CIVIL PROCEDURE II SEC. 001 SYLLABUS

Professor Andrew Pardieck
Fall 2016, SIU Law 535-3, Sec. 001
Mon/Wed/Fri 9:00 am to 9:50 am, Rm. 102

I. COURSE INTRODUCTION

This three-hour course continues the first semester’s introduction to civil litigation. After discussing the basics of pleadings, discovery, and dispute resolution in Civil Procedure I, we turn here to topics including jurisdiction, venue, joinder, and preclusion. Where can you file a lawsuit? What claims can or must you join in the suit? What parties can or must you join? When is a claim or issue precluded because it was or could have been raised earlier? As set out in more detail below, the goals for this course are that all leave with a basic conceptual understanding of how the federal courts answer these questions. While the focus will be on the federal courts, we will look at other jurisdictions, primarily Illinois, to provide a point of comparison. We will also look at the tools used, including pleadings and motion practice, in resolving these issues.

II. COURSE MATERIALS

A. Required Texts

1. S. YEAZELL, CIVIL PROCEDURE (9th edition)\(^1\);
2. Student Packet, available on TWEN.

B. Optional But Strongly Recommended

1. S. YEAZELL, FEDERAL RULES OF CIVIL PROCEDURE WITH SELECTED STATUTES (most recent version);

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\(^1\) For those who used the 8th Edition in Civil Procedure I, you may choose to do the same in Civil Procedure II to avoid the expense of purchasing another text. Excerpts of the new cases are posted on TWEN and page numbers are included for both editions in the syllabus.
2. **Illinois Court Rules and Procedure, Vol. I (most recent version).**

The rules and statutes contained in the above volumes are available online from various sources. You are not required to purchase statutory supplements for that reason. I do, however, strongly recommend that you use a printed compilation of the rules and statutes that we will study this semester. 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 this 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);

D. **TWEN**

The TWEN site for this course contains required reading, including a current copy of the syllabus, additional writing instructions, and supplementary materials for this course. The PowerPoint slides used in class will also be posted periodically throughout the semester.

III. **Grades**

Grades are based on a final exam, worth up to 70 points; other written work product, worth up to 20 points; and classroom attendance & participation, worth up to 10 points. In addition, you may complete an optional, extra-credit project worth up to five (5) ‘bonus’ points.

A. **Attendance & Participation (10 points)**
It is incumbent upon you to read the material, come to class well prepared, and participate. Every student who does so will receive all ten (10) attendance & participation points; those who do not will receive fewer or no points. For the purposes of the participation grade, I will take illness or other work commitments explained in advance into consideration.

Students who attend but are not prepared for class and have not provided a valid reason in advance will be counted absent. Similarly, students who attend, but come in late will be counted absent.

With regard to absences, this course adheres to SIU Law’s attendance policy: attendance is required in all classes. If you accumulate more than nine (9) class 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 and participation, as well as other course requirements. See also the Disability Statement infra.

B. Written Work Product (20 points)

There will be two different types of writing exercises this semester. The first, worth up to five (5) points, will include concept-mapping or briefing exercises assigned periodically throughout the semester.

The second requires you to prepare a motion that is worth up to fifteen (15) points. Factual and procedural information will be distributed after we have covered the relevant legal material. Additional research--beyond reviewing the cases in the textbook--will be required in order to properly complete the assignment.
Further instructions for both writing exercises will be posted to TWEN and provided in class.

C. The Exam (70 points)

The exam will be an in-class, closed-book, final exam, in which you will be permitted to use a Federal and Illinois Rules excerpt provided to you by the exam proctor. Use of any other materials during the exam will be prohibited.

The exam itself will likely consist of some combination of multiple choice, short answer, and essay questions. The subject matter will include both material from the assigned readings and material discussed in class. If you have to miss a class for whatever reason, get notes from a friend or acquaintance.

D. Extra Credit Project

You may complete an optional, extra credit project worth up to five (5) bonus points. For this project you may work in groups of up to four (4) students. The object is to develop and present a creative or artistic means of understanding a difficult concept covered in this course.

You may explain these concepts using whatever medium you want. The assignment is bounded only by your creativity and the dictates of common courtesy. The due date for your final project will be the end of the semester.

Your colleagues will assist in anonymously scoring the creative value of the presentations. I will consider this class input in conjunction with evaluating the substantive merit in assigning a grade to the project.

Additional instructions for the project will be posted to TWEN and provided in class.

E. Grading
This course follows SIU Law’s grading policy. It will be graded on a curve, and, of necessity, subject to mandatory medians.

F. Laptop Policy

Laptops are not banned in this class. But I encourage you to consider bringing your text, printed supplements, a pen and paper to class—and leaving the laptop at home. In April of 2016, the Wall Street Journal reported on the latest, of many studies, demonstrating that students who take handwritten notes generally 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.* Those who write their notes longhand think more intensely about the material, in part, because writing is slower and forces one to choose what is important. *Id.*

IV. CONTACT INFORMATION & OFFICE HOURS

If I am 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 will also have regular office hours on Mondays from 2 p.m. to 4 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. LEARNING OBJECTIVES

At the end of this course, students who do the work will be able to identify issues relating to personal jurisdiction, distinguishing between general and specific jurisdiction; subject matter jurisdiction; service of process; waiver and contractual issues; and venue. Students will be able to identify basic choice of laws issues, distinguishing between cases applying state and federal law. Students will be able to identify issues relating to *res judicata*, distinguishing between claim and issue
preclusion, and, finally, identify the joinder issues that determine who the appropriate parties to the litigation are. For each of the issues identified, students will be able to set out the correct legal standard, analyze varied fact patterns, and apply the law to those facts.

VI. NOTES ON COURSE ASSIGNMENTS

- The readings vary in length.
- We will not always cover one unit per class.
- If you have questions about what to read for the next class, ask.
- Understanding the material will require reading the assignments more than once.
- If you are struggling with the material, come talk to me. This is the start of a journey and getting lost along the way is common.
- Finding your way will take work. The traditional wisdom is that preparing for each hour of class requires *three hours* of preparation outside of class. ABA standards establish minimums incorporating *two hours* of out-of-class work per week for fifteen weeks.²

- *The assignment for the first class* is to read and be prepared to discuss the material found on pp. 63-79 of the 9th edition, or pp. 59-76 of the 8th Edition, and Supplement pp. 1-4.

VII. COURSE OUTLINE & ASSIGNMENTS

A. OVERVIEW

1. Approaching Civil Procedure & Constitutional Limits in Litigation
   - *8th Edition* Text, pp. 59-64
   - *9th Edition* Text, pp. 63-68

B. PERSONAL JURISDICTION (CHAPTER 2)

² 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). If we assume two hours, you should plan on spending nine hours working on civil procedure each week (3 x 2 hours of preparation + 3 classroom hours).
1. **The History & Origins of the Personal Jurisdiction Doctrine**  
   14th Amendment  
   8th Edition Text, pp. 65-76  
   9th Edition Text, pp. 69-79  
   *Pennoyer v. Neff*  
   Supp. 1-4, including Problem Set #1

2. **The Modern Constitutional Formulation of Power**  
   Fed. R. 4(k); 735 ILCS 5/2-209  
   8th Edition Text, pp. 79-89  
   9th Edition Text, pp. 80-89  
   *International Shoe Co. v. Washington*  
   Supp. 4-5

3. **The Modern Constitutional Formulation of Power & In Rem Jurisdiction**  
   8th Edition Text, pp. 89-103  
   9th Edition Text, pp. 89-102  
   *Hanson v. Denkla*  
   *Shaffer v. Heitner*  
   Supp. 5-6, including Problem Set #2

4. **Specific Jurisdiction: The Modern Cases**  
   8th Edition Text, pp. 103-112  
   *Add Burger King Corp. v. Rudzewicz excerpt*  
   9th Edition Text, pp. 103-114  
   *World-Wide Volkswagen v. Woodson*  
   Supp. 6-7, Problem Set #3

5. **Specific Jurisdiction: The Modern Cases, cont’d**  
   8th Edition Text, pp. 124-131  
   *Add Abdouch v. Lopez excerpt*  
   9th Edition Text, pp. 114-132  
   *J. McIntyre, Ltd. v. Nicastro*  
   *Abdouch v. Lopez*

6. **General Jurisdiction**  
   735 ILCS 5/§2-209(b)
8th Edition Text, pp. 132-138
- Add Daimler v. Bauman Excerpt on TWEN
9th Edition Text, pp. 132-143
Goodyear Dunlop Tires Operations, S.A. v. Brown
Daimler v. Bauman

7. The Service of Process Rule & The Mechanics of Waiver
735 ILCS 5/2-201 & 2-301
Fed.R.Civ.P. 12(b),(g),(h); 735 ILCS 5/2-301
8th Edition Text, pp. 139-147; 76-79
9th Edition Text, pp. 143-154
Burnham v. Superior Court
Supp. pp. 27-29
Notes of The Mechanics of Challenging Jurisdiction
Note on Protective Orders against Service of Process

8. Waiver By Contract (Consent)
8th Edition Text, pp. 148-154
9th Edition Text, pp. 154-159
Carnival Cruise Lines v. Shute
Supp. 29-39
Dace Intern., Inc. v. Apple Computer, Inc.
Saba Software, Inc. v. Deere and Co.
Illinois Choice of Law & Forum Act

9. The Constitutional Requirement of Notice
Fed. R. Civ. P. 4
735 ILCS 5/§2-201-208
Il. S. Ct. R. 101-04
8th Edition Text, pp. 154-64
9th Edition Text, pp. 160-175
Mullane v. Central Hanover Bank & Trust Co.
Supp. 39-44
Problem Set #6
Problem Set #7
Musgavero v. Kenzler

10. Self Imposed Restraints on Jurisdiction: Long-Arm Statutes & Venue
28 U.S.C. § 1390-1391
C. SUBJECT MATTER JURISDICTION (CHAPTER 3)

1. **Federal Question Jurisdiction**
   28 USC § 1331

   U.S. Const. Art. III, sec. 1 & 2

   8th Edition Text, pp. 191-206

   9th Edition Text, pp. 205-220

   *Louisville & Nashville RR v. Mottley*

   Supp. 59

2. **Diversity Jurisdiction**
   28 USC § 1332(a)-(c)

   8th Edition Text, pp. 207-221

   9th Edition Text, pp. 220-234

   *Redner v. Sanders*

   *Hertz Corp. v. Friend*

3. **Supplemental Jurisdiction**
4. **Removal**

28 U.S.C. § 1441(a)-(c), 1446, 1447
U.S. Const. Art. III, sec. 1 & 2
8th Edition Text, pp. 229-238
9th Edition Text, pp. 242-251

*Caterpillar, Inc. v. Lewis*

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**D. STATE LAW IN FEDERAL COURTS (CHAPTER 4)**

1. **The Erie Problem**

28 U.S.C. § 1652
8th Edition Text, pp. 239-250
9th Edition Text, pp. 255-267

*Erie Railroad v. Tompkins*

2. **The Limits of State Power in Federal Courts/The Outcome Determination & Balancing Tests**

8th Edition Text, pp. 251-257
9th Edition Text, pp. 267-274

*Guaranty Trust Co. v. York*

*Byrd v. Blue Ridge Rural Electric Coop.*

3. **De-Constitutionalizing Erie/The Hanna Limitation on Erie**

28 U.S.C. §§ 2071-77
8th Edition Text, pp. 258-66
9th Edition Text, pp. 274-283

*Hanna v. Plumer*

Supp. 60-64


Problem Set #9

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**E. RESPECT FOR JUDGMENTS (CHAPTER 11)**

1. **Claim Preclusion: Same Cause of Action**

8th Edition Text, pp. 715-727
2. Claim Preclusion: Consistency, the Parties & Finality  
Fed. R. Civ. P. 13  
8th Edition Text, pp. 727-748  
9th Edition Text, pp. 727-744  
- Read introductory note but omit Searle Brothers v. Searle.  
Taylor v. Sturgell  
Gargallo v. Merrill Lynch, Pierce, Fenner & Smith  
Supp. 69-70, 74-81  
DeLuna v. Treister

3. Issue Preclusion: Same Issue; Litigated and Determined; Essential; Mutuality  
8th Edition Text, pp. 749-767  
9th Edition Text, pp. 744-765  
Illinois Central Gulf RR v. Parks  
Parklane Hosiery Co. v. Shore  
Supp. 81-86  
Kessinger v. Grefco, Inc.

4. Collateral Attack & Reopened Judgments  
U.S. Const. Art. IV  
28 USC 1738  
Fed. R. Civ. P. 60  
8th Edition Text, pp. 778-790  
9th Edition Text, pp. 767-779  
Durfee v. Duke  
United States v. Beggerly  
Supp. 88-89

F. JOINDER (CHAPTER 12)

Fed. R. Civ. P. 13, 18(a) & 42(b)  
28 USC 1367  
735 ILCS 5/2-405, 2-407, 2-608, 2-613, 2-614  
8th Edition Text, pp. 791-806
2. Joinder of Parties by Plaintiff
Fed. R. Civ. P. 20, 21
735 ILCS 5/2-404, 2-405, 2-407
8th Edition Text, pp. 806-812
9th Edition Text, pp. 799-804
Mosely v. General Motors Corp.
Supp. 92-94
Sommers v. Korona
Schwartz v. Swan

3. Third-Party Claims
Fed. R. Civ. P. 14
735 ILCS 5/2-406(b) & (c)
8th Edition Text, pp. 812-818
9th Edition Text, pp. 805-812
Price v. CTB, Inc.
Supp. 94-97
Laue v. Leifheit

4. Compulsory Joinder
Fed. R. Civ. P. 19
735 ILCS 5/2-404, 2-406
8th Edition Text, pp. 829-839
9th Edition Text, pp. 812-823
Temple v. Synthes Corp.
Helzberg’s Diamond Shops v. Valley West Des Moines
Shopping Center
Supp. 98-101
Consolidated Cable Utilities v. City of Aurora

5. Intervention & Interpleader
Fed. R. Civ. P. 22, 24
28 U.S.C. 1335, 1397, 2361
735 ILCS 5/2-408, 409
8th Edition Text, pp. 839-854
- Omit Paragon Molding Ltd. v. Safeco Insurance Co.
  Add Southern Farm Bureau Life Ins. Co. v. Davis
9th Edition Text, pp. 823-839
Natural Resources Defense Council v. United States
Nuclear Regulatory Commission
Martin v. Wilks
Supp. 101-104

6. Class Actions & the Constitution: Representative Adequacy & Personal Jurisdiction
28 U.S.C. 1332(d), 1453
8th Edition Text, pp. 859-873
9th Edition Text, pp. 840-853
Hansberry v. Lee
Phillips Petroleum v. Shutts

7. The Class Action and Federalism
Fed. R. Civ. P. 23
735 ILCS 5/2-801 thru 2-806
8th Edition Text, pp. 873-893
• Add Standard Fire Insur. Co. v. Knowles
9th Edition Text, pp. 853-878
Wal-Mart Stores, Inc. v. Dukes
Standard Fire Insur. Co. v. Knowles

8. Settlement of Class Actions
Fed. R. Civ. P. 23(e)
735 ILCS 5/2-806
8th Edition Text, pp. 894-909
9th Edition Text, pp. 878-894
Amchem Products Inc. v. Windsor
Supp. pp. 104-109
Notes on IL class actions

FINAL EXAM, DECEMBER 15, 2016, 1:15 P.M. TO 4:15 P.M.

VIII. FINAL NOTES

Make-Up Classes: Classes that meet on Mondays and Fridays must hold make-up classes (or require out-of-class assignments) for the Labor Day and Veterans Day holidays. Details regarding the make-up will be
announced in class.

**Class Recording Policy:** This class is not being recorded. 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.

**Disability Policy:** Disability Support Services provides 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://salukicares.siu.edu/index.html](http://salukicares.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 618-453-3135.

**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](http://www bert.siu.edu), Department of Safety’s website [www.dps.siu.edu](http://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.