Personal Jurisdiction – minimum contacts test (International Shoe). Protects traditional notions of fair play and substantial justice 1. Activities of non-resident are systematic and continuous for a substantial period of time. 2. Δ enjoys the benefits and protections of the forum state → can resort to forum state’s courts for enforcement of its rights. 3. Min contacts – connected to action that gives rise to harm – ensures fair and orderly administration of laws. 4. Once minimum contacts are established, court look to Δ’s burdens and interest of adjudication to maintain fairness. 5. Place of Domicile → Δ’s physical presence + manifested intent to remain → establishes minimum contacts.

Stream of Commerce (Asahi) → two ways to view minimum contacts.

1. O’Connor → minimum contacts must come about by an action of the Δ purposefully directed towards the forum state. Placement of product in “stream of commerce” is not enough. Awareness that product might be ‘swept’ into forum state is not enough.

Ex: (1) design product for forum market, (2) advertise in forum state, (3) provide customer service to consumers in forum state.

2. Brennan → injecting goods into a stream of commerce suffices to support jurisdiction under the minimum contacts test.

Forseeability Test (World Wide VFW) → to establish minimum contacts the forseeability that is critical to due process analysis is that Δ’s conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there. Where Δ purposefully avails itself of the conduct of acting activity in forum state → Δ can reasonably foresee being subjected to the forum state’s legal system.

Contractual Relationship (Burger King) → where Δ enters into a contractual relationship, the Δ may be found to have established minimum contacts in the state where the contract was formed. Burger King establishes a far reaching version of minimum contacts.

General Jurisdiction – Δ’s contacts with forum state substantial = jurisdiction proper over all claims, even if unrelated to contacts

Specific Jurisdiction - Δ’s contacts not broad, minimal contacts of Isho allows jurisdiction only over claims related to contacts

Venue – (§1391) determines which court can hear case brought within a jurisdiction. (§1391a = diversity action) → (1) Where any Δ lives (2) substantial part of events occurred (3) any Δ is subject to Pj, (§1391b = no diversity) → (1) any Δ resides, if all Δ in same state (2) where substantial portion of events occurred (3) district where any Δ can be found if no district otherwise proper.

(§1391c = corporations) → venue proper where Pj is proper against corp. (§1391d = aliens) → any district

Change in venue → Fed’s dist court can transfer to diff venue for convenience of parties and interest of justice (§1404)

Forum Non Conveniens – 1. Motion to dismiss on basis that a different forum is more appropriate under circumstances. Strong local prejudice may make fair trial difficult to achieve. 2. When x chooses home forum, deference given to choice. 3. When x chooses foreign forum, court might question motives.

Subject Matter Juris – power to hear certain case/controversy. If no SM Juris court can dismiss case at any time (12b3)

District Courts → original juris on all civil matters arising under constitution, laws, or treaties (§1331)

Well Pleaded Complaint Rule → x can’t bring state issue in fed’l ct by anticipating const’l defense

Diversity Juris (§1332) → dist ct = original juris where (1) claim > $75k (2) citizens from different states. Corporations – citizens of both state of incorporation and state of principal place of biz. Aliens – citizen of state where domiciled (Sua deh v. Farouki).

Complete diversity → all parties are diverse

Supplemental Juris (§1367a) → Dist Ct has supplemental juris over all claims that form part of same case/controversy. (§1367b) → where Dist Ct original juris based only on diversity – cts don’t have juris over 3rd parties that destroy complete diversity.

Removal (§1441) → (a) original Δ can remove action brought in state court to dist ct if dist ct has original juris (b) any civil action arising under constitution or laws of US can be removed without regard to citizenship of parties (c) fed question + state claim

Procedure → (§1446) → (1) short/plain statement of grounds for removal within 30 days of service to Δ → (2) if diversity appears that could have given fed ct juris, Δ can’t remove if after 1 year of original filing.

Eric Doctrine (§1652) → apply federal procedural law, apply state substantive law of the forum state. Goal = prevent forum shopping

1. Where interest is intricately bound up with State interests/rules – use state procedural law. If not, then look to State v. Fed’t considerations

2. Hannah Test – Where there is a FRCP: (1) is rule authorized by rules enabling act (2) is rule constitutional – if yes, use FRCP

Certified Question – state sup ct answers specific question for fed’l ct. State sup ct’s answer creates precedent within that state.

Remedies (§2201) – declarations of appropriate court has force and effect of a final judgment or decree

Punitive damages – purpose = to deter/punish for wrongdoing 1. Judges obligated to review punitive damages to ensure due process (Oberg) 2. Excessive pun dam violate due process – fed issue, ratio btw compens & punitive shouldn’t exceed single multiplier digit (State Farm)

Declaratory relief (§57) → existence of adequate remedy doesn’t preclude judgm’t for declaratory relief where appropriate

Injunctive relief (65) → (1) prelim injunctions – must give notice to adverse party → 65a1 (2) TRO – can be granted without notice to adverse party if (a) clear immediate/irreparable injury, loss, or damage will result before adverse party can be heard in opposition → 65b1 (b) TRO expires within 10 days by its own terms unless good cause shown for extension, motion for prelim injunction set for earliest possible time and takes precedent – 65b2. (3) x must post bond when receiving TRO to protect Δ’s interests – 65c. Appeals - §1292a1 – prelim injunctions are appealable under interlocutory appeals.

Pleadings (8a) → 1. Must set out law/facts such that Ct can provide remedy. Three things req: (a) short/plain statement of juris (b) short/plain statement of claim showing x entitled to relief (c) demand for relief that x seeks. 2. Attorney must sign (11a) 3. Cannot be presented to harass or cause unnecessary delay or increase in litigation (11b1) 4. Claims and defenses must be warranted by existing law (11b2) 5. Allegations must have/or are likely to have evidentiary support (11b3) 6. Denials of factual contentions must be based on evidence (11b4)

Sanctions (11b) → court can sanction attys for failure to adhere to 11b rules – (1) on a motion by party (2) on ct’s own initiative. Sanctions are limited to means sufficient to deter repetition of such conduct. → monetary, nonmonetary, atty fees.

Answering a Pleading (12a) → 1. Δ must answer pleading within 20 days of service 2. If service waived - Δ has 60 days to answer. 3. If service waived + Δ lives outside judicial district – 90 days to answer 4. Party served Cross-claim pleading – 20 days, x has 20 days to serve a reply to counterclaim 5. US has 60 days when served a complaint

Amendments to Pleadings (15) → 1. One amendment is acceptable at any time before a responsive pleading is served. 2. If no responsive pleading permitted – within 20 days of service 3. Amendment by leave of court or adverse party’s written consent 4. Responding pty has 10 days to respond after amendment.

Presenting Defenses (12b) → motions should be made prior to pleading, if further pleading is allowed: (1) Lack of SM Juris (2) Lack of PJ (3) Improper venue (4) Insufficiency of process (5) insufficiency of service of process (6) failure to state a claim upon which relief can be granted (7) failure to join a party under Rule 19 – compulsory joinder.

1. 12b(6) treated as a motion for summary judgment - all parties given opportunity to present material

2. Preliminary hearings are to be given for defenses 1-7
Discovery
(26) → Dist Ct judges make initial decisions, virtually unrestrained – broad discretion on discovery issues, only overturned on appeal where abuse of discretion is shown.

Scope of Discovery → 1. Non-privileged info regarding any matter relevant to the claim or defense of any party. Info must appear reasonably calculated to lead to the discovery of admissible evidence and to prove/disprove something that law says matters (26b1). 2. Limits – unduly burdensome, costly, or obtainable from less burdensome source (26b2c). 3. Requests for discovery = narrowly tailored to specific allegations of complaint (Davis v. Precoat Metals). Trial Prep Materials – discovery of docs prepared in anticipation of litigation (work product) available only by showing substantial need for materials and party unable to obtain materials without substantial hardships.

Work Product – mental impressions, conclusions, opinions, legal theories concerning litigation (26b2c)

Options for Sensitive Discovery 1. In Camera Review – judge reviews evidence before opposing party sees, eliminates risk of impropriety 2. Redacted Files

Complete non-sensitive discovery first, then if still viable case, move on to sensitive discovery (26d)

Attys/Client Privilege → 1. Statement made by attorney 2. In Confidentiality 3. Extends only to those pts involved in underlying claim

Resolution without Trial → Default Judgment – 1. If A doesn’t answer complaint – judge on merits. 2. Failure to comply with court orders – dismissal as sanction (41b) operates as judgm’t on merits. 3. Entitled to dismiss if π doesn’t move on case – threat of suit not allowed

Voluntary Dismissal – 1. π may dismiss (a) prior to A’s answer (b) mutual dismissal (41a1) 2. Voluntary dismiss – judge on merits if π has ever dismissed action based on same claim in US court 3. If A counterclaims – π can’t dismiss unless A’s claim can be separated (41a2)

Mediation → 3rd party neutral helps parties settle, no legal req to settle. Dist ct must encourage pts to use ADR techniques (§651)

Arbitration – imposes decision on pts after hearing sides. Binding if pts accept outcome. Has pwr of contract. Tradeoff: low cost, fairness?

Summary Judgment (56) → 1. No genuine issue as to any material fact – possibly affect outcome. 2. Cts look to anything that comes out of discovery to determine whether genuine issue exists. 3. Effect = adjudication on merits. 4. Respondents must state specific facts that show dispute requires trial. 5. Moving party = (a) affirmative evidence negating claim (b) lack of evidence put forth by non-movant (c) movant’s evidence suffice. Non-movant may ask judge for continuance to do more discovery to disprove SJ motion (56f).

SJ in bad faith = court can sanction (56g).

Coloex trilogy – made SJ easier to get – lowered bar.

Jury Trial (38) → 1. Party must demand jury trial within 10 days of service (38b). 2. Pt can demand specific issues to be tried, otherwise jury trial is for all issues (38c). 3. Waiver – if no demand for jury trial, right is waived. 4. Historical Test → whether a given claim could have been brought before a jury prior to 1791. If yes – right to jury. Where mixed questions of law/equity – court grants jury trial. Legal claim + equitable counterclaim → right to jury maintained.

Burden of Production – bringing forth evidence such that reasonable jury to find for pty on case

Burden of Persuasion – burden of actually convincing jury to find for pty

Judgment as a Matter of Law (50) → court may issue a JML after party has been fully heard on that issue during jury trial.

JNOV → after jury rendered verdict – judge may grant for 3 reasons: 1. Error in admitting evdnce 2. Weight of evdnce against winner 3. Error w/ legal instruc

JML – all reasonable inferences should be viewed in favor of non-movant. Ct cannot make credibility judgments nor weigh evidence.

New Trial (59) → 1. New trial may be granted to any pty on all or some of issues (59a) 2. Motion to alter judgm’t must be filed within 10 days of entry of judgment (59a).

Claim Preclusion (Res Judicata) – goals: efficiency, finality, inconsistency. Two Questions: (1) Could Claim have been brought? → look to forum state’s laws. Where Dist Ct sitting in diversity, it should look to the state’s laws to see whether a claim would have been precluded under that state’s laws. (2) Should Claim have been brought? → ‘Same Transaction/Occurrence Test’ – common core of operative facts and evidence necessary to sustain a second verdict would sustain the first, second claim precluded. If second claim is arguably part of same transaction, look to see whether efficiency/fairness/inconsistency arguments tip the scales.

Issue Preclusion (Collateral Estoppel) → 5 factors: (1) same issue of fact/law? (2) same parties? (3) actually litigated/determined? (4) valid/final judgment? (5) determination essential to the judgment? Where two possible reasons for a jury to have found for party – neither is barred from re-litigation.

Party Prejudice → 1st party closely related to 2nd party may bar relitigation. Prejudice = interests of 2nd party adequately represented in first suit.

Injunctive relief – issue preclusion scrutinized more heavily where injunctive relief given b/c of fear of inconsistency

Offensive Collateral Estoppel – if ptys not party in 1st suit may take advantage of a particular fact previously decided against A.

Defensive Collateral Estoppel – A not able to use key factual finding in prior suit against π trying to relitigate claim – fairness reason – all get day in court

Counterclaims (13) → pleadings should state CC against opposing pty that arise out of the same transaction or occurrence (13a).

Compulsory (§1367) → jurisdiction supplemental, ct can hear counterclaim. Permissive → pleading – states counterclaim not part of same transaction. For Ct to hear a permissive counterclaim, there must be an independent basis of jurisdiction.

Joiner (20, 21, 42) → Permissive – (20a) all parties may join as π if (a) assert right to relief jointly (b) claim relief that arises out of same transaction. All pts may join as Δ if (a) assert right to relief arising out of same transaction or (b) similar question of law/fact will arise.

Compulsory (19) → π joiner required if in their absence complete relief cannot be granted (19a1) or where absence will impair ability to protect an interest or will leave parties at risk of inconsistent obligations (19a2). Court can force person to become a pty (involuntary π or Δ). If Compulsory joiner impossible → ct must decide whether to continue lawsuit – Factors: prejudice, adequacy of judgment, remedies? (19b)

Severance – π can have joined action if it will burden, embarrass, or delay trial (20b) or if it will prejudice Δ (42b)

Third Party Practice (14) → theory “if we are liable, then they are also liable”. 3rd πy can also assert counterclaims against other pts under 12 & 13

Class Actions (23) → Four Preqs: (1) numerosity – enough πs? (2) commonality – law/fact questions common to classmembers? (3) typicality – reps are typical of the class (4) adequacy – reps members of class & adequate council with resources/experience.

23b Categories → 1. Separate actions risk inconsistency, incompatible standards of conduct for Δ. A refuses to act on grounds applicable to class making injunctive relief necessary. 3. Questions of law/fact predominate over questions affecting individuals and class action is superior method of adjudication. Under 3rd Class → factors show superiority (a) members want class action (b) extent of prior litigation (c) desirable concentration of litigation (d) difficulties in managing class action.

Burdens → 23b1 & 23b2 → no opt out. 23b3 → opt out + notice required (differences b3 – predominate, superior, opt-out, notice)

Fixes → π bears cost of id’ng members and providing notice such that the members can opt-out. CAPA → minimal diversity necessary, $5 mill requisite, class actions brought in Fed Ct under §1453 → easy to bring in fed ct.

Supplemental Jurisdiction – Under §1367 fed ct can gain su juris over pts whose claims against Δ do not exceed $5 mill mark and completely destroy juris, so long as original case brought into fed ct under class action certification.