Monday, Aug. 26

General Introductory Information:

Office Hours: 260: MTTH 3:15 - 4:30pm (or by appointment)

Our TA Katie will email us with her email and office hours.

A note about Field, Kaplan & Clermont: We will skip around in the book, but it will follow the temporal organization of a court case.

Don't go to a statutory supplement or a random source for looking at the statutory/regulatory provisions (Federal Rules of Civil Procedure, federal statutes) assigned in the course, look at the links from the syllabus (posted online, course website), because they link to versions edited by Green. If you use an unedited version, you will struggle through material needlessly. If it is in a link from the syllabus, struggle through it because we are supposed to see it and work through it.

Professor Green will not use myLaw. He will use his course website: <http://msgre2.people.wm.edu/civpro.htm> . Make sure that when looking at the website that you refresh the browser, he will update frequently, especially after class to post updates on assignments.

Power point slides will be posted online (after class) so don't worry about copying information down verbatim.

Two note takers will be designated per period. They will consult each other and email him ONE set of notes, which he will correct for errors (if any) and then post on the course site.

Review sessions will commence two weeks or so into the semester, students can come at their discretion and ask any and all questions.

You can find old exam questions with answers on Professor Green's blog: <http://michaelstevengreen.typepad.com/blog/>. The blog will also be where he will provide written answers to particularly prevalent or important questions by students. Do not look at the old exam questions yet – they are far too hard at this point and some questions are on material that will not be included this year.

Exams are graded on a curve, the same curve as the other Civil Procedure classes.

He may tell us "Here is some material that you might study if you want to distinguish yourself." However, at some point you have to recognize that you will not have a feeling of closure but you do have to cut yourself off on the studying at some point. Don't study too much.

1. What is civil procedure?
   1. Civil v. Criminal
   2. Civil is everything non-criminal like torts, contract, civil right actions, bankruptcy etc…
   3. Procedure v. substance
      1. Procedural law-what you can and cannot do in a court
      2. Imagine a “semi-angelic” world—people sometimes violate the law, but always provide the legally required relief when requested. No disagreement about the facts. No one requests relief unjustifiably. In such a world there would be no need for courts.
         1. In reality there are unjustifiable demands for relief and unjustified refusals to provide relief
         2. People are going to disagree with one another so they have to go to court
      3. procedural law is court law and substantive law is law that would still exist even in semi-angelic world without courts
      4. example of substantive civil law: wrongful death, negligence law, contract law
      5. example of procedural law: rules about drafting a complaint
      6. Statute of limitations: substantive or procedural?
         1. Depends on its purpose
            1. Procedural if its purpose is directed only to what happens in courts – e.g. should not sue for tort after a year because after that point witnesses’ memories are stale. Would be inapplicable in world without courts.
            2. Substantive if it is relevant even to semi-angelic world. The idea may be that someone has waived his right to relief if he waits to long to ask for it. This rule would be relevant even in a world without courts.
2. Why is civil procedure so hard?
   1. Not familiar with activity being legally regulated
      1. In tort law, we have a connection to activity the law is regulating, even if we don’t (yet) understand the law
         1. We have an understanding of what driving is, which makes it easier to learn the law of negligence concerning driving
      2. Whereas in the example of drafting a complaint we don’t know what the standards are and we don’t know what a complaint is – we don’t know the activity being legally regulated *and* don’t know the law doing the regulating.
   2. Interdependencies
      1. Everything that we are doing is linked to what we have done before and what we will do in the future. He might give us a quick and easy explanation of a concept to work with initially (e.g. summary judgment) that will be filled in later
      2. Hopefully, it will all come together at the end of class.
   3. Statutory/regulatory
      1. This is mostly a regulatory and statutory class.
      2. Statutes and regulations are difficult to read. This class is not as much about case law (such as torts).
   4. Dynamic
      1. The law is changing all of the time. Almost every year there are changes in the Federal Rules of Civil Procedure and the SCt issues an important CivPro decision practically each year.
      2. Tort law, in contrast, changes only glacially. CivPro changes quickly.
   5. Structure of legal system is central
      1. We will learn constitutional law, statutory law, regulatory law (Federal Rules of Civil Procedure), and common law.
         1. Must figure out how (or if) the statutory law is compatible with the Constitution – did Congress have the power to enact the statute? Is it compatible with Constitutional protections?
         2. Must figure out if the regulatory law is compatible with the Constitution, and also whether it is compatible with the federal statute that enabled it
         3. Must figure out whether the common law is compatible with constitutional, statutory, and regulatory law.
      2. We will also study state law on procedure. How do the aforementioned components all fit together with state law?
      3. Looking horizontally, how do states’ laws fit together with one another?
      4. How all of these components fit together is central, and it is challenging.
      5. When learning a legal rule, you must always ask yourself – “What type of law am I learning? Is it federal constitutional, federal statutory, federal regulatory, federal common law, state law, etc.?”
3. Why is civil procedure so important?
   1. If you will be a civil litigator, this is the most important course you will have in law school
      1. Even if the area that you work in is tort law, procedure is very integral
   2. Substantive law is only as good as procedural law
      1. If you didn’t have procedural law substantive law wouldn’t get enforced
4. Three themes that will keep on coming up in the course:
   1. In coming up with rules for resolving disputes in court one needs to balance
      1. Upholding the substantive rule of law
         1. Find out what actually happened and applying the substantive law properly
         2. Eg in negligence suits making sure all and only those who were actually negligent pay
      2. Other interests (e.g. party autonomy and privacy)
      3. Efficiency
   2. Structure of American legal system
      1. Relationship between the states
      2. Relationship between federal and state governments
      3. Separation of powers-division of power between federal courts and Congress
         1. We will see that a lot of federal proecdure is controlled by Congress
   3. Statutory interpretation
      1. Parsing statutes, regulations (FRCPs) and constitutional provisions
      2. There are different methods for doing so, which we will discuss\
5. Organization of course
   1. Organized temporally – on the basis or how a case proceeds
   2. 1st standards for drafting a complaint
      1. then discuss how the complaint is served on the defendant
   3. 2nd : The Pleading Period
      1. Pieces of paper are passed back and forth between the parties (formal papers)
      2. This is a very inexpensive period in the court case, if resolution can be reached here, very good
      3. defenses that the defendant can bring up to complaint, in an answer or by motion
         1. Some directed to forum (idea is that court is not right place for litigation to proceed)
            1. Subject Matter Jurisdiction (SMJ) (should not be in federal court)
            2. Personal Jurisdiction (esp. relevant in state court)

No PJ if state does not have adjudicatory power over the defendant

Defendant must have certain amount of contact with the state

Different from state not having power to extend its law to the dispute

If you were sued in Alaska state court about a battery that occurred in Virginia the court would have no PJ over you, even if it used Virginia battery law

PJ is relevant in the same sense in federal court, but then the question is whether the defendant has requisite connections to the US as a whole, so it is really only relevant for foreigners

BUT there is a FRCP (which we will discuss) such that, in general, a federal court will not assert PJ over a defendant unless a state court would have had PJ

* + - * 1. Venue – is it the right place in the court system?

Eg in VA state court the question would be whether it should be brought in VA state court in Arlington or Roanoke or Richmond...

In federal court the question is what *district* the action should be brought in

* + 1. Will do other defenses the defendant can bring up
    2. Plus amendment – when can you make changes in a pleading
  1. 3rd Complex litigation
     1. When can the plaintiff or the defendant add causes of action or parties to the existing lawsuit
     2. When can someone else intervene into the lawsuit?
     3. What effect does this have on SMJ?
  2. 4th Discovery Period🡪exchange of information – parties can compel it from other parties and from witnesses – includes documents, depositions...
     1. You find out what type of information (including the bad information) the opposing party has
     2. This can encourage settlement
     3. Will discuss some privileges limiting discovery
     4. Also it is usually this period that a party will move for summary judgment: summary judgment for defendant if court finds that no reasonable jury could find a defendant liable, therefore the case is decided. This is an inexpensive way to solve a dispute before trial
  3. 5th Trial and judgment
     1. Will not be main focus – only 2% of cases filed in federal court make it to trial – they are settled, or disposed of through motions to dismiss, summary judgment
     2. Our focus will be on what happens before trial
  4. 6th Preclusion-the fact that there was a judgment has got to mean something
     1. To what extent does a judgment keep new litigation from occurring?
  5. 7th Erie Doctrine – really about 2 things
* Common law is judge made law. There is no statute on the books so the judge makes a law. One Erie question is the extent to which federal courts can make common law (whether substantive or procedural)
* Another question is the extent to which a federal court entertaining a state law action must use state rather than federal procedure
* Federal Rules of procedure were created in 1938.

1. Let’s now start with Drafting a Complaint
   1. Structure of Court Systems
      1. Where to sue? federal or state court
      2. Concentrating mostly on Federal Court System in this class
         1. rules governing federal courts have been very influential on state procedure
      3. If you choose the federal court system, you will start in the federal trial court, called a federal district court
         1. For appeals there is an intermediate appellate court (organized by circuits)
            1. Federal circuit-tax and patent claims
            2. DC has its own circuit
         2. Then the US SCt – if it chooses to grant certiorari
      4. State courts usually also have two tiers of appellate review
      5. For issues of federal law brought in state court, after you go as high up as you can in state court system-can appeal that issue to the US Supreme Court
         1. If it chooses to grant cert
   2. Drafting a complaint
      1. What the caption of the complaint looks like (see Rule 10)
         1. Title means the parties
         2. File number-stamped when first filed
            1. way of referring to that case throughout litigation
         3. 7(a) spells out the types of pleadings
      2. What is in the complaint (see 8(a))
         1. Statement of jurisdiction
            1. Why this is a case to be brought in federal court\
            2. Why there is venue
            3. Usually includes facts supporting PJ
         2. Short statement of facts entitling plaintiff to relief
         3. Request for relief
      3. Factual allegations divided into paragraphs Rule 10b
         1. The defendant can then admit or deny them by number
         2. Plaintiff can refer to them later in the complaint or parties can refer to them in other pleadings
            1. E.g. plaintiff might say in complaint: by virtues of the allegations 4-6 I am entitled to damages for breach of contract
      4. Complaint=Formulaic statement about why you are entitled to relief🡪will perform various purposes throughout litigation
         1. no evidence referred to, no cases cited, just very short and simple
         2. At last as far as 8(a) is concerned
            1. the US Supreme Court has been beefing up the pleading requirements at this initial stage to prevent people from bringing frivolous law suits.