

**LEGAL PROCESS
SYLLABUS**

I. SPHERES OF LAW-MAKING AUTHORITY

A. An Overview

CHARLES R. CALLEROS, "Sources of Lawmaking Powers" — Wass. Supp. 1-3

HENRY M. HART, JR. & ALBERT M. SACKS, "The Role of the Courts in the Development of the Underlying Decisional Law," "The Legislature," and "Administrative Agencies" — Wass. Supp. 4-6

HERBERT JACOB ET AL., "The Civil Law and Common Law Traditions" — Wass. Supp. 7-8

Geoffrey C. Hazard, "Fundamental Differences Between Procedural Systems" — Wass. Supp. 9-10

B. Federal and State Courts

CHARLES R. CALLEROS, "The Common Law" — Wass. Supp. 11-13

DANIEL J. MEADOR, "Introductory Overview," "The State Courts," and "The Federal Courts" — MEADOR 1-33

C. The Legislature

HENRY M. HART, JR. & ALBERT M. SACKS, "Introductory Text on the Legislature's Function" — Wass. Supp. 14-20

D. The Executive

WILLIAM BURNHAM, “Executive Power” and “Growth of Presidential Power” — Wass. Supp. 21-25

E. Administrative Agencies

WILLIAM BURNHAM, “The Advent and Growth of Administrative Agencies” and “Administrative Law” — Wass. Supp. 26-34

II. INTERSECTING SPHERES OF LAW-MAKING AUTHORITY

A. Checks and Balances

DELMAR KARLEN, “Relations of the Judiciary to Other Branches of Government” — Wass. Supp. 35-45

B. Judicial Interpretation of Statutes

WILLIAM BURNHAM, “Statutory Interpretation Methods” — Wass. Supp. 46-52

Adam Liptak, *The Legal Context: Presidential Signing Statements, and Alito’s Role in Them, Are Questioned* — Wass. Supp. 53-55

Charlie Savage, *Obama Looks to Limit Impact of Tactic Bush Used to Sidestep New Laws* — Wass. Supp. 56-58

McDonald v. Sante Fe Trail Transportation Co. (U.S. 1976) — Wass. Supp. 59-65

Schwegmann Brothers v. Calvert Distillers Corp. (U.S. 1951) — Wass. Supp. 66-67

Alex Kozinski, *Hunt for Laws’ “True” Meaning Subverts Justice* — Wass. Supp. 68-71

C. Overlapping Jurisdiction

DANIEL J. MEADOR, “Complicating Circumstances” — MEADOR 34-44
(carry-over paragraph)

D. Deference to Administrative Interpretations of Statutes

HENRY M. HART, JR. & ALBERT M. SACKS, “The Role of the Courts in the Interpretation and Enforcement of the Constitution and of Statutes and Administrative Determinations” — Wass. Supp. 72

Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc. (U.S. 1984) — Wass. Supp. 73-79

E. Legislative Responses to Judicial Interpretation and Law-making

CHARLES R. CALLEROS, “Interplay Between Legislation and Common Law” — Wass. Supp. 80-82

City of Milwaukee v. Illinois (U.S. 1981) — Wass. Supp. 83-91

William J. Brennan, Jr., *In Defense of Dissents* — Wass. Supp. 92-99

Obama Reverses Bush-era Policies, Says Agency Preemption Needs Legal Basis — Wass. Supp. 100-01

III. AN OVERVIEW OF THE CIVIL LITIGATION PROCESS

A. An Examination of the Adversary System

STEPHEN LANDSMAN, *THE ADVERSARY SYSTEM: A DESCRIPTION AND DEFENSE* — Wass. Supp. 102-06

Judith Resnik, *Managerial Judges* — Wass. Supp. 107-19

Film: Truth on Trial (PBS “Ethics in America” series)

OSCAR G. CHASE ET AL., CIVIL LITIGATION IN COMPARATIVE CONTEXT —
Wass. Supp. 120-27

B. Alternatives to Litigation

Private Ordering Through Alternatives to Litigation — Casebook 100-13

Owen M. Fiss, *Against Settlement* — Wass. Supp. 128-38

Robert Berner & Brian Grow, *Banks vs. Consumers (Guess Who Wins)* —
Wass. Supp. 139-48

Adam Liptak, *Lawyers Won't End Squabble, So Judge Turns to Child's Play* —
Wass. Supp. 149-50

IV. PERSONAL JURISDICTION

A. Traditional Bases of Jurisdiction: Presence, Consent and Domicile

Casebook 680

Pennoyer v. Neff (U.S. 1877) — Casebook 681-91

Wendy Collins Perdue, *Sin, Scandal, and Substantive Due Process: Personal
Jurisdiction and Pennoyer Reconsidered* — Wass. Supp. 151-57

Fraudulent Inducement into the Forum — Casebook 691-93

Harris v. Balk (U.S. 1905) — Casebook 693-96

Jurisdiction over Corporate Defendants — Casebook 699-700

Note on Consent and Domicile — Wass. Supp. 158-59

B. The Modern Formula and Constitutional Limitations on State Power

1. The Breakthrough Cases

International Shoe Co. v. Washington (U.S. 1945) — Casebook 700-07

Shaffer v. Heitner (U.S. 1977) — Casebook 781-96

Wendy Collins Perdue, *The Story of Shaffer* — CLERMONT 135-58
(optional)

David D. Siegel, *Pack Up Your Troubles — Carefully* — Wass. Supp.
160-61

Subparts D-G of Chapter 6 (on *in rem* jurisdiction) —
GLANNON GUIDE 99-109 (optional)

2. A Detour: Statutory Authority for Exercise of Jurisdiction

a. State Long-Arm Statutes

The States' Response — Long-Arm Statutes — Casebook
713-17

Gray v. American Radiator & Standard Sanitary Corp. (Ill.
1961) — Wass. Supp. 162-65

b. Federal Rule of Civil Procedure 4

The Federal Rules Amendment Process — Casebook 197-98
(note10)

Personal Jurisdiction in Federal Court — Casebook 717-19

Fed. R. Civ. P. 4(k)

THOMAS MAIN, "Suing Foreign Defendants in U.S.
Courts" — Wass. Supp. 166-67

Mwani v. Bin Laden (D.C. Cir. 2005) — Wass. Supp. 168-74

Practice Exercise 2 (on long-arm statutes) —
GLANNON 25-45 (optional)

Chapter 7 (on long-arm statutes) — GLANNON GUIDE
111-30 (optional)

3. A Second Detour: Procedures for Challenging Personal Jurisdiction

Fed. R. Civ. P. 12(b), 12(g), 12(h)

Practice Exercise 3 (on challenges to personal jurisdiction) —
GLANNON 47-61 (optional)

Practice Exercise 19 (on motions to dismiss) — GLANNON
367-82 (optional)

Chapter 8 (on litigating objections to jurisdiction) —
GLANNON GUIDE 131-50 (optional)

Chapter 17 (on pre-answer motions under the Federal
Rules) — GLANNON GUIDE 329-45 (optional)

4. Exploring the Meaning of Contacts and “Fair Play and Substantial Justice”

Casebook 719-20

World-Wide Volkswagen Corp. v. Woodson (U.S. 1980) — Casebook
720-34

General and Specific Jurisdiction — Casebook 734-36

Burger King Corp. v. Rudzewicz (U.S. 1985) — Casebook 743-56

Asahi Metal Industry Co. v. Superior Court (U.S. 1987) — Casebook 756-66

Note, *The Precedential Value of Supreme Court Plurality Decisions* — Wass. Supp. 175-86

5. The General Jurisdiction Alternative

Helicopteros Nacionales de Colombia v. Hall (U.S. 1984) — Casebook 811-19

Subparts A-C of Chapter 6 (on general jurisdiction) —
GLANNON GUIDE 91-99 (optional)

6. Jurisdiction in Cyberspace

Pavlovich v. Superior Court (Cal. 2002) — Casebook 766-80

7. Transient Jurisdiction Revisited

Burnham v. Superior Court (U.S. 1990) — Casebook 799-811

The Battle Over Natalee — Wass. Supp. 187

Practice Exercise 1 (on personal jurisdiction) — GLANNON
3-24 (optional)

Chapter 5 (on personal jurisdiction) — GLANNON GUIDE
69-89 (optional)

C. European Perspectives on Personal Jurisdiction

THOMAS MAIN, “European Perspectives” — Wass. Supp. 188-91

V. REASONABLE NOTICE

Mullane v. Central Hanover Bank & Trust Co. (U.S. 1950) — Casebook 825-28

Manner of Serving Process — Casebook 828-30

Adam Liptak, *How to Tell Someone She's Being Sued , Without Really Telling Her* — Wass. Supp. 192-94

Court Order requiring service via email and Facebook, *MKM Capital Pty Ltd. v. Corbo* (Supreme Court of the Australian Capital Territory 2008) — Wass. Supp. 195-96

THOMAS MAIN, “Service Upon Foreign Defendants” — Wass. Supp. 197

Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (entered into force 1969) — Wass. Supp. 198-201

Practice Exercise 18 (on service of process in federal court) — GLANNON 345-65 (optional) (includes some material not covered in class, which will not be tested)

Subparts A & B of Chapter 9 (on notice and service of process) — GLANNON GUIDE 151-60 (optional)

VI. SUBJECT MATTER JURISDICTION: THE COURT’S COMPETENCE

A. In General

Casebook 850

B. Subject Matter Jurisdiction of the Federal Courts

1. Diversity Jurisdiction

a. Constitutional and Statutory Provisions

U.S. Const. art. III, § 2

28 U.S.C. §§ 1332(a)-(c) & (e), 1359

b. The Controversy Surrounding Diversity Jurisdiction

Adrienne J. Marsh, *Diversity Jurisdiction: Scapegoat of Overcrowded Federal Courts* — Wass. Supp. 202-16

c. The Diversity of Citizenship Requirement

Mississippi Band of Choctaw Indians v. Holyfield (U.S. 1989) — Wass. Supp. 217-18

Mas v. Perry (5th Cir. 1974) — Casebook 851-61

Diversity Limerick — Wass. Supp. 219

Note on the Determination of a Corporation's Principal Place of Business — Wass. Supp. 220-21

THOMAS MAIN, "Jurisdiction of Cases Involving Aliens" — Wass. Supp. 222-25

d. The Amount in Controversy Requirement

Amount in Controversy — Casebook 861-64

Practice Exercise 5 (on diversity jurisdiction) —
GLANNON 89-107 (optional)

Chapter 2 (on diversity jurisdiction) — GLANNON
GUIDE 3-24 (optional)

Computer-Aided Exercise (on diversity
jurisdiction) — PARK & MCFARLAND 18-26; then go to
a computer to complete the exercise (optional)

2. Federal Question Jurisdiction

Review U.S. Const. art. III, § 2

28 U.S.C. § 1331

Casebook 864-65

Louisville & Nashville R.R. v. Mottley (U.S. 1908) — Casebook 865-73

Practice Exercise (on federal subject matter jurisdiction) —
PARK & MCFARLAND 11-18 (optional)

Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg. (U.S. 2005) —
Casebook 873-88

Practice Exercise (on federal subject matter jurisdiction) —
PARK & MCFARLAND 30-39 (skim), 56-67 (read) (optional)

Practice Exercise 4 (on federal question jurisdiction) —
GLANNON 63-87 (optional)

Chapter 3 (on federal claims and federal cases) — GLANNON
GUIDE 25-50 (optional) (subpart I contains material that will
not be tested)

3. Removal Jurisdiction

28 U.S.C. §§ 1441(a)-(c) & (f), 1446(a), (b) & (d), 1447

Casebook 914-23

Notice of Filing of Notice of Removal and Notice of Removal in
West Virginia University v. Rodriguez (N.D. W. Va. 2008) — Wass.
Supp. 226-31

Motion to Remand in *West Virginia University v. Rodriguez* (N.D. W.
Va. 2008) — Wass. Supp. 232-35

For background on the *Rodriguez* litigation and copies of additional litigation documents, see <http://richrodriguezlaw.blogspot.com/2008/02/litigation-as-press-release.html> (optional)

Practice Exercise (on removal jurisdiction) — PARK & MCFARLAND 39-41 (skim), 68-70 (read) (optional)

Practice Exercise 7 (on removal) — GLANNON 123-39 (optional)

Chapter 4 (on removal jurisdiction) — GLANNON GUIDE 51-68 (optional)

VII. VENUE

28 U.S.C. §§ 1391(a)-(d), 1392

Casebook 830-31

Bates v. C&S Adjusters, Inc. (2d Cir. 1992) — Casebook 831-37

Practice Exercise (on venue) — PARK & MCFARLAND 50-53 (skim), 76-77 (read) (optional)

Practice Exercise 8 (on venue) — GLANNON 141-58 (optional)

Subparts A-C of Chapter 10 (on venue and transfer) — GLANNON GUIDE 173-82 (optional)

Computer-Aided Exercise (on personal jurisdiction, subject matter jurisdiction and venue) — PARK & MCFARLAND 78-84; then go to a computer to complete the exercise (optional)

Practice Exercise 9 (on personal jurisdiction, subject matter jurisdiction and venue) — GLANNON 159-73 (optional)

VIII. ASCERTAINING THE APPROPRIATE LAW

A. When State Law Must Be Applied in Federal Court

Erie R.R. v. Tompkins (U.S. 1938) — Casebook 925-35

Irving Younger, *Observation: What Happened in Erie* — Wass. Supp. 236-49

Edward A. Purcell, Jr., *The Story of Erie* — CLERMONT 21-79 (optional)

Practice Exercise 10 (on *Erie*) — GLANNON 177-99 (optional)

Chapter 11 (on *Erie* basics) — GLANNON GUIDE 195-214 (optional)

Guaranty Trust Co. v. York (U.S. 1945) — Casebook 935-41

Efforts to Apply *York* — Casebook 941-45

Byrd v. Blue Ridge Rural Electric Cooperative, Inc. (U.S. 1958) — Casebook 947-53

Hanna v. Plumer (U.S. 1965) — Casebook 953-61

John Hart Ely, *The Irrepressible Myth of Erie* — Casebook 962-66

Federal Procedural Statutes and *Hanna-Erie* — Casebook 966-68

Gasperini v. Center for Humanities, Inc. (U.S. 1996) — Casebook 977-93

Practice Exercise 11 (on *Erie* analysis) — GLANNON 201-28 (optional)

Chapter 12 (on *Erie* analysis) — GLANNON GUIDE 215-34 (optional)

B. The Determination of State Law

Mason v. American Emery Wheel Works (1st Cir. 1957) — Casebook 993-98

IX. EXAM-TAKING

John H. Langbein, *Writing Law Examinations* — Wass. Supp. 250-55