

CIVIL PROCEDURE II
Law 601 (Section 331)

Professor Kimberly Brown
Fall 2013

Welcome! This is the second half of a two-semester course in Civil Procedure. As you know, courses in Civil Procedure address the procedural rules that govern how, when and where parties resolve a dispute through the use of civil litigation, primarily in federal court. In Civil Procedure I, you explored the fundamentals of pursuing or defending a civil lawsuit with respect to a simple one-plaintiff/one-defendant lawsuit from its cradle (the complaint) to its grave (settlement or judgment) and beyond (appeals). This semester, we will focus on the preliminary consideration of choosing a forum (personal jurisdiction, subject matter jurisdiction, and venue), ascertaining the appropriate law to apply (the Erie Doctrine), joinder of additional claims and parties to an action, class actions, and the binding effect of prior decisions (the preclusion doctrines).

A. REQUIRED TEXTS AND ADDITIONAL ASSIGNMENTS

The assigned texts for this class are:

1. Friedenthal, Miller, Sexton and Hershkoff, Civil Procedure: Cases and Materials Compact Eleventh Edition for Shorter Courses (Thomson West 2013).
2. Friedenthal, Miller, Sexton and Hershkoff, 2013-2014 Civil Procedure Supplement (Thomson West 2013).
3. There will be occasional supplemental readings, which will be posted on TWEN. You must enroll in TWEN for this course.
4. The syllabus includes additional worksheets designed to reinforce class material. They will be posted on TWEN. Please bring **written responses** to the next class period. From time-to-time, I may assign additional worksheets that are not listed on the syllabus.

B. OPTIONAL READING

Glannon, Civil Procedure: Examples and Explanations. No readings will be assigned from this book, but many students find it very helpful.

Emanuel, Crunchtime: Civil Procedure (5th ed.). This book contains sample flowcharts, which I highly recommend that students construct for themselves in every law school class.

C. CLASS TIMES

Class will meet on Tuesdays and Thursdays from 3:00-4:15 p.m. in Angelos Law Building Room 1002.

D. ATTENDANCE

According to law school policy, class attendance is a primary obligation of each student [Attendance Policy <http://law.ubalt.edu/template.cfm?page=267>]. A student who exceeds the maximum allowable absences (**five** for this course) may be compelled to withdraw from the course, or may be barred from sitting for the final exam. A student who is compelled to withdraw or is barred from sitting for the final exam may receive an "F" in the course.

The sole means of establishing attendance is by signing the attendance sheet. Students are responsible for making sure that they sign the attendance sheet each day. Please do not approach me after I have left the classroom or on some later date and tell me that you were in class on a particular day. I cannot “back-fill” assignment sheets. If you forget to sign in, you will be counted as absent for that day.

Please be on time for class and prepare to **remain seated for the full session**, absent extenuating circumstances.

E. CLASS PARTICIPATION

Class will be conducted by calling on students at random and asking various questions of the material. I also encourage volunteers. You will need to prepare carefully in order to participate in class discussion, which is required in this course. Preparing the material in advance and coming to class each day is also the single best thing you can do to learn the material and perform well on the exams. But

most importantly, preparation and participation are the most basic elements of professional competence. A lawyer who does not show up or is unprepared for hearings or client meetings may not only lose the case, but may also be fined, disciplined or sued.

Accordingly, “passing” when called on or informing me that you did not prepare the particular material that is at issue are not acceptable practices in this class. If you are unable to provide the basic facts of a problem or a case when called on, you will be considered unprepared for class. That said, I realize that you are juggling lots of competing responsibilities as law students. Accordingly, if you are unprepared for class at some point during the semester, please notify me in advance of class and I will not call on you that day. I do not need to hear your reasons for being unprepared.

I understand that some people are more comfortable than others voluntarily raising a hand to participate. If you are one of those people, you can still do well if you are fully prepared when I call on you. Nonetheless, I do recommend that you try to push yourself out of your comfort zone and raise your hand when you feel particularly strong on a subject. If you email me or let me know in advance that you would like to discuss a particular problem, case or topic, I will be sure to call on you that day so that you can participate when you are feeling particularly confident.

F. CLASS PREPARATION

The outline of assignments identifies the cases that will be the primary focus of class discussion. For each case assigned, please come prepared to discuss the procedural posture of the case, the issue(s) before the court for resolution, the rule or standard to be applied, the court’s analysis of the rule or standard as applied to the facts of the case, and the court’s conclusion. You should also be attuned to the policy rationale underlying the court’s holding and any countervailing arguments set forth in concurring or dissenting opinions. In some instances, cases that we will discuss in class are summarized in the notes in your book, rather than appearing in full or amended text. Although you are responsible for the assigned reading in its entirety, the outline of assignments highlights the cases from the notes that you should consider with particular care.

When the assignment refers to a rule from the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”), a statute from the United States Code, or a provision

of the United States Constitution, you should **very carefully** read the relevant provision and come to class prepared to discuss it in detail.

G. PROFESSIONALISM

Class professionalism is 10% of your final grade. In order to maximize your class professionalism grade, you must:

- (a) come to class on time;
- (b) come to class having read and thought about the material;
- (c) demonstrate a good faith effort to respond to my questions when I call on you
- (d) participate fully in small group work;
- (f) follow the policy referenced above if you are unprepared, with no exceptions;
- (g) do not “surf the net” during class;
- (g) do not leave the room during class unless it is an emergency which you discuss with me afterwards; and
- (h) show respect and professional behavior towards your classmates and towards me during class and in any written correspondence.

H. GRADING

Your grade in this course will be based on:

- **a midterm exam (5%, graded Pass/Fail);**
- **a final exam consisting of one or more essay questions (85%); and**
- **class professionalism, discussed above (10%).**

The exam will be open book. You may bring hard copies of any document or book into the exam.

I do not have sample exams and answers for your review, but we will do worksheets throughout the semester to reinforce the material and thus prepare you for the exam.

The School of Law Honor Code <http://law.ubalt.edu/template.cfm?page=477> applies to this class.

I. OFFICE HOURS AND ADMINISTRATIVE ASSISTANCE

My office is in Room 509. Office hours are by appointment. You can also see me after class or send an email to schedule an appointment. I am happy to discuss any questions or concerns that you have related to this course or law school and practice in general.

My assistant is Deborah Pinkham (deborah.pinkham@ubalt.edu).

J. LAPTOPS

Laptops are permitted except in the event that we have a guest speaker. During class, please do not use laptops to check email, surf the net, or engage in activities other than note-taking. The Law School Honor Code applies to this policy.

K. CLASS RECORDINGS

If you are unable to attend class due to a religious holiday, please contact my assistant, Deborah Pinkham (deborah.pinkham@ubalt.edu), **at least 24 hours in advance** and she will arrange to have the class taped. Please note that I cannot guarantee that a taping request will be fulfilled because the logistics are beyond my control. You may audiotape the class on your own, but please destroy the tapes at the end of the semester.

L. OUTLINE OF ASSIGNMENTS

The following outline sets forth the order of assignments, which are from the casebook unless otherwise indicated. **There will be times when we will not get through an entire assignment in a single class period.**

Given the numerous variables that can affect the speed at which we move through the material, the syllabus may be modified as the semester progresses. I will keep you posted.

* * *

Introduction, Notice and Service of Process

August 20: Carefully read the syllabus. You are responsible for its contents with respect to class policies and procedures. Read Chapter 1: pp. 1-9, 11, 16-34. Read Chapter 3: pp. 145-75. Be prepared to discuss Mullane v. Central Hanover Bank & Trust Co. Read U.S. Constitution, Amendments V and XIV, § 1. Read Fed. R. Civ. P. 4, 5, 6, 12 and Forms 3, 5 and 6. Prepare Rule 4 Worksheet (posted on TWEN).

Personal Jurisdiction

August 22: Read Chapter 2: pp. 35-44 (through n.4). Be prepared to discuss Pennoyer v. Neff. Read U.S. Constitution, Article IV, § 1. Read 28 U.S.C. § 1738.

August 27: Prepare Pennoyer Worksheet (posted on TWEN). Read pp. 44-49, and 119-20. Be prepared to discuss Hess v. Pawlowski, Harris v. Balk and Milliken v. Meyer.

August 29: Read pp. 50-57, 61-66 (through note 4). Be prepared to discuss International Shoe v. Washington, McGee v. International Life Ins. Co. and Hanson v. Denckla.

September 3: Prepare International Shoe Worksheet (posted on TWEN). Read pp. 66-77. Be prepared to discuss World-Wide Volkswagen Corp. v. Woodson, Keeton v. Hustler Magazine, Inc., Kulko v. Superior Court, and Calder v. Jones.

September 5: Prepare World-Wide Volkswagen Worksheet (posted on TWEN). Read pp. 77-89. Be prepared to discuss Burger King Corp. v. Rudzewicz and Asahi Metal Industry Co. v. Superior Court.

September 10: Read pp. 89-112. Be prepared to discuss J. McIntyre Machinery Ltd. v. Nicastro, Helicopteros Nacionales De Colombia, S.A. v. Hall, Perkins v. Benguet Consolidated Mining Co., and Goodyear Dunlop Tires Operations, S.A. v. Brown.

September 12: Prepare Burger King/Asahi/Nicastro Worksheet (posted on TWEN). Read pp. 112-18 and be prepared to discuss Community Trust Bancorp, Inc. v. Community Trust Financial Corp. and Zippo Manufacturing Corp. v. Zippo Dot Com. Read handout, Shreve & Raven-Hansen, "Jurisdiction in Cyberspace" (excerpted from UNDERSTANDING CIVIL PROCEDURE (4th ed. 2009)) (posted on TWEN).

September 17: Prepare Personal Jurisdiction and the Internet Worksheet; General Jurisdiction Worksheet; and Rule 4(k) Worksheet (posted on TWEN). Read pp. 121-37, 139-41. Be prepared to discuss Shaffer v. Heitner, Burnham v. Superior Court and Carnival Cruise Lines, Inc. v. Shute. Read Fed. R. Civ. P. 4(k); 12(b), 12(g) and 12(h).

September 19: Mid-term examination (worth 5% of the final grade; pass/fail).

Subject Matter Jurisdiction: Diversity

September 24: Read Chapter 4: pp. 193-205 (through n.6). Be prepared to discuss Mas v. Perry. Read and be prepared to discuss The Hertz Corp. v. Friend (at pp. 570-78 of the Supplement and posted on TWEN). Read 28 U.S.C. § 1332(a)-(c) (diversity jurisdiction); United States Constitution, Art. III; Fed. R. Civ. P. 8(a)(1); 12(b)(1) & 12(h).

September 26: Prepare Diversity of Citizenship Worksheet (posted on TWEN). Read pp. 208-09. Re-read 28 U.S.C. § 1332.

Subject Matter Jurisdiction: Federal Question Jurisdiction

October 1: Prepare Amount in Controversy Worksheet (posted on TWEN). Read pp. 211-17 (through n.1). Be prepared to discuss Louisville & Nashville R. Co. v. Mottley and Osborn v. Bank

of the United States. Read 28 U.S.C. § 1331 (federal question jurisdiction) and Article III, § 2 of the U.S. Constitution.

October 3: Prepare Mottley Worksheet (posted on TWEN). Read pp. 218 (starting with note 6)-31. Be prepared to discuss Grable & Sons Metal Prods., Inc. v. Darue Engineering & Manufacturing, Merrell Dow Pharmaceuticals, Inc. v. Thompson and Gunn v. Minton. Read Fed. R. Civ. P. 8(a)(1), 12(b)(1).

Subject Matter Jurisdiction: Supplemental Jurisdiction

October 8: Read pp. 231-36. Read and be prepared to discuss United Mine Workers of America v. Gibbs. Re-read Article III, § 2 of the U.S. Constitution. Read 28 U.S.C. § 1367 (supplemental jurisdiction).

Joinder of Claims

October 10: Prepare Supplemental Jurisdiction Worksheet (posted on TWEN). Read Chapter 8: pp. 409-16. Be prepared to discuss M.K. v. Tenet and Moore v. New York Cotton Exchange. Read Fed. R. Civ. P. 1; 2; 13(a)(1), (b), (g); 18(a); 21 and 42(b). Optional: Read pertinent pages of Gensler, Federal Rules of Civil Procedure (excerpt posted on TWEN).

Joinder of Parties and Class Actions

October 15: Prepare Claim Joinder and Counterclaims Worksheet (posted on TWEN). Read pp. 418-32. Be prepared to discuss M.K. v. Tenet and Provident Tradesmen Bank and Trust Co. v. Patterson. Read Temple v. Synthes Corp. and Helzberg's Diamond Shops v. Valley West Des Moines Shopping Center (posted on TWEN). Read Fed. R. Civ. P. 14(a), (b); 19; and 20. Optional: Read pertinent pages of Gensler, Federal Rules of Civil Procedure (excerpt posted on TWEN).

October 17: Prepare Party Joinder Worksheet (posted on TWEN). Read Chapter 9: pp. 332-35. Be prepared to discuss Jueb v. B/G Foods, Inc. Re-read Fed. R. Civ. P. 14(a), (b); 19; and 20; 28 U.S.C. § 1367(b). Read Fed. R. Civ. P. 23(a)-(c). Optional:

Read pertinent pages of Gensler, Federal Rules of Civil Procedure (excerpt posted on TWEN).

October 22: No new assignment. Wrap-up/review.

The Binding Effect of Prior Decisions: The Preclusion Doctrines

October 24: Read Chapter 15: pp. 680-92 (top). Be prepared to discuss Rush v. City of Maple Heights and Mathews v. New York Racing Assoc., Inc.

October 29: Read pp. 700-706. Be prepared to discuss Cromwell v. County of Sac. Read Panniel v. Diaz, Cambria v. Jeffery, and Parklane Hosiery Co., Inc. v. Shore (posted on TWEN).

Ascertaining the Applicable Law: The Erie Doctrine

October 31: Prepare Issue Preclusion Worksheet (posted on TWEN). Read Chapter 6: pp. 277-94. Be prepared to discuss Swift v. Tyson, Erie R. Co. v. Tompkins, and Guaranty Trust Co. v. York. Read 28 U.S.C. § 1652.

November 5: Read and be prepared to discuss Hanna v. Plumer (posted on TWEN). Read pp. 295-98 and be prepared to discuss Byrd v. Blue Ridge Rural Elec. Cooperative, Inc. Read 28 U.S.C. § 2072. Read and be prepared to discuss Walker v. Armco Steel Corp. (posted on TWEN).

Removal

November 7: Prepare Erie Worksheet (posted on TWEN). Prepare Removal Worksheet (posted on TWEN). Read Hays v. Bryan Cave LLP (posted on TWEN). Read 28 U.S.C. §§ 1441(a) & (b) and 1446 (removal statutes).

Venue

November 12: Read Chapter 5: pp. 255-57. Read and be prepared to discuss Bates v. C&S Adjusters, Inc. (posted on TWEN). Read 28 U.S.C. §§ 1390, 1391(a)-(d) (venue).

Transfer and Forum Non Conveniens

November 14: Prepare Venue Worksheet (posted on TWEN). Read pp. 219-75. Be prepared to discuss Piper Aircraft Co. v. Reyno. Read 28 U.S.C. §§ 1404(a), 1406(a) (transfer statutes).

November 19: Prepare Transfer and Forum Non Conveniens Worksheet.

November 21: Final review session.