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### **Syllabus for Subrin Section of Civil Procedure**

You need two books: 1) Subrin, Minow, Brodin, Main, *Civil Procedure – Doctrine, Practice, and Context*, Third Edition (Aspen Publishers, 2008) (called “the casebook”) (make sure you have the 3rd Edition); and 2) Subrin, Minow, Brodin, Main, *Federal Rules of Civil Procedure with Resources for Study* (Aspen Publishers, 2010-2011) (called “Supplement”) (Make sure your Supplement is 2010-2011.) These books are available at the Northeastern University Bookstore.

Some students feel they need a bit more context for the study of civil procedure. Professor Margaret Woo and I have written a book designed for American college students and first year law students who want an introduction to American civil litigation, as well as for foreign law students and lawyers who want to know more about our legal system. I am not assigning this book, nor am I recommending that you buy it. But if you think it would help you, you might look at it in our library or at the Northeastern University Bookstore. The book is *Litigating in America – Civil Procedure in Context* (Stephen N. Subrin and Margaret Y.K. Woo, Aspen Publishers, 2006.) Some students have also found useful Joseph W. Glannon, *Civil Procedure Examples and Explanations* (Aspen Publishers), which has simple problems and explanations about many of the procedural rules and concepts. Again, I am not recommending that you buy this book. But you might want to look it over at some point and see if you think it is helpful.

The pages assigned in this syllabus refer to the casebook. Ordinarily, each number (such as 1), 2), 3) ) refers to one day’s assignment. Some assignments may take a portion of the next class.

Please read “1)” for the first day of class. This First Assignment is found at the end of this syllabus.

**When rules or statutes are the focus of an assignment, please read them in your Supplement.**

#### Assignments

##### I. An Introduction to Underlying Issues of Civil Procedure

1) A Potential Gift of Two Islands. This First Assignment can be found at the end of this syllabus.

## II. Thinking Like a Trial Lawyer, Pleadings, and Simple Joinder

2) Introduction and Summary of a Lawsuit, Claims, Causes of Action, and Elements, 2-9 (up to “Law as Theatre”), 183-195. Skip Practice Exercise No. 6. Remember, pages 183-195 provide only a summary. It is not expected that you will learn the whole course yet. I just want you to have a road map of an entire law suit, so that you can go back to this summary as the course progresses in order to remind yourself how the stages and concepts of a civil litigation fit together.

3) Practice Exercise No. 6, p. 195. We will have a strategy session in class. It will be helpful to you to become familiar with the facts of the jeep case, because we will be referring to that case throughout the course. Be sure to read pages 1002-1006 mentioned in the Practice Exercise. Look at pages 192-195 again.

4) Complaints. 195-223. Skip Exercises 7 and 8. In addition to the relevant pleading rules, please read 28 U.S.C. Sec. 2072 in the Supplement. (“U.S.C.” is the abbreviation for “United States Code.”) This statutory provision is similar to the Enabling Act of 1934 in which Congress gave the Supreme Court authority to promulgate procedural rules for civil cases in the Federal District Courts.

5) Complaints. *Ashcroft v. Iqbal* in your Supplement and Exercise 7, pages 229-230; read up to Practice Exercise No.8 on page 230. Do not do Exercise No. 8.

6) More on Complaints, 223 – 229, and Anonymous Plaintiffs, 233-237.

7) Sanctions, 283-298. (Skip Practice Exercise 11).

8) Answers, Motions, and Affirmative Defenses, including Practice Exercise 9, 237-246.

9) Amendments, 246-258 and *Krupski v. Costa Crociere S.p.A* in the Supplement.

10. Learning how to make arguments in court. Read 259 – 264. Page 264 is particularly important, because it explains some of the fundamentals of making an argument to a judge. Outline for yourself what arguments you would make for the party to whom you have been assigned in Exercise 10. If you represent the Dees, consider whether you will oppose the motion, and also consider what a judge would want to know from each party in this case. If you are a clerk to the judge, consider what questions you, if you were judge, would want to ask. We will pick lawyers to argue in court at a motions session.

11) Exercise 10. (pp. 262-264) Also reread *Christopher v. Duffy*. Motion Session in class. If you are not a participant, please be prepared to discuss the arguments you hear at the motions session and to critique them in a friendly, positive manner.

12) Simple Joinder, 298-315. (including Exercise 12, but skip Exercise 13).

13) Necessary and Indispensable Parties, Intervention, 316-332.

14) Review, 332-335. You will learn the most by actually writing out answers. The answers will not be collected, but the questions and answers will be discussed in some detail in this class.

### III. Discovery

15) 337-363.

16) 363-389. (do Exercise 16, skip Exercises 14 and 15.) At some point look at discovery in the *Carpenter* case in the Case Files, 1038-1043.

### IV. Jury Trial and Judicial Control of Results

17) Value of Jury Trial and Summary Judgment, 425-442, 463-476. Concentrate on *Adickes*.

18) Summary Judgment, 476-499.

19) Discuss potential arguments for Exercise 21, pages 499-501. Pick those who will argue summary judgment at a motions session. We will only be doing the oral portion of this assignment. Please consider the arguments in Part B on p. 501 for Ultimate Auto and the Garage. The major issue is whether the McGill's and the Garage's only obligation is to follow the Regulations, or, in other words, whether the Regulations preempt (eliminate in this situation) all other law.

20) The class will be dedicated to oral arguments based on Exercise 21. Again, those who are not arguing should consider what arguments they would make and be prepared to do gentle, but honest, critiques of the arguments.

21) Voluntary and Involuntary Dismissal, Directed Verdict, Judgment NOV, Motions for New Trial, 501-526 (concentrate on *Galloway* and the questions after it). Do not do Practice Exercise 22.

22) Read on your own pp. 527 and 528, up to *Brandon*, and 531-542. (Skip the Practice Exercises.) I hope that this class will be led by the plaintiffs' lawyer in the *Carpenter* jeep case. Please consider what questions you want to ask him. I will discuss portions of the reading in Class 23.

23) Appeals and Review. 547 – 552. It is important that you do the Review Question before class. You will learn the most by writing it out. You don't have to hand it in, but we will discuss potential answers in class.

#### V. Alternative Dispute Resolution

24 ) The Adversary System and ADR, 553-589. Skip the Exercises. I hope to have a speaker or speakers who are mediators lead this class. (If you want an additional document for your file, please submit a writing in accordance with "A" or "B" on p. 590, which is part of Practice Exercise 28, starting of p. 589. If you hand in either of these documents at any time before Thanksgiving, your instructor will be glad to read it and offer comments.

#### VI. The Choice of an Appropriate Court: Personal Jurisdiction, Notice, and Venue

25) Personal Jurisdiction, 609-612, 625-638 (up to H). Spend most of your time on *International Shoe*.

26) Personal Jurisdiction, 639-660.

27) Personal Jurisdiction, 660-685 (including Exercise 30; skip Exercise 31).

28) Personal Jurisdiction, 687-694; 710-725..

29) Finishing Personal Jurisdiction and Notice, 725-750.

30) Venue and *Forum Non Conveniens*, 750-761 (we won't do Review, p. 761 in class, but you may want to do it on your own).

#### VII. The Choice of an Appropriate Court: Subject Matter Jurisdiction and Removal

31) Federal Question, Diversity, and Beginning of Supplemental Jurisdiction, 763-778 (up to 3), 793-802.

32) Supplemental Jurisdiction and Removal, pages 802-813 (Skip Exercises; Review on 813-815 is for your own use.)

#### VIII. Choice of Law (*Erie* issues)

33) 817-846.

34) 846-864, including Exercise 35, and *Shady Grove Orthopedic Assocs., P.A. v. Allstate Insurance Co.* in your Supplement.

## IX. Finality: Preclusion Law

35) Claim Splitting or Claim Preclusion, 865-890 (we'll also discuss the Review Problems).

36) Issue Preclusion (Collateral Estoppel), 890-908 and *Taylor v. Sturgell* in your Supplement.

## X. Class Actions (to the extent we have time)

37) Essential Requirements for Class Actions, 927-951.

38) More on Essentials and Settlement Class Actions, 951-983 (skip Exercise 37).

39) The Mysteries of *Martin v. Wilks*, 983-996 (skip Exercise 38).