

TABLE OF CONTENTS

PREFACE TO THE SEVENTH EDITION	III
TABLE OF CASES	XXV
TABLE OF AUTHORITIES.....	XLVII
Chapter 1. Choosing a System of Procedure	1
Band's Refuse Removal, Inc. v. Borough of Fair Lawn	3
Notes and Questions	11
Lon Fuller, The Problems of Jurisprudence	13
W. Zeidler, Evaluation of the Adversary System: As Comparison, Some Remarks on the Investigatory System of Procedure.....	14
Marvin Frankel, The Search for Truth: An Umpireal View	16
Notes and Questions	17
Kothe v. Smith.....	19
Notes and Questions	21
Procedural Challenges of Our Federal System	26
Chapter 2. The Rewards and Costs of Litigation—Of Remedies and Related Matters.....	29
A. Prejudgment Seizure.....	29
Fuentes v. Shevin	31
Notes and Questions	42
Mitchell v. W.T. Grant Co.....	45
North Georgia Finishing, Inc. v. Di-Chem, Inc.	47
Notes and Questions	50
Connecticut v. Doehr.....	52
Notes and Questions	64
B. Post Judgment Remedies.....	68
1. Damages.....	69
Carey v. Piphus.....	69
Notes and Questions	78
Enforcing Money Judgments	83
2. Equitable Remedies.....	85
Smith v. Western Electric Co.....	88
Notes and Questions	91
Enforcing Equitable Decrees—Contempt	95
Notes and Questions	96
C. Cost of Litigation.....	98
Venegas v. Mitchell	98
Notes and Questions	102
D. Private Ordering Through Alternatives to Litigation	106
Negotiation and Settlement Promotion	108
Third-Party Intervention.....	109

Mediation	109
Notes and Questions	112
Arbitration	115
Mandatory Arbitration in Adhesion Contracts	117
Class Action Bans in Arbitration Clauses	118
Notes and Questions	122
Chapter 3. Describing and Defining the Dispute	123
A. The Historical Evolution of Pleading	123
1. The Forms of Action	124
2. Common Law Pleading	125
3. The American Reform Experience	127
Gillispie v. Goodyear Service Stores	128
Notes and Questions	131
B. Describing and Testing the Plaintiff's Claim	134
1. The Problem of Specificity	137
United States v. Board of Harbor Commissioners	137
Notes and Questions	139
2. Consistency and Honesty in Pleading	142
A. Inconsistent Allegations	142
McCormick v. Kopmann	142
Notes and Questions	144
B. Certification by Signing—Rule 11	146
Zuk v. Eastern Pennsylvania Psychiatric Institute of the	
Medical College of Pennsylvania	146
Notes and Questions	153
3. Heightened Requirements for Specificity	160
Tellabs, Inc. v. Makor Issues & Rights, Ltd.	161
Notes and Questions	171
4. The Current Application of Rule 8(a)(2) Pleading	
Requirements	177
Swierkiewicz v. Sorema, N. A.	177
Notes and Questions	181
Bell Atlantic Corp. v. Twombly	184
Ashcroft v. Iqbal	192
Notes and Questions	198
C. Defendant's Response	206
1. Pre-Answer Motions Under Rule 12	206
Notes and Questions	207
2. Failure to Answer—Default	208
Shepard Claims Service, Inc. v. William Darrah & Associates	208
Notes and Questions	212
3. The Answer	216
A. Admitting or Denying the Averments	216
David v. Crompton & Knowles Corp.	216
Notes and Questions	218
B. Affirmative Defenses	220

C.	Counterclaims	225
	Wigglesworth v. Teamsters Local Union No. 592.....	225
	Notes and Questions.....	227
D.	Voluntary Dismissal.....	229
E.	Amendments to Pleadings	231
	1. Permission to Amend.....	232
	David v. Crompton & Knowles Corp.	232
	Notes and Questions.....	234
	Amendments at Trial.....	235
	Supplemental Pleadings.....	236
	2. Relation Back of Amendments.....	236
	Krupski v. Costa Crociere S.P.A.	236
	Notes and Questions.....	245
Chapter 4. Establishing the Structure and Size of the Dispute.....		251
A.	Proper Parties to a Suit	251
	1. Real Party in Interest (Rule 17(a)).....	251
	2. Fictitious Names.....	253
	Southern Methodist University Association of Women Law	
	Students v. Wynne and Jaffe	253
	Notes and Questions	255
B.	Joinder of Claims (Rule 18(a)).....	258
C.	Permissive Joinder of Parties (Rule 20).....	258
	Kedra v. City of Philadelphia	259
	Insolia v. Philip Morris, Inc.....	261
	Notes and Questions	264
D.	Compulsory Joinder of Parties (Rule 19).....	266
	Camacho v. Major League Baseball	268
	Notes and Questions	272
E.	Impleader (Rule 14).....	278
	Clark v. Associates Commercial Corp.....	278
	Notes and Questions	282
F.	Counterclaims and Cross-Claims (Rule 13).....	284
	Notes and Questions	285
G.	Interpleader (Rule 22 and 28 U.S.C.A. § 1335).....	286
	State Farm Fire & Casualty Co. v. Tashire.....	287
	Notes and Questions	293
H.	Intervention (Rule 24).....	296
	Natural Resources Defense Council, Inc. v. United States Nuclear	
	Regulatory Commission	296
	Notes and Questions	301
	The Definition of “Interest” in Rule 24(a)(2)	305
I.	Class Actions (Rule 23)	308
	1. The Problem of Representation	310
	Hansberry v. Lee	311
	Notes and Questions	315

2.	The Standards for Certification.....	317
A.	Rule 23(b)(2) Class Actions	318
	Walters v. Reno.....	318
	Notes and Questions.....	327
B.	Rule 23(b)(3) Class Actions	329
	Butler v. Sears, Roebuck and Co.	329
	Notes and Questions.....	333
	Consumer Class Actions.....	334
	Mass Tort Class Actions.....	337
	Employment Discrimination Class Actions	340
	Notice.....	343
	Opt-out Rights in 23(b)(3) Class Actions.....	345
	Notice in (b)(1) and (b)(2) Classes.....	346
	Settlement Classes	346
Chapter 5. Obtaining Information for Trial		349
A.	The Promise and Reality of Broad Discovery	350
	Hickman v. Taylor.....	350
	Notes and Questions	351
	In re Convergent Technologies Securities Litigation.....	352
	Proportionality and the 2015 Rule Amendments.....	354
	Notes and Questions	356
B.	The Discovery Devices	359
	Initial Disclosure	359
	Requests for Production.....	361
	Interrogatories.....	363
	Depositions	364
	Physical or Mental Examination.....	366
	Discovery Sequence and Tactics.....	367
	The Challenges of E-Discovery.....	369
	Notes and Questions	372
C.	Managing the Scope and Burden of Discovery.....	376
	Davis v. Ross.....	376
	Notes and Questions	379
	Kozlowski v. Sears, Roebuck & Co.	385
	McPeck v. Ashcroft.....	387
	Notes and Questions	391
D.	Exemptions from Discovery.....	396
	Hickman v. Taylor.....	397
	Notes and Questions	403
	Upjohn Co. v. United States	408
	Notes and Questions	416
	In re Shell Oil Refinery.....	419
	Notes and Questions	424
E.	Investigation—Fact Gathering Without Judicial Assistance.....	431
	Corley v. Rosewood Care Center, Inc.	431
	Notes and Questions	432

F.	Enforcing the Discovery Rules—Sanctions	434
	Cine Forty-Second Street Theatre Corp. v. Allied Artists Pictures Corp.	434
	Notes and Questions	439
Chapter 6. Adjudication Before Trial: Summary Judgment.....		443
A.	The Nature of the Summary Judgment Device: The Concept of Burden Shifting	444
	An Introduction to the Concept of Burden of Proof.....	444
	Summary Judgment and Judgment as a Matter of Law Contrasted ...	446
	Adickes v. S.H. Kress & Co.	447
	The Movant’s Burden in Summary Judgment	450
	Celotex Corp. v. Catrett	454
	Notes and Questions	464
B.	Meeting the Burden of Production: Determining the Appropriate Standard	469
	Arnstein v. Porter.....	469
	Dyer v. MacDougall.....	472
	Notes and Questions	475
	Summary Judgment in Defamation Cases.....	483
Chapter 7. Judicial Supervision of Pretrial and Promotion of Settlement.....		485
A.	Pretrial Conference	486
	Notes and Questions	488
	G. Heileman Brewing Co. v. Joseph Oat Corp.	490
	Notes and Questions	500
B.	Settlement Devices Using Intervention by Third Parties	507
	1. Mediation	509
	2. Early Neutral Evaluation (ENE).....	510
	3. Court-Annexed Arbitration.....	511
	4. Summary Jury Trial.....	513
	Summarization Techniques	514
	Limited Benefits?.....	515
	Confidentiality	516
	5. Mini-Trial.....	517
C.	Obligation to Participate in ADR Settlement Processes	518
D.	Incentives to Settle Through Shifting of Attorney’s Fees and Costs ...	520
	Marek v. Chesny.....	520
	Notes and Questions	531
Chapter 8. Trial.....		539
A.	The Phases of a Trial	539
	1. Jury Selection	539
	2. Opening Statements.....	540
	3. Presentation of Evidence	540
	4. Argument	543

5.	Instructions.....	544
6.	Jury Deliberation and Verdict.....	546
7.	Post-Trial Motions and Judgment.....	547
B.	Seventh Amendment Right to Jury Trial.....	547
	Beacon Theatres, Inc. v. Westover.....	550
	Dairy Queen, Inc. v. Wood.....	557
	Notes and Questions.....	561
	The “Clean-Up” Doctrine.....	563
	Ross v. Bernhard.....	564
	Notes and Questions.....	572
	Curtis v. Loether.....	574
	Notes and Questions.....	577
	Tull v. United States.....	578
	Notes and Questions.....	580
	Teamsters Local No. 391 v. Terry.....	582
	Notes and Questions.....	597
	The Right to Jury Trial in Statutorily-Created Administrative Proceedings.....	598
	Notes and Questions.....	600
	Complex Cases and the Right to Jury Trial.....	603
	The Seventh Amendment and Jury Size.....	608
	Jury Selection.....	610
	Notes and Questions.....	612
C.	Judicial Control of the Verdict.....	613
	1. Judgment as a Matter of Law (Formerly Directed Verdict and J.N.O.V.).....	613
	Galloway v. United States.....	614
	Notes and Questions.....	627
	The Constitutionality of Judgment as a Matter of Law After Verdict.....	629
	Lavender v. Kurn.....	631
	Notes and Questions.....	636
	Judgment as a Matter of Law and Law Application.....	642
	Burden Shifting and Substantive Policy.....	643
	Guenther v. Armstrong Rubber Co.....	645
	Notes and Questions.....	647
	2. Motion for New Trial.....	652
	Ahern v. Scholz.....	652
	Notes and Questions.....	657
	The Intersection Between Judgment as a Matter of Law and Motion for New Trial.....	659
	Relief from Judgment Under Rule 60(b).....	664
	3. Remittitur and Additur.....	669
	Dimick v. Schiedt.....	669
	Notes and Questions.....	676
	4. The Nature of the Verdict.....	683
	Whitlock v. Jackson.....	683

	Notes and Questions	689
5.	Juror Impeachment of the Verdict	695
	Sopp v. Smith.....	695
	People v. Hutchinson.....	696
	Notes and Questions	699
Chapter 9. Choosing the Forum—Geographical Location		705
A.	The Traditional Formulation: The “Power” Theory of Jurisdiction	705
	Pennoyer v. Neff.....	705
	Notes and Questions	712
	Fraudulent Inducement into the Forum.....	716
	Harris v. Balk	718
	Notes and Questions	721
	Hess v. Pawloski.....	722
	Notes and Questions	723
	Jurisdiction over Corporate Defendants.....	725
B.	The Shift to Minimum Contacts.....	726
	International Shoe Co. v. Washington.....	726
	Notes and Questions	731
	McGee v. International Life Ins. Co.....	733
	Notes and Questions	734
C.	The States’ Response—Long-Arm Statutes.....	737
	Notes and Questions	739
	Personal Jurisdiction in Federal Court	741
D.	Refining the Minimum Contacts Analysis.....	743
	World-Wide Volkswagen Corp. v. Woodson.....	744
	Notes and Questions	752
	General and Specific Jurisdiction	754
	Calder v. Jones	756
	Notes and Questions	758
	Burger King Corp. v. Rudzewicz	762
	Notes and Questions	769
	J. McIntyre Machinery, Ltd. v. Nicastro	772
	Notes and Questions	784
	Rilley v. MoneyMutual LLC	791
	Notes and Questions	795
E.	Presence of Defendant’s Property	801
	Shaffer v. Heitner.....	801
	Notes and Questions	806
	Choice of Law.....	809
F.	Personal Service Within the Jurisdiction.....	812
	Notes and Questions	815
G.	The General Jurisdiction Alternative	817
	Goodyear Dunlop Tires Operations, S.A. v. Brown.....	817
	Notes and Questions	823

H.	Litigating Jurisdiction	830
	Insurance Corporation of Ireland, Ltd. v. Compagnie des Bauxites de Guinee	830
	Notes and Questions	832
	Consent to Suit in Forum	835
	Forum Selection Clauses	836
I.	The Requirement of Notice	837
	Notes and Questions	838
	Manner of Serving Process	840
J.	Venue	842
	Bates v. C & S Adjusters, Inc.	843
	Notes and Questions	846
K.	Discretionary Decline of Jurisdiction.....	849
	Piper Aircraft Co. v. Reyno.....	849
	Notes and Questions	857
Chapter 10. Subject Matter Jurisdiction—Choosing Between		
State and Federal Court..... 865		
A.	Diversity of Citizenship	865
	Mas v. Perry.....	866
	Notes and Questions	869
	Corporate and Association Citizenship.....	875
	Amount in Controversy.....	877
	Notes and Questions	878
B.	Federal Question	882
1.	The Well-Pleaded Complaint Rule	883
	Louisville & Nashville R.R. v. Mottley.....	883
	Notes and Questions	885
2.	State Law Claims with Federal Ingredients	892
	Gunn v. Minton.....	892
	Notes and Questions	898
C.	The Penumbra of Federal Judicial Power—Supplemental Jurisdiction	909
1.	Codifying Supplemental Jurisdiction.....	909
	United Mine Workers v. Gibbs	909
	Owen Equipment & Erection Co. v. Kroger.....	911
	Notes and Questions	914
2.	Interpreting the Supplemental Jurisdiction Statute	918
	Exxon Mobil Corp. v. Allapattah Services, Inc., Rosario Ortega v. Star-Kist Foods, Inc.....	918
	Notes and Questions	930
	Griffin v. Lee.....	933
	Notes and Questions	939
D.	Removal.....	944
	Notes and Questions	947

Chapter 11. Choosing the Law to Be Applied in Federal Court.....	959
A. Choosing Between State and Federal Law.....	959
Swift v. Tyson	959
Erie Railroad Co. v. Tompkins	960
Notes and Questions	966
Guaranty Trust Co. v. York.....	970
Notes and Questions	975
Efforts to Apply <i>York</i>	977
<i>Erie</i> and Conflict of Laws.....	980
Byrd v. Blue Ridge Rural Electric Cooperative, Inc.....	982
Notes and Questions	987
Hanna v. Plumer	988
John H. Ely, The Irrepressible Myth of <i>Erie</i>	997
Notes and Questions	1000
Federal Procedural Statutes and <i>Hanna-Erie</i>	1002
Burlington Northern Railroad Co. v. Woods	1004
Notes and Questions	1005
Walker v. Armco Steel Corp.	1011
Notes and Questions	1013
Gasperini v. Center for Humanities, Inc.	1014
Notes and Questions	1026
B. Determining State Law.....	1032
Mason v. American Emery Wheel Works	1032
Notes and Questions	1034
C. The “Converse- <i>Erie</i> ” Problem	1038
Dice v. Akron, Canton & Youngstown R.R.	1038
Notes and Questions	1043
D. Federal Common Law	1048
1. The Source and Legitimacy of Federal Common Law	1048
2. Categories of Federal Common Law	1051
Chapter 12. Appeals	1057
A. The Value of Appellate Review.....	1057
B. Appellate Jurisdiction.....	1063
1. Timely Notice of Appeal	1063
Bowles v. Russell	1063
Notes and Questions	1069
2. As-of-Right Appellate Review and the Final Judgment Rule.....	1074
A. The Final Judgment Rule	1074
Bullard v. Blue Hills Bank.....	1074
Notes and Questions.....	1081
B. Exceptions to the Final Judgment Rule: Practical	
Finality	1085
Notes and Questions.....	1087
C. Exceptions to the Final Judgment Rule: Collateral	
Orders.....	1089
Cohen v. Beneficial Industrial Loan Corporation.....	1089

	Mohawk Industries, Inc. v. Carpenter	1090
	Notes and Questions.....	1097
	Civil Rights Cases.....	1103
	Discovery Orders	1104
D.	Section 1292 and Interlocutory Injunctions.....	1106
	Carson v. American Brands, Inc.....	1106
	Notes and Questions.....	1109
3.	Discretionary Forms of Appellate Review	1112
A.	Discretionary Review and the Role of the District Court	1112
	Nystrom v. TREX Co., Inc.....	1112
	Notes and Questions.....	1116
B.	Discretionary Review by Writ of Mandamus.....	1122
	Will v. United States	1122
	Notes and Questions.....	1126
C.	Discretionary Review of Class Action Litigation.....	1131
	Microsoft Corp. v. Baker	1132
	Notes and Questions.....	1138
4.	Supreme Court Appellate Jurisdiction	1140
C.	Appellate Review of Judicial Findings of Fact	1142
	Bose Corp. v. Consumers Union of United States, Inc.	1142
	Notes and Questions	1148
D.	Problems of Appellate Procedure	1153
	Standing on Appeal.....	1153
	Notes and Questions	1154
	The Mechanics of Taking an Appeal.....	1156
	Chapter 13. Preclusive Effects of Judgments.....	1159
A.	Basic Preclusion Concepts	1159
	Res Judicata and Collateral Estoppel.....	1159
	Final Judgments.....	1161
B.	Claim Preclusion (Res Judicata)	1162
1.	Same Claim or Cause of Action	1162
	Manego v. Orleans Board of Trade.....	1162
	Notes and Questions	1169
	Other Action Pending.....	1176
2.	Exceptions to the Rule Against Splitting a Cause of Action	1177
	Capitol Hill Group, Inc. v. Pillsbury, Winthrop, Shaw, Pittman, LLP	1178
	Notes and Questions	1183
3.	On the Merits.....	1187
	Rinehart v. Locke	1188
	Notes and Questions	1190
4.	Preclusion in State-Federal Court Adjudications	1192
	Marrese v. American Academy of Orthopaedic Surgeons.....	1192
	Notes and Questions	1197
	Semtek International, Inc. v. Lockheed Martin Corp.....	1201
	Notes and Questions	1207

C.	Issue Preclusion (Collateral Estoppel).....	1210
1.	Same Issue Litigated.....	1210
	Little v. Blue Goose Motor Coach Co.	1210
	Notes and Questions	1212
	Hardy v. Johns-Manville Sales Corporation.....	1213
	Notes and Questions	1216
	Commissioner of Internal Revenue v. Sunnen	1218
	Notes and Questions	1220
2.	Alternative Grounds for Decision.....	1225
	Janet Alexander Cosmetics v. L’Oreal USA, Inc.	1225
	Notes and Questions	1232
D.	Persons Bound by Judgment	1237
1.	Nonparty Preclusion: Parties and Persons in Privity	1237
	Taylor v. Sturgell.....	1238
	Notes and Questions	1250
2.	Mutuality of Estoppel.....	1256
	Parklane Hosiery Co. v. Shore.....	1257
	Notes and Questions	1265
3.	Collateral Attack on Class Action Judgments.....	1271
	Stephenson v. Dow Chemical Co.	1271
	Notes and Questions	1280
4.	Collateral Estoppel Against the Government.....	1285
	United States v. Mendoza	1285
	Notes and Questions	1288
	INDEX.....	1293