

CIVIL PROCEDURE

Mr. Mitchell

Spring 2009

Course Materials: Our main text is Friedenthal, Miller, Sexton, and Hershkoff, *Civil Procedure: Cases and Materials* (Revised 9th ed. 2008) (“CB”). You will also need the 2008 statutory supplement (“Supp.”), and Glannon, *Civil Procedure, Examples and Explanations* (“Glannon”). And there will be occasional handouts that I will provide.

Attendance and Participation: I do not have a strict attendance policy, but excessive absenteeism (eight or more absences) will render you ineligible to take the final exam. If you are unprepared for class, please let me know by e-mail before the start of that class. Laptop computers are welcome in class, but may be used only for class-related work.

Final Exam: Your grade in the class will depend solely on your exam performance. The exam will be three hours, in class, and open book. You may bring any resources you wish, but you may not connect to the Internet during the exam.

Contact information: My office is room 403; e-mail is jmitchen@gmu.edu. Office hours are by appointment, Mondays and Wednesdays, 12pm – 6pm.

The syllabus is tentative and subject to change. Some assignments, especially those marked with an asterisk (*), may be shortened or skipped as the course progresses. (1/22/09).

A. SUBJECT-MATTER JURISDICTION

1. Foundations

CB 1-4 (skim).

CB 4-18.

28 U.S.C. §§ 2071-2072. (Supp. 280-281).

Fed. R. Civ. P. 1-12. (Supp. 11-48) (read **only** the text of the Rules; **skip** the notes and comparative state provisions).

Fed R. Civ. P. 84. (Supp. 173).

Forms 1-3; 5-7; 11. (Supp. 174-180).

U.S. Const. Art. III. (Supp. 217-218).

CB 22-23, *Capron v. Van Norden* plus accompanying notes.

Marbury v. Madison (handout).

Fed. R. Civ. P. 12(h)(3).

2. Diversity-of-Citizenship Jurisdiction

U.S. Const. Art. III, sec. 2. Supp. 217.

28 U.S.C. §§ 1332(a)-(c); (e); 1359; 1653. Supp. 235-236; 240; 244; 260.

CB 251-254; 256-272 (starting with *Mas*) (**Skip** notes 5-6 on p. 269).

Optional: Glannon 89-107.

3. Federal-Question Jurisdiction

U.S. Const. Art. III, sec. 2. Supp. 217.

28 U.S.C. § 1331. Supp. 235.

CB 272-280.

Optional: Glannon 63-87.

4. Joinder

Fed. R. Civ. P. 13-14, 18-20. Supp. 48-51; 59-61.

Glannon, 253-282 (required).

Skim: Glannon 283-307; Fed. R. Civ. P. 19, 22, 24.

5. Supplemental Jurisdiction

U.S. Const. Art. III, sec. 2. (Supp. 217).

28 U.S.C. § 1367. Supp. 245.

CB 299-326. (Start at “Section D.” on page 299).

Glannon 309-330 (required).

Optional: Glannon 331-342.

6. Removal Jurisdiction

28 U.S.C. § 1441; 1446; 1447. (Supp. 253-255; 256-257).

CB 327-338.

Optional: Glannon 123-139.

7. Federal Appellate Jurisdiction

28 U.S.C. §§ 1251, 1254, 1257. (Supp. 226; 227; 231).

28 U.S.C. §§ 1291, 1292. (Supp. 232-234).

28 U.S.C. § 1651 (“All Writs Act”). (Supp. 259).

Fed. R. Civ. P. 54; 58(a). (Supp. 139-140; 146-147).

CB 1092-1096 (**Skip** Jetco and notes); 1102-1107 (**Skip** section (iii)).

B. PERSONAL JURISDICTION

8. Traditional Bases for Personal Jurisdiction

U.S. Const. art. IV and amend. XIV. (Supp. 218; 219-220).

Fed. R. Civ. P. 12(h)(1). (Supp. 43-44).

CB 63-72.

9. Modern Personal Jurisdiction – Minimum Contacts Analysis.

CB 73-83 (**Skip** the *Gray* case on p. 83).

Optional: Glannon 3-45.

10. Specific Jurisdiction

CB 89-105 (**Skip** note 2 on p. 103); 108-125.

Fed. R. Civ. P. 4(k)(1)(A). (Supp. 16).

11. General Jurisdiction

CB 125-135 (Skip “Section F”).

12. Jurisdiction Based on Power over Property

CB 144-158 (start with *Harris v. Balk*, skip note on “cybersquatting”).

13. Jurisdiction Based on Physical Presence

CB 159-170.

14. Jurisdiction Based on Consent

Fed. R. Civ. P. 12(h)(1). (Supp. 43-44).
CB 170-174.

15. Jurisdictional Reach of Federal District Courts

Fed. R. Civ. P. 4(k). (Supp. 16).
CB 175-178.

*** 16. Notice**

CB 183-197.

C. VENUE AND FORUM NON CONVENIENS

17. Venue

28 U.S.C. §§ 1391, 1404, 1406, 1407, 1441. (Supp. 247-48; 250; 251-55).
Fed. R. Civ. P. 12(h)(1). (Supp. 43-44).
CB 345-349; 357-364.
Optional: Glannon 141-173.

18. Forum non conveniens

CB 364-375.

D. ERIE AND CHOICE-OF-LAW ISSUES

19. The *Erie* doctrine

U.S. Const. art. III & amend. X. (Supp. 217-219).
28 U.S.C. § 1652 (“Rules of Decision Act”). (Supp. 259).
28 U.S.C. § 2072 (“Rules Enabling Act”). (Supp. 280-281).
CB 376-432.
Optional: Glannon 177-249.

20. Interstate choice of law

CB 432-433.

21. The “New” Federal Common Law

CB 441-444.

E. PLEADING

22. Specificity of Pleading.

Fed. R. Civ. P. 8(a); 9(b); 10; 12(b); 12(e).
CB 511; 513; 517-537 (**Skip** note 3 on p. 526).

*** 23. Burden of Pleading.**

CB 542-544; 551.
Gomez v. Toledo (handout).
Fed. R. Civ. P. 8(d).

24. Motions to Dismiss.

Fed. R. Civ. P. 12.
CB 558-567 (starting at “Section B”); 568-569.
Glannon 473-477 (required).

25. Affirmative Defenses.

Fed. R. Civ. P. 8(c).
CB 574-579.

26. Amendments to Pleadings.

Fed. R. Civ. P. 15.
CB 579-590 (stop at Section E).
Glannon 383-407 (required).

*** 27. Rule 11 Sanctions.**

Fed. R. Civ. P. 11.
CB 594-605 (start with “Permissive pleading rules”).

F. DISCOVERY

28. Discovery.

Fed. R. Civ. P. 26-37; 45.
CB 764-769; 772-788; CB 831-841.
Discovery Worksheet (handout).
Optional: Glannon 409-471.

G. JUDGE AND JURY

29. The Right of Jury Trial.

Fed. R. Civ. P. 38-39.
28 U.S.C. § 2201.
CB 925-937; 953-961.

30. Judgment as a Matter of Law.

Fed. R. Civ. P. 50.
CB 993-997; 1009-1012 (starting at the top of page 1009).
Optional: Glannon 495-515.

31. Summary Judgment.

Fed. R. Civ. P. 56.
CB 888-891; 899-915.
Glannon 477-494 (required).

32. Trial Without a Jury.

Fed. R. Civ. P. 52.

33. Post-Trial Motions.

Fed. R. Civ. P. 50, 59.
Optional: Glannon 517-538.

H. PRECLUSION

34. Claim preclusion

CB 1146-1154; 1157-1158 (including notes).
Optional: Glannon 541-561.

35. Issue preclusion

28 U.S.C. § 1738. (Supp. 265).
CB 1167-1170. 1173-1175.
Optional: Glannon 577-594.

36. Privity and Nonmutuality

CB 1162-1183. 1195-1217.
Optional: Glannon 595-613.

I. CLASS ACTIONS

37. Introduction to Class Actions

Review joinder notes
Fed. R. Civ. P. 23. Supp. 64-68.
CB 688-691 (up to “Miller”); 694-697; 699-700 (starting at note 6).
CB 702-704; 710-712.
CB 720-725.

38. Jurisdictional Issues in Class Actions

28 U.S.C. §§ 1332(a); 1367. (Supp. 235-236; 245).
28 U.S.C. §§ 1332(d); 1453. (Supp. 236-40; 258-59).
CB 725-737.

39. Preclusive Effects of Class Action Judgments

CB 758-762.

*** 40. Class-action settlements**

Fed. R. Civ. P. 23(f). (Supp. 67).

CB 717-719; 737-750.