

HAMLIN UNIVERSITY SCHOOL OF LAW—FALL SEMESTER 2012

CIVIL PROCEDURE I—WEEKEND SECTION

PROFESSOR PIELEMEIER

1:00-4:15 pm, SATURDAYS, ROOM 101

SYLLABUS (as modified on July 27, 2012)

ADVANCE ASSIGNMENT: Our first class session is scheduled for Saturday, August 11. For that class session, prepare for discussion of Units 1, 2, and 3, noted later in this Syllabus.

REQUIRED COURSE MATERIALS

There will be two required books, plus some additional matters noted below.

(1) The first required book, the Casebook, is from Aspen Publishers, which is offering the book in two formats, hardcover and a "SMARTe" edition. The latter is not a physical book, but apparently a code or set of codes to obtain the material through the internet. The price for the SMARTe edition is about \$40 less than the Hardcover edition. It is my understanding that if you want to purchase the SMARTe version, you must do so over the internet. Go to <http://www.aspenlaw.com> and click on student resources, then navigate as best you can from there. You can purchase the hardcover version from the Hamline Law Bookstore (<http://www.hamlinelawbookstore.com>). Here are the details.

Title: Civil Procedure: Cases and Problems

Authors: Allen Ides and Christopher N. May

Edition: Fourth (2012)

Publisher: Aspen Publishers

ISBN (Hardcover version): 1454806966

ISBN (SMARTe version): 1454818379

(2) Second required book (available only in paperback):

Title: Civil Procedure: Constitution, Statutes, Rules and Supplemental Materials, 2012

Authors: Allen Ides and Christopher N. May

Edition: 2012

Publisher: Aspen Publishers

ISBN: 1454810874

(3) TWEN. I will be setting up an electronic course web site on TWEN ("The West Education Network") to facilitate communication outside of class. All students in the course must sign on to the web site and provide an e-mail address no later than our second class session. To access TWEN, you will need a Westlaw password, which will be provided to you during orientation or, at the latest, during our first class. You can sign on by going to <http://lawschool.westlaw.com> and clicking on TWEN courses. Then click on Add/Drop Courses and you should then see all Hamline courses that have a TWEN page, where you can add this course.

(4) Supplemental materials. From time to time I will have some supplemental notes and other materials included as part of an assignment. Some of the shorter ones are included with the list of assignments later in this document. Longer Supplemental Materials will be posted on the course TWEN page under the link entitled "Assignments and Supplemental Course Material." There is no charge for these supplemental materials, and you may print them out or download them as you wish.

Office Hours and E-Mail

Office hours are posted on my office door (Room 225W), and I will usually be in during those hours. In addition, I am normally here throughout the day on many days, so feel free to ask questions at other times as well. My preference, however, is not to be disturbed during the hour preceding one of my classes.

You can reach me by E-Mail at:
jpielemeier@gw.hamline.edu

I am in the process of constructing a Civil Procedure page behind my "Home Page" on Hamline's World Wide Web Pages. It contains links to litigation oriented resources, and recent old examinations. You may access this web page at <http://sites.hamline.edu/personal/jpielemeier/civpro.html>. I will also provide a link on the TWEN home page for this course.

Supplemental Reading

It is not necessary to do any reading beyond that assigned. In fact, thoughtful consideration of the assigned materials is preferable to seeking other material, and I would not encourage extensive reference to outside materials. For those who want to go beyond the assigned materials, there is no single text or hornbook to recommend. Although I have reviewed them only briefly, two that may be helpful are: (1) Clermont, *Principles of Civil Procedure* (Thomson West, 3d edition, 2012); and (2) Shreve and Raven-Hanson, *Understanding Civil Procedure* (LexisNexis, 4th edition, 2009). In addition, an occasional brief reference to *Moore's Federal Practice* (available on Lexis) and Wright, Miller, and Cooper's *Federal Practice and Procedure* (available on Westlaw), both multi-volume treatises, may be helpful. Also, the articles and books cited in the casebook have been carefully chosen and should afford a good discussion of the various questions at issue if you desire to read further. I would suggest that you refer to a law dictionary if you see a word in the assigned material that you do not understand.

Learning Outcomes for the Course

The basic goals and objectives of this course are to develop an understanding of the issues, rules, and policies involved in the process of civil (as opposed to criminal) litigation. They are also to develop proficiency in legal methodology and problem solving.

Coverage in this Fall Semester course in Civil Procedure I will include most of Chapters I-VI of the Casebook and Chapter VII through approximately page 630.

Preparation and Attendance

HUSL Policies on attendance, lateness and preparation

The program of instruction at the School of Law is based on an active and informed exchange between instructor and student and between student and student. Regular, prepared class attendance helps develop skills essential to the competent practice of law. A student who violates the attendance policy, including the instructor's specification of class expectation described below, may lose his or her right to take the exam in the course, to receive course credit or may receive other penalties described below and in Academic Rule 108. Persistent or frequent lateness or unpreparedness may also be the basis for reduction of the grade awarded in a course. See Academic Rule 108 for further details.

You are expected to be prepared for discussion of the materials assigned for each day. If you are called upon and are not well-prepared, this will result in a waste of your classmates' time as well

as your own. Thus, if for any legitimate reason, you are not well-prepared, please let me know *before* class begins, and you will not be called upon during that class period.

As the Academic Rules and Attendance Policy provide, regular and punctual class attendance and preparation are required. As a general rule, in Weekend section classes, I consider absences in excess of six class hours per semester to be excessive. Potential sanctions for failure to meet these requirements are set forth in the HUSL Academic Rules. If the permitted number of absences is exceeded, opportunities to pursue “make-up work,” as opposed to sanctions, will not be granted absent a strong justification for the excessive absence, such as incapacitating illness or injury, death in the family, childbirth, or analogous circumstances. Such make-up work, if permitted, will ordinarily be in the form of a required paper.

At my discretion, lateness to class may be deemed an absence. Please be on time (subject to snow emergencies) and remain in the classroom during each class session unless illness requires that you leave.

Technology Policy

You may use laptop computers or other electronic devices in class to take notes and access course related materials. You should not use your laptop or electronic devices for other purposes.

In addition to the usual courtesies due to your classmates, refrain from text-messaging and email, using cell phones, pagers, or any other communication device. Refrain also from displaying wallpaper, screen savers, or other material on your computer screen that can reasonably be expected to distract your classmates.

Grades:

First year Civil Procedure consists of a three credit course in the fall and a three credit course in the spring. A separate written examination and grade for each course will be given each semester. In Civil Procedure I, the final examination will be the exclusive basis for your grade. The focus on the exams will be on topics covered during the semesters they are given.

As you will see, however, topics covered throughout the course will have various degrees of relationship with each other. Because some topics covered during the spring semester require some understanding of topics covered during the first semester, the spring exam will assume that you have a competent understanding of topics covered during the first semester.

Sample Documents

A separate packet that will be placed in your law school message boxes contains a number of sample documents. We will not discuss these samples extensively in class, although we may refer briefly to some later with a critical eye. However, you should look them over briefly no later than the end of the first two weeks of classes.

They are included to provide you with examples of what some documents used in litigation "look like." They are more simplistic than one would ordinarily see in substantial litigation, but they generally would be deemed sufficient and should serve the purpose noted above.

The documents, while reflecting a hypothetical case filed in a federal court in Minnesota, are in a form that is typical in federal courts throughout the United States. Slight variations in the way things are done exist from state to state (and even among different courts in the same court system within a given state), but such variations can easily be ascertained by consulting local court rules and local attorneys. These documents include some brief "NOTES," which elaborate on their use and purposes.

A Note on The Federal Rules

A great portion of the course will be devoted to a study of the application and interpretation of the Federal Rules of Civil Procedure. These are the rules applied in the Federal Courts. The Federal Court system is a separate system which exists in addition to a separate system of State Courts in each State. In many cities, the Federal Courts are in a building just down the street from where the State Courts are sitting. In several situations, a party may have a choice whether to file a lawsuit in State Court or Federal Court. During portions of the first semester, we will be studying the "types" of cases that may or must be filed and determined in Federal Court.

Although most lawsuits are in fact filed in the State Courts, we will be focusing on the Federal Rules for two reasons. First, they apply to Federal Courts sitting in all the states and therefore will be pertinent regardless of where a student decides to practice. Second, while there are often some minor differences, a majority of the states have adopted Rules of Procedure to be applied in their State Court System that are modeled after the Federal Rules. As such, a study of the Federal Rules is the best means by which to discuss procedural issues which will arise in both Federal and virtually all State Courts.

Although they will not be extensively discussed because of wide variations, you should be aware that almost all Federal Courts (both District Courts and Courts of Appeals) have promulgated local rules which supplement (usually only in minor respects) the Federal Rules. The same holds true in many State Court systems in that in addition to following a set of Rules of Civil Procedure that has statewide application, courts within a more limited geographical area (such as all those within a given city) may have a set of local rules which supplements the state rules and

which applies only to lawsuits filed in courts within that area. (Minnesota also has an additional set of "General Rules of Practice for District Courts," which are of statewide application and establish some of the more practical details involved in litigation). In addition, in some areas individual judges have issued "Standing Orders," which describe some of the more specific details of practice before an individual judge. An attorney should not practice before any Court without determining whether such local rules or standing orders exist and their effect.

Furthermore, at times special rules will be applicable to special types of proceedings. For example, a separate system of rules is used in federal Bankruptcy proceedings, even though such proceedings are in fact "civil" actions which are determined by the Federal Courts. Such special rules can normally be found by reference to the statutes that govern the type of proceedings involved, and they supersede the general procedural rules on those matters that they cover.

In addition to "Court Rules" which generally are printed in pamphlets such as the one you have purchased for this course, many procedural matters are governed by statutes and, less often, a constitution. Such statutes can usually be found by referring to the names of various "chapters" of state statutes or statutory index references to the subject matter involved. In pursuing any course of action, an attorney should always consult the statutes of the state in which he or she is practicing (or, if a federal claim is involved, the federal statutes) to determine whether any such statutes are applicable.

Many of the assignments in this course will include a reading of one or more Federal Rules. However, you should be aware of the fact that we will not be covering all of the rules. Rather, we will focus on the more major issues involved in civil procedure and the rules that are pertinent to these issues. Even though some of the rules will not be specifically assigned, however, you should at some point during the year skim through all of the rules.

Your 2012 Supplement containing the Federal Rules is scheduled for publication on July 30, 2012. In the event you are not able to purchase it before our first class on August 11, I have compiled a separate short document that contains items in the Supplement that will be relevant to our first class session. I will have a copy placed in your message box, in addition to posting a copy on the TWEN page under Assignments and Supplemental Materials.

A GENERAL INTRODUCTION

One possible definition of a Civil Procedure course is "A Study of the Mechanics of a Civil Law Suit." In a sense, however, this definition is misleading in that the means by which the substantive rights and duties of litigants are implemented, through the courts or otherwise, are not mechanical in the sense of being predetermined by rigid rules. Rather, the "rules" of civil procedure provide only a framework within which an attorney representing a client in litigation must work. In general, the manner in which a lawsuit will proceed is determined by the attorneys

for the litigants, not by the rules themselves. The rules are merely tools which an attorney may or may not use or invoke, depending on the facts and circumstances of a given case.

This course will focus primarily on the procedure used in the courts. Less formal procedures (generally referred to as Alternative Dispute Resolution, or "ADR" Processes) are also often used to resolve disputes. We will touch on these processes briefly in this course, but be aware that Hamline offers several other courses that focus more specifically in this area.

The procedural mechanisms utilized in alternative dispute resolution systems often differ to a great extent from those used in the court system, in part because it has often appeared that the procedure used in the courts is not the best method of resolving certain types of problems. In fact, Rule 114 of the Minnesota General Rules of Practice for District Courts, first adopted in 1994, requires that the parties to many actions filed in court make an *attempt*, before extensively proceeding with the normal litigation process, to resolve the matter through ADR processes. When studying the materials in this course, you should query whether there might be better ways than those actually employed to resolve the dispute at hand. Questions of this sort have led to the establishment of less cumbersome alternative dispute resolution systems.

Notwithstanding the existence of these other mechanisms, the most typical way of resolving disputes that are not informally settled is through the use of the courts, and it is for this reason that "court" procedure will be the focus of our study. Because most cases that are filed are settled before an actual trial, resulting in the vast majority of the litigator's time being spent on issues that arise during that time period, most of the course will be devoted to such pretrial issues.

The importance of a solid knowledge of Civil Procedure to the practice of law cannot be understated. Even if an attorney never gets *directly* involved in the handling of a lawsuit (and many with various specialties do not), it is the rare attorney who never comes into *some* contact with litigation, and a knowledge of procedure is essential to an understanding of what is taking place and communicating with the attorneys who are handling the litigation. A good understanding of procedure is also frequently necessary to understand fully cases that set forth legal principles in numerous areas of the law. It is even more important to persons who will be directly involved with litigation.

As was stated earlier, the "rules" of procedure are a framework within which the attorney involved in litigation must work. They are starting points and tools for the resolution of disputes. However, often the manner in which a given rule should be interpreted or applied in a given case is not clear. As such, you should concentrate upon learning the purposes of the rules and developing the skills of arguing how the rules should be applied. In doing so, think about what goals we should seek to attain (those mentioned in Rule 1 and others) in building a system for the resolution of disputes, taking into account the constitutional structure of the United States.

**Civil Procedure I–Weekend Section
Hamline University School of Law
Professor Pielemeier**

PROBABLE ASSIGNMENTS AND SUPPLEMENTAL MATERIALS

Assignments generally.

As you will see below, I have divided the materials we will cover in Civil Procedure I into various “Units.” I used to call these “units” “classes.” That, however, was misleading because the amount of time given in class to each unit varied. The units are now grouped more by subject matter than by the amount of time likely to be spent on them.

As you will see, there are a total of 33 Units, which we will be cover over 39 classroom hours

I will let you know at the end of each weekend class session the actual assignment for the next weekend.

Although on occasion specific rules or statutory provisions will be stated as part of the next assignment, I will usually only assign page numbers in the Casebook. You should assume that rules, statutes, and constitutional provisions focused upon in the assigned pages are also part of the assignment, and you should therefore study them as well. (Such provisions appear in your 2012 Supplement: item number (2) of the required materials.) You do not need to read the Advisory Committee Notes to any of the Rules in your Supplement unless I explicitly assign some.

Some of the Unit assignments contain supplemental materials or notes. Some of the longer supplemental materials will be posted on the TWEN page under “Assignments and Supplemental Materials. You should download and/or print those materials in connection with the Unit for which they are assigned. There is no charge for these Supplemental Materials.

For our first weekend session, prepare for discussion of the materials assigned for Units 1, 2, and 3 below. Unit 2 will probably be relatively difficult for your first day of law school.

Unit Number 1: A general introduction.

Assignment: The materials in this Initial Syllabus to here, Note 1 below, and Casebook pages xxxi-xxxii, 1-27 (to the case) and 42 (Part E) through the first full paragraph of Part 2 on page 44. You may omit the remaining materials in Chapter 1.

1. Before we begin our coverage of this subject, it will be helpful to reflect on what some of the goals of our dispute resolution system should be. Assume you are one of the pioneers in setting up a new society. You have concluded that one aspect of that society should be a governmental mechanism, or system, for resolving disputes that persons seem unable to resolve through informal discussion and compromise among themselves.

What should be the goals of that system? In thinking about this, bear in mind that in many situations, the persons involved may have disagreements about the underlying facts leading to the dispute, as well as disagreements as to how the applicable substantive law applies in its resolution.

Rule 1 of the Federal Rules of Civil Procedure (page 57 of your Rules Supplement) suggests that “the just, speedy, and inexpensive determination” of legal controversies should be goals of the system. Few, if any, would dispute that notion. But can we be any more specific? See if you can think of three more specific characteristics or goals of a system for resolving disputes that you think would be appropriate. We will have some discussion of these goals in class.

Unit Number 2: Personal Jurisdiction—Early Principles

Assignment: The brief excerpt from Hall's Specialties (below), notes 1-3 below, Article IV, Section 1 and Amendment XIV, section 1 of the U.S. Constitution (on pages 4-5 and 7 of your Rules Supplement), and 28 U.S.C. section 1738 (page 46 of your Rules Supplement) (these provisions are all pertinent to Pennoyer, the first case assigned for today), and casebook pages 53-75 (up to Part 3).

HALL'S SPECIALTIES, INC. v. SCHUPBACH

758 F.2d 214 (7th Cir., 1985)

EVANS, District Judge.

An Indiana resident read an ad in an Indiana publication that offered a specific item (a 1963 Trinity propane anhydrous ammonia tanker transport) for sale. The ad stated that the seller was from Illinois. Mr. Indiana, in direct response to the ad, telephoned Mr. Illinois to discuss the

tanker, and Mr. Illinois sent pictures and literature about the tanker to Mr. Indiana. Mr. Indiana traveled to Illinois, examined the tanker, decided to purchase it, did so, and transported it back to Indiana. The tanker soon proved to be defective (the fact that it ultimately blew up is not important on the jurisdictional issue), and this suit essentially for breach of warranty and rescission of the sales contract was born.

Now, one would think that in a rational system, especially one that seeks (or should seek) clarity and definiteness, experienced lawyers could simply and with conviction unanimously answer Mr. Indiana's question: "Can I sue the guy who sold me the tanker here in Indiana?" But alas we know, to our embarrassment, that the only honest answer the lawyer can probably give is a "Gee, I can't say for sure."

NOTES

1. The short excerpt from Hall's Specialties, which you just read, is included simply as a "warning"--to encourage and reinforce your tolerance for uncertainty, which you'll need in your study of this and many other topics. Be advised, however, that the last six words of the excerpt are not, standing alone, an adequate answer to an exam question.
2. Four potential issues are involved in determining whether the court where a case is filed is a court that can hear the case: (1) subject matter jurisdiction, (2) personal jurisdiction, (3) venue, and (4) service of process (adequate notice). The existence of each of these four matters is a prerequisite to a court's ability to hear a case. Note, however, that lack of any of the last three prerequisites can be waived by a party who might otherwise contest their existence. Lack of subject matter jurisdiction, however, cannot be waived.
3. Our focus during the next few class sessions will be on personal jurisdiction. Generally speaking, we will be asking, "In what state, or states, can a lawsuit be brought?" Often there will be more than one state in which a suit can be brought. The focus in the cases, however, is whether the particular state in which the suit was brought has personal jurisdiction.

Personal jurisdiction involves the question of the authority of a court in a given state over the parties to the lawsuit. A court will not have the power to render a judgment that is legally binding on a party if the court lacks personal jurisdiction over that party.

Generally, we are concerned only about whether the court has personal jurisdiction over defendants. Caselaw suggests that, by filing the lawsuit, plaintiffs have consented to personal jurisdiction by the court where the suit was filed.

Unit Number 3: Personal Jurisdiction--International Shoe

Assignment: Note 1 below, and Casebook Pages 75-84 (through Note 6).

International Shoe (page 77) is thought of as a watershed case in the area of constitutional limitations on the exercise of personal jurisdiction. It is really the starting point for modern analysis of the issue. What is the Court's test? Imagine you are an attorney litigating a personal jurisdiction issue just after the case was decided. Does the opinion suggest any "factors" that the Court deems pertinent to whether its test is met, which you should take into account in arguing your jurisdictional issue?

Unit 4: Long-arm Statutes and Early Refinements of International Shoe

Assignment: Read Casebook pages 84-90. Then read *McGee v. International Life Ins. Co.*, which is available on TWEN (under Assignments and Supplemental Course Materials), and consider whether it suggests any factors, in addition to those reflected in *International Shoe*, that seem to be pertinent in applying the *International Shoe* test.

Then read pages 90-97 of the Casebook and consider how you might articulate the distinction between *McGee* and *Hanson*. Is there any particular type of connection by the defendant with the forum state in *McGee* that seems to be missing in *Hanson*? Also consider whether you think the differing results of the two cases are appropriate. Why or why not?

Unit 5: World Wide Volkswagen (plus)

Assignment: Read *World-Wide Volkswagen v. Woodson and Insurance Corp. of Ireland*, available on TWEN.

Unit 6: Burger King, Asahi, and J. McIntyre

Assignment: Read Casebook pages 98-107 (to the case) and 112 (part b)-132. (You may omit the case and notes from pages 107 to the top of page 112.)

Unit 7: The "Effects" Test

Assignment: Read Casebook pages 132-150.

Unit 8: General Personal Jurisdiction

Assignment: Read Casebook pages 150-165.

Unit 9: Some Refinements on Specific Jurisdiction

Assignment: Read Casebook pages 165-183.

Unit 10: Jurisdiction Over Property

Assignment: Review *Harris v. Balk* (Casebook pages 72-74), Read Casebook pages 183-197 and Cable News Network, available on TWEN.

Unit 11: Transient (“Tag”) Jurisdiction

Assignment: Read Casebook pages 197-206.

Unit 12: Jurisdiction by Consent and Some Other Aspects of Personal Jurisdiction

Assignment: Read the Handout on Jurisdiction by Consent, available on TWEN, and Casebook pages 206-221.

Unit 13: Service: Compliance with the Rules and Due Process

Assignment: Read Note 1 below, Then read Rules 4 and 5 (not Rule 4.1), with your primary focus on Rules 4(a) through 4(f) and 4(h). In connection with Rule 4(a), read Form 3 on pages 162-163 of your Rules Supplement. In connection with Rule 4(d), read Forms 5 and 6 on pages 164-165 of your Rules Supplement.

Then Read Casebook pages 223-236, Note 2 below, and Casebook pages 237-245.

1. Recall that adequate service of process is one of the four pre-requisites to a court's ability to properly hear a case and render a valid judgment. Unlike subject matter jurisdiction, personal jurisdiction, and venue, this pre-requisite does not really entail the issue of whether the case has been filed in a proper court. Rather, the issues involved are whether service has been in compliance with the applicable rules of the court in which the action was filed, and whether the notice given is sufficient under the constitution.

2. Mullane (the next case) is the primary Supreme Court case on due process requirements of notice. It involves the settlement of accounts of a trust fund. A typical trust is composed of money or other valuable assets, which are generally invested. A trust will typically have income beneficiaries and principal beneficiaries. For example, a person may set up a trust, by the terms of which the income made from it is to be paid to that person's spouse for life (in which case the spouse is the "income beneficiary" to whom the trustee will mail the income), and that upon the spouse's death, the remainder (what is left in the trust) is to be paid to the children (who would be the "principal beneficiaries").

Mullane involved a situation where many small trusts set up in many different places were "pooled" into a common trust fund in New York, whose trustee would manage and invest the assets and distribute the proceeds.

As with everything else in life, disputes may arise in connection with trust administration. Such disputes may involve such matters as whether certain monies in the trust are principal or income, just who the proper beneficiaries are, and the like. The type of procedure involved in Mullane was an "accounting" by the trustee of the common fund--a settlement of the trust accounts resulting in a judicial decree. The issues involved in this sort of proceeding might include (1) the propriety of the distribution of the funds by the trustee; (2) a determination of what funds are principal and what funds are interest; (3) whether the trustee has fulfilled its duties; and (4) a determination of the amount of fees payable to the trustee, and from whence they are paid.

As is reflected at the end of the paragraph on spanning pages 237-238, under the New York statute governing this accounting, once the court approves the accounting and renders a decree confirming it, that decree is binding on everyone with an interest in the fund--in short, the determinations made in the accounting cannot be challenged. As a result this accounting will affect the rights and interests of potential beneficiaries of all these trusts (see the second full paragraph on page 239 and the second full paragraph on page 240).

At least it will, that is, if these proceedings pass constitutional muster--if jurisdiction is permissible and there was constitutionally adequate notice.

Unit 14: More on Due Process and Some Other Aspects of Service

Assignment: Read Casebook pages 246-267. You may omit Part D on pages 267-271. Then read the first paragraph of Part E on page 271 and Part E.2 on pages 276-281. You may omit Part E.1 on pages 272-276.

Unit 15: Due Process Requirements in Attaching Property, and Review

Assignment: Read Casebook pages 282-299.

Unit 16: Federal Subject Matter Jurisdiction–Federal Question

Assignment: Read Sections 1 and 2 of Article III of the U.S. Constitution (page 4 of your Rules Pamphlet) and 28 U.S.C. section 1331 (page 18). Then read Casebook pages 301-329 (You may omit the additional paragraph on page 235 of your Rules Supplement.).

Unit 17: Federal Subject Matter Jurisdiction–Diversity Part I

Assignment: Read 28 U.S.C. section 1332(a), (b), (c), and (e) on pages 18-19 and 22 of your Rules Pamphlet—you may omit subdivision (d) which extends from pages 19-22. Then read Casebook pages 329-348. You may omit the case and notes on Casebook pages 348-360.

Unit 18: Federal Subject Matter Jurisdiction–Diversity Part II

Assignment: Read Casebook pages 360-373.

Unit 19: Federal Subject Matter Jurisdiction: Supplemental Jurisdiction

Assignment: Read 28 U.S.C. section 1367 and Casebook pages 374-394.

Unit 20: Federal Subject Matter Jurisdiction: Removal and the Rest

Assignment: Read 28 U.S.C. sections 1441(a), (b), (c), and (f), 1446(a), (b), (c), and (d), and 1447. Then read Casebook pages 394-416.

Unit 21: Venue

Assignment: Read 28 U.S.C. section 1391 and Casebook pages 417-435.

Unit 22: Change of Venue and Forum Non Conveniens

Assignment: Read 28 U.S.C. sections 1404 and 1406 and Casebook pages 435-447 and 453-465. You may omit the notes and case on pages 447-453.

Addendum to Units 23-27

In connection with these Units, please note the following:

The language of a former version of section 1652, quoted in the bottom paragraph on page 470, remains largely the same today on page 42 of your Rules Pamphlet.

Note that the powers granted to Congress in Article I, Section 8 of the Constitution (pages 3-4 of your Rules Pamphlet) include the power “to constitute tribunals inferior to the Supreme Court,” and that similar power is given in Section 1 of Article III. Also note the last paragraph of Article I, section 8 (the “necessary and proper clause”) on page 4 of your Rules Pamphlet.

Note Article VI of the Constitution (the supremacy clause) on page 5 of your Rules Pamphlet.

Note the Tenth Amendment to the Constitution on page 6.

Note section 2072 of Title 28 (the “Rules Enabling Act”) on pages 53-54 in your Rules Pamphlet.

Finally, in connection with Byrd (Casebook page 537, the last case assigned in Unit 24), note the Seventh Amendment on page 6 of your Rules Pamphlet.

Unit 23: Erie v. Tompkins

Assignment: Read Casebook pages 467-479.

We will not cover this chapter on the “three track” sequence described in the chapter, but instead we will follow the sequence used in virtually all other Civil Procedure casebooks. You may omit material that is not assigned.

Unit 24: The Erie Doctrine Develops

Assignment: Read Casebook pages 533 (beginning with the case)-537, the note beginning on the bottom half of page 509-511 (to the case), and pages 537-540.

Unit 25: Hanna v. Plumer–The Capstone Case

Assignment: Read Casebook pages 511-517 and 540-544

Unit 26: Developments Since Hanna

Assignment: Read *Walker v. Armco Steel*, available on TWEN, and Casebook pages 517-533.

Unit 27: Federal Common Law and “Reverse Erie”

Assignment: Read Casebook pages 499 (part b)-503 (to the Problem), *Boyle v. United Technologies*, available on TWEN, and Casebook pages 553 (beginning with the Note)-556.

Unit 28: Pleading: A Touch of History, The Required Specificity, and Substantive Sufficiency

Assignment: Read Rules 7, 8, and 10, Forms 1 through 3, 7, and 10 through 13 (on pages 162-163, and 165-168 of your Rules Pamphlet) and review the pleadings on pages 3-12 in the Sample Documents that were distributed at the beginning of this course. Then,

For A Touch of History, read Casebook pages 559-561 (to Part B) and 586 (Part D)-588.

For the Required Specificity, read Casebook pages 588-590 (to the case), *Board of Harbor Commissioners* in the Unit 28 Supplement, available on TWEN, and Casebook pages 595-598 (to the Problems).

For Substantive Sufficiency, read *Molasky*, also in the Unit 28 Supplement on TWEN.

Unit 29: Rules 9 and 11

Assignment: Read Rule 9 and the *Ross* case and notes following it in the Unit 29 Supplement, available on TWEN.

Then read Rule 11 and the *Zuk* case, also in the Unit 29 Supplement.

Unit 30: Two Recent Supreme Court Decisions That Have Generated Controversy

Assignment: Read *Bell Atlantic Corp. V. Twombly*, available on TWEN, and *Ashcraft v. Iqbal* on Casebook pages 601-612 (to the Notes). Also read *Khalik v. United Airlines* on pages 236-241 of your 2012 Supplement. You may omit the notes and problems from Casebook pages 612 to Part A on page 616.

Unit 31: Responding to the Complaint

Assignment: Read Casebook pages 616 (Part 2)-623 (to the case). Then read the materials in the Unit 31 Supplement, available on TWEN (waiver problems, Zielinski, and Layman).

Unit 32: Amendments

Assignment: Read Rule 15 and the material in the Unit 32 Supplement, available on TWEN (Beeck, Graboi, and Notes).

Unit 33: More on Amendments

Assignment: Read the material in the Unit 33 Supplement, available on TWEN (Krupski).