CIVIL PROCEDURE II – SPRING 2010

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I. CLASS POLICIES

A. Attendance, preparation and professionalism:

Members of the legal profession, including law students, are held to the highest standard of professionalism. You should regard class attendance as you would a court appearance on behalf of a client. Thus, you should be punctual, well prepared, and ready to fully participate in class discussion.

Moreover, you will find that the study of law is a group endeavor, in which we all learn from each other. Lack of preparation, and/or the failure to participate when called on, is not only unprofessional, it reduces the value of classroom discussion for everyone.

In compliance with ABA regulations, the faculty has adopted the following attendance rule:

"Punctual and regular attendance in all classes is required. Failure to attend classes regularly and punctually shall result in the lowering of a student's grade or disqualification to take the examination for the class. Professors shall enforce attendance in all classes in a manner appropriate to the particular class."

In accordance with this policy, attendance at all class meetings is required. The policy will be implemented in this class by requiring all students to initial an attendance sheet at each class verifying their presence. When a student is unavoidably absent from class, he or she must review the class discussion, either by listening to a tape recording or by reviewing another student's notes, and must provide the professor with written confirmation of the manner in which he or she has completed the review (i.e. identify the particular notes or recording reviewed and when). You should note, however, that even such a review is not an entirely satisfactory substitute, and likely will reduce your understanding of the material.

Any student who misses three or more classes, and who fails thereafter to provide the professor with written confirmation of the manner in which he or she completed the review of what was covered in the classes that were missed, will have his or her final grade for the course lowered by a plus/minus factor (e.g., from "B" to "B-").
B. Participation

The participation of all class members contributes to everyone's understanding of the course material. Students should expect to be called on regularly in class to participate in discussions. Voluntary participation is equally important, and will be encouraged.

C. Grading

Throughout the semester, I will ask you to prepare and turn in a handful of written assignments designed to give you an experiential learning experience with some of the litigation skills and techniques we will be covering. I may also ask you to work in groups and prepare oral presentations as well (e.g., an in-class deposition exercise). The written assignments will be graded on a Satisfactory/Unsatisfactory basis. Unsatisfactory assignments will be returned and must be resubmitted in satisfactory form within one week. A student who fails to consistently turn in Satisfactory work may have his or her final grade for the course lowered by a plus-minus factor (e.g., from “B” to “B-”). Failure to turn in required assignments or satisfactory rewrites of those assignments may result in a reduction in the course grade of up to a full letter grade (e.g. from “B” to “C”).

Subject to the potential for a student’s final grade being reduced as set forth above and in the “Attendance” section, 100% of your final grade for this course will be determined by the final exam. The final exam will be three hours long and will cover the entire semester’s material for this course. The exam essays will be similar in format to those used on the California bar exam.

D. Office Hours

My office hours are Wednesdays from 4:30pm - 5:30pm. You also are welcome to make an appointment to meet with me at different time. My office is located at 536 Mission Street, Room 2346.

E. Course Website / TWEN Page

Students enrolled in this course will have access to the course website on TWEN, which is hosted by Westlaw. The on-line TWEN page contains this syllabus and will periodically be updated with class announcements, class discussion problems, in-class slides/handouts, and the like.

II. LEARNING OUTCOME GOALS

This is the second part of a two-semester course on Civil Procedure. Civil Procedure I addressed two major topics, the court’s authority to hear the particular dispute in question, and what law applies when a federal court presides over state law diversity actions. Civil Procedure II now takes the students through the mechanics of actually litigating the civil action once it is properly before the court, covering elements of pleading, joinder of parties and claims, discovery, functions of court and jury, verdicts, post-judgment motions, and appeal.
Civil Procedure II has the following objectives:

1. Develop student familiarity with the Federal Rules of Civil Procedure and related federal civil procedural litigation requirements as well as certain California procedures that vary from federal law through class discussion, problem analysis, assignments requiring preparation of pleadings discovery and a memorandum as well as the preparation for and the administration of a final exam;

2. Develop student proficiency in statutory interpretation of federal and California procedural laws;

3. Develop student proficiency in case opinion analysis including identify key components of a decision and the development of rules from multiple opinions;

4. Develop student proficiency in legal/factual analysis including identifying key facts, issue spotting and legal reasoning in problem analysis;

5. Develop student proficiency in writing skills and written legal analysis, including the above-mentioned pleading, discovery and memo drafting as well as writing an exam essays;

6. Developing student oral advocacy skills through oral participation in the classroom;

7. Become familiar with alternative dispute resolution techniques;

8. Become familiar with ethical requirements associated with filing pleadings and memoranda and conducting discovery and protecting privileges.

III. READING ASSIGNMENTS

There are three required texts for this class:

- Reading assignments indicated as “Friedenthal” refer to the hard-cover textbook, Friedenthal, Miller, Sexton & Hershkoff, Civil Procedure, Tenth Edition (West 2009).

- A handful of other specific reading assignments indicated as “Kane” refer to the paperback Kane & Levine, Civil Procedure in California (Thomson West 2008).

- Supplemental Course Reader (which you can pick up from Ben Mayr in the Faculty Center, 2nd Floor).

When you are assigned to read one of the Federal Rules of Civil Procedure, a statute in the United States Code, a portion of the United States Constitution or California Constitution, or a provision in the California Code of Civil Procedure or California Rules of Court, you can find those in the Kane paperback, or alternatively you can easily find them on-line.
We will move through the syllabus in the order indicated below. For each class, you should always plan on reading the next topic on the syllabus unless I instruct you otherwise.

A. Modern Pleading under the Federal Rules

1. Introduction
   Fed R. Civ. P. 1, 2, 8(a), 12(b)
   Friedenthal, 554-556; 558-567 (i.e., skip Cook)

2. Drafting a Complaint: Specificity
   Fed R. Civ. P. 8(d), 8(e)
   Forms 1, 2, 7, 10, 11 (Appendix of Forms starts at p. 168 of Kane)
   Friedenthal, 567-579
   Supplemental Course Reader, 1-33 (Complaint in Bell Atlantic v. Twombly [focus on ¶ 51]; Iqbal v. Ashcroft)

3. Drafting a Complaint: The Burden of Pleading and Production; Pleading Special Matters
   Fed. R. Civ. P. 9, 10
   Friedenthal, 584-594
   Kane, 622-631 (Committee on Children’s Television, Inc. v. General Foods Corp.)

* Written Assignment: Drafting a Complaint
   Read Supplemental Course Reader, 34-37 (Prince v. Downing simulated case – client’s story), then draft a Complaint on behalf of Ms. Prince

4. Responding to the Complaint
   Fed R. Civ. P. 7, 8(b), 8(c), 12
   Cal. Code Civ. Proc §§ 430.10 to 430.80
   Friedenthal, 602-612; 617-622

5. Amending the Pleadings; Voluntary Dismissals and Default Judgments
   Fed. R. Civ. P. 15, 41(a)-(b), 55
   Friedenthal, 623 (just the Section D intro); 630-634
   Supplemental Course Reader, 38-43 (Robinson v. Sappington and note on Rule 41 Dismissals and Rule 55 Default Judgments)

6. Rule 11: Deterring Frivolous Pleadings
   Fed. R. Civ. P. 11
   Friedenthal, 640-651
B. Joinder of Claims and Parties

1. Joinder of Claims by Plaintiffs; Counterclaims; Cross-Claims
   Fed. R. Civ. P. 18(a), 13(a)-(c) & (g)-(h)
   Review 28 U.S.C. § 1367 (Supplemental Jurisdiction statute)
   Friedenthal, 654-674

2. Joinder of Parties
   Fed. R. Civ. P. 19, 20
   Friedenthal, 678-685; 688-704

3. Third-Party Claims; Intervention
   Fed. R. Civ. P. 14(a)-(b), 24
   Friedenthal, 704-712; 733-740
   Kane, 670-678 (City & County of San Francisco v. State)

C. Class Actions

1. Introduction; Types of Class Actions
   Fed. R. Civ. P. 23
   Friedenthal, 741-767

2. Class Action Procedures; Due Process Considerations
   Fed. R. Civ. P. 23
   Friedenthal, 767-795

3. Settlement of Class Actions
   Fed. R. Civ. P. 23
   Friedenthal, 796-819

D. Pretrial Devices for Obtaining Information: Depositions & Discovery

1. The General Scope of Discovery; Mandatory Disclosures
   Fed. R. Civ. P. 26
   Friedenthal, 826-829; 848-853

2. Depositions, Interrogatories, Requests to Produce Documents, and Requests for Admissions
   Fed. R. Civ. P. 30, 33, 34, 36
   Friedenthal, 853-856; 861; 865-878; 885-888 (through end of page)
3. Developing a Theory of Your Case: Identifying Evidence to Pursue through Discovery

Supplemental Course Reader, 44-61 (“Theory Development Questioning—Pursuing Helpful Evidence” from *Lawyers as Counselors*)

* Written Assignment: Evidence to Pursue through Discovery in *Prince v. Downing*

In *Prince v. Downing*, identify what you believe to be the crucial contentions from your client's (i.e., Prince’s) perspective. Be sure to state each contention as a factual proposition, and not an abstract legal element. For one of your critical contentions, using the techniques described in the *Lawyers as Counselors* reading, create a list of additional potential evidence (i.e., potential events other than what you know about your case from your client’s story) tending to prove (or cut against) the contention.

4. Oral Deposition Techniques

Supplemental Course Reader, 62-68 (Moscato, *Depositions Nuts & Bolts*)

For class, in *Prince v. Downing*, be prepared to depose D&D's managing partner, Bob Downing, on each of the following topics using the T funnel technique described in the reading:

- Everything that occurred when Prince met with Downing to complain about harassment by Harrison.
- Everything that supports D&D's contention that Prince welcomed Harrison's conduct/advances.
- All the reasons why Prince was not hired by D&D as an associate.

5. Discovery Privileges and Immunities

Fed. R. Civ. P. 26(b)(3)
Friedenthal, 896-917

6. Judicial Supervision of Discovery; Case Management

Fed. R. Civ. P. 26(c), 37, 16
Friedenthal, 920-926; 931-939

E. Adjudication by Special Proceedings

1. Summary Judgment

Fed. R. Civ. P. 56
Friedenthal, 958-961; 970-987 (beginning with *Adickes* note at bottom of 970)

* Written Assignment: Draft a Motion for Summary Judgment in *Prince v. Downing*

[Specific assignment TBA]
2. **Judgment as a Matter of Law**  
Fed. R. Civ. P. 50  
Friedenthal, 1070-1091

3. **Motions for a New Trial**  
Fed. R. Civ. P. 59  
Friedenthal, 1119-1120 (stop before *Ginsberg* case); 1138-1141; 1144 to 1148

F. **Appellate Review**

1. **The Principle of Finality**  
Fed. R. Civ. P. 54(a)-(b)  
28 U.S.C. §§ 1291, 1292(a)-(b)  
Friedenthal, 1187-1191; 1194-1203

G. **The Binding Effect of Prior Decisions: Res Judicata and Collateral Estoppel**

1. **Claim and Defense Preclusion**  
Friedenthal, 1249-1263; 1267-1272

2. **Issue Preclusion; Persons Bound by Preclusion**  
Friedenthal, 1272-1289; 1305-1326

H. **Alternative Dispute Resolution**

1. **A Critique of Adversarial Justice; Intro to ADR Processes**  
Friedenthal, 1357-1370