

Civil Procedure
Spring 2010 Syllabus
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Required Books:

1. ALLAN IDES & CHRISTOPHER N. MAY, CIVIL PROCEDURE CASES AND PROBLEMS (3rd ed. Aspen) (2009). ISBN 978-0-7355-7964-4
2. JONATHAN HARR, A CIVIL ACTION (Vintage Books)(Available in paperback). ISBN 0-394-56349-2
3. FEDERAL RULES OF CIVIL PROCEDURE (West 2009-10). ISBN 978-0-314-19144-1 or ISBN 978-1-5994-1654-0 (the same rules book you used first semester.

Goals and Objectives

The study of law will be a continuing process throughout your professional career. You have a great deal to learn, a short time in law school, and an even shorter time in my course. Thus, there are many goals of this course.

Lawyers are problem solvers. The primary goal of this course will be to assist you in developing 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. Because lawyers solve problems in the context of law, we will focus on how to ascertain the rule of law, and to predict how that rule will be applied by the courts. As you have probably learned already the rules of procedure have a lot to say about what claims actually get addressed on the merits. To be successful at having your claim addressed in court, or in an administrative tribunal, you will have to master the rules of procedure. We will read cases, but most of civil procedure is codified. We will focus on how courts interpret rules and statutes. You will continue to be exposed to some Constitutional analysis and important principles of Federalism. We will also explore alternatives to litigation as a method for resolving disputes.

By the end of the semester you should develop your tentative views on the quality of justice delivered through the civil litigation process in the United States. I invite you to develop your personal views on the appropriate goals of our litigation process and how procedural and constitutional rules can advance these goals. Once you develop your personal analytical framework, you will have some basis for evaluating the various court decisions and legislative responses we will study in the course.

Classroom Discussion

The teaching method will vary in your classes. I will give some short lectures and have some question and answer periods. We will address some, but not all of the problems set out in the book. Most of the course will be conducted through an instructor led class discussion of

various questions and points raised primarily by me, but not infrequently by you. Because my goal is to give you the opportunity to develop your personal skills at arguing and predicting court behavior, it is not always useful for me to tell you my views or for me to exercise my skills at analysis. I will try to assist you in developing your skills. I will do this usually by questioning.

If I, or someone else, question you about your views, you should not construe this as a negative comment or necessarily as disagreement with your views, but as an attempt to explore the extent and basis of your understanding. The classroom is a place to explore your views and test your theories. You will learn more when people disagree with you than when everyone agrees. Not all of your opinions will hold up under careful scrutiny. Not everyone will agree with your views even when they are fully defended. Furthermore, although some of your views will be justifiable, the level of your personal analysis may preclude you from fully articulating the justification. When this happens (and it will happen to most of you), do not be concerned, this is part of the learning process.

On the one hand, I will be quite demanding. I will strive for accuracy in reporting the details of cases, and frequently will ask you questions calling for sophisticated analysis. When I ask you a question I will demand a specific answer to the question I ask, not a generalized statement about the subject matter of my question. On the other hand, I understand that you are still beginning law students and as individuals will develop your analytical skills at varying speeds. I also understand, as will your classmates, that the temporary anxiety attached to speaking in a class might occasionally block your ability to respond even to the simplest of questions. Again, don't worry. All I ask, and all you should ask of yourself, is a good faith effort.

Much of your development will take place outside the classroom when you prepare for class and discuss issues with your colleagues. Many of the class sessions are designed to raise questions rather than to resolve them, with the expectation that you will think about the issues raised and discuss them with your colleagues. In addition to out of class discussion, I encourage you to read broadly. The casebook provides easy access to secondary materials. Take advantage of that access. Learn as much as you possibly can.

I have not used this edition of this casebook before. I usually try to limit the reading assignments so you have ample opportunity to study, but this book is a bit uneven. I anticipate the assignments will be unbalanced. I apologize in advance for that inconvenience.

Attendance Policy

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. You need to prepare for class, come to class, and be willing to participate in the discussion. You should review the school's attendance policy. In my view missing more than ten percent of the scheduled class sessions is excessive.

You must come to class on time. It is disruptive and unfair to me and your classmates to wander into the classroom in the middle of a discussion. If you must leave before class is completed please do not disrupt the class again by returning during the same class session. Coming to class late may be treated as an absence.

Throughout the semester you will have substantial projects due in other classes, in particular in legal writing. You will be given ample advance notice of the assignments in this

class and in your other classes. You will be able to fulfill all of your obligations if you budget your time. The fact that you choose to spend your time on some other class or paper is not an acceptable excuse for missing or being unprepared in my class. If you are to be a successful lawyer, you must learn to budget your time and meet all of your many obligations.

Testing and Grading

You will have a three hour final examination in May. The examinations will be based on the types of problems, cases and issues we discuss in the classes. Your grade in the course will be determined by this examination. I reserve the right, however, to adjust a final examination grade ½ letter grade if your classroom participation is consistently outstanding, or consistently abysmal. Excessive absences obviously detract from your classroom participation and may result in reducing your grade.

I encourage you not to worry too much about the examination process. I understand that modern educational theory focuses predominantly on defining objectives, teaching to those objectives and testing to see if the student learned, or the teacher taught the objectives properly. I do not follow that approach. My goal in teaching is to assist you in developing the basic analytical skills and discipline that will allow you to grow into a competent, ethical and effective practicing lawyer. Much of what we focus on in class will not directly show up on a written examination, but may well form the foundation for a successful practice of law. You will not be a fully competent lawyer after my class, but you should be well on the way. The exam will be structured to allow you to demonstrate the progress you have made toward that goal.

I ask that you do not tape record the class sessions without my permission. Obviously, I will accommodate legitimate needs based on illness, disability or other factors. Please let me know what I can do.

Office Hours

My office is on the bridge separating the two buildings in Room 209 E. I am here usually from 8 until 3:30 or 4:00 daily. Feel free to stop in any time. I teach at 9 and 1 on M, W, and F. If you would like to make an appointment call or email me at 651-523-2983 or pthompson@hamline.edu [Please note this address. We have an adjunct, Peter J. Thompson, who ends up with some of my email sent to him by mistake].

Computer Policy.

You may use your computers in the class room for civil procedure class related tasks. Using your computer for other purposes during the class period is not allowed.

In Closing

You have heard much about a perceived glut of lawyers in our society. Nobody has argued, however, that we have too many good lawyers. There is plenty of room at the top for lawyers who are thorough, conscientious, and creative. There are not too many lawyers who listen and understand their client's problems, and who understand the full breadth and limits of the law in order to respond to those problems. We strive to educate good lawyers. To a large extent our ability to succeed is in your hands. The quality of your education depends on you. If I can help, please let me. Pnt

Assignments for First 15 Class Sessions

Class Session	Assignment	FRCP
1.	A CIVIL ACTION.	
	Preliminary Thoughts	
	1. Who won?	
	2. Assess the roles of each of the lawyers. Was their representation adequate? Was it ethical? What did they do well? What did they do poorly?	
	3. Was there a just result? Consider the following quotes:	
	“Most Americans like to think of our legal system as a Norman Rockwell tableau in which an objective truth is ultimately found. As A Civil Action makes painfully clear, however, the system is actually a highly subjective one in which abstract notions of justice tend to be eclipsed by the predilections of the participants.” P. Toomey, <i>A Civil Action</i> , FLA. B. J. 70 (1996).	
	“The system worked just the way it was supposed to. Frankly, I don’t think there’s one moral lesson to be gained from this case.” Facher, <i>Boston Phoenix</i> , January 8, 1998.	
	“I used to believe in the idea that justice would prevail if you worked hard enough at it... The Woburn case gave me a depressing dose of reality.” Nesson, Harr, Afterword.	
	4. Review FRCP 1. Did the rules contribute to a “just, speedy and inexpensive determination?”	
2.	A CIVIL ACTION- continued	
3.	Scope of Discovery	pp. 608-17 FRCP 11(a, b); 26 (b, g) Fed. R. Evid. 401, 402
4.	Privilege	pp. 618-33 Fed. R. Evid. 501
5.	Privilege/Work Product	pp. 633-44
6.	Discovery Process	pp. 645-56; 664-68 FRCP 26(a,d,e,f); 16; 27; 28; 29;30;31;32;33;34;36
7.	Protective Order/E Discovery	pp. 669-77; FRCP 35, 37, 26 (c, e);

Ronald I Raether Jr., *Preparing for the Rule 26(f) Scheduling Conference And Other Practical Advice in the Wake of the Recent Amendments to the Rules Governing E-Discovery*, 54 AUGUST FEDERAL LAWYER 22 (2007) [54-AUG Fed. Law. 22]

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| 8. | Sanctions/E-discovery | <i>Zubulake v. UBS Warburg, LLC.</i> , 229 F.R.D. 422 (S.D. N.Y. 2004). | |
| 9. | Joinder-Claims | pp. 679-694 | FRCP 13, 18 |
| 10. | Cross-claim/Real party | pp. 700-15 | FRCP 17 |
| 11. | Joinder of parties | pp. 715-30 | FRCP 20 |
| 12. | D's Joinder of Parties | pp. 731-48 | FRCP 14, 19 |
| 13. | Intervention | pp. 748-561 | FRCP 24 |
| 14. | Interpleader | pp. 761-777 | |
| 15. | Compulsory Joinder | pp. 777-91; 802-08 | FRCP 19 |

More to Come