

Law A 502 A: Civil Procedure I
Autumn 2018 – 6 credits
M-Th 1:30-2:45 pm
Gates Hall Room 138

Professor Craig H. Allen
Office: Gates Hall Room 335
Office hrs: M&Th 9:00-10:00 am
Fridays 8:00-11:00 (by appointment)

SYLLABUS

COURSE DESCRIPTION: This course is the first year introduction to civil procedure for J.D. students. Coverage includes subject matter jurisdiction of federal courts, personal jurisdiction, venue, pleading, joinder, disclosures/discovery, choice of law, pretrial, trial and post-trial practice, and a brief introduction to appellate practice and the doctrines of former adjudication.

Our focus will be on the federal civil procedure statutes, principles and rules. Fortunately, the Civil Rules applicable in Washington trial courts are very similar to the Federal Rules of Civil Procedure. We will aim for a practicing lawyer's level of understanding of the structure and processes of civil procedure, to prepare you for upper level courses in Civil Procedure II, Pretrial Practice, and Federal Courts.

REQUIRED TEXTS: (1) Coleman-Stempel, et al., Learning Civil Procedure (3d ed. 2018), (2) Federal Civil Rules Booklet (LegalPub.com 2018) (both are available in the UW Bookstore).

COURSE WEB SITE: <https://canvas.uw.edu/courses/1222193>

ACCESS AND ACCOMODATIONS: If you have established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me so we can discuss your needs. If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations, you are welcome to contact DRS in Room 011 of Mary Gates Hall or 206-543-8924 or uwdrs@uw.edu or disability.uw.edu. Reasonable accommodations are established through an interactive process between you, your instructor(s), and DRS.

CLASSROOM USE OF TECHNOLOGY: You may use your personal computer in class only for class-related purposes. You may not use it for any activity not directly related to the class. Please be certain your cell phone is turned off before class begins.

LAW SCHOOL ATTENDANCE POLICY: The success of this course depends on your attendance and participation. Please notify me not later than 8:30 AM of the class day if you will unavoidably miss that class. Consistent with the Law School Attendance Policy (and ABA standards), any student who has failed to attend at least 80% of the sessions will be dropped from the course and not allowed to take the final exam. Alternatively, I may at my sole discretion lower the grade of the student by one full letter grade.

POLICY ON CLASS RECORDING/PODCAST: Because attendance is required, regularly scheduled classes will not be recorded. Nor will I approve ad-hoc requests to record individual class sessions or save copies of handouts for absent students. If you miss a class, please make arrangements to obtain any handouts and notes from a classmate. Exception: on religious holidays recognized by the school and in the event that a make-up class is scheduled, I will make arrangements for the session to be recorded.

OFFICE HOURS: My office hours are posted above. For reasons I will be happy to explain, I prefer not to answer substantive questions by e-mail. Should you have such questions, I encourage you to see me during office hours. Please note that my regular office hours end on Friday November 30, 2018.

COURSE LEARNING OBJECTIVES: The Coleman-Stempel *Learning Civil Procedure* course book is unique among first year Civil Procedure course books in its approach. The “Learning” course book approach— one that adopts a practice-based orientation— is explained in the book’s Preface and Study Guide, and I encourage you to read both. The course book opens each “unit” with an “overview” and each chapter with a summary of the key concepts to be covered in that chapter. Each chapter also includes a “quick summary” of the chapter materials. Every chapter includes a number of “Examples and Analyses” to guide you in developing the skill of applying a given case, statute, or FRCP to hypothetical factual situations—a skill all lawyers must master and that we will employ in the class sessions. We will be covering all but one (Chapter 9) of the 20 chapters in the book, thus the substantive learning objectives for the course can be gleaned by perusing the course book table of contents and unit overviews. Among your first year courses, Civil Procedure is the one that makes the widest use of legal texts: federal statutes and the Federal Rules of Civil Procedure. Accordingly, an additional learning objective of the course is to introduce you to the skill commonly referred to as “statutory” (or textual) construction and application. A more thorough discussion of the learning goals and a suggested formula for success is attached at the end of the syllabus.

METHOD AND EVALUATION: This class will combine lectures by the instructor with analysis and discussion of selected cases and exercises by you, using the expert system (with one-half of the class serving as experts each week—see schedule below). On the final exam, you will be responsible for all assigned readings plus in-class discussions. Course grades will be based on a comprehensive final examination, but may be adjusted in recognition of class preparation and participation.

LAW SCHOOL HONOR CODE: All students enrolled in the course are bound by the Law School Honor Code. <http://www.law.washington.edu/Students/Academics/HonorCode.aspx>.

ASSIGNMENTS: “CB” Learning Civil Procedure course book. All statutes and FRCPs are in the Supplement. Note: I will often refer to the Buffalo Creek Disaster case, but the book by that title written by the attorney who litigated the case (Gerald Stern) is not assigned reading.

NOTES: (1) The listed reading assignments should be treated as estimates. On some days we will proceed faster and on others more slowly. Keep in mind that only rarely will we cover all of the cases, notes, or exercises assigned. You are nevertheless responsible for all of the assigned readings. (2) Handouts may be posted on the course CANVAS web site or distributed in some class sessions. **Students who unavoidably miss a class should arrange to have a classmate obtain a copy.** (3) Bring your CB and FRCP Supplement to class every day.

DAY	DAY	TOPIC	ASSIGNMENT (CB pages are estimates)
		Week 1: Sept. 24-28	No experts this week
1	M	Subject Matter Jurisdiction I	CB “Study Guide” pp. xxxvii-xlii & pp. 1-14 (up to “B”)
2	T	SMJ II: Federal Question	CB 14-37; 28 U.S.C. § 1331
3	W	SMJ III: Diversity of Citizenship	CB 38-55; 28 U.S.C. § 1332(a) – (c) (skip § 1332(d))
4	Th	SMJ IV: Supplemental Jurisdiction, Removal/Remand, Litigating SMJ	CB 55-82; 28 U.S.C. §§ 1367, 1441, 1446-1447; FRCP 12(b)(1)

		Week 2: Oct. 1-5	Experts: Last names beginning with A-K
5	M	Due Process I: PJ	Chapter 2: CB 83-110 (to "3"); FRCP 1 & 12(b)(2)
6	T	Due Process II: PJ	Chapter 2: CB 110-31 (up to "Due Process Notice")
7	W	Due Process III: Notice	Chapter 2: CB 132-56, FRCP 4
8	Th	Due Process IV: Opp to be Heard	CB 157-67; FRCP 64, skim FRCP 65
		Week 3: Oct. 8-12	Experts: Last names beginning with L-Z
9	M	Venue	Chapter 3, 28 U.S.C. §§ 1390-1391, 1404, 1406
10	T	Applicable Law	CB 193-214 (to 3), 28 U.S.C. §§ 1652, 2071-2072
11	W	Applicable Law*	CB 214-15 (<u>Pete v. Dalty</u>) then skip to 228-42
12	Th	FRCP 11	CB 243-65(to "3"); FRCP 11(a), (b) & (d)
		Week 4: Oct. 15-19	Experts: A-K
13	M	FRCP 11; Begin Pleading	CB 265-75, FRCP 11(c); CB 277-86, FRCP 1 & 2
14	T	Pleading II	CB 286-307; FRCP 5
15	W	Pleading III	CB 308-24; FRCP 7-10
16	Th	Pleading IV	CB 325-43 (to "B"); FRCP 12 (especially 12(g) & (h))
		Week 5: Oct. 22-26	Experts: L-Z
17	M	Pleading V	CB 343-55, FRCP 41, 55
18	T	Joinder	CB 357-80; FRCP 13, 14, 17, 18 & 20; skim FRCP 19; Review CB 56-69 & § 1367(b)
19	W	Amended Pleadings	CB 429-49; FRCP 15
20	Th	Discovery I	CB 467-85 (to "2"); FRCP 26(b)
		Week 6: Oct. 29-Nov. 1	Experts: A-K
21	M	Discovery II	CB 485-504; FRCP 26(c)-(g)
22	T	Case Management/Guest Lecture	CB 451-66, FRCP 16
23	W	Discovery III	CB 505-29; FRCP 26(a); FRCP 33-34
24	Th	Discovery IV	CB 530-54 (to F); FRCP 36, 30, 32, 45
		Week 7: Nov. 5-9	Experts: L-Z
25	M	Discovery V	CB 554-66; FRCP 35, 27, 26(a)
26	T	Discovery VI	CB 567-88; FRCP 37
27	W	Summary Judgment I	CB 589-609 (to E); FRCP 56
28	Th	Summary Judgment II	CB 630-41
		Week 8: Nov. 12-16	Experts: A-K
XX	M	No Class	Veterans' Day Holiday
29	T	Jury Trial Rights	CB 643-68 (to H); FRCP 38, 47-49, 51
30	W	Jury Trial Rights*	CB 668-74; Wash. Const. Art. I/Sec. 21 (on Canvas)
31	Th	Trial	CB 675-88 (to J); FRCP 68

DAY		TOPIC	ASSIGNMENT
		Week 9: Nov. 19-23	No Experts
32	M	Trial	CB 688-98; FRCP 49, 50(a) & 52(a)
33	T	Post-Trial Motions	CB 699-714 (to G); FRCP 50(b), 52, 54, 59
XX	W	No Class	THANKSGIVING BREAK
XX	Th	No Class	THANKSGIVING BREAK
		Week 10: Nov. 26-30	Experts: L-Z
34	M	Post-Trial Motions	CB 714-31; FRCP 52, 54, 55(c), 60
35	T	Appeals*	CB 733-56; 28 U.S.C. §§ 1291-1292
36	W	Remedies	CB 757-72; FRCP 54, 57, 58, 64-65, 69-71, 28 U.S.C. § 2201
37	Th	Preclusion Doctrines	CB 773-96
		Week 11: Dec. 3-4	
38	M	End of Course Review	CB 797-820
XX	T	No class	Exam Preparation Time
XX	W	No class	Exam Preparation Time
		December 10-14	
XX	F	Final Exam Dec. 14	

NOTES ON FINAL EXAMINATION

The final exam is scheduled for Friday, December 14, at 8:30AM. It will be four-hours long. The scope of the exam includes all assigned readings, whether the readings were covered in class or not. It also includes any information handed out or discussed in class, whether taken from the readings or not.

The following instructions will be given in the exam:

This is a limited open-book/personal outline examination. While taking the exam you may refer to the Learning Civil Procedure course book and FRCP Supplement assigned in the course syllabus. You may also refer to an outline you prepared personally or as a member of a study group. You may not refer to any other materials, including class handouts, consult with anyone, access files on your computer, or open an Internet connection while taking the exam.

If you are using a computer to take this exam, you must (1) use ***SoftTest*** in the **Secure Mode** (i.e., you will have access to *SoftTest* only—you will not be able to access any files on stored on your computer or access the Internet) and (2) adhere to the UW Law School “Use of Computers on Exams” policy. See <http://www.law.washington.edu/Students/Academics/Exams.aspx>.

CIVIL PROCEDURE I COURSE LEARNING GOALS

Law schools are professional schools (not graduate schools), the mission of which is to prepare students for admission to the bar and the practice of law. Civil Procedure, like all first year law school courses, is one of the key foundation courses in every student's preparation to become an attorney. In fact, I would go so far as to suggest that all of your other courses are virtually inert in the hands of someone who does not have a firm grasp of the procedures for enforcing the legal rights, obligations, and duties studied in those other courses. Although there is generally widespread agreement among Civil Procedure teachers that certain core subjects should be included in the first year course, teachers differ somewhat in their coverage and emphasis. The substantive subjects that form the learning goals for this course can be quickly identified by reference to the syllabus reading assignments and your course book's table of contents and are briefly outlined below. As we proceed through the quarter you will see that there are many overlaps among your first year classes. For example, many of your Torts cases will involve pleading and pretrial adjudication issues. A frequently heard question from the professor in that class is "What is the *procedural posture* of the case?" (e.g., a motion to dismiss? For summary judgment? For judgment notwithstanding the verdict?) Civil Procedure supplies the foundation to understand those procedural "postures" and the standards applied in each.

Substantive learning goals: Upon completing the course students will be able to identify the law and policy of federal civil procedure: jurisdiction, venue, pleading, motions, joinder, discovery, choice of law, pretrial disposition, basic trial practice, post-trial motions, appeals, remedies, preclusion, and ethical dimensions of civil practice. Skill-building goals: case analysis, reading and analyzing statutes and other legal texts, legal problem solving methods (the IRAC method will be emphasized), legal argumentation, critical thinking, and lawyering skills, particularly pleading, discovery and motion practice.

ASSESSMENT

Self-assessment: The best students understand that no one is in a better position to assess their comprehension of the material than they—the individual students—are. They also take full advantage of exchanges with fellow students, discussing the CB's "Additional Exercises" with them, questions in commercial study aids and, when they are ready, by taking practice exams and critiquing their performance. Self-assessment early and often is essential if you (and I) are to be able to clear up problems, uncertainties and misunderstandings.

My assessment: The purpose of examinations is to assess the extent to which you have achieved the course learning goals. From my point of view, that assessment is divided into a determination of whether you have achieved the minimum satisfactory command of the course learning goals (an assessment that is mindful of what a would-be lawyer must demonstrate to pass a bar examination) and have therefore earned a passing grade for the course, and a comparison, for differential grading purposes, of your demonstrated competency in the course learning goals vis-à-vis the other students in the class. In preparing an examination I carefully consider the principle that it be drafted in a way that ensures it will be a valid and reliable assessment of your command of the course learning goals. To accomplish that, and to cover as much of the assigned material as practicable, I typically use a mix of objective (true/false and/or multiple choice), short answer, and essay questions.

FORMULA FOR SUCCESS:

1. Form a study group with other members of your section. Like a 12 person jury, a 3-4 person study group collectively recalls and comprehends more than any single individual in the group.
2. Read the assigned materials carefully. Read them more than once. Read them to comprehend. A generation that prides itself on its ability to “multitask” (reading a case or listening to a lecture while texting a friend, listening to music, and surfing the Web) ends up with an attention span measured in nanoseconds. Short attention spans can be fatal to legal analysis, where comprehension of the concepts requires a concentrated investment of time and attention.
3. The West “Learning” Law course books are uniquely progressive in their approach. Pay attention to the elements of each chapter (see **How to prepare for class** on CB xli).
 - Each chapter opens with a section on **Key Concepts to Master**. These are necessarily part of the course learning goals that will be assessed on the final examination.
 - Your CB authors have included **Text Box** “side bars” to enable you to build your legal vocabulary. I encourage you to also buy a law dictionary. Bring your dictionary to class (they make great reading on long bus rides).
 - The authors of your course book have far more legal practice experience than most law case book editors. They generously share that practice experience with you with their **In Practice** notes throughout the book.
 - Our class discussion will draw on the Buffalo Creek Disaster litigation and the course book’s **Examples and Analyses**, and **Additional Exercises**. We will not have time to discuss all of **Examples** or **Additional Exercises** in class, so I encourage you to draw on them in discussions with the other students in your study group.
4. Do not assume that the same classroom habits that served you in your prior studies will be the most effective approach to legal studies. I recommend that you close your laptop in this class and listen. Not just to me, but also to your classmates. This is not an undergraduate course. It’s a core course in a professional school program. We mean it when we say that we are helping you learn a new way of thinking about problems—to think like lawyers and judges.
5. What do I mean by the “way” lawyers and judges think about problems? It’s called IRAC (see **How to prepare for exams** on CB xli-xlii). Law school exams typically consist of fact patterns that require you to identify issues, apply the rules you have learned, analyze the interplay between the two, and come to a conclusion or a recommendation. You must know the legal rules to do this, but you must also be able to do the other three steps in the IRAC process.
6. Prepare a comprehensive outline of the course that integrates the readings and class discussions. This is a key step in active learning. You’ll be pleased at how much better you understand the materials after organizing them in a way best suited to your learning style. You will be able to use an outline you or your study group prepared when you take the course examination.

A note on Civil Procedure study aids: For many students, Civil Procedure is the most challenging course in the first year of law school. At the same time, it serves as a vital foundation for a host of other law school courses (and bar examination subjects), including Constitutional Law, Evidence, and Trial Advocacy. A variety of commercial study aids are available to help guide first year students in their civil procedure studies. They take the form of bar review outlines, flash cards, audio lectures on a variety of electronic media, comprehensive course outlines, “canned” case briefs, and student study guides.

Study aids are just that—an aid—not a substitute for assigned materials. I have selected what I believe is the best and most progressive first year Civil Procedure course book available. Unlike most casebooks, the *Learning Civil Procedure* course book incorporates much of the explanatory material and hypothetical problems and answers commonly found in study aids (but not in casebooks). **Your primary focus should be on the materials and exercises assigned in that book and your federal rules supplement, the class lectures and discussions, and in preparing—in partnership with the other members of your study group should you choose to join one—a comprehensive course outline for use in the examination.**

Whether study aids will assist you in learning the course materials (and are worth the added cost) and, if so, what format is best is a highly personal choice. My recommendation is that you review the civil procedure study aids available in the Gallagher Law Library to see what might work best for you.