

**Prof. Chris Newman
Civil Procedure 112
Spring Term 2024
Syllabus and Class Policies**

Goals:

My goals for this course are to help you cultivate:

- 1) A basic understanding of the core concepts underlying the law of civil procedure.
- 2) The ability to recognize and analyze the key procedural issues presented by a given set of facts.
- 3) Familiarity with the key sources of legal authority governing civil procedure in the federal courts, and the most salient areas of dispute with regard to their interpretation and application.

Materials:

Our main text will be Field, Kaplan, Clermont & Clopton, *MATERIALS FOR A BASIC COURSE IN CIVIL PROCEDURE*, 14th ed. (Foundation Press). Class reading assignments will consist primarily of pages from this book.

I also suggest that you purchase Baicker-McKee & Janssen, *A STUDENT'S GUIDE TO THE FEDERAL RULES OF CIVIL PROCEDURE*, 2023-24 ed. (West Pub.). In addition to providing the text of the Rules, this volume contains useful notes concerning practical aspects of their application, as well as introductory treatise-like sections on some of the key procedural areas outside them. I will not generally assign readings from this book; you should consult it to read and shore up your understanding of each Rule you encounter in the casebook. If you would prefer to forego this book and use some other up-to-date published version of the Rules, you are free to do so. (I will provide a link to one on TWEN.)

Assignments

Our casebook is set up to begin by providing an encapsulated overview of the entire field, followed by sections that examine the various topics in more depth. The readings for our first nine class sessions will be as follows. I will post the other assignments later.

Class	Topic	first page	last page	total pages
1	Intro	3	38	35
2	Complaints, Rule 12	39	60	21
3	Compulsory counterclaims, amendments	60	87	27
4	Discovery	87	117	30
5	Pretrial conferences, Terminating litigation, Provisional remedies	134	168	34

6	Settlement, Jury, Proof	168	199	31
7	Evidence, Motions at close of evidence, Submission to jury, Motions after verdict, Judgment	200	236	36
8	Judgment, Appeal, Subject matter jurisdiction	236	272	36
9	Personal jurisdiction, Joinder	273	295	22

Class Preparation:

I suggest that you expect to allot at least four hours (YMMV) to work your way through the readings before each class session. These are difficult materials; to understand them will require work, and it is work that no one else can do for you. Class time will generally not be used to rehearse basic information that can readily be obtained from the reading; instead you will be assumed to have that information and class will be used to try to help you correct, confirm and deepen your understanding of the materials, to integrate them conceptually, and to think about them critically and strategically (i.e., like a lawyer).

I also strongly suggest that you do your outlining throughout the course of the term as part of your weekly class preparation, rather than leaving it to the end. The best way to master any area of the law is to take the primary source materials (statutes and opinions), tear them apart intellectually, digest them, and convert them into your own analytical outline. Ultimately you will want your outline to be organized not primarily by cases but by doctrinal areas and issues, so that it provides you with a ready checklist of issues to think about when analyzing a fact pattern, and pulls together and organizes all the examples and judicial statements from various opinions that bear on each issue. This outline—and the mental organization you acquire by creating it—will be your best friend during the exam.

Class Participation:

You really shouldn't think of cold-calling as hazing or interrogation. You should think of it more as an opportunity for a sort of one-on-one tutoring, albeit conducted in public. Yes, in part the point is to keep you awake and motivated to do the reading, but really the main goal is to help you start thinking like a lawyer, to hone your ability to communicate about difficult legal issues, to challenge you in an arena where your performance is blissfully irrelevant to the disposition of anyone's life, liberty, or property. Our casebook poses various "questions"; when you encounter them take the time to think out what your answer would be, as they highlight issues that you are likely to be asked about if called on.

The vast majority of your grade is based on written exam performance, but I do have discretion to give bumps up or down for outliers at either end of the spectrum in terms of preparedness when called on. Preparedness doesn't mean mastery; it means that you show clear signs of having read and thought about materials, so that you are in a position to have a constructive conversation about them. You are always welcome to raise your hand and volunteer answers or ask questions in class. If I do not call on you, don't take it personally—there are many reasons why I might not do so, and you are encouraged to post any unanswered questions or comments

on TWEN (see below). In particular, you are invited to post answers to any questions that were posed in the assignment sheet but that we didn't get to in class. You are also invited to post thoughtful responses to other people's postings. As discussed further below, learning how to discuss legal issues in writing is an important skill. Thoughtful engagement online will be taken into account when evaluating participation.

Laptop use, notes, and PowerPoint:

I am not paternalistic enough (yet) to ban the use of laptops in class. But I urge you to read and carefully consider the advice contained in [this article](#). When you do so, remember that what you're trying to learn (and what you're going to be tested on) is conceptual understanding, not regurgitation of information. Your goal in class should not be to play passive stenographer; it should be to actively engage in putting together the pieces to get a big picture that makes (more) sense. Laptops are distracting, and you're spending a lot of money to be here. Don't shortchange yourself. And while the use of laptops for notetaking and consulting relevant materials in digital form is permitted, **use of digital devices for purposes of communication with other persons inside or outside the classroom is not.** (If a non-present significant other urgently needs to reach you, you are free to absent yourself to deal with it.). This is a norm that [you are likely to find strictly enforced by judges](#), so you may as well get used to it now. If you have a comment on what is being said by anyone in class, you are warmly encouraged to share it. You should, however, exhibit the courtesy and courage to raise your hand and do so openly. Side conversations can take place elsewhere.

I make some use of PowerPoint slides. Occasionally I will give them to you beforehand to be used as part of class prep; usually not. If I use them in class I will post them online later, so you don't need to sit there and try to copy their contents down in class. My slides are not intended to be self-explanatory or comprehensive. They are merely a tool I use to structure lectures and provide exhibits of things I wish to highlight. Some of them contain information in outline form, but do not rely on them as containing everything you need to know about the topics covered in class that day. They do not. Use them as a resource, and take any useful information from them and integrate it into your own outline. On the exam, my slides do not constitute citable authority in their own right. Also, you are not authorized to make the slides available to others.

Class TWEN page:

I make extensive use of TWEN, and encourage you to do so as well. Ideally, our TWEN page is a second classroom where we can expand the discussion beyond what we have time to do in the first one. I am teaching two sections this term, and you will both be combined into a single TWEN page, thus enabling discussions to take place among a broader group.

Class Assignments and other materials will be posted in the section called "**Course Materials.**" Check it regularly: you will be regarded as having constructive notice of anything posted there.

Class time is a very limited resource, and in an attempt to keep it coherent and focused on the key points, I will inevitably have to cut off certain trains of thought and ignore certain raised hands. Not everything contained in a reading assignment will necessarily be discussed in class.

Even the things we focus on will rarely if ever be completely resolved by our discussion. So here's our place to continue the conversation and engage the stray thoughts. Did you have a burning question or comment that we didn't get to in class? An idea you'd like to get feedback on? Run across an interesting or amusing article, blog post, or video clip relevant to what we're studying? I encourage you to post it. You all have the power to create and respond to topics in the "**Civ Pro Discussion**" forum. Remember, our coverage of a topic is not over just because we've moved beyond it in class.

In fact, if you have a question that doesn't get answered in class I'd strongly encourage you to post it here rather than emailing or just coming to ask me during office hours. There are several advantages to this:

- The process of having to formulate your question in writing will almost certainly cause you to think about it more clearly, and the benefit from any answer you receive will be directly proportional to the amount of effort you have already put into thinking about it yourself.
- Posting it online enables other people to try their hand at responding to your question, which is a valuable exercise. I promise that you will gain a lot more from hashing out an answer for yourselves than by passively imbibing one posted by me. (Plus you never know: I might be wrong. As you ought to know by now, there are such things as authorities in the law, but they aren't people.)
- Any answer I provide will be of much higher quality if I have the ability to think about it and respond in writing rather than giving you whatever I happen to have on the top of my head when you ask.
- It lets everyone in the class get the benefit of the exchange, so that people do not feel compelled to attend office hours for fear of missing some crucial bit of information.

Keep in mind when interacting on TWEN that tone matters. I definitely encourage you to engage critically with each other (and me), both in class and outside it. One of the skills you should be cultivating is how to engage in a critical conversation about legal issues respectfully and constructively. This is not an academic exercise but a crucial practical skill that attorneys use every day, whether in a meeting (or email exchange) with partners or clients, or in letters or emails to opposing counsel. E.g.: When a senior partner (or judge) tells you forcefully and impatiently that *of course* the law is X, and you think they are overlooking something important, how do you correct them without pissing them off?

I have started a page of **web links** to relevant materials that I think useful and/or interesting. If you run across any additional ones that you think might profitably be added, by all means let me know.

There is also a forum called **Class Concerns**, in which you can make any comments you wish about what is going on in class or outside of it. My goal is to try to make this course as useful as possible, and it is better to get feedback when I can still do something about it than to have flaws revealed to me only in a post hoc class evaluation. You are empowered to post anonymously in this forum. I trust you to use this power responsibly and constructively.

The TWEN page has links to **CALI exercises**, which are generally well-done and useful. Before shelling out for Glannon, I suggest you try making use of these when you want to run through some practice problems (as you should). I will also be posting exam questions from prior years in the section called **Practice Problems**, and will give you opportunities to write and get feedback on practice answers to them, or to other problems.

Office Hours

Barring conflicts, I will hold regular office hours on Wednesdays from 12:15-1:45. As explained above, I also strongly encourage you to make use of TWEN for the purpose of asking questions. If you need to meet with me personally for any reason, feel free to email and we can set up a meeting.

The Exam

Usually, the exam for this course is 4 hours, in-class, all-essay. It is also possible that I will incorporate some short answer or multiple choice. You should prepare based on the assumption that the only materials available to you during the exam will be your copy of the Rules book and a printed outline of your own creation.