

WESTERN STATE COLLEGE OF LAW

CIVIL PROCEDURE I 141A & C

Fall 2013

SYLLABUS AND COURSE POLICIES

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1. Objectives:

Civil Procedure I is a semester-long, three (3) credit course that has several objectives.

First, and foremost, this course will assist you to continue to develop the legal skills you were taught in your first year which are essential for your success in law school and in the practice of law:

- how to *read* and *understand court decisions* from which we derive many of the legal principles that courts apply to resolve legal controversies;
- how to make sense out of a series of court decisions that relate to a particular legal issue by comparing and contrasting the facts of those decisions with each other; this process is known as *case synthesis* and is the *common law* method by which lawyers and courts develop new legal principles out of a body of case law and apply those principles to new controversies (in this course, procedural issues) that courts have to resolve.
- how to interpret procedural statutes and rules which will help you to apply those statutes and rules to resolve procedural issues in the context of new factual situations that continually arise during the course of litigation as well as in class hypotheticals and law school examinations.

The procedural issues covered in this course will frequently not be “black and white;” federal courts in different circuits often adopt different interpretations of the same rule and federal courts in the same circuit often interpret the same rule differently depending on the facts. Therefore, your mid-term and final exam test how well you have mastered these critical thinking skills, not just the “black letter” of the rules themselves.

Second, because civil procedure doctrine is continually changing (it is currently in the throes of radical change), you will learn how law evolves over time to adapt to social change. Law that developed in a horse and buggy era may not meet the needs of the age of the Internet.

Third, we will explore the basic issues of civil procedure, practical issues that lawyers encounter as they proceed through the phases of civil lawsuit. But this is not a

“follow the numbers” course that will teach you what paper to file and when to file them. You will come to view procedural rules as comprising a civil litigation *system* designed to provide civil justice to the parties who bring their controversies to court. You will learn the policies and goals that lie behind the procedural rules and will be challenged to ask yourselves how well the current rules achieve those policies and goals, whether these policies and goals are still valid today, whether they provide civil justice to all people, rich and poor and in-between, whether they should be changed.

2. Required Texts:

- Freer & Perdue, Civil Procedure: Cases, Materials & Questions, 6th ed. LexisNexis, 2008
- Freer & Perdue On-Line Supplement: [2012 Summary of Juris.&Venue Clarification Act of 2011 \(“JVCA”\)](http://www.lexisnexis.com/lawschoolsupplement/study/texts/#CivilProcedure). You can access this Update at: <http://www.lexisnexis.com/lawschoolsupplement/study/texts/#CivilProcedure>
- Federal Rules of Civil Procedure, Thomson West, 2013-14 Educational Edition (the “Rules”)

3. Helpful Supplemental Reading (you may purchase these books, they may be available in the library or they may be available on short term loan from me):

- Glannon, Civil Procedure, Examples and Explanations, 7th ed. Walters Kluwer, 2013 (“Glannon Examples”)
- Glannon, The Glannon Guide to Civil Procedure, 3d Ed. Aspen, 2013 (“Glannon Guide”)
- Shreve & Raven-Hansen, Understanding Civil Procedure, 4th ed. LexisNexis, 2009
- Friedenthal, Kane & Miller, Hornbook on Civil Procedure, 4th ed. West, 2005

4. “In-Class” Methodology:

The centerpiece of this course will be Federal Rules of Civil Procedure [hereinafter, “F.R.C.P.”] which is the code of procedure applicable in civil litigation in federal court. However, Civil Procedure law is derived from a wide variety of primary legal authority besides the F.R.C.P. For example, the law of personal jurisdiction is largely constitutional case law while the subject matter jurisdiction of federal courts is defined by Article III of the U.S. Constitution and federal statute. But even where an F.R.C.P. or statute or constitutional provision governs a particular procedural issue, courts have provided their interpretation (sometimes conflicting) through case law.

Therefore, although this course deals with “procedural rules,” we will, nevertheless, heavily employ the same “case method” with which you have already become somewhat familiar in your “substantive” courses (i.e., contracts and torts). To prepare for class, you must read the assigned materials (see week by week reading assignments list, *infra*) carefully such that you understand them. In particular you should brief the cases found in the reading.

When, during the course of your assigned reading, you encounter references to an F.R.C.P. or a federal statute or a constitutional provision, you are required, as part of your preparation for class, to look them up in your supplement and read them carefully. Also, most of the F.R.C.P.’s in the supplement are followed by Advisory Committee Notes, which is the F.R.C.P. equivalent of the “legislative history” behind the rules. These Notes are a valuable resource to help you to understand the rules and you are, therefore, required, as part of your preparation for class, to read these carefully as well.

The Glannon suggested 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 these resources are very good practice for your exams.

In addition to the required tests and suggested supplemental reading, there is another learning resource available to you at your option. This resource is a set of computer-aided exercises known as “CALI” that is located in the computer lab located 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.

5. Exams and Grading:

Throughout the semester, I will be happy to review with students, during consultations in my office, student answers to practice exams. Please bring your practice exam answer with you to your consultation. I have posted practice exams and issue analyses on my Course Website. For the most efficient use of your consultation time, ***please use a past examination that I have drafted. Do not wait until the end of the semester to begin taking practice exams.*** A good time to start would be after we have completed the first unit: personal jurisdiction; try your hand at those portions of past final exams dealing with that topic. I will also distribute a copy of an essay mid-term exam dealing with personal jurisdiction for you to practice on.

There will be a graded mid-term in essay format and a final examination in both essay and multiple choice formats. Each student will receive a numeric final course grade which will consist of the sum of 15% of the mid-term grade and 85% of the final examination grade.

Additionally, I reserve the option to administer unannounced quizzes at the commencement of class or online. The scores of any such quizzes will be factored into the final grade in this course.

6. 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 will randomly call on people in class to describe cases or rules and to answer questions. Please prepare for each week's full set of assigned readings. This syllabus represents my best guess as to the material we will cover each week. Please be aware that coverage of some topics might continue over the subsequent class sessions.

7. Attendance & 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 (6) ONE HOUR OR MORE THAN TWO (2) THREE 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. Please do not sign the roll sheet if you arrive late. Similarly, please do not leave until the end of class. If you do so you will be marked absent for that class session. 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 Dean of Students.

It should go without saying but I don't expect that cell phones, i-pods, head phones, blackberries or pagers and the like will be seen, heard or used in the classroom. You may use your computer but it should be open to course related materials and not to your email, eBay etc.

8. Seating Chart:

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

9. Office Hours:

I am delighted to talk with a student or students almost any time. I will be available in my office by appointment. Please make appointments through the Appointment Book located at the Reception Desk on the Third Floor. If you cannot make a scheduled appointment, please notify the faculty secretary as soon as possible that you are canceling your appointment so that another student can see me during that time slot. I will also be available the rest of the week as time permits.

10. Online Contact:

Sometime before the first day of class I will set up a LexisNexis Web Course for this class. **DURING ORIENTATION YOU WILL BE TOLD HOW TO REGISTER WITH LEXISNEXIS. YOU WILL BE ENROLLED IN THE WEB COURSE FOR MY CLASS AND WILL BE ABLE TO ACCESS MATERIALS POSTED TO THE WEB COURSE SITE. PLEASE ALSO REFER TO “GETTING STARTED WITH LEXISNEXIS WEBCOURSES” ON THE LAST PAGE OF THIS SYLLABUS.** During the 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 and outlines that pertain to the topics we will study. I may also use the web course to post practice exams and sample answers or to administer quizzes. Finally the web course can be used to hold out of class discussions.

10. Reading Assignments:

Week	Subject	Required Reading	Recommended Reading**
1	Introduction Personal Jurisdiction	Check your access to the course website on LexisNexis The Rules, pages XIX-XXIX (“An Outline of the Procedure in a Civil Action’) Freer & Perdue 1-46 US Constitution, Art IV, § 1 US Constitution, Amend 5 and 14 28 USC § 1257	Glannon Examples 3-25 Glannon Guide 69-89
2	Personal Jurisdiction	<i>Asahi Metal Industry Co. v. Superior Court of California</i> , 480 U.S. 102 (1987) Freer & Perdue 46-77	Glannon Guide 92-99
3	Personal Jurisdiction	Freer & Perdue 77-106 <i>The Functional and Dysfunctional Role of Formalism in Federalism:</i>	

		<i>Shady Grove versus Nicaastro</i> , 16 Lewis & Clark Law Review 905 (2012).	
4	Personal Jurisdiction In Rem Jurisdiction Transient Jurisdiction	Freer & Perdue 127-135 Freer & Perdue 106-127	Glannon Guide 99-109
5	Personal Jurisdiction: <ul style="list-style-type: none"> • Long Arm statutes • Notice & Opportunity to Be Heard 	Freer & Perdue 139-176 FRCP 4	Glannon Examples 27-46; 347-367 Glannon Guide 111-130
6	Subject Matter Jurisdiction: <ul style="list-style-type: none"> • Diversity 	Freer & Perdue 177-214 JVCA* (Sections 1332(a) and (c)(1)) US Const. Art. III 28 U.S.C. §1332	Glannon Examples 89-107 Glannon Guide 3-24
7	Subject Matter Jurisdiction: <ul style="list-style-type: none"> • Federal Question • Supplemental Jurisdiction • Removal 	Freer & Perdue 214-232 U.S. Const, Art III 28 U.S.C. §1331 Freer & Perdue 233-239 JVCA (Sections 1441 and 1446) 28 U.S.C. §§ 1441 and 1446 - 1448	Glannon Examples 63-87, 109-121 Glannon Guide 25-50 Glannon Examples 309-331 Glannon Guide 255-278 Glannon Examples 123-139 Glannon Guide 51-68
8	Venue, Transfer and Forum Non Conveniens Challenging Jurisdiction	Freer & Perdue 241-242; 245-271 JVCA (Sections 1390, 1391, 1392 and 1404(a) and (d)) 28 U.S.C. §§1391, 1404 and 1406 Freer & Perdue 273-282 FRCP 12	Glannon Examples 141-158; 159-173 Glannon Guide 151-173 Glannon Examples 47-62 Glannon Guider 329-344
9	Pleadings: <ul style="list-style-type: none"> • Complaint • Voluntary and 	Freer & Perdue 283-337	Glannon Examples 369-383

	<p>Involuntary Dismissal</p> <ul style="list-style-type: none"> Defendant's Options in Response 	FRCP 7, 8, 9, 10, 12, 41(a) and (b).	Glannon Guide 279-299
10	<p>Pleadings:</p> <ul style="list-style-type: none"> Amendment Rule 11 	<p>Freer & Perdue 337-359 FRCP 11 and 15</p>	<p>Glannon Examples 385-408 Glannon Guide 299-328</p>
11	<p>What Law Applies in Federal Court?: Erie</p>	<p>Freer & Perdue 535-570 US Constitution, Art VI US Constitution, Amend 10 28 USC §§ 1652 and 2072</p>	<p>Glannon Examples 177-199 Glannon Guide 195-214</p>
12	<p>What Law Applies in Federal Court?: Erie (continued)</p>	<p>Freer & Perdue 570-605</p> <p><i>The Fruits of Shady Grove: Seeing the Forest for the Trees</i>, 44 Akron Law Review 999 (2011).</p>	<p>Glannon Examples 201-228; 229-249 Glannon Guide 215-234</p>
13	<p>Joinder (By Plaintiffs) and Supplemental Jurisdiction:</p> <ul style="list-style-type: none"> Claim Joinder by Plaintiffs Permissive Party Joinder by Plaintiffs Supplemental Jurisdiction 	<p>Freer & Perdue 667-691 FRCP 18 and 20</p> <p>Freer & Perdue 777-789 23 U.S.C. §1367</p>	<p>Glannon Examples 253-270 Glannon Guide 235-254</p> <p>Glannon Examples 309-344 Glannon Guide 255-278</p>
14	<p>Joinder (By Defendants)</p> <ul style="list-style-type: none"> Counterclaims Cross-Claims Impleader 	<p>Freer & Perdue 692-719 FRCP 13 and 14</p>	<p>Glannon Examples 271-282</p>
15	Reading Week		

* Freer & Perdue On-Line Supplement: [2012 Summary of Juris.& Venue Clarification Act of 2011](http://www.lexisnexis.com/lawschoolsupplement/study/texts/#CivilProcedure) (“JVCA”). You can access this Update at:
<http://www.lexisnexis.com/lawschoolsupplement/study/texts/#CivilProcedure>

**These readings are meant to engage you in the study process and to help you develop a stronger understanding of the basics of procedure. To gain an appropriate level of understanding of these topics you must reflect on the material and practice applying the principles you have learned. To assist you with that process the recommended readings provide you with questions, examples and explanations on each of the topics. At the end of each week you should read this material and then do the practice problems.

Getting started with LexisNexis Webcourses

Student Instructions

Enrolling in your Web Course

Your professor will let you know if you need to self enroll or if he or she has already enrolled you. If your professor has enrolled you, skip to the next section below. Otherwise, follow these simple instructions to enroll for the first time:

1. Go to <http://webcourses.lexisnexis.com/>
2. Click on the **Login** button
3. Enter your **LexisNexis ID** and click the **Login** button
Note: If you get an error message "Invalid ID: If you have not registered your LexisNexis ID, please use the registration links below.", then you must first register your LexisNexis ID. Choose the "Law School Student Registration" link to register your LexisNexis ID, then repeat steps 1, 2 and 3.
4. Click on **Browse Course Catalog**
5. Click on the **link for your school**
6. Select your course and click **Enroll**

To access your LexisNexis Web Course once you have been enrolled:

1. Go to <http://webcourses.lexisnexis.com/>
2. Click on the **Login** button
3. Enter your **LexisNexis ID** and click the **Login** button
4. From the **Course List**, select the specific course you would like to access (this will only show the Web Courses for which you have enrolled)

Using your LexisNexis Web Course

Once you log into a Web Course, you will immediately see:

- the main course window in which **Announcements** will be posted
- **Navigation buttons** on the left for accessing different types of information and documents posted by your professor

Communicating with classmates and your professor through LexisNexis Web Courses

- *Send an e-mail to your classmates, groups of classmates, or your professor* – Click on the **Communication** button from the **Navigation** area; click **Send E-mail**; select the recipients to which you wish to send your e-mail
- *Participate in a discussion forum with your classmates* – Click on **Communication** from the **Navigation** area; click **Discussion Board** (or your professor may have selected **Discussion Board** as one of the navigation buttons); you may **Reply** to an existing message or **Start [a] New Thread**

Manage your course with Student Tools

- *Send documents to your professor or classmates* – click **Student Tools** from the **Navigation** area; click **Dropbox**; click **Browse** and select the file you wish to send
- *Check grades* – if your professor has created on-line quizzes, you may be able to check your grades by clicking **Student Tools** from **Navigation** area; click **Check Your Grade**; select the specific **Quiz/Exam**
- *Dot down notes regarding your course* – click **Student Tools**, click **Electric Blackboard**; type notes in the text box; click **Save**.