Civil Procedure I  
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Office Hours: Wednesdays 12:00-1 p.m. and by appointment

Required Casebooks: Marcus, Redish, Sherman & Pfander, CIVIL PROCEDURE: A MODERN APPROACH (Thomson/West, 5th ed. 2009); Levine, CIVIL PROCEDURE IN CALIFORNIA (West, 2012 ed.). I will distribute a case supplement electronically as well.

Recommended Hornbooks: There are many fine supplemental hornbooks on civil procedure. The basic single volume works are by (1) Friedenthal, Kane & Miller; (2) James, Hazard & Leubsdorf; (3) Glannon; (4) Teply & Witten; (5) Dodson; and (6) Shreve & Raven-Hansen. There are also very comprehensive, multivolume works by (1) Moore and (2) Wright, Miller, et al, which are valuable for in-depth research later in your legal careers. I recommend that initially you use one or more of these books in the library if you feel the need for further explanation of a particular point that is covered in the reading or class discussion. If you find one of these treatises helpful on a regular basis, then you may want to purchase your own copy of one of the shorter works. (Note, however, that the discussion in certain areas may be outdated due to recent case law and/or statutory or rule changes.)

In addition, there is a book with in-depth examinations of several of the cases we will read in this course that some might find informative: Clermont (ed.), Civil Procedure Stories (2d ed. 2008). Finally, there are many other commercial materials available in the bookstore, but I make no recommendations. In that realm, caveat emptor.

Class Attendance: Hastings' academic regulations (and the American Bar Association accreditation rules) require regular and punctual attendance. Even more importantly, the learning process in law school demands it. Although I cannot expect everyone's attendance to be perfect, I will watch for instances of regular or prolonged absences and I will enforce the regulations as necessary. If you are having trouble with attendance, please come see me early in the semester to discuss the problem.

Class Participation: In law school as in law practice, thorough preparation is the key to successful performance. Whether or not you happen to be called upon, you will find it difficult to follow the discussion each day unless you are well prepared. Therefore, I expect everyone to be prepared to participate fully in the discussion every day. Because I realize that rare, unforeseeable events can occur which absolutely prevent you from being prepared, you may give me a note before class requesting that I
not call on you. There is no need to state a reason and no penalty for using this privilege. However, if this privilege is used more than once during the semester, I will expect you to come to see me, as it may indicate that you are having chronic problems in studying or budgeting your time.

Class participation includes full mental participation. Therefore, do not surf the web, answer e-mail, communicate with each other, etc, during class. It affects your concentration, is distracting to those who can see your screen and is rude to your professor.

Class Starting Time: Class will start promptly. Students should be in their seats with their computers already booted before class starts so that fellow students will not be disrupted by late arrivals. Cell phones should be turned off or set to vibrate only.

Course Objectives:

- Recognize pleadings meeting the code and notice pleading requirements.
- Discuss the discovery devices, including limitations on their use.
- Explain the right to trial by jury, including rules regarding jury composition.
- Discuss role of judge and jury in U.S. legal system.
- Examine dispositive motions: demurrer/dismiss, summary judgment, judgment as a matter of law.
- Recognize jurisdictional limits on courts.
- Apply the Rules of Decision Act (Erie).
- Discuss the right to appeal.
- Discuss ethical requirements associated with filing pleadings and memoranda, conducting discovery, and protecting privileges.
- Synthesize course concepts through interaction and discussion with other students and the professor.
- Analyze facts in hypothetical problems and apply the applicable rules of procedure to demonstrate proficiency in legal analytical skills.

Courtroom Observations: Virtually every level of state and federal court can be found within a short distance of UC Hastings. Observing hearings in court will enable you to see how the rules of procedure work in practice and how they affect what lawyers do. During the semester, you must attend at least one civil law and motion session (also called “writs and receivers”) at a trial court and one appellate hearing at either state or federal court. You should stay at least one hour on each visit. It is especially beneficial to stay until the end of a session, because often it is possible to speak to the attorneys, and sometimes the judge, at that time.

You can find out what is going on in the courts on any given day by looking at The Recorder or the Daily Journal, the local legal newspapers, which are available in the library or by looking at the respective courts’ on-line calendars. The reference desk in the library also keeps information on upcoming appellate hearings. Courttime, available through the Hastings web site, features calendar information and sometimes highlights notable cases in the local courts. (My Hastings web pages also contain links to many courts and their calendars: http://www.uchastings.edu/faculty-
You will need to plan ahead to attend appellate hearings, which are held only periodically; you should have little trouble finding law and motion and trial sessions in state and federal courts on almost any day of the week.

San Francisco Superior Court (for civil matters) is located at 400 McAllister St. (Superior courts are located in all counties in California, should you wish to go near your home.) The California Court of Appeal and the California Supreme Court both hold oral arguments periodically at their headquarters at 350 McAllister St., in addition to several other locations in the state. The United States District Court for the Northern District of California (trials and civil law and motion) sits daily at 450 Golden Gate Avenue, as well in downtown Oakland and San Jose. The U.S. Court of Appeals for the Ninth Circuit hears oral arguments periodically at its headquarters building on the corner of 7th and Mission Streets, as well as in several other cities throughout the Western United States. When going to court, take ID, but minimize whatever else you take, such as computers, etc. Some courts will not allow you to bring electronics into the courtrooms.

After each court visit, you are to turn in a one or two page typewritten memorandum concerning your visit. Please deliver a hard copy, which you have stapled together if necessary. One memorandum is due in hard copy on or before October 5, 2012; the second is due by November 2, 2012. You should space your visits out accordingly, because your understanding of the process will grow as we cover more material. The heading of your memorandum should include your name, the name of the court (and judges) you visited, and the date you visited the court. In the body of your memorandum, describe briefly what you observed and what you learned from the visit about how civil procedure affects the way courts function. I want factual information that generally identifies the proceedings you observed, describes what happened, and explains the insights about procedure you obtained from the trip to court. I am particularly interested in how well you think that the attorneys and judges carried out their respective roles. Try to talk to attorneys or judges after their work is completed.

The second report should offer some comparisons with your earlier visit. In the heading of the second paper, please repeat the name of the court you visited previously as well as the date of that visit. I will review these memoranda on a pass/fail basis.

Grading and Exams: At about the halfway point in the semester, we will have an ungraded practice examination. There will be a graded final exam given in December. You will be able to bring your Levine 2012 rulebook to the examinations. Old examinations are available in electronic form through the library and through my page on the Hastings web site. Note that the format of the exams may differ from the old examinations. This will all be discussed in class closer to the times for the examinations.

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2 Calendars for the Northern District judges can be found at: [http://www.cand.uscourts.gov/cand/calendar.nsf/Calendars/OpenView](http://www.cand.uscourts.gov/cand/calendar.nsf/Calendars/OpenView)

You may write anything you please directly in the copy of the Levine rulebook you intend to bring to the examinations, but it is not permissible to use white-out to "create" more space for notes. You may not attach or paste in any additional papers to the pamphlet. If anyone is at all uncertain about what any of these rules mean, please ask me for a clarification.

This assignment sheet will advise you generally of the material we will be covering over the semester. It also lists more specifically what we will cover in our first weeks together. I will announce at the end of each class what I expect to cover the next time. As we reach the end of this specific set of assignments, I will provide another assignment sheet for the remainder of the semester.

"M" refers to Marcus, Redish and Sherman; "L" refers to Levine. In certain assignments, I have indicated that you should also read specified Federal Rules of Civil Procedure ("FRCP") or sections of the California Code of Civil Procedure ("CCP"). These items are also contained in Levine. “Supp.” refers to the supplemental materials.

**Chapter I: Choosing a System of Procedure**

(1) M 1-16

**Chapter III: Describing and Defining the Dispute**

(2) M 114-24; *Jones v. Clinton* Complaint (Supp. 1-6)
(3) L 643-52; CCP §§ 425.10, 430.10; L 555-62
(4) M 125-132; FRCP 7, 8, 12(e) & (f); L 177 (Form 11)
(5) M 133-37; FRCP 8 (d)
(6) M 137-51; FRCP 11; 28 U.S.C. § 1927
(7) M 151-58; FRCP 12 (b)(6)
(8) M 158-59, FRCP 9(b)
(9) M 174-78; *Ashcroft v Iqbal* (Supp. 7-17)
(10) M 198-200; FRCP 12 (a), (b), (g), (h)
(11) M 207-08; FRCP 8 (b); *Jones v. Clinton* Answer (Supp. 18-22); L 566-67
(12) M 211-15, FRCP 8(b)
(13) *Krupski v. Costa Crociere* (Supp. 65-75); FRCP 15

**Chapter V: Obtaining Information for Trial**

(14) M 343-68; FRCP 26, 30-36, 45; L 570-77
(15) M 377-87; FRCP 34
(16) L 652-59; FRCP 35; CCP §§ 2017.220; 2032.020; 2032.220; 2032.310; 2032.320; 2032.510; 2032.530
(17) M 387-408; FRCP 26 (b)(3); *Hickman* Story (Supp. 23-26)
(18) M 409-19; FRCP 26 (a)(2), 26 (b)(4); M 419-20
(19) *Jones v. Clinton* Sanctions opinion (Supp. 27-41); FRCP 37
Chapter VII: Judicial Supervision of Pretrial and Promotion of Settlement

(20) M 471-76; FRCP 16

Chapter VI: Adjudication Before Trial: Summary Judgment

(21) M 430-34; FRCP 56
(22) Adickes v. S.H. Kress & Co. (Supp. 42-49)
(23) M 440-50

Chapter VIII: Trial

(24) M 523-33; FRCP 38, 39; L 214 (Amend. VII, US Const.)
(25) L 725-30; L 278 (art. I, § 16 Cal Const)
(26) M 590-91; FRCP 48; M 591-94; FRCP 47
(27) L 730-39
(28) People v. Garcia (Supp. 50-57)
(29) M 594-623; FRCP 50
(30) M 632-48; FRCP 59, 60
(31) Anderson v. City of Bessemer City (Supp. 58-64); FRCP 52(a)

Depending on the time remaining, we will cover topics from the following chapters:

Chapter XII: Appeal

Chapter XIII: Preclusive Effect of Judgments

We will also cover some materials from the following chapters, but most coverage is reserved for Civil Procedure II:

Chapter IV: Establishing the Structure and Size of the Dispute

Chapter IX: Choosing the Forum: Geographical Location

Chapter X: Choosing the Forum: State v. Federal Court

Chapter XI: Choosing the Law to be Applied in Federal Court