

Civil Procedure II

Spring 2015 / Sec. B SYLLABUS-2

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Class Meetings: Tuesdays, 10:10AM-12:00Noon, Rm. 206

[Please note that the March 10 class will meet from 12:10-2:00PM, and the Final Exam Preview/Q&A will be held April 29 from 10:10AM-12Noon.]

Open Office/Drop In Hours: Tuesdays, 12:00Noon-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 the second semester of the wonderful world of Civil Procedure. This Syllabus provides very 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. Do not assume that it is identical to the Fall Semester Syllabus—it's not! I may be adjusting the syllabus during the semester, and will notify you on-line when that occurs.

Our Teaching Fellows & The Skills Exercises

Our two Teaching Fellows will be working with our class again this semester: Robert Kaplan and Royce Liu. As you well know by now, they play a very important role in this course, in two principal ways. They are available for general course review and will schedule their own review sessions. They are also in charge of supervising the Spring 2014 “skills” exercises. These exercises are designed to help all 1Ls continue to think and act as lawyers, using materials from a simulated but—as you know from your TWEN postings—very close to real case.

As in Fall 2014, these skills assignments will enable you to see how what you have learned over the course of this year can and should be applied in a practice setting. Consider these exercises as a preview of what you will do as a lawyer. The exercises will also help focus your review of the material in preparation for the final exam. This semester you will be doing two exercises, drafting a substantial Complaint (in a law firm group), and crafting a thorough discovery plan (solo).

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

Jan. 27	Review of Negotiation Exercise and Introduction to Complaint Drafting Exercise
Mar. 3	Complaint Draft due today @ 5:00pm (in hard copy to Betty in Rm. 216)

- Mar. 31 Recap Complaint Drafting Exercise and Introduce Discovery Plan Exercise
- Apr. 21 Discovery Plan due today @ 5:00pm (in hard copy to Betty in Rm. 216)

“TWEN” (The West Education Network)

As an important part of the course, we will use a new course page (specifically for Spring Semester 2014) on Westlaw’s TWEN, at www.lawschool.westlaw.com. Please register for the new course page as soon as possible. As was true in the fall semester, TWEN is a useful tool for extending class discussions beyond classroom hours, and to enable students to talk with each other, share ideas, post interesting articles, and ask and answer questions from me and from each other. TWEN is 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 must register for this Spring Semester course on TWEN within the first week of class, and 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. 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

Civil Procedure II, a two-credit course, is a separate course from Civil Procedure I. In this semester, there will be no midterm but only a two-hour final examination. Here is how I will determine your grades for the spring 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 two unexcused 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 skills exercises described above.

Final Exam: 90%

The final exam will be a 2-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 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 Final Exam: I have six (yes, **six**) mighty powerful 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 hip-hop 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 exams: You should always review your exams, as this process is an important (if occasionally painful) learning opportunity. The objective is to learn how to improve for the next time, and I am always ready to suggest ways for you to improve your performance and skills. Please be aware that I am only able to change a grade if there is a mathematical error, 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 see any of your exams, please carefully review the Answers Memo that I post on TWEN after each exam; then see Betty Black Leonardo, who is the custodian of all my exams, in order to review your own exam. (I sometimes write comments on specific points on your exam, although the clearest—and most substantial—explanations are provided on the Answers Memo.)

Open Office/Drop In Hours

I will hold "Open Office/Drop In" hours on Tuesdays, from 12:00Noon to 2:00PM in Room 207. On occasion, if I have a faculty meeting or other conflict during that time, I will notify you and attempt to schedule an alternate open office hour.

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—baseball in general and the NY Mets in particular. Make it a goal to stop in 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.

Communicating with Me

Administrative Assistant: My administrative assistant is Betty Black Leonardo, whose e-mail address is lawbbl@hofstra.edu. Her phone number is 463-5928, and her office is in Room 216. Betty will be glad to help you. Among her other duties, Betty keeps track of attendance and maintains all my exams.

E-mail and Telephone: My e-mail address is lawjhd@hofstra.edu. My office phone no. is 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 two-credit course may thus miss no more than two 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.

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 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 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 and quite helpful 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”^a

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 deeply.^b

^a 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>.

^b 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>.

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

Just as in the Fall, the Spring Semester of the Civil Procedure course is designed to assist you in learning the following important lawyering skills. Please review them, as I will ask you at the end of the semester whether the course achieved these objectives.

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.
 - 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 & Assignments 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>
Jan. 13 Class #1	Respect for Judgments	Y 715-735; FRCP 13
Jan. 20	No class—Monday schedule	
Jan. 27 Class #2	Respect for Judgments (cont.) <ul style="list-style-type: none"> • Review of Negotiation Exercise • Introduction to Complaint Drafting Exercise • Review of Fall 2014 Final Exam 	Y 735-748; FRCP 41(b); Post answers to “Maria Ipada Claim Preclusion Hypo” on TWEN
Feb. 3 Class #3	Respect for Judgments (end)	Y 749-772; Restatement (Second) of Judgments §27 and Comment [Y 755]; Restatement (Second) of Judgments §29 [Y 771]; Post answers to “Batman and Wonder Woman Hypo” on TWEN
Feb. 10 Class #4	Personal Jurisdiction [PJ]	Y 59-87; “Pennoyer v. Neff in contemporary plain English” [TWEN]; Wendy Collins Perdue, <i>Sin, Scandal, and Substantive Due Process</i> [TWEN]; FRCP 4; U.S. Const., art IV, sec. 1; Amend. XIV, sec. 1. [Be ready to discuss the Notes & Problems on Y 72-75 and Y 77-78.]
Feb. 17 Class #5	PJ (cont.)	Y 87-103
Feb. 24	PJ (cont.)	Y 103-112; 118-138

Class #6		[Be ready to discuss the Notes & Problems on Y 109-112.]
Mar. 3 Class #7	PJ (cont.)	Y 139-154 Complaint Draft due today @ 5:00pm (in hard copy to Betty in Rm. 216)
Mar. 10 Note: class meets 12:10-2:00PM Class #8	PJ (cont.)	Y 154-181
Mar. 17 Class #9	PJ (end) Subject Matter Jurisdiction [SMJ]	Y 181-189; 28 U.S.C. 1391-1392,1404 [Be ready to discuss the Notes & Problems on Y 186-188.] Y 191-201; U.S. Const., art III; 28 U.S.C. 1331-1332
Mar. 24 Class #10	SMJ (cont.)	Y 201-221
Mar. 31 Class #11	SMJ (end) <ul style="list-style-type: none"> • Recap Complaint Drafting Exercise • Introduce Discovery Plan Exercise 	Y 221-238; 28 U.S.C. 1367, 1441, 1446-1447
Apr. 7	No class—Spring Break	
Apr. 14 Class #12	State Law in Federal Courts: <i>Erie</i>	Y 239-257; 28 U.S.C. 1652; Rizzi, <i>Erie Memoirs Reveal Drama, Tragedy</i> (TWEN Course Materials)
Apr. 21 Class #13	<i>Erie</i> (end)	Y 258-274; 28 U.S.C. 2072; FRCP 65, 68 [Be ready to discuss the Notes &

		Problems on Y 270-271.] Discovery Plan due today @ 5:00pm (in hard copy to Betty in Rm. 216)
Apr. 28 Class #14	Joinder	Y 791-817; FRCP 14, 18-22, 42
Apr. 29 [10:10am- 12noon]	* Final Exam Preview and Q & A	

I look forward to another great semester together.