

Complex Litigation

Spring 2011

I. Course Objectives

1. Gain knowledge about the rules and statutory provisions, as well as relevant case law, involving complex litigation – including multiple related litigation, class actions, discovery, attorneys fees, and the settlement and trial of complex cases. The class will be particularly useful for students who intend a career in civil litigation.
2. Enhance some core legal skills including how to analyze and critically evaluate rules and statutory provisions, cases, ideas, arguments, and points of view.
3. Develop skill in expressing yourself orally and in writing as a lawyer. Because of the size of the class – no more than 24 – and the paper and editing requirements, students will have good opportunities to develop their skills in these areas.
4. Continue to develop an ethical and professional identity.

II. Course Materials

The textbook for this course is Richard L. Marcus, Edward F. Sherman, and Howard M. Erichson, *Complex Litigation: Cases and Materials on Advanced Civil Procedure* (5th Edition, 2010), hereafter MSE.

You should also obtain a copy of the Federal Rules of Civil Procedure, which you should still possess from your first year Civil Procedure class (or can borrow from a fellow student). Alternatively, you can access the Rules at www.law.cornell.edu.

III. Regular Class Attendance

The course will meet on Tuesdays and Thursdays between 3:00 and 4:25 pm. We will not, however, be meeting on March 10, 15, and 17 and April 14.

Because we will, therefore meet only 22 times, you will have only one unexcused absence. I will lower your final grade if you have more than one unexcused absence. If you are ill or face some other personal circumstance that makes it impossible to attend class, please contact me by email at tmmengler@stthomas.edu prior to class and I will excuse you from class.

IV. Course Requirements

I will determine your grade for this course principally in three ways.

First, I will require you to research and write a sole-authored paper, which in every way satisfies the requirements of the School of Law upper-level writing requirement. I would urge you to review our policy yourself, which you can find on our website at Part III-A-3 of the School of Law Academic Policy Manual. That policy requires, among other things, a paper that (1)

embodies substantial legal research and critical analysis; (2) is well-written and carefully edited; (3) contains no fewer than 7,500 words, including appropriate footnotes or endnotes; and (4) reflects revisions incorporating my critique and suggestions on an initial draft, as well as the critique and suggestions of one of your fellow students enrolled in this course (see below).

The initial draft of your paper (which should be complete in every way) is due on Thursday, March 17, at 5:00 pm. You should submit your draft by email to me and to the student who has been selected to review and critique your draft.

Your final (or second) draft of your paper is due Friday, April 29. Your final paper will be worth 65% of your grade in the course.

Second, I will ask each of you to edit, critique, and make suggestions concerning another student's initial draft (hereafter "Review"). This Review of another student's draft should include correction of grammatical errors, suggestions about writing style and organization, and a critique of the substantive components of the paper. This Review should be returned to the author of the paper and a second copy to me no later than Monday, April 4 at 5:00 pm. I would expect that the Review should include about 2 pages of critical comments (which can be positive, as well as negative) and a thorough edit of the draft paper itself (with suggested edits on the draft paper). This Review will be worth 10% of your final grade in the course.

Third, you will be required to take a 75-minute final essay examination, scheduled during the examination period. The examination will include one fact situation and one or a few questions following the facts.

The examination will be open book; that is, you may bring to the examination room your textbook, a copy of the Federal Rules of Civil Procedure, and any supplemental materials, your notes from the course, and any outline of the course you completed by yourself or jointly with the assistance of a classmate. The final examination will be worth 25% of your final grade in the course.

Additionally, your grade can be enhanced by as much as one-half letter grade (but not reduced) by participating in classroom discussions in an informative and effective way.

Class Topics

I. The Nature of Complex Litigation and How it Affects Third Parties

January 18 – MSE, pp. 1-23

January 20 – MSE, pp. 45-58, and FRCP 19

January 25 – MSE, pp. 78-94

II. Gathering Related Litigation

(a) Consolidation and Forum Selection

January 27 – MSE, pp. 123-33; 28 U.S.C. §§ 1391 and 1404, FRCP 42

February 1 – No reading. Guest speaker is Justice Frank Sullivan of Indiana Supreme Court.

- (b) Multidistrict Litigation

February 3 – MSE, pp. 133-72; 28 U.S.C. §1407

III. The Class Action – FRCP 23

- (a) Prerequisites

February 8 – MSE, pp. 227-48; FRCP 23(a); 23(g)

February 10 – MSE, pp. 248-71; FRCP 23(a); 23(g)

- (b) Types of Class Actions – FRCP 23(b)

February 15 – MSE, pp. 271-92; FRCP 23(b)(1)

February 17 – MSE, pp. 292-305; FRCP 23(b)(2); *Dukes v. Wal-Mart Stores*, cert. petition

February 22 – MSE, pp. 305-08; 319-328; FRCP 23(b)(3) and 23(c)(2)(B)

February 24 – MSE, pp. 328-59; FRCP 23(b)(3)

- (c) Settlement Classes

March 1 – MSE, pp. 370-89

- (d) Litigating Class Certification

March 3 – MSE, pp. 389-405; FRCP 23(c)

- (e) Subject Matter Jurisdiction and the Class Action Fairness Act

March 8 – MSE, pp. 419-33; 28 U.S.C. §§1331; 1332; 1367; 1453

IV. Discovery

- (a) Managing It and E-Discovery

March 29 – MSE, pp. 506-27; FRCP 16 and 26

- (b) Protective Orders and Privilege

March 31 – MSE, pp. 541-76; FRCP 26(c); 26(b)(5)

V. Settling Complex Cases

April 5 – MSE, pp. 657-83; 698-713; FRCP 23(e)

VI. Trying Complex Cases

April 7 – MSE, pp. 755-81; FRCP 42(b)

VII. Attorneys Fees

April 12 – MSE, pp. 593-600; 610-31; FRCP 23(h)

VIII. Arbitration

April 19 – MSE, pp. 866-78; 885-901

IX. Course Review – **April 21** or following week