

CASES AND MATERIALS
ON CIVIL PROCEDURE
SIXTH EDITION

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MATTHEW  BENDER

PREFACE TO THE SIXTH EDITION

Organization and Methodology. As with the earlier editions, the Sixth Edition is organized in a traditional manner. The Sixth Edition begins with an introductory chapter that contains an overview of the litigation process and the entire subject. Subsequent chapters cover personal jurisdiction, *forum non conveniens*, subject matter jurisdiction, the *Erie* doctrine and choice of law, pleadings, discovery, summary judgment, trial practice, post-trial motions, appellate practice and procedure, preclusion doctrines, provisional remedies, enforcement of judgments, and alternative dispute resolution. Although each chapter contains one or more problems or exercises, the Sixth Edition primarily uses the case method of instruction, supplemented with copious notes and questions. Law professors will recognize most of the “old favorite” cases, including *International Shoe Co. v. Washington*, *Erie Railroad v. Tompkins*, and *Hickman v. Taylor*; modern classics such as *Burger King Corp. v. Rudzewicz* and *Reeves v. Sanderson Plumbing Co.*, and many others. Careful and rigorous editing of the cases throughout the book makes coverage of a wide variety of issues possible.

Major Revisions and Additions. Building on the foundation established in earlier editions, the Sixth Edition contains updated court decisions and statutory amendments, including the amendments due to the Jurisdiction and Venue Clarification Act of 2011.

Special Features. The Sixth Edition also includes the following special features:

- *An Introduction to the Practice of Civil Litigation through Actual Litigation Documents.* Unlike most Civil Procedure books, the Sixth Edition includes documents from actual cases. Complaints and answers, motions, briefs, orders, and in the discovery chapter, a short deposition, are all excerpted for the student to review and study. A set of self-initiated disclosures adapted from a real case is also included. In some instances, a series of related papers paints a more complete picture. For example, Chapter 2 ends with an appendix containing all of the major pleadings, motions and briefs generated in a typical forum contest. Likewise, Chapter 9 contains the documents presented by both sides in an actual summary judgment proceeding, as well as President Clinton’s successful motion for summary judgment in *Jones v. Clinton*. Similarly, Chapter 10 contains fascinating excerpts from the jury selection, court’s charge, and final arguments in *Pennzoil Co. v. Texaco Inc.* — the case that produced the largest jury verdict in history. These unique “real world” materials help students to understand both the theory and practice of civil litigation.
- *Problems, Including “Chapter Summary Problems.”* Most of the chapters contain “Chapter Summary Problems.” These comprehensive problems call for application of the students’ composite knowledge of the difficult parts of each chapter, requiring students to “put the chapter together” and to apply what they have learned. These problems are placed early in the chapter, encouraging the student to think about the issues beforehand, but they can be answered only after the student has studied the materials in the chapter.
- *“Improving the System.”* We have included sections at the end of most chapters entitled “Improving the System.” These sections are designed to help students

PREFACE TO THE SIXTH EDITION

think critically about current practice. A significant pedagogical benefit can be derived from the consideration of current problems and proposed improvements. Our experience has been that this method encourages critical thought about the purposes of procedural rules and statutes. Such critical analysis not only facilitates mastery of the materials, but also tends to more fully engage the students.

- *Supplementation of Traditional Federal Materials Though/By Comparison With State Practices; Use of California and Texas as “Benchmark” States.* It is traditional to concentrate or emphasize the federal system in first-year Civil Procedure courses. Although the Sixth Edition provides thorough and detailed coverage of federal practice and procedure, we have supplemented the federal material with a comparative explanation of analogous material taken from two benchmark states: California and Texas. We selected these states because of their size and because their procedural systems are well developed. In every chapter, the treatment of state practice is brief and is designed to enhance comprehension of the subjects covered without detracting from the book’s major federal theme.
- *A “User Friendly” Book.* The Sixth Edition is also designed to be user friendly. Although Civil Procedure may be the most difficult course in the first-year curriculum, we have done our best to make fundamental concepts easier for students to comprehend. For example, we have selected cases with interesting and amusing fact patterns and particularly difficult cases are preceded by notes pointing the students in the right direction. The cases are also edited with student comprehension in mind, but without oversimplification. Our philosophy is that it is best for the student to come to class with a basic comprehension of the material in the book, so that the professor can cover more sophisticated issues during class.
- *Appendix Concerning the Quality of Life for a Litigation Lawyer.* In recent years, litigators have encountered increasing difficulty in combining a good quality of life with a professional practice in the adversary system. For this reason, the Sixth Edition contains a unique Appendix that deals with whether and how an ethical and competent litigator can live a full life and happy life. The Appendix is designed to help students avoid, or at least minimize, some of the more negative aspects of real-world litigation.

We hope and expect that you and your students will enjoy using the Sixth Edition. We know that they will find it interesting, challenging and entertaining.

DAVID CRUMP
WILLIAM V. DORSANEO III
REX R. PERSCHBACHER
DEBRA LYN BASSETT

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