CONTACT INFORMATION

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COURSE TIMES AND LOCATION

Tuesday, Wednesday, and Thursday; 10:10 to 11:40 am; 238 Koppelman Hall

COURSE MATERIALS AND TWEN

The required casebook is BARBARA ALLEN BABCOCK, TONI M. MASSARO & NORMAN W. SPAULDING, CIVIL PROCEDURE: CASES AND PROBLEMS (6th ed. 2017). You must purchase a (new or used) copy of the sixth edition; you may not use an earlier edition. You should bring the casebook with you to every class.

You must also bring printed copies of any assigned Federal Rules of Civil Procedure and statutory provisions to the relevant class sessions. For convenience, you can purchase a copy of STEPHEN N. SUBRIN ET AL., FEDERAL RULES OF CIVIL PROCEDURE: WITH RESOURCES FOR STUDY, 2018-2019 (Wolters Kluwer 2018), which contains all the relevant rules and statutes for this course. (You may not use an earlier edition of this supplement, as the Federal Rules were recently amended.) Alternatively, you can obtain copies of the current rules and statutory provisions from an open-access website such as Cornell Law School’s Legal Information Institute.

I will post additional readings and materials on this course’s webpage on TWEN. Once again, you must bring printed copies of these readings to the relevant class sessions. (Please register for this course on TWEN as soon as possible, using an email address you check regularly. All course-related announcements will be made through TWEN.)

Finally, you may wish to consult various treatises, hornbooks, and commercial outlines, some of which are on reserve in the library. You are certainly free to do so, but I advise you to use these materials with caution, as they frequently oversimplify the subject matter.
CLASS ATTENDANCE AND PARTICIPATION

Class attendance is mandatory; **unexcused absences or tardiness will lower your course grade.**

I will circulate dated sign-in sheets at the beginning of each regularly scheduled class. You must personally sign these sheets during class time—i.e., **before** class has ended. Your signature (or lack thereof) will constitute dispositive evidence of your attendance at (or absence from) any given class. Falsifying a sign-in sheet (by, for example, signing another student’s name) is a violation of the Code of Academic Conduct.

Consistent with the rules of the New York Court of Appeals and American Bar Association, you must attend at least 85% of the regularly scheduled classes to pass this course. **This means that you may miss no more than six classes during the entire semester.** If you exceed the permitted number of absences—either by not attending class or failing to sign in—you will be administratively withdrawn from the course, with potentially serious consequences for your financial aid, academic standing, graduation date, and eligibility to sit for the bar exam.

The Office of Student Affairs has authority to excuse an absence for religious reasons and in cases of truly compelling hardship. To have an absence excused, so that it will not count against your permitted number of absences for this course, you must contact the Office of Student Affairs (not me or my assistant). I will treat an absence as excused only if I receive confirmation directly from the Office of Student Affairs.

I will “cold call” students off a randomly generated list every class, **including the first class.** My “calls” will be relatively short, lasting only a few questions. This means that I will likely call on up to a third of the class during any given class session and that you should expect to be called on about once a week. I expect you to be prepared to answer questions about the assigned materials each class. In addition, I will assign problems from the casebook throughout the semester. You should prepare preliminary answers to the problems; though I will not collect them, you should be ready to discuss them in class.

Each student may decline to participate in two class sessions during the semester (though, per the attendance policy, you still must attend these classes). To use these “free passes,” you must email me by 9:00 am on the day(s) you elect not to participate. If there is some truly extenuating circumstance that prevents you from preparing for a given class, please also email me by 9:00 am on the day of the class. An excused lack of preparation will not count as a “free pass.”

LAPTOP POLICY

You may not use a laptop, iPad, e-reader, smartphone, or any similar device during class. The available research is pretty overwhelming that using a laptop in class impedes most students’ learning; it can also prove distracting to your classmates. So that no one has to worry about missing any important material during class, a podcast of every class will be posted on Echo360 within two business days. (The Hofstra Law IT Department provides instructions on how to access the Echo360 app through the Hofstra Portal.) You are not permitted to record any class yourself.
OFFICE HOURS AND EMAIL

Starting the week of August 27, I will hold regular office hours, usually on Thursday afternoons between 2:00 and 5:00 pm. Appointments will be in 15-minute blocks. **Every student must attend office hours at least once by November 15.** You may attend office hours either on your own or in pairs. Electronic sign-up sheets for each day of office hours will be available on TWEN. If you cannot make my regular office hours, please email my assistant to schedule an appointment for some other time.

Please raise any substantive questions with me during class, immediately after class, or during office hours—**not** by email—as such questions are best addressed in person. You should direct any administrative questions about the course to my assistant.

EXAMS AND GRADING

Your course grade will be based primarily on your performance on a limited-open-book final exam, which the Registrar has currently scheduled for Friday, December 7, 2018, at 1:00 pm. I will provide additional details about the final exam later in the semester.

You will also be required to complete a take-home, limited-open-book midterm exam in mid-October. The midterm exam will be ungraded, though your performance may affect your course grade (in either direction) if your final exam score falls near the border between two half-letter grades. We will spend an entire class session discussing the answers to the midterm exam and exam-taking techniques more generally.

I may also raise or lower your course grade by a half-letter based on the quality of your class participation. And once again, unexcused absences or tardiness will lower your course grade.

RESCHEDULED CLASSES

My wife and I are expecting our second child around Labor Day weekend. As a result, I will likely have to cancel, and schedule makeups for, a couple of the class sessions falling in late August or early September. I will try to give you as much notice as I possibly can before any canceled classes. Thank you in advance for your understanding and patience.

OPTIONAL SESSION

In early September, I will hold an optional session on “How to Study for Law School.” I will provide further details closer to the date. The session will not be recorded.
ASSIGNMENTS

Below is a provisional schedule of reading assignments and class sessions for the first half of the semester. (I will post the remainder of the syllabus in early September, after I have gotten a sense of how quickly we are able to cover the material.) **Please be aware that the schedule is subject to change.** To ensure you are fully prepared for every class, try to read one (but no more than one) day ahead. For readings from the casebook (“CB”), please skip any notes following a case unless specifically assigned. “FRCP” refers to the Federal Rules of Civil Procedure.

I. Introduction, Due Process, Notice, Service of Process

**August 21: How to Read and Brief a Case**
- *Kindred Nursing Centers L.P. v. Clark* (TWEN)
- Prepare case brief for *Kindred Nursing* and bring a printed copy to class

**August 22: How to Read and Brief a Case, Take 2; Course Overview; Due Process**
- Bring a printed copy of your *Kindred Nursing* case brief to class
- Bring a printed copy of the course syllabus to class
- *Sniadach v. Family Finance Corp.*, CB pp. 2-8
- Note: Due Process as Notice and a Chance to Be Heard, CB pp. 8-11
- Note: Private Actors and Due Process, CB p. 11
- Note: The *Mathews* Test, CB pp. 11-15
- Note: Critiques of Due Process Balancing, CB pp. 23-25
- FRCP 1, 2, 16(a)

**August 23: Notice; Service of Process; Default**
- Note: *Mullane v. Central Hanover Bank & Tr. Co.*, CB pp. 32-33
- *Greene v. Lindsey*, CB pp. 27-31
- Note: *Jones v. Flowers*, CB pp. 33-35
- Notice: Constitutional Requirements Ritualized: Rule 4, CB pp. 35-38
- *Mid-Continent Wood Products v. Harris*, CB pp. 39-44
- Note: Serving and Being Served, CB p. 47
- FRCP 3, 4, 55, 60(b)

**August 28: Due Process and Lawyers**
- Prepare Problem Case: The Elusive Defendant, CB pp. 25-27
- *Lassiter v. Department of Social Services*, CB pp. 63-72
- Access to Lawyers: The Price of Advice, CB pp. 75-82 (skim)
- *Turner v. Rogers*, CB pp. 91-102
II. Pre-Judgment (Preliminary) Relief

August 29: Preliminary Injunctions and TROs
• *Walker v. City of Birmingham*, CB pp. 767-783 (also read note 1)
• Excerpts from the “travel ban” cases (TWEN)
• FRCP 64, 65

III. Pleadings

August 30: The Complaint (I)
• A Brief History of Civil Procedure, CB pp. 296-312 (skim)
• *Conley v. Gibson*, CB pp. 313-315
• *Bell Atlantic Corp. v. Twombly*, CB pp. 320-342
• FRCP 8(a) & (d)-(e), 10, 12(b)-(c)

September 4: The Complaint (II); Heightened Pleading Requirements
• *Ashcroft v. Iqbal*, CB pp. 344-358
• CB pp. 371-372 (note 8)
• Note: Plausibility Versus Probability, CB pp. 372-374
• *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, CB pp. 384-392
• FRCP 9(b)

September 5: Responding to the Complaint
• Prepare Problem Case: The Aggrieved Nurses, CB pp. 312-313
• Prepare Problem Case: What You Don’t Know Can Hurt You, CB pp. 319-320
• The Rules and Forms, CB pp. 401-402
• The Pre-Answer Motion, CB pp. 402-403
• *Zielinski v. Philadelphia Piers, Inc.*, CB pp. 406-409 (also read note 2)
• CB p. 410 (note 4)
• *Gomez v. Toledo*, CB pp. 410-414
• Note: Pleading Clearly Established Law, CB pp. 414-415
• CB pp. 419-421 (notes 2, 3, 4, and 5)
• Prepare Problem Case: A Woman Partner (Parts 1 and 2), CB pp. 400-401, 410
• FRCP 8(b)-(c), 12, 13
September 6: Amending the Complaint; Rule 11 (I)
- Note: Liberal Pleading and Liberal Amendments, CB pp. 421-422
- Prepare Problem Case: A Woman Partner (Part 3), CB p. 421 (see also pp. 400-401)
- Prepare problems, CB pp. 422-423
- The History and Importance of Rule 11, CB pp. 443-448
- An Inquiry Reasonable Under the Circumstances, CB pp. 448-449
- Kraemer v. Grant County, CB pp. 449-454
- FRCP 11, 15

September 11: Rosh Hashanah—No Class

September 12: Rule 11 (II)
- Saltany v. Reagan, CB pp. 469-471
- Note: Lawyers for Causes, CB pp. 473-475
- Note: Post-Pleading Improper Purposes, CB pp. 475-476
- Frantz v. U.S. Powerlifting Federation, CB pp. 476-480
- Young v. City of Providence ex rel. Napolitano, CB pp. 481-487
- Note: Factual Contentions Versus Inferences, CB pp. 488-489
- The Inherent Power to Sanction, CB pp. 491-495
- FRCP 11

IV. Discovery, Case Management, and Settlement

September 13: Discovery Mechanics; Scope
- An Overview of the Discovery Tools and Their Deployment, CB pp. 499-505
- Discovery Reform Redux: How the Solution Became the Problem, CB pp. 505-510
- Blank v. Sullivan & Cromwell, CB pp. 522-523
- Note: Relevance and Proportionality, CB pp. 524-526
- Note: Unduly Burdensome or Expensive, CB p. 526
- Note: Penalties for Noncompliance with Discovery Orders, CB pp. 526-527
- FRCP 26, 27-36 (skim), 37

September 18: Yom Kippur—No Class

September 19: Yom Kippur—No Class
September 20: Attorney-Client Privilege and Attorney Work Product
- Note: Privileges in Civil Litigation, CB pp. 529-530
- Hickman v. Taylor, CB pp. 530-537
- Note: The Scope of Work Product and Anticipating Litigation, CB pp. 539-542
- Upjohn Co. v. United States, CB pp. 542-547
- Note: The Lifetime of the Privilege: Swidler & Berlin v. United States, CB pp. 547-549
- Note: Waiving the Privilege, CB pp. 549-550
- Note: Administering a Claim of Privilege, CB pp. 555-558
- Prepare Problem Case: A Literary Law Student, CB pp. 527-529

September 25: E-Discovery; Pretrial Conference and Order; Settlement
- Note: Spoliation and the Duty to Preserve Evidence, CB pp. 562-565
- Digital Data and the Problem of Electronic Discovery, CB p. 565
- Note: E-Discovery Amendments, CB pp. 585-588
- Note: The Discovery of “Metadata,” CB pp. 588-591
- Note: Privilege Logs and Inadvertent Disclosure in E-Discovery, CB pp. 591-592
- Note: Social Networking Sites, Discovery, and Privacy, CB pp. 592-593
- Note: The Appealability of Discovery Orders, CB pp. 628-630
- Introduction to Chapter 4, CB p. 647
- Settlement, CB pp. 652-653
- Marek v. Chesny, CB pp. 653-663
- The Pretrial Conference, CB pp. 672-674
- FRCP 16, 37(e), 41, 68

V. Summary Judgment

September 26: Summary Judgment (I)
- Celotex Corp. v. Catrett, CB pp. 696-703
- Note: Burdens of Proof, Pleading, and Production, CB pp. 707-710
- FRCP 54(b), 56

September 27: Summary Judgment (II)
- Note: Anderson v. Liberty Lobby, Inc., CB pp. 720-722
- Watch video evidence from Scott v. Harris (TWEN)
- Scott v. Harris, CB pp. 725-736
- CB pp. 740-745 (note 5)
VI. Jury Trial

October 2: The Right to a Jury Trial
- Prepare answers to Summary Judgment Problems, CB pp. 745-746
- Prepare Problem Case: A Literary Law Student (Part 2), CB p. 688 (see also pp. 527-528)
- Incidents of Jury Trial: Size and Unanimity, CB pp. 786-788
- Interpreting the Seventh Amendment: The Historical Test, CB pp. 788-789
- Curtis v. Loether, CB pp. 789-793
- Note: Other Applications of the Historical Test, CB pp. 793-795
- Note: Jury Trials and Civil Rights, CB p. 795
- Beacon Theaters v. Westover, CB pp. 796-800
- Note: What Facts a Judge May Decide, CB pp. 800-801
- Markman v. Westview Instruments, Inc., CB pp. 801-805
- U.S. Const. amend. VII; FRCP 38, 39, 47, 48, 51, 52

October 3: Juror Selection; Managing the Jury (I)
- The Law of Jury Selection, CB pp. 809-811
- Edmonson v. Leesville Concrete Co., CB pp. 814-818
- Justice O’Connor’s Edmonson dissent (TWEN)
- CB pp. 830-833 (notes 2 and 3)
- FRCP 49, 50, 51, 59

October 4: Managing the Jury (II)
- Galloway v. United States, CB pp. 833-841
- CB pp. 841-842 (first two paragraphs of note 1)
- Note: The Procedure for Moving for JMOL, CB pp. 845-846
- Sanders-El v. Wencowicz, CB pp. 846-852 (also read notes 1-4)
- Weisgram v. Marley Co., CB pp. 852-859
- Additur and Remittitur, CB pp. 865-866
- Prepare Problem Case: The Bereaved Widow, CB pp. 823-824
- FRCP 50

VII. Personal Jurisdiction and Venue

October 9: Territory; Minimum Contacts (I)
- Introduction: State Boundaries and Jurisdiction, CB pp. 105-106
- Discussion of Pennoyer v. Neff, CB pp. 106-112
- International Shoe Co. v. Washington, CB pp. 113-117
- Note: The World After International Shoe, CB pp. 117-119
- Note: Litigating Personal Jurisdiction, CB pp. 119-121
- Note: General and Specific Jurisdiction, CB p. 121
- World-Wide Volkswagen Corp. v. Woodson, CB pp. 126-132 (also read note 4)
- FRCP 4(k); N.Y. “Long Arm” Statute (TWEN)
October 10: Minimum Contacts (II)
- Prepare Problem Case: Contact Without Commerce, CB p. 112
- Prepare Problem Case: Contacts in the Stream of Commerce, CB p. 122
- Note: Keeton v. Hustler Magazine, Inc., CB pp. 137-140
- Asahi Metal Indus. Co. v. Superior Court, CB pp. 140-146
- J. McIntyre Machinery, Ltd. v. Nicastro, CB pp. 147-160

October 11: Minimum Contacts (III); Personal Jurisdiction and the Internet
- Prepare Problem Case: A Troubled Young Man, CB pp. 136-137
- Burger King Corp. v. Rudzewicz, CB pp. 163-171
- Bristol Myers Squibb v. Superior Court (TWEN)

***I will post the midterm exam questions on TWEN after class on October 11. Your exam answers will be due by 9 am on October 15.***

October 16: Physical Presence; General Jurisdiction
- Prepare Problem Case: The Ubiquitous Defendant, CB pp. 204-205
- CB pp. 174-175
- Burnham v. Superior Court, CB pp. 175-184
- Daimler AG v. Bauman, CB pp. 191-202

October 17: Consent; Venue; Forum Non Conveniens
- Carnival Cruise Lines v. Shute, CB pp. 221-227
- CB pp. 229-230 (note 6)
- Venue, CB p. 292
- BNSF Railway Co. v. Tyrrell (TWEN)
- Venue Transfers Within the Federal Court System, CB pp. 998-1000
- Piper Aircraft Co. v. Reyno, CB pp. 1002-1008
- 28 U.S.C. §§ 1391, 1392, 1404, 1406
- Prepare Problem Case: An Unhappy Wanderer, CB p. 105

October 18: Midterm Debrief

Page 9 of 9