

## **CIVIL PROCEDURE I (LAW 600-329B)**

**Professor Kimberly Wehle**  
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**Fall 2021**

**Welcome!** This course is the first of two required courses in Civil Procedure. This course focuses on the process and procedures of a civil lawsuit with respect to a simple one-plaintiff/one-defendant lawsuit from its cradle (the complaint) to its grave (settlement or judgment) and beyond (appeals). The course will provide an introduction to the structure and operation of the state and federal court systems in the United States, and will concentrate on cases brought in the federal courts, conducted pursuant to the Federal Rules of Civil Procedure. We will examine the mechanics of civil litigation, including pleadings, pre-trial motions, the discovery process, trial by jury, judgments and relief, motions after judgment, and 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. LEARNING OUTCOMES**

This course is designed to teach foundational Civil Procedure concepts as well as core analytic skills. By the end of this course, you will: (1) understand and be able to apply the Federal Rules of Civil Procedure assigned in this course; (2) be able to draft basic pleadings; (3) be able to present legal analysis in IRAC (Issue, Rule, Analysis Conclusion) format; (4) be able to draft a “framework” for reconciling rules into a decision tree for use in legal analysis and on an exam; (5) be able to apply new facts to legal doctrine; (6) develop some level of comfort around thinking and speaking “on your feet”; (7) understand and practice basic tenets of attorney professionalism; (8) learn how to work through a legal program collaboratively and in small groups; (9) understand the difference between law and policy and be able to articulate the policy rationales and critiques of a rule; and (10) understand basic concepts of litigation strategy.

## **B. COURSE MEETING TIMES**

Class is scheduled for Tuesdays and Thursdays from 3-4:15 p.m. Room TBA. If class has to be cancelled, I will notify students via TWEN.

The Law Scholars for this course are Kaitlin O’Dowd and Eva Cox (kaitlin.odowd@ubalt.edu and eva.cox@ubalt.edu). They will hold optional weekly sessions. The time is TBA. A separate syllabus will be posted for the Law Scholar sessions.

Kaitlin and Eva’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. They will also go over class assignments. Kaitlin and Eva are available to meet individually with students on substantive Civil Procedure questions, as well. It is strongly recommended that you attend all of the Law Scholar sessions if you wish to do well in this class.

## **C. COURSE WEBSITE**

This course has a Westlaw’s TWEN page with links to this syllabus, announcements, the class assignments, and other class materials. You are responsible for self-enrolling and checking the website regularly for course information. The TWEN page is titled: Civil Procedure I (Wehle)

## **D. ASSIGNED READING**

The assigned texts for Civil Procedure are:

1. Rowe, Sherry and Tidmarsh, Civil Procedure (Thomson West 5th ed. 2020) (“Casebook”). ISBN: 978-1684676590
2. Glannon, Perlman, Simard, Casebook Connect, PracticePerfect: Civil Procedure (Wolters Kluwer) (“PracticePerfect”). This is an online subscription with videos and quizzes. The link to purchase is here: <https://www.wklegaledu.com/pp-civilprocedure>
3. West, Federal Rules of Civil Procedure, 2020-2021 (“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 August, but you can use any current hard copy version of the Federal Rules of Civil Procedure. Online access to the rules during class is not sufficient.**

4. There will be occasional handouts, which will be posted on TWEN.

## **E. 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. This book contains sample flowcharts or “frameworks,” which I highly recommend that students construct for themselves in every law school class.

## **F. COURSE EXPECTATIONS AND ATTENDANCE**

American Bar Association Standards for Law Schools establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work per week for each credit earned in a class, or an equivalent amount of work for other academic activities, such as simulations, externships, clinical supervision, co-curricular activities, and other academic work leading to the award of credit hours.

Attendance is mandatory. Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowed absences (generally 20% of class sessions) as illustrated below may be compelled to withdraw from the course or may be barred from sitting for the final exam. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools.

Regular Semester Hours		
Credit Hours	Meetings Per Week	
	1	2
2	2 absences	5 absences
3	2 absences	5 absences
4	--	5 absences

All classes will be recorded. All class recordings are for the sole use of the class and may not be reproduced by students for any other purpose. Faculty cannot reproduce students' voices or images from the class for any other purpose without additional student consent. All such recordings are protected by a UB login process based on where they are posted. Students may mute their microphone or turn off their camera if they do not consent to be recorded, but this may mean they need to find additional ways to participate in the class discussion. Students may be required to turn on their cameras and participate in graded class activities. In addition, students who turn off their camera and do not remain present for the class session may be subject to the Honor Code for misrepresenting attendance.

#### **G. ACADEMIC INTEGRITY**

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or the School of Law. Violations of academic integrity include, but are not limited to: cheating; plagiarism; misuse of library materials; use of another's book or study materials without consent; unapproved multiple submissions; material misrepresentation of one's academic history or standing; misrepresentation of any academic matter; intentionally giving another student false or inaccurate information about class requirements; inappropriate discussion of exams; and misrepresenting or falsifying class attendance reports. The School of Law Honor Code and information about the process is available at [https://law.ubalt.edu/academics/policiesandprocedures/honor\\_code/index.cfm](https://law.ubalt.edu/academics/policiesandprocedures/honor_code/index.cfm).

#### **F. 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](mailto:deborah.pinkham@ubalt.edu)).

As noted above, the Law Scholars for this class are Kaitlin O'Dowd and Eva Cox. The Law Scholar sessions 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.

## **G. DISABILITY POLICY**

If you are a student with a documented disability who requires an academic accommodation programs, exams, or access to the University's facilities, please contact Ms. Keri Hickey, Director of Student Support in the Law School's Office of Academic Affairs, at [khickey@ubalt.edu](mailto:khickey@ubalt.edu) or the University's Office of Disability and Access Services at [das@ubalt.edu](mailto:das@ubalt.edu).

## **H. TITLE IX SEXUAL MISCONDUCT AND NONDISCRIMINATION POLICY**

The University of Baltimore's Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB's nondiscrimination policies can be found at: <http://www.ubalt.edu/titleix>.

## **I. COURSE EVALUATIONS**

It is a requirement of this course that students complete a course evaluation. The evaluation will be available later in the semester and is entirely anonymous. Faculty members will not have access to the feedback provided on course evaluations until after all grades are submitted.

## **J. 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 during 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.

## **K. HOW TO PREPARE FOR CLASS**

You are expected to complete all reading assignments and to consistently participate in class discussion in order to demonstrate that you have read and reflected on the issues raised in the assignment. There will be additional online coursework that students must complete in advance of class, primarily in the form of short videos. Each week, students must also complete mandatory out-of-class worksheet assignments that we will review during 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. **I will go over how to brief a case during the first week of class.**

**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.

**PowerPoints:** As part of your out-of-class work, review the PowerPoint for each class session in advance of class [posted on TWEN]. What this means is that you should think about each slide in light of the reading and jot down a few thoughts as to its relevance.

**PracticePerfect:** As part of your classroom work, you must watch—and re-watch the PracticePerfect video or take the PracticePerfect quiz assigned for that day in advance of each class. The quizzes will not be graded. In some instances, I assign YouTube videos in lieu of Practice Perfect.

**Assignments:** There will be 20 class assignments worth 1% each, as well as additional assignments that are worth more. **You must post your assignments on TWEN before the class on which the assignment is due.** Late assignments will not be accepted absent emergencies. I will not be collecting the assignments during class, but it is highly recommended that you bring hard copies to class so that you can discuss your answers.

Kaitlin and Eva will grade assignments under my supervision. 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.

Note that, given the size of the class, you will not be given line-by-line, detailed feedback on each of the assignments. The assignments are designed to help you to learn the material by applying it. Mastery will come with diligent work over the course of the entire semester—even without individualized feedback on each assignment.

## **L. GRADING**

**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**
  - **Pleading Assignment Part II**
  - **First Rule 12 Assignment**
  - **Rule 15 Assignment**
  - **Second Rule 12 Assignment**
  - **Answer Assignment**
  - **Rule 11 Hypothetical 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**
- **Framework for Responding to the Complaint Assignment (5%);**
- **Midterm (15%);**

- **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**. You can use and access anything you want so long as you do the work entirely alone.
2. The School of Law Honor Code applies to this class. Be familiar with it.

## **M. 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.

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.

Be sure review the PowerPoint for each session in advance of class [posted on TWEN].

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## **Introduction**

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August 24:        **Read FRCP 1 & 2.** Carefully read the entire syllabus. Read Casebook Chapter 1: Read pp. 1-23. Complete Course Overview Assignment [posted on TWEN].

August 26:        Read handout, “Briefing a Case” [posted on TWEN].

**YouTube Video:** Law 101: How a Lawsuit Works:  
<https://www.youtube.com/watch?v=9tbL9424rHc>

## **Plaintiff’s Opening Moves**

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### **Complaint**

August 31:        **Read FRCP 1-3; 7; 8(a), (d), (e); 10.** Chapter 2: Read pp. 24-36. Be prepared to discuss Conley v. Gibson and Swierkiewicz v. Sorema, N.A.

**PracticePerfect Video:** Complaints: Legal and Factual Sufficiency.

September 2:    **Re-read FRCP 8(a), (d). Read 28 U.S.C. §§ 1331 & 1332(a)(1).** Prepare Complaint Assignment [posted on TWEN]. Read pp. 36-45. Be prepared to discuss Bell Atlantic Corp. v. Twombly.

**PracticePerfect Video:** Complaints: Legal and Factual Sufficiency. Please watch it again.

September 7:    Read pp. 45-58. Be prepared to discuss Ashcroft v. Iqbal. Read Twombly Complaint [posted on TWEN].

**PracticePerfect Video:** Complaints: Legal and Factual Sufficiency. Please watch it again.

September 9:      **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].

**PracticePerfect Quiz:** Complaints: Legal and Factual Sufficiency.

### **Amending the Pleadings**

September 14:      **Read FRCP 7, 15(a), 16(b).** Read pp. 80-90. Be prepared to discuss Williams v. Citigroup, Inc. and Neita v. City of Chicago. Read Foman v. Davis [posted on TWEN].

**PracticePerfect Video:** Amendments.

September 16:      **Read FRCP 4(m), 15(c)(1).** Read Brown v. Cuyahoga County [posted on TWEN]. Prepare Pleading Assignment Part II [posted on TWEN].

**PracticePerfect Video:** Relation Back of Amendments.

### **Responding to the Complaint**

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#### **Rule 12 Motions**

September 21:      **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. 67-70.

**PracticePerfect Video:** Motions under Rule 12

**PracticePerfect Quiz:** Amendments and Relation Back of Amendments

#### **The Answer**

September 23:      **Read FRCP 8(b), 8(c)(1).** Read pp. 70-80. Be prepared to discuss Milton v. General Dynamics Ordnance and Tactical

Sys., Inc. and GEOMC Co. v. Calmare Therapeutics Inc.  
Prepare Rule 15 Assignment and Second Rule 12 Assignment  
[posted on TWEN].

**YouTube Video:** How to Draft An Answer:  
[https://www.youtube.com/watch?v=ovyRSL\\_qVxg](https://www.youtube.com/watch?v=ovyRSL_qVxg)

**PracticePerfect Quiz:** Motions under Rule 12

September 28: Prepare Answer Assignment [posted on TWEN].

**Policing Materials Submitted to the Court: Rule 11 and Mid-term Review**

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September 30: **Read FRCP 11.** Read pp. 90-102. Be prepared to discuss Patsy’s Brand, Inc. v. I.O.B. Realty, Inc. and In re Pennie & Edmonds LLP.

**YouTube Video:** F.R.C.P. Rule 11 Motion for Sanctions explained: <https://www.youtube.com/watch?v=TVczIbi6Xgc>

**\*\* Due on TWEN before the start of class: Framework for Responding to the Complaint Assignment. Late submissions will not be accepted. The Honor Code applies.**

October 5: **Re-read FRCP 11.** Read pp. 102-06. Be prepared to discuss Frantz v. United States Powerlifting Fed’n. Prepare Rule 11 Hypothetical Assignment [posted on TWEN].

Prepare Sample Mid-term Exam [posted on TWEN].

**Mid-term exam**

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October 7: Mid-term examination. The mid-term examination will cover material through Rule 11. I will give you details regarding the content of the exam closer to the exam date. You will have exactly 60 minutes to complete the examination.

## **Timing and Scheduling: The Pretrial Conference**

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October 12:        **Read FRCP 16(a), (b), (e), (f); skim 16(c)-(d).** Prepare Rule 16 Assignment [posted on TWEN]. Read pp. 174-2000. Be prepared to discuss McKeague v. One World Technologies, Inc., Acuna v. Brown & Root, Inc., Ocean Atlantic Woodland Corp. v. DRH Cambridge Homes, Inc., R.M.R. v. Muscogee County School District.

## **Discovery**

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October 14:        **Skim FRCP 27-36. Carefully read FRCP 26(a)(1), (d), (f) & 37(c)(1).** Chapter 3: Read pp. 107-40. Be prepared to discuss Oxbow Carbon & Minerals LLC v. Union Pacific R.R., United States ex rel. Guardiola v. Renown Health, Prepare Rules 26-27 Overview Assignment [posted on TWEN].

**PracticePerfect Video:** The Scope of Discovery

October 19:        **Re-read FRCP 26(b)(1), (b)(2), (b)(3)(A)-(B) & (b)(5).** Read pp. 140-60. Be prepared to discuss Hickman v. Taylor, Republic of Ecuador v. Hinchee.

**PracticePerfect Video:** Discovery: Work-Product and Privilege

**PracticePerfect Quiz:** The Scope of Discovery

October 21:        **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].

**PracticePerfect Quiz:** Discovery: Work Product and Privilege

October 26:        **Read FRCP 26(b)(5), 26(e)(1), 29, 33, 34.** Prepare Rule 33 Assignment & Rule 34 Assignment [both posted on TWEN].

## Discovery Disputes and Discovery Sanctions

October 28: **Read FRCP 37(a), (b), (c)(1), (d) & (e).** Read pp. 160-66. Be prepared to discuss National Hockey League v. Metropolitan Hockey Club, Inc.

**YouTube Video:** Discovery: What is a Motion to Compel?  
<https://www.youtube.com/watch?v=zBEhja-Egzs>

November 2: **Read FRCP 27-36. Guest speaker.**

**YouTube Video:** Litigation Tips: How to Focus on Discovery to Win at Trial?  
<https://www.youtube.com/watch?v=L5rHzVf5Lro>

November 4: **Read FRCP 26(c).** Read pp. 166-73. Be prepared to discuss In re National Prescription Opiate Litigation.

**YouTube Video:** “Missing” Documents And Sanctions For Discovery Disputes?  
<https://www.youtube.com/watch?v=EZkNZMUxpbw>

## Post-Discovery Practice

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### Judge and Jury

November 9: **Read FRCP 2, 38. Read U.S. Constitution Amendment VII.** Complete Discovery Sanctions Assignment [posted on TWEN]. Chapter 5: Read pp. 231-35, 249-58. Be prepared to discuss Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry.

**YouTube Video:** What’s the difference between a bench trial and jury trial?  
<https://www.youtube.com/watch?v=pARLlz3mdvs>

### Summary Judgment and JMOL

November 11: **Read FRCP 56(a), (b), (f); 12(d); 50(a).** Read pp. 236-43. Be prepared to discuss Celotex Corp. v. Catrett.

**PracticePerfect Video:** Summary Judgment

November 16: **Re-read FRCP 56(a), (b), (c), (e), (f).** Prepare Rule 56 Assignment [posted on TWEN]. Re-read Celotex Corp. v. Catrett. Read pp. 243-49 (through n.4(a)). Be prepared to discuss Scott v. Harris.

**PracticePerfect Quiz:** Summary Judgment

November 18: **Read FRCP 50(a), (b); 59(a)(1)(A).** Read Rule 50 Handout [posted on TWEN].

**PracticePerfect Video:** Judgment as a Matter of Law

**Appeal**

November 23: **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. 305-12. Prepare Appeals Assignment [posted on TWEN].

**YouTube Video:** What is an appeal in a civil litigation?  
<https://www.youtube.com/watch?v=gkcklUCmDDY>

**PracticePerfect Quiz:** Judgment as a Matter of Law

**Final Review Session**

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November 30:<sup>1</sup> Prepare Course Framework Assignment [posted on TWEN]

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<sup>1</sup> No class 11/25 because of the Thanksgiving holiday.