

CIVIL PROCEDURE II

LAW B 500 A

SYLLABUS

WINTER 2019

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Class Hours:

Tuesdays and Thursdays – 8:30am to 10:20am

Room TBD

COURSE OBJECTIVES AND OVERVIEW

This course is a continuation of Civil Procedure I with an emphasis on the issues raised in complex litigation and appeals in federal court. The course principally is taught from a practical, as opposed to a theoretical, perspective, and is aimed at equipping students with the skills and knowledge required to analyze the difficult procedural issues that arise in civil litigation and arrive at sound strategic decisions. Topics covered by the course will include joinder of claims and of parties, class action practice, summary judgment litigation, claim and issue preclusion, post-trial motions, and appellate jurisdiction. Whether you pursue a judicial clerkship, a career as a litigator, or will manage litigation as in-house counsel for a corporation or organization, a working knowledge of these topics is essential.

TEXTBOOK AND COURSE MATERIALS

Required textbook and rules

- Hazard, Tait, Fletcher & Bundy, *Pleading and Procedure* (11th ed. 2015) ISBN: 978 1-60930-181-1, Foundation Press
- A reasonably current version of the Federal Rules of Civil Procedure, Federal Rules of Appellate Procedure, and federal jurisdiction statutes found in U.S.C. Title 28. If you own a copy already, please do not buy a new edition – you may find any new material online.

Additional materials that will be posted online

- Supplemental materials, including court decisions not included in your textbook, will be posted on the Course Canvas Website.
- PowerPoint slides will be posted on the Course Canvas Website after each class.

Optional study aids

Study aids are not required, and they are not a substitute for the assigned materials, but they can be helpful. There have been recent changes to some aspects of Civil Procedure, including important new court decisions. So, be cautious when using older materials. Here are several study aid options:

- Baicker-McKee, *A Student's Guide to the Federal Rules of Civil Procedure* (12th Edition 2009, West Publishing). This book has a practical and helpful approach to how the civil rules and statutes have been applied by the courts.
- Wright & Kane, *The Law of Federal Courts* (7th Edition 2017, West Publishing)
- Friedenthal, Kane, Miller, *Civil Procedure*, (5th Edition 2015, West Hornbook Series)
- James, Hazard & Leubsdorf, *Civil Procedure* (6th Edition 2011, Foundation Press)

Treatises

- Wright and Miller, *Federal Practice and Procedure* (4th Ed. 2008)(available in the library and online via Westlaw)
- James William Moore and Daniel R. Coquillette, *Moore's Federal Practice* (3rd Ed. 1997)(available in the library and online via Lexis)

BAR EXAMINATION

The Multistate Bar Examination includes Civil Procedure as a test subject. The list of test specifications includes the following topics – most of which are covered in Civil Procedure II:

- Federal court supplemental jurisdiction
- Joinder of parties and claims, including class actions
- Claim and issue preclusion

- Law applied by federal courts
- Appeals, including interlocutory review, final judgment rule, and scope of review for judge and jury.

The course is not structured or intended as a bar exam review course, but the discussion and review of these issues throughout the course should prove very helpful to students who sit for the Multistate Bar Examination.

[COURSE WEBSITE](#)

The following resources and materials will be posted and available on the Website:

Syllabus

A link to the Course Syllabus appears at the top of the home page of the Course Canvas Website. The Syllabus is updated as adjustments are made throughout the quarter, and you can determine whether you have the most recent version of the Syllabus by referring to the date in the file name.

Reading Assignment Schedule

The reading assignment for each class, along with links to supplementary materials, are included in the Course Schedule below.

PowerPoint Slides

PowerPoint slides that are used in class will be posted online shortly after each class in the FILES section of the Course Canvas Website.

Writing Assignments

The course requirements include four writing assignments. The assignments will be posted as each is assigned in the ASSIGNMENTS section on the Course Canvas Website. Submissions should be uploaded to the Course Canvas Website.

Podcast Links

As noted below, all classes will be podcast. Links will be posted on the Course Canvas Website and available shortly after each class.

[OFFICE HOURS AND QUESTIONS](#)

To avoid scheduling conflicts, office hours are by appointment. But I am usually available before and after class, and I always am happy to discuss any issues or questions you may have. If you would like to meet, please send me an email or talk with me after class to schedule a time.

It also is fine to send me questions about class readings and discussions via email (although I encourage office visits, as it gives me a chance to get to know you). I often find that if one person has a question, other students also often have it, and it can be helpful to share the question and the answer with the class. But I understand that sometimes people would prefer that their questions be treated privately and not circulated. If you email me a question and indicate that you would prefer

that your question not be shared with others, I will honor that request. Absent such a request, I may circulate the question and answer if it addresses an issue that I think will be of general interest to the class.

In addition to discussing course related matters, I am happy to meet with students to talk about other law-related issues including judicial clerkships, externships, course selection choices, and life and opportunities at law firms, in the public sector, or at public interest organizations.

COURSE REQUIREMENTS AND GRADING

CLASS PREPARATION AND PARTICIPATION

Class Attendance

Students are expected to attend class fully prepared and ready to participate. If you are ill or have an emergency and are unable to attend class, please email me in advance of class. Unexcused absences will affect the portion of your grade that is based on class participation and performance. Please note that the Law School Attendance Policy and ABA Standards require that students attend a minimum of 80% of course classes.

Required Reading

With a couple of exceptions, the reading assignments for each class have been kept to a reasonable length with the expectation that it will give you time to think about and understand the issues covered, and not just read about them. So, please do both: read and think. If you have questions or do not understand something, please raise the issue in class. It's likely that you're not the only person with the question or having difficulty.

In addition to the material in the course textbook that is assigned for each class, please review the syllabus carefully and make sure to download and review the supplemental materials that are posted on the Course Canvas Website for about half of the classes (listed below in the Class Schedule below).

The reading assignments for Class 4 ("*Another Look at Erie*") and Class 9 ("*Introduction to Class Actions*") are longer than the rest of the assignments (by about 10 pages) because it is not possible to condense that material and cover it meaningfully. I encourage you to plan in advance for the longer reading assignments for those two classes.

Class Participation and Discussion

Students will be called on in class, questioned, engaged, and debated at random starting on the first day of class. This practice will be bilateral. Students also are free to engage, question, and debate me, and one another – all in an effort to make the course interesting and ensure a solid understanding of the material.

This class format is not intended to intimidate or feel uncomfortable – to the contrary, a good measure of humor usually creeps into the process. The format is intended to stimulate class

discussion, ensure that we hear from a broad range of diverse voices as we explore these issues, keep you motivated to stay on top of your readings, and help you develop an ability to orally explain legal issues – something that almost all lawyers have to do.

Please bring your copy of the federal civil rules and federal jurisdiction statutes to every class. You frequently will need access to those materials during class discussions.

Writing Assignments

Five writing assignments are noted in the Course Schedule below. The writing assignments are intended to help you synthesize the material thoroughly, give you practice applying it in advance of the practice and final examinations, and help build litigation skills.

Please submit your writing assignments to the drop box on the Course Canvas Website. If you have problems uploading your submission, please contact my assistant, Curtis Terry. Please do not email your assignment to me, directly.

Review Classes

A review class is built into the course schedule at the end of the quarter. It will provide an opportunity to review the material we have covered, and address any questions or areas of confusion. There is no reading assignment for the review class. Instead, as noted in the course schedule, you will be asked to submit questions in advance identifying areas about which you may have a question or confusion. We will go over that material in the review class.

Some Simple Advice

The best piece of advice I can give you in navigating civil procedure is the simplest one: “*Read the rules.*” You’ll probably hear me say that regularly through the quarter. Whether in law school or in practice, more often than not, that’s where you’ll find the answer.

Particularly important rules and statutes are identified in the course schedule below, but you are expected to be familiar with *any* federal civil rule or statute referenced in the reading assignments. If you encounter a reference to a rule or statute in a court decision or discussion in the textbook, look it up and read it. It will only take a few minutes, and it’s one of the most helpful habits you can develop.

GENERAL COURSE MATTERS

Computer and Internet Use During Class

Class discussion is the principal method by which we will identify and analyze the legal issues that the course covers. Computer use in class is not prohibited, but limited use of computers in class is preferred and recommended because computers tend to inhibit active listening, thinking, analyzing, and participation. We talk a lot in law school about teaching students how to “think like lawyers.” It is difficult to think critically and type on a keyboard at the same time. The PowerPoint slides

posted on the course website after each class will capture the main points from each class that are worth noting.

If you elect to use a computer in class, it must be used *solely* to take notes or for other class-related purposes. Use of computers for other purposes unrelated to class is disrespectful of your colleagues and will negatively affect the portion of your grade that is based on class participation. Worse yet, it will impact your understanding of the material, which you will lament when you encounter it on the final examination or bar examination.

Podcasts

All classes will be podcast. If you miss a class, it will be worth reviewing the podcast. But the podcasts tend to be a poor substitute for class attendance because the recording does not pick up responses and comments by students, which can make it difficult to follow the discussion and absorb the important points that are being developed. And sometimes the recording system lets us down and misses a class entirely.

Access and Accommodations

Your experience in this class is important to me. If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest convenience 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 (conditions include but not limited to; mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 011 Mary Gates Hall or 206-543-8924 or uwdrs@uw.edu or disability.uw.edu. DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions. Reasonable accommodations are established through an interactive process between you, your instructor(s) and DRS. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

GRADING AND FINAL EXAMINATION

Your final grade for the course will be determined by a combination of your scores and performance in the several components of the course as follows:

- **Final Examination (65%)**

The final examination is a 3-hour limited open book exam, which will count for 65% of your final grade. You may bring with you the following resources: the assigned textbook; the Federal Rules of Civil Procedure; your class notes; any materials posted to the course website; and any outlines that you personally prepared or worked with a group to prepare. I recommend that you bring hard (paper) copies of these materials in case of technical problems. You may not bring commercial outlines, treatises or other outside resources to the exam with you.

The exam currently is scheduled for March 21 at 1pm. Please check the law school's final examination schedule online later in the quarter to confirm the date and time. More details to follow as exam time approaches.

For this exam, only computers that have *ExamSoft* installed may be used. In *ExamSoft*, the exam will be Non-Secure with Blocked Internet, which will give you access to outlines and notes on your computer, but will not permit access to the internet.

- **Writing Assignments (20%)**

The course includes five writing assignments. The writing assignments are allocated, in the aggregate, 20% of your final grade (a maximum of 4 points for each writing assignment).

- **Class Participation (15%)**

Grading for in-class participation is based on my assessment of your level of preparedness for class discussions, and the depth and quality of your in-class answers and questions. Class participation is given weight in grading because it provides an additional means by which I can gauge your understanding and mastery of the course material. Class participation also is given weight because speaking skills are important in practicing law, whether they are used in court, in discussions with a client, or in negotiations with other counsel. Lawyers need to be able to orally explain complex legal issues, and law school is the appropriate place to start developing those skills.

Once composite grades for all of the course components are assembled, I will ensure compliance with the law school grade distribution requirements and then finalize the grades for the course.

Wait List

If you are on the waiting list for this course when classes begin and you want to be admitted, please attend the first class session and sign the Waiting List sheet. Priority will be given to students who have attended class and signed the Waiting List sheet.

IMPORTANT DATES

Tuesday, January 8	First day of class
Sunday, January 13 at Noon	Writing Assignment No. 1 Due
Saturday, January 26 at Noon	Writing Assignment No. 2 Due
Sunday, February 3 at Noon	Writing Assignment No. 3 Due
Sunday, February 10 at Noon	Writing Assignment No. 4 Due
Sunday, March 3 at Noon	Writing Assignment No. 5 Due

Tuesday, March 12

Final class

Thursday, March 21 at 1:00pm

Final Examination
[Please confirm date and time]

COURSE SCHEDULE AND ASSIGNMENTS

Please see schedule below. Please also regularly check the course syllabus on Canvas for revisions and additions to the schedule.

See following pages

READING AND CLASS SCHEDULE

BEFORE THE FIRST CLASS: In addition to the assignment noted below, please review the subject matter jurisdictional statutes (28 U.S.C. §§1331 and 1332) and *Hazard*, pp. 371-409.

CLASS	DATE	TOPIC	ASSIGNMENT
WEEK 1		JOINDER OF CLAIMS AND PARTIES	
1	Tuesday Jan 8	<p>Introduction; Joinder of Claims and Counterclaims</p> <p>Cases <i>Podhorn v. Paragon Group</i> <i>Jones v. Ford</i></p> <p>Statutes 28 U.S.C. §§ 1331, 1332, 1367</p> <p>Rules FRCP 13, 18, 2</p>	<p><i>Hazard</i>, pp. 557-572</p> <p><u>Also:</u> <i>Podhorn v. Paragon Group</i> (Posted on CANVAS)</p>
2	Thursday Jan 10	<p>Cross-Claims; Joinder of Parties – Part 1</p> <p>Cases <i>Fairview Park v. Al Monzo Const.</i> <i>Kedra v. City of Philadelphia</i></p> <p>Statutes 28 U.S.C. §§ 1331, 1332, 1367</p> <p>Rules FRCP 13, 17, 18, 19 and 20</p>	<p><i>Hazard</i>, pp. 573-588</p>
	Thursday Jan 10	<p>Writing Assignment No. 1 Joinder of Claims</p>	<p><u>DUE:</u> Sunday, January 13 at Noon</p>

CLASS	DATE	TOPIC	ASSIGNMENT
WEEK 2		JOINDER OF PARTIES AND ANOTHER LOOK AT <i>ERIE</i>	
3	Tuesday Jan 15	<p>Joinder of Parties – Part 2</p> <p>Cases <i>Lopez v. City of Irvington</i> <i>Temple v. Synthes Corp.</i> <i>Helzberg’s Diamond Shops v. Valley West</i> <i>Daynard v. Ness Motley</i></p> <p>Statutes 28 U.S.C. §§ 1331, 1332, 1367</p> <p>Rules FRCP 13, 14, 17, 18, 19 and 20</p>	<p><i>Hazard</i>, pp. 588-599</p> <p><u>Also:</u> <i>Lopez v. City of Irvington</i> <i>Daynard v. Ness, Motley</i> (Posted on CANVAS)</p>
4	Thursday Jan 17	<p>Another Look at <i>Erie</i> A deeper look at choice of law rules</p> <p>Cases <i>Swift v. Tyson</i> <i>Erie Railroad v. Tompkins</i> <i>Guaranty Trust v. York</i> <i>Byrd v. Blue Ridge Rural Elec. Coop</i> <i>Hanna v. Plumer</i></p>	<p><i>Hazard</i>, pp. 335-375</p>
WEEK 3		PROVISIONAL REMEDIES AND RULE 11	
5	Tuesday Jan 22	<p>Provisional Remedies: TROs and PI; and Removal</p> <p>Cases <i>Washington v. Trump</i> <i>Trump v. Hawaii</i> <i>U.S. v NY Times</i> <i>Caterpillar v. Williams</i></p> <p>Rules FRCP 65</p> <p>Statutes 28 U.S.C. § 1441</p>	<p><i>Washington v. Trump</i> <i>Trump v. Hawaii</i> <i>Remedies and Stakes: U.S. v NY Times</i> (Posted on CANVAS)</p> <p><i>Hazard</i>, pp. 286-297</p>

CLASS	DATE	TOPIC	ASSIGNMENT
	Tuesday Jan 22	Writing Assignment No. 2 Removal	<u>DUE</u> : Saturday, January 26 at Noon
6	Thursday Jan 24	Rule 11 and Sanctions Issues Cases <i>Walker v. Norwest Corp.</i> <i>Christian v. Mattel, Inc.</i> Rules FRCP 11	Yeazell, pp. 416-429 (Posted on Canvas)
WEEK 4		SUMMARY JUDGMENT	
7	Tuesday Jan 29	Summary Judgment – Part 1 Cases <i>Adickes v. S.H. Kress</i> <i>Celotex Corp. Catrett</i> <i>Tolan v. Cotton</i> <i>Scott v. Harris</i> Rules FRCP 56	<i>Hazard</i> , pp. 803-829
8	Thursday Jan 31	Summary Judgment – Part 2 Cases <i>Anderson v. Liberty Lobby</i> <i>Matsushita v. Zenith</i> Rules FRCP 56	<i>Hazard</i> , 829-850

CLASS	DATE	TOPIC	ASSIGNMENT
	Thursday Jan 31	Writing Assignment No. 3 Summary Judgment	<u>DUE</u> : Sunday, February 3 at Noon
WEEK 5		CLASS ACTIONS	
9	Tuesday Feb 5	Introduction to and Administration of Class Actions Cases <i>Wal-Mart v. Dukes</i> <i>Comcast v. Behrend</i> Statutes 28 U.S.C. §1332(d) Rules FRCP 23	<i>Hazard</i> , pp. 638-639; 651-671, 678-693 <i>This reading assignment carries over to the next class</i>
10	Thursday Feb 7	Notice in Class Actions Cases <i>Castano v. American Tobacco Co.</i> <i>Eisen v. Carlisle & Jaquelin</i> Statutes 28 U.S.C. §1369 Rules FRCP 23	<i>Hazard</i> , 678-693 <u>Also</u> : <i>Castano v. American Tobacco Co.</i> <i>Eisen v. Carlisle & Jaquelin</i> (Posted on CANVAS)
	Thursday Feb 7	Writing Assignment No. 4 Class Actions	<u>DUE</u> : Sunday, February 10 at Noon

CLASS	DATE	TOPIC	ASSIGNMENT
WEEK 6		CLASS ACTIONS AND JMOL MOTIONS	
11	Tuesday Feb 12	<p>Settlement of Class Actions</p> <p>Cases <i>Amchem Products v. Windsor</i> <i>Shady Grove Orthopedic Assn v. Allstate</i> <i>In re Bluetooth Headset Litigation</i></p> <p>Statutes 28 U.S.C. §1369</p> <p>Rules FRCP 23</p>	<p><i>Hazard</i>, pp. 693-703</p> <p><u>Also:</u> <i>In re Bluetooth Headset Litigation</i> <i>Shady Grove Orthopedic Assn v. Allstate</i> <i>Amchem Products v. Windsor</i> (Posted on CANVAS)</p>
12	Thursday Feb 14	<p>Motions for Judgment as a Matter of Law</p> <p>Cases <i>Lind v. Schenley Industries</i> <i>Peterson v. Wilson</i> <i>Reeves v. Sanderson Plumbing Products</i></p> <p>Rules FRCP 59</p>	<p><i>Yeazell</i>, pp. 636-650</p> <p><i>Reeves v. Sanderson Plumbing Products, Inc.</i> (Posted on CANVAS)</p>
WEEK 7		POST-TRIAL MOTIONS AND PRECLUSION	
13	Tuesday Feb 19	<p>Motions for a New Trial</p> <p>Cases <i>Reid v. San Pedro, LA and Salt Lake RR</i> <i>Pennsylvania RR v. Chamberlain</i> <i>Dadurian v. Underwriters at Lloyds</i></p> <p>Rules FRCP 50</p>	<p><i>Yeazell</i>, pp. 651-668</p> <p><i>Dadurian v. Underwriters at Lloyd's, London</i> (Posted on CANVAS)</p>

CLASS	DATE	TOPIC	ASSIGNMENT
14	Thursday Feb 21	<p>Claim Preclusion</p> <p>Cases <i>Federated Dept. Stores v. Moitie</i> <i>Davis v. Dallas Area Rapid Transit</i> <i>Staats v. County of Sawyer</i> <i>Semtek Int'l Inc. v Lockheed Martin</i></p>	<p><i>Hazard</i>, pp. 1049-1072</p> <p><u>Also:</u> <i>Semtek Int'l Inc. v. Lockheed Martin Corp.</i> (Posted on CANVAS)</p>
WEEK 8		PRECLUSION	
15	Tuesday Feb 26	<p>Issue Preclusion – Same Parties</p> <p>Cases <i>B&B Hardware v. Hargis Industries</i> <i>Jacobs v. CBS</i> <i>Taylor v. Sturgell</i></p>	<p><i>Hazard</i>, pp. 1072-1103</p>
16	Thursday Feb 28	<p>Issue Preclusion – Different Parties</p> <p>Cases <i>Parklane Hosiery v. Shore</i> <i>Smith v. Bayer</i></p>	<p><i>Hazard</i>, pp. 1103-1116</p> <p><u>Also:</u> <i>Smith v. Bayer</i> (Posted on CANVAS)</p>
	Thursday Feb 28	<p>Writing Assignment No. 5 Issue Preclusion</p>	<p><u>DUE:</u> Sunday, March 3 at Noon</p>

CLASS	DATE	TOPIC	ASSIGNMENT
WEEK 9		APPELLATE REVIEW	
17	Tuesday Mar 5	<p>Appellate Review – Part 1 <i>Final Judgments</i></p> <p>Cases <i>Cox Broadcasting v. Cohn</i> <i>Mohawk Industries v. Carpenter</i> <i>Cooper & Lybrnd v. Livesay</i></p> <p>Statutes 28 U.S.C. §§ 1251, 1253, 1254, 1257, 1291, 1292</p> <p>Rules FRAP 1-6, 10 and 11 FRCP 52(a), 54(b), 65(a) and (b)</p>	<p><i>Hazard</i>, pp. 1139-65</p> <p><u>Also:</u> <i>Coopers & Lybrand v. Livesay</i> (Posted on CANVAS)</p>
18	Thursday Mar 7	<p>Appellate Review - Part 2 <i>Final Judgments</i></p> <p>Cases <i>Kerr v. USDC</i> <i>Bankers Life v. Crenshaw</i></p> <p>Statutes 28 U.S.C. §§ 1251, 1253, 1254, 1257, 1291, 1292</p> <p>Rules FRAP 1-6, 10 and 11 FRCP 52(a), 54(b), 65(a) and (b)</p>	<p><i>Hazard</i>, pp. 1160-1173</p>
WEEK 10		REVIEW	
19	Tuesday Mar 12	<p>Review Session</p>	<p><i>Please submit at least one question addressing an area you would like to review by 5pm on Friday March 8</i></p>

CLASS	DATE	TOPIC	ASSIGNMENT
WEEK 11		FINAL EXAMINATION	
19	Thursday Mar 21	Final Examination	