**Civil Procedure** (Law 5301)

University of Florida Levin College of Law

**FALL 2021 SYLLABUS**

**1. Overview.** This course examines the body of law governing how civil litigation unfolds, exploring the nuts and bolts of what lawyers actually do when they help a party bring or defend a claim. Additionally, at its core, civil procedure raises important questions about the role of courts and what makes a process fair and just. We will focus on the federal system, taking a close look at its procedural rules, statutes, and case law.

**2. Course Objectives and Student Learning Outcomes.** By the end of the semester, you should be able to (1) demonstrate a foundational understanding of the law of U.S. civil procedure, including the rules, statutes, and case law that govern jurisdiction, choice of law, stages of litigation (e.g., pleading, discovery, motions, etc.), and the ethical obligations of lawyers; (2) identify legal doctrines by reading primary legal authorities, and; (3) apply the law to new facts while taking into account the strategic and normative implications such as cost control and access to justice.

**3. Required Materials.** Our casebook is Stephen C. Yeazell & Joanna C. Schwartz, Civil Procedure (10th ed. 2018). No supplement is required. Additional material will be posted on the course’s Canvas site.

**4. Class Meetings.** Our class meets on Tuesdays, Thursdays, and Fridays from 10:45am-12:00pm in HH 355C.

**5. Office Hours.** I will hold office hours on Wednesdays from 10:30am-12:30pm. I encourage each of you to take advantage of these office hours. I also am genuinely happy to meet by appointment outside of these scheduled hours; please email in advance to schedule a mutually convenient time.

**6. Contact Information.** My office is in Room 312L and my office telephone number is 352-273-0701. My e-mail address is endo@law.ufl.edu.

**7. Assignments.** A preliminary list of the reading assignments is included below in Section 19. We generally will discuss about 30-35 pages per class. At the end of each class, I will confirm the next assignment. If you miss class, prepare the next set of approximately 30 pages.

Additionally, over the course of the semester, there may be several ungraded exercises, which will provide you with opportunities to assess your growing understanding of the course materials and to receive feedback on your progress. While they will not be part of your final course grade, satisfactory and timely completion of the exercises is required for passing the course.

**8. Class Preparation and Participation.** The ABA contemplates that you will spend an average of eight hours per week doing out-of-class work for this course. Please leave plenty of time to complete your reading and other assignments—they likely will take longer than you think, especially at first.

In class, I encourage each of you to participate thoughtfully in the discussions. If you are not prepared when you are called on, you may pass on participating. Excessive passing or disruptive behavior may result in a reduction of your grade by one-third of a point (e.g., from a B+ to a B).

As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others, especially when engaging with issues that may elicit strong emotions. Our discussions will be more constructive if you critically examine the bases for your propositions and the inferences you draw from their interactions so that you can articulate your reasoning. Also, listen carefully to what your colleagues have to say and create space for their participation to get the benefit of multiple perspectives—as a group, we are likely to differ across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. Especially when you disagree, use those moments to test your logic and engage deeply with the substantive issues. Be mindful of both your intentions and your impact.

Although grade enhancement will be rare, exemplary class participation may raise your grade by two-thirds of a point or be used to differentiate among students with the same grade to achieve a curve. Quality, not quantity, is key.

**9. Class Attendance.** The ABA requires “regular and punctual” course attendance. Regular attendance is a key element to understanding the material, which will prepare you for both the final exam and, ultimately, practice. Attendance will be taken at the start of each session. It is a serious violation of the Academic Honesty policy to sign in for other people or to have others sign in for you.

Excessive absence or tardiness may result in a reduction of your grade by one-third of a point. Absent extenuating circumstances, failure to attend 80% of the class sessions will result in your being barred from taking the final exam in this course.

Observance of a University-recognized religious holiday does not count as an absence and will not count against your absences. Please be sure to notify me of such absences in advance via email. Likewise, please email me as soon as practicable if a family, medical, or other similar emergency arises.

**10. Electronic Devices & Recordings.** You may use a computer or tablet in class to take notes but be sure to be respectful of your colleagues and do not engage in activities that might be distracting. Additionally, there are several studies that suggest taking longhand note can aid retention and comprehension (*see, e.g.*, <https://doi.org/10.1177/0956797614524581>). Please set your telephones to “silent” mode when in class.

Under a new state law, students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

**11. Essay.** You must complete a 1,500-word essay, which is due by 11:59pm on Monday, November 29, 2021, to pass the class. The essay assignment will be posted several weeks before it is due. The final essay is an opportunity for you to demonstrate your ability to synthesize the materials that we have covered and rigorously explore the doctrinal, pragmatic, and policy implications of the how our system of civil procedure has been designed. It must be exclusively your own work and all sources must be cited.

**12. Exam.** The final exam will be a three-hour exam. All answers must be exclusively your own work. You may not consult with others about the exam once the exam period has started. The law school policy on exam delays and accommodations can be found [here](http://www.law.ufl.edu/student-affairs/current-students/forms-applications/exam-delays-accommodations-form).

**13. Grading**. Your grade in this class will be based on the final take-home essay (30%) and final exam (70%), subject to the provisions of Sections 7, 8, 9, 10, 16, and 17.

The University of Florida Levin College of Law’s mean and mandatory distributions are posted on its website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

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

The law school grading policy is available at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>.

**14. Accommodations**. I am committed to making our classroom accessible to all members of our community. Reasonable accommodations ensure equal opportunity for students with disabilities. Students requesting accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

**15. Student Course Evaluations.** Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

**16. Academic honesty.** The legal profession—a self-regulating association—depends on the integrity, honor, and personal ethics of each member. Similarly, academic honesty and integrity are fundamental values of the UF Law School community. You should be sure that you understand and comply with the UF Student Honor Code, available at <https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>, and the Law School’s application of it, available at <https://www.law.ufl.edu/life-at-uf-law/officeof-student-affairs/additional-information/honor-code-and-committee/honor-code>.

**17. COVID.** Over the past two years, we have had to adjust to address the public health issues associated with COVID-19. The UF Student Health Center offers Covid-19 vaccines to students at no charge and the school encourages all students to become vaccinated and to wear masks indoors regardless of vaccinated status. All members of the community should stay abreast of any changes and comply with the current COVID-related public health and safety rules. A failure to comply may be considered an Honor Code violation and result in a failing grade.

**18. Mental Health & Wellness.** Law school can be very stressful, particularly in your first semester. If you are struggling, please know that you are not expected to deal with issues on your own—indeed, an important part of professionalism is knowing when to ask for help. The Office of Student Affairs is an excellent resource. The university provides many other resources to help you through law school, including several options through its Counseling & Wellness Center.

**19. Reading Assignments (subject to change)**

| **DATE** | **TOPIC** | **ASSIGNMENTS** |
| --- | --- | --- |
| 8/24/2021 | **Overview:** The Idea and the Practice of Procedure; Where Can the Suit Be Brought; Parties to the Lawsuit | Syllabus; CB 1-13 (stop at C.); CB 27(D.)-31 (stop at E.) |
| 8/26/2021 | **Overview:** Stating the Case; Factual Development-Discovery | CB 13(C.)-27 (stop at D.); CB 31(E)-37 (stop at F.) |
| 8/27/2021 | **Overview:** Pretrial Disposition-Summary Judgment; Trial; Former Adjudication; Appeals | CB 37(F.)-56; CB 289-91 |
| 8/31/2021 | **Incentives to Litigate:** Litigation in the U.S. at the Start of the Twenty-First Century; Reasons to Litigate | CB 293-324 (stop at b.) |
| 9/2/2021 | **Incentives to Litigate:** Reasons to Litigate; Financing Litigation | CB 324(b.)-57 |
| 9/3/2021 | **Pleading:** The Story of Pleading; Establishing the Law; Sorting Weak & Strong Cases | CB 361-97 (stop at b.) |
| 9/7/2021 | **Pleading:** Special Cases; Allocating the Elements; Ethical Limitations in Pleading; Default & Pre-Answer Motions | CB 397(b.)-427 (stop at 3.) |
| 9/9/2021 | **Pleading:** Answer, Reply, Amendment | CB 427(3.)-50 (stop at Assessment Questions) |
| 9/10/2021 | ***Review Exercise 1*** | Materials posted on Canvas |
| 9/14/2021 | **Discovery:** Modern Discovery; Tools of Discovery; Scope of Discovery | CB 455-65 (stop at 1.); CB 478(C.)-92 (stop at 3.) |
| 9/16/2021 | **Discovery:** Scope of Discovery; Experts; Ensuring Compliance & Controlling Abuse of Discovery | CB 492(C.)-502 (up to Notes & Problems); 507(E.)-18 |
| 9/17/2021 | **Resolution Without Trial:** Pressure to Choose Adjudication or an Alternative | CB 523-54 (stop at *Ferguson*) |
| 9/21/2021 | **Resolution Without Trial:** Adjudication Without Trial: Summary Judgment | CB 569(C)-88 (up to Assessment Questions) |
| 9/23/2021 | **The Trier and the Trial:** Choosing & Challenging Judges; Sharing Power with a Jury; Judges Controlling Juries: Judgment as a Matter of Law | CB 593-610 (up to Notes & Problems); 626(E.)-642 (up to F.) |
| 9/24/2021 | ***Review Exercise 2*** | Materials posted on Canvas |
| 9/28/2021 | Mid-Term Review | Practice Midterm |
| 9/30/2021 | Beginnings & International Shoe | CB 62(B.)-66; video lecture on *Pennoyer*;79 (*International Shoe*)-99 (stop at 3.) |
| 10/1/2021 | Specific Jurisdiction | CB 99(3.)-111 (stop at *Nicastro*) |
| 10/5/2021 | Specific Jurisdiction (cont.) | CB 111 (*Nicastro*)-28 (stop at 4.) |
| 10/7/2021 | General Jurisdiction | CB 128(4.)-48 (stop at *Burnham*) |
| 10/8/2021 | **NO CLASS – HOMECOMING** |
| 10/12/2021 | General Jurisdiction (cont.) |  CB 148 (*Burnham*)-158(C.) |
| 10/14/2021 | Consent and Notice | CB 158-77 (stop at E.) |
| 10/15/2021 | ***Review Exercise 3*** | Materials posted on Canvas |
| 10/19/2021 | Self-Imposed Restraints on Jurisdictional Power | CB 177(E.)-99 (stop at Assessment Questions) |
| 10/21/2021 | Federal Question Jurisdiction; Diversity Jurisdiction | CB 205-225 (stop at *Hertz*) |
| 10/22/2021 | Diversity Jurisdiction (cont.); Supplemental Jurisdiction; Removal | CB 225-49 (stop at Assessment Questions) |
| 10/26/2021 | ***Review Exercise 4*** | Materials posted on Canvas |
| 10/28/2021 | *Erie* | CB 255-71 |
| 10/29/2021 | *Erie* (cont.) | CB 271-85 (stop at Assessment Questions) |
| 11/2/2021 | Claim Preclusion | CB 704-35 (stop at B.) |
| 11/4/2021 | Issue Preclusion | CB 735(B.)-55 (stop at C.) |
| 11/5/2021 | Boundaries of Preclusion & Repose | CB 755(C.)-70 (stop at Assessment Questions) |
| 11/9/2021 | Joinder | CB 777-94 (stop at 2.) |
| 11/11/2021 | **NO CLASS – VETERAN’S DAY** |
| 11/12/2021 | Joinder (cont.) | CB 794(2.)-812 (stop at C.) |
| 11/16/2021 | Intervention & Interpleader | CB 812(C.)-28 |
| 11/18/2021 | ***Review Exercise 5*** | Materials posted on Canvas |
| 11/19/2021 | Class Actions | CB 829-37(stop at b.); 850(4.)-55 (stop at *Dukes*) |
| 11/23/2021 | Class Actions | CB 855-73 (stop at *Amchem*) |
| 11/25/2021 | **NO CLASS – THANKSGIVING** |
| 11/26/2021 | **NO CLASS – THANKSGIVING** |
| 11/29/2021 | Final Review Class | Review notes; submit a review question by 11:59pm on Saturday, November 27, 2021 |

**20. Certification.** Please go to the Canvas assignment (available from August 26, 2021) to certify that you have read and understood the components of the syllabus.