

SYLLABUS: ILLINOIS CIVIL PROCEDURE (Spring Term, 2009)
DePaul University College of Law

Instructor: Daniel T. Gillespie

Class Schedule: Tuesday & Thursday, 4:00-5:15 p.m. Room 901 Lewis

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I. INTRODUCTION

This class covers the procedures governing the conduct of all civil cases in Illinois state courts. These procedures are governed by the Illinois Constitution, Illinois statutes (principally, the Illinois Code of Civil Procedure, 735 ILCS 5/1-101 et seq., referred to here as the "Code"), court rules (the Illinois Supreme Court Rules, referred to here as Rules, and local rules) and the common law. The subject matter is crucial to the practice of law in Illinois.

II. CASEBOOK AND PROBLEMS

The casebook for the course is Gomberg, Myron, Illinois Civil Procedure, Before And After Trial (Fifth Edition, 2003). Illinois Court Rules and Procedures (West, 2008) also is a required text. Jeffrey Parness's excellent one-volume text Illinois Civil Procedure (LexisNexis, 2008) is recommended reading. To enhance the practical application of the rules covered, we also may utilize and discuss in class some problem sets that Prof. Parness has developed. The principal purpose of the problems is to offer you an avenue to further study, understand and analyze civil procedure. I am grateful to Professor Parness for permission to use his problem set.

III. CLASS SESSIONS AND EXPERT PANELS

Every class, except the first and last (weeks one and 14) will follow the same format. The starting point, and sometimes the ending point, for analysis of virtually any Illinois Civil Procedure problem being discussed is to identify the applicable rule or rules. The first 20-45 minutes of every class except the first and last ones will therefore begin with an examination of the text of statutes or court rules that have been assigned for study for that class. Following that review, we will turn to the principal cases in the casebook (and, for some, but not all, the principal cases, the notes that follow the case) assigned for that week. I will endeavor to discuss, in class, all of the principal cases assigned for reading, during the week for which they are assigned. It will not, however, be possible to discuss all the notes that follow some of the principal cases. There are 14 weeks of classes, but there will be no expert panels for either the first or last class sessions. For each of the other 12 weeks of classes, there will be an expert panel assigned for the class during that week. Expert panel assignments and allocations will be such that every student will be assigned to be on an expert panel for at least one class. Each panel will include approximately four students.

Expert panel members for a particular week are expected to: (a) attend the class session for that week; (b) be "fully prepared" to discuss the assigned material, meaning that they will have fully and closely reviewed this material. Any member of an assigned expert panel may switch expert panels with any other student in the class for one or more of his or her assigned weeks at will and for any reason, and must switch for one of his or her assigned weeks if he or she is not going to attend the class session for that week. I require only that I be notified of the switch by the beginning of the class session of the relevant assigned week. During their assigned weeks, expert panel members will be the students I will call on in the first instance

and the students I will expect to offer answers to questions I pose to the class. Needless to say, that a student is not a member of the expert panel for a particular week does not mean that I may not choose to rely on another class member to provide answers to questions.

IV. FINAL EXAMINATION AND GRADING

For all students, the grade will be based on a closed book final examination. The grades of some students will also reflect their class participation. Students who consistently distinguish themselves in class discussions may have their classroom performance taken into account in the final grading process, and their grade adjusted accordingly.

V. READING ASSIGNMENTS

The reading assignments are made on a weekly basis. The weekly assignments vary in length, but average fewer than 50 pages, a misleadingly low total, because of the time you should spend studying, not just reading, the text of the procedural statute or court rule assigned. (Code provisions and Supreme Court rules are rarely more than several paragraphs long, though those several paragraphs may go on for a page or more of single-spaced text.) The provisions and rules may nonetheless be difficult to understand, even with close study or be indeterminate in one respect or another. That is why there is so much litigation over their meaning and application.

All of the assigned statutes or rules will be found in the casebook itself, but I nonetheless recommend utilizing the West paperbound volume Illinois Court Rules and Procedure to conduct your review. This is in part because the West pamphlet includes the Advisory Committee comments to the Supreme Court Rules and the casebook does not. The West pamphlet also allows for easier reference to related provisions than does the casebook. (The placement of Code and Supreme Court rule provisions in the casebook is sometimes curious.) There are some statutory provisions that are not found in the West paperbound volume, but only in the casebook. These are identified below by the designation "casebook" and a page number.

Students will note that the reading assignments for each week set forth the chapters or subsections of chapters of the casebook that will be the general subject of classroom discussion. Then the assignment denotes the constitutional, statutory or rule provisions that will be the focus of the class discussion. Lastly, the assignment denotes the principal cases and the notes, if any, to be reviewed. Students in the class are, of course, expected to study the assigned materials prior to the class for which they are assigned. This includes the first week's assignment.

I. Week One

Gomberg, Chapter I, Structure and powers of state courts.

1970 Illinois Constitution, ¶¶ 1-9 (casebook, 2-4, see maps. casebook, 12-13)

S. Ct Rules 1-2

705 ILCS 5/7-9 (casebook, 8)

CCGO 1.2 (casebook, 16-23)

Code, 5/1-104-109, 5/2-201

Gomberg, Principal case at 27-29 and notes following.

Gomberg, Chapter II, Scope of civil practice law.

Code 5/1-102-109

Gomberg, note at 31

Gomberg, Chapter III, Commencement of the action.

Code 5/2-201, 208-09
5 ILCS 70/1.11 (casebook, 42)
S. Ct. Rule 11-12, 14, 181

II. Week Two

Gomberg, Chapter IV A.1, 3-4

Code 5/2-203-205.1,
805 ILCS 5/5.25 (casebook, 74), 805 ILCS 405/6 (casebook, 83-4)
Gomberg, Chapter IV, pp. 51-2 (text)., Chapter IV, principal cases at 57-70; 77-82; 84-5;
notes following all principal cases

III. Week Three

Chapter IV. A.5-6, B.

Code 5/2- 206-9, 301
Gomberg, Chapter IV, principal cases at 95-148; notes following principal cases; especially
n.4 at 149-50

IV. Week Four

Gomberg, Chapter V, Removal of the action from the forum.

Code 5/2-101-102, 104, 106, 201-207, 1101, 1001.5
Code, 105/5-1, 5-5, 5-10
S. Ct. Rule 187
Gomberg, principal cases at 160-70, notes following principal cases; notes at 188-90;
principal case at 191-99 and notes following principal case, 199-202.

V. Week Five

Gomberg, Chapter VI, Statutes of limitations.

5 ILCS 70/1.11 (casebook, page 207)
Code 5/13-101, 201, 202.1, 202.2, 205, 206, 208-09, 211, 215, 217 .
Gomberg, text at 205-18, with principal cases and notes following.

VI. Week Six

Gomberg, Chapter VII, Parties.

Code 5/2-401-411, 614, 801-806, 1008, 740 ILCS 100/1-3 (casebook, 295-6)
Code, 5/2-1116-17
Gomberg, text at 251, principal cases at 252-63; 272-74; 299-302 and notes
following; principal cases at 308-19; 323-29; 333-35; 337-38; 339-42

VII. Week Seven

Gomberg, Chapter VIII, Pleading.

Code 5/2-601-605, 607-610, 612-14, 616, 701, 1007
S. Ct. Rule 134, 137
Gomberg, principal cases at 347-68, and notes following; 371-82; 388- 409, 420-25.

VIII. Week Eight

Gomberg, Chapter IX, Pre-trial dispositive motions.

Code, 5/2-615, 619, 619.1, 1005
S. Ct. Rule 191

Gomberg, text at 445-50; principal cases at 451-457 and notes following; notes at 464-67; text 472-477, principal case at 486-89, 492-501, and notes following.

IX. Week Nine

Gomberg, Chapter X.A-D

Code, 5/8-801-02, 901

S. Ct. Rules 201-04, 207-08. 211-17, 219

Gomberg, text 509-513; principal cases at 513-19 and notes following; 522-29 and notes following 540-47.

X. Week Ten

Gomberg, Chapter X.E-I

S. Ct. Rules 201-04, 207-08, 211-217, 219, 222, 224; principal cases at 581-84 and notes following; notes at 587-94; principal case at 594-98 and note following, text: 606-15.

XI. Week Eleven,

Gomberg, Chapter XI.B, XII.D, XIII.A.-B

Code, 5/2-1009, 1202-03, 1206, 1301-2, 1401

S. Ct. Rules 271-73, 366

Gomberg, principal cases at 627-35 and notes following; principal cases at 637-643 and notes following; principal cases at 679-86; 694- 95 and notes following; notes at 700-01; notes 1-4 at 703-4; principal cases at 706-9, 713-22

XII. Week Twelve

Gomberg, Chapter XV, Appeals

S. Ct. Rules 301-04, 306-08

Gomberg, text at 817;

principal cases at 817-19, 821-23; 826-29; 840-48

XIII. Week Thirteen

Gomberg, Chapter XVI, Former Adjudication

Gomberg, text at 851-52; principal case at 852-55 and note following; principal cases at 856-879 and all notes following, including notes in Section E.

XIV. Week Fourteen, Civility and Review

Chapter XVII and Review Class.

Text: 883-897.