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CIVIL PROCEDURE  
Cases and Problems

*Fourth  
Edition*



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**CIVIL PROCEDURE  
CASES AND PROBLEMS**



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**Fourth Edition**

**Allan Ides**

**Loyola Law School**

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**Loyola Law School**

**Professor Emeritus**



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## Preface

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Most first-year law students find Civil Procedure to be one of their most challenging courses. While other first-year courses such as Contracts, Torts, Property, and Criminal Law present their own difficulties, they at least address roughly familiar turf—the making of enforceable agreements, the vindication of personal injuries, the ownership of property, and the commission and punishment of crimes—areas to which many of you have been exposed on television or at the movies, if not in real life. Civil Procedure, on the other hand, introduces us to a new language of process, and in a sense a new way of thinking, premised on rules and principles that occur and recur daily, but within the much less visible realms of civil litigation and formal dispute resolution. Because it has no “real world” counterpart, Civil Procedure is in some ways like a foreign language, possessing a linguistic culture of its own. As a student, your first challenge is thus to learn the basics of this new language—one in which you will soon find yourself to be surprisingly fluent.

While the doctrines of Civil Procedure may at times seem highly technical or more than moderately perplexing in their application, don't despair! The fog of one's initial encounter with procedure is natural, yet it is neither permanent nor impenetrable. To succeed at Civil Procedure, you need patience, discipline, and a willingness to appreciate the inherent play of some of the underlying doctrines. In our over 60 years of combined teaching experience, we have found that students who accept this challenge often, and to their surprise, find Civil Procedure to be one of their most enjoyable and rewarding courses. What at first glance might appear to be a subject that is dry and far removed from human experience may, with patience and effort on your part, turn out to be rich in its intellectual and practical possibilities. You might think of Civil Procedure as a series of puzzles, each with its own special rules and nuances. Like an intricate game, as you master one level, you will move on to a new and more challenging stage. If you learn to take one step at a time, you will proceed nicely to the finish.

We have, frankly, loved (and continue to love) teaching Civil Procedure. There is a deep pleasure in watching students learn to navigate an initially mysterious but almost always fascinating labyrinth. This casebook reflects our rich and satisfying experience. It embodies the thousands of hours we've spent in the classroom and in our offices—working with students, learning what works and what doesn't, trying new approaches. One thing of which we're certain is this: The only way to learn Civil Procedure is through an active process of applying the doctrines to the solution of real Problems. It is for this reason that this book contains well over 200 Problems interspersed throughout the text. We urge students who use the book to do the Problems as they appear in their assignments. Given the amount of material that must be covered, it is unlikely your professor will be able to cover all of

the Problems in class. Yet this is a boon for you, for by doing the Problems yourself you will reap tremendous benefits. Make a habit of doing all of the Problems, either by yourself or with a small group of your fellow students. Then take the time to review the actual cases on which many of the Problems are based, the citations to which appear at the end of the Problem. If the court took a different approach than you did, ask yourself why. In short, make a habit of first learning the language of Civil Procedure by doing the reading and listening to your professor. Then practice using that language by applying it to the Problems as they appear in the book. This process of reading, thinking, doing—and sometimes redoing—is the one sure way to master Civil Procedure.

The Table of Contents provides a detailed outline of this book. As such, it serves as an overview of the course in Civil Procedure. You might want to skim the Table of Contents before you begin the course and then refer back to it periodically as you proceed. This may help give you a sense of where you've been and where you're going. In addition, Chapter I, part B, provides a narrative overview of the Civil Procedure course from the perspective of a hypothetical civil litigation Problem. The "Hypothetical Case," which appears at pages 8–19, takes you through each of the major topics in this course, some of which you may not cover due to time constraints. This hypothetical should give you a good sense of what is covered in Civil Procedure and how the separate components of the course interact with one another. We strongly urge you to read the Hypothetical Case before embarking on your study of the specific doctrines found in later chapters. By doing so, you'll have a sense of "the big picture" into which the issues covered by this course all fit.

Good luck to you on this new adventure. We hope that these materials will serve as a useful learning tool, and that they will provide you with the knowledge and the confidence necessary to use the civil litigation system as a means of furthering justice.

Allan Ides

Christopher N. May

November 2011

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Finally, we would thank the thousands of wonderful students who over many years have given us inspiration and a better understanding of the learning process, and without whom we would never have undertaken such a project.

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