

CIVIL PROCEDURE

SECOND EDITION

THOMAS D. ROWE, JR.
SUZANNA SHERRY
JAY TIDMARSH

FOUNDATION PRESS

75TH ANNIVERSARY

CIVIL PROCEDURE

SECOND EDITION

by

THOMAS D. ROWE, JR.

Elvin R. Latty Professor of Law Emeritus
Duke University School of Law

SUZANNA SHERRY

Herman O. Loewenstein Professor of Law
Vanderbilt University Law School

JAY TIDMARSH

Professor of Law
Notre Dame Law School

FOUNDATION PRESS

2008

This publication was created 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. The publisher is 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.

Nothing contained herein is intended or written to be used for the purposes of 1) avoiding penalties imposed under the federal Internal Revenue Code, or 2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

© 2004 FOUNDATION PRESS

© 2008 By THOMSON/FOUNDATION PRESS

395 Hudson Street
New York, NY 10014
Phone Toll Free 1-877-888-1330
Fax (212) 367-6799
foundation-press.com

Printed in the United States of America

ISBN 978-1-59941-393-8



TEXT IS PRINTED ON 10% POST
CONSUMER RECYCLED PAPER



UNIVERSITY CASEBOOK SERIES

EDITORIAL BOARD

ROBERT C. CLARK

DIRECTING EDITOR

Distinguished Service Professor and Austin Wakeman Scott
Professor of Law and Former Dean
Harvard University

DANIEL A. FARBER

Sho Sato Professor of Law and Director, Environmental Law Program
University of California at Berkeley

OWEN M. FISS

Sterling Professor of Law
Yale University

SAMUEL ISSACHAROFF

Bonnie and Richard Reiss Professor of Constitutional Law
New York University

HERMA HILL KAY

Barbara Nachtrieb Armstrong Professor of Law and
Former Dean of the School of Law
University of California, Berkeley

HAROLD HONGJU KOH

Dean & Gerard C. Bernice Latrobe Smith Professor of
International Law
Yale University

SAUL LEVMORE

Dean and William B. Graham Professor of Law
University of Chicago

THOMAS W. MERRILL

Charles Keller Beekman Professor of Law
Columbia University

ROBERT L. RABIN

A. Calder Mackay Professor of Law
Stanford University

CAROL M. ROSE

Gordon Bradford Tweedy Professor of Law & Organization, Emerita
Yale University
Lohse Chair in Water and Natural Resources
University of Arizona

DAVID L. SHAPIRO

Professor of Law, Emeritus
Harvard University

KATHLEEN M. SULLIVAN

Stanley Morrison Professor of Law and
Former Dean of the School of Law
Stanford University

To Mom and Susan

— T.R.

To Hannah and Joshua

— S.S.

To Chris, David, Kevin, and Clare

— J.T.

PREFACE TO THE SECOND EDITION

Since the publication of the first edition in 2004, much has changed in the world of Civil Procedure. Over the last four years, the Supreme Court decided a number of significant cases that resolved circuit splits, clarified ambiguities, or altered legal doctrine. Congress enacted the Class Action Fairness Act (CAFA). New Rules provisions were adopted governing the discovery of electronically stored information. And in December 2007, the restyled Federal Rules of Civil Procedure took effect, changing the language of nearly every Rule. Lower courts, of course, have continued to issue decisions interpreting the old and new Rules and Supreme Court precedent.

We take account of all these changes in this new edition. We include five new Supreme Court cases as principal cases, and discuss eight others in greater or lesser detail in the notes. We note substantive and stylistic changes in the Rules, and include primary and secondary material on CAFA. When judicial opinions quote outdated language from the pre-2007 Rules, we remark on the changes. In addition, preparing a second edition has given us the opportunity to replace some lower-court cases with more recent, and more teachable, ones. This edition includes six new principal cases from the lower federal courts — including one decided as recently as January 2008 — and dozens more are discussed in the notes.

We have also tried to improve on the first edition by editing our own text to make it crisper, more informative, and more readable. In this we were aided by our own students and by other students and professors using the book, who pointed out errors, ambiguities, and infelicitous phrasing. We are grateful for their assistance and hope that users will continue to correspond with us. We owe thanks to John Bloomquist at Foundation Press for his continued support of this project. We also thank Ann McGuigan Jones for her wonderful proofreading of the manuscript. Finally, we continue to be inspired by our students, whose intelligence, intellectual curiosity, and enthusiasm drive us to become ever better teachers and authors.

*Durham, North Carolina
Nashville, Tennessee
Notre Dame, Indiana
March, 2008*

PREFACE TO THE FIRST EDITION

As is often the case, this book had its source in the authors' desire to provide a new perspective on Civil Procedure. We wanted to write a book that was short and intellectually sophisticated, exploring both doctrinal and theoretical themes in a book of manageable length. We have therefore tried to combine — both in the choice and editing of cases and in our own text — depth, brevity, and clarity. We also aimed for adaptability, adding modularity to our structure to allow teachers to pick and choose what to teach and what to omit. The reader can judge whether we have accomplished our goals.

A word on the cases and other non-original material: We follow the ordinary convention of signaling substantive changes or omissions with brackets and ellipses. But we have omitted citations and footnotes without notice, and we have also added or altered citations and non-emphatic italicization within cases to conform to modern academic usage. Readers should therefore not assume that the materials as printed are identical in form to the originals.

Finally, this book could not have been written without the help of many other people. We would especially like to thank our deans — Katharine Bartlett at Duke, Kent Syverud at Vanderbilt, and Patricia O'Hara at Notre Dame — for providing both tangible and intangible encouragement and support. Steve Errick and the members of the editorial board at Foundation brought the authors together and helped make the project a reality. Six Vanderbilt law students tirelessly and conscientiously citechecked, proofread, and generally kept us honest and consistent: Christine Anthony, Amy Bohannon, Charles Canter, Meredith Capps, Brendan McLaughlin, and Liza Wirtz. Jesse Schomer at Notre Dame provided additional research assistance. We are also grateful to the department of Information Technology Services and Solutions at the Vanderbilt University Law School, especially Michael Curatolo, who set up a Web-based document library for the three of us to share, taught us (and retaught us) to use it, and responded to all our emergency calls for help. Our assistants — Maya Jackson at Duke, Janelle Steele at Vanderbilt, Debbie Sumption and Debbie Blasko at Notre Dame, and Peggie Flynn at Harvard — took charge of the voluminous correspondence inevitably generated by three authors at different schools,

made multiple copies of multiple drafts, and generally provided on-the-spot assistance. Professor Rowe would also like to thank his mother-in-law, Senior Ninth Circuit Judge Betty Fletcher, for editorial suggestions on Chapter 6, Appeals. Finally, we thank our students at Duke, Harvard, Michigan, Minnesota, Notre Dame, and Vanderbilt for providing the inspiration for this book and for keeping us on our toes.

*Durham, North Carolina
Nashville, Tennessee
Notre Dame, Indiana
May, 2004*

ACKNOWLEDGMENTS

We acknowledge with thanks the copyright owners who have graciously granted us permission to reprint excerpts from the following works:

AMERICAN LAW INSTITUTE/UNIDROIT, *PRINCIPLES OF TRANSNATIONAL PROCEDURE*, copyright © 2006, by the American Law Institute.

AMERICAN LAW INSTITUTE, *RESTATEMENT (SECOND) OF JUDGMENTS*, copyright © 1982, by the American Law Institute.

Robert G. Bone, *The Process of Making Process: Court Rulemaking, Democratic Legitimacy, and Procedural Efficacy*, 87 GEO. L.J. 887. Reprinted with permission of the publisher, Georgetown Law Journal copyright © 1999.

Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281, copyright © 1976, by permission of Antonia Chayes and by the Harvard Law Review Association.

CHARLES E. CLARK, *HANDBOOK OF THE LAW OF CODE PLEADING* (2d ed.) copyright © 1947. Reprinted with permission of Thomson West.

Donald L. Doernberg, *There's No Reason for It; It's Just Our Policy: Why the Well-Pleaded Complaint Rule Sabotages the Purposes of Federal Question Jurisdiction*, 38 HASTINGS L.J. 597, copyright © 1987 by University of California, Hastings College of Law. Reprinted from HASTINGS LAW JOURNAL, Volume 38, Number 4, April 1987, 597, and by permission of the author.

John Hart Ely, *The Irrepressible Myth of Erie*, 87 HARV. L. REV. 693, copyright © 1974, by the Harvard Law Review Association.

Christopher M. Fairman, *Heightened Pleading*, 81 TEX. L. REV. 551, copyright © 2002. Reprinted by permission of the Texas Law Review Association and the author.

Owen M. Fiss, *Against Settlement*, 93 YALE L.J. 1073. Reprinted by permission of The Yale Journal Company and Fred B. Rothman & Company, from *The Yale Law Journal*, copyright © 1984, Vol. 93, pages 1073-90.

Lawrence Friedman, *Some Notes on the Civil Jury in Historical Perspective*, 48 DE PAUL L. REV. 201, copyright © 1998, by the De Paul Law Review.

Lon L. Fuller, *The Forms and Limits of Adjudication*, 92 HARV. L. REV. 353, copyright © 1978, by the Harvard Law Review Association.

Geoffrey C. Hazard, Jr., *Discovery and the Role of the Judge in Civil Law Jurisdictions*, Volume 73, Number 4, NOTRE DAME L. REV. (May 1998) 1017. Reprinted with permission © by *Notre Dame Law Review*, University of Notre Dame.*

STEPHAN LANDSMAN, READINGS ON ADVERSARIAL JUSTICE: THE AMERICAN APPROACH TO LITIGATION copyright © 1988. Reprinted with permission of Thomson West.

John H. Langbein, *The German Advantage in Civil Procedure*, 52 U. CHI. L. REV. 823, copyright © 1985, by the University of Chicago Law Review.

JULIUS BYRON LEVINE, DISCOVERY copyright © 1982. By permission of Oxford University Press.

Carrie Menkel-Meadow, *Whose Dispute Is It Anyway? A Philosophical and Democratic Defense of Settlement (In Some Cases)*, 83 GEO. L.J. 2663. Reprinted with permission of the publisher, Georgetown Law Journal copyright © 1995.

Burt Neuborne, *The Myth of Parity*, 90 HARV. L. REV. 1105, copyright © 1977, by the Harvard Law Review Association.

Wendy Collins Perdue, *Personal Jurisdiction and the Beetle in the Box*, 32 B.C. L. REV. 529, copyright © 1991, reprinted by permission of the author.

EDWARD A. PURCELL, JR., BRANDEIS AND THE PROGRESSIVE CONSTITUTION, copyright © 2000, by Yale University Press. Reprinted by permission.

Judith Resnik, *Managerial Judges*, 92 HARV. L. REV. 353, copyright © 1982, by the Harvard Law Review Association.

LEONARD L. RISKIN & JAMES E. WESTBROOK, DISPUTE RESOLUTION AND LAWYERS (abridged 2d ed.) copyright © 1998. Reprinted with permission of Thomson West.

William W. Schwarzer, *The Federal Rules, the Adversary Process, and Discovery Reform*, 50 U. PITT. L. REV. 703 copyright © 1989. Reprinted with permission by the University of Pittsburgh Law Review.

David L. Shapiro, *Class Actions: The Class as Party and Client*, Volume 73, Number 4, NOTRE DAME L. REV. (May 1998) 913. Reprinted with permission © by *Notre Dame Law Review*, University of Notre Dame.*

Stephen N. Subrin, *Discovery in Global Perspective: Are We Nuts?*, 52 DE PAUL L. REV. 299, copyright © 2002, by the De Paul Law Review.

* Foundation Press and the authors bear responsibility for any errors which have occurred in reprinting or editing.

TABLE OF CASES

Principal authorities appear in bold typeface.
References are to page number.

- | | |
|--|---|
| <p><i>Abrazinski v. DuBois</i>, 876 F. Supp. 313 (D. Mass. 1995), 74</p> <p>Ackermann v. United States, 340 U.S. 193 (1950), 297</p> <p>Acuna v. Brown & Root Inc., 200 F.3d 335 (5th Cir. 2000), 191</p> <p><i>Adam v. Saenger</i>, 303 U.S. 59 (1938), 491</p> <p><i>Adams v. Robertson</i>, 520 U.S. 83 (1997), 668</p> <p><i>Adickes v. S.H. Kress & Co.</i>, 398 U.S. 144 (1970), 264</p> <p>“Agent Orange” Prod. Liab. Litig., In re, 821 F.2d 139 (2d Cir. 1987), 166</p> <p><i>Air Crash Disaster near Roselawn, Indiana</i> October 31, 1994, In re, 172 F.R.D. 295 (N.D. Ill. 1997), 126</p> <p><i>Air Measurement Techs., Inc. v. Akin Gump Strauss Hauer & Feld, L.L.P.</i>, 504 F.3d 1262 (5th Cir. 2007), 547</p> <p><i>Aldinger v. Howard</i>, 427 U.S. 1 (1976), 567, 568, 573</p> <p>Alexander v. Fulton County, 207 F.3d 1303 (11th Cir. 2000), 371</p> <p><i>Alicea-Hernandez v. Catholic Bishop of Chicago</i>, 320 F.3d 698 (7th Cir. 2003), 69</p> <p><i>Allison v. Citgo Petroleum Corp.</i>, 151 F.3d 402 (5th Cir. 1998), 652</p> <p><i>Alumax Mills Prod., Inc. v. Cong. Fin. Corp.</i>, 912 F.2d 996 (8th Cir. 1990), 387</p> <p><i>Alyeska Pipeline Serv. Co. v. Wilderness Society</i>, 421 U.S. 240 (1975), 210</p> <p>Amchem Prods., Inc. v. Windsor, 521 U.S. 591 (1997), 685, 691, 697</p> <p><i>Am. Fire & Cas. Co. v. Finn</i>, 341 U.S. 6 (1951), 585</p> <p><i>Am. Life Ins. Co. v. Stewart</i>, 300 U.S. 203 (1937), 248</p> <p><i>Am. Med. Sys., Inc.</i>, In re, 75 F.3d 1069 (6th Cir. 1996), 661</p> | <p><i>Am. Nat’l Red Cross v. S.G.</i>, 505 U.S. 247 (1992), 531</p> <p><i>Am. Nurses’ Ass’n v. Illinois</i>, 783 F.2d 716 (7th Cir. 1986), 57, 58</p> <p><i>Am. Well Works Co. v. Layne & Bowler Co.</i>, 241 U.S. 257, 260 (1916), 534, 546</p> <p><i>Amgen Inc. v. Hoechst Marion Roussel, Inc.</i>, 190 F.R.D. 287 (D. Mass. 2000), 153</p> <p><i>Anderson v. City of Bessemer City</i>, 470 U.S. 564 (1985), 294, 295</p> <p><i>Anderson v. Liberty Lobby, Inc.</i>, 477 U.S. 242 (1986), 260, 263, 265, 269, 279, 281</p> <p><i>Antitrust Grand Jury</i>, In re, 805 F.2d 155 (6th Cir. 1986), 149</p> <p><i>Armstrong v. Pomerance</i>, 423 A.2d 174 (Del. 1980), 433</p> <p><i>Arthur v. Maersk, Inc.</i>, 434 F.3d 196 (3d Cir. 2006), 86</p> <p>Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102 (1987), 453, 485, 487</p> <p>Asher v. Unarco Material Handling, Inc., 2008 WL 130858 (E.D. Ky. Jan. 10, 2008), 382</p> <p><i>Associated Gen. Contractors of Cal., Inc. v. Carpenters</i>, 459 U.S. 519 (1983), 49</p> <p>Atlantic Pipeline Corp., In re, 304 F.3d 135 (1st Cir. 2002), 216</p> <p><i>Atlantis Dev. Corp. v. United States</i>, 379 F.2d 818 (5th Cir. 1967), 402</p> <p><i>Avista Mgmt., Inc. v. Wausau Underwriters Ins. Co.</i>, 2006 WL 1562246 (M.D. Fla. June 6, 2006), 161</p> <p><i>Baby Neal ex rel. Kanter v. Casey</i>, 43 F.3d 48 (3d Cir. 1994), 648</p> <p><i>Baker v. Gold Seal Liquors, Inc.</i>, 417 U.S. 467 (1974), 368</p> |
|--|---|

- Baker v. John Morrell & Co., 266 F. Supp. 2d 909 (N.D. Iowa 2003), 58
- Baltimore & Ohio R. Co. v. Baugh, 149 U.S. 368, 401 (1893), 593
- Bank of the United States v. Planter's Bank, 22 U.S. (9 Wheat.) 904 (1824), 531
- Barone v. Rich Bros. Interstate Display Fireworks Co., 25 F.3d 610 (8th Cir. 1994), 461
- Batson v. Kentucky, 476 U.S. 79 (1986), 251
- Beacon Theatres, Inc. v. Westover, 359 U.S. 500 (1959), 235, 248, 312, 340, 345
- Becnel v. KPMG LLP, 387 F. Supp. 2d 984 (W.D. Ark. 2005), 547
- Bell Atl. Corp. v. AT&T Corp., 339 F.3d 294 (5th Cir. 2003), 653
- Bell Atl. Corp. v. Twombly**, 550 U.S. —, 127 S. Ct. 1955 (2007), **45**
- Beneficial Nat'l Bank v. Anderson, 539 U.S. 1 (2003), 585
- Bensusan Rest. Corp. v. King, 937 F. Supp. 295 (S.D.N.Y. 1996), *aff'd* 126 F.3d 25 (2d Cir. 1997), 465
- Bergeron v. Nw. Publ'ns Inc., 165 F.R.D. 518 (D. Minn. 1996), 97
- Berkovitz v. Home Box Office, Inc., 89 F.3d 24 (1st Cir. 1996), 272
- Betzel v. State Farm Lloyds, 480 F.3d 704 (5th Cir. 2007), 189
- Bird v. Parsons**, 289 F.3d 865 (6th Cir. 2002), **470**
- Black & White Taxicab Co. v. Brown & Yellow Taxicab Co., 276 U.S. 518 (1928), 591
- Blair v. Equifax Check Serv., Inc., 181 F.3d 832 (7th Cir. 1999), 662
- Blankenhorn v. City of Orange, 485 F.3d 463 (9th Cir. 2007), 272
- Blonder-Tongue Labs., Inc. v. Univ. of Ill. Found., 402 U.S. 313 (1971), 336, 337, 342
- BMW of N. Am., Inc. v. Gore, 517 U.S. 559 (1996), 562
- Bomar v. Keyes, 162 F.2d 136 (2d Cir. 1947), 604, 621
- Boston & Montana Consolidated Copper & Silver Mining Co. v. Montana Ore Purchasing Co., 188 U.S. 632 (1903), 529
- Bowers v. Nat'l Collegiate Athletic Ass'n, 475 F.3d 524 (3d Cir. 2007), 117
- Boyle v. United Techs. Corp., 487 U.S. 500 (1988), 599
- Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972), 492
- Breslin v. Brainard, 2002 WL 31513429 (E.D. Pa. Nov. 1, 2002), 196
- Bridgeport Music, Inc. v. Still N The Water Pub., 327 F.3d 472 (6th Cir. 2003), 462
- Brown v. Allen, 344 U.S. 443 (1953), 320
- Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985), 451, 456, 459, 464, 465, 468
- Burlington N. R. Co. v. Woods, 480 U.S. 1 (1987), 623
- Burnham v. Superior Court**, 495 U.S. 604 (1990), **477**
- Bus. Guides, Inc. v. Chromatic Communic'ns Enters., Inc., 498 U.S. 533 (1991), 97, 98
- Byrd v. Blue Ridge Rural Elec. Coop., Inc., 356 U.S. 525 (1958), 605, 607, 611, 627, 629
- Cable News Network L.P. v. cnnnews.com, 162 F. Supp. 2d 484 (E.D. Va. 2001), *aff'd in relevant part*, 56 Fed. App'x 599 (4th Cir. 2003), 433
- Cadle Co. v. Schlichtmann, Conway, Crowley & Hugo, 338 F.3d 19 (1st Cir. 2003), 403
- Calder v. Jones, 465 U.S. 783 (1984), 409, 451
- Canada Life Assurance Co. v. Converium Ruckversicherung (Deutschland) AG, 335 F.3d 52 (2d Cir. 2003), 548
- Carden v. Arkoma Assocs., 494 U.S. 185 (1990), 557
- Carlson v. Green, 446 U.S. 14 (1980), 240
- Carnival Cruise Lines, Inc. v. Shute**, 499 U.S. 585 (1991), **491**
- Carolina Power & Light Co. v. Uranex, 451 F. Supp. 1044 (N.D. Cal. 1977), 434
- Carter v. United States**, 333 F.3d 791 (7th Cir. 2003), **75**
- Carter v. Jury Comm'n of Greene County, 396 U.S. 320 (1970), 252
- Casas Office Mach., Inc. v. Mita Copystar Am., Inc., 42 F.3d 668 (1st Cir. 1995), 583
- Cascade Natural Gas Corp. v. El Paso Natural Gas Corp., 386 U.S. 129 (1967), 401
- Castano v. Am. Tobacco Co., 84 F.3d 734 (5th Cir. 1996), 653, 661, 662, 691
- Caterpillar Inc. v. Lewis, 519 U.S. 61 (1996), 554
- Catrett v. Johns-Manville Sales Corp., 826 F.2d 33 (D.C. Cir. 1987), 263

- Celotex Corp. v. Catrett**, 477 U.S. 317 (1986), **258**, 279
- Chalick v. Cooper Hosp./Univ. Med. Ctr., 192 F.R.D. 145 (D.N.J. 2000), 116
- Chambers v. NASCO, Inc., 501 U.S. 32 (1991), 98, 161
- Chase Nat'l Bank v. Norwalk, 291 U.S. 431 (1934), 346, 354
- Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry**, 494 U.S. 558 (1990), **233**
- Checuti v. Conrail, 291 F. Supp. 2d 664 (N.D. Ohio 2003), 81
- Christiansburg Garment Co. v. EEOC, 432 U.S. 412 (1978), 215
- Christianson v. Colt Indus. Operating Corp., 486 U.S. 800 (1988), 351
- Cimino v. Raymark Indus., Inc., 751 F. Supp. 649 (E.D. Tex. 1990), 695
- Cimino v. Raymark Indis., Inc.**, 151 F.3d 297 (5th Cir. 1998), **692**
- Circuit City Stores v. Adams, 532 U.S. 105 (2001), 225
- Citicorp Leasing, Inc. v. United Am. Funding, Inc., 2004 WL 102761 (S.D.N.Y. Jan. 21, 2004), 510
- City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999), 240, 241
- Clark v. Paul Gray, Inc., 306 U.S. 583 (1939), 570, 573, 575
- Clark v. Milam, 152 F.R.D. 66 (S.D. W. Va. 1993), 76
- Clearfield Trust Co. v. United States, 318 U.S. 363 (1943), 599
- Cleveland v. Caplaw Enters., 448 F.3d 518 (2d Cir. 2006), 71
- Cobb v. Delta Exps., Inc., 186 F.3d 675 (5th Cir. 1999), 583
- Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949), 604
- Cohen v. Office Depot, Inc., 184 F.3d 1292 (11th Cir. 1999), *vacated in part on reh'g on other grounds*, 204 F.3d 1069 (11th Cir. 2000), 623
- Colombia, S.A. v. Hall, 466 U.S. 408 (1984), 473
- Comm'r v. Sunnen, 333 U.S. 591 (1948), 335
- Commercial Money Ctr., Inc. v. Ill. Union Ins. Co., 508 F.3d 327 (6th Cir. 2007), 81
- Cnty. Dental Servs. v. Tani, 282 F.3d 1164 (9th Cir. 2002), 303
- CompuServe, Inc. v. Patterson, 89 F.3d 1257 (6th Cir. 1996), 465, 474
- Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust, 508 U.S. 602 (1993), 296
- Cone v. W. Va. Pulp & Paper Co., 330 U.S. 212 (1947), 288, 289
- Conley v. Gibson**, 355 U.S. 41 (1957), **35**, 41, 42, 48, 54, 68
- Connecticut v. Doeher, 501 U.S. 1 (1991), 505
- Cooper v. Fed. Reserve Bank of Richmond, 467 U.S. 867 (1984), 688
- Cooter & Gell v. Hartmarx Corp., 496 U.S. 384 (1990), 94, 97
- Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984), 100
- Corvello v. New England Gas Co., 243 F.R.D. 28 (D.R.I. 2007), 153
- County of Suffolk v. Long Island Lighting Co., 907 F.2d 1295 (2d Cir. 1990), 669
- Crawford-El v. Britton, 523 U.S. 574 (1998), 77
- Crossman v. Marcoccio, 806 F.2d 329 (1st Cir. 1986), 215
- Cuba v. Sabbatino, 376 U.S. 398 (1964), 599
- Cummings v. Gen. Motors Corp., 365 F.3d 944 (2004), 288
- Curran v. Price, 150 F.R.D. 86 (D. Md. 1993), 96
- Curtis v. Loether, 415 U.S. 189 (1974), 238
- Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414 (9th Cir. 1997), 473
- Daggett v. Comm'n on Gov't Ethics and Election Practices, 172 F.3d 104 (1st Cir. 1999), 401
- Dagnello v. Long Island R. Co., 289 F.2d 797 (2d Cir. 1961), 627
- Dairy Queen, Inc. v. Wood, 369 U.S. 469 (1962), 248
- Damsky v. Zavatt, 289 F.2d 46 (2d Cir. 1961), 241
- Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579 (1993), 154
- David v. Caterpillar, Inc., 324 F.3d 851 (7th Cir. 2003), 202
- Day v. McDonough, 547 U.S. 198 (2006), 77
- Dehmlow v. Austin Fireworks, 963 F.2d 941 (7th Cir. 1992), 462
- Del Vecchio v. Conseco, Inc.**, 230 F.3d 974 (7th Cir. 2000), **558**
- Del Ponte v. Universal City Dev. Partners, Ltd., 2008 WL 169358 (S.D.N.Y. Jan. 16, 2008), 476
- Delta Air Lines v. August, 450 U.S. 346 (1981), 215

- Desert Empire Bank v. Ins. Co. of N. Am., 623 F.2d 1371 (9th Cir. 1980), 375
- Dice v. Akron, Canton & Youngstown R.R., 342 U.S. 359 (1952), 631
- Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prods. Liab. Litig., In re, 431 F.3d 141 (3d Cir. 2005), 688
- Dillard v. Baldwin County Comm'rs, 225 F.3d 1271 (11th Cir. 2000), 402
- Dimick v. Schiedt, 293 U.S. 474 (1935), 286
- Dist. of Columbia v. Tri County Indus., Inc., 531 U.S. 287 (2001), 292
- Diversified Indus., Inc. v. Meredith, 572 F.2d 596 (8th Cir. 1978), 149
- DLC Mgmt. Corp. v. Town of Hyde Park, 163 F.3d 124 (2d Cir. 1998), 287
- Donaldson v. United States, 400 U.S. 517 (1971), 401
- Dubicz v. Commonwealth Edison Co.**, 377 F.3d 787 (7th Cir. 2004), 78
- Edmonson v. Leesville Concrete Co.**, 500 U.S. 614 (1991), 251
- EEOC v. Luce, Forward, Hamilton & Scripps, 345 F.3d 742 (9th Cir. 2003), 225
- Ehrenhaus v. Reynolds, 965 F.2d 916 (10th Cir. 1992), 162
- Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974), 669
- Elecs. Boutique Holding Corp. v. Zuccarini, 2001 WL 83388 (E.D. Pa. Jan. 25, 2001), 66
- Empire HealthChoice Assurance, Inc. v. McVeigh, 547 U.S. 677 (2006), 547, 548
- Epstein v. MCA, Inc., 179 F.3d 641 (9th Cir. 1999), 686
- Erickson v. Pardus, 551 U.S. —, 127 S. Ct. 2197 (2007), 56, 57
- Erie R.R. v. Tompkins**, 304 U.S. 64 (1938), 524, 590, 600, 602, 603, 604, 606, 610, 614, 619, 625
- Esfeld v. Costa Crociere, 289 F.3d 1300 (11th Cir. 2002), 607
- Euromarket Designs, Inc. v. Crate & Barrel Ltd., 96 F. Supp. 2d 824 (N.D. Ill. 2000), 469
- Ex parte Peterson, 253 U.S. 300 (1920), 222
- Exxon Mobil Corp. v. Allapattah Servs., Inc.**, 545 U.S. 546 (2005), 570, 670, 671, 681
- Falcon v. Gen. Tel. Co. of the Southwest, 457 U.S. 147 (1982), 649, 704
- Ferens v. John Deere Co., 494 U.S. 516 (1990), 637
- Finley v. United States, 490 U.S. 545 (1989), 569, 570, 572, 573
- First Nat'l Bank of Pulaski v. Curry, 301 F.3d 456 (6th Cir. 2002), 584
- Fisher v. United States, 425 U.S. 391 (1976), 149
- FleetBoston Fin. Corp. v. fleetbostonfinancial.com, 138 F. Supp. 2d 121 (D. Mass. 2001), 433
- Foman v. Davis, 371 U.S. 178 (1962), 81
- Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 103 F.3d 1007 (D.C. Cir. 1997), 126
- Franchise Tax Board v. Constr. Laborers Vacation Trust, 463 U.S. 1 (1983), 535, 536
- Frantz v. United States Powerlifting Fed'n**, 836 F.2d 1063 (7th Cir. 1987), 99
- Fuentes v. Shevin, 407 U.S. 67 (1972), 505
- Ga. Ports Auth. v. Construzioni Meccaniche Industriali Genovesi, 119 F.R.D. 693 (S.D. Ga.1988), 383, 384, 386
- Ga. Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975), 505
- Galloway v. United States, 319 U.S. 372 (1943), 281, 341
- Gardynski-Leschuck v. Ford Motor Co., 142 F.3d 955 (7th Cir. 1998), 558, 560
- Gasparini v. Ctr. for Humanities, Inc.**, 518 U.S. 415 (1996), 286, 623
- Gator.com Corp. v. L.L. Bean, Inc., 341 F.3d 1072 (9th Cir. 2003), *vacated as moot*, 398 F.3d 1125 (9th Cir. 2005), 476
- Gavigan v. Walt Disney World Co., 646 F. Supp. 786 (E.D. Pa. 1986), 476
- Geiserman v. MacDonald, 893 F.2d 787 (5th Cir. 1990), 189
- Gen. Elec. Co. v. Wabash Appliance Corp., 304 U.S. 364 (1938), 247
- Gilbert v. Johnston, 127 F.R.D. 145 (N.D. Ill. 1989), 73
- Gleklen v. Democratic Cong. Campaign Comm., 199 F.3d 1365 (D.C. Cir. 2000), 272
- Goldlawr, Inc. v. Heiman, 369 U.S. 463 (1962), 511
- Gonsalves v. City of Bedford**, 168 F.R.D. 102 (D. Mass. 1996), 167
- Goodlett v. Kalishek, 223 F.3d 32 (2d Cir. 2000), 638

- Goodman v. Praxair, Inc., 494 F.3d 458 (4th Cir. 2007), 85, 86
- Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.**, 545 U.S. 308 (2005), **542**
- Grace v. MacArthur, 170 F. Supp. 442 (E.D. Ark. 1959), 490
- Granfinanciera, S.A. v. Nordberg, 492 U.S. 33 (1989), 235, 240, 242, 244, 247
- Gratz v. Bollinger, 539 U.S. 244 (2003), 401
- Greene v. Lindsey, 456 U.S. 444 (1982), 504
- Greenleaf v. Garlock, Inc., 174 F.3d 352 (3d Cir.1999), 286
- Grupo Dataflux v. Atlas Global Group, L.P., 541 U.S. 567 (2004), 554
- Grutter v. Bollinger, 539 U.S. 306 (2003), 401
- Grutter v. Bollinger**, 188 F.3d 394 (6th Cir. 1999), **395**
- Guaranty Trust Co. of N.Y. v. York**, 326 U.S. 99 (1945), **599**, 603, 606, 610, 614, 619
- Guglielmino v. McKee Foods Corp., 506 F.3d 696 (9th Cir. 2007), 585
- Guidry v. Kem Mfg. Co., 598 F.2d 402 (5th Cir. 1979), 283
- Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947), 513
- Haas v. Jefferson Nat'l Bank, 442 F.2d 394 (5th Cir. 1971), 394
- Hagens v. Lavine, 415 U.S. 528 (1974), 548
- Haley v. Medtronic, Inc.**, 169 F.R.D. 643 (C.D. Cal. 1996), **654**
- Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998), 649, 706
- Hanna v. Plumer**, 380 U.S. 460 (1965), **609**, 618, 626, 628, 630, 691
- Hanrick v. Hanrick, 153 U.S. 192 (1894), 584
- Hansberry v. Lee, 311 U.S. 32 (1940), 646, 647, 683, 684
- Hansen v. Shearson/American Express, 116 F.R.D. 246 (E.D. Pa. 1987), 383
- Hanson v. Denckla, 357 U.S. 235 (1958), 437, 438, 442, 444, 445, 448, 455, 464
- Harborside Refrigerated Servs. v. Vogel, 959 F.2d 368 (2d Cir. 1992), 324
- Harlow v. Fitzgerald, 457 U.S. 800 (1982), 271
- Harris v. Sec'y, U.S. Dep't of Veterans Affairs, 126 F.3d 339 (D.C. Cir. 1997), 77
- Haworth, Inc. v. Herman Miller, Inc., 162 F.R.D. 289 (W.D. Mich. 1995), 150
- Hays v. Cave, 446 F.3d 712 (7th Cir. 2006), 547
- Heller Finan., Inc. v. Midwhey Powder Co., 883 F.2d 1286 (7th Cir. 1989), 76
- Herbert v. Nat'l Acad. of Scis., 974 F.2d 192 (D.C. Cir. 1992), 69
- Hess v. Pawloski, 274 U.S. 352 (1927), 419
- Hickman v. Taylor**, 329 U.S. 495 (1947), 53, **137**, 150, 170
- Hilao v. Estate of Marcos, 103 F.3d 767 (9th Cir. 1996), 693, 695, 696
- Hill v. Motel 6, 205 F.R.D. 490 (S.D. Ohio 2001), 127
- Hoffman v. Blaski, 363 U.S. 335 (1960), 510
- Holster v. Gatco, Inc., 485 F. Supp. 2d 179 (E.D.N.Y. 2007), 692
- Hopkins v. Walker, 244 U.S. 486 (1917), 543
- Hopwood v. State of Texas, 21 F.3d 603 (5th Cir. 1994), 399
- Hospitality Mgmt. Assocs., Inc. v. Shell Oil Co., 591 S.E.2d 611 (S.C. 2004), 688
- Hunt v. Cromartie, 526 U.S. 541 (1999), 272
- I-35 Bridge Collapse Site Inspection, In re, 243 F.R.D. 349 (D. Minn. 2007), 115
- Improvement Co. v. Munson, 81 U.S. (14 Wall.) 442 (1872), 265, 281
- In re — See party name
- Infor. Sys. & Networks Corp. v. United States, 994 F.2d 792 (Fed. Cir. 1993), 302
- Initial Pub. Offering Secs. Litig., In re, 243 F.R.D. 79 (S.D.N.Y. 2007), 706
- Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinée, 456 U.S. 694 (1982), 408, 449
- Inset Systems, Inc. v. Instruction Set, 937 F. Supp. 161 (D. Conn. 1996), 466
- Int'l Paving Systems v. Van-Tulco, Inc., 866 F. Supp. 695 (E.D.N.Y. 1994), 385, 386
- Int'l Shoe Co. v. Washington**, 326 U.S. 310 (1945), **420**, 426, 430, 431, 432, 436, 441, 446, 468, 472, 479, 486, 663, 664
- Integra Realty Res., Inc., In re, 354 F.3d 1246 (10th Cir. 2004), 662
- Iqbal v. Hasty, 490 F.3d 143 (2d Cir. 2007), 57
- Ivy v. Diamond Shamrock Chems. Co., 996 F.2d 1425 (2d Cir. 1993), 683

- J. Lyons & Co., Ltd. v. Republic of Tea, Inc., 892 F. Supp. 486 (S.D.N.Y. 1995), 510
- J. B. ex rel. Hart v. Valdez, 186 F.3d 1280 (10th Cir. 1999), 648
- J.E.B. v. Alabama, 511 U.S. 127 (1994), 257
- Jacque v. Steenberg Homes, Inc., 563 N.W. 2d 154 (Wis. 1997), 559
- Jansen v. City of Cincinnati, 904 F.2d 336 (6th Cir. 1990), 397, 398
- Jean Alexander Cosmetics, Inc., v. L'Oreal USA, Inc., 458 F.3d 244 (3d Cir. 2006), 334
- Jenkins v. Methodist Hosps. of Dallas, Inc., 478 F.3d 255 (5th Cir. 2007), 96
- Jenkins v. Raymark Indus., Inc., 782 F.2d 468 (5th Cir. 1986), 648, 653
- Johnson Creative Arts, Inc. v. Wool Masters, Inc., 743 F.2d 947 (1st Cir. 1984), 508
- Jones v. Bock, 549 U.S. —, 127 S. Ct. 910 (2007), 76
- Jones v. Flowers, 547 U.S. 220 (2006), 504, 505
- Jones v. Krautheim, 208 F. Supp. 2d 1173 (D. Colo. 2002), 623
- Jones v. Prince George's County, 348 F.3d 1014 (D.C. Cir. 2003), 402
- Jumpsport, Inc. v. Jumpking, Inc., 213 F.R.D. 329 (N.D. Cal. 2003), 146
- Kanter v. Barella, 489 F.3d 170 (3d Cir. 2007), 69
- Katchen v. Landy, 382 U.S. 323 (1966), 249, 340
- Keeton v. Hustler Magazine, Inc., 465 U.S. 770 (1984), 450
- King Vision Pay per View, Ltd. v. J.C. Dmitri's Rest., Inc.**, 180 F.R.D. 332 (N.D. Ill. 1998), 71
- Kircher v. Putnam Funds Trust, 547 U.S. 633 (2006), 334
- Kirksey v. R.J. Reynolds Tobacco Co., 168 F.3d 1039 (7th Cir. 1999), 37
- Klapprott v. United States, 335 U.S. 601 (1949), 298
- Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487 (1941), 637
- Knowlton v. Allied Van Lines, Inc., 900 F.2d 1196 (8th Cir. 1990), 497
- Kossick v. United Fruit Co., 365 U.S. 731 (1961), 598
- Koster v. Lumbermens Mut. Cas. Co., 330 U.S. 518 (1947), 513
- KPS & Assocs., Inc. v. Designs by FMC, Inc., 318 F.3d 1 (1st Cir. 2003), 303
- Kristian v. Comcast Corp., 446 F.3d 25 (1st Cir. 2006), 225
- Kulko v. California Superior Court, 436 U.S. 84 (1978), 443, 485
- La Buy v. Howes Leather Co., 352 U.S. 249 (1957), 294
- Lamarque v. Fairbanks Capital Corp., 927 A.2d 753 (R.I. 2007), 688
- Lanford v. Prince George's County, 175 F. Supp. 2d 797 (D. Md. 2001), 586
- Lear Corp. v. Johnson Elec. Holding Ltd., 353 F.3d 580 (7th Cir. 2003), 557
- Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163 (1993), 39, 41
- Lehman v. Nakshian, 453 U.S. 156 (1981), 240
- Lehman v. Revolution Portfolio LLC**, 166 F.3d 389 (1st Cir. 1999), 377
- Lesnick v. Hollingsworth & Vose Co., 35 F.3d 939 (4th Cir. 1994), 462
- Lew v. Kona Hosp., 754 F.2d 1420 (9th Cir. 1985), 271
- Lewis v. Windsor Door Co., 926 F.2d 729 (8th Cir. 1991), 584
- Lightfoot v. Union Carbide Corp., 110 F.3d 898 (2d Cir. 1997), 292
- Link v. Wabash R.R., 370 U.S. 626 (1962), 158, 161
- Louisville & Nashville R.R. v. Mottley, 219 U.S. 467 (1911), 530
- Louisville & Nashville R.R. v. Mottley**, 211 U.S. 149 (1908), 527
- Lowdermilk v. United States Bank Nat'l Ass'n, 479 F.3d 994 (9th Cir. 2007), 680
- Lucas v. Spellings, 408 F. Supp. 2d 8 (D.D.C. 2006), 96
- Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982), 252, 253
- Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992), 402
- Lundquist v. Precision Valley Aviation, Inc., 946 F.2d 8, 10 (1st Cir. 1991), 552
- Lutz v. Glendale Union High Sch., 403 F.3d 1061 (9th Cir. 2005), 240
- Luv n' care Ltd. v. Insta-Mix, Inc., 438 F.3d 465 (5th Cir. 2006), 461
- Mace v. Van Ru Credit Corp., 109 F.3d 338 (1997), 701
- Madara v. Hall, 916 F.2d 1510 (11th Cir. 1990), 462
- Makah Indian Tribe v. Verity**, 910 F.2d 555 (9th Cir. 1990), 388

- Manley v. AmBase Corp., 337 F.3d 237 (2d Cir. 2003), 292
- Marcello v. Maine, 238 F.R.D. 113 (D. Me. 2006), 66
- Marek v. Chesny**, 473 U.S. 1 (1985), **208**
- Maritz, Inc. v. Cybergold, Inc., 947 F. Supp. 1328 (E.D. Mo. 1996), 465
- Markman v. Westview Instruments, Inc.**, 517 U.S. 370 (1996), **242**
- Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304 (1816), 521, 540
- Martin v. Wilks, 490 U.S. 755 (1989), 346, 347, 354
- Mason v. Am. Emery Wheel Works, 241 F.2d 906 (1st Cir. 1957), 636
- Mass. Sch. of Law v. Am. Bar Ass'n, 914 F. Supp. 1172 (E.D. Pa. 1996), 153
- Mass. Inst. of Tech. v. Micron Tech., Inc., 508 F. Supp. 2d 112 (D. Mass. 2007), 476
- Mathews v. Eldridge, 424 U.S. 319 (1976), 506
- Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986), 263, 269, 279
- Mayes v. Rapoport, 198 F.3d 457 (4th Cir. 1999), 583
- Mayle v. Felix, 545 U.S. 644 (2005), 85
- McCowen v. Jamieson, 724 F.2d 1421 (9th Cir. 1984), 394
- McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819), 530
- McCurry v. Adventist Health Sys./Sunbelt, Inc., 298 F.3d 586 (6th Cir. 2002), 303
- McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), 39, 40, 274
- McGee v. Int'l Life Ins. Co., 355 U.S. 220 (1957), 436, 437, 442, 446, 456, 468
- McMahan v. Toto, 311 F.3d 1077 (11th Cir. 2002), 639
- McNabb v. United States, 318 U.S. 332 (1943), 33
- Merrell Dow Pharms. Inc. v. Thompson**, 478 U.S. 804 (1986), 521, **533**, 544
- Mesa v. California, 489 U.S. 121 (1989), 531
- Metro. Opera Ass'n, Inc. v. Local 100, Hotel Employees and Restaurant Employees Int'l Union, 212 F.R.D. 178 (S.D.N.Y. 2003), 124
- Mich. Nat'l Bank v. Quality Dinette, Inc., 888 F.2d 462 (6th Cir. 1989), 474
- Mich. State AFL-CIO v. Miller, 103 F.3d 1240 (6th Cir. 1997), 397, 398, 399
- Microsoft Corp. Antitrust Litig., In re, 355 F.3d 322 (4th Cir. 2004), 343
- Microvote Corp. v. Montgomery County, 942 F. Supp. 1046 (E.D. Pa. 1996), 636
- Millennium Enters., Inc. v. Millennium Music, LP, 33 F. Supp. 2d 907 (D. Or. 1999), 469
- Miller v. Fenton, 474 U.S. 104 (1985), 245
- Milliken v. Meyer, 311 U.S. 457 (1940), 419, 422
- Missouri ex rel. Pemiscot County v. W. Sur. Co., 51 F.3d 170 (8th Cir. 1995), 562
- Mitchell v. Forsyth, 472 U.S. 511 (1985), 311
- Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974), 505
- Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978), 195
- Montgomery Ward & Co. v. Duncan, 311 U.S. 243 (1940), 285
- Moore v. Chesapeake & Ohio Railway Co., 291 U.S. 205 (1934), 532, 536
- Moore v. N.Y. Cotton Exch., 270 U.S. 593 (1926), 373, 566
- Mosley v. Gen. Motors Corp., 497 F.2d 1330 (8th Cir. 1974), 372, 373
- Mullane v. Cent. Hanover Bank & Trust Co.**, 339 U.S. 306 (1950), 63, 64, 66, **498**, 664, 666, 669
- Murphy Bros. v. Michetti Pipe Stringing, Inc., 526 U.S. 344 (1999), 585
- Murray v. Haverford Hosp. Corp., 278 F. Supp. 5 (E.D. Pa. 1963), 383, 384, 385
- Mwani v. bin Laden, 417 F.3d 1 (D.C. Cir. 2005), 462, 507
- N.A. Burkitt, Inc. v. J.I. Case Co., 597 F. Supp. 1086 (D. Me. 1984), 636
- Nashville v. WEDGE Group, Inc., 882 F.2d 1087 (6th Cir. 1989), 474
- Nat'l Ass'n of Life Underwriters, Inc. v. Comm'r, 30 F.3d 1526 (D.C. Cir. 1994), 74
- Nat'l Hockey League v. Metro. Hockey Club, Inc.**, 427 U.S. 639 (1976), **156**, 188, 189, 193
- Nationwide Mut. Ins. Co. v. Buffetta, 230 F.3d 634 (3d Cir. 2000), 636
- Neely v. Martin K. Eby Constr. Co., 386 U.S. 317 (1967), 289
- Newburyport Water Co. v. Newburyport, 193 U.S. 561 (1904), 548
- Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826 (1989), 579