**Civil Procedure**

Fall 2020 (Section 4)

University of Florida Levin College of Law

Syllabus

Law 5301 Professor Andrew Hammond

Holland Hall 355C Holland Hall, Office 312K

Mon 10:40 am to 11:55 am hammond@law.ufl.edu

Wed/Fri 11 am to 12:15 pm Office Hours: Fri 1 pm to 3:00 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 define the litigation process (pleadings, 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 each class, including when we meet online. 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 may 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.

**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 sipmly 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 reach out to 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.

**In-Class Instruction during the COVID-19 Pandemic**

I quote the Dean’s instructions below:

“In response to the COVID-19 pandemic, the Law School has put in the following policies and requirements in place to maintain your learning environment and to enhance the safety of our in-classroom interactions.

You are required to wear approved face coverings at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution. You also will no longer be permitted on the UF Law campus. Finally, Dean Inman will also report your noncompliance to the relevant state board of bar examiners. [Note: our assigned TA will help oversee compliance with classroom safety protocols.]

This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between students. Please do not move desks or stations. Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class. Follow your TA’s guidance on how to enter and exit the classroom.  Practice physical distancing to the extent possible when entering and exiting the classroom.

If you are experiencing COVID-19 symptoms (<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>), please do not come to campus or, if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions about when you are able to return too campus. <https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/>.”

**Screen Policy (in Person)**

Laptop use is not permitted in this class when we meet in-person. I will post all powerpoint slides and handouts I use in class, which will serve as useful materials for you to review throughout the semester and for the final exam. If you require an accommodation for this policy, please see below under “Other General Information.”

**Online Class Sessions**

In accordance with ABA guidance, close to one-third of our class meetings will be online. As you will see in the schedule below, those classes are marked “ONLINE” and include most of our Midterm Reviews, the Final Exam Review, sessions when I am introducing a sub-unit, or subjects that lend themselves to the online format, such as the material on litigation financing. When I hold class virtually via Zoom, you can, of course, take notes on your computer during the class. (Indeed, that will be particularly useful for the review sessions.) While I am conducting an online class, I expect you to be as engaged as you are in the classroom, and I will take attendance and call on students as I would in an in-person class. That said, I understand if you need to turn your video off occasionally, but I expect that each of you will have your video on for nearly all of each online class meeting. Feel free to add a background if you would like more privacy during the class. Here are some UF-themed backgrounds provided by the Law School: <https://www.law.ufl.edu/zoom-backgrounds>. I realize this may be a new aspect of coursework for you so please get in touch if you have questions. Also, our Final Exam Review session will be on Zoom on November 30th, and I intend to record and post it to Canvas. It will be available to all students until the end of the Exam Period.

**Office Hours & Coffee Hours**

My office hours this semester will be virtual (via Zoom) and run from 1 pm to 3:00 pm on Fridays. I will keep the first thirty minutes open for students who want to drop in. For the other times, 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. I will also hold additional office hours during the December reading period. In addition to office hours, I will schedule occasional “coffee hours” over Zoom throughout the semester that will be open to anyone in the class. You do not need to sign up in advance, and you can drop in as your schedule permits. I will announce them in advance on Canvas.

**Grades and the Final Exam**

Your grade in the course 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 your copy of the 2019 rules supplement. No other materials will be allowed. I will hold additional office hours during the reading period. After December 3rd (i.e. once the reading period is over), I will not communicate with any students about the course or the exam until after the exam period ends on December 17th. I will provide more information on the exam 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

**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: This class will be accessible to all members of our law school community. 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. Please note that I have chosen not to make recordings of class discussions available to all students in order to ensure active attendance and participation in class.  Please contact Dean Inman for access to recordings if you have an ADA accommodation or are required to miss class because of illness.

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  8/24/20 | **Overview of a Civil Lawsuit:**  Overview of Jurisdiction, Venue, and Service of Process | CB 1-13  Supp: U.S. Const. Art. III §§ 1-2;  28 U.S.C. §§ 1331, 1332, 2072;  FRCP 7; 8(a); 11; 12(b)(1), (e) | |
| 2 | Wed 8/26/20 | Overview of Pleading and Discovery | CB 13-37 (up to F.)  Supp: FRCP 8(b), (c); 12(a)-(b); 13(a)-(c); 15; 26(a)(1)(A), (b)(1-2), (c) | |
| 3 | Fri 8/28/20 | Overview of Summary Judgment, Trial, Former Adjudication, and Appeals | CB 37(F.)-59  Supp: FRCP 56(a); 50(a), (b); 28 U.S.C. § 1291 | |
| 4 | Mon  8/31/20 | **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 | |
| 5 | Wed 9/2/20 | Personal Jurisdiction: In Rem Jurisdiction | CB 88(2.)-99 (up to 3.) | |
| 6 | Fri  9/4/20 | Personal Jurisdiction: Specific Jurisdiction | CB 99(3.)-128 (up to 4.)  Supp: FRCP 4(k)(1) | |
| 7 | Mon 9/7/20 | ***NO CLASS (LABOR DAY)*** |  | |
| 8 | Wed 9/9/20 | Personal Jurisdiction: General Jurisdiction | CB 128(4.)-146 | |
| 9 | Fri  9/11/20 | Personal Jurisdiction: Consent, Notice, and Service of Process | CB 158(C.)-177 (up to E.)  Supp: FRCP 4(a)-(d), (l), (m) | |
| 10 | Mon  9/14/20 | Personal Jurisdiction: Long-Arm Statutes, Venue, and Forum Non Conveniens  (ONLINE) | CB 177(E)-195 (up to *Atlantic Marine* )  Supp: 28 U.S.C. §§ 1391, 1404, 1406, 1631 | |
| 11 | Wed 9/16/20 | **Midterm Review #1: Personal Jurisdiction** | CANVAS: Read, issue spot, and outline answers for “Midterm Review #1,” which we will go over in class. | |
| 12 | Fri  9/18/20 | **Subject Matter Jurisdiction:** In what type of court, state or federal, can I file a lawsuit? Federal Question Jurisdiction | CB 205-218, *Grable* (\*Canvas)  Supp: 28 U.S.C. § 1331, 1332(a)-(c); U.S. Const. Art. III §§ 1-2 | |
| 13 | Mon  9/21/20 | Subject Matter Jurisdiction:  Diversity Jurisdiction  (ONLINE) | CB 218(C.)-232 (up to D.)  Supp: 28 U.S.C. § 1331; FRCP 12(h)(3) | |
| 14 | Wed 9/23/20 | Subject Matter Jurisdiction:  Supplemental Jurisdiction | CB 232(D.)-240  Supp: 28 U.S.C. § 1367 |
| 15 | Fri 9/25/19 | Subject Matter Jurisdiction:  Removal | CB 241-249  Supp: 28 U.S.C. § 1441(a)-(d), 1446, 1447; FRCP 18, 20 |
| 16 | Mon 9/28/20 | **The *Erie* Doctrine:** What law, state or federal, applies?  (ONLINE) | CB 255-274 (through n.2)  Supp: 28 U.S.C. § 1652 |
| 17 | Wed 9/30/20 | The *Erie* Doctrine (cont’d) | CB 274(2.)-283 (through first paragraph only), *Gasperini* (\*Canvas)  Supp: 28 U.S.C. § 2072 |
| 18 | Fri 10/2/20 | ***NO CLASS (HOMECOMING)*** | Watch Lecture on **Incentives to Litigate:**  Remedies; Litigation Financing (ONLINE)  CB 299-316 (up to a.)  CB 332-343 (up to c.); 347-357  FRCP 64, 65, 68, 69, 70 |
| 19 | Mon  10/5/20 | **Midterm Review #2: Subject Matter Jurisdiction and *Erie*** (ONLINE) | CANVAS: Read, issue spot, and outline answers for “Midterm Review #2,” which we will go over in class. |
| 20 | Wed 10/7/20 | **Pleading:** History and Functions; Notice Pleading | CB 361-381 (up to a.)  Supp: FRCP 7, 8, 12(b) |
| 21 | Fri 10/9/20 | Pleading: Modern Federal Pleading | CB 381(a.)-397 (up to b.)  Supp: FRCP 8, 9 |
| 22 | Mon 10/12/19 | Pleading: Special Claims; Allocating Elements; Ethical Limitations (ONLINE) | CB 397(.b)-421 (up to C.)  Supp: FRCP 11; 8 |
| 23 | Wed 10/14/20 | 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 | Fri 10/16/20 | Pleading: Amendments | CB 437-450  Supp: FRCP 8, 15, 42 |
| 25 | Mon 10/19/20 | **Discovery:**  Stages; Methods  (ONLINE) | 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 | Wed 10/21/20 | Discovery: Relevance; Proportionality; Privilege | CB 478(C.)-494 (up to D.)  Supp: FRCP 26(b)(1&2), (c) |
| 27 | Fri 10/23/20 | Discovery: Experts; Compliance; Sanctions | CB 501(D.)-518; *Daubert* (\*Canvas)  Supp: FRCP 26(b)(3)-(5) & (g), 37 |
| 28 | Mon 10/26/20 | **Dispositions:**  Default; Dismissal; Settlement  (ONLINE) | CB 523-543 (up to c.)  Supp: FRCP 41, 55, 60(b) |
| 29 | Wed 10/28/20 | Dispositions: Summary Judgment | CB 569(C.)-588 |
| 30 | Fri 10/30/20 | Dispositions: Right to Jury Trial; Judgment as a Matter of Law; Motion for a New Trial | CB 606(B.)-618; 650-656; Supp: FRCP 56, 1, 2, 38, 39; U.S. Const. Amend. VII; CB 626-636; 642-648; Supp: FRCP 50, 59 |
| 31 | Mon 11/2/20 | **Midterm Review #3: Review of Pleading, Discovery, and Dispositions** (ONLINE) | CANVAS: Submit your answers to Canvas for “Midterm Review #3” by Sunday 11/1 at 5 pm, which we will go over in class. |
| 32 | Wed 11/4/20 | **Appeals:** Who can appeal? Final Judgment Rule | CB 661-680 (up to 2.) |
| 33 | Fri 11/6/20 | Appeals: Exceptions to the Final Judgment Rule; Scope of Review | CB 680(2.)-699 |
| 34 | Mon 11/9/20 | **Preclusion:** Claim Preclusion | Read CB 703-735 (up to B.)  Supp: FRCP 13 |
| 35 | Wed 11/11/20 | ***NO CLASS: Veterans Day*** |  |
| 36 | Fri 11/13/20 | Preclusion: Issue Preclusion | CB 735(B.)-757 (up to D.) |
| 37 | Mon 11/16/20 | **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 | Wed 11/18/20 | Joinder: Compulsory Joinder | CB 802-824  Supp: FRCP 12(b)(7), 19 |
| 39 | Fri 11/20/20 | **Class Actions:** Introduction; Federalism (ONLINE) | CB 829-837(up to b.)  Supp: FRCP 23 |
| 40 | Mon  11/23/20 | Class Actions: Statutory Requirements; Settlement (ONLINE) | CB 842(3.)-869, 873-883  Supp: 28 U.S.C. § 1331(d) |
| 41 | Tues  11/24/20 | **Midterm Review #4: Appeals, Preclusion, Joinder, and Class Actions** (ONLINE) | CANVAS: Submit your answers to Canvas for “Midterm Review #4” by Monday 11/23 at 5 pm, which we will go over in class. |
| 42 | Wed 11/25/20 | ***NO CLASS: Thanksgiving Holiday*** |  |
| 43 | Fri  11/27/20 | ***NO CLASS: Thanksgiving Holiday*** |  |
| 44 | Mon  11/30/20 | Final Exam Review Session  (ONLINE) | No reading assignment. Please review your notes in preparation. |

**\*\*\*Final Examination: Friday, December 11, 2020 at 8:30 am\*\*\***