

**WESTERN STATE UNIVERSITY
COLLEGE OF LAW**

CIVIL PROCEDURE I, Section 141 A

SYLLABUS AND COURSE POLICIES – Fall 2018

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A. Learning Outcomes:

Institutional Level (University):

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

Program Level (JD Program):

Western State College of Law's JD 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.

Course Level Learning Outcomes:

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 some of the basic issues of Civil Procedure including personal and in rem jurisdiction, subject matter jurisdiction, choosing the forum for litigation, pleadings (how the dispute is framed), and the sometimes complex rules that help to determine whether a federal court hearing a dispute will apply federal or state law (and if state law, which state's law);
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. 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 Students Services Suite 119. 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 Dean Allen Easley at aeasley@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law’s “Policy against Discrimination and Harassment.”

C. Required Texts:

1. Freer & Perdue, Civil Procedure: Cases, Materials & Questions (“Freer & Perdue”), 7th ed. Carolina Academic Press, 2016 (NOTE: the 6th edition, published in 2012, is out of date and is not an acceptable substitute for the 7th edition)

In addition, the authors have provided a brief 2018 supplement to their book, free of charge, which will be available on our web course (“F & P 2018 Supplement”)

2. Federal Rules of Civil Procedure, Thomson West, 2018-19 Educational Edition (the “Rules Supplement”) (NOTE: the 2017-18 Educational Edition, and any earlier editions, are out of date)

D. 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, 8th ed. Wolters Kluwer, 2018 (“Examples”)
2. Glannon, The Glannon Guide to Civil Procedure, 3d Ed. Wolters Kluwer, 2013 (“Guide”)

E. Preparing for Class:

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” (written rules drafted by the Advisory Committee on Rules of Civil Procedure and adopted by the Supreme Court), but also at statutes (laws 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 14th Amendment). By comparison, 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. And to take two more quick examples, the FRCP set out the “service of process” rules that dictate to the party bringing a lawsuit (plaintiff) how the party being sued (defendant) must be notified that a lawsuit has been brought against the individual in federal court. The FRCP also set out the “pleading” rules that establish the requirements the parties (plaintiff and defendant) must adhere to in setting forth their claims and defenses in that lawsuit. 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 carefully, including assigned cases from the “casebook” and the listed rules, statutes, and constitutional provisions that can all be found in the “rules supplement” (see class by class reading assignments listed below).

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. This resource is a set of computer-aided exercises known as “CALI” exercises. You can access these CALI exercises on computers in the computer lab in the Library, or online from your own computer through the library portal (<http://westl.iii.com/screens/databases.html>), or the CALI website (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.

Expectations for outside preparation time required for this class: While the amount of time you need to set aside for class preparation will vary with the degree of difficulty of the materials we will be discussing, I would anticipate that you should be devoting a minimum of three hours of outside of class study time for each 90 minute class session, and often more than that. I include in “preparation time” reading the assigned materials, group study, case briefing and outline preparation, taking practice tests, reviewing my comments on your practice answers, and time that you and I might spend going over materials during office hours.

F. 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 a 90% weighting of the final examination.

G. Classroom Participation:

Legal education is a cooperative venture and oral communication skills will be important throughout your professional 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.

H. 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 smart phones, iPads 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 <https://www.nytimes.com/2017/11/22/business/laptops-not-during-lecture-or-meeting.html> and <http://www.theatlantic.com/technology/print/2014/05/to-remember-a-lecture-better-take-notes-by-hand/361478/>. The theory behind these findings 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. As they shift into scribe-mode they stop actively listening. As a result they retain less and understand less. One of the above studies 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.

I. 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.

J. 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 from 1:00-5:00pm and Wednesdays from 3:00-5:00pm. You may drop in any time during those hours. Or you may sign up for office hours in advance on the sign-up sheets that will be posted each week outside the Executive Offices. 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). 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) with any questions you might have.

K. 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 will not bring “handouts” to class – they will always be posted on the web course for you to download on your own. I will also use the web course to post practice exams. 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.**

L. Reading Assignments (subject to modification):

Class	Subject	Required Reading	Recommended Supplemental Reading and CALI Exercises
1	Introduction (Please complete this reading before the first day of class)	Check your access to web course Rules Supplement, review the materials on pp. v-xx at the beginning of the supplement (entitled “Historical Introduction” and “An Outline of the Procedure in a Civil Action”) Freer & Perdue 3-22	
2	Personal Jurisdiction	Freer & Perdue 34-38 (<i>Hess</i>)	Guide 71-73
3 & 4	Personal Jurisdiction Long-Arm Statutes	Freer & Perdue 38-49 (<i>I. Shoe</i>); “handout” (<i>McGee</i>) Freer & Perdue 142-146	Guide 74-78 Examples 27-46 Guide 117-136
5	Personal Jurisdiction	Freer & Perdue 49-81 (<i>WWVW</i> ; <i>Burger King</i>)	Guide 78-85
6 & 7	Personal Jurisdiction	Freer & Perdue 81-99 (<i>Asahi</i> notes; <i>McIntyre</i>)	Guide 85-91

8	Personal Jurisdiction	Freer & Perdue 99-112 (<i>Daimler</i>); F & P 2018 Supplement 3-13 (<i>Bristol-Myers Squibb</i>)	Examples 3-25 (covers the gamut from <i>I. Shoe to Goodyear (Daimler's predecessor)</i> Guide 97-105 CALI Exercise: Jurisdiction over the Person (CIV19) (consider whether the answer to Q23 should change after <i>Goodyear & Daimler</i>)
9	In rem Jurisdiction; transient presence; doing business	Freer & Perdue 113-132 (<i>Shaffer; Burnham</i>);	Guide 106-116
10	Personal Jurisdiction & the internet	“handout” (<i>Triple Up</i>)	
11	Notice	Freer & Perdue 147-166 (<i>Mullane; Triad</i>) FRCP 4	Examples 347-367 Guide 157-177
12 & 13	Subject Matter Jurisdiction: Diversity	Freer & Perdue 181-218 (<i>Strawbridge; Mas; Randazzo; Hertz; Belleville</i>) US Constitution, Article III 28 USC §1332	Examples 89-107 Guide 3-25
14	Subject Matter Jurisdiction: Federal Question	Freer & Perdue 219-238 (<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	Midterm Exam (approximate date)		
16	Subject Matter Jurisdiction: Removal	Freer & Perdue 239-246 28 USC §§1441 and 1446-1448	Examples 123-140 Guide 53-70
17 & 18	Venue, Transfer and Forum Non Conveniens	Freer & Perdue 247-248; 252-280 (<i>Bates; Piper</i>) 28 USC §§1391, 1404 and 1406	Examples 141-158; 238-239 Guide 179-199 CALI Exercise: Jurisdiction and Venue (CIV03)
19	Challenging Jurisdiction	Freer & Perdue 281-291 (<i>Baldwin</i>) FRCP 12	Examples 47-62; 369-383 Guide 137-155; 337-353 CALI Exercise: Waiver under Rule 12 (CIV09)
20 & 21	Pleadings: Complaint; Voluntary and Involuntary Dismissal	Freer & Perdue 293-339 (<i>Dioguardi;</i> <i>Twombly; Iqbal; Swanson;</i> <i>Leatherman</i>) FRCP 7, 8, 9, 10, 41(a) and (b)	Guide 285-297
22	Pleadings: Defendant's Options in Response	Freer & Perdue 339-347 FRCP 12, 55, 60(b)	Examples 369-383 Guide 297-307; 337-353
23	Pleadings: Amendments; Rule 11	Freer & Perdue 347-369 (<i>Marsh;</i> <i>Rector</i>) FRCP 11 and 15	Examples 385-408 Guide 307-336
24	The <i>Erie</i> Doctrine: When must a federal court apply state law	Freer & Perdue 541-562 (<i>Erie;</i> <i>York; Ragan; Byrd</i>) U.S. Constitution, Article VI, cl. 2 28 USC §1652	Examples 177-205 Guide 201-228 CALI Exercise: <i>Erie</i> Doctrine 1: <i>Erie</i> Basics (CIV22)

25	Erie: Hanna and the FRCP	Freer & Perdue 562-577 (<i>Hanna</i>) 28 USC §2072	Examples 205-228 Guide 228-240
26 & 27	Erie Refinements	Freer & Perdue 577-613 (<i>Gasperini; Shady Grove</i>)	
28	Finish		
	Reading Week		