# .- Civil Procedure Law (with general principles of civil justice system)

## Prof. Antonino Barletta

## ***COURSE AIMS AND EXPECTED LEARNING OUTCOMES***

The aim of this course is to provide students with a deep knowledge of the law governing the adjudicatory proceedings, summary proceedings, interim proceedings, arbitration, and main alternative dispute resolution methods, by providing a systematic (and not merely general) overview of the relevant principles, together with an introduction to general concepts of civil justice system.

At the end of the course, students will gain a thorough understanding of the techniques of judicial protection of rights, and appreciate the differences among various types of court proceedings, bearing in mind the aims and effects pursued. They will also develop the ability to use appropriate language for a legal argument. In particular, students will be able to coordinate principles and general rules to provisions pertaining to different types of adjudicatory proceedings and summary proceedings, arbitration, and other main alternative dispute resolution methods, by applying autonomously the knowledge gained to specific cases.

***COURSE CONTENT***

Section I

The course will introduce students to general principles of civil justice system and the basics of civil trials through an in-depth analysis – in theoretical and practical terms – of the rules of civil procedure applicable to ordinary court proceedings, considering also of the recent reforms in this area, with specific reference to Law no. 206 of November 26th, 2021 and Legislative Decrees to be enacted according to the principles set forth therein. After an introduction dwelling on the constitutional principles that connote the function of civil trials and in part influence their structure (with a large digression to precautionary relief), the course will continue with a preliminary analysis of declaratory proceedings and the final judgement in both formal and substantive terms. This will be followed by an examination of the reformed criteria governing jurisdiction and venue as well as a study (also through case law) of the conditions for bringing a civil action, i.e. locus standi. The concept of 'party' to an action will also be addressed.

On the basis of the foregoing, the various types of civil action will be examined (declaratory action, action for satisfaction, and action for relief) and likewise the whole issue of claims, affirmative defences, procedural defences, counterclaims, collateral findings and set off. The subject of lis pendens will also be analysed.

Then, the course will tackle the provisions regarding the parties of the proceedings and their lawyers, with specific reference to the issue of the necessary and optional joinder of parties; the various types of intervention of third parties depending on the degree of connection between the claims; third party summonses, parties ousted from proceedings and substitution of parties will also be studied. The course will continue with an analysis of general rules on the acts of the process, of the electronic civil process, and of the use of IT systems in the exercise of civil jurisdiction.

Section II

The course will also study civil trials at first instance and appeals (Book II of the Code of civil procedure).

Section III

Moreover, the course will also address the issues of payment injunctions and confirmation of eviction orders, precautionary reliefs (seizures, injunctions in case of new work and risks of damage, preliminary investigation proceedings, provisory measures), possessory proceedings, summary adjudication, and non-contentious jurisdiction proceedings.

**Only for the profile Law&Economics**

Section IV

Finally, the course will also study arbitration and other main alternative dispute resolution methods (mediation of civil and commercial disputes, and assisted negotiation).

***READING LIST***

The examination on Sections I and II will be based on lecture notes and whatever reading material is mentioned in class.

For Section III reference is to be made to:

Mandrioli-Carratta, *Diritto processuale civile,* Vol. III, the latest edition available, limited to chapters I, II, III, VI, and Mandrioli-Carratta, *Diritto processuale civile,* vol. IV, latest edition available, limited to chapters VII e VIII, or as an alternative Consolo, *Spiegazioni di diritto processuale civile*, Vol. I, the latest edition available, limited to section II, chapters from 1 to 4, and Mandrioli-Carratta, *Diritto processuale civile,* Vol. III, the latest edition available, limited to chapters VIII and IX.

For Section IV -- **for the profile Law&Economics** -- reference is to be made to:

Mandrioli-Carratta, *Diritto processuale civile,* Vol. III, the latest edition available, limited to chapters VIII and IX

Students not attending lectures must study the following in addition to the textbook specified above:

1st alternative

Biavati-Cavallini-Orlandi, *Assetti della giustizia civile e penale in Italia*, Bologna, 2016, parts I and II, chapters from I to IX.

Mandrioli-Carratta, *Diritto processuale civile,* Vol. I, the latest edition available.

Mandrioli-Carratta, *Diritto processuale civile,* Vol. II, the latest edition available.

Mandrioli-Carratta, *Diritto processuale civile,* Vol. III, the latest edition available, limited to chapters I, II, III, VI, and **for the profile Law&Economics** chapters VIII e IX.

Mandrioli-Carratta, *Diritto processuale civile,* Vol. IV, the latest edition available, limited to chapters VII e VIII.

2nd alternative

Consolo, *Spiegazioni di diritto processuale civile*, Vol. I, the latest edition available, limited to the following parts: “parte introduttiva” on line; section I; section II, limited to chapters from 1 to 4; section III, limited to chapters 1, 2, 3, 5, 6, 8, 9 10; section IV.

Consolo, *Spiegazioni di diritto processuale civile*, Vol. II, the latest edition available.

Mandrioli-Carratta, *Diritto processuale civile,* Vol. III, the latest edition available, limited to chapters VIII and IX **for the profile Law&Economics**.

Materials on civil procedure law are available on Blackboard.

***TEACHING METHOD***

Frontal lectures. For better attendance at lectures students are advised to acquire prior knowledge of the topics in the parts of the handbook indicated on Blackboard.

***ASSESSMENT METHOD AND CRITERIA***

The examination will take place in different ways for students attending and not attending the course.

Whatever the examination mode is chosen, according to what is described below, the students will have to demonstrate both to have learned basic concepts and distinctions, with a knowledge of the main issues, and to have acquired the ability to expose possible solutions concerning the cases indicated for the test, as well as to expose the topics studied, with the appropriate terminology.

- Students attending the course will take a midterm examination to verify the degree of learning achieved at the end of the first half of the course. The modalities of the midterm examination will be communicated in time during the course. Where possible, this examination will take place in writing. It will last two hours and will be based on an open-ended question, aimed at allowing connections among different notions of civil procedure law. The answer will be given a score expressed in letters (A = 30-27 / 30; B = 26-24 / 30; C = 23-21 / 30; D = 20-18 / 30), which will be considered to form the overall grade out of thirty. Within one year of its attendance, the intermediate test will exempt students from the corresponding part of the program to prepare for the final exam. This latter will be oral and will result in the assignment of a score out of thirty, which will average the grades achieved in the midterm exam. Students who do not intend to make use of the marks obtained in the intermediate and the corresponding partial exemption may however take the oral examination in the manner and the contents below for students not attending the course.

- Students not attending the course will have to take the exam orally on the entire program and in relation to the bibliography indicated above.

***NOTES AND PREREQUISITES***

#### The course requires knowledge of the main institutions of civil law.

#### TUTORIALS

Information on office hours available on the teacher's personal page at <http://docenti.unicatt.it/ita/antonino_barletta/>