

CIVIL PROCEDURE

Syllabus
Spring Semester 2009
T & Th: 5:50 - 7:30 p.m.

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Forsan et haec olim meminisse juvabit.
Virgil, **The Aeneid**, Book 1

REQUIRED CASEBOOK:

Hazard, Tait, Fletcher & Bundy, **Pleading and Procedure: State and Federal Cases and Materials** (Foundation Press, 9th ed. 2005) + **2008 Supplement**

Federal Rules of Civil Procedure (Thomson/West, 2008)

HELPFUL REFERENCES (NOT REQUIRED):

“If you wish to be a lawyer, attach no consequence to the place you are in, or the person you are with – but get books, sit down anywhere and go to reading for yourself. That will make a lawyer of you quicker than any other way.”

Abraham Lincoln

The subject of Civil Procedure is extremely rich in books with which to supplement your casebook and the class discussion. MAKE USE of these books when you have questions about material from class that you do not understand or when you want further discussion of the issues raised in class.

Chemerinsky, **Federal Jurisdiction** (2d ed. 1994)

Clermont, **Civil Procedure: Territorial Jurisdiction and Venue** (1999)

Clermont (ed.), **Civil Procedure Stories** (2d ed. 2008)

Clermont, **Principles of Civil Procedure** (2005)

Freer, **Introduction to Civil Procedure** (2006)

Friedenthal, Kane & Miller, **Civil Procedure** (4th ed. 2005)

Glannon, **Civil Procedure: Examples & Explanations** (4th ed. 2001)

Glannon, **The Glannon Guide to Civil Procedure** (2003)

Hunter, **The Power of Procedure: The Litigation of Jones v. Clinton** (2002)

Issacharoff, **Civil Procedure** (2d ed. 2009)

James, Hazard & Leubsdorf, **Civil Procedure** (5th ed. 2001)

Levine, Doernberg & Nelken, **Civil Procedure Anthology** (1998)

Thomas Main, **Global Issues in Civil Procedure** (2006)

Mullenix, Redish & Vairo, **Understanding Federal Courts and Jurisdiction** (1998)

Kiely & Ottley, **Understanding Products Liability Law** (2006) (*see* Chapters 11-19 deal with the preparation of a products liability case, including the discovery process)

Shapiro, **Civil Procedure: Preclusion in Civil Actions** (2001)

Sherry & Tidmarsh, **Essentials: Civil Procedure** (2007)

Shreve & Raven-Hansen, **Understanding Civil Procedure** (3rd ed. 2002)

Simon, **The Anatomy of a Lawsuit** (Rev. ed. 1996)

Subrin & Woo, **Litigating in America** (2006)

Teply & Whitten, **Civil Procedure** (2d ed. 2000)

Wright, **The Law of Federal Courts** (5th ed. 1994)

For accounts of specific lawsuits and the litigation process, *see*:

Bingham and Gansler, **Class Action** (2002)

Harr, **A Civil Action** (1995)

Stern, **The Buffalo Creek Disaster** (1976)

Werth, **Damages** (1999)

MATERIAL TO BE COVERED DURING THE SEMESTER:

The following topics will be covered during the semester. All “Text” references are to pages in the Hazard, Tait, Fletcher & Bundy casebook. Students also should read the corresponding pages in the 2008 Supplement. The “Rules” can be found in the Federal Rules of Civil Procedure (FRCP). Students are expected **to read and to be prepared to discuss** these materials for class. Students also are responsible for issues raised and discussed in class and for materials distributed in class.

I. Introduction

Rules: 28 U.S.C. § 2072; FRCP 65

Text: pp. 1 - 46

II. Due Process in an Adversary System

Text: pp. 47 - 52; 106 - 112; 121 - 124

III. Choosing the Proper Court

A. Territorial Jurisdiction

Text: pp. 145 - 317

B. Subject Matter Jurisdiction

Rules: U.S. Const., art. III; 28 U.S.C. §§ 1331 - 1333; 1367; 1441 - 1447

Text: pp. 346 - 355; 362 - 393; 400 - 412

C. Venue

Rules: 28 U.S.C. §§ 1391; 1404; 1406

Text: pp. 412 - 435

F. Forum Non Conveniens

Text: pp. 435 - 448

IV. The *Erie* Problem

Rules: U.S. Const., 7th and 14th Amendments; 28 U.S.C. §§ 1652, 2072

Text: pp. 449 - 491

V. Pleadings

A. The Complaint and Answer

Rules: FRCP 1 - 12

Text: pp. 546 - 599; 609 - 635

B. Amended Pleadings

Rules: FRCP 15

Text: pp. 635 - 647

VI. Discovery: Regulating the Flow of Information

Rules: FRCP 16, 26 - 37, 45

Text: pp. 821 - 845; 852 - 873; 885 - 886; 911 - 918

VII. Disposition Without Trial

Rules: FRCP 55 - 56

Text: pp. 919 - 945, 963 - 968

VIII. Trial

Rules: U.S. Const., 7th Amendment; FRCP 38, 47 - 50, 58

Text: pp. 990 - 998; 1002 - 1015; 1031 - 1032; 1056 - 1081; 1097 - 1132; 1137 - 1140

IX. Preclusive Effect of Prior Adjudication

Rule: FRCP 41

Text: 1158 - 1159; 1171 - 1177; 1181 - 1184; 1189 - 1191; 1195 - 1198

Weisman v. Schiller, Ducanto & Fleck 733 N.E.2d 818 (1st Dist. 2000)

METHOD OF EVALUATION:

Your final grade for the course will be based upon an examination to be given during the scheduled examination period in May 2009. The examination will consist of a number of fact situations. The criteria for grading the final examination will be:

- familiarity with the assigned material;
- analysis of the legal and factual issues presented;
- synthesis and organization of thought;
- accurate and appropriate use of legal terminology;
- clarity of style and persuasiveness of expression.

For the final examination, you may bring into the examination room:

- your **Federal Rules of Civil Procedure** will your notes in the margins and the blank pages;
- one 8½ x 11 inch sheet of paper with your notes on both sides.

EXPECTATIONS FOR CLASS

I have **three requirements** of **ALL** students for **EVERY** Civil Procedure class:

(1) You must have **READ** the assigned material in the casebook, Supplement, and the Federal Rules of Civil Procedure. Because the processes of Civil Procedure are unfamiliar to most of you, read the material a couple of times before each class.

(2) You must have **THOUGHT** about the assigned material. What do the cases mean? How do they relate to material we previously have discussed?

(3) You must be **PREPARED, ABLE AND WILLING** to discuss the material. Civil Procedure is not a lecture course. We use the Socratic method. I will call on students and ask questions and more questions. However, do not be afraid to ask me questions as well about the material. If you do not understand something in the cases or the class discussion, the chances are very good that other class members also are having difficulty with it. In addition, I expect students to volunteer to participate. Class discussion is not meant to embarrass or to humiliate anyone. It is part of the training that you will need (as attorneys) to deal with clients, other attorneys, and judges.

There are two other important matters applicable to this Civil Procedure course:

(1) **Laptop computers.** Most of you use laptop computers to take notes during class. While you may do so, I strongly **DO NOT** encourage it. Why? Law school classes are NOT exercises in dictation in which you write down every word your professor says, memorize it, and give it back to the professor on the final examination. Law school classes are meant to be Socratic exercises that help you develop your analytical and reasoning abilities, not your typing skills. Take your class notes in long hand and type them into your computer **after class**. That not only will force you to review what was discussed in class, it also will leave you free to participate in – and get much more out of – the class discussions.

If you do bring a laptop computer to class, it is to be used **EXCLUSIVELY** for taking notes. Students found to be using their laptops in class to surf the internet, to send or receive emails, or for other non-class related purposes will be required to leave and will not be permitted to return for the remainder of the class.

(2) **Cell Phones.** Turn off your pagers and cell phones before class. An attorney in DuPage County, Illinois, recently was held in contempt of court and jailed for 24 hours when his cell phone went off in court. Unfortunately, I do not have the power to jail you if your cell phone goes off in class. However, cell phones are **VERY** distracting to me and to the other students. If you cannot be away from your cell phone for the period of the class, do not come to class. If your cell phone rings during class, you will be required to leave and will not be permitted to return for the remainder of the class.