

CLASS ACTIONS Syllabus, Fall 2018

Law 6936 (2 credit hours)

M 1:00 – 2:40 PM, Holland Hall Room 354

Professor Page: Room 312D; page@law.ufl.edu; 273-0929

Office hours: MTWTh 3:00-5:00 and by appointment.

Course Description. In this seminar, we'll examine the nature and significance of the **class action**, a unique procedural device designed to enable courts to provide redress for widespread harms. People and lawyers bring class actions to vindicate rights under securities, antitrust, tort, civil rights, environmental, employment, and consumer protection laws, among others. Seminar discussions will necessarily address the procedural and jurisdictional requirements of the Federal Rule of Civil Procedure 23 and the Class Action Fairness Act of 2005. We will also be concerned, in class and in our research, with the many legal and policy issues raised by class action litigation.

Outside speakers. Experienced class action practitioners will speak in our sessions Discovery, Summary Judgment, Economic Expert Testimony, Class Certification, Settlement, and Arbitration.

Purpose and Learning Objectives of the Course. By the end of the course, students will be able to describe and apply the important procedural standards and practical considerations that govern class actions and class action practice. The topics you'll learn are more fully described in the syllabus below.

Required Knowledge. 1L Civil Procedure, even if you did not cover class actions.

Assigned Texts. The assignments are to ROBERT H. KLONOFF, *CLASS ACTIONS AND OTHER MULTIPARTY LITIGATION* (4th ed. 2017). The text is available in hardback, but you can also get (at a reduced price) a pdf of the chapters of the book that we cover in this two-hour seminar. The bookstore can handle both transactions.

The casebook contains the relevant statutes and Federal Rules of Civil Procedure, but you'll probably want to refer to a rules book, like the supplement from your civil procedure class. I've also included a .pdf version of the Rules on the TWEN site, and link in the web links section of the site to a very useful web version of the Rules maintained by Cornell law school.

Outside Reading. The best quick overview is ROBERT H. KLONOFF, *CLASS ACTIONS AND OTHER MULTIPARTY LITIGATION IN A NUTSHELL* (4D ED. 2012).

Important resources for practical issues are the *MANUAL FOR COMPLEX LITIGATION (FOURTH)* (2004) and *Managing Class Action Litigation: A Pocket Guide for Judges*, both published by the Federal Judicial Center. Pdf versions of both in the "Course Materials" section of the TWEN site.

Other books:

MARTIN H. REDISH, *WHOLESALE JUSTICE: CONSTITUTIONAL DEMOCRACY AND THE PROBLEM OF THE CLASS ACTION LAWSUIT* (2007) [argument that the modern class action is unconstitutional]

DEBORAH R. HENSLER, ET AL., *CLASS ACTION DILEMMAS: PURSUING PUBLIC GOALS FOR PRIVATE GAIN* (2000)

CLARA BINGHAM & LAURA LEEDY GANSLER, *CLASS ACTION* (2002)

JANE SCHAPIRA, *INSIDE A CLASS ACTION: THE HOLOCAUST AND THE SWISS BANKS* (2003)

Articles:

There are countless articles addressing every conceivable aspect of class actions. Many of the most important ones are listed in the “Table of Secondary Authorities” portion of the casebook.

Blogs:

There are also many blogs dealing with class actions. Unfortunately, most are promotional vehicles for class action law firms, but they still may be useful sources of current information. If you google “class action blog,” you’ll see dozens of them.

Research Resources. Most of your research can be done on Westlaw and Lexis, but you should also be aware of the special relevance of www.bloomberglaw.com, which gives us free access to PACER and court dockets and all the filings in federal litigation. Those of you who want to examine a particular litigation in great detail as your paper (see below) will want to make use of this service.

TWEN site. There is a course TWEN site with important course materials.

Instructional Methods. The classes I conduct will be in a familiar Socratic format, with some lecture and review, but will also include discussion. The classes with outside speakers will highlight their experience in practice, but will give opportunities for class questions and discussion. *Everyone is expected to participate in those sessions with questions.*

Notice that I will miss a class on September 10. That class will be made up by a narrated PowerPoint lecture for Assignment 10 on Appellate Review of Class Actions. That PowerPoint is available via a link on the Course Materials page of the TWEN site. I’ll refer to those materials in other classes, and you’ll have opportunities to ask questions about them any time, including by email or in my office.

Paper and Grade: The law school grading policy and mandatory mean and distributions are available at <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9> This class adheres to those standards and the following grades and grade point equivalents:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

Grade Components. The grade will be based on **A. class participation** (25%) and **B. a paper** (75%).

A. Class participation. This component will include:

(1) class preparation, including both questions and discussion (20%). The class discussion component of the grade (10%) will take account of attendance, preparation, and the frequency and quality of oral participation in class discussion.

Class preparation is required. Of course, I'm going to ask you questions. You should expect to spend an average of about 2 hours preparing for each hour of class. **Please let me know before class if you're unprepared that day.**

Class discussion is also essential in all classes. This component includes raising questions and comments in all classes, *especially those taught by outside speakers*. These are leading practitioners and it's your opportunity to benefit from their expertise. (It's important for us to welcome them with a fun and stimulating class.)

As part of the class participation grade, every student is required to email me (ahead of time) at least one good question for the outside speaker for each of those classes, based on the assigned materials. Then you should ask the question during the session, if there's time.

Absences. Attendance is required. I will take roll by a sign-up sheet, which is, of course, subject to the honor code. *For Assignment 10, which will be by a narrated PowerPoint lecture, send me an email stating that you've watched it.* (The class preparation requirement applies to this class too!)

If you're going to be absent or unprepared for any class, let me know ahead of time, preferably by email. If you have more than 1 unexcused absence, your grade will suffer. If you miss more than 2 classes, you may not be permitted to get a grade in the class.

Classroom Civility. During class, do not connect to a wireless network with any device, unless it's part of a show-and-tell or presentation.

- (2) a 5-10 minute "show-and-tell" presentation (5%) in class one of the early class sessions.

This presentation should address some aspect of class action law, practice, politics, or depiction in popular culture. It could focus, for example, on a movie, an op-ed, or a blog post about a supposedly outrageous class action. Anything goes (and you get full credit) as long as it's interesting. We'll need to move fast to get all of these in in classes 1-4, so let me know right away (even before the class) when you'd like to do yours.

B. Paper. The final paper (75%) should be 25 pages long, including footnotes. In the paper, you must not only research and describe the law, but also analyze the key issues and develop and sustain an argument. To receive full credit for the paper, you must turn in a complete draft on the assigned day on the syllabus.

There are two main types of papers that are acceptable:

Traditional: a law-review style examination of a current legal issue or doctrine, analyzing the leading and recent decisions and making a legal and informed policy argument.

Record study: an in-depth analysis of the record in a single class action, using Pacer. There should be an introduction, placing the issues in the class action in context, followed by a detailed discussion of the pleadings, motions, judicial decisions, and appeals in the case. The discussions must be analytical. It *must refer to litigation documents from Pacer*, and *include independent research* on the important substantive and procedural issues in the litigation.

I've posted an example of each of the types of paper in the Course Materials section of the TWEN site.

There are three components of the final paper grade:

- (1) a prospectus, on time, showing a well-thought-out paper topic, and a complete draft, on time, showing appropriate progress on your research and writing (5%).

(2) a presentation of the research on which your paper will be based (10%). The 20-minute (or so) *presentation* component will be based on an in-class, oral exposition of your paper’s argument. An **A** presentation will be clear, informative, analytical, and interesting. You may use PowerPoint or handouts.

(3) a final research paper (60%). I will base the grade on the quality of your research, writing, analysis, and argument, and on the accuracy of your citation form (following A UNIFORM SYSTEM OF CITATION (20th ed. 2016). An **A** traditional will develop a clear and imaginative argument based on thorough research and analysis, using accurate citation form. An **A** record study will present the context of the issues and examine the record in detail, explaining the significance of the action of the court and the parties at each stage, clearly and insightfully. It will reflect independent research of the key procedural and substantive issues in the case.

Prospectuses, drafts, and final papers must be submitted to me by email or before the dates indicated in the syllabus. The grade for a component portion of the paper grade will decline by one letter grade for each week past the deadline that the assignment is submitted.

Also, please review the College honor code, particularly with reference to plagiarism:
<https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>

Accommodations. Students requesting classroom accommodation must first register with the Office of Disability Resources. The UF Office of Disability Resources will provide documentation to the student who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation.

<i>Class</i>		<i>Topic & Casebook Pages</i>
1	8/13	<p>Introduction to Class Action Litigation</p> <p>Overview of course plan & expectations Overview of course topics: <i>Procedural Contexts:</i> Conditions for Class Certification—Threshold, 23(b)(2), 23(b)(3); Discovery, Summary Judgment, The Certification Decision, Settlement, Appellate Review, Arbitration</p> <p><i>Assignments:</i> Casebook, pp 1-14 FED. R. CIV. P. 23 Class Actions, <i>close</i> reading <i>Menocal v. GEO Group, Inc.</i>, 882 F.3d 905 (10th Cir. 2018) (available on TWEN)</p>
2	8/20	<p>Threshold Requirements</p> <p><i>Assignments:</i> Rule 23(a) Threshold Certification Requirements <u>Implicit Requirements</u>—Ascertainability (for (b)(3) classes), casebook pp. 35-37; Representative’s Membership in the Class, casebook pp. 54-58 <u>Explicit Requirements</u> (1) Numerosity, casebook pp. 78-86; (2) Commonality, casebook pp. 86-103 (<i>Wal-Mart v. Dukes</i>); (3) Typicality, casebook pp. 103-15</p> <p>Show & Tells, 1-4</p>

		Threshold Requirements (cont'd) <i>Assignments:</i> Rule 23(a)(4) Adequacy of Representation, casebook pp. 123-38; 147-57
3	8/27	Certification Requirements for Different Types of Class Actions Rule 23(b)(1) Classes based on risks of non-class treatment (A) incompatible standards for the opponent of the class, casebook pp. 159-65 (B) harm to class members' interests, casebook pp. 171-82 Rule 23(b)(2) "Injunction Classes," casebook pp. 190-207 Show & Tells, 5-8
	9/3	Labor Day
	9/10	No Class We'll make up this class by covering Assignment 10, a narrated PowerPoint on Appellate Review. There's a link in TWEN Course Materials section.
4	9/17	Damage Classes <i>Assignments:</i> Rule 23(b)(3) & casebook pp. 211-37; 269-81; 237-51 Show & Tells, 9-12
5	9/24	Summary Judgment George Paul, Partner, White & Case, Washington, DC <i>Assignments TBA</i> & casebook pp. 336-38 ****Prospectuses Due****
6	10/1	Discovery and Case Management Guest Practitioner: Jason Gourley, Associate Corporate Counsel, Amrock, Inc., Detroit, MI Guest instructor: Prof. William Hamilton, Executive Director, UF Law E-Discovery Project <i>Assignments: TBA</i> & casebook pp. 307-36
7	10/8	Economic Expert Witnesses Guest: James McClave, Ph.D., President, Info Tech, Inc., Gainesville, FL <i>Assignments: TBA</i> & review casebook pp. 269-81; 281-93
8	10/15	Litigating Class Certification Guest Practitioners: William V. Reiss, Partner, RobinsKaplan LLP, New York, NY & Adam Hemlock, Partner, Weil, Gotschal & Manges, New York NY <i>Assignments: TBA</i> & casebook pp.266-81
9	10/22	Settlements Guest Practitioner: Brent W. Landau, Partner, Hausfeld LLP, Philadelphia PA <i>Assignments: TBA</i> & casebook pp. 529-624
10	<i>Narrated Power Point</i>	Appellate Review <i>Assignments:</i> casebook pp. 697-722

11	10/29	Arbitration Guest Practitioner: Joseph Sellers, Partner, CohenMillstein, Washington, DC <i>Assignments: TBA & casebook pp. 675-96</i> ****Drafts Due****
12	11/5	Presentations 1-4
	11/12	<i>Veterans' Day</i>
13	11/19	Presentations 5-8
14	11/26	Presentations 9-12
	12/3	****Final Papers Due****