



CIVIL PROCEDURE II SYLLABUS

Professor Andrew Pardieck
Fall 2022, SIU Law 535-3 §001
Tues/Thurs 9:00 am to 10:15 am

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
3. Materials posted to D2L.

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. D2L

The D2L page for this course contains course announcements, a copy of the syllabus, and supplementary materials for this course. Assignments should also be submitted via D2L.

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

Professors Upchurch, 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 focuses on the former, and the C&L materials the latter. They 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.

The class code for the Fall 2022 semester is: 322-89-1840. You will not need to purchase another license for Civil Procedure II. You will need to switch to your new class by logging into C&L and clicking "My Account" at the

top of the page. You will not receive credit for your work if you do not use the correct class code.

III. GRADES

Grades are based on a final exam, worth up to fifty (50) points, other work product also worth fifty (50) points, and an extra credit project worth up to two (2) extra points.

A. Semester Work Product (50 points)

1. Class Attendance and Participation (10 points)

This course adheres to SIU Law's attendance policy: attendance is required in all classes. If you accumulate more than four (4) absences in this course, you will be subject to the sanctions set out in the law school rules, including mandatory withdrawal from the course.

Those who come to class late or unprepared will be counted absent. Regarding the former, those who show up after the attendance sheet has passed your seat, you will be counted absent for the day.

Studies show a strong relationship 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 has been shown a better predictor of grades than any other known predictor of academic performance. *Id.*

In order to encourage both your attendance and participation, if you come to class well prepared and participate, you will receive ten (10) attendance & participation points. Those who do not will receive fewer or no points. For the purposes of the participation grade, I will take into consideration written notice of work commitments provided in advance of class and timely notice of illness.

2. C&L Exercises (20 points)

You will be asked to complete exercises in C& L. Collectively the C&L exercises are worth twenty (20) points. How many points you receive will depend on how many C&L questions you answer correctly. Your effort determines your grade here: you may re-do the exercises as many times as necessary to get all answers correct.

Some of the C&L materials track the reading and completing them before class will assist you in class. At the same time, there will only be one deadline, at the end of the semester, for completing this work. Use your time management skills to complete the material as the semester progresses.

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3. Midterm (20 points)

There will be a graded midterm, with an opportunity to re-write a portion of the exam. Additional instructions will be posted to D2L and provided in class.

B. Final Exam (50 points)

The final exam will 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. Additional instructions will be posted to D2L and provided in class.

C. Extra Credit Project (2 points)

You can complete an optional poster or PowerPoint presentation project, worth one (1) or two (2) extra credit points. You may work in groups of up to four (4) students. The object is to develop and present a poster or

PowerPoint presentation, 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 D2L and provided in class.

- Remember the Honor Code

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.

E. 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.

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

We will do things differently this semester. Laptops *may* be used in this class. But I still encourage you to bring your text, printed supplements, a pen and paper to class—and leave the laptop at home.

Remember, studies have repeatedly demonstrated that students who take handwritten notes outperform students who type their notes on a computer. See, e.g., 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 phone *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

Office hours 3 – 5 p.m. on Tuesdays or by appointment. If you'd like to set up a time to meet, feel free to email me at apardieck@law.siu.edu.

For those emailing, please note my response may not come immediately as carpal tunnel syndrome periodically makes computer work difficult. But you should receive a response to every email you send me, either directly or if it raises a question applicable to all via an email to the class. If you don't hear from me, in one form or another, please follow up. I may have missed or not gotten the email.

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, please let me know!

VII. TENTATIVE COURSE OUTLINE & ASSIGNMENTS

OVERVIEW & PERSONAL JURISDICTION & VENUE

1. (8/23) Approaching Civil Procedure & Constitutional Limits in Litigation
 - Yeazell Text, pp. 61-66

(8/23) The History & Origins of the Personal Jurisdiction Doctrine 14th Amendment

- Yeazell Text, pp. 67-86
 - *Pennoyer v. Neff*
 - *International Shoe Co. v. Washington*
- Click & Learn Questions

2. (8/25) The Modern Constitutional Formulation of Power
 - Reread *International Shoe Co. v. Washington*
 - Yeazell Text, pp. 77-86; 89-100
 - *International Shoe Co. v. Washington*
 - *Shaffer v. Heitner*
 - Click & Learn Questions

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).

3. (8/30) The Modern Constitutional Formulation of Power & In Rem Jurisdiction
 - Reread *Shaffer v. Heitner*
 - Yeazell Text, pp. 89-111
 - *Shaffer v. Heitner*
 - *World-Wide Volkswagen v. Woodson*
4. (9/1) Specific Jurisdiction & General Jurisdiction
 - Reread *World-Wide Volkswagen v. Woodson*
 - Fed. R. 4(k)
 - *World-Wide Volkswagen v. Woodson*
 - *J. McIntyre, Ltd. v. Nicastrò*
 - *Goodyear Dunlop Tires Operations, S.A. v. Brown*
 - *Daimler v. Bauman*
 - Click & Learn Questions
5. (9/6) Recent Cases
 - Reread *Daimler v. Bauman*
 - Yeazell 2021 PJ Supplement, pp. 15-27
 1. *Daimler v. Bauman*
 - *Bristol-Myers v. Superior Court*
 - *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*
 - Click & Learn Questions
6. (9/8) Transient Jurisdiction, Consent and Waiver
 - Reread *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*
 - Fed.R.Civ.P. 12(b),(g),(h)
 - Yeazell Text, pp. 148-163
 - *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*
 - *Burnham v. Superior Court*
 - *Carnival Cruise Lines v. Shute*
 - Click & Learn Questions
7. (9/13) Constitutional Notice & Service of Process
 - Reread *Carnival Cruise Lines v. Shute*
 - Fed. R. Civ. P. 4
 - Yeazell Text, pp. 163-177
 - *Carnival Cruise Lines v. Shute*
 - *Mullane v. Central Hanover Bank & Trust Co.*
 - Click & Learn Questions

8. (9/15) Self Imposed Restraints on Jurisdiction: Long-Arm Statutes & Venue

- Reread *Mullane v. Central Hanover Bank & Trust Co.*
- 28 U.S.C. § 1390-1391
- Yeazell Text, pp. 177-187
 - *Mullane v. Central Hanover Bank & Trust Co.*
 - *Gibbons v. Brown*
 - *Thompson v. Greyhound Lines, Inc.*
- Click & Learn Questions

9. (9/20) Forum Non Conveniens & Transfer

- Reread *Thompson v. Greyhound Lines, Inc.*
- 28 U.S.C. §1404(a)
- Yeazell Text, pp. 187-203
 - *Piper Aircraft v. Reyno*
 - *Atlantic Marine Constr. v. US*
- Click & Learn Questions

SUBJECT MATTER JURISDICTION (CHAPTER 3)

1. (9/22) Federal Question Jurisdiction

- Reread *Atlantic Marine Constr. v. US*
- 28 USC § 1331
- U.S. Const. Art. III, sec. 1 & 2
- Yeazell Text, pp. 205-218
 - *Louisville & Nashville RR v. Mottley*
- Click & Learn Questions

2. (9/27) Diversity Jurisdiction

- Reread *Louisville & Nashville RR v. Mottley*
- 28 USC § 1332(a)-(c)
- Yeazell Text, pp. 218-232
 - *Redner v. Sanders*
 - *Hertz Corp. v. Friend*
- Click & Learn Questions

3. (9/29) Supplemental Jurisdiction

- Reread *Hertz Corp. v. Friend*
 - 28 U.S.C. § 1367
 - Yeazell Text, pp. 232-241
 - *In re Ameriquest Mortgage Co.*
 - *Szendrey-Ramos v. First Bancorp.*
 - Click & Learn Questions
4. (10/4) Removal
- Reread *Szendrey-Ramos v. First Bancorp.*
 - 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*
 - Click & Learn Questions

TENTATIVE MIDTERM DATE -- 10/6

STATE LAW IN FEDERAL COURTS (CHAPTER 4)

1. (10/11) 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. (10/13) De-Constitutionalizing Erie/The Hanna Limitation on Erie
- Reread *Guaranty Trust Co. v. York*
 - 28 U.S.C. §§ 2071-77
 - Yeazell Text, pp. 271-287
 - *Byrd v. Blue Ridge Rural Electric Coop.*
 - *Hanna v. Plumer*
 - Click and Learn Questions

RESPECT FOR JUDGMENTS (CHAPTER 11)

1. (10/18) Claim Preclusion: Same Cause of Action
- Reread *Hanna v. Plumer*
 - Fed. R. Civ. P. 13
 - Yeazell Text, pp. 703-712
 - *Frier v. City of Vandalia*

- Click & Learn Questions
2. (10/20) Claim Preclusion: Consistency, the Parties & Finality
 - Reread *Frier v. City of Vandalia*
 - Yeazell Text, pp. 718-735
 - *Taylor v. Sturgell*
 - *Gargallo v. Merrill Lynch, Pierce, Fenner & Smith*
 - Click & Learn Questions
 3. (10/25) Issue Preclusion: Same Issue; Litigated and Determined; Essential; Mutual?
 - Reread *Gargallo v. Merrill Lynch, Pierce, Fenner & Smith*
 - Yeazell Text, pp. 735-755
 - *Illinois Central Gulf RR v. Parks*
 - *Parklane Hosiery Co. v. Shore*
 - Click & Learn Questions
 4. (10/27) Collateral Attack & Reopened Judgments
 - Reread *Parklane Hosiery Co.*
 - 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*
 - Click & Learn Questions

JOINDER (CHAPTER 12)

5. (11/1) Joinder of Claims: By Plaintiff & By Defendant.
 - Reread *U.S. v. Beggerly*
 - Fed. R. Civ. P. 13, 18(a) & 42(b)
 - 28 USC 1367
 - Yeazell Text, pp. 775-788
 - *Cordero v. Voltaire, LLC.*
 - Click & Learn Questions
6. (11/3) Joinder of Parties by Plaintiff
 - Reread *Cordero v. Voltaire*
 - Fed. R. Civ. P. 20, 21

- Yeazell Text, pp. 788-94
 - *Mosely v. General Motors Corp.*
- Click & Learn Questions

ELECTION DAY 11/8 – MAKEUP CLASS T/B/A

7. (11/10) Third-Party Claims

- Reread *Mosely v. GM*
- Fed. R. Civ. P. 14
- Yeazell Text, pp. 794-802
 - *Price v. CTB, Inc.*
- Click & Learn Questions

8. (11/15) Compulsory Joinder

- Reread *Price v. CTB, Inc.*
- 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*
- Click & Learn Questions

9. (11/17) Intervention & Interpleader

- Reread *Helzberg v. Valley West*
- 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*
- Click & Learn Questions

THANKSGIVING VACATION

10. (11/29) 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*
- Click & Learn Questions

11. (12/1) **The Class Action & Statutory Requirements**

- Fed. R. Civ. P. 23
- Yeazell Text, pp. 851-867
 - *Wal-Mart Stores, Inc. v. Dukes*
- Click & Learn Questions

READING DAY, MONDAY, DECEMBER 5, 2022

FINAL EXAM, T/B/A

VIII. FINAL NOTES

CLASS RECORDING POLICY: Absent advance approval of the instructor, audio or video recording by any student of any class is prohibited.

EMERGENCY PROCEDURES: We ask that you become familiar with Emergency Preparedness @ SIU. Emergency response information is available on posters in buildings on campus, on the Emergency Preparedness @ SIU website, and through text and email alerts. To register for alerts, visit <http://emergency.siu.edu/>.

DISABILITY POLICY. SIU Carbondale is committed to providing an inclusive and accessible experience for all students with disabilities. Disability Support Services coordinates the implementation of accommodations. If you think you may be eligible for accommodations but have not yet obtained approval, please contact DSS immediately at 618-453-5738 or disabilityservices.siu.edu. You may request accommodations at any time, but timely requests help to ensure accommodations are in place when needed. Accommodations and services are determined through an interactive process with students and may involve consideration of specific course design and learning objectives in consultation with faculty. Upon completion of a

Disability Accommodation Agreement with DSS, students should bring the agreements for each course 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) 453-2461, or siucares@siu.edu, <https://salukicare.siu.edu/>. Assistant Dean Judi Ray is available at the School of Law to help students access university resources. Please email her at judiray@siu.edu, or call 618- 453-3135.

COVID-19. SIUC's policy on face masks and social distancing is consistent with the guidance from the Centers for Disease Control and Prevention and the Illinois Department of Public Health. For up-to-date information, students, faculty, and staff should visit SIUC's COVID website (<https://siu.edu/coronavirus>), which includes the Saluki Safety Plan. People can also send email to pandemicinfor@siu.edu.