Civil Procedure
Course Requirements and Syllabus
Fall 2010
Professor Lonny Hoffman

Course Description

This course provides an introduction to the civil adjudicative process, primarily that of the federal courts, including jurisdiction, pleadings, discovery, dispositive motions and trial procedure. My objectives in this course are to teach the subject matter in a comprehensive manner, consider ethical and professional questions related to the study of procedure, and introduce students to the analytical and practical skills necessary for applying the study of procedure to the practice of law.

Course Materials

The casebook we will be using is SUBRIN, MINOW, BRODIN & MAIN, CIVIL PROCEDURE: DOCTRINE, PRACTICE AND CONTEXT (3d ed. 2008). I have also put together some additional course materials (“CM”) that I will hand out on the first day of class. Finally, you also need to obtain a copy of the Federal Rules of Civil Procedure (FRCP). I have ordered West Publishing’s 2010-2011 Federal Rules of Civil Procedure Educational Edition for you to purchase through the bookstore, but you can purchase 2009-10 version as well so long as the version you obtain contains all of the advisory committee notes (the shortest, most compact rulebooks may exclude the committee notes).

Class Schedule

This class regularly meets on Wednesdays from 10:30-11:50, and on Thursdays and Fridays from 9:00 – 10:20 am. There are a few days this semester when we will meet at different times instead of our regularly scheduled class meeting time. All of those dates are indicated in the attached syllabus.

Grades, Attendance and Participation

Your grade in this course will be based on one final examination (scheduled for 12/17 from 9:00 a.m. to 1:00 p.m.). It will be an in-class, open book examination comprised of three or four short to medium length essay questions. Most of my past exams are available through a link on my University of Houston webpage (http://www.law.uh.edu/faculty/main.asp?PID=179). I will give you more details about the exam during the semester. On the day of the exam, you may bring your casebook, rulebook, any CM I hand out to you, and any materials you have prepared. You may not bring in anything prepared by someone else. If you have any questions about what you can bring in to the exam, contact me in advance of the test.

Regular class attendance is required by the school’s academic rules and, in any case, is essential to a coherent understanding of the course. I do not take a daily attendance but I expect you will attend at least 80% of the class sessions. You will be asked to verify on the final examination, subject to the school’s honor code, that you have met this minimum attendance requirement. I may lower a final grade and/or take any other appropriate disciplinary action necessary, if it is determined that a
student is absent from more than 20% of the scheduled classes.

I will sometimes call on students; at other times I ask for volunteers. If you are prepared when I call on you, then I may improve your final grade, subject to any restrictions that the school may set. In the past I have increased the final grade of some students by one-third of a letter grade and, in rare instances, by a greater amount. On other (even rarer) instances, I have reduced a student’s grade for failure to attend and/or participate.

**Contact Information and Office Hours**

My office is in the faculty suites on the second floor of TUII. I hope you will feel welcome to stop by during my office hours (Monday 9:30 – 11:00 am) or by calling/emailing in advance to schedule an appointment at another convenient time. My office phone is (713) 743-5206. My UH email is LHoffman@central.uh.edu.

My assistant is Sandra Hoffpauir. Her email is swhoffpa@central.uh.edu. In this course, we will have five student teaching assistants. I will introduce you to all of them and discuss the teaching assistant program in depth when we meet on the first class day.

**Course Syllabus**

Your assignment before the first class on Wednesday, August 25 is to read:

1. Subrin, Minow: pp. 1-9, 183-95, and pp. 264 (starting with Section “E” on the bottom) through page 283.


Finally, a word about buying other materials for this class. I do not require that you buy any other materials and do not think any are necessary for you to understand the material in this course. But because students often ask me about them, I offer this suggestion: consider waiting at least until you’ve been in class for a few weeks. That will give you a chance to see what sort of supplemental materials may be best for you. It will also give you a chance to review a list I’ve put together of some outside materials that I think are pretty decent (I’ll pass out that list a couple of weeks into the semester). Also, as you will see on the syllabus, I have included some suggested, additional resources relating to the material we will cover. This reading is entirely optional; some of you may find that this additional reading gives you what you are looking for without having to buy some outside commercial material. I emphasize, however, that these additional readings listed on the syllabus are not required for a clear understanding of the course.
Below is the detailed course outline and syllabus. You can use it as a kind of roadmap to see where we will be going all semester long. The dates in brackets are estimates of when we will get to this material. Assignments in bold are the heavier-than-usual reading loads.

I. Introduction to Civil Procedure

A. Introduction to the Course and Overview of Course Themes [Aug 25].

1. Subrin, Minow: pp. 1-9, 183-95, and pp. 264 (starting with Section “E” on the bottom) through page 283.


B. Continue with Introduction and Overview [Aug 26]


C. Continue with Introduction and Overview [Aug 27]

[no additional reading assigned for this class; we will continue to discuss prior materials]

II. The Civil Lawsuit

A. Notice Pleading

1. Read Questions to Think About in Advance of Discussion of Notice Pleading (CM at 1) [Sept 1]

2. Read Federal Rules of Civil Procedure 8 and 9 and Form 11 in the Appendix of Forms following the Federal Rules of Civil Procedure (West rulebook) [Sept 1]

3. Read Subrin, Minow pp. 195-204 [Sept 1]

4. Read Swierkiewicz case (CM at 2-10) [Sept 1]

5. Read Subrin, Minow pp. 205-222 [Sept 1]

6. Read Ashcroft v. Iqbal (CM at 11-28) [Sept 2]

8. Prepare Practice Problem (CM at 28a and 28b) [Sept 3]

B. Motions, Answers and Affirmative Defenses

1. (Some) Rule 12 Motions: Rule 12(b)(6), 12(c) and Rule 12(e)
   a. Read Subrin, Minow, pp. 223-29 [September 6 at 2:30] (note, this is a replacement class meeting in lieu of our regularly scheduled class on Sept 9)
   b. Read Rules 12(b)(6), 12(c) and 12(e) [Sept 6]
   c. Prepare Practice Exercise #7, Subrin, Minow, p. 229 and Review Question 1 (Subrin, Minow, p.333-34) [Sept 6]

2. Answer and Affirmative Defenses
   a. Read pp. 237-246 (Subrin, Minow) [Sept 8]
   b. Read Rules 8(b) and (c) [Sept 8]
   c. Prepare Exercise on timing and waiver issues (CM at 29) [Sept 8]

   a. Questions to Think About in Advance of Discussion of Rule 11 (CM at 30) [Sept 14 at 2:30 in 144TUII] (replacement class)
   b. Read pp. 283-98 (Subrin, Minow) [Sept 14].
   c. Read FRCP 11, and also specifically read text of advisory committee notes accompanying 1983 and 1993 amendments [Sept 14]
C. Amendments

1. Read FRCP 15 [September 15]
2. Read pp. 246-49, and 259-62 (Subrin, Minow) [Sept 15]
3. Read Swartz v. Gold Dust Casino (CM at 31-34) [Sept 15]
4. Read Mayle v. Felix (CM at 35-52) [Sept 16]
5. Read Krupski v. Costa Crociere S. P. A. (CM) [Sept 16]
6. Prepare Practice Exercise #10 (pp.262-63 in Subrin, Minow) [Sept 17] – this problem is to be turned in to your TA before class starts

D. Joinder of Claims and Parties

1. Read pp. 298-307 (Subrin, Minow) [Sept 22]
2. Read FRCP 18, 20 and 23 [Sept 22]

E. Counterclaims

1. Read pp. 307-11 (Subrin, Minow) [Sept 22]
2. Read FRCP 13 [Sept 22].
3. Prepare Exercise #12 (pp. 310-11 in Subrin, Minow) [Sept 22]

F. Cross-Claims: Read pp. 311-15 (Subrin, Minow) [Sept 23] and FRCP 14 [September 23]

G. Necessary and Indispensable Parties

1. Read pp. 316-28 (Subrin, Minow) [Sept 23]
2. Read FRCP 19 [Sept 23]

H. Prepare Practice Question: Question Two on pp. 334-35 (Subrin, Minow) [Sept 24] – you will turn in Question Two, #2 (the amendment question) to your TA before class
III. **Personal Jurisdiction and Related Issues**

A. **Introduction to Personal Jurisdiction and the Traditional Conception of Personal Jurisdiction**

1. Read Questions to Think About in Advance of Reading *Pennoyer v. Neff* (CM at 5) [Sept 28 at 2:30] (note, this is a replacement class meeting in lieu of our regularly scheduled class on Oct 1)

2. Read *Pennoyer v. Neff*, pp. 609-20 (Subrin, Minow) [Sept 28].


B. **The Modern Conception of Personal Jurisdiction**

1. Read *International Shoe v. Washington*, pp. 620-32 (Subrin, Minow) [Sept 29 and 30].

C. **Long-Arm Statutes and other Non-Constitutional Limits on Judicial Jurisdiction**

1. Read *Gray v. American Radiator* (CM at 56-57) [Sept 30]

2. Read Ohio Long Arm Statute, sec. 2307.382 (CM at 58) [Sept 30]

3. Read Federal Rule of Civil Procedure 4(k)(1)(a) [Sept 30]

4. Read pp. 632-34 and 636-38 (Subrin, Minow) [Sept 30]

D. **Minimum Contacts Analysis in Operation**

1. Read *World-Wide Volkswagen case v. Robinson*, pp. 639-54 (Subrin, Minow) [Oct 6].

2. Read *Asahi Metal Industry Co., Ltd. v. Superior Court of California*, pp. 660-71 (Subrin, Minow) [Oct 6].

3. Read *Calder v. Jones* pp. 654-60 (Subrin, Minow) [Oct 7].

4. Read *Burger King v. Rudzewicz*, pp. 672-85 (Subrin, Minow) [Oct 7].

5. Prepare Practice Exercise #30, pp. 671-72 (Subrin, Minow) [Oct 8] – you will turn in an answer to this problem to your TA before class.

7. Read Burnham v. Superior Court of California, pp. 710-725 (Subrin, Minow) [Oct 13].


E. Consent: Read Carnival Cruise Lines v. Shute, pp. 735-42 (Subrin, Minow) [Oct 14].

F. Prepare Practice Exercise #31, pp. 685-86 (Subrin, Minow) [Oct 15]

G. Notice
1. Read Mullane v. Central Hanover Bank & Trust Co., pp. 742-50 (Subrin, Minow) [Oct 20]

2. Read Jones v. Flowers (CM at 61-78) [Oct 20]


4. Prepare Practice Problem (Fall 2007 exam question (CM at 79) [Oct 21] –

H. Review and in-class mock mid-term exam [Oct 22] (to be distributed) –

I. Venue
1. Read pp. 750-51 [Oct 27]


3. Prepare for Venue Exercise (CM at 80) [Oct 27].

J. Forum Non Conveniens
1. Questions to Think About in Advance of Piper Aircraft v. Reyno (CM at 81) [Oct 28].

2. Read Piper Aircraft, pp. 751-61 (Subrin, Minow) [Oct 28 and 29].

3. Prepare Practice Question: FNC Hypothetical (CM at 82) [Oct 29] – you will turn in an answer to your TA before class

4. Optional suggested reading: (excerpt from): Lonny Hoffman, “Forum Non
IV. Subject-Matter Jurisdiction and Related Issues

A. Diversity of Citizenship

1. Read *Mas v. Perry* (CM at 83-85) [Nov 3]

2. Read pp. 763-65 and 772-78 (Subrin, Minow) [Nov 3].


B. Federal Question

1. Read *Louisville & Nashville R.R. Co. v. Mottley*, pp.765-72 (Subrin, Minow) [Nov 4]

2. Read *Grable v. Darue Eng.* (CM at 89-101) [Nov 4]

3. Prepare Practice Question: Short Answer Question No. 2 from Fall 2005 Final Exam (CM at 102) [Nov 5] – you will turn in an answer to your TA before class


B. Supplemental Jurisdiction

1. Questions to Think About in Advance of Discussing Supplemental Jurisdiction (CM at 103) [Nov 8] (note, this is a replacement class meeting in lieu of our regularly scheduled class on Nov 10)

2. Read pp. 793-809 (Subrin, Minow) [Nov 8]


4. Read *Exxon Mobil Corp. v. Allapattah Services, Inc* (CM at 104-116) [Nov 8]

C. Removal
1. Read pp. 809-13 (Subrin, Minow) [Nov 9] (note, this is a replacement class meeting in lieu of our regularly scheduled class on Nov 11)


3. Read *Martin v. Franklin Capital* (CM at 117-25) [Nov 9]

V. The Choice of Law Problem in Federal Court: Federal or State Law

A. Read *Erie Railroad v. Tompkins*, pp. 817-27 and 863-64 (Subrin, Minow) [Nov 17]

B. Read 28 U.S.C. §§ 1652, 2071, 2072 [Nov 17]

C. *Shady Grove v. Allstate* (CM) [Nov 17]

VI. Pre-Trial Discovery

A. Formal and Informal Presuit Discovery


2. Read FRCP 27 [Nov 18]


B. Overview of Formal, Post-filing Discovery Mechanisms in the Federal Rules

1. Read pages 337-40; 360-72; and 373-85 (Subrin, Minow) [Nov 18]

2. Read Federal Rule of Civil Procedure 26, 27, 30, 31, 33, 34, 35, 36, and 37 [Nov 18]

C. Focus on Electronic Discovery

1. Read 388-406, Subrin, Minow [Nov 19]

2. Practice Problem (to be distributed) [Nov 19]
D. Attorney-Client Communications and Work Product Privilege

1. Questions to Think About in Advance of Hickman v. Taylor and Upjohn cases (CM at 141) [Nov 24]

2. Read Hickman v. Taylor, pp. 340-49 (Subrin, Minow) [Nov 24]

3. Read Upjohn v. United States (CM at 142-50) [Nov 24]

4. Read FRCP 26 [Nov 24]

6. Prepare Practice Review Questions: Exam questions from Fall 2003 and Fall 2002 exams (CM at 151-52) [Nov 29] – you will turn in an answer to your TA before class

VII. Judgment As a Matter of Law

A. Summary Judgment

1. Read pages 463-66 and 476-89 (Subrin, Minow) [Dec 1] (note, this is a replacement class meeting in lieu of our regularly scheduled class on Nov 12)

2. Read FRCP 56 [Dec 1]

3. Read pages 489-99 (Subrin, Minow) [Dec 1]

B. Voluntary Dismissals, Involuntary Dismissals, Directed Verdicts/Judgment as a Matter of Law/JNOV: Read pp. 501-26 (Subrin, Minow) [Dec 1]

C. Prepare Practice Exercise #21 499-501 (Subrin, Minow) [Dec 2] –

Review

The last day of class, Friday, Dec 3, is reserved for a general sum up and review of the course by me. You should hold open Dec 14 (time and place TBA) for a pre-exam review session. Your first exam, contracts is on Dec 9 and your second exam, torts, is on Dec 13. In my experience, students find a civ pro review session to be most beneficial after their other finals are over. Hence, the Dec 14 proposed review date to take place before your Dec 17 exam in civ pro).