

SYLLABUS
ADVANCED CIVIL PROCEDURE (LAWS 558)
Prof. Lisa Eichhorn

REQUIRED TEXTS

- R. Freer, *Civil Procedure* (5th ed. 2022).
- Joseph Glannon, *Civil Procedure: Examples & Explanations* (8th ed. 2018). [Ninth edition page numbers appear below in italics and brackets if they differ.]

COURSE POLICIES

1. Contact Information

My email address is eichhorn@law.sc.edu. If you have a quick question and want to talk face to face, feel free to find me at the end of class. For longer in-person discussions, my office hours are on **Tuesdays and Fridays from 10:30 to noon**, but you are welcome to email me to make appointments (to meet either in person or via Zoom or Teams) at other times. My office telephone is 803-576-6776. My office is 324, and you may leave things for me with any administrative assistant in the faculty corridor.

2. Course Structure

This is a one-semester, three-credit course. We will meet on Tuesdays, Thursdays, and Fridays from 9:10 to 10:10 a.m. in room 288.

3. Learning Outcomes & Assessments

This course is designed to help you improve your ability to research, read, understand, and synthesize procedural rules, statutes, and cases; to expose you to federal and SC procedural topics that receive only brief, or no, coverage in 1L Civil Procedure; to deepen your understanding of first-year Civil Procedure topics that arise very frequently in practice—particularly motions to dismiss and summary judgment; and to help you understand what makes for an effective procedural argument. Assessment will take the form of two quizzes and a final exam. (See next paragraph for details.)

4. Grade Calculation

Your final course grade will be based upon three components: two take-home quizzes—each counting 15%—and an open-book, in-school final exam counting 70%. Although the exam is open-book, you will need to be very familiar with the course material to finish the exam on time.

5. Attendance

I take attendance each day. If you miss more than four class meetings, you will need an attendance waiver from Dean Kuo to be eligible to sit for the exam. An additional Law School policy states that if you miss over 30% of our class meetings (i.e., 12 classes), Dean Kuo cannot grant you a waiver and you must instead petition a Law School faculty committee for permission

to take the final exam. If you miss a class, please view the Panopto recording and get notes from a classmate. Once you've done so, if you have questions about the missed class, please email me or come to my office hours to discuss them.

6. Disability Accommodation

If you need disability accommodations in class, please let me know asap so we can discuss your needs. In addition, please see the Registrar to document your disability. Documentation must be in place before the school can grant accommodations, including extra time on exams.

7. Class Participation

You are always encouraged to participate in class discussion, as long as you are respectful of your classmates. I often call on students in class to ensure that the discussion is not dominated by just a few voices (and to keep people awake).

8. TWEN

On our TWEN course website, you'll find the syllabus, course objectives, a topic outline, assigned readings that are not in your books, handouts from class, and some Bar Exam materials.

9. Generative AI

Please note that generative AI programs such as ChatGPT, Bard, etc., are still prone to hallucinating and are thus unreliable sources of legal information. Lexis+AI is more reliable but doesn't always cite you to the best authorities. Our quizzes and exam will contain specific instructions about whether you may use generative AI.

DAILY ASSIGNMENTS

Wed., 8/21: Introduction

- Go to our TWEN course page and read the Syllabus & Course Objectives posted there. Bring any questions about the course policies in the Syllabus to class.
- To refresh your memories of 1L Civ Pro, read Freer § 1.4.
- Locate any books, notes, outlines, etc. you retained from your 1L Civ Pro course.
- Take the ungraded, open-book Diagnostic Quiz, which is posted on TWEN under the "Assignments" tab. Study the answers and follow up as directed if necessary.

Thurs., 8/22 Researching Civ Pro Issues

- Use the "Researching Civil Procedure" handout to answer the questions on the "Research Homework" handout (both handouts on TWEN) and bring your answers to class.

Fri., 8/23: Personal Jurisdiction Basics: Review and Practice

- Skim Glannon ch. 1 and study Freer §§ 2.1 and 2.6 to 2.7.

Tues., 8/27: Continued Review of PJ Basics and *Mallory v. Norfolk Southern* (U.S. 2023)

- Read the 2023 Supreme Court opinion in *Mallory* (on TWEN).
- As you read *Mallory*, look at the "PA statutes at issue in *Mallory*" handout (on TWEN).

Thurs., 8/29: Personal Jurisdiction: Emerging Issue: Remote Workers & PJ

- Read *Crosson*, 2023 WL 2609048 (D.N.J. 2023) & *Simon*, 2023 WL 5985282 (E.D. Pa. 2023) (both on TWEN).

Fri., 8/30: Topics in Challenging Personal Jurisdiction

- Study Freer §§ 6.2 & 6.3 (but skip § 6.2.2 on *in rem* and *quasi-in-rem* jurisdiction). As you read Freer, study the provisions of FRCP 12 that he references.
- Study the chart on Glannon p. 53 [*9th edition p. 71*].
- Read *Light-N-Up*, 757 S.E.2d 732 (S.C. Ct. App. 2014), and S.C. Code Ann. §§ 15-35-920, -930, and -940 (all on TWEN)

Tues., 9/3: The Mechanics of Service of Process Under FRCP 4

- Read Glannon ch. 18 [*9th ed. ch. 19*]; as you read, study the provisions of FRCP 4 as they are referenced in the reading. Study hypos 1-3, 5, 6, 10, and 13-14 and Glannon's explanations.

Thurs., 9/5: Service of Process: SC's Rule 4

- Use SCRCP 4 (instead of the Massachusetts Rule 4) to answer Glannon's hypos 1-3, 5, 6, and 10 in ch. 18. As you do so, assume that Marvell brings his suit against Donne in SC state court. For "Massachusetts," substitute "South Carolina"; for "Hyannis," substitute "Pawley's Island"; for "Boston," substitute "Columbia."
- Read *Roberson*, 615 S.E.2d 112 (S.C. 2005) (on TWEN).

Fri., 9/6: Statutes of Limitation

- Read FRCP 3 and review 4(m).
- Read SCRCP 3; S.C. Code § 15-3-20; *Hooper*, 687 S.E.2d 29 (S.C. 2009); *Dean*, 468 S.E.2d 645 (S.C. 1996); & *Christian*, 589 S.E.2d 895 (Ga. Ct. App. 2004) (all on TWEN).

Tues., 9/10: Subject Matter Jurisdiction: Review and Practice

- Take the (ungraded) SM Jur. Checkup Quiz (on TWEN) and bring your answers to class. Feel free to consult (§§ 4.1-4.6) and Glannon (ch. 4 & 5) [*9th ed. 5 & 6*] as you do the quiz.

Thurs., 9/12: Navigating Statutes: Supplemental Jur. and Removal Review

- Do the first four questions on the Supplemental Jur. & Removal Checkup Quiz (on TWEN) and bring your answers to class. Feel free to consult Freer (§ 4.7) or Glannon (ch. 16) [*9th ed. ch. 17*], along with the supplemental jurisdiction statute (28 U.S.C. § 1367) as you work through the quiz.

Fri., 9/13: Supplemental Jur. & Removal Review, cont'd

- Do questions 6-10 on the Supplemental Jur. & Removal Checkup Quiz (on TWEN) and bring your answers to class. Feel free to consult the removal provisions (28 U.S.C. §§ 1441, 1446, & 1447) along with Glannon ch. 7 [*9th ed. ch. 8*] and Freer § 4.8 as you work through the quiz.

Tues., 9/17: Removal, cont'd

- **NOTE: I will make Quiz One available today. It's due Tues., 9/24, before class.**
- *Texas Brine Co. v. American Arb. Assoc.*, 955 F.3d 482 (5th Cir. 2020) (on TWEN).
- Arthur Hellman article on “snap removal” (on TWEN).

Thurs., 9/19: Federal Venue Statute & Transfer of Venue

- To review the basics of federal venue, read Glannon pp. 141-46 & 148-51 [*9th ed. pp. 157-62*].
- Read Freer § 5.5, but skip the “Multidistrict Litigation” subsection at the end.
- **NOTE:** Soon we'll use BloombergLaw to search for dockets in class. If you no longer have your Bloomberg password, go to www.bloomberglaw.com, then go to the link/icon that references law schools and then the link that says “Register for Free.” Use your school email address, and skip the part at the top that says “Authorization Code.” If you forget your logon, click on the “forgot” link.

Fri., 9/20: South Carolina Venue Issues

- Read the excerpt on venue from Prof. Flanagan's SC Civ Pro treatise (on TWEN). As you do so, study S.C. Code Ann. § 15-7-30, -50, and -120 (on TWEN).

Tues., 9/24: Online Resources

- **NOTE: Submit your quiz before class today.**
- Find the Local Civil Rules for our local federal district court by going to www.scd.uscourts.gov and clicking on the “Rules” tab. Consult Local Civil Rule 7.06 and make a note of the deadline for filing a response to an opponent's motion.
- Be sure that you can access the Bloomberg Law database at www.bloomberglaw.com. We will use it in class.

Thurs., 9/26: Declaratory Judgments and Injunctive Relief

- Read “Declaratory Judgments” document (from Richard L. Hasen, *Remedies: Examples & Explanations* (3d ed. 2013) (on TWEN)).
- Read “Intro to Injunctions” document (from Tabb & Janutis, *Remedies in a Nutshell* (4th ed. 2021)) (on TWEN).

Fri., 9/27: TROs and Preliminary Injunctions

- Read FRCP 65; focus on 65(a)-(c).
- Read *Real Truth*, 575 F.3d 342 (4th Cir. 2009) (on TWEN).
- Read Scott Moise's Scrivener column on p.i. and TRO motions (on TWEN).

Tues., 10/1: Motions to Dismiss for Failure to State a Claim

- Read Freer §§ 7.3.2 & 7.3.3.
- Read *Gee v. Pacheco*, 627 F.3d 1178 (10th Cir. 2010) (on TWEN).
- Compare FRCP 8(a)(2) and SCRCPC 8(a).

Thurs., 10/3: How to Draft a Motion to Dismiss

- Review the “Johnson 12(b)(6) series” (on TWEN) and be ready answer the questions on the “Johnson 12(b)(6) Questions” document (also on TWEN).

Fri., 10/4: Discovery Review & Practice

- Skim Glannon pp. 409-16 [*9th ed. 415-422*].
- Read *AVX v. Horry Land Co.* (on TWEN) and FRCP 26(b). I also posted a pdf of the privilege log from the case on TWEN, just FYI.

Tues., 10/8: Discovery: Expert Witnesses

- As you do the readings below, mark up FRCP 26(a)(2) and 26(b)(4).
- Read Glannon pp. 416-18 and study hypo 16 on p. 421 and its explanation on pp. 432-34 [*This info was cut from Glannon’s 9th edition, so see the pdf of it on TWEN.*].
- Read Freer §§ 8.2.1 and 8.3.4.

Thurs., 10/10: Discovery: Subpoenas

- Study FRCP 45 and answer questions posted on TWEN.
- Study hypo 11 in Glannon’s chapter 22 [*9th ed. ch. 23*] and his explanation of that hypo. The facts regarding the lawsuit against “Blue” are in hypo 8.
- Read and be ready to discuss *MWK Recruiting* (on TWEN).

Fri., 10/11: Summary Judgment Review – OPTIONAL

- Attendance at this class meeting is optional, but you ARE responsible for the concepts in the reading below, which are fair game on the exam.
- Read Glannon ch. 23 [*9th ed. ch. 24*] and refer to FRCP 56 as it is referenced in the chapter. Study hypos 1, 4, 9, 10, 13, and 14 (and Glannon’s explanations) in that chapter. Hypos 13 and 14 refer back to the facts of hypo 5.

Tues., 10/15: Summary Judgment Practice

- Review the readings listed for 10/10 above. Then spend no more than 30 minutes on the Multi-State Essay Exam question (on TWEN). Bring your written version to class. I may ask you to email me your answers at the end of class, but I will not grade them.

Thurs., 10/17 & Fri., 10/18: FALL BREAK – NO CLASS

Tues., 10/22: Getting to Settlement

- Read FRCP 41 and Freer § 7.4.
- Read “Hidden From the Public” article on secret settlements (on TWEN).
- Skim Local Civil Rule 5.03 and read 5.03(E). Then skim SCRCP 41.1 but read 41.1(c).

Thurs., 10/24: Jury Selection Issues

- Read Freer § 9.2.3.
- Read the majority opinion from *Foster v. Chatman* (on TWEN).
- Read the (short) Alison Frankel article on BLM & jury selection (on TWEN).

Fri., 10/25: Post-Trial Motions: Rules 50(b) & 59(a)

- Review FRCP 50(b) & 59(a).
- Skim Glannon pp. 515-23, which should be review. Then study pp. 525-26 carefully.

Tues., 10/29: Joinder Review

- Read Glannon pp. 253-58 [*9th ed. 263-68*], and study FRCP 13, 18, and 20 as you do so.
- Read Glannon pp. 271-75 [*9th ed. 281-85*], and study FRCP 14 as you do so.

Thurs., 10/31: Joinder -- Rules 19 & 24

- Read Glannon pp. 285-90 [*9th ed. 293-98*] and study FRCP 19 as you do so. Study hypos 1-3, and Glannon's explanations.
- Read FRCP 4(k)(1)(B).
- Read Glannon pp. 292-97 [*9th ed. 300-05*] and study FRCP 24 as you do so. Study hypos 7, 8, and 13.

Fri., 11/1: Interpleader

- **NOTE: I will make Quiz Two available today. It is due next Friday before class.**
- Read Freer § 13.2. As you do so, study FRCP 22 and 28 U.S.C. §§ 1335, 1397, and 2361.

Tues., 11/5: ELECTION DAY – NO CLASS

Thurs., 11/7: Class Actions -- Intro

- Read Freer §§ 13.3.1 to 13.3.4. As you read Freer, study FRCP 23(a)-(b).

Fri., 11/8: Class Actions – The Details

- **NOTE: Quiz Two is due before class today.**
- Read Freer §§ 13.3.5 to 13.3.7. As you read Freer, study FRCP 23(c)-(h).

Tues., 11/12: Class Actions & CAFA

- Read Freer §§ 13.3.8 to 13.3.9. As you read Freer, study 28 U.S.C. § 1332(d) and § 1453.

Thurs. 11/14: Review of Basic Preclusion Doctrines

- Read Glannon ch. 26 [*9th ed. ch. 27*]. Study questions 1-5 and 15 and Glannon's answers.
- Read Glannon ch. 28 [*9th ed. ch. 29*]. Study questions 1-3 and Glannon's answers.

Fri. 11/15: Fancy Preclusion – Nonmutual Collateral Estoppel

- Read Glannon ch. 29 [*9th ed. ch. 30*]. Study questions 1-6 and Glannon's answers.

Tues., 11/19: Appeals: Appellate Process and the Final Judgment Rule

- Read Freer §§ 14.1 to 14.4; as you read Freer, study 28 U.S.C. § 1291 and FRCP 54(b).

Thurs., 11/21: Appeals: Exceptions to F.J. Rule; Standards of Review (last class meeting)

- Read Freer §§ 14.5 to 14.7; as you do so, study 28 U.S.C. § 1292(a)-(b) and FRCP 23(f).

Fri., 11/22: Review (Optional)

Good luck on your exam! It's scheduled for Wed., Dec. 4th, at 9 a.m.