

First Assignment: Civil Procedure I (Section C1)

Fall 2021 Semester

Class Meets: **Tuesday and Thursday: 9:30-10:45 AM**

Office Hours: **Tuesday and Thursday: 11-12:20 (on Bricks or Zoom)**

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Pronouns: he/him/his

Required Texts:

Richard Field, Benjamin Kaplan and Kevin Clermont's Civil Procedure: Materials for the Basic Course (13th ed., 2010) ("Text" or "CB")

David Benjamin Oppenheimer, *Patt v. Donner*: A Simulated Casefile for Learning Civil Procedure (2nd edition) (2019)

Gerald M. Stern, Buffalo Creek Disaster (2008, 2d Edition) ("Buffalo Creek")

Access to 2021 Federal Rules of Civil Procedure

Additional material will be provided through Blackboard Course page.

First Class Assignment: August 24, 2021

1. "Handy Bikes"

The goal of this initial class meeting is to give you a sense of what civil procedure is in practice. I am certain that each of you comes to law school with some sense of what a tort or a contract is. You are probably less certain of what civil procedure is, although there have been a few very good movies about pre-trial litigation activities (e.g., "Civil Action" and "Erin Brokovich"). What follows is a hypothetical that raises, in some form, nearly ever significant legal question that we will consider this semester (and perhaps a couple that you won't see until Civil Procedure II). The goal of this exercise is to give you a sense of the issues that are at the heart of civil procedure.

As you read through the hypothetical and questions below, ask yourself what makes sense—what rule or set of rules, ought to govern the situation? Is the rule you envision workable? Sensible? Efficient? Fair? Does the rule place an undue burden on the plaintiff? On the defendant? On a third party? On the public fisc? The central purpose of this exercise is not to come up with the exact answers, but to reflect upon the

questions we would ask if we were asked to design a procedural system anew, including what values underlie both our questions and answers. Before knowing any of the rules, what is your gut reaction to the issues presented—what would the law be if you were “ruler for a day”? Again, I am not concerned that you know the correct answers to any of these questions (not yet, at least); what I am interested in is your untutored instincts. What do you think the answer ought to be and why?

The Problem:

While on a family vacation to Buffalo, New York, Sandra Sheppard bought a bicycle for her seven-year-old daughter Jalila from “Handy Bicycle Shop.” Mrs. Sheppard used a credit card for the purchase. Not having time to assemble the bike herself, Mrs. Sheppard paid an additional amount to have the bike assembled by the bicycle shop. The first day Jalila rode the bicycle, the front wheel came off very suddenly, and Jalila fell off, sustaining a concussion, a broken leg, and multiple bruises. Mrs. Sheppard took Jalila to the hospital immediately, but the Stern family, with whom they were vacationing, collected the pieces of the bicycle. However, they could not find the nut and bolt that were used to attach the wheel to the frame. As it happens, Mrs. Stern is an engineer for an automobile company, and she looked at the bicycle and concluded that there had either been a defect in the parts from the manufacturer (“Easy Ride Bipeds” of Cleveland, OH), or that Handy Bicycle Shop had assembled the bike incorrectly.

Jalila stayed in the hospital in Buffalo for only three days, but was expected to wear a leg cast for six months. She will also be required to have extensive physical therapy after the cast is removed. After the Sheppards returned home to Miami, Florida, Mrs. Sheppard called his credit card company and requested that they cancel the \$350.00 charge for the bike and assembly. The company promptly did so. At this point, neither the manufacturer (“Easy Ride Bipeds”) nor the bike shop (“Handy Bicycle”) is aware of Jalila’s injury. Nevertheless, the Sheppard family is intent on suing to recover Jalila’s mounting medical expenses. Without worrying about the *merits* of the Sheppard’s claims, which you’ll cover in torts, think about how you would answer the following questions:

- 1) Should the Sheppards be allowed to file a lawsuit without first notifying the bike shop and the manufacturer of their potential claim to see if things can be resolved without litigation? How much notice should the Sheppard family be required to give the potential defendants? What would be the advantages and disadvantages (to both plaintiffs and defendants) of a system requiring pre-filing notice?
- 2) Given the state of the Sheppard’s knowledge about the accident, including knowing whether either of the potential defendants was at fault, should they be allowed to sue at this stage? What more, if anything, might you require before they could proceed?
- 3) Assume that the Sheppards are allowed to sue now. What does the commencement of Assume a suit entail? What papers, if any, should they be required to file? Whom should receive these papers? How should they receive the papers? What

must the Sheppards say in their papers? What information should the defendants be entitled to receive at this stage?

- 4) Up to this point, we have assumed that the Sheppards want to sue immediately. Why might that be so? Might there be an advantage if they wait? Are there disadvantages to the defendants if the Sheppards wait to sue? Should there be a limit on how long the Sheppards can wait before filing their suit? If so, what should such a limit be? Why?
- 5) Where would the Sheppards likely want to file suit? Why? Would it be fair if the Sheppards could sue Easy Ride in Miami? How about Handy Bicycle? Does the Constitution speak to issues of fairness in this context? If so, where? What are the Sheppards' options of where to file their lawsuit?
- 6) As we'll discuss in the first class meeting, there are basically two types of courts in the United States—state courts and federal courts—and two types of laws, state laws and federal laws. (Admittedly, an oversimplification). Although state courts generally hear state-law claims, and federal courts hear federal law claims, the U.S. Constitution allows for federal courts to hear some cases involving state-law claims when the parties are citizens of different states. Does this make sense? Would the Sheppards want to take advantage of that provision here, if they could? Is a company a “citizen” within the meaning of the constitutional provision? Should the Sheppards be the sole decision-maker regarding where the suit takes place?
- 7) Most lawyers will work on cases only if they are being paid (I am certain that this comes as a shock to most of you!), or there is a prospect of future payment. Who will pay the lawyers for each of the parties and on what basis? Suppose the Sheppards bring suit and ultimately lose. Should they pay the defendants' legal fees?
- 8) Handy Bicycle wants the \$350.00 that it did not get because Mrs. Sheppard stopped the credit card payment. Should Handy Bicycle be able to assert its claim in a suit brought by the Sheppards? Or does Handy Bicycle need to bring a separate lawsuit to recover the \$350.00? If the latter, where might it file such a suit?
- 9) What law should be applied in the Sheppards case? State? Federal? Does it depend on whether the court in which the case is filed is a state or federal court? If state law is to be applied, which state's law? New York? Ohio? Florida? What factors ought to guide our decision in this matter?
- 10) Easy Ride thinks that to the extent that it is responsible, the fault lies with the parts it bought from the Screw & Bolt Company in Fresno, California. What should Easy Ride be able to do, or even be required to do, if it suspects this is the case?