Civ Pro Outline

I. Getting the Defendant Into Court

A. Personal Jurisdiction

1. Historical development of the minimum contacts test

   **Pennoyer** – Allows states to assert personal jurisdiction over a Δ only if served process in the court’s jurisdiction. Court can assert in rem jurisdiction if the Δ has property in the forum state, even if it is unrelated to the action.

   **Hess** – Implied consent. Allows states to obtain jurisdiction based on implied consent if the Δ has availed themselves in any way to the forum jurisdiction.

   **International Shoe** – States can exercise personal jurisdiction over Δ if they have sufficient systematic and continuous minimum contacts with the forum. Minimum contacts must meet the “fair play and substantial justice” standard. Court puts emphasis on *quantity* of contacts in forum state. High amount of activity within state almost automatically creates implicit consent.

2. Modern elaboration of the minimum contacts test

   *Personal long arm*

   **Gray** – Minimum contacts exist when a Δ’s business may result in use and consumption of its products in the forum state.

   **Worldwide VW** – Limitation of Gray. Foreseeability of product’s use in forum state is insufficient grounds for establishing jurisdiction. Creating a danger in a forum equals implied consent.

   **Keeton** – Fine definition of minimum contacts. Regular sales to a forum state will establish minimum contacts.

   **Kulko** – Court cannot exercise in personam jurisdiction unless the Δ has sufficient contact with the forum to show that he has purposely availed himself to its protection.

   *Corporate long arm*

   **Burger King** – Court may establish in personam jurisdiction over a party who has engaged in a substantial and continuing contractual relationship with a corporation within that forum, so long as Δ had fair notice of the possibility of availment to that forum. Convenience of the forum is irrelevant (*Hanson v. Denckla*).

   **Asahi** – The placement of a product in the stream of commerce by itself does not constitute minimum contacts to the forum state. Jurisdiction must have been reasonably contemplated by Δ when placing product in the stream of commerce.

   *Note:* The case as presented looks more attractive to the argument denying jurisdiction. Is this more of a nod to the international implications of a decision against Asahi, or just pure reasoning? Balancing of competing factors?

   **Perkins** – Sustained, “continuous and systematic” activities of a foreign corporation in a state make it fair and reasonable to subject *those specific activities* to in personam jurisdiction. There is a possibility that jurisdiction may be established for activities distinct from those specific activities constituting the minimum contacts.

   **Helicopteros** – Isolated contact with a forum does not constitute “continuous and systematic” minimum contacts.
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3. In rem jurisdiction and other single-factor test

Tyler – In rem proceedings don’t require personal service, but neither does anything else.

Quasi-in rem - court has jurisdiction to decide over a person to the extent of their interests located within the forum

Pennington – Property does not have to be land to establish in rem jurisdiction. May be account holdings, stock, etc.

Harris – If a state law allows for attachment of debt, and Δ whom the debt is attached to is personally served in the forum, jurisdiction is established.

Shaffer - This case basically blows away Pennoyer controls for in rem (as previous cases have shifted away from Pennoyer’s in personam controls) in favor of International Shoe’s fairness and substantial justice standards. Court holds that property affects persons, and thus jurisdiction hinges over whether or not there is contact that can be established over “the interests of persons in a thing,” not just if the property itself is in the forum. If the intent of an in rem action is to coerce appearance in another state’s courts, then there is no jurisdiction. Each case must be subjected to a fair play reasoning to determine the essence of the in rem argument, though.

Burnham – Physical presence in the forum alone subjects Δ to personal jurisdiction. This ruling made the International Shoe test subjective.

Courts have still assumed that Milliken is good law, where a court’s finding of personal jurisdiction is presumed good unless disproved by extrinsic evidence.

Zapata – International disputes with distinct agreements of availment to another nation’s courts must be honored.

Carnival Cruise Lines – Forum clauses will trump the minimum contacts provision.

4. Personal jurisdiction in federal court

DeJames – If it is impossible to establish minimum contacts according to a state claim, then national contacts may not be established to continue the claim. Court held, however, that if a federal claim were originated wholly as a federal claim (i.e. an act of Congress), then national contacts would be permissible to establish jurisdiction.

Rule 4 (k)(1)(a) normally allows for federal complaints to be subject to the forum state in which it is brought, unless in cases of federally initiated national service. Codification of the minimum contacts test.

5. Challenging personal jurisdiction

FRCP 12(h)(3) – Personal jurisdiction may not be challenged after the commencement of a suit. If there is no pleading initially to challenge jurisdiction, defendants have given express consent to the court’s ruling. Court can end a suit whenever it appears that there is no jurisdiction.

FRCP (12)(b) – Dismissals are not final judgments, unless the dismissal is based on failure to state a claim.

Data Disc – Π must make a prima facie showing of jurisdiction to maintain it.

Baldwin – Non-appearance does not omit the ability to reopen the issue of jurisdiction down the road. If a default position of jurisdiction is taken, there is no recourse.
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B. Notice and Service of Process

Mullane – Notice must be reasonably certain to get to the concerned parties in a case. Passive notice is unacceptable. If the format of notice is chosen with due regard for the practicalities and peculiarities of the case and substantial success rates of service, the constitutional requirements of Due Process are satisfied.

Subsequent cases have required service to all Δ, not just those readily identifiable.

FCRP 4 – Service on third party Δ can be made within 100 miles of the court if it has jurisdiction over them.

MD Firemen – Actual notice does not constitute proper service if Δ does not consent to the notice. FRCP 4(d), Notice requires a waiver of service.

Rovinski – Service of process on a cohabitant is OK.

Hellenic Challenger – Service to artificial entities may not be delegated to specific persons.

FRCP 4(h) – Service to an officer that is reasonably cognizant of the service is adequate.

Wyman – Service given while presence in the forum was coerced does not provide in personam jurisdiction.

C. Federal Subject-Matter Jurisdiction

1. Federal-question jurisdiction

28 USC §§ 1331 – Federal court has original jurisdiction over all federal question claims, but not anticipatory defenses that raise federal questions.

1337 – Original jurisdiction over any claim based on an act of Congress regarding commerce.

1442 – Any action against a government employee is removable to federal court.

Smith – Federal jurisdiction is allowed when the suit “depends upon construction or application of the Constitution or laws of the United States,” (US), even though the cause of action is state-related (a state statute).

Moore – No federal jurisdiction if there is the question is only about federal law violation (not construction).

Shoshone – If a federal statute says that state laws dictate certain portions of its provisions, there is no federal question or jurisdiction.

Merrill Dow – Just because there is presence of a federal issue does not automatically confer jurisdiction. There must be an automatic assumption of no federal private cause of action. A federal claim for mere evidentiary purposes does not confer federal jurisdiction.

2. Diversity jurisdiction

28 USC §1332 covers diversity requirements. For corporations, most courts use “nerve center” as the basis for jurisdiction. For unincorporated business, look to citizenship of the majority of business’ employees.

“Complete Diversity” rule: No diversity jurisdiction if any plaintiff is a citizen of the same state as any defendant, no matter the quantity of parties.

Mas – Domicile is determinative of diversity jurisdiction, and may be based on future residential intention.
Kramer – Can’t make up fake jurisdiction simply for review in federal courts. 28 USC §1359.

Rose – Nominal parties may be ignored in diversity cases.

3. Jurisdictional amount

Tongook – A plaintiff’s belief in amount in controversy alone does not establish jurisdiction. FRCP 12(h)(3). Jurisdictional amount must be actual.

Snyder – Aggregated claim amounts from different Pls cannot be used to meet the minimum amount. Fast rule: Two non-related claims against a single defendant from a single plaintiff can be aggregated to meet the federal minimum!

McCarty – Some courts look to the plaintiff’s amount in controversy, some look to the defendant’s amount, and some look to both for a finding either way. Net result of a decision in any case must exceed $75K.

4. Federal and nonfederal claims in combination

Gibbs - Federal courts may rule on mixed claim cases (if the federal claims are of a substantial nature) if they originate from a “common nucleus of facts”. However, the claims must all derive from a common set of facts. 28 USC §1332. Federal claim failed but the fed still was able to rule on the state claim.

Aldinger – A defendant with only a state claim cannot be joined to a pending federal claim simply due to the “common nucleus of operative fact” instruction.

Kroger – Owen prohibits the court only from exercising jurisdiction over a state law claim by a plaintiff against a non-diverse third-party defendant impleaded for indemnity purposes by a defendant.

Gibbs and Owen (Kroger) became codified in 28 USC §1367(a&b), with a nod to the broader terms of “other claims that are so related to the claims in the action with original jurisdiction,” perhaps making the narrow terms of “common nucleus” more open for joining other claims to an original suit.

5. Removal

Bright – Plaintiff files based on federal withholding taxes, artfully pleaded as a state contract claim. 28 USC §1441(c) The Gibbs rule: Fed courts may rule on mixed claims, or remand state matters at their discretion (also allows for removal of some claims not allowed under (a)).

6. Attacks on subject-matter jurisdiction

Capron – Invalid federal jurisdiction claims can be submitted anytime.

Collateral attacks: If no one notices lack of subject-matter jurisdiction, can the issue be raised during a subsequent action to enforce a ruling on the matter? No. Once a matter is over, it is over.

D. Venue and Forum Non Conveniens

Bates – 28 USC 1391 (b)(2), venue may be based where a substantial part of the events giving rise to the claim occurred.
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Hoffman – Δ can move to any forum that suit could have been brought in.
Gulf Oil – Allows fed courts to “bounce” inconvenient cases to another district.

Piper – Balancing issues of fairness in convenience between Π and Δ. Favorable law is never a balancing issue.

II. The Erie Doctrine

A. Federal v. State Law in Diversity Cases

Erie – Designed for two purposes: to discourage forum-shopping and to avoid inequitable administration of the laws.

York – Outcome determinative test for State law trump. Any state rule that could affect the substantive outcome of a trial in state court is to be applied to a federal hearing.

Byrd – When federal and state rules don’t conflict, there is no problem substituting FRCP in the case. If the laws conflict, the federal interest in preserving the federal law is balanced against the state law. If fed interest is higher, state law is trumped. Goes against Erie to a point, allowing federal law to trump state even if the outcome would be different.

28 USC § 2071, 2072. Rules Enabling Act

Hanna – When a FRCP and state law conflict, only the fed rule should be followed. Reasoning is that any FRCP can be argued to be “outcome determinative,” and to ignore an FRCP on these grounds would emaciate federal authority. Some courts say that this overruled Byrd.

Walker – If you can’t bring an issue in state court because statute of limitations has tolled, you can’t bring it in federal court under diversity to “get lucky”. Hanna doesn’t apply because there are no direct conflicts.


Stewart – “Direct collision” may not be the only way that federal rules may usurp the control of a state statute. If a federal rule is sufficiently broad to cover individual state stipulations, there may be a quasi-conflict that invokes federal supremacy.

Gasperini – State law allowed for jury review, 7th Amendment does not. US applied the state law selectively, adapting it to conform to procedural norms of federal law, while testing the jury’s verdict against the state statute’s “deviated materially” standard.

B. Ascertaining State Law

Klaxon – Klaxon helps Erie keep federal/state forum shopping down to a minimum by making a ruling in NY federal court the same as a ruling in TX fed courts. Courts must abide by state conflict-of-laws rules. Klaxon always applies.

Mason – State law may be ignored if it is unsupported by the great weight of authority.

Van Dusen – “A change of venue under § 1404(a) generally should be, with respect to state law, but a change of courtrooms.” Transferor law to travel with transferee.

Ferens – No matter who initiates transfer, the transferor law travels to the transferee forum (the Ferens Rule).
III. Pleading

A. The Complaint and Motion to Dismiss

   Dioguardi – Complaint must state cause of action, but does not need to state applicable legal theory.

   FRCP 9 – Pleading matters.

   American Nurses – Just because a pleading’s facts may raise ephemeral allegation of non-actionable items, the entire pleading cannot be discounted. A case with at least one actionable claim must be permitted to pass on to discovery, and perhaps that process will eliminate the few frivolous claims that remain.

B. The Answer

   Zielinski – Rule 8(b) requires a more specific defense answer than a general denial. A specific denial may warn plaintiff of illegitimacy of a claim.

C. Amendments

   Moore – A court can admit post-trial amendments to the pleadings (or pleadings conforming to the evidence) when issues not raised in the pleadings are tried by express or implied consent. FRCP 15(b).

   Beeck – Court can allow amendment of an answer as long as it is not in bad faith or would prejudicethe opposing party, but the general rule is to allow an answer amendment. FRCP 15(a).

   Worthington – 15(c)(3) - An amendment must be to correct legitimate mistakes in original filing, not change unknown quantities.

   Ingraham – An affirmative defense must be timely pleaded or it is considered waived. Considered damage caps an affirmative defense, even though not enumerated in FRCP 8(c). Non-enumerated defenses may be deemed as such if the court feels it proper.

   Taylor – Fudge room on what a non-enumerated affirmative defense is. Unlike Ingraham, held that damage caps were not affirmative defenses, since damage findings are substantiated after a verdict.

D. Sanctions

   Surowitz – Pleadings in derivative suits stating harm not yet found should not be summarily dismissed if the pleading is verified by reasonable belief of an actual harm in the original suit.

   Hadges – Sanctions, FRCP 11, 60(b).

IV. Joinder

A. Joinder of claims by plaintiffs

   Harris – Multiple issues may be consolidated into a single claim if they arise from the same transaction or occurrence.

   FRCP 18, 20 – Joinder only needs subject-matter jurisdiction. Permissive, not compulsory.
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Rush – Only one opportunity to present all actions based on common nucleus of facts. Cannot split actions.

B. Counterclaims

Mitchell – Cannot reserve compulsory counterclaims for cause of action in a separate suit. All same T/O counterclaims are compulsory.

Great Lakes – Counterclaim is compulsory if it bears a ‘logical relationship’ to an opposing party’s claim. Grants ancillary jurisdiction based on T/O having original jurisdiction.

FRCP 13, § 1367 – Compulsory counterclaims must be made on all issues from same T/O. Permissive counterclaims may be made at will.

C. Cross-claims

LASA – Cross-claims have ancillary jurisdiction. Failure to file does not preclude later litigation.

FRCP 19, 20, 42(b) – Can separate issues for clarity.

D. Impleader

Jeub – Impleaders must not prejudice the findings against the third party.

Goodhart – Impleader cannot be used as a coercive tool to get smaller judgment for sympathy or coerce third party testimony in fear of retribution.

Revere – Ancillary jurisdiction allows court to hear impleaded third-party compulsory counterclaims against Π without diversity, as long as from same T/O.

Guaranteed Systems – Court can’t hear non-diverse third party counterclaims if impleaded by Δ. From Kroger.

E. Interpleader


F. Necessary and indispensable parties

Bank of CA – Parties whose interest may be affected by judgment or whose interests are necessary to the action are subject to compulsory joinder.

FRCP 19 – What parties are necessary. Class actions are subject to Rule 23.

Haas – If a necessary party cannot be joined because of lack of diversity, any possible holding that could prejudice that party is grounds for claim dismissal.

G. Intervention

FRCP 24 – Intervention.

Smuck – Court will grant petition to intervene if denial would deny petitioner the ability to protect their interests of if their interests are poorly represented in the initial claim.
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Atlantis – Intervention is allowable if the possible outcome of the initial claim could affect the intervener, even if they are not affected by the initial claim’s final judgment directly.

V. Class actions

A. Class certifications

FRCP 23 – 23(a) numerosity, common questions of law or fact, typicality, and adequate representation. Every class action must satisfy all four of these prerequisites as well as meeting one of the criteria in 23(b).

Holland – Application of 23(a) and (b). Decision is binding on all members of a proper class.

Causey – Class may be improper means of adjudication if potential members do not meet the 23(a) criteria.

B. Due process

Hansberry – Due process forbids later suits between class members. However, class members may sue each other if they were not named original parties, and/or if their interest was not adequately represented in the class suit. Fair representation allows for binding judgments against absent plaintiffs.

Martin – Non-joined third parties to class suits are not bound by the class decision, even if they knew or should have known on the class action.

C. Class action practice

Eisen – Notice must be served to all potential class members according to the Mullane standard. Cost burden is on Π.

Wetzel – Court can re-certify a class if the original certification is later determined to be inappropriate but relief is still a viable issue. If a class can be certified under both (b)(2) and (B)(3), (B)(2) wins. No notice necessary in (B)(2), (B)(3) requires notice.

D. Mass tort class actions

Amchem – Asbestos case. Class actions cannot be used as corporate tools to limit damages. Class actions must strictly conform to 23(a), and mass injuries on varying levels fail this requirement.

Ortiz – Same as Amchem. Class action cannot be used to preclude further litigation for disparately harmed parties identified in the class.

E. Jurisdictional complications

Zahn – If a class action is based on separate claim amounts, then each claim must meet the jurisdictional requirement. If the claims are identical, then they may be aggregated into a total amount.

Shutts – Upon sufficient notice and waiver, absent plaintiffs not opting out of a class suit are deemed as consenting to the applicable laws of the forum where the suit is being presented. Those homogenous members opting out are free to pursue litigation on their own.
VI. Discovery

A. General scope of discovery

FRCP 26(a)-(b), 27(a)(1), 32(a) -

Blank – Court provides the guidelines for what can be ordered as discovery. There is no flat bar to availability of discovery, just that it is somewhat relevant to the subject matter. The court can exclude information it does not find relevant according to 26(c).

Marresse – If there is a concern for privacy in discovered information, the discovery can either be reviewed in camera by the judge, in camera with names redacted, or court can force the completion of other plaintiff discovery pending before being able to resist a motion by defendant (26(d)). Security issues cannot be used to resist specific discovery.

B. Specific discovery devices

1. Depositions

FRCP 30 – Depositions are witness accounts of any matter the court allows parties to gather as pertinent evidence.

Haviland – Depositions can be made by any witness who a party believes their testimony is reasonably calculated to lead to the discovery of admissible evidence.

2. Interrogatories

FRCP 33 – Interrogatories are answers to written questions. They are admissible even if they contain speculative conclusions on issues to be tried.

Leumi – Interrogatories may contain speculative conclusions of law and be admissible if they are from a witness who may be more educated on complex subject matter than the attorney submitting the questions. Additionally, when an interrogatory is purposed not to determine the existence of an issue, but rather to obtain evidence intended to support a side, the interrogating party must show evidence that the issue is in fact in the case.

3. Production of things

FRCP 34, 45 - Rule 34 governs discovery between parties. Rule 45 controls subpoenas for non-party discovery requests.

Hart – People or officers of business with sufficient standing to control the information requested for production must make a concerted effort to produce what is requested.

4. Physical and mental examinations

FRCP 35 – Court can compel subjection to examination, but the person’s condition must be in controversy and there must be a “good cause” weighing of the pain or effects of the examination against the need and usefulness of the information gained through such procedure. Requires only that the person to be examined must be a party (or under the custody or legal control of a party) to the case.

Schlagenhauf – The basis for examination must be higher than mere relevance. There must be an actual need for the examination.

5. Requests for admissions
FRCP 36, Requests for admission – A party may serve request for admission of any item within 26(b)(1) discovery that relates to opinion of fact or law as applied to facts.

FRCP 37(c)(2), Failure to disclose, false or misleading disclosure, refusal to admit. Sanctions allowable for the named actions include: a) an order granting the claim of the requesting party, b) an order refusing the disobedient party from using the requested materials as a defense or refuting evidence, c) judgment by default on any issues of claim or the suit as a whole for disobedient party, d) contempt for failure to submit to a properly requested mental or physical examination. – McSparran – Codified in 36(b). Admission will only be disallowed on good cause through pleading with the judge.

C. Mandatory disclosure

Comas – An order to compel production may be imposed on anything, confidential or not, that the court deems material.

D. Work product

Hickman – Requests for non-factual and “attainable by other means” information from opposing attorneys is prohibited.

FRCP 26(b)(3) – Discover Scope and Limits – Trial preparation: Materials. A party may obtain discovery of documents prepared in anticipation of litigation by or for another party or for that other party’s representative only upon a showing that the party seeking discovery has substantial need of the materials, and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

E. Sanctions

FRCP 37(b) – Sanctions may be imposed for failure to comply with an order demanding testimony or other such requests. May be punished by 1) acceptance of requesting party’s position as settled fact, 2) refusal of defense on the issue requested, 3) stay of proceedings until proffer is completed, 4) contempt, unless 5) the party failing to comply can show good cause. Meant as deterrence.

Cine 42nd St. – Grossly negligent disregard to comply with ordered testimony, answers, etc. is grounds for the strictest enforcement of 37(b). Simple negligence (oversight, etc.) is not.

VII. Adjudication without trial

FRCP 56 – (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial; and (e) Affidavits or other means of proof may be used to refute a motion for SJ, but if no such proof is entered, SJ may be entered for the adverse party if appropriate.

Lundeen – Credibility is not an issue for affidavits proffered in motion for summary judgment. A claim that cross-examination of an affiant would preclude SJ must be accompanied by proof of material fact that an issue really exists and that facts can be contested.

Cross – SJ cannot be granted when affidavits supporting the motion for SJ are based on subjective interpretation of facts and/or motive. Unlike Lundeen, the supporting affidavits in
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this case do not serve to uncover a paper trail of facts in dispute, but merely offer presumption of fact as proof to make the issue moot, which is unallowable.

Adickes – When the evidentiary matter in support of the motion for SJ does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is presented.

Celotex – If the burden of proof at trial is on the non-moving party, the party motioning for SJ does not have to support their motion with evidence to negate the burdened party’s claim.

FRCP 55 – Default judgment.

Coulas – Failure to respond to a claim is grounds for default judgment, providing that proper notice has been issued. Once a party has filed an answer, any judgment must be on the merits of the claim, and default judgment becomes inappropriate. However, summary judgment may still be entered on proper proof if the answering party fails to perform their obligations.

FRCP 60 – Motion for SJ or DJ can be set aside if the judgment was void.

Courts will frequently grant setting aside of default judgment if there are evidenced merits shown afterwards (in a timely manner). Policy is that case should be based on merits, not technicalities.

VIII. The trial stage

A. Trial by jury

1. The right to a jury trial

Beacon Theaters – Equity suits do not require trial by jury. However, counterclaims in equity suits based on legal claims do not preclude a jury trial for both types of claims. The jury can try both types at the same time, and there is no need to order separate trials pursuant to 42(b).

Dairy Queen – Any suit involving money damages, whether for accounting purposes or actual award, is a legal claim, no matter how it is framed. Jury trial is appropriate.

Ross – Even though claims created by the FRCP are not automatically covered by the 7th Amendment’s guarantee of trial by jury, and jury can try claim based wholly or in part on a legal issue. Stockholder’s derivative suits are an example of these artificially based claims.

Courts can deny jury trials if it feels the issues would be hypertechnical and over the jury’s heads. However, in the event that a trial is overly complex, a court can order components of the issue for separate trial by jury, hopefully allowing for less juror confusion while still granting the motion for a jury trial.

Teamsters – Suit claiming inadequate representation, a component of which was later asserted as requiring backpay. US held that the pleadings were messed up, but because there was an issue of damages eventually argued, the claimant can still assert that there is a legal issue inherent in an equity action. Any cause of action containing in some part a legal issue is due trial by jury.

Indianhead – Even if a court awards damages after denying a jury trial because of solely equitable claims, that does not imply that there was an actual legal issue concerned with the decision. Damages may be incidental to an equity suit.
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2. Jury selection

   Thiel – Jury selection cannot be exclusive. Any deliberate exclusion of a certain population is reversible error.

   Flowers – Exhibited bias towards the issue to be tried and/or the parties involved is sufficient grounds for a preemptory strike of a juror.

B. Judicial control over jury selection

1. The province of the jury

   Dobson – The jury is impaneled to decide issues of fact. Judges cannot apply facts to issues of law to base motions for DVs or JNOVs. The jury must decide the issues according to the facts of the case.

2. Jury misconduct

   FRCP 49 – If a jury returns a general verdict without being able to conclusively show its basis, or if it has been assigned specific questions to which their answers are conflicting, court cannot enter judgment but either remand the jury with more specific instructions, or grant a new trial.

   Robb – Judge can mold an ambiguous informal verdict formally to the issue only if the jury’s purpose is clear.

   Sopp – Juror’s affidavits are not admissible as evidence, nor grounds to attack a verdict (unless it contains evidence of overt acts of misconduct).

   Hukle – Quotient verdicts are invalid, unless the jurors agree beforehand not to be bound by the result before the averaging takes place.

3. Judicial power to override the jury

   Denman – Jury cannot decide verdict on possibilities, only facts. JNOV as a matter of law can be used if the evidence presented is legally insufficient to support a jury’s verdict.

   FRCP 50(a)(1) – Questions of fact must allow for a reasonable jury to be able to decide the issue. If not, JNOV can be entered.

   Kircher – A court’s definition of “fact” may be convoluted. The test is that facts must be so that a “reasonable” jury could decide the issue. Perhaps there is some leeway for inferential steps in the facts, as long as they do not require clairvoyance to be resolved.

   Aetna – JNOV can be entered if the court feels a verdict is against the clear weight of the evidence, based on false evidence, or would result in a miscarriage of justice.

C. Extraordinary relief from judgment

   Hulson – Untimely motions for JNOV may only be granted if the delay is based on reasonable mistake. However, ignorance of FRCP guidelines is not grounds for extraordinary relief past timely deadlines. 60(b).

IX. The binding effect of decisions
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A. Res judicata (Claim preclusion)

Rush – If there are multiple claims based on only a single transaction, there is one and only one chance to sue on all claims rising from it.

Moitie – Res judicata cannot be ignored by claim of “simple justice.” There are very few exceptions, like when the prior ruling was based on fraud, or where jurisdiction was improperly granted and the ruling court should not have granted trial in the first place.

Jones – Severability of separate issues from a single course of action may or may not invoke res judicata. If the issue giving rise to the claim is an overarching agreement, but was agreed between the parties beforehand that each action under that agreement was a separate transaction, then separate court actions are maintainable. If not, there is only one chance to try all issues related to the original cause of action.

Prior judgments concerning continuing or renewed conduct are hard to concretely define. Suggested means of evaluating the definition of a true “prior judgment” are “whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties’ expectations or business understanding or usage.”

Smith – A small percentage of courts have allowed cases stemming from single T/Os to continue even though the main T/O issue has been tried. However, the trend is towards Moitie, since procedural allowances make all claim inclusion relatively easy.

Heaney – Res judicata bars all action that was litigated, or would have been litigated in the course of trial of the first suit. However, in this case the mandamus that was the center of the initial action could have been filed long before any ancillary issues could have been foreseen. Res judicata is a policy to weed out repetitious or inefficient litigation. “Against this policy must be weighed society’s interest in providing a forum for the just and responsive adjudication of every aggrieved party’s claim.” So there is still a loophole in res judicata.

Bogard – In 23(b)(3) class actions ONLY, can a class member sue the party originally sued in the class action, and ONLY with new facts or evidence of harm above what was concluded in the earlier trial. Since 23(b)(3) is a catchall, there may be inherent lack of common questions of fact for individual class members harmed disproportionately to the majority of the certified class, and their claims are not necessarily precluded by res judicata.

Anguiano – A claim can be precluded by res judicata even if it had been involuntarily dismissed in the previous proceeding for lack of action by one party. An involuntary dismissal is treated as if it had been tried on the merits (41(b)). Hard-liner approach.

Rinehart – A claim can be precluded by res judicata if it was dismissed for failure to state a claim in the original suit to the extent that it can be inferred what the original suit was actually trying to assert as a claim. Hard-liner 2.

B. Collateral estoppel (Issue preclusion)

Cromwell – Estoppel only works on identical issues in a subsequent trial. Issue preclusion ONLY applies to the issues a court has already ruled on. Not claim preclusion, which bars both the cause of action and any possible claims related at trial.

Russell – If multiple issues were argued in the original suit, issue preclusion is barred unless the party claiming it can show with certainty what issue was actually argued in the initial suit.

FRCP 15(b) – Allows examination of record to determine what issue was originally ruled on.
Rios – The central finding of an original judgment alone constitutes estoppel, and any finding of fact that is not the sole or part of the basis for the original judgment cannot be estoppel.

Patterson – Held that if two issues were tried and neither could be identified as the sole basis for the decision, both were estopped.

Contrary to the Halpern Rule (ALA endorsed): If two issues were tried in the original suit and neither could be conclusively identified as the sole basis for the decision, then neither can be estopped. ALA modified rule: If both or all issues were appealed and the court decided on the entirety on appeal, then both or all are estopped in any subsequent suit.

Ralph Wolff – If a party could not be bound (was not a party to) by the preliminary suit holding a certain way, then that party cannot benefit from asserting res judicata in the current claim, even if the previous suit involved the same set of facts.

Bernhard – A party claiming res judicata does not have to be a party to the original suit. The impetus of this is to prevent the other party from filing a claim on the same issues of the initial suit against another party privy to the original suit that it failed to prove the first time. Called “defensive non-mutual estoppel.”

Defensive non-mutual estoppel – Plaintiff sues, but the defendant uses defensive estoppel to claim that plaintiff’s requested recovery has already been barred in a prior suit (not involving this plaintiff personally, but as a privy).

Parklane – Offensive non-mutual estoppel is OK as long as there are no procedural or ruling problems with the original suit.

Offensive non-mutual estoppel – Plaintiff is using estoppel as proof that defendant was liable in a prior suit, and claims that based on that they should be liable in this suit.