

CIVIL PROCEDURE COURSE OVERVIEW

This document contains an overview of the substance of the course. There is also a syllabus, entitled " setting forth the specific topics and assignments for the semester, as well as an accompanying document on course mechanics. In general, material will be distributed, and information will be updated, via the course TWEN site.

I. Introduction and Overview:

Welcome to Civil Procedure. In this course, we will examine the process through which the American legal system resolves disputes. Its focus is on the rules that apply to civil cases. While specific examples will most often be drawn from the federal system, we will discuss and compare examples from the judicial systems of states and American Indian tribes, two other types of sovereign entities that operate judicial systems within the United States.

One goal of the course is, of course, to understand how the rules of civil procedure and related legal principles operate. You will also begin to think about how to develop effective strategies for clients in view of the various procedural choices that may be available to them. Another main objective should be to understand how the rules embody and promote various values and policies, such as fairness to litigants, cost control, resource allocation, judicial efficiency, the administration of justice, etc. Opportunities to compare litigation with other forms of dispute resolution will also occur in this course.

You will study in your first year a number of subjects in which substantive law will be the main focus, e.g., torts, contracts, property law. Such laws govern relationships and duties between parties in their business transactions, daily activities, personal interactions, and relationship with and protection from government, among other activities. The distinction between substance and procedure is difficult to define precisely and will be the subject of some discussion over the course of the semester. In broad terms, it might be helpful to think of substantive law as governing the conduct and relationships of people, entities, and groups outside of the courtroom - establishing how they should behave and interact in various circumstances.

On the other hand, civil procedure involves a mechanism - namely, a civil lawsuit -- for enforcing substantive rules and resolving disputes centering around perceived breaches of substantive principles of law. It typically, therefore, regulates conduct inside the courtroom (or at least inside the court clerk's office where you will be filing most case-related documents), including the steps through which litigants develop written pleadings and conduct factual discovery leading up to trial or other final resolution of a lawsuit. It determines how disputes will proceed through the legal system, transcending substantive differences in the subject matter of each underlying dispute. And, while parties may proceed in court on their own (pro se or pro per), civil procedure is the stuff that makes

lawyers necessary or, at least, highly useful in the litigation process. Imagine navigating through the rules and legal landscape that regulates civil process without the benefit of this course and/or other legal training.

One other important distinction between substantive law and civil procedure that we soon will explore involves the kind of law that applies to each. Much of substantive law taught in other first-year courses involves what is known as common law, or substantive rules of decision developed by courts and set forth in judicial opinions. Civil procedure, on the other hand, is dominated by positive law, or rules enacted by legislatures or their delegates, including judicial rules promulgated by committees of the Supreme Court and equivalent bodies of state and tribal systems. As such, it engages attorneys in closely reading and interpreting rules and statutes. It may also, though, involve studying legislative history and/or judicial decisions interpreting procedural rules. There is also a healthy dose of Constitutional interpretation involved in the study of civil procedure, particularly in the study of jurisdiction. As such, we will be closely reading a number of cases as well, studying the development over time of different doctrines.

Sources of Civil Procedure:

Procedural rules, as we will soon see, include and are informed by a wide array of legal sources. There are the Federal Rules of Civil Procedure and parallel procedural rules developed by states and tribes as well as local rules created and published by specific judicial courts or districts. The United States Constitution and statutes enacted by Congress, and/or the equivalent legislative bodies of the states or tribes set forth the outer boundaries of civil procedure. Additionally, there are judicial opinions, or cases, that interpret rules, statutes, and Constitutional text. Ethical rules regulating the conduct of attorneys and judges provide other parameters in legal process. As you begin practicing law, you will even find that there are unwritten rules, derived from local custom and practice that may shape the presentation and resolution of civil disputes.

Scope of Course:

The course will focus in part on theoretical, historical, and Constitutional dimensions of federal judicial power and civil procedure. Toward this end we will read and discuss Article III of the Constitution, the Fourteenth Amendment, and related judicial opinions and commentaries, among other sources. We will also focus, though, on the Federal Rules of Civil Procedure, and occasional examples from state and tribal systems, and their application to concrete fact patterns. Other more practice-oriented issues we will consider during the course include: (1) what Constitutional and statutory rules determine whether a federal court may exercise subject matter jurisdiction, (2) under what circumstances might a practitioner, given the choice, elect to bring a suit on behalf of a client in federal court as opposed to state or tribal court, (3) how do practitioners preserve their choice of forum in the crafting of their pleadings, (4) what is necessary to initiate a suit and defend a civil lawsuit, (5) what mechanisms are available to develop the factual

basis of a dispute, (6) how does a lawsuit proceed to trial, and (7) what effect do judgments in one dispute have on future disputes involving the same or similar parties or issues?

As you can see, this course is really the meat and potatoes (or the rice and beans, for those of you who may prefer vegetarian fare) of civil law practice. It critical to anyone who plans to represent a client in a lawsuit, even if one hopes to avoid the eventuality of trial work or litigation. Even those of you who plan on entering careers as criminal lawyers may find yourselves needing to understand the fundamentals of civil procedure. For instance, should a client of yours (despite your best advocacy efforts) become incarcerated, you may need to file a Petition for Writ of Habeas Corpus to challenge his or her detention, and that would involve the filing of an original civil lawsuit in either state or federal or, depending on where you choose to practice, possibly tribal court.

The course is divided into the following topics:

Introduction: A Snapshot of the Civil Litigation Process (Using a simple personal injury case as an example)

Adjudicatory Power: Choosing Courts and Law

Subject Matter Jurisdiction: The Line between State and Federal Judicial Power

Constitutional Dimensions to Choice of Law in Federal Court

Personal Jurisdiction: The Limits of Judicial Power over Defendants

The Litigation Process: Incentives to Litigate and Remedies

Pleading

Joinder of Parties and Claims

Discovery

Pre-Trial Disposition

Trial and Appeal (Briefly - these topics, though go beyond the coverage of this course)

The Meaning of Completed Adjudication

The Preclusive Effect of Prior Judgments

It is not possible in one 4-credit course to cover every topic related to civil litigation from claim through appeal. Some topics, i.e., trial procedures and evidentiary rules are the topics of other upper-level courses such as Evidence, Trial Practice, Law Clinic, and Federal Jurisdiction. This class will focus more on pre-trial procedures than ones applicable to trial or appeal. It will also spend considerable time grounding you in the Constitutional and statutory parameters that apply to the choice of courts and laws, and allocation of power between the different judicial systems within the United State.

While we will make every effort to complete the assignments set forth in the detailed syllabus, it is possible that we will not finish all of the assignments on the syllabus. Where necessary, we will sacrifice breadth of coverage for depth. Changes in the syllabus will be announced in class.

Teaching Objectives:

My hope is that you will gain a sound understanding of key tenets of the law governing civil process and procedure, including the Constitutional fundamentals, the statutory parameters, and the various rules of civil procedure that apply. I want you to be aware of the different judicial sovereign entities and judicial systems that exist in the United States - state, federal, and tribal - and learn how to approach a procedural matter that may intersect one or more of these systems. It will not be possible to cover the nuances in every state, federal, and tribal system; therefore, understanding the underlying premises of the adversarial system and the policy considerations and legal parameters (i.e., allocation of power and Constitutional concerns) of the rules of civil process is critical.

We will spend a good deal of time, learning how to critically read supreme court cases, with constitutional dimensions, and trace the development of doctrine in those cases.

You will gain experience reading and interpreting rules.

I hope also the course will assist you in developing some of the practical tools you will need to apply procedural rules in crafting or defending a civil lawsuit on behalf of a client, and in developing and responding to a lawsuit beyond the initial pleading stage.

You will be working on a collaborative project designed to assist you in course principles to a mock case, thereby honing skills critical to client counseling and collaboration while reviewing course material.

You will draft a simple complaint.

Perhaps you will even gain some insights that will assist you as you serve someday on rules committees or in interpreting and responding to future proposals to amend the rules of civil procedure. Try, therefore, to understand and critique the choices made by each of the attorneys in the cases.

Finally, law does not exist in a vacuum. Underlying each of these rules and the cases you will read are real clients with real problems, families, goals, feelings, and stakes in the outcome and handling of civil litigation. Therefore, it is important for us to try to glean as much as possible about the parties from the materials and reflect also on the impact of the various legal rules on those parties and/or the causes or communities they represent. What are the benefits and drawbacks of the litigation process? Are the rules fair to all or do they benefit some more than others? In any given set of circumstances, might another method of resolution have been more beneficial to one or another (or both) of the parties?

I will use a variety of teaching approaches, including a combination of socratic dialog and class discussion (i.e., I will pose questions and work through problems with you in class, not lecture), written exercises and problems, and occasional use of multi-media materials. Some activities will ask you to think and act like a practitioner; others will engage you in thinking about public policy and constitutional theory and the impact of a case or procedural rule on a party. At times, you will be called upon to discuss or work on problems in small groups. There will be some written exercises that you will complete individually as well.

You are encouraged to gain a feel for civil procedure outside of class by observing judicial proceedings, reading and reflect upon examples related to the themes of the course drawn from the news, recommended readings, your study in other courses, or any past employment. Throughout the course of the semester, I will recommend CALI exercises and other problem sets that you may complete in order to practice applying the principles we cover in class. While this class like most other first-year courses culminates in a comprehensive final exam that constitutes the majority of your grade, to fully understand civil procedure, it is necessary to be fully and regularly engaged in understanding and applying course themes and materials at all times during the semester. Accordingly, class preparation and participation is critical, including completion of any recommended or assigned problems and exercises. The objective will be to provide opportunities for you to be engaged on a regular basis in active, rather than passive, learning throughout the semester. The details of the course, including reading assignments, are set forth more fully below in the Detailed Semester Plan and document on Course Mechanics, which are posted on an online class TWEN page sponsored by Westlaw that you will gain access to on your first day of orientation.

Professor Seielstad's First and Second Class Assignments for Civil Procedure

Civil procedure operates on a number of different levels and involves many different sources of law. It is fundamentally a process that any civil case in the United States must follow when a litigant seeks redress in a court of law, federal or state, tribal or municipal. As such, there is a flow, a sequence, a set of steps with which to become familiar that can be entered and exited in different points depending on which party is involved and the pattern of resolution of a particular dispute. There is also a strategic dimension where attorneys must make choices in an effort to maximize their client's goals and interests.

Each particular step is defined and bounded by a set of legal doctrine. The legal doctrine in civil procedure is defined by (1) Rules of Civil Procedure, promulgated by the highest court within a jurisdiction (i.e., the Supreme Court of the United States for federal court and the Supreme Court of Ohio for courts in Ohio), (2) legislative enactments called statutes, (3) constitutional authority set forth in the text of the Constitution and interpreting case law of the United States Supreme Court, and (4) judicial opinions that interpret rules and statutes. As we will discuss more during the semester, there are also local rules of procedure and standing orders, promulgated by a particular court, and unwritten customs of courtesy and practice that attorneys, judges, and court personnel craft through repeated interactions that must be navigated. Particularized rules, timelines, and processes may be adopted at preliminary hearings in each case as well, for example, when a court issues a scheduling order in a particular case to govern when each step of the preparation and the final trial will occur.

In the first few classes, we will conduct an overview of the big picture of civil procedure. We will be covering the overarching process of a civil case from beginning to end to give you a good context for understanding the different doctrines we will be studying and how they fit together. As the semester goes on, we will then go back and dissect each phase of the process and its doctrines in more detail, applying each to problems and fact patterns and drafting some procedural documents, to assist you in understanding and learning to utilize the rules of procedure on behalf of clients.

Understanding the context of the class, the basic flow and structure of a civil action, and how civil procedure relates to your other law school classes will be a primary goal of the first week of class.

We are also focusing in this first week of orientation and throughout the semester on the development of certain key lawyering skills that you will need to be successful in your first-year classes. For the first week, those include skills of critical reading of court cases and legal rules, including statutes, note-taking and drafting case briefs, and familiarity with the Socratic dialogue and other approaches to class discussion that will be used in this and other law school classes.

These skills will be covered in this class and other orientation sessions conducted by Professor John Terzano and your Learning Community leaders.

For the first class, please read the following background pieces (get the main points of the readings and basic flow and structure of the civil process; you do not need to memorize the entire details set forth in each at this stage). Note: This is conceptual overview reading for the purpose of providing a broad-based orientation to the topic of civil procedure. After today, we will be focusing on critical reading of cases, rule and statutes that will require you to parcel over the details of words, structure and meaning.

- Yeazell's red Casebook (hereinafter "CB"): p. 1-5
- Civil Procedure Overview (Seielstad)
- Overview of civil procedure: http://www.law.cornell.edu/wex/civil_procedure
- Think about a procedural system that you have participated in before law school, whether it be one in a court of law, a school, military, or employment context, athletics, clubs, or any other context. What were some of the key features of the system? Did any steps relate to those identified in the readings? What defined the rules that applied and who determined them? How did these rules get interpreted? What were some of the underlying values or principles that informed the procedures, i.e., fairness, due process, notice, efficiency, etc.? How did the procedural steps and requirements compare to or work with a body of substantive principles on the merits of a particular issue that was subjected to the procedural system? How well did the system function and what remedies were available to those that disagreed with the process or outcome of the proceeding? Bring with you to class a 1-page summary of the system and some of its key features, particularly as they relate to those identified in the reading for civil procedure. (Note: you don't have to identify private information or details of your particular involvement, just describe the parameters discussed above about a system with which you are familiar.)

For Wednesday (Second Class), please read in Yeazell through p. 14 and figure out what courts would be available for the Peters v. Dodge scenario on p. 2, based on personal jurisdiction and subject matter jurisdiction. Read also, Federal Rule 12(b)(2) and the statute, 28 U.S.C. Section 1332(a).

Make sure you understand are prepared to answer in class the problems 1-4 on p. 11-12

Prepare written answers to the written question set forth below.

Written Assignment due on Wednesday by the start of class (posted to TWEN Assignment Drop Box, which you will gain access to on Tuesday):

With respect to the Hawkins case on p. 7 read it at least 2 times and prepare written answers to the following questions. For the purposes of this exercise, please copy the question and put a concise answer following it drawing from the text of the case to support your answer:

Who are the parties and what can you tell about each in terms of where they are situated or live? What is the relationship between the estate and Mr. Creal?

Where did the underlying accident occur? Is that relevant to the issue discussed in the case?

In what court is the case situated (federal court or state court and in what location)?

What is the fundamental issue addressed in the opinion reported in this casebook? What question does it address?

What is the court's holding or answer to that issue/question?

What Rule of Civil Procedure is utilized and for what purpose? Why is that the applicable rule at this stage in the proceedings?

What statute governs the court's deliberation of the issue and ultimate result?

What requirements does that statute set forth?

In order to fully apply the primary legal rule that governs the issue in the case, what other legal doctrine and authority has to be considered and interpreted? Where is that legal doctrine set forth (case law, statute, rule, etc.)? Why is it necessary to consider other sources of legal interpretation in addition to the applicable statutory language? What statutory language needed to be interpreted?

What facts are relevant to the determination of the issue posed in the case? To what extent are those facts relevant to the underlying tort case that was the basis for the lawsuit? Why is this so?

What facts would be relevant to the underlying tort case of whether the Defendant is liable to the plaintiff for negligence discussed at this phase in the proceedings?

Who wins and loses this stage of the dispute and why?

What happens now and what remedies may be left for the Plaintiffs?

Bring a copy of your answers to class and post them in the Assignment Drop Box in Westlaw's TWEN course page.