

<i>Preface</i>	<i>xxv</i>
<i>Acknowledgments</i>	<i>xxix</i>
<i>Abbreviations</i>	<i>xxx</i>
<i>Special Notice</i>	<i>xxxiii</i>

<b>1 PROCEDURE AND THE SYSTEM</b>	<b>1</b>
<b>Introduction</b>	<b>1</b>
<b>A. What Is Civil Procedure? Why Are Rules of Procedure Necessary?</b>	<b>2</b>
<b>B. Procedure as a Value in Itself</b>	<b>4</b>
<i>Carey v. Phipus</i>	<i>4</i>
Notes on Procedure as an Independent Value	11
<b>C. Customs and Institutions — Three Hallmarks and a New Development</b>	<b>15</b>
1. Our Adversary System	16
2. Our Civil Jury Trial	18
<i>Lavender v. Kurn</i>	<i>22</i>
Notes on Giving Cases to Juries and Taking Them Away	27
3. Our American Federalism	29
a. State Courts	30
b. Federal Courts	32
c. Intersystem Effects Overview	33
d. Federal Pre-Emption	36
Problem 1-A. “We’re in Compliance with Federal Standards!”	37
Notes on Federal Pre-Emption of State Law	38
4. A New Development — Managerial Judging	40
<i>Malone v. United States Postal Service</i>	<i>41</i>
Notes on Judges as Managers	47
<b>D. Provisional Remedies</b>	<b>49</b>
<i>Connecticut v. Doehr</i>	<i>54</i>
Notes on Prejudgment Seizure of Property	66

<b>2 PERSONAL JURISDICTION: THE GEOGRAPHICAL REACH OF JUDICIAL AUTHORITY</b>	<b>69</b>
<b>Introduction</b>	<b>69</b>
<b>A. Traditional Theory Arises: Territoriality and Power</b>	<b>70</b>
1. The Original Idea: Presence of Person or Property	70
<i>Pennoyer v. Neff</i>	70
Notes on Due Process and Limits of Jurisdiction	76
Notes on Traditional Terms and Categories	79
<i>Harris v. Balk</i>	81
Notes on <i>Quasi-In-Rem</i> (Type 2) Jurisdiction	84
Problem 2-A. Flight 1403: Served over Arkansas	86
Notes on Jurisdiction Based on Presence of Defendant	86
2. The Idea Modified: Cars and Companies Stretch Theory	87
<i>Hess v. Pawloski</i>	87
Notes on Social Dangers and Special Standards	88
<b>B. Modern Theory Arrives: Fairness and Contacts</b>	<b>90</b>
1. The Constitutional Shift	90
<i>International Shoe v. Washington</i>	90
Notes on Minimum Contacts and Specific Jurisdiction	95
Notes on “Domestication” Statutes and Jurisdiction over Out-of-State Corporations	97
<i>McGee v. International Life Insurance Co.</i>	99
<i>Hanson v. Denckla</i>	101
Notes on Minimum Contacts and “Purposeful Availing”	104
2. The Coming of Long-Arm Statutes	105
<i>Gray v. Standard American Radiator &amp; Standard Sanitary Corp.</i>	106
Notes on State Long-Arm Statutes	111
Notes on “Stream of Commerce”	113
3. Immunity from Service of Process	113
<i>Cannington v. Cannington</i>	114
Notes on Trickery and Other Reasons for Immunity from Process	116
<b>C. Evolution of Modern Theory (Interests and Policies)</b>	<b>116</b>
1. Limited Jurisdiction Shrinks	116
<i>Shaffer v. Heitner</i>	116
Notes on Reduced Application of Limited Jurisdiction	127
Problem 2-B. Slip and Fall	129
Notes on the Continuing Viability of <i>In Rem</i> Jurisdiction	130
<i>World-Wide Volkswagen Corp. v. Woodson</i>	130
Further Notes on Stream of Commerce	139
<i>Asahi Metal Industry Co. v. Superior Court</i>	141

	<i>J. McIntyre Machinery, Ltd. v. Nicaastro</i>	146
	Still Further Notes on Stream of Commerce	155
2.	<b>Specific Jurisdiction Expands</b>	157
	<i>Burger King v. Rudzewicz</i>	157
	Notes on Jurisdiction in Contract Suits	168
	Notes on <i>In Personam</i> Jurisdiction in Federal Court	169
3.	<b>Exceptional Cases: Domestic Relations and Libel</b>	170
a.	Domestic Relations Cases	170
	<i>Kulko v. Kulko</i>	171
	Notes on Jurisdiction in Domestic Relations Cases	176
b.	Libel Cases	178
	<i>Calder v. Jones</i>	179
	Notes on Jurisdiction in Libel (and Other Intentional Tort) Cases	182
4.	<b>General Jurisdiction and Presence</b>	188
	<i>Daimler AG v. Bauman</i>	188
	Notes on General Jurisdiction	197
	<i>Burnham v. Superior Court</i>	203
	Notes on the Continuing Vitality of Presence as Basis for Jurisdiction	214
5.	<b>Jurisdiction by Consent: Private Contract</b>	215
	<i>Carnival Cruise Lines, Inc. v. Shute</i>	215
	Notes on Choosing the Forum by Private Agreement	217
6.	<b>Brave New World: Jurisdiction and the Internet</b>	219
	<i>Dudnikov v. Chalk &amp; Vermilion Fine Arts, Inc.</i>	220
	Notes on Jurisdiction over Internet Claims	229
7.	<b>The Modern Era: Old Limits In New Guise; An Old Question Answered</b>	234
	<i>Bristol-Myers Squibb Company v. Superior Court of California</i>	235
	Notes On <i>Bristol-Myers Squibb</i>	239
	<i>Ford Motor Company v. Montana Eighth Judicial District Court;</i> <i>Ford Motor Company v. Bandemer</i>	242
	Notes on <i>Ford v. Montana Eighth Judicial District</i>	259
<b>D.</b>	<b>The Requirement of Reasonable Notice</b>	<b>261</b>
1.	The Constitutional Standard	261
	<i>Mullane v. Central Hanover Bank &amp; Trust Co.</i>	261
	Notes on the Requirement of Notice	267
2.	Service in the Digital Age	269
	Problem 2-C. “Would You Please Give This to Your Dad?”	270
	Notes on Serving People	271
	Notes on Serving Companies	273
	Notes on Serving Public Agencies	274
<b>E.</b>	<b>Litigating Jurisdiction</b>	<b>274</b>
	<i>Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee</i>	275
	Notes on Appearing Versus “Staying Home”	277

<b>3 SUBJECT MATTER JURISDICTION (THE COMPETENCE OF COURTS)</b>	<b>281</b>
<b>Introduction</b>	<b>281</b>
<b>A. Diversity Jurisdiction (Suits “Between Citizens of Different States”)</b>	<b>282</b>
1. A First Look	282
2. What Does “Citizenship” Mean?	284
<i>Jane Doe v. Schwerzler</i>	285
Notes on Citizenship for Diversity Purposes	288
3. Amount-in-Controversy Requirement Revisited	295
Notes on Administering the Amount-in-Controversy Requirement	295
4. Class Suits	296
5. Reasons for Diversity Jurisdiction — An Ongoing Debate	297
Notes on the Diversity Jurisdiction Controversy	300
<b>B. Federal Question Jurisdiction (Suits “Arising Under” Federal Law)</b>	<b>302</b>
1. Threshold Matters	302
2. The “Well-Pleaded Complaint” Principle	304
<i>Louisville &amp; Nashville Railroad Company v. Mottley</i>	305
Notes on the Well-Pleaded Complaint Rule	307
Notes on Litigating Subject Matter Jurisdiction	310
Notes on the Breadth of Arising Under Jurisdiction	311
3. Arising Under Jurisdiction in Cases of Special Federal Concern	312
<i>Grable &amp; Sons Metal Products, Inc. v. Darue Engineering &amp; Manufacturing</i>	313
Notes on Cases of Special Federal Concern	319
<b>C. Federal Supplemental Jurisdiction</b>	<b>323</b>
1. Common Law Doctrines of Ancillary and Pendent Jurisdiction	324
2. The Supplemental Jurisdiction Statute	329
<i>Exxon Mobil Corporation v. Allapattah Services, Inc.</i>	330
Notes on Federal Supplemental Jurisdiction After <i>Exxon</i>	341
<b>D. Federal Removal Jurisdiction</b>	<b>344</b>
1. Scope of the Doctrine	346
<i>Caterpillar, Inc. v. Williams</i>	346
Notes on Scope of the Removal Doctrine	352
2. Procedural Details and Tactical Maneuvers	355
Problem 3-A. “I Hurt My Hand”	356
Notes on Procedural Details of Removal and Tactical Options	358
3. Broadened Removal Opportunities	363

<b>4</b>	<b>THE RIGHT COURT: VENUE AND TRANSFER</b>	<b>365</b>
	<b>Introduction</b>	<b>365</b>
	<b>A. How Venue Rules Operate</b>	<b>365</b>
	Notes on Motions to Change Venue	368
	<b>B. Federal Venue Law</b>	<b>371</b>
	Notes on the Basic Federal Venue Provisions	372
	Problem 4-A. “It Happened So Fast!”	372
	Notes on the Federal Venue Statute	373
	<b>C. <i>Forum Non Conveniens</i> and Forum Selection Clauses</b>	<b>374</b>
	1. “Forum Non Conveniens” Venue Transfer	375
	<i>Piper Aircraft Co. v. Reyno</i>	375
	Notes on <i>Forum Non Conveniens</i>	387
	2. Forum Selection Clauses	390
	Notes on Forum Selection Clauses	391
<b>5</b>	<b>MODERN FEDERALISM: THE <i>ERIE</i> DOCTRINE</b>	<b>395</b>
	<b>Introduction: Federalism Revisited</b>	<b>395</b>
	<b>A. State Law in Federal Courts: The <i>Erie</i> Doctrine</b>	<b>395</b>
	1. The Era of <i>Swift</i>	396
	<i>Swift v. Tyson</i>	397
	Notes on <i>Swift</i> and Federal Common Law	400
	2. The Arrival of <i>Erie</i>	402
	<i>Erie Railroad Co. v. Tompkins</i>	403
	Notes on the Coming of the <i>Erie</i> Doctrine	408
	<i>Guaranty Trust Co. v. York</i>	414
	Notes on <i>Erie</i> ’s First 20 Years	419
	3. The <i>Erie</i> Doctrine Comes of Age	423
	<i>Byrd v. Blue Ridge Rural Electric Cooperative</i>	423
	Notes on <i>Byrd</i> and the Agenda of the Court	427
	<i>Hanna v. Plumer</i>	428
	Notes on <i>Hanna</i> and the “Armor-Plated” Federal Rules	436
	Problem 5-A. “The Brakes Didn’t Hold”	440
	Notes on “Substantive” Evidence Rules	440
	4. <i>Erie</i> Today: Accommodationist Strategies	443
	<i>Gasperini v. Center for Humanities, Inc.</i>	443
	Notes on <i>Gasperini</i> and the Revival of the “Balancing” Test	455

<b>6 STATING CLAIMS AND DEFENSES: THE ART OF PLEADING</b>	<b>461</b>
<b>Introduction</b>	<b>461</b>
<b>A. Pre-Rules Traditions</b>	<b>461</b>
1. The Writ System: Pigeon Holes and Technicality	462
2. Code Pleading: The Modern Cause of Action	465
<i>Reilly v. Highman</i>	466
Notes on Pleading a Cause of Action Under the Code	469
Problem 6-A. “The Roof Was Leaking”	473
Notes on Problems of Code Pleading	473
<b>B. Rules Pleading: The Complaint</b>	<b>474</b>
1. The “Short and Plain Statement” Standard: Formalism Reduced	475
<i>Swierkiewicz v. Sorema</i>	477
Notes on Stating a Claim for Relief	481
2. The “Short and Plain Statement” Standard: New Rigor?	485
<i>Bell Atlantic Corp. v. Twombly</i>	486
Notes on <i>Twombly</i> and Tighter Pleading Standards	501
3. Elements in a Claim for Relief	506
Notes on the Conventions of Rules Pleading	508
4. Pleading Special Matters: The “Strong Inference” Standard in Securities Fraud	512
<i>Tellabs, Inc. v. Makor Issues &amp; Rights, Ltd.</i>	514
Notes on the PSLRA and the “Strong Inference” Standard	524
5. Alternative and Inconsistent Allegations	529
Problem 6-B. Was It the Bartender or the Driver of the Truck?	529
Notes on Alternative and Inconsistent Allegations	530
6. Pleading Damages; Prayer for Relief	531
Notes on Pleading Damages and Demanding Judgment	532
<b>C. Rules Pleading: The Response to the Complaint</b>	<b>532</b>
1. Preliminary Defense Motions Under Rule 12(b)	533
Problem 6-C. Student versus Professor	534
Notes on Rule 12(b) Motions	534
2. Attacking the Sufficiency of the Complaint Under Rule 12(b) and Related Provisions	535
Notes on Motions Attacking the Complaint	536
3. Getting to the Merits — Denying or Admitting Allegations in the Complaint	538
Problem 6-D. Who Ran the Cement Truck?	539
Notes on Pleading Denials	540
4. Getting to the Merits — Affirmative Defenses	541
<i>Gomez v. Toledo</i>	542
Notes on Affirmative Defenses	545

5. Getting to the Merits — Bringing Counterclaims Against the Plaintiff	546
<i>Valley View Angus Ranch v. Duke Energy Field Services</i>	550
<i>Letourneau v. Hickey</i>	552
Notes on Counterclaims	555
6. Failure to Answer: Default	558
Notes on Obtaining and Challenging Default Judgments	560
<b>D. Plaintiff’s Response to the Defendant</b>	<b>563</b>
<b>E. The Obligation to Be Truthful: Sanctions Under FRCP 11</b>	<b>564</b>
<i>Method Electronics, Inc. v. Adam Technologies, Inc.</i>	567
Notes on Sanctioning Lawyers and Clients for Misconduct During Litigation	572
<b>F. Dismissals of Lawsuits</b>	<b>576</b>
<i>Marex Titanic, Inc. v. Wrecked and Abandoned Vessel</i>	577
Notes on Dismissals, Voluntary and Otherwise	581
<b>G. Amending Pleadings</b>	<b>583</b>
1. Entitlement and Permission	583
2. Relation Back	585
<i>Hedel-Ostrowski v. City of Spearfish</i>	586
Notes on the Relation Back Doctrine	589
 <b>7 SHAPING THE SUIT: JOINDER OF CLAIMS AND PARTIES</b>	 <b>593</b>
<b>Introduction</b>	<b>593</b>
<b>A. Status; Problems of Eligibility</b>	<b>594</b>
1. Standing to Sue	595
2. Capacity to Sue and Be Sued (FRCP 17)	597
3. Real Party in Interest — In General (FRCP 17)	598
4. Real Party in Interest — Insured Parties (FRCP 17)	599
Notes on Insured Parties	601
5. Immunities from Suit	603
<b>B. Joinder of Claims</b>	<b>607</b>
<b>C. Joinder of Parties</b>	<b>608</b>
1. Permissive (FRCP 20)	608
<i>Fisher v. Ciba Specialty Chemicals Corp.</i>	609
Notes on Permissive Joinder of Parties	614
2. Compulsory (FRCP 19)	615
<i>Mastercard International, Inc. v. Visa International Services Ass’n, Inc.</i>	621
Notes on Necessary and Indispensable Parties	626

<b>D. Impleader</b>	<b>628</b>
<i>Yelin v. Carvel Corp.</i>	629
Notes on Impleader	635
<b>E. Counterclaims and Crossclaims</b>	<b>637</b>
<b>F. Interpleader</b>	<b>638</b>
<i>State Farm Fire &amp; Casualty Co. v. Tashire</i>	639
Notes on Interpleader	644
<b>G. Intervention</b>	<b>645</b>
<i>Kleissler v. United States Forest Service</i>	646
Notes on Intervention	655
<b>H. Class Actions</b>	<b>658</b>
1. A Special Joinder Device, or Something Else?	658
2. The Approach of FRCP 23: The Certification Process	659
3. The Approach of FRCP 23: Four Types of Class Suits	660
4. The Fundamental Challenge: Ensuring Adequate Representation	664
<i>Hansberry v. Lee</i>	664
Notes on <i>Hansberry</i> and the Problem of Adequate Representation	669
5. The “Unfair Treatment” Class Suit Under FRCP 23(b)(2)	673
<i>Allen v. International Truck and Engine Corp.</i>	674
Notes on “Unfair Treatment” Class Suits	676
6. The “Common Question” Class Suit Under FRCP 23(b)(3)	680
<i>Madison v. Chalmette Refining, L.L.C.</i>	682
Notes on “Common Question” Class Suits	686
7. Opt-Out Rights and Notice	691
Notes on Opt-Out Rights, Notice, and Preliminary Hearings	692
8. Jurisdiction and Choice-of-Law Issues	694
9. Settlement and “Settlement Classes”	699
<i>Amchem Products, Inc. v. Windsor</i>	699
Notes on Settlement and Settlement Classes	713
10. Is There Such a Thing as Trying to Do Too Much?	715
Notes on “Supersized” Class Suits	718
11. Finality of Class Action Judgments: A Look Back	719
Notes on <i>Hansberry</i> and Collateral Review of Judgments in Class Suits	721
<b>8 PRETRIAL MANAGEMENT AND DISCOVERY</b>	<b>723</b>
<b>Introduction</b>	<b>723</b>
<b>A. Modern Pretrial Management — Does It Work?</b>	<b>724</b>
Notes on Pretrial	727
<b>B. Philosophy and Dilemmas of Modern Discovery</b>	<b>729</b>



<b>C. Phases of Discovery</b>	<b>732</b>
Notes on Conferral Requirements and Automatic Discovery	733
<b>D. Scope of Discovery</b>	<b>735</b>
Problem 8-A. Underhood Fire in the Lincoln	736
Notes on the Scope of Discovery	738
<b>E. Discovery Devices</b>	<b>741</b>
1. Depositions	741
Problem 8-B. “Did You Consult a Lawyer About a Divorce?”	743
Notes on the Mechanics and Practicalities of Depositions	744
2. Interrogatories	747
Problem 8-C. “Describe Every Accident”	748
Notes on Use and Limitations of Interrogatories	750
3. Requests for Production and Inspection	753
4. Physical and Mental Examination	754
Notes on Court-Ordered Examinations	756
5. Requests for Admission	758
<b>F. Work Product Protection</b>	<b>758</b>
<i>Hickman v. Taylor</i>	759
Notes on Work Product Protection	766
<b>G. Attorney-Client Privilege</b>	<b>769</b>
<i>Upjohn Co. v. United States</i>	770
Notes on Attorney-Client Privilege in the Corporate Setting	779
<b>H. Discovery of Experts</b>	<b>785</b>
Problem 8-D. What Experts Did You Consult?	786
Notes on Disclosure of Experts	788
Problem 8-E. “Produce All Correspondence”	794
Notes on the “Woodshedding” of Experts, and on Impeachment	794
<b>I. E-Discovery</b>	<b>800</b>
1. Nature of the Beast	800
<i>Race Tires America v. Hoosier Racing Tire Corp.</i>	801
Notes on E-Discovery in the Twenty-First Century	803
2. Who Pays? How Much Is Discoverable? What About Retaining Data? What If Data Is Lost?	804
Notes on E-Discovery, Data Preservation, Costs, and Spoliation	808
<b>J. Discovery Sanctions</b>	<b>810</b>
Notes on Discovery Sanctions	811
<b>K. The Final Pretrial Conference and Order</b>	<b>813</b>
Notes on the Pretrial Process	814

<b>9</b>	<b>SUMMARY JUDGMENT, AND A LOOK AT BURDENS</b>	<b>815</b>
	<b>Introduction</b>	<b>815</b>
	<b>A. Burdens of Proof: A First Look</b>	<b>817</b>
	1. Burdens of Production and Persuasion	817
	2. The Football Field Analogy	819
	3. Burdens and Summary Judgment: Three Paradigm Situations	820
	<b>B. Summary Judgment: The <i>Adickes</i> and <i>Celotex</i> Cases</b>	<b>821</b>
	<i>Adickes v. S.H. Kress &amp; Co.</i>	822
	Notes on <i>Adickes</i> and Concern to Protect Plaintiffs	826
	<i>Celotex Corp. v. Catrett</i>	827
	Notes on the Court's New Standard	835
<b>10</b>	<b>TRIAL AND AFTER: ENTITLEMENT TO A JURY; IMPANELING JURIES; POST-TRIAL CHALLENGES</b>	<b>841</b>
	<b>Introduction: Civil Juries in Historical Perspective</b>	<b>841</b>
	<b>A. Entitlement to Jury Trial</b>	<b>846</b>
	1. Beginnings of the Modern Era: End of Historical Test	847
	Problem 10-A. "You Didn't Tell Us He Had Been Sick"	848
	Notes on the Historical Approach	848
	<i>Beacon Theatres, Inc. v. Westover</i>	851
	Notes on the Dawn of the Modern Approach	859
	2. Growing Pains: Jury Trials in the Administrative State	862
	Notes on Jury Trial Entitlement in the Administrative State	864
	3. Further Growing Pains: The Issue-by-Issue Approach	865
	Notes on Stresses in the New Standard	866
	4. A Footnote Out of Nowhere: Complex Cases and the Right to Jury Trial	868
	5. An Awkward Accommodation (The So-Called Two-Pronged Standard)	869
	<i>Chauffeurs, Teamsters &amp; Helpers, Local No. 391 v. Terry</i>	869
	Notes on an Awkward Standard	884
	6. Modern Era Reconsidered: Is It Really That Complicated?	885
	<b>B. Controlling Juries: Judgment as a Matter of Law and New Trials</b>	<b>885</b>
	1. Judgment as a Matter of Law	886
	<i>Galloway v. United States</i>	887
	Notes on JMAL Motions and the Sufficiency Concept	899
	2. New Trial Motions: Errors and Second Chances; Remittitur and Additur	904
	Problem 10-B. Danielle's Weakened Arm	907
	Notes on Remittitur and Additur	909
	3. A Procedural Jungle: Combined Motions Under FRCP 50 and 59	916
	Problem 10-C. "I Had to Stop for Those Sheep!"	917

Notes on Combined Motions for JMAL and New Trial	919
4. New Trial Motions Based on Misconduct by Jurors (and Sometimes Others)	923
Problem 10-D. “Finding Liability Would Only Drive Up the Price”	925
Notes on Setting Aside Verdicts for Misconduct	926
<b>C. Bench Trials: Judges as Factfinders</b>	<b>931</b>
<b>D. Extraordinary Relief: Motions Under FRCP 60(b); Equitable Proceedings; Resisting Void Judgments in New Actions</b>	<b>932</b>
<b>11 APPELLATE REVIEW</b>	<b>939</b>
<b>Introduction</b>	<b>939</b>
<b>A. Reasons for Appellate Review; Scope and Mechanics</b>	<b>940</b>
1. Why Have Appellate Review? Is This Mechanism Worth It?	940
Notes on the Value of Appellate Review	941
2. Scope of Review	945
3. Obtaining Review: Notice as the Crucial First Step	948
<i>Bowles v. Russell</i>	948
Notes on Timely Notice of Appeal and as “Jurisdictional”	956
4. Obtaining Review: The Rest of the Process	960
Notes on Appellate Process	961
<b>B. The Basic Rule: Only Final Judgments Can Be Appealed</b>	<b>962</b>
1. A “Pragmatic” Principle	963
<i>Quackenbush v. Allstate Insurance Co.</i>	964
Notes on “Practical Not Technical” Finality	967
2. Modifying the Concept: “Collateral Order” Appeals	970
<i>Cohen v. Beneficial Industrial Loan Corp.</i>	970
<i>Mohawk Industries, Inc. v. Carpenter</i>	972
Notes on the Collateral Order Doctrine	979
3. Evading the Concept: Mandamus Review	985
<i>Cheney v. United States District Court</i>	985
Notes on Mandamus as a Mechanism of Interlocutory Review	988
<b>C. Exceptions to the Final Judgment Rule</b>	<b>992</b>
1. Orders Relating to Preliminary Injunctions (28 USC §1292(a))	992
2. Multiple Claims and the Certification Procedure of FRCP 54(b)	993
<i>Curtiss-Wright Corp. v. General Electric Co.</i>	995
Notes on Appeals Under FRCP 54(b)	1001
3. The Dual Certification Procedure Under §1292(b)	1004
<b>D. Appellate Review of Facts</b>	<b>1006</b>

1. Jury-Tried Cases — The Power to Enter Judgments as a Matter of Law and to Order New Trials	1007
Notes on Appellate Review of Jury Factfinding	1007
2. Judge-Tried Cases — “Clear Error” Review	1008
<i>Pullman-Standard v. Swint</i>	1009
Notes on “Clear Error” Review of Judge-Found Facts	1015
<b>12 BINDING EFFECT OF JUDGMENTS</b>	<b>1017</b>
<b>Introduction</b>	<b>1017</b>
<b>A. Finality and Repose: Basic Policy Considerations</b>	<b>1018</b>
<b>B. Claim Preclusion (<i>Res Judicata</i>)</b>	<b>1019</b>
1. Final Judgment	1020
2. On the Merits	1020
Problem 12-A. “They’re Picking on Me”	1021
Notes on <i>Res Judicata</i> Effects of Dismissals Before Trial	1022
3. Same Transaction	1024
<i>Manicki v. Zeilmann</i>	1025
Notes on the “Same Transaction” Standard	1029
4. Same Parties (and Nonparty Preclusion and the “Privity” Rule)	1034
<i>Taylor v. Sturgell</i>	1035
Notes on Applying Claim Preclusion Despite Changed Parties	1049
5. Exceptions to (and Limits of) Claim Preclusion	1051
Problem 12-B. “Part of That’s Mine”	1052
Notes on Exceptions to the Rule Against Claim Preclusion	1053
<b>C. Claim Preclusion in a Federal System</b>	<b>1058</b>
1. Effects of State Court Judgments	1059
<i>Marrese v. American Academy of Orthopaedic Surgeons</i>	1059
Notes on the Preclusive Effect of State Court Judgments	1066
2. Effects of Federal Court Judgments	1068
<i>Semtek International v. Lockheed Martin Corp.</i>	1068
Notes on the Preclusive Effect of Federal Court Judgments	1073
<b>D. Issue Preclusion (<i>Collateral Estoppel</i>)</b>	<b>1076</b>
1. “Actually Litigated and Determined”	1076
2. “Valid and Final Judgment”	1077
Notes on Valid and Final Judgments	1079
3. “Essential to the Judgment”	1080
Problem 12-C. “Your Trucks Are Messing Up My Access Road”	1080
Notes on Which Facts Are “Essential to the Judgment”	1081
<i>Jean Alexander Cosmetics v. L’Oreal USA</i>	1083
Notes on Issue Preclusive Effects of Alternative Findings	1090

---

4. Same Parties and the “Privity” Rule	1092
Notes on Nonparties “in Privity with” Parties	1093
5. Use of Preclusion by Nonparties and the “Mutuality” Rule	1093
<i>Parklane Hosiery Co., Inc. v. Shore</i>	1096
Notes on Offensive Nonmutual Issue Preclusion	1103
<i>Table of Cases</i>	1107
<i>Table of Authorites</i>	1129
<i>Index</i>	1139