

# Global Issues in Civil Procedure

By Thomas Main

## **1. Discovery (teaching an area that is difficult to teach using only U.S. cases)**

Teaching discovery is notoriously difficult for civil procedure professors because court opinions (reprinted in the traditional casebooks) don't convey the strategy/reality of discovery practice and/or lack the requisite context for evaluating whether or not the court's decision was correct/necessary. The suggested alternative is usually drafting exercises, but that is an impractical solution for many courses/professors. I spend two or three days on discovery, and assign my 22-page Chapter 4 ("Discovery") as the assignment either for Day One or Day Two of that sequence. The materials in that Chapter illustrate well (1) why discovery matters to the plaintiff—i.e., discovery is about gathering evidence to prove the elements of a cause of action (this is the "context" of discovery); and (2) why different countries have different approaches to discovery—i.e., the techniques/rules of discovery reflect institutional choices and policy preferences (this is the "public policy" of discovery). Both of those principles are central concerns that are typically very difficult to convey to students; the "global" dimension of the case is really just a bonus. The global dimension is good because it introduces "comparative" perspective—i.e., not all countries have the same discovery rules. It introduces "transnational" perspective—i.e., the court must decide whether one country's efforts to preclude discovery of material located within its territorial boundaries is nevertheless discoverable in a proceeding taking place elsewhere. And the case introduces "international" perspective because there is a popular international treaty on point. Notwithstanding the presence of the trifecta of globalization (comparative, transnational, international), it is a very accessible case.

## **2. Pleading (giving foreign perspective on politically-charged developments in the field)**

Chapter 3 on pleading is only five pages long. This material resonates with recent cases that have elevated the pleading standard in federal courts. Any professor who is assigning *Twombly* or *Iqbal* could assign these five pages for useful perspective. The *Twombly/Iqbal* line of cases are usually criticized by liberals as restricting access to courts (and celebrated by conservatives for advancing efficiency). Yet because the *Twombly/Iqbal* line is much more consonant with the approach of the rest of the world, it is the conservatives who are finding some comfort in the global perspective, while the liberals must make the argument for American exceptionalism.

## **3. Horizontal Conflicts (making sense of conflicts doctrine by giving international context)**

Civil procedure casebooks tend to avoid materials about how courts determine the applicable law in horizontal conflicts. It is avoided, presumably, because conflict of laws can be tricky—and there is a separate course. But there are many cases (*Piper Aircraft*, e.g., is in every casebook) that don't make any sense to the students without some knowledge of conflicts doctrine. I offer a nine-page Chapter that describes the basic contours of the subject.

## **4. Service (teaching careful reading of the Rules while giving transnational perspective)**

"Service" is a subject that each casebook uses a different opinion to teach. Because the case is used simply to teach careful reading of FRCP 4, this is an obvious place to use a transnational case instead. Rather than assigning and discussing a case that reviews the particulars of 4(e) or 4(h) about serving individuals/corporations, instead assign and discuss either my *Brockmeyer* or *Prewitt* cases in Chapter 7 that reviews the particulars of 4(f). Either way you're focusing on the careful reading of a rule, but with the foreign defendant case(s), you have a more interesting fact pattern and some exposure to transnational perspective.