

CIVIL PROCEDURE I (LAW 612-319)

**Professor Kimberly Wehle
Fall 2017**

Welcome! This course is the first of two required courses in Civil Procedure. This semester of Civil Procedure is taught in conjunction with Introduction to Lawyering Skills (“ILS”), the first-year legal research and writing class. The assignments for the ILS portion of this course are contained in a separate syllabus.

This semester of Civil Procedure covers the fundamentals of pursuing or defending a civil lawsuit in a United States federal court. We will examine the mechanics of civil litigation with respect to a simple one-plaintiff/one-defendant lawsuit from its cradle (the complaint) to its grave (settlement or judgment) and beyond (appeals).

This is one of the most important classes you will take in law school. It is also one of the most difficult to grasp because it is unlike anything you have encountered in your education thus far. It will likely be several weeks before it all starts to make sense to you. Be patient – it will come together!

A. COURSE MEETING TIMES

Class will meet on Mondays from 6:15-9:00 p.m., with two exceptions.

We will also have class on Wednesdays from 7:45-9:00 p.m. in Room 403. This session will be conducted primarily by the Law Scholar, Clarissa Lindsey. A separate syllabus will be posted for the Law Scholar sessions. Clarissa’s primary focus during law scholar sessions will be on law student skills—briefing cases, taking notes, drafting outlines, preparing for exams, taking exams, etc. She will also go over class assignments. She is available to meet individually with students on substantive Civil Procedure questions, as well. The Wednesday Law Scholar sessions are optional, unless I choose to use that time for core coursework Civil Procedure I. In the latter event, I will post an announcement in advance. The Civil Procedure I sessions will be mandatory.

B. ASSIGNED READING

The assigned texts for Civil Procedure are:

1. Rowe, Sherry and Tidmarsh, Civil Procedure (Thomson West 4th ed. 2016) (“Casebook”).
2. Rowe, Sherry and Tidmarsh, 2017 Civil Procedure Supplement (“Supp.”), which contains the text of the rules, statutes and provisions of the United States Constitution that we will be discussing. Most importantly, we will be carefully reading and applying the Federal Rules of Civil Procedure (“FRCP”). **Note that this volume is generally not available from the publisher until the first week of August.**
3. There will be occasional handouts, which will be posted on Westlaw’s TWEN site. You must enroll in TWEN for this course.
4. There are additional textbooks for the ILS class, which are listed on the ILS syllabus.

C. OPTIONAL READING

Glannon, Civil Procedure: Examples and Explanations. No readings will be assigned from this book, but many students find it very helpful.

Emanuel, Crunchtime: Civil Procedure (6th ed.). This book contains sample flowcharts or “frameworks,” which I highly recommend that students construct for themselves in every law school class.

D. ATTENDANCE

Class attendance is a primary obligation for students. According to law school policy, a student who exceeds the maximum allowable absences (**five for this course**) may be compelled to withdraw from the course or may be barred from sitting for the final exam. A student who is compelled to withdraw or is barred from sitting for the final exam may receive an "F" in the course.

The sole means of establishing attendance is by signing the attendance sheet. Students are responsible for making sure that they sign the attendance sheet each day. Please do not approach me after I have left the classroom or on some later date and tell me that you were in class on a particular day. In fairness to

everyone, I cannot “back-fill” sign-in sheets. If you forget to sign in, you will be counted as absent for that day.

Students who are more than 15 minutes late may stay for class but may not sign the attendance sheet or be counted as present for that day. **Please do not leave the classroom during class unless there is a compelling need. Small group assignments are NOT the time to take a break from class.**

E. THE DREADED SOCRATIC METHOD

Class will be conducted by calling on students at random and asking various questions of the material. I also encourage volunteers. You will need to prepare carefully in order to participate in class discussion, which is required in this course. Preparing the material in advance and coming to class each day is also the single best thing you can do to learn the material and perform well on the exams. But most importantly, preparation and participation are the most basic elements of professional competence. A lawyer who does not show up or is unprepared for hearings or client meetings may not only lose the case, but may also be fined, disciplined or sued. Accordingly, “passing” when called on or informing me that you did not prepare the particular material are not acceptable practices in this class. If you are unable to provide the basic facts of a problem or a case when called on, I will assume you are not prepared.

I understand that some people are more comfortable than others voluntarily raising a hand to participate. If you are one of those people, you can still do well if you are fully prepared when I call on you. Nonetheless, I do recommend that you try to push yourself out of your comfort zone and raise your hand when you feel particularly strong on a subject. If you email me or let me know in advance that you would like to discuss a particular problem, case or topic, I will be sure to call on you that day so that you can participate when you are feeling particularly confident.

In the case of a true emergency that makes it virtually impossible to prepare for class, you may contact me in advance of class (preferably by email) and, if appropriate, I will not call on you that day. This policy should be used only in rare circumstances.

F. HOW TO PREPARE FOR CLASS

It is very important that you **bring your casebook and your Supplement with you to each class.** In many instances when you are called on in class, your first instinct should be to pull out your Supplement and look at text of the rule we are discussing.

Cases: It is highly recommended that, for each case assigned, you prepare a written brief that includes: the parties and their positions (i.e., who is suing whom and why), the procedural posture of the case (is it a trial court decision or on appeal and what document is the court ruling on), the issue(s) before the court for resolution, the rule or standard to be applied, the court's analysis of the rule or standard as applied to the facts of the case, and the court's conclusion. You should also be attuned to the policy rationale underlying the court's holding and any countervailing arguments set forth in concurring or dissenting opinions. In some instances, cases that we will discuss in class are summarized in the notes in your book, rather than appearing in full or amended text. You are responsible for the assigned reading in its entirety.

Rules: When the materials in the casebook refer to a rule from the Federal Rules of Civil Procedure, a statute from the United States Code, or a provision of the United States Constitution, you should carefully read the relevant provision from the Supplement even if it is not specifically assigned for that day. If a rule is assigned for that day, please "brief" the rule by summarizing each sentence of the assigned rule **in your own words.** You are not required to read the Advisory Committee Notes following the text of the rules but it is recommended; you may find them helpful as you parse the language of the rules.

Assignments: You must come to class with written responses – in hard copy – to Assignments posted on TWEN. With the exceptions of the Pleading Assignment Part II and the Framework for Responding to the Complaint Assignment, Assignments may be done in pairs or groups. The Pleading Assignment Part II and Framework for Responding to the Complaint Assignment **must be done individually.** The Honor Code applies.

G. LAPTOPS

Laptops are permitted except in the event that we have a guest speaker. During class, please do not use laptops to check email, surf the net, watch YouTube, or engage in activities other than note-taking.

H. GRADING

Although Law 612 is a 6-credit course, the two components of the course are graded completely separately. You will get a grade in this course (3 credits) and a grade for Introduction to Lawyering Skills (ILS) (3 credits).

Your grade in Civil Procedure will be based on:

- **Class Assignments (each worth 1% for a total of 20%):**
 - **Course Overview Assignment**
 - **Complaint Assignment**
 - **Pleading Assignment Part I**
 - **First Rule 12 Assignment**
 - **Rule 15 Assignment**
 - **Second Rule 12 Assignment**
 - **Answer Assignment**
 - **Rule 11 Assignment**
 - **Rule 11 *Shiffrin* Assignment**
 - **Rule 16 Assignment**
 - **Sample Mid-Term Exam**
 - **Rules 26-27 Overview Assignment**
 - **Rule 26 Assignment**
 - **Rule 30 Assignment**
 - **Rule 33 Assignment**
 - **Rule 34 Assignment**
 - **Discovery Sanctions Assignment**
 - **Rule 56 Assignment**
 - **Appeals Assignment**
 - **Course Framework Assignment**
- **Pleading Assignment Part II (5%);**
- **Framework for Responding to the Complaint Assignment (5%);**
- **Midterm (10%);**
- **Final Exam (60%).**

I reserve the right to factor class preparedness and participation into your final grade, either favorably or unfavorably. Thus, if you fail to follow the preparation policy for this class, your final grade can be dropped by a half letter grade (e.g., an A- to a B+).

Regarding the Class Assignments:

1. Absent a dire, unforeseen emergency, **late submissions of assignments will receive a zero.**
2. With the exceptions set forth in (3) below, Class Assignments may be done in pairs or groups.
3. The Pleading Assignment Part II and Framework for Responding to the Complaint Assignment **must be done individually.**
4. The School of Law Honor Code applies. Be familiar with it.

Regarding the Exams:

1. The exams are **open book**. This means that you can bring anything into the examination that is on paper—outlines, casebooks, notes, study guides, etc. You should bring a copy of the FRCP. You may not bring any electronic device into the examination other than your laptop, which you can only use for word processing.
2. The School of Law Honor Code applies to this class. Be familiar with it.

J. OFFICE HOURS, LAW SCHOLAR, AND OTHER SUPPORT

I will schedule formal office hours the week prior to the final exam. Throughout the semester, you can also see me after class or send an email to schedule an appointment. I am happy to discuss any questions or concerns that you have related to this course or law school and practice in general.

My assistant is Deborah Pinkham (deborah.pinkham@ubalt.edu). Her office is on the fifth floor.

As noted above, the Law Scholar for this class is Clarissa Lindsey (clarissa.lindsey@ubalt.edu). Law Scholar sessions will be held on Wednesdays from 7:45-9:00 pm. They are not mandatory, but they are highly recommended if you wish to do well in this class. You will be building fundamental skills for success in law school.

K. CLASS RECORDING

If you are unable to attend class **due to a religious holiday only**, please contact my assistant, Deborah Pinkham (deborah.pinkham@ubalt.edu), **at least 24 hours in advance** and she will arrange to have the class taped. Please note that I cannot guarantee that a taping request will be fulfilled because the logistics are beyond my control.

L. OUTLINE OF ASSIGNMENTS

The following outline sets forth the assignments by date. The page numbers refer to the casebook unless otherwise indicated. **There will be times when we will not get through an entire assignment in a single class period. This is by design and to be expected.** For each class, you are responsible for any “leftover” material from a prior class in addition to the new assignment listed on the syllabus.

Note that for each Monday class period listed below by calendar date, there is the equivalent of **two assignments**. We will cover the first part of the assignment during the first part of class and the second part of the assignment during the second part of class, following a break.

Given the numerous variables that can affect how we move through the material, the syllabus may be modified as the semester progresses. I will post any modifications on TWEN.

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Introduction

August 23: **Read FRCP 1 & 2.** Carefully read the entire syllabus. Read Casebook Chapter 1: Read pp. 1-24. Read handout, “Briefing a Case” [posted on TWEN]. Complete Course Overview Assignment [posted on TWEN]. Complete Background Questionnaire on TWEN (click on “Forums” under the

navigation bar on the left-hand side; all announcements will also be posted here).

Plaintiff's Opening Moves

The Complaint

Read FRCP 1-3; 7; 8(a), (d), (e); 10. Chapter 2: Read pp. 25-39. Be prepared to discuss Conley v. Gibson and Swierkiewicz v. Sorema, N.A.

August 28:

Re-read FRCP 8(a), (d). Read 28 U.S.C. §§ 1331 & 1332(a)(1). Prepare Complaint Assignment [posted on TWEN]. Read pp. 39-50. Be prepared to discuss Bell Atlantic Corp. v. Twombly.

Read pp. 50-64 and corresponding pages of the Supplement. Be prepared to discuss Ashcroft v. Iqbal. Read Twombly Complaint [posted on TWEN].

September 11:¹

Read FRCP 9(b), (g). Read Rule 9 handout [posted on TWEN]. Be prepared to discuss United States ex rel. Bledsoe v. Community Health Sys., Inc. and Browning v. Clinton [posted on TWEN]. Prepare Pleading Assignment Part I [posted on TWEN].

Amending the Pleadings

Read FRCP 7, 15(a), 16(b). Read pp. 85-90. Be prepared to discuss Williams v. Citigroup, Inc. Read Foman v. Davis [posted on TWEN].

September 18:

Read FRCP 4(m), 15(c)(1). Read pp. 90-96. Be prepared to discuss Asarco, LLC v. Union Pacific Railroad Co. Read Brown v. Cuyahoga County [posted on TWEN].

¹ No class on September 4 due to Labor Day holiday.

**** Due in class at 6:15 pm sharp: Pleading Assignment Part II [GRADED]. Please bring two hard copies. Late submissions will not be accepted. The Honor Code applies.**

Responding to the Complaint

Rule 12 Motions

Read FRCP 5, 6, 7, 12 (a)(1), (a)(4), (b), (c), (e), (f), (g), (h). Prepare First Rule 12 Assignment [posted on TWEN]. Read pp. 73-75. Prepare problem on p. 77 of the casebook, under the heading, “Waiving Rule 12(b) Defenses.”

The Answer

September 27.² **Read FRCP 8(b), 8(c)(1).** Read pp. 75-84. Be prepared to discuss Milton v. General Dynamics Ordnance and Tactical Sys., Inc. and Lockheed Martin Corp. v. United States.

Prepare Rule 15 Assignment [posted on TWEN].
Prepare Second Rule 12 Assignment [posted on TWEN].
Prepare Answer Assignment [posted on TWEN].

****Read Framework for Responding to the Complaint Assignment [posted on TWEN]. Come to class with any questions you have.**

Policing Materials Submitted to the Court: Rule 11

October 2: **Read FRCP 11.** Read pp. 97-112. Be prepared to discuss Patsy’s Brand, Inc. v. I.O.B. Realty, Inc., In re Pennie & Edmonds LLP and Frantz v. United States Powerlifting Fed’n. Prepare Rule 11 Assignment [posted on TWEN].

**** Due in class at 6:15 pm sharp: Framework for Responding to the Complaint Assignment.** Please bring two hard copies. **Late submissions will not be accepted. The Honor Code applies.**

² For this week only, Civil Procedure will be held on Wednesday night instead of Monday night.

Timing and Scheduling: The Pretrial Conference

October 9: **Read FRCP 16(a), (b), (e), (f); skim 16(c)-(d).** Read Shiffrin v. City of New York and prepare Rule 11 Shiffrin Assignment [both posted on TWEN]. Prepare Rule 16 Assignment [posted on TWEN]. Read pp. 188-195. Be prepared to discuss Tower Ventures, Inc. v. City of Westfield.

Catch-up and Mid-term Review

Prepare Sample Mid-term Exam (posted on TWEN). Bring a hard copy to class.

Discovery

Skim FRCP 27-36. Carefully read FRCP 26(a)(1), (d), (f) & 37(c)(1). Chapter 3: Read pp. 113-24. Prepare Rules 26-27 Overview Assignment [posted on TWEN].

October 16: **Read FRCP 27-36. Guest speaker.** No laptops.

Re-read FRCP 26(b)(1), (b)(2), (b)(3)(A)-(B) & (b)(5). Read Federal Rule of Evidence 502 [posted on TWEN]. Read Wood v. Capital One Servs., Inc. [posted on TWEN]. Read pp. 125-27, 130-134, & pp. 146-58. Be prepared to discuss Gilead Sciences, Inc. v. Merck & Co.; and Hickman v. Taylor.

Mid-term exam

October 23: Mid-term examination. The mid-term examination will cover material through Rule 11. It will consist of a **single essay question**. You will have exactly 60 minutes to complete the examination. As for what you can bring into the exam, please see Subpart H, above. **We will review the exam during a forthcoming Law Scholar session.**

October 30: **Read FRCP 30, 32(a)(5)(A), 45(a). Skim the rest of FRCP 45.** Prepare Rule 26 Assignment and Rule 30 Assignment [posted on TWEN].

Read FRCP 26(b)(5), 26(e)(1), 29, 33, 34. Read pp. 125-27. Prepare Rule 33 Assignment & Rule 34 Assignment [both posted on TWEN].

Discovery Disputes and Discovery Sanctions

November 6: **Read FRCP 37(a), (b), (c)(1), (d) & (e).** Read pp. 166-171. Be prepared to discuss National Hockey League v. Metropolitan Hockey Club, Inc. Prepare Discovery Devices Review Chart [posted on TWEN].

Read FRCP 26(c). Read pp. 172-176. Be prepared to discuss Phillips v. General Motors Corp.

Post-Discovery Practice

Judge and Jury

November 13: **Read FRCP 2, 38. Read U.S. Constitution Amendment VII.** Complete Discovery Sanctions Assignment [posted on TWEN]. Chapter 5: Read pp. 236-42 and 257-66 (through n.7). Be prepared to discuss Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry.

Summary Judgment and JMOL

Read FRCP 56(a), (b), (f); 12(d); 50(a). Read pp. 242-49. Be prepared to discuss Celotex Corp. v. Catrett.

November 20: **Re-read FRCP 56(a), (b), (c), (e), (f).** Prepare Rule 56 Assignment [posted on TWEN]. Re-read Celotex Corp. v. Catrett. Read pp. 249-56 (through n.4(a)). Be prepared to discuss Scott v. Harris.

Read FRCP 50(a), (b); 59(a)(1)(A). Read Rule 50 Handout [posted on TWEN].

Appeal

November 27: **Read 28 U.S.C. §§ 1291, 1292(b) & FRCP 54(a), 58. Read Federal Rule of Appellate Procedure 4(a)(i) (contained in Supp.).** Read pp. 309-19. Prepare Appeals Assignment [posted on TWEN].

Final Review Session

Prepare Course Framework Assignment [posted on TWEN].

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