

**CIVIL PROCEDURE §2 (Fall 2019) ▪ Professor Keith Rizzardi [krizzardi@stu.edu](mailto:krizzardi@stu.edu)**  
**Tues/Thur – 2pm to 4pm, Room 102** (revised 8/22/2019)

**REQUIRED READING MATERIALS: Read all pages of this syllabus, in its entirety. Also:**

James Moliterno, EXPERIENCING CIVIL PROCEDURE (West 2<sup>nd</sup> Ed. 2017) ISBN 1634608143.

*Buy or rent a printed copy. An optional “e-learning” library can be purchased with this book.*

David Crump et.al., CASES & MATERIALS ON CIVIL PROCEDURE (Carolina 7<sup>th</sup> Ed. 2019)

*Do not buy this whole book. A deeply discounted electronic “Redshelf” excerpt will be used.*

<https://redshelf.com/book/1196819/excerpts-from-cases-and-materials-on-civil-procedure-7e-1196819-9781531018009-david-crump-kevin-o-leske-keith-w-rizzardi-william-v-dorsaneo-iii-rex-r-persbacher-and-debra-lyn-bassett>

U.S. Courts, FEDERAL RULES OF CIVIL PROCEDURE (Dec. 1, 2017)

*Free online from [uscourts.gov](https://uscourts.gov) <https://bit.ly/1RFFyvb> Download the iPhone app, too!*

*Also available at <https://www.federalrulesofcivilprocedure.org/>*

*Counsel: “Hey Judge, can I use free cases I found on google? I can’t afford books.” Judge: (fn<sup>1</sup> below)*

**RECOMMENDED READING MATERIALS:**

-- John Dernbach, [A Practical Guide to Writing Law School Essay Exams](#) or

[Writing Essay Exams To Succeed \(Not Just to Survive\)](#) (*get it used & cheap online!*)

-- Kevin M. Clermont, [Principles of Civil Procedure](#) (West Concise Hornbook, 2018)

*(available for free from the STU Library West Academic Study Aids)*

-- Joseph W. Glannon, [Examples & Explanations for Civil Procedure](#) (*at STU library*)

**ABOUT CIV PRO:** Read. Think. Discuss. Argue. Laugh. Write. Learn. This course introduces first year law students to state and federal court systems and the exercise of civil jurisdiction over claims and parties. Students explore the stages of litigation, such as pleadings, motions, discovery, and pre-trial, trial, and post-trial procedures. The U.S. Constitution, Federal Rules of Civil Procedure, judicial opinions, state & federal statutes, administrative regulations and ethics rules are surveyed as sources of law. Lessons combine traditional Socratic lectures with visual learning, collaborative learning and experiential learning to emphasize *five* skill sets:

- (1) studying law by parsing statutes, rules and cases;
- (2) annotating and understanding the Federal Rules of Civil Procedure;
- (3) applying core facts to legal concepts in practical oral and written exercises;
- (4) considering concepts of due process, ethics & professionalism in litigation; and
- (5) taking notes, learning phrases & enhancing recall for examinations.

**GRADING:** Grades will follow our school’s required curve, but use this framework:

*9 points:* Fill-in-the-blank quizzes (4x) based on readings. Lowest score dropped.

*21 points:* for a multiple choice mid-term, 10/8/2019 at 9:30-11:30 a.m. Rooms 102, 215

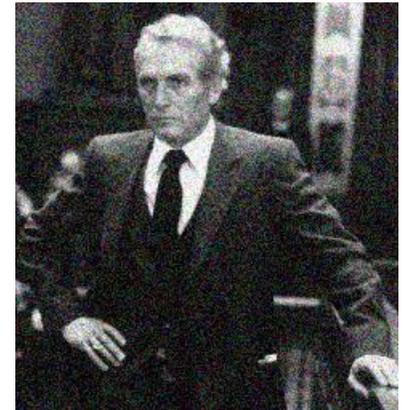
*85 points:* The final exam has fill-in-the-blank (10 points), multiple choice (25 points), and essay (50 points) questions.

*Extra credit points* may be awarded based on proof of timely completion of CALI exercises (see Learning Plan).

**NOTE:** material from any readings or lectures assigned for any date prior to or including the test date could be tested.

**TESTS & ANONYMOUS GRADING NUMBERS (AGN):** NEVER use your name on test materials. Your identity is kept confidential by using an AGN, obtained online using MyBobcat (use WebAdvisor link then click on STUDENTS, Academic Profile, My AGN Numbers, and Select Term). Failing to use your AGN causes a failing grade. Use a No. 2 pencil for multiple choice tests on Scantron forms. Be sure to read, understand and follow test instructions.

**ACCOMODATION REQUESTS.** If you have a disability, and need to seek accommodation, please contact our Dean of Students, John Hernandez, [jhernandez@stu.edu](mailto:jhernandez@stu.edu) as soon as possible. Be advised that the in-class quizzes already include extra time and no accommodations will be necessary.



*There is no justice. The rich win; the poor are powerless. We become tired of hearing people lie. And after a time we become dead, a little dead. We think of ourselves as victims and we become victims. We become weak; we doubt ourselves; we doubt our beliefs; we doubt our institutions; and we doubt the law. But today you are the law. You are the law, not some book, not the lawyers, not a marble statue, or the trappings of the court. See, those are just symbols of our desire to be just. They are, in fact, a prayer, I mean a fervent and a frightened prayer.” Frank Galvin, [The Verdict](#) (1982)*

<sup>1</sup> “Try professionalism. ‘Hey’ is disrespectful. Using cheap old cases shows incompetence. Do the job right, or I’ll refer you for disciplinary action.”

**SCHEDULE & READINGS:** A schedule with assignments will be published on <http://www.keithinking.com>  
All readings should be done before class. Some materials are provided in class, but initial assignments are as follows:

- 8/20 *Intro to law: Moliterno, Chapter 1, pp. 1-15 (handout materials for 8/22 distributed)*  
8/22 *Handouts and Jack H. Friedenthal, Mary Kay Kane and Arthur R. Miller, Civil Procedure Hornbook (West, 5<sup>th</sup> Ed, 2015)  
Read Chapter 1, Intro (find this on the STU Digital Library – online!)*  
8/27 *Statutes/Diversity: Moliterno, Chapter 2.A2 and 28 USC §1332 and Mas v. Perry, 492 F.2d 1242 (5th Cir. 1974)*  
8/29 *Fed Question: Moliterno, Chapter 2.A1 and CALI Extra Credit <https://www.cali.org/lessonlink/17145/CIV32/6083/jg>*  
9/3 *Removal: Moliterno, Chapter 2.A3, 28 USC §§1441, 1446, and Caterpillar Inc. v. Lewis, 519 U.S. 61 (1996)*  
9/5 *Supplemental Jdctn, Moliterno, Chapter 2.A4*

**POWERPOINT SLIDES:** Selected slides from the lectures will be posted on <http://www.keithinking.com>

### **PRINCIPLES OF STUDENT PROFESSIONALISM**

Law professors generally aspire to teach students in a manner that achieves three goals, including:

- (A) thinking like a professional by recognizing relevant legal principles and competing arguments;
- (B) performing like a professional by using oral or written communication in a persuasive manner;
- (C) acting with integrity, by advocating positions within the boundaries of the facts and law. See, e.g. [Carnegie Report](#)

To help professors reach these goals, students must be part of the process, before, during and after class.

My experience suggests that four student behaviors often lead to academic success:

1. **Preparedness.** Students should read the syllabus (updated on <http://www.keithinking.com>) and required materials before each class. Students who struggle with material should consult additional resources. Prepared students possess basic understanding of relevant laws or rules and can identify the parties to a case, the presiding court, the legal issues, the essential facts, the ultimate holding, and the reasoning. If you are repeatedly unprepared, you may be marked absent.

2. **Participation.** Attendance is taken and all students should plan to participate. (By the way, using simplistic calculations of dollars spent vs. minutes of class time, a law school education costs as much as \$2 per minute.) Students will sign a seating chart, and rows may be announced as “hot” for each class. Please try to attend all classes on a timely basis, and avoid leaving class; it is disruptive to others. (No, do not ask permission to use the rest room, but my classes often take a short break at the midpoint.) Be sure to comply with law school’s attendance policy, or you will incur an automatic, administrative “F.” If you miss a class, try to learn materials on your own; while you are welcome to visit my office and ask questions, do not expect any professor to reteach a whole class just for you.

3. **Focus.** Never answer phone calls, emails or text messages in class. To increase concentration, decrease distractions and allow desktop space for books, laptops are prohibited. Tablet devices with a stylus are allowed. Science shows that typing can create a “scribe” effect, whereas handwritten note-taking creates synthesis thinking.

4. **Continuous self-assessment.** Learning is a continuous process. Take notes before and during class. After each class, combine lecture notes with pre-prepared notes. Create your own outlines to learn as you go, rather than relying on memorizing a pre-prepared outline. Pursue long-term memory; strive to retain each topic of study as a building block for the next, rather than quickly forgetting each unit after each quiz. Evaluate your own knowledge, and take practice quizzes, score yourself, and review your wrong answers. Identify the things you still do not know. Once aware of weaknesses, seek additional help from the professor, or from the Academic Success team. Don’t weakly ask for “help?” Prepare, identify objectives, and ask questions with purpose.

No nation is permitted to live in  
ignorance with impunity.  
-- Thomas Jefferson

Nothing in this world is worth  
having or worth doing unless it  
means effort, pain or difficulty.  
-- Theodore Roosevelt

Education must not simply teach  
work: it must teach Life.  
-- W. E. B. Du Bois

Know your enemy and know  
yourself and you can fight a  
hundred battles without disaster.  
-- Sun Tzu

The Internet is a big distraction.  
-- Ray Bradbury



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**LEARNING OBJECTIVES:** Using readings, lectures & videos, applied through note taking, class discussions, in class exercises, multiple choice questions and written essay questions, students think about the litigation process, actively read, annotate and apply the rules civil procedure, and develop basic concepts of ethics & professionalism in litigation. This class applies education science to maximize student learning, using the following tools:

- Spaced repetition, during class and through periodic unit quizzes, empowering students to learn and re-learn material;
- Self-regulated learning, encouraged through the use of sample documents, alternative sources, and CALI exercises;
- Free recall testing, to promote sophisticated learning pathways, with short answer and fill in the blank; and
- Synthesis and schematic thinking, using outlines, maps and decision-trees, to combine concepts.

## **Outcomes Re: Exploration of Concepts**

Students distinguish between state & federal systems, & can identify & describe the procedures used to resolve civil disputes in the American legal system, while comparing alternatives between state & federal approaches.

- *ABA Standard 302(a): knowledge & understanding of substantive & procedural law*
- *STU Learning Outcome 1: Students demonstrate knowledge & understanding of the law & the U.S. legal system.*

## NOTES:

Students search for answers to legal questions related to civil procedure by using tables of contents, cross-references, majority and minority views in opinions and secondary sources, and by parsing legal text.

- *ABA Standard 302(a): knowledge & understanding of substantive & procedural law.*
- *ABA Standard 302(b): Legal analysis & reasoning, legal research, problem-solving & written/oral communication in the legal context.*
- *STU Learning Outcome 2: Students demonstrate competency in issue spotting, analytical & problem-solving skills.*
- *STU Learning Outcome 3: Students demonstrate competency in research.*
- *STU Learning Outcome 5: Students demonstrate competency in legal practice skills.*

## NOTES:

Students discuss fairness, ethics & professionalism such as Rule 11, FRCP, Sec. 57.105, Fla.Stat., ABA Model Rules of Professional Conduct, Florida's professionalism rules, and the effects upon litigation.

- *ABA Standard 302(c): Exercise of proper professional & ethical responsibilities to clients and the legal system.*
- *STU Learning Outcome 6: Students exercise proper professional & ethical responsibility to clients & legal system.*
- *STU Learning Outcome 7: Students demonstrate knowledge & awareness of a larger moral & ethical responsibility to society.*

## NOTES:

## **Outcomes: Concept Application & Internalization**

Students prepare notes before class, take exams (multiple choice & essay) and engage in self-assessment exercises to develop skills and to show competence with civil procedure, and especially, the Federal Rules of Civil Procedure.

- *ABA Standard 302(b): Legal analysis & reasoning, legal research, problem-solving & written/oral communication in the legal context.*
- *STU Learning Outcome 2: Students will demonstrate competency in issue spotting, analytical & problem-solving skills.*

## NOTES:

Students engage in oral and written advocacy related to real or hypothetical problems by interpreting constitutional clauses, statutes, court opinions and other rules to explain how legal disputes in civil litigation can be analyzed and resolved.

- *ABA Standard 302(b): Legal analysis & reasoning, legal research, problem-solving & written/oral communication in the legal context.*
- *ABA Standard 302(d) Other professional skills needed for competent & ethical participation as a member of the legal profession.*
- *STU Learning Outcome 2: Students will demonstrate competency in issue spotting, analytical & problem-solving skills*
- *STU Learning Outcome 4: Students will communicate effectively and with civility*

## NOTES:

## **Continuous Course Improvement**

Professor analyzes statistical reports, rewrites questions with non-distractors or negative point biserials. reviews written and oral evaluations, categorizes feedback to identify strengths or weaknesses, and re-evaluates course and syllabus.

## PROFESSOR NOTES:

