
PREFACE

Process lies at the core of our legal system: It expresses many of our culture's basic ideas about the meaning of fairness; it determines the victor in close cases; and it further determines which cases will be close ones. Procedure is also the area of law least understood and most maligned by lay observers. We root for underdogs and insist that rules not be stacked against them. But we are equally quick to condemn a case for having been decided on a "legal technicality," a phrase commonly signifying that a procedural rule has come into operation.

A similar ambivalence pervades debate about the behavior of courts and lawyers. As a society we demonstrate a strong belief in the efficacy of lawsuits to solve social, business, and personal problems, and we extol the rule of law as a distinguishing virtue of our culture. But at the same time we worry about what many believe is an excessive willingness to seek legal solutions. The ensuing debate ranges from the role of courts in restructuring social institutions to the question of whether lawyers exacerbate disputes and waste social resources by reflexively behaving in competitive, adversarial ways.

All these issues are procedural. Lawyers thus need to understand process as a tool of their trade, as a constitutive element of the legal system, and as a focus of debate about social values. Yet civil procedure is, by most accounts, a difficult and frustrating first-year course. Students come to law school with little experience in thinking explicitly about procedure and with an impression that cases simply arrive at the point of decision. Moreover, students sense that procedure may be the area in which lawyers' skill counts most; the notion that meritorious cases can be lost because of bad lawyering outrages their sense of justice even as it creates anxiety.

This book seeks to show procedure as an essential mechanism for presenting substantive questions and as a system that itself often raises fundamental issues regarding social values. We hope that students will begin to appreciate that lawyers move the system and that, to a large extent, clients' fates depend on the wisdom, skill, and judgment of their lawyers. Moreover, although all would agree that cases should not be decided on the basis of "mere" technicalities, fierce debate quickly arises when one tries to distinguish rules that merely direct traffic from those that guard the boundaries of fairness.

In addition to considering such theoretical issues, the book has some practical goals. It seeks to give students a working knowledge of the procedural system and its sometimes arcane terminology. The course also introduces the techniques of statutory analysis. It should give students a better understanding of the procedural context of the decisions they read in other courses. To these ends we have tried to select cases that are factually interesting and do not involve substantive matters beyond the experience of first-year students. The problems following the cases are intended to be answerable by first-year students and to present real-life issues. Finally, the book incorporates a number of dissenting opinions to dispel the notion that most procedural disputes present clear-cut issues.

The organization of the book adapts it to the most common sequences in contemporary procedure courses. After a brief overview of the procedural system in Chapter 1, some courses will initially consider the materials in Part I, which covers jurisdiction and choice of law. Other courses will begin with discussion of remedies, pleading, discovery, resolution without trial, identifying the trier, trial, appeal, and former adjudication, which are addressed in Part II.

Part III, on joinder and complex litigation, recapitulates much of the material in Parts I and II and can be used either as a culmination of the course or as an insertion that follows pleading.

Cases have been severely edited to eliminate citations (without indicating their omission), and they read somewhat differently from real case reports; we hope they err in the direction of smoothness. Citations are retained only when they seem significant. Footnotes have been eliminated without indication. Those that survive retain their original numbers, while the editors' footnotes employ symbols.

Those whose assistance was acknowledged in the prefaces of earlier editions created the foundations on which this book rests. And—two of us are delighted to welcome a new author to this edition: Maureen Carroll, of the University of Michigan Law School. Professor Carroll brings to the task both the perspective of fine scholarship and excellent teaching—and a new set of sharp eyes. Moreover, with her addition to the book we return it in part to its midwestern roots: The first edition of the predecessor work was by a pair of authors, one at Michigan, the other at Indiana (a heritage to which we pay modest tribute with the Peters-Dodge hypothetical in Chapter 1).

Finally, we want to thank many teachers and students who have used previous editions for detailed, thoughtful, and constructive suggestions. As with past editions, this one has been greatly improved by the library staff at UCLA's Hugh & Hazel Darling Law Library, whose ingenuity is exceeded only by their helpfulness.

We hope you like the result and that you will continue to make suggestions for improvement.

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