I. COURSE INTRODUCTION

This three-hour course is an introduction to the process of litigation and its alternatives. It covers topics fundamental to the practice of law and use of the civil justice system. Whether one litigates or does deals, works in the private sector or government, understanding the discovery process—the information produced when you get sued—is necessary. Understanding what claims can be joined and who can be sued is necessary. Understanding what claims can be resolved before trial, during trial, and on appeal is necessary. This course covers all of that. It starts with discovery; then addresses the means to resolve a case without trial or before trial; the decision-making process at trial and on appeal; claims brought and precluded at trial and after; and the claims and parties that can or must be joined. The goals for this course are that all leave with a basic conceptual understanding of these topics and a familiarity with the tools that are used, i.e. the discovery devices, pleadings, and motion practice through which these issues are resolved.

II. COURSE MATERIALS

A. Required Texts

1. S. Yeazell, Civil Procedure (8th ed. 2012);
2. S. Yeazell, Federal Rules of Civil Procedure with Selected Statutes (2012);
4. Illinois Supplement, available on TWEN.

If you have a copy of the 7th edition of Professor Yeazell’s Civil Procedure text, feel free to use it, but you are responsible for knowing and understanding the material covered in the 8th edition. There are some new cases that are significant, and there is some new discussion that is helpful. I will upload copies of the new cases to the TWEN site for this course, and you can check reserve copies of the 8th edition to review the new discussion.
Similarly, you can use 2011 editions of the federal and state statutory supplements, but you are responsible for knowing and understanding current law. Copies of the federal and state rules are readily available on-line via commercial databases, such as Westlaw or Lexis, or via publically available materials, such as those found on the Illinois Courts website, [http://www.state.il.us/court/supremecourt/rules/](http://www.state.il.us/court/supremecourt/rules/), or the Cornell University School of Law’s Federal Rules of Civil Procedure site, [http://www.law.cornell.edu/rules/frcp/](http://www.law.cornell.edu/rules/frcp/).

B. Recommended Reading


C. TWEN

The TWEN site for this course contains required reading: a copy of the syllabus; excerpted copies of new cases found in Professor Yeazell’s 8th edition; and a copy of the Illinois supplement for this course. PowerPoint slides used or prepared in class will also be posted on TWEN at some point during the semester. The TWEN password for the site is tetsuzuki

III. GRADES

Grades are based on a final exam (70%); a short writing assignment (20%); and classroom attendance and participation (10%).

A. Attendance & Participation (10%)

Please note that this course adheres to SIU Law’s attendance policy. Attendance is required in all classes. If you accumulate more than nine (9) class hour absences, you will be subject to the sanctions set out in the law school rules, which include mandatory withdrawal from the course. Missing part of the class counts as missing all of the class minutes for that class.

In terms of participation, it is incumbent upon you to read the material, come to class well prepared, and participate. Every student who does so will receive the ten (10) class participation points; those who do not will not.

I understand that students have other course, work, and personal commitments. For the purposes of the attendance and participation grade, I will take those commitments explained in advance into consideration in evaluating absences or an inability to prepare. Just as in practice, you will find a difference in resolving scheduling conflicts beforehand and simply not showing up.
B. **Writing Exercise (20%)**

The writing component of your grade will be based on evaluation of a five (5) to seven (7) page memorandum you will be asked to prepare.

The class will be divided up into two groups. One half of the class will be asked to write in support of a motion to compel; one half will be asked to write in opposition to the motion. Memoranda in support of the motion will be provided to those opposing the motion who will then have fourteen (14) days to write a response. We’ll divide up the class and discuss the topic and deadlines after the drop/add period is over. All are encouraged to get started early on the basic research. I’ll distribute the motion to compel itself at a later date.

The goal of the writing exercise is to encourage you to think about and apply some of the law we are studying. It is also an opportunity to practice writing. The practice of law depends, in large part, on the ability to produce persuasive written work product under a deadline. We’ll practice that skill here.

C. **The Exam (70%)**

The exam will be an in-class, final exam in which you will be permitted to make use of your Federal Rules of Civil Procedure and Illinois Code of Civil Procedure texts. You are free to highlight and annotate them as you see fit. Use of any other materials during the exam will be prohibited.

The exam itself will likely consist of a combination of short answer and essay questions. The subject matter will include both material from the assigned readings and material discussed in class. If you have to miss a class for whatever reason, get notes from a friend or acquaintance.

D. **Grading**

This course follows SIU Law’s grading policy for second and third year courses with enrollments over thirteen (13) students. It will be graded on a curve, and, of necessity, subject to mandatory medians.

IV. **CONTACT INFORMATION**

I encourage you to contact me with any questions you might have. After class, rather than before, is usually a good a good time. Feel free to drop by my office, Room 214, or email to set up a time.
I will check email sent to apartdieck@siu.edu and respond as soon as I can. My response may not come immediately and it may be brief. The ulnar nerve in my left hand periodically objects to typing.

IV. COURSE ASSIGNMENTS

The first assignment is to read the material on Modern Discovery; Relevance; and the Duty to Preserve set out below. Please note the assigned readings do not always follow the order found in the text or supplement. The readings for the topics below vary in length, and we will not always cover one topic per class. If you have questions about what to read for the next class, don’t hesitate to ask.

V. COURSE OUTLINE

A. Discovery (Chapter 7)

1. Modern Discovery; Relevance; and the Duty to Preserve
   - Text 457-469
     a. Davis v. Precoat Metals
     b. Steffan v. Cheney
     c. Silvestri v. General Motors
   - Supp. 1-3;
   - Fed. R. Civ. P. 26 (b), 27, 29;
   - Ill. S. Ct. R. 201(b), 217(a)

2. Discovery Stages; Required Disclosures; Requests for Production; and IMEs
   - Text 469-477
   - Supp. 3-5, 16-19
   - Fed. R. Civ. P. 26(a), 34, 35
   - Ill. S. Ct. R. 214, 215, 222, 224, 735 ILCS 5/2-402

3. Interrogatories; Requests for Admission; and Expert Reports
   - Text 477-480
   - Supp. 5-11, 19-22
   - Fed. R. Civ. P. 33, 36, 26(e)
   - Ill. S. Ct. R. 213, 216

4. Depositions; Pretrial Lists & Orders; Ensuring Compliance
   - Text 480-487
   - Supp. 11-16
   - Fed. R. Civ. P. 16(e), 26(d), 27-32, 37, 45
   - Ill. S. Ct. R. 201, 202-212
5. Privileges & Work Product
   - Text 487-497
     - a. Hickman v. Taylor
     - Supp. 28-33
     - Fed. R. Civ. P. 26(b)(1) & (b)(3)
     - II. S. Ct. R. 201(b)(2)

6. Attorney Client Privilege & Work Product
   - Supp. 33-44

7. Expert Information
   - Text 497-503
     - a. Thompson v. The Haskell Co.
     - b. Chiquita International Ltd. v. M/V Bolero Reefer
     - Supp. 44-47
     - Fed. R. Civ. P. 26(a)(2) & 26(b)(4)
     - II. S. Ct. R. 201(b)(3), 204(c), 213(f)(g)

8. Discovery and Privacy
   - Text 503-508
     - Supp. 22-28
     - 735 ILCS 5/2-1003

9. Ensuring Compliance & Controlling Abuse
   - Text 508-522
     - a. Zubulake v. UBS Warburg, LLP
     - Supp. 47-54
     - Fed. R. Civ. P. 37
     - II. S. Ct. R. 201(k), 219

B. Resolution without Trial (Chapter 8)

1. Default Judgment, Voluntary & Involuntary Dismissal
   - Text 523-531
     - a. Peralta v. Heights Medical Center
     - Supp. 55-64
     - Fed. R. Civ. P. 41(a)(b), 54(c) & 55
     - II. S. Ct. R. 103(b), 105, 273
     - 735 ILCS 5/2-1009, 2-1206, 2-1301, 2-1302, 5/13-217

2. Settlement, Mediation & Confidentiality Agreements
   - Text 531-555
b. Kalinauskas v. Wong
- Ill. Ct. R. 86-95, 99

3. Arbitration
- Text 555-580
  a. Ferguson v. Countrywide Credit Indus. Inc.
  b. AT & T Mobility LLC v. Concepcion
  c. Ferguson v. Writers Guild of America
- Supp. 64-66

4. Summary Judgment
- Text 581-596
  a. Celotex Corp. v. Catrett
- Supp. 66-69
- Fed. R. Civ. P. 56
- Ill. Ct. R. 191-192
- 735 ILCS 5/2-1005

C. The Trier and the Trial (Chapter 9)

1. Managing Litigation: Pretrial Orders & Divided Authority
- Text 597-607
  a. McKey v. Fairburn
  b. Reid v. San Pedro, Los Angeles & Salt Lake Railroad
- Supp. 69-70
- Fed. R. Civ. P. 16
- Ill. Ct. R. 218

2. Bench Trials & the Right To Trial by Jury
- Text 607-615
- Supp. 72-78
- U.S. Const. Amend. VII
- Fed. R. Civ. P. 38, 39

3. Choosing a Jury
- Text 616-625
  a. Thompson v. Altheimer & Gray
- Supp. 78-82
- Ill. Ct. R. 234
- 28 U.S.C. §§ 1861-70
- 735 ILCS 5/2-1005

4. Challenging a Judge
- Text 625-643
- Supp. 71-72,
- Ill. Ct. R. 63(c)
- 28 U.S.C. §§ 144, 455
- 735 ILCS 5/2-1001, 2-1005.1, 2-1006

5. Judges Controlling Juries
- Text 643-655
  a. Penn. RR v. Chamberlain
- Supp. 83-91
- Fed. R. Civ. P.
- Fed. R. Civ. P. 50, 52
- 735 ILCS 5/2-1202, 1203
- Ill. S. Ct. R.

- Text 656-671
  b. Peterson v. Wilson
- Supp. 91-94
- Fed. R. Civ. P. 59
- 735 ILCS 5/2-1205, 1205.1,

D. Appeal (Chapter 10)

1. Appeals: Who & When
- Text 673-693
  a. Aetna Casualty & Surety Co. v. Cunningham
  b. Liberty Mutual Insur. Co. v. Wetzel
- 28 U.S.C. §§ 1291-1292
- Ill. S. Ct. R. 301, 203-304, 306-308

2. Appeals: When & How
- Text 693-713
  a. Lauro Lines s.r.l. v. Chasser
  b. Anderson v. Bessemer City
  c. Harnden v. Jayco, Inc.

E. Respect for Judgments (Chapter 11)

1. Claim Preclusion: Same Cause of Action
- Text 715-725, 47-52
  a. Frier v. City of Vandalia
  b. Rush v. City of Maple Heights (in Ch. 1)
- Supp. 95-100
2. Claim Preclusion: Consistency, the Parties & Finality
   • Text 725-748
     a. Searle Brothers v. Searle
     b. Taylor v. Sturgell
     c. Gargall v. Merrill Lynch, Pierce, Fenner & Smith
   • Supp. 100-113

3. Issue Preclusion: Same Issue; Litigated and Determined; Essential; Mutuality
   • Text 749-766
     a. Illinois Central Gulf RR v. Parks
     b. Parklane Hosiery Co. v. Shore

   • Text 767-772
     a. State Farm Fire & Casualty Co. v. Century Home
        Components
   • Supp. 113-121

5. Boundaries of Issue Preclusion, Collateral Attack & Reopened Judgments
   • Text 772-790
     a. Kovach v. District of Columbia
     b. Durfee v. Duke
     c. United States v. Beggerly
   • Supp. 121-123

F. Joinder (Chapter 12)

   • Text 791-806
     a. Plant v. Blazer Fin. Services
   • Supp. 124-126
   • Fed. R. Civ. P. 13, 17, 18(a) & 42(b)
   • 735 ILCS 5/2-204, 2-405, 2-407, 2-608, 2-613, 2-614

2. Joinder of Parties by Plaintiff
   • Text 806-812
     a. Mosely v. General Motors Corp.
   • Supp. 126-129
   • Fed. R. Civ. P. 20, 21
   • 735 ILCS 5/2-404, 2-405, 2-407

3. Third-Party Claims
   • Text 812-818
4. More Complex Litigation
   - Text 818-829
     a. Kroger v. Omaha Public Power District
     b. Owen Equipment & Erection Co. v. Kroger
       - Supp. 133-134
       - Fed. R. Civ. P. 13(g)-(h), 19, 20
       - 735 ILCS 5/2-608

5. Compulsory Joinder
   - Text 829-839
     a. Temple v. Synthes Corp.
     b. Helzberg’s Diamond Shops v. Valley West Des Moines Shopping Center
       - Supp. 134-137
       - Fed. R. Civ. P. 19
       - 735 ILCS 5/2-404, 2-406

6. Intervention
   - Text 839-852
     a. Natural Resources Defense Council v. United States Nuclear Regulatory Commission
     b. Martin v. Wilks
       - Supp. 137-139
       - Fed. R. Civ. P. 24
       - 735 ILCS 5/2-408

7. Interpleader
   - Text 852-859
       - Supp. 139-140
       - Fed. R. Civ. P. 22
       - 28 U.S.C. 1335, 1397, 2361
       - 735 ILCS 5/2-409

8. Class Actions & the Constitution: Representative Adequacy & Jurisdiction
   - Text 859-877
     a. Hansberry v. Lee
     b. Phillips Petroleum v. Shutts
       - Supp. 140-141
9. Class Actions: Statutory Requirements & Recent Case Law
   - Text 877-893
     - a. Wal-Mart Stores, Inc. v. Dukes
     - Supp. 141-148
     - Fed. R. Civ. P. 23
     - 735 ILCS 5/2-801 thru 2-806

10. Settlement of Class Actions
    - Text 894-909
      - a. Amchem Products Inc. v. Windsor
      - Supp. 145
      - Fed. R. Civ. P. 23(e)
      - 735 ILCS 5/2-806

Additional readings, as time permits, to be announced.

VI. FINAL NOTES

Make Up Classes: We are required to make up a class for the Labor Day holiday. At this point, I would anticipate making up the class missed sometime mid-October.

Disability Disclosure Statement: Students with disabilities are entitled to reasonable accommodations and academic adjustments. See http://disabilityservices.siu.edu/. Any student requiring accommodation because of a disability should contact the Associate Dean’s Office at the law school.

Recording Classes: Absent a request for an accommodation, this course will not be recorded on a regular basis.

Emergency Procedures: Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT's website at www.bert.siu.edu, Department of Safety’s website www.dps.siu.edu (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.