Civil Procedure

1. **Jurisdiction**
   1. SJM
      1. Federal – Courts of limited jurisdiction
         1. **Diversity of Citizenship** – 1332, pg 253
            1. Complete Diversity - All Ps and all Ds must be citizens of different states (*Strawbridge v. Curtiss*)

Individual Citizenship

Citizenship is the last place you were at that you intended to stay indefinitely

Domicile is determined by factors (*W. Va Univ. v. Rodriguez*)

Residence location

Voting Registration

Location of Personal and Real Property

Location of Spouse and family

Membership in Unions and organizations

Place of employment

Driver’s license and Vehicle Registration

Phone numbers, mail, etc

Corporate Citizenship

PPB – Nerve Center test (*Hertz v. Friend*)

And State of Incorporation

Partnerships – Citizenship of all the members (*Belleville Catering v. Champaign Markey Place*)

* + - * 1. Claim must exceed $75,000, exclusive of interest and costs
        2. Aggregated claims if common claim for P, or joint tortfeasors
        3. Exceptions

Domestic Relations cases – No Diversity of Citizenship SMJ

* + - * 1. Class Action or derivative - based on Representative Citizenship
        2. Minor, incompetent, estate - based on the party that is represented Citizenship
      1. Alienage Jurisdiction – Cases involving foreign nationals
      2. Federal **Question –** 1331, pg 252 - Cases arising under Federal Questions
         1. Well Pleaded Complaint Rule – (*Louisville & Nashville v. Motley*)

Federal Substantive Complaint has to be the center of the issue in the complaint

Not as a defense, counter argument

* + - * 1. Federal Cause of Action – Private right of action - Patent, Civil rights, Interstate Commerce, etc
        2. State Cause of Action with federal ingredient (*Grable &Sons Metal Producing v. Darue Engineering*)

Does complaint depend upon interpretation of a federal issue

Sufficient National Interest

Is it contested

Does it distort labor between state and federal courts - Floodgates?

Will it open floodgates?

* + 1. **State** – Courts of General Jurisdiction
  1. **Personal Jurisdiction** – Rule 4(k)(1)(A), pg 9
     1. In Personam – Personal obligations
        1. Traditional
           1. Tag – Presence + Service (*Pennoyer v. Neff*)

Not for a corporation

* + - * 1. Domicile
        2. Consent

Explicit Consent

Contractual Consent - *Burger King v. Rudzewicz*

Implicit Consent – Showing up without contesting

* + - 1. Is there a Long Arm Statute?
         1. Is it constitutional?

Minimum Contacts – comports with traditional notions of fair play and substantial justice - *International Shoe v. Washington*

Location of offense

Activities

Continuous & Systematic General Business Contacts – Close to General Jurisdiction – *Helicopteros* Agent

Monies received from resident of state = PJ (*McGee v. International Life Insurance*)

Purposeful Availement to benefits and protections -  *Hanson v. Denkla*

Foreseeability, More than a single fortuitous contact – *World-Wide Volkswagen v. Woodsen*

Did defendant initiate contact with the forum state

Stream of Commerce – *Gray v. American Radiator & Standard Sanitary Corp*; *Asahi*; *McIntyre Machinery v. Nicastro*

* + 1. General v. Specific Jurisdiction – *Goodyear Dunlop Tires Operation v. Brown*
  1. Quasi-in-Rem – Personal Obligations to the limit of a thing in the jurisdiction
     1. Mostly irrelevant since minimum contacts doctrine
     2. Presence of a thing gives jurisdiction over the person to the extent of the value of the thing
  2. In Rem – Ownership of a thing
     1. Presence of a thing

1. **Venue** – where can the Case be heard
   1. Local Actions – only stationary venue
      1. Venue for land cases is always the location of the land
      2. In-rem, Quasi-in-rem, foreclosure, title actions, lien enforcement/removal, and ejectments
   2. State Venue Provisions
      1. Must follow forum state provisions
      2. To transfer out of state must use Forum Non Conveniens
   3. Federal –
      1. Venue Statute - 28 USC 1391 pg 267
         1. Diversity
            1. Where Any defendant resides if all defendants are in the same state
            2. Substantial part of events occurred
            3. Any district a D is subject to personal Jurisdiction (at time action is commenced, filed) if no other district would suffice
         2. All Others
            1. Where Any defendant resides if all defendants are in the same state
            2. Substantial part of events occurred
            3. Any district a D is found if no other district would suffice
         3. **Corporations**
            1. Anywhere there is Inc, PPB, or where subject to Personal Jurisdiction (in this case), when the action commenced as long as all D are in same state
            2. Where a substantial event occurred
         4. Alien
            1. Any district
   4. Transfer of Venue - convenience of parties & witnesses + interest of justice must substantially outweigh original forum choice, 1391, pg 267
      1. 1404 pg 269
         1. Transferor has proper venue
         2. **Keeps law from the transferor State**
      2. Goldlawr 1404
         1. Transferor with proper venue, but no PJ
         2. Applies transferee state law to case
         3. Permissive
      3. 1406 pg 269
         1. Transferor does not have proper venue
         2. Applies transferee state law to case
      4. Goldlawr 1406
         1. Transferor does not have proper venue, and no PJ
         2. Applies transferee state law to case
         3. Permissive
      5. When Appealing Transfer
         1. Standard of review is Abuse of Discretion
         2. Transferee state is more convenient because of
            1. Witnesses
            2. Evidence
            3. Justice
   5. Forum Non Conveniens – *Piper Aircraft v. Reyno*
      1. Plaintiff choice of law is given substantial weight
      2. Must show clear advantage to dismiss case and reopen in another forum
   6. Removal – 28 USC 1441 - *Piper Aircraft v. Reyno*
      1. Vertical movement
         1. State to federal only, can be remanded if improper jurisdiction
      2. If Based on Diversity, Home state D cannot remove to federal court
      3. Removal does not constitute a waiver of PJ
      4. 30 days from service, or 30 days from when it becomes removable
      5. 1 year time limit for removability for diversity of citizenship – 1446(b), pg 272

Erie Doctrine +

Hanna 2 prong Test

* + 1. Unilateral Rule – All D’s have to agree
    2. No time limit for federal question
    3. Notice of Removal, not motion or request

1. **Erie Doctrine**
   1. *Swift v. Tyson* – Created federal common law
   2. *Erie Railroad v. Tompkins* – Removed federal

general common law

* + 1. Federal Common Law still exists in:
       1. Rights to water between states
       2. Contract obligations of the US
       3. Admiralty, etc
  1. *York* - A state action in federal court should not yield a substantially different result
  2. *Ragan v. Merchants* - State law controls when the action is commenced
  3. *Woods v. Interstate Realty* - State statutes forbidding corp suits if corp is not properly registered in state, applies in federal court
  4. *Cohen v. Beneficial Industrial Loan Corp* - state requirement for a bond in derivative suit required in federal court even though fed. Rule did not require it (did not forbid it either)
  5. *Byrd v. Blue Ridge Rural Electric Coop* - right to a jury in federal courts remains, along with any practice where the fed court can be justified by a **paramount fed interest** as opposed to the states
  6. *Hanna v. Plumer* - two prong approach to "Erie Doctrine"
     1. Rules Enabling Act Prong - If there is a valid federal rule of civil procedure on point, it applies
     2. In the absence of a federal rule on the point the court is to consider the problem in light of the twin aims of the Erie rule
        1. Discourage Forum Shopping
        2. Avoid inequitable administration of laws

1. **Notice and Opportunity to be Heard** (14th Amendment)
   1. Notice - Check state and constitution
      1. Constitutional Requirements – *Mullane*
         1. Personal Service of Written Notice is always adequate in any type of proceeding
         2. Otherwise must be:
            1. Reasonably convey required information
            2. Affords a reasonable amount of time
            3. Reasonably certain to inform most of those affected
            4. Not less likely to bring notice than another feasible and customary substitute
         3. Notice by Publication – Missing or Unknown persons
      2. Statutory Requirements – *National Development C v. Triad*
         1. FRCP 4(e) pg 7 *–* an individual can be served by
            1. Following state law where the district court is located or where service is made
            2. Any of the following:

Delivering a copy of the summons and complaint to the individual personally

Leaving a copy of both at the individuals dwelling or usual place of abode with someone of suitable age and discretion who resides there

Delivering a copy of both to an agent authorized by appointment or law to receive service of process

* + 1. Immunity – induced into the state
    2. Evasion – can trick if within the state
    3. Sewer Service – false statements on service resulted in New York tightening requirements
  1. Opportunity to be heard
     1. *Connecticut v. Doehr* – pre-trial attachment without a pre-existing interest is unconstitutional if there is not a bond, hearing, or exigent circumstances.
     2. Perfect State Statute – would require a pre-deprivation hearing, cause, and a bond

1. **Pleadings,** Rule 7, pg 16

Rule 12

* 1. Complaint – Form 7
     1. Notice Pleading – Rule 8(a)(1)-(3), pg 17
     2. *Twombly* & *Iqbal* – needs to provide sufficient details to provide proper notice
     3. Rule 9 –Fraud/ mistake pleaded with particularity, so do special damages
  2. M/D – Rule 12, pg 22
     1. 12(b)
        1. SJM – Never waived
        2. PJ – waived after any other motion or pleading
        3. Venue – waived after any other motion or pleading
        4. Insufficient process– waived after any other motion or pleading
        5. Insufficient Service of Process– waived after any other motion or pleading
        6. Failure to state a claim – can be raised any time through trial
        7. Failure to join a party – can be raised any time through trial
  3. Answer
     1. Pg 18 list of Affirmative Defenses
  4. Amended Pleading – Rule 15 pg 26

Rule 15

* + 1. Before Trial
       1. Once as a matter of course within 21 days
       2. Written consent, or court’s leave
    2. During and After Trial
       1. If objected, should freely permit unless evidence that action is prejudicial
    3. Relation Back
       1. Amended pleading relates back to the date of the original pleading
    4. Variance – when the evidence submitted is not in pleadings
  1. Sanctions – Rule 11, pg 20 & 1927, pg 305
     1. Notify opposing counsel
     2. Wait 21 days
     3. Then motion court for sanctions

1. **Discovery** – Rule 26
   1. Scope and Limits – 26(b)(1), pg 43
   2. Discovery Tools
      1. Depositions – Rule 32, pg 56
         1. 10 each side
         2. 1 day, 7 hours
         3. Unless court order or agreement
      2. Interrogatories – Rule 33, pg 58
         1. Parties only
      3. Medical Examination – Rule 35, pg 61
         1. Court ordered only
         2. Parties only
      4. Production of Documents and things – Rule 34, pg 60
         1. Parties
         2. Or via subpoena
      5. Subpoena – Rule 45
         1. Non Party, 100 mi limit
         2. Show up, answer questions, bring documents
      6. Request for Admission – Rule 36, pg 62
         1. Parties
   3. Privilege – Rule 26(b)(3)(b), pg 44
      1. Attorney/Client
         1. **Protects confidential** (reasonably protected)
         2. **Communications** (opposed to facts) **between**
         3. **An attorney and a client** (client not 3rd party)
         4. **For the purpose of giving legal advice** (as opposed to business advice)
      2. Physician
      3. Mental Health
      4. Religious Leader
   4. Work Product Doctrine – *Hickman v. Taylor,* Rule 26(b)(3), pg 44
      1. Policy: Attorneys should do their own work, could make attorneys witnesses at trial
      2. Work done in anticipation of litigation
2. **Adjudication**
   1. Summary Judgment - Rule 56, pg 83
      1. No disputed material facts
         1. Video – *Scott v. Harris*
      2. One side is clearly right/wrong
      3. Court views non-movant’s case in best possible light
      4. Defendant SJ must provide some affirmative defense
      5. 0-0 tie goes to defendant
   2. JMOL – Judgment as a Matter of Law
      1. Before Jury Verdict, after all evidence
      2. SJ standard, could reasonable minds differ
   3. Jury Verdict – 7th Amendment right to Jury
      1. Must be invoked by either party
      2. Only reserved for trials that would have been at Law in 1791
      3. Cannot exempt members of the venire during voir dire for race or gender – *J.E.B v. Alabama*
   4. RJMOL – Renewed Judgment as a Matter of Law
      1. After Jury Verdict
      2. Only if JMOL was filed
      3. No Reasonable/fair-minded jury could have determined that result
   5. New Trial
      1. If Judge disagrees with verdict but the evidence is not so clear a JMOL would apply
      2. Additur
         1. Add damages or new trial
      3. Remmitur
         1. Reduce damages or new trial
   6. Judge Control
      1. Admissibility of evidence
      2. Jury Instructions
      3. Form of the Verdict
         1. General - Is he liable?
         2. Special - Split up questions - Was he negligent? Was he driving? Was she negligent?
      4. Judicial Comment
      5. Jury Misconduct
3. **Res Judicata**
   1. Claim Preclusion, pg 591
      1. Elements
         1. Same claim (cause of action)
            1. Primary Rights View (2 claims in Carter v Hinkle) - Writ based
            2. Single Wrongful Act (1 claim in Carter v Hinkle)
            3. Sameness of the Evidence - same evidentiary showing
            4. **Transactional View** (restatement view)

all rights to relief

Under same T&O (Transaction and Occurrence)

* + - 1. Same Parties (identical or in privity), Same Configuration (Generally)
      2. Valid, Final, and "on the merits"
         1. Valid doesn't mean right but with jurisdiction
         2. Final means end of trial court, appeals that are reversed release the preclusion
         3. "On the merits" Court, SJ, DV, P's failure to prosecute, etc, **not** lack of jurisdiction, improper venue, failure to joinder.
    1. DOESN'T preclude when:
       1. Parties have agreed to split claim
       2. Court reserves P's right
       3. Limitations of SJM to was unable to stress a certain theory
       4. Inconsistent with fair and equitable implementation of a statutory or constitutional scheme
       5. Continuing or Recurring Wrongs
          1. Judgment for past and prospective
          2. or Judgment on each occasion
       6. Clear and convincing that policies favoring preclusion are overcome by extraordinary circumstances
  1. Issue Preclusion – Collateral Estoppel, pg 609
     1. Five criteria of assessment for Issue Preclusion
        1. was the same issue actually litigated and determined
           1. Ex D's negligence
        2. Was the issue ESSENTIAL to the judgment of the first case
           1. Necessarily decided
        3. Was the holding on that issue embodied in a valid, final judgment, "on the merits"
        4. Against whom a preclusion may be asserted
           1. Party to 1st case
           2. Or In Privity with the party to the 1st case
        5. By whom a preclusion may be asserted
           1. Then -

A Party to the 1st case

Or in Privity with a party to the 1st case

* + - * 1. NOW- *Parlane Hosiery*, pg 633

Mutuality – Whether they were a party to the 1st case

Allowed

Non-Mutual Defensive - Allowed

**Non-Mutual Offensive** - if certain conditions are satisfied

Not an Easy Joinder in 1st Case

No Foreseeability of Litigation/incentive

A lack of Inconsistent Judgments

No Different Procedures

* + 1. 3 relationships deemed sufficiently close for purposes of issue preclusion
       1. Nonparty who has succeeded to a party's interest is bound by prior judgments against that party
       2. Nonparty who controlled the original suit
       3. Nonparty whose interests were adequately represented in the original suit

1. **Joinder**
   1. Joinder test:
      1. Which Scenario
         1. Claim Joinder - 18(a)
         2. Counter Claim - 13(a)-(b)
         3. Joinder of Additional Defendants - 20(a)
         4. Joinder of Additional Plaintiffs - 20(a)
         5. Cross-Claims - 13(g)
         6. Impleader 14(a)
      2. Is the Procedural Satisfied?
      3. Is there independent SJM Jurisdiction?
         1. No, Is there **Supplemental Subject Matter Jurisdiction?**
            1. Same Case - §1367(a), pg 264

Case = Common Nucleus of operative fact - (*Gibbs*)

* + - * 1. Excluding claims by PLAINTIFFS under rules 14, 19, 20, or 24 - §1367(b), pg 265
        2. Court discretion in applying Supplemental jurisdiction - §1367(c), pg 265

Novel or complex

Claim substantially predominates over original claim

District court has dismissed all original jurisdiction claims

Other exceptional compelling circumstances

* 1. Claim Joinder – Either Party - 18(a), pg 31
     1. Permissive:
        1. Can join as many as you want
        2. No need for them to be related
        3. Might have to include claims because of Claim Preclusion (modern - same transaction and occurrence)
        4. Check SJM
           1. Is there independent SJM?

If no, is there supplemental jurisdiction §1367, pg 264

* 1. Joinder of Parties – by Plaintiffs
     1. Permissive Joinder of Parties - Rule 20(a), pg 33
        1. Plaintiffs
           1. Arise out of the same **transaction and Occurrence**
           2. With a **common question** of fact or law
           3. Check SJM & PJ
        2. Defendants
           1. Arise out of the same **Transaction and Occurrence**
           2. With a **common question** of fact or law
           3. Check SJM & PJ
     2. Compulsory Joinder of Parties – Defendant or Judge- Rule 19, pg 32
        1. Generally - only when lawsuit will not work without adding the party & PJ & SJM
  2. Counter Claim – Either Party - 13(a)-(b), pg 24
     1. Compulsory - 13(a):
        1. Same T&O
        2. Doesn't require adding a party whim the court has no jurisdiction over
        3. Must be asserted or it is lost
        4. Always Supplemental Jurisdiction per § 1367 [(b) only applies to actual plaintiff]
     2. Permissive – 13(b):
        1. **Any** non-compulsive counterclaim
        2. Check SJM – Probably no Supp. Jurisdiction, needs independent basis for SJM
  3. Cross-Claims – Defendants - 13(g), pg 24
     1. Permissive:
        1. May assert a claim against any co-party if the claim is out of the same T&O
        2. Or relates to any property that is the subject matter of the original action
        3. Check SJM
  4. Impleader – Defendants - 14(a), pg 25
     1. Permissive:
        1. Defending Party may bring in a 3rd party when:
        2. 3rd Party may be liable for all or part of the claim against it
        3. Check SJM & PJ
           1. Down-sloping supplemental Jurisdiction ok
           2. Up-sloping **no** supplemental jurisdiction

1. **Standards of Review**
   1. De Novo – Review decisions of law
   2. Clear Error – Review of facts
   3. Abuse of Discretion – Discretion
2. **Evaluate Exam Questions**
   1. Policy Questions
      1. Judicial Economy
      2. Finality
      3. Federalism
      4. Seeking to decide cases on the merits
   2. Joinder Questions
      1. In federal practice, a P can join any claims he or she has against the D.
      2. In a state following the FRCP, a P can join any claims he or she has against the D because those are the Federal Rules.
      3. If state X follows the more traditional rule of demanding a *transactional relationship*, use fact analysis to show that all the claims come from the same incident.





