

**CIVIL PROCEDURE: CASES, QUESTIONS, AND  
MATERIALS**

**Ninth Edition**

**2024 UPDATE MEMORANDUM**

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We are delighted to offer this Memorandum Update for professors and students using the ninth edition of the casebook. Page numbers in this Memorandum are to that edition of the casebook.

This update reflects the very few changes and developments that have occurred since publication of the 2024 Ninth Edition of the casebook.

Permission is hereby granted to distribute copies of this Update Memorandum free of charge to students using the book in their class.

Thank you for adopting our casebook. As always, we welcome any feedback, questions, or suggestions you may have about the casebook.

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## Federal Rules of Civil Procedure

Four amendments to the Federal Rules went into effect on December 1, 2023.

- The amendment to Rule 6 in 6(a)(6)(A) defines legal holidays to include Juneteenth.
- The amendment to Rule 15(1) substitutes the words “no later than” for what had previously been “within.” As noted by the Advisory Committee: “A literal reading of “within” would lead to an untoward practice if a pleading is one to which a responsive pleading is required and neither a responsive pleading nor one of the Rule 12 motions has been served within 21 days after service of the pleading. Under this reading, the time to amend once as a matter of course lapses 21 days after the pleading is served and is revived only on the later service of a responsive pleading or one of the Rule 12 motions. There is no reason to suspend the right to amend in this way. “No later than” makes it clear that the right to amend continues without interruption until 21 days after the earlier of the events described in Rule 15(a)(1)(B).”
- The amendment to Rule 72 changes Rule 72(b)(1) to permit the clerk to serve a copy of a magistrate judge’s recommended disposition by any of the means provided in Rule 5(b).
- Rule 87 is a new Civil Rule that allows for the Judicial Conference of the United States to declare an emergency if circumstances make it difficult for courts to perform their ordinary functions.

## **Chapter 2: Personal Jurisdiction**

### **B. Constitutional Limits on Personal Jurisdiction**

#### **8. Consent to Jurisdiction**

##### **c. Corporate Registration Statutes**

At page 201, before section 9, please add:

What does *Mallory* mean for consent statutes based on conduct? While the non-resident motor vehicle statutes such as the one the Court upheld in *Hess v. Pawloski* will continue to exist unchallenged, other conduct consent statutes have been challenged. In 2023, the Second Circuit considered the legality of a federal statute that deemed a defendant to consent to personal jurisdiction in the United States if it made certain types of payments to “terrorists” associated with the Palestine Liberation Organization or the Palestinian Authority. The Second Circuit invalidated jurisdiction, holding that consent must be premised “on activities from which it was reasonable to infer a defendant's submission to personal jurisdiction,” such as any “litigation-related conduct, or a defendant’s acceptance of some in-forum benefit conditioned on amenability to suit in the forum’s courts.” *Fuld v. PLO*, 82 F.4th 74, 93 (2d Cir. 2023). The Second Circuit distinguished the consent statute from the statute at issue in *Mallory*, observing that the PSJVTA did not involve “litigation-related activities or reciprocal bargains” from which a court could “infer . . . an intention to submit” to jurisdiction in the United States. *Id.* at 90. In the wake of the Court’s fractured decision in *Mallory*, such questions of implied consent will undoubtedly continue to percolate through the lower courts.

## **Chapter 9: Adjudication With and Without a Trial or Jury**

### **B. Trial and the Right to a Jury**

#### **1. Scope of the Constitutional Right**

##### **c. Juries in Non-Article III Federal Courts**

At page 473, at the end of the text, before part d, please add:

The Supreme Court clarified the “public rights” exception from *Atlas Roofing* and *Granfinanciera* by addressing the jury trial right for a defendant facing civil monetary penalties for securities fraud allegations before the Securities and Exchange Commission. In a 6-3 decision in *SEC v. Jarkesy*, 603 U.S. \_\_\_, 144 S.Ct. 2117, 219 L.Ed.2d 650 (2024), the Court held that there was a “close relationship between federal securities law and common law fraud” which resembles a common law cause of action, thus making these suits at common law protected by the Seventh Amendment.