

# Civil Procedure

Elon Law School  
Fall 2020  
Monday, Wednesday, & Friday 8:00–9:45 am  
Rooms 204, 207, 211

Eric M. Fink  
[efink@elon.edu](mailto:efink@elon.edu)  
336-279-9334  
Office Hours: [calendly.com/emfink](https://calendly.com/emfink)

## Description

In this course, you will learn about the procedures for civil suits. Topics to be covered include the scope of a lawsuit, selection of an appropriate forum, presentation of claims and defenses, choice of applicable law, disposition without a trial, and the effect of judgments on future litigation. Other aspects of civil litigation (e.g., discovery, trials, & appeals) are covered in upper-level elective courses. While the course will focus on federal courts, the rules of civil procedure in many states (including North Carolina) are similar.

This course is intended to prepare you for legal practice by developing the knowledge and skill required to recognize and analyze procedural issues, advise clients on those issues and the available options, and to draft pleadings and pre-trial motions.

## Required Materials

Cases, statutes, rules, and other assigned readings (see “Schedule & Assignments”) are available online via the course site [emfink.net/CivilProcedure](https://emfink.net/CivilProcedure). The course site also has subject outlines, visual aids, review problems, past exam questions, and links to other useful resources.

Click & Learn: Civil Procedure (Carolina Academic Press). This is an online interactive resource that will help you review and master the legal principles covered in the course.

## Policies

### Grading

Your final grade for the term will be based on the assigned Click & Learn review questions (40% total) and a final exam (60%).

- You will complete the assigned Click & Learn questions outside of class. You should complete the questions for each unit of the course by the dates indicated in the Schedule & Assignments section of the syllabus.
- The final exam will consist of essay and short-answer questions and will be administered during the Fall term exam period, as scheduled by the Law School Registrar.

### Class Preparation, Attendance, & Participation

Successful performance in this course depends on completion of all reading assignments before class, regular and prompt class attendance, and constructive engagement during class. Elon Law School's standards and ABA guidance for awarding course credit assume at least two hours of out-of-class student work for each hour of classroom instruction.

Elon Law School has adopted the following attendance policy for all courses:

*The Law School administers a policy that a student maintain regular and punctual class attendance in all courses in which the student is registered, including externships, clinical courses, or simulation courses. Faculty members will give students written notice of their attendance policies before or during the first week of class. These policies may include, but are not limited to: treating late arrivals, early departures, and/or lack of preparation as absences; imposing grade or point reductions for absences, including assigning a failing grade or involuntarily withdrawing a student from the class; and any other policies that a professor deems appropriate to create a rigorous and professional classroom environment.*

*In case of illness or emergency, students may contact the Office of Student and Professional Life, which will then notify the student's instructors. A student may notify the faculty member directly of a planned absence and should refer to individual faculty members regarding any policy that may apply. In the case of prolonged illness or incapacity, the student should contact the Office of Student and Professional Life.*

### Disability Accommodations

For disability accommodation requests, contact the Elon Law Registrar's Office.

### Honor Code

The Law School honor code applies to all activities related to your law school study, including conduct during class and examinations.

# Schedule & Assignments

## Introduction

*August 31*

### The Federal Judicial System

- U.S. Constitution, Art. III, § 1
- Russel Wheeler & Cynthia Harrison, “Creating the Federal Judicial System”, Federal Judicial Center (3d ed. 2005)
- Administrative Office of U.S. Courts, “Understanding the Federal Courts”
- Federal Courts
- Federal District Courts in North Carolina

### Civil Action Overview

- William Felstiner, Richard Abel, & Austin Sarat, “The Emergence & Transformation of Disputes: Naming, Blaming, & Claiming”, 15 Law & Society Review 630 (1981)
- Civil Action Flowchart

## Joinder

*September 2*

### Basic Claim & Party Joinder

- FRCP Rules 18 & 20
- Mosley v. General Motors Co.

*September 4 & 7*

### Counterclaims & Crossclaims

- FRCP Rule 13
- Counterclaims
- Jones v. Ford Motor Credit Co.
- Ginwright v. Exeter Finance Corp.
- Pace v. Timmermann's Ranch & Saddle Shop, Inc.

*September 9*

### Third-Party Claims

- FRCP Rule 14
- Third Party Claims Diagram
- Lehman v. Revolution Portfolio LLC

*September 11*

### Required Parties, Interpleader, & Intervention

- FRCP Rules 19, 22, & 24
- 28 U.S.C. § 1335
- Camacho v. Major League Baseball
- Deutsch v. Schoelkopf
- Sevier v. Lowenthal
- Motion to Intervene in North Carolina Division, Sons of Confederate Veterans v. University of North Carolina, No. 19-CVS-1579 (N.C. Super. Ct., Dec. 13, 2019 )

*September 14*

### Joinder Review

- Review Problem
- Review Problem Diagram

*Click & Learn: Joinder (Due September 15)*

## **Subject Matter Jurisdiction**

*September 16 & 18*

### **Federal Question Jurisdiction**

- U.S. Constitution, Art. III, § 2
- FRCP Rule 12(b)(1)
- 28 U.S.C. § 1331
- Louisville & Nashville R.R. Co. v. Mottley
- Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing

*September 21 & 23*

### **Diversity Jurisdiction**

- 28 U.S.C. § 1332
- Mas v. Perry
- Ottawa Township Board of Trustees v. New Par: Decision & Order 1; Decision & Order 2
- Complete Business Solutions Group, Inc. v. Annie's Pooch Pops LLC

*September 25 & 28*

### **Supplemental Jurisdiction**

- 28 U.S.C. § 1367
- Supplemental Jurisdiction under § 1367
- § 1367(b) Illustration
- United Mine Workers of America v. Gibbs
- Jones v. Ford Motor Credit Co.
- Ginwright v. Exeter Finance Corp.
- Exxon Mobile Corp. v. Allapattah Services, Inc.

*September 30*

### **Subject Matter Jurisdiction Review**

- Review Problems
- Joinder & Subject Matter Jurisdiction Diagram

*Click & Learn: Subject Matter Jurisdiction (Due October 1)*

## **Personal Jurisdiction**

*October 2*

### **Foundations of Personal Jurisdiction**

- U.S. Constitution, 5th Amendment & 14th Amendment, § 1
- FRCP Rule 12(b)(2)
- Pennoyer v. Neff

*October 5, 7, & 9*

### **Specific Jurisdiction Based on Minimum Contacts**

- International Shoe Co. v. Washington
- World Wide Volkswagen Corp. v. Woodson
- Keeton v. Hustler Magazine, Inc.
- J. McIntyre Machinery, Ltd. v. Nicastrò

*October 12*

### General Jurisdiction

- Daimler A.G. v. Bauman

*October 14*

### Personal Jurisdiction Review

- Review Problems
- Review Problem 1 Diagram
- Personal Jurisdiction Flowchart

*Click & Learn: Personal Jurisdiction (Due October 15)*

## Preclusion

*October 16 & 19*

### Claim Preclusion

- Restatement (2d) of Judgments, §§ 13-26
- Whole Woman's Health v. Hellerstedt
- Review Problem 1

*October 21 & 23*

### Issue Preclusion

- Restatement (2d) of Judgments, §§ 27-29
- Parklane Hosiery Co., Inc. v. Shore
- Review Problem 2
- Claim & Issue Preclusion

*Click & Learn: Preclusion (Due October 25)*

## Pleading

*October 26*

### Pleading Under the Federal Rules

- FRCP Rules 3, 7-12, 15

*October 28 & 30*

### Complaints

- FRCP Rules 8(a), 9(b), 12(b)(6)
- Bell Atlantic Corp. v. Twombly
- Ashcroft v. Iqbal
- Sevier v. Lowenthal

*November 2*

### Answers & Defenses

- FRCP Rule 8(b) & (c)
- Zielinski v. Philadelphia Piers, Inc.
- Beeck v. Aquaslide "n" Dive Corp.

*November 4*

**Truthfulness & Good Faith in Pleadings**

- FRCP Rule 11
- *Washington v. Alaimo*

*November 6*

**Pleadings Review**

- Review Problems

*Click & Learn: Pleadings (Due November 8)*

## **Choice of Law in Federal Court (Erie Doctrine)**

*November 9 & 11*

**The Rules of Decision Act**

- Rules of Decision Act, 28 U.S.C. § 1652
- *Erie R.R. Co. v. Tompkins*
- *Byrd v. Blue Ridge Rural Electric Cooperative, Inc.*
- Brian L. Frye, *The Ballad of Harry James Tompkins*, 52 *Akron Law Review* 531 (2019)

*November 13*

**The Rules Enabling Act**

- Rules Enabling Act, 28 U.S.C. §§ 2072, 2073, 2074
- *Hanna v. Plumer*
- *Shady Grove Orthopedic Associates v. Allstate Insurance Co.*

*November 16*

**Erie Doctrine Review**

- Review Problems
- Erie-Hanna Diagram

*Click & Learn: Erie Doctrine (Due November 17)*

## **Summary Judgment**

*November 18*

**Standard for Summary Judgment**

- FRCP Rules 56(a)
- *Scott v. Harris*
- *Motion for Summary Judgment in Hillwood Investment Properties III v. Radical Mavericks Management, Ltd.*, No. 10-05639 (Tex. Dist. Ct. June 22, 2011)

*November 20*

**Burden of Production**

- FRCP Rules 56(c), (d), (e)
- *Slaven v. City of Salem*
- Review Problem

*Click & Learn: Summary Judgment (Due November 22)*

*Final Exam (Date)*