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# Civil Procedure

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## *A Context and Practice Casebook*

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THIRD EDITION

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To my family of teachers and writers:  
Layne Stromwall, Michael Stromwall Hess, and  
Amanda Stromwall Hess.

GERRY HESS

To my first teachers, my parents, Marylin and Raymond Beiner.

THERESA BEINER

For my wife, Dana, and my daughter, Meredith.

SCOTT BAURIES

For my father, Satyanarayan, who would have celebrated this book,  
and for my mother, Aruna, who would have read it cover to cover.

SAURABH VISHNUBHAKAT





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## Series Editor's Preface

Welcome to a new type of casebook. Designed by leading experts in law school teaching and learning, Context and Practice casebooks assist law professors and their students to work together to learn, minimize stress, and prepare for the rigors and joys of practicing law. **Student learning and preparation for law practice are the guiding ethics of these books.**

Why would we depart from the tried and true? Why have we abandoned the legal education model by which we were trained? Because legal education can and must improve.

In Spring 2007, the Carnegie Foundation published *Educating Lawyers: Preparation for the Practice of Law* and the Clinical Legal Education Association published *Best Practices for Legal Education*. Both works reflect in-depth efforts to assess the effectiveness of modern legal education, and both conclude that legal education, as presently practiced, falls quite short of what it can and should be. Both works criticize law professors' rigid adherence to a single teaching technique, the inadequacies of law school assessment mechanisms, and the dearth of law school instruction aimed at teaching law practice skills and inculcating professional values. Finally, the authors of both books express concern that legal education may be harming law students. Recent studies show that law students, in comparison to all other graduate students, have the highest levels of depression, anxiety and substance abuse.

More recently, the NextGen Bar Exam reflects a genuine effort to dramatically increase the focus on assessing more than mere knowledge, and on assessing law practice skills. "Set to debut in July 2026, the NextGen bar exam will test a broad range of foundational lawyering skills, utilizing a focused set of clearly identified fundamental legal concepts and principles needed in today's practice of law." *About the NextGen Bar Exam*, NextGen: The Bar Exam of the Future, <https://nextgenbarexam.ncbex.org>.

**The problems with traditional law school instruction begin with the textbooks law teachers use.** Law professors cannot implement *Educating Lawyers* and *Best Practices* or prepare students for the NextGen Bar Exam using texts designed for the traditional model of legal education. Moreover, even though our understanding of how people learn has grown exponentially in the past 100 years, no law school text to date even purports to have been designed with educational research in mind.

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I welcome reactions, criticisms, and suggestions; my e-mail address is mschwartz@ pacific.edu. Knowing the authors of these books, I know they, too, would appreciate your input; we share a common commitment to student learning. In fact, students, if your professors care enough about your learning to have adopted this book, I bet they would welcome your input, too!

MICHAEL HUNTER SCHWARTZ

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