

CIVIL PROCEDURE

CASES AND MATERIALS

Fifth Edition

John J. Cound
Jack H. Friedenthal
Arthur R. Miller
John E. Sexton

American Casebook Series



Summary of Contents

	Page
PREFACE	xxiii
TABLE OF CASES	xlvi
 Chapter 1. A Survey of the Civil Action	 1
A. The Concern and Character of Procedure	1
B. An Outline of the Procedure in a Civil Action	3
C. A Note on Motion Practice	17
D. A Note on Remedies	18
E. Illustrative Cases	21
 Chapter 2. Selecting The Proper Court	 66
A. Jurisdiction Over the Parties	66
B. Jurisdiction Based Upon Power Over Property	147
C. Other Bases of Jurisdiction: Consent and Necessity	165
D. The Requirement of Reasonable Notice	174
E. The Mechanics of Giving Notice	184
F. Immunity From Process and Etiquette of Service	203
G. Opportunity to Be Heard	209
H. Challenging a Court's Exercise of Jurisdiction Over the Person or Property	233
I. Jurisdiction Over the Subject Matter of the Action—The Court's Competency	237
J. Challenging the Subject-Matter Jurisdiction of the Court	305
K. Venue, Transfer, and Forum Non Conveniens	310
 Chapter 3. Ascertaining the Applicable Law	 343
A. State Law in the Federal Courts	344
B. The Problem of Ascertaining State Law	383
C. Federal "Common Law"	394
D. Federal Law in the State Courts	412
 Chapter 4. The Development of Modern Procedure	 420
A. Common-Law Pleading	420
B. The Forms of Action	432
C. The Other System: Equity	449
D. Reform: New Pleading, Abolition of the Forms, and the Merger of Law and Equity	458
 Chapter 5. Modern Pleading	 470
A. The Complaint	471
B. Responding to the Complaint	505
C. The Reply	526
D. Amendments	527

E. Supplemental Pleadings	538
F. Provisions to Ensure Truthful Allegations	541
Chapter 6. Joinder of Claims and Parties: Expanding the Scope of the Civil Action	553
A. Joinder of Claims	553
B. Addition of Claims	556
C. Identifying Parties Who May Sue and Be Sued	578
D. Claims Involving Multiple Parties	581
E. Impleader	606
F. Interpleader	614
G. Intervention	637
Chapter 7. Class Actions	656
A. History and Philosophy of the Class Action	656
B. Operation of the Class-Action Device	662
C. Due Process Considerations	677
D. Class-Action Practice	684
E. Class Actions and Jurisdiction	697
Chapter 8. Pretrial Devices for Obtaining Information: Depositions and Discovery	710
A. The General Scope of and Discretionary Limits on Discovery	710
B. The Mechanics of the Discovery Devices	732
C. Special Problems Regarding the Scope of Discovery	766
D. Sanctions and Judicial Supervision of Discovery	791
Chapter 9. Pretrial Management and the Pretrial Conference	802
A. Case Management	802
B. Extrajudicial Personnel: Masters and Magistrates	811
C. The Final Pretrial Order	813
Chapter 10. Adjudication Without Trial or by Special Proceeding	820
A. Summary Judgment	820
B. Dismissal of Actions	851
C. Default Judgment	854
Chapter 11. Trial	861
A. The Nature of the Trial Process	861
B. Trial by Jury	873
C. The Law of Evidence	934
D. The Burden of Proof: Production and Persuasion	942
E. Instructions and Verdicts	945
F. Attacks on Verdicts and Judgments	963
Chapter 12. Securing and Enforcing Judgments	1032
A. Methods of Securing the Judgment—Provisional Remedies	1033
B. Methods of Collecting and Enforcing the Judgment	1043

	Page
Chapter 13. Appellate Review	1061
A. The Principle of Finality	1061
B. The Time to Appeal	1109
C. The Ambit of Review	1115
D. The View at the Top—Courts Above Appellate Courts	1138
 Chapter 14. The Binding Effect of Prior Decisions: Res Judi-	
cata and Collateral Estoppel	1146
A. Terminology	1146
B. Claim and Defense Preclusion	1148
C. Issue Preclusion	1166
D. The Required Quality of Judgment	1186
E. Persons Benefitted and Persons Bound by Preclusion	1188
F. Intersystem Preclusion	1215
 Chapter 15. Alternative Dispute Resolution	1230
A. Introduction	1230
B. Negotiated Settlement	1245
C. Alternative Systems of Dispute Resolution: Beyond Adversari-	
ness, Beyond the Law	1256
INDEX	1281