



Federal Civil Procedure

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Office Hours: Tuesdays 3:00 – 4:00 (except once a month for faculty meetings); and Wednesdays 10:00 to 11:30. I encourage students to meet with me outside class hours to discuss relevant issues raised in and outside the classroom. I welcome drop-in visits and I am happy to schedule appointments - see me before or after class, or e-mail me.

Legal Assistant: Sherri Meyer, Rm. 301, 445-3335.

COURSE OVERVIEW

This course provides a survey of the common law, statutory, and constitutional foundations of federal civil procedure and the policy choices that underlie access to the federal courts. It covers the procedures followed by the federal courts in civil (noncriminal) disputes and examines the ways in which common understandings of fairness shape the design of the American civil procedural system. The course examines the dynamics and tactics of lawyers' roles and is designed to familiarize students with the fundamental constructs of the federal civil judicial system. These constructs require an understanding of key provisions of the US Constitution, federal court jurisdiction, notice, venue, the law to be applied by the federal courts, pretrial procedures, matters related to trials, motions, verdicts, judgments, and joinder of claims and parties.

TEACHING METHODS

This class will be primarily conducted using a modified Socratic method by which I will call on students randomly to facilitate discussion of the materials. I will lecture only when necessary for emphasis and in order to explain matters that are not obvious from the materials. It is very important that students are prepared to discuss each assignment because the primary means of examining the issues raised in the assignments will be through class participation and discussion. I will hold periodic



review sessions during the semester during which I will invite students to ask questions about the materials covered.

A Teaching Assistant will be assigned to each section. They will hold regular office hours and review sessions to discuss problems and exercises that will have been distributed in advance.

COURSE GOALS/OBJECTIVES

The course will contribute to the acquisition of essential legal skills (legal synthesis, analysis, strategies and reasoning, statutory interpretation, advocacy, communication, professionalism, and critical thinking) and values (professional responsibility) inherent in the study and practice of law. Each student will be expected to:

1. Demonstrate foundational knowledge and understanding of federal procedural law.
2. Demonstrate ability to communicate effectively in the legal context, in writing and orally.
3. Demonstrate basic legal analysis, legal reasoning and problem-solving skills.
4. Demonstrate knowledge and understanding of the Lawyer's professional responsibility to advance the mission of service to the underrepresented so that all individuals have equal access to the privileges of our justice system.
5. Demonstrate an awareness and understanding of the knowledge, skills, and values necessary to be competent and effective lawyers in a multicultural world.

LEARNING OUTCOMES

At the end of this course, students should be able to:

1. Demonstrate foundational knowledge and understanding of key concepts in Federal Civil Procedure in the subject areas covered in class.
2. Demonstrate an ability to apply knowledge of the rules of federal civil procedure and critical thinking skills to perform competent legal analysis, reasoning, and problem solving.
3. Demonstrate professional judgment and professionalism through conduct consistent with the legal profession's values and standards.
4. Demonstrate knowledge and understanding of the Lawyer's professional responsibility to advance the mission of service to the underrepresented so that all individuals have equal access to the privileges of our criminal justice system.



REQUIRED READING MATERIALS

1. CASEBOOK: Yeazell and Schwartz, eds., Civil Procedure (9th ed., 2016)
2. SUPPLEMENT: Stephen Yeazell, ed., Federal Rules of Civil Procedure (2018).
3. OTHER MATERIALS: In addition to the required materials, I will provide the class with handouts and CANVAS postings as they are needed.

Abbreviations:

CB	= Casebook
Supp.	= Supplementary cases, notes, and other materials
FRCP	= Federal Rules of Civil Procedure (in Supplement)
US Const.	= US Constitution (in Supplement)
28 U.S.C	= Title 28, United States Code (in Supplement)

GRADING POLICY

The final closed-book exam will be worth 100% of your final grade. You will be given **two mandatory practice exams** and in addition you may be given short exercises in class and via the class CANVAS site. The first practice examination will cover personal jurisdiction and will be scheduled for a 50 minute period following the completion of the materials on personal jurisdiction. This practice exam is mandatory, but will not be formally graded. A model answer and comments will be provided and individual meetings with your TA's will be arranged in order to discuss your progress. The second practice exam will be administered via CANVAS (subject-matter TBA). You will be given a model answer and grading guide and asked to assess your answers. Feedback will be offered.

PROFESSIONALISM / PARTICIPATION / ATTENDANCE

You are expected to attend class regularly (please refer to the attendance policy in the Albany Law School Student Handbook), arrive on time at the beginning of each class, and stay until class is over. You are expected to read the assignments prior to each class and be prepared to provide full, insightful answers to questions that you may be asked. Each student will be called on randomly to lead discussion of assigned materials. Class discussions are important. If you are unable to attend a class please try to notify me in advance.

USE OF ELECTRONICS

I welcome the use of laptops in class. However, students must turn off access to social media on ALL devices. Please refrain from messaging, e-mailing, surfing the net, playing games, writing papers, doing homework, etc. during class time. Do not display



material on screen which may be distracting to me or your classmates. Please silence cell phones when you are in the classroom. **Audio or video recording or live transmission of the class is prohibited without my prior permission.** This is law school policy and violation of that policy can subject students to disciplinary action.

E-MAIL COMMUNICATION POLICY

I encourage students to E-mail me outside class hours with any questions or comments about the class or the assigned materials. I will answer each E-mail as promptly as I can. Though E-mail correspondence is generally considered informal, please keep in mind that E-mail communication within the law school should conform to the standards of professional communication expected in legal practice - e.g. write in complete sentences, address the recipient by name and title (if necessary), sign your name at the end of the message, acknowledge receipt of E-mail messages addressed personally to you. E-mails sent by me to the class should be opened and read as promptly as possible.

Before your scheduled exam at the end of the semester I will conduct an “E-review” (students are encouraged to E-mail me questions that I will answer and forward to the entire class).



ASSIGNMENTS

The following list of assignments provides you with an outline of the subjects covered in this course, and the order in which they will be covered. Flexibility is built into the schedule and therefore the amount of material covered in each class will depend on the depth of class discussion and level of detail of the assigned reading. The numbered assignments DO NOT necessarily correspond to one reading assignment. As a rough guide – many class sessions will cover about 4 cases and the accompanying notes. Please try to read ahead about 4 cases in preparation for each class.

References to rules, statutes and constitutional provisions are part of the reading assignment. Please read them.

A. INTRODUCTION

- 1. Introduction CB 1-16; 28 U.S.C. §§1331&1332; FRCP 11.
- 2. Introduction (continued)..... CB 16-28; FRCP 8;
Assessment Questions.....CB 59-60 - Q1 & Q2 (Do on your own).

B. PERSONAL JURISDICTION

- 3. Pennoyer and International Shoe CB 63-89;
.....(*Read note on Milliken v. Meyer* p.80-81);
..... US Const. Art. III.
- 4. International Shoe Framework CB 89-103;
..... (*Read note on Harris v. Balk* p. 91-92).
- 5. Specific Jurisdiction CB 103-132;
.....(*Read note on Burger King v. Rudzewicz*, Note 3, p.112-114);
..... FRCP 4(k) (1) (A).
- 6. General Jurisdiction..... CB 132- 143; Supp. P. 315-324; 143-154;
Challenge and WaiverFRCP 12(b), (h), and (g).
- 7. Consent / Long Arm Statutes CB 154-159; CB 175-180;
Illustrative Long Arm Statutes.....Handout.

Practice Exam- 50 minutes.



C. NOTICE & SERVICE OF PROCESS

8. Notice, Venue..... CB 160-175; FRCP 4; CB 180-186.

D. VENUE

9. Venue (continued)28 U.S.C. §1391, §1392; FRCP 12(b) (3);
.....Handout;
Transfer & Forum Non Conveniens..... CB 186-194; §1404, §1406, §1631;
Assessment Questions..... CB 199-203.

E. SUBJECT MATTER JURISDICTION

10. Federal Question Jurisdiction CB 205-220;
28 U.S.C. §§1331; U.S. Const. Art. III §§ 1 & 2;
Diversity Jurisdiction.....CB 220-230; 28 U.S.C. §1332.
Amount in Controversy CB 230--22134;

11. Supplemental Jurisdiction CB 234-242; 28 U.S.C. §§ 1367; Handout;
Removal CB 242-250; 28 U.S.C. §§1441, 1446-48; FRCP 81c;
Assessment Questions..... CB 251-254.

F. JOINDER OF CLAIMS AND PARTIES

12. Joinder of Claims, Counterclaims, Cross-Claims, Parties CB 785-805;
FRCP 18, 42, 54(b), 13, 13(g).

13. Third Party Claims/Compulsory JoinderCB 805-823; FRCP 14; 19;
InterventionCB 823-836; FRCP 20, 42; 12 (b) (7).

G. THE ERIE PROBLEM

14. The Erie Problem CB 255-271 (Read *Swift v. Tyson* p. 256-258);
.....28 U.S.C. §1652.

15. The Federal Rules and ErieCB 272—283.



H. PLEADING

- 16. Sufficiency of a Complaint.....CB 367-405; FRCP 8, 12;
..... (**Read Notes on Conley v. Gibson and Twombly** Note 2(c) p. 388).
- 17. Allocating elements/Ethical Limitations CB 409-429; Rule 11 (REVIEW).
- 18. Responding to a ComplaintCB 429-445; FRCP 8, 12, 7.
- 19. Amendments/Relation Back CB 445-458; FRCP 15;
Assessment Questions..... CB 458-461.

I. MATTERS RELATED TO TRIALS

- 20. Discovery of Facts/Scope & LimitationsCB 32-34; Supp.309-314;
..... CB 463-477; CB 481-487.
- 21. Proportionality/Privacy/Privilege CB 487-502;
.....FRCP 26(b) (2) (C); 26(c); 26(b) (1); 26(b) (5); 26(b) (3).
- 22. Ensuring Compliance/Controlling Abuse CB 508-523; FRCP 37(e);
Assessment Questions CB 523-526 (Do on your own).
- 23. Adjudication without trial..... CB 578-598
- 24. Judges Guiding Juries CB 633-666;
Assessment Questions..... 666-668.
- 25. Effect of a Final Judgment/..... CB 715-725; CB 749-772 (**if time permits**).
Res Judicata & Collateral Estoppel