

New York Civil Practice
Professor Shepard

Course Description

This is a course in New York State court civil practice. It examines the operation of the system for delivering civil justice and dispute resolution services to the people of the State of New York and others who are litigants in its court system. The focus of the course is the litigation of cases in the Supreme Court of the State of New York, New York State's trial court of almost general jurisdiction. Other courts are discussed as part of the course.

This course builds on and reviews the vocabulary of first year civil procedure. Much of the course asks you to apply the New York Civil Practice Law and Rules to fact situations encountered in representation of clients in New York State courts and to compare and contrast the approach of New York civil practice to federal civil practice.

You will learn about the sources of authority that regulate the civil justice system in New York state courts. You will also gain familiarity with and a critical perspective on the structure and operations of New York State's civil justice system. Finally, you will become familiar with critical concepts in the Civil Practice Law and Rules, New York's rough equivalent of the Federal Rules of Civil Procedure.

This is not, however, a comprehensive course in New York Civil Practice, but a consideration of important, but selected topics. We simply do not have enough time to cover the entire CPLR or the casebook in depth. There are thus gaps in our coverage. We do not, for example, spend very much time on pleadings, trials or finality of judgments. We also do not cover statutes of limitations in depth.

Subjects covered can include some or all of the following: subject matter jurisdiction and court organization, judicial selection, judicial review of arbitration proceedings, personal jurisdiction, venue, forum non conveniens, motion practice, appeals, Article 78 special proceedings, disclosure and bills of particular.

Part of the course is an orientation to how to research sources for New York Civil Practice problems.

Books to Purchase

A. Required:

1. O. CHASE & R. BARKER, CIVIL LITIGATION IN NEW YORK (4th ed. 2002) ("CB")

2. A current one volume version of the official current text of the CPLR ("CPLR")

Note: You must have a one volume version of the CPLR for this course, one which includes the Judiciary Articles of the New York State Constitution. You are free to purchase one published by any publisher so long as it is current (includes amendments to the CPLR through 2006) and contains the Judiciary Article of the New York Constitution (Article VI) and selected provisions of the Judiciary Law. Please be sure that the most recent changes to the CPLR are included in the edition you purchase. The bookstore has the Looseleaf Law version of the CPLR in stock, which is updated annually.

B. Recommended books

1. Hornbooks

Many students like to purchase a one volume hornbook on New York civil practice and I strongly recommend that they do so. I have thus asked the bookstore to have available:

D. SIEGEL, NEW YORK PRACTICE (4th Edition 2005)

This is a well written and authoritative one volume hornbook on New York practice. It will be a valuable reference tool for you if you practice in New York after graduation. I allow students to bring SIEGEL with them to the final (which is open book).

I ask the bookstore to stock the student edition of SIEGEL because it is cheaper than other editions (e.g. the practitioner's edition).

I don't make specific reading assignments from SIEGEL but it is relatively easy to track what you might want to read by looking up the topics we cover in the index.

Please also be sure that if you purchase SIEGEL you also have any Supplement to the Edition you purchase.

2. Court rules

As we will discuss in class, many of the provisions of the CPLR are supplemented by rules for the New York State Courts which are promulgated by the courts themselves on their own authority (as opposed to the CPLR, which is a statute passed by the Legislature and signed by the Governor). Do not confuse "court rules" with the "rules" of the CPLR. The court rules are compiled in Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCCR") and are posted at

www.courts.state.ny.us/ucsrules.htm. These court rules are critical to the day-to-day life of a litigator in state court and are mentioned often during the course. Some are assigned as readings. They are available on various web sites which we will identify in class and which can be found in the Additional Resources section of this website.

While it is not essential for course purposes, some students have found it useful to have a single volume compilation of the court rules. One is published by West:

McKinney's New York Rules of Court: State Edition (West Publishing)
(paperback) Please be sure you purchase the most recent edition.

Remember that court rules constantly change, and the volume you are purchasing is not supplemented annually.

3. Additional bibliography

Additional bibliography can be found in CB at xiii-xiv. We will also discuss research sources for New York Civil Practice problems in class early in the semester.

Web Site and Supplementary Materials

Unfortunately, the CB is not as up to date as is necessary for this Course. As described in the description of the Course Website in the Announcements Section, many of the reading assignments contain materials which are not in the CB or the CPLR. Often, I want you to read court rules, or New York Law Journal articles, or recent cases that are not in the CB.

Assigned supplementary materials are contained on the course web site. They will not be xeroxed and distributed to you. It is your responsibility to access the web site and read and download the supplementary materials that are assigned.

Course Administration

A. Office hours and communications

My office phone number is 3-5890. My e-mail address is andrew.i.schepard@hofstra.edu.

I am at the Law School on Monday, Tuesday and Wednesday. I usually bring my appointment calendar to class. If you want to see me, either email me, see me after class to make an appointment or contact my secretary Betty Black in Room 216 or at 3-5928.

B. Grading, attendance and class preparation policies

1. Examinations

There will be an examination or examinations which will be the major component of your final grade. The final examination is likely to be short essay or essays with space to write your answer limited to that provided in the examination book. Samples of past final examinations are posted on the course web site. I reserve the right to change the format of the examination as I deem appropriate.

2. Class participation

Your class participation may have an impact on your final grade. I reserve the right to call on students who do not volunteer. I take classroom participation and performance into account in grading, but only in a positive direction (it raises final grades, but does not lower them).

You will be given a sign with your name on it to bring to class and display. Please bring your sign every day.

Many classes will focus around problems that illustrate key concepts in New York civil practice. Some are in the CB; others are supplemental problems that I have prepared.

I often make assignments to certain students in advance to be prepared to discuss particular problems in class or to represent one side or another involved in the problem. Sometimes, a team of students is assigned to work together to prepare a problem.

When I say "prepared" on the problem I mean you have: (a) identified the relevant provisions of the CPLR, understand them, and tried to apply them to the factual situation; (b) identified the public policy interests that the problem implicates; (c) considered how the cases and materials that are assigned influence your analysis and, most importantly, based on your reading; (d) conducted any research you deem appropriate outside of the assigned materials; (e) identified the strongest arguments for each side on the problem.

Those who are assigned to advocate one side or the other on the problem must meet and confer before class and be prepared to argue their respective position based on the material in the assignment. Please do not miss classes for which you are assigned to prepare a problem. I cannot give you an absolute date on which you will be asked to present your problem (nor do I feel I have to) because often the date we get to the problem depends on the pace of class discussion. You also may be asked to post an analysis of the problem on the Course Website before class.

Everyone is expected to prepare the problems for class, even if particular students are assigned to present them. I may call on you concerning the problem even if you are not assigned to prepare it.

3. Research Guide Improvements.

Lisa Spar, our Librarian, has prepared an excellent Research Guide to New York Practice which can be accessed through the External Links button on the Course Website. This Research Guide will be of great benefit to you, as Ms. Spar has synthesized the best resources for you. The more you become familiar with it, the better.

Important suggestions for how to improve the Research Guide which Ms. Spar adopts will be eligible for extra credit in grading in the same manner as class participation.

4. Attendance

The rules of the New York State Court of Appeals, the American Bar Association, and the Law School all require law students to be in good and regular attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of your regularly-scheduled classes. Thus, you may miss no more than 15% of your classes. A student in a three-credit course may miss no more than six hours of class.

I will provide sign-in sheets for each regularly-scheduled class, which shall be the dispositive evidence regarding your absence from a given class. Each student is responsible for signing in. Falsification of sign-in sheets is a violation of the Code of Academic Conduct.

If you exceed the permitted absences by failing to sign in, you will be administratively withdrawn from the course. No prior notice may be given, and you will receive notification from the Office of Academic Records indicating the withdrawal. Any such withdrawal may have serious ramifications for your financial aid, academic standing, and date of graduation. If you are excessively absent from several classes, you may face additional sanctions, including but not limited to denial of certification of good and regular attendance to the New York State Board of Law Examiners, or other state bar examiners.

If you believe you must be absent from class for more than the permitted number of hours, you should speak with me and the Senior Assistant Dean for Student Affairs (or the Director of Student Affairs) in Room 244 as soon as possible. Accommodations may be made for students who must be absent for religious reasons and in cases of truly compelling hardship.

More important than ABA or Law School rules, your own learning requires your attendance in class. This is a statutory based course and much of the learning is cumulative- the concepts discussed in each assignment build on each other. You need to understand how to read the CPLR, which is sometimes written in difficult to comprehend language. It will be very difficult for you to master the material in a single burst at the end of the semester, especially if you do not attend class.