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Legal Research, Writing and Civil Litigation

PLG-108-2409

Syllabus and Course Guide

The Crestpoint Legal Research, Writing, and Civil Litigation course is a pre-recorded class. This means that all lectures will be made available at the outset of the class. The student should listen to all 15 lectures at his or her convenience. However, the student must interact with the school by taking a quiz or answering a discussion question each week.

All assignments and exams must be submitted by the course deadline. The deadline can be found on your progress report, which can be accessed on the Course Materials page or by clicking on the assignments and exams button on your student menu and then selecting this course.

If a student is having trouble completing the course, the student is strongly encouraged to contact his or her academic advisor or Academic Support (academicsupport@crestpoint.edu).

COURSE DESCRIPTION:

This course is among the most important courses a paralegal student can take, simply because it is in the area of litigation that attorneys rely most heavily on their paralegals. This course will provide students with a comprehensive understanding of the major aspects of civil litigation, from both the plaintiff's and defendant's perspectives. The course will focus on a variety of subjects aimed at teaching the student how to manage a case from beginning to end. The subjects covered in the course will include determining jurisdiction and venue; initiating and commencing a lawsuit; client counseling; investigation techniques and the discovery process; the drafting of summons and complaints, motions, briefs and pleadings; settlement techniques; the trial itself; pre- and post-trial activities and the appeals process.

This course will also offer an intensive but simplified introduction to U.S. legal systems and methodologies, basic principles of *stare decisis* and precedent, the nature of legal education, and sources of law. Topics include: the judicial structure, including both federal and state; statutes, regulations, common law and constitutional law; synthesizing sources of law; the judicial

process and the doctrine of *stare decisis*; overruling precedent, holding, rationale, and dictum.

The key component of the paralegal's role in civil litigation is drafting documents. Therefore, this course will also focus on training our students to do competent legal research and develop their ability to draft legal documents. Students will learn to identify and use a variety of research tools, including both the online collection provided by LexisNexis® as well as traditional book-based methods of legal research. A portion of the course will focus on the various types and form books of reference books, proper case citation, cite checking and the proper method of case reporting, *Shepardizing*®, methods of compiling legislative histories and administrative legal research.

COURSE LEARNING OUTCOMES:

At the completion of this course, the student should be able to:

- Conduct online research to find primary and secondary sources of legal authority.
- Cite legal sources appropriately.
- Distinguish between binding and non-binding authority.
- “Shepardize” to determine if case law is valid.
- Edit and revise a persuasive legal memorandum.
- Draft legal memoranda and research memos.
- Apply and describe the rules of venue.
- Determine whether a class action certification is appropriate based on a given fact pattern.
- Demonstrate how case precedent and *stare decisis* influence case holdings.
- Evaluate whether a court has subject matter jurisdiction in both federal and state courts.
- Differentiate between personal jurisdiction, in-rem jurisdiction, and quasi-in-rem jurisdiction.
- Apply the *Erie* doctrine in a variety of scenarios.

READING ASSIGNMENTS:

All reading assignments refer to the Crestpoint courseware, including the interactions attached to each subchapter. Cases and/or statutes that are specifically mentioned in the syllabus are required reading. The texts of these cases and/or statutes may be accessed directly from the courseware. In addition to the assigned courseware and cases, students should familiarize themselves with the various legal documents listed for each lecture. These documents can be found on the “Documents and Slides” page on the Crestpoint student website. Some, but not all, of these documents will be discussed in class. Reading assignments for each class should be completed prior to the class.

RECOMMENDED READING:

It is *highly* recommended that student obtain copies of the following reference books:

1) William H. Putnam, [Pocket Guide to Legal Research](#)

<http://www.amazon.com/Pocket-Guide-Research-William-Putman/dp/1418053767/>

2) William H. Putnam, [Pocket Guide to Legal Writing](#)

<http://www.amazon.com/Pocket-Guide-Legal-Writing/dp/1401865976/>

The links to Amazon.com above are for your convenience only. You can get these books from virtually any source at which legal and legal education books are sold. This syllabus references readings from these books, which should be treated as optional, but encouraged, reading. These books should also be kept throughout your Crestpoint career (and perhaps for your work career as well) as handy references regarding legal citation, legal research and legal writing rules and principles.

In addition to the courseware's electronic form, you may also view/print out a PDF version of the courseware that includes:

- 1) **The courseware**
- 2) **All lectures slides**

See the course materials page for the link.

School Virtual Library

All Crestpoint students are encouraged to take advantage of the Crestpoint virtual library, which can be accessed from the "course materials" page on the student menu or directly through this link: <http://nationalparalegal.edu/Students/VirtualLibrary.aspx>.

WRITTEN ASSIGNMENTS:

At the outset of the course, two assignments will be posted on the “assignments and exams” page. The 2 assignments will cumulatively count for 30% of the student’s grade for the course. Information will be posted to the message board that indicates when the material for each assignment is discussed in class.

Please compose your answers to assignments on your own computer, remembering to save your work frequently. Once your assignment is complete, please submit by uploading it pursuant to the directions on the “Assignments and Exams” page within the Crestpoint student site. Assignments may be submitted as PDF files, Microsoft Word documents, Open Office documents or PowerPoint presentations.

Each submitted assignment will be graded on the following scale:

4 - Excellent

3 - Good

2 – Satisfactory

1 – Poor

0 – Not acceptable (must resubmit)

(Half-points may also be awarded in assignment grading.)

Please see the “Assignment Grading Rubric” (the next page of this syllabus) for more detailed information about how assignments are graded and the key elements of assignments that instructors look for when grading assignments.

In addition to a grade, students will receive written feedback from the instructor on their assignments, where appropriate.

For more information on assignments, please see the *Crestpoint Student Handbook*.

To the extent possible, it is recommended that students complete the assignments as the course proceeds rather than waiting until after the course ends.

Assignment Grading Rubric

Factor	4 (Excellent)	3 (Good)	2 (Satisfactory)	1 (Poor)	0 (no credit)
Thoroughness	Answers all questions in the exercise completely and in the appropriate order.	Answers all questions in the exercise but not completely and/or not in the appropriate order.	Answers most of the questions in the exercise but not completely and/or not in the appropriate order.	Does not answer many of the questions in the exercise but does make some reasonable effort to do so.	Makes little or no reasonable effort to answer the questions posed in the assignment.
Demonstrates Understanding of the Assignment and has come to an appropriate conclusion	Response demonstrates a thorough understanding of the exercise and the student has justified and enunciated an appropriate conclusion.	Response demonstrates an understanding of the exercise and comes to a conclusion.	Response demonstrates some understanding of the exercise. The conclusion that the student comes to may not be appropriately justified by the rest of the essay.	Response demonstrates some understanding of the exercise but shows a high level of confusion on the part of the student. The student's conclusion, if any, is not supported by the rest of the essay.	Response demonstrates a very poor understanding of the subject matter presented by the assignment.
Documentation/ Legal research (note: For assignments, sources should be those obtained through legal research; for exam essays, legal principles learned in class or the courseware is sufficient.)	Student has cited at least two excellent sources and has applied them appropriately. Appropriate sources are documented and well cited and well integrated.	Student has cited one excellent source or two or more good sources but has missed at least one excellent source. Sources are integrated well in the assignment.	Student has cited appropriate sources but has missed the best available OR student has cited good sources but has done a poor job of integrating them.	Student has cited poor or inappropriate authorities or has failed to establish the relevance of the sources that he or she has cited.	Student has not cited any legal authorities or has cited authorities that are irrelevant.
Organization	Essay is organized very well; the reader can clearly understand where the essay is going at all points and a cohesive easy-to-follow argument is made in the essay. Separate paragraphs are used for separate ideas.	Essay is well organized. The essay is coherent, though may not flow freely. Different components of the essay are broken up appropriately.	Essay shows some level of organization, but is difficult to follow. The essay is not as focused as it should be. Essay may go back and forth between points without using new paragraphs.	Essay is poorly organized and is very difficult to follow. The student did not appropriately separate thoughts and did not properly organize the essay.	Student's essay is in chaos. There is no reasonable attempt to organize the essay coherently.
Critical Thinking and Analysis	Shows excellent critical thinking and analysis. The student is able to apply the cited law to the facts of the given case in a clear and convincing manner.	Shows good critical thinking and analysis. The student's points are well argued and well supported.	Shows adequate critical thinking and analysis. The student's points are supported by logic, but are not exceptionally convincing.	Shows minimal critical thinking and analysis. The student's arguments are weak and unconvincing.	Shows no effort at critical thinking or analysis. The student's points make no sense.

Credit may also be taken off for poor spelling or grammar.

Weekly Discussion Assignments

For each of the first 6 weeks of the course, weekly discussion assignments will be posted on the “Assignments and Exams” page. The 6 assignments will cumulatively count for 30% of the student’s grade for the course. These assignments have a due date specified in the assignment and in the assignment title. Answers submitted after the due date will incur a grade penalty.

Please compose your answers to assignments on your own computer. Once your assignment is complete, please submit by uploading it pursuant to the directions on the “Assignments and Exams” page within the student site. Assignments may be submitted as PDF files, Microsoft Word documents, Open Office documents or PowerPoint presentations.

Weekly discussions will be graded on the same 0-4 scale as the research assignments.

In addition to a grade, students will receive written feedback from the instructor on their assignments, where appropriate.

To the extent possible, it is highly recommended and encouraged that students stay as current as possible with the weekly and submit them in a manner that allows you to practice as you learn the material. Submitting the weekly discussion beyond the given deadlines will result in a grade penalty.

EXAMINATIONS:

Examinations will be posted on the Crestpoint website when indicated on the syllabus of the course. The examinations consist entirely of “short essay” questions. The 2 examinations will cumulatively count for 40% of the student’s course grade.

Examinations are non-cumulative; they cover only the material that has been covered since the previous examination. The instructor will provide specific information regarding the content of each examination as the examination time approaches.

All examinations are timed. A student may begin the examination any time after it is posted to the Crestpoint website. Once begun, the examination must be completed within 4 hours.

Examinations will be graded on a conventional 0-100 scale. The number of points each question is worth is equal to 100 divided by the number of questions on the examination.

For each examination question, full credit will be awarded if the student:

- 1) Correctly identifies the legal issue(s) presented by the question
- 2) Applies the correct law to the legal issue(s) presented (note: full credit may also be awarded if the student’s answer comes to an “incorrect” conclusion if the student bases his or her analysis on correct law and supports his or her position in a convincing manner)
- 3) Presents his or her answer in a clear and understandable manner

The amount of partial credit to be awarded, if any, for an answer that is not complete and correct is at the discretion of the instructor. Instructors are instructed to award partial credit that is proportional to the level of knowledge and legal skill displayed by the student in answering the question.

Please note that, even if not directly stated in the question, you must give reasons for your answers to open ended questions. One word answers such as “yes” or “no” or answers that merely restate the question without explaining the answer given will not be credited.

The following factors are generally NOT taken into account in grading examinations:

Legal research; Although research is a key component of assignments, examinations are graded on the student’s knowledge of the legal concepts taught and do not require independent research.

Grammar and spelling (unless they impact the ability of the graded to understand the student’s answer); Although these are essential skills for a paralegal, examinations test legal knowledge and ability to apply the skills learned, not necessarily the ability to write professional legal memoranda (assignments test this skill). In addition, because exams are taken under time constraints, we would rather see the students spend their time spotting legal issues and applying applicable law than on proofreading answers for typos and grammar mistakes.

For more information on examinations, please see the *Crestpoint Student Handbook*.

To the extent possible, it is recommended that students complete the exams as the course proceeds rather than waiting until after the course ends.

CRESTPOINT ACADEMIC ADVISOR

Each Crestpoint student is assigned an academic advisor upon enrollment. Your academic advisor is a resource that can and should be drawn on if you need academic assistance. This includes advice on studying, help with assignments, general academic questions, etc. You should have received an email from your academic advisor upon enrollment. If you have not received such an email or do not know who your academic advisor is, please contact Anne Lewis at anne@crestpoint.edu.

CRESTPOINT PLAGIARISM POLICY

All work done by Crestpoint students on assignments, examinations and research projects is expected to be their own work. Quoting other sources as part of analyzing a subject is desirable and necessary in many cases. However, when other sources are quoted or used, they must be properly attributed to the original sources. This applies to direct quotes of sources and to paraphrasing other sources or using ideas obtained from other sources even if the exact text is not used.

Plagiarism means using the materials of others without appropriately citing the source and is an academic offense.

Under the Crestpoint plagiarism policy, a student may not, as part of any assignment or exam submission:

- 1) Quote any text from any other source without:
 - a) putting quotation marks around the quoted material;
AND
 - b) appropriately citing the source of the quote.
- 2) Pass off the work of another as his or her own, even if the student does not directly quote from the other source.

Please note that the Crestpoint plagiarism policy does not mean that you cannot quote language from the courseware, textbook or slides as part of an answer to a question on an exam. These are resources that are meant to be used on an exam when applied in an appropriate manner. However, quoting any source *without attribution* is plagiarism.

In addition, Crestpoint students may not share their completed work, answer keys, or sample answers which they have obtained by any method with any other student. Students may NOT upload any sample answer (whether written by themselves or any other person) to any publicly available website or database. **Any student who uploads a sample assignment or exam answer to a publicly available website or database shall be disciplined in a manner to be determined by the school Dean, up to and including expulsion from the college.**

Policy on the use of Artificial Intelligence in the completion of academic assessments

AI (artificial intelligence) resources such as ChatGPT and Bard can be useful in a number of ways. However, it can also be abused, as students may be tempted to use AI-generated content in place of the work needed to build the skills necessary to complete their academic programs.

Students are expected to submit substantially their own work product. To the extent student assessments are copied and pasted from AI platforms, they must be framed by quotation marks or block quotes with appropriate citations, just as though they were citing any other Internet source. Submitting work copied from AI sources without attribution is plagiarism and will be dealt with

accordingly.

Submitting content generated by AI with proper quoting and attribution is not plagiarism. However, heavy use of AI-generated content in an assessment may show lack of original work and grading will reflect that. At the grader's discretion, assignments composed substantially of AI-generated content will be awarded little or no academic credit.

For more information regarding the Crestpoint Plagiarism Policy, penalties and due process rights where plagiarism is alleged, please see the Crestpoint Plagiarism Policy at:

<http://nationalparalegal.edu/pages/PlagiarismPolicy.pdf>

WEEKLY INTERACTION REQUIREMENT

To ensure that all students are involved and participating in the course as the course moves forward, each student enrolled in this course must, at least once during each week, either:

1) Submit at least one assignment

OR

2) Take at least one examination

OR

3) Answer a weekly “interaction” question or questions that will be posted on the “Assignments and Exams” page.

The weekly “interaction” question(s) will be straightforward and will cover material covered in class each week. Answers to these questions should be short (typically 1-3 sentences) and to the point.

COURSE GRADES

Grades are issued on a classical A through F scale based on the grades scored on the assessments, per this syllabus.

Lecture and reading assignments schedule

Class 1

We will begin this course with a background discussion of the U.S. legal system and the structure of our judiciary. We will look at the various sources of law that exist under the American system and analyze the differences between primary and secondary sources of law. Finally, we will discuss the concept of case law and discuss how to tell when it is appropriate to cite a particular case.

Courseware Reading:

Chapter 1: United States Legal System– Judicial Structure

- A. Introduction to Separation of Powers
- B. Federalism and the Difference between Federal and State Judicial Systems
- C. Sources of Law
- D. Case Law

Cases and Statutes:

United States Constitution, Article III

The best way to start gaining an understanding of the manner in which the U.S. judicial system works is by going straight to the source: Article III. In that Article, the structure of the federal court system is established. When reading this article, notice how only the Supreme Court is mandated by the Constitution. Also, pay close attention to the bases for federal court jurisdiction. That language will be critical later in the course.

In re: United States

This is a very recent case with a strange fact pattern that deals with a fascinating issue. Normally, of course, it is the prosecutor that argues for the pressing of criminal charges and the judge decides if criminal charges are appropriate. Here, we have sort of a role reversal. The prosecutor wanted to drop a charge that the judge refused to drop! The judge even went so far as to appoint a private lawyer to prosecute the case. This case is a very important read because it brings into focus the separation of powers as it applies to the functioning of the criminal justice system.

Class 2

We will devote this class discussion to issues of legal citation and cite checking. We will discuss the different sources from which a person can access the complex body of information known as “the law.” We will learn how to cite check and how to “Shepardize” and discuss why those things are important. We will also discuss the types of sources that should be sought as primary or mandatory authority and the types of sources that are secondary authority.

Courseware Reading:

Chapter 2: Legal Research

- A. Introduction to Legal Research
- B. Legal Research Sources
- C. Legal Citation
- D. Briefs, Legal Memoranda and Legal Writing
- E. Cite Checking

Legal citations: <https://www.law.cornell.edu/citation/>

Class 3

In this class, we will take a virtual trip to a “law library.” We will look at and discuss the various types of law volumes you would find at the law library. We will also discuss legal research using the physical digests. Although most legal research is done online today, it helps to know how to use law libraries for research as well.

Courseware Reading:

NONE

If you have a copy of [Pocket Guide to Legal Research](#) referenced earlier in this syllabus, it is recommended that you read through as much of Chapters 1 through 5 as you can of that book. If you cannot complete this reading, then browse it and come back to read it more thoroughly when you can.

Class 4

In this class, we will begin a legal memorandum walkthrough. We will discuss research on Lexis and the Lexis system in general. Then, we will look at a legal research project (comparable to an assignment) and simulate the legal research component of completing that assignment. We will also organize our “assignment” in preparation for actually writing the assignment in our next class.

Courseware Reading:

NONE

If you have a copy of Pocket Guide to Legal Research referenced earlier in this syllabus, it is recommended that you read through as much of Chapters 5 through 9 as you can of that book. If you cannot complete this reading, then browse it and come back to read it more thoroughly when you can.

Chapter 10 of this book should be used as a reference for citing various types of primary and secondary authority.

Class 5

We will devote this class to discussing principles of legal writing. We will discuss how a memorandum of law should look and we will go through the “do”s and “don’t”s of legal writing. We will look at various important legal writing strategies, including the usage of strong transitional words, avoidance of legalese, etc.

Courseware Reading:

NONE

If you have a copy of Pocket Guide to Legal Writing referenced earlier in this syllabus, it is recommended that you read through as much of Chapters 1 through 4 as you can of that book. If you cannot complete this reading, then browse it and come back to read it more thoroughly when you can.

Class 6

In this class, we will continue our assignment walkthrough from class 4. We will take our research and organization from class 4 and use it to draft a legal memorandum from scratch. Special attention will be paid to drafting statements of fact, properly framing the legal issue, properly citing and quoting legal authority, stating the rule of law, applying the rules to the facts at hands and drafting an appropriate conclusion.

Courseware Reading:

None required; however, it is recommended that you read the Courseware reading for Class 7 (Jurisdiction), so you will have a basic understanding of jurisdiction when we go through the assignment. You may want to have a look at Assignment 4 as well. You will be able to begin working on the assignment after this class; you will be able to complete it after Class 7.

If you have a copy of Pocket Guide to Legal Writing referenced earlier in this syllabus, it is recommended that you read through as much of Chapters 7 through 10 as you can of that book. If you cannot complete this reading, then browse it and come back to read it more thoroughly when you can.

Class 7

In this class, we will begin the Civil Litigation component of our course. We will start that study with a discussion of jurisdiction. That is, we will discuss when a court has the power and authority to decide a case. First, we will focus on the question of jurisdiction over the parties or things. We will look at when a court may exercise jurisdiction over the parties and/or property involved in a civil action. Then, we will look at subject matter jurisdiction; or when the court has the authority to determine the legal questions brought before it.

Courseware Reading:

Chapter 3: Jurisdiction

- A. Introduction: Jurisdiction over the Parties or Things
- B. Personal Jurisdiction
- C. In Rem and Quasi In Rem Jurisdiction
- D. Subject Matter Jurisdiction
- E. Subject Matter Jurisdiction - Supplemental Jurisdiction

Cases and Statutes:

International Shoe Co. v. Washington

This is probably the leading case in terms of the analysis of what constitutes “due process” in holding citizens of one state to the jurisdiction of the courts of another state. This case set forth the famous “minimum contacts + fairness” formula for determining whether it is constitutional to hold a person to the jurisdiction of a foreign state. When discussing later cases such as Burger King and Asahi, remember that all those cases fundamentally stem from International Shoe.

28 U.S.C. § 1331

This is the “federal question jurisdiction” provision for federal courts in the U.S. Code. It is short and to the point, but it must be read as a starting point for any discussion about federal question jurisdiction in federal courts.

28 U.S.C. § 1332

This is the “diversity jurisdiction” provision for federal courts in the U.S. Code. It describes when and under what circumstances a lawsuit can be brought in federal court simply because the litigants are from different states. Although there are many other provisions relating to federal court jurisdiction, this provision, along with 1331, is the most often used and therefore the most important to read.

Suggested Videos:

<https://lawshelf.com/videos/entry/subject-matter-jurisdiction-over-a-civil-action-federal-question-jurisdiction>

<https://lawshelf.com/videos/entry/subject-matter-jurisdiction-over-a-civil-action-diversity-jurisdiction>

Assignment 1 can be completed at this point.

Class 8

First in this class, we will look at the issue of proper venue, i.e., how to choose in which court a civil case should proceed if more than one court has jurisdiction over the subject matter and persons involved in the case. Next, we will turn our focus to the issue of choice of law. Sometimes more than one set of laws appear to be applicable to a case and the judge has to make a determination as to whether to apply federal or state law or must determine which state supplies the laws that should govern a case. We will touch on the famous Erie doctrine, in which the Supreme Court ruled that state law should be applied in federal court in some circumstances. In addition to the federal/state law dichotomy, we will also discuss the procedure for determining which state’s law to apply in the event that parties or events in more than one state are involved in the litigation.

Courseware Reading:

Chapter 4: Venue, the Erie Doctrine and Choice of Law

- A. Venue- Introduction
- B. Venue- State actions
- C. Venue- Federal actions
- D. Venue- *Forum non conveniens*
- E. Erie Doctrine and Choice of Law- Introduction
- F. History of the Erie Doctrine
- G. Choice of Law

Cases and Statutes:

28 U.S.C. § 1391

This statute sets forth the rules for the proper venues for federal cases. Although venue rules vary from state to state, reading this statute will help give you an idea about how venue rules work. When reading the statute, think of the policy considerations that go into these rules and where it is fair to expect a person to bring or defend against a lawsuit.

Erie Railroad Co. v. Tompkins

This case, of course, gave rise to the famous Erie doctrine that provides that, in certain circumstances, state case law should be applied in federal court. The policy reasons for this rule and its limits make this doctrine an area of study unto itself. For our purposes, it will suffice to discuss the policy considerations that led to the decision and whether Erie and its progeny really do a good job at alleviating those concerns.

Suggested Videos:

<https://lawshelf.com/videos/entry/determining-proper-venue-in-civil-actions>

The midterm examination will be posted at this point.

Class 9

We will focus in this class on the opening stages of a civil case, i.e., the first steps in “pre-trial practice.” We will start by looking at the “pleadings,” i.e., the documents that open the civil action: the summons and complaint filed by the plaintiff and the defendant’s answer. We will discuss the content of these documents and how and when they must be filed and then served on the opponent. We will look at examples of these documents and discuss how they should be drafted.

Courseware reading:

Chapter 5: Pre-Trial Practice

- A. Introduction to Pre-Trial Practice
- B. Summons, Complaint and Answer
- C. Service of Process

Cases and Statutes:

Federal Rules of Civil Procedure: Rules 7 and 8

From this point on in the course, your primary reading of legal sources should be of the Rules of Procedure themselves. Although different states have different rules regarding civil procedure, the federal rules apply to federal courts in every state and serve as a great sample of a body of procedural rules. These two rules set forth the requirements for drafting complaints that initiate lawsuits.

Federal Rules of Civil Procedure: Rule 4

This Federal Rule discusses the procedure for service of process upon a defendant in a civil case. Keep in mind that the purpose of service of process is to notify the opponent of the lawsuit. How well does this rule guarantee that such notice will be effectively delivered? Are there any requirements that you would add?

Documents for Review:

- Civil Action Cover Sheet
- Summons in a Civil Action- Federal
- Sample Completed Complaint - State
- Waiver of Service of Summons - Federal
- Certificate of Service by Mail- State
- Answer to a Complaint Packet -State

Assignment 2 can be completed at this point.

Class 10

We will focus on the process of discovery in this class. We will look at the various methods that are available to parties to a civil proceeding to investigate in preparation for trial. We will discuss depositions, interrogatories, requests for documentation, etc., and we will look at the various forms that should be used during this process. We will also look at Rule 11 of the FRCP, which provides for sanctions against parties for an array of misconduct, including discovery violations.

Courseware Reading:

Chapter 5: Pre-Trial Practice

D. Discovery and Rule 11

Cases and Statutes:

Federal Rules of Civil Procedure: Rule 11

This is the famous rule that allows a judge to impose sanctions on an attorney for filing a false, misleading or frivolous document or for other misconduct. In addition, the rule provides that the attorney must vouch for all documents filed during the course of the lawsuit. This rule is very important because it often serves as a basis for threats leveled between opponents in a contentious civil proceeding.

Documents for Review:

- Provisional Discovery Plan- Federal
- Form Interrogatories - State
- Subpoena in a Civil Case - Federal
- Request for Admissions - State

Class 11

Tonight, we will finish up our discussion of pre-trial practice by discussing various other issues relevant to this stage in the litigation. We will touch on the issues of pre-trial motions and joinder, which occur when parties other than the plaintiff and defendant seek to join litigation that may affect their interests. We will briefly touch on the doctrine of *res judicata* which aims to prevent issues from being litigated more than once.

Courseware Reading:

Chapter 5: Pre-Trial Practice

- E. Pre-Trial Motions Practice
- F. Adding Parties and Claims
- G. *Res Judicata* and Collateral Estoppel

Cases and Statutes:

Federal Rules of Civil Procedure: Rule 12

This very important rule lists the motions that a defendant in a lawsuit can file in response to a complaint leveled by the plaintiff. The defendant can move to dismiss the case for a variety of reasons or can move to have the plaintiff clarify the allegations in the complaint. The rule also discusses which of the various defenses are waived if they are not raised initially. If you are going to practice in civil litigation and you can memorize the content of any one of the Federal Rules, this should be the one.

Federal Rules of Civil Procedure: Rule 14

This Rule discusses the basics of third party practice. We will discuss several other rules regarding the introduction and maintenance of multiple parties in a proceeding. In fact, it would be best to try to read Rules 14-22 and 24-25. But, reading Rule 14 will at least give you a solid introduction and view of how third party practice works in the federal civil litigation system.

Documents for Review:

- Cross Complaint - State
- Third Party Summons – Federal

Class 12

Next, we will begin our discussion of the trial itself. We will discuss jury selection and other events that happen early in a trial, such as opening statements and presentation of evidence. We will look at burdens of proof that apply in civil cases, including the generally applied “preponderance of the evidence” standard and discuss the interaction between the jury system and the burdens of proof. We will also look at certain motions, such as orders to show cause and requests for judicial intervention that may precede or accompany litigation.

Courseware Reading:

Chapter 6: Trial Practice

- A. Introduction to Trial Practice
- B. Basic Trial and Jury Selection
- C. Opening Statements and Burden of Proof

Cases and Statutes:

United State Constitution: Amendment VII

The Seventh Amendment guarantees the right to a jury trial in a civil case. Although the Amendment seems simple enough, its phrase “in suits at common law” has spurred mounds of analysis (including Supreme Court cases) trying to figure out exactly what that means.

Documents for Review:

- Request for Judicial Intervention- State
- Order to Show Cause - Federal
- Temporary Restraining Order -State
- Declaration for Temporary Restraining Order -State

Class 13

This class will continue our discussion of trial practice. We will discuss how trials are run, what the various stages of a trial are and how evidence may and may not be presented. We will also focus on the different stages of the trial itself and on the motions that are appropriate for each phase of the trial.

Courseware Reading:

Chapter 6: Trial Practice

- D. Plaintiff's Case-in-Chief
- E. Defendant's Case-in-Chief
- F. Close of Evidence

Cases and Statutes:

Federal Rules of Evidence, Rules 801-803 These are the federal rules regarding the all-important issue of "hearsay." Although the rules of evidence are not quite as important to a paralegal as they are to an attorney, since paralegals do not actually try cases, the hearsay rules may be an exception. Very often, cases can turn on whether somebody's statement of what someone else said will be admissible. Therefore, for trial preparation and for settlement negotiations, it is important to understand that basics of what constitutes inadmissible hearsay.

Girden v. Sandals International

This case discussed the importance of proper jury instructions. Specifically, when is an improper jury instruction grounds for reversal of the jury verdict and when is it merely considered "harmless error"? This case will help bring this issue into focus and it provides a glimpse as to how courts analyze this question.

Documents for Review:

- Sample Trial Ready - List
- Exhibit and Witness List - State
- Notice of Appearance for Attorney - Federal
- Judgment Abstract - State

Class 14

In this class, we will focus on post-trial procedure. We will examine the motions that should and must be made at the close of a trial after the jury has delivered its verdict. We will look at the standard under which jury verdicts can be reversed and/or new trials can be ordered. We will also look briefly at the issue of enforcing judgments, including the methods by which a judgment can be collected.

Courseware Reading:

Chapter 7: Post-Trial Practice, Appeals and Class Actions

- A. Introduction to Post-Trial Practice
- B. Post-Trial Motions
- C. Enforcement of Judgments

Cases and Statutes:

Federal Rules of Civil Procedure: Rules 59 and 60

Judgments rendered by courts and/or juries are supposed to be final and complete. However, sometimes, new evidence or changed circumstances dictate that verdicts should be re-examined. These rules provide the grounds under which judgments should be reviewed and, if necessary, revised. Understanding these rules is critical to the legal practitioner in the field of litigation, because they set forth the limits on what you can do for a client who has suffered an adverse judgment.

Documents for Review:

- Bill of Costs - Federal
- Certificate of Judgment Foreclosure by Sale - State
- Writ of Attachment before Judgment - Federal
- Writ of Execution – Federal

Suggested Videos:

<https://lawshelf.com/videos/entry/the-basics-of-class-action-lawsuits>

Class 15

The final class will continue our discussion of post-trial procedures. We will look at the appeals process, by which a party who disagrees with the court's rulings or the jury's verdict can appeal the case to a higher court. Finally, we will close with a discussion of class action lawsuits; what their roles are, how they are organized and what prerequisites there are to their filing.

Courseware Reading:

Chapter 7: Post-Trial Practice, Appeals and Class Actions

D. Appeals

E. Class Action Lawsuits

Cases and Statutes

Federal Rules of Appellate Procedure: Rule 4(a)

This rule sets forth the procedures and timelines relevant to the filing of an appeal. These are, of course, a starting point when discussing the civil appellate process.

Federal Rules of Civil Procedure: Rule 23

This federal rule discusses the class action lawsuit. “Mass torts” is a growing and very lucrative area of personal injury law. Because of the complexity involved in class actions lawsuits and because of the enormous potential ramifications that such suits have, following proper procedure in handling such suits is critical. Rule 23 is a great place to start when learning about the class action lawsuit.

Documents for Review:

- Bill of Costs - Federal
- Certificate of Judgment Foreclosure by Sale - State
- Writ of Attachment before Judgment - Federal
- Writ of Execution – Federal

The final examination will be posted at this point