

Civil Procedure I Syllabus – Fall 2020
Law 612/Section 319A Fall 2020

Instructors

Professor William Hubbard, whubbard@ubalt.edu
Teaching Assistants (ILS): Sabrina Marquez, sabrina.marquez@ubalt.edu; Sina Jahanshahi, sina.jahanshahi@ubalt.edu
Law Scholar (Civil Procedure): Ellen Pruitt, ellen.pruitt@ubalt.edu

Class times and Office Hours

Civil Procedure: Monday and Wednesday, 1:30 pm - 2:45 pm
ILS: Monday and Wednesday, 3 pm to 4:15 pm
Additional Classes: Thursdays, 10:30 am - 11:45 am¹
Class Zoom Link: <https://ubalt.zoom.us/j/99858069617>

Office Hours: Thursday 1:00 to 3:00 pm.²
Office Hours Zoom Link: <https://ubalt.zoom.us/j/285586048>

Modality

This class will be taught 100% online.

Introduction and Welcome

This is the class where you learn the first half of Civil Procedure and build the foundation for basic lawyering skills and professional values. While the course description and objectives for Civil Procedure I/ILS and general law school policies are listed on this syllabus, the assignments and assessments focus on Civil Procedure. A separate ILS Syllabus lists required materials, assignments and assessments for ILS. Please read both syllabi carefully, as you need to know what the course requires to be successful in it.

Course Description

This course integrates rigorous instruction in legal analysis, research, and writing with the substantive law of civil procedure to give beginning law students an opportunity to combine skills and doctrine as practicing lawyers do. It focuses on the process and procedures of a civil lawsuit, from filing a complaint through final appeal. It introduces the structure and operation of the state and federal court systems in the United States, concentrating on federal courts. Topics include pleadings, pre-trial motions, the discovery process, jury trial, judgments and relief, post-judgment motions, and appeals. Students will learn civil procedure through statutory interpretation, case analysis and rule synthesis, and legal research and writing projects. Legal analysis, research, and writing skills will be developed through course-work that includes critical case reading, analysis and briefing; common law principles and processes; factual analogy and

¹ We will use this slot for Civil Procedure in some weeks and for ILS classes in others. Later in the term, we may not use this slot for some weeks. However, do not schedule anything in this slot for any weeks, as our schedule may change.

² The time and day for office hours may shift once I learn about your other class conflicts.

distinction; rule synthesis and application; objective/predictive writing (office memo); case law and statutory research; citation; and professional norms.

Course Objectives and Learning Outcomes

1. Accurately identify, explain and apply Civil Procedure rules,
2. Read and analyze cases and other sources of law by identifying the rule, holding, and determinative facts of cases,
3. Identify the elements of a rule and apply rules to facts,
4. Research and properly cite legal authorities, such as cases, statutes and secondary sources,
5. Write predictive memoranda on legal issues, taking into account the weight and value of different authority, and
6. Build legal writing and grammar skills.

Course Materials

These are required. You must bring them to class every day.

- Stephen C. Yeazell and Joanna C. Schwartz, *Civil Procedure* (10th ed., 2019) (“Yeazell”)
- Stephen C. Yeazell and Joanna C. Schwartz, *Federal Rules of Civil Procedure with Selected Rules and Statutes* (2019)

I encourage you to purchase the abridged version of Black’s Law Dictionary, available at <https://tmsnrt.rs/2vfgSIN>. This book will help you to understand all of your classes.

ILS materials are listed on the ILS syllabus.

Helpful Study Aids (not required)

- Joseph W. Glannon, *Civil Procedure: Examples and Explanations*
- Shreve and Raven-Hansen, *Understanding Civil Procedure*
- Terrill Pollman, Judith Stinson, Elizabeth Stinson, *Legal Writing: Examples and Explanations*
- Terri LeClerq, *Guide to Legal Writing Style*
- Please note that the library also has free access to several West Academic Study aids, including podcasts, at law.ubalt.edu/library. **They are free!**

Course Web Site

This course has a TWEN webpage with links to this syllabus, announcements, class assignments, and other materials. You are responsible for self-enrolling in the TWEN page and for checking it regularly for course information. I might accidentally post answers to the exam. You never know. The TWEN webpage will also be a forum for you to ask questions and for me to post answers.

Course-Work Expectations

You are required to be on time and prepared to participate in class. “On time” means you are in your seat when begins. “Prepared” means you have read the work assigned, briefed the relevant cases, carefully analyzed the rules mentioned in the readings, and looked up any words or terms in the readings that you did not understand. You cannot simply skim the reading to get a general

idea. You need to read and think about every word, because that's what lawyers have to do to be successful.

You are expected to read and understand ALL the Rules of Federal Civil Procedure that are cited in your readings. If the reading talks about Rule 11, for example, look it up in the Federal Rules of Civil Procedure, tab it, and read it carefully. You are also expected to look up any words that you don't know in the readings. If they are legal terms, *Black's Law Dictionary* is a great resource. I will often ask students in class to define words. Yep. It's gonna be like that.

Finally, American Bar Association Accreditation Standards establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately 1 hour of classroom instruction and 2 hours of out-of-class work 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. For our two classes (Civ Pro and ILS), this means that you should expect to spend about 12 hours each week preparing for class by reading, taking notes, and thinking. If you are only spending an hour preparing for each class you're not working enough. Incidentally, if I ask you on the first day of class to raise your hand if you read the syllabus, put both hands on your head instead. Don't tell your classmates about this. It'll be fun.

Computers and the Internet

I encourage you to handwrite your notes. Numerous studies show that for the vast majority of students, laptops are distracting, and they actually make you do worse on exams. Phones are even worse. Here's a recent study, FYI:

https://www.usnews.com/news/education-news/articles/2018-07-27/study-cellphones-laptops-in-the-classroom-lead-to-lower-test-scores?src=usn_fb

Zoom Policies

- a. Authentication Requirement
 - i. You must use an authenticated account to join the Zoom classes for this course. As noted below, I will take attendance through Zoom using authenticated accounts.
- b. Camera
 - i. I strongly encourage you to turn on your camera during class. Seeing your faces helps me to gauge your comprehension.
 - ii. Moreover, as I'm sure you have learned during the lock-down, conversations are better when you can see someone's face.
 - iii. If you have a reason for not using your camera, please let me know.
- c. Raising your hand
 - i. If you want to speak in our class, please use the "Raise Hand" function in Zoom. Please do not simply start talking.
- d. Chat
 - i. I strongly prefer if you ask questions orally using the "Raise Hand" function rather than through a public or private chat.
 - ii. Of course, if you are having microphone issues, you can use Chat to ask questions

- iii. Please do not use Chat to provide commentary on the class. While I love a good joke as much as the next person, such comments are distracting for other students.
- e. Recording
 - i. I will be recording every Zoom class and posting the recordings to Panopto.
 - ii. Faculty are required to record Zoom classes for the purposes of accommodating a disability, for students who cannot attend or so students who wish to review may have access to the full class content.
 - iii. All 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.
 - iv. 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. 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.
- f. Professionalism
 - i. Even though we are meeting via Zoom, I expect you to behave like a professional in class.

Attendance

a. General Considerations

- i. UB has an attendance policy -- <http://law.ubalt.edu/academics/policiesandprocedures/index.cfm>
- ii. The maximum number of absences in Civ Pro I and ILS is **THREE**.
- iii. Absent extraordinary circumstances, if you are absent more than 3 times you may fail this course.

b. The Basic Mechanics of Taking Attendance

- i. Attendance will be taken after each class via Zoom.
- ii. By joining Zoom using an authenticated account, your presence in class will automatically be recorded.
- iii. If you do not use an authenticated account, you will not be counted present.
- iv. Exceptions
 - 1. If you chronically show up late, you may be counted as absent.
 - 2. A student who is present but unprepared for class may be treated as absent.
- v. **NOTE:** Missing class probably will lower your grade even in the absence of a formal rule that reduces your grade. The more engaged you are in any class the more you will learn and the better you will perform.

Attendance

If you miss more than **three classes** in either Civ Pro I or ILS, you will not be able to take the final exam or turn in the final memo, respectively. Even these three “allowed” absence are only to be used when necessary. For example, if you miss four classes but have no excuse for some of those absences, you will not be able to take the final exam or turn in the final memo. In other words, you do not get “cut” days in my classes unless you keep your absences under four. If you miss more than three days and all of those absences are explained by injury, illness, or exigent circumstances, you will be able to take the final or turn in the final memo. I have discretion in determining what counts as an explained absence, but I swear I’m not unreasonable. And if you keep your absences under four in each class, I don’t even need to know why you were absent. Want to sleep in a couple times? Fine. Just keep your absences under 4. But be careful. You may end up needing those absences once we hit cold and flu season.

Pro tip: Missing class almost surely will lower your grade. Conversely, the more engaged you are in any class the more you will learn and the better you will perform. Law is not a spectator sport.

Class Cancellation

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule. *Also, there is no such thing as a “10-minute rule.”*

Law Scholar

Tori Devore is the Law Scholar for this course. She will provide you with a schedule for her sessions. Law Scholar sessions are not graded or required, but you are encouraged to attend them because you will practice the skills you use in class. Tori is here to help you. Be nice to her. Seriously.

Contacting Professor Hubbard

You can also email me at whubbard@ubalt.edu. Note that if you email me from an email account other than your University of Baltimore account, the University’s spam filter may prevent me from getting your email. To be on the safe side, always use your University of Baltimore email account to contact me.

Grades

You will receive one grade for Civil Procedure and one grade for ILS. The Civil Procedure grade will be composed of a midterm exam (20%) (October 3), final exam (80%), and professionalism. The midterm and final examinations will test your knowledge of the subjects covered in this course, as well as your critical thinking, legal analysis, and argument skills.

Your professionalism - or lack thereof - may help or hurt your grade by up to one step (e.g., B+ to A-, or B- to C+).

Course Evaluations

It is a requirement³ 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.

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. For more information on the School of Law Honor Code, go here: https://law.ubalt.edu/academics/policiesandprocedures/honor_code/index.cfm.

Once you lose your reputation for honesty, it is hard to get it back, especially in the legal profession. Know the Honor Code and stick to it.

Title IX Sexual Harassment and Sexual Misconduct 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>.

Disability Policy

If you are a student with a documented disability who requires an accommodation for academic programs, exams, or access to the University's facilities, please contact the Office of Academic Affairs, at ublawacadaff@ubalt.edu or (410) 837-4468.

³ I am required to state that completion of evaluations is a requirement. Giving me a positive evaluation is *not* a requirement.

COURSE TOPICS FOR CIVIL PROCEDURE

The topics for the course are:

- I.** Introduction to Civil Procedure
 - a. Overview of Procedure
 - 1. Stating the Case
 - a. The Lawyer's Responsibility
 - b. The Complaint
 - c. Responses
 - d. Amendment of Pleadings
 - 2. Discovery
 - 3. Pretrial Disposition – Summary Judgment
 - 4. Trial
 - 5. Appeals
- II.** Pleadings
 - a. Functions
 - 1. Story Telling (?)
 - 2. Establishing the Law
 - 3. Sorting Strong Cases from Weak Ones
 - b. Ethical Limitations in Pleading
 - c. Responding to the Complaint
 - 1. Default
 - 2. Pre-Answer Motions
 - 3. Answer
 - 4. Reply
 - 5. Amendments
- III.** Discovery
 - a. Modern Discovery
 - b. Stages of Discovery
 - c. Scope of Discovery
 - d. Experts
 - e. Compliance
- IV.** Resolution without Trial
 - a. Default and Default Judgments
 - b. Dismissal
 - c. Summary Judgment
- V.** The Trial
 - a. Judges and Juries
 - b. Sharing Power with a Jury
 - c. The Final Pretrial Conference and Order
 - d. The Directed Verdict
 - e. The New Trial
 - f. The Limits of Judicial Power
- VI.** Appeal
 - a. Who can Appeal
 - b. When a Decision May Be Reviewed (Finality)

c. Scope of Review

COURSE ASSIGNMENTS FOR CIVIL PROCEDURE

The assignments are subject to change to maximize student learning (and we may not cover every topic). All changes will be emailed to you and posted on the TWEN site in the Syllabus folder.

Week 1

- **Monday, August 24:** Class 1 - Introduction to Civil Procedure
 - Read the Civ Pro and ILS syllabi over carefully.
 - *Yeazell*, p. 1-7 (up to *Hawkins*), 293-300, 332-34 (read text box at the top of the page)
 - As you do the reading, imagine you are a lawyer faced with a potential client. When a potential client walks in the door, (1) what kinds of information do you want to obtain and (2) what kinds of decisions do you need to make?

- **Wednesday, August 26:** Class 2 - Introduction to Civil Procedure: Stating the Case, The Lawyer's Responsibility, and how am I supposed to read in law school?!
 - You are about to read your first judicial opinion and rules. To give you insights into how to read statutes, rules and judicial opinions, start by carefully reading *A Lawyer Writes*, p. 33-59. Many of the same techniques for statutes apply to the Rules of Civil Procedure. **Take your time with this reading. It is probably the most important reading you will do during your first semester of law school.**
 - Now use the approaches laid out in *A Lawyer Writes* to do the reading in the Civil Procedure book.
 - *Yeazell*, p. 13-18. Brief *Bridges v. Diesel* (p. 14). What court are we in? What are the underlying facts that gave rise to this lawsuit? What's the procedural history? What's the question presented that the court must decide? What's the holding? What rule is being applied? What reasoning does the court use to reach the holding? What questions do you have about the case or the relevant rules?
 - Look closely at Rule 11(a), (b) and (c). Diagram Rule 11(b) and 11(b)(1). What obligations do they impose? On whom? Bring a hard copy of your diagram of Rule 11(b) to class. What "red flag" words did you find?

- **Thursday, August 27:** Class 3 - Introduction to Civil Procedure: The Complaint, The Response, Amendment; Factual Development – Discovery
 - *Yeazell*, p. 18-27; 31-37

Week 2

- **Monday, August 31:** Class 4 - Introduction to Civil Procedure: Pretrial Disposition; Trial
 - *Yeazell*, p. 37-47
 - Prepare a written case brief of *Houchens v. Am. Home Ass. Co.*, 927 F.2d 163 (4th Cir. 1991) to turn in at the beginning of class.

- **Wednesday, September 2:** Class 5 - Introduction to Civil Procedure: Appeals; Start Story of Pleading
 - *Yeazell*, p. 50-59. Although we skipped some parts of chapter 1, which will be covered in your Civil Procedure II class next semester, take a look at Assessment Questions 1-4. These are the kinds of multiple-choice questions you will get asked on a midterm or final exam, or the bar exam. See if you understand the questions and how you would answer them.
 - Review the life cycle of the case. Review your notes from the semester so far. What questions do you have?
 - *Yeazell*, p. 361-68 – What differences exist between the 16th Century Complaint and the 20th Century Complaint?
 - What is the *Haddle v. Garrison* complaint about? What factual allegations does it make? What legal claims does it assert?

- **Thursday, September 3:** Class 6 - Introduction to Civil Procedure: Summons and Calendaring Dates
 - Reading TBA

Week 3

- **Monday, September 7:** Class 7 – Pleading: The Story of Pleading
 - *Yeazell*, p. 366-80
 - What courts was this complaint litigated in? What was the question presented in each case? Did the Supreme Court get it right? Why or why not?

- **Wednesday, September 9:** Class 8 - Pleading: Sorting Strong Cases from Weak Ones
 - *Yeazell*, p. 380-97
 - We will be discussing *Conley v. Gibson* (p. 388), *Bell Atlantic v. Twombly* (p. 390), and *Ashcroft v. Iqbal*. This is a line of cases in which the Court interprets Rule 8(a)(2) over time. How does the Court understand what is required under Rule 8(a)(2) in each case? How does this change over time? What are the implications of this change?

- **Thursday, September 10:** Class 9 – Pleading: Sorting Strong Cases from Weak Ones (cont'd); Applying *Twiqbal*
 - Reread *Yeazell*, p. 385-97
 - What questions do you have about *Twiqbal*? What are the take-aways you want to remember about *Twiqbal*?
 - TWEN: Read *Simms v. Hao* Complaint
 - You represent Hao. Using *Twiqbal*, how would you argue that the complaint should be dismissed?
 - If you represented Ms. Simms, how would you argue her complaint should withstand a motion to dismiss?

Week 4

- **Monday, September 14:** Class 10 - Pleading: Special Cases: Requiring and Forbidding Specificity in Pleading; Allocating the Elements of a Claim
 - *Yeazell*, p. 397-410
 - Does it make sense to have different pleading standards for different claims?
 - In *Jones v. Bock*, why does it matter who bears the burden of pleading exhaustion?

- **Wednesday, September 16:** Class 11 - Ethical Limitations in Pleading I
 - *Yeazell*, p. 409-21
 - Closely read Rule 11(b) again (we did this way back on the second day of class), 11(c)(1) and 11(c)(2).
 - (1) decide how many rules there are,
 - (2) analyze each rule to determine what it means,
 - (3) break down the rule into its parts,
 - (4) look at each of the parts separately to figure out what it does, and
 - (5) rewrite the rule in a way that helps you use it.

Week 5

- **Monday, September 21:** Class 12 - Responding to the Complaint: Default, Pre-Answer Motion, Answer
 - *Yeazell*, p. 421-433
 - Rule 12 is the source of much litigation and is extremely important. Take the time to break it down carefully.

- **Wednesday, September 23:** Class 13 - Responding to the Complaint: Answer, Reply, Amendments
 - *Yeazell*, p. 433-453

Week 6

- **Monday, September 28:** Class 14 - Discovery: Modern Discovery – Discovery before Discovery and Crafting a Discovery Plan; Tools of Discovery (Required Disclosures, Requests for Production, Interrogatories and Requests for Admissions)
 - *Yeazell*, p. 455-470, p. 476
 - How would you define “discovery”? What obligations do individuals have before litigation takes place? What disclosures are mandatory once litigation commences? What are the various tools available to litigants in conducting discovery?
 - Do the problems in the book to practice how to apply the various rules.

- **Wednesday, September 30:** Class 15 - Tools of Discovery cont’d (Depositions, Physical and Mental Evaluations, Pretrial Witness Lists and Pretrial Order); Scope of Discovery – Relevance; Proportionality, Burden and Privacy I
 - *Yeazell*, p. 471-85

Week 7

- **Monday, October 5:** No class – study for the midterm
- **Wednesday, October 7:** Class 16 - **MIDTERM (Good luck!)**

Week 8

- **Monday, October 12:** Class 17 - Discovery: Scope of Discovery – Proportionality, Burden and Privacy; Privilege, Trial Preparation Material
 - *Yeazell*, p. 485-501

- **Wednesday, October 14:** Class 18 - Discovery: Trial Preparation cont'd; Experts
 - *Yeazell*, Review *Hickman v. Taylor*, p. 501-507

Week 9

- **Monday, October 19:** Class 19 - Discovery: Ensuring Compliance and Controlling Abuse of Discovery
 - *Yeazell*, p. 507-22

- **Wednesday, October 21:** Class 20 - Resolution Without Trial: Default and Dismissal
 - *Yeazell*, p. 523-32

Week 10

- **Monday, October 26:** Class 21 - Resolution Without Trial: Summary Judgment
 - *Yeazell*, p. 569-79

- **Wednesday, October 28:** Class 22 - Resolution Without Trial: Summary Judgment
 - *Yeazell*, p. 579-91

Week 11

No classes – focus on working on your open memos.

Week 12

- **Monday, November 9:** Class 23 - The Trier and the Trial: Judges, Juries, Final Pretrial Conference and Order
 - *Yeazell*, p. 593-97 (Judges)
 - *Yeazell*, p. 606-618 (When may a jury decide? Choosing and Challenging Jurors)
 - *Yeazell*, p. 619-23 (Final Pretrial Conference and Order)
 - TWEN: Rule 106: Local Rules, Federal District Court, Maryland, p. 20-24
 - Sample of Final Pretrial Order:
https://www.fjc.gov/sites/default/files/2012/CivLit2D_Form36.pdf
 - This seems like an especially long reading, but it's not. There's a lot of basic background information here about how judges and juries are selected and challenged. We are going to focus our class discussion on when the right to a jury trial exists and on final pretrial conferences and orders, but you are also responsible for knowing how judges and juries are selected and challenged.

- **Monday, November 9:** Class 24 - Judges guiding Juries; Judges Controlling Juries: The Directed Verdict
 - *Yeazell*, p. 623-642

Week 13

- **Monday, November 16:** Class 25 - The Trial: New Trial and The Limits of Judicial Power (Reexamination Clause and Jury as a Black Box)
 - *Yeazell*, p. 642-59

- **Wednesday, November 18:** Class 26 - Appeal - Who can Appeal?
 - *Yeazell*, p. 661-73

Week 14

- **Monday, November 23:** Class 27 - Appeal – When a decision may be reviewed: “Finality”
 - *Yeazell*, p. 672-81, 688-91
 - Civil Judgment Form: <http://www.uscourts.gov/sites/default/files/ao450.pdf> . This is what a judgment is supposed to look like.
 - Federal rules of Appellate Procedure; look at Rules 3 and 4, and Form 1 (Notice of Appeal). Focus on 3(a)(1) and 4(a)(1). At <http://www.uscourts.gov/sites/default/files/Rules%20of%20Appellate%20Procedure>

- **Wednesday, November 25:** Class 28 - Scope of Review; Review Questions
 - *Yeazell*, p. 691-702