

**CIVIL PROCEDURE II  
LAW 601 – SECTION 331  
SPRING 2015 – PROF. PETERS**

**SYLLABUS (version 1 dated 12/02/14)**

*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 Tuesday and Thursday from 9:00 to 10:15 a.m. in AL 803.

**Class attendance policy.** 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 assessed a full one-grade reduction in his or her final grade in the course (e.g., from a B+ to a C+). In addition, it is my policy that any student who is absent from more than seven (7) classes will be withdrawn from the course and given a final grade of “WA” (withdrawn due to absences), which will require that student to retake the course.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.

**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 will be made available only on the TWEN site, and important notices will be distributed to the e-mail address you have registered with Westlaw (so make sure that address is current).

**Required texts.**

*Casebook.* The required casebook is Joseph W. Glannon, Andrew M. Perlman, & Peter Raven-Hansen, *Civil Procedure: A Coursebook* (“Glannon”), published by Aspen/Wolters Kluwer. There are now two editions of the casebook: the first edition (“E1”), published in 2011, and the second edition (“E2”), published in 2014. You may use either edition for the Spring 2015 semester of this course. (In subsequent semesters I am likely to assign only the second edition.) Most assignments in the schedule at the end of this syllabus apply to both editions, with little or no substantive difference between them. Occasionally I have assigned material from E2 that is not available in E1; in those instances I will make the assigned material available on the TWEN website.

*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.

*Schedule and exam coverage.* The reading assignments for each class meeting appear in the schedule of assignments below, which may be modified as the semester progresses. Although the final exam will focus primarily on subjects and materials we have discussed in class, you may be tested on everything in the assigned readings, including material we have not covered in class.

**Class format and participation.** This semester 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 5-6 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 e-mail no later than 24 hours before the start of the class session in question. Both students involved must send or be copied on the e-mail.

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.** Immediately before each class, I will post on the TWEN website any PowerPoint slides I intend to use that day. I also will make an 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.

**Reaching the instructor.** My office is AL 516. I will post regular weekly office hours at the beginning of the semester. Office hours are first-come, first-served and do not require an appointment. 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](mailto:cpeters@ubalt.edu). My assistant, Laurie Schnitzer (AL 1112), can be reached at 410-837-4689 and [lschnitzer@ubalt.edu](mailto:lschnitzer@ubalt.edu).

**Grading.** Subject to the attendance policy described above, your final grade in the course will be based on the following components:

- *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.
- *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.

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

**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 very heavily. 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*.)

## Schedule of assignments.

- Designations of chapters, sections, etc. refer to both editions of the Glannon case-book unless otherwise noted. Where necessary, the first edition of Glannon is designated as “E1” and the second edition as “E2.” Assigned readings from E2 that are not available in E1 will be posted on the TWEN website, on the Course Materials page, under the relevant class number.
- 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>Date</u>	<u>Topics</u>	<u>Assignment</u>	<u>Principal Rules, Statutes, Etc.</u>	<u>Principal Cases &amp; Materials</u>
<i>Class 1</i> TU 1/13	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> TH 1/15	Federal subject-matter jurisdiction: diversity jurisdiction, cont.	Ch. 3, §§ III-IV		<i>Mas v. Perry</i> , 489 F.2d 1396 (5 <sup>th</sup> Cir. 1974) <i>Hertz Corp. v. Friend</i> , 130 S. Ct. 1181 (2010)
<i>Class 3</i> TU 1/20	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 <sup>th</sup> Cir. 1982) <i>Louisville &amp; Nashville R.R. Co. v. Mottley</i> , 211 U.S. 149 (1908)
<i>Class 4</i> TH 1/22	Federal subject-matter jurisdiction: federal-question jurisdiction, concluded; removal; review	Finish Ch. 4, § III if necessary Ch. 5, §§ I-II (up to <i>Avitts</i> case; do not read <i>Avitts</i> ) E2: Ch. 5, §§ III-IV (will be posted on TWEN for E1 users)	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> TU 1/27	State law in federal courts: the <i>Erie</i> doctrine	Ch. 24, §§ I-II, VI		<i>Black &amp; White Taxicab &amp; Transfer Co. v. Brown &amp; Yellow Taxicab &amp; Transfer Co.</i> , 276 U.S. 518 (1928) <i>Erie R.R. Co. v. Tompkins</i> , 304 U.S. 64 (1938)

<u>Date</u>	<u>Topics</u>	<u>Assignment</u>	<u>Principal Rules, Statutes, Etc.</u>	<u>Principal Cases &amp; Materials</u>
<i>Class 6</i> TH 1/29	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)
<i>Class 7</i> TU 2/3	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)
<i>Class 8</i> TH 2/5	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)
<i>Class 9</i> TU 2.10	Personal jurisdiction: the modern “minimum contacts” approach	Ch. 6, §§ III-V		<i>International Shoe Co. v. Washington</i> , 326 U.S. 310 (1945)
<i>Class 10</i> TH 2/12	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)
<i>Class 11</i> TU 2/17	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]
<i>Class 12</i> TH 9/19	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)
<i>Class 13</i> TU 2/24	Personal jurisdiction: minimum contacts and general jurisdiction; consent and waiver	E2: Ch. 8, §§ I, V-VI (will be posted on TWEN for E1 users)		<i>Daimler AG v. Bauman</i> , 571 U.S. ___ (2014)

<u>Date</u>	<u>Topics</u>	<u>Assignment</u>	<u>Principal Rules, Statutes, Etc.</u>	<u>Principal Cases &amp; Materials</u>
<i>Class 14</i> TH 2/26	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; E2: Ch. 11, §§ I-II (will be posted on TWEN for E1 users) 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
<i>Class 15</i> TU 3/3	<b>In-class midterm</b>			
<i>Class 16</i> TH 3/5	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 &amp; Trust Co.</i> , 339 U.S. 306 (1950)
<i>Class 17</i> TU 3/10	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 591-607	FRCP 18, 20	<i>Hohlbein v. Heritage Mutual Insurance Co.</i> , 106 F.R.D. 73 (E.D. Wis. 1985)
<i>Class 18</i> TH 3/12	Joinder of claims and parties: Rule 13 counterclaims and cross-claims	E2: Ch. 17, § IV (will be posted on TWEN for E1 users) Ch. 17, § V	FRCP 13	<i>King v. Blanton</i> , 735 S.E.2d 451 (N.C. App. 2012)
3/16-3/20	<b>Spring break</b>			
<i>Class 19</i> TU 3/24	Joinder of claims and parties: Rule 14 impleader of third-party defendants	Ch. 17, §§ VI-VIII (note that § VIII is mislabeled as § VII in E1)	FRCP 14	<i>Erkins v. Case Power &amp; Equip. Co.</i> , 164 F.R.D. 31 (D.N.J. 1995)
<i>Class 20</i> TH 3/26	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)

<u>Date</u>	<u>Topics</u>	<u>Assignment</u>	<u>Principal Rules, Statutes, Etc.</u>	<u>Principal Cases &amp; Materials</u>
Class 21 TU 3/31	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 <sup>th</sup> Cir. 1999)
Class 22 TH 4/2	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)
Class 23 TU 4/7	Joinder and supplemental federal subject-matter jurisdiction, cont.	Ch. 20, §§ III-IV	28 U.S.C. § 1367(b)	<i>Owen Equipment &amp; Erection Co. v. Kroger</i> , 437 U.S. 365 (1978)
Class 24 TH 4/9	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)
Class 25 TU 4/14	Review of joinder and supplemental SMJ	Problem set (to be posted on TWEN)		
Class 26 TH 4/16	Effect of judgments: claim preclusion, cont.; intro. to issue preclusion	Ch. 33, §§ III, VI; Ch. 34, §§ I-II, III (to bottom p. 1224 [E1]/top of p. 1245 [E2]; 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)
Class 27 TU 4/21	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)
Class 28 TH 4/23	Effect of judgments: non-mutual issue preclusion, cont. Review of preclusion	Finish Class 27 assignment if necessary		
TBD	<b>Final exam</b>			