

Texas Pretrial Procedure (Procedure II)  
Alistair Dawson and Alex Kaplan  
Spring 2015 Semester  
Syllabus and Reading Assignments

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I. Required Materials

Your assigned readings are from Alex Wilson Albright's Texas Courts—A Survey (2014-2015) ("Albright") and from the Commentary portion of O'Connor's Texas Rules—Civil Trials (2014) ("O'Connor's"). You also will be responsible for all Texas Rules of Civil Procedure (TRCP) rules, as well as any other constitutional or statutory provisions, that you are asked to review in Albright, even though they are not set out in this reading list. The TRCP rules may be found in O'Connor's beginning at page 771. All other referenced provisions are set out in appendices to the Albright text.

Except where they are marked with an asterisk (\*) in the reading list, references to the sections of the O'Connor's Commentary germane to a particular day's lessons are included solely for your convenience. Those unmarked sections generally will not be covered in class, nor will exam questions be drawn from them. However, because they provide an excellent discussion of the topics covered in the daily lesson, you may wish to review them, either before or after class, to be certain that you understand the concepts that we have been discussing. On a few occasions, however, the O'Connor's Commentary is sufficiently important that we have marked it with an asterisk (\*) in the reading list. When we have done that, the Commentary will be discussed in class, and questions may be drawn from it for the final examination.

## II. Course Subjects and Reading Assignments

We have set forth below the main subject areas that we intend to cover during the course. We have also listed what we currently anticipate will be the reading assignments for each of these subjects. As the semester approaches, we may make certain adjustments to these subjects and reading assignments (e.g., adding/removing materials or changing the sequence), in which case we will provide a revised syllabus, but we don't expect major changes.

### 1. Introduction to Texas Courts and Their Subject Matter Jurisdiction

- Albright, chs. 1, 2.A.1-2.A.2, 2-A.3, pp. 1-23
- O'Connor's, ch. 2.F,\* pp. 148-163
- O'Connor's, chs. 3.F, 5.C., pp. 253-262, 345-355

### 2. Preliminary Matters Regarding Judges and Lawyers in Texas: Judicial Disqualification and Recusal; Lawyer Professionalism

- Albright, chs. 2.B, pp. 23-39; Albright, ch. 2.C, pp. 39-52
- O'Connor's, ch. 1. H § 7, p.65;

### 3. Trial Court Authority on Pretrial Matters

- Albright, ch. 2.D.1, pp. 52-59; O'Connor's, ch. 1.G, § 2, pp. 55-57.
- Albright, ch. 2.D.1, pp. 59-65;
- Albright, chs. 2.D.2-D.3, pp. 65-75; O'Connor's, chs. 1.D, pp. 42-48, 2.H, § 1-10, pp. 172-156

### 4. Service of Process and Default Judgments

- Albright, chs. 3.A-3.C, pp. 77-96; O'Connor's chs. 1.D, pp. 42-48, 3.B, pp. 202-216 & ch. 7.A, pp. 611-628
- Albright, chs. 18.A-18.D, pp. 791-812; O'Connor's, chs. 1.D, pp. 42-48, 3.B, pp. 202-216 & ch. 7.A, pp. 611-628

5. Personal Jurisdiction: Minimum Contacts; Specific and General Jurisdiction
  - Albright, ch. 3.D, pp. 97-116
  - O'Connor's, ch. 3.B, § 2.3, pp. 203-210
6. Challenging Personal Jurisdiction: Special Appearance and Collateral Attacks
  - Albright, ch. 3.E, pp. 116-131; O'Connor's, ch. 3.B,\* pp. 202-216
  - Albright, ch. 3.F, pp. 131-136; O'Connor's, ch. 7.A, pp. 611-628
  - Albright, ch. 18.E, pp. 812-819; O'Connor's, ch. 7.A, pp. 611-628
7. Forum Non Conveniens and Forum Selection Clauses
  - Albright, ch. 3.G, pp. 136-144; O'Connor's, ch. 3.D, pp. 230-241
  - Albright, ch. 3.H, pp. 145-149; O'Connor's, ch. 3.D, § 5, p. 238
  - Albright, ch. 3.I, pp. 149-150
8. Venue: Permissive, Mandatory and Improper Venue
  - Albright, ch. 4.A, pp. 151-152; O'Connor's, ch. 2.6, pp. 164-171
  - Albright, ch. 4B, pp. 153-171; O'Connor's ch. 2.F, pp. 164-171
9. Challenging Venue
  - Albright, ch. 4.C, pp. 171-191; O'Connor's ch. 3.C, pp. 217-230
  - Albright, ch. 4.D, pp. 192-193
  - Albright, ch. 4.E, pp. 194-201; O'Connor's ch. 3.C, § 3, pp. 225-227

10. Pleadings: Petitions, Answers, Defenses, Amendments, Defects, Etc.
  - Albright, ch. 5.A, pp. 203-210
  - O'Connor's ch. 2.B,\* pp. 109-124, ch. 3.E,\* pp. 241-253
  - Albright, ch. 5.B, pp. 211-221; O'Connor's ch. 3.G, pp. 262-269
  - Albright, ch. 5.C, pp. 221-231; O'Connor's ch. 8.F, pp. 748-753
  - Albright, ch. 5.D, pp. 232-242, O'Connor's ch. 8.F, pp. 748-753
  - Albright, ch. 5.E, pp. 242-253; O'Connor's 5.K, pp. 398-415
  - TRCP 91a
  - 2014 WL 1389776 (Tex.App. – Beaumont Apr. 10, 2014) (unpublished);
11. Joinder: Permissive and Compulsory Joinder of Claims and Parties; Intervention; and Severance, Separate Trials and Consolidations
  - Albright, ch. 6.A, pp. 255-267; O'Connor's 2.E § § 3-7, pp 143-148, ch. 5.J, pp 392-398
  - Albright, ch. 6.A, pp. 267-273; O'Connor's ch. 5.I pp 385-391
  - Albright, ch. 6.B, pp. 273-278; O'Connor's ch. 2.E, § 6 pp 145-147
  - Albright, ch. 6.C, pp. 279-282; O'Connor's ch. 2.E, § 6 pp 145-147
12. The Scope of Discovery: Relevance (and Related Mandamus Issues)
  - Albright, ch. 7.A, pp. 283-285; O'Connor's ch. 6.A, § § 1-5, pp. 447-451
  - Albright, ch. 7.B, pp. 286-300; O'Connor's ch. 6.B, § § 1-3, pp 481-508
13. The Scope of Discovery: Privileges Preventing Discovery
  - Albright, ch. 7.C.1, pp. 301-314; O'Connor's chs. 6.B, § 3.3, p. 495-497
  - Albright, ch. 7.C.2 & C.3, pp. 314-329; O'Connor's ch. 6.B, § 3.3 495-497; O'Connor's ch. 6.B, § 3.14, p. 504
14. Written Discovery Requests and Responses; Privilege Assertions
  - Albright, ch. 8.A, pp. 331-335; O'Connor's ch. 6.A. pp. 447-460
  - Albright, ch. 8.B, pp. 336-339; O'Connor's ch. 6.A. pp. 460-482
  - Albright, ch. 8.C.1-8.C.S, pp. 339-346; O'Connor's ch. 6.A. pp. 465-470
  - Albright, ch. 8.C.7, pp. 358-359

15. Electronic Discovery

- Albright, ch. 8.C.6, pp. 346-358; O'Connor's ch. 6.C, pp. 509-526

16. Depositions

- Albright, ch. 8.D.1-8, D.12, pp. 360-374; O'Connor's ch. 6.F. 550-572

17. Discovery (Misc.): Discovery Control Plans, Discovery Agreements, Conducting Physical & Mental Examinations, and Third-Party Discovery

- Albright, ch. 8.E, pp. 374-377; O'Connor's ch. 6.A. § 7, pp. 452-456
- Albright, ch. 8.F, pp. 377-384;
- Albright, ch. 8.G, pp. 384-388; O'Connor's ch. 6.J § 5, pp. 602-604
- Albright, ch. 8.H, pp. 388-390; O'Connor's chs. 6.A, § § 18.4-18.9, 6.G § 5, pp. 468-470, 594-596

18. Discovery Sanctions

- Albright, ch. 9.A, pp. 397-404; O'Connor's ch. 5.K. pp 398-415
- Albright, ch. 9.B, pp. 404-411
- Albright, ch. 9.C, pp. 411-416
- Albright, ch. 9.D, pp. 417-421

19. Experts: Consulting and Testifying Experts

- Albright, ch. 10.A, pp. 423-432; O'Connor's chs. 6.D. § 1-6.D. § 2, pp. 526-528, ch. 6.D, § 3.2, p. 530, § 4.2, pp. 534-535
- Albright, ch. 10.B, pp. 432-438; O'Connor's chs. 6.D, § 3.1, pp. 528-530, § 4.1, pp. 531-534, § § 6-8, pp. 536-539
- Albright, ch. 10.B.1-10.B.6, pp. 438-443; O'Connor's chs. 6.D, § 3.1, pp.528-530, § 4.1, pp. 531-534, § 6-8, pp. 536-539
- Albright, ch. 10.C, pp. 444-446; O'Connor's ch. 6.D.5, pp. 535-536

20. Summary Judgment Practice: Standards and Procedure

- Albright, ch. 11.A, pp. 447-455; O'Connor's ch. 7.B, pp. 628-652
- Albright, ch. 11.B, pp. 455-463; O'Connor's ch. 7.C, pp. 653-665
- Albright, ch. 11.C, pp. 463-472; O'Connor's ch. 7.D, pp. 665-671

21. Complex Litigation: Severance, Separate Trials, Consolidation; Multi-District Litigation; Class Actions; and Related Issues

- Albright, ch. 19.A, pp. 821-833; O'Connor's chs. 5.H. 380-385
- Albright, ch. 19.B, pp. 833-837; O'Connor's ch. 5.G, pp. 375 -379
- Albright, chs. 19.C.1-19.C.3, pp. 837-849
- Albright, ch. 19.C.4, pp. 849-859
- Albright, ch. 19.D, pp. 859-864
- Albright, ch. 19.E, pp. 864-868

III. Instructor Contact Information and Office Hours

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Office Hours: We are not full-time professors at the Law Center, so rather than setting a specific time during the day for office hours, we will make ourselves available to you either before or after classes. Also, for more in-depth discussions, we are available to speak with you by appointment at other times. You can email or call us at the contact information above to arrange an appointment.

#### IV. Course Objective

The main objective of this course is to provide a survey of the key aspects of Texas pretrial civil procedure. It should be useful for anyone who intends to practice in the civil courts in Texas. The topics will include pleading claims and defenses, personal jurisdiction, venue, joinder rules, fact and expert discovery (including e-discovery), summary judgment practice, and matters related to complex litigation (including class actions and multi-district litigation).

This course is not designed to serve as a bar review or bar prep course for Texas civil procedure. To be sure, this course will cover subjects and materials that will be covered on the bar exam, and our exam will, in certain respects, simulate the types of questions (and the time pressure involved in answering them) that you will experience during the bar exam. But we want to emphasize that the bar exam may cover subjects and materials that we will not cover.

#### V. Class Participation

Class participation is important for everyone to get the most out of this course. In order for class participation to be useful, though, the class needs to be familiar with the course materials – and not just one or two students “on call” for that class session. As a result, we expect that you will read the assigned materials and be prepared for each class. We will take volunteers for questions and discussions, but we will also call on people without prior notice.

Class participation may affect your grade. Your participation may merit an adjustment of one step up or one step down from your final exam grade (for example, from B to B+ or from B to B-).

#### V. Final Examination

Our final examination will have two parts — one part with multiple choice and true/false questions, and one part with essay questions. Details about the final examination and the types of questions you can expect will be discussed during the course. We will also provide you with sample exam questions for practice.

## VI. Accommodating Students with Disabilities

The American with Disabilities Act of 1990 (the “ADA”) requires that the University of Houston make reasonable accommodation to persons with disabilities as defined in the Act. Students who feel they need assistance under the ADA guidelines should contact Student Services to discuss such consideration.

## VII. Attendance Requirements

Any student missing more than six (6) class hours will be dropped from the course. It is likely that you will have to miss class on occasion for medical, religious, professional, or other reasons. Please bear in mind that the fact that the absence was for a “good” reason does not matter because the Law Center’s policy requires at least 80% attendance, not a maximum of 20% (excused or otherwise) absences. Therefore, use your permitted absences wisely.

Welcome to our class, and good luck.