

Cases
and
Materials
on
Civil
Procedure

David Crump
William V. Dorsaneo, III
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Analysis
and
Skills
Series

CASES AND MATERIALS ON CIVIL PROCEDURE

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PREFACE

TRADITIONAL ORGANIZATION AND APPROACH

Organization and Methodology. This book is mostly traditional in approach. It is organized along the lines of the events in a lawsuit, beginning with service of process and establishment of the court's jurisdiction, and proceeding through post-trial motions and appeals. For the most part, it uses the traditional case method. Law professors will recognize most of the "old favorite" cases, including venerable decisions such as *Pennoyer v. Neff*, modern classics such as *Burger King Corp. v. Rudzewicz*, and many others in between.

Special Features. However, there is more to the book than traditional organization and approach. The following is a description of some of the special features that we have included.

SPECIAL FEATURES

An Introduction to the Practice of Civil Litigation Through Actual Litigation Documents. In addition to traditional case materials, the book includes documents from actual litigation. Complaints and answers, motions, briefs, orders, and in the discovery chapter, a short deposition, are all excerpted for the student to see and study. In some instances, a single document is presented; in others, a series of related papers tells the story of the underlying litigation. For example, Chapter 2 ends with an appendix containing all of the major papers in a typical forum contest. Likewise, Chapter 9 contains the documents presented by both sides in a typical summary judgment proceeding. (We also think students will be fascinated with Chapter 10, which contains excerpts from the jury selection, court's charge, and final arguments in *Pennzoil Co. v. Texaco Inc.*—the case that produced the largest jury verdict in history.) These materials are integrated with traditional appellate opinions, so that the skills the student develops through the case method can be used to analyze the practice documents. We believe that these "real world" materials will help the student to understand the theory of civil procedure better, as well as providing insights into what litigators do.

"Improving the System:" Introducing Theoretical Issues at the Cutting Edge of the Law. We would not be content, however, with introducing the student to current practice. A good lawyer needs to be able to grow with the law. In fact, he or she needs to think ahead of the current state of the law. Therefore, we have included sections in most chapters entitled "Improving the System." We think that these sections will help the student to think critically about current practice, and although the issues in the "Improving the System" section usually will have been raised earlier in the chapter, there is benefit in looking at proposed improvements as a group. Our experience indicates that this method encourages deeper thought about the purposes of the Rules of Civil Procedure.

A "User Friendly" Book. Above all, we have tried to produce a book that makes the fundamentals easy for the student to grasp. Although Civil Procedure may be the most difficult course in the first-year curriculum (we have no illusions of making it truly simple), we have done our best to make our book "user friendly." For exam-

ple, particularly difficult cases are preceded by notes entitled "How to Read this Case." The cases are edited with student comprehension in mind, and explanations of difficult principles are inserted in brackets. In a few instances, difficult cases are preceded by problems designed to prepare the student in advance. Our notes and questions are self-contained; they do not require the student to consult outside sources. Our philosophy is that it is best for the student to come to class having actually understood the material in the book. The class then does not need to consist solely of helping to get across the basics, and the professor can raise more interesting issues.

Supplementation of Traditional Federal Materials With an Introduction to Differing State Practices; Use of California, New York, and Texas as "Benchmark" States. It is traditional to emphasize the federal system in a beginning course in Civil Procedure. This book follows that emphasis. It provides the basis for a thorough understanding of the Federal Rules of Civil Procedure. One unique feature of the book, however, is that we have supplemented this fundamental federal emphasis with a brief look at the analogous procedures of three benchmark states: California, New York, and Texas. We selected these states because of their size, because their procedural systems are well developed, and because they do not follow the federal rules as closely as other states. Hence, comparative analysis is encouraged. In every chapter, the treatment of state practice is brief and does not detract from the major purpose of teaching the federal rules. We believe that an introduction to these benchmark states' rules will stimulate deeper thought about the advantages and disadvantages of the federal rules.

Careful Case Selection. In some areas of Civil Procedure, there are cases that are familiar to every teacher or student. But when these "old favorites" are not available, the book reflects a careful selection process. We have tried to present cases with interesting factual patterns, because we know that retaining the reader's attention is an important goal for any book. We also have attempted to use cases with simple, clear, correct reasoning, on the theory that teaching from a correctly reasoned case is more effective than criticizing a "wrong" decision. And we have preferred recent cases. In fact, the majority of the cases reproduced or cited, other than old favorites, were decided in the 1980's.

Problems. Many of the chapters contain problems. For the most part, the problems in earlier chapters are simple (often, in fact, we have put suggested answers in the book). In this difficult course, it happens all too often that a complex problem is not as helpful to the real goal of student understanding as a simpler one that clearly illustrates the application of the principles the student has learned. In later chapters, some of the problems are more difficult, but we have remained faithful to the idea that problems should be within the abilities of students who have read and understood the materials.

• • •

The book has been tested by use in the classes of Professors Crump and Dorsaneo. It reflects some changes based on that experience, but the basic approach is

unchanged—because it worked extremely well. We hope that you will enjoy using the book as much as we and our students have.

DAVID CRUMP
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