

# Law in Action: Civil Litigation

## Class Policies and Assignments

**COURSES COVERED:** Civil Procedure II  
Torts II

**REQUIRED TEXTS:** Freer & Perdue, Civil Procedure Cases, Materials & Questions (7<sup>th</sup> Ed.)  
Manning, Torts: A Context and Practice Casebook  
Federal Rules of Civil Procedure (you may purchase a supplement or print the necessary rules from an online source)

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***Please read this document very carefully—as a lawyer would. You will be held accountable for knowing all of the information contained in this document.***

Law in Action: Civil Litigation is designed to take advantage of the natural synergy between Civil Procedure and Torts, the combination of which enhances student learning of both topics. Civil procedure is often difficult for students to understand in a vacuum. It also inevitably is intertwined with other substantive topics, and yet it is rarely taught with reference to the substance of the non Civil Procedure topics. Torts exists almost entirely within the constructs of the civil system and is primarily a civil litigation based topic, and yet it is usually taught without reference to the litigation context within which it occurs. Teaching the courses in combination helps students see how the law fits together. More specifically, using civil procedure to accomplish objectives such as obtaining evidence or prevailing in a lawsuit via a motion, helps you understand how civil procedure unfolds in a case. It removes the theoretical and replaces it with concrete understanding. Your learning of both subjects—Civil Procedure and Torts—is enhanced because you will be able to see how the topics work in real life— together.

With this combination course you will be better able to place what you are learning in the context of a lawsuit, you will develop a greater understanding of how a lawsuit is constructed, and you will be better able to apply what you learn, making you better prepared for law practice.

### **Why this course may be different from other courses:**

Recently, the Carnegie Foundation published *Educating Lawyers: Preparation for the Practice of Law* and the Clinical Legal Education Association published *Best Practices for Legal Education*. Both were in-depth efforts to assess the effectiveness of modern legal education, and both concluded that legal education fell quite short of its goal of educating law students and preparing them for the practice of law. According to both reports, some of the key reasons for this failure are: (1) law professors' rigid adherence to the case method, Socratic dialogue, and

use of a single teaching method; (2) the inadequacies of law school assessment mechanisms; and (3) the absence of law school instruction aimed at teaching law practice skills and professional values. These reports cited to and relied on the wealth of educational research about how people learn and made suggestions for improving legal education. This course aims to follow many of the suggestions outlined in those reports, as well as the research on human learning, and is designed with these best practices in mind.

Additionally, the State Bar of California, in an effort to address the disconnect between law school and law practice will soon require law schools to provide a minimum of 15 units of professional skills instructions, aimed at preparing students to be “practice-ready” upon graduation. This course is designed to fulfill those requirements—and to prepare you for the practice of law.

### **Our Fundamental Expectations:**

We expect you to:

- have fun (the research on learning shows that students learn more in class when they feel like class is fun);
- care as passionately about your learning as we do;
- treat the class as a professional obligation;
- impose high expectations on us, on yourself, and on your peers;
- be respectful to us and your peers;
- develop skills that will help you be a better lawyer;
- discover for yourself why Law in Action: Civil Litigation is the single most exciting course in law school!

### **Course Goals:**

- Values
  - Demonstrate respect for other students, staff and faculty;
  - Develop an attitude of cooperation with students, faculty, lawyers, and judges;
  - Demonstrate honesty, reliability, responsibility, judgment, self-motivation, hard work, professionalism and critical self-reflection.
- Skills
  - Think strategically about problems—consider the law, facts, client needs, wants and emotions, and potential legal, monetary, physical and psychological ramifications
  - Identify relevant facts in cases, class discussion, simulated exercises and on examinations, and be able to use facts to support a position, evaluate a claim and identify potential alternatives;
  - Present an effective oral argument
  - Advocate for a client’s position

- Develop effective client communication skills
  - Generate potential solutions to client problems, and understand the relative merits of each solution
  - Investigate facts, including preparing for and taking depositions and conducting discovery
  - Understand the necessary steps to prepare a civil case for trial
  - Draft civil litigation documents;
  - Know when and how to employ procedural devices;
  - Articulate policy arguments to convince a court to adopt, extend or modify a rule of law and/or to demonstrate the soundness of a conclusion on an examination;
  - Demonstrate in writing how lawyers solve problems—by understanding what laws they use, how they apply the law to new facts, and how they use those facts to make arguments to judges or juries;
  - Identify legal issues when presented with a client problem or examination question;
  - Respond to an exam question using an IRAC format;
  - Apply and analyze the law of torts and civil procedure.
- Knowledge/Content Goals:
    - Develop knowledge of the civil system, including how tort claims are litigated;
    - Recognize documents used by practitioners engaged in civil litigation and understand the purpose or context for using such documents;
    - Know the elements of each of the torts and defenses covered during the course of the semester and the definitions for each of those elements;
    - Know the requirements for each of the procedural devices covered during the course of the semester, when to use the devices and how those devices are employed
    - Understand the policies underlying tort law and civil procedure and be able to apply those policies to new situations to reach a reasoned conclusion.

**Teaching and Learning Methods used in this course:**

- Reading background material
- Oral and Written Exercises
- Reading and briefing cases
- Lecture
- Reviewing and drafting documents used by practitioners
- Writing assignments
- Small group quizzes and other exercises
- Whole class, small group and team discussion and problem solving
- Simulations

**Professional Engagement:**

As you may know, you are creating your professional reputation in the law. Accordingly, please behave as the best attorneys do. This includes paying attention and listening to what others say, as well as working with others to collectively learn the material.

Please be prepared for class and be ready to work. Please listen to others, avoid dominating the discussion, take the initiative to improve your skills, take risks and be resourceful.

Please seek help when you realize you need it or when recommended. Please show up every day on time and stay in class the whole time.

When you are assigned to work in teams, everyone in the team has the responsibility of making sure that the team works together effectively and efficiently.

Professional engagement includes:

- **Resourcefulness.** If you have problem, first try to figure out a way to solve it.
- **Taking appropriate risks.** For some this means volunteering to speak in a class. For others it is the risk of being silent and not leading a discussion. It may mean admitting you are off track or that you need help with an aspect of the course.
- **Behavior in class.** Be respectful of others by encouraging others to talk during group work. Listening is an enormous part of effective lawyering. If you finish an exercise early or before others, ask for feedback or work on other aspects of the course. Arrive early and be ready to work, and be engaged during the entire class session—it is important not to disrupt others learning, or the class session, by doing things like eating during class or leaving to use the restroom.
- **Electronic Device usage.** Using a computer, smartphone, tablet or any other electronic device in a way that does not support your learning in this course (texting, the Twitter, Facebook, email, on-line shopping, etc.) will be considered an absence.
- **Attitude.** Have a positive approach to working with others. If you have a complaint, including one about the course, voice it directly, in person to those that are involved (and be prepared to offer a solution).
- **Timeliness.** Complete and turn in all work on time.
- **Attention to work product.** Be thoughtful about what you say and what you turn in.
- **Growth.** If you have received feedback on an assignment, try to understand and use it. If one approach doesn't work, try another—and reflect on what works. Struggle with analyzing a problem before asking about it or giving up—but also remember to ask questions when your struggle doesn't produce the results you hope for.
- **Perseverance.** A student that does not give up, but keeps working to develop his or her skills, regardless of where he or she is, is acting professionally.

**Preparation:**

Legal education is a cooperative venture, and lawyers must be able to orally communicate their ideas. Class participation therefore is a mandatory part of this course. Please note there is a significant difference between being unprepared and being unable to “answer” a question. You do not need to be an expert, but you must read and think about the assigned materials, prepare answers to assigned exercises, complete assigned work and be ready to engage and discuss this work and your thoughts with others. **If you are not prepared for some classes I may ask you to leave, because I will be discussing materials related to assignments and it is only appropriate to have the discussion with students who have already completed the assignment.**

You should stay sufficiently ahead on your assignments to ensure your readiness to participate for each class. Neither the assertion that you did not anticipate the class or group getting so far, nor that you read the assignment too long ago to remember it will excuse a failure to be prepared. You will not be deemed unprepared simply because you venture an incorrect answer in class (unless, of course, your answer reflects inadequate preparation). In some limited circumstances, such as an emergency or crisis, you may be excused from participating if you request an excuse **prior to the commencement of class** (subject to professor approval). Aside from the above-referenced excuse, there is no such thing as an excused failure to be prepared.

#### **Attendance:**

As required by the American Bar Association, the body that accredits law schools, class attendance is mandatory. I understand that this may differ from what you have been used to in your undergraduate or other graduate education. Please inform me of actual or anticipated excessive absences (more than 2 classes). Excessive absences may result in your grade being lowered and/or in your receiving a failing grade in the course. If you come late to class, or leave for an extended period of time during class, that will count as an absence for that day. Additionally, a student who has missed more than three classes may be prohibited from sitting for the exam or receiving credit for the course. If you are concerned about your absences or ability to meet this policy, please let me know as soon as possible, so we can work through any problems.

#### **Course Grading:**

- ***Class preparation and participation (10% of grade):*** You must complete all assigned preparation activities and have completed all assigned readings and problems prior to coming to class. Each time you cannot contribute to the class discussion of a case or problem or fail to hand in (on time) a complete version of an assignment, you will lose points for class preparation and participation and your grade will be reduced accordingly. **Please bring a copy of your answer to each of the assigned exercises. As you may recall, I will periodically collect your answers to these problems.**
- ***Team Contribution (20% of grade):*** This course uses the strategy of team-based

learning, which has been used for over 30 years and is implemented in 23 countries across a wide range of disciplines, including medicine, business, science, technology, and many others. Teams mimic the professional environment you will be entering and help develop essential lawyering skills. In practice, you will frequently work with others to serve your clients effectively. You will work with lawyers, clients, consultants, court and agency staff, and assistants. Studies have shown that, across all disciplines, the ability to work well with others is as important to success as substantive expertise. Team-based learning develops the skills and values necessary for law practice, while also allowing you to apply class materials and get immediate feedback on your analysis.

You will form heterogeneous teams at the beginning of the course. In this course, you will be working in teams of three to five students; these teams will last the entire semester. Teams will be assigned during the first week of the semester. Teams will develop and refine team contribution guidelines, and assess how well each member of the team contributes at various points in the semester. Throughout the course you will be assigned problems and exercises to work on in your teams. Your grade for this section will be a combination the work that the team produces and your contribution to your team's efforts. I expect each team to work together effectively and efficiently; each team member is responsible for seeing that the team achieves these goals.

Team-based learning has two major components: individual out-of-class preparation and in-class teamwork focusing on applying the materials prepared out-of-class on exercises.

If you have a problem with your team, try to work it out. The biggest reason that teams do not function effectively is that team members avoid conflict. To promote conflict resolution, you will establish team contribution guidelines first, and then check in with the team every few weeks to see if all of you are following the guidelines. Be aware that most teams take about 4-6 weeks to become truly effective. Be patient, keep the lines of communication open, and come talk to us if you have questions or concerns. You may have addressed conflicts between teammates effectively in your previous work, service, academic, and extracurricular experiences. Address the issue with your team as you would in a professional office. Consider how you would want to hear the message if your behavior was a challenge for your teammates. If the problem is not resolved using the team contribution guidelines, talk to me, and I can suggest ways for you and your teammates to work through the problem. In the rare case of alleged student misconduct, I will likely intervene. I consistently monitor teams to observe professionalism, effort, and contribution.

- **Midterm Examination (20% of course grade):** Three hour examination (consisting of some combination of short answer, essay and/or performance exam) dealing with the main topics covered during the first half of the semester.
- **Final Examination (50% of grade):** Six hours, in two three hour blocks. The final

exam will include short answer, essay/performance and multiple choice questions.

- **Penalty for Falsifying Assignments.** A student who falsifies any exercise, required or optional, will receive an F in the class and will have her or his name reported to the state bar where he or she is planning to sit for the bar. This includes, but is not limited to, submitting work of another as your own.

- **Office Hours, Appointments and E-mail:**

Students may use office hours to address their concerns and confusion regarding any of the course material or for other guidance. My office is on the first floor, and I will post my office hours outside by door usually by mid-week for the following week. I will also be available by text message with the cell phone number provided to you on the first day of class.

- **Course Web Page:** Law in Action: Civil Litigation has its own webpage on TWEN. The password is “\_\_\_\_\_”.

Please get into the habit of checking TWEN frequently for new postings. I will post assignments, preparation questions, announcements, this packet, and other information and materials on the site. TWEN also gives me the ability to easily communicate with one another through discussion forums where I will continue and clarify the classroom conversation, ask and answer questions as they arise, and appraise one another of relevant items of interest we may come across in the news or elsewhere. **If you have a question, comment or interesting thought, please post it to the TWEN discussion board, rather than send an email.** I will wait for other students to respond, and then, if there is no response, or if I have something to add to the response, I will post our responses to the discussion board. Other than very personal questions, all questions should be directed first to TWEN, rather than to email. It allows you to work collaboratively with others, ensures that if everyone has a question or confusion it will be readily apparent to us, and it means that others will have the benefit of having thought about any questions that are asked.

***Adjustment for Extraordinary Course Webpage Participation:** I may adjust your final course grade for extraordinary Course Webpage participation as follows: I will adjust up to two-tenths upward (e.g., from a 3.0 to a 3.2) the grades of students whose efforts are extraordinary. To achieve this “extraordinary” standard, students must volunteer to participate frequently on the webpage and must contribute ideas and analysis that reflect original and valuable insight.*

- **Disability Services:** 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](tel:7144591117); [despinoza@wsulaw.edu](mailto: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](mailto:csheppard@wsulaw.edu) or [\(714\) 459-1152](tel:7144591152). Complaints will be handled in accordance with the College of Law’s “Policy against Discrimination and Harassment.”

- **Academic Misconduct Policy:** All students are expected to conduct themselves appropriately and ethically in their academic work. Inappropriate and unethical behavior includes (but is not limited to) giving or receiving unauthorized aid on examinations or in the preparation of papers or other assignments, or knowingly misrepresenting the source of academic work.
- **Assignments:** Assignments include materials from the texts, and other materials from class.

**Please note that class meets on Tuesdays from 10:45 – 12:15 p.m. and 1:30 – 3:00 and Thursdays from 1:00 – 3:00 p.m.; the assigned readings are listed by date.** The following is a roadmap of the planned readings. First year law courses do not always follow the same pattern and vary depending on the class discussion. Though not anticipated, any changes to the syllabus will be clear and announced in advance.

| <b>Topic</b>  | <b>Date</b> | <b>Reading Assignments</b>   |
|---|-------------|--|
| Using a Practice Guide to Develop Understanding of the Law, and Solve a Client Problem; Introduction to Personal Jurisdiction   | T 1/16      | Posted on TWEN   |
| Does the court have the power to bind the defendant to a judgment? Should defendant move to quash service?  |             |  |
| Service of Process; Establishing Personal Jurisdiction via Historical/Traditional Categories: Physical Presence; Domicile; General Appearance; Contractual Consent  | TH 1/18     | FRCP Rule 4; FREER: 159 – 163 ( <i>Triad</i> through note 7); 191-193  |
| Establishing Personal Jurisdiction via Minimum Contacts: Introduction to General and Specific Jurisdiction; <u>International Shoe</u> ; claims arising out of/with a substantial connection to the contact(s) | T 1/23      | FREER: 38-42;44-45 notes 1-4 ( <i>International Shoe</i> ); <i>Vons</i> , 14 Cal.4 <sup>th</sup> 434-460; <i>Snowney</i> , 35 Cal.4 <sup>th</sup> 1054 |

| <b>Topic</b>   | <b>Date</b> | <b>Reading Assignments</b>  |
|--|-------------|---|
| Establishing Personal Jurisdiction via Minimum Contacts: purposeful availment; foreseeability; examining the nature and quality of defendants contacts                   | TH 1/25     | FREER: 46-58 ( <i>McGee</i> ); ( <i>World Wide Volkswagen</i> ); <i>Hall</i> , 56 CA4th 1342                            |
| Establishing Personal Jurisdiction via Minimum Contacts: purposefully directing contacts at the forum state; the <u>Calder</u> “effects test”                            | T 1/30      | <i>Calder</i> , 465 U.S. 783; <i>Sipple</i> , 82 CA3d 143; <i>Schluskel</i> , 141 CA3d 194; FREER: 64 ( <i>Keeton</i> ) |
| Establishing Personal Jurisdiction via Minimum Contacts: internet contacts; defamation claims; the reasonableness requirement  | TH 2/1      | <i>Zippo</i> , 952 F.Supp. 1119; <i>Pavlovich</i> , 29 CA4th 262; <i>Burdick</i> , 233 Cal.App.4th 8                    |
| Advocating for Extension, Modification or Imposition of a Rule—Strict Liability  |             |   |
| Introduction to Strict Liability; Strict Liability for Animals   | T 2/6       | MANNING: 315-19 (including exercise 3-2)  |
| Imposing Strict Liability on a Class of Activities—Understanding and Making Policy based arguments   | TH 2/8      | MANNING: 315-42 (Exercises 3-3 and 3-4)   |
| The Imposition of Strict Liability on Abnormally Dangerous Activities—Understanding and Making Policy based arguments  | T 2/13      | MANNING 342-50 (Exercise 3-5)   |
| The Imposition of Strict Liability on Abnormally Dangerous Activities—evaluating factors; Establishing Causation; Imposing Strict Liability in Other Contexts--Sex Torts | TH 2/15     | MANNING: 350-58 (Exercises 3-6 through 3-8); Packet to be distributed on 2/17   |
| Does the Court have Subject Matter Jurisdiction? Should Defendant remove or move to dismiss?   |             |   |
| Jurisdiction based on Diversity of Citizenship   | TH 2/22     | FREER: 181-187 (to note 1); 199-206, ( <i>Hertz</i> )   |
| Jurisdiction based on Diversity of Citizenship   | T 2/27      | FREER: 215-218; 239-243 (Removal)   |
| Jurisdiction based on Federal Questions  | TH 3/1      | FREER: 220-224 ( <i>Mottley</i> ); 229-235 ( <i>Grable</i> )  |
| Is the Case filed in the Proper Venue?   |             |   |
| Filing in the proper court; transferring the case  | T 3/6       | 28 U.S.C. 1391; FREER: 247; 263   |
| <b>MIDTERM EXAMINATION</b>   | TH 3/8      |   |
| Personal Jurisdiction: General Jurisdiction over Corporations; Products Liability and the Stream of Commerce Theory; Providing Notice                                    | T 3/20      | <i>Daimler</i> , 134 S.Ct. 746; FREER: 147-153 ( <i>Mullane</i> )   |
| Introduction to the Products Liability Cause of Action: Is the item that caused the injury a product?  | TH 3/22     | MANNING: 359-67   |
| Who can, should and/or must be joined to an  | T 3/27      | FRCP 20, 19, 14 and 24;   |

| <b>Topic</b>  | <b>Date</b> | <b>Reading Assignments</b>                                      |
|---|-------------|---|
| action? Permissive Joinder; Mandatory Joinder; Impleader and Intervention   |             | FREER: 711; 725-730; 736-737 ( <i>Alisal</i> )                  |
| Naming Defendants in a Products Liability action: Was the defendant a commercial seller or distributor of the item that injured the plaintiff?  | TH 3/29     | MANNING: 367-79   |
| Proving up the Products Liability claim: Introduction to design, manufacturing and warning defects; use of circumstantial evidence; use of expert witnesses—the value and purpose of their testimony and required discovery disclosures | T 4/3       | MANNING: 379-83; FREER: 404-12.                                 |
| Proving up the Products Liability claim: proving the product was defective at the time it left defendant's control; Taking and defending expert witness depositions   | TH 4/5      | MANNING: 383-402; Review Deposition Handout From Fall Semester  |
| Proving up the Products Liability claim: proving the product was defective at the time it left defendant's control; Taking and defending expert witness depositions   | T 4/10      | MANNING: 402-409 (including exercise 4-13)                      |
| Proving up the Products Liability claim: Warning defects  | TH 4/12     | MANNING: 408-24   |
| Proving up the Products Liability claim: Warning defects; causation; anticipating foreseeable misuse; Filing a class action   | T 4/18      | MANNING: 425-26; FREER: 769-773; 782-783.                       |
| Filing a Class Action; What claims can, should and/or must be joined? Joinder of Claims; Supplemental Jurisdiction  | TH 4/19     | FREER: 678-685; Section 1367; FRCP 13.                          |
| What claims can, should and/or must be joined? Joinder of Claims; Supplemental Jurisdiction;  | T 4/24      | FRCP 14, 18. Freer 705, 708, 715 note 4.                        |
| The last word on Personal Jurisdiction: Contract and Property claims  | TH 4/26     | FREER: 67-77 ( <i>Burger King</i> ); 113-123 ( <i>Shaffer</i> ) |
| Choice of Law; Right to a Jury; the Final Judgment Rule   | T 5/1       | FREER: 543 – 549; 802-804.                                      |