



**OREGON PRACTICE AND PROCEDURE (LAW 645; CRN 50539)**  
**FALL 2019 SYLLABUS**

Revised July 2019

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Instructor: Hon. Karsten H. Rasmussen with J. Aaron Landau

Class meetings: T/R from 5:30-6:45 p.m., Room 243

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\*Available for discussion and appointments after class and by appointment at other times.

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**Course Description**

This class is designed to be an intensive study of civil procedure in Oregon courts. We will critically evaluate Oregon civil procedure in light of the purposes and values of a procedural system in comparison with federal rules. We will examine the Oregon civil justice process beginning with jurisdiction and venue and continuing through pre-trial, trial, and post-trial procedures. Compared to a traditional civil procedure class, this course will focus less on theory and more on practice. We expect you to work beyond issue spotting and engage in issue deciding. The goal is to help you learn how to practice law and how to think like a lawyer.

**Course Materials**

Casebook: K.H. Rasmussen, J.A. Landau, and M. Holland, Oregon Practice and Procedure (3d ed., 2017). Cited in readings below as “Text.”

Supplement: Oregon Practice and Procedure Supplement PDF (electronic handout). Cited in readings below as “Supp.”

**Grading Policy**

Grades will be based on:

1. Midterm Pleading Assignment (50% of final grade). The midterm requires you to prepare a Rule 21 motion and argue it to a sitting judge at the Lane County Courthouse;
2. Take home, accumulative final exam (50% of final grade). The final will be formulated to test your overall understanding of the course’s core concepts. The tie-breaker will be contained in the final. Class attendance and participation are encouraged.

**Academic Integrity:** Students are expected to demonstrate high levels of academic integrity and professionalism, and are prohibited from committing or attempting to commit any act that constitutes academic misconduct. Academic dishonesty will be grounds for automatic failure in

the course. If you have questions about conduct please ask your instructor or review the University Student Conduct Code or the UO Policy.

### **Attendance Policy**

Class meets Tuesday/Thursday from 5:30 p.m. to 6:45 p.m. in Room 243. The School of Law believes that dependability and punctuality are essential characteristics of a good lawyer and that the development of good professional habits is essential for legal education. Students are expected to attend all classes and arrive punctually. Students are responsible for monitoring their own attendance, and no advanced notice is required for the imposition of a penalty. As a matter of information, the law school requires JD and LLM students to attend a minimum of 80% of scheduled class meetings.

### **Accommodation**

If you need accommodation based on a disability, please contact Nicole Commissiong, Assistant Dean for Student Affairs, as soon as possible to make the appropriate arrangements.

### **Prohibited Discrimination and Harassment Reporting**

Any student who has experienced sexual assault, relationship violence, sex or gender-based bullying, stalking, and/or sexual harassment may seek resources and help at [safe.uoregon.edu](http://safe.uoregon.edu). To get help by phone, a student can also call either the UO's 24-hour hotline at 541-346-7244 [SAFE], or the non-confidential Title IX Coordinator at 541-346-8136. From the SAFE website, students may also connect to Callisto, a confidential, third-party reporting site that is not a part of the university.

### **Reading Assignments**

The first several reading assignments are the most difficult assignments of the class. We begin with jurisdiction and justiciability because these are necessary foundational concepts. But **take heart!** The reading becomes easier and the class becomes more practically oriented as we progress through the material.

Below is the schedule of planned reading assignments. **Start all reading assignments with the relevant ORCP, UTCR, and ORS** sections, some of which are found in the Statutory Supplement and referenced in the reading assignment. Then read them again. In an effort to save you money, we have not ordered West's Rules of Court (about \$100), so please double check the rules and statutes against other sources.

**Please come to class prepared to discuss the problems contained in the readings.** To increase dialogue and engagement with the material, students will be divided into "firms" (groups of 2-3 students) at the beginning of this course. Every class session, a firm will be responsible for leading the class through the assigned reading and responses to reading questions, which will be distributed within the first week of class. Firms that are not assigned to lead will still be required to prepare responses and counter arguments to the session's reading questions and discussion. **Preparation and participation are crucial to your success in this course, and your training as a future attorney.**

Date	Reading	Subjects and Goals
<b>Class 1</b> Tu 8/27	Middlebury and Chicago Statement (handouts).  Text: 1-25 (to §1C). Supp: 310.	<b><u>Course Intro; Jurisdiction</u></b> <ul style="list-style-type: none"> <li>● Review of academic free speech policies.</li> <li>● Subject matter jurisdiction of Oregon courts.</li> <li>● Personal jurisdiction standards. <b>ORCP 4, 5, 6, 21 A(2).</b></li> </ul>
<b>Class 2</b> Th 8/29	Text: 25-47.	<b><u>Venue; Summons and Complaint</u></b> <ul style="list-style-type: none"> <li>● Venue requirements of <b>ORS 14.030-14.165</b>; motions for improper venue, and why venue matters.</li> <li>● When a court should defer jurisdiction under <i>forum non conveniens</i>.</li> <li>● Steps in service of summons and complaint; due process standards. <b>ORCP 7.</b></li> </ul>
<b>Class 3</b> Tu 9/3	Text: 48-73.	<b><u>Justiciability I</u></b> <ul style="list-style-type: none"> <li>● Introduction to four central concepts of justiciability: adversity, ripeness, mootness, and standing.</li> </ul>
<b>Class 4</b> Th 9/5	Text: 74-82. Supp: 5-20; 208-220.	<b><u>Justiciability II</u></b> <ul style="list-style-type: none"> <li>● <i>Kellas</i> and legislative authority to define citizen justiciability.</li> <li>● Focus on standing.</li> </ul>
<b>Class 5</b> Tu 9/10	Text: 83-98. Supp: 1-2; 307-308.	<b><u>Pleadings</u></b> <ul style="list-style-type: none"> <li>● Notice vs. code pleading, and “ultimate facts.” <b>ORCP 16, 17, 18, 20, 21.</b></li> <li>● Prayer and remedies; pleading compensatory and punitive damages. <b>ORCP 18 B, 67C, ORS 31.710, 31.725.</b></li> <li>● Declaratory judgments. <b>ORS 28.010-28.160.</b></li> <li>● Denials and defenses in the answer (responsive pleadings). <b>ORCP 7, 13, 15, 17, 19, 21.</b></li> </ul>
<b>Class 6</b> Th 9/12	Catch-up	
<b>Class 7</b> Tu 9/17	Text: 99-118 (exc. §4G); 272-277. Supp: 3-20; 221; 311-318.	<b><u>Dismissal I</u></b> <ul style="list-style-type: none"> <li>● Procedure governing motions to dismiss; distinction from summary judgment. <b>ORCP 21.</b></li> <li>● Bases for dismissal <u>other</u> than failure to state a claim: lack of subject matter jurisdiction; prior action pending; lack of capacity; insufficiency of service, summons, or process; lack of real party in interest; failure to join; and time limitation.</li> </ul>
<b>Class 8</b> Th 9/19	Text: 106-110 (§4G)	<b><u>Dismissal II</u></b> <ul style="list-style-type: none"> <li>● Motions to dismiss for failure to state a claim. <b>ORCP 21 A(8).</b></li> <li>● Motions to amend pleadings. <b>ORCP 21 and 23.</b></li> <li>● Disqualification/recusal of judge. <b>ORS 14.210-14.270.</b></li> </ul>
<b>Class 9</b> Tu 9/24	Text: 119-157. Supp: 319, 321, 322.	<b><u>Joinder and Class Actions</u></b> <ul style="list-style-type: none"> <li>● Distinction between permissive and compulsory joinder of parties or claims. <b>ORCP 24, 28, 22 E; and ORCP 29, 21 A(7).</b></li> </ul>

		<ul style="list-style-type: none"> <li>● Intervention of right and permissive intervention at the trial and appellate level; interpleader. <b>ORCP 31; ORCP 33.</b></li> <li>● Standards for class certification. <b>ORCP 32.</b></li> </ul>
<b>Class 10</b> Th 9/26	Text: 158-172 (to §6H). Supp: 222-227; 323-327; 278-80.	<u><b>Discovery I</b></u> <ul style="list-style-type: none"> <li>● General scope and process of discovery. <b>ORCP 26, 36 C, 46.</b></li> <li>● Strategy considerations: How to determine what to seek and why.</li> <li>● Four methods: (1) depositions, <b>ORCP 38-41</b>; (2) requests for production, <b>ORCP 43</b>; (3) physical / mental examinations and production of medical records, <b>ORCP 44</b>; and (4) requests for admission, <b>ORCP 45 and 46 C.</b></li> </ul>
<b>Class 11</b> Tu 10/1	Text: 172-178.	<u><b>Discovery II</b></u> <ul style="list-style-type: none"> <li>● Strategy in responding to discovery requests; objections generally.</li> <li>● Work product doctrine, <b>ORCP 36 B(3)</b>; privilege.</li> <li>● Protective orders. <b>ORCP 36 C.</b></li> <li>● Motions to compel discovery and sanctions for failure to comply. <b>ORCP 46.</b></li> </ul>
<b>Class 12</b> Th 10/3	Text: 179-188. Supp: 262-277; 320-321;	<u><b>Summary Judgment I</b></u> <ul style="list-style-type: none"> <li>● Standards governing summary judgment, <b>ORCP 47 C.</b></li> <li>● How and when to move for summary judgment.</li> <li>● Evidentiary standards, burden of proof.</li> <li>● Distinction from ORCP 21A motion to dismiss.</li> </ul>
<b>Class 13</b> Tu 10/8	Text: 188-198. <i>Due-Donohue v. Beal</i> , 191 Or App 98 (2003).	<u><b>Summary Judgment II</b></u> <ul style="list-style-type: none"> <li>● Responding to motions for summary judgment: standards and strategy.</li> <li>● Attorney affidavits under <b>ORCP 47 E.</b></li> </ul>
<b>Class 14</b> Th 10/10	Text: 199-216. Supp: 232-251.	<u><b>Alternative Dispute Resolution and Settlement</b></u> <ul style="list-style-type: none"> <li>● Introduction to arbitration, circumstances triggering mandatory arbitration. <b>ORS 36.600-36.740; UTCR 13.010-300.</b></li> <li>● Facilitated negotiation and mediation process. <b>ORS 36.100, 36.180-200.</b></li> <li>● Reaching a settlement and compromise. <b>ORS 17.065-17.990; ORCP 54, 73; UTCR 6.010-6.020.</b></li> <li>● Offer of judgment. <b>ORCP 54 E.</b></li> </ul>
<b>Class 15</b> Tu 10/15	Catch-up	
<b>Class 16</b> Th 10/17	Text: 217-239. Supp: 252-261.	<u><b>Trial I: Due Process and the Right to Jury Trial</b></u> <ul style="list-style-type: none"> <li>● Constitutional and statutory basis for the right to trial by jury. <b>Or. Const. Art. I. Secs. 16, 17, Art. 7 (Amended), Secs. 3, 5(7), 9; ORCP 50, 51, 56-58; UTCR 6.130.</b></li> </ul>
<b>Class 17</b> Tu 10/22	Text: 239-256 (to §9C). Supp: 262-277; 328.	<u><b>Trial II: Mechanics</b></u> <ul style="list-style-type: none"> <li>● Jury selection (voir dire). <b>ORCP 57; UTCR 3.120, 3.160, 6.090.</b></li> <li>● Jury reform under <b>ORCP 58.</b></li> <li>● Restrictions on judicial review of jury decisions and due process.</li> </ul>
<b>Class 18</b> Th 10/24	Text: 256-277. Supp: 278-280; 21-74; 303-305; 322.	<u><b>Trial III: Mechanics Cont'd</b></u> <ul style="list-style-type: none"> <li>● Conduct at trial. <b>ORCP 58.</b></li> <li>● Motions in limine.</li> <li>● Jury instructions. <b>ORCP 59; UTCR 6.060, 6.070.</b></li> </ul>

		<ul style="list-style-type: none"> <li>• Jury verdicts. <b>ORCP 59, 61.</b></li> <li>• Consolidation and bifurcation. <b>ORCP 53.</b></li> </ul>
<b>Class 19</b> Tu 10/29	Text: 278-283 (to §10C).	<b><u>Post-Trial I</u></b> <ul style="list-style-type: none"> <li>• Raising problems intrinsic to a jury verdict. <b>ORCP 59.</b></li> <li>• Objections to findings of fact in a bench trial. <b>ORCP 62.</b></li> <li>• Directed verdict (<b>ORCP 60</b>) and JNOV (<b>ORCP 63</b>); distinction and strategies.</li> </ul>
<b>Class 20</b> Th 10/31	Text: 283-290. Supp: 281-282.	<b><u>Post-Trial II</u></b> <ul style="list-style-type: none"> <li>• Motion for new trial. <b>ORCP 64; ORS 19.205(d).</b></li> </ul>
<b>Class 21</b> Tu 11/5	Text: 291-324 (to §11D). Supp: 75-77.	<b><u>Judgments I: Entry of Judgment, Preclusion Doctrines</u></b> <ul style="list-style-type: none"> <li>• Form and entry of judgment; distinctions between limited, general, and supplemental judgments. <b>ORS 18.035-18-082, 19.205; ORCP 67-71.</b></li> <li>• Claim and issue preclusion (res judicata/collateral estoppel). <b>ORS 43.130-170; ORCP 19B.</b></li> </ul>
<b>Class 22</b> Th 11/7	Text: 324-336.	<b><u>Judgments II: Relief from Judgments, Declaratory Judgments</u></b> <ul style="list-style-type: none"> <li>• Relief from judgment. <b>ORCP 71; 69 F.</b></li> <li>• Enforceability and stays of judgment. <b>ORCP 72 A; ORS 19.335-.350.</b></li> <li>• Brief intro to enforcement of judgments. <b>ORS 18.252-18.270; ORCP 78-85.</b></li> </ul>
<b>Class 23</b> Tu 11/12	Catch-up	
<b>Class 24</b> Th 11/14	Text: 337-349 (to §12C). Supp: 283-302.	<b><u>Appellate I: What's Appealable</u></b> <ul style="list-style-type: none"> <li>• What kinds of trial actions can and cannot be appealed. <b>ORS 19.205, 19.235, 19.255; ORCP 67,70.</b></li> <li>• Assignment of error and preservation. <b>ORAP 5.45; ORCP 59 H.</b></li> </ul>
<b>Class 25</b> Tu 11/19	Text: 349-379.	<b><u>Appellate II: Standards of Review</u></b> <ul style="list-style-type: none"> <li>• Identify different standards of review for appellate actions, <i>e.g.</i> error of law vs. “abuse of discretion.” <b>Or. Const., Art. 7 (Amended), Sec. 3; ORS 19.415; ORCP 62 F, 64 B(2).</b></li> <li>• Distinction between reversible and harmless error. <b>ORS 19.415(2).</b></li> <li>• Review by Supreme Court. <b>ORS 2.520, 19.405; ORAP 9.05-9.30; ORS 34.250</b></li> </ul>
<b>Class 26</b> Th 11/21	Text: 380-394.	<b><u>Attorney Fees</u></b> <ul style="list-style-type: none"> <li>• Bases for attorney fee awards and how to seek them. <b>ORS 20.075-107, 20.220; ORCP 68; ORAP 13.10; UTCP 2.050, 2.080; DR 2-106.</b></li> <li>• Costs / disbursements; prevailing party fees. <b>ORS 20.115-20/330, ORCP 68.</b></li> <li>• Collecting fee interest as part of damages. <b>ORCP 68, ORS 82.010.</b></li> </ul>
<b>Class 27</b> Tu 11/26	TBA	

\* MIDTERM TRIAL AND FINAL EXAM DATES TBA \*