

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 semester.

REQUIRED TEXTS

Yeazell, CIVIL PROCEDURE 7th ed. (Aspen 2008).

Yeazell, Federal Rules Supplement (Aspen 2009).

RECOMMENDED TEXTS

Freer, INTRODUCTION TO CIVIL PROCEDURE 2d ed. (Aspen 2009). [Hornbook]

Glannon, CIVIL PROCEDURE: EXAMPLES AND EXPLANATIONS, 6th ed. (Aspen, 2008). [Study Guide]

Baicker-McKee, Janssen, & Corr, A STUDENT'S GUIDE TO THE FEDERAL RULES OF CIVIL PROCEDURE, 12th ed. (Thomson/West 2009). [Rules Supplement annotated with cases and some explanation]

OFFICE HOURS

My office hours for this semester are listed on the home page of the course web page. You may sign up ahead of time with the Receptionist on the 4th floor for an appointment or 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. You also may set up an appointment outside of my regular office hours by e-mailing me.

LAPTOP USE

Laptops are permitted in class, but are not recommended; if used, they may be used **only** for notetaking. That means you may have the Word Processing program of your choice open, but only that program. You may not play games (including solitaire), use InstantMessenger, read or send email, or access the Web for any reason during class. If you plan to use a laptop during class, it must be plugged in and set up before class starts. Also, you should print out your case briefs and reading notes to have ready access to them during the class discussion. Do not try to read briefs or notes from your laptop screen, if you use a laptop for notetaking in class.

CLASS ATTENDANCE

Class attendance is mandatory. I will circulate a roll sheet to record attendance. If you are not in attendance when the roll sheet is passed, you are absent for that day. 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, which is based exclusively on the final examination (see Examinations and Grading, infra); 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 the Academic Rules V.1. 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.

TAPING OF CLASS

I do not permit my class to be taped 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 tape the class for you and send an email to me letting me know that the class will be taped for you. If you face serious illness or family emergency and need to have more than one class taped, you should contact the Academic Dean’s Office per the Policy on Recording Classes.

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), you soon will see that the pace varies. **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 or concerned. It is good practice to review your case briefs and notes on the answers to problems materials 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. (All of the recommended texts and other resources are on reserve under my name in the library. You may want to try them out before you decide to purchase them.) 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. Because the first class meetings are devoted to an overview of all of the topics for the whole semester, other texts should not be consulted until after the first couple of weeks.

3. You should read carefully and brief each assigned case in the casebook. A sample briefing form is provided separately (at the Course Materials tab). 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 law texts 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 do not need to attempt to memorize the rules or statutes. You will have your rules book with you in your office (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 his 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 exam 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 first reading assignment may leave you wondering why the lawyers for the plaintiffs in *Hawkins v. Masters Farms, Inc.* wanted to bring her case in federal court instead of state court, what is involved in moving to dismiss for lack of diversity jurisdiction, why citizenship at the time of the filing of the complaint controls the outcome, or how to go about changing the law if it is unfair.) 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, post them in the course 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 also has a unique set of learning strategies. That is, 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, person, 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 questions, hints, and professor comments were field tested on undergraduates and law students. 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/>.

HINTS ON STUDY METHODS

There is probably no single best method that can be recommended for studying. Every individual has or will develop techniques that seem to work best for him or her. However, it may be useful for me to suggest to you a couple of things that I think you should try, at least until you have developed your own methods. One caveat: Do not assume that the way you studied as an undergraduate will be sufficient for law school. You soon will discover that the volume of reading and the intellectual and physical demands that law school places on you will overwhelm most of the techniques that got you through your undergraduate studies. Law school will demand that you rethink your approach to studying.

While much of undergraduate study is concerned with the acquisition of knowledge that can be recalled, law school demands that you develop not only the skill of recall, but, in addition, be able to analyze and apply the knowledge that is recalled. To learn how to use and apply the cases, rules, and principles studied, you must develop the habit of systematic review throughout the semester. You cannot pull it all together at the end.

There are two types of review, day-to-day review and periodic review. It is essential that you do both types. Day-to-day review is primarily a device for assuring yourself that you understand the material you study as you go along. You want to fix more firmly in your mind the important propositions developed in each course from day to day. In addition, day-to-day review helps you connect each day's work in the course with that of the previous day and eliminate errors, omissions, and confusion in your notes.

Periodic review is used to get a broad mental picture of the main divisions in the course and, ultimately, of the whole course. The details you have learned in the course must be put together and formed into a coherent whole. You need to create for yourself a mental map or chart of the main classifications in the law, the principal subdivisions within them, the further classes and subclasses, and the interrelations and overlaps so that you can quickly classify problems and thus make your way back to the specific cases and materials that dealt with that type of problem. You are not merely memorizing the material you have studied. The thing you are now looking for is the connection between all the individual problems and rules—the central theme of the various chapters and the broad general principles, policies, and reasoning on which the specific cases are based. You are creating a synthesis of the materials that you have studied.

Periodic review is facilitated by the creation of a good outline that you have prepared for yourself. A written outline not only gives you a tangible picture of the organization of the course but also compels you to do the reviewing more thoroughly, carefully, and systematically. Commercial outlines and outlines prepared (and often sold) by upperclass students may have some benefit, but they can never substitute for an outline that you have prepared for yourself. The real value of a written outline lies in combing through your material and organizing it in a systematic way. The process should permit you to see where your knowledge is incomplete or inaccurate so that you have time to fill in the missing pieces before examinations.

Periodic review must be just that—periodic—you cannot leave the review process to the day or even the week before the examination in the course and expect to get much out of it. I suggest that you devote some time at least once each week to periodic review, including the creation and revision of your course outline.

ACCOMMODATIONS

Any student who has a disability requiring accommodation under the Americans with Disability Act should contact Assistant Dean Georgia Niedzielko in the Academic Dean's Office. Dean Niedzielko will coordinate accommodations with the University Office of Disability Support Services for Students (DSS.)

EXAMINATIONS AND GRADING

The grade in this course is based on one examination at the end of the semester. This final examination will be a combination of essay-answer questions and multiple-choice answer questions. It will be an "open book" examination. You may bring any non-electronic, inanimate resources you wish to the examination. The date and time for the final examination is scheduled by the Registrar's Office and will be announced later in the semester. Any issues relating to scheduling or accommodations must be raised with the dean's office rather than with me to preserve your anonymity.

Before mid-term, I will administer a practice examination. 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. I will provide written feedback on your answer.

From time to time, I also will give you end-of-unit problem sets. These also will not be graded and, therefore, will not enter into the calculation of your grade in this course. 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.

MY BACKGROUND

If you would like to read some about my background, specialty areas, and other classes, see http://law.cua.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 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, 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, etc.