Civil Procedure Outline

I. Getting the Defendant Into Court

A. Personal Jurisdiction
   In personam = power over Δ
   Constitutional analysis of In personam jurisdiction:
   i. Does traditional basis apply? If so, in personam is satisfied (maybe).
   ii. 2 prong minimum contacts analysis
       1. Δ must have relevant contact w/ the forum
           a. Δ’s purposeful availment of the forum, not a unilateral act by Π.
           b. Foreseeability that Δ would be haled into the forum.
       2. Fairness
           a. Relatedness: does Π’s claim arise from Δ’s contact w/ forum.
           b. Convenience: burden is on Δ to show that the forum is unconstitutionally inconvenient.
           c. State’s interest in providing redress for its resident Π’s in this type of action.
           d. Π’s interests.
           e. Efficiency of legal system.
           f. Interstate interests in shared substantive policy.
   3. Unclear Issues
      a. Stream of commerce
      b. Presence in forum while being served.
      In Rem/Quasi in Rem = power over Δ’s property
      - State must have a statute that gives personal jurisdiction and case must satisfy due process requirements.
      Every state has a series of statutes, usually for gen’l jurisdiction:
      1. Domicile
      2. Non-resident motorists based on implied consent (specific jurisdiction for car crashes)
      3. Long Arm Statute
         A. Some, such as CA, reach to full constitutional limit
         B. Some give a ‘laundry list’ of various elements that subject a Δ to PJ such as contracts, transactions, real estate, torts, etc.
         C. Wording varies from state to state.
         D. Long Arm language is subject to different interpretations.
      General Jurisdiction: Δ can be sued in a forum on a claim arising anywhere in the world.
      Specific Jurisdiction: Δ can be sued in a forum only for claims that arose in that forum.
      Constitutional Limit on due process circle: the law today is an amalgam of all prior cases.

1. History of Minimum Contacts Test
   Pennoyer v. Neff (1877) p.62
   • Raw physical power; establishes that states have personal jurisdiction over people and property within its boundaries; gave traditional bases for personal jurisdiction.
   i. Δ served w/ process in the forum, a.k.a. presence; by being present at time of service gives general jurisdiction.
   ii. Service of process upon Δ’s agent in the forum.
   iii. Δ is domiciled in the forum; this also gives general jurisdiction.
   iv. Δ consents to jurisdiction (waiver)
   Under Pennoyer, it’s tough to get PJ unless the person is in the state while process is served.
   Hess v. Pawloski (1927) p.71
   • Δ injured Π in car accident in MA and left MA before being served; MA had a statute providing that if Δ gets in a wreck in MA, Δ has appointed a state official as agent for service
of process, consistent w/ Pennoyer but expands in personam jurisdiction by expanding the traditional bases; II appeared solely to contest jurisdiction (interlocutory appeal); statute was held to be a valid exercise of state police power;

i. Service upon Δ’s agent is allowed, but agent does not have to be appointed by Δ.
ii. Δ implies consent to appointment of an agent by driving on roads in a state.

International Shoe v. Washington p.75

• Court develops new formula instead of sticking with tradition; gives PJ if Δ has minimum contacts w/ forum so that “exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.” Hard to define language.
   i. Very flexible amorphous test; not rigid like Pennoyer; expands PJ.
   ii. Clear from International Shoe that II can get In Personam jurisdiction w/o serving Δ in the forum.
   iii. International Shoe doe not overrule Pennoyer.
   iv. Analyzes PJ in terms of minimum contacts and fairness.

2. Modern Minimum Contacts Test

a. Long Arm Statutes

Gray v. American Radiator (1961) p.82

• Minimum contacts are satisfied even when a corporation conducts no business within a state as long as the act giving rise to the lawsuit has a “substantial connection” to the state; Δ manufactured valves, but did no business in IL; defective valve was installed on water heater, causing injury in IL; Δ claimed no PJ in IL; IL Supreme Court found PJ; unless Δ’s product had been brought into IL against Δ’s will, Δ probably contemplated some of it’s products being in IL; “stream of commerce” argument that Δ has (indirectly) benefited from IL laws; IL has a strong interest in the litigation to protect its citizens and most witnesses/evidence are likely to be found in IL; Δ’s due process rights are not infringed by subjecting it to suit in IL.

McGee v. International Life (1957) p.91

• TX insurance co. sells only one premium in CA; contract is breached; TX company is subject to PJ in CA; the term was not used in the case but this is now referred to as specific jurisdiction.
   i. Δ solicited business in CA, was aware of and communicated with its policyholder in CA, so it should not be surprised about being required to defend suit there after refusing to pay the policyholder’s beneficiary.
   ii. Relatedness; Π’s claim arose from Δ’s contact w/ forum state, making up for a small amount of contact.
   iii. Forum state had an interest in providing a courtroom for its citizens being ripped off by an insurance company.

Hanson v. Denckla p.93 (1958)

• PA ♂ sets up trust in DE bank and holds an account for several years; ♂ moves to FL continuing to hold the account, then dies; court hold that FL does not have In Personam Jurisdiction over the DE bank b/c bank had no relevant contact with FL; to be a relevant contact under Int’l Shoe, it must result from Δ’s purposeful availing or reaching out to the forum; bank did not seek out FL, ♂ just moved there.


• No personal jurisdiction is established w/o relevant contacts; family moving from NY to AZ buys new car in NY, crashes in OK gets hurt badly, family sues 4 Δ’s for product liability in an OK court:
   i. Volkswagen manufacturer: PJ established
   ii. Volkswagen of North America: PJ established
   iii. Regional distributor: PJ not established-no purposeful avilment
   iv. Seaway motor dealer in NY: PJ not established-no purposeful avilment
Car got to OK not by purposeful availment but by II driving; foreseeability is relevant, but not relevant that product would get there; **must be foreseeable that Δ would get sued there.**

**Keeton v. Hustler** p.107

- Π was forum shopping; all 50 states allow damages for defamation, but NH had the longest statute of limitations plus a long arm that extended to the Due Process Clause limits; Dist court and CA1 both dismissed on the grounds that Π lacked sufficient contacts w/ NH to give NH enough interest in redressing libel to the Π, holding that “the New Hampshire tail is too small to wag so large an out-of-state dog.” Supreme Court found NH circulation was sufficient contact w/ forum.

**Kulko v. Superior Court** p.109

- Only divorce case that ever went to U.S. Supreme Court; children of divorced parents voluntarily moved from father’s NY home to mother’s CA home; mother sued father to adjust child support; father contested PJ in CA court; U.S. Supreme Ct. held that a state may not exercise jurisdiction over a Δ who has not purposefully availed himself of the benefits of that state, even if the state has a strong interest in the litigation; father’s single act of buying the daughter a one-way plane ticket to CA was not sufficient contact or purposeful availment w/ the forum; although CA has an interest in getting adequate child support payments, it would be more reasonable to try the case in NY, since that was the site of the marriage & separation.

**Burger King v. Rudzewicz** p.111 (1985)

- Contract case (not a tort case); Suit was brought in FL (Burger King Headquarters) against MI Δs; Δ never set foot in FL; also a choice of law issue b/c Δ wants MI franchise law to protect him; PJ was allowed; court recognizes 2 parts of International Shoe (contact and fairness); there must be relevant contact before looking at fairness:
  - Contact? Δs did avail themselves by making contact with FL (franchising w/ a FL corporation).
  - Fairness? Unfair to make ‘small guys’ travel to FL, but burden is on Δs to show unfairness and Δs must show that defending in FL is so difficult and inconvenient that it puts Δs at a major disadvantage in the litigation.

**Asahi Metal v. Superior Court** p.121 (1985)

- A Δ must purposefully avail himself of a forum by putting a product into the stream of commerce with the expectation that it will reach a forum state. Once contacts are established, fairness requirement must be met, which is tougher to do with foreign Δ. Given the inconvenience of defending a suit in a distant and foreign forum, it would be unreasonable and unfair for CA to exercise jurisdiction over Asahi. No majority opinion; product changes hands twice, issue of PJ for product liability:
  - i. 4 justices (Brennan): relevant contact if Δ put product in stream of commerce and could reasonably anticipate product getting to forum state.
  - ii. 4 justices (O’Connor): Need foreseeability and intent or purpose to serve the forum.
  - iii. Stevens did not decide.
  - THERE IS NO HARD LAW ON THE STREAM OF COMMERCE AFFECTING PJ.

b. **General Jurisdiction**

Rule: If Δ has continuous and systematic contacts w/ a forum, they are subject to general jurisdiction in the forum.

Incorporation/domicile: for sure

3 day travel (Burnham): maybe

**Perkins v. Benguet Consolidated Mining Co.** p.131 (1932)

- If sufficient minimum contacts exist, a state may assert PJ over a Δ even for causes of action arising outside the jurisdiction. Δ was a Filipino corporation that had its operations suspended during WWII; during the war, company president returned to Ohio where he operated an office, employed 2 secretaries, and kept company files. II sued in OH for failure
to pay dividends on stock; court found Δ had ‘continuous & systematic’ contact w/ OH to establish PJ, even though the cause of action is not related to OH or Δ’s activities within OH. Supreme Court generally gives state discretion to assert or forego PJ in these types of cases. *Helicopteros v. Hall* p.133 (1984)

- PJ may be satisfied by sufficient minimum contacts w/forum state so that maintaining suit does not offend fair play/substantial justice. Δ was from Colombia, owned helicopter that crashed in Peru, killed 4 U.S. citizens. Helicopter was manufactured in TX. Decedents’ survivors brought wrongful death suit in TX court. Majority held that Δ’s negotiations/purchase in forum state do not establish continuous & systematic contacts to establish general jurisdiction b/c Δ only took one trip to TX for contract negotiations. Accepting checks from a TX bank account is also insufficient b/c it’s a unilateral act. Dissent thought sufficient minimum contacts existed, did not offend fair play, Δ could reasonably expect to be called into TX, esp. b/c Δ sent pilots to TX for training and Δ obtained numerous benefits from its transactions in TX, and Π’s wrongful death claim is sufficiently related to the contacts between Δ and TX to warrant specific jurisdiction.

- **Internet Jurisdiction**

  *Bellino v. Simon* p.142

- Π alleged that Δ defamed Π’s business, causing a suspension of the business from eNay and a sales loss of $500,000; Δ also claimed that defamatory remarks to a LA resident caused a loss of sales; Δ gave his opinions to the LA resident for free and encouraged him to get a 2nd opinion; court holds that PJ is not established from one unsolicited phone call from the forum state to a nonresident Δ; however, the subsequent e-mails sent by Δ to the LA resident purposefully established minimum contacts such that Δ could reasonably anticipate being haled into court there (specific jurisdiction); Π is not a LA resident, but tortious effects of Δ’s activities were felt in LA, LA law applies, and principle witness is a LA resident; Δ has not shown that he would suffer a great burden by litigating the case in LA; person giving 2nd opinion lacks continuous/systematic contacts w/ LA, so the action against him must be dismissed.

3. **In rem jurisdiction**

   - In Rem: Court has power over Δ’s property and dispute is over who owns the property.
   - Quasi-In-Rem: Lawsuit has nothing to do with ownership of the property.

   *In Pennoyer,* Mitchell used property as jurisdictional basis for a suit

   1. There must be an In Rem/Quasi-In-Rem attachment statute allowing states to attach property.
   2. Do constitutional analysis if court attached property @ beginning of case.

   *Tyler v. Judges of the Court of Registration* p.150

   - Personal notice to all adverse claimants is not required in a motion in rem to quiet title to property; otherwise it would be impossible to have a judicial proceeding to clear title, b/c the purpose of the proceeding is to rid the property of all known and unknown claims.

   *Harris v. Balk* p.152

   - Courts may assert jurisdiction over debts if PJ can be attained over the debtor; Quasi-In-Rem: attaching Balk’s property in MD to the person of Harris (same concept as *Pennoyer*); Harris (NC) owed Balk (NC) $180; Balk owed $344 to Epstein (MD); Epstein served Harris while Harris was visiting MD; Harris consented and paid the $180 he owed Balk directly to Epstein; Balk then sued Harris in NC to recover the $180; Supreme Ct. reversed lower court decision in favor of Balk, holding that the situs of a debt travels with a debtor for jurisdictional purposes; so while temporarily in MD, Harris was liable for garnishment even if the debt was incurred in NC. (The notice given not likely to withstand a modern due process attack)

   *Shaffer v. Heitner* p.154 (1977)

   - Minimum contacts must exist for In-Rem Jurisdiction to attach; Π (nonresident of DE) owned one share of stock in Δ’s DE corporation; brought derivative suit in DE against
directors on behalf of corporation (impact on \( \Pi \) is minimal); pursuant to DE law, \( \Pi \) filed motion to sequester 82,000 shares of stock owned by 21 corporate officers; \( \Delta \) contended that they did not have sufficient minimum contacts to justify DE jurisdiction; U.S. Supreme Ct. reverse lower court decisions and held that officers’ stock shares do not provide sufficient contacts w/ DE to support DE jurisdiction; DE does have an interest in supervising the mgmt. Of a DE corporation, but the DE legislature fails to assert this interest in the sequestration statute; also, DE is not a fair forum for the litigation b/c the officers had never set foot in DE or purposefully availed themselves of DE benefits & protections; unreasonable to suggest that anyone buying securities in a DE corporation impliedly consents to DE jurisdiction on any cause of action. (after this case, DE amended its laws to provide unlimited PJ over every DE corporation director, but \( \Delta \)s corporation (Greyhound) then reincorporated in AZ)

4. Transient Jurisdiction

_Burnham v. Superior Court_ p.167 (1990)

- \( \Delta \) was sued in CA for claim arising in NJ while on a brief visit to CA that was unrelated to the cause of action; issue of whether CA had gen’l jurisdiction over \( \Delta \); is presence a basis for PJ or are minimum contacts required? Like _Asahi_, no majority opinion:
  i. 4 justices (Scalia): Presence has an historical pedigree for establishing PJ, so minimum contacts don’t need to be assessed.
  ii. 4 justices (Brennan): Disregard historical trends, all assessments of PJ should be made under minimum contacts test.
  iii. Stevens did not decide.

Since \( \Delta \) was present in CA and had benefits of CA legal protection (police & fire), \( \Delta \) was subject to general jurisdiction; at the time this case was decided, no state had ever used transient jurisdiction.

5. Jurisdiction by Consent

_Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee_ p.178 (1982)

- The failure to comply with jurisdictional related discovery may constitute implied consent to jurisdiction; \( \Delta \)’s failure to supply requested information as to their contacts w/ the forum supports the presumption that the \( \Delta \) jurisdictional defense was invalid; every court has the authority to decide its jurisdiction, subject to appeal; once someone attempts to contest jurisdiction, they are subject to the courts rules; \( \Delta \) (U.K. insurance co.) doesn’t pay a claim, then contests PJ in PA; \( \Delta \) was given huge discovery orders to justify their lack of jurisdiction; by not complying, court sanction is to establish jurisdiction;

In this case, jurisdiction is not established by presence, citizenship or minimum contact, but by **consent**. By coming to PA, British \( \Delta \) consents to U.S. Rules of Civil Procedure and waives due process rights by accident; \( \Delta \) could have stayed in England.

_Bremen v. Zapata_ p.180 (1972)

- A contract with an express forum selection clause may establish jurisdiction by consent, even if it’s in a foreign court; in this case, \( \Pi \) and \( \Delta \) clearly agreed to litigate all suits in London; international expansion of American commerce & industry would be adversely affected if we had to resolve all disputes in our own courts.


- \( \Pi \) gets injured on Cranival Cruise ship; when \( \Pi \) bought ticket, she unknowingly gave contractual consent to litigate cases exclusively in FL; \( \Pi \) files suit in WA, \( \Delta \) contests jurisdiction; Supreme Ct. reverses lower ct. decision establishing PJ for \( \Delta \) in WA; court finds the forum selection clause to be reasonable b/c \( \Delta \) has interest in limiting the forums where it can be sued, it spares litigants the time/expense of determining a forum and customers presumably benefit from lower prices if a \( \Pi \) company limits the forums where it can be sued. Bargaining power inequality btw \( \Pi \) and \( \Delta \) makes this decision seem less credible; boilerplate forum selection clause could be construed as unconscionable; no meeting of the minds, ticket
was non-refundable, Π did not know of clause at time of buying ticket. (Congress passed an act in 1994 that prohibited forum selection by shipping cos., then repealed the act 3 yrs. later) Δ could have declined to contest PJ in WA, had default jgmt entered, then Π would have to come to FL to contest it.

6. **Personal Jurisdiction in Federal Court**

Rule 4:
- 4(e) only covers service on individuals in the same district;
- 4(k)(1)(A) incorporates state long-arm statutes into the federal system; Congress incorporates state law into rule 4(k), b/c if there were a federal long-arm, a Π could bring somebody into a state where they have no contacts, simply b/c the Δ has minimum contacts with the U.S.; if congress decided that a federal long agrm was consistent w/ fair play & substantial justice, there would be a 5th amendment due process problem.
- 4(k)(1)(D) gives exceptions that allow federal long arm (U.S.C. authorization)
- 4(k)(2) is mistakenly read by some to mean that claims arising under federal law allow service of summons to anyone; it’s actually intended to allow Americans to bring foreigners into courts if they have contacts with U.S. (a foreign corporation doing business w/ U.S. citizens may not have minimum contacts w/ a state to have gen’l jurisdiction, but could still be subject to federal jurisdiction).

- In some cases no state long-arm works (federal question & interpleader)  
  - Jurisdiction could not be established over a foreign corporation that Δ wished to implead b/c the atate long-arm did not reach them.

  * Stafford v. Briggs p.183*

  * Oxford v. PNC p.184*
  - Out-of-district service of process is not constrained by constitutional strictures in *International Shoe*, but their application is limited by fundamental notions of fairness (Δ’s contacts w/ place action was brought, inconvenience of defending in a distant forum, judicial efficiency, locus of discovery, interstate character & impact of Δs activities)

7. **Challenging Personal Jurisdiction**

Rule 12(b),(g), and (h)
- Pleas & Abatement (initial ways to avoid a lawsuit)
- 12(b) gives 7 defenses to filing a claim (lack of SMJ, lack of PJ, lack of venue, insufficient process (very rare), insufficient service of process, failure to state a claim (12(b)(6)), indispensable parties; any single defense is sufficient to drop a claim)
- 12(b) (2,3,4,5) must be out in the first rule 12 response or else they’re waived.
- 12(b) (6 & 7) can be raised anytime through trial.
- 12(b)(1) can be raised at anytime-it’s never waived.

- If Π files a complaint of negligence, then Δ files answer denying negligence, Δ cannot then move for dismissal on grounds of 12(b)(2) lack of PJ-this will automatically be denied.
- 12(g) requires motions to be consolidated; generally, if all defenses are not raised in 1st motion, it is equivalent to waiving those motions.
- 12(h) gives exceptions to 12(g) (failure to state claim upon which relief can be granted, failure to join indispensable party, lack of SMJ)

- Once Δ begins to argue merits, the are implicitly consenting to jurisdiction; prior to rule 12(b) Δ had to explicitly state that they were not touching the merits.
- In some states (Cali) a Δ challenging PJ must do so thru a special appearance; this allows Δ to come into a forum to specifically challenge PJ and only PJ; if something else is challenged, PJ is
waived; federal rules and most states do not have the Cali special appearance rule; instead they put pressure on Δ to raise all issues at once or waive them

-Rule 12: when Δ is sued & served it must bring a motion or an answer within 20 days.

Data Disc v. Systems Technology p.186
• If a Π’s proof of PJ is limited to written materials, it is necessary only for these materials to demonstrate facts which support a finding of jurisdiction in order to avoid a motion to dismiss.

U.S. Industries v. Gregg p.189
• Δ had property sequestered and was refused the right to make a limited appearance in a forum; Δ was told that any judgment entered for Π would be in-personam, not in-rem; court found a legitimate public interest behind gen’l appearance rule b/c there is a public interest in having that expenditure of judicial resources settle the rights of parties w/ respect to that claim and not leaving open the possibility of subsequent, duplicative litigation; Δ always has the option of defaulting; if Δ defends on merits, there’s no difference btw applying gen’l or limited appearance rule.

Orange Theatre v. Rayherstz App. 1
• Rule has abolished the need for Δ to make a special appearance to contest jurisdiction, but Δ must still contest PJ in a timely manner.

B. Notice
Due process requires that Δ be notified; notice usually comes from service.

Mullane v. Hanover Bank p.191
• Notice by newspaper publication fails to comply with due process where the names and addresses of the parties are known. Π was a bank wishing to judicially terminate the rights of beneficiaries against the trustee for improper mgmt.; pursuant to statute, all beneficiaries of the common trust were notified in a local paper for 4 consecutive wks; Δ (Mullane) was appointed a special guardian; Δ argued that newspaper notice was inadequate to afford due process; U.S. Supreme Ct. reversed, holding that due process requires that notice be provided prior to the deprivation of life, liberty or property by adjudication; personal service of notice always complies with due process, but parties residing outside of forum do not necessarily need personal service b/c this would place impossible obstacles on Π; in many circumstances, notice by mail complies w/ due process, even though notice may not reach all interested parties, b/c it can be assumed that the present beneficiaries will defend the rights of interested parties (due process balances the utility of quieting title with the right to notice); notice by publication is not a reliable method of apprising interested parties of their rights; thus the NY statute is unconstitutional, but for Δs whose addresses are unknown, newspaper notice does comply w/ due process. (notice by publication is a legal fiction, b/c a reasonable person would not regularly read the legal notices in a newspaper published in a distant state—but there may be no other way; different w/ an in-rem proceeding b/c seizure of property would give constructive notice)
• Notice must be reasonably calculated under all of the circumstances to apprise the Δ of the suit; Notice by publication is almost always in small print at the back page of a newspaper and usually no good unless Δs whereabouts are unknown.

C. Service of Process
Service of Process is governed by Rule 4
i. Process consists of a summons and a copy of the complaint
ii. Service can be made by any non-party who is at least age 18; (Rule 4(c)(2)-federal, not local rule)
iii. 4(e)(2) gives 3 alternatives for serving an individual:
   a. Personal service-can be anywhere in the forum.
b. Substituted service—must be at Δ’s usual abode or dwelling and must be served on someone of suitable age and discretion who resides at the dwelling (not a babysitter); if a teenage son or daughter was served, Δ could contest suitable age/discretion of their child.
c. Π may serve Δ’s agent.; Rule 4(e)(1) incorporates methods of serving from state laws; Π can either use Rule 4 or state’s service of process laws.

iv. When serving a corporation, Π must serve an officer, manager or general agent (must be an agent of sufficient responsibility); Rule 4(e)(1) allows incorporation of state laws for serving a corporation.
v. Waiver of service in Rule 4(d) is generally done by 1st Class Mail.—NOT A PROVISION FOR SERVICE, but if Δ returns a form of waiver within 30 days, they don’t have to be formally served.

vi. Suitable locations for service:
   a. 4(k)(1)(A) allows process to be served throughout the forum state.
   b. Service can reach out of state only if the state court in that state could do the same thing.
   c. 2 Exceptions: (1) in 4(k)(1)(B) Π can serve outside a forum even w/o a state long arm, but only within 100 miles of the federal courthouse issuing the summons (bulge rule); (2) This exception does not apply to original defendants, only to joined parties under Rule 14 or 19.

vii. A rule may allow broader service.
   1. Mechanics of Service
      i. Rule 4(d)(2)(B) allows service of process by 1st class mail when it includes a request for waiver.
      ii. Rule 4(d)(4): when Π files request for waiver of service, Δ must either waive or pay for substituted service.
      iii. Even if Δ knows of lawsuit, failure to comply w/ Rule 4 will prevent litigation from proceeding.
      iv. Rule 4(h) authorizes agents to accept service of process; applies commonly accepted practice standard (similar to U.C.C.); provides that employees that frequently accept service for a corporation are valid agents.
      v. Cognovit notes are only legal in 4 states (incl. IL); they waive everything (notice, service, default jgmt. etc) by contractual consent; supreme ct. finds them constitutional in consumer contracts.
      vi. A statute of limitations can be tolled or stayed if Π goes into a coma or leaves the country for military service.

Maryland State Firemen’s Ass’n v. Chaves p.205 (1996)
   • Πs must strictly comply with service provisions, even if Δ has actual notice of the lawsuit; Π filed a complaint, then mailed a copy of complaint and summons to Δ; Δ never answered the complaint, so Π moved for default judgment; the motion was denied; even though Δ had notice of the lawsuit and consulted with a lawyer, Δ never returned the written acknowledgement of service, and Δ never attempted service by another means; Π did not follow state law of masiling summons & complaint by certified mail; also, Π could have sent a request for waiver of service, but did not; some jurisdictions relax the service rules when circumstances indicate that Δ had actual notice, but in this case Maryland adopted a ruled of strict compliance; service by mail is only effective if Δ returns written acknowledgement or consents to waiver; failure to waive forces Δ to pay the cost of substituted service.

National Equipment v. Szuhent p.212 (1964)
   • Service upon an expressly designated agent (by contract) is valid & proper, even if the agent is not required to deliver notice to the Δ; U.S. Supreme Court held that contractual appointment of an agent plus subsequent transmittal of notice to the defendant satisfies requirements of Rule 4(d)(1); if contracting for a forum is allowed, then contracting for an agent to serve process should also be allowed; although Δ did not know the agent, Δ
validated the agency by promptly accepting & transmitting the summons; also, the agent in this case had such limited authority that there was no conflict of interest; since this agent had such limited authority, there was no conflict of interest; since prompt notice was given to Δ, the agent met the requirements of Rule 4(d)(1).

- Black Dissent: Boilerplate agent designation clauses should not be allowed; finds this to be a due process violation.

2. Immunity and Etiquette

*State ex rel. Sivnkstv v. Duffield* p.222

- Nonresidents confined in jail on criminal charges are not immune from service of process for civil actions; Δ was arrested for reckless driving (hit 2 pedestrians) while on vacation and was awaiting trial in jail b/c he could not post bond; while in jail, Δ was served for a tort action by one of the pedestrians; Δ argued the court had no jurisdiction b/c he was a nonresident and a prisoner at the time of service; court held that a nonresident who voluntarily enters a jurisdiction (as opposed to entering to answer a criminal indictment) is subject to service of civil process. Criminal defendants should be immune from service when they enter a jurisdiction to answer an indictment to encourage their presence at the indictment or trial.
- Dissent: allowing this kind of service could lead to judicial abuse (go figure, it’s West Virginia) if a Δ is served while incarcerated on a frivolous criminal charge.

*Wyman v. Newhouse* p.226 (1938)

- Jurisdiction is improper when service is procured by fraudulent means; Π and Δ were having an affair; Π invited Δ to come to FL for a little bada bing bada boom; when Δ arrived at airport, he was served with a lawsuit for not paying loans from Π and not making good on a promise of marriage; Δ ignored the process and default jgmt was entered against him; court upheld Δ’s collateral motion to dismiss the complaint, holding that service was invalid since, Δ was fraudulently induced to enter the jurisdiction of the state of FL; any jgmt procured fraudulently lacks jurisdiction and is null and void, and an erroneous jgmt such as this one may be attacked collaterally; a state must also have a statute specifically providing that fraudulent service is invalid; whenever a person is sued they should just stay put, have default jgmt entered, and then make Π come to them to enforce it.

D. Federal Subject Matter Jurisdiction

SMJ determines whether to use state of federal court; separate inquiry from personal jurisdiction, but both are needed; fed court can only hear (1) diversity of citizenship or (2) federal questions; state courts can hear any case that is a cognizable claim unless it’s an exclusive federal question (patent infringement, antitrust, securities, etc.)

1. Diversity Jurisdiction

To establish diversity jurisdiction, residence is irrelevant (§ 1332 (a)(1)); diversity cases are between citizens of different states where the amount in controversy > $75,000.

i. Citizens of different states:

a. Complete diversity rule: There is no diversity if any Π is a citizen of the same state as any Δ. *(Strawbridge v. Curtis* rule)

b. Citizenship determination:
   1. For Americans, citizenship is in the state of domicile; domicile is established by (1) presence in that state and (2) subjective intent to make that a permanent home; a person can only have one domicile at a time; domicile is retained until presence and subjective intent both change. *(In Woodson, IIs are not domiciled until reaching AZ)*
   2. Corporate citizenship: domicile does not apply; under § 1332 (c)(1), a corporation is a citizen of all states where it is incorporated plus a corporation is a citizen of the one state with its principle place of business (PPB). A corporation can have only one PPB; either determined by (1) nerve center test where decisions are made, (2) muscle
center test where the corporation has the most activity or (3) total activities
considering both nerve and muscle; use nerve center unless all corporate activity is in
a single state.

c. Citizenship of representative suits (§ 1332 (c)(2)) has 3 instances: decedents, minors and
incompetents; look at their citizenship and not the representative.

ii. Amount in controversy:
   a. Must exceed $75,000, not including interest on the claim or costs; $75,000.00 not
      enough, must be at least $75,000.01.
   b. Π’s claim governs unless there is a legal certainty that Π cannot collect that much.
   c. Π’s ultimate recovery is irrelevant to SMJ; if Π sues for $100,000 and only wins $10,000,
      Π still has SMJ.
   d. Aggregation (when 2 or more claims must be added to exceed $75,000): Claims can be
      aggregated if there’s one Π versus one Δ, even if the claims are unrelated, but claims
      cannot be aggregated if there are multiple parties on either side. BUT, with joint claims
      (i.e. joint liability for the same tort) the total value of that claim applies.
   e. 1332 provides that Πs may not aggregate unless there is a single indivisible harm b/c
      class actions are easier to file in state court than in federal court; Πs can consolidate only
      if each suit individually has merits to get into courts on its own; if claims are separate &
      distinct, people with individual rights cannot aggregate.

• State courts can hear federal issues, but federal courts cannot hear state issues except for
diversity.
• Diversity courts/fed courts used to have little caseload; now they’re much busier; diversity
  jurisdiction was originally intended to protect Eastern creditors from having biased juries in
  Western foreclosure suits.
• Purpose of diversity jurisdiction is a fairness concern that in-state juries would discriminate
  against out-of-state litigants; xenophobic juries may have a local bias against outside
  litigants; trial lawyers lobby for federal diversity cases; notion of sophisticated big city juries;
  homogeneity of states religious beliefs; nation used to be much less unified.
• Fairness is not an issue with partial diversity b/c locals are on both sides of the litigation.
• § 1359 prohibits jurisdiction when partied are improperly or collusively made or joined to
  invoke jurisdiction of such court.
• § 1332 (a)(2) confers federal SMJ over foreigners.

28 U.S.C. § 1332

Capron v. Van Noorden p.21 (1804)
• A case will be thrown out of federal courts for lack of SMJ, even if it has already made it to
  the appellate stage by the time the problem is discovered; Π sued Δ in federal court; Π failed
  to allege that he was a citizen of a different state than Δ; since the case did not involve a
  federal question, diversity was required to hear it in federal court; Π lost in circuit court, then
  appealed to U.S. Supreme Ct. on the grounds that circuit court could not decide in favor of Δ
  due to lack of jurisdiction; Supreme Ct. agreed and legally “unmade” the trial as if it had
  never occurred; even though Π was was responsible for filing a deficient complaint, Π
  brought up the issue on appeal and it worked to his advantage, b/c w/ the case thrown out, no
  res judicata or collateral estoppel applies and he can bring it again in any court.

• This case underscored the limited jurisdiction of federal courts and the importance of
  state sovereignty-a big reason that a federal case can be dismissed for lack of SMJ by
  anyone at anytime.

• When determining federal diversity jurisdiction, a party changes domicile only when they
  take up residence with intent to stay there; a wife’s domicile is not necessarily presumed to
  be that of her husband; Π’s (hubby & wife) were awarded damages in fed. court for Δ being a
peeping tom (right on!); Δ claimed on appeal that Π’s failed to prove diversity b/c the wife is either domiciled in same state as Δ or in France w/ her hubby; court holds that federal SMJ extends to French hubby’s claim under 1332 (a)(2) and wife was still domiciled in MS where she lived before marrying and this did not change when she came to LA, b/c she was only a student in LA and did not intend to remain there after graduation; court also holds that wives are not domiciled with their foreign husbands, b/c this would deny them from citizenship in any state while also denying them alien status; also efficiency warrants hearing both hubby & wife’s claims in the same hearing; the case would have a different result today b/c under 1332(a), an alien admitted to the U.S. for permanent residence is deemed a citizen in their state of domicile.

- Pete Rose lawsuit: Rose sued (1) Bart Giamatti from NY (2) Major League Baseball from all states and (3) Cincinatti Reds from OH in OH Court; Rose set it up in state court b/c he has a better chance for a good verdict in OH where he’s a hero; Reds and MLB are disregarded as nominal parties; common law rule is used to establish fed. jurisdiction between Rose (OH) and Giamatti (NY); Judge is wrong and right: MLB/Reds are not nominal parties, BUT Rose would have bias in his favor in Ohio.

2. Jurisdictional amount

* A.F.A. Tours v. Whitchurch p.271

- The amount in controversy requirement is settled if Π makes a good faith estimate that value of actual & punitive damages and injunctive relief meet the required amount; Π sued Δ a forern employee for disclosing confidential information; Π sought injunction, actual & punitive damages; Δ MSJ on grounds that he only did business w/ 2 former clients and could not possibly meet the federal SMJ minimum; district court dismissed then CA2 reversed, holding that dismissal for failure to meet the amount is warranted only when it is *legally certain* that the claim is less than the jurisdictional amount; the numbers in this case indicated that if Δ served even 2% of his former customers, he could earn more than the minimum jurisdictional amount in profits; punitive damages could also raise the claim above the minimum amount. Therefore, no legal certainty of too low of a claim; the good-faith pleading requirement shifts the burden to the Δ to prove the claim is too low, which is almost impossible to do if the Δ is seeking injunctions and/or punitive damages; however, if Π exaggerates their claim just to get into federal court, 1332(b) allows courts to impose costs on the Π; by contrast, Π has the burden of proving diversity of citizenship.

3. Federal Question Jurisdiction

i. Fed question jurisdiction is governed by rule 1331; citizenship and amount in controversy are irrelevant.

ii. The case must arise under federal law: (1) look only to Π’s complaint, do not look at defenses or answer; (2) in looking at the complaint, the claim itself must arise under federal law.

iii. Well Pledged Complaint Rule: If the Π is enforcing a federal right, it’s a federal case.

iv. Holmes test (p.285): “A suit arises under the law that creates the cause of action.”

* Osborn v. Bank of the United States p.278 (1824) *

- The “arising under” language in Article 3, Sect. 2 of the constitution gives Congress the power to confer federal SMJ over all cases which conceivably involve fed questions; state official attempted to tax a local branch of the national bank, and the bank alleged this tax was unconstitutional; by creating a national bank, Congress authorized the bank to sue or be sued in any federal court.

* Louisville & Nashville v. Mottley p.280 (1908) *

- Πs had a lifetime pass to ride on a railroad as a settlement for injury in a train wreck; Congress passed a law against railroads giving free passes; Πs sued railroad for not honoring passes, claiming federal statute does not apply to them; Πs were granted relief in federal
court; Δ appealed and U.S. Supreme Court held that a Π cannot obtain federal SMJ by anticipating that Δ will raise fed. questions in its defense; even if Π’s allegations show that fed questions will arise in the litigation, the complaint itself must raise federal questions to obtain SMJ; the merits of Π’s claim are irrelevant since there is no diversity jurisdiction and the Π’s claim involves a breach of contract; Π ended up winning a jgmt in state court and having it affirmed in the U.S. Supreme Ct. 3 yrs later.

_T.B. Harms v. Eliscu_ p.284 (1965)

- Π assignee of copyrights sued Δ songwriter alleging that Π had wrongfully assigned copyrights of his songs to a third party. Even though copyrights themselves have federal question SMJ, the assignment of copyright claims do not have fed question jurisdiction, b/c they are a contract cause of action. The Copyright Act does not create an explicit right of action to enforce or rescind assignments of copyrights. This is a narrow Supreme Court reading of “arising under” unlike the broad reading in _Osborn_ as it bifurcates the contract law issues of a copyright assignment (state court) from the copyright itself (federal court).

_Merrell Dow v. Thompson_ p.290

- Fed question jurisdiction over a state cause of action is appropriate only if the state claim involves an essential federal element for which Congress intended to grant a federal remedy; Π sued Δ pharmaceutical for 5 state tort claims and 1 federal claim (Food Drug & Cosmetic Act-inadequate warning labels); Π petitioned to remove to fed court and fed district court denied Π’s motion to remand to state court and granted Δ’s MD on *forum non conveniens* grounds (court dismisses a claim which, for matters of convenience should be brought elsewhere-since Π was Canadian, they may have been required to litigate in Canada); CA6 reversed and U.S. Supreme Ct affirmed b/c the mere presence of a federal issue as an element of a state tort does not warrant federal jurisdiction.

- Brennan dissent: Fed courts are better able to interpret federal laws and the necessity of uniform decisions warrants fed jurisdiction over this case.

4. **Combined federal and nonfederal claims (Supplemental Jurisdiction)**

   _Never mention supplemental jurisdiction until it’s shown to be needed._

   i. Original Π must meet diversity or federal question jurisdiction.
   
   ii. Once a federal claim is in court, Π may assert other claims in the case.
   
   iii. For every single claim asserted in federal court, there must be a basis of SMJ.
   
   iv. If there isn’t a basis for other claims, then look for supplemental jurisdiction under § 1367.
   
   v. Supplemental jurisdiction allows a federal court to hear claims it otherwise could not hear.
   
   vi. Supplemental jurisdiction only applies to additional claims.

_United Mine Workers v. Gibbs_ p.298 (1966)

- Π asserted 2 claims arising from labor disputes in coal mines: (1) Federal Question violation of labor law (2) state tort claim; 1<sup>st</sup> claim is OK b/c it invokes a federal question; 2<sup>nd</sup> claim does not invoke federal question and there is no diversity, so it could not go into court on its own; Supreme Ct. allowed supplemental jurisdiction for claim #2 b/c it was part of a: **common nucleus of operative fact** (same transaction or occurrence) with claim #1.

- Today _Gibbs_ is codified under §1367:
  
  A. § 1367(a) grants supplemental jurisdiction to a claim if it meets the _Gibbs_ test;
  
  B. § 1367(b) kills supplemental jurisdiction in certain circumstances:
     
     i. It applies only in diversity cases, never in federal question cases.
     
     ii. In diversity cases, § 1367(b) only kills supplemental jurisdiction over claims 3 categories of Πs: (1) claims by Πs against parties joined by Rules 14 (3<sup>rd</sup> party brought in by Δ), 19 (Joinder of necessary/indispensable parties), 20 (permissively joined parties), & 24 (Intervention); (2) Claims by Rule 19 Πs; (3) claims by intervening Πs.
• Π was awarded $$ on both federal & state claims; Δ moved to set aside fed claims and motion was granted; CA6 affirmed and U.S. Supreme Ct. held that fed jurisdiction was appropriate b/c the state issues did not predominate and there was not a substantial likelihood that a jury would confuse legal theories of the federal and state claims; dismissal of a pendent (supplemental) state claim would only be warranted if the federal claims were dismissed before trial.

• Several reasons to allow supplemental jurisdiction: (1) judicial efficiency; (2) beneficial to Πs who could not afford to separate 2 separate claims; (3) forcing separate litigation of 2 related claims could create res judicata problems and the first one resolved could wrongly control resolution of the other; (4) potential statute of limitations problems.

• A court always has jurisdiction to decide if it has jurisdiction; litigants cannot go back in time to argue that some past court had or did not have jurisdiction unless the circumstances are exceptional.

_Aldinger v. Howard_ p.304 (1976)

• A federal court may grant supplemental jurisdiction to a state claim against a separate defendant under 3 different conditions: (1) common nucleus of operative fact, (2) the statutory grant of federal SMJ does not expressly or implicitly negate such joinder, or (3) judicial efficiency warrants the joinder; in this case, the federal statute at issue (Civil Rights Act) expressly excluded municipal corporations from the definition of persons covered, evidencing intent to preclude the exercise of federal SMJ over them.

_Owen Equipment v. Kroger_ App.7 (1978)

• Π brought a diversity suit against Δ1 in fed court for wrongful death of her husband; Δ1 filed a 3rd party complaint against Δ2 alleging Δ2’s negligence; Π amended her complaint to include Δ2; it was later revealed at trial that Δ2 and Π were both from Iowa, thus destroying complete diversity; Δ1 was granted summary jgmt; Δ2 moved to dismiss for lack of diversity; the motion was denied in district court and affirmed by CA8; U.S. Supreme Court held that fed courts do not retain jurisdiction over an action based on diversity when Π adds a supplemental claim against a Δ who destroys complete diversity; in this case, Δ1 was allowed to bring Δ2 into the lawsuit without questioning whether there was complete diversity, but courts may be more willing to allow Δs to obtain ancillary jurisdiction since the Π could have chosen a more suitable forum in the first place.

• Bringing in a 3rd party for indemnity without 1331/1332 in violation of _Strawbridge_ is still allowed.


• Good old conservative Scalia further limited the availability of pendent party jurisdiction that was available under _Aldinger_ by holding that a statute conferring federal jurisdiction must expressly authorize pendent party jurisdiction-formerly it was allowed anytime it was not expressly prohibited; this decision required Π to bifurcate her federal claims against the U.S. gov’t in the Federal Tort Claims Act (that have exclusive federal jurisdiction under § 1346) from her state claims against the City of San Diego and the utility company; this leaves the wrongful death Π no choice but to incur the expenses of two separate lawsuits in order to bring all of her claims; this effectively destroys pendent party jurisdiction, b/c it is not needed when it is expressly authorized in a statute.

28 U.S.C. § 1367

_Executive Software v. U.S. District Court_ p.313 (1994)

• A court can deny supplemental jurisdiction over pendent state law claims only if one of the 1367[c] exceptions is satisfied; Π sued her Δ employer in state court w/ 3 state law claims and 2 fed law claims; Δ removed to federal court; fed court remanded the state claims to state court w/o reason; CA9 held that a fed court can only decline supp. Jurisdiction over pendent state claims for one of the expressly provided reasons in 1367[c]: (1) state claims raise novel
or complex issues of state law; (2) state claims “substantially predominate” over fed claims; (3) fed court has dismissed all state claims; (4) “exceptional circumstances” give other compelling reasons for declining jurisdiction; Declining jurisdiction must best accommodate economy, convenience, fairness & comity. **There is disagreement as to what constitutes “exceptional circumstances” under 1367(c)(4).**

5. **Removal**

Removal occurs when Δ transfers a state case to federal court. Governed by 1441, 1446 and 1447.

i. Removal is a one way street; there is no such thing as removing from federal to state court; a federal court removes to state court.

ii. A state court case can only be removed to the federal district embracing the state court where it was filed.

iii. A state case may only be removed within 30 days of service of the document that makes the case removable (usually service of process at the beginning of the case); it is possible to become removable later.

iv. A case is only removable if it has federal SMJ.

v. 2 exceptions to removal in diversity cases only: (1) There is no removal if any Δ is a citizen of the forum where the state case is filed; (2) Δs cannot remove a diversity case more than one year after filing in state court (this is a stupid rule b/c it allows Π to join a Δ to preclude removal, wait a year, then drop the claim against that Δ).

**A Δ cannot remove to federal court in anticipation using a federal question defense; 1441(a) allows removal only when there’s original jurisdiction.**

28 U.S.C. § 1441, 1446, 1447

*Shamrock Oil v. Sheets* p.321 (1941)

- A Π cannot remove a state claim to fed court, even if Δ brings a federal counterclaim; only an original Δ can remove a case to federal court.

*American Fire v. Finn* p.325 (1951)

- A claim can not be removed under §1441(c) unless it is separate and independent from otherwise non-removable claims; Π from TX sued 3 parties for loss suffered in a fire; two were out of state, one was local; the 2 out of state Δs removed the suit under 1441[c]; hury gave Π a verdict, then Δ tried to vacate jgmt on grounds that fed court lacked jurisdiction; U.S. Supreme Ct. held the claim could not be removed b/c it was not separate & independent from the non-removable claims; this is a strict interpretation of separate & independent under 1441[c]; even if a claims are separable and otherwise mandate federal jurisdiction, it’s impossible to remove them unless they are truly independent from non-removable state court causes of action; this uses the broad definition of cause of action in *Gibbs* (violation of one right by a single legal wrong) and effectively allows a Π to litigate all claims in his presumably favorable state court by simply joining non-removable claims.


- A federal court can only remand state court claims that it can decline to hear under §1367; this case applies §1441[c] and holds that a district court only has limited authority to remand a case; because Πs fed/state complaints in this case were not separate & independent, no removal allowed; **This case makes it clear that if a federal claim is “separate and independent” from a state claim, then it cannot possibly arise from a “common nucleus of operative fact” shared by the state claim.** Likewise, claims arising from a common nucleus cannot be considered separate and independent. Therefore, if supplemental jurisdiction cannot be declined b/c fed and state claims arise from a common nucleus, then a fed court cannot remand any linked claims to state court and must hear the entire case.
• This case also teaches the principle that removal from state to federal court is only permitted when the case involves a federal question, so complete diversity of parties is not a sufficient basis for removal.

6. Attacks on subject matter jurisdiction
   Direct/Collateral Attacks p.333-338
   Grounds for collateral attack:
   i. subject matter was so far beyond the court’s jurisdiction that entertaining the action was a manifest abuse of authority.
   ii. Allowing the judgment to stand would substantially infringe the authority of another tribunal or government agency
   iii. Judgment was rendered by a court lacking capability to make an adequately informed determination of a question concerning its own jurisdiction and as a matter of fairness, the party seeking to avoid the judgment should have a belated opportunity to attack the court’s SMJ.

C. Venue and Territorial Restrictions
   Venue is another hurdle for the Π; venue needs to be laid in an appropriate rule;
   i. Provisions for venue (applies anytime Π files suit in federal court-different from removal)
      1391(a): venue choices in diversity suits
      1391(b): venue choices in federal question suits
      2 choices for venue choice:
      a. Π may lay venue in any district where all Δs reside, but if all Δs reside in different districts of the same state, then the Π may lay venue in any one of those districts; for venue purposes, residence is usually the same as domicile; but under 1391[c], a corporation “resides” in all districts where it is subject to personal jurisdiction (different from SMJ citizenship)
      b. Π can lay venue in any district where a substantial part of the claim arose
         1391(a)(3) and 1391(b)(3) almost never come up; only if no district applies.
         Hypo: Π from NV wants to sue Δ from MO for a car crash in Cali; Π can lay venue in MO under 1391(a)(1); Π can lay venue in Cali. under 1391(b).
   ii. Transfer of Venue (different from removal): the transferor must be a proper venue and must have PJ over the Δ.
      1404(a): When transferor court is an improper venue, the court may dismiss or transfer in the interest of justice.
   iii. Forum Non Conveniens (FNC): Court dismisses when there is a far more convenient court somewhere else; Court will dismiss if it cannot transfer anywhere (if the best court is in another country); if a court dismisses under FNC, it will impose conditions on a Δ such as waiver of SOL or American discovery rules abroad.
      Reasor-Hill v. Harrison p.343 (1952)
      • A state court can have jurisdiction over a case for injuries to land in a different state; MO landowner sued AR chemical company in AR court for damage to his crops from insecticide; one state court should be able to interpret the laws of another state-this is not as difficult as interpreting the laws of a foreign country; also the old notion of pursuing a remedy where the tort occurred does not apply to American citizens who are free to travel between states; finally state courts may be rightfully reluctant to subject their own citizens to suits by outsiders, but courts should not provide a sanctuary to those who wrongfully caused injury to a landowner in another state.
      28 U.S.C. § 1391
      • Venue is proper in the district where a debtor resides and where a collection notice was forwarded; Π had debts and moved from NY to PA; the debts were assigned to a collection agency who sent a notice to Π’s address in PA which was forwarded to NY; Π sued for a
violation of Fair Debt Collection Practices Act (FDCPA); $\Delta$ filed to dismiss on the grounds that NY was an improper venue; court held that a district where a notice was forwarded and where $\Pi$ resides has venue, regardless of collection agency’s lack of intent to forward the notice; having the notice forwarded was foreseeable by $\Delta$ since they did not mark “do not forward” on the envelope; also the FDCPA was enacted by Congress to prevent the harm of abusive debt practices on consumers which cannot possibly occur until receipt of a collection notice; this case contributes the rule that events giving rise to a claim to not have to be intentional (post office forwarding a collection notice).

Rules 12(b), 12(h)


- A federal court in which suit was properly commenced under §1404(a) is not entitled to transfer a case to a district court in which the $\Pi$ could not have properly commenced suit; the language of the statute clearly states that venue transfer is proper to the place “where the action might have been brought” and this obviously applies to where it might have been brought by $\Pi$s. Allowing $\Delta$ that kind of power would grossly discriminate against $\Pi$s; $\Delta$’s argument that he could have moved to the venue he wished to transfer to was rejected; $\Delta$s often have strategic motives to make a §1404 motion to transfer venue on grounds of inconvenience, b/c it could throw off the $\Pi$’s litigation strategy that was developed in the original venue; the old rule was to apply the transferor’s laws in the transferee’s venue, but modern case law is drifting away from that rule; Hoffman has been criticized for having an overly narrow construction.


- Claim was brought in PA for mostly Scottish plane crash; had to be dismissed b/c it cannot be transferred to another country; $\Delta$s prefer foreign laws b/c there’s less punitive damages and strict liability; U.S. Supreme Court held that it is irrelevant that the substantive law in an alternative forum is less favorable to $\Pi$s when applying the doctrine of forum non conveniens; Piper factor list for FNC: (1) When $\Pi$s are foreign, they presumably did not choose an American forum for convenience and it would be bad to encourage an onslaught of litigation that could have been brought in foreign forums; (2) a case can be dismissed on FNC grounds if evidence & witnesses are more easily located in a foreign forum; (3) dismiss for FNC if a court would have to apply laws of different countries to different litigants; (4) FNC dismissal if a foreign country has a greater interest in the litigation; (5) reverse a FNC dismissal only if a district court abused its discretion.

III. Erie Doctrine

Generally applies only in diversity cases;

Issue of whether a federal court follows state laws when deciding an issue;

Rule: Federal Courts must apply state substantive law; if the issue is one of substance, state laws apply.

Reasons to apply state substantive law:

1. Rules of Decision Act
2. 10th Amendment state powers

“Substance” can be defined by the elements of a cause of action; the Supreme Court has given lousy factors and never fit them all together.

If diverse $\Pi$s would benefit from applying a federal law that would be unfair to non-diverse plaintiffs required to apply the state law, the state law should also be applied to diverse $\Pi$s.

4 general inquiries about Erie doctrine:

1. Federal directive on the issue?
2. Outcome determinative?
3. Balance the interests?
4. Twin Aims (avoid forum shopping and inequitable administration)

A. Choice between Federal and State Law in Diversity Cases
Swift v. Tyson p.372 (1842)
- Federal courts must follow only state statutory laws (not state judge-made common law) in cases that state law applies; this was a narrow reading of the Rules of Decision Act “laws of several states” but was decided at a time when common law was rapidly developing; there was a legitimate interest in being able to consult all available authorities to make a decision; also this decision had policy motivations for promoting interstate commerce.

Erie v. Tompkins p.374 (1938)
- Overrules Swift, requiring federal courts to apply the substantive common law of the state in which they sit; II was injured by a train and sued for negligence under federal common law; PA state law gave II no recourse b/c he was a trespasser; II was awarded damages under fed common law, and jgmt was affirmed on appeal; U.S. Supreme Court reversed on grounds that fed courts are to apply state common law for 3 different reasons: (1) Rules of Decision Act requires federal courts to apply state common law as well as state statutes (Swift misinterpreted); (2) Swift permitted/engouraged forum shopping, b/c a II could choose whether state or federal law applied to their claim by selecting a forum; (3) Swift allowed federal courts to create federal common law which gave them much more power than the Constitution allows.
- Erie affirms the concepts of state sovereignty and autonomy and also ensures the same law applies regardless of forum.

Guaranty Trust v. York p.381 (1945)
- A federal court with diversity jurisdiction must apply state procedural rules such as a state SOL if it is thought to have a substantial effect on the outcome of the litigation.
- Outcome determination: if looking at state law, case wouldn’t get into court b/c of statute of limitations; no federal rule on point; outcome should be dismissed in state court, so to allow a different outcome in federal court is wrong; SOL is thought to be substantive.
- York expanded the Erie Doctrine by requiring fed courts to apply state procedural rules when they have a substantial effect on the outcome; Erie only applied to state substantive rules-this helps to curb forum shopping.

Byrd v. Blue Ridge p.386 (1958)
- Balancing the interests: State law provided that particular issue is to be determined by a judge (Not a jury); federal law left the issue to a jury; York outcome does not apply; if not clearly substantive, go with state law unless the federal judicial system has an interest in doing it differently.
- Federal courts may apply federal rules, even if state rules are outcome determinative if federal policy in enacting the rules outweighs federal policy; when a state does not have substantive state policy goals to be advanced by applying state laws in a federal court, the balance shifts in favor of countervailing federal policies.
- In Byrd, II would not have a jury trial for a worker’s comp claim under state law, but would have one under federal law (7th amendment right to a jury trial)

Hanna v. Plumer p.392
- Federal rules of civil procedure within the scope of the Rules Enabling Act (28 U.S.C. § 2072) control over state outcome determinative rules; 2072(a) allows the Supreme Court to establish FRCP; 2072(b) limits the powers so as not to abridge, enlarge or modify any state substantive right. (Courts disagree on what a substantive right is)
- Splits Erie into 2 doctrines; If there is a FRCP that directly conflicts with state law, the FRCP trumps, so long as it is valid (Supreme Court has never invalidated a FRCP); it must fit within the rules enabling act if it deals with procedure;
- Hanna addresses the supremacy clause; if there is a federal directive on point that governs the (procedural) issue, it is supreme law of the land so long as it is valid; therefore, if a federal directive is on point (FRCP) it wins.
• *Hanna* dictum since adopted: **twin aims of Erie**
  1. Avoid forum shopping
  2. Avoid inequitable administration of the law

Inquiry: If a federal judge ignores state law, will it cause litigants to shop for federal court?

A procedural rule on filing a complaint would not cause a litigant to shop for a forum and non-diverse litigants/atty’s would be familiar with local procedure rules; Rule 4(d)(1) does not have to bow to state-created procedures.

*Walker v. Armco Steel* p.402

- Federal rules should not be construed broadly so as to place them in direct conflict with state rules, which would require a federal court to apply the federal rule; Π was injured, sued diverse Δ for negligence in fed court; Π filed complaint within 2 yr SOL, but Δ was not served until after SOL expired; fed law only requires filing of complaint within 2 yr SOL, but state (OK) law required service within 2 yr SOL; dist court dismissed as violating OK SOL, CA & Supreme Court affirmed; a federal rule should be read based on its plain meaning; a plain reading of federal SOL reveals no conflict with OK law and has no intent to toll a state SOL or displace state tolling rules; also failing to apply state SOL here would result in an inequitable administration of law to non-diverse cases.

*Burlington Northern v. Woods* p.407

- U.S Supreme Court held that Federal Appellate Rules trump Alabama rules in regard to imposing penalties on unsuccessful appeals for money judgments-federal rule only imposes penalties on unsuccessful frivolous appeals.
  - **If there is a conflict between federal and state law, federal law applies**
  - **If there isn’t a conflict, use the *Erie* test**

*Stewart v. Ricoh* p.408

- A federal rule prevails over a conflicting state law if the federal rule is sufficiently broad to cover the issue; Π and Δ had a contract with a forum selection clause; Π sued Δ in Alabama; Δ moved to transfer to selected (NY) forum under §1404(a) and pursuant to the forum selection clause; dist court denied motion on the grounds that Alabama law controls and it looks down upon forum selection clauses; CA11 reversed on the grounds that venue is governed by federal law; Supreme Court held that federal rule prevails under a 2 part analysis: (1) The federal rule is sufficiently broad to control the issue before the court (1404(a) allows district court to weigh factors to determine if a transfer is appropriate); (2) The federal rule must be applied if it represents a valid exercise of Congress authority under the Constitution (1404(a) passes const muster); therefore, the case was remanded to evaluate the forum selection clause on Δ’s 1404(a) motion.

*Gasperini v. Center for Humanities* p.411 (1996)

- A state statute on re-examining jury awards can be given effect by federal appellate courts without violating the 7th Amendment reexamination clause; Π was awarded compensatory damages from Δ; Δ moved for a new trial arguing the verdict was excessive; dist court denied Δ’s MNT, but CA2 vacated the jgmt and applied NY law using the “material deviation” standard for excessive judgments instead of the federal “shocked conscience” standard; CA2 set aside the verdict and ordered a new trial unless Π would accept a much lower judgment; Π contended that CA2 erred in applying NY law on 7th amendment reexamination clause grounds; U.S. Supreme Ct. held that a fed court applying NY law did not violate the 7th; the “material deviation” standard is substantive and outcome-affective b/c failure to apply it would unfairly discriminate against non-diverse NY litigants or encourage forum shopping.
  - **An award is a fact that a federal appellate court cannot review under the 7th, but federal courts can review abuse of discretion standards, applying either state or federal standards.**
• Involved 2 aspects of law: (1) Set a standard for a court to order a new trial for excessive damages; (2) allowed an appellate court to apply the standard *de novo*.
• Were these aspects substantive? (1) Yes, federal courts follow state laws on ordering new trials for excessive damages; (2) No, federal courts have an interest in allocating power to itself and state law has no business telling an appellate court its business.
• Problem with *Gasperini* is that it gives very little guidance.

B. **Ascertaining State Law**

*Klaxon v. Stentor* p.423
• In order to promote uniform application of substantive law within a state, fed courts must apply the conflicts of law rules of states in which they sit; “the proper function of a federal court is to ascertain what the state law is, not what it ought to be.”

• A federal court may apply recent trends in state law over outdated common law; Π (MS) was injured and sued a diverse Δ; dist court dismissed the complaint holding that it was required to follow an old MS rule that manufacturers were not liable for products negligence when there is no privity of contract between them and the user (Δ manufactured a part on the machine that injured Π); CA1 reversed holding that a state law that has been undercut by subsequent decisions but not explicitly overruled does not necessarily have to be followed by federal courts. (This could be problematic if the trend was not as clear as it was in this case) “harsh rule” in Mississippi was applied regretfully

• When state rules conflict, federal courts may apply the rule that they predict the state supreme court would apply;

IV. **Pleading**

Pleadings are documents that lay out claims and defenses

i. **Rule 11:** Requires attorney to sign all documents (except for discovery); attorney signing certifies 4 things to show pleadings are not frivolous:

a. Pleading is not being presented to harass, cause unnecessary delay;

b. Claims, defenses & contentions are warranted by existing laws or nonfrivolous arguments;

c. Allegations have evidentiary support;

d. Denials of factual contentions are warranted or reasonably based on a lack of information and belief;

Continuing certification-not frivolous then or later; sanctions are discretionary; they used to be required but not anymore; a motion for a Rule 11 violation is served but is not filed-the other side has a 21 day safe harbor to withdraw a frivolous claim; if the Π does noting in 21 days, the Δ can file a motion.

ii. **Complaint:** Rule 8(a) gives 3 requirements for a complaint:

(1) Statement of grounds for SMJ;

(2) Short & plain statement of the claim;

(3) A demand for judgment

Federal Rules use a notice pleading that does not require detail, but there are a couple of areas where Π must plead in detail:

(1) Rule 9(b) in circumstances of fraud or mistake, Π must give particulars;

(2) Rule 9(g): Π must give specifics about claims for special damages (i.e. priapism sustained in car wreck)

iii. **Answer:** It is a pleading; 2 things are done in an answer:

(1) Respond to allegations of a complaint; failure to deny an allegation is treated as an admission of all allegations except damages.

(2) Raise affirmative defenses in Rule 8(c): (SOL, fraud, res judicata); an affirmative defense is the Δ injecting a new fact tending to show the Δ can’t lose; the affirmative defense must be in the answer or Δ runs the risk of waiving.

iv. Amending the pleading: Rule 15(a) gives 3 basic rules for amended pleadings:

(1) Π has a right to amend once before Δ serves an answer;
(2) If the other side does object, the party presenting variant evidence can move to amend their complaint.

Rule 15(c): Amending after the SOL has run; If a party seeking to amend is entitled to relation back, it is treated as though it were filed before the SOL expired.

Rule 15(c)(2): Complaint can be amended after SOL runs to add a new claim

Rule 15(c)(3): Complaint can be amended after SOL to join a new Δ

A. General Requirements
   Dioguardi v. Durning p.515 (1951)
   • A complaint must state just enough to sufficiently notify the opposing party of the claims against him so he can begin preparing a defense; abolished requirement that a cause of action be stated; Π had trouble writing in English, but the complaint still disclosed enough to inform Δ that he was being charged with wrongful conversion of property-court probably would have been less sympathetic to a lawyer who spoke English, but Π was an immigrant who did not know the American legal system.
   Lodge 743 v. United Aircraft p.521 (1976)
   • A statement of the claim on which the suit is based needs to posit facts with sufficient definiteness to enable the Δ to frame an answer; Π made a complaint alleging breach of a labor contract covering over 2000 workers; Δ moved for a more definite statement from Π to identify relevant info. about each worker; Π requested that the motion be denied due to the laborious research of Δ’s files required to compile 2,000 names; the motion was granted, but the Π did not have to respond until completing discovery proceedings of Δs files.
   • Rule 12(e) applies when Δ doesn’t have the information on how to swawer

B. Complaint & Answer
   Garcia v. Hilton Hotels (1951) p.522
   • A complaint sufficiently pleads a right to relief when it states enough facts to reasonably assume that the essential elements of the claim can be proven at trial; a complaint will be held valid if it is reasonable to assume from it that the Π could make out a case at trial entitling him to relief, even if he did not explicitly allege every element of his claim (i.e. slander claim failing to explicitly allege publication); when a court senses that some cause of action can be made out from the pleadings, it is reluctant to dismiss a complaint b/c it doesn’t want to deprive a Π of his day in court; also if a Π cannot specifically plead an element, they might be calling Δ’s bluff-if Δ wants to avoid the embarrassment of a public lawsuit, they may just settle.
   Burden of Pleading p.527
   American Nurses Ass’n v. Illinois (1986) p.544
   • A multiple-charge complaint is neither dismissible nor invalid because it includes extraneous facts that do not state a claim in addition to stating a valid claim; a complaint does not fail for merely being confusing or including invalid claims with valid ones; the purpose of federal pleading rules is not to eliminate all imperfectly written complaints but only those which fail to state any valid claim at all.
   Jones v. Clinton (App. p.19)
   • Presidential immunity issues; led to Clinton’s impeachment by eventually denying 12(b)(6) protection to Clinton.
   Zielinski v. Philadelphia Piers (1956)
A general denial is not valid if any allegations being denied have previously been admitted by both parties as being true; Plaintiff sued “Defendant” for injuries; after being served, Defendant answered that they were Defendant; later it was revealed that “Defendant” was not the defendant at the time of injury because the forklift had been sold, but not rebadged; Defendant later denied the allegations of Plaintiff’s complaint; court held that a general denial is ineffective when some of the claims denied are true and not at issue; in such a circumstance, Defendant must make a more specific answer; a general denial implies that Plaintiff was not even injured; 2 policy reasons for this: (1) SOL will run on Plaintiff, depriving him of any opportunity for redress; (2) when a knowingly ineffective answer filed after Plaintiff’s SOL has run, an allegation of agency will be instructed to the jury as presumptively admitted by both parties for the purpose of litigation.

**Promissory estoppel issue** by purposely lying low, Plaintiff relies on this to their detriment

**Defendant** made a general denial when they should have made a specific denial under Rule 8-court used Rule 8 violation as a way of sanctioning


An affirmative defense will not be saved for appeal unless it is raised at some point during the pleading or trial stage before judgment is passed; 2 Plaintiff’s were awarded $1.3 mln and $4.2 mln respectively for medical mal by an Air Force surgeon; U.S. appealed both judgments on the grounds that they exceeded a $500K cap set by TX state legislature; CA5 held that an affirmative defense must be raised at some point before judgment is passed; affirmative defenses must be pleaded in a timely manner to prevent an unfair surprise to a Plaintiff by raising an unexpected defense; if Plaintiffs knew of the statutory cap in this case, they could have challenged the constitutionality of the cap or argued their injuries were not subject to the cap.


A Defendant does not waive the right to raise a statutory limit of damages on appeal if not raised in the pleadings; tough to reconcile with *Ingraham*; to hold otherwise would unrealistically require Abs to anticipate awards in excess of the statutory limitation even when they were not requested by the Plaintiff; even if Plaintiff does not ask for damages above the cap, Defendant should be aware of the cap because the court may not be aware of the cap being on the books.

*Owens Generator v. Heinz* (App. p.21)

Erie doctrine as applied to pleadings

C. Amendments

*Moore v. Moore* p.567

After a trial, pleadings may be amended to include issues not raised in the pretrial pleadings as long as the issues were tried with implied consent of the adverse party; custody case that Defendant (mom) won on a counterclaim after specifically itemizing matters and amounts claimed in an amended pleading; Plaintiff (dad) appealed on the ground that Defendant did not request any affirmative relief in pretrial pleadings and that the court erred in allowing the post-trial pleading amendments because they prejudiced the Plaintiff; court held that pleadings may be amended after trial if those issues were tried with consent of the adverse party in determining what issues it must be assessed whether adverse party received actual notice of injecting unpleaded matters as well as adequate opportunity to litigate them; applying the test to this case, custody, child support, attorney’s fees, bond for kidnapping kid were implied consent but separate maintenance for mom was not implied consent. The court here abandons strict procedural rules to do what is reasonable and fair.

**Rule 15(b) applies here**-if a party’s objection to amended pleadings is overruled, they can seek a continuance to have more time to address the amended pleadings.

*Beeck v. Aquaslide n’ Dive Corp.* p.571

A court does not abuse its discretion by allowing and amendment to an answer which initially admitted responsibility for manufacturing a product but later seeks to deny
manufacturing it; in the absence of bad faith on the part of the movant, leave to amend is fully within the discretion of the court; everyone with a legitimate complaint can have their day in court, but this should not be afforded at the expense of the other parties

- Π was reasonably misled by reliance on 3 different insurance companies; both parties made a good faith mistake and Π’s lawyer didn’t waste any time with the SOL; correct Δ did nothing wring b/c they didn’t know Π was paralyzed; Π eventually got $3 mln for fraudulent misrepresentation by proving to jury that he would have won a tort suit; president of Aquaslide testified that he was the only one who could identify his product-he framed himself here b/c the insurance companies should not have been responsible for identifying the product.


- Relation back issue in Rule 15(c); Π was injured by Δ (cops) in Peoria Heights (go figure); sued for Civil Rights Violation; Π named “three unknown officers” in his complaint; later amended the complaint after SOL expired to specifically name the officers; IL rule would allow this sort of amended complaint; FRCP 15 did not allow at the time because there was no mistake concerning the proper party and FRCPs always win in conflicts with state procedural laws; the new standard of the rule would have allowed Π to amend b/c the new actual Δ was given notice within 120 days of the filing of the complaint and Δs even concede this, but this is not use to Π here b/c it was not in effect at the time.
- There is a difference between innocent mistakes (misspelling Δ’s name) and unethical lawyering.

C. Sanctions

Rule 11 binds every bar member as an officer of the court with duties to follow; from 1945-83 the old rule was a subjective standard and had only 9 violations in 38 yrs.; the rule was amended against sloth in 1983 to require lawyers to do preliminary work to find out what is true or false; from 1983-93, there were over 3000 motions for sanctions; amended in 1993 to give 21 day safe harbor period b/c the goal is not to have sanctions-a Π who gives false info has an opportunity to retract.

_Surowitz v. Hilton Hotels Corp._ p.582 (1966)

- A technical violation of a FRCP verification requirement does not alone warrant dismissal of an otherwise meritorious claim; Π was an elderly immigrant w/ little education or English proficiency; her son-in-law (Brilliant) helped her with investments and discovered Δ was engaged in a fraudulent scheme; Brilliant convinced Π to file suit in her name and explained everything he was putting forth; Π claimed to understand the complaint but Π’s minimal English became apparent during deposition, so Δ moved to dismiss on the grounds that Π’s affidavit was false (Rule 23(b) violation) and the dist court dismissed w/ prejudice and appellate court affirmed; Supreme Court reversed on the grounds that this technical verification requirement does not alone warrant dismissal of an otherwise meritorious claim; Rule 23(b)’s verification requirement that allegations in the complaint are true to the best of the petitioner’s knowledge and belief is intended to discourage worthless claims against wealthy defendants (strike suits), but not to discourage bona fide claims; in this case there is no evidence that Π or her lawyer acted in bad faith Π honestly and reasonably believed Brilliant’s advice; the charges and allegations merited an adjudication of the issues and it was wrong to dismiss the complaint w/o even requiring Δ to answer.


- Rule 11 sanctions require compliance with the 21-day safe harbor and an attorney may rely on objectively reasonable representations of his client in order to avoid Rule 11 sanctions for submitting false statements to a court; Π’s attorney signed statements stating something that Δ proved to the contrary; Δ moved for dismissal of Π’s Rule 60(b) action and requested sanctions against Π; dist court denied the 60(b) motion and imposed sanctions on Π and Π’s
lawyer; Π appealed; because of failure to provide the 21-day safe harbor period, the sanction should be reversed; also the new Rule 11 entitles an attorney is entitled to rely on the objectively reasonable representations of a client when submitting an affidavit and the Π’s representations to his attorney were objectively reasonable in this case.

- **21 day safe harbor period gives Π a chance to retract false statements.**

V. **Joinder**

If joinder rule is met, it must still be assessed if a claim has SMJ.

A. **Joinder of Claims by Plaintiff**

Rule 18(a): Π can assert all claims they have against Δ; even if they’re unrelated, they can all be joined in a single case.

*Harris v. Avery* p.597 (1869)

- Claims arising out of the same transaction may be joined in one lawsuit pursuant to state codes; Π sued Δ for false imprisonment, slander, & possibly conversion; old common law requires separate actions for trespass (false imprisonment) and trespass on the case (slander); but a new Kansas statute allowed Π to unite several causes of action if they arise out of the same transaction to avoid a multiplicity of suits whenever practicable, so one suit was allowable here.

- **This case would not have been an issue if Π had been falsely imprisoned with an arrest warrant, b/c at old common law, FI with a warrant was a case action but FI w/o a warrant was a trespass action.**

*Rush v. City of Maple Heights* p. 1225 (1958)

- A Π may maintain only one action to enforce his/her rights existing at the time such action is commenced; Π collected $100 in damages to her motorcycle in municipal court then received $12,000 for personal injuries in the court of common pleas which was affirmed on appeal; OH Supreme Court reversed, holding that the old rule of separating personal injury and property damage actions should not be followed b/c it conflicts with the great weight of authority in the U.S.; generally injuries to person and property amount to several effects of a single wrongful act.

- **After filing 1st suit, Π had no choice but to file the 2nd suit b/c the municipal court can’t decide higher amounts than $100; Π’s lawyer was following the minority rule of bifurcating personal & property damages; even though it’s unfair to Π in this instant case, the court overturns in order to establish a precedent for judicial efficiency & “heads up” lawyering.**

- Claim preclusion would not bar the owner of the bike from suing for property damage after a non-owning rider had unsuccessfully sued for injuries BUT owner/operator cannot bring 2 separate suits for bike damage and bodily injury.

- Hypo: 2 non-adjoining pieces of land destroyed in the same fire-old rules would separate claims-new rules would allow joinder to encourage efficiency.

- Hypo: Car accident/fistfight/slander all occur at once do all have to be brought in same suit? Rule 42 allows 1 lawsuit w/ separate trials to avoid prejudice.

B. **Counterclaims**

Counter claims under Rules 13(a) and 13(b): A counterclaim is against an opposing party. Rule 13(a) compulsory counterclaims arise from the same transaction or occurrence (t/o) as Π’s claim against Δ; it must be asserted in the same case. **Require no independent jurisdictional basis**

Rule 13(b) permissive counterclaims may be asserted in the same action but do not have to be if not arising from the same t/o.

*Mitchell v. Federal Intermediate Credit Bank* p.1239 (1932)

- A party cannot use part of a contract as a shield in one action and then another part of the same contract as a sword in another action. (Compulsory counterclaims from same t/o).
• Mitchell lost his chance to sue bank b/c of claim preclusion—despite no 13(a) at the time, common law claim preclusion rules did exist.  
  *United States v. Heyward-Robinson Co.* p.602
• Π counterclaimed to Δ’s counterclaim against Π; Δ argued that Π’s counterclaim were permissive & not compulsory and that there was no independent basis for fed jurisdiction over them (Π’s original claim was a federal question); CA2 held that a courts should broadly interpret the rule governing compulsory counterclaims (using logical relationship standard—even broader than same t/o); by requiring only a logical relationship, a multiplicity of suits can be avoided; in this case, same Π/Δ, same type of work, same time frame, payments on both jobs were on a lump sum basis and it would have been impossible to allocate between them within the lump sum $$ amount.
• Majority thinks permissive counterclaims require independent jurisdictional basis; concurrence disagrees, but both reach the same result.  
  *Great Lakes Rubber Corp. v. Herbert Cooper Co.* p.606
• Counterclaims bearing a logical relationship to an opposing party’s claims and requiring investigation of the same facts cannot be dismissed; Π brought unfair competition suit against Δ; Δ counterclaimed w/ a Sherman Antitrust Act suit; Π’s original suit was dismissed for lack of SMJ, but Δ’s counterclaim has 1331 jurisdiction; Π then counterclaimed Δ’s counterclaim with a suit identical to the 1st suit that was dismissed; Δ moved to dismiss Π’s counterclaim and the motion was granted; CA3 reversed on the grounds that Π’s counterclaim was compulsory—it had logical relationship (and was the exact same question) so it gets supplemental jurisdiction under §1367.

D. **Cross-claims**

Cross claims are governed by Rule 13(g); (look for Supplemental Jurisdiction/SMJ if necessary)

i. Cross claims are against co-parties

ii. Cross claims must arise out of the same t/o

i. Cross claims are never compulsory

iv. Proper parties: parties may be co-Π’s if the claims arise from the same t/o and raise at least one common question under Rule 20(a); then assess SMJ.  

• A cross claim is valid as long as it bears some logical relationship with the t/o that is the subject matter of the original counterclaim; in order to advance Rule 13’s policy goal of avoiding multiplicity of litigation, all of the issues should be tried at once.

• By covering all claims at once, the majority makes an efficient decision, but LASA is at a disadvantage b/c all they want is a settlement of their marble contract, but they end up having to wait for years to get settlement/payment for marble while all other suits are settled; downside of efficiency in a clusterfuck suit is that some parties are unfairly kept hanging.

E. **Impleader**

Impleader means bringing in a 3rd party, joining somebody who owes indemnity or contribution on the underlying claim;

Hypo: Δ joins 3rd part to indemnify for Π’s claim; different from a cross-claim, b/c it must relate to the underlying claim (Rule 14)

Two other Rule 14(a) claims (claims must be supported by PJ, SMJ, 1367, etc.):  
(1) Π can sue a 3rd party Δ if it arises from the same t/o  
(2) 3rd party Δ can sue Π under same t/o

**District courts do not have jurisdiction over claims by Π against persons made parties by Rule 14**

Rule 14 allows joinder, but Rule 82 says joinder rules are trumped by jurisdiction.  
• A party may implead a 3rd party Δ for indemnity when even if Minnesota state law does not recognize indemnity claims before the party pays more than its share of the loss; invoking of the federal third party procedural practice must not do violence to substantive rights of parties, but accelerating or expediting those rights does not conflict w/ MN state law; the substantive aspects of MN law are satisfied by staying actual judgment for indemnity against the 3rd party Δ until original Δ pays the judgment against it.


• An employer’s motion to implead an employee was denied on the grounds that jurors would be likely to render a smaller verdict if they are required to find that an individual employee is ultimately responsible for its payment (employee would not be able to indemnify Δ b/c he had no money); Δ always has the right to bring a separate suit against its employee.

*Revere v. Aetna* p.653

• Claims may be asserted by a 3rd party Δ against the original Π without independent jurisdictional basis if ancillary jurisdiction is appropriate.


• Gives strict interpretation of §1367(b) by not allowing Π to bring in a non-diverse 3rd party after original Δ removed to federal court and counterclaimed against original Π. To the N.C. Dist Court, “plaintiff” in 1367(b) meant original plaintiff, not a defendant in a counterclaim.

F. **Necessary & Indispensable Parties**

Necessary & indispensable parties under Rule 19: sometimes a non-party to an action is so interested that the court may demand that they be joined; if an an absentee is necessary, they must be joined (3 steps).

(1) Is the absentee necessary? Rule 19(a) uses “as needed” instead of necessary.

   Test #1 (Efficiency): In 19(a)(1), w/o an absentee brought in, the court cannot accord complete relief among the parties.

   Test #2 (Protect absentee): In 19(a)(2) sub 1, an absentee’s interest may be harmed if not joined.

   Test #3 (Protect Δ): In 19(a)(2) sub 2, an absentee’s interest may subject Δ to multiple or inconsistent obligations.

Joint tortfeasors are not necessary; If Π sues one of 2 joint tortfeasors, the other cannot be forced in as a necessary party.

(2) Joinder of an indispensable is feasible of PJ and diversity are not destroyed.

(3) If joinder is **necessary but not feasible**, either proceed without an indispensable or dismiss; Rule 19(b) gives 4 factors to look at:

   i. will jgmt in indispensable’s absence be prejudicial to anybody?
   ii. to what extent can prejudice be lessened?
   iii. will a judgment in indispensable’s absence be adequate?
   iv. adequate remedy if action is dismissed for non-joinder? (most important factor)

*Provident Tradesmen’s Bank v. Patterson* p.639 (1968)

• When it is not feasible to join a necessary party, the action must be dismissed only if the party is indispensable; Rule 19(b) was drafted to avoid narrow & inflexible reasoning; test balances interests of Π, Δ, absentee and the public; this case sidesteps certain issues by noting that the indispensable party will not be bound by judgment (but will have less $$ to go after); Rule 19(b) analysis is very flexible and a court can reach a result by emphasizing some prongs and minimizing others.

G. **Intervention**

Voluntary joining by a new party governed by Rule 24;

When an intervenor decides to come in, the choose whether they want to be on Π or Δ side;

The court has power to realign;

2 types of intervention:
(1) Rule 24(a)(2) (Intervention of Right): Absentees interest may be harmed if it is not joined and it is not adequately represented (similar to Test #2 for necessary parties).
(2) Rule 24(b)(2) (Permissive Intervention): Absentee’s claim or defense has at least one question in common with case or court’s decision.

Rule 24

- Third parties may intervene after a judgment on the merits if 24(a) is satisfied; there must be (1) an interest in the appeal (of a case that a party decides not to appeal); (2) intervenors being impeded in protecting their interests if not allowed to intervene; (3) interveners’ interests not being adequately represented by a party that does not appeal.
- Atlantis v. United States p.689
- Stare desisis supplies a practical disadvantage which constitutes an impairment of a 3rd party’s ability to protect that party’s interest; U.S. sued several Δs to quiet title to property, but not Atlantis; Atlantis sought to intervene claiming it possessed title; dist court denied the intervention as being unjustified; CA5 reversed on the grounds that a decision would adversely affect Atlantis’s claimed ownership; also Atlantis is not adequately represented by the U.S. or the named Δs and satisfies the conditions required for joinder under Rule 19 or Rule 24.

VI. Class Actions

i. Initial requirements: all 4 requirements in Rule 23(a) must be met in every class action.
   (1) Numerosity: too many to join practically
   (2) Commonality: something in common among all class members
   (3) Typicality: representative’s claim must be typical of the party
   (4) Representative and lawyer must adequately represent the class

ii. One type of class action must be satisfied under Rule 23(b)
   23(b)(1) and 23(b)(2) have very special requirements;
   23(b)(3) must show 3 things:
   (1) Common questions predominate
   (2) Class action is the superior method for resolving the suit
   (3) Notice to class members is required in b(3); representative must pay to give required notice.
   Rule 23(c)(2) provides what is required for a class action notice; notice must tell members they have a right to opt out; notice/right to opt out is only required in 23(b)(3)-not in (b)(1) or (b)(2).
   (4) Who is bound by a class action? All members except those who opt out of a (b)(3) suit; members cannot opt out of (b)(1) or (b)(2).
   (5) Subject matter jurisdiction
   a. Diversity of citizenship: for citizenship, only the representative must be diverse from the Δ.
   b. Amount in Controversy: circuit split; In Zahn, the Supreme Court held that each member of the class must claim > $75,000 but there is a strong argument that §1367 overrules Zahn as long as representative’s claim > $75,000;
      3 circuits make Zahn the law: 3rd, 8th, 10th
      4 circuits hold that §1367 overrules Zahn: 4th, 5th, 7th, 9th
      Supreme Court granted cert and split 4 to 4.

A. Introduction
   History of Class Actions p.695-701

B. Suitability for Treatment as a Class Action
   Certification Requirements p.701-708
C. **Due Process**  
*Hansberry v. Lee* p.718  
- Granting res judicata effect to a class action judgment in which the prerequisites and procedures for class action were not satisfied violates due process.  
*Martin v. Wilks* p.1307  
- A party seeking a judgment binding on another cannot obligate the latter to intervene in a suit without mandatorily joining that person in the action.

Notice requirements p.708-709; App. p.38

D. **Class Action Practice**  
Mgmt of class actions p.709-18  
*Wetzel v. Liberty Mutual* p.725

*General Telephone v. Falcon* p.732

Notice of Class Action Settlement (App. p.39)

E. **Jurisdictional Complications**

*Snyder v. Harris* p.735

*Zahn v. Int’l Paper* p.736

*Leonhardt v. Western Sugar* (App. p.40)

*Phillips Petroleum v. Shutts* p.738

Venue p.747

F. **Precursive Effect**
VII. Adjudication Without Trial

A. Summary Judgment
   - Summary judgments are governed by Rule 56
   - Unlike 12(b)(6), courts can look at evidence
   - Rule 56(c): moving party must show there is no dispute on a material issue of fact and that they are entitled to judgment as a matter of law.
   - Point of SJ is to weed out cases that don’t need a trial b/c there are no disputes of fact.
   - Where does the evidence come from? Depositions, interrogatories, etc., but not pleadings b/c pleadings are not sworn documents (but pleadings might be relevant)
   - Summary judgment is the same inquiry as trial motions.
   - Courts do not grant MSJ lightly and will “bend over backwards” to avoid it.

Rules of Thumb for Summary Judgments
1. Rarely granted for party with the burden of proof at trial
2. Tends to be more rarely given in tort claims than in contract claims.

Hypo: Π sues Δ for running a red light and hitting Π; Δ moves for summary judgment with affidavits from God, Jesus, & Allah; if Π does nothing, Δ will win, but if Π gets one affidavit from a crackhead, MSJ cannot be granted b/c of the dispute of fact and it must go to trial.

Lundeen v. Cordner p.914

Cross v. United States p.920

Celotex v. Catrett p.925
- Message from Supreme Court to lower courts that it’s OK to grant MSJ sometimes; held that Δ can grant MSJ by establishing that Π has no evidence to support an element of a claim.

B. Dismissal of Actions
- Rule 12(b)(6): Motion to dismiss for failure to state a claim;
- Some states call this a demurrer;
- The court does not look at evidence in a 12(b)(6) motion, only at the face of the complaint
- Court makes this inquiry: If everything the Π says is true, would the law give Π a judgment?
- If the answer is no, it would not make sense to go on.
- Hypo: Suppose elements of a cause of action are A, B, C, D but Π only alleges only A, B, and C; case will be dismissed without prejudice, giving Π another chance to plead; this helps to weed out cases that lack a claim as a matter of law.

McCants v. Ford Motor Co. p.943

Link v. Wabash RR Co. p.945

C. Default Judgments

Coulas v. Smith p.947

- Failure of a Δ to appear when a case is called for trial does not warrant a default judgment against him; default jgmt is only appropriate when Δ fails to answer a complaint which this Δ did; however, Δ who answers can have a judgment against him on the merits.

Rule 60

VIII. Trials

i. Right to a jury trial

- Jury resolves facts and judge resolves the law; in federal court, the right to a jury trial in civil cases is governed by the 7th Amendment; this preserves the right to a jury trial in actions at law but not suits of equity; 7th Amendment only applies in federal courts (not incorporated).
- Test: Figure out whether there would have been a jury trial right in 1791 under British common law to make the distinction between law and equity; there used to be law and equity courts, now just a single court.
- At common law: Law remedy is compensatory damages, still the main legal remedy to this day; Equitable remedies were injunction, specific performance, reformation, rescission.
- What happens in a federal court when a case involves both legal and equitable issues? Until 2 famous cases, federal courts considered the most important part of the case.

Beacon Theaters and Dairy Queen gave 3 rules:
1. Determine jury rights issue by issue as opposed to overall center of gravity
2. If an issue underlies both law and equity, there must be a jury.
3. Try the jury issues first before the equity issues.

ii. Jury Selection

- Voir dire process allows questioning of potential jurors
- In selecting the jury, each side has unlimited strikes for cause
- Each side has 3 peremptory strikes without reason
- Peremptory strikes must be race and gender neutral

iii. Motions for trial

(1) Judgment as a Matter of Law (JMOL) takes judgment away from jury; timing is important; a party can only move for JMOL after the other side has had its chance to present evidence, meaning Δ could move twice (end of Π evidence and end of all evidence)

Standard for granting JMOL: Reasonable people could not disagree on the result

JMOL is very rare, much like SJ (Π has to prove A & B but only proves A, then JMOL)
(2) Revised Motion for JMOL (formerly MJNOV): governed by Rule 50(b); here, a judge has let the case go to the jury, a verdict is returned, losing side makes MJNOV, court decides jury verdict was unreasonable, MJNOV is granted. Picky issue to look for: **MJMOL at the close of evidence is a pre-requisite for MJNOV; if no MJNOL, Δ waives the right to MJNOV.**

(3) Motion for a new trial is governed by Rule 59(a); timing for MNT is same as MJNOV (10 days after judgment); can be granted if judge is convinced that something is wrong with the judgment; a new trial is much less radical than MJNOV;
   a. Judge may have made a serious error at trial (evidence, burden, etc.)
   b. Jury misconduct (quotient, verdict, etc.); damages figure is a deliberative group process or verdict is against serious weight of evidence.

MNT may be for only part of the case; MNT can be conditional-no doubt Π should win, but damages are off, so grant MNT unless parties agree on different damages.
   a. If damages are too high, judge grants a new trial unless Π agrees to remit part of judgment; in *Hetzel* (1998), Supreme Court said trial courts cannot simply lower the award; must offer lower amount or a new trial; remittitur is OK in federal court and most state courts.
   b. If jury awards damages that are too low, Π moves for a new trial; court agrees to move unless Δ agrees to add more $; additur is unconstitutional in federal courts, 7th amendment violation in *Dimick*; allowable in state courts; *Dimick* is still good law.

A. **Jury Misconduct**
   Special Verdicts p.1071
   
   *Robb v. John C. Hickey* p.1086
   
   *Kramer v. Kister* p.1088
   
   *Sopp v. Smith* p.1089
   
   *Hukle v. Kimble* p.1092
   
   *McDonough v. Greenwood* p.1094

B. **Power to Override the Jury**
   Denman v. Spain p.1048
   
   *Kircher v. Atchison* p.1051
Rule 50

Aetna v. Yeatts p.1095

C. Conditional & Partial New Trials
Fisch v. Manger p.1101

Powers v. Allstate p.1105

Doutre v. Niec p.1106

D. Extraordinary Relief from Judgment
Briones v. Riviera Hotel & Casino p.1109

Patrick v. Sedwick p.1110

Smith v. Great Lakes Airlines p.1112

IX. The Binding Effect of Decisions
Always involves case 1 that has gone to jgmt and case 2 that is pending and poses question of whether jgmt from 1 precludes jgmt in 2; if so, it’s precluded by Res Judicata or Collateral Estoppel.
General Rule: The court in case 2 applies the preclusion law of the jurisdiction that decided case 1. Semtek is an exception.

A. Res Judicata (Claim Preclusion)
Parties have one bite at the apple to vindicate a claim
3 steps to Res Judicata:
(1) Both cases were brought by same Π against same Δ
(2) Case 1 ended in a valid final jgmt on the merits; on the merits means fully litigated or a default judgment case; it is safe to say that any judgment in favor of a Π is on the merits; if Π loses, it is not on the merits due to a 12(b) loss or a SOL dismissal.
Rule 41(b) all voluntary dismissals are to be treated as on the merits unless they were based on jurisdiction, venue or indispensable parties

(3) Case 1 and Case 2 involve the same claim; **majority** definition of claim is all rights to relief arising from a t/o; **minority** definition of claim uses a primary rights theory that there is a different claim for each invaded right.

Hypo 1: Π sues Δ for personal injuries in a car crash; Π then later sues Δ for property damage in the same crash; majority view is that RJ applies, minority says RJ does not apply.

Hypo 2: Same car crash. Π sues Δ; then Δ later sues Π; no RJ b/c not the same Π/Δ, but 2nd suit should be dismissed b/c of compulsory counterclaim rule.

*Federated Department Stores v. Moitie* p.1234

*Jones v. Morris Plan Bank* p.1235

Rule 41(b)

*Rinehart v. Locke* (App. p.50a)

*Anguiano v. Transcontinental Bus System* (App. p.52)

*Semtek Int’l v. Lockheed Martin Corp.* p.1326

- Case 1 in fed court/Case 2 in state court; held that state court in case 2 should apply federal preclusion law, **but** if case 1 was in federal court under diversity jurisdiction, then *Semtek* says that federal law will usually adopt the state law of the state where the federal court sat; also held that 41(b) means it cannot be refiled in the same federal court, but must look to state law to determine Res Judicata for any other purpose.

B. **Collateral Estoppel (Issue Preculsion)**

i. Case 1 ended in a valid final jgmt on the merits (like RJ)

ii. Same issue was litigated and determined in Case 1

iii. That issue was essential to judgment in Case 1

iv. Due process requires that collateral estoppel is asserted only against somebody who was a party Case1 (except when privity exists).

v. Mutuality rule: collateral estoppel can only be used by somebody who was a party in case 1; 2 exceptions to mutuality rule:

a. Non-mutual defensive collateral estoppel (not a party in case 1, but a Δ in case 2)

b. Offensive, non-mutual collateral estoppel (not in Case 1, but a Π in case 2)

Hypo 1: Π loses tort suit against Δ1 b/c of contributory negligence; Π sues Δ2 for same t/o as Case 1; Δ2 can get defensive non-mutual collateral estoppel since Π had a chance to litigate in Case 1.
Hypo 2: \( \Pi_1 \) loses tort suit against \( \Delta \) b/c of contributory negligence; \( \Pi_2 \) sues \( \Pi_1 \) for same t/o as case 1; most jurisdictions say that \( \Pi_2 \) can’t get non-mutual offensive collateral estoppel, but there is a strong trend in favor of allowing this as long as using it would be fair under the circumstances.

*Cromwell v. County of Sac* p.1244

*Russell v. Place* p.1250

*Rios v. Davis* p.1252

*Patterson v. Saunders* (App. p.56)

*Ralph Wolff v. New Zealand* p.1280

*City of Anderson v. Fleming* p.1282

*Bernhard v. Bank of America* p.1284

*Parklane v. Shore* p.1291
- Parklane factors: (1) \( \Delta \) had full chance to litigate in 1\(^{st}\) case; (2) \( \Delta \) could foresee multiple suits; (3) \( \Pi \) in 2\(^{nd}\) case could not have joined easily in 1\(^{st}\) case (discourages wait & see plaintiffs); (4) no inconsistent judgements.

*Schwartz* dissent (App. p.59)

Currie Law Review Article (App. p.62)

C. Intersystem Preclusion

*Hart v. American Airlines* p.1312