

# HAMLIN UNIVERSITY SCHOOL OF LAW--CIVIL PROCEDURE I

Professor Pielemeier

2011-2012

## Initial Syllabus

### Advance Assignment

For our first class on Tuesday, August 23, read the first eight pages of this Syllabus and the material assigned for Unit One, noted on page 7.

### Required Course Materials

(1) Civil Procedure, A Coursebook, by Glannon, Perlman, and Raven-Hansen, published by Wolters Kluwer (Aspen Publishers). ISBN: 978-0-7355-9789-1.

(2) 2011 Rules Supplement to item (1) above. ISBN: 978-0-7355-0862-0.

(3) TWEN. I will be setting up an electronic course web site on TWEN (“The West Education Network”) to facilitate communication outside of class. All students in the course must sign on to the web site and provide an e-mail address no later than our second class session. To access TWEN, you will need a Westlaw password, which will be provided to you during orientation or, at the latest, during our first class. You can sign on by going to <http://lawschool.westlaw.com> and clicking on TWEN courses. Then click on Add/Drop Courses and you should then see all Hamline courses that have a TWEN page, where you can add this course.

(4) Supplemental materials. From time to time I will have some supplemental notes and other materials included as part of an assignment. An initial photocopied packet [like this one] will be placed in your message box in the law school before our first class. Later supplemental materials will be posted on the course TWEN page under the link entitled “Assignments and Supplemental Course Material.” There is no charge for these supplemental materials, and you may print them out or download them as you wish.

### Office Hours and E-Mail

Office hours are posted on my office door (Room 225W), and I will usually be in during those hours. In addition, I am normally here throughout the day on many days, so feel free to ask questions at other times as well. My preference, however, is not to be disturbed during the hour preceding one of my classes.

You can reach me by E-Mail at:  
Jpielemeier@gw.hamline.edu

I am in the process of constructing a Civil Procedure page behind my "Home Page" on Hamline's World Wide Web Pages. It contains links to litigation oriented resources, and recent old examinations. You may access this web page at <http://sites.hamline.edu/personal/jpielemeier/civpro.html>. I will also provide a link on the TWEN home page for this course.

### Supplemental Reading

It is not necessary to do any reading beyond that assigned. In fact, thoughtful consideration of the assigned materials is preferable to seeking other material, and I would not encourage extensive reference to outside materials. For those who want to go beyond the assigned materials, there is no single text or hornbook to recommend. Three that may be helpful are: (1) Shreve and Raven-Hanson, *Understanding Civil Procedure* (LexisNexis, 4<sup>th</sup> edition, 2009) (2) Friedenthal, Kane and Miller, *Civil Procedure* (West, 4th ed., 2005); and (3) Clermont, *Principles of Civil Procedure* (Thomson West, 2d edition, 2009). In addition, an occasional brief reference to *Moore's Federal Practice* (available on Lexis) and Wright, Miller, and Cooper's *Federal Practice and Procedure*, both multi-volume treatises, may be helpful. Also, the articles and books cited in the casebook have been carefully chosen and should afford a good discussion of the various questions at issue if you desire to read further. I would suggest that you refer to a law dictionary if you see a word in the assigned material that you do not understand.

### Learning Outcomes for the Course

The basic goals and objectives of this course are to develop an understanding of the issues, rules, and policies involved in the process of civil (as opposed to criminal) litigation. They are also to develop proficiency in legal methodology and problem solving.

Coverage in this Fall Semester course in Civil Procedure I will include a brief introduction to the process of civil litigation, subject matter jurisdiction, personal jurisdiction, venue, and pleading, which are the first five parts of your casebook.

## Preparation and Attendance

### *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.

You are expected to be prepared for discussion of the materials assigned for each day. If you are called upon and are not well-prepared, this will result in a waste of your classmates' time as well as your own. Thus, if for any legitimate reason, you are not well-prepared, please let me know *before* class begins, and you will not be called upon during that class period.

As the Academic Rules and Attendance Policy provide, regular and punctual class attendance and preparation are required. As a general rule, I consider absences in excess of four class sessions per semester to be excessive. Potential sanctions for failure to meet these requirements are set forth in the HUSL Academic Rules. If the permitted number of absences is exceeded, opportunities to pursue "make-up work," as opposed to sanctions, will not be granted absent a strong justification for the excessive absence, such as incapacitating illness or injury, death in the family, childbirth, or analogous circumstances. Such make-up work, if permitted, will ordinarily be in the form of a required paper.

At my discretion, lateness to class may be deemed an absence. Please be on time (subject to snow emergencies) and remain in the classroom during each class session unless illness requires that you leave.

### Technology Policy

You may use laptop computers or other electronic devices in class to take notes and access course related materials. You should not use your laptop or electronic devices for other purposes.

In addition to the usual courtesies due to your classmates, refrain from text-messaging and email, using cell phones, pagers, or any other communication device. Refrain also from displaying wallpaper, screen savers, or other material on your computer screen that can reasonably be expected to distract your classmates.

### Grades:

First year Civil Procedure consists of a three credit course in the fall and a three credit course in the spring. A separate written examination and grade for each course will be given each semester. In Civil Procedure I, the final examination will be the exclusive basis for your grade. The focus on the exams will be on topics covered during the semesters they are given.

As you will see, however, topics covered throughout the course will have various degrees of relationship with each other. Because some topics covered during the spring semester require some understanding of topics covered during the first semester, the spring exam will assume that you have a competent understanding of topics covered during the first semester.

### Assignments:

In Civil Procedure I, supplemental materials such as these will contain the assignments for several “units” of the course. Units after those included in this initial handout will be posted on the TWEN page under the link labeled “Assignments and Supplemental Materials.” I used to call these “units” “classes.” That, however, was misleading because the amount of time given in class to each unit varied. The units are now grouped more by subject matter than by the amount of time likely to be spent on them.

I will let you know at the end of each class session the actual assignment for the next class.

Although on occasion specific rules or statutory provisions will be stated as part of the next assignment, I will usually only assign page numbers in the Casebook. You should assume that rules, statutes, and constitutional provisions focused upon in the assigned pages are also part of the assignment, and you should therefore study them as well. (Such provisions appear in your 2011 Supplement: item number (2) of the required materials.) You do not need to read the Advisory Committee Notes to any of the Rules in your Supplement unless I explicitly assign some.

The remainder of this document contains additional introductory material, as well as the assignment for the first class.

## Sample Documents

A separate packet that will be placed in your law school message boxes contains a number of sample documents. We will not discuss these samples extensively in class, although we may refer briefly to some later with a critical eye. However, you should look them over briefly no later than the end of the first two weeks of classes.

They are included to provide you with examples of what some documents used in litigation "look like." They are more simplistic than one would ordinarily see in substantial litigation, but they generally would be deemed sufficient and should serve the purpose noted above.

The documents, while reflecting a hypothetical case filed in a federal court in Minnesota, are in a form that is typical in federal courts throughout the United States. Slight variations in the way things are done exist from state to state (and even among different courts in the same court system within a given state), but such variations can easily be ascertained by consulting local court rules and local attorneys. These documents include some brief "NOTES," which elaborate on their use and purposes.

## A GENERAL INTRODUCTION

One possible definition of a Civil Procedure course is "A Study of the Mechanics of a Civil Law Suit." In a sense, however, this definition is misleading in that the means by which the substantive rights and duties of litigants are implemented, through the courts or otherwise, are not mechanical in the sense of being predetermined by rigid rules. Rather, the "rules" of civil procedure provide only a framework within which an attorney representing a client in litigation must work. In general, the manner in which a lawsuit will proceed is determined by the attorneys for the litigants, not by the rules themselves. The rules are merely tools which an attorney may or may not use or invoke, depending on the facts and circumstances of a given case.

This course will focus primarily on the procedure used in the courts. Less formal procedures (generally referred to as Alternative Dispute Resolution, or "ADR" Processes) are also often used to resolve disputes. We will touch on these processes briefly in this course, but be aware that Hamline offers several other courses that focus more specifically in this area.

The procedural mechanisms utilized in alternative dispute resolution systems often differ to a great extent from those used in the court system, in part because it has often appeared that the procedure used in the courts is not the best method of resolving certain types of problems. In fact, Rule 114 of the Minnesota General Rules of Practice for District Courts, first adopted in 1994, requires that the parties to many actions filed in court make an *attempt*, before extensively proceeding with the normal litigation process, to resolve the matter through ADR processes. When studying the materials in this course, you should query whether there might be better ways than those actually employed to resolve the dispute at hand. Questions of this sort have led to the establishment of less cumbersome alternative dispute resolution systems.

Notwithstanding the existence of these other mechanisms, the most typical way of resolving disputes that are not informally settled is through the use of the courts, and it is for this reason that "court" procedure will be the focus of our study. Because most cases that are filed are settled before an actual trial, resulting in the vast majority of the litigator's time being spent on issues that arise during that time period, most of the course will be devoted to such pretrial issues.

The importance of a solid knowledge of Civil Procedure to the practice of law cannot be understated. Even if an attorney never gets *directly* involved in the handling of a lawsuit (and many with various specialties do not), it is the rare attorney who never comes into *some* contact with litigation, and a knowledge of procedure is essential to an understanding of what is taking place and communicating with the attorneys who are handling the litigation. A good understanding of procedure is also frequently necessary to understand fully cases that set forth legal principles in numerous areas of the law. It is even more important to persons who will be directly involved with litigation.

As was stated earlier, the "rules" of procedure are a framework within which the attorney involved in litigation must work. They are starting points and tools for the resolution of disputes. However, often the manner in which a given rule should be interpreted or applied in a given case is not clear. As such, you should concentrate upon learning the purposes of the rules and developing the skills of arguing how the rules should be applied. In doing so, think about what goals we should seek to attain (those mentioned in Rule 1 and others) in building a system for the resolution of disputes, taking into account the constitutional structure of the United States.

### **ASSIGNMENTS AND SUPPLEMENTAL MATERIALS**

For our first class session on Tuesday, August 23, prepare for the material assigned below for Unit 1.

#### **Unit Number 1: A general introduction.**

**Assignment: The materials in this supplemental packet to here, Note 1 below, and pages 1-36 of the Casebook.**

1. Before we begin our coverage of this subject, it will be helpful to reflect on what some of the goals of our dispute resolution system should be. Assume you are one of the pioneers in setting up a new society. You have concluded that one aspect of that society should be a governmental mechanism, or system, for resolving disputes that persons seem unable to resolve through informal discussion and compromise among themselves.

What should be the goals of that system? In thinking about this, bear in mind that in many situations, the persons involved may have disagreements about the underlying facts leading to the dispute, as well as disagreements as to how the applicable substantive law applies in its resolution.

Rule 1 of the Federal Rules of Civil Procedure (in your 2010 Rules Supplement) suggests that the just, speedy, and inexpensive determination of legal controversies should be goals of the system. Few, if any, would dispute that notion. But can we be any more specific? See if you can think of three more specific characteristics or goals of a system for resolving disputes that you think would be appropriate. We will have some discussion of these goals in class.