

Civil Procedure

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Civil Procedure

**Cases, Text, Notes,
and Problems**

Second Edition

Larry L. Teply

PROFESSOR OF LAW
CREIGHTON UNIVERSITY

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Contents

Table of Cases	xix
Table of Short Form Citations	xxvii
Preface	xxix
Chapter 1 Introduction to Civil Procedure and Practice	3
Section A. The Study of the Subject of “Civil Procedure” and Its Importance	3
Section B. Court Systems in the United States	4
Section C. The Role of Civil Actions in the Administration of Justice	6
1. The Relationship between Civil, Criminal, and Administrative Actions	6
2. Limits of Civil Actions in Resolving Disputes	6
<i>Cudahy Junior Chamber of Commerce v. Quirk</i>	7
Notes and Questions	10
Section D. The Adversary System	11
Section E. Historical Origins of Civil Procedure	12
1. Writs and the Forms of Action	12
2. Procedure in the Common-Law Courts	15
3. Equity (Chancery) Courts	17
4. Development and Reform of Civil Procedure in the United States	18
Section F. An Overview of a Civil Action	22
1. Presuit Investigation	23
2. The Plaintiff’s Initial Litigation Decisions	24
(a) Choosing a Court Authorized to Hear a Particular Type of Case (Subject-Matter Jurisdiction)	24
Problems	28
(b) Choosing a Location Where the Particular Defendant May Be Required to Appear and Defend (“Personal Jurisdiction”)	28
Problems	30
(c) Choosing a Court in the Proper Location (“Venue”)	30
Problem	31
(d) Choice-of-Law Considerations	31
(e) Can the Plaintiff Join Multiple Claims in One Lawsuit?	32
Problem	33
(f) Who May (or Must) Be Named as Parties in the Lawsuit?	33
Problem	35
(g) Is a Person Who Wants to Commence the Action the “Real Party in Interest” and Do All the Parties Have the Capacity to Sue or Be Sued?	35
Problem	36

3. Commencement and Service of Process	36
4. The Plaintiff's First Pleading, Remedies, and Amendments	37
Problems	42
5. The Defendant's Response to the Plaintiff's Commencement of the Action	43
(a) Default	43
(b) Transfer, Forum Non Conveniens, and Removal	43
Problems	44
(c) The Defendant's Basic Responses to the Complaint	44
Problems	46
(d) Assertion of Claims by the Defendant against Other Parties	47
(e) Good-Faith Requirements	49
Problems	49
6. The Plaintiff's Possible Responses to the Defendant's Answer	50
Problems	51
7. Intervention by Parties Outside of the Lawsuit	51
Problem	51
8. Discovery by Parties to the Action	51
(a) Depositions	52
(b) Interrogatories	52
(c) Requests for the Production of Documents or Tangible Things	52
(d) Requests for Admission	53
(e) Physical or Mental Examinations	53
(f) Mandatory Disclosures	53
(g) Sanctions	53
Problems	54
9. Pretrial Conferences	54
10. Disposition of the Action Without Trial	54
(a) Judgment on the Pleadings	54
(b) Summary Judgment	55
(c) Voluntary Dismissal	55
(d) Involuntary Dismissal	55
(e) Settlement	56
Problems	56
11. Trial	56
Problems	59
12. Post-Trial Motions	60
Problems	61
13. Judgments and Final Remedies	61
14. Appeals	62
Problems	64
15. Finality in Litigation	64
Problems	65
16. Alternative Dispute Resolution	65
17. The Path for Studying Civil Procedure	67
Chapter 2 Personal Jurisdiction and Related Matters	69
Section A. "Territorial" Rules of Jurisdiction	70
1. Personal Jurisdiction Prior to the Adoption of the Fourteenth Amendment	70
2. Incorporation of the Traditional Territorial Rules into the	
Due Process Clause of the Fourteenth Amendment	71

<i>Pennoyer v. Neff</i>	71
Notes and Questions	77
3. The Operation of the Territorial Rules	78
(a) In Rem and Quasi in Rem Jurisdiction	78
Notes and Questions	80
(b) In Personam Jurisdiction: Physical Presence—Personal Service upon the Defendant Within the Forum State	81
(c) In Personam Jurisdiction: Consent, Appearance, and Waiver	82
Notes and Questions	83
(d) In Personam Jurisdiction: Domicile in the Forum State	84
Section B. The “Minimum Contacts” Test	86
1. Development of Modern Restrictions on State Court Jurisdiction in <i>International Shoe</i>	86
<i>International Shoe Co. v. Washington</i>	87
Notes and Questions	90
2. Reaction of the States to the “Minimum Contacts” Test: Enactment of “Long-Arm” Statutes	91
Notes and Questions	92
3. Developing the “Content” of the “Minimum Contacts” Test	92
Notes and Questions	96
Notes and Questions	98
Notes and Questions	100
<i>World-Wide Volkswagen Corp. v. Woodson</i>	101
Notes and Questions	106
Notes and Questions	107
4. Specific Jurisdiction	108
<i>Burger King Corp. v. Rudzewicz</i>	108
Notes and Questions	118
<i>Asahi Metal Industry Co. v. Superior Court</i>	119
Notes and Questions	126
Problems	128
5. General Jurisdiction	128
<i>Helicopteros Nacionales de Colombia, S.A. v. Hall</i>	129
Notes and Questions	136
Problems	136
6. Application of the Minimum Contacts Test to Internet Activities	137
Section C. The Status of the “Territorial” Rules after <i>International Shoe</i>	138
<i>Shaffer v. Heitner</i>	138
Notes and Questions	146
<i>Burnham v. Superior Court</i>	147
Notes and Questions	157
Problems	158
Section D. Jurisdiction by Necessity	159
Notes and Questions	160
Problems	160
Section E. Due Process Requirements of Notice	161
1. Notice of the Commencement of the Action	161
<i>Jones v. Flowers</i>	161
Notes and Questions	170
Problem	171

2. Notice and Opportunity to Be Heard in the Context of Provisional Remedies	171
<i>Connecticut v. Doehr</i>	171
Notes and Questions	178
Problems	180
Section F. Service of Process	181
1. Methods and Manner of Service	181
Notes and Questions	182
2. Waiver of Service	182
Problems	183
Section G. Special Issues of Amenability to Process and Personal Jurisdiction in Federal Court	184
<i>Republic of Panama v. BCCI Holdings (Luxembourg) S.A.</i>	186
Notes and Questions	192
Problems	193
Chapter 3 Venue and Related Matters	195
Section A. Transitory and Local Actions	196
Notes and Questions	197
Problems	198
Section B. Venue in the Federal Courts	198
1. Development of the Modern Federal Venue Scheme: 28 U.S.C. §1391	198
2. Interaction of §1391(a)(1), (2), and (3)	202
<i>Pfeiffer v. Insty Prints</i>	202
Notes and Questions	204
Problems	205
3. Venue Based on Substantial Events Within the District	206
<i>Bates v. C & S Adjusters, Inc.</i>	206
Notes and Questions	208
Problems	210
4. Residence of Corporations and Associations	211
<i>Zinn v. Gichner Systems Group</i>	211
Notes and Questions	214
Problems	214
5. The “Local Action” Rule and Property-Based Venue in Federal Court	215
Notes and Questions	215
Problems	216
Section C. Transfers of Venue Within a Judicial System	216
Notes and Questions	218
Section D. The Doctrine of Forum Non Conveniens	218
<i>Piper Aircraft Co. v. Reyno</i>	219
Notes and Questions	228
Problems	229
Section E. Forum-Selection Clauses	230
<i>Carnival Cruise Lines, Inc. v. Shute</i>	230
Notes and Questions	233
Notes and Questions	234
Section F. Injunctions Against Extrastate Litigation and Stays of Forum Proceedings	234

Chapter 4 Subject-Matter Jurisdiction	237
Section A. Overview of the Subject-Matter Jurisdiction of the Federal Courts	237
1. The Federal Judicial System	237
2. Federal Courts as Courts of Limited Jurisdiction	238
3. Subject-Matter Jurisdiction of the U.S. Supreme Court	239
4. Subject-Matter Jurisdiction of the Lower Federal Courts and the Need for Both Constitutional and Statutory Authority	240
5. Principal Jurisdictional Categories of Article III	240
6. Seriousness of a Subject-Matter Jurisdiction Defect	241
7. Hierarchical Order of Consideration	241
8. Effect of a Dismissal Because of a Lack of Subject-Matter Jurisdiction	242
9. Refiling in State Court—Statute of Limitations Tolling Problem	242 243
Section B. Federal Question Jurisdiction	243
1. The Scope of the Constitutional Grant	243
2. The Scope of the Statutory Grant	245
(a) Cases in Which Federal Law Creates the Plaintiff’s Claim for Relief	245
(b) Cases in Which Federal Law Is an Essential Element of the Plaintiff’s State Law Claim	246
(c) The “Well-Pleaded Complaint” Rule <i>Louisville & Nashville Railroad Co. v. Mottley</i>	247 247
Notes and Questions	249
(d) Meeting the Requirements for “Arising under” Jurisdiction in “Category 2” Federal Question Cases <i>Grable & Son’s Metal Products, Inc. v. Darue Engineering & Manufacturing</i>	251 251
Notes and Questions	256
Problem	258
3. Distinguishing Proper Subject-Matter Jurisdiction in a Federal Question Case from Ultimate Success on the Merits	259
4. Scope of the Statutory Grant in Declaratory Judgment Actions Problems	260 262
Section C. Diversity and Alienage Jurisdiction	263
1. Suits between Citizens of Different States <i>Walls v. Ahmed</i>	268 269
Notes and Questions	271
Problems	274
2. Determining the Amount in Controversy	275
(a) Cases in Which the Plaintiff Requests Money Damages Notes and Questions Problems	275 278 278
(b) Aggregation of Claims Notes and Questions	279 279
(c) Relief Other Than Monetary Damages Problems	281 281
Section D. Judicial Exceptions to Federal Jurisdiction	282
1. Domestic Relations Cases	282
2. Probate Cases Problems	283 284

Section E. Supplemental Jurisdiction	285
1. Overview	285
Notes and Questions	286
2. Meeting the Requirements of §1367(a)	287
(a) Determining When Claims Are Part of the Same Article III “Case or Controversy”	287
Notes and Questions	288
Problem	288
(b) Supplemental Jurisdiction for Claims Involving Additional Parties	289
Problem	290
3. Restrictions Imposed by §1367(b) in Actions Founded Solely on Diversity of Citizenship	290
<i>Exxon Mobil Corp. v. Allapattah Services, Inc.</i>	294
Notes and Questions	302
Notes and Questions	304
Problems	304
4. Discretionary Dismissals under §1367(c)	305
Notes and Questions	307
5. Tolling of the State Statute of Limitations under §1367(d)	308
Notes and Questions	308
Problems	309
Section F. Removal Jurisdiction	309
Problems	314
Chapter 5 Sources of Law	317
Section A. Overview of the Erie Doctrine	317
1. Introduction to Source-of-Law Issues in United States Law	317
2. The Erie Doctrine—Basic Rule	318
3. The Rules of Decision Act and the Swift Doctrine	319
4. The <i>Erie Railroad Co. v. Tompkins</i> Decision	323
<i>Erie Railroad Co. v. Tompkins</i>	324
Notes and Questions	327
5. <i>Klaxon</i> and the Application of <i>Erie</i> to Conflict-of-Laws Issues	328
Question	330
Section B. Initial Developments after the <i>Erie</i> Decision	330
1. Early Post- <i>Erie</i> Decisions	330
<i>Guaranty Trust Co. v. York</i>	331
Problems	334
<i>Byrd v. Blue Ridge Rural Electric Cooperative, Inc.</i>	336
2. The Branching of the Erie Doctrine	339
<i>Hanna v. Plumer</i>	339
Notes and Questions	347
Problems	349
Section C. The Development of the Rules of Decision Act “Branch”— The “Outcome Determination” Test	350
1. The <i>Ferens</i> Decision	350
Notes and Questions	352

2. The <i>Chambers</i> Decision	352
Notes and Questions	353
Problem	354
3. The <i>Gasperini</i> Decision	354
<i>Gasperini v. Center for Humanities, Inc.</i>	354
Notes and Questions	363
Problems	365
4. The <i>Semtek</i> Decision	366
Section D. The Latest Development of the Rules Enabling Act ("Hanna") "Branch"	366
1. The <i>Burlington Northern</i> Decision	367
<i>Burlington Northern Railroad Co. v. Woods</i>	367
Notes and Questions	370
2. The <i>Stewart Organization</i> Decision	371
Notes and Questions	372
3. The <i>Business Guides</i> Decision	372
Notes and Questions	373
Problems	374
4. The <i>Grupo</i> Decision	374
Notes and Questions	374
5. The <i>Semtek</i> Decision	375
Notes and Questions	375
Problems	376
Section E. Determination of State Law	376
<i>Gilstrap v. Amtrak</i>	377
Notes and Questions	380
Section F. Federal Common Law	382
1. "Substantive" Federal Common Law	382
2. Federal Procedural Common Law in State Courts	385
Notes and Questions	388
Chapter 6 Pleading and Related Matters	389
Section A. Background and Overview	389
Section B. Stating a "Claim for Relief" in the Complaint and Pleading Special Matters	392
1. Degree of Detail Required in the Complaint	392
<i>Leatherman v. Tarrant County Narcotics</i>	
<i>Intelligence & Coordination Unit</i>	394
Notes and Questions	396
<i>Swierkiewicz v. Sorema N. A.</i>	396
Notes and Questions	399
<i>Bell Atlantic Corp. v. Twombly</i>	400
Notes and Questions	410
Problem	413
2. Pleading Special Matters	413
(a) Fraud and Mistake	413
Notes and Questions	413
Problem	414

(b) Special Damages	414
Notes and Questions	415
Problems	415
(c) Other Special Pleading Requirements	415
Notes and Questions	415
3. Alternative, Hypothetical, and Inconsistent Pleading	417
Notes and Questions	417
4. Allocating the Burden of Pleading	417
Section C. Responding to the Complaint	419
1. Preanswer Motions and Demurrers	419
Notes and Questions	420
2. What Does an “Answer” Contain?	421
3. The Answer: Admissions and Denials	421
Notes and Questions	423
4. Waiver of Defenses by Failing to Include Them in a Preanswer Motion or the Answer	423
Notes and Questions	424
5. The Answer: Affirmative Defenses	424
Notes and Questions	425
Problems	426
Section D. Responding to the Answer	427
Problem	428
Section E. Amendments	429
1. Amendments Pursuant to Rule 15(a)	429
<i>Hill v. Equitable Bank, N.A.</i>	429
Notes and Questions	432
2. Trial of Issues by Consent and Amendments at Trial: Rule 15(b)	432
Problems	433
3. Relation Back of Amendments: Rule 15(c)	434
(a) Amendments Asserting a Claim or Defense Under Rule 15(c)(1)(B)	434
(b) Amendments Changing the Party Under Rule 15(c)(1)(C)	436
<i>Lovelace v. O’Hara</i>	436
Notes and Questions	439
(c) Relation Back of Amendments in Federal Court Based on State “Relation Back” Law Under Rule 15(c)(1)(A)	440
Problems	441
Section F. Supplemental Pleadings	443
Notes and Questions	444
Problem	444
Section G. Good-Faith Pleading	445
<i>Hedges v. Yonkers Racing Corp.</i>	446
Notes and Questions	453
<i>Geisinger Medical Center v. Gough</i>	453
Notes and Questions	455
Problems	457

Chapter 7 Joinder of Claims and Parties	459
Section A. The “Real Party in Interest” Requirement	461
<i>Schrag v. Dinges</i>	462
Notes and Questions	464
Problems	465
Section B. The “Capacity to Sue or Be Sued” Requirement	465
<i>Joseph Muller Corp. Zurich v.</i>	
<i>Societe Anonyme de Gerance et D’Armement</i>	465
Notes and Questions	466
Section C. Basic Joinder of Claims by Plaintiffs	467
Notes and Questions	468
Section D. Basic Joinder of Claims by Defendants:	
Counterclaims and Crossclaims	469
1. Who Is an “Opposing Party”?	471
<i>Rainbow Management Group, Ltd. v.</i>	
<i>Atlantis Submarines Hawaii, L.P.</i>	471
Notes and Questions	474
Problems	475
2. Claims Not Coming into Existence until a Judgment Is Rendered	475
<i>Tenneco Oil Co. v. Templin</i>	476
Notes and Questions	479
Problems	480
Section E. Permissive Joinder of Plaintiffs and Defendants	481
<i>Lucas v. City of Juneau</i>	482
Notes and Questions	482
Problems	483
Section F. Impleader	484
<i>Collini v. Wean United, Inc.</i>	485
Notes and Questions	487
Problems	488
Section G. Interpleader	489
Notes and Questions	491
Problems	493
Section H. Required Joinder of Parties	494
<i>Temple v. Synthes, Ltd.</i>	498
Notes and Questions	500
<i>Z & B Enterprises, Inc. v. Tastee-Freez International, Inc.</i>	500
Notes and Questions	505
Problems	506
Section I. Intervention	506
<i>Sierra Club v. Espy</i>	507
Notes and Questions	511
Problems	512
Section J. Class Actions	512
Notes and Questions	518
Problems	519

Chapter 8	Discovery	523
Section A.	Basic Discovery Scope and Methods	523
1.	The General Scope of Discovery: Rule 26(b)(1)	524
	<i>Anderson v. Hale</i>	526
	Notes	528
2.	Limitations on Discovery Under Rule 26	529
	<i>Behler v. Hanlon</i>	530
	Problem	533
3.	The Mechanics of Discovery Exchange	534
	(a) Introduction	534
	(b) Required Disclosures: Rule 26(a)(1)-(3)	536
	Problems	540
	(c) The Traditional Methods of Discovery: Depositions	541
	<i>Riley v. Murdock</i>	544
	Notes and Questions	546
	Problems	550
	(d) Interrogatories Under Rule 33	553
	Notes and Questions	555
	(e) Production of Documents and Tangible Things: Rule 34	556
	(f) Requests for Admission: Rule 36	558
	Problems	559
	(g) Compulsory Physical and Mental Examinations: Rule 35	561
	Notes and Questions	562
	Problems	564
4.	Pretrial Conferences and Orders: Rule 16	564
5.	Discovery Certifications and Sanctions: Rules 26(g) and 37	565
	Notes and Questions	567
Section B.	Special Considerations in the Discovery of Electronically Stored Information ("E-Discovery")	568
	<i>Zubulake v. UBS Warburg LLC</i>	569
	Notes and Questions	576
Section C.	Additional Discovery Standards: Privilege, Work Product, and Expert Witnesses	577
1.	Privilege	577
	Problem	579
	(a) Privilege against Self-Incrimination	579
	(b) Attorney-Client Privilege	580
	<i>Upjohn Co. v. United States</i>	582
	Notes and Questions	585
2.	"Work Product" and Trial Preparation Materials: Rule 26(b)(3)	587
	(a) The "Work Product" Doctrine	587
	<i>Hickman v. Taylor</i>	588
	Notes and Questions	593
	(b) "Opinion" Work Product	596
	<i>Estate of Chopper v. R.J. Reynolds Tobacco Co.</i>	596
	Notes and Questions	600
	Problems	600

(c) Contention Interrogatories and Work Product Protection	601
<i>Alta Health Strategies, Inc. v. Kennedy</i>	601
Note	603
3. Discovery Concerning Experts	603
(a) Discovery as to Experts Who May Testify at Trial	603
(b) Discovery as to Experts Who Are Not Expected to Testify at Trial	604
<i>Bank Brussels Lambert v. Chase Manhattan Bank, N.A.</i>	605
Notes and Questions	609
Problem	610
Chapter 9 Disposition of the Action Without Trial	611
Section A. Default Judgments	611
<i>Pretzel & Stouffer v. Imperial Adjusters, Inc.</i>	613
Notes and Questions	617
Problems	617
Section B. Judgment on the Pleadings	618
Problems	619
Section C. Summary Judgment	619
<i>Celotex Corp. v. Catrett</i>	621
Notes and Questions	625
Problems	627
Section D. Voluntary and Involuntary Dismissals	628
1. Voluntary Dismissals	628
<i>Lake at Las Vegas Investors Group, Inc. v. Pacific Malibu Development Corp.</i>	629
Notes and Questions	631
Problems	632
2. Involuntary Dismissals	632
(a) Meaning of “Lack of Jurisdiction” in Rule 41(b)	633
<i>Costello v. United States</i>	633
Notes and Questions	636
Problem	636
(b) Meaning of “Adjudication on the Merits” in Rule 41(b)	636
Notes and Questions	637
Problem	638
Section E. Devices to Encourage Settlement	638
Section F. Alternative Dispute Resolution	640
1. Arbitration	641
Note and Questions	643
2. Mediation	643
Notes and Questions	644
3. Summary Jury Trial	644
Notes and Questions	645
4. Early Neutral Evaluation	645
5. Mini-Trial	645

Chapter 10 Trial	647
Section A. Selecting the Trier of Fact	647
1. Trial by Jury or by the Court	647
2. The Right to a Trial by Jury in Civil Cases	648
(a) Introduction	648
(b) Sources of the Right to a Trial by Jury: Constitutional and Statutory	649
(c) The Right to a Trial by Jury under the Seventh Amendment: General Principles	649
(d) Development and Evolution of the Modern Federal Approach <i>Beacon Theatres, Inc. v. Westover</i>	651
Notes and Questions	655
Problems	660
(e) Comparing the Right to a Trial by Jury in Federal and State Court	660
(f) Right to a Trial by Jury versus “Mere Incidents” of the Right	662
(g) Right to a Trial by Jury in Complex Cases	663
3. Requesting a Jury Trial: Rules 38 and 39	664
<i>Burns v. Lawther</i>	665
Notes and Questions	667
Problems	668
4. Selection of Jurors: Rule 47	669
(a) Challenges for Cause	670
<i>Bell v. Vanlandingham</i>	670
Notes and Questions	671
Problems	671
(b) Constitutional Limits on Peremptory Challenges	672
Notes and Questions	673
5. Jury Size and Unanimity: Rule 48	674
Section B. The Trial Process, Jury Verdicts, and Final Judgment	675
1. Procedure at Trial	675
(a) Order of Trial	675
(b) Presentation of Evidence	676
(c) Burden of Proof and Mechanisms for Enforcing the Burden	676
2. Jury Instructions and Verdicts	678
(a) Jury Instructions: Rule 51	678
(b) General and Special Jury Verdicts: Rule 49	679
<i>Selgas v. American Airlines, Inc.</i>	680
Notes and Questions	684
3. Findings by the Court: Rule 52	684
Question	685
4. Judgments: Rules 54 and 58	685
Problem	686
 Chapter 11 Post-Trial Motions, Appellate Review, and Extraordinary Relief from Judgments	 687
Section A. Post-Trial Motions	687
1. Motions for Judgment Notwithstanding the Verdict (Judgment as a Matter of Law)	687

2. Motions for a New Trial	690
3. Motions to Alter or Amend a Judgment	691
Problems	692
Section B. Appellate Review	692
1. Right to Appeal	692
<i>Walker v. Kazi</i>	692
Notes and Questions	693
Problem	694
2. Steps, Scope, and Standards of Review, the “Harmless Error” Doctrine, and Timing of the Appeal	694
3. The “Final Judgment” Rule and Its Exceptions	696
(a) The “Final Judgment” Rule	696
<i>Gagnon v. Allstate Insurance Co.</i>	696
Notes and Questions	697
Problems	698
(b) Cases Involving Multiple Claims or Parties	698
Notes and Questions	698
Problem	699
(c) The “Collateral Order” Exception	699
Problems	700
(d) Pendent Appellate Jurisdiction	701
(e) The Rejected “Death Knell” Doctrine	701
(f) Interlocutory Appeals	701
Notes and Questions	702
Problems	702
(g) Review by Extraordinary Writs	703
Notes and Questions	703
Section C. Extraordinary Relief from a Judgment	703
Notes and Questions	704
Problem	704
Chapter 12 Finality in Litigation	705
Section A. Introduction	705
Section B. Claim Preclusion	708
1. Basic Principles	708
2. Applying the Requirements of Claim Preclusion	711
<i>Powder Basin Psychiatric Associates, Inc. v. Ullrich</i>	711
<i>Thibeault v. Brackett</i>	715
Notes and Questions	717
Problems	717
3. Exceptions to the General Rule of Claim Preclusion	717
Problems	718
4. Counterclaims, Crossclaims, Third-Party Claims, and Claims by Intervenor and Rule 19 Parties	720
<i>United-Bilt Homes, Inc. v. Sampson</i>	721
Notes and Questions	722
Problems	724

Section C. Issue Preclusion	724
1. Basic Principles	724
2. The Essential Elements of Issue Preclusion	727
<i>Cycles, Ltd. v. Navistar Financial Corp.</i>	727
Notes and Questions	729
<i>Holtman v. 4-G's Plumbing & Heating, Inc.</i>	730
<i>Hebden v. Workmen's Compensation Appeal Board</i>	732
Notes and Questions	734
<i>Malloy v. Trombley</i>	737
Notes and Questions	741
Problems	741
3. Exceptions to Issue Preclusion	742
Problems	744
4. Nonmutual Preclusion	745
<i>Hunter v. City of Des Moines</i>	746
Notes and Questions	749
Problems	751
Section D. Preclusion of Nonparties	753
Notes and Questions	753
Problems	755
Section E. Preclusion of Coparties	755
Problem	755
Section F. Preclusion of Subject-Matter and Personal Jurisdiction Questions	755
Notes and Questions	757
Problems	758
Section G. Complications of the Federal System	758
1. Enforcement of State Judgments	758
Notes and Questions	760
Problems	762
2. Enforcement of Federal Judgments	763
Notes and Questions	765
Problems	767
3. Enforcement of Foreign Nation Judgments	768
Note	768
Problems	769
Index	771

Table of Cases

Principal cases are listed in bolded capital typeface. References are to pages of the casebook. Bold page numbers indicate the location of reprinted cases. Cases cited in principal cases and within other quoted materials are not included in this Table of Cases.

- Abernathy v. Abernathy, 157
Adam v. J.B. Hunt Transp., Inc., 330
Ager v. Jane C. Stormont Hosp., 605, 610
Alexander v. Sandoval, 246
Allen v. McCurry, 760
ALTA HEALTH STRATEGIES, INC. v. KENNEDY, 601
Amchem Prods., Inc. v. Windsor, 516–17
America Online, Inc. v. Alameda County, 233
American Med. Sys., *In re*, 515
American Nat'l Red Cross v. S.G., 244
American Well Works Co. v. Layne & Bowler Co., 245
ANDERSON v. HALE, 526, 535
Anderson v. Liberty Lobby, Inc., 626
Ankenbrandt v. Richards, 282–84
ASAHI METAL INDUS. CO. v. SUPERIOR COURT, 84, 119, 127–28, 136
Atlas Roofing Co. v. Occupational Safety & Health Rev. Comm'n, 659
Avco Corp. v. Aero Lodge No. 735, 311

Baker *ex rel.* Thomas v. General Motors Corp., 761
Bangor Punta Operations, Inc. v. Bangor A. & R.R. Co., 519
BANK BRUSSELS LAMBERT v. CHASE MANHATTAN BANK, N.A., 605, 610
Bank of the United States v. Planters' Bank, 244
Barber v. Barber, 283
BATES v. C & S ADJUSTERS, INC., 206, 209–10

Batson v. Kentucky, 672–74
Baxter v. Palmigiano, 580
BEACON THEATRES, INC. v. WEST-OVER, 651, 655–61, 664
BEHLER v. HANLON, 526, 528, 530, 533, 535
BELL ATLANTIC CORP. v. TWOMBLY, 400, 410–13, 419, 456
Bell v. Hood, 259
BELL v. VANLANDINGHAM, 670, 671
Beneficial Nat'l Bank v. Anderson, 341
Bergeron v. Boyle, 196
Bernhard v. Bank of Am. Nat'l Trust & Sav. Ass'n, 745, 749
BG Real Estate Servs., Inc. v. American Equity Ins. Co., 529
Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 246, 384, 667
Blackmer v. United States, 84
Blonder-Tongue Labs., Inc. v. University of Ill. Found., 764
Boykin v. Keycorp., 412
Bremen, M/S v. Zapata Off-Shore Co., 230
Breon v. Coca-Cola Bottling Co., 526
Brinkley v. Harbour Recreation Club, 425
Bromley v. Michigan Educ. Ass'n-NEA, 444
Brown v. Shaner, 439–40
Brown v. Western Ry. Co., 386, 388
BURGER KING CORP. v. RUDZEWICZ, 84, 108, 126–28, 184–85, 214, 424
BURLINGTON NORTHERN R.R. CO. v. WOODS, 367, 370–74

- BURNHAM v. SUPERIOR COURT**, 78, 81, 98, 138, 147, 157–58, 185
- BURNS v. LAWOTHER**, 665, 667
- Business Guides, Inc. v. Chromatic Communications Enters., Inc., 372–74
- BYRD v. BLUE RIDGE RURAL ELEC. COOP., INC.**, 336, 347–49, 353, 364–65, 367
- Cabello v. Fernandez, 550
- Cadent Ltd. v. 3M Unitek Corp., 551
- Calder v. Jones, 106–07, 127, 137
- Candlewood Timber Group, LLC v. Pan American Energy, LCC, 197
- Cannon v. University of Chi., 246
- Carden v. Arkoma Assocs., 272
- CARNIVAL CRUISE LINES, INC. v. SHUTE**, 230, 233
- Castano v. American Tobacco Co., 515
- Caterpillar Inc. v. Lewis, 271, 314
- Caterpillar, Inc. v. Williams, 311
- Catrett v. Johns-Manville Sales Corp., 625
- CELOTEX CORP. v. CATRETT**, 621, 625–26
- Central R.R. & Banking Co. v. Pettus, 519
- Chambers v. NASCO, Inc., 352–54, 446
- Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry, 659
- CHOPPER, ESTATE OF v. R.J. REYNOLDS TOBACCO CO.**, 596, 600
- Chris-Craft Indus. Prods. Inc. v. Kuraray Co., 552
- Churchill Corp. v. Third Century, Inc., 235
- Cincinnati Ins. Co. v. Flanders Elec. Motor Serv., Inc., 380
- Cities Serv. Oil Co. v. Dunlap, 330–33
- City of Minneapolis v. Fisher, 382
- City of Monterey v. Del Monte Dunes Ltd., 658
- Cleveland v. Policy Mgmt. Sys. Corp., 707
- Cohen v. Beneficial Indus. Loan Corp., 336, 699
- Cold Metal Process Co. v. United Eng'g & Foundry Co., 698
- Colgrove v. Battin, 662–63, 674
- COLLINI v. WEAN UNITED, INC.**, 485, 487
- Conference Am., Inc. v. Q.E.D. Int'l, Inc., 312
- Conley v. Gibson, 392–94, 410
- CONNECTICUT v. DOEHR**, 171, 178–80
- Continental Bank, N.A. v. Meyer, 424
- Coopers & Lybrand v. Livesay, 701
- Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co., 199
- COSTELLO v. UNITED STATES**, 633, 636, 718
- Coventry Sewage Assocs. v. Dworkin Realty Co., 277
- Cronkite v. Fahrback, 549
- CUDAHY JUNIOR CHAMBER OF COMMERCE v. QUIRK**, 7, 10
- Cunningham v. Hamilton County, 700
- Curran v. Price, 453
- Curtiss-Wright Corp. v. General Elec. Co., 699
- Cybersell, Inc. v. Cybersell, Inc., 137
- CYCLES, LTD. v. NAVISTAR FINANCIAL CORP.**, 727, 729
- D'Arcy v. Ketchum, 71
- Dairy Queen, Inc. v. Wood, 655, 657, 661, 664
- Daniel v. American Bd. of Emergency Medicine, 208–09
- Day & Zimmermann, Inc. v. Challoner, 329
- Deford v. Soo Line R.R. Co., 311
- Delta Air Lines, Inc. v. August, 639
- Dennis Garberg & Assocs. v. Pack-Tech Int'l Corp., 757
- Denver & Rio Grande W.R.R. Co. v. Brotherhood of R.R. Trainmen, 200
- Department of Transp. v. City of Atlanta, 643
- Derienzo v. Harvard Indus., Inc., 441
- Dice v. Akron, Canton & Youngstown R.R. Co., 385, 388, 662
- Digital Equip. Corp. v. Desktop Direct, Inc., 700
- Dimick v. Schiedt, 691
- Doe v. FBI, 465
- Edmondson & Gallagher v. Alban Towers Tenants Ass'n, 306

- Edmonson v. Leesville Concrete Co., 672
 EEOC v. Concentra Health Servs., Inc., 412
 Eisen v. Carlisle & Jacquelin, 514
 Empire HealthChoice Assurance, Inc. v. McVeigh, 258
 England v. Louisiana Bd. of Med. Exam's, 762
 Erickson v. Pandus, 410
ERIE RAILROAD CO. v. THOMPCKINS, 265, 317–19, 322–23, 324, 327–31, 335–36, 339, 347–54, 364–66, 374, 376–77, 381–83, 440, 491, 708, 764, 766–67
 Evans v. Evans, 7
 Executive Software N. Am., Inc. v. United States District Court, 306
EXXON MOBIL CORP. v. ALLAPATTAH SERVS., INC., 286, 289, 291, 293, 294, 302–03
- Factors Etc., Inc. v. Pro Arts, Inc., 381
 Fall v. Eastin, 78
 Fayemi v. Hambrecht & Quist, Inc., 567
 Felder v. Casey, 386–88
 Feltner v. Columbia Pictures Television, Inc., 658
 Felzen v. Andreas, 694
 Ferens v. John Deere Co., 217, 329–30, 350–52
 FGS Constructors, Inc. v. Carlow, 432
 Finley v. United States, 289–90
 Franchise Tax Bd. v. Construction Laborers Vacation Trust, 261–62
- GAGNON v. ALLSTATE INS. CO.**, 696, 697
 Garcia v. General Motors Corp., 751
 Gardynski-Leschuck v. Ford Motor Co., 278
GASPERINI v. CENTER FOR HUMANITIES, INC., 319, 354, 363–64, 376
 Gator.com Corp. v. L.L. Bean, Inc., 137
GEISINGER MEDICAL CENTER v. GOUGH, 453, 456, 470
 Getter v. Wal-Mart Stores, Inc., 671
 Gill v. Gulfstream Park Racing Ass'n, Inc., 529
GILSTRAP v. AMTRAK, 377, 380–81
- Goldlawr, Inc. v. Heiman, 217
 Gonzales v. Centro Espirita Beneficente Uniao Do Vegtal, 180
 Gonzalez v. Reno, 283
GRABLE & SONS METAL PRODS., INC. v. DARUE ENG'G & MFG., 246, 251, 256–59
 Graf v. Tastemaker, 201
 Gray v. American Radiator & Standard Sanitary Corp., 92
 Green *ex rel.* Green v. Lewis Truck Lines, Inc., 562
 Griffin v. McCoach, 329, 491
 Grupo Dataflux v. Atlas Global Group, L.P., 271
 Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc., 374–75
GUARANTY TRUST CO. v. YORK, 323, 331, 335–36, 347–50, 353, 356, 370–71, 374, 376
- HADGES v. YONKERS RACING CORP.**, 446, 453
HANNA v. PLUMER, 330, 339, 347–50, 352–53, 364, 366, 370–73, 376,
 Hanson v. Denckla, 94–96,
 Haring v. Prosis, 760–61
 Harris v. Balk, 79–80, 96, 147, 293
 Harris v. Secretary, 425
HEBDEN v. WORKMEN'S COMP. APPEAL BD., 732, 734
 Heiser v. Woodruff, 764
HELICOPTEROS NACIONALES DE COLOMBIA, S.A., v. HALL, 84, 107, 129, 136, 159–60
 Henderson *ex rel.* Hartsfield v. Alabama Power Co., 663
 Henderson v. United States, 373
 Herman v. Marine Midland Bank, 600
 Herremans v. Carrera Designs, Inc., 279
 Hess v. Pawloski, 86
 Hetzel v. Prince William County, 690
HICKMAN v. TAYLOR, 524, 587, 588, 593–96
HILL v. EQUITABLE BANK, N.A., 429, 432
 Hilton v. Guyot, 768
 Hinderlider v. La Plata River & Cherry Creek Ditch Co., 382

- Hodgson v. Bowerbank, 266
Hoffman v. Blaski, 217
Hoffman v. United States, 580
Holliger, K-Mart Corp., *State ex rel.* v., 92
Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc., 250
Holmgren v. State Farm Mut. Auto. Ins. Co., 600
HOLTMAN v. 4-G'S PLUMBING & HEATING, INC., 730, 734
Housing Fin. & Dev. Corp. v. Ferguson, 660
HUNTER v. CITY OF DES MOINES, 746, 749–50
Hurd v. Pittsburg State Univ., 674
- In re* (see name of the party)
Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 106, 146, 185, 188
INTERNATIONAL SHOE CO. v. WASHINGTON, 78, 85–86, 87, 90–92, 96, 98, 100, 136–38, 157, 184–85
International Software Sys., Inc. v. Amplicon, Inc., 234
Iqbal v. Hasty, 410, 412
- J.E.B. v. ALABAMA *ex rel.* T.B., 672–74
Jackson v. Birmingham Bd. of Educ., 246
James Daniel Good Real Prop., United States v., 178
Japanese Elecs. Prods. Antitrust Litig., *In re*, 664
Jennings v. AC Hydraulic A/S, 137
Jinks v. Richland County, 308–09
Johnson v. Fankell, 386, 388
JONES v. FLOWERS, 161, 170
JOSEPH MULLER CORP. ZURICH v. SOCIETE ANONYME DE GERANCE ET D'ARMEMENT, 465, 466
- Kampa v. White Consol. Indus., Inc., 364
Karahalios v. National Fed'n of Fed. Employees, 246
Keeton v. Hustler Magazine, Inc., 106–07, 127
Kerr-Selgas v. American Airlines, Inc., 684
Kimbrough v. Holiday Inn, 642–43
Klein v. AIG Trading Group, Inc., 529
K-Mart Corp., *State ex rel.* v. Holliger, 92
Kramer v. Caribbean Mills, Inc., 273
Kremer v. Chemical Constr. Corp., 760
Kulko v. Superior Court, 98–100, 158
Kurczv. Eli Lilly & Co., 381
- LAKE AT LAS VEGAS INVESTORS GROUP, INC. v. PACIFIC MALIBU DEV. CORP.**, 628, 629, 631
Lawhorne v. Employers Ins. Co., 492
Leary v. Daeschner, 432
LEATHERMAN v. TARRANT COUNTY NARCOTICS INTELLIGENCE & COORDINATION UNIT, 394, 396, 399, 410
Lehman Bros. v. Schein, 380
Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach, 218
LOUISVILLE & NASHVILLE RAILROAD CO. v. MOTTLEY, 247, 249–51, 257, 261, 286
LOVELACE v. O'HARA, 436, 439–40
LUCAS v. CITY OF JUNEAU, 482, 482–83
- M&C Corp. v. Erwin Behr GmbH & Co., 552
M/S Bremen v. Zapata Off-Shore Co., 230
Mace v. Van Ru Credit Corp., 370
MALLOY v. TROMBLEY, 737, 741
Marek v. Chesny, 640
Maritz, Inc. v. CyberGold, Inc., 137
Markman v. Westview Instruments, Inc., 664
Marrese v. American Academy of Orthopaedic Surgeons, 759
Marshall v. Marshall, 283–84
Maryland Cas. Co. v. W.R. Grace & Co., 274
Mason v. American Emery Wheel Works, 380
Mastondrea v. Occidental Hotels Mgmt. S.A., 128
Matshshita Elec. Indus. Co. v. Epstein, 759
Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 626
Matter of (see name of party)

- Mayle v. Felix, 435
 McDonald v. John P. Scripps Newspaper,
 7
 McElreath v. McElreath, 197
 McGee v. International Life Ins. Co., 93,
 96
 McKenzie v. Hawaii Permanente Med.
 Group, Inc., 348
 Meredith v. City of Winter Haven, 381
 Mesa v. California, 310
 Metropolitan Life Ins. Co. v. Taylor, 311
 Migra v. Warren City Sch. Dist. Bd. of
 Educ., 760
 Milliken v. Meyer, 85, 103, 762
 Mills v. Duryee, 758
 Mississippi Publishing Corp. v. Mur-
 phree, 335
 Morin v. Nationwide Fed. Credit Union,
 552
 Mottley v. Louisville & Nashville R.R.
 Co., 250
 Mullane v. Central Hanover Bank & Trust
 Co., 93, 96, 102, 159–60, 170–71
 Murphy Bros. v. Michetti Pipe Stringing,
 Inc., 313

 Nashville, Chattanooga & St. Louis Ry. v.
 Wallace, 260
 Natale v. Town of Ridgefield, 701
 National Hockey League v. Metropolitan
 Hockey Club, 566
 New York Life Ins. Co. v. Dunlevy,
 79–80, 490
 Nike, Inc. v. Commercial Iberica de Ex-
 clusivas Deportivas, S.A., 273
 NLO, Inc., *In re*, 645
 Northwest Forest Res. Council v.
 Dombeck, 382
 Norwood v. Kirkpatrick, 217

 O'Brien v. International Bhd. of Elec.
 Workers, 555
 Ohio Cellular Prods. Corp. v. Adams
 USA, Inc., 479
 One 1981 Chevrolet Monte Carlo, State
 v., 660
 Operative Plasterers' & Cement Masons'
 Int'l Ass'n v. Benjamin, 551
 Ortiz v. Fibreboard Corp., 516–17

 Osborn v. Bank of the United States,
 243–44, 249, 285
 Owen Equip. & Erection Co. v. Kroger,
 291–92

 Palmer v. Hoffman, 331
 Parklane Hosiery Co. v. Shore, 657, 764
 Peile v. Skelgas, Inc., 219
 Pelfrey v. Bank of Greer, 661
PENNOYER v. NEFF, 71, 77–78, 81,
 83–86, 89, 91, 138, 185, 553
 Peralta v. Heights Med. Ctr., Inc., 613
 Perkins v. Benguet Consol. Mining Co.,
 93, 96, 136
PFEIFFER v. INSTY PRINTS, 202, 204,
 217
 PGA Tour, Inc. v. Martin, 10
 Phillips Petroleum Co. v. Shutts, 160
 Phillips v. County of Allegheny, 412
PIPER AIRCRAFT CO. v. REYNO,
 217–18, 219, 228–30
 Pohlmann v. Bil-Jax, Inc., 757
POWDER BASIN PSYCHIATRIC ASSO-
CIATES, INC. v. ULLRICH, 711,
 717, 722
 Powers v. Ohio, 672
PRETZEL & STOFFER v. IMPERIAL
ADJUSTERS, INC., 612, 613, 617
 Provident Tradesmens Bank & Trust Co.
 v. Patterson, 497–99, 505

 Ragan v. Merchants Transfer & Ware-
 house Co., 335, 346–48
 Railroad Co. v. Stout, 648
 Railway Labor Executives Ass'n v. Pitts-
 burgh & Lake Erie R.R. Co., 311
RAINBOW MANAGEMENT GROUP,
LTD. v. ATLANTIS SUBMARINES
HAWAII, L.P., 471, 474
 Raygor v. Regents of the Univ. of Minn.,
 308
 Reasor-Hill Corp. v. Harrison, 197
REPUBLIC OF PANAMA v. BCCI
HOLDINGS (LUXEMBOURG) S.A.,
 185, 186, 192
RILEY v. MURDOCK, 543, 544, 546,
 548
 Rivell v. Private Health Care Sys., Inc.,
 412

- Robbins v. Oklahoma, 412
 Rockwell Int'l Corp v. United States, 564
 Rosenbaum v. MacAllister, 694
 Ross v. Bernhard, 661, 663
 Ross v. Oklahoma, 674
 Rowe Entm't, Inc. v. William Morris Agency, Inc., 568
 Ruhrgas AG v. Marathon Oil Co., 241
 Rush v. Savchuk, 147
- Salve Regina College v. Russell, 381–82
 San Remo Hotel, L.P. v. City & Country of San Francisco, 761–62
 Sanyo Laser Prods., Inc. v. Arista Records, Inc., 529
 Schlagenhauf v. Holder, 561–64
SCHRAG v. DINGES, 462, 464
 Sea-Roy Corp. v. Sunbelt Equip. & Rentals, Inc., 596
 Sears Roebuck & Co. v. Mackey, 698
 SEC v. Parkersburg Wireless Ltd. Liab. Co., 580
 Seider v. Roth, 147
SELGAS v. AMERICAN AIRLINES, INC., 680, 684
 Semtek Int'l Inc. v. Lockheed Martin Corp., 366, 375–76, 636, 638, 764–67
 Serafino v. Hasbro, Inc., 580
SHAFFER v. HEITNER, 79, 96–99, 127, 138, 146–47, 157
 Shamrock Oil & Gas. Corp. v. Sheets, 311–12
 Shields v. Barrow, 496
 Sibbach v. Wilson & Co., 331, 347, 373
 Sieglock v. Burlington N. Santa Fe Ry. Co., 515
SIERRA CLUB v. ESPY, 507
 Silvestri v. General Motors Corp., 577
 Simler v. Conner, 650
 Skelly Oil Co. v. Phillips Petroleum Co., 261
 Slocum v. New York Life Ins. Co., 687
 Smith v. Kansas City Title & Trust Co., 252, 256–58
 Snyder v. Harris, 293
 St. Paul Mercury Indem. Co. v. Red Cab Co., 27
- St. Paul Reins. Co. v. Commercial Fin. Corp., 566
State ex rel. v. (see opposing party and relator)
 State Farm Fire & Cas. Co. v. Tashire, 264, 491
State v. (see opposing party)
 Steel Co. v. Citizens for a Better Env't, 241
 Steinlage v. Mayo Clinic Rochester, 273
 Stevens v. Blevins, 219
 Stewart Organization v. Ricoh Corp., 233–34, 371–72
 Strawbridge v. Curtiss, 27, 264, 291, 303
 Studiengesellschaft Kohle, m.b.H. v. Shell Oil Co., 565
 Stutz v. Minnesota Mining & Mfg. Co., 519
 Sun Oil Co. v. Wortman, 160
 Supreme Tribe of Ben-Hur v. Cauble, 293
 Swaim v. Fogle, 349
SWIERKIEWICZ v. SOREMA N.A., 394, 396, 410, 412
 Swift v. Dairyland Ins. Co., 706
 Swift v. Tyson, 319–23, 327–29, 376–77, 385
 Swindler & Berlin v. United States, 581
 Swint v. Chambers County Comm'n, 701
 Swiss Am. Bank, Ltd., United States v., 193
- Tank v. Chronister, 272
TEMPLE v. SYNTHES, LTD., 487, 498, 500, 505
TENNECO OIL CO. v. TEMPLIN, 476, 479–80
 Textile Workers Union of Am. v. Lincoln Mills, 384
THIBEAULT v. BRACKETT, 715
 Thomas v. Barton Lodge II, Ltd., 487
 Ticor Title Ins. Co. v. Brown, 514–15
 Tiller v. Atlantic Coast Line R.R. Co., 435
 Tobjy v. Tobjy, 197
 Tongkook Am., Inc., v. Shipton Sportswear Co., 277
 Troxel v. Granville, 283
 Tull v. United States, 650, 657–58, 662
 Tutu Wells Contamination Litig., *In re*, 567

- Tyler v. Judges of the Court of Registration, 78
- U.S.I. Props. Corp. v. M.D. Constr. Co., 274
- United Mine Workers v. Gibbs, 285, 287, 306–07
- United States Fidelity & Guar. Co. v. A & S Mfg. Co., 273
- United States v. (see opposing party)**
- United Steelworkers of Am. v. R.H. Boulogny, Inc., 272
- UNITED-BILT HOMES, INC. v. SAMPSON, 721, 722–23**
- Unitherm Food Sys., Inc. v. Swift, 688–89
- UPJOHN CO. v. UNITED STATES, 580–81, 582, 587, 596**
- Van Dusen v. Barrack, 329–30, 339, 350–51
- Vandenbark v. Owens-Illinois Glass Co., 380
- W.E. Aubuchon Co. v. Aubuchon Distrib., Inc., 569
- Walker *ex rel.* Walker v. Norwest Corp., 457
- Walker v. Armco Steel Corp., 347–48, 364
- WALKER v. KAZI, 692, 693**
- Wallis v. Pan Am. Petroleum Corp., 383
- WALLS v. AHMED, 268, 269, 271–72**
- Weesner v. Weesner, 197
- Will v. Hallock, 700
- Williams v. Florida, 662
- Williams v. Lakeview Co., 106
- Williams v. WMX Techs., 413
- Wilton v. Seven Falls Co., 493
- Wolde-Meskel v. Vocational Instruction Project Community Servs., Inc., 279
- Woods v. Interstate Realty Co., 335, 467
- WORLD-WIDE VOLKSWAGEN CORP. v. WOODSON, 84, 92, 101, 106, 108, 146**
- York v. Texas, 84
- Youren v. Tintic Sch. Dist., 565
- Z & B ENTERS., INC. v. TASTEE FREEZE INT’L, INC., 500, 505–06**
- Zahn v. International Paper Co., 293, 303
- ZINN v. GICHNER SYS. GROUP, 202, 211, 214, 217**
- ZUBULAKE v. UBS WARBURG LLC, 568, 569, 576–77**
- Zuk v. Eastern Pa. Psychiatric Inst. of the Med. Coll., 457

Table of Short Form Citations

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Preface

This second edition of *Civil Procedure: Cases, Text, Notes, and Problems* continues the philosophy and fundamental features of the first edition. The primary focus of the second edition is to fully incorporate the comprehensive 2007 restyling amendments of the Federal Rules of Civil Procedure. In addition, all of the chapters have been updated with the latest cases, including a special revision of the pleading section of Chapter 6 centered on the Supreme Court's 2007 decision in *Bell Atlantic Corp. v. Twombly*. Other recent Supreme Court decisions of significance, including *Exxon Mobil Corp. v. Allapattah Services, Inc.*, *Grable & Son's Metal Products, Inc. v. Darue Engineering & Manufacturing*, and *Unitherm Food Systems, Inc. v. Swift*, as well as the 2006 federal "e-discovery" amendments, were previously included with the first edition.

At the level of introductory Civil Procedure, law school curricula typically provide from three to six credit hours within which to cover the wide range of topics relevant to civil litigation. We have constructed this casebook to accommodate the demands and opportunities presented by "short" and "long" courses alike. The casebook carefully integrates both basic and more complex issues of federal and state civil procedure and is presented in a "user friendly" format. Throughout the casebook, explanatory text has been interwoven with illustrative cases, notes, questions, and figures to make the presentation of the material more efficient for the professor and more understandable for the student. As an additional teaching feature, all of the chapters contain carefully drafted problems following each topic section. The problems are designed to provide maximum teaching flexibility—enabling a professor to utilize the problems in each section to teach all or part of the material.

The casebook is also organized to facilitate a variety of teaching approaches. Chapter 1 provides background and introduction to all topics germane to the civil litigation process. Professors then have the option to commence more in-depth treatment beginning with either Jurisdiction and Venue in Chapters 2 through 4 or Pleadings and Joinder in Chapters 6 and 7.

In all of the chapters, we have selected cases with regard to each topic that will optimize students' understanding of the important issues pertaining to the topic. We have included traditional cases when we believe they are the best vehicles with which to produce a clear understanding of a topic. However, we include a significant number of recent cases when they are better learning tools.

The text, notes, and questions accompanying the cases are designed to help students read the cases effectively and critically. The explanatory text also provides historical material that bears on the evolution of the procedures being studied when necessary for a clear understanding of the topic. The notes and questions accompanying the cases raise other matters related to the issues explored in the cases. The notes and questions also address other issues of real concern in the general procedural area under study, but which may

be a step beyond the material directly covered by the case. This array of material thus allows individual professors to select the best way in which to achieve comprehension of the subject of Civil Procedure.

As is true with virtually all Civil Procedure casebooks, the materials primarily focus on federal practice, especially the Federal Rules of Civil Procedure. However, we have also included materials on state practice and highlighted the contrast with federal practice when it is important for a full understanding of particular procedural topics. The traditional mainstays of Civil Procedure—personal and subject-matter jurisdiction, the *Erie* doctrine, pleadings, and joinder—receive comprehensive treatment. Furthermore, with the ever-increasing emphasis in modern practice on pre-trial litigation, special treatment is afforded discovery, especially the newest area of “e-discovery.”

We owe a significant debt to the people who supported and encouraged us in the preparation of this second edition. Particular mention should be made of the support provided by Creighton University School of Law and Seton Hall University School of Law. Professors Teply and Whitten wish to thank Creighton law librarian, Kay Andrus, and the staff of the Klutznick Law Library for their untiring research efforts, as well as the efficient and helpful secretarial assistance provided by Pat Andersen.

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