CIVIL PROCEDURE
SYLLABUS

PURPOSE OF THE SYLLABUS

The purpose of this syllabus is to give you some information about the course that should help you to negotiate some very unfamiliar (for most of you) territory. Because no syllabus can answer all the questions that might arise, you are encouraged to take advantage of office hours and informal contacts with me to ask questions about the content of the course, teaching style, learning methods, etc. as they arise during the year.

REQUIRED TEXTS

This is a full-year course during which we will use only these books—no new books in the spring.

Yeazell, CIVIL PROCEDURE 8th ed. (Aspen 2012) and Spencer, FEDERAL CIVIL RULES SUPPLEMENT (West Academic 2014).

RECOMMENDED TEXTS

I consider these to be the best of the student supplements. They differ somewhat in their approach and students usually find that one works better for them than the others. They are all on reserve under my name in the library, so I suggest you try them out first before deciding which, if any, to buy.

Freer, INTRODUCTION TO CIVIL PROCEDURE 3d ed. (Wolters Kluwer 2012). [Treatise; detailed enough for a practicing lawyer to use, but with lots of examples geared to students.]

Erichson, INSIDE CIVIL PROCEDURE: WHAT MATTERS & WHY 2d ed. (Wolters Kluwer 2012). [Overview of basic concepts and how they interact, less detail than treatise, aimed at students]

Freer, A SHORT HAPPY GUIDE TO CIVIL PROCEDURE (West Academic 2014). [Overview of basic concepts; points out common misunderstandings]

Glannon, CIVIL PROCEDURE: EXAMPLES AND EXPLANATIONS, 7th ed. (Aspen, 2013). [Study Guide for law students; after a brief explanation of basic concepts, lots of practice problems with answers; good for practice applying concepts either throughout semester as topics are covered or at end of semester to prepare for exams]

Baicker-McKee, Janssen, & Corr, A STUDENT’S GUIDE TO THE FEDERAL RULES OF CIVIL PROCEDURE (Thomson/West 2013). [Rules Supplement annotated with cases and some explanation or each rule; designed for students but comparable to Wright & Miller multivolume treatise that lawyers use]
OFFICE HOURS

My office hours for this semester are by appointment. Please contact me by phone or email (preferred) to schedule a mutually convenient time.

LAPTOP USE

I do not permit the use of laptops, netbooks, tablets, smartphones, etc. in class. If you have one with you for use in another class or between classes, please make sure that it is put away before this class begins.

CLASS ATTENDANCE

Class attendance is mandatory. I will circulate a roll sheet to record attendance. You do not need to notify me in advance that you will be absent, and you do not need to tell me why—there are no “excused” absences. Attendance does not figure into the computation of the final grade; however, the law school’s attendance policy provides if a “student misses more than two hours of course work for each credit hour assigned to the course” that student may be excluded from the course. (See Academic Rule VIII (A) in the Announcements.) It is a mark of professionalism and it is your responsibility to contact me during the semester if you run into difficulties complying with this standard.

Occasionally, due to an emergency, you might be unprepared for class. Please come anyway to listen to the discussion, but tell me at the beginning of class so that I do not call on you and waste everybody’s time finding out that you are not prepared.

RECORDING OF CLASS

I do not permit my class to be recorded on a routine basis. If you know that you will miss class due to illness or other unavoidable reason, you may ask a classmate to record the class for you. Also, send an email to me letting me know that the class is being recorded so that I can inform the other students that they are being recorded. If you face serious illness or family emergency and need to have more than one class recorded, you should contact the Academic Dean’s Office per its Policy on Recording Classes. Any recording made is for your use only, should not be shared with anyone outside the class, and should be deleted after use.

CLASS PREPARATION AND ASSIGNMENTS

Although we will proceed through the assigned materials roughly as indicated in the schedule of daily reading assignments (see Reading Assignments posting), the pace varies somewhat each week. You always should be prepared to discuss the material assigned for the date, even if we have not covered all material assigned from the previous class. Not every case, note, problem, or question in the casebook will be discussed in class; there is not enough time. Class time will be devoted to highlight the most important cases and materials, to consider some topics in more detail, and to give you an opportunity to raise questions regarding issues about which you are confused, concerned, or
particularly interested. It is good practice to review your case briefs and notes on the answers to problems immediately before class since you may have written them several days before.

Bring both your casebook and the rules supplement with you to class every day.

**HINTS ON PREPARING FOR CLASS**

In order to profit from the class sessions, you must prepare adequately for class.

1. You should take note of the chapter and section headings and subheadings in the casebook to orient yourself to the concepts that will be discussed in class. These will tell you the topic to which the assigned cases relate and where this topic fits in the course overall.

2. Learn a little about the topic before you start reading the assigned cases. This can be done by reading in the Baicker-McKee book, the Glannon text, or a Hornbook (e.g., Freer) the sections that correspond to the topics covered by the assigned cases. There is no single best text or approach that I can recommend. For each topic, you will need to become familiar with the resources available and decide for yourself which best serves your needs.

3. You should read carefully and brief each assigned case in the casebook. Before you brief your first case, refer to the article “How to Read a Legal Opinion” by Oren S. Kerr under the Course Materials tab of the course web page on TWEN. You will need to tailor your case briefing in each of your classes to adjust for the information you need to participate fully in the class discussion of materials. This process of trial and error usually takes the first couple of weeks of classes. Feel free to ask for help if you feel like you are not “getting it” because you are unable to answer the questions we consider in class.

4. You will be encountering many words and phrases for the first time or of which you have only a vague understanding. Look up every word you do not know. It is tedious and slows down your reading, but it is essential to a full understanding of the reading and an important habit to develop. This instruction applies to legal jargon, to Latin phrases, and to any other word you are not sure about. Surmising meaning from context is fine for reading novels—but legal materials require a close reading and a full understanding.

5. For each section, read carefully the corresponding rule or statute from the Rules and Statutes supplement book. You also may find the “Authors’ Commentary” section of Baicker-McKee book helpful (recommended book and on reserve in library). Be careful, however, not to confuse the commentary on the rule with the rule itself. We will concentrate on the rules and cases interpreting them. It is important that you understand the rule well enough to apply it. You should not attempt to memorize the rules or statutes. You will have your rules book with you in your office in practice (and during the exam) and will check the exact wording as appropriate. Knowing that there is a rule that affects what you want to do, being able to locate that rule quickly, and knowing how to apply it are important. Being able to recite it is not.

6. Read and prepare tentative answers to all problems and questions posed by the author of the casebook. These materials not only assist in your understanding of the assigned cases, but serve to
elaborate the doctrine and processes under study. Attempting to apply the material you have just read
to answer the author’s questions also will assist you in figuring out whether you understand the
material you have just read.

7. When you figure out the answer to a question or problem, make a note of the basis for your answer
and how you figured it out. You will frequently be asked in class to explain how you arrived at an
answer. (Hint: “It was written into my book by the guy I bought it from” is not a good answer.) As
often as time permits, writing out an answer in full sentences or a paragraph will also help you get into
the practice of expressing yourself in writing, which will inure to your benefit at the end of the
semester exams and beyond.

8. Make notes of things that you do not understand or that puzzle you about the reading as you do it.
(For example, the reading assignment for Monday’s class may leave you wondering why the United
States has both federal and state court systems or what the difference is between personal jurisdiction
and subject matter jurisdiction.) Bring those notes with you to class. Many times, your questions will
be answered by the class discussion. If they are not answered by the end of class, do something to
resolve them: post them in the Questions and Discussion forum on the course web page, along with
your tentative conclusions, answers, or opinion; ask a classmate; or ask me. Don’t wait until the end of
the semester to figure out all the things you’ve been wondering about all semester.

CLASS PARTICIPATION AND PURPOSE OF CLASS DISCUSSION

Each person enrolled in this section of civil procedure is expected to come to class prepared to
participate in the discussion of the assigned cases and materials and of the hypotheticals posed by me.
Class sessions benefit you by providing an opportunity for you to articulate your understanding of the
concepts under study. Failure to participate fully in class discussion of the materials significantly
lessens your opportunity to test your understanding of the doctrine and processes of the law of civil
procedure. Everyone’s willingness to participate enures to the benefit of all. Your contributions can
enhance the learning of your classmates and their participation can help you to comprehend better the
materials under study.

Learning in a setting that relies upon discussion as an essential element of the teaching methodology
requires that each member of the class demonstrate an appreciation of the strengths and weakness of
every other member of the class and also demonstrate an ability to monitor his or her own actions to
ensure that the opportunities for all members to learn are maximized. Each person approaches a new
learning task in an idiosyncratic manner. Some people prefer to understand as much as possible about
a topic through reading about it before they are ready to discuss the topic. Others prefer to get a
general sense of the topic and then use a conversation about the topic to further their comprehension.
When these two types of learners meet in a classroom, without an appreciation of the diversity of
learning strategies, conflict is possible. The readers can’t understand why the talkers just didn’t get it
from the readings and the talkers can’t understand why the readers won’t become engaged in the
classroom discussion without a great deal of effort. Neither preference is either right or wrong; neither
is a “better” or “more efficient” way to learn; they are simply two distinct preferences for approaching
a learning task.
It is important that you listen to everyone in the class, even though at times you may feel that someone is monopolizing the conversation, asking questions that have already been asked, taking the discussion on unhelpful tangents, or belaboring the obvious. Occasionally, each of these things happens. You will not encounter the perfect learning environment for you each time you come to class. As mentioned above, even if we could customize the class for you, it would not be the perfect environment for others in the class. In addition, despite the fact that most law students are perfect in every act and deed, occasionally one slips by the Admissions Committee who is not so perfect and you should be able to tolerate some imperfection.

In fact, learning by listening to each other is more than something you need to tolerate. It is something you will come to appreciate, for several reasons. First, each person begins law school with a unique background that allows him or her to construct new knowledge in a way that is similarly unique. Some people come to law school with a background as a paralegal, so for them certain terminology and processes will at first be easier to grasp and they can help classmates with terminology. Others may be in their second career and can help us all understand non-legal terminology or practices that we run across in the materials we study. Second, as a lawyer, you will not have the luxury of choosing to whom you will listen. Clients, witnesses, and opposing parties are as diverse as any population. Begin to practice the skills of active listening that you will need in your legal career by listening closely to the discussions in class to extract from the diverse styles of discourse as much as you can. Third, you will benefit from the opportunity to practice your own developing skills at articulating a position and defending it within the relatively risk-free environment of the classroom. (In other words, nobody will go to jail or lose money if you don’t have it quite right.)

Finally, you should monitor your own behavior in the classroom. If you find yourself monopolizing the discussions, refrain from volunteering for a time, or volunteer only once or twice during the session. On the other hand, if you find yourself rarely participating in the discussions, plan to volunteer at least once each session. Your contributions may assist someone else who is struggling with the same questions as you, and you can help yourself to understand the material by articulating your understanding of it.

**RESPONSIBILITY FOR CLASS RECITATION**

One of the most important forums for learning in the first year of law school is the classroom discussion of cases and materials. Although each professor conducts class sessions in somewhat different ways, most, if not all, rely heavily on students to make presentations about the cases and materials that have been assigned by the professor and then to respond to questions from the professor that seek to clarify, probe, and elaborate on the cases and materials under study.

There is an online tutorial that is designed to give a feel for what a first year law school class is like. Each first year subject is represented by one case (for CivPro it’s *Erie v. Tompkins*, which we will talk about in a couple of weeks) and a casebook-style excerpt and sample case brief are provided. After reading the case excerpt and case brief, you can interact with the site in a form of Socratic dialogue that presents multiple choice questions about a case. For “wrong” answers, you are told why the answer is wrong and guided to the more correct answer. Some questions also have balloons that, when clicked, provide hints or insights into why the professor is asking the question and what the student should learn from the questioning. The tutorial was developed by a team of SMU professors to assist the transition
from college to law school by making the intricacies of the Socratic dialogue more transparent. The Criminal Law and Torts ones are particularly well done, so you might want to start with one of those and then look at the others if you find those helpful. The site is available to all at this address: http://www.law.smu.edu/firstday/.

ACCOMMODATIONS

Any student who has a disability requiring accommodation under the Americans with Disability Act should contact the University Office of Disability Support Services for Students (DSS) at http://dss.cua.edu/ and, if you have any questions, Assistant Dean Maura DeMouy in the Academic Dean’s Office.

HONOR CODE

The Rules of Professional Conduct for Law Students (the Honor Code) applies to conduct of law students from the time a student registers in the law school until graduation. The Rules of Professional Conduct for Law Students are located in the Announcements posted on the law school’s website at http://www.law.edu/Announcements/RulesofProfessionalConduct.cfm. Allegations of violations of these rules, including allegations of academic dishonesty, are brought before the Honor Board for investigation and possible adjudication.

In addition to the Law School Honor Code, students also are bound by the University’s Academic Honesty policy, found on the University’s website at http://policies.cua.edu/academicundergrad/integrityprocedures.cfm.

Academic honesty is expected of all students. Neither the Law School nor the University will tolerate violations of academic honesty.

EXAMINATIONS AND GRADING

The grade in this course is based on a midterm examination (30%) at the end of the first semester and a comprehensive final examination (70%) at the end of the second semester. You must pass the comprehensive final examination in order to pass the course. Both examinations will be a combination of essay-answer questions and multiple-choice answer questions and will be “open book.” You may bring any non-electronic, inanimate resources you wish to the examination. The dates and times for the examinations are scheduled by the Registrar’s Office. Any issues relating to scheduling or accommodations must be raised with the Academic Dean’s office rather than with me to preserve your anonymity.
On Wednesday, September 17th, I will give a **practice examination** in class. This examination will not count as part of your course grade, but is a requirement of the course. In other words, it is a prerequisite for sitting for the final examination. It is intended to give you some practice in taking a law school examination and to help you review and synthesize the material from the first part of the semester. We will go over it in the next class and I will provide written feedback on your individual answer within a couple of weeks.

From time to time, I also will give you **end-of-unit problem sets**. These also will not be graded. They are intended as a diagnostic tool to enable you to evaluate better your own understanding of materials recently covered. We will go over these problem sets in class on the days indicated on the list of Reading Assignments.

Throughout the year you will be assigned **exercises** that are intended to reinforce the material we are studying by simulating actual lawyering tasks, such as drafting a complaint or responding to a complaint. Some of them (like the Rule Reading Exercise we started with) will be done in class and others will be done outside of class. Their due dates are highlighted on the list of Reading Assignments. Successful and timely completion of all of the exercises is a requirement of the course.

**MY BACKGROUND**

If you would like to read some about my background, specialty areas, and other classes, see [http://www.law.edu/fac-staff/lawfaculty.cfm](http://www.law.edu/fac-staff/lawfaculty.cfm).

**COMMENCEMENT**

Whether your college commencement was three months, three years, or three decades ago (you know who you are), there was probably some assertion in one of the speeches that the ceremony marked not just an end, but also a beginning. We stand together now at the beginning of your legal career. I am excited about this class and hope you are (or will be) too. Part of what makes it exciting is the exchange of ideas among us and the intense engagement with information and skills that you will be using the rest of your lives. To get us started in that exchange and engagement, I would like each of you to post at least one entry of a paragraph or so in length on the **TWEN Questions and Discussion forum** sometime before the end of Labor Day weekend. You can ask a question about the readings, answer a question asked by the casebook author or by one of your classmates, make a connection between what we are learning in Civil Procedure and a news story, explain the procedural posture of a case you read in one of your other classes, muse about alternative strategies that might have been used by the lawyers involved in a casebook case, seek clarification of something discussed in class, react to the outcome of one of the cases—fair *vel non*?, try your hand at rewriting one of the rules or statutes to make it clearer, explain the difference between a rule and a statute to your client, etc.