

COURSE SYLLABUS

Faculty:	Professor James Coben
Course:	Civil Procedure II (Section One)
Semester:	Spring 2011
Meeting Schedule:	Monday, Wednesday, and Friday (8:00-8:50 a.m.)
Room:	101
Office Hours and Communication:	I will set formal office hours after week one of the semester (when I know the full schedule for the students in all of my courses). In the meantime, feel free to stop by whenever my door is open (I am generally on campus Monday-Wednesday 8-4:30; and Friday from 8:00-12:00). I am glad to schedule appointments whenever needed (just give me a call or email – 651-523-2137; jcoben@hamline.edu).

Course Description:

Focuses on the civil judicial process and dispute resolution. Continuation of Civil Procedure I. Studies additional aspects of the civil lawsuit, including Erie Doctrine, pleadings, motions, discovery, trial, post-trial motions, appeals, and finality of judgments.

Required Course Materials:

Casebook (hereafter "I & M")

- Allen Ides and Christopher May, CIVIL PROCEDURE CASES AND PROBLEMS, 3RD EDITION (Aspen 2009; ISBN13: 978-0-7355-7964-4)

Statute/Rules Supplement (hereafter "rules supplement")

- Allen Ides and Christopher May, CIVIL PROCEDURE CASES AND PROBLEMS, 2010 STATUTORY, CASE, AND MATERIALS SUPPLEMENT (ASPEN 2010; ISBN13: 978-0-7355-9058-8)

The organization of the course generally follows the I & M text. We will discuss in class approximately 1/4 of the textbook problems, though I encourage you to consider all of them as you prepare each day's assignment (or later as part of your

exam preparation). In addition, for each assignment, you should read the relevant Federal Rules of Civil Procedure and statutory material contained in the Rules supplement. Don't worry, at the end of each class, I will highlight supplemental reading (if any) to focus on for the next class!

Recommended Texts:

For a narrative approach offering succinct explanations and good examples, I recommend Joseph W. Glannon, CIVIL PROCEDURE EXAMPLES AND EXPLANATIONS, 6TH EDITION (Aspen 2008; ISBN13: 978-0-7355-7033-7). You might also enjoy Joseph W. Glannon, GLANNON GUIDE TO CIVIL PROCEDURE: LEARNING CIVIL PROCEDURE THROUGH MULTIPLE-CHOICE QUESTIONS AND ANALYSIS, 2ND EDITION (Aspen 2009; ISBN13: 978-0-7355-7954-5).

Advice on Additional Study Aids:

Before you buy study aids, you might want to check the holdings in the library, which has everything from nutshells and outlines to tapes, hornbooks, and treatises. If you are looking for a more detailed discussion of topics we cover, you might find a civil procedure treatise to be helpful (see, e.g., Wright and Kane's LAW OF FEDERAL COURTS—Hornbook Series 6th (West 2002) or Wright, Miller, and Cooper's FEDERAL PRACTICE AND PROCEDURE (West 1978-2010).

I also encourage you to try a number of the computer-aided exercises on civil procedure (jump-linked off of the course TWEN site). These exercises, prepared by the Center for Computer Assisted Legal Instruction ("CALI"), are a nice change of pace and a great way to reinforce basic course principles. To enhance your use of the exercises, you might want to consider purchasing Roger C. Park and Douglas D. McFarland, COMPUTER-AIDED EXERCISES ON CIVIL PROCEDURE, 5TH EDITION (Gale Cengage 2004; ISBN13: 978-0-3141-5418-7). This CALI supplement helps you prepare to master the exercises and contains an extremely concise summary of key civil procedure concepts.

Finally, interested in general first year study guides? I recommend the following (both available from Amazon):

- Tracey E. George and Suzanna Sherry, WHAT EVERY LAW STUDENT REALLY NEEDS TO KNOW: AN INTRODUCTION TO THE STUDY OF LAW (Aspen 2009; ISBN13: 978-0-7355-8236-1)
- Ruth Ann McKinney, READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT (Carolina Academic Press 2005; ISBN13: 978-1-5946-0032-6)

Learning Outcomes for the Course:

"Civil litigation is an institutional arrangement for using state power to bring a recalcitrant reality closer to our chosen ideals. We turn to the courts because we need to, not because of some quirk in our personalities. We train our students in the tougher arts so that they may help secure all that the law promises, not because we

want them to become gladiators or because we take a special pleasure in combat.”

Owen Fiss, *Against Settlement*, 93 YALE LAW JOURNAL 1073, 1089
(1984)

This course introduces you to the court procedures that apply to civil lawsuits. Civil litigation is one problem-solving option in the lawyer’s toolbox. There are many others, including negotiation, mediation, and arbitration. While we will touch on these alternatives to litigation as a method for resolving disputes, the primary course objectives are for you to:

- Learn legal method;
- Understand the development of the law of civil procedure;
- Gain familiarity and ability to work with the Federal Rules of Civil Procedure and jurisdictional and procedural statutes; and
- Refine your analytical ability to look at a problem (a rule of law, an issue, or an argument), identify the various alternative solutions, ascertain the strengths and weaknesses of each, and determine your opinion as to the best approach to resolving the problem.

Through vigorous questioning, limited lectures, and small group activity, I will help you improve your ability to:

- Ascertain the rule of law and to predict how that rule will be applied by the courts;
- Make quality legal arguments to judicial officers (as well as mediators, arbitrators, and opposing counsel);
- Effectively communicate complex legal concepts to your future clients;
- Gain comfort with the ambiguity inherent in the practice of law;
- Increase your confidence in public speaking; and
- Understand the importance of thorough preparation, professionalism, and creativity in legal advocacy

Because this course introduces you to a new language of process (which may at first seem impenetrable), we will spend considerable time on simple case analysis. What were the key facts in the case? What issue did the court address? What was the holding and the rationale of the decision? As you gain confidence in mastering individual cases, you will begin to assimilate the broad principles of civil procedure that will allow you to analyze increasingly complex problems. Believe it or not, the puzzle of civil procedure can be fun. I will do my best to make it so!

Course Expectations:

I expect you to be prepared for class every day. Adequate preparation means having read, thought about, and analyzed the assigned materials to come to an understanding of the legal principles to be discussed for that day.

HUSL Policies on attendance, lateness and preparation

The program of instruction at the School of Law is based on an active and informed exchange between instructor and student and between student and student. Regular, prepared class attendance helps develop skills essential to the competent practice of law. A student who violates the attendance policy, including the instructor's specification of class expectation described below, may lose his or her right to take the exam in the course, to receive course credit or may receive other penalties described below and in Academic Rule 108. Persistent or frequent lateness or unpreparedness may also be the basis for reduction of the grade awarded in a course. See Academic Rule 108 for further details.

Attendance:

You will not benefit from class discussion unless you are present and well prepared for class. Furthermore, if you are not well prepared and are called upon to participate, the whole class will suffer. Accordingly, I ask you to prepare for class, come to class, and be willing to participate in the discussion. I will circulate an attendance sheet each day; your initial on the sheet is your representation that you have been present during the entire class period. I will consider more than four class absences to be excessive under the law school attendance policy. Absent exceptional circumstances, excessive absences will result in your removal from the class without "make-up work" alternatives.

Computer Use:

I encourage you to use laptop computers or other electronic devices in class to take notes and access course-related materials. However, use of electronic devices for purposes unrelated to class (such as checking email, participating in chat rooms, surfing the web, etc.) is prohibited – such use may result in not being allowed to use electronic devices in class for the balance of the semester and/or a grade reduction.

TWEN Site:

You must register for the TWEN site for this course by the end of the first week of class. Make sure the email address you use to register for TWEN remains valid during the semester or you will miss critical announcements and supplemental course material. Any powerpoint slides or other electronic media that I use in class will be posted to the TWEN site for download (available AFTER the class in which the material is utilized).

Grading Components:

You will have a mid-term examination and a final examination. The 90 minute mid-term exam will be open book and will cover forum non conveniens, the Erie Doctrine, pleadings, and discovery. We will schedule the mid-term once we know your legal writing schedule and dates for other mid-term exams, if any. The final 2-hour exam will be closed book and will cover joinder, class actions, adjudication

without trial, trial, claim and issue preclusion, and appeals. You may bring your Rules Supplement to the final exam but no other materials. (NOTE: You are free to handwrite any notes you would like in your supplement; however, you are prohibited from adding additional pages or pasting in typed outlines.) Your grade in the course will be determined by your performance on the two exams (the mid-term will count for 1/3 of your grade; the final will count for 2/3 of your grade). I reserve the right, however, to adjust a final grade ½ letter grade if your classroom participation is consistently outstanding, or consistently poor. Absences and lateness detracts from your classroom participation and will result in reducing your grade.

The best thing you can do to prepare for the final exam is to regularly write answers to textbook problems under “exam” conditions (in other words, with time limitations and using only your rules supplement). I am glad to give feedback to students who send me sample answers to textbook problems.

Assignments

The following is the tentative schedule of assignments for the class through the end of the semester. We may move faster or slower than these specific assignments (revisions to the syllabus, if any, will be posted to the course TWEN site). References are to page numbers in the casebook. As part of my work with the Dispute Resolution Institute, I will be in Beijing, China during the last week of scheduled classes. Accordingly, our last class will be on Friday, April 29th (no classes on Monday, May 2nd or Tuesday, May 3rd as normally would be required). During the first class, we will agree on two make-up dates and times and I will revise the syllabus as needed.

Exam Review and Chapter Five Wrap-up (1 class)

January 19

I & M, pp. 433-442 (Forum Non Conveniens – *Piper Aircraft*)

The Erie Doctrine and Related Problems (6 classes)

January 21

I & M, pp. 451-464 (Overview – *Erie*)

January 24

I & M, pp. 465-478 (Federal Statutes and the Supremacy Clause – *Stewart*)

January 26

I & M, pp. 483-497 (Federal Rules of Civil Procedure – *Sibbach* and *Hanna I*)

January 28

I & M pp. 497–503 (*Walker*) and Rules Supplement pp. 251–267 (*Shady Grove*)

January 31

I & M, pp. 503-517 (Federal Procedural Common Law – *Guaranty Trust, Byrd, and Hanna II*)

February 2

I & M, pp. 517-528, 534-539 (*Gasperini*, “Reverse-*Erie*,” and *Erie* doctrine synthesis)

Pleadings (5 classes)

February 4

I & M pp. 541-564 (Historical Background; Fact Pleading – *Epstein* and *Bockrath*)

February 7

I & M, pp. 565-583 (Notice Pleading (the complaint) – *Dioguardi* and *Leatherman*)

February 9

I & M, pp. 583-597 (Notice Pleading (the answer) – *King Vision*; FRCP 12(b)(6) Motion to Dismiss – *Northrop* and *Kirksey*)

February 11

FRCP 15 (Amended and Supplemental Pleadings—readings to be posted to the TWEN site)

February 14

I & M, pp. 597-608 (Pleading sufficiency under FRCP 8(a)(2) -- *Bell Atlantic* and *Iqbal* (in Rules Supplement pp. 268–281))

Discovery (4 classes)

February 16

I & M, pp. 608-626 (Discovery Intro – scope and relevance; privilege – *Jaffee*)

February 18

I & M, pp. 626–644 (Attorney–client privilege – *Upjohn*; Work–product (*Hickman* and *Upjohn*))

February 21

I & M, pp. 645–668 (Discovery – the formal discovery process in federal court: mandatory disclosures and sanctions – *Advance Financial*; depositions; interrogatories; request for production and inspection; physical and mental exams – *Schlagenhauf*; requests for admission)

Make-up class (to be scheduled during week of February 21)

I & M pp. 668–678 (Protective Orders, Motions to Compel and Sanctions – Seattle Times); E-Discovery (readings to be posted on TWEN)

Joinder of Claims and Parties (6 classes)

February 23

I & M pp. 679–700 (Joinder of claims and parties overview; claims and counterclaims (Burlington Northern; Hart; Semmes). **NOTE:** Ignore Note 3 on page 690.

February 25

I & M pp. 700–726 (Cross Claims – Rainbow and Harrison; Permissive Joinder of Parties by Plaintiffs – Green and Exxon)

February 28

I & M pp. 726–748 (Permissive Joinder by Plaintiffs continued; Joinder of Parties by Defendants: Rule 13h – Schoot and Hartford; Rule 14 – WallKill and Guaranteed Systems)

March 2

I & M pp. 748–761 (Intervention by Absentees – Great Atlantic and American Honda)

March 4

I & M pp. 761–777 (Interpleader – Indianapolis Colts and Geler)

March 7, 9, and 11

(no classes SPRING BREAK)

March 14 AND Make-up class (date/time to be decided)

I & M pp. 777–808 (Compulsory Joinder – Provident Tradesmens; Republic of the Phillipines; and Temple)

Class Action (3 classes)

March 16

I & M, pp. 809–825 (Class Action Introduction: Constitutional Requirements – Hansberry and Phillips)

March 18

I & M, pp. 825–836; 842–845; 857–867; 879, 883--891 (Class Action Fairness Act (CAFA); FRCP 23(a) and (b) requirements – Boggs)

March 21

I & M, pp. 891–915; 925–927 (Class Action Settlement – Hanlon; Class Action Waiver; Review Problems)

Adjudication Without Trial (4 classes)

March 23

I & M, pp. 929-947 (Summary Judgment – *Anderson*)

March 25

I & M, pp. 947-957 (Summary Judgment – *Celotex*)

March 28

I & M, pp. 957-976 (Summary Judgment for Plaintiff – *Johnson*; Summary Judgment Sua Sponte – *Goldstein*)

March 30

I & M, pp. 976-994 (Default Judgment – *Rogers*; Dismissal)

Trial (3 classes)

April 1

I & M, pp. 995-1025 (Trial by Jury – *Beacon Theatres*; *Terry*; and *Markman*)

April 4

I & M, pp. 1025-1053 (Jury Instructions and Verdicts – *Mitchell*; Judgment as a Matter of Law – *Honaker*)

April 6

I & M, pp. 1053-1073 (Judgment as a Matter of Law – *Weisgram*; Motion for New Trial – *Tesser*)

Claim and Issue Preclusion (5 classes)

April 8

I & M, pp. 1157-1182 (Claim preclusion: “same claim” – *Porn* and *Los Angeles Branch NAACP*)

April 11

I & M, pp. 1182-1208 (Claim preclusion: “final, valid and on the merits” – *Moite*; “same parties and privity” – *Taylor*)

April 13

I & M, pp. 1208-1226 (Issue preclusion (collateral estoppel): “same issue” – *Sunnen* and *Lumpkin*)

April 15

I & M, pp. 1226-1236 (Issue preclusion (collateral estoppel): “actually litigated”; “decided and necessary” – *Cunningham* and *Aldrich*)

April 18

I & M, pp. 1236–1250 (Issue preclusion (collateral estoppel): “same parties and privity” – *Bernhard* and *Parklane Hosiery*)

Appeals (3 classes)

April 20

I & M, pp. 1075–1091 (Timing and Collateral Order Doctrine – *Cohen*; *Digital Equipment*; and *Quackenbush*); Rules Supplement, pp. 283–287 (*Mohawk Industries*)

April 22

(No class--EASTER BREAK)

April 25

I & M, pp. 1091–1111 (Interlocutory Appeals – *Carson* and *Ahrenholz*; All Writs Act – *Will* and *Silver Sage*)

April 27

I & M, pp. 1111–1126; 1135–1139 (Certification – *Olympia*; Standards for Review – *Pullman*; Review at the U.S. Supreme Court)

Course Review (1 class)

April 29

Course Review; Exam Prep