Welcome to Texas Pretrial Procedure! This is a valuable course, but it is full of detail that simply has to be learned. Nevertheless, you will be much more capable as a lawyer than you would be without it.

This is a list of readings from the casebook and other sources. The list is not exhaustive. There will be certain other readings, and it may at times become necessary to deviate from the syllabus. I will attempt to let you know sufficiently in advance if this occurs.

OVERVIEW
-Text at 1.01 (1-3).

I. THE PRE-LITIGATION PHASE
   Omit: Various Text and Notes; Hoover Stovack LLP v. Walton.
   Emphasize: Contingent Fee Contract and Notes; Reneker article; One-, Two-, and Four-Year Limitations Statutes; S.V. v. R.V.; Practice Exercises.

1.02. INITIATING THE ATTORNEY-CLIENT RELATIONSHIP
   A. FEES AND FEE CONTRACTS
      - Text, 4-6; Notes (13)
      - CONTINGENT FEE CONTRACT (14) AND NOTES
   B. AVOIDING CONFLICTS OF INTEREST
      -Text, [1] 18-19; Text [f]-[g], 20.

1.03. CASE EVALUATION, ACCEPTANCE, SETTLEMENT
      -RENEKER ARTICLE (22)

End Class #1 – 15 pgs

1.04. PRE-LITIGATION FACT-GATHERING
      -Text, 24

1.05. PRELIMINARY PROCEDURES
      -Text, 32, down to but not including health care liability claims (omit bottom 35-top 36).

1.06 LIMITATIONS
      -Text and Statutes, 36-37 (Emphasize ONE-, TWO-, AND FOUR-YEAR STATUTES AND RESIDUAL STATUTE, P. 42)
      -Text and S.V. V. R.V. (45); Notes 1-4 (52)
      -PRACTICE EXERCISE #1 (57)

End Class #2 – 29 pgs

II. EMERGENCY AND INTERIM RELIEF
   Omit: Various Text and Notes; Statutes at 72-73; Practice Exercise #6.
   Emphasize: Weber article; Monroe v. GMAC; Practice Exercise #2.

2.01. TRO'S AND INJUNCTIONS
      -Rules 682-83, 692 (1st sentence)
2.02. OTHER INTERIM RELIEF (FOR CREDITORS)
A. SEQUESTRATION
-Text, 65; Statutes, 65; MONROE V. GMAC (68)
B. LIS PENDENS
-Text and statute, 70-71
C. SELF-HELP REPOSSESSION
-Text, 71

2.03. INTERIM RELIEF FOR THE UNSECURED CREDITOR
-Text, 72 (omit statute provisions); Text 73-74 (through paragraph headed “Contents”);
-Text 74-75 (through paragraph headed “Contents”)
-PRACTICE EXERCISE #2

2.04. WRONGFUL USE OF SPECIAL REMEDIES
-Barfield v. Brogdon (81)

End Class #3 – 24 pgs

III. SUBJECT-MATTER JURISDICTION
 Omit: Peek v. Equipment Serv. Co.; Statutes, 124-28; Gonzalez v. Reliant Energy Inc.; Practice Exercise #6; § 3.05.
 Emphasize: Practice Exercises #3, 4, 5.

3.01. OVERVIEW OF TEXAS COURTS
-Text, 87; Chart, 88

3.02. CONSTITUTIONAL AND STATUTORY OVERVIEW
-Text, 88-99; Text 99-105
-Summary 105; PRACTICE EXERCISE #3 (105); Rule 500.3(a), (d) (selected Justice Ct. rules)

3.03. AMOUNT IN CONTROVERSY
-Text, 107-108; United Services Automobile Ass’n v. Brite (108); Notes 2-4 (111-12)

End Class #4 – 23 pgs

3.04. COMPETING JURISDICTIONAL GRANTS
A. DISTRICT COURT LAND-TITLE GRANT V. JUSTICE COURT EVICTION
-Text, 119; Dass Inc. v. Benjie Smith (119); Notes 1, 2, 5 (122-23)

B. PROBATE JURISDICTION
-Text, 124 (2 paragraphs this page only); PRACTICE EXERCISE #5 (129)
IV. PERSONAL JURISDICTION

Omit: Various Texts and Notes; pp. 158-177 (Guardian Royal, CMMC, and Michiana cases and most of Note 1, but read Moki Mac case in Note); PHC Minder v. Kimberly-Clark; Practice Exercise #9; Choice Auto Brokers v. Dawson; Notes, 199; In re Florenza; Grable article, 215; Bavarian Autohouse v. Holland; Dawson-Austin v. Dawson; In re General Electric; pp. 259-267.

Emphasize: Practice Exercises #7, 8, 10, 11; Moki Mac v. Drugg (176); Notes 1-4 (221); McKanna v. Edgar; Special Appearance Form.

4.01. GENERAL PRINCIPLES (A FIRST-YEAR REVIEW)

- Text, pp. 147-50; Text, bottom 150

End Class #5 – 20 pgs

4.02. TEXAS PERSONAL JURISDICTION

A. THE GENERAL LONG-ARM STATUTE

- Text and Statutes 151-52; Notes 1, 3, 4, 5, 6, 9 (152-56)
- PRACTICE EXERCISE #7 (156)

B. SPECIFIC JURISDICTION

- Text, 158; Moki Mac River Expeditions v. Drugg (Note case, 178-79)

C. GENERAL JURISDICTION

- Text, 182; MOKI MAC RIVER EXPEDITIONS V. DRUGG (182); DAIMLER AG V. BAUMAN (note case) (191)
- Note 1 (188); PRACTICE EXERCISE #8 (189)

4.03 THE FAMILY- CODE LONG-ARM STATUTES

- Text and statute 198-99; Note 2 (205) (mentioning UCCJEA); Note 6 (205-09) (summarizing PKPA)

4.04. SERVICE OF PROCESS

A. DUE PROCESS REQUIREMENTS

- Text, 209; Peralta v. Heights Med. Ctr. (210)

End Class #6 – 19 pgs

B. TEXAS STATUTES AND RULES

1. Strict Compliance

- Rule 106; Text, 213; Wilson v. Dunn (214); NOTES 1-4 (218-19)

2, 3, 4. Techniques, Waiver, Limitations

- Rules 99, 103 (1st sentence), 107; Text, 219-26

5. Citation by Publication

- Text, 227-28

C. SECRETARY OF STATE SERVICE

- Text, 229; MCKANNA V. EDGAR (229); Text, 230-31; Campus Investments, Inc. v. Cudlever (232); Rule 108; Text, 233; PRACTICE EXERCISE #10 (234)
4.05. CHALLENGING JURISDICTION

A. SPECIAL APPEARANCE
- Rules 120a, 122; Text, 235; SPECIAL APPEARANCE FORM (236); Notes 1-3 (238)
- PRACTICE EXERCISE #11 (251)

End Class #7 – 24 pgs

B. FORUM NON CONVENIENS
- Text and statute (252-55)


V. VENUE

Omit: Various Notes; Practice Exercise #15; Ruiz v. Conoco; Wilson v. Texas Parks and Wildlife.

Emphasize: In re Missouri Pacific RR; Velasco v. Texas Kenworth Co.; Practice Exercises #12, 13, 14, 16.

5.01. THE BASIC VENUE SCHEME (GENERAL RULE
- Text and statutes, 269-70.

A. DEFENDANT’S RESIDENCE
- Text, 270; MIJARES V. PEREZ (270) and notes.

B. DEFENDANT’S PRINCIPAL OFFICE (ENTITIES)
- Text and statute (bottom 272); IN RE MISSOURI PACIFIC RR Co. (273); Notes 2-3.

C. SUBSTANTIAL PART OF EVENTS OR OMISSIONS
1. Torts: Text (279); VELASCO V. TEXAS KENWORTH CO. (279); Note, 281.
2. Contracts: KW Construction v. Stephens & Sons Concrete Contractors (282); Note (287).

D. CONVENIENCE TRANSFERS
- Text, 287-88.

End Class #8 – 24 pgs

5.02. EXCEPTIONS TO THE GENERAL RULE

A. TYPES OF EXCEPTIONS – Text, 289.

B. MANDATORY AND PERMISSIVE EXCEPTIONS – Text and statutes, 290-95. - PRACTICE EXERCISE #12 (295).

C. MULTIPLE CLAIMS AND PARTIES
1. Multiple Claims: A Word about Joinder (296); Text, 296; PRACTICE EXERCISE #13
2. Multiple Defendants: Text and statutes, 298; PRACTICE EXERCISE #14
3. Multiple Plaintiffs; Intervention: Text and statute, 299; Surgitek, Bristol-Myers Corp. v. Abel (300); Notes 1-2

D. COUNTERCLAIMS, CROSS-CLAIMS, AND THIRD-PARTY CLAIMS
- Note about Joinder, 304; Text and statute, 304

End Class #9 – 17 pgs
5.03. LITIGATING VENUE RIGHTS
- Rule 86; Rule 87(2)(a); Rule 87(3)(a); Text and forms, 305-10; PRACTICE EXERCISE #16
- Carlile v. RLS Legal Solutions (311); Notes 1-3
- Text on Appellate Review (317)

5.04. CONTRACTING FOR VENUE
- Text (325).

5.05. CHANGE OF VENUE FOR IMPARTIAL TRIAL
- Rule 257; Text, 326; Notes

5.06. MULTIDISTRICT LITIGATION
- Text and statute, 329-333.

End Class #10 – 18 pgs


VI. PLEADINGS

6.01. HISTORIAL BACKGROUND – Text (341).

6.02. OVERVIEW OF PLEADINGS – 343-44

6.03.-04. PLAINTIFF’S PETITION
- Sample Petition (345); Notes
A. GENERAL PRINCIPLES AND FORMAL ELEMENTS – Text, 348; Rule 21(b-d, f) (filing, including electronic; service); Rule 47 (contents)
B. PLEADING A “CAUSE OF ACTION”
- Text, 349-50 (to end of [1])
- Text on Fair Notice, 352; Rules 45, 47; Castleberry v. Goolsby Bldg. Corp. (352): CITY OF HOUSTON V. CRABB (353); Notes 1-4, 354

End Class #11 – 17 pgs

- Chart, 358
- WHITE V. JACKSON (359)
- Text on Fair Notice (365); Petition, Answer, Order, Amended Petition (365-70); NOTES, 370-71
- Rule 56; Text, 371; Note 1, 372
- Rule 47; Text on Demand for Relief (376)
- Rule 13; Text and Statutes on Certifications and Sanctions (377)

6.05. MOTIONS TO DISMISS (“NO BASIS”)
- Rule 91a.1, 91a.7; Text [A]-[B], 383-85
6.06. DEFENDANT’S ANSWER
A.-B. CONTENTS AND FUNCTION
-Text, 387; PRACTICE EXERCISE #17
C. SPECIAL EXCEPTIONS
-Rules 90-91; Text, 388; McKAMEY v. KINNEAR (389)

D. PLEA IN ABATEMENT
-Text, 397; WYATT V. SHAW PLUMBING CO. (397); Notes 1, 3
E. PLEA TO THE JURISDICTION
-Text, 401; Note 1 (407)
F. THE GENERAL DENIAL (WHICH MEANS, “PROVE IT”)
-Rule 92 (1st paragraph); Text, 409; Bahr v. Kohr (409); Notes
G. SPECIAL DENIALS – Text, 411
1. Conditions Precedent: Text, 412; Rules 54, 93; Dairyland Mut. Ins. Co. v. Roman (413)
2. Verified Denials (Execution): Text, 415; Note 1 (416)
3. Verified Denials (Capacity): Text, first two paragraphs, 417 -PRACTICE EXERCISE #19 (419)
H. AFFIRMATIVE DEFENSES
-Rule 94; Text, 419; ECHOLS V. BLOOM (420)

6.07. AMENDED AND SUPPLEMENTAL PLEADINGS
-Text, 423; Burnett v. File (424)
-Text on Supplemental Pleadings, 430; Note 2 (432); R. 66, 67 (trial amendant)

6.08. SPECIALIZED PLEADINGS
A. THE SWORN ACCOUNT
-Text, 433; Rule 185; PANDITI V. APOSTLE (433): first two paragraphs, Text, 435-36;
Text on Defenses, 438; Sample Petition, 439
B. TRESPASS TO TRY TITLE
-Rules 783, 788, 791; Text part [D], 442-45
C. EVICTION
-Rule 510.3, 510.5
D. EXPEDITED ACTIONS
-Rule 169(a)(1), (d)


VII. PARTIES (SELECTED ISSUES ONLY)
Omit: Various Text and Notes; Ingersoll-Rand v. Valero Energy; Notes (465); Practice Exercise #21; In re Union Carbide; Clayton v. Mony Life Ins. Co.; Brookes v. Northglen Ass’n; Notes 3-5; Southwestern Refining Co. v Bernal and rest of the chapter to the end. Emphasize: Nothing in this chapter.
7.01. PERMISSIVE JOINDER OF CLAIMS
- Text (451)

7.02. PERMISSIVE JOINDER BY PLAINTIFF
- Rule 40; Text, 452; Russell v. Hartford Ins. Co. (452); Note 5 (458).

7.03. JOINDER BY DEFENDANT
A. COUNTERCLAIMS
- Rule 97(a); Text, 459

- Jack H. Brown Co. v. Northwest Sign Co. (464)

B. CROSSCLAIMS
- Rule 97(e); Text 471; Note 1-2.

7.04. PERMISSIVE JOINDER BY DEFENDANTS: THIRD PARTY ACTION
- Rule 38(a); Text (473).

7.05. INTERVENTION
- Text, 478; Rule 60.

7.06. INTERPLEADER
- Text, 484; Rule 43 (1st sentence only); Notes 1-2 (489).

7.07. COMPULSORY JOINDER
- Text, 490; Rule 39(a).

7.08. CLASS ACTIONS
- Text, 496; Rule 42(a), b3).

VIII. PRECLUSION
Omit: Most of the chapter. Read only what is indicated here.
Emphasize: None of the chapter.

A. CLAIM PRECLUSION: MERGER AND BAR OR RES JUDICATA
- Text at § 8.01 (517); Text beginning bottom of page (517-518); Barr v. Resolution Trust Corp. (519).

B. ISSUE PRECLUSION: COLLATERAL ESTOPPEL
- Text (529).

C. PARTIES BOUND
- Text (534); Benson v. Wanda Petroleum Co. (534).

End Class #15 – 17 pgs

IX. DISCOVERY: PURPOSES, SCOPE, USES
Omit: Various Text and Notes; In re CSX Corp.; In re Dana Corp.; Axelton, Inc. v. McIlhany; Tom L. Scott, Inc. v. McIlhany; Evidence Rules, 604-06.

9.01. INTRODUCTION
- Text, 551-56; PRACTICE EXERCISE #23, Nos. 1-2 only (skip forward to p. 577 for this)

9.02. DISCOVERY AND ATTORNEY OBLIGATIONS
9.03 “RELEVANT,” “NOT PRIVILEGED”

A. THE “REASONABLY CALCULATED” STANDARD
-Rule 192; Text, 562; K-Mart v. Sanderson (562); IN RE NATIONAL LLOYD’S INS. CO. (567); Notes 2, 4 (569).
-Text on Witnesses, etc., 570; Notes 1, 3 on Insurance and Settlements, 574
-PRACTICE EXERCISE #23

B. PRIVILEGE AND OTHER LIMITS
-Text on Work Product, 579; National Tank Co. v. Brotherton (580)

9.04. PRESERVATION AND WAIVER OF PRIVILEGES

A. WRITTEN DISCOVERY
-Rules 193.2-.3(a-b); Text, 616-619

10.02. DISCOVERY DEVICES
A. WRITTEN DISCOVERY
(1) Requests For Disclosure: Rule 194; Text, 638; NOTES 1, 4 (639)
(2) Interrogatories: Rule 197; Text, 640; PRACTICE EXERCISE # 29
(3) Requests For Production and Inspection: Rule 196; Text, 641; In re Kuntz; NOTES 1, 3, 4
   -Rule 196.4; Text, 647; IN RE WEEKLEY HOMES (648); NOTES 1-3

B. ORAL AND NON-WRITTEN DISCOVERY
(1) Depositions: Text, 668; Text, 668-669; Notice of Deposition Form, 669; Notes 1, 3;
   Subpoena Form (671)
   -Rules 191, 195.4, 196(2)(a), 199, 203
   -Notes 5, 6, 7, 9, 10 (672-77)
   -NOTE 8 ON APEX DEPOSITIONS, 674

10.03 AMENDMENT AND SUPPLEMENTATION
-Rules 193.5-.6, 195.6, 215.5; ALVARADO V. FARAH MFG. CO. (687); Notes 1, 3, 6, 8

10.04 SANCTIONS
-Rule 215.1(a), (d); 215.2(b); 215.4(b); Text, 695; TRANSAMERICAL NATURAL GAS V. POWELL (695); Notes 2, 5, 6, 7; PRACTICE EXERCISE # 34


XI. DISPOSITION WITHOUT TRIAL
Omit: Various Text and Notes; Mathis v. Bocell (730); Cooper v. Circle Ten Council.

11.01. DEFAULT [AND DISMISSAL]
- Rule 165(a) (1st 3 sentences); Rules 239, 239a, 241, 243; Text, 713; Morgan v. Compugraphic Corp. (714); Notes 1, 3, 5

**11.02. SUMMARY JUDGMENT**

**A. STANDARDS**
- Text, 719; Rule 166a (c), (f)
- SCIENCE SPECTRUM, INC. V. MARTINEZ (722)
- Text on No Evidence Motions (724); Rule 166a(i); MOORE V. K-MART INC. (725)

End Class #22 – 19 pgs

- Notes (730); Text on Hybrid Motions (731)

**B. PROCEDURE AND EVIDENCE**
- Text, 731; KERLIN V. ARIAS (731)
- Text, 733; Notes, 740


**XII. SETTLEMENT AND ADR**

*Omit: Various Notes and Text.*

*Emphasize: Knutsen v. Morton Foods Inc. in Note 1 (756); Robert Wise Article (772)*

**12.01. EFFECTS OF SETTLEMENT**
- Text, 751; Tex, 753; McMillen v. Klingensmith (757)

End Class #23 – 17 pgs

- KNUTSON V. MORTON FOODS INC. IN NOTE 1 (760); Notes 2-3 (through p. 765)
- Rule 167.2(a), 167.4(a)-(b) (offer of settlement)
- Rule 11; Leal v. Cortez (765); Notes 1, 3

**12.02. ADR**
- Overview (773-76)

End Class #24 – 17 pgs

- ROBERT K. WISE ARTICLE (777)
- Text on Arbitration (783-89)
- Text on Other Types of ADR (789-91)

**APPENDIX:** ADR and the Texas Bar Exam

End Class #25 – 16 pgs
MY POLICIES FOR CONDUCTING CLASS
PROFESSOR SCHWARTZ

1. Welcome to the course in Texas Pretrial Procedure! This is an important subject to study: it isn’t always fascinating, but it is among those in which your hard work is most likely to be rewarded when you practice law. This course could easily be a lecture course, but I encourage class participation because one of the values of a law school is that it teaches you to “think like a lawyer.”

2. It is necessary to implement policies or rules for such a class. Therefore, please understand the businesslike tone of the following items. My longtime personal opinion is that law schools fail to teach professionalism. Law schools might teach you law and even teach you legal ethics, but they utterly fail, in my view, to teach you how to be a respected and professional lawyer. You may hear lawyers talk in military terms and invoke medieval battle tactics to describe their role. This talk makes my heart sink; this is not the middle ages. Litigation is a modern dispute resolution mechanism that has justice as its aim; it replaces trial by combat. Accordingly, (1) you are free to criticize any idea, you are free to destroy any argument, and you are encouraged to prove the professor wrong, but (2) you are never free to criticize another person or to act unprofessionally in this class. You should consider this class as the first day of your professional life.

3. You need not communicate with the professor concerning the reasons for your absences. If you are absent, I always assume you have a good reason. As long as you comply with the law school’s attendance requirements, I don’t need to know the reason.

4. You need not communicate with the professor concerning your unpreparedness. It is your responsibility to read forward in the casebook according to the syllabus so as to be prepared for class. Unless I indicate otherwise, we shall go straight through the syllabus. I personally think the class will be worthless to you without preparation, but you paid for this class. If you want to waste your money, that is your choice. But, before you make that choice, I encourage you to watch the Academy award winning film, The Paper Chase. In that movie (made before cell phones), Professor Kingsfield tells Mr. Hart, “Mr. Hart, here is a dime. Take it, call your mother, and tell her there is serious doubt about you ever becoming a lawyer.” If, in my judgment, the class is unprepared, I reserve the right to dismiss the class.

5. Hold up your hand before talking; realize that the professor cannot always recognize everyone and must determine when we must move along. This will be a large class, and there is no responsible way to teach it without covering a lot of ground. I have to consider the need to cover the material and the need to bring a variety of students into the discussions. Therefore, please hold up your hand before speaking out. Please understand if we have to cut off discussion and move on.

6. SPEAK LOUDLY when you are called on. Every student should speak loudly enough for everyone else to hear. Also, one of the skills you should learn is how to stand up in a group of people and speak extemporaneously and persuasively on difficult subject matter. Again, as Professor Kingsfield said, “Speak louder, Mr. Hart! Fill the room with your intelligence!”

7. Practice Examination; Final Examination; Grading. Your grade for the course will be determined by an anonymous final examination, except if you are disrespectful to another student in my class, in which your grade will be adjusted downward.
8. **Attendance.** It is required that you comply with the law school’s attendance requirements, which mandate 80% attendance.

9. **Seating Chart.** Please sit in your assigned seat. Even if you come in late or leave early for emergency reasons, occupy your assigned seat. Unlike Professor Kingsfield, I actually want to know you and recognize your name and face.

10. **Cell Phones and Computers.** I hate them. If I see you staring down into a computer or cell phone, you will get the opportunity to teach the class with me. I am not on Facebook, LinkedIn, or Twitter. I don’t know what Snapchat is. I don’t text. I still own a Blackberry. If you need to contact me about a class matter, my email address is schwartz@skadden.com.

11. **Disability.** Any student with a disability requiring accommodation should let me know (except as to the exam, for which accommodation is to be arranged through the law school administration).
## TABLE OF RULES ASSIGNED

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