Civil Procedure II  
Law 6213 – Section 13  
Spring 2019

SYLLABUS

Professor: Jonathan R. Siegel  
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Office Hours: Mondays and Wednesdays, 3:00 - 4:00 pm.

Class Schedule: Mondays, Tuesdays, and Wednesdays, 11:00 - 11:55 am. Classes will begin promptly at the appointed time.

Required Texts:  
1. Friedenthal, Miller, Sexton & Hershkoff, CIVIL PROCEDURE (12th ed.)  
2. Friedenthal, et al., 2018-2019 CIVIL PROCEDURE SUPPLEMENT (but see note under “Reading Assignments,” below)  
3. Supplementary Materials (get from the Records Office or my website)

Assignments: An initial list of reading assignments is attached. You should read each assignment before the class in which the assigned material is discussed, think carefully about the reading, and be prepared to participate in class discussion. The assignment numbers do not correspond to class periods; you will know which assignment you should be on from announcements made during class. However, if at the end of a class we have made substantial progress on the reading assigned so far and no announcement is made, read the next assignment. For the first class, please read assignment 1 (that’s “1”, not “I”).

Requirements: The requirements for all students are: read the assignments in a timely fashion, attend class, participate in class discussion, and take the final exam. Grades will be based primarily on the exam, with classroom participation also considered. Students who are persistently and excessively absent will not receive a positive class participation adjustment and may receive a negative class participation adjustment or a grade of No Credit. Occasional, isolated absences do not directly affect a student’s grade; students should not seek approval for such absences.

Taping of Classes: All requests regarding class taping must be made through the Office of Student Affairs. Students should not ask me about taping of classes. I will not approve taping if the Student Affairs Office has denied it. I will not approve taping if the Student Affairs Office has referred a student to the professor for permission. I will usually approve taping when the Student Affairs Office has determined that the taping request falls within the Law School’s class taping policy. Taping of classes by students is not permitted. I am always happy...
during my office hours or by other appointment to discuss any topics a
student may have missed.

Class Participation: Students will be called on at random during class. Volunteer participation is
also encouraged. Students should be prepared to participate each day.

Electronic Devices: All cell phones and other devices that might make noise must be turned off
(or otherwise set so as not to make noise) during class. The “vibrate” setting
is allowed. Computers that sound music or make other noise on start-up may
not be started once class has begun. Students whose devices violate this rule
may be asked to leave the classroom.

The use of computers to take notes in class is permitted. Students should, however, be aware that studies suggest that taking notes by hand promotes better learning and that students who take notes by computer should particularly avoid attempting to transcribe the class. See Susan Dynarski, Laptops Are Great. But Not During a Lecture or a Meeting, N.Y. Times, Nov. 22, 2017, and studies cited therein.

The use of computers for any other purposes during class, such as playing games, surfing the Internet, or reading or sending messages, is distracting to other students and is therefore prohibited. Students are on their honor to comply with this rule.

The use of electronic means to transmit answers to students being asked questions during class is prohibited. Violation of this rule constitutes academic dishonesty.

The use of computers in taking the final examination is strongly encouraged. Students who choose to handwrite their exams are cautioned that words that are not readily legible may be disregarded.

Communication: I sometimes send important messages relating to the course to students by e-mail. This may occur before the first day of class. Students are responsible for checking their official GW e-mail accounts (the one with an address ending in @law.gwu.edu) daily throughout the term.

Examination: The examination will be open book. It may contain a mixture of essay and multiple choice questions.

Student Names: During the first week of class, I will ask students what they would like to be called. Until then, I will call on students using their official, registered names. Students who would like to be called on by a different name may notify me in advance by e-mail.
Learning Outcomes: A student who completes this course should have knowledge and understanding of the American system of civil procedure. The student should understand the steps in a lawsuit, particularly including discovery, pre-trial motions (particularly the motions to dismiss for failure to state a claim upon which relief can be granted and for summary judgment), the right to jury trial, post-verdict and post-judgment motions, appeal, and the preclusive effect of judgments. The student should understand the rules relating to these topics, the doctrines and policies that underlie the rules, and strategic considerations that arise when these topics come up in actual practice.

READING ASSIGNMENTS -- Part 1

Assignments are given by page number in the Casebook and by reference to the matter to be read in the Supplement.

Make sure you have the Twelfth Edition of the casebook; earlier editions will not do. A used copy is fine.

The 2018-2019 Supplement to the casebook, which contains the Federal Rules of Civil Procedure and relevant statutes from Title 28 of the U.S. Code, is listed above as a required text. If you would like to economize, you could get by with a different version of the rules and statutes, but you should realize that the differing page numbers will cause some inconvenience to you.

In general, when the assigned reading refers to a statute or a rule from the Federal Rules of Civil Procedure, you should also read that statute or rule. Usually, this is indicated in the assignments below, but you should do it even if it is not so indicated.

Further reading assignments will be distributed as the term progresses.

Abbreviations used below:

FMSH Friedenthal, Miller, Sexton & Hershkoff, CIVIL PROCEDURE (12th ed.)
SM Supplementary Materials
F.R. Federal Rule(s) of Civil Procedure

I. Discovery

Scope of Discovery

1. Read this syllabus, particularly the initial material that precedes the reading assignments. The syllabus contains important information you will need to know throughout the semester.
   FMSH 40 (last ¶) - 45 (1st ¶)
   F.R. 1, 26, particularly F.R. 26(b)(1), (b)(2), (c)

2. FMSH 845-846, 851 (last ¶) - 862
   F.R. 26, particularly F.R. 26(b)(1), (b)(2), (c) (read it again!)
Mechanics of Discovery and Disclosure

3. FMSH 862-877
   F.R. 26(a)(1), 26(d), 26(f), 28(a), 29-31, 33, 45(a).
   Note: In this assignment, the rules are really more important than the cases. Be sure to read
   the rules. In reading Rules 29-31, note particularly Rules 30(a)(1), 30(b)(1), 30(b)(3), 30(b)(6),
   30(c); skim the rest. Read all of Rule 33.

4. FMSH 877-890
   FMSH 846-851
   F.R. 26(e), 27(a), 34-36
   Note: Again, the rules are the most important part of the assignment.

Protected Materials

5. FMSH 891 - 902 (1st ¶)
   F.R. 26(b)(3)

6. FMSH 902-912

Experts; Use of Discovery

7. F.R. 26(a)(2); (b)(4); FMSH 912-914
   F.R. 32, 33(c), 36(b); FMSH 927-931; SM 1

Sanctions

8. F.R. 26(g), 37; FMSH 914-926

II. Case Management

9. F.R. 16
   FMSH 933-953

III. The Applicable Law

10. 28 U.S.C. § 1652
    FMSH 403-415 (1st ¶)
    (Although the main case in this assignment is Erie, pay attention also to Swift v. Tyson)

11. FMSH 415-429
    F.R. 3; U.S. Const. amend VII

12. FMSH 429-441 (1st ¶)
    F.R. 4(e); 28 U.S.C. § 2072; U.S. Const. art. VI
13. FMSH 441-453 (to end of note 3 following Stewart)
   (Pay attention to the note case of Burlington Northern v. Woods)

14. FMSH 462-475
   F.R. 23(a), (b)
   SM 2
   FMSH 475-480 plus the following notes on 480-484: 1-4, 8, 9