

CIVIL PROCEDURE
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
FALL 2024 SYLLABUS – LAW 5301 – 4 CREDITS

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Office Hours: Tuesday 3:30 p.m. – 5:30 p.m.

MEETING TIME:

Monday, Tuesday, Thursday 10:45 a.m. – 12:00 p.m.

CLASSROOM LOCATION:

Holland 285D

COURSE DESCRIPTION AND OBJECTIVES:

In this course, we will learn the rules by which civil lawsuits are conducted in U.S. federal courts. We will also learn the policy concerns that undergird the rules of civil procedure, such as efficiency, fairness, and accuracy.

STUDENT LEARNING OUTCOMES:

At the end of this course, students should be able to:

1. Recognize and apply the Federal Rules of Civil Procedure
2. Understand the policy concerns underlying the Federal Rules of Civil Procedure
3. Identify and analyze legal issues related to the Federal Rules of Civil Procedure

REQUIRED READING MATERIALS:

Please be sure to register for the Canvas course website and have any required materials with you in print form in class. To be clear, you will be required to obtain physical copies of all textbooks. You are responsible for checking the Canvas course website and your email connected to the website on a regular basis for any class announcements or adjustments.

The required textbooks for this course are as follows:

1. Friedenthal, Miller, Sexton, Hershkoff, McKenzie, and Steinman’s casebook, CIVIL PROCEDURE: CASES AND MATERIALS (13th ed.) (hereafter CB)
2. Friedenthal, Miller, Sexton, Hershkoff, McKenzie, and Steinman’s supplement, CIVIL PROCEDURE SUPPLEMENT FOR USE WITH ALL PLEADING AND PROCEDURE CASEBOOKS, 2024-2025 (hereafter SUP)
3. Gerald Stern, THE BUFFALO CREEK DISASTER (2008) (hereafter BCD)

Please note that we will be studying the Federal Rules of Civil Procedure (hereafter FRCP), which is contained in the SUP and also readily available online. There is no need to separately purchase a printed copy of the FRCP. Other reading materials will be provided on the course website and indicated with the notation “PDF” in the final section of this syllabus.

COURSE EXPECTATIONS AND GRADING EVALUATION:

Your course grade will be based on a final exam (90%), an ungraded midterm exam (5%), and class participation (5%).

The final exam will be a fixed date, open book/notes, closed internet, in-class exam. The final exam schedule can be found [here](#). Please note that the schedule is subject to change. After course grades have been posted, if you wish to review your final exam, I will make your final exam available to you. If you wish to speak to me after you have reviewed your exam, you may do so after February 10, 2025.

The midterm exam will be ungraded, meaning you will receive full credit if you make a good faith effort to complete the exam and turn in your answer on time. You will receive no credit if you do not complete it on time or if your answer does not reflect a good faith effort.

In evaluating your class participation, I will take into account a number of considerations, including the professionalism and civility you display in class, your preparedness, and your class attendance. I expect everyone to be familiar with the assigned material and prepared to discuss it in class if called upon. I also expect everyone to be civil in the manner in which they conduct themselves in class discussions. Please do not arrive late to class, leave early, or leave to take a break during class, absent extenuating circumstances. If you are late to class, leave early, or leave to take a break during class, absent extenuating circumstances, you will receive a zero for class participation for that date and may be marked absent.

CLASS ATTENDANCE POLICY:

Attendance in class is required by both the ABA and UF Law. Attendance will be taken at each class meeting. Students are responsible for ensuring that they are not recorded as absent. Students are allowed 3 unexcused absences during the course of the semester. A student who fails to meet the attendance requirement will be dropped from the course. UF Law's on attendance can be found [here](#). Please note the religious holiday exemption below. If a student is late to class, leaves early, or leaves to take a break during class, absent extenuating circumstances, the student may be marked absent.

OBSERVANCE OF RELIGIOUS HOLIDAYS:

UF Law respects students' [observance of religious holidays](#). The following guidelines from UF apply:

- Students, upon prior notification to their instructors, shall be excused from class or other scheduled academic activity to observe a religious holy day of their faith.
- Students shall be permitted a reasonable amount of time to make up the material or activities covered in their absence.
- Students shall not be penalized due to absence from class or other scheduled academic activity because of religious observances.

COMPLIANCE WITH UF HONOR CODE:

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Law Honor Code located [here](#). The UF Law Honor Code also prohibits use of artificial intelligence, including, but not limited to, ChatGPT and

Harvey, to assist in completing quizzes, exams, papers, or other assessments unless expressly authorized by the professor to do so.

INFORMATION ON UF LAW GRADING POLICIES:

UF Law’s mean and mandatory grade distributions are posted on UF Law’s website, and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent	Letter Grade	Point Equivalent
A	4.0	C	2.0
A-	3.67	C-	1.67
B+	3.33	D+	1.33
B	3.0	D	1.0
B-	2.67	D-	0.67
C+	2.33	E	0.0

UF Law’s grading policy is available [here](#).

EXAM DELAYS AND ACCOMMODATIONS:

UF Law’s policy on exam delays and accommodations can be found [here](#).

CELLPHONES AND LAPTOPS:

Cellphones and laptops cannot be used during class without prior approval. Please turn off your cellphone during class. You may use a tablet *for the sole purpose of taking notes*. I reserve the right to prohibit the use of tablets should they become a distraction.

STATEMENT RELATED TO ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES:

Students requesting accommodations for disabilities must first register with the Disability Resource Center (<https://disability.ufl.edu/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester. Students need to share their accommodation letter with me and discuss their access needs as early as possible in the semester. Students may access information about various resources on the UF Law Student Resources Canvas page (<https://ufl.instructure.com/courses/427635>).

STUDENT COURSE EVALUATIONS:

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. See [here](#) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students [here](#).

RECORDINGS OF CLASS:

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor. A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or guest lecturer during a class session. Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third-party note/tutoring services. A student who publishes a recording (*i.e.*, shares a class recording with a fellow classmate) without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor and Student Conduct Code.

ABA OUT-OF-CLASS HOURS REQUIREMENTS:

ABA Standard 310 requires that students devote 2 hours to out-of-class preparation for every “classroom hour” of in-class instruction. Each weekly class time is approximately 4 hours in length, requiring at least 8 hours of preparation outside of class, including reading the assigned materials.

OFFICE HOURS:

My regular in-person office hours are Tuesdays 3:30 p.m. to 5:30 p.m. My office hours will be held in Holland 310. If you are unable to meet with me during my regularly scheduled office hours, please send me an email, and we will arrange another mutually convenient time. My email address is kim@law.ufl.edu. I encourage you to come see me during the semester and ask questions that you may have about the course.

LEGAL DISCLAIMER:

No lesson is intended to espouse, promote, advance, inculcate, or compel a particular feeling, perception, or belief. Any discussion surrounding race, color, national origin, or sex will be presented in an objective manner and without my endorsement of any particular point of view. To the extent possible, facts and theories will be presented along with different interpretations and viewpoints. I encourage you to engage in open discussions so that you reach your own opinions and conclusions. I will not judge you on your opinions, only on how you support your opinions with facts and legal reasoning.

HEALTH AND WELLNESS RESOURCES:

Law school can be a daunting experience, especially when life outside the law becomes challenging. UF Law provides numerous resources for your support, and I encourage you to seek help if you have concerns. Any student who has difficulty accessing sufficient food or lacks a safe place to live is encouraged to contact the Office of Student Affairs. If you are comfortable doing so, you may also notify me so that I can direct you to further resources.

- *U Matter, We Care*: If you or someone you know is in distress, please contact umatter@ufl.edu, call 352-392-1575, or visit [U Matter, We Care website](#) to refer or report a concern and a team member will reach out.
- *Counseling and Wellness Center*: [Visit the Counseling and Wellness Center website](#) or call 352-392-1575 for information on crisis services as well as non-crisis services.
- *Student Health Care Center*: Call 352-392-1161 for 24/7 information to help you find the care you need or [visit the Student Health Care Center website](#).
- *University Police Department*: [Visit UF Police Department website](#) or call 352-392-1111 (or 911 for emergencies).
- *UF Health Shands Emergency Room / Trauma Center*: For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS:

The following course schedule is offered as a guide to the direction of the course. Our pace will depend on the level of interest and the level of difficulty of each section. As such, the course schedule is subject to change. You are not responsible for reading the introductory paragraph before each case or the “Notes and Questions” after each case unless noted otherwise below. Readings with the notation “PDF” can be found on the course website. I may include additional readings or exclude readings as the course progresses.

I. OVERVIEW OF A CIVIL LAWSUIT

- 1) A SURVEY OF THE CIVIL ACTION
 - CB: 1-28 (skim)
 - CB: 29-30 (*Capron*)
- 2) WHEN CAN A COURT ENTERTAIN A CLAIM? (SMJ)
 - S: U.S. Const. art. III
 - S: 28 U.S.C. §§ 1331; 1332(a)
 - S: FRCP 1
- 3) WHEN CAN A COURT ENTERTAIN A CLAIM? (PJ)
 - CB: 31-35 (*Tickle*)
 - S: FRCP 3; 4(a)-(c) and (k); 17
- 4) WHO IS PART OF A LAWSUIT? (PARTY JOINDER)

- CB: 40-41 (*Temple*)
 - S: FRCP 13, 14(a)-(b); 18, 19, 20, 24
- 5) HOW DOES A CASE GET TO AND STAY IN COURT? (MTD)
- CB: 37-39 (*Case*)
 - S: FRCP 7, 8, 11(a)-(b); 12, 15, 55(a)
- 6) HOW DOES A CASE PROCEED TO RESOLUTION? (DISCOVERY)
- CB: 42-45 (*DiMichel*)
 - PDF: *Tran*
 - S: FRCP 26-37 (skim)
- 7) HOW IS A CASE RESOLVED WITHOUT TRIAL? (SJ)
- S: FRCP 56, 68
 - PDF: *Valley Nat'l Bank*
 - PDF: *Houchens*
- 8) HOW ARE CASES DECIDED? (JURIES, JUDGES, AND JUDGMENT)
- CB: 49-62 (introductory paragraphs; not cases, notes, or questions)
 - CB: 63-67 (*Lavender*)
 - S: FRCP 38, 39, 40, 47, 48, 49, 50, 51, 52, 54, 58, 59, 60, 61
- 9) HOW DO CASES END?
- S: FRCP 57, 64, 65, 69
 - CB: 68-72 (*Hicks*)
 - CB: 73 (*Fetter*)

II. JURISDICTION AND DUE PROCESS

- 1) PERSONAL JURISDICTION: TRADITIONAL BASES
- CB: 79-86 (*Pennoyer*)
 - CB: 91-93 (*Hess*)
- 2) PERSONAL JURISDICTION: EXPANSION, MINIMUM CONTACTS
- CB: 95-100 (*International Shoe*)
- 3) THE MECHANICS OF CHALLENGING PERSONAL JURISDICTION
- CB: 234-236
- 4) PERSONAL JURISDICTION: LONG ARM STATUTES
- CB: 107-113 (*Gray*)
 - PDF: Fla. Stat. § 48.193

- 5) PERSONAL JURISDICTION: FEDERAL LONG ARM STATUE
 - S: FRCP 4(k)

- 6) PERSONAL JURISDICTION: DUE PROCESS
 - CB: 102-103 (*McGee*)
 - CB: 103-106 (*Hanson*)
 - CB: 114-123 (*World-Wide Volkswagen*)
 - CB: 159-160 (*Walden*)

- 7) PERSONAL JURISDICTION: DUE PROCESS
 1. CB: 134-142 (*Asahi*)
 2. CB: 143-158 (*McIntyre*)

- 8) PERSONAL JURISDICTION AND THE INTERNET
 - CB: 200-202

- 9) PERSONAL JURISDICTION: GENERAL/SPECIFIC TODAY
 - CB: 162-167 (*Goodyear*)
 - CB: 175-193 (*Ford*)

- 10) PERSONAL JURISDICTION: PROPERTY
 - CB: 210-222 (*Shaffer*)

- 11) PERSONAL JURISDICTION: PHYSICAL PRESENCE
 - CB: 223-231 (*Burnham*)

- 12) PERSONAL JURISDICTION: CONSENT
 - CB: 198 (*Bremen*)
 - CB: 198-199 (*Carnival Cruise Lines*)

- 13) PROCEDURAL DUE PROCESS: NOTICE
 - CB: 237-245 (*Mullane*)

- 14) PROCEDURAL DUE PROCESS: OPPORTUNITY TO BE HEARD
 - PDF: *Mathews*
 - CB: 286-294 (*Doehr*)

- [MIDTERM DISTRIBUTED]

- 15) SUBJECT MATTER JURISDICTION - DIVERSITY
 - CB: 304-306
 - CB: 311-316
 - S: U.S. Const. art. III, § 2
 - S: 28 U.S.C. §§ 1332(a)-(c)

- 16) CITIZENSHIP
 - CB: 309-311 (*Mas*)
- 17) AMOUNT IN CONTROVERSY
 - CB: 318-322 (*Whitchurch*)
- 18) EXCEPTIONS
 - CB: 324-325
- 19) CHOICE OF LAW
 - CB: 442-444 (*Swift*)
 - CB: 445-451 (*Erie*)
 - S: 28 U.S.C. § 1652
- 20) SUBJECT MATTER JURISDICTION - FEDERAL QUESTION
 - CB: 331-333 (*Mottley*)
 - CB: 335-338 (*Harms*)
 - CB: 340 (*Smith*)
 - CB: 340 (*Moore*)
 - CB: 341-342 (*Merrell Dow*)
 - CB: 342-347 (*Grable*)
 - CB: 347-351 (*Gunn*)
 - S: 28 U.S.C. § 1331
- 21) SUBJECT MATTER JURISDICTION - REMOVAL
 - CB: 380-387
 - S: 28 U.S.C. § 1441 (up to §1441(c))
- 22) SUBJECT MATTER JURISDICTION - SUPPLEMENTAL
 - CB: 353-358 (*Gibbs*)
 - CB: 359-360 (*Aldinger*)
 - CB: 360-361 (*Kroger*)
 - CB: 365-373 (*Exxon*)
 - S: 28 U.S.C. § 1367
- 23) CHALLENGING SUBJECT MATTER JURISDICTION
 - CB: 387-388
- 24) VENUE AND TRANSFER
 - CB: 395-398
 - CB: 404-407 (*Bates*)
 - CB: 410-414 (*Hoffman*)
 - S: 28 U.S.C. § 1391; § 1404; § 1406

- 25) FORUM NON CONVENIENS
- CB: 421-429 (*Piper Aircraft*)

III. STAGES OF A CIVIL LAWSUIT

- 1) FORUM SHOPPING
 - BCD: Part I, 3-88
 - PDF: BCD Filings
- 2) PLEADING DOCUMENTS (THE COMPLAINT AND ANSWER)
 - S: FRCP 8-12
 - S: Form 10-21, 30-31 (pp. 159-166)
- 3) DEFAULT JUDGMENTS
 - S: FRCP 55
- 4) PLEADING AND DISMISSALS (12(B)(6))
 - CB: 603-607
 - CB: 608-610 (*Dioguardi*)
 - CB: 617-627 (*Twombly*)
 - CB: 628-639 (*Iqbal*)
 - CB: 645 (*Erickson*)
 - S: FRCP 12
- 5) PLEADING: PROVISIONS TO ENSURE TRUTHFUL ALLEGATIONS
 - S: FRCP 11
 - PDF: *Garr*
- 6) THE STRUCTURE OF A CASE: JOINDER OF CLAIMS AND PARTIES
 - CB: 735-738 (*LASA*)
 - S: FRCP 13, 14, 18, 19, 20, 21, 24, 42
- 7) THE STRUCTURE OF A CASE: CLASS ACTIONS
 - CB: 810-822 (*Wal-Mart*)
 - CB: 804-808 (*Hansberry*)
 - S: FRCP 23
- 8) THE STRUCTURE OF A CASE: CLASS ACTION JURISDICTION
 - CB: 869-870 (*Snyder*)
 - CB: 870 (*Zahn*)
 - CB: 870 (*Exxon*)
 - CB: 870-873 (CAFA)

- CB: 873-881 (*Shutts*)
 - CB: 28 U.S.C. §1332(d); §1453; §§1711-1715
- 9) DISCOVERY DEVICES
- BCD: Part II, 91-177
 - S: FRCP 26, 30, 32, 33, 34, 35, 36, 37, 45
- 10) DISCOVERY: INTRODUCTION
- CB: 897-900
 - S: FRCP 27
- 11) DISCOVERY: RELEVANCE
- CB: 904-905
- 12) DISCOVERY: PROPORTIONALITY
- CB: 912 (note 4)
- 13) DISCOVERY: PRIVILEGE
- CB: 944-953 (*Hickman*)
 - S: FRCP 26(b)(3)
- 14) SUMMARY JUDGMENT
- CB: 1013-1015 (*Adickes*)
 - CB: 1017-1023 (*Celotex*)
 - CB: 1027-1029 (*Anderson*)
 - CB: 1032-1033 (*Scott*)
 - S: FRCP 56
- 15) THE CONSTITUTIONAL RIGHT TO A JURY TRIAL
- CB: 1054-1060 (*Beacon Theatres*)
 - CB: 1074-1082 (*Terry*)
 - S: FRCP 38, 39, 47, 48, 49, 51, 52
- 16) JURY SELECTION
- CB: 1093-1100 (skim)
 - CB: 1100-1103 (*Edmonson*)
 - CB: 1103-1105 (*J.E.B.*)
- 17) SCOPE AND ORDER OF TRIAL
- CB: 1106-1111
- 18) (HOW) DO CASES END?: JUDGMENT AND DIRECTED VERDICT
- S: FRCP 50, 54, 59, 60
 - S: U.S. Const. 7th Amendment

- 19) (HOW) DO CASES END?: APPEAL
 - CB: 1214-1217 (*Liberty Mutual*)
 - CB: 1242-1243
 - S: 28 U.S.C. §§ 1291-2

- 20) (HOW) DO CASES END?: BASIC CLAIM AND ISSUE PRECLUSION
 - CB: 1262-1266 (*Rush*)
 - CB: 1279-1281 (*Mitchell*)
 - CB: 1283-1284 (*Linderman*)

- 21) (HOW) DO CASES END?: PRECLUSION AND NON-PARTIES
 - CB: 1327-1329 (*Bernhard*)
 - CB: 1330-1332 (*Blonder-Tongue*)
 - CB: 1334-1340 (*Parklane*)
 - CB: 1344-1349 (*Martin*)
 - CB: 1349-1355 (*Sturgell*)

- 22) (HOW) DO CASES END?: CLAIM AND ISSUE PRECLUSION IN CLASS ACTIONS
 - CB: 886-890 (*Cooper*)

IV. REVIEWING AND ASSESSING CIVIL ADJUDICATION

- 1) SETTLEMENT
 - BCD: Part III, 181-280
 - S: FRCP 41

- 2) EXPLORING ALTERNATIVES TO LITIGATION
 - CB: 1383-1394
 - PDF: *Hooters*
 - PDF: *Circuit City*
 - CB: 890-893 (*Concepcion*)

- 3) COURSE REVIEW
 - Submit questions