

WESTERN STATE COLLEGE OF LAW

CIVIL PROCEDURE I

Fall 2016

SYLLABUS AND COURSE POLICIES

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1. Objectives:

Civil Procedure I is a semester-long, three (3) credit course that has several objectives.

First, and foremost, this course will assist you to continue to develop the legal skills you were taught in your first year which are essential for your success in law school and in the practice of law:

- how to *read* and *understand court decisions* from which we derive many of the legal principles that courts apply to resolve legal controversies;
- how to make sense out of a series of court decisions that relate to a particular legal issue by comparing and contrasting the facts of those decisions with each other; this process is known as *case synthesis* and is the *common law* method by which lawyers and courts develop new legal principles out of a body of case law and apply those principles to new controversies (in this course, procedural issues) that courts have to resolve.
- how to interpret procedural statutes and rules which will help you to apply those statutes and rules to resolve procedural issues in the context of new factual situations that continually arise during the course of litigation as well as in class hypotheticals and law school examinations.

The procedural issues covered in this course will frequently not be “black and white;” federal courts in different circuits often adopt different interpretations of the same rule and federal courts in the same circuit often interpret the same rule differently depending on the facts. Therefore, your mid-term and final exams will test how well you have mastered these critical thinking skills, not just the “black letter” of the rules themselves.

Second, because civil procedure doctrine is continually changing (it is currently in the throes of radical change), you will learn how law evolves over time to adapt to social change. Law that developed in a horse and buggy era may not meet the needs of the age of the Internet.

Third, we will explore the basic issues of civil procedure, practical issues that lawyers encounter as they proceed through the phases of civil lawsuit. But this is not a

“follow the numbers” course that will teach you what paper to file and when to file them. You will come to view procedural rules as comprising a civil litigation *system* designed to provide civil justice to the parties who bring their controversies to court. You will learn the policies and goals that lie behind the procedural rules and will be challenged to ask yourselves how well the current rules achieve those policies and goals, whether these policies and goals are still valid today, whether they provide civil justice to all people, rich and poor and in-between, whether they should be changed.

2. Required Texts:

- Freer & Perdue, Civil Procedure: Cases, Materials & Questions, 7th ed. Carolina Academic Press, 2016
- Federal Rules of Civil Procedure, West Academic Publishing, 2016-17 Educational Edition (the “Rules”)

3. Helpful Supplemental Reading (you may purchase these books, they may be available in the library or they may be available on short term loan from me):

- Glannon, Civil Procedure, Examples and Explanations, 7th ed. Walters Kluwer, 2013 (“Glannon Examples”)
- Glannon, The Glannon Guide to Civil Procedure, 3d Ed. Aspen, 2013 (“Glannon Guide”)
- Shreve & Raven-Hansen, Understanding Civil Procedure, 5th ed. LexisNexis, 2013
- Friedenthal, Kane & Miller, Hornbook on Civil Procedure, 5th ed. West, 2015 (Note: A copy is available on Reserve in the Library).

4. “In-Class” Methodology:

The centerpiece of this course will be Federal Rules of Civil Procedure [hereinafter, “F.R.C.P.”] which is the code of procedure applicable in civil litigation in federal court. However, Civil Procedure law is derived from a wide variety of primary legal authority besides the F.R.C.P. For example, the law of personal jurisdiction is largely constitutional case law while the subject matter jurisdiction of federal courts is defined by Article III of the U.S. Constitution and federal statute. But even where an F.R.C.P. or statute or constitutional provision governs a particular procedural issue, courts have provided their interpretation (sometimes conflicting) through case law.

Therefore, although this course deals with “procedural rules,” we will, nevertheless, heavily employ the same “case method” with which you have already become somewhat familiar in your “substantive” courses (i.e., contracts and torts). To prepare for class, you must read the assigned materials (see week by week reading

assignments list, *infra*) carefully such that you understand them. In particular you should brief the cases found in the reading.

When, during the course of your assigned reading, you encounter references to an F.R.C.P. or a federal statute or a constitutional provision, you are required, as part of your preparation for class, to look them up in your supplement and read them carefully. Also, most of the F.R.C.P.'s in the supplement are followed by Advisory Committee Notes, which is the F.R.C.P. equivalent of the "legislative history" behind the rules. These Notes are a valuable resource to help you to understand the rules and you are, therefore, required, as part of your preparation for class, to read these carefully as well.

The Glannon suggested reading texts are particularly helpful. They are relatively easy to read, are sometimes entertaining, and contain questions and answers; the Glannon Guide text contains multiple choice questions followed by the answers and the Glannon Examples text contains questions followed by narrative answers. The feedback is immediate and these resources are very good practice for your exams.

In addition to the required tests and suggested supplemental reading, there is another learning resource available to you at your option. This resource is a set of computer-aided exercises known as "CALI" that is located in the computer lab located in the Library. You can perform these exercises in the computer lab or make copies for your home use. The CALI exercises cover a variety of civil procedure topics and can be a valuable way to strengthen your ability to deal intelligently and creatively with the issues and concepts explored in class. Maximum benefit can be derived by performing these exercises in teams of two or more students.

5. Exams and Grading:

Throughout the semester, I will be happy to review with students, during consultations in my office, student answers to practice exams. Please bring your practice exam answer with you to your consultation. I have posted practice exams and issue analyses on my Course Website. For the most efficient use of your consultation time, ***please use a past examination that I have drafted. Do not wait until the end of the semester to begin taking practice exams.*** A good time to start would be after we have completed the first unit: personal jurisdiction; try your hand at those portions of past final exams dealing with that topic. I will also distribute a copy of an essay mid-term exam dealing with personal jurisdiction for you to practice on.

There will be a graded mid-term in essay format and a final examination in both essay and multiple choice formats. Each student will receive a numeric final course grade which will consist of the sum of 15% of the mid-term grade and 85% of the final examination grade.

Additionally, I reserve the option to administer unannounced quizzes at the commencement of class or online. The scores of any such quizzes will be factored into the final grade in this course.

6. Classroom Participation:

Legal education is a cooperative venture and oral communication skills will be important throughout your life. Each of you must be prepared to participate in class on a regular basis. If you have not read the materials or do not have a brief for an assigned case, you are unprepared. I will randomly call on people in class to describe cases or rules and to answer questions. Please prepare for each week's full set of assigned readings. **In preparation for each week's reading assignments, you are expected to carefully read and re-read the cases and other materials in the casebook and to brief each black letter case. Where the casebook materials refer to a rule or statute, you are expected to look up and carefully read that rule or statute in the rules supplement. This weekly preparation should take you, on average, at least nine hours per week if not more.** Please be aware that coverage of some topics might continue over the subsequent class sessions.

7. Attendance & Decorum:

I will take attendance at the beginning of each class by asking you to sign in for the class on a roll sheet. If you are not signed in, you are absent. **IN ACCORDANCE WITH SCHOOL RULES, IF YOU MISS MORE THAN FOUR (6) ONE HOUR OR MORE THAN TWO (2) THREE HOUR CLASSES, YOU WILL BE ACADEMICALLY DISMISSED FROM THE COURSE.**

You should be in your seat at the commencement of class to be counted as present for the class. Please do not sign the roll sheet if you arrive late. Similarly, please do not leave until the end of class. If you do so you will be marked absent for that class session. If you have an emergency that causes you to have to leave during the class, please do so unobtrusively. If you have a disability which prevents you from remaining in your seat during the class, please contact the Dean of Students.

It should go without saying but I don't expect that cell phones, i-pods, head phones, blackberries or pagers and the like will be seen, heard or used in the classroom. You may use your computer but it should be open to course related materials and not to your email, eBay etc.

8. Seating Chart:

A seating chart will be distributed at the beginning of the second class session. Please print your name legibly in the seat you choose for your permanent seat. If you wish to change your seat, please notify me so that I can make the appropriate changes on the chart.

9. Office Hours:

I am delighted to talk with a student or students almost any time. I will be available in my office by appointment. Please make appointments through the Appointment Book located at the Reception Desk on the Third Floor. If you cannot make a scheduled appointment, please notify the faculty secretary as soon as possible that you are canceling your appointment so that another student can see me during that time slot. I will also be available the rest of the week as time permits.

10. Online Contact:

I have already set up the LexisNexis Web Course for this class. You need to enroll in this webcourse. **PLEASE REFER TO “GETTING STARTED WITH LEXISNEXIS WEBCOURSES” ON THE LAST PAGE OF THIS SYLLABUS.** During the semester I will use this web course to send you emails, make class announcements and post course documents such as this syllabus and charts, questions and outlines that pertain to the topics we will study. I may also use the web course to post practice exams and sample answers or to administer quizzes. Finally the web course can be used to hold out of class discussions.

11. DISABILITY SERVICES STATEMENT:

Western State College of Law provides accommodations to qualified students with disabilities. The **Disabilities** Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Second Floor Students Services Suite. Dean Espinoza’s phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Associate Dean of Students Charles Sheppard at csheppard@wsulaw.edu or (714) 459-1152. Complaints will be handled in accordance with the College of Law’s “Policy against Discrimination and Harassment.”

**12. Argosy University
Institutional Learning Outcomes:**

1. Analytical Reasoning

Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems

2. Effective Communication

Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation

3. Information Competency

Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action

4. Interpersonal Effectiveness

Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals

5. Personal and Professional Integrity and Ethical Behavior

Demonstrate a multi dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.

6. Professional Competence

Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession

13. Western State College of Law – Programmatic Learning Outcomes

Western State College of Law's curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(1) Doctrinal Knowledge

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

(2) Practice Skills

Students will demonstrate the development of other law practice skills. Each student's chosen outcomes within this category will be varied based on the student's particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and

advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

(3) Legal Analysis

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

(4) Legal Research

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

(5) Communication

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

(6) Advocacy of Legal Argument

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert

such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

(7) Client Sensitivity and Cultural Competency

Students will demonstrate an awareness of clients’ needs and goals, including a sensitivity to clients’ background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

(8) Legal Ethics

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

14. Reading Assignments:

Week	Subject	Required Reading	Recommended Reading**
1	<p>Introduction</p> <ul style="list-style-type: none"> How to read a case <p>Personal Jurisdiction</p>	<p>Check your access to the course website on LexisNexis Orin Kerr’s “How to Read a Legal Opinion” Green Bag article</p> <p>The Rules, pages ix-xviii (“An Outline of the Procedure in a Civil Action”)</p> <p>Freer & Perdue 3-49; Pennoyer v. Neff Handout;¹ Pacific Christian Advocate Notice;² US Constitution, Art IV, § 1; US Constitution, Amend 5 and 14; 28 USC § 1257</p>	<p>Glannon Examples 3-25 Glannon Guide 69-89³</p>
2	Personal Jurisdiction	<p>Freer & Perdue 49-62; <i>Asahi Metal Industry Co. v. Superior Court of California</i>, 480 U.S. 102</p>	Glannon Guide 92-99

¹ This pdf is located in my Civil Procedure I LexisNexis webcourse under “Course Materials.”

² This pdf is located in my Civil Procedure I LexisNexis webcourse under “Course Materials.”

³ These page references are to the Second Edition of the Glannon Guide because I do not currently have the Third Edition.

		(1987) (you can ccess this online); Freer & Perdue 81-99; <i>The Functional and Dysfunctional Role of Formalism in Federalism: Shady Grove versus Nicaastro</i> , 16 Lewis & Clark Law Review 905 (2012).	
3	Personal Jurisdiction	Freer & Perdue 62-81; 132-142	
4	Personal Jurisdiction In Rem Jurisdiction Transient Jurisdiction	Freer & Perdue 99-112 Freer & Perdue 113-132	Glannon Guide 99-109
5	Personal Jurisdiction: <ul style="list-style-type: none"> • Long Arm statutes • Notice & Opportunity to Be Heard 	Freer & Perdue 143-179 FRCP 4	Glannon Examples 27-46; 347-367 Glannon Guide 111-130
6	Subject Matter Jurisdiction: <ul style="list-style-type: none"> • Diversity 	Freer & Perdue 181-218; JVCA* (Sections 1332(a) and (c)(1)); US Const. Art. III; 28 U.S.C. §1332	Glannon Examples 89-107 Glannon Guide 3-24
7	Subject Matter Jurisdiction: <ul style="list-style-type: none"> • Federal Question • Supplemental Jurisdiction • Removal 	Freer & Perdue 219-238; U.S. Const, Art III; 28 U.S.C. §1331; Freer & Perdue 238-246; JVCA* (Sections 1441 and 1446); 28 U.S.C. §§ 1441 and 1446 - 1448	Glannon Examples 63-87, 109-121 Glannon Guide 25-50 Glannon Examples 309-331 Glannon Guide 255-278 Glannon Examples 123-139 Glannon Guide 51-68
8	Venue, Transfer and Forum Non Conveniens	Freer & Perdue 247-280; JVCA (Sections 1390, 1391, 1392;	Glannon Examples 141-158; 159-173

	Challenging Jurisdiction	and 1404(a) and (d)) 28 U.S.C. §§1391, 1404 and 1406 Freer & Perdue 281-291; FRCP 12	Glannon Guide 151-173 Glannon Examples 47-62 Glannon Guider 329-344
9	Pleadings: <ul style="list-style-type: none"> • Complaint • Voluntary and Involuntary Dismissal • Defendant's Options in Response 	Freer & Perdue 293-347 FRCP 7, 8, 9, 10, 12, 41(a) and (b).	Glannon Examples 369-383 Glannon Guide 279-299
10	Pleadings: <ul style="list-style-type: none"> • Amendment • Rule 11 	Freer & Perdue 347-369; FRCP 11 and 15	Glannon Examples 385-408 Glannon Guide 299-328
11	What Law Applies in Federal Court?: <i>Erie</i>	Freer & Perdue 541-577; US Constitution, Art VI; US Constitution, Amend 10; 28 USC §§ 1652 and 2072	Glannon Examples 177-199 Glannon Guide 195-214
12	What Law Applies in Federal Court?: <i>Erie</i> (continued)	Freer & Perdue 577-613 <i>The Fruits of Shady Grove: Seeing the Forest for the Trees</i> , 44 Akron Law Review 999 (2011).	Glannon Examples 201-228; 229-249 Glannon Guide 215-234
13	Joinder (By Plaintiffs) and Supplemental Jurisdiction: <ul style="list-style-type: none"> • Intro to Claim Preclusion • Claim Joinder by Plaintiffs • Permissive Party Joinder by Plaintiffs • Supplemental Jurisdiction 	Freer & Perdue 621-630 Freer & Perdue 673-697; FRCP 18 and 20 28 U.S.C. §1367	Glannon Examples 253-270 Glannon Guide 235-254 Glannon Examples 309-344 Glannon Guide 255-278

14	Joinder (By Defendants) <ul style="list-style-type: none"> • Counterclaims • Cross-Claims • Impleader 	Freer & Perdue 698-725; FRCP 13 and 14	Glannon Examples 271-282
15	Reading Week		

* Jurisdiction and Venue Clarification Act of 2011

**These readings are meant to engage you in the study process and to help you develop a stronger understanding of the basics of procedure. To gain an appropriate level of understanding of these topics you must reflect on the material and practice applying the principles you have learned. To assist you with that process the recommended readings provide you with questions, examples and explanations on each of the topics. At the end of each week you should read this material and then do the practice problems.

Getting started with LexisNexis Webcourses

Student Instructions

Enrolling in your Web Course

Your professor will let you know if you need to self enroll or if he or she has already enrolled you. If your professor has enrolled you, skip to the next section below. Otherwise, follow these simple instructions to enroll for the first time:

1. Go to <http://webcourses.lexisnexis.com/>
2. Click on the **Login** button
3. Enter your **LexisNexis ID** and click the **Login** button
Note: If you get an error message "Invalid ID: If you have not registered your LexisNexis ID, please use the registration links below.", then you must first register your LexisNexis ID. Choose the "Law School Student Registration" link to register your LexisNexis ID, then repeat steps 1, 2 and 3.
4. Click on **Browse Course Catalog**
5. Click on the **link for your school**
6. Select your course and click **Enroll**

To access your LexisNexis Web Course once you have been enrolled:

1. Go to <http://webcourses.lexisnexis.com/>
2. Click on the **Login** button
3. Enter your **LexisNexis ID** and click the **Login** button
4. From the **Course List**, select the specific course you would like to access (this will only show the Web Courses for which you have enrolled)

Using your LexisNexis Web Course

Once you log into a Web Course, you will immediately see:

- the main course window in which **Announcements** will be posted
- **Navigation buttons** on the left for accessing different types of information and documents posted by your professor

Communicating with classmates and your professor through LexisNexis Web Courses

- *Send an e-mail to your classmates, groups of classmates, or your professor* – Click on the **Communication** button from the Navigation area; click **Send E-mail**; select the recipients to which you wish to send your e-mail
- *Participate in a discussion forum with your classmates* – Click on **Communication** from the Navigation area; click **Discussion Board** (or your professor may have selected **Discussion Board** as one of the navigation buttons); you may **Reply** to an existing message or **Start [a] New Thread**

Manage your course with Student Tools

- *Send documents to your professor or classmates* – click **Student Tools** from the Navigation area; click **Dropbox**; click **Browse** and select the file you wish to send
- *Check grades* – if your professor has created on-line quizzes, you may be able to check your grades by clicking **Student Tools** from Navigation area; click **Check Your Grade**; select the specific **Quiz/Exam**
- *Jot down notes regarding your course* – click **Student Tools**, click **Electric Blackboard**; type notes in the text box; click **Save**.