**Civil Procedure | Green | Fall 2017**

**Notes: 8/21/17**

**Review Sessions:** TBD

**Class Website:** msgre2.people.wm.edu/civpro.htm

**Midterm:** outside of class and not recorded graded, but will be graded and feedback given

**Outline of Class Notes for Today:**

* What is Civil Procedure?
* Why it is a hard class?
* Three main themes in course
* State and federal jurisdiction

**What is Civil Procedure?**

* Procedure v. Substance
	+ Procedure: Court Law; process case will go through
		- Constitutes the court and regulates its activity
	+ Substance: the law that regulates peoples activities outside of court

**Civil v. Criminal**

* Civil: anything not criminal, is civil; is the way the bulk of law is enforced
* Criminal: could end up to losing the liberty of individuals

*Most cases do not go to trial | Only 1-2% go to trial | Settled or disposed before trial*

* *that is why we will concentrate on pre-trial procedure*
* *also on procedure of federal courts*

**Why is civil procedure so hard?**

* Not familiar with activity being legally regulated
* Interdependencies: talking about one rule, but mention a rule that the other is dependent upon – all connected and work as a large web
* Regulatory/Statutory very different than common law
* Dynamic – laws keep changing ever year
* Structure of legal system is central to understanding this course
	+ **Federal v. State Relations – The relations between each and how they work**
* Separation of powers (Congress v. Federal Courts)
* State vs. State (California v. New York)
* Even international (France v. New York)
* always need to know what law you are learning – e.g. concerning the relevant federal law governing a federal court, might be…
	+ Constitutional law
	+ statutory law
	+ Fed. R. Civ. P.
	+ Common Law

**Why is civil procedure so important?**

It is the way substantive law is enforced. If there weren’t procedure, there wouldn’t be a method to require you to do what you are legally obligated to do. Substantive law is only as powerful as procedural law.

**Three Themes**

1. Balance: What is this law trying to do? balance three concerns
	1. Accuracy: determining what actually happened, choosing the proper law, and accurately applying
	2. Autonomy (other interests, e.g. privacy): it seems to appear important to have individuals autonomous and not the government in charge of how litiogation proceeds
		1. Negative consequences: accuracy/efficiency
	3. Efficiency: sometimes accuracy is sacrificed in name of efficiency; some wrong outcomes do appear because it is expensive to avoid them
2. Structure of American Legal System
	1. Relationship between the different level of government and other nations
3. Statutory Interpretation
	1. How/ways to interrupt a statute or regulation

**Structure of Court Systems – division between trial courts and appellate courts**

**trial courts find facts (usual through jury) and issue judgment**

* **appeal determines whether there were legal errors**
* Federal Court System
	+ trial courts - U.S. District Court
		- E.g. E.D. Pa.
		- will be out focus
	+ U.S. Court of Appeals (intermediate appellate court)
		- E.g. 3rd Circuit
		- right to appeal
	+ U.S. Supreme Court
		- discretionary appeal



* Virginia Court System
	+ Trial court: Circuit Court (also General District Court)
	+ Court of Appeal
		- Most states have intermediate courts, which hears most appeals
	+ Virginia Supreme Court

**Example Case:**

* Joe sues Jane in VA circuit court (a state trial court) under VA negligence law in connection with a car accident in VA; he loses; he appeals up the VA state court system to the VA Supreme Court, but still loses
* Is this the end of things?
	+ Not necessarily. Can go to the US Supreme Court if there is a federal issue such as “unconstitutionality” of VA state law

**Example Case:**

* Joe sues Jane in E.D. VA. Under VA negligence law in connection with a car accident in VA; he loses; he appeals to the 4th Circuit but still loses
* Is this the end of things?
	+ If only questions of VA law 🡪 then can’t up to US Supreme Court
	+ If there is a question of federal law then appeal is possible (if US SCt chooses to take case)
	+ US SCt is not an authority on VA state law
	+ Cannot appeal to VA Supreme Court from federal court on issue of VA law either, even though it is the final authority on VA law
		- there is no appeal from the federal court system to a state court system
	+ the federal court has no authority of state law – it will simply opine about what it thinks VA law is without issuing judgments that are binding on VA state courts

**3 Requirements to Consider in Counsel Choosing the Proper Court**

1. Subject Matter Jurisdiction
2. Personal Jurisdiction
3. Venue

**Subject Matter Jurisdiction (SMJ):** the *authority* of a court system to hear cases of a particular type

* State courts are general subject matter jurisdiction – the state court system can hear any type of case (with one exception to be discussed)
* but there are specialized courts in states
	+ Such as domestic relations courts, family court, probate court, estate court, etc.
	+ SMJ will arise in state court concerning these matters
	+ if there is no SMJ in that court that just means there is SMJ in another type of court in that state

**Example Case:**

* Joe (Cali) and Fred (Cali) get into a fight in a bar in San Francisco. Joe sues Fred VA state court. Is there SMJ?
* Yes. Under SMJ, they can take it. ABSOULTELY. States can hear any type of case: i.e. other state’s law, federal law
	+ However, there may be other problems besides SMJ - personal jurisdiction can limit the power of a court to issue a binding judgment on an unwilling defendant

**Personal Jurisdiction:** this is about the power of a court over an unwilling defendant from outside the jurisdiction

1. There is no problem with personal jurisdiction if both parties – really D – consents to the trial out of state or waives it

**Venue:** *where* within a c. system can a case be brought

* Question of Venue: “Should we hear the case in town x or town y?” (State)
* Question of Venue: “Should we hear the case in District x or District y?” (Federal)

*Subject Matter Jurisdiction is a problem within the federal court system and not really within the state courts. Federal court have the problem of possibly stepping on the toes of state courts.*

**Example Case:**

Gunter (German) and Helmut (German) get into a fight in a bar in Berlin. Gunter sues Helmut in VA state court. Is there SMJ?

* YES because VA State Court has general subject matter jurisdiction
* Possible limitation is personal jurisdiction

**Example Case:**

Joe (Cali is arrested by Fred (Cali) in San Fran. Joe sues Fred in VA state court for violations of his federal constitutional rights. Is there SMJ?

* YES because VA state court has general subject matter jurisdiction – they can hear any type of case, even a case under federal law
* **Concurrent Jurisdiction:** there is usually concurrent jurisdiction for actions under federal law - what could be brought in federal court may also be brought in state court
	+ ***EXCEPTION to Concurrent Jurisdiction****:* Congress may provide that some cases may only be heard in federal c.
		- Exclusive Federal Jurisdiction
			* i.e. admiralty, patent/copyright, bankruptcy

**THE RULE:**

**Concurrent federal subject matter jurisdiction for federal actions**

**Be heard in state or federal courts**

**THE EXCEPTION:**

**Exclusive federal subject matter jurisdiction**

**Patent/copyright, bankruptcy, etc.**