

Civil Procedure
Law 6212 – Section 13A
Fall 2023

SYLLABUS

- Professor: Jonathan R. Siegel
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Office Hours: Tuesdays and Wednesdays, 1:30 - 2:30 p.m.
- Class Schedule: Tuesdays, Wednesdays, and Fridays, 10:40 - 11:55 a.m. Classes will begin promptly at the appointed time.
- Required Texts:
1. Friedenthal, Miller, et al., CIVIL PROCEDURE (13th ed.)
 2. Friedenthal, Miller, et al., 2023-2024 CIVIL PROCEDURE SUPPLEMENT
 3. Supplementary Materials (available in the Records Office, on Canvas, or on my website)
- Assignments: An initial list of reading assignments is attached. You should read each assignment before the class in which the assigned material is discussed, think carefully about the reading, and be prepared to participate in class discussion. The assignment numbers correspond roughly but not exactly to class periods. At the end of each class, I usually announce the assignment for the next class. If at the end of any class we have made substantial progress on the last materials so far assigned and I make no announcement, read the next assignment. For the first class, read assignments 0 and 1 (that's "1", not "I").
- Requirements: The requirements for all students are: read the assignments in a timely fashion, attend class, participate in class discussion, and take the midterm and final exams. Grades will be based primarily on the exams, with class participation also considered. Students who are persistently and excessively absent will not receive a positive class participation adjustment and may receive a negative class participation adjustment or a grade of No Credit. Occasional, isolated absences do not directly affect a student's grade and students need not seek permission for such absences.
- Class Participation: Students will be called on at random during class. Volunteer participation is also encouraged. Students should be prepared to participate each day.
- Please participate in class discussion civilly and respectfully. The study of law involves controversial issues on which people have different opinions. Students of differing legal and political views should all feel welcome to participate. Students are free to disagree with me or with other students and to express that disagreement but should do so civilly and respectfully.

- Communication:** I frequently send messages relating to the course to students via Canvas and/or by email. This will likely occur before the first day of class. Students are responsible for checking Canvas and their official GW email account (the one with an address ending in @law.gwu.edu) daily throughout the term.
- Examinations:** The midterm and final exams will be open book. The exams may contain a mixture of essay and multiple choice questions. Further details will be provided in advance of the exams.
- Students are strongly encouraged to use computers to type their exam answers. Students who choose to handwrite their exam answers are cautioned that words that are not readily legible may be disregarded. Students who require an exception to this rule for a legitimate reason (e.g., disability) should discuss the matter with the University's Office of Disability Support Services (see below) and/or the Law School's Dean of Students Office well in advance of the exam. Please do not discuss this issue with me directly as doing so could interfere with the anonymity of the exam process.
- Names & Pronouns:** I generally use first names when calling on students. Before the first class, I will invite students to submit a form telling me the name they wish to be called and (optionally) their pronouns. If a student submits no preferred name, I will use the student's official, registered first name.
- Disabilities:** Students who may need an accommodation based on the potential impact of a disability should contact the Office of Disability Support Services (DSS) at 202-994-8250 (Rome Hall, Suite 102), to establish eligibility. Once a student is registered and deemed eligible for accommodation, the student should contact the Dean of Students Office at 202-994-8320 to coordinate reasonable accommodations (e.g., note-taking assistance, adaptive technologies, etc.).
- Learning Outcomes:** A student who completes this course should have knowledge and understanding of the American system of civil procedure. The student should understand the steps in a lawsuit, particularly including choice of forum (subject matter jurisdiction, personal jurisdiction, and venue), pleading, notice, joinder, choice of law, discovery, pre-trial motions (particularly the motions to dismiss for failure to state a claim upon which relief can be granted and for summary judgment), the right to jury trial, post-trial motions, appeal, and the preclusive effect of judgments. The student should understand the rules relating to these topics, the doctrines and policies that underlie the rules, and strategic considerations that arise when these topics come up in actual practice.

Devices: Students must make sure that their devices do not make noise that could interrupt the class. The “vibrate” setting is permitted. Devices that make noise on startup may not be started once class has begun. It is strongly recommended that students who plan to use a device to take notes in class set the device so that it makes no sound on startup.

Electronic devices may be used in class to take notes and to access the course materials. Students are advised that some studies suggest that taking notes by hand promotes better learning. Students who take notes on a device should not try to transcribe the class. *See* Susan Dynarski, *Laptops Are Great. But Not During a Lecture or a Meeting*, N.Y. Times, Nov. 22, 2017.

The use of electronic devices in class for purposes other than taking notes or accessing the course materials, such as playing games, accessing anything other than course materials (whether on the Internet or the device), or reading or sending messages, is distracting to other students and is therefore prohibited. Students who use devices in class must agree to this condition and are on their honor to comply with it.

The use of electronic means to transmit answers to students being asked questions during class is prohibited. Violation of this rule constitutes academic dishonesty.

Taping of classes: All classes will be taped by the Law School. Taping (or other recording) of classes by students is not permitted. The Law School tapes will be posted and available for all students. Students should bear in mind that whatever they say in class will be preserved on the tapes.

The purpose of class taping is to accommodate students who need to miss class because of an unavoidable conflict and to permit students to review classes. The availability of class tapes does not alter the duty to attend class. Watching class tapes does not by itself excuse failure to attend class.

Seating Chart: On the third day of class I will distribute a seating chart. Thereafter, students must sit in their assigned seats. Students who do not sit in their assigned seats may be deemed absent.

Distancing: The COVID-19 pandemic called our attention to the role of proximity in transmitting illness. If you are sick, please stay home and watch class on tape. If you do come in while sick, please maintain appropriate distancing. If you need to tell me that you are sick (regardless of what you are sick with), please do not walk up close to me to tell me. Email me or tell me from 6 feet away.

READING ASSIGNMENTS -- Part 1

Assignments are given by page number in the Casebook and by reference to the matter to be read in the Supplement.

Make sure you have the Thirteenth Edition of the casebook; earlier editions will not do. A used copy is fine. You will also need a copy of the Federal Rules of Civil Procedure and relevant statutes from Title 28 of the U.S. Code. The 2023-2024 Supplement to the Casebook is recommended for this purpose. If you wish to economize, you could get by with a different version of the rules and statutes, but you should realize that the differing page numbers and somewhat different content will cause some inconvenience to you, and there will be some reading assignments that you will be unable to complete. In any event, please do not decide that you will simply look up the rules and statutes online. That could work for class, but you will want the rules and statutes available in hard copy during the exams. Internet access is not permitted during the exams.

In general, when the assigned reading refers to a statute or a rule from the Federal Rules of Civil Procedure, you should also read that statute or rule. Usually, this is indicated in the assignments below, but you should do it even if it is not so indicated. When reading a statute or rule it is not necessary to read any “Comparative State Provisions” that are included in the Supplement unless they are specifically assigned.

Each assignment has an assignment number. Some assignments have multiple lettered subparts. Be sure to do the whole of an assignment that has multiple lettered subparts.

Further reading assignments will be distributed as the term progresses.

Abbreviations used below:

FMSH	Friedenthal, Miller, et al., CIVIL PROCEDURE (13th ed.)
Supp.	Friedenthal, et. al, 2023-2024 Civil Procedure Supplement
SM	Supplementary Materials
F.R.	Federal Rule(s) of Civil Procedure

I. The Civil Action -- An Overview

0. *Read this syllabus*, especially the initial pages that precede the reading assignments (including the top of this page). The syllabus contains course rules and requirements and other important information that students are responsible for knowing. Failure to comply with the course rules and requirements stated in the syllabus may result in grade penalties or a grade of No Credit.
1. *Overview; Jurisdiction*
FMSH 6-24 (first ¶)
FMSH 28 (last ¶) - 30. Read very carefully.
Supp.: Article III of the U.S. Constitution; 28 U.S.C. § 1332(a)
SM 1-6

2. *Jurisdiction; Pleading*
FMSH 31 - 36 (through end of note 4).
Supp.: F.R. 1-3, 4(a), 4(e); U.S. Const., amends. V, XIV § 1
SM 7-9
SM 15 (material preceding the *Vassilev* case)
Supp.: F.R. 7(a), 8(a)
SM 10-17
3. *Joinder; Discovery*
SM 18-20
Supp.: F.R. 13(a),(b),(g), 14(a)(1)-(5), 18, 20, 23(a)
FMSH 42-46
Supp.: F.R. 26(b)(1), 30(a)(1), 33(a)(1), 34(a), 35(a), 36(a)(1)

Summary Judgment; Trial

4. FMSH 46-49
Supp.: F.R. 56
FMSH 49-50 (material preceding the *Alexander* case)
FMSH 62 (heading d) - 68 (through end of note 3)
Supp.: F.R. 50, 51(a), (b); U.S. Constitution, Amendment VII

Appeal; Prior Adjudication

5. F.R. 52(a)
SM 21-24
FMSH 72 (last ¶) - 73
SM 25
FMSH 73-77
SM 26-27

II. Personal Jurisdiction

6. *The Traditional View and the Transition*
FMSH 79-94
7. *A. The Modern View*
FMSH 95-107

B. The Role of State Law
FMSH 107-113
Supp.: State long-arm statutes

8. *Applying the Modern View*
FMSH 113-134
9. *Applying the Modern View, Continued*
FMSH 134-161
10. *General Jurisdiction*
FMSH 161-174 (take note of *Perkins v. Benguet and Helicopteros*, cited within *Goodyear*)
SM 28-30
11. *Jurisdiction Based on Property*
FMSH 207 (heading I) -222 (Give careful attention to *Harris v. Balk*)
12. *A. Jurisdiction Based on Physical Presence*
FMSH 223-231

B. Jurisdiction Based on Consent
FMSH 194-199

C. Personal Jurisdiction in Federal Court
FMSH 231-234
F.R. 4(k)

D. How to Challenge a Court's Personal Jurisdiction
FMSH 234-236
F.R. 12(b), (g), (h)

III. Notice

13. *A. Constitutional Considerations*
SM 31; FMSH 239 (next-to-last ¶)-251

B. Statutes and Rules Regulating Notice
FMSH 251-265 (through end of heading e)
Supp.: F.R. 4

IV. Subject-Matter Jurisdiction

14. *Diversity Jurisdiction*
Review your notes on subject matter jurisdiction from the first week of class.
FMSH 297, 304-325, except skip section 5 (on collusive joinder) on 317-318
Supp.: U.S. Const., art. III, §§ 1, 2; 28 U.S.C. § 1332(a), (b), (c), (e)

15. *A. Federal Question Jurisdiction*
FMSH 326-335 (1st two ¶s)
Supp.: 28 U.S.C. § 1331, 1254, 1257

B. Pendant & Ancillary Jurisdiction
FMSH 353-363
F.R. 13(a), (b), (g), 14(a)(1), 18, 20

16. *A. Supplemental Jurisdiction*
Supp.: 28 U.S.C. § 1367
FMSH 363 (last ¶)-374 (1st ¶)

B. Removal Jurisdiction
Supp.: 28 U.S.C. §§ 1441(a), (b), (c); 1442(a); 1445; 1446(a), (b), 1447(c), (d)
FMSH 380-387

C. How to Challenge a Court's Subject Matter Jurisdiction
FMSH 387-393

V. Venue, Transfer, and Forum Non Conveniens

17. Supp: 28 U.S.C. § 1391 (pay particular attention to sections (b) and (c))
FMSH 404-410 (1st ¶)
Supp.: 28 U.S.C §§ 1404, 1406, 1631
SM 32
FMSH 415-417, 420-432

VI. Pleading

18. FMSH 603-628
Supp.: F.R. 7, 8; Former Federal Form 11 (in the “Appendix of Abrogated Forms”)
Supp.: ¶ 51 of the amended complaint in *Bell Atlantic v. Twombly*
19. FMSH 628-646, 663 (heading B) - 664 (end of heading 1), 678 (heading 4) - 684 (1st ¶)
Supp.: F.R. 8(b), 8(c), 11, 12(a), 12(b)
SM 33-40