

CIVIL PROCEDURE  
FALL 2012  
Professor Stephen Bundy

August 2012

**Introduction to the Course**

**Location and Schedule**

Room 110; MTuWTh 8:35-9:50

I will hold class on Rosh Hashanah, Monday September 17, but the class session will be videotaped for those who are observing the holiday.

Class on Yom Kippur, Wednesday September 26, will be canceled and made up on Friday, October 12 from 1:45-3, probably in our regular room 110.

The Academic Rules also require a scheduled make up for the class that would have occurred on Thanksgiving Day. That make up will be held on Friday October 26 from 1:45 to 3, again probably in our regular room 110.

There may be additional make up classes if unexpected cancelations occur.

All make up classes will be taped and posed to the course's bSpace site.

**Instructor Information**

Stephen Bundy  
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Office Hours: Wednesday 3:30-5 p.m.; Thursday 2-3 p.m.; or by appointment. There will be additional office hours scheduled during reading and exam period.

Assistant: Stephanie Dorton, Room 344; 643-2256

**Texts**

The assigned texts for this course are G. Hazard, C. Tait, W. Fletcher & S. Bundy, Pleading and Procedure: State and Federal (Foundation Press 10<sup>th</sup> ed. 2009) (referred to henceforward as "HTFB"), the 2012 Supplement thereto, and Kevin Clermont, Federal Rules of Civil Procedure (Foundation 2012). In addition to these materials, there will be various handouts, all of which will be posted to bSpace.

Further texts are not required, nor, for many people, are they necessary. Many find that they do just fine with some combination of the assigned materials, their class and reading notes, and judicious in and out of class questioning of the instructor.

Others want more. If you are one of them, there are lots of other texts that may be helpful. If you find one you really like, you may even want to buy it. But before buying seek advice from second and third year students and sample the wares to see which work for you. Many of these items are behind the loan desk at the library and can be sampled there for free.

There are several overview texts that some students have found helpful. I have no personal experience, but some swear by J. Glannon, Civil Procedure: Examples and Explanations, while others recommend G. Shreve and P. Raven-Hansen, Understanding Civil Procedure.

Two good hornbooks are J. Friedenthal, M. Kane & A. Miller, Civil Procedure and F. James, G. Hazard & J. Leubsdorf, Civil Procedure. Another classic hornbook that deals with many topics we will cover is C. Wright and M. Kane, Federal Courts. If you're a person for whom "too much ain't enough," the best multi-volume treatise is C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure. All are on reserve in the Library.

Most commercial outlines are capable overviews written by respected scholars and teachers. The dangers are two: (a) they get in the way of thinking through the material yourself (you can recite a rule but don't actually understand it) and (b) they may not reflect your professor's analysis, emphasis and interests (you can recite a rule but it differs in subtle ways from what will be tested). They also cover a lot more material than can be taught in five units of the first semester. Some find them useful, though, particularly as a way to make sure that they haven't missed or grossly misunderstood something important.

## **Course Requirements**

The course requirements consist of class attendance and participation and a graded final examination.

Assignments for the course will be posted to bSpace over the course of the semester. Initially they may sometimes run only a class or two ahead. Later they will come in larger chunks. At the end of the semester you will receive a syllabus that sets out all the material that we have covered.

Preparation is important. Most assignments for the course will be short, in the range of 15 pages, but they call for your close attention. In many parts of this course, federal constitutional provisions, statutes or rules are central. Accordingly, when a rule is assigned, you should read it all. You should always bring your rule book to class.

Class participation is expected. Volunteers are always welcome. But I will regularly call

on class members selected at random. Class participation cannot hurt or help your grade. But it will help to build your skills and confidence, and it makes the class experience richer for others.

The grade will be based on an in-house written examination, a typical law school production. The examination will be open book, in the following specific sense: you may have with you the assigned texts for the course, your own reading and class notes, and any outline or study aid that you prepared. All your notes or outlines must be in hard copy form. This is intended to rule out commercial outlines and horn books. You will also get to do a practice examination toward the end of October that will give you a sense of what the final examination will be like.

### **Coverage and Assignments**

We are going to cover the following topics in roughly this order.

- 1. Procedural Due Process: An Introduction**
- 2. Pleading: the Complaint and Answer; Amending the Pleadings**
- 3. Selecting a Court That Has Territorial Jurisdiction**
- 4. Selecting a Court That Has Subject Matter Jurisdiction**
- 5. Discovery and Case Management**
- 6. When Is Trial Required: Summary Judgment, Judgment as a Matter of Law and the Role of the Jury**
- 7. Preclusion**
- 8. Basic Joinder of Claims and Parties**
- 9. The Law Applied in Federal Courts: the doctrine of *Erie R.R. v. Tompkins***