**Civil Procedure**

Fall 2019

University of Florida Levin College of Law

Syllabus

Law 5301 (Class #23548) Professor Andrew Hammond

Holland 284 Holland Hall, Office 312K

MTuTh 9 am to 10:15 am hammond@law.ufl.edu; (352) 273-0961

 Office Hours: Thurs 1 pm to 3 pm

**Overview**

This course covers the constitutional framework, statutory law, and court rules and practices that govern federal civil litigation in the United States. Unlike your other first year courses, which cover a particular substantive area of law (e.g., Torts, Property, Contracts), Civil Procedure is the study of why and how to bring a civil lawsuit in federal court, regardless of the substance involved (e.g., whether the case involves a tortious act, a property dispute, or a breach of contract).

We begin with a four-class overview of the choices and processes involved in filing and pursuing a federal civil lawsuit. We then dig in and work our way through each major topic in roughly chronological order of the stages of litigation. Among the topics we will cover are: who can bring a lawsuit against whom (the constitutional framework for U.S. courts, preclusion, joinder); in what court, both in terms of geographic location (personal jurisdiction) and in terms of the topic of the lawsuit (subject matter jurisdiction); and what steps characterize the litigation process (pleading, discovery, dispositions, and appeals).

The course covers not only doctrine, but also strategic, practical, and policy considerations. Some of Civil Procedure involves learning and applying clear rules. Much of it, however, involves strategy and argument in how the rules are interpreted and applied to particular cases, as well as policy choices about that have implications on how our society resolves disputes and promises fair treatment.

**Course Objectives & Student Learning Outcomes**

After completing this course, students should be able to:

1. Describe the constitutional and statutory foundations of the federal court system and their application to jurisdiction in federal civil lawsuits;
2. Demonstrate an understanding of the procedural rules and statutes that govern the process of litigation of civil lawsuits in federal court;
3. Explain an attorney’s ethical obligations when making representations to the court during federal civil litigation;
4. Apply strategic and practical considerations throughout the process of filing and litigating a federal civil lawsuit; and
5. Explain how procedural policy choices shape individuals’ access to federal courts.

**Required Course Materials & Workload**

The required materials for this course are the casebook, Stephen C. Yeazell & Joanna C. Schwartz, *Civil Procedure* (10th ed., 2018) (referred to as “CB” in assignments below), and its 2019 rules supplement, Stephen C. Yeazell & Joanna C. Schwartz, *2019 Federal Rules of Civil Procedure with Selected Statutes*, *Cases, and Other Materials* (2019) (“Supp” below). The supplement includes the Federal Rules of Civil Procedure (“FRCP” below), related federal statutes (U.S. Code or “U.S.C.” below), the U.S. Constitution (“U.S. Const.” below), and a few recent decisions.

You are expected to read and be prepared to discuss all of the assigned reading each class, including all of the “Notes” assigned. Hint: doctrinal information and questions we will discuss in class often appear in the “Notes” section of the casebook.

In accordance with Standard 310 of the American Bar Association’s (ABA) standards for law schools, students are expected to devote 2 hours of out-of-class preparation for every 1 credit hour of in-class instruction. Because this course has 4 credit hours of in-class instruction weekly, you should expect to spend approximately 8 hours outside of class reading, preparing, and reviewing the material for our class meetings each week.

**Attendance**

Attendance is mandatory and an essential part of the course. As a result, I will take attendance at the start of each class. I will pass around a seating chart during our second class, and I ask that you sit in the same seat throughout the semester (so please sit somewhere you’ll be comfortable).

In accordance with ABA guidance, you are allowed six absences from class total, for any reason (including for illness, medical appointments, job interviews, school activities, work tasks, family issues, and the like). For ease of administration and to respect your privacy, I do not make any differentiation between “excused” or “unexcused” absences; this means that there is no need to tell me why you will be or were absent from class, so long as you have six or fewer absences total. Only observance of a University-recognized religious holiday does not count toward your six absences, but still please do notify me in advance of such absences. More than six absences will prevent you from sitting for the final exam and you will fail the course. Four to six absences may result in a reduction of your final grade.

**Screen Policy**

Laptop use is not permitted in this class, with the exception that two students each week will be permitted to use their laptops to take notes for sharing with the rest of the class. If each student signs up to take notes for one week, we will be covered for the semester. Please do so here (<https://doodle.com/poll/kmdvqzsbgqeuyws3>) and make a note of the week for which you have signed up. Notes should be emailed to me after each class. I will not review or edit them, but I will post them on the Canvas website for this course. I will also post all powerpoint slides and handouts I use in class, which will serve as useful review throughout the semester and for the final exam.

**Preparing for and Participating in Class**

Please keep up with the reading as assigned; if we do not get through everything in a given class, we will pick up where we left off the next day, with the goal of completing each week’s material by the end of the week. You are responsible for both reviewing anything we did not get to in the prior class and completing the material as listed on the syllabus for each class. I do not anticipate changing reading assignments, but if I do, I will give you advanced notice.

I will seek your active participation in our class discussions—not to see whether you know the answers to my questions (and many will not have “right” or “wrong” answers), but so that we can work through those questions together. I “cold call” using a randomized class list, which just means that I may call on any of you during the class period. As a result, you must be prepared to participate on any given day. “Prepared” means having read the assigned material for that day as well as any material not covered from the prior class. It means that you’re ready to discuss the material, but it does not require that you have ready answers for any question that might come up.

While I expect you to come to every class and to come prepared, I recognize, however, that exceptional circumstances may lead you not to have read the material for a particular day. If that occurs, I’d much rather you show up unprepared than not show up at all; I just ask that you let me know the night before class that you will not be prepared. If you do come unprepared without letting me know, your grade may suffer.

Attorneys need to be able to speak confidently in public settings, including in front of large groups, but law students do not possess that skill at the very beginning of their first semester. Your active participation in class will help you to develop it. If you have anxieties about speaking in class, please see me soon. I’m happy to work with you to find a way for you to participate comfortably, so that you can get the most out of this course.

**Grades and the Final Exam**

Regular attendance, preparation, and active participation in classroom discussion are required. Your course in the grade will be based on a final exam, with potential adjustment based on your attendance and participation. The final exam will be timed, during the regular exam period, and will be limited open book, for which you may use only: (1) your copy of the 2019 casebook rules supplement; and (2) a class outline prepared in whole or substantial part by you. The outline you prepare for the final exam can include the notes I upload to Canvas. No other materials will be allowed. More information on the exam will be provided in class.

Information on UF Law grading policies: The law school grading policy is available at <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>. Students receive grade points according to the following scale:

Grade Points Grade Points Grade Points

A (Excellent) 4.00 C+ 2.33 D- 0.67

A- 3.67 C (Satisfactory) 2.00 E (Failure) 0.00

B+ 3.33 C- 1.67

B (Good) 3.00 D+ 1.33

B- 2.67 D (Poor) 1.00

**Office Hours & Coffee Hours**

My office hours this semester are Thursdays from 1 pm to 3 pm. My office is HOL 312K—on the third floor of Holland Hall. You can sign up for a 15-minute slot on Canvas. While I love talking about civil procedure and the law more generally, I am happy to talk about whatever you’d like. You do not need to “prepare” for office hours. In addition to office hours, I am scheduling “coffee hours” with small groups of you on Thursdays from 4 pm to 5 pm. We will meet in the Student Commons (coffee/tea is on me). I will email you in groups with a schedule.

**Other General Information**

Policy related to make-up exams or other work: The law school policy on delay in taking exams is available at [http://www.law.ufl.edu/student-affairs/current-students/academic-policies - 12](http://www.law.ufl.edu/student-affairs/current-students/academic-policies#12).

Statement related to accommodations for students with disabilities: Students requesting accommodation for disabilities must first register with the UF Disability Resources Center, <https://drc.dso.ufl.edu/>. The Center will provide documentation to the student, who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation.

Student course evaluations

Students can provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations are typically open during the last two or three weeks of the semester, but students will receive notice of the specific times when they are open. Summary results of these assessments are available to students at <https://evaluations.ufl.edu/results/>.

Compliance with UF Honor Code

Academic honesty and integrity are fundamental values of the UF Law School community. Students are expected to 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, information available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>.

**Class Schedule and Assignments**

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| **CLASS** | **DATE** | **TOPIC** | **ASSIGNMENT** |
| 1 | Mon 8/26/19 | **Overview of a Civil Lawsuit:**Overview of Jurisdiction, Venue, and Service of Process | CB 1-18 (up to 2.)Supp: U.S. Const. Art. III §§ 1-2; 28 U.S.C. §§ 1331, 1332(a)-(c), 2072; FRCP 7; 8(a); 11; 12(b)(1), (e) |
| 2 | Tues 8/27/19 | Overview of Pleading and Discovery | CB 18(2.)-27 (up to D.); 31(E.)-37 (up to F.)Supp: FRCP 8(b), (c); 12(a)-(b); 13(a)-(c); 15; 26(a)(1)(A), (b)(1-2), (c) |
| 3 | Thurs8/29/19 | Overview of Summary Judgment and Trial | CB 37(F.)-47 (up to H.) Supp: FRCP 56(a); 50(a), (b)  |
| 4 | Mon 9/2/19 | ***NO CLASS: Labor Day***  |  |
| 5 | Tues 9/3/19 | Overview of Former Adjudication and Appeals | CB 47(H.)-59Supp: 28 U.S.C. § 1291 |
| 6 | Thurs 9/5/19 | **Personal Jurisdiction:** In what court, geographically, can I file a lawsuit? | CB 77(B.)-88 (up to 2.)Supp: U.S. Const. Art. IV § 1 & Amend. XIV § 1 |
| 7 | Mon 9/9/19 | Personal Jurisdiction: In Rem Jurisdiction | CB 88(2.)-99 (up to 3.) |
| 8 | Tues 9/10/19 | Personal Jurisdiction: Specific Jurisdiction | CB 99(3.)-111 (up to *Nicastro*)Supp: FRCP 4(k)(1) |
| 9 | Thurs 9/12/19 | Personal Jurisdiction: Specific Jurisdiction (cont’d) | CB 111-128 (up to 4.) |
| 10 | Mon 9/16/19 | Personal Jurisdiction: General Jurisdiction | CB 128(4.)-146 |
| 11 | Tues 9/17/19 | Personal Jurisdiction: Consent, Notice, and Service of Process | CB 158(C.)-177 (up to E.)Supp: FRCP 4(a)-(d), (l), (m) |
| 12 | Thurs 9/19/19 | Personal Jurisdiction: Long-Arm Statutes, Venue, and Forum Non Conveniens  | CB 177(E)-195 (up to *Atlantic Marine* )Supp: 28 U.S.C. §§ 1391, 1404, 1406, 1631 |
| 13 | Mon 9/23/19 | **Midterm Review #1: Personal Jurisdiction****Subject Matter Jurisdiction:** In what type of court, state or federal, can I file a lawsuit? Federal Question Jurisdiction | CANVAS: Read, issue spot, and outline answers for “Midterm Review #1,” which we will go over in class.CB 205-218Supp: 28 U.S.C. § 1331, 1332(a)-(c); U.S. Const. Art. III §§ 1-2  |
| 14 | Tues 9/24/19 | Subject Matter Jurisdiction: Diversity Jurisdiction | CB 218(C.)-232 (up to D.)Supp: 28 U.S.C. § 1331; FRCP 12(h)(3)  |
| 15 | Thurs 9/26/19 | Subject Matter Jurisdiction: Supplemental Jurisdiction;Removal | CB 232(D.)-249Supp: 28 U.S.C. §§ 1367, 1441(a)-(d), 1446, 1447; FRCP 18, 20  |
| 16 | Mon 9/30/19 | **The *Erie* Doctrine:** What law, state or federal, applies? | CB 255-274 (through n.2)Supp: 28 U.S.C. § 1652  |
| 17 | Tues 10/1/19 | The *Erie* Doctrine (cont’d) | CB 274(2.)-283 (through first paragraph only)Supp: 28 U.S.C. § 2072   |
| 18 | Thurs 10/3/19 | **Midterm Review #2: Subject Matter Jurisdiction and *Erie*** **Incentives to Litigate:** Remedies; Litigation Financing | CANVAS: Read, issue spot, and outline answers for “Midterm Review #2,” which we will go over in class.CB 299-316 (up to a.) |
| 19 | Mon10/7/19 | Incentives to Litigate Litigation Financing | CB 332-343 (up to c.); 347-357 |
| 20 | Tues 10/8/19 | **Pleading:** History and Functions; Notice Pleading | CB 361-381 (up to a.)Supp: FRCP 7, 8, 12(b) |
| 21 | Thurs 10/10/19 | Pleading: Modern Federal Pleading | CB 381(a.)-397 (up to b.)Supp: FRCP 8, 9 |
| 22 | Mon 10/14/19 | Pleading: Special Claims; Allocating Elements; Ethical Limitations  | CB 397(.b)-421 (up to C.)Supp: FRCP 11; 8 |
| 23 | Tues 10/15/19 | Pleading: Responding to the Complaint; Pre-Answer Motions; Answer; Reply | CB 421(C.)-436, 155-158 (up to C.)Supp: FRCP 12, 55, 8 |
| 24 | Thurs 10/17/19 | Pleading: Amendments | CB 437-450Supp: FRCP 8, 15, 42 |
| 25 | Mon 10/21/19 | **Discovery:**Stages; Methods | CB 462-478 (up to C.)Supp: FRCP Read 16, 26(a)(1&2),(e)-(g), 30(a)-(d), 33, 34, 36, 37, 45(a) |
| 26 | Tues 10/22/19 | Discovery: Relevance; Proportionality; Privilege | CB 478(C.)-494 (up to D.)Supp: FRCP 26(b)(1&2), (c) |
| 27 | Thurs 10/24/19 | Discovery: Experts; Compliance; Sanctions | CB 501(D.)-518Supp: FRCP 26(b)(3)-(5) & (g), 37 |
| 28 | Mon 10/28/19 | **Dispositions:**Default; Dismissal; Settlement | CB 523-543 (up to c.)Supp: FRCP 41, 55, 60(b) |
| 29 | Tues 10/29/19 | Dispositions: Summary Judgment | CB 569(C.)-588  |
| 30 | Thurs 10/31/19 | Dispositions: Right to Jury Trial  | CB 606(B.)-618; 650-656Supp: FRCP 56, 1, 2, 38, 39; U.S. Const. Amend. VII |
| 31 | Mon 11/4/19 | Dispositions: Judgment as a Matter of Law; Motion for a New Trial **Midterm Review #3: Review of Pleading, Discovery, and Dispositions** | CB 626-636; 642-648Supp: FRCP 50, 59CANVAS: Read, issue spot, and outline answers for “Midterm Review #3,” which we will go over in class. |
| 32 | Tues 11/5/19 | **Appeals:** Who can appeal? Final Judgment Rule | CB 661-680 (up to 2.) |
| 33 | Thurs 11/7/19 | Appeals: Exceptions to the Final Judgment Rule; Scope of Review | CB 680(2.)-699 |
| 34 | Mon 11/11/19 | ***NO CLASS: Veterans Day***  |  |
| 35 | Tues 11/12/19 | **Preclusion:** Claim Preclusion | Read CB 715-735 (up to B.)Supp: FRCP 13 |
| 36 | Thurs 11/14/19 | Preclusion: Issue Preclusion | CB 735(B.)-757 (up to D.) |
| 37 | Mon 11/18/19 | **Joinder:** Joinder of Claims; Joinder of Parties | CB 778-801 Supp: 28 U.S.C. § 1367; FRCP 18, 42, 13, 14(a) & (b), 20, 21   |
| 38 | Tues 11/19/19 | Joinder: Compulsory Joinder | CB 802-824 Supp: FRCP 12(b)(7), 19 |
| 39 | Thurs 11/21/19 | **Class Actions:** Introduction; Federalism | CB 829-837(up to b.); 842(3.)-850 (up to 4.)  |
| 40 | Mon11/25/19 | Class Actions: Statutory Requirements **Midterm Review #4:** **Preclusion, Joinder, and Class Actions** | CB 850(4.)-866 (up to 5.)CANVAS: Read, issue spot, and outline answers for “Midterm Review #4,” which we will go over in class. |
| 41 | Tues11/26/19 | ***NO CLASS: Friday classes meet*** |  |
| 42 | Thurs11/28/19 | ***NO CLASS: Thanksgiving Day***  |  |
| 43 | Mon12/2/19 | Final Exam Review Session | No reading assignment. Please review your notes in preparation. |