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# Understanding Civil Procedure

SEVENTH EDITION

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August 2023  
Washington, D.C.  
Bloomington, IN



# Preface to the Seventh Edition

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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 continuing developments in areas like electronic discovery, personal jurisdiction, and pleading 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.

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 referred to different state rules and doctrines where appropriate, striving to use a representative cross-section of state models.

We have also referred so frequently to major civil procedure treatises that we have adopted short form citations for them. The following list gives the full citation for each such work, followed by the short form with which we cite it. We supply only the section numbers for these sources because the page numbers vary with succeeding editions. In addition, we use “Rule [number]” as a short form reference to a Federal Rule of Civil Procedure.

## ***I. Hornbooks***

RICHARD D. FREER, *INTRODUCTION TO CIVIL PROCEDURE* (5th ed. 2022)

JACK H. FRIEDENTHAL, ARTHUR R. MILLER, JOHN E. SEXTON & HELEN HERSHKOFF, *CIVIL PROCEDURE* (13th ed. 2022).

GEOFFREY C. HAZARD, JR., JOHN LEUBSDORF, & DEBRA BASETT, *CIVIL PROCEDURE* (6th ed. 2011).

LARRY L. TEPLY & RALPH U. WHITTEN, *CIVIL PROCEDURE* (5th ed. 2013).

CHARLES ALAN WRIGHT & MARY KAY KANE, *LAW OF FEDERAL COURTS* (8th ed. 2017).

## **II. *Treatises***

CHARLES ALAN WRIGHT ET AL., *FEDERAL PRACTICE AND PROCEDURE* (5th ed., updated online 2022) (WRIGHT & MILLER). In rare cases where quoted material is taken from a prior edition, we have left a full citation.

JAMES W. MOORE, *MOORE'S FEDERAL PRACTICE* (2015 ed., updated online 2022) (MOORE; volume number omitted where section number is keyed to a Federal Rule of Civil Procedure). In rare cases where quoted material is taken from a prior edition of MOORE, we have left a full citation.

## **III. *Statutory Citations***

All statutory citations are to the latest codification (2018 for the United States Code at this writing) unless otherwise indicated.

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