Civil Procedure

Professor Howard Wasserman
FIU College of Law
Spring 2026

Final Examination

Format:

This is a take-home final examination. It consists of **thirteen (13)**. You will answer **three (3)**.

- One question requires a short answer (it should take you fewer than 55 words) and is worth **twenty (20)** points. Everyone will answer this question. It is clearly identified.
- One question requires an essay of a maximum of **1000 words**. It will involve forum selection. It is worth **fifty (50)** points. It will be randomly assigned.
- One question requires an essay of a maximum of **1000 words** (although you may need fewer words). It will involve some other issue from the class material. It is worth **fifty (50)** points. It will be randomly assigned.

Assignments will be posted on the FIU Civ Pro Blog (www.fiucivpro.blogspot.com) at noon on Friday, April 24, 2025.

The exam will be available for download from the FIU Civ Pro Blog (www.fiucivpro.blogspot.com) at 9 a.m. Monday, April 27, 2024; papers are due outside my office by 1 p.m. on Tuesday, April 28, 2024. You have **28 hours** to work on this exam, which is more than you will need. You cannot work for 28 hours; don't try.

You must work alone. You may not consult or discuss—by any means or methods of communication or interaction—the exam, the questions, your answers, or anything related to them with colleagues, friends, family, classmates, other law students, teachers, pets, inanimate objects, me, or anyone in the known universe. Please respect me, your colleagues, and your professional identity by adhering to this requirement.

No outside research is permitted or necessary. No use of ChatGPT, Claude, or other generative artificial-intelligence or electronic programs is permitted. You may use only the assigned course materials, including anything on the FIU Civ Pro Blog.

Please write your answer in Word. The first page must consist of a cover page containing your Blind ID #, your section (A or B), and the numbers of your three assigned questions. Begin your first answer on the second page. Points will be deducted for failing to follow these rules.

Each answer must include the word count for that answer. Five (5) points will be deducted from any answer not followed by a word count.

Begin each essay on a new page.

A Note on the Problem and Individualized Questions

Questions arise from one civil action. Pay close attention to dates. Documents and issues may be presented by topic rather than in chronological order. Information, facts, and documents presented apply to all subsequent questions. Facts, documents, and procedural issues are added as you go, relevant to subsequent questions. Once some fact, document, or issue has been introduced, it can be used for ***all*** subsequent questions—later questions may require that you refer to and rely on earlier information.

The case is presented in a combination of global facts, court documents, motions, legal arguments, and legal provisions. If something is part of a pleading or document, you may refer to it (and should cite by ¶ or §) as you would to a document. New legal provisions and cases are presented; you may refer to them as you would to real laws or real cases (according to class guidelines).

Because each question arises sequentially and builds on previous events in the litigation, you must read the entire exam and all questions; you must understand the larger controversy and all issues resolved earlier in the cases, even if you did not answer those questions. Some documents or developments do not have attached questions; they provide new information that becomes relevant for later questions. Do not jump to your assigned questions and ignore everything else in the cases. You should at least think about the subject and answers to unassigned questions, as that may affect how you answer to your later assigned questions.

Questions are introduced by: **Question # ___: (in Bold and underlined)**. All facts, documents, law, and information necessary to answer a question have appeared *before* or as part of that question. Any new information appearing after a question is for *later* questions. Everything that has come before may be used in answering later questions.

The case is in federal. The Federal Rules of Civil Procedure and applicable federal statutes govern, along with additional legal provisions or cases provided in the exam. Statutes can be cited as § ___; rules can be cited as FRCP ___, but you must cite to the precise provision in proper format (*e.g.*, FRCP 26 (b)(2)(A)(ii)); points will be deducted for failure to properly identify rule and statutory provisions. Cases can be identified with one party name (e.g., *Ford*). Follow the citation rules provided in the blog post at the beginning of the semester.

You may want to begin by reading the entire exam and seeing the entire flow of the case. This allows you to see and understood the entire dispute, all the issues involved, and how the case proceeds.

Read the facts carefully. All necessary facts are provided; if some fact is not provided, it is not necessary to the analysis. Although you may not have an entire document (omissions are indicated by * * *), you have everything you need to answer the question at hand. You may draw appropriate conclusions and inferences from the absence of a fact. Do not assume a fact is lacking because you do not see it in a document; it just means you do not need it. Do not assume facts. Do not fight the facts you are given. If you do not have the facts to support some issue, do not discuss that issue unless otherwise told to address it. Pay attention to the role assigned—advocate or court—and write your answer accordingly.

Read the questions carefully. Answer only the question asked. The questions and issues to be drawn out of each question are straightforward. Do not look for tricks or hidden balls. Most questions are discrete, narrow, and precise, asking you to resolve one specific question or issue (or two issues that form a related whole) from a particular position (Plaintiff, Defendant, or Court). The questions likely do not require you to run through multiple issues or more than 1-2 related rules. Any rule or issue you introduce or mention should be analyzed and applied to the facts in detail. Do not mention a rule in passing as a conclusion.

Pay attention to the role assigned in a question—court, plaintiff, or defendant. It affects how you address the issue, including the position to take. If you are told to argue a particular position, do so.

Writing Your Answers

Your analysis can look and sound like what you wrote for the essays and what you saw in the samples.

Save your words. Avoid throat clearing. ("The issue is" "As the Court, I would find . . ." "The defendant will argue the pleading is sufficient . . ."). Jump right into your answer ("The motion is granted . . .", "The court should grant . . ." "The defendants will file . . ."). When asked to be a party or the court, do not begin with "the party is likely to argue" or "the court is likely to find." You are the party or you are the court, so just argue or find. If asked to reach a conclusion, do so; do not hedge. Do not *italicize* or **bold** or <u>underline</u> words for emphasis; the reader can figure it out. Keep yourself out of the argument. Review and recall the blog posts on writing and analysis.

Begin each answer on a separate page, clearly identifying the question being answered at the start (write the question number in bold above the paragraph--e.g. **Question 1**). In a parenthetical at the end of each answer, state the number of words in that answer.

You should write a good, well-organized, readable essay for each question. The key to your grade is your analysis and explanation in reaching a conclusion. Show and explain your work and be specific. Good essays should follow a tight REA structure: Brief conclusion; state and explain the relevant legal rules (statute, rule, case, etc.), including text and (where appropriate) history and policy; discuss and apply the specific facts you have to those legal rules.

Recall the connection between statutes or Federal Rules and the case interpreting them in framing and explaining your rules.

Do not use sentence fragments, bullet points, or outlines. Do not cut-and-paste portions of your notes or outline. Do not list a series of rules—especially by reprinting the entire rule—and then talk about facts. Avoid overuse of ellipses—if you have multiple ellipses in a quotations, rewrite it. Do not waste time and space reciting random facts divorced from the legal framework; discuss the law, then discuss the facts in light of the law. The goal is not to show how many rules you know, but to resolve a problem under the law. Obey the principle of "Chekhov's Rule:" Do not mention a rule, idea, principle, or fact unless it is part of your application and analysis. Not everything we say in class must find its way into your answer; figure out what matters and what furthers your answer.

Make sure your answer is an explanation, not a conclusion. If your "analysis" amounts to "the rule is satisfied because the standard laid out in the rule is satisfied," you are going in circles. If your entire analysis takes up one sentence that repeats the legal standard, that is not enough. You must explain why a rule is satisfied, pointing to the specific and precise facts you have.

Materials

You may use all assigned materials from the class. This includes the casebook; Glannon; your rules pamphlet; all rules, statutes, cases, documents, and other materials provided or assigned; and materials or comments posted to the blog. You may use any original notes, outlines, or other study document that you were at least 25% responsible for creating (i.e., an outline created by a study group). You may not use commercial outlines, supplements, or other materials, books, sources, and web sites that were not assigned as part of the class. You may not do outside research, consult any additional sources or reports, or do any online research.

You must work alone. You may not consult or discuss—by any means or methods of communication or interaction—the exam, the questions, your answers, or anything related to them with colleagues, friends, family, classmates, other law students, teachers, pets, inanimate objects, me, or anyone in the known universe. Please respect me, your colleagues, and your professional identity by adhering to this requirement.

No use of ChatGPT, Claude, or other generative artificial-intelligence or electronic programs is permitted. You may use only the assigned course materials, including anything on the FIU Civ Pro Blog.

Academic Policies:

This examination 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 J.D. Handbook. Students are expected to be familiar with and to conduct themselves in accordance with those policies and regulations, as well as the rules established for this exam.

Good luck.