Civil Procedure Outline

I. INTRODUCTORY MATERIAL

- **Fuentes v. Shevin**: a taking of property under a writ of replevin absent prior court proceedings (summary writ) violates due process
  - Central meaning of due process: Parties whose rights are to be affected are entitled to be heard, and in order that they may enjoy that right they must be notified.
  - An opportunity to be heard must be granted at a meaningful time and in a meaningful manner.

- **Mitchell v. W.T. Grant**: in creditor default, so long as the hearing comes occurs quickly after the repossession (meaningful time) in front of a judge, both parties do not have to be present
  - Creditor’s proceedings one of the few exceptions that do not require summary proceedings.

- **North Georgia Finishing v. Di-Chem**: must at least cite a facially valid reason why property must be seized immediately; court adheres to **Fuentes**

II. GETTING THE DEFENDANT INTO COURT

A. Personal Jurisdiction

   1. Historical Development of the Minimum Contacts Test

- **Pennover v. Neff**: man sued in OR, had property in OR, but he lived in CA

- A state does not have jurisdiction over in personam cases when the defendant is a nonresident who only owns property in the state.
- Every state has exclusive jurisdiction and authority over persons and property within its territory.
- No state can exercise direct jurisdiction over persons and property outside its territory.
- The validity of the judgment depends upon the party’s status before judgment is rendered. What occurs later is irrelevant.
- If the party appeared voluntarily, then the state would have jurisdiction.
- Case is different for in rem cases because the party is put on notice in regards to their property and because states have jurisdiction over property.
- In personam: judgment against a person by virtue of his presence within the state or his citizenship there.  
- In rem: determine status of property within state, and determination is binding with respect to all possible interest holders;  
- Quasi-in-rem: judgment against a person but recovery is limited to the value of property within the jurisdiction; dispute does not have to be related to the property.  
- In *Grace*, the court upheld service in Ark. court made in a plane while flying over the state.

- **Blackmer v. U.S.**: a U.S. citizen was served while in France.  
  - One is always subject to the laws of one’s country. No right is violated simply because he is served in a foreign country.

- **Milliken v. Meyer**: WY resident sued in WY court but service made while he was in CO; service stands  
  - Domicile in the state is sufficient to bring an absent defendant within reach of the state’s jurisdiction.

- **Adam v. Saenger**: TX resident brought suit in CA but did not appear, and a default judgment was rendered against him in a cross-action; default judgment stands  
  - Submitting to the jurisdiction of a state by bringing suit there permits state jurisdiction over you.

- **Result**: Defendant’s presence is the key.

- **Hess v. Pawloski**: PA resident caused a car accident in MA; MA does have jurisdiction  
  - A state may have implied jurisdiction over those who commit crimes upon state roads.  
  - By using the roads, one implies consent to have an agent in the state to receive service. The agent must mail the notice.

  - Presence theory of corporations: A foreign corporation is amenable to service if it is doing business within the state  
  - Question is what “doing business” meant

- **International Shoe v. Washington**: DE company’s only connection to WA was that it had salesmen who worked in the state; state has jurisdiction
- Corporation must have certain minimal contacts with the state such that the maintenance of the suit does not offend traditional notions of fair play and justice.
- The activities sued upon must be related to the business conducted within the state.
- The court looks to (1) the quantity of business and (2) the relatedness of the claim. If it find both, then definitely jurisdiction.
  - If only have one, look to fair play (administration of laws and benefits gained by the company by being in the state and convenience.

- Result: To establish presence (consent to jurisdiction), just establish minimum contacts with the state. Notice must also be reasonable.

2. Modern Elaboration of the Minimum Contacts Test

- Long-Arm Laws: seek to provide personal jurisdiction over nonresidents who cannot be found and served in the forum
- They predicate jurisdiction upon defendant’s general activity in the state, or the commission of a certain act outside the jurisdiction causing consequences within it.
- Some states narrow the laws to certain categories. Other states make them as broad as possible (necessary minimum contacts required by the constitution).

- Gray v. American Radiator: OH company manufactured a part sold by a PA company, who sold a product that caused injury in IL; even without other contacts, OH company submits to IL jurisdiction
  - If a long-arm statute states so, a nonresident submits to jurisdiction when he causes a tortious act in the state.
  - It is sufficient to establish jurisdiction that the act or transaction has a substantial connection with the forum.
  - Must be minimum contacts and a reasonable method of notification.
  - The relevant inquiry is to whether defendant engaged in some conduct by which he may be said to have invoked the benefits and protections of the forum.
  - If a corporation elects to sell its products in another state, it is not unjust to hold it answerable there caused by defects of the products (corporations that want to sell nationwide must defend nationwide).
- The courts of the place of injury also are usually the most convenient (trend away from territorial limitations towards opportunity to be heard and convenience).

- In *Advance Ross*, the IL court limits *Gray* in that jurisdiction does not extend to those who committed tortious acts outside the state but the effects of the act were felt instates.
- Two circuits have adopted the “but for” standard for determining whether a cause of action “arises from” the business transacted by the defendant.

- *World-Wide Volkswagen v. Woodson*: NY car dealership’s only connection to OK court was that it sold a car to someone who later drove through OK; no jurisdiction
  - The minimum contacts test fulfills two requirements: (1) protects the defendant from having to litigate in an inconvenient forum, and (2) acts to ensure the states do not intrude upon other states.
  - The question is less of quantity of contacts with the state but purposefulness of contacts. Did the company bring the product there or did the consumer?
  - Dealer has no activity in the state, no advertising, no sales, no benefits from OK.

- Step 1: contacts (number, relatedness, purposefulness)
- Step 2: fairness (convenience, hardship)
- Related contacts: contacts related to controversy; only one needed to support jurisdiction
- Unrelated contacts: if continuous and substantial, contacts unrelated to controversy may support jurisdiction

- *Keeton v. Hustler Magazine*: defendant had minimum contacts, plaintiff did not; jurisdiction present
  - A plaintiff does not need minimal contacts with the forum.

- *Kulko v. Superior Court*: NY father bought a plane ticket for his daughter to move in with the CA mother; no jurisdiction in CA
  - Merely causing an effect within the forum state without purposeful availment of benefits of the state will not support jurisdiction.
  - No minimum contacts and not fair (mother moved to CA, he should not have to go out there, too).

- *Burger King v. Rudzewicz*: MI franchisee sued by FL franchise in FL court; jurisdiction supported
Defendant must purposefully direct his actions so that minimum contacts are present. Defendant should be able to foresee that his connection could submit him to jurisdiction within the state (foreseeability).

- The state must be a forum, not necessarily the best forum.
- When a defendant who has purposefully directed his activities seeks to avoid jurisdiction, he must present a compelling case that the presence of other considerations would render jurisdiction unreasonable (fairness).
- A contract with an out-of-state party does not alone support jurisdiction, but course of dealings before and after contract does (contract-plus analysis).

-Asahi Metal v. Superior Court: Japanese tire sold to Taiwanese company who sold to CA; no jurisdiction in CA for Japanese company
  - Mere awareness by a foreign defendant that its product, sold to foreign customers, would reach the forum state by “stream of commerce” does not support jurisdiction.
  - Defendant must purposefully direct activity towards the state and receive benefits and protections of its laws.
  - The placement of a produce into the stream of commerce, without more, is not an act purposefully directed towards the forum state. Additional contact is necessary (office, advertising, hotline).
  - Against fair play and justice here as well (travel to foreign country with foreign laws, CA has no interest)

-Helicopteros Nacionales v. Hall: Peruvian corp. not subject to jurisdiction in TX when its contacts to TX were unrelated to the controversy
  - When the act occurred out-of-state (general jurisdiction) and the controversy is unrelated to a foreign company’s contacts with the forum, jurisdiction is present only if other sufficient contacts are present.

-Courts are reluctant to find jurisdiction based solely on the existence of website advertisements. Something more than the mere maintenance of a website is required to show that the defendant purposefully directed its activities at the forum.
- Sliding scale test: the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity than an entity conducts over the Internet.
  - Active: internet businesses, usually jurisdiction
-Passive: information exchange, usually not

**Result:** In order to support personal jurisdiction, (1) a defendant must have purposefully directed action towards the forum and, in doing so, created minimum contacts, and (2) fairness and inconveniences do not dictate against the forum. Courts seem to find minimum contacts easily, but they may not find contacts if it appears unfair.

3. *In rem Jurisdiction and Other Single-Factor Tests*

- **Tyler v. Judges:** an *in rem* proceeding, dealing with a tangible res (anything that can be devised), may be instituted and carried to judgment without personal service upon claimants with the state, or notice by name to those without it.

- **Pennington v. Fourth National Bank:** indebtedness due from a resident to a nonresident (bank deposits) is property within the state
  - Garnishment of foreign attachment is a proceeding quasi in rem, so substituted service is permissible.

- **Harris v. Balk:** the obligation of the debtor to pay his debt clings to him wherever he goes. The site of the debt does not matter, and he must pay it wherever there is jurisdiction over him.

- **Shaffer v. Heitner:** DE shareholder attempted to attach company stock to suit but stocks were not in DE; no attachment
  - In rem cases must have the same minimum contacts as in personam cases.
  - In rem: jurisdiction based on court’s power over property within the territory, effect limited to the property supporting jurisdiction (affects the interest of all persons in that property)
  - Quasi-in-rem: jurisdiction based on attachment or seizure of property in the territory, not on contacts between the defendant and the state (affects the interests of particular persons in the property)
  - In personam: jurisdiction based on authority over person, can impose a personal obligation on the defendant
  - Property cannot be subject to a court’s judgment unless reasonable and appropriate efforts have been made to give the property owners actual notice of the action.
  - Since the presence of property in the state will help to prove contacts, in rem cases will be unaffected. Those
cases affected will be those in which property is seized that is completely unrelated to the cause of action.  
-If a direct assertion of personal jurisdiction would violate due process, and indirect assertion (quasi-in-rem) would be equally impermissible.

-Burnham v. Superior Court: NJ served while visiting in CA in CA court; jurisdiction present  
-When the nonresident defendant is served instate, there is no need for minimum contacts.  
-Minimum contacts test refers to absent defendants only.

Result: Do not use International Shoe two-step test if: domicile in the state (Milliken), service instate (Burnham), and real property claim in rem within the state

-M/S/ Bremen v. Zapata: forum-selection clauses will be honored unless the resisting party shows it to be unreasonable under the circumstances

-Carnival Cruise Lines v. Shute: forum-selection clauses contained in form contracts are subject to judicial scrutiny for fairness

-Result: If in doubt, use the International Shoe test and look for minimum contacts and fairness. Forum selection clauses in contracts will always be examined for fairness.

4. Personal Jurisdiction in Federal Court

-DeJames v. Magnificence Carriers: defendant had contacts with U.S. but not NJ where the federal case would be heard; no jurisdiction  
-In looking for minimal contacts, the court looks only to the contacts with the forum state, not the entire nation, when a case is heard in federal court.  
-Apply FRCP 4k1A  
-Where service is effected by means of a state statute, a federal court must look to contacts within the state.  
-When service is effected by means of a federal law, national contacts may be used as a basis (Rule 4k1D).

-Rule 4: Federal Summons Rules  
-Rule 4k1A: party is amenable to federal suit whenever the party would be amenable to suit in the courts of the state in which the district court sits (state’s long-arm)
5. Challenging Personal Jurisdiction

- Rule 4k1B: joined party not more than 100 miles away from place whence summons issued
- Rule 4k1D: party amenable when authorized by U.S. statute

- Rule 12b: the defenses of lack of jurisdiction over subject/person, improper venue, or insufficiency of process shall be asserted before or in place of the answer to the pleading
- Rule 12g: if any of these defenses is omitted when others are asserted, the party may no longer raise that defense
- Rule 12h: lack of jurisdiction over person, improper venue, and insufficiency of process defenses are waived if omitted from a motion, but the court shall dismiss an action at any time during trial when lack of jurisdiction over subject matter is apparent

- Special appearance: the procedure at common law by which a defendant presented a challenge to the jurisdiction without submitting to the court’s jurisdiction for any other purpose

- Data Disc v. Systems Technology: judges impose different requirements regarding the burden of proof plaintiff must present to prove that the court has jurisdiction (prima facie to preponderance of evidence)

- Baldwin v. Iowa State: a defendant who makes no appearance at all remains free to challenge a default judgment for want of personal jurisdiction. But if a defendant contests jurisdiction and loses, he is bound by that decision.

- Orange Theatre v. Rayherstz: jurisdictional defense must be in the Rule 12b motion before answer or with the answer; otherwise it is waived (Rule 12h)

B. Notice and Service of Process

- Mullane v. Central Hanover: settlement of trust conglomerate failed to give adequate notice
- The means employed to provide notice must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.
- The form chosen must not be substantially less likely to bring home notice than other of the feasible and customary substitutes.
- A service process that is a mere gesture is not due process.
-For parties whose addresses are known, service must be given. For unknown addresses, publication is adequate.

-Dusenbery v. U.S.: certified mail notice sent to prison inmate is adequate notice because no better notice was available and the notice was of such a means that would be desirous of reaching the party

-**Rule 4**: Federal summons rules

-**Maryland State Firemen’s v. Chaves**: service by first-class mail without a response does not constitute legal service; certified mail would be appropriate
  - Rule 4d now calls for first class mail of a waiver to defendant. If defendant does not respond with thirty days, then the plaintiff must serve process (defendant pays for service if no reasonable excuse for refusing waiver).
  - Federal Express is not first class mail.

-**Rovinski v. Rowe**: MN resident’s legal address was with his mother in MI; service with her adequate
  - Rule 4e2 permits service to be made by leaving a copy of the summons at defendant’s home with a person of suitable age.
  - The service of process rule should be liberally construed and provide a good deal of freedom and flexibility in service.

-**Insurance Co. v. S/S Hellenic Challenger**: service made to a company officer not authorized to receive process but did anyway on several occasions and knew what to do
  - Rule 4h has been liberally construed and does not limit service solely to officially designated officers. Service may be made upon a representative so integrated with the organization that he will know what to do with the summons.

-**Wyman v. Newhouse**: Summons served by fraudulently means of inducing the party to enter the forum is invalid.
  - Different from process servers who use fraudulently means to serve within the forum
  - A fraud affecting the jurisdiction is equal to lack of jurisdiction.
  - A judgment procured fraudulently is null and void.

-**Result**: Rule 4 governs but it is interpreted loosely.
C. Federal Subject-Matter Jurisdiction

1. Federal-Question Jurisdiction

- **28 U.S.C. § 1331**: federal question jurisdiction, federal courts have original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the U.S.

- **28 U.S.C. § 1337**: federal courts have original jurisdiction of any civil action arising under and act of congress regulating commerce or protecting trade against restraints and monopolies (antitrust)

- **28 U.S.C. § 1442**: civil actions against any federal officer sued in official capacity may be removed to district court

- *Louisville & Nashville R&R v. Mottley*: plaintiffs brought contract claim but anticipated that defense would defend the breach by claiming that they had to follow federal law
  - Federal courts do not have jurisdiction when the sole federal question is raised as a defense.
  - Plaintiff’s cause of action must raise the federal question.

- *Skelly Oil v. Phillips*: one can not artfully plead around *Mottley* by asking the federal court for a declaratory judgment of the defense rather than raise it in court

- *Smith v. Kansas City Title*: arose from a state-created action but turned on issues of federal law (it is illegal in MO to do this; federal law says what “this” is)
  - When it appears from the complaint that the right to relief depends upon the construction or application of the constitution or federal laws, and such federal claim is not merely colorable, and rests upon a reasonable foundation, the district court has jurisdiction.

- *Moore v. Chesapeake*: state cause of action that more indirectly turns on interpretation of federal law; no jurisdiction
  - Difference from *Smith* is the closeness and relatedness of the federal connection; if more of a state than a federal question, then no federal jurisdiction

- *Shoshone Mining v. Rutter*: claims that arise under federal law but turn on state law are not federal questions
  - Question, again, is what law must be interpreted the most in the case
-Merrell Dow v. Thompson: there is no federal question jurisdiction when plaintiffs raise a claim under federal law when congress has determined that there should be no private action for that law (able to raise only because one of several claims that arise under state law)
  -The mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction.

-Result: Federal question must be basis of claim (not defense, not hinging upon state claim), and decision must be based on federal question.

2. Diversity Jurisdiction

-28 U.S.C. § 1332: amount must exceed $75,000, and the case must be between citizens of different states or citizens and subjects of a foreign state; corporation is citizen of state of incorporation and state where principal place of business is located

-28 U.S.C. § 1359: party may not join another party so to create or destroy diversity of citizenship
  -There is no diversity if any plaintiff is a citizen of the same state as any defendant, no matter how many parties are involved in the litigation (does not have to be complete diversity of defendants).
  -Regardless of diversity, federal courts do not hear probate or domestic relations cases (divorce, child custody).

-Mas v. Perry: MS citizen lived in LA as a student; citizen of MS
  -The citizenship is determined at the time the complaint is filed.
  -The burden of proving diversity is on the party invoking federal jurisdiction.
  -State citizenship determined by domicile. Mere residence in a state is not sufficient.
  -Domicile is the place of one’s true, fixed, and permanent home. A change in domicile can only be effected by taking up residence in a new domicile with the intent to remain there.

-China Nuclear v. Anderson: Alien corporations cannot sue a partnership of U.S. and alien because not complete diversity (aliens on both sides)
-White v. Halstead: three tests to determine a corporation’s principle place of business: (1) nerve center (locus of cooperate decision making), (2) cooperate activities/operating assets (location of production or service), and (3) total activity

-Rose v. Giamatti: jurisdiction is based solely upon the citizenship of the real parties to the controversy, not those brought in to create or defeat diversity

3. Jurisdictional Amount

-28 U.S.C. § 1332: amount must exceed $75,000 (now is $5 million); if the matter is adjudged at less that the amount, plaintiffs may not claim costs and may have costs imposed on them

-Tongkook v. Shipton: when the claim was brought, plaintiff believed the jurisdictional amount was satisfied but discovery showed that the amount was less; no jurisdiction
-Regardless of why the jurisdictional amount was less than originally thought, district courts must excuse cases if the amount is sure to be below the required level.
-When a plaintiff is seeking unspecific damages in tort, a district court should permit the claim to proceed and not predetermine how much a plaintiff should receive.
-A plaintiff’s subjective belief to the amount, no matter how much in good faith, cannot be the controlling factor.

-Snyder v. Harris: amount of each person’s claim in class action suit not to be aggregated (changed by recent statute, claims are aggregated now)

-McCarty v. Amoco Pipeline: courts are not settled upon how to decide or from whose viewpoint to examine the amount in question (plaintiff’s? party invoking federal jurisdiction?)

4. Federal and Nonfederal Claims in Combination

-Pendant jurisdiction: when the plaintiff in complaint appends a claim lacking an independent basis for federal subject-matter to a claim possessing such a basis
-Ancillary jurisdiction: when either a plaintiff or defendant injects a claim lacking an independent basis for jurisdiction by way of a counterclaim, cross-claim, or third-party complaint
-Both can also be called supplemental jurisdiction
-United Mine Workers v. Gibbs: federal and state claims brought in same case; after judgment by jury, judge throws out federal claim; federal court still has jurisdiction to decide on state claim
  -State law claims are appropriate for federal court determination if they form a separate but parallel ground for relief also sought in a substantial claim based on federal law.
  -Question is whether the state and federal claims arise from a “common nucleus of operative fact.”
  -Pendant jurisdiction exists where there is a federal claim and state claim, and their relationship permits the conclusion that the entire action is but one case. The federal claim must have substance sufficient to confer subject matter jurisdiction (federal question section).
  -Due to res judicata, plaintiffs often HAVE to try all claims in one judicial proceeding, so pendant jurisdiction is absolutely necessary then.

-Owen Equipment v. Kroger: in diversity suit, defendant filed a third-party complaint and settled with plaintiff, leaving a non-diverse suit between plaintiff and third-party in federal court; no jurisdiction
  -In addition to the Gibbs “common nucleus” test, the court must also examine the posture in which the nonfederal claim is asserted and the statutes that confers jurisdiction.
  -Congress has clearly demonstrated that diversity must be complete.

-28 U.S.C. § 1367: courts have supplemental jurisdiction over claims that are so related to the claims in the action within original jurisdiction that they form part of the same case or controversy, except in claims by plaintiffs against third-party defendants/interveners/joinders if those claims would be inconsistent with jurisdictional requirement (Kroger)

-Result: For federal question, look to common nucleus of facts. For diversity, diversity of parties must remain.

5. Removal

-28 U.S.C. § 1341: defendant may remove a case from state court to federal court if the federal court has original jurisdiction in the matter; any state claims joined to the federal claims may also be removed, but the federal court may remand all matters in which state law predominates
-Bright v. Bechtel: employee claimed that taxes should not have been taken out of his salary; since federal taxes involved, defendant can remove to federal court and state tax claim may be removed as well
  -The federal and state tax claims arose out of a common nucleus of fact (same act of withholding), so there is pendant jurisdiction of claims.

-1441c removes separate and independent causes of action; 1441b removes claims so closely related to be within pendant jurisdiction
-Could mean that all cases that involve a federal question are removable (state claims too independent are remanded under 1441c).

-Artful pleading doctrine: a claim pled under state law is deemed to arise under federal law when the state law on which the plaintiff purports to rely is preempted by federal law, and the only possible relief is federal

-Result: If a federal question is involved, at least that part of the claim may be removed. State claims may be removed or remanded depending upon their connection to the federal claim.

6. Attacks on Subject-Matter Jurisdiction

-Capron v. Van Noorden: a judgment is void if the court deciding the case has no subject-matter jurisdiction over the matter, Rule 12h (lack of jurisdiction over person must be waived before/with answer)
  -Defendant can only raise the defense in a direct attack (appeal on same case), not in a collateral attack (separate trial, such as proceeding to enforce decree).
  -The prohibition against collateral attacks is almost a bright-line rule.

D. Venue and Forum Non Conveniens

-Venue means the place of trial in an action within a state.

-28 U.S.C. § 1391: actions may be brought only in the judicial district where the/a defendant resides, where a substantial part of the events giving rise to the claim occurred, where a substantial part of the property is located, or where any defendant is subject to personal jurisdiction (if no other district available)
A corporation resides in any district in which it is subject to personal jurisdiction.

-Bates v. C & S Adjusters: illegal debt collection letter forwarded from PA to NY; plaintiff brought suit in NY; proper forum because event giving rise to claim occurred in NY (reception of letter).
  -Since statute allows for claims to be brought where a substantial part of the events occurred, there could be several possible forums.

-28 U.S.C. § 1404: a district court may transfer a case to any other district court where it might also have been brought for the convenience of parties and witnesses.

-28 U.S.C. § 1406: even if the court does not have jurisdiction, it does have jurisdiction to transfer to a court that does have jurisdiction.

-Hoffman v. Blaski: a district court that is a proper forum may not transfer a case, on motion from the defendant, to a district that is not a proper forum.
  -In Van Dusen, the court held that the law applicable in the transferor forum follows the transfer (not in federal question cases).

-Gulf Oil v. Gilbert: forum non conveniens is the doctrine by which a court may resist jurisdiction even when jurisdiction is authorized by statute (plaintiff make jurisdiction exceptionally difficult for defendant).
  -Factors to be considered in determining if forum is inappropriate: private interest of litigant
    -relative ease of access to sources of proof
    -availability of compulsory process for unwilling witnesses and cost of transporting willing witnesses
    -view of site of events, if necessary
    -enforceability of judgment
    -all other practical problems that regard efficiency and cost
  -Unless the balance is strongly in favor of the defendant, plaintiff’s choice of forum stands.

-Piper Aircraft v. Reyno: court applies Gulf Oil criteria to declare PA an improper venue in the wrongful death trial of Scottish citizens against foreign and domestic defendants.
An alternative forum is not automatically barred if it would lead to a change of law unfavorable to the plaintiff.

**Result:** There are several possible forums. Plaintiff’s choice stands unless patently unfair to defendants.

### III. THE ERIE DOCTRINE

#### A. Federal v. State Law in Diversity Cases

- **Erie R. Co. v. Tompkins:** state common law must be followed in federal courts hearing state cases
  - Holding otherwise would allow someone could walk down the street to a different courthouse and receive a different rule of law.

- **Hinderlider v. La Plata River:** federal common law may be applied to some diversity cases where no particular state’s law clearly dominates

- **Guaranty Trust Co. v. York:** as to consequences that so intimately affect recovery or non-recovery, a federal court in diversity case should follow the state law
  - Statute of limitations may commonly be procedure (federal law), but when it denies recovery under state law, the federal court should not rule differently (walk down the street and receive different justice)

  - In *Ragan*, the court held, that in absence of federal procedural rule, state law would determine.
  - In *Cohen*, federal rules did not require a bond but state law did. Federal courts must require bond because state interest would be destroyed otherwise (different rule down the street).

- **Byrd v. Blue Ridge:** SC says decision made by a judge; federal law says jury
  - if the conflicting state/federal laws will affect the decision, the state law is used unless the rule is central to the federal system
  - State laws cannot alter the essential character of the federal court.
  - There is a strong federal policy against allowing state rules to disrupt the judge/jury relationship in federal court.
  - Three part test:
    - State substantive interest
    - Federal procedural interest
    - Outcome effect

- **28 U.S.C. § 2071:** procedure to create and approve lower court rules
- **28 U.S.C. § 2072**: federal Rules Enabling Act; such rules shall not abridge, enlarge, or modify any substantive right

- **Hanna v. Plumer**: state and federal service of process rules in conflict; federal rule prevails
  - If solely regarding procedure (FRCP), then federal rule prevails over state rule.
  - The twin aims of *Erie* (discouragement of forum shopping and inequitable administration of the law) will not be injured by applying the service of process law or other purely procedural laws.
  - Two step analysis: (1) is there a federal rule applicable (sufficiently broad to cause a direct collision with state law)? Is it procedural (valid exercise of rulemaking authority under Rules Enabling act) and (2) If no, then apply twin-aims analysis of *Erie* (state substantive interest, federal procedural interest, outcome effect)

- **Walker v. Armco Steel**: upholds *Ragan*, time when statute of limitations began to toll is determined by state law because there is no federal law that directly collides
  - Courts will look to second step (*Erie* considerations) in determining whether the laws are in direct collision (will read federal rules loosely or narrowly)

- **Stewart Organization v. Ricoh**: questions of forum in diversity cases are determined by federal law
  - State courts focus on single concern; federal courts look to several concerns. Not a point where state and federal rules can sit side-by-side.

- **Gasperini v. Center for Humanities**: the 7th amendment does not preclude appellate review of jury awards (state law prevails over federal practice)
  - No collision because 7th does not specifically say that there is to be no reexamination of jury awards (is just federal procedure)
  - Also, would encourage forum shopping to hold otherwise

- **Result**: First, do laws conflict and is federal law only about procedure. If yes, then balance state substantive interest, federal procedural interest, and outcome effect. Federal law dominates in purely procedure cases. The determination of whether laws collide is often made in looking ahead to the balancing considerations. Most prominent concern is often the discouragement of forum shopping.

**B. Ascertaining State Law**
-**Klaxon v. Stentor**: federal courts must apply the conflicts-of-laws rules of the state in which they sit; each state has a conflicts-of-laws rule that determines which state’s law applies when several choices are available.

-Mason v. American Emery Wheel: federal court in diversity is not bound to follow state case law that is clearly outdated and not in accordance with current state law dicta.

-Goal is to mimic as closely as possible how a state court would rule. In doing so, the federal court can look to dicta in other cases, lower court decisions, and decisions from other states.

-Van Dusen v. Barrack: the law applicable to the transfer forum follows the transfer.

-No matter which party transfers the suit, the law of the transferee forum applies (could lead to forum shopping, but oh well).

-**Result**: Federal courts follow the language of state conflicts-of-laws rules to determine which state law to apply, and the law follows the transfer.

**IV. PLEADING**

A. The Complaint (and the Motion to Dismiss)

-**Rule 8**: complaint should consist of a short and plain statement (1) of jurisdictional grounds, (2) statement of the claim showing entitlement to relief, and (3) demand for judgment.

-The answer shall admit, deny, or state lack of knowledge (denial) to each averment.

-**Rule 12**: amount of time to return answer, failure to state a claim (12b), and requirement to assert certain defenses.

-Dioguardi v. Durning: practically unintelligible complaint satisfies Rule 8 complaint requirement.

-The complaint must only be enough to appraise the defendant of the claim against him (notice complaint).

-Judges have rejected pleadings for including too much information.

-Leatherman v. Tarrant County: some federal cases (fraud) may require more specific pleading, but civil rights cases do not; Rule 9b lists those that require more particularity.

-More rigorous requirements also applied to antitrust cases, cases against government officials, securities litigation.
-American Nurses v. Illinois: complaints should not be dismissed under 12b6 if there is a legal claim present, even though it may be veiled in invalid claims
  -Rule 12b6 motions (modern demurrer) used to test pure questions of law rather than failure to state enough facts to prove a legit claim
  -A complaint cannot be dismissed because it includes invalid claims along with valid ones.

-Result: Complaints must only state the bare minimum, but they must state enough to present a legal claim and give notice of the coverage of the suit to defendants

B. The Answer

  -Federal Rules discourage use of the general denial, which must be made in good faith and only in situations in which everything in the complaint can be denied legitimately. The answer should rather admit, deny, or plead insufficient information.

  -Zielinski v. Philadelphia Piers: defendant did not alert plaintiff in its answer that it had been bought out by another company
  -A specific denial is required to show why the defendant is not a party in the case (general denial not appropriate when extremely prejudicial to case).

C. Amendments

  -Rule 15: one amended pleading allowed before answer; otherwise, amendments must be permitted by court, and the court shall freely give leave; defendant has remainder of time from original answer or 10 days to respond to amendment
  -Also discusses amendments to conform to the evidence and supplemental pleadings (events happened since pleading)
  -The new pleadings relate back to the original and are considered as if all had been in the original

  -Moore v. Moore: if issues not raised in pleadings are tried by express consent of the parties, there can be no question about the propriety of permitting amendment (Rule 15b)
  -When consent must be implied, the court searches the record for indications that the party contesting the amendment received actual notice and the ability to litigate the matter.
  -The clearest indications of a party’s implied consent is in the failure to object to evidence.
-Is a child custody case; defendant had to have know that the issue who had custody would be decided

-Beeck v. Aquaslide: the running of a statute of limitations is not prejudicial to a motion to amend (company realized that it was not liable after admitting it was)
  -The burden is on the party denying the motion to show prejudice that would constitute a denial of a motion to amend.
  -A trial court’s decision is reviewable only for abuse of discretion.

-Wortington v. Wilson: plaintiff amended complaint after learning in discovery who the actual defendants were and after statute of limitations had passed; amendment not permitted
  -An amended complaint will relate back to the original if arises out of same conduct as original and new party is aware of action within 120 days of filing the original complaint (Rule 15c).
  -Rule 15 does not permit a plaintiff to replace unknown parties with actual parties.

-Rule 8c: lists 19 affirmative defenses that must be raised specifically
  -List not conclusive, courts look to statutes and state practice as well. In general, defendants must raise affirmatively defenses that do not flow logically from the plaintiff’s complaint.

-Ingraham v. U.S.: failure to raise any of the Rule 8c defenses timely constitutes a waiver
  -Central to the inquiry as to whether the defense had to be stated is the issue of unfair surprise to plaintiffs (would formulate different theory of case of different defense presented).
  -Defendant has the burden of pleading affirmative defenses. Plaintiff then must introduce evidence to rebut the defense.
  -Plaintiff also has burden of putting forth evidence to prove relief.

-Taylor v. U.S.: limitations of damages not an affirmative defense, so defendant has usual 10 days to file post-trial motions regarding excessive jury verdicts

-Result: Party opposing amendment must have good reason to do so. Affirmative defenses must be amended timely.

D. Sanctions

-Rule 11: Sanctions may be imposed on attorneys and firms for filing frivolous or factually baseless claims; attorney has 21 days from filing of
motion to amend or withdraw without sanction; sanctions listed; sua sponte (court initiated) sanctions do not have 21-day safe harbor

-Hadges v. Yonkers Racing: attorney and client inadvertently mistook their claim; sanctions not warranted
  -An attorney is entitled to rely on his client’s statements as to factual claims when those statements are objectively reasonable.
  -The attorney must conduct a reasonable inquiry under the circumstances into whether factual assertions have evidentiary support.
  -Attorneys must have the 21-day safe harbor to correct legitimate mistakes.

V. JOINDER

A. Joinder of Claims by Plaintiff

-Harris v. Avery: two claims arising from the same action may be included in one suit
  -Transaction: same facts, same issues
  -Claims from a single transaction should be joined unless the several causes might entail prejudice to the defendant’s substantial rights and would tend to confuse the jury.
  -Res judicata often has the effect of compelling plaintiffs to join all related claims.

-Rule 18: A party may join as many claims as the party has against an opposing party. The only restriction is subject-matter jurisdiction.

-Rule 20: All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or arising out of the same transaction and if any question of law or fact common to all will arise in the action.
  -All persons may be joined in one action as defendants if there is asserted against them jointly severally, or arising out of the same transaction any right to relief.
  -Judgment is not necessarily for all plaintiffs or against all defendants.
  -The judge may order separate trials.

-Rush v. City of Maple Heights: plaintiff could not bring separate suits for damages to property and person arising out of the same accident
  -Two or more claims arising out of the same transaction must be joined if the issue and facts are the same.
-The test is whether the same evidence would be used to prove the plaintiff’s case in the two actions.

**B. Counterclaims**

-Mitchell v. Federal Intermediate Bank: a counterclaim involving the same issues involved in the suit must be brought at the time of the suit
-Can not use same facts as a shield and a sword (cannot be defense in one suit and offense in another).
-Defense preclusion typically raised in a subsequent action by the original plaintiff when the defendant tries to assert a defense that was not raised in the earlier action.

-Rule 13: A pleading shall states as a counterclaim any claim that he has against any opposing party if it arises out of the same transaction.
-A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction.
-A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction. The cross-claim may assert that the co-party is liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

-Great Lakes Rubber v. Herbert Cooper: a counterclaim claim without federal jurisdiction may be raised by a defendant if the counterclaim is compulsory
-A federal court has ancillary jurisdiction of the subject matter of a counterclaim if it arises out of the same transaction that is the subject matter of the opposing party’s claim of which the court has jurisdiction.
-A counterclaim is compulsory if it bears a logical relationship to an opposing party’s claim. It is logically related if each of the claims would involve a substantial duplication of effort and time by the parties and courts.

-28 U.S.C. § 1367 states the conditions of federal supplemental jurisdiction.

-What constitutes a transaction? Issues of fact and law the same, res judicata would bar a subsequent suit on defendant’s claim, save evidence, logical relation between claim and counterclaim

**C. Cross-Claims**
-LASA v. Alexander: a grant of jurisdiction over the subject matter includes the power to adjudicate all matters ancillary to the particular subject matter.

- Must be a logical relationship between the cross-claims and the transaction that is the subject matter of the complaint or counterclaim (must involve same transaction).

- Counterclaim: against plaintiff
- Cross-claim: against co-defendant
- Third-party complaint: against someone not yet a party

D. Impleader

- Rule 14: a defending party, as a third-party plaintiff, may cause a summons a complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff’s claim.
  - The third-party defendant shall make any defenses as provided in Rule 12 and any counterclaims as provided in Rule 13.
  - When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in.

- Jeub v. B/G Foods: the court does not have to wait to see if defendant is liable for defendant to indemnify a third party
  - Third-party complaint (impleader) is one for indemnification. In federal court, can indemnify in same suit.
  - Plaintiff could not bring complaint against third party in federal court without independent jurisdiction. § 1367 allows ancillary jurisdiction in defendant v. third party but not plaintiff v. third party (plaintiff chose federal court, must deal with consequences).

- In Goodhart, the court refused to implead an employee of defendant because of possible prejudice in the case (smaller verdict, interest of employee biased).
  - Defendant cannot implead an existing defendant (cross-claim).

- Revere Copper v. AETNA: defendant impleaded third party, third party counterclaimed against defendant; plaintiff moved to dismiss the counterclaim because no diversity of citizenship
  - Court has ancillary jurisdiction because fell within core aggregate of facts required by § 1367.
§ 1367 states that the court does not have jurisdiction over claims by plaintiffs against persons made parties under Rule 14 when there is no jurisdiction (*Kroger*). Third-party defendants can bring claims regardless of jurisdiction (*Revere*).

In *Noland*, the court allowed a third-party plaintiff to claim indemnity and damages (Rule 14 should be interpreted broadly to permit claims that could be made in one action).

Rule 4 allows service under Rule 14 on someone not more than 100 miles away from the site of summons issuance.

### E. Interpleader

-Interpleader is available to anyone who is subject to several competing claimants on the same funds and wants those parties to fight it out amongst themselves.

-Example: insurance funds, company pays the policy funds into court and the several parties fight it out as interpleader parties to decide who receive it

**-Rule 22:** Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability.

### F. Necessary and Indispensable Parties

-**Bank of California v. Superior Court:** joinder of parties is compulsory only when a complete determination of the controversy could not be had without the presence of those parties.

-Indispensable parties are those whose interests are not separable from the rest. The court cannot proceed without them.

-Where the plaintiff seeks some sort of affirmative relief that, if granted, would injure or affect the interests of a third person not joined, that third person is an indispensable party.

-The court may, on its own motion, dismiss the proceedings or refuse to proceed until all the parties have been brought in (Rule 19b).

-Necessary parties are those who are interested in the sense that they might possibly be affected but their interests are separable. If necessary parties are impossible or impracticable to bring in, the action may proceed.

-If readily available, should be brought in.
-If indispensable party not present, case dismissed.
-If necessary party no present, can continue.

**Rule 19**: a person who is subject to service of process and whose joinder will not deprive the court of jurisdiction shall be joined if (1) in the person’s absence, complete relief cannot be accorded among the parties or (2) the person claims an interest and may be affected by the outcome

-If the person cannot be made a party, the court shall determine whether the action should proceed with the current parties or should be dismissed, the absent person being thus regarded as indispensable.

-**Haas v. Jefferson National**: a party joined by mandate of court caused non-diversity of parties; case dismissed because joinder was necessary and had to be done regardless of consequences

-**Rule 19(b)** lists the factors to be considered in deciding whether to dismiss because of absence of indispensable party.

G. Intervention

-**Rule 24**: Anyone shall be permitted to intervene in an action when a statute confers an unconditional right to intervene or when the applicant claims an interest relating to the property or transaction and the applicant is so situated that the disposition of the action may as a practical matter impair the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties

-Anyone may be permitted to intervene when a statute confers a conditional right to intervene or when an applicant’s claim or defense and the main action have a question of law or fact in common. The court will decide if the intervention will unduly delay or prejudice the rights of the original parties.

-**Smuck v. Hobson**: the situations in which a petitioner should be allowed to intervene under Rule 24 are not necessarily limited to those when the trial court should compel him to become a party under Rule 19.

-**Smuck v. Hobson**: The party must have an interest relating to the transaction that is the subject of the action.
-With intervention, the question is not whether a lawsuit should be begun but whether an already initiated lawsuit should be extended to include additional parties. 
-Court looks to see if the intervention applicant may be impeded in protecting his interest if not allowed to join and that his interest is not already adequately represented by others. 
-The burden is on the party opposing intervention to show adequacy of representation.

-§ 1367 bars nondiverse plaintiffs seeking to intervene under Rule 24 in diversity suits.

-Atlantis v. U.S.: the question of whether intervention as a matter of right exists often turns on the unstated question of whether joinder of the intervener was called for under Rule 19 
-When conjunction of the same claim, interest, and transaction as in the main action coincide, the court must realize that the first decision will most likely be the second one as well, so a party that could bring a suit on the same matter should be allowed in intervene.

VI. CLASS ACTION

A. Introduction

-Rule 23: a. Prerequisites: numerosity, common questions of law/fact, claims of representative parties typical, adequacy of representation, satisfaction of b
-b. A: inconsistent or varying adjudications would establish incompatible standards of conduct  
   B1: adjudications with respect to individual members would be dispositive of interests of group or substantially impair their ability to protect their interests  
   B2: party opposing class has acted or refused to act on ground applicable to the class, thereby making appropriate INJUNCTIVE relief to whole appropriate  
   -B3: questions of law/fact common to the members of the class predominate over any questions affecting only individual members, and class action is superior
-c. The court must define the class and send out notice of the class action. The notice must be the best notice practicable under the circumstances

B. Class Certification
Marisol v. Guiliani: court certified a class of children in custody system and children at risk of abuse whose status should be known by the system; court did require subclasses

- Before certifying a class, the court must determine if the prerequisites are present (23a) and must qualify the part under 23b.
- Commonality: the claims must be so interrelated that the interests of the class members will be fairly and adequately protected in their absence
- Adequacy of representation: there can be no conflict between the named parties and other members of the plaintiff class
- Rule 23c4 permits division of the class into subclasses by claim
- Rule 16c gives the trial court wide discretion at pre-trial conferences to narrow the issues

General Telephone v. Falcon: employee passed over for promotion did not represent those not ever employed by the company

- A class representative must be part of the class, possess the same interest, and suffer the same injury as the class members

Causey v. Pan American: class action not allowed for representatives of decedent in plane crash (mass accidents)

- A mass accident resulting in injuries to numerous persons is ordinarily not appropriate for a class action.
- Mass accident class action would be appropriate where (1) limited to issue of liability (no damages), (2) class members support the action, and (3) choice of law problems minimized by the accident occurring and/or all plaintiffs reside within same jurisdiction.
- Rule 23b2 does not extend to cases in which damages are the predominant relief.
- Class action must be superior to other methods, and in mass accidents, individual claims for damage may be better.

C. Due Process

Hansberry v. Lee: class action to enforce racial covenant did not bar potential class members who opposed it by res judicata

- A class action lawsuit may bind members of the class who were not made parties to it. The issue is res judicata even to those not made formal parties.
-The exception, where there is a failure of due process, is where it cannot be said that the procedure adopted fairly insures the protection of the interests of absent parties who are bound by it (Rule 23 lists several safeguards).
-Must be adequacy of representation
-Claim in class action was for themselves and all those similarly situated. That group definition does not apply to those in the potential class who oppose relief (not named or similarly situated).

-Martin v. Wilks: class action judgment for black firefighters was not preclusive for suits brought by fellow white firefighters
- A class action between one group of employees and their employer cannot possibly settle the conflicting claims of another group of employees.
- A party that does not intervene under Rule 24 and is not forced to join under Rule 19 is not precluded from a judgment in a later case.

D. Class Action Practice

-Eisen v. Carlisle: notice could not be sent to only a percentage of the party because the expense of sending it to all was too expensive
- Individual must be sent to all class members whose names and addresses may be ascertained through reasonable effort.
- Notice must be the best practicable under the circumstances, including individual notice (Rule 23c2, unambiguous requirement).
- Notice must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it (Mullane).
- Plaintiffs must bear the cost of notice except in shareholder derivative suits.
- May not apply to 23b2 or actions maintainable under b2 or b3

-Wetzel v. Liberty Mutual: case certified as b2 (no notice required) and b3 does not need to send notice once the court decided that b2 relief was unnecessary
- A court does not have redetermine class certification after summary judgment.
- B2 class actions are particularly suited for discriminatory hiring and promotion practices (cohesive class).
- When certified as b2 and b3, do not have to apply the strict notice requirements of b3.
-Where individual monetary claims are at stake, the balance swings in favor of the provision of some form of notice.
-In *Falon*, the court said that the representatives in employee class action suits must represent the entire class (difficult to represent current employees and potential employees).

**E. Mass Tort Class Actions**

- *Amchem Products v. Windsor*: mass asbestos tort could not have a class consisting of those who already know their asbestos-related injuries and those had been exposed but not yet affected (different interests)
  -The comments to Rule 23 caution the use of class actions in mass tort when individual stakes are high and disparities among class members are great.

**F. Jurisdictional Complications**

- *Snyder v. Harris*: in order to reach the jurisdictional amount, the claims of the parties cannot be aggregated (not true anymore, amendment says they can be)

- *Zahn v. International Paper*: all class members in a Rule 23b3 suit must meet the jurisdictional amount requirement (no longer true, aggregate must be over $5 million)

- *Phillips Petroleum v. Shutts*: court could not apply KS law to all claims when laws from other states represented in the class action conflicted with KS law
  -Out-of-state plaintiffs do not have to affirmatively consent to jurisdiction (opt-out procedure adequate).

**VII. DISCOVERY**

**A. General Scope of Discovery**

- *Rules* 26-37 are the basis discovery provisions.
- Purposes: preservation of relevant information that might not be available at trial, isolation of issues that actually are in controversy, and discovery of what testimony and other evidence is available.

- *Rule 26*: b1: Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party
  -b2: The court can alter the limits of discovery by rule or by circumstances (examples of circumstances given).
-**Rule 30** and **33**: set the specific limits
- c: The court may issue protective orders to protect a party from discovery if the party meets one of the listed requirements.

-Blank v. Sullivan: A party is entitled to discovery, not only of material that is relevant and admissible at trial, but also of information that appears reasonably calculated to lead to the discovery of admissible evidence.

-Marrese v. American Academy: judge’s order compelling complete discovery of sensitive information was erroneous
- A motion under Rule 26c to limit discovery requires the judge to compare the hardship to the party against whom discovery is sought with the hardship to the party seeking discovery if discovery is denied (consider nature of hardship as well as its magnitude).
- Judges could look at privileged information *in camera* (just him) to decide if relevant. If not, no disclosure is necessary.
- Judge could also allow party opposing to redact the privileged information as well.

**B. Specific Discovery Devices**

1. **Depositions**

**-Rule 30**: rules regarding oral depositions, including amount allowed and other restrictions on people, time limit, process of recording, need for officer, motion to terminate, certification, copies, and failure to attend

**-Rule 31**: a party may take the testimony of any person by deposition upon written questions

**-Rule 26d**: Parties may not begin discovery until all parties have conferred to discuss the discovery plan

-Haviland v. Montgomery Ward: plaintiff’s elderly CEO may be deposed
- Even though circumstances may make it difficult to depose someone, there are several devices that can get around many difficulties (limit his time deposing each day, allow him to stay in France, conduct it over the phone).

-Depositions designed to function by private arrangement among the parties without need for judicial intervention.
-There is no requirement that a non-party be subpoenaed, but there is no sanction for a non-party that does not show but there is a sanction for ignoring a subpoena.
-An attorney may not make “speaking objections” during objection in which he leads witness to an answer.

2. Interrogatories

-**Rule 33**: limits interrogatories to 25 questions, answers may be used to the extend permitted by the rule of evidence; an interrogatory is not necessarily questionable because an answer involves an opinion that relates to fact or the application of law to fact

-**Leumi Financial v. Hartford Accident**: interrogatory permitted that asked for a legal definition of a word used in a contract
  - When the question is too broad and seems an undue burden to receive little information, the court will attempt to narrow the question.
  - Opinion-seeking questions should be allowed unless the possibility that the answer will prejudice the answerer unfairly outweighs the benefit of narrowing the issue.

3. Production of Things

-**Rule 34**: production of documents, request for documents
-**Rule 45**: subpoena; person can only be served in the district or 100 miles from site of issuance; held in contempt if ignore; other duties, protections, and procedure regarding subpoenas

  - A request must describe the items to be discovered with reasonable particularity (flexible standard).

-**Hart v. Wolff**: case dismissed because of failure to produce; claimed not to have access to documents but never tried
  - A prima facie case of control of the requested documents is all that needs to be established to justify issuance of an order to produce.

4. Physical and Mental Examinations

-**Rule 35**: when the mental or physical condition of a party is in controversy, the court may order the party to submit to a mental or physical examination; the party examined may ask for the report, and the part asking for the examination may ask for reports of other examinations
-Strict standards; person’s physical or mental condition must be in controversy, and the movant must show good cause to compel the examination.
- The determination of good cause involves weighing the pain, danger, or intrusiveness of the examination against the need for, or usefulness of, the information to be gained.

-Schlagenhauf v. Holder: bus driver did not have to submit to 12 tests.
- Rule 35 applies to plaintiffs and defendants.
- “Good cause” is a higher standard than other discovery methods. It requires a showing by the movant that each condition as to which the examination is sought is really and genuinely in controversy and that good cause exists for each particular examination.

-If defendant gives plaintiff a copy of the examination upon her request, then plaintiff must give defendant a copy of any other examinations.

5. Requests for Admissions

- Rule 36: a party may serve upon any other party a written request for admission of the truth of any matters within the scope of discovery that relate to statements or opinions of fact or of the application of law to fact. The matter is admitted unless a written answer is returned with the time granted.
- Any matter admitted is conclusively established unless the court permits withdrawal or amendment.

- Rule 37: when a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and the party requesting thereafter proves the genuineness, the proving party may request reasonable fees unless certain conditions are met.

- McSparran v. Hanigan: plaintiff’s admission was enough to reverse a jury verdict.
- Since the plaintiff knew what making the admission meant, and defendant relied upon it, the admission stands as if it had been made in testimony at trial.
- One can refuse to admit so long as one has reasonable grounds to deny without incurring the Rule 37 sanctions.
-Purpose of the rule is to limit the issues in dispute and obviate some of the formalities that control the introduction of evidence at trial.
-Party must admit, deny, or provide a detailed explanation on why it cannot admit or deny.
-Party may also object because of vagueness or privileged information.
-Least useful of the discovery devices

C. Mandatory Disclosure

-The initial step in the discovery process is mandatory disclosure of certain information.

-Rule 26a: without waiting for a discovery request, a party must produce certain items within 14 days of the pre-trial discovery conference; certain kinds of cases and cases where there is no need excluded

-Comas v. United Telephone: plaintiff attempts to compel production of documents that the parties agreed to produce in mandatory disclosure
  -Parties must produce the documents they agreed to produce. Other production is not required until formal discovery.
  -Defendant did not produce in time. He must pay plaintiff’s fees in bringing this motion.

D. Work Product

-Rule 26b3: a party may obtain discovery of materials prepared in anticipation of litigation by another party or attorney only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party’s case and that the party unable without undue hardship to obtain the substantial equivalent of the materials by other means; the court shall protect against disclosure of the mental impressions and opinions of an attorney

-Hickman v. Taylor: not required to produce work product because other means were easily available to get the information
  -Work product is not limited to attorneys but extended to others who prepared work primarily for the litigation.
  -The burden rests of the party trying to invade the privacy to establish adequate reasons to justify production.
E. Sanctions

- **Rule 37**: evasive or incomplete disclosure is to be treated as a failure to disclose; attorney’s fees and expenses should be paid to the losing party in a motion to compel
  - For failing to comply with discovery order, the court has several penalty options, including dismissing the case or refusing to allow parts of the claim to continue forward

- **Cine 42nd v. Allied Artists**: party was grossly negligent in producing evidence regarding its damages; the court precluded evidence regarding damages at trial
  - A grossly negligent failure to obey an order compelling discovery may justify the severest disciplinary measures.
  - Gross negligence amounting to a total dereliction of professional responsibility but not a conscious disregard of court orders is properly embraced within the fault component.

VIII. ADJUDICATION WITHOUT TRIAL

- The moving party has the initial burden of presenting information that clearly establishes that there is no factual dispute regarding the matter upon which summary judgment is sought.
  - If, but only if, the moving party produces information that appears to establish that no factual dispute exists, then the responding party normally must come forward with materials to show that there is a genuine issue of fact or summary judgment will be granted.

- **Rule 56**: must show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law; an adverse party must set forth specific facts showing that there is a genuine issue for trial

- **Lundeen v. Cordner**: summary judgment for intervenor because plaintiff did not show that a material issue of fact existed (Africa insurance case)
  - Were this information presented at trial, intervener would be entitled to a directed verdict in her favor, so summary judgment is in order.
  - The court should not deny a motion for summary judgment on the vague basis that something not known could show up at trial.
-A party opposed to a summary judgment based on affidavits must assume some initiative in showing that at factual issue actually exists. Specific facts must be properly produced.

-Cross v. U.S.: no summary judgment for vacationing professor
-Movant has the initial burden of showing that there is no issue of material fact. Only once he has shown that does the opposing party have to prove otherwise.
-Summary judgment is particularly inappropriate where the inferences that the parties seek to have drawn deal with questions of motive, intent, and subjective feelings and reactions.

-Adickes v. S.H. Kress: no summary judgment for restaurant in civil rights case
-The facts must be viewed in the light most favorable to the non-moving party.
-When the evidence in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is presented.

-Initial question: moving party must show that there is no genuine issue of material fact
-If succeed: non-moving party must have contrasting evidence to show why summary judgment should not be granted.

-A material fact is one that will affect the outcome of the case, and a material fact raises a genuine issue if a reasonable jury could reach different conclusions concerning that fact.

-Celotex v. Catrett: summary judgment without affidavits or other evidence granted
-A moving party does not need to prove its initial burden with affidavits or other requirements.
-When the nonmoving party will bear the burden of proof at trial, a summary judgment may properly be made solely on the pleadings and other pretrial documents (moving party must affirmatively show the absence of evidence to support the non-moving party).
-Summary judgment may be delayed until both parties have had an adequate amount of time to conduct discovery.
-**Rule 55**: default judgment may be entered when a party has failed to plead or otherwise defend
  - If the party against whom judgment by default is sought has appeared in the action, the party shall be served with written notice of the application for judgment at least 3 days prior to the hearing.
  - For good cause, the court may set aside an entry of default.

-Coulas v. Smith: defendant must receive notice for a hearing on his default, but he does not require notice if the hearing and judgment is on the merits of the case (if judgment on merits, is not in default)

**IX. THE TRIAL STAGE**

**A. Trial by Jury**

1. *The Right to a Jury Trial*

   - Equity courts had no jury. Equity courts had sole custody of the issuance of injunctions.
   - The right to jury is determined by inquiring whether the matter in question was a subject of a legal or equitable jurisdiction in 1791 (date of 7th amend.).
   - 7th Amend. “preserved” the right to jury as it existed at common law at the time.
   - There is no right to jury trial if, viewed historically, the issue would have been tried in the courts of equity or if otherwise it would have been tried without a jury.
   - Clean-up doctrine: once an equity court obtained jurisdiction of a suit primarily of an equitable character, the court could decide any incidental legal issues that arose in the course of the litigation

-**Rule 38**: right to jury trial preserved; party must motion for jury trial

-Beacon Theatres v. Westover: in trial of equitable and legal relief, a jury trial should be held first
  - Except under the most imperative circumstances, a jury trial should come before an equity hearing (issues that could be decided by a jury should not be precluded before the jury trial)

-Dairy Queen v. Wood: equitable and legal issues sent to jury first
- It does not matter if legal issue is incidental. The jury issue is always resolved first.
- Rule 53 allows for the appointing of masters to help juries understand complicated issues.

-Ross v. Bernhard:
- If the claim presents a legal issue, one entitling the party to a jury trial, the right to a jury is not forfeited merely because the other party’s right to sue must first be adjudicated as an equitable issue.
- To see if the issue is legal in nature, look to the pre-merger custom and the remedy. The practical abilities of the jury may be considered in extremely complex cases, but it is rarely considered.

-Chauffeurs, Teamsters v. Terry: breach of a union’s duty of representation decided to be more legal than equitable, so must have a jury
- To determine whether a particular action will resolve legal rights, the court examines both the nature of the issues involved and the remedy sought. The second inquiry is more important.
- When the claim was not permitted in common law, the court looks to claims that are analogous.
- When history of the claim is inclusive, the nature of the remedy is especially important.
- Damages are equitable when they are restitutionary, incidental to, or intertwined with injunctive relief.

-Indianhead Truch v. Hvidsten: suit for injunctive relief and damages incurred until relief can be granted is solely equitable
- A 6-person jury satisfies the 7th Amend’s guarantee.
- 7th Amend refers only to federal courts. State courts may have fewer than six so long as due process is still satisfied.

2. Jury Selection

- Flowers v. Flowers: juror disqualified for showing prejudice and bias during voir dire
- A court should disqualify any person (must disqualify as matter of law) who has a bias or prejudice in favor of any party or in regards to the subject matter.
- Bias is an inclination toward one side of the issue rather than to the other, but to disqualify, it must appear that the
state of mind of the juror leads to the natural inference that he will not or did not act with impartiality.
-Prejudice means pre-judgment.

-The trial judge determines the amount of challenges for cause each party has.
-The federal courts allow three peremptory challenges.

-Edmonson v. Leesville: defendant removed blacks with peremptory challenges; must assert race-neutral reason for doing so

-To establish a prima facie case of discrimination includes looking to see if there is a pattern of strikes against members of a particular race.
-Called raising a Batson challenge

-J.E.B. v. Alabama: like race, cannot exclude jurors because of gender

-Once a prima facie case of discrimination has been made out, the judge may require an explanation of the motivation for dismissing the juror in question. If the judge is not satisfied with the lawyer’s explanation, the challenge may be disallowed.

-Hidalgo v. Fagen: party struck two Hispanic women during voir dire but gave racially neutral explanation; no problem

-Once the party has given a racially-neutral explanation, the party raising the challenge must then be given the opportunity to show pretext.
-Party bringing the Batson challenge has burden of persuasion.
-Youth is an acceptable race-neutral explanation.

B. Judicial Control Over Jury Decisions

1. The Province of the Jury

- A question of law is a judge question; a question of fact is a jury question.

-Markman v. Westview: interpretation of a patent term found to be a matter of law left to the judge
-Where history and precedent provide no clear answers functional considerations play a part in the choice between judge and jury to define terms of art.
-The definition of a word should be consistent in the courts, and since judge’s decisions are a matter of law (stare decisis applicable), a the judge should decide.

-Dobson v. Masonite: the meaning of a contract is a question of fact for the jury.
   -If the court wants the verdict to be uniform, is matter of law; if it wants the matter specific to the case, is matter of fact.

2. Jury Misconduct

- The general verdict is almost exclusively used. All a jury does is announce which party wins and how much should be recovered.
  - No way to tell how the jurors decided, causes mistrials (erroneous instructions may not have mattered, ignored instructions and ruled on sentiment)
  - Special verdict requires the jury to answer a series of questions regarding each facet of the case but not to enter a verdict stating who wins.

-Rule 49: permits courts to issues special verdicts to juries

-Robb v. John C. Hickey: jury returned ambiguous verdict that contradicts itself
  - The court should mold an informal verdict to render it formal, effective, and to coincide with the substance of the verdict as agreed and intended by the jury.
  - This power should only be employed when the intent of the jury is clear. When it is too ambiguous, the court must grant a new trial.

-Sopp v. Smith: jurors swore in affidavits that they went to the crime scene
  - In general, affidavits of jurors regarding their decision cannot be utilized to attack the verdict.
  - Affidavits speaking to improper extrinsic or overt acts should be allowed, such as access to improper matter or an illegal method of reaching the verdict.
  - A juror may not testify as to statements made during deliberations.

-Hukle v. Kimble: quotient verdicts invalid
-Quotient verdict is when all jurors do not agree on a result so compromise in some manner (averaging of damages, coin flip).

-There are many cases in which jurors have been charged with misconduct for holding unauthorized conversations concerning the case.

3. Judicial Power to Override the Jury

-**Rule 50**: after a party has been fully heard, and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issues against that party and may grant a motion for judgment as a matter of law
  -The motion may be made any time before submission to a jury.
  -After judgment, the party may renew its request for judgment as a matter of law, and may also ask for a new trial.

-**Rule 56** (summary judgment) and **Rule 50** (judgment as a matter of law) should be governed by the same judging standards. The only difference is the time when they are made.

-**Denman v. Spain**: judgment as a matter of law against plaintiff in car accident case because she did not prove her case by a preponderance of the evidence
  -Conclusions as to what occurred are only possibilities, and verdicts can not be based solely on possibilities.

-**Kircher v. Atchison**: man stumbled on RR track and injured himself in a very unlikely manner; judgment for him stands
  -The jury had enough evidence to decide he was telling the truth. A reasonable jury could so find.

-**Rule 59**: judges may grant a new trial in both jury and non-jury cases

-**AETNA v. Yeatts**:
  -It is the duty of the judge to set aside a verdict and grant a new trial if he is of the opinion that the verdict is against the clear weight of the evidence, is based upon evidence that is false, or will result in a miscarriage of justice, even though there may be substantial evidence that would prevent the direction of the verdict.
-The granting or refusing of a new trial is a matter resting in the sole discretion of the trial court judge. His action is not reviewable upon appeal, except in the most exceptional circumstances.

-If a party does not motion for a directed verdict before the case is sent to the jury, a court may not grant a JNOV after the jury rules.

-The important difference between a trial judge’s power on a motion for a new trial and on a motion for directed verdict is that he may grant a new trial based on his belief or disbelief in some of the witnesses, while on a directed-verdict motion he may not (clear weight of the evidence, no reasonable jury could find).

4. Conditional and Partial New Trial

-Fisch v. Manger: NJ recognizes additur but orders a new trial because the amount decided upon by the judge is still not adequate

-Remittitur: an order denying the defendant’s application for a new trial on condition that the plaintiff consent to a specified reduction of the jury’s award

-Additur: an order denying the plaintiff’s application for a new trial on condition that the defendant consent to a specified increase of the jury’s award

-Remittiturs recognized almost everywhere; additurs outlawed on some states

-The federal system does not recognize additur

-Powers v. Allstate Insurance: states vary on how to decide an amount for the plaintiff in a remittitur

-Some states allow the maximum amount that a reasonable jury could find; other courts base the amount on the lowest a jury could find (rare); still other courts use what the judge thinks is reasonable

C. Relief from Judgment

-Hulson v. Atchison: the trial court may not extend the time for taking action under Rule 50; the trial court has no choice but to deny any motion for an extension to file

-Ignorance of the rules does not furnish grounds for relief under Rule 60b.

-Rule 60: the court may relieve a party from a final judgment, order, or proceeding for mistake, newly discovered evidence which
by due diligence could not have been discovered in time to move for a new trial, fraud, judgment is void, or any other reason justifying relief from the operation of the judgment. The party has one year after the judgment order to file.

- **Briones v. Riviera Hotel**: Rule 60b not to be used for failure to comply with court rules
  - Courts are reluctant to grant Rule 60b relief because of the burden in overturning decisions.
  - Four factors to be considered in deciding if neglect was excusable: danger of prejudice to opposing party, length of delay and impact on proceedings, reason for the delay, and the good faith of the moving party

- **Patrick v. Sedwick**: new trial not granted for Rule 60b2 (newly discovered evidence)
  - A motion for a new trial because of newly discovered evidence must meet the following criteria: it would probably change the result in a new trial; must have been discovered by the party since the trial; must have been of such a nature that the party could not have discovered it before trial; is material; must relate to facts in existence at time of trial

- **Smith v. Great Lakes**: only extrinsic fraud, not intrinsic fraud will permit Rule 60bc relief
  - Extrinsic fraud: that which prevents a litigant from making a claim or defense
  - Intrinsic fraud: that which the trial itself is designed to discover, i.e. which witnesses are lying

**X. THE BINDING EFFECT OF DECISIONS**

**A. Res Judicata (Claim Preclusion)**

- A party one gets one chance to litigate a claim and factual/legal issue.
- Issue preclusion bars the relitigation of issues actually adjudicated and essential to the judgment.
- Judgments that warrant preclusive effect are those that are final and on the merits.

- The judgment in a prior suit will be considered conclusive, both on the parties to the judgment and on those in privity with them, as to matters that actually were litigated or should have been litigated in the first suit
-Three elements must be present: (1) judgments are final, valid, and on the merits; (2) parties must be identical to those in the first; and (3) the claim in the second suit must involve matters properly considered included in the first action.
-In *Rush*, plaintiff had to bring suit for injury to property and person caused by the same accident in the same suit.

-Claim: relief asked
-Issue: legal question asked

-Federated Department Stores v. Moitie: there are situations in which considerations of justice and fairness dictate that prior judgments not be given preclusive effect, such as fraud or when a jurisdictional defect should have prevented the first court from hearing the suit.

-Jones v. Morris: default in payments on installment plan must be brought in one suit
-If a transaction is represented by one single and indivisible contract and the breach gives way to one single cause of action, it cannot be split into distinct parts and separate actions.
-If the same facts will support both actions, then there is but one cause of action.

-Smith v. Kirkpatrick: no claim preclusion because different issues and different facts needed to be decided in the later suit
-Judgment in one action is conclusive in a later one, not only as to matters actually litigated, but also to any that might have been litigated, when the two causes of action are so alike that a different judgment in the second suit would impair the judgment in the first.

-Heaney v. Board of Trustees: a writ of mandamus does not have to be tried at the same time as a claim for damages
-Issues actually adjudicated in the mandamus action are res judicata for the damages hearing.

-Bogard v. Cook: defendant’s injury claim not res judicata even though other injuries had been decided in a previous class action suit
-All individual claims were not joined in the class action (not a b3 class) and he did not receive notice that any of his claims would be precluded because of participation in the class action (against public policy to preclude).
Anguiano v. Transcontinental: dismissal for failure to comply and other involuntary dismissals (Rule 41b) act as an adjudication on the merits, so later claims are precluded
   -If one makes an honest mistake in disobeying a rule, then the appeals court would probably find that a complete dismissal without leave to amend would be an abuse of discretion.

Rinehart v. Locke: dismissal for failure to state a claim precludes a later case on the same issue that does state a claim
   -An order of a district court dismissing a claim which does not specify that the dismissal is without prejudice (on merits then) is res judicata.

Semtek v. Lockheed Martin: MY court claimed that claim was precluded because federal court in CA ruled that the claim was time-barred; no res judicata, would only be precluded in CA courts
   -The res judicata effect of a federal diversity judgment is such as would belong to judgments of the state court rendered under similar circumstances.
   -CA law would allow plaintiff to sue in MY, and the federal court cannot extinguish that right (strict Rule 41b reading would not allow because judgment was on the merits).

B. Collateral Estoppel (Issue Preclusion)

   -A right, question, or fact distinctly put in issue and directly determined by a court cannot be disputed in a subsequent suit between the same parties, even if the second suit is for a different cause of action.
   -The issue raised in the second suit actually must have been litigated in the first action, and must have been decided by the first court. Determination of that issue must have been necessary to the court’s judgment.

Cromwell v. County of Sac:
   -The inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been litigated and determined.
   -Party could ask for a special verdict, judge’s opinion, or amend the pleadings to discover on what basis the judgment was rendered.
- **Russell v. Place**: verdict could have been reached by looking at two issues; neither is precluded because it is indeterminative which one was decided
  - The precise question must be raised and determined in the previous suit.
  - If there are several points under which the jury could make the decision, none are precluded unless extrinsic evidence shows the basis of the decision.
  - If a defendant puts forward five defenses, and judgment is for the plaintiff, all five defenses are precluded because the jury decided that none were valid.

- **Rios v. David**: third party allowed to bring a second suit because he could not appeal the findings in the first suit
  - Technically, he won in the first suit (found not liable), so he could not appeal. However, he was still found negligent, and he must have the right to appeal or bring another suit in order to protect against court abuses.
  - It is the judgment, not the findings of fact, that constitutes the estoppel. The finding of fact by a jury that is not material to the judgment is not preclusive.

  - Issues do not have preclusive effect if the outcome does not depend upon those findings.
  - Multiple findings have preclusive effect when the jury could not have arrived at the same judgment without each of those findings.
  - A judgment does not act as collateral estoppel between coparties unless that are adversaries, and they are considered adversaries only if there is a claim for relief by one coparty against the other.

- **Patterson v. Saunders**: judge expressly made findings but did not say on what grounds he bases his decision upon
  - A judgment in a case involving two or more issues is treated as conclusive to all of them, when all are decided in the favor of the same litigant and the judgment rests upon them jointly (for plaintiff, all defenses precluded; for defendant, all claims precluded).
  - *Restatement* holds the opposite: when two or more issues, none are precluded

- **Ralph Wolff v. New Zealand**: mutuality of parties; to bind the plaintiffs, the defendants must also have been bound by a previous decision
- **Bernhard v. Bank of America:**
  - The estoppel is mutual if the one taking advantage of the earlier adjudication would have been bound by it had it gone against him.
  - Mutuality is not necessary in master/servant relationships, where the liability of the defendant asserting res judicata is dependant upon or derived from the liability of one who was exonerated in an earlier suit brought by the same plaintiff (defensive collateral estoppel).

- **Parklane Hosiery v. Shore:** use of offensive collateral estoppel permitted
  - Offensive collateral estoppel occurs when a plaintiff seeking to estop a defendant from relitigating the issues that the defendant previously litigated and lost against another plaintiff.
  - Courts have broad discretion to determine when offensive collateral estoppel should be applied.
  - In cases where a plaintiff could easily have joined in the earlier action or where the application would be unfair to a defendant, a trial judge should not allow it.