

Civil Procedure

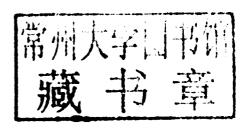


LEADING CASES IN CIVIL PROCEDURE

$\mathbf{B}\mathbf{y}$

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PREFACE

This basic text is intended to fill a gap in the very crowded field of first-year civil procedure casebooks. The book has been designed to serve three purposes: (1) to identify the leading cases in civil procedure that every law student needs to know as an educated attorney in his or her professional life, (2) to reduce or eliminate the amount of detailed nuance relating to civil procedure contained in most civil procedure courses, and (3) to provide a one volume book that includes cases, constitutional provisions, statutes, and rules, suitable for a one-semester, fourteen-week course. As many law schools now have eliminated the traditional year-long course in civil procedure, the need for at least one text tailored to the one-semester civil procedure course is apparent.

This book's design is based on the author's thirty years experience in teaching civil procedure. First, the book assembles a core "canon" of decisional law in civil procedure, accompanied by the constitutional provisions, statutes, and rules involved in those cases. The author believes that there is such a canon and that most procedure teachers, if pressed, would agree on certain canonical cases. In assembling these leading cases in civil procedure, then, the selection has been guided by several questions: "What are the essential decisions in civil procedure that every educated attorney needs to know, and would be familiar with?" "What are the essential topics or problems in civil procedure that every educated attorney needs some passing familiarity?" "What procedural problems may be treated in other courses, or are better suited for an advanced procedure course?" The text covers topics, then, essential to a fundamental knowledge of civil procedure.

The second goal of this book is to drastically reduce or eliminate the huge amount of in-depth coverage, source materials, and procedural nuance that characterize current civil procedure textbooks. This book is completely shorn of the bells and whistles that characterize many of our current casebooks. As our course credit hours have shrunk, our casebooks have grown fatter and more detailed. This text instead focuses on a core canon and therefore reduces topic coverage as well as collateral materials. Our students need to gain a basic grasp of the procedural process in fourteen weeks; we are not training them to become procedural scholars. Entire topics in civil procedure that currently are covered in other casebooks have been eliminated from this book. Hence, this book does not cover topics such as service of process, interpleader, historical materials on common law pleading, discovery mechanisms, interlocutory appeal, default judgments, voluntary and involuntary dismissal, execution of judgments, and trial. In addition, coverage of those topics selected for inclusion also has been drastically reduced, focusing on a few core decisions that illustrate the problems and issues related to that topic. The book is assembled in the belief that our first year students do not need to be Erie

scholars, but do need to be familiar with basic *Erie* doctrine. In addition, cases have been edited to eliminate most internal citation. Finally, this book eliminates the notes, comments, and questions that typically accompany decisions in existing casebooks.

The book has been assembled based on the structure of a fourteen-week, four-hour course. Rather than assembled in chapters, the book is designed based on a fourteen-week curriculum. Hopefully, this structure provides easy and simple guidance for students and the professor to work through the onesemester course. Each week addresses a topic in civil procedure and assembles the core cases, statutes, or rules that reasonably may be studied by students and taught by the professor in four hours of class time. The topic selection reflects the author's evaluation of core coverage. Although the number of cases has been reduced, the presentation of cases departs from many current casebooks. Thus, in most instances decisions are reported fully, and concurring and dissenting opinions also are set out at length. This presentation supplies students with a fuller appreciation of underlying facts, procedural developments, doctrinal analysis, and competing judicial views. The materials for each week aim to cover approximately forty pages of assigned reading, focusing on four leading cases and related statutory material that illustrate the core concepts an educated lawyer needs to appreciate.

In recognition that other professors might have selected other topics for coverage, the second portion of the book sets forth materials for alternative weeks that may be substituted for coverage other than the topics in the main text. The alternative materials replicate the basic concept that topic coverage should be streamlined and self-contained within a reasonable teaching unit.

The third goal of this book is to provide students with a readily accessible one-volume, affordable paperback text in civil procedure that combines decisional law along with relevant constitutional provisions, statutes, and rules. Our first year students are compelled to purchase both a text and a statutory supplement for use in civil procedure, but the first year course implicates only selected constitutional provisions, statutes, and rules. While there is an argument for compelling students to purchase an entire statutory supplement, there are countervailing arguments for relieving students of this requirement in their first year of law school. Moreover, some procedure professors eschew teaching the rules portion of the course, altogether. This text, then, integrates relevant constitutional, statutory, and rule provisions along with the cases in which those sources are implicated by the decision.

This text attempts to replicate the concept of the introductory "survey course" in the undergraduate curriculum. The text is intended to accomplish breath of coverage, rather than depth. It does not attempt to present any theories or themes of the procedural process. The text does, however, enable the procedure professor to enhance students' understanding of the procedural process through the professor's in-depth knowledge of the core canon, authoritative bases for the decisional law, contested or unresolved issues, and academic controversies surrounding the materials.

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