

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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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.”

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