Civil Procedure Outline

**\*\*\*Personal Jurisdiction\*\*\***

1. **Introduction to Personal Jurisdiction**
   1. **Jurisdiction** is which court has authority to decide a case
      1. **Subject Matter Jurisdiction** – does a court have authority to decide a certain type of case
      2. **Personal Jurisdiction –** Does court have authority to make binding decisions on involved parties
2. **Types of Personal Jurisdiction**
   1. **In Personam –** jurisdiction over the person
   2. **In Rem –** Jurisdiction over the property, or a piece of property w/r/t to the whole world. Who owns this piece of property
   3. **Quasi In Rem Type 2 –** Property is used as the basis for asserting personal jurisdiction. Has no bearing on the issue brought up by litigation
3. **Constitutional Basis**
   1. **14th Amendment** says that no state shall deprive anyone of life liberty or property without due process of law.
   2. **5th Amendment** similar wording to 14th – expound on differences
   3. **Full Faith and Credit Clause –** A legal decision in one jurisdiction is given full faith and credit by every other jurisdiction within the US
4. **In Personam (Personal Jurisdiction)**
   1. **Presence –** defined as being present within the jurisdiction
   2. **Consent –** showing up to court and agreeing to be held to trial
      1. Have person set up to receive service of process
      2. Implicit Establishment
         1. Showed up to defend case
         2. Filed a counter-claim under the jurisdiction of forum court
         3. **Personal Jurisdiction** must be challenged at the outset of the case, otherwise challenge is forfeit
      3. **Contract**
         1. **Choice of Forum Clause –** Parties agree to litigate in specified forum
            1. Courts reluctant to enforce, don’t want to be ousted of jurisdiction
            2. Common in international arena
      4. Explicit Cosent
         1. Defendant agrees to terms of litgation
   3. **Special Appearance** allows defendant to challenge jurisdiction
      1. Submits to court’s jurisdiction to decide jurisdiction
   4. **Minimum Contacts (International Shoe)**
      1. Must have certain minimum contacts within the forum state to not offend “fair play and substantial justice”
         1. Protects defendant from burden of litigating in a **distant or inconvenient** forum
         2. Acts to ensure states do not reach out beyond limits imposed as coequal sovereigns
      2. Model of **Consent** and **Presence** is replaced with fairness of jurisdiction.
      3. **General Jurisdiction**
         1. Contacts must be **continuous and systematic**
            1. Enjoys benefits and protections of state laws
         2. Can bring case that is unrelated to the specific contacts. Defendant must be “at home”
            1. Establishes “home base” essentially **(Goodyear v. Brown)**
            2. Headquarters or place of incorporation
            3. **Domicile** of a person
         3. Evidence of specific jurisdiction **cannot**  be used to establish general jurisdiction
      4. **Specific Jurisdiction**
         1. Minimum Contacts are related to the case
         2. Relationship between litigation and contacts
         3. Defendant can reasonably foresee being haled into court there
            1. Look to convenience for defendant **(World Wide)**
      5. Relevant Contacts are enough to establish personal jurisdiction
         1. Relevance of contact can make up for minimal nature of contacts **(McGee v. International Life Insurance)**
         2. States have interest in protecting rights of its citizens. **Forum state’s interest in adjudicating a case**
      6. Unilateral activity of those who claim some relationship with a non-resident defendant does not constitute minimum contacts **(Hanson v. Denkla)**
         1. Jurisdiction does not travel with chattel **(World Wide)**
      7. **Stream of Commerce –** Foreseeability of product being sold in a state is relevant contact to establish personal jurisdiction
         1. Enjoys benefits and laws of state where component or product is being sold
         2. Merely placing in stream of commerce is not sufficient (**Nicastro)**
            1. Must have **contacts** in addition to SOC

Regular flow of products into forum, not isolated sale

Advertisements

Design product specifically for a market

Salesman in New Jersey

* + - * 1. Must avail itself of rights and privileges of the forum state
    1. **Long Arm Statutes** allow a state to exercise jurisdiction over out of state defendants if they do business in a state, derive substantial revenue from a state, or commit a tort in that state.
       1. Must satisfy due process, statutes often push the boundaries of constitutionality to ensure all possible jurisdiction is available
       2. Don’t leave jurisdiction on the table
          1. States have interest in protecting the rights of plaintiffs (its citizens)
    2. Jurisdiction does not travel with Chattel
       1. Unilateral activity of owner of chattel does constitute **minimum contacts**
       2. **Foreseeability** of use not enough, would render chattel agent of suit
    3. **Foreseeability** – a corporation must be able to reasonably foresee being haled into courtin a forum state for jurisdiction to apply
       1. Can foresee by purposely avail yourself of a state’s laws or privileges **(Hanson v. Denkla)**
       2. Foresee by deriving substantial revenue from forum state **(World Wide)**
          1. Capable of use in forum state does not satisfy substantial revenue
    4. Defendant’s purposeful **contacts** with a state determine whether **personal jurisdiction** exists
    5. **Minimum Contacts** must be established first
       1. Then check to see if fair and reasonable
       2. If not many contacts, quality of contacts can make up and establish jurisdiction
    6. **Minimum Contacts** for **Libel Cases**
       1. Can sue anywhere where damages arise from defendants actions there
          1. Sue in any state where magazine is published
          2. **Keeton v. Hustler**
       2. Can sue if harm caused was in forum state
          1. **Calder v. Jones**
    7. **Choice of Law Clause –** use specified state law in any jurisdiction **(Burger King)**

1. **Quasi In Rem Jurisdiction (Type 2)**
   1. Allows plaintiff to acquire jurisdiction where defendant has property by attaching property
      1. Can only gain judgment up to value of property
      2. In Personam jurisdiction is preferable
   2. **Minimum Contacts** principle of International Shoe applies to Quasi-in-rem cases
      1. Test is notions of fair play and substantial justice as to not offend due process
      2. If property attached, must be related to litigation.
2. **In Rem Jurisdiction**
   1. **Against the Property**
   2. Decides ownership of property in regards to the whole world
   3. Jurisdiction extends to property attached
   4. Must satisfy terms of **Minimum Contacts**
      1. Must not violate notions of fair play and substantial justice
   5. Case regards Ownership of a thing

|  |  |  |
| --- | --- | --- |
|  | **Source of Power** | **Topic of Suit** |
| **In Personam** | Consent (Pennoyer)  Present/Served in Territory(Pennoyer)   * Minimum Contacts (Int’l Shoe) Modern Standard | Personal Obligations |
| **Quasi in Rem (type 2)** | Presence of Property | Personal Obligations |
| **In Rem** | Presence of Property | Ownership of Property |

1. **Cases Regarding Personal Jurisdiction**
   1. **Pennoyer v. Neff** – first personal jurisdiction case, establishes needs of presence and consent in due process. Largely irrelevant today **“Fountainhead”** personal jurisdiction case
   2. **International Show vs. Washington (Minimum Contacts)**
   3. **World-Wide-Volkswagen v. Woodson (Establishing Contacts)**
   4. **Burger King v. Rudzewicz (Establishing Contacts)**
   5. **McIntyre v. Nicastro (Stream of Commerce)**
   6. **Goodyear v. Brown (Specific v. General Jurisdiction)**
   7. **Shaffer v. Heitner (Quasi in Rem)**

**\*\*\*Notice and Opportunity to be Heard\*\*\***

1. **Notice and Service of Process**
   1. **Constitutional Minimum**
      1. Defined by 5th and 14th amendments
      2. Notice must be reasonably calculated, under all circumstances to apprise interested parties of the pendency of the action **(Mullane)**
         1. Means employed must be actually desirous of actually informing the absentee
      3. Generally, if the address of the recipient is known, notice must be done by mail
         1. Certified mail is preferred
         2. If you know that someone did not receive notice (certified mail is returned)
      4. If the address of the recipient is not known, then notification by publication is sufficient
         1. Due Diligence to locate the addresses of those who need to apprised of the litigation
            1. To do otherwise, would add too much expense to notification
   2. **Statutory Requirements**
      1. All courts have rules or statutes that spell out in detail the mechanics and form of giving ntoice
      2. Governed by **Rule 4** of Federal Rules of Civil Procedure
         1. A Summons must be served with a copy of the complaint
         2. Must also contain according to **Rule 4(a)(1)**
            1. Name of court and parties
            2. Directed to defendant
            3. Name and address of plaintiff’s attorney
            4. State the time within which defendant must appear
            5. Notify defendant that a failure to appear and defend will result in default judgment against defendant
            6. Be signed by the court clerk
            7. Bear the seal of the court
         3. **Rule 4(c)** defines what must be done in service of summons
            1. Must have a copy of the complaint
            2. Must be served by someone who is 18 years old and not a party
            3. May be made by U.S. Marshall or deputy Marshall or by a person appointed by the court
         4. **Rule 4(e)** defines exactly how you serve an individual
            1. Can be done by following state law for serving a summons in state where district court is located
            2. Delivering a copy of the summons to the individual personally
            3. Leaving a copy at individuals dwelling or usual place of abode with someone of suitable age and discretion who resides there. Generally doesn’t mean certified mail, fed ex but a process server

For a transient person, usual place of abode is some place where he spends a significant amount of time among other things

Listed as home

Was present at location when process was served.

* + - * 1. Delivering to an agent authorized by law to receive service of process
      1. **Rule 4(h)** defines how you serve a corporation, partnership or association
         1. Serve according to 4(e)(1) for an serving an individual
         2. Delivery copy to an officer, managing or general agent or any other agent authorized by law to receive service of process.
    1. **Waiver of service of process**  governed by rule 4(d)
       1. Defendant says save me the hassle of service, can avoid formality by signing a paper and sending it back to plaintiff
       2. Defendant would do this because if defendant does not return waiver, court can make them pay costs of service of process
       3. You get more time **Rule 4(d)(3)**  to file response if you waive service of complaint (60 days to respond vs. 21 days without waiver)

1. **Opportunity to be Heard**
   1. Due process requires an opportunity to be heard. Does not require a trial
      1. A student suspended from school is entitled to notice of charges and opportunity to tell her side of the story
   2. Defendant must receive sufficient advance warning to prepare an adequate defense
      1. Not necessary under exigent circumstances. **Rule 65** allows for temporary restraining orders to be granted ex parte
         1. Lasts 14 days
         2. No Hearing needed
         3. Person seeking injunction must post bond as security
      2. If not exigent circumstance, either bond or pre judgment hearing is necessary. Preferably both
         1. A post judgment hearing is not ok
      3. Principal interest is the that of the party seeking a pre judgment remedy with due regard to plaintiff’s circumstance (exigent?) and ancillary government interest
   3. **Matthews Test** for proper due process
      1. Interest of person whose property is being attached (will it cause undue hardship)
      2. Risk of Error
      3. Interests of STate

**\*\*\*Subject Matter Jurisdiction\*\*\***

1. **Introduction to Subject Matter Jurisdiction**
   1. **Subject Matter Jurisdiction** is concerned with a court’s authority to decide a certain type of case
      1. State courts have **General Subject Matter Jurisdiction**
         1. They can hear any claim. Plaintiff should be able to find some court in which to assert claim
         2. Exception is where congress has vested courts with exclusive subject matter jurisdiction
            1. Admiralty
            2. Securities
            3. Patent and Copyright Infringement
            4. Antitrust
      2. Federal Courts have **Limited Subject Matter Jurisdiction** 
         1. Powers specified by Article III of constitution, and not beyond that
         2. Presumption against federal subject matter jurisdiction
         3. Parties can’t confer federal jurisdiction by consent
         4. Lack of subject matter jurisdiction cannot be waived
            1. Can be raised at any time during case (even at Supreme Court)
            2. Plaintiff is without remedy if statute of limitations on claim has expired when defense is raised
      3. Federal and state courts can have concurrent jurisdiction.
         1. Case can be **removed** from state court to federal court if there is concurrent jurisdiction
      4. Limits of federal subject matter jurisdiction defined by
         1. Article III of the constitution
            1. 9 heads of jurisdiction
         2. Statutes of Congress
            1. **1331 –** Federal question jurisdiction
            2. **1332 –** Diversity of citizenship jurisdiction
      5. Plaintiff’s burden to establish federal subject matter jurisdiction
2. **Diversity of Citizenship Jurisdiction** is governed by 28 U.S.C. 1332 and allows for federal subject matter jurisdiction in cases between citizens of different states and the amount of controversy exceeds $75,000
   1. Can have jurisdiction between
      1. Citizens of different states
      2. Citizens of a state and citizens or subjects of a foreign state
      3. Citizens of different states and in which citizens or subjects of a foreign state are additional parties
      4. A foreign state and plaintiff and citizens of a state or different states
   2. **Strawbridge v. Curtiss** establishes that complete diversity is necessary.
      1. No plaintiff can be citizen of same state as any defendant
      2. Citizenship and resident are not interchangeable terms
   3. **Establishing citizenship** for diversity cases
      1. Defined as **domicile** for an individual
         1. A person’s fixed home
         2. Intention to live some place indefinitely
            1. Change of domicile has to be someone having the intent to stay somewhere while actually making it there.

*World Wide Volkswgen—*the family intended to move to Arizona, but had an accident in Oklahoma on the way, so their domicile was still New York

* + 1. An alien admitted to the United States for permanent residence is a citizen of the state where the alien is domiciled **(1332(a)(4))**
  1. **Establishing citizenship** for corporations **(Rule 1332(c)(1))**
     1. A corporation is a citizen of any state where it is **incorporated** and where it has its **principal place of business**
        1. A corporation is **incorporated** where it filed its articles of incorporation
        2. A corporation has its **principal place of business** where it has its headquarters or where a corporation’s officers direct its operations. Known as a corporations **nerve center**
           1. Defined by Hertz v. Friend
  2. **Establishing citizenship** for non-incorporated businesses
     1. Not seen as separate from the individuals who own them, so **not** subject to the rules of corporations
     2. **Partnerships** are where two or more persons have association as owners of a business for profit
        1. A partnership is held to be a citizen of all states in which its partners are members
           1. If a partner is a corporation, then follow rules for establishing citizenship as in 1332(c)(1), and then apply those citizenships to the same test as a partnership
        2. Labor unions are non-incorporated partnerships
           1. If a labor union has members in all 50 states, then diversity jurisdiction can not exist since they would be a citizen of all 50 states eliminating diversity as an option
        3. L.L.C. is a citizen of wherever its partners claim citizenship
           1. Bellville catering case
  3. **Establishing citizenship** for class action law suits is determined by the citizenship of the class representative, not all the class members.
  4. **28 U.S.C. 1359** deals with claims where a person tries to assign a claim specifically to invoke jurisdiction.
     1. If assigned specifically for jurisdiction assignee is ignored and assignor is used for purposes of jurisdiction
  5. In case of minor, decedent or incompetent, court uses jurisdiction of the minor, decedent or incompetent , not their legal representative
     1. **Rule 1332(c)(2)**
  6. **Domestic Relation Exception** for diversity of citizenship
     1. Court may refuse to hear cases dealing with
        1. Divorce
        2. Alimony
        3. Child custody decree
     2. Court still may hear a case in which a tort arises from a “domestic relations” case
  7. **Probate Exception** – Federal court will not probate or administer an estate
     1. May still hear cases that arise from probate
  8. **Amount in Controversy** for diversity of citizenship cases must exceed $75,000
     1. Claims can be aggregated in certain circumstances
        1. If it’s one plaintiff vs. one defendant claims can be aggregated
           1. Claims don’t have to be related
        2. If two plaintiffs and one defendant, then claims cannot be aggregated, even if related
           1. Claims must be attributed to a single individual
     2. If two tortfeasors jointly cause an injury that’s worth more than $75k, then claim satisfies amount in controversy requirement even if the individual claims are less than $75k. ONLY FOR JOINT TORTFEASORS
     3. Plaintiff just needs to make a good faith assertion that he is seeking more than $75k
     4. A specific amount is not necessary, ok to say amount greater than $75k to be determined at trial

1. **Federal Question Jurisdiction** is governed by 28 U.S.C. 1331 and allows for federal question jurisdiction when a case arises from a question of federal law
   1. Generally not exclusive to federal court, can be brought in state court as well
      1. Exceptions for:
         1. Patent Infringement
         2. Civil Rights Legislation
   2. **Well Pleaded Complaint Rule** states that a federal question must **arise** through a well pleaded complaint taking in only the things necessary for a plaintiff to win
      1. Any defenses or potential defenses are irrelevant – a federal question arising out of defense does not qualify for federal question jurisdiction
         1. If sued for breach of contract, it arises under state law even if the defendant breached the contract due to new federal regulations.
            1. Case would not be a well pleaded complaint
            2. **Louisville and Nashville RR v. Mottley (Mottley Case)**
      2. Congress can rid this by statute if they please, it’s an interpretation of **1331.** Constitution grants broader jurisdiction
      3. If Federal Question arises in counterclaim, same result as **Mottley** – no federal question jurisdiction
         1. Counterclaim is not a **well pleaded complaint**
         2. Must arise from plaintiff’s case
         3. If not a counterclaim, and defendant files a separate action, federal question jurisdiction may apply as it arises out of a well pleaded complaint
         4. **Holmes Group v. Gornado**
      4. In **Declaratory Judgment** in which court declares the rights of the parties you must ask how the lawsuit would play out without declaratory judgment
         1. If coercive action that would’ve been brought without declaratory judgment can be brought in federal court, than the declaratory judgment can be brought in federal court
         2. Does not matter who would bring the coercive action, as long as one could be brought by one of the parties
         3. **Skelly Oil v. Phillips Petroleum**
         4. **Franchise Tax Board v. Construction Laborers Vacation Trust**
            1. Tax board sought to collect delinquent taxes from individuals from their vacation trust
            2. Sought a declaration that federal employee pension law did not prevent it from recovering money from the trust
            3. Court held no federal question jurisdiction because no coercive action could be brought under federal law

The question about federal pension law would be raised as a defense by the pension board

* 1. **Centrality of Federal Issue of the Claim** in conjunction with the well pleaded complaint rule is needed to establish federal question jurisdiction when the federal issue arises as ingredient of a state claim.
     1. There have been several litmus tests over the years to decide whether the federal claim is substantial enough to warrant jurisdiction
        1. **American Well Works Test**
           1. A case **arises** under the law that creates the cause of action
           2. If cause of action is brought under state law, but turns on a federal issue then it doesn’t qualify
           3. For federal question jurisdiction, the case must arise under federal law
        2. **Smith v. Kansas City Title and Trust**
           1. Case **arises** from state banking law
           2. Central question is whether a federal act is unconstitutional
           3. Court upheld jurisdiction on basis that there is a federal cause of action when there is a federal ingredient to the case on the plaintiff’s side
           4. Plaintiff’s case depends on interpretation of federal law
           5. Broad Rule
        3. **Moore v. Chespeake and Ohio RR**
           1. Would satisfy smith test, and fail American Well Works Test
           2. Court Rules no jurisdiction
        4. **Merrell Dow Pharmaceuticals**
           1. Negligence case arising out of state court based on mislabeling of drug under federal statute
           2. No jurisdiction because there has not been a cause of action created by the federal act in question
     2. The rule has become two parts
        1. How important is the federal ingredient
           1. Is the federal governments interest in the case strong enough to warrant the attention of the federal courts
        2. Will it upset the balance and division of labor between federal and state courts
           1. Will the case open up the floodgates of litigation in federal court
           2. If a negligence per se action is allowed because it violates a federal statute, then thousands of cases will be brought
           3. If a malpractice suit for mishandling a federal case is allowed then floodgates will open (**Singh v. Redano)**
        3. **Grabel and Sons v. Darue**

1. A Federal court can have **Supplemental Jurisdiction** when it can hear claims and issues that don’t invoke federal subject matter jurisdiction if it arises from a claim that does have federal subject matter jurisdiction
2. A federal court can have  **Removal Jurisdiction** if a state law claim can be heard in federal court
   1. Case can be removed only when federal court would’ve had **Subject Matter Jurisdiction** anyway
      1. Defendant doesn’t ask for permission to remove. They simply remove the case
      2. If removal is improper, federal court will remand back to state court
      3. A plaintiff can only remove when the original complaint could have been filed in federal court
         1. If a plaintiff brings a case under state employment law that could’ve been filed as a case in violation of a federal employment law it is not removable because the original case could not have been filed in federal court
      4. Defendant is removing, so has burden to demonstrate Plaintiff’s claim invokes federal subject matter jurisdiction
      5. Defendant can remove only to the federal district court for the district in which the state claim was filed
      6. **28 U.S.C. 1446** says a defendant has 30 days in which to remove
         1. Supreme Court rules that 30 days begins when service was effected (**Murphy Bros. v. Michetti Pipe Stringing)**
            1. Some jurisdictions hold that the 30 day time limit begins when the first defendant is served **(Noble v. Bradford)**
            2. Others hold that the clock restarts every time a new defendant is added

Unanimous approval for removal must still be satisfied

**Majority Rule**

* + - * 1. If case becomes removable at any point (adding in some federal component, dropping a defendant to satisfy diversity) the 30 day clock begins at the point it becomes removable
  1. **28 U.S.C. 1441** Governs rules for removal
     1. **1441(b) in-state defendant rule** says an action based on diversity is not removableif a defendant is a citizen of the State in which the action is brought.
        1. Applies only to pure diversity case. If the suit can be brought under Federal question jurisdiction (1331) then case can be removed
  2. Generally, all defendants must agree to remove, if one refuses, the others simply cannot remove the case
     1. Single defendant may remove, so long as there is a separate and independent federal question claim against them
        1. Claims arising from an interlocking series of transactions are not separate and independent
  3. If a plaintiff deliberately pleads damages less than $75k for purposes of avoiding diversity when it’s clear the case is for more than $75k a defendant can still remove

**\*\*\*Venue\*\*\***

1. **Introduction to Venue**
   1. **Venue** is where within a court system a case can be brought. Generally, a matter of convenience
      1. Contrasted with **personal jurisdiction** which determines whether the state as a whole has power over the defendant
      2. All states have venue rules which govern where a case can be filed
      3. **Local Actions** involved land and generally must be filed where land is located
         1. In rem, QIR, where real property is basis of jurisdiction
         2. Cases where P seeks remedy to realty
         3. Claims for damage or injury to land
      4. Any action that is not a **Local Action** is called a **transitory action**
2. **Venue in Federal Court**
   1. Exists side by side with **Personal Jurisdiction** and both must be satisfied
   2. Governed by **28 U.S.C. 1391**
      1. **Diversity of Citizenship Cases (1391(a))**
         1. May be brought in a judicial district where any defendant resides if they all reside in the same state.
            1. Resides means citizen of or **domicile**
            2. **1391(a)(1)**
         2. May be brought where substantial portion of events or omissions giving rise to claim occurred
            1. **1391(a)(2)**
         3. If the above two options fail, can go anywhere there is personal jurisdiction over defendant. **Used very rarely,** generally where events or omissions occurred somewhere outside of the U.S. Otherwise, venue would be proper somewhere
            1. **1391(a)(3)**
      2. **Federal Question Cases (1391(b))**
         1. Judicial district where any defendant resides if they all reside in the same state
         2. Where substantial portion of events or omissions occurred
         3. Judicial district where any defendant may be found (essentially the same as 1391(a)(3))
      3. For venue purpose, a corporation resides in an judicial district in which it is subject to personal jurisdiction at the time the action is commenced **1391(c)**
         1. If multiple districts within a state, treat each judicial district as an individual state, and venue exists in whichever district has personal jurisdiction
         2. **Non incorporated businesses** are treated like corporations for venue
      4. An alien may be sued in any district **(1391(d))**
      5. **Bates v. C&S adjusters –** more than one place where venue is proper
3. **Transfer/Change of Venue**
   1. Most states permit a transfer if they are unlikely to get a fair trial where it’s filed
      1. No state can unilaterally transfer a case from one of its courts to a court in a different state
   2. **Transfer in Federal Court**
      1. Governed by 28 U.S.C. 1404(a) and 1406(a)
         1. Difference is transferor court in 1404 is a proper venue, and in 1406 transferor court is an improper venue
         2. The transferee court must have venue and personal jurisdiction
      2. 1404 permits transfer to any district where the suit “might have been brought”.
         1. Supreme Court interprets that to mean cases can only be transferred to a district in which venue and personal jurisdiction would’ve been proper.
         2. True 1404 transfer requires proper personal jurisdiction and venue in the transferor court
            1. Law goes with true 1404 transfer
      3. **Goldlawr** **transfers** occur where the transferor court does not have personal jurisdiction
         1. Can occur with either 1404 or 1406 transfer
         2. Law does not go with it.
   3. **Forum Selection Clause** is not entitled to dispostitive weight in deciding whether to transfer, but is a significant factor in the district court’s calculus
   4. **Choice of Law Clause**
      1. A 1404 transfer is merely a transfer of courtroom and does not change the law that applies. Take the law with you if true 1404 transfer. Proper venue and personal jurisdiction in transferor court
         1. **Ferens v. John Deere Co.** , **Van Dusen v. Barrack**
      2. In a Goldlawr or any 1406 transfer the law does not travel with the transfer. They will apply the law of the transferee court
   5. In deciding whether to transfer, court shall consider
      1. 1404(a)
         1. Convenience of the parties
         2. Convenience of the witnesses
         3. Interest of justice
      2. 1406(a)
         1. If case is filed in improper venue, the court shall dismiss, or if in interest of justice, transfer
   6. **Multidistrict Litigation –** 28 U.S.C. 1407 – permits transfer for just pre trial purposes
4. **Forum Non Conveniens (Piper Aircraft)**
   1. Courts may refuse jurisdiction over matters where there is a more appropriate forum available to the parties
   2. **Gilbert Test** 
      1. Plaintiffs choice of forum not given full weight because it’s not plaintiff’s home forum
      2. Alternative forum exists somewhere
      3. Where are private interests most satisfied
         1. Where are relevant witnesses, evidence, investigations located
      4. Where are public interests most satisfied
         1. Is the desired forum familiar with the law available
      5. Is the forum law patently unfavorable
   3. Cannot defeat a dismissal or a transfer based solely on substantive law being less favorable in the alternative forum

**\*\*\*Pleadings\*\*\***

1. First step in litigation is **Pleading**
   1. Short in modern practice governed by FRCP
   2. Filed by litigants, setting forth their claims and defenses
   3. Plaintiff initiates by filing complaint
   4. Defendant responds by filing
      1. **Answer –** Defendant’s own pleading, and may raise an affirmative defense
      2. **Reply –** Plaintiff gets to respond to any new matter
   5. Performs 4 functions
      1. Putting parties on notice of claims and defenses of opponents
      2. Stating facts each party believed it can prove
      3. Narrowing the number and scope of issues needing trial
      4. Providing a quick method for resolving meritless claims and defenses
   6. Gatekeeper to modern judicial machinery
      1. How high should the bar for litigation be set? It is low under modern system
2. **Rules for Pleading**
   1. **Rule 7(a)** limits number of pleadings to a complaint, third party complaint, answer and reply
   2. **Rule 8(a)** governs the complaint and it must contain three things
      1. Short and plain statement of the grounds for the court’s jurisdiction
         1. Exception is when the court already has jurisdiction **Rule 8(a)(1)**
         2. No requirement of allegation of personal jurisdiction or venue
         3. **Form 7** shows acceptable allegations for subject matter jurisdiction
      2. Short and plain statement of the claim showing the pleader is entitled to relief
      3. A Demand for the relief sought, which may include relief in the alternative or different types of relief
         1. Monetary damages being sought
         2. Can demand damages in amount to be shown at trial
         3. Alternative relief (injunction, specific performance, declaratory judgment)
         4. **Rule 54(c)** – if P is entitled to more than what they demanded, recovery not limited to demand
   3. **Rule 10** governs form of all pleadings in court
      1. Must state the name of the court, title of case (smith v. jones), and identity of document
      2. Rule 10(b) – party must set forth claims and defenses in numbered paragraphs
      3. Rule 10(c) – can reference allegations found elsewhere in the document
   4. Must be factually sufficient **(Dioguardi v. Durning)**
      1. Has plaintiff pleaded all elements of a cause of action. Plaintiff mentioned elements or they’re directly or reasonably inferable
      2. Has plaintiff pleaded in question in sufficient detail to proceed with legal action
   5. Must be legally sufficient (**Scheuer v. Rhodes)**
      1. This issue is not whether a plaintiff will prevail but whether she is entitled to offer evidence to support the claims
      2. Legally insufficient if everything plaintiff says is true, there is still no legal claim
         1. Can be dismissed with a **rule 12(b)(6) motion**
   6. Plaintiff doesn’t have to plead facts, just state a claim to which entitles him to relief
      1. Defendant negligently drove her car and injured plaintiff
   7. **Rule 9** governs heightened pleading requirements
      1. **Rule 9(b)** says fraud or mistake requires a higher hurdle
         1. Must state with particularity the circumstance concerning fraud or mistake
         2. Fraud needs to be clear and convincing evidence vs. preponderance of evidence for most civil cases
      2. **Rule 9(c)** pleading should include who what where when how but not why
      3. **Rule 9(g)** states that special damages must be specifically stated in complaint
   8. Some causes of action requiring heightened pleading requirements not mentioned in rule 9
      1. Securities claims
      2. Civil rights legislation – overturned by Leatherman
         1. **Leatherman v. Tarrant County** is exception for municipal liability. Does not require higher pleading requirement, follows **Conley v. Gibson**
      3. Antitrust Legislation
         1. **Bell Atlantic Corp v. Twombley** sets out higher pleading requirement for antitrust legislation. Defines minimum pleading requirement
            1. Must show factually plausible allegations
            2. Plaintiff can’t plead conclusory facts
            3. If pleading conspiracy, must include evidence to exclude independent action

Must plead enough factual matter to suggest an agreement

* + 1. **Conley v. Gibson** – Partially overturned by Twombly. Stated that failure to state a claim should not be granted unless plaintiff could plead **“no set of facts”** which would entitle them to relief
    2. **Iqbal –** Don’t plead conclusory allegations.
  1. **Rule 8(d)(2) and 8(d)(3)** allow for pleading of alternative or inconsistent claims or defenses
     1. **McKormick v. Koppman**
  2. **Rule 41** governs dismissals of complaints
     1. **Rule 41(a)(1)** is voluntary dismissal by the plaintiff
        1. Can be done without court order if done before opposing party serves and answer or motion for summary judgment
        2. Signed by all parties who have appeared
        3. Dismissed without prejudice
           1. Dismissed w/ prejudice if plaintiff has previously dismissed any action based on the same claim
           2. However, if 2nd dismissal is by stipulation of the parties, then not dismissed w/ prejudice
        4. Can be done with court order in other circumstances
           1. Unless otherwise stated, voluntary dismissal by court order is without prejudice
     2. **Rule 41(b)** is involuntary dismissal (Link v. Wabash)
        1. Plaintiff fails to prosecute, defendant can move for dismissal
        2. Plaintiff fails to comply with FRCP or court order
        3. Operates as adjudication on the merits, dismissed with prejudice

1. **Defenses and Objections to Complaint (Rule 12)**
   1. Governed by **Rule 12,** defendant has several options
      1. Motion
      2. Answer
         1. Admissions
         2. Denials
      3. Affirmative defenses
      4. Counterclaim
      5. Cross Claim
   2. **Motions** – defendant can seek dismissal on a number of ground
      1. Defendant can raise any of seven specific defenses from **Rule 12(b)** on motion or responsive pleadings
         1. Any motion made under rule 12 can be joined with any other rule 12 motion. **12(g)(1)**
         2. If a party makes a motion under rule 12, they cannot make another motion under rule 12 that was available and omitted from earlier motion. **12(g)(2)**
            1. **Rule 12(h)(1)** defines waiver of (2)-(5) defenses by omitting it from an earlier rule 12 motion or not including in any motion or in a responsive pleading or amendment allowed as a matter of course

Use it or lose for b(2)-(5).

B(1), (6) and (7) can be used whenever

* + 1. **12(b)(6)** motion is to dismiss for failure to state a claim.
       1. If facts undisputed, can seek judgment as a matter of law
       2. Summary judgment under rule 56 also available
    2. **12(e)** is a motion for a more definite statement, rare though
       1. Made to strike at unintelligibility
    3. **12(f)** is a motion to strike – get rid of case now rather than later
    4. If motion filed, it’s considered the answer
  1. **Answer**  is set forth by rule 8(b), 8(c), and 8(d)
     1. Rule 12(a) – have an answer within 21 days of service or 60 days if you waived service. Plaintiff has 21 days to reply to answer
     2. Defendant can admit, deny or claim that they lack sufficient information to admit or deny
        1. Allegations not denied are deemed admitted (Rule 8(d))
     3. **Admissions** serve to establish undisputed facts on which there is no need for trial
     4. **Denials** serve to establish facts which are in dispute
        1. **General denial** is a short pleading, denies every allegation of complaint
           1. Only use when defendant can deny everything in good faith
           2. **Qualified general denial** would be admitting allegations of one paragraph and denying everything else (**Form 30)**
        2. **Specific denials** allow one to accept or reject the individual numbered allegations set out in the complaint
           1. Can deny part of a paragraph, rather than the whole thing
        3. Denial must fairly respond to allegation, do not plead contrary facts
        4. Denial that is too literal is called a pregnant denial
           1. Defendant did not drive her car negligently down main st. on that night is “pregnant” with the accusation that defendant drove negligently at some other time
     5. **Denial for Lack of Knowledge or Information** is that a party lacks knowledge to form a belief about the truth of an allegation
        1. Cannot be used if defendant has reasonable access to the info, or it is matter of public record or general knowledge
        2. Works as a denial
  2. **Affirmative Defenses** are required to be raised in answer by **Rule 8(c)(1)**
     1. 19 possible affirmative defenses listed in 8(c)(1)
        1. Affirmative defense is a new set of facts upon which defense is premised
        2. **Preclusion is an affirmative defense**
  3. **Counter Claim** is against plaintiff
     1. I am not liable, but plaintiff owes me
     2. Rule 7(a)
        1. If D files counterclaim, then P files answer to that
        2. Complaint, Answer and counterclaim, answer to counterclaim
  4. **Cross Claim** brings in another defendant
  5. If defendant doesn’t respond, he is found in **default**
     1. **Default** is a ministerial notation on court’s docket sheet that D failed to plead
     2. **Default Judgment** is enforced like any other judgment
        1. Recovery limited to what’s listed in complaint
        2. Governed by
           1. **Rule 6(b) –** extend time
           2. **Rule 54(c) –** default judgment limited to demand in pleading
           3. **Rule 55 –** process for getting default judgment
        3. Defendant only responsible for amount mentioned in complaint
        4. If suing for liquidated amount, defaulting defendant can be ordered to pay by the clerk (55(b)(1))
        5. If damages are not fixed, court must have a hearing on damages and can hear other matters including finding for defendant (55(b)(2))
           1. If person has ever showed up, they must be given notice (55(b)(2))

1. **Amended Pleadings**
   1. Governed by **Rule 15**
   2. 15(a)(1) – party can amend within 21 days of service, or if a responsive pleading is required, 21 days after service of a responsive pleading or service of motion under rule 12(b),(e) or (f).
      1. No permission is needed to amend pleading within this time period. (matter of course)
   3. 15(a)(3) – Response to pleading must be done within 21 days of service of the amended pleading
      1. 15(a)(2) – if beyond 21 days plaintiff needs permission from other party or court to amend
      2. **Foman v. Davis** said that a plaintiff should generally be given the opportunity to amend absent undue delay, bad faith, and undue prejudice to the moving party
   4. 15(b) is only used when there is a variance between pleading and what was presented at trial
      1. Surprises are bad, court will take prejudice of opposing party into consideration
      2. Can be amended if objected to, if not objected to keep on trucking
   5. 15(c) is **relation back rule** which deals with amended pleadings and statutes of limitations
      1. Relation back is to pretend the claim was there all along
      2. Rule 15(c)(1)(B) if the amended claim that arises out of the conduct, transaction or occurrence originally set out in original pleading
         1. If it arises out of same transaction, then it relates back
      3. Rule 15(c)(1)(C) adds a new party and if it relates back
         1. If D knew case was going on and should’ve been a part of it from the beginning
            1. Allowed if it satisfies 15(c)(1)(B) and doesn’t prejudice proceedings
      4. **Marsh v. Coleman Company –** Not same stream of facts. Fraud complaint doesn’t relate back to firing complaint
2. **Rule 11 Sanctions – Veracity in Pleadings**
   1. Weaker rule 11 now in existence
      1. Values served by weak Rule 11
         1. Access to justice
         2. Encourages zealous advocacy
   2. Rule 11(a) says you have sign every document
   3. Rule 11(b) says duty to disclose precedent , candor in all steps of the process
   4. **Sanctions** defined by Rule 11(c)
      1. If after notice and opportunity to respond, court can impose sanctions on
         1. Attorney
         2. Law Firm
         3. Party to litigation
      2. 11(c)(2) -- motion for sanctions must be made separately from all other motions
         1. First – serve party before filing with court
            1. Gives party opportunity to fix problems
         2. If ignored for 21 days, file with court
      3. **Marlin v. Moody National Bank –** must give opportunity to respond before imposing sanctions
      4. 11(c)(3)Courts have inherent power to sanction sua sponte
      5. 11(c)(4) – if sanction made on motion, can order payment of all or part of movant’s attorney’s fees directly related for violation
      6. 11(c)(5) – limitations on sanctions
         1. Court can’t sanction client for violation of 11(b)(2)
   5. Section 1927 is further sanctions, applies only to attorney’s
   6. Court can sanction with inherent power

**\*\*\*Discovery\*\*\***

1. **Discovery Rules** serve three purposes
   1. Permit preservation of evidence that might be lost before trial
   2. Provide mechanism for narrowing the issues in dispute between the parties
   3. Permit parties to gain more information about their own and the other side’s case
      1. Eliminates surprises for a more just result
      2. Allows parties to learn well in advance what evidence other side has in support of his claim
2. Scope of **Discovery** is anything that’s not privileged which relates to any parties claims or defenses **(Rule 26(b))**
   1. Issue does not have to be admissible at trial, because it could lead to admissible evidence (**Rule 26(b))**
3. **Discovery** has 5 traditional devices for acquiring information
   1. **Rule 26(a)(1) – Required Initial Disclosures** 
      1. Requires party to disclose all information that they may use to support their claims or defenses without request
   2. **Rule 30, 31 – Depositions** 
      1. Witness placed under oath and answers questions without a judge present
      2. Anyone with discoverable information can be deposed
      3. Presumptive limit of 10 depositions per side
      4. Corporations must produce the person who is most capable of answering the questions
      5. Can depose a non-party if they have discoverable information.
   3. **Rule 33 – Interrogatories**
      1. Party may send to any other party written questions which require a response under oath
         1. Cannot send interrogatory to a non-party.
      2. Parties required to provide facts reasonably available to them
      3. Presumptive limit of 25
      4. Generally prepared by attorneys
   4. **Rule 34 – Production of Documents and Things**
      1. Permits a party to require another party to produce all relevant documents or tangible things for inspection copying or testing
      2. Can ask a non-party to produce documents and things
   5. **Rule 35 – Medical Examination**
      1. When the health, physical or mental condition of a party is n controversy, the court may order the party to submit to a physical or mental examination by a “suitably licensed or certified examiner
      2. Requires a court order
   6. **Rule 36 – Requests for Admission**
      1. Used to determine what issues are actually in dispute
4. **Privileged Material** is not discoverable
   1. Confidential communication between
      1. Confidential communications between lawyer and client
      2. Doctor and patient
      3. Priest and parishioner
      4. Husband and wife
   2. Only the communication is privileged, not the underlying facts
      1. Can’t ask what their husband said about something. Can ask about that something
   3. Within corporation, attorney-client privilege extends to where communication was needed to supply a basis for legal advice, concerned matters within scope of employee’s duties, and was considered confidential within the corporation
      1. **Upjohn v. United States**
   4. **Rule 26(b)(5)(A)** requires the privilege to be claimed and describe in detail the things not produced to let the other party assess the claim
      1. If privilege is not claimed, can be viewed as a waiver
         1. Courts generally refuse to invoke this remedy without showing of bad faith or prejudice
   5. **Work Product Doctrine – Rule 26(b)(3) – Hickman v. Taylor**
      1. Ordinarily party may not discover documents and things prepared in advance of litigation
      2. Exceptions for undue prejudice
         1. If one attorney deposed a witness who has since died, then that work product is discoverable
      3. Can not be prepared as ordinary course of business, must be specific to litigation. Company may do an investigation internally into every accident, but it’s normal course of business

**\*\*\*Summary Judgment/Jury Selection/Adjudication Without Jury\*\*\***

1. **Summary Judgment** is granted pursuant to **Rule 56** when there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law
   1. Two situations where appropriate
      1. All parties agree on facts, dispute is entirely about the law
      2. Parties disagree about the facts and there is a genuine dispute of material fact, but one side has so little evidence that no reasonable jury could find for that side
   2. Factual dispute must be material and genuine
      1. Material factual dispute – relevant to the outcome of the case
      2. Genuine Factual dispute – when reasonable jury could come out either way
   3. The burden of proof for summary judgment must meet the requirement for a jury verdict
      1. By preponderance of evidence – then summary judgment must be granted on that
      2. By clear and convincing evidence – Summary judgment must use that standard
      3. **Anderson v. Liberty Lobby**
   4. Must be some evidence beyond the pleadings to have summary judgment. Summary judgment mus **pierce the veil** of the pleadings
      1. Cannot grant summary judgment based on statements in pleadings (Rule 12(b)(6)) motion for that
   5. Burden of establishing the nonexistence of a genuine issue is on the moving party for summary judgment. It must meet rule 56(c) burden of production
      1. Moving party may submit affirmative evidence that negates an essential element of non-moving party’s claim
      2. Moving party may demonstrate to the court that the non-moving party’s evidence is insufficient to establish an essential element of the non-moving party’s claim
      3. Moving party does not need to support its motion with affidavits negating the opponents claim **(celotex v. catrett)**
   6. If burden of persuasion at trial is going to be on moving party, they must support motion for SJ with credible evidence. If burden of persuasion is on non-moving party, moving party has to demonstrate non-moving party’s evidence is insufficient.
2. **Jury Selection**
   1. 7th Amendment guarantees right to a trial by jury in federal court.
      1. Doesn’t apply in state court, though most states provide juries
   2. Federal juries must represent a reasonable cross section of the public (**Taylor v. Louisiana)**
   3. Jurors summoned for duty are called the **venire.** Selection from the venire is called **Voir Dire**
      1. Purpose of Voir dire is to gain info about jurors (bias, knowledge, opinions on the case)
      2. Juror can be struck if they have close connection with any of the parties or witnesses or fixed opinion. **Struck for Cause**
   4. **Peremptory Challenges** allow parties to strike jurors before case **without cause**
      1. In federal cases, limited to three peremptory strikes (28 U.S.C. 1870)
      2. Cannot use peremptory challenges to strike based on:
         1. Race (baston v. Kentucky)
         2. Gender (J.E.B. v. Alabama)
   5. Jury size set by **rule 48**
      1. No smaller than 6, no larger than 12
      2. Unanimous verdict required, regardless of size
   6. Either party needs to ask, or request a jury trial
      1. Done within 14 days of last pleading directive
      2. If not asked for, waived
3. **Judgment as a Matter of Law/Directed Verdict/Renewed Judgment as a Matter of Law**
   1. Governed by Rule 50 – if court finds that there is insufficient evidence, it may decline to submit to a jury and enter a **directed verdict**
      1. Called a **judgment as a matter of law** according rule 50
      2. If motion for JMOL was made before submitting to jury, can make motion for renewed judgment as a matter of law to have the court make a judgment notwithstanding the verdict
         1. Must be submitted within 28 days of judgment
   2. Only available when evidence is so weak, no reasonable jury could find for that side. Standard is same as summary judgment
   3. Overturning JMOL or renewed JMOL requires a complete absence of probative facts to support the conclusion; it’s an abuse of discretion from the court. (**Lavender v. Kurn)**
4. **Motion for a new trial**
   1. Governed by **Rule 59**
      1. Must be made within 28 days of judgment
      2. Can be done Sua Sponte **(Rule 59(d))**
   2. Standard is clear weight of evidence. Jury made its decision against the clear weight of the evidence
      1. New trial can be given even if there is sufficient evidence to preclude JMOL
   3. Lesser standard than JMOL, it’s a do over.
   4. Reversing denial of new trial is rare; some courts hold denial of a new trial to be unreviewable for same reason as JMOL. Must be an abuse of discretion from the court
   5. New trial can be granted on misconduct by counsel or other unfairness because of newly discovered evidence.
      1. Even a motion on grounds of new evidence must be made within 28 days. But, a party can move for relief under Rule 60(b)(2) if they discover new evidence and motion is filed within one year of judgment
   6. Court can grant new trial if size of judgment **shocks the conscience of the court** (p.524 Note 7)
      1. Court can grant **remmittur** instead of new trial. Court offers lower settlement as alternative to new trial. If rejected, a new trial commences
      2. Additur is not permitted by federal law
5. **Other Techniques for Controlling Juries**
   1. **Admissibility of Evidence**
      1. Challenging admissibility of evidence so jury never hears some things
      2. Defendant’s criminal record is never admissible
      3. Sometimes expert testimony is inadmissible
   2. **Jury Instructions**
      1. Judge instructs jury as to what applicable law is and jury has to apply that to the facts
      2. Judge identifies elements of each claim or defense, explain which party had burden of proof and what the burden of persuasion is
      3. Errors in jury instruction are a common basis for appeal and reversal
   3. **Form of the Verdict – Rule 49**
      1. Rule 49(a) allows for special verdicts by which the court asks the jury to decide one or more specific factual questions but not the bottom line of who wins or who loses
      2. Rule 49(b)allows for general verdict combined with one or more specific questions
   4. **Judicial Comment**
   5. **Juror Misconduct**
      1. Generally affidavits of jurors can’t be used to impeach verdicts however, recently there have been exceptions
      2. **Iowa Rule** is based on differences between extrinsic and intrinsic influences
         1. **Extrinsic influence** involve overt acts which may be corroborated or disproved
            1. illegal method of reaching verdict
            2. admissible
         2. **Intrinsic influence** are matters known only to individual juror
            1. non admissible
   6. **Motion to Set Aside Judgment (Rule 60(b))**

**\*\*\*Choice of Law, The Erie Doctrine\*\*\***

1. **Erie Doctrine** is about choice of law
   1. When does a court apply state law
      1. Question of which state law is horizontal
   2. When does a court apply federal law
      1. Question of federal or state law is vertical
         1. Vertical is important for **Erie Doctrine**
      2. Federal law always trumps state law
         1. If there is a valid federal law which conflicts with state law, federal law wins
   3. Within a subset of laws there is hierarchy
      1. Constitution > Statute > Common Law
   4. **Erie Railroad v. Tompkins** set the standard for federal court choice of law
      1. A federal court in diversity should apply the law of the state in which it sits
      2. Pre **Erie**, a court sitting in diversity would apply federal common law, which was more favorable to corporate interests
         1. Court ruled that was an unconstitutional usurpation of powers
      3. After Erie, a court sitting in diversity applies state law in which it sits, generally more plaintiff friendly
   5. **Post Erie** federal courts apply Federal Rules of Civil Procedure as well so
      1. **Procedure – Federal**
      2. **Substantive Law – State**
      3. Pre Erie was the opposite
   6. **Klaxon v. Stentor** decided which state law would apply. Erie only decided that state law would apply. Apply the law of the state in which the court sits.
   7. **Rules of Decision Act –** in absence of federal law, state law controls (Swift misunderstood this)
   8. **Rules Enabling Act** put in place Rules of Civil Procedure
2. **When Does State Law Apply**
   1. Decision in **Erie** did not discuss whether federal courts were required to apply these state laws on every issue that may arise in a case
      1. Court has struggled to articulate a comprehensive test of determining procedural v. substantive issues
   2. **York Test** is if federal law or state law significantly affects the outcome of a case. If it does, use state law
      1. **Outcome Determinative Test**
      2. Base on **York**, courts have applied state law in statute of limitations cases
      3. Problems because procedural issues are outcome determinative, any rule for dismissal is outcome determinative
   3. **Hanna v. Plumer** established a two prong analysis for Erie cases. Don’t ask if the conflict is outcome determinative
      1. Where there is a federal rule on point, use that federal rule (Rules enabling act prong)
         1. If it’s in doubt whether a federal law is on point it should be given a narrow construction
      2. Where there is not a federal rule on point
         1. Follow a federal rule, practice or custom which conflicts with a state way of doing things
         2. Focus on the twin aims of erie
            1. Preventing forum shopping
            2. Avoidance of inequitable administration of the laws
   4. **Byrd v. Blue Ridge**
      1. Balance the twin aims of Erie, called Byrd balancing
      2. Balance state interests in their versus federal interest in their practice
         1. If equally strong, use federal law **(Taylor)**
3. **How does Federal Court Determine Content of State Law (Deweerth v. Baldinger)**
   1. Federal courts are to take all available data and make the “best Erie guess” as to which law applies
   2. Can file writ to ask state court what the rule would be
   3. Apply Federal Common Law where it exists
      1. Exists only where there is a pressing need to have a federal rule which congress hasn’t provided
      2. Treated as if it were a statutory law
4. Federal common law applies in cases where congress has not made a statute, but one should exist. Water rights.

**\*\*\*Preclusion\*\*\***

1. **Claim Preclusion** allows for a plaintiff to bring a cause of action or claim only once
   1. Three requirements
      1. Cases must involve the same claim
         1. Some jurisdictions recognize **Single Wrongful Act View** in which all claims arising from a single act must be brought together
            1. You have to file personal and property claims in a car accident, they can’t be separate
            2. Makes sense from efficiency view
         2. Minority of jurisdictions recognize **Primary Rights View**
            1. Single incident can be a violation of multiple rights (Car accident causes personal and property damage)
            2. There is a separate claim for every right violated

Makes sense from logical and pragmatic view

* + - 1. Majority of jurisdictions recognize **Transactional or Restatement View**
         1. A claim encompasses all rights to relief with respect to all or any part of the transaction or series of connected transactions out of which the action arose
         2. Transaction is a natural grouping or common nucleus of operative facts
         3. All claims need to arise from a single transaction
    1. Parties to the two suits must be identical or in privity
       1. Identical means same parties in same orientation/posture.
          1. Plaintiff is still plaintiff, defendant is still defendant
          2. Parties in **privity** can be precluded

Parties can be in **privity** if

**Express beneficial relationship**

Trustee—benificiary

**Successors to same interest in property**

Subsequent owners of a piece of property

* + 1. First case must have a valid final judgment on the merits
       1. If case is appealed, use **Rule 60(b)(5)** to reopen a final judgment if it’s based on an earlier decision which is reversed or vacated
       2. **Invalid** is without subject matter or personal jurisdiction
       3. **Judgment on the merits** includes summary judgment, default judgment, directed verdict etc…
          1. If dismissed for lack of subject matter jurisdiction, personal jurisdiction or improper venue then not valid judgment on the merits
  1. Preclusion for contracts – a claim should include all amounts owed at time claim was filled. If suit filed and another breach occurred then two causes of action
  2. Exceptions to Claim preclusion
     1. P. 606 (what are important ones)

1. **Issue Preclusion** Prevents re-litigation of particular issues that were already litigated and determined in the first case
   1. **Was the issue litigated in the first case**
      1. Usually obvious, but sometimes requires a closer look at record
      2. **Cromwell v. County of Sac** – Issue was not litigated to those specific coupons
   2. **Was the issue essential to the judgment in the first case**
      1. Sally and Joe hypotheticals
      2. Did it determine the outcome of the case
      3. If Sally sues Joe for negligence, and it’s found that Sally is contributorily negligent then Joe’s outcome doesn’t matter, only contributory negligence was essential to judgment of the case
   3. **Was the holding embodied in a valid final judgment on the merits**
      1. Same as claim preclusion. Includes everything except for PJ, SJ and venue for the most part
   4. **Against whom may preclusion be asserted**
      1. Can be asserted against parties to prior litigation
      2. Rejected virtual representation. Everyone gets their day in court
      3. Collateral estoppel cannot be applied against a person who was not a party to case 1
      4. **Hardy v. Johns-Mansville** – only companies that had prior judgments against them were included
   5. **By whom may preclusion be asserted?**
      1. Mutuality not needed any more
      2. Non mutual defensive collateral estoppel – trend is to allow (Bolder Tongue Labs)
         1. P Sues D1, some issues decided against P
         2. P sues D2
         3. Non mutual because party asserting estoppel not party to case 1
         4. Defensive because party asserting estoppel is D in case two
      3. Non mutual offensive collateral estoppel – trend is to allow if certain conditions are satisfied (parklane hosiery)
         1. Courts have broad discretion to apply, look to certain factors that would make it unfair to defendant to see if it’s allowed
            1. Plaintiff could’ve easily joined an earlier case (knew about it)
            2. Foreseeability for further litigation/nominal damages sought would prevent a person from defending with appropriate vigor
            3. Inconsistent judgment, the issue has been decided both ways at some point
            4. There are some procedural differences available to parties that wasn’t allowed previously
         2. P1 sues D. Some Issue X decided against D
         3. P2 sues D
         4. P2 attemps collateral estoppel against D on X
         5. Non mutual because party asserting estoppel was not a party to case 1
         6. Offensive because party asserting estoppel is the plaintiff in case 2
      4. Collateral estoppel cannot be applied against a person who was not a party to case 1
2. **Appeals** – trial court judgment is final for preclusion purposes. If appealed and reversed, can file a **Rule 60** motion to reopen the case
3. **Federalism Issues** What happens if judgment is entered in one district and the second case is filed in another jurisdiction

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | State Case 2 |  | Federal Case 2 |  |
|  |  |  |  |  |  |
| State Case 1 |  | Full Faith and Credit Clause  Must follow the State’s law that comes before  Rule 28 §1738 |  | Full Faith and Credit Clause  Must follow the State’s law that comes before  Rule 28 §1738 |  |
|  |  |  |  |  |  |
| Federal Case 1 |  | i. Federal Question Cases: Preclusion is governed by Federal Common Law  ii. Diversity Case: Preclusion is a matter of Federal Common law but you must render State law |  | i. Federal Question Cases: Preclusion is governed by Federal Common Law  ii. Diversity Case: Preclusion is a matter of Federal Common law but you must render State law |  |
|  |  |  |  |  |  |

**\*\*\*Joinder and Supplemental Jurisdiction\*\*\***

1. **Joinder** permits the joining of parties and claims across transactional lines
   1. Always ask
      1. What picture are we looking at (see handout)
      2. Is there a joinder rule which allows assertion of claim, is it satisfied
      3. Is it supported by subject matter jurisdiction (independent or supplemental).
   2. Cannot alter requirements of Personal or subject matter jurisdiction and venue
      1. Added parties must be subject to personal jurisdiction of court
      2. Every joined claim must have basis of federal subject matter jurisdiction
   3. If not supported, court can allow **Supplemental Jurisdiction**
      1. Allows a federal court to hear claims so closely related to underlying dispute as to be considered part of the same case or dispute
      2. Close relationship defined on transactional lines
2. **Claim Joinder by Plaintiffs – Rule 18** 
   1. **Rule 18(a)** allows a claimant to assert every claim they have against a party, even if not transactionally related
      1. Preclusion rules may force a plaintiff to join several claims in a single case
      2. Open season for people declaring claims (cross claim, counterclaim)
      3. Permissive – don’t have to join all claims
   2. Some cases will have multiple bases of subject matter jurisdiction
      1. If each new claim has diversity, or fed. Question jurisdiction then fine
   3. If no independent basis for jurisdiction, then sometimes a court can assert **Supplemental Jurisdiction**
      1. A state claim can piggyback on a claim with valid subject matter jurisdiction if it is part of the same case
         1. Case is **common nucleus of operative fact** 
            1. Factual circumstances, not law – similar to transactional test
      2. Federal court has discretion, doesn’t have to accept it
      3. Dismiss state claim if
         1. Federal claim dismissed before trial
         2. State law dominates (state dog with federal tail)
         3. Likelyhood of jury confusion
      4. Codified by **28 U.S.C. 1367**
         1. Section (b) rolls back supplemental jurisdiction for diversity cases for plaintiffs claims against parties joined under Rule 14, 19, 20, 24
            1. Irrelevant when fed question is basis for jurisdiction
   4. **Permissive Party Joinder by Plaintiff– Rule 20**
      1. Rule 20(a)(1) governs proper plaintiffs
         1. Transactional relatedness requirement(similar to claim preclusion)**and**
         2. Common question of law or fact
      2. Rule 20(a)(2) governs proper defendants
         1. Transactional relatedness requirement (similar to claim preclusion) **and**
         2. Common question of law or fact
      3. Rule 19 requires parties to be joined in certain circumstances
         1. If lawsuit put together by P can’t work without added D
      4. Rule 21 governs misjoinder of parties, penalty is not dismissal, the court can just add or drop a claim and may also sever any claim against a party
      5. **Rule 42** Governs consolidation
      6. Joined Parties can have supplemental jurisdiction under 1367(a), However, if the basis of claim is diversity then there is no supplemental jurisdiction over plaintiffs’ claims against party added under Rule 14, 19,20 or 24
   5. **Claim Joinder by Defendant (Counterclaim, Crossclaim)**
      1. **Rule 13** governs claim joinder by defendant called cross claims or counterclaim
         1. **Rule 13(a)** makes some counterclaims mandatory if they arise out of the same transaction or occurrence and doesn’t require the addition of a second party
            1. If you don’t bring the claim you lose it *Cateret*.
            2. If defendant makes motion, not required to assert compulsory counterclaim (notes after *Cateret*)
         2. **Counterclaim** must satisfy subject matter jurisdiction
            1. Must have independent basis (1331, 1332)
            2. Supplemental jurisdiction (1367) – arises from common nucleus of operative fact

Slightly broader than transactional relatedness

Compulsory counterclaim always has 1367 supplemental b/c from same transaction

* + - 1. **Rule 13(b)** is a permissive counter claim which allows a party to assert any claim she has against an opposing party (similar to Rule 18(a))
         1. Need jurisdiction as well. Independent basis or supplemental
    1. **Crossclaim** governed by **Rule 13(g)**
       1. Cross claim is when multiple parties are on the same side, one D sues the other D
          1. Must ask about subject matter jurisdiction (1331,1332, Supplemental)
          2. Must arise out of the transaction or occurrence of the original action

Indemnity or contribution claim allowed. Different than Rule 14. Both D already party of case

Generally supplemental present, because out of same transaction or occurence

* + - 1. Not mandatory, permissive, don’t have to join

1. **Overriding Plaintiff Party Structure/Impleader**
   1. Defendant has equal freedom as plaintiff in naming parties to claims. Rule 13(h) allows the defendant to join additional parties to counterclaim or cross claim so long as the joinder meets requirements of rule 19 or rule 20
   2. **Impleader** is when plaintiff sues defendant, and defendant brings a third party to the claim
   3. **Impleader** is governed by **Rule 14**
      1. Original defendant = third party plaintiff, added party is third party defendant
      2. Third party can be impleaded if they are liable for the plaintiff’s claim
      3. Two situations can arise
         1. **Indemnity** says if I have to pay, you actually have to pay all of it. Arises as a matter of law most of the time
            1. Insurance for example, or employer-employee relationship
         2. **Contribution** says you’re partially responsible for some of the judgment just made
      4. Must implead within 14 days of the answer, or when given permission by the court
      5. May implead, don’t have to. It’s **permissive**
      6. **Third Party Defendant** may assert any defense against the plaintiff that the original defendant did not use
   4. Third Party defendant can assert claims against the plaintiff (downsloping). Plaintiff can assert claim against defendant (upsloping).
      1. Transactional requirement. TPD claims against plaintiff vice versa must arise out of same transaction
      2. **Upsloping** third party claim must satisfy and independent basis of subject matter jurisdiction, cannot be granted supplemental jurisdiction if the original claim is based on diversity jurisdiction
      3. **Downsloping** third party claim has supplemental jurisdiction because transactional requirement ensures common nucleus of operative fact.