Federal Civil Procedure
Prof. Elliott
Fall 2018

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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. Criminal procedure constrains the government’s investigation, arrest, and prosecution of persons for crimes, while civil procedure governs lawsuits between parties (you, me, companies, cities, non-profits) under common-law or statutory causes of action. Many actions have criminal and civil consequences: a death can be murder (a crime) and wrongful death (a tort).

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

This course begins with a 50,000-foot flyover of a civil lawsuit from start to finish. With that framework in place, the course then covers a number of civil procedure topics in detail, including jurisdiction, pleading (the papers filed to set up the lawsuit), discovery (the exchange of information among parties), judgment, and appeal. Upper-division courses such as Advanced Civil Procedure, Complex Litigation, and Conflict of Laws cover other civil procedure topics.

You will learn the policies behind modern civil procedure and how to interpret and apply procedural rules, statutes, and cases. You will learn where and how to file a lawsuit in federal court and how to pursue that lawsuit to its conclusion without trial. (Trial is an increasingly rare event, and the various aspects of trial are covered in Evidence, Trial Advocacy, and other upper-division courses.)

Civil procedure uses the case method, where you read court cases to learn the legal rules used to resolve disputes, how the courts arrive at those rules, and how the rules evolve over time. But, because federal civil procedure is largely governed by statutes and rules implementing those statutes, 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 asks you to think about the strategies, tactics, etiquette, and, most important, ethics of lawyering.

Required Materials

The required materials for the course are

- the course copy-pack;
- 2018 Federal Rules of Civil Procedure (you must use the current version – I have had the bookstore stock the cheap version published by legalpub.com);
Please read this document carefully; you are responsible for its contents.

- Harr, A Civil Action (1995) (any edition you can find, paper or electronic); and
- i>Clicker+ (ISBN 1464120153) or the i>Clicker smartphone app.

Strongly recommended, but not required, are
- Glannon, Civil Procedure: Examples and Explanations (7th ed. 2013); and

Reading Assignments and Texts

In general: The course copy-pack has numbered assignments. A separate document (“Class Dates and Assignments”) attached to the end of this Syllabus matches those numbered assignments to the specific dates of this semester. Importantly, the cover page for each assignment in the course copy-pack directs you to Rules or statutes you need to read for class in addition to the material in the copy-pack.

Texts: The primary text is the course copy-pack; I may also hand out additional material from time to time. The other key text is the 2018 Federal Rules of Civil Procedure (Rules). You must use a current version of the Rules, as they are amended yearly.

Problem sets: Sometimes the day’s assignment includes a problem set in addition to other reading. We will discuss the problems in class, so please answer them as part of your class prep. You will not turn in your answers. I will publish model answers and explanations to the course website about a week after each problem set is assigned.

A Civil Action: Law students often find civil procedure abstract and difficult. The non-fiction account A Civil Action helps by giving 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 course in early 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 20. I will bring it into class discussion after that. John Travolta and Robert Duvall starred in a film based on the book; we will watch it together later in the semester.

Glannon: Joseph Glannon’s Examples & Explanations: Civil Procedure is a strongly recommended (but not required) text. You may purchase it or use it on reserve. It is best used to review and test of your understanding. He covers more topics than we will; skip the parts that do not match our course coverage. The book is increasingly out of date, so pay careful attention when you have read cases dated 2013 and later.

Other resources: Meador & Mitchell’s American Courts (purchase or use on reserve) is a useful introduction to the federal and state courts. Wright & Miller’s Federal Practice & Procedure (an enormous multi-volume treatise on reserve) is the gold-standard treatise on civil procedure, among other subjects; you can consult it during this course, and you are likely to use it as a practicing lawyer. For more real-world background, Civil Procedure Stories (use on reserve) provides the history and litigation strategy of a number of important civil procedure cases.
Class Participation

Class participation: Bring the course copy-pack, the Rules, any handouts, and your i>clicker (or smartphone with i>clicker app) 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 app) to respond to multiple choice questions in class. You will not be graded on your responses: the questions are for you to see how you’re doing and for me to assess the class’s 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” (at random, with no advance notice) on several students to help discuss the assignment. Always be prepared to discuss the material assigned for the current date, even if we carry over discussion from a previous class.

Two Free Passes: 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 stating your name, the date, and “Free Pass” when class begins. You must take both steps, or 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, 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.

A note about laptops: Studies show that trying to transcribe a lecture word-for-word reduces your comprehension: your brain doesn’t work to understand the material but instead merely moves your fingers in response to the sounds you hear. You do not learn when you are transcribing our class discussion on a laptop. Those who take notes by hand learn far better, because to handwrite you must paraphrase – and thus must understand the material. The best learning comes from taking notes by hand and then typing them up later. Experiment with leaving your laptop home and using your pen.

Grading

Final grades conform to the mandatory curve imposed by UASL 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 exam is a cumulative, open-book test given at 9:00 a.m. on Tuesday, December 11. You will take it anonymously, using your Law School exam number. The exam has multiple-choice questions, which must be answered on a Scantron, and essay questions, which must be handwritten or typed using ExamSoft.

I will hold a final review session on Monday, December 10, at 1 p.m. in the Moot Court Room. It will consist only of your questions and our answers to them. You may ask questions by email until 5 p.m. that same day (December 10). I will not respond to questions received after that deadline. (I note that December 10 is the last day of Hanukkah; if you have an issue with the scheduling of the review session or the question deadline, please contact me.)
Grading the final examination: Multiple-choice questions are graded for correctness; there is no wrong-answer penalty. I will grade your essays using the following 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 court cases;
- 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 apply 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.

Mandatory practice examinations: There will be three mandatory pass/fail practice examinations:

- An in-class multiple-choice exam taken on Thursday, September 6, cumulative through Thursday, August 30.
- An in-class essay exam taken on Thursday, October 6, cumulative through Thursday, September 27. If you will type your essay, you must install and test ExamSoft in advance.
- An in-class multiple-choice exam taken on Thursday, November 8, cumulative through Wednesday, October 31.

A practice exam may be rescheduled only for an acceptable reason, such as a serious or infectious illness or a serious injury supported by a doctor’s note, a serious illness or death in your close family, jury duty, military service, religious observances, or the equivalent. (I have scheduled these practice exams to avoid any major religious holidays.) Unacceptable reasons include (but are not limited to) attendance at an away game or a social event such as a wedding.

Because each practice exam is pass/fail, anyone who turns in a response that reflects serious effort will receive full credit. If you miss an exam for an unacceptable reason, or if your response to the 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 post answers and explanations for the two multiple choice practice exams immediately after you take them; keep a record of your answers as you take the tests so that you can see how you did (I may also contact you individually to follow up on your performance). I will hand your essays back with personalized feedback, as well as circulate a sample answer. I will not give letter grades on any of the practice exams. Final grades are curved, and one cannot predict final grades from these exams.

What “open book” means: On any test in this course, you may use any paper resources, such as the course materials, your outline, another student’s outline (with 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, the Internet or the electronic version of your notes). Note that this means you cannot use the electronic version of the course pack during the exam. **Print out, in advance, anything you wish to use during any test in this course.** It is highly unlikely you would need a full print-out of the electronic version of the course pack; instead, you should print out selected pages you find useful.

**Studying for exams:** The materials discussed in the previous paragraph are helpful for studying. But you cannot plan to rely on them during any exam. No law school exam affords you time to look up much, and if you plan to rely heavily on your materials, you will do poorly. You should prepare for all exams as if they were closed-book.

**Course Webpage**

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

I will also use the email function of the website to contact you if needed; in particular, I will email you if an emergency requires me to cancel, or to delay the beginning of, class. **You must use an email address you actually check when you sign up for the TWEN site.** Sign up at lawschool.westlaw.com (click on TWEN at the top of the page and set up your account; then click “Add Course” and add this course).

**Course Policies**

**Office hours:** Office hours are Monday and Thursday from 2:30 to 3:30; these are times that fit your class schedule. You may always email me for an appointment at another time – helliott@law.ua.edu.

I encourage you to come to office hours as often as you wish, whether to talk about civil procedure, law school, life as a lawyer, or maintaining your well-being 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 given advance notice, you are still welcome, but you may need to wait while I talk with someone else.

**Coffee/tea/beverage:** Early in the semester, I would like to meet with you in small groups to have a beverage and a snack, **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 homepage and click on “Sign-Up sheets”). You are not required to come to one of these get-togethers, but I hope you will.

**Emailing me:** I check my email regularly, but only during work hours. I will try my best to respond to any email within 24 hours. Do not freak if I do not respond immediately.

**Attendance:** Class attendance is mandatory. A roll sheet will be circulated each day. 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.”
(emphasis added). For this 4-credit course, you may miss no more than 12 hours.

**Do not email me to explain any particular absence** (seriously, don’t). **However, if the total number of hours 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 it become clear that you may miss an inordinate number of classes due to illness or something similar, immediately contact Grace Lee, Associate Dean for Academic Affairs, at (205) 348-1125 or glee@law.ua.edu to make appropriate arrangements.

**Electronic devices:** Laptops are permitted in class only for class purposes (taking notes, viewing the course pack and websites or other documents that I have asked you to pull up, or the like). Laptops must be set up before class starts.

Cellphones, tablets, and similar devices must be off during class unless you are using the i>Clicker 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.

Using your personal electronic devices in the classroom setting for purposes unrelated to the course can hinder instruction and learning, not only for you but also for other students in the class. Anyone whose use of an electronic device (laptop, phone, tablet, etc.) interferes with the classroom learning experience may be asked to leave class and will be considered absent for that day (see attendance policy above).

**Recording devices:** The use of any recording device in this course is prohibited without my prior written permission. I give permission only for disability- and armed-service-related purposes required by law or for absences due to circumstances beyond your control; you may not record a class simply because you believe it will aid your studying or because you will be out of town.

**Disability accommodations:** The Law School is committed to meeting the needs of students with disabilities and provides appropriate accommodations and services tailored to each person’s specific requirements. The Law School’s assistant deans and the University’s Office of Disability Services work together to help individuals with disabilities achieve and maintain individual autonomy. Students with disabilities are encouraged to contact Grace Lee, Associate Dean for Academic Affairs, at (205) 348-1125 or glee@law.ua.edu, so that their needs for support services can be evaluated and accommodated in a timely manner.

**Notification of changes:** I will make every effort to follow the guidelines of this syllabus as stated; however, I reserve the right to make changes as needed. I will notify you of such changes in class and/or via email and will do my best to provide reasonable time for you to adjust.

**Ethical community statement:** The University of Alabama is committed to an ethical, inclusive community defined by respect and civility. The UAct website (http://www.ua.edu/uact) provides extensive information on how to report or obtain assistance with a variety of issues, including issues related to dating violence, domestic violence, stalking,
sexual assault, sexual violence or other Title IX violations, illegal discrimination, harassment, child abuse or neglect, hazing, threat assessment, retaliation, and ethical violations or fraud.

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.

Severe weather guidelines: Tuscaloosa can suffer severe thunderstorms and tornadoes. These weather events can be life-threatening. Please visit https://ready.ua.edu/severe-weather-guidelines/ to learn more about the University’s policies on severe weather and about what you can do to be prepared for such events.

A Note About Wellness

Law school is stressful, and practicing lawyers have high rates of substance abuse, depression, and anxiety. One of the best skills you can learn in law school is how to manage stress. Maintaining your physical well-being is essential: get enough sleep, enough exercise, and enough healthy food to keep your body happy. Also, studies show that it is exceedingly beneficial to spend a short period daily quieting your thoughts (through prayer, meditation, or a similar practice).

Should you find yourself experiencing symptoms of depression,1 anxiety,2 or substance abuse,3 it is essential to seek help sooner rather than later. The Law School has a psychologist with regular part-time hours; you may also contact Grace Lee, Associate Dean for Academic Affairs, at (205) 348-1125 or glee@law.ua.edu and/or the Student Counseling Center (1101 Jackson Avenue, (205) 348-3863).

Some law students worry that seeking help will cause problems with bar admission in the future. According to the U.S. DOJ, state bars violate the Americans with Disabilities Act when they ask questions about mental-health diagnoses and treatment. See U.S. DOJ, Department of Justice Reaches Agreement with the Louisiana Supreme Court to Protect Bar Candidates with Disabilities, www.justice.gov/opa/pr/department-justice-reaches-agreement-louisiana-supreme-court-protect-bar-candidates. State bars may, however, ask about conduct, so that the typical bar-admission question is now phrased to ask whether the applicant “has within the past five years exhibited any conduct or behavior that could call into question the applicant’s ability to practice law in a competent, ethical and professional manner.”

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1 Typical symptoms of depression include persistent negative mood, fatigue, loss of interest in daily activities, difficulty concentrating, problems with sleep (too much or too little), problems with appetite (too much or too little), pain without an obvious physical cause, and/or thoughts of suicide. See National Institute of Mental Health, Depression, at https://www.nimh.nih.gov/health/topics/depression/index.shtml.

2 Typical symptoms of anxiety include restlessness, irritability, fatigue, difficulty concentrating, muscle tension, uncontrolled worrying, difficulty sleeping, and/or panic attacks (episodes of intense fear that include heart palpitations, shortness of breath, and other disturbing physical symptoms). See National Institute of Mental Health, Anxiety, at https://www.nimh.nih.gov/health/topics/anxiety-disorders/index.shtml.

3 “Substance use disorders occur when the recurrent use of alcohol and/or drugs causes clinically significant impairment, including health problems, disability, and failure to meet major responsibilities at work, school, or home.” Substance Abuse and Mental Health Services Administration, https://www.samhsa.gov/disorders.
The following is a list of a few books (which take very different approaches) that can be helpful in dealing with depression, anxiety, negative thinking, and other causes of stress:

- **Daniel Amen, Change Your Brain, Change Your Life** (neurological focus)
- **Edmund J. Bourne, The Anxiety & Phobia Workbook** (instruction in skills to deal with anxiety)
- **Alice Boyes, The Anxiety Toolkit** (instruction in skills to deal with anxiety)
- **David Burns, Feeling Good: The New Mood Therapy** (cognitive-behavioral therapy to recognize depressive thought patterns and learn how to defeat them)
- **Colette Dowling, You Mean I Don’t Have to Feel This Way?** (written in 1993 but still recommended for dealing with depression and anxiety)
- **Dennis Greenberger & Christine Padesky, Mind Over Mood** (cognitive-behavioral therapy to overcome depression and anxiety and to achieve wellness)
- **Jon Kabat-Zinn, Full Catastrophe Living** (mindfulness to reduce stress)
- **Joyce Meyer, Straight Talk on Depression** (Christian approach to dealing with depression)
- **Martin Seligman, Learned Optimism** (skills for approaching life positively)

**The Honor Code**

The Honor Code governs your conduct in this course, 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.