

Civil Procedure - Spring 2018
Prof. Rosenblatt

Syllabus

Class description:

In this course, we will explore major topics in U.S. civil procedure. “Civil procedure” represents the set of rules and practices by which civil (that is, non-criminal) disputes are resolved in U.S. court systems. Readings will be drawn mostly from the SIXTH edition of David Crump et al. CASES AND MATERIALS ON CIVIL PROCEDURE and the statutory supplement associated therewith. Reading assignments may be supplemented by occasional photocopied or electronic materials.

Learning objectives and assessment

Successful students in this class will demonstrate professionalism. They will be prepared for class; be attentive in class; arrive to class in a timely manner; and participate thoughtfully and courteously in class. These objectives will be assessed through application of attendance and class participation policies.

Successful students will turn in assignments on time. Late assignments will receive point penalties.

Successful students in this class will express themselves clearly, both orally and in writing. This objective will be assessed through feedback and grading policies for both assignments and exams.

Successful students in this class will demonstrate legal analysis and substantive knowledge in the field of civil procedure law. They will demonstrate (1) familiarity with and understanding of the terms, rules, principles, and underlying policies of U.S. civil procedure through effective communication, both orally and in writing; (2) the ability to advise clients in matters concerning civil procedure in a competent and ethical manner through application of relevant principles, rules, policies, and practical considerations to hypothetical factual situations; and (3) the ability to advocate for particular outcomes by applying legal principles to facts in a persuasive manner. These learning objectives will be assessed through class participation; in-class exercises; problem sets, essays, and other homework assignments; possible quizzes; a midterm; and a final exam.

Students will also engage in peer assessment and self-assessment via occasional assessment-focused problem sets, essays, and other assignments.

Evaluation:

Grades will be based on a “points” system. Students can earn up to 1000 total possible points for the course, as follows:

- In-class performance, including attendance, class participation, and in-class exercises: up to 100 points (10% of possible points)
- Out-of-class assignments: up to 150 points (15% of possible points)
- Midterm: up to 240 points (24% of possible points)
- Final exam: up to 510 points (51% of possible points)

Office Hours/Meetings

I welcome and encourage both individual meetings and group meetings.

I will hold walk-in office hours this semester on Tuesdays, 4:00-6:00 p.m. If that time doesn't work for you or if you want to ensure a one-on-one meeting, I am happy to meet at a different time—just e-mail me at brosenblatt@law.whittier.edu and we'll find a time that's convenient.

Communicating

Moodle

This course will continue to make occasional use of the course's Moodle site. I will post handouts and other information on that site, will send classwide e-mails via that program, and may use it for assignments.

E-mail

From time to time I will send e-mail to the whole class or to individual students. I will use students' “poets.whittier” addresses; please make sure that you check your poets address (or auto-forward from that address to one you check regularly). It is your responsibility to ensure that you receive e-mails via your poets account.

Attendance

If you know ahead of time that you will have to miss class, please e-mail me in advance so that I can tell you about any assignments, etc. that you will miss and tell you whether/how you can make them up without penalty. If it is ever necessary for you to miss class without advanced warning, please e-mail me regarding your absence after the fact, for the same reasons. For any sort of absence, if you have an excuse (such as illness), please let me know what it is. I will assess your excuse and determine whether to excuse your absence for purposes of class participation. If you do not explain an absence I will assume you do not have an excuse.

General

Always feel free to e-mail me with questions: brosenblatt@law.whittier.edu.

Of course, I hope you never have crises or emergencies, but if you do, please send me an e-mail letting me know what's going on. Don't suffer in silence; the more I know, and the sooner I know it, the more I may be able to do to help.

Class participation:

Class meets on Mondays from 9 a.m. to 10:50 a.m. and Tuesdays from 2:00-4:00 p.m.

- I expect students to attend class and I consider attendance in awarding points for in-class performance.
- Students who are tardy for class will be awarded $\frac{1}{2}$ the in-class performance points they would receive if they arrived on time to that class meeting. In other words, any tardiness at all—even a minute or two—will be treated as $\frac{1}{2}$ absence for points calculation purposes. Arrive on time!
- In addition to tracking attendance for in-class performance purposes, I also expect students to satisfy the school's attendance requirements. I report attendance to the Office of Student Affairs, which assesses attendance and has the ability to administratively withdraw from the class any student who misses more than 20% of class meetings in a semester.

Be prepared for class.

- Intelligent contribution in class discussions, including answering questions and asking questions if material is unclear, will count as class participation for purposes of awarding in-class performance points. Please raise your hand to ask or respond to a question.
- When I ask questions, I will sometimes call for volunteers and will sometimes call on students based on random selection. In both cases, I will expect students to be familiar with readings and ready to analyze and respond to hypotheticals.

I will allow each student to request to be taken out of the question queue once per semester and to "pass" once per semester. In either event, you should expect to be "on call" in the next class.

A note on computer and mobile phone use in class:

I strongly recommend hand-writing your notes. I do not prohibit laptop use for note-taking, but I do strongly discourage it, as **studies unequivocally show that students learn better when they handwrite their notes rather than typing them.** Internet use, game-playing, or other non-note-taking computer use in class is even more strongly discouraged. If such computer use becomes distracting, I reserve the right to withdraw laptop privileges from the computer user. If at any time you are distracted by someone else's non-note-taking computer use, please let me know. (I am happy to keep any such complaints confidential if you prefer).

Use of mobile phones in class is prohibited. I reserve the right to confiscate mobile phones from students whose mobile phone use is distracting. As above, if at any time you are distracted by

someone else's mobile phone use, please let me know. (I am happy to keep any such complaints confidential if you prefer).

Reading assignments and subject matter

Assignments below are from the Crump text and statutory supplement (unless otherwise specified). I have kept the assignments as short as possible to permit you to do them in advance of each relevant class. Sometimes the pages assigned will refer you to additional materials in the book's appendix; although those are not required, I encourage you to read them if you have time, as they generally provide helpful examples.

We do not always cover every assigned case as part of in-class discussion or lecture. This is intentional; my goal is that our class time not be a redundant re-hash of the reading, but rather focus on understanding the policies reflected and applying the principles articulated in the cases. Thus, the reading and class time should complement each other, rather than being repetitious. A successful student will engage closely with the reading and engage actively in class discussion.

Note that the below lists predicted dates for reading assignments and the subject matter to be begun in class on those dates. Some subjects will take two (or more) class meetings to cover; when that occurs, please make an effort to read all of the assigned material before the first class meeting on that subject unless I instruct otherwise. Also note that although the date of the midterm and final will not change, all other dates are approximate; we may move faster or slower depending on the particular lecture/pacing needs of the class. If it makes sense to read certain material earlier or later than the date identified here, I will announce it in class. You are, of course, always welcome to read ahead when your time permits.

Please also note that while this identifies the *reading* assignments on any given topic, **it does not represent all of your homework and exercises**. I will often augment the readings below with other assignments appropriate to the topic, including essays, problem sets, and other exercises.

January 8 (class 1)

Overview

- Intro to the structure of a civil case
 - o Read pp 1-14. Consider the problems as you read
 - o Optional reading: pp. 14-48

January 9 (class 2)

A court's power to adjudicate a dispute: Subject Matter Jurisdiction

- Intro to subject matter jurisdiction
 - o Read pp. 149-151 (think about Problem A as you read it, but don't write out an answer)

- Federal Question (“Arising Under”) Jurisdiction
 - o Read 28 U.S.C. §1331 and U.S. Const. Art. III, §2
 - o Read pp. 156-164
 - o Read *Gunn v. Minton* (Abridged) (Will be posted on Moodle)

January 15 – NO CLASS (MLK DAY)

January 16 (class 3)

- Diversity Jurisdiction
 - o Read 28 U.S.C. §1332 and re-read U.S. Const. Art. III, §2
 - o Read pp. 166-173
- Supplemental Jurisdiction
 - o Read 28 U.S.C. §1367
 - o Read pp. 176-189
 - o [Supplemental Jurisdiction problems](#)

January 22 (class 4)

- Removal and Remand
 - o Read 28 U.S.C. §§1441(a)-(c), 1445, 1446, 1447
 - o [Read pp. 191-199](#)
 - o [Written Assignment: Questions 1-4 of Problem A on p. 149-150 \(due Jan 22\)](#)

January 23 (class 5)

A court’s power over property and parties to a dispute: Personal Jurisdiction

- Intro to personal jurisdiction
 - o Read U.S. Const. amend. XIV §1 c. 3
 - o Read pp. 49-50
- Intro to Minimum Contacts, General and Specific Jurisdiction, and Long-Arm Statutes
 - o Read pp. 57-73

January 29 & January 30 (classes 6-7)

- Applying the Minimum Contacts Doctrine
 - o Read pp. 74-82; 85-94; 95-97
 - o Read pp. ___ of the Crump Supplement (the *Walden* and *Daimler* cases)

February 5 (class 8)

- Jurisdiction *In Rem*, Tag Jurisdiction, and Jurisdiction by Consent
 - o Read pp. 97-113

February 6 (class 9)

- Notice and Service of Process
 - o Read Fed. R. Civ. P. 4, 5(a), 5(b), and 5(d)
 - o Read pp. 118-121
- 118-121 Challenging Personal Jurisdiction
 - o Read Fed. R. Civ. P. 12(b), 12(g), and 12(h)(1)
 - o Read pp. 115-118
- Written Assignment: Questions 1-2 of Problem A on p. 50

February 12 & February 13 (classes 10-11)

Geographical location: Venue and *Forum Non Conveniens*

- o Read 28 U.S.C. §§1390-1391, 1400(b), 1404(a), and 1406
- o Read pp. 131-144
- o Multiple choice exercises?

February 19 & February 20 (Classes 12-13)

What law will the court apply: *Erie* and Choice of Law

- The *Erie* Doctrine (“Vertical” Choice of Law)
 - o Read 28 U.S.C. §§1652, 2071, 2072-2074
 - o Read pp. 209-214
 - o Read pp. 219-237
- “Horizontal” Choice of Law
 - o Read pp. 237-242

February 26 (Class 14) – Review and Catch-up

February 27 (Class 15) – IN-CLASS MIDTERM EXAM

March 5 & March 6 – NO CLASS – SPRING BREAK

March 12, March 13, and March 19 (Classes 16-18)

Multiple Parties and Claims (“Joinder”)

- Overview
 - o Read pp. 327-333
- Counterclaims and cross-claims
 - o Read Fed. R. Civ. P. 13
 - o Read pp. 333-339
- Read pp. 333-339 Third Party Practice (Impleader, Joinder, Intervention)
 - o Read Fed. R. Civ. P. 14, 18, 19, & 20
 - o Read pp. 339-348
- Consolidation and Severance

- Read Fed. R. Civ. P. 21 and 42
- Multiple choice exercises?

Anatomy of a Civil Suit

March 20 & March 26 (Classes 19-20)

Pleadings

- Read Fed. R. Civ. P. 6, 7, 8, 9(b), 10, 11, 12, and 15
- Read pp. 261-279 (Rule 8)
- Read pp. 285-287 (Rule 9(b))
- Read pp. 302-303; 309-314 [8] (Rule 11/sanctions)
- Read pp. 315-321 (amendments)

March 27 & April 2 (Classes 21-22)

Discovery

- Read Rules 26, 29, 30, 31, 33, 34, 35, 36, 37, 45
- Read pp. 389-406 (planning, relevance)
- Read pp. 413-418 (work product)
- Read pp. 429-430 (initial disclosures)
- Read pp. 446-453 (depositions)
- Read pp. 471-474 (interrogatories)
- Read pp. 474-489 (RFAs and RFPs)

April 3 (Class 23)

Adjudication Without Trial

- Default Judgment
 - Read Rule 55 and Rule 60(b)
 - Read pp. 574-576
- Judgment on the Pleadings
 - Re-read Rule 12(c)
 - Read Note, p. 545
- Summary Judgment
 - Read Rule 56
 - Read pp. 546-555

April 9 (Class 24)

Trial

- Pre-Trial
 - Read Rule 16 (pre-trial conference; scheduling; management)
- Trial, Generally

- Read pp. 579-581
- Jury Selection
 - Read U.S. Const. Amend. VII; Rules 38, 39, and 47; and 28 U.S.C. § 1861 et seq.
 - Read pp. 607-619
- Presentation of Evidence
 - Read Rules 43 and 45
 - Read p. 637-638
 - Read pp. 645-649
- Jury Argument, Jury Instructions, and Verdicts
 - Read pp. 655-668
 - Read Rule 51

April 10 (Class 25)

Post-Trial Motions

- Re-read U.S. Const. Amend. VII; Read Rules 50 and 60
- Read pp. 693-706
- Read pp. 708-717
- Read pp. 725-729

April 16 (Class 26)

Appeals

- Read Rule 61 and 28 U.S.C. § 2111
- Read Rules 46, 50, 51, 52(a), and 59
- Skim Fed. Rules App. Procedure
- Read pp. 731-735
- Read pp. 736-740
- Read pp. 747-760

April 17 & April 23 (Classes 27 & 28)

Preclusion

- Res Judicata/Claim Preclusion
 - Read pp. 761-768
- Collateral Estoppel/Issue Preclusion
 - Read pp. 768-782