

*Dated: January 7, 2022*

## **CIVIL PROCEDURE**

*Antonin Scalia Law School  
George Mason University  
Course No. 112-005  
CRN 19017  
Spring Term 2022*

**PROFESSOR DONALD J. KOCHAN**  
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### **Syllabus**

#### **COURSE SCHEDULE/MEETING TIMES/TYPE:**

Mondays & Thursdays  
6:05 pm – 8:05 pm

While this class meets in person, students may be informed of some class sessions proceeding remotely as necessary. Please be alert for these and any other messages on class scheduling and other concerns.

The final exam is scheduled for May 5 at 6:00 pm.

**OFFICE HOURS:** Although some weeks may differ, regular office hours will be presumptively be held from 4:30 pm – 5:30 pm and 8:15-9:00 pm on Mondays and Thursdays. Professor Kochan will announce additional or alternative office hours as appropriate. Moreover, students may contact Professor Kochan by email to request appointments for office hours, which may be conducted by Zoom.

#### **REQUIRED TEXTS:**

- RICHARD H. FIELD, BENJAMIN KAPLAN & KEVIN M. CLERMONT, MATERIALS FOR THE BASIC COURSE IN CIVIL PROCEDURE, 13<sup>th</sup> ed. (Foundation Press 2020) (“Textbook”)
- KEVIN M. CLERMONT, FEDERAL RULES OF CIVIL PROCEDURE AND SELECTED OTHER PROVISIONS 2021 (Foundation Press 2021) (“Rules Book”)
- Supplemental readings, required and non-required, will be available on the course TWEN page.

**COURSE OVERVIEW/DESCRIPTION:** This course is an introduction to the rules of civil procedure and their interpretation by courts—in other words, the procedures and rules governing the processes through which civil litigation proceeds in court. Our study will focus on federal courts and the federal rules, but it will give you a framework for understanding corresponding state rules of procedure. In a four credit course, it is not possible to cover all rules of procedure and related topics. In fact, it would not be possible to do so even in a longer course, as many of the rules cannot be appreciated and understood until confronted with them in practice. However, you will leave the course with a solid grounding in fundamentals of civil procedure and equipped with the tools to re-examine, on-the-ground later in practice, the relevant bedrock rules and their application. Because this is a rules-based course, it will feel different to you from other courses you have so far taken in law school, and it should. Consequently, you should also approach it differently. You will be expected to carefully examine all corresponding rules related to the relevant readings. You must work on understanding how to interpret rules-based or statutory language. Be aware of this fact. Embrace that this course is different. That simple step at the outset will better prepare you to tackle the material. There will be new skills to learn and new studying techniques to adopt that are not present in your other first year courses. And those skills will serve you far beyond the subject matter of this course.

#### **GOALS & LEARNING OUTCOMES:**

- Please read pages iii-vi of the assigned Textbook (a portion of the Class 1 Reading Assignment). The Textbook authors do an excellent job explaining key goals of the course and the ways that the Textbook structure (followed in this course) serves those goals. These include:

Understand “the fundamental and recurrent problems of litigative procedure as against particular procedural devices,” keeping “the larger picture . . . in view.”

“[T]urn out lawyers who will not approach a practice question as just an exercise in using the index to the practice act or the rule book, but who will go about the job with a lively awareness of the importance of farsighted procedural strategy, a sense of the total procedural resources of the law, and a feeling of personal responsibility for the fair and efficient running of procedural machinery.”

“[P]erceive the essence and ultimately the thematic coherence of the adversary system prevailing in U.S. courts.”

“[C]onvey an understanding of the constitutional and legal structure in which those courts operate.”

“[D]evelop a sense of the importance of any given procedural system in constructing the surrounding body of substantive law. Indeed, all U.S. civil procedure professors recognize that no one can begin to understand any legal system without a careful dissection of its procedural component.”

RICHARD H. FIELD, BENJAMIN KAPLAN & KEVIN M. CLERMONT, *MATERIALS FOR THE BASIC COURSE IN CIVIL PROCEDURE* iii-v (13<sup>th</sup> ed. 2020).

- Obtain a sophisticated understanding of the law of civil procedure, including the bedrock rules, their interpretation, their applications, and the underlying policies and theories supporting them. In particular, students will obtain a deep understanding of the Federal Rules of Civil Procedure (“FRCP”) and their interpretation and application.
- Understand the interplay and distinctions between procedure and substantive law, including the ways procedure impacts substance.
- Develop an ability to recognize and apply key procedural issues presented by a given set of facts. Develop skills at litigation planning and designing long-range, farsighted litigation strategy based on interconnected procedural stages and procedural rules.
- Gain an improved understanding of the federal court system, including its interrelationship with state law and state courts.
- An enhanced ability to read, understand, interpret, and evaluate text of rules and statutes in ways—including methods and tools of interpretation—that are transferable beyond the subject matter of the course.

**FINAL EXAM / BASIS OF EVALUATION & ASSESSMENTS:** Your grade will be based on a final exam, which may include a mix of essays, short answers, and multiple choice. Professor Kochan reserves the right, in extraordinary circumstances, to apply a single-increment adjustment up or down to your grade for outliers at either end of the spectrum of class participation. The exam will cover all materials assigned in the Textbook and Rules Book, all materials covered in class lectures, and any assigned supplemental material including handouts. The exam will be open book and open note. This means each student may use his/her Textbook and Rules Book, any assigned supplemental materials, any notes or outlines which that student prepared, and any group notes or outlines to which he/she made a *significant* contribution in preparation. No commercial outlines, treatises, or similar materials will be permitted for use during the examination

## **PARTICIPATION / COURSE RULES / STRUCTURE:**

- All students are expected to participate in class discussions. All students should consider themselves on call for all class sessions. Professor Kochan will use a modified Socratic method where students will be randomly selected to be called on in class to answer questions or engage in discussion on the materials; yet all students are encouraged to volunteer answers and to ask questions during the course of each class (using good judgment when to do so). A successful class session will have a broad mix of selected students and volunteer discussants.
  
- In the event of any remote participation or fully remote class sessions:
  - Cameras must remain on in Zoom throughout the duration of class.
  - Microphones should be muted when not speaking and students should minimize class disruption by re-muting themselves as soon as they are done speaking.
  - Please have your settings such that your full name shows.
  - You may use the chat function to request the floor or when requested to register a response to a professor question (such as a poll). Do not use the chat box to type questions, make commentary, or to interact with other students in side conversations.

**STUDENTS REQUIRED TO REGISTER FOR COURSE TWEN PAGE:** Before the first class, all students must register for the TWEN page for this class. All class-wide announcements and other communications will rely on the TWEN platform's list of TWEN-registered students and their email addresses associated with their TWEN account.

**SYLLABUS SUBJECT TO CHANGE.** Professor Kochan may deviate from the tentative syllabus for reasons including current events, scheduling, new cases, et cetera. Students will be notified of any changes and receive any other updates via TWEN.

**EMAIL COMMUNICATION:** Students are responsible for checking their email with regularity for class announcements, including regarding class instruction, adjustments to readings or class scheduling, and supplemental materials. Students must use their MasonLive email account to receive important University information, including communications related to this class. I will not respond to messages sent from or send messages to a non-Mason email address. As stated above, students must register for the TWEN page associated with this course, as that will be the platform for generating email distribution lists.

**ATTENDANCE:** Regular and punctual attendance are required to earn academic credit. Attendance requirements for academic credit will follow the policies set forth in Academic Regulation 4-1. Please note that this includes the following: “A student who is not present for at least 75 percent of a session of the course is absent from that session.” AR 4-1.1. In addition, Professor Kochan reserves the right to consider tardiness as an absence. In addition to tardiness of any length possibly resulting in an absence, any student arriving more than 10 minutes after the start of class is presumptively absent for the day’s class and will be logged absent, except and unless the student has pre-approval to be late or contacts Professor Kochan after class for an exception, which Professor Kochan may grant or deny at his discretion. Should circumstances occur where you anticipate the possibility of missing a substantial number of class sessions (e.g. a serious illness), you should immediately contact the Assistant Dean, Student Academic Affairs. Attendance will be tracked by a visual survey of the classroom, calling roll, or other appropriate means.

**CLASS RECORDINGS BY STUDENTS PROHIBITED:** Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by students by means of a recording device such as an audio recording device or camera. Any exceptions to this policy must be expressly permitted in writing.

**STANDING ZOOM LINK:** The following link has been established to be used for remote classes, including in the case of an emergency or last-minute switch to remote. Please record this in multiple places so that you are prepared to use it as necessary:  
<https://gmu.zoom.us/j/94454239476?pwd=RzBJdEpPVnorQXV2a2xPdHZSYklPQT09>

**WEATHER-RELATED CLOSURE AND DELAY CONTINGENCY PLANS:** The following are standing rules governing how we will handle these inclement weather delays or closures throughout the semester. These rules apply no matter what the generic University-wide announcement states.

- 1) You should not expect that a class will be cancelled for weather-related reasons. At the very least, we will proceed by Zoom if necessary.
- 2) In other words, if the law school closes its physical plant for weather, assume we will proceed by Zoom and watch your email for further instructions. If there is only a delayed opening, assume we will either proceed in person if the delay is minor or that we will proceed by Zoom and watch for further instructions. Delayed openings are less likely to affect this evening class.
- 3) If you ever learn of a school closure or delayed opening, please check your email immediately and regularly throughout the hours before class. On any day when an inclement weather announcement has been made to delay or close our physical campus, I will email you as soon as possible to advise on the plans for the day’s class. You are responsible for checking your email.
- 4) If we switch to Zoom, please plan to use the standing zoom link above. Students will be expected to participate live-on-Zoom for these sessions. If other extraordinary circumstances make that impossible, please let me know the extraordinary circumstances and I will consider allowing you to watch a recording of class.

**COVID INSTRUCTIONAL CONTINGENCY PLAN:** In the event that the administration requires this class to transition to a completely remote format, or if for any reason Professor Kochan is unable to teach any class sessions, Professor Kochan or the administration will inform the students as to the manner and type of instruction by which the class will be operated and any other relevant changes.

**COVID HEALTH & SAFETY REQUIREMENTS:** Please note that under current University health and safety protocols, face coverings and social distancing are required for all persons on campus. These rules must be followed in the classroom. Failure to follow such rules will result in removal from class. Please refer to the most up-to-date University policies [here](#).

**ACADEMIC INTEGRITY:** It is expected that students adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never provide or accept unauthorized assistance on any school related assignment. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

**CLASSROOM ACCOMMODATIONS:** Disability Services at George Mason University is committed to providing equitable access to learning opportunities for all students by upholding laws that ensure equal treatment of people with disabilities. If you are seeking accommodations for this class, please visit <http://ds.gmu.edu/> for detailed information about the Disabilities Registration Process. Faculty may not receive or respond to requests for an accommodation. All requests must be handled by the office of Disability Services. You may contact Disability Services directly via email at [ods@gmu.edu](mailto:ods@gmu.edu) or phone at (703) 993-2474. If you have any questions about how in-class or testing accommodations are implemented at the law school, please contact the Assistant Dean, Student Academic Affairs for more information.

**ADDITIONAL SCHOOL POLICIES AND RESOURCES:**

- **STUDENT HONOR CODE** - [Click Here](#)
- **ACADEMIC REGULATIONS** - [Click Here](#)
- **UNIVERSITY LIFE:** University Life provides student support resources such as **Counseling and Psychological Services** (<https://caps.gmu.edu/>), **Student Health Services** (<https://shs.gmu.edu/>), and the **Student Support and Advocacy Center** (<https://ssac.gmu.edu/>). For more information about University Life on the Arlington Campus, please visit: <https://ularlington.gmu.edu/>

## **COURSE ASSIGNMENTS/SCHEDULE:**

### ***IMPORTANT NOTICE – READ CAREFULLY:***

All pages referenced below are to the Textbook. Even though not expressly listed, you are also required to carefully read and understand all rules referenced in the assigned Textbook pages by reading and studying those referenced rules and their commentary in the Rules Book.

It is your responsibility to identify the relevant rules on which you should be prepared ahead of class by carefully looking for references to them in the assigned Textbook reading. To the extent you missed reading any rules ahead of class, you should take note of that oversight during class and be sure to read the relevant rules in detail after class.

Indeed, even if you read the rules in advance, it is wise to make time immediately after class to re-read all rules that were discussed during class, as you are likely to have a better appreciation for the text and interpretation of relevant rules immediately after a class discussion.

And, you will be best able to internalize that understanding and the lessons from the class if you re-read those rules shortly after we discuss them in class.

While the same is true for any assigned material (including cases and other material from the Textbook), it is especially true for the text of the rules.

### **Class 1, January 20**

Pages iii-ix

Pages 3-12 *Sibbach v. Wilson & Co.*

Pages 1233-1243 Pleading

### **Class 2, January 24**

Pages 13-38 *Sibbach v. Wilson & Co.* cont.; general lessons

Pages 39-43 Stating the Claim

### **Class 3, January 27**

Pages 43-72 Stating the Claim; Defenses and Objections; Replying to Defenses

### **Class 4, January 31**

Pages 73-87 Counterclaims; Amending the Pleadings

### **Class 5, February 3**

Pages 87-114 Disclosure and Discovery

### **Class 6, February 7**

Pages 114-117 Disclosure and Discovery; Review

Video to be played and dissected in class: <https://www.youtube.com/watch?v=c2Fje4GzmGg>

### **Class 7, February 10**

Pages 134-143 Pretrial Conferences

Pages 143-167 Terminating Litigation Without Trial

**Class 8, February 14**

Pages 167-178 Settlements

Pages 179-196 Trial

**Class 9, February 17**

Pages 197-223 Trial

**Class 10, February 21**

Pages 223-246 Trial and Judgment

**Class 11, February 24**

Pages 246-252 Appeal

Pages 253-258 Subject Matter Jurisdiction

**Class 12, February 28**

Pages 258-272 Subject Matter Jurisdiction

Pages 273-280 Forum Selection

**Class 13, March 3**

Pages 280-295 Multiple Parties and Multiple Claims

Pages 1079-1086 Intervention

**Class 14, March 7**

Handouts on the Economics of Civil Procedure (See TWEN)

**Class 15, March 10**

Pages 1747-1764 The Adversarial Process

SPRING RECESS

**Class 16, March 21**

Pages 367-381 Federal Courts, State Law, & *Erie*

**Class 17, March 24**

Pages 398-426 Federal Courts and State Law (cont.)

**Class 18, March 28**

Pages 426-448 Federal Courts and State Law (cont.)

**Class 19, March 31**

Pages 463-489 Territorial Authority to Adjudicate

**Class 20, April 4**

Pages 489-533 Personal Jurisdiction



**Class 21, April 7**

Pages 683-697 Subject Matter Jurisdiction

**Class 22, April 11**

Flexible Day

**Class 23, April 14**

Pages 755-782 Claim Preclusion

**Class 24, April 18**

Pages 803-817 Issue Preclusion

**Class 25, April 21**

Pages 881-895 Credit Due to Valid and Final Judgments

Pages 907-913 Validity versus Finality

**Class 26, April 25**

Flexible Day; Review Session