MEMORANDUM

To: **Students**

From: **Civil Procedure Faculty**

Re: **Course Simulation Exercises**

Throughout this course, we will be engaging in a series of exercises in Civil Procedure using a simulated case file. The goal of these exercises is to help you begin to integrate knowledge of civil procedure with the ability to apply that knowledge to effectively represent clients. They are designed to help you get a feel for how lawyers think and behave. They are also designed to encourage you to work with your colleagues in a professional environment.

During these exercises you will:

- Analyze the impact of civil procedure doctrines on litigation planning, particularly choice of forum issues;
- Develop a plan for additional fact gathering relevant to choice of forum issues;
- Counsel a client about objectives in litigation;
- Represent a client in a settlement negotiation;
- Draft pleadings;
- Develop a comprehensive discovery plan;
- Grapple with issues that will challenge you to consider your professional responsibilities as a lawyer; and
- Reflect on your performance overall.

We have developed a case file and teaching materials specially designed for these exercises. The materials are "close ended"- you will not need to do additional research to complete the assignment.

We will schedule your participation in the exercises to insure that the matters we cover in the exercises have been covered in our classes and that your participation in the exercises does not unduly interfere with your other first year courses and activities. Your Civil Procedure professor will advise you of your schedule and will also discuss his or her policy about evaluating and providing feedback on your participation in the exercises.

You will be assigned to a litigation group representing either a potential plaintiff or a potential defendant. Our teaching fellows will help facilitate your participation in the exercises and will be supervised by the Civil Procedure faculty.

Please note that the information that you are receiving is for your side only. *Do not discuss it with colleagues representing the other side unless authorized to do so by a faculty member.*

Tinkers, Evers & Chance[1]
Memorandum

To: Litigation Team Representing Albert Sachs

From: Alex Evers, Senior Partner

Re: Fact Investigation Plan (Assignment #1)

I am delighted that you have been assigned to work with me in our firm's representation of Mr. Albert Sachs. As you may have seen in recent news reports, Mr. Sachs' son, 18-year-old Brian, died a horrible death from alcohol poisoning during a fraternity initiation at the Jefferson Institute of Technology (JIT). Brian had been at an off-campus pledge party hosted by Zeta Omega Mu. The incident got a lot of attention in the media, including print, TV and blogs on the Internet. Brian had just moved from Wyoming to Jefferson to begin his freshman year of college at JIT.

I had a very brief initial meeting with Mr. Sachs, after which the firm decided to take his case. I only had time to obtain some cursory factual background during our meeting. However, it did become apparent that we will need to learn more before we can make a decision about the best forum to pursue an action for damages arising from Brian's death, should Mr. Sachs decide to go that route.

As your first assignment on the case, I'd like you to identify what further facts we will need to investigate in order to reach a more definitive conclusion about the following issues:

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[1] Tinkers, Evers & Chance is a well-regarded law firm in Jefferson City, Jefferson (a mythical state). As described on the firm's website:

> The firm's attorneys have a reputation as leaders in the legal profession. This is not only because they have achieved excellent results in many high-profile cases, but also because they are nationally recognized leaders in bar associations, continuing legal education activities and committees relating to the administration of justice.
>
> Attorneys at Tinkers, Evers & Chance strive to get the best compensation possible for personal injuries and wrongful deaths. At the same time, they hold a broader goal: to use the hard lessons learned from these cases to help improve our communities and make the world a safer place.

You are one of the associates at Tinkers, Evers & Chance (T, E & C) assigned to represent Albert Sachs. T, E & C gives its associates a lot of responsibility early in their careers. It does, however, assign each case to a senior partner ultimately responsible for the matter for the assigned associates to consult with. Alex Evers, the senior partner overseeing the representation of Sachs, is a prominent plaintiff's trial lawyer in Jefferson who has won many cases at trial. Evers is a past president of the Association of Trial Lawyers of America, a 58,000-member Washington, D.C.-based bar group associated with plaintiffs' attorneys.

T, E & C represents clients on a contingent fee basis: they pay nothing unless they recover damages; if they do, the firm gets one-third of the recovery. By the time that a case is assigned to the litigation team the firm has made a decision to take the case.

(1) Can we commence an action for damages arising from the death of Brian on Mr. Sachs' behalf in Wyoming state court, which is where Mr. Sachs resides?

(2) Can we commence the action in federal rather than state court (either in Wyoming or Jefferson)?

(3) Even if we establish that Wyoming has personal jurisdiction over JIT, do we need to be concerned about the outcome of a possible motion by JIT to transfer (if we sue in federal court) or for dismissal for *forum non conveniens* (if we sue in state court) in favor of litigation in Jefferson?

Please put together a 2-3 page fact investigation plan in which you indicate what facts you want to investigate, why each fact is important to evaluating our probability of success on the issues identified above, and what sources you want to consult to investigate the fact. You should begin with an initial paragraph or two briefly explaining your fact investigation plan and how it relates to the jurisdiction issues above. You should then provide me with a chart in which you identify a series of facts relating to each issue, why each fact is important, and how/where you intend to find it. For example, you might do the following:

Issue	Fact	Why Important	How to Find Out
Subject Matter Jurisdiction for Federal Court	State which most recently issued Brian Sachs driver's license (assuming he has one)	Establishes an affiliation with the issuing state for purposes of determining Brian Sachs' citizenship for diversity jurisdiction.	Check Department of Motor Vehicles databases in both Wyoming and Jefferson.

Robinson, Reese & Hodges[1]
Memorandum

To: Litigation Team Representing Jefferson Institute of Technology (JIT)

From: Chris Hodges, Senior Partner

Re: Assignment #1 -- Fact Investigation Plan

I am delighted that you have been assigned to work with me in representing Jefferson Institute of Technology (JIT) in connection with an anticipated claim of Mr. Albert Sachs. As you may have seen in recent news reports, Mr. Sachs' 18-year-old son, Brian, died from alcohol poisoning during a fraternity initiation at the Jefferson Institute of Technology (JIT). Brian had been at an off-campus pledge party hosted by Zeta Omega Mu. The incident got a lot of attention in the media, including print, TV and blogs on the internet. Brian had just moved from Wyoming, where his family lives, to Jefferson to begin his freshman year of college at JIT.

I had a brief initial meeting with President Marilyn Jensen of JIT concerning Mr. Sachs' potential claims, after which the firm decided to take JIT's case. I only had time to obtain some

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[1] Robinson, Reese & Hodges is a well-known full service law firm in Jefferson City, Jefferson (a mythical state). As described on the firm's website:

> Our Firm is known for forging close relationships with clients. In fact, our Firm has aligned its core areas of practice to meet clients' legal and business objectives. Whether the legal issue involves complex securities, estate planning and fiduciary services, high stakes litigation, insolvency and restructuring, insurance and reinsurance, intellectual property, private equity, public finance, real estate, tax, or other legal services, the Firm's extensive business knowledge of these focused areas helps make us a value-added member of the client's team.
>
> Our mission is simple. We strive to create value by providing superior legal advice and business counsel to protect and advance the interests of our clients. We believe that we succeed only when our clients succeed. Our culture of respect and professional excellence are key factors in how we respond to our clients' needs.
>
> **Litigation**
>
> Our Litigation Department represents a broad range of clients across many industries, including financial institutions, manufacturers, pharmaceutical companies, colleges and universities, insurance companies, technology companies, healthcare providers and governments. R, R & H litigators frequently handle national class-action cases involving antitrust, asset tracing, intellectual property, securities, employment, environment, construction, white-collar defense, products liability and various commercial litigation.

In conjunction with Jefferson Institute of Technology's (JIT) small general counsel's office, Reese, Robinson & Hodges (R, R & H) has represented JIT for about two decades on all matters- including corporate, bond offerings and litigation. JIT is a very good and very valued client of the firm. R, R & H charges JIT for the time of the partners and associates who work for it on an hourly basis.

You are an associate in the R, R & H Litigation Department assigned to represent JIT in connection with anticipated litigation by Albert Sachs. R, R & H gives its associates a lot of responsibility early in their careers. It does, however, assign each case to a senior partner ultimately responsible for the matter for the assigned associates to consult with.

Chris Hodges, the senior partner overseeing JIT's representation in the Sachs matter, has over twenty-five years of jury and jury-waived trial experience in insurance coverage and bad faith litigation as well as in a wide variety of products liability and complex commercial matters. Hodges is a Vice-Chair of the Insurance Coverage Litigation Committee and the National Trial Academy Committee of the Tort Trial and Insurance Section of the ABA and is an active member and mediator of the CPR Institute for Conflict Prevention and Resolution.

cursory factual background during our meeting. However, it did become apparent that we will need to learn more before we can make any decisions about whether we can challenge Mr. Sachs' choice of forum for pursuing the lawsuit.

As your first assignment on the case, I'd like you to identify what further facts we will need to investigate in order to reach a more definitive conclusion about the following issues:

1) Can we defeat an effort by Mr. Sachs to commence an action for damages arising from the death of Brian if it is brought in a Wyoming state or federal court, on the basis that a Wyoming court would not be able to exercise personal jurisdiction over JIT?

2) If Mr. Sachs commences an action in federal rather than state court (either in Wyoming or Jefferson), can we seek dismissal on the basis of lack of subject matter jurisdiction?

3) If Mr. Sachs commences an action in Wyoming, and the court holds there is personal jurisdiction over JIT there, can we succeed in a possible motion to transfer (if the case is in federal court) or dismissal for *forum non conveniens* (if the case is in state court) in favor of litigation in Jefferson?

Please put together a 2-3 page fact investigation plan in which you indicate what facts you want to investigate, why each fact is important to evaluating our probability of success on the issues identified above, and what sources you want to consult to investigate the fact. You should begin with an initial paragraph or two briefly explaining your fact investigation plan and how it relates to the jurisdiction issues above. You should then provide me with a chart in which you identify a series of facts relating to each issue, why each fact is important, and how/where you intend to find it. For example, you might do the following:

Issue	**Fact**	**Why Important**	**How to Find Out**
Subject Matter Jurisdiction for Federal Court	State which most recently issued Brian Sachs driver's license (assuming he has one)	Establishes an affiliation with the issuing state for purposes of determining Brian Sachs' citizenship for diversity jurisdiction.	Check Department of Motor Vehicles databases in both Wyoming and Jefferson.

Grading Rubric for Fact Investigation Exercise
[5 points total]

Grade Sub-Categories	Points/Comments
<u>FACT SECTION</u> (2 points) **1. Factual inquiries accurately stated using facts (not as legal research inquiries)** **2. Facts relevant to PJ of JIT in Wyoming State Court** **(a)** JIT ownership/rental of property in Wyoming **(b)** JIT admissions fairs/employees' trips or presence in Wyoming **(c)** JIT emails/phone calls/visits to Brian and/or other students in Wyoming **(d)** JIT admissions brochures/other recruiting **(e)** # of current students at JIT from Wyoming **(f)** Permanent residence of relevant witnesses (Albert, frat brothers, other students, etc.) **(g)** JIT bank funds/accounts in Wyoming **(h)** JIT contracts with Wyoming businesses or residents **(i)** Tuition paid by Brian to JIT/scholarship money **(j)** Number of alumni/fund-raising $ from Wyoming **3. Facts Relevant to SMJ in Fed Court (Diversity)** **(a)** State of Brian's driver's license **(b)** State of Brian's voter registration, if any **(c)** Brian's statements of intent to remain/move permanently **(d)** Brian's lease/ownership of property **(e)** Amount of compensatory damages (e.g., medical, funeral, etc.)	
<u>ANALYSIS/WHY IMPORTANT</u> (2 points) **1. Accurate synthesis of facts and inquiry in light of PJ precedent** **2. Accurate synthesis of facts and inquiry in light of SMJ precedent**	
<u>CREATIVITY RE: POSSIBLE SOURCES</u> (1 point) **1. Consideration of sources available pre-litigation** e.g., DMV records, voter registration records, IRS records, websites, maps, census data, local and University newspapers, polls/interviews of students, marketing materials in Wyoming high schools, host organizations of college fairs, student handbooks, dorm and housing agreements, etc.	

Name of Professor: **Plaintiff or Defense Counsel:**

Simulation Evaluation – *Sachs v. JIT*

1. **Did this exercise deepen your understanding of the doctrinal law we have studied up unto this point? Why or why not?**

2. **What did you think was the best thing about the simulation? Please explain and provide details.**

3. **What did you think was the worst thing about the simulation? Please explain and provide details.**

4. **Did your group work effectively together? Why or why not?**

5. **Did you find the case materials useful? Why or why not? Do you have any suggestions for how the case file can be improved?**

6. **What did you learn about the nature of collaborative work in the legal setting?**

7. **Did you feel like you had adequate time to prepare for each assignment?**

Name of Professor: **Plaintiff or Defense Counsel:**

8. **Did you feel that the feedback you received from your professor was useful?**

9. **To what extent did the simulation exercises lead you to think about legal ethics and your professional identity? Please explain what you learned about legal ethics through the simulation and offer and recommendations for improvement in these areas.**

10. **Please explain what you learned about lawyering skills through the simulation. To what extent were these exercises useful in laying groundwork for the lawyering skills of fact investigation, counseling, negotiation, and problem solving for a client? Please offer any recommendations for improvement in these areas.**

11. **How did you feel the teaching fellows enhanced or detracted from exercise?**

12. **Do you have any suggestions on how to improve the simulation in the future?**

Sample Feedback from Students

"I learn best through practical application, so being able to put what we learn to actual use helps to consolidate everything we've learned."

"I learned that it is very difficult [to work in collaborative teams in a legal setting]. We discovered new ways of fairly delegating tasks so that works gets done well and quickly without a single person doing everything."

"We learned a great deal about fact investigation … [it] taught us to think critically about what sorts of information we'll need [to gather]."

"This exercise definitely reinforced the information that we've covered in class."

"I also really liked having the opportunity to work with other people on this assignment. I thought each of my teammates brought something different to the table based on their own experiences with the subject matter of the case. In retrospect, it was really interesting to see how we came together with our different viewpoints and were able to compromise on certain points in order to complete the assignment."

"The simulation was helpful in applying all the information we learned in class to a real case."

"It was interesting to deal with a case where the clients told lawyers information that they weren't allowed to reveal to other lawyers. I think that is something that can be very tricky in negotiations and also leaves a huge moral obligation to the lawyer to make sure they don't slip."

"The exercise definitely helped me with my understanding of doctrinal law. Being able to use the doctrinal law in a practical way made it more fluid and relevant. The simulation was helpful in connecting different theories and rules and seeing how they worked together."

"This was the first time I've worked in a team. I had to learn how to adapt to the others' working and learning styles."

"The exercise did a great job of solidifying the Erie doctrine for me."

"I learned about the potential for major discrepancies between what lawyers want and what their clients want. I also learned the importance of thoroughness in fact investigation. Having worked with closed universe fact patterns for awhile, it becomes easy to think of the law as a puzzle simply needing to be put together. One can't put together a puzzle without finding all the pieces first."

"The exercise deepened my understanding of Venue, Choice of Law, and Forum Non Conveniens."

"Having to work on a client's case provided motivation to get a deeper understanding of the law."

"I learned [when working with my team] that no matter how bright you think you are other people will point out things you did not think of."

"The exercises gave me an understanding of what lawyers actually have to do. I never realized how vague information could be and it showed that lawyers might not always be given all the information that is needed to handle the case."

"The exercise allowed me to use the rules I had learned and apply them directly to a fact pattern. The structure of the simulation encouraged abstract thinking, since there were no definitive answers yet, no court ruling to work backwards off of."

"The choice of forum memo was definitely beneficial because we had to address personal jurisdiction, transfer, and *forum non conveniens*, for instance, in conjunction with one another. I had a hard time seeing how these laws fit together before the simulation, but now it makes much more sense."