

CIVIL PROCEDURE I: SYLLABUS: FALL 2008

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Key: T refers to the principal hardcover text, by Marcus, Redish and Sherman (4th ed. 2005); FRCP refers to the federal rules of civil procedure (in the paperback volume); § refers to a section from title 28 in the United States Code (in the paperback volume); U.S. Const. refers to provisions in the U.S. Constitution (in the paperback volume); S refers to cases and materials other than problem sets in the photocopied supplement; PS refers to a problem set included at the end of the photocopied supplement.

GENE SHREVE AND PETER RAVEN-HANSEN, UNDERSTANDING CIVIL PROCEDURE (3rd Ed. 2002) (Shreve) is included as suggested reading for the course. On the syllabus, each major section of the course is followed by a reference to the applicable pages in Shreve.

INTRODUCTION

August 27: Introduction and welcome: review of course requirements
No reading

September 2: The big picture: the goals of procedural justice T1-25
FRCP 1; § 455; S1-6

September 3: Litigation and its alternatives; looking ahead
T98-120; S7-11

I. THE LITIGATION HIGHWAY, FROM BEGINNING TO END

A. GETTING A LAWSUIT STARTED: WHAT'S THE BEEF?--PLAINTIFF'S COMPLAINT AND DEFENDANT'S RESPONSES

[Suggested reading: Shreve pp. 199-255]

Saturday, September 6: Maintaining the status quo while suit is pending: preliminary injunctions and temporary restraining orders
S12-22
FRCP 65

1. The complaint; responsive motions; litigation misconduct; default

September 8: T121-138

FRCP 2, 3, 7, 8(a), 10(b), 12(b), 12(e), 12(f);

PS 1

September 9: T138-142

FRCP 11, 8(e); **PS2**

September 10: T156-77; **PS4** (Note! We are temporarily skipping PS3)

FRCP 9(b)

September 15: T177-199 [Do problems in note 3 on p. 191]

FRCP 12(g), 12(h), FRCP 55, 60

2. The answer; counterclaims; crossclaims; amendments; voluntary dismissal

September 16: T199-214

FRCP 8(b)-(d), 12(c), 13(a)&(b), 41

September 17: T214-227; 265-267

FRCP 13 (g); 15(a), (c); **PS3**

B. STILL GETTING STARTED: WHO'S THE BEEF WITH?--CONFIGURING AND RECONFIGURING THE PARTIES BY MEANS OF JOINDER DEVICES

[Suggested Reading: Shreve pp. 255-303]

1. Real party in interest; permissive joinder of parties; compulsory joinder of parties; impleader; interpleader; intervention

September 22: T228-242

FRCP 10(a); 17(a); 18; 20, 21.

September 23: **S23-26**; T260-265

(Take a crack at the questions on p. 241, n. 8); **PS5**

FRCP 14, 19

September 24: T267-288

FRCP 22, 24; § 1335; **PS 6**

2. Class Action

September 29: T288-290; 297-309; 320-331 (I have not assigned the case that the notes at pp. 320-31 follow—the notes are informative, though the case is not)

FRCP 23; **PS7**

September 30: Practice Exam

C. GATHERING INFORMATION IN SUPPORT OF YOUR CASE--DISCLOSURE AND DISCOVERY

[Suggested reading: Shreve pp. 303-359]

1. Discovery and Disclosure Principles; the pre-trial role of the judge

October 1: T332-342

FRCP 16, 26(a), 26(f)

2. Disclosure and Discovery devices and their limits

October 6: T342-357;

FRCP 26(a); skim FRCP 27, 30, 31 and 33-36; **PS8**

October 7: T357-80

FRCP 26 (b) (1) (2), 26(c)

3. Privileged and Protected Information

October 8: T380-401

FRCP 26(b) (3), (5)

PS9

4. Discovery from Experts; discovery sanctions

October 13: T401-412; 415-23; **S27** [**S27 is a case--do not ignore it**]

FRCP 26(b) (4), (e), (g); 37

D. CHALLENGING THE SUFFICIENCY OF YOUR OPPONENT'S CASE AFTER GATHERING INFORMATION BUT BEFORE TRIAL--SUMMARY JUDGMENT

[Suggested Reading: Shreve pp. 362-82]

October 14: T424-449
FRCP 56

October 15: T449-464; **PS10**

October 27: Practice exam

E. CHALLENGING THE SUFFICIENCY OF YOUR OPPONENT'S CASE AT TRIAL--JUDGEMENT AS A MATTER OF LAW AND NEW TRIAL

[Suggested Reading: Shreve pp. 426-42]

1. Judgment as a matter of law

October 28: T521-529 (skim); 606-622
FRCP 50

October 29: T623-643

2. New Trial

November 3: T643-658; **PS11**
FRCP 59, 60

F. AFTER TRIAL IS OVER: RES JUDICATA

November 4: T1092-1111

II. THE LIGITIGATON HIGHWAY REVISITED: FILLING POTHoles

A. PERSONAL JURISDICTION

November 5: T710-29

November 10: T729-52

November 11: T752-76

November 12: T791-798; 809-821

PS 12 & 13

B. SUBJECT MATTER JURISDICTION

[Suggested reading: Shreve pp.107-55]

November 17: Diversity Jurisdiction

S26 (The Strawbridge case)

U.S. Constitution Art. III, Sections 1-2

28 USC §§ 1332, 1359

T860-71

November 18: Federal Question Jurisdiction

T871-90

28 U.S.C. 1331, 1257

November 19: Supplemental Jurisdiction

Gibbs and Kroger cases (on website)

November 24: Supplemental Jurisdiction

T890-92; **Rosario Ortega case** (on website—not in the text);

28 USC §1367

November 25: Removal and Remand

T911-18; 28 USC 1441, 1446, 1447.

December 1: Subject Matter Jurisdiction Problems

PS 14, 15 & 16

Conclusion

December 2: Question & answer

December 3: Practice Exam