

LEARNING SERIES

LEARNING
CIVIL
PROCEDURE

JEFFREY W. STEMPEL

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WEST.

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DEDICATION

For Ann, Ryan, Shanen and Reed

To Carol, Karen, and Kelsey for their cheerful and enthusiastic support and assistance

To Mark, Dad, Mom, Cole, Ardon and Ezra, with boundless gratitude and love

To My Loving Family

For Gagas

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PREFACE

In a world of scarce resources, there seems nonetheless to be no shortage of civil procedure books, many of them quite good. But in our years of teaching the course, we had yet to find the optimal coursebook and found ourselves supplementing the other casebooks we have used with additional reading and lectures designed to fill the gaps of other books. At the same time, we grew disenchanted with the constant parade of case after case after case as an effective or efficient method of illustrating a particular procedural point. Although the traditional Langdellian case method can be a powerful tool for learning, we do not believe it should be the nearly exclusive tool for teaching civil procedure. Most civil procedure books include 60 or more excerpted cases, some as many as 80 or 90. As some point, a civil procedure book can begin to look merely like a set of bound cases with some connecting transitions.

And what transitions—often notes between the excerpted cases that refer to other cases (often without much or any explanation) under the assumption that busy first-year law students will actually find the time to examine these additional cases in addition to keeping up with the assigned reading, doing legal writing assignments, and grabbing a few hours of sleep while attempting to maintain some semblance of a normal life during law school. These notes often include relatively esoteric procedural questions that, although occasionally fascinating to the law professoriate, are not particularly germane to mainstream civil litigation and almost never come up for the average practitioner. *Learning Civil Procedure* eliminates these “How Many Angels Can Dance on the Head of a Pin?” questions that are a staple following case excerpts in many traditional casebooks and replaces them with examples, exercises, and problems designed to build student mastery of the discipline.

At the same time that some books fall prey to esoteric doctrine, they also often provide students with little or no history or background regarding the discipline. Other books have so much historical or political background that the student may think there has been a registration mistake and the law school has been overrun by the political science department. *Learning Civil Procedure*, although practical in orientation, understands that the civil rules and attendant doctrine did not develop in a vacuum. Good

lawyers need to know some of the history and institutions responsible for the current state of civil litigation – and this is provided in this coursebook.

Despite scores of cases, most books provide relatively little opportunity for students to test their knowledge with problems of the type they will encounter in final examinations or in practice. Most civil procedure books also skimp on the building practical litigation and lawyering skills and assessment of dispute resolution realities.

Thus, despite the crowded market of civil procedure books we concluded that there was room for one more—if it was sufficiently different from and an improvement upon the status quo. At the same time we were planning such a book, Thomson/West published *Learning Evidence* by Deborah Jones Merritt and Ric Simmons. This text was a dramatic departure from the traditional evidence casebook in terms of organization, format, presentation, reinforcement, and the use of explanatory scenarios and problems as teaching tools rather than excerpted court cases. In fact, *Learning Evidence* is a coursebook without a single case excerpted at any length. It instead focuses on the Rules of Evidence as the core of the subject and upon the application of those rules to frequently encountered litigation matters.

Learning Evidence was a watershed in law school casebooks and has come close to revolutionizing the field with its success as a widely adopted book that has changed the way the course is taught in many law schools. It inspired West Academic Publishing to create a series of books using this type of approach and solidified our desire to create a civil procedure text in the same vein. We were thrilled to be able to become a part of this emerging new series of coursebooks with *Learning Civil Procedure*.

Learning Civil Procedure follows the popular approach of *Learning Evidence*. In particular *Learning Civil Procedure* is presented in an attractive, readable visual format like all books in West's *Learning* series. As detailed in the Study Guide at the outset of the book, each chapter begins with a list of **Key Concepts** to orient the student and provide a road map for the chapter. Icons, text boxes, and other visual aids differentiate material and help guide the reader. Material that is somewhat tangential but nonetheless important or useful is set off in colored text box bubbles to differentiate it from core material. Excerpted cases are distinctly set off, as are the book's **Examples & Analysis** feature and more extensive **Additional Exercises**

that can be used for class discussion. Also unique as compared to other civil procedure casebooks is the **In Practice** feature (marked by the Esq. icon), providing practical litigation knowledge and advice to students, the sort of thing lawyers usually learn only after being in the field.

We also adapt *Learning Evidence* as necessary to the differences between civil procedure and other first-year courses and evidence or other upper-division courses. Particularly for a first-year course, part of the educational goal is to create culturally literate lawyers who not only know doctrinal and practical substance but also appreciate the history and of the field and key developments in the field.

For civil procedure and other courses, some of the key developments are cases – and we have therefore not completely eliminated the study of cases from our approach to studying civil litigation. In particular, iconic cases such as *Louisville & Nashville Railroad v. Mottley* (Ch. 1), *International Shoe v. Washington* (Ch. 2), *Hickman v. Taylor* (Ch. 12), and *Erie v. Tompkins* (Ch. 4) have been included, as have current applications of difficult areas of law such as *Teamsters v. Terry* (Ch. 15), *Shady Grove Orthopedic v. Allstate Insurance* (Ch. 4), and *Taylor v. Sturgell* (Ch. 20). But despite including these cases, *Learning Civil Procedure* includes only 15 excerpted cases along with some occasionally extensive quotation of a few other important cases – a far cry from other civil procedure books.¹ Each of these cases is excerpted in sufficient length and detail that students gain the advantages of analyzing a case that has not been unduly condensed and edited. The case excerpts permit a close reading of precedent and extensive discussion of judicial analysis to the extent desired by the instructor.

Rather than cases alone, this book focuses on the on the nature of civil litigation as a whole, in particular the Rules of Civil Procedure, statutes, and constitutional provisions most often operative in civil litigation. Important provisions are excerpted in the book itself so that students need not be constantly flipping back and forth between the casebook and a rules-and-

¹ On a website supporting use of this book, we are providing edited versions of many of the important, classic, or iconic cases that of necessity had to be left out in order to create the slimmer, more problem-oriented book published. But if an instructor wishes to add additional cases or substitute one important case (e.g., *Gasperini v. Center for the Humanities* instead of *Shady Grove v. Allstate* when studying the *Erie* doctrine in Ch. 4), this can easily be done.

statutes supplement. After the introduction of a concept, the applicable rule or statutory provision is quoted, followed by examples and analyses that help flesh out the concept and emphasize the provision. Students engage in application of new concepts and develop basic understanding before moving on to new topics. This approach is more consistent with current learning theory than the traditional pure case method.

Learning Civil Procedure is also distinguished from other books in the field by its practice-based orientation. It is the only civil procedure coursebook by a major publisher with authors who have more than 60 years of collective full-time litigation experience as well as more than 50 years of full-time law teaching experience. *Learning Civil Procedure* focuses on the civil procedure issues that arise with frequency in real world litigation and addresses them in a practical manner, without sacrificing material and opportunity to explore more complex, less frequent problems that may be of pedagogical value.

Learning Civil Procedure is a broad but succinct coursebook easily adapted to a four-credit, five-credit, or six-credit format. More time can be taken with the material in the book itself and it can be supplemented with additional cases and materials for discussion available in the book's Teacher's Manual or website. *Learning Civil Procedure* is adaptable to suit the instructor's discretion and is also well-supported. The Teacher's Manual contains extensive analyses of the more involved and complex **Additional Exercises** at the end of each Chapter as well as supplementary analyses of the **Examples and Explanations** in each chapter so that the instructor can go beyond the answers provided in text. Similarly, the Teacher's Manual provides analysis of questions posed in the book and provides material for further discussion at the discretion of the instructor.

In addition to edited versions of additional cases for possible use and Westlaw links to full versions of many cases found in traditional civil procedure casebooks that do not appear in *Learning Civil Procedure*, the book's website also provides a "Comprehensive Study Guide" that instructors may provide to students in order to provide them with additional grounding in legal concepts useful in studying civil procedure and other law school course. The website also provides PowerPoint slides that the instructor may use in class if desired to assist in covering the assigned material.

Learning Civil Procedure can stand on its own but most instructors will probably assign a supplementary book containing the entire Federal Rules

of Civil Procedure and important statutes and constitutional provisions. In addition, as noted in the Comprehensive Study Guide available on the website, there are a number of useful treatises that can further flesh out the student's understanding of the civil litigation issues addressed in this book.

We have endeavored to make *Learning Civil Procedure* a fun and effective part of legal education and hope students and faculty will agree. Questions or comments can be addressed to the authors according to the contact information listed below. We hope users of this book come to understand and appreciate the civil litigation process, succeed as litigators and lawyers, and work during their careers to maintain and improve our system of civil dispute resolution.

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