CIVIL PROCEDURE Syllabus Professor Andrews (Fall 2016)

Key:

RB	Rulebook, 2016 Federal Rules of Civil Procedure ("FRCP") Booklet, Legalpub.com
HB	Handout Book, Andrews Course Materials, Fall 2016
CP	Civil Procedure, Joseph Glannon, Aspen 2013 (7th Edition)
Review	Read the material for its general content without detailed study
Study	Carefully read and re-read the material for a full understanding of its meaning and application
FRCP	The Federal Rules of Civil Procedure (in the first half of the Legalpub Rulebook)
_ USC § _	Section ("§") of the United States Code (selected federal statutes, in the back of the Rulebook)

I. INTRODUCTION (Andrews)

Review: Andrews text, Part I (HB, 1)
Chapters 3 and 4, George & Sherry, (book from "Intro" orientation class)

II. CHOICE OF THE FORUM -- *Introduction* to jurisdiction, venue and choice of law

A. Introduction to Forum Choice (Andrews)

Review: Andrews text, Part II(A) (HB, 11)
CP, Chap. 6, pages 109-14 (text only, not the problems)

B. Personal Jurisdiction

1. Introduction (Andrews)

Review: Andrews text, PJ Intro, Part II(B)(1) (HB, 15)
CP Chap. 1, Intro (pp 3-4)
US Constitution, Due Process Clauses, Amendment 5 (RB, 255) and Amendment 14, §1 (RB, 257)

2. The "Minimum Contacts" Test

Study: Andrews text, Part II(B)(2) (HB, 20)
International Shoe (HB, 23) **(Group 1)**
Review: CP Chap. 1 (pp 4-5) (text only, not problems)

3. Personal Jurisdiction – Specific or "Case-Linked" PJ

a. The Purposeful Availment Element

Study: Andrews text, Part II(B)(3)(a) (HB, 29)

b. The *WWVW* Two-Prong Specific PJ Test

Study: Andrews text, Part II(B)(3)(b) (HB, 30)
Worldwide VW (HB, 32) **(Group 2)**

c. Application of Purposeful Availment and 2-Prong Test

Study: Andrews text, Part II(B)(3)(c) (HB, 40)
Asahi (HB, 44) **(Group 3)**
CP chap. 1 text (pp 7-11) and Problems 1-16

Review: *McIntyre* (HB, 52)

d. Long-arm Statutes **(Andrews)**

Review: CP, Chap. 2, text (pp 27-33)
CP, Chap. 18, text (pp 352-53)
Andrews text (HB, 43)

4. Personal Jurisdiction - General or "All-Purpose" PJ

a. Extent of Contacts

Study: Andrews text, Intro & Part II(B)(4)(a) (HB, 64)
Goodyear (HB, 66) **(Group 4)**
Potts (HB, 72) **(Group 5)**

Review: CP Chap 1, text (pp. 5-7)

b. Relatedness

Study: Andrews text, Part II(B)(4)(b) (HB, 76)
O'Connor (HB, 79) **(Group 6)**

5. Current Status of Historical Bases for PJ -- Service, Property & Consent

Study: Andrews text, Part II(B)(5) (HB, 89)
Burnham (HB, 91) **(Group 7)**

6. Challenging Personal Jurisdiction **(Andrews)**

Review: Andrews text (HB, 101)
FRCP 12(b)(2)
CP Chap. 3 (pp. 47-53) (text only)

7. Summary and Review

Davenport, Parts I & II(B) (HB, 102) **Group 8)**

CP Chap 1, Problems 17-18, 20
PJ Practice essay exam (in-class handout)

C. Subject-Matter Jurisdiction

1. Introduction **(Andrews)**

Review: Andrews text, Part II(C)(1) (HB, 108)
U.S. Const, Article I, § 8, Clauses 9 & 18 (RB, 250-51)
US. Const, Art III, §§ 1 & 2, Clause 1 (RB, 253)
28 USC §§ 1331 & 1332(a) (RB, 214+)
CP Chap. 4, text (pp 63-65)

2. Federal Question Jurisdiction

Study: Andrews text, Part II(C)(2) (HB, 110)
28 USC §1331
Mottley (HB, 112) **(Group 9)**
CP Chap. 4, text (pp. 63-71) and Problems 1-13

Review: Civil Rights Statute, 42 USC §1983 (HB, 148)
Patent, etc., jurisdiction statute, 28 USC §1338 (RB, 219)

3. Diversity Jurisdiction

Study: Andrews text, Part II(C)(3) (HB, 115)

a. Diversity - Natural persons:

Study: 28 USC §1332 (a)(1)
McDonald, Rayfield and Mas (HB, 117) **(Group 10)**
CP Chap 5, text, (pp. 89-92)
CP, Problems 1-7 (pp 94-95) [skip Problems 1(e),(f)]

b. Diversity - Corporations:

Study: 28 USC 1332(c)(1)
Hertz (HB, 128) **(Group 11)**
CP Chap 5, text (pp 92-94)
CP Problems 8 – 11 (pp 95-96)

c. Diversity – Amount-in-controversy **(Group 12)**

Study: *Mas* case (HB, 124)
CP Ch 5, text (pp 96-99) [skip Case 5]
CP Problems 12-13 (pp 99-100)[Skip Problems 12d and 12e]
In-class handout

D. Introduction to Venue **(Andrews)**

Review: Andrews text, Part II(D) (HB, 135)
28 USC § 1391(a), (b), (c) and (d)
CP Chap. 8 (pp.141-46)

E. Introduction to Choice of Law **(Andrews)**

Review: Andrews text, Part II(E) (HB, 135)
CP Chap. 10 (pp. 177-78) and Chap. 12 (pp. 229-35)

F. Summary and Review **(All students)**

CP Chap. 6 (text and problems)
Practice multiple-choice exam re "Which Court" (in-class handout)

III. STARTING A CIVIL LAWSUIT – Preparing, filing and serving the complaint

A. Introduction to the Federal Rules of Civil Procedure (Andrews)

Review: Andrews text, Part III(A) (HB, 137)
FRCP 1, 2 and 83
Discussion of 2015 amendment to FRCP 1 (RB, 6)
[scan – "flip through" – entire red Rulebook]

B. Introduction to Pleadings and Motions (Andrews)

Study: Andrews text, Part III (B) (HB, 146)
FRCP 7
Review: FRCP Forms 30 and 40 (HB, 143)

C. Introduction to "Cause of Action" and Complaints (Andrews)

Study: Andrews text, Part III(C) (HB, 146)
FRCP 3, 5(d) & 7
Review: CP sample complaint CP Chap. 31 (p. 632)
42 USC §1983; Pattern Jury Instruction for §1983 (HB, 148)

D. Form of the Complaint (Group 13)

Study: Andrews text, Part III(D) (HB, 151)
FRCP 8(a), (d)(1) & (e), and FRCP 10
FRCP 84 and Forms 1, 7 and 11 (HB, 139-42)
Boozer, Parts I & II (HB, 152)
Davenport, Part II(A) (HB, 102)

E. "Particularity" of Pleading

Study: Andrews text, Part III(E) Intro (HB,155)

1. Special Particularized Pleading Requirement of Rule 9(b) (Group 14)

Study: Andrews text, Part III(E)(1) (HB, 156)
FRCP 9(b)
FRCP Form 21 (HB, 142)
General Cigar (HB, 157); *Scott* (HB, 161)

2. General Notice Pleading of Rule 8(a)(2) (Group 1)

Study: Andrews text, Part III(E)(2) (HB, 165)
FRCP 8(a), 9(b)
FRCP Form 11
Leatherman (HB, 167) *Swierkiewicz* (HB, 171)
NC Rules and Form (HB, 166)

3. Notice pleading: A New Plausibility Standard? **(Group 2)**

Study: Andrews text, Part III(E)(3) (HB, 176)
FRCP 8(a), 9(b)
FRCP Form 11
Twombly (HB, 177)
Iqbal (HB, 183)

4. Understanding *Twombly* and *Iqbal* **(Group 3)**

Study: Andrews text, Part III(E)(4) (HB, 195)
Weber (HB, 199)
Walmart Complaint Hypothetical Set (HB, 197)

F. "Ethics" in Pleading – Rule 11

1. History and elements of Rule 11 **(Group 4)**

Study: Andrews Introduction (HB, 201)
FRCP 11 – historical "tracking" exercise (HB, 202)
FRCP 11, AC notes: 1983-2007 amendments (HB, 203)

2. Rule 11 – Reasonable Inquiry and Sufficient Bases **(Group 5)**

Study: Andrews text, Part III(F)(2) (HB, 212)
FRCP 11(b)
Mars (HB, 214)
Garr (HB, 221)

3. Rule 11 – Pleading SMJ **(Group 6)**

Study: FRCP 8(a)(1); FRCP 11(b)
Walker (HB, 216)
Boozer (HB, 152)

4. Rule 11 – Inconsistent Pleading **(Group 7)**

Study: FRCP 11(b); FRCP 8(d)(2) & (3)
FRCP Forms 2 and 12
"Tavern" Hypothetical (HB, 212)

5. Rule 11 – Motions and Sanctions **(Andrews)**

Study: FRCP 11(c), 11(d)
Garr (HB, 221)

G. Joinder

1. Introduction to Joinder and Severance of Claims **(Andrews)**

Study: Andrews text , Part III(G) (HB, 229)
FRCP 18(a), 42 and 82
FRCP Form 13
CP Chap.13 (pp. 253-55, 257-58)

2 . Simple Joinder of Parties

Study: FRCP 20 & FRCP 21
CP Chap. 13, text (pp 253-55), Problems 1, 3 (skip 3f), 4-6, 16)
Problem Set (HB, 231) **(Group 8)**
Novartis, SAP America and *Rubio* (HB, 232+) **(Group 9)**

H. Jury Demand **(Andrews)**

Study: Andrews text, Part III(H) (HB, 246)
FRCP 38(a), (b) and (d)
Review: FRCP 39, 47 & 48
US Constitution, Amendment 7

I. Service of the Complaint and Notice to the Defendant

Study: Andrews text, Part III (I) (HB, 246)
CP, Chapter 18, pp 351-52

1. Due process standards **(Group 10)**

Study: *Mullane* (HB, 250)
CP Chap 18, text (pp. 347-48)
US Constitution, Amendments 5 and 14

2. Rule requirements for service (and waiver of service) **(Group 11)**

Study: FRCP 4(a), 4(b), 4(c), 4(e), 4(h), 4(l) and 4(m)
CP Chap 18, text, 348-50 and Problems 1, 2, 4, 7, 8 and 10-13 (skip Mass rule)
"Karl" Hypothetical (HB, 248)

3. Waiver of Service **(Group 12)**

Study: FRCP 4(d) and forms at RB, 30-32
CP, Chapter 18, text (p 350) and Problem 6

J. Amendment of the Complaint **(Group 13)**

Study: Andrews text, Part III(J) (HB, 257)
FRCP 7(a), FRCP 15(a)
Fulton (HB, 258); *Barringer* (HB, 261)
CP Chap. 20, text (pp 385-91) and Problems 1-8
Review: FRCP 15(b),(c) & (d)
CP Chap. 20 (p. 391-97)

K. Voluntary Dismissal **(Group 14)**

Study: Andrews text, Part III(K) (HB, 264)
FRCP 41(a)
San Juan; *Hailstock*; *Texas UJoints* (HB, 265+)

M. Summary and Review Review: CP Chap 31 **(All students)**

IV. DEFENDANT'S RESPONSE – Responding to and challenging the complaint

Study: Andrews Introduction (HB, 275)

A. The "Answer" – Response to Complaint Allegations (Group 1)

Study: Andrews text and Problems (HB, 275-78)
FRCP 8(b), 10 and 11(b)(4)
FRCP Forms 30 & 40
Beckman (HB, 279)

Review: CP sample answer, CP Chap. 33 [consider ¶ 7, page 663]
AC notes re 1993 amendment to Rule 11 re denials (HB, 207)

B. The "Answer" – Affirmative Defenses (Group 2)

Study: Andrews text, Part IV(B) (HB, 281)
FRCP 7, 8(c) and 8(d)
LaFont (HB, 283); *Harriss* (HB, 286)

C. The "Answer" – Cross-claims and Counterclaims (Group 3)

Study: Andrews text, Part IV(C) (HB, 291)
FRCP 7; FRCP 13(a), (b), (g), (h) and (i); FRCP 18
CP Chap. 13 (pp. 255-57 and problems 7-15)
Keisser Insurance (HB, 294)

Review: *Davenport* (HB, 102)

D. Amendment of the Answer (Group 4)

Study: Andrews text, Part IV(D) (HB, 298)
FRCP 15(a)
Harriss (HB, 286); *Beeck* (HB, 299)

E. Rule 12(b) Motions to Dismiss

1. Introduction and Rule 12(b)(1)-(5) motions (Andrews)

Study: Andrews text, Part IV(E) (HB, 304)
FRCP 7(b), 12(a) & 12(b)
FRCP Form 40
CP Chap. 19, text (pp. 369-71)

Review: Consider motions in *Walker, Potts*, *Davenport* and *Boozer*

2. The Rule 12(b)(6) motion (Andrews)

Study: Andrews text, Part IV(E) (HB, 306-07)
CP Chap. 23, text (pp 473-77) and Problems 1-6
Smith-Haynie [Part I] (HB, 308)
Boozer, Part III (HB 152)
Austin (HB, 315) and Complaint Hypotheticals (HB, 197)

Review: Consider motions in *Leatherman*, *Swierkiewicz, Scott*, *General Cigar*, *Iqbal*)

F. Other Rule 12 Motions **(Group 5)**

Study: Andrews text, Part IV(F) (HB, 312)
FRCP 12(c) through 12(f) and 12(i)
Austin (HB, 315)
Harbor Commission (HB, 319)
Erikson (HB, 322)

G. Consolidation of Motions and Waiver of Defenses **(Group 6)**

Study: Andrews text and Problem, Part IV(G) (HB, 325)
FRCP 8(c), 12(g) & 12(h)
Remainder of CP Chap 19
Harriss (HB, 286)

H. Timing and Service of Response **(Group 7)**

Study: Andrews text and Problem, Part IV(H) (HB, 327)
FRCP 4(d)(3), 5, 6, 12(a) and 15(a)

I. Default **(Group 8)**

Study: Andrews text, Part IV(I) (HB, 329)
FRCP 5(a)(2), 54(c), 55(a) thru 55(c), 60(b) and 77(d)(1)
C&G Boats (HB, 331)
Rice (HB, 335)
Greene (HB, 340)
CP, Chapter 18, Problem 14 (p. 358)

J. Involuntary Dismissals **(Group 9)**

Study: Andrews text, Part IV(J) (HB, 343)
FRCP 41(b)
McDaniel (HB, 345)

K. Introduction to Effect of Dismissals and Preclusion Law **(Group 10)**

Study: Andrews text, Part IV(K) (HB, 343)
FRCP 4(m); FRCP 41
White v. New York (HB, 347)
Rinehart (HB, 350)
Texas UJoints (HB, 271)

Review: CP, Chap 27, text (pp 561-63); CP Chap 28, text (pp 575-79)
Consider dismissals in *Mottley*, *Austin*, *Scott*

L. Summary and Review -- CP Chap. 33 **(All students)**

V. **DISCOVERY** – Gathering facts and preparing the case

A. Introduction **(Andrews)**

Study: Andrews text, Part V(A) (HB, 355)
FRCP 26(b)(1)

Review: FRCP 26 (*except* skip Rule 26(a) & 26(b)(4))
CP Chap 21, "Intro" text (pp. 409-10);
CP Chap 22, "Intro" text (pp. 435-36)

B. The Basic Scope of Discovery

1. Introduction **(Andrews)**

Study: Andrews text, Part V(B) (HB, 358)
Historical comparison of Rule 26(b)(1) (HB, 362-63)

Review: FRE 407 (RB, 136); FRE 802 (RB, 146)

2. Relevance **(Group 11)**

Study: Andrews text, (HB, 358-60)
FRCP 26(b)(1)
Kozlowski (HB, 368) [Parts I and II]
United Oil (HB, 372)
Fed. Rule of Evidence 401 (RB, 135) and AC Notes (HB, 361)
Advisory Committee Notes, 2015 amend to Rule 26(b) (HB, 364)
CP Chap. 21, text (pp. 409-12) and Problems 2- 5

3. Proportionality **(Andrews)**

Study: Andrews text (HB, 360)
FRCP 26(b)(1) and FRCP 26(b)(2)(C)(iii)
Kozlowski (HB, 368)
CP, Chap. 21, Problem 6 (p 418)

4. "Privilege" **(Andrews)**

Review: Andrews text (HB, 358)
FRCP 26(b)(1), FRCP 26(b)(5)
CP Chap. 21, text (pp. 410-12)

C. Limitations on Discovery

1 Frequency and extent **(Andrews)**

Review: Andrews text, Part V(C)(1) (HB, 378)
FRCP 26(b)(2)

Professor Andrews **CIVIL PROCEDURE – COURSE MEMORANDUM** **Fall 2016**

Welcome. Here are the basic rules, procedures and suggestions for this course:

I. CLASS MEETING TIMES AND ROOM

We will meet in Room 175 from 1:00 to 2:10 (or later), Tuesday, Thursday, and Friday.

II. COURSE DESCRIPTION AND OBJECTIVES

We will cover the fundamentals of "civil procedure" before and after trial. By "**Civil**," I mean non-criminal cases, such as a car accident case, based on negligence law, between two drivers in which one seeks money damages from the other. "**Procedure**" means the mechanism for presenting and resolving a civil lawsuit. It does not encompass the "substantive" law of civil actions, such as the standard for negligence of the drivers (a question for Torts class). We will focus on the basic procedural stages of a civil lawsuit in federal court, from filing the complaint, mid-litigation discovery, to post-trial motions and challenges to the judgment (other courses will discuss the trial itself). We will concentrate on procedural standards in federal court because they govern cases in federal court throughout the nation and they are the model for most states' procedural systems, including the Alabama Rules of Civil Procedure (governing procedure in Alabama *state* courts).

By the end of the semester, you will know 1) the policies and principles underlying modern civil procedure; 2) the fundamentals of interpreting and applying procedural rules, statutes and cases; and 3) the basic steps in the process of a civil suit.

III. TEXTBOOKS.

First, our primary text will be materials that I have compiled into a **Handout Book ("HB")**. Bind these loose papers or put them in a notebook. The 2016 version will be on sale in the law school bookstore. This HB contains the cases that we will study, but it is more than a "casebook." It also contains many of my lectures and problem sets.

Second, the **Rulebook** (abbreviated **"RB"**) contains the Federal Rules of Civil Procedure (**"FRCP"**), the federal constitution and also some statutes governing civil procedure (the federal Judicial Code is "Title 28" of the United States Code). You can use any current (2016) federal civil procedure rulebook, but my syllabus page citations are to the 2016 Federal Civil Rules Booklet by legalpub.com, Inc. [ISBN: 978-1-934852-31-6]. The Rules were amended last year, so an older copy with be out-of-date. Make sure that you buy a rulebook with the 2016 version of the FRCP.

Third, we will use a form of "study aid," Joseph **Glannon**, **CIVIL PROCEDURE: EXAMPLES & EXPLANATIONS** (Aspen, 7th Ed.)[ISBN: 978-1-4548-1548-8]. In this book (which I abbreviate in the syllabus as "**CP**"), Glannon gives brief but straight-forward textual discussions of the major topics, coupled with useful hypothetical questions and explanatory answers.

IV. ASSIGNMENTS AND CLASS PARTICIPATION

Your reading assignments are stated in detail in the Syllabus.

For the first day of our Civil Procedure class (Thursday, August 11), read the material in Part I, Part IIA and Part IIB(1) of the Syllabus. I will not call on students the first day. I likely will call on students – those in Group #1 – in the second class period (Friday, August 12), for the material in Part IIB(2) – the *International Shoe* case.

The Syllabus is an outline of the course by topic. Unlike some syllabi, it is not divided by day or class period. Some sections of the Syllabus outline will take only a partial class period and others will cover multiple class periods. I usually will tell you at the end of each class (or in an email) the units that I predict the next class will cover, but you should get used to the pace and read ahead.

The Syllabus lists precise pages for the early assignments. As the semester progresses, the Syllabus will cite Rules and Statutes and other material without specific page references, because you will have learned how to find these citations in your assigned texts.

I have designated the class assignments as "study" or "review." The "study" materials require the most intense analysis and will be the primary focus on the final examination. The "review" assignments are "FYI" and will give you a better context and background for learning the "study" materials.

I have assigned you to one of **14 groups**. The Syllabus assigns each group to three subject matter units during the semester. For the group assignments, I will call on students in the group assigned to that unit. I will not "random call" on students outside of the group for that assignment. You must attend class and be prepared on the day(s) that your group is assigned for class discussion. I will lecture in class on the subjects listed in the Syllabus as "Andrews."

The group simply will be the students on whom I call that day for class discussion. You do not need to prepare a special presentation. I urge the members of the group to work together to study the material. Because the group has advance notice, I expect a high level of preparation.

I invite each group to meet with me to discuss its topic in advance of the class discussion. This is beneficial for everyone. It is a great way to get to know each other and talk leisurely about civil procedure. Lunch is a great time to meet.

V. EXAMINATIONS AND GRADING

Your final grade will be based on your performance on the final examination. I will make no other adjustments in the grade for class performance, practice exams or otherwise.

Your final examination will have both essay and multiple-choice questions. I will offer you the option to take a few **practice exams** with both types of questions. I will discuss these in more detail in class.

I will grade your actual final exam essay answers anonymously by giving you points for issues and ideas that you develop in your answer. I will grade on the official law school mandatory mean (a form of curve), whereby your final letter grade will depend on your performance relative to that of your classmates.

You may use a **computer** to take/type the essay portion of the final exam, but you must use the official law school exam software. You will learn more about this software during the semester.

The final examination will be an **open-book** examination. The only exception is that you may not use your computer or any other electronic device during the exam to access notes, or research. This means that you will need hard copies of any materials that you intend to use during the exam.

One of the most stressful aspects of first-semester law school exams is that new law students usually do not know what to expect and do not know whether they are on the right track in study and preparation for the final exam. Law school exams are different from most college exams. Many beginning students struggle with the idea of writing an essay exam, particularly in civil procedure. I will help you ready yourself for my exam and generally for law school study, in a variety of ways, including practice exams. I will spend time both in and outside of class, discussing a variety of skills and suggestions for success in law school.

VI. TALKING TO ME -- OFFICE HOURS, WALKS, LUNCHES AND E-MAILS

My office is # 313. My official "office hours" will be Monday, 10:30-11:30 am, and Tuesday, 9:00-10:00 am, but I will have an open office whenever I am in the building (most every weekday). Friday after class would be a great time to meet. Feel free to ask me questions at any time that you see me. I encourage you to talk to me. Email me if you want to set up an office appointment in advance. If you do not understand a point, ask me.

I am "famous" (perhaps infamous) for telling beginning law students: "There is such thing as a stupid question." I do not say this to stifle your intellectual thought, but instead to spur it. I intend to convey that you should always think before you speak. Lawyers must do this, and you should start to learn now to do so. Thinking about a question before you ask it also helps you substantively. If you think about your question first, your question not only will be better framed for me to answer, but also my answer will have more meaning to you, because your prior thinking gives you a context or pathway on which you can better register and process the information.

I usually prefer questions outside of class. This allows both you and me to consider the question and better discuss the subject. I differ from many other professors on this point, but I personally have found that the formal classroom setting in this CP course is not a good time or place to address most student questions. I give many other opportunities for feedback and consultation with me. The class period is a session of limited time and structure, for all students, and individual student questions can delay the progress of the class as a whole. The class session is just one of the many ways in which I hope to guide you in your study of law. During some class sessions, I will open the class to your questions. Ask your

questions then or outside of class. I enjoy and encourage your questions.

You can see me after class, in my office, individually or in small groups, to ask questions and more fully explore Civil Procedure or (most) any other topic. I encourage you to eat **lunch** with me. We can eat at the law school café or walk to Newk's (and on nice days – Zoe's, in the football stadium). Last time I taught CP at 1:00 pm, I ate with the groups almost every time before their group was up for class discussion.

In addition, I love to walk for exercise. Each fall, dozens of students (individually or in groups) walk with me in lieu of an office visit. The weather is often too hot for long walks early in the semester, but if it is a small group, we may be able to walk in the Coliseum.

Monitor your law school **emails** on a daily basis. I regularly will send class-wide **emails** to update assignments, address questions, and send handouts. You also may send questions to me through the Law School e-mail system. Your question may prompt me to share the answer with the entire class.

VII. CLASSROOM BEHAVIOR, ATTENDANCE, AND SPECIAL ACCOMMODATION

The general rule is that I require you to act in a manner that is respectful and fitting for a professional school. With the aim of professionalism in mind, you **may not wear a hat** of any kind in my classroom unless you get prior approval from me (e.g., for medical or religious reasons). Likewise, you may not eat in the classroom. You must follow the law school rules on beverage containers.

I will use a projector and a white board on many days, so select a seat from which you can see both. If you need special accommodation for a visual or other impairment, you should inform the Dean's office for special, school-wide arrangements. Please tell me if I can do anything more.

The Law School has a **strict attendance policy**. You may not miss more than **9 class sessions**, no matter the reason. If you miss 10 class sessions, you will be withdrawn from the course, likely as a "fail" (unless you can convince the Dean's office that yours should be a withdraw-"pass"). If you miss class, I do not need or want to hear why. Sometimes an absence is necessary. You should not attend if you are ill and contagious. You know the rules and repercussions. You are training to be a professional. Make good decisions.

You must sign the roster to be counted as present, and you may not sign the roster if you are more than **ten minutes late** for class. Some professors may ask you to attend on time or not at all, but I encourage you to attend even if you are late (you may not sign the roster if you are more than ten minutes late). If you attend class (on time) but miss the roster, you may not retroactively sign without my permission.

You may not record, videotape or photograph any part of the class without my prior approval (or that of the Dean's office). Please be respectful to others with regard to your other electronic gadgets. Use your computer in class only for class purposes, such as note-taking or referral to assigned materials stored or accessible on the computer. Turn off phones (and texting or other messaging signals) before each class.

VIII. "TIPS" -- STUDY HABITS AND EXAM TAKING

This is a professional school. It is a transition to the practice of law. Law school (any law school, not just Alabama) is different than most other educational settings. Your law school study will build upon the learning and skills of your undergraduate education, but law school demands greater commitment and new skills. The skills needed to succeed in law school mirror those needed in law practice.

The key to success in law school, and in law practice, is both hard work and smart work. I will discuss this topic more in our class sessions. Here are some general points and guidelines:

Hard Work: Long Hours. The first year of law school is more than a full-time job. You should plan on spending approximately three hours studying outside of class for every hour in class. This means that this fall, with a 14-hour course load, you must do outside study an average of 42 hours per week, in addition to the time spent in the classroom. You should spend most (but not all) of your nights and weekends studying the law throughout the semester. The final exam study weeks are even more demanding. You should study 12-16 hours per day during the exam period – most all of your waking hours.

You must make many personal sacrifices to meet the demands of law school (and of law practice), but you should not lose sleep and neglect your health or important personal activities. Achieving the proper balance between life and work/study is a challenge (one that will continue throughout your career). You must prioritize your activities in a manner that most of you have never done before. You must plan in advance and work around the demands of both law school and your personal life. Planning will enable you to better evaluate which non-study activities you must forego for the semester and which ones you can continue.

During exam finals period (as in law practice "crunch times" such as trials or deal closings), this balance and planning differ. You must forego most non-essential personal activities. Do not forego sleep, which is one of the most important things you can do for yourself during this period. Exams require a rested and nimble brain, not one which is sleep-deprived and full of rote memorization.

The law school offers many extra-curricular activities. Some of these are productive uses of your time, and some are not. First-year law students cannot attend every law school event, including the scholarly lectures. You certainly cannot and should not attend all of the parties. It is a good idea for most law students to attend a few social functions, but no law student, especially first-year law students, should attend all that are offered. You must select wisely and avoid most all outside events on "school nights," particularly during your first year of law school. You should consider most of the party events as 2L/3L student events and only special occasions for first-year students.

Smart Work: Active Learning. Success in law school demands not only long hours of study, but also smart and efficient use of those hours. The key is active learning. This active learning comes in two basic stages – 1) class preparation and 2) retroactive review and synthesis of the material. Both stages are essential to success. Most students put too much weight on class preparation, relative to review.

"Doctrinal" vs Methodology Courses. When considering how you will divide your time and study for law school, you need to understand the different demands of your courses that are primarily "doctrinal" and the other courses that are primarily "methods" courses. Orientation, including the Introduction to Law, is not a "doctrinal" course. In the Introduction class, you will focus primarily on methodology and legal concepts. Likewise, your Legal Writing and Research classes focus on methodology. These courses will use law to teach essential skills and methods but the aim is not to teach the underlying law. By contrast, in your three doctrinal courses – Torts, Criminal and Civil Procedure – the focus is more on learning the law itself but you need skills to do so. All of your classes in law school will be a mix of actual law and legal skills and methods. In Civil Procedure, a supposed "doctrinal" class, I am explicit about teaching the skills and methodology of learning law (such as this memorandum on study tips). So, there is overlap – law and methodology in all types of courses – but the focus of the two categories is different. Much of my advice in this memo is aimed at the skills of mastering the doctrinal courses.

Class Preparation. Do not passively read the materials assigned for class. Actively read. This means more than merely highlighting with different colors. You must ask yourself questions about the material you are reading. That is the attempted point of "briefing" cases or "parsing" rules (below), but your active reading should go beyond briefing and parsing. I recommend that you read the materials assigned for class multiple times, at incremental levels of scrutiny with different questions in mind. In my HB, I give some suggested incremental levels of reading for the first case, *International Shoe*.

You must learn to ask different types of questions, and the most important question is how the case law or rule would apply in various contexts. In class, I will ask these types of questions and discuss these other contexts. Most law professors in class model the type of questions that you should ask yourself. At the beginning, this will seem an almost impossible task. It will come easier as you progress through the semester and through law school. Try to mimic the professor's questioning process and do this critical reading and thinking on your own.

Case briefs. A "case brief" is a separate document in which you summarize key parts of the case. It usually includes the following elements: the court, parties, procedural history of the case, factual context of the case, and, most importantly, the legal principles in the case and the court's application of those principles to the facts of the case. The primary function of the case brief is to train yourself to actively read the case and ask the proper questions before class. Do not waste time on the aesthetics of the case brief. The case brief itself will be of little use later in the semester as you study for the final exams. The benefit of preparing a case brief is not the end product but instead the process (the questions, repeated reading and thinking) required to prepare the brief. You eventually will learn to brief cases by carefully reading the case, with notes in the margins of the case.

Parsed and annotated rules. When your assigned material is a rule or statute, the rough equivalent of briefing a case is parsing and annotating the rule. You should type or download the literal text of the rule or statute, and add white space to the text. You should then "parse" the rule by dividing the text, based on key clauses and words (for example, "except," "but," "unless," "and," "or"). You should carefully consider the text – ponder the word choice and sentence structure. You "annotate" the rule by adding your own notes and questions from class, official notes or cases. We will discuss this more in class.

Identify the Source Law. You should identify and think about the "source material." You should make two distinctions in this regard. First, do not confuse summaries or secondary materials (or even some material in assigned texts) with "the law." Professor Glannon is not the source of the law of civil procedure. I am not the source either. We are merely aids in your study of the law of civil procedure.

Second, when reading cases, you should ask yourself what is the source of law at issue in that particular case. Is it federal or state? Is it constitutional law, common law, or rule/statute application? Is the case merely illustrative of a legal principle or is it the binding law of the land?

For example, in the personal jurisdiction cases (that we will study early in our class), the primary source law is the due process clause of the federal constitution. The cases come from the US Supreme Court, so they are binding on all courts on this issue. In many other units, the source law at issue in the case will be a rule of civil procedure, and the case merely illustrates the application of the rule. In these cases, you should start and end your study with the rule of civil procedure. By contrast, in classes based on the "common law," such as Torts, the source of the law is the case, but you should realize that the case is merely representative of countless other similar cases from that particular state (and likely other states) on that topic.

Retroactive Review and Synthesis. An essential element of the study of law is retroactive review and synthesis. You should do this in your first semester in several incremental steps. I suggest the following "**Plan**" - which should begin the first week of classes – for this incremental review:

> First, review on a **daily** basis. Get into the habit, every class day, starting on the first day of your doctrinal classes, of going back and reviewing the material that you covered earlier that day in each class before reading the next day's reading assignment for that class. I recommend spending 30 minutes per class (some days more, some days less) on this daily retroactive review before reading the next day's assignment for the class.
>
> This daily review will consist of some reading and a lot of thinking. In this CP class, I suggest that you re-read my HB narrative text after our class discussion of that topic. These discussions should have far more meaning after class and will help you move on to the next day's assignments.
>
> The second step is **weekly** review. On Friday afternoons and evenings (which is a time that law students usually waste), review the entire prior week's study from a very "big picture" point of view. This review should be for each of your doctrinal courses. What did you do this week in Torts, Criminal or CP? Where are you in your study of the major topic? What key points was the professor making in class? Try to do this exercise without your notes or any materials in front of you. Then, if you cannot easily grasp the big picture, go back and figure it out. Start by looking at the syllabus and table of contents of your books. Consider debating and discussing these issues with your classmates on Friday evenings, but only after your own personal reflection.

The third step is **bi-weekly** review in the form of outlining of your doctrinal courses [you do not typically "outline" a methodology class such as Legal Writing]. After your Friday night "big picture" review, you should use most of the remainder of each weekend to outline. This is a bi-weekly or tri-weekly exercise only with regard to a particular course. You should work on outlines every weekend. The difference will be the course(s) that you outline. You should alternate weekends and focus on outlining only one [sometimes two] course(s) each weekend. You will outline each course, in two or three week intervals.

The Labor Day weekend usually is a good time to start outlining. You will have had a few weeks of material, usually enough to outline, in at least one of your doctrinal courses. Some of your other professors may spend most of August on introductory concepts. If so, that is not a good course to outline early. Look at your syllabus for the entire course to get a sense of whether the material is introductory. For example, Part I of my Handbook is all introduction, and little, if any of it, should be in your outline. I spend only a portion of a class on that material but some professors spend multiple class units on introduction. Strive to tell the difference.

At the beginning of the semester, you may simply alternate weekends and outline a different doctrinal course each weekend, but as the semester continues, you must become more selective. In selecting which doctrinal course(s) to outline over the weekend, focus on whether you have completed a "major topic" in your courses that week (a realization hopefully made during the Friday weekly review). You should make sure that you finish the outline for each major topic soon after you finish that topic in class, but you should not let one course go without outlining for more than three weeks. This means that on many weekends you must outline two courses.

The bi/tri-weekly review of each course best involves three elements – 1) outlining, 2) hypotheticals, and 3) mastery – which I explain in more detail below:

> *Outlining*. A proper outline is one of law. It often will include case references, but you should structure the outline around the law – the legal principles – rather than the cases [know the difference]. The outline collects, in a single document, information from all of your multiple materials, usually in the order of the class syllabus. Your outline should not be a mere collection of case briefs or a linear condensation of your notes.
>
> Most law students know that they must outline, but they do not properly prioritize or time their outlines. Many law students erroneously believe that the outline is all that they must do to adequately prepare for a final exam and/or they wait until the finals study week to start or complete the outline. The outline is only an intermediate step (albeit an essential step) in mastering the material. You should prepare your outline throughout the semester and complete it on the last day of classes for that subject.
>
> Many law students inappropriately rely on other outlines, whether a commercial outline or that of another current or former student. Reliance on other outlines defeats the primary purpose of the outline, which is to make you actively think about the law. Your outlining may benefit by looking at other outlines, but only if you do so in a very limited

way. Looking at another outline early may help you understand the proper format of an outline. Once you reach this understanding (which should be fairly quickly), put the other outline away. Comparing another outline to your *completed* outline also can be beneficial if you use it as a tool to prompt active analysis and thinking. Likewise, another outline may help you work through an analytical tough spot, but make sure that this reference to another outline actually spurs your own active thinking.

The outline should be an outline *of the law*. A good starting point often is your class syllabus. Most syllabi and tables of contents are "bare bones" outlines of law. Your outline should be a much more thorough discussion of the law reflected in the syllabus in a fuller analytical structure.

When you outline, you should have in front of you multiple materials: primarily your cases and/or rulebook and class notes, but also other materials such as your case briefs. In the outlining process you will be pulling your knowledge of the law, as reflected in these various sources, into one single document. But, you are not merely transferring all of this material into a larger document. You must ask questions, think and use your judgment. You must cull and prioritize all of your different learning and study materials. Your aim should be to fully and accurately state the law in a concise manner. This should be a very active thinking process. This active thinking is what makes proper outlining so useful.

Hypotheticals. After you outline, test yourself through hypothethicals. Hypothetical questions are one of the most useful forms of self-study. They not only test your knowledge of the law, but they also mimic what you will be asked to do on most law school exams – apply the law to a new fact pattern.

Although some law students overlook the value of hypotheticals, many learn to crave and search for them. Students sometimes waste too much time or pick poor sources, such as the internet. You have easier access to good hypotheticals than you think. For example, the Glannon book is filled with CP questions and answers. I (and some other faculty) will give you written hypotheticals. Your access to hypotheticals is not limited to these formal written questions.

Every time a professor in class varies a fact pattern of case and asks a question about that varied fact pattern, it is a hypothetical. You should learn to spot these in class. I recommend that you mark these in your class notes and, as part of either your daily or weekly review, copy these from your class notes and put them into a separate file of hypotheticals for that course. You will be surprised at how many you have when you open this hypo file weeks later when you are trying to master a topic.

You and your classmates also are excellent sources of hypo sets. You can make them up entirely or follow the pattern of your professor and vary the facts of the cases yourselves. One other way to use cases for hypothetical learning is to ask a different legal question

than the one presented in the case. For example, you could use the facts of one CP case that formally addresses subject matter jurisdiction to also ask yourself about personal jurisdiction and so on.

Hyper-Learning Through Charts. As part of your bi-weekly review and effort to master a topic, you should experiment with different kinds of charts. I call this "hyper" learning as opposed to "hypo" learning. Just as you can create almost endless, there is no limit to the charts you can prepare. Putting different concepts together in visual form, often is a good form of active thinking and provides needed variety to just reading your long outline. As the class progresses, I will give you a variety of chart – grids, mini-outlines, decision-tree flow-charts – as examples and suggest other forms of charts for you to make on your own.

Mastery of Major Topics. Make sure that you understand each major topic after you have completed your class study and outline of that topic. You do not have to understand every part of every class discussion on a daily basis - it is inevitable that you will have days of class in which you are "lost" - but you must master the *topic* as you complete it. Do not assume that you will have time to learn the topic later in the semester. You will not. You need to master each topic as the professor completes it (usually in the 2-week increments of outlining), so that you can dedicate your time later in the semester to synthesis of the topics.

The last step is **semester final review**, during the exam study period. Do not use this period either working on or reading the outline. Your outlines already should be done. You may need to read and review your outline, but most of your valuable exam period study time must be spent on higher intensity learning, what I call "hyper-learning:" for example, working on hypothetical problems, creating single-page charts, decision-trees, flowcharts, checklists and summaries, and taking, under exam condition, prior exams of the professor.

Many students report that they spend their final exam period time reading, condensing and re-condensing their outline, in decreasing increments. This may be adequate study for some students, but it is not the most efficient or beneficial form of exam period study. The creation of a much shorter outline on a major topic – a single page summarizing the law of personal jurisdiction, for example – is a very good exercise. This usually can be done more directly, however, without going through the several intermediate stages of condensation.

During this final review, you periodically should test yourself through hypothetical questions. Do not go through the hypo sets too quickly. Think. Deliberate. Commit your logic to paper. Write down the key steps in your analysis of each hypo. This need not (and usually should not) be a formal essay. Instead, you should write just enough to slow down your thinking and to record your analytical process. Then, go back and look at the source law. Make sure that you understand not only the bottom line answer to the hypo, but, more importantly, the proper analysis of that problem. You also should pause to double-check your summary charts. Are they still accurate in light of your refined thinking on the hypo?

After you have made several cycles of this hyper-and hypo-learning, you will be ready for the ultimate hypo. You should take a practice exam (preferably old actual exams from your professor), under near exam conditions to test how well you have done. You should write the full answer in essay format. Time carefully. You should do the practice exam after you have fully studied and early enough that you will have time to go back and study points that were not clear on the practice exam. You should consider meeting with other students (who have similarly seriously considered the old exams) to discuss the issues that each of you identified and your analysis of those issues.

You must be at the "mastery" level in each of your classes to succeed on the exams. Many law students mistakenly believe that *understanding* the material is sufficient. Understanding will get most students a passing grade, but that is not enough for top grades. Almost all students understand the material. The key to success is synthesis of the material and analysis of how each component interrelates with the others. This comes only from "hyper" learning and mastery.

It is very difficult to determine when you have reached this mastery level. You probably will not have a sufficient "feel" for this until after you have taken your fall exams and received your grades. Many of you will not get to the necessary level until later in law school. Some may never achieve it. Recognize that your recognizing what is *not* mastery level is itself an important step in this process. You should assume for most of your first year of law school, that you are not yet at that level and that you need to do more study.

Essay Exam Writing. Law school essay exams are different than most undergraduate exams. The primary difference is that most law school essay exams ask you to apply and analyze the law, rather than merely report back what you have learned. This can be daunting.

I will help you in many ways prepare for law school exams, but during the semester, as you read cases in this class, you can help prepare yourself for exam essay writing by considering the written structure of the cases. You should stop and consider them as possible examples of good essays. Well-written case opinions share many qualities with good essay exams. The writer (judge or student) usually must apply existing law to a new fact pattern and reach a conclusion. Not all case opinions fit this mode. Indeed, some are poorly written. In addition, some law school cases, particularly constitutional law cases, such as some of the personal jurisdiction cases, decide "new law" and typically follow a different pattern in which facts are less relevant: issue, text, history, policy and new test/law.

Most legal writing, however, follows an "IRAC" or 1-2-3-4 format, that you will study in Legal Writing class. Law school essays generally follow this pattern with slightly different emphasis:

[1] Case opinions and office memoranda typically start by stating the key issues [the "I" in IRAC] (e.g., "*The defendant moved to dismiss for lack of personal jurisdiction. He claims that he has never been in the forum state but instead only sent a product there, at plaintiff's request. Is this direction of a product sufficient contact with the forum state to constitute purposeful availment?).* This step is typically overdone by law students on their first attempt at writing law

essay exams. Students waste valuable exam time by repeating all of the exam facts or restating the exam question. On most law school essay exams, you should consider minimizing or skipping this first step. Including this portion on a law exam essay is not literally a negative, if you have time, but the problem is that most students overdo this step to the detriment of the far more important part of the exam essay [#3 – Analysis].

[2] The next step usually is to state the governing law or rule [the "R" of IRAC]. (*"A state court's personal jurisdiction is limited by due process standards and is tested under the International Shoe minimum contacts test, which has been refined into a two-part test. The World-wide VW two-part test is....."*). Students tend to overstate the law at beginning of law school exams. It usually is inefficient and ineffective to state all of the law at the beginning of an exam. The problem with this approach is that you do not give context for this law, and you often mistakenly state law in "treatise" format, including law not actually pertinent to the exam question. On the other hand, the law must be introduced, so that your analysis is not out of context. This is a careful balance that requires the student to use judgment.

[3] Next comes an analysis of the issues ["A" in IRAC], whereby the writer applies the law to the facts. This is the portion of the exam in which facts are most important and best used. This analysis section interweaves the law and the facts – the writer applies the law to the facts of this case, often comparing or contrasting the facts of primary cases to the facts of the case at hand. (*"In World-wide VW, the Court found minimum contacts lacking where the defendant did not purposefully initiate the contact with the forum state. There, the plaintiff bought the car in NY and brought it to the forum state without the defendant's specific knowledge. Here, by contrast, defendant knowingly sent the product to the forum, at plaintiff's request. The defendant's contact with the forum state – the car- was deliberate by defendant. It was not made unilaterally by the plaintiff/consumer... "*). This is the ***single most important part*** of any law school essay exam. You are given the most points (by far) for this portion. Virtually all law professors agree that the primary problem in most student essay exams is this analysis component; students fail to ***fully analyze and explain.***

[4] The essay ends with a conclusion [the "C" in IRAC] (*"Because the defendant had sufficient control over his product and knowingly chose to send it to the forum state, he had sufficient minimum contacts with the state so as not to offend due process. The defendant's motion to dismiss is denied."*). A common mistake is to hedge or equivocate. If the exam question calls for a conclusion (and they usually do), you must give a conclusion. Moreover, forcing yourself to give a conclusion has the side benefit of forcing a fuller analysis, which is the primary point of the essay.

Study Aids and Other Outlines. Use outside study aids wisely. These aids can help you in your learning, but be careful with them. Never rely on them to the exclusion of the assigned material. Instead, use them (if at all) as a check on or against your own understanding of the law. The study aid should spur your own further thinking, not substitute for your thinking.

If you want to focus in-depth on a particular CP rule or concept in detail, I suggest **Wright & Miller's**

or **Moore's** multi-volume federal procedure treatises in the library. You also can come to my office to discuss other study aids and uses.

My warning as to outside study aids applies equally, if not more, to upper level students' outlines for the course. Another person's outline can be helpful if you use it to think actively about the course, but it is a major mistake to *rely on* another's outline. The other outlines are often wrong. They may misstate the law and/or rely on cases not assigned for study this semester. The law of CP has evolved significantly in the past few years. I also change my course materials on a yearly basis, which means a different order and approach to CP. The other students' outlines also may not be analytically sound even as to law that has not changed. Remember that these older outlines were made by a person who at the time was not much farther into the learning process than you. Most importantly, the whole point of creating an outline is to do the work yourself. It is the process of outlining that helps you learn the law.

Group study. I urge you to conduct some of your study in groups, but do so wisely. Some group study can be too passive. Group study is best done after careful study on your own. You should select as group times the periods in which you would not otherwise be actively engaged in intense, solitary learning and study.

Typically the two best types of group study are 1) studying during a time of the day or week when you are tired of studying on your own and are beginning to drift, and/or, 2) when you are in a "rut" – whether in deriving new hypo sets or in answering a particular tough question - and need some fresh input to further stimulate your thinking. The first type of group study is useful on Friday evenings, as a follow-up to, the Friday big picture review [step #2 of the "plan"]. The second type of group study is useful to exchange "hypo's" and tough questions, after personal study, either during the semester bi-weekly mastery of a particular major topic or during finals study period.

You should not work on outlines in groups. The group may help you work through particular tough spots after your own full study, but group study should not be your primary form of study. Likewise, although you should develop concise summary charts and comparisons, you should not do so as a group exercise. The group may be useful to exchange ideas for charting and for later comparison of completed charts, but the actual derivation and development of these "hyper learning" charts should be an individual exercise.

Group study with your classmates should make you think more actively, not less. The best group size is five or fewer; often, the ideal size is two or three. Larger groups tend toward passivity of the members.

Self-Assessment. You ultimately must teach yourself the law. You must assess for yourself if you have learned the law sufficiently. This too can be challenging and stressful. Learning law is largely a solitary exercise. As a lawyer, you must teach and assess yourself during your entire career. You must learn to ask the right questions. You must learn to assess whether you have done enough to master the law. You must critique and improve your writing and analysis. One of the key aims of law school is to teach you how to do this.

You always will need to learn more law. You cannot possibly learn all of the law while in law school or

in practice, even as to a very particular area of the law. Instead, we at the law school will help you learn how to learn the law. We, the professors, are ourselves still learning.

IX. MY HEALTH AND POSSIBLE MAKEUP CLASSES.

As some of you already know, in the Fall of 2011, I was diagnosed with an aggressive form of breast cancer and had to withdraw from teaching the entire academic year to receive treatments. I now am "done" with treatments, but I am closely monitored by doctors here and in Houston, at MD Anderson. I therefore may need to alter some of our class periods. I currently do not have any scheduled appointments that would require me to miss a class this semester, but cancellation of class due to my medical visits is a possibility. I may use any absence as an opportunity for you to take a practice exam, depending on our class progress. I also may go "long" on some days – meet until 2:15 or later rather than 2:10 – and those extra minutes will give us some breathing room. I will keep you posted.

Finally, I have found that I mistake words when speaking. This likely is due to my increasing "old age" (nearing retirement), but the problem seems to be more pronounced after my chemotherapy. And, the problem seems to be getting worse, not better. Be patient. I often catch my mistake, and you usually can tell my intention from the context. But, I will not catch all of my spoken mistakes. My written words in the Handout Book are more reliable. If you are still confused after class, send me an email or ask me in person after class. I apologize in advance.

I look forward to working with you.

Carol Andrews