

Civil Procedure (Weekend)
Fall 2008, Professor James Coben
Sundays, 1:15-4:15 p.m., Room 105

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Office Hours and Communication:

Sundays 11:30 a.m. - 12:45 p.m. and after class. During the week, I am generally in the office Tuesday-Friday 9:00 a.m. – 5:00 p.m.; feel free to stop by whenever my door is open. Also, you can contact me by phone and e-mail. I am glad to schedule appointments whenever needed.

Required Course Materials:

- Ides and May, CIVIL PROCEDURE CASES AND PROBLEMS, 2ND EDITION (2006), ISBN 0-7355-5889-2, hereafter “I & M”
- Ides and May, CIVIL PROCEDURE: RULES, STATUTES, AND CASES, 2008 Supplement, ISBN 978-0-7355-7789-3, hereafter "Rules Supplement"

The organization of the course generally follows the I & M text. We will discuss in class approximately one-third 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. For the most part, the relevant supplemental reading will be obvious to you and accordingly is not listed in the syllabus below. In addition, at the end of each class, I will highlight the reading to focus on for the next class.

Advice on Supplements:

For a narrative approach offering succinct explanations and good examples, consider Glannon, CIVIL PROCEDURE EXAMPLES AND EXPLANATIONS, 6TH EDITION (Aspen 2008). For aid keeping your eye on the “big picture”, you might look at Kane, LAW IN A NUTSHELL—CIVIL PROCEDURE (West, 5th ed., 2003). Before you buy study aids, please 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, FEDERAL COURTS, (West, 5th ed., 1994) or Wright, Miller, and Cooper’s FEDERAL PRACTICE AND PROCEDURE (multi-volume treatise).

I 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 Ed., 2004). This CALI supplement helps you prepare to master the exercises and contains an extremely concise summary of key civil procedure concepts.

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).

Goals and Objectives:

“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 explore these alternatives to litigation as a method for resolving disputes, this course is primarily about refining 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, we will focus on how to ascertain the rule of law, and to predict how that rule will be applied by the courts. I will put a special premium on helping you to think about how to communicate legal concepts to your future clients. In-class exercises will give you ample opportunity to practice the skill of legal counseling, as well as making legal arguments to judicial officers, mediators, arbitrators, and opposing counsel.

Recognizing that 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.

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.

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. While laptops for note taking are strongly encouraged, I require that only word processing programs be open during class. Anyone using web browsers, electronic games, or communicating via email or instant messaging during class will be asked to leave and will not be permitted to bring their laptops to class for the duration of the course.

Testing and Grading:

You will have a three-hour final examination in December. The examination will be based on the types of problems, cases, and issues we discuss in the classes. You may bring your Rules Supplement to the exam but no other materials. 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 poor. Excessive absences or 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. In addition, we will have an "ungraded" practice exam in class on October 5th.

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.

Chapter One (Litigation and Its Alternatives) - 1 class**August 17**

- I & M, pp. 1-24 (Overview)
- I & M, pp. 24-47 (Alternatives to Civil Litigation; Professionalism)

Chapter Two (Acquiring Jurisdiction Over the Parties to a Lawsuit) - 6 classes

August 24

- I & M, pp. 49-62 (Territoriality – Pennoyer)
- I & M, pp. 62-73 (Traditional Bases of Jurisdiction; *In Rem* and *Quasi in Rem* jurisdiction -- Harris)

August 31

NO CLASS (Labor Day Holiday)

September 7

- I & M, pp. 73-82 (Long-Arm Jurisdiction - International Shoe)
- I & M, pp. 82-94 (Statutory Limitations on Long-Arm Jurisdiction; Minimum Contacts: Purposeful Availment (contractual relationships) – Hanson)

September 14

- I & M, pp. 94-108 (Minimum Contacts: Purposeful Availment (contractual relationships) continued -- Burger King and Chalek)
- I & M, pp. 108-129 (Minimum Contacts: Purposeful Availment (stream of commerce) – World-Wide Volkswagen and Asahi I)

September 21

- I & M, pp. 129-146 (Minimum Contacts: Purposeful Availment (effects test) – Kulko, Calder, and Revell)
- I & M, pp. 146-162 (Minimum Contacts: Relatedness (General Jurisdiction) -- Perkins and Helicopteros)

September 28

- I & M, pp. 163-179 (Minimum Contacts: Relatedness (Specific Jurisdiction) – Nowak I; Reasonableness Requirement – Asahi II and Nowak II)
- I & M, pp. 179-193 (Minimum Contacts: Traditional Bases for Jurisdiction (*In Rem/Quasi in Rem* Jurisdiction) – Shaffer)

October 5

- I & M, pp. 193-215 (Minimum Contacts: Traditional Bases for Jurisdiction (physical presence) - Burnham; Federal Long-Arm Provisions; Challenging Lack of Jurisdiction; Personal Jurisdiction review and in-class practice exam (ungraded))

Chapter Four (Subject Matter Jurisdiction) - 3 classes

October 12

- I & M, pp. 279-290 (Practice exam review; General Principles of Subject Matter Jurisdiction; Federal Question Jurisdiction)
- I & M, pp. 290-308 (“Essential Federal Ingredient Test” – Grable & Sons; “Well-pleaded Complaint Rule” – Mottley)

October 19

NO CLASS (Mid-term break)

October 26

- I & M, pp. 308-336 (Diversity Jurisdiction: Citizenship – Lundquist (individuals) and Tubbs (corporation); Forum Doctrine; Cases Involving Aliens – Eze and Grupo)
- I & M, pp. 337-350 (Diversity Jurisdiction: Amount in Controversy -- Coventry; Aggregation of claims and Declaratory Judgments)

November 2

- I & M, pp. 350-369 (Supplemental Jurisdiction – Gibbs and Kroger)
- I & M, pp. 370-388 (Removal Jurisdiction – McCurtain and Eastus; Challenges to a Court’s Subject Matter Jurisdiction)

Chapter Five (Venue, Transfer, and Forum Non Conveniens) - 1 class

November 9

- I & M, pp. 393-422 (Overview; 28 USC § 1391 – Bramlet; Transfer of Venue in Federal Court – Jones)
- I & M, pp. 422-439 (Forum Non Conveniens – Piper Aircraft; Shiley; Review)

Chapter Six (The Erie Doctrine and Related Problems) – 2 classes

November 16

- I & M, pp. 441-454 (Overview – Erie)
- I & M, pp. 454-472 (Federal Statutes and the Supremacy Clause – Stewart; “Specialized” Federal Common Law – Boyle)
- I & M, pp. 472-492 (Fed. Rules of Civil Procedure – Sibbach, Hanna I and Walker)

November 23

- I & M, pp. 492-505 (Federal Procedural Common Law – Guaranty Trust, Byrd, and Hanna II)
- I & M, pp. 505-527 (Gasperini and Semtek; Erie synthesis)

November 30

NO CLASS (Thanksgiving Break)

December 7 (optional)

Pre-exam review session will be scheduled at a mutually convenient time.