

CASES AND MATERIALS ON
CALIFORNIA
CIVIL PROCEDURE

Second Edition

David I. Levine
William R. Slomanson
C. Keith Wingate
Rochelle J. Shapell

American Casebook Series®

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Second Edition

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For Arielle, Mary Jane & Ross, Gloria, and Lorne

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Preface to the Second Edition

Students often ask about the differences between state and federal practice. They sense that tactical and strategic considerations influence an attorney's decision to choose state or federal court, but they often are frustrated by the lack of relevant materials in their federal casebooks. We believe that too many students graduate from law school with the unwarranted assumption that state civil procedure will operate in lock-step with the federal model they studied in their introductory procedure course. This is an especially precarious assumption now that state civil procedure is eligible for testing on the California Bar Examination. A two or three unit advanced course in California Civil Procedure is our prescribed remedy.

We developed this new edition of the first casebook on California Civil Procedure with several objectives in mind. We selected and edited judicial opinions consistent with our primary goals—to deepen and clarify student comprehension of civil procedure. We have presented a number of fresh concepts in this edition that are not covered in the traditional first year civil procedure casebook. Some of these concepts are covered in court opinions selected because of their discussion of critical themes and procedures unique to California civil practice. Other opinions were selected because they discuss the California legal perspective on concepts resting on more familiar footing. Students will be steeped in the comparative law tradition of examining different solutions to the same problem. While focusing on state appellate opinions, we have also incorporated key U.S. Supreme Court, Ninth Circuit and California federal district court opinions in order to reinforce the perspective of a California practitioner choosing knowledgeably between state and federal court.

With the experience gained teaching from the first edition, we have substantially revised this edition's coverage and organization. Most of the principal cases in the book are new to this edition. The casebook features an expanded hypothetical problem set forth in Chapter One, which recurs in varied forms throughout the text. We have written or revised the Notes and Questions following each case with particular focus on facilitating classroom discussion of the readings and highlighting differences between state and federal practice in California. References to relevant cases, scholarly commentary, and other bibliographic resources will enable professors and students to engage in further research on topics of interest. We are confident that users will find this revised edition to be lively and informative.

This edition offers a new feature, which is designed to confront the adage that a book is obsolete on the day it is published. Our California Civil Procedure Course Web Page will provide inter-edition updates,

other practical web references, and additional web-based materials suitable for this course and related practice. Newly edited substitute cases, which casebook users will be authorized to download, will also be available on our website at: <<http://home.att.net/~slomansonb/CalCivPro.html>>.

We express our thanks to the following individuals who have contributed to the evolution of this edition of the casebook. We begin with our diligent research assistants: Henry Garon, Colleen Kelly, Jerome Meyer, Jully Pae and Stacy Turner. Their help would not have been possible without the support of the Hastings and Thomas Jefferson law schools. We are grateful to Professor Lois Schwartz and to Kathleen Kizer, Ph.D., each of whom read the entire manuscript with great care and provided many beneficial suggestions. We also thank Stephen Lothrop and other members of Faculty Support as well as Mary Glennon of the professional library staff at Hastings. All of them assisted us in countless ways as we engaged in our research and completed the casebook manuscript.

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Being mindful of balancing coverage, cost, and length, we have omitted, without so specifying, as many case, statutory, and footnote citations within a given judicial opinion as possible. Interested readers may consult the original opinions for these details. Numbered footnotes retain the original numbering. Lettered footnotes are those of the casebook authors. Many of the statutes and rules cited in the casebook can be found in Mary Kay Kane & David I. Levine, *Civil Procedure in California: State and Federal*. West, a Thomson business, publishes this paperback of supplemental materials annually.

D.I.L.
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