

**UNIVERSITY OF FLORIDA
LEVIN COLLEGE OF LAW**

COMPLEX CIVIL LITIGATION FALL 2022

LAW 6311 CLASS NUMBER 25115

**MONDAY AND WEDNESDAY
1:15 –4:40 PM HH - 345**

COURSE SYLLABUS



Why Should I Take This Course?

Complex civil litigation shapes today's body politic. Complex civil litigation challenges governmental actions and laws; complex civil litigation vindicates human and civil rights; complex civil litigation remedies collective wrongs, rectifies mass torts, and violations of statutory rights. Complex litigation involves employment rights, consumer rights, political rights, financial rights, constitutional rights, and environment rights. Complex litigation structures our everyday life.

Student Learning Outcomes:

In this course you will:

- (i) Learn and apply the statutes, case law, and structural debates over what has been called "complex litigation" which involves management of cases involving multiple parties and multiple issues across multiple state and federal jurisdictions.
- (ii) Learn and apply relevant principles and case law governing due process, damages, and available remedies and relief.
- (iii) By the conclusion of this course, you will be able to understand, manage, and handle the procedural issues, rules, and structures of consolidation, joinder, and transfer in federal and state (a) multiparty litigation, (b) multidistrict litigation, and (c) class action litigation.

Who Is Your Professor?



I joined the UF Law faculty as a Legal Skills Professor in 2017 after 30+ years of practicing complex civil litigation with Holland & Knight in Miami (1983 – 2000) and Tampa (2000 – 2010) and Quarles & Brady (2010 – 2016) in Tampa. Before leaving the practice of law, I was a UF adjunct professor for 10 years.

I am from Philadelphia. You will undoubtedly notice my latent Philadelphia accent.



I hold a BA in philosophy from Lehigh University in Bethlehem, Pennsylvania, and an MA in philosophy from Washington University in St. Louis, Mo. I graduated from UF Law in 1983.

I am married to Cynthia Tejcek. Cindy graduated from Loyola University in Chicago with a BS in mathematics. She also holds an MBA from Kellogg School of Management at Northwestern University. We meet when she was the chief information officer of the American Bar Association. We have three adult grown children: My eldest son is an emergency room trauma nurse, my middle son is an Army Captain, and my daughter is a corrections officer.

Office Hours and How Can You Contact Me!

I want to hear from you by email, phone, or text. Please let me know If you have something to share with me – an inspiration, a new thought, a frustration, or concern.

Email	Telephone	Text	Office
hamiltonw@law.ufl.edu	480.993.8777	480.993.8777	376 Holland

Zoom	SKYPE
https://ufl.zoom.us/j/459159787	william.hamilton.1120

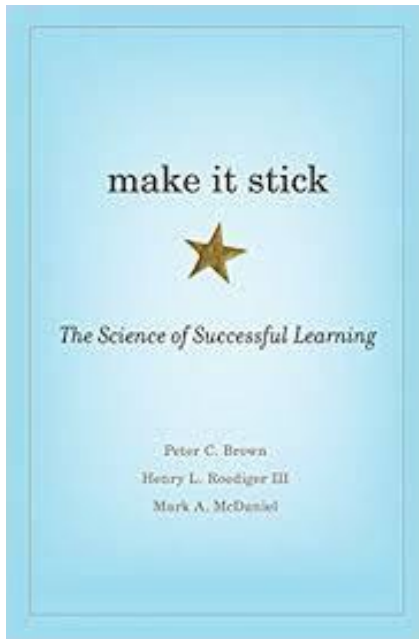
Office Hours:

Zoom is my favorite videoconferencing platform. We can have a face-to-face Zoom conference **any time** (even on tablets and smartphones). I will also hold office hours from 3:00 - 4:00 PM Mondays and Wednesdays in my office 375 Holland. If you are unable to meet with me during my regularly scheduled office hours, please send me an e-mail, and I'll be happy to arrange another mutually convenient time.

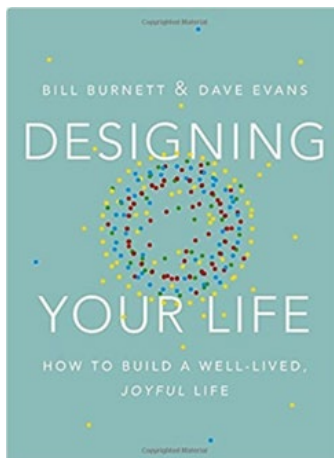
How You Can Do Well in this Course. It's Simple!

You will want to be engaged in this class. This is not a lecture-based course. At the beginning of each class, I will present the class with a problem that you will work on with your classmates based on what you have gleaned from the readings. Then we go over your suggested solutions together in class. Finally, I may summarize the lesson and outline the key take-aways. We will have three scheduled multiple choice "low stakes" check-up quizzes designed to help you absorb and remember the course materials. We will also discuss current events and some of the many complex litigation cases now in the courts.

My teaching practices are reflected in [**Make It Stick: The Science of Successful Learning**](#) by Peter C. Brown.



This course will introduce you to a litigation career path. You will want to see if it fits your interests and passions. I recommend the book ***“Designing Your Life: How to Build a Well-Lived Joyful Life,”*** by Burnett and Evans, Alfred A. Knopf (2016), for helpful strategies to find career directions that may work for you.



Attendance: You are expected to attend all the class sessions. I take attendance for every class.

Examination and Grading Policy: The total points that may be earned in the class are based upon the quizzes, attendance points, and the final examination. 1090. While the course grade distribution usually reflects the usual structure of A = 100 – 90%, B = 89% - 80%, etc., you should keep in mind that your final grade will reflect your class rank. For example, a numerical grade average of 92% earned on various exercises and assignment during the course may not translate the final grade of A- when combined with the score earned on the final examination. Early assignment scores should not establish an expectation of a similar final grade. Most students do well on the early check-up quizzes and the assignments and exercises are usually completed properly for full points.

How Will I be Graded?

1. Final examination: Points equally $\frac{1}{2}$ the total available course points.

There will be a 3-hour take-home, open-book examination composed of 4 questions and fact patterns. The final exam may be taken at any time during the finals period. There are no “breaks” or timeouts” after you start the examination. The Student Honor Code applies.

The final examination will be graded on the following rubric:

- (1) 20%: Identification of the issues presented by the scenario
- (2) 20%: Analysis of the issues presented by the scenario
- (3) 20%: Application of case law to the issues presented by the scenario
- (4) 20%: Resolution of the issues presented by the scenario
- (5) 20%: Felicity, conciseness, and richness of the written expression

2. Three In-Class Check-up Quizzes: 30 points each quiz (total quiz points: 60)

There will be 3- short check-up quizzes spaced evenly through the semester. The goal of the check-up quizzes is to help cement the course basic principles and to provide a quick glance at your comprehension. The quizzes are 20 minutes in length and composed of multiple choices questions. We will discuss each quiz in class after its completion.

2. Class Attendance and Participation: 2 points each class (total class points: 110)

The purpose of class participation is to attain a depth of understanding through probing responses and answers. Each class is worth 2 points. Class participation will be evaluated on the following rubric:

- (1) Asking and answering questions that illuminate the issues,
- (2) Asking and answering questions that enrich the class dialogue and advance the classes understanding of the issues,
- (3) Participating in the class dialogue and discussions,
- (4) Participation team debates and mock exercises,
- (5) Engaging in class activities, exercises and projects.
- (6) Demonstrating class preparation.

Classes will contain numerous individual and group exercises and problems.

We may occasionally have a remote class on Zoom. ***Students attending the class remotely are required to participate in the class and to be “on screen,” except as excused in advance.***

Is this Course Graded on a Curve?

I am provided a curved grade range by the Registrar and my class grade average must be within that range. In past semesters my grade point class average has been around 3.25.

Are Smartphones and Laptops Permitted in the Classroom?

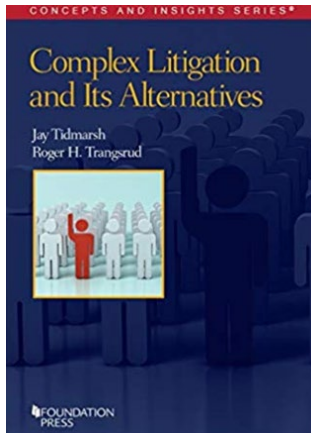
You may use laptops in class to take notes. I will turn my phone off when I come to class. Please do the same. Please restrict the use of your laptop to taking notes, and ***not visiting social media websites, texting, or emailing***. I expect your attention in class. Nothing life changing will happen while you are offline in class.

What Notes Should I Take in Class?

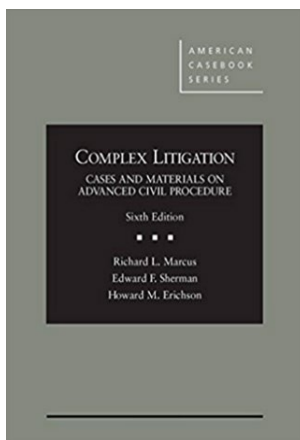
I recommended that you do not take word-for-word literal notes. This is not a court reporting class! Instead, think about what is happening in class and record the key ideas. Handwriting your notes is better for you than typing notes. Check out this article: ***Note-Taking: Writing vs. Typing Notes*** at <https://studyskills.com/students/note-taking/>.

What are the assigned texts?

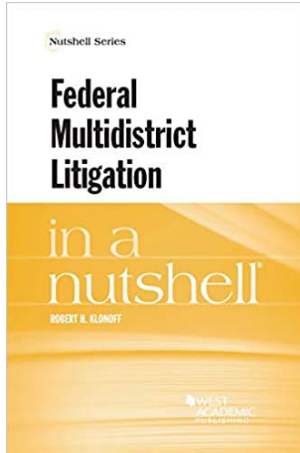
1. *Complex Litigation and Its Alternatives, 2nd Edition*, Jay Tidmarsh and Roger Transgrud (2018).



2. *Complex Litigation: Cases and Materials on Advanced Civil Procedure, 8th Edition*, Marcus, Sherman, & Erichson, West Academic Publications (2021)



3. *Federal Multidistrict Litigation in a Nutshell*, Robert H. Klonoff (2020)



We will also be referring the following free resources:

- ***Manual For Complex Litigation, Fourth***, Federal Judicial Center 2004, <https://public.resource.org/scribd/8763868.pdf>.
- ***Coordinating Multijurisdiction Litigation, A Pocket Guide for Judges***, Federal Judicial Center and National Center for State Courts, 2013, <http://ncsc.contentdm.oclc.org/cdm/ref/collection/civil/id/116>.
- ***The Judicial Panel on Multidistrict Litigation***
<http://www.jpml.uscourts.gov/>

Workload/class preparation and the 2:1 out of class/in class requirement (ABA Standard 310):

Students should expect to spend, on average, approximately two hours preparing for every hour of class. Reading assignments are posted on the “Modules” link on the Canvas site (located on the left side of the Canvas site).

It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class.

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. This course has 3 “classroom hours” of in-class instruction each week, requiring at least 6 hours of preparation outside of class. Accordingly, you will have about 60 pages of reading each week. Because the course includes statutory and regulatory excerpts that require careful reading, as well as discussion problems that require thoughtful advance written preparation, you should spend at least one hour on every 10-15 pages of reading.

What Will We Be Doing Each Week?

The course’s Canvas webpage includes our weekly topic, readings, resources, recorded lectures, assignments, and other reference materials. The Canvas web page is our “official” course home.

Below is a high-level overview of the topics the course will cover per week. Please refer to the course Canvas page for details.

Week 1: Complex Civil Litigation as Public Litigation
Week 2: Claims Against Different Parties in the Same Litigation
Week 3: Why and How to Become Part of an Ongoing Litigation
Week 4: Different Lawsuits in Different Jurisdictions with Similar Parties
Week 5: Multidistrict Courts and Due Process
Week 6: The Multidistrict Panel: Selection of the Transferee Court
Week 7: Multidistrict Case Management and Bellwether Trials
Week 8: Multidistrict Settlement, Common Funds, and Attorney Fees
Week 9: The Rationale for Class Action Litigation
Week 10: Different Types of Class Actions
Week 11: Damage Class Actions: Rule 23(b)(b) Cases
Week 12: The Class Action Fairness Act
Week 13: Class Action Settlements

Here are more of what we will cover in each weekly module:

Module 1: Why Would We Ever Want Litigation to Vindicate Broad Social Goods? Complex Civil Litigation as Public Litigation: An Overview

After completion of this module you will be able to:

- Understand the social policies of “public litigation”
- Understand the tension between public good v. private gains endemic to complex litigation
- Assess management issues associated with complex litigation
- Understanding social benefits and costs of aggregate litigation
- Understanding the drawbacks to aggregate litigation
- Understanding the ethical issues raised by aggregate litigation

Complex Litigation, Tidmarsh & Trangsrud, pp. 1-38 (pages are for the 7th Edition ; pages will be updated for the 8th Editon).

Complex Litigation, Markus et al., pp. 1-14

Federaral Multidistrict Litigation, §§ 1.1, 1.2, 1.3

Module 2: Why Would A Plaintiff Want to Bring Claims Against Different Parties in the Same Litigation?

After completion of this module you will be able to:

- Understand the requirements of permissive party joinder
- Understand the requirements of compulsory required party joinder
- Understanding Interpleader
- Articulate multiparty litigation joinder strategies

Complex Litigation, Tidmarsh & Trangsrud, pp. 39 – 74.

Complex Litigation, Markus et al.

Mosley v. General Motors, pp. 15 – 19

In Re Stand’N Seal Products, pp. 24-28

Stanford v. Tennessee Valley, pp. 28-31

Hall v, E.I. Du Point, pp. 33-37

Eldredge v. Carpenters Northern, pp. 40-43

Module 3: Why and How Would Anyone want to Become Part of an Ongoing Litigation?

After completion of this module you will be able to:

- Assess the benefits and risks of case intervention
- Determine when intervention is a viable strategy and weigh other potential strategies.
- Understanding consolidation, transfer, and removal.

Complex Litigation, Tidmarsh & Trangsrud, pp. 75 – 82

Complex Litigation, Markus et al.

Animal Protection Institute v. Merriam, pp. 57-61

Martin v. Wilks, pp. 68- 81

Module 4: How Should We Coordinate Lawsuits in Different Federal and State Jurisdictions Involving Similar or Identical Parties and Issues?

After completion of this module you will be able to:

- Seeking stays, transfers, and injunctions
- Avoiding issue preclusion

Complex Litigation, Tidmarsh & Trangsrud, pp. 101 – 138

Complex Litigation, Markus et al.

William Gluckk & Co. v. International Playtex, pp. 88-93

Semmes Motors v. Ford Motor, pp. 93-99

Katz v. Realty Equities Corp., pp. 101-109

Ginsey Industries, Inc. v. L.T.K. Plastics, pp. 112-114

DeMelo v. Lederle Laboratories, pp. 117 -124

Module 5: Should Cases from Around the Nation be Consolidated into a Single Case before One Judge?

After completion of this module you will be able to:

- Understand the role of the multidistrict panel
- Assess the factors bearing on the transfer decision
- Invoking and utilizing powers of the transferee court

Complex Litigation, Tidmarsh & Trangsrud, pp. 83 – 92.
Complex Litigation, Markus et al.
 In Re Shoulder Pain Pump, pp. 136 – 137
 In Re Aviation Products, pp. 137-143
 Stanley A. Weigel, article, pp. 147- 148
 In Re Factor VIII, pp. 148-151
 In Re Vioxx Products, pp. 163 – 167
 BP Oil Spill Litigation, article, pp. 171 -175
Federal Multidistrict Litigation, Chapter 3.

Module 6: Can the Multidistrict Court Preserve the Rights of all the Parties and Still Get Fair Results?

After completion of this module you will be able to:

- Evaluate the twin goals of efficiency and fairness in MDL proceeding
- Assess whether public policy should bear on MDL proceedings
- Manage coordination between dual federal state proceedings through abstention, stays, and injunctions

Complex Litigation, Markus et al., pp. 158 – 197
 Abstention, pp 176-178
 Burford Abstention, pp. 178 – 179
 Younger Abstention, pp. 179-181
 Life-Link International v. Lalla, pp. 181-183
 Standard Microsystems Corp. v. Texas Instr., pp. 187-192

Federal Multidistrict Litigation, Chapter 7.

Module 7: How Can We Handle Legal Wrongs Not Worth Litigating Individually?

After completion of this module you will be able to:

- Understand the class action elements and the rationale for class actions
- Assess and implement an appropriate class definition and establish numerosity

Complex Litigation, Tidmarsh & Trangsrud, pp. 139 – 170

Complex Litigation, Markus et al.

Hansberry v. Lee, pp. 202 -205

Kline v. Coldwell, Banker & Co., pp. 205 -208

Simer v. Rios, pp. 214 -219

Oplchenski v. Parfums Givenchy, Inc., pp 223 -231

Module 8: Should Some Cases Be Excluded from Class Treatment?

After completion of this module you will be able to:

- Identify the commonality requirements of class certification
- Defend and challenge the adequacy of class representation
- Identify the kinds of class actions that can be maintained

Complex Litigation, Tidmarsh & Trangsrud, pp. 170 – 199

Complex Litigation, Markus et al., pp. 236 – 266

Wal-Mart Stores v. Dukes, pp. 236 – 247

Peil v. National Semiconductor Corp. pp. 256 – 258

Rodriguez v. West Publishing Corp., pp. 258 – 261

Module 9: What Class Action Types and Remedies are Available?

After completion of this module you will be able to:

- Understand Injunctive relief and when injunctive relief is appropriate and the correct strategic choice
- When to seek declaratory relief and its benefits
- Understand jurisdictional issues related to class actions

Complex Litigation, Tidmarsh & Trangsrud, pp. 199 – 212

Complex Litigation, Markus et al., pp. 266 – 299
Ortiz v. Fibreboard Corp., pp. 267 – 279
Parsons v. Ryan, pp. 286 – 290
Wal-Mart Stores, Inc. v. Dukes, pp. 290 – 295
Amgen Inc. v. Connecticut Retirement, pp. 302 – 311
Smilow v. Southwestern Bell, pp. 316 – 322
Castano v. The American Tobacco Co., pp. 330 – 343
In Re Nassau County Strip Search Cases, pp. 348 - 356

Module 10: Once a Class Action Starts Can It Be Settled Short of Full litigation?

After completion of this module you will be able to:

- Understand the settlement negotiation process
- Articulate the elements of a settlement
- Implement the conditional settlement process
- Avoid the challenges to a conditional settlement

Complex Litigation, Tidmarsh & Trangsrud, pp. 212 – 215
Complex Litigation, Markus et al.
Amchem Products, Inc. v. Windsor, pp. 363 - 378

Module 11: How Can Courts Manage All the Conflicting Claims and Interests? What if I Want to go it Alone?

After completion of this module you will be able to:

- Direct class action motion practice, hearings, and experts
- Understand the scope of class action subject matter jurisdiction
- Manage class notices, opt-out, and class communications
- Selecting class counsel
- Group representation ethical issues

Complex Litigation, Tidmarsh & Trangsrud, pp. 291-313
Complex Litigation, Markus et al.,
In Re Hydrogen Peroxide Antitrust Lit., pp. 383 – 394
Notice, Opt-Out and Class Communications, pp. 454- 460

Module 12: Who Says A Class Action Settlement is Fair and What Happens When Not Everyone is Happy with a Proposed Settlement?

After completion of this module you will be able to:

- Understand the basic principles of fairness in class action approvals, objectors, and fairness hearings
- Handle settlement funds distribution and negotiations
- Determine appropriate fees and costs for class counsel Determine settlement subclasses and relief
- Implement or resist settlement objectors

Complex Litigation, Tidmarsh & Trangsrud, pp. 215 – 225

Complex Litigation, Markus et al.

Parker v. Anderson, pp. 610 -613

In Re Prudential Insurance Co., pp. 615 -629

Dennis v. Kellogg Co., pp. 642 -648

In Re UnitedHealth Group, Inc., pp. 652 -654

Federal Multidistrict Litigation, Chapter 10

Module 13: Final Examination Review and Preparation

Weekly reading assignments may be supplemented to include new and important case law, events, and public policy debates. We will have jurists and practitioners visiting the class. The syllabus may be adjusted to reflect class progress and interests. I will work hard to keep your reading assignments within 40 pages per week. I invite you to provide me feedback on the intensity of the course.

IMPORTANT UNIVERSITY AND LAW SCHOOL POLICY STATEMENTS

Accommodations for students with disabilities:

Students requesting accommodation for disabilities must first register with the Dean of Students Office (<http://www.dso.ufl.edu/drc/>). The Dean of Students will provide documentation to the student who must then provide this documentation

to the instructor when requesting accommodation. Accommodations are not retroactive; therefore, students should contact the office as soon as possible in the term for which they are seeking accommodations. Accommodation for the final examination will be handled by the Dean of Students without involvement of the instructor.

Preferred Name and Pronouns:

It is important to the learning environment that you feel welcome and safe in this class; and that you are comfortable participating in class discussions and communicating with me on any issues related to the class. If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise. I would like to acknowledge your preferred name, and pronouns that reflect your identity. If your name and pronouns are not reflected by your UF-rostered name please let me know how you would like to be addressed in class. I welcome you to the class and look forward to a rewarding learning adventure together.

You may also change your "Display Name" in Canvas. Canvas uses the "Display Name" as set in myUFL. The Display Name is what you want people to see in the UF Directory, such as "Ally" instead of "Allison." To update your display name, go to one.ufl.edu, click on the dropdown at the top right, and select "Directory Profile." Click "Edit" on the right of the name panel, uncheck "Use my legal name" under "Display Name," update how you wish your name to be displayed, and click "Submit" at the bottom. This change may take up to 24 hours to appear in Canvas. This does not change your legal name for official UF records

Examination Delay Policy

The law school policy on exam delays and accommodations can be found at:

<https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>.

Discourse, Inclusion, and the Classroom Ethos:

As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and

respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions.

As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class section, I encourage each of us to:

- commit to self-examination of our values and assumptions
- speak honestly, thoughtfully, and respectfully
- listen carefully and respectfully
- reserve the right to change our mind and allow for others to do the same
- allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers.

Class Recordings:

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 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 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 Code and Student Conduct Code.

UF Law grading policies:

<u>Letter Grade</u>	<u>Point Equivalent</u>
<u>A (Excellent)</u>	<u>4.0</u>
<u>A-</u>	<u>3.67</u>
<u>B+</u>	<u>3.33</u>
<u>B</u>	<u>3.0</u>
<u>B-</u>	<u>2.67</u>
<u>C+</u>	<u>2.33</u>
<u>C (Satisfactory)</u>	<u>2.0</u>
<u>C-</u>	<u>1.67</u>
<u>D+</u>	<u>1.33</u>
<u>D (Poor)</u>	<u>1.0</u>
<u>D-</u>	<u>0.67</u>
<u>E (Failure)</u>	<u>0.0</u>

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

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. Guidance on how to give feedback professionally and respectfully is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens and can 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 at <https://gatorevals.aa.ufl.edu/public-results>.

Academic misconduct:

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

Getting technical help with Canvas:

For issues with technical difficulties for E-learning in Canvas, please contact the UF Help Desk at:

- Learning-support@ufl.edu
- (352) 392-HELP - select option 2
- <https://lss.at.ufl.edu/help.shtml>

Getting Help:

Other resources are available at <http://www.distance.ufl.edu/getting-help> for:

- Counseling and Wellness resources
- Disability resources
- Resources for handling student concerns and complaints
- Library Help Desk support

Should you have any complaints with your experience in this course please visit <http://www.distance.ufl.edu/student-complaints> to submit a complaint.

Disclaimer: *This syllabus represents the current course plans and objectives. As the semester proceeds, these plans may be changed to enhance the class learning experience. Such changes, communicated*

clearly, are not unusual and should be expected.