**Class Actions** Syllabus, Spring 2020

Law 6936 (2 credit hours)

Tu 1:00 – 2:50 PM

Holland Hall Room 350

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

Office hours: MW: 1:00-3:00; Th: just about any time, but email me.

**Course Description.** In this seminar, we’ll examine the theory and practice of the **class action**, a unique procedural device designed to enable courts to redress widespread harms. People and lawyers bring class actions to vindicate rights under securities, antitrust, tort, civil rights, environmental, employment, and consumer protection laws, among many 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. But we’ll also be concerned, in class and in our research, with the many policy issues raised by class action litigation, especially whether it’s serving its function of providing redress to class members in appropriate cases.

**Outside speakers.** Experienced class action practitioners will speak in our sessions on 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. It doesn’t matter if you didn’t cover class actions.

**Assigned Texts.**  The assignments are to Robert H. Klonoff, Class Actions and Other Multi-Party Litigation (8th ed. 2017). 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 (5th ed. 2017).

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)

Bryan T. Fitzpatrick, The Conservative Case for Class Actions (2019)

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](http://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.* Please see the section on class participation below.

**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:

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| **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.**

**A. Class participation (25%)**. 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, especially in a seminar like this one. 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 also 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 that question (or another good one) during the session, if there’s time.* ***So, when I ask if there are any questions, everyone should have one.***

**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.*Seriously***.**

(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 current class action litigation, politics, or depiction in popular culture. It could focus, for example, on a movie, an op-ed, or a blog post about a supposedly wonderful or 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 (75%)**. The final paper should be 25 pages long (about 6500 words), including footnotes. In the paper, you must, of course, research and describe the law. Equally important, however, you must 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 to access litigation documents, such as pleadings, orders, discovery materials, and briefs. There must be an introduction, placing the issues in the class action in context, followed by a detailed discussion of the decisions and litigation documents. The discussions must be analytical. It *must refer to litigation documents from Pacer* (citing each one by its ECF (electronic case filing) number 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 TWEN.

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. It will include citations litigation documents by their ECF (electronic case filing) number, as described in the Blue Book.

***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.

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| ***Class*** | | ***Topic & Casebook Pages*** |
| 1 | 1/14 | **Introduction to Class Action Litigation**  Overview of course plan & expectations  Overview of course topics:  *Procedural Contexts*: Conditions for Class Certification—Threshold, 23(b)(2), 23(b)(3); Discovery, Summary Judgment, The Certification Decision, Settlement, Appellate Review, Arbitration  *Assignments*:  Casebook, pp 1-14  Fed. R. Civ. P. 23 Class Actions, *close* reading  *Menocal v. GEO Group, Inc.*, 882 F.3d 905 (10th Cir. 2018) (available on TWEN) |
| 2 | 1/21 | **Threshold Requirements**  *Assignments*:  **Rule 23(a)** Threshold Certification Requirements  Implicit Requirements—Ascertainability (for (b)(3) classes), casebook pp. 35-37; Representative’s Membership in the Class, casebook pp. 54-58  Explicit Requirements (1) Numerosity, casebook pp. 78-86; (2) Commonality, casebook pp. 86-103 (*Wal-Mart v. Dukes*); (3) Typicality, casebook pp. 103-15  **Show & Tells, 1-4** |
| 3 | 1/28 | **Threshold Requirements (cont’d)**  *Assignments*:  **Rule 23(a)(4)** Adequacy of Representation, casebook pp. 123-38; 147-57  **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** |
| 4 | 2/4 | **Damage Classes**  *Assignments:*  **Rule 23(b)(3)** & casebook pp. 211-37; 269-81; 237-51  **Show & Tells, 9-12** |
| 5 | 2/11 | **Summary Judgment**  Guest practitioner: George Paul, Partner, White & Case, Washington, DC  *Assignments TBA* & casebook pp. 336-38  ***\*\*\*\*Prospectuses Due*\*\*\*\*** |
| 6 | 2/18 | **Litigating Class Certification**  Guest Practitioners: Meegan F. Hollywood, Partner, RobinsKaplan LLP, New York, NY & Adam Hemlock, Partner, Weil, Gotschal & Manges, New York NY  *Assignments: TBA* & casebook pp.266-81 |
| 7 | 2/25 | **Settlements**  Guest Practitioner: Brent W. Landau, Partner, Hausfeld LLP, Philadelphia PA  *Assignments: TBA* & casebook pp. 529-624 |
| 8 | 3/10 | **Discovery and Case Management**  Guest judge: Gary R. Jones, U.S. Magistrate Judge, Northern District of Florida  Guest instructor: Prof. William Hamilton, Executive Director, UF Law E-Discovery Project  *Assignments: TBA &* casebook pp. 307-36 |
| 9 | 3/17 | **Economic Expert Witnesses**  Guest: James McClave, Ph.D., President, Info Tech, Inc., Gainesville, FL  *Assignments: TBA* & review casebook pp. 269-81; 281-93 |
|  | *Narrated Power Point* | **Appellate Review**  *Assignments:*  casebook pp. 697-722 |
| 10 | 3/24 | **Arbitration**  Guest Practitioner: Joseph Sellers, Partner, CohenMillstein, Washington, DC  *Assignments: TBA &* casebook pp. 675-96  ***\*\*\*\*Drafts Due\*\*\*\**** |
| 11 | 3/31 | **Presentations**1-4 |
| 12 | 4/7 | **Presentations**5-8 |
| 13 | 4/14 | **Presentation** 9-12 |
|  | 4/28 | **\*\*\*\*Final Papers Due\*\*\*\*** |