Civil Procedure
Part I
Sixth Edition

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With this set of *Law in a Flash* cards, you have the foundation for excellent exam performance. Once you’re familiar with these cards, you can face your Civil Procedure exam with the confidence of knowing and understanding every principle and being able to recognize issues in context.

This booklet will show you how to maximize your exam performance by preparing for and executing your exam intelligently. Your pre-exam goal will be to free your exam time for spotting issues and applying the law. Your exam goal will be to identify every major issue and analyze it in an organized fashion.

**Overview of Civil Procedure/How This Set Is Organized**

Civil Procedure is almost every law student’s most dreaded First Year class. It’s about as far removed from everyday life as any law school course can be. The cases are boring and confusing and the concepts themselves are convoluted. However, when you strip Civil Procedure down to its bare bones, it is just the process by which a civil claim makes its way through litigation. Everything you learn in Civil Procedure is simply a step in that process. In this set of *Law in a Flash*, you’ll cover the first half of the steps in that process, which should roughly correspond to what you’ll cover in the first semester of a standard Civil Procedure class.

This set is also organized to mirror, as closely as possible, the organization of most casebooks and treatises on
Civil Procedure. Each card in this set has a code in the top right-hand corner, telling you the topic on the card, as well as the card’s position in that topic. The topics and abbreviations, in the order in which they appear, are listed below. Card numbers for each topic are listed in parenthesis:

1. The **court** in which plaintiff chooses to pursue a claim. The choices and limitations on those choices are issues of **Jurisdiction**, and that’s the first topic you’ll cover.

- **JUR/GEN** General (1)
- **JUR/SMJ** Subject Matter Jurisdiction (2–137)
- **JUR/PGEN** Jurisdiction over the Parties/General (138–158)
- **JUR/PNPM** Jurisdiction over the Parties/In *personam* Jurisdiction (159–242)
- **JUR/PNRM** Jurisdiction over the Parties/In *rem* Jurisdiction (243–244)
- **JUR/PQIR** Jurisdiction over the Parties/Quasi in *rem* Jurisdiction (245–258)
- **JUR/SOP** Jurisdiction/Service of Process (259–274)
- **JUR/NAO** Jurisdiction/Notice and Opportunity to be Heard (275–295)
- **JUR/VEN** Jurisdiction/Venue (296–347)
- **JUR/RMV** Jurisdiction/Removal (348–393)
2. The second topic in this set is **Ascertaining the Governing Law: The Erie Doctrine** (Code: AGL) (394–435). This essentially addresses the problem of which law a court should apply in any given situation: state or federal.

3. The **pleadings** associated with an action; principally, plaintiff’s complaint, defendant’s answer, counterclaims and crossclaims, and preliminary motions (that is, motions to dismiss and motion for judgment on the pleadings). These are covered in cards with the code **PLE** (436–493).

Each topic includes definition and theory questions, as well as hypotheticals that teach you how to apply specific legal principles to the level of detail tested on law school exams.

*Note that the rest of Civil Procedure—from discovery procedures, through trial, multiparty/multiclaim litigation, former adjudication (res judicata and collateral estoppel), and appeal—is discussed separately in the Civil Procedure II set of Law in a Flash.*

**References**

This set contains references to source materials. The references usually appear at the very end of the answer to each question. (Keep in mind that the reference is to the most applicable source.) If a card doesn’t have a specific reference, check the general source material discussed in the cards before and after it.
References are abbreviated as follows:


**FKM** J. Friedenthal, M. Kane, and A. Miller, *Hornbook on Civil Procedure*, Fifth Edition, ©2015, West


The following source was also consulted in preparation of these flashcards.


Every card in this set has been carefully checked against these, and other, sources. When sources conflict—as they occasionally do—the rule cited on the card is the one followed by the majority of sources. It is very important to remember that *the rule cited on any given card may or may not reflect the interpretation your professor chooses*. Because your professor is the only one whose opinion counts on your law school exam, if your professor gives you a different viewpoint, follow your professor’s view on your exam!
The “Quick Review” Feature

This set has a special *Law in a Flash* feature: cards that are coded as Quick Review cards, for a last-minute, black letter brush-up on Civil Procedure.

You can quickly access Quick Review cards by flipping through the set and checking the top left-hand corner of each card. Quick Review cards have this code next to the card number: ⬤⬤⬤. For instance, if card #74 is a Quick Review card, the top left-hand corner reads: 74 ⬤⬤⬤.

The Quick Review cards state all the rules you’ll need to know for your Civil Procedure exam. To make the most of them, be sure that you’re familiar with the entire set first. Then, as you go through the Quick Review cards, think of a hypothetical that covers each element. That way, you’ll be ensuring that you know what each element really means. It’s worth emphasizing a point that many law students overlook: It doesn’t matter how well you memorize the rules if you don’t know how to apply them to facts. For instance, knowing that personal jurisdiction requires minimum contacts doesn’t help if you don’t know the elements that comprise minimum contacts. It’s this application skill that distinguishes top law students, and that’s what you get from reviewing the hypothetical cards. But with that in mind, you’ll find that the Quick Review cards are a fast and easy way to ensure you’ve got a firm grasp of the black letter law.
Abbreviations and “Notes” in Law in a Flash Answers

Answers in most Law in a Flash sets contain abbreviations and subheadings. Some are straightforward. For instance, in this set, you’ll frequently find that subheadings like “SIGNIFICANCE” and “STATE RULE” are self-explanatory. There are three sub-headings that appear in every set of Law in a Flash: NOTE, RELATED ISSUE, and N.B. A “note” highlights either a subsidiary issue, or a factor that otherwise would be lost in the answer. “Notes” most frequently appear in complex answers. A “Related Issue” involves facts slightly different from the facts given on the front of the card. “Related Issues” are included when a slight change in the fact pattern would change either your reasoning or the result, and the related facts easily could be confused with the facts given. “N.B.” is an abbreviation that confuses many students. N.B. is an abbreviation for the Latin term “nota bene,” which means “mark well” or “take note.” In Law in a Flash, N.B. is used to highlight a particularly insidious trap or a point of great significance.

How to Use Law in a Flash

While there’s no one perfect way to incorporate Law in a Flash into your studies, as a rule of thumb, the earlier you begin using it, the better you will perform. If you have Law in a Flash early in your course, you should follow your syllabus and review a topic just before it comes up in class, and then again when the topic is completed, making sure that you modify and/or remove cards to
reflect your professor’s coverage of each topic. When your final exam approaches, whether or not you’ve used *Law in a Flash* throughout the course, follow these tips to get maximum benefit from the cards:

1. **RECITAL.** After you answer each card, put the card down, and repeat in your own words the principle in the card. If it’s a hypothetical, review the facts and the law. This will enhance your memory for each principle.

2. **OVERLEARNING.** Overlearning is considered the best way to reduce test anxiety. You should go over a card twice after you have the answer down pat. If it took you two tries to answer a card correctly, you should review it twice more at least (for a total of three to four times all together).

3. **ONE SUBJECT PER SESSION.** Don’t try to study more than one subject per study session. Doing so creates “interference”—it causes your memory to confuse the subjects you’re studying. Study different subjects in different locations—even if this only means different parts of the library—for the same reason.

By the same token, break up each study session with short breaks, perhaps between topics. Even a two-minute break for a drink of water gives your mind a chance to consolidate what you’re learning, and improves your chances of remembering it.

4. **LAST-MINUTE ACTIVITY.** In between your last study session and your exam, don’t take part in activities that
will interfere with your memory—like reading a newspaper or studying another subject (if you can avoid it). The less mental activity there is between your last study session and your exam, the more likely you are to remember everything you need to know. Naturally, the activity providing the least mental interference is sleep. If you’re too anxious to get a good night’s sleep, try to make sure your interim activities are as different from studying as they can be—perhaps sports or TV.

“Acing” Your Civil Procedure Exam

Studying with *Law in a Flash* will dramatically improve your memory and understanding of Civil Procedure. Nonetheless, you must still prepare for your exam in an organized, intelligent manner. The suggestions below will help you do just that.

**Before Your Exam**

Your pre-exam goal is to know every principle flawlessly, understand its application to facts, and anticipate to the extent possible what will be on your exam. Ideally, when you enter your exam, all you will have to do is spot issues and analyze them.

Take advantage of any advice your professor gives you before the exam. Many professors hold special exam preparation sessions. If yours does, attend and listen for clues as to what to expect on the upcoming exam. While this may strike you as self-evident, it’s amazing how many students believe their study time will be better spent reviewing notes instead of attending such sessions.
Along the same lines, listen precisely to what your professor says in the last two weeks of class. Even if (s)he is covering new material, there may be clues to what’s on the exam. Many teachers, in some way, refer to most of what you’ll see on your exam. For instance, your professor’s mentioning towards the end of the semester a principle you covered months earlier could be an indication of something to watch for on your exam.

By the same token, take full advantage of any old exams on file in your library. Seeing what your professor has tested in the past is a good indication of what to expect on your exam. Pay particular attention to questions that appeared several years ago as opposed to last year; while professors tend to repeat past exam questions (in modified form), they tend not to rely on last year’s exam, but rather go further back to look for issues that worked in the past. This is good advice for any course, but it’s particularly important for Civil Procedure, since the exams cover unique material and are likely to surprise you.

**What to Expect**

You’ll find that Civil Procedure will not be an issue-laden, complex exam like Torts, Criminal Law or Contracts. Instead, you are more likely to find yourself with time to analyze questions in some detail.

**The Key to Exam Success**

The key to success on your Civil Procedure exam, as with any law school exam, is ORGANIZATION. This extends to the way you should prepare for the exam as well. There
are certain things you have to memorize, and you have to do so in an organized fashion. You *have* to know:

1. A general topic outline of the course
2. Every major element and standard
3. How to apply those elements and standards to facts

A. A general topic outline

Shortly before you take your exam, you should memorize a general outline of the major topics your professor covered in class, since it’s unlikely (albeit possible) your professor will ignore an important topic on the exam.

The mnemonic immediately below covers the major topics in both *Law in a Flash Civil Procedure I & II*, which in turn mirror the major topics in the popular Civil Procedure textbooks. True, this mnemonic is cumbersome, but you need only remember it long enough to copy it down as soon as you enter your exam.

**SPiNS V. RoW, PADS J. PoD, CoX AIR JIJI CARA**

S-Subject matter jurisdiction; P-Personal jurisdiction; N-Notice; S-Service of process; V-Venue; R-Removal; W-Waiver; P-Pleadings; A-Applicable law (*Erie*); D-Discovery; S-Summary judgment; J-Jury issues; P-Post trial motions; D-Dismissals; C-Counterclaims; X-Crossclaims ("X"-cross); A-Ancillary jurisdiction; I-Ipleader; R-Real party; J-Joinder/parties; I-Intervention; J-Joinder/claims; I-Interpleader; CA-Class Actions; R-Res judicata; A-Appeals.

Obviously, if your professor has covered different topics,
modify the mnemonic accordingly. The point is to be able to get down on paper *immediately* every possible major issue your professor could test you on—as soon as you enter your exam.

B. Every major element and standard

The greatest favor you can do for yourself is to ensure that you are *thoroughly* familiar with every important standard and its application. This is particularly daunting for Civil Procedure, because there are many different motions you need to know, and each has a lot of different standards. However, it’s this kind of substantive review for which *Law in a Flash* is ideal. This set includes many mnemonics to help you remember basic elements. Memorize verbatim those covering rules you find difficult to remember.

Before you enter your exam, you should be able to copy down your general course mnemonic, fill in every name, and write down the elements of every principle *flawlessly*. If you find this intimidating, you should realize that every minute you spend memorizing, at this point, will repay you tenfold on your exam—because it will *save you time searching your memory for rules*. Furthermore, it’ll give you greater confidence and stop you from panicking over remembering elements while you’re trying to answer the questions.

In fact, you should be able to memorize any rule you need in a one-day period, if you follow this program, commonly called the “10-1-10-1” approach. Look at any rule you need to memorize (including the general course
mnemonic), put it aside, and immediately write it down. Repeat this until you have it down perfectly. Then, write it down after ten minutes. Fill in any gaps. Wait one hour, and write it down again. Do the same in ten hours, and then after one day. That’s it—10 minutes, 1 hour, 10 hours, 1 day. Why approach it this way? Because these are the intervals at which, memory experts believe, memory begins to break down. You should do this program as close to your exam as possible; if there will be a significant gap before your exam, reinforce your memory by copying the rule down as frequently as you find necessary. Remember—you have to be able to remember these elements flawlessly.

Memorizing each rule associated with Civil Procedure is extremely important, but you can’t perform well if you get the various rules confused. One of the biggest favors you can do for yourself is to keep the various topics separated and organized in your mind. For instance, when you analyze a former adjudication problem, you have to analyze res judicata and collateral estoppel separately. When you analyze jurisdiction, you have to keep all the standards separate, and analyze each element of jurisdiction separately: subject matter, personal jurisdiction, notice, venue, and the rest.

While it’s important to keep each section of Civil Procedure separate in your mind, remembering the threads that connect one section to another will help you remember standards at various points in the trial process. Take motions, for instance. There are many motions the
parties can make in the course of a civil trial. But take a look at the major ones: A motion to dismiss for failure to state a claim, a motion on the pleadings, a motion for summary judgment, and two of the major post-trial motions—directed verdict and JNOV. If you keep in mind that all of these motions short-circuit the trial process, it’s easier to remember the standards on which each of these motions is granted. For instance, a motion to dismiss for failure to state a claim is granted if it’s not possible, from the plaintiff’s complaint, for the plaintiff to prove any set of facts on which he will be entitled to relief. A motion on the pleadings requires that the pleadings indicate there is no set of facts the plaintiff can prove under which he’ll be entitled to relief. A summary judgment motion requires that there be no issue of material fact, so that the judge can enter judgment as a matter of law. A directed verdict requires that no reasonable jury could find for the non-moving party, and a JNOV requires that no reasonable jury could find as the jury did. Thus, while it’s important to keep various topics separated and organized in your mind, remembering the connections between various parts of the civil trial process will help you remember the elements and standards for various motions.

C. Applying elements and standards

As with every Law in a Flash set, most of the cards in Civil Procedure deal with application of rules to facts. You should memorize the theory cards, then index them in your mind under your course outline. You should then be able to answer all the hypotheticals correctly. Application is
particularly important in those areas of Civil Procedure that require you to draw your own conclusions. These include issues such as: “minimum contacts” in jurisdiction, the scope of “transaction or occurrence,” and the applicability of *res judicata* and collateral estoppel. The cards in this set give you situations that mirror facts from major cases and key you in on those elements courts have weighed heavily in past cases on the same point. Because of the learning principles incorporated into *Law in a Flash*, you will find that the mental pictures created by the hypotheticals cards will jog your memory for the applicable rules.

**Taking Your Exam**

A. Grade killers

There are three grade killers that can torpedo your exam performance:

**PANIC • INSTINCT • DISARRAY**

If you have prepared sufficiently, panic should not be a factor in your performance. If you’ve gone through your notes sufficiently before your exam, if you can answer all of the relevant cards comfortably, if you have your rules and mnemonics (including your general course mnemonic) memorized, and if you have analyzed past exams, you have *no reason* to panic; don’t let the anxiety of your classmates affect you!

To get a top grade, you must answer the exam questions in an organized, well-reasoned fashion. Your professor cannot read your mind and see how smart you are; (s)he can only see what you’ve written in your blue book. That’s
where blind instinct and disarray can torpedo you. You have to apply the principles you’ve memorized, and you have to do so in an organized fashion. That’s why it’s important to follow these instructions precisely.

As soon as you enter your exam, write your general topic outline vertically down a piece of scratch paper. Fill in each item. Copy down any other mnemonics you’ve memorized, and fill them in. This will take you a maximum of two to three minutes, so don’t fool yourself into thinking this is a waste of time. Don’t succumb to the temptation to read through the whole exam; and, as a corollary to this, don’t be intimidated if the people around you immediately begin writing in their blue books. It isn’t the one who writes the most or writes the earliest who gets the top grade, it’s the one who writes the best answer—and that’s what you’re going to do. If you take these few minutes at the beginning of the exam to write down every important principle, you will free your mind to identify issues and analyze them, instead of hunting through your memory for the applicable rule. You’ve taken a task you can do before your exam—memorizing rules—and removed the need to waste time remembering rules during the exam. After all, before your exam, you can’t identify issues on the exam or analyze them; all you can do is prepare. If you prepare thoroughly and write down the principles you need to know as soon as you enter your exam, you will dramatically reduce your test anxiety, and, as a result, improve your exam performance.
Once all of the basics are down on scratch paper, you’re ready to look at your exam.

First, calculate the time you have to finish each question. (The time allotted to each question will probably be given on your exam; if not, the weight it’s given—in terms of points or percentages—will tell you how much time you should spend on each question.) Write down the times at which you should finish each question and stick to this schedule. If you have any time left when the exam is over, you can go back and flesh out any answers you feel you haven’t completed to your satisfaction. But as you proceed, don’t, as they say, rob Peter to pay Paul. Stick to your deadlines. There’s no faster route to the bottom of the class than to be forced to skip a question entirely because you’ve run out of time.

B. First reading

Read a question through at least once before you try to answer it. This will ensure that you get the main gist of the question and do not stray from the facts when you answer.

C. Second reading

Review what the professor is asking and read the question again, with the professor’s goal firmly in mind. When you read the question this second time, carefully check for issues in every line. It’s possible that your professor threw in some smoke screens that weren’t intended to raise issues, but your presumption should be that every fact, every event, every phrase in the question, raises an
important issue. When you identify an issue, highlight the fact or check the line, and mark down the issue on a separate piece of scratch paper. Once you’ve carefully read the facts, and picked out the issues, go through your general topic outline to see if you’ve missed anything. If you have, add it to your list of issues. If the facts involve multiple parties or the problem is a jurisdiction problem, diagram the parties (including their residences or citizenships, if appropriate). This will help avoid confusion. Furthermore, in doing so, you will avoid operating by instinct. Diagramming in advance forces you to think logically.

D. Organizing your answer

Go back through the question, and jot down a quick outline of your answer on a piece of scratch paper. Remember that Civil Procedure is divided between topics that are *mechanical* and those that require *analysis*. If an issue is “mechanical,” jot down the standard (if necessary). If the issue is analytical, jot down factors in the facts that will aid your analysis; for example, facts that will bear on minimum contacts in a jurisdiction question, or facts that will make an action appropriate for a class action. If you have kept your topic outline at hand, you should be able to see all the significant issues. Once you’ve isolated and organized the basic elements of your answer, you’re ready to fill in your blue book.

E. Filling in your blue book

Use your list of issues as a road map, and follow it precisely. Your goal should be to make your answer as
To write an effective essay, you should keep the reader in mind and aim to make it straightforward and easy to read as possible. For each issue, start by mentioning just enough of the facts to let the professor or grader know that you’ve identified the controlling facts. Don’t waste time repeating facts. After you identify the specific facts you’re addressing, state the applicable rule. This may seem painfully obvious, but many law students gloss right over the rule and proceed with analysis. Your professor isn’t a mind reader; (s)he doesn’t know if you know the rule unless you write it in your blue book! Then apply the rule to the facts. If there is more than one rule on an issue, address each rule separately and how it applies to the facts.

Finally, draw a conclusion. As you’ve heard a million times, your conclusion is not as important as your analysis. If you run out of time before you state your list of issues, to indicate that you spotted them, state the rule(s) applicable to each, and come back to them later if you have time.

**After Your Exam**

Once your exam is complete, don’t conduct a postmortem with your classmates. What’s done is done, and if you listen to other people discuss the exam, your memory will play tricks on you, making you believe you missed significant issues when you didn’t, and convincing you that everyone else wrote down something you completely forgot about. Put the exam to rest with the knowledge that you studied effectively, analyzed your exam intelligently, and maximized your performance as a result.
If You Need More Advice...

The advice on studying and exam-taking appearing in this booklet is an excerpt from the book *Strategies & Tactics for the First Year Law Student*, published by Aspen Publishing. Strategies & Tactics is a short, easy-to-read handbook on how to do everything from take notes in class to answer exam questions. If you’d like a copy of *Strategies & Tactics*, you can find it at your bookstore or at customer.service@aspenpublishing.com.

Good luck!