



CIVIL PROCEDURE I SYLLABUS--PART I

Professor Andrew Pardieck
Spring Semester 2020, Law 505-3, §002
Tues/Thurs 3:00 - 4:15 pm, Rm. 204

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 how lawsuits get filed and resolved is necessary. What does a complaint look like? What information do you have to produce when you sue or get sued? What claims are resolved before trial, during trial, on appeal? This course covers all of that. After the introduction, it starts with the complaint, answer, and related motions; then addresses discovery; then resolution without trial; the decision-making process at trial; and finally appeals. 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 pleadings, discovery devices, and motion practice through which these issues are resolved.

II. COURSE MATERIALS

A. Required Texts

1. S. YEAZELL, CIVIL PROCEDURE (Aspen 10th edition);
2. CLICK & LEARN: CIVIL PROCEDURE (Carolina Academic Press)
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 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]

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 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.

Additional instructions for purchasing and accessing the materials can be found in the Click & Learn instructions posted to TWEN.

III. GRADES

Grades are based on a final exam, worth up to sixty (60) points and other written work product, worth up to forty (40) points. You may also complete extra credit projects worth up to five (5) extra points.

A. Written Work Product (40 points)

1. Regularly Scheduled Exercises (20 points)

You will be asked to complete regularly scheduled exercises: some from *C&L*; some not. Collectively they are worth twenty (20) points. How many points you receive will depend on how many questions you answer correctly.

The *C&L* materials are organized by Unit and then Part. For the *C&L* materials, if you answer 80% or more of the assigned questions in a Part correctly, you will receive credit for that Part. As discussed below, three (3) extra credit points will be awarded to those who answer all of the assigned questions correctly.

Note your effort determines your grade here: you may re-do the exercises as many times as necessary to get all answers correct.

2. Midterm (20 points)

There will be a graded, closed-book midterm, that includes both a Multistate Essay Examination (MEE) type essay question and Multistate Bar Exam (MBE) type multiple-choice questions.

Eight (8) points of your score will be based on the grade I assign to your essay. Eight (8) points based on your multiple-choice answers. The remaining four (4) points will be based on a memorandum that you write analyzing your midterm. 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 (60 points)

The exam will be an in-class final exam. It will be closed book, like the bar exam. The exam will likely consist of some combination of multiple-choice, short answer, and essay questions. The subject matter will include both materials from the assigned readings and material discussed in class. If you miss a class for whatever reason, get notes from a friend or acquaintance.

C. Extra Credit Projects (5 points)

There are two options to obtain extra credit: First, you can get up to three (3) extra credit points by answering all of the *C&L* questions for each assigned Part correctly (regardless of how many times you re-do the exercise).

Second, you can complete an optional poster project, worth up to 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 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 12 waiver, or an overview topic, e.g., discovery practice. 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, participation, and other course requirements.

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.

Why? 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.*

Studies have shown that using laptops to take notes “impairs” and is “detrimental” to learning:

The present research suggests that even when laptops are used solely to take notes, they may still be impairing learning because their use results in shallower processing. In three studies, we found that students who took notes on laptops performed worse on conceptual questions than students who

took notes longhand. We show that whereas taking more notes can be beneficial, laptop note takers' tendency to transcribe lectures verbatim rather than processing information and reframing it in their own words is detrimental to learning.

Mueller et al., *The Pen Is Mightier Than the Keyboard: Advantages of Longhand Over Laptop Note Taking*, PSYCHOLOGICAL SCIENCE 1 (May 22, 2014).

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

If I'm 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 holding regular office hours on Wednesdays 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. COURSE ASSIGNMENTS & EXPECTATIONS

Please note:

- 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, please come talk to me.

V. COURSE OUTLINE, PART I

A. An Overview of Procedure (Chapter 1)

1. Introduction, Jurisdiction & Service of Process, Lawyer's Responsibility [Tuesday, 1/14]
 - Text 1-18
 - a. *Hawkins*
 - b. *28 USC 1331, 1332*
 - c. *Bridges*
 - d. *Rule 11(b)*
2. Introduction to Pleadings, Parties, Discovery [Thursday, 1/16]
 - Text 18-37
 - a. *Bell*
 - b. *Fisher*
 - c. *Gordon*
3. Introduction to Summary Judgment, Trial, Former Adjudication & Appeals [Tuesday, 1/21]
 - Text 37-56
 - a. *Houchens*
 - b. *Norton*
 - c. *Ison v. Thomas*

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).

d. *E.H.Reise v. Board of Regents*

4. Catch-up & Review [Thursday, 1/23]
 - Complete Chapter Review Questions, Text 56-60
 - Complete C&L Basic Skills & Fundamentals Questions
 - Prepare for an in-class quiz

B. Pleading (Chapter 6)

1. The Story of Pleading [Tuesday, 1/28]
 - Fed. R. Civ. P. 7, 8(a)(e), 10, 12(b)(6)
 - Text 361-381
 - a. *Haddle*
2. Federal Notice Pleading I—Sorting [Thursday, 1/30]
 - Fed. R. Civ. P. 8
 - Text 381-403
 - a. *Iqbal*
 - a. *Swanson* on TWEN

Week in Review

- C&L Unit 5, Part 1
 - C&L Unit 5, Part 2
3. Federal Notice Pleading II – Special Cases [Tuesday, 2/4]
 - Fed. R. Civ. P. 9
 - Text 397-408
 - a. *Stradford*
 - b. *Jones*
 4. Legal Ethics of Pleading [Thursday, 2/6]
 1. Fed. R. Civ. P. 11
 2. Text 408-421
 - a. *Walker*
 - b. *Christian*

Week in Review

- C&L Unit 5, Part 2
 - C&L Unit 5, Part 5
5. Motion Practice [Tuesday, 2/11]
 - Fed. R. Civ. 12
 - Text 421-427

6. The Answer & Reply [Thursday, 2/13]

- Fed. R. Civ. P. 8(b)-(d), 12
- Text 427-437
 - a. *Zielinski*

Week in Review

- C&L Unit 5, Part 3

7. Amendment of Pleadings [Tuesday, 2/18]

- Fed. R. Civ. P. 15(a)-(b)
- Text 437-444
 - a. *Beeck*

8. Relation Back of New Claims & Parties & Assessment Questions [Thursday, 2/20]

- Fed. R. Civ. P. 15(c)
- Text 444-454
 - a. *Moore*
 - b. *Bonerb*
 - c. *Krupski on TWEN*

Week in Review

- C&L Unit 5, Part 4

C. Discovery (Chapter 7)

1. Modern Discovery, Duty to Preserve & The Stages of Discovery, Part I [Tuesday, 2/25]

- Fed. R. Civ. P. 16, 26
- Text 455-468
- *Zubulake*

2. The Stages of Discovery, Part II [Thursday, 2/27]

- Fed. R. Civ. P. 30, 33, 35-36
- Text 468-478

Week in Review

- C&L Unit 7

Outline continued in "Syllabus, Part II" posted to TWEN

VI. IMPORTANT DATES

- 1L Formative Assessment Week -- Monday, March 2 – Friday, March 6
- Reading Day, April 27, 2020
- Final Exam, April 28, 2020, 8:15 A.M. To 11:15 A.M.

VII. LEARNING OBJECTIVES

At the end of this course, students who do the work will be able to identify the different stages of litigation, place the issues presented in an appropriate chronological context, and analyze accordingly.

Following study of pleadings, students will be able to apply the relevant rules and case law to analyze the types, sufficiency, and timing of pleadings; defenses; amendments; and the certification requirements for all documents filed with the court.

Following study of the discovery process, students will be able to identify both formal and information discovery devices. Applying relevant rules and case law, students will be able to analyze the scope of mandatory disclosures, expert disclosures, relevancy, and proportionality. Students will be able to identify and analyze the protections against disclosure found in the attorney-client privilege and work product doctrine. Students will understand what constitutes sanctionable discovery misconduct and the sanctions available.

Following study of pre-trial adjudication, students will be able to identify the basic types of alternative means of dispute resolution and understand the basic contours of the law relating to binding arbitration. For cases filed in the civil justice system, students will be able to determine when a defendant has defaulted and when voluntary and involuntary judgment are available. Applying relevant rules and case law, students will be able to analyze standards for entry of summary judgment and apply those standards to varying fact patterns.

Following study of the trier and trial, students will be able to identify when there is a right to trial by jury and what questions are decided by the jury. Applying the relevant rules and case law, students will be able to analyze issues relating to choosing a jury, including when prospective jurors may be stricken and when those strikes may be challenged. Students will be able to analyze whether a challenge to the presiding judge is possible.

For the post-trial phase of litigation, students will understand and be able to apply the legal standards for motions for a new trial and motions for judgment as a matter of law. Students will also be able to understand the basic rules governing appeal, including the final judgment rule, and interlocutory exceptions, as well as the scope of appellate review for decisions made by judge and jury.

VIII. FINAL NOTES

CLASS RECORDING POLICY: 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.