

# Civil Procedure

Dean Thomas M. Mengler

Fall 2010

## I. Class Materials

Rowe, Sherry, and Tidmarsh, *Civil Procedure*, Foundation Press (2<sup>nd</sup> ed. 2008)

A. Benjamin Spencer, *Federal Civil Rules Supplement 2010-11* (West)

Supplementary Materials (handouts or Blackboard posts)

## II. Course Objectives

1. *Gain knowledge about the Federal Rules of Civil Procedure and constitutional and statutory provisions dealing with subject matter jurisdiction, personal jurisdiction, and venue.*

This course will introduce you to the most important procedural rules and constitutional and statutory provisions relating to the filing and litigation of a civil law suit in federal district court. As such, you will gain a basic understanding about how our civil, as opposed to criminal, justice system works in the United States, with a predominant focus on federal courts.

2. *Develop some core legal skills, including how to analyze and critically evaluate rules and statutory provisions, cases, ideas, arguments, and points of view.*

We will spend most of our time (a) reading and analyzing the language of rules and statutes; and (b) reading, interpreting and analyzing cases deciding legal issues raised by the rules and statutes. One of our goals, therefore, will be to learn how to parse carefully the words of a rule or statute. Another goal will be to learn how to read a case, to identify and evaluate the principal arguments of the parties, as well as to evaluate critically the judge's decision.

3. *Developing skill in expressing yourself orally and in writing as a lawyer.*

Civil Procedure will be one of many opportunities for you in the next three years to develop your skill in expressing yourself orally and in writing. From time to time, I will call on you; and I hope from time to time, you will volunteer your thoughts. Twice this semester, at the mid-term and final examinations, you will be asked to communicate in writing your understanding of civil procedure.

4. *Develop an ethical framework.*

Again, over the course of your three years at St. Thomas, you will have many opportunities to reflect and discuss ethical issues and the concept of professionalism. In Civil Procedure, you will be invited occasionally to reflect on how you can be both a successful and ethical litigator.

### **III. Class Attendance and Participation**

I expect you to attend class regularly. Please let me know (by e-mail) if you are unable to attend class, preferably prior to class. I also expect you to participate in class discussions. Please let me know, prior to class, if you are unprepared.

### **IV. Examinations**

The grade in this course will be based on an in-class Midterm Examination and an in-class Final Examination. The Final Examination will be administered in the Law Building during the regularly scheduled examination period. The Final Examination will be three hours. It will cover all material in the course.

The Midterm Examination will count for 25 percent of your final grade; the Final Examination will count for the remaining 75 percent.

Both the Midterm and the Final are limited open book examinations. You may bring to the examination all class materials, your notes, and any outline you have participated in creating.

### **V. Office Hours**

My office is on the fourth floor of the Law Building, in the Morrison Dean's Suite. My office number is 651-962-4886 and my e-mail is [tmmengler@stthomas.edu](mailto:tmmengler@stthomas.edu). I keep no regular office hours. The best way to schedule an appointment with me is to contact my assistant, LuAnn Hudson, at 651-962-4880 or [lhudson@stthomas.edu](mailto:lhudson@stthomas.edu).

### **VI. Disabilities**

Qualified students with documented disabilities who need classroom accommodations should make an appointment with the Enhancement Program-Disability Services office. Make an appointment by calling 651-962-6315 or stopping by Room 119, O'Shaughnessy Educational Center. For further information, see <http://www.stthomas.edu/enhancementprog/>.

**Civil Procedure**  
Dean Thomas M. Mengler

**Syllabus**  
Fall 2009

**Introduction**  
Casebook 1-28

**Part One: Forum Selection**

**A. JUDICIAL POWER OVER TYPE OF CASE: SUBJECT MATTER JURISDICTION**

1. *Federal Question Jurisdiction*  
28 U.S.C. § 1331  
Casebook 527-32
2. *Diversity Jurisdiction*  
28 U.S.C. § 1332(a) – (c)  
Casebook 549-63
3. *Perspectives on Subject Matter Jurisdiction*  
Casebook 519-27
4. *Supplemental Jurisdiction*  
28 U.S.C. § 1367  
Casebook 563-70
5. *Removal of a Case from State to Federal Court*  
28 U.S.C. §§ 1441, 1446, 1447  
Casebook 580-86

**B. JUDICIAL POWER OVER DEFENDANTS: PERSONAL JURISDICTION**  
Casebook 407-14

1. *Territoriality – The Initial Approach*  
Casebook 414-20
2. *Minimum Contacts*  
Casebook 434-53
3. *Notice and Service of Process*  
Federal Rule of Civil Procedure (FRCP) 4  
Casebook 497-506
4. *Personal Jurisdiction in Federal Court*  
Casebook 506-07

- C. VENUE**  
28 U.S.C. §§ 1391, 1404, 1406  
Casebook 507-11

## **Part Two: Process of Civil Litigation**

### **A. PLEADING**

1. *Historical Perspective*  
Casebook 29-34
2. *The Complaint – Stating a Claim*  
FRCP 7, 8(a), (d), (e), 9  
Casebook 34-45
3. *Ashcroft v. Iqbal*  
556 U.S. \_\_\_, 129  
S. Ct. 1937 (2009) (download from [www.law.cornell.edu/supct](http://www.law.cornell.edu/supct))
4. *Filing and Serving the Complaint*  
FRCP 4  
Casebook 58-67
5. *Ethical Limitations*  
FRCP 11  
Casebook 86-103
6. *Rule 12 Motions*  
FRCP 12  
Casebook 67-71
7. *The Answer*  
FRCP 8(b)-(e)  
Casebook 71-77
8. *Amending the Pleadings*  
FRCP 15  
Casebook 77-86

### **B. DISCOVERY**

1. *Introduction*  
Casebook 104-11
2. *Discovery Devices*  
FRCP 26  
Skim FRCP 27-37

Casebook 111-18

3. *Scope and Burden*  
FRCP 26(b)(2)  
Casebook 118-36
4. *Work Product*  
FRCP 26(b)(3)  
Casebook 136-48
5. *Experts and Privilege*  
FRCP 26(a)(2), (b)(4)  
Casebook 148-55
6. *Controlling Discovery and Sanctions*  
FRCP 26(c), (f)-(g), 37  
Casebook 155-74

**C. JOINDER**

Casebook 353-60

**Claim Joinder**

1. Plaintiff  
FRCP 8(d)(2) and 18  
Casebook 360-62
2. Defendant-Counter Claims  
FRCP 13  
Casebook 363-70

**Party Joinder**

3. *Permissive Joinder*  
FRCP 20  
Casebook 371-76
4. *Impleader*  
FRCP 14  
Casebook 376-82
5. *Cross-Claims*  
FRCP 13(g)  
Casebook 382-87
6. *Compulsory Joinder*  
FRCP 19  
Casebook 387-95

**D. PRE-TRIAL DISPOSITION – SUMMARY JUDGMENT**

FRCP 56

Casebook 257-72

**E. TRIAL AND ITS AFTERMATH**

1. *Pre-Trial Conference*

FRCP 16

Casebook 174-202

2. *Alternative Dispute Resolution*

Casebook 203-07, 215-226

3. *The Trial*

Casebook 229-32

4. *Judgment as a Matter of Law*

FRCP 50

Casebook 272-84

5. *New Trial Motion*

FRCP 59

Casebook 284-86

6. *Intersection of FRCP 50 and 59*

Casebook 286-93

**F. PRECLUSIVE EFFECT OF JUDGMENTS**

1. Casebook 315-25