

Understanding

CIVIL PROCEDURE

FIFTH EDITION



Gene R. Shreve

Peter Raven-Hansen

Charles Gardner Geyh



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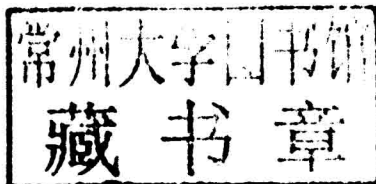
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MATTHEW  BENDER

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Washington, D.C.

Bloomington, IN

Preface to First Edition

This text treats the entire subject of civil procedure. It is primarily intended as a reference for law school civil procedure students. However, its treatment of recent developments in areas like Federal Rules of Civil Procedure 11, 16 and 26, personal jurisdiction and res judicata may make it useful to some practitioners as well.

If the law of contracts, torts or property reflects the substantive values of our society, civil procedure is the process for making those values real. The law of civil procedure governs the manner in which cases enter, transit, and leave the judicial process. It establishes the authority of courts to hear cases, opportunities for litigants to create and use a record of decision, and the force and effect of judgments.

We believe that the key to understanding the principles of civil procedure is knowing why: why they were created and why they are invoked. To these ends we have used a variety of means. History is the key to personal jurisdiction and the Erie doctrine, and we have explained them accordingly by tracing their historical evolution. Pragmatic concerns chiefly shape the civil procedure of pretrial discovery and motion practice, as well as trial practice, and we start discussion of these subjects by assessing why a lawyer is interested in them.

Federal Rule 11, discovery controls under Federal Rules 26(b)(1), 26(f), and 26(g), and expanded pretrial management under Federal Rule 16, are subjects so new that neither history nor pragmatic considerations are sufficient to anticipate their development. Using theory as well as both reported and unreported opinions available through early 1988, we have compensated by giving more prominence to these subjects than they presently enjoy in the typical civil procedure curriculum. This reflects our conviction that the subjects will grow in importance over the next few years. Finally, throughout the book we identify the latest sources which will enable readers with specialized needs to supplement the information we provide.

We have followed the practice of almost all civil procedure courses in using the Federal Rules of Civil Procedure as our model. However, we have also referred to different state rules and doctrines where appropriate, striving to use a representative cross-section of state models. We have also referred frequently to major civil procedure treatises, using a short form for citations explained in § 5.

Bloomington, Indiana

Washington, D.C.

May, 1988

TABLE OF CONTENTS

Preface to Fifth Edition

Preface to First Edition

Chapter 1	INTRODUCTION	1
§ 1.01	WHAT IS CIVIL PROCEDURE?	1
[1]	Approaching the Subject	1
[2]	Substance and Procedure	2
[3]	Civil Procedure in the United States	3
[4]	Some Common Misperceptions of Civil Procedure	5
§ 1.02	SOURCES OF CIVIL PROCEDURE	7
§ 1.03	BRIEFING A CIVIL PROCEDURE CASE	11
§ 1.04	OUTLINING IN CIVIL PROCEDURE	14
§ 1.05	RESEARCH AND DRAFTING IN CIVIL PROCEDURE	15
§ 1.06	CIVIL PROCEDURE BIBLIOGRAPHY AND SHORT FORM CITATIONS	16
Chapter 2	SELECTING A COURT — AN INTRODUCTION	19
§ 2.01	THE CHOICES: STATE AND FEDERAL JUDICIAL SYSTEMS	19
§ 2.02	FACTORS INFLUENCING THE SELECTION OF A COURT	22
Chapter 3	A COURT WITH JURISDICTION OVER PERSONS AND THINGS	25
§ 3.01	PERSONAL JURISDICTION BASICS	25
[1]	How and Why Personal Jurisdiction Problems Arise	25
[2]	Law that Limits the Reach of Personal Jurisdiction	26
[a]	State Courts — Due Process and “Long Arm” Statutes	26
[b]	Federal Courts — Due Process and Rule 4	28
[3]	Traditional Categories of Jurisdiction	30
[a]	<i>In Personam</i> Jurisdiction	31
[b]	<i>In Rem</i> Jurisdiction	31
[c]	<i>Quasi in Rem</i> Jurisdiction	31
§ 3.02	<i>PENNOYER v. NEFF</i> : AN ERA OF RIGID TERRITORIAL LIMITS	33
[1]	<i>Pennoyer</i> and its Rationale	33
[2]	The Aftermath of <i>Pennoyer</i>	35
§ 3.03	<i>INTERNATIONAL SHOE CO. v. WASHINGTON</i> : THE SHIFT TO MINIMUM CONTACTS	37
[1]	Due Process and the Reasonableness of Plaintiff’s Forum Choice	37
[2]	The Advent of Minimum Contacts	39

TABLE OF CONTENTS

[3]	Justifications for <i>Shoe</i> 's Extension of Personal Jurisdiction	40
§ 3.04	SPECIFIC AND GENERAL JURISDICTION	41
[1]	The Four Scenarios from <i>International Shoe</i>	41
[2]	Specific and General Jurisdiction Compared	42
§ 3.05	SPECIFIC JURISDICTION — THE EMERGING, MULTIFACTOR ANALYSIS	44
[1]	<i>McGee v. International Life Ins. Co.</i>	44
[2]	<i>Hanson v. Denckla</i>	46
[3]	<i>World-Wide Volkswagen v. Woodson</i>	49
[4]	<i>Keeton v. Hustler Magazine</i>	51
[5]	<i>Calder v. Jones</i>	53
§ 3.06	SPECIFIC JURISDICTION — GIVING STRUCTURE TO THE EMERGING, MULTI-FACTOR ANALYSIS: <i>BURGER KING CORP. v. RUDZEWICZ</i>	54
§ 3.07	THE "STREAM OF COMMERCE" PROBLEM	57
[1]	The Stream of Commerce	57
[2]	<i>Asahi Metal Industry Co., Ltd. v. Superior Court</i>	59
[3]	<i>J. McIntyre Machinery, Ltd. v. Nicastro</i>	62
§ 3.08	GENERAL JURISDICTION	64
[1]	<i>Perkins v. Benguet Consolidated Mining Co.</i>	65
[2]	<i>Helicopteros Nacionales de Colombia v. Hall</i>	66
[3]	<i>Goodyear Dunlop Tires Operations v. Brown</i>	67
§ 3.09	PENNOYER REVISITED: THE LINGERING RELEVANCE OF TERRITORIAL PRESENCE	68
[1]	Presence of Property: The Decline of <i>Quasi in Rem</i> Jurisdiction	69
[a]	<i>Shaffer v. Heitner</i>	69
[b]	<i>Rush v. Savchuk</i>	71
[2]	Presence of Persons — The Retention of Transient Jurisdiction: <i>Burnham v. Superior Court of California</i>	72
§ 3.10	LITIGATING JURISDICTION: TIMING THE CHALLENGE	74
[1]	Direct Attack	74
[2]	Collateral Attack	74
§ 3.11	WAIVER OF OR CONSENT TO PERSONAL JURISDICTION	76
[1]	How Waiver Operates	76
[2]	Special and Limited Appearances	77
[3]	Litigating Jurisdiction as Partial Consent or Waiver	79
[4]	Jurisdiction by Pre-Litigation Consent	80
§ 3.12	ISSUES ON THE FRONTIER OF PERSONAL JURISDICTION	82
[1]	Pendent or Supplemental Personal Jurisdiction	82
[2]	Jurisdiction in Cyberspace	84
[3]	Globalization and Personal Jurisdiction	87

TABLE OF CONTENTS

Chapter 4	NOTICE AND OPPORTUNITY TO BE HEARD	89
§ 4.01	THE DUE PROCESS GUARANTEE OF NOTICE AND THE OPPORTUNITY TO BE HEARD	89
§ 4.02	SPECIAL DUE PROCESS CONCERNS ARISING FROM CLASS ACTIONS AND PREJUDGMENT ATTACHMENTS	92
[1]	Class Actions	92
[2]	Prejudgment Attachments	93
§ 4.03	RULES REGULATING SERVICE OF PROCESS	95
[1]	The Interplay of Constitutional Law and Rules or Statutes; Diversity of Local Approaches	95
[2]	The Federal Rule Model	96
[3]	Service Abroad; The Hague Convention	99
Chapter 5	A COURT WITH JURISDICTION OVER THE SUBJECT	101
§ 5.01	INTRODUCTION	101
[1]	Subject Matter Jurisdiction Generally	101
[2]	Subject Matter Jurisdiction of the Federal Courts	103
	PART A. Federal Question Jurisdiction	105
§ 5.02	CONSTITUTIONAL SCOPE	105
§ 5.03	STATUTORY SCOPE	106
[1]	The Substantial Question Filter	107
[2]	The Well-Pleaded Complaint Filter	108
[3]	The Significance Filter	111
[a]	The Creation Test	111
[b]	The Embedded Federal Question Test	112
	PART B. Diversity Jurisdiction	115
§ 5.04	IN GENERAL	115
[1]	Rationale and the Modern Critique	115
[2]	Diversity Between Whom?	117
[3]	Further Limitations on Diversity Jurisdiction	118
§ 5.05	CITIZENSHIP	120
§ 5.06	AMOUNT IN CONTROVERSY	123
[1]	The “Legal Certainty Test” and the Single Claim	123
[2]	Aggregating Multiple Claims	126
	PART C. Removal and Supplemental Jurisdiction	128
§ 5.07	REMOVAL JURISDICTION	128
[1]	In General	128
[2]	Removal of Joined Federal and State Law Claims	132

TABLE OF CONTENTS

§ 5.08	OVERVIEW OF SUPPLEMENTAL JURISDICTION AND ITS ANTECEDENTS	133
§ 5.09	PENDENT JURISDICTION	136
[1]	Pendent Claim Jurisdiction	136
[2]	Pendent Party Jurisdiction	138
§ 5.10	ANCILLARY JURISDICTION	141
§ 5.11	STATUTORY SUPPLEMENTAL JURISDICTION	144
[1]	The Three-Part Test for Supplemental Jurisdiction	144
[a]	Qualifying Under Section 1367(a)	145
[b]	Disqualifying Under § 1367(b)	146
[c]	Discretion Under § 1367(c)	147
[2]	Problems With Subsection 1367(b)	148
[a]	Overinclusiveness?	148
[b]	Underinclusiveness?	148
Chapter 6	A CONVENIENT COURT	153
§ 6.01	TRADITIONAL BASES FOR VENUE	153
[1]	In General	153
[2]	Bases for Venue	154
[3]	Judge-Made Exceptions	158
§ 6.02	CHANGE OF VENUE	159
[1]	Dismissal and Forum Non Conveniens	159
[2]	Transfer of Venue	162
§ 6.03	PROPOSALS REGARDING THE RELATIONSHIP OF PERSONAL JURISDICTION AND VENUE	164
Chapter 7	ASCERTAINING THE APPLICABLE LAW	167
§ 7.01	OVERVIEW	167
§ 7.02	THE EVOLUTION FROM <i>SWIFT</i> TO <i>ERIE</i>	168
[1]	<i>Swift v. Tyson</i>	168
[2]	The Controversial Reign of the <i>Swift</i> Doctrine	168
[3]	<i>Erie R.R. Co. v. Tompkins</i>	169
§ 7.03	TESTS FOR APPLYING <i>ERIE</i>	172
[1]	Substance-Versus-Procedure and the Outcome Determination Tests	172
[2]	<i>Byrd</i> and the Assessment of State and Federal Interests	174
[3]	<i>Hanna</i> and the Modified Outcome-Determination Test	175
[4]	Later <i>Erie</i> Issues	176
[5]	Analytical Summary: Three Contemporary Tests Under the <i>Erie</i> Doctrine	178
§ 7.04	STATE LAW VERSUS FEDERAL PROCEDURAL STATUTES AND RULES PROMULGATED UNDER THE RULES ENABLING ACT	180

TABLE OF CONTENTS

[1]	Early Uncertainty	180
[2]	<i>Hanna, Walker, Woods, and Shady Grove: The Resilience of Federal Rules of Procedure</i>	181
[3]	Modern Analysis	186
[a]	Matters “Procedural” Within the Meaning of the Rules Enabling Act	186
[b]	The Relationship Between the Rules Enabling Act and the Rules of Decision Act	187
[4]	Other Federal Procedural Statutes	188
§ 7.05	WHICH STATE’S LAW?	190
[1]	The Conflict-of-Laws Problem	190
[2]	The <i>Klaxon</i> Rule	190
[3]	<i>Klaxon</i> and § 1404(a)	191
§ 7.06	ASCERTAINING THE CONTENT OF STATE LAW	193
[1]	The Elusive Model of the Highest State Court	193
[2]	Data to Be Used in Forecasting State Law	194
[3]	How Much Freedom Do Federal Judges Have in Handling State Law?	196
§ 7.07	FEDERAL COMMON LAW	197
Chapter 8	SIMPLE PLEADING AND PRACTICE	203
§ 8.01	OVERVIEW: THE FUNCTIONS AND HISTORY OF PLEADING	203
§ 8.02	PRE-CODE PLEADING AND PRACTICE	204
[1]	Common Law Issue Pleading and Practice	204
[2]	Equity Pleading and Practice	207
§ 8.03	CODE FACT PLEADING AND PROCEDURE	209
[1]	In General	209
[2]	The Cause of Action and the Theory of the Pleadings	210
[3]	The Specificity of Fact Pleading Under the Codes	211
§ 8.04	MODERN FEDERAL PLEADING	213
[1]	The Specificity of Federal Pleading	213
[a]	Notice Pleading	213
[b]	Elements Pleading	214
[c]	Heightened Pleading	216
[d]	Plausible Pleading	218
[e]	Plausible Pleading After “ <i>Twigbal</i> ”	222
[2]	Consistency and the Theory of the Pleadings in Modern Pleading	225
[3]	The Form of Pleading Under the Federal Rules	227
[4]	Special Pleading Rules in Modern Pleading	227
§ 8.05	CANDOR AND CARE REQUIREMENTS IN MODERN PLEADING	229
[1]	Verification	229
[2]	Certification and Rule 11	230

TABLE OF CONTENTS

[a]	Rule 11 in General	230
[b]	Evidentiary Support	233
[c]	Legal Support	235
[d]	Improper Purpose	236
[e]	Sanctions	238
[f]	Assessment	239
§ 8.06	THE COMPLAINT	240
[1]	Statement of Jurisdiction	241
[2]	Statement of Claim and the Burden of Pleading	241
[3]	Demand for Relief	243
§ 8.07	CHALLENGING PLEADINGS: MOTION PRACTICE	244
[1]	Motion Practice in General	244
[2]	Bases for Motions	246
[a]	Defects of Form	246
[b]	Waivable Preliminary Defenses	247
[c]	Failure to State a Claim (or Defense) and Other Nonwaivable Defenses	248
[3]	Consequences of Challenging a Pleading	249
[a]	Successful Challenge	249
[b]	Unsuccessful Challenge	250
§ 8.08	THE ANSWER	250
[1]	Denials	250
[2]	Other Defenses	252
[a]	Preliminary, Nonwaivable and Affirmative Defenses	252
[b]	A Note on the Affirmative Defense of the Statute of Limitations	255
[3]	Claims by Way of Answer	257
§ 8.09	THE REPLY AND OTHER PLEADINGS	257
§ 8.10	AMENDMENT OF PLEADINGS	258
[1]	Amendment Before Trial	258
[2]	Amendment During and After Trial	260
[a]	Conforming Amendment by Consent	261
[b]	Conforming Amendment Over Objection	262
[c]	The Objecting Party's Tactical Dilemma	262
[3]	Amendment and the Statute of Limitations	263
[a]	Relation Back of Amendments Amending Claims Against the Same Parties	263
[b]	Relation Back of Amendments Amending Parties	265
[c]	Responding to Amendment	268
§ 8.11	A CONCLUDING NOTE ON COMMON SENSE IN PLEADING	269

TABLE OF CONTENTS

Chapter 9	COMPLEX PLEADING AND PRACTICE	271
§ 9.01	OVERVIEW	271
[1]	Definitions of Complex Litigation	271
[2]	Reasons for Complex Litigation	271
[a]	Judicial Efficiency	272
[b]	Avoiding Prejudice to a Party or Absentee	272
[3]	How the Federal Rules of Civil Procedure Facilitate Expansion of Claims and Parties	273
	PART A. Adding Claims Without Adding Parties	273
§ 9.02	CLAIM JOINDER	274
§ 9.03	COMPULSORY AND PERMISSIVE COUNTERCLAIMS	275
§ 9.04	CROSSCLAIMS	278
	PART B. Adding Claims by Adding Parties	280
§ 9.05	PERMISSIVE AND COMPULSORY PARTY JOINDER	280
[1]	Permissive Joinder	280
[2]	Compulsory Party Joinder	282
[a]	Required Parties Under Rule 19(a) — When Must Joinable Persons Be Brought In?	282
[b]	Rule 19(a) — When is Joinder of a Required Party Feasible?	285
[c]	Rule 19(b) — When Is the Absence of a Person Who Cannot Be Joined So Problematic that the Case Must Be Dismissed?	286
§ 9.06	IMPLEADER	288
§ 9.07	INTERPLEADER	293
§ 9.08	INTERVENTION	295
[1]	Intervention of Right	295
[2]	Permissive Intervention	297
[3]	Comparing Intervention of Right and Permissive Intervention	298
§ 9.09	CLASS ACTIONS	299
[1]	Due Process Requirements Common to Federal and State Class Actions	301
[2]	Class Actions Under Rule 23	303
[3]	Reconciling Judicial Economy and Public Law Enforcement (b)(3) Class Actions	309
[4]	Small-Claim, Large-Class Actions	311
[a]	Comparative Availability of Federal and State Class Actions	311
[b]	Problems Small-Claim, Large-Class Actions Pose in Federal Court	312
[5]	Class Actions in Global Perspective	315
§ 9.10	CONSOLIDATING CASES — CURRENT LAW AND POSSIBILITIES FOR THE FUTURE	315
[1]	Intradistrict Consolidation — Rule 42(a)	315

TABLE OF CONTENTS

[2]	Federal Multidistrict Litigation Under Section 1407	317
Chapter 10	DISCOVERY	319
§ 10.01	OVERVIEW	319
	PART A. Scope of Discovery	323
§ 10.02	IN GENERAL	323
§ 10.03	THE FADING FEDERAL PRESUMPTION OF DISCOVERABILITY ,	323
[1]	Relevant to the Claim or Defense of Any Party	323
[2]	Reasonably Calculated to Lead to the Discovery of Admissible Evidence	326
[3]	Examples and Problem Areas	326
[a]	Information Already in the Discoverer's Possession	326
[b]	Impeachment Material	327
[c]	Opinions and Contentions	328
[d]	Insurance and Other Information About Financial Assets	328
[4]	Electronic Information	329
[a]	The Duty to Preserve ESI	331
[b]	Formulating E-Discovery Requests and Formats	332
[c]	Cost Allocation in E-Discovery	333
§ 10.04	THE NON-DISCOVERABILITY OF PRIVILEGED MATTER	334
§ 10.05	WORK PRODUCT	337
[1]	<i>Hickman v. Taylor</i> and Work Product Immunity	337
[2]	Defining Work Product	339
[a]	Documents and Tangible Things	340
[b]	Prepared in Anticipation of Litigation or for Trial	341
[c]	By a Party or His Representative	343
[3]	Asserting the Qualified Immunity	343
[4]	Overcoming the Qualified Immunity	343
[a]	Witness Statements Requested by the Witness	343
[b]	Factual Work Product	344
[c]	Opinion Work Product	345
§ 10.06	EXPERTS	346
[1]	In General	346
[2]	Testifying Experts	347
[3]	Retained or Specially Employed Non-Testifying Experts	348
	PART B. Mechanics of Discovery	349
§ 10.07	REQUIRED DISCLOSURES AND OTHER GENERAL MECHANICS	349
[1]	Mandatory Discovery Conference and Discovery Plans	349
[2]	Required Disclosures	350

TABLE OF CONTENTS

[a]	Initial Disclosures	350
[b]	Pretrial Disclosures	352
[3]	Supplementation of Discovery	352
§ 10.08	DEPOSITIONS	353
[1]	Procedure for Taking	353
[2]	Use and Value of Depositions	356
§ 10.09	INTERROGATORIES	358
[1]	Procedure for Asking	358
[2]	Use and Value of Interrogatories	360
§ 10.10	PRODUCTION AND ENTRY REQUESTS	361
[1]	Procedure for Making	361
[2]	Use and Value of Production and Entry Requests	363
§ 10.11	PHYSICAL AND MENTAL EXAMINATIONS	363
[1]	Procedure for Taking	363
[2]	Use and Value of Physical and Mental Examinations	366
	PART C. Control of Discovery	366
§ 10.12	THE ABUSE OF DISCOVERY	366
§ 10.13	FRONT-END CONTROLS: PREVENTING THE ABUSE OF DISCOVERY	369
[1]	Certification Requirements	369
[2]	Managerial Orders	370
[3]	Protective Orders Against Specific Hardship	373
§ 10.14	BACK-END CONTROLS: SANCTIONS	375
[1]	The Predicate for Sanctions	375
[2]	The Nature and Incidence of Sanctions	377
Chapter 11	DISPOSITION WITHOUT TRIAL	381
§ 11.01	OVERVIEW	381
§ 11.02	DEFAULT	381
[1]	Entering a Default	382
[2]	Entering a Default Judgment	383
§ 11.03	SUMMARY JUDGMENT	385
[1]	Purposes	385
[2]	Procedure	387
[a]	Initial Motion	387
[b]	Responses to the Motion	390
[c]	Disposition and Appeal	392
[3]	The Standard for Summary Judgment	393
[a]	In General	393
[b]	Relationship to Trial Burdens	396
[c]	Particular Issues: Credibility and State of Mind	399

TABLE OF CONTENTS

[d]	Assessment	401
§ 11.04	DISMISSAL OR NONSUIT	405
[1]	Voluntary Dismissal or Nonsuit	405
[2]	Involuntary Dismissal or Compulsory Nonsuit	407
§ 11.05	ALTERNATIVE DISPUTE RESOLUTION	409
[1]	Settlement	409
[2]	Mediation	410
[3]	Arbitration	411
[4]	Summary Jury Trials	413
Chapter 12	TRIAL AND POST-TRIAL MOTIONS	415
§ 12.01	OVERVIEW: THE TRIAL PROCESS	415
[1]	Setting the Case For Trial	415
[2]	Final Pretrial Conference and Order	416
[3]	Jury Selection	416
[4]	Opening Statements	417
[5]	Presentation of Plaintiff's Case-in-Chief	418
[6]	Mid-Trial Motion for Directed Verdict, Involuntary Dismissal or Judgment as a Matter of Law	418
[7]	Presentation of Additional Evidence	418
[8]	Motions at the Close of All the Evidence	419
[9]	Closing Argument	419
[10]	Instructions to the Jury	419
[11]	Jury Deliberation and Verdict	419
[12]	Challenges to Verdict and the Entry of Judgment	420
[13]	Other Post-Trial Motions	420
[14]	Vanishing Civil Trials?	421
	PART A. Narrowing Issues and Allocating Burdens	424
§ 12.02	REQUESTS FOR ADMISSIONS	424
[1]	Procedure for Requesting Admissions	424
[2]	Use and Value of Requests for Admissions	426
§ 12.03	PRETRIAL CONFERENCE	426
[1]	Purposes	426
[a]	Managerial Purposes	427
[b]	Facilitating Settlement	428
[c]	Assessment	430
[2]	Procedures for Pretrial Conferences	430
[3]	The Pretrial Order and Its Effect	432
§ 12.04	BURDEN OF PROOF	435
[1]	In General	435
[2]	The Burden of Production	436

TABLE OF CONTENTS

[3]	The Burden of Persuasion	438
[4]	Presumptions	439
PART B. Trial and Judgment		441
§ 12.05	OVERVIEW	441
§ 12.06	THE TACTICAL DECISION WHETHER TO DEMAND A JURY TRIAL	441
§ 12.07	OBTAINING JURY TRIAL	443
[1]	The Right to Trial by Jury: The Federal Model	443
[2]	Claiming a Jury Trial	449
§ 12.08	JUDGE-JURY INTERACTION; VERDICTS	450
[1]	Allocating Issues Between Judge and Jury — An Overview	450
[2]	Evidentiary Controls	451
[3]	Instructing the Jury	452
[4]	Verdicts	454
§ 12.09	TAKING THE CASE FROM THE JURY: MOTIONS FOR JUDGMENT AS A MATTER OF LAW AND FOR NEW TRIAL	456
[1]	Directed Verdicts and Judgments N.O.V. Rephrased as Judgments as a Matter of Law	456
[a]	The Theoretical Justification for Court Intervention in Jury Cases ...	457
[b]	The Legal Standard Governing Directed Verdicts and Judgments N.O.V.	457
[2]	New Trial Motions	458
[a]	In General	458
[b]	Evaluative Errors: Verdicts That Are Excessive, Inadequate, or Otherwise Against the Weight of the Evidence	459
[c]	Process Errors	462
[3]	The Interplay of Directed Verdicts and Judgments N.O.V. With Other Procedural Law	463
[a]	The Consistency of Directed Verdicts and Judgments N.O.V. With the Right to Jury Trial	463
[b]	How Directed Verdicts and Judgments N.O.V. Complement Each Other	464
[c]	The Relationship of Directed Verdicts and Motions for Judgments N.O.V. to Earlier Motions for Deciding Cases in Lieu of Trial	466
[d]	The Interrelationship of Post-Trial Motion Practice and Dispositions on Appeal	468
§ 12.10	BENCH TRIALS (NON-JURY CASES)	469
§ 12.11	JUDGMENTS	471
[1]	The Nature and Force of Judgments	471
[2]	Resisting the Preclusive Effect of Final Judgments	472
[a]	Collateral Attack	472

TABLE OF CONTENTS

[b]	Extraordinary Relief	472
[c]	Amendment	473
Chapter 13	APPEAL	475
§ 13.01	OVERVIEW	475
	PART A. When? Appealability	476
§ 13.02	APPEALABILITY IN GENERAL	476
§ 13.03	FINAL JUDGMENT RULE	477
[1]	In General	477
[2]	Finality in Multi-Claim and Multi-Party Cases	479
§ 13.04	“PRACTICAL CONSTRUCTIONS” OF THE FINAL JUDGMENT RULE	482
[1]	Collateral Order Doctrine	482
[2]	Other “Practical Constructions”	485
§ 13.05	STATUTORY INTERLOCUTORY APPEAL	486
[1]	Statutory Interlocutory Appeal as of Right	486
[2]	Statutory Interlocutory Appeal by Permission	487
[3]	Extraordinary Statutory Review: Mandamus and Prohibition	489
	PART B. Where and How? Perfecting Appeal	491
§ 13.06	WHERE? APPELLATE SYSTEMS	491
§ 13.07	HOW? PROCEDURAL STEPS IN PERFECTING APPEAL	493
	PART C. What? Reviewability	494
§ 13.08	WHAT? REVIEWABILITY	494
[1]	Prejudicial Effect	495
[2]	Preservation Below	496
[3]	Presentation Above	499
	PART D. How Much? Intensity of Review	501
§ 13.09	HOW MUCH? INTENSITY OF REVIEW	501
[1]	In General	501
[2]	The Principal Federal Standards of Review	503
[a]	<i>De Novo</i> — Questions of Law	503
[b]	Clearly Erroneous — Findings by the Court	506
[c]	Reasonableness — Findings by the Jury and Some Administrative Agencies	507
[d]	Abuse of Discretion — Discretionary Orders	508
[e]	No Review — Selective Findings by Administrative Agencies	509