



2018-2019 Civil Procedure Syllabus

Instructor: Fred Galves

Class Days/Time: Mondays 6:30 p.m. – 9:15 p.m.

Office Hours Fall Semester: Mondays 5:00 p.m. – 6:00 p.m.
and 9:30 p.m. -10:00 p.m.

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I. Course Description

Welcome to “Civil Procedure”! This course introduces the student to the language, structure, and complex rule systems governing the procedure and operation of the American Federal Civil Justice System. Particular emphasis will be placed upon the *Federal* Rules of Civil Procedure, pertinent federal statutes governing the operation of federal courts, and general sovereignty and federalism issues. Although this course will focus mostly on **federal** Civil Procedure, the federal rule system serves as a “model” for most **state** Civil Procedure rule systems. Thus, by studying federal Civil Procedure, we also will be learning much applicable state Civil Procedure. We will note significant differences between Federal Civil Procedure and California Civil Procedure—to that end, please refer closely to the footnotes in the “Intro & Overview.” To some extent, we shall also consider international/global Civil Procedure issues.

A. Objectives and Outcomes of the Course

In addition to discussing Civil Procedure issues and examining the historical, social, economic, and political context in which legal decisions are made, we shall analyze the form and rhetoric of American legal argumentation and legal reasoning. In doing so, we shall see the brilliance and eminence, as well as the fallibility and limitation, of our adversarial system. In class, we shall examine cases, hypotheticals, and problems which reveal the issues attorneys must consider in deciding when, where, and whether to bring a lawsuit; against whom to bring it, how to bring it, and what procedural options are available to respond **strategically** to the changing circumstances as the lawsuit proceeds. We shall also study a defense attorney's vast array of available procedural devices and tactical maneuvers in defending the lawsuit before it ever even gets to trial, as well as those available both during and after trial. We shall also consider the judiciary's concerns for managing the litigation as it proceeds through the system.

Upon successful completion of this course, a student will be able to:

- 1) Identify issues of Civil Procedure as they would appear in the everyday practice of law;
- 2) Know and understand the fundamental rules and concepts relevant to Civil Procedure in state and federal court;
- 3) Apply the concepts and rules learned to any particular identified issue;
- 4) Discern relevant facts needed to assess a particular issue;
- 5) Appreciate and understand the ethical issues raised by the practice of law;
- 6) Demonstrate an understanding of the origins and development of the U.S. procedural system;
- 7) Demonstrate an understanding of critical thinking skills and legal analysis techniques as they are applied to Civil Procedure issues;
- 8) Analyze court cases, identify key legal issues, and apply the appropriate Civil Procedure rules, standards, and principles to certain fact patterns in order to reach defensible legal conclusions.
- 9) Develop an understanding of the Constitutional, Statutory, and Common Law Procedural Systems and an understanding of the role of logic, critical analysis and creativity in the study and application of Civil Procedure.

A continuing theme will be the conflicting dual objectives of the Civil Procedure system: *fairness* on the one hand vs. *judicial economy* on the other. People are often frustrated by the ability of attorneys to win lawsuits through procedural means (on mere “technicalities”); however, they are often equally troubled by the backlog of civil cases that prevents parties from achieving justice (sometimes for many years). Thus, our system is an attempt to create procedural rules that streamline adjudication, yet still honor fairness and due process. Ideally, our justice system seeks in every case to “*get it right*” so that justice prevails; but realistically, our justice system also needs to “*get it done*” because resolving disputes needs to be completed in a timely and efficient manner. Inevitably, no design is perfect: changes and modifications are often made as we continually attempt to perfect the system so that it is both fair and efficient. In the process, we shall learn what it means to become both a competent and ethical attorney.

Finally, a word of caution: at times it may appear as though we are just learning how to *manipulate* a complex rule system at the expense of “truth” and “justice.” Such is not my goal in teaching this course. If it ever appears otherwise, please understand that before any future ethical lawyer can even begin to pursue “justice,” he or she must first analyze, scrutinize, and internalize our vast complex procedural rule system which makes the very pursuit of justice legally possible. Hopefully as the course proceeds, you will begin to appreciate how procedure is critically important in obtaining justice and it must be mastered by future lawyers, because procedural strategy, maneuvers, and tactics can and often do affect substantive legal outcomes.

B. Integration with Juris Doctor Program Outcomes

Upon completion of the course, students will:

1. Possess the knowledge and understanding of substantive law and procedure;
2. Possess the ability to identify and understand key legal issues;
3. Apply knowledge and critical thinking skills to perform competent analysis, reasoning and problem solving in a legal context; and
4. Possess communication skills including writing and oral advocacy in a legal context.

C. Course Methodology

This course will consist primarily of lecture, dialogue, and class discussion. Throughout the course, I will call randomly on students as well as request volunteers. Students who are not prepared for class will miss much of the material and will fail to contribute to the class. Accordingly, class participation is extremely important. Therefore, you will be expected to: (1) be *prepared* for each class; and, (2) *participate* in class discussion, both when called upon and by volunteering valid arguments and insightful observations.

At the end of each case or subsection in the book, the editor has included “Points for Discussion” that illuminate issues from the case or subject matter at hand. These points are designed to be helpful in understanding the cases and materials. **You should be prepared to discuss these points in class** (although often we may discuss only some of them). You may want to prepare *case briefs* to consult before class. They are often helpful in comprehending class discussion and in responding to questions. Most importantly, the process of preparing a brief will sharpen your legal issue-spotting and analytical skills.

If you have time, being involved in a well-organized, well-run study group can help you to develop your issue-spotting and legal persuasion skills. These skills are very difficult to develop through just the passive learning of reading on your own and listening in class. A study group should be small and efficient. When you are an attorney, much of your time will be spent consulting with other attorneys, so you may want to get used to collaborating with your classmates.

It is important to make sense of *what you are learning, as you are learning it* – so please do not wait until the end of the semester to start reviewing your notes. Making sense of your notes after each class is much more difficult and time-consuming than you might think. Synthesizing your notes weekly will help you to understand the law and to keep up with the material as it is being covered.

Finally, try to engage in *good* class participation. Monopolizing class time with insignificant or unhelpful comments will not be looked upon favorably. Conversely, merely voicing one or two interesting statements throughout the year will be insufficient, even if such statements are cogent, well-articulated, lucid, and insightful. Accordingly, a balance between *quality and quantity* of class participation should be your aim.

II. Schedule and Class Attendance

Regular and punctual class attendance is required. Please note that I use the screens located directly above and behind me at the podium to display computer images and text during class. We will meet in Classroom “A” once a week on Monday evenings, for 2 ½ hours of actual class time, from 6:30 p.m. - 9:15 p.m. (with a 15-minute break around 7:45 p.m.). Please be punctual.

III. Course Grading.

The main areas from which I shall determine your final grade for the course are the Mid-Term and Final Examinations that are given at the conclusion of: (1) the fall semester (the Mid-Term Exam); and, (2) the spring semester (the Final Exam):

A. Mid-Term Examination.

At the end of the first semester, on December 5th, from 6:00 p.m. to 8:00 p.m., there will be a Mid-Term examination. The exam will consist of a one-hour essay question and one-hour of multiple-choice questions. The exam will be “closed book” which means that you will not be allowed to bring in your books or notes.

On the essay portions of the exam, maximum credit will be given to those answers that both identify the problems posed in a comprehensive fashion and demonstrate a thorough, effective, and balanced analysis of how those problems should be solved. Less credit will be given to answers which merely state opinions or unsupported conclusions, or which simply recite abstract principles of law from commercial outlines without **applying** those principles to the facts of the given hypotheticals. Thus, in taking the essay portion of the exam, students should spot the issues and thoroughly analyze them from all perspectives. Essay exam questions will focus on: (1) the gray areas of the law where there often is not only one, or even any “correct,” definitive answer; and, (2) on fact patterns which fall both squarely on and in between different rules of law. The Mid-Term exam will constitute thirty-three percent (**33%**) of your final grade. **In no event shall any grade be changed on the exam except to correct an obvious mathematical or clerical error.**

B. Final Examination.

At the end of the second semester, in May, there will be a three-hour final *comprehensive* examination. The exam will consist of two (2) a one-hour essay questions and one-hour of multiple-choice questions. The exam will be “closed book” which means that you will not be allowed to bring in your books or notes. Please understand that the exams test your legal reasoning and analytical abilities, not simply your memory, although excellent recall of the material will be necessary in order to score well on the exams. The same advice set forth above regarding the essay portions of the mid-term exam also applies to the final exam. The final exam will constitute sixty-seven percent (**67%**) of your final grade. **In no event shall any grade be changed on the final exam except to correct an obvious mathematical or clerical error.**

C. Class Participation.

Although class participation is not graded, I consider good class participation to be, at a minimum, a thorough understanding of the case, rule, or hypothetical at issue, the ability to articulate that understanding in a precise, effective, and persuasive manner, and the ability to consider further or deeper implications of the issues and competently articulate those implications. Obviously, attendance is necessary to engage in good class participation.

To maximize your likelihood of success on the exams, always try to: (1) come to class prepared; and, (2) get involved in the class discussion. You are adequately prepared if you have carefully read the assigned materials, answered questions posed in the materials, and struggled to discern where these materials “fit” in the course. You are sufficiently involved in the class discussion when you are actively listening to your colleagues and volunteering additional relevant comments, criticisms, or perspectives. The touchstones of meaningful participation are precision (both in listening and in speaking), clarity, and respect. Don’t be afraid to be “wrong.” You must learn how to articulate a position effectively and learn the art of advocacy the only way that one can—by experience. Participation dramatically improves your comprehension of the course materials and thereby makes it much more likely that you will earn a higher grade.

IV. Use of Laptops, iPads, Etc., During Class.

Various technological/digital devices are very powerful and helpful tools that can greatly assist in our learning, organizing, and understanding of legal concepts and information. However, they can also be extremely distracting to others during class, as well as sometimes even be counter-productive to the user trying to learn and master new material. In the end, such devices are just “tools;” and like any other tool they can be used either for “good,” or for “evil”—because they can be used either properly, or improperly.

Although it is tempting to issue an all-out ban on such devices during class, as the distraction can at times be too alluring, and too disruptive, the goal in law school should be for future lawyers to learn HOW to use such devices professionally, responsibly, and productively, in both formal and informal settings. Successful lawyers are not on Facebook, Youtube, or checking box scores during court or in client meetings because what they are doing is too important and demands their full attention and respect. We need to aim for that same level of commitment and excellence, especially because we are engaged in learning which demands even more undivided attention.

Therefore, please refrain from abusing access to the internet during class. In the event that the distraction becomes a problem, I ask that students please let me know about this, or any issue, which may be making it difficult for you to learn during class. There is a proper place for technology in the practice of law, and you need to learn that proper usage and professional etiquette. As a result, please do not ruin it for others, and in many ways, for yourself, by using technological devices inappropriately during class. Of course, having your cell phones is sometimes necessary so that you are not completely out of contact with family or significant others during class, but please try to limit texting, please silence ringers, and please use phones only when necessary (try not to be disruptive if you must leave class to take an important call).

V. Course Materials.

The **REQUIRED** texts for this course are:

- A Benjamin Spencer, *CIVIL PROCEDURE, A CONTEMPORARY APPROACH*, 5th Ed, West Publishers (“**The Casebook**”);
- Prof. Fred Galves, “INTRODUCTION AND OVERVIEW OF CIVIL PROCEDURE,” (“**Intro and Overview**”)—**part of the “Prof. Galves’ Federal Rules of Civil Procedure APP” (website and phone APP); this APP will be available for purchase by our first class (\$4.99 to purchase the APP) (approximately \$15.00 to Purchase a hard copy of Book);**
- Prof. Fred Galves, *SUPPLEMENTAL MATERIALS/ “HANDOUTS”* (“**Supp. Mats**”/“**Handouts**” – **These are supplemental readings that from time to time be copied and made available in class the week before they are due.**)

You will need to bring your Casebook to class and have the Federal Rules of Civil Procedure available to consult during class (on the APP), along with any pertinent supplemental materials for that particular class, as well as the "Intro and Overview."

Also, please note that I distribute a *class outline* for each class on “Populi” (see below). These class outlines contain the main topics and cases we will cover for that particular class. The class outlines will help you to organize your class notes (you can print out the class outlines and use them as cover sheets for that particular day’s class notes). The class outlines will inform you where we will begin the next class in case we ever fall behind schedule so that you always know right where we are in the course coverage.

Finally, please note that I use *computer images daily in class*. Therefore, you should select a seat where you can easily view the screens. The information contained in the computer images on the screens will help to organize class discussion and facilitate your note taking. However, PLEASE DO NOT ATTEMPT TO SIMPLY COPY ALL OF THE CONTENTS ON THE COMPUTER SCREEN. The images and text are informational slides designed to get you to understand and think further about the legal concepts being considered for that particular class. They are just foundational catalysts for class discussion and exploration of the material.

If you are looking for a helpful reference guide beyond the assigned reading materials, with practice questions and basic concepts explained, I would recommend

- Joseph W. Glannon, *CIVIL PROCEDURE: EXAMPLES & EXPLANATIONS*, WOLTERS KLUWER PUBLISHERS), 7th EDITION. This publication contains many helpful examples and hypotheticals (with answers & explanations) to help you understand many key Civil Procedure concepts. Please try to write out answers to the questions on your own BEFORE consulting the answers. You can then compare the author’s explanations with your written responses.

VI. Populi Course Communication Page

We will have a Communication Page for Civil Procedure on Populi. We will use this page to communicate and for me to provide materials. The page for Civil Procedure will contain our class assignments, class outlines, class announcements, and other pertinent information. Please consult it before class as you prepare for class.

VII. Website: “www.professorfredgalves.com”.

I also have a personal website for students, professors, lawyers, judges, and any other persons interested in the law. There are many articles and helpful items on the website that you may find useful. Please feel free to explore the site. Directly below are some links to my website, and background→

Web site: <http://professorfredgalves.com/>
Bio: <http://professorfredgalves.com/about/>
Teaching Philosophy: <http://professorfredgalves.com/professor-of-law/>

VIII. Office Hours.

I will be available for office hours, in our classroom, both before class, and after class, on Monday evenings. The following are my office hours for Fall, 2018:

Mondays (before class)	5:00 p.m. – 6:00 p.m.
Mondays (after class)	9:30 p.m. – 10:00 p.m.

Also, I can be available by appointment, occasionally before your class on Thursdays. Please make sure to take advantage of office hours – law school can be difficult and we professors are here to help you. You need to make sure that you take advantage of all opportunities to learn and prepare. You are going to be someone’s champion someday, either in court or in some other legal setting, so you should make the most of this academic experience.

IX. Relax.

Although law school can be very difficult, you have embarked on a very interesting and challenging experience. Do not let exaggerated horror stories consume you so much that you become overly concerned and stressed and, as a result, fail to fully benefit from the journey. Just like you (and your parents and friends), we law school professors very much want for you to succeed and we are very confident that you can and will do so. We will challenge you in class, but the purpose is really to get you to challenge yourself, intellectually and academically, so that you can be as successful as possible in law school, and thereafter, in life as an ethical, civil, and professional attorney. You can do it; you can succeed. It is up to you. I look forward to your continued progress and growth this academic year as a future attorney.

X. Course Assignments for THE FIRST SEMESTER:

AUGUST 2018

CLASS #	DATE	READING ASSIGNMENT FOR CLASS
1	8/13	<p><u>INTRODUCTION: BACKGROUND/PERSONAL & SUBJECT MATTER JURISDICTION & VENUE/APPLICABLE LAW</u></p> <ul style="list-style-type: none"> • Course Description & Syllabus; • <u>Casebook</u>: pp. 1-14 (Chapter 1) (to “3.”); • <u>Intro & Overview</u>, pp. 1-45 (to “VI.”) (Summary of 1st Semester)
2	8/20	<p><u>INTRODUCTION: PLEADINGS (COURT PAPERS/FILINGS); JOINDER OF CLAIMS AND PARTIES; DISCOVERY;</u></p> <ul style="list-style-type: none"> • (Course Description & Syllabus); • <u>Casebook</u>: p. 14 (Chapter 1) (from “3.” to “5.”); • <u>Intro & Overview</u>, pp. 45-80 (from “VI.” to “IX.”) (Summary of 2nd Semester)
3	8/27	<p><u>INTRODUCTION: RESOLUTION WITHOUT TRIAL; TRIAL/POST TRIAL/APPEALS; FORMER ADJUDICATION—PRACTICE QUIZ</u></p> <ul style="list-style-type: none"> • <u>Casebook</u>: pp. 14-17 (Chapter 1) (from “5.” to End); • <u>Intro & Overview</u>, pp. 80-107 (to End) (Summary of 2nd Semester) • Practice Quiz Handout—Do on Your Own

SEPTEMBER 2018

CLASS #	DATE	READING ASSIGNMENT FOR CLASS
--	9/3	Labor Day (No Class)
4	9/10	<p><u>PERSONAL JURISDICTION (Fairness/Due Process): HISTORICAL/TRADITIONAL BASES; STRETCHING THE HISTORICAL BASES; & MODERN PERSONAL JURISDICTION DOCTRINE (“MINIMUM CONTACTS”)</u></p> <ul style="list-style-type: none"> • <u>Intro & Overview</u> pp. 16-23 (from “V.” to “2.”); • <u>Casebook</u> pp. 19-44 (Chapter 2) (from beginning to “C.”) -- PRACTICE QUIZ ANSWERS
--	9/15	<u>Saturday-9/15:</u> OPTIONAL CLASS to Read <u>World-Wide VW Case</u> Together
5	9/17	<u>PERSONAL JURISDICTION (Fairness/Due Process): APPLYING MINIMUM CONTACTS/LONG-ARM STATUTES; SPECIFIC V.</u>

		<u>GENERAL JURISDICTION</u> <ul style="list-style-type: none"> • <u>Intro & Overview</u> pp. 16-23 (from “V.” to “2.”); • <u>Casebook</u> pp. 44-73 (Chapter 2) (from “C.” to “<u>Burger King</u>”)
6	9/24	<u>PERSONAL JURISDICTION (Fairness/Due Process): FURTHER APPLICATIONS/DEVELOPMENT OF THE MINIMUM CONTACTS TEST</u> <ul style="list-style-type: none"> • <u>Casebook</u> pp. 73-138 (Chapter 2) (from “<u>Burger King</u>” to “2.”)

OCTOBER 2018

CLASS #	DATE	READING ASSIGNMENT FOR CLASS
7	10/1	<u>PERSONAL JURISDICTION: ABSORBING IN-REM JURISDICTION; PRESENCE JURISDICTION; CONSENT JURISDICTION; FEDERAL COURT JURISDICTION AND NOTICE (PROCEDURAL DUE PROCESS—RULE 4 NOTICE/ SERVICE OF PROCESS)</u> <ul style="list-style-type: none"> • <u>Casebook</u> (Chp. 1→2) pp. 138-188: (from “2.” to “<u>Dusenberry</u>”) • <u>Casebook</u> (Chp. 2) PP. 199-203 (from “B.” to <u>Rio</u>); • <u>Intro & Overview</u> pp. 47-48 (from “2.” to “3.”); <u>Casebook</u> (Chp. 2) PP. 210-217 (from “a.” to End)
8	10/8	<u>PERSONAL JURISDICTION & NOTICE REVIEW</u>
9	10/15	<u>SUBJECT MATTER JURISDICTION: §1332 DIVERSITY JURISDICTION; §1331 FEDERAL QUESTION JURISDICTION</u> <ul style="list-style-type: none"> • <u>Intro & Overview</u> PP. 23 – 28 (from “2.” to “B.”) • <u>Casebook</u> (Chp. 3) PP. 219- 264 (from “Chp. 3” to “C.”) §1332 Diversity Jurisdiction Handout
10	10/22	<u>SUBJECT MATTER JURISDICTION: §1367 SUPPLEMENTAL JURISDICTION; §1441 REMOVAL JURISDICTION</u> <ul style="list-style-type: none"> • <u>Intro & Overview</u> PP. 28 - 30 (from “B.” to “C.”) <u>Casebook</u> (Chp. 3) PP. 264-269 (from “C.” to End)
11	10/29	<u>VENUE: FEDERAL COURT VENUE: §1391; TRANSFER OF VENUE; & FORUM NON CONVENIENS MOTIONS</u> <ul style="list-style-type: none"> • <u>Intro & Overview</u> PP. 30-35 (from “C.” to “E.”) • Venue Handout • <u>Casebook</u> (Chp. 4) PP. 313-350 (from “Chp. 4” to “2.”); <u>Casebook</u> (Chp. 4) PP. 357-371 (from “C.” to “End”)

NOVEMBER 2018

CLASS #	DATE	READING ASSIGNMENT FOR CLASS
12	11/5	<u><i>ERIE DOCTRINE: STATE LAW IN FEDERAL COURTS; APPLICABLE LAW</i></u> <ul style="list-style-type: none"> • <u>Intro & Overview</u> PP. 33-43 (from “E.” to “i.”) • <u>Casebook</u> (Chp. 5) PP. 373-425 (from “Chp 5.” to “<u>Gasperini</u>”)
13	11/12	<u><i>ERIE DOCTRINE: STATE LAW IN FEDERAL COURTS; APPLICABLE LAW</i></u> <ul style="list-style-type: none"> • <u>Intro & Overview</u> PP. 33-41 (from “E.” to “5.”) • <u>Casebook</u> (Chp. 5) PP. 321-353 (from “Chp 5.” to “<u>Byrd</u>”)
14	11/19	<u><i>SUBJECT MATTER JURISDICTION, VENUE, AND ERIE DOCTRINE REVIEW</i></u>

DECEMBER 2018

CLASS #	DATE	READING ASSIGNMENT FOR CLASS
	12/5	<i>MID-TERM EXAM: 6:00-8:00 pm</i> <i>(1-Hour Multiple Choice; 1-Hour Essay)</i>