

CIVIL PROCEDURE II
Spring 2020
M/W 2:30-3:50pm
Room 1108

Professor Marie-Amélie George

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Office Hours: M 4:00-5:00pm and by appointment

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Review Sessions: F 11 am – 12 pm in room 1102

“[W]hat substantive law says should be means nothing,
except in terms of what procedure says you can make real.”

– Karl Llewellyn

“[Civil] procedure is the etiquette of ritualized battle.”

– Stephen Yeazell

Re-introduction

Welcome Back! This semester we will build on concepts we learned last semester and follow the life cycle of a lawsuit through to its conclusion. I will expect you to remember the basics of what we covered in Civil Procedure I, but I will not test you again on the material we covered last semester—with the exception of the basics of subject matter jurisdiction, which we will review and expand upon this semester.

As a reminder, since procedure is related to the basic fairness of the justice system, our conversations may touch on deeply held beliefs or challenge your ideas about the legal system. Please remain respectful of different viewpoints and be open to having your own perspective changed.

Learning Objectives

At the end of this semester, you should be able to:

- Identify the relevant legal principles of cases and apply them to new sets of facts.
- Identify the relevant rules of Federal Civil Procedure and apply them to new sets of facts.
- Analyze how procedural rules affect substantive outcomes.
- Explain and apply the principles governing third-party practice, discovery, trials, appeals, and preclusion.
- Create basic litigation documents.
- Express your legal analysis in writing and oral presentations.
- Be friends with the Federal Rules of Civil Procedure!

Course Materials

- Joseph W. Glannon, et al., Civil Procedure: A Coursebook (3rd Edition 2017).

- Federal Civil Rules of Civil Procedure (eff. Dec. 1, 2017)
- Other materials as assigned.

Office Hours and Review Sessions

You are encouraged to come by my office (Worrell 3331) with questions or concerns. My formal office hours are Monday from 4:00 to 5:00p.m., but you are also welcome to schedule an appointment for another time by emailing me at georgemp@wfu.edu.

Gray O'Saile, your TA, is also available to answer questions by email at osaign14@wfu.edu and during the Friday review sessions. The review sessions will be held every Friday at 11am in room 1102, beginning the second week of the semester, during which you will work through a practice problem to apply the week's doctrinal material and hone your analytical skills.

Class Policies & Procedures

Reading for Class

Unless otherwise indicated, page numbers in your syllabus refer to your Glannon coursebook. FRCP refers to the Federal Rules of Civil Procedure and FRAP refers to the Federal Rules of Appellate Procedure.

You are responsible for reading all the assigned class material, whether or not we cover all of the material during class.

Accommodations

I am committed to making our classroom a safe and accessible space for all members of our community. If you need a reasonable accommodation for this course please make sure to contact the Wake Forest Learning Assistance Center (Reynolda Hall, 336-758-5929) or Student Health Services (Wellbeing Center/Reynolds Gym Ground floor, 336-758-5218). If you need an accommodation because English is not your native language, please contact Tracey Coan (Law School Dean's Office, coantb@wfu.edu).

Computer and Technology Policy

You may use your laptop during class for course-related purposes. However, during class you may not access email, instant message, social networking, games, or have screens open for anything other than work related to civil procedure. If laptop use becomes a detriment to classroom learning, I reserve the right to implement an individual or class-wide ban.

Cell phones must be silenced and put away. If you have a legitimate need to leave your cell phone out, please speak to me ahead of time.

Class Polling

We will use real-time polling in class. Please sign up for a free account at <https://www.polleverywhere.com>.

Grading

Your grade is comprised of three main components: drafting assignments (10%), attendance and participation (10%), and the final exam (80%).

Drafting Assignments

You will complete two drafting exercises to help you understand the practical application of the legal doctrines we are studying. These will be done in small groups, since law is a collaborative profession. Assignments turned in late must be accompanied by a Motion for Extension of Time.¹ Assignments turned in more than 24-hours after they are due will not be accepted.

Attendance and Participation

I expect everyone to attend class, to keep up with reading and assignments, engage in class discussions, participate in the in-class exercises, and complete the online quizzes. Please be on time to class. It is distracting for someone to enter the classroom after class has begun. Consistently arriving late to class will lower your final grade.

In addition to voluntary class participation – which I encourage! – I will randomly call on students during each class. I understand that sometimes, for whatever reason, you would prefer to not be called upon to speak on a particular day. Please contact me before class to let me know. Using this option more than once during the semester, however, will result in a lowering of your final grade.

Three or more absences will result in a lowering of your final grade. In accordance with the law school's policy on class attendance, students who miss five or more classes will not be permitted to sit for the final exam absent extraordinary circumstances (i.e., hospitalization, loss of an immediate family member, or events of a similar magnitude).

If you are on time, do not accrue more than the allowed number of passes/absences, are generally prepared when called upon in class, and complete the assignments, you will receive full credit for attendance and participation as part of your final grade.

Final Exam

The final exam will consist of multiple choice and essay questions. You will be allowed to bring your own outline to the exam. I have set aside the last week of classes to review the course material, during which time you can ask questions you may have about what we have covered.

Other Matters

Being a law student is challenging. Please don't hesitate to contact me with concerns about the course or your law school experience.

Being a law professor is also challenging. Please retain your sense of flexibility and humor.

¹ FRCP 6.

Schedule of Assignments

We will endeavor to stay on schedule, but the following is subject to change as the semester progresses.

| Amending the Pleadings | |
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| January 8 <i>Intro to Spring Semester Timely Amendment</i> | Read pp. 559-71 (stop after note 7) FRCP 15 |
| January 13 <i>Untimely Amendment</i> | Read pp. 580-601 |
| Multi-Party Practice | |
| January 15 <i>Joining Plaintiffs' Claims and Joining Parties</i> | Read pp. 607-623 FRCP 18, 20 |
| *Note – no class on January 20 st , Martin Luther King Jr. Day | |
| January 22 <i>Counterclaiming, Crossclaiming & Impleader</i> | Read pp. 624-646 FRCP 13, 14(a)-(b) |
| January 27 <i>Intervention, Interpleader & Required Parties</i> | Read pp. 647-661 (stop before <i>Grutter</i>), 673-74 (An Introduction to Interpleader) FRCP 19, 22, 24 |
| January 29 <i>Class Actions</i> | Read pp. 685-87, 697-722 FRCP 23(a) – (b) |
| February 3 <i>Class Actions Cont.</i> | Read pp. 722-27 <i>Dukes v. Wal-Mart</i> (on Sakai) <i>Beroth Oil Co. v. NC Dept of Transp.</i> (on Sakai) FRCP 23(c), (e) |
| Supplemental Jurisdiction | |
| February 5 <i>Supplemental Jurisdiction</i> | Read pp. 729-30, 751-57 (ignore questions 3, 5, 6) 28 USC § 1367 |
| February 7: Quiz #1 on Sakai | |
| Discovery | |
| February 10 <i>Scope of Discovery</i> | Read pp. 775-776, 786-811 (through mid-page Q) FRCP 16(b); 26(b)(1)-(2); 26(f) |
| February 12 <i>Discovery Tools</i> | Read pp. 823-839 FRCP 26(a), 33, 34 |

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| Discovery Drafting Exercise Due by 2/16 at 5 p.m. | |
| February 17 <i>Discovery Tools Cont.</i> | Read pp. 839-860, 867-869 FRCP 30(a), 36 |
| February 19 <i>Review of Discovery Drafting Exercise Discovery Abuse</i> | Read pp. 871-889 FRCP 26(c),(e),(g); 37(a) |
| Mid-Semester Review | |
| February 24 <i>Mid-Semester Review</i> | |
| February 26 <i>Practice Midterm</i> | |
| Dispositions Without Trial | |
| March 2 <i>Dismissals</i> | Read pp. 1003-1014 FRCP 41 |
| *Class Cancelled March 4 th – will be made up with court visit *Note - no class on March 9 th or 11 th , Spring Break | |
| March 16 <i>Summary Judgment</i> | Read pp. 1014-1023, 1028 (start at Section C)-1043 FRCP 56(a)-(c) |
| March 18 <i>Summary Judgment Cont'd</i> | Materials on Sakai |
| The Jury Trial | |
| March 23 <i>Trial Practice</i> | Read pp. 987-988 (Introduction), 995-1002, 1045-1046, 1052-1060, 1068-1076 (stop at Section VIII) FRCP 16(a)-(e), 38-39, 47 28 U.S.C. §1870 |
| March 25 <i>Directed Verdicts</i> | Read pp. 1079-1102 FRCP 50 |
| Summary Judgment Drafting Exercise Due by 3/27 at 5p.m. | |
| March 30 <i>Jury Instructions & Jury Verdicts</i> | Read pp. 1110 (starting at Section III) – 1134 FRCP 49, 51 |
| April 1 <i>Review of SJ Drafting Exercise Settlement Exercise</i> | Materials on Sakai |

| Trying Again | |
|---|--|
| April 6 <i>Weight-of-the Evidence Challenges & Mistakes at Trial</i> | Read pp. 1135-1149 (through Note 4); 1153 (start at Section III)-1165 FRCP 59-61 |
| April 8 <i>Appeals</i> | Read pp. 1169-1196 (through Section B); 1207 (starting at Section VI) – 1212 (through Section D) FRAP 3(a), 4(a)(1)-(4) |
| April 10: Quiz #2 on Sakai | |
| Preclusion | |
| April 13 <i>Claim Preclusion</i> | Read pp. 1215-1241 (through n.6) |
| April 15 <i>Issue Preclusion</i> | Read pp. 1249-1256, 1274-86 |
| Go! Fight! Win! | |
| April 20 <i>Review</i> | |
| April 22 <i>Practice Exam</i> | |