

THE LAW OF CIVIL PROCEDURE

CASES AND MATERIALS

Second Edition

Joel Wm. Friedman
Jonathan M. Landers
Michael G. Collins

American Casebook Series®

THOMSON



WEST

CASES AND MATERIALS

The Law of Civil Procedure Second Edition

by

JOEL WM. FRIEDMAN

Jack M. Gordon Professor of Procedural Law & Jurisdiction
Tulane Law School

JONATHAN M. LANDERS

Partner, Gibson, Dunn & Crutcher
New York, N.Y.
San Francisco, Ca.

MICHAEL G. COLLINS

Robert A. Ainsworth Professor of Courts and the Federal System
Tulane Law School

AMERICAN CASEBOOK SERIES®

THOMSON
—★—
WEST

Thomson/West have 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/West are not engaged in rendering 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 and West Group are trademarks registered in the U.S. Patent and Trademark Office.

© West, a Thomson business, 2002

© 2006 Thomson/West

610 Opperman Drive

P.O. Box 64526

St. Paul, MN 55164-0526

1-800-328-9352

Printed in the United States of America

ISBN-13: 978-0-314-16881-8

ISBN-10: 0-314-16881-8



TEXT IS PRINTED ON 10% POST
CONSUMER RECYCLED PAPER



PREFACE TO THE SECOND EDITION

Most professors who teach the basic course in civil procedure would agree that first year students often find it to be the most difficult and/or unapproachable course in the first year curriculum. This is to be expected. Unlike the material covered in such typical first year courses as torts, contracts, property, criminal law and constitutional law, the subjects addressed in the first year civil procedure course are foreign to their previous experience and are, for the most part, issues of concern only to lawyers. But they eventually recognize that the issues presented in civil procedure course have a dramatic and profound impact on a wide range of contemporary transactions and events.

The first edition of this casebook was drafted expressly with the first year student in mind and was not intended to serve as both a casebook and hornbook. We continue that philosophy in this second edition. Although this new edition keeps pace with recent decisions — particularly those in the areas of personal jurisdiction, supplemental jurisdiction, and complex litigation — we have tried to avoid the temptation to provide the sort of encyclopedic presentation of issues that would appeal to the scholarly bent of law professors. Instead, we have tried to organize the material in a way that is approachable and helpful to students. To that end, we begin each chapter and subsidiary section with a textual explanation to provide the context in which the relevant issues arise and to highlight what those issues are. We also believe it is helpful to the pedagogic experience to offer case opinions that raise these issues in the context of contemporary problems. Consequently, aside from the expected assortment of foundational Supreme Court opinions, we have carefully chosen more recently decided cases that pose the relevant questions in a contemporary setting. For similar reasons, we have chosen to replace the decision in *Franchise Tax Board v. Construction Laborers* with a shorter, but more teachable case addressing the federal courts' federal question jurisdiction. We have also provided a rich collection of hypothetical problems to accompany each set of materials to give students with the opportunity to test their understanding of the cases, statutes, and rules of procedure.

While we have tried to make the materials as approachable as possible, we were alert to the need to avoid oversimplification. In that regard, while we have edited all of the principal cases, we have chosen not to attempt to reduce each opinion to a few conclusory paragraphs. Part of the journey for first year students is to learn how to appreciate the context in which statements of law are made so that they can gain a deeper and more refined understanding of the court's decision. I

Finally, we appreciate the reality that law schools differ in the number of semesters and number of credit hours they devote to the subject of civil procedure. With that in mind, this book was designed to cover the waterfront so that it could be used by those who, like two of us, teach but a single four credit hour course, or by others who teach a five or six credit hour course over an entire academic year. And by careful editing and, we hope, judicious use of explanatory material, we have been able to limit the length of the book to a manageable size. We hope you agree.

J.W.F.
M.G.C.

New Orleans, La.
February, 2006

ACKNOWLEDGMENTS

We wish to thank the following authors and copyright holders for permitting the inclusion of portions of their publications in this book.

Edwards, Harry T., "Alternative Dispute Resolution: Panacea or Anathema?", *Harvard Law Review*, Vol. 99, pp. 676-82 (1986). Reprinted with permission of Judge Edwards and the Harvard Law Review Association.

Gauvey, Susan K., "ADR's Integration in the Federal Court System," *Maryland Bar Journal*, Vol. 34-APR, pp. 39-43 (2001). Reprinted with permission of Judge Gauvey and the Maryland Bar Journal.

Perritt, Jr., Henry H., "Dispute Resolution in Cyberspace: Demand for New Forms of ADR," *Ohio State Journal on Dispute Resolution*, Vol. 15, pp. 676,684-92,694,702 (2000). Reprinted with permission of Dean Perritt and the Ohio State Journal on Dispute Resolution.

"Developments in the Law, "The Paths of Civil Litigation," *Harvard Law Review*, Vol. 113, pp. 1851-62 (2000). Reprinted with permission of the Harvard Law Review.

Leiberman, Jethro K. & Henry, James F., "Lessons from the Alternative Dispute Resolution Movement," *University of Chicago Law Review*, Vol. 53, pp. 425-35 (1986). Reprinted with permission of the University of Chicago Law Review.

Preparation of this casebook in camera-ready form would not have been possible without the outstanding assistance and inspired work of Lynn Becnel.

TABLE OF CASES

Principal cases are in italic type. Non-principal cases are in roman type. References are to pages.

Ackermann v. Levine, 325
 Adickes v. S.H. Kress & Co., 529
Advanta Corp. Securities Litigation, In Re, 392
 Aetna Casualty & Surety Co. v. Yeatts, 752
 Agostini v. Felton, 805
 Ahrenholz v. Board of Trustees, 776
 Albingia Verischerungs A.G. v. Schenker Int'l Inc., 228
 Aldinger v. Howard, 186
 Alexander v. Gardner-Denver Co., 890
Allstate Insurance Co. v. Hugh Cole Builder, Inc., 580
 ALS Scan, Inc. v. Digital Service Consultants, Inc., 131
 Alyeska Pipeline Service Co. v. Wilderness Society, 345
 Amchem Products Inc. v. Windsor, 668
 American Life Insurance Co. v. Stewart, 675
Anderson v. Bessemer City, 786
 Anderson v. Liberty Lobby, Inc., 542
 Ariel Land Owners, Inc. v. Dring, 227
 Arizona v. California, 836, 851
 Arnstein v. Porter, 37, 554
Asahi Metal Industry Co. v. Sup. Ct. of California, 88
 Astoria Federal S&L Ass'n v. Solimino, 859
 Atlas Roofing Co. v. Occupational Safety and Health Review Commission, 701
Baldwin v. Iowa State Traveling Men's Ass'n, 811, 841
 Baltimore & Carolina Line, Inc. v. Redman, 726
 Banco Nacional de Cuba v. Sabbatino, 265
 Barnes v. Anderson, 715
 Batson v. Kentucky, 711
Beacon Theatres, Inc. v. Westover, 677

Beeck v. Aquaslide 'N' Dive Corp., 441
 Behrens v. Pelletier, 781
 Bendectin Prods. Liability Litigation, In re, 647
 Bivens v. Six Unknown Named Agents of FBI, 290, 428
 Blackie v. Barrack, 647
 Blunt v. Little, 752
 Boeing v. Shipman, 732
 Bosky v. Kroger Texas, LP, 225
Bracken v. Matgouranis, 159
 Bradley v. Kochenash, 630
 Brazinski v. Amoco Petroleum Additives Co., 212
 Bridgestone/Firestone Tire Litigation, In re, 648
Brink v. First Credit Resources, 448
 Brinkley v. Harbour Recreation Club, 555
 Brown v. Board of Education, 415
 Buckhannon, Bd. & Care Home, Inc. v. West Virginia Dept. of Health and Human Resources, 366
 Burger King Corp. v. Rudzewicz, 68, 85
 Burnet v. Coronado Oil & Gas Co., 815
Burnham v. Superior Ct. of Calif., 112
 Bush v. Lucas, 292
 Business Guides v. Chromatic Communications Enterprises, 404
Byrd v. Blue Ridge Rural Electric Cooperative, Inc., 269
 Calder v. Jones, 86, 87
 Cannon v. Univ. of Chicago, 292
 Carlson v. Green, 292
 Carnival Cruise Lines, Inc. v. Shute, 70
 Carolina Power & Light Co. v. Uranex, 340
 Castano v. American Tobacco Co., 648
 Caterpillar v. Williams, 169
 Cavallero v. U.S., 482
Celotex Corp. v. Catrett, 531

- Chambers v. NASCO, Inc., 353, 415
 Chambers v. Ohio Dep't of Human Services, 872
Chauffeurs, Teamsters & Helpers Local No. 391 v. Terry, 689
 Cheney v. District Court, 783
Chrysler Corp. v. Carey, 512
 Churchill v. Barach,
 Circuit City Stores v. Adams, 892
 City of Burlington v. Dague, 353
 City of Chicago v. Int'l Coll. Of Surgeons, 163, 227
 City of Monterey v. Del Monte Dunes, 700
City of Riverside v. Rivera, 346
 Clearfield Trust Co. v. U.S., 290
Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. Department of the Interior, 611
 Coburn v. 4-R Corp., 647
 Cogdell v. Hospital Center at Orange, 598
 Cohen v. Beneficial Industrial Loan Corp., 770
 Cole v. Burns Int'l Sec. Services, 891
Coleman v. American Red Cross, 21, 522
 Collins v. City of Wichita, Kansas, 805
 Commissioner of Internal Revenue v. Estate of Bosch, 294
 Commissioner v. Sunnen, 847
 Community Dental Services v. Tani, 552
 Conley v. Gibson, 374
Connecticut v. Doehr, 326
 Consorti v. Armstrong World Industries, Inc., 752
 Cooper Industries v. Leatherman Tool Group, Inc., 764
 Corrugated Container Antitrust Litigation, *In re*, 667
 Cort v. Ash, 163, 292
 Costello v. United States, 523
Coury v. Prot, 172
 Crawford El v. Britton, 439
 Crown Cork & Seal Co. v. Parker, 672
 Curtis v. Loether, 689
Cybersell, Inc. v. Cybersell, Inc., 123
 D.L. Thomas v. American Home Products, Inc., 302
 Davis v. Passman, 292
 De Weerth v. Baldinger, 302
Decker v. Circus Circus Hotel, 3
 DelCostello v. Teamsters, 291
 Deposit nat'l Guaranty Bank v. Roper, 671
 Devlin v. Scardelletti, 672
DeWeerth v. Baldinger, 796
 Diary Queen, Inc. v. Wood, 686
 Dice v. Akron, Canton & Youngstown R. Co., 288, 290
 Dimick v. Schiedt, 763
 Dirussa v. Dean Witter Reynolds, Inc., 892
 Dobson v. Masonite, 708
 Dominguez-Cota v. Cooper Tire, 228
 Du Page Forklift Service, Inc. v. Material Handling Services, Inc., 846
 Dura Pharmaceuticals v. Broudo, 404
 Durfee v. Duke, 813, 841
 Dusenbery v. U.S., 155
 Dyer v. MacDougall, 554
 Edmonson v. Leesville Concrete Co., 712
 Eisen v. Carlisle & Jacquelin, 649
Erie Railroad v. Tompkins, 260
ESAB Group, Inc. v. Centricut, Inc., 134
 ESAB Group, Inc. v. Centricut, LLC, 140
 Esfeld v. Costa Crociere, S.P.A., 255
 Estate of Darulis v. Garate, 144
 Eubanks v. Billington, 653
 Evans v. Jeff D., 364
 Evolution Online Systems, Inc. v. Koninklijke PTT Nederland N.V., 283
 Executive Software North America, Inc. v. U.S. Dist. Ct., 210
Exxon Mobil Corp. v. Allapattah Services, Inc., 188, 579, 664, 665
Exxon Valdez, In re, 312
 Factors Etc., Inc. v. Pro Arts, Inc., 301
 Farmland Industries, Inc. v. Frazier-Parrott Commodities, Inc., 283
 Farrar v. Hobby, 352
Fauntleroy v. Lum, 807
 Federated Dep't Stores, Inc. v. Moitie, 835
 Felder v. Casey, 228, 855
 Feltner v. Columbia Pictures Television, Inc., 700
 Ferens v. John Deere Co., 243
 Field v. Volkswagenwerk AG, 598
 Finley v. U.S., 187

- First National Bank of Pulaski v. Curry, 225
 Flagg Bros., Inc. v. Brooks, 332
 Fleet Business Credit Corp v. National City Leasing Corp., 422
 Floeter v. C.W. Transport, Inc., 225
 Floss v. Ryan's Family Steak Houses, 892
 Fontana v. Elrod, 653
 Foster v. Pfizer, Inc., 418
 Franchise Tax Bd. of Calif. v. Construction Laborers Vacation Trust, 163
 Frew v. Hawkins, 806
 Fuentes v. Shevin, 332
Fullin v. Martin, 216
 Galloway v. United States, 725, 726
 Gasoline Products Co. v. Champlin Refining Co., 753
Gasperini v. Center for Humanities, Inc., 286, 763
 Gator.com Corp. v. L.L. Bean, Inc., 130
 General Tel. Co. of Southwest v. Falcon, 639
 Georgia v. Brailsford, 701
 Gilmer v. Interstate/Johnson Lane Corp., 891
 Goldlawr v. Heiman, 243
Gomez v. Toledo, 423
 Goodman v. Lukens Steel Col., 291
 Gonzalez v. Chrysler Corp., 256
 Grable & Sons Metal Prod., Inc. v. Darue Eng. & Mfg, 167
 Grace v. McArthur, 59
 Graham v. DaimlerChrysler Corp., 366
 Granfinanciera, S.A. v. Nordberg, 701
 Green v. R.J. Reynolds Tobacco Co., 225
 Griffiths v. Luban, 87
 Grupo Dataflux v. Atlas Global Group, L.P., 176
 Grupo Mexicano de Desarrollo, S.A. v. Alliance Fund, Inc., 340
Guaranty Trust Co. of N.Y. v. York, 266
 Gulfstream Aerospace Corp. v. Mayacamas Corp., 771
 Gundle Lining Constr. Corp. v. Adams County Asphalt, 585
 Hall v. Cole, 345
Hanna v. Plumer, 272
Hansberry v. Lee, 634
 Hanson v. Denckla, 74
 Hardware State Bank v. Cotner, 426
 Harlow v. Fitzgerald, 426
 Harman v. Apfel, 785
 Harris v. Balk, 97
 Heck v. Humphrey, 841
 Helicopteros Nacionales de Colombia v. Hall, 68
Helzberg's Diamond Shop Inc. v. Valley West Des Moines Shopping Center, Inc., 600
 Heno v. Sprint/United Management Co., 715
 Hensley v. Eckerhart, 352
Herrera v. Reicher, 848
 Hess v. Pawloski, 61
 Hetzel v. Prince William County, 764
Hickman v. Taylor, 472
Hidalgo v. Fagen, Inc., 712
 Hilton v. South Carolina Pub. Railways Comm'n, 821
 Hinderlider v. La Plata River & Cherry Creek Ditch Co., 289
 Hoagland v. Sandberg, Phoenix & Von Gontard, 179
 Hoffman v. Blaski, 242
 Horn v. Lockhart, 580
Howard v. Wal-Mart Stores, Inc., 727
Hubler Chevrolet, Inc. v. General Motors Corp., 639
 Iacurci v. Lummus Co., 751
 IBM Corp v. United States, 784
Iglesias v. Mutual Life Ins. Co., 562
Illusions Holdings, Inc., In Re, 483
 In Re Arbitration between Monesgasque De Reassurances v. Nak Naftogaz of Ukraine, 228
 In re National Presto Industries, Inc., 243
In re Termination of Parental Rights to Greg H.L. v. Jerome E.M., 844
 Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites, 85
International Shoe Co. v. State of Washington, 63
 Iragorri v. United Technologies Corp., 257
 J.E.B. v. Alabama, 712
 Jackson v. Virginia, 543
 Jaffee v. Redmond, 471, 499
 Jinks v. Richland County, 214
 Joan W. v. City of Chicago, 752
 Johansen v. Combustion Engineering, Inc., 764
 John v. Sotheby's Inc., 620
 Johnson v. California, 711

- Johnson v. Fankell, 288
 Johnson v. Georgia Highway Express, Inc., 699
 Johnson v. Gmeinder, 483
 Jones v. R.R. Donnelley & Sons Co., 171
 JPMorgan Chase Bank v. Traffic Stream Infrastructure Ltd., 182
 Judin v. United States, 405
 Kansas Pub. Employees Ret. Sys. v. Reimer & Kroger Assoc., 805
 Keeton v. Hustler Magazine, 86
 Keller v. Prince George's County, 699
 Klaxon Co. v. Stentor Electric Mfg. Co., 284
 Koch v. Koch Ind., Inc., 392
 Kokkonen v. Guardian Life Ins. Co., 525
 Kremer v. Chemical Const. Corp., 832
 Krieger v. Fadely, 386
Kyle v. Morton High School, 430
 La Buy v. Howe's Leather Co., 771
 Lacy v. Sitel Corp., 522
LaFont v. Decker-Angel, 420
Langadinos v. American Airlines, Inc., 386
 Lapidus v. Bd. Of Reg. of Univ. Sys. Of Ga., 229
Latino v. Kaizer, 734
Lauro Lines, S.R.L. v. Chasser, 777
Lavender v. Kurn, 38, 725
 Lawson Prods, Inc. v. Avnet, Inc., 399
 Leatherman v. Tarrant Cty.,
 Lehr v. Robertson, 155
 Levy Jewelers, Inc. v. ADT Security Systems, Inc., 574
Lewis v. U.S. Slicing Machine Co., 13
 Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach, 244, 609
Liberty Mutual Ins. Co. v. Wetzel, 772
 Lincoln Property Co. v. Roche, 223, 574, 599
 M/S Bremen v. Zapata Off-Shore Co., 69
 Magnus Electronics, Inc. v. La Republica Argentina, 857
 Manetti-Farrow, Inc. v. Gucci America, Inc., 283
Marek v. Chesny, 354, 525
Markman v. Westview Instruments, Inc., 702
 Marrese v. American Acad. Of Orthopaedic Surgeons, 841, 842
 Martin v. Franklin Capital Corp., 227
 Martin v. Wilks, 618
Mas v. Perry, 10
 Mathews v. Eldridge, 332
 Matsushita Elec. Inc. v. Epstein, 524
 Matthews v. Rollins Hudig Hall Co., 891
 Mazziotti v. Allstate Ins. Co., 870
 McClain v. Metabolife, Inc., 764
 McGee v. Int'l Life Ins. Co., 73
Memphis Community School District v. Stachura, 305
 Mennonite Bd. of Missions v. Adams, 154
 Merrell Dow Pharmaceuticals Inc. v. Thompson, 164
 Merrill Lynch v. Curran, 293
 Milliken v. Meyer, 59
 Mills v. Harmon Law Offices, 228
 Missouri v. Jenkins, 342
 Mitchell v. Forsyth, 781
 Mitchell v. W.T. Grant Co., 332
 Modern Equipment Co. v. Continental Wester Ins. Co., 708
 Monell v. NY City Dept. of Soc. Servs., 428
 Monroe v. Pape, 428
 Montana v. U.S., 847
Mullane v. Central Hanover Bank & Trust Co., 149
Naghiu v. Inter-Continental Hotels Group, Inc., 568
 National Development Co. v. Triad Holding Corp., 148
 National Equipment Rental, Ltd. v. Szukhent, 148
 Nemariam v. Fed. Dem. Repub. Of Ethiopia, 256
New Jersey Sports Productions, Inc. v. Don King Productions, Inc., 622
 New York Life Insurance Co. v. Dunlevy, 620
Nidds v. Schindler Elevator Corp., 544
 Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc., 541
 Nolan v. Transocean Air Lines, 285
 Northwest Airlines, Inc. v. Transport Workers Union of America, 293
 Norwood v. Kirkpatrick, 254
 Nudd v. Burrows, 718
 Olberding v. Illinois Central R.R., 62
 Olds v. Donnelly, 598
 One Beacon Ins. Co. v. JNB Storage, 585

One Lot Emerald Cut Stones v. U.S., 847
 Oregon Bureau of Labor and Industries v. U.S. West Comm. Inc., 225
 Ortiz v. Fiberboard, 647
 Osborn v. Bank of the United States, 162
Owen Equipment & Erection Corp. v. Kroger, 186, 585
Pacitti v. Macy's, 460
Parklane Hosiery Co., Inc. v. Shore, 861
 Parsons v. Bedford, 674
 Patt v. Family Health Systems, Inc., 498
 Pavlovich v. Sup. Ct. of Santa Clara County, 88
Pavon v. Swift Transportation Co., Inc., 44
 Pennie & Edmonds, LLP, In re, 414
Pennoyer v. Neff, 50
Pennsylvania Railroad Co. v. Chamberlain, 720
 Pennzoil Co. v. Texaco, Inc., 323
 Perrone v. G.M.A.C., 647
 Perry v. Globe Auto Recycling, Inc., 830
 Peterson v. Wilson, 742
 Philadelphia Newspaper, Inc. v. Hepps, 427
Phillips Petroleum Co. v. Shutts, 653
 Pierce v. Cook & Co., 805
 Pierce v. Underwood, 785
Piper Aircraft Co. v. Reyno, 245
PKWare v. Meade, 233, 240
 Plant v. Blazer Financial Servs., 566
 Poller v. Columbia Broadcasting System, Inc., 553
 Pollux Holding Ltd. v. Chase Manhattan Bank, 257
 Pope v. Barrett, 752
 Precision Specialty Metals, Inc. v. U.S., 415
 Provident Tradesmens Bank & Trust Co. v. Patterson, 604
Pryor v. Seyfarth, Shaw, Fairweather & Geraldson, 33
Puricelli v. CNA Insurance Co., 574
 Quantachrome Corp. v. Micromeritics Inst. Corp., 497
 Quercia v. United States, 718
 Ragan v. Merchants Transfer & Warehouse Co., 280
 Railroad Company v. Stout, 709
 Ravel Monegro v. Rosa, 255, 284

Raygor v. Regents of the Univ. of Minnesota, 213
 Reeves v. Sanderson Plumbing Prods., Inc., 729
 Reise v. Board of Regents of Univ. of Wisconsin, 782
 Revell v. Lidov, 88
 RIO Properties, Inc. v. RIO Int'l Interlink, 145
 Robb v. Norfolk & Western Ry., 522
 Ross v. Bernhard, 688
 Royal Bed & Spring Co., Inc. v. Famossul Industria, 283
Rudow v. Fogel, 852
 Rufo v. Inmates of Suffolk Cty. Jail, 345, 805
 Ruhrgas AG v. Marathon Oil Co., 228
 Rush v. Savchuk, 111
 Saadeh v. Farouki, 179
 Sala v. Amtrak, 648
Salve Regina College v. Russell, 296
 Samuel v. Herrick Memorial Hosp., 340
Santelli v. Electro-Motive, 468
 Saylor v. Lindsley, 522
 Scherer v. Equitable Life Assurance Society of the U.S., 181
 Schiavone v. Fortune, 455
Schlagenhauf v. Holder, 499
 School Asbestos Litigation, In re, 648
 Schultea v. Wood, 439
 Scott v. Shepherd, 370
 Sea Hawk Seafoods, Inc. v. Exxon Corp., 323
 Sealed Case (Medical records), In re, 782
 Sears, Roebuck & Co. v. Mackey, 770
Seawright v. Charter Furniture Rental, Inc., 406
Semtek Int'l Inc. v. Lockheed Martin Corp., 522, 565, 836
Shaffer v. Heitner, 98
 Shamrock Oil & Gas Corp. v. Sheets, 225
 Shankle v. B-G Maint. Mgmt. Of Colo., Inc., 892
 Shelley v. Kraemer, 639
 Shields v. Barrow, 599
 Singh v. Daimler-Benz AG, 179
 Skelly Oil Co. v. Phillips Petroleum Co., 171
 SMU Ass'n of Women's Law Students v. Wynne & Jaffe, 781
 Sniadach v. Family Finance Corp., 97, 331

- v. Wynne & Jaffe, 781
 Sniadach v. Family Finance Corp., 97, 331
Society of Separationists, Inc. v. Herman, 816
Sopha v. Owens-Corning Fiberglas Corp., 823
 Southern Co. Energy Marketing v. Virginia Elec. & Power Co., 598
 Spallone v. United States, 342
 Spencer v. U.S. Dist. Ct., 224
 Sphere Drake Ins. PLC v. Trisko, 43
 Sprague v. Ticonic National Bank, 345
 St. Paul Mercury Indemnity Co. v. Red Cab Co., 224
 State Farm Fire & Casualty Co. v. Tashire, 178, 610, 630
 State Farm Mutual Ins. Co. v. Campbell, 321
 Stewart Org., Inc. v. Ricoh Corp., 282
 Strawbridge v. Curtiss, 178
 Supreme Tribe of Ben-Hur v. Cauble, 663
 Swann v. Bowie, 752
 Swierkiewicz v. Sorema, N.A., 440
 Syngenta Crop Protection, Inc. v. Henson, 228
 Tango Music, LLC v. Deadquick Music, Inc., 179
Temple v. Synthes Corp., 596
 Textile Workers Union v. Lincoln Mills of Alabama, 290, 291
The Dartmouth Review v. Dartmouth College, 375
The Exxon Valdez, In re, 312
 The Holmes Group, Inc. v. Vornado Air Cir. Systems, Inc., 225
 The Schooner Exchange v. McFaddon, 178
 Thiel v. Southern Pac. Co., 710
 Theis Research Inc. v. Brown & Bain, 181
 Thompson v. Dep't. of Housing and Urban Dev., 466
 Title v. United States, 796
 Treinies v. Sunshine Mining Co., 842
 Tull v. United States, 699
 Turn Key Gaming, Inc. v. Oglala Sioux Tribe, 618
 Turney v. O'Toole, 857
Ty, Inc. v. The Jones Group, Inc., 334
United Mine Workers of America v. Gibbs, 183, 560
 U.S. v. Kimbell Foods, Inc., 290
 U.S. v. Mendoza, 871
 U.S. v. Philip Morris, 872
 U.S. v. Stauffer Chemical Co., 782
 U.S. v. Swiss American Bank, Ltd., 140
 U.S. v. Ziegler Bolt & Parts Co., 140
 U.S. v. Beggerly, 806
 U.S. v. Hatahley, 310
 U.S. v. United Mine Workers, 345
 Univ. of Tennessee v. Elliott, 858
 Van Dusen v. Barrack, 241, 784
 Vandebark v. Owen-Illinois Glass Co., 302
 Von Bulow, In re, 771
 Walgreen Co. v. Sara Creek Property Co., 341
 Walker v. City of Hutchinson, 154
 Walker v. Armco Steel Corp., 147, 280
 Weinstock v. Columbia University, 553
Weisgram v. Marley Co., 745
 West v. Conrail, 281
 Whitehead v. Foodmax of Mississippi, 415
 Will v. Michigan Dept. of State Police, 429
 Willis v. Dean Witter Reynolds, Inc., 891
 Wilson v. Garcia, 291
 Wilson v. Intercollegiate Conf. Athl. Ass'n, 225
 Wilson v. Quadramed Corp., 700
 Woodfield v. Bowman, 422
 Woodring v. Hall, 72
World-Wide Volkswagen Corp. v. Woodson, 75
 Wright v. Universal Marine Service Corp., 892
York Ford, Inc. v. Building Inspector & Zoning Admin. Of Saugus, 854
 Young v. New Haven Advocate, 88
 Zahn v. International Paper Co., 664
Zielinski v. Philadelphia Piers, Inc., 16

SUMMARY OF CONTENTS

PREFACE	v
ACKNOWLEDGMENTS	vii
TABLE OF CASES	xxv

CHAPTER 1. An Introduction to the Procedural System..... 1

Section

A. Where Can the Case Be Brought?	1
B. Getting the Case Started	12
C. Obtaining Information About the Case	20
D. Pretrial Procedures	32
E. The Trial	38
F. Repose (Claim and Issue Preclusion)	44

CHAPTER 2. Adjudicative Power: Personal Jurisdiction 49

Section

A. The Historical Background	50
B. The Modern Approach	63
Consent and Forum Selection Clauses	69
The Legacy of <i>International Shoe</i> : The Emergence of Long Arm Statutes and the General/Specific Jurisdiction Dichotomy	72
C. Power over Property	96
D. Transient Jurisdiction: Back to the Future	112
E. A New Jurisdictional Frontier: Cyberspace	122
F. Personal Jurisdiction of the Federal Courts	132
1. Statutory Delegation of Authority	132
2. Constitutional Limitations	134
G. Service of Process: Exercising Power and Providing Notice	141
1. Introduction	141
2. Service of Process Under the Federal Rules of Civil Procedure	142
3. The Constitutional Dimension	148

CHAPTER 3. Adjudicative Power: Subject Matter Jurisdiction..... 157

Section

A. Federal Questions	158
B. Diversity of Citizenship and Alienage	172
C. Supplemental Jurisdiction	182
D. Removal	215

CHAPTER 4.	Non-Constitutional Limitations on the Exercise of Adjudicative Power	231
Section		
A.	Venue	232
B.	Transfer of Venue.....	239
C.	Forum Non Conveniens	244
CHAPTER 5.	Choosing and Ascertaining the Applicable Law	259
Section		
A.	Choice of Law — The <i>Erie</i> Doctrine.....	259
B.	Federal Law in State Courts: The “Reverse-<i>Erie</i>” Problem.....	287
	<i>Erie</i> and the Federal General Common Law: A Postscript.....	289
C.	Ascertaining the Content of State Law	293
CHAPTER 6.	Judicial Remedies	303
Section		
A.	Monetary Relief.....	304
	1. Compensatory Damages	304
	2. Punitive Damages.....	312
	3. Enforcing Money Judgments	323
B.	Provisional Remedies	325
	1. Pre-Judgment Seizure	325
	2. Interim Injunctive Relief.....	333
C.	Injunctions and Declaratory Relief	341
	1. Permanent Injunctive Relief.....	341
	2. Enforcement of Injunctions.....	342
	3. Declaratory Judgments	343
D.	Fee Shifting, Costs, and Settlement Incentives	344
CHAPTER 7.	Pleading.....	367
Section		
A.	An Introductory Note on Substantive Law	368
B.	A Brief History of Pleading	369
	1. Common Law	369
	2. Equity.....	372
C.	Pleading Under the Federal Rules	373
	1. The Basic Rules	374
	2. Fraud.....	392
	3. Rule 11	404
D.	The Defendant’s Response.....	415
	1. Rule 12 Practice.....	417
	2. The Answer	419
	3. Counterclaims	427
E.	Reprise—Civil Rights Cases (Suits Against Governments and Officials).....	427

F.	Amendments	441
1.	The Basics-Rule 15(a).....	441
2.	Relation Back-Rules 15(b) and 15(c).....	446
CHAPTER 8. Discovery		457
Section		
A.	The Scope of Discovery	459
1.	Relevance.....	459
2.	Privileges.....	466
3.	Work Product.....	472
4.	Expert Information.....	482
5.	Protective Orders.....	490
6.	The Costs of Discovery	491
B.	Discovery in Action	492
1.	Disclosure	493
2.	Depositions.....	494
3.	Interrogatories and Document Requests	497
4.	Mental and Physical Examinations	499
C.	Cost Shifting and Sanctions	510
CHAPTER 9. Disposition Without Trial		521
Section		
A.	Default and Pre-Trial Dismissals	521
1.	Default.....	521
2.	Involuntary Dismissal	522
3.	Voluntary Dismissals	523
4.	Settlement	524
B.	Summary Judgment	525
1.	An Introductory Note on Burden of Proof	526
2.	The Movant's Showing.....	529
3.	The Nonmovant's Response	543
CHAPTER 10. Joinder of Claims and Parties		557
Section		
A.	Claim Joinder (in a Two-Party Setting)	559
1.	By Plaintiff.....	559
2.	By Defendant (Counterclaims).....	561
3.	Cross-Claims.....	568
B.	Real Party in Interest	568
C.	Joinder of Parties	574
D.	Third-Party Practice	580
E.	More Complex Patterns	584
F.	Mandatory Joinder of Parties	595
G.	Intervention	610
H.	Interpleader	620
I.	Class Actions	631
1.	Introduction	631
2.	Class Actions and Due Process	633

3.	The Structure of Rule 23.....	639
	Notice in Class Actions Under Rule 23	649
4.	Choice of Law and Jurisdiction.....	653
	Subject Matter Jurisdiction in Class Actions.....	663
5.	The Class Action Fairness Act of 2005.....	665
6.	Settlement of Class Actions	667
CHAPTER 11. Trials		673
Section		
A.	The Right to Trial by Jury	673
1.	The Merger of Law and Equity.....	675
2.	New Statutory Rights.....	689
3.	The Jury's Role	701
4.	Selecting the Jury	710
B.	Control of the Decisionmaking Process.....	715
1.	The Phases of a Trial.....	716
2.	Procedural Controls	717
3.	Taking a Case from the Jury	719
4.	New Trials	733
5.	Procedures Governing Post-Verdict Motions.....	744
6.	Excessive Verdicts.....	752
7.	A Detour: Judicial Review of Judicial Factfinding	764
CHAPTER 12. Appeals		767
Section		
A.	The Timing of Appeals	768
1.	The Final Decision Rule and its Exceptions	769
2.	The Collateral Order Doctrine.....	777
B.	Standards for and Limitations on Review.....	784
C.	Relief from Judgment —Rule 60(b)	796
D.	Collateral Attack (vs. Appeal).....	807
CHAPTER 13. The Preclusive Effect of Adjudication on Subsequent Litigation.....		815
Section		
A.	General Introduction	815
B.	<i>Stare Decisis</i> and the Law of the Case	816
C.	Claim Preclusion (<i>Res Judicata</i>)	823
D.	Issue Preclusion (Collateral Estoppel)	843
1.	The Essential Elements	844
a)	Identity	844
b)	Actually Litigated and Unambiguously Determined	848
c)	Necessarily Decided.....	852
2.	Parties Subject to Issue Preclusion: The Death of Mutuality	860
CHAPTER 14. Alternatives to Litigation — ADR		875
Section		

A.	General Overview.....	875
B.	A Comparative Assessment of ADR and Litigation: Bouquets, Bats and Stats.....	881
C.	The Future — Cyber-ADR?	897
INDEX		903

TABLE OF CONTENTS

PREFACE	v
ACKNOWLEDGMENTS	vii
TABLE OF CASES	xxv

CHAPTER 1. An Introduction to the Procedural System.....1

Section

A.	Where Can the Case Be Brought?	1
1.	Structure of the Judicial System	2
2.	Applying the Concepts	3
	Decker v. Circus Circus Hotel	3
	Mas v. Perry	10
B.	Getting the Case Started	12
1.	The Complaint	13
	Lewis v. U.S. Slicing Machine Co.	13
2.	The Answer: Pre-Answer Motions	15
	Zielinski v. Philadelphia Piers, Inc.	16
C.	Obtaining Information About the Case	20
	Coleman v. American Red Cross	21
D.	Pretrial Procedures	32
	Pryor v. Seyfarth, Shaw, Fairweather & Geraldson	33
E.	The Trial	38
	Lavender v. Kurn	38
F.	Repose (Claim and Issue Preclusion)	44
	Pavon v. Swift Transportation Co., Inc.	44

CHAPTER 2. Adjudicative Power: Personal Jurisdiction.....49

Section

A.	The Historical Background	50
	Pennoyer v. Neff	50
	Milliken v. Meyer	59
	Grace v. McArthur	59
	Creeping Pennoyerism: The Evolving Meaning of Presence and Consent	60
	Hess v. Pawloski	61
	Olberding v. Illinois Central R.R.	62
B.	The Modern Approach	63
	International Shoe Co. v. State of Washington	63
	Consent and Forum Selection Clauses	69
	M/S Bremen v. Zapata Off-Shore Co.	69
	Carnival Cruise Lines, Inc. v. Shute	70