

Core Civil Procedure

Core Civil Procedure

Learning Through Multiple-Choice Questions

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CAROLINA ACADEMIC PRESS

Durham, North Carolina

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Library of Congress Cataloging-in-Publication Data

Names: Brescia, Ray, author.
Title: Core civil procedure : learning through multiple-choice questions /
Ray Brescia.
Description: Durham, North Carolina : Carolina Academic Press, LLC, [2023]
Identifiers: LCCN 2023000061 (print) | LCCN 2023000062 (ebook) | ISBN
9781531026110 (paperback) | ISBN 9781531026127 (epub)
Subjects: LCSH: Civil procedure--United States--Examinations, questions,
etc. | LCGFT: Study guides.
Classification: LCC KF8841 .B733 2023 (print) | LCC KF8841 (ebook) | DDC
347.73/5--dc23/eng/20230403
LC record available at <https://lcn.loc.gov/2023000061>
LC ebook record available at <https://lcn.loc.gov/2023000062>

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
(919) 489-7486
www.cap-press.com

Printed in the United States of America

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Introduction

Welcome and Overview

This guide is designed to supplement and build your knowledge around the topic of civil procedure. It does so through multiple-choice questions designed to test and deepen your understanding of the topic through the concept of *deliberate practice*, which is work toward an obtainable but far-off goal, with constant feedback. As you work through the material in this guide, you will slowly build your understanding of the core concepts of civil procedure and move on to the next topic area once you have done so. Use this guide to supplement a class on civil procedure and as preparation for the bar exam. While this guide focuses mostly on the specific rules relevant to civil procedure in the federal courts, and it certainly serves as an effective and useful complement to a course on federal civil procedure, the core concepts it covers are relevant to litigation in state courts as well. Because of its emphasis on the specific rules governing litigation in the federal courts in the United States, it is also useful for practitioners not used to the functioning of the federal courts who might want to develop a greater facility with and knowledge of their practices.

While many of the questions in this guide are a bit more complex and challenging than what one might find in a typical bar exam, their relative difficulty will prepare you well to spot the key issues, identify the knowledge a particular question is testing, and select the correct answer in the sometimes more straightforward questions you might typically see in a bar examination. Working with these questions will also facilitate your ability to read critically and effectively and train you to do so more quickly, which are all skills you will need in any examination.

In addition to the questions themselves, at the end of each chapter there is a Formative Assessment Quiz which helps you gauge your understanding of the material in that chapter. The answer key in Chapter 9 provides just the correct answer to each question in the book and Chapter 10 then provides an in-depth explanation for each answer. Those explanations contain not just the answer but also the sources for the answer, from the Federal Rules of Civil Procedure, statutory law, and case law. Use these explanations to not just understand the questions you got wrong and identify the concepts with which you may struggle but also to ensure you are understanding the things you got right. Think of them as a coach along the way. This coaching is a particularly important aspect of deliberate practice.

You can use the Formative Assessment Quiz when you have concluded your work in a given chapter. You can also wait to take the Formative Assessment Quiz until you have finished a few chapters and have it serve as a “midterm exam,” to test your understanding of the issues at different points in the semester or during the course of your studies. Note that instead of a Formative Assessment Quiz, Chapter 8 contains a Summative Assessment Quiz. This is an excellent way to review the material contained in the entire guide and to prepare for a final examination as well as the bar exam.

This guide is structured by chapters devoted to different topics and sub-topics related to a particular chapter’s broad subject matter. You can work through the material in each chapter and follow along with a course or bar review based on the topical sections in each chapter.

What This Guide Covers, and What It Does Not

This course is designed to introduce the reader to the issues that are typically covered in an introductory course on federal civil procedure, one taught in every law school in the United States. Because of that, there are comprehensive chapters on core concepts like personal jurisdiction, subject matter jurisdiction, and pleadings. There is also a chapter on joinder of claims and parties, which, in many ways, builds on the lessons of personal jurisdiction and subject matter jurisdiction. The chapters on discovery and trials and appeals are less comprehensive, partly because those subjects tend to be less of a focus of the introductory course and students can learn more on those topics in an upper-level course or courses. Similarly, this guide does not cover the topics that tend to be covered more in upper-level courses on federal jurisdiction, advanced civil procedure, or even constitutional law, like standing, class actions, interpleader, and other similar topics.

A Note to Students

This book is designed to be *modular*. You can follow along with whatever course plan or casebook your instructor may use, aligning your work in this guide with the structure and order of materials your instructor uses. Try to refrain from diving into material you have not yet learned in whatever course you are taking. The understanding and skills you will gain from working through this guide will occur through testing your knowledge of the information learned in a traditional course. It will also strengthen that learning. At the same time, it is no substitute for what you will learn in a traditional course.

First and foremost, you should use the information you learn from these exercises to deepen your understanding of the knowledge you are supposed to be developing. In addition, you can also use these exercises to gather information about *you*, how well you are absorbing the material, the effectiveness of your study strategies, etc. Use this

second-order information to hone in on not only your strengths but also your weaknesses so you can build on the former and shore up the latter.

One more important note: given the format of the answers, it is very difficult to take these questions and then look for the answer after each question. You will invariably see the answer to the next question. At a minimum, it is recommended that you take the questions in a particular section before looking up the answers.

Taking Multiple-Choice Exams

Multiple-choice questions are challenging. It is easy to get lost in the weeds of the fact pattern: you may think it is taking you in one direction, and then you find the question is completely different from what you were anticipating. Once you start on that other direction, certain facts and issues will seem important to you, and when you get to the call of the question, you find that you might have to read the question all over again. I am sorry to report that this is often the express design of the questions you will face. Figuring out how to sort out the signal from the noise is a critical skill you will need to develop. In addition, having potential answers available to you might give you some degree of comfort, but those can be deceptive, and just because the wording of a potential answer might seem *familiar* to you does not mean that it is *correct*. The key question to ask with every multiple-choice question is “What knowledge is this question testing?” There can be many false paths, red herrings, and dead ends in a multiple-choice question (to mix my metaphors!). When trying to answer a multiple-choice question, you must identify the specific nugget of knowledge, regarding a very particular issue, that is the focus of the question. A question cannot cover every possible issue under the sun, and practically every question is trying to assess your understanding of a very discrete topic. In order to ensure you can focus on what knowledge a particular question is testing, use the following approach, one that I call, with a nod to popular culture, *using the F.O.R.C.E.*

F. *Find* the question:

Turn first to the call of the question to get a general sense of what the exam question is asking. It might require you to read the last sentence or two of the fact pattern if the question itself is opaque, such as when it says something like “Should the motion to dismiss be granted?” Finding the question first helps you avoid turning down a distracting and diverting path in the fact pattern.

O. *Observe*:

What are the facts of the fact pattern and how do they relate to the call of the question?

R. *Reorient*:

This is the most important step. Once you have read the call of the question and understand the facts, you now ask yourself, “What knowledge is this question testing?” Once you can focus in on that, it will likely make certain facts more

salient and important than others. Then you can focus on the important ones and orient yourself toward the direction in which the question is truly going.

C. *Codify:*

Here, you are going to identify the applicable rule that addresses the question presented. It is the next logical step following Step 3; once you have re-oriented yourself to understand what knowledge the question is testing, you can then align the question, facts, and the appropriate rule that governs the situation. And when we say “rule” in the context of a federal civil procedure exam, sometimes it means a specific Federal Rule of Civil Procedure, and sometimes it means a rule that comes from a statute or case law. It can even come from the U.S. Constitution itself. For example, if the knowledge the question is testing is your knowledge of general personal jurisdiction (*see* Chapter 2), the “rule” to apply in that situation is derived, very loosely, from the U.S. Constitution but really is found in case law. Whatever the situation, apply the correct and appropriate “small r” rule to fact pattern and question presented.

E. *Execute:*

Finally, it is time to look at the potential answers offered to you. Here, you will choose the answer that best matches your identification of the knowledge tested in Step 3 and your codification of the answer in Step 4. Really try to figure out what the answer should be before you look at the potential answers. And be aware of “traps”—for example, you might see an answer that sounds familiar and want to choose it as a result, but the answer might only be familiar because it relates to a legitimate rule in the pantheon of civil procedure rules, not because it is actually the proper rule to apply in a given situation.

Once again, the most important step in this process is Step 3. Every multiple-choice question is testing specific knowledge. Once you can hone in on what specific knowledge a particular question is testing, the extraneous issues melt away, and the answer should become clear. It takes some practice to utilize this approach, and you can experiment with it without time constraints at first. Eventually, it will become habitual. You will find that it actually makes reading less time-consuming (with less time spent rereading the question), and your answering the question will go more quickly.

Using Multiple-Choice Questions to Deepen Your Learning and Prepare for Essay-Based Questions

First, while the questions in this guide stand on their own and can be utilized to develop your understanding of particular issues at face value, you can also use them creatively to further deepen your learning. First, you can take apart a particular question and manipulate the facts to determine whether a change in facts might change the outcome. For example, when it comes to the subject matter jurisdiction of the federal

courts (*see* Chapter 3), diversity jurisdiction may be available based on the citizenship of a particular party given its state of incorporation, as presented in the fact pattern on a given question. What happens if that citizenship changes? What change will change the outcome? Which will not? You can play around with each of the fact patterns in each question to help you develop a deeper understanding of the application of the different rules in particular situations. This can also help prepare you for anything—any iteration of a range of general facts that dictate the results in a particular situation. Pull together a study group of your colleagues. Have each of you change the fact pattern of a few questions and then share those changed fact patterns within the group. (Study groups are highly recommended generally.)

On a related note, you will probably notice that for a small percentage of questions, the fact patterns appear very similar. That is by design. For a few questions, this guide uses this method to test your knowledge and understanding of the material by borrowing some facts from a previous question and changing them up a bit. The basic elements of the question may even come from a different chapter altogether. Do not be fooled into thinking the question is the same, and, as a result, the answer and outcome are the same as well. Sometimes the facts change, but it does not necessarily change the outcome. At other times, the facts will change, and it *will* change the outcome. If you develop an ability to identify these situations and determine what changes to the outcome, if any, may occur as a result of those changes, you are on the road to mastery.

Second, since many law school exams and bar examinations include essay questions, any one of the questions contained in this guide can be converted into an essay question. Just ignore the potential answers and ask yourself, “How would I answer this question if it were an essay?” You can elaborate on the given facts and expand the issues you want to address, but you can certainly use these fact patterns as prompts for an essay-based question and answer. Again, pull together a study group to help expand your capacity to do this by tackling a number of questions in this way.

A Note to Instructors

The chapters in this guide are presented in a particular order, one commonly used in an introductory federal civil procedure course. At the same time, as described above, the chapters and the sections found within them are modular. You can align them with your course syllabus and assign them by chapter and even section within specific chapters to correspond to the structure and order of your course. Students can use the Formative Assessment Quizzes that conclude each chapter as a way to chart their progress on a particular topic, or you could recommend that students use those quizzes together as a “midterm” of sorts. If, for example, after the first month or so of class, you have covered personal jurisdiction and subject matter jurisdiction, you can recommend that students take the Formative Assessment Quizzes at the ends of Chapters 2 and 3 together, as a way to assess their progress and understanding of the material. The Summative Assessment Quiz (Chapter 9) can also serve as a good review prior to your final exam. Once again, I do not see the materials in this guide as supplanting

anything you are teaching, or as a substitute for it, but rather as a way to supplement the important work you are doing inside and outside the classroom.

Acknowledgments

I have long been interested in and intrigued by the subject of civil procedure since my first days at law school. Because of that interest, I have sought out and benefited from the mentorship of many wonderful teachers and colleagues who have taught me so much over the years. This interest in civil procedure probably started in my first class in law school, taught by the late Geoffrey Hazard. Working alongside Harold Hongju Koh and the late Michael Ratner on several cases was incredibly rewarding and edifying. Clerking for the Hon. Constance Baker Motley was a gift. I learned so much from all of these mentors. Fellow civil procedure instructors at Albany Law School have also taught me so much, including current colleagues Rosemary Queenan, Connie Mayer, and Nina Farnia. Former colleagues Donna Young and Dale Moore were so very patient, kind, and generous to me when I first started teaching in this area. Former colleague Joe Buffington also helped to sharpen my approach to writing multiple-choice questions. In addition, Polly Boyle, Alice Broussard, Noah Chase, Paige Gottorff, Danielle Piccone, and Taylor Yensan offered editorial assistance with this guide, and my intrepid colleague Sherri Meyer offers tireless assistance in all of my work. Finally, the fantastic team at Carolina Academic Press has been wonderful to work with, including Carol McGeehan, Ryland Bowman, Jennifer Hill, and Scott Sipe. More than anything, though, this guide is a product of countless conversations and mutual learning with students in my civil procedure class, who have taught me so much. This book is a small token of my appreciation of them.