Civil Procedure Final Outline

**Personal Jurisdiction**

PJ exists over residents & property in forum st

Historical bases:

$ citizenship

$ presence (still valid b/c df's presence means he availed himself of the forum's laws)

$ consent (can be express or implied)

Long Arm Statutes -

$ 2 part inquiry to determine whether PJ exists:

1. Does PJ violate the LAS? (is it legal?)
2. Does PJ violate the DPC? (is it constitutional?)

$ R4.k.1.a - fed cts shld use st laws for PJ

$ R4.k.1.b&c - fed cts also have PJ over parties joined under R14 or R19 & served in the US within 100 mi of the cthouse, or ' 1335 interpleaders

$ R4.k.2 - fed LAS - only use when sts can't get PJ

$ df can't be a st citizen and must have min contacts w/ US as a whole

Int'l Shoe - PJ requires **minimum contacts** s/t exercise of PJ doesn't offend traditional notions of **fair play** and substantial justice (2 part test):

1. Contacts (analyze as a continuum) -
   $ Isolated (suit ok on directly related claim (specific J)) to
   $ Continuous & Systematic (suit ok for any claim (general J)
   $ look at **purposeful availment & foreseeability**

2. Fairness - more fairness required if fewer contacts exist
   $ look at convenience and being subject to forum's laws/st's interest in exercising its laws and how related the claim is to the contact

Stream of commerce -

$ PJ exists over manu when product injurs people in forum (Gray v. Am Radiator)

$ Asahi - PJ requires stream of comm + purposeful act (intent to serve the market) (plurality)

Df must purposefully avail himself of the forum's laws s/t he cld foresee being haled into ct there to be subject to PJ there (WWVW)

$ pl's unilateral act is not enough to establish min contacts

$ df's act doesn't count if it was solicited by pl (but does if df solicited pl)

IRJ - suit to quiet title to land in forum st

QIRJ - suit for personal rights limited to df's property in forum st

$ Shaffer v. Heitner - min contacts applies to IRJ & QIRJ too

$ property must be attached at the beginning of the suit

PJ obtained by fraud is invalid

Df can consent to contest PJ only or can wait & contest PJ when pl tries to
enforce a default jdgmt (if df is wrong, won’t get to litigate the merits)  
R82 - fed rules don’t extend or limit jurisdiction or venue  

Service of Process  
Svc must be reasonably calculated under the circumstances to give notice and an opportunity to be heard (to comply w/ DPC - Mullane)  
$ first class mail is usually enough  
$ publication can only be used if df is avoiding service  
R4.d.2 - dfs can be asked to waive formal svc & must pay for it if they don’t  
R4.e.1 - fed cts will effect service pursuant to the laws of the st where it sits, or  
R4.e.2 - abode svc - leave w/ a person of suitable age & discretion residing at df’s usual place of abode  
R4.h.1 - corps can be served by delivering service to an officer, manager or agent appointed to receive service  
R4.m - service must be made within 120 days of filing the complaint  
Contract boilerplate can validly contain waiver of svc/appointment of agent  
Parties present in the state solely for a ct appearance shld be immune from service  

Subject Matter Jurisdiction  
1331 - federal question must be raised as a part of pl’s prima facie case  
$ doesn’t count if anticipated as a defense (well pleaded complaint rule)  
$ can include questioning the constitutionality of the fed law  
1332 - complete diversity between sides must exist when the complaint is filed  
$ citizenship is determined by domicile (residence + intent to indefinitely remain) - humans are citizens of only one st  
$ partnerships are citizens of every st their partners are citizens of  
$ corps are citizens where they’re incorporated & where their PPB is  
  $ nerve center - where corp decisions are made  
  $ corporate activities - where the bulk of corp activity takes place  
  $ total activity - mixture of nerve & corp tests  
$ amt in controversy must exceed $75,000  
$ denied only if df can prove it doesn’t have a legal certainty@  
$ can only be aggregated when there’s 1 pl & 1 df (regardless of whether claims arise out of the same t/o)  
  $ unless multiple parties each possess a partial undivided interest & the whole exceeds $75,000  
1367.a - supplemental J exists when a claim arises out of the same t/o and fed ct has original J over the original claim  
  1367.b - if SMJ is based on 1332, no Supp J over claims by pl against a party brought in under R14(3df), 19 (indispensable parties), 20 (permissive parties), or 24 (intervenors)  
1367.c - dc can refuse to exercise 1367 if:  
  1. it’s a novel/complex st law issue,  
  2. st claims predominate,  
  3. dc has dismissed the fed claim,  
  4. or other compelling reasons  
1441.a - suit can be removed by df to a dc that has original J over the case  
  1441.b - unless SMJ is based on 1332 & df is a citizen of the forum  
  1441.c - jdg can accept removal of st claims along w/ fed claims (& can remand independent st claims back if more just)  
  $ can only deny st claims that cld be denied under 1367.c.1-4  
  $ pl can’t remove even in response to counterclaim by df (pl consented to
SMJ is not valid when it is obtained by collusion. A declaratory suit is only allowed if its coercive suit would also be allowed.

**Venue**

1. Venue is proper:
   1. in the state where all defendants reside
   2. where a substantial part of the events the claim arises out of occurred
   3. or if neither 1 or 2 are met:
      $\text{where any defendant is subject to personal jurisdiction if SMJ is based solely on diversity, or}$
      $\text{where any defendant can be found if SMJ is not based solely on diversity}$

1. A corporation resides anywhere it is subject to personal jurisdiction.

1. When land is involved, venue is proper in any district where the land is located.

1. Venue automatically confers personal jurisdiction.

1. When venue is proper, a defendant can transfer to a different court that would have had original jurisdiction (PJ, SMJ & proper venue) if more convenient.

$\text{Choice of law transfers with the case.}$

**FNC** - The district court has the discretion to determine if venue is inconvenient, consider:

- access to sources of proof
- ability to compel reluctant witnesses
- possibility of viewing premises
- practical problems (expense, general ease & expedition)

1. When venue is improper, the district court can dismiss or transfer to a court with proper venue if doing so serves justice.

**The Erie Doctrine**

In diversity cases, federal courts must use state substantive law (3-part test):

1. Hanna v. Plumer - Federal courts must use federal rules unless there is no direct conflict or federal rules are unconstitutional.

2. York - If using federal law results in a different outcome, use state law to discourage forum shopping.

3. Byrd - To determine if state law creates a right that it should be followed, balance:
   $\text{constitutional requirements & need for uniformity with state courts}$
   $\text{state interest in ensuring its laws are applied & federal consistency with state courts}$

SoL & choice of law rules are substantive.

Federal courts do not have to follow state laws if they would not be upheld by the state supreme court.

**Pleadings**

R8.a - Pleadings need contain only a short and plain statement of the basis for jurisdiction & claim.

$\text{Pledefendant has to give plaintiff notice of the claim & its legal basis (so that defendant can prepare an answer).}$
R 8.c - pleadings must include all affirmative defenses (inc SoL)

affirmative defenses can be introduced later only if there is no prejudice to other side

Issues can be raised at trial if consented to by both sides

Amendment of pleadings should be granted unless non-movant can show it wld result in prejudice

R12.b - defenses than can be raised on a motion to dismiss (before submitting a responsive pleading):
1. no SMJ
2. no PJ
3. improper venue
4. insufficient process
5. insufficient service
6. failure to state a claim (same std of proof as summ jdgmt)
7. failure to join a R19 party

R12.h - 2-5 are waived if not submitted in the first response, 6 & 7 must be raised b/f final jdgmt, 1 can be raised any time

R12.e - motion for a more definite statement

R15 - Amendment of pleading:
R15.a - 1 free amendment allowed b/f other party files a response, after that, it is the ct's discretion (should be freely given)

R15.b - amendment is implied if the issue is tried by the parties

R15.c.1 - relation back is allowed if allowed by the st's SoL rule

R15.c.2 - new claims can be added if they involve the same evidence (t/o)

R15.c.3 - pl can change names of dfs due to mistake if

same t/o and

df had actual notice within 120 days of filing and

knew/hrtk the suit shld have been filed against him

(RL - allowed if no prejudice to df)

R11.b - atty presenting any paper to the ct certifies it is correct & not frivolous

have to make an inquiry reasonable under the circumstances

recent trend toward non-monetary sanctions

21 day safe harbor period not available if ct is acting sua sponte

Joinder

Anything other than P v. D requires a rule

Still have to prove PJ & SMJ

R18 - all claims can be joined if they're between the same parties

R42.b - trial can be split to prevent prejudice or jury confusion

R13.a - counterclaims are compulsory if they arise out of the same t/o and doen't require 3rd parties to adjudicate
$ don’t require independent basis for SMJ b/c automatically covered by ’ 1367
R13.b - counterclaims are permissive if they don’t arise out of the same t/o
$ do require independent basis for SMJ
R13.g cross/3rd Party claims may be brought if they have a logical relationship to the same t/o as the original claim (never compulsory)
R14 - 3rd party joinder is allowed if the claim arises out of the same t/o and there’s at least one common question of law or fact
$ not allowed if it’d harm any party’s substantive rights
$ 3rd party’s citizenship is irrelevant for ’ 1332 purposes, but still have to have SMJ
R14.a - df can implead a 3df for indemnity (any cross/counterclaim can follow)
  $ 3df allowed to counterclaim against pl if arises out of the same t/o even though there’s no independent basis for SMJ
R14.b - pl can implead a 3df if df counterclaims against pl
R19.a - parties should be joined (if feasible (doesn’t negate SMJ)) when:
$ 19.a.1 - complete relief can’t be obtained w/o joinder
$ 19.a.2.i - joined party’s interest wld be damaged by an adverse ruling
$ 19.a.2.ii - failure to join would risk duplicate/inconsistent jdgmts
$ joint tortfeasors aren’t necessarily indispensable parties
R19.b - if it’s not feasible, ct shld weigh equities & decide whether to continue w/o the party or dismiss
(R20 - all parties can join as pls if their claims arise out of the same t/o)
(R22 - parties can be joined if they have claims against pl that cld expose pl to multiple liability)
R24.a - to intervene @of right the party must have:
$ an interest that
$ may be adversely affected by the suit and
$ that is not adequately represented by others
Issues of first impression can be challenged by any party whose rights concerning the same t/o wld be affected & aren’t adequately represented
R24.b - an intervenor may be permitted when he has a common question of law or fact, unless allowing intervention would unduly delay the suit or prejudice the parties

Class Actions
Can be viewed as a massive joinder or an entity unto itself
R23.a - to certify, there must be:
1. numerosity
2. commonality (of member’s claims)
3. typicality (of rep’s claims)
4. adequate representation
Types of classes:
$ R23.b.1.a - risk of inconsistent jdgmts & incompatible stds
$ R23.b.1.b - risk of jdgmt that wld affect interest of others (limited fund)
  $ claims must exceed the funds available, no $ can go back to df
$ R23.b.2 - suit for injunction
$ R23.b.3 - common questions predominate over individual questions
  $ requires notice & opt out provision
R23.e - ct must approve any settlement & may require notice
$ may have to create a class on df’s side (s/t all interests are adequately represented) for settlement/jdgmt to be binding
SMJ (’ 1332) - only the rep has to be diverse
$ but each individual claim must satisfy the amt in controversy
requirement
Forum st can bind absent members b/c they consent
$ DPC concerns if it’s a 23.b.1 class w/o notice that binds a party
Individual members may still be able to litigate their individual claims if they can show those claims to be distinct from the claim of the class
Mass torts may be better solved by litigation - too much pressure on dfs

Adjudication
R41.a - pl can voluntarily dismiss his claim once w/o prejudice
R41.b - involuntary dismissal is an adjudication on the merits (unless based on no J, no venue, R19 party not joined)
Default is entered (R55.a), then default jdgmt is ordered (R55.b) after 3 day notice
$ only entered when df doesn’t plead
$ R12.b.2 & 6 are valid defenses to a default jdgmt
R56.c - summ jdgmt shld only be granted when:
1. movant is entitled to jdgmt, and
2. there is no genuine issue of material fact
3. regarding any essential element of the claim
4. that could possibly stop a reasonable jury,
5. applying the appropriate std of proof,
6. from finding for non-movant
$ all inferences/doubts are resolved in favor of the non-movant
$ must be based on admissable evidence
$ won’t be denied based on credibility unless non-movant presents some evidence of doubt (or unless affiant is an interested party)
$ if the burden of persuasion would be on the movant at trial, the burden of production can be met using the same credible evidence that would be presented at trial
$ if the burden of persuasion would be on the non-movant, the movant can :
  $ submit affirmative evidence that negates an essential element of non-movant’s claim (most common), or
  $ demonstrate that non-movant’s evidence cannot establish an element of the claim

JMOL & RJMOL use the same std as summ jdgmt
$ have to move for JMOL to be able to move for RJMOL
$ new trial can be awarded (as an alternative) if jury’s verdict was against the clear weight of the evidence
Jury misconduct - reconcile an inconsistent verdict or declare a mistrial
$ subsequent affidavits from jurors may be able to impeach the verdict
  $ possibly only if they concern extrinsic/overt acts
  $ the bias is towards allowing the jury verdict to stand
R60.b - a case can be reopened (relief from jdgmt granted) for:
1. excusable neglect
2. discovery of evidence
  $ new evidence must:
    $ probably change the result of the trial
    $ have been discovered since the trial
    $ not have been discoverable before the trial
    $ be material
not be *merely* cumulative or impeaching

3. fraud/misrepresentation
4. void jdgmt
5. satisfied jdgmt
6. etc.

1, 2, & 3 must be moved for within 1 yr

**Res Judicata**
Applies to non-divisible parts only (installment contract v. negotiable bond)

Claim Preclusion - a claim cannot be relitigated if:
2. the two cases involve the same claim
3. the two cases involve the same pl & df
4. there was a final judgement on the merits (inc R12.b.6 dismissal)

pl must include all legal bases for relief on a single claim or they are waived

Matsushita - even if alternative legal theory couldn’t be brought in the first court

Issue Preclusion - an issue cannot be relitigated if:
1. the two cases involve the same issue
2. and the party to be bound was a party to the original suit

non-parties can use issue preclusion defensively

non-parties can only use issue preclusion offensively at the dc’s discretion

dc will look to *wait & see* and full & fair opportunity

3. the issue was essential to the jdgmt (without the finding, the outcome would have been different)

Patterson (maj) - if a jdgmt explicitly rests on both of 2 alternative issues, both will be precluded

Rest 2\textsuperscript{nd} (min) - if a jdgmt explicitly rests on both of 2 alternative issues, neither will be precluded (PC - concern that one wasn’t fully decided)

if one of the findings is a lack of SMJ, the other has no authority

mass torts w/ inconsistent verdicts - decide preclusion based on equity
Personal Jurisdiction
$ Presence/Citizenship/Consent
$ Long Arm Statute
$ Constitutional requirements
  $ Contacts - Isolated (Specific) B Continuous (General)
  $ Purposeful availment
  $ Foreseeability
$ Fairness
  $ Relatedness
  $ Convenience
  $ State = interest

Subject Matter Jurisdiction
$ State
$ 1331 - Federal Question
$ 1332 - Diversity, Amt in Controversy
$ 1367 - Same t/o (not pl)
Service - Reasonably Calculated under the Circumstances
Venue
$ 1391 1-3
$ Forum Non Conveniens - Proof, Compell, Premises, Practical problems
Erie
$ Hanna (direct conflict)
$ York (shopping)
$ Byrd (fed & st interest/purpose)
Pleadings - claim, jurisdiction & affirmative defenses
$ R11 - correct, not frivolous, inquiry RC
Joiner
$ R13 - c/c claims - logical relationship
$ R14 - same t/o & common Q
$ R19, R24, R23
Adjudication
$ R56
$ JMOL BRJMOL
$ R60
Res Judicata
$ claim/issue
$ parties
$ final/essential