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; and 3) the basic steps in the process of a civil suit.

II. TEXTBOOKS. You must buy two 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 2011 Federal Civil Rules Booklet by legalpub.com, Inc. [ISBN: 978-1-934852-17-0].


Finally, I recommend, but do not require, that you read (before classes start) a basic primer on the US legal system, American Courts, by Daniel Meador (West, 3rd edition 2009)(ISBN: 9780319410936).

[The email that I sent to many of you in May, suggesting that you buy this book, mistakenly cited the 2d edition, published in 2000. If you read that version, you do not need to buy the new version. The differences are statistical and other updates not pertinent to the purpose for which I suggested the book – a background primer. Nevertheless, I apologize for the error.]

III. ASSIGNMENTS AND CLASS PARTICIPATION

Your reading assignments are stated in detail in the attached Syllabus.

For the first day of our Civil Procedure class, read the material in Syllabus Section I, Section II(A),
Section II(B)(1) and Sections II(B)(2)(a) and (b) [through Diversity – “natural persons”]. Most of this reading, particularly Section I, is background and introductory material that we will not discuss now in class as independent topics. We will cover the important aspects of this material, later in independent Syllabus sections dedicated to the topics. You should focus your study for the first day on the material in Section II regarding subject matter jurisdiction, particularly the section noted as one for “random call.” I will call on students. You can read some or all of this first day’s material early (even now), before you arrive for orientation.

The time spent on each section or topic will vary. The Syllabus divides the material by topic, not the class period. We will move in the order listed on the syllabus. I expect you to keep up with the reading. Some units take longer than one class period and others take less.

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 eleven groups, which will be your “group” throughout the semester. If you want to form your own group, put your names on the sign-up sheet on my office door (Office #313) (six or five students per group, depending on final class size).

I will assign each group to a few units during the semester. The Syllabus designates the units as “All,” “Andrews,” “Random” or “Group X.” The subjects listed as “All” are primarily background material that I will not discuss in class as independent topics. I will lecture in class on the subjects listed as “Andrews.” I will random call on students on subjects listed as “Random.” For the “group” assignments, I call on students in the group assigned to that unit. I will not “random call” on other students regarding the topics designated as “group.” 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).

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.

IV. 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 have both essay and multiple-choice questions. I will grade your essay answers anonymously 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 you are absent and/or are not prepared for your group's class discussion assignment. The Registrar will assist me in this process to maintain anonymity. If an emergency arises and you cannot attend class, you must notify me in advance to avoid penalty points. [I rarely have to give penalty points and do not expect to do so this semester].

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 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 study and exams in a few ways. First, I will offer you optional study skills sessions on Fridays in which I will discuss a variety of skills and suggestions for success in law school. I have summarize those suggestions, below in Section VII of this Syllabus.

In addition, early in the semester, I will offer you the option to take a practice exam covering all of the topics in Section II of the Syllabus (choice of court). This practice exam will be given under exam conditions, including your extensive study before the exam. I have not yet set the time or date for this practice exam, but it will be in September and likely will be on the first Friday afternoon after we have completed the topic. Finally, I will offer you an opportunity late in the semester to write an essay answer to a question concerning civil discovery.

V. 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 “Conflicts” class at 1 pm on the same days as our class). 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 usually 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. The class itself 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. During many class sessions, I will open the class to your questions. Ask your questions then.

In addition, I will hold occasional “Question and Answer” sessions on Friday afternoons, at 2pm (after my Conflicts class). I have scheduled two early kick-off sessions, for 2pm on Friday, August 19 and Friday, August 26 (in room 175).
You also can see me after class, in my office or otherwise, individually or in small groups, to ask questions and more fully explore Civil Procedure. 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. We meet until noon every day and I teach again at 1pm on the days we meet, so, unfortunately, those days will be tight for lunch. But, there is no harm in asking about lunch. I may be able to have a quick lunch inside the building with you.

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.

Finally, you can send me a question by email (though I might ask to discuss in person, if that is an easier way to discuss your question).

You must monitor your law school emails. 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.

VI. 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 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 Dean Marsh so that she can set up 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 sessions of the regular class sessions (excluding the optional Friday afternoon sessions), no matter the excuse. If you miss ten 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 to hear why, unless you are scheduled for a group discussion that day and/or exceed 9 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 texting or other messaging signals) before each class.

VII. “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 our Friday sessions (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 student 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 (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.

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 30 minutes (but rarely more than an hour total) on this daily retroactive review before reading 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 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 multiple materials: primarily your casebook 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. 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 hypotheticals. 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 casebook (as well as his other study aids) 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 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 cases 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 facts and 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 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 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 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 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.

Group study with your classmates 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. Learning law is largely a solitary exercise. As a lawyer, you will have to 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 principal 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.

**VIII. OUTSIDE STUDY WORKSHOPS.**

I will offer occasional workshops on Friday afternoons, to discuss study skills and class questions. I will start on Friday, August 19, and hold another on August 26. Both will be at 2 pm, in Room 175. You may ask questions about both study skills and the substance of Civil Procedure, but I plan to begin at least the first one, with an overview of my advice on how best to approach your study in law school generally, and in civil procedure class, in particular. In the past, I have done this study skills instruction in the class itself and in workshops for the entire class. For a variety of reasons, I decided to offer most such instruction in these optional sessions for my own students who want to attend.

I look forward to working with you.
SYLLABUS

Key:

CB  Casebook, Glannon, Perlman & Raven-Hansen, Civil Procedure: A Coursebook

Review   Read the material for its general content without detailed study
Study    Carefully read, analyze and re-read the material for a full understanding

Andrews  Professor Andrews will lecture on the subjects
Group X  The students in the assigned group number will answer questions about the subject
All     Students should read as background but topics not discussed in class
Random  Professor Andrews will call on students randomly (not announced in advance)

§  This symbol means “Section”
FRCP  Federal Rules of Civil Procedure
__ USC § __ United States Code [Title #, USC, Section #] – found in back of Rulebook

I.  INTRODUCTION  (All)

A.  The American Court System

Review:  CB, Chapter 1, §§ 1 – IV
CB, Chapter 28, §§ II(A) and II(B)
CB, Chapter 32, §§ I and II (pp 1137-41) and § IV (pp 1149-50)

B.  Overview of a Civil Action and Sources of Law Governing Civil Procedure

Review:  CB, Chapter 2

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

A.  Introduction to Choice of Court

B.  Subject Matter Jurisdiction

1.  Introduction  (Andrews)

Review:  US Constitution, Article I § 8 and Art III § 1 and § 2, clause 1
28 USC §§ 1331 and 1332(a)
CB, Chapter 1, §§ V and VI (pp 11-18)
2. Diversity Jurisdiction

a. Introduction

Study: US Constitution, Art. III, § 2, clause 1
28 USC § 1332 (a)(1) [skip material after § 1332 (a)(1)]
CB, Chapter 3, § I (pp 39-41)

b. Citizenship of Natural Persons

Study: CB, Chapter 3, §§ II and III (pp 41-57)
[skip the material at pp 54-57, Notes # 2, #3, #4 and #8]

c. Citizenship of Corporations

Study: 28 USC § 1332(c)(1)
CB, Chapter 3, §§ IV
[skip material at pp 69, Notes #5, 6 and 7]

d. Amount-in-Controversy

Study: CB, Chapter 3, §§ V and VI [skip the material at p 81, #2]

e. Constitutional vs Statutory Limitations and Summary

Study: CB, Chapter 3, §§ VII and VIII

3. Federal Question Jurisdiction

a. Introduction and Constitutional Limitations

Study: US Constitution, Art. III, § 2, clause 1
28 USC §1331
CB, Chapter 4, §§ I and II

b. Mottley and the Well-Pleased Complaint Rule

Study: CB, Chapter 4, §§ III

4. Introduction to Removal

Review: 28 USC § 1441 (a) and (b) and §1446 (a), (b) and (c)
CB, Chapter 5, §§ I, IV and VI
C. **Personal Jurisdiction**

1. **The Early History of Personal Jurisdiction** *(Andrews)*
   
   Review: US Constitution, Amendments 5 and 14 [Due Process Clauses]  
   CB, Chapter 6, §§ I – III

2. **The Shoe “Minimum Contacts” Due Process Test for Personal Jurisdiction**
   
   Study: CB, Chapter 6, §§ IV & V *(Group 4)*

3. **Challenging Personal Jurisdiction** *(All)*
   
   Review: CB, Chapter 6, § IV, Notes 10-14

4. **Refinements on Minimum Contacts - Specific Personal Jurisdiction**
   
   a. **The WWVW Two-Prong Test**
      
      Review: CB, Chapter 7, §§ 1A and IC *(All)*
      
      Study: WWVW, CB, Chapter 7, § IB (pp. 182-99) *(Group 4)*

   b. **Application of the WWVW Test**
      
      Study: *Burger King*, Chapter 7, § ID (pp 201-08) *(Group 5)*  
      *Asahi*, CB, Chapter 7, §§ III, IV, and VII *(Group 6)*  
      *Nicastro*, [handout] *(Group 7)*
      
      Review: CB, Chapter 7, §§ II and V

5. **Refinements on Minimum Contacts - General PJ Based on Contacts**
   
   Study: *Helicol*, CB, Chapter 8, § I *(Group 8)*  
   *Goodyear* [handout] *(Group 9)*
   
   Review: CB, Chapter 6, § IV (re-read Shoe)  
   CB, Chapter 7, § IV (re-read notes on relatedness)

6. **Other (non-contacts) Bases for PJ – Pennoyer Revisited – Tag, Property, Consent**
   
   Study: Tag – CB, Chapter 8, § IV *(Group 10)*  
   Consent – CB, Chapter 8, § VI *(Andrews)*
   
   Review: Property – CB, Chapter 8, § III (intro, pp 260-64)
7. Statutory Limitations

Review: CB, Chapter 9, §§ I, II, IV and V

9. Summary and Review

Study: CB, Chapter 7, § VI
CB, Chapter 8, § V and VII

D. Introduction to Venue

Review: CB, Chapter 11, § 1

E. Introduction to Choice of Law

F. Summary and Review – Optional Practice Test

III. SERVICE OF PROCESS

A. Introduction

Review: CB, Chapter 10, § I

B. The *Mullane* Due Process Reasonableness Test

Study: US Constitution, Amendments 5 and 14 (Due Process Clauses)
CB, Chapter 10, § II (pp 320-33)

C. The Rule Requirements for Service

Study: FRCP 4(a), (b), (c), (e), (h), (l) and (m)
CB, Chapter 10, §§ III (A) through III(D) and III(F)

D. Waiver of Service

Study: CB, Chapter 10, § III(E)
FRCP 4(d)
FRCP Forms 3, 5 and 6

E. Summary and Review

Study: CB, Chapter 10, §§ V and VI
IV. THE INITIAL STAGES -- PLEDGING AND EARLY MOTIONS

A. Introduction

Review: FRCP 1, 2, 7 and 83
FRCP Forms 11, 30 and 40
CB, Chapter 13, §§ 1 and II
CB, chapter 28, § II (pp 1017-20)

B. The Complaint

1. Introduction to the “Complaint” and Cause of Action

2. Form and Other Requirements

   Study: FRCP 8 (a), (d)(1) and (e)(1), FRCP 10, FRCP 84
   FRCP Forms 1, 7 and 11

   Review: Sample “Doe” complaint (CB, pp 426-29)

3. The Substance – The “Notice Pleading” Requirement

   Study: CB, Chapter 13, § III [skip Notes # 9 & 10, pp 424-25]
   FRCP 8(a)
   FRCP Form 11

   Review: NC Pleading [handout]

4. The Substance – Heightened Pleading

   Study: CB, Chapter 13, § III
   FRCP 9(b)
   FRCP Form 21

   Review: NC Pleading [handout]

5. The Substance – A New Pleading Standard?

   Review: CB, Chapter 13, § V

6. Summary and Review

   Review: CB, Chapter 13, § VI
C. Defense Response Options

1. Introduction (Andrews)

   Study: FRCP 7(a) and FRCP 12(b)
   FRCP Forms 30 and 40
   CB, Chapter 14, § I

2. Timing and Service of the Response (Andrews)

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

3. Default (Group 5)

   Study: FRCP 5(a)(2), FRCP 54(c), FRCP 55(a) through (c)
   FRCP 60(b) and FRCP 77(d)(1)
   CB, Chapter 14, § II

4. Rule 12 Motions (Group 6)

   Study: FRCP 12(a) through 12(f)
   FRCP Form 40
   CB, Chapter 14, § III(A) (pp. 472-82)
   CB, Chapter 13, §III (pp 420-23, Notes # 4-5 and 8)

5. The Answer

   a. Responses to Complaint Allegations (Group 7)

      Study: FRCP 8(b)
      CB, Chapter 14, § IV, pages 489-90
      CB, Chapter 14 Notes #2-5, pp 494-95

   b. Affirmative Defenses (Group 8)

      Study: FRCP 8(c); FRCP 12(f)
      CB, Chapter 14, §§ IV and V

6. Summary and Review (All)

   Study: CB, Chapter 14, §§ VI and VII
D. Ethics and Good Faith in Pleading

1. Introduction and History of Rule 11

   Study: FRCP 11 (Andrews)
   CB, Chapter 15, § V (pp 540-43)
   Review: CB, Chapter 15, § I
   Advisory Committee Notes on Amendments to FRCP 11 [handout]

2. Reasonable Inquiry (Group 9)

   Study: FRCP 11(b)
   CB, Chapter 15, § II

3. Legal Arguments (Group 10)

   Study: FRCP 11(b)(2)
   CB, Chapter 15, § III

4. Purpose (Group 11)

   Study: FRCP 11(b)(1)
   CB, Chapter 15, § IV

5. Mechanics of Rule 11 Motions, Summary and Review (All)

   Study: FRCP 11(c)
   CB, Chapter 15, §§ V and VI

E. Amending Pleadings

1. Introduction (Andrews)

   Review: FRCP 7(a), FRCP 12(a) and FRCP 15
   CB, Chapter 16, § I

2. Amendments as a Matter of Course (Random)

   Study: FRCP 15(a)(1)
   CB, Chapter 16, § II

3. Amendments with Consent or Leave of Court (Random)

   Study: FRCP 15(a)(2)
   CB, Chapter 15, § III

   19
F. Suit and Pleading Structure – Simple Joinder

1. Introduction and Simple Joinder of Claims (Andrews)
   Study: FRCP 18, 42 and 82
   CB, Chapter 17, §§ I and II
   CB, Chapter 16, § V Note #10 (p 558)

2. Simple Joinder of Parties (Random)
   Study: FRCP 20
   CB, Chapter 17, § III

3. Counterclaims (Random)
   Study: FRCP 13(a) and (b)
   CB, Chapter 17, §§ IV
   [skip Note #3, p 615]

4. Crossclaims (Random)
   Study: FRCP 13(g)
   CB, Chapter 17, § V

5. Summary and Review (All)
   Study: FRCP 7, FRCP 13(h) and 13(i), FRCP 18
   CB, Chapter 17, pp. 630-31

G. Waiver of Claims and Defenses
   Study: FRCP 8 and FRCP 12(g) and (h); FRCP 15(a) (Random)
   CB, Chapter 14, § III(B) (pp 482-89)
   CB, Chapter 8, § VI(B) (p 296)
   Harriss case [handout]

VI. DISCOVERY

A. Introduction (Andrews)
   Review: FRCP 16, FRCP 26 [skip FRCP 26(a) and 26(b)(4)]
   CB, Chapter 21, § I
B. Informal Discovery

Review: CB, Chapter 21 § II

C. General Rules and Limitations of Formal Discovery

1. The Scope of Discovery – Relevance

Study: FRCP 26(b)(1)
FRE 401
CB, Chapter 21, § III(A) through III(D)
Advisory Committee Notes re 2000 Amend [handout]

Review: CB, Chapter 21, § III(A), (B) and (D)

2. Work Product Protection

Study: FRCP 26(b)(3) and 26(b)(5)
CB, Chapter 17, § III(E)

3. Reasonableness, Good Faith & Supplementation

Study: FRCP 26 (b)(2), 26(c), 26(e)(1) and 26(g)

C. The Discovery Methods

1. Introduction

Review: CB, Chapter 22, § I (pp. 801-02)

2. Timing, Filing and Sequence of Discovery

Study: FRCP 5(a) &(d), FRCP 26(d) & 26(f) and FRCP 29
CB, Chapter 21, § III (pp. 808-09)

3. Interrogatories

Study: FRCP 33
CB, Chapter 21, § III (pp 809-14)

4. Document Requests

Study: FRCP 34
CB, Chapter 21, § IV and § V (pp 814-18)
5. Other Tools and Summary

Review: CB, Chapter 21 §§ VI (pp 825-28), VII (pp. 833, 839-40, Notes 3 & 4), VIII and IX

D. Discovery Control and Motions (Group 10)

Study: FRCP 26(b)(2), 26(c) and 26(g) and FRCP 37
CB, Chapter 23

E. Summary and Review -- Practice Test: Discovery Essay Exam

VII. DISPOSITIONS WITHOUT TRIAL

A. Voluntary and Involuntary Dismissals (Random)

Study: FRCP 41(a)
CB, Chapter 27, §§ I, II and III

B. Summary Judgment (Random)

Study: FRCP 56
CB, Chapter 27, § IV & V

VIII. TRIAL AND POST-TRIAL MOTIONS

A. Introduction

B. Juries (All)

Study: FRCP 38
Review: US Constitution, Amendment 7
CB, Chapter 28, § § I, II, V, VI and VII

C. Rule 50 Motions for Judgment as a Matter of Law (Random)

Study: FRCP 50(a) and (b)
CB, Chapter 29, § I

D. Rule 59 Motions for New Trial (Random)

Study: FRCP 59; FRCP 61
CB, Chapter 31, §§ I and II(A), II(B), II(C), and III
E. Rule 60 Motions for Relief From Judgment

Study: FRCP 60
CB, Chapter 31, § IV

IX. INTRODUCTION TO PRECLUSION

Review: CB, Chapter 33, §§ I and III
CB, Chapter 34, § I
CB, Chapter 17, § II (Note #5, p 595)
CB, Chapter 17, § IV (Note #2, p 615)

X. FINAL EXAMINATION REVIEW