**UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW**

**IMPACT LITIGATION**

**COURSE SYLLABUS**

**Spring 2022**

**PROFESSORS’ CONTACT INFORMATION:**

**Ashleigh B. Merchant, Esq.**

ashleigh@merchantlawfirmpc.com

(404)-259-5736

**OFFICE HOURS:**

I will be available by appointment. I encourage you to call, text or email me if you are having difficulties with, or simply want to clarify your understanding of, any of the materials covered in the reading or in class. I will also make myself available during the lunch break and after class.

Additionally, I will remain in the classroom for in person office hours after class from 2:30 to 3:30 on Monday January 10, 2022 and Thursday, January 14, 2022.

**COURSE DESCRIPTION**:

One model of social change entails the strategic use of carefully planned litigation to achieve law and policy reforms. In this class we will explore the benefits and drawbacks of the impact litigation model, compare impact litigation to other models of public interest law, and consider it’s ethical and professional implications. Then, turning on national cases involving criminal justice reform, we will examine how impact litigation can work in practice.

**LEARNING OUTCOMES:**

After completing this course, students should be able to:

1. Identify issues for systematic reform;
2. Learn how to build a case for systematic reform from the ground up;
3. Learn how to decide on specific legal avenues for reform including criminal, civil and non-litigation methods;
4. Apply strategic and practical considerations throughout the process of impact litigation;
5. Explain how decisions in impact litigation affect the clients and society as a whole.

**TEACHING PHILOSPHY:**

Great lawyers don’t just know how to think, they know how to actually solve problems. The practice of law is an art form. As lawyers we often are confronted with laws that we find unfair, unjust or simply wrong. I want each of you to walk away with a practical understanding of how you can fight for your client while working within the system to change the law to make it more fair and more just. I want you to be creative in your thinking on how the practice of law is evolving and how you can handle issues that might arise throughout your practice. I hope you leave this class inspired to not only practice law but effectuate change with your practice.

**INSTRUCTIONAL METHODS:**

The best way for you to learn is to participate actively during class. Since this class is condensed into a short time frame, class will consist of student presentations, my own interactive lectures, guest speakers and robust group dialogue. I will challenge everyone to take part in civil debates on the topics- you will be expected to understand how to argue for both sides of an issue, even if it means playing devil’s advocate for something with which you personally disagree. I encourage everyone to ask questions and expect everyone to actively participate throughout each class hour. I anticipate our discussions being similar to the brainstorming and strategy discussions lawyers engage in with co-counsel during team meetings.

**CLASS ATTENDANCE:**

Whether in person or online, attendance at each session of this compressed course is mandatory. Any missed session will result in a 5-point reduction in a student's final grade (on the 100 point scale) for each missed session. Further information about the Levin College of Law's attendance policy is available here: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/academic-policies#3>

**GRADING INFORMATION AND GRADING SCALE:**

The components of the final grade for the course are listed below:

* Written paper at conclusion of course: 50%
* Classroom preparation and participation: 50%

The law school grading policy is available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/academic-policies#3>

The law school recognizes the following grades:

A (excellent) 4.0

A- 3.67

B+ 3.33

B 3.00

B- 2.67

C+ 2.33

C (satisfactory) 2.00

C- 1.67

D+ 1.33

D (poor) 1.00

D- 0.67

E (failure) 0.00

**WRITTEN PAPER:**

The written paper will be due on or before Friday, January 28, 2022 by 5pm. Papers must be submitted by email in either WORD or PDF format. Papers should be at least 10 pages but not more than 20 pages. The format of the paper will be a “bench brief” which will be explained in detail during class. The paper will be the student’s choice of different focus areas, which will be discussed in class, all based on the same set of facts.

**CLASS PREPARATION AND PARTICATION:**

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Assignments will be posted prior to the beginning of class and will be comprised of developing questions for the topic areas to be discussed as well as being prepared to engage in group discussions about strategies in litigation. Please note that due to the compressed nature of this course, the bulk of your preparation must be done in the days prior to the start of class.

**UF LAW HONOR CODE:**

The University of Florida College of Law Honor Code represents a commitment by students to adhere to the highest degree of ethical integrity. Teaching and learning flourish best in an environment where mutual trust and respect form the bedrock of relationships. The Honor Code helps create a community in which students can maximize their intellectual and academic potential. Students are bound by the UF Honor Code, which may be found at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>.

**ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES:**

Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, [www.dso.ufl.edu/drc/](http://www.dso.ufl.edu/drc/)) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the law school Office of Student Affairs. Students with disabilities are encouraged to follow this procedure as early as possible.

**LEARNING ENVIRONMENT AND PREFERRED NAME:**

It is important to the learning environment that you feel welcome and safe in this class; and that you are comfortable participating in class discussions and communicating with me on any issues related to the class.  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 phone.  I would like to acknowledge your preferred name, and pronouns that reflect your identity.  Please let me know how you would like to be addressed in class, if your name and pronouns are not reflected by your UF-rostered name. I welcome you to the class and look forward to a rewarding learning adventure together.

**ONLINE COURSE EVALUATION:**

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/>.

**CLASS MEETING TIMES AND ATTENDANCE:**

This class will meet on the following dates and times:

**Monday, January 10, 2022: 10:00am to 11:30am and**

**1:00pm to 2:30pm**

**Tuesday, January 11, 2022: 10:00 am to 11:30 am**

**1:00pm to 2:30pm**

**Wednesday, January 13, 2022: 10:00 am to 11:30 am**

**1:00pm to 2:30pm**

**Thursday, January 14, 2022: 10:00 am to 11:30 am**

**1:00pm to 2:30pm**

**Friday, January 15, 2022: 10:00 am to 12:00 pm**

**Attendance is mandatory.**

**COURSE TOPICS AND READING MATERIALS:**

**\***These topics cover a lot of in-depth legal topics. While we will be touching on these important topics and how they relate to impact litigation, this course will only touch on these important topics in a high-level manner to help students develop a stronger, high-level perspective of impact litigation and its nuances. Students are encouraged to study these topics in greater depth in other courses.

**Monday, January 10, 2022 – Day 1 Topics:**

1. **Introduction and Overview of Types of Impact Litigation**
2. **Introduction To Systematic Reform Through Individual Representation**

Introduction of Case Study: *State v. Ryan Duke (Pleadings Will Be Provided, please read these pleadings by Day 1)*

1. **Introduction To Remedies: Injunction and Damage Actions**: strategic litigation seeking systematic reform through actions for particular remedies.

Introduction of Case Study: *“Cartersville-70”* *(Pleadings Will Be Provided, please read these pleadings by Day 1)*

1. **Introduction To Combining Litigation and Non Litigation Strategies:** How to use the media and politics to effectuate change and advocate for your position.

*Introduction To Case Study: Gag Order Materials (Pleadings Will Be Provided, please read these materials by Day 1)*

**Tuesday, January 11, 2022 – Day 2 Topics:**

**Morning: Systematic Reform Through Individual Representation: Criminal Cases**

1. **Selecting Issues**
2. **Selecting Clients**
3. **Building and planning cases from the “ground up”**
4. **Developing legal strategies**
5. **Choosing the proper legal avenue for success**
6. **Identifying and working collaboratively with co-counsel**
7. **Making the case for change**

**Afternoon Case Study:**

***Ryan Duke Case and Who Pays For An Indigent Defense????***

***Zoom With Criminal Defendant To Discuss Fighting The System As An Incarcerated Defendant***

**Reading To Be Done Prior To Day 2:**

Jennifer M. Allen, Free for All A Free for All: The Supreme Court's Abdication of Duty in Failing to Establish Standards for Indigent Defense, 27 Law & Ineq. 365 (2009)

Andrew L. B. Davies, Ph.D. et. al., The Court Is in Recession: On the Implications of the Covid-19 Pandemic for Indigent Defense Spending, 18 Ohio St. J. Crim. L. 449 (2021)

**Wednesday, January 12, 2022 – Day 3 Topics:**

**Remedies: Injunction and Damage Actions**

**Morning – Nuts And Bolts Of “Civil” Remedies**

1. **Sources of Civil Rights Law:**
2. Substantive civil rights protections
3. Section 1983 and *Bivens*
4. Other Enforcement mechanisms
5. **Case Preparation**
6. Investigating civil rights claims
7. Role of clients in impact litigation
8. **Remedies: Injunctive Relief**
9. Requirements for Relief
10. Facial and As-Applied Challenges
11. **Remedies: Damages**
12. Types of Damages
13. Individual and Supervisory Liability
14. Qualified Immunity

\*\*\*\**Also Discuss Qualified Immunity And How This Topic Can Be Used In Combining Litigation and Non-Litigation Strategies*

1. **Remedies: Emergency Relief**
2. Temporary Restraining Orders
3. Habeas Petitions
4. Interlocutory or Non-Final Appeals

**Afternoon Case Study:**

**Discuss the Cartersville 70 Litigation**

 **Q & A Zoom With Plaintiff’s Lawyers For Cartersville 70**

**Reading To Be Done Prior To Day 3:**

Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 390 (1971)

McKesson v. Doe, 141 S. Ct. 48, 208 L. Ed. 2d 158 (2020)

Meg Green, Standing on the Wrong Side: Hernandez v. Mesa and Bivens Remedies in the Context of Cross-Border Shootings by Federal Law Enforcement, 61 B.C.L. Rev. E-Supplement II.-18 (2020)

James E. Pfander, Iqbal, Bivens, and the Role of Judge-Made Law in Constitutional Litigation, 114 Penn St. L. Rev. 1387 (2010

Isabella Ruth Edmundson, Imprisoned by Liability: Why Bivens Suits Should Not Be Available Against Employees of Privately Run Federal Prisons, 45 Ga. L. Rev. 1127 (2011)

**Thursday, January 13, 2022 – Day 4 Topics:**

**Introduction To Combining Litigation and Non Litigation Strategies**

**Morning Session:**

1. **How To Talk To The Media Without Violating Your Professional And Ethical Obligations (*Gentile, ABA Rules, etc.)***
2. **How to Use The Media To Flip The Script and Change the Narrative:**

Discussion on how to put your narrative into the media. Compare the first hour of Dateline to the second special where the attorneys provided interview. Excerpts will be shown during class and discussed.

1. **Bringing the Law To the People:**

Discussion on how to take a complex legal issue and make the people care about your issue and your client. This includes testifying in front of the legislature about laws as well as advocating for change through civic organizations, bar associations, and other movements.

**Afternoon Session:**

1. **How To Prepare and Present A Case To the Media:**

Live demo and simulation at end of day. This section will teach students how to develop a media strategy for their cases Each student will walk away knowing exactly how to handle the media and how to use the media to their advantage.

**Reading To Be Done Prior To Day 4:**

Gentile v. State Bar of Nevada, 501 U.S. 1030 (1991).

Kenneth B. Nunn, Ideology, Gentile and Pretrial Attorney Speech: A Response to Professor Tarkington, 66 Fla. L. Rev. F. 35 (2015)

**Friday, January 14, 2022 – Day 5 Topics:**

1. **Ethical and Client Considerations**: reconciling law reform goals with duty to individual client.
2. **The Risk of Backlash:** making change will make a lot of people mad along the way but this will teach you how to best deal with this and other backlash from representing what some consider “unpopular” causes.
3. **Become A Resource To Make Sure The Change Remains:** once you are able to make change happen how do you insure that the change remains. Also how do you insure that progressive changes you fought so hard to make live on after your case?