

AMERICAN
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CIVIL
PROCEDURE

CASES AND MATERIALS

COMPACT ELEVENTH EDITION FOR
SHORTER COURSES



Jack H. Friedenthal, Arthur R. Miller,
John E. Sexton & Helen Hershkoff

WEST

CIVIL PROCEDURE

CASES AND MATERIALS

Compact Eleventh Edition
for Shorter Courses



By

Jack H. Friedenthal

*Edward F. Howrey Professor of Law
George Washington University*

Arthur R. Miller

*University Professor
New York University
Formerly Bruce Bromley Professor of Law
Harvard University*

John E. Sexton

*President and Benjamin Butler Professor of Law
New York University*

Helen Hershkoff

*Herbert M. and Svetlana Wachtell Professor of
Constitutional Law and Civil Liberties
New York University*

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For Jo Anne

—*Jack*

In Ellen's memory

—*Arthur*

For Lisa

—*John*

For my family

—*Helen*

PREFACE

This Compact Eleventh Edition is designed to meet the needs of those teaching Civil Procedure courses shorter than the traditional assignment of three hours for each of two semesters. It responds to suggestions and requests that a book of this type be made available. The shortening of the materials found in the larger Eleventh Edition and the elimination of certain chapters reflect the authors' judgments concerning what should be the central themes of a Civil Procedure course. The authors continue to believe that the larger Eleventh Edition will prove advantageous for many teachers who have shorter courses of four or even three hours because it provides the maximum flexibility in terms of an individual classroom's coverage, depth, sensibility, and emphasis. With that in mind, we have included material in the Compact Eleventh Edition that expands the range of choices available to you.

Like the Eleventh Edition from which it is adapted, the Compact Eleventh Edition offers an up-to-date and accessible approach to the study of Civil Procedure. Students tend to find Civil Procedure the most mysterious of their law school courses. Our goal is to present the material in a clear and simple environment, yet one that challenges and stimulates the student toward increasing critical understanding. The Compact Eleventh Edition reflects amendments to the Federal Rules of Civil Procedure and covers important new Supreme Court cases on personal jurisdiction, pleading, federal jurisdiction, the *Erie* doctrine, class actions, and *res judicata*. The edition addresses not simply doctrinal change, but also the still uncertain effects of new technology, globalism, and privatization on the system of civil justice. The edition also responds to the many helpful comments from judges, practitioners, colleagues, and students at the large number of schools in which earlier editions have been used. Our conversations confirm our own conclusion that the book is and will continue to be a highly successful teaching tool, and we have preserved in this compact edition the basic format of the Eleventh Edition. Along with traditional material, we include contemporary cases in which the facts are interesting, in which the conflicting policies seem to be in a state of equilibrium or in which the context has extrinsic fascination, rather than materials that offer a tight monograph on various aspects of procedure. In addition, we have made room for cutting-edge issues including the effect of the Internet on personal jurisdiction, the federalization of interstate, state law class actions, the relation between human rights litigation and *forum non conveniens* doctrine, the effect of pleading rules on corporate accountability and civil rights enforcement, and the impact of alternative dispute resolution on judicial

practice, which we believe will contribute in positive ways to a lively and engaged classroom discussion. We also have incorporated short problems that test doctrinal understanding, foster case reading skills, and encourage a sense of litigation strategy.

As has been the practice with all of the past editions, this Compact Eleventh Edition offers substantial emphasis on the operation of the Federal Rules of Civil Procedure and draws comparisons with state and international practice. The materials in this volume refer to and are augmented by a Supplement, which contains not only the federal statutes and rules governing procedure, but also selected state provisions for comparison. A number of other materials, such as Advisory Committee notes, proposed rule alterations, and local court rules, also are included. The Supplement contains a litigation timechart and an illustrative litigation problem, showing how a case develops in practice and samples of the documents that actually might have formed a portion of the record. These samples are not designed as models to be emulated. To the contrary, they often contain defects intended to encourage students to criticize them in light of knowledge they have obtained from the cases and classroom discussion. The Supplement also includes the complaints from two principal cases and an important note case.

The cases and excerpts from other materials have been edited carefully in order to shorten them and clarify issues for discussion. With regard to footnotes, the same numbering appears in the casebook as appears in the original sources; our footnotes are indicated by letters. Omissions are indicated with asterisks.

The authors are deeply grateful to a host of people who have assisted us in the preparation of this volume, the earlier editions, and the Supplements. Among our students deserving special mention for the aid they have provided in preparing earlier editions of the book are Judge Prudence C. Beatty, Sam L. Abram, Kim Barry, James J. Beha, Jeffrey A. Benjamin, (Professor) Richard B. Bernstein, Michael Blasie, (Professor) Barry B. Boyer, (Professor) Michael Broyde, William M. Burns, Bertram Carp, (Professor) Sanford Caust-Ellenbogen, Anna L. Cavnar, Jeffrey J. Chapman, Daniel Chazin, Tan Yee Cheung, Caroline P. Cincotta, Adam S. Cohen, Stephanie Cohen, Steven Cohen, Diane Costa, Russell C. Crane, David Drueding, Gary Eisenberg, Seth K. Endo, Lisa Fair, David E. Firestone, (Judge) Raymond Fisher, Grant H. Franks, Kelly A. Frawley, Patrick P. Garlinger, Stacy Gershwind, Lisa E. Goldberg, Robert H. Goldman, Steven F. Goldman, Ashley K. Goodale, Amanda W. Goodin, Susanna R. Greenberg, Debra L. Greenberger, Kimberly M. Greene, Kevin A. Griffin, Edward Hartnett, Daniel M. Hennefeld, Wendy B. Jacobs, (Professor) Joe J. Kalo, (Dean) Mary Kay Kane, Lonnie Keene, Christopher D. Kercher, Tarek M. Khanachet, Amy Kimpel, Jessica M. Kumm, Pearline M. Kyi, Daniel Laguardia, Fredrick W. Lambert,

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Finally, we sincerely thank our many colleagues and students across the legal community for the countless excellent suggestions they have offered. Their contributions have been instrumental in the preparation of the Eleventh Edition and this Compact Edition that is adapted from it.

J.H.F.

A.R.M.

J.E.S.

H.H.

April 2013

CIVIL PROCEDURE

CASES AND MATERIALS

**Compact Eleventh Edition
for Shorter Courses**

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