This course, along with Civil Procedure II, will survey questions, large and small, that face the lawyer and client who seek to initiate, or who must defend against, a lawsuit filed in the federal courts of the United States. We will examine the Federal Rules of Civil Procedure (the “FRCP”), Title 28 of the United States Code (the “Judicial Code”), the United States Constitution, and Supreme Court opinions construing them. Beyond learning procedural law, we will examine strategic, ethical, professional, and economic considerations pertinent to United States civil litigation. We will start by exploring questions of constitutional limits on the powers of courts, jurisdiction, and how to join other parties.

Learning Outcomes and Competencies

By the end of this course, students should have knowledge of:

- How our system struggles to deliver access to justice to all litigants and potential litigants, and therefore struggles to deliver on our aspirational commitment of equal justice for all.
- A basic familiarity with when a litigant is entitled to appeal and how appellate courts review the various questions with which they are presented;
- The law of personal jurisdiction under the Constitution’s due process clauses and state long-arm statutes;
- The law of subject matter jurisdiction under Article III, 28 U.S.C. §§ 1331, 1332 & 1367; and
- The law of former adjudication (res judicata and collateral estoppel);

This knowledge will be achieved through exercises that will develop skills in careful reading, oral presentation, responding to objective questions without study aids, and the preparation of written memoranda that spot civil procedure issues in a fact pattern and then analyze those issues.

Attached to this syllabus is a list of competencies that a law school should strive to instill in all of its graduates and an indication whether students in Civil Procedure I will be exposed to, practice, or become competent in the competency in question over the course of the semester.

Activities Designed to Promote Information Literacy

I encourage you to go beyond the written materials and to use secondary materials to master the concepts and ideas that we will be studying. A couple of prominent examples are listed below under the heading “Supplementary Materials.” I also expect students to educate themselves about the rules of discovery in connection with fulfilling the requirement of completing a CALI exercise on discovery with a partner.
Texts You Must Purchase


Supplementary Materials

A number of commercial treatises and study aids for Civil Procedure are available. I have no problem with their use but cannot vouch for their usefulness. Some former students have told me that Professor Arthur Miller’s Civil Procedure audio lectures are very helpful. I have also heard some good things about the following three publications, but have not myself spent any significant time with any of them:

- Glannon, CIVIL PROCEDURE: EXAMPLES & EXPLANATIONS (Aspen)
- Glannon, THE GLANNON GUIDE TO CIVIL PROCEDURE (Aspen)
- Spencer, ACING CIVIL PROCEDURE (Thomson West)

In the library, there are also at least two important multi-volume civil procedure treatises of which you might turn for a comprehensive and scholarly treatment of any civil procedure question you might wish to research:

- Wright & Miller, FEDERAL PRACTICE AND PROCEDURE
- James, Hazard & Leubsdorf, MOORE’S FEDERAL PRACTICE

USEFUL WEB SITES:

http://www.uscourts.gov (this cite has links to the Federal Rules, and to all the federal courts including the 2nd Circuit and the Vermont district court)

http://www.supremecourtus.gov (U.S. Supreme Court)

http://www.scotusblog.com (An excellent blog)

https://www.vermontjudiciary.org (Vermont courts)

Classroom Attendance and Participation
Class attendance is mandatory. I will pass around a sign-in sheet for each class that it is your responsibility to sign. If at all possible, you should clear absences with me in advance. If it is not possible to advise me in advance that you will be missing class, you should contact me as soon as possible thereafter so that your absence will not be regarded as unexcused. Unexcused absences will affect your final grade and, if repeated, will be reported to the administration in accordance with school policy. Please note that, under ABA regulations, you may be barred from taking the final examination if you miss more than 20% of your classes in a semester.

I expect students to be prepared for class and will call on you at random. If for some respectable reason you are not prepared on a particular day, you can elect to pass. Especially good classroom participation – in terms of quality and not number of times one participates – may result in a half-grade increase to your final grade. (Only about 10% of the class can expect this.) By contrast, especially dismal participation may result in a half-grade decrease to your final grade.

I would strongly encourage you to take notes by hand, even if you typically use a laptop. Handwriting slows you down and forces you to develop your critical listening skills. The use of the internet or email – whether on your computer or on a device such as a smart phone – during class is inappropriate, unless I indicate otherwise.

**Academic Success Mentors**

Our Academic Success Program has made two students available as mentors. Dylan King and Christopher Denny will have weekly office hours and workshops to discuss the material covered in class. For further information, please contact Katrina Munyon about the dates for these workshops and for other resources available at the Academic Success Program.

**Exams and Grading**

Your grade will be based on a mid-term exam and a final exam. I will also offer mandatory multiple-choice quizzes delivered through the TWEN course website. Performance on these quizzes will NOT count towards your final grade. In mid-October (date to be determined based on other scheduled midterms), I will give a graded, in-class mid-term exam. The Mid-term will be worth 25% of your grade. Finally, I will give an in-class final exam at the end of the semester during our scheduled finals slot worth 75%.

Pursuant to school policy, this class will be graded on a B curve.

**Course Web Site**

I have put together a course web site on The West Education Network ("TWEN"). I will use the site to communicate with you, post relevant materials, sign-up sheets, and prompt and continue class discussions. You must register on TWEN and should pay attention when you receive an email from me through the web site.

**Assignments**
There are 28 class meetings. I will cover about 20 pages of material per class. You should read the text of any Rule or Statute that is cited in your casebook as you do your reading. Most important of all, you should WRITE OUT your answers to the questions posed in the text. In my view, this is the best way to consolidate the materials and to give you a sense of whether you are getting what you need to get out of the readings. Also, as noted above, I will periodically give mandatory quizzes that will not count towards your final grade.

You should also build in a few minutes prior to class to go back over your notes and answers – especially if you get a bit out in front of the class in your reading (as you should).

The following schedule is subject to adjustment as the semester proceeds.

INTRODUCTION
1. Introduction to the Course and the Court System. Glannon 1-18
2. The Time Line of a Civil Action. Glannon 19-36

CHOOSING A PROPER COURT
A. A Court with Subject Matter Jurisdiction
5. Amount in Controversy. Glannon 73-88 (and Mas again at 51)

B. A Court with Personal Jurisdiction
9. The Origins of Personal Jurisdiction. Glannon 145-158; U.S. Const. am. XIV
10. Minimum Contacts. Glannon 159-176
   – Specific Personal Jurisdiction
11. Specific In Personam Jurisdiction. Glannon 177-201
12. Contacts by Contract. Glannon 201-210
14. Virtual Contacts Glannon 232-244
15. **Mid-term Examination** (tentative)

   – **Other Bases for Personal Jurisdiction**

   17. Property Contacts: The end of *Pennoyer*? Glannon 264-282

   18. Transient Contacts: *Pennoyer* Rises Again. Glannon 282-301


**Personal Jurisdiction Review – Exercise**

20. Review of the Exercise in class

**GIVING NOTICE**


22. Implementing the Standard by Rule F.R.C.P. 4; Glannon 337-356

**A CONVENIENT FORUM (AGAIN): VENUE**

23. A Proper Venue. 28 USC §1391; Glannon 359-376


**PRECLUSION: THE FORCE AND EFFECT OF FINAL JUDGMENTS**

25. An Introduction to Claim Preclusion. Glannon 1202-1129

26. Judgments or Parties? Claim or Issue? Glannon 1219-1244

27. Elements of Issue Preclusion. Glannon 1244-1262

Attachment – Law School Competencies

Course Name: **Civil Procedure**

**E**=exposed to  
**P**=practiced (includes being exposed to)  
**C**=become competent (includes being exposed to and practicing)  
- =not addressed in the course  
“client” includes live and simulated clients

I. Problem solving
1. Identifies client problem and client objective: **E**  
2. Identifies and diagnoses legal problems from a set of facts: **P**  
3. Demonstrates sufficient grounding in substantive law to recognize legal issues and potential courses of action: **P**  
4. Identifies potential outcomes and consequences and develops practical contingency plans to handle various possibilities: **P**  
5. Reads law and client facts carefully: **P**  
6. Listens well: **E**  
7. Uses knowledge and insight of others in finding solutions to a legal problem: **E**  
8. Collaborates effectively to find solution(s): **E**

II. Client counseling and management
1. Establishes and maintains a proper attorney-client relationship: **E**  
2. Gathers relevant information: -  
3. Analyzes decisions to be made: -  
4. Counsels client about decision: -  
5. Ascertains and implements client’s decision: -  
6. Demonstrates concern about the client’s problems and concerns and works to gain client’s trust: -  
7. Demonstrates sensitivity to whatever culture, gender, race, class or other barriers might diminish communication and interaction: -  
8. Understands, timely responds to and anticipates client’s concerns and demonstrates respect for client’s choices and values: -  
9. Understands how to advise and inform client about choices, expectations and risks, and how to advise and then work with client to reach decisions: **E**

III. Factual investigation and analysis
1. Determines the need for factual investigation: **P**  
2. Plans a factual investigation-uses all available sources including on-line resources: **E**  
3. Implements the investigative strategy: **E**  
4. Memorializes and organizes information in an accessible form: -
5. Decides whether/when to conclude the process of fact-gathering: -
6. Evaluates the information that has been gathered: E
7. Demonstrates understanding of the interplay between facts and legal theories and between facts and rules of evidence: E
8. Uncovers relevant facts (including those facts that help other side) and demonstrates how the facts will be applied: E
9. With respect to client and witness interviews, student: (1) pays attention, listens well and takes notes as necessary; (2) appropriately uses both open and closed questions to fully extract information (and concerns with respect to client interviews); (3) makes sure that she understands everything that was said and follows up or clarifies so as to clear up any possible ambiguities or misunderstandings; (4) maintains eye contact with person being interviewed, conveys interest and understanding with body language and words; (5) avoids legal jargon and generally presents explanations that are clear and simple; and (6) decides, in advance, what she plans to accomplish in the interview: -
10. Finds facts by mining documents, depositions and other paper records for relevant information: -

IV. Legal Research
1. Researches and applies relevant authorities – statutes, cases, regulations: P
2. Conducts effective and efficient research: E
3. Uses primary and secondary sources to conduct research: E
4. Uses applicable research tools to find relevant authority: E
5. Uses applicable research tools to discover relevant factual information: E
6. Navigates statutory and regulatory authorities effectively: P
7. Makes appropriate choices regarding free research resources: -

V. Legal analysis and reasoning
1. Identifies and formulates legal issues: C
2. Identifies relevant legal rules among range of authorities: C
3. Synthesizes legal rules: C
4. Effectively applies facts to law: C
5. Formulates effective legal theories: C
6. Identifies and addresses counter-arguments: C
7. Demonstrates careful case/law reading: C
8. Identifies critical legal and factual issues presented by a legal problem: C
9. Identifies the main common law, statutory and regulatory rules and authorities relevant to each issue: C
10. Applies legal rules to each issue: C
11. Determines answers to each issue and then puts the answers into a sequence that answers the overall question posed by a legal problem: C
12. Identifies and addresses contrary authority and, with respect to the contrary authority cited by opposing side, exposes weaknesses and wrongly selected authority: P
13. Sees client's problem or legal issue from many points of view and makes use of these perspectives in his or her understanding and analysis: E

VI. Writing and Communication
1. Organizes written documents effectively: E
2. Explains and applies law accurately, effectively, and clearly: E
3. Correctly assesses the recipient's perspective: E
4. Uses effective oral communication: E
5. Writes in concise, clear, grammatically-correct, well-organized language appropriate to the task: E
6. Links facts to law logically and readable: E
7. Speaks in simple declarative sentences, without rambling or using jargon: E
8. Oral communication is confident, respectful, and authentic: E
9. Understands the audience(s), purpose and setting for a written document or oral presentation and adapts approach accordingly: E
10. Demonstrates sensitivity to whatever culture, gender, race, class or other barriers might diminish communication and interaction: E
11. Advocates in a persuasive and effective manner: E

VII. Professionalism
1. Demonstrates independent professional judgment: E
2. Demonstrates self-directedness, self-awareness, and initiative: E
3. Understands the business of law: E
4. Takes responsibility for matters and assignments
   a. Project management: E
   b. Time management: E
5. Proactively seeks supervision and/or feedback: E
6. Assumes an active role in professional self-development: E
7. Handles professional and personal stress and/or identifies when s/he may need additional resources:
   a. Engages in regular self-reflection: E
   b. Recognizes and takes steps to address and/or resolve ethical dilemmas: E
   c. Demonstrates collaboration skills by working effectively in a team: P