



CIVIL PROCEDURE II SEC. 001 SYLLABUS

Professor Andrew Pardieck
Fall 2019, SIU Law 535-3 §001
Tues/Thurs 9:00 am to 10:15 am, Rm. 202

I. COURSE INTRODUCTION

This three-hour course continues the first semester's introduction to civil litigation. After discussing the basics of pleadings, discovery, and dispute resolution in Civil Procedure I, we turn here to topics including jurisdiction, venue, joinder, and preclusion. Where can you file a lawsuit? What claims can or must you join in the suit? What parties can or must you join? When is a claim or issue precluded because it was or could have been raised earlier? As set out in more detail below, the goals for this course are that all leave with a conceptual understanding of how the federal courts answer these questions. While the focus will be on the federal courts, we will look at other jurisdictions, including Illinois, to provide a point of comparison. We will also look at the tools used, including pleadings and motion practice, in resolving these issues.

II. COURSE MATERIALS

A. Required Texts

1. S. YEAZELL, CIVIL PROCEDURE (10th edition);
2. CLICK & LEARN: CIVIL PROCEDURE (beta version online)
3. Materials posted to TWEN.

B. Optional But Recommended

1. S. YEAZELL, FEDERAL RULES OF CIVIL PROCEDURE WITH SELECTED STATUTES (most recent version); *or*
2. FEDERAL CIVIL RULES BOOKLET (LegalPub.com)

The rules and statutes contained in the above volumes are available online or in print from various sources at various price points. You are not required to purchase a statutory supplement for that reason.

I do, however, strongly recommend that you use a printed compilation of the rules and statutes.

This is a course about rules--learning them and applying them. You will have a much easier time doing so with a physical copy of the rules that you can read, mark-up, and place in context. Whether you read the rules online, print them out, or purchase a statutory supplement, it is your responsibility, both in this class and for the bar exam, to learn and apply them.

C. Recommended Secondary Reading

1. J. GLANNON, THE GLANNON GUIDE TO CIVIL PROCEDURE (most recent edition);
2. J. GLANNON, EXAMPLES AND EXPLANATIONS: CIVIL PROCEDURE (most recent edition);
3. G. SHREVE & P. RAVEN-HANSEN, UNDERSTANDING CIVIL PROCEDURE (most recent edition).

D. TWEN

The TWEN site for this course contains required reading, including a current copy of the syllabus and supplementary materials for this course.

E. Click & Learn: Civil Procedure [C&L]

Professor Upchurch, along with colleagues Professors Gilles and Ho have authored an interactive guide to civil procedure that is remarkable. It breaks down the federal rules and concepts to a manageable size, and it offers multiple opportunities, graduated in difficulty, to practice applying the concepts.

There is no substitute for learning how to read cases and rules, and there is no substitute for mastering and applying the concepts that you learn from them. The *Yeazell* text and the C&L materials complement each other. If you work through both diligently, there is no concept that we will cover this semester that you cannot learn and learn well.

We are fortunate that Professors Upchurch, Gills and Ho have offered to make C&L available to us, in its beta version. Regardless of the version, the material is copyrighted. You may not distribute any portion of it to any other person without the written permission of Professor Upchurch. Also understand that because we are accessing the materials prior to publication,

there may be glitches, with the software and its use. We will explore, together, how best to use this resource in conjunction with a traditional case book.

III. GRADES

Grades are based on a final exam, worth up to fifty-five (55) points and other written work product, worth up to forty-five (45) points. You may also complete extra credit projects worth up to six (6) extra points.

A. Written Work Product (45 points)

You will be required to complete three different types of work product this semester.

1. Regularly Scheduled Exercises (15 points)

You will be asked to complete regularly scheduled *C&L* exercises. Collectively they are worth 15 points. How many points you receive will depend on how many questions you answer correctly from all of the assigned exercises. You can re-do the exercises as many times as you like, in order to answer all of the questions correctly—so everyone is capable of getting all 15 points.

2. Graded MEE-type Assignment. (15 points)

There will be a graded, bar exam-type writing assignment on personal jurisdiction. This exercise will be closed-book, with space limitations, similar to what you will find on the Multistate Essay Examination (MEE) portion of the bar exam. You will complete this in-class after working through the chapter in the text on personal jurisdiction. Up to ten (10) points of your score will be based on a grade I assign to your essay. The remaining five points will be based on a memorandum that you write analyzing your work, including an assessment of (a) your legal analysis; (b) your writing; (c) and your test-taking performance. Additional instructions will be provided in class.

3. Grade MBE-type Assignment. (15 points)

You will also be asked to complete an MBE-type, multiple-choice exam, approximately two-thirds of the way through the course. It will be worth ten (10) points. Additional instructions will be provided in class.

- o Remember the Honor Code

As a reminder, the Honor Code applies to all work product completed for this course. Except where collaboration is expressly permitted, you are expected to complete all written exercises individually. Note an Honor Code investigation must be reported to the Bar Examiners even if you are cleared of any violation.

B. The Exam (55 points)

The exam will be an in-class, final exam. It will be closed book, like the bar exam. The exam itself will likely consist of some combination of multiple choice, 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.

C. Extra Credit Project

There are two options to obtain extra credit: First, you can get up to three (3) extra credit points by completing all of the *C&L* questions for each subject assigned this semester. Three points will be awarded to those who complete them all correctly (regardless of how many times you re-do the exercise). One or two extra credit points will be awarded to the remainder of the student completing all of the assigned questions, depending on the number of correct answers provided.

Second, you can complete an optional poster project, worth up to three (3) extra credit points. You may work in groups of up to four (4) students. The object is to develop and present a poster, at the end of the semester, explaining (not just outlining) a difficult-to-understand concept covered in this course. You may choose either a specific topic, e.g. explaining Rule 20,

or an overview topic, e.g. subject matter jurisdiction. Additional instructions will be posted to TWEN and provided in class.

D. Attendance & Participation

Studies show a strong correlation between attendance and both class grades and GPA. Crede et al., *Class Attendance in College: A Meta-Analytic Review of the Relationship of Class Attendance with Grades & Student Characteristics*, REVIEW OF EDUCATIONAL RESEARCH (June 2010). Class attendance is a better predictor of grades than any other known predictor of academic performance. *Id.*

As a result, the ABA and law school rules prioritize attendance, as does this course. This course adheres to SIU Law's attendance policy: attendance is required in all classes. If you accumulate more than six (6) absences, you will be subject to the sanctions set out in the law school rules. Those sanctions include mandatory withdrawal from the course. Neither the law school nor the ABA's attendance rules recognize "excused absences." Save your absences for sick days and work conflicts.

If you have a disability requiring accommodation, please see Disability Support Services to make the necessary arrangements. We will follow their guidance regarding attendance and participation accommodations, as well as other course requirements. See also the Disability Statement *infra*.

Showing up is important. Showing up prepared and on time equally so. In practice, the courts may sanction you, and your clients may go elsewhere, if you do not. In this class, students who attend, but come in late will be counted absent--you may *not* sign the attendance sheet after it has passed your seat. Similarly, students who attend but are not prepared for class and have not provided a valid reason for the lack of preparation in advance will be counted absent.

F. Grading

This course follows SIU Law's grading policy. The final exam will be graded on a curve, and, of necessity, subject to mandatory medians. Note the curve does not measure competency. As with the practice of medicine

or other professions, the real test is competency, as demonstrated first by passing the bar exam and then in practice.

F. Laptop Policy

Absent accommodation, laptops may *not* be used in this class. Bring your texts, pen and paper to class—and leave the laptop at home.

In April of 2016, the Wall Street Journal reported on one of many studies demonstrating that students who take handwritten notes outperform students who type their notes on a computer. Robert Lee Hotz, *The Power of Handwriting*, WALL ST. J. D1 (Apr. 5, 2016). Students who write their notes out longhand “appear to learn better, retain information longer, and more readily grasp new ideas.” *Id.* Those who write their notes longhand think more intensely about the material, in part, because writing is slower and forces one to choose what is important. *Id.*

G. Mobile Phones

Cell phones *may not* be used in class except when used as part of an instructor-directed class exercise, e.g. completion of an online quiz.

Whether you are using a laptop or cell phone, sending text messages, hanging out on Facebook, and the like distracts you and others around you. Some research also suggests that it makes you stupid. See Rochelle Garner, *Your smartphone makes you stupid, study shows* (June 26, 2017), <https://www.cnet.com/news/smartphone-makes-you-stupid-university-of-texas/>

IV. CONTACT INFORMATION & OFFICE HOURS

If I am in my office and the door is open, you and your questions are welcome. After class is usually a good time to catch me. Or you can email apardieck@law.siu.edu to set up a time. I anticipate having regular office hours on Tuesdays from 3:00 p.m. to 5:00 p.m.

For those emailing, please note my response may not come immediately and it may be brief. The ulnar nerve in my left hand periodically objects to typing. Email aside, you have options. If you have questions, by all means ask.

V. LEARNING OBJECTIVES

At the end of this course, students who do the work will be able to identify issues relating to personal jurisdiction, distinguishing between general and specific jurisdiction; subject matter jurisdiction; service of process; waiver and contractual issues; and venue. Students will be able to identify basic choice of laws issues, distinguishing between cases applying state and federal law. Students will be able to identify issues relating to *res judicata*, distinguishing between claim and issue preclusion, and, finally, identify the joinder issues that determine who the appropriate parties to the litigation are. For each of the issues identified, students will be able to set out the correct legal standard, analyze varied fact patterns, and apply the law to those facts.

VI. NOTES ON COURSE ASSIGNMENTS

- The readings vary in length. Understanding the material will require reading the assignments *more than once*.
- The ABA standards establish a minimum requiring *two hours* of out-of-class preparation for each hour of class. The traditional wisdom is that preparing for each hour of class requires at least *three hours* of preparation outside of class.¹
- We will not always cover one unit per class. If you have questions about what to read for the next class, ask.
- If you are struggling with the material, come talk to me.

VII. TENTATIVE COURSE OUTLINE & ASSIGNMENTS

OVERVIEW & PERSONAL JURISDICTION

1. (8/20) Approaching Civil Procedure & Constitutional Limits in Litigation
Yeazell Text, pp. 61-66

¹ If we assume three hours, you should plan on spending twelve hours working on civil procedure each week (3 x 3 hours of preparation + 3 classroom hours).

- (8/20) The History & Origins of the Personal Jurisdiction Doctrine
14th Amendment
Yeazell Text, pp. 67-77
 · *Pennoyer v. Neff*
Online Click & Learn Questions
2. (8/22) The Modern Constitutional Formulation of Power
Yeazell Text, pp. 77-86
 · *International Shoe Co. v. Washington*
Online Click & Learn Questions
3. (8/27) The Modern Constitutional Formulation of Power & In Rem
Jurisdiction
Yeazell Text, pp. 89-111
 Shaffer v. Heitner
 World-Wide Volkswagen v. Woodson
4. (8/29) Specific Jurisdiction
Fed. R. 4(k)
Yeazell Text, pp. 111-128
 J. McIntyre, Ltd. v. Nicaastro
 Abdouch v. Lopez
Online Click & Learn Questions
5. (9/3) –General Jurisdiction
Yeazell Text, pp. 128-148
 Goodyear Dunlop Tires Operations, S.A. v. Brown
 Daimler v. Bauman
 Bristol-Myers v. Superior Court
Online Click & Learn Questions
6. (9/5) Transient Jurisdiction, Consent and Waiver
Fed.R.Civ.P. 12(b),(g),(h)
Yeazell Text, pp. 148-163
 Burnham v. Superior Court
 Carnival Cruise Lines v. Shute
Online Click & Learn Questions
7. (9/10) Constitutional Notice & Service of Process
Fed. R. Civ. P. 4
Yeazell Text, pp. 163-177
 Mullane v. Central Hanover Bank & Trust Co.

Online Click & Learn Questions

8. (9/12) Self Imposed Restraints on Jurisdiction: Long-Arm Statutes & Venue
28 U.S.C. § 1390-1391
Yeazell Text, pp. 177-187
Gibbons v. Brown
Thompson v. Greyhound Lines, Inc.
Online Click & Learn Questions

9. (9/17) Forum Non Conveniens & Transfer
28 U.S.C. §1404(a)
Yeazell Text, pp. 187-203
Piper Aircraft v. Reyno
Atlantic Marine Constr. v. US
Online Click & Learn Questions

(9/19) IN-CLASS MULTISTATE ESSAY-TYPE EXAM

SUBJECT MATTER JURISDICTION (CHAPTER 3)

1. (9/24) Federal Question Jurisdiction
28 USC § 1331
U.S. Const. Art. III, sec. 1 & 2
Yeazell Text, pp. 205-218
Louisville & Nashville RR v. Mottley
Online Click & Learn Questions

2. (9/26) Diversity Jurisdiction
28 USC § 1332(a)-(c)
Yeazell Text, pp. 218-232
Redner v. Sanders
Hertz Corp. v. Friend
Online Click & Learn Questions

3. (10/1) Supplemental Jurisdiction
28 U.S.C. § 1367
Yeazell Text, pp. 232-241

In re Ameriquest Mortgage Co.
Szendrey-Ramos v. First Bancorp.
Online Click & Learn Questions

4. (10/3) Removal
28 U.S.C. § 1441(a)-(c), 1446, 1447
U.S. Const. Art. III, sec. 1 & 2
Yeazell Text, pp. 241-253
Caterpillar, Inc. v. Lewis
Online Click & Learn Questions

STATE LAW IN FEDERAL COURTS (CHAPTER 4)

1. (10/8) The Erie Problem & Its Limits
28 U.S.C. § 1652
Yeazell Text, pp. 255-271
Erie Railroad v. Tompkins
Guaranty Trust Co. v. York
2. (10/10) De-Constitutionalizing Erie/The Hanna Limitation on Erie
28 U.S.C. §§ 2071-77
Yeazell Text, pp. 271-287
Byrd v. Blue Ridge Rural Electric Coop.
Hanna v. Plumer
Online Click and Learn Questions
 - Check TWEN if not yet available on the website

RESPECT FOR JUDGMENTS (CHAPTER 11)

1. (10/15) Claim Preclusion: Same Cause of Action
Fed. R. Civ. P. 13
Yeazell Text, pp. 703-712
Frier v. City of Vandalia
Online Click & Learn Questions
 - Check TWEN if not yet available on the website
2. (10/17) Claim Preclusion: Consistency, the Parties & Finality
Yeazell Text, pp. 718-735

Taylor v. Sturgell
Gargallo v. Merrill Lynch, Pierce, Fenner & Smith
Online Click & Learn Questions
· Check TWEN if not yet available on the website

- (10/22) Issue Preclusion: Same Issue; Litigated and Determined; Essential; Mutual?
Yeazell Text, pp. 735-755
Illinois Central Gulf RR v. Parks
Parklane Hosiery Co. v. Shore
Online Click & Learn Questions
· Check TWEN if not yet available on the website

- (10/24) Collateral Attack & Reopened Judgments
U.S. Const. Art. IV
28 USC 1738
Fed. R. Civ. P. 60
Yeazell Text, pp. 757-773
V.L. v. E.L.
United States v. Beggerly
Online Click & Learn Questions
· Check TWEN if not yet available on the website

(10/29) IN-CLASS MBE-TYPE EXAM

JOINDER (CHAPTER 12)

- (10/31) Joinder of Claims: By Plaintiff & By Defendant.
Fed. R. Civ. P. 13, 18(a) & 42(b)
28 USC 1367
Yeazell Text, pp. 775-788
Cordero v. Voltaire, LLC.
Online Click & Learn Questions
· Check TWEN if not yet available on the website
- (11/5) Joinder of Parties by Plaintiff
Fed. R. Civ. P. 20, 21
Yeazell Text, pp. 788-94
Mosely v. General Motors Corp.
Online Click & Learn Questions

- Check TWEN if not yet available on the website
- 3. (11/07) Third-Party Claims
 - Fed. R. Civ. P. 14
 - Yeazell Text, pp. 794-802
 - Price v. CTB, Inc.*
 - Online Click & Learn Questions
 - Check TWEN if not yet available on the website
- 4. (11/12) Compulsory Joinder
 - Fed. R. Civ. P. 19
 - Yeazell Text, pp. 802-812
 - Temple v. Synthes Corp.*
 - Helzberg's Diamond Shops v. Valley West Des Moines Shopping Center*
 - Online Click & Learn Questions
 - Check TWEN if not yet available on the website
- 5. (11/14) Intervention & Interpleader
 - Fed. R. Civ. P. 22, 24
 - 28 U.S.C. 1335, 1397, 2361
 - Yeazell Text, pp. 812-828
 - Natural Resources Defense Council v. United States Nuclear Regulatory Commission*
 - Martin v. Wilks*
 - Southern Farm Bureau Life Ins. Co. v. Davis*
 - Online Click & Learn Questions
 - Check TWEN if not yet available on the website
- 6. (11/19) Class Actions: the Constitution & Federalism
 - 28 U.S.C. 1332(d), 1453
 - Yeazell Text, pp. 829-850
 - Hansberry v. Lee*
 - Phillips Petroleum v. Shutts*
 - Standard Fire Insur. Co. v. Knowles*
 - Online Click & Learn Questions
 - Check TWEN if not yet available on the website
- 7. (11/21) The Class Action & Statutory Requirements
 - Fed. R. Civ. P. 23

Yeazell Text, pp. 851-867
Wal-Mart Stores, Inc. v. Dukes
Online Click & Learn Questions
· Check TWEN if not yet available on the website

READING DAY, DECEMBER 2, 2019

FINAL EXAM, DECEMBER 3, 2019, 1:15 P.M. TO 4:15 P.M.

VIII. FINAL NOTES

CLASS RECORDING POLICY: This class is not being recorded. Absent a disability-related accommodation arranged through Disability Support Services (see below), you will not have access to a recording of the class. Absent advance approval of the instructor, audio or video recording by any student of any class is prohibited.

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.

DISABILITY POLICY. Disability Support Services provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. [_http://disabilityservices.siu.edu/](http://disabilityservices.siu.edu/). Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar's Office to ensure the School of Law provides the proper classroom and examination accommodations.

SALUKI CARES. The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-5714, or siucares@siu.edu, <http://salukicare.siu.edu/index.html>. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618453-3135.