

WAKE FOREST UNIVERSITY SCHOOL OF LAW
CIVIL PROCEDURE II - SPRING 2016
Professor Gregory S. Parks

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Office Hours: Monday and Wednesday, 11:00 a.m. – 12:30 p.m. and by appointment

Class Meetings: Monday, Wednesday, and Friday at 10:00 a.m. – 10:50 a.m. – Room 1109

LEARNING OBJECTIVES

➤ *Foundational Knowledge*

- You'll be able to define what "civil procedure" means, technically, historically and conceptually, and how it serves as a framework for understanding the courses Civil Procedure I and II.
- You'll be able to explain why civil procedure is indispensable in clarifying and vindicating substantive legal rights such as the ones you'll learn about in courses like Constitutional Law, Contracts, Torts, and Property (as well as many upper-level courses you may take).
- You'll be able to parse court cases to extract the relevant facts and legal rules.
- You'll be able to articulate the theoretical and conceptual reasons behind the litigation process from filing pleadings to potential appeal.

➤ *Application Goals*

- You'll be able to identify simple (one issue) and complex (multiple issues) civil procedure issues and apply your knowledge of the legal rules to resolving those issues as seen in new fact-patterns.

➤ *Integration Goals*

- You'll be able to synthesize the details of each concept in the casebook into an overarching theme or system of analysis for those chapters.
- You'll be able to stretch your understanding of civil procedure beyond what you read in the supplement and the casebook—integrating black-letter rules that are not found in your readings—i.e., only raised in class or looked-up and applied to novel questions that may arise in class—with those in your readings.

➤ *Learning-How-to-Learn Goals*

- Given your foundational knowledge, you'll be able to formulate incisive questions and feel comfortable searching Westlaw to augment and enhance your knowledge about civil procedure especially where questions involve specific jurisdictions, jurisdictional/circuit surveys, or concepts well-beyond the scope of the class.

ALLOW ME TO REINTRODUCE MYSELF...: My name is Gregory Scott Parks. My father, Leon, and his brother, were born to John and Lillian Parks. My mother, Queen Elizabeth (yes, that was her name; she's now deceased), was born the youngest girl of thirteen children. I have three sisters—two older, one younger. I also have two nephews and a niece. We are a close family. My parents were school teachers. I attended the elementary school where my mother taught as well as the middle school where my father taught. After I graduated from high school my father became its assistant principal. In college I majored in Psychology, minored in English and went on to earn a PhD in

Psychology before going to law school. After earning my JD, I clerked for two judges and then went on to work at a large law firm in Washington, D.C. Then I came down to North Carolina. I am a martial artist (4th degree black belt in karate, black belt in Tae Kwon Do, and train in Brazilian jujitsu, judo, and Muay Thai kickboxing; I like to travel and cook. I also like my job; it's more like a hobby than a job. What a great life! I hope to help you find such a career.

I tell you all of this for a simple reason: I realize that in professional school, maybe especially law school, it is often difficult for students to bridge the personal divide between themselves and their professors. This barrier works to the detriment of students, in my estimation. Whether due to fear, anxiety, intimidation, or lack of trust, students fail to realize that their professors are human and that we are here for the students' benefit. And this fear, anxiety, intimidation, and lack of trust, therefore, undermine the students' ability to learn all that they can from their professors, some more so than others. If you are intimidated by me, you will not likely come to office hours to get my help where you don't understand material. If you don't trust me, you will likely rely more heavily on materials outside of my assigned readings and my classes—e.g., prior students' notes, materials from classes I've taught in the past, unassigned supplements, and the like. A sense of peace and trust with regard to me as your guide, coach, teacher, and sometimes cheerleader, is essential for doing well in this class. I know the material. I've studied it as a student, restudied it in preparation for the bar exam, applied it as a lawyer, and have studied it more deeply as I've taught it for several years now. Most importantly, I am the person who writes your exams and who grades them. As such, my insights are the most critical insights for your success in my class.

THE SYLLABUS: You are bound by my syllabus! As such, it behooves you to be quite familiar with it. Note, however, that table does not represent exactly what will be covered each class. What is reflected in the two left-most columns is simply the flow of the course—what precedes and follows subject matter. I may decide, sometime into the semester, to alter reading assignments. While it is doubtful that we will get that far “ahead” or “behind,” if we do, I will make the necessary adjustments.

THE COURSE: This course is an introduction to the rules and practices that govern civil litigation in trial courts as well as the policies that underlie these rules and practices. You will primarily study the federal, as opposed to any particular state system's, rules of civil procedure this year. The assigned reading materials provide a basic foundation for understanding civil procedure. What you read constitutes anywhere from 50%-60% of the material you need to be well-prepared for the final examination. The hypotheticals, which are sometimes drawn from principles in cases we have not read in class, constitute anywhere from 40%-50% of the material you need to be well-prepared for the final examination. With that said, Glannon produces some excellent supplemental materials from which you can get a good and basic foundation of civil procedure. However, you cannot excel in my class simply by understanding these basics; you must draw from the assigned readings as well as what I cover in class. Also, these supplemental materials will be over-inclusive or under-inclusive with regards to what I am looking for in my class.

In a sense, my class, like pretty much all law school classes, is a survey course. What I mean by that is that civil procedure is broad and expansive. With that said, outside of what I have planned for us to cover in class, you are not expected to know civil procedure more broadly. This means that you do not need to know the civil procedural rules—state or federal—of your home-state or across states and circuits. This course is, quite simply, an effort to give you the foundational knowledge you need to understand civil procedure and to answer some of the broader questions you may have about the topic as the year, your law school experience, and professional life as a lawyer unfolds. In turn, I will not spend much class time answering questions that are far afield from what I have

deliberately planned for us to cover this year. That is not to discourage your curiosity and questions. However, if your questions are likely to take the class far afield from where I intend for us to go, those are questions that you should raise and have answered during office hours. In addition, I do not spend time answering questions that are the focus of your other courses. If you have constitutional, contracts, property, and torts questions, I encourage you to speak with your professors for those classes. You are likely to get clearer answers from them, and their answers may be most helpful to you, especially in taking final examinations for their classes.

REQUIRED MATERIALS: The casebook for this course is *Civil Procedure: A Coursebook* (2nd ed. 2014) by Glannon, Perlman, and Raven-Hansen. In addition, a copy of *Civil Procedure: Rules, Statutes, and Other Materials 2016* by Glannon, Perlman, and Raven-Hansen is required. I may occasionally supplement your required reading with photocopied materials, which I will upload to TWEN.

OFFICE HOURS: Please feel free to stop by my office, Room 3346, at your convenience or on Monday and Wednesday, 11:00 a.m. – 12:30 p.m. and by appointment. I tend to focus on class preparation the hour or two prior to class. If you need to schedule an appointment with me, please email me at parksgs@wfu.edu to arrange a time. My office telephone number is 336.758.2170. If you cannot reach me, you may reach my assistant, Ms. Sonya Casstevens at casstesa@wfu.edu. Her office is right next to mine.

CLASSROOM PROCEDURE: My classes will take-on a familiar pattern. I will typically start each class with a quick recap of the high points from the prior class. We will then spend around 20-30 minutes parsing the assigned case for the day. The bulk of the rest of the class, we will walk through hypos that clarify and apply the rule(s) that we learned from the case. I will post some version of the hypos I will pose in class sometime before the section where the hypos will be analyzed. It is up to you to review these hypos and think-through their answers.

A variety of students will be called on, randomly, each class to help elucidate the issues that are up for discussion that day. Your questions about the material are welcome. However, a response to them may be delayed until an appropriate time—*e.g.*, elaboration on the *Erie* Doctrine for the classes on the *Erie* Doctrine or appeals for a lengthier discussion in the spring semester. Also, class time is not an exercise of how exhaustive or even, in some sense, specific about the law we can be. The class is designed to give you a general overview of civil procedure. As such, I will not use class time to address questions that survey the circuits/district, pinpoint circuits/districts that pique your curiosity, or expound far beyond the law in ways that address individual students' curiosities. With that said, my hope is that your curiosity about civil procedure will abound, but if you have questions that may take the class far afield, I will ask that you raise those questions during office hours. Even under such circumstances, I may require you to do a little homework to unearth the answer. In addition, while I may take questions during class that add to the hypotheticals I propose, I will not do that beyond one or two iterations. For example, if I provide a hypothetical "ABCD" and one student wants to add "E" to the hypothetical, that is fine, but I will not likely take class time to allow students to add "F," "G," "H," etc... Doing so will take us too far off track.

OUTLINES: It is in your best interest to prepare an outline from which you will study for the final exam. While it will likely be tempting to get an outline from a student who has taken my class prior, it is always wisest to prepare your own outline. I change my class a bit from year to year, reflecting changes in the law or to add clarification where the presentation was unclear in the past, so old outlines are likely obsolete by the time you may get them. To get clarity on how to organize your outline, I am happy to help you during office hours.

LAPTOP POLICY: You are free to use your laptop in class, but it is a proven fact that students who take handwritten notes come to comprehend the material they learn better than if they were to take notes via laptop. If you do use your laptop in class, do not spend time surfing the Internet, playing games, or sending/responding to emails, as this can be distracting to people sitting behind or to the side of you. Recording devices, cell phones, iPads, PDAs, etc... are not permitted in class. If you must bring a cell phone to class (*e.g.*, family member ill, job interview), clear it with me before class and place it on vibrate. You will not be questioned, berated, or harassed for violation of these policies. Violation of these policies, however, will result in an automatic loss of class participation points.

In addition, you are not permitted to use audio or video devices to record class. A violation of this rule is an Honor Code violation. If you need a class recorded, please notify me, and I will do my best to make it happen.

GRADING: Your class participation/professionalism grade will constitute 15% of your final grade (see “Class Attendance & Preparation” below). Your final exam will be a three- to four-hour exam at the end of the semester. It will consist of anywhere from 20 multiple-choice questions and one issue-spotting question. The exam will be open-book—*i.e.*, casebook, supplement, and your personal outline. Your final exam will constitute 85% of your final grade.

PRACTICE: If you would like to practice doing questions, let me recommend *Civil Procedure: Examples and Explanations* (7th ed, 2013) or *The Glannon Guide to Civil Procedure* (3rd ed., 2013)—both by Joseph W. Glannon. Also, before the end of the semester, there will be a simple (one, general issue) issue-spotting, practice exam. I will inform you the week before the practice exam what the topic will be. Thirty minutes will be dedicated to taking the practice exam. The remainder of the time will focus on how I would grade the exam.

CLASS ATTENDANCE & PREPARATION: *I expect consistent and timely attendance.* If you need to be absent for illness, personal or family emergency, or job interview, please inform me before class. There is no need to give me the specifics of why you will be absent. Please be prepared for each class, which means, having done the readings, reviewed them with your group (if you are in one), and having briefed the cases. If you are not prepared for class, send me an email before class informing me, and I will neither call on you nor penalize you. Your attendance also includes mental attendance. While I do not prohibit laptops in class, I am fairly good at discerning when students are captivated by the Internet—*e.g.*, Facebook, Twitter, J.Crew, G-chat—so please do not zone out. That zoned-out look is sure to get you called-on.

CLASS MAKE-UPS: Occasionally, I need to be out of town for a conference or presentation. In this syllabus, I highlight dates I will be away and when our make-up classes will be. If, by chance, I fall ill and cannot make class, I will let you know as soon as I cannot make class or have my assistant—Ms. Casstevens—inform you and will work with you to find an appropriate time for a make-up class. Also note that sometimes campus closes due to weather. These classes also have to be made-up. For make-up times, I will inform you of what you need to read, though it will usually be about half of the next assigned reading.

I will be out of class on the following dates with some Fridays pending:

- Wednesday, January 20
- Friday, February 5
- Friday, March 4
- Friday, March 18
- Friday, April 22

The pre-scheduled make-ups are on the following dates at noon (the official make-up day and time by the Dean's Office) in 1109:

- Friday, January 22
- Monday, January 25
- Monday, February 1
- Monday, February 8
- Monday, February 15
- Monday, February 22
- Monday, February 29
- Monday, March 14

READING & BRIEFING CASES/TAKING NOTES: Cases MUST be read and briefed—including: Case Name, Case Date and Court, Judge Who Wrote Opinion, Facts, Procedural History, Holding, Reasoning, Concurrence(s), Dissent(s)—before class. As you read your cases, be sure to look-up, in a legal dictionary, any words or phrases you do not know. Note that for Chapter 2 of the casebook, you do not need to read the specific rules (Chapter 2 is an overview of all of second semester's Civil Procedure II). Relevant United States Code sections are printed in *Civil Procedure: Rules, Statutes, and Other Materials 2015*. In addition to reading your cases, be sure to read all pages of the assigned reading to gain a better contextual understanding for the cases as well as footnotes.

For the most effective note-taking, weave into your brief or your notes, more generally, finer points made by the casebook authors in the notes after the cases. This especially includes writing short briefs—e.g., case name, court, date, and a parenthetical with the black-letter rules—of cases mentioned in the casebook notes. From our discussions in class, we will clarify the finer-points of black-letter law raised in the cases read for class. We will also raise and discuss black-letter rules not raised in the readings. I may provide historical context or factual details about cases. You should have a column ready-to-go in your notes where you take notes from class. On the other hand, you might weave your class notes into your briefs or notes from your readings. I encourage you to set your class notes in a different type, font, or color.

COURSE SCHEDULE: Starting on page six of the syllabus, you will find the reading assignments for the course. We will typically cover one unit per class. However, we will likely find that we cover something less than a full unit per class, which means we will carry that unit over to the next class along with the assigned unit for the following class. Ultimately, this will prove to stretch 33 units over 42 classes (including reviews and possible, additional units). The schedule may be adjusted daily as I determine how much material we cover. From time to time, I may revise the syllabus—adding, pruning, or deleting material. Revisions will be uploaded to TWEN.

Class	Readings	Learning Objectives
1	Casebook: 413-432; FR 7 and 8, 10-12	<ul style="list-style-type: none"> ▪ What's the distinction between common law, equity, and code pleading? ▪ What is notice pleading? ▪ How do the rules add to our understanding of what pleadings are and how they operate?
2	Casebook: 432-447; FR 9	<ul style="list-style-type: none"> ▪ How must one plead the elements of a claim? ▪ Why is there heightened pleading? ▪ How do the rules speak to heightened pleading?
3	Casebook: 447-467; FR 7-12 (exclude 7.1), 84; Forms 1-3, 7, 11	<ul style="list-style-type: none"> ▪ What have the <i>Iqbal-Twombly</i> standard added to the evolving standard for pleading? ▪ What role do the Forms play in pleading and heightened pleading? ▪ What challenges does the <i>Iqbal-Twombly</i> standard create?
4	Casebook: 519-537; FR11, 41	<ul style="list-style-type: none"> ▪ Why are care and candor important in civil litigation? ▪ What constitutes the "reasonable inquiry" standard? ▪ How are good faith arguments made to change the law?
5	Casebook: 537-552; FR11, 41	<ul style="list-style-type: none"> ▪ What is the "proper purpose" standard? ▪ What is the proper procedure for FR11 sanctions? ▪ Why have FR11 sanctions?
6	Casebook: 469-480; FR7-8, 55, 60(b)	<ul style="list-style-type: none"> ▪ Why would a defendant choose to not respond to a complaint? ▪ What are the consequences of not responding? ▪ What is the distinction between a default and a default judgment?
7	Casebook: 480-497; FR7, 12, 56	<ul style="list-style-type: none"> ▪ What is a "motion"? ▪ What are the types of FR12 motions? ▪ What is the "FR12 waiver trap"?
8	Casebook: 497-518; FR8, 12	<ul style="list-style-type: none"> ▪ How does a defendant answer a complaint? ▪ How might a party further plead? ▪ How do you analyze a response to a complaint?
9	Casebook: 553-574; FR15	<ul style="list-style-type: none"> ▪ How does a party amend without leave of court? ▪ How does a party amend before trial with leave of court? ▪ How does a party amend during and after trial with leave of court?
10	Casebook: 574-597; FR15	<ul style="list-style-type: none"> ▪ Why should we be mindful of the limitations period? ▪ How does a party amend claims or defenses after the limitations period? ▪ How does a party amend parties after the limitations period?
11	Casebook: 601-617; FR17, 18, 20 42(b)	<ul style="list-style-type: none"> ▪ What is the rationale behind joinder? ▪ How does a party join multiple claims? ▪ How are parties joined?
12	Casebook: 618-640; FR7(a), 13, 14	<ul style="list-style-type: none"> ▪ How does a party cross-claim? ▪ How does a party counterclaim? ▪ How is FR14 employed to implead and assert additional

		claims?
13	Casebook: 641-652; FR19	<ul style="list-style-type: none"> ▪ Why use complex joinder? ▪ How are parties joined under FR19?
14	Casebook: 652-677; FR22, 24	<ul style="list-style-type: none"> ▪ Why would a party intervene? ▪ How is intervention conducted under FR24? ▪ How is interpleader conducted?
15	Casebook: 679-705; FR23	<ul style="list-style-type: none"> ▪ Why initiate a class action suit? ▪ What are the due process requirements for a class action suit? ▪ How is a class action certified under FR23(a)?
16	Casebook: 705-722; FR23	<ul style="list-style-type: none"> ▪ How is a class action certified under FR23(b)? ▪ How are things like jurisdiction and notice established in a class action?
17	Casebook: 769-786	<ul style="list-style-type: none"> ▪ How is an informal investigation conducted? ▪ How is discoverable matter narrowed and circumscribed?
18	Casebook: 786-810; FR26, 33-34, 37, 45	<ul style="list-style-type: none"> ▪ How is a lawyer's work product defined? ▪ How is an expert's work product defined?
19	Casebook: 811-824; FR26(a), 33, 37(a)(1) & (c)(1); form 52	<ul style="list-style-type: none"> ▪ Why are discovery tools needed? ▪ What are the mandatory discovery procedures? ▪ What is discovery sequencing; and what are interrogatories?
20	Casebook: 824-848; FR26, 32-34, 45, 53, 72-73	<ul style="list-style-type: none"> ▪ How is a request for documents and other things conducted? ▪ How is electronic discovery conducted?
21	Casebook: 848-856; FR35-36; form 51	<ul style="list-style-type: none"> ▪ How are depositions conducted? ▪ How are physical and mental examinations conducted? ▪ How are requests for admissions made?
22	Casebook: 857-875; FR16(a)-(c), 26(b)-(g) & 37	<ul style="list-style-type: none"> ▪ Why should courts exert control over discovery? ▪ What are the tools for controlling discovery?
23	Casebook: 977-992; FR16(b)(1), (c)(2), (e), (f)(1)(A)-(B), 41(b), 73, 83(a)	<ul style="list-style-type: none"> ▪ What's the pretrial authority of courts? ▪ What role does the pretrial order play in litigation?
24	Casebook: 993-1004; FR 41, 54(c), 55, 60	<ul style="list-style-type: none"> ▪ Why have a disposition without trial? ▪ How is voluntary dismissal conducted? ▪ How does an involuntary dismissal come about?
25	Casebook: 1004-1018; FR56	<ul style="list-style-type: none"> ▪ What is a summary judgment? ▪ What is the rationale behind summary judgment? ▪ how is summary judgment proven?
26	Casebook: 1018-1033; FR12(b)(6), 12(c), 56, 50(a)	<ul style="list-style-type: none"> ▪ How does a summary judgment motion relate to other motions? ▪ What's the relationship between the movant's burden and burden of proof at trial?
27	Casebook: 1035-1050;	<ul style="list-style-type: none"> ▪ What's the distinction between law and equity in the

	FR38-39	<p>context of jury trials?</p> <ul style="list-style-type: none"> ▪ How is a right to a jury trial determined?
28	Casebook: 1051-1067; FR38-39; 28 U.S.C. §1870	<ul style="list-style-type: none"> ▪ What role does the Seventh Amendment play in looking at new statutory rights? ▪ What is the evolving nature of a right to jury trial? ▪ How is a jury trial administered?
29	Casebook: 1069-1098; FR50	<ul style="list-style-type: none"> ▪ What is the distinction between a directed verdict and judgment as a matter of law? ▪ How is “legally sufficient evidentiary basis” defined? ▪ What are the procedural technicalities of FR50?
30	Casebook: 1099-1124; FR42, 48-49, 51-52	<ul style="list-style-type: none"> ▪ How are juries controlled by rulings on admissibility of evidence? ▪ How are juries controlled by jury instructions? ▪ How are juries controlled by jury verdicts?
31	Casebook: 1125-1143; FR50, 60-61	<ul style="list-style-type: none"> ▪ Why would a party request a new trial? ▪ How is the weight-of-the-evidence errors evaluated?
32	Casebook: 1143-1154; FR 50, 60-61	<ul style="list-style-type: none"> ▪ How are new trials for process errors evaluated? ▪ Under what circumstances is relief from judgment granted?
33	Casebook: 1157-1180; 28 U.S.C. §§ 1291, 1292(a)-(b); Fed. R. App. P. 3-5; FR54; forms 70-71	<ul style="list-style-type: none"> ▪ How is an appeal presented and decided? ▪ What gets appealed? ▪ How is “the final judgment rule” implicated in the appeals process?
34	Casebook: 1180-1195; 28 U.S.C. §1292	<ul style="list-style-type: none"> ▪ How is “the collateral order doctrine” implicated in the appeals process? ▪ What does it mean to be final by direction? ▪ What is the interlocutory appeal process?
35	Casebook: 1195-1201; FR52; 28 U.S.C. § 1651	<ul style="list-style-type: none"> ▪ What are standards of review? ▪ How are the standards of review applied?