HAMLINE UNIVERSITY
School of Law

COURSE SYLLABUS

Faculty:	**Professor James Coben**
Course:	**Civil Procedure II (Weekend)**
Semester:	**Spring 2012**
Meeting Schedule:	**Sunday (1:15-4:15pm)**
Room:	**101**
Office Hours and Communication:	**Feel free to stop by whenever my door is open (I am generally on campus Monday-Thursday 10am-4:30pm; and Sundays 11:30am-5:00pm). I am glad to schedule appointments whenever needed (just give me a call or email – 651-523-2137; jcoben@hamline.edu).**

Course Description:
Continuation of Civil Procedure I. Studies additional aspects of the civil lawsuit, including Erie Doctrine, discovery, pre-trial motions, trial, post-trial motions, appeals, and finality of judgments.

Required Course Materials (same materials as utilized in the fall semester):
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, 2011 STATUTORY, CASE, AND MATERIALS SUPPLEMENT (ASPEN 2011; ISBN13: 9780735508033)

Practice Perspectives (hereafter "A&F")

- Michael P. Allen and Michael Finch, AN ILLUSTRATED GUIDE TO CIVIL PROCEDURE, SECOND EDITION (Aspen 2011; ISBN 13: 9780735509535)

The organization of the course generally follows the I&M casebook. We will discuss in class approximately 1/4 of the casebook 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 Statute/Rules Supplement. Don't worry, I'll help you decide what's relevant (though

as a practical matter, you should begin the habit of looking at any civil procedure rule referenced in an assigned case). To provide "hands on" practice on procedural matters, we'll be utilizing the age discrimination lawsuit (*Otis & Fiona Olman v. Full Moon Sports, Inc. & Bruce Belcher*) detailed in the A&F text.

Advice on Study Aids:

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).

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 7th (Thomsen Reuters 2011) or Wright, Miller, and Cooper's FEDERAL PRACTICE AND PROCEDURE (Thomsen Reuters 1978-2011).

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)

"Treating litigation and settlement as though they were entirely distinct processes is, of course, an oversimplification. In practice, the two are intertwined. The fundamental rules and structure of each clearly acknowledge the importance of the other. Modern civil procedure is structured to facilitate the interaction between litigation and settlement. For example, many court systems require, as part of the routine cadence of litigation, consultation with opposing parties for the purpose of exploring settlement. Many rules make discussions of settlement an explicit part of judicial conferences. Civil procedure rules specifically contemplate stipulated dismissals, the entry and reopening of consent decrees, and procedures for judicial involvement in privately bargained class action settlements. Rules of evidence specifically protect statements made during settlement discussions. Even after a judgment is entered, many court systems now employ a number of strategies for promoting settlement at the appellate level. Modern litigation, in other words, takes place in concert with the ongoing prospect of settlement."

Michael Moffit, *Three Things To Be Against ("Settlement" Not Included)*
78 FORDHAM L. REV. 1203, 1206-07 (2009)

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 two 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:
Please reconfirm that you are registered with a correct email address on the course TWEN site. 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, covering the Erie Doctrine and discovery will be open book (self–scheduled before the mid-term break; the actual "exam timing window" will be voted on by the class). The final 2–hour exam will cover joinder, class actions, adjudication without trial, trial, claim and issue preclusion, and appeals. As in the fall, 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 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). Unless otherwise noted, references are to page numbers in CIVIL PROCEDURE CASES AND PROBLEMS, 3RD EDITION (I&M) or AN ILLUSTRATED GUIDE TO CIVIL PROCEDURE (A&F).

Fall Exam Review

Prior to our first class, please pick up a copy of your fall exam answers in the registrar's office and self-grade your answers using the self-grading template posted to TWEN along with a copy of the exam. I encourage all students to schedule a time to meet with me to discuss exam performance and require anyone getting a "C" or lower to do so as soon as possible.

The Erie Doctrine and Related Problems (2 classes)

January 15

Erie overview – *Erie*; Federal statutes and the Supremacy Clause – *Stewart*

- A&F, pp. 65-71 (but stop at problem 5.1, which we'll return to at the end of the Erie material)
- I&M, pp. 451-478

When state law conflicts with a federal rule of civil procedure – *Sibbach, Hanna I*, and *Walker*

- I&M, pp. 483-503

January 22

When the conflict isn't with a federal statute or rule or civil procedure – *Guaranty Trust*, *Byrd*, and *Hanna II*)

- I&M, pp. 503-517

Erie wrap (*Shady Grove*) and "Reverse-Erie" (i.e., federal law in state courts)

- Rules Supplement, pp. 254–270
- I&M, pp. 534-536
- A&F, pg. 71 Problem 5.1 (I strongly encourage you to write out an answer)

Discovery (2 classes, plus online assignment)

January 29

Discovery Intro – scope and relevance; the pre-trial conference and FRCP 16; discovery planning; mandatory disclosures; the basic discovery devices

- I&M, pp. 608-617; 645-647; 649-656; 664-first full para. of 668; 996-999
- A&F, pp. 126-140; 144-151

Privilege Overview – *Jaffe* ; Attorney-client privilege – *UpJohn*

- A&F, pp. 140-144
- I&M, pp. 618-633

February 5
Work product – *Hickman* and *UpJohn*; E-Discovery – *Teague* and *Coburn* (on TWEN))

- I&M, pp. 633-644; 656 n. 3
- A&F, pg. 148
- TWEN Materials on E–Discovery (Teague v. Target Corp.; Coburn Group v. Whitecap; and Fed. R. Evid. 502)

Protective orders – *Seattle Times*; Motions to compel and sanctions – *Advance Financial* and *Schlagenhauf*)

- I&M pp. 647-649; 656-663; 668–677

NOTE: In lieu of class during President's weekend, I will distribute a supplemental discovery and joinder assignment (based on *Olman v. Full Moon Sports*) that you can complete any time between February 5 and February 26. Details to follow.

Joinder of Claims and Parties (2 classes plus online assignment)

February 12
Joinder of claims and parties overview; claims and counterclaims (*Burlington Northern*; and *Hart*); Cross Claims – *Rainbow* and *Harrison*

- I&M, pp. 679–694 (ignore Note 3 on page 690); and 700–708
- A&F, pp. 193-199

Permissive joinder of parties by plaintiffs – *Green* and *Exxon*

- I&M, pp. 709-731
- A&F, pp. 200-203

Febrary 19
NO CLASS. As noted above, you will in lieu of class have a discovery and joinder assignment that you are free to complete any time between February 5 and 26. The assignment will be distributed in class in late January.

February 26
Joinder of parties by defendants: Rule 13h – *Schoot* and *Hartford*; Rule 14 – *WallKill* and *Guaranteed Systems*; Intervention by absentees – *Great Atlantic* and *American Honda*

- I&M pp. 731–761
- A&F, pp. 206-207 and first full paragraph of 208 (impleader); bottom of 209-210 (intervention)

Interpleader – *Indianapolis Colts* and *Geler*; Compulsory joinder – *Provident Tradesmens* and *Temple*

- I&M pp. 761–791; 802-805
- A&F, pp. 208-209 (compulsory joinder excerpt)

March 4
No class; spring break

Class Action (1 class)

March 11
Class action introduction; Constitutional requirements – *Hansberry* and *Phillips;* Class Action Fairness Act (CAFA); FRCP 23 overview

- I&M, pp. 809–836

FRCP 23 requirements –*Wal-Mart*; Class action waiver – *Concepcion*; Class action settlement – *Hanlon*

- Rules Supplement, pp. 286-300 (Concepcion)
- TWEN site (Wal-Mart, Inc. v. Dukes)
- I&M, pp. 842-844; 857-860; 865-867; 879; 886-915

Summary Judgment (1 class)

March 18
Summary judgment: Basic principles – *Anderson* and *Celotex;* Summary judgment for plaintiff – *Johnson*; Summary judgment sua sponte – *Goldstein*; A case study in getting practical: Summary judgment in *Olman v. Full Moon Sports*

- I&M, pp. 929–976
- A&F, pp. 211-240

Defaults, Dismissal, and Trial (1 class)

March 25
Defaults and dismissals - *Rogers*

- I&M, pp. 976-994

Right to trial by jury – *Beacon Theatres*; *Terry*; and *Markman*); Trial basics, jury instructions and verdicts –*Mitchell*

- I&M, pp. 995–1036
- A&F, pp. 241-251; 254-260

Judgment as a matter of law – *Honaker*; Motion for new trial – *Tesser*

- I&M, pp. 1036–1053; 1059-1071
- A&F, pp. 251-253; 262-264

Claim and Issue Preclusion (2 classes)

April 1
Claim preclusion: "same claim" – *Porn* and *Los Angeles Branch NAACP*)

- I&M, pp. 1157-1182

Claim preclusion: "final, valid and on the merits" – *Moite*; "same parties and privity" – *Taylor*

- I&M, pp. 1182–1208

April 8
No class; Easter break

April 15
Issue preclusion (collateral estoppel): "same issue" – *Sunnen* and *Lumpkin*; "actually litigated"; "decided and necessary" – *Cunningham* and *Aldrich*

- I&M, pp. 1208–1236

Issue preclusion (collateral estoppel): "same parties and privity" – *Bernhard* and *Parklane Hosiery*

- I&M, pp. 1236–1250

NOTE: I encourage you to complete the CALI exercise on preclusion (use the following link to log on and complete the exercise:
http://www.cali.org/lessonlink/391/CIV17/1768/flash
Trust me, this is a GREAT way to prepare for exams. It's a comprehensive review of claim and issue preclusion (approximate completion time 1.5 hours). You don't have to do it in one sitting. In fact, you might consider doing questions 1–11 (addressing claim preclusion) right after the April 1st class when we finish that subject and then wait to answer issue preclusion (collateral estoppel) questions until after class on April 15th.

Appeals (1 class)

April 22
Timing and collateral order doctrine – *Cohen*; *Digital Equipment*; *Quackenbush* and *Mohawk Industries*); strategic concerns

- A&F, pp. 265-274
- I&M, pp. 1075–1091
- Rules Supplement, pp. 301-305 (*Mohawk Industries*)

Interlocutory appeals – *Carson* and *Ahrenholz*; All Writs Act –*Will* and *Silver Sage*; FRCP 54d Certification – *Olympia*; Standards for review; Review at the U.S. Supreme Court

- I&M, pp. 1091–1118; 1135–1139

NOTE: Assuming there is interest, I'll schedule an optional exam review session at a mutually convenient time.