CIVIL PROCEDURE
Section 1
FALL 2000 SEMESTER

MEETING ROOM: 132
MEETING TIMES: 8:00 to 8:50 A.M., Monday, Tuesday, Wednesday, and Thursday

PROFESSOR: LARRY CATÁ BACKER
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FINAL EXAM: Saturday, December 9, 2000; 8:30 A.M.

COURSE INFORMATION

REQUIRED BOOKS:


RECOMMENDED BOOKS:

While the following books need not be purchased, they may serve as useful references or provide materials for review. Note that the Glannon book will be most helpful for the second half of the course.

1. GLANNON, CIVIL PROCEDURE: EXAMPLES AND EXPLANATIONS (Little, Brown, 3rd ed. 1998) (note that the first edition, printed in 1987, and the second, published in 1992, contain much outdated law) (this book will be especially useful in the classes on jurisdiction); and

READING ASSIGNMENTS:

Reading assignments are set forth below in the syllabus. Reading assignments will also be announced from time to time in class. Additional readings and problems may be added or substituted throughout the semester. Please bring Text, FRCP and any supplemental readings with you to each class.

Understand that there is no guarantee that we will be able to cover in class all material assigned for that class session throughout the semester. Anticipate, therefore, that there may be occasions when you will have read ahead. Do not panic; do not become irritated; do not conclude that there is something amiss; humor me and assume that there is a reason for the pacing of the course. If in doubt, please be sure to see me.

Please keep in mind that you will be responsible for all assigned readings whether or not discussed in class. You will also be responsible for all materials covered in class, whether or not included in your reading materials.

In reviewing the Federal Rules of Civil Procedure, you will be expected to have read the appropriate commentary, as well as the current proposed amendment, if any, to the rule you are reviewing. Understand that Civil Procedure is a rules intensive course; I will expect you to develop some facility with the rules we cover, at least by the end of the semester. You should plan to spend a considerable amount of time becoming comfortable with the rules themselves, and not merely with what the cases say about the rules.

While this course will concentrate on federal procedural rules, you may also wish to review applicable Pennsylvania rules. Pennsylvania’s civil procedure rules may be found in PENNSYLVANIA RULES OF COURT (West, rev. ed. 2000). Local rules for the county courts of central Pennsylvania may be found in PENNSYLVANIA LOCAL COURT RULES (CENTRAL REGION) (West 2000). The rules of the United States District Court for the Eastern, Central and Western Districts of Pennsylvania may also be of interest. These can be found in PENNSYLVANIA RULES OF COURT (FEDERAL) (West, rev. ed. 2000). The local appellate rules of the U.S. Court of Appeals for the Third Circuit may also be found in this book. Multiple copies of these books may be found in the reserve section of the Library.

GRADING

The course grade will be based on a THREE HOUR final examination. The examination will be limited open book. You will be allowed to bring into the exam only the "Required Books" listed on page 1, in which you are free to write whatever notes you are able to squeeze onto the pages of your texts. Please take note now that you will NOT be permitted to glue, attach or otherwise append any materials to the books you may bring to the
exam. For example -- your outlines, typewritten and reduced, may not be glued to the back pages of the text. IF IN DOUBT CHECK WITH ME FIRST.

Your final examination is currently scheduled for Saturday, December 9, 2000 at 8:30 A.M. in a room to be announced. I will advise you of any changes.

ATTENDANCE AND CLASS PARTICIPATION

Law School rules require me to notify students of my attendance policy. First year and introductory classes provide the basis for your legal education. It is important for you to attend class. Also, I remind you that material not in your readings and for which you will be responsible will likely be covered in class from time to time during the course of class discussion (and may find its way into the final exam).

Class attendance is required. Starting August 23, 2000, you will be required to sign in at each class session.

Failure to attend class is not cost free: One point will be deducted from your final grade for each absence in excess of four. There will be no distinction made between excused and unexcused absences. The four “cost free” absences should be sufficient to cover all imaginable circumstances which might arise. I understand, though, that the unimaginable may, in fact, occur. If extreme circumstances do arise, please notify me, and we will discuss whether an accommodation is appropriate.

Class Meeting Time and Makeups. Class meets four times a week, Monday through Thursday from 8:00 A.M through 8:50 A.M.. Should make up classes become necessary I will give you as much warning as possible.

Class participation is required. All students are expected to be prepared for each class session (that is, to have carefully read the material assigned). It is my policy to call on students at random. However, at the end of each class session, I may designate one or more students to act as discussion leaders for the next class session, with primary responsibility for the materials to be covered that day. Please come see me before class if you are unprepared and you want to be excused from participation (please have a very good reason ready). Otherwise, your failure to participate on two separate class days will be treated as the equivalent of an absence from class. Please note: participation does not mean having the “right” answers to the questions we discuss. Participation requires only that you have read and thought about the materials to be discussed and that you are prepared to discuss them.
Seating is assigned. To make seat selection somewhat less arbitrary, the seat you choose on Tuesday August 22, 2000 will be your assigned seat. I will circulate a seating chart on Tuesday for you to fill in.

Class Notes and Tape Recording. Please feel free to get together with your classmates for studying and sharing notes. It is sometimes efficient. Take as many notes as you like. . . NO TAPE RECORDING OF CLASS. Sorry.

A word on my approach to class. This is not primarily a lecture course. I hope to begin to teach you not only the substantive rules of civil procedure, but also how to think like a lawyer, and how to argue and defend a position before your peers (just like you'll have to do in court or at a meeting). To that end, the bulk of each class session will consist of discussion. You should expect to be challenged, even when you are right!; understand that one of my goals for this year is to teach you how to defend your answers, and persuasively present your analysis, even under aggressive questioning. Don't take it personally. Aggressively testing your ideas and answers to questions (as well as the level of your preparation) doesn't mean that I don't respect you. Understand that you may not always have the right answer. There may not be a right answer. Moreover, if you had the right answer to all the questions, there would be no need for you to attend class!

It may be helpful for you, as the semester progresses, to ask yourself often the following two questions as the basis of your review: (1) what substantive rules am I learning, and (2) how are these rules related to those I have already learned.

CONFERENCES

I maintain an open door policy. I encourage you to see if me should you have any questions or concerns. Please feel free to contact me by e-mail if you like. I will respond promptly.
SYLLABUS

For those who want to plan ahead, I provide the following syllabus. Where the cases or TEXT make references to the Federal Rules of Civil Procedure, you will be expected to have looked at the referenced rules as well as the relevant rule commentary, whether or not I list them in this syllabus.

I An Introduction to Civil Procedure

1. Introduction to Course, Law as Theatre, TEXT 1-17.

II. Remedies and Stakes

5. Provisional Relief; Maintaining the Status Quo, Equitable and Declaratory Relief, Damages, TEXT 99-139 (Practice Exercises 2-4, optional).
6. Attorney’s Fees and the Economics of Relief, Assessing the Value of Legal Services, Contingency Fee, TEXT 139-165 (Practice Exercise 5, optional).

III. Thinking Like a Trial Lawyer, Pleadings and Simple Joinder

9. Complaints (Practice Exercise 8, TEXT 207-238; Practice Exercise 7 optional).
11. Answers, motions and Affirmative Defenses (TEXT 244-259; Practice Exercise 9 optional).
12. Amendments (Practice Exercise 10; TEXT 260-274).
15. Simple Joinder, Counterclaims and Cross-Claims (TEXT 315-328; Practice Exercise 12).
16. Third-Party Practice (TEXT 328-336; Practice Exercise 13).

IV. Discovery
17. The Role of Discovery, Discovery Techniques (TEXT 337-356; Practice Exercise 14 optional).
18. Zealous Advocacy and Ethical Considerations, Adversariness in Discovery (TEXT 362-399; Practice Exercise 15).
20. Practice Exercise 16 (TEXT 414-418).

V. The Right to a Jury Trial and Judicial Control of Results
21. Values and Historical Background (TEXT 419-434).
22. Right to Jury Trial (TEXT 434-447; Practice Exercise 17-18, optional).
27. Dismissals, Directed Verdicts, Judgments NOV; New Trial Motions (TEXT 502-530; Practice Exercise 20).
28. Motion to Vacate Judgment, Instructions, Types of Verdicts, Bifurcation, Remittitur and Additur (TEXT 530-547; Practice Exercise 21-22, optional).
29. Closing Arguments (TEXT 547-553; Practice Exercise 23-24, optional).
30. Appeals and Review (TEXT 553-559).

VI. Questioning and Taming the Current System
31. Thinking About the Adversary System, Is there a Litigation Crisis (TEXT 561-589).
32. Alternative Dispute Resolution (TEXT 589-614).

VII. The Choice of An Appropriate Court: Personal Jurisdiction, Notice and Venue
34. Introduction to Personal Jurisdiction and Traditional Conceptions (TEXT 643-661).
35. Modern Conception (TEXT 661-673).
37-38. Burger King Corp. and Asahi (TEXT 695-724; Practice Exercise 27-28).
40. Jurisdiction Based Solely on Personal Service, General Jurisdiction, Consent (TEXT 741-774; Practice Exercise 29, optional).

VIII. The Choice of An Appropriate Court: Subject Matter Jurisdiction and Removal
42. Introduction to Subject Matter Jurisdiction (TEXT 795-804).
43. Supplemental Jurisdiction (TEXT 804-829; Practice Exercise 30-31).
44. Removal (TEXT 829-836).

IX. Choice of Federal or State Law – The Erie v. Tompkins Problem
45. The Rise of the Modern Doctrine (TEXT 837-851).
47. Walker, Gasperini (TEXT 867-881; Practice Exercise 32).

X. Finality and Preclusion
50. Issue Preclusion (TEXT 911-925).
51. The Counterweights to Finality (TEXT 925-941; Practice Exercise 33, optional).

XI. Complexity

52. Necessary and Indispensable Parties (TEXT 945-963).
53. Interpleader, Class Actions (TEXT 964-989; Practice Exercise 34 optional).
55. Practice Exercise (TEXT 1026-1027).