I. PJ
   A. Geography - IN WHAT STATES can P sue D? (not worried about what court)
      1. Considered a personal privilege of D.
      2. Whatever court we end up in, that court must have POWER over SOMETHING.
         a. Defendant themselves, or
            i. In personam (preferred)
         b. Defendant's property
            i. In rem
            ii. Quasi in rem
      2. Due Process Clause of Constitution - sets outer boundary for how far court can reach to get jurisdiction
         a. Visualize as a circle (outermost reach of courts)
         b. If falls within the circle, there isn't PJ guaranteed.
            i. There MUST be a statute (LONG ARM)
            ii. All states have different long-arm statutes (some go to outer reaches of circle, some not as far.)
      3. STEPS:
         a. Look for a statute. If there is no statute, no PJ.
         b. If statute, then is it within constitutional limits?
   B. IN PERSONAM JURISDICTION:
      1. General or Specific:
a. General - D can be sued in forum on a claim that arose anywhere in the world
b. Specific - D is being sued on claim that has some connection with the forum.

2. TEST = There is General Jur if D's ties are Continuous and Systematic. (Helicoptoros)
3. CONSTITUTIONAL ANALYSIS - How broadly can a court exercise jurisdiction, allowed by const.?
   a. Pennoyer v. Neff (1870's)
      • State has power over persons, property within its boundaries
      • Traditional bases for PJ
         1. Presence - D is served with process within forum - General Jurisdiction
         3. D's agent was served within the forum
         4. D consents to jur.
   b. Hess v. Pawloski (1927) - D (PA) drives to MA, in car accident with P.  D returns to PA.  MA has non-resident motorist statute (If D comes into state in car, involved in car accident, a state official is appointed as agent for service of process.)
      • Consistent with Pennoyer (service in forum on D's agent.)
      • Agent was appointed by operation of law. (implied consent)
      • P appeared solely to contest PJ (Special appearance)
   c. International Shoe (1945) - Jur. If D "has such minimum contacts with the forum that exercise of jur. Does not offend traditional notions of fair play and substantial justice."
      • Very flexible - leads to expansion of Pennoyer
      • Gives In personam jurisdiction even if D is not served in the forum
      • Nowhere does International Shoe say that it overrules Pennoyer (only if D is not present in the forum)
      • 2 parts (contact and fairness)
         • Contacts - 2 questions:
            • Continuous and systematic? Or Isolated act?
            • Cause of action arises out of forum activities? Yes/no.
   d. Gray v. American Radiator - P injured when valve on water heater explodes. Although manufacture and sale to distributor occurred outside of forum state, Ct. held:
      • Injury (tort) occurred within forum state
      • Reasonable to foresee use and possible defect within forum, and foreseeable that manufacturer Would be sued. Satisfies minimum contacts.
e. **McGee v. Internat'l life - D (AZ) sells one policy in CA, sued for breach. Court held:**
   - D solicited that contract from CA
   - P's claim arose from D's contact with CA (relatedness)
   - Emphasized CA's interest in providing forum for citizens to obtain payment when insurers refuse to pay. - **Fairness aspect of Int'l Shoe**

f. **Hanson v. Denckla (1958) - PA woman sets up a trust with DE bank. She moves to FL, does FL have In Personam Jur. Over DE bank, because bank had no relevant contact with FL.**
   - No contact because no "purposeful availment" - D must reach out to forum in some way.
   - Cannot involve unilateral contacts of P with D, D must purposefully invoke benefits/protections of forum law.

h. **WWVW (1980) - Issue: did OK have jurisdiction over regional distributor of VW, and over retailer? Court held:**
   - No personal jurisdiction because no purposeful availment by regional dist. And retailer.
   - Car got to OK thru unilateral act of P.
   - **Forseeability - relevant. But not foreseeable that they would get sued in OK (not just that car would pass thru there.)

   - Must take into account both Contacts and Fairness. But Contacts comes first - without min contacts, fairness is irrelevant.

f. **Keeton v. Hustler Magazine - P sues for libel in NH, only state where SoL had not run.**
   - Court held that P does not need min contacts with forum, just D. Further, there was an in-forum effect of actions by D, because there were readers present in NH.

h. **Kulko - D hailed into court when visiting forum for business, but action had nothing to do with presence in state.**
   - Ct. held that Dad's payment of plane ticket for daughter to move to CA was not sufficient to constitute purposeful availment/min. contacts with forum

j. **Burger King (1985)**
   - Contract case brought in FL.
   - Court holds:
     - International shoe has 2 parts (fairness and contacts)
     - Must have relevant contacts first before courts consider fairness.
     - Contact was established, D reached out to FL
     - Fairness - D argued that jur. In FL was unfair, rejected. Burden is on D to show that forum is unconstitutional, not just inconvenient. Must show that D is at grave disadvantage in litigation

k. **Asahi (87) - Stream of commerce case**
- Talk about both sides of stream of commerce argument.
  1. Contacts exist if there it is reasonably foreseeable that product will make it to other forums.
  2. Reasonably foreseeable PLUS intent/purpose to serve other forums.
     - Just placing an object in the stream of commerce does not constitute purposeful availment. (even if D is aware products will reach forum).
     - However, must also consider the burden on D (fairness argument). Burden on Japanese company very large compared to CA's interest in case.
  1. Helicoptoros Nacionales v. Hall - SCt held that since the cause of action did not arise out of forum activities, mere purchases and training of personnel in forum is insufficient to establish min. contacts.
  m. TRANSIENT JURISDICTION - Burnham (90) - Similar facts to Kulko, D (NJ) visits children in CA while there on business, and served with papers for divorce. Claim had nothing to do with activities in CA. Therefore must be General Jur. Does service of process in the forum still live if claim has nothing to do with activities in forum?
     - Know both sides:
       - In-state service of process does give Gen Jur based on historical pedigree.
       - History is irrelevant, Must be assessed under Int'l Shoe. Must arise out of contacts and fairness.
  4. Framework for Constitutional test:
     a. Does one of the traditional bases from Pennoyer apply?
     b. ON THE OTHER HAND, some justices say: International Shoe test. (Contacts and Fairness.)
       - Minimum Contacts between D and the Forum (MUST HAVE)
         - Purposeful availment of forum (reaching out - money, use roads, etc.)
         - Forseeability (that D would get sued in the forum)
       - Fairness
         - Relatedness (does P's claim arise from D's contact with forum?)
           - May make up for low contacts
         - 5 fairness factors:
           - Inconvenience for D and witnesses - must be severely disadv.
           - State's interest - McGhee
           - Plaintiff's interest
           - Legal system's interest in efficiency
• Interstate interest in shared substantive policies

5. STATUTORY TEST - Whether a statute allows for In Personam Jur.
   a. Every state has a statute that mimics Traditional Bases for Jur.
   b. Every state has some statute that is based on IMPLIED CONSENT (non resident motorist statute.)
   c. LONG ARM STATUTES - Allows Jur over non-resident. 2 kinds:
      • Constitutional limit
      • Laundry list Long Arm - List of activities D does that gives Jur over D in forum.
      • **Courts can disagree on interpretations of Long Arms.
      • Grey v. American Radiator: Some courts say that negligence was committed in state A, so no Jur in state B. Other courts say that B has Jur because P was injured in state B.
   d. Internet PJ Issues - how min contacts are established over internet/phone/email:
      • Websites:
      • Active websites: business-oriented websites are usually subject to PJ in any buyer's state due to access
      • Passive sites: usually not subject to PJ if only provide information to interested visitors
      • Interactive sites: more interaction, more likely to find PJ. Courts go both ways on finding PJ.
      • Email/phone calls - treated similarly. If unsolicited to D, usually not sufficient to establish min contacts. If D calls/sends emails, may establish PJ.
      • Bellino v. Simon: 2 D's move to dismiss action on lack of PJ. Granted to Spence and denied to Simon. P has sued for defamation. Ct. held that the 2 instances were different because:
         • Spence received an unsolicited phone call from buyer in which he made defamatory remarks about P. Since this was an isolated incident and the call came from buyer, the court found no PJ.
         • In Simon's case, the buyer went thru a website that allowed direct emailing to D. D then emailed back several times to buyer making defamatory remarks. This constituted min contacts, after which D needed to show unfairness (didn't do.) PJ exists.

6. CHALLENGING PJ:
   a. PJ obtained by CONSENT:
      • Ins. Co. of Ireland v. CBG - D made special appearance to challenge PJ on case where ins. Co refused to pay. However, Ct. held that submission to court for the purpose of challenging PJ implies agreement with the process and rules by which the court operates. If those rules are not followed, then D waives PJ challenge.
      • Default judgment - If D fails to appear and judgment is entered on default, D can later challenge PJ but may not challenge case on the merits.
• Bremen v. Zapata - In K between 2 corporations, the forum selection clause is superior to PJ in other forum state. SCt. Held that to keep business/commerce efficient, courts must defer to K agreed to by parties.

• Carnival Cruise Lines v. Shute - D contests PJ in Washington because, although ticket was advertised and purchased there, one provision gave forum selection to FL. Court held that passengers benefited from reduced ticket prices from cruise line saving money in litigating in forum of choice.

b. Direct Attack – Appearing in forum ct. to challenge PJ.

• In some states, “Special Appearance”, and may not mention any other issues at that time or PJ is waived.

• In other states, may appear to bring up PJ objection and other objections. However, PJ attack must be brought up FIRST or waived.


• D ignores suit entirely. Default judgment entered against D, D challenges enforcement of judgment in resident state.

• Rendering ct. files action in enforcing state to begin enforcement procedures based on Full Faith and Credit. Usually states must enforce unless no PJ on D.

7. HYPO: Washington resident drives into Oregon. Sees Cuckoo Clock Shop, buys a clock. Brings clock home, one day becomes defective and hits owner. Owner wants to sue Joe, from Oregon. Can Owner (WA) sue Joe (OR)?

a. Does a statute allow jurisdiction here?

• No. No presence, no residency, no agent, no consent, etc.

• Must be by LONG ARM.

b. Suppose LONG ARM says WA has jur over nonresidents that commit tort in WA. Did Joe commit a tort in WA?

• No - because uncle Joe did not do anything in WA.

• Yes - because P was injured in WA, some courts say that if injury is in forum, this constitutes a tort. (Grey v. Am. Radiator)

c. CONSTITUTIONAL ANALYSIS - does it fit in Due Process?

• No traditional bases of jur. (again)

• Must use Int'l Shoe test:

  • Relevant contact of Joe with WA?

    • Clock is in WA. Is this relevant?

    • Purposeful availment - no. Joe did not ship clock into WA. Clock got there by unilateral act of P (WWVW)

    • KNOW THE FACTS. (location of clock shop, advertising in WA papers or TV, other customers in WA.) (McGee - reaching out to forum.)

    • Forseeability - is it foreseeable that Joe would get sued in WA?
• Fairness factors
  • Relatedness - P's claim arises from D's contact with forum
  • Inconvenience - Burden is on D to show unconstitutionality. Not in this case.
  • State's interest - WA may have interest to protect residents
  • P's interest - injured doesn't want to travel
  • Legal system's interest in efficiency and shared substantive policies.

C. IN REM and QUASI IN REM: due to D's PROPERTY IN FORUM (can be personal, not just real property)
  1. In Rem - Dispute is WHO OWNS the property.
  2. Quasi In Rem - Has nothing to do with ownership of property. We know D owns it, and the value of the property is used to get PJ over D, and to limit judgments against D.
      a. Pennoyer v. Neff - suit had nothing to do with who owned property, but property used to get jur over Neff
  3. To get IR or QIR, must use STATUTE - Attachment statute.
      a. Pennoyer - must seize/attach statute at the outset of suit.
      b. Shaffer v. Heitner (77) - P filed shareholder's derivative suit against D in Delaware. D claimed no PJ, on basis that incorporation in a state is insufficient for PJ. Court held that for Const. test for IR and QIR, must assess whether D has minimum contacts with forum, not just attachment of property. Upholds Internat'l Shoe, overrules Harris v. Balk.
      *for QIR, must show that D has minimum contacts, and does not offend trad. Notions of fairness.

II. Notice - Due process requires that D be given notice and an opportunity to be heard.
   A. Service of Process - FRCP 4
      1. Process consists of summons (notice of being sued - rule 4a, b) and a copy of the complaint.
      2. Service can be made by any non-party who is at least age 18 (rule 4c2)
      3. How to serve a human being:
         • 4e2 - three choices
            • Personal service - anywhere in the state.
            • Substituted service - ok if at D's usual home, must be of suitable age and discretion who resides there.
            • Serve D's agent - appointed by contract or operation of law.
            • Nat'l Equipment Rental v. Szukhent - Ct. held that service to an agent specified in a contract between the 2 parties is valid, even when the agent is not personally known to one of the parties, so long as the agent promptly passes on notice and has no conflict of interest.
4e1 - any method of serving process that is allowed by state law. (either state where court sits or state where process is served.)

4. How to serve a corporation (4h)
   - Must serve officer or managing/general agent.
     - Sufficient responsibility that would transmit important papers.

5. Waiver of service (4d)
   - By mail (D can waive formal service)
   - Rule 4d states that if service is waived, the party does NOT waive any objection to PJ, venue.
   - Maryland State Fireman's Assoc. v. Chaves - Ct. held that although there was actual notice, D did not send back the waiver of service form via mail, and therefore service was improper.

6. Geographic limits of service of process (4k1a)
   - Can serve throughout the state.
   - Fed Ct. can only serve outside the state if a state court could. (use state service laws)
     - Exception (4k1b) - Bulge rule - if you can reach outside the forum 100 miles to add parties
     - (4k1c and d)

7. Immunity from service - courts may grant immunity from service in circumstances where statutory and constitutional conditions are met for the benefit of the court. (Witnesses/parties/attorneys in pending cases are immune from service while in the jurisdiction)
   - State v. Duffield - Court held that person in jail on criminal charges can be served with process for a civil suit, so long as he was voluntarily in jurisdiction at the time of arrest (regardless of citizenship)
   - Wyman v. Newhouse - Ct. held that if P is lured into jurisdiction to be served, service is not sufficient. **Fraud affecting jurisdiction = no jurisdiction at all."

B. CONSTITUTIONAL STANDARD FOR NOTICE

1. Mullane v. Central Hanover Bank - Notice must be reasonably calculated under all the circumstances to apprise D of the suit. Ct. upheld notice by publication for beneficiaries of a trust that could not be readily identified, however, ruled that since there were many better means to notify parties for whom addresses were available, statutory notice was inadequate.
   - Notice by publication - AKA Constructive Notice - Back page of newspapers, small print, almost always invalid. Rare that this will give actual notice.

2. Wuchter v. Pizzutti - SCt. Held that notice was invalid, although it reached D anyway, because it wasn't given in the proper procedural manner. The purpose of Rule 4 is to easily be able to determine if service was proper instead of analysis on a case by case basis.

3. Greene v. Lindsey - Ct. held that posting notice on door of residence was inadequate, as it may not always be received. **Current practice - Mail is superior manner of serving process.
4. Dobkin v. Chapman - Ct. held if service is impossible/impracticable, mail to last known address and publication in local paper was most advisable.

C. Opportunity to be heard - Prejudgment seizure of property.
   1. Constitutionality of seizure based on 5 factors:
      a. P must give affidavit of claim
      b. P must show specific facts that they are entitled to possession.
      c. Must get court order to seize property
      d. P may be required to post bond
      e. D gets hearing on the merits at some point.

III. SMJ - What court is D sued in? State or Federal Court? Fed Ct. can only hear certain kinds of cases, while States can hear all kinds.
   A. Diversity of Citizenship (not residence)
      1. Section 1332a1 - must be between citizens of dif. states and amt. in controversy must exceed 75k
      2. Complete diversity rule - no diversity if any P is citizen of same state as any D.
         a. Strawbridge v. Curtis - complete diversity rule. If any P is of same state as any D, no diversity, regardless of how many parties involved.
      3. Reasons for/against diversity requirement:
         a. For - To protect out of state parties from prejudice in state courts. Superiority of Fed. Common law is more efficient in establishing precedent.
         b. Against - Increases congestion in Fed. Cts., Fed. Courts should not decide cases arising under state law, as they are not primary authority on state law.
      4. Citizenship of a human being - US citizen is a citizen of state in which they are domiciled at the time of filing of the claim.
         a. 2 factors:
            • Presence in the state
            • Intent to make that state permanent residence
         b. ONLY 1 DOMICILE
         c. HYPO - OK domicile. Turns 18, goes to college in MA, goes to law school in CA for 3 years. Goes to med school in PA. Never goes back to OK. Has never formed the intent to make a new permanent home, therefore retains OK domicile.
         d. WWVW - Ct. held that Robinsons were still residents of Y because had not yet reached new address to make it new domicile. Must have intent AND actual presence in state to make new domicile.
      5. Citizenship of Corporation - prescribed by statute (1332c1)
         a. Of all states where incorporated, but usually only one.
         b. ONE state where principle place of business. PPB.
         c. Therefore could have 2 states of citizenship.
         d. **Exam - will tell states of incorp, doesn't have to tell PPB.
i. Factors - Nerve center (where decisions are made), Muscle center (place of most activities), Total activities (both nerve and muscle centers.)

ii. Most courts will use nerve center, unless all of the activity is in a single other state.

6. Amount in controversy
   a. Must exceed 75k, not counting interest on the claim or costs of litigation.
   b. P's claim governs, unless it is clear to a legal certainty that P cannot recover that much. (AFA tours v. Whitchurch)
   c. Aggregation (def) - where we must add 2 or more claims to get over 75k.
      i. RULE - Aggregate claims if one P v. one D. even if claims are unrelated to each other. NO AGGREGATION if there are multiple parties on EITHER SIDE. (Zahn v. International Paper)
      ii. For Joint Claims, use total value of the claim (ex. 3 joint tortfeasors sued. If total value is over 75k, doesn't matter how many parties. JOINT claim, any one could be responsible for total amt.)

7. 1359 - There is no diversity jurisdiction where a party, by assignment, has manipulated the system to create diversity. A party MAY MOVE to create diversity, however.
   - Rose v. Giamatti - Ct. held that in determining diversity, the court must disregard nominal/formal parties and determine jurisdiction based only on the citizenship of the real parties to the controversy. (Def) real party - one, who by substantive law, has the duty sought to be enforced or enjoined.

B. Federal Question (FQ) Jurisdiction (1331)
   1. Claim arising under Federal Law:
      a. Look only at the COMPLAINT
      b. Look only at P's CLAIM ITSELF. Ignore everything else (counterclaims, possible defenses, etc.)
   2. Well-Pleaded Complaint Rule - Just look at the claim in the complaint.
      a. **Is the Plaintiff enforcing a Federal Right?
      b. Osborn v. Bank of US - Ct. held that may exercise FJ if an issue is raised that MAY involve a FQ. Likelihood/remoteness that the FQ will actually come up has no bearing on FSMJ.
      c. Louisville and National RR v. Mottley - Mottleys have a lifetime RR pass. Congress passes a law (*) saying that RR cannot honor free passes. Mottleys sue RR for breach of contract and that new law doesn't apply to them.
         - Claim does not mention FQ. Simply breach of contract.
         - Mottleys are not enforcing Fed. Right. They only assert a claim for declaratory relief that raises a FQ. This is not sufficient for FSMJ.
      d. TB Harms v. Eliscu - Ct. held that disputed copyright assignment does not trigger SMJ. Must look to claim, and the ACTUAL LAW THAT CREATES the cause of action. Here, the cause of action is created under K law, and not trademark/patent law (involves copyrights, but not infringement). No SMJ.
         - Holmes' Creation Test - a suit arises under the law that creates the cause of action.
e. Merrell Dow v. Thompson - Ct. held that SMJ exists only when, in a claim with state-based claim for damages, P's right to relief depends necessarily on a substantial question of federal law.

- If jury could decide for P without ruling on fed law, P's right to relief does not depend on fed law.

C. Supplemental (Pendant) Jurisdiction (codified in 1367) - P must have met one of Diversity or FQ to get ORIGINAL CLAIM into court. There may be other claims in the case. For every claim, there must be SMJ.

1. If not all claims invoke diversity or FQ, look to Supp. Jur.


   - Most courts equate this with same transaction/occurrence. T/O. Same real world event.

   - However, if the state claim predominates, the court may dismiss the state claim and go ahead with the fed claim alone.

   - However, doesn't NEED to be heard in Fed. Ct. Court MAY hear state claim if from same T/O, even if fed claim fails before trial.


4. STEPS UNDER 1367:
   a. Does 1367a grant supp. Jur to this claim? Yes if it meets Gibbs. (very broad)
   b. Does 1367b take away supp jur? ONLY IN DIVERSITY CASES - Takes away certain P claims. (claims by P against persons joined by 14, 19, 20, 24; rule 19 P claims; claims by P under rule 24 intervener P's.)
   c. 1367c outlines situations in which the fed ct CAN remand case to state court:
      - Complex issues of state law
      - State claim predominates
      - Court has dismissed all FQ claims
      - Exceptional/other circumstances.

5. HYPO - How does Gibbs come out under 1367?
   a. 1367a granted supp jur in Gibbs.
   b. 1367b does not take away supp jur in Gibbs, because Gibbs was not a diversity case.

D. Removal - allows D a choice to REMOVE the case to Fed Ct. (sect. 1441, 1446, 1447)


2. Only D can remove. P can never remove a case to Fed. Ct. Even if P is subject to counterclaim, cannot remove.
• Shamrock Oil v. Sheets - Ct. held that P could not remove to fed ct. after being subject to counterclaim.

3. Removal can only occur within 30 days of SERVICE of document that First makes case Removable.

4. Can remove case if there is Fed. SMJ. (Diversity or FQ)
   a. **EXCEPTIONS IN DIVERSITY not FQ:
      i. No removal if any D is Citizen of forum.
         • American Fire v. Finn - Ct. held that removal where there were multiple defendants for a single wrong was improper, because not all D were diverse.
      ii. HYPO - P (TX) v. D1 (PA), D2 (NY). For $1M. Filed in NY state ct. Can it be removed by D's? *Generally can remove if meets SMJ (by diversity), **HOWEVER, exception because no removal in diversity case because D2 is a citizen of the forum.
      iii. HYPO - Same facts. Suppose P dismisses claim against D2. Case just became removable, because there is no longer an instate D. PROBLEM - NO REMOVAL OF A DIVERSITY CASE MORE THAN 1 YEAR AFTER IT WAS FILED IN STATE COURT.

E. Attacks on SMJ:
   1. Direct:
      • PJ may be decided before SMJ
      • Parties may not delay SMJ challenge until state SoL has run to bar state action.
      • Abuse may result in Rule 11 sanctions, because this ruling is not on the merits of the case.

   2. Collateral:
      • Judgment by court with no SMJ is generally VOID.
      • Collateral attacks should be based on the following factors:
        • Clear lack of SMJ
        • SMJ determination was based on question of law, not fact.
        • Ct's Jurisdiction was limited and not general
        • Question of SMJ not actually litigated.
        • There exists strong policy for Ct. not acting beyond J.

IV. Venue - Third major hurdle in selection of forum. (PJ, then SMJ). QUESTION - Exactly WHICH Federal Court do we go to? SMJ just gives allowance to A Fed. Ct. Not WHICH DISTRICT
   A. Considered a personal privilege of D.
   B. Basic provisions (1391a - Diversity, 1391b - FQ)
      1. P can lay venue in either: any district in which substantial part of claim arose, OR in any district where ALL Defendants reside (NOT CITIZENSHIP)
         • Exception: if all D's reside in diff. districts of the same state, you may lay venue in a district where any one of them resides.
- Residence is determined by domicile.
- Corporations reside in all districts where it is subject to personal jurisdiction (1391c). Can be much different than citizenship. (ex. Ford is Citizen of DE and MI. It is a resident of ALL districts in US due to business all over country.)

2. Diff between 1391a and b - subpart 3. Only apply if there is no district anywhere in the country where either provision applies. Different between Diversity and FQ.

3. Aliens may be sued in any district.

4. Forum selection clauses in contracts are generally held valid unless unfair. (Carnival v. Shute)

5. WRT Real Property - Ct. held that once PJ is established, a state court may entertain a case for damages to real property located in another state.
   - Reasor-Hill Corp. v. Harrison - Ct. held that if there is PJ in one court, that court can rule on damages to real property in another state. (Analysis rejected majority, which was based on old English rules for property in other nations. Rule for nations still valid.)

5. WRT Debt - When a debtor moves to a new address (jur. In a new venue), a substantial part of action is considered to have taken place there although the new address is not known to creditor.
   - Bates v. C&S Adjusters - Court held that although the collection agency transacts no regular business in NY, since P moved to NY, there is PJ over D there because collection letters were forwarded from P's old address (PA) to his NY address.

B. Transfer of Venue - Moving within same judicial system (transfer from one Fed. District Ct. to another District.)
   1. Transferor court - Original, where case was brought. Transferring case AWAY.
   2. Transferee - Ct. to which case is transferred. GETS case from other Ct.
   3. 2 Transfer Statutes - BOTH REQUIRE TRANSFEREE CT TO BE PROPER VENUE AND HAVE PJ OVER DEFENDANT. D cannot waive PJ to get into transferee ct.
      - 1404a - When Transferor is proper venue. (proper venue to proper venue) Look at convenience for parties (distance, location of events, etc.), interest of justice.
         - Hoffman v. Blaski -
      - 1406a - When Transferor is IMPROPER (?) venue. Transferor can transfer or dismiss the case.

C. Forum non conveniens (FNC) - Court dismisses because litigation would be more appropriate elsewhere. **Requires that there is an alternate forum in which to bring the action.
   1. Why dismiss?
      - Transfer is impossible - other court is in a diff. judicial system. (other court in a foreign country)
         - Piper v. Reyno - Plane crash in Scotland, Plane owned and operated by Scottish citizens, all people killed Scottish. Plane manufactured by PA. Case dismissed to be adjudicated in Scotland. (see footnote 6, public and private factors.)
         - P typically hate this, because no punitive damages or strict liability in foreign countries, D's love this.
2. Court may impose conditions on FNC dismissal (D's waiver of SoL, etc.)

V. Challenging Forum Selection - How does D challenge P's choice of forum? In some State Cts., D challenges by "Special Appearance". In this case, you can only contest PJ and nothing else. **Object - to force D to raise defenses AT THE OUTSET.** Rule 12.

A. Rule 12:
   1. Within 20 days, must respond with either:
      a. Motion - not pleading. Request for Ct. order
         - Rule 12b gives 7 defenses (can put them in Motion to Dismiss or in Answer)
            1. SMJ
            2. PJ
            3. Venue
            4. Insufficient process - problem with papers
            5. Insufficient service of process
            6. Failure to state a claim
            7. Failure to join an indispensable party
      b. Answer - pleading.
   2. 12g and 12h: give specific timing of defenses.
      - 12b2-5 must be put in first rule 12 response or else they are WAIVED.
      - 12b6,7 can be raised anytime thru trial on the merits.
      - 12b1 can be raised anytime in the case. (Dismissal of case with Supplemental Jur if no longer FQ).
   3. HYPO - P sues D. D files MD for 12b5. D files answer, including 12b2. Can this be used at this point? NO, because wasn't in first rule 12 response and was WAIVED.

VI. Erie Doctrine - Generally comes up in Diversity cases, not FQ. Court has to decide particular issue, judge has to decide whether to apply state law or federal law to the issue.

A. Swift v. Tyson - Ct. held that should apply state law for local matters (statutes, interpretation of statutes, permanent matters of real property) and apply fed law for all other matters (Federal Common law)
   - Allowed forum shopping for favorable local law to P, and also for D (thru removal) but denies forum choice to D when no diversity. **OLD LAW

B. Erie RR v. Tompkins - Federal Ct. must apply State substantive law to the issue. Ended administration of Fed. General Common Law. *(goal: avoid forum shopping and ensure equitable administration of law)*
   1. Rules of Decision Act (RDA) Sect. 1652. If there is no Fed. Law on point, must apply state law.
   2. Constitution requires (10th Am) that Fed Gov't not invade powers retained by states. (matters of law included.)
3. SUBSTANTIVE matters - elements of claim, elements of defense. Less obvious things like SoL require more analysis.

C. Hanna v. Plumer (66) - Erie as 2 separate issues.

1. Is there a FRCP on point? (can be Constitution, Statute, any Fed. Directive.)
   a. If yes, then must apply Fed. Rule so long as it is valid.
      • Validity is determined under Rules Enabling Act. (2072).
      • Congress designated power to write rules to Supreme Ct.
      • Therefore Rules are ok as long as do not modify a right. (Must be procedural, never stricken down by SCt.)
      • Therefore, do not use Erie.
      • Burlington Northern v. Woods - Ct. held that fine on losing appellants from state law is in direct conflict with fed law, therefore must use FRCP.
      • Stewart v. Ricoh - Ct. held that AL's policy against forum selection clauses was in direct conflict with 28 USC 1404a, which allows judges to change forum in consideration of all circumstances, so FRCP governs.
   b. If no, and judge wants to ignore state law, judge cannot if it is a substantive issue.

2. How do we know if the issue is substantive?
   a. Outcome determination - Guaranty Trust v. York, Walker v. Armco Steel. P's claim was barred under SoL, so couldn't proceed under state law. Files in Fed Ct. under diversity. SCt. Held that SoL is determinative. Must apply state law because failing to do so would result in different outcome.
   b. Balance the interests - Byrd v. Blue Ridge. State law said that certain issue had to be decided by judge, not jury. Does Fed judge have to apply that state law? Fed. Judge wanted to let jury decide. SCt. held that if not clearly substantive, we will apply state law unless the fed system has an interest in doing it differently. Therefore judge could allow jury to decide, no good reason not to.
      • Avoid forum shopping.
      • Avoid inequitable administration of law. (Ask - At the outset of the case, if the Fed. Ct. ignored state law, would it cause litigants to flock to Fed. Ct? If so, then cannot ignore state law.)
   d. Gasperini v. Center for Humanities - P was awarded $300k for lost photographic slides. NY ct relied on state rule overturning verdict as excessive. SCt held that state statute could be applied in Fed Ct for review of verdict, while controlling trial court's discretion in review of verdicts.

D. Ascertaining State Law

1. Fed. Courts must apply conflict-of-laws rules of the states in which they sit, if the laws of that circuit differ from state to state.
   • Klaxon v. Stentor Electric - Ct. held that it is not the function of the federal courts to "make" state law or say what it should be, but to ascertain what it IS.

2. SCt may overrule state law when it is foreseeable that a state supreme court would overturn state precedent when case is brought.
• Mason v. Am. Emery Wheel Works - Ruling of court went against "harsh rule" of precedent, because it was contrary to great weight of authority and court was sure that old state rule would be overturned when any applicable case was brought in state ct.

E. Hypos:

• Diversity case in Fed Ct.. Under FRCP 23, class can be certified. Under state rule, not certifiable.
  a. Hanna question - Is there Fed Law on point? YES - Rule 23. Rule is valid, and stands. DONE.

• State is concerned with medical malpractice cases. MO passes a statute saying that when filing a MMC, it goes to arbitration panel for hearing. Plaintiffs hate this. Statute then says if you don't like the result, you can go to trial, but the jury knows what the panel says. Citizen of IL goes to MO, sues in MO fed. Ct. for MM under diversity.
  b. Fed. Must apply State law if substantive. Not obvious. Go to phrases:
    • Outcome determinative? Not really. Not clear that panel and jury reach diff. decisions.
    • Balance of interests - Under Byrd, will apply state law unless Fed System has some interest in doing it differently. What is Fed interest? Here, the state has a strong interest in its rule, to reduce cost of medical care. There is no infringement on Federal process. Balance in favor of state law.
    • Twin aims - If judge ignores state law, will it cause people to flock to fed ct? Yes. Therefore should stick with state law.
    • FINALLY - INDICATES SUBSTANCE.

VII. Pleadings - Using FRCP

A. General purposes:
  • Provide notice
  • Get rid of baseless claims (Rule 12b6)
  • Set out each party's view of facts (discovery)
  • Form narrow issues to be litigated (discovery)

B. Complaint - Principle pleading by P. FRCP 8A.
  • Requirements:
    a. Must have Statement of Federal Jurisdiction
    b. Short and Plain statement of the Claim. (Dioguardi v. Durning)
      • Notice pleading - not a lot of detail. (states use Code pleading - law that gives entitlement to relief, more detail)
      • Exceptions - Rule 9b, 9g:
        • Fraud or mistake - must give details/particularity.
        • Items of special damages: do not normally flow from an event.
    c. Demand for judgment (money, injunction, etc.)
- Garcia v. Hilton Hotels - Ct. will deny motion to dismiss for failure to state a claim when
  the claim presented is obviously frivolous, but may grant a motion for more definite
  statement if pleading lacks specificity.
- Swierkiewicz v. Sorema - Ct. held that complaint need not allege all of the elements
  necessary to prove the case, only enough to put D on notice.
- American Nurses Assoc. v. IL - Ct. holds that when one valid claim is among many
  invalid claims in complaint, ct should not dismiss. MSJ is more appropriate.

C. D's Answer - Rule 12 says within 20 days of SERVICE, must respond by motion or answer.
- Respond to allegations of complaint. Rule 8b.
  a. 3 options:
    - Admit
    - Deny (Failure to deny can be treated as an admission. Exception: You never
      admit the amt. of damages.)
    - Lack sufficient info to admit/deny
  b. Zielinski v. Philly Piers - In answer, D must specifically set out which facts it
    admits, and which it denies. A general denial does not put P on notice of the facts
    that P must prove, or that there is no case because the wrong D is sued.
- Raise Aff. Defenses. Rule 8c. AD's is not a denial. It is a NEW FACT as to why P
  cannot win. **MUST BE PLEADED IN ANSWER, or WAIVED. If forget, may be
  able to amend answer.
  a. Examples:
    - SoL - Even if D did all the things P claimed, SoL makes it so P cannot win.
    - Res Judicata
    - Assumption of Risk, etc…
  b. Ingraham v. US - Ct. denied gov't motions for relief from judgment on excessive
    damages because not raised in timely manner. Court designated statutory limit on
    recovery as an aff. Def. which must be raised in the answer.
  c. Taylor v. US - SCt. held that statutory limitation on liability was not an AD.
    (contradicting/overruling Ingraham.)

- 15a - gives 3 basic rules about amendment in Fed. Ct.
  a. P has right to amend once before D serves answer, no day limit.
    - D's motion to dismiss is NOT an answer. P can still amend even after
      MD.
  b. D has right to amend once within 20 days of serving answer.
    - D can amend to add AD's within 20 days.
  c. If there is no right to amend, seek leave of court. (permission)
    - Beeck v. Aquaslide - Court granted leave to amend when D discovered
      (after had already admitted) that product causing injury was not one of
      theirs. This is based on determination that P would not be foreclosed from
      suing another D.
d. Court may render binding decision on issue when evidence is presented by one party, if opposing party should have notice that issue will be decided.
  - Moore v. Moore - P filed for custody of child, denied by ct. D was therefore granted custody, although not pleaded by D. However, P was not on notice that spousal maintenance support was being litigated, so even though P failed to object, the decision is not binding.

  - 15b - about variance, can only come up in trial. Where trial evidence does not match what was pleaded. 1 of 2 things can happen:
    a. Other side does not object to evidence. At this point, the pleading is effectively amended to show this new evidence.
    b. Other side objects. Evidence is not admissible if objected to. Even then, the party proffering evidence can move to amend. (liberal)

  - 15c - very specific. Where one side wants to amend after SoL has run. Amendment to add new claim or new D.
    a. Relation back - Treat amended pleading like it was filed with original.
      - When the amendment changes the party or naming of the party against whom a claim is asserted, if the amendment properly satisfied service of summons requirement in rule 4m, and party to be brought in:
        - Received actual notice and will not be prejudiced in maintaining their defense on the merits, AND
        - Knew or should have knows that, but for a mistake concerning the identity of the proper party, the action would have been brought previously.
      - Worthington v. Wilson - Ct. held that P's complaint, which alleged D as unknown but later moved to amend, had no relation back because naming of parties was not a MISTAKE, just an unknown.
    b. HYPO - case filed on July 1. SoL runs on July 10. On July 15, P wants to amend to add new claim. Can he do it? Only can if there is relation back. How do we know?
      - 15c2 - Relation back IF THE AMENDED PLEADING concerns the same conduct, T/O as original pleading. Involves same real world events.
      - 15c3 - Relation back if adding new D. MUST MEET STANDARD in 15c3

E. Sanctions to deter frivolous pleadings - Rule 11 and 23.1
  - Rule 23.1 - goal: to prevent strike suits, but not to dismiss suits brought in good faith my shareholders who believe they have been wronged.
    - Surowitz v. Hilton Hotels - Ct held that P's suit for investment in share of stock, although filed and handled by son in law, was brought in good faith.
  - Rule 11 - allows sanctions for frivolous suits on lawyers and firms, both by motion of opposing party or court's own initiative. 21-day safe-harbor period exists to allow party's lawyer to change defect in suit and avoid sanctions. Purpose: to deter lawyers who discover lies by their clients from filing frivolous claims anyway.
    - Hadges v. Yonkers Racing Corp. - Court held that attorneys are entitled to rely on client's statements when they are reasonable.
VIII. Joinder - determine scope of litigation. EVERY CLAIM MUST HAVE SMJ.

A. Claim Joinder by P - Rule 18a.
   - P may (doesn't have to) join any claim she has against D. Don't have to be related in any way at all.
   - After P determines claims, must assess SMJ
   - Judge may still separate claims for ease of litigation.
   - However, when there is one T/O leading to multiple causes for relief, all relief must be sought in one action. Harris v. Avery.

B. Claim Joinder by D
   - Counterclaim - Rule 13a,b
     a. (def) claim against opposing party, someone who has already sued D. (ex. Back to P)
     b. MUST BE Filed with answer
     c. Mitchell v. Fed. Intermed. Credit Bank - Ct. held that party may not use a claim as a shield in one action and then as a sword against the same party in another action.
     d. 2 kinds:
        - Compulsory Counterclaim 13a - (def) arises from same T/O as P's claim. Must be asserted in this case, or it is WAIVED.
        - US v. Heyward-Robinson - Ct. held that 2 subcontracts entered into by the same parties for the same type of work during the same time, they may be considered of the same T/O.
        - HYPO: A and B are driving own cars and collide. A sues B, litigate and over. Case 2, B sues A for same injuries. Case dismissed because arose from same T/O. Compulsory Counterclaim not filed and waived.
        - Permissive Counterclaim 13b - (def) does not arise from same T/O as P's claim. May assert at same time, but not required.
     f. Same facts, but D's counterclaim is only for 45k. P's claim belongs in Fed. Ct for diversity and amt. in controversy. However, Counterclaim does not exceed 75k. Look now to Supp. Jur. 1367a - Does it meet Gibbs? Yes, because it arises from same T/O. Does 1367 b take it away? Only kills claims by Plaintiffs, therefore OK.
   - Cross claim 13g, h
     a. (def) - against a co party, must arise from same T/O, not compulsory.
     b. LASA v. Alexander - Ct. held that supplementary jurisdiction is granted to all arising counter and cross-claims from the same T/O of a single complaint, and Judge can use rule 42 to separate the claims for litigation for simplicity. However, cross claims that are not related to original T/O are not granted Jur.
c. Rule 13h is the best way to bring in a party for indemnification when indemnity is based on a CC or XC.

d. P may not bring XC against Co-P unless made a D by a CC.

e. HYPO - A, B, C in separate cars collide.  A (CA) v. B (AZ), C (AZ).  All claims over 75k.  Diversity because every P is diverse from every D, all claims over 75k. We represent C:
   - We will assert a compulsory counterclaim against A.  That claim gets into Fed. Ct. because of diversity (citizenship and amt.)
   - May file cross claim against B.  This is NOT diverse, (citizenship). However, Supp. Jurisdiction.
     - 1367a - Meets Gibbs, because same T/O
     - 1367b - Is it taken away? Applies in diversity, but does NOT, because a D's claim.

C. Proper Parties - Rule 20a.  This is a tool for the Plaintiff.  Tells when we can have multiple Plaintiffs and Multiple Defendants.
   - Test - 2 factors determine allowance of joinder as COPLAINTIFFS
     a. Claims arise from same T/O
     b. Claims raise at least one common question
   - May multiple parties be joined as CODEFENDANTS - same 2 part test as coP

D. Indispensable Parties - WHO MUST BE JOINED - Rule 19
   - Definitions:
     a. Indispensable parties - parties with an interest in the controversy such that a judgment cannot be made without either affecting their interest or leaving the controversy in such a condition that its final result may be inconsistent with equity and good conscience.
        - If cannot get indisp party in, can dismiss w/o prejudice, or if there is no forum in which indisp. Party can be brought in, can continue to allow some relief to P.
     b. Necessary parties - parties with an interest in the controversy, but those interests are separable from other parties and the court can proceed to a final judgment without affecting those parties while doing final justice.
        - Provident Tradesmens Bank v. Patterson - Ct. held that a party is not indispensable if the absence of that party may be prejudicial to that party, but that the likelihood is low and a judgment has already been reached.
   - Rule 19 - 3 steps:
        - Yes, if A meets ANY of 3 tests:
          19a1 - without A, the court cannot accord complete relief
          19a2i - A's interest may be harmed if not joined.
          19a2ii - A's interest may subject D to multiple or inconsistent obligations.
Joint Tortfeasors are not necessary.

HYPO: A owns 1000 shares of stock in X corp. B says that he paid for half, and that should own jointly. B sues X for ct. order to cancel A's stock, and reissuance in joint names. Is A necessary? YES, under all 3 tests, especially second.

b. Is joinder of A feasible?
   - PJ and SMJ.
     - Does ct. have PJ?
     - Would A's entry into case destroy diversity?

c. If NO to part 2, then: either proceed without A, or dismiss the case.
   - 19b gives factors courts consider, when determining whether to dismiss or go on. Court looks to see if another court could take the case with A.
   - Dismissal indicates that A was INDISPENSIBLE.

E. Impleader - Claim between existing party and someone new. (C claims are between existing parties, I claims are between existing party and someone new.) Rule 14.

1. (def) Defending party joins someone new who may be liable for claim against D.
   - Ex. P sues one of several joint tortfeasors. D then sues other contributors to tort. Third Party Defendants (TPD) are ones brought in.
   - Jeub v. B/G Foods - Ct. held that D only has a right to implead TPD upon conclusion of action with P for indemnity, D may still bring in TPD. TPD will not have to pay until judgment is entered against D.
   - Too, Inc. v. Kohls - Ct. rejected request for impleader when highly unlikely that TPD will be able to actually indemnify D. May bring in TPD for contribution, but not complete indemnity.

2. P may assert a claim against TPD if it arises out of same T/O. Then assess SMJ.

3. TPD may assert claim against P if it arises out of same T/O. Assess SMJ.

4. P's to original claim do not become Ds when subjected to CC or XC for Supp. Jur. purposes.

F. Intervention - joining someone new. Absentee comes into case on own volition. Must come in as either P or D. Court may realign status, but must come in either as P to assert a claim, or as D to defend against claim. Rule 24.

1. Conflicting goals:
   - Efficiency of resolving related issues in single event
   - Prevention of excessively complex lawsuits.

2. 24a2 - Intervention of right - test: you have a right to intervene if A's interest may be harmed if not joined, and is not adequately represented now.
   - Smuck v. Hobson - Ct. held that parents seeking appeal on racially segregated school issue must have an interest (not necessarily a right at issue), and that their ability to protect their interest would be impeded by action without their involvement, and that they were not adequately represented (school board had voted not to continue litigation.) Ct. held that decision by school board must have
been in bad faith to allow intervention by parents, because parents' interests are traditionally represented by school board.

3. 24b2 - Permissive intervention - must show that A's claim or defense has at least one common question with the pending case. Court has discretion in allowing permissive intervention.

4. **assess SMJ after all determination of status.

G. Class actions - Representative(s) sues on behalf of a group. Most times just P class actions. D class actions are rare.

1. Initial requirements - Rule 23a
   - Numerosity - too numerous for practicable joinder
   - Commonality - some question in common to all class members
   - Typicality - representative's claim must be typical of the class.
   - Representative will fairly and adequately represent the class.
   - General Telephone v. Falcon - Ct. held that class certification can be reversed because class representative made no showing of commonality and typicality of claims between his case and the class.
   - Holland v. Steele - Ct. found that if members of the class suffered the same injury, regardless of status as inmates or detainees, there was commonality.

2. Next step - must fit the case within one of three types of class actions - Rule 23b
   - B1 and B2 (discrimination suits) are specific. (*cannot opt out)
   - B3 - Must show these things:
     i. Common questions predominate.
     ii. Class action is the superior way to resolve this dispute
     iii. If certified, the court must define the class and appoint class counsel (23g)
     iv. Must give notice to all members of the class and give opt-out.
     v. Settlement or dismissal of a certified class action must be approved by the court. (may opt out again before settlement)
   - In all types, in settlement/dismissal, must give notice to all members to get feedback. 23e.
   - Causey v. Pan Am - P must show that class action is best way to resolve dispute, not appropriate for mass tort (disaster, plane crash, etc.) due to difference in injury, issues, relief desired.

3. Jurisdiction in Class Actions
   - SMJ - 1332a1 - Diversity - 2 factors:
     - For citizenship, look ONLY AT REPRESENTATIVE.
     - Amount in controversy - Exxon Mobil v. Alla Pattah - Class invokes diversity if representative's claim exceeds 75k, regardless of class members' claims. This comes from Supplemental Jurisdiction.
   - PJ - In class actions for money damages, notice sent and received is enough to satisfy PJ over P class. (Philips Petroleum v. Shutts)
Does not apply where no money damages, or where notice is not required. Minimum contacts must be shown.

However, this can be avoided by basing fed. PJ on US citizenship of class members.

4. Due Process in Class Actions - One's interests must be adequately protected by the members of the class who are actually parties to the action to be bound by the judgment.
   - Hansberry v. Lee - There is no estoppel of suit by landowner class against two consecutive Ds for selling land to black buyers. The interests of D are opposed to that of the class, so cannot be bound by 1st judgment.
   - Martin v. Wilks - Ct. held that White firefighters cannot be bound by decision in which they failed to intervene Voluntarily. P needed to be joined as a party to be bound by previous decision.

5. Costs - Costs of notice in class action must be undertaken by party seeking class status.

6. Class Action Fairness Act - Completely separate grant of SMJ for class actions. 1332d2.
   - Class action is OK in Federal Ct. if ANY CLASS MEMBER is diverse from ANY DEFENDANT and total Amt. in controversy exceeds $5M. This makes it much easier to get class actions to Fed. Ct.

7. Mass Tort Class Actions:
   - Problems:
     - Choice of law, Erie, notice to large numbers of class members, subclasses, and difficulty of proving class membership (Castano v. American Tobacco)
     - High stakes (on lives, etc of P.) This may indicate that it is not a waste of resources to conduct individual trials.
     - Differences in individual issues outweighs commonality of injury (Dalkon Shield)
     - Product liability class actions - Not usually certified.
     - Amchem v. Windsor - Exposure/injury differences added to differences in health histories of class members make typicality/predominance difficult. There is also the problem of notice to individuals who were potentially exposed.
   - Factors for certification:
     i. Increasing likelihood:
        - Centrality of at least one issue
        - Limited fund for recovery (especially in 23b1 - no opt out)
          - Ortiz v. Fibreboard - Ct. held that fund must be limited before claim commences, instead of during the litigation process. However, this makes it more difficult to certify 23b1B classes.
     ii. Decreasing likelihood:
        - State variation in law
        - Larger typical claim
• Very novel claim
• Closing off future plaintiffs who haven't shown injury

8. Preclusive effect of Class Actions

• Cooper v. FRB Richmond - Ct. held that ruling for D in class action on discrimination does not preclude future actions by individuals for own claims. However, future claims cannot be for discrimination, because this issue was already disposed of by ct.

IX. Pretrial Adjudication

A. 12b6 - Motion to Dismiss for Failure to State a Claim (Demurrer)

1. Court does not look at evidence.
2. If the Plaintiff proved everything she has shown, would she win?
3. Usually brought up very early in the case, gives dismissal without prejudice (can be amended and refiled.)

B. Summary Judgment - Rule 56

1. Here the court can look at evidence.
   a. Usually in affidavit form.
   b. Use depositions, interrogatories.
   c. Pleadings cannot be considered evidence, but may be used.
   d. Lundeen v. Cordner - Ct. held that MSJ was appropriate because D supported motion with affidavits and evidence, P had own testimony of intent. Must refute evidence with own evidence to show issue of fact.

2. Standard - 56c
   a. Moving party must show:
      i. No genuine dispute on material issue of fact.
      ii. Entitled to judgment as a matter of law.
   b. All inferences are drawn in favor of NON MOVING party

3. Courts do not tend to grant MSJ, but several cases came out that go against this:
   a. Celotex v. Catrett - SJ is a useful part of FRCP to secure just and speedy results.

4. General rules:
   a. Rarely granted for party with burden at trial
   b. Generally tougher to grant in tort than in contract.
   c. Court never resolves disputes of fact on summary judgment.

5. Burden of Proof for MSJ:
   a. Moving party is party with BoP at trial.
      • Party with burden of persuasion at trial must establish elements of case. (moving party)
      • Burden then shifts to other party to establish an issue for trial.
   b. Non-moving party has BoP at trial:
Moving party can achieve MSJ in 2 ways:
  - Bring evidence to negate an element of non-moving party's claim OR
  - Show that non-moving party's evidence is insufficient to establish an element
    - Then non-moving party must establish evidence for elements of claim.

c. Evidence does not need to be admissible at trial for purposes of MSJ.

C. Dismissal - Rule 41
1. Voluntary dismissal - almost always granted. Purpose - to extricate moving party from lawsuit without affecting legal rights. Returns parties to the place they were before suit began.
   - Is not viewed as an adjudication on the merits, unless P uses it to harass D. If suit is dismissed, brought again, and moved for dismissal, it is then viewed as an adjudication on the merits.
2. Dismissal for failure to prosecute - based on P's lack of due diligence. D is not prejudiced if motion is denied.

D. Default Judgments - Rule 55
1. Clerk may enter default judgment on actions where damages are certain and calculable - like K, but not for injury.
2. 3 days notice required to party who has appeared in action but will have default judgment entered against them.
   a. Coulas v. Smith - If the party has answered or pled on the merits of the case, default judgment will serve as adjudication on the merits instead

X. Trial
1. 7th am - PRESERVES right to jury trial in civil cases in fed. Ct. from 1791 (not state ct. 6th am - criminal cases.) Right to jury trial MAY BE WAIVED.
   a. Only in law, not in equity.
   b. Difference is in what remedy is available.
      i. Law - Damages, $$ for harm
      ii. Equity - Injunction (court order to do/stop doing something), Specific Performance (compels action), Reformation, Rescission.
   c. Now, Law and Equity are merged. How do we determine right to jury?
      i. Before 1959 - Court looks to see at Center of Gravity of Case - remedy.
         - For cases that were primarily equity, judge could decide any incidental issues of law that arose in the course of litigation.
      ii. Beacon Theaters v. Westover - SCt held that right to jury trial cannot be taken away due to mixture of legal and equitable claims in the same case.
iii. **DQ v. Wood - SCt** held that right to jury trial is preserved, but that jury issues should be tried first and then issues of equity determined by the judge.

- Determine jury right ISSUE BY ISSUE, not all or nothing.
- If an issue of fact underlies law and equity, you get a jury on that issue.
- Try jury issues first, then judge rules on equity issues.

2. **Issues with jury trial:**
   a. Complexity of case for unraveling by the jury
   b. Practical limitations on jurors' knowledge, experience and ability
   c. Capacity of jury to make rational decisions to afford due process to parties
   d. Cost of jury trial > judge, both in money and time.

B. **Types of verdicts:**
   1. **General verdict:**
      - Verdict entered for a party without explanation of grounds on which it was entered
      - No way to know how jury made decision (based on major aspects of the case or sentiment?)
   2. **Special verdict -** verdict entered by the jury in response to questions on discrete issues
   3. **General verdict with answers to interrogatories:**
      - In negligence suit, with contrib. neg. as a complete bar to recovery, jury returns verdict:
        - P was negligent, or
        - D was negligent.
      - If jury returns verdict that does not follow instructions, new trial must be ordered.
      - If verdict is unambiguous, court can mold it to fit instructions. But if not, new trial necessary.

C. **Motions - 3 motions to control jury**
   - Motion for Judgment as a Matter of Law (JMOL) Rule 50a - takes decision away from jury.
     - Standard - reasonable people could not disagree on the result.
     - Similar to MSJ - no issue of fact.
   - Judgment notwithstanding the verdict (JNOV) Rule 50b - same as JMOL, comes up later in the case
     - Jury reached decision that reasonable people could not reach. (not applicable if reasonable inference could be made that does not contradict laws of nature - Kircher v. Atchison)
     - Can undo jury decision by JNOV, takes judgment away from jury's side and gives it to other side.
     - Denman v. Spain - Ct. held that since there was no evidence for P nor against D, must rule for D although jury found for P in car accident case.
   - Motion for New Trial (MNT) rule 59a
Less Radical than JNOV

Must come up within 10 days of verdict

Almost limitless grounds for new trial

Can be whole new trial or partial new trial.

Conditional New Trial - Liability is clear, but damages figure is way off. (Robb v. Hickey)

i. Jury gives too high damages figure - Judge orders new trial unless P agrees to remit to lower amount. Court cannot just lower award, P must consent. OK in fed. Ct.

ii. Damage figure is too low - P MNT, Judge orders new trial unless D adds to damages figure and gives P more $$$. Unconstitutional in Fed. Ct., violates 7th am.

Appealing Directed or JNOV verdicts - only on "abuse of discretion" by trial court

- On DV, Appeals ct. may AFFIRM or enter NEW TRIAL
- On JNOV, ct. may AFFIRM JURY VERDICT, AFFIRM JNOV, or enter NEW TRIAL
- On MNT, no appeal. Only judgments can be appealed. However, DENIAL of MNT can be appealed.

D. Jury Misconduct

- Mansfield rule (majority) - jurors may not submit affidavits that impeach a verdict they decided upon.

- Iowa rule - Intrinsic v. extrinsic acts:
  - Extrinsic acts which may be corroborated or disproved may be admitted (such as access to improper matter or illegal method of reaching verdict)
  - Intrinsic acts such as thoughts, misunderstandings and prejudice of jurors may not be admitted.

- Quotient verdicts - damages determined by averaging all jurors' sums instead of collaboration.
  - Hukle v. Kimble - Ct. held that quotient verdicts were grounds for new trial.
  - Schulz v. Chadwell - Ct. held that quotient verdicts may be used as a starting point for deliberations, and not be grounds for new trial if not used for final damages value.

- Voir Dire
  - McDonough v. Greenwood - Ct. held that for new trial, juror must be found to have answered dishonestly in voir dire, and that an honest response would have provided grounds for dismissal for impartiality.

E. Extraordinary relief from judgment:

- Mistake/Excusable Neglect:
  - Briones v. Riviera Hotel - Ct. held that failure to notify translator of deadline was excusable under 4 factors:
  - Danger of prejudice to opposing party
• Length of delay and effect on proceedings
• Reason for delay
• Moving party acting in good faith
• Newly discovered evidence/Fraud:
  • Patrick v. Sedwick - Ct. held that evidence must have been in existence or would have been discovered by due diligence at time of original trial.
  • Smith v. Great Lakes Airlines - Ct. held that judgment can only be set aside on extrinsic fraud (that which prevents a litigant from making a claim/defense, like SoL.) Cannot set aside on witnesses lying.

XI. Binding effect of decisions
A. Res Judicata/Claim Preclusion
• Must be 2 cases: 1st with FINAL JUDGMENT, 2nd PENDING
• **Question: Does the judgment in case 1 preclude the court from litigating anything in case 2?
• AKA: One bite at the apple - You can only sue once on a particular claim.
• 3 steps:
  • Were both cases brought by same P against same D?
  • Did case 1 end in final judgment on the merits?
  • ON THE MERITS - Rule 41b - all judgments are on the merits UNLESS made on JUR, Venue, or Indispensable parties. Settlements have no preclusive effect unless in class action.
  • Rinehart v. Locke - Dismissal of case = adjudication on merits. If prior case was dismissed, cannot bring again.
  • Anguiano v. Trans. Bus System - Dismissals are categorized as voluntary or involuntary. Invol. = adjudication on merits unless otherwise specified.
  • Semtek v. Lockheed - Claim preclusion operates to keep same case from being brought in same court. However, if case 2 is brought in Fed. Ct. in another state, the claim is given whatever preclusive effect that it would have in the state ct. of that jurisdiction.
  • Do both cases involve same claim?
• Majority holds: same T/O
• Minority: Specific to rights invaded. Different right, diff. claim.
• Federated Dept. Stores v. Moitie - Ct. held that red judicata precluded 2 Ps from bringing action in fed. Ct. for which the original case had been appealed and overruled. Claim preclusion encourages Ps to litigate entire case in court in which it was originally brought.
• Jones v. Morris - Ct. held that D was precluded from litigating for full payment of loan due to acceleration clause (making whole amt due when defaulted. D originally accepted 2 mo. payment as damages in first claim.) D could not then sue for remainder.

B. Collateral estoppel/Issue Preclusion - more narrow that Claim Preclusion
• Must be 2 cases, with an issue that has already been decided in 1, to be re-decided in 2.
*Question: Was there an issue established in 1 that needs to be decided in 2?

5 steps:

- Did 1 end in valid final judgment on merits?
- Is an issue that was actually litigated in 1 present in 2?
- Cromwell v Sac - Ct. held that since P failed to submit evidence that he was a bona fide purchaser in case 1, it was not actually litigated and cannot have preclusive effect in 2.
- Was the issue in 1 essential to the judgment in 1?
- Russell v. Place - Ct. held that may look at extrinsic evidence to determine if issue was essential to court's ruling.
- Rios v. Davis - an issue of fact that does not become basis or grounds for verdict is not preclusive to either party.
- Patterson v. Saunders - Even if issue not at core of verdict, an issue decided in court could be held conclusive if not appealed.
- Schwartz v Pub Administrator - Ct. held that preclusive effect is given to issue decided in prior case where 2 parties were coDs to each other.
- Mutuality - can only be by someone who was in 1. (not held by all courts).
  - NON-MUTUAL ISSUE PRECLUSION - asserted by someone who was not in case 1. Allowed in some circumstances, but not if P could have joined in previous action of where it would be unfair to D. Parklane v. Shore.
  - NON-MUTUAL DEFENSIVE ISSUE PRECLUSION - D in case 2 is using decided issue as a defense even if he wasn't in case 1. Allowed. Bernhard v. BoA

C. Intersystem Preclusion

- Full Faith and Credit clause requires that a state give AT LEAST AS MUCH preclusive effect to a judgment from another state. Does not prevent giving GREATER preclusive effect.
- Hart v. American Airlines - Ct. held that NY was allowed to preclude further action after decided in TX (where mutuality is required). This gave a greater preclusive effect to the issues previously decided. Allowed.
- Fed-state preclusion - By Erie Doctrine, look to the law of state that rendered first judgment. If that state would give preclusive effect, Fed. Ct. must also. P could have initially brought both actions in fed. Ct. to get around this.