**Law 200F, Section 1 -- Civil Procedure -- Fall 2012 -- Syllabus**

Professor David B. Oppenheimer

498 Simon Hall

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**Class Meeting Times:** 10:00-11:05, Tues, Wed, Thurs, Fri

Room 110

**Office Hours:** Tuesdays and Wednesdays 3:30-5:00 (or by appointment)

498 Simon Hall

**Required Books:**

Hazard, Tait, Fletcher & Bundy, Pleading & Procedure: State and Federal Cases and Materials (10th edition 2009) Foundation Press.

2012-13 Supplement to Hazard, Tait, Fletcher & Bundy.

Any 2012-13 edition of the Federal Rules of Civil Procedure.

Gerald Stern, The Buffalo Creek Disaster (Vintage). (There are several paperback editions, any of which are fine.)

You will also be assigned to view video recordings, as listed in this syllabus or announced in class.

**Recommended Reading:** The following books give a good picture of the litigation process.

A Civil Action

Jonathan Harr

Publisher: Vintage Press

ISBN-10: 0679772677; ISBN-13: 978-0679772675

Class Action: The Story of Lois Jenson and the Landmark Case That Changed Sexual Harassment Law

Clara Bingham& Laura Leedy Gansler

Publisher: Anchor

ISBN-10: 0385496133; ISBN-13: 978-0385496131

The Power of Procedure: The Litigation of Jones v. Clinton

Nan D. Hunter

Publisher: Aspen Publishers

ISBN-10: 073552825X; ISBN-13: 978-0735528253

**Assessment Criteria I:**

At the end of the semester, I encourage you to assess the success of this course by addressing the following questions.

1. Do you understand the core concepts of civil procedure in the following areas: personal jurisdiction, federal subject matter jurisdiction, theories of notice and fact pleading in state and federal court, joinder of parties and claims, pre-trial discovery, pre-trial and trial motions, right to civil jury, jury selection, post-trial motions, preclusion, choice of law in federal court adjudications of state law claims, and alternatives to civil litigation as a method of dispute resolution?

2. Can you read a newspaper article or professional journal article about a procedural dispute in a civil case, or a civil procedure law reform proposal, and understand: the basic dispute, the interest groups who will gain or lose from the outcome, the persuasiveness of the arguments of the parties, and the arguments which are missing from the article?

3. If you are asked in a summer job following your 1L year to conduct research on a civil procedure problem, by a lawyer who has reasonably good communications skills and a reasonably good understanding of civil procedure, will you be able to understand the assignment?

4. Have you experienced the beauty of the poetry embedded in the Federal Rules of Civil Procedure?

**Assessment Criteria II:**

I will assess your understanding of civil procedure by testing you on the core concepts of civil procedure, as set forth briefly above and more thoroughly below. I’ll test your knowledge and understanding through a mid-term examination (tentatively set for October 5), which will consist of 15 multiple choice questions and will count for 15% of your final grade; a final examination (tentatively set for December \_\_), with a multiple choice section which will consist of twenty-five questions which will count for 25% of your grade, and an essay question which will count for 50% of your grade. The last 10% of your grade will be determined by your successfully completing a brief paper describing a court visit, and by completing nine advocacy exercises, which will be graded “pass” (1 point) or “please re-write” (1 point if re-written, 0 points if not re-written), as more fully explained below.

**Assessment Criteria III:**

In assessing the success of this class, you may want to consider the recent research conducted here at Berkeley Law on the essential factors of lawyer effectiveness, in order to assess whether the skills you’re learning are likely to be useful in a legal career. Through a fascinating empirical study, which can be found at http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1353554, Shultz and Zedeck have identified 26 factors that contribute to effective lawyering. They are:

©Marjorie Shultz and Sheldon Zedeck

26 LAWYERING EFFECTIVENESS FACTORS

1. Analysis and Reasoning: Uses analytical skills, logic, and reasoning to approach problems and to formulate conclusions and advice.

2. Creativity/Innovation: Thinks “outside the box,” develops innovative approaches and solutions.

3. Problem Solving: Effectively identifies problems and derives appropriate solutions.

4. Practical Judgment: Determines effective and realistic approaches to problems.

5. Providing Advice & Counsel & Building Relationships with Clients: Able to develop relationships with clients that address client’s needs.

6. Fact Finding: Able to identify relevant facts and issues in case.

7. Researching the Law: Utilizes appropriate sources and strategies to identify issues and derive solutions.

8. Speaking: Orally communicates issues in an articulate manner consistent with issue and audience being addressed.

9. Writing: Writes clearly, efficiently and persuasively.

10. Listening: Accurately perceives what is being said both directly and subtly.

11. Influencing & Advocating: Persuades others of position and wins support.

12. Questioning & Interviewing: Obtains needed information from others to pursue issue/case.

13. Negotiation Skills: Resolves disputes to the satisfaction of all concerned.

14. Strategic Planning: Plans and strategizes to address present and future issues and goals.

15. Organizing and Managing (Own) Work: Generates well-organized methods and work products.

16. Organizing and Managing Others (Staff/Colleagues): Organizes and manages others’ work to accomplish goals.

17. Evaluation, Development, and Mentoring: Manages, trains and instructs others to realize their full potential.

18. Developing Relationships within the Legal Profession: Establish quality relationships with others to work toward goals.

19. Networking and Business Development: Develops productive business relationships and helps meet the unit’s financial goals.

20. Community Involvement and Service: Contributes legal skills to the community.

21. Integrity & Honesty: Has core values and beliefs; acts with integrity and honesty.

22. Stress Management: Effectively manages pressure or stress.

23. Passion & Engagement: Demonstrates interest in law for its own merits.

24. Diligence: Committed to and responsible in achieving goals and completing tasks.

25. Self-Development: Attends to and initiates self-development.

26. Able to See the World through the Eyes of Others: Understands positions, views, objectives, and goals of others.

**Expectations:**

The reading assignments for this course average just 15-20 pages a night. They require, however, very careful preparation. I know that life is filled with distractions, some of which we cannot avoid, and some of which we cannot resist. But if you’re not well prepared for class, you won’t really understand the material. If you are well prepared for class, it’s my responsibility to be sure that you do understand the material. I promise to do my best to fully meet that responsibility; I ask you to do the same.

**Advocacy exercises:**

These exercises will be designed to help you learn civil procedure by actually drafting parts of documents used in civil practice in federal courts. You will work in rotating teams of three, with each group assigned to one of our three teaching assistants. You will be assigned to complete partially drafted documents, based on templates and models drafted by me and Rebecca Schonberg (’12), Molly Leiwant (’13), Sam Wheeler (’13) and Gabriella Ahdoot (’14). All exercises will be graded on a pass/do-over basis. Advocacy exercises are due (subject to change) on:

1. August 28
2. September 4
3. September 11
4. September 18
5. September 25
6. October 17
7. October 24
8. October 31
9. November 6 (court visit report)
10. November 19

**Teaching Assistants:**

We will be assisted by three upper division law student teaching assistants. They are:

Molly Leiwant, [mleiwant@gmail.com](mailto:mleiwant@gmail.com)

Gabriella Ahoot, [gahoot@gmail.com](mailto:gahoot@gmail.com)

Sam Wheeler, [swheeler@berkeley.edu](mailto:swheeler@berkeley.edu)

Their primary responsibility is to help read the advocacy exercises, but they have all kindly agreed to be available by e-mail to answer questions and discuss the beauty of civil procedure with you. I am also available by e-mail, nearly anytime, at [doppenheimer@law.berkeley.edu](mailto:doppenheimer@law.berkeley.edu).

**Video Reviews/Previews:**

After most classes I will record a brief (2-5 minute) video recording in which I will review the lessons you should have taken away from that day’s class, and preview the material we’ll be discussing in our next class. They will be posted to B-Space, usually by Noon. This is a new experiment, which I hope will help give more structure to your study of civil procedure. We’ll see how it goes.

**Power Point ™ Slides**

In most classes I will be projecting Power Point ™ slides on the board. A version of the slides will be available before class on B-Space if you’d like to download them and follow along. The full slide show will be available after class, and may be useful for review purposes.

**Class cancelations and make-up classes:**

We meet every Tuesday, Wednesday, Thursday and Friday from August 22 – November 21, except for Wednesday, September 26 (Yom Kippur) and Friday, October 5 (mid-term exam). We will hold make-up classes at 10:00 am in our regular room (room 110) on Monday September 24, Monday October 15, and Monday November 19. I have cancelled our last class of the semester, which would have been on Tuesday, November 27. Thus, our final class will be held on Wednesday, November 21 (the day before Thanksgiving). See the list of reading assignments below for a virtual calendar.

Reading Assignments:

Week 1

1. Wednesday 8/22

Introduction – The Buffalo Creek Disaster as a roadmap to civil procedure.

The chronology of a civil lawsuit as the organizing principle for this course.

Read Casebook pp. 1-15 and begin reading “The Buffalo Creek Disaster.”

In class, we will observe and conduct the initial interview of Plaintiff Paula Patt.

2. Thursday 8/23

Introduction to the Federal Rules of Civil Procedure (“FRCP”)

Continue reading “The Buffalo Creek Disaster.”

Read FRCP Rules 1, 2 & 3.

3. Friday 8/24

Notice Pleading (also known as “Rule” Pleading) compared with Fact Pleading (also known as “Code” Pleading).

FRCP Rules 7 & 8

Casebook pp. 585-586, 606-617

Read the Claybrooks v. ABC complaint, available on B-Space.