

# CIVIL PROCEDURE

Spring 2008

Section 401

Room 805 (Lewis)

**Professor Moller**

## **Course Schedule:**

Monday, Wednesday: 5:50-7:30 p.m.

## **Contact:**

E-mail (preferred): mmoller@depaul.edu

Telephone: (312)-362-5758

## **Required Texts:**

1. Stephen C. Yeazell, *Civil Procedure* (6th ed. 2004) (abbrev: CB)
2. Stephen C. Yeazell, *Federal Rules of Civil Procedure with Selected Statutes, Cases, and Other Materials* (2007-2008) (abbrev: FRCP)
3. Joseph W. Glannon, *Civil Procedure: Examples and Explanations* (5th ed. 2006) (abbrev: G)
4. Supplemental reading packet (distributed via Blackboard) (abbrev: Supp.)

## **Class Requirements:**

A seating chart will be handed out the first day of class which all students must sign. Failure to sit in the appropriate seat will be recorded as an absence.

Students should regularly check Blackboard. A current syllabus will be posted there, and I may also post announcements regarding class or reading assignments there from time to time.

Please note: ***In each class I will call on students at random to engage in a discussion about the readings. Therefore, please come to each class prepared for discussion.***

Student performance will be based primarily on the basis of a final examination. Regular attendance is required. Attendance and class participation may be taken into account in determining the final grade.

## **Grading**

There will be one three hour open book examination, which will comprise the majority of the grade in this course. Students may use any written materials during the examination, including the casebook, class notes or outlines, and handouts distributed during class.

## Outline

### **I. Introduction to Procedure: Procedural Rules as Expressions of Procedural Values**

#### ***Assignment:***

FRCP 1, 3, 4(a-e, l-m), 6 (a-b, e)

Forms 1, 1A, 1B

CB: 12 (short section entitled “Service of Process”)

Supp.: *United States v. McLaughlin*, 470 F.3d 698 (7th Cir. 2006) (Posner, J.).

Advisory Committee Notes on FRCP 4(m)

### **II. The Process of Adjudication**

#### **A. Framing the Complaint**

##### 1. History and Theory of Pleading

#### ***Assignment:***

FRCP 8(a, e-f), 12(b); skim FR Forms 3-18

CB: 329-40

Supp.: *Conley v. Gibson*

##### 2. Enforcing Pleading Rules (Pre-Answer Motions and Sanctions)

#### ***Assignment:***

FRCP 7(a), 11-12

FR Form 19

CB: 12-17, 340-54, 377-81

##### 3. Pleading Rules in Transition

#### ***Assignment:***

FRCP 9

CB: 365-77

Supp: *Dura Pharmaceuticals v. Broudo* (excerpts)

##### 4. *Bell Atlantic Corp. v. Twombly*: Pleading Rules Transformed . . . ?

#### ***Assignment:***

Review FRCP 1, 8(a, e-f)

Skim FRCP 23

Supp: Review *Conley v. Gibson*

Read Federal Rule of Evidence 201

Read *Bell Atlantic Corp. v. Twombly* (majority opinion excerpts) and *Erickson v. Pardus* (excerpts)

## **B. Answering the Complaint**

### 1. Mechanics and Pitfalls of Answering Complaints

**Assignment:**

FRCP 8(b-d), 12

FR Forms 20-21

CB: 381-93

### 2. Amending Complaints and Answers

**Assignment:**

FRCP 15

CB: 393-405

## **C. Getting to the Facts**

### 1. Which Facts are Discoverable?

**Assignment:**

FRCP 26(b)(1-2)

CB: 407-16

### 2. Tools for Getting the Facts

**Assignment:**

FRCP 26-37

CB: 416-25

### 3. Judicial Control of Fact Discovery

**Assignment:**

FRCP 26(g), 37

CB: 425-27, 451-64

Supp: Review *Bell Atlantic Corp. v. Twombly* (majority opinion) (pay special attention to Section II.B).

## **D. Trial, and How to Avoid It**

### 1. Avoiding the Jury: Summary Judgment

#### a. Introduction to Summary Judgment

**Assignment:**

FRCP 56

CB: 513-16 (problems only)

#### b. The Burden on the Party Moving for Summary Judgment

**Assignment:**

Supp: *Adickes v. S.H. Kress & Co.* (excerpts)

*Celotex Corp. v. Catrett* (excerpts)

CB: 519-21

- c. The Burden on the Party Opposing Summary Judgment  
**Assignment:**  
CB: 521-26  
Supp.: *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,  
(excerpts)

2. Controlling the Jury

- a. The Limits of Rational Inference  
**Assignment:**  
FRCP 52  
CB: 583-92
- b. Controlling Juries after the Verdict  
**Assignment:**  
FRCP 50, 59  
CB: 592-6011

**E. The Meaning of Completed Adjudication**

- 1. Res Judicata (Claim Preclusion)  
**Assignment:**  
FRCP 13  
U.S. Const. art. IV, § 1  
28 U.S.C. § 1738  
CB: 657-86
- 2. Collateral Estoppel (Issue Preclusion)  
**Assignment:**  
CB: 686-708  
G: 521-26, 539-46

**III. Constitutional Limits on Judicial Power**

**A. Constitutional Limits on Courts' Power over Persons and Things:  
Personal Jurisdiction**

- 1. The Evolution of Due Process Restraints on Judicial Power
  - a. *Pennoyer v. Neff*  
**Assignment:**  
U.S. Const. amend. XIV, § 1  
Review FRCP 12(g-h)  
CB: 61-75

- b. The *International Shoe* Revolution  
**Assignment:**  
CB: 76-97
  - c. The Rise of Minimum Contacts  
**Assignment:**  
CB: 98-132
  - d. Surviving Remnants of *Pennoyer*  
**Assignment:**  
CB: 132-140, 140-45
  - e. Notice as a Separate Constitutional Requirement  
**Assignment:**  
CB: 145-59
2. The Statutory Component of Judicial Power over Persons and Things  
**Assignment:**  
FRCP 4(k)  
28 U.S.C. §§ 1391-92, 1404, 1406  
CB: 159-69  
G: 131-37, 149-52

**B. Dividing Authority between State and Federal Courts: Subject Matter Jurisdiction**

- 1. Federal Courts' Power to Hear Cases That Raise Questions of Federal Law  
**Assignment:**  
U.S. Const. art. III; 28 U.S.C. § 1331  
CB: 179-92
- 2. Federal Courts' Power to Hear Cases Based on State Law  
**Assignment:**  
28 U.S.C. §§ 1332(a)-(c)  
CB: 192-93, 195 n.5(a)-205  
Supp.: *Mas v. Perry*
- 3. Supplemental Jurisdiction  
**Assignment:**  
CB: 205-12
- 4. How to Remove State Cases to Federal Court  
**Assignment:**  
28 U.S.C. §§ 1441(a)-(c), 1446, 1447  
CB: 212-19

**C. State Law in Federal Courts: An Introduction to the “*Erie* Problem”**

1. From *Swift v. Tyson* to *Erie Railroad v. Tompkins*

***Assignment:***

28 U.S.C. § 1652

CB: 221-4, 227-31

G: 165-73

Supp.: *Swift v. Tyson*

*Erie Railroad v. Tompkins*

2. Accommodating the Federal Rules of Civil Procedure in an *Erie* World

***Assignment:***

28 U.S.C. §§ 2071, 2072

CB: 231-51