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

I. 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 (that is 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 because 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; 3) the basic steps in the process of a civil suit; and 4) rudimentary drafting of civil pleadings.

II. TEXTBOOKS. You must buy four required texts for this course:

First, 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). Please use the 2010 Federal Civil Rules Booklet by legalpub.com, Inc. [ISBN: 978-1-934852-11-8].

Second, as our "casebook, we will use materials that I have compiled into a Handout Book ("HB"). I suggest that you bind these loose papers or put them in a notebook. They will be on sale in the law school bookstore.

Third, we will use a form of "study aid," ["Glannon"]: Joseph Glannon, CIVIL PROCEDURE: EXAMPLES & EXPLANATIONS (Aspen, 6th Ed.) [ISBN 0-7355-5556-7]. Glannon gives brief but straight-forward descriptions of the topics and useful hypothetical questions with explanations.

Finally, please read (before classes start) a basic primer on the US legal system, American Courts, by Daniel Meador (West, 3rd edition 2009)(ISBN: 9780319410936).

III. ASSIGNMENTS AND CLASS PARTICIPATION

Your reading assignments are stated in detail in the Syllabus. For the first day of Civil Procedure class, read the material in Syllabus Section I.
The time spent on each section or topic will vary. We will move in the order listed on the syllabus. I expect you to keep up with the reading.

I have designated the 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 will ask you to join one of eight groups, which will be your “group” throughout the semester. If you want to form your own group of four (or possibly five students, depending on final class size), put your names on the sign-up sheet on my office door (#313).

I will assign each group to a few units during the semester. The Syllabus designates the units as either “Andrews” or “Group X.” I lecture on the subjects listed as “Andrews.” For the “group” assignments, I call on students in the group assigned to that unit. I will not “random call” on other students during these class sessions. You must attend class and be prepared on the day(s) that your group is assigned for class discussion (or suffer “grade penalty” points -- see below).

This year, for the first time, I am going to move to random calling on students for approximately the last quarter of the class. I am doing this because I have found that students stop preparing for and participating in class during this period, and I need to provide some added motivation to the class.

As to the group class assignment, 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 prepare for the class discussion. 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 (schedule permitting). This is beneficial for everyone. It is a great way to get to know each other and talk leisurely about civil procedure.

In addition, you will work in the same group to prepare two written pleadings (a draft complaint and answer). The group must timely file its pleadings – give me a written copy by the designated time and date – or suffer "grade penalty points" (see below). I will not affirmatively "grade" the submissions, but I will give written feedback. Your group must designate at least one spokesperson from your group for each of the two pleadings. The spokesperson(s) must sign the pleading and be prepared to discuss it in class, if needed.

In addition, you will have at least two individual writing assignments, one of which will be required (discussed below with regard to final exams – Section V).

**IV. LEARNING CIVIL PROCEDURE**

The Federal Rules of Civil Procedure are the primary source for study in this class (with the exception of the Syllabus Section II – “Choice of the Forum” – where the law comes primarily from the constitution, case law and statutes). This reliance on written, black letter rules distinguishes civil procedure from other courses, which rely principally on case law. In Sections III through VI of the
Syllabus (the “rule” portion), the cases primarily are illustrations of the application and/or interpretation of the rules, as opposed to the source of the law itself.

There are many ways to learn application of the rules: case illustrations of a rule’s application, my class questions, the problem sets, Glannon's questions, FRCP forms, and sample litigation papers. In addition, you may want to read the Advisory Committee notes that explain the drafting history of each rule. The “Advisory Committee” is the group or persons – law professors, judges and lawyers – who drafted the FRCP. These notes often are useful in understanding the rules. In the past, I used a rulebook that contained the notes, but now use a less expensive rulebook, which does not have the AC notes. The AC notes for Rule 11 and Rule 26(b)(1) are in the Handout Book. If you have trouble understanding any other Rules, you may want to read the AC notes for that rule on-line.

I use some cases to illustrate more than one topic or rule, because in practice an issue rarely presents itself in isolation. Issues of civil procedure arise at all stages of civil litigation. If you have trouble understanding why I assigned a case, go back and look at the day's topic on the syllabus and focus on that issue. It is a good idea to regularly consider issues of civil procedure beyond the issues for which the case is formally assigned. For example, you should ask yourself the bases for personal and subject matter jurisdiction in every case we study, even after we finish the jurisdiction study unit.

V. EXAMINATIONS AND GRADING

Your final grade will be based on your performance on the final examination. The only exception will be the few students who have grade penalty points (discussed below). I will make no other adjustments in the grade for class performance, written assignments or otherwise.

Your final examination will include both essay and multiple-choice questions, similar in format to the fall 1996 exam [included in the Handout Book]. I will (anonymously) grade your essay answers by giving you points for issues and ideas that you develop in your answer. I will grade both the essay and the multiple-choice portions on a curve, whereby your final letter grade will depend on your performance relative to that of your classmates.

Before I assign grades, I will see if any student has grade penalty points. I will deduct the equivalent of one multiple-choice question, each time that (1) you or your group submits a group problem assignment late (without an extension), or (2) you are absent and/or are not prepared for your group's class discussion assignment. I will deduct two multiple-choice questions if you or your group never turns in an assignment. The Registrar will assist me in this process to maintain anonymity. If an emergency arises and you cannot attend class or turn in your group's assignment, you must notify me in advance to avoid grade penalty points. [Note that I rarely have to give penalty points and I do not expect to have to do so this semester].

You may use a computer to take 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. We will discuss this more as the practice midterm exam approaches.

One of the most stressful aspects of law school exams is that law students usually do not know what to expect and do not know whether they are on the right track. Law school exams are different from most college exams. Many students struggle with the idea of writing an essay exam, particularly in civil procedure. I will help you ready yourself for law school essay exams in a few ways.

First, early in the semester, you will write an essay answer to a practice question concerning personal jurisdiction. I will comment on your essay and will have a group discussion of the content and style. Second, you will have a practice mid-term exam in October (date TBA). It will cover all material in the class up through the exam. This practice exam will be given under exam conditions, including your extensive study before the exam. I will comment on your exam answers, but it will not be “graded” or count directly toward your final grade. Third, I may offer you an opportunity in early November to write an essay answer to a question concerning civil discovery.

Copies of my fall 1995 and fall 1996 final exams are in the Handout Book. For your study of the actual final exam, I strongly suggest that you spend the time to study them and write out sample answers on your own. Do not “take” these old exams early, before I tell you to do so.

In section VII below, I further discuss essay exam writing. I also will do so throughout the semester, and the law school will offer workshops on exam writing.

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

My office is # 313. I usually will be in my office every weekday (I teach my other class at 9:35 in the morning three days a week (T, W, and Th). Feel free to ask me questions at any time that you see me. I appreciate your opinions on the class. I encourage you to talk to me. If you do not understand a point, ask me.

I prefer questions outside of class. I give many opportunities for feedback and consultation with me. The class session is just one of the many ways in which I hope to guide you in your study of law. That is a session of limited time and structure, for all students. If you have questions, wait. Many of them will be answered in that class. If not, ask me after class.

I encourage you to eat lunch with me. We can eat at the law school café or walk over to Newk’s or Arby’s. I like to walk with students around campus to discuss civil procedure or other topic. Walking is a good way to reduce stress and clarify your thoughts (unencumbered by papers/notes). In my practice years, I walked often to discuss and sort out difficult legal issues.

You must monitor your emails. You will be given a law school email address. I regularly will send the class group emails in which I update assignments, address questions, and give you handouts. 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 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** on one side of the classroom and a white board on the other side, every day, so select a seat from which you can see both. If you need special accommodation for a visual or other impairment, you should inform Dean Marsh so that she can set up school-wide arrangements. Please see me if I can do anything in addition to facilitate your learning.

The Law School has a **strict attendance policy.** You may not miss more than 12 sessions of this class, no matter the excuse. If you miss twelve class sessions, you will be withdrawn from the course, likely as a “fail” (unless you can convince the Dean’s office (and me) that yours should be a withdraw- “pass”). If you miss class, I do not need to hear why, unless you are scheduled for a group discussion that day and/or exceed 12 class absent sessions. 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. If you attend class (on time) but miss the roster, you may retroactively sign it, if and only if, you have my permission.

You may not record, videotape or photograph any portion of the class without my prior approval. 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 instant 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 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 class (it is one of my primary areas of expertise and interest), but 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 16-hour course load, you must study on average 48 hours per week, in addition to the time spent in the classroom. You should spend most 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. To achieve the proper balance, 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, 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.

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 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-only events and rare 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, but most students put too much weight on class preparation.

**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, 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.

You must learn to ask different types of questions but 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. Learn to mimic this process and do this critical reading 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. 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 (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 (See Section IV above, concerning study of CP rules) and questions and those of your professor.

**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.” Glannon is not the source of the law of civil procedure. The FRCP are the source. I am not the source either. I am merely an aid 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 and the role of that law. 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 in CP 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 CP cases, the source law is a rule of civil procedure, and the case is merely illustrative of 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 usually is merely representative of countless other similar cases 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 year 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, 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 at least thirty minutes (but rarely more than an hour total) on this daily retroactive review before moving to the next day’s assignment.

The **second** step is **weekly** review. On Friday afternoons (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 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. Each weekend, after your Friday night “big picture” review, you should use the remainder of the weekend to outline. This is a bi-weekly or tri-weekly exercise only with regard to a particular course. You should outline
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.

At the beginning, you may simply alternate weekends, but as the semester continues, you must
become more selective. In selecting which 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 that Friday’s weekly review). You should make sure that you have an
outline done for each major topic soon after you finish that topic in class, but you cannot ever
let one course go without outlining for more than three weeks. This means that many
weekends will require you to outline two courses.

The bi/tri-weekly review of each course best involves three elements – outlining,
hypotheticals, and 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 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 more thorough discussion of the law reflected in the syllabus in a
fuller analytical structure. When you outline, you should have in front of multiple
materials: primarily your casebook and/or rulebook and class notes, but also other
materials such as your case briefs and Glannon. 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. 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 (and other books like it) is filled with 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’s. 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.

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 - 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, 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 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.

As you are doing this “hyper” learning, you periodically should test yourself through hypothetical questions. Do not go through the hypo’s too quickly. Think. Deliberate. Commit your logic to paper. Write down the key steps in your analysis of that 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’s?

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 with sufficient 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.

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 knowing 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 examples of essay answers. 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 (note that 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 facts and issues [the “I” in IRAC] (e.g., “The defendant has 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 and restating the exam question. On most law school essay exams, you should think about 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 application 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 case- 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 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.

In this CP class, I assign particular parts of the Glannon book throughout the semester. Read the parts as I assign them. You may and should look at them again, later, but you should not use Glannon before it is assigned. I am trying to teach you how to use this particular study aid. If you want to focus in-depth on a particular 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. They also may not be analytically sound. Remember that these older outlines were made by a person who at the time was not much farther into the learning process than you. More 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’s 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, after and 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.

Generally, it is not a good use of your study time to go over cases, rules and basic material as a group. You should never 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 original 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.

Groups should make you think more actively, not less. Usually, the best group size is five or fewer. Often the ideal group size is two or three. Larger groups tend toward passivity of the members.

**Self-Assessment.** You ultimately must teach yourself the law. You must ask the right questions. You must assess whether you have done enough to master the law. You must critique and improve your writing and analysis. One of the principal aims of law school is to teach you how to do this. As a lawyer, you will have to teach and assess yourself during your entire career.

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. SCHEDULING**

We have an odd schedule. We meet for 50 minutes three days a week (M, W and Th), but on Tuesdays, we meet 75 minutes. This is to pad our schedule by a half class period every week so that we do not have to do extra makeup classes [if I were to get sick or otherwise have to miss class] and so that we can break for a study period for the practice midterm.

I look forward to working with you.
I. INTRODUCTION TO US LEGAL SYSTEM & CIVIL PROCEDURE (Andrews):

A. The American Legal System: Dispute Resolution Systems and Sources of Law
   Review: Charts (HB, 4 and 5)
           Meador book (entire book)

B. Overview of a civil action
   Review: Stages of a Civil Lawsuit charts (HB, 6-13)
            Sample pleadings and litigation papers (HB, 14+)
            CP Chap. 30

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

A. Introduction to Forum Choice
   Review: “Which Court?” chart (HB, 29)
            CP, Chap. 6, pages 109-14 (text only, not the problems)

B. Personal Jurisdiction

   1. Introduction
      Review: Andrews' summary case note - Pennoyer (HB, 30)
               Andrews' excerpt, discussion of Pennoyer era pj (HB, 33-35)
               CP Chap. 1, Intro (pp 3-4)

   2. The “Minimum Contacts” Test
      Study: International Shoe (HB, 43) (Group #1)
      Review: U.S. Const, Amend 5 & 14 (Sec 1) (due process clauses) (RB, 210)
               CP Chap. 1 (pp 4-5) (text only, not problems)
               Andrews' essay re Shoe and policy of relatedness (HB, 35-37 and 40+)

   3. Personal Jurisdiction -- Specific PJ
      Study: Worldwide VW (HB, 48) (Group #2)
             Asahi (HB, 57) (Group #3)
      Review: Andrews’ excerpt re WWVW (HB, 37-38)
               Andrews' case notes - McGee, Hanson, Kulko, Keeton & BK (HB, 30+)
4. Personal Jurisdiction - General PJ
   (Group #4)
   Study: Helicopteros (HB, 64)
          Potts (HB, 72)
            Andrews' case notes – Perkins and Keeton (HB, 30+)
            CP Chap 1, pp. 5-7 [be careful of oil company example on page 7!]

5. Personal Jurisdiction based on Service, Property and Consent
   (Group #5)
   Study: Burnham (HB, 76)
   Review: Andrews' case notes - Shaffer and Insurance Corp.
            Andrews' essay re Shaffer and Burnham (HB, 39-40)

6. Challenging Personal Jurisdiction    (Andrews)
   Review: FRCP 12(b)(2)
            CP Chap. 3 (pp. 47-53) (text only)

7. Summary and Review
   PJ Practice Essay (in-class handout)
   CP Chap 1, p. 14 (problem #15)

C. Subject-Matter Jurisdiction

1. Introduction     (Andrews)
   Review: U.S. Constitution, Article I (Sec. 8)(RB, 205)
            Article III (Sec. 1 and 2 (cl.1) (RB, 208)
            28 USC §§ 1331 & 1332(a) (RB, 173)
            CP Chap. 4 (pp 63-65)

2. Federal Question Jurisdiction    (Group # 6)
   Study: 28 USC §§ 1257 (HB, 87, note) and 1331 (RB, 173)
           CP Chap. 4 (pp. 63-71 and problems 1 thru 10 & 15)
           Mottley (HB, 85)
   Review: Civil Rights Statute, 28 USC §1983 (HB, 106)
            "RICO" statute excerpts, 18 USC §1961 (HB, 88)
            Patent, etc., jurisdiction statute, 28 USC §1338 (RB, 178)

3. Introduction to Removal     (Andrews)
   Review: 28 USC §§ 1441(a)&(b) and 1446(a), (b) & (d)
           CP Chap. 7 (pp. 123-27) & CP Chap 32 (p 53, sample removal papers)
           McDonald (HB, 91); Rayfield (HB, 93)

4. Diversity Jurisdiction
   Study: 28 USC §1332 (a)(1) [skip the statutory material after §1332(a)(1)]
   Diversity - Natural persons:
       (Group #7)
       McDonald (HB, 91); Rayfield (HB, 93)
       CP Chap 5, 89-92 & problems 1-7  [skip problems 1(e), 1(f)]
4. Diversity Jurisdiction (continued)  
   Study: Diversity - Corporations:  
   (Group #8)  
   28 USC 1332(c)(1); *Hertz* (HB, 97)  
   CP Chap 5, 92-93 and problems 8-11  
   Diversity - Amount: CP Ch 5, 95-99 [skip Case #4 & problems 12d, 12e]

D. **Introduction to Venue** (Andrews)  
   Review: 28 USC § 1391(a), (b) and (c)  
   CP Chap. 8 (pp.141-47)

E. **Introduction to Choice of Law** (Andrews)  
   Review: 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 Choice of Court

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

A. **Introduction to the Federal Rules of Civil Procedure**  
   (Andrews)  
   Review: FRCP 1, 2 and 83

B. **Introduction to “Pleadings” and “Motions”**  
   (Andrews)  
   Study: FRCP 7  
   Review: Andrews sample pleadings and motions (HB, 14+)  
   FRCP Forms 30 and 40 (RB, 117-19)

C. **Introduction to “Cause of Action” and Complaints**  
   (Andrews)  
   Study: FRCP 3, 5(d) & 7  
   Review: Andrews sample complaint (HB, 14)  
   CP sample complaint CP Chap. 31 (p. 634)  
   Negligence and Fraud chart (HB, 105)  
   42 USC §1983 and Pattern Jury Instruction for a $1983 claim (HB, 106)

D. **Form of the Complaint**  
   (Group #1)  
   Study: FRCP 8(a), (d)(1) & (e), 10, and 84  
   Review: FRCP Forms 1, 7 and 11  
   Andrews sample complaint (HB, 14)  
   Comparison of pleadings chart (HB, 109)

E. **Particularity of Pleading**

1. **Particularized pleading**  
   (Group #2)  
   Study: FRCP 9(b)  
   FRCP 21  
   *General Cigar* (HB, 127); *Scott* (HB, 131)
2. Notice pleading vs. particularized pleading (Group #3)

Study: FRCP 8(a), 9(b)
FRCP Form 11

Leatherman (HB, 110); Swierkiewicz (HB, 113); Iqbal (HB, 117)

F. “Ethics” in Pleading

1. History and elements of Rule 11

Study: FRCP 11
Review: FRCP advisory committee notes: 1983 and 1993 amendments

2. Application of Rule 11 (Group #4)

Study: FRCP 8(d)(2) & (3), FRCP 11
FRCP Forms 2 and 12

Garr (HB, 150); Mars (HB, 143); Walker (HB, 146)

G. Introduction to Joinder and Severance of Claims

Study: FRCP 18(a), 42 and 82
FRCP Form 13
CP Chap.13 (pp. 253-55, 257-58)

H. Simple Joinder of Parties (Group #5)

Study: FRCP 20 & 21
CP Chap. 13 (pp 253-55, text and problems 1, 3 (exclude 3f) thru 6, &16)

Novartis (HB, 157); SAP America (HB, 162)

I. Jury Demand (Andrews)

Study: FRCP 38(a), (b) and (d)
Review: FRCP 39, 47 & 48
US Constitution, Amendment 7

J. Other Materials Filed with the complaint (Andrews)

Review: FRCP 5.1, 7.1

K. Service of the Complaint and Notice to the Defendant

1. Due process standards (Group #6)

Study: Mullane (HB, 165)
CP Chap 18 (pp. 345-46, 349-50, text)
US Constitution, Amendments 5 and 14

2. Rule requirements for service (Group #7)

Study: FRCP 4(a) through 4(e), 4(h), 4(l) and 4(m)
FRCP Forms 3, 5 and 6
CP Chap 18 (pp. 345-50, text & problems 1-8)(skip Mass rule at p 308)
L. Amendment of the Complaint

Study: FRCP 7(a), 15(a)

Sabatini (HB, 171)

CP Chap. 20 (383-89) (text and problems 1 thru 8)

Review: FRCP 15(b), (c) & (d)

CP Chap. 20 (p. 389-95)

M. Summary and Review (All students)

Review: CP Chap 31 and Group complaint (in-class hand-out)

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

A. The “Answer” – Response to Complaint Allegations

Study: FRCP 8(b), 10 and 11(b)(4)

FRCP Forms 30 & 40

Beckman (HB, 177)

Review: Andrews sample answer (HB, 17)

CP sample answer, CP Chap. 33 [examine paragraph 7, page 663]

Advisory Committee notes re 1993 amendment to Rule 11 re denials [handout]

B. The “Answer” – Affirmative Defenses

Study: FRCP 7, 8(c) and 8(d)

LaFont (HB, 179); Harriss (HB, 181)

C. The “Answer” – Cross-claims and Counterclaims

Study: FRCP 7; FRCP 13(a), (b) and 13(f) thru (i); FRCP 18

CP Chap. 13 (pp. 255-57 and problems 7-15)

Keisser Insurance (HB, 185)

D. Timing and Service of Response (Andrews):

Study: FRCP 4(d)(3), 5, 6, 12(a) and 15(a)

E. Amendment of the Answer

Study: FRCP 15(a)

Harriss (HB, 181); Beeck (HB, 188)

F. Rule 12(b) Motions to Dismiss (Andrews):

Study: FRCP 7(b), 12(a) & 12(b) and FRCP Form 40

CP Chap. 19 (pp. 367-69), CP Chap. 23 (pp 473-77 and problems 1 thru 6)

Smith-Haynie [Part I] (HB, 187); Anderson (HB, 191)

Review: Consider motions in previous cases (e.g., Potts, Leatherman, Swierkiewicz, Scott, General Cigar, Iqbal, Walker)
G. Other Rule 12 Motions (Group #5)
Study: FRCP 12(c) through 12(f) and 12(i)
*Austin* (HB, 201); *Erikson* (HB, 204)

H. Consolidation of Motions and Waiver of Defenses (Group #6)
Study: FRCP 8(c), 12(g) & 12(h)
CP Chap 19 (problems 1 thru 12 & 14)
*Harriss* (HB, 181)

I. Summary and Review (All students)
CP Chap. 33 and groups prepare/draft Answer to Group Complaints (In-class hand-outs)

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

A. Introduction to Discovery (Andrews)
Study: FRCP 26 (except Rule 26(a) & 26(b)(4))
CP Chap 21, pp. 409-10; CP Chap 22 (pp. 435-36, text)

B. Scope of Discovery – Relevance (Group #7)
Study: FRCP 26(b)(1)
*Kozlowski* (HB, 211) [Parts I and II]; *United Oil* (HB, 215)
Fed. Rule of Evidence 401 and notes (HB, 208)
CP Chap. 21 (pp. 409-12 and problems 3 thru 5)
Advisory Committee Notes, 2000 amendment to Rule 26(b)(1) (HB, )
Review: FRE 407 (RB, 151); FRE 802 (RB, 161)

C. Limitations on Discovery

1. Introductory to Privilege (Andrews):
   Review: FRCP 26(b)(1), FRCP 26(b)(5),
   CP Chap. 21 (pp. 410-12)

2. Confidentiality, Burden and Other Limits on Discovery (Andrews)
   Study: FRCP 26(b)(2), 26(c)
   *Kozlowski* (HB, 211) [Parts I, III & IV]
   CP Chap. 21 (problems 6 thru 8)
   Review: FRCP 5.2

3. Work Product Protection (Group #8)
   Study: FRCP 26(b)(3) & 26(b)(5)
   CP Chap. 21 (pp. 413-15 and problems 1, 13-16)
   *Hickman* (HB, 221)
D. General Duties in Discovery

1. Timing and Sequence of Discovery
   Study: FRCP 26(d), 26(f), 29
   Review: FRCP 16; FRCP Form 52

2. Duty of Supplementation
   Study: FRCP 26(e)(1)

3. Duty of Good Faith and Reasonable Inquiry
   Study: FRCP 26(g)

E. Discovery Devices – Introduction

1. Interrogatories (all students – random call)
   Study: FRCP 33
   United Oil (HB, 215)
   CP Chap. 22: text (p. 436), problems 1 thru 7 (pp. 447-48) and sample interrogatory and problems (p. 463-71)

2. Document Requests (all students – random call)
   Study: FRCP 34
   Kozlowski (HB, 211) [Part IV]; United Oil (HB, 215)
   CP Chap 22: text (pp. 437-39) and problems 8-10 (pp 448-49)
   Review: FRCP Form 50
   Andrews sample discovery (HB, 22+)

3. Depositions (Andrews)
   Review: FRCP 30
   CP Chap. 22: text (pp. 441-42) and sample papers (pp. 457-58)

4. Physical/Mental Exams (Andrews)
   Review: FRCP 35(a)

5. Requests to Admit (Andrews)
   Review: FRP36
   FRCP Form 51

6. Automatic Disclosures
   Review: FRCP 26(a)(1), FRCP 26(a)(3) & FRCP 26(d)
   CP Chap. 22 (pp. 445-46)

F. Discovery Motions, Protective Orders and Sanctions (all students – random call)
   Study: FRCP 26(c), 26(g) 37
   Kozlowski (HB, 211); United Oil (HB, 215)
   CP Chap 22 (p. 396)

G. Mock Final Exam: Fall 1995 Exam (HB, 273), Essay Question #1 (HB, 281)
A. Summary Judgment -- Mechanics and Standards  (Andrews)
Study: FRCP 12(b) and FRCP 56
CP Chap. 23 (pp. 473-80)
Andrews' overview of summary judgment (HB, 230)
Review: Ala. Code §12-21-12 (HB, 228)
Pattern jury instruction re burden of proof (HB, 229)
Proposed amendment to FRCP 56 and AC notes (in-class handout)

B. Summary Judgment -- Practical application  (all students – random call)
Study: FRCP 56
CP Chap. 23 (problems 10-15) and CP Chap 36
Celotex (HB, 231); Albert (HB, 239); Martin (HB, 242)

C. Introduction to Trial  (Andrews)

D. Trial Motions for Judgment as a Matter of Law or New Trial  (all students – random call)
Study: FRCP 50(a) & (b); FRCP 59(1)(a), 59(b) and 59(d)
Alabama Code 12-13-11 (HB, 251)
Newtown (HB, 245)Warren (HB, 248);
Review: CP Chap 24 & Chap 25
FRCP 52, 54(a) & 54(b), 58, and 79(a)

E. Motions in the Trial Court to Vacate the Judgment (Andrews)
Review: FRCP 51, 54, 59, 60 and 61
Brandon (HB, 252)

F. Default  (all students – random call)
Study: FRCP 5(a)(2), 54(c), 55(a) thru 55(c), 60(b) and 77(d)(1)
C&G Boats (HB, 255), Rice (HB, 258)

G. Other Dismissals  (all students – random call)
Study: FRCP 41
Prairie State Bank (HB, 262); McDaniel (HB, 265)

H. Introduction to the Preclusive Effect of Dismissals/Judgments (all students – random call)
Study: FRCP 4(m); FRCP 41
White v. New York (HB, 267); Rinehart (HB, 269)
Review: Consider dismissals/judgments in previous cases (e.g., Mottley, Austin, Scott )

I. Appeals (Andrews)

VII. FINAL OVERVIEW – Review Fall 1995 and 1996 final examinations (HB, 273 & 281)