

## **CIVIL PROCEDURE (SECTION 6): SPRING 2012**

### **Syllabus and Course Information**

Monday & Wednesday 6:00-7:50

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### **Required Texts**

Babcock, Massaro & Spaulding, *Civil Procedure: Cases and Problems*, 4th ed. (2009)

*Federal Rules of Civil Procedure and Selected Other Procedural Provisions*, Foundation Press (2011)

Harr, *A Civil Action* (1995)

Grossman and Vaughn, *A Documentary Companion to "A Civil Action"*, 4th ed. (2008)

### **Materials Available On MyWCL**

Babcock, Massaro, & Spaulding 2011 Teacher's Update

28 U.S.C. Amendments (Dec. 2011)

Various other assigned documents

### **Recommended Text**

*Civil Procedure Stories* (2d ed. 2008) includes fourteen detailed narrative discussions of important civil procedure cases. During the course, we will be reading and discussing seven or eight of the fourteen cases covered by this volume. In light of the number of books I am already having you buy, and my concern about not assigning too much reading, I am not requiring *Civil Procedure Stories*. Nonetheless, it may be a helpful addition to your other assignments.

### **Office Hours**

To be announced.

## **Grades**

Your grade will be based on an in-class, anonymously-graded final examination. This grade may be adjusted under the class participation system described below.

### **Class Participation**

I will be using a “Present and Prepared” system, which may be used to raise your grade for the course by one increment if your grade on the final examination is on the borderline. Starting with the second class, you will find a sign-in sheet outside the classroom. If you are prepared to participate in class discussion, you may write your signature next to your name on the sign-in sheet. If you do so, I may call on you that day. If you do not sign the sheet, I will not call on you. You may not sign the sheet after 6:00 pm. If you sign the sheet for 20 of 27 class meetings (excluding the first class) and are prepared every time you do so, your grade for the course will be raised by one increment (“bumped”) if your final examination grade is on the borderline. If you sign the sheet, and I call on you and find that you are not prepared, you will receive a one increment decrease in your grade for the course. Moreover, if you do not sign the sheet for at least 13 of the 27 class meetings, you will receive a one increment decrease in your grade for the course.

If you cannot attend a class session because (1) you are ill, (2) your child or other dependent is ill, (3) you are visiting a very gravely ill family member or close friend, or (4) you are attending the funeral of a family member or close friend, please contact my assistant, Kellee Fitzgerald, by e-mail ([fitzgerald@wcl.american.edu](mailto:fitzgerald@wcl.american.edu)) with an explanation and ask her to give you “Present and Prepared” credit for that day. (I urge you NOT to attend class if you have a potentially contagious illness.) I know that there are many other reasons—expected and unexpected—why you might not be able to attend a particular class or make it to class on time, but I have already taken this into account by making you eligible for a Present and Prepared “bump” if you sign in for 20/27 classes, rather than all 27 classes.

The system is one of “Present and Prepared,” not “Present and Brilliant.” If you stumble over the answer to a question, I will NOT deem you unprepared for that day, unless your answer demonstrates that you simply have not done the reading. It is possible that I will inadvertently call on you on a day that you have not signed the sheet. If I do so, and you do not wish to respond, please point out my error, and I will immediately move on. Should you wish to respond, please point out my error nonetheless so that I can give you credit for being present and prepared for that class.

For your own benefit and the benefit of the class, I urge you to raise your hand at any time if you would like to ask a question or offer a comment. You should never hesitate to participate.

## MyWCL

There is a site for this class on MyWCL. I will post announcements, this syllabus, some assignments, and other information and materials on the site. Moreover, MyWCL will give me the ability to communicate with any or all of you by e-mail.

## Reading Assignments

Finish *A Civil Action* as soon as possible. Throughout the semester, I will be discussing issues it raises. *A Documentary Companion to "A Civil Action"* will periodically refer you back to relevant pages from *A Civil Action* itself.

Every time a reading assignment mentions a federal rule, statute, or constitutional provision, you should read that rule, statute, or provision. I cannot stress enough how important it is to do this. I have tried to note many provisions in the syllabus, but if you see reference to an additional provision in the assigned reading, you should look at it as well.

You should read the assigned pages in the order in which they appear on the syllabus.

## Tentative Schedule of Assignments

Note: "BMS" stands for *Babcock, Massaro, & Spaulding*, your casebook. "BMSTU" stands for the *Babcock, Massaro & Spaulding 2011 Teacher's Update*, available on MyWCL. "G&V" stands for Grossman & Vaughn, *A Documentary Companion to "A Civil Action."*

"FRCP" stands for the *Federal Rules of Civil Procedure*. You generally should refer to the most recent version of the Federal Rules, near the front of the Rule Book. (The reading assignment on Rule 11 also includes advisory committee notes, which appear later in the Rule Book, at the pages indicated on the syllabus.) The United States Constitution and procedural provisions from section 28 of the United States Code ("28 U.S.C. § \_\_\_\_") are reproduced near the end of the rule book. You can use the back cover of the rule book as a finding aid.

### **Class 1 – Monday, January 9**

*Introduction* – BMS 58-68; G&V vii-xiii

*Notice* – U.S. Const. amend. V & amend. XIV, § 1; BMS 26-31.

### **Class 2 – Wednesday, January 11**

*Notice* – BMS 26-31 (reread); BMS 32 (*Mullane*)-35; G&V 7-14, skim 62-80; BMS 35-38; FRCP 3, 4(a)-(e), (m); BMS 38-44.

### **Class 3 – Wednesday, January 18**

*Personal Jurisdiction* – BMS 104-115, 141-144.

**Class 4 – Monday, January 23**

*Personal Jurisdiction* – *Goodyear v. Brown* (BMSTU 40-48); G&V 5 question #4; BMS 115-117, 118-121; G&V 4 (Mass. Gen. Laws Ch. 223A, § 3); FRCP 4(k); BMS 121-130, 176.

**Class 5 – Wednesday, January 25**

*Personal Jurisdiction* – BMS 121-28 (re-read); *McIntyre v. Nicastro* (BMSTU 23-40); BMS 134-136 [the 8-0 “reasonableness” portion of *Asahi*, the basic facts of which are laid out in *Nicastro*]

**Class 6 – Monday, January 30**

*Personal Jurisdiction* – *Calder v. Jones* (on MyWCL); BMS 144-155, 178-192; G&V 4-5 Comments and Questions ##1-3.

Additional assignment for Class 6: Go to the Amazon.com website and try to determine whether there exists, anywhere on the site, a choice of law clause (establishing which jurisdiction’s law will apply in any suit between a shopper and the company) and/or a forum selection clause (establishing which court(s) will have jurisdiction over such a suit).

**Class 7 – Wednesday, February 1**

*Personal Jurisdiction* – BMS 156 (starting at “International Shoe”)-165

*Venue* – 28 U.S.C. §§ 1391(a)-(d) (as amended in December, on MyWCL), 1404 (as amended in December, on MyWCL), 1406.

*Subject Matter Jurisdiction: Introduction* – Article III of U.S. Constitution; BMS 207-209; G&V 15-17, 147-52.

**Class 8 – Monday, February 6**

*Subject Matter Jurisdiction: Diversity* – 28 U.S.C. § 1332(a)-(c) (as amended in December, on MyWCL); BMS 225-228, 209-213, 218-225, 228-230; G&V 18-23

*Subject Matter Jurisdiction: Federal Question* – 28 U.S.C. § 1331; BMS 231-236.

*Subject Matter Jurisdiction: Removal* – 28 U.S.C. §§ 1441(a), (b) (as amended in December, on MyWCL); 1446(a)-(d) (as amended in December, on MyWCL); 1447(c), (d); BMS 929-930, 944 n. 4; G&V 23-28.

**Class 9 – Wednesday, February 8**

*Erie Doctrine* – 28 U.S.C. §§ 1652; BMS 866, 871-877, 866-871; 28 U.S.C. §§ 2072; U.S. Const. Art. VI; BMS 877-880.

**Class 10 – Monday, February 13**

*Erie Doctrine* – 28 U.S.C. §§ 1652, 2072; U.S. Const. Art. VI.; BMS 880-888 n. 2; G&V 52-55  
*History of Civil Procedure* – BMS 269 (bottom)-277, 280-289; History of Procedure Chart (on MyWCL).

*The Complaint* – FRCP 7, 8(a), (d) & (e), 10, 12(b)(6), (e), (f); BMS 291-294.

**Class 11 – Wednesday, February 15**

*The Complaint* – FRCP 8(a), (d) & (e), BMS 306-336; G&V 60-83; FRCP 9(b); BMS 339-340; *Ashcroft v. Iqbal* (BMSTU 62-75).

**Class 12 – Monday, February 20**

*Rule 11* – FRCP 11; BMS 400-406; G&V 113 (pre-1983 version of Rule 11); Rule Book 230-35 (advisory committee notes for 1993 amendments to Rule 11); BMS 406-07, 412-424, 434-37; G&V 749-766 (Appendix B), 113-28, 138-47.

**Class 13 – Wednesday, February 22**

*Amending the Pleadings* – FRCP 15; BMS 379-381; G&V 101-112 (up to “Relation Back”); BMS 381-389, 394-395; G&V 112-13.

*Responding to the Complaint* – FRCP 8(b) & (c); G&V 83-101; FRCP 12(a), (b), (c), (e), (f), (g), & (h); BMS 361-364, 370-374, 377-379.

**Class 14 – Monday, February 27**

*Responding to the Complaint* – FRCP 12(g) & (h) (reread); BMS 361

*Prior Judgments: Claim Preclusion* – BMS 1130-1132, 1158-1161 (§§ 17-20, 24-26), 1133-1135; *Car Carriers v. Ford* (on MyWCL); BMS 1163-1165; FRCP 41(b).

**Class 15 – Wednesday, February 29**

*Prior Judgments: Issue Preclusion* – BMS 1165-1166, 1161-1162 (§§ 27-28), 1166-1169, 1183 n. 4, 1189 nn. 3-4.

*Prior Judgments: Issue Preclusion and Mutuality* – BMS 1162-1163 (§ 29), 1174-1184

**Class 16 – Monday, March 5**

*Prior Judgments: Issue Preclusion and Mutuality* – BMS 1174-1184 (re-read), 1189 n. 2.

*Prior Judgments: Preclusion in a Federal System* – U.S. Const. Art. IV § 1; 28 U.S.C. § 1738; BMS 1163 (§§ 86-87), 1169-1173, 1220-1231.

**Class 17 – Wednesday, March 7**

*Joinder: Multiple Claims* – FRCP 13, 18, 21, 42; *Grumman Systems* and material preceding case (on MyWCL); G&V 155-56.

*Joinder: Multiple Parties* – FRCP 20; BMS 962-966.

**Class 18 – Monday, March 19**

*Joinder: Multiple Parties* – FRCP 14, 19, 21, 24, 42; BMS 972-975; G&V 157-180; BMS 966-972.

**Class 19 – Wednesday, March 21**

*Supplemental Jurisdiction* – 28 U.S. § 1367; BMS 901-907; *Jones v. Ford Motor Credit* (on MyWCL); *Owen Equipment v. Kroger* (on MyWCL).

**Class 20 – Monday, March 26**

*Supplemental Jurisdiction* – BMS 907-922

*Discovery: Introduction* — FRCP 26-37, 45 (skim all these rules); BMS 469-474; G&V 189-91.

*Discovery: Scope (introduction)* — FRCP 26(b), 26(c), 26(g), 37(a).

*Discovery: Relevance and Privileges* — FRCP 26(b)(1); G&V 195-199.

**Class 21 – Wednesday, March 28**

*Discovery: Relevance and Privileges* — FRCP 26(b)(1), 26(b)(5); G&V 199-201; BMS 496-498

*Discovery: Protective Orders and Motions to Compel* — FRCP 26(b)(2), 26(c), 37; G&V 231-34, 241-42; BMS 494-495.

*Discovery: Work Product* — BMS 498-505.

**Class 22 – Monday, April 2**

*Discovery: Work Product* — BMS 498-505 (re-read); FRCP 26(b)(3); BMS 505-509, 520-523, 525-528, 495-496;

**Class 23 – Wednesday, April 4**

*Discovery: Experts* — FRCP 26(b)(4), 26(a)(2); G&V 216-27; BMS 559-562, 564-569; G&V 227-30.

*Discovery: Work Product and Experts*—G&V 205-09 (skim App. C).

**Class 24 – Monday, April 9**

*Discovery: Experts* — BMS 554.

*Mandatory Disclosure* — FRCP 26(a); BMS 475-478; G&V 242-43.

*Interrogatories* — FRCP 33, 26(g), 26(e)(1); G&V 245-74 (skim), 275-76, 276-277 (esp. questions 3, 4, 6, 8, 10, 12).

**Class 25 – Wednesday, April 11**

*Interrogatories* — G&V 277-278 (questions 13-16).

*Depositions* — FRCP 30, 32, 45; BMS 593-594; G&V 282-300.

*Document production* — FRCP 34, 37; G&V 300-305, 306 (esp. questions 3-6), 306-12; Model Rule of Professional Conduct 3.4(a) (at G&V 740); BMS 528-530.

**Class 26 – Monday, April 16**

*Document Production: Electronic Discovery* — FRCP 26(b)(2)(B), 26(b)(5), 34(a), 34(b), 37(e), 45(c)(2)(B), 45(d)(1)(B); BMS 530-531, 549-54.

*Medical Examinations* — FRCP 35; G&V 361-68, 376-77.

*Requests for Admission* — FRCP 36.

**Class 27 – Wednesday, April 18**

*Pretrial dispositions (introduction)* — BMS 601-602; FRCP 41; G&V 555-56, 546-554

*Summary judgment* — FRCP 56; BMS 633-640.

**Class 28 – Monday, April 23**

*Summary judgment* — BMS 640-651; *Anderson v. Liberty Lobby* (on MyWCL); BMS 654-664, 668-671; G&V 557-82.