

TABLE OF CONTENTS

PREFACE TO THE THIRD EDITION	III
PREFACE TO THE SECOND EDITION	V
PREFACE TO THE FIRST EDITION	VII
TABLE OF CASES	XXIII

PART ONE. LEADING CASES IN CIVIL PROCEDURE

Chapter 1. Choosing the Forum (Personal Jurisdiction)	3
A. The Professional Responsibility of the Lawyer	3
American Bar Association Model Rules of Professional Conduct	3
B. Traditional Bases: Territorial Jurisdiction.....	7
Constitutional Provisions	7
U.S. Const. Article IV § 1.....	7
U.S. Const. Amend. XIV § 1.....	7
Federal Rule of Civil Procedure 55	8
28 U.S.C. § 1738	8
Pennoyer v. Neff.....	8
C. Implied Consent	17
Hess v. Pawloski.....	17
D. Due Process Minimum Contacts	19
Federal Rule of Civil Procedure 12	20
International Shoe Co. v. State of Washington	21
Chapter 2. Choosing the Forum (Personal Jurisdiction)	31
A. Minimum Contacts at the Extreme	31
McGee v. International Life Insurance Company	31
B. Minimum Contacts Retrenched.....	33
Hanson v. Denckla	33
C. Long Arm Statutes and the Stream of Commerce	46
Illinois Long Arm Statute: Ill. Comp. Statutes § 2-209	46
California Long Arm Statute: Cal. Code Civ. Pro. § 410.10	48
Gray v. American Radiator & Standard Sanitary Corporation	48
Kulko v. Superior Court of California	55
D. Property Revisited.....	63
Shaffer v. Heitner.....	63
Chapter 3. Choosing the Forum (Personal Jurisdiction)	83
A. Affiliating Circumstances	83
World-Wide Volkswagen Corporation v. Woodson	83
B. General and Specific Jurisdiction	100
Helicopteros Nacionales de Colombia, S.A. v. Hall.....	100

C.	First Amendment Considerations and Intentional Torts.....	111
	Keeton v. Hustler Magazine	111
	Calder v. Jones	116
	Walden v. Fiore.....	120
D.	Jurisdiction Based on Contract Revisited	127
	Federal Rule of Civil Procedure 4 [selected provisions].....	127
	Burger King Corporation v. Rudzewicz	128
Chapter 4. Choosing the Forum (Personal Jurisdiction)		143
A.	Stream of Commerce Revisited	143
	Asahi Metal Industry Co., Ltd. v. Superior Court of California	143
	J. McIntyre Machinery, Ltd. v. Nicastro	153
B.	General and Specific Jurisdiction Revisited.....	173
	Goodyear Dunlop Tires Operations, S.A. v. Brown.....	173
	Daimler AG v. Bauman.....	179
C.	Tag Jurisdiction.....	188
	Burnham v. Superior Court of California	188
D.	Consent Revisited: Forum Selection Clauses	206
	Carnival Cruise Lines, Inc. v. Shute.....	206
Chapter 5. Choosing the Forum (Subject Matter Jurisdiction).....		217
A.	Diversity Jurisdiction and Special Diversity Problems	217
	28 U.S.C. § 1332	217
	Federal Rule of Civil Procedure 12	218
	Federal Rule of Civil Procedure 17. Plaintiff and Defendant; Capacity; Public Officers	218
	Mas v. Perry.....	220
	28 U.S.C. § 1441. Removal of civil actions.....	223
	The Hertz Corporation v. Friend.....	224
B.	Special Problems in Diversity Jurisdiction: Collusive and Fraudulent Joinder	233
	28 U.S.C. § 1359. Parties collusively joined or made	233
	Kramer v. Caribbean Mills, Inc.....	233
	Rose v. Giamatti	237
C.	Federal Question Jurisdiction—“Arising Under” Jurisdiction.....	249
	Art. III, Section 2, Clause 1. Jurisdiction of Courts.....	249
	28 U.S.C. § 1331. Federal question	249
	28 U.S.C. § 1338. Patents, plant variety protection, copyrights, mask works, designs, trademarks, and unfair competition.....	249
	American National Red Cross v. S.G. and A.E.....	250
	T. B. Harms Company v. Eliscu	264
D.	Federal Question Jurisdiction—The Well-Pleaded Complaint Rule	269
	Louisville & Nashville Railroad Company v. Mottley	269
Chapter 6. Choosing the Forum (Subject Matter Jurisdiction).....		273
A.	Federal Question Jurisdiction—Express and Implied Actions	273
	Merrell Dow Pharmaceuticals Inc. v. Thompson	273

B. Statutory Bases 286
 Grable & Sons Metal Products, Inc. v. Darue Engineering 286

C. Supplemental Jurisdiction—Common Law Principles 293
 Pendent Claim and Pendent Party Jurisdiction 293
 Federal Rule of Civil Procedure 2. One Form of Action 293
 Federal Rule of Civil Procedure 42. Consolidation; Separate Trials 293
 United Mine Workers of America v. Gibbs 293
 Finley v. United States 299

D. Supplemental Jurisdiction—Common Law Principles 310
 Ancillary Jurisdiction 310
 Federal Rule of Civil Procedure 14. Third-Party Practice 310
 Owen Equipment and Erection Company v. Kroger 311

Chapter 7. Choosing the Forum (Supplemental Jurisdiction,

Removal, Venue) 321

A. The Supplemental Jurisdiction Statute 321
 28 U.S.C. § 1367. Supplemental jurisdiction 321
 Exxon Mobil Corporation v. Allapattah Services, Inc. 322

B. Removal Jurisdiction 345
 28 U.S.C. § 1441. Removal of civil actions 345
 28 U.S.C. § 1442. Federal officers or agencies sued or prosecuted 347
 28 U.S.C. § 1443. Civil rights cases 348
 28 U.S.C. § 1445. Nonremovable actions 348
 28 U.S.C. § 1446. Procedure for removal of civil actions 349
 28 U.S.C. § 1447. Procedure after removal generally 351
 28 U.S.C. § 1448. Process after removal 352
 Carlsbad Technology, Inc. v. HIF Bio, Inc. 352

C. Venue and Transfer of Venue 357
 28 U.S.C. § 1391. Venue generally 357
 28 U.S.C. § 1404. Change of venue 359
 28 U.S.C. § 1406. Cure or waiver of defects 359
 Bates v. C & S Adjusters, Inc. 360
 Atlantic Marine Construction Company, Inc. v. United States
 District Court for the Western District of Texas 363

D. Forum Non Conveniens 372
 Piper Aircraft Company v. Reyno 372

Chapter 8. Modern Pleading 385

A. Selections from the Field Code (N.Y. Laws 1848) 385

B. Notice Pleading 386
 Federal Rule of Civil Procedure 1. Scope and Purpose 386
 Federal Rule of Civil Procedure 2. One Form of Action 387
 Federal Rule of Civil Procedure 7. Pleadings Allowed; Form of
 Motions and Other Papers 387
 Federal Rule of Civil Procedure 7.1. Disclosure Statement 387
 Federal Rule of Civil Procedure 8. General Rules of Pleading 388
 Federal Rule of Civil Procedure 9. Pleading Special Matters 388

Dioguardi v. Durning	389
Conley v. Gibson	391
C. The Limits of Notice Pleading	394
Bell Atlantic Corporation v. Twombly	394
D. Plausible Pleading Reaffirmed	410
Ashcroft v. Iqbal	410
Chapter 9. Modern Pleading	427
A. Responding to the Complaint	427
Federal Rule of Civil Procedure 12 [Please Review Rule 12]	427
Federal Rule of Civil Procedure 8(d)	427
PAE Government Services, Inc. v. MPRI, Inc.	427
Garcia v. Hilton Hotels International, Inc.	434
Rubert-Torres v. Hospital San Pablo, Inc.	439
B. The Answer; Denials and Affirmative Defenses	442
Federal Rule of Civil Procedure 8(b)–(c)	442
Zielinski v. Philadelphia Piers, Inc.	443
C. Amendments to Pleadings	449
Federal Rule of Civil Procedure 15. Amended and Supplemental Pleadings	449
Krupski v. Costa Crociere S. p. A.	451
D. Truthful Pleadings and Sanctions.....	461
Federal Rule of Civil Procedure 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions.....	461
28 U.S.C. § 1927. Counsel’s Liability for Excessive Costs	462
Roth v. Green.....	463
Chapter 10. Joinder of Parties and Claims	475
A. Counterclaims.....	475
Federal Rule of Civil Procedure 13. Counterclaim and Crossclaim.....	475
Federal Rule of Civil Procedure 14. Third-Party Practice.....	476
Jones v. Ford Motor Credit Company	478
B. Cross-Claims.....	487
Federal Rule of Civil Procedure 13(g), (h), (i).....	487
Federal Rule of Civil Procedure 18. Joinder of Claims	487
Federal Rule of Civil Procedure 20. Permissive Joinder of Parties	487
Federal Rule of Civil Procedure 42. Consolidation; Separate Trials	488
Lasa Per L’Industria Del Marmo Societa Per Azioni of Lasa, Italy v. Alexander	489
C. Persons Needed for a Just Adjudication	499
Review Federal Rule of Civil Procedure 12(b)(7)	499
Federal Rule of Civil Procedure 19. Required Joinder of Parties	499
The Bank of California v. The Superior Court of San Francisco	500
Provident Tradesmens Bank & Trust Co. v. Patterson	505
D. Intervention	513
Federal Rule of Civil Procedure 24. Intervention	513
Grutter v. Bollinger.....	514

Chapter 11. Discovery	521
A. Scope and Constitutionality of Discovery	521
Federal Rule of Civil Procedure 26. Duty to Disclose; General Provisions Governing Discovery	521
Federal Rule of Civil Procedure 26(c) Protective Orders.....	526
Federal Rule of Civil Procedure 35. Physical and Mental Examinations.....	529
Schlagenhauf v. Holder.....	530
B. Protective Orders	541
Federal Rule of Civil Procedure 26(c)	541
Federal Rule of Civil Procedure 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions	542
Seattle Times Company v. Rhinehart.....	546
C. Work Product Immunity.....	556
Federal Rule of Civil Procedure 26(b)(3).....	556
Federal Rule of Civil Procedure 30. Depositions by Oral Examination.....	557
Federal Rule of Civil Procedure 33. Interrogatories to Parties.....	562
Federal Rule of Civil Procedure 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes.....	563
Hickman v. Taylor.....	565
D. Attorney-Client Privilege.....	577
Upjohn Company v. United States.....	577
 Chapter 12. Summary Judgment, Trial Motions, and Post-Trial Motions	 589
A. Evidentiary Burdens and Credibility Issues	589
Federal Rule of Civil Procedure 56. Summary Judgment	589
Lundeen v. Cordner.....	591
Cross v. United States.....	600
B. Modern Summary Judgment Standards	604
Celotex Corporation v. Catrett	604
Scott v. Harris.....	615
C. Judgment as a Matter of Law (Directed Verdict)	624
Federal Rule of Civil Procedure 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling.....	624
Galloway v. United States	626
D. Judgment as a Matter of Law (Post-Trial Motions).....	645
Neely v. Martin K. Eby Construction Co., Inc.....	645
 Chapter 13. Choice of Applicable Law (<i>Erie</i> Doctrine)	 657
A. Historical Basis: The Rules of Decision Act.....	657
28 U.S.C. § 1652. State laws as rules of decision	657
Erie R. Co. v. Tompkins	657
Klaxon Co. v. Stentor Electric Mfg. Co., Inc.....	669

B.	The Outcome Determination Test.....	671
	Guaranty Trust Co. of New York v. York	671
C.	Constitutional Concerns: The Byrd Balancing Test	681
	Byrd v. Blue Ridge Rural Electric Cooperative, Inc.....	681
D.	The Rules Enabling Act	689
	28 U.S.C. § 2071. Rule-making power generally.....	689
	28 U.S.C. § 2072. Rules of procedure and evidence; power to prescribe	690
	Federal Rule of Civil Procedure 83. Rules by District Courts; Judge’s Directives	690
	Hanna v. Plumer	691
	Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co.	700
	Chapter 14. Representational Class Action Litigation	711
A.	Due Process Considerations	711
	Hansberry v. Lee	711
B.	Class Certification.....	716
	Federal Rule of Civil Procedure 23. Class Actions.....	716
	Wal-Mart Stores, Inc. v. Dukes	721
C.	Jurisdiction and Choice of Law Issues.....	740
	28 U.S.C. § 1332(d). Class actions; diversity of citizenship; amount in controversy.....	740
	28 U.S.C. § 1453. Removal of class actions.....	744
	Phillips Petroleum Company v. Shutts.....	746
D.	Settlement Classes.....	764
	Amchem Products, Inc. v. Windsor	764

PART TWO. ALTERNATIVE WEEKS

	Chapter 15. Procedural Due Process.....	791
A.	Reasonable Notice	791
	U.S. Const. Amend. V.....	791
	U.S. Const. Amend. XIV.	791
	Mullane v. Central Hanover Bank & Trust Co.	791
B.	Service of Process	799
	Federal Rule of Civil Procedure 4. Summons.....	799
	National Equipment Rental, Ltd. v. Szukhent.....	806
C.	Opportunity to be Heard: Prior Hearing	817
	Fuentes v. Shevin	817
D.	Attachment Statutes.....	831
	Connecticut v. Doehr.....	831
	Chapter 16. Right to Trial by Jury	845
A.	Historical Bases and Modern Approach	845
	U.S. Const. Amend. VII. Civil Trials.....	845
	Federal Rule of Civil Procedure 38. Right to a Jury Trial; Demand.....	845
	Federal Rule of Civil Procedure 39. Trial by Jury or by the Court.....	846

	Federal Rule of Civil Procedure 57. Declaratory Judgment.....	846
	28 U.S.C. § 2201. Creation of remedy	846
	28 U.S.C. § 2202. Further relief	847
	Beacon Theatres, Inc. v. Westover	847
B.	Characterizing the Issue.....	856
	Dairy Queen, Inc. v. Wood	856
	Ross v. Bernhard	861
C.	Administrative Forum	870
	Atlas Roofing Co., Inc. v. Occupational Safety and Health Review Comm.	870
D.	Statutory Civil Penalty Actions.....	878
	Tull v. United States	878
Chapter 17. Interlocutory Appeal.....		887
A.	The Final Judgment Rule	887
	Federal Rule of Civil Procedure 54. Judgment; Costs	887
	28 U.S.C. § 1291. Final decisions of district courts	888
	28 U.S.C. § 1292. Interlocutory decisions	889
	Liberty Mutual Insurance Company v. Wetzel	889
	Curtiss-Wright Corp. v. General Electric Co.	893
B.	Collateral Order Doctrine	899
	Cohen v. Beneficial Industrial Loan Corp.	899
	Mohawk Industries, Inc. v. Carpenter	901
C.	Certified Orders.....	910
	Yamaha Motor Corp., U.S.A. v. Calhoun.....	910
	United States v. Philip Morris USA Inc.	913
D.	The Writ of Mandamus	925
	Federal Rule of Civil Procedure 53. Masters.....	925
	28 U.S.C. § 1651. Writs	927
	La Buy v. Howes Leather Company.....	928
Chapter 18. Res Judicata and Preclusion Doctrine.....		937
A.	Res Judicata and the Finality of Judgments.....	937
	Cromwell v. County of Sac.....	937
	Russell v. Place	948
B.	Collateral Estoppel: Identity of Issues.....	951
	Commissioner of Internal Revenue v. Sunnen	951
C.	Mutuality of Estoppel.....	958
	Parklane Hosiery Company, Inc. v. Shore.....	958
D.	Federalism Issues.....	973
	Review U.S. Const. Article IV § 1; 28 U.S.C. § 1738; Fed. R. Civ. P. 8(c)(1).....	973
	Durfee v. Duke.....	973
	Federal Rule of Civil Procedure 41. Dismissal of Actions	977
	Semtek Int'l Corp. v. Lockheed Martin Corp.	979