Complex Litigation  
Course Syllabus  
Chief Judge B. Lynn Winmill  
Dave Metcalf & Jeff Severson  
(Fall Semester 2018)

1. **Complex Litigation**
   a. Defining the complex case.
   b. Identifying the options for resolving complex cases.
   c. Discussing pros and cons of various options.

2. **Case Study of BP oil spill in Gulf of Mexico**
   a. Review the options to resolve the largest environmental disaster in our Nation’s history.
   b. Study:
      i. How did the oil spill occur?
      ii. Who was potentially responsible?
      iii. In what forums was litigation filed?
      iv. Discuss pros and cons of Ken Feinberg’s compensation fund.
      v. Describe Multi-District Litigation.
      vi. What are advantages of individual lawsuits?
      vii. Attorney strategies for plaintiffs and for defense.
      viii. Reading: “The Other Oil Cleanup” NY Times Magazine

3. **Case Study of Adams v US – CV-03-49-BLW (D.Id.)**
   a. 400 farmers alleging crop loss in 1,500 fields over 5-year period.
      i. How did the crop loss occur?
      ii. Who was potentially responsible?
      iii. What were the options for the farmers to recover their crop losses?
      iv. Class action? Joinder? Bellwether Trial?
   b. Reading: Opinions of Chief Judge Winmill in the Adams case

4. **Case study of Vioxx settlement ($5 billion)**

5. **Class Actions – Rule 23(a) Requirements**
   a. Identifying the threshold requirements to certify a class action.
   b. Discuss in depth Justice Scalia’s opinion (and Justice Ginsburg’s dissent) in the landmark case of Wal-Mart v Dukes
   c. Readings:
      i. NOW v Scheidler
      ii. Vietnam v Benecke
      iii. Patrykum v Gomilla
      iv. Hanlon v Chrysler
v. Radcliffe v Experian
vi. Wal-Mart v Dukes

6. **Class Actions – Rule 23(b) Requirements**
   a. Readings:
      i. *In re Dennis Greenman*
      ii. *Ortiz v Fiberboard*
      iii. *Wal-Mart v Dukes*

7. **Justice Department Resolution of Complex Cases**
   a. Study decision by U.S. District Judge Rakoff to reject class action settlement in the SEC enforcement action involving *Citigroup Global* class action.
   b. Study 2nd Circuit decision overturning Judge Rakoff (*SEC v Citigroup Global* 2014 WL 2486793 (2nd Cir. 2014))
   c. Study Judge Rakoff’s article *The Financial Crisis: Why Have No High-Level Executives Been Prosecuted* (*NY Review of Books* 2014)
   d. Study Justice Department new policy announced by Deputy Sally Yates in September of 2015 to pursue individuals (not just corporations).

8. **Class Actions – Notice, Settlement, Fees, and Remedies**
   a. Readings:
      iv. *In Re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability*

9. **Discovery In Complex Litigation**
   c. Review litigation holds, the use of discovery tools, seeking and responding.
   d. Discussion of Chief Judge Winmill’s practice of requiring discovery mediation before filing discovery-related motions.
   e. Readings:
   f. Presentation by distinguished attorneys on real-world discovery problems.
   g. Presentation by Chief Judge Winmill on judicial perspective.

10. **Experts – Their Use in Complex Litigation**
    a. The importance of experts in complex litigation.
       i. What should you look for in an expert?
       ii. How do jurors evaluate expert testimony?
b. Presentation by distinguished attorney regarding hiring and preparation of experts.

c. Readings
   i. Federal Rules of Evidence 701 to 706
   ii. *Daubert* opinions (US Supreme Court and 9th Circuit)
   iii. *US v Herrera*
   iv. *Metabolife v Wornick*
   v. *Yeti by Molly v Deckers*
   vi. *Sherwin-Williams v JB Collision*

11. **Writing & Oral Advocacy**
   a. Presentation by Chief Judge Winmill on judicial perspectives.
      i. What a judge expects.
      ii. The best practices of the best attorneys.
      iii. Reading: Bryan Garner’s interviews with Supreme Court Justices on writing and oral advocacy.

12. **Grading System**
   i. The class grades are based on the following:
      1. 30% Class Action Brief
      2. 30% Oral Argument
      3. 20% Class Participation
      4. 20% Final Exam
   b. The students are given a fact scenario -- half are assigned to be plaintiffs and half defendants.
   c. The plaintiffs must write a 10 page brief seeking to certify a class action based on the facts given. The defense responds with a 10 page brief in opposition.
   d. The parties are graded on their briefs and provided feedback on the good and bad points
   e. They then present oral argument to a 3-judge panel (Judge Winmill and Dave and Jeff) and are graded on their presentation and receive further feedback.

**Credit Hours for Coursework**

In accordance with ABA Standard 310, the College of Law awards one credit hour for experiences that are reasonably designed to involve 50 minutes of classroom or direct faculty instruction and two hours of out-of-class student work per week, or at least the equivalent amount of work for academic activities including simulation, field placement, clinical, and other academic work leading to the award of credit hours.

The Course requirements outlined above with respect to materials and assignments, in my professional judgement, are complex enough in nature that it is expected that the amount of out-of-class time it will take students to complete the assignments will meet the rule.
Center for Disability Access and Resources (CDAR) Reasonable Accommodations Statement:

Reasonable accommodations are available for students who have documented temporary or permanent disabilities. Ideally, students in Moscow and Boise should meet with CDAR by the end of the first week of class to assess if any accommodations are needed for courses and/or examinations. All accommodation requests are then submitted by CDAR to Dean Dodge for final approval. CDAR serves as the sole evaluator of medical documentation and determines reasonable accommodations on a per semester basis. The College of Law does not have the authority to evaluate or grant disability accommodations without CDAR first submitting a recommendation. You may contact CDAR by:

- Calling 208-885-6307
- Emailing cdar@uidaho.edu

It is ultimately the student’s responsibility to seek a disability accommodation, and until an accommodation is approved by CDAR and Dean Dodge, no student will be entitled to receive any accommodations. To learn more about CDAR, visit its website at http://www.uidaho.edu/current-students/cdar. Moscow students may also visit CDAR in suite 127 of the Pitman Center. Please review the College of Law Catalog and Student Handbook for more information on the disability accommodation process.

Recording Class Sessions:
Students may not electronically record classes unless they have the express consent of the instructor, except where the Dean of Students has allowed recording as a disability accommodation pursuant to a recommendation by CDAR. Recording classes without the instructor’s express consent violates the Honor Code. Students recording classes as a disability accommodation must follow procedures set down by CDAR. Students who are unable to attend class for reasons of illness or other exigencies must receive permission from the instructor before classes are recorded on their behalf. Contact the Law Library for recording equipment and information on recording procedures.

Civility
In any environment in which people gather to learn, it is essential that all members feel as free and safe as possible in their participation. To this end, it is expected that everyone in this course will be treated with mutual respect and civility, with an understanding that all of us (students, instructors, professors, guests, and teaching assistants) will be respectful and civil to one another in discussion, in action, in teaching, and in learning. Should you feel our classroom interactions do not reflect an environment of civility and respect, you are encouraged to meet with your instructor during office hours to discuss your concern. Additional resources for expression of concern or requesting support include the College of Law Dean of Students (jdodge@uidaho.edu), the University Dean of Students office and staff (885-6757), the UI Counseling & Testing Center’s
confidential services (885-6716), or the UI Office of Civil Rights & Investigations (885-4285).