**Introduction**

Administrative issues – office hrs, laptop policy, etc.

Always read statutory/regulatory materials off of the website/syllabus so you get edited versions

What am I going to do today?

start with abstract discussion of course,

* especially discussing why subject matter is so hard/disorienting
* and talk about some important themes that will repeatedly arise
* then begin on pleading

1. What is Civil Procedure?
   1. Procedure rather than substance
      1. In some situations important consequences ride on the distinction
      2. But for our purposes, procedure is simply court law – the law applying to judges’, litigants’, and lawyers’ activities in the context of lawsuits
      3. like all courses in civ pro, will look mostly at *federal* courts
   2. “Civil” refers to civil side of civil/criminal divide
      1. Civil is a broad category
         1. Not just tort, contract, property, but also
            1. governmental actions for taxes, regulatory violations
            2. civil rights actions against the government
            3. and many others
2. sounds both more boring and more interesting than it is
   1. sounds more boring than it is because it seems to be about arbitrary piddling rules
      1. e.g. how many of days after filing a complaint the Plaintiff must serve
      2. Much more theoretical and challenging than you would think
      3. Also less arbitrary
         1. Will try to show how law makes sense
   2. Sounds more interesting than it is because it seems to be about trial
      1. Trial strategy
      2. Evidentiary objections etc.
      3. In fact, will be about what happens before trial
         1. Pleading period
         2. Discovery period
      4. The content of the course represents most of what a litigator’s life is like
         1. fewer than 2% of cases filed in federal court go to trial
         2. Are disposed of in other ways
            1. Settlement
            2. Dismissal in pleading period
            3. Summary judgment during discovery period
3. Why is Civ Pro so hard?
   1. not familiar with the activity being regulated – actions in court
   2. interdependencies – rules are interconnected
   3. statutory/regulatory course
      1. must learn to read statutes and regs
      2. much harder than reading cases, but crucial
         1. more like being a lawyer
   4. dynamic – lots of changes in the law
      1. new SCt cases
      2. amendments to fed rules
   5. structural issues are central
      1. must always worry about different levels or types of law
      2. with respect to federal procedural law we will learn
         1. fed constitutional law
         2. fed statutes
            1. which will be valid only if they are in accordance with fed constitution
         3. fed regulatory law (because that is what the Federal Rules of Civil Procedure essentially are)
            1. which will be valid only if in accordance with statute delegating power to make the regs
         4. fed common law
            1. which can be overridden by regs, statutes and const
4. The importance of Civ Pro
   1. if you will be engaged in civil litigation, absolutely most important class you will take in law school
   2. Also - law is worthless without enforcement and enforcement is through courts
      1. Civil procedure is the engine driving substantive civil law
5. Three main themes of course
   1. how to come up with rules for litigating disputes that balance:
      1. the goal of vindicating the substantive rule of law
      2. Other interests – eg autonomy or privacy
      3. Efficiency
   2. Structure of American Legal System
      1. Relationship between federal gov’t and states
      2. Relationship between states
      3. Relationship between branches of federal government
   3. Methods of statutory/regulatory interpretation
6. Outline of suit
   1. four main periods
      1. Pleading
         1. Formal documents exchanged, no evidence presented
         2. Getting rid at this point is very cheap
         3. Even if case is not disposed of, the contours of the case are determined
      2. Discovery
         1. Look at the evidence each side has
            1. Document requests, Depositions
         2. More expensive than pleading period
         3. Can get rid of at this point through summary judgment
      3. Trial
         1. Expensive
         2. Risky
      4. Appeal
7. 1st main topic of class – complaint and pleading standards
   1. Assume we are before a fed ct
   2. must draft a complaint – file it with court and serve it
   3. Mechanics of a complaint
   4. Caption
      1. 10(a)
      2. **Rule 10.  Form of Pleadings**
8. Caption; Names of Parties. Every pleading must have a caption with the court’s name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

Rule 8. General Rules of Pleading  
  
(a) Claim for Relief. A pleading that states a claim for relief must contain:  
(1) a short and plain statement of the grounds for the court’s jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;  
(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and  
(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

* notice numbered paragraphs

1. Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence — and each defense other than a denial — must be stated in a separate count or defense.

* Three main things that can be wrong with a complaint:  
  1) legal sufficiency of factual allegations   
  2) level of specificity in factual allegations   
  3) evidentiary support for factual allegations
* 1) legal sufficiency of factual allegations – do they add up to a cause of action
* E.g. What are the elements of a cause of action for negligence (tort)?
  + Duty
  + Breach
  + Causation
  + Damages
* What about the following case?
* P alleges:
* D negligently drove 100 miles an hour through a stop sign, thereby causing an accident that resulted in P’s damages
  + Assume however that P was also driving 100 mph through stop sign – and had P not done so, there would have been no accident
* Does P’s complaint state a claim?
  + Yes
  + Contributory negligence is an affirmative defense
  + P need not allege lack of contributory negligence
    - That is D’s job (in the answer)
* Other example of affirmative defense? – statute of limitations