

CIVIL PROCEDURE I (LAW 600-339C)

**Professor Kimberly Wehle
Fall 2020**

Welcome! This course is the first of two required courses in Civil Procedure. This semester 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. 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 Mondays and Wednesdays from 3-4:15 p.m. via Zoom. In light of the challenges of conducting class entirely on Zoom, students will be responsible for viewing videos and doing online quizzes in advance of class as part of the scheduled classtime. Accordingly, **our Zoom classtime will generally be limited to 3-3:45 p.m.** If we need to go over on any particular day, we will—so please be available for the full period but understand that the class will

generally end 30 minutes earlier than scheduled because part of the classroom work will be done individually online.

Attendance is mandatory. 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.

The Law Scholar, Miranda Walker, miranda.walker@ubalt.edu, will hold optional weekly Zoom sessions. The time is TBA. A separate syllabus will be posted for the Law Scholar sessions. Miranda'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. Miranda is 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. **ASSIGNED READING**

The assigned texts for Civil Procedure are:

1. Rowe, Sherry and Tidmarsh, Civil Procedure (Thomson West 5th ed. 2020) (“Casebook”).
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 Westlaw's TWEN site. You must enroll in TWEN for this course.

D. 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.

E. ATTENDANCE

Class attendance by being present during Zoom sessions 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.

Sign-in will be recorded on Zoom. You are strongly encouraged to keep your video on during the entire class session.

Students who choose to turn off their cameras who are called on or otherwise asked to engage in class work and are in fact not present may be subject to discipline under the Honor Code for misrepresenting attendance.

All classes will be recorded.

F. 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 (please raise your hand using the Zoom feature during class). 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 or in the Zoom chat) and, if appropriate, I will not call on you that day. This policy should be used only in rare circumstances.

G. 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. **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.

Miranda 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.

H. 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.

I. 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).

As noted above, the Law Scholar for this class is Miranda Walker (miranda.walker@ubalt.edu). 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.

J. DISABILITY POLICY

If you are a student with a documented disability who requires an academic accommodation, please contact Karyn Schulz, Director, Center of Educational Access, Office of Disability and Access Services, at 410-837-4141 or kschulz@ubalt.edu.

K. 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

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

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

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

PracticePerfect Quiz: Motions under Rule 12

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

Policing Materials Submitted to the Court: Rule 11

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].

Timing and Scheduling: The Pretrial Conference

October 7: **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.

Catch-up and Mid-term Review

October 12: Prepare Sample Mid-term Exam [posted on TWEN].

Mid-term exam

October 14: Mid-term examination. The mid-term examination will cover material through Rule 11. **It will consist of 5 multiple choice and one short essay question.** You will have exactly 60 minutes to complete the examination.

Discovery

October 19: **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 21: **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 26: **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 28: **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

November 2: **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 4: **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 9: **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

Judge and Jury

November 11: **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 16: **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 18: **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 23: **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 25: **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

November 30: Prepare Course Framework Assignment [posted on TWEN].

December 2: Exam Q&A/Review

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