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Civil Procedure I

**FALL 2014 / Sec. B
SYLLABUS-2**

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Class Meetings: Tuesdays & Thursdays, 10:40am-12:00noon, Rm. 238

Open Office/Drop In Hours: Thursdays, 12:10pm-2:00pm, Rm. 207

“The history of liberty has largely been the history of observance of procedural safeguards.”

~ Justice Felix Frankfurter, in McNabb v. United States, 318 U. S. 332, 347 (1943)

“To me, a lawyer is basically the person that knows the rules of the country. We're all throwing the dice, playing the game, moving our pieces around the board, but if there is a problem the lawyer is the only person who has read the inside of the top of the box.”

~ Jerry Seinfeld

Welcome to Hofstra University Law School and to the wonderful world of Civil Procedure. This Syllabus provides *extremely* important information regarding the course. You should read it carefully, and then review it from time to time, as some parts of it will pertain to later portions of the course. I may be adjusting the syllabus during the semester, and will notify you on the TWEN web site for the course when that occurs.

Your Lawyering Skills Exercises

One of the most important parts of law school is starting right away learning the skills required to perform as a successful lawyer. Every lawyer—no matter what field he or she ends of practicing—needs to develop basic litigation, mediation, negotiation, and drafting skills. The Civil Procedure course offers an introduction to several of these basic lawyering skills.

We are fortunate in having two Teaching Fellows working with our class this year: Royce Liu and Robert Kaplan. The Teaching Fellows are 2Ls selected on the basis of their performance in Civil Procedure last year and their interest in helping 1Ls succeed.

They play a very important role in this course, in two principal ways. They are available for general course review and will schedule periodic drop-in sessions. They are also in charge of supervising your lawyering skills exercises. These exercises are designed to help all 1Ls start thinking and acting as lawyers, using materials from a simulated (but very close to real) case.

You will be assigned to work in a law firm group and you will be given a number of assignments in connection with a fictional client's situation. These assignments will provide you with your first set of opportunities to see how what you have learned over the course of the semester can be applied in a practice setting. They will also help focus your review of the semester's material in preparation for the final exam. In other words, the lawyering skills exercises are just as valuable (and connected to the final exam) as the other material covered in the classroom and the casebook.

Consider these exercises as a first look at what you will doing as a lawyer. During Fall 2014 you will be doing the following:

- Planning a fact investigation;
- Deciding in what jurisdiction your lawsuit should be filed (and whether it should be filed in federal or state court)
- Planning how to counsel a client on a critical stage of the case
- Negotiating the case

Some of these assignments throughout the year will be done in small groups; others involve solo work; and one may be done in class as a general discussion. Don't worry if you've never done any similar exercises—I'm assuming this material is new for everyone.

Here is the schedule for your Skills Exercises for Fall 2014. (These dates are all integrated in the Class Schedule below but they're separately listed here for your convenience.)

- Tue. Sep. 2 Lawyering Skills Exercises Overview; Introduction to Assignment #1 (Fact Investigation Memos)***
- Tue. Sep. 23 Assignment #1 (Fact Investigation Memos) due to your T.A. today @ 6:00pm***
- Thu. Oct. 9 Recap Assignment #1 (Fact Investigation Memos); Introduce Assignment #2 (Choice of Forum Memos)***
- Thu. Oct. 23 Meet in class to continue working with your groups on Lawyering Skills Assignment #2***
- Thu. Oct. 30 Assignment #2 (Law Firm Choice of Forum Memos) due to your T.A. today @ 6:00pm***
- Tue. Nov. 11 Introduce & Conduct Assignment #3 (Counseling Strategy Discussion) in class; Introduce Assignment #4 (Negotiation Sessions)***
- Tue. Nov. 18 Recap Assignments 2 & 3.***

Tue. Dec. 2 **Assignment #4 (Individual Reports on Negotiation Sessions) due to your T.A. today @ 6:00pm**

Open Office/Drop In Hours

I will hold “Open Office/Drop In” hours this semester on Thursdays, 12:10pm-2:00pm, in Room 207.

My “Open Office/Drop In” hours are just as they sound: **entirely open. No appointments needed, no appointments made, just come in.** We can discuss any subject you like: Civil Procedure, law school in general, legal careers, or—my favorite topics—the NY Mets and NY Giants. Make it a goal to stop in to introduce yourself and chat with me at least once this semester. Or come every week. If you arrive at my office and find other students there, step right in—the more the merrier.

TWEN Discussions

I will be setting up a course page on TWEN, at www.lawschool.westlaw.com. The discussion forum will allow students to extend discussions beyond the classroom, and will enable you to talk with each other, share ideas, ask questions, and post related articles. **Our class discussion forum is an important part of this course.** TWEN is also particularly well suited to students who express their opinions more comfortably in writing than orally. TWEN also gives me a quick way to reach all of you with any special announcements, syllabus changes, handout materials, interesting web links, etc. You should check our course TWEN page regularly (preferably daily, but *at a minimum twice a week*).

You must register for this course on TWEN during the first week of class, and each of you must post two comments on the discussion forum no later than the end of the third week of class. Your level of participation after that is up to you, but I urge you to take an active part—for your own benefit. If you need help using TWEN, contact 1-800-WESTLAW or our Law Library.

My experience is that students who participate actively on the TWEN discussion board (by asking questions, suggesting answers, and posting relevant articles) do better than those who merely lurk.

Grading Policies

You will receive a grade on your transcript for the fall semester (three credits), and a separate grade for the spring semester (two credits). Here is how I will determine grades for the fall semester:

Participation & Performance: 10%

You are expected to come to class on time, fully prepared, ready thoughtfully to engage in our discussions. If you have more than three absences, I reserve the right to reduce this portion of your grade. In addition to class and TWEN participation, your grade will also involve your performance in the series of lawyering skills exercises described above.

Midterm Quiz: 15%

The mid-term quiz is designed to give you a first-look at a law school essay exam and to provide early feedback about your test-taking skills. This 45-minute quiz will be given at a day and time to be selected by the Registrar (you will receive plenty of notice). I will discuss the mid-term in class and in my open office sessions. I will post copies of past years' midterms and answers memos on TWEN, and I will post a comprehensive Answers Memo for your midterm on TWEN within two or three weeks after you have taken the midterm.

Final Exam: 75%

The final exam will be a 3-hour closed-book exam that will require knowledge of all the material we study during the semester. I will provide more information later in the semester to help you prepare for it.

Professionalism

A student's legal career begins the minute he or she begins law school. Accordingly, students are expected to behave professionally at all times. Professional behavior includes, but is not limited to the following:

- attending all classes and arriving on time;

- preparing for and participating thoughtfully in class;
- maintaining a professional and appropriate demeanor with your classmates, the teaching fellows, and the professor both inside and outside the classroom;
- diligently performing the series of lawyering skills described in this Syllabus in a timely manner; and
- complying with the no laptops/electronic devices policy described in this Syllabus.

I reserve the right to reduce your final grade if you fail to comply with this professionalism policy.

How to Prepare for the Midterm Quiz and Final Exam: I have six (yes, **six**) strong recommendations:

- 1) Come to every class prepared by having read and thought about the readings;
- 2) When taking notes in class, **do not attempt to transcribe the proceedings, but rather take only selective notes and concentrate on thinking about the information presented and the questions and hypotheticals discussed;**
- 3) Always try to think of the answer to questions I pose in class, whether or not you are the student being called on;
- 4) Ask your own questions, both in class and in my office during office hours;
- 5) Form a study group with several classmates to prepare and review a course outline (important: create your own—do not rely on a commercial one); and
- 6) Take my prior examinations and practice questions which I will post on TWEN.

As is apparent from these recommendations, you can only hope to do well in this course (or generally in law school) if you put in regular, sustained effort. Here's the bad news: you cannot waltz, tango, or jazz-funk through your classes and then "cram" for a law school exam. As the great scholar and original Mets Manager Casey Stengel once put it, "If we pitched as hard when we're not in trouble as we pitch to get out of trouble, we wouldn't get in trouble in the first place."

Reviewing your quiz and exam: You should review your midterm quiz and final exam, as this process is an important (even if sometimes less-than-pleasant) learning opportunity. The objective is to learn how to improve for the next time. Please be aware that I am only able to change a grade on the extremely limited grounds set out in the Student Handbook, so approach the task of reviewing your exam with that in mind. I grade every exam with great care, and determine your grade in relation to the exams of your classmates. Thus, your result represents how well you did not in any absolute sense, but in comparison with the performance of all the other students taking this exam. If you wish to review your exam, please carefully read the Answers Memo that I will post on TWEN after the exam; then see Betty Black, who is the custodian of all my exams, in order to look at your own exam. (I sometimes write comments on specific points on your exam, although the clearest explanations are provided on the Answers Memo.)

Communicating with Me

Administrative Assistant: My administrative assistant is Betty Black Leonardo, whose e-mail address is lawbbl@hofstra.edu. Her phone number is 516-463-5928, and her office is in Room 216. Betty will be glad to help you. She will keep records of class attendance and will keep track of any class handouts.

E-mail and Telephone: My e-mail address is lawjhd@hofstra.edu. My office phone number is 516-463-5269. My e-mail is almost always on and I check it regularly, so e-mail is a good way to reach me, and *I prefer it to the telephone*. Note that most general questions about the course material are best handled by posting on the TWEN discussion board.

Attendance Policy

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. A student enrolled in a three-credit course may thus miss no more than four ninety-minute class sessions (whether excused or unexcused—the rules do not differentiate).

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. **It is your responsibility to sign yourself in during the class time—do not leave the classroom without having signed the attendance sheet.**

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 classes, you should contact the Office of Student Affairs as soon as possible. Accommodations will be made for students who must be absent for religious reasons and in cases of truly compelling hardship. Any request for an exception made to the Office of Student Affairs must be accompanied with appropriate documentation.

Course Materials

Required Materials:

Our casebook is Stephen C. Yeazell, Civil Procedure (8th ed. 2012). You must also have access each class to a copy of the Federal Rules of Civil Procedure. I recommend Yeazell's 2014 Federal Rules Civil Procedure, with Selected Rules and Statutes, which also contains the text of the U.S. Constitution and selected provisions from Title 28 of the U.S. Code. Other required readings will be posted in the Syllabus and updated on TWEN.

Recommended Materials for Additional Help

If you have questions about Civil Procedure, you should try to raise them in class, on our TWEN discussion board, in my office hours, and with our Teaching Fellows. Students sometimes ask for recommendations for further reading. I can mention the following: Howard M. Erichson, Inside Civil Procedure: What Matters and Why (2nd ed., 2012); Richard D. Freer, A Short & Happy Guide to Civil Procedure (2014); Samuel Issacharoff, Civil Procedure (3rd ed., 2012); and Joseph W. Glannon, Examples & Explanations: Civil Procedure (7th ed., 2013). A simple summary of civil procedure basics (with hypertext links to certain terms and cases) may be found on the web at “Civil Procedure 101” <http://www.west.net/~smith/civprohome.htm>.

However, let me emphasize that the primary sources for your study of Civil Procedure should be the casebook and your class notes. Ask yourself one simple question if you find yourself spending a lot of time with one of the secondary sources: Will any of those authors be writing or grading your midterm quiz and final exam?

No Laptops or Other Electronic Devices During Class

In this course, you may not use a laptop, tablet, smart phone, cell phone, or any other electronic device during class. Research shows that students who use laptops *learn less* than students who do not use them. Several studies have shown that laptop-using students do worse on exams than handwriting students, controlling for other factors. According to a 2014 study, “students who took notes on laptops performed worse on conceptual questions than students who took notes longhand” because “laptop note takers’ tendency to transcribe lectures verbatim rather than processing information and reframing it in their own words is detrimental to learning”¹

Commenting on these studies, another writer said that “there is something about typing that leads to mindless processing. And there is something about ink and paper that prompts students to go beyond merely hearing and recording new information — and instead to process and reframe information” so they learn more

¹ Pam A. Mueller & Daniel M. Oppenheimer, *The Pen Is Mightier Than the keyboard: Advantages of Longhand Over Laptop*, *Psychological Science* (2014), at <http://pss.sagepub.com/content/25/6/1159>.

deeply.²

Surveys at other schools report that students are more satisfied with the learning environment in no-laptop courses. Although some students prefer to use laptops, a larger number of students in the surveys say that classrooms are quieter, they can hear the teacher and other students better, and they feel more engaged in the classroom experience with fewer distractions.

A beneficial use of laptops (and desktops) is for you periodically to rewrite and reframe your handwritten notes into a course outline to prepare for exams. The process of organizing and updating your materials is essential to good learning.

An exception to this policy banning laptops in the classroom exists for a student who has been designated by the Office of Student Affairs to take notes for another student who is receiving an accommodation. This exception doesn't cover taking notes for your friends. In fact, a student designated by the Office of Student Affairs doesn't know the identity of the student who will use the notes. If you are a designated note-taker, please sit in the last row of the classroom.

Learning Objectives

The first semester of the Civil Procedure course is designed to assist you in learning the following important skills:

1. Case Analysis. Students will master the following skills:
 - a. Identification of the elements of a reported opinion: procedural facts, issue, holding, rationale, legal rules, policy.

² Wray Herbert, Ink on Paper: Some Notes on Note Taking, Association for Psychological Science (Jan. 28, 2014), at <http://www.psychologicalscience.org/index.php/news/were-only-human/ink-on-paper-some-notes-on-note-taking.html>. For similar commentary, see Cindi May, *A Learning Secret: Don't Take Notes with a Laptop*, Scientific American, June 3, 2014, at <http://www.scientificamerican.com/article/a-learning-secret-don-t-take-notes-with-a-laptop/>; Fred Barbash, *Why Students Using Laptops Learn Less in Class Even When They Really Are Taking Notes*, Washington Post, Apr. 28, 2014, at <http://www.washingtonpost.com/news/morning-mix/wp/2014/04/28/why-students-using-laptops-learn-less-in-class-even-when-they-really-are-taking-notes/>; Joanna Penn, *The Pen Is Mightier Than The Keyboard: Advantages of Longhand Over Laptop Note Taking*, Journalist's Resource, July 30, 2014, at <http://journalistsresource.org/studies/society/education/longhand-versus-laptop-note-taking#>; Art Markman, *If You Are Going to Take Notes, Do It By Hand*, Psychology Today, June 25, 2014, at <http://www.psychologytoday.com/blog/ulterior-motives/201406/if-you-are-going-to-take-notes-do-it-hand>.

- b. Synthesis of a line of related opinions.
2. Rule and Statutory Analysis. Students will master the elements of rule and statutory analysis:
 - a. Close reading of the words of the rule or statute.
 - b. Identifying the purpose of the rule or statute.
 - c. Fitting the rule or statute into the broader rule or statutory scheme.
 - d. Using legislative history.
 - e. Using cases to interpret the rule or statute.
3. Legal Problem Solving. Students will master these problem-solving skills:
 - a. Identifying legal issues in simple and complex fact situations.
 - b. Identifying the relevant legal authority and policy.
 - c. Identifying potential dispute resolution alternatives (*e.g.*, mediation, arbitration, litigation) to achieve the client's goals.
4. Legal Argument. Students will be able to make effective legal arguments:
 - a. Identifying the legal issues.
 - b. Identifying the relevant facts, authority, and policy.
 - c. Supporting the client's position with facts, authority, and policy.
 - d. Distinguishing unfavorable facts, authority, and policy.
5. Legal Drafting. Students will draft legal documents that communicate clearly, are persuasive and comply with applicable rules.
6. Critical Thinking. Students will demonstrate key elements of the legal inquiry:
 - a. Evaluate cases, rules, statutes, arguments, documents, and attorneys' actions based on their effects on (1) clients, (2) the civil litigation system, and (3) society.
 - b. Challenge assumptions made by judges, legislators, attorneys, students, professors, and themselves.
7. Lawyering Skills. Students will experience basic lawyering skills, such as fact investigation, choice of forum, client counseling, and negotiation.

~ Adapted from Michael Hunter Schwartz, What the Best Law Teachers Do (2013)

Class Schedule

Abbreviations:

Y = Yeazell (the 8th edition of Yeazell's casebook)

FRCP = Federal Rules of Civil Procedure (listed by Rule number)

U.S.C. = United States Code

Note: All assignments must be completed no later than the date for which they are listed. Updates and changes to the schedule below will be provided on-line at TWEN.

<u>Date</u>	<u>Topic</u>	<u>Assignment</u>
Thu. Aug. 21	Civil Procedure Quick & Dirty	Y 1-12; 28 U.S.C. 1331, 1332(a); Skim the following: FRCP 7, 8, 9, 11, and 12
Tue. Aug. 26	Civil Procedure Quick & Dirty (cont.)	Y 12-26; Read Harry W. Jones, <i>Our Uncommon Common Law</i> (in TWEN Course Materials); Skim <i>Federal Court Basics</i> (Spend some time browsing the following U.S. Courts web site, and be sure to look at Why Two Court Systems?, Structure of Federal Courts, Comparing Federal and State Courts, and Cases in Federal and State Courts), at http://www.uscourts.gov/educational-resources/get-informed/federal-court-basics.aspx .
Thu. Aug. 28	Parties and the Messy World of Facts	Y 26-35; Skim U.S. Const. Art. III; Skim FRCP 20(a), 26, 30, 33, 36, and 39
Tue Sep. 2	Lawyering Skills Exercises Overview; Introduction to Assignment #1 (Fact Investigation Memos); How does a <i>Summary Judgment</i> end a lawsuit?	Y 35-46; Skim FRCP 41, 50, 55, 56, and 59
Thu. Sep. 4	What in the world is <i>Res Judicata</i> ?; Appeals; ADR = <i>Appropriate Dispute</i>	Y 46-58; Read Subin & Woo, <i>Public Adjudication, Private Resolution, and the Alternative Dispute Resolution Movement</i> [on TWEN];

	<i>Resolution</i>	Browse Superior Court of California, County of Fresno, <i>Alternative Dispute Resolution</i> , and be sure to review the advantages and disadvantages of ADR, at http://www.fresnosuperiorcourt.org/alternative_dispute_resolution/
Tue. Sep. 9	Litigation and Damages; Specific Remedies	Y 275-312
Thu. Sep. 11	Declaratory Relief; Who Pays for Litigation and How?; Fee Shifting	Y 312-345; 28 U.S.C. 2201, 2202; FRCP 57; U.S. Const. Amend. XIV
Tue. Sep. 16	Preliminary Injunctions & TRO's; Due Process	Y 345-363; 28 U.S.C. 1291, 1292; FRCP 65
Thu. Sep. 18	Pleadings Tell Stories	Y 365-384; FRCP 7, 8, 9, and 10; Skim FRCP Forms 1-7, 10-12, 30, 40, 50, and 51
Tue. Sep. 23	How Much Detail Do You Need?	Y 384-401 Assignment #1 (Fact Investigation Memos) due to your T.A. today @ 6:00pm
Thu. Sep. 25	No class—Rosh Hashanah	
Tue. Sep. 30	Specificity in Pleading; Allocating the Elements; Civil Procedure Ethics & Law	Y 401-420; FRCP 11
Thu. Oct. 2 [class meets 10:10am-12:00noon]	Civil Procedure Ethics & Law (cont.); Responding to the Complaint Midterm Q & A Session	Y 421-432; FRCP 12
Fri. Oct. 3	MIDTERM QUIZ [The Registrar will assign the	

Time & Room TBA	rooms and determine the time]	
Tue. Oct. 7	Responding to the Complaint (cont.); Amending the Complaint	Y 432-450; FRCP 15, 26(e)(1), 37(c)(1), 41(a), 42(b), and 55
Thu. Oct. 9	S.O.L.s & Relation Back; Discovery Recap Assignment #1 (Fact Investigation Memos); Introduce Assignment #2 (Choice of Forum Memos)	Y 450-459; FRCP 26-37, 45
Tue. Oct. 14	Discovery (cont.)	Y 459-487; FRCP 16
Thu. Oct. 16	Discovery (cont.)	Y 487-497
Tue. Oct. 21	Discovery (cont.)	Y 497-508; Federal Rule of Evidence 702
Thu. Oct. 23	Meet in class to continue working with your groups on Lawyering Skills Assignment #2	
Tue. Oct. 28	Discovery (cont.)	Y 508-522
Thu. Oct. 30	Resolution Without Trial	Y 523-540; FRCP 41, 55, 60 Assignment #2 (Law Firm Choice of Forum Memos) due to your T.A. today @ 6:00pm
Tue. Nov. 4	Mediation <i>encore</i> ; Contracting for Confidentiality; Contracting for Arbitration	Y 540-544; 548-558; 28 U.S.C. 651
Thu. Nov. 6	Contracting for Arbitration (cont.)	Y 559-580

Tue. Nov. 11	Introduce & Conduct Assignment #3 (Counseling Strategy Discussion) in class; Introduce Assignment #4 (Negotiation Sessions)	
Thu. Nov. 13	Summary Judgment <i>encore</i>	Y 581-596; FRCP 56
Tue. Nov. 18	The Trier and the Trial; Recap Assignments 2 & 3	Y 597-615; US. Const. Amend. VII; FRCP 38-39
Thu. Nov. 20	Choosing & Challenging Judges & Juries	Y 616-643; 28 U.S.C. 144, 455, 1861-1864, 1866-1867, and 1870; FRCP 47-48
Tue. Nov. 25	Judges vs. Jurors?	Y 643-656; FRCP 50-51
Thu. Nov. 27	No Class—Happy Thanksgiving	
Tue. Dec. 2	Motion for a New Trial	Y 656-671; FRCP 59 Assignment #4 (Individual Reports on Negotiation Sessions) due to your T.A. today @ 6:00pm
Wed. Dec. 3 12:10-2:00PM	Final Exam Q & A Session	

I look forward to a great semester together.