# Civil Procedure

## Prof. Alberto Romano

***COURSE AIMS AND INTENDED LEARNING OUTCOMES***

The course aims to introduce students to the knowledge of civil procedural law including both its theoretical foundations and current positive law, and through the constant reinterpretation of substantive law from the point of view of trials.

Consequently, at the end of the course, students are expected to have acquired a solid basic knowledge of the subject, to be able to present it appropriately, and to critically relate it to their knowledge of civil law.

***COURSE CONTENT***

Jurisdiction and trials: definition, limits and constitutional guarantees. The general principles governing civil procedure. Ordinary cognitive proceedings at first instance: general and special procedures. Judgments, appeals and *res judicata*. Enforcement proceedings. Summary, interim and special proceedings.

***READING LIST***

C. Consolo, *Spiegazioni di Diritto processuale civile,* *vol. I, Le tutele (di merito, sommarie ed esecutive) e il rapporto giuridico processuale*, Giappichelli, Turin, 2019.

C. Consolo, *Spiegazioni di Diritto processuale civile,* *vol. II, Il processo di primo grado e le impugnazioni delle sentenze*, Giappichelli, Turin, 2019.

The lecturer reserves the right to notify any variations due to the entry into force of the changes recently delegated to the Government by means of Art. 1, paragraph 15, Law No 206 of 26 November 2021.

It is possible to exclude the following parts, together with those provided online:

Vol. I: rapporti tra giudice civile e pubblica amministrazione (pp. 55-59); forme di tutela cautelare nei processi diversi da quello civile (pp. 212-215); i procedimenti nunciativi e possessori (pp. 255-262); le forme dell'espropriazione forzata immobiliare e mobiliare, dell'espropriazione di crediti e mobili presso terzi, esecuzione specifica (pp. 306-318); le vicende anomale del proc. esecutivo (pp. 319-331); i titoli di giurisdizioni uniformi in materia di procedure di insolvenza ecc. (pp. 440-446); le regole uniformi in materia di notificazioni e assunzioni di prove all’estero (pp. 474-477); arbitrato rituale e libero (pp. 513-557); l'azione surrogatoria in dettaglio (pp. 583-589); la responsabilità civile del giudice (pp. 618-622); ausiliari del giudice (cancelliere, custode, consulente tecnico) (pp. 627-631); la condanna alle spese e la responsabilità processuale (pp. 641-651); atti processuali e provvedimenti del giudice in generale (pp. 651-661); comunicazioni e notificazioni (pp. 663-673).

Vol. II: esercitazione su preclusioni e limiti oggettivi del giudicato, mera costituzione parti, mediazione e negoziazione assistita (pp. 193-218); procedimento sommario di cognizione (pp. 369-377); rapida comparazione ecc. (pp. 379-396); altre novità ecc. (pp. 399-414); l’appello nel rito sommario e nel rito del lavoro (pp. 547-554); dettagli su revocazione sentenze di cassazione (pp. 647-652); le impugnazioni dei lodi rituali (pp. 673-711).

3. A. Chizzini, *La domanda giudiziale e il suo contenuto,* Milan, 2018.

Students who attended the course in previous years may choose to take the exam on the contents already listed in the Faculty Guide or on the new syllabus specified above.

The general part of the course may be studied also using following textbook:

Attardi, *Diritto processuale civile,* Padua, 1999, 3rd ed., general part.

Students that have passed the *Epistemologia giudiziaria* exam or the *Law and Logic of Evidence* exam, are *exempted* from the study of the following parts: par. 1 and 3 of Ch. 6 in Sect. VI (pp. 303-308; pp. 318-323); Ch. 7 in Sect. VI, single means of proof (pp. 325-368).

Students who successfully passed the Private International Law are exempted from studying also the entire Chapter 4 of Section III (pp. 421-477).

In terms of the manuals used, students who have attended the course in previous years have the option to take the exam on the course content already published in the Faculty guide or on the new programme indicated above.

***TEACHING METHOD***

The course consists of classroom lectures (ore remotely) and seminars aimed at combining the systematic and the practical profiles of the procedural and civil-law subject.

***ASSESSMENT METHOD AND CRITERIA***

The final exam aims to assess the students’ achievement of the intended learning outcomes specified above.

The final assessment will consist in an oral exam. In January, attending students will be given the possibility to take an optional written test, if the epidemiological situation allows to do so. This test will be focused on the topics of the course presented during the lectures of semester 1; if positive, the mark obtained in this test will be taken into account during the oral exam. Through questions concerning significant aspects of the various parts of the course it is possible to assess the overall knowledge acquired by the students, their ability to critically deal with the topics covered and relate the various parts of the course content.

The mark, on a 30-point scale, is equally based on the students’ mastery of qualitative and quantitative argumentations, their critical view of the topic covered during the course and their ability to relate different parts of the course content.

The exam consists of a series of oral questions concerning the course textbooks, and the final mark is the result of the average of all the scores obtained in the answers. Students who during the exam demonstrate a comprehensive view of the issues covered during lectures, combined with their critical application, and an appropriate and accurate use of the technical language, will be assigned excellent marks. Students who demonstrate unstructured synthesis and analysis skills, and/or a correct but not always appropriate use of the language, will be assigned satisfactory marks. Students with knowledge gaps and/or inappropriate language use – although within a context characterised by a minimal knowledge of the subject – will be assigned pass marks. Students with knowledge gaps (such as ignoring a part of the course textbooks), inappropriate language, lack of familiarity with the topics included in the course content and with the relevant regulatory references, will be assigned fail marks.

Notes for the exam preparation

It is useful to provide some information on the exam preparation.

An initial observation: civil procedural law is objectively a complex exam that requires an adequate amount of preparation with long settling time. As a matter of fact, according to the *common law* tradition, this exam “*turns a student into a lawyer*”.

This is due to different reasons, but the most important ones are two: on the one hand, the extensive regulatory framework to be memorised; on the other hand, the dogmatic in-depth analysis that has always characterised the subject and is an essential knowledge prerequisite to understand the deep mechanisms of the procedural phenomenon.

These difficulties objectively exist and it would be irresponsible to deny it, however they should not scare the students, nor should they create insecurity: this has been a difficult exam also for those who have the burdens (and the honours) to teach it, it has been difficult for all the current assistant professors, for each student who intend to complete a course of study that meets the expectations at the basis of the training agreement that links families, students, and Università Cattolica in Milan: that is to contribute to shaping, with the necessary commitment, men and women with an adequate cultural preparation to face the increasingly complex and competitive professional life of the jurist. After all, we could rightly say that the vast majority of the students who take the exam have studied and made efforts, but the point is to understand the reasons why sometimes these efforts do not lead to entirely satisfactory outcomes both for the student and the examination board.

In this context, in light of very clear experiences, we may say that having to repeat an exam – which deeply concerns students – is not (and cannot be) so serious as it may seem, but it is only a transition phase, sometimes a very important one, in the preparation and learning of this subject, which often requires a maturation time that not always can be easily estimated. There are numerous cases in which students who had to repeat the exam eventually passed it with flying colours, thus proving themselves and the examination board that they had acquired the fundamental concepts of the subject and that they can master them appropriately.

In this respect, in light of the experience gained, we offer some advice and remind students that we have developed some functional activities designed to help them – every student: not only those who have to repeat the exam - to prepare and pass the exam:

1. In the first place, we strongly advise against postponing this exam until the end of the degree course: it is certainly better to take it immediately, in the third year or in the fourth year at the latest. Leaving this exam at the end, when students are already focussed on the final thesis and on getting the degree, causes greater anxiety in the students, thus depriving them of their serenity and the time required to obtain positive results.

2. Every year, after the Christmas break, between January and February, students are offered the possibility to sit a partial written test: this helps them focus their preparation on the general part of the subject, obtain a first indicative “assessment” of their performance that may be useful to supplement any possible gaps, which are usually related to their study method.

3. Throughout the academic year, every Wednesday, a support-supplementing preparation activity is available: it is performed in an informal way, starting from the students’ questions, with the purpose of teaching (or at least improving) the students’ study method and make it more suitable for the preparation required. What emerges in these cases is that often students – despite being prepared – are not able to adequately formulate their answer to a question, leave out fundamental elements and focus on insignificant details.

4. During the year, lectures will be combined with practical exercises especially designed to teach students to summarise the main issues of the subject, to focus on the fundamental institutions, to understand the most complex theoretical issues through practical examples.

Finally, this information is general, and is not meant to exclude the possibility to adjust it to the needs of every single student. In this regard, the lecturer and the examination board are available for any further information and clarification.

I wish you every success in your work!

***NOTES AND PREREQUISITES***

In case the current Covid-19 health emergency does not allow frontal teaching, remote teaching will be carried out following procedures that will be promptly notified to students.

Further information can be found on the lecturer's webpage at http://docenti.unicatt.it/web/searchByName.do?language=ENG or on the Faculty notice board.