CIVIL PROCEDURE Syllabus Professor Andrews (Fall 2013)

Key:
HB Handout Book, Andrews Course Materials, Fall 2013
Review Read the material for its general content without detailed study
Study Carefully read and re-read the material for a full understanding of its meaning and application
Andrews Professor Andrews will lecture on the subjects in class
Group x The students in the assigned group number will answer questions and otherwise discuss the subjects in class
FRCP The Federal Rules of Civil Procedure (in first half of Rulebook)
_USC §_ Section ("§") of the United States Code (federal statutes, selected, in back of Rulebook)

I. INTRODUCTION TO US LEGAL SYSTEM & CIVIL PROCEDURE

A. The American Legal System: Dispute Resolution Systems and Sources of Law
   Review: Legal System charts (HB, 5 and 6)
            Meador book (entire book)
B. Overview of a civil action
   Review: Stages of a Civil Lawsuit charts (HB, 7-14)
            Sample pleadings and litigation papers (HB, 15+)
            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, 30)
            CP, Chap. 6, pages 109-14 (text only, not the problems)

B. Personal Jurisdiction

1. Introduction
   Review: Andrews' summary case note - Pennoyer (HB, 31)
            Andrews' excerpt, discussion of Pennoyer era pj (HB, 34–36)
            CP Chap. 1, Intro (pp 3-4)

2. The "Minimum Contacts" Test
   Study: International Shoe (HB, 44)
   Review: U.S. Const, Amend 5 & 14, §1 (Due Process) (RB, 261 & 263)
            CP Chap. 1 (pp 4-5) (text only, not problems)
            Andrews' article re Shoe (HB, 36–38)
3. **Long-Arm Statutes**
   
   Review: CP, Chap. 2, text (pp 27-33)

4. **Personal Jurisdiction – Specific PJ**
   
   Study: *Worldwide VW* (HB, 49)  
   *Asahi* (HB, 57)  
   *McIntyre* (HB, 64)  
   
   Review: Andrews’ article excerpt re *WWVW* (HB, 38-39)  
   Andrews case notes - *McGee, Hanson, Kulko, Keeton, Burger King* (HB, 31+)

5. **Personal Jurisdiction - General PJ**
   
   a. **Extent of Contacts (corporations)**
      
      Study: *Helicopteros* (HB, 79)  
      *Goodyear* (HB, 90)  
      
      Review: Andrews’ article re *Perkins* (HB, 39-40)  
      Andrews’ case notes – *Perkins & Keeton* (HB, 31)  
      CP Chap 1, text (pp. 5-7)

   b. **Extent of Contacts (natural persons)**
      
      Study: *Potts* (HB, 86)  
      
      (Group #7)

   c. **Relatedness**
      
      Study: *O’Connor* (HB, 96)  
      
      Review: Relatedness in *Helicol, Goodyear and WWVW*
      Finish Andrews article (HB, 34-43)

6. **Personal Jurisdiction based on Service, Property & Consent**
   
   Study: *Burnham* (HB, 76)  
   
   Review: Andrews' case notes - *Shaffer & Insurance Corp* (HB, 31)

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

8. **Summary and Review**
   
   PJ Practice exam  
   CP Chap 1, Problems 17-18, 20
C. Subject-Matter Jurisdiction

1. Introduction
   Review: U.S. Const, Article I, § 8 (RB, 256)
   U.S. Const, Art III, §§ 1 & 2 (clause 1) (RB, 259)
   28 USC §§ 1331 & 1332(a) (RB, 222)
   CP Chap. 4, text (pp 63-65)

2. Federal Question Jurisdiction
   Study: 28 USC §§ 1257 (HB, 117, note) and 1331 (RB, 222)
   CP Chap. 4, text (pp. 63-71) and Problems 1-13
   Mottley (HB, 115)
   Review: Civil Rights Statute, 42 USC §1983 (HB, 140)
   “RICO” statute excerpts, 18 USC §1961 (HB, 118)
   Patent, etc., jurisdiction statute, 28 USC §1338 (RB, 227)

3. Introduction to Removal
   Review: 28 USC §§ 1441(a)&(b) and 1446(a), (b) & (d) (RB, 243+)
   CP Ch. 7, text (pp. 123-27) & CP Ch 32 (sample removal paper)
   McDonald (HB, 121); Rayfield (HB, 123)

4. Diversity Jurisdiction
   a. Diversity - Natural persons:
      Study: 28 USC §1332 (a)(1) [skip statutory material after §1332(a)(1)]
      McDonald, Rayfield and Mas (HB, 121-27) (Group #11)
      CP Chap 5, text, 89-92, Problems 1-7 [skip Problems 1(e),(f)]
   b. Diversity - Corporations:
      Study: 28 USC 1332(c)(1)
      Hertz (HB, 131)
      CP Chap 5, text (pp 92-94) and Problems 8 - 11
   c. Diversity – Amount-in-controversy
      Study: Mas case (HB, 127)
      CP Ch 5, text, (pp 95-99) [skip Case 5], Problems 12-13
      [Skip Problems12d and 12e]

D. Introduction to Venue
   Review: 28 USC § 1391(a), (b), (c) and (d)
   CP Chap. 8 (pp.141-46)
E. **Introduction to Choice of Law**  
(Andrews)  
Review: CP Chap. 10 (pp. 177-78) and Chap. 12 (pp. 229-35)  
Meador, Chap. 4 (pp 34-42 )

F. **Summary and Review** (All students)  
CP Chap. 6 (text and problems); Practice exam re “Which 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  
[scan – “flip through” – entire red Rulebook]

B. **Introduction to “Pleadings” and “Motions”**  
(Andrews)  
Study: FRCP 7  
Review: Andrews sample pleadings and motions (HB, 15+)  
FRCP Forms 30 and 40 (RB, 119-21)

C. **Introduction to “Cause of Action” and Complaints**  
(Andrews)  
Study: FRCP 3, 5(d) & 7  
Review: Andrews sample complaint (HB, 15)  
CP sample complaint CP Chap. 31 (p. 632)  
Negligence and Fraud chart (HB, 139)  
42 USC §1983; Pattern Jury Instruction for §1983 (HB, 140)

D. **Form of the Complaint**  
(Group # 1)  
Study: FRCP 8(a), (d)(1) & (c), 10, and 84  
“Checklist” exercise  
FRCP Forms 1, 7 and 11  
Review: FRCP Forms 13-15 and 17-19  
Andrews sample complaint (HB, 15)  
Comparison of pleadings chart (HB, 143)

E. **Particularity of Pleading**

1. **Particularized pleading**  
(Grupo #23)

Study: FRCP 9(b)  
FRCP Form 21  
*General Cigar* (HB, 161); *Scott* (HB, 165)
2. Notice pleading vs. particularized pleading: the former view  
   Study: FRCP 8(a), 9(b)  
   FRCP Form 11 
   *Leatherman* (HB, 144)  
   *Swierkiewicz* (HB, 147)  

3. Notice pleading vs. particularized pleading: a “new” view?  
   Study: FRCP 8(a), 9(b)  
   FRCP Form 11 
   *Iqbal* (HB, 151)  

F. “Ethics” in Pleading  

1. History and elements of Rule 11  
   Study: FRCP 11 – historical chart exercise (in-class handout)  
   FRCP AC notes: 1983,1993 amendments (HB, 169)  

2. Application of Rule 11: Reasonable Inquiry  
   Study: FRCP 11(b)  
   *Garr* (HB, 184)  
   *Walker* (HB, 180)  
   Review: AC notes  

3. Application of Rule 11: Law and Argument  
   Study: FRCP 11 (b)  
   *Mars* (HB, 184)  
   Review: AC notes  

4. Application of Rule 11: Facts and Inconsistent Pleading  
   Study: FRCP 8(d)(2) & (3), FRCP 11(b)  
   FRCP Forms 2 and 12  
   Tavern Hypo  
   *Walker* (HB, 180)  

5. Application of Rule 11: Motions and Sanctions  
   Study: FRCP 11(c), (d)  
   *Garr* (HB, 184)  
   Consider motions in *Garr and Walker*  

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 #8)
Study: FRCP 20 & 21
CP Chap. 13, text (pp 253-55), Problems 1, 3 (skip 3f), 4-6, 16
Novartis (HB, 191); SAP America (HB, 196)

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

J. Service of the Complaint and Notice to the Defendant

1. Due process standards  (Group #9)
Study: Mullane (HB, 99)
CP Chap 18, text (pp. 347-48, 351-52)
US Constitution, Amendments 5 and 14

2. Rule requirements for service (and waiver of service)  (Group #10)
Study: FRCP 4(a) through 4(e), 4(h), 4(l) and 4(m)
FRCP Forms 3, 5 and 6
Finish remainder of CP Chap 18 [skip Mass rule, page 354]

K. Amendment of the Complaint  (Group #11)
Study: FRCP 7(a),15(a)
Sabatini (HB, 205)
CP Chap. 20, text (pp 385-91) and Problems 1-8

Review: FRCP 15(b),(c) & (d)
CP Chap. 20 (p. 391-97)

L. Voluntary Dismissal  (Group #12)
Study: FRCP 41(a)
Prairie State (HB, 209)

M. Summary and Review  (All students)
Review: CP Chap 31
IV. DEFENDANT'S RESPONSE – Responding to and challenging the complaint

A. The “Answer” – Response to Complaint Allegations (Group #1)
   Study: FRCP 8(b), 10 and 11(b)(4)
   FRCP Forms 30 & 40
   *Beckman* (HB, 213)
   Review: Andrews sample answer (HB, 18)
   CP sample answer, CP Chap. 33 [consider ¶ 7, page 663]
   AC notes re 1993 amendment to Rule 11 re denials (HB, 169+)

B. The “Answer” – Affirmative Defenses (Group #2)
   Study: FRCP 7, 8(c) and 8(d)
   *LaFont* (HB, 215); *Harriss* (HB, 217)

C. The “Answer” – Cross-claims and Counterclaims (Group #3)
   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, 221)

D. Amendment of the Answer (Group #4)
   Study: FRCP 15(a)
   *Harriss* (HB, 217); *Beeck* (HB, 224)

E. Rule 12(b) Motions to Dismiss (Andrews)
   Study: FRCP 7(b), 12(a) & 12(b) and FRCP Form 40
   CP Chap. 19, text (pp. 369-71),
   CP Chap. 23, text (pp 473-77) and Problems 1-6
   *Smith-Haynie* [Part I] (HB, 225)
   *Austin* (HB, 232)
   Review: Consider motions in previous cases (e.g., *Potts, Leatherman, Swierkiewicz, Scott, General Cigar, Iqbal, Walker*)

F. Other Rule 12 Motions (Group #5)
   Study: FRCP 12(c) through 12(f) and 12(i)
   *Austin* (HB, 2321); *Erikson* (HB, 237)
   *Harbor Commission* (HB, 235)

G. Consolidation of Motions and Waiver of Defenses (Group #6)
   Study: FRCP 8(c), 12(g) & 12(h)
   Finish remainder of CP Chap 19
   Waiver Problem set
   *Harriss* (HB, 217)
H. Timing and Service of Response (Group #7)
   Study: FRCP 4(d)(3), 5, 6, 12(a) and 15(a)
   Problem set [in-class handout]

I. Default (Group #8)
   Study: FRCP 5(a)(2), 54(c), 55(a) thru 55(e), 60(b) and 77(d)(1)
   C&G Boats (HB, 240), Rice (HB, 243)

J. Involuntary Dismissals (Group #9)
   Study: FRCP 41(b)
   McDaniel (HB, 247)

K. Introduction to Effect of Dismissals and Preclusion Law (Group #10)
   Study: FRCP 4(m); FRCP 41
   White v. New York (HB, 249); Rinehart (HB, 251)
   Review: CP, Chap 27, text (pp 561-63); CP Chap 28, text (pp 575-79)
   Consider dismissals in previous cases (e.g., Mottley, Austin, Scott)

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

[ALL REMAINING UNITS ARE LECTURE AND RANDOM CALL]

V. DISCOVERY – Gathering facts and preparing the case

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

B. Scope of Discovery – Relevance (Group #11)
   Study: FRCP 26(b)(1)
   Kozlowski (HB, 258) [Parts I and II]
   United Oil (HB, 262)
   Fed. Rule of Evidence 401 and notes (HB, 255)
   CP Chap. 21, text (pp. 409-12) and Problems 2-5
   AC Notes, 2000 amendment to Rule 26(b)(1) (HB, 256)
   Review: FRE 407 (RB, 150); FRE 802 (RB, 160)
C. Limitations on Discovery

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

2. Confidentiality, Burden and Other Limits on Discovery
   Study: FRCP 26(b)(2), 26(c)
   *Kozlowski* (HB, 258) [Parts I, III & IV]
   CP Chap. 21 text, (pp 410-11) and Problems 5-7
   Review: FRCP 5.2

3. Work Product Protection (Group #12)
   Study: FRCP 26(b)(3) & 26(b)(5)
   CP Chap. 21, text (pp. 413-15) and Problems 1, 12-15
   *Hickman* (HB, 268)

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
   Study: FRCP 33
   *United Oil* (HB, 262)
   CP Chap. 22: text (p. 435-366), Problem 1 and sample I
   interrogatory (p. 463-72)

2. Document Requests
   Study: FRCP 34
   *Kozlowski* (HB, 258) [Part IV]; *United Oil* (HB, 262)
   CP Chap 22, text (pp. 437-39) and Problems 8-10
   Review: FRCP Form 50
3. Depositions
   Review: FRCP 30
   CP Chap. 22, text (pp. 441-43), Samples (pp. 457-59)

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

5. Requests to Admit
   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
   Study: FRCP 26(c), 26(g) 37
   Kozlowski (HB, 258); United Oil (HB, 262)
   CP Chap 22 (p. 446)

VI. JUDGMENTS AND CHALLENGES TO JUDGMENTS

A. Summary Judgment -- Mechanics and Standards
   Study: FRCP 12(b) and FRCP 56
   CP Chap. 23 (pp. 477-80); Chap 24, text (pp 495-97)
   Andrews' overview of summary judgment (HB, 279)
   Review: Ala. Code §12-21-12 (HB, 277)
   Pattern jury instruction re burden of proof (HB, 278)

B. Summary Judgment – Practical Application
   Study: FRCP 56
   CP Chap. 23, Problems 6-15
   Celotex (HB, 280)
   Albert (HB, 288)
   Martin (HB, 292)

C. Introduction to Trial

D. Trial Motions for Judgment as a Matter of Law or New Trial
   Study: FRCP 50(a) & (b); FRCP 59(1)(a), 59(b) and 59(d)
   Alabama Code 12-13-11 (HB, 302)
   Newtown (HB, 296)
   Warren (HB, 299)
   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
   Review: FRCP 51, 54, 59, 60 and 61
   Brandon (HB, 303)

F. Appeals
   Review: Meador (pp 12-16)
   Scan (flip through) FRAP

VII. FINAL OVERVIEW – Review Fall 1995 and 1996 final examinations (HB, 307 & 315)
Welcome. Here are the basic rules, procedures and suggestions for this course:

I. CLASS MEETING TIMES AND ROOM

We will meet in Room 175 at the following times (please note the time change to Friday):
   Monday, 2:00-3:10
   Wednesday, 2:00-3:10
   Friday, 1:00–2:10

II. COURSE DESCRIPTION AND OBJECTIVES

We will cover the fundamentals of "civil procedure" before and after trial. By "Civil," I mean non-criminal cases, such as a car accident case, based on negligence law, between two drivers in which one seeks money damages from the other. "Procedure" means the mechanism for presenting and resolving a civil lawsuit. It does not encompass the "substantive" law of civil actions, such as the standard for negligence of the drivers (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.

III. 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 2013 Federal Civil Rules Booklet by legalpub.com, Inc. [ISBN: 978-1-934852-24-8].

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," Joseph Glannon, Civil Procedure: Examples &

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).

IV. ASSIGNMENTS AND CLASS PARTICIPATION

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

For the first day of our Civil Procedure class (Friday, August 16), read the material in Part I and Part IIA of the Syllabus. I will not call on students on the first day. I likely will call on students – those in Group #1 – in the second class period (Monday, August 19).

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

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

I will ask you to join one of 12 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) (likely four students per group, but dependent on final class size).

I will assign each group to a few units during the semester. The Syllabus designates the units as “Andrews,” “Random/All” or “Group X.” I will lecture in class on the subjects listed as “Andrews.” I will random call on students on subjects listed as “Random/All.” For the “group” assignments, I will call on students in the group assigned to that unit. I will not “random call” on other students, outside of the group for that assignment. You must attend class and be prepared on the day(s) that your group is assigned for class discussion.

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 study the material. Because the group has advance notice, I expect a high level of preparation. I invite each group to meet with me to discuss its topic in advance of the class discussion. This is beneficial for everyone. It is a great way to get to know each other and talk leisurely about civil procedure.
Early in the semester, the syllabus assigns class discussion groups to cases. Even though a group is assigned to a particular case, all members of the group should carefully study the other material assigned for that subject matter, especially the FRCP, statute or constitutional provision as issue in the case or problem set. As the semester progresses, the syllabus assigns groups to an entire unit.

V. EXAMINATIONS AND GRADING

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

Your final examination will have both essay and multiple-choice questions. The Handout Book has two (very) old exams in the back. These exams are generally representative of my style of exam. I will offer you the option to take a few practice exams. I will discuss these in more detail in class.

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.

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

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

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

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

My office is #313. I usually will be in my office every weekday. 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 am “famous” (perhaps infamous) for telling beginning law students: “There is such thing as a stupid question.” I do not say this to stifle your intellectual thought, but instead to spur it. I intend to
convey that you should always think before you speak. Lawyers must do this, and you should start to learn now to do so. Thinking about a question before you ask it also helps you substantively. If you think about your question first, your question not only will be better framed but my answer will have more meaning, a context or pathway on which you can better register and process the information.

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

You 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.

You must monitor your law school emails on a daily basis I regularly (often daily) will send the class group emails in which I update assignments, address questions, and give you handouts. I will use your law school email address. 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 and a white board on many days, so select a seat from which you can see both. If you need special accommodation for a visual or other impairment, you should inform the Dean’s office for special, school-wide arrangements. Please tell me if I can do anything more.

The Law School has a strict attendance policy. You may not miss more than 9 sessions of the regular class 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 absent class 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. Some professors may ask you to attend on time or not at all, but I encourage you to attend even if you are late, with the caveat that you may not sign the roster if you arrive more than ten minutes late. 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.

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

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

The key to success in law school, and in law practice, is both hard work and smart work. I will discuss this topic more in our class sessions, and 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 do outside study an average of 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. Achieving the proper balance between life and work/study is a challenge (one that will continue throughout your career). You must prioritize your activities in a manner that most of you have never done before. You must plan in advance and work around the demands of both law school and your personal life. Planning will enable you to better evaluate which non-study activities you must forego for the semester and which ones you can continue.

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

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

**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. Most law professors in class model the type of questions that you should ask yourself. At the beginning, this will seem an almost impossible task. It will come easier as you progress through the semester and through law school. Try to mimic 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.” Professor Glannon is not the source of the law of civil procedure. I am not the source either. We are merely aids in your study of the law of civil procedure. In most units, the FRCP are the source.

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

For example, in the personal jurisdiction cases (that we will study early in our CP class this semester), 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 from that particular state (and likely other states) on that topic.

**Retroactive Review and Synthesis.** An essential element of the study of law is retroactive review and synthesis. You should do this in your first 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 15-30 minutes per class (but rarely more than one hour total for all classes) on this daily retroactive review before reading the next day’s assignment for the class.

The **second** step is **weekly** review. On Friday afternoons and evenings (which is a time that law students usually waste), review the entire prior week’s study from a very “big picture” point of view. This review should be for each of your doctrinal courses. What did you do this week in Torts 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 most of 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 the Friday weekly review). You should make sure that you finish the outline for each major topic soon after you finish that topic in class, but you should not let one course go without outlining for
more than three weeks. This means that on many weekends you must outline two courses.

The bi/tri-weekly review of each course best involves three elements – 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 legal principles – rather than the cases. The outline collects, in a single document, information from all of your multiple materials, usually in the order of the class syllabus. Your outline should not be a mere collection of case briefs or a linear condensation of your notes.

Most law students know that they must outline, but they do not properly prioritize or time their outlines. Many law students erroneously believe that the outline is all that they must do to adequately prepare for a final exam and/or they wait until the finals study week to start or complete the outline. The outline is only an intermediate step (albeit an essential step) in mastering the material. You should prepare your outline throughout the semester and complete it on the last day of classes for that subject.

Many law students inappropriately rely on other outlines, whether a commercial outline or that of another current or former student. Reliance on other outlines defeats the primary purpose of the outline, which is to make you actively think about the law. Your outlining may benefit by looking at other outlines, but only if you do so in a very limited way. Looking at another outline early may help you understand the proper format of an outline. Once you reach this understanding (which should be fairly quickly), put the other outline away. Comparing another outline to your *completed* outline also can be beneficial if you use it as a tool to prompt active analysis and thinking. Likewise, another outline may help you work through an analytical tough spot, but make sure that this reference to another outline actually spurs your own active thinking.

The outline should be an outline of the law. A good starting point often is your class syllabus. Most syllabi and tables of contents are “bare bones” outlines of law. Your outline should be a much more thorough discussion of the law reflected in the syllabus in a fuller analytical structure. When you outline, you should have in front of you multiple materials: primarily your cases and/or rulebook and class notes, but also other materials such as your case briefs. In the outlining process you will be pulling your knowledge of the law, as reflected in these various sources, into one single document. But, you are not merely transferring all of this material into a larger document. You must ask questions, think and use your judgment. You must cull and prioritize all of your different learning and study materials. Your aim should be to fully and accurately state the law in a concise manner. This should be a very active thinking process. This active thinking is what makes proper outlining so useful.
Hypotheticals. After you outline, test yourself through 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 book is filled with CP questions and answers. I (and some other faculty) will give you written hypotheticals. Your access to hypotheticals is not limited to these formal written questions.

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

You and your classmates also are excellent sources of hypo’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 on a daily basis - it is inevitable that you will have days of class in which you are “lost” - but you must master the topic as you complete it. Do not assume that you will have time to learn the topic later in the semester. You will not. You need to master each topic as the professor completes it, so that you can dedicate your time later in the semester to synthesis of the topics.

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

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

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 after you have fully studied and early enough that you will have time to go back and study points that were not clear on the practice exam. You should consider meeting with other students (who have similarly seriously considered the old exams) to discuss the issues that each of you identified and your analysis of those issues.

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

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

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

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

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

[1] Case opinions and office memoranda typically start by stating the key issues [the “I” in IRAC] (e.g., “The defendant moved to dismiss for lack of personal jurisdiction. He claims that he has never been in the forum state but instead only sent a product there, at plaintiff’s request. Is this direction of a product sufficient contact with the forum state to constitute purposeful availment?). This step is typically overdone by law students on their first attempt at writing law essay exams. Students waste valuable exam time by repeating all of the exam facts or restating the exam question. On most law school essay exams, you should consider minimizing or skipping this first step. Including this portion on a law exam essay is not literally a negative, if you have time, but the problem is that most students overdo this step to the detriment of the far more important part of the exam essay [#3 – Analysis].

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

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

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

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

If you want to focus in-depth on a particular CP rule or concept in detail, I suggest **Wright & Miller's** or **Moore's** multi-volume federal procedure treatises in the library. You also can come to my office to discuss other study aids and uses.

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

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

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

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

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

**Self-Assessment.** You ultimately must teach yourself the law. 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.

**IX. MY HEALTH, “CANCELLED?” CLASSES AND MAKEUP CLASSES.**

As some of you already may know, in the Fall of 2011, I was diagnosed with an aggressive form of breast cancer and had to withdraw from teaching that year to receive treatments. I now am “done” with treatments, but I am closely monitored by doctors here and in Houston, at MD Anderson. I therefore will need to alter some of our class periods. I must be in Houston, September 10 – 12 (and possibly Sept 13). I have not yet finalized how I will address my absences. I may use one as an opportunity for you to take a practice exam, depending on our class progress. I also will go “long” on a few Fridays, ending class at 2:30, to make up for part of that time [I will let you know which Fridays in advance]. I will make every effort to avoid additional changes. I will keep you posted.

Finally, although I have significantly recovered, I am not entirely recovered. I have found that I mistake words when speaking. This is in part due generally to my increasing “old age,” but this problem is more pronounced after my chemotherapy. Be patient with me. I often catch my mistake, and you usually can tell my intention from the context. If you are still confused after class, send me an email or ask me in person after class.

I look forward to working with you.

*Carol Andrews*