.S. 2021)
 - *Mallory v. Norfolk Southern Railway Co.* (U.S. 2023) (if available)
22. Venue, Venue Transfer, & Forum Non Conveniens
 - Chapter 11, pp. 613-639
23. *Erie* Doctrine: Part One
 - Chapter 12, pp. 641-667
24. *Erie* Doctrine: Part Two
 - Chapter 12, pp. 667-686
25. Conclusion: Dispute Resolution and the Big Picture
 - Chapter 13, pp. 687-698, 706-716, 731-733