CONTENTS

Preface	xxvii
Acknowledgments	xxix
Chapter 1 An Overview of Procedure	1
A. The Idea and the Practice of Procedure	1
1. Locating Procedure	1
2. Clients, Lawyers, Procedure, and Strategy	2
B. Where Can the Suit Be Brought?	5
1. Personal Jurisdiction	6
2. Subject Matter Jurisdiction	6
Hawkins v. Masters Farms, Inc.	7
Notes and Problems	10
3. Service of Process	13
C. Stating the Case	13
1. The Lawyer's Responsibility	13
Bridges v. Diesel Service, Inc.	13
Notes and Problems	15
Note: Reading the Rules—Process and Politics in State and Federal Courts	16
2. The Complaint	17
Bell v. Novick Transfer Co.	17
Notes and Problems	18
3. The Response — Motions and Answer	21
a. Pre-Answer Motions	21
Notes and Problems	22
b. The Answer	22
Notes and Problems	25
4. Amendment of Pleadings	25
D. Parties to the Lawsuit	26
Fisher v. Ciba Specialty Chemicals Corp.	26
Notes and Problems	99

xii	Contents
E. Factual Development—Discovery	30
Gordon v. T.G.R. Logistics, Inc.	31
Notes and Problems	35
F. Pretrial Disposition—Summary Judgment	35
Houchens v. American Home Assurance Co.	36
Notes and Problems	39
G. Trial	41
Norton v. Snapper Power Equipment	42
Notes and Problems	44
H. Former Adjudication	46
Ison v. Thomas	46
Notes and Problems	48
I. Appeals	49
Reise v. Board of Regents of the University of Wisconsin	50
Notes and Problems	51
Note on Appellate Structure and Jurisdiction	53
Note: Civil Procedure in Your Substantive Courses	54
Assessment Questions—And a Word About Using These Questions	55
Analysis of Assessment Questions	57
PART I THE CONSTITUTIONAL FRAMEWORK FOR	
U.S. LITIGATION	59
A. Approaching Civil Procedure	59
B. Constitutional Limits in Litigation	60
1. The Idea of Jurisdiction	60
2. Jurisdiction and the Constitution	61
3. The Constitution and Choice of Law	62
Chapter 2 Personal Jurisdiction and Notice	65
A. The Origins	65
Pennoyer v. Neff	65
Notes and Problems	71
B. The Modern Constitutional Formulation of Power	73
1. Redefining Constitutional Power	73
International Shoe Co. v. Washington	75
Notes and Problems	80
McGee v. International Life Insurance Co.	82
Hanson v. Denckla	82
Notes and Problems	83

Contents	xiii
2. Absorbing <i>In Rem</i> Jurisdiction	84
3. Specific Jurisdiction: The Modern Cases	88
World-Wide Volkswagen Corp. v. Woodson	88
Notes and Problems	95
J. McIntyre Machinery, Ltd. v. Nicastro	98
Notes and Problems	107
4. General Jurisdiction and Refinements to Specific Jurisdiction	108
Goodyear Dunlop Tires Operations, S.A. v. Brown	108
Notes and Problems	111
Daimler AG v. Bauman	112
Notes and Problems	118
Bristol-Myers Squibb Co. v. Superior Court	120
Notes and Problems	126
Ford Motor Co. v. Montana Eighth Judicial Dist. Court	128
Notes and Problems	133
Note on Personal Jurisdiction and the Internet	134
Burnham v. Superior Court	135
Notes and Problems	140
Note on the Mechanics of Jurisdiction: Challenge and Waiver	141
Notes and Problems	143
C. Consent as a Substitute for Power	144
Carnival Cruise Lines, Inc. v. Shute	145
Notes and Problems	148
Mallory v. Norfolk Southern Railway Co.	149
Notes and Problems	154
D. Notice	155
1. The Constitutional Requirements	155
Mullane v. Central Hanover Bank & Trust Co.	157
Notes and Problems	161
Baidoo v. Blood-Dzraku	162
2. Beyond the Constitutional Requirements: The Mechanics of Notice and Service	166
Notes and Problems	167
E. Self-Imposed Restraints on Jurisdictional Power: Long-Arm Statutes, Venue, Discretionary Refusal of Jurisdiction, and	
Multidistrict Litigation	171
Long-Arm Statutes as a Restraint on Jurisdiction	171
Gibbons v. Brown	171
Notes and Problems	173

xiv	Contents
2. Venue as a Further Localizing Principle	175
Notes and Problems	176
Thompson v. Greyhound Lines, Inc.	177
Notes and Problems	179
3. Declining Jurisdiction: Transfer and Forum Non Conveniens	181
Piper Aircraft v. Reyno	181
Notes and Problems	186
Atlantic Marine Construction Co. v. United States District Court	188
Notes and Problems	191
4. Borrowing Jurisdiction: Multidistrict Litigation	192
Assessment Questions	193
Analysis of Assessment Questions	196
Chapter 3 Subject Matter Jurisdiction of the Federal Courts	199
A. The Idea and the Structure of Subject Matter Jurisdiction	199
B. Federal Question Jurisdiction	202
Louisville & Nashville Railroad v. Mottley	204
Notes and Problems	206
C. Diversity Jurisdiction	209
1. Diversity of Citizenship	209
Redner v. Sanders	211
Notes and Problems	213
Hertz Corp. v. Friend	216
Notes and Problems	218
2. Amount in Controversy	219
D. Supplemental Jurisdiction	221
Notes and Problems	222
In re Ameriquest Mortgage Co. Mortgage Lending Practices Litigation	224
Szendrey-Ramos v. First Bancorp	226
Notes and Problems	228
E. Multidistrict Litigation	229
F. Removal	231
Notes and Problems	231
Keller Logistics Group, Inc. v. Navistar, Inc.	237
Notes and Problems	239
Assessment Questions	239
Analysis of Assessment Questions	242

Contents	XV

Chapter 4 State Law in Federal Courts: <i>Erie</i> and Choice of Law	245
A. State Courts as Lawmakers in a Federal System: Erie	246
1. The Issue in Historical Context	246
2. Constitutionalizing the Issue	247
Erie Railroad v. Tompkins	249
Notes and Problems	252
B. The Limits of State Power in Federal Courts	255
1. Interpreting the Constitutional Command of Erie	256
Guaranty Trust Co. v. York	256
Notes and Problems	257
Byrd v. Blue Ridge Rural Electric Cooperative	258
Notes and Problems	260
2. De-constitutionalizing <i>Erie</i>	260
Hanna v. Plumer	260
Notes and Problems	264
3. Determining Whether State and Federal Law Conflict	267
C. The Interpretation of State Law in Federal Courts	269
1. Deciding Which State's Laws to Apply	269
2. Deferring to a State's Interpretation of Its Laws	270
Mckesson v. Doe	271
Notes and Problems	273
Assessment Questions	274
Analysis of Assessment Questions	275
PART II THE PROCESS OF LITIGATION	277
A. Approaching Civil Procedure	277
B. Choosing Procedure	278
C. A Roadmap for Exploring Choices	279
Chapter 5 Incentives to Litigate	281
A. Litigation in the United States in the Twenty-First Century	281
Notes and Problems	285
B. Reasons to Litigate: Dollars, Orders, and Declarations	287
1. Damages	288
Troupe v. $C \mathcal{E}' S$ Wholesale Grocers, Inc.	288
Notes and Problems	291
a. Damage Amounts: Ceilings and Floors	291
b. Categorizing Damages	293
Notes and Problems	294

XVI		Contents
2.	Specific Relief	296
	Lucy Webb Hayes Natl. Training School v. Geoghegan	297
	Notes and Problems	299
3.	Declaratory Relief	300
	Notes and Problems	302
4.	Temporary Remedies	303
	a. Preliminary Injunctions and Temporary Restraining Orders: The Basic Problem	304
	Winter v. Natural Resources Defense Council, Inc.	304
	Notes and Problems	310
	b. Provisional Remedies and Due Process	314
	Fuentes v. Shevin	314
	Notes and Problems	319
C. Fi	nancing Litigation	321
1.	The "American" and "English" Rules About Attorneys' Fees	323
	Notes and Problems	325
2.	Insurance, the Contingent Fee, and Alternative Litigation Finance	325
	a. Insurance	326
	Notes and Problems	326
	b. The Contingent Fee	328
	Notes and Problems	330
	c. Alternative Litigation Finance	331
	Notes and Problems	333
3.	Public Subsidies and Professional Charity	334
	Notes and Problems	337
4.	From Fee Spreading to Fee Shifting	337
	a. The Common Fund	337
	Notes and Problems	338
	b. By Contract	338
	c. By Common Law	339
	d. By Statute	339
	Notes and Problems	340
	Evans v. Jeff D.	<i>340</i>
	Notes and Problems	342
	Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources	344
	Notes and Problems	345
Assessm	ent Questions	346
	of Assessment Questions	347

Contents	xvii
Chapter 6 Pleading	349
A. The Story of Pleading	349
1. Of Stories and Jurisdiction	349
Notes and Problems	350
2. Plaintiff's Story, Defendant's Story	352
3. One Function of Pleading: Establishing the Law	353
Notes and Problems	356
Haddle v. Garrison (S.D. Ga. 1996)	359
Notes and Problems	360
Haddle v. Garrison (11th Cir. 1997)	362
Notes and Problems	362
Haddle v. Garrison (525 U.S. 121 (1998))	362
Notes and Problems	365
4. Another Function of Pleading: Sorting Strong from Weak Cases?	366
a. The "Ordinary" Case: How Much Detail in a Complaint?	367
Notes and Problems	368
Ashcroft v. Iqbal	<i>372</i>
Notes and Problems	382
McCleary-Evans v. Maryland Department of Transportation, State Highway Administration	384
Notes and Problems	386
b. Special Cases: Requiring and Forbidding Specificity in Pleading	387
Stradford v. Zurich Insurance Co.	387
Notes and Problems	390
5. Allocating the Elements of a Claim	391
Jones v. Bock	392
Notes and Problems	394
B. Ethical Limitations in Pleading—and in Litigation Generally	397
Notes and Problems	398
Christian v. Mattel, Inc.	400
Notes and Problems	403
C. Responding to the Complaint	405
1. Default	406
2. Settle	406
3. The Pre-Answer Motion (and a Close Post-Answer Relative)	406
Notes and Problems	407
Notes and Problems	408
Notes and Problems	410

xviii	Contents
4. Answer	410
a. Denials	411
Zielinski v. Philadelphia Piers, Inc.	411
Notes and Problems	414
b. Affirmative Defenses	416
Notes and Problems	417
5. Reply	417
Notes and Problems	418
D. Amendments	419
Notes and Problems	419
1. The Basic Problem: Prejudice	419
Beeck v. Aquaslide 'N' Dive Corp.	419
Notes and Problems	424
2. Statutes of Limitations and Relation Back	426
Moore v. Baker	426
Bonerb v. Richard J. Caron Foundation	428
Notes and Problems	429
Assessment Questions	432
Analysis of Assessment Questions	433
Chapter 7 Discovery	435
A. Modern Discovery	435
1. Discovery Before Discovery: Obligations and Spoliation	436
Zubulake v. UBS Warburg LLP	436
Notes and Problems	438
2. Getting the Story Straight: Crafting a Discovery Plan	440
B. The Tools of Discovery	441
1. Required Disclosures—First Round	443
Notes and Problems	443
2. Documents, Things, Land, and Bytes: Requests for Production (Rules 34 and 45)	445
Notes and Problems	446
3. Asking Questions in Writing, Seeking Admissions: Interrogatories and Admissions (Rules 33 and 36)	446
Notes and Problems	448
4. Asking Questions in Person: Depositions (Rule 30) and Physical	
and Mental Evaluations (Rule 35)	449
Notes and Problems	450
5. Pretrial Witness Lists and the Final Pretrial Order	454

Contents	xix
C. The Scope of Discovery	454
1. Relevance	454
Favale v. Roman Catholic Diocese of Bridgeport	455
Notes and Problems	458
2. Proportionality, Burden, and Privacy	459
Cerrato v. Nutribullet, LLC	459
Wagoner v. Lewis Gale Medical Center, LLC	461
Rengifo v. Erevos Enterprises, Inc.	463
Notes and Problems	466
3. Privilege	468
Notes and Problems	469
4. Trial Preparation Material	471
Hickman v. Taylor	471
Notes and Problems	475
D. Experts	476
Notes and Problems	478
Thompson v. The Haskell Co.	479
Chiquita International Ltd. v. M/V Bolero Reefer	480
Notes and Problems	482
E. Ensuring Compliance and Controlling Abuse of Discovery	482
1. Types of Discovery Disputes	483
2. Ensuring Compliance	483
Notes and Problems	484
3. Remedies: Management and Sanctions	486
Mueller v. Swift	486
Notes and Problems	490
Security National Bank of Sioux City v. Abbott Laboratories	491
Notes and Problems	492
Assessment Questions	493
Analysis of Assessment Questions	495
Chapter 8 Resolution Without Trial	497
A. The Pressure to Choose Adjudication or an Alternative	498
1. Default and Default Judgments	498
Bluegrass Marine Inc. v. Galena Road Gravel, Inc.	499
Notes and Problems	502
2. Scheduling Orders and Failure to Prosecute: Involuntary Dismissal	504
3. Voluntary Dismissal	505
Notes and Problems	505

ίX			Contents
В.	Av	roiding Adjudication	506
	1.	Negotiation and Settlement: Why Settle? And How?	506
		a. Contracting to Dismiss	508
		Notes and Problems	509
		b. Third-Party Participation in Settlement: Facilitation,	
		Encouragement, and Coercion	513
		Notes and Problems	514
		c. Contracting for Confidentiality	515
		Notes and Problems	515
		Kalinauskas v. Wong	517
		Notes and Problems	519
	2.	Contracting for Private Adjudication: Arbitration and Its Variants	521
		a. The Idea and Practice of Arbitration	521
		b. Federalism and Arbitration: Herein of Preemption	522
		Ferguson v. Countrywide Credit Industries, Inc.	523
		Notes and Problems	527
		AT&T Mobility LLC v. Concepcion	528
		Notes and Problems	536
C.	Ac	ljudication Without Trial: Summary Judgment	537
		Notes and Problems	537
	1.	Summary Judgment in Action: The Burdens on the Moving and	
		Nonmoving Parties	540
		Celotex Corp. v. Catrett	541
		Notes and Problems	544
	2.	Summary Judgment in Action: How Courts Should Assess the	T 4.6
		Evidence	546
		Tolan v. Cotton	547
		Notes and Problems	550
		Scott v. Harris	552
		Notes and Problems	557
		ent Questions	559
A nal	ysis	of Assessment Questions	560
Chap	oter	9 The Trier and the Trial	563
A.	Cł	noosing and Challenging Judges	564
		Notes and Problems	566
		Caperton v. A.T. Massey Coal Co.	567
		Notes and Problems	574
В.	Sh	aring Power with a Jury	576

Contents	xxi
1. When May a Jury Decide?	576
Notes and Problems	580
2. Choosing Jurors	582
3. Challenging Jurors	584
Notes and Problems	586
C. What Will Trial Be About? The Final Pretrial Conference and Order	588
Monfore v. Phillips	589
Notes and Problems	592
D. Judges Guiding Juries	593
1. Instruction and Comment	593
2. Excluding Improper Influences	594
3. Size and Decision Rules	595
E. Judges Controlling Juries: Judgment as a Matter of Law	596
Notes and Problems	597
1. Judgment as a Matter of Law in Action: How Courts Should Assess the Evidence	599
Conte v. Emmons	599
Notes and Problems	602
Judgment as a Matter of Law in Action: Judgments and Renewed Judgments	604
Notes and Problems	605
Unitherm Food Systems, Inc. v. Swift-Eckrich, Inc.	605
Notes and Problems	609
F. Judges Undoing Verdicts: The New Trial	610
The Justifications for New Trials	610
a. Flawed Procedures	611
b. Flawed Verdicts	611
Lind v. Schenley Industries	612
Notes and Problems	615
2. Conditional New Trials	616
a. New Trial Limited to Damages	616
b. Remittitur and Additur	616
G. The Limits of Judicial Power: The Reexamination Clause and the Jury as a Black Box	617
Peterson v. Wilson	618
Notes and Problems	621
Assessment Questions	624
Analysis of Assessment Questions	625

xxii	Contents
Chapter 10 Appeal	627
A. Whether a Decision May Be Reviewed: Obstacles to Appeal	627
1. The Adversity Requirement	628
Notes and Problems	628
2. The Preservation Requirement	629
Notes and Problems	630
3. Financial Burdens and Other Forms of Discouragement	632
B. When a Decision May Be Reviewed: "Finality"	634
1. The Final Judgment Rule	635
a. Appellate Jurisdiction and the Final Judgment Rule	635
Liberty Mutual Insurance Co. v. Wetzel	635
Notes and Problems	639
b. Defining the Moment of Judgment	641
Notes and Problems	642
2. Exceptions to the Final Judgment Rule	643
a. Practical Finality	643
Lauro Lines s.r.l. v. Chasser	643
Notes and Problems	647
b. Injunctions	650
Notes and Problems	650
c. Certification of Interlocutory Appeals	650
d. Mandamus	651
Notes and Problems	652
C. How a Decision May Be Reviewed: Scope of Review	653
1. Law and Fact	653
Anderson v. Bessemer City	654
Notes and Problems	658
2. Harmless Error	659
Van Zee v. Hanson	659
Notes and Problems	661
Assessment Questions	661
Analysis of Assessment Questions	662
Chapter 11 Respect for Judgments	665
A. Claim Preclusion	666
1. Precluding the "Same" Claim	666
a. Efficiency	666
Frier v. City of Vandalia	666

Contents	xxiii
Notes and Problems	671
Semtek Intl. Inc. v. Lockheed Martin Corp.	674
Notes and Problems	678
b. Consistency—The Logical Implications of the Former Judgment	679
Notes and Problems	680
2. Between the "Same" Parties	681
Taylor v. Sturgell	682
Notes and Problems	687
3. After a Final Judgment	691
4. After a Judgment "On the Merits"	691
Notes and Problems	692
Gargallo v. Merrill Lynch, Pierce, Fenner & Smith	693
Notes and Problems	696
B. Issue Preclusion	696
1. An Issue of Fact or Law	697
Notes and Problems	698
2. An Issue "Actually Litigated and Determined"	698
Illinois Central Gulf Railroad v. Parks	699
Notes and Problems	701
3. By a Valid and Final Judgment	702
4. The Determination of the Issue Is "Essential to the Judgment"	702
Notes and Problems	704
5. Against a Party to the First Case, Who Had Adequate Incentive and Opportunity to Litigate the Issue	705
Parklane Hosiery Co. v. Shore	707
Notes and Problems	712
C. The Boundaries of Preclusion	717
1. Claim Preclusion	717
2. Issue Preclusion	718
D. Repose: Collateral Attack and Reopened Judgments	719
1. Full Faith and Credit as a Bar to Collateral Attack	720
V.L. v. E.L.	721
Notes and Problems	724
2. The Reopened Judgment as an Alternative to Collateral Attack	728
United States v. Beggerly	728
Notes and Problems	731
Assessment Questions	732
Analysis of Assessment Questions	734

xxiv		Contents
PART III PROBING THE E CLAIMS AND PA	BOUNDARIES: ADDITIONAL ARTIES	737
Chapter 12 Joinder		739
A. Joinder of Claims		739
1. In a Plaintiff's Comp	laint	739
a. Historical Backgro	ound	739
b. The Federal Rules	s	740
c. Joinder and Juriso	diction	740
2. In Defendant's Answ	er: Counterclaims and Crossclaims	742
Cordero v. Voltaire, I	LLC	742
Notes and Probler	ms	745
B. Joinder of Parties		748
1. By Plaintiffs: Permiss	ive Joinder	748
Mosley v. General N	Aotors Corp.	748
Notes and Probler	ms	751
2. By Defendants: Third	d-Party Claims	754
Price v. CTB, Inc.		754
Notes and Probler	ms	756
3. By Court Order: Con	npulsory Joinder	760
Temple v. Synthes Co	orp.	761
Notes and Probler	ms	762
Marvel Characters,	Inc. v. Kirby	764
Notes and Probler	ms	768
C. Intervention		771
United States v. City	y of Los Angeles	772
Notes and Probler	ms	776
Martin v. Wilks		778
Notes and Probler	ms	783
D. Interpleader		784
-	eau Life Ins. Co. v. Davis	786
Notes and Probler	<u>v</u>	788
E. Class Actions		788
1. The Class Action and	l the Constitution	789
a. Representative Ad		789
Hansberry v. Lee	•	790

794

Notes and Problems

Contents	xxv
b. Notice and Opt-Out	796
Phillips Petroleum v. Shutts	796
Notes and Problems	800
2. The Class Action and Federalism	801
Standard Fire Ins. Co. v. Knowles	803
Notes and Problems	806
3. Class Certification	808
Notes and Problems	812
Wal-Mart Stores, Inc. v. Dukes	813
Notes and Problems	823
4. Counsel Appointment and Fees	824
5. Class Settlements	825
a. Settlement Notice and Approval	825
Notes and Problems	827
b. The "Settlement Class"	828
Amchem Products, Inc. v. Windsor	829
Notes and Problems	835
Assessment Questions	840
Analysis of Assessment Questions	842
Table of Cases	845
Table of Citations to the Judicial Code (28 U.S.C.)	851
Table of Citations to the Federal Rules of Civil Procedure	853
Table of Authorities	857
Index	861