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 two books—no new books in the spring.


Baicker-McKee, Janssen, & Corr, A STUDENT’S GUIDE TO THE FEDERAL RULES OF CIVIL PROCEDURE (Thomson/West 2015). This statutes and rules Supplement is annotated with cases and some explanation of each rule. It is designed for students but is similar to the Wright & Miller multivolume treatise that lawyers use. You will be assigned to read the rules and statutes themselves. You likely will find it useful to also read the accompanying commentary.

RECOMMENDED TEXTS

I consider the ones listed below 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 you can 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.]
OFFICE HOURS

My office hours for this semester are listed on the home page of the course web page. No need for an appointment; you may just drop by during that time. When you arrive, please stop at the Receptionist Desk first so that the Receptionist can call me to let me know that you are here. If necessary, you also may set up an appointment outside of my regular office hours by emailing me.

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 at the beginning of each class 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 class for each credit hour assigned to the course, that student may be excluded from the course. (See Academic Rule VII (A).) 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.

We will start promptly at 9:00. In order to avoid disrupting others, be sure to allow enough time before class to find your seat and prepare your books and notes for class.

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 and statutes 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 (for Wednesday’s class), 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.

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5. For each section, read carefully the corresponding rule or statute from the rules and statutes Supplement. You also may find the “Authors’ Commentary” section helpful. 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 consistently 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 helpful 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 why you can sue in federal court for more than $75,000 but not for exactly $75,000.) 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 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/.

**LEARNING OUTCOMES**

Successful completion of this course means that you will have achieved the following learning outcomes:

**Doctrinal and Substantive Knowledge**
- demonstrate an understanding of the structure of federal court system and parallel state court systems
- demonstrate an understanding of the origin, history, and structure of the federal rules of civil procedure
- demonstrate a working knowledge and understanding of the federal rules of civil procedure and key statutes
- demonstrate an understanding of litigation as a dispute resolution mechanism that balances competing values of finality, certainty, equity, and efficiency

**Problem Solving and Critical Thinking**
- demonstrate an appreciation for the ways that procedure can be used to effectuate substantive rights and obtain the remedy the client desires
- demonstrate the ability to apply legal doctrine to solve (simulated) clients’ problems

**Legal Practice Skills**
- demonstrate the ability to read, understand, and brief a case
- demonstrate the ability to read and apply rules and statutes and the case law interpreting them in the context of federal civil procedure
- demonstrate the ability to understand and synthesize legal doctrine
- demonstrate the ability to correctly calculate deadlines
- demonstrate comfort with admitting error, confusion, and failure without defensiveness or obfuscation
- demonstrate the ability to learn from mistakes

**Legal Writing and Research Skills**
- demonstrate the ability to use standard reference materials to research a procedural issue
- demonstrate the ability to analyze a novel fact situation and draft a well-reasoned and well-supported response to a problem posed
demonstrate the ability to craft simple litigation documents accurately, such as a notice of removal, a response to a simple complaint, a memorandum answering a research question posed, and a bench memo presenting likely arguments and recommending a ruling.

Professionalism, Ethics, and Integrity
- demonstrate the traits of thoroughness and timeliness in written work
- demonstrate punctuality, preparedness, and regularity of class attendance
- demonstrate the ability to articulate a position clearly, completely, and courteously
- demonstrate an understanding of and fidelity to the lawyer’s obligation to clients, opponents, and the courts in an adversarial system that is dependent upon the integrity of the actors

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/integrityfull.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 written material you wish to the examination. The dates and times for the examinations are scheduled by the Registrar. 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 Thursday, October 1st, 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. You will need to write out your answers and reasons in advance. We will then go over the problem sets and your answers 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.