

**WESTERN STATE UNIVERSITY  
COLLEGE OF LAW**

**CIVIL PROCEDURE I, Section 141 A**

**SYLLABUS AND COURSE POLICIES – Fall 2014**

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**A. Objectives:**

This three (3) credit, semester-long course is the first half of the required six (6) credit courses which will explore the procedural rules which govern civil (as opposed to criminal) disputes. During the fourteen weeks of this course you will:

1. Explore the basic issues of Civil Procedure including personal and in rem jurisdiction, subject matter jurisdiction, forum choice, pleadings, joinder and supplemental jurisdiction, and learn about the framework of the civil dispute resolution process and the practical issues lawyers encounter in handling a civil dispute;
2. Come to appreciate the procedural structure of the overall litigation system by gaining an understanding of the policies and goals that underlie the structure;
3. Learn something about the complexities of “our federalism,” a phrase which refers to our system of government, composed of fifty semi-sovereign states under the umbrella of our national (federal) government. This means not only learning about the framework of the civil dispute resolution process, but also examining a host of complex issues that arise involving where disputes get resolved (state or federal court, or which state among the fifty states that are part of our national union);
4. Observe, in the context of procedural law, how and why law changes over time; and
5. Begin to develop the analytic and strategic skills necessary for success in law school and in the practice of law. In other words, you will begin to “think like a lawyer.”

**B. Required Texts:**

1. Freer & Perdue, Civil Procedure: Cases, Materials & Questions (“Freer & Perdue”), 6th ed. LexisNexis, 2012
2. Freer & Perdue, 2014 Update Memorandum (“Update”) (available to download from Web Course)

3. Federal Rules of Civil Procedure, Thomson West, 2014-15 Educational Edition (the “Rules Supplement”)

### **C. Suggested Supplemental Reading:**

I do not necessarily recommend that you buy both of the books listed below. I do recommend that you consider buying at least one of them. Look them over (you may find them in the library). I think you will find these two Glannon resources to be very helpful supplemental resources that, in conjunction with your assigned readings, will give you a clearer sense of the lay of the land. Pick the one that seems more helpful to you. There are earlier editions to each of these supplements that you may be able to find on the used book market. However, these earlier editions were published in 2008 and 2009. While much of the law of Civil Procedure has not changed significantly in the intervening years, there are some important areas where significant changes have occurred.

1. Glannon, Civil Procedure, Examples and Explanations, 7th ed. Aspen, 2013 (“Examples”)
2. Glannon, The Glannon Guide to Civil Procedure, 3d Ed. Aspen, 2013 (“Guide”)

### **D. Preparing for the Classroom:**

A centerpiece of this course will be the Federal Rules of Civil Procedure (“FRCP”) which are the rules applicable in civil litigation in federal court. Many states have modeled their own procedural rules after the FRCP, but not California. Nevertheless there are many similarities between “California procedure” and “federal procedure.” Over the course of the year, we will note some of the key similarities and differences, but our focus will be on federal procedure. Once you learn that system of procedure well, learning about differences in procedural rules in California and other states will be much easier.

It is important to understand, however, that the law of Civil Procedure is derived from a wide variety of primary legal authorities besides the FRCP. So you will be looking not just at “rules” (drafted by the Advisory Committee on Rules of Civil Procedure and adopted by the Supreme Court), but also at statutes (enacted by Congress), the Constitution, and case law interpreting the rules, statutes and constitutional provisions. For example, the law of personal jurisdiction is largely constitutional case law (interpreting the due process clause of the 14<sup>th</sup> Amendment), while the subject matter jurisdiction of federal courts is defined by Article III of the United States Constitution and federal statutes enacted by congress under authority given to congress by Article III. To take a more complex example that we will study to close out the fall semester, the law that determines what claims and parties can be joined together in a single lawsuit is a carefully choreographed blend of joinder rules (that dictate whether joinder is permitted, mandated or forbidden), subject matter jurisdiction statutes (that determine whether the federal courts can exercise subject matter jurisdiction over the claims or parties that have been joined in a single suit pursuant to the applicable joinder rules), and constitutional provisions (that set outer limits on the authority of congress to authorize the federal courts to exercise subject matter jurisdiction). But even where a rule, statute, or constitutional provision (or some

combination of the three) seems to govern a particular procedural issue, courts are called on to interpret these various written laws. Not surprisingly, these interpretations by different courts, reflected in judicial opinions, are sometimes conflicting.

Therefore, although this course deals with written procedural rules, statutes, and constitutional provisions, we will read judicial opinions too, much as you do in your other classes. But unlike some of your other classes, where almost all of the primary legal authority you study is case law, in Civil Procedure you must learn to read cases in the context of the rules, statutes and constitutional provisions they interpret and apply. Therefore, to adequately prepare for class, you must read all the assigned materials (see class by class reading assignments listed below) carefully, including assigned cases and the rules, statutes, and constitutional provisions that can all be found in the “rules supplement.”

Also, the casebook authors will often pose questions and problems at the end of a segment of reading. It is important that you apply what you have read to answer their questions/problems as part of your class preparation. This “application” work will help you get more out of the reading assignment, gain a deeper understanding of class discussion, and in the long run, help you learn the material in a deeper way that will “stick” for a longer period of time.

The Glannon recommended reading texts are particularly helpful in giving you additional opportunities to “apply” what you are learning to other factual scenarios. They are relatively easy to read; the Glannon Guide text contains multiple choice questions followed by the answers and the Glannon Examples text contains short hypotheticals followed by narrative answers. Both books give you immediate feedback on your thinking and they are a very good check during the semester to make sure you are understanding the materials we are studying. They are also very good practice for your exams.

In addition to the required and recommended texts, there is another learning resource available to you at your option. The resource is a set of computer-aided exercises known as “CALI” that is located in the computer lab in the Library. You can perform these exercises in the computer lab, online through the library portal (<http://westl.iii.com/screens/databases.html>), or through the CALI website ([www.cali.org](http://www.cali.org)). 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.

#### **E. Practice Questions, Exams and Grading:**

Throughout the semester, I will be happy to review with students answers to practice exams and practice questions that I will distribute from time to time. We will review some of these in class and you may choose to review some with me in my office. *Do not wait until the end of the semester to begin taking practice exams and answering practice questions.*

There will be a graded mid-term exam and a final exam. The mid-term exam will consist of one essay question and several multiple-choice questions. The final exam will likely contain one or two essay questions, multiple-choice and perhaps some short-answer questions. The final

course grade will be based on a 10% weighting of the mid-term exam and an 85-90% weighting of the final examination.

I may administer announced or unannounced quizzes during class or online. The scores on any such quizzes will be weighted no more than 5% of in determining the final grade.

#### **F. 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 you are unprepared. I will periodically call on students in class at random to describe cases or rules and to answer questions. Even though some students find this method unattractive or intimidating, overcoming intimidating circumstances is an important and time tested part of the legal education process. And the single most effective way to overcome the intimidation is to be prepared.

Among other reasons for you to be prepared is that it is fairly inconsiderate of the time and efforts of your fellow students to come to class unprepared.

PLEASE NOTE, HOWEVER, THAT THERE IS A SIGNIFICANT DIFFERENCE BETWEEN BEING UNPREPARED AND BEING UNABLE TO ANSWER A PARTICULAR QUESTION CORRECTLY. No one knows the answer to every law-related question. An important part of the learning experience is testing your own opinions and conclusions. You will not be penalized for venturing an incorrect answer as long as it is a thoughtful answer based on preparation. An important part of the learning process involves thinking out loud and making mistakes. Just make sure you are sufficiently familiar with the cases, statutes, rules, questions and problems that you are able to discuss them when called upon to do so.

#### **G. Attendance and 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 (4) 1 ½ 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. Once again it is fairly inconsiderate of the other students and of the professor to walk in late. Similarly, you should not leave until the end of class. 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 Registrar or the Academic Dean.

I expect that cell phones, iPods, head phones, pagers and the like will be not be seen, heard or used in the classroom. You may use your laptop computer but it should be open to course related materials. With respect to note taking and laptops, studies have shown that students do better on exams when they take notes by hand (the old fashioned way). See

<http://www.theatlantic.com/technology/print/2014/05/to-remember-a-lecture-better-take-notes-by-hand/361478/>. The theory behind this finding is that students who take notes by hand are forced to listen more and write down what is important, because they can't write fast enough to take down everything. Notetakers who use laptops are more likely to subconsciously turn into scribes, simply transcribing things verbatim. They stop actively listening. As a result they retain less and understand less. The above study found that even when laptop note-takers were told in advance not to be a scribe, but to listen and take notes in your own words, it still didn't make a difference. Laptop notetakers performed worse on tests. So please remember that technology is a tool. It cannot replace the wonderful learning tool that is your mind. Do everything you can to make sure that your mind is fully engaged during class, and that even when you are not directly participating in class discussion that you are actively listening and thinking.

#### **H. Seating Chart:**

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

#### **I. Office Hours:**

I am delighted to talk with a student or students almost any time. Often the best time to ask questions is right after class when your questions are fresh, and I am happy to remain after class to discuss any questions that come up. I will also have office hours on Mondays and Wednesdays from 3:00 to 5:00pm. You may drop in any time during those hours. Or you may schedule an appointment in advance, either during those office hours or at any other time that is mutually convenient. Please contact my assistant, Christy Alvarez, to schedule appointments. You can reach her in person (her desk is right outside my office), by phone (714-459-1168), or by email ([calvarez@wsulaw.edu](mailto:calvarez@wsulaw.edu)). If you cannot make a scheduled appointment, please notify Christy as soon as possible so that time can be freed up for another student. You can also reach me directly by email ([aeasley@wsulaw.edu](mailto:aeasley@wsulaw.edu)) with any questions you might have.

#### **J. Web Course:**

Sometime before the first day of class I will set up a LexisNexis Web Course for this class. **DURING ORIENTATION YOU WILL BE TOLD HOW TO REGISTER WITH LEXISNEXIS. YOU WILL THEN BE ENROLLED IN THE WEB COURSE FOR MY CLASS AND WILL BE ABLE TO ACCESS MATERIALS POSTED TO THE WEB COURSE SITE.** 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, outlines and other documents 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.

**The web course will be important to your success in this class. Please make sure you have access to the site. You should test your access BEFORE the first day of class. There are computers in the library if you need one.**

**K. Reading Assignments (subject to modification):**

<b>Class</b>	<b>Subject</b>	<b>Required Reading</b>	<b>Recommended Supplemental Reading or CALI Exercises</b>
1	<b>Introduction</b>  (Please complete this reading before the first day of class)	<b>Check your access to web course</b>  Rules Supplement, pages XIII-XXV (“An Outline of the Procedure in a Civil Action”)  Freer & Perdue 1-19	
2	<b>Personal Jurisdiction</b>	Freer & Perdue 21-36 ( <i>Pennoyer; Hess</i> )	Guide 71-73
3 & 4	<b>Personal Jurisdiction</b>  <b>Long-Arm Statutes</b>	Freer & Perdue 36-46 ( <i>I. Shoe</i> )  Freer & Perdue 139-141	Guide 74-78  Examples 27-46 Guide 117-136
5	<b>Personal Jurisdiction</b>	Freer & Perdue 46-77 ( <i>WWVW; Burger King</i> )	Guide 78-85
6	<b>Personal Jurisdiction</b>	Freer & Perdue 77-95 ( <i>McIntyre</i> )	Guide 85-91
7	<b>Personal Jurisdiction</b>	Update 5-14 ( <i>Daimler</i> ); Freer & Perdue 100-106 (notes after <i>Goodyear</i> )	Examples 3-25 (covers the gamut from <i>I. Shoe to Goodyear</i> ) Guide 97-105 CALI Exercise: Jurisdiction over the Person (CIV19) (consider whether the answer to Q23 should change after <i>Goodyear</i> )

8	<b>In rem Jurisdiction</b>	Freer & Perdue 106-120 ( <i>Shaffer</i> )	Guide 106-116
9 & 10	<b>Transient presence; doing business; jurisdiction &amp; the internet</b>	Freer & Perdue 121-127; 135-137; “handout” ( <i>Burnham; Music Millenium</i> )	
11	<b>Notice</b>	Freer & Perdue 143-176 ( <i>Mullane; Triad; Doehr</i> ) FRCP 4	Examples 347-367 Guide 157-177
12 & 13	<b>Subject Matter Jurisdiction: Diversity</b>	Freer & Perdue 177-214 ( <i>Strawbridge; Mas; Randazzo; Hertz; Belleville</i> ) US Constitution, Article III 28 USC §1332	Examples 89-107 Guide 3-25
14	<b>Subject Matter Jurisdiction: Federal Question</b>	Freer & Perdue 214-233 ( <i>Mottley; Grable</i> ) US Constitution, Article III 28 USC §1331	Examples 63-87; 109-121 (the latter clarifies the difference between personal jurisdiction and subject matter jurisdiction) Guide 27-40
15	<b>Midterm Exam (approximate date)</b>		
16	<b>Subject Matter Jurisdiction: Removal</b>	Freer & Perdue 233-239 28 USC §§1441 and 1446-1448	Examples 123-139 Guide 53-70
17	<b>Venue, Transfer and Forum Non Conveniens</b>	Freer & Perdue 241-242; 245-271 ( <i>Bates; Piper</i> ) 28 USC §§1391, 1404 and 1406	Examples 141-158; 238-240; 247-249 Guide 179-199 CALI Exercise: Jurisdiction and Venue (CIV03)

18	<b>Challenging Jurisdiction</b>	Freer & Perdue 273-282 ( <i>Baldwin</i> ) FRCP 12	Examples 47-62; 369-383 Guide 137-155; 337-353 CALI Exercise: Waiver under Rule 12 (CIV09)
19 & 20	<b>Pleadings: Complaint; Voluntary and Involuntary Dismissal</b>	Freer & Perdue 283-328 ( <i>Dioguardi</i> ; <i>Twombly</i> ; <i>Iqbal</i> ; <i>Swanson</i> ; <i>Leatherman</i> ) FRCP 7, 8, 9, 10, 41(a) and (b)	Guide 285-297
21	<b>Pleadings: Defendant's Options in Response</b>	Freer & Perdue 328-337 FRCP 12	Examples 369-383 Guide 297-307; 337-353
22	<b>Pleadings: Amendments; Rule 11</b>	Freer & Perdue 337-359 ( <i>Marsh</i> ; <i>Rector</i> ) FRCP 11 and 15	Examples 385-408 Guide 307-336
23 & 24	<b>Joinder (By Plaintiffs): Claim Joinder by Plaintiffs; Permissive Party Joinder by Plaintiffs; Supplemental Jurisdiction</b>	Freer & Perdue 667-691 ( <i>Gibbs</i> ; <i>Schwartz</i> ) FRCP 18 and 20 28 USC §1367	Guide 241-245; 261-284
25 & 26	<b>Joinder (By Defendants): Counterclaims; Cross- Claims; Impleader</b>	Freer & Perdue 692-719 ( <i>Dindo</i> ; <i>Carteret</i> ; <i>Markvicka</i> ; <i>Kroger</i> ) FRCP 13 and 14	Examples 253-282 (covers Rules 18, 20, 13 & 14); 309-344 (jurisdictional considerations) Guide 246-260

27	<b>Joinder (Compulsory): Compulsory Joinder; Intervention</b>	Freer & Perdue 719-735 ( <i>Haas; Temple</i> ) FRCP 19 and 24	Examples 283-307 CALI Exercise: A Review of Joinder Concepts (CIV11); Joinder of Claims and Parties (CIV18) (this latter CALI exercise is a comprehensive review of joinder and related jurisdiction issues, but it has a few small glitches)
28	<b>Finish</b>		
	Reading Week		

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## 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**
- *Not down notes regarding your course* – click **Student Tools**, click **Electric Blackboard**; type notes in the text box; click **Save**.