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MASSARO*

**CIVIL PROCEDURE**  
**Cases and Problems**



**ASPEN LAW & BUSINESS**

*Civil Procedure*  
**Cases and Problems**

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*To Tom and Jerry,  
Neither cat nor mouse*

# Preface

Unlike most other Civil Procedure texts, we do not start with personal jurisdiction, pleading, or an overview of the whole process. Rather, in the first two chapters we take up procedural due process and the decisionmakers who effect it. These are subjects that most students have some experience in or instincts about, and on which they can build legal analysis. Starting here gives students a context for later thinking about specific procedural issues and rules, and, in fact, makes them better at it.

We break due process into its components: adequate notice (and the new Rule 4) and what constitutes a meaningful opportunity to be heard (for example, whether the presence of a lawyer is necessary for due process). Against this background, we take up the thorny subject of personal jurisdiction, which we have found students are better able to understand after the due process training, particularly that related to service of process.

In Chapter 2 we describe the qualities sought in decision-makers, how we choose our judges and juries, and how lawyers operate in the system as independent decisionmakers and lawmakers. We also address the issues involved in choosing between the state and federal systems and the consequences of that selection.

By the end of the first two chapters, students have covered many of the standard topics in the basic course—notice, service of process, personal jurisdiction, venue, subject matter jurisdiction, right to trial by jury, and *Erie*—and have read much of the traditional case fare, but in a context that enables fuller understanding of it and the various actors' roles within it.

We then proceed chronologically through the a lawsuit process, beginning with pleading and ending with a chapter on appeals. The last chapter has an appellate case on every topic covered in the rest of the book, so that it in effect summarizes what has gone before. At the same time, the cases illustrate the various standards of review and doctrines of appealability.

Except in the final chapter on appeals, which is entirely case-

based, we open each section with a problem that is much like an exam question, and that is something like a real situation a lawyer might face with a client. Then we present the legal materials, cases, and statutes necessary for solving the problem. The purpose is to display the lawyer's role in varying procedure contexts and to encourage active engagement with the cases and rules.

We have used these problems for years now, and warrant their workability. They can be used either at the conclusion of study of a topic or to introduce it. One of their main benefits is that they take away the mystique of exams and also show the students how to apply what they learn to actual situations.

We have assembled these materials mindful of Professor Edward A. Purcell Jr.'s paean to procedure: "Procedure offers a particularly rewarding subject . . . because it constitutes the realm of irony in the law. . . . [T]he apparently most trivial and mechanical of procedural rules can have an importance far beyond their ostensible purposes. Similarly, in qualifying, frustrating, or transforming the significance of substantive rules and rights, procedure can illuminate their practical human significance and spotlight the critical points where social factors impinge most sharply on the legal process." *Litigation and Inequality: Federal Diversity Jurisdiction in Industrial America, 1870-1958*, at 249 (1992). Our hope is that the "practical human significance" of procedure is apparent throughout the text.

Finally, we wish to acknowledge our debts. First and foremost, we thank Paul D. Carrington. This book is an outgrowth of earlier editions of Carrington and Babcock, and it bears the indelible stamp of his conception of Procedure as it was expressed in those texts. He has been "of counsel" in this endeavor, and our debt to him is apparent in each chapter. We also thank Ellen Borgerson, who generously offered materials and insights that improved many sections of the book, especially Chapter 3. The numerous reviewers of the book also were extremely helpful to us in making difficult decisions about coverage, content, and organization, for which we thank them.

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*Barbara Allen Babcock  
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# *Civil Procedure*



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