

Civil Procedure

Civil Procedure

Cases, Text, Notes, and Problems

FOURTH EDITION

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[vol.] **WRIGHT ET AL.** = CHARLES A. WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, *FEDERAL PRACTICE AND PROCEDURE* (3d ed., vols. 6–7C, 10–11A, with varying dates).

[vol.] **WRIGHT ET AL.** = CHARLES A. WRIGHT, ARTHUR R. MILLER & RICHARD L. MARCUS, *FEDERAL PRACTICE AND PROCEDURE* (3d ed., vols. 8–8A, 12, with varying dates).

[vol.] **WRIGHT & MILLER** = CHARLES A. WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* (3d ed., vols. 4–5B, 9–9A, with varying dates).

Preface

This fourth edition of *Civil Procedure: Cases, Text, Notes, and Problems* continues the philosophy and fundamental features of the first three editions. We have updated this edition to reflect all current amendments of the Federal Rules of Civil Procedure as well as federal statutes. The new edition also includes the latest decisions of the U.S. Supreme Court on subject-matter and personal jurisdiction, venue, the *Erie* doctrine, class actions, pleadings, joinder, and preclusion. Furthermore, the new edition continues to cover all Federal Civil Procedure bar examination topics.

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. It carefully integrates both basic and more complex issues of federal and state civil procedure. This material is presented in a “user friendly” format. Throughout the book, 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 Jurisdiction and Venue in Chapters 2 through 4 or with 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, including “e-discovery.”

With respect to the formatting and editing of the casebook, we have tried to make the presentation of the text of the court opinions as easy to read as possible without unnecessary editorial markings. Whenever we have deleted part of the text of a court opinion, we have noted that deletion with ellipses. At times, we have summarized deleted material from a court opinion and included that summary in brackets within the opinion. In most opinions, we have deleted the court’s internal citations to cases and other sources of authority and we have done so without noting those deletions with ellipses. We have also omitted footnotes from the court opinions without noting those deletions. However, when the footnotes are needed for a proper understanding of the court’s opinion, they have been retained and are cited with their original footnote numbering from the court opinion. References in a court opinion to a specific Federal Rule of Civil Procedure or Federal Rule of Appellate Procedure have been edited, when necessary, to reflect the current language and section of the latest rules. Finally, in our text discussion throughout the casebook, we have used “short forms” for frequently cited sources. For example, “WRIGHT ET AL.” is used to cite to their multi-volume treatise, *Federal Practice and Procedure*, and “TEPLY & WHITTEN” is used to cite to the separate Civil Procedure “hornbook” text authored by Professors Tepy and Whitten, entitled *Civil Procedure* and also published by Carolina Academic Press. A complete listing of these short forms can be found in the “Table of Short Form Citations.”

We owe a significant debt to the people who supported and encouraged us in the preparation of this fourth edition. Particular mention should be made of the support provided by Creighton University School of Law and Seton Hall University School of Law. Professors Tepy and Whitten wish to thank Creighton law librarian, Troy C. Johnson, and the staff of the Klutznick Law Library for their research support. They also wish to thank the efficient and helpful secretarial assistance provided by Pat Andersen.

Professor McLaughlin wishes to thank Christopher A. Dernbach, Seton Hall Law School Class of 2021, for his invaluable research assistance in the preparation of the fourth edition of this casebook. Professor McLaughlin also wishes to thank all of his student research assistants over the years who have assisted him in the preparation

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Finally, more than thanks is due to our families who have suffered through multiple editions of this casebook. Professor Teply wishes to dedicate this casebook to his grandchildren: Anna Louisa Teply, Nicholas Benjamin Teply, Lydia Beatrice Teply, Clara Elizabeth Teply, Gabriel Patrick Teply, William Francis Teply, and Reece Benedict Teply. Professor McLaughlin wishes to dedicate this casebook in loving memory of his parents, Marie Rose and William James McLaughlin, and his sister, Jeanne Marie McLaughlin Grivalsky, and with heartfelt thanks to his wife, Barbara Jeanne Howard McLaughlin, his children, Kathleen Marie McLaughlin Novasack and Kevin Francis McLaughlin, and his grandchildren, Juliette Rose Novasack, Bennett Howard Novasack, Evangeline Mary Novasack, Donovan Francis McLaughlin, and Jackson James McLaughlin. Professor McLaughlin also wishes to remember his aunt, Rose Adeline Giuffre Paino, and his uncle, Martin Joseph Giuffre.

Larry L. Teply
Denis F. McLaughlin
Ralph U. Whitten
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