

**WESTERN STATE UNIVERSITY
COLLEGE OF LAW**

CIVIL PROCEDURE II, Section 142 C

SYLLABUS AND COURSE POLICIES – Spring 2012

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A. Objectives:

This three (3) credit, semester-long course is the second half of the required six (6) credit courses which explore the procedure governing civil (as opposed to criminal) disputes.

During the first semester you studied personal and in rem jurisdiction, and in the context of the federal courts, notice and opportunity to be heard, subject matter jurisdiction (including removal jurisdiction), venue and transfer, pleadings, and joinder of claims and parties (and the jurisdictional implications of adding claims and parties).

This semester we will continue our study of joinder by looking at two special joinder devices, interpleader (as distinct from impleader) and class actions. We will then turn to the discovery tools and process, privilege and work product doctrines and their implications for discovery, expert witnesses, pretrial disposition (including summary judgment), disposition at the trial itself, and post-trial motions. Then we will step back and look at two different families of doctrines that have implications for the pretrial and trial process and the judgments that result from that process: first, the *Erie* doctrine (which relates to what law is to be applied by the federal courts); and second, preclusion doctrines (commonly known as claim preclusion and issue preclusion, or historically as res judicata and collateral estoppel). We will then conclude the semester with an examination of the appellate process.

Though our topics of study will differ this semester from what we studied last semester, we will be building on foundations we laid in the fall. The same skills that helped you in the first semester will be important to you in Civil Procedure II. For example:

1. It will be just as important this spring as it was in the fall to read the assigned materials carefully and completely and attempt to understand them **before** class.
2. You should continue to practice the analytical skills you will need to succeed in law school and in the practice of law – primarily how to read, interpret, understand and apply cases, statutes and procedural rules. In particular, the Federal Rules will take on even more importance this semester as we work our way through the pretrial and trial process. It will be important to continue your efforts to apply the rules to the cases and hypotheticals we study as you develop your skills of statutory and rule analysis.

3. Vocabulary is important. Lawyers talk and write like lawyers. This doesn't mean we need to learn to talk and write in jargon that is incomprehensible to the masses. I am a firm believer in "plain English for lawyers." But use of the correct words in the right way and in the right context matters. Using words incorrectly, even if you otherwise have the basic idea about how something works, creates the impression in the reader (whether the reader be an exam grader, opposing counsel, or a judge) that you don't know what you are talking about. A contribution claim is not the same as an indemnity claim, though both can support impleading a third-party defendant. Impleader is not the same as interpleader, as we will soon learn. "Residence," like "jurisdiction" can mean different things in different contexts, so it is important to be precise and clear. Statutes are not rules. Though the skills for interpreting them may be similar, the process of creating them (legislative action vs. advisory committee recommendations) is different. And again, calling a rule a statute or vice versa simply makes you sound uninformed. So, now that you have made it through the first semester, begin to work at precision in your use of terminology.

4. Our task as lawyers is to apply cases, rules and statutes to differing fact situations. The good lawyer is paid to understand the subtle distinction between one factual scenario and another that might lead to a different conclusion about whether a case, rule or statute applies. Your skill at doing this is something that you should continue to develop and improve throughout the remainder of your law studies. As you push yourself to understand when distinctions matter and when they don't, you deepen your understanding of law and legal analysis.

B. Required Texts:

1. Freer & Perdue, Civil Procedure: Cases, Materials & Questions ("Freer & Perdue"), 6th ed. LexisNexis, 2012
2. Federal Rules of Civil Procedure, Thomson West, 2012-13 Educational Edition (the "Rules Supplement")

C. Suggested Supplemental Reading:

Again, as in the fall semester, you are cautioned to pay attention to the decision dates of cases, or the adoption dates of statutory and rule changes. These supplemental resources were published between three and seven years before the current edition of Freer & Perdue. While much of the law of Civil Procedure has not changed significantly over that period, there are some areas where changes (and sometimes significant changes) have occurred. Your failure to detect changes creates the impression that you have not carefully studied the required reading materials, but instead have relied exclusively on supplemental study aids. That is not a good impression to create.

1. Glannon, Civil Procedure, Examples and Explanations, 6th ed. Aspen, 2008 ("Examples")
2. Glannon, The Glannon Guide to Civil Procedure, 2d Ed. Aspen, 2009 ("Guide")

3. Shreve & Raven-Hansen, Understanding Civil Procedure, 4th ed. LexisNexis, 2009
4. Friedenthal, Kane & Miller, Hornbook on Civil Procedure, 4th ed. West, 2005

D. Schedule changes and makeup classes:

My apologies for any inconvenience created by the following schedule change. It is necessitated by my prior commitment to chair an accreditation site visit for the Western Association of Schools and Colleges (WASC) in Stockton, California the week of March 4-8, 2013. As a result of this site visit, we will not meet that week, which unfortunately is the week before our spring break. I have scheduled makeup sessions for the two classes that I will miss, trying as best as I can to minimize any disruption to your normal class schedule. The first makeup class will be held on Tuesday, February 26, 2013 from 10:45am to 12:15pm. I know Tuesdays at 10:45am are when we would normally be meeting anyway, but Tuesday, February 26th has been administratively designated as a day to hold Monday classes to make up for the Monday Martin Luther King Holiday when classes will not meet. And as best as I can tell, you do not have Monday morning classes. So, on Tuesday, February 26th, when your Monday classes will meet, we will have a Civil Procedure makeup class at our normal 10:45am time. The second makeup class will actually be on a Monday, March 18, 2013 (the Monday after our spring break), from 10:45am to 12:15pm. So during the week of March 18th, we will meet three times, Monday, Tuesday and Thursday.

Again, I apologize for any inconvenience this may cause you. Unfortunately, I made this commitment to WASC long before I knew I would be teaching at Western State this spring.

E. Preparing for the Classroom:

A centerpiece of this course will be the Federal Rules of Civil Procedure (“FRCP”) which are the rules applicable in civil litigation in federal court. Many states have modeled their own procedural rules after the FRCP, but not California. Nevertheless there are many similarities between “California procedure” and “federal procedure.” Over the course of the year, we will note some of the key similarities and differences, but our focus will be on federal procedure. Once you learn that system of procedure well, learning about differences in procedural rules in California and other states will be much easier.

It is important to understand, however, that the law of Civil Procedure is derived from a wide variety of primary legal authorities besides the FRCP. For example, the right to a civil jury trial in certain cases in federal court flows from the Seventh Amendment to the U.S. Constitution. The right to appeal a judgment is, in part, defined by congressional statute (28 U.S.C. §§1291 and 1292). But even where a FRCP or statute or constitutional provision seems to govern a particular procedural issue, courts are called on to interpret those provisions. Not surprisingly, these interpretations by different courts, reflected in judicial opinions, are sometimes conflicting.

Therefore, although this course deals with written procedural rules, we will employ the same “case method” which you encountered in your first semester and with which you have already become somewhat familiar on your “substantive” courses such as contracts and torts. To prepare for class, you must read the assigned materials (see class by class reading assignments listed in the attached chart) carefully such that you understand them.

As in the fall semester, but to an even greater degree, in addition to reading cases, we will be reading rules and statutes. Careful attention to the precise wording of rules and statutes is absolutely essential. When, during the course of your assigned reading, you encounter references to a FRCP or to a federal statute or constitutional provision (all of which are in your second required text, the “rules supplement,” with which you should now be very familiar) you are required, as part of your preparation for class, to look them up in your rules book and read them just as carefully as you read the casebook assignment. Also, most of the FRCPs in the rule book are followed by Advisory Committee Notes, which are the FRCP equivalent of the legislative history. These notes are a valuable resource to help you to understand the rules.

The Glannon recommended reading texts are particularly helpful. They are relatively easy to read, are sometimes entertaining and contain questions and answers; the Glannon Guide text contains multiple choice questions followed by the answers and the Glannon Examples text contains questions followed by narrative answers. The feedback is immediate and they are a very good check during the semester to make sure you are understanding the materials we are studying. They are also very good practice for your exams.

In addition to the required and recommended texts, there is another learning resource available to you at your option. The resource is a set of computer-aided exercises known as “CALI” that is located in the computer lab in the Library. You can perform these exercises in the computer lab or make copies for your home use. The CALI exercises cover a variety of civil procedure topics and can be a valuable way to strengthen your ability to deal intelligently and creatively with the issues and concepts explored in class. Maximum benefit can be derived by performing these exercises in teams of two or more students. One CALI exercise in particular, called the “Discovery Game,” is particularly useful as you work your way through the discovery rules. I highly recommend it.

F. Practice Questions, Exams and Grading:

Throughout the semester, I will be happy to review with students answers to practice exams and practice questions that I will distribute from time to time. We will review some of these in class and you may choose to review some with me in my office. *Do not wait until the end of the semester to begin taking practice exams and answering practice questions.*

There will be a graded mid-term exam and a final exam. The mid-term exam and the final exam will likely contain essay and multiple-choice questions. The final course grade will be based on a 10% weighting of the mid-term exam and an 85-90% weighting of the final examination.

I may administer announced or unannounced quizzes during class or online. The scores on any such quizzes will be weighted no more than 5% of in determining the final grade.

G. Classroom Participation:

Legal education is a cooperative venture and oral communication skills will be important throughout your life. Each of you must be prepared to participate in class on a regular basis. If you have not read the materials or do not have a brief for an assigned case, you are unprepared. I may randomly call on students in class to describe cases or rules and to answer questions. Even though some students find this method unattractive or intimidating, overcoming intimidating circumstances is an important and time tested part of the legal education process. And the single most effective way to overcome the intimidation is to be prepared.

Among other reasons for you to be prepared is that it is fairly inconsiderate of the time and efforts of your fellow students to come to class unprepared.

PLEASE NOTE, HOWEVER, THAT THERE IS A SIGNIFICANT DIFFERENCE BETWEEN BEING UNPREPARED AND BEING UNABLE TO ANSWER A PARTICULAR QUESTION. No one knows the answer to every law-related question. An important part of the learning experience is testing your own knowledgeable opinions and conclusions. You will **not** be down-graded for venturing an incorrect answer. You should, however, be sufficiently familiar with the cases, notes, questions and examples to discuss them when called upon to do so.

H. Attendance and Decorum:

I will take attendance at the beginning of each class by asking you to sign in for the class on a roll sheet. If you are not signed in, you are absent. **IN ACCORDANCE WITH SCHOOL RULES, IF YOU MISS MORE THAN FOUR (4) 1 ½ HOUR CLASSES, YOU WILL BE ACADEMICALLY DISMISSED FROM THE COURSE.**

You should be in your seat at the commencement of class to be counted as present for the class. Once again it is fairly inconsiderate of the other students and of the professor to walk in late. Similarly, you should not leave until the end of class. If you have an emergency that causes you to have to leave during the class, please do so unobtrusively. If you have a disability which prevents you from remaining in your seat during the class, please contact the Registrar or the Academic Dean.

It should go without saying but I don't expect that cell phones (smart or otherwise), iPods, head phones, pagers and the like will be seen, heard or used in the classroom. You may use your laptop computer but it should be open to course related materials and not to your email, eBay, etc. With respect to note taking and laptops, please keep in mind that it is considerably more important that you hear and understand what is said in class than that you record every single word. When you attempt to record every word in your electronic notes, the portion of your brain that you use to listen and comprehend shuts down. You become a mere scribe, writing down words that have no meaning to you.

I. Seating Chart:

A seating chart will be distributed at the beginning of the second class session. Please print your full name **legibly** in the seat you choose for your permanent seat. If you wish to change your seat during the semester, please notify me so that I can make the appropriate change on the chart.

J. Office Hours:

I am delighted to talk with a student or students almost any time. I will remain after class for questions when that is possible. I will have office hours on Tuesdays and Thursdays from 12:30 to 2:30pm. You may drop in any time during those hours. I will also be available by appointment almost any time convenient to you, so long as I have advanced notice. Please make appointments through the Appointment Book located at the faculty reception desk on the third floor. If you cannot make a scheduled appointment, please notify the faculty secretary as soon as possible so that another student can see me during that time slot. You can also reach me by email.

If you received a poor grade in Civil Procedure I, or if you did not do as well as you hoped to do, I urge you do everything you can to improve your understanding of this important subject. The materials we study this semester build on the foundation of things we studied in the fall semester. If you come to see me I will do everything I can to help you build a stronger foundation aiming towards a more successful spring semester.

K. Web Course:

Sometime before the first day of class I will set up a LexisNexis Web Course for this class and enroll you in the course. Please check the web course before our first class on January 15th. As in the fall semester, I will use this web course to send you emails, make class announcements and post course documents such as this syllabus and charts, questions, outlines and other documents that pertain to the topics we will study. I may also use the web course to post practice exams or to administer quizzes. Finally the web course can be used to hold out-of-class discussions.

The web course will be important to your success in this class. Please make sure you have access to the site. You should test your access BEFORE the first day of class. There are computers in the library if you need one.

Reading Assignments (subject to modification):

Class	Subject	Required Reading	Recommended Reading
1	Review fall Final Exam		
2	Interpleader	Freer & Perdue 737-752 (<i>Pan American; Tashire</i>) FRCP 22 28 USC §§1335, 1397 & 2361	
3	Class Actions	Freer & Perdue 753-777 (<i>Hansberry</i>) FRCP 23 28 USC §§1711-1715	Bronsteen & Fiss article (available on web course)
4	Class Actions, cont'd	Freer & Perdue 777-792 (<i>Exxon Mobil</i>) 28 USC §§1453 & 1332(d)	
5	Discovery -Initial Disclosures -Depositions -Interrogatories -Production of Documents and Things -Medical Examination -Requests for Admission	Freer & Perdue 361-369 FRCP 26(a)(1) FRCP 27, 28, 30, 31 & 32 FRCP 33 FRCP 34 FRCP 35 FRCP 36	Examples ¹ 409-10; 435-471 Guide ² 347-348; 371-394 CALI Exercise: The Discovery Game (available in library – excellent learning tool!)
6 & 7	Discovery, cont'd -Scope of Discovery -Limits & Proportionality -Subpoena -Use of Discovery at Trial	Freer & Perdue 369-388 (<i>United Oil; Zubulake</i>) FRCP 26(b)(1) FRCP 26(b)(1) & (2) FRCP 45 FRCP 32 & 33(c)	Examples 410-434 Guide 348-369

¹ Examples refers to Glannon, Civil Procedure: Examples & Explanations, 6th ed. Aspen, 2008.

² Guide refers to Glannon, The Glannon Guide to Civil Procedure, 2d ed. Aspen, 2009.

8 & 9	Privilege and Work Product	Freer & Perdue 388-404 (<i>Hickman</i>) FRCP 26(b)(3)	Examples 412-434 Guide 356-369
10	Experts	Freer & Perdue 404-416 (<i>Ager</i>) FRCP 26(a)(2) & 26(b)(4)	Examples 415-434
11	Pretrial Proceedings & Sanctions	Freer & Perdue 416-437 (<i>Fisons</i>) FRCP 16, 26(f) & (g), 37	
12	Jury Trial	Freer & Perdue 439-460 (<i>Terry</i>) U.S. Constitution, 7 th Amendment	
13 & 14	Summary Judgment	Freer & Perdue 487-508 (<i>Anderson; Coble</i>) FRCP 56	Examples 473-494 Guide 395-417
15	Mid-Term Exam		
16	Disposition at Trial – JMOL	Freer & Perdue 508-517 (<i>Lavender</i>) FRCP 50	Examples 495-521 Guide 419-439
17	Disposition at Trial – New Trial	Freer & Perdue 518-533 (<i>Dadurian</i>) FRCP 59	Examples 521-535 Guide 441-461
18	The <i>Erie</i> Doctrine: When must a federal court apply state law	Freer & Perdue 535-555 (<i>Erie; York; Ragan; Byrd</i>) U.S. Constitution, Article VI, cl. 2 28 USC §1652	Examples 177-204 Guide 195-222
19	<i>Erie: Hanna</i> and the FRCP	Freer & Perdue 555-570 (<i>Hanna</i>) 28 USC §2072	Examples 204-228 Guide 222-234
20 & 21	<i>Erie</i> Refinements	Freer & Perdue 570-605 (<i>Gasperini; Shady Grove</i>)	

22 & 23	Claim Preclusion	Freer & Perdue 613-632 (<i>Carter</i>)	Examples 541-576 Guide 463-482
24	Issue Preclusion	Freer & Perdue 632-649 (<i>Cromwell</i> ; <i>Rios</i> ; <i>Hardy</i>)	Examples 577-594 Guide 483-500
25	Issue Preclusion, cont'd	Freer & Perdue 649-665 (<i>Blonder-Tongue</i> ; <i>Parklane</i>)	Examples 595-613 Guide 500-503
26 & 27	Appeal	Freer & Perdue 793-821 (<i>Cunningham</i>) 28 USC §§1291, 1292, 1651, 1254 FRCP 23(f), 54(b), 60	
28	Finish		