

TABLE OF CONTENTS

PREFACE	V
PREFACE TO THE FOURTH EDITION	IX
ACKNOWLEDGMENTS	XIII
TABLE OF CASES	XXXI
Chapter 1. An Overview of Civil Procedure	1
A. The Role of Procedure	1
Beeck v. Aquaslide ‘N’ Dive Corp.	1
Notes and Questions	4
B. Dealing with Civil Procedure	4
C. The Federal Rules of Civil Procedure	6
D. Dealing with Disputes.....	8
Marc Galanter, The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts	9
John Lande, ‘The Vanishing Trial’ Report: An Alternative View of the Data	12
Notes and Questions	14
Notes and Questions	17
Problem	18
E. A Civil Procedure Timeline.....	19
1. Pre-litigation Phase.....	20
2. Plaintiff Commences Its Case.....	20
3. Defendant’s Initial Response	21
4. Refining the Case	21
5. Case Management	22
6. Discovery	22
7. Resolution of the Case by the Judge	23
8. Jury Trials	23
9. Appeals.....	24
10. Effect of a Judgment	25
Chapter 2. Joinder of Claims and Parties	27
A. Counterclaims.....	28
Introductory Problem	28
Nasalok Coating Corp. v. Nylok Corp.	29
Notes and Questions	32
B. Additional Plaintiffs and Defendants	35
Introductory Problem	35
Liberty Media Holdings, LLC v. Bittorrent Swarm	36
Notes and Questions	40

C.	Cross-Claims	42
	Introductory Problem	42
	Rainbow Management Group, Ltd. v. Atlantis Submarines Hawaii, L.P.	43
	Notes and Questions	45
D.	Additional Claims by Existing Parties	46
	Introductory Problem	46
	McCoy v. Like	47
	Notes and Questions	48
	Problems	50
	Exercise	51
Chapter 3. Personal Jurisdiction and Venue		53
A.	Exercising Jurisdiction over Defendants	53
	Introductory Problem 1	53
	Introductory Problem 2	54
1.	Jurisdiction over Defendants: The Early Decisions	55
	Notes and Questions	58
	Problems.....	59
	International Shoe Co. v. Washington	61
	Notes and Questions	65
2.	Jurisdiction over Nonresident Defendants	67
a.	Specific Jurisdiction	68
b.	General Jurisdiction	70
	Exercise	71
	Problems.....	72
3.	Emerging Personal Jurisdiction Principles	74
	Shaffer v. Heitner	76
	Notes and Questions	83
	World-Wide Volkswagen Corp. v. Woodson	84
	Notes and Questions	90
	Problems.....	92
	Burger King v. Rudzewicz.....	93
	Notes and Questions	102
	Burnham v. Superior Court	104
	Notes and Questions	110
	J. McIntyre Machinery, Ltd. v. Nicastro.....	113
	Note and Question	123
	Walden v. Fiore.....	124
	Notes and Questions	127
	Daimler AG v. Bauman.....	129
	Notes and Questions	137
4.	To the Internet—and Beyond!	139
	Advanced Tactical Ordnance Systems, LLC v. Real Action Paintball, Inc.....	139
	Exercise	143

B.	Venue	144
	Introductory Problem	145
1.	Federal Venue Standards	145
	Astro-Med, Inc. v. Nihon Kohden America, Inc.	146
	Notes and Questions	149
	Problems.....	150
2.	Transferring the Lawsuit.....	151
a.	By Statute	151
	Meteoro Amusement Corp. v. Six Flags	152
	Notes and Questions.....	156
b.	By Forum Non Conveniens	158
	Piper Aircraft Co. v. Reyno	159
	Notes and Questions.....	164
	Problems.....	166
c.	By Forum Selection Clause.....	168
	Atlantic Marine Constr., Co., Inc. v. U.S. Dist. Ct. for the Western District of Texas	168
Chapter 4. Federal Subject Matter Jurisdiction		173
A.	The Concept of Subject Matter Jurisdiction	173
B.	Federal Question Jurisdiction	176
	Introductory Problem	176
1.	How Does a Party Invoke Federal Question Jurisdiction?	178
	Louisville & Nashville Railroad v. Mottley	178
	Notes and Questions	180
2.	What Types of Claims Present a “Federal Question?”	183
a.	United States Constitution	183
b.	Treaties.....	184
c.	International Law.....	184
d.	Federal Common Law	184
e.	Special Federal Statutes	184
f.	State Law	185
	Problems.....	185
C.	Diversity Jurisdiction.....	186
	Introductory Problem	186
1.	The Policy Underlying Diversity Jurisdiction	187
2.	Determining Diversity	189
a.	Individuals	189
	Lundquist v. Precision Valley Aviation, Inc.	189
	Notes and Questions.....	193
b.	Corporations and Other “Legal Persons”	194
	Hertz Corp. v. Friend	194
	Notes and Questions.....	201
	Zambelli Fireworks Mfg. Co., Inc. v. Wood	202
	Notes and Questions.....	204
3.	The Amount in Controversy.....	206

4.	Additional Issues in Diversity Jurisdiction	209
a.	Alienage Jurisdiction	209
b.	Time for Determining Diversity	210
c.	Manipulating § 1332	211
d.	States	214
e.	Exceptions to Diversity Jurisdiction	214
f.	Other Diversity Statutes	215
	Problems	216
	Exercise	217
D.	Supplemental Jurisdiction	218
	Introductory Problem	218
1.	The Theoretical Basis for Supplemental Jurisdiction	219
	United Mine Workers v. Gibbs	219
	Notes and Questions	223
2.	The Supplemental Jurisdiction Statute	225
	Problems	226
3.	Supplemental Jurisdiction and Joinder of Parties	228
	Exxon Mobil Corp. v. Allapattah Services, Inc.	229
	Notes and Questions	236
	Problems	240
E.	Removal	241
	Introductory Problem	241
1.	General Rules Governing Removal	242
	Caterpillar Inc. v. Williams	242
	Notes and Questions	244
2.	Removal in Diversity Cases	246
3.	More Complex Cases	248
	a. State Law Claims with an Essential Federal Element	248
	Grable & Sons Metal Products, Inc. v. Darue Engineering	
	& Mfg.	248
	Notes and Questions	252
	b. Complete Preemption	253
	Beneficial National Bank v. Anderson	253
	Notes and Questions	258
	Problems	259
4.	Procedure for Removal	259
	Problems	261
	Chapter 5. Determining the Applicable Law	263
A.	Choice of Law	264
	Introductory Problem	264
	Paul v. National Life	265
	Notes and Questions	270
B.	The <i>Erie</i> Doctrine	272
	Introductory Problem	272
1.	Genesis of the <i>Erie</i> Doctrine	274
	Notes and Questions	276

Erie R. Co. v. Tompkins	278
Notes and Questions	282
Guaranty Trust Co. of New York v. York	286
Notes and Questions	292
Notes and Questions	295
Hanna v. Plumer	295
Notes and Questions	301
2. Post- <i>Hanna</i> Cases Applying the <i>Erie</i> Doctrine	303
a. Rules Promulgated Under the Rules Enabling Act	304
b. Other Federal Judge-Made Law	307
c. Federal Statutes	310
Stewart Organization v. Ricoh Corporation	310
Notes and Questions	313
3. Federal Common Law	314
Texas Industries, Inc. v. Radcliff Materials, Inc.	314
Notes and Questions	318
Problems.....	320
Chapter 6. Pleading Claims	323
A. Philosophy and History of Pleading	323
1. Historical English Pleading	324
Charles E. Clark, Handbook of the Law of Code Pleading	326
Notes.....	328
2. Code Pleading	330
Charles E. Clark, Handbook of the Law of Code Pleading	331
Notes and Questions	332
B. Pleading a Claim Under the Federal Rules.....	333
1. The Form of the Complaint.....	333
Notes and Questions	337
2. The Basic Pleading Standard of Federal Rule 8(a)	339
3. Applying the Rule 8(a) Standard.....	340
Swierkiewicz v. Sorema, N. A.	340
Bell Atlantic Corp. v. Twombly.....	343
Ashcroft v. Iqbal	349
Notes and Questions	359
4. Heightened Pleading Standards.....	362
Wallace v. Tesoro Corp.....	362
Notes and Questions	366
Browning v. Clinton	368
Notes and Questions	370
5. The Prayer for Relief.....	371
Problems.....	372
Exercise	373
C. Notifying Opposing Parties: Service of Process.....	373
Introductory Problem	374
1. Constitutional Standards.....	374
Mullane v. Central Hanover Bank & Trust Co.	374

	Notes and Questions	378
2.	Procedural Standards for Service of Process	380
	Larsen v. Mayo Medical Center.....	381
	Notes and Questions	384
	Cox v. Quigley.....	385
	Notes and Questions	389
	Problems.....	394
	Exercise	395
D.	Veracity Standards for Pleadings and Other Filed Documents	396
	Ruszala v. Walt Disney World Co.	398
	Notes and Questions	402
	Exercise	403
	Christian v. Mattel, Inc.....	404
	Notes and Questions	410
	Problems	414
E.	Amended and Supplemental Pleadings	415
	Introductory Problem	416
1.	Amending Pleadings with (or Without) the Court's Permission ..	416
	Beeck v. Aquaslide 'N' Dive Corp.	416
	Notes and Questions	416
2.	Amendments to Add Issues at Trial.....	418
	Otness v. United States	418
	Notes and Questions	420
	Problems.....	421
3.	Amendments Filed After the Limitations Period Has Expired	421
	Erwin v. McDermott.....	421
	Notes and Questions	425
4.	Supplemental Pleadings	427
	Stewart v. Shelby Tissue, Inc.	427
	Notes and Questions	429
	Exercise	430
Chapter 7. Responding to Claims		431
A.	Dismissals	431
	Introductory Problem	431
1.	Voluntary Dismissals	432
	Marques v. Federal Reserve Bank of Chicago.....	432
	Notes and Questions	434
	Hinfin Realty Corp. v. Pittston Co.	435
	Notes and Questions	439
2.	Involuntary Dismissals	440
	Aura Lamp & Lighting Inc. v. International Trading Corp.	441
	Notes and Questions	445
	Problems.....	447
	Exercise	447

B.	Objecting to the Complaint by Motion	448
1.	Timing Rules Governing Rule 12 Motions	449
a.	Defenses Other than Subject-Matter Jurisdiction	449
	Introductory Problem	449
	Problems	451
b.	Subject-Matter Jurisdiction	452
	Notes and Questions	453
2.	Challenging the Substantive Allegations of a Claim	454
	Introductory Problem	454
a.	When a Pleading “Fails to State a Claim”	456
b.	Procedural Aspects of the Rule 12(b)(6) Motion	456
c.	Motion for a More Definite Statement and Motion to Strike	457
d.	Objecting to the Statement of a Claim and Settlement	458
	Problems	458
C.	Responding to the Complaint: The Answer	459
	Introductory Problem	459
1.	Menu of Responses	460
	King Vision Pay Per View, Ltd. v. J.C. Dimitri’s Restaurant, Inc.	463
	Problems	465
	Exercise	465
2.	Affirmative Defenses	467
	Red Deer v. Cherokee County, Iowa	467
	Notes and Questions	471
3.	Responding to the Answer	473
	Reyes v. Sazan	473
	Notes and Questions	475
	Exercise	476
D.	Failure to Respond: Default Judgment	477
	Introductory Problem	477
	KPS & Associates, Inc. v. Designs by FMC, Inc.	477
	Notes and Questions	483
	Problems	485
	Exercise	486
E.	Judgment on the Pleadings	486
	Introductory Problem	486
 Chapter 8. Advanced Joinder (available at www.crosscivilprocedure.com)		489
 Chapter 9. Alternative Dispute Resolution and Settlement (available at www.crosscivilprocedure.com)		491

Chapter 10. Discovery	493
A. The Scope of Discovery.....	494
1. Mandatory Disclosure	494
Introductory Problem	494
2. Discovery of Relevant and Non-Privileged Information	496
Introductory Problem 1	496
Introductory Problem 2	496
Thompson v. Department of Housing and Urban Devel.....	497
Notes and Questions	500
Problems.....	503
3. Discovery of Attorney Work Product.....	504
Introductory Problem	504
Hickman v. Taylor	504
Spirit Master Funding, LLC v. Pike Nurseries Acquisition, LLC	508
Notes and Questions	511
Gutshall v. New Prime, Inc.....	513
Problems.....	515
4. Discovery About Experts.....	516
Introductory Problem	516
Spirit Master Funding, LLC v. Pike Nurseries Acquisition, LLC	517
Notes and Questions	519
Problems.....	520
Exercise	521
B. Discovery Devices	521
1. Depositions.....	521
Alexander v. F.B.I.....	522
Notes and Questions	527
2. Interrogatories	529
O'Connor v. Boeing North American, Inc.	529
Notes and Questions	535
Exercise	537
3. Request for Production of Documents	537
Notes and Questions	540
Exercise	542
4. Request for Admissions.....	543
Asea, Inc. v. Southern Pac. Transp. Co.	543
Notes and Questions	546
Exercise	547
5. Physical and Mental Examinations	548
Ali v. Wang Laboratories, Inc.	548
Notes and Questions	551
C. Discovery Sanctions	552
Lee v. Walters	552
Notes and Questions	558

Chapter 11. Taking the Case from the Jury	561
A. Summary Judgment.....	562
1. The Rule 56 Standard	562
Introductory Problem	562
<i>Celotex Corp. v. Catrett</i>	563
Notes and Questions	569
2. Using Inferences.....	574
<i>Jorgensen v. Epic/Sony Records</i>	574
Notes and Questions	580
Problems.....	582
B. Judgment as a Matter of Law	583
Introductory Problem 1	583
Introductory Problem 2	584
<i>Kinsler v. CMI Corp., Bid-Well Div.</i>	585
Notes and Questions	590
Problems	593
Chapter 12. Jury Trial	595
A. The Constitutional Right to a Jury Trial in Federal Civil Cases (available at www.crosscivilprocedure.com).....	596
B. Demanding a Jury Trial	596
<i>Marseilles Hydro Power, LLC v. Marseilles Land and Water</i> Company	596
Notes and Questions	597
Problems	599
C. Selecting a Group of Prospective Jurors	599
<i>Floyd v. Garrison</i>	601
Notes and Questions	602
Exercise	604
D. Challenging Individual Prospective Jurors	604
Introductory Problem	604
<i>Thompson v. Alzheimer & Gray</i>	606
Notes and Questions	609
Exercise	611
<i>Alverio v. Sam’s Warehouse Club, Inc.</i>	616
Notes and Questions	620
Problems	621
Exercise	622
E. Jury Instructions and Jury Verdicts.....	623
1. Requesting and Objecting to Jury Instructions.....	623
<i>Jarvis v. Ford Motor Co.</i>	624
Notes and Questions	628
2. Jury Verdicts.....	628
<i>Lavoie v. Pacific Press & Shear Co.</i>	629
Notes and Questions	632
Problems.....	634
Exercise	635

F.	New Trial	635
	Introductory Problem	635
	Piesco v. Koch	637
	Notes and Questions	642
	Problems	646
	Exercise	646
G.	Relief from Judgment.....	647
	Tate v. Riverboat Services, Inc.	648
	Notes and Questions	653
	Exercise	656
Chapter 13. The Effect of a Judgment.....		657
A.	Enforcing a Judgment (available at www.crosscivilprocedure.com).....	657
B.	Preclusive Effect of a Judgment: An Overview	657
C.	Claim Preclusion	659
	Introductory Problem	659
	1. The Basics of Claim Preclusion	659
	Rodgers v. St. Mary's Hospital	659
	Notes and Questions	662
	2. Precluding Counterclaims, Cross-Claims, and Defenses	666
	3. Final Judgment on the Merits	668
	4. Exceptions to Claim Preclusion	669
	Problems.....	670
D.	Issue Preclusion.....	671
	Introductory Problem	671
	1. Same Issue	673
	Williams v. City of Jacksonville Police Dept.	673
	Notes and Questions	678
	2. Actually Litigated.....	679
	3. Actually Decided.....	680
	4. Necessary to the Judgment.....	681
	Stemler v. Florence.....	681
	Notes and Questions	686
	5. Exceptions	687
	Problems.....	688
E.	Parties Affected by Claim and Issue Preclusion (available at www.crosscivilprocedure.com).....	690
F.	Applying Preclusion Across State Lines (available at www.crosscivilprocedure.com).....	690
G.	Doctrines Similar to Preclusion (available at www.crosscivilprocedure.com).....	690
Chapter 14. Appeals		691
A.	Who May Appeal	691
	Introductory Problem	691
	In re DES Litigation.....	692
	Notes and Questions	695

B.	The Timing of an Appeal—The “Final Decision” Rule (available at www.crosscivilprocedure.com).....	696
C.	Scope of Appellate Review	696
1.	Need to Raise the Issue Below.....	696
2.	The Standard of Review	698
	Notes and Questions	701
D.	United States Supreme Court Review (available at www.crosscivilprocedure.com).....	703
	INDEX.....	705