SYLLABUS

Purpose Of The Course

The three words of this course’s title convey important information. First, this course covers *federal*, not state, procedure (though you will learn a bit about state procedure along the way).

Second, this course covers *civil*, not criminal, procedure. Most people have seen some criminal procedure in cop shows; it governs how the state proceeds when it investigates, arrests, and prosecutes someone for a crime. Civil procedure appears on many fewer TV shows (mainly *Suits* and *The Good Wife* – or, if you are as old as me, *Ally McBeal* and *LA Law*) and governs lawsuits between private parties (you, me, companies, unions, governments, etc.). Many actions have criminal *and* civil consequences: a death can be murder (criminal) *and* wrongful death (civil).

Third, this course covers *procedure*, which gives the structure but not the substance of a lawsuit. Procedure tells you how to sue someone, while other areas of the law (contracts, torts, patent law, etc.) tell you what you can sue for (breach of contract, negligence, patent infringement, etc.).

The course loosely tracks the progress of a federal civil suit, covering (1) jurisdiction over parties and cases, (2) pleadings and motions, (3) discovery, and (4) judgment. Then, at the end of the semester, you will study (5) joinder of claims and parties to tie many threads together.

You will learn the policies behind modern civil procedure and how to interpret and apply procedural rules, statutes and cases. You will gain a good understanding of where and how to file a lawsuit in federal court and of how to pursue that lawsuit to its conclusion without trial. (The specifics of trial – an increasingly rare event in litigation – are covered Evidence, Trial Ad, etc.) Civil procedure uses the case method, where you read court cases to learn the legal rules courts use to resolve disputes, how the courts arrive at those rules, and how they evolve over time. This course also introduces you to statutory interpretation. Like all law school courses, civ pro will help you learn to “think like a lawyer.” More than most courses, civ pro also allows you to think about the strategies, tactics, etiquette, and, most important, ethics of being an attorney.

Required Materials

The required materials for the course are

- **Rowe, Sherry, & Tidmarsh, Civil Procedure** (3d ed. 2012) (hereinafter Rowe) (*you cannot access e-books during the final: purchase or rent a paper copy*);
- the 2015 Rowe Supplement (Supplement) (contains the Federal Rules of Civil Procedure (Rules), relevant statutes, and late-breaking additions to Rowe);
- **Harr, A Civil Action** (1995) (any edition you can find, paper or electronic); and
- i>Clicker+ (ISBN 1464120153) or REEF (the i>Clicker smartphone app).

Strongly recommended, but not required, are

- **Glannon, Civil Procedure: Examples and Explanations** (7th ed. 2013); and
- **Meador & Mitchell, American Courts** (3d ed. 2009 or 2d ed. 2000).
Reading Assignments and Texts

In general: A list of reading assignments is attached to this syllabus; a separate document (“Class Dates and Assignments”) matches those assignments to the specific dates of this semester. Use the headings on the assignment list and the ROWE chapter headings to help keep the structure of the course in view.

Textbook and Supplement: The primary texts are ROWE and its Supplement. I may also hand out copies from time to time. A typical assignment consists of a case or two (with notes) from ROWE, the Supplement, or my handout, along with a Rule or statutory provision (almost always found in the Supplement).

Each assignment comes with questions/notes on the attached assignment list and in the text that will help your understanding. You will be encountering unfamiliar words and phrases. Look them up; this will slow you down at first, but you will soon develop the vocabulary you need.

A Civil Action: Law students often find civil procedure abstract and difficult. The non-fiction account A Civil Action gives you the real-world story of a tort case brought by ordinary people against two large corporations, in which the Rules play a key role. (The Rules have been amended substantially since the book was written; you need learn only the current Rules.)

I emailed everyone who was assigned to this class by late July and suggested that you read A Civil Action before school started; if you have not read it yet, you should plan on completing it by September 14. I will bring it into class discussion after that. John Travolta and Robert Duvall starred in the film; you will watch the movie during class and lunch on Friday, September 18 from 9 to 11 in Room A112. Note that class that day will be held earlier than usual and in a different room; this is to ensure that you have a break between civ pro and your legal writing class at 1. I will provide breakfast.

Glannon: Glannon’s Examples & Explanations: Civil Procedure is a strongly recommended (not required) text. If you choose to get it, use it during the semester as a review for each topic. Glannon covers more topics than we will; skip the parts that do not match our class coverage.

Other resources: Meador & Mitchell’s American Courts is a useful introduction to the federal and state courts (especially if it’s been years since you took an American Government class). Wright & Miller’s Federal Practice & Procedure (on reserve) is the gold-standard treatise on civil procedure, among other subjects; you may find it useful to consult during this course, and certainly you will use it throughout your career. For more real-world background, Civil Procedure Stories (on reserve) provides the history and litigation strategy of a number of important civil procedure cases, including several you will study.

Problem Sets

Sometimes, in addition to or in lieu of the assigned reading, I will hand out problem sets. We will discuss the problems in class, so please answer them as part of your class preparation. You will not turn in your answers. I will publish model answers and explanations on the class website after class discussion. The problem sets will give you the opportunity to test how well you’re understanding the material. Follow up with me on any misunderstandings.
Class Scheduling and Participation

Class participation: Bring Rowe, the Supplement, any handouts, and your i>clicker to class with you each day. You will participate regularly in two different ways.

First, you will use the i>Clicker (or i>Clicker’s REEF app) to respond to multiple choice questions in class. Everyone should participate in this way, whenever such questions are asked. You will not be graded on whether you give the correct answer: the questions are for you to assess your own understanding and for me to assess the class’s general understanding. The i>clicker system does record participation, and I will follow up with anyone who is not clicking.

Second, each day, I will “cold-call” (meaning at random, with no advance notice) on several students to help discuss the assigned material. Always be prepared to discuss the material assigned for the current date, even if we carry over discussion from the previous class.

Two Free Passes: You will probably have a bad day at some point. Each of you has two free passes from cold-calling, but to claim a pass you must email me at least 30 minutes before class starts (at helliott@law.ua.edu) and you must hand me a note at the beginning of class telling me you are claiming a pass. If you fail to take both steps, you are fair game.

A note on class participation: Do your best to participate early and often; at the same time, stay on topic, be respectful of the others in the class, and do not monopolize the discussion. If I believe that someone is participating too much, too little, or inappropriately, I will contact that person. If cold-calling intimidates you, please come to my office hours so we can chat about it.

Grading

Final grades conform to the mandatory curve imposed by Law School policy.

Your final grade is based solely on the following components:

- Final examination, letter-graded: 70%
- Three practice examinations, pass/fail: 10% each

Final examination: The final examination will be a cumulative in-class exam given at the time assigned by the Law School (currently Mon., December 7, at 1:30 p.m.). You will take it anonymously, using your Law School exam number. The exam consists of a multiple-choice section and an essay section. The multiple-choice questions must be answered on a Scantron. On the essay section, you may handwrite or use your computer as provided by the Law School. If you use a computer, you must use ExamSoft or the like (as approved by the Registrar). All parts of the exam are open-book (defined below).

I will explain what I expect from you on the exam throughout the semester, provide extensive sample exam questions, and hold a final question-and-answer session (tentatively scheduled for Saturday, December 5, at 1 p.m.). That final session will consist only of your questions and our answers to them; I will not provide any kind of general review of the course. You may continue to ask me questions via email (or in person, if you see me) until 3 p.m. on the day before the exam commences (thus, the deadline is currently Sunday, December 6, at 3 p.m.). I will not respond to questions sent after that deadline.
Grading the final examination: The multiple-choice questions on the final will be graded simply for correctness (though I give you the opportunity to write out an explanation if you believe I have made an error). There is no penalty for wrong answers, so you should guess on any question about which you are unsure.

I will grade your answer to the essay questions using several criteria:

- your ability to see the legal issues raised by the fact pattern given;
- your ability to provide the legal rules relevant to the issues, whether from the Federal Rules of Civil Procedure, the U.S. Code, or a case;
- your ability to use the rules and the facts to analyze the issues and to show me the steps in your argument as you reach a particular conclusion to each issue;
- your recognition and analysis of potential flaws in your argument (because the facts cut both ways, the law is uncertain on this issue, or the like); and
- the persuasiveness with which you state your argument.

The better your answer is organized, the better I can see how you satisfy these criteria. I do not take off points for misspellings or grammatical mistakes, but such flaws may make it more difficult for me to understand your reasoning and thus may indirectly affect your grade.

I will circulate a memorandum before classes end about how to follow up with me in the spring semester about your performance in the class and on the exam.

Mandatory practice examinations: There will be three mandatory pass/fail practice examinations; none is given anonymously. The first practice exam will consist solely of multiple choice questions; the other two will include both multiple choice and essay questions similar to those you will see on the final exam.

The purpose of the practice exams is to let you try taking a law-school exam before you take your finals and earn grades. Most law students have never taken anything like a law-school issue-spotting exam before starting their 1L year; if you go into the finals period without having practiced exam-taking, you will be unhappy. (I have posted a number of past exams on the course webpage; I recommend using them in the second half of the semester. Do the same for your other classes, if past exams are available from your professor or through the library.)

Here is the schedule for the practice exams:

- The first mandatory practice exam will be an in-class multiple-choice exam taken on Fri., Sept. 11; it will cover material up through Weds., Sept. 2.
- The second mandatory practice exam will be an in-class multiple-choice and essay exam taken on Fri., Oct. 16, covering material up through Mon., Oct. 12.
- The third mandatory practice exam will be an in-class multiple-choice and essay exam taken on Fri., Nov. 13, covering material up through Fri., Nov. 6.

If anyone misses a practice exam for an acceptable reason, I will consult with him or her to set a make-up time. An acceptable reason is a serious or infectious illness supported by a doctor’s note, a serious injury supported by a doctor’s note, a serious illness or death in your close family, or the equivalent. Unacceptable reasons include (but are not limited to) attendance at a social event such as a wedding, attendance at an away game, or vacationing with family.
Because each practice exam is pass/fail, anyone who turns in a response that reflects serious effort will receive the full 10% allocated to that exam. If you miss a practice exam for an unacceptable reason, or if your response to the exam questions convinces me that you did not take the exercise seriously, you will receive an F and thus lose 10% from your final grade.

I will give feedback on your exams and return them to you; we may also take some class time to go over them. **I will not give letter grades on any of the practice exams, nor will I guess what final grade might be predicted from your practice exam performance.** Because final grades are curved, your performance is relative to your classmates’ performance; it is therefore impossible to predict your final grade from your practice exams.

Note that if everyone takes all three practice exams and passes them (I have only failed one person in seven years on a practice exam), everyone heads into the final exam on equal footing.

**What “open book” means:** All the tests in this course are open book, meaning you may use any paper resources, including the course materials, your own outline, another student’s outline (so long as you have the author’s permission), and commercial outlines. You may not talk to anyone about the exam while you are taking it (other than to ask a question of the proctor or the Registrar’s Office), and you may not use any electronic resources (for example, you cannot use the Internet or refer to the electronic version of your notes while taking the exam; you also cannot use an electronic version of the casebook). **Print out, in advance, anything you wish to use during any test in this course.**

**Studying for exams:** The materials discussed in the previous paragraph can certainly be helpful in studying. It would be a mistake, however, to bring lots of supporting materials with you to any exam. No law school exam affords you time to look up much information at all, and if you plan to rely heavily on your materials, you will do poorly. The material needs to be firmly established in your head by the time of the exam. Thus, you should prepare for all exams as if they were closed-book. (Yes, this means flashcards will be helpful study aids.) The only real difference between closed- and open-book exams is that, during an open-book exam, you may refer to a document if you suddenly “blank” on an issue.

**Course Webpage**

The course webpage is hosted by The West Education Network (TWEN). There you will find this Syllabus, the Reading Assignments document, the Class Dates and Assignments document, discussion forums, sign-up sheets for activities (including the lunches discussed below), announcements, and links to supplemental material.

I will also use the email function of the website to contact the members of the class periodically; in particular, I will email you if an emergency requires me to cancel (or delay the beginning of) class. **You must supply an email address you actually use when you sign up for the TWEN site. Do not use your UA email address if you do not check it at least daily.**

Everyone should sign up at http://lawschool.westlaw.com/ (click on TWEN at the top of the page and provide any information requested to set up your account. Then click “Add Course” on the TWEN home page and add this class.

Please remain enrolled in the TWEN site after this semester is over; I like to email follow-up info in the spring.
Course Policies

Office hours: Office hours are Monday, Tuesday, and Thursday from 1 to 1:50; these are times that fit your class schedule. For appointments at other times, email me at helliott@law.ua.edu.

I encourage you to come to office hours as often as you wish, whether to talk about civil procedure, being a law student, being a lawyer, or maintaining your sanity in the face of all three. If you know you plan to stop by, please email me so that I may schedule my time accordingly. If you have not planned in advance to attend office hours, you are still welcome to come by, but you may need to wait while I talk with someone else who got there first.

I am a SafeZone Ally, one of many resource people on campus who provide an open door for individuals seeking information or assistance regarding sexual orientation, gender identity, harassment, and/or discrimination. Feel free to talk to me at any time if you or someone you know has questions or concerns.

Lunch: Early in the semester, I would like to meet with you in groups of five or six to have lunch, my treat. Please go to the TWEN site for this course, where you will find sign-up sheets (look in the left-hand column on the home page and click on “Signup sheets”). You are not required to come to lunch, but I hope you will.

Emailing me: I check my email regularly, but I do not usually check my email after work hours. If you email me in the evening, I will try my best to respond to your email the next day. Do not freak out if I do not respond immediately.

Attendance: Class attendance is mandatory. A roll sheet will be circulated each day. If you do not initial it, you are absent, regardless of the reason for your absence. The law school’s attendance policy provides that “A student who is absent for any reason from more than three class hours per semester credit hour in a course may be dropped from the roll or not allowed to sit for the exam and receive an ‘F’ for the course. If a student’s absences exceed three class hours per semester credit, the Dean, after consulting with the professor, will determine whether the student will be withdrawn without a penalty or not be allowed to sit for the exam and receive an ‘F’ for the course” (emphasis added). For this four-credit course, you may miss no more than 12 classes.

Do not email me to explain any particular absence. You are an adult, and you are in control of how you spend your time; unless you have missed one of the mandatory practice exams, I do not need to know that you are going to a wedding or that you are feeling under the weather. However, if the total number of classes you miss approaches the maximum of 12, you must contact me. The Honor Code provides that “Knowing failure to report having missed more than a certain number of classes to an Instructor who specifically requires all Students to do so constitutes an Honor Code violation.” Should something occur that you believe will cause you to miss an inordinate number of classes, immediately contact the Associate Dean of Academic Affairs so that you may make appropriate arrangements to deal with your situation.

Disability policy: If you have a disability which requires accommodation (for classes, exams, or both), please contact the Associate Dean of Academic Affairs.

Electronic devices: Laptops are permitted in class only for taking notes and for viewing websites or other documents that I have asked you to pull up. You may not use your laptop for any other purpose during class. Someone whose laptop use interferes with the classroom learning
Please read this document carefully; you are responsible for its contents.

Experience may be asked to leave and will be considered absent for that day. Laptops must be set up before class starts. Cellphones, tablets, and similar devices must be off during class unless you are using i>Clicker’s REEF app. You may not send or receive calls, text messages, instant messages, or the like during class unless special circumstances (an imminent birth, for example) justify leaving your phone on. Someone whose use of such a device interferes with the classroom learning experience may be asked to leave class and will be considered absent for that day.

A note about laptops: Many students attempt to transcribe every word said in class, feeling that only word-for-word transcription produces good notes. However, study after study shows that trying to transcribe a lecture word-for-word actually reduces your comprehension – your brain doesn’t do any work to paraphrase or understand the material but instead merely moves your fingers to type letters in response to the sounds you hear. You do not learn when you are transcribing our class discussion on a laptop.

Instead, those who take notes by hand learn far better, because to write notes by hand you must paraphrase – and thus must understand the material. Understanding is even better for those who take notes by hand and then type them up later. You may wish to experiment early in the semester to see whether you learn better through handwriting or through typing.

Recording devices: The use of recording devices in class is prohibited without my prior written permission. I give permission only for disability-related purposes under a Law School accommodation or for absences due to circumstances beyond your control; you may not record class simply because you believe it will aid your studying or because you will be out of town for an away game.

Nondiscrimination Policy: The University of Alabama is committed to providing an inclusive environment that is free from harassment or discrimination based on race, genetic information, color, religion, ethnicity, national origin, socioeconomic status, political beliefs, sex, sexual orientation, gender expression, gender identity, age, ability, size, or veteran status. The University of Alabama prohibits any verbal or physical conduct that threatens or endangers the health or safety of any individual or group, including physical abuse, verbal abuse, threats, stalking, intimidation, harassment, sexual misconduct, coercion, and/or other communication or conduct that creates a hostile living or learning environment. Harassment or other illegal discrimination against individuals or groups not only is a violation of University Policy and subject to disciplinary action, but also is inconsistent with the values and ideals of the University.

The Honor Code

The Honor Code governs your conduct in this class, as it does any other activity in which you participate at the Law School. “The goal of the Honor Code is to ensure that no Student gains an unfair advantage in Law School over another Student and to promote those ideals of honor and integrity that are germane to the practice of law. Pursuant to this goal, all students while enrolled at the University of Alabama School of Law shall refrain from intentionally lying, cheating, stealing, or tolerating such action by another and shall refrain from other reprehensible acts.”

N. B. This syllabus, along with the Reading Assignments handout and the Class Dates and Times handout, is available on the TWEN site for this course, should you misplace it.