

## COURSE SYLLABUS

Faculty:	<b>Professor James Coben</b>
Course:	<b>Civil Procedure II (Weekend Section)</b>
Semester:	<b>Spring 2013</b>
Meeting Schedule:	<b>Saturdays (1:00-4:15pm)</b>
Room:	<b>100</b>
Office Hours and Communication:	<b>Feel free to stop by whenever my door is open (I am generally on campus Monday-Thursday 8am-4:30pm; and Saturdays 10:00am-4:30pm). I am glad to schedule appointments whenever needed (just give me a call or email – 651-523-2137; jcoben@hamline.edu).</b>

### ***Course Description:***

Continuation of Civil Procedure I. Studies additional aspects of the civil lawsuit, including 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, 4<sup>TH</sup> EDITION (Wolters Kluwer 2012); ISBN: 9781454818373. Hard cover version available for purchase in the bookstore; SmartE Edition available directly from the publisher).

Statute/Rules Supplement (hereafter “SRS”)

- Allen Ides and Christopher May, CIVIL PROCEDURE: CONSTITUTION, STATUTES, RULES AND SUPPLEMENTAL MATERIALS, 2012 (Wolters Kluwer 2012; ISBN: 9781454810872)

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).

***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 (Wolters Kluwer 2012; ISBN13: 978-1-4548-1690-4). You might also enjoy Joseph W. Glannon, *GLANNON GUIDE TO CIVIL PROCEDURE: LEARNING CIVIL PROCEDURE THROUGH MULTIPLE-CHOICE QUESTIONS AND ANALYSIS*, 2ND EDITION (Wolters Kluwer 2012; ISBN13: 978-1-4548-1719-2).

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 1978-2012).

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 will cover discovery and joinder and will be open book (self-scheduled before the end of February; the actual “exam timing window” will be voted on by the class). The final 2-hour exam will cover class actions, adjudication without trial (summary judgment; default; dismissal), 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.

***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).

## **Discovery (2 classes)**

### **January 12**

Discovery Intro – scope and relevance; Discovery planning; Mandatory disclosures – *Advance Financial*; Overview of the basic discovery devices (depositions; interrogatories, requests for production and inspection; physical and mental examinations – *Schlagenhauf*; requests for admission; discovery related to experts)

- I&M, pp. 631-641; 668-678; 689-700

Privilege overview – *Jaffe*

- I&M, pp. 641-650

### **January 19**

Attorney-client privilege – *UpJohn I*; Work product – *Hickman* and *UpJohn II*

- I&M, pp. 650-668

E-discovery – *Wood*; Duty to supplement; Protective orders – *Seattle Times*; Motions to compel and sanctions; Federal discovery to assist foreign/intl. tribunals

- I&M pp. 679-689; 700-710

## **Joinder of Claims and Parties (3 classes)**

### **January 26**

Joinder of claims and parties overview; claims and counterclaims (*Law Office of Jerris Leonard, Burlington Northern*; and *Hart*); Cross Claims – *Rainbow* and *Harrison*

- I&M, pp. 715-736; 741-750

### **February 2**

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

- I&M, pp. 750-773

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

- I&M pp. 773-803

### **February 9**

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

- I&M pp. 803-832; 843-845

ADR process choice introduction (Senate Table Exercise)

- Excerpt from Frank E. A. Sander & Lukasz Rozdeiczer, *Matching Cases and Dispute Resolution Procedures*, 11 HARV. NEGOT. L. REV. 1 (2006); Excerpt from Rule 114, Minnesota General Rules of Practice (distributed in your P3 class on February 2)

## **February 16**

No Class (mid-term break)

### **Summary Judgment (1 class)**

## **February 23**

Summary judgment: Basic principles – *Anderson* and *Celotex*

- I&M, pp. 983–1013

Summary judgment for plaintiff – *Johnson*; Summary judgment sua sponte – *Goldstein*

- I&M, pp. 1013–1033

ADR Process Choice Exercise

### **Class Action (2 classes)**

## **March 2**

Class action introduction; Constitutional requirements – *Hansberry* and *Phillips*;

Class Action Fairness Act (CAFA); FRCP 23a & b overview

- I&M, pp. 849–878

A note on class certification; A note on class actions and the statute of limitations; A note on subclasses; FRCP 23a application – *Walmart Part I*

- I&M, pp. 884-885; 892-908

## **March 9 (Distance Learning Module)**

FRCP 23b application – *Walmart Part II*; Preclusive effect of class action judgments;

A note on enjoining competing actions; Class action settlement or dismissal

- I&M, pp. 926-941; 951-955

### **Defaults, Dismissal and Trial (2 classes)**

## **March 16**

Default judgment – *Rogers*; Dismissal

- I&M, pp. 1033-1053

Right to trial by jury – *Beacon Theatres*; *Terry*; and *Markman*

- I&M, pp. 1055-1082

## **March 23**

Composition of juries; jury instructions and verdicts – *Mitchell*

- I&M, pp. 1082-1096

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

- I&M, pp. 1096-1112; 1118-1133

**March 30**

No Class (spring break)

**Claim and Issue Preclusion (2 classes)**

**April 6**

Claim preclusion: "Same claim" – *Porn* and *Los Angeles Branch NAACP*)

- I&M, pp. 1219-1243

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

- I&M, pp. 1243-1270

**April 13**

Issue preclusion (collateral estoppel): "Same issue" – *Sunnen* and *Lumpkin*; "Actually litigated"; "Decided and necessary" – *Cunningham* and *Aldrich*; "Same parties and privity" – *Bernard* and *Parklane Hosiery*

- I&M, pp. 1270-1309; 1319-1322

P3 adventure learning (Court Experience) debrief

**Appeals (1 class)**

**April 20**

Timing and collateral order doctrine – *Cohen*; *Mohawk Industries*; *Quackenbush*

- I&M, pp. 1135-1152

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. 1152-1178; 1196-1199

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