CIVIL RIGHTS

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9:30-10:45 a.m., Monday/Tuesday
RDB 2007

Office Hours: Monday & Tuesday, 10:45-Noon, 2-3:30 p.m.
Wednesday, Friday, 9:30-10:30 a.m.
Whenever I am in my office
Email questions
Schedule a meeting at your convenience

***Course Outline*:**

This is a survey of civil rights law, emphasizing the process of making and enforcing laws protecting federal civil and constitutional rights and bringing claims to vindicate those rights. We will focus primarily on 42 U.S.C. § 1983 and *Bivens*, the vehicles for bringing challenges to laws and governmental conduct that violate the Constitution and federal law. This is an essential class for anyone interested in constitutional, civil rights, employment, or employment-discrimination litigation.

The class examines the intersection of constitutional law, federal courts, civil procedure, and criminal procedure—it focuses on the "how" of constitutional litigation. We will discuss some substantive constitutional law, what a plaintiff must prove to get a case before a jury and to prevail on the merits of a constitutional claim, and what forms of relief are available. We also will discuss the procedural and jurisdictional hurdles that the plaintiff must clear, including various defenses of absolute and qualified immunity, sovereign immunity, standing requirements, federal jurisdiction and abstention requirements, and res judicata. One objective of the course is to give students an understanding of the mechanics of bringing, prosecuting, and defending civil rights actions seeking to redress constitutional violations. The class also will examine the scope, extent, and limitations on the power of Congress to create, provide, and protect civil rights by statute, particularly the limitations on Congress' power under § 5 of the Fourteenth Amendment.

Perhaps more than any subject matter you will see, United States civil rights law is a unique construct, grounded in the federalist system of dual sovereignty, notions of limited national government, and the role race plays and historically has played in American society.

***Learning Outcomes*:**

- By the end of this course, students will be able to analyze the law of constitutional litigation against local, state, and federal government and officials.
- By the end of this course, students will be able to apply existing precedent to analyze new problems and issues in constitutional litigation.
- By the end of this course, students will be able to prepare and present a Supreme Court argument on a current problem in constitutional litigation.

***Required Course Materials*:**

Required Text:
HOWARD M. WASSERMAN, UNDERSTANDING CIVIL RIGHTS LITIGATION (3d ed. Carolina Academic Press 2023)
Appendix A: Constitution of the United States
Appendix B: Emancipation Proclamation
Appendix C: United States Code and Federal Rules of Civil Procedure (selected provisions)
Table of Cases: Full citations to cases cited throughout text

Other Materials: Available from ***FIU Civil Procedure Blog*:** http://fiucivilrights.blogspot.com.

Assessments

Three components comprise your grade. Details on each provided separately. *See* **Assessments** on ***Blog*** for details.

1) **Oral Arguments:** 40 points (30 points for argument, 10 points for judging)
Held the day after final exams. Everyone will argue one case and sit as a Supreme Court Justice on at least one case.

2) **Reaction Papers:** 120 points total (40 points each)
Three (3) short reaction papers written on assigned panel topics.

3) **Class Participation:** 30 points. This includes work on assigned panels and general class discussions.

***Panels*:**

Class discussion will combine panels and volunteers.

A panel of approximately 5-7 students (depending on final enrollment) will be "on call" for each of eight (8) topics on the syllabus. Panelists will be the first ones called on during class discussions and will be expected to help lead the conversation, which obviously entails a high level of preparation of the cases and problems assigned on that material. Everyone will be on three panels (3). Panels will be assigned at random prior to the start of the semester.

In addition, your reaction papers (*see* above and "Assessments" on ***Blog*** for details) will be written on the topics on which you were a panelist.

Panelists should not and will not be the only ones prepared for class or participating, of course. I want and expect all members of the class to engage with the material and in the classroom conversations.

In evaluating class participation, I will consider overall performance, both for the classes in which you were assigned as a panelist and overall participation in the broader conversation throughout the semester.

Course Blog

To read the blog, go to http://fiucivilrights.blogspot.com; posts can be read going down from most recent.

We will use the blog for several purposes:

• Syllabus, assignment information, all additional assigned readings, and the list of Puzzles are in the *Additional Materials* post.

• Classes will be audio-recorded and the file will be posted to the blog.

• I will write a short post following each class session. It will contain a summary and some additional points about the just-completed session, as well as assignments, materials, questions, and issues you should think about for the next class.

• I will post Reaction Papers (anonymously).

• I would like this to generate an ongoing conversation with ***short*** posts about the law of Civil Rights and § 1983, the class discussions, reaction papers, and, most importantly, real-world stories touching on this material (I promise there will be a lot of them). Review the suggestions on writing reaction papers for hints of possible blog topics; they carry to the blog. I occasionally will post questions to the blog and encourage written responses for the blog. Email proposed posts or material to me and I will put them on the blog.

College of Law Academic Policies

This class is administered and conducted in accordance with all the provisions of the Florida International University College of Law Academic Policies, *reprinted in* the College of Law Student Handbook. Students are expected to be familiar with and to conduct themselves in line with those policies.

Recording

All classes will be audio-recorded. Your attendance and participation in this course constitutes consent to such recordings, which will only be used for educational purposes by students in the course and securely stored in University systems. If there is a concern regarding the recording and use of such recording, please contact FERPA@fiu.edu.

Technology and Class Conduct

Use of laptops, tablets, book readers, smart phones, and similar devices during class is absolutely prohibited, unless you have received permission or accommodation in advance.

Phones must be turned off when class begins.

Class attendance is required.

You must be in class on time unless I have previously given you permission to come late. You may not enter the room once class has begun unless I have given you permission to come late. Once class has begun, do not leave unless absolutely necessary and please limit movement in and out of the room; I reserve the right to change this policy mid-semester. Exceptions to these policies for medical or similar reasons will be made for documented accommodations.

You must have your book with you and open on your desk at every class.

For those of you who prefer having (or being able to obtain) more precise notes, classes will be audio-recorded and the audio file for each class session will be posted on the ***Blog***. You are welcome and encouraged to review the recording and supplement your notes. This is, in fact, comparable to what you will experience in practice. You will go through a day of trial or deposition working with your own brief notes and your participation in events, then receive a transcript a day or two later.

Plagiarism Policy

Do not.

AI Policy

Do not.

The use of ChatGPT and other generative AI, LLM, or similar programs for written assignments is prohibited and will be deemed a violation of FIU and College of Law academic policies.

***Class Assignments*:**

All reading will be in *Understanding Civil Rights Litigation* (3d ed.), supplemented by a handful of cases and additional Puzzles supplementing the ones in the book. We will spend most class time on the Puzzles and less time working through the doctrine, especially on problem-intensive sections. This is the trade-off: There is less reading in this class and the reading is more straightforward than parsing cases yourself. But you must learn the doctrinal and theoretical basics (including the facts and details of key cases listed on the syllabus) through the short and straight-forward reading in preparing for class; you must understand the basic rules, standards, and ideas on a broad level, then apply that to our discussion of the Puzzles and problems. So it is less reading, but more advance work to really be ready to discuss and analyze the problems.

Constitutional provisions can be found in Appendix A and statutory and rule provisions in Appendix C. Cases listed are key precedents you should pay special attention to in the reading, class discussions, and in working problems.

Puzzles are in listed book sections; additional puzzles will be posted to the ***Blog*** ahead of class.

Introduction/Historical Context *Understanding* Ch. 1

Provisions:
U.S. Const. amend. XIII, XIV
18 U.S.C. §§ 241, 242
42 U.S.C. §§ 1981, 1982
34 U.S.C. § 12601 (formerly 42 U.S.C. § 14141)

Other:
Good Writing and Talking Procedure (***Blog* Post)**
Barton, *Great Legal Stylists* (Skim) (***Blog***)

Elements of Civil Rights Claims

Introduction *Understanding* § 2.01

"Under Color of Law" and State Action *Understanding* Ch.2

Provisions:
42 U.S.C. § 1983
18 U.S.C. § 242
34 U.S.C. § 12601 (formerly 42 U.S.C. § 14141)

Cases:
Monroe v. Pape (1961)
Brentwood Academy v. Tennessee Secondary Sch. Athletic Ass'n (2001)
United States v. Price (1966)
Burton v. Wilmington Parking Authority (1961)
Lindke v. Freed **(*Blog*)** (replace p.30)

Puzzles:
§§ 2.02[6], 2.03[6], 2.05[2]

"Rights, Privileges, and Immunities" *Understanding* § 3.01

Enforcing Federal Statutes *Understanding* Ch. 3, Part B (§§ 3.07-3.12)

Provisions:
42 U.S.C. § 1983
42 U.S.C. § 1981
28 U.S.C. § 1331
28 U.S.C. § 1343(a)
42 U.S.C. §§ 2000a, 2000a-3
42 U.S.C. §§ 2000e-1, 2000e-5(f)(1) (Title VII)

Cases:
Alexander v. Sandoval (2001)
Gonzaga University v. Doe (2002)
Armstrong v. Exceptional Child Center, Inc. (2015)

Enforcing the Fourteenth Amendment *Understanding* Ch. 3, Part A

Provisions:
U.S. Const. amend. XIV
42 U.S.C. § 1983
18 U.S.C. § 242

Cases:
DeShaney v. Winnebago County (1989)

Puzzles:
§ 3.05[6]

Parallel and Substitute Claims *Understanding* § 3.13

Provisions:
42 U.S.C. § 1983
42 U.S.C. § 2000bb-1 (RFRA)
42 U.S.C. §§ 2000cc-1- 2 (RLUIPA)

Cases:
Fitzgerald v. Barnstable Sch. Dist., 555 U.S. 246 (2009)

Claims Against Federal Officials *Understanding* Ch. 4

Provisions:
28 U.S.C. §§ 1346(b), 2679(b)

Cases:
Bivens v. Six Unknown Named Agents (1971)
Wilkie v. Robbins (2007)
Ziglar v. Abbasi (2017)
Egbert v. Boule (***Blog***)

Proposed Legislation
Bivens Act **(*Blog*)**
Constitutional Accountability Act **(*Blog*)**
Accountability for Federal Law Enforcement Act (***Blog***)

Puzzles:
§ 4.06

Individual Immunities

Overview *Understanding* § 5.01

Legislative Immunity *Understanding* Ch. 5, Part A

Provisions:
U.S. CONST. art. I, § 6, cl.2

Cases:
Gravel v. United States (1972)
Bogan v. Scott-Harris (1998)
Supreme Court of Virginia v. Consumers Union of United States (1980)

Puzzles:
§ 5.07

Judicial Process (Judicial & Prosecutorial) Immunities *Understanding* Ch. 5, Part B

Provisions:
42 U.S.C. § 1983 (final sentence added in 1988)

Cases:
Stump v. Sparkman (1978)
Mireles v. Waco (1991)
Buckley v. Fitzsimmons (1993)
Van De Kamp v. Goldstein (2009)
Rehberg v. Paulk (2012)

Puzzles:
§§ 5.09[5], 5.10[7]

Qualified Immunity *Understanding* Ch. 5, Part C

Cases:
Pearson v. Callahan (2009)
Mullenix v. Luna (2015)
White v. Pauley (2017)
Taylor v. Riojas (2020) (***Blog***)
City of Tahlequah v. Bond (***Blog***)
Rivas-Villegas v. Cortesluna (***Blog***)

Legislation:
Ending Qualified Immunity Act (***Blog***)

Puzzles:
§ 5.20

Immunity Review

Puzzle:
§ 5.21

Government Entity Liability

Overview — *Understanding* § 6.01

Municipal Liability — *Understanding*, Ch. 6, Part A

Provisions:
42 U.S.C. § 1983
34 U.S.C. § 12601

Cases:
Monell v. Department of Social Services (1978)
Board of County Commissioners of Bryan County v. Brown (1997)
Los Angeles County v. Humphries (2010)
Owen v. City of Independence (1980)
Connick v. Thompson (2011)

Legislation:
Constitutional Accountability Act **(*Blog*)**

Puzzles:
§ 6.08

State Sovereign Immunity — *Understanding* Ch. 6, Part B §§ 6.09-6.13

Provisions:
U.S. Const. art. I § 8
U.S. Const. amend. XI, XIV
34 U.S.C. § 12601

Cases:
United States v. Georgia (2006)
Will v. Michigan Dept. of State Police (1989)
Ex parte Young (1908)
Edelman v. Jordan (1974)

Legislation:
Constitutional Accountability Act **(*Blog*)**

Puzzles:
§ 6.13[6]

Supervisory Liability and Entity Liability — *Understanding* §§ 6.14-6.16

Puzzles:
§ 6.16

Civil Rights Procedure

Jurisdiction, Motions, and Appeals *Understanding* Ch. 7, Part A

Provisions:
U.S. Const. amend VII (1791)
28 U.S.C. §§ 1331, 1343(a)(3), 1367
42 U.S.C. §§ 2000e-2, 2000e-5(f)(1), 2000e-5(f)(3) (Title VII)
28 U.S.C. §§ 1291
28 U.S.C. §§ 1253, 1254, 1257 (pre-1988), 1257 (current)
28 U.S.C. § 2201-2202
28 U.S.C. §§ 2281 (repealed)-2282 (repealed)
28 U.S.C. § 2284
28 U.S.C. §§ 2201-2202
Fed. R. Civ. P. 65

Cases:
Camreta v. Greene (2011)
Shapiro v. McManus (2015)

Puzzles:
§ 7.05

Competing Vehicles for Enforcing Constitutional Rights *Understanding* Ch. 7, Part B

Provisions:
28 U.S.C §§ 1997e(a), 2241, 2253, 2254

Cases:
Heck v. Humphrey (1994)
Wilkinson v. Dotson (2005)
Hill v. McDonough (2006)

Puzzle:
§§ 7.07[4], 7.10

Section 1983 and Preclusion *Understanding* Ch. 7, Part C

Provisions:
U.S. Const art. IV § 1
28 U.S.C. §§ 1738
28 U.S.C. §§ 1257 (pre-1988), 1257 (current)

Cases:
Allen v. McCurry (1980)
Migra v. Warren City Sch. Dist. Bd. of Educ. (1984)

Puzzle:
§ 7.11[4]

Limitations and Accrual *Understanding* Ch. 7, Part D

Provisions:
42 U.S.C. § 1988(a)
28 U.S.C. § 1658

Abstention

Introduction to Abstention *Understanding* § 8.01

Provisions:
28 U.S.C. §§ 1253, 1257 (pre-1988), 1257 (current)
28 U.S.C. § 1292(a)
28 U.S.C. §§ 2281 (repealed)- 2282 (repealed)
28 U.S.C. § 2284
28 U.S.C. §§ 2201-2202
Fed. R. Civ. P. 65

Review Equitable Relief:
Ex parte Young (1909)
§§ 6.13, 7.01, 7.02[3], 7.02[5], 7.03[3], 7.03

Statutory Abstention *Understanding* Ch. 8, Part B

Provisions
28 U.S.C. § 2283
28 U.S.C. § 1341
28 U.S.C. § 7421(a)

Cases:
Mitchum v. Foster (1972)

Puzzles:
§ 8.08[4]

Pullman *Understanding* Ch. 8, Part A

Cases:
Railroad Commission v. Pullman (1941)
Wisconsin v. Constantineau (1971)
City of Houston v. Hill (1987)
Arizonans for Official English v. Arizona (1997)
Expressions Hair Design v. Schneiderman (2017)

Puzzles:
§ 8.06

Younger *Understanding* Ch. 8, Part C

Provisions:
28 U.S.C. §§ 2201-2202
28 U.S.C. §§ 2281 (repealed)-2281 (repealed)
28 U.S.C. § 2284
28 U.S.C. § 1253
28 U.S.C. § 2283
28 U.S.C. §§ 1257 (pre-1988), 1257 (current)

Cases:
Younger v. Harris (1971)
Samuels v. Mackell (1971)
Mitchum v. Foster (1972)
Steffel v. Thompson (1974)
Doran v. Salem Inn, Inc. (1975)
Huffman v. Pursue, Ltd. (1975)
Hicks v. Miranda (1975)
Sprint Communications v. Jacobs (2013)

Puzzles:
§ 8.13

Rooker-Feldman *Understanding* Ch. 8, Part D

Provisions:
28 U.S.C. § 1331
28 U.S.C. § 1257

Cases:
District of Columbia Court of Appeals v. Feldman (1983)
Exxon Mobil Corp. v. Saudi Basic Indus. Corp. (2006)

Puzzles:
§ 8.17

Abstention Review *Understanding* Ch. 9 Part E

Puzzles:
§ 8.18

Civil Rights Remedies

Introduction to Remedies *Understanding* § 9.01

"Action in Law:" Damages and Retroactive Relief *Understanding* Ch. 9, Part A

Cases:
Carey v. Piphus (1978)
Memphis Community Sch. Dist. v. Stachura (1986)
Smith v. Wade (1983)

"Suit in Equity:" Prospective Relief *Understanding* Ch. 9, Part B

Provisions:
42 U.S.C. § 1983 (final sentence)
28 U.S.C. §§ 2201-2202
28 U.S.C. §§ 2281 (repealed)-2282 (repealed)
28 U.S.C. § 2284
28 U.S.C. § 1292(a)
18 U.S.C. § 242
34 U.S.C. § 12601
Fed. R. Civ. P. 60, 65
18 U.S.C. § 3626

Review Equitable Relief:
Ex parte Young (1909)
§§ 6.13, 7.01, 7.02[3], 7.02[5], 7.03[3], 7.03

Cases:
Los Angeles County v. Humphries, 131 S. Ct. 447 (2010)
City of Los Angeles v. Lyons (1983)
Susan B. Anthony List v. Driehaus 134 S. Ct. 2334 (2014)
Agostini v. Felton, 521 U.S. 203, 209 (1997)

Puzzles:
§ 9.09[5]

Attorneys' Fees *Understanding* Ch. 9, Part C

Provisions:
28 U.S.C. § 1988(b)
42 U.S.C. § 1997e

Cases:
Buckhannon Board and Care Home v. West Virginia Dept. of Health and Human Serv., 532 U.S. 598 (2001)
Farrar v. Hobby (1992)
Sole v. Wyner, 551 U.S. 74 (2007)
Perdue v. Kenny A. ex rel. Winn (2010)
Lackey v. Stinnie **(*Blog*)** (replace p.344)

Puzzles:
§ 9.20

Remedies Review

Puzzles:
§ 9.21