

CIVIL PROCEDURE I-- Course Information Memo

Professor Murphy Fall 2022

Office 268D (in the law practice center)

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“It is not without significance that most of the provisions of the Bill of Rights are procedural. It is procedure that spells much of the difference between rule by law and rule by whim or caprice.”
Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 179 (1951) (Douglas, J. concurring).

“Preparation & Precision”

COURSE MATERIALS

Required

- Freer & Perdue, *Civil Procedure: Cases, Materials, and Problems* (8th ed. 2020) (Carolina Academic Press, ISBN 978-1531014087) (obtain the hardcover, not the electronic, version)
- **2021-2022 Edition of the Federal Rules of Civil Procedure** (Carolina Academic Press, ISBN 978-1531022808). This edition is necessary because it contains statutes and constitutional provisions that we will be consulting, in addition to the Federal Rules of Civil Procedure, and I frequently will be referring to a specific page in the book.
- Course Materials Supplement (I will provide in hardcopy and also post under "Resources" in our Bridges course site).

Other Materials to Consider

- 3-ring binder for Course Materials Supplement and occasional materials that I will distribute during the semester (I suggest keeping this binder separate from the binder/notebook in which you take your pre-class preparation notes and your class notes).
- The required course materials and in-class discussions are all you should need to learn the course concepts. Students who wish to consult a supplemental resource might consider the items below. (I do not recommend Civil Procedure study aids authored by someone other than a Civil Procedure professor.)
 - If you wish to supplement your assigned course reading with a student-oriented treatise, you might consider Freer, *Introduction to Civil Procedure*. It follows the structure of the casebook we will be using in class. (On reserve in the library.)
 - If you would like to work through hypotheticals and explanations, you might consider:
 - Joseph W. Glannon, *The Glannon Guide to Civil Procedure: Learning Civil Procedure Through Multiple-Choice Questions and Analysis* (This is available as a free e-book through the law library.)

- Joseph W. Glannon, *Civil Procedure: Examples & Explanations* (On reserve in the library)
- CALI (Computer Assisted Legal Instruction) instructional units, with a Q&A format, are available for free. Register at www.cali.org and use the school code: ROGERWstu175
- The “Zero L” modules for refresher "big picture" lectures and other resources, particularly the following modules:

Introduction to Law and the Court Systems

- Kinds of Law: Some Major Categories and Sources of Law—Video 2
- Federal v. State Law and Order of Authorities (Videos 1 & 2)
- The Federal Court System—Videos 1 & 2
- The State Court Systems

A Preview of Your 1L Courses: The Stages of Civil Litigation

CLASS PARTICIPATION & ATTENDANCE

To further growth as a learner of Civil Procedure, independent effort towards learning is essential.

- Students may not refer to course materials or recordings that I distributed to prior Civil Procedure students. This prohibition includes, but is not limited to: PowerPoint slides, grading rubrics or sample answers, and recordings of live classes.
- Students may not refer to any transcriptions or summaries created by prior students of live classes or recordings.

Students are expected to be fully prepared for every class session.

- I do not have a “pass” policy in this course.
- Any unprepared student whom I call upon during class should respect the other participants in class by admitting the lack of preparation rather than trying to disguise it; attempting to disguise lack of preparation wastes class time, which in turn wastes the time and money other students are investing in the class.

Listen attentively and proactively.

- I typically pose a question to the entire class and then call on a student only after I have posed the question; **you should not ask me to repeat the question.**¹

¹ If you did not hear or understand the entire question, do your best to rephrase what you did hear or understand. My reason for this rule is that in professional settings, you'll need to be able to "finesse" a response if you are caught off guard by a question that you did not hear. For example, you should avoid saying to a client, a senior supervising attorney, or a judge that you didn't hear the question. Instead, perhaps say something like, "your general concern seems

- All students should proactively think about or jot down their own response to the question even if not called upon.
- Do not "tune out" when another student is asking a question and I am responding; these colloquies usually are very helpful in furthering class understanding of the material.

No Use of Electronic Devices in Classroom

- **A student may not, during class, use any electronic device (laptop, cell phone, smart phone, electronic recording device, tablet, e-reader, etc.).** This rule is grounded in several empirical studies and discussed in a separate distributed document entitled "Prohibition on Electronic Devices in Classroom." **However, if you are entitled to an accommodation to use an electronic device to take notes and would like to use an electronic device in this course,** please contact me immediately, informing me that you intend to seek an accommodation from Dean of Students Lorraine Lalli, and then please follow up with her to obtain the accommodation (llalli@rwu.edu).
- If I believe that it is more likely than not that a student used an electronic device during class, I may count that student as absent for the class.
- I suggest that you not even *bring* your smartphone to the classroom, based on research suggesting the mere presence of a smartphone in a room impairs cognition.²

Audio Recordings of Class

I will endeavor to make audio recordings of each class available within a day of the class; these recordings will be available until the end of the semester. No other recording of class is allowed.

- If you miss a class, be sure to listen to the audio recording of the missed class before you prepare for, and attend, the next class.
- If you had difficulty following a particular point during class, I suggest that you note the time of the confusion; after class, you can simply fast-forward to the relevant portion of the audio recording.
- Students may not in any manner distribute or share class recordings or any portion of class recordings.

to be _____" or "your basic question seems to be on _____." Then the questioner likely will jump in with further detail and you'll then be able to give a more targeted response. I'd rather that students get practice with this in the classroom setting than be caught off guard when the stakes are much higher in the professional setting.

2 Having Your Smartphone Nearby Takes a Toll on Your Thinking, HARVARD BUSINESS REVIEW (March 20, 2018) ("Our research suggests that . . . the mere presence of our smartphones is like the sound of our names — they are constantly calling to us, exerting a gravitational pull on our attention. . . . Attempts to block or resist this pull takes a toll by impairing our cognitive abilities. In a poignant twist, then, this means that when we are *successful* at resisting the urge to attend to our smartphones, we may actually be undermining our own cognitive performance. . . . With these findings in mind, students, employees, and CEOs alike may wish to maximize their productivity by defining windows of time during which they plan to be separated from their phones, allowing them to accomplish tasks requiring deeper thought. . . .").

- Listening to an audio recording cannot effectively substitute for in-class attendance. Among other things, the sound quality is not nearly as good as being present in class, and it often may be hard to understand what is being said on the recording. In addition, student comments typically are not picked up by the audio recording device.

Attendance

- Please consult Article VI, Sections 601-602, for the details of the law school mandatory attendance policy. Students should attend every class unless they have a professionally acceptable reason for not doing so.
- Each student is responsible for signing, with their first and last name, the blue attendance sheet circulated during class. Failure to do so results in the student recorded as absent.
- No need to inform me of an upcoming absence.
- Every six classes or so, my TA will update absences on the Attendance tool in Bridges; please check that tool for the number of your absences, bearing in mind that the records will typically lag by several classes.

No distribution of my Civil Procedure materials

Students are prohibited from distributing any materials associated with this course with anyone outside the roster of students who were in our section this academic year. This prohibition on distribution includes, but is not limited to: grading rubrics, sample answers, diagrams, charts, supplemental materials, quiz questions, and audio recordings or transcripts of those recordings. Violating this rule would undermine my pedagogical efforts with future students.

MEETINGS WITH STUDENTS

I encourage students to meet with me outside class to discuss any questions about the course. (I believe discussing your questions face to face will be more effective in advancing your learning than corresponding about your questions.) I am happy to meet either with a student individually or with a small group of students.

Two options for meetings:

- In person during office hours: While in my office, students must wear an N95, KF94, or KN95 mask.
- Via Zoom--please email me and we will schedule a time to meet via Zoom during office hours.

PREPARATION FOR CLASS SESSIONS, NOTE-TAKING DURING CLASS, DISTILLING MATERIAL

1. The Basic Structure for Legal Analysis in Civil Procedure

- Identify the relevant legal authority (such as a Federal Rule of Civil Procedure, statute, constitutional provision or case law)
- Isolate the relevant language/test within the legal authority
- Engage the facts by applying the relevant language/test

2. Studying a Rule or Statute

Preparing for Civil Procedure I is in some respects quite different from preparing for Contracts, Torts, or Criminal Law in that Civil Procedure I is heavily populated with complex statutes and rules.

- Study carefully the assigned rule or statute.
- Consider outlining or diagramming the rule/statute to aid in your comprehension.
- Highlight any difficult concepts and try to figure them out on your own.
- Note any questions that you have from reading the rule/statute. (Noting questions you have in advance of class will help you monitor whether you are anticipating the issues that will be the focus of class discussion).
- Look up any words you do not understand in a law dictionary.

3. Studying a Civil Procedure Case

- Read (or reread) the case carefully.
- Prepare a written brief with:
 1. the procedural posture of the case--
 - who sued whom (not necessarily indicated by the case name!)
 - for what (cause(s) of action and remedies)
 - in which court (federal or state? trial or appellate court?)
 2. the legal issue(s)
 3. how the court resolved the legal issue(s)
 4. the reasoning the court used to resolve the legal issue(s).
- Highlight any difficult concepts and try to figure them out on your own.
- Note any questions that you have from reading the case. (Noting questions you have in advance of class will help you monitor whether you are anticipating the issues that will be the focus of class discussion.)
- Look up any words you do not understand in a law dictionary.

4. Study carefully the casebook notes before and after the cases, as well as any supplemental readings assigned

5. Preparing Casebook and Supplemental Problems

To prepare casebook or supplemental problems properly, you should:

- type or write the answer in your notes (not just a notation in your casebook or supplemental materials)
- explain in writing how you arrived at your answer, including the legal authority that justifies your answer *with the precise language of the legal authority that is applicable*
- If your answer to an assigned problem is based on a rule or statute:
 - cite the precise provision of the rule or statute
 - write within quotation marks the exact language from the rule or statute that is directly applicable to the assigned problem. (You may need to use ellipses to do this properly, omitting language that does not apply to the assigned problem.)

I expect a high standard of answering problems that you have had an opportunity to prepare in advance (e.g., written questions in the casebook or Course Materials Supplement, questions I have announced at the end of a class session, and Master Challenge assignments).

6. How to take notes during class

The wise words—over 80 years ago--of a renowned law professor about notetaking have since been substantiated by extensive scientific research:

Notetaking is well nigh essential. . . . You need it, if you would consolidate. But note-taking, like briefing, is a treacherous tool. Notes that have any value are not *copied* down. . . . Notes that have value are not what is said, they are a selection, a working over, a working up, of what is said—a preservation of the queries opened by the instructor, a preservation of the independent queries which occur to you. It is much harder, it is much slower to take notes this way. It is much harder: reacting, rephrasing, you must *think* to take a note. Selecting in the light of the discussion the essential from the surrounding whirl of words, you have to give attention, to be using the stuff between your ears, throughout the whole discussion. Karl N. Llewellyn, *The Bramble Bush: On Our Law and Its Study* (1930).

Thus, don't attempt to write down everything that transpires in the classroom; listen and think about what is being said and take notes selectively. (I will endeavor to audio-record every class session and make the recordings available to students. If you have a point of confusion in your notes, you can always go back and listen to the relevant portion of the audio-recording of the class session.)

7. Integrating Pre-Class Preparation Notes with In-Class Notes & Preparing “Birds-Eye” Takeaways

As soon as possible after each class, I suggest that you type and organize your in-class notes, integrating them with your pre-class preparation notes. (This technique is well-grounded in learning science, for a variety of reasons.) As you type and organize your in-class notes, identify in writing several “birds-eye” takeaways from the class. These “birds-eye” takeaways should be the most general-level legal principles that you learned from the previous class session. By discerning the general-level legal principles, you can more easily organize your understanding of the details. I will often begin a class session by calling on students to articulate their “birds-eye” takeaways.

COURSE ASSESSMENTS

1. Formative Assessments

- At various points during the course, I will assign problems, exercises, and quizzes that are intended to help students improve their comprehension, application, analysis, or synthesis of specific procedural issues or improve their performance of particular skills. These “formative assessments” are individually “low-stakes,” because they are intended to help you learn through your mistakes and to highlight areas in which you might need to adjust your learning strategies. However, performance on these individualized formative assessments may affect your final course grade one grade increment as discussed below in the section titled “Components of Final Course Grade.”

Individualized feedback

- On written assignments that you are required to submit, my TA will complete an individualized grading rubric for you. Also, after you submit your assignments, I will typically discuss the assignments in class and occasionally provide the class with my sample document or sample written answer.
- I intend to give at least one, possibly two, multiple-choice quizzes during the Friday “Assessments” time slots, and, during the Friday “Enrichments” time slots, I will discuss with the class some of the questions on the quizzes.
- I may assign some quizzes on Bridges that you may take multiple times to improve your understanding and your score(s).

Group feedback

- In class, we will discuss pre-assigned casebook and supplemental problems for which you were to prepare (but not submit) written answers.

2. Components of Final Course Grade

- Final exam grade

AND

- Possible adjustment of the final exam grade based on performance on formative assessments (quizzes and written submissions).
 - I have the discretion to adjust the final exam grade by one grade increment up or down (e.g., from a C+ up to a B- or from a B- down to a C+.) based on the student's performance on formative assessments. Factors that may influence the exercise of my discretion include, but are not limited to, how close the student's exam raw score was to the next higher/lower final exam grade or the degree to which the formative assessment scores were or were not consistent with the final exam grade.³
- I will *not* adjust a grade based on class participation except in a rare circumstance.

Final Exam will be three hours and closed book, except that:

- Students will be provided a copy of any Federal Rules of Civil Procedure, statutes, or constitutional provisions that I assigned during the semester.
- Students may bring a 3-page checklist to the exam, with parameters to be announced later in the semester.

LEARNING OUTCOMES FOR THIS COURSE

By the end of this year-long course, students should be able to:

1. Doctrinal & Substantive Knowledge

- a. Define and explain the rule of law, the role of legal institutions in the creation and application of processes governing the resolution of civil disputes, and the structure of the legal system in the United States.
- b. Identify, explain, and apply constitutional provisions, statutes, rules of civil procedure, and case law affecting the processes of civil litigation.
- c. Prepare themselves to succeed on the civil procedure portions of licensing exams required to practice law.

2. Legal Analysis Skills

- a. Analyze and form sound judgments on a range of issues pertaining to civil procedure.
- b. Draw and synthesize governing legal principles pertaining to civil procedure from a variety of sources, including from constitutional provisions, statutes, rules of civil procedure, and case law.
- c. Identify the civil procedure issues inherent in actual cases or hypothetical problems.

³ An example of the latter factor causing an upward adjustment from the final exam grade would be a situation in which the student had very strong performance on in-class quizzes and written submissions, but the student's final exam grade was substantially lower than one would have expected based on performance on the formative assessments. An example of the latter factor causing a downward adjustment from the final exam grade would be a situation in which the student did not timely complete one or more formative assessments or did not appear to have made a good faith effort on one or more formative assessments.

- d. Identify the legal rules and facts necessary to competently analyze a civil procedure issue inherent in an actual case or hypothetical problem.
- e. Assess the strengths and weaknesses of potential legal arguments and counter-arguments on civil procedure issues.
- f. Differentiate the types and relevance of legal authorities bearing on civil procedure issues, including constitutional provisions, statutes, rules of civil procedure, and case law.

3. Writing Skills

- a. Draft a simple Complaint, Answer, and Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted.
- b. Articulate in writing cohesive and logical legal analyses pertaining to civil procedure issues.

OTHER SKILLS OR VALUES TO DEVELOP IN THIS COURSE

1. Professionalism

- a. Prepare thoroughly
- b. Develop skills of self-directed learning, reflection, and self-assessment
 - E.g., I will sometimes ask you to fill-in a rubric for yourself on a written assignment that you have submitted. You should then compare your completed rubric to the rubric that the course TA completed for you and reflect on how well you self-assessed your performance.
- c. Act with complete integrity and civility throughout this course and your entire law school experience so that you will have a solid foundation of integrity and civility upon your entry into the practice of law.

2. Oral Communication and Interpersonal Skills

- a. Communicate precisely
 - You might be asked in class to rephrase your question, comment, or response to be more precise with your language.
- b. Listen attentively and proactively
- c. Interact effectively and sensitively with a broad range of people with differing backgrounds, ideas, and expressions and collaborate effectively with colleagues.
 - Review “Classroom Environment” section above.
 - I will sometimes ask you to break into small groups during class to work on a question that I have posed; use this as an opportunity to develop the skills of interacting effectively and sensitively with others and collaborating effectively with your colleagues.
- d. Develop public speaking skills
 - Law school classes may be the first context in which you have been required to speak in front of a large group of people. It is a relatively safe space in which to develop your public

speaking skills, because an actual client is not depending on your performance and because your classmates are at the same level of instruction as you.

- If you are very nervous about being called upon in class, I suggest that you become accustomed to speaking in class by volunteering an answer or by asking a question. If called upon in class, perhaps pause to take a deep breath while thinking: “I’ve worked hard on this. I’m prepared.” You might also consider seeking support and strategies from the campus Counseling Center.

GENERAL ADVICE FOR LAW SCHOOL SUCCESS

*You may find helpful the following excerpt from Nancy Levit & Douglas O. Linder, *The Happy Lawyer—Making a Good Life in the Law* (2010) (chapter on “Defining Success for Yourself in Law School: Keeping Your Own Compass”)*

[T]here are a few keys to future career happiness that you can learn in law school. Surprisingly, they have little to do with pure academic successes. A recent study of more than 6,000 law students at fifty law schools showed that high LSAT scores are “slightly negatively related to life satisfaction.” The researchers concluded that “one’s ability level, as assessed by standardized admissions tests, does not predict life satisfaction; rather, rewards gained through hard work and engagement with the material predicts life satisfaction.” In short, highly engaged law students are more likely to become happier lawyers.

Those keys to life satisfaction have everything to do with learning to let internal motivations guide you. Students who define success in terms of their own values are better at avoiding the distress-depression-substance abuse triad. The individual values can include personal qualities that are important to you, such as integrity, responsibility, or openness to collaboration. Or they can shape intrinsically satisfying goals, such as representing clients effectively, telling a client’s story, championing civil rights, or serving the public.

Having intrinsic focus does more than enhance self-esteem, build competence, and help avoid the competitive nature of a law school’s system of extrinsic rewards. Research in learning theory shows that when students study toward the goal of mastering a topic and concentrate “on acquiring the skills or knowledge that are the subject of study,” they actually perform better academically than those students who set performance goals that focus “on grades or other performances relative to . . . fellow students.” In other words, if you are studying Property “hard” and agonizing over whether you are studying “hard enough to get a B,” you are likely to perform less well than if you study with the goal of being able to explain various rules about covenants that run with the land to a future client. If you learn to focus on your own objectives and consider what fulfills you personally, you will be more likely to pursue individually satisfying—rather than socially-prescribed—career directions.

Another key to success in law school that lays the foundation for future career satisfaction is to make friends. Your fellow students will be your professional peers for the rest of your career. Reach out, even if it makes you uncomfortable at first. Remoteness and lack of sociability are not characteristics of either happy law students or happy lawyers. Studies show that those lawyers who have more close friends and a greater amount of social interaction are more likely to be successful (according to ratings of external evaluators) than lawyers who report they are isolated.