

# Civil Procedure Section 2

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Welcome to Civil Procedure! In this document, you will find the reading assignments for the semester. The assignments, however, are subject to change.

**Communication:** All class communication will be over email. You are responsible for anything that is emailed to the class. If you are not receiving emails that I refer to in class, let me know. Also, rather than hold formal weekly office hours, I will be available to talk with anyone who has questions after each class session.

**Readings:** We will use the Friedenthal, Miller, Sexton and Hershkoff, *Civil Procedure: Cases and Materials* casebook and the supplement to the casebook, which contains the Federal Rules of Civil Procedure and all the relevant statutes. In the list of assignments below, CB refers to readings from the casebook, “Supp” to readings from the supplement, FRCP refers to specific rules and statute numbers refer to federal statutes. Further, where it says “review,” it means that a block of class time will be spent reviewing material from the prior few classes. You should send questions by email to me ([DSchleic@gmu.edu](mailto:DSchleic@gmu.edu)) prior to class, if you have them. I will address questions received by email first, and then ask the class if there are other questions.

**Grading and Participation:** I will be using a “soft Socratic” style. I will call on students at random, but will also take questions and comments from other students. The final exam is 100% of your grade subject to a one third class participation adjustment at my discretion.

## **Class Schedule and Reading:**

### **I. Introduction**

- a. January 7: Introduction
  - i. CB 1-21
  - ii. Supp vi-vii (chart)
  - iii. Supp 280-281 (28 U.S.C. § 2071-2072)

### **II. The Complaint, Motions to Dismiss and the Answer**

- a. January 12: The Complaint and 12(b)(6) Motion to Dismiss
  - i. FRCP 8(a), 12(a)(1), 12(b)
  - ii. CB 513-537, 558-64
  - iii. Supp 179-185 (skim)
  - iv. Supp 442-60 (radically skim – just take a look)

- b. January 14: Pleading and Special Pleading and Responding the Complaint by R. 12 Motion
  - i. FRCP 8(a), 8(d), 9; FRCP 8(d); FRCP 8(a)(3), 9(g), 54(c)
  - ii. CB 538-58
- c. January 21: The Answer, Affirmative Defenses, Amending Pleadings, Relation Back and Sanctions
  - i. FRCP 8, 11, 15, 23.1
  - ii. CB 568-597
- d. January 26: Notice and Service
  - i. FRCP 3, 4(a) – (f), (h), (m); 12(b)(4),(5);
  - ii. CB 183-205, 209-221
  - iii. Supp 175-177 (Forms 3-6)
- e. January 28: Opportunity To Be Heard and Review
  - i. CB 221-244
  - ii. Prepare questions in advance of class

### **III. Personal and Subject Matter Jurisdiction**

- a. February 2: Subject Matter Jurisdiction 1: Intro and Diversity
  - i. CB 246-247; CB 251-68 (through note 4), 270-72
  - ii. Supp 217-218 (Constitution, Art III, §§ 1, 2)
  - iii. 28 U.S.C. §§ 1332 (a)-(c), 1359
- b. February 4: Subject Matter Jurisdiction 2: Federal Question Jurisdiction
  - i. CB 272-299
  - ii. 28 U.S.C. §§ 1331, 1333-34, 1338
- c. February 9: Subject Matter Jurisdiction 3: Supplemental Jurisdiction and Removal
  - i. CB 299-320, 327-332
  - ii. 28 U.S.C. §§ 1367, 1441, 1446 (a), (b), (d), 1447.
- d. February 11: Personal Jurisdiction 1
  - i. CB 63-73, 75-89, 175-178.
  - ii. FRCP 4(k)
  - iii. Supp 286-291 (NY, NC, and RI long arm statutes)
- e. February 16: Personal Jurisdiction 2:
  - i. CB 89-93, 94-125

- f. February 18: Personal Jurisdiction 3: General Jurisdiction and Technology
  - i. General Jurisdiction: 125-35
  - ii. Internet Jurisdiction 135-142
- g. February 23: In Rem, in Personam and Consent based Personal Jurisdiction:
  - i. CB 146-168, 170-173
- h. February 25: Venue, Transfer, Forum Non-Conveniens, Waiver and Review
  - i. CB 345-49, CB 353-375
  - ii. 28 U.S.C. §§ 1391, 1404; **review** FRCP 12(b)(3), (h)(1).
  - iii. Prepare questions on any aspect of jurisdiction in advance of class

#### **IV. Joinder and Class Actions**

- a. March 2: Joining Claims and Counterclaims
  - i. CB 606-28
  - ii. FRCP 13, 17
- b. March 4: Joinder and Interpleader
  - i. Party Joinder:
    - i. CB 631, 634-636, 640-59, 680-84, 313-32
    - ii. FRCP 14, 20, 21, 42(a)
  - ii. Rule and Statutory Interpleader
    - i. CB 661-62, 667-80
    - ii. FRCP 22; 28 U.S.C. §§ 1335, 1397, 2361.
- a. March 16: Class Actions 1
  - i. CB 688-93, 694-719
  - ii. FRCP 23
- b. March 18: Class Actions 2
  - iii. CB 720-54

#### **V. Discovery, Summary Judgment and Trial**

- a. March 23: Discovery: Introduction, Mandatory Disclosure and Depositions
  - i. CB 764-79, 783-96
  - ii. FRCP 26
- b. March 25: Discovery: Interrogatories, Documents and Other Issues
  - i. CB 796-814, 821-831
  - ii. FRCP 33, 34, 36, 45

- c. March 30: Limits on Discovery, Experts and the Duty to Preserve
  - i. CB 831-860
  - ii. FRCP 26(a)(2), (b)(1), (3), (4), (c), 37 (skim Rule 37)
- d. April 1: Summary Judgment, Default Judgment, Directed Verdicts and JNOV
  - i. Review materials on motions to dismiss
  - ii. FRCP 56
  - iii. CB 888-910, 919-22, 993-997, 1009-1012, 566
  - iv. Is Summary Judgment Unconstitutional? (Handout)
- e. April 6: Trial By Jury
  - i. CB 925-937; 953-61, 968-970, 985-991, 1033-35
  - ii. FRCP 38, 39; Supp 219 (Amendment VII of U.S. Constitution)

**VI. Preclusion**

- a. April 8: Claim Preclusion or Res Judicata
  - i. CB 1145-1152, 1154-58, 1162-1166, 758-761
- b. April 13: Issue Preclusion or Collateral Estoppel and review
  - i. CB 1167-73, 1177-81, 1196-99, 1211-19, 1225-29
  - ii. Prepare questions in advance of class

**VII. The Erie Doctrine**

- a. April 15: *Erie 1*
  - i. CB 376-410
  - ii. 28 U.S.C. §§ 1652, 2072
- b. April 20: *Erie 2* and the Return of Federal Common Law
  - i. CB 410-432, 441-46

**VIII. Appellate Review**

- a. April 22: Appellate Review and final review
  - i. 28 U.S.C. §§ 1291-922
  - ii. 1092-1096, 1099-1102, 1108-09, 1111-1115, 1124-1126
  - iii. Prepare any questions in advance of class