CIVIL PROCEDURE -- SPRING 2012

Course Information and Tentative Syllabus

Dean Larry Dessem

I. Classes. Our class will meet on Monday and Wednesday from 10:00 to 10:50 in Room 4. Our first class will be on Wednesday January 18, and our last class of the semester will be on Wednesday April 25.

II. Office Hours. I welcome your questions, and I encourage you to raise those questions during our class periods so that your colleagues can benefit from both the questions and my responses. If I'm not in my office in Room 203, my assistant, Ms. Judy Tayloe, will know when I can meet with you. I'd also be happy to talk with you before or after class so that we can schedule a mutually convenient time to talk. My office telephone number is 882-3246, my home telephone number is 256-6825, and my email is DessemRL@missouri.edu.

III. Disability Accommodations. If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share with me, or if you need to make arrangements in case the building must be evacuated, please let me know as soon as possible. If disability-related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please register with the Office of Disability Services (http://disabilityservices.missouri.edu), S5 Memorial Union, 882-4696, and then notify me of your eligibility for reasonable accommodations. The Office of Disability Services is the campus office responsible for reviewing documentation provided by students requesting academic accommodations and for accommodations planning in cooperation with students and instructors, as needed and consistent with course requirements. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

IV. Intellectual Pluralism. The Law School welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this course may address concerns to either myself or the University’s Director of the Office of Student Rights and Responsibilities (http:osrr.missouri.edu). All students will have the opportunity to submit an anonymous evaluation of both this course and the instructor at the end of the course.

V. Attendance and Participation. I consider class attendance and participation to be extremely important and believe that not only your success, but the success or failure of our class, will depend, in part, upon the preparation and participation of each student in the class. For this reason, I expect any student who will not be present in class, or who will not be prepared to participate, to present me with the motion for extension of time with which you will be separately provided. I also reserve the right to impose upon students who, without a valid excuse, do not attend class or are not prepared to participate all other sanctions permitted by the School of Law.
VI. Class Preparation. I will expect that each student has carefully read all of the day's assigned text material and has come to class prepared to discuss both that material and any problems or exercises contained in that material. In reading the text, you should check out citations to rules and statutes highlighted in the textual material. These questions and problems will often provide the basis for class discussion, and you may be asked to provide and explain your answer to the class. Please be sure to bring both your text and the Rules supplement with you to each class.

I highly recommend that each of you "brief" each case that you are assigned to read. The particular format of case briefing that you use is not as significant as your diligence in actually briefing the cases. The purpose of case briefing should be to organize your study and sensitize you to the facts of each case, as well as to the procedural posture and issues presented by each case. Your study of civil procedure also will be helped if you consider the procedural posture of the cases that you study in your other first-year courses. The great bulk of the cases that you study in your first year are appellate decisions, and it should help sharpen your understanding of civil procedure to consider just how each particular case reached the appellate courts in the posture that it did.

VII. Texts. Our texts will be Stephen Yeazell, Civil Procedure (7th ed. 2008) and the 2011 supplement to that text—both of which were assigned in Civil Procedure I.

In addition to these major texts, you may find it helpful to consult other civil procedure reference works during the course of the semester. These books are on reserve at the Law Library.

Glannon, Civil Procedure: Examples and Explanations (6th ed. 2008). This paperback contains short discussions of much of the material covered in the Yeazell text, as well as hypothetical questions and explanatory answers. Although the majority of the book deals with topics covered in Civil Procedure I, you may find it helpful to consult Glannon on such Civil Procedure II topics as motions to dismiss and for summary judgment, directed verdicts, joinder, and discovery. The final portion of the book consists of the discussion of a hypothetical civil case, which is used to show "the Rules [of Civil Procedure] in Action."

Glannon, The Glannon Guide to Civil Procedure (2d ed. 2009). In contrast to Glannon’s Civil Procedure: Examples and Explanations, this paperback’s focus on teaching civil procedure is through multiple-choice, rather than essay, questions. As with Glannon’s other volume, the majority of this text covers material discussed in Civil Procedure I, although relevant portions of the text involving Civil Procedure II material may be useful—especially with respect to most effectively responding to multiple-choice questions.

Erichson, Inside Civil Procedure: What Matters and Why (2009). This succinct paperback hornbook addresses major topics in civil procedure through standard text, “sidebars,” “frequently asked questions,” and chapter summaries and uses diagrams to illustrate specific civil
procedure concepts.

Friendedtal, Kane & Miller, Civil Procedure (4th ed. 2005). This is one of the better, and most exhaustive, one-volume civil procedure treatises. It achieves a nice balance between the theoretical and practical and contains many case citations.

James, Hazard & Leubsdorf, Civil Procedure (5th ed. 2001). This civil procedure treatise tends to focus more on theoretical aspects of civil procedure than on the day-to-day, more routine, problems that the civil practitioner may encounter. For instance, while the book devotes little space to the nuts and bolts of class actions, much attention is given to the historic background of procedure and there is a separate chapter concerning "social and economic aspects of civil litigation."

Shreve & Raven-Hansen, Understanding Civil Procedure (4th ed. 2009). This recent civil procedure treatise does a good job of comprehensively covering its subject matter in a single and clearly written volume.

Wright & Kane, Law of Federal Courts (7th ed. 2011). The focus of this well established one-volume treatise is on the Federal Rules of Civil Procedure, which makes it particularly useful for the second semester of civil procedure.

Wright & Miller, Federal Practice and Procedure. This is the most extensive civil procedure authority, and I highly recommend it for any in-depth research in the area of either civil procedure or federal courts. It is particularly good concerning the Federal Rules of Civil Procedure. This multi-volume treatise can be searched as a full text or browsed as an electronic book in Westlaw’s FPP database.

Moore, Moore's Federal Practice. This is the other major multi-volume civil procedure treatise. While it may not be as helpful or exhaustive as Wright & Miller, in certain areas, such as the finer points of federal jurisdiction, it can be quite useful. This treatise can be searched as a full text or browsed as an electronic book within Lexis (by going from the main Lexis screen to Legal/Area of Law - By Topic/Litigation/Treatises & Analytical Materials/Matthew Bender(R)/Moore’s Federal Practice - Civil).

In addition to the above treatises, there are several West "Nutshell" books on library reserve that deal with civil procedure. These are much abridged versions of a full length treatise, but some students find them helpful in organizing and studying a course. Kane, Civil Procedure in a Nutshell (6th ed. 2007) contains a general overview of civil procedure (similar to the much more extensive treatment contained in the same author's Civil Procedure hornbook), while Currie, Federal Jurisdiction in a Nutshell (4th ed. 1999) is addressed to the jurisdictional aspects of civil procedure that are covered in the first semester. Finally, Dessem, Pretrial Litigation in a Nutshell (5th ed. 2011) discusses much of the material (particularly concerning the Federal Rules of Civil Procedure) that we will study this semester in Civil Procedure II.
Extensive amendments to the Federal Rules of Civil Procedure concerning electronic discovery became effective on December 1, 2006, as did amendments to Rules 26 and 56 concerning expert witnesses and summary judgment on December 1, 2010. Texts published before these dates do not address these new Rules.

While there are several commercial civil procedure outlines which attempt to organize and summarize the basic civil procedure course, I strongly recommend that you compile your own outlines (either by yourself or in a study group). Read the assigned text for each day and attempt to solve any problems or questions on your own before resorting to any supplemental texts. The final examination will be based exclusively upon the material discussed in class and in your texts and will not presuppose outside research or knowledge of any material beyond the basic texts or our classes.

VIII. Grading. Your grade in this class will be based upon (1) a series of weekly quizzes and (b) a final examination. At the beginning of each Monday class (starting on January 23), a quiz may be given at the first part of the class hour. The single multiple-choice questions that will be asked will be worth two points each. There will be ten questions asked over the course of the semester, but only a maximum of 16 points can be earned based upon these quizzes. These quizzes will cover only material from the previous week's classes, and your combined point total on these quizzes will count for approximately 15% of your total grade in this course (with the remainder of your grade being determined by the final examination).

The final examination will contain both essay and multiple-choice questions. These questions may relate to any of the material covered in the course this semester.

In computing your final grade, I will add the total number of points that each student has earned on his or her quizzes and final examination and then assign a grade based upon the Law School's grading scale.

The School of Law's Honor Code applies to all work done in this course. If you have any questions about this, please see me.

IX. Suggestions. I am interested in constructive criticism concerning this course, and I hope that you will share your thoughts with me as the semester progresses. If you have not understood a particular point, chances are that other students could profit from further explanation.
The following is a tentative course syllabus for Civil Procedure II. While there undoubtedly will be changes in the specific day-to-day classes, I will attempt to stay as close to this syllabus as circumstances permit. All page references are to Stephen Yeazell, *Civil Procedure* (7th ed. 2008) and presuppose study and discussion of the corresponding material in the 2011 Yeazell supplement.

### Week Coverage

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<th>Week</th>
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<td>Jan 16</td>
<td><strong>Class Actions.</strong> Pages 798-821. At our first class meeting on January 18, we will begin a discussion of class actions. Be sure to read for the class on the 18th not only page 788 - 811 in the text, but the text of Rule 23 carefully during your class preparation. We also will have an anticipatory make-up class from 10:30 to 11:20 on Friday, January 20 in Room 4, for which class please read pages 811 - 821.</td>
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<td>Jan. 23</td>
<td><strong>Class Actions.</strong> Pages 821-846. The week will begin with our first quiz of the semester on January 23 (based on material from the prior week). We will continue our discussion of class actions, considering the constitutional limitations on class actions, jurisdictional issues posed by such actions, and class action settlements.</td>
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<td>Jan. 30</td>
<td><strong>Class Actions; Discovery; Summary Judgment.</strong> Pages 415-426; 526-540. Rather than meeting at our regular Monday time, we will meet on Tuesday, January 31, from 11:30 to 12:30 in Room 4 (during your regular Criminal Law class period). During this class we will have a guest speaker for our final class on class actions and their settlement. In our Wednesday class, we’ll begin our consideration of discovery and, in particular, relevance and the duty to preserve evidence. There will be a required class for all first-year students on summary judgment at noon on February 3 in Room 7. For this combined class, please read text pages 526-540 and Rule 56 of the Federal Rules of Civil Procedure.</td>
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<td>Feb. 6</td>
<td><strong>Discovery.</strong> Pages 426-449. We will continue our discussion of discovery this week, considering the different discovery methods, working through the stages of pretrial discovery, and discussing privilege and work-product protection.</td>
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Discovery. Pages 449-463; Supplement pages 445-457. Our classes this week will focus on expert witnesses, privacy within the discovery process, electronic discovery. We also will discuss portions of Chapter VIII (Resolution without Trial), including a consideration of defaults and default judgments, and appellate and involuntary dismissals. In preparation for drafting your own appellate briefs, there will be the first of two additional classes on appeals this week. On February 23 at 1:00 in Room 7, there will be a class concerning appeals for all civil procedure students; Please read pages 625-643 for this class. You also are to complete with a partner the computer discovery game that will be handed out in class and turn in your results sheet by our class on Wednesday, February 29.

Judicial Management of Litigation; The Trier and the Trial; Appeals. Pages 540-560; 625-655. At our regular classes this week we will look at judicial management of litigation and begin a discussion of the role of the judge and the jury in the trial court. An additional class for all Civil Procedure II students concerning exceptions to the final judgment rule will be taught by Professor Esbeck at noon on March 2 in Room 7, before which class you should read pages 644-655 in the text, Federal Rules of Civil Procedure 23(f) & 65(a) and (b), Federal Rules of Appellate Procedure 5 and 21, and 28 U.S.C. "1292(a) & (b) and 1651. Students are to turn in their computer discovery exercise sheets by our class on Wednesday, February 29.

The Trier and the Trial. Pages 579-597; Supplement pages 471-486. This week we will continue our consideration of the civil trial and the judge or jury that tries the civil action. In particular, we will discuss the method of selection of civil jurors and how potential jurors and the trial judge can be challenged by counsel.
March 5

March 12  The Trier and the Trial. Pages 598-617. This week we will continue our discussion of jury selection and consider both the means by which judges can constitutionally control juries and the possibility of new trials.

March 19  The Trier and the Trial. Pages 617-623. We will conclude Chapter 9's treatment of civil trials with a consideration of the 7th amendment’s reexamination clause and efforts to impeach a jury verdict due to jury misconduct.

March 26  Have a good Spring Break!

April 2

April 9

Respect for Judgments. Pages 688-702; Supplement pages 489-497. We will continue and conclude our discussion of claim preclusion and begin our discussion of issue preclusion.

April 16  Respect for Judgments. Pages 702-717. We will continue and conclude our discussion of issue preclusion, considering non-mutual collateral estoppel and the impact of collateral estoppel in litigation involving more than two civil actions.
April 23  Respect for Judgments. Pages 722-729. We will conclude our semester with a consideration of the impact of full faith and credit upon the doctrine of respect for judgments.