

Civil Procedure

Fall 2018, 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. **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 12^h 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 2018-2019) (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 ten hours per week, on average, outside of class studying for this 5-credit course. This is **in addition** to the 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 may, secondarily, encompass a MidTerm examination. In some years, I treat the MidTerm as purely a practice opportunity; in other years, it counts towards the grade. I will seek your collective input as to preferences, but inevitably, some students prefer the opposite. If the MidTerm counts, 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. 1-28

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. 77 (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 Section and Intro and Hess v. Pawloski, p 88 through to Int’l Shoe

Read International Shoe Co. v. Washington, pp. 92

Read Gray v. American Radiator, pp. 105

Personal Jurisdiction: Specific Jurisdiction, Long-Arm Statutes, and Due Process

Read pp. 103-104

Read McGee v. International Life Insurance Co., p 99

Read Hanson v. Denckla, p. 101

Read World-Wide Volkswagen Corp. v. Woodson, p. 112

Read Keeton v. Hustler Magazine. P 122

Read Kulko v. Superior Court of California, p. 124

Read Burger King Corp. v. Rudzewicz, p 124

Read Asahi Metal Industry Co. v. Superior Court, p. 132

Skim J. McIntyre Machinery, Ltd. v. Nicastro, p. 140

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, p 159

Read *Daimler AG v. Bauman* p 164

Read *Bristol-Myers Squibb Co v. Sup. Court of Cal.* P 157

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 179

Harris v. Balk, p 180

Notes and Questions, pp. 167

Shaffer v. Heitner, p 182

Personal Jurisdiction: Presence and Consent

Read *Burnham v. Superior Court*, p 195

Read *Carnival Cruise Lines, Inc. v. Shute*, p 172

Personal Jurisdiction and the Federal District Courts

Read p. 206-207

Read Federal Rule 4

Next Module: Subject Matter Jurisdiction (To be distributed early in the term as part of Syllabus Part II)