

# Civil Procedure

Law 5301  
Spring 2023

JONATHAN L. MARSHFIELD

*University of Florida Levin College of Law*

marshfield@law.ufl.edu | 352-273-0940

Office Hours: Wednesday 3:00-5PM (Room 301)

## **COURSE DESCRIPTION**

Welcome to civil procedure! This is a unique and exciting course. Most classes in law school deal with issues that are familiar and intuitive. Tort law, for example, will address when a person injured in an automobile accident can recover compensation for injuries. Contract law may cover the enforceability of an agreement between cable TV providers and their “cord-cutting” customers. These areas of law can be very complex, but they usually address intuitive questions of substantive law that grow out of everyday scenarios.

Civil procedure is different. Civil procedure is a body of law that does not have an easy analog in everyday life. When a party files a lawsuit to enforce a substantive right or obligation, the law of civil procedure governs how that lawsuit will proceed. Civil procedure determines, for example, whether the plaintiff filed the lawsuit with the correct court, whether a defendant received proper notice of the lawsuit, and what evidence the parties must reveal to each other.

But don't be fooled into thinking that civil procedure is about only technicalities and formalism. To the contrary, civil procedure is the deep fabric that holds the civil justice system together. Substantive rights have little meaning without a process for enforcing those rights, and poor enforcement processes can stymie even the most noble substantive commitments. The law of civil procedure aspires to ensure that justice is realized by providing a fair, accurate, and efficient process for resolving disputes. Far from being a robotic exercise, lawyers strategically apply procedural rules through the lens of those foundational normative principles.

In short, civil procedure is about the law governing how private disputes are resolved in court, and it involves the exciting and often complicated intersection of detailed rules, normative judgments, and strategic analysis.

## **COURSE OBJECTIVES**

This course is designed to help students:

1. Understand the general progression of a civil litigation in federal court from pleading to appeal.
2. Learn the basic rules and doctrines of civil procedure by critically reading and synthesizing primary sources of law (especially cases, statutes, court rules, and constitutional text).
3. Develop the ability to recognize and analyze procedural issues presented by new factual scenarios.
4. Develop an understanding of the normative and strategic considerations that influence the application, interpretation, and design of civil procedure law.
5. Obtain a basic understanding of the format, style, and strategies that affect the drafting of key litigation documents.

## **REQUIRED TEXTS**

There are two required texts:

1. ROWE, SHERRY & TIDMARSH, CIVIL PROCEDURE (5th ed. 2020).
2. ROWE, SHERRY & TIDMARSH, 2022 SUPPLEMENT TO CIVIL PROCEDURE, 5th Edition (August 2022).

The supplement includes The Federal Rules of Civil Procedure, but you can also access a reliable electronic copy of the Rules for free here: <https://www.law.cornell.edu/rules/frcp> (Links to an external site.). Note, however, that the supplement includes additional material (like new cases since the book's publication) that will be required reading during the year. Thus, you must have the supplement even if you prefer to access the Federal Rules of Civil Procedure electronically. Make sure that you purchase the August 2022 version of the casebook supplement.

If you wish to consult a hornbook, I recommend HOWARD M. ERICHSON, *INSIDE CIVIL PROCEDURE: WHAT MATTERS AND WHY* (3d ed. 2018). I also recommend JOSEPH W. GLANNON, *CIVIL PROCEDURE: EXAMPLES AND EXPLANATIONS* (8th ed. 2018) for helpful practice questions. Be warned, however, that commercial texts and outlines are no substitute for our class discussion or the assigned reading. Commercial study aids often present the law in very generalized and concrete terms. We will spend significant time drawing out ambiguities and unresolved problems in the law, and I expect you to track those discussions and develop your own ability to spot and analyze legal issues. Do not rely on commercial study aids as a substitute for reading, attending and participating in class, or carefully crafting your own outline.

## **CLASS LOCATION & TIME**

Class meets in HH 355C on Tuesday, Wednesday, and Thursday from 10:45am until noon. This schedule with longer class periods means that we have several extra classes built in. I may, therefore, cancel a class or two without having to schedule a make-up class.

## **ATTENDANCE POLICY & OUT OF CLASS STUDY**

Attendance is mandatory and an essential part of the course. In accordance with ABA guidance, you are allowed a total of five absences from class, for any reason (including for illness, medical appointments, job interviews, school activities, work tasks, family issues, and the like). Only observance of a University-recognized religious holiday does not count toward your five absences, but you must notify me in advance of those religious observance-related absences. To respect your privacy, I do not otherwise differentiate between “excused” or “unexcused” absences. As a result, there is no need to tell me why you will be or were absent from class, so long as you have five or fewer absences total. More than five absences could result in preventing you from sitting for the final exam and failing the course.

Please do not arrive late to class, leave early, or leave to take a break during class absent extenuating circumstances. Please turn off your cell phone during class. I reserve the right to lower your final grade if you engage in behavior that disrupts the learning environment for your classmates.

Regarding out of class work, ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Each class is approximately 1 hour in length, requiring at least 2 hours of preparation outside of class including reading the assigned materials, writing critical analyses, completing written assignments and quizzes and preparing for the final examination.

## **POLLEVERYWHERE & CELLPHONES**

I will use Poll Everywhere (a live response system) in class. I will provide further information on how to access Poll Everywhere and register for my course. You can use Poll Everywhere on a laptop or a cell phone. Please be prepared to access Poll Everywhere during every class. You may not use cellphones for any other purpose during class, and please silence them completely during class.

## OFFICE HOURS

My office is located at Room 301. For this semester, my office hours are Wednesday 3-5PM. I am happy to meet with you outside of those hours if scheduling permits. Please email me to schedule a time outside of my posted office hours. Outside of class, e-mail should be your first choice in getting in touch with me. I will be in my office (Room 301) during scheduled office hours, but I am also happy to meet via Zoom during office hours if you prefer.

## ASSESSMENT & GRADES

This is a four-credit course. Your grade will be determined as follows:

Formative Assessments	5%
Final Exam	95%

I also reserve the right to make adjustment based on your attendance and participation. Regular attendance, preparation, and active participation in classroom discussion are required.

*Formative Assessments:* The formative assessments are short, focused assignments and quizzes in addition to your weekly reading. They are very important. I design them to provide you with early and incremental feedback on your progress in the course. For each assignment, we will either discuss a model answer in class or I will provide model answers so that you can see how you performed. These exercises will be most beneficial to you if you complete them independently, but you may discuss them with classmates. In general, I aim to have five formative assessments for the semester. I grade the formative assessments on a pass-fail basis. If you complete them on time and in good faith, you will receive full credit for the assignment. In addition to the formative assessments, I may also make other review materials, problems, and quizzes available, but those will be optional and will not count towards your grade in any way.

*Final Exam:* The final exam is scheduled for Tuesday, May 9, 2023. I will provide more information on the exam in class, but it will be a time-limited, open-resource exam. The law school grading policy is available [here](#). The law school policy on exam delays and accommodations can be found [here](#). Students receive grade points according to the following scale:

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	3.0	D (Poor)	1.0
B-	2.67	D-	0.67
C+	2.33	E (Failure)	0.0

## ACCOMMODATIONS:

This class will be accessible to all members of our law school community. Students requesting accommodations 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 (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester. It is important for students to share their accommodation letter with me so we can discuss their access needs as early as possible in the semester.

## **PREFERRED NAME AND PRONOUNS:**

Many of you may have a preferred name that is not the name given to me on the official roll. It is important to the learning environment that you feel welcome and safe in this class. I want you to be comfortable participating in class discussions and communicating with me on any issues related to the class. I would like to refer to you by your preferred pronoun and last name. As such, if your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise before the first day of class.<sup>1</sup>

## **DISCOURSE, INCLUSION, AND THE CLASSROOM:**

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. This is even more important in the case of controversial issues and other topics that may elicit strong emotions. As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class section, I encourage each of us to:

- commit to self-examination of our values and assumptions;
- speak honestly, thoughtfully, and respectfully;
- listen carefully and respectfully;
- reserve the right to change our mind and allow for others to do the same;
- allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers.

## **RECORDING OF CLASS:**

Students are allowed to record video or audio of “class lectures.”<sup>2</sup> 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.

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

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<sup>1</sup> You may also change your “Display Name” in Canvas. Canvas uses the “Display Name” as set in myUFL. The Display Name is what you want people to see in the UF Directory, such as “Ally” instead of “Allison.” To update your display name, go to [one.ufl.edu](http://one.ufl.edu), click on the dropdown at the top right, and select “Directory Profile.” Click “Edit” on the right of the name panel, uncheck “Use my legal name” under “Display Name,” update how you wish your name to be displayed, and click “Submit” at the bottom. This change may take up to 24 hours to appear in Canvas. This does not change your legal name for official UF records.

<sup>2</sup> 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.

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.

### **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. Click [here](#) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via [ufl.bluer.com/ufl/](http://ufl.bluer.com/ufl/). Summaries of course evaluation results are available to students [here](#).

### **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 [here](#), and the Law School's application of it, information available [here](#).

## CLASS SCHEDULE

NOTE – I may adjust this schedule depending on our progress in class and/or developments in the law.

<u>Topics</u>		<u>Assigned Reading</u>	
		Rowe, et al. (5 <sup>th</sup> ed.)	FRCPs/Statutes/Const.
<b>Week 1</b>			
Tu	Intro to Civil Procedure	1 - 20	None
W	Formal Requirements of a Complaint & Pleading a Claim ( <i>Conley</i> )	24 - 30	FRCP 3;7;8(a);8(d); 8(e); 10
Th	Pleading a Claim Cont. ( <i>Twombly</i> )	36 - 45	FRCP 8(a)
<b>Week 2</b>			
Tu	Pleading a Claim Cont. ( <i>Iqbal</i> )	45 - 58	FRCP 8(a)(2)
<i>First Formative Assessment – The Twombly Two-Step – Pleading a Claim</i>			
W	Logistics of Filing & Serving a Complaint & Rule 12 Motions	67 - 70	FRCP 4(a)-(j); 4(l)-(m); 12
Th	Responding to Complaint (Answers & Affirmative Defenses)	70 - 80	FRCP 8(b)-(e); 12
<i>Optional Practice Problem – Service and Rule 12 Motions</i>			
<b>Week 3</b>			
Tu	Amending Pleadings ( <i>CitiGroup &amp; Neita</i> )	80 - 90	FRCP 15(a) & (c)
W	Rule 11 Sanctions ( <i>Patsy's &amp; In re Pennie</i> )	90 - 106	FRCP 11
Th	Discovery Devices	107 - 118	FRCP 30; 33; 34; 35; 36; 45
<b>Week 4</b>			
Tu	Discovery Scope ( <i>Oxbow &amp; Renown</i> )	118 - 140	FRCP 26(b)(1); 26(b)(2)-(4)
W	Discovery Work Product ( <i>Hickman</i> )	140 - 152	FRCP 26(b)(3) & (5)
Th	Discovery Disputes and Sanctions	160 - 173	FRCP 26(c); 37(a)-(e)
<i>Second Formative Assessment – Sanctions, Amending Pleadings, &amp; Discovery</i>			
<b>Week 5</b>			
Tu	Summary Judgment ( <i>Celotex &amp; Harris</i> )	236 - 249	FRCP 56
W	Right to Jury Trial	249 - 266	FRCP 38; 39; 7th Amend.
Th	JML & JNOV	272 - 294	FRCP 59; 59
<b>Week 6</b>			
Tu	Relief from Judgment and Appeals	294 - 312	FRCP 60
W	Judgments Claim Preclusion ( <i>Rush</i> )	313 - 328	None
Th	Judgments Issue Preclusion ( <i>Parklane</i> ), Interjurisdictional, Stare Decisis	329 - 348	None
<b>Week 7</b>			
Tu	Joinder (Intro) & Joinder of Claims ( <i>Painter</i> )	349 - 350 353 - 363	FRCP 18, 13(a)-(b); 8(d)(2); 42(b)
W	Joinder of Parties ( <i>Holl</i> ) and Impleading Third Parties ( <i>Lehman</i> )	363 - 375	FRCP 20; 21; 14(a); 13(g)
Th	Joinder Required ( <i>Makab</i> ); Intervention ( <i>Grutter</i> )	380 - 395	FRCP 19; 24
<i>Third Formative Assessment – Judgments &amp; Joinder</i>			

	<u>Topics</u>	<u>Assigned Reading</u>	
		Rowe, et al. (5 <sup>th</sup> ed.)	FRCPs/Statutes/Const.
<b>Week 8</b>			
Tu	Personal Jurisdiction (Intro, <i>Pennoyer</i> & <i>Int'l Shoe</i> )	399 - 400 405 - 419	None
W	Personal Jurisdiction ( <i>WW V W</i> )	419 - 436	None
Th	Personal Jurisdiction ( <i>Nicastro</i> )	437 - 446	None
<b>Week 9</b>			
Tu	Personal Jurisdiction ( <i>Bristol-Myers</i> & <i>Ford</i> )	446 - 453 7 - 16	None This is from the Supplement
W	Personal Jurisdiction ( <i>Slack</i> )	453 - 461	None
<i>Fourth Formative Assessment – Specific Jurisdiction</i>			
Th	Personal Jurisdiction - General ( <i>Daimler</i> & <i>Burnham</i> )	461 - 479	None
<b>Week 10</b>			
Tu	Personal Jurisdiction - Consent and Notice	479 - 485	None
W	Notice ( <i>Mullane</i> )	485 - 495	None
Th	Venue (original, change, forum non conveniens, <i>Piper</i> )	495 - 507	28 USC 1391(a)-(d); 1404; 1406
<b>Week 11</b>			
Tu	SMJ (Intro), Federal Question ( <i>Motley</i> ), Diversity ( <i>Sheehan</i> )	508 - 508 516 - 520 534 - 540	None Art. III, sec 2; 28 USC 1331 28 USC 1332(a)-(c), (e)
W	SMJ Diversity Corp. Citizenship & Amt in Controversy ( <i>Hertz</i> & <i>Liberty</i> )	540 - 551	28 USC 1332(a)-(c), (e)
Th	SMJ Supplemental Jurisdiction ( <i>Gibbs</i> & <i>Exxon</i> )	551 - 567	28 USC 1367
<b>Week 12</b>			
Tu	Removal	567 - 573	28 USC 1441
<i>Fifth Formative Assessment – Subject Matter Jurisdiction</i>			
W	Erie – Choice of Law ( <i>Swift</i> & <i>Erie</i> )	574 - 582	None
Th	Erie – Choice of Law ( <i>Guaranty Trust</i> & <i>Ragan</i> )	586 - 594	None
<b>Week 13</b>			
Tu	Erie – Choice of Law ( <i>Hanna</i> )	594 - 603	None
W	Erie – Choice of Law ( <i>Shady Grove</i> ) Problems in note 3	614 - 623 607 - 609	None
Th	Erie – Ascertaining Content of State Law ( <i>Webber</i> )	623 - 630	None
<i>Optional Practice Problem – Erie</i>			