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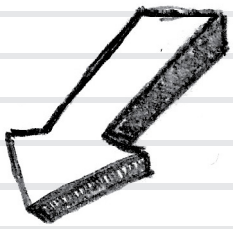
divorce. No minimum contacts = no jurisdiction, so case dismissed!" In fact, the husband was so averse to answering the wife's complaint that he made a special appearance in court (meaning that he appeared only to contest jurisdiction), and tried to quash (same thing as squash) the summons. Kinda makes you wonder whether this guy really wanted the divorce, doesn't it?

The Supreme Court had very little patience for these antics, and explained that the entire minimum contacts analysis applies to defendants that aren't actually physically present in a state. The minimum contacts test is a way of stretching the idea of "presence." But when a defendant is physically present in a state and is served with in-hand process, guess what? There's personal jurisdiction. Nice try.

Go ahead. Practice your explanation of the presence rule here:

Long-Arm Statutes



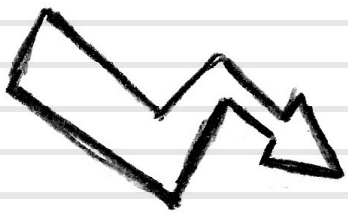
We know what you're thinking: "Where do long-arm statutes fit into all this?" And many of you are hoping that the answer is, "Nowhere. Just ignore anything you hear about long-arms." Sorry to disappoint. The bad news is that you *have* to learn about long-arm statutes. The good news, though, is that they're really not all that difficult. We promise.

What we've discussed from the beginning of this chapter until now is called the "Constitutional analysis" of personal jurisdiction. But the court that is trying to exercise jurisdiction over a non-resident defendant has more than the Constitution to worry about. The court must be sure that jurisdiction follows the guidelines of the state long-arm statute.

Here's how it works: Every state has a long-arm statute that says, essentially, "We permit our state to have jurisdiction over defendants who aren't from our state." Some of those statutes are very broad and vague, and say things like, "Anything that would pass the International Shoe test will also be authorized under our state's long-arm statute." Other states have statutes that are narrow and say things like "we authorize jurisdiction over an out-of-state defendant only when that defendant causes a tort in our state."

Why would a state give its own court less jurisdiction than the Constitution would allow? Well, maybe some states have limited court resources. Maybe some states don't want every yokel in the world to come and file suit in their courts. All you need to know is that the states are Constitutionally *permitted* to exercise jurisdiction in any case that would pass the Shoe test. But just because they are *permitted* to do so does not mean that they *must* do so. Bottom line: On your final exam, in order for the state to have personal jurisdiction over your non-resident defendant, the case must follow the rules of the minimum contacts test and the rules of the applicable state statute.

If your long-arm statute is one of the broad ones, then pretty much, all you'll have to worry about is the Constitutional analysis. If your long-arm statute is a narrow one, then you'll have to check that your facts meet **both** the requirements of the long-arm statute itself **and** the requirements of the Shoe test.



So how do you use the long arm statute in your analysis?

Step #1: Look at the requirements of your long-arm statute to see if your facts fit within its framework.

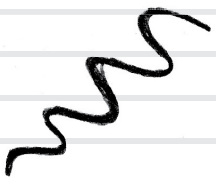
Step #2: If your long-arm statute would authorize jurisdiction in your hypothetical case, then move along to doing the Constitutional analysis.

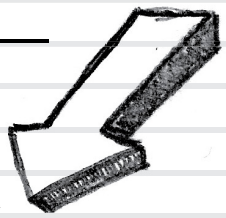
You may have also heard your professor put it this way: A state can give an out-of-stater more protections than due process demands, but it cannot give an out-of-stater less protection than due process demands.

Get your exam language ready now. Write out your intro about the relationship between long-arm statutes and the Constitutional analysis.

Go and look at some actual long-arm statutes. Can you see the difference between the ones that are broad and the ones that are narrow? What kind of language will you examine to figure out whether you have a broad one or a narrow one?

Choose one broad one and one narrow one. Now go back to one of your hypos from earlier in this chapter. Write out a corresponding analysis for each of your chosen long-arm statutes.



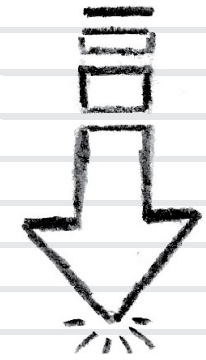


Notice

Before we leave personal jurisdiction, we need to give a little nod to our friend, "Notice." In order to acquire personal jurisdiction over a defendant (regardless of whether that defendant is in-state or out-of-state), the defendant must receive "notice" of the lawsuit. This is one of those things that you definitely knew before starting law school, but that you forgot somewhere between IRAC and the Socratic method.

"Notice" still means now what it meant before you started Civil Procedure—that the guy being sued is *told* that he's being sued. Back in Pennoyer's time, the idea of "notice" often got all jumbled up with the idea of jurisdiction. These are two separate

(but related) concepts. In order for a lawsuit to properly proceed against any defendant, the court (or "forum") must have a legitimate basis for exercising jurisdiction over that defendant. Even when a court has a nice, solid basis for exercising jurisdiction (like, say, the defendant passed the Shoe test with flying colors), the defendant must still receive "notice" of the action before it can properly proceed against him. And the reverse is also true. If a plaintiff hires the best process-server in town, tracks down the defendant, and notifies him about a lawsuit, that defendant can still have the case dismissed if the court lacks a proper basis for exerting personal jurisdiction over him.



For you mathematical folks out there, here are a few equations:

MINIMUM CONTACTS + LONG-ARM AUTHORIZATION = PERSONAL JURISDICTION

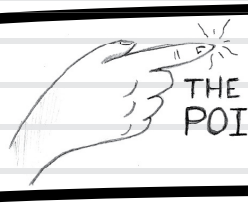
PROPER SERVICE OF PROCESS = NOTICE

PERSONAL JURISDICTION + NOTICE = THE CASE CAN PROCEED AGAINST THIS DEFENDANT IN THIS PARTICULAR FORUM STATE (of course, we'll still need to check that the case is properly in federal court).

Since this is law school, we'll do a case about notice, just to drive the point home.

Mullane v. Central Hanover Bank & Trust

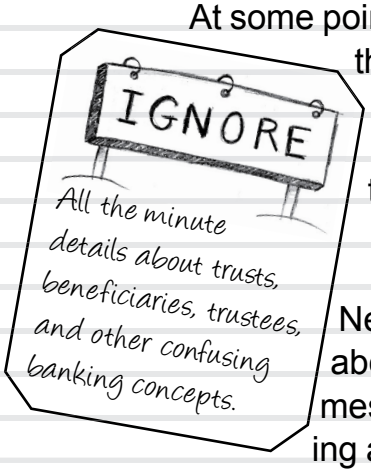
339 U.S. 306 (1950)



For notice to be proper, it must be reasonably calculated to reach the people it needs to reach

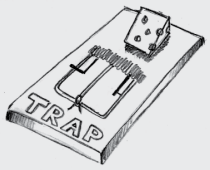
Here's how you can conceptualize what happened: A *trust fund* was set up for a group of people (this is like a gigantic bank

account where a bunch of people all share the same account). The people who all share a trust fund are called "beneficiaries." Professional bankers who are in charge of investing the money in the trust fund are called "trustees." At some point, the trustees needed to notify all the beneficiaries about something going on with the trust. It's not important *why* the trustees needed to notify the beneficiaries.



All the minute details about trusts, beneficiaries, trustees, and other confusing banking concepts.

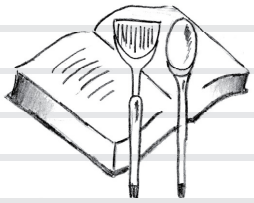
The trustees followed the New York banking law's instructions about notification, and published a message in the local newspaper telling all the beneficiaries what was happening with the trust. As a result, *some* of the beneficiaries found out how the trustees had been managing the trust fund, and they were not very happy. Those beneficiaries started a whole big lawsuit against the trustees. One of the issues the plaintiffs raised in that lawsuit was the issue of improper notice. According to the trust beneficiaries, it was unfair of the trustees to have published notice in the newspaper.



This case can be frustrating to read, because the case isn't about a lawsuit. It seems a little strange to learn about the major rule regarding Notice by reading a case in which it hadn't been a plaintiff serving a defendant with a complaint in a lawsuit. But don't be frustrated by that oddity. It really makes no difference. If it helps, just pretend that the trustees were suing the beneficiaries. Even though the notice by publication hadn't been a notification about a dispute, the underlying problem with that notification (that it really wasn't done in a way that would reach the interested parties) functioned in the same way as it would have if this whole thing had been about a dispute.

In this case, the Supreme Court was deciding whether that banking law (which had authorized the trustees to notify everyone by publishing in the newspaper) was constitutional. The Supreme Court held that the notification law was unconstitutional, because alerting people to important information by putting notices in tiny print in the back of a newspaper is a lousy way to do so. "Notice by publication" (the legal term for printing notices in the newspaper) may work as a last resort, but if there had been a way for the trustees to actually contact the beneficiaries, then the trustees should at least have *tried* contacting them directly.

The Supreme Court set out a standard about notice in this case: When people need to be notified about legal proceedings, the method of notification must be "reasonably calcu-



Study Recipe

Personal Jurisdiction

Ingredients:

- *Legalese to English* personal jurisdiction notes and case briefs
- 1 skeleton outline
- 1 set of complete class notes
- 1 set of completed workbook entries
- Your professor's syllabus
- 3-4 old exams from your professor (if none are available, use exams from a different professor)
- 1 textbook, complete with table of contents
- 1 case chart (recipe follows)
- 1 flowchart (recipe follows)

STEP 1: PREPARE YOUR WEEKLY STEW
(Complete Step 1 at the end of each week.)

Sit in front of your computer and for **each case**, do the following:

- Look over your class notes
- Look over your homework notes
- Look over your textbook's headings
- Look over your class syllabus
- Look over the *Legalese to English* explanation of the case

Combine all pieces into one document.

How will you know when it's done? It's done when each case has a tasty, bite-sized explanation that is in your own words. Once you've decided on your preferred wording, capture that wording in the way you like it best. That means that you should be thinking about what kinds of fonts, graphics, or formatting will help you best understand and remember the key points of every case and concept.

STEP 2: CREATE CASE CHARTS

(Complete Step 2 at the end of your unit on Personal Jurisdiction. Closer to exams, you should memorize this chart.)

- Create a document that looks something like this:

PERSONAL JURISDICTION

THE FORUM STATE DID HAVE JURISDICTION OVER THE DEFENDANT	THE FORUM STATE DID NOT HAVE JURISDICTION OVER THE DEFENDANT
Burger King v. Rudzewicz Lots of contacts with Florida equaled general jurisdiction for Burger King guys	
	Helicopteros: No jurisdiction because the contacts with Texas weren't enough to be considered "continuous and systematic." There were no offices, no employees, etc.
	Asahi (tire valve case): No jurisdiction because putting something into the stream of commerce is not, on its own, enough to justify jurisdiction.
	World Wide Volkswagen: No jurisdiction because bringing a car to a state does not mean that the car dealer had a contact with that state. Plaintiffs misuse the concept of "foreseeability" in their losing argument.

STEP 3: PROFESSOR TELEPATHY

(Complete Step 3 within two weeks of finishing Personal Jurisdiction in class.)

Brainstorm about what your professor is going to ask you on your final exam. Here's how to do that:

- Look over old exams, both those written by your professor and those written by other professors.
- Look over the *Legalese to English* workbook questions.

- Talk to your classmates and study group mates.
- Look over your class notes and determine the "hot topics" on which your professor seems to focus.

STEP 4: DEVELOP YOUR "CANNED ANSWER"

(Complete Step 4 after you have mastered your understanding of the case law and have spent at least two hours brainstorming possible test questions.)

You can pre-write most of your exam answer by planning. For example, every personal jurisdiction answer will begin with some statement about the International Shoe Test. The more you plan, the better your answer is bound to be!

Remember, this plan is not being made for the purpose of "figuring out" whether the court does or does not have jurisdiction. Your job will always be to answer "maybe." Making an exam plan will require you to plan *how* you will explain that the answer is "maybe." If you've learned about IRAC or CIRAC or CRAC or some other acronym, this is the place to plan to put that method into action.

STEP 5: TAKE A MOCK FINAL EXAM

(Complete Step 5 at least a week before your final exam.)

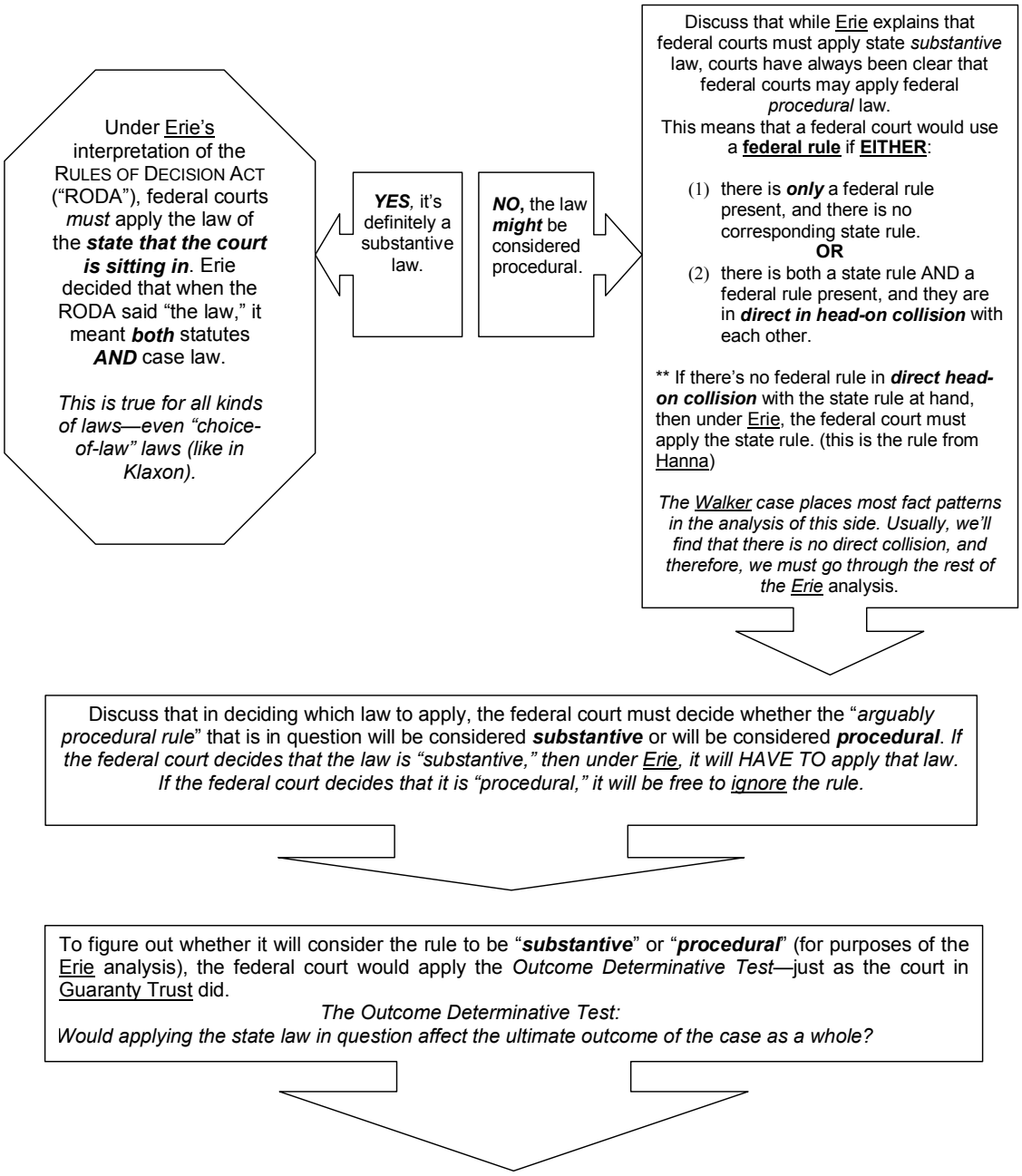
Using your self-created charts and canned answers, draft an answer to an actual exam question. The sooner you do this, the better! If you have enough time, you can write out a practice answer and have it reviewed by a TA, a professor, or a tutor.

Remember, final exams are like marathons. If you were training for a marathon, you'd definitely spend time weight-lifting, eating right, exercising, and stretching, but you'd also need to actually practice *running*. Only a serious jackass would run for the very first time *at* the marathon. The same logic holds true here. If the first time you've ever written an exam answer is on your exam, it will not go as well as it would have if you had practiced.

Erie Doctrine Exam Essay Flowchart

In order to spot an Erie issue on a Civil Procedure exam, you **must** have a fact pattern that puts a lawsuit in federal court based on ***diversity jurisdiction—****if the case is in federal court based on a federal question, then it's clearly the federal law that will be applied!*

Look at the particular ***state law*** (either a statute or a case law precedent) that is in question. Is that law ***clearly a substantive law***? (This could mean that it's a tort statute, a contracts statute, a choice-of-law statute, a state common law trend, etc.)



Under Guaranty, if applying the state law in question would ***not*** affect the outcome of the case as a whole, then the federal court will conclude that the law is merely a ***procedural*** rule. Once the federal court has decided this, the federal court is free to ignore that state law, and do things the "federal way."

NO

YES

Under Guaranty, if applying the state law in question would definitely affect the outcome of the case as a whole, then the federal court will conclude that the law is (at least for choice-of-law purposes) a ***substantive*** law. Once the federal court has decided this, the federal court *must*, under Erie, apply that state law.
Discuss how applying the state law in this kind of scenario ensures that the court in your hypo is following the "twin aims of Erie" (avoiding forum shopping and ensuring that cases come out the same in state court and federal court).

If you're not sure which of the two sides you're actually on, just discuss them *both.*
But stay organized!!

Sometimes, it's impossible to know whether applying the state law would affect the outcome of the case. If your hypo gives you a situation like that, then go directly to the Byrd Balancing Test as described below. This test tells us that in cases where the affect of applying the state law is unclear, we should be sure to balance the interests of (1) making sure state and federal courts come out the same way and (2) making sure that all federal courts do things uniformly.

Even when you've concluded that the state law in question ***definitely does*** or ***might*** affect the ultimate outcome of the case, there are times when the federal court should still do things "the federal way"—if there is some particular interest that the federal courts have in making sure that all federal courts do things ***uniformly***. (This is the point of Byrd.)
When you're discussing how you should apply a state law (because it's been found to be "substantive," then you should still talk about whether applying that state law would be more important than ignoring that state law, in the interest of uniformity.
Discuss the ***balancing of that federal uniformity against the regular Erie interest in making sure that there is no forum shopping between state and federal court.***

Come to some kind of a conclusion one way or another, about whether the state law in question is an important ***law*** (and must be followed by the federal court) or is a less important ***procedural rule*** (and can be ignored by the federal court in favor of using an exactly corresponding federal rule instead).

XIV. How To Get a D on a Civil Procedure Exam

Congratulations. You've made it to the end of this book. Or maybe you're starting here. Either way, good for you. By this point, you've accepted that most of your classmates have gotten straight As for the past fifteen years, and that you might be in a situation that isn't as easy as you might have expected.

We've been there. We feel your pain, your anxiety, and your frustration. And we're here to help. First, we'd like to introduce you to some fundamental truths about law school in general and Civil Procedure, in particular.

- **It's not necessary to be an expert in this subject in order to get a good grade in the course**. It sure seems like you'd do better if you found out that you're distantly related to the Glannon family, doesn't it? But think of it this way: taking a Civil Procedure final is like participating in Battle of the Bands. Being an expert in rock music may help you out. But ultimately, it's the performance that counts. Establishing a relationship with the audience is key, and doing what makes them happy is mandatory. The same goes for pleasing your professor. It's not expertise that will wow him—it's what you bring to the stage when it's your turn.

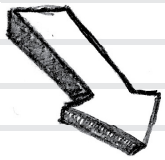
- **Your classmates aren't doing any better than you are**. If you were to listen to conversations in the school cafeteria, you're bound to hear any number of jackasses pontificating about the true value of Pennoyer, or about the strategic use of nonmutual offensive collateral estoppel. But if you were listening with *our* ears, you'd hear what we hear: 1Ls are awkward with their discussion of complex topics. Most loudmouths make serious errors when they yap about topics they purport to understand. You knew you were smart before you came to law school. Don't let twelve weeks of loudmouthing take your identity away from you. You're *still*

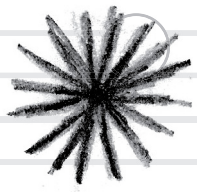
smart. And in two more years, you'll have the big diploma to back it up.

- **Preparation for class is not the same thing as preparing for an exam**. Sure, you'll have to prepare for class in order to avoid being ridiculed. But even that woman who sits in the front row, recording every lecture and referring to the professor as "Phil" instead of "Professor Obtusenstein" won't do well unless she prepares properly for the exam.

For many 1Ls, Civil Procedure creates the perfect storm for exam-induced anxiety. It's about as confusing as law school topics can get. It's duller than the paint on the Woodsons' 1978 Volkswagen. And it's a four-credit course. But learning the hazards is key to avoiding peril.

To that end, we'd like to share with you our experience about what has led many students before you to get Ds in Civil Procedure. Don't be afraid. You know that old axiom—"those who cannot remember history are doomed to repeat it." By getting familiar with some common pitfalls, you're sure to avoid them.





Here are the top seven ways that students crash in Civil Procedure:

1. Obsess about class, but play ostrich with the final exam. It's easy to waste hours looking up terms that appear in the first paragraph of early Civil Procedure cases. 1Ls often convince themselves that the key to understanding the underlying point of a case is to picture the facts that led to the initial cause of action. In this class, that's just not true. Poring over the finer points of F.O.B. shipping in International Shoe or researching the history of the contributory negligence statute in Erie simply won't help you prepare for your final. In fact, the only thing that will help you prepare for final exams are *final exams*. Get them now. Use your professor's old exams as well as other professors' exams. Get a sense of what the question is likely to bring up, and prepare *now* to answer that question. The sooner, the better. Don't "save" copies of old exams for later in the semes-

ter—the sooner you start, the better you'll do. And if your professor makes you feel unprepared for classroom discussion, just close your eyes and repeat, "grading is anonymous, grading is anonymous."

2. Think about it, read about it, talk about it, but never write about it. Professors can spot an unprepared student a mile away. For new law students, lack of confidence with complex concepts manifests as awkwardly written essays. And awkward language can also be the result of failure to practice writing. Students who write about the minimum contacts test for the first time at their final exams are setting themselves up for failure. If you find yourself saying "I know what *res judicata* means, but I just can't say it," you are lying to yourself. If you can't say it, then you don't know it. After all, if someone asked you to explain how to make a ham sandwich, you'd be able to do that without excuses. Go back to your books. Re-read your notes. Get a handle on the topic, and then practice, practice, practice writing your essay.

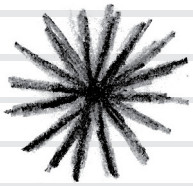
3. Losing your mind at the exam. Nothing makes us cringe more than a post-exam 1L who tells us that she spent four pages doing a minimum-contacts analysis on her hypo's ***plaintiff***. Or that she used the Shoe rule to test whether the parties had diversity of citizenship. We understand that by exam-time, you have so much rolling around in your brain that *nothing* seems to have a common-sense answer anymore. That's why it's essential to start early. If you do the right prep work, you'll develop a clear picture of what issues your final exam is likely to raise. When your exam question is something familiar, you'll be less likely to lose your mind on test day.

4. Missing the Erie question: A classic professory move is to bring up a state law, but fail to characterize the issue as a "choice of law" question. Even worse, many professors expect students to do a Hanna analysis without pointing to a specific federal statute to use in that analysis. Remember—any time you see a state law, think Erie. And when you see that state law, check if there is a FRCP that's close enough to it to warrant a Hanna analysis.

5. Inserting yourself into your essay: Civil Procedure class is not the time for opinions. Should you ever find yourself writing about what you "think" the court should do, STOP. Civil Procedure is about predicting what a federal court would do, based on the huge history of federal case law you'll have studied. Predictions, not opinions.

6. Forgetting to tickle your professor's fancy. People who become Civil Procedure professors really like this stuff. And what's more, they envision themselves as your personal prophets of the FRCP. So you have to give them some shout-outs on your exam. Don't use language from a study guide (even ours!), or a textbook, or Wikipedia to make your points—use your professor's special hand-crafted wording. You may have *learned* things in language that appeals to *you* (and we hope that you have!), but when it's time to *write*, you need to use your professors' buzzphrases in a way that says, "Oh Professor! You have led me through the valley of Civil Procedure. Without you, I would never have found my way. But now, with your guidance, I shall go forth with the procedural acuity of Oliver Wendell Holmes."

7. Stopping too soon. Civil Procedure is extra difficult because its sub-topics differ drastically from one another. That means that how it *feels* to write a personal jurisdiction essay is pretty different from how it *feels* to write a joinder essay. As a result, students often end their essays without adequately discussing all angles. It takes a lot of time and a lot of words to fully argue both sides of a complex issue. Be honest with yourself. Practice what you'll say on an exam. Make sure that you've tied up any loose-ends when discussing the myriad issues on your exam.



The Freakout Factor

In our work with thousands of law students, we've heard the same phrases repeated, time after time. "I know what the law is, but I just can't say it" has been perhaps the most common 1L mantra of frustration. And a variation on that theme has