

# TABLE OF CONTENTS

PREFACE .....	v
ACKNOWLEDGMENTS.....	vii
SUMMARY OF CONTENTS .....	xv
TABLE OF CASES .....	xxxiii
TABLE OF SECONDARY AUTHORITIES.....	li

## CHAPTER 1. INTRODUCTION AND HISTORY ..... 1

### Sec.

A. Themes of This Casebook .....	1
1. The Importance of Class Actions.....	1
2. Approach of This Casebook.....	2
3. Recurring Questions and Concerns.....	4
B. Perspectives on Class Actions .....	7
<i>Owen M. Fiss, The Political Theory of the Class Action .....</i>	7
<i>La Mar v. H &amp; B Novelty &amp; Loan Co.</i> .....	10
<i>Jonathan M. Landers, Of Legalized Blackmail and Legalized Theft: Consumer Class Actions and the Substance–Procedure Dilemma .....</i>	11
<i>Stephen B. Burbank, Sean Farhang &amp; Herbert M. Kritzer, Private Enforcement .....</i>	14
<i>Notes and Questions.....</i>	15
C. Historical Overview .....	16
1. Echoes From the Past .....	16
<i>Notes and Questions.....</i>	17
2. The Old Federal Equity Rules.....	17
<i>Charles A. Wright, Arthur R. Miller &amp; Mary K. Kane, Federal Practice and Procedure.....</i>	18
<i>Notes and Questions.....</i>	19
3. Original Rule 23 .....	19
<i>John G. Harkins, Jr., Federal Rule 23—The Early Years.....</i>	20
<i>Notes and Questions.....</i>	22
<i>Zechariah Chafee, Jr., The Thomas M. Cooley Lectures: Some Problems of Equity .....</i>	22
<i>Notes and Questions.....</i>	23
4. Modern Rule 23 .....	23
<i>Charles A. Wright, Class Actions .....</i>	23
<i>Notes and Questions.....</i>	27
5. Amended Rule 23 and the Class Action Fairness Act .....	27
<i>Notes and Questions.....</i>	29
6. Contemporary Judicial Views on Class Actions.....	30
<i>Rahman v. Chertoff.....</i>	30
<i>Klay v. Humana, Inc.....</i>	31
<i>Notes and Questions.....</i>	33

## CHAPTER 2. CLASS CERTIFICATION: THRESHOLD REQUIREMENTS AND RULE 23(a) ..... 35

### Sec.

A. Threshold Requirements .....	35
1. A Definable Class .....	35

	<i>Manual for Complex Litigation (Fourth)</i> .....	36
	<i>In re Teflon Prods. Liab. Litig.</i> .....	37
	<i>Notes and Questions</i> .....	41
	<i>Mullins v. Direct Digital, LLC</i> .....	44
	<i>Notes and Questions</i> .....	53
2.	The Proposed Representatives' Membership in the Class.....	54
	<i>Harriston v. Chi. Tribune Co.</i> .....	54
	<i>Notes and Questions</i> .....	56
3.	A Live Controversy (Mootness Considerations) .....	58
	<i>Rocky v. King</i> .....	58
	<i>Notes and Questions</i> .....	62
	<i>Campbell-Ewald Co. v. Gomez</i> .....	63
	<i>Notes and Questions</i> .....	69
4.	Standing Issues in Class Actions .....	70
B.	Explicit Requirements—Rule 23(a) .....	72
1.	Numerosity .....	73
	<i>Zeidman v. J. Ray McDermott &amp; Co.</i> .....	73
	<i>Patrykus v. Gomilla</i> .....	78
	<i>Notes and Questions</i> .....	80
	<i>Problem</i> .....	86
2.	Commonality .....	86
	<i>Wal-Mart Stores, Inc. v. Dukes</i> .....	87
	<i>Notes and Questions</i> .....	99
	<i>Problem</i> .....	102
3.	Typicality .....	103
	<i>Taylor v. Safeway Stores, Inc.</i> .....	104
	<i>Notes and Questions</i> .....	106
	<i>Marcus v. BMW of N. Am., LLC</i> .....	107
	<i>Notes and Questions</i> .....	111
	<i>Problem</i> .....	115
4.	Adequacy of Representation .....	115
	<i>Hansberry v. Lee</i> .....	117
	<i>Notes and Questions</i> .....	121
	<i>Black v. Rhone-Poulenc, Inc.</i> .....	123
	<i>Notes and Questions</i> .....	124
	<i>Kaplan v. Pomerantz</i> .....	128
	<i>Notes and Questions</i> .....	133
	<i>Robin v. Doctors Officenters Corp.</i> .....	135
	<i>Notes and Questions</i> .....	137
	<i>Jean W. Burns, Decorative Figureheads: Eliminating Class Representatives in Class Actions</i> .....	143
	<i>Notes and Questions</i> .....	147
	<i>Problem</i> .....	147
	<i>Gomez v. Ill. State Bd. of Educ.</i> .....	147
	<i>Dubin v. Miller</i> .....	149
	<i>Notes and Questions</i> .....	152
	<i>Problem</i> .....	155
	<i>Barbara J. Rothstein &amp; Thomas E. Willging, Managing Class Action Litigation: A Pocket Guide for Judges</i> .....	156
	<i>Notes and Questions</i> .....	157
	<i>Oxendine v. Williams</i> .....	157
	<i>Notes and Questions</i> .....	158
	<b>CHAPTER 3. CLASS CERTIFICATION: RULE 23(b)</b> .....	<b>159</b>

**Sec.**

A.	Rule 23(b)(1) .....	159
1.	Rule 23(b)(1)(A) Actions.....	160
	<i>In re Dennis Greenman Sec. Litig.</i> .....	161
	<i>Notes and Questions</i> .....	163
	<i>In re Electronics Pacing Sys., Inc., Accufix Atrial "J" Leads Prod. Liab. Litig.</i> .....	166
	<i>Notes and Questions</i> .....	169
	<i>Problem</i> .....	171
2.	Rule 23(b)(1)(B) Actions.....	171
	<i>Ortiz v. Fibreboard Corp.</i> .....	172
	<i>Notes and Questions</i> .....	182
	<i>Doe v. Karadzic</i> .....	184
	<i>Notes and Questions</i> .....	187
	<i>Problem</i> .....	190
B.	Rule 23(b)(2) .....	190
1.	Core Considerations .....	191
	<i>Walters v. Reno</i> .....	191
	<i>Notes and Questions</i> .....	193
2.	Relevance of Type of Relief Sought .....	197
	<i>Wal-Mart Stores, Inc. v. Dukes</i> .....	198
	<i>Notes and Questions</i> .....	203
3.	The "Necessity" Requirement.....	207
	<i>Dionne v. Bouley</i> .....	207
	<i>Notes and Questions</i> .....	211
	<i>Problem</i> .....	211
C.	Rule 23(b)(3) .....	211
1.	Predominance .....	212
	<i>Brown v. Cameron-Brown Co.</i> .....	212
	<i>Notes and Questions</i> .....	215
	<i>McManus v. Fleetwood Enters., Inc.</i> .....	219
	<i>Notes and Questions</i> .....	223
2.	Superiority .....	231
	<i>Sonmore v. Checkrite Recovery Servs., Inc.</i> .....	233
	<i>Notes and Questions</i> .....	237
	<i>Notes and Questions</i> .....	244
	<i>Notes and Questions</i> .....	246
	<i>In re Domestic Air Transp. Antitrust Litig.</i> .....	247
	<i>Notes and Questions</i> .....	250
	<i>Problem</i> .....	251

**CHAPTER 4. LITIGATING A CLASS ACTION ..... 253****Sec.**

A.	Initial Strategic Considerations in Prosecuting and Defending a Class Action .....	253
1.	Plaintiffs' Strategic Considerations .....	253
	<i>Herbert Newberg &amp; Alba Conte, Newberg on Class Actions</i> ....	253
2.	Defendant's Strategic Considerations.....	259
	<i>Jerold Solovy, Timothy Chorvat, Avidan Stern &amp; David Feinberg, "Strategies for Defending a Class Action," In Litigation &amp; Resolution of Complex Class Actions</i> .....	259
	<i>Alan H. Maclin, Strategies and Options for Defending Class Actions</i> .....	260
3.	Issues Common to Both Sides: Need to Review Local Rules....	264

	<i>Problem</i> .....	265
B.	Certification Decision.....	266
	1. Core Principles .....	266
	<i>Manual for Complex Litigation (Fourth)</i> .....	266
	<i>Notes and Questions</i> .....	267
	<i>Amgen Inc. v. Conn. Ret. Plans &amp; Trust Funds</i> .....	272
	<i>Notes and Questions</i> .....	278
	<i>Comcast Corp. v. Behrend</i> .....	281
	<i>Notes and Questions</i> .....	288
	<i>Am. Honda Motor Co., Inc. v. Allen</i> .....	289
	<i>Notes and Questions</i> .....	292
	<i>Problem</i> .....	293
	2. Additional Certification Issues.....	293
	<i>Bing v. Roadway Express, Inc.</i> .....	293
	<i>Notes and Questions</i> .....	295
	<i>Notes and Questions</i> .....	298
	<i>Manual for Complex Litigation (Fourth)</i> .....	298
	<i>Notes and Questions</i> .....	299
	<i>Pruitt v. Allied Chem. Corp.</i> .....	302
	<i>Notes and Questions</i> .....	306
C.	Class Action Discovery.....	307
	1. Pre-Certification Discovery .....	307
	<i>Hart v. Nationwide Mut. Fire Ins. Co.</i> .....	308
	<i>Notes and Questions</i> .....	310
	<i>In re Rail Freight Surcharge Antitrust Litig.</i> .....	312
	<i>Notes and Questions</i> .....	313
	<i>Borskey v. Medtronics, Inc.</i> .....	319
	<i>Notes and Questions</i> .....	321
	<i>Nat'l Org. for Women, Inc. v. Sperry Rand Corp.</i> .....	321
	<i>Notes and Questions</i> .....	325
	<i>Baldwin &amp; Flynn v. Nat'l Safety Assocs.</i> .....	326
	<i>Laborers Local 17 Health &amp; Benefit Fund v. Philip Morris, Inc.</i> .....	328
	<i>Notes and Questions</i> .....	331
	2. Post-Certification Discovery .....	332
	<i>Brennan v. Midwestern United Life Ins. Co.</i> .....	332
	<i>Manual for Complex Litigation (Fourth)</i> .....	334
	<i>Notes and Questions</i> .....	335
	<i>Problem</i> .....	335
D.	Summary Judgment Motions.....	336
	<i>Cowen v. Bank United</i> .....	336
	<i>Notes and Questions</i> .....	337
E.	Judicial Control of Proceedings.....	339
	1. Role of the Judge .....	339
	<i>Martha Minow, Judge for the Situation: Judge Jack Weinstein, Creator of Temporary Administrative Agencies</i> .....	339
	<i>Manual for Complex Litigation (Fourth)</i> .....	345
	<i>Notes and Questions</i> .....	346
	2. Rule 23(d)(1)(A) .....	347
	<i>Charles A. Wright, Arthur R. Miller &amp; Mary K. Kane, Federal Practice and Procedure</i> .....	347
	3. Other Provisions of Rule 23(d)(1) .....	348
F.	Trial Structure and Evidentiary Issues.....	350
	1. Seventh Amendment Issues .....	351

---

<i>Mullen v. Treasure Chest Casino, LLC</i> .....	353
<i>Melissa Hart, Will Employment Discrimination Class Actions Survive?</i> .....	356
<i>Notes and Questions</i> .....	358
2. Due Process Issues: Aggregate Proof and Trial Structure .....	359
<i>Tyson Foods, Inc. v. Bouaphakeo</i> .....	361
<i>Notes and Questions</i> .....	368
<b>CHAPTER 5. NOTICE OF CLASS CERTIFICATION, “OPT-OUT” RIGHTS, AND COMMUNICATIONS WITH CLASS MEMBERS ..... 371</b>	
<b>Sec.</b>	
A. Notice of Class Certification and “Opt-Out” Rights.....	371
1. Notice and Opt-Out Rights in Classes Certified Under Rule 23(b)(3) .....	372
<i>Eisen v. Carlisle &amp; Jacquelin</i> .....	372
<i>Manual for Complex Litigation (Fourth)</i> .....	375
<i>Notes and Questions</i> .....	375
<i>Problem</i> .....	376
2. Costs, Timing, Form, and Content of Notice in Class Actions Certified Under Rule 23(b)(3) .....	378
<i>Oppenheimer Fund, Inc. v. Sanders</i> .....	379
<i>Notes and Questions</i> .....	382
<i>Manual for Complex Litigation (Fourth)</i> .....	384
<i>Notes and Questions</i> .....	384
3. The Right to Make an Appearance in Rule 23(b)(3) Class Actions .....	385
4. Notice and Opt-Out Rights in Class Actions Certified Under Rules 23(b)(1) or 23(b)(2) .....	386
5. Notice to Class Members of Decertification.....	387
<i>Culver v. City of Milwaukee</i> .....	387
<i>Notes and Questions</i> .....	389
B. Communications With Class Members.....	389
1. Contacts With Potential Class Members Before a Class Action Is Filed .....	389
2. Communications With Potential Class Members Between Filing and Class Certification .....	390
<i>Gulf Oil Co. v. Bernard</i> .....	391
<i>Notes and Questions</i> .....	393
<i>Cox Nuclear Med., Inc. v. Gold Cup Coffee Serv., Inc.</i> .....	394
<i>Notes and Questions</i> .....	395
3. Communications With Class Members After Class Certification .....	396
<i>Haffer v. Temple Univ.</i> .....	396
<i>Notes and Questions</i> .....	398
<b>CHAPTER 6. MULTI-JURISDICTIONAL CLASS ACTIONS ..... 399</b>	
<b>Sec.</b>	
A. General Considerations .....	399
<i>Califano v. Yamasaki</i> .....	399
<i>Notes and Questions</i> .....	402
<i>Alabama v. Blue Bird Body Co.</i> .....	403
<i>Notes and Questions</i> .....	406
B. Personal Jurisdiction and Choice-of-Law Issues .....	407
<i>Phillips Petroleum Co. v. Shutts</i> .....	407

---

<i>Notes and Questions</i> .....	412	
<i>In re Rhone-Poulenc Rorer, Inc.</i> .....	414	
<i>In re Copley Pharm., Inc., "Albuterol" Prod. Liab. Litig.</i> .....	419	
<i>Castano v. Am. Tobacco Co.</i> .....	421	
<i>Notes and Questions</i> .....	426	
<b>CHAPTER 7. CIVIL PROCEDURE DOCTRINES WITH SPECIAL CLASS ACTION IMPLICATIONS ..... 431</b>		
<b>Sec.</b>		
A.	Statute of Limitations Issues in Class Actions .....	431
	<i>Armstrong v. Martin Marietta Corp.</i> .....	431
	<i>Notes and Questions</i> .....	438
	<i>Problem</i> .....	441
B.	Issues Relating to Diversity Jurisdiction .....	442
	1. Aggregation of Claims for Purposes of Jurisdictional Amount	444
	<i>Exxon Mobil Corp. v. Allapattah Servs., Inc.</i> .....	444
	<i>Notes and Questions</i> .....	448
	2. Determining Citizenship for Diversity Purposes .....	449
	3. Broadening the Scope of Federal Diversity .....	451
	<i>Notes and Questions</i> .....	458
C.	<i>Res Judicata</i> and Collateral Estoppel .....	463
	1. Claim Preclusion ( <i>Res Judicata</i> ) in the Class Action Context .	463
	<i>McDowell v. Brown</i> .....	464
	<i>Notes and Questions</i> .....	469
	<i>Johnson v. General Motors Corp.</i> .....	473
	<i>Notes and Questions</i> .....	475
	<i>Patrick Woolley, Rethinking the Adequacy of Adequate Representation</i> .....	480
	<i>Notes and Questions</i> .....	482
	2. Issue Preclusion (Collateral Estoppel) in the Class Action Context.....	483
	<i>Premier Elec. Constr. Co. v. Nat'l Elec. Contractors Ass'n, Inc.</i>	484
	<i>Notes and Questions</i> .....	492
	<i>Smith v. Bayer Corp.</i> .....	492
	<i>Notes and Questions</i> .....	500
	<i>Problem</i> .....	503
D.	Federal Relations With State Courts in the Class Action Context..	504
	1. Overview of the Issues .....	504
	<i>In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.</i> .....	504
	<i>Notes and Questions</i> .....	509
	2. Full Faith and Credit .....	509
	<i>Matsushita Elec. Indus. Co. v. Epstein</i> .....	509
	<i>Epstein v. MCA, Inc.</i> .....	514
	<i>Notes and Questions</i> .....	520
	3. The "Rooker-Feldman" Doctrine .....	522
	<i>Kamilewicz v. Bank of Bos. Corp.</i> .....	522
	<i>Notes and Questions</i> .....	526
<b>CHAPTER 8. RESOLUTION AND FUNDING OF CLASS ACTIONS ..... 529</b>		
<b>Sec.</b>		
A.	Class Action Settlements.....	529
	1. Interested Participants .....	529
	2. Negotiation of Class Action Settlements .....	535

---

	<i>Nancy Morawetz, Bargaining, Class Representation, and Fairness.....</i>	535
	<i>John C. Coffee, Jr., Class Wars: The Dilemma of the Mass Tort Class Action .....</i>	538
	<i>Notes and Questions.....</i>	542
	<i>S. Arthur Spiegel, Settling Class Actions .....</i>	544
	<i>Hon. Elaine Bucklo &amp; Thomas R. Meites, What Every Judge Should Know About a Rule 23 Settlement (But Probably Isn't Told).....</i>	546
	<i>Notes and Questions.....</i>	549
3.	Settlement Certification .....	550
	<i>Amchem Prods., Inc. v. Windsor .....</i>	550
	<i>Notes and Questions.....</i>	562
	<i>Ortiz v. Fibreboard Corp.....</i>	563
	<i>Notes and Questions.....</i>	563
4.	Procedural Considerations in Assessing Class Action Settlements.....	565
	<i>Zimmer Paper Prods., Inc. v. Berger &amp; Montague, P.C. ....</i>	566
	<i>Notes and Questions.....</i>	572
	<i>Manual for Complex Litigation (Fourth).....</i>	576
	<i>Notes and Questions.....</i>	576
5.	Substantive Considerations in Approving Class Action Settlements.....	579
	<i>Reynolds v. Beneficial Nat'l Bank.....</i>	579
	<i>In re Nat'l Football League Players Concussion Injury Litig. ....</i>	585
	<i>Notes and Questions.....</i>	597
	<i>Lazy Oil Co. v. Witco Corp.....</i>	601
	<i>Notes and Questions.....</i>	605
6.	Dismissal of Class Claims Prior to Class Certification .....	605
7.	The Class Action Fairness Act and Settlement Issues .....	606
	<i>Notes and Questions.....</i>	607
8.	Proposed Rule Changes Dealing With Settlement.....	608
	<i>Notes And Questions .....</i>	609
9.	Final Thoughts on Settlement.....	610
	<i>Susan P. Koniak, Feasting While the Widow Weeps: Georgine v. Amchem Products, Inc.....</i>	610
	<i>Notes and Questions.....</i>	612
B.	Class Action Remedies .....	614
1.	Equitable Relief.....	614
	<i>Jack Greenberg, Civil Rights Class Actions: Procedural Means of Obtaining Substance .....</i>	614
	<i>Lloyd C. Anderson, The Approval and Interpretation of Consent Decrees in Civil Rights Class Action Litigation .....</i>	620
	<i>Notes and Questions.....</i>	621
2.	Damages.....	623
	<i>Notes and Questions.....</i>	624
	<i>In re BankAmerica Corp. Sec. Litig. ....</i>	625
	<i>Notes and Questions.....</i>	631
C.	Attorneys' Fees in Class Actions .....	632
	<i>Manual for Complex Litigation (Fourth) .....</i>	632
	<i>In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig. ....</i>	636
	<i>Notes and Questions.....</i>	644
D.	Third-Party Litigation Financing .....	649

---

1.	Class Action Context.....	649
	<i>Deborah R. Hensler, Third-Party Financing Of Class Action Litigation In The United States: Will The Sky Fall?....</i>	649
2.	The Non-Class Aggregation Context.....	657
	<i>Elizabeth Chamblee Burch, Financiers As Monitors In Aggregate Litigation.....</i>	657
3.	Disclosure of Funders .....	665
	<i>Natto Iyela Gbarabe v. Chevron Corp.....</i>	665
	<i>Notes And Questions .....</i>	667
E.	Alternative Dispute Resolution.....	668
1.	The Promise of ADR in Class Actions.....	668
	<i>Carrie Menkel-Meadow, When Dispute Resolution Begets Disputes of Its Own: Conflicts Among Dispute Professionals..</i>	668
	<i>Kenneth R. Feinberg, Creative Use of ADR: The Court-Appointed Special Settlement Master .....</i>	669
	<i>Notes and Questions.....</i>	673
2.	Individual Arbitration in Lieu of Class Actions .....	675
	<i>AT&amp;T Mobility LLC v. Concepcion .....</i>	676
	<i>Notes and Questions.....</i>	687
	<i>Am. Express Co. v. Italian Colors Rest. .....</i>	688
	<i>Notes and Questions.....</i>	695
<b>CHAPTER 9. APPELLATE REVIEW .....</b>		<b>697</b>
<b>Sec.</b>		
A.	Interlocutory Appellate Review of Class Certification Decisions ....	697
1.	Background to Rule 23(f) .....	697
2.	Rule 23(f).....	701
	<i>Advisory Committee Notes to 1998 Amendment to Federal Rule of Civil Procedure 23 .....</i>	701
	<i>Chamberlain v. Ford Motor Co.....</i>	702
	<i>Notes and Questions.....</i>	706
B.	Appeal From Final Judgment .....	709
1.	Intervention for Purposes of Appeal .....	709
	<i>United Airlines, Inc. v. McDonald .....</i>	709
	<i>Notes and Questions.....</i>	712
2.	Appeal by Unnamed Class Members After Settlement .....	714
	<i>Devlin v. Scardelletti.....</i>	714
	<i>Notes and Questions.....</i>	718
3.	Mootness of Class Representative's Claim .....	719
C.	Standards of Review on Appeal From Class Certification .....	719
	<i>Yokoyama v. Midland Nat'l Life Ins. Co.....</i>	719
	<i>Notes and Questions.....</i>	722

**CHAPTER 10. SPECIAL FOCUS ON MASS TORT, EMPLOYMENT DISCRIMINATION, AND SECURITIES FRAUD CLASS ACTIONS .. 723**

**Sec.**

	<i>John Leubsdorf, Class Actions at the Cloverleaf.....</i>	723
A.	Mass Tort Class Actions .....	725
1.	Overview .....	725
	<i>Deborah R. Hensler &amp; Mark A. Peterson, Understanding Mass Personal Injury Litigation: A Socio-Legal Analysis.....</i>	727
	<i>Notes and Questions.....</i>	734
2.	A Historical Review: The Courts' Treatment of Mass Tort Class Actions .....	735

---

<i>In re Rhone-Poulenc Rorer, Inc.</i> .....	737
<i>Castano v. Am. Tobacco Co.</i> .....	742
<i>Amchem Prods., Inc. v. Windsor</i> .....	747
<i>Ortiz v. Fibreboard Corp.</i> .....	747
<i>Manual for Complex Litigation (Fourth)</i> .....	747
<i>Notes and Questions</i> .....	749
3. Other Issues in Mass Tort Class Actions.....	755
<i>Carlough v. Amchem Prods., Inc.</i> .....	756
<i>John C. Coffee, Jr., Class Wars: The Dilemma of the Mass Tort Class Action</i> .....	760
<i>Notes and Questions</i> .....	762
<i>In re Fibreboard Corp.</i> .....	764
<i>Cimino v. Raymark Indus., Inc.</i> .....	769
<i>Laurens Walker &amp; John Monahan, Sampling Damages</i> .....	774
<i>Notes and Questions</i> .....	777
<i>Problem</i> .....	778
4. Mass Tort Reform.....	779
<i>Peter H. Schuck, Mass Torts: An Institutional Evolutionist Perspective</i> .....	779
<i>Notes and Questions</i> .....	780
<i>Notes and Questions</i> .....	783
B. Employment Discrimination Class Actions.....	783
1. Applicability of Rule 23 to Title VII Suits .....	785
<i>E. Tex. Motor Freight Sys., Inc. v. Rodriguez</i> .....	785
<i>Notes and Questions</i> .....	789
<i>Johnson v. Montgomery Cnty. Sheriff's Dep't</i> .....	791
<i>Wal-Mart Stores, Inc. v. Dukes</i> .....	794
<i>Notes and Questions</i> .....	794
<i>Hoffman v. R.I. Enters., Inc.</i> .....	798
<i>Notes and Questions</i> .....	799
<i>Notes and Questions</i> .....	802
<i>Notes and Questions</i> .....	806
<i>Cooper v. Federal Reserve Bank</i> .....	807
<i>Notes and Questions</i> .....	812
2. Employment Discrimination Suits Not Subject to Rule 23 .....	813
<i>Hoffmann-La Roche Inc. v. Sperling</i> .....	813
<i>Notes and Questions</i> .....	820
<i>Shushan v. Univ. of Colo.</i> .....	821
<i>Notes and Questions</i> .....	827
<i>Thiessen v. Gen. Elec. Capital Corp.</i> .....	827
<i>Notes and Questions</i> .....	835
<i>Problem</i> .....	836
C. Securities Fraud Class Actions .....	836
1. Materiality and Reliance in 10b-5 Class Actions .....	837
<i>Basic, Inc. v. Levinson</i> .....	837
<i>Amgen Inc. v. Conn. Ret. Plans &amp; Trust Funds</i> .....	844
<i>Notes and Questions</i> .....	844
2. Loss Causation and Class Certification.....	857
<i>Erica P. John Fund, Inc. v. Halliburton Co.</i> .....	857
<i>Notes and Questions</i> .....	861
3. Securities Class Action Reform .....	862
<i>Notes and Questions</i> .....	864
<i>Greebel v. FTP Software, Inc.</i> .....	866
<i>Notes and Questions</i> .....	869

---

<i>In re Oxford Health Plans, Inc., Sec. Litig.</i> .....	871
<i>Notes and Questions</i> .....	875
<i>In re Milestone Scientific Sec. Litig.</i> .....	878
<i>Notes and Questions</i> .....	883
<i>Notes and Questions</i> .....	886
<i>Problem</i> .....	888
 <b>CHAPTER 11. DEFENDANT CLASS ACTIONS, DERIVATIVE SUITS, AND SUITS INVOLVING UNINCORPORATED ASSOCIATIONS ..... 889</b>	
<b>Sec.</b>	
A.	Defendant Class Actions..... 889
1.	Overview of Rule 23 Considerations ..... 890
	<i>Thillens, Inc. v. Cmty. Currency Exch. Ass'n</i> ..... 890
	<i>Notes and Questions</i> ..... 896
2.	Additional Issues Involving Adequacy of Defendant Class Representatives ..... 900
	<i>Coal. for Econ. Equity v. Wilson</i> ..... 900
	<i>Notes and Questions</i> ..... 902
	<i>La Mar v. H &amp; B Novelty &amp; Loan Co.</i> ..... 903
	<i>Notes and Questions</i> ..... 905
3.	Special Problems Under Rule 23(b)(2) ..... 905
	<i>Henson v. E. Lincoln Township</i> ..... 905
	<i>Notes and Questions</i> ..... 913
B.	Shareholder Derivative Suits..... 915
1.	Nature of Injury Required ..... 916
	<i>Bagdon v. Bridgestone/Firestone, Inc.</i> ..... 916
	<i>Notes and Questions</i> ..... 919
2.	Recurring Themes in Rule 23.1 Litigation ..... 920
	<i>Blasband v. Rales</i> ..... 920
	<i>Notes and Questions</i> ..... 924
	<i>Garber v. Lego</i> ..... 925
	<i>Notes and Questions</i> ..... 931
3.	Similarities to Rule 23 ..... 932
	<i>Deleo v. Swirsky</i> ..... 935
	<i>Notes and Questions</i> ..... 938
C.	Suits Involving Unincorporated Associations ..... 941
1.	Applicability of Rule 23.2 When an Unincorporated Association Can Sue as a “Jural Entity” in State Court..... 944
	<i>Northbrook Excess and Surplus Ins. Co. v. Med. Malpractice Joint Underwriting Ass'n</i> ..... 944
	<i>Notes and Questions</i> ..... 947
2.	Prior Existence of Association ..... 948
3.	Applicability of Rule 23(a) and Rule 23(b) to Analysis of Certification Under Rule 23.2 ..... 948
 <b>CHAPTER 12. MULTIDISTRICT LITIGATION ..... 953</b>	
<b>Sec.</b>	
A.	Overview and Statistics ..... 953
	<i>Multidistrict Litigation Act</i> ..... 954
	<i>Richard D. Freer, Exodus from and Transformation of American Civil Litigation</i> ..... 956
	<i>Edward F. Sherman, The MDL Model for Resolving Complex Litigation If a Class Action Is Not Possible</i> ..... 956
B.	How MDL Works ..... 957

---

1.	The Role of The MDL Panel .....	957
	<i>Stanley A. Weigel, The Judicial Panel on Multidistrict Litigation, Transferor Courts and Transferee Courts.....</i>	957
	<i>Notes and Questions.....</i>	959
2.	Standards for Transfer .....	960
	<i>In re Multi-Piece Rim Prods. Liab. Litig. ....</i>	960
	<i>Margaret S. Williams &amp; Tracey E. George, Who Will Manage Complex Civil Litigation?.....</i>	963
	<i>Notes and Questions.....</i>	967
3.	Selection of Transferee Judge.....	969
	<i>In re Silicone Gel Breast Implants Prods. Liab. Litig. ....</i>	969
	<i>Jaime Dodge, Facilitative Judging: Organizational Design in Mass-Multidistrict Litigation .....</i>	971
	<i>Notes and Questions.....</i>	972
C.	The Administration and Resolution of MDL Cases .....	973
1.	Settlements.....	973
	<i>Howard M. Erichson &amp; Benjamin C. Zipursky, Consent Versus Closure .....</i>	973
	<i>Notes and Questions.....</i>	975
2.	Remand and Trial Issues.....	976
	<i>Catherine R. Borden, Emery G. Lee III &amp; Margaret S. Williams, Centripetal Forces: Multidistrict Litigation and its Parts .....</i>	976
	<i>Notes and Questions.....</i>	977
	<i>Lexecon, Inc. v. Milberg Weiss Bershad Hynes &amp; Lerach .....</i>	977
	<i>Notes and Questions.....</i>	983
3.	Bellwether Trials in MDL Proceedings .....	987
	<i>Eldon E. Fallon, Jeremy T. Graybill &amp; Robert Pitard Wynne, Bellwether Trials In Multidistrict Litigation .....</i>	987
	<i>Notes and Questions.....</i>	992
D.	Policy and Reform Issues.....	992
1.	Overview of Policy Concerns .....	992
	<i>Elizabeth Chamblee Burch, Judging Multidistrict Litigation .....</i>	992
	<i>Notes and Questions.....</i>	999
2.	Best Practices .....	1000
	<i>Standards and Best Practices for Large and Mass-Tort MDLs.....</i>	1000
	<i>Notes and Questions.....</i>	1001
E.	MDL Case Study: The VW Clean Diesel Litigation .....	1001
	<i>Problem.....</i>	1003
F.	Coordination of Federal and State Claims .....	1004
1.	Informal Coordination .....	1004
	<i>Manual for Complex Litigation (Fourth).....</i>	1004
	<i>Notes and Questions.....</i>	1008
2.	Proposed Formal Federal-State Coordination.....	1008
	<i>Complex Litigation: Statutory Recommendations and Analysis.....</i>	1008
	<i>William W. Schwarzer, Alan Hirsch &amp; Edward Sussman, A Proposal to Amend the Multidistrict Litigation Statute to Permit Discovery Coordination of Large-Scale Litigation Pending in State and Federal Court .....</i>	1010
	<i>Notes and Questions.....</i>	1012
	<b>CHAPTER 13. MISCELLANEOUS AGGREGATION DEVICES .....</b>	<b>1015</b>

**Sec.**

A.	Aggregation Devices Under the Federal Rules of Civil Procedure	1015
1.	Permissive Joinder .....	1015
	<i>Guedry v. Marino</i> .....	1016
	<i>DIRECTV, Inc. v. Adrian</i> .....	1019
	<i>Notes and Questions</i> .....	1022
	<i>Problem</i> .....	1027
2.	Compulsory Joinder .....	1027
	<i>Iron Workers Local Union No. 17 Ins. Fund v. Philip Morris, Inc.</i> .....	1029
	<i>Kescoli v. Babbitt</i> .....	1035
	<i>Notes and Questions</i> .....	1040
	<i>Shimkus v. Gersten Co.</i> .....	1044
	<i>Notes and Questions</i> .....	1048
3.	Impleader .....	1049
	<i>Tiesler v. Martin Paint Stores, Inc.</i> .....	1052
	<i>Notes and Questions</i> .....	1053
4.	Interpleader .....	1058
	<i>Federal Interpleader Act</i> .....	1059
	<i>State Farm Fire &amp; Casualty Co. v. Tashire</i> .....	1059
	<i>6247 Atlas Corp. v. Marine Ins. Co.</i> .....	1064
	<i>Notes and Questions</i> .....	1068
5.	Intervention .....	1071
	<i>Johnson v. City of Dallas</i> .....	1072
	<i>Mausolf v. Babbitt</i> .....	1075
	<i>Notes and Questions</i> .....	1082
	<i>Woolen v. Surtran Taxicabs, Inc.</i> .....	1085
	<i>Notes and Questions</i> .....	1091
	<i>Problem</i> .....	1092
	<i>Martin v. Wilks</i> .....	1093
	<i>Notes and Questions</i> .....	1097
6.	Consolidation .....	1099
	<i>Daybrook Fisheries, Inc. v. Am. Marine Constr., Inc.</i> .....	1100
	<i>Malcolm v. Nat'l Gypsum Co.</i> .....	1102
	<i>Notes and Questions</i> .....	1107
B.	Additional Aggregation Devices .....	1109
1.	Transfers Under 28 U.S.C. § 1404 .....	1109
	<i>Hoffman v. Blaski</i> .....	1110
	<i>Notes and Questions</i> .....	1113
2.	Bankruptcy .....	1116
	<i>W. Homer Drake, Jr. &amp; Christopher S. Strickland, Chapter 11 Reorganizations</i> .....	1117
	<i>Ralph R. Mabey &amp; Peter A. Zisser, Improving Treatment of Future Claims: The Unfinished Business Left by the Manville Amendments</i> .....	1118
	<i>Notes and Questions</i> .....	1120
	<i>Alan N. Resnick, Bankruptcy as a Vehicle for Resolving Enterprise-Threatening Mass Tort Liability</i> .....	1121
	<i>Joseph F. Rice &amp; Nancy Worth Davis, The Future of Mass Tort Claims: Comparison of Settlement Class Action to Bankruptcy Treatment of Mass Tort Claims</i> .....	1123
	<i>Notes and Questions</i> .....	1126
	<i>Marl D. Plevin, Robert T. Ebert &amp; Leslie A. Epley, Pre-Packaged Asbestos Bankruptcies: A Flawed Solution</i> .....	1126

---

<i>Samuel Issacharoff, Private Claims, Aggregate Rights.....</i>	1133
<i>Notes &amp; Questions.....</i>	1135
<i>In re Dow Corning Corp.....</i>	1135
<i>Notes and Questions.....</i>	1142
<i>In re Joint E. and S. Dist. Asbestos Litig. .....</i>	1144
<i>Notes and Questions.....</i>	1146
C. Potential New Directions: Aggregate Settlement Without the Class Mechanism .....	1147
<i>Charles Silver &amp; Lynn A. Baker, Mass Lawsuits and the Aggregate Settlement Rule.....</i>	1148
<i>Notes and Questions.....</i>	1149
<i>Principles of the Law of Aggregate Litigation .....</i>	1149
<i>Principles of the Law of Aggregate Litigation .....</i>	1151
<i>Howard M. Erichson &amp; Benjamin C. Zipursky, Consent Versus Closure .....</i>	1152
<i>Notes and Questions.....</i>	1154
D. Afterword .....	1154
<i>Developments in the Law: Multiparty Litigation in the Federal Courts.....</i>	1154
<i>Edward H. Cooper, The (Cloudy) Future of Class Actions .....</i>	1156
APPENDIX A: FEDERAL RULE OF CIVIL PROCEDURE 23.....	1157
APPENDIX B: CLASS ACTION FAIRNESS ACT OF 2005 .....	1163
INDEX.....	1179