

UNDERSTANDING CIVIL PROCEDURE

Fifth Edition

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FIFTH EDITION

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Washington, D.C.

Bloomington, IN

Preface to First Edition

This text treats the entire subject of civil procedure. It is primarily intended as a reference for law school civil procedure students. However, its treatment of recent developments in areas like Federal Rules of Civil Procedure 11, 16 and 26, personal jurisdiction and res judicata may make it useful to some practitioners as well.

If the law of contracts, torts or property reflects the substantive values of our society, civil procedure is the process for making those values real. The law of civil procedure governs the manner in which cases enter, transit, and leave the judicial process. It establishes the authority of courts to hear cases, opportunities for litigants to create and use a record of decision, and the force and effect of judgments.

We believe that the key to understanding the principles of civil procedure is knowing why: why they were created and why they are invoked. To these ends we have used a variety of means. History is the key to personal jurisdiction and the Erie doctrine, and we have explained them accordingly by tracing their historical evolution. Pragmatic concerns chiefly shape the civil procedure of pretrial discovery and motion practice, as well as trial practice, and we start discussion of these subjects by assessing why a lawyer is interested in them.

Federal Rule 11, discovery controls under Federal Rules 26(b)(1), 26(f), and 26(g), and expanded pretrial management under Federal Rule 16, are subjects so new that neither history nor pragmatic considerations are sufficient to anticipate their development. Using theory as well as both reported and unreported opinions available through early 1988, we have compensated by giving more prominence to these subjects than they presently enjoy in the typical civil procedure curriculum. This reflects our conviction that the subjects will grow in importance over the next few years. Finally, throughout the book we identify the latest sources which will enable readers with specialized needs to supplement the information we provide.

We have followed the practice of almost all civil procedure courses in using the Federal Rules of Civil Procedure as our model. However, we have also referred to different state rules and doctrines where appropriate, striving to use a representative cross-section of state models. We have also referred frequently to major civil procedure treatises, using a short form for citations explained in § 5.

Bloomington, Indiana

Washington, D.C.

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