
CONTENTS

<i>Preface</i>	xxiii
<i>Acknowledgments</i>	xxv
CHAPTER 1	
An Overview of Procedure	1
A. The Idea and the Practice of Procedure	1
1. Locating Procedure	1
2. Clients, Lawyers, Procedure, and Strategy	2
B. Where Can the Suit Be Brought?	4
1. Personal Jurisdiction	5
2. Subject Matter Jurisdiction	5
<i>Hawkins v. Masters Farms, Inc.</i>	6
Notes and Problems	8
3. Service of Process	10
C. Stating the Case	11
1. The Lawyer's Responsibility	11
<i>Bridges v. Diesel Service, Inc.</i>	11
Notes and Problems	12
Note: Reading the Rules—Process and Politics in State and Federal Courts	13
2. The Complaint	14
<i>Bell v. Novick Transfer Co.</i>	14
Notes and Problems	15
3. The Response—Motions and Answer	17
a. Pre-Answer Motions	17
Notes and Problems	18
b. The Answer	18
Notes and Problems	20
4. Amendment of Pleadings	21
D. Parties to the Lawsuit	21
<i>Fisher v. Ciba Specialty Chemicals Corp.</i>	22
Notes and Problems	24
E. Factual Development—Discovery	24
<i>Gorson v. T.G.R. Logistics, Inc.</i>	26
Notes and Problems	29
F. Pretrial Disposition—Summary Judgment	29
<i>Houchens v. American Home Assurance Co.</i>	30
Notes and Problems	32
G. Trial	33
<i>Norton v. Snapper Power Equipment</i>	34

Notes and Problems	36
H. Former Adjudication	38
<i>Ison v. Thomas</i>	38
Notes and Problems	40
I. Appeals	40
<i>Reise v. Board of Regents of the University of Wisconsin</i>	41
Notes and Problems	42
Note on Appellate Structure and Jurisdiction	44
Note: Civil Procedure in Your Substantive Courses	44
Assessment Questions—And a Word About Using These Questions	45
Analysis of Assessment Questions	47
PART I	
THE CONSTITUTIONAL FRAMEWORK FOR U.S. LITIGATION	49
A. Approaching Civil Procedure	49
B. Constitutional Limits in Litigation	49
1. The Idea of Jurisdiction	50
2. Jurisdiction and the Constitution	50
3. The Constitution and Choice of Law	52
CHAPTER 2	
Personal Jurisdiction and Notice	53
A. The Origins	53
<i>Pennoyer v. Neff</i>	53
Notes and Problems	57
B. The Modern Constitutional Formulation of Power	59
1. Redefining Constitutional Power	59
<i>International Shoe Co. v. Washington</i>	60
Notes and Problems	64
<i>McGee v. International Life Insurance Co.</i>	66
<i>Hanson v. Denckla</i>	67
Notes and Problems	67
2. Absorbing <i>In Rem</i> Jurisdiction	68
3. Specific Jurisdiction: The Modern Cases	69
<i>World-Wide Volkswagen Corp. v. Woodson</i>	69
Notes and Problems	74
<i>J. McIntyre Machinery, Ltd. v. Nicastrò</i>	74
Notes and Problems	76
4. General Jurisdiction and Refinements to Specific Jurisdiction	77
<i>Goodyear Dunlop Tires Operations, S.A. v. Brown</i>	77
Notes and Problems	78
<i>Daimler AG v. Bauman</i>	79
Notes and Problems	81
<i>Bristol-Meyers Squibb Co. v. Superior Court</i>	82
Notes and Problems	85
<i>Ford Motor Co. v. Montana Eighth Judicial Dist. Court</i>	87

Notes and Problems	92
Note on Personal Jurisdiction and the Internet	93
<i>Burnham v. Superior Court</i>	94
Notes and Problems	98
Note on the Mechanics of Jurisdiction: Challenge and Waiver	99
Notes and Problems	100
C. Consent as a Substitute for Power	101
<i>Carnival Cruise Lines, Inc. v. Shute</i>	102
Notes and Problems	104
D. Notice	105
1. The Constitutional Requirements	105
<i>Mullane v. Central Hanover Bank & Trust Co.</i>	107
Notes and Problems	109
<i>Baidoo v. Blood-Dzraku</i>	111
2. Beyond the Constitutional Requirements: The Mechanics of Notice and Service	114
Notes and Problems	115
E. Self-Imposed Restraints on Jurisdictional Power: Long-Arm Statutes, Venue, Discretionary Refusal of Jurisdiction, and Multidistrict Litigation	118
1. Long-Arm Statutes as a Restraint on Jurisdiction	118
<i>Gibbons v. Brown</i>	118
Notes and Problems	120
2. Venue as a Further Localizing Principle	121
Notes and Problems	122
<i>Thompson v. Greyhound Lines, Inc.</i>	123
Notes and Problems	125
3. Declining Jurisdiction: Transfer and Forum Non Conveniens	126
<i>Piper Aircraft v. Reyno</i>	127
Notes and Problems	131
<i>Atlantic Marine Construction Co. v. United States District Court</i>	132
Notes and Problems	135
4. Borrowing Jurisdiction: Multidistrict Litigation	136
Assessment Questions	137
Analysis of Assessment Questions	138
CHAPTER 3	
Subject Matter Jurisdiction of the Federal Courts	141
A. The Idea and the Structure of Subject Matter Jurisdiction	141
B. Federal Question Jurisdiction	144
<i>Louisville & Nashville Railroad v. Mottley</i>	145
Notes and Problems	147
C. Diversity Jurisdiction	150
1. Diversity of Citizenship	150
<i>Redner v. Sanders</i>	151
Notes and Problems	152
<i>Hertz Corp. v. Friend</i>	155
Notes and Problems	157
2. Amount in Controversy	158

D. Supplemental Jurisdiction	159
Notes and Problems	160
<i>In re Ameriquest Mortgage Co. Mortgage Lending Practices Litigation</i>	162
<i>Szendrey-Ramos v. First Bancorp</i>	163
Notes and Problems	165
E. Multidistrict Litigation	166
F. Removal	168
Notes and Problems	168
<i>Keller Logistics Group, Inc. v. Navistar, Inc.</i>	171
Notes and Problems	173
Assessment Questions	173
Analysis of Assessment Questions	175
CHAPTER 4	
State Law in Federal Courts: <i>Erie</i> and Choice of Law	177
A. State Courts as Lawmakers in a Federal System: <i>Erie</i>	178
1. The Issue in Historical Context	178
2. Constitutionalizing the Issue	179
<i>Erie Railroad v. Tompkins</i>	180
Notes and Problems	183
B. The Limits of State Power in Federal Courts	185
1. Interpreting the Constitutional Command of <i>Erie</i>	186
<i>Guaranty Trust Co. v. York</i>	186
Notes and Problems	187
<i>Byrd v. Blue Ridge Rural Electric Cooperative</i>	188
Notes and Problems	189
2. De-constitutionalizing <i>Erie</i>	189
<i>Hanna v. Plumer</i>	190
Notes and Problems	193
3. Determining Whether State and Federal Law Conflict	196
C. The Interpretation of State Law in Federal Courts	197
1. Deciding Which State's Laws to Apply	197
2. Deferring to a State's Interpretation of Its Laws	198
<i>Mckesson v. Doe</i>	199
Notes and Problems	200
Assessment Questions	201
Analysis of Assessment Questions	202
PART II	
THE PROCESS OF LITIGATION	203
A. Approaching Civil Procedure	203
B. Choosing Procedure	203
C. A Roadmap for Exploring Choices	204
CHAPTER 5	
Incentives to Litigate	205
A. Litigation in the United States at the Start of the Twenty-First Century	205
Notes and Problems	209

B. Reasons to Litigate: Dollars, Orders, and Declarations	210
1. Damages	211
<i>Troupe v. C & S Wholesale Grocers, Inc.</i>	211
Notes and Problems	213
a. Damage Amounts: Ceilings and Floors	214
b. Categorizing Damages	215
Notes and Problems	216
2. Specific Relief	217
<i>Lucy Webb Hayes Natl. Training School v. Geoghegan</i>	218
Notes and Problems	220
3. Declaratory Relief	220
Notes and Problems	222
4. Temporary Remedies	223
a. Preliminary Injunctions and Temporary Restraining Orders: The Basic Problem	224
<i>Detroit Will Breathe v. City of Detroit</i>	224
Notes and Problems	227
b. Provisional Remedies and Due Process	228
<i>Fuentes v. Shevin</i>	229
Notes and Problems	233
C. Financing Litigation	234
1. The “American” and “English” Rules About Attorneys’ Fees	236
Notes and Problems	237
2. Insurance, the Contingent Fee, and Alternative Litigation Finance	238
a. Insurance	238
Notes and Problems	238
b. The Contingent Fee	239
Notes and Problems	242
c. Alternative Litigation Finance	242
Notes and Problems	244
3. Public Subsidies and Professional Charity	245
Notes and Problems	248
4. From Fee Spreading to Fee Shifting	248
a. The Common Fund	248
Notes and Problems	248
b. By Contract	249
c. By Common Law	249
d. By Statute	249
Notes and Problems	250
<i>Evans v. Jeff D.</i>	251
Notes and Problems	253
<i>Buckhannon Board and Care Home, Inc. v. West Virginia</i>	
<i>Department of Health and Human Resources</i>	253
Notes and Problems	255
Assessment Questions	256
Analysis of Assessment Questions	257

CHAPTER 6	
Pleading	259
A. The Story of Pleading	259
1. Of Stories and Jurisdiction	259
Notes and Problems	260
2. Plaintiff's Story, Defendant's Story	261
3. One Function of Pleading: Establishing the Law	262
Notes and Problems	265
<i>Haddle v. Garrison (S.D. Ga. 1996)</i>	267
Notes and Problems	268
<i>Haddle v. Garrison (11th Cir. 1997)</i>	269
Notes and Problems	269
<i>Haddle v. Garrison (525 U.S. 121 (1998))</i>	270
Notes and Problems	272
4. Another Function of Pleading: Sorting Strong from Weak Cases?	273
a. The "Ordinary" Case: How Much Detail in a Complaint?	274
Notes and Problems	275
<i>Ashcroft v. Iqbal</i>	277
Notes and Problems	286
<i>McCleary-Evans v. Maryland Department of Transportation,</i> <i>State Highway Administration</i>	287
Notes and Problems	289
b. Special Cases: Requiring and Forbidding Specificity in Pleading	289
<i>Stradford v. Zurich Insurance Co.</i>	290
Notes and Problems	292
5. Allocating the Elements of a Claim	293
<i>Jones v. Bock</i>	294
Notes and Problems	295
B. Ethical Limitations in Pleading—and in Litigation Generally	298
Notes and Problems	299
<i>Christian v. Mattel, Inc.</i>	300
Notes and Problems	303
C. Responding to the Complaint	305
1. Default	305
2. Settle	305
3. The Pre-Answer Motion (and a Close Post-Answer Relative)	306
Notes and Problems	306
Notes and Problems	307
Notes and Problems	309
4. Answer	309
a. Denials	309
<i>Zielinski v. Philadelphia Piers, Inc.</i>	310
Notes and Problems	312
b. Affirmative Defenses	314
Notes and Problems	314
5. Reply	315
Notes and Problems	315
D. Amendments	316
Notes and Problems	316
1. The Basic Problem: Prejudice	316

<i>Beeck v. Aquaslide 'N' Dive Corp.</i>	316
Notes and Problems	320
2. Statutes of Limitations and Relation Back	321
<i>Moore v. Baker</i>	322
<i>Bonerb v. Richard J. Caron Foundation</i>	323
Notes and Problems	325
Assessment Questions	327
Analysis of Assessment Questions	328
CHAPTER 7	
Discovery	331
A. Modern Discovery	331
1. Discovery Before Discovery: Obligations and Spoliation	332
<i>Zubulake v. UBS Warburg LLP</i>	332
Notes and Problems	334
2. Getting the Story Straight: Crafting a Discovery Plan	335
B. The Tools of Discovery	336
1. Required Disclosures—First Round	338
Notes and Problems	338
2. Documents, Things, Land, and Bytes: Requests for Production (Rules 34 and 45)	339
Notes and Problems	340
3. Asking Questions in Writing, Seeking Admissions: Interrogatories and Admissions (Rules 33 and 36)	341
Notes and Problems	342
4. Asking Questions in Person: Depositions (Rule 30) and Physical and Mental Evaluations (Rule 35)	342
Notes and Problems	344
5. Pretrial Witness Lists and the Final Pretrial Order	347
C. The Scope of Discovery	347
1. Relevance	347
<i>Favale v. Roman Catholic Diocese of Bridgeport</i>	348
Notes and Problems	350
2. Proportionality, Burden, and Privacy	351
<i>Cerrato v. Nutribullet, LLC</i>	351
<i>Wagoner v. Lewis Gale Medical Center, LLC</i>	352
<i>Rengifo v. Erevos Enterprises, Inc.</i>	355
Notes and Problems	357
3. Privilege	359
Notes and Problems	360
4. Trial Preparation Material	361
<i>Hickman v. Taylor</i>	361
Notes and Problems	365
D. Experts	366
Notes and Problems	367
<i>Thompson v. The Haskell Co.</i>	368
<i>Chiquita International Ltd. v. M/V Bolero Reefer</i>	369
Notes and Problems	370

E. Ensuring Compliance and Controlling Abuse of Discovery	371
1. Types of Discovery Disputes	371
2. Ensuring Compliance	372
Notes and Problems	372
3. Remedies: Management and Sanctions	374
<i>Mueller v. Swift</i>	374
Notes and Problems	377
<i>Security National Bank of Sioux City v. Abbott Laboratories</i>	378
Notes and Problems	379
Assessment Questions	380
Analysis of Assessment Questions	382
CHAPTER 8	
Resolution Without Trial	385
A. The Pressure to Choose Adjudication or an Alternative	386
1. Default and Default Judgments	386
<i>Peralta v. Heights Medical Center</i>	386
Notes and Problems	388
2. Scheduling Orders and Failure to Prosecute: Involuntary Dismissal	389
3. Voluntary Dismissal	390
Notes and Problems	390
B. Avoiding Adjudication	391
1. Negotiation and Settlement: Why Settle? And How?	391
a. Contracting to Dismiss	393
Notes and Problems	393
b. Third-Party Participation in Settlement: Facilitation, Encouragement, and Coercion	397
Notes and Problems	397
c. Contracting for Confidentiality	398
Notes and Problems	398
<i>Kalinauskas v. Wong</i>	400
Notes and Problems	402
2. Contracting for Private Adjudication: Arbitration and Its Variants	403
a. The Idea and Practice of Arbitration	403
b. Federalism and Arbitration: Herein of Preemption	404
<i>Ferguson v. Countrywide Credit Industries, Inc.</i>	405
Notes and Problems	408
<i>AT&T Mobility LLC v. Concepcion</i>	409
Notes and Problems	415
C. Adjudication Without Trial: Summary Judgment	416
Notes and Problems	416
1. Summary Judgment in Action: The Burdens on the Moving and Nonmoving Parties	418
<i>Celotex Corp. v. Catrett</i>	420
Notes and Problems	422
2. Summary Judgment in Action: How Courts Should Assess the Evidence	424
<i>Tolan v. Cotton</i>	424
Notes and Problems	428

<i>Scott v. Harris</i>	429
Notes and Problems	433
Assessment Questions	434
Analysis of Assessment Questions	435
CHAPTER 9	
The Trier and the Trial	437
A. Choosing and Challenging Judges	438
Notes and Problems	439
<i>Caperton v. A. T. Massey Coal Co.</i>	440
Notes and Problems	446
B. Sharing Power with a Jury	447
1. When May a Jury Decide?	448
Notes and Problems	451
2. Choosing Jurors	453
3. Challenging Jurors	454
Notes and Problems	456
C. What Will Trial Be About? The Final Pretrial Conference and Order	458
<i>Monfore v. Phillips</i>	458
Notes and Problems	460
D. Judges Guiding Juries	461
1. Instruction and Comment	462
2. Excluding Improper Influences	462
3. Size and Decision Rules	463
E. Judges Controlling Juries: Judgment as a Matter of Law	464
Notes and Problems	464
1. Judgment as a Matter of Law in Action: How Courts Should Assess the Evidence	466
<i>Conte v. Emmons</i>	466
Notes and Problems	469
2. Judgment as Matter of Law in Action: Judgments and Renewed Judgments	471
Notes and Problems	471
<i>Unitherm Food Systems, Inc. v. Swift-Eckrich, Inc.</i>	472
Notes and Problems	475
F. Judges Undoing Verdicts: The New Trial	476
1. The Justifications for New Trials	476
a. Flawed Procedures	476
b. Flawed Verdicts	476
<i>Lind v. Schenley Industries</i>	477
Notes and Problems	480
2. Conditional New Trials	481
a. New Trial Limited to Damages	481
b. Remittitur and Additur	481
G. The Limits of Judicial Power: The Reexamination Clause and the Jury as a Black Box	482
<i>Peterson v. Wilson</i>	482
Notes and Problems	485
Assessment Questions	488
Analysis of Assessment Questions	489

CHAPTER 10	
Appeal	491
A. Whether a Decision May Be Reviewed: Obstacles to Appeal	491
1. The Adversity Requirement	492
Notes and Problems	492
2. The Preservation Requirement	493
Notes and Problems	494
3. Financial Burdens and Other Forms of Discouragement	495
B. When a Decision May Be Reviewed: “Finality”	497
1. The Final Judgment Rule	497
a. Appellate Jurisdiction and the Final Judgment Rule	498
<i>Liberty Mutual Insurance Co. v. Wetzel</i>	498
Notes and Problems	501
b. Defining the Moment of Judgment	503
Notes and Problems	504
2. Exceptions to the Final Judgment Rule	505
a. Practical Finality	505
<i>Lauro Lines s.r.l. v. Chasser</i>	505
Notes and Problems	508
b. Injunctions	510
Notes and Problems	510
c. Interlocutory Appeals	511
d. Mandamus	511
Notes and Problems	512
C. How a Decision May Be Reviewed: Scope of Review	513
1. Law and Fact	513
<i>Anderson v. Bessemer City</i>	513
Notes and Problems	517
2. Harmless Error	517
<i>Van Zee v. Hanson</i>	518
Notes and Problems	519
Assessment Questions	520
Analysis of Assessment Questions	521
CHAPTER 11	
Respect for Judgments	523
A. Claim Preclusion	523
1. Precluding the “Same” Claim	524
a. Efficiency	524
<i>Frier v. City of Vandalia</i>	524
Notes and Problems	528
<i>Semtek Intl. Inc. v. Lockheed Martin Corp.</i>	531
Notes and Problems	534
b. Consistency—The Logical Implications of the Former Judgment	535
Notes and Problems	536
2. Between the “Same” Parties	537
<i>Taylor v. Sturgell</i>	537
Notes and Problems	542
3. After a Final Judgment	544

4. After a Judgment “On the Merits”	545
Notes and Problems	545
<i>Gargallo v. Merrill Lynch, Pierce, Fenner & Smith</i>	546
Notes and Problems	549
B. Issue Preclusion	549
1. An Issue of Fact or Law	550
Notes and Problems	550
2. An Issue “Actually Litigated and Determined”	551
<i>Illinois Central Gulf Railroad v. Parks</i>	551
Notes and Problems	553
3. By a Valid and Final Judgment	553
4. The Determination of the Issue Is “Essential to the Judgment”	554
Notes and Problems	555
5. Against a Party to the First Case, Who Had Adequate Incentive and Opportunity to Litigate the Issue	556
<i>Parklane Hosiery Co. v. Shore</i>	557
Notes and Problems	561
C. The Boundaries of Preclusion	565
1. Claim Preclusion	565
2. Issue Preclusion	566
D. Repose: Collateral Attack and Reopened Judgments	567
1. Full Faith and Credit as a Bar to Collateral Attack	567
<i>V.L. v. E.L.</i>	568
Notes and Problems	571
2. The Reopened Judgment as an Alternative to Collateral Attack	574
<i>United States v. Beggerly</i>	574
Notes and Problems	576
Assessment Questions	577
Analysis of Assessment Questions	579

PART III

PROBING THE BOUNDARIES: ADDITIONAL CLAIMS AND PARTIES

581

CHAPTER 12

Joinder

583

A. Joinder of Claims

583

1. In a Plaintiff’s Complaint

583

a. Historical Background

583

b. The Federal Rules

584

c. Joinder and Jurisdiction

584

Notes and Problems

585

2. In Defendant’s Answer: Counterclaims and Crossclaims

586

Cordero v. Voltaire, LLC

587

Notes and Problems

589

B. Joinder of Parties

591

1. By Plaintiffs: Permissive Joinder

591

<i>Mosley v. General Motors Corp.</i>	591
Notes and Problems	594
2. By Defendants: Third-Party Claims	596
<i>Price v. CTB, Inc.</i>	596
Notes and Problems	598
3. By Court Order: Compulsory Joinder	601
<i>Temple v. Synthes Corp.</i>	602
Notes and Problems	603
<i>Marvel Characters, Inc. v. Kirby</i>	604
Notes and Problems	607
C. Intervention	610
<i>United States v. City of Los Angeles</i>	611
Notes and Problems	614
<i>Martin v. Wilks</i>	616
Notes and Problems	620
D. Class Actions	621
1. The Class Action and the Constitution	621
a. Representative Adequacy	621
<i>Hansberry v. Lee</i>	622
Notes and Problems	626
b. Notice and Opt-Out	627
<i>Phillips Petroleum v. Shutts</i>	627
Notes and Problems	630
2. The Class Action and Federalism	631
<i>Standard Fire Ins. Co. v. Knowles</i>	633
Notes and Problems	636
3. Class Certification	637
Notes and Problems	640
<i>Wal-Mart Stores, Inc. v. Dukes</i>	642
Notes and Problems	649
4. Counsel Appointment and Fees	651
5. Class Settlements	651
a. Settlement Notice and Approval	652
Notes and Problems	653
b. The “Settlement” Class	654
<i>Amchem Products, Inc. v. Windsor</i>	654
Notes and Problems	659
Assessment Questions	663
Analysis of Assessment Questions	664
<i>Table of Cases</i>	667
<i>Table of Citations to the Judicial Code (28 U.S.C.)</i>	673
<i>Table of Citations to the Federal Rules of Civil Procedure</i>	675
<i>Table of Authorities</i>	677
<i>Index</i>	679