Description: This course supplements the basic Civil Procedure course by an in-depth consideration of advanced topics in procedural law that commonly arise in more sophisticated forms of civil litigation, but are omitted or only introduced in the basic course. Topics covered include: class actions and other forms of aggregate litigation; multi-forum litigation problems, such as federal abstention, jurisdictional conflicts, and international aspects; pretrial and discovery processes in complex litigation; provisional remedies and other forms of expedited litigation; and special federal statutes concerning multi-state class actions, multi-jurisdiction tort cases, and multi-district federal litigation.

Materials: The principal material is the coursebook by Sullivan, et al, Complex Litigation (2d ed. 2014: LexisNexis) (copy of table of contents attached). This will be supplemented by additional materials on selected topics to be posted on the course TWEN site. In addition, students will need convenient access to the current texts of the Federal Rules of Civil Procedure and the provisions of Title 28 of the United States Code.

Class Meetings, Assignments, and Grading: This is a 2-hour course that will meet once weekly, at 4:00-5:50 p.m. on Thursdays. At the initial meeting of January 8, 2015, students will be assigned to act as memo writers and discussion leaders in the ensuing weeks’ classes. It is anticipated that the final grade will be based approximately 50% on the memos and class discussion performances, and 50% on a short term paper or final exam.

Topics and Readings: The following is a tentative list of topics and readings for the semester, which can be modified or supplemented as a result of the initial class discussion:

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Dedications

Each author can think of many people to whom we might dedicate this text. We appreciate the support of all of those persons over many years and in particular recognize these:

ETS: To Leslie Black Sullivan.
CDF: To Barbara, with my appreciation for her support and encouragement.
RDF: To Louise, Courtney and Collin.
BGC: To Leon Goodrich, Thomas Kane, and Donald Engle, my principal mentors in the trenches of complex litigation.
Preface

Litigation always has been a complicated undertaking. In the current age of multi-party, multi-claim, and overlapping multi-jurisdiction cases, lawsuits have assumed even higher levels of complexity. This text introduces in a comprehensive but compact way both fundamental and cutting-edge aspects of complex litigation.

In contrast to traditional casebooks, COMPLEX LITIGATION relies on a limited number of leading cases, coupled with extensive text and note material reviewing existing doctrine and exploring unanswered legal and policy issues. The reliance on text and notes to develop underlying legal doctrine minimizes the need for students to search for the necessary background based on fragments or inferences from principal cases.

The text comprehensively treats all aspects of the complex litigation process — from CAFA to the ALI Principles of the Law of Aggregate Litigation, from Internet personal jurisdiction to electronic discovery, and more. The text devotes attention to important and often neglected structural issues, including personal and subject matter jurisdiction, choice of law, mechanisms for coordinating overlapping federal and state litigation, and preclusion. It discusses the real world conduct, management, and control of the pre-trial and discovery process that characterizes complex cases, as well as trends and emerging legal doctrine that have promoted and facilitated the disposition of complex cases without trial.

Despite its broad coverage, COMPLEX LITIGATION is concise as a result of its primary use of text and note material to develop the implications of leading cases. It may easily be adopted for use in a two- or three-unit course.

Careful readers will notice our adoption of certain conventions. For example, in excerpted cases, we have deleted without notation various footnotes and citations. We have retained, however, selected footnotes within excerpted cases for teaching purposes. Those bear both consecutive numbering and, in brackets, the original note number from the opinion. We mostly have not included parallel case cites within excerpted opinions even if the original opinion did so. We have tried to eliminate most instances of boldface type even if excerpted opinions contained boldface headings.

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From the Sedona Conference®, for the Sedona Principles for Electronic Document Production (2d ed. June 2007) and for the Sedona Principles for Electronic Document Production (July 2005);

From LexisNexis, for 3 Brazil, Freer & Sherman, Moore’s Federal Practice § 16.03 (3d ed. 2008);

From LexisNexis, for Weinstein’s Federal Evidence § 706.02.

Provost Sullivan and Professor Clary wish to acknowledge the support of the University of Minnesota, and the dedicated research assistance of the following law school students over the course of this project (in alphabetical order) — Hugh Brown, Calvin Hoffman, David Klink, Anthony de Sam Lazaro, Cicely Miltich, James Owens, and Nicholas Tymoczko.
Preface

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Professor Freer acknowledges with gratitude the support of the administration and of his colleagues at Emory University School of Law. In particular, he is grateful to his Civil Procedure and Conflict of Laws colleagues Tom Arthur, Peter Hay, Jonathan Nash, Kimberly Robinson, and Robert Schapiro for continuing (and patient) engagement. Professor Freer also thanks Sean Diamond for outstanding research and editorial assistance.
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