



ASPEN CASEBOOK SERIES

**CIVIL PROCEDURE  
CASES AND PROBLEMS**

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**Fifth Edition**

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# CIVIL PROCEDURE

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*For Matthew, Joel, and Kate*

*For a dear friend and former colleague  
Dean Fred Lower,  
who forty years ago gave me the chance  
to begin teaching Civil Procedure*

*For Aaron*

# Preface

---

Most first-year law students find Civil Procedure to be one of their most challenging courses. While other first-year courses such as Contracts, Torts, Property, and Criminal Law present their own difficulties, they at least address roughly familiar turf—the making of enforceable agreements, the vindication of personal injuries, the ownership of property, and the commission and punishment of crimes—areas to which many of you have been exposed on television or at the movies, if not in real life. Civil Procedure, on the other hand, introduces us to a new language of process, and in a sense a new way of thinking, premised on rules and principles that occur and recur daily, but within the much less visible realms of civil litigation and formal dispute resolution. Because it has no “real world” counterpart, Civil Procedure is in some ways like a foreign language, possessing a linguistic culture of its own. As a student, your first challenge is thus to learn the basics of this new language—one in which you will soon find yourself to be surprisingly fluent.

While the doctrines of Civil Procedure may at times seem highly technical or more than moderately perplexing in their application, don't despair! The fog of one's initial encounter with procedure is natural, yet it is neither permanent nor impenetrable. To succeed at Civil Procedure, you need patience, discipline, and a willingness to appreciate the inherent play of some of the underlying doctrines. In our over 70 years of combined teaching experience, we have found that students who accept this challenge often, and to their surprise, find Civil Procedure to be one of their most enjoyable and rewarding courses. What at first glance might appear to be a subject that is dry and far removed from human experience may, with patience and effort on your part, turn out to be rich in its intellectual and practical possibilities. You might think of Civil Procedure as a series of puzzles, each with its own special rules and nuances. Like an intricate game, as you master one level, you will move on to a new and more challenging stage. If you learn to take one step at a time, you will proceed nicely to the finish.

We have, frankly, loved (and continue to love) teaching Civil Procedure. There is a deep pleasure in watching students learn to navigate an initially mysterious but almost always fascinating labyrinth. This casebook reflects our rich and satisfying experience. It embodies the thousands of hours we've spent in the classroom and in our offices—working with students, learning what works and what doesn't, trying new approaches. One thing of which we're certain is this: The only way to learn Civil Procedure is through an active process of applying the doctrines to the solution of real Problems. It is for this reason that this book contains well over 200 Problems interspersed throughout the text. We urge students who use the book to do the Problems as they appear in their assignments. Given the amount of material that must be covered, it is unlikely your professor will be able to cover all of



the Problems in class. Yet this is a boon for you, for by doing the Problems yourself you will reap tremendous benefits. Make a habit of doing all of the Problems, either by yourself or with a small group of your fellow students. Then take the time to review the actual cases on which many of the Problems are based, the citations to which appear at the end of the Problem. If the court took a different approach than you did, ask yourself why. In short, make a habit of first learning the language of Civil Procedure by doing the reading and listening to your professor. Then practice using that language by applying it to the Problems as they appear in the book. This process of reading, thinking, doing—and sometimes redoing—is the one sure way to master Civil Procedure.

Good luck to you on this new adventure. We hope that these materials will serve as a useful learning tool, and that they will provide you with the knowledge and the confidence necessary to use the civil litigation system as a means of furthering justice.

*Allan Ides  
Christopher N. May  
Simona Grossi*

*February 2016*

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We also want to thank the American Law Institute for granting us permission to reprint the Restatement (Second) of Judgments, §13 Comment b, §20, §24, §27, §35, §36, and §37, © 1982.

Finally, we would thank the thousands of wonderful students who over many years have given us inspiration and a better understanding of the learning process, and without whom we would never have undertaken such a project.

# SUMMARY OF CONTENTS

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<i>Contents</i>	<i>xi</i>
<i>Preface</i>	<i>xxxi</i>
<i>Acknowledgments</i>	<i>xxxiii</i>
<b>Introduction</b>	<b>1</b>
<b>I. Pleadings and Related Motions</b>	<b>13</b>
<b>II. Personal Jurisdiction</b>	<b>115</b>
<b>III. Service of Process and Notice</b>	<b>245</b>
<b>IV. Subject Matter Jurisdiction</b>	<b>303</b>
<b>V. Venue, Transfer, and <i>Forum Non Conveniens</i></b>	<b>407</b>
<b>VI. The <i>Erie</i> Doctrine and Related Problems</b>	<b>465</b>
<b>VII. Discovery</b>	<b>553</b>
<b>VIII. Joinder of Claims and Parties</b>	<b>633</b>
<b>IX. Class Actions</b>	<b>749</b>
<b>X. Adjudication Without Trial</b>	<b>885</b>
<b>XI. Trial</b>	<b>965</b>
<b>XII. Appellate Review</b>	<b>1045</b>
<b>XIII. The Binding Effect of a Final Judgment</b>	<b>1131</b>
<i>Table of Cases</i>	<i>1233</i>
<i>Table of Authorities</i>	<i>1253</i>
<i>Index</i>	<i>1261</i>

# CONTENTS

---

<i>Preface</i>	xxxi
<i>Acknowledgments</i>	xxxiii
<b>Introduction</b>	<b>1</b>
A. The State and Federal Judicial Systems	1
1. State Judicial Systems	2
2. The Federal Judicial System	3
B. State and Federal Court Caseloads	6
1. State Court Caseloads	6
2. Federal Court Caseloads	9
<b>Chapter I. Pleadings and Related Motions</b>	<b>13</b>
A. Code Pleading	14
<i>Epstein v. M. Blumenthal &amp; Co.</i>	17
Notes and Questions	19
Problem 1-1	20
<i>Doe v. City of Los Angeles</i>	21
Notes and Questions	28
Problem 1-2	29
B. Notice Pleading and the Federal Rules of Civil Procedure	30
1. The Complaint	32
a. Rule 8	32
b. Foundational Cases and Developments	32
<i>Conley v. Gibson</i>	32
Notes and Questions	34
Problems 1-3–1-5	36
A Note on Exceptions to Rule 8	36
<i>Leatherman v. Tarrant County Narcotics</i>	
<i>Intelligence and Coordination Unit</i>	38
Notes and Questions	40
Problems 1-6–1-7	41
c. Recent Developments	42
<i>Bell Atlantic Corp. v. Twombly</i>	42
Notes and Questions	53
Problem 1-8	55
<i>Ashcroft v. Iqbal</i>	55
Notes and Questions	66
A Note on Plausibility, Inferences, and Pleading Sufficiency	67

d.	<i>Twombly</i> and <i>Iqbal</i> Applied	70
	<i>Swanson v. Citibank, N.A.</i>	70
	Notes and Questions	76
	<i>McCleary-Evans v. Maryland Department of Transportation</i>	77
	Notes and Questions	83
	<i>Littlejohn v. City of New York</i>	84
	Notes and Questions	95
	Problem 1-9	95
2.	The Answer	96
	<i>King Vision Pay Per View, Ltd. v. J.C. Dimitri's Restaurant, Inc.</i>	98
	Notes and Questions	100
	Problems 1-10–1-11	100
3.	Rule 12(b) Motions to Dismiss	101
	<i>Johnson v. City of Shelby</i>	103
	Notes and Questions	104
	<i>Kirksey v. R.J. Reynolds Tobacco Co.</i>	104
	Notes and Questions	107
	Problems 1-12–1-13	108
C.	Pleading Review Problem	109
	Problem 1-14	109
	<b>Chapter II. Personal Jurisdiction</b>	<b>115</b>
A.	<i>Pennoyer v. Neff</i> and the Rule of Territoriality	116
	<i>Pennoyer v. Neff</i>	116
	Notes and Questions	124
	Problems 2-1–2-3	126
B.	Traditional Bases of Personal Jurisdiction	127
1.	Personal Jurisdiction	127
a.	Domicile	127
b.	Voluntary Appearance	128
c.	Consent to Service on an Agent	129
d.	Transient or Tag Jurisdiction	129
2.	<i>In Rem</i> and <i>Quasi in Rem</i> Jurisdiction	130
	<i>Harris v. Balk</i>	131
	Notes and Questions	134
	Problem 2-4	135
3.	The Advent of Fictions	135
C.	The Modern Law of Jurisdiction	137
1.	<i>International Shoe</i> — Jurisdiction Beyond Fictions and Tradition	138
	<i>International Shoe Co. v. Washington</i>	138
	Notes and Questions	143

2. Establishing a Statutory Basis for Jurisdiction beyond the Traditional Forms	145
3. Due Process: The Nonresident Defendant's Connections with the Forum State	148
a. Contracts	149
<i>McGee v. International Life Insurance Co.</i>	149
Notes and Questions	150
<i>Hanson v. Denckla</i>	151
Notes and Questions	156
<i>Burger King Corp. v. Rudzewicz</i>	157
Notes and Questions	166
Problems 2-5-2-7	167
b. Torts	168
<i>Calder v. Jones</i>	168
Notes and Questions	171
Problems 2-8-2-10	173
<i>Walden v. Fiore</i>	174
Notes and Questions	180
A Note on the "Stream of Commerce" Theory	181
<i>J. McIntyre Machinery, Ltd. v. Nicaastro</i>	182
Notes and Questions	197
A Note on the Stream-of-Commerce Theory Today	199
Problems 2-11-2-12	200
A Note on Personal Jurisdiction and the Internet	201
Problems 2-13-2-14	203
4. Due Process: The Relatedness Requirement	204
<i>Nowak v. Tak How Investments, Ltd.</i>	
[Part I]	204
Notes and Questions	210
Problem 2-15	212
5. Due Process: The Reasonableness Requirement	212
<i>Asahi Metal Industry Co., Ltd. v. Superior Court of California</i>	213
Notes and Questions	216
<i>Nowak v. Tak' How Investments, Ltd.</i>	
[Part II]	216
Notes and Questions	218
Problems 2-16-2-17	219
6. Due Process: General Jurisdiction	220
<i>Daimler A.G. v. Bauman</i>	220
Notes and Questions	230

	Problems 2-18–2-19	230
D.	Minimum Contacts and the Traditional Bases of Jurisdiction	231
	Problem 2-20	233
E.	Exercising Jurisdiction Under Federal Long-Arm Provisions	234
	1. Federal Long-Arm Provisions	235
	2. Minimum Contacts at the National Level	235
	Problem 2-21	236
F.	Challenging Lack of Personal Jurisdiction over the Defendant	237
	1. The Burden of Proof	237
	2. Direct Attack	237
	3. Collateral Attack	239
	Problems 2-22–2-23	240
G.	Personal Jurisdiction Review Problems	241
	Problems 2-24–2-25	241
	<b>Chapter III. Service of Process and Notice</b>	<b>245</b>
A.	The Mechanics of Service: Rule 4	246
	1. Request for Waiver of Service	246
	Problem 3-1	247
	2. Formal Service of Summons and Complaint	247
	a. Individuals	248
	Problem 3-2	248
	b. Corporations, Partnerships, and Associations	249
	<i>American Institute of Certified Public Accountants v. Affinity Card, Inc.</i>	249
	Notes and Questions	253
	c. Defendants Served in a Foreign Country	254
	d. Substantial Compliance	254
	Problem 3-3	255
	3. Time Limit for Effecting Service: Rule 4(m)	256
B.	The Due Process Right to Notice	257
	<i>Mullane v. Central Hanover Bank &amp; Trust Co.</i>	257
	Notes and Questions	263
	Problems 3-4–3-5	265
	<i>Jones v. Flowers</i>	266
	Notes and Questions	274
	Problems 3-6–3-7	276
	A Note on Challenging Service of Process	277
	You've Got Mail	278
C.	Pre-filing Waiver and Consent	280
	<i>Underwood Farmers Elevator v. Leidholm</i>	281
	Notes and Questions	283

D.	Policy-Based Immunities and Exemptions	284
1.	Participation in Legal Proceedings in the Forum State	285
2.	Trickery or Fraud	285
	Problems 3-8–3-9	286
E.	Notice and Hearing When Property Is Attached	287
	<i>Connecticut v. Doehr</i>	288
	Notes and Questions	295
	Problems 3-10–3-12	298
F.	Service of Process and Notice Review Problems	300
	Problem 3-13–3-15	300
	 <b>Chapter IV. Subject Matter Jurisdiction</b>	 <b>303</b>
A.	Subject Matter Jurisdiction in Federal Courts	304
1.	The Constitutional and Statutory Dimensions of Subject Matter Jurisdiction in Federal Courts	304
2.	Federal Question Jurisdiction	306
a.	Article III “Arising Under” Jurisdiction	306
	Problem 4-1	308
b.	Statutory “Arising Under” Jurisdiction: The Federal Question Jurisdiction of U.S. District Courts	308
	The Foundations of Statutory Arising-Under Jurisdiction	309
	<i>Shoshone Mining Co. v. Rutter</i>	310
	Notes and Questions	312
	<i>American Well Works Co. v. Layne       &amp; Bowler Co.</i>	312
	Notes and Questions	314
	<i>Smith v. Kansas City Title and Trust Co.</i>	314
	Notes and Questions	317
	<i>Gully v. First National Bank</i>	317
	Notes and Questions	321
	Problems 4-2–4-4	321
	A Note on Declaratory Judgments and Statutory Arising-Under Jurisdiction	322
	Problems 4-5–4-6	323
	A Note on Concurrent and Exclusive Federal Question Jurisdiction	324
	The Modern Approach to Statutory Arising-Under Jurisdiction	325
	<i>Gunn v. Minton</i>	326
	Notes and Questions	332
	Problem 4-7	333



3. Diversity Jurisdiction	333
a. Introduction	333
b. Diversity of State Citizenship	335
<i>Rodríguez v. Señor Frog's de La Isla, Inc.</i>	335
Notes and Questions	339
Problem 4-8	340
A Note on 28 U.S.C. § 1359 and “Collusive” Transfers or Assignments to Create Diversity Jurisdiction	341
A Note on the Citizenship of Artificial Entities	342
Problem 4-9	343
A Note on Statutes Allowing for Minimal Diversity	344
c. Cases Involving Aliens	345
<i>Eze v. Yellow Cab Co. of Alexandria,     Virginia, Inc.</i>	345
Notes and Questions	346
<i>Grupo Dataflux v. Atlas Global Group,     L.P.</i>	347
Notes and Questions	352
Problems 4-10–4-11	355
A Note on U.S. Citizens with Dual Nationality	356
A Note on U.S. Corporations with Their Principal Place of Business Abroad	357
Problems 4-12–4-13	357
d. Amount in Controversy	358
<i>Coventry Sewage Associates v. Dworkin     Realty Co.</i>	359
Notes and Questions	365
A Note on Aggregation of Claims	366
Problems 4-14–4-15	368
A Note on Computing the Amount in Controversy in Suits for Declaratory or Injunctive Relief	368
Problem 4-16	370
4. Supplemental Jurisdiction	370
a. Overview and Introduction	370
b. Pendent and Ancillary Jurisdiction	371
<i>United Mine Workers of America v. Gibbs</i>	371
Notes and Questions	375
<i>Owen Equipment and Erection Co.     v. Kroger</i>	377
Notes and Questions	382