

399

CIVIL PROCEDURE

CASES AND MATERIALS

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American Casebook Series



**CIVIL
PROCEDURE**
CASES AND MATERIALS

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Gellhorn's Administrative Law in a Nutshell, 336 pages, 1972.

Mashaw and Merrill's Cases and Materials on Introduction to the American Public Law System, about 1080 pages, 1975.

Robinson and Gellhorn's Teaching Materials on The Administrative Process, 928 pages, 1974.

ADMIRALTY

Healy and Sharpe's Cases on Admiralty, 2nd Ed., 875 pages, 1974.

AGENCY

Seavey and Hall's Cases on Agency, 431 pages, 1956.

Seavey's Text on Agency, 329 pages, 1964.

See Agency-Partnership.

AGENCY-PARTNERSHIP

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Seavey, Reuschlein & Hall's Cases on Agency and Partnership, 599 pages, 1962.

Steffen's Cases on Agency and Partnership, 3rd Ed., 733 pages, 1969.

ANTITRUST LAW

Oppenheim's Cases on Robinson-Patman Act, Pamphlet, 295 pages, 1967.

Oppenheim and Weston's Cases on Antitrust, 3rd Ed., 952 pages, 1968.

Oppenheim and Weston's Supplement, 1972.

Posner's Cases on Antitrust, 885 pages, 1974.

BANKRUPTCY

MacLachlan's Text on Bankruptcy, 500 pages, 1956.

Selected Bankruptcy Statutes, 486 pages, 1974.

Selected Commercial Statutes, 1016 pages, 1973.

See Creditors' Rights.

BUSINESS ORGANIZATIONS

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See Corporations.

BUSINESS PLANNING

Painter's Problems and Materials in Business Planning, about 890 pages, 1975.

Painter's Problems and Materials in Business Planning, 1975 Supplement.

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See Pleading and Procedure.

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- McBaine's Cases, Introduction to Civil Procedure, 399 pages, 1950.
- Shipman's Text on Common Law Pleading, 3rd Ed., 644 pages, 1923.

COMMUNITY PROPERTY

- Burby's Cases on Community Property, 4th Ed., 342 pages, 1955.
- Huie's Texas Cases on Marital Property Rights, 681 pages, 1966.
- Verrall and Sammis' Cases on California Community Property, 2nd Ed., 398 pages, 1971.

CONFLICT OF LAWS

- Cramton, Currie and Kay's Cases—Comments—Questions on Conflicts, 2nd Ed., about 940 pages, 1975.
- Ehrenzweig's Text on Conflicts, 824 pages, 1962.
- Ehrenzweig's Conflicts in a Nutshell, 3rd Ed., 432 pages, 1973.
- Ehrenzweig and Louisell's Jurisdiction in a Nutshell, 3rd Ed., 291 pages, 1973.
- Goodriche and Scoles' Text on Conflict of Laws, 4th Ed., 483 pages, 1964.
- Scoles and Weintraub's Cases on Conflict of Laws, 2nd Ed., 966 pages, 1972.

CONSTITUTIONAL LAW

- Engdahl's Constitutional Power in a Nutshell, 411 pages, 1974.
- Ginsburg's Cases on Constitutional Aspects of Sex Based Discrimination, 129 pages, 1974.
- Lockhart, Kamisar and Choper's Cases—Comments—Questions on Constitutional Law, 4th Ed., about 1500 pages, 1975.
- Lockhart, Kamisar and Choper's Cases on The American Constitution, 4th Ed., about 1100 pages, 1975.

CONSTITUTIONAL LAW—Continued

- Lockhart, Kamisar and Choper's Annual Supplement.
- See Constitutional Rights and Liberties.

CONSTITUTIONAL RIGHTS & LIBERTIES

- Lockhart, Kamisar and Choper's Cases on Constitutional Rights and Liberties, 4th Ed., about 1100 pages, 1975.
- Lockhart, Kamisar and Choper's Annual Supplement.

CONSUMER CREDIT

- Kripke's Cases on Consumer Credit, 454 pages, 1970.
- Schrag's Cases on Consumer Credit, 2nd Ed., Pamphlet reprint from Cooper, et al. Law and Poverty, 2nd Ed., 197 pages, 1973.

CONTRACTS

- Calamari & Perillo's Text on Contracts, 621 pages, 1970.
- Corbin's Cases on Contracts, 3rd Ed., 1381 pages, 1947. 1953 Supplement, 36 pages.
- Corbin's Text on Contracts, Student Edition, 1224 pages, 1952.
- Freedman's Cases on Contracts, 658 pages, 1973.
- Fuller and Eisenberg's Cases on Contracts, 1043 pages, 1972.
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- Reitz' Cases and Materials on Contracts as Basic Commercial Law, about 665 pages, 1975.
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- Simpson's Text on Contracts, 2nd Ed., 510 pages, 1965.
- White and Summer's Text on the Uniform Commercial Code, 1054 pages, 1972.

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- Nimmer's Cases on Copyright and Other Aspects of Law Pertaining to Literary, Musical and Artistic Works, 828 pages, 1971.
- Nimmer's 1974 Supplement.

CORPORATIONS

- Henn's Text on Corporations, 2nd Ed., 956 pages, 1970.
- Henn's Cases on Corporations and Other Business Enterprises, 1279 pages, 1974.
- Henn's Statutory Supplement to Cases on Corporations, 1974.

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- Krantz' Cases on the Law of Corrections and Prisoners' Rights, 1130 pages, 1973.
- Krantz' 1974 Supplement.
- Model Rules and Regulations on Prisoners Rights and Responsibilities, 212 pages, 1973.

CREDIT TRANSACTIONS

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CREDITORS' RIGHTS

- Epstein's Teaching Materials on Debtor-Creditor Relations, 525 pages, 1973.
- Epstein's Debtor-Creditor Relations in a Nutshell, 309 pages, 1973.
- Riesenfeld's Cases and Materials on Creditors' Remedies and Debtors' Protection, 2nd Ed., about 760 pages, 1975.
- Riesenfeld's Statutory Supplement, 1975.
- Selected Bankruptcy Statutes, 486 pages, 1974.

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- Dix and Sharlot's Cases on Criminal Law, 1360 pages, 1973.
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- Miller's Text on Criminal Law, 649 pages, 1934.
- Stumberg's Texas Cases on Criminal Law, 505 pages, 1954.
- Stumberg and Maloney's Texas Cases Supplement, 117 pages, 1965.

CRIMINAL PROCEDURE

- Davis' Police Discretion, about 120 pages, 1975.
- Federal Rules of Civil-Appellate-Criminal Procedure, Law School Edition, 346 pages, 1975.
- Grano's Problems in Criminal Procedure, 171 pages, 1973.
- Kamisar, LaFave and Israel's Cases on Modern Criminal Procedure, 4th Ed., 1572 pages, 1974.
- Kamisar, LaFave and Israel's Cases on Basic Criminal Procedure, 4th Ed., 767 pages, 1974.

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- Kamisar, LaFave, and Israel's Annual Criminal Procedure Supplement.
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- Clark's Cases on Domestic Relations, 2nd Ed., 918 pages, 1974.
- Clark's Text on Domestic Relations, 754 pages, 1968.
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- Paulsen's Cases on Family Law and Poverty, 2nd Ed., Pamphlet reprint from Cooper, et al. Law and Poverty, 2nd Ed., 200 pages, 1973.
- See Juvenile Courts.

DRUG ABUSE

- Uelman and Haddox Cases on Drug Abuse Law, 564 pages, 1974.

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- Cook's Cases on Equity, 4th Ed., 1192 pp., 1948.
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McClintock's Text on Equity, 2nd Ed., 643 pages, 1948.
Van Hecke, Leavell and Nelson's Cases on Equitable Remedies and Restitution, 2nd Ed., 717 pages, 1973.
See Remedies.

ESTATE PLANNING

- Lynn's Text on Introduction to Estate Planning, 274 pages, 1975.

EVIDENCE

- Broun and Meisenholder's Problems in Evidence, 130 pages, 1973.
Cleary and Strong's Cases on Evidence, 2nd Ed., about 1065 pages, 1975.
McCormick, Elliott & Sutton's Cases on Evidence, 4th Ed., 1088 pages, 1971.
McCormick, Cleary, et al., Text on Evidence, 2nd Ed., 938 pages, 1972.
Rothstein's Evidence in a Nutshell, 406 pages, 1970.

FEDERAL ESTATE AND GIFT TAXATION

- See Taxation.

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FEDERAL JURISDICTION AND PROCEDURE

- Currie's Cases on Federal Courts, 2nd, 1040 pages, 1975.
Ehrenzweig and Louisell's Jurisdiction in a Nutshell, 3rd Ed., 291 pages, 1973.
Forrester, Currier and Moye's Cases on Federal Jurisdiction and Procedure, 2nd Ed., 933 pages, 1970.
Forrester, Currier and Moye's Supplement, 1973.
Merrill and Vetri's Problems in Federal Courts and Procedure, 460 pages, 1974.
Wright's Text on Federal Courts, 2nd Ed., 745 pages, 1970.
Wright's Supplement, 1972.

FUTURE INTERESTS

- Gulliver's Cases on Future Interests, 624 pages, 1959.
Gulliver's Introduction to the Law of Future Interests, Pamphlet reprint from Gulliver's Cases, 87 pages, 1959.
Powell's Cases on Future Interests, 3rd Ed., 621 pages, 1961.
Simes' Text on Future Interests, 2nd Ed., 355 pages, 1966.
See Wills, Intestate Succession, Trusts, Gifts and Future Interests.

GRATUITOUS TRANSFERS

- See Wills, Intestate Succession, Trusts, Gifts and Future Interests.

HOUSING AND URBAN DEVELOPMENT

- Berger's Cases on Housing, 2nd Ed., Pamphlet reprint from Cooper, et al. Law and Poverty, 2nd Ed., 254 pages, 1973.
Krasnowiecki's Cases on Housing and Urban Development, 697 pages, 1969.
Krasnowiecki's Statutory Supplement 1969.
See Land Use.

INSURANCE

- Keeton's Cases on Basic Insurance Law, 655 pages, 1960.
Keeton's Basic Text on Insurance Law, 712 pages, 1971.
Keeton's Case Supplement to Keeton's Basic Text, 398 pages, 1971.
Keeton's Programmed Problems in Insurance Law, 243 pages, 1972.
Keeton & Keeton's Compensation Systems, Pamphlet reprint from Keeton & Keeton's Cases on Torts, 85 pages, 1971.
Vance's Text on Insurance, 3rd Ed., 1290 pages, 1951.

INTERNATIONAL LAW

- Friedmann, Lissitzyn and Pugh's Cases on International Law, 1,205 pages, 1969.
Friedmann, Lissitzyn and Pugh's Supplement, 1972.

INTRODUCTION TO LAW

- Fryer and Orentlicher's Cases on Legal Method and Legal System, 1,043 pages, 1967.
Kempin's Historical Introduction to Anglo-American Law in a Nutshell, 2nd Ed., 280 pages, 1973.
Kimball's Historical Introduction to Legal System, 610 pages, 1966.
Kinyon's Introduction to Law Study and Law Examinations in a Nutshell, 389 pages, 1971.
Mashaw and Merrill's Cases and Materials on Introduction to the American Public Law System, about 1,060 pages, 1975.
Rombauer's Legal Problem Solving, 2nd Ed., 212 pages, 1973.
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- Nelson's Cases on Judicial Administration and the Administration of Justice 1032 pages, 1974.

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JURISPRUDENCE

Christie's Text and Readings on Jurisprudence—The Philosophy of Law, 1056 pages, 1973.

JUVENILE JUSTICE

Fox's Cases on Modern Juvenile Justice, 1012 pages, 1972.

Fox's The Law of Juvenile Courts in a Nutshell, 286 pages, 1971.

LABOR LAW

Oberer and Hanslowe's Cases on Labor Law, 1091 pages, 1972.

Oberer and Hanslowe's Statutory Supplement, 1972.

Oberer and Hanslowe's 1975 Case Supplement.

Sovern's Cases on Racial Discrimination in Employment, 2nd Ed., Pamphlet reprint from Cooper et al. Law and Poverty, 2nd Ed., 167 pages, 1973.

† See Workmen's Compensation.

LAND USE

Beuscher and Wright's Cases on Land Use, 788 pages, 1969.

Hagman's Cases on Public Planning and Control of Urban and Land Development, 1208 pages, 1973.

Hagman's Text on Urban Planning and Land Development Control Law, 559 pages, 1971.

LEGAL BIBLIOGRAPHY

Cohen's Legal Research in a Nutshell, 2nd Ed., 259 pages, 1971.

How To Find The Law, with Special Chapters on Legal Writing, 6th Ed., 313 pages, 1965.

How To Find The Law Student Problem Book.

Rombauer's Legal Problem Solving, 2nd Ed., 212 pages, 1973.

LEGAL ETHICS

Mellinkoff's Text on The Conscience of a Lawyer, 304 pages, 1973.

Pirsig's Cases on Professional Responsibility, 2nd Ed., 447 pages, 1970.

Pirsig's 1974 Supplement.

LEGAL HISTORY

Kempin's Historical Introduction to Anglo-American Law in a Nutshell, 2nd Ed., 280 pages, 1973.

Kimball's Historical Introduction to Legal System, 610 pages, 1966.

Smith's Cases on Development of Legal Institutions, 757 pages, 1965.

LEGAL INTERVIEWING AND COUNSELING

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LEGAL METHOD—LEGAL SYSTEM

Fryer and Orentlicher's Cases on Legal Method and Legal System, 1043 pages, 1966.

See Introduction to Law.

LEGAL PROCESS

See Legal Method.

LEGAL PROFESSION

See Legal Ethics.

LEGAL WRITING STYLE

Weihofen's Text on Legal Writing Style, 323 pages, 1961.

See Legal Bibliography.

LEGISLATION

Davis' Legislative Law and Process in a Nutshell, about 390 pages, 1975.

Nutting, Elliott and Dickerson's Cases on Legislation, 4th Ed., 631 pages, 1969.

LOCAL GOVERNMENT LAW

Michelman and Sandalow's Cases on Government in Urban Areas, 1216 pages, 1970.

Michelman and Sandalow's 1972 Supplement.

Stason and Kauper's Cases on Municipal Corporations, 3rd Ed., 692 pages, 1959.

Valente's Cases on Local Government Law, 914 pages, 1975.

See Land Use.

MASS COMMUNICATION LAW

Gillmor and Barron's Cases on Mass Communication Law, 2nd Ed., 1007 pages, 1974.

MORTGAGES

Maxwell, Riesenfeld, Hetland and Warren's California Cases on Security Transactions in Land, 2nd Ed., about 600 pages, 1975.

Osborne's Cases on Secured Transactions, 559 pages, 1967.

Osborne's Text on Mortgages, 2nd Ed., 805 pages, 1970.

MUNICIPAL CORPORATIONS

See Local Government Law.

NATURAL RESOURCES

Trelease, Bloomenthal and Geraud's Cases on Natural Resources, 1131 pages, 1965.

NEGOTIABLE INSTRUMENTS

Nordstrom and Clovis' Problems on Commercial Paper, 458 pages, 1972.
Selected Commercial Statutes, 1016 pages, 1973.

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Weber's Commercial Paper in a Nutshell, 2nd Ed., 361 pages, 1975.
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OFFICE PRACTICE

Strong and Clark's Law Office Management, 424 pages, 1974.
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OIL AND GAS

Hemingway's Text on Oil and Gas, 486 pages, 1971.
Huie, Woodward and Smith's Cases on Oil and Gas, 2nd Ed., 955 pages, 1972.
See Natural Resources.

PARTNERSHIP

Crane and Bromberg's Text on Partnership, 695 pages, 1968.
See Agency-Partnership.

PATENTS

Choate's Cases on Patents, 1060 pages, 1973.

PERSONAL PROPERTY

Aigler, Smith and Tefft's Cases on Property, 2 Vols., 1339 pages, 1960.
Bigelow's Cases on Personal Property, 3rd Ed., 507 pages, 1942.
Fryer's Readings on Personal Property, 3rd Ed., 1184 pages, 1938.

PLEADING AND PROCEDURE

Cound, Friedenthal and Miller's Cases on Civil Procedure, 2nd Ed., 1186 pages, 1974.
Cound, Friedenthal and Miller's Cases on Pleading, Discovery and Joinder, 643 pages, 1968.
Cound, Friedenthal and Miller's Civil Procedure Supplement, 1974.
Ehrenzweig and Louisell's Jurisdiction in a Nutshell, 3rd Ed., 291 pages, 1973.
Federal Rules of Civil-Appellate-Criminal Procedure, Law School Edition, 346 pages, 1975.
Hodges, Jones and Elliott's Cases on Texas Trial and Appellate Procedure, 2d Ed., 623 pages, 1974.
Hodges, Jones, Elliott and Thode's Cases on Texas Judicial Process Prior to Trial, 935 pages, 1966.
Karlen, Meisenholder, Stevens and Vestal's Cases on Civil Procedure, about 900 pages, 1975.
Karlen and Joiner's Cases on Trials and Appeals, 536 pages, 1971.
Karlen's Procedure Before Trial in a Nutshell, 258 pages, 1972.
McBaine's Cases on Introduction to Civil Procedure, 399 pages, 1950.

PLEADING AND PROCEDURE—Cont'd

McCoid's Cases on Civil Procedure, 823 pages, 1974.
McElhane's Trials, Problems and Materials on Effective Litigation, 457 pages, 1974.

POVERTY LAW

Cooper, Dodyk, Berger, Paulsen, Schrag and Sovern's Cases on Law and Poverty, 2nd Ed., 1208 pages, 1973.
Cooper and Dodyk's Cases on Income Maintenance, 2nd Ed., Pamphlet reprint from Cooper, et al. Law and Poverty, 2nd Ed., 449 pages, 1973.
LaFrance, Schroeder, Bennett and Boyd's Text on Law and the Poor, 558 pages, 1973.

REAL PROPERTY

Aigler, Smith & Tefft's Cases on Property, 2 Vols., 1339 pages, 1960.
Bernhardt's Real Property in a Nutshell, about 365 pages, 1975.
Browder, Cunningham & Julin's Cases on Basic Property Law, 2d Ed., 1397 pages, 1973.
Burby's Text on Real Property, 3rd Ed., 490 pages, 1965.
Donahue, Kauper and Martin's Cases on Property, 1501 pages, 1974.
Moynihan's Introduction to Real Property, 254 pages, 1962.
Phipps' Titles in a Nutshell—The Calculus of Interests, 277 pages, 1968.
Smith and Boyer's Survey of the Law of Property, 2nd Ed., 510 pages, 1971.
See Housing and Urban Development.

REMEDIES

Cribbet's Cases on Judicial Remedies, 762 pages, 1954.
Dobbs' Text, on Remedies, 1067 pages, 1973.
Dobbs' Problems in Remedies, 137 pages, 1974.
Dobbyn's Injunctions in a Nutshell, 264 pages, 1974.
Van Hecke, Leavell and Nelson's Cases on Equitable Remedies and Restitution, 2nd Ed., 717 pages, 1973.
Wright's Cases on Remedies, 498 pages, 1955.
York and Bauman's Cases on Remedies, 2nd Ed., 1381 pages, 1973.
See Equity.

RESTITUTION

See Equity.
See Remedies.

REVIEW MATERIALS

Ballantine's Problems.
Burby's Law Refreshers.
Smith Reviews.

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SALES

- Nordstrom's Text on Sales, 600 pages, 1970.
Nordstrom and Lattin's Problems on Sales and Secured Transactions, 809 pages, 1968.
Selected Commercial Statutes, 1016 pages, 1973.
See Commercial Transactions.

SECURED TRANSACTIONS

- Henson's Text on Secured Transactions, 364 pages, 1973.
See Commercial Transactions.
See Sales.

SECURITIES REGULATIONS

- Ratner's Materials on Securities Regulations, 893 pages, 1975.
Ratner's Statutory Supplement.

SEX BASED DISCRIMINATION

- See Women and the Law.

SOCIAL LEGISLATION

- See Workmen's Compensation.

SURETYSHIP AND GUARANTY

- Osborne's Cases on Suretyship, 221 pages, 1966.
Simpson's Cases on Suretyship, 538 pages, 1942.

TAXATION

- Chommie's Text on Federal Income Taxation, 2nd Ed., 1051 pages, 1973.
Chommie's Review of Federal Income Taxation, 90 pages, 1973.
Hellerstein's Cases on State and Local Taxation, 3rd Ed., 741 pages, 1969.
Kragen & McNulty's Cases on Federal Income Taxation, 2nd Ed., 1107 pages, 1974.
Lowndes, Kramer and McCord's Text on Federal Estate and Gift Taxes, 3rd Ed., 1099 pages, 1974.
McNulty's Federal Estate and Gift Taxation in a Nutshell, 343 pages, 1973.
McNulty's Federal Income Taxation in a Nutshell, 322 pages, 1972.
Rice's Problems in Federal Estate & Gift Taxation, 2nd Ed., 496 pages, 1972.
Rice's Problems in Federal Income Taxation, 2nd Ed., 589 pages, 1971.
Selected Federal Taxation Statutes and Regulations, about 1125 pages, 1975.

TORTS

- Green, Pedrick, Rahl, Thode, Hawkins and Smith's Cases on Torts, 1311 pages, 1968.
Green, Pedrick, Rahl, Thode, Hawkins and Smith's Cases on Injuries to Relations, 466 pages, 1968.

TORTS—Continued

- Keeton and Keeton's Cases on Torts, 1193 pages, 1971.
Keeton and Keeton's 1974 Supplement.
Noel and Phillips' Products Liability in a Nutshell, 365 pages, 1974.
Prosser's Text on Torts, 4th Ed., 1208 pages, 1971.

TRADE REGULATION

- See Anti-Trust Law.
See Unfair Trade Practices.

TRIAL AND APPELLATE PRACTICE

- See Pleading and Procedure.

TRUSTS

- Bogert's Text on Trusts, 5th Ed., 726 pages, 1973.
Powell's Cases on Trusts and Wills, 639 pages, 1960.
See Wills, Intestate Succession, Trusts, Gifts and Future Interests.

UNFAIR TRADE PRACTICES

- Oppenheim's Cases on Unfair Trade Practices, 3rd Ed., 1071 pages, 1974.
Oppenheim's Robinson-Patman Act Pamphlet, 258 pages, 1974.

WATER LAW

- Trelease's Cases on Water Law, 2nd Ed., 863 pages, 1974.

WILLS

- Atkinson's Text on Wills, 2nd Ed., 975 pages, 1953.
Mennell's Cases on California Decedents' Estates, 566 pages, 1973.
Turrentine's Cases on Wills, 2nd Ed., 483 pages, 1962.
See Wills, Intestate Succession, Trusts, Gifts and Future Interests.

WILLS, INTESTATE SUCCESSION, TRUSTS, GIFTS AND FUTURE INTERESTS

- Gulliver, Clark, Lusky and Murphy's Cases on Gratuitous Transfers: Wills, Intestate Succession, Trusts, Gifts and Future Interests, 1017 pages, 1967.

WOMEN AND THE LAW

- Davidson, Ginsburg and Kay's Cases on Sex Based Discrimination, 1031 pages, 1974.

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PREFACE

The coverage of this volume is the entire lawsuit including the decision to litigate, selection of the court, jurisdictional reach of the court, pleadings, motions, discovery, scope of the litigation, pretrial conference, trial, appeal and res judicata/preclusion. This is not just another edition of the earlier book, *Procedure Before Trial*, by these authors and Claude Brown; this is a new volume in coverage and in much of the material contained in the book.

This book is keyed to the Federal Rules of Civil Procedure and those state procedural schemes modeled after the federal rules. The starting point is the federal rules. Very little is included on the Code pleading which antedated the federal rules. We believe that the emphasis on the federal rules is desirable for several reasons.

We believe that the federal rule system embodies a basic philosophy of procedure which is manifested in all of the federal rules and results in a close interrelation of all of the rules. This philosophy and the various interrelations can be made much clearer when the materials concentrate upon the rules system. Furthermore, there are many facets to the operation of each major rule which remain obscure unless there is such concentration. All of these matters may well be examined without examination of code state rules. Not only does preliminary examination of code state rules in most areas completely dilute the study of the federal rule system in most areas, but it is unnecessary for understanding the federal rule system. In fact, to the extent that study of the code system is made in any depth, it tends to obscure the federal system operation and may inculcate notions contrary to those manifested in the federal rules. The simple fact is that the federal rules have embodied a successful procedural system only because the judges administering them have been willing to abandon various notions inherent in the code state procedural systems. It is also true that misinterpretations of the rules have often arisen from the process of importing code notions into the rules. On the other hand, while the federal rules properly demand a sympathetic attitude, a study of this rule system for state use furnishes an adequate background for consideration of code state rules by a student who may be later confronted with problems under such rules. Finally, among other considerations is the important fact that students presently in law school will in the future be required to cope with the development of many

PREFACE

new ideas and rules that will stem from the federal rule system and not from the Field Code system of procedure. To equip the student for this future, concentration in depth upon federal rule philosophy and operation is necessary. And this concentration can furnish a basis for class consideration of improvement of procedures in various areas.

Some areas of procedure are not covered by the federal rules or their state counterparts—for example, jurisdiction. In dealing with such areas, we have, as far as possible, dealt with problems and solutions that are common to all jurisdictions.

Several other purposes should be served by the materials. The materials are selected upon a basis which we believe will afford an opportunity to emphasize the adversary nature of the pre-trial stage of a lawsuit, an emphasis which is crucial to an understanding of any court-related procedural system. In this connection we have kept in mind the notion that the materials should impart a background the student will find useful in his other law school courses and also useful for his activities after graduation.

To accomplish all of the above goals we have attempted to design this volume as a teaching tool, eschewing the notion that it should be a scholarly source book for research or other purposes. Our experience has led us to believe that, for the understanding of the nature of the federal rule system and its operation, it is of primary importance to concentrate upon cases which illustrate the operation of the rules in suitable and interesting fact and substantive law contexts. Inherent in this approach is a belief that mere knowledge of the terms of the general rules is of minimum value. Thus, selection of cases has not been confined to leading Supreme Court cases or other appellate cases; rather, opinions which tend to show trial level problems and the relation of the rules to the merits of the case have been preferred.

Various different general arrangements of the materials could have been adopted, but for the most part a chronological arrangement has appeared the most useful in our experience. Therefore the subjects are organized generally in the order in which procedures are employed in the conduct of a lawsuit. Thus the subjects of jurisdiction, commencement of suit and venue are treated first. Once a proper court is chosen, what procedures must be followed or are merely available from the commencement of the suit to the stage of trial? These matters seem to be most easily explored by considering suits which do not involve multiple parties first and then by adding complications which occur in suits involving multiple parties. Finally the

PREFACE

last chapter deals with the effect of judgments. Materials on res judicata/preclusion have been included because the concept may be important in the initial stages of a law suit. Also, the subject matter is rarely considered in any part of the typical law school curriculum, and yet it is of great importance to courts, attorneys and litigants.

Matters of format seem self-explanatory. A federal rules pamphlet must be used as a supplement since the rules are not reproduced in this volume.

The original footnote numbers have been retained in all cases in which the original footnotes to an opinion have been retained and the editors' footnotes are indicated by asterisks. The authors feel that the contents of this book are those which should be covered in a procedure course in either the first or second year. By a careful selection of materials, the book can be used in a two, three or four hour course. The materials are sufficient for a six-hour course.

The emphasis is on procedure under the federal practice and not upon the jurisdiction of the federal courts which is left to a course in Federal Courts or Federal Jurisdiction.

We are indebted to Dean Mason Ladd, the late Professor Sheldon D. Elliott, and Professor Claude Brown for their experience in the publication of previous casebooks in which the authors participated. We also appreciate the permissions of the copyright owners to reproduce the various copyrighted excerpts from law reviews and books which have been included in this volume.

D.K.
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G.N.S.
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May, 1975

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SUMMARY OF CONTENTS

	Page
PREFACE	XI
TABLE OF CASES	XXI
Chapter	
1. The Machinery of Justice	1
2. Litigation in Context	24
3. Selection of a Proper Court	64
4. Mechanics of Commencing a Law Suit	190
5. Complaint	218
6. Use of Motions	299
7. Responsive Pleadings	322
8. Amended and Supplemental Pleadings	365
9. Procedures to Clarify the Controversy	391
10. Judgments Short of Trial	497
11. Scope of the Controversy	529
12. The Trial	692
13. Appeals	842
14. Res Judicata/Preclusion	848
Index	917

TABLE OF CASES

The principal cases are in italic type. Cases cited or discussed are in roman type. References are to Pages.

- Adam v. Saenger, 359
Aetna Casualty & Surety Co. v. Yeatts, 815
Aetna Life Ins. Co. v. Haworth, 67
Air Crash Disaster, Dayton, Ohio, On March 9, 1967, In re, 886
Akely v. Kinnicutt, 544
Allis-Chalmers Mfg. Co. v. Malan Construction Corp., 254
American Pipe & Construction Co. v. Utah, 670
Armour & Co. of Delaware v. B. F. Bailey, Inc., 555
Arnstein v. Porter, 508
Atlantis Development Corp. v. United States, 607
- Bagdon v. Philadelphia & Reading Coal & Iron Co.*, 120
Baker v. F & F Investment, 406
Balanovski, United States v., 158
Baltimore & Carolina Line v. Redmond, 796
Bank of California Nat. Ass'n v. Superior Court, 559
Baroff v. Becker, 519
Bartolotta v. United States, 229
Bass v. Richardson, 620
Beacon Theatres, Inc. v. Westover, 712
Beckstrom v. Coastwise Line, 362
Belfer v. Pence, 413
Bland v. Norfolk & Southern R. Co., 515
Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 876
Boggs v. Inter-American Mining & Smelting Co., 198
Bradford, People v., 253
Breier v. Northern California Bowling Proprietors' Ass'n, 366
Brunette Machine Works, Ltd. v. Kockum Industries, Inc., 188
- Bruszewski v. United States*, 864
Burnett v. New York Cent. R. R. Co., 210
Burton v. Weyerhaeuser Timber Co., 490
Byrd v. Blue Ridge Electric Coop., 87
- Carson v. Burlington, 430
Carter v. Jury Commission of Greene County, 737
Celanese Corp. v. E. I. duPont de Nemours & Co., 430
Chicago Great Western Ry. Co. v. Farmers Produce Co., 598
Cities Service Oil Co. v. Dunlap, 252
Clark v. Chase Nat'l Bank, 532
Clarke v. Redeker, 908
Cohn v. Weiss, 77
Colgrove v. Battin, 781
Cone v. West Virginia Pulp & Paper Co., 786
Conley v. Gibson, 242
Cordner v. Metropolitan Life Ins. Co., 626
Cox v. Johnston, 282
Crocker v. Johnson, 337
Curry v. Pyramid Life Ins. Co., 363
Curtis v. Loether, 707
- Dairy Queen, Inc. v. Wood*, 720
Dansby v. Dansby, 268
Dato, In re, 350
Devine v. Griffenhagen, 320
D. H. Overmyer Co., of Ohio v. Frick Co., 114
Dimick v. Schiedt, 819
D. L. Stern Agency v. Mutual Benefit Health & Acc. Ass'n, 531
Dolan v. Baldrige, 200
Donaldson v. United States, 622
Durfee v. Duke, 877
Dyotherm Corp. v. Turbo Machine Co., 362

TABLE OF CASES

- Eagle, Star & British Dominions Ins. Co. v. Heller*, 882
- Edmondson v. Nebraska*, 622
- Eisen v. Carlisle & Jacquelin*, 654
- Elliott v. Mosgrove*, 278
- Ellis v. Crockett*, 279
- El Paso Natural Gas Co., United States v.*, 839
- Elwonger v. Career Academy, Inc.*, 311
- Engelhardt v. Bell & Howell Co.*, 901
- Erie R. Co. v. Tompkins*, 80
- Falcone v. Middlesex County Medical Soc.*, 910
- Fidelis Fisheries v. Thorden*, 404
- Fink v. Fink*, 283
- Firemen's Ins. Co. of Newark, N. J. v. Show*, 332
- Fischer v. Buehl*, 465
- Fitts v. Southern Pacific Co.*, 741
- Foman v. Davis*, 365
- Frank v. Solomon*, 325
- Freeman v. Continental Gin Co.*, 367
- Freeman v. Kirby*, 291
- Fuentes v. Shevin*, 165
- Gallick v. Baltimore & Ohio R. Co.*, 780
- Galloway v. United States*, 758
- Garfein v. McInnis*, 166
- Garrison v. Baltimore & Ohio R. Co.*, 385
- Gasoline Products Co. v. Champlin Refining Co.*, 827
- Gebhard v. Niedzwiecki*, 446
- General Motors Corp. v. Burns*, 615
- GFI Computer Industries, Inc. v. Fry*, 436
- Gibson v. Eric-Lackawanna R. Co.*, 754
- Glens Falls Indemnity Co. v. United States ex rel. and to Use of Westinghouse Elec. Supply Co.*, 586
- Globe Cereal Mills v. Scrivener*, 490
- Goff v. AAMCO Automatic Transmissions, Inc.*, 321
- Goldlawr, Inc. v. Heiman*, 186
- Goldstein v. Brandmeyer*, 311
- Great American Ins. Co. v. Harleysville Mut. Cas. Co.*, 545
- Great Lakes Rubber Corp. v. Herbert Cooper Co.*, 344
- Green v. Walsh*, 372
- Greenbaum v. United States*, 89
- Griffin v. City of Cincinnati*, 748
- Guaranty Trust Co. of New York v. York*, 86
- Gulf Oil Corp. v. Gilbert*, 189
- Gully v. First Nat. Bank*, 71
- Gunder v. New York Times*, 500
- Gumperz v. Hofmann*, 209
- Gustin-Bacon Division Certainteed Products Corp., United States v.*, 311
- Hadley v. Baxendale*, 282
- Halprin v. Mora & Davis*, 776
- Hanna v. Plumer*, 191
- Hansberry v. Lee*, 646
- Harris v. Balk*, 159
- Hatch v. Merigold*, 248
- Henry L. Doherty & Co. v. Goodman*, 112
- Hess v. Pawloski*, 109
- Hickman v. Taylor*, 413
- Hodgson v. Virginia Baptist Hospital, Inc.*, 308
- Holm v. Shilensky*, 513
- Humphreys v. Tann*, 898
- Hunter v. International Systems & Controls Corp.*, 525
- Ice Plant Equipment Co. v. Martocello*, 323
- Ikerd v. Lapworth*, 440
- Illian v. McManaman*, 507
- International Prisoners' Union v. Rizzo*, 911
- International Shoe Co. v. Washington*, 124
- International Union, U. A., A. & A. I. Wks. v. Hoosier Cardinal Corp.*, 216
- Iroquois Oil & Gas Co. v. Hollingsworth*, 556
- Jacobson v. Mutual Benefit Health & Acc. Ass'n*, 263
- Jacobus v. Colgate*, 76
- J. M. Blythe Motor Lines Corp. v. Blalock*, 497
- Johnson v. Department of Water and Power of the City of Los Angeles*, 915
- Johnson v. New York, N. H. & H. R. Co.*, 788
- Jones v. McKesson & Robbins, Inc.*, 499
- Jones Enterprises, Inc. v. Atlas Service Corp.*, 149