

# CIVIL PROCEDURE

CASES AND MATERIALS

Ninth Edition

Jack H. Friedenthal

Arthur R. Miller

John E. Sexton

Helen Hershkoff

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## CASES AND MATERIALS

### Ninth Edition

By

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*For Stephen and Ben, with love.*  
*—Helen*

## Preface

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This Ninth Edition, which has been prepared by Jack H. Friedenthal, Arthur R. Miller, and Helen Hershkoff, offers an up-to-date and accessible approach to the study of civil procedure. Students tend to find Civil Procedure the most mysterious of their law school courses. Our goal in this edition is to present the material in a clear and simple environment, yet one that challenges and stimulates the student toward increasing critical understanding. Moreover, because courses in civil procedure vary greatly as to the hours allotted, the extent to which they are mandatory or optional, and the law school year or years when students are expected to enroll in them, we have designed this edition for maximum flexibility in terms of an individual classroom's coverage, depth, sensibility, and emphasis.

This new edition reflects significant developments in the field of procedure, focusing not simply on doctrinal change, but also on the still uncertain effects of new technology, globalism, and privatization on the system of civil justice as a whole. The Ninth Edition also responds to many helpful comments from judges, practitioners, and colleagues and students at the large number of schools in which earlier editions have been used. Our conversations confirm our own conclusion that the book is and continues to be a highly successful teaching tool, and we have preserved the basic format and much of the material in the earlier edition. When we have deleted earlier material, our preference has been to substitute contemporary cases in which the facts are interesting, in which the conflicting policies seem to be in a state of equilibrium, or in which the context has extrinsic fascination, rather than materials that offer a tight monograph on various aspects of procedure. In addition, we have streamlined some earlier notes and cases to make room for new cutting-edge issues—including the effect of the Internet on personal jurisdiction, the federalization of state law class actions, the relation between human rights litigation and *forum non conveniens* doctrine, the effect of pleading rules on corporate accountability and civil rights enforcement, and the incorporation of alternative dispute resolution techniques into judicial practice—that we believe will contribute in positive ways to a lively and engaged classroom discussion.

As has been the practice with all of the past editions, we offer substantial emphasis on the operation of the Federal Rules of Civil Procedure but also draw comparisons with state and international practice. The materials in this volume refer to and are augmented by a Supplement, which contains not only the federal statutes and rules governing procedure, but also comparative state provisions. A number of other materials, such as Advisory Committee notes, proposed rule alterations, and local court rules, also are included. The Supplement contains, as well, a litigation timechart and an illustrative problem, showing how a case develops in practice and samples of the documents that actually might have formed a portion of the record. These samples are not designed as models to be emulated. To the contrary, they often contain defects intended to encourage students to criticize them in light of knowledge they have obtained from the cases and classroom discussion.

The cases and excerpts from other materials have been carefully edited in order to shorten them and clarify issues for discussion. With regard to footnotes, the same numbering appears in the casebook as appears in the original sources; our footnotes are indicated by letters.

The authors are deeply grateful to a host of people who have assisted us in the preparation of this volume, the earlier editions, and the Supplements. Among our students deserving special mention for the aid they have provided in preparing earlier editions of the book are Prudence Beatty Abram, Sam L. Abram, Kim Barry, Richard B. Bernstein, (Professor) Barry B. Boyer, (Professor) Michael Broyde, William M. Burns, Bertram Carp, (Professor) Sanford Caust-Ellenbogen, Jeffrey J. Chapman, Daniel Chazin, Tan Yee Cheung, Adam S. Cohen, Stephanie Cohen, Steven Cohen, Diane Costa, David Drueding, Gary Eisenberg, Lisa Fair, (Judge) Raymond Fisher, Grant H. Franks, Stacy Gershwind, Lisa E. Goldberg, Robert H. Goldman, Steven F. Goldman, Ashley K. Goodale, Kevin A. Griffin, Edward Hartnett, Wendy B. Jacobs, (Professor) Joe J. Kalo, (Dean) Mary Kay Kane, Lonnie Keene, Daniel Laguardia, Fredrick W. Lambert, Judyann M. Lee, Christopher Mahon, Shirin Malkani, Maureen P. Manning, (Professor) John J. McGonagle, Matthew McGrath, Kiran H. Mehta, Franklin N. Meyer, Gary Meyerhoff, Jennifer Nevins, Marcy Oppenheimer, Jennifer Pariser, Dawn A. Pederson, Kate Elizabeth Phillips, Norman A. Platt, Martin C. Recchuite, Christopher Reich, James E. Rossman, Beth A. Rotman, Gregory S. Schmolka, Marc Schuback, (Professor) Linda J. Silberman, Donna Silverberg, (Professor) William Slomanson, Roger D. Smith, David A. Stein, Brian A. Stern, Mara E. Trager, Jacqueline Veit, (Professor) Michael Vitiello, and Gail Zweig. For their help in preparing the Ninth Edition, we thank the following students and graduates of the New York University School of Law: James J. Beha, Jeffrey A. Benjamin, Anna L. Cavnar, Caroline P. Cincotta, Seth K. Endo, David E. Firestone, Kelly A. Frawley, Amanda W. Goodin, Susanna R. Greenberg, Debra L. Greenberger, Kimberly M. Greene, Daniel M. Hennefeld, Christopher D. Kercher, Jessica M. Kumm, Susan S. Lee, Kevin J. Lynch, Alexandra A. Magness, Lisabeth C. Meletta, Tara Mikkilineni, Joy E. Milligan, Greg G. Oehler, Robert Silvers, Christopher M. Straw, Reuben B. Teague, and Eva A. Temkin. We extend special thanks to Jo Anne Friedenthal, Dan Evans, Stephen Wagner, Erica Tate, and Linda Ramsingh for their invaluable work on this volume and prior editions.

Finally, we sincerely thank our many colleagues and students across the legal community for the countless excellent suggestions they have offered. Their contributions have been instrumental in the preparation of this Ninth Edition.

J.H.F.  
A.R.M.  
J.E.S.  
H.H.

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