



Leading Cases in

Civil Procedure



Linda S. Mullenix

WEST®

LEADING CASES IN CIVIL PROCEDURE

■ ■ ■

By

Linda S. Mullenix

*Morris and Rita Atlas Chair in Advocacy
University of Texas School of Law*



AMERICAN CASEBOOK SERIES®

WEST®

A Thomson Reuters business

Thomson Reuters created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. Thomson Reuters does not render legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

American Casebook Series is a trademark registered in the U.S. Patent and Trademark Office.

© 2010 Thomson Reuters

610 Opperman Drive
St. Paul, MN 55123
1-800-313-9378

Printed in the United States of America

ISBN: 978-0-314-91153-7

WEST'S LAW SCHOOL ADVISORY BOARD

JESSE H. CHOPER

Professor of Law and Dean Emeritus,
University of California, Berkeley

JOSHUA DRESSLER

Professor of Law, Michael E. Moritz College of Law,
The Ohio State University

YALE KAMISAR

Professor of Law, University of San Diego
Professor of Law Emeritus, University of Michigan

MARY KAY KANE

Professor of Law, Chancellor and Dean Emeritus,
University of California,
Hastings College of the Law

LARRY D. KRAMER

Dean and Professor of Law, Stanford Law School

JONATHAN R. MACEY

Professor of Law, Yale Law School

ARTHUR R. MILLER

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

GRANT S. NELSON

Professor of Law, Pepperdine University
Professor of Law Emeritus, University of California, Los Angeles

A. BENJAMIN SPENCER

Professor of Law,
Washington & Lee University School of Law

JAMES J. WHITE

Professor of Law, University of Michigan

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 one-semester 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 breadth 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.

LINDA S. MULLENIX
MORRIS & RITA ATLAS CHAIR
IN ADVOCACY
UNIVERSITY OF TEXAS SCHOOL OF LAW

TABLE OF CASES

References are to pages. Cases cited in principal cases and within other quoted materials are not included.

-
- Amchem Products, Inc. v. Windsor**, 521 U.S. 591, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997), **688**
- American National Red Cross v. S.G.**, 505 U.S. 247, 112 S.Ct. 2465, 120 L.Ed.2d 201 (1992), **200**
- Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County**, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987), **123**
- Ashcroft v. Iqbal**, — U.S. —, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009), **361**
- Atlas Roofing Co., Inc. v. Occupational Safety and Health Review Com'n**, 430 U.S. 442, 97 S.Ct. 1261, 51 L.Ed.2d 464 (1977), **784**
- Bank of California Nat. Ass'n v. Superior Court in and for City and County of San Francisco**, 16 Cal.2d 516, 106 P.2d 879 (Cal.1940), **458**
- Bates v. C & S Adjusters, Inc.**, 980 F.2d 865 (2nd Cir.1992), **319**
- Beacon Theatres, Inc. v. Westover**, 359 U.S. 500, 79 S.Ct. 948, 3 L.Ed.2d 988 (1959), **761**
- Bell Atlantic Corp. v. Twombly**, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), **345**
- Burger King Corp. v. Rudzewicz**, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985), **108**
- Burnham v. Superior Court of California, County of Marin**, 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990), **133**
- Byrd v. Blue Ridge Rural Elec. Co-op., Inc.**, 356 U.S. 525, 78 S.Ct. 893, 2 L.Ed.2d 953 (1958), **627**
- Calder v. Jones**, 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984), **99**
- Carlsbad Technology, Inc. v. HIF Bio, Inc.**, — U.S. —, 129 S.Ct. 1862, 173 L.Ed.2d 843 (2009), **312**
- Carnival Cruise Lines, Inc. v. Shute**, 499 U.S. 585, 111 S.Ct. 1522, 113 L.Ed.2d 622 (1991), **159**
- Celotex Corp. v. Catrett**, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986), **555**
- Cohen v. Beneficial Indus. Loan Corp.**, 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949), **811**
- Commissioner v. —** (see opposing party)
- Conley v. Gibson**, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957), **343**
- Connecticut v. Doeher**, 501 U.S. 1, 111 S.Ct. 2105, 115 L.Ed.2d 1 (1991), **747**
- Cromwell v. Sac County**, 94 U.S. 351, 24 L.Ed. 195 (1876), **846**
- Cross v. United States**, 336 F.2d 431 (2nd Cir.1964), **551**
- Curtiss-Wright Corp. v. General Elec. Co.**, 446 U.S. 1, 100 S.Ct. 1460, 64 L.Ed.2d 1 (1980), **805**
- Dairy Queen, Inc. v. Wood**, 369 U.S. 469, 82 S.Ct. 894, 8 L.Ed.2d 44 (1962), **770**
- DeRienzo v. Harvard Industries, Inc.**, 357 F.3d 348 (3rd Cir.2004), **413**
- Dioguardi v. Durning**, 139 F.2d 774 (2nd Cir.1944), **341**
- Durfee v. Duke**, 375 U.S. 106, 84 S.Ct. 242, 11 L.Ed.2d 186 (1963), **880**
- Empire Healthchoice Assur., Inc. v. McVeigh**, 547 U.S. 677, 126 S.Ct. 2121, 165 L.Ed.2d 131 (2006), **240**
- Erie R. Co. v. Tompkins**, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), **604**
- Exxon Mobil Corp. v. Allapattah Services, Inc.**, 545 U.S. 546, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005), **284**
- Finley v. United States**, 490 U.S. 545, 109 S.Ct. 2003, 104 L.Ed.2d 593 (1989), **261**
- Fuentes v. Shevin**, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972), **734**
- Galloway v. United States**, 319 U.S. 372, 63 S.Ct. 1077, 87 L.Ed. 1458 (1943), **575**
- Garcia v. Hilton Hotels Intern.**, 97 F.Supp. 5 (D.Puerto Rico 1951), **392**
- Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.**, 545 U.S. 308, 2006-14 I.R.B. 697, 125 S.Ct. 2363, 162 L.Ed.2d 257 (2005), **234**
- Gray v. American Radiator & Standard Sanitary Corp.**, 22 Ill.2d 432, 176 N.E.2d 761 (Ill.1961), **46**

- Grutter v. Bollinger**, 188 F.3d 394 (6th Cir. 1999), **471**
- Guaranty Trust Co. of N.Y. v. York**, 326 U.S. 99, 65 S.Ct. 1464, 89 L.Ed. 2079 (1945), **617**
- Hanna v. Plumer**, 380 U.S. 460, 85 S.Ct. 1136, 14 L.Ed.2d 8 (1965), **636**
- Hansberry v. Lee**, 311 U.S. 32, 61 S.Ct. 115, 85 L.Ed. 22 (1940), **646**
- Hanson v. Denckla**, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958), **32**
- Helicopteros Nacionales de Colombia, S.A. v. Hall**, 466 U.S. 408, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984), **88**
- Hertz Corp. v. Friend**, — U.S. —, 130 S.Ct. 1181 (2010), **175**
- Hess v. Pawloski**, 274 U.S. 352, 47 S.Ct. 632, 71 L.Ed. 1091 (1927), **18**
- Hickman v. Taylor**, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451 (1947), **519**
- Hoffman v. Blaski**, 363 U.S. 335, 80 S.Ct. 1084, 4 L.Ed.2d 1254 (1960), **322**
- Ingraham v. United States**, 808 F.2d 1075 (5th Cir.1987), **406**
- International Shoe Co. v. State of Washington**, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), **21**
- Jones v. Ford Motor Credit Co.**, 358 F.3d 205 (2nd Cir.2004), **437**
- Keeton v. Hustler Magazine, Inc.**, 465 U.S. 770, 104 S.Ct. 1473, 79 L.Ed.2d 790 (1984), **102**
- Klaxon Co. v. Stentor Electric Mfg. Co.**, 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941), **615**
- Kramer v. Caribbean Mills, Inc.**, 394 U.S. 823, 89 S.Ct. 1487, 23 L.Ed.2d 9 (1969), **185**
- Kulko v. Superior Court of California**, 436 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d 132 (1978), **52**
- La Buy v. Howes Leather Company**, 352 U.S. 249, 77 S.Ct. 309, 1 L.Ed.2d 290 (1957), **838**
- LASA Per L'Industria Del Marmo Societa Per Azioni of Lasa, Italy v. Alexander**, 414 F.2d 143 (6th Cir.1969), **448**
- Liberty Mut. Ins. Co. v. Wetzel**, 424 U.S. 737, 96 S.Ct. 1202, 47 L.Ed.2d 435 (1976), **802**
- Louisville & N.R. Co. v. Mottley**, 211 U.S. 149, 29 S.Ct. 42, 53 L.Ed. 126 (1908), **218**
- Lundeen v. Cordner**, 354 F.2d 401 (8th Cir. 1966), **542**
- Mas v. Perry**, 489 F.2d 1396 (5th Cir.1974), **172**
- Matter of (see name of party)**
- McGee v. International Life Ins. Co.**, 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957), **30**
- Merrell Dow Pharmaceuticals Inc. v. Thompson**, 478 U.S. 804, 106 S.Ct. 3229, 92 L.Ed.2d 650 (1986), **222**
- Mohawk Industries, Inc. v. Carpenter**, — U.S. —, 130 S.Ct. 599 (2009), **813**
- M/S Bremen v. Zapata Off-Shore Co.**, 407 U.S. 1, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972), **149**
- Mullane v. Central Hanover Bank & Trust Co.**, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), **710**
- National Equipment Rental, Limited v. Szukhent**, 375 U.S. 311, 84 S.Ct. 411, 11 L.Ed.2d 354 (1964), **723**
- Neely v. Martin K. Eby Const. Co.**, 386 U.S. 317, 87 S.Ct. 1072, 18 L.Ed.2d 75 (1967), **593**
- Owen Equipment & Erection Co. v. Kroger**, 437 U.S. 365, 98 S.Ct. 2396, 57 L.Ed.2d 274 (1978), **273**
- PAE Government Services, Inc. v. MPRI, Inc.**, 514 F.3d 856 (9th Cir.2007), **389**
- Parklane Hosiery Co., Inc. v. Shore**, 439 U.S. 322, 99 S.Ct. 645, 58 L.Ed.2d 552 (1979), **865**
- Pennoyer v. Neff**, 95 U.S. 714, 24 L.Ed. 565 (1877), **6**
- Philip Morris USA, Inc., United States v.**, 396 F.3d 1190, 364 U.S.App.D.C. 454 (D.C.Cir.2005), **824**
- Phillips Petroleum Co. v. Shutts**, 472 U.S. 797, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985), **670**
- Piper Aircraft Co. v. Reyno**, 454 U.S. 235, 102 S.Ct. 252, 70 L.Ed.2d 419 (1981), **326**
- Provident Tradesmens Bank & Trust Co. v. Patterson**, 390 U.S. 102, 88 S.Ct. 733, 19 L.Ed.2d 936 (1968), **463**
- Rhone-Poulenc Rorer, Inc., Matter of**, 51 F.3d 1293 (7th Cir.1995), **655**
- Rose v. Giamatti**, 721 F.Supp. 906 (S.D.Ohio 1989), **188**
- Ross v. Bernhard**, 396 U.S. 531, 90 S.Ct. 733, 24 L.Ed.2d 729 (1970), **775**
- Roth v. Green**, 466 F.3d 1179 (10th Cir. 2006), **422**
- Rubert-Torres v. Hospital San Pablo, Inc.**, 205 F.3d 472 (1st Cir.2000), **397**
- Russell v. Place**, 94 U.S. 606, 24 L.Ed. 214 (1876), **857**
- Schlagenhauf v. Holder**, 379 U.S. 104, 85 S.Ct. 234, 13 L.Ed.2d 152 (1964), **486**
- Scott v. Harris**, 550 U.S. 372, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007), **565**
- Seattle Times Co. v. Rhinehart**, 467 U.S. 20, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984), **501**
- Semtek Intern. Inc. v. Lockheed Martin Corp.**, 531 U.S. 497, 121 S.Ct. 1021, 149 L.Ed.2d 32 (2001), **885**
- Shaffer v. Heitner**, 433 U.S. 186, 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977), **60**

- Sunnen, Commissioner v.**, 333 U.S. 591, 68 S.Ct. 715, 92 L.Ed. 898 (1948), **859**
- Taylor v. United States**, 821 F.2d 1428 (9th Cir.1987), **409**
- T. B. Harms Co. v. Eliscu**, 339 F.2d 823 (2nd Cir.1964), **214**
- Tellabs, Inc. v. Makor Issues & Rights, Ltd.**, 551 U.S. 308, 127 S.Ct. 2499, 168 L.Ed.2d 179 (2007), **377**
- Tull v. United States**, 481 U.S. 412, 107 S.Ct. 1831, 95 L.Ed.2d 365 (1987), **791**
- United Mine Workers of America v. Gibbs**, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966), **256**
- United States v. _____** (see opposing party)
- Upjohn Co. v. United States**, 449 U.S. 383, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981), **530**
- World-Wide Volkswagen Corp. v. Woodson**, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980), **78**
- Yamaha Motor Corp., U.S.A. v. Calhoun**, 516 U.S. 199, 116 S.Ct. 619, 133 L.Ed.2d 578 (1996), **822**
- Zielinski v. Philadelphia Piers, Inc.**, 139 F.Supp. 408 (E.D.Pa.1956), **401**

LEADING CASES IN CIVIL PROCEDURE

TABLE OF CONTENTS

	Page
PREFACE	iii
TABLE OF CASES	xiii
PART ONE. LEADING CASES IN CIVIL PROCEDURE	
Sec.	
I. Choosing the Forum (Personal Jurisdiction)	1
A. The Professional Responsibility of the Lawyer	1
<i>American Bar Association Model Rules of Professional Conduct</i>	1
B. Traditional Bases: Territorial Jurisdiction	5
<i>Constitutional Provisions</i>	5
U.S. Const. Article IV § 1	5
U.S. Const. Amend. XIV § 1	5
28 U.S.C. § 1738. Full Faith and Credit	5
<i>Pennoyer v. Neff</i>	6
C. Implied Consent	18
<i>Hess v. Pawloski</i>	18
D. Due Process Minimum Contacts	20
U.S. Const. Amend. I: Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances	20
U.S. Const. Amend. X: Reserved Powers to States	20
Federal Rule of Civil Procedure 12	20
<i>International Shoe Co. v. State of Washington</i>	21
II. Choosing the Forum (Personal Jurisdiction)	30
A. Minimum Contacts at the Extreme	30
<i>McGee v. International Life Insurance Company</i>	30
B. Minimum Contacts Retrenched	32
<i>Hanson v. Denckla</i>	32
C. Long Arm Statutes and the Stream of Commerce	44
Illinois Long Arm Statute: Ill. Comp. Statutes § 2-209	44
California Long Arm Statute: Cal. Code Civ. Pro. § 410.10	46
<i>Gray v. American Radiator & Standard Sanitary Corporation</i>	46
<i>Kulko v. Superior Court of California</i>	52
D. Property Revisited	60
<i>Shaffer v. Heitner</i>	60
III. Choosing the Forum (Personal Jurisdiction)	78
A. Affiliating Circumstances	78
<i>World-Wide Volkswagen Corporation v. Woodson</i>	78
B. General and Specific Jurisdiction	88
<i>Helicopteros Nacionales de Colombia, S.A. v. Hall</i>	88
C. First Amendment Considerations	99
<i>Calder v. Jones</i>	99
<i>Keeton v. Hustler Magazine</i>	102

Sec.	Page
III. Choosing the Forum (Personal Jurisdiction)—Continued	
D. Jurisdiction Based on Contract Revisited	107
Federal Rule of Civil Procedure 4 [Selected Provisions]	107
<i>Burger King Corporation v. Rudzewicz</i>	108
IV. Choosing the Forum (Personal Jurisdiction)	123
A. Stream of Commerce Revisited	123
<i>Asahi Metal Industry Co., Ltd. v. Superior Court of California</i>	123
B. Tag Jurisdiction	133
<i>Burnham v. Superior Court of California</i>	133
C. Consent Revisited I (Forum Selection Clauses)	149
<i>M/S Bremen v. Zapata Off-Shore Company</i>	149
D. Consent Revisited II (Consumer Contracts)	159
<i>Carnival Cruise Lines, Inc. v. Shute</i>	159
V. Choosing the Forum (Subject Matter Jurisdiction)	170
A. Diversity Jurisdiction and Special Diversity Problems	170
28 U.S.C. § 1332. Diversity Jurisdiction	170
Federal Rule of Civil Procedure 12	171
Federal Rule of Civil Procedure 17. Plaintiff and Defendant; Capacity; Public Officers	171
<i>Mas v. Perry</i>	172
<i>The Hertz Corporation v. Friend</i>	175
B. Special Problems in Diversity Jurisdiction: Collusive Joinder	184
28 U.S.C. § 1359. Parties Collusively Joined or Made	184
28 U.S.C. § 1441. Actions Removable Generally	184
<i>Kramer v. Caribbean Mills, Inc.</i>	185
<i>Rose v. Giamatti</i>	188
C. Federal Question Jurisdiction—“Arising Under” Jurisdiction	200
Art. III, Section 2, Clause 1. Jurisdiction of Courts	200
28 U.S.C. § 1331. Federal Question	200
28 U.S.C. § 1338. Patents, Plant Variety Protection, Copyrights, Mask Works, Designs, Trademarks, and Unfair Competition	200
<i>American National Red Cross v. S.G. and A.E.</i>	200
<i>T. B. Harms Company v. Eliscu</i>	214
D. Federal Question Jurisdiction—The Well-Pleaded Complaint Rule	218
<i>Louisville & Nashville Railroad Company v. Mottley</i>	218
VI. Choosing the Forum—Subject Matter Jurisdiction	222
A. Federal Question Jurisdiction—Express and Implied Actions	222
<i>Merrell Dow Pharmaceuticals Inc. v. Thompson</i>	222
B. Statutory Bases	234
<i>Grable & Sons Metal Products, Inc. v. Darue Engineering</i>	234
<i>Empire Healthchoice Assurance, Inc. v. McVeigh</i>	240
C. Supplemental Jurisdiction—Common Law Principles	256
<i>Pendent Claim and Pendent Party Jurisdiction</i>	256
Federal Rule of Civil Procedure 2. One Form of Action	256
Federal Rule of Civil Procedure 42. Consolidation; Separate Trials	256
<i>United Mine Workers of America v. Gibbs</i>	256
<i>Finley v. United States</i>	261
D. Supplemental Jurisdiction—Common Law Principles	272
<i>Ancillary Jurisdiction</i>	272
Federal Rule of Civil Procedure 14. Third-Party Practice	272
<i>Owen Equipment and Erection Company v. Kroger</i>	273

Sec.	Page
VII. Choosing the Forum—Supplemental Jurisdiction, Removal, Venue	283
A. The Supplemental Jurisdiction Statute	283
28 U.S.C. § 1367. Supplemental Jurisdiction	283
<i>Exxon Mobil Corporation v. Allapattah Services, Inc.</i>	284
B. Removal Jurisdiction	305
<i>The Removal Statutes</i>	305
28 U.S.C. § 1441. Actions Removable Generally	305
28 U.S.C. § 1442. Federal Officers or Agencies Sued or Prosecuted	307
28 U.S.C. § 1443. Civil Rights Cases	308
28 U.S.C. § 1445. Nonremovable Actions	308
28 U.S.C. § 1446. Procedure for Removal	308
28 U.S.C. § 1447. Procedure After Removal Generally	310
28 U.S.C. § 1448. Process After Removal	310
28 U.S.C. § 1453. Removal of Class Actions	311
<i>Carlsbad Technology, Inc. v. HIF Bio, Inc.</i>	312
C. Venue and Transfer of Venue	317
28 U.S.C. § 1391. District Courts; Venue Generally	317
28 U.S.C. § 1402. United States as Defendant	318
28 U.S.C. § 1404. District Courts: Change of Venue	319
<i>Bates v. C & S Adjusters, Inc.</i>	319
<i>Hoffman v. Blaski</i>	322
D. Forum Non Conveniens	326
28 U.S.C. § 1406. District Courts: Cure or Waiver of Defects	326
<i>Piper Aircraft Company v. Reyno</i>	326
VIII. Modern Pleading	339
A. Selections From the Field Code (N.Y. Laws 1848)	339
B. Notice Pleading	340
Federal Rule of Civil Procedure 1. Scope and Purpose	340
Federal Rule of Civil Procedure 2. One Form of Action	340
Federal Rule of Civil Procedure 7. Pleadings Allowed; Form of Motions and Other Papers	340
Federal Rule of Civil Procedure 7.1. Disclosure Statement	341
Federal Rule of Civil Procedure 8. General Rules of Pleading	341
<i>Dioguardi v. Durning</i>	341
<i>Conley v. Gibson</i>	343
C. The Limits of Notice Pleading	345
Federal Rule of Civil Procedure 12(b)(6)	345
Federal Rule of Civil Procedure 84. Forms	345
<i>Bell Atlantic Corporation v. Twombly</i>	345
<i>Ashcroft v. Iqbal</i>	361
D. Fact Pleading Revitalized	375
Federal Rule of Civil Procedure 9. Pleading Special Matters	375
<i>Tellabs, Inc. v. Makor Issues & Rights, Ltd.</i>	377
IX. Week Nine: Modern Pleading	389
A. Responding to the Complaint	389
Federal Rule of Civil Procedure 12	389
Federal Rule of Civil Procedure 8(d)	389
<i>PAE Government Services, Inc. v. MPRI, Inc.</i>	389
<i>Garcia v. Hilton Hotels International, Inc.</i>	392
<i>Rubert-Torres v. Hospital San Pablo, Inc.</i>	397
B. The Answer; Denials and Affirmative Defenses	400
Federal Rule of Civil Procedure 8(b)–(c)	400

Sec.	Page
IX. Week Nine: Modern Pleading—Continued	
<i>Zielinski v. Philadelphia Piers, Inc.</i>	401
<i>Ingraham v. United States</i>	406
<i>Taylor v. United States</i>	409
C. Amendments to Pleadings	411
Federal Rule of Civil Procedure 15. Amended and Supplemental Pleadings	411
<i>DeRienzo v. Harvard Industries, Inc.</i>	413
D. Truthful Pleadings and Sanctions	420
Federal Rule of Civil Procedure 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions	420
28 U.S.C. § 1927. Counsel's Liability for Excessive Costs	422
<i>Roth v. Green</i>	422
X. Week Ten: Joinder of Parties and Claims	435
A. Counterclaims	435
Federal Rule of Civil Procedure 13. Counterclaim and Crossclaim	435
Federal Rule of Civil Procedure 14. Third-Party Practice	436
<i>Jones v. Ford Motor Credit Company</i>	437
B. Cross-Claims	446
Federal Rule of Civil Procedure 13(g), (h), (i)	446
Federal Rule of Civil Procedure 18. Joinder of Claims	446
Federal Rule of Civil Procedure 20. Permissive Joinder of Parties	446
Federal Rule of Civil Procedure 42. Consolidation; Separate Trials	447
<i>Lasa Per L'Industria Del Marmo Societa Per Azioni of Lasa, Italy v. Alexander</i>	448
C. Persons Needed for a Just Adjudication	457
Review Federal Rule of Civil Procedure 12(b)(7)	457
Federal Rule of Civil Procedure 19. Required Joinder of Parties	457
<i>The Bank of California v. The Superior Court of San Francisco</i>	458
<i>Provident Tradesmens Bank & Trust Co. v. Patterson</i>	463
D. Intervention	470
Federal Rule of Civil Procedure 24. Intervention	470
<i>Grutter v. Bollinger</i>	471
XI. Week Eleven: Discovery	478
A. Scope and Constitutionality of Discovery	478
Federal Rule of Civil Procedure 26. Duty to Disclose; General Provisions Governing Discovery	478
Federal Rule of Civil Procedure 35. Physical and Mental Examinations	485
<i>Schlagenhauf v. Holder</i>	486
B. Protective Orders	496
Federal Rule of Civil Procedure 26(c)	496
Federal Rule of Civil Procedure 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions	497
<i>Seattle Times Company v. Rhinehart</i>	501
C. Work Product Immunity	510
Federal Rule of Civil Procedure 26(b)(3)	510
Federal Rule of Civil Procedure 30. Depositions by Oral Examination	511
Federal Rule of Civil Procedure 33. Interrogatories to Parties	516
Federal Rule of Civil Procedure 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes	517
<i>Hickman v. Taylor</i>	519
D. Attorney–Client Privilege	530
<i>Upjohn Company v. United States</i>	530

Sec.	Page
XII. Summary Judgment, Trial Motions, and Post-Trial Motions	541
A. Evidentiary Burdens and Credibility Issues	541
Federal Rule of Civil Procedure 56. Summary Judgment	541
<i>Lundeen v. Cordner</i>	542
<i>Cross v. United States</i>	551
B. Modern Summary Judgment Standards	555
<i>Celotex Corporation v. Catrett</i>	555
<i>Scott v. Harris</i>	565
C. Judgment as a Matter of Law (Directed Verdict)	573
Federal Rule of Civil Procedure 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling	573
<i>Galloway v. United States</i>	575
D. Judgment as a Matter of Law (Post-Trial Motions)	593
<i>Neely v. Martin K. Eby Construction Co., Inc.</i>	593
XIII. Choice of Applicable Law (<i>Erie</i> Doctrine)	604
A. Historical Basis: The Rules of Decision Act	604
28 U.S.C. § 1652. State Laws as Rules of Decision	604
<i>Erie R. Co. v. Tompkins</i>	604
<i>Klaxon Co. v. Stentor Electric Mfg. Co., Inc.</i>	615
B. The Outcome Determination Test	617
<i>Guaranty Trust Co. of New York v. York</i>	617
C. Constitutional Concerns: The <i>Byrd</i> Balancing Test	627
<i>Byrd v. Blue Ridge Rural Electric Cooperative, Inc.</i>	627
D. The Rules Enabling Act	635
28 U.S.C. § 2071. Rule-Making Power Generally	635
28 U.S.C. § 2072. Rules of Procedure and Evidence; Power to Prescribe Federal Rule of Civil Procedure 83. Rules by District Courts; Judge's Directives	636
<i>Hanna v. Plumer</i>	636
XIV. Representational Class Action Litigation	646
A. Due Process Considerations	646
<i>Hansberry v. Lee</i>	646
B. Class Certification	650
Federal Rule of Civil Procedure 23. Class Actions	650
<i>In the Matter of Rhone-Poulenc Rorer Inc.</i>	655
C. Jurisdiction and Choice of Law Issues	665
28 U.S.C. § 1332(d). Class Actions; Diversity of Citizenship; Amount in Controversy	665
28 U.S.C. § 1453. Removal of Class Actions	669
<i>Phillips Petroleum Company v. Shutts</i>	670
D. Settlement Classes	688
<i>Amchem Products, Inc. v. Windsor</i>	688

PART TWO. ALTERNATIVE WEEKS

I. Procedural Due Process	710
A. Reasonable Notice	710
U.S. Const. Amend. V	710

Sec.	Page
I. Procedural Due Process—Continued	
U.S. Const. Amend. XIV	710
<i>Mullane v. Central Hanover Bank & Trust Co.</i>	710
B. Service of Process	718
Federal Rule of Civil Procedure 4. Summons	718
<i>National Equipment Rental, Ltd. v. Szukhent</i>	723
C. Opportunity to be Heard: Prior Hearing	734
<i>Fuentes v. Shevin</i>	734
D. Attachment Statutes	747
<i>Connecticut v. Doehr</i>	747
II. Right to Trial by Jury	760
A. Historical Bases and Modern Approach	760
U.S. Const. Amend. VII. Civil Trials	760
Federal Rule of Civil Procedure 38. Right to a Jury Trial; Demand	760
Federal Rule of Civil Procedure 39. Trial by Jury or by the Court	760
Federal Rule of Civil Procedure 57. Declaratory Judgment	761
28 U.S.C. § 2201. Creation of Remedy	761
28 U.S.C. § 2202. Further Relief	761
<i>Beacon Theatres, Inc. v. Westover</i>	761
B. Characterizing the Issue	770
<i>Dairy Queen, Inc. v. Wood</i>	770
<i>Ross v. Bernhard</i>	775
C. Administrative Forum	784
<i>Atlas Roofing Co., Inc. v. Occupational Safety and Health Review Comm.</i>	784
D. Statutory Civil Penalty Actions	791
<i>Tull v. United States</i>	791
III. Interlocutory Appeal	800
A. The Final Judgment Rule	800
Federal Rule of Civil Procedure 54. Judgment; Costs	800
28 U.S.C. § 1291. Final Decisions of District Courts	801
28 U.S.C. § 1292. Interlocutory Decisions	801
<i>Liberty Mutual Insurance Company v. Wetzel</i>	802
<i>Curtiss-Wright Corp. v. General Electric Co.</i>	805
B. Collateral Order Doctrine	811
<i>Cohen v. Beneficial Industrial Loan Corp.</i>	811
<i>Mohawk Industries, Inc. v. Carpenter</i>	813
C. Certified Orders	822
<i>Yamaha Motor Corp., U.S.A. v. Calhoun</i>	822
<i>United States v. Philip Morris USA Inc.</i>	824
D. The Writ of Mandamus	835
Federal Rule of Civil Procedure 53. Masters	835
28 U.S.C. § 1651. Writs	838
<i>La Buy v. Howes Leather Company</i>	838
IV. Res Judicata and Preclusion Doctrine	846
A. Res Judicata and the Finality of Judgments	846
<i>Cromwell v. County of Sac</i>	846
<i>Russell v. Place</i>	857
B. Collateral Estoppel: Identity of Issues	859
<i>Commissioner of Internal Revenue v. Sunnen</i>	859
C. Mutuality of Estoppel	865
<i>Parklane Hosiery Company, Inc. v. Shore</i>	865

Sec.	Page
IV. Res Judicata and Preclusion Doctrine—Continued	
D. Federalism Issues	880
Review U.S. Const. Article IV § 1; 28 U.S.C. § 1738; Fed. R. Civ. P. 8(c)(1)	880
<i>Durfee v. Duke</i>	880
Federal Rule of Civil Procedure 41. Dismissal of Actions	884
<i>Semtek Int'l Corp. v. Lockheed Martin Corp.</i>	885