A. Jurisdiction Over the Parties or Their Property

The Traditional Bases for Jurisdiction

a. General— the defendant can sue in the forum on a claim that arose anywhere in the world.

b. Specific— the defendant can be sued in the forum only for a claim that arose in the forum
   a. Pennoyer v. Neff— For in personam jurisdiction the defendant must be served in the state. For quasi in rem and in rem, the property must be attached prior to service and the judgment is limited to that of the value of the property. The service was not valid because the land had not been seized prior to notice.
      1. Rule— State can’t compel nonresident landowner (in persona) to court w/out attaching land (quasi in rem)
   b. In rem— the court exercises its power to determine the status of property located within its territory, and the determination of the court is binding with respect to all possible interest holders in that property.
   c. Quasi-in-rem— the court renders a judgment for or against a person but recovery is limited to the value of property that within the jurisdiction and thus subject to the court’s authority.
      1. the dispute may be related or unrelated to the land.
      2. using property to litigate individual rights

c. Personal Jurisdiction
   a. Power over person— may serve a person while in the state
   b. Service of process to a defendant’s agent in the forum
   c. Consent— one can voluntarily appear
   d. Power over property— attach property to claim
      1. notice irrelevant
      2. judgment only for property attached
   e. Citizenship

d. Expanding the Bases of Personal Jurisdiction
   a. Hess v. Pawloski— does the law allowing service to an assigned representative violate the 14th amendment? There was implied consent because of the dangerous nature of the vehicle. The nature of implied or formal consent is not relevant to the application of the due process clause of the 14th amendment. The cause of action must be related to his presence in his car on the highways.
      1. Rule— driver in state consented to being held for jurisdiction in state for accident in state.
         a. For car/driving accident— Yes
         b. For slander after accident—??
         c. For fight after accident—??
   e. A New Theory of Jurisdiction— Minimum Contacts, but not trying to expand.
      a. International Shoe Co. v. Washington— in personam
         1. New Law— Due Process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain
            a. minimum contacts with it such that the maintenance of the suit does not offend “traditional notions of fair play and substantial justice.”
         2. This is a more flexible test allowing us to move away from Pennoyer, but not overruling it, because this is only used if they aren’t in the forum.
            a. Traditional notions of fair play and substantial justice
               i. Defendant’s burden
               ii. The forum state’s interest
               iii. The plaintiff’s interest in convenient and effective relief
               iv. The judicial system’s interest in efficient resolution of controversies
               v. The state’s shared interest in furthering fundamental policies.
3. Rationale
   a. The company is accepting a reciprocal duty to answer for its in-state activities in the local courts. A state has a duty to enforce laws within its borders when the defendant is taking advantage of other laws and benefits of the state.
   b. Limitation— it is the contacts that spawned the lawsuit that are significant.
   c. Important aspects of the test
      i. Applies to individual and corporate defendants
      ii. Limitations on personal jurisdiction found in long arm statutes are distinct from the constitutional limit imposed by the minimum contacts test.
      iii. May have sufficient contacts with a state to support minimum contacts jurisdiction there even though she did not act within the state.
      iv. Focuses on the time the defendant acted and not the time of the lawsuit.

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<tr>
<th>Contacts</th>
<th>Cause of Action</th>
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<tr>
<td>Continuous and Systematic</td>
<td><strong>General Jurisdiction</strong> (sued for any claim, even one completely unrelated to its instate activities)</td>
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<tr>
<td>Single Contact</td>
<td><strong>Specific Jurisdiction</strong> (only subject to those claims arising out of the contact)</td>
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f. Specific Jurisdiction and State Long-Arm Laws
   a. The Development of the long-arm laws
      1. Long-arm laws seek to provide personal jurisdiction over non residents who cannot be found and served in the forum.
         a. Flows from International Shoe's emphasis on the quantum and quality of the defendant's activity in the forum state.
      2. The due process clause does not actually confer any jurisdiction on state courts, it only defines the outer bounds of permissible jurisdictional power. “When you authorize your courts to exercise jurisdiction, you may not go any further than this.”
      3. Every personal jurisdiction question has two part analysis
         a. Is there a state statute that authorizes it to exercise personal jurisdiction under the circumstances of the case?
         b. If there is, would it be constitutional to do so?
            i. **Unenumerated**— Some states statutes say “on any basis not inconsistent with the Constitution of this state of the United States.”
            ii. **Enumerated**— Long Arm Statutes authorize their courts to exercise jurisdiction over defendants based on specific types of contact with the forum state.
               1. Passed in reaction to International Shoe.
               2. Not necessarily as broad as the due process would allow.
               3. There are instances when the statute might authorize jurisdiction that would exceed the limits of due process.
         a. Where the tort actually occurred— at the point of manufacturing or at the point of injury. This court says it's at the point of injury.
         b. A two-part test must be satisfied— the state long arm must be as broad as the due process.
         c. Titan man. In OH, sold to PA, and injury occurred in IL.
The burden was shifted to the defendant to show that they didn’t have many valves in the state. If they had only one it might have not fulfilled the due process clause.

b. Due Process of Long Arms
   
   1. Reach—McGee v. International Life Insurance Co—SC says that it was sufficient that the suit was based on a contract, which had substantial connection with that state.
      a. Everything pertaining to the policy was being conducted in CA and benefiting a person in CA. Defendant had solicited the contract.
      b. Relatedness—the claim arose from the defendant’s contact
      c. They would be at an extreme disadvantage if they had to go to the state that the insurance company was in.
          i. They would be essentially judgment proof.
      d. The state had an interest.
   
   2. No Reach—Hanson v. Denckla—The trustee’s contacts with FL had been less than minimal, and that the state could not assert personal jurisdiction over it. Since Florida had not obtained personal jurisdiction over an indispensable party to the action, the trustee, Delaware was justified in refusing the full faith and credit to the Florida decree.
      a. “Defendant must have purposefully availed itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws.”—no deliberate choice
      b. Had to show that the bank purposefully availed itself of the privilege of conducting activities within the forum state. Did not conduct business in the state, did not have holdings there.
      c. Had FL not had the indispensable party rule, they might have been able to assert jurisdiction.
   
   3. No Reach—World-Wide Volkswagen Corp. v. Woodson—A car purchased in NY and driven to AZ and injured in OK. Can the OK long arm reach to WWV? No. court jurisdiction. Petitioners carry on no activity whatsoever in Oklahoma; they close no sales and perform no services there, avail themselves of none of the benefits of Oklahoma law, and solicit no business there either through salespersons or through advertising reasonably calculated to reach that State. Nor does the record show that they regularly sell cars to Oklahoma residents or that they indirectly, through others, serve or seek to serve the Oklahoma market. Although it is foreseeable that automobiles sold by petitioners would travel to Oklahoma and that the automobile here might cause injury in Oklahoma, “foreseeability” alone is not a sufficient benchmark for personal jurisdiction under the Due Process Clause. The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State, but rather is that the defendant’s conduct and connection with the forum are such that he should reasonably anticipate being haled into court there. Nor can jurisdiction be supported on the theory that petitioners earn substantial revenue from goods used in Oklahoma.
      a. Stream of Commerce ends in NY.
      b. Case may have different if they had reached out to OK, with ads, encouraged word of mouth.
      c. There was jurisdiction over the importer and VW.
      d. 
   
   4. Reach—Cause of action did not arise there, but effects were felt. Keeton v. Hustler—There were continuous and systematic contacts(sold magazines in the
state) and the cause of action did not arise there, but the effects were felt in that state.
   a. Some question of forum shopping.
   b. SC found there were minimum contacts and the long-arm reached as far as due process.

5. **No Reach— Kulko v. Superior Court**
   a. Did not believe by sending his children to CA is purposefully “availed himself” of the “benefits and protections” of CA laws. You would encourage the wrong kind of conduct if you enforced this is as availing himself. Did he foresee this. Perhaps.
   b. Does not agree with the assertion of in personam jurisdiction was warranted by the financial benefit that appellant received from his daughter’s presence in CA. He derived benefit from her absence from his house.
   c. No evidence that he has exerted physical injury on either property or persons within the state of CA. The cause of action arises from his personal, domestic relations. Furthermore, the controversy between the parties arises from a separation that occurred in NY.
   d. Fairness—it is the appellant who has stayed in NY and would impose a burden not justified by his very limited contacts in CA.

6. **Burger King Corp. v. Rudzewicz**
   a. Contracts Case—suit is brought in FL by BK. The defendants are two franchise holders in MI. Ct says they have jurisdiction.
   b. Contacts
      i. Prior negotiations and contemplated future consequences, along with the terms of the contract and the parties’ actual course of dealing— that must be evaluated in determining whether the defendant purposefully established minimum contacts with the forum.
      ii. Franchise grew out of “a contract, which had substantial connection with that State.”
      iii. Rud reached out to FL, Language in the contract.
      iv. Reasonable foreseeability coupled with other factors—reasonably anticipated—were experienced businessmen.
   c. Fairness—The burden is on the defendant too show the unfairness of the forum

7. **Plurality— Asahi Metal v. Superior**— outside man. sells to co that man and sells to forum state.
   a. **No minimum contacts— (4 Justices)** The placement of the product in the stream of commerce, without more, is not a purposeful act toward the forum state. When A sold it to be he didn’t know it would end up in C,D,E, and even if he did he didn’t put them there.
      i. **Compare to WWV**— not so clear that just putting goods in the stream of commerce is purposeful availment.
      ii. More of an active effort needed.
      iii. Brennan(Dissent)— if is a contact if the defendant put the product in the stream of commerce and could reasonably anticipate that it would get to state C.
   b. **Offends traditional notions of fair play and justice**— not sufficient if the minimum contacts were present.
      i. Great burden on defendant to litigate in forum state
      ii. Forum state has no interests
      iii. Plaintiff’s interests in obtaining relief are minimal
iv. Must consider other nations laws and policies
   c. “The defendant may be sued in the state on this claim under the minimum
      contacts test because it has purposefully conducted activities there, and the
      claim arises out of this purposeful contact.”
   d. “In evaluating the minimum contacts one looks to whether the defendant has
      taken advantage of the benefits and protections of the laws of the state.”

Minimum Contacts Theory—International Shoe

Minimum Contacts—The defendant must have a relevant contact with the forum—purposeful availment (not a unilateral act of a third party) and

Foreseeability (it must be foreseeable that the defendant would be hailed into court in the forum state. Not just that the product would get there
   • relatedness         plaintiff’s interest         legal system’s interest in efficiency
   • convenience         state’s interest

g. General Jurisdiction and State Long Arm Statutes
   a. Perkins v. Benguet Consolidated Mining Co.—When the CEO of a foreign mining
      company sets up shop in OH, and continues to conduct business from OH, the court may
      find that he carried on continuous and systematic supervision of the limited wartime
      activities of the company. The activity did not arise out of OH.
      1. Rule—Strict general jurisdiction would not violate due process for OH to take or
         decline jurisdiction (Continuous and systematic, but cause of action did not arise)
   b. Helicopteros v. Hall—Because the cause of action did not arise out of the forum state
      activities, the court had to determine whether Heli had continuous and systematic
      contacts to establish general jurisdiction. They held that they were insufficient because the
      activities were not related to the crash.
      1. Never authorized business there, no agent there, no services there, no contract
         signed there, no employees based there, no real property or office.
      2. Yet, received $ in an account in TX, sent pilots and personnel to train there, made
         purchases in TX.
   c. Belino v. Simon—The cause of action did not arise out of the state, but Simon had
      sufficient minimum contacts and LA jurisdiction would not offend traditional notions of
      fair play and substantial justice.
      1. Simon initiated contacts, not burdensome
      2. goes through the fair play and justice list.
   d. General comments
      1. Even if the court concludes that the tort took place where the injury occurred rather
         than where the defendant’s negligent act occurred, you still need to satisfy the
         minimum contacts test.

h. Jurisdiction Based Upon Power over Property—In Rem and Quasi In Rem
   a. Quasi in rem—The dispute has nothing to do with the ownership of the property
   b. Attachment statute—allows a state to attach and grab property
   c. Tyler v. Judges of the Court of Registration--
   d. Harris v. Balk—Portable debt, wherever he goes the debt goes. The origination of the
      debt is irrelevant. Okay to attach intangible property
   e. Must still meet the minimum contacts test—Shaffer v. Heitner—
      1. Appellants holdings in Greyhound do not provide sufficient contacts with DE,
         state’s interests were not significant.
      2. Need minimum contacts for quasi in rem attachment.
a. Pre-Shaffer—quasi in rem—just need property
b. Post-Shaffer—quasi in rem—need minimum contacts
   i. Applying the requirements of international shoe because the court wants to be consistent in exercising jurisdiction over the interests of persons in a thing.
   ii. Property must be related to the litigation
   c. If the long arm is too short can use quasi-in rem with property.

3. If this were land it might have worked to just attach it.

   i. Jurisdiction Based on Physical Presence
      a. Burnham v. Superior Court—Jurisdiction based on physical presence alone constitutes due process because it is one of the continuing traditions of our legal system that define the due process standard of traditional notions of fair play and substantial justice. It was developed by analogy to physical presence.
         1. Father, visiting his children in CA, was served and asserts that CA has no personal jurisdiction over him.
            a. Does not need to meet the test of min contacts of Int’l Shoe.
            b. Does not need to meet the test that the litigation arise out of activities in the forum state from Shaffer.

   j. Consent
      a. Insurance Corp. of Ireland v. Compagnie Des Bauxites De Guinee—English insurance company did not think the ct had jurisdiction so they showed up and therefore consented.
         1. If they had not shown up they would have had a default judgment entered
            a. State upholds juris—enforceable and can’t argue the merits of the case
            b. State does not uphold—not enforceable, trial in state.
      b. Carnival Cruise Lines v. Shute—When a ticket purchased in WA includes a clause that any litigation must be brought in FL, the court will find that the ticket purchaser consented to litigation in FL. The min contacts were found insufficient by the lower court, but that was not addressed by the SC. Enforce the forum clause
         1. special interests
         2. spare litigation
         3. reduced fairs
      c. Baldwin v. Iowa Traveling Men’s Association—A defendant who makes no appearance whatsoever remains free to challenge a default judgment for want of personal jurisdiction.
         1. They did make an appearance and therefore waived rights to contest jurisdiction.

B. Jurisdictional Reach of the Federal District Courts—Rule 4—Notice(Rules for Service of Process)
a. 4e—service upon individuals within a jurisdictional district of the US
b. 4k1—territorial limits of effective service—there is no federal long arm, use the long arm of the state.
c. 4k2—When there are minimum contacts with the US, but not a citizen of the state.
d. Federal Questions and Diversity of Citizenship
e. Special Appearance—one may make an appearance to litigate the jurisdictional question, but be careful to raise nothing else. If anything else is raised that speaks to the merits, the jurisdictional issue is waived and he has consented.
   a. Rule 12b—may move to dismiss for lack of personal jurisdiction as well as failure to state a claim—more liberal approach allows for this quasi merit based challenge
      1. PJ, venue, insufficient process, insufficient service of process—must raised in the answer
      2. SMJ failure to state a claim, indispensable parties—can be raised anytime
   b. Must raise this immediately or it will be lost. If he loses on the merits, he can’t come back and say that there was no personal jurisdiction if he didn’t raise it previously.
c. If he challenges the jurisdictional issue and loses he may proceed to defend on the merits without waiving his objection. If he loses on the merits, he may appeal to an appellate court in the rendering state, claiming that the trial court’s conclusion that it had personal jurisdiction was wrong.

d. Ignore Completely— if he fails to appear because he believes the court has no jurisdiction over him, a default judgment will be entered. If the judgment is enforceable he will have lost the case. The winning side will need to go to the state where the defendant is and

a. Full Faith and Credit Clause— will allow a ruling in one state to be upheld in another

b. Before this, however, the court may examine the personal jurisdiction in the original action and if it finds there is no personal jurisdiction it will not uphold the ruling in that state. Collateral Attack.

c. If the State does find there is personal jurisdiction, he cannot litigate the merits again.

d. Cannot challenge personal jurisdiction in the enforcement action if she has already done so in the original action.

g. Reasonable Notice— Constitutional Requirements

i. Mullane v. Central Hanover— Statutory notice (publication in newspaper) to known beneficiaries was inadequate, not because it failed to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hand.

1. Does not requires that they actually found out about the suit.

ii. Notice rules need to be determined and declared rather than determined ad hoc by state statutes— Wuchter v. Pizzutti

1. When a mortgagee is easily identifiable he needs to be given actual notice.

iii. Greene v. Lindsey (1982)— postings on apartment doors of a housing complex is not sufficient notice. First class mail is necessary. W as found to not satisfy the Mullane standard

1. Not a reliable means of acquainting interested parties of the fact that their rights are before the courts.

iv. Must give notice and the opportunity to be heard (to get to court w/ out extreme costs)— Alaska case

v. Not sufficient to mail foreclosure summons to persons known to be judged insane.

h. The Mechanics of Giving Notice— Rule 4— must still comply with Mullane

i. Rule 4(c)—

1. (1)— must serve a copy of both the summons and the complaint

2. (2)— must be 18 and not a party to the action

ii. Waiver of Service— Rule 4(d)— Maryland State Firemen’s Association v. Chaves— mere receipt of the waiver of service does not give rise to any obligation to answer the lawsuit or provide a basis for default judgment.

1. If you don’t waive the service you have to pick up the bill for the service, but you are not waiving any other offenses.

iii. Service— Rule 4(e)(2)—

1. Personal Delivery on Natural Persons— process server yelled fire in order to serve a summons to a little old lady.

2. Leave a copy at the usual abode with someone of suitable age and discretion who lives there— Rovinski— Service at any resident at D’s residence=valid service.

   a. If the federal rules are not satisfied look to the local rules.


   a. Even though D’s did not personally know W einberg, she promptly accepted and transmitted the notice to the Ds.

   b. Valid under 4e2.
iv. **Rule 4(e)(2)**—May use the methods of the state in which the person is being served or in which the district court is located.

v. **Service on Artificial Entities—Corporations**
   1. **Rule 4h**—does not require rigid formalism. Service of process is not limited solely to officially designated officers... rules are construed in a manner reasonably calculated to effectuate their primary purpose to give the defendant adequate notice that an action is pending. The person who accepted in this case had done so before. *Insurance Co. of North America v. Hellenic Challenger.*

vi. **Return of Service—Lying**—when a process server lies about completing service there is nothing that can be done. Tody you can sue for punitive damages.

vii. **Rule 4(K)—Territorial Limits of Effective Service or the Long Arm**—you can serve process throughout the forum state.
   1. **(1)(a)**—Federal court can reach out of state only if the state court in that state could do the same thing.
   2. **(1)(d)**—When there is a statute
   3. **(2)**—when there are sufficient contacts with the US as a whole, but not with an individual state.

j. **Etiquette/Immunity from Process**
   i. **Sivnkstv v. Duffield**—Man had entered the state voluntarily, but was jailed and then served. Subject to service of civil process, irrespective of the question of residence, if he was voluntarily in the jurisdiction at the time of arrest or confinement.
      1. He would be immune if he had been subpoenaed there, was a witness, or juror or otherwise part of a court proceeding.
   ii. **W yman v. N ewhouse**—Service will not be valid when the defendant was wooed into the state by fraud.

C. **Subject Matter Jurisdiction**—We have satisfied the personal jurisdiction and we must now decide which court to go to. Federal court can only hear certain cases, whereas States can hear anything with a few exceptions.
   a. **Diversity of Citizenship**—when case was filed—§1332a
      a. Must be complete diversity—there is no diversity if any plaintiff is the citizen of the same state as any defendant—Stawbridge v. Curtiss
      b. The plaintiff's state was not in the record—Capron v. Van Noorden
         1. Rule 12b3—may bring up lack of jurisdiction at anytime.
      c. A US citizen is a citizen of the state where she is domiciled—Mas v. Perry—mere residence in a state does not establish domicile for purposes of diversity jurisdiction. There must be subjective intent to make it your home and you must be present in the state.
         1. Mr. Mas (France) §1332(a)(3) v. LL (US)
         2. Mrs. Mas (MS, not LA) §1332 v. LL (LA)
      d. §1359—there is no jurisdiction where party is improperly or collusively made to get diversity
      e. Rose(OH) v. Giamatti(NY)—Long established common law doctrine to disregard nominal parties. He should have just sued the MLB (OH) to stay out of federal court.
   f. **Corporation—§1332(c)(1)**
      1. Any state where it is incorporated—can be several
      2. Principle place of business—White v. Halstead Test
         a. Nerve center—decision making control
         b. Corporate activities—production or service activities
         c. Total activities—balances all relevant factors.
         d. Unincorporated—look at the citizenship of all members
b. Amount in controversy + Diversity of Citizenship—Must exceed $75,000—§1332
   a. “It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify a dismissal. AFA Tours, Inc. v. WhiteChurch
      1. must allow the plaintiff to brief the issue
      2. detailed factual analysis is required
   b. Aggregation** consider supplemental jurisdiction
      1. If there are multiple causes of action and one plaintiff and defendant (tort and contract) aggregate
      2. Not if there are multiple parties with distinct claims—each suit needs to be able to stand on its own.
      3. Joint Claims arising from a single indivisible harm—go with total
         a. shared ownership, each owns 100%—not if seeking damages on harm

c. Federal Question—§1331
   Even if there is no diversity or $$ we can still get to federal court with a federal question.
   a. Right to sue does not depend on defense; just action to sue…must be in cause to be in
      1. Congress can do whatever with Art. III §2 “arising under”
   b. Well pleaded complaint Rule—Only look to the complaint and not possible defenses—Louis & Nashville R R v. M ottley
      1. Construing §1331 narrowly—Remove from complaint anything that goes beyond the prima facie case.
      2. Alleging an anticipated constitutional defense in the complaint does not give a federal court jurisdiction if there is no diversity of citizenship between the litigants. The plaintiffs cause of action must be based on federal statute or the Constitution in order to have a federal question which would grant jurisdiction to the federal courts.
   c. Skelly Oil v. Phillips Petroleum—Plaintiff cannot use declaratory judgments to get around Mottley
      1. Federal Jurisdiction relies on “coersive suit.”
   d. Franchise Board (CA) v. Construction Laborers Trust—federal question did not appear in the complaint
   e. T he proper forum to hear a case is the one having control over the laws which created the cause of action. T .B. Harms Co. v. Eliiscu
      1. Copyrights are subject to federal law, but where the matter involves titles or contract questions it is a state issue.
      2. No federal question was present
   f. Incorporation of a federal standard in a state law private action, when that standard creates no federal right of action, does not confer federal question jurisdiction—Merrell Dow Pharmaceuticals, Inc. v. Thompson
      1. Congress had not established a federal cause of action for the violation

d. Supplemental Claims and Parties—§1367—Allows courts to hear claims it would not normally hear because they do not meet the Diversity of Federal Question
   a. Every claim must have subject matter jurisdiction
      1. 1331—Federal Question
      2. 1332—Diversity
      3. 1367—Pendant Jurisdiction
   b. Under pendant jurisdiction, federal courts may decide state issues which are closely related to the federal issues being litigated. United Mine Workers v. Gibbs
      1. The state and federal claims must derive from a common nucleus of operative fact. A plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding.
a. Must also decide if the state law claim predominates, whether it would require the court to decide sensitive or novel issues of state law, confuse the jury, were the federal issues already resolved? (1367(c))

2. Pre §1367
3. *Hurn v. Ourlsr*— state law claims are appropriate for federal court jurisdiction when they form a separate but parallel ground for relief also sought in a substantial claim based on federal law.

Plaintiff was not able to join two defendants in a cause of action when one claim was already pending in fed ct. and the other had no basis for federal jurisdiction based on common nucleus of operative facts— *Aldinger v. Howard*

1367(b)— in any civil action of which the district courts have jurisdiction based on §1332 the district courts shall not have jurisdiction under 1367 over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24— *Owen Equipment & Erection v. Kroger*

1. There was no claim based on substantive law, but only diversity
2. Respondent would not have been able to bring this suit originally naming them both as defendants because there would have been no diversity. This would give her a way around the rule.
3. Defendants can bring them in or multiple plaintiffs with the same claim can go after one defendant.

e. Rule 82—Joinder rules do not affect jurisdiction. If there is a Rule 14, joinder claims would not be allowed. Rule 14 allows joinder

f. §1367 would now allow this, but then they examined the Congressional purpose of the federal act in question— *Finley v. U.S.*

1. Two claims, two defendants, one under §1331 and the other has no independent basis for subject matter jurisdiction. §1367 would not allow it because the only restraint if on whether it is a claim only on diversity and this in one on the federal question.
2. §1367 doesn’t kill it because this is not a diversity case, but a federal question case

g. Three Part analysis to §1367— must meet both the Constitutionality of Gibbs and the statutory authority of §1367.

1. Nucleus of operative facts
2. Applies discretionary factors of Gibbs

h. 1367(c) gives the courts discretion to not hear the case, but they must explain their reasons for denying supplemental jurisdiction. *Executive Software v. U.S.*

1. Congress intended that the four reasons enumerated be the only ones allowed to remove the jurisdiction
2. Must also decide if the state law claim predominates, whether it would require the court to decide sensitive or novel issues of state law, confuse the jury, were the federal issues already resolved? (1367(c))

e. Removal from State to Federal Court— When the defendant wants to be in federal court after being sued in state court--§1441, §1446, §1447

a. 1441(a)— defendants may remove from state to federal only if the defendant could have commenced this action himself in federal court.

1. You can only remove to the district court embracing the place where such action is pending.

b. 1441(b)— diversity case is only removable if “none of the parties in interest properly and served as defendants is a citizen of the State in which the action is brought”

1. There is no need to protect him from prejudice of his home state.

c. Borough of West Mifflin v. Lancaster

f. Challenging SMJ
a. Collateral Attacks  
   1. **Kalb v. Feurstein**—State selling debtor’s land while debtor in bankruptcy  
      a. allows the collateral attack  
      b. the state unfairly used proceedings to take property  
   2. **Durfee v. Duke**  
      a. Mistake of state where land was located, no collateral attack allowed  
   3. Finality overrides SMJ  

b. Order of Analysis  
   1. **Ruhrgras**—There is no reason to require a district court to decide SMJ first  

g. Venue—After PJ and SMJ—Which Federal District Court do we go to?  
   a. 1391(a)—diversity  
      1. where any defendant resides, if they all in same state  
      2. where a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is located  
      3. only if you can’t use 1 or 2 you go for any district where D is subject to PJ (used in cases of foreign countries)  
   b. 1391(b)—federal question  
      1. where any defendant resides, if they all in same state  
      2. where a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is located—**Bates v. C & S Adjusters, Inc**  
         a. The forwarding of the mail to Bates constituted consent—there is no intentional reaching out.  
      3. where any defendant may be found, if 1 or 2 is not found  
   c. Minority Rule—**Reasor Hill Corp v. Harrison**  
      1. Flying crop duster from another state.  
      2. State court can hear a claim for damages for injury to property in another state.  
         a. Courts can pass on title outside their jurisdiction  
         b. It is not necessary to bring the claim before they have left the jurisdiction  
         c. The landowner would have no other option if the court did not allow this.  

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<th>M O, CA — Venue— M O, CA</th>
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When you have both defendants you have to have it in CA, where the accident occurred because this is based on diversity and 1391 applies, it must be in CA because not all D’s are from the same place.  

You may waive venue  

h. Transfer of Venue—  
   §1404—may transfer to any district or division where it might have been brought.  
   a. Defendant cannot transfer the action to a district in which the plaintiff could not have properly brought it. **Hoffman v. Blaski**  
      1. Petitioner wanted it to be where it could have been brought at the time transfer or the time of filing. They didn’t buy this argument.  
   §1406—when the transferor court is the improper venue. May dismiss or transfer in the interests of justice.  

i. Forum Non-Conveniens—They dismiss because they cannot transfer and there is a more appropriate court somewhere else.  
   **Piper v Reno** Airplane crash in Scotland. All decedents are Scottish. Pilots were Scottish. Scottish law was going to govern. The court thought that Scottish law was more appropriate. Scotland was the appropriate—Footnote 6—factors that the court will look at.
D. The Erie Doctrine—Does the Federal Court follow State Law?

Federal v. State Law in Diversity Cases

a. Swift v. Tyson—Rules of Decision Act—“law of the states”—only to the statutes and local usages of the state, not to judicial decisions interpreting principles of common law. The court held that they examine all the rules and choose the correct one.
   a. Story—The states are not making the law, they are simply interpreting it, the law is the same in all the states. The law is the same in Athens and Rome.
   b. Black & White Taxi—an example of how this doesn't work. The taxi company reincorporated in another state that recognized the monopoly, sued in Federal court, and the federal court chose the law.
   c. This is an inaccurate application and acceptance of the concept of natural law.

b. Erie v. Thompkins—Tompkins was injured when walking along a RR track. Sued in NY in Federal District Court to have federal common law apply, since the PA law would have required negligence. The federal DC relied on its own decisions that the RR need not be negligent.
   a. USSC overrules Swift—
      1. Swift had failed to achieve its main objective—to have state judge recognize the rightness of Federal Common Law.
      2. Allowed forum shopping
      3. Authorized Judges to make law where they had not been delegated such powers—if there is no Federal Law on point—to go the state law.

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<th>Pre-Erie</th>
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<td>Procedural—use state rules</td>
<td>Procedural—use federal</td>
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<tr>
<td>Substantive—use Federal Common Law</td>
<td>Substantive—use state law</td>
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c. Outcome Determinative— Guaranty Trust Co v. York—SOL seen as substantive law and therefore the Erie Doctrine applies.

d. Balancing the Interests—Byrd v. Blue Ridge Electrical Cooperative, Inc—Whether the judge or the jury should decide the status of an “employee” was different in state and federal court. If it is clearly substantive, we go with state law, but if it isn’t we can look to countervailing federal policies.
   a. In this case the 7th amendment jury trial was important.

e. Federal Directive on Point—Hanna v. Plumer
   a. Whether an issue is outcome determinative must be viewed under the policies of Erie—prevent forum shopping and inequitable admin of laws.
      1. If the Federal Judge were to do his own thing would it encourage forum shopping.
   b. If there is a federal directive(including FRCP) on point that governs the issue—USE IT.

f. Conflict between State and Federal Law—
   a. FRCP Rule 3—holds that a suit is commenced at the time of filing does not toll the state's SOL. There was no direct collision because they could work togethe and Rule 3 was procedural but the state SOL was substantive. Walker v. Armco Steel Corp
   b. If it is arguably procedural—question of which court should hear the case—the federal rule will apply. Stewart Organization v. Ricoh

c. Ascertaining State Law
   g. A State supreme court decision need not be followed by a federal court sitting in diversity if that decision has lost its vitality and it is likely that it will be overturned—Mason v. American Emery Wheel Works
h. McKenna

E. Pleadings

4 purposes for pleadings
- Notice
- Identify Basis of Claim—Rule 12(b)(6)
- Set our Each Sides View of the Fact
- Narrow the Issues

a. General Requirements as to Detail—Rule 8
   a. (8)(a)—
      1. A short and plain statement of the grounds upon which the court’s jurisdiction depends;
      2. a short and plain statement of the claims showing that the pleader is entitled to relief;
      3. a demand for judgment for relief—Diguardi
   b. If a complaint does not have enough info to answer to, a motion for more definite statement will be granted—Rule 12(e)—Lodge 743

b. Complaint and Answer
   a. A complaint that does not contain a material allegation is not necessarily subject to dismissal if the plaintiff could make out a case at trial entitling him to relief—Garcia v. Hilton Hotels
      1. The complaint was enough to put Hilton on notice. As there was an omission, a rule 12(b)(e) was granted.
      2. Absolute privilege will result in dismissal of claim.
   b. 8(b)—responds to allegations of the complaint. Admit, deny, or I don’t know
      1. Failure to deny the allegation is treated as an admission of all allegations except damages. If you fail to deny, you had admitted.
   c. 8(c)—Affirmative Defenses (SOL, statute of frauds, res judicata)
      1. injecting a new fact, that if true, means the plaintiff loses
      2. Owens Generator
   d. 12(b)—Attacking the complaint
      1. Lack of SMJ—anytime
      2. Lack of PJ—during first response
      3. Improper Venue—1st
      4. Insufficient process—1st
      5. Insufficient service—1st
      6. Failure to state a claim upon which relief can be granted—anytime
      7. Failure to join a party under Rule 19—anytime
         a. A federal complaint will not be dismissed for failure to state a claim unless it appears that the plaintiff can prove no set of facts in support of his claim. American Nurses
   c. Amendments
      a. Rule 15(a)—Amendments
         1. Plaintiff has a right to amend once before the defendant serves her answer. Even after a motion to dismiss, they can still amend.
         2. The defendant has the right to amend once within the 30 days of serving her answer.
            a. Admitted fault after relying on insurers. Court granted them the motion as it was made in good faithBeeck v. Aquaslide
         3. If there is no right to amend, ask for a leave of court.
b. **15(b)—Variance**—comes up when the evidence at trial does not match what was pleaded
   1. When issues are tried by express or implied consent, but they were not included in the pleadings, the pleadings may be amended to reflect this. Moore v. Moore
   2. If the other party objects, they will still be able to amend if the objecting party does not present sufficient reasons for keeping the evidence out.

c. **15(c)—An amendment to a pleading will relate back to the date of the original pleading when...(helps avoid SOL problems)**
   1. **(2)**—a new claim will be added when it arose out of the same transaction or occurrence.
      a. Child sues for her own injuries and the death of her mom. The court will allow her to amend to sue for the wrongful death of her dad.
   2. **(3)**—If “unknown” persons are listed in the original complaint, and amendment to the complaint with the names of the persons will not be accepted—Worthington v. Wilson
      a. Only if the “unknown” had actual notice he was being sued.
      b. If we allowed this people would just file complaints with fictitious names and change them later.

d. **Sanctions—Rule 11**
   a. Even though the old lady did not understand the complaint—the USSC doesn't requires that to be so since she had an attorney and her son-in-law explained things to her. Her limited English helped here. Surowitz v. Hilton Hotels Corp
      1. This rule about understanding was intended to avoid strike suits.
   b. Trial Judge abused his discretion in awarding sanctions—Hadges v. Yonkers Racing Corp

F. **Joinder**

a. **Joinder of Claims by plaintiffs—Rule 18**
   a. **Rule 18(a)—** A plaintiff may unite causes of action where they have arisen from the same transaction or transactions connected with the same subject matter. Harris v. Avery
      1. **Rule 42(b)—** judgess can hold separate trials for properly joined claims
   b. Where more than one cause of action arises from a single wrongful act, the plaintiff must raise all causes of action in one lawsuit in order to enforce his existing rights—Rush v. City of Maple Heights
      1. Comes down to claim preclusion. The city is already found negligent(issue preclusion), but the claim has already been adjudicated.

c. **Hypo—**
   1. Parties and privity and land acquired during/ before action
      a. TN v. TP→LL v. TP (not bound)
      b. TN v. TP→SubTN v. TP (bound)
      c. LL v. TP→TN v. TP (bound)
   2. 1 fire burns 2 plots of land. P must bring in one suit.
   3. P v. D (auto accident) NEG, BATTERY, SLANDER—must all be in the same suit.

b. **Counter Claims—Rule 13(a) and (b)**
   a. **(a)Compulsory—** One that arises from the same transaction or occurrence If you don’t assert in the pending claim, its gone.
      1. Mitchell was sued by the bank for note. He won in that he had already paid off the loan with the potato crop. But then he wanted to sue to get back the difference between the potato crop and the loan. He is not allowed to bring this claim. Mitchell v. Federal Intermediate Credit Bank
2. When a counterclaim is asserted on a contract in federal court, a claim based on another contract (not under 1331) may be joined if it is compulsory (is a logical relationship to the original claim). United States v. Heyward Robinson
   a. The two contracts in question involved the same parties, made reference to each other, and concerned the same type of work.
3. 1st claim had no diversity—dismissed. The counterclaim by Cooper §1331. Then GL counterclaimed the §1331 claim with the same facts of the first claim—Great Lakes Rubber Corp v. Herbert Cooper Co.
   a. The last claim was compulsory because it arose out of the same transaction or occurrences.
   b. (b)—Permissive—it does not arise out of the same transaction or occurrence, but does relate to the subject matter.
      1. L sued for purchase price and lost. H sued to recover damages for fraud. H’s claim was not compulsory because the issue had not been brought up previously. Linderman Machine Co. v. Hillenbrand Co.
      c. Cross Claims—Rule 13(g)—a cross claim is a claim against a co-party not an opposing party and it arises from the same transaction or occurrences underlying the dispute. These are not compulsory
         a. Interpretation of “same transaction or occurrence” will impact the holding on these cases. LASA
      d. Impleader—Rule 14—Bringing someone new into the lawsuit usually someone who will indemnify her. The purpose of the rule is to provide suitable machinery whereby the rights of all parties may be determined in one proceeding.
         a. A party may be impleaded in a federal action to determine that party’s indemnification liability to a party-defendant where the applicable state law provides no right of indemnification exists until the defendant has been forced to pay damages—Jeub v. B/G Foods
         b. Goodhart v. United States Lines, Inc
         c. Even if you get someone in under Rule 14b—they still must satisfy SMJ or supplemental jurisdiction and if the claim was based solely on diversity the plaintiff cannot implead someone who is not diverse. Guaranteed Systems v. National Can
      e. Proper Parties—Rule 20
         a. Co-plaintiffs—same transaction or occurrence
         b. Co-defendants—same transaction or occurrence
      f. Necessary and Indispensable Parties—Rule 19—Court will demand someone be joined
         a. (a)(1)—without A, the court cannot accord complete relief among the parties. This is based on efficiency. If A is not brought in there will be multiple litigations
         b. (a)(2)(i)—A’s interest may be harmed if she is not joined. Protecting absentee
         c. (a)(2)(ii)—A’s absence may subject the defendant to multiple or inconsistent obligations. Protecting the defendant.
         d. (b)—Cannot join if doing so would destroy diversity, court must then decide to let the case go on or to dismiss—Provident Tradesman Bank
            1. The prejudicial effect a judgment would have on the absent party—none
            2. Alternative measures the court might use to lessen any prejudice—accepted limitations on all claims to the amount of the insurance policy
            3. Whether the judgment rendered in the absence of a non joined party would be adequate—modification of the judgment instead of dismissal
            4. Will there be an adequate remedy if the suit is dismissed based on nonjoinder—no reason to throw away a judgment
            5. If we decide to dismiss, then A is indispensable, except if there is other forum for the case.
      g. Intervention—Rule 24—3rd Party Wants in on the lawsuit—permissive
a. (a)(2)—intervention of right
   1. Must show A's interests will be harmed if she is not let in
   2. Her interests are not adequately represented now
   3. No independent basis of jurisdiction is required

b. Smuck v. Hobson
   1. Former Superintendent—no interest
   2. School Board Member—individual from collective cannot act
   3. Parents
      a. Have an interest-a21
      b. Inadequately represented-a(2)(2)

c. (b)(2)—permissive intervention
   1. A’s claim or defense has at least one question in common
   2. SM J?

d. Even though the judgment of the action will not be binding on the wanna-be intervenor—if the practical effect of the judgment in the original action would be to establish precedent that would be controlling in an action later instituted by the intervenor—Atlantis v. US

G. Class Actions—Rule 23
   a. Suitability for Treatment as a Class Action
      a. (a)—Prerequisites—Holland v. Steele
         1. numerosity—no magic number
         2. Law/fact question in common
         3. Representative=same members of class
         4. Representatives will fairly and adequately protect the interests of the class—doesn't talk about the lawyer, but courts will look at it.
      b. (b)—Class Actions Maintainable
         1. (1) the prosecution of separate actions would cause the risk of one of the following
            a. inconsistent adjudications which would result in incompatible standards for the party opposing the class
            b. the decisions would prejudice next cases (limited funds) or if the lawsuit would be dispositive to non adjudicated claims.
         2. (2) Opposing party has not acted properly and injunctive or declaratory relief is needed for the whole class.
         3. (3) This is the easiest to satisfy, but does require notice in 23(c). Causey v. Pan American World Airways, Inc
            a. Question of law and fact predominate over individual questions
            b. Class action is the superior method for resolving the action
            c. Questions to consider?
               i. Interest of the indiv members to control the case
               ii. Any litigation already commenced
               iii. Result of concentrating litigation in the forum
               iv. Management difficulties

   b. Due Process
      a. One is not bound to a class action suit if there was not adequate representation of the class—Hansberry v. Lee
         1. A group of homeowners who had joined as class to uphold a restricted covenant against opposition did not represent Hansberry's interests as a homeowner.
         2. If this were a b2 class action no notice and no opting out.
         3. But this was a b3 class action and notice was required to be sent and the option to opt out would have been afforded to him.
      b. As they had no obligation to intervene in the lawsuit between the class of BF F and the city, the W FF are not precluded by the earlier judgment—Martin v. Wilks
1. The BFF should have brought the WFF in under Rule 19. When it is not invoked a party cannot be bound to the judgment. Rule 19 is not compulsory.

c. Notice
1. Use Mullane teachings and Rule 23(c) notice requirements for Rule 23(b)(3) class actions

c. Class Action Practice
a. If a class action is brought under Rule 23(b)(2) because of a request for injunctive relief as well as each class member having identical issues (although Liberty made no argument), but events subsequent to filing make injunctive relief unnecessary, the notice requirements of Rule 23(c) need not be met since it was not filed as a 23(c) claim. Wetzel v. Liberty Mutual Insurance
1. 23(b)(2) class actions in theory all have the same common problem and the action is binding on all of them and they have no option to opt out.
   a. The class is homogenous/ and entity
2. 23(b)(3) class actions included plaintiffs that do not have identical interests, they should be given the option to opt out if they wish to pursue the litigation on their own.
   b. There is a difference between individual claim of discrimination and the existence of a class of individuals that have been discriminated against. General Telephone v. Falcon
1. Discrimination was typical
2. Promotion practices were motivated by a policy of ethnic discrimination
3. The policy was reflected in the other employment practices.
4. The harm suffered by the individual representing the class must be the same as the class he is representing.

d. Jurisdictional Complications
a. Determining Diversity of Citizenship in class actions should be based on the citizenship of the named parties only. Ben-Hur
b. Aggregation problems in Class Actions—Courts are split
1. The $'s of the individual claimants in 23b3 class actions will not be aggregated if they do not satisfy the $ requirement on their own. Snyder
   a. Courts are not willing to budge on this one, since Congress mandated the $ requirement.
   b. Each plaintiff in a Rule 23(b)(3) class action must satisfy the jurisdictional amount requirement—Zahn
2. When several plaintiffs unite to form a single entity—Rule 23b2 class—it is enough if their interests collectively equal the jurisdictional amount.

c. A court sitting in diversity cannot exercise supplemental jurisdiction where the exercise of such jurisdiction would be inconsistent with the jurisdictional requirements of §1332. §1367(b) prohibits claims that would allow addition of parties that would destroy the diversity because of $$. Leonhardt v. Western Sugar Co.

d. Personal Jurisdiction in Class Actions
1. A state may exercise jurisdiction over a class action plaintiff even if the plaintiff's contacts with the state would not confer jurisdiction over the defendant. Phillips Petroleum v. Shutts
   a. The minimum requirements required in Int'l Shoe are not necessary here as the plaintiffs in the class action is not in nearly as perilous a situation as a civil defendant.
   b. Each plaintiff was notified and given the option to opt out.
      i. Although, we have no idea if they actually received the notice.

e. Preclusive Effect
1. Does this only apply to 23b3 cases, what of b2?
a. A successful defense of a class-action discrimination suit does not bar individual suits by members or potential members of the class. *Cooper v. Federal Reserve Bank of Richmond*

1. The class action represented a pattern of discrimination, while the individual suits will be individual discrimination which is not barred by rejudicata or collateral estoppel. One can exist without the other.
2. The representative of the class would not be able to do this though.

f. Mass Tort Litigation

a. Questions of Predominance and Superiority will often not be met in cases in which the class is certified as a 23b3 and the class includes members from several states. *Castano*

1. The court erred in its certification of the class because it did not consider the state law issues—there was only cursory discussion.
2. Or how the trial would be conducted on its merits—did not consider how the individual claims of addiction would be dealt with. Failed to consider individual reliance.
3. Immature torts results in higher than normal risk that the class action may not be superior to the individual adjudication.

b. Class Action settlement offers for 23b3 class must meet the Rule 23 requirements of predominance, superiority, adequate, representation, and notice before certification—*Amchem*

1. In this cases there were too many differences between the members of the class and there was no adequate representation.
2. The class includes those that are injured and those that haven't even shown symptoms. These individuals have different concerns.
3. There is no personal jurisdiction either—how would you get consent from people that haven't even shown symptoms?

c. Certain requirements when attempting to certify under Limited Funds Rule 23(b)(1)(B)—*Ortiz*

1. Insurance limit was not what was meant by limited funds
2. Ortiz did not want people to be able to opt out, instead wanted to bind them to this actions.

H. Adjudication without Trial

a. Summary Judgment—**Rule 56** This is used to weed out cases that don’t need to go to trial

- 56(c)—no dispute on a material issue of fact and the moving party is entitled to judgment as a matter of law
- 56(e) Adverse party may not rest, but must set forth specific facts that there is a genuine issue for trial

a. If Rule 56(e) is not satisfied—motion for summary judgment is filed, moving party presents evidence that there is no genuine issue of material fact—the non moving party must present valid evidence on the contrary—*Lundeen v. Cordner*

1. further, there must be a finding that no party’s case will be strengthened by the cross examination of one of the witnesses—which was decided here.

b. When there are still issues of material fact to resolve, the court cannot grant SJ. *Cross v. United States*

1. The burden is on the moving party initially—then shifts to the non moving party. All disputes will be resolved in favor of the non moving party.
2. Further, all the affidavits submitted by the professor came from fellow professors who had the same interests.

c. The moving party must establish the absence of any genuine issue of material fact, even if there is no evidence given by non moving party that the fact did exist—*Adickes v. S.H. Kress*
1. Evidence is viewed in the light most favorable to the party opposing the motion.

d. SJ must be entered against a party who fails to make a showing sufficient to establish
the existence of an element essential to his case and on which he bears the burden of
proof at trial. Celotex Corp v. Catrett

1. The court exercises great restraint in granting these motions.

b. Dismissal

Voluntary Dismissal — Rule 41(a)

a. (a)(1) — By plaintiff
   1. before an answer has been filed —or—
   2. filing a stipulation of a dismissal signed by all the parties

b. (a)(2) — by the court — must go and ask them to grant you a dismissal without
prejudice
   1. McCants v. Ford Motor Co.— plaintiff asked the court to dismiss without
      prejudice after SOL had expired and defendant had filed a msj.

Involuntary Dismissal — Rule 41(b)

2. Link v. W abash — The court has the right to dismiss a plaintiff’s action with
prejudice because of his failure to prosecute.


c. Default Judgments — Rule 55— Failure to Plead or Otherwise Defend

a. (a) — clerk enters the party’s default

b. (b) — Judgment is entered in two ways
   1. (1) By the clerk — when the claim is for sum certain or which by computation
      can be made certain
      a. Was not a default judgment because he had made an appearance.  Coulas
         v. Smith
         i. Rule 60(b)(1) — mistake — is only good for one year.

   2. (2) By the Court — If they have ever appeared they should be served with a
      written notice at 3 days prior to the hearing.
      a. Will conduct hearing on damages.

I. Judicial Control Over Jury Decision

a. Jury Misconduct

      1. Mansfield Rule: Affidavits of jurors may not be used to impeach their verdict
      2. Iowa Rule: Cannot be used except when extrinsic or overt acts which may be
corroborated or disproved.

b. No quotient verdicts — Huckle v. Kimble

c. Juror’s failure to answer a question properly during voir dire will not require a new
   trial unless it severely biased the case.  McDonough

b. Judicial Power to Override the Jury — Rule 50 and Rule 59

a. Directed Verdict/ JNOV standards — if there is “substantial evidence” for the opposing
   party.
   1. Directed Verdict — at close of P’s Case— R50(a)
      a. by D

   2. Directed Verdict— after all evidence is presented— R50(a)
      a. By D or P
      b. Reasons not to Grant— next appeals court will have a jury verdict to fall
         back on
      c. Must ask for a DV to get a JNOV

   3. JNOV — it is really a directed verdict given after the jury has brought back their
decision— Rule 50(b)

   4. by P or D
b. JNOV will be granted when a jury verdict for the plaintiff rests on conjecture rather than legally sufficient evidence. Denman v. Spain

c. Although evidence may be far fetched, it cannot result in a JNOV — Kircher v. Atchison

d. New Trial Standard— Judge is like the 13th juror— look to credibility and facts as given
   1. Easier standard since the jury is given their chance
   2. Some states have one NT limit
   3. You need “abuse of discretion” to over a finding of a new trial Aetna v. Yeatts

c. Conditional and Partial New Trial
   a. Additur— not in CL — but in 7th circuit— add to verdict and we wont order a new trial
   b. Remittitur — allowed— the amount was in the original amount awarded by the jury.

d. Extraordinary Relief from Judgment
   a. Rule 58— once the verdict is handed down, make judgment forthwith
   b. Rule 50— M ust file motion J NOV not later than 10 days post-verdict
   c. Rule 59— M ust file motion for New Trial not later than 10 days post verdict
   d. Rule 6(b)— Court may not extend time for 50(b), 59(b,d,e), R60, or R73
   e. Rule 60(b)
      1. “Excusable Neglect”— elastic concept not limited strictly to omissions caused by circumstances beyond the control of the movant— Briones v. Riviera Hotel and Casino
      2. If new medical treatments are discovered after verdict has been entered it must meet several requirements— Patrick v. Sedwick
         a. W ould change the result at a new trial
         b. Discovered since the trial
         c. Could not have been discovered before the trial
         d. M ust be material
         e. M ust not be merely cumulative or impeaching
      3. If some of the evidence exists at the time of trial, but not all, it will not result in a new trial— Smith v. Great Lakes Airlines

J. The Binding Effects of Decisions
   a. Claim Preclusion (Res Judicata)
      a. If you have received a ruling in federal court and refile in state only to be removed to federal court, with the same facts— it is res judicata— Federated Department Stores, Inc. v. M oitie
         1. It didn’t matter that their former co-plaintiffs won on appeal.
      b. If a transaction is represented by a single and indivisible contract and the breach gives rise to a single cause of action, it cannot be split into distinct parts and separate actions— Jones v. M orris Bank of Portsmouth
         1. T he note and conditional sales contract constituted one single contract. Sole purpose of the conditional sales contract was to retain title in the seller until the note was paid. E specially since the acceleration clause condensed them altogether.
         2. W ill the same evidence support both causes of action
         3. Coupons on bonds are different.
      c. If a claim is dismissed with prejudice, because of failure to state a claim, it is considered to have been viewed on its merits and there is res judicata. Rinehart v. Locke
         1. N eed to have it dismissed “without prejudice”
      d. An involuntary dismissal (not indicating w/ out prejudice) will result in claim preclusion— Aguilano v. T ranscontinental Bus System, Inc
      e. Costello
b. Issue Preclusion (Collateral Estoppel)
   a. Cromwell v. Sac
   b. It is well settled that a judgment of a court of competent jurisdiction upon a question
directly involved in one suit is conclusive as to that question in another suit between
the same parties, where it can be established that the **precise question was raised**
and **determined in the prior suit**. Russell v. Place
   c. A finding of fact by a jury or a court which does not become the basis or one of the
grounds of the judgment rendered is not conclusive against either party to the suit.
Rios v. Davis
   d. "The fact that persons are interested in the same question or in proving the same facts
does not make them privies." Ralph Wolff & Sons v. New Zealand Ins. Co
   e. City of Anderson v. Fleming W v. Contractor when she stepped into an
excavation—judgment against her. W v. City for the same thing—city pleaded the
judgment in favor of the contractor. As she was not entitled to judgment against the
contractor she is not entitled to judgment against the city.
   f. There is no compelling reason why the person asserting the plea of res judicata need
to have been a party or have privity with the party to the earlier litigation. There is
no need for mutuality here. Bernard
      1. W as the issue decided in the prior adjudication identical with the one presented
         in the action in question?
      2. W as there a final judgment on the merits?
      3. W as the party against whom the plea is asserted a party or in privity with a
         party to the prior adjudication.
      4. A litigant who was not a party to a prior judgment is not per se precluded from
         using that judgment offensively to prevent a defendant from relitigating issues
         resolved in that earlier proceeding.