

# Civil Procedure

**What Matters and Why**

**Second Edition**

Howard M. Erichson



**Wolters Kluwer**  
Law & Business





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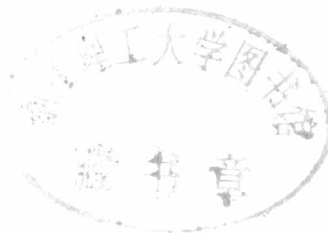
# Inside Civil Procedure

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**Second Edition**

**Howard M. Erichson**

*Professor of Law  
Fordham University School of Law*



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Published by Wolters Kluwer Law & Business in New York.

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Wolters Kluwer Law & Business  
Attn: Order Department  
PO Box 990  
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-1-4548-1097-1

### **Library of Congress Cataloging-in-Publication Data**

Erichson, Howard M.

Inside civil procedure : what matters and why / Howard M. Erichson. — 2nd ed.  
p. cm. — (The inside series)

Includes bibliographical references and index.

ISBN 978-1-4548-1097-1 (alk. paper) 1. Civil procedure—United States—  
Outlines, syllabi, etc. 2. Pleading—United States—Outlines, syllabi, etc. I. Title.

KF8841.E75 2012

347.73'5—dc23

2012016219



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# Preface

Some students love civil procedure. Most don't. Not everybody finds it easy to master topics like personal jurisdiction or *res judicata*, which—let's face it—strike some people as technical, dry, and unintuitive. I've taught civil procedure long enough to know that not everybody *gets* it. This book is devoted to helping you get it.

The key to learning civil procedure is to get inside it. Procedural rules and doctrines that at first seem incomprehensible finally make sense when you understand what they're trying to do, how they're used in practice, and how they fit into the bigger picture. I suppose you could try to memorize rules without really understanding how they work or how they fit into the overall system, but why would you? It's not going to accomplish what your civil procedure professor expects of you, and it's certainly not going to give you what you need in order to serve clients in the real world of litigation.

This book explains the major topics in civil procedure. You won't find endless citations of cases and law review articles on each topic. You won't find every exception to every twist of every nuance. Nor will you find details that you'll simply look up when you're in practice. I'm not going to tell you, for example, the time limit for responding to a request for admissions in federal court. All right, 30 days.

What you will find are clear explanations and a host of features designed to help you master the material. The Overview at the beginning of each chapter positions the material in that chapter within the field of civil procedure. The Frequently Asked Questions (FAQs) give straight answers to questions that commonly pop up in a civil procedure course, and clear up common mistakes and misconceptions. Sidebars add color and offer insights, study tips, and practice pointers. For a number of topics, you'll find a step-by-step Analysis that demonstrates how you might apply the material. The Summary feature near the end of each chapter gives you a quick and easy guide to the most basic points covered in that chapter. And the Connections feature at the end of each chapter helps you fit the points made in that chapter with the other topics in civil procedure. By the end of each chapter, you should have a clear understanding of not only how the procedural rules and doctrines work, but also how the pieces of the puzzle fit together.

The Second Edition builds on the success of the first edition and updates the book from beginning to end. The past few years have seen numerous amendments to the Federal Rules of Civil Procedure and to the federal jurisdiction and venue statutes, as well as a number of Supreme Court decisions on civil procedure issues. The summary judgment rule has been thoroughly revised. Congress altered the statutes governing venue, venue transfer, and subject matter jurisdiction. Most significantly, the Supreme Court's sudden interest in procedural topics has led to big decisions on personal jurisdiction, subject matter jurisdiction, the *Erie* doctrine, and class actions. All of these recent cases are addressed in the new edition.

For most law students, the course on civil procedure feels different from other first-year courses such as contracts, torts, property, and criminal law. Other courses focus on substantive law, the rights and duties that the law establishes, whereas procedure is all about the process for resolving disputes that arise under those substantive rights and duties. But don't make the mistake of viewing procedure as secondary or insignificant. Process matters. Any lawyer will tell you that the outcome of a case often depends on its procedural path. As Representative John Dingell said during a House subcommittee hearing, "I'll let you write the substance . . . and you let me write the procedure, and I'll screw you every time."<sup>1</sup> Procedural rules affect the likelihood of achieving just outcomes. And process matters for its own sake. We're talking, after all, about nothing less than our system of justice. Treating participants fairly and taking the resolution of disputes seriously rank among the most important things we do in a civilized society.

This book focuses primarily on procedure in the federal courts, because that's what most law school civil procedure courses emphasize, and because much procedure in the United States, even in state courts, follows the model of the federal rules. Unless noted otherwise, the specific rules cited are Federal Rules of Civil Procedure, but you'll find important state variations mentioned throughout the book.

As you learn about each topic, think about how you will *use* these procedures as a lawyer. To serve your clients well in an adversary system of justice, you need to understand the strategies available under the rules of procedure. Lawyers often compare litigation to a chess game or some sort of ritualized battle. Chess and other games of strategy require players to see all available options, anticipate opponents' moves, and see several moves ahead. Others have compared litigation to theater. Lawsuits involve the presentation of competing stories, and skilled lawyers understand how the rules of procedure create opportunities to present a compelling story based on the evidence. Thinking about the ways in which you can use your procedural knowledge for your clients will greatly enhance your understanding of each topic.

Always look for how each part fits into the whole. You cannot really understand summary judgment, for example, without seeing how it relates to pleadings, discovery, and trial. Although this book necessarily teaches procedural topics one at a time, ultimately you have to understand civil procedure as a seamless web in which each aspect of the litigation process relates to all of the others. But enough metaphors. It's a seamless web, it's a chess game, it's theater, it's ritualized battle. . . . It's civil procedure, and it's time to get down to learning it.

Howard M. Erichson

April 2012

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<sup>1</sup>Hearing on H.R. 2327, 98th Cong. 312 (1983).

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# Acknowledgments

I thank Fordham Law School and Seton Hall Law School for their generous support of this project. I thank my research assistants on this book, Lincoln Davis Wilson, Victoria Belyavsky, and Joshua Steinberger, not only for their meticulous work but also for never letting me forget that this book is for law students. Thanks also to research assistants Robert Gonello and Sunila Sreepada who worked primarily on other projects but ably assisted with this book as needed. At Aspen, I thank Carmen Corral-Reid, Richard Mixter, Barbara Roth, and Lisa Wehrle, as well as outside reviewers who offered valuable suggestions. I am indebted, finally, to two groups of people without whom I could not have written this. My colleagues at my own institutions and throughout the field of civil procedure have taught me so much about how to understand this area of law and how to convey it effectively. This book is saturated with their teaching. Finally, my students have been a constant source of challenge and inspiration. Their questions, confusions, ideas, and insights are woven into every page.

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# Subject Matter Jurisdiction

# 1

## O V E R V I E W

A first step in civil procedure is understanding the limits on the power of courts. Suppose a judge in traffic court entered a judgment purporting to grant a divorce and award child custody—no one would consider the judgment legitimate. Why, exactly? Because the judge’s power does not extend to that category of cases. In other words, a traffic court lacks **subject matter jurisdiction** over a family law case. *Federal* courts too have limited subject matter jurisdiction, which is the focus of this chapter. Jurisdiction is about power and the structure of our federal system of government. Federal subject matter jurisdiction delineates the power of the federal courts as a matter of federalism (the division of powers between the federal and state governments) and separation of powers (the division of powers between the legislative, executive, and judicial branches of government). From the lawyer’s perspective, jurisdiction is also about strategy. Because lawyers perceive strategic advantages in different courts, jurisdictional doctrines set up a game of forum selection strategy that both plaintiffs and defendants play.

### A. INTRODUCTION TO STATE AND FEDERAL COURTS

1. One Nation, Multiple Court Systems
2. Trial and Appellate Courts
3. Federal Subject Matter Jurisdiction



**B. FEDERAL QUESTION JURISDICTION**

1. The Well-Pleaded Complaint Rule
2. State Law Claim with Federal Issue

**C. DIVERSITY JURISDICTION**

1. Types of Diversity
2. Determining Citizenship
3. Complete Diversity
4. Amount in Controversy
5. Diversity Jurisdiction over Class Actions

**D. OTHER BASES FOR FEDERAL JURISDICTION****E. SUPPLEMENTAL JURISDICTION**

1. Grant of Supplemental Jurisdiction
2. Constraint on Supplemental Jurisdiction in Diversity Cases
3. Discretionary Decline of Jurisdiction

**F. REMOVAL**

1. Removal from State Court to Federal Court
2. Removal Procedure
3. Separate and Independent Federal Claims

**G. ANALYZING SUBJECT MATTER JURISDICTION**

## A. Introduction to State and Federal Courts

You cannot start learning jurisdictional doctrine without a clear picture of the judicial framework. Courts in the United States do not constitute a unitary and uniform system, but rather multiple systems of multilayered courts. They include a federal court system and multiple state court systems, and each system comprises layers of trial courts and appellate courts.

### (1) One Nation, Multiple Court Systems

Each of the 50 states has its own court system. So do U.S. districts and territories such as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. The state court systems employ their own judges, and are supported by the taxpayers of each state (except the courts of the District of Columbia, which are funded by the federal government). Some states hold judicial elections to select their judges, while others use an appointment process.

Each system of state or territorial courts includes courts of limited jurisdiction and courts of general jurisdiction. Courts of **limited jurisdiction** vary from state to state, but may include small claims courts, municipal courts, probate courts, traffic courts, and family courts. What makes them courts of limited jurisdiction is that they are empowered to hear only certain categories of cases. Municipal courts, for example, often handle traffic violations, small claims, and misdemeanors, but

would not adjudicate felony criminal cases or civil lawsuits for substantial money damages. Courts of **general jurisdiction**, by contrast, can hear any type of case unless it is specifically excluded from the court's power. The name for the court of general jurisdiction varies from state to state. In Texas, it's the District Court. In Tennessee, it's the Circuit Court. In New York, confusingly, it's called the Supreme Court. A number of states label their court of general jurisdiction the Superior Court, to draw a contrast between courts of general jurisdiction and courts of limited jurisdiction, or inferior courts. By whatever name, every state has at least one court of general jurisdiction.

In addition to the more than 50 state and territorial court systems in the United States, there is an additional court system that includes courts across the entire nation. These are the federal courts—the judicial branch of the U.S. government. The federal courts form the central focus of this book and of most law school civil procedure courses; they also present the stickiest problems of subject matter jurisdiction. At a theoretical level, you might picture a map of the 50 states, each with its own state court system, and floating above it, a map of the entire United States with its system of federal courts. Here in the real world, however, lawyers and litigants experience the state and federal courts as institutions that function side by side, presenting different procedural opportunities depending on the nature of the lawsuit. For many lawyers, the visual image of these multiple court systems is not abstract floating maps, but rather a state courthouse building with a federal courthouse literally across the street. Depending on subject matter jurisdiction, some cases can be filed only in the state court, some only in the federal court, and some in either place.



**Foley Square, New York, with state courthouse on the left and federal courthouse on the right.**  
Photo courtesy of Philip Schatz and the Federal Bar Association SDNY Chapter.

## (2) Trial and Appellate Courts

Each of the state and territorial court systems, like the federal court system, comprises layers of trial courts and appellate courts. Cases begin in the trial court and