

WESTERN STATE COLLEGE OF LAW

CIVIL PROCEDURE II: Sections 142A and 142D -- Spring 2013

SYLLABUS

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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 that governs civil (as opposed to criminal) disputes.

During the first semester you studied, mainly as they pertained to the federal courts, personal and in rem jurisdiction, notice and opportunity to be heard, subject matter jurisdiction, removal, venue and transfer, pleadings, and *Erie* (what law is to be applied by the federal court). You should retain your notes from the first semester as they will certainly come in handy when you study for the bar exam and we will refer to matters covered in the first semester.

This semester we will study joinder and supplemental jurisdiction, Class Actions, discovery, privilege (particularly the protection of work product), expert witnesses, pretrial disposition (including summary judgment), disposition at the trial itself, claim and issue preclusion, enforcement of judgments and appeal.

I am aware that the D section has already covered at least some of joinder. Nevertheless, I will begin this semester with joinder and supplemental jurisdiction because (i) joinder will be covered on the final exam; (ii) joinder and associated subject matter jurisdiction can be a confusing subject for students; and (iii) for reasons which will become clear during the semester, I want to keep the sections at relatively the same place.

While this semester will be somewhat more practice oriented, the same skills that helped you in the first semester will be important to you in Civil Procedure II. For example:

1. In order to obtain the maximum benefit from our classroom time (42 hours), you will need 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, apply and distinguish cases, statutes and procedural rules.
3. **Vocabulary is important.** Lawyers talk and write like lawyers. Use of the correct word(s) and complete, coherent sentences is not a sinister requirement of overly picayune law professors. It is essential to the effective study and practice of law. Residence is not the same as citizenship; statutes are not Rules [of Civil Procedure]; and the word “jurisdiction” by itself could mean either

subject matter or personal jurisdiction. You may find a word or expression in your reading for which you just don't know the meaning. Rather than meandering "in a fog", try to find (you should have learned a little about legal research during the first semester) or ask about the meaning.

4. **Writing is important.** Most lawyers write more than they talk. Please notice that this syllabus is written in relatively short sentences and relatively short paragraphs. Practice good writing as much as you can. Write in short complete sentences and short paragraphs using proper grammar, spelling, punctuation, capitalization and syntax.

5. The ability to apply cases, Rules and statutes to differing fact situations is critical. Imagination, as much as anything else, is what good lawyers get paid for. Sometimes, but not often, a proffered fact pattern will be exactly like the facts of a case or Rule or statute you have read. Exam questions are almost always variations of well known cases. And, of course, an essence of the practice of law is the ability to apply the appropriate law to the situation presented.

B. Required Texts:

1. Freer & Perdue, Civil Procedure – Cases, Materials and Questions, 6th ed, LexisNexis, 2012.
2. Federal Rules of Civil Procedure, Thomson West, 2012-13, Educational Edition

C. Suggested 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).

1. Glannon, Civil Procedure, Examples and Explanations, 6th ed. Aspen, 2008 ("Glannon Examples")
2. Glannon, The Glannon Guide to Civil Procedure, 2nd ed. Aspen, 2009 ("Glannon Guide")
3. Shreve & Raven-Hansen, Understanding Civil Procedure, 3rd ed. LexisNexis, 2002
4. Friedenthal, Kane & Miller, Hornbook on Civil Procedure, 4th ed. West, 2005

D. Room assignments (and attending class with the other section)

The **A section** will meet on Tuesday and Thursday from 10:45-12-15 in Room 110 the entire semester. As of now there are no days or times that I will not be here. However, the spring schedule has Monday classes meeting on Tuesday, February 26 and Tuesday classes meeting on April 30, the last day of classes. Instead of that, we are going to "make up" the April 30 class in advance at a convenient time on Friday, March 1. I will explain why on the first day of class.

The D section will meet on Wednesday evening from 6:30-9:45 in Room 206 **through February 6; after that the D section will meet in Room 102.** I would imagine that the two classes will move at relatively the same speed. Therefore, **once or twice during the semester**, if you are unable to attend class with your section you may attend **the corresponding class** of the other section. Please do not abuse this privilege. You may not (i) make up an absence by attending other than the corresponding class; or (ii) effectively transfer to the other section.

E. Preparing for the Classroom:

The centerpiece of this course will continue to be the Federal Rules of Civil Procedure (“FRCP”) which is the code of procedure applicable in civil litigation in federal court and which has been adopted by many state courts, but not California. However, Civil Procedure law is derived from a wide variety of primary legal authority 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 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 have provided their interpretations (sometimes conflicting) through case law.

Although this course deals with “procedural rules,” we will heavily use the same “case method” which you encountered in the first semester and 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 carefully such that you understand them. In particular, you should brief the cases found in the readings. As you have undoubtedly experienced, a brief should long enough to contain the important information and short enough to be a useful summary. Most important of all, the brief should reflect your understanding of what’s going on in the case. Copying large portions of an opinion verbatim is not the same as briefing a case.

When you encounter references to a FRCP or a federal statute or a constitutional provision, you are required, as part of your preparation for class, to look up these legal sources in your supplement and read them carefully. Also, most of the FRCPs in the Thomson West book are followed by Advisory Committee Notes, which are the equivalent of a legislative history. These notes are a valuable resource to help you understand the Rules. You should, as a part of your preparation for class, read these notes in addition to the Rule itself.

The Glannon recommended reading texts are particularly helpful. They are relatively easy to read, are sometimes entertaining and they contain questions and answers; the Glannon Guide text contains multiple choice questions followed by the answers; the Glannon Examples text contains questions followed by narrative answers. The feedback is immediate and the problems provide 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. 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.

F. Practice Questions, Exams and Grading

Throughout the semester, I will be available to review 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 (probably essay) and a final examination consisting of multiple choice questions, short answer questions and an essay question. Each student will receive a numeric final course grade which will consist of the sum of up to 15% of the mid-term grade and up to 85% of the final examination grade. Three years ago I gave a take home quiz on joinder/subject matter jurisdiction which accounted for 4% of the final grade.

As of now the midterm exam is scheduled for Thursday, February 28 at 10:45-12:15 am for the A section and Wednesday, February 27 at 6:30-8 pm for the D section. I will attempt to have the exam graded and returned before the semester break. I will provide at least four practice midterms and at least four practice final exams.

G. Classroom Participation

Legal education is a cooperative, participatory 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 students in class to describe cases or rules and to answer questions. **There will be no such thing as a “free pass” day as there is normally no such thing in practice. An “I don’t know” answer will be unacceptable the entire semester.**

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 answer. No one knows the answer to every law-related question. You will **not** be down-graded or considered absent 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.

As you probably observed during the first semester, classroom participation has several benefits. First, if well done, it helps the class. Second, it enables you to test your knowledge and understanding “free”. The more you test that the better you will understand the material. Finally, as described above, clear oral communication is one of the essentials of a high quality work life.

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 or two (2) three hour classes, you will be academically dismissed from the course.** I do not make the school’s attendance policies and I will not change them.

You should be in your seat at the commencement of class. Once again, it is fairly inconsiderate (not to mention unprofessional) 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 are in the evening class I consider it a violation of the Honor Code to sign the attendance sheet during the first half of the class and leave before the

class ends without telling me that you are doing or have done that. 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 do not expect that cell phones, i-pods, i-pads, 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. However, the use of computers in the classroom should not interfere with your ability to pay attention to what is going on. I have observed that students who are too intent on recording every word often will have little understanding of what those words mean.

I. Seating Chart

A seating chart will be distributed at the beginning of the first 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.

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 be available by appointment almost every weekday except Wednesday afternoon and some weekends. 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. If you do not have an appointment and want to “take your chances”, you are welcome to just drop by my office or to call my extension, 1142. If none of this works for you, let me know and we will work something out. I know, for example, that evening students have fewer options, but that should not prevent you from seeing me when you need to.

A word from the experience of the past: many students who should have seen me did not. If you’ve made a poor grade the first semester or feel lost you should do everything you can to get yourself to where you understand the material. That includes getting extra help from me.

K. Web Course

Sometime before January 2, I will set up a LexisNexis Web Course for this class and enroll you in the course. **Please check the web course by at least January 10.** If you are unable to access it, send me an email or, better yet, seek help in the library. During the semester I will use the web course to send you emails, make class announcements and post course documents such as this syllabus, practice questions, practice exams and charts and outlines relating to the topics we will study. **You should check the web course regularly during the semester.**

The web course will be important to your success in this class. It would be a very bad idea to dither about making sure you have access to this site. There are computers in the library if you need one.

L. Reading Assignments (subject to modification):

Week	Subject(s)	Required Reading	Suggested Reading
1	<p>Joinder (by Plaintiffs) Joinder (by Defendants)</p> <p>Supplemental Jurisdiction</p> <p>Compulsory Joinder</p>	<p>Freer & Perdue, 667-719</p> <p>FRCP 13, 14, 18 and 20</p> <p>Freer & Perdue, 719-730 28 USC § 1367</p> <p>FRCP 19 Freer & Perdue 693-704</p>	<p>Glannon Examples, 253-282 Glannon Guide, 235-254</p> <p>Glannon Examples, 309-342 Glannon Guide, 255-278</p>
2	<p>Joinder (continued)</p> <p>- Intervention</p> <p>- Interpleader</p>	<p>Freer & Perdue, 730-753 CALI – Lesson: <i>Joinder of Claims and Parties</i></p> <p>FRCP 24</p> <p>FRCP 22 28 USC §§ 1335, 1397 & 2361</p>	<p>Glannon Examples, 283-307</p>
3	<p>The Class Action</p>	<p>Freer & Perdue, 753-793 FRCP 23; 28 USC 1711-1715; 28 USC 1453; 28 USC 1332(d) Bronsteen and Fiss, <i>The Class Action Rule</i>, 78 Notre Dame L Rev 1419</p>	
4-5	<p>Discovery</p> <p>- Discovery Devices</p> <p>- Initial Disclosures</p> <p>- Depositions</p> <p>- Interrogatories</p> <p>- Production of Documents and Things</p> <p>- Medical Examination</p> <p>(continued on next page)</p>	<p>Freer & Perdue, 361-388 CALI, The Discovery Game¹</p> <p>FRCP 26(a)(1)</p> <p>FRCP 27, 28, & 30-32</p> <p>FRCP 33</p> <p>FRCP 34</p> <p>FRCP 35</p>	<p>Glannon Examples, 409-410 Glannon Guide, 347-348</p> <p>Glannon Examples, 436-471 Glannon Guide, 371-394</p>

¹ There are several versions of the Discovery Game available in the library. Any one of these versions may be played to satisfy this assignment. You should, at the conclusion of the game, be able to print out a proof of completion. I will collect those.

	<ul style="list-style-type: none"> - Requests for admission - Scope of Discovery - Limits and Proportionality - E-Discovery - Subpoena - Use at trial 	<p>FRCP 36</p> <p>FRCP 26(b)(1)</p> <p>FRCP 26(b)(1) and (2)</p> <p>See handout</p> <p>FRCP 45</p> <p>FRCP 32 and 33(c)</p>	<p>Glannon Examples, 410-434</p> <p>Glannon Guide, 348-369</p>
6	Privilege and Work Product	<p>Freer & Perdue, 388-404</p> <p>FRCP 26(b)(3)</p>	
7	<p>Experts</p> <p>Pretrial Proceedings</p> <p>Sanctions</p>	<p>Freer & Perdue, 404-416</p> <p>FRCP 26(a)(2) and 26(b)(4)</p> <p>Freer & Perdue 416-421</p> <p>FRCP 16 and 26</p> <p>Freer & Perdue, 421-439</p> <p>FRCP 26(g) and 37</p>	
8	Right to A Jury Trial	<p>Freer & Perdue, 439-460</p> <p>Constitution, 7th Amend</p>	
9-10	Summary Judgment	<p>Freer & Perdue, 487-508</p>	<p>Glannon Examples, 473-494</p> <p>Glannon Guide, 395-417</p>
11	<p>Disposition at Trial</p> <ul style="list-style-type: none"> - Judgment as A Matter of Law - New Trial and Relief from Judgment 	<p>Freer & Perdue, 508-518</p> <p>FRCP 50</p> <p>Freer & Perdue 518-535</p> <p>FRCP 59 & 60</p>	<p>Glannon Examples, 495-538</p> <p>Glannon Guide, 419-439</p> <p>Glannon Guide, 441-461</p>
12-13	<p>Preclusion</p> <ul style="list-style-type: none"> - Introduction - Claim Preclusion (res judicata) - Issue Preclusion (collateral estoppel) - Federalism 	<p>Freer & Perdue, 613-615</p> <p>Freer & Perdue, 615-632</p> <p>Freer & Perdue, 632-662</p> <p>Freer & Perdue, 662-667</p>	<p>Glannon Examples, 541-576</p> <p>Glannon Guide, 463-482</p> <p>Glannon Examples, 577-613</p> <p>Glannon Guide, 483-503</p>
14	Appeal	<p>Freer & Perdue, 793-823</p>	