

CIVIL PROCEDURE I-- Course Information Memo

Professor Murphy – Fall 2019

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Office Hours: Tuesdays & Thursdays 1:00-2:30

“Preparation & Precision”

COURSE MATERIALS

Required

- Freer & Perdue, *Civil Procedure: Cases, Materials, and Problems* (7th ed. 2016) (Carolina Academic Press) (ISBN 978-1-61163-911-7)
- *2019-2020 Edition of the Federal Rules of Civil Procedure* (Carolina Academic Press) (ISBN 978-1-5310-1551-0).
- Course Materials Supplement (provided in hardcopy during orientation and also posted under "Resources" on our course site on Bridges).

Other Materials You Might Consider

- 3-hole binder for your Course Materials Supplement and occasional materials that I will distribute during the semester.
- The required course materials and in-class discussions are all you should need to learn the course concepts. Students who want to consult a supplemental resource might consider the books below. (Make sure you use the most recent edition of the book.) Study aids are on reserve in the library.
 - If you wish to supplement your 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.
 - If you would like to work through hypotheticals and explanations, you might consider Joseph W. Glannon, *Civil Procedure: Examples & Explanations*.

CLASS PREPARATION

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.

With respect to the care needed in studying a rule or statute, you might find of interest this statement from a former student, who was interning with a state court judge the summer after her first year of law school: *“I think I lost count as to how many summary judgment motions I have written memos for or how many motions to compel discovery or strike the answer I have checked to make sure they are complying with the New Jersey Court Rules of Civil Procedure. Thank you so much for making sure that we paid attention to every word in the rules because it really does make a big difference!”*

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. 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 each class session by calling on students to articulate their “birds-eye” takeaways.

7. Preparing Individual Checklists on Particular Topics

- As we finish a particular topic in the course, I suggest that you create a distilled checklist of questions that a lawyer would have to ask and answer if the client’s case implicated that topic. I suggest that your checklist be in a simple question format. Keep your individual checklists of questions handy during class to help you stay on track.
- A resource that might be helpful to you in double-checking your checklist is A. Benjamin Spencer, *Acing Civil Procedure*. The book has sections in a checklist format. Important caveat in consulting the Spencer book: You should create your own checklist based on our course; Professor Spencer’s checklists sometimes are over- or under- inclusive of the analysis and synthesis that we will pursue in our course.

- Before responding to a Master Challenge assignment, I advise that you create a checklist on the topic being assessed in that particular assignment and use that checklist to guide your response.
- I recommend that you revise your checklists (and your notes) immediately after you receive feedback on written assignments, including any samples that I post
- The individual checklists of questions that you create can serve as the basis of a single checklist that you may bring to the exam, as detailed later in this memo.

8. Written Submissions

- Format for submitting written assignments
Master Challenge assignments and any other written assignments required to be submitted to me must:
 - be submitted at the beginning of class in hard copy
 - be typed
 - be stapled in the upper left corner
 - include the student's semester 3-digit number provided by Student Finance & Records in the **top right corner**. (This number is different than the anonymous 4-digit numbers students will use for the final exam.)

- Scoring of submissions
My teaching assistant initially will review written submissions; the teaching assistant will not have access to the student's identity when reviewing a submission. If warranted, staff members of the Academic Success Program or I will be able to access student names. In reviewing written submissions, the teaching assistant will tentatively assign a score of a 1, 2, or 3. These numbers represent the following:
 - 1: Pervasive confusion on assignment as indicated in the rubric or not a good faith effort
 - 2: Good faith effort but progress needed on several issues as indicated in the rubric
 - 3: Good comprehension of assignment; progress may be needed on a few issues as indicated in the rubric

The great majority of students in the class will receive a "2." I will read submissions to which my TA has tentatively assigned a "1" or a "3" and will make the final judgment on the score.

- Writing Composition & Mechanics

Words are the lawyer's stock in trade. It is essential that a lawyer have strong skills in writing composition and mechanics when dealing with judges, clients, and other lawyers. For example, the U.S. Court of Appeals for the Seventh Circuit (one rung below the Supreme

Court) was so disturbed by a lawyer's ineptitude in writing that it ordered the lawyer to explain why he should not be barred from practicing before the court!*

All written submissions to me should comply with high standards of writing composition and mechanics. I may subtract points for writing that is below par. Feel free to consult with our Writing Specialist, Dr. Justin Kishbaugh, on your draft of a written assignment before you submit the final version to me. He can be contacted at jkishbaugh@rwu.edu.

CLASS PARTICIPATION & ATTENDANCE

1. "Passes" are not permitted during class.

2. Attendance Policy

I follow the school-wide mandatory attendance policy, which is described in detail in sections 601-603 of the Student Handbook, posted on the law school website.

- Six absences place you in violation of the policy.
- Each student must sign the attendance sheet during the applicable class; otherwise, the student will be recorded as absent.
- Each student is responsible for keeping track of the dates of any absences in the course; please do not ask me to inform you of the number of your absences.

3. Audio Recording of Classes

I will endeavor to make audio recordings of each class available immediately after the class. No other recording of class is allowed. To access the recordings, click on the "Video Capture (Panopto)" link on the course website and then click "launch."

- If you miss a class, be sure to listen to the audio recording of the class before you 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.

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.

* Stanard v. Nygren, 658 F.3d 792 (7th Cir. 2011).

4. No Use of Electronic Devices in Classroom

A student may not, during class, use any electronic device (laptop, cell phone, smart phone, pager, electronic recording device, tablet, e-reader, etc.). My reasons for this rule are based on the research reported in Murphy, Ryan, & Warnapala, *Note-Taking Mode and Academic Performance in Two Law School Courses* (posted on SSRN and forthcoming in the *Journal of Legal Education*.)

If I believe that it is more likely than not that a student used an electronic device during class, that student may be counted as absent for the class.

If you are entitled to an accommodation to use a laptop and would like to use a laptop in class, please contact me, 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)

I suggest that you not even *bring* your smartphone to the classroom, based on recent research suggesting the mere presence of a smartphone in a room impairs cognition.²

COURSE ASSESSMENTS

1. Formative Assessments

At various points during the course, I will assign problems or exercises that are intended to help students improve their comprehension, application, analysis, or synthesis of specific procedural issues or improve their performance of particular skills.

Individualized feedback

- On written assignments that you 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 two multiple-choice quizzes on which you will receive a score. I will also discuss with the class some of the questions on the quizzes.

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. . . .”).

- The written submissions and quizzes are intended principally to help you to develop your understanding of Civil Procedure concepts and your ability to apply those concepts to new factual situations. 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.”

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. Summative Assessments

Components of Final Course Grade

- Final exam grade

AND

- "Initial course grade"—for a particular student, this may simply be the final exam grade or it may be an anonymous adjustment of the final exam grade based on performance on the multiple-choice quizzes and the written assignments submitted to me.
 - Performance on the quizzes and written submissions may make a difference in the student's initial course 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+.)

AND

- Possible adjustment of “initial course grade” based on class participation and attendance by one grade increment up or down.
 - If a student participated in class discussions at a high level and had a good attendance record, I might adjust the initial course grade up by one grade increment.
 - Conversely, if a student was inattentive or unprepared in class, I may adjust the initial course grade by one increment down. Examples of inattention or lack of preparation include: not having a written answer to an assigned problem or Master Challenge assignment or being unable to explain during class the student’s written answer to a preassigned problem.

Final Exam

- At the final exam, students will be provided a copy of the Federal Rules of Civil Procedure.
- Students may bring only the following to the exam:
 - A typed checklist, created by the student, which contains questions that should be asked and answered on various Civil Procedure topics. (See earlier discussion of checklists in this memo.)
 - maximum 3 single-spaced, one-sided pages in length; Times New Roman 12-point font, with line spacing at 1.0 and one-inch margins all around. The bottom of each page must include the page numbering format “Page 1 of ____”
 - students must submit their checklists with their exams, but I will not grade the checklists
- Typed answers on the exam are preferred.

Advice on Using the Checklist During the Final Exam

Keep the checklist of questions beside you during the exam, and, as you write your exam answers, make sure you have raised any relevant questions from your checklist and answered those checklist questions with reference to the relevant facts. The checklist will help force you to be methodical and thorough in answering the exam questions. With your exam answers guided by the checklist, you are less likely to miss important issues.

PROFESSIONALISM

1. To further your growth as a learner of Civil Procedure:

- You may not refer during the semester to a prior student's notes/outlines/assignments or to class materials that I previously distributed to prior students.
- You may not listen to prior audio recordings of this course or read summaries thereof.

2. "Court rules" apply in class

- To avoid distracting your fellow students:
 - Arrive on time. If for an unavoidable reason you are late to class, please sit in the empty seat designated in the classroom.
 - Do not leave the classroom while class is in session.
 - No eating or gum chewing during class.
- Please do not wear a hat unless you have a religious obligation to do so. (To gauge students' comprehension during class discussion, I need to see clearly the faces of all my students.)

3. Seek help when needed

- Please inform Dean of Students Lorraine Lalli and me if you are unprepared or unable to keep up with work, either because of illness, family emergency, or other difficult circumstance.
- Support services for both personal and spiritual concerns are available to you on campus. All services are confidential and involve no cost. The Counseling Center and the Office of Spiritual Life are located on separate floors in the Center for Student Development building. Additionally, the Counseling Center can arrange to meet with students in a private location in the School of Law building.

4. Communication with me outside class

- Feel free to drop by during my office hours, either individually or in a small group, to discuss any aspect of the course or anything else on your mind.
- Before asking me an administrative question about the course or assignments, please try first to find the answer in this memo.
- I will endeavor to respond to any student emails within two business days.

5. No distribution of my Civil Procedure materials

My Civil Procedure 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, and Panopto audio recordings or transcripts of those recordings. Any violation of my rule on non-distribution of Civil Procedure materials constitutes a violation of the Honor Code and would undermine my pedagogical efforts with future students.

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.
- 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 assessments and arguments pertaining to civil procedure issues, applying legal analysis to those 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
 - 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.**³
 - 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.
- c. Interact effectively and sensitively with a broad range of people with differing backgrounds, ideas, and expressions and collaborate effectively with colleagues.
 - E.g., 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.

3 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 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.

- 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.