

Complex Litigation
Spring 2013
Professor Stephen Bundy

**Course Information and
Syllabus**

Time and Location: T, Th 8:35-9:50 a.m., Room 140

Course Materials: Richard Marcus, Edward Sherman and Howard Erichson, *Complex Litigation* (West 5th ed. 2010) (“MSE”). You will also need to have and bring to class every day an up to date version of the Federal Rules of Civil Procedure relevant to the day’s discussion—any current version will do, including one downloaded from the internet. There will also be electronic handouts, probably on a pretty regular basis.

There are occasional assignments below from the Federal Judicial Manual on Complex Litigation (available on line at fjc.org).

There are also, less frequently, assignments from the American Law Institute’s Principles of Aggregate Litigation. Those excerpts will be posted on bSpace.

Contacting the Professor: My office is in Room 436, in the North Addition. My office hours are Tuesday, 3:30-4:30 and Wednesday 3-4 or by appointment. My email is sbundy@law.berkeley.edu.

Course Requirements: I will often lecture, but I will also often want to hear from you. Volunteers are always welcome. At the start of the second week of the course (Tuesday, January 14), I expect to distribute an on call list. Each student should expect to be on call for about three weeks (six classes) distributed across the semester. Students who are on call may be asked to participate in class discussion. There will be a final examination in the course—it will be an 8-10 hour take-home with a strict word limit (currently 2500 words).

Here is the tentative syllabus for the class. It is subject to amendment with notice, both as to when we cover material and also how much material will be covered, as the course moves ahead:

1. Introduction

MSE 1-24 (to be read as background for the course). This will be a lecture class.

2. Preclusion and Non-Parties

MSE 782-97

3. Issue Preclusion as a Device for Eliminating the Need for Repetitive Litigation

MSE 837-65

4. Permissive Joinder

MSE 24-37; Fed. R. Civ. P. 20 and 42.

5. Compulsory Joinder

MSE 45-64; Fed. R. Civ. P. 19

6. Intervention

MSE 64-78; Fed. R. Civ. P. 24

7. Litigation in Different Federal Districts: Stay, Injunction, Transfer

MSE 95-107 and 119-23; 28 U.S. C. §1404.

And for the very limited parallels for identical or related actions pending in state and federal court see the helpful summary in Manual on Complex Litigation §20.32 (available on line at Federal Judicial Center).

8,9,10 Related Litigation in Different Places—Introduction to Multidistrict Litigation.

Class 8

MSE 133-60; 28 U.S.C. §1407

Class 9—The Progress of a Large Multi District Case: the example of Vioxx

Manual for Complex Litigation §§10.2-10.225 (available online at the Federal Judicial Center website, fjc.org); Manual for Complex Litigation §§20.3-20.313, MSE 160-72; MSE 774-76

Class 10—Multi District Litigation--Settlement Leverage and Settlement Ethics

DeLaventura v. Columbia Acorn Trust, 417 F.Supp.2d 147 (2006) (copy on bSpace; also available on Google Scholar)

MSE 698-713; Model Rule of Professional Conduct 1.8 (g) (available on line). In addition, I will distribute portions of the Vioxx Settlement for review and discussion

11. Class Actions: Numerosity, Commonality, Typicality; Rule 23 (a)

MSE 236-48; Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541(2011) (Part I and II of majority; entire dissent)(handout); MSE 255-59

12. Class Actions: Adequacy of Representation and Selection of Counsel

MSE 259-71; 578-92; Rule 23 (a) (4) and 23 (g)

13. Class Actions (23 (b) (1) Limited Fund and Incompatible Standards)

MSE 272-92

14. Class Actions (23 (b) (2) Injunctive and Declaratory Relief Class Actions)

MSE 292-305; Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541(2011) (Part III)

15. Class Actions (23 (b) (3) Common Question Class Actions—fraud and consumer claims)

MSE 305-28

16. Class Actions (23 (b) (3) and 23 (c) (4)--Common Question Class Actions and Subclassing—mass torts

MSE 328-59

17. Class Actions (Certification Solely for Settlement) MSE 370-89

18. Class Actions (Modern Certification Practice and Review of Prior Case Law) MSE 389-405

19. Class Actions (Personal Jurisdiction—Choice of Law) MSE 433-60

20. Class Actions (Class Notice and Opt-Out Rights; Communications with Class Members Relating to their Exercise) MSE 461-81

21-22. Trying Complex Cases and Class Actions—Compression, Bifurcation, Trifurcation and Sampling

MSE 751-781 and reread the last (unanimous) portion of Dukes v. Wal-Mart on the method of trial proposed by the trial court in that case.

23. Setting Attorney's Fee Awards

MSE 598-631

24. Review of Class Action Settlements

MSE 657-59; 665-94; Rule 23 (e)

25-26. Preclusion: Effect of Class Action Judgments

Hansberry v. Lee, 311 U.S. 32 (handout); MSE 797-837

27. Federalizing Class Action Practice Part I: Subject Matter Jurisdiction; MSE 419-433; 28 U.S.C. §§1332; 1367; Erie Issues: Shady Grove Orthopedic Associates v. Allstate Ins., 130 S. Ct. 1431 (2010)(handout)

28. Federalizing Class Action Practice—The Influence of the Federal Arbitration Act

MSE 867-78; AT&T Mobility LLC v. Concepcion, 131 S. Ct. 1740 (2011)