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TEACHING CIVIL PROCEDURE USING AN INTEGRATED CASE-TEXT-AND-PROBLEM METHOD

LARRY L. TEPLY AND RALPH U. WHITTEN

Many students consider Civil Procedure to be the most challenging first-year course¹ in United States law schools.² The course presents students with an array of complex topics—ranging from subject-matter jurisdiction to finality in litigation.³ Civil Procedure also requires students to work with and comprehend a complicated set of statutes and rules that are not always models of clarity and excellence in drafting.⁴ In addition, Civil Procedure students

1. Although current statistics are not readily available, a 1995 survey of Civil Procedure teachers found that Civil Procedure is widely taught as a required first-year subject; however, a small percentage of law schools teach basic Civil Procedure as a second-year subject. See Cynthia Ford, *Integrating Indian Law into a Traditional Civil Procedure Course*, 46 SYRACUSE L. REV. 1243, 1284 (1996) (indicating, inter alia, that 143 of the 183 respondents to the author's survey taught Civil Procedure as a first-year subject).

2. See, e.g., DAVID CRUMP ET AL., CASES AND MATERIALS ON CIVIL PROCEDURE, at iv (4th ed. 2001) (suggesting that “Civil Procedure may be the most difficult course in the first-year curriculum”). See also Elizabeth M. Schneider, *Structuring Complexity, Disciplining Reality: The Challenge of Teaching Civil Procedure in a Time of Change*, 59 BROOK. L. REV. 1191, 1191 (1993) (indicating that “students find procedure enormously complex and challenging, and it has the reputation for being the hardest course in the first-year curriculum”).

3. See Patrick J. Ryan, *A Mental Model of Civil Procedure*, 28 RUTGERS L.J. 637, 637 (1997) (aptly stating that “[C]ivil [P]rocedure, typically the procedure course of first impression for new lawyers, is a large, complex, subtle, frequently changing, and occasionally obscure body of legal knowledge”). For excellent descriptions of the evolution of the topics of coverage in Civil Procedure courses in American law schools, see Paul D. Carrington, *Teaching Civil Procedure: A Retrospective View*, 49 J. LEGAL EDUC. 311, 315-21, 327-28 (1999), and Mary Brigid McManamon, *The History of the Civil Procedure Course: A Study in Evolving Pedagogy*, 30 ARIZ. ST. L.J. 397 (1998).

4. Perhaps the best example of poor statutory drafting that has affected Civil Procedure courses is the 1990 supplemental jurisdiction statute, 28 U.S.C. § 1367 (2000). See Richard D. Freer, *Compounding Confusion and Hampering Diversity: Life After Finley and the Supplemental Jurisdiction Statute*, 40 EMORY L.J. 445 (1991); Thomas C. Arthur & Richard D. Freer, *Grasping at Burnt Straws: The Disaster of the Supplemental Jurisdiction Statute*, 40 EMORY L.J. 963 (1991); Thomas C. Arthur & Richard D. Freer, *Close Enough for Government Work: What Happens When Congress Doesn't Do Its Job*, 40 EMORY L.J. 1007 (1991). See also Jonathan R. Siegel, *What Statutory Drafting Errors Teach Us About Statutory Interpretation*, 69 GEO. WASH. L. REV. 309 (2001) (examining a drafting error in the federal venue statute). See also *infra* notes 65-66 and accompanying text (discussing federal venue). A good example of a poorly drafted Federal Rule of Civil Procedure is the 1991 amendment of Rule 15(c), which governs “relation

must try to understand modern rules and doctrines that have often been shaped by historical conditions that have long since disappeared.⁵ Further, the subject of civil litigation, unlike other first-year courses such as property, contracts, and torts, is one whose underlying principles many first-year students have not personally experienced.⁶ As a result, Civil Procedure often seems alien and incomprehensible. Added to these problems is the difficulty that most first-year Civil Procedure courses cover certain doctrines involving constitutional rules and federalism that interact with the technical rules of the “unitary civil action” in mysterious ways.⁷ Professors at many law schools also continue to

back” of amendments. LARRY L. TEPLY & RALPH U. WHITTEN, CIVIL PROCEDURE 530-43 (2d ed. 2000) (requiring thirteen pages to discuss the interpretive problems of FED. R. CIV. P. 15(c)).

5. When it comes to understanding Civil Procedure, a page of history is indeed worth a volume of logic. Cf. *N.Y. Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921) (Holmes, J.) (making this point in a different context).

6. One useful method of providing students who are unfamiliar with civil litigation is to give them a relatively short exposure to the development of an actual lawsuit, including litigation documents and transcripts. There are excellent resources for this purpose. See, e.g., DAVID CRUMP & JEFFREY B. BERMAN, *THE STORY OF A CIVIL SUIT: Dominguez v. Scott's Food Stores* (2d ed. 1985) (presenting a case based on a fall in a grocery store in 129 pages); PETER N. SIMON, *THE ANATOMY OF A LAWSUIT* (1984) (presenting an “auto accident” case in 152 pages, which was developed for use in a law school orientation program); MARC A. FRANKLIN, *THE BIOGRAPHY OF A LEGAL DISPUTE: AN INTRODUCTION TO AMERICAN CIVIL PROCEDURE* (1968). Some professors opt for an even more in-depth study of a single civil case to provide students with this context. The “Buffalo Creek” disaster is a good example. See GERALD M. STERN, *THE BUFFALO CREEK DISASTER* (1976); see also Lawrence M. Grosberg, *The Buffalo Creek Disaster: An Effective Supplement to a Conventional Civil Procedure Course*, 37 J. LEGAL EDUC. 378 (1987); Charles A. Rees, *A Calendar of Buffalo Creek Hypotheticals for the Civil Procedure Course*, 18 OHIO N. L. REV. 233 (1991); GEOFFREY C. HAZARD, JR. ET AL., *PLEADING AND PROCEDURE: STATE AND FEDERAL, CASES AND MATERIALS* 595-607, 655-62 (8th ed. 1999) (incorporating the Buffalo Creek pleadings into the casebook). Another good example is based on events that took place in *Anderson v. Cryovac, Inc.*, 862 F.2d 910 (1st Cir. 1988). See JONATHAN HARR, *A CIVIL ACTION* (1995); *A CIVIL ACTION* (Touchstone Pictures 1998); LEWIS A. GROSSMAN & ROBERT G. VAUGHN, *A DOCUMENTARY COMPANION TO A CIVIL ACTION* (rev. ed. 2002) (798 pages); Raleigh Hannah Levine, *Of Learning Civil Procedure, Practicing Civil Practice, and Studying A Civil Action: A Low-Cost Proposal to Introduce First-Year Students to the Neglected MacCrate Skills*, 31 SETON HALL L. REV. 479 (2000). Still another example is NAN D. HUNTER, *THE POWER OF PROCEDURE: THE LITIGATION OF JONES V. CLINTON* (2002) (intended for use as a supplementary text in Civil Procedure and related courses). See generally Judith L. Maute, *Response: The Values of Legal Archaeology*, 2000 UTAH L. REV. 223, 227-29 (2000) (discussing the benefits of “contextualizing” as a means of improving student learning and a benefit of historical reconstruction of cases).

7. See Carrington, *supra* note 3, at 327 (indicating that “by 1965 there was virtual unanimity that the first year of law school should include a yearlong six-credit course in Civil Procedure devoted primarily to federal practice and constitutional limitations on the practices of state courts”); McManamon, *supra* note 3, at 436 (pointing out that the appearance of the Field and Kaplan Civil Procedure casebook, RICHARD H. FIELD & BENJAMIN KAPLAN, *MATERIALS FOR A BASIC COURSE IN CIVIL PROCEDURE* (1953), defined the modern content of the Civil Procedure course by adding “such federal subjects as federal subject matter jurisdiction and the

complain that modern students' educational backgrounds make them less prepared and motivated to take on these challenges in the context of a traditional Civil Procedure casebook.⁸

Furthermore, professors teaching Civil Procedure ordinarily try to achieve a number of challenging goals with the course. As in other first-year law school subjects, professors are concerned about teaching traditional legal reasoning, including case analysis, rule and doctrinal synthesis, and statutory and rule interpretation.⁹ In addition, first-year Civil Procedure teachers try to convey an understanding of the overarching role of civil litigation in the United States system of justice. Civil Procedure teachers also want students to internalize the basic rules and procedures of Civil Procedure that all lawyers should readily know and to be able to apply these legal rules to specific factual situations. Teachers want students to be able to identify procedural issues in complex factual situations and to understand the policies behind particular procedural rules and doctrines. Additionally, they want students to develop the ability to take adversarial positions on procedural issues and construct intelligent arguments in support of their positions. Finally, but importantly, they want students to understand the ethical limits of an adversary system of civil litigation. Achieving any one of these tasks presents a daunting challenge. Achieving all of them, often in a course of six semester hours or less,¹⁰ may be impossible.

Apart from the nature of the material, professors face other kinds of challenges. These challenges include the difficulties that students have with learning the subject and student resistance to a traditional casebook approach

impact on federal procedure of *Erie Railroad Co. v. Tompkins*" in addition to "traditional topics such as pleading, joinder, and directed verdicts"); see also Donald C. Lubick, Book Review, 67 HARV. L. REV. 1492 (1954) (reviewing RICHARD H. FIELD & BENJAMIN KAPLAN, MATERIALS FOR A BASIC COURSE IN CIVIL PROCEDURE (1953)).

8. Cf. Philip N. Meyer, *Fingers Pointing at the Moon: New Perspectives on Teaching Legal Writing and Analysis*, 25 CONN. L. REV. 777, 782 (1993) (pointing out "the seismic shift of popular culture from a print-based culture to a post-literate, technology based, oral and visual story culture. . . . [in which] information [is processed] almost exclusively via imaginistic narratives[,] [a]ttention spans are compressed [and] [i]ntellectual activity is conflated with entertainment").

9. Cf. Kurt A. Strasser, *Teaching Contracts—Present Criticism and a Modest Proposal for Reform*, 31 J. LEGAL ED. 63, 81-83 (1981) (discussing similar goals for the first-year contracts course); Stephen I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 19-21 (1996) (reporting survey results indicating that the primary goals in basic first-year courses were to "improve the students' thinking ability" (46%), to "have students learn substantive legal doctrine" (15%), or both (31%)).

10. A 1995 survey of Civil Procedure teachers found a wide variance of credit hours allocated to Civil Procedure, but the majority of respondents indicated that students received six hours of credit for the course. See Ford, *supra* note 1, at 1284 (reporting credit hours of three (eleven respondents), four (thirty-eight respondents), five (forty-two respondents), six (ninety-four respondents), and seven (1 respondent)).

involving a sequential reading of cases.¹¹ The source of these challenges is the changing nature of law school curricula. Faculties at many United States law schools are busily reducing the number of classroom hours devoted to Civil Procedure.¹² This change reflects, in part, several factors: the growing presence of procedural courses in the second and third years of law school;¹³ the relative unpopularity of Civil Procedure among beginning law students;¹⁴ the integration of pleading, motion practice, and other procedural topics into legal writing courses;¹⁵ and the desire to add other subjects to the first-year curriculum.¹⁶ As a result, teachers must drop important subject areas—*e.g.*,

11. See, *e.g.*, James Eagar, Comment, *The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education*, 32 GONZ. L. REV. 389, 402-06 (1997) (noting that “[s]tudents . . . often sarcastically view [the] indirect process of gaining fundamental information [by means of the sequential reading of cases] about a large and complex area of law as a scholarly version of the childhood game, ‘hide the ball’”).

12. A similar change appears to be occurring with regard to other traditional first-year subjects. See, *e.g.*, Peter S. Menell & John P. Dwyer, *Reunifying Property*, 46 ST. LOUIS U. L.J. 599, 599 (2002) (noting that “many law schools . . . have reduced the number of credit hours [for the Property course] absolutely and in relation to the other first-year courses”).

13. These courses include Pretrial Litigation, Complex Litigation, Advanced Civil Procedure, Conflict of Laws, Evidence (as well as advanced evidentiary courses, such as witness examination), Federal Courts and Trial Practice.

14. See, *e.g.*, Lea B. Vaughn, *Integrating Alternative Dispute Resolution (ADR) into the Curriculum at the University of Washington School of Law: A Report and Reflections*, 50 FLA. L. REV. 679, 695 (1998) (noting that “[m]any students complain that [C]ivil [P]rocedure is an overly dry, abstract, and technical course [and that] many [students] also complain about the litigation orientation of the course”).

15. See, *e.g.*, BARBARA CHILD, *DRAFTING LEGAL DOCUMENTS: PRINCIPLES AND PRACTICES* (2d ed. 1992) (including material on, *inter alia*, complaints, motions and answers); MARGARET Z. JOHNS, *PROFESSIONAL WRITING FOR LAWYERS* (1998) (including material on, *inter alia*, complaints and motions to dismiss); NANCY L. SCHULTZ & LOUIS J. SIRICO, JR., *LEGAL WRITING AND OTHER LAWYERING SKILLS* (3d ed. 1998) (including material on, *inter alia*, pleadings, motions, discovery, jury instructions and appellate briefs).

16. See, *e.g.*, Robert F. Broomquist, *Some Thoughts on Law School Curriculum Reform: Scaling the Mountainside*, 29 VAL. U. L. REV. 641, 657 (1995) (proposing to “semesterize” first-year courses, including Civil Procedure, which results in “shaving one hour credit off each course” and indicating that “[s]ome of the content omitted from the first-year courses can resurface in new or restructured courses in the second or third years—chosen and tailored by the individual student to meet his or her specific interests”). *But cf.* Richard B. Cappalli, *The Disappearance of Legal Method*, 70 TEMPLE L. REV. 393, 412 (1997) (discussing new offerings and trends in the allocation of credits in the first-year law school curriculum and its adverse impact on teaching legal method); Carrington, *supra* note 3, at 327 (suggesting that the reduction in the hours credit given to Civil Procedure has resulted in dropping much of the material marking the historical evolution of procedure and concluding that “[t]o the extent that the purpose of reducing the number of hours in the yearlong first-year courses was intended to accommodate courses presenting a broader perspective on law, the change may in this respect have been counterproductive”); see also *id.* at 328 (“Semesterization seems to have been driven less by any dissatisfaction with the content or form of yearlong course than by the convenience of faculty

the *Erie* Doctrine, discovery, class actions, appeals or res judicata—from the course and make a multitude of other compromises in coverage.

Although no teaching method or set of materials may be able to solve all the problems presented by these challenges, we believe that the case-text-and-problem method comes closest to doing so.¹⁷ As discussed below, we find textual material particularly useful as a method of increasing both topic coverage and student comprehension. Although case analysis remains essential to many objectives of the first-year curriculum, especially in teaching legal reasoning, supplementing case analysis with text and problems furthers more of the objectives of the first-year Civil Procedure teacher than any other method that we have encountered. In the following discussion, we outline the major components of this method and explain how discrete topics in Civil Procedure can be taught using the approach. We also explain how the objectives of the first-year curriculum are furthered by the method. We recognize that teaching method and selection of teaching materials are uniquely personal matters. Nevertheless, teachers seeking flexibility in course coverage may wish to consider the approach we describe. The approach may be especially appealing to teachers who are faced with the task of teaching Civil Procedure in three or four-hour courses, with the attendant need to maximize coverage in a time-efficient manner.

I. USE OF AN OVERVIEW

One of the first problems facing a Civil Procedure teacher is orienting students to the subject and providing them with perspective. To provide this orientation and perspective, most casebooks currently in print provide an overview of a civil action as the initial starting point for the basic course in Civil Procedure.¹⁸ Because the elements of Civil Procedure are part of an

coming and going on leave and by the desire of anxious students for more frequent examinations.”).

17. This case-text-and-problem approach to Civil Procedure is embodied in a casebook prepared by the authors and Professor Denis McLaughlin and published in 2002 by William S. Hein & Co. See LARRY L. TEPLY, RALPH U. WHITTEN & DENIS F. MCLAUGHLIN, *CASES, TEXT, AND PROBLEMS ON CIVIL PROCEDURE* (2d ed. 2002).

18. See, e.g., JOHN J. COUND ET AL., *CIVIL PROCEDURE: CASES AND MATERIALS* 1-61 (8th ed. 2001) (containing “A Survey of the Civil Action”); TEPLY ET AL., *supra* note 17, at 21-66 (containing “An Overview of a Civil Action”); STEPHEN C. YEAZELL, *CIVIL PROCEDURE* 1-75 (5th ed. 2000) (containing an “Overview of Procedure”). Some of these overviews can be extensive. See, e.g., RICHARD H. FIELD ET AL., *MATERIALS FOR A BASIC COURSE IN CIVIL PROCEDURE* 1-374 (7th ed. 1997) (containing “A First View of the Subject,” including a comprehensive presentation of the “Phases of a Lawsuit”). A notable exception to providing an initial overview is Babcock and Massaro’s casebook, which commences directly with chapters on procedural due process and decisionmakers. See BARBARA ALLEN BABCOCK & TONI M. MASSARO, *CIVIL PROCEDURE: CASES AND PROBLEMS* 1-374 (1997).

interconnected system,¹⁹ we agree that students benefit from this approach.²⁰ An overview helps students understand the decisions that a lawyer must make before, at the outset, and during a civil action.²¹ Importantly, it also introduces them to all of the basic rules governing the progression of a civil action through a particular court system.²² This, in turn, helps students understand the various procedural devices, such as motions to dismiss, demurrers, motions for summary judgment, and so forth, which appear in the more intensive examination of particular subject areas in later materials. The overview is also an excellent place to provide some brief historical background, such as the origins of the division between law and equity,²³ which assists students in understanding modern aspects of civil litigation.²⁴ In essence, an overview “let[s] students form some idea as to the nature of the litigation ‘forest’ before asking them to master any of its ‘trees.’”²⁵

19. Schneider, *supra* note 2, at 1191 (pointing out aptly that “as a course, Civil Procedure is internally complex, for every discrete area is interrelated with every other area in a kind of seamless web”).

20. See also COUND ET AL., *supra* note 18, at iv (explaining that their first chapter overview “sets forth a basic, textual statement of a procedural system’s framework, without which an understanding of any particular part of the system is difficult, if not impossible”).

21. See, e.g., TEPLY ET AL., *supra* note 17, at 22-32 (focusing on choosing a court system, choosing a court system authorized to hear a particular type of case, choosing a location where the particular defendant may be required to appear and defend, and choosing a court in the proper location).

22. The focus of most Civil Procedure courses is the federal system and the Federal Rules of Civil Procedure. However, there are some exceptions. See Carrington, *supra* note 3, at 329 (discussing the “metaprocedure” approach of ROBERT M. COVER ET AL., *PROCEDURE* (1988) and noting that it “tends to short the importance of statutes and rules of court that are the plumbing and electric wiring of the great edifice the editors strive to erect” in the 1,877-page work); McManamon, *supra* note 3, at 436-37 (also discussing *PROCEDURE* as a notable exception). See also Linda S. Mullenix, *God, Metaprocedure, and Metarealism at Yale*, 87 MICH. L. REV. 1139, 1170 (1989) (reviewing ROBERT M. COVER ET AL., *PROCEDURE* (1988)) (finding the approach in *PROCEDURE* to be “pedantic” and “hopelessly snobbish”); GEOFFREY C. HAZARD, JR. ET AL., *supra* note 6 (substantial emphasis on state procedure).

23. See Linda S. Mullenix, *The Influence of History on Procedure: Volumes of Logic, Scant Pages of History*, 50 OHIO ST. L.J. 803, 803 (1989) (pointing out aptly that “[t]he Federal Rules of Civil Procedure, accomplishing the merger of law and equity, require some knowledge and understanding of those two antecedent systems”).

24. See *id.* at 804 (asserting that “for the procedure teacher, pedagogical responsibilities require not only knowledge of procedural history, but transmission of that history to students at an early stage in their legal education,” noting that “[m]uch of the substantive law that first year students examine is imbued with procedural implications,” and concluding that “the procedure teacher carries the heavy responsibility of placing both substance and procedure in a historical context that suggests the richness, value, and importance of that history”).

25. COUND ET AL., *supra* note 18, at iv.

Another widely recognized function of an overview is helping students learn procedural terminology.²⁶ In later chapters, students are confronted with a variety of bewildering terms: complaints, third-party plaintiffs, venue, motions to dismiss, summary judgment, involuntary dismissals, certiorari, etc. These terms appear not only in cases that they read in Civil Procedure, but also in their other first-year courses. Early exposure to procedural terminology thus increases the students' proficiency in reading and understanding cases in all first-year courses.²⁷

Our preference is to teach an overview chapter with a minimum of case analysis, using the text and problem method described above.²⁸ We precede the general overview of the civil action with an outside reading assignment designed to familiarize the students with (1) the study of Civil Procedure and its importance,²⁹ (2) the role of civil actions in the administration of justice (including the relationship between civil, criminal and administrative proceedings),³⁰ (3) the adversary system,³¹ and (4) the historical origins of Civil Procedure (including the forms of action, the division between law and equity and the development and reform of procedure in the United States).³² Our initial class focuses on the general role of the civil action in the administration of justice in the United States, including an examination through the traditional Socratic dialogue of those elements of procedure that should be considered fundamental to all civilized legal systems. Although the students are not familiar with the elements of the civil action at this point, and, indeed, are often unclear about the difference between civil and criminal proceedings, this initial dialogue serves to orient the class generally to the nature of civil proceedings and the general problems of how to conduct them fairly. Even concepts as esoteric as the doctrine of finality in litigation can be introduced at a rudimentary level in this initial class by posing a hypothetical in which a plaintiff brings an initial unsuccessful civil action against a defendant and then tries again a second time. Even at this early stage, the students can see that there ought to be some rules providing that litigation over

26. See, e.g., LINDA J. SILBERMAN & ALLAN R. STEIN, CIVIL PROCEDURE: THEORY AND PRACTICE, at xxiv (2001) (beginning with an overview which helps the students, inter alia, "gain an introduction to relevant terms and concepts").

27. See COUND ET AL., *supra* note 18, at iv; see generally Bradley Scott Shannon, *Action Is an Action Is an Action Is an Action*, 77 WASH. L. REV. 65 (2002) (discussing the importance of the proper use of terminology and confusion caused by the varying use of terms in the Federal Rules of Civil Procedure).

28. Our overview chapter incorporates only one case, *Cudahy Junior Chamber of Commerce v. Quirk*, 165 N.W.2d 116 (Wis. 1969), contained in section B(2) of Chapter 1, entitled "Limits of Civil Actions in Resolving Disputes." See TEPLY ET AL., *supra* note 17, at 5.

29. See TEPLY ET AL., *supra* note 17, at 1-2.

30. See *id.* at 2-4.

31. See *id.* at 9-10.

32. See *id.* at 10-20.

a particular matter must come to an end, even though students have no idea of the complexities of the finality doctrine they will encounter as the last topic in the course. Our coverage of the single case in the introductory materials comes next, and it is designed to accomplish a couple of modest objectives. First, it is designed to illustrate to the students how to brief a case for procedural purposes.³³ Second, the particular case that we use is designed to focus them on whether there are kinds of questions that should not be answered through court proceedings. Third, it is designed simply to introduce them to how we will cover cases in later chapters.

After these initial classes, we proceed to the general overview of the civil action, which we cover exclusively through text and problems.³⁴ The use of text and problems is a particularly good way to achieve the functions of the overview described above in an efficient manner. The basic procedures in the civil action can be effectively explored in this manner and the terminology of Civil Procedure introduced. In later chapters, when covering particular procedural topics in more depth, we often reassign the briefer subsections in the overview for review. For example, in the subject-matter jurisdiction chapter, we assign the students to reread the materials on subject-matter jurisdiction in the overview to reorient them to the topic. In addition, we inform them that the procedures studied in the overview will appear in cases in which other topics are being examined. When this occurs, they can return to the overview to refamiliarize themselves with the nature of the procedure.³⁵ Although the overview refers to terminology and procedures found in both state and federal courts, the main focus, as in many other casebooks, is on federal courts and practice under the Federal Rules of Civil Procedure. We spend approximately three weeks on the introductory classes and the overview.

33. In the initial class, we instruct the students how we would like students to do so. We suggest that the students prepare a case brief with the following type of information: (1) The nature of the case (*for example*, "This was an action in the United States District Court for the District of Nebraska seeking damages for personal injuries received in an automobile accident in Illinois."); (2) The procedural posture of the case (*for example*, "The case is before the United States Court of Appeals for the Eighth Circuit to review a judgment of the district court dismissing the action for improper venue."); (3) The procedural issue in the case, *i.e.*, the issue or issues for which we are studying the case, together with the answer to the issue given by the court (*for example*, "Did the district court err in dismissing the action for improper venue? (No)"); and (4) the reasoning of the court. We also tell the students that we may interrupt them while they are trying to give us this information with questions about the case and that they should not be distressed by this, but that they should familiarize themselves with the case as much as possible in order to give us the kind of information that we request. They acquire an understanding of the kinds of things we want as the course progresses. For example, they quickly learn that we want them to tell us what strange words, such as "demurrer," mean.

34. See TEPLY ET AL., *supra* note 17, at 21-66.

35. For example, summary judgment is mentioned in a number of places devoted to topics other than summary judgment.

If time permits at the end of the introductory materials, we like to explore some recurring interpretive issues in Civil Procedure, such as the substance-procedure distinction and the “plain meaning” rule.³⁶ However, we sometimes assign this material for outside reading and pick it up in class coverage in later chapters when it becomes relevant.

II. CASES

Cases have, of course, been the “backbone” of traditional Civil Procedure casebooks, as they have been of casebooks in other first-year courses. Reading and analyzing cases is still the most important method for teaching basic legal reasoning, including critical evaluation of arguments, policies and judicial opinions.³⁷ Even when cases involve statutory or rule interpretation, as opposed to common-law exposition, they allow students to explore the process of reasoning from basic premises to logical conclusions, and they are invaluable for exploring the proper relationship between the courts and other branches of government.

In addition to the general usefulness of cases for the purposes described above, case study serves several more particular functions in a Civil Procedure course. First, case study is the most effective way to present the historical evolution of a complex procedural doctrine, replete with warts and ambiguities, and to teach students to articulate and criticize the doctrine. Second, cases are useful to illustrate how courts in certain areas articulate rules that do not fully express the policies that the courts are enforcing in the area; the cases in these situations allow the students to look beyond the articulation of the rules and identify the “real” reasons for the decisions in the area. Third, cases are useful in Civil Procedure, as in other courses, to illustrate the difficulties of applying rules and policies to shifting factual patterns in specific topic areas. Our use of cases to serve these functions is illustrated in the examples below.

36. See TEPLY ET AL., *supra* note 17, at 66-74.

37. The appropriateness of the case method of teaching, however, continues to be analyzed and debated. See, e.g., Steve Sheppard, *Casebooks, Commentaries, and Curmudgeons: An Introductory History of Law in the Lecture Hall*, 82 IOWA L. REV. 547, 594-623 (1997) (describing the development and current use of the casebook and the case method); Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 545-65 (1991) (summarizing and critiquing the justifications for the continuing use of the case method of teaching); David D. Garner, Comment, *The Continuing Validity of the Case Method in the Twenty-First Century*, 2000 BYU EDUC. & L.J. 307, 323-38 (2000) (cataloging the merits and demerits of the case method, analyzing the validity of each, and concluding that the case method is a valuable tool in legal pedagogy whose continued use is justified). See generally W. Burlette Carter, *Reconstructing Langdell*, 32 GA. L. REV. 1 (1997) (providing an indepth study of Langdell and his legacy); Arturo L. Torres & Karen E. Harwood, *Moving Beyond Langdell: An Annotated Bibliography of Current Methods of Law Teaching*, 1994 GONZ. L. REV. 1 (1994).

The use of cases to present the historical evolution of a complex doctrine is illustrated nicely by the case law in the area of personal jurisdiction. In personal jurisdiction, students must study the creation of a set of constitutional restrictions over a period of about a hundred and fifty years. Many procedure teachers begin the study of personal jurisdiction with the case of *Pennoyer v. Neff*,³⁸ and we are no different.³⁹ However, after covering *Pennoyer*, we explore the operation and evolution of the traditional territorial rules of jurisdiction (up to the date of the *International Shoe* case) by text, notes and questions. This allows us to limit class coverage of the traditional rules if we are behind schedule and return to them when relevant in later sections of the personal jurisdiction chapter. Of course, we include coverage of *International Shoe Co. v. Washington*⁴⁰ as our next step, but we find it efficient to explore the early evolution of the “minimum contacts” test, including the response of the states through the enactment of modern long-arm statutes, by using text, notes and questions.⁴¹ This, we believe, nicely sets up the examination of the doctrines of specific and general jurisdiction⁴² and the effect of the minimum contacts test on the traditional territorial rules that follows in separate sections. Throughout these sections, we supplement the cases with basic note and question material designed to focus the students on the difficulties and ambiguities in the Supreme Court’s construction of the due process limits on state-court jurisdiction. We also include problems, often, but not exclusively, based on state and lower federal court cases, to test the students’ ability to apply the tests. These problems serve as an excellent basis for illustrating the difficulties involved in administering the test. Although we include a large

38. 95 U.S. 714 (1878). See, e.g., COUND ET AL., *supra* note 18, at 62-67; FIELD ET AL., *supra* note 18, at 923-31; CRUMP ET AL., *supra* note 2, at 47-49.

39. See TEPLY ET AL., *supra* note 17, at 207. Although we rely heavily on case presentation in our coverage of personal jurisdiction, we introduce the coverage of the topic with an overview consisting entirely of text and problems. *Id.* at 197. This overview serves the same orientation function as the general overview that we cover in Chapter 1, but limited, of course, to issues of personal jurisdiction. The use of text and problems serves the same function here as in other areas, and complements the case presentation that is the core of the chapter. See *infra* Parts III–IV (discussing the use of text and problems). In addition, although we cover personal jurisdiction extensively in our own courses, we realize that teachers with less than six semester hours to devote to Civil Procedure may have to pick and choose among topics. Even a topic as important as personal jurisdiction may have to be severely truncated. Consequently, in addition to the general overview in the first chapter, we provide overview sections in other chapters as well, so that teachers wishing to introduce a topic, but not spend extensive time on it, may do so. We also introduce the pre-Fourteenth Amendment doctrine of personal jurisdiction with text. See TEPLY ET AL., *supra* note 17, at 204. This serves the function of letting the students know that the law of personal jurisdiction originated even earlier than *Pennoyer* and that the earlier law is related to what comes later.

40. 326 U.S. 310 (1945).

41. See TEPLY ET AL., *supra* note 17, at 229-34.

42. See *id.* at 234-321.

number of problems in the materials, we do not feel compelled to cover them all each year. Rather, we cover different problems in different years, thus, also thwarting somewhat the tendency of students with used casebooks to assume the answers written in the margins by their predecessors in interest will be the ones they will be required to give.

Our materials on personal jurisdiction also include the topics of jurisdiction by necessity,⁴³ the due process requirements of notice,⁴⁴ service of process,⁴⁵ and special problems of amenability to process in federal court, including the Fifth Amendment Due Process Clause limits on federal long-arm jurisdiction.⁴⁶ The latter topic may seem excessive to many teachers, but we deem it of considerable importance given the recent extensive litigation over Fifth Amendment issues in the lower federal courts prompted by federal long-arm statutes and Rule 4(k)(2). The materials demonstrate the difficulties that the lower federal courts are having in adapting Fourteenth Amendment doctrine to fit federal long-arm jurisdiction. Our experience is that there is little time to devote to this subject in the traditional course in Federal Courts, and there is seldom anywhere else in law school that the topic is ever taught. Study of the Fifth Amendment material also nicely complements the previous examination of the Fourteenth Amendment Due Process restrictions on state-court jurisdiction and demonstrates the difficulty of transferring the latter restrictions into an area that may present fundamentally different policy considerations. Time permitting, therefore, it seems that at least one class on the topic is worthwhile.

On the whole, we think that the case treatment of personal jurisdiction, supplemented by text and problems to increase efficiency of coverage and develop more highly the students' skills in applying doctrine, is a valuable illustration of how cases can be used to give the students a picture of a quasi common-law test developed over an extensive period of time.⁴⁷ As noted

43. See *id.* at 318-21. We cover this topic exclusively through text and problems.

44. See *id.* at 321-29. We cover this topic through use of the seminal case of *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), plus notes, questions and a single problem.

45. See TEPLY ET AL., *supra* note 17, at 329-36. We cover this topic, which includes waiver of service under Federal Rule 4 exclusively through text, notes, questions and problems.

46. See *id.* at 337-353. We cover this topic by use of a single case, *Republic of Panama v. BCCI Holdings (Luxembourg) S.A.*, 119 F.3d 935 (11th Cir. 1997), plus text, notes, questions and problems.

47. We call this a "quasi common-law" doctrine for several reasons. First, the traditional territorial rules originated in common-law doctrines of "international jurisdiction." Second, after they were incorporated in the Due Process Clause of the Fourteenth Amendment by the *Pennoyer* case, they evolved and adapted in accordance with the usual method of common-law decision-making employed by American courts. Finally, this process of common-law-like development continued when the Court attempted to adapt the Due Process Clause to modern life in *International Shoe*. Other areas in which we use cases in this same manner include the *Erie*

earlier, however, case study serves valuable additional functions in other situations as well.

A second use of cases is to illustrate to the students how lawyers must “look through” rules announced in opinions to identify unannounced policies that the courts are pursuing, and perhaps even obscuring, with the rules. A good example of this kind of situation occurs in cases articulating the rules for determining whether the amount in controversy in diversity cases has been satisfied. We use the case of *Tongkook America, Inc. v. Shipton Sportsware Co.*,⁴⁸ along with supplemental notes and text, to demonstrate the approach of the courts in determining amount-in-controversy issues in cases in which the plaintiff seeks money damages.⁴⁹ In *Tongkook*, the court of appeals articulated the basic “good-faith, legal certainty” rule along with supplementary rules, one of which is that the courts will not take into account defenses in determining whether the good-faith rule is satisfied.⁵⁰ *Tongkook* violated the latter rule by taking into account an uncontested defense that the parties should have both been aware of, but were not, at the time of commencement.⁵¹ The case, along with supplemental note material (including other cases), illustrates that what the courts are probably really doing in jurisdictional amount cases is enforcing an unarticulated policy of preventing creation of jurisdiction by manipulation or negligence. Thus, the case and its supplementary material are quite useful

doctrine and the development of the Seventh Amendment right to jury trial in federal court. See TEPLY ET AL., *supra* note 17, at 945-87.

48. 14 F.3d 781 (2d Cir. 1994). The *Tongkook* case was a diversity action in the U.S. District Court for the Southern District of New York, in which Tongkook sued Shipton for \$117,621.05 for breach of contract. *Id.* at 782. On appeal to the U.S. Court of Appeals for the Second Circuit from a judgment of \$40,759.73 for Tongkook, including interest, the issue was whether the amount-in-controversy requirement of § 1332 was satisfied. *Id.* at 784. The court of appeals held it was not. *Id.* at 785. In *Tongkook*, the district court raised the issue of whether the jurisdictional amount was satisfied in a court conference, after the fact had been revealed that a partial payment of \$80,760.00 had been made prior to commencement on the \$117,621.05 amount claimed. *Id.* at 783. Neither party was aware of the payment at the time of commencement. *Id.* Alerted by the district court’s concern, Shipton asserted lack of subject-matter jurisdiction, but the court, apparently relying on an affidavit of the plaintiff’s president that he really thought the amount due was \$117,621.05 at commencement, let the action go on under the “good-faith, legal certainty” test. *Id.* The court of appeals reversed because, on the objective facts at the beginning of the lawsuit, more than \$50,000 (the amount-in-controversy requirement at the time) was not “in controversy.” *Id.* at 785. The court of appeals stated that the “good faith-legal certainty” test has an objective element. *Id.* However, the court also stated that a valid defense to a claim does not oust the jurisdiction of the court, and payment (or partial payment in this case) is a defense. *Id.* at 785-86.

49. See TEPLY ET AL., *supra* note 17, at 125. We previously explained the test through text and follow it up with note material discussing other similar cases that seem to be, but are not actually, inconsistent with *Tongkook* once the true policy rationale of the cases is understood.

50. See *Tongkook America, Inc.*, 14 F.3d 781.

51. *Id.*

in teaching the students that they cannot simply swallow what the courts say in judicial opinions, but must read critically and with more than one case in view to determine what the likely outcome should be on a given issue. Neither *Tongkook* nor any of the other cases discussed in the notes is wrong in result. They simply do not fully articulate the rationale that the courts employ in jurisdictional amount situations.

A third use of cases is to illustrate the difficulties of applying established doctrine to varying factual patterns. We use cases for this purpose in a number of areas, such as in the area of finality in litigation. We begin our examination of the doctrine of *res judicata* with an overview section, consisting of explanatory text,⁵² followed by cases that illustrate the application of the “black letter rules” of claim and issue preclusion discussed in the text.⁵³ The overview concludes with a textual examination of the doctrines of law of the case, *stare decisis* and judicial estoppel.⁵⁴ As in other chapters, this overview affords teachers with truncated courses, or those who prefer to devote a minimum amount of time to preclusion doctrines, to cover finality adequately, though not in detail. The cases in this overview section serve the purpose of illustrating the application of the rules described in the textual material. This material is followed by a more detailed examination of the doctrines of claim and issue preclusion using the same format described above—textual explanation followed by illustrative cases designed to demonstrate the problems involved in applying the doctrines discussed in the text. In addition, the cases are supplemented by notes and questions and problems to test the students’ understanding of and ability to apply the rules examined in the text and cases.⁵⁵ Throughout the chapter, the cases selected constitute a valuable means of illustrating the application of the complex doctrines of finality in litigation.

III. TEXT

Textual material serves several important functions in teaching Civil Procedure. First, textual material is useful in areas in which case presentation of doctrine would be too complex for a basic survey course, but in which completeness of presentation requires that the students be given some introduction to a broad range of doctrine in an area. Second, integration of

52. See TEPLY ET AL., *supra* note 17, at 1074-79.

53. See *id.* at 1079-90.

54. See *id.* at 1090-93.

55. See *id.* at 1093-1111 (claim preclusion including counterclaims); *id.* at 1111-50 (issue preclusion, including nonmutual preclusion). Chapter 13 on finality also includes sections on preclusion of co-parties, preclusion of subject-matter jurisdiction and personal jurisdiction questions and complications of the federal system (including the effect of state judgments in other states and federal courts, enforcement of federal judgments in other federal and state courts, and the enforcement of foreign nation judgments in state and federal courts in the United States).

textual material in a casebook allows more efficient class presentation of the material, as the students can assimilate the textual material on their own and their understanding of it can be tested through the use of questions directed to application of the material in cases and problems, or through hypothetical situations presented by the teacher. Third, it is readily apparent that the “supplemental materials” market for all law school subjects is booming.⁵⁶ Although textual presentation of material in a casebook cannot substitute for more extensive presentations in supplemental materials, integrating a certain amount of text with cases allows the teacher to insure that the most important textual material for class purposes will be in the students’ hands, rather than relying on the hit and miss approach of student selection of supplementary material.⁵⁷

The first of these functions (surveying complex material that otherwise could not be covered) is illustrated by our use of textual material in teaching subject-matter jurisdiction, specifically the intricacies of the federal question

56. Jeffrey W. Stempel, *All Stressed Up But Not Sure Where to Go: Pondering the Teaching of Adversarialism in Law School*, 55 BROOK. L. REV. 165, 170-71 (1989) (reviewing STEPHAN LANDSMAN, READINGS ON ADVERSARIAL JUSTICE: THE AMERICAN APPROACH TO ADJUDICATION (1988)) (pointing out that “the hornbooks arose to meet a gaping hole in the courses and course books, which could not cover every aspect of the subject matter in any detail and which continued to hide a good deal of the pedagogical ball in order to spur students into thinking for themselves” and that “[a]s finals approach and anxiety heightens, the student typically exchanges the more learned hornbooks for books that make no representation of intellectual scholarship but bill themselves as study aids and professionally authored course outlines to help the student learn enough black letter law to perform well in the final examination”). Cf. Stephen N. Subrin, *Teaching Civil Procedure While You Watch It Disintegrate*, 59 BROOK. L. REV. 1155, 1190 n.88 (1993) (noting that a popular supplemental study aid with examples and explanations “gave [students] a false sense that civil procedure contained more ‘black letter’ law than [the author] believe[d] to be true [and that] it fed the students’ deep taste for ‘answers,’ which was at cross-purposes with [the teacher’s] desire to force them to ask questions and to learn to live with the uncertainty which pervades the lawyers’ professional life”); see also *id.* at 1186 (“Perhaps the materials for a civil procedure course should lay out the doctrine that is not readily conveyed or understood through a few judicial opinions. This would leave the time to use the doctrine in concrete situations. Why do students buy hornbooks and outlines? If the law can be laid out more simply, maybe we should do it, but only if that then frees time for the more complex.”).

57. In our course, we recommend the supplementary material that we want the students to use, specifically TEPLY & WHITTEN, *supra* note 4. Even so, the students do not always focus on the supplementary material in the fashion that they should, especially in the earlier part of the course. Cf. William M. Richman, Book Review, 65 IND. L.J. 927, 929 (1990) (reviewing GENE R. SHREVE & PETER RAVEN-HANSEN, UNDERSTANDING CIVIL PROCEDURE (1989)) (noting the author’s experience that “[f]rom time to time, I will call on a student to recite the facts and procedural stance of a case and notice that the student refers not to a written brief or a casebook margin brief, but rather to the treatise and [the student’s] marginal notes in it”). It is, therefore, valuable to have the essential textual material in the casebook, with appropriate citations to other supplementary reading for the students who wish to do it.

jurisdiction of the U.S. District Courts. We begin our examination of federal subject-matter jurisdiction with a textual overview of the subject-matter jurisdiction of the district courts,⁵⁸ as in other chapters, and this is followed by a textual exploration of the federal question jurisdiction, including the relationship between the constitutional and statutory grants,⁵⁹ and the two statutory categories of federal question jurisdiction (cases in which federal law creates the plaintiff's claim and cases in which state law creates the plaintiff's claim, but federal law contributes in a proper way to the state claim).⁶⁰ This is followed by an examination of the well-pleaded complaint rule (which applies in both categories of cases) through the case of *Louisville & Nashville Railroad Co. v. Mottley*.⁶¹ After *Mottley*, there is further textual examination of the category of federal question cases in which state law creates the plaintiff's claim, but federal law contributes to the claim, and of the operation of federal question jurisdiction in declaratory judgment actions.⁶² It is our judgment that this latter material is too complex for study primarily through cases in a first-year Civil Procedure course. However, it is essential to expose the material to the students in, at least, a rudimentary form. Our students frequently clerk for law firms during law school and are given a significant amount of responsibility for researching and analyzing complex problems in Civil Procedure. Over the years, it has seemed to us that they are expected to understand a significant number of problems concerning federal subject-matter jurisdiction and personal jurisdiction. Thus, we consider it important to give all students the broadest possible exposure to these topics that we can afford in the first-year course. Textual presentation, supplemented by problems, is the only realistic way to accomplish this in a reasonable amount of time and in a manner that they will comprehend.⁶³ In addition to providing a method of surveying complex material that could not otherwise be covered in a first-year course, enhanced use of text also allows presentation of material in a time-efficient fashion when it is not justifiable for teachers to spend significant class time on the material. This should be especially appealing to teachers who must teach Civil Procedure in three or four-hour packages. We sometimes assign

58. See TEPLY ET AL., *supra* note 17, at 75-81.

59. See *id.* at 81-84.

60. See *id.* at 85-86.

61. 211 U.S. 149 (1908); see TEPLY ET AL., *supra* note 17, at 86-91.

62. See TEPLY ET AL., *supra* note 17, at 91-103. Both of these latter textual treatments are accompanied by problems to test the students' understanding of the material.

63. Cf. Eagar, *supra* note 11, at 403-06 (pointing out that "[t]he huge market for commercial course aids which outline areas of law would seem to support the view that the present [case method] system does not do an adequate job in teaching substantive law" and concluding that although "[t]he use of the case method has value because it simulates the manner in which a practicing lawyer ascertains the law by reading cases . . . it is not the clearest and most efficient method of introducing a broad area of law to students with no legal background").

the textual overview sections of particular chapters as outside reading when we cannot afford to spend class time on particular material.⁶⁴ In addition, some overview sections contain more extensive coverage of topics than others, including cases, extensive text and problems. We sometimes cover these sections in class, but the use of text and problems allows more time-efficient coverage.⁶⁵

IV. PROBLEMS

We consider the problem method essential to achieving the goals of the first-year curriculum and to the effective teaching of Civil Procedure.⁶⁶ Regardless of the topic we are covering, or the materials we are using to cover it (cases or text), we include problems for class coverage that are designed to assure that the students have absorbed the subject. Problems also sharpen the students' analytical skills and are an extraordinarily flexible way of dealing with a variety of legal materials and multiple issues. They also allow the teacher to proceed from the simplest situations to much more complex ones, with the option of omitting coverage of more complicated problems if time or the demands of pedagogy so dictate. One good example of how problems can be integrated with cases and text to deal with a complicated area of statutory interpretation is the material we use to cover the basic federal venue provisions.

The basic federal venue statutes are, to say the least, not well drafted.⁶⁷ The statutes raise a number of unnecessarily complicated questions that Congress mysteriously leaves unattended while it addresses other, seemingly

64. Like other teachers, we change the content of our course from year to year in order to adapt the course to the needs that we perceive our students will have in practice and changes in other areas of the curriculum that allow material that would otherwise be taught in the first year to be offered to interested students in the second and third years of law school. The textual overview sections of our chapters allow us to expose students to omitted material with a minimum of class time when we do so.

65. We have sometimes done this with overview section devoted to claim and issue preclusion discussed in the preceding section. In addition, we have also covered the *Erie* doctrine by using the overview section of that chapter, which contains extensive textual discussion of the doctrine, but also contains the *Erie* case itself, as well as problems with which to test the students' basic understanding of the doctrine. See TEPLY ET AL., *supra* note 17, at 424-42.

66. For an article extolling the problem method of teaching Civil Procedure, see Stephen J. Shapiro, *Teaching First-Year Civil Procedure and Other Introductory Courses by the Problem Method*, 34 CREIGHTON L. REV. 245 (2000). See generally Eagar, *supra* note 11, at 403-06 (discussing the benefits of the problem method); Myron Moskovitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241 (1992) (advocating the adoption of the problem method of instruction in the standard large class and the standard core course in every year of law school).

67. See TEPLY & WHITTEN, *supra* note 4, at 321-54 (discussing the evolution and issues concerning the present federal venue statute).

less important matters.⁶⁸ In addition, the law of venue develops mainly in the lower federal courts, and often only in the district courts, with little court of appeals intervention. The result is a large number of questions that are effectively open in a final, authoritative sense. This context presents teachers with a dilemma, but also with an opportunity. The dilemma is whether to spend significant time on a matter that may be considered marginal in importance relative to other matters in the Civil Procedure course. The opportunity is to explore how to deal with a complex and poorly drafted statute that is important to lawyers at the threshold of every federal action. The integration of text, case, note and problem coverage offers an excellent way to do this in a time-efficient manner.

In our coverage of venue, we begin with a short textual treatment of the distinction between local and transitory actions.⁶⁹ This section is important to the students' understanding of both state and federal venue. Although the section contains text, notes, questions and problems, we sometimes assign the material for outside reading and omit the problems,⁷⁰ proceeding directly to the next section on federal venue. That section also begins with a textual overview of the federal venue statutes. We do not spend class time on this text, but pick up the material in conjunction with coverage of the case and problems. The

68. For example, when Congress amended 28 U.S.C. § 1391(a) & (b) in 1990 to provide that venue is proper in "a judicial district where any defendant resides, if all defendants reside in the same state," *see* Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 311, 104 Stat. 5089, 5114, it left in effect 28 U.S.C. § 1392(a), which also provided that venue was proper for non-local actions against multiple defendants residing in different districts in the same state in "any of such districts." *See* 28 U.S.C. § 1392 (2000). Thus, two statutes provided for venue in a district in a state in which any defendant resided as long as all defendants resided in the same state. In addition, in the amendments to § 1391(a) & (b), Congress dealt with venue in cases in which "property" is the subject of the action without specifically addressing the "local action" rule. It also left in effect 28 U.S.C. § 1392(b), which allows a plaintiff to bring a local action involving property located in different districts in the same state in any district in which part of the property is located, but it did not address the relationship between the latter section and the property sections of § 1391(a) & (b). In 1996, Congress repealed § 1392(a), thus eliminating the superfluity of that section, but did not address the far more important subject of the status of the "local action" rule, despite the fact that it had been widely remarked upon. *See* Act of Oct. 1, 1996, Pub. L. No. 104-202, 110 Stat. 3023. These matters, including the complexity of the "local action" problem under the existing scheme, are fully discussed in TEPLY & WHITTEN, *supra* note 4, at 322, 338-41.

69. *See* TEPLY ET AL., *supra* note 17, at 354-59.

70. Although problems with the "local action" rule are interesting, we have already surveyed the issues briefly in the overview of the civil action covered in the first chapter. In addition, depending on our coverage of personal jurisdiction in a given year, we may also have examined potential constitutional restrictions on the power of states to directly affect the title to land in other states, which is related to the "local action" question. Thus, class discussion of the material in this section is not essential and the material can be picked up when covering "local action" problems involving federal venue.

case we have selected, *Pfeiffer v. Insty Prints*,⁷¹ is a diversity action involving discussion of all three subsections of 28 U.S.C. § 1391(a) at a simple level. The case, thus, serves to illustrate the operation of the basic venue provisions without extensive complications. Notes and questions following the case raise some additional simple issues about the operation of the basic venue scheme. These are followed by seven problems ranging from the very simple to the quite complex. Coverage of the problems tests the students' understanding and ability to apply the basic provisions, and the later complex problems illustrate the difficulties with the way the basic statute is drafted. Thus, the first problem involves a simple hypothetical situation in which a single plaintiff is suing multiple defendants who reside in different districts in the same state in a diversity action based on an automobile collision in a third state. The problem tests the students' understanding (1) that venue based on plaintiff's residence is no longer proper under the amended venue scheme, (2) that venue based on defendant's residence is proper in any district in which one of the defendants resides when there are multiple defendants residing in different districts in the same state, and (3) that under the circumstances of the problem venue is also proper in the district in which the events giving rise to suit (here all the events) occurred. The next problem builds on the first by shifting the residence of one of the defendants to another state, thus, making venue proper on the facts only in the state and district where the events giving rise to the suit occurred.

71. No. 93-C2937, 1993 U.S. Dist. LEXIS 15319 (N.D. Ill. Oct. 29, 1993). The *Pfeiffer* case was a diversity action in the U.S. District Court for the Northern District of Illinois, in which the plaintiff sued two individual and two corporate defendants for breach of contract. *Id.* at *2-3. The case was before the district court on the defendants' motions to dismiss for improper venue. *Id.* at *1. *Pfeiffer's* facts allow the teacher to explore § 1391(a)(1)-(3) thoroughly. The individual defendants resided in Wisconsin. *Id.* at *2-3. The corporate defendants also resided in Wisconsin, because under § 1391(c) they were subject to personal jurisdiction there. *Id.* at *5. However, even if the corporations were subject to personal jurisdiction in the Northern District of Illinois, all of the defendants would not reside there because the residence of the individuals was outside the state. *Id.* at *3. Section 1391(a)(2) was not applicable because although the defendant received correspondence and phone calls in Illinois, these "events" did not give rise to the claim. *Id.* at *6. The allegations were that the theater (in Wisconsin) was not properly supervised, nor was there proper supervision of ticket sales (in Wisconsin), tickets were mailed late (in Wisconsin), and television and radio advertising was not properly procured (in Wisconsin), etc. *Id.* at *3. Likewise, the property provision of § 1391(a) was inapplicable because the property (the play) was not the subject of the action. At the time of the case, § 1391(a)(3) allowed the plaintiff to sue where all the defendants were subject to personal jurisdiction, but only if there is no other district where the action could be brought. *Id.* at *9-10. This provision was inapplicable because the action could be brought in the Eastern District of Wisconsin under § 1391(a)(1) & (2). *Id.* at *10. Section 1391(a)(3) now allows the plaintiff to sue where "any defendant" is subject to personal jurisdiction, but this would not have helped if it had been in effect, because even if the corporations were subject to personal jurisdiction in Illinois, they still could be sued in Wisconsin, and, thus, the action could be brought elsewhere, making the "fallback" provision inapplicable. *See id.* at *1-9.

The third problem is divided into two parts. The first part asks where venue would be proper if the auto accident that is the subject of the suit occurred in another country. This part of the problem thus tests the students' understanding of the "fallback" rule of § 1391(a)(3). Under the circumstances described, the rule makes venue proper in either of the districts where the defendants reside because personal jurisdiction can (presumably) be asserted over the resident defendant there, which is the test under the statute. This part of the problem also allows us to bring out that, while venue may be proper in either one of the districts in which the defendants reside, it may be impossible to obtain personal jurisdiction over the other defendant in that district, with the result that the plaintiff may have to bring two actions. This reinforces a lesson that we try to teach from the beginning of the course: that subject-matter jurisdiction, personal jurisdiction and venue restrictions (as well as other potential procedural restrictions) must be satisfied in every case or the action (or some party therein) must be dismissed. The second part of the third problem is also critical. It asks the students to suppose that the same action is commenced in a state court and removed to federal court. Under these circumstances, venue is proper in the district and division to which the action is removed, because the removal statute, 28 U.S.C. § 1441(a), contains its own venue provision. Over the years, we have found that the students tend to miss this simple rule unless it is illustrated in class with a problem.⁷²

The rest of the problems become progressively more complex. We think it is important to cover all the problems in the basic section, but individual preferences and time pressures may dictate to other teachers that certain problems, considered more esoteric than others, can be omitted. In some years, we also choose to explore selectively⁷³ the issues presented in later portions of our materials. These include more intensive examination of events-based venue,⁷⁴ the residence of corporations and associations,⁷⁵ the "local action" rule and property-based venue,⁷⁶ transfers of venue under 28 U.S.C. § 1404(a) and other provisions,⁷⁷ the doctrine of forum non conveniens,⁷⁸ forum selection clauses⁷⁹ and injunctions against extrastate litigation and stays of forum proceedings.⁸⁰ Our selection of coverage in these sections depends on the overall plan that we have for the course. For example, coverage of transfer under § 1404(a) and forum non conveniens may need more extensive coverage

72. See generally TEPLY ET AL., *supra* note 17, at 367-68 (Problems 4-5 and 4-6).

73. We seldom have time to cover the entire venue chapter, even in a six-hour course.

74. See TEPLY ET AL., *supra* note 17, at 369-76.

75. See *id.* at 376-82.

76. See *id.* at 382-86.

77. See *id.* at 386-400.

78. See *id.* at 400-15.

79. See TEPLY ET AL., *supra* note 17, at 416-22.

80. See *id.* at 422-23.

in a year in which we are planning a complete coverage of the *Erie* doctrine (which follows venue in our course plan), because these topics are related to issues in the more advanced *Erie* materials.

The venue materials described above illustrate well the flexibility that teaching with cases, text and problems offers. Although this flexibility exists within most topics in Civil Procedure, the venue materials show how problems are particularly useful in exposing the issues raised by a poorly drafted statute or an ambiguous constitutional or common-law doctrine. Although the same result can be obtained by carefully constructed hypothetical situations presented to the students for the first time in class, problems integrated with the other materials give students a better chance to prepare for the types of issues that will be raised in class. They, therefore, make the class dialogue more productive and less time consuming.

V. CONCLUSION

Although case analysis remains essential to many objectives of the first-year curriculum, especially in teaching legal reasoning, we believe that integrating case analysis with text and problems furthers more of the goals of the first-year Civil Procedure teacher than any other method that we have encountered. In our opinion, it also results in a beneficial synergy that enhances student learning. When preceded by a broad overview, it offers an excellent way to provide broad coverage as well as context in a time-efficient manner. Furthermore, it gives teachers exceptional flexibility, including the option to study the historical evolution of a complex doctrine, such as the *Erie* doctrine or personal jurisdiction, to investigate complicated statutes or rules, or to examine a topic by covering self-contained introductory text. Most importantly, it offers teachers who must teach Civil Procedure in less than a six-hour format the ability to maximize topic coverage. Although, as we stated earlier, the choice of teaching methodology and materials is a uniquely personal one, we have found that a carefully integrated set of cases, text, and problems is excellent approach for teaching Civil Procedure.

**TEACHING IMPORTANT
CIVIL PROCEDURE
CONCEPTS**

