

Syllabus for Procedure— Professor David Crump—Fall 2017

SYLLABUS FOR PROCEDURE I
PROFESSOR CRUMP

FALL 2017

Welcome to Procedure I! This is a difficult, challenging course, but it also is a wonderful, exciting course, one that will repay the hard work you and I will put into it.

This is a list of readings from the casebook and other sources. The list is not exhaustive. There will be certain other readings and projects, including certain individual projects, and it may at times become necessary to deviate from the syllabus. I will attempt to let you know sufficiently in advance if this occurs.

Certain readings are set out in CAPITAL letters. These cases or readings are to be emphasized. Others are in lower case; this indicates that our treatment of the case will be by lecture, and it accordingly indicates that you should not concentrate on that case as heavily as upon other readings. I hope that this device will help you manage the reading better!

SECTION I: OVERVIEW

- TEXT & PROBLEMS (1-12)

A. Jurisdiction

Class 1

- TEXT (14)
- 28 USC 1332
- U.S. CONST. ART. III, § 2
- STRAWBRIDGE V. CURTISS (14) & NOTES
- TEXT (15)
- SAMPLE BRIEF (15)
- Text (16)
- WYMAN V. NEWHOUSE (17) & NOTES

B. Pleadings

Class 2

- 3 Complaints (Handout, 3)
- RULE 8(a), (d)(1)
- TEXT (19)
- BELL V. HCR MANOR CARE FACILITY (20)
- NOTES (21)
- Appendix to § 1.04 (23-30) & Notes
- Litigation Problem No. 1 (Handout, 4-6)

C. Discovery

- rule 26(b)(1)
- TEXT (30)
- KERR V. UNITED STATES DISTRICT COURT (31)
- Note 1 (33)

D. Summary Judgment

- RULE 56(a)
- Text (34)
- WARREN V. MEDLEY (34)

E. Trial

Class 3

- Course Objectives (Handout, 2)
- On Teaching Civil Procedure (Handout, 9-10)
- FEIN V. PERMANENTE MEDICAL GROUP (37) & NOTES
- Fein v. Permanente Medical Group (40)

F. Taking the Case from the Jury; Appeal

- Text (42-43)
- Text (43)

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- Wilcox Devel. Co. v. First Interstate Bank (44)
- Notes 1,2,4 (47)
- Text on Appellate Court (47) (omit case & notes)
- Litigation Problem No. 2 (Handout, 7)

SECTION II: JURISDICTION OVER PERSONS AND PROPERTY; SERVICE; VENUE

A. Basic Concepts: Territoriality and Consent

- Text (49)
- U.S. Const. Amend. 14, due process clause (supp.)
- Problem A (50) (read only; analyze later, at end of chapter)
- Text (51)
- Pennoyer v. Neff (52)
- NOTES (54)
- Grace v. MacArthur (55)
- HESS V. PAWLOSKI (55) & NOTES

B. The Minimum Contacts (“Fair Play,” etc.) Standard

- INTERNATIONAL SHOE CO. V. WASHINGTON (58) & NOTES

B. (Cont.)

- Text (61)
- McGee v. Int’l Life (62)
- Perkins v. Benguet (63) & NOTES

C. State Long-Arm Statutes

- TEXT & STATUTE (66)
- GRAY V. AMERICAN RADIATOR (67) & NOTES
- TEXT & STATUTES (71-72)
- Hall v. Helicopteros (72) & NOTES 1-2

Class 4

D. Modern Development: Purposeful Availment, Reasonable Anticipation, the Internet, and the “New” In Rem Jurisdiction

- Text (64)
- Hanson v. Denckla (65)
- Text (74)
- BURGER KING CORP. V. RUDZEWICZ (76) & NOTES 1, 3
- Note on Stream of Commerce (86)
- J. McIntyre Machinery Ltd. v. Nicastro (87) & Notes 1-2 (90)
- Goodyear Dunlop Tires v. Brown (92)
- Note on *Walden* and *Bristol* cases and NOTE ON DAIMLER CASE (Handout, 12)

D. (Cont.):

- TEXT (97-99)
- SHAFFER V. HEITNER (99) & NOTES 1, 2, 5

E. “Tag” Jurisdiction: Serving a Nonresident Within the Forum

- Burnham v. Superior Court (106)

F. Jurisdiction by Consent, by Contract (Forum Selection Clauses), or by Broader Federal Rules

- Notes 1, 2, 4 (111)
- Carnival Cruise Lines Inc. v. Shute (112)
- Note 4 (113)
- Note on Rule 4(k) (114)

Class 5

G. Challenging Personal Jurisdiction

- Reconsider Wyman v. Newhouse (115)
- Text (115)
- RULE 12 (b),
- RULE 12(h)(1)
- HARKNESS V. HYDE (116)

H. Compliance with Rules for Service of Process

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- RULE 4, rule 5(a)(1),(b),(d)(1)
- LEIGH V. LYNTON (121)
- Morton v. F.H. Paschen (123) & NOTES

H. (Cont.)

- Butler v. Butler (126)
- FEDERAL FORMS 3, 5-6 (Supp.)

I. Venue and Venue Transfer; Forum Non Conveniens

Class 6

- 28 USC 1391(b),(d), 1400(b), 1404(a), 1406
- PROBLEM C (131)
- Note on Transfer (133)
- ROBERTSON V. CARTINHOOR (133)
- NOTE ON TWO KINDS OF PLACES (136)
- Text (138) on Forum Non Conveniens (omit Piper case)
- Note 3 (138)

J. Return to Chapter Summary Problem (50) and Analyze

- Worksheet for Analyzing Chapter Summary Problem (Handout 14)
- Chapter Summary Problem (50)

K. Improving the System

Class 7

- TEXT AND PROBLEMS (145-47)

L. The Anatomy of a Forum Contest

- APPENDIX TO CHAPTER 2 (2A-1 through 2A-23); WE SHALL CONSIDER EACH DOCUMENT AND EACH SET OF NOTES IN THE APPENDIX

SECTION III: SUBJECT MATTER JURISDICTION

- Text (149)
- Problem A (149) – read now; analyze at end
- Section 3.02 (state courts) (150-153) (but omit the Lekse and Denner cases)
- Text (153-154)

A. “Arising Under” Jurisdiction (Or Federal Question Jurisdiction)

- 28 USC 1331
- U.S. Const. Article III, § 2
- Text (156)
- PROBLEM B (156)
- LOUISVILLE & NASHVILLE R. CO. V. MOTTLEY (157) & Notes 1, 2, 4
- APPENDIX (166)

Class 8

B. Diversity Jurisdiction

- 28 USC 1332
- U.S. Const. Article III, § 2
- Strawbridge v. Curtiss (166)
- MAS V. PERRY (166)
- TEXT (168)
- NOTES (169)
- Hertz Corp. v. Friend (171)
- PROBLEM C (173)
- Appendix (173)

C. Supplemental Jurisdiction

- Text (176)
- 28 USC 1367(a), (c)
- Text (177)
- UNITED MINE WORKERS V. GIBBS (178) & NOTES 1-2
- Appendix (180)

Class 9

D. Removal

- 28 USC 1441 (a),(b)
- 28 USC 1445
- 28 USC 1446

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- 28 USC 1447
- PROBLEM D, PARTS A-C (191)
- Text (192)
- CATERPILLAR INC. V. LEWIS (192) & NOTES 1, 2, 6

E. Return to Chapter Summary Problem (149) and Analyze

- Also, Review Problem (Snake Inc. v. Tumm) (Handout, 19)

F. Improving the System

- TEXT, NOTES, AND QUESTIONS (199-207) (but omit notes 2-3 under C in 207-208)

IMPORTANT: WATCH THE FIRST VIDEO BY THIS TIME!!

SECTION IV: THE ERIE DOCTRINE

A. State Substantive Law in Federal Courts

- Text (209)
- 28 USC 1652
- ERIE RR V. TOMPKINS (211)

B. Federal Procedural Law

- 28 USC 2071, 2072
- Text (219)
- Note on Cases that Created the Five Approaches (Handout 20-21)
- Text (226)
- HANNA V. PLUMER (227) & NOTES 1-3

C. Choice of Law

- Text (237)
- PENNINGTON V. DYE (238)
- Klaxon Co. v. Stentor Co. (238)
- NOTES 1-2 (239-40)

Class 10

SECTION V: PLEADINGS

A. Common Law and Code Pleading; Functions of Pleadings

- Read text (245-261) in summary fashion; However, CONCENTRATE ON NOTES 1-2 (249), NOTES 1-2 (252), AND MESSICK V. TURNAGE (259) AND BE READY TO DISCUSS THEM IN CLASS
- Text (261)
- Problem A (261) (read now; analyze at end)

B. Standards for the Federal Complaint

- RULES 7, 8(a),(d)(1); 10; 84
- FEDERAL FORMS 7, 10, 11, 12
- Note on “Notice Pleading” (263)
- Dioguardi v. Durning (264)
- CRITICISM OF DIOGUARDI (265)
- NOTES (266)
- PROBLEM B (266)
- Conley v. Gibson (267)
- Text (269)
- BELL ATLANTIC V. TWOMBLY (270)
- Notes (274)

Class 11

B. (cont.)

- ASHCROFT V. IQBAL (276) & NOTES
- PROBLEM C (279)
- Partridge v. Two Unknown Police Officers (279)
- RULE 12(b),(e),(f)
- RULE 8(a)
- Text (280)
- FOX V. LUMMUS CO. (281) & NOTES
- RULE 9(b),(c),(g)

Class 12

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- FEDERAL FORM 13
- SWEENEY CO. V. ENGINEERS-CONSTRUCTORS CO. INC. (285) & Notes
- Notes 1-2 on Special Damages (287)

Class 13

B. (Cont.)

- Lambert v. Southern Counties Gas Co. (290)
- Faulkner v. Ft. Bend Independent School District (291) & Notes
- APPENDIX (292)

C. Defendant's Pleadings (Admissions; Denials; Affirmative Defenses)

- RULE 8(b),(c),(d); 12(a),(h)
- FEDERAL FORMS 19, 20, 21
- Text (292)
- Text (293)
- WHITE V. SMITH (294) & NOTES
- Text (296)
- Gomez v. Toledo (297)
- Problem D (299)
- NOTES 2-3(300)
- APPENDIX (301)

D. Certifications and Sanctions

- RULE 11
- TEXT (302)
- Eastway Constr. Corp. v. City of New York (303)
- Notes (304)
- Text (306-309)
- Text (309)
- HADGES V. YONKERS RACING CORP. (309) & NOTES
- PROBLEM E (312)
- Note on Other Sanctions (313)
- Chambers v. Nasco (313)
- Note (315)

Class 14

E. Amendment

- RULE 15(a),(b),(c)
- BEECK V. AQUASLIDE 'N' DIVE CORP (315) & NOTES
- Note on Relation Back (319)
- Krupski v. Costa Crociere (319)

F. State Court Pleadings

- Text and Case on Texas Pleadings (321-323)

G. Improving the Rules of Pleading

- TEXT AND PROBLEMS (325)

H. Return to Chapter Summary Problem (261) and Analyze

I. Appendix of Sample Pleadings (Texas)

- pp. 5A-4 through 5A-10; CONCENTRATE ON THE NOTES AND QUESTIONS AND BE READY TO DISCUSS THEM IN CLASS

Class 15

SECTION VI: MULTIPLE PARTIES AND CLAIMS

- Text & Diagrams (327-333)

A. Counterclaim and Cross-Claim

- RULE 13(a),(c)
- CAVANAUGH V. WESTERN MD. RY. CO. (333) & Notes 1, 6

B. Third-Party Claims (or "Impleader")

- RULE 14(a)(1)
- Text (339)
- BARAB V. MENFORD (340) & Note 1

C. Permissive Joinder; Consolidation, Separate Trial and Severance

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- RULE 20(a)
- Grogan v. Babson Bros. (343)
- NOTE 1 (345)
- rules 18(a), 42, 21
- Henz v. Superior Trucking (345) and Note 1

D. Intervention, Interpleader, Class Actions, and Multidistrict Litigation

- RULE 24(a),(b)(1)
- Text (356)
- RULE 22
- 28 USC 1335(a)
- Form 20

Class 16

D. (cont.)

- Text (361)
- STATE FARM FIRE & CAS CO. V. TASHIRE (362) & Notes 1 and 3
- TEXT (368)
- RULE 23
- PROBLEM A (370)
- Eisen v. Carlisle & Jacquelin (371)
- 28 USC 1407
- NOTES (377-379)
- In re Asbestos (379)

SECTION VII: DISCOVERY AND DISCLOSURE

Class 17

- Text (389)
- Problem A (390) (read now; analyze at end)
- Text (391-394)
- PROBLEM B (394);'
- PROBLEM C (395)
- Morris, Strategy of Discovery (395)
- NOTES (403)

A. Scope of Discovery: "Relevant" and "Not Privileged"

- RULE 26(b)(1),(2)(c)
- Kerr v. District Court (404)
- BANK OF THE ORIENT V. SUPERIOR COURT (404) & NOTES 1-2
- Text (406)
- Kerr v. District Court (407)
- PROBLEM D (410)

B. Work Product; Discovery of Experts

- Text (413)
- RULE 26(b)(3)
- BANK OF THE ORIENT V. SUPERIOR COURT (416)
- NOTES 3-4 (418-419)
- RULE 26(b)(4)
- AGER V. JANE C. STORMONT HOSP. & TRAINING (419)

Class 18

C. Protective Orders and Confidentiality Agreements

- RULE 26(c)
- CENTURION INDUSTRIES V. WARREN STEURER & ASSOC. (424)
- Problem F (426)

D. Mechanics of the Discovery Devices

- DEPOSITIONS:
 - RULES 28(a), 29, 30(a) to d(1), 31(a)(1)-(2)
 - Salter v. Upjohn Co. (446)
 - NOTES (447)
 - Groce, Checklist (449) & NOTES
 - Text (451-453)

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- Sample Deposition (454)
- NOTES (466)
- Text (467)

Class 19

D. (cont.)

- INTERROGATORIES:
 - RULE 33
 - BURNS V. THIOKOL CHEM CORP (467)
 - Sargent-Welch Scientific Co. v. Ventro Corp. (470) & Notes 206
 - APPENDIX (471)
 - SEITZ ARTICLE (472)
- REQUESTS FOR ADMISSION:
 - RULE 36
 - TREVINO V. CENTRAL FREIGHT LINES, INC. (474) & NOTES
 - Appendix (478)
- PRODUCTION:
 - RULE 34, RULE 45(d), RULE 26(b)(2)(B)
 - Text (478-480)
 - MAJOR TOURS INC V. COLOREL (480)
 - Note on Sanctions (484)
 - Notes (484)
 - Problem G (486)
 - Text (487-489)
- MOTIONS FOR PHYSICAL AND MENTAL EXAMINATION (RULE 35)

Class 20

E. The Duty to Supplement; Use of Discovery

- RULE 26(e) (duty to supplement)
- RULE 32(a)(1-4,6) (use of deposition at trial limited to opponents, unavailable witnesses, impeachment, or completeness; many states avoid imposing such a limit)
- Frechette v. Welch (496)

F. Self-Initiated Disclosures, Presumptive Limits, etc.

- TEXT (429)
- RULES 26(a), 30(a)(2), 30(d)(1), 33(a)
- HARRIMAN V. HANCOCK COUNTY (430) & NOTES
- APPENDIX (441-446) (BE READY TO DISCUSS THE NOTES IN THE APPENDIX)

G. Discovery Certifications, Conferences, Abuse, and Sanctions

- Text (499)
- RULE 26(f)(1-3)
- Fed. Form 52 (Supp.—“Report of Parties’ Planning Meeting”)
- RULES 26(g) AND 37
- Roesberg v. Johns-Manville (499) & Notes 1-2
- LEW V. KONA HOSPITAL (501) & NOTES 1, 2, 5
- Ogin v. Ahmed (506)
- Appendix (507)

Class 21

H. Return to the Chapter Summary Problem (390) and Analyze

I. Improving the Discovery Rules

- Text on Texas State Discovery Rules (507)
- TEXT AND PROBLEMS (509)

SECTION VIII: PRETRIAL CONFERENCES AND CASE MANAGEMENT

A. Pretrial Conferences and Orders

- RULE 16
- Chevrette v. Marks (513) & Notes 1, 3
- UNITED STATES V. FIRST BANK OF CIRCLE (515) & Notes 2, 5, 6
- Appendix Containing Sample Pretrial Order (519)

B. Judges as “Managers”

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- Text & Notes (524-528)
- Kothe v. Smith (528) & Notes 2-3
- RULES 53(a), 72, 73(a)
- Notes 1-2 (532)

C. Docket Control and Case Flow Management

- rules 6(a)(1), 40, 79
- OATES V. OATES (533) & NOTES
- TEXT & NOTES (534-541)
- Karubian v. Security Pacific Bank (541) & Note 1

SECTION IX: THE PERSONAL DIMENSION OF LITIGATION (“THE LITIGATOR’S LIFE”)

- APPENDIX ON THE PERSONAL DIMENSION (A-1 THROUGH A-23, END OF BOOK)

Class 22

(Important Note: This Appendix is about what to avoid. Students often consider these materials “depressing” or “discouraging.” They’re not; they just make the point that you have to avoid what you have to avoid, if you want to find satisfaction in practicing law!)

SECTION X: SUMMARY JUDGMENT, DISMISSAL, AND DEFAULT

A. Judgment on the Pleadings

- rule 12(c)
- Text (545)

B. Summary Judgment

- RULE 56
- Warren v. Medley (546) & NOTES
- FIGURE 9A

B. (cont.)

- Problem A (548) (read now; analyze at end)
- Text (550)
- CELOTEX CORP. V. CATRETT (550) & NOTES 1,3
- Campbell v. Fort Worth Bank & Trust (560) & Notes 1-2

Class 23

C. Dismissal

- RULE 41(a),(b)

D. Default

- RULE 55
- BUTNER V. NEUSTADTER (547) & Notes

E. Return to Chapter Summary Problem (548) and Analyze

- READ AND CONSIDER APPENDIX TO SECTION 9.02 (561-571) (SUMMARY JUDGMENT DOCUMENTS)
- EMPHASIZE NOTES (570)

SECTION XI: TRIAL

IMPORTANT: WATCH SECOND VIDEO BY THIS TIME!

- Text (579-81)
- Problem A (581) (read now, analyze at end)

A. Right to Trial by Jury

- U.S. CONST. AMEND. VII
- RULE 38
- TEXT (583)
- DAIRY QUEEN INC. V. WOOD (587)

Class 24

B. Demand and Waiver of the Right

- RULE 39, 81(c)
- Text (599)
- LEWIS V. TIME INC. (600) & Notes 2-3 (602)

C. Jury Selection

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- NOTES 1-2 (606)
- 25 USC 1861
- RULE 47
- Text (607)
- FLOWERS V. FLOWERS (609)
- Cortez ex rel. Estate v. HCCI-San Antonio Inc. (611) & Notes

Class 25

C. (cont.)

- McDonough Power Equip. Inc. v. Greenwood (613)
- NOTES (614)
- NOTE 3 (619)
- NOTES ON HOW TO PRESENT (620)
- Whichmann v. United Disposal (621) and NOTE 1
- Text on State Protection (622)
- APPENDIX (622-637); CONCENTRATE ON NOTES AT 633-635

D. Opening Statements

- Text (637)

E. Evidence and “Proof”

- FED. RULES OF EVIDENCE 801(c), 803(6), 803(8)
- Text (638-642)
- RAINEY V. BEECH AIRCRAFT CORP. (642) & NOTE 1

Class 26

E. (cont.)

- Guetersloh v. CIT Corp. (644) & NOTES

F. Jury Argument

- Text (655)
- Brokopp v. Ford Motor Co. (656) & Notes 1-2

G. Jury Instructions; Verdicts

- RULE 49; RULE 51(c)(1) and (d)
- TEXT (661)
- Text (662)
- MCLAUGHLIN V. FELLOWS GEAR SHAPER CO. (662) (Note: Please understand – (1) the jury questions; (2) the conflicting answers; (3) what the district court did; (4) what the court of appeals did; and (5) why the dissent says it’s wrong) & NOTES 1-3
- PROBLEM C (668)
- APPENDIX (677-689)

Class 27

H. Trial to the Court Without a Jury

- RULE 52(a)(1)
- Text (689)

I. Return to Chapter Summary Problem (581) and Analyze

SECTION XII: DIRECTED VERDICT AND POST-TRIAL MOTIONS

- Text (693)
- MOTIONS (p. 44) (back in Chapter 1)
- Text on Judgment on the Verdict (694)

A. Judgment as a Matter of Law

- Problem B (695)
- Text (695)
- REEVES V. SANDERSON PLUMBING CO. (650)

Class 28

A. (cont.)

- Problem B (695)
- Text (695)
- REEVES V. SANDERSON PLUMBING CO. (650)
- RULE 50(a)
- RULE 50(b)
- Reconsider McLaughlin v. Fellows Gear Shaper Co. (662)

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- NOTES 1,3 (667)
- Notes on Procedural Aspects (702)
- Note on Requirements (703)

B. New Trial

- RULE 59(a)(1), (b)
- Text (709)
- CONWAY V. CHEMICAL LEAMAN TANK LINES INC. (709) & NOTES 1,3
- United States v. An Article of Drug (714)
- Figure 11A

C. Rule 60 Motions and Relief From Judgments

- RULE 60
- Text (725)
- Rozier v. Ford Motor Co. (726)
- Text on Default (729)

SECTION XIII: APPEALS

A. Scope of Appellate Review

This material is to be covered by lecture, but read sufficiently so that you understand the harmless error, cured error, preservation, and discretion doctrines.

- McDonough v. Greenwood (731) & Notes
- Notes on Preservation (734)
- Text on Discretion (735)
- Anderson v. Bessemer City (736) & Note 3

B. Appellate Procedure

- Note 1 (743)
- Fed. R. App. P. 3(a), (c), 4(a), 8, 10(a),(b), 28, 30(a), 31(a), 32(a),(b) sufficiently to have general awareness of their contents
- BOWLES V. RUSSELL (740) & Notes
- RULE 62(d)
- Texaco Inc. v. Pennzoil Co. (744) & Notes 1-2
- Text (746)

C. Appealable Orders

- 28 USC 1291
- NOTES 1-3 ON FINAL J. RULE (749)
- Read the following material sufficiently to understand lecture:
 - Notes 5-6 (750-751)
 - 28 USC 1292(a),(b)
 - Rule 54(b)
 - Sears, Roebuck & Co. v. Mackey (751)
 - Levesque v. State of Maine (754)
 - Garner v. Wolfenbarger (755)
 - 28 USC 1651
 - Kerr v. District Court (756)

D. The Supreme Court—To Be Covered by Your Reading

- Text (758-760)

SECTION XIV: REMEDIES, JUDGMENTS, AND THEIR ENFORCEMENT

A. Seizure: Attachment, Garnishment, Sequestration, Replevin, etc .

- RULE 64
- Kheel Article (789)
- Fuentes v. Shevin (791) & Notes
- MITCHELL V. W.T. GRANT CO. (791) & NOTE 1
- Text (799-800)

Class 29

Class 30

B. Temporary Restraining Orders

- RULE 65(a)
- WEBER ARTICLE (800)

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- PROBLEM B (803)

C. Damages (Compensatory and Punitive)

- Memphis Comm. Schl. Dist. V. Stachura (804) & Notes 2-3
- HAWTHORNE INDUS. INC. V. BALFOUR MACLAINE INT’L INC. (807) & NOTES
- PROBLEM C (809) (This problem is much harder than it looks. Read the jury instruction [really read it] and count all of its required elements.)
- Smith v. Wade (809)

D. Injunctions and Other Equitable Remedies

- Text (817)
- MIDCON CORP. V. FREEPORT-MCMORAN INC. (817) & NOTES 1-2
- PROBLEM D (823)
- Text, Notes & Questions (823-828)

E. Declaratory Judgments

- 28 usc 2201-2202
- rule 57
- Text (828)

F. Attorney’s Fees and Interest

- City of Riverside v. Rivera (828)
- Text (831)

G. Enforcement of Judgments by Execution and Sale

- GRIGGS V. MILLER (833) & NOTES
- Guardian Loan Co. v. Early (835) & Notes
- RULE 69(a)
- Text on Federal Rules (838)

H. Other Enforcement Devices (To Be Covered Primarily by Lecture, Plus Discussion of Problems)

- JUDGMENT LIENS: Text (838); Note 2 (839); PROBLEM E (840)
- POST-JUDGMENT GARNISHMENT: Riggs Nat. Bank v. Simplicio (840) & Notes
- TURNOVER ORDERS: Text (841); In re Brecheisen (842); PROBLEM F (843)
- RECEIVERSHIP: RULE 66; Olsan v. Comora (844) & Notes; PROBLEM G (846)
- DISCOVERY IN AID OF ENFORCEMENT: Text (846)
- CONTEMPT & ARREST: Charles Mfg. Co. v. United Furniture Workers (847) & Notes
- INTERSTATE ENFORCEMENT: Text (849)

Class 31

SECTION XV: ALTERNATIVE METHODS OF DISPUTE RESOLUTION

A. Types of ADRs, the Case For and Against

- Text (851-860); EMPHASIZE FISS ARTICLE (859) & NOTES (859); PROBLEM B (860)
- Problem C (861)
- “Don’t Try” by Gross & Syverud (861) & NOTES 1-2 (862)

B. Negotiation

- Dorsaneo & Crump Article (863) & Notes
- Problem D (870)

C. Settlement Agreements

- Text (880)
- PROBLEM E (880)
- Spector v. K-Mart Corp. (880) & NOTES
- Runyan v. NCR Corp. (883)
- APPENDIX (885)
- TEXT [C] (885)
- Text (886)

Class 32

D. Arbitration and Related Procedures

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- PROBLEM F (892)
- SPRINZEN V. NOMBERG (892) & NOTES
- TEXT (896)

Class 33

E. Mediation and Other Advisory Procedures (To Be Covered Primarily By Lecture, Plus Discussion of Problems)

- Text, Notes, Etc. (899-911) (including mediation, mini-trials, court-annexed arbitration, and summary jury trials) (omit Part C at 951)

F. Return to Chapter Summary Problem (896) and Analyze

SECTION XVI: RES JUDICATA, COLLATERAL ESTOPPEL, AND RELATED PRECLUSION DOCTRINES

A. Res Judicata (Claim Preclusion)

- Text (761)

B. Collateral Estoppel

- Text on Collateral Estoppel (769)

IMPORTANT: WATCH THE THIRD VIDEO BY THIS TIME!

Note from University of Houston:

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let’s Talk” program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html

Syllabus for Procedure— Professor David Crump—Fall 2017

Class Policies

Welcome to the Course in Civil Procedure! This is a wonderful subject to study: fascinating, challenging, and practical. It also is among the most difficult courses in law school, but at the same time, it is among those in which your hard work is most likely to be rewarded when you practice law.

It is necessary to implement policies or rules for such a class. Therefore, please understand the businesslike tone of the following items.

1. *You Need Not Communicate with the Professor Concerning the Reasons for Your Absences.* If you are absent, I always assume you have a good reason. As long as you comply with the law school's attendance requirements, I don't need to know the reason. Exception: See Item 12 below!
2. *You Need Not Communicate with the Professor Concerning Your Unpreparedness.* If you are unprepared on a given day when I happen to call on you, my approach is to go ahead and call on you. The (relatively mild) sanction for occasional unpreparedness is that you must stand up and admit it. For this and other reasons, I request that you not inform me about unpreparedness. I assume (and I think your classmates assume) that even good students may be unprepared occasionally. (I may, however, call on you again in the near future, and I do begin to take unpreparedness more seriously if it occurs repeatedly.)
3. *It Is Your Responsibility to Read Forward in the Casebook so as to Be Prepared for Class.* Unless I otherwise indicate, we shall go straight through the syllabus. There will be a few occasions when we shall deviate, and I'll try to let you know about that well in advance.
4. *Hold Up Your Hand Before Talking; Realize that the Professor Can't Always Recognize Everyone and Must Determine When We Must Move Along.* This will be a large class, and there is no responsible way to teach it without covering a lot of ground. I have to consider the need to cover the material and the need to bring a variety of students into the discussions. Therefore, please hold up your hand before speaking out. Please understand if we have to cut off discussion and move on.
5. *Stand Up and SPEAK LOUDLY When You Are Called On.* Every student must speak loudly enough for everyone else to hear. Conversely, one of the skills you should learn is how to stand up in a group of people and speak extemporaneously and persuasively on difficult subject matter. One of the habits that will most annoy your classmates is speaking so that they have to strain to hear you.
6. *And You Will Be Required, In this Class, to Speak in Class, Without Excuses.* No one should be in law school who has too much stage fright to answer questions in class. Thus, avoidance techniques will not work. I expect you to take a position and answer questions about it. If you aren't sure, try! And keep trying. Repeated avoidance may affect your grade.
7. *Out of Class Assignments.* Every student, at some point during the course, will be given a practical, out-of-class assignment that will involve document preparation, preparing an oral trial-related presentation, or the like. These outside assignments will culminate in a simulated jury trial.
8. *Reading The Story of a Civil Suit: Dominguez v. Scott's Food Stores (Light Blue Paperback).* At certain points in the course, we shall use the light blue paperback book, *The Story of a Civil Suit*, in addition to the casebook. We shall read and discuss the full *Dominguez* book.
9. *Reviews.* Three times during the semester, I shall furnish reviews of material covered up to the time of each review.

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10. *Practice Examination; Final Examination; Grading.* Sometime about the middle of the semester, we'll have a practice examination. It will be announced in advance and will not count toward your grade in any way. It probably will be administered outside class time. Your grade for the course will be determined by an anonymous final examination and will be based on a curve, which in turn will conform approximately to the law school average for first-year classes. At appropriate times during the semester, I'll try to help you to know what to expect and how to take law school exams. The examination probably will be 3 hours rather than 4. In addition, repeated unpreparedness (as well as avoidance) may affect your grade.
11. *Attendance.* It is required that you comply with the law school's attendance requirements, which mandate 80% attendance. Attendance will be taken every class period. I also do notice consistent, prolonged absences and on occasion, when students' failure to attend has been obvious, I have felt it necessary to drop them from the course.
12. *Double Absences on Days of, or Within Two Days of, a Legal Writing Assignment Turn-In Date, Subject to Liberal Excuse.* There is one attendance issue that raises a sensitive problem. The Lawyering Skills and Strategies course involves various deadlines for turning in assignments. I began to notice a couple of years ago that on these dates and within two days before, large numbers of students missed class to concentrate on their writing assignments alone. There are several disadvantages from this behavior. First, it means that a large percentage of the class needs catch-up work in later class meetings. Repetition of the most basic issues becomes necessary. This is unfair to students who have attended regularly. Second, this course is equally important, and it is a four-hour, one-semester course. Third, the absences result from poor time management, and time management is essential to good lawyering.

Therefore, I have decided to count all absences on the day an LSS assignment is due, and those on the two days preceding each deadline, as double absences. One absence on these days counts as two. This rule is subject to a liberal excuse policy: a double absence can be excused if you tell me of a reason not involving LSS and obtain my agreement. This policy will be liberally administered. That is, I will liberally agree to excuses unrelated to the LSS course if you present them to me. I hope that this policy will provide the needed incentive without being too heavy-handed. After all, it should be possible to get the job done if you plan your time, and this is an essential lawyering skill.

13. *Seating Chart.* Please sit in your assigned seat. Even if you come in late or leave early for emergency reasons, occupy your assigned seat.
14. *Disability.* Any student with a disability requiring accommodation should explain both to the professor (except as to the exam, for which accommodation is to be arranged through the law school administration).
15. *Make-Up Classes Due to the Professor's Need to Be Out of the City.* Every semester, I find that it's not just students who miss occasional classes; your professor (me) sometimes has the same problem. The administration expects us to make up any classes of this kind. It is likely that I may miss three (3) classes in early November. Making them up usually means four classes in some weeks, so you should anticipate that. It's extra work at the time, but fortunately, it means fewer classes crowded in later, nearer the exam. Friday is designated as a make-up day, but it may be that other days of the week are better for make-ups, and I will ask the class about this.