

Required Casebook & Materials:

1. Hazard, Tait, Fletcher & Bundy, Pleading and Procedure: State and Federal Cases and Materials (9th ed., Foundation 2005).
2. Federal Rules of Civil Procedure (2007-08 educational ed., West) – it should have a purple cover. Older editions will not work – the rules were amended on December 1, 2006 and will be amended again on December 1, 2007.
3. Grossman & Vaughn, A Documentary Companion to A Civil Action (3rd. ed., Foundation 2006) – a used version of the revised edition is also acceptable.
4. Jonathan Harr, A Civil Action (1995).
5. TWEN postings – some materials will be available through the TWEN site.

Optional Materials:

1. 2007 Supplement to Hazard, Tait & Fletcher, Cases on Pleading and Procedure, State and Federal (we will not use this but it is available).
2. TWEN postings – From time to time, I will post additional materials and weblinks to the class TWEN site. Please feel free to forward relevant material to me if you think that your classmates would enjoy reading it.

Basic References:

I recommend the following study aids to help you to understand the materials we are covering in class. All are available in the library and some are available for purchase in the bookstore.

1. Friedenthal, Kane and Miller, Civil Procedure (4th ed., West 2005)
2. Glannon, Civil Procedure: Examples and Explanations (5th ed., Aspen 2006) (Glannon is especially good for the spring topics of jurisdiction and Erie.)
3. James, Hazard and Leubsdorf, Civil Procedure (5th ed., Foundation 2001)
4. Other study aids: Your TA Joe McCarthy has prepared a guide to some of the more popular ones. We will post this guide on the TWEN site.

None of the study aids are allowed during the open book final exam, so please do not incorporate them into your outlines (e.g., by cutting and pasting electronic versions). In the not-so-distant future when you are practicing law, you may consult two leading multi-volume treatises: Moore's Federal Practice and Wright, Miller & Cooper's Federal Practice and Procedure. These are part of the permanent reference collection in the library, and will not be on reserve. They provide much more detail than you need to know for now.

Grading and Class Participation:

Your fall civil procedure grade will be comprised of an open book, take home final examination and class participation. One reflective essay (described below) is required, but will be factored into your final grade only if it is *not* handed in.

Class participation is very important. I will call randomly on two people per case to engage in Socratic dialogue about the cases. You may pass (please say "pass" in order to avoid ambiguity), but rest assured that I will call on you again during the very next class. From time to time, I will break the class up into smaller discussion groups, to discuss the problems and questions in A Documentary Companion to A Civil Action (hereinafter A Documentary Companion). Students often find that this is an easier way to participate in class; if so, I encourage you to volunteer to report your group's findings to the rest of the class.

Another form of class participation is through the class TWEN site. Because we may not have time in class to cover the assigned problems and questions in A Documentary Companion, each of you will belong to a small on-line "law firm" to discuss specific questions. More details will be given in class.

I am interested in including everyone in the class discussion. If you are extremely intimidated by class participation, please don't hesitate to come by and chat about it with me during my office hours. Conversely, if you have a tendency to over-participate, please keep in mind that you should allow your colleagues a chance to participate – and I will not hesitate to let you know if I would like you to defer your question or comment to a sidebar after class. Each of you has a unique gift to bring to the class and to the legal profession, but you must be willing to be proactive in order to develop fully your skills. Your grade may get a bump up if the participation is outstanding and a bump down if it is minimal. More than eight unexcused absences will result in a bump down. If you have an excuse (such as sickness or urgent family matters) for an absence, please send it to me by e-mail, not by voice-mail; I will need a written record.

Finally, you are required to hand in at least one reflective essay this semester. Although this essay will be ungraded, I would like you to begin a conversation with me – and more importantly yourself and your colleagues – about what it means to be

a good lawyer. You will have occasional opportunities in class to have these discussions out loud with each other.

Office Hours and TA Hours:

My office is in room 454 and my fall office hours will be Tuesdays and Thursdays from 3:00-5:00 (right after your Torts class). If you need to make an appointment outside my regularly scheduled office hours, please feel free to contact me (mchon@seattleu.edu; (206) 398-4042). **Please do not disturb me in the hour just before class unless it is a true emergency.** My assistant is Junsen Ohno and she is located on the 4th floor (ohnoj@seattleu.edu; (206) 398-4283). She'll know where to reach me in case of an emergency.

Your TA is Joe McCarthy, who also was the TA for my civil procedure class last year. (You are lucky to have an experienced TA!) Joe's e-mail is: mccarth2@seattleu.edu and he can also be reached through the TWEN e-mail function. Joe will announce his office hours during the first two weeks of class.

Course Objectives:

You, like the vast majority of American law students, are required to take Civil Procedure in your first year of law school. Why?

On a simplistic level, the subject of this class – the procedure applicable in federal courts – is about how to conduct a lawsuit in federal court. But on more sophisticated levels, this class will expose you to foundational constitutional concepts such as due process, and separation of powers. For example, what does it mean to have one's day in court? When does Congress enact procedural statutes and why does it delegate its rule-making powers to the federal courts? How much power can a court legitimately exercise? Answers to these questions will reveal themselves throughout the year.

By studying selected Federal Rules of Civil Procedure, moreover, you will begin to learn the art of statutory interpretation: What does a rule mean? When does a rule govern? What happens where there is no rule on point? How does the system of federal rules connect with the U.S. Code, common law and/or U.S. constitutional law?

In the spring, you will learn some of the basic doctrines undergirding our common law system: When is a court's judgment binding and when is it not? You will continue to encounter questions of constitutional dimension: Which court will have jurisdiction to hear a case – federal, state or tribal? And if in federal court, which federal court? Finally, what choice of law should govern a dispute?

Throughout, we will discuss litigation strategy, issues of professionalism, legal ethics, as well as the diverse meanings of social justice. Jonathan Harr's A Civil Action, in conjunction with video footage produced by Professors Berger and Wigglesworth, will facilitate this important conversation. In addition, we will turn to A Documentary Companion to study actual litigation documents connected with the Woburn case.

Procedure impacts all substantive law you will learn in your other first year classes. Choices made by attorneys about procedural rules can have an enormous impact on their clients' cases. More generally, choices made by lawmakers (legislators and judges) with respect to the content of these procedures can affect whole classes of litigants.

I love teaching civil procedure, and I hope you will enjoy learning it.

Assignments:

Except for the first week of class, we will cover in each class up to two cases (or a case and one set of problems from A Documentary Companion). I will try to let you know if we will continue discussion of an assigned case or problem set into the next class. Some assignments (especially some of the notes and questions following the cases) will not be discussed fully in class. Anything not discussed explicitly in class will not be on the exam.

You were asked to try to complete Jonathan Harr's A Civil Action during the summer. Please try to review the pages indicated on the syllabus on or before the assigned class dates, to make these classes more meaningful. Some excerpts are sixty pages long, so make sure to keep on track with these assignments.

ACA – refers to Harr, A Civil Action

ADC – refers to Grossman & Vaughn, A Documentary Companion to A Civil Action (3rd. ed. or rev. ed.)

PP – refers to Hazard, Tait, Fletcher & Bundy, Pleading and Procedure: State and Federal Cases and Materials (9th ed.)

Chapter 1. Introduction

Try to finish reading ACA in its entirety over the summer before classes begin. Note the general impressions you have of the characters, especially the lawyers and clients. Be prepared to share these impressions in class and on the TWEN site.

For the first week of class:

- Read *A Synopsis of Anderson v. W.R. Grace*, posted on the TWEN site under Course Materials.

- Review ACA pp. 1-99.
- Skim ADC pp. vii to xxviii.
- Read ADC pp. 147-52.
- Skim ADC pp. xxix to xliii; Appendix D.
- Read ADC Appendix E pp. 788-91 (executive summary).
- For Thursday, August 30, read:

<i>The Structure of a Lawsuit</i>	PP 1-15
<i>The Structure of the Court System</i>	PP 15-19
<i>American Uniqueness: A Comparative Perspective</i>	PP 32-35 (optional)

In the second week of class, we will turn to the following cases and materials.

Chapter 5. PLEADINGS

Introduction/ Determining the Substantive Sufficiency of a Complaint

<u>Access Now v. Southwest Airlines Co.</u>	PP 546-67
<u>National Federation of the Blind v. Target Corp.</u>	TWEN

The Formal Sufficiency of the Complaint: How Specific Must a Pleading Be?

Note on the Philosophy of Modern Pleading	PP 567-68
Notes and Questions (skip 1-2)	PP 575-81
<u>Bell Atlantic v. Twombly</u>	TWEN
<u>Erickson v. Pardus</u>	TWEN

ADC 61-80 (focus less on details than on overall structure and approach); ADC 80-83 (focus on the following questions: pp. 80-1d; 81-2a; 81-3b and c; 82-4d; 82-5a).

<i>Allocating and Adjusting the Burden of Pleading</i>	PP 581-86
<u>Gomez v. Toledo</u>	PP 586-91
<u>Leatherman v. Tarrant County Narcotics Unit</u>	PP 591-601
Claim Frame Problem	TWEN

Ethical Constraints on Pleading

McCormick v. Kopmann PP 601-09

Zuk v. Eastern Pennsylvania Psychiatric Institute PP 609-25

ACA 99-119; ADC 114; 138-45 (focus on questions 143-1a; 144-1d; 144-4; 145-6a and b); 146-47

Responding to the Complaint

Motions and Defenses Under Rule 12 PP 625-27

Zielinski v. Philadelphia Piers, Inc. PP 627-35

ADC 83-99 (focus less on details than on overall structure and approach);
ADC 99-101 (focus on the following questions: 99-1b; 99-2c; 100-3e; 100-4a; 101-6a)

Amended Pleadings

Worthington v. Wilson PP 635-47

ADC 112-113 (focus on questions 112-1 (Relation Back); 113-2; 113-3; 113-4)

Chapter 8. DISPOSITIONS WITHOUT TRIAL

Introduction/ Summary Judgment

Adickes v. S.H. Kress & Co. PP 919-35

Celotex Corp. v. Catrett PP 935-45

Arnstein v. Porter PP 945-54

Colston v. Barnhart PP 954-63

ACA 123-431; ADC 557-77; 577-80 (focus on 577-1, 578-3; 579-11)

Chapter 6. JOINDER AND CLASS ACTIONS

Introductory Note/ Joinder of Claims PP 648-53

(We will discuss Jones v. Ford Credit Motor Co. and Fairview Park Excavating Co. v. Al Monzo Construction Co. in the spring semester, after we have covered subject matter jurisdiction.)

ADC 155-56 (focus on all questions as overview of joinder of claims)

Joinder of Parties

PP 669-73; ADC 157 (focus on questions 1 and 2 as an overview of joinder of parties)

Kedra v City of Philadelphia PP 673-83

Temple v. Synthes Corp. PP 684-85

Helzberg's Diamond Shops v. Valley West PP 685-94

Banks v. City of Emeryville PP 694-700

ACA 143-46

ADC 157-62 (focus on questions 162-2 and 162-4; 169-77 (focus on questions 176-1; 176-2; 177-3; 177-7)

Problem: Joining the City of Woburn? TWEN

Class Actions PP 733-42

Castano v. American Tobacco Co. PP 763-78

ADC 185-88 (optional)

Chapter 7. DISCOVERY: REGULATING THE FLOW OF INFORMATION

The Scope and Mechanics of Discovery PP 821-28

Zubulake v. UBS Warburg LLC PP 828-45; ACA 147-93

ADC 189-91 (focus on 190-1; 190-2; 190-3); 196-99; 289-93 (focus on all questions on pp. 292-93)

optional: ADC Chapter 9 (skim for examples of discovery devices, for future reference when you are practicing. Hint: if you are planning to be a litigator, you may also want to take a class on comprehensive pretrial advocacy after your first year.)

Privileges and Trial Preparation Immunities

Upjohn v. United States PP 845-56

Hickman v. Taylor PP 856-65

Upjohn v. United States PP 865-70

ADC 205-209 (focus on 208-1; 208-2; 208-4; 208-5; 208-6; 208-7)

ADC 210-16 (focus on all questions on pp. 215 and 216)

Ager v. Jane C. Stormont Hospital PP 870-84

ACA 197-215

Discovery Ethics and Discovery Abuses

Washington State Physicians Ins. Exchange v. Fisons PP 897-918

ACA 216-228

Chapter 2. REMEDIES

PP 35-46; Skim ACA 233-52

Possible optional reading on punitive damages. TWEN

Chapter 8. DISPOSITION WITHOUT TRIAL revisited

Settlement and the Pretrial Conference PP 963-68

Kothe v. Smith PP 968-75

In re Atlantic Pipe Conference PP 975-89

Skim ACA 252-85

Chapter 6. JOINDER AND CLASS ACTIONS, revisited

PP 652-53; ACA 285-88

ADC 528-41 (focus on questions 538-8; 539-9; 540-12)

Chapter 9. TRIAL

The Significance and Structure of Trial PP 990-93

The Final Pretrial Conference and the Pretrial Order PP 993-95

The Right to a Jury Trial PP 995-98

Selection of the Trier of Fact

People v. Currie PP 1056-69

ADC 601-07 (focus on question 607-2c)

Edmonson v. Leesville Concrete, Inc. PP 1069-81

ADC 608-09 (focus on questions 608-3 and 609-4c)

Liljeberg v. Health Services Acquisition Corp. PP 1082-97

The Province of the Jury

Simblest v. Maynard PP 1097-1106

Sioux City & Pacific Railroad Co. v. Stout PP 1106-1114

Review ACA 280-85; skim ACA 291-376

ADC 611-15; 618-24

Skim ACA 376-401

ADC 625-33 (focus on all questions)

Tanner v. United States PP 1114-25

ACA 401-92 (optional)

ADC 551-554 (focus on questions 551-1, 552-4 and 553-7)

Final week of class: Don't forget to turn in your reflective essay! Please bring it to class in print (hard copy) form on the last day of class.