COMPLEX LITIGATION – SPRING 2019

Course Information and Tentative Syllabus

Professor Larry Dessem

I. Classes. Our regular class meeting times are Tuesday and Thursday from 4:45 to 6:00 in Room 3. Our first class is on Tuesday, January 22. We will not meet on January 31, March 14, and April 25. We will have make-up classes in Room 5 from 1:00 to 1:50 on February 5 and February 12. I hope that we also will be able to attend proceedings in a complex action in federal court, but this will depend on what opportunity may present itself. The final examination is Thursday, May 16 at 8:30 a.m.

II. Office Hours and Communication. I welcome your questions, and I encourage you to raise those questions during our class periods so that your colleagues can benefit from both the questions and my responses. I will be happy to entertain individual questions immediately after class, and I'll also be happy to schedule other mutually convenient times to talk. You can reach me on my email at DessemRL@missouri.edu or on the phone at 573 882-7066 (office) or 573 256-6825 (home). Please be sure to check the TWEN site for our course regularly, as I will use that site to send you course material and otherwise communicate with you.

III. Disability Accommodations. If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share with me, or if you need to make arrangements in case the building must be evacuated, please let me know as soon as possible. If disability-related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please register with the Office of Disability Services (http://disabilityservices.missouri.edu), S5 Memorial Union, 882-4696, and then notify me of your eligibility for reasonable accommodations. The Office of Disability Services is the campus office responsible for reviewing documentation provided by students requesting academic accommodations and for accommodations planning in cooperation with students and instructors, as needed and consistent with course requirements. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

IV. Intellectual Pluralism. The Law School welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this course may address concerns to either myself or the University’s Director of the Office of Student Rights and Responsibilities (http:osrr.missouri.edu). All students will have the opportunity to submit an anonymous evaluation of both this course and the instructor at the end of the course.

V. Attendance and Participation. I consider class attendance and participation to be extremely important and believe that not only your success, but the success or failure of our class, will depend, in part, upon the preparation and participation of each student in the class. For
this reason, I expect any student who will not be present in class, or who will not be prepared to participate, to send me an email or give me a note explaining your inability to meet this class requirement. I also reserve the right to impose the sanctions permitted by the Law School upon students who, without a valid excuse, do not attend class or are not prepared to participate. As explained in the discussion of grading below, class attendance and participation will count for up to 10% of your grade in this course.

VI. Class Preparation. I will expect that each student has carefully read all of the day's assigned text material and has come to class prepared to discuss both that material and any questions contained in that material. In addition to reading the text, you should separately read major citations to the Federal Rules of Civil Procedure and sections of Title 28 of the United States Code in the textual material. Also be sure to bring with you to class each day a copy of the Federal Rules.

VII. Texts. Our texts will be Marcus, Sherman & Erichson, Complex Litigation: Cases and Materials on Advanced Civil Procedure (6th ed. 2015) and a copy of the Federal Rules of Civil Procedure. Your copy of the Federal Rules can be the one that you used in your Civil Procedure course, so long as it contains the current Rules. Rule 23, which governs class actions, was amended effective December 1, 2018, and your rulebook may not include these amendments. You can download and print Rule 23 as currently in effect from the United States Court website, uscourts.gov.

In doing research on class actions, a very helpful compendium of sources is available in the Law Library's Library Guide to Class Actions: http://libraryguides.missouri.edu/classactions. The guide was created by Kristin Sanocki, a graduate of the Law School and former student in the Complex Litigation course.

VIII. Grading. Your grade in this class will be based upon a (1) final examination on May 16 (approximately two-thirds of your course grade); (2) a writing and oral argument simulation (approximately one-third of your course grade); and (3) your class participation (approximately one-tenth of your course grade). In awarding class participation points I will consider your class attendance, your preparation for class, and your participation in the class. I expect regular, valuable contributions from all members of the class, and I do not want to engender a competition to see who can talk the most in class. Instead, it is my hope that all students in the class will achieve at or near the maximum score for this portion of the final grade.

You will be able to bring into your final examination any written material, including the Marcus text, a copy of the Federal Rules, your class notes, course handouts, and other material that you believe will be useful. You will not be able to bring or access electronic media other than your own notes on your personal laptop computers.

The School of Law's Honor Code applies to all work done in this course. If you have any questions about this, please see me.
IX. **Learning Outcomes.** In this course students will:

- Consider in depth the means by which complex actions are resolved in the federal courts;
- Develop the ability to choose and apply the law in resolving complex disputes;
- Understand the significant policy issues concerning complex dispute resolution; and
- Develop the ability to make strategic decisions concerning complex civil litigation.

Assessment in this course will be both formative (in daily class questioning and discussion) and summative (by your oral and written argument exercise and a final examination).

X. **Suggestions.** I am interested in constructive criticism concerning this course, and I hope you will share your thoughts with me as the semester progresses. If you have not understood a particular point, chances are that others could profit from further explanation. I look forward to a good semester as we explore the wondrous world of complex litigation.
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Tentative Syllabus

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January 31: We will not meet on January 31.

February 5: 1:00 Make-Up in Room 5. Forum Selection Clauses; Enforcement of Judgments: Richards v. Lloyd’s of London, 135 F.3d 1289 (9th Cir. 1998) (TWEN); Lloyd’s v. Ashenden, 233 F.3rd 473 (7th Cir. 2000) (TWEN); Lucasfilm v. Ainsworth, 3 W.L.R. 333 (Court of Appeal – Civil Division, 2009-12-16, rev’d on other grounds, 3 W.L.R. 487 (Sup. Ct. 2011)(TWEN); Restatement (Third) of Foreign Relations Law, §§ 481, 482 (TWEN).

February 5: Regular Course Meeting. Transfer Within the Federal Courts; Multidistrict Litigation; pp. 112 – 116; 128 – 146; Heyburn & McGovern, Evaluating the MDL Process (TWEN); Panel on MDL Home Page (TWEN); MDL Rules & Procedures (TWEN).

February 7: Powers of Transferee Court; Resolving Complex Litigation through MDL proceedings: pp. 147 – 175.

February 12: **Regular Course Meeting.** Overview of Rule 23(a) Class Action Requirements; Rule 23(a)(2) Commonality; text pp. 223-256.

February 14: Adequacy of Representation: pp. 256 – 266.

February 18: *(Monday)* Your motions and briefs in the MDL Litigation (that will be argued on February 19) are due to Professor Dessem by noon today.

February 19: This class will be devoted to argument of your motions to transfer civil actions to a Section 1407 MDL. In preparation for this class, please read the Multidistrict Litigation Exercise and Wajert, Product Liability Multidistrict Litigation (TWEN).

February 21: Types of Class Actions: Rule 23(a)(1)(A) and (B) (including Limited Fund Class Actions): pp. 266 – 285.


March 14: We will not meet on March 14.


March 25 – 29: Have a good Spring Break!


April 16: Settling Complex Cases: Distributing Settlement Funds; Non-Monetary Relief; Objectors: pp. 636 – 657.


April 25: We will not meet on April 25.


May 2: A guest speaker will talk about the use of complex litigation procedures to resolve significant and sophisticated civil disputes.

May 16: Final Examination (8:30 a.m.).