

Professor Ira Steven Nathenson
St. Thomas University School of Law
Civil Procedure I, Fall 2015
Section 1 (Law 600-01)
Section 2 (Law 600-02)

Email: inathenson@stu.edu
Phone: 305-474-2454
Homepage: <http://www.nathenson.org/>
Course website: <http://www.nathenson.org/courses/civpro/>
Class time Sect. 1: Mon. & Wed. 11:00AM–12:15PM, room A-112
Class time Sect. 2: Mon. & Wed. 2:00PM–3:15PM, room 104
Office hours: Mon. & Wed. 5:30–7:30PM, Tues. 4:30–6:30PM, and by appointment.

SYLLABUS

Read this syllabus carefully, before the first class, to understand the course requirements. For your initial assignments, go to the [Civil Procedure Assignments page](#). Be well-prepared to discuss the first assignment on August 17 so that we hit the ground running.

ABOUT CIVIL PROCEDURE

In this year-long course, we will study the procedures, principles, and rules that courts in the United States use to resolve civil disputes (not criminal cases). We will focus primarily on federal courts, examining the Federal Rules of Civil Procedure (the “FRCP”), Title 28 of the United States Code (the “Judicial Code”), the United States Constitution, and Supreme Court opinions construing them. Beyond learning procedural law, we will examine strategic, ethical, professional, and economic considerations pertinent to United States civil litigation.

COURSE WEBSITE AND INITIAL ASSIGNMENTS

Assignments and course-related materials are posted to the course website at [Nathenson.org](#). This site contains more than just the syllabus and assignment, and also offers extensive [Civil Procedure study resources](#) including [handouts](#), [problem sets](#), [flowcharts](#), [study questions](#), [past essay exams](#), [practice essays](#), and much more. (See links for examples.) I also run a [YouTube channel with Civil Procedure videos](#). From time to time, course-related announcements will also be sent to your official St. Thomas Law email account, so check your email regularly. Here are the most important links for the course:

- Homepage: <http://www.nathenson.org/>
- Course website: <http://www.nathenson.org/courses/civpro/>
- Syllabus: <http://www.nathenson.org/courses/civpro/cp-i-syllabus/>
- Assignments: <http://www.nathenson.org/courses/civpro/assignments/>
- Study resources: <http://www.nathenson.org/courses/civpro/resources/>
- YouTube channel: <https://www.youtube.com/user/irastevennathenson>

BOOKS

It is essential that you obtain the current editions of the books listed below. Civil Procedure is changing constantly, and older materials differ not just in content, but will also contain outdated law. Always bring both required books to class.

1. **CASEBOOK (required).** *CIVIL PROCEDURE: A COURSEBOOK* (SECOND EDITION), BY JOSEPH W. GLANNON, ANDREW M. PERLMAN, AND PETER RAVEN-HANSEN (2d ed. 2014). Do not purchase the first edition.
2. **RULES SUPPLEMENT (required).** *CIVIL PROCEDURE: RULES, STATUTES, AND OTHER MATERIALS, 2015*, BY JOSEPH W. GLANNON, ANDREW M. PERLMAN, AND PETER RAVEN-HANSEN (2015). Do not purchase previous editions, which may contain outdated rules or statutes.
3. **HORNBOOKS/PROBLEMS BOOKS (recommended).** JOSEPH W. GLANNON, *CIVIL PROCEDURE: EXAMPLES & EXPLANATIONS* (7th ed. 2013). Aspen is offering a package deal by which you can buy Glannon’s *Examples & Explanations* book along with his *Glannon Guide to Civil Procedure*. Check with the bookstore for details.

LEARNING OUTCOMES, METHODOLOGIES, AND ASSESSMENT

Outcomes and methodologies

Learning outcomes refers to skills, concepts, and other matters I want you to learn in our year-long course. *Learning methodologies* are the techniques we will use to learn these matters.

Learning Outcomes (the goal)	Learning Methodologies (the means)
<i>Civil Procedure law and concepts:</i> Examples from the Fall semester include subject-matter jurisdiction, personal jurisdiction, venue, notice, pleadings, and more. Examples from the Spring include pleadings, joinder and supplemental jurisdiction, discovery, dispositive motions, trial, <i>Erie</i> doctrine, preclusion, and appeals. See assignments for more examples.	Reading, briefing, marking up, and discussing cases, rules, statutes and provisions of the Constitution, study questions, problem sets with explanations, and handouts such as tables and flowcharts.
<i>Reading rules and statutes:</i> Developing skills of reading, marking up, interpreting, and applying statutory materials such as the Federal Rules of Civil Procedure and the United States Code.	Handouts and exercises requiring students to mark up rules and statutes, and to identify components of these materials, such as textual structure, logical connectors, levels of discretion, and more; classroom discussion; problem sets and explanations. See also “ Basics of reading and marking up statutes and rules ” below.

<i>Briefing and reciting:</i> Skills attendant to reading and reciting Civil Procedure cases.	In-class recitation and discussion. See also “ Basics of case recitation ” below.
<i>Multiple choice skills:</i> Developing proficiency in multiple-choice assessment.	ALI sessions, online problem sets at Nathenson.org, quizzes, examinations.
<i>Essay skills:</i> Mastery of written legal analysis in expanded IRAC format.	Online practice essay questions, in-class “how to do an essay” session, handout on writing essays, essay examinations.
<i>Understanding of U.S. court system:</i> Conceptual and practical understanding of the complexities of the U.S. court system, which has horizontal (fifty state systems) and vertical (dual federal and state systems) components. This understanding should go beyond understanding the systems’ complexities to a readiness to utilize that knowledge in legal practice.	Cases and statutes involving subject-matter jurisdiction, exclusive jurisdiction, removal jurisdiction, personal jurisdiction, venue, transfer, and dismissal, and in the Spring, the <i>Erie</i> doctrine.
<i>Concepts of procedural Constitutional Law:</i> Constitutional concepts such as Article III jurisdiction, Due Process, federalism, Full Faith and Credit, and more.	Readings from the Constitution and cases construing the Constitution, along with in-class discussion, problem sets, and study questions. We also do a “PJ Big Picture Day” to review a long series of jurisdiction cases.
<i>Understanding of procedural justice:</i> Identifying policies underlying procedural law, such as economy, efficiency, transparency, legitimacy, and participation, and using those policies to understand the law and to make legal arguments.	Discussion aimed at understanding <i>why</i> procedural law is created, and <i>how</i> judicial decisions are shaped by choices made between often-competing principles of procedural justice. This is the “why things are the way they are” consideration.
<i>Basics of jurisprudence:</i> Understanding basic principles of law and judging, such as the differences between rules and standards, formalism versus realism, standards of review, and more.	Handouts, class discussion.

Assessment

Finally, *assessment* refers to the ways you will receive *feedback* to help you determine your level of success and to course-correct for improvement. Grading is only one form of assessment.

- *Formal assessment* is feedback for which you receive a score or grade, along with other comments and suggestions from the instructor.
- *Informal assessment* includes feedback that is unscored, such as class recitation, active learning exercises, ALI sessions, and meetings with the instructor during office hours.
- *Formative assessment* occurs while the class or topic is still being studied.

- *Summative assessment* occurs at the end of a course or end of a section.

As you review the chart below, think about how some forms of assessment are *both* summative and formative. Also consider the fact that assessment comes from many sources, including the instructor, class discussions, ALI sessions, self-assessment, and more.

	Formative	Summative
Formal	Quizzes, mid-semester essays, end-of-semester examination, and review of results from these types of assessment, because they guide you on how to improve for later tests.	Quizzes, mid-semester essays, end-of-semester examination because they are used as parts of computing a course grade.
Informal	Class recitation, ALI sessions, active learning, problem sets, practice essays, and more because they allow you to assess your performance while studies continue. <i>Therefore, informal formative assessment is often the most important type of assessment.</i>	Redoing practice essays and problem sets after each section of a course is complete; working on outlining, meeting with professor.

GRADING

Quizzes and during-semester essay exams. There will be a number of quizzes and essay examinations during the semester. Quizzes may or may not be announced in advance; essays will be announced in advance.

End-of-semester exam. There will also be a closed-book final examination administered on an anonymous basis at the conclusion of the semester. It will consist of multiple-choice, short-answer, and one or more essay questions. I will provide you with relevant provisions of the Federal Rules of Civil Procedure and other materials for use during the examination. Laptops will be permitted for answering essay questions, subject to law school policy as detailed in the Student Handbook.

Comprehensive Spring exam. St. Thomas University School of Law administers comprehensive final examinations for its Spring semester first-year courses. This means that the Spring final examination will include materials from both the Fall and Spring semesters.

DAY-TO-DAY PREPARATION AND RECITATION

In general. Each student should be well prepared for class discussion each day:

- **Professional and respectful discussion.** Class is a quiet place for focus and respectful discussion. Lawyers persuade for a living. So speak up when you ask questions or you are called on. After all, you cannot persuade if you cannot be heard. Similarly, unless you are called on or are volunteering, do not talk. It's distracting and disrespectful to the group. Finally, during recitation, questioning, and discussions, be respectful of others. We're free to disagree and to disagree with passion. Again, that's what lawyers do. [But as the oath for the Florida Bar recognizes, we're not free to treat others without respect, civility, or dignity.](#) So please don't make me [invoke FRCP 12\(f\)](#) and ask you to leave or mark you absent.
- **Doing the work.** Being prepared includes *carefully reading* the assigned materials more than once, *marking up* cases and rules or statutes, *briefing* assigned cases, and *looking up* unfamiliar words in a dictionary (legal or otherwise).
 - *Bring your books.* Bring your Casebook and Rules Supplement to class every day.
 - *Read and mark up the rules and statutes.* Reading and briefing the cases in the Glannon Casebook is not enough. If you have not carefully read and [marked up](#) the assigned rules, statutes, or constitutional provisions in your Rules Supplement, you are not prepared.
 - *Don't know it? Look it up.* For unfamiliar legal terms, an online legal dictionary is available at <http://dictionary.law.com>. *Black's Law Dictionary* is also highly recommended.
 - *Keep tabs on confusion.* For things that you find to be confusing, write up a list of questions before class. Some of your questions will likely be answered during class. For other questions, raise them in class or in office hours. You should do the same thing after class.
 - *How much is enough?* If you do not know if you are preparing enough, a good rule of thumb is that you should spend *at least* twice as much time preparing before class as you spend in class. In other words, for a 75-minute class, you should prepare an absolute minimum of two and a half hours. Difficult or longer assignments will take longer.
 - *Reading ahead.* Some students like to read ahead, which is a good way of organizing your time. However, even if you have read ahead, you still need to re-review assigned materials immediately prior to class. It is no excuse to say "I read this a week ago but forgot what I read."

- *Day-to-day overlap.* If we do not finish the materials assigned for a particular day, you must re-review those materials again for the next class. Additionally, even if we do not complete discussion of an assignment in class, you must still read any new materials assigned for the next class. We are not “behind” until I tell you so expressly.
- *Passes.* One time per semester, if you are unprepared, you may tell me before class begins and I will not call on you. However, if you do not tell me in advance, and I call on you and determine in my sole discretion that you are unprepared, you may be marked as absent. If this happens more than once, your final grade may be lowered.

Basics of reading and marking up statutes and rules. We will discuss in class, at length, how to read and mark up dense statutory materials such as rules and statutes. For a peek ahead, see this [handout](#). For now, suffice it to say that when statutes or federal rules are assigned, you must read them carefully and slowly. Read them multiple times. Every word and punctuation mark is important. Determine the structure of the text, the importance of words of logic (such as OR or AND) and words of discretion (such as MAY or MUST). Mark up rules and statutes to help you understand them. Oftentimes we will spend more time discussing rules and statutes than we might spend on the cases. Many of our in-class hypotheticals will be based on the rules and statutes. So please be prepared. If I walk around the room and see that you have not marked up your statutes or rules, I will know that you are not prepared.

Basics of case recitation. Early in the semester, we will spend time discussing briefing and how to recite a case. As a starting point for the first week, you should be able to answer the following basic questions when called upon to discuss any assigned case:

- *Court.* That's the decision-maker writing the opinion, and any decisions below. In what trial court was this case filed? State or federal? What was the disposition of that court? If there were one or more appeals, to which courts? What did any appellate courts decide?
- *Litigants.* Who are the plaintiffs and defendants in the trial court? On appeal, who are the appellants/appellees or petitioners/respondents? Keep in mind that an appellant or petitioner might be a plaintiff *or* a defendant, so pay close attention to who is who.
- *Material facts and procedural history.* What are the material historical facts of this case? What happened to cause the suit? What is the procedural history (such as where filed, removed, transferred, any motions, and what any lower courts did)?
- *Issues.* What are the *substantive* legal issues such as property, tort, or contract? What are the *procedural* issues? We'll primarily focus on the procedural issues, but often the substantive issues will affect the procedural issues, and vice-versa.
- *Arguments.* What are the arguments that each side makes?
- *The court's analysis/rationale.* How does the court analyze the case? Can you spot the *issue*, *rule*, *analysis*, and *conclusion*? What law does the court use, interpret, or create? How does the

court apply that law to the relevant facts? Does the court also recite *policy* concerns? Does it address *counterarguments* or ignore them?

- *Holding*. What is the holding: i.e., what does the court do (affirm, remand, reverse, etc.)?

These questions are *preliminary* to deeper exploration of the materials. But if you are not prepared to answer these basic questions, you are unprepared to discuss the case. [Additional guidance on reciting in class can be found here.](#)

CLASSROOM POLICIES

Attendance, starting time, absences, sign-in

- *Class attendance*. Class attendance is mandatory. In accordance with St. Thomas Law’s absence policy, you may only miss 20% of the classes. However, I strongly recommend that you do not miss that many classes. In addition to assigned materials, anything I say or that we discuss in class is fair game for quizzes, essays, or other forms of testing.
- *No late entries*. I begin class using the time on the classroom clock on the wall. To avoid disruptions, be in your seat and be ready to work prior to that time. No student is allowed to enter the classroom once I have started class. Please do not disturb class by trying to come in late, so be on time. Although I will have sympathy that traffic was bad or that you had an appointment, the needs of the many outweigh the needs of the few—or the one—and I enforce this policy equally, consistently, and without exception.
- *Leaving class*. If you leave class early without permission or without a genuine emergency, you may be marked absent.
- *Sign-in sheet*. Attendance is taken by roll sheet passed around in each class. It is each student’s responsibility to personally sign the sheet (i.e., to *certify* their presence) during class. I provide the Registrar with a roll sheet for each class, and this is the exclusive measure of your attendance for that day. Do not come to me later and tell me you forgot to sign the roll sheet, and do not offer to show me your notes as proof that you were in class. Further, be aware that it is a serious violation of the Academic Integrity policy to sign in other people or to have others sign you in. The reason goes to the paramount value of *honesty*, which is one of the most important qualities of an aspiring attorney. In fact, we will study [FRCP 11\(b\)](#) regarding honesty in certification later this academic year.
- *Excessive absences*. If you are deemed absent from class more than five times, you will be dropped from the course with a failing grade, and will not be allowed to take the final exam. Please do not hesitate to contact me to let me know that you are ill, that your car broke down, or that a loved one had surgery. However, there is no such thing as an “excused” absence—whether for the above-listed or any other reasons—and I have no discretion in this regard. So please do not ask me to excuse an absence. Although I will have the greatest of sympathy for personal circumstances, it is your responsibility to monitor your absences, and if you anticipate

missing more than 20% of any class, you are strongly advised to contact Dean Hernandez regarding the possibility of withdrawal before it is too late to do so.

Computers, tablets, and phones. For the past several years, laptops and electronic devices have been barred from use in class. However, this semester, as an experiment, such devices will be permitted for class-related purposes. The reason devices will be permitted is because I want to incorporate online resources such as statutes, problem sets, and other materials into our class discussions. However:

- *Class purposes only.* Your use of electronic devices should be limited to class purposes only. Do not allow yourself to be distracted by eBay, email, Instagram, Facebook, or other shiny diversions: I teach from a tablet that I use as an electronic whiteboard, I walk around the entire classroom constantly, and I will call you out for misusing technology.
- *Quiet zone.* Mute phones and devices so that they do not make any sound. Focus on class discussion.
- *Note taking.* I would strongly encourage you to [take notes by hand even if you use a laptop](#) because handwriting slows you down and forces you to develop your critical listening skills.
- *No recording.* Although electronics are permitted, recording of the class by audio or video is prohibited unless approved in advance in writing by me, and will be permitted only for exceptional reasons or required accommodations.

Aug. 11, 2015 (v.1.1, enhancements to recitation in class)