

**CIVIL PROCEDURE II
LAW 601 – SECTION 412 (EVENING)
SPRING 2017 – PROF. PETERS**

SYLLABUS (version 1 dated 12/01/16)

Note: This syllabus and the included schedule are subject to change with such notice as is practicable. Students should read this entire document carefully. Each enrolled student will be assumed to have read and understood its contents. Anyone with questions about the syllabus or the course should contact me (Prof. C.J. Peters).

Class Meetings:

Except as otherwise announced or indicated on the schedule, class will meet every Monday and Wednesday from 6:15 to 7:30 pm in AL 603. *Note that the assigned classroom may change early in the semester. Check posted classroom information for updates.*

Reaching the Instructor:

My office is AL 516. I will post regular weekly office hours at the beginning of the semester. My regular office hours are first-come, first-served and do not require an appointment; however, you may contact me to make an appointment if you choose. I will hold special office hours following the midterm and during the week before the final exam. I also am happy to meet with you at a mutually convenient time outside my posted hours, and you are welcome to drop in whenever you find me in my office.

My office phone number is 410-837-4509 and my e-mail is cpeters@ubalt.edu. My assistant, Laurie Schnitzer (AL 1008), can be reached at 410-837-4689 and lschnitzer@ubalt.edu.

Course Description:

This course covers those advanced topics necessary to a complete understanding of the civil litigation process including: personal jurisdiction and venue, federal subject-matter jurisdiction, the substantive law to be applied by the courts (the *Erie* Doctrine), complex litigation (including joinder of additional claims and parties and class actions) and former adjudication.

Course Materials:

The following texts are required for this course:

Casebook. The required casebook is Joseph W. Glannon, Andrew M. Perlman, & Peter Raven-Hansen, *Civil Procedure: A Coursebook* (2nd edition 2014) (“Glannon”), published by Aspen/Wolters Kluwer. You must use the 2nd (2014) edition of Glannon, not the earlier 1st (2011) edition.

Rules, statutes, etc. In addition to materials in the Glannon casebook, I will assign provisions of federal statutes, the Constitution, and the Federal Rules of Civil Procedure. Any Rules supplement to a civil procedure casebook published in 2013 or later should have the updated texts of these provisions. Pre-2013 supplements will have most but not all of the updated provisions; the updated text is readily available on the internet, and I will provide links on the TWEN site. You may obtain the assigned provisions by purchasing a supplement, for free on the internet, or by some combination of both methods; but you must read all the assigned provisions before class, and you must have their text readily available in class.

Course TWEN Website:

Use of the TWEN website is a required element of the course, so please sign up for the class on TWEN as soon as possible. Some required readings may be made available only on the TWEN site, and important notices will be distributed to the email address you have registered with Westlaw (so make sure that address is current).

Student Learning Outcomes:

This course is designed to generate and assess the following student learning outcomes:

Outcome 1: Students will demonstrate a working knowledge of the fundamental elements of the following procedural doctrines: federal subject-matter jurisdiction; choice of law in federal diversity cases; personal jurisdiction and related doctrines; joinder in federal court; and preclusion.

Outcome 2: Students will demonstrate competence in applying these procedural doctrines to analyze legal problems and make legal arguments.

Grading:

Subject to the attendance policy described below, your final grade in the course will be based on the following two components. See the schedule at the end of this syllabus for the anticipated date of each component.

Midterm (15/100 points). The midterm will be an in-class, open-book examination administered during a regularly scheduled class session. It will consist of a small number of essay or short-answer questions. You may use a laptop with the required exam software to write your answers. The midterm will be similar in format and style to the final exam and will be scored similarly, using blind grading. It will be designed to assess (and help you self-assess) your working knowledge of the doctrines covered prior to the midterm (Outcome 1) and your progress toward competence in applying these doctrines (Outcome 2).

Final exam (85/100 points). The final exam will be a three-hour, in-class, open-book examination consisting of essay questions, short-answer questions, or both. You may use a

laptop with the required exam software to write your answers. The final exam will be designed to assess your working knowledge of the doctrines covered in the course (Outcome 1) and your competence in applying these doctrines (Outcome 2).

After the final exam, I will aggregate the points earned by each student on the two graded course components to determine a point total (out of a possible 100 points). I then will use students' total scores to assign grades according to the School of Law's required first-year curve (which applies to Civil Procedure II).

Note that although the midterm and the final exam will focus primarily on subjects and materials we have discussed in class, you may be tested on anything in the assigned readings, including material we have not covered in class.

Course Expectations:

Each student enrolled in this course will be expected to fulfill the following minimum requirements:

- Enrollment in the course TWEN website (see above), using a current, valid email address, and regular monitoring of emails sent by the instructor via the TWEN website or otherwise.
- Regular and timely class attendance (see "Attendance" below).
- Conduct in the classroom and in other aspects of the course that is professional, polite, and respectful of classmates, instructors, and other participants (see in particular "Distractions in the Classroom" below).
- Timely completion of all course assignments.
- Preparation for class, including completion of the assigned readings prior to class. (The reading assignments for each class meeting appear in the schedule of assignments below, which may be modified as the semester progresses.)
- Participation in class when asked to do so (see "Class Format and Participation" below).
- Adherence to all applicable School of Law and University policies, including the Academic Integrity and Sexual Misconduct and Nondiscrimination policies (see below).

These, however, are the minimum expectations of students enrolled in the course. Students who excel in law school invariably do more than fulfill these minimum requirements. While there is no single formula for success, excellent students typically do most or all of the following:

- Spend at least 2-3 hours preparing for each hour of class time.
- Begin outlining the course relatively early in the semester.
- Discuss the course regularly with other students, e.g., in a study group.
- Meet with the instructor after the midterm to review their performance, and occasionally during the semester to discuss material or issues they do not fully understand.

- Occasionally volunteer relevant questions, answers, or comments at appropriate times in class.
- Devote substantial time to studying for the midterm and the final exam.

Attendance:

Pursuant to ABA and School of Law policy, each student will be allowed a maximum of five (5) absences during the semester. Any student who is absent from more than five classes will be withdrawn from the course and given a final grade of “WA” (withdrawn due to absences), which will require that student to retake the course. Reasons for absences are irrelevant, except as required by School of Law or University policy.

I will monitor attendance by means of a sign-in sheet circulated at the beginning of class each day. I reserve the right to count students who come in late as absent, although I typically will not exercise that right except in cases of egregious or repeated tardiness. Each student is responsible for keeping track of his or her own attendance record and for contacting me in case of questions or potential discrepancies.

Class Format and Participation:

I will use a “panel” system for calling on students in class. Before the first class, I will post a list of students who will be “on call” for each class session (typically 3-4 students per session). On-call students are expected to be prepared and ready to discuss that day’s assignment in class. Each student can expect to be on-call twice during the semester. A student who is absent or unprepared when on-call will be on-call during the next two class periods. Students may switch their on-call days with other students, provided I am notified of the switch by email no later than 24 hours before the start of the class session in question. Both students involved must send or be copied on the email.

In addition to the panel system, I frequently will solicit volunteer answers and (particularly when presenting hypotheticals) sometimes will allow the class several minutes to consider questions or discuss them in small groups before answering. And I encourage students to volunteer pertinent questions or comments at appropriate moments during class.

Computers in the Classroom and Note-taking:

Empirical research suggests that students benefit more from taking class notes the old-fashioned way – writing them by hand – than from typing them into a computer. (See this June 2014 article from *Scientific American* online: <http://www.scientificamerican.com/article/a-learning-secret-don-t-take-notes-with-a-laptop/>.) Computers present the obvious problem of distractions and the less obvious, but probably more serious, problem of “court reporter’s syndrome”: note-takers tend to “zone out” and simply record everything they hear without mentally processing it. Nonetheless, I am not taking the step of banning computers from the classroom. I want you to be able to access the online course materials in the classroom if you choose, rather than printing them out before class. And sometimes computers serve other useful classroom functions. But I do strongly suggest that you at least experiment with taking notes by hand this semester.

Distractions in the Classroom:

Please note and respect the following policies, and contact me if you have any questions or think you have a good reason for an exception:

- Any sound-emitting devices (e.g., cell phones) must be muted or switched off during class.
- Unless I specifically allow otherwise, you may not communicate telephonically or electronically with anyone else while class is in session.
- Please avoid any behavior that might distract a classmate, or for that matter the instructor. Common sense should be your guide here; it will be mine in enforcing the policy.

PowerPoints and Class Recordings:

Shortly before each class, I will post on the TWEN website any PowerPoint slides I intend to use that day. I also will make a Panopto audio/video recording of each class, which you will be able to access online. Please do not rely on the recordings, however, as the quality often is not good and the technology sometimes fails. If you would like to record a class by any other means, please ask my permission first; as a rule, I will allow it only in exceptional circumstances.

Class Cancellation:

If I must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at 410-837-4201. If the University is open, students should presume that classes are running on the normal schedule.

Exam Preparation:

Although effective exam-study techniques vary greatly by student, subject, and instructor, many civil-procedure students benefit from writing answers to practice questions and hypotheticals; doing so helps solidify your knowledge of the subject and provides much-needed practice in exam-style analysis. I will post several practice exam questions and model answers toward the end of the semester. The Glannon casebook contains many review questions, and additional questions can be found in many commercial study aids (see below).

Study Aids and Treatises:

I do not keep up with the many civil procedure study aids that are available, but I do have positive experience with Glannon, *Civil Procedure: Examples and Explanations* (Aspen), which is written by one of your casebook authors and is now in its sixth edition. *Examples and Explanations* walks you through the doctrine fairly clearly and provides many hypotheticals for practice in applying it.

A word of caution about study aids: do not rely on them. Often they get things wrong, and even more often they emphasize different things, or the same things in a very different way, than your professors do. Use them sparingly and with a grain of salt. In my experience, study aids tend to work best as a source of hypotheticals and practice questions rather than as a primary tool for learning a subject.

The field of federal civil procedure features not one, but two comprehensive and highly authoritative multi-volume treatises: *Moore's Federal Practice* (Matthew Bender) and *Wright & Miller's Federal Practice and Procedure* (Thompson/West). Sets of both treatises are available in the library (don't even think of buying a set; they consist of dozens of volumes and cost thousands of dollars for a full collection). *Moore's* and *Wright & Miller* are the places to go for a detailed overview of particular topics in federal procedure or for the answer to a specific procedural question. Hint: use the table of contents volume (at the beginning of the set) and the index volumes (at the end). The coverage of both treatises is similar, and the choice between them depends on availability and taste. (I've always preferred *Wright & Miller*.)

Academic Integrity:

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter (including attendance), and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at http://law.ubalt.edu/academics/policiesandprocedures/honor_code/.

Title IX Sexual Misconduct and Nondiscrimination Policy:

The University of Baltimore's Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees, and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation, and/or related experiences or incidents. Policies and procedures related to Title IX and UB's nondiscrimination policies can be found at <http://www.ubalt.edu/titleix>.

Disability Policy:

If you are a student with a documented disability who requires an academic accommodation, please contact Leslie Metzger, Director of Student Services, at 410-837-5623 or lmetzger@ubalt.edu.

Schedule of Assignments:

- Designations of chapters, sections, etc. refer to the Glannon casebook.
- The principal Rules, statutes, and constitutional provisions are listed below, but be sure to read all such provisions mentioned in the assigned reading. Some assigned provisions (as noted below) have been revised recently and will be out of date in pre-2013 supplements. Those provisions (and all others) are available online; a link will be provided on the TWEN site.
- Any other materials not included in Glannon are indicated with a “[T]” and can be downloaded from the TWEN course website under the relevant class number.

<u>Class/Date</u>	<u>Topics</u>	<u>Assignment</u>	<u>Principal Rules, Statutes, Etc.</u>	<u>Principal Cases & Materials</u>
<i>Class 1</i> MO 1/9	Introduction to the course Federal subject-matter jurisdiction: introduction; diversity jurisdiction	Ch. 1, § VI; Ch. 3, §§ I-II	U.S. Const., art. III, § 2, cl. 1 28 U.S.C. § 1332(a), (b), (c)(1)	<i>Gordon v. Steele</i> , 376 F. Supp. 575 (W.D. Pa. 1974)
<i>Class 2</i> WE 1/11	Federal subject-matter jurisdiction: diversity jurisdiction, cont.	Ch. 3, §§ III-IV		<i>Mas v. Perry</i> , 489 F.2d 1396 (5 th Cir. 1974) <i>Hertz Corp. v. Friend</i> , 130 S. Ct. 1181 (2010)
MO 1/16	No class today (MLK Day)			
<i>Class 3</i> WE 1/18	Federal subject-matter jurisdiction: diversity jurisdiction, concluded; federal-question jurisdiction	Ch. 3, §§ V-VIII; Ch. 4, §§ I-III	28 U.S.C. § 1331	<i>Diefenthal v. C.A.B.</i> , 681 F.2d 1039 (5 th Cir. 1982) <i>Louisville & Nashville R.R. Co. v. Mottley</i> , 211 U.S. 149 (1908)
<i>Class 4</i> MO 1/23	Federal subject-matter jurisdiction: federal-question jurisdiction, concluded; removal; review	Finish Ch. 4, § III if necessary Ch. 5, §§ I-II (skip <i>Avitts</i> case; begin again with note 7 on p. 131); §§ III-IV	28 U.S.C. §§ 1441, 1446-1448	<i>Note</i> that the removal provisions were amended substantially in 2013; pre-2013 supplements will not have the updated versions
<i>Class 5</i> WE 1/25	State law in federal courts: the <i>Erie</i> doctrine	Ch. 24, §§ I-II, VI		<i>Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab & Transfer Co.</i> , 276 U.S. 518 (1928) <i>Erie R.R. Co. v. Tompkins</i> , 304 U.S. 64 (1938)

<u>Class/ Date</u>	<u>Topics</u>	<u>Assignment</u>	<u>Principal Rules, Statutes, Etc.</u>	<u>Principal Cases & Materials</u>
Class 6 MO 1/30	State law in federal courts: applying the <i>Erie</i> doctrine	Ch. 25, §§ I-III		<i>Guaranty Trust Co. v. York</i> , 326 U.S. 99 (1945) <i>Byrd v. Blue Ridge Rural Electric Cooperative, Inc.</i> , 356 U.S. 525 (1958)
Class 7 WE 2/1	State law in federal courts: the <i>Erie</i> doctrine, concluded; review	Ch. 25, §§ IV, VI		<i>Hanna v. Plumer</i> , 380 U.S. 460 (1965)
Class 8 MO 2/6	Personal jurisdiction: introduction and historical background	Ch. 6, §§ I-II	U.S. Const., amend. V, federal Due Process Clause; amend. XIV, § 1, state Due Process Clause	<i>Pennoyer v. Neff</i> , 95 U.S. 714 (1878)
Class 9 WE 2/8	Personal jurisdiction: the modern “minimum contacts” approach	Ch. 6, §§ III-V		<i>International Shoe Co. v. Washington</i> , 326 U.S. 310 (1945)
Class 10 MO 2/13	Personal jurisdiction: minimum contacts and specific jurisdiction	Ch. 7, § I.A-C		<i>McGee v. International Life Insurance Co.</i> , 355 U.S. 220 (1957) <i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286 (1980)
Class 11 WE 2/15	Personal jurisdiction: minimum contacts and specific jurisdiction, cont.	Ch. 7, §§ II-IV		<i>Asahi Metal Industry Co. v. Superior Court</i> , 480 U.S. 102 (1987) <i>McIntyre Machinery, Ltd. v. Nicastro</i> , 131 S. Ct. 2780 (2011) [T]
Class 12 MO 2/20	Personal jurisdiction: minimum contacts and the Internet	Ch. 7, §§ V-VII		<i>Jackson v. The California Newspapers Partnership</i> , 406 F. Supp. 2d 893 (N.D. Ill. 2005)
Class 13 WE 2/22	Personal jurisdiction: minimum contacts and general jurisdiction; consent and waiver	Ch. 8, §§ I, V-VI		<i>Daimler AG v. Bauman</i> , 571 U.S. ___ (2014)
Class 14 MO 2/27	Other quasi-jurisdictional doctrines: long-arm statutes; venue provisions; transfers of venue; forum non conveniens Review of personal jurisdiction	Ch. 9, §§ I-II, IV-V; Ch. 11, §§ I-II; Ch. 12, §§ I, II.A, IV-V	FRCP 4(k) 28 U.S.C. §§1391, 1404, 1406	<i>Note</i> that 28 U.S.C. § 1391 was amended substantially in 2011; pre-2011 supplements will not have the updated version

<u>Class/ Date</u>	<u>Topics</u>	<u>Assignment</u>	<u>Principal Rules, Statutes, Etc.</u>	<u>Principal Cases & Materials</u>
Class 15 WE 3/1	Notice and service of process	Ch. 10, §§ I-III, V-VI	U.S. Const., amend. V, federal Due Process Clause; amend. XIV, § 1, state Due Process Clause FRCP 4 (skim)	<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306 (1950)
Class 16 MO 3/6	In-class midterm			
Class 17 WE 3/8	Joinder of claims and parties: introduction; Rule 18 “sweep-up” joinder of additional claims between existing parties; Rule 20 joinder of parties in the original action	Ch. 17, §§ I-III	FRCP 18, 20	<i>Hohlbein v. Heritage Mutual Insurance Co.</i> , 106 F.R.D. 73 (E.D. Wis. 1985)
Class 18 MO 3/13	Joinder of claims and parties: Rule 13 counterclaims and cross-claims	Ch. 17, §§ IV-V	FRCP 13	<i>King v. Blanton</i> , 735 S.E.2d 451 (N.C. App. 2012)
Class 19 WE 3/15	Joinder of claims and parties: Rule 14 impleader of third-party defendants	Ch. 17, §§ VI-VIII	FRCP 14	<i>Erkins v. Case Power & Equip. Co.</i> , 164 F.R.D. 31 (D.N.J. 1995)
3/20-3/26	Spring break			
Class 20 MO 3/27	Joinder of claims and parties: Rule 19 joinder of “necessary and indispensable” parties	Ch. 18, §§ I-II	FRCP 19	<i>Torrington Co. v. Yost</i> , 139 F.R.D. 91 (D.S.C. 1991)
Class 21 WE 3/29	Joinder of claims and parties: Rule 24 intervention; interpleader; brief introduction to class actions	Ch. 18, §§ III, IV (through note 8; do not read <i>Principal Life</i> materials), V; Ch. 19, § I	FRCP 24, 22, 23	<i>Grutter v. Bollinger</i> , 188 F.3d 394 (6 th Cir. 1999)
Class 22 MO 4/3	Joinder and supplemental federal subject-matter jurisdiction	Ch. 20, §§ I-II	U.S. Const., art. III, § 2 28 U.S.C. § 1367(a), (c), (d), (e)	<i>United Mine Workers v. Gibbs</i> , 383 U.S. 715 (1966)

<u>Class/ Date</u>	<u>Topics</u>	<u>Assignment</u>	<u>Principal Rules, Statutes, Etc.</u>	<u>Principal Cases & Materials</u>
<i>Class 23</i> WE 4/5	Joinder and supplemental federal subject-matter jurisdiction, cont.	Ch. 20, §§ III-IV	28 U.S.C. § 1367(b)	<i>Owen Equipment & Erection Co. v. Kroger</i> , 437 U.S. 365 (1978)
<i>Class 24</i> MO 4/10	Effect of judgments: claim preclusion	Ch. 33, §§ I-II		<i>River Park, Inc. v. City of Highland Park</i> , 703 N.E.2d 883 (Ill. 1998)
<i>Class 25</i> WE 4/12	Review of joinder and supplemental SMJ	Problem set (to be posted on TWEN)		
<i>Class 26</i> MO 4/17	Effect of judgments: claim preclusion, cont.; intro. to issue preclusion	Ch. 33, §§ III, VI; Ch. 34, §§ I-II, III (to top of p. 1245); skip <i>Panniel</i> case; after <i>Panniel</i> , read part A, notes 2, 4; part B, notes 2-5; part C, note 2; part E)		<i>Felger v. Nichols</i> , 370 A.2d 141 (Md. 1977) <i>Cambria v. Jeffery</i> , 29 N.E.2d 555 (Mass. 1940)
<i>Class 27</i> WE 4/19	Effect of judgments: issue preclusion, cont.; non-mutual issue preclusion	Finish Class 26 assignment if necessary Ch. 34, §§ IV, VI		<i>Parklane Hosiery Co., Inc. v. Shore</i> , 439 U.S. 322 (1979)
<i>Class 28</i> MO 4/24	Effect of judgments: non-mutual issue preclusion, cont. Review of preclusion	Finish Class 27 assignment if necessary		
Optional online Q&A review sessions Dates & times TBD				
Final exam Date & time TBD				