

TABLE OF CONTENTS

PREFACE	V
Chapter 1. Due Process	1
I. The Emergence of Due Process	2
II. What Is Due Process?	4
A. Substantive Due Process	6
B. Procedural Due Process	7
C. Due Process Functionalism	8
III. Modern Due Process Applied	9
IV. A Final Example	14
Chapter 2. Pleading	19
I. From Common Law Pleading to the Present	20
II. Pleading Under the Federal Rules	23
III. Heightened Specificity	26
IV. Sorting out Claims	29
V. Rule 12(b)	31
VI. The Legal Basis for Suit: Rule 12(b)(6)	32
VII. A Word on Method	42
Chapter 3. Facts	47
I. Discovery	49
II. Testing the Factual Record	54
III. The Role of Burden Shifting	57
IV. Burden Shifting on Summary Judgment	60
V. The Scope of Judicial Fact-Finding	65
VI. The Disappearing Trial	69
Chapter 4. Parties	73
I. Proper Parties	74
II. Necessary and Interested Parties	78
A. The Demands of Complete Resolution	78
B. The Expanding Realm of Interested Parties	81
C. Related Parties	85
III. Aggregated Parties	86
A. Representative Litigation	86
B. Modern Rule 23	91
C. Types of Class Actions	95
1. Limited Fund Class Actions	95
2. Injunctive Classes	96
3. Damages Classes	98
IV. Conclusion	100
Chapter 5. Jurisdiction	101
I. Limits of Territorial Jurisdiction	103
II. The Emergence of the Transactional Approach	108
III. The Search for Limits	111
IV. The Rise of Due Process Balancing	117

V.	Looking Backward: The Unresolved Legacy of <i>Pennoyer v. Neff</i>	120
A.	In-State Service: <i>Burnham v. Superior Court</i>	122
B.	Consent-Based Jurisdiction: <i>Carnival Cruise Lines, Inc. v. Shute</i>	124
C.	Consent to General Jurisdiction.....	126
D.	Revisiting the Basics?	129
VI.	Looking Forward: Personal Jurisdiction in the Internet Age	135
VII.	Conclusion	137
	Chapter 6. Federalism	139
I.	Diversity Jurisdiction	142
II.	Federal Question Jurisdiction.....	145
III.	The Boundaries of State Law in the Modern Era	147
IV.	The Boundaries of Federal Law	152
V.	Removal and Forum Allocation.....	156
VI.	Supplemental Jurisdiction	157
VII.	The Erie Doctrine.....	161
VIII.	Conclusion	170
	Chapter 7. Repose	171
I.	Complete Litigation	172
II.	Claim Preclusion	175
III.	Issue Preclusion	181
IV.	The Law of the Case	189
V.	Further Reaches.....	190
VI.	Relief from Judgment	194
	Chapter 8. Management	197
I.	The Managerial Turn in Judging.....	197
II.	Sanctions	200
III.	Alternative Dispute Resolution.....	205
IV.	Judicial Control of Fees	210
V.	Limits on the Managerial Model.....	213
	Chapter 9. Why Litigate?.....	217
I.	The Law and Economics Model.....	219
II.	Do Litigants Behave as the Economic Model Would Predict?	226
A.	The World of Human Complexity.....	226
B.	Examples in the Domain of Law	230
1.	Following the Cues.....	230
2.	Being Led Astray.....	232
3.	Believing in Yourself.....	236
III.	Conclusion	239
	TABLE OF CASES	241
	INDEX.....	245