

**WESTERN STATE UNIVERSITY
COLLEGE OF LAW**

CIVIL PROCEDURE II: Section 142 A & C – Spring 2017

SYLLABUS

Professor Glenn S. Koppel
Office: Room 221L
Phone: 714-459-1143

1. Objectives:

The following are the Learning Outcomes for this course.

- **Doctrinal Knowledge:** Understanding and applying the procedural rules and caselaw that govern and regulate the process of civil litigation in federal court.
- **How to learn the law:** This course will continue to develop the legal skills you were, and are being, taught in your other courses which are essential for your success in law school and in the practice of law, namely:
 - 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.
- **Legal Analysis:** This course will hone your 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.
- **Critical Thinking:** 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.

- **How law evolves to adapt to changing times:** 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.
- 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 and Questions 7th ed., LexisNexis, 2016.
- Federal Rules of Civil procedure – West 2016-2017 Academic Edition.
- **Certain week’s *required assignments* include a CALI online exercise. If you are not already registered with CALI, you should do so at “cali.org.” the Authorization Code is WESTNNstu235. Where a CALI exercise is required, you must provide me with a proof of completion. For instructions on how to do this, click onto “Saving Your CALI Lesson Score.”**

3. Suggested Supplemental Reading:

- Glannon, Civil Procedure – Examples & Explanations,; 7th Edition, Aspen Law & Business 2008 (“Glannon Examples”).
- Glannon, The Glannon Guide to Civil Procedure, Aspen, 2013 3rd Edition (“The Glannon Guide”).
- Freer, Civil Procedure, 3rd Edition, Wolters Kluwer.
- Shreve & Raven-Hansen, Understanding Civil Procedure, 5th ed., LexisNexis.

4. In-Class" Methodology:

The centerpiece of this course will continue to be Federal Rules of Civil Procedure [hereinafter, "F.R.C.P."'] which is the code of procedure applicable in civil litigation in federal court and which has been adopted by many state courts (but not California). However, Civil Procedure law is derived from a wide variety of primary legal authority besides the F.R.C.P. For example, the right to a civil jury trial flows from the Seventh Amendment to the U.S. Constitution. The right to appeal a judgment is, in part, defined by congressional statute (28 U.S.C. §§1291 and 1292). But even where an F.R.C.P. or statute or constitutional provision governs a particular procedural issue, the relevant text must be interpreted by courts on a case-by-case basis.

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 carefully and brief all cases (*not* including note cases). *Book briefing is not acceptable.*

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 up these legal sources 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. Effective December 2015, certain discovery rules have been amended. *You are required to carefully note the changes wrought by these amendments and their effect on access to discovery.*

5. Exams and Grading

There will be a graded mid-term exam (probably essay format) and a final examination consisting of multiple choice questions, possibly some short answer questions and an essay question. 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.

Practice exams and issue analyses are available on my course website. DO NOT WAIT UNTIL THE END OF THE SEMESTER TO BEGIN TAKING PRACTICE EXAMS. I am available during my regularly scheduled office hours to discuss with you your answers to practice exams. But, *before seeing me, make sure that you have first compared your answer to a given practice exam with my issue analysis* so that we can make the most efficient use of our time together.

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 six hours per week if not more.** Please be aware that coverage of some topics might continue over the subsequent class sessions.

7. Attendance & Decorum

Successful completion of this course is dependent upon satisfaction of the W.S.U. Attendance Policy which is reprinted in the Student Handbook. I will take attendance at the beginning of each class. **If you arrive late or depart early you will be marked absent for that session. Late arrivals must not sign the sign-in sheet.**

For the **daytime** classes, a student may miss no more than **three** (3) class sessions. For the **evening** classes, a student may miss no more than **two** (2) class sessions.

Students cannot make up an absence in my class by attending another professor's class.

Students' leaving and returning to their seats while class is in session is a major distraction for other students as well as for myself. If you have a physical issue that may require you to leave the classroom while class is in session, please notify me before class session begins.

9. 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.

10. Office Hours:

Please make appointments through the Faculty Appointments Book located at the faculty support staff's desk on the second floor. My office hours will be posted in this book. If you cannot make a scheduled appointment, please notify me or faculty support staff that you are canceling your appointment as soon as possible so that another student can see me during that time slot. I will also be available the rest of the week as time permits.

11. Course Web Page:

The course will have its own webpage on Lexis-Nexis' Blackboard platform. You will need a Lexis ID number to access the webpage. To access the webpage, go to <http://webcourses.lexisnexis.com/>. The course webpage includes chat sub-groups, instructional objectives for every topic that is a part of this course, downloadable outlines of every topic to help you organize your lecture notes, links to the online quizzes, "think aloud" demonstrations of the legal analysis skills you are expected to develop in this course and other helpful information and links. Click on the "Course Information" button to learn about the course webpage and how you can use it to enhance your learning.

12. 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."

13. 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

14. 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.

Reading Assignments

The Scope of Litigation: Joinder of Parties and Claims

WEEK 1

Claims Joinder: By Plaintiffs & Related Supplemental Jurisdiction Issues

Required: F&P 673 – 697

FRCP 18 & 20

CALI Exercise: “*Joinder of Claims and Parties*”

Recommended: Glannon Examples, 253 – 270 (Rules 18 and 20); 309 – 344 (Supplemental Jurisdiction)

WEEK 2

Claims Joinder: By Defendants & Related Supplemental Jurisdiction Issues

- **Counter-claims**
- **Cross-claims**
- **Impleader (Third-Party Practice)**

Required: F&P 698 – 725

FRCP 13(a), (b) & (g); FRCP 14

Recommended: Glannon Examples, 253 – 270; 271 – 282 (FRCP 14)

WEEK 3

I. Compulsory Joinder (Necessary and Indispensable Parties)

Required: F&P 725 - 736

Rule 19

Recommended: Glannon Examples, 283-307

II. Intervention

Required: F&P 736 – 741

Rule 24

III. Interpleader

Required: F&P 743 – 758

Rule 22

28 U.S.C. §§1335, 1397, and 2361

CALI Exercise: “*Interpleader*”

Suggested for review of Jurisdiction & Joinder: Glannon Examples, 333 - 346

WEEK 4

IV. The Class Action

A. Introduction

Required: F&P 759 – 762

Read the following law review article: John Bronsteen and Owen Fiss, *The Class Action Rule*, 78 Notre Dame Law Review 1419 (August 2003).

B. Constitutional Considerations

Required: F&P 762 – 769

C. Mechanics of Rule 23

Required: F&P 769 – 7784

Rule 23

D. Jurisdictional Considerations

Required: F&P 785 – 800

28 USC 1453; 28 USC 1332(d)

Discovery

Preparation for Trial, Summary Judgment and/or Settlement

WEEK 5

I. Introduction

Required: F&P 371 – 374; CALI Exercise: “*Woburn: A Game of Discovery*”
(No “proof of completion” required.)

Recommended: Glannon – Examples & Explanations 409 – 410;

II. Discovery Tools

Recommended: Glannon Examples 435 – 471

A. Required Disclosures

Required: F&P 374 - 376

Rule 26(a)(1)

B. Depositions

Required: F&P 376 – 378

Rules 27, 28(a) and (c), 30, 31, and 32

C. Interrogatories

Required: F&P 378 - 379
Rule 33

D. Production of Documents and Things

Required: F&P 379 - 380
Rule 34

E. Medical Examination

Required: F&P 380 - 381
Rule 35

F. Requests for Admission

Required: F&P 381
Rule 36

III. Scope of Discovery

Recommended: Glannon Examples 409 – 434

A. General Scope: 2015 Amendments (“Proportionality”) and Discovery of “ESI”

Required: F&P 381 – 399
Rule 26(b)(1) and (2)

WEEK 6

B. Work Product

Required: F&P 399 – 411
Rule 26(b)(3)

WEEK 7

C. Experts

Required: F&P 411 – 422
Rules 26(a)(2) and 26(b)(4)

D. Review Problem: F&P 422 – 423

IV. Timing, Pretrial Disclosures, and Conferences

Required: F&P 423 – 428
Rule 16

- V. **Discovery Sanctions**
Required: Rules 26(g) and 37

Judgment and Beyond

WEEK 8

- I. **The Right to a Jury Under the Seventh Amendment; Selection and Size of Jury**
Required: F&P 445 – 465
7th Amendment of the U.S. Constitution

WEEK 9

- II. **Pre-Trial Disposition: Summary Judgment**
Required: F&P 490 – 513
CALI Exercise: “*Summary Judgment*”
Read the following law review article: Glenn S. Koppel, *The California Supreme Court Speaks Out on Summary Judgment In Its Own “Trilogy” of Decisions: Has the Celotex Era Arrived?*, 42 Santa Clara L. Rev. 483 (2002)
Rule 56

Recommended: Glannon Examples 473 – 494

WEEK 10

- III. **Disposition at Trial:**

Recommended: Glannon Examples 495 – 538
- A. **Judgment as a Matter of Law**
Required: F&P 514 – 523
Rule 50
CALI Exercise: “*Judgments as a Matter of Law*”
Recommended: The Glannon Examples, 495 - 521
- B. **New Trial and Relief from Judgment**
Required: F&P 523 – 532; 536 - 539
Rules 59 and 60(b)
Recommended: The Glannon Examples, 521 - 537

WEEKS 11 - 13

IV. Preclusive Effects of Prior Judgments

A. Introduction

Required: F&P 621 – 623

CALI Exercise: “*Preclusion*”

B. Claim Preclusion (Res Judicata)

Required: F&P 623 – 644

Recommended: Glannon Examples 541 – 576

C. Issue Preclusion (Collateral Estoppel)

Required: F&P 644 – 667.

Recommended: Glannon Examples 577 – 613

D. Problems of Federalism

Required: F&P 667 – 671

WEEK 14

V. Appellate Review

Required: F&P 801 – 828

28 U.S.C. §§ 1291, 1292, 1251 and 1257