CIVIL PROCEDURE II
Section A, Spring 2017
Mon 8:10 a.m.-10:00 a.m., Room 238

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COURSE SYLLABUS

EDUCATIONAL OBJECTIVES FOR THE COURSE

The first semester of Civil Procedure focuses on identifying the appropriate court to resolve a dispute (choice of forum- personal jurisdiction, subject matter jurisdiction etc.) and deciding on the law to be applied by the court. The second semester of Civil Procedure provides an introduction to the nature and functioning of judicial systems to resolve disputes, including a survey of the major phases of civil litigation under the Federal Rules of Civil Procedure and the lawyer’s role in the process. Major emphasis is given to the reach of judicial authority, pleadings and amendments, pretrial discovery, the right to a jury trial, appellate procedure (including appeals from administrative decisions), and judgments and former adjudication. During the semester, we will consider the relationship of procedure to the substantive law of an underlying case, as well as the purposes and characteristics of procedural rules in light of recent revisions of the rules. Finally, as we did in the fall semester, you will have continuing opportunities to apply what you are learning in the context of our simulated case, Sachs v. JIT.

By the end of the semester, I will expect you to have achieved the following learning outcomes:

• Demonstrate a thorough knowledge of the basic rules of law and policies of federal civil procedure [Law School Learning Outcome 1(a)]. This includes extracting rules and policy from federal court opinions, federal rules, federal statutes, and constitutional provisions, as well as analyzing, interpreting, and arguing different interpretations of legal rules [Learning School Learning Outcomes 5(a)].

• Knowledge of civil procedure concepts likely to be tested on the bar examination [Law School Learning Outcomes 2].

• Understanding of a lawyer’s role in civil litigation, including the use of procedural tools such as motions and discovery [Law School Learning Objective 6(h)], as well as how to conduct oneself, consistent with the standards of professional conduct [Law School Learning Objective 7(b)].
SOME PERSPECTIVES ON PROCEDURE IN OUR CIVIL DISPUTE SYSTEM

Below are some perspectives to consider as we head into this semester, as we’ll see the continued tension in trying to balance multiple policies and interests in our civil justice system:

"The history of liberty has largely been the history of observance of procedural safeguards."  *McNabb v. United States*, 318 U. S. 332, 347 (1943) (opinion of Justice Felix Frankfurter)

“Although the civil justice system is not broken, it is in serious need of repair. In many jurisdictions, today’s system takes too long and costs too much. Some deserving cases are not brought because the cost of pursuing them fails a rational cost-benefit test while some other cases of questionable merit and smaller cases are settled rather than tried because it costs too much to litigate them.” Final Report on the Joint Project of the American College of Trial Lawyers Task Force on Discovery and the Institute for the Advancement of the American Legal System 2 (March 11, 2009)

“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser— in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough.”  -- Abraham Lincoln, *Notes for a Law Lecture* (1846), in *Life and Writings of Abraham Lincoln* 328 (Philip V. D. Stern ed. 1940).

COURSE MATERIALS

Required Texts  -- Please bring all required texts to each class

   NOTE: I may also post supplemental material on TWEN, such as recent cases not otherwise covered in the book or the supplement.
(2) Federal Civil Rules Booklet (LegalPub.com, 2016 ed.)

Suggested Texts for Further Understanding

GRADING

You will receive one grade for the spring semester of Civil Procedure II (2 credits). Your grade for the spring semester will be based on the following:

Class Participation: 10%
You are expected to come to class on-time, fully prepared, and ready to thoughtfully engage in our discussions. I will take attendance and will take notes about your participation. If you have more than two unexcused absences, I reserve the right to reduce this portion of your grade.

Simulation Performance: 10%
Your grade will also include assessment of your performance in two simulated exercises over the course of the semester. As in the fall, you will be assigned to work in a law firm group.

Complaint Drafting Exercise (5%)
This exercise will involve collaborative work both in and outside of class, wherein you will each be assigned to a small law firm group representing the plaintiff. After an introduction to initial pleadings in the first week of class, you will be given an opportunity in the second week of class to work to brainstorm about how to draft the plaintiff’s complaint. After class, you will be asked to work with your group to draft and submit a complaint on behalf of the plaintiff to be filed in a federal court proceeding. Although you are permitted to work with the other members of your group, you are not permitted to collaborate with any other students in the class in connection with this exercise. Your final product will be graded on the thoroughness and accuracy of the legal and factual components of the complaint, as well as your application of the relevant Federal Rules of Civil Procedure and related case law. You will receive written feedback on this exercise and we will have a general discussion in class after the exercises have been submitted.

Discovery Plan Exercise (5%)
This exercise will involve primarily individual work. You will again be assigned to represent either the plaintiff or the defendant in a federal court proceeding. After we have completed the reading on discovery, we will take time during class to brainstorm collectively about potential options for formal discovery. You will then be asked to work individually to draft a proposed discovery plan for either the plaintiff or the defendant. No collaboration is permitted outside of class. After all discovery plans have been submitted, we will collectively review sample model discovery plans for both sides in class. In addition, you will receive written feedback on your own discovery plan. You will be graded on the thoroughness of your discovery plan, as well as your
knowledge and reference to the relevant Federal Rules of Civil Procedure and any related case law.

**Mid-Term Assessment:** 10%
The mid-term assessment is designed to provide you and me with an assessment of your understanding of the material we are covering and to provide you with a sense of what to expect on the final exam. The assessment will be online and I will review the results in class. In addition, I invite each of you to meet with me in my office if you are experiencing any difficulties with the material.

**Final Exam:** 70%
The final exam will be a 2-hour, closed-book exam and will be some combination of multiple choice and essay questions. I will provide more information later in the semester to help you prepare for it.

**CLASS COMMUNICATION**

It is my hope that there will inevitably be times throughout the semester when you will want to talk with me or other students in the class. I do not schedule specific times for office hours, but I will generally be in my office throughout the week. That said, I tend to have a number of meetings scheduled throughout the day. Feel free to stop by anytime – if I am busy, my secretary, Maria Filotti will be happy to set up an alternative time to meet. You may also e-mail me or Ms. Filotti to make an appointment at a designated time.

I will continue to use TWEN to post course materials, and I may post discussion threads or links articles about recent legal developments.
WEEKLY ASSIGNMENTS*

* Please note that the assignments may change throughout the course of the semester if I feel that we need to slow down, speed up, or skip some of these readings. I will give you advance notice both in class and on TWEN so that you can plan your class preparation accordingly.

MONDAY, JANUARY 23rd: MODERN PLEADING REQUIREMENTS

**In Class:** Introduction to the Course/Review of Syllabus
The Story of Pleading
  *Haddle v. Garrison* (11th Cir. 1997) (p. 380)
  *Bell v. Novick Transfer Co.* (D. Md. 1955) (p. 20)
  *Conley v. Gibson* (U.S. 1957) (p. 388)
  *Bell Atlantic Corp. v. Twombly* (U.S. 2007) (p. 389)
  *Ashcroft v. Iqbal* (U.S. 2009) (p. 391)

**Assignment:** Casebook: pp. 367-403; Review Rules 8, 10, 12(b)(6)

THURSDAY, JANUARY 26th: SPECIAL PLEADINGS & ETHICAL LIMITATIONS

**NOTE:** Monday Class Schedule

**In Class:** Special Pleadings
Allocating the Elements of a Claim
  *Jones v. Bock* (U.S. 2007) (p. 410)
Ethical Limitations in Pleading & in Litigation Generally
  *Walker v. Norwest Corp.* (8th Cir. 1996) (p. 419)
  *Christian v. Mattel, Inc.* (9th Cir. 2003) (p. 423)
Introduction to Complaint Drafting Assignment

**Assignment:** Casebook: pp. 403-429; Review Rules 8, 9, 11; Review Assignment #7: Complaint Drafting (passwords will be distributed via email)
MONDAY, JANUARY 30th: RESPONDING TO THE COMPLAINT & AMENDMENTS

In Class: Responding to the Complaint
Amendments to the Complaint
Beeck v. Aquaslide ‘N’ Dive Corp. (8th Cir. 1977) (p. 446)
Moore v. Baker (11th Cir. 1993) (p. 453)
Bonerb v. Richard J. Caron Foundation (W.D.N.Y. 1994) (p. 454)
Assignment: Casebook: pp. 429-461 (including assessment questions);
Review Rules 7, 8, 12, 15(c)(1)(C), 26(e)(1), 37(c)(1)

MONDAY, FEBRUARY 6th: JOINDER OF CLAIMS AND PARTIES

In Class: Joinder of Claims
Plant v. Blazer Financial Services (5th Cir. 1979) (p. 790)
Joinder of Parties
Mosley v. General Motors Corp. (8th Cir. 1974) (p. 799)
Price v. CTB, Inc. (M.D. Ala. 2001) (p. 805)
Assignment: Casebook: pp. 785-812; Supplement: Review Rules 13, 14, 18, 20, 21, 42(a)

COMPLAINT DRAFTING ASSIGNMENTS DUE SUNDAY, FEB 5th AT 5:00 PM

MONDAY, FEBRUARY 13th: JOINDER OF PARTIES AND CLAIMS

In Class: Compulsory Joinder
Temple v. Synthes Corp. (U.S. 1990) (p. 813)
Helzbergs’ Diamond Shops v. Valley West Des Moines Shopping Center (8th Cir. 1977) (p. 817)
Intervention
Martin v. Wilks (U.S. 1989) (p. 830)
Interpleader
Southern Farm Bureau Life Ins. Co. v. Davis (W.D. La. 2010) (p. 838)
MONDAY, FEBRUARY 20th

NO CLASS – PRESIDENTS’ DAY HOLIDAY

MONDAY, FEBRUARY 27th: CLASS ACTIONS

In Class: Class Action Overview and Themes, History of the Class Action
Hansberry v. Lee (U.S. 1940) (p. 843)
Wal-Mart Stores, Inc. v. Dukes (U.S. 2011) (p. 866)

Assignment: Casebook: pp. 840-878; Review Rule 23;

The Mid-Term Assessment will become available on TWEN on Friday, March 3rd at 2:00 PM. You must complete it by NOON on Sunday, March 5th 26th.

MONDAY, MARCH 6th: DISCOVERY

In Class: Review Mid-Term Assessment
Modern Discovery & the Stages of Discovery
Introduction to the Discovery Plan Assignment

Assignment: Casebook: pp. 463-481; Review Rules 26, 30, 33, 34, 35, 36, 45;
Complete Mid-Term Assessment; Review Discovery Plan:
Assignment #8 (passwords will be distributed via email)

MONDAY, MARCH 13th: DISCOVERY

In Class: The Scope of Discovery
Favale v. Roman Catholic Diocese of Bridgeport
(D. Conn. 2005) (p. 483)
Price v. Leflore County Detention Center Public Trust
(E.D. Okla. 2014) (p. 487)
Rengifo v. Erevos Ent., Inc. (S.D.N.Y. 2007) (p. 488)
Privilege
Trial Prep Material
Hickman v. Taylor (U.S. 1947) (p. 496)

Assignment: Casebook: pp. 481-502; Review FRCP 26;
MONDAY, MARCH 20th: DISCOVERY

**In Class:** Experts

*Thompson v. The Haskell Co.* (M.D. Fla. 1994) (p. 505)
*Chiquita Int’l. Ltd v. M/V Bolero Reefer* (S.D.N.Y. 1994) (p. 506)

Ensuring Compliance and Controlling Abuse of Discovery
*Zubulake v. UBS Warburg LLP* (S.D.N.Y. 2003) (p. 509)
*Security Nat. Bank of Sioux City v. Abbott Labs.* (N.D. Iowa 2014) (p. 519)

**Assignment:** Casebook: pp. 508-526; Review Rule 26, 37

**DISCOVERY PLAN ASSIGNMENT DUE SUNDAY, MARCH 19TH AT NOON**

MONDAY, MARCH 27th: RESOLUTION WITHOUT TRIAL

**In Class:** Pressure to Choose Adjudication or an Alternative Default and Default Judgments

Scheduling Orders and Failure to Prosecute Voluntary Dismissal

Avoiding Adjudication
*Jane Smart v. GROWCO, Inc.* (p. 538)

Contracting for Private Adjudication
*Ferguson v. Countrywide Credit Ind., Inc.* (9th Cir. 2002) (p. 557)
*AT&T Mobility LLC v. Concepcion* (U.S. 2011) (p. 563)

**Assignment:** Casebook: pp. 527-536; 538-547; 553-573; Review Rules 16, 55, 60, 41

MONDAY, APRIL 3rd: RESOLUTION WITHOUT TRIAL

**In Class:** Adjudication without Trial: Summary Judgment

*Celotex Corp. v. Catrett* (U.S. 1986) (p. 583)
*Tolan v. Cotton* (U.S. 2014) (p. 589)
*Bias v. Advantage Int’l, Inc.* (D.C. Cir. 1990) (p. 593)

**Assignment:** Casebook: pp. 578-601; Review Rule 12(b)(6), 56

MONDAY, APRIL 10th:

**NO CLASS – SPRING BREAK**
MONDAY, APRIL 17th: APPEAL

In Class: Who Can Appeal

*Aetna Cas. & Sur. Co. v. Cunningham* (5th Cir. 1953) (p. 672)

When a Decision May Be Reviewed: Finality & the Final Judgment Rule


*Lauro Lines s.r.l. v. Chasser* (U.S. 1989) (p. 691)

Scope of Review

*Anderson v. Bessemer City* (U.S. 1985) (p. 701)

*Harnden v. Jayco, Inc.* (6th Cir. 2007) (p. 707)

Assignment: Casebook: pp. 669-713; Review 28 U.S.C. §§ 1291, 1292, 2107, 2111, Rules 3, 4, 50, 52, 58, 59

MONDAY, APRIL 24th: RESPECT FOR JUDGMENTS

In Class: Claim Preclusion

*Frier v. City of Vandalia* (7th Cir. 1985) (p. 717)


*Gargallo v. Merrill Lynch, Pierce, Fenner & Smith* (6th Cir. 1990) (p. 741)

Assignment: Casebook: pp. 715-744; Review Rule 13

WEDNESDAY, APRIL 26th: RESPECT FOR JUDGMENTS

NOTE: Monday Class Schedule

In Class: Issue Preclusion


*Parklane Hosiery Co. v. Shore* (U.S. 1979) (p. 754)

The Boundaries of Preclusion

Repose: Collateral Attack and Reopened Judgments

*Durfee v. Duke* (U.S. 1963) (p. 768)


Assignment: Casebook: pp. 744-782