

HAMLIN UNIVERSITY SCHOOL OF LAW

Syllabus for Civil Procedure I Fall, 2010

Professor Douglas McFarland
651-523-2085

dmcfarland@hamline.edu

Class Meetings and Office Hours

The class meets on Mondays and Wednesdays from 11:00 to 11:50 in classroom 103. My other class meets Tuesdays and Thursdays from 8:00 to 9:15. You will find me in my office (227W) before and after these classes. I will also often be in the office several afternoons and occasional Fridays. I do not post regular office hours, but am available to students any time I am here (shortly before a class may not be a prime time).

NOTE: FOR THE FIRST WEEK OF CLASSES ONLY, THE CLASS WILL MEET ON FRIDAY INSTEAD OF MONDAY. CLASS ONE WILL BE WEDNESDAY IN ROOM 103 AS SCHEDULED; CLASS TWO WILL BE FRIDAY IN ROOM 105 AT 9 A.M. WEEK TWO WILL BEGIN THE REGULAR M, W SCHEDULE.

Required Text and Supplemental Materials

The casebook is Jack H. Friedenthal, Arthur R. Miller, John E. Sexton & Helen Hershkoff, *Civil Procedure: Cases and Materials* (10th ed. 2009) [FMSH] plus the 2010 supplement, which includes the Federal Rules of Civil Procedure and selected sections of the United States Code. The required enriching text is Roger C. Park & Douglas D. McFarland, *Computer-Aided Exercises on Civil Procedure* (5th ed. 2004) [PM], with accompanying exercises from the Center for Computer-Assisted Legal Instruction [CALI], which are available on the CALI website [www.cali.org]; you will encounter more of the CALI exercises in civil procedure II than in civil procedure I. Lessons on the CALI site are not discussed in class, but I strongly recommend working through them in pairs or small groups. Students have always found them helpful. You will note I have written several of them. The best time to work through a CALI lesson is at the end of the material it covers.

A website for this class can be found on The West Education Network [TWEN]. The syllabus, additional course materials, sample examinations, and a list of CALI exercises will be posted on the TWEN site. Students should register on TWEN as soon as possible and check the site periodically for announcements and other materials.

Additional supplemental readings are not required, although additional readings will assist understanding of the law of civil procedure. I strongly recommend first-year students concentrate on close study of their assigned materials, and do NOT consult additional, outside materials earlier than perhaps the middle of October. At that point, students seeking additional readings can choose from many hornbooks, supplemental materials, and study aids. Multi-volume treatises are available in the library. Of these, I recommend Charles A. Wright & Arthur

R. Miller, *Federal Practice and Procedure*, and Douglas D. McFarland & William J. Keppel, *Minnesota Civil Practice* (4th ed. 2008). Good single-volume hornbooks are Jack H. Friedenthal, Mary Kay Kane & Arthur R. Miller, *Civil Procedure* (4th ed. 2005), and Charles Alan Wright & Mary Kay Kane, *Law of Federal Courts* (6th ed. 2002).

Course Description and Objectives

Civil procedure I is the first half of a year-long course studying the civil judicial process. As described in the school of law catalog, it “[f]ocuses on the civil judicial process and dispute resolution. Civil Procedure I includes a study of the constitutional and legislative grants of authority to the state and federal judicial systems, including questions of personal jurisdiction, subject matter jurisdiction, notice required by due process of law, and venue.” Civil procedure II, in spring, 2011, “[s]tudies additional aspects of the civil lawsuit, including pleadings, motions, discovery, trial, post-trial motions, appeals, and finality of judgments.” One way of thinking of this is civil procedure I is the jurisdiction semester and civil procedure II is the rules semester.

The objectives of this course are the following:

- 1) learning legal method, including the skill of briefing cases;
- 2) understanding common law and statutory development of the law of civil procedure;
- 3) familiarity and ability to work with the Federal Rules of Civil Procedure;
- 4) developing the ability to make and evaluate legal arguments;
- 5) learning to separate the relevant from the irrelevant;
- 6) a nodding acquaintance with other procedural systems; and
- 7) reading and application of jurisdictional and procedural statutes.

Classroom discussion will primarily be the Socratic method based on the case method of legal instruction. We will also analyze and discuss hypotheticals and problems, occasionally in groups. Students will be asked to demonstrate the ability to read rules and statutes precisely.

While case briefs will not be collected or graded, I strongly recommend that first-year students brief every case. We will concentrate on this skill. Professors differ to some extent in expectations for a brief; I believe a good case brief has the following elements:

- name of case and citation to where it is found in the casebook;
- facts of the case (what are the relevant facts needed to state to support the issue/holding; the procedural history is part of the facts, not a separate section);
- the issue (phrased as a yes or no question, the other side of the “holding” of the case);
- the decision (this is only “yes” or “no” in answer to your yes or no issue); and
- reasoning and comments (mention court’s reasoning, your reactions and comments).

We will discuss briefing techniques in the first class.

Attendance Policy

Attendance will be recorded by circulation of the attendance sheet provided by the registrar’s office. Attendance is expected at every class. Excessive absences (defined as six absences) will result in removal of the student from the class roster; no make-up work will be offered.

Examination and grading

The grade will be based entirely on the final examination, which in all likelihood will be a three-hour examination combining both traditional fact-pattern analysis questions and multiple-choice questions.

Assignments and Class Outline

Note: I recommend against first-year law students reading beyond the assignment for the first class prior to our meeting for the first time. Students eager to read over the summer will find value in *The Bramble Bush* by Karl Llewellyn and possibly enjoy *One L* by Scott Turow or *The Paper Chase* by John Jay Osborn, Jr.

Assignments are in FMSH and PM. Specific assignments are made for only the first five classes. For each class after that, prepare ahead approximately 15+ pages, depending on the length of the cases included and nature of the materials, e.g., three cases with notes in 15 pages is enough but one-and-one-half cases in 15 pages is not. The number of classes indicated for each chapter is an estimate only. When the materials deal with one or more of the Federal Rules of Civil Procedure [FRCP] or a jurisdictional statute, you must in addition study the applicable rule(s) or statute(s). While the fall semester materials deal with few of the FRCP (spring is the rules semester), you need to bring your supplement rulebook to class whenever the material involves a jurisdictional statute.

Chapter 1. A Survey of the Civil Action (5 classes)

Class 1 FMSH 1-6;
PM 1-18 (brief *Mottley*)

When convenient during the first two weeks (but not before our first class), work through CALI CIV 05 (Analysis of a Diversity Case) outside class, preferably in a pair or group..

Class 2 FMSH 25-35 (brief *Capron, Tickle, Case*)
Class 3 FMSH 35-44 (brief *Temple, DiMichel, Alderman*)
Class 4 FMSH 44-56 (brief *Alexander, Diniero, Price*)
Class 5 FMSH 56-70 (brief *Lavender, Hicks, Des Moines*)

Note: while chapter 1 is a brief survey of a civil action from start to end, you should think of the first five classes as an exercise in case briefing only. This is not the time to learn the procedural law involved; we will spend substantial time on each of these topics during the rest of the year.

Chapter 2. Jurisdiction over the Parties and their Property (9+ classes)

PM 27-30; FMSH 71-92, 99-198
Study relevant parts of PM Exercise Two at appropriate points of chapter.

Chapter 3. Providing Notice and an Opportunity to be Heard (3 classes)

FMSH 199-239
Study relevant parts of PM Exercise Two at appropriate points of chapter.

Chapter 4. Jurisdiction over the Subject Matter of the Action--the Court's Competency (6+

classes)

FMSH 266-307, 324-362

Study relevant parts of PM Exercise Two at appropriate points of chapter, and work through CALI CIV 03 at appropriate points.

Chapter 5. Venue, Transfer, and Forum Non Conveniens (2 classes)

FMSH 369-403

Study relevant parts of PM Exercise Two at appropriate points of chapter.

At a time convenient in the semester, probably early November, we will discuss the skills and techniques of writing a law school exam and have an ungraded practice examination (2+ classes).

Civil procedure II in spring, 2011, will begin with Chapter 7 The Development of Modern Procedure (selections).