NEW YORK PRACTICE
Professor Chase
SYLLABUS
Spring, 2005

The casebook for this course is Chase and Barker, Civil Litigation in New York (4th Ed., 2002). Students should also purchase a current edition of the New York Civil Practice Law and Rules ("CPLR"). I recommend the version published by Lexis, the 2005 "Redbook". In addition to the CPLR this version has a useful appendix of other relevant statutes and rules. All references in this syllabus are to these texts unless otherwise indicated. I have included some recent cases and provided citations. I will also arrange to get them posted on Blackboard.

Please read the Notes following the assigned principal cases. Because we will often take a close look at the statutory material, it is important that you bring the casebook and the CPLR to every class.

Students interested in consulting treatises should see Chase, The CPLR Manual (Rev. ed.) and D. Siegel, New York Practice (3d ed.). Neither of the latter two works is required - both are on reserve in the library. For additional bibliography see the casebook at xiii.

Most of the chapters in the casebook include litigation problems. Please be prepared to discuss these in class.

Note: The grade for this course will take class participation into account. Failure to be prepared when "on call" can lead to grade reduction. Lack of regular attendance can lead to a failing grade in the course.

ASSIGNMENT I

Background: Casebook, introduction (ix-xiv); CPLR 101-107.
For the first class please think about the differences between the New York and the Federal court systems. What occurs to you? What would you most like to explore about New York civil procedure?

ASSIGNMENT II

Doctrines governing the choice of forum
Note to students: You may have studied the principles underlying these doctrines in Civil Procedure. In this class we will concentrate on New York applications. If you are a little rusty, be sure to review the background material in the casebook.

A. Personal jurisdiction
1. Introduction and “presence” of natural persons: CPLR 301; text, 1-4 (incl. Problem A). Hammett, p. 17; Merigone, p. 20.

2. Partnership “presence” CPLR 310(a); 310-a(a); 1501; 1502; 5201(b). Problem B, p.22; First American Corp., p. 22.
3. “Presence” of corporations - CPLR 301. Note, p. 27; Problem C; Note 1, p. 31; Bryant, p. 32; DeLagi, p. 34; Laufer, p. 38; Landoil, p. 42.


5. Contact-based jurisdiction - CPLR 302(a); CPLR 313. Problem D, p. 59; George Reiner & Co., p. 66; Indosuez, 98 N.Y.2d 238; Problem E, p. 73; Talbot, p. 73; Note, p. 78; LaMarca, p. 79.

5. Jurisdiction based on the location of property - CPLR 301; 302(a)(4); 314(2)(3). Note, p. 89; Problem F, p. 99; Banco Ambrosiano, p. 99.

6. Matrimonial and related jurisdiction - CPLR 105(p); 302(b); 314(1). Problem G, p. 103; Carr, p. 104; Kulko, p. 107; Vernon, 100 NY2d 960.

B. Discretionary limits on jurisdiction - CPLR 327. Note, p. 115; Martin, p. 116; Bewers, 119, Hart, 124; Gen. Obligations Law § 5-1402; Credit Francais, p. 128

C. Choosing the forum within the state.

1. Subject matter jurisdiction
   - the concept in New York, Lacks, p.135.
   - general limits, Bus. Corp. L. Sec. 1314(b), c.b., p. 140, note 1; Calzaturificio, p. 139
   - particular courts, Kagen, 143; Sohn, p. 148; Notes, pp. 154-162.
   - removal and transfer within the state court system - CPLR 325.


ASSIGNMENT III
Commencing the action – the surprisingly troublesome formalities of acquiring jurisdiction

A. Introduction; conditions precedent, Note, p. 177. **NB:** The third paragraph on page 177 erroneously states that pursuant to CPLR 306-b, service must be made “within fifteen days of commencement in an action or proceeding governed by a statute of limitations of four months or less.” In fact, CPLR 306-b provides that “where the applicable statute of limitations is four months or less, service shall be made not later than fifteen days after the date on which the applicable statute of limitations expires.” The authors apologize for the error.

Mendon Ponds, 98 NY2d 745.

C. Form of summons; amendment; supplementation - CPLR 305, 2101(c), (d), (f); 1024; Tamburo, p. 191; Provosty, p. 194.

D. Serving natural persons - CPLR 308, 312-a, 309, 315; 3215(g)(3). Notes, pp. 196-197; Problem A, p. 197; Macchia, 197; Bossuk, p. 200; Feinstein, p. 203; Dobkin, p. 209.


ASSIGNMENT IV

The Appearance - a jurisdictional trap for the unwary

A. How and when made - CPLR 320(a), 3211(e), (f), 3012, 3024. CPLR 2005. Notes, pp. 230-235, incl. Problem A.

B. Effect - CPLR 320(b), (c); 302(c), 3211 (f). Adesso, p. 238; Gager, p. 239; Textile Technology, p. 244; Problem B, p. 246; Einstoss, p. 247.

D. Informal appearance – Problem C, p. 250; Rubino, p. 251; City of New York, p. 253; Parrotta, p. 254.

E. Retrospective – Note, p. 255.

ASSIGNMENT V

Limitations of time

A. Statutes of limitations
   1. In general - CPLR 201, 203(a),(c). Note, p. 259.
   2. The applicable period
      (a) Tort and contract - CPLR 213(2); 214(4), (5), (6); 215(1),(3),(8). Problem A, p. 260; Chase, p. 261; Cubito, p. 267.

      (b) Products liability - UCC 2-725 (p. 271, Note 1); CPLR 214-c, CPLR 214-e. Problem B, p. 271; Victorson, p. 272; Blanco, p. 276.
ASSIGNMENT VI

Constructing the Litigation: Joinder of Parties

[NOTE: No class time will be spent on permissive and compulsory joinder, third party practice, interpleader, or intervention. The New York rules for these devices are similar to federal rules with which you are already familiar. Nor will we cover claims for contribution, apportionment of damages and related doctrines (CPLR articles 14, 14-A and 16), as these are essentially substantive tort rules.]

A. Class actions and the interplay between state and federal practice:
   2. Notice - CPLR 904; Boulevard, 409.

B. Special parties
   1. The poor: CPLR Art. 11. Problem A, 475; Smiley, 475; Lassiter, 481
   2. Infants, incompetents and conservatees; CPLR Art. 12; Notes, 494-495.

ASSIGNMENT VII

A. Motion Practice
   CPLR 2211-2212; 2214-2221. Note, 499-501; Problem A, 501 and notes, 502-506; Notes, 509 - 512: Foley, 512 and notes to 519.
B. Provisional Remedies
   1. Generally
      CPLR 6001; Note and Problem A, 521.
   2. Seizure of property
      CPLR 7101-7102; 7108(a), 7109-7110. Morning Glory, 522.
   3. Attachment
      CPLR 6201-6202; 6210-6213. Note, 528; Societe Generale, 529; Note, 532;
      Problem B, 534; Abkco, 535
   4. Injunction
      CPLR 6301-6315. Problem D, 551; Credit Agricole, 552.
   5. Receivership; Notice of Pendency
      Notes, 559-560.

ASSIGNMENT VIII

Pleadings
   A. In General
      CPLR 3011, 3013-3017; 3026. Notes, 565-566.
   B. The Complaint
      CPLR 3013-3017; 3020; 3024; 3211(a),(7); 3012-a. Problem A, 569; Foley, 569;
      Lanzi, 576.
   C. The Answer
      CPLR 3018, 3211(b), (e). Form, 578; Rouse, 579; Problem B, 581; Munson, 581,
      Gager, 583.
   D. Counterclaims and other Pleadings
      CPLR 3019, 3011. Chisholm-Ryder, 589; Batavia Kill, 591.
   E. Effect of Pleadings
      CPLR 3026; 3017(a); 3025(c). Note, 598; Diemer, 599; Rogoff, 603; Iannone,
      604.
   F. Amendments
      CPLR 3025. Note, 611; Loomis, 612.
   G. Sanctions
      CPLR 8303a. Notes, 618-620.

ASSIGNMENT IX

The Bill of Particulars
      CPLR 3041-3044. Form, 621; Problem A, 623; Felock, 623; Northway, 626; Problem B,
ASSIGNMENT X

Disclosure
A. Scope in General; Privileges.
   CPLR 3101, 3103(a), (c). Note, 637; Problem A, 639; Andon, 640; Savitsky, 644; Tran, 99 NY2d 383. Note, 647; Problem B, 648; Spectrum, 648; Hoffman, 656; Miranda, 660; Problem C 662; Saar, 662; Gilly, 666

B. Devices Available
   CPLR 3102(a); 3107; 3117(a); 3120; 3121; 3130.

C. Compelling and Avoiding Disclosure
   CPLR 3124-3126; 3133; 3104(a). Siegman, 701; Notes, 702-703.

ASSIGNMENT XI

Accelerated Judgment
A. Overview
   CPLR 3211-3214. Notes, 707-711.

B. Failure to state a cause of action or defense
   CPLR 3211(a)(7). Rovello, 712; Lanzi, 717.

C. Summary Judgment
   CPLR 3212-3214. Problem B, 722; Banco Popular, 1 NY3d 381; Ugarriza 732; Gonzalez, 730; Goncalves, 726.

D. Default judgment
   CPLR 3215 (a) – (c); (g).

ASSIGNMENT XII

Settlements
   CPLR 2104; 5003-a (a),(e); 8020. Note, 747; Hallock, 748; Bonnette. 3 NY3d 281.

ASSIGNMENT XIII

Calendar Practice
   CPLR 3403. Note, 757-760; Baczowski, 765; Uddaraju, 1 A.D. 3d 140.

ASSIGNMENT XIV

Trial
A. General CPLR 4011; 4014; 4016; 4017. Note, 777.
B. Jury trials CPLR 4101-4110; DES Market Share, 781; Note, 791; Siriano, 794; Santana, 800.
C. Motions for judgment during and after trial. CPLR 4401, 4404. Licari, 803 and notes ff.; Cohen, 827; Nicastro, 831 and notes, 842.

ASSIGNMENT XV

The Effect of a Judgment
A. Judgments and structured judgments
   CPLR 5011; 5031-5038; 5041-5049. Desiderio, 100 NY2d 159.
B. Vacating Judgments
   CPLR 317, 5015.
C. Appeals
   CPLR 5513, 5601-5602; 5701, 5501. Andon, 881; Burke, 892; Note, 897.
D. Res Judicata
   CPLR 5013. Note, 927.
   1. Claim Preclusion
      Gowan, 929; Hodes, 931; O’Connell, 1 NY3d 179; Notes, 935; Problem A, 936.
   2. Issue Preclusion
      Note, 942; Kaufman, 943; O’Connor, 949; Gilberg, 956.

ASSIGNMENT XVI

Unlawful Government Activity
CPLR 7801, 7803, 7804; CPLR 103(c). Note, 973; Problem A, 977; Corbeau, 978; New York City, 983; Klostermann, 998.

ASSIGNMENT XVII

Arbitration: An Alternative to Litigation

1. Arbitration Agreements and their enforcement - CPLR 7501-7503. Note, 1017; Problem A, 1018; Just In, 1019; Matarasso, 1021; Weinrott, 1023.
2. The proceeding -CPLR 7505-7507. Siegel, 1028