

Civil Procedure (Weekend Section)
Fall 2009, Professor James Coben
Sundays, 1:15-4:15 p.m., Room 101

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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-Thursday 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:

Casebook (hereafter “I & M”)

- Allen Ides and Christopher May, CIVIL PROCEDURE CASES AND PROBLEMS, 3RD EDITION (Wolters Kluwer 2008), ISBN-13: 978-0-7355-7964-4

Rules Supplement

- Kevin Clermont, FEDERAL RULES OF CIVIL PROCEDURE AND SELECTED OTHER PROCEDURAL PROVISIONS, 2009 EDITION (Foundation Press 2009), ISBN-13: 978-1-5994-1654-0

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, 6th ed., 2007). 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 and Kane's LAW OF FEDERAL COURTS—Hornbook Series 6th (West 2002) or Wright, Miller, and Cooper's FEDERAL PRACTICE AND PROCEDURE (West 1978-2009).

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).

Course Description (descriptions for all courses can be found on the law school’s website at <http://law.hamline.edu/catalog.html>):

“Focuses on the civil judicial process and dispute resolution. It includes a study of the constitutional and legislative grants of authority to the state and federal judicial systems, including questions of personal jurisdiction, subject matter jurisdiction, and venue. Studies each stage of the civil lawsuit including pleadings, motions, discovery, trial, post-trial motions, appeals, and finality of judgments. In addition, examines alternatives to the litigation process including mediation and arbitration and the role of negotiation in resolving clients' problems.”

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, 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!

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. 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.

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. Absences and tardiness detract 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 (self-scheduled) during the week of September 13th.

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.

Chapters One and Two

(Introduction; Acquiring Jurisdiction Over the Parties to a Lawsuit) - 4 classes

August 16

- I & M, pp. 1-24 (The Civil Litigation Process; Alternatives to Civil Litigation)
- I & M, pp. 53-66 (Personal Jurisdiction: Territoriality – Pennoyer)

August 23

- I & M, pp. 66-77 (Traditional Bases of Jurisdiction; *In Rem* and *Quasi in Rem* jurisdiction -- Harris)
- I & M, pp. 77-91 (Long-Arm Jurisdiction -- International Shoe; Statutory Limitations on Long-Arm Jurisdiction)
- I & M, pp. 91-98 (Minimum Contacts: Purposeful Availment (contractual relationships) – Hanson)

August 30

- I & M, pp. 98-112 (Minimum Contacts: Purposeful Availment (contractual relationships continued) – Burger King and Chalek)
- I & M, pp. 112-133 (Minimum Contacts: Purposeful Availment (stream of commerce) -- World-Wide Volkswagen and Asahi I)
- I & M, pp. 133-150 (Minimum Contacts: Purposeful Availment (effects test) -- Kulko, Calder, and Revell)

September 6

NO CLASS—Labor Day Holiday

September 13

- I & M, pp. 150-166 (Minimum Contacts: Relatedness (general jurisdiction) -- Perkins and Helicopteros)
- I & M, pp. 167-176 (Minimum Contacts: Relatedness (specific jurisdiction) -- Nowak I)
- I & M, pp. 176-183 (Reasonableness Requirement -- Asahi II and Nowak II)
- I & M, pp. 183-205 (“Minimum Contacts” and the Traditional Bases for Jurisdiction (*in rem/quasi in rem* Jurisdiction) -- Shaffer; (physical presence) -- Burnham)
- I & M, pp. 205-218 (Federal Long-Arm Provisions; Challenging Lack of Jurisdiction; Personal Jurisdiction review)

During the week of September 13th, you will complete an online, ungraded practice exam (self-scheduled). We will discuss the exam in class on September 27th.

Chapter Three (Service of Process and Notice) – 1 class

September 20

- I & M, pp. 221-235 (FRCP 4 and Mechanics of Service -- American Institute)
- I & M, pp. 235-254 (Due Process Right to Notice -- Mullane and Mennonite)
- I & M, pp. 255-269 (Waiver and Consent -- Underwood; Policy-based Immunities and Exemptions -- Fun-Damental; May Department Stores)
- I & M, pp. 269-283 (Notice and Hearing When Property is Attached -- Doehr)

Chapter Four (Subject Matter Jurisdiction) - 3 classes

September 27

- I & M, pp. 287-316 (General Principles of Subject Matter Jurisdiction; Federal Question Jurisdiction; “Essential Federal Ingredient Test” -- Grable & Sons; “Well-pleaded Complaint Rule” -- Mottley)
- Practice Exam Review

October 4

- I & M, pp. 317-345 (Diversity Jurisdiction: Citizenship -- Lundquist (individuals) and Tubbs (corporation); Cases Involving Aliens -- Eze and Grupo Dataflux)
- I & M, pp. 345-359 (Diversity Jurisdiction: Amount in Controversy -- Coventry; Aggregation of claims and Declaratory Judgments)

October 11

- I & M, pp. 360-380 (Supplemental Jurisdiction -- Gibbs and Owen; 28 USC § 1367)
- I & M, pp. 380-400 (Removal Jurisdiction – McCurtain and Eastus; Challenges to a Court’s Subject Matter Jurisdiction)

October 18

NO CLASS (Mid-term break)

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

October 25

- I & M, pp. 403-432 (Venue Overview; 28 USC § 1391 – Bramlet; Transfer of Venue in Federal Court – Smith and Jones)
- I & M, pp. 433-442 (Forum Non Conveniens – Piper Aircraft)

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

November 1

- I & M, pp. 451-464 (Overview – Erie)
- I & M, pp. 454-478 (Federal Statutes and the Supremacy Clause – Stewart)
- I & M, pp. 483-503 (Fed. Rules of Civil Procedure – Sibbach, Hanna I and Walker)

November 8

- I & M, pp. 503-517 (Federal Procedural Common Law – Guaranty Trust, Byrd, and Hanna II)
- I & M, pp. 517-528, 534-539 (Gasperini, “Reverse-Erie, and Erie doctrine synthesis)

Chapter Seven (Pleading) – 2 classes

November 15

- I & M pp. 541-554 (Historical Background)
- I & M, pp. 554-560 (Fact Pleading -- Bockrath)
- I & M, pp. 565-575 (Notice Pleading (the complaint) – Dioguardi and Leatherman)
- I & M, pp. 583-588 (Notice Pleading (the answer) -- King Vision)

November 22

- I & M, pp. 588-597 (FRCP 12(b)(6) Motion to Dismiss -- Northrop and Kirksey)
- I & M, pp. 597-608 (Pleading Sufficiency Under 8a2 -- Bell Atlantic). NOTE: Excerpts from the Supreme Court's most recent decision on this issue (Ashcroft v. Iqbal) will be posted to the course TWEN site.
- FRCP 15 Amended and Supplemental Pleadings—readings to be posted to the course TWEN site)

November 29

NO CLASS (Thanksgiving Break)

December 6 (optional)

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