

PLEADING AND PROCEDURE

STATE AND FEDERAL

Cases and Materials

DAVID W. LOUISELL

GEOFFREY C. HAZARD, JR.

University Casebook Series

CASES AND MATERIALS
ON
PLEADING AND PROCEDURE
STATE AND FEDERAL

By
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and
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PREFACE TO THIRD EDITION

Civil procedure is coming of age as society thrusts upon it perhaps the severest challenges of its history. Can it assimilate the massive and complex environmental and consumer clashes of today and tomorrow, as satisfactorily as it did and does the individualistic and simpler person-to-person contests of yesterday and today? Can it handle class suits as well as it does traffic and promissory note disputes?

The hopes of our earlier editions largely have been fulfilled. More states have switched to the Federal Rules of Civil Procedure in whole or substantial part. Long-arm statutes have been refined, and many of the conceptual problems in such issues as joinder, indispensable parties, intervention, and real party in interest have been put to rest. Discovery has been further modernized. Such old provisional remedies as garnishment and attachment, assumed because of their ancient respectability to be above the turmoil of modern procedural skepticism, increasingly are subjected to constitutional critique.

We do not delude ourselves that all of the changes are necessarily "progress"; that "all is for the best in a best of all possible [procedural] worlds." Some of the movement in diminution of the jury may be as grounded in myth as the mythology the Supreme Court postulates in reexamining the constitutional necessity of a jury of twelve. But casebook editors must try to assimilate all the significant developments, like them or not.

In many areas our job has been essentially updating: a later, and hopefully a better, case for an obsolescent one; notes revised to take account of the intervening legislative or rules amendments, and new basic decisional trends. But sometimes our attempts in this edition have been much more fundamental than updating, as witness the new attacks on the problems of remedies, class suits and procedure in perspective.

Again we have adhered to our policy of juxtaposing Federal Rules and Code solutions, not only because not all jurisdictions even now are totally enamored of the former—as witness New York and California—but also for teaching effectiveness. And we have struggled for balance, especially in our selection of cases, between the traditional fields of the private law suit and the new litigation of an ecology and consumer-minded generation.

PREFACE TO THIRD EDITION

This edition will have succeeded if students of procedure continue their willingness to pursue hard problems diligently, and will keep their minds open to our own faith that rational procedure will remain as indispensable to civil peace and liberty tomorrow, as it was yesterday and is today.

For valuable assistance we express our appreciation to Daniel Leer, Douglas L. Hammer, and especially David H. Karlen, Boalt products of the preceding edition. Our procedural colleagues, always generous in their suggestions for improvement, are not forgotten—especially Preble Stolz, Jan Vetter and Ronan Degnan.

D. W. L.
G. C. H., Jr.

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