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Civil Procedure II

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Summary. Civil Procedure I introduced you to many of the basic principles that govern the course of litigation in the federal courts of the United States, including personal and subject-matter jurisdiction, choice of law, basic rules of pleading, and joinder of parties and claims.

In Civil Procedure II, we turn to matters that are seemingly more prosaic and detail-oriented, and less concerned with “big-picture” subjects like the reach of the federal judicial power—but which occupy a proportionately greater share of the time and attention of practicing attorneys in preparing or defending any federal case, and which also raise their own set of thorny deeper questions. We will deal with additional topics in joinder (including a look at the most expansive vehicle for litigating mass claims that exists in the federal system—the class action), dispositive motions, pretrial discovery, trial and appellate procedure, and the preclusive effects of federal court judgments. We will begin to touch upon matters that, for those students considering a career in litigation, will be more fully developed in the upper-level courses on Complex Litigation, Evidence, Federal Jurisdiction, Pre-Trial Practice, Trial Practice, and Appellate Practice and Procedure.

You should bring this syllabus with you to each class. The syllabus is tentative and subject to amendment.

Textbook and Course Materials.

Required Text: Marcus, Redish, Sherman, and Pfander, *Civil Procedure: A Modern Approach* (5th ed. 2009) [“**Casebook**”]. The casebook is available in any of the campus bookstores or online at <http://www.westacademic.com/>. You should review the notes following each assigned case in addition to the text of the cases themselves.

Optional, but Recommended: *Federal Rules of Civil Procedure*, 2010–2011 edition. Additional course materials will be handed out in class or made available for pickup [“**Handout**”].

Grading. Your course grade will be based on your performance on a final written examination at the conclusion of the course. Additional details concerning the format of the exam will be provided later in the semester.

Office Hours. Office hours will be held Fridays 1:00 p.m. to 4:00 p.m., or by appointment. Please contact my assistant, Huda Kebede, at 556-9133, to schedule an appointment.

Course Syllabus

Unit 1: Additional Topics in Joinder

I. Interpleader

Fed. R. Civ. P. 22 & 28 U.S.C. § 1335.

Discussion (Casebook, pp. 275–77).

State Farm Fire & Casualty Co. v. Tashire (Casebook, pp. 277–82).

II. Intervention

Fed. R. Civ. P. 24.

Discussion (Casebook, p. 285).

Natural Resources Defense Council, Inc. v. United States Nuclear Regulatory Comm’n (Casebook, pp. 285–90).

Discussion (Casebook, pp. 293–97).

III. Class Actions

A. Introduction

- Fed. R. Civ. P. 23 & 28 U.S.C. § 1332(d).
- Discussion (Casebook, pp. 297–99).
- *Hansberry v. Lee* (Casebook, pp. 299–303).

B. Certification

- Discussion (Casebook, pp. 305–06).
- *Walters v. Reno* (Casebook, pp. 306–15).
- *Castano v. American Tobacco Co.* (Casebook, pp. 318–29).
- Discussion (Casebook, pp. 336–38).

C. Notice and Opt-Out Rights

- Discussion (Casebook, pp. 338–42).

D. Class Action Fairness Act (CAFA)

- Excerpt from Herr & McCarthy, “The Class Action Fairness Act of 2005” (Handout).

Unit 2: Discovery

I. Introduction

Fed. R. Civ. P. 26(b)(1)–(2), 26(g)

Discussion (Casebook, pp. 343–44).

Hickman v. Taylor (Casebook, p. 344).

In re Convergent Technologies Securities Litigation (Casebook, pp. 347–49).

II. Discovery Devices

A. Initial Disclosures and the Discovery Conference

- Fed. R. Civ. P. 26(a)(1), 26(f).
- Discussion (Casebook, pp. 352–54).

B. Requests for Documents

- Fed. R. Civ. P. 34.
- Discussion (Casebook, pp. 354–55).

C. Interrogatories

- Fed. R. Civ. P. 33.
- Discussion (Casebook, pp. 355–57).

D. Depositions

- Fed. R. Civ. P. 30(a)–(d), (g), 32(d).
- Discussion (Casebook, pp. 357–60).

E. Examination

- Fed. R. Civ. P. 35(a).
- Discussion (Casebook, pp. 360–61).

F. Requests for Admissions

- Fed. R. Civ. P. 36.
- Discussion (Casebook, pp. 366–67 n.3).

III. Discovery Management

Fed. R. Civ. P. 26(c).

Davis v. Ross (Casebook, pp. 368–72).

Kozlowski v. Sears, Roebuck & Co. (Casebook, pp. 377–79).

McPeck v. Ashcroft (Casebook, pp. 379–83).

IV. Privileges

Fed. R. Civ. P. 26(b)(3).

Discussion (Casebook, pp. 387–88).

Hickman v. Taylor (Casebook, pp. 388–94).

Upjohn Co. v. United States (Casebook, pp. 399–406).

Swidler & Berlin v. United States (Handout).

V. Investigation

Corley v. Rosewood Care Center, Inc. (Casebook, pp. 419–20).

VI. Sanctions

Fed. R. Civ. P. 37.

Cine Forty-Second Street Theatre Corp. v. Allied Artists Pictures Corp. (Casebook, pp. 422–27).

Unit 3: Pre-Trial Dispositions

I. Default Judgment

Fed. R. Civ. P. 55.

Shepard Claims Service Inc. v. William Darrah & Associates (Casebook, pp. 200–04).

II. Dismissal

Fed. R. Civ. P. 41(a)–(b).

III. Summary Judgment

Fed. R. Civ. P. 56.

Discussion (Casebook, pp. 430–34).

Adickes v. S.H. Kress & Co. (Casebook, pp. 434–36).

Discussion (Casebook, pp. 436–40).

Celotex Corp. v. Catrett (Casebook, pp. 440–50).

Arnstein v. Porter (Casebook, pp. 455–58).

Dyer v. MacDougall (Casebook, pp. 458–60).

Unit 4: Trial

I. Phases of Trial

Discussion (Casebook, pp. 523–31).

II. The Jury Trial Right

Fed. R. Civ. P. 38 & 39.

Discussion (Casebook, pp. 531–33).

Beacon Theatres v. Westover (Casebook, pp. 533–41).

Dairy Queen, Inc. v. Wood (Casebook, pp. 541–44).

Ross v. Bernhard (Casebook, pp. 548–55).

Curtis v. Loether (Casebook, pp. 557–59).

Tull v. United States (Casebook, pp. 561–63).

Teamsters Local No. 391 v. Terry (Casebook, pp. 565–79).

Discussion: Complex Cases (Casebook, pp. 585–94).

Unit 5: Post-Trial Practice

I. Motion for Judgment as a Matter of Law

Fed. R. Civ. P. 50.

Discussion (Casebook, pp. 594–95).

Galloway v. United States (Casebook, pp. 596–608).
Discussion (Casebook, pp. 610–11).

II. Motion for New Trial

Fed. R. Civ. P. 59.
Ahern v. Scholz (Casebook, pp. 632–37).
Discussion (Casebook, pp. 639–43).

III. Motion for Relief from Judgment

Fed. R. Civ. P. 60(b).
Discussion (Casebook, pp. 643–48).

IV. Remittitur and Additur

Dimick v. Schiedt (Casebook, pp. 648–55).

Unit 6: Appellate Practice

I. Introduction

28 U.S.C. § 1291.
Discussion (Casebook, pp. 1016–21).

II. Appellate Jurisdiction

- A. Notice of Appeal
 - *Bowles v. Russell* (Casebook, pp. 1021–27).
- B. Final Judgment
 - Discussion (Casebook, pp. 1030–31).
 - *Quackenbush v. Allstate Insurance Co.* (Casebook, pp. 1031–33).
- C. The Collateral Order Doctrine
 - *Cohen v. Beneficial Industrial Loan Corp.* (Casebook, pp. 1036–37).
 - *Will v. Hallock* (Casebook, pp. 1037–42).
 - Discussion (Casebook, pp. 1047–50).
- D. Interlocutory Review
 - 28 U.S.C. § 1292(a).
 - *Carson v. American Brands, Inc.* (Casebook, pp. 1051–55).

III. Discretionary Forms of Review

28 U.S.C. § 1292(b)
Nystrom v. Trex, Inc. (Casebook, pp. 1058–61).
Will v. United States (Casebook, pp. 1068–71).
Discussion (Casebook, pp. 1076–77).

IV. Prevailing Party Appeals

El Paso Natural Gas Co. v. Neztosie (Handout).

V. Review in the Supreme Court

28 U.S.C. §§ 1251, 1253–1254, 1257.

Supreme Court Rules 10–16

Discussion (Casebook, pp. 1079–80).

Unit 7: Preclusive Effects of Judgments

I. Introduction

Discussion (Casebook, pp. 1094–97).

II. Claim Preclusion (Res Judicata)

Manego v. Orleans Board of Trade (Casebook, pp. 1097–1103).

Discussion (Casebook, pp. 1109–12).

Marrese v. American Academy of Orthopaedic Surgeons (Casebook, pp. 1128–32).

Semtek International, Inc. v. Lockheed Martin Corp. (Casebook, pp. 1136–42).

III. Issue Preclusion (Collateral Estoppel)

Little v. Blue Goose Motor Coach Co. (Casebook, pp. 1145–48).

Hardy v. Johns-Manville Sales Corp. (Casebook, pp. 1150–53).

IV. Persons Bound by Judgment

Discussion (Casebook, pp. 1167–68).

Taylor v. Sturgell (Casebook, pp. 1168–81).

Discussion (Casebook, pp. 1186–87).

Parklane Hosiery Co. v. Shore (Casebook, pp. 1187–95).

Unit 8: Alternative Dispute Resolution

Discussion (Casebook, pp. 491–97).