

August 30, 2009

CIVIL PROCEDURE SECTION D
FALL 2009
PROFESSOR CLARY
MONDAY, TUESDAY & THURSDAY
10:55-12:10

COURSE OVERVIEW AND SYLLABUS

1. The one-semester course in Civil Procedure will focus on relevant issues involved in commencing, handling, and resolving a lawsuit in federal court. We will begin our discussion with the idea of jurisdiction -- the power of the court over claims and parties.
2. The issues we will study include: personal jurisdiction; service of process; subject matter jurisdiction; the Erie doctrine; pleading of claims and defenses; joinder of claims; discovery procedures; summary judgment motions; trial and post-trial motions; appeal of judgments; and effect of judgments.
3. Attendance and preparation are required.
4. Grading: The grade will be based upon 165 potentially available points.
 - 45 points: There will be three “partnership” exercises on the subjects of complaints, answers, and a discovery plan. You will divide into groups of roughly five-eight students per partnership. You will submit each exercise as a partnership. Each exercise will be worth 15 points. The partnership’s points will apply to each member of the partnership. You will identify your partnership members through personal pseudonyms, recorded with my assistant Susan Miller in Room 441. Each person’s pseudonym will carry throughout the course.
 - 80 points: There will be four fifteen-minute, in-class “rules quizzes.” These will be entirely closed book. You will take the quizzes as individuals. Each of you will submit the quizzes using your own personal pseudonym. Each quiz will be worth 20 points.
 - 35 points: There will be a five-page paper in place of the final exam. I will ask you to select and then analyze a current development relating to any civil procedure topic we have studied during the course. Each of you will prepare the paper individually and submit the paper using your own personal pseudonym. The paper will be worth 35 points.
 - 5 points: Each student may receive up to 5 points for particularly excellent class participation. Participation points will be added to a student’s total

raw score per normal law school procedures, prior to the translation of the raw scores into the law school mandatory grading curve. (Note that the expectation in the course is that every student will participate, so receiving 0 extra points indicates a standard level of contribution to class discussions. A 0 in this category does not indicate any deficiency.)

4. The course casebook will be Yeazell, Civil Procedure (7th ed. Aspen 2008) and the 2009 Rules Supplement for the Yeazell text.
5. We will try to adhere to the schedule in the course syllabus. However, we have much ground to cover, and so there may be modifications in the syllabus as we go along.

<p>Week # 3 Monday, Sept. 21</p>	<p>Notice and Service of Process</p> <p>Long-arm Statutes</p> <p>Venue</p> <ul style="list-style-type: none"> • Dee-K Enterprises <p>Forum Non Conveniens</p> <ul style="list-style-type: none"> • Piper Aircraft 	<p>149-154</p> <p>154-58, 2009 Supp. 13-21 (Rule 4, Minn. Stat. §§ 543.19, 303.13)</p> <p>158-159 (skip notes p. 159), 160-64</p> <p>164-169</p>
<p>Tuesday, Sept. 22</p>	<p>Subject Matter Jurisdiction Federal Question Jurisdiction</p> <ul style="list-style-type: none"> • Mottley 	<p>175-189; 2009 Supp. 341 (28 U.S.C. § 1331)</p>
<p>Thursday, Sept. 24</p>	<p>Diversity Jurisdiction, Amount in Controversy</p> <ul style="list-style-type: none"> • Redner • Saadeh 	<p>189-204; 2009 Supp. 341-342 (28 U.S.C. § 1332 (a)-(c))</p>
<p>Week # 4 Monday, Sept. 28</p>	<p><u>Closed book quiz on personal jurisdiction, subject matter jurisdiction, venue, and related topics</u></p> <p>Erie Doctrine (State Law in Federal Court)</p> <ul style="list-style-type: none"> • Erie Railroad v. Tompkins • Guaranty Trust • Byrd 	<p>221-240</p>
<p>Tuesday, Sept. 29</p>	<p>Erie Doctrine</p> <ul style="list-style-type: none"> • Hanna v. Plumer • Semtek 	<p>240-255</p>

Thursday, Oct. 1	Pleading	333-340; 2009 Supp. 13, 28-33 (Rules 1, 2, 7, 8, 9 and 10)
Week # 5 Monday, Oct. 5	Modern Pleading <ul style="list-style-type: none"> • Haddle 	340-357
Tuesday, Oct. 6	Elements of the Claim <ul style="list-style-type: none"> • Twombly • Stradford • Jones 	357-375
Thursday, Oct. 8	Ethical Principles in Litigation <ul style="list-style-type: none"> • Walker • Mattell 	375-387; 2009 Supp. 33-37 (Rule 11)
Week # 6 Monday, Oct. 12	Responding to the Complaint-Answer, Affirmative defenses, pre-answer motions, reply, amendments <ul style="list-style-type: none"> • Zielinski • Beeck • Moore • Bonerb 	387-414; 2009 Supp. 28-31, 37-41, 44-46 (Rules 7, 8(c), 12, 15)
Tuesday, Oct. 13	Counterclaims, Joinder of Claims <ul style="list-style-type: none"> • Plant • Mosley 	735-755; 2009 Supp. 41-42, 52, 55-56, 112-113, 353 (Rules 13, 18, 20, 42; 28 U.S.C. § 1367)
Thursday, Oct. 15	Third Party Claims <ul style="list-style-type: none"> • Price • Kroger 	755-770; 2009 Supp. 42-43, 353 (Rule 14; 28 U.S.C. § 1367)

<p>Week # 7 Monday, Oct. 19</p>	<p>Compulsory Joinder</p> <ul style="list-style-type: none"> • Temple • Helzberg's Diamond Shops <p>[Comment re Intervention and Interpleader]</p> <p>Hand out complaint drafting exercise</p>	<p>770-780; 2009 Supp. 52-56 (Rules 19, 20)</p>
<p>Tuesday, Oct. 20</p>	<p><u>Closed book quiz on Erie, pleading, joinder, and related topics</u></p> <p>Class Actions</p> <ul style="list-style-type: none"> • Michigan High School • Heaven 	<p>798-807; 811-813; 2009 Supp. 57-66 (Rule 23)</p>
<p>Thursday, Oct. 22</p>	<p>Class Actions</p> <ul style="list-style-type: none"> • Hansberry • Shutts • Amchem 	<p>816-846; 2009 Supp. 57-66 (Rule 23)</p>
<p>Week # 8 Monday, Oct. 26</p>	<p>Class Action Fairness Act</p>	<p>2009 Supp. 342-345 (28 U.S.C. § 1332(d))</p>
<p>Tuesday, Oct. 27</p>	<p><u>Class hand-in draft complaint</u> Discussion of complaint exercise</p>	<p>No new reading</p>
<p>Thursday, Oct. 29</p>	<p>Discovery Overview</p> <ul style="list-style-type: none"> • Davis • Steffan • Silvestri <p>Hand out answer drafting exercise</p>	<p>415-38; Supp. 70-104 (Rules 26 – 36)</p>

<p>Week # 9 Monday, Nov. 2</p>	<p>Limitations on Discovery, including trial preparation material and privilege</p> <ul style="list-style-type: none"> • Hickman • Thompson • Chiquita 	<p>438-54; 2009 Supp. 70-75 (Rules 26(a)(2), 26(b)(3), 26(b)(4), 26(b)(5))</p>
<p>Tuesday, Nov. 3</p>	<p>Discussion of e-discovery issues</p>	<p>Read <i>Zubulake</i>, 217 F.R.D. 309, and follow-on decisions</p>
<p>Thursday, Nov. 5</p>	<p><u>Class hand-in draft answer</u> Discussion of answer exercise Distribute discovery plan exercise</p>	<p>No new reading</p>
<p>Week # 10 Monday, Nov. 9</p>	<p>Discovery and privacy in more detail</p> <ul style="list-style-type: none"> • Stalnaker <p><u>Federal Court Summary Judgment Hearing</u> <u>1:00 pm-2:30 pm Room 25</u></p>	<p>454-60; 2009 Supp. 70-82, 97-104 (Rules 26, 34, 35, 36)</p>
<p>Tuesday, Nov. 10</p>	<p>Discussion of discovery sanctions material</p> <ul style="list-style-type: none"> • Zubulake 	<p>460-72; 2009 Supp. 77-78, 104-110 (Rules 26(g), 37)</p>

Thursday, Nov. 12	<p>Resolution without trial, including summary judgment</p> <ul style="list-style-type: none"> • Peralta • Celotex • Bias • Sanders • Mckey 	473-81, 526-49; 2009 Supp. 111-12, 135-37 (Rules 41, 55, 56)
<p>Week # 11 Monday, Nov. 16</p>	<p><u>Hand in discovery plans</u> Class discussion of discovery plans</p>	No new reading
Tuesday, Nov. 17	<p>Right to jury trial, procedural controls on juries</p> <ul style="list-style-type: none"> • Terry • Chamberlain 	551-52, 556-70, 600-09; 2009 Supp. 123-26, 127-29, 140 (Rules 50, 52, 59)
Thursday, Nov. 19	<p><u>Closed book quiz on class actions, discovery, trial, juries, and related topics</u></p> <p>Post verdict controls on Juries (JNOV and new trials); Introduction to appeals</p> <ul style="list-style-type: none"> • Lind 	609-17, 625-27, 629-35; 2009 Supp. 123-26, 127-29, 140 (Rules 50, 52, 59)
<p>Week # 12 Monday, Nov. 23</p>	<p>Finality and appeals</p> <ul style="list-style-type: none"> • Wetzel • Lauro Lines • Anderson • Harnden 	635-65; 2009 Supp. 127-29, 132, 337 (Rule 52, 54(b), 28 U.S.C. §§ 1291, 1292)

Tuesday, Nov. 24	Claim preclusion <ul style="list-style-type: none"> • Frier • Martino • Searle Bros. • Gargallo 	667-93
Thursday, Nov. 26	<u>NO CLASS –THANKSGIVING</u>	
Week # 13 Monday, Nov. 30	Issue preclusion and collateral attack <ul style="list-style-type: none"> • Parks • Parklane • Durfee 	694-710, 722-29
Tuesday, Dec. 1	Catch-up day	No new reading
Thursday, Dec. 3	<u>Closed book quiz on appeal and preclusion subjects</u> Catch-up day	No new reading
Week # 14 Monday, Dec. 7	No class – day to work on final papers	No new reading
Tuesday, Dec. 8	<u>Final papers due at start of class</u> Course evaluations Civil Procedure Jeopardy®	No new reading