Civil Procedure I
Fall 2016, Professor Sample
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1. **Syllabus:** Reading assignments are set forth in this syllabus. The class-by-class breakdowns represent approximations. During the semester, there will be alterations, deletions and additions. Any changes will be announced in class.

2. **Learning Objectives:** The staple of legal education, particularly in the first year, is the appellate decision. In order to fully understand an appellate decision you must be able to think procedurally, to reconstruct the whole case from the beginning through the appellate decision. The objective of the course is to supply those thinking skills that are the foundation of legal education. Topics covered include civil actions at law historically and currently, a brief introduction to equity, provisional and final remedies, res judicata and collateral estoppel, relief from judgment and collateral attack, personal jurisdiction and venue, the subject matter jurisdiction of the federal courts, and choice of source of law. Inclusive of the second-semester, (Civil Procedure II, which will taught be Dean Schepard) the course examines the reciprocal relationship between substantive law and procedure by recreating a whole case from pleadings through appeal. Substantive law draws meaning from its application at each stage of the litigation process. In other words, each stage of the process can provide a "window" on the meaning of substantive law. These stages include: issues of jurisdiction (both personal and subject matter); pretrial proceedings (pleadings, discovery, pretrial screening); the trial (admissibility of evidence, sufficiency of the evidence to get to the jury, terms of submission to the jury, the verdict); and the appeal (issues preserved for appeal, "facts" on appeal, standard of review). The focus throughout is on the need to develop the skill of thinking procedurally in order to understand the law and to help shape its development.

3. **Texts:** The case book that we will be using is the 11th edition of Civil Procedure Cases and Materials by Friedenthal, Miller, Sexton & Hershkoff. The supplement we will be using is Friedenthal, Miller, Sexton, and Hershkoff, Federal Rules of Civil Procedure Supplement (West 2016-2017) (Statutory and Case Supplement). Note that for the first time (for me that is) we will be using the Casebook "Plus" features associated with Friedenthal et al, casebook. These digital features include all manner of extra, supplemental resources, including, perhaps most notably, practice questions. I will reference these materials on occasion in class, and you are responsible for whatever we mention in class, but for the most part, this resource – which I recognize comes at an added expense for you – is intended to be a valuable resource to complement our class discussions, particularly in areas where you find yourselves struggling. I welcome your feedback, over the course of the semester, as to your individual and collective perspectives as to the cost-benefit analysis of the "Plus" features.

4. I will also supply additional materials. The first installment of additional materials is included on the first assignment webpage as an additional PDF along with this syllabus. No other book is required. I will discuss optional commercial materials, including those

that I think can be --- depending on the source and the manner in which they are used --- helpful and harmful early in the semester. For now, the critical point is that relying on outside sources *instead* of the course materials is to follow a well-worn path to the destinations of delusion (first) and disaster (second).

5. **Preparation & Participation:** You are expected to read and think about the assigned material before each class. Likewise, you are expected to contribute to the classroom discussions on both a voluntary and involuntary basis. I will call on you. Your participation may impact your grade at the margins. That does <u>not</u> mean that more talking is better. It does mean that preparation is expected; regular participation is part of the class; and that the nature of your participation is expected to be at a high level, such that your contributions are genuinely contributions to your classmates.

6. **TWEN:** There is a TWEN page for this course. To register (1) go to lawschool.westlaw.com (2) click on TWEN (3) choose "add course" and add this course. Once you have registered you will have the ability to engage in substantive discussions with your fellow students. I will also use TWEN to post course materials. I encourage you to use the TWEN list serve to discuss substantive matters relating to the course. I may monitor these discussions as a matter of interest, but will not be intervening as a matter of course.

7. **Amount of Time Spent for Credit**: The American Bar Association requires that you spend at least six hours per week, on average, outside of class studying for this 3-credit course. This is in addition to the four hours a week we spend in class. (The ABA has a formula for determining the requirement. In other courses, the required number of out-of-class hours may be different.)

8. **Attendance:** You may miss no more than six class hours this semester. Accommodations may be made in truly compelling circumstances. In the event you believe yourself to be in such circumstances, you should send an e-mail to me within twenty-four hours of your absence. I will do nothing respecting these issues until late in the semester. At that point, I will review the file of anyone with more than six hours of missed class and determine whether to forward the file to the Office of Student Affairs possibly resulting in denying you credit for the course. All of the above pertains only to the bare minimum floor for attendance. Early in the term, we will have a couple of extended and/or additional sessions on dates TBA.

9. **Exams:** Your grade will turn primarily on a final exam at the end of the semester. More will be said about this in due course. I will be covering matters in class that are not part of the readings, and your readings will cover matters that are not covered in class. All of it is fair game for the exams. You will develop a good sense of the relative import of the material as the semester develops, but I will also give some additional specific guidance on this in the period leading up to the exam.

10. **Laptops:** As you know, several professors have banned laptops. Personally, I think they are doing you a favor, but after much deliberation, I have decided that you are allowed --- but not encouraged --- to use your laptops for note-taking purposes. Using laptops for other purposes (chatting, emailing, surfing, gaming) is prohibited, mostly because it is distracting for both you and those around you. A compelling articulation of the view that handwritten note-taking promotes greater overall learning may be found at *Dorf on Law*, http://michaeldorf.org/2006_11_01_archive.html

11. **Office:** You are welcome to drop by at any time; if I'm in and can't meet with you right away, we'll find a time to do so. My "formal" office hours will be determined early in the semester (once various committee and other obligations are determined) and I will coordinate these with your section's class schedule to the extent feasible.

NB: Reading assignments begin below.

Preliminary schedule of readings.

Class 1 – Overview (Read prior to 1st class session)

Read pp. 1-27
Read Note on the Arrival of Modern Procedure, pp. 550-551
Look at Judicial Map, "Geographic Boundaries of United States Courts of Appeals and United States District Courts (contained within the PDF of supplemental materials)
Read Avista Management, Inc. v. Wausau Underwriters Insurance Company (contained within the PDF of supplemental materials)
* Professor Freedman's "Eight Minutes of Reading on Eight Hundred Years of Procedure to Help You Understand the Next Eight Months" (contained within the PDF of supplemental materials).

Module 2 – Quick Intro to Judicial Authority; Pleading

Read Capron v. Van Noorden, pp. 28-29
Read Tickle v. Barton, pp. 30-34, through Note 1
Read Case v. State Farm Mutual Automobile Insurance Co., pp. 35-37
Note the following definitions:

- Alias process – "When some court process (it could be a subpoena, a summons, a warrant, or a writ) expires in effectiveness before it can be used, or is used but does not completely achieve what it was supposed to do (*e.g.,* a summons could not be served on all the defendants, or a writ of execution was unsuccessful in garnering enough property to cover a judgment), a second or subsequent document may be issued, which will be called an "alias" one, *e.g.,* "alias summons," "alias subpoena," "alias warrant," "alias writ," etc.)." Source: The Leff Dictionary of Law, 94 Yale L.J. 1855, 1992 (1985).

- Plea in abatement – At common law, a response to the complaint that does not challenge the merits of the claim but rather raises defects relating to such matters as the location of the action, the place of trial, or wrongful joinder. See Koffler & Reppy, Handbook of Common Law Pleading 416-429 (1969). In the federal system, Federal Rule 12(b)(1) through (5) and (7) are the modern counterparts to the common law plea in abatement.

Module 3 – Quick intro to Joinder and the Scope of the Lawsuit

Read Temple v. Synthes Corp., pp. 38-39
Read Introduction to Joinder (within PDF of distributed supplemental materials)

Module 4 – Personal Jurisdiction: The Traditional Bases

Read Pennoyer v. Neff, pp. 75-84 (through note 4)
Note the following definitions:

- Special appearance – a procedure that allows a defendant to challenge a court's exercise of personal jurisdiction without submitting to the court's power for any other purpose

- Collateral attack – a challenge to the enforcement of a judgment typically arguing that the rendering court lacked jurisdiction

- Limited appearance – a procedure that allows a defendant in an action commenced on a quasi-in-rem basis to appear for the limited purpose of defending his interest in the attached property without submitting to the court's excise of full personal jurisdiction

Module 5 – Personal Jurisdiction: Expanding the Bases and a New Approach

Read Hess v. Pawloski, pp. 87-90
Read International Shoe Co. v. Washington, pp. 90-97
Read Gray v. American Radiator, pp. 97-103
SKIM Community Trust Bancorp, Inc. v. CTFC pp 159-163

Module 6-7 – Personal Jurisdiction: Specific Jurisdiction, Long-Arm Statutes, and Due Process

Read pp. 103-104
Read McGee v. International Life Insurance Co., pp. bottom 104-105
Read Hanson v. Denckla, pp. 105-108
Read World-Wide Volkswagen Corp. v. Woodson, pp. 109-118
Read Kulko v. Superior Court of California, p. 119
Read Burger King Corp. v. Rudzewicz, pp. 120-124
Read Asahi Metal Industry Co. v. Superior Court, pp. 124-132
SKIM J. McIntyre Machinery, Ltd. v. Nicastro, pp. 133-150

Module 8 - Personal Jurisdiction: General Jurisdiction

Read Perkins v. Benguet Consolidated Mining Co., pp. to be distributed

Read Helicopteros Nacionales de Colombia, S.A. v. Hall, pp. to be distributed
Notes and Questions, pp. 157-158
Goodyear Dunlop Tires Operations, S.A. v. Brown, pp. 151-158

Module 9-10 – Jurisdiction Based upon Power over Property: In rem and Quasi-in-rem Jurisdiction

Reread Pennoyer v. Neff
Pennington v. Fourth National Bank of Cincinnati, Ohio, p 165
Note and Question, p. 166
Harris v. Balk, pp. 166-167
Notes and Questions, pp. 167
Shaffer v. Heitner, pp. 167-180
Notes and Questions, pp. 180

Module 11 – Personal Jurisdiction: Presence and Consent

Read Burnham v. Superior Court, pp. 180-191
Read Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinée, pp. 191-193
Read M/S Bremen v. Zapata Off-Shore Co., p. 194-195
Read Carnival Cruise Lines, Inc. v. Shute, pp. 195-196

Module 12 – Personal Jurisdiction and the Federal District Courts

Read p. 196-197
Read Federal Rule 4

Module 13 – Subject-Matter Jurisdiction: Introduction and State Court Power

Read Intro Note to Chapter 4, pp. 259-260
Read Lacks v. Lacks, pp. 260-263, especially Note 1 p. 263
Read U.S. Const. Art. III, § 2

Module 14-16 – Subject-Matter Jurisdiction of the Federal Courts: Diversity of Citizenship

Read pp. 266-271
Read 28 U.S.C. § 1332
Read Mas v. Perry, pp. 271-274
Read Notes, pp 274-275 (Dred Scott, Hertz)
Read A.F.A. Whitchurch, pp 282-285
Read Note on Judicially Created Exceptions to Diversity Jurisdiction, pp. 289-291

Module 17-19 – Subject-Matter Jurisdiction of the Federal Courts: Arising Under Jurisdiction

Read Notes inclusive of Osborn v. Bank of the United States, pp. 291 (Notes)-294
Read 28 U.S.C. § 1331
Read Louisville &. Nashville R. Co. v. Mottley, pp. 296-298
Read Note on Private Rights of Action, pp. 303

Read Shoshone Mining Co. v. Rutter, p. 304
Read Smith v. Kansas City Title & Trust Co., pp. 304
Read Moore v. Chesapeake & Ohio Railway Co., pp. 305
Read Merrell Dow Pharmaceuticals Inc. v. Thompson, pp. 305-306
Read Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing, pp. 306-311
Read Empire Healthchoice Inc. v. McVeigh, pp. 311-313
Read Gunn v. Minton, pp 313-316

Module 20-21 – Subject-Matter Jurisdiction of the Federal Courts: Pendent, Ancillary, and Supplemental Jurisdiction; Removal Jurisdiction

Read Introductory Note on pp. 318-319
Read United Mine Workers of America v. Gibbs, pp. 318-324
Read Notes on Pendent and Ancillary Jurisdiction Following Gibbs, pp. 324-329
Read 28 U.S.C. § 1367
Read Exxon Mobil Corp. v. Allapattah Services, Inc., pp. 330-338
Read Executive Software North America, Inc. v. United States District Court for the Central District of California, pp. 339-343
Read 28 U.S.C. § 1441 et al (listed on p 345) & notes pp. 345-346

Module 22 – Venue and Forum non Conveniens

Read pp. 359-363
Read Reasor-Hill Corp. v. Harrison, pp. 363-368
Read Bates v. C & S Adjusters, Inc., pp. 368-372, through Note 9
Read 28 U.S.C. §§ 1404, 1406, 1407
Read Hoffman v. Blaski, pp. 373-379
Read Gulf Oil Corp. v. Gilbert, pp. 383-384
Read Piper Aircraft Co. v. Reyno, pp. 384-392

Module 23-25 – State Law in the Federal Courts

Read pp. 397-400 (esp. Swift v. Tyson note)
Read Erie R. Co. v. Tompkins, pp. 400-409
Read Guaranty Trust Co. v. York, pp. 409-416 (through Note 3)
Read Byrd v. Blue Ridge Rural Electric Cooperative, Inc., pp. 418-422
Read 28 U.S.C. § 2072
Read Hanna v. Plumer, pp. 423-430
Gasperini v. Center for Humanities, Inc., pp. 446-455
Shady Grove Orthopedic v. Allstate Co., pp. 456-469

Module 26 – Determining State Law; Federal Common Law; Federal Law in State Courts

Read pp. 469-470, especially Klaxon Co. v. Stentor Electric Mfg. Co., p. 496
Read pp. 476-478
Read Note on Federal Common Law and Federal Rules of Preclusion, p. 490
Read Note 1 on Federal Law in the State Courts, pp. 495