

Civil Procedure

Fall 2017, Professor Sample

james.sample@hofstra.edu

- 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. **This is a 5-credit one-semester course. Accordingly, the workload is substantial and the expectations for your level of effort and preparation are very high.**
- 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. 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 2017-2018) (Statutory and Case Supplement).
- 4. Optional “Plus” materials:** You may wish to use 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. The publisher charges for this option and I will not reference it in class but this resource has been found to be a valuable way to complement our class discussions, particularly in areas where you find yourselves struggling. No one is required to purchase the “Plus” features.
- 5.** 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).

- 6. 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 not 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.
- 7. 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.
- 8. 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.)
- 9. 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.
- 10. 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. Your grade will, secondarily, encompass a MidTerm examination. The MidTerm will count for less than the Final, with the exact percentages to be announced early in the term. 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.

11. 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

12. 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 this Module 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)

* Optional Reading: 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).

Class 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.

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 exercise of full personal jurisdiction

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

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

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

Read *Goodyear Dunlop Tires Operations, S.A. v. Brown*, pp. 151-158

Read *Daimler AG v. Bauman*

Read *Bristol-Myers Squibb Co v. Sup. Court of Cal.* (to be distributed)

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

Personal Jurisdiction: Presence and Consent

Read *Burnham v. Superior Court*, pp. 180-191
Read *Carnival Cruise Lines, Inc. v. Shute*, pp. 195-196

Personal Jurisdiction and the Federal District Courts

Read p. 196-197
Read Federal Rule 4

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

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

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

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

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

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
Read *Gasperini v. Center for Humanities, Inc.*, pp. 446-455
Read *Shady Grove Orthopedic v. Allstate Co.*, pp. 456-469

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

Notice, Service & the Right to be Heard

Read *Mullane v. Cent. Hanover Bank & Trust Co.*, and notes following pp. 201-215. Pay special attention to *Dusenberry*, *Greene*, and *Jones* in notes.
Read *Fuentes v. Shevin* (PDF on TWEN)
Read Federal Rule 4
Read pp. 216- 221 (mechanics of notice)
Read notes on pp. 227-231
Read “Opportunity to Be Heard” pp.
Read *Mitchell v. W.T. Grant Co.*, pp. 249-252
Read *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, To be Distributed

Read Connecticut v. Doeher, pp. 249

Pleading

Read p. 554

Read Federal Rules 8 and 9

Read excerpt from Conley v. Gibson, p. 563

Read paragraph on Federal Rule 9(b), p. 563

Read Note on Leatherman v. Tarrant County Narcotics, pp. 568

Read Note on Swierkiewicz v. Sorema N.A., pp. 565-568

Read Bell Atlantic Corporation v. Twombly, pp. 569

Read Garcia v. Hilton Hotels Int'l, Inc., p 593

Read Ashcroft v. Iqbal, 129 S.Ct 1937 (2009) p 579 thru notes on 592

Read FRCP 9 (Pleading special matters)

Responding to the Complaint, with an Emphasis on Motions to Dismiss for Failure to State a Claim

Read Federal Rule 12

Read (as background) p. 610-611

Read Intro and American Nurses' Association v. Illinois, pp. 611

Read Note on Common Law Plea of Abatement p 617

Read Note on Other Motions Attacking Pleadings p 618

Read Note on Denials, pp. 619

Read Zielinski v. Philadelphia Piers, Inc. (to be distributed)

Pleading: Affirmative Defenses

Read Ingraham v. United States pp. 621

Read Taylor v. United States, pp 625

Pleading; Amendments

Read Federal Rule 15

Read Beeck v. Aquaslide 'N' Dive Corp., p 627

Read Note 1 on 638-639 (re: Worthington)

Pleading: Deterring Frivolous Pleadings

Read Surowitz v. Hilton Hotels, pp. 641

Policing the Pleading Process and Managing the Case

Read Federal Rule 11

Read Hades v. Yonkers Racing Corp., p 648

Read Federal Rule 16

Read Notes on p 917-922

Read Velez v. Awning Windows, Inc., p 922

Notes and Questions, pp. 937-939

Joinder: The Parties and Their Claims

(Unless noted in class, cases, notes & questions within joinder are optional and are provided for illustrative purposes; reading the applicable rules pertinent to each subsection is far more important)

Read Introductory handout on Joinder (to be distributed)

Review Temple v. Synthes Corp., p 38

Joinder of Claims: Historical Limitations

Harris v. Avery, p 659

Joinder: Permissive Joinder of Claims

M.K. v. Tenet, pp. 662

Joinder: Counterclaims

Intro to Counterclaims, p 663

U.S. v. Heyward-Robinson, pp. 665

Joinder: Cross-Claims

LASA per L'Industria v. Alexander, p. 674

Joinder of Parties: Who may sue and be sued

Read Ellis Canning Co. v. Int'l Harvester Co. p. 680

Joinder of Parties: Historical Limitations

Read Ryder v. Jefferson Hotel, p 684

Joinder: Permissive Joinder of Parties

Read M.K. v. Tenet, pp 686

Joinder: Traditional Concept of Indispensable Parties

Bank of California Nat. Ass'n v. Superior Court, p 691

Joinder: Required Joinder of Persons under Rule 19

Provident Tradesmens Bank & Trust Co. v. Patterson, p. 696

Joinder: Impleader

Jeub v. B/G Foods, Inc., p 706

Joinder: Interpleader

Pan American Fire & Casualty v. Revere, p. 723

State Farm Fire & Casualty v. Tashire, p. 728

Joinder: Intervention

Introductory Note on Intervention, p. 737

Smuck v. Hobson, p 737

Discovery Intro

Read DiMichel v. South Buffalo Ry. Co., p 40

Read Alderman v. Baltimore & Ohio R. Co., p. 44

Discovery: Concepts and Mechanics

Read pp. 831-834

Read Federal Rule 26(b)

Read In re Petition of Sheila Roberts Ford, p 834

Read Kelly v. Nationwide Mutual Insur. Co., p. 838

Read Note on Proportionality, p. 844

Read Marrese v. American Acad. Orthopaedic Surgeons, p 845

Read Federal Rule 26(a)

Federal Rule of Civil Procedure 26(f)

Mechanics:

Skim 851-856 in casebook but read pertinent rules carefully

Read p 860 (interrogatories)

Read p. 866-867 (production)

Read p 871 (mental and physical exams)

Read p 878-879 (requests for admissions)

Materials Prepared in Anticipation of Trial:

Read Hickman v. Taylor, pp 886

Adjudication without Trial: The Motion for Summary Judgment

Read Federal Rule 56

Read pp. 950-954

Read Adickes v. S.H. Kress & Co., p. 954

Read Celotex Corp. v. Catrett, p. 957

Read Scott v. Harris, p 969

Judge and Jury

Read pp 985-990

Read Beacon Theatres, Inc. v. Westover, p 990

Read Dairy Queen, Inc. v. Wood, p 998

Read Chauffers, Teamsters and Helpers Local 391 v. Terry, p. 1013

Taking the case from the jury:

Read Federal Rules 50 and 59

Read intro note p. 1055

Appeals and Preclusion Intro

Read Hicks v. United States, p 66

Read Des Moines Navigation & R. Co. v. Iowa Homestead Co., p 71

Preclusion Continued

Read pp. 1249-1251

Read Rush v. City of Maple Heights, pp. 1214

Read Jones v. Morris Plan Bank of Portsmouth, pp. 1225

Read Note on Issue Preclusion, pp. 1235-1236

Read Note on Persons Benefitted and Persons Bound by Preclusion, The Traditional Model, p. 1271

Read Bernhard v. Bank of America Nat. Trust & Sav. Ass'n, p 1272

Read Parklane Hosiery Co. v. Shore, p 1279, through Note 2

Read Note on Binding Nonparties, p. 1288

Read Taylor v. Sturgell, p 1293

Floating modules if time permits TBD