

**Civil Procedure II (Weekend Section)**  
**Spring 2009, Professor James Coben**  
**Sunday, 1:15-4:15 p.m., Room 105**

**Email:** [jcoben@hamline.edu](mailto:jcoben@hamline.edu)

**Phone:** 651-523-2137

**Office:** 306A (3<sup>rd</sup> Floor of the Law/Graduate Conference Center)

**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, 5<sup>th</sup> 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, 5<sup>th</sup> 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* (5<sup>th</sup> 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 May. The examination will be based on the types of problems, cases, and issues we discuss in the classes. You may bring your rules supplement (annotated in any way you like) 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  $\frac{1}{2}$  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 on March 15th. NOTE: This class is optional; Professor Coben will be abroad conducting mediation training that weekend. The official make-up class is scheduled for Sunday, May 3rd.

**Assignments**

The following is the tentative schedule of assignments. We may move faster or slower than these specific assignments (if so, I will note any proposed changes in the powerpoints shown in class and post the revisions to the course TWEN site. References are to page numbers in the casebook.

## **Fall Exam Review; Service of Process and Notice**

### **Sunday, January 18**

I & M, pp. 217-240 FRCP 4; due process – Mullane. Also, please review your first semester outlines. We will begin class by discussing the fall semester exam -- a copy will be posted to the course web site.

### **Sunday, January 25**

I & M, pp. 240-278; 529-552 Service of Process and Notice – Menonite; prefiling waiver and consent; policy-based immunities and exemptions; attachment of property -- Doehr.

## **Pleadings and Discovery**

### **Sunday, February 1**

I & M pp. 552-609; Rules Supplement, pp. 243-255 (Bell Atlantic) Pleadings and Discovery Intro -- common law and code pleading (a bit of history); Notice Pleading – the complaint and answer; motion to dismiss

### **Sunday, February 8**

I & M, pp. 585-620 Discovery Intro – scope and relevance; privilege; work product doctrine

### **Sunday, February 15**

I & M, pp. 620-652 Discovery -- the formal discovery process in federal court (mandatory disclosures; depositions; interrogatories; request for production and inspection; physical and mental exams; requests for admission; sanctions); discovery drafting exercises (additional materials to be distributed in class)

## **Joinder of Claims and Parties**

### **Sunday, February 22**

I & M, pp. 653-704 Joinder of claims and parties overview; claims and counterclaims; cross-claims; joinder of parties by plaintiffs -- real party in interest; permissive joinder

### **Sunday, March 1**

I & M, pp. 704-766 Joinder of parties by defendants; intervention by absentees; interpleader; compulsory joinder

## **Class Actions**

### **Sunday, March 8**

I & M, pp. 767-791; 813, 832, 840-844; 856-866 Class Action overview; Class Action Fairness Act (CAFA); FRCP 23(a) and (b) requirements; settlement or dismissal of class actions. NOTE: In addition to the reading noted above, individual student teams will be assigned in advance to brief and present to the class key concepts from several cases interpreting FRCP 23(a) and (b) requirements.

### **Sunday, March 15 (attendance optional)**

In-class practice exam and self-grading exercise

NOTE: You are encouraged, but not required, to take the practice exam. Professor Coben will be abroad conducting mediation training; make-up class will be held on May 3rd.

## **Adjudication Without Trial**

### **Sunday, March 22**

I & M, pp. 867-893; 903-935 Summary judgment; default judgment; dismissals

### **Sunday, March 29**

No Class – Spring Break

## **Trial**

### **Sunday, April 5**

I & M, pp. 937-996; 1001-1002 Pre-trial conferences; right to trial by jury; jury instructions and verdicts; judgment as a matter of law; motion for new trial

### **Sunday, April 12**

No Class – Spring Break

## **Claim and Issue Preclusion**

### **Sunday, April 19**

I & M, pp. 1097-1140 Claim preclusion (res judicata) -- “same claim”; “final, valid and on the merits”; “same parties and privity”

### **Sunday, April 26**

I & M, pp. 1140-1184 Issue preclusion (collateral estoppel) – “same issue”; “actually litigated”; “decided and necessary”; “same parties and privity”

## **Appellate Review**

**Sunday, May 3 (Make-up class: 1:15-4:15 in Room 105)**

I & M, pp. 1015-1065, 1074-1077 Appellate review -- final decisions and collateral order doctrine; interlocutory appeals; rule 54(b) certification; standards of review on appeal; US Supreme Court review