OVERVIEW OF THE COURSE

In the **FALL** we will cover the procedural areas likely to arise in your other courses:

- **pleading** (how to state a claim or defense, and how to attack that statement);
- **summary judgment** (how to avoid trial, going outside the pleadings);
- **discovery** (procedure for obtaining information and shaping issues, helpful in understanding pleading and summary judgment);
- **trials** (including judgments as a matter of law [formerly "directed verdicts"] which raise issues very much like those raised by summary judgment).

Rulings on these procedural matters often raise issues of substantive law covered in your other courses.

In the **SPRING** we will cover:

- **jurisdiction** (what are the proper courts for this dispute and these parties);
- **joinder** (what claims and parties may be or must be combined in this dispute);
- **res judicata** or **claim preclusion** (what claims or defenses are lost if not asserted) and **collateral estoppel** or **issue preclusion** (when issues determined in one case are binding in another);

**Erie Railroad v. Tompkins,** (when federal courts should apply state law rather than federal law), matters for which the broader background you will have in your second semester of law study may be very helpful.

I suggest you read a secondary source as background. For each block of assigned material, the syllabus will suggest readings in two leading secondary authorities, F. James, G. Hazard & J. Leubsdorf, CIVIL PROCEDURE (5th Ed. 2001, Aspen)("James"), and J. Friedenthal, M. K. Kane, & A. Miller, CIVIL PROCEDURE (4th Ed. 2005, West Pub. Co.) ("Friedenthal"). Both are available at the reserve desk of the Law Library.

I also suggest you look at J. Glannon, CIVIL PROCEDURE, EXAMPLES & EXPLANATIONS (6th Ed. 2008, Aspen)("Glannon"), contains sample litigation documents and problems. THE GLANNON GUIDE TO CIVIL PROCEDURE (2003, Aspen)(“Glannon Guide”), outlines an area of civil procedure, asks questions, then explains the answer. Both are on reserve.

I do not take attendance or enforce the 20% rule, but I expect and recommend regular and well-prepared attendance. Of course you will miss some classes because of religious holidays, illness, etc. If you miss a class, please borrow someone’s notes, then bring me any questions you have.

I recommend volunteering in class. If you haven’t volunteered in the past week, please ask yourself, “Why not? This is a great opportunity to practice public speaking, a fundamental
lawyering skill. It is better to discover misconceptions in class rather on the exam.” But do not over do it. If you have already volunteered during this class meeting, please ask whether your point is of general use and interest. If so, raise the point in class. If not, ask me after class.

Your volunteering in class can help me and your classmates. If something is unclear to you, it is probably also unclear to many of your classmates, but I may not appreciate what is unclear to the class.

The final exam will be two hours of essay questions, but the total time for the questions will be one hour and thirty minutes.

I pledge that I will not discriminate on the basis of race, color, national origin, sex, age, disability, religion, sexual orientation, or veteran status. I expect that you will behave with professional decorum to your classmates and future brothers and sisters in the legal profession, and in accord with the Honor Code.

If you need accommodation for a disability, please contact me or Associate Dean Trujillo in our Dean’s Office or Cindy Donahue at Disability Services (303-492-5614, Donahuec@Colorado.EDU ).

OVERVIEW OF THE SUBJECT

What is "civil procedure?"

"Civil" may be contrasted with "criminal." Civil actions are normally begun by the person to be benefited, while criminal prosecutions are now normally brought by the government. Civil remedies emphasize making the wronged person whole, either by a judgment requiring payment of money damages or by an injunction directing the defendant to do or not to do something. Criminal remedies generally are punishments: fines, imprisonment, even execution. The rules of criminal procedure in such matters as burden of proof, discovery, and self-incrimination may be quite different from the civil procedure rules for such matters.

"Procedure" may be contrasted with "substance," "evidence and trial tactics," and "remedies." Substance provides the rules persons should follow outside court: perform your contracts, don't batter people, etc. Evidence and trial tactics govern what happens in court. Remedies are what you get as plaintiff, or avoid as defendant, if you prevail in court: a judgment for money damages or an injunction. Civil procedure is the law of how you get to court, how you raise or avoid legal and factual issues, how you preserve or change what happened there, and how that court's action affects other court actions.

A new version of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”) or – in this class – just “Rule”) took effect on December 1, 2007. The revisions were stated to be merely stylistic and to make no substantive changes, but any change in wording may change meaning. The textbook was revised to conform with the new rules, but many cases and secondary authorities you read will use the old rules.
INTRODUCTION

Please read pages 1-53 and 257-59 of Yeazell, CIVIL PROCEDURE (7th Ed. 2008) (“Casebook”). Similar background materials appear in Friedenthal, Chap. 1; Glannon, Chap. 30; James, Chap. 1.

PLEADING

Background

Friedenthal §§5.1 to 5.3, 5.7 to 5.10, 5.14 to 5.16 (plaintiff’s pleading), §§5.17 to 5.20 and §§ 5.22 to 5.25 (defendant's response), and §§5.26 to 5.28 (amending pleadings). Glannon, Chaps. 19 [maybe a little heavy on jurisdiction, which we'll cover next semester], 31, 33. Glannon Guide, Chaps 14, 15. James, §§3.1, 3.6 to 3.11, 3.13, (plaintiff’s pleading), §§4.1 to 4.5 (defendant's response), §§4.18 to 4.24 (amending pleadings).

Class Discussion


Consistency & Ethics, pp. 13-17, 356-57, Rules 8(e)(2), 11.
Specificity, pp. 17-20, 357-364
Special Rules, pp. 364-71, Rule 9
Allocating the Elements, pp. 370-75, Rule 8(c)
Ethics again, pp. 375-87
Responding to the Complaint, pp. 20-24, 387-402, Rules 8 & 12
Amendments, pp. 25, 402-14, Rule 15

DISCOVERY

Background

Friedenthal, Chap. 7. Glannon, Chap. 21, 22. Glannon Guide, Chaps 17, 18. James, Chap. 5A.
Class Discussion

Pages 28-33, 415-16 (introduction);
Pages 416-21, Rules 26(b)(1 & 2) (relevance),
Pages 421-26, (spoliation),
Pages 426-37, Rules 26(a), 30-36 (stages of discovery),
Pages 437-38, (compliance), Rules 26(c-g), 37, 45,
Pages 439-42, (privilege),
Pages 442-49, Rules 26(b)(3), 33(a)(2), 36(a)(1)(A) (trial preparation),
Pages 449-454, Rules 26(a)(2) & (b)(4), 45(c)(3)(B)(ii) (experts),
Pages 454-60 (privacy),
Pages 460-72 (abuses, controls), Rules 26(c-g), 37, 45.

SUMMARY JUDGMENT

Background

Friedenthal, Chap. 9; Glannon, Chap. 23; Glannon Guide, Chap. 19; James, Chap. 4C.

Class Discussion

Pages 33-38, 526-40, Rule 56.
Pages 474-78 (default judgments), Rule 55.
Pages 478-81 (dismissals), Rule 41.
Pages 540-49 (judicial management), Rule 16.

TRIAL

What types of cases do judges or juries decide?

Background:

Friedenthal, §§11.3 to 11.6. James, §§8.1 to 8.3, 8.10 to 8.12.

Class Discussion

Pp. 281-84, 556-79, Amendment VII to the U.S. Constitution (in the Supplement), Rules 38-39, 42(b), 18, 13(a, b)

If it is a jury-type case, what does it take to get to the jury?

Background:
Friedenthal, Chap. 12; Glannon, Chap. 24, 25; Glannon Guide, Chaps. 20, 21.
James, §§7.21 to 7.30.

Class Discussion

Pages 38-42, 598-617 ("judgment as a matter of law," [formerly "directed verdict" and "JNOV"]; instructions & verdicts; new trials), Rules 49-51, 52(b, c), 59, 60.