

FLORIDA CIVIL PRACTICE

SPRING SEMESTER 2012
PROFESSOR TERRY LEWIS

COURSE DESCRIPTION/OBJECTIVES: If you are wronged, should you file a law suit? What legal theory supports your claim? Who can you sue, in what court, and where? How do you properly prepare for trial and competently present your case?

In this course, we will seek answers to these and other questions that arise in the prosecution or defense of a Florida civil action. We will analyze the substantive laws and procedural rules that govern the civil practice of law in Florida, and apply them to hypothetical facts. I may, from time to time, ask members of the local legal community to conduct demonstrations or other learning activities, and to share with you their practical knowledge of Florida civil practice.

You are expected to be active learners in this class by : (1) completing all reading assignments before class; (2) participating in class discussions; (3) actively engaging in assigned learning activities, such as the drafting of pleadings or other documents and role plays.

CLASS MEETING INFORMATION: This class will be held from 5:00 p.m. to 6:50 p.m. on Mondays. Attendance is required and an attendance roster will be distributed each class. Students who fail to sign the attendance sheet before leaving class will be presumed to have been absent. Signing for another student is an honor code violation. In accordance with the Law School's accreditation requirements, if you miss more than 20% of the scheduled class meetings, you will not receive credit for the course. Be in class on time. Students who are tardy may be counted as absent. Before you come to class, be sure all cell phones and other disruptive electronic devices are silenced or off.

EXAMINATION/GRADING: The final exam will be given when scheduled by the College of Law. It will be an open book exam and will account for 90 % of the student's grade. Class attendance, participation and assignments will account for 10 % of the student's grade. The final exam will include a combination of multiple choice, true/false and short answer. As in all classes, students enrolling in this course agree to be bound by the University's academic honor code in all of their academic work.

DISABILITIES: Students with disabilities needing academic accommodations should: (1) register with and provide documentation to the Student Disability Resource Center; and (2) bring a letter to me from the Student Disability Resource Center indicating that you need academic accommodations. This should be done within the first week of class.

MATERIALS: Our primary text will be: West Publishing's Florida Civil Practice (2012 Edition) by Phillip J. Padovano, though you will find that an earlier edition addition, at a reduced price, may suffice for our purposes. Supplemental materials may also be used throughout the semester and will be available for purchase at the Copy Center or will be posted on Blackboard.

GENERAL ADMINISTRATION: My office is located at Room 301-C, Leon County Courthouse, 301 South Monroe Street, Tallahassee, Fl 32301. My telephone number is 577-4308 and my e-mail address is terryle@leoncountyfl.gov. My judicial assistant's name is Laura Ogden and her e-mail address is laurao@leoncountyfl.gov.

COURSE OUTLINE/READING ASSIGNMENTS: Below is an outline indicating the topics and their order of discussion for this course. It is an approximation and subject to change. I may post more specific reading topics on Blackboard or announce in class. Students are expected to read those portions of the required text which correspond to the indicated topic(s) to be discussed, prior to class. The more ambitious should feel free to make further exploration of these topics in any other source considered helpful for a better understanding of the subject.

Florida Civil Practice

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1. Introduction - Overview of course, approach to the subject, goals, expectations, policies, etc

2. Actions

Definitions

Cause of Action

Legal and equitable claims / statutory / court created

Remedies

 Damages (compensatory, statutory, punitive)

 Injunctions (temporary, permanent, bond, dissolving)

 Declaratory Judgment

 Extraordinary Writs (Mandamus, Prohibition, etc)

Accrual

Conditions Precedent

Required waiting periods

Statute of Limitations

Laches

Delayed discovery doctrine

Tolling of Statute of Limitations

Statutes of repose

Joinder and Severance

Readings: pages 69-86; 857-885; 889-924

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3. Parties

- Definitions
- Capacity
- Standing
- Real Party in Interest
- Infants and Incompetents
- Permissive Joinder
- Failure to Join Parties
- Misjoinder
- Intervention
- Interpleader
- Survivor and Substitution
- Class Actions

Readings: 87-137

1/30, 2/6

4. Jurisdiction

- Subject Matter Jurisdiction (County Courts / Circuit Courts / Concurrent)
- Personal Jurisdiction
- In Rem Jurisdiction
- Objections to Jurisdiction

Readings: pages 1-27

5. Venue

- Generally
- Venue Statutes
- Public Officers and Entities
- Local Action Rule
- Choice of Venue
- Nature of the Action
- Residence of the Defendant
- Multiple Defendants and Causes of Action
- Pleading Venue
- Improper Venue
- Change of Venue (Fair trial, convenience of the parties and witnesses)

Readings: pages 29-68

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6. The Initial Pleading

The Complaint or Petition (Statement of Claim)

Purpose

Form

Caption

Commencement or Introductory Statement

Jurisdictional Allegations

Allegations of the Claim – Short, Plain Statement of Ultimate Facts

Some examples – Negligence, Breach of Contract, Intentional Torts, etc.

Simplicity, Clarity, Precision, Conciseness

Pleading Special Matters (e.g., fraud and special damages)

Conclusion/Prayer for Relief

Jury or Non Jury

Signature

Verification

Exhibits

Amendments

Readings: pages 211-232, 237-240, 253-258

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7. Service of Process

Definitions

Purpose and Waiver

Issuance and Form

Process Servers

Method of Service

Personal

Substitute

By Mail

Constructive

Time for Service

Objections
Court papers generally (filing, service, computing time, etc)

Readings: pages 287-326, 196-210

2/20, 27/11

8. Defensive Pleadings and Motions

Time to Respond
Motions to Dismiss, For More Definite Statement, To Strike
The Answer
Affirmative Defenses and Replies
Counterclaim
Third Party Claim
Cross Claim

Readings: pages 241-286

9. Defaults

Introduction
By Clerk
By Court
Relief from Default
Default Judgment

Readings: pages 327-348

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10. Judges

Disqualification and recusal

Readings: pages 144-160

11. Discovery

Introduction - the purpose of discovery
Scope of discovery
Protective Orders
Depositions

Readings: pages 349-387

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Interrogatories
Request for Production; Entry and Inspection
Production from Nonparties
Medical and Psychological Examinations
Requests for Admission
Electronic Discovery
Sanctions; Procedure for Resolving Discovery Disputes

Readings: pages 388-427

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12. Pretrial Procedure

Notice of Trial
Case Management Conference
Order Setting Trial

Readings: pages 539-568

13. Resolving the Case Short of Trial

Settlement
Mediation

Arbitration
Proposal for settlement
Summary Judgment
Dismissal - voluntary, involuntary, failure to prosecute

Readings: 429-439, 443-482

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14. Trial Procedure

Generally
Jury Selection
 Qualification of Jurors
 Voir Dire Examination
 Challenges for Cause
 Peremptory Challenges
 Practical considerations (objectives, preparation, techniques)
Opening Statement
Direct Examination
Cross Examination
Exhibits
 Procedure for Admission
 Authentication
 Original Document Rule
Demonstrative Aids

Readings: pages 595-615, 625-629, 637-648, 679-686; 697-722

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Objections
Motions
 In Limine
 For Mistrial
 For directed Verdict
Closing Argument
Jury Instructions
 Entitlement
 Charge Conference
 Request for Instruction

Objections
Verdict
Form
Deliberations
Rendition of Verdict

Readings: pages 731-741, 744-756, 771-789, 799-831

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15. Post Trial Motions

Motion for New Trial/Rehearing
Motion to tax Costs
Motion for Attorney fees

16. Judgments

Form
Entry
Execution
Discovery in Aid of Execution
Motion for Relief From Judgment

Readings: pages 760-770, 494-520, 186-194