

Civil Procedure I, Fall 2009
Syllabus
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Office Hours: Wednesday 2:00-4:00 or by appointment

About the course

Civil Procedure is about the rules and principles that govern dispute resolution. By learning these rules and principles, you begin the process of becoming legal insiders. You will acquire knowledge that non-lawyers lack, and for the most part do not want. But this knowledge will be essential to your ability to achieve substantive justice (or at least a chance at it) for your future clients.

In this course, you will learn the mechanics of how to start and maintain a civil lawsuit, as well as the tactics, doctrine and policy governing the mechanics. You will also learn how the United States Constitution polices the boundaries of procedural issues. This semester, we will focus on some of the constitutional issues, in particular how the Constitution dictates where a lawsuit can be brought, and what law will apply to the case. We will also study the complex matter of whether a lawsuit can be brought in American Indian tribal courts.

Required texts

- Yeazell, *Civil Procedure* (7th ed.)
- 2009 Federal Rules of Civil Procedure Supplement to Yeazell
- Federal Indian law supplement (to be posted on TWEN)
- Jonathan Harr, *A Civil Action* (1995)

Grading

Your grade will consist of two or three factors, depending on the outcome of your mid-term: (1) a mid-term paper (this grade will only count if it helps), (2) a final examination, and (3) in-class participation. I will probably hand out the mid-term assignment during the week of October 19 (exact date to be determined later). It will be a take home paper, but I will only give you a few days (two or three—t.b.a.) to complete it. If your mid-term grade is higher than your final, it will count for approximately 1/3 of your grade. The final exam will be three hours long and account for either approximately 2/3 or all of your grade. (Note that the fractions are approximate because in-class participation will also affect your grade.) The final will be “open book,” meaning you may consult any written materials you wish, with the exception of commercial outlines. To derive your final grade, I will also factor in class participation. (See Class Participation Policy for elaboration.)

Assignments: Unless I say otherwise, please assume that we will cover the next assignment in the next class. Almost every assignment will refer to rules and/or statutes in the Yeazell Rules Supplement. You are responsible for reading those rules, and I will not consider you prepared for class unless you have done so. For the Rules, it's important to read the Advisory Committee Notes (key parts are reprinted after each Rule), which give plain English explanations, examples, etc.

For each assignment, I have included questions for you to consider. **You are also responsible for all questions posed in the casebook and supplement.**

Overview: The following two assignments provide an overview of some of the subject matter that we will cover during the year. Read this material for general themes rather than minute detail.

- 1) Yeazell, 1-12; Rules Supplement xiii-xv: personal jurisdiction, subject matter jurisdiction, venue, service of process (Where?)

Who drafts the federal rules of procedure? What makes the federal rules of procedure different from congressional legislation?

What test does the court use to determine whether Mr. Creal was "domiciled" in Kansas? Which facts were most significant in determining that Mr. Creal was not a citizen of Kansas?

What can the plaintiffs do next? Consider note 3, p.9.

Why did the plaintiffs bother to file in federal court if jurisdiction was questionable? Why did the defendants bother to object? See note 4, p. 9.

- 2) Yeazell 13-25: pleadings (How?)

In *Bridges*, why didn't the judge impose a sanction under Rule 11? Should she have?

Is Rule 8, as interpreted in *Bell*, in tension with Rule 11 and *Bridges*?

Do problems 1 and 2 (all sub-parts) on p. 21.

Overview, Part 2, A Civil Action

- 3) *A Civil Action* (through "The Woodshed")

Skim through the current Rules governing discovery (Rules 26-37). How would application of these rules have changed some of the discovery disputes in *A Civil Action*?

What was the basis for Cheeseman's Motion for Summary Judgment?
See pages 134-141.

4) *A Civil Action* (through the end)

How important was procedure to determining the outcome of *Anderson v. Grace*? Did the rules of procedure facilitate the truth? Did they stand in the way of the truth? Is a trial, as structured by the rules, aimed at getting at the truth?

What do you think of the behavior of the lawyers involved? Were they ethical? Were they fair? Were they skillful? Would you describe them as "good lawyers?" What do you mean by that?

Personal Jurisdiction: constitutional limits (Where?)

5) Yeazell 55-71: *Pennoyer*

According to the Supreme Court, how should/could Mitchell have obtained personal jurisdiction over Neff? See note 2 on page 67.

What rules of personal jurisdiction did *Pennoyer* establish? Does anything strike you as questionable about those rules? See note 4 on pages 68-69.

Please do problems in note 6 on pages 69-70.

Is this decision "formalist" (meaning following predetermined rules) or one based on "practical reasoning" (meaning relying on overall considerations of fairness and practicality)? What are the advantages of a formalist opinion? What are the potential disadvantages? See note 8 on pages 71.

6) Yeazell 72-74: challenge & waiver

How do you object to personal jurisdiction under the federal rules?

What is a "special appearance"? Are you required to make a special appearance in federal court?

Please do problem 1, all sub-parts, on page 73.

7) Yeazell 74-82: *International Shoe*

What is the holding in *Milliken v Meyer*? Is it consistent with *Pennoyer*?

What result, applying the *Shoe* analysis to the facts of *Pennoyer*?

What is the difference between general and specific jurisdiction? Please consider the variations on *Shoe* in note 4, pages 81-82.

8) Yeazell 82-96: *McGee, Hanson; Shaffer*.

What justifies the different outcomes in the *McGee* and *Hanson*? In *McGee*, assume the Insurance Company had a claim against McGee for filing a false claim; could the Insurance Company have sued McGee in Texas? What other facts would you need to determine this?

What does *Hanson* add to the minimum contacts requirement? Could the Delaware trustee have refused to continue to manage Mrs. Donner's trust? Does that matter?

After *Shaffer*, what result on the facts of *Pennoyer*? What is left of the basic approach in *Pennoyer*? Is there still transient jurisdiction? Is the presence of property still relevant to jurisdiction? See notes 2 and 3 on page 93.

Did the *Shaffer* majority correctly apply the *Shoe* analysis? Or do you think Brennan's dissent was more apt?

Are the personal jurisdiction provisions of the Anti-Cybersquatting Act constitutional under *Shaffer*? Consider note 7 on pages 94-95.

9) Yeazell 96-105: *World-Wide Volkswagen*

Did the majority think it would have been inconvenient for the petitioners, WWVW and Seaway, to defend a case in Oklahoma? If not, why not subject them to jurisdiction there?

What if the car had been an airplane instead? How about a toaster? What if the accident had occurred in Pennsylvania?

Please think about the hypothetical in note 1.c. on p. 102-03.

10) Yeazell 105-111: *Asahi*

What is each Justice's view? See note 2 on pages 110. Is there a majority opinion? What should lower courts do?

Is White's view in *Asahi* consistent with his view in WWVW?

Please consider the variations in note 3 on page 110.

Please think about the hypothetical in note 4 on page 111.

11) Yeazell 111-122: *Burger King, Pavlovich*

What were the contacts that Rudz. had with Florida? What role did fairness analysis play?

Are the reasoning and result in *Burger King* consistent with *WWVW* ?

Is *Burger King* consistent with the reasoning and result in *Asahi*?

What about a consumer who borrows from a distant lender?

Can you distinguish *Pavlovich* from *Burger King*? What more was the majority looking for in *Pavlovich*? Is “express aiming” at a particular geographical jurisdiction a sensible requirement in the internet world? Why or why not?

12) Yeazell 122-139, Rules Supplement 519-521: General jurisdiction, Transient Jurisdiction, Consent

What is the test for asserting general jurisdiction over an out-of-state defendant? Does the test seem to be met in *Perkins*?

In *Burnham*, what is each Justice’s view?

After *Burnham*, is there personal jurisdiction in a state if the defendant is served while flying over it?

How does *Burnham* fit into the struggle over the meaning of *Pennoyer*?

Would the Court in *Carnival Cruise Lines* have found personal jurisdiction absent the contract clause? See note 1 on page 138.

Did the defendants in *Carnival Cruise Lines* get adequate notice? Did they knowingly “consent?”

What is the intended effect of each of the contractual clauses described in note 4 on page 139, and how does it differ from the preceding one?

13) Yeazell 140-154: Notice and Service of Process

Would *Mullane* have come out differently if the bank had not been sending regular mailings to the beneficiaries?

Why did the New York legislature (apparently) think that a statute providing such casual notice would be constitutional?

What fairness concerns are involved in the question of notice that are distinct from those involved with the question of personal jurisdiction?

14) Yeazell 154-173, Colorado Long-Arm Statute, C.R.S. 13-1-124 (on TWEN site): Sub-Constitutional Limits on Jurisdiction: Long Arm Statutes, Venue, Forum Non Conveniens,

Why might states choose to further limit the reach of their jurisdiction through the device of long-arm statutes? Why not just assert jurisdiction to the maximum extent permissible under the U.S. Constitution?

Does analysis under the Colorado long-arm statute differ substantially from constitutional analysis? How or how not?

Please do the problems in notes 1-4 on pages 159-60.

In *Dee-K Enterprises*, where would venue lie if there were only foreign defendants? Why does this change when Bakrie is joined with the other defendants?

What was the tactical thinking of the plaintiffs in *Piper*?

What are the tactical reasons to seek transfer of venue?

From a defendant's perspective, when is transfer of venue as good as dismissal for lack of personal jurisdiction followed by re-filing the suit?

Looking ahead: The topics we will cover the rest of the semester will include:

Subject matter jurisdiction

Jurisdiction in tribal courts

Choice of law in federal courts