* **Things to Remember:**
* A good exam answer always starts w/ the RULE of LAW
* A holding is essential to the outcome of the case. A statement that the outcome does not turn on is just dicta.
* When comparing cases, 1) state rules from 1st case, 2) state rules from 2nd case, 3) compare/contrast cases
* Remember to always discuss the most relevant case!
* 1st defense is always, “I didn’t do it!”
* Standards, unlike rules, are always subjective and must be reevaluated in every case
* Necessary and Proper Clause: always say first what it amplifies. It does not stand on its own.

**Four levels of law:**

1. Knowledge – when law is settled, do you know that?

2. Judgment – when law is unsettled, are you aware?

3. Policy – why is the law as it is? Should it be different

4. Jurisprudence - philosophy

**Kinds of Q’s asked in past:**

1) **Multiple Choice** – no more than 1 hour (recommend), generally 15 Qs

* Have objective right answers

2) **Short answer** – usually 3 Qs worth 25 pts each, 1 hr total

- sometimes have 2 sides, sometimes don’t (might be testing to see if you know that)

- always give both sides IF it has 2 sides

3) **Classic Issue-Spotting**: fact situation – tell issues, legal standards, what Π/Δ will argue and who will probably win.

- to be an issue, something has to have 2 sides. Never obvious. Don’t waste time talking about non-issues.

- Start w/ standard, then everything that follows must relate to standard.

- How does standard apply to facts? Tell what standard is and how Π will use, then how Δ will use

- What should legal standard be? Tell last place standard was settled, then how it should be extended to help Π, how to help Δ. (Last case said “this” and should be extended to this case b/c; then other interpretation of last case)

- Do not allow way in which an issue is resolved to prevent you from discussing other issues raised by the problem.

- do issues in self-contained units.

- don’t have to repeat yourself b/t issues. But, nothing in 1 part carries over to another

4) **Jurisprudential kind of Q** – view whole course through some kind of philosophical lens.

- Have a thesis – whether you agree or disagree w/ philosophical proposition

- use examples from diff. parts of course to support proposition

- Also, argue other side, w/ examples; then why you think you’re right.

No points for case names or statute/rule #s. Only for correct legal propositions.

* Degree of detail in pleadings should represent purpose they are to serve

**Objective of pleadings:**

1. Identify/separate legal v. factual contentions (facts 🡪 jury; legal Qs 🡪 judge)
2. Establish what party intends to prove at trial (in detail)
3. General notice of opponent’s contentions – “notice pleading”

**R8 – Pleadings should include:**

1. short plain statement of claim showing entitled to relief;
2. and demand for relief sought

***Case v. State Farm***

* Δ filed 12(b)(6) motion b/c Π failed to state a claim for relief
* Dismissed – ‘meddling/interference’ is piddling claim w/ no real dmgs; violation of civil rts had nothing to do w/ employment K
* Basically, just really poorly worded pleading

**Discovery**

**R26**: **Duty to Disclose**

* **(b)(1)** discoverable if relevant and not privileged
* **(b)(3)** Exception to privilege

**R33**: Ask if they possess evidence

**R34**: Ask to produce evidence

**R37**: Compel discovery 🡪 give evidence to the judge

***DiMichel v. South Buffalo RR***

* DiMichel wanted to compel discovery of surveillance films (action for dmgs based on injury at work)
* Allowed discovery only of tapes to be used in trial
* Only hand over tapes after the party requesting them has been deposed
* Generally, materials prepared for trial are exempt from discovery, unless a party can show a **substantial need and undue hardship** (R26-b-3)
* **Court needs 3 things to have jurisdiction over a person:**

1. Subject matter jurisdiction

- Diversity

- Federal question

2. Personal jurisdiction

3. Proper venue

**Subject-Matter Jurisdiction**

Does court have power to decide kind of case Π brought (nature of the dispute)?

State courts have SMJ over almost everything. Must prove for fed cts.

**Must have Const’l Provision (AIII §2) + Statute**

**R 12(b)(1)** 🡪 motion to dismiss for lack SMJ – can be made at any time!

***Capron v. Van Noorden (1804)***

* SMJ can be disputed by Δ at any time b4 final decision (R12-h-3)
* Now, Π can’t dispute b/c R8(a)(1) requires basis for SMJ in pleading
* Can’t challenge after final decision ***(Des Moines)***

**States**: can hear practically anything, unless exclusively federal by statute

# Diversity: §1332

**Art III § 2** 🡪 minimal diversity – one Δ resident of diff. state than one Π

*(State Farm v. Tashire)*

**§ 1332 🡪 complete diversity** – no Δ resident of same state as any Π

*(Strawbridge v. Curtis, 1806)*

* Must be diverse at time of filing (unaffected by later changes)
* Citizenship = Domicile ≠ Residence *(Mas v. Perry)*
  + **Domicile**: true, fixed, permanent home, where person has intentions of returning
* Corporation citizen of 1) state where incorporated and 2) state where principal place of business
* Unincorporated Ass’n citizenship based on that of each member
* Executor or rep. is citz’n of state where person rep’ing is citz’n

**Policy**: Avoid discrimination against out-of-state residents; Allows forum-shopping

**Amount in controversy** 🡪 > $75K (no min. $ under Const.)

} *(AFA Tours v. Whitchurch)*

* Amount claimed by Π controls if made in good faith
* Dismissal only if appears to legal certainty that < jursd’l amount
* 1 Π against 1 Δ can aggregate claims to meet amount
* 2 Π’s can only aggregate amounts when joint, indivisible claim *(Mas v. Perry)*
* Several Π’s can aggregate claims to meet amount only when “common undivided interest”
* Under § 1332(b), judge can punish Π who rcvs <$75K in fed. ct. if he believes claim was frivolous, by imposing costs.

**§ 1359 🡪** no SMJ when party joined or assigned to attempt to have SMJ

**§ 1367 🡪**min. div. when >75 killed in same accident and at least $5 mill in controversy

# Federal Question 🡪 A3§2 + §1331

* Cases rising under fed. law
* Π original claims all that matter. Cannot presume defenses or c/c’s *(Mottley)*

## Osbourne Test (Federal Ingredient)

* + Is there any fed. ingredient to Π’s claim (no matter how remote)?

## Holmes (Creation) Test *(Harms v. Eliscu)*

* + Is the cause of action created by the federal sovereign?
  + EXP: No jursd. if no fed. issue to decide, even if fed. created

*(Shoshone Mining cases 🡪 fed created, but dependent on local customs)*

* *Smith –* if remedy depends on construction/application of fed. law, and rest upon reasonable foundation, fed ct. has jursd., even if state-created cause of action. *(confined to v. sm. scope by Empire Healthcare)*
* *Moore –* Cannot make fed. claim in anticipation of defense (no contributory neg. if Δ violated state/fed ee-safety laws)
* Not enough if state-created claim requires interpretation of fed. law, but issue under state law must turn *necessarily* on fed. issue

### Private right of action?

### Right to relief depend *necessarily* on fed. issue?

### *(Merrell Dow)*

### Fed. element sufficiently important? (state v. fed. interest)

E.g. – *Grable*: only 1 issue, which was federal

*Empire Healthcare v. McVeigh*: issue rested on K law, so state ct

## Org. Jrsd. by Statute:

### Bankruptcy (§1334), Commerce/Trade (§1337), Patent/Copyright (§1338), Const’l Issues/Civil Rts (§1343), US as Π (§1345), US as Δ (§1346)

# Supplemental Jurisdiction 🡪 A3§2 + §1367 (1991)

Pendant jursd: Π adds claim w/o independent basis for SMJ to one w/ basis for SMJ

Ancillary jursd: Π or Δ adds claim w/o basis through c/c, cross-claim, or 3rd party complaint

## Gibbs Test: Do claims arise out of the same transaction?

* + Transaction = sing. wrongful invasion of sing. primary act, whether 1 act or many (“common nucleus of operative fact”)
  + If SMJ exists at time of filing, never goes away; T4, fed. claim must be fairly arguable when filed

## Exceptions for SJ in actions under §1332, when claims would destroy diversity:

### Claims by Π AGAINST joined Δ’s , under

* + - R14 🡪 Δ, as 3rd party Π joins 3rd party Δ

*(Kroger)*

* + - R19 🡪 Required joinder
    - R20 🡪 Permissive joinder
    - R24 🡪 Intervention

### Claims by Π’s required to join under R19

### Claims by intervening Π’s under R24

### NOT for Π’s permissively joined under R20

* + Can’t do indirectly what you couldn’t do directly!!!

## § 1367(c): When cts can refuse SJ:

### Claim raises novel/complex issue of state law

### Claim substantially predominates

### All claims w/ org. jrsd. dismissed

### Exceptional circumstances or compelling reasons

# Removal

## §1441🡪

## (a) Δ can remove if Π could have brought in fed. ct.

* + (b) If SMJ based on fed. Q, can always remove, but if based solely on

diversity, can’t remove if Δ resident of state.

* + (c) Fed. Q 🡪 can remove entire case, but DC has discretion to remand any

issues in which state law predominates.

* + - If seeking same remedy for state and fed. claims, removal for all should be granted, and no claims remanded *(Lancaster)*
    - Fed. Ct. must send state claims back when they don’t satisfy the *Gibbs Test 🡪* when not same Const’l case
    - T4, joining unrelated claims in state ct. can prevent removal b/c inefficient

## §1442🡪Federal Officers

* + (a) the US, any agency or officer, or Congressman, sued for any act

relating to official duties

* + (b) nonresident US civil officer personally served w/n state by alien can

remove to DC of same state

## §1443🡪Civil Rights removable

## §1445🡪Nonremovable: against RR, under Fed. Eployer’s Liability

## Act, under state’s workmen’s comp, under Violence Against Women

## §1453🡪Class Actions (R23)

## §1446🡪Procedure to Remove

* + (a) file notice of removal following R11
  + (b) w/n 30 days of time Δ rcvs Π’s pleading or is served OR w/n 30 days of time it becomes removable; BUT not more than 1 yr after commencement if based on diversity under §1332
  + (d) notify adverse parties and state clerk

## §1447🡪Procedure after Removal

* + (c) motion to remand w/n 30 days (unless b/c SMJ, which if lacking, the ct

can remand at any time b4 final J)

* + (d) order remanding to state ct is NOT reviewable, unless it was removed

b/c civil rights (§1443)

* + (e) joinder after removal: if it will destroy SMJ, ct can deny joinder OR

allow and remand to state

**Must satisfy Due Process Clause of 14 Amd. + Statute**

**Court Needs Power + Proper Notice**

**R 12(b)(2)** 🡪 motion to dismiss for lack of PJ – must be made when filing response

# Power over Person

## *Pennoyer v. Neff*

* If court does not have proper personal jurisdiction, Δ cannot be bound by ruling

Types of cases that could be brought in 19th century:

### True-in-rem: ask court to declare title (quiet title action)

### Quasi-in-rem I: ask court to choose who has best title (action for

### ejectment)

### Quasi-in-rem II: can’t serve Δ, so proceed against property he has w/n

### jrsd. of court (really has nothing to do w/ property)

### In personam: action against person

## *International Shoe*

* Jurisdiction proper if minimum contacts so as not to offend “traditional notions of fair play and substantial justice.” (activities systematic and continuous)
* Standard, not rule! 🡪Examine fairness in every case

### *Gray v. American Radiator* (high-water mark of *Shoe* for torts)

2 Possible Holdings:

1. NARROW: Can be sued wherever you expect to make money. If products sold in state, probably proper
2. BROAD: Subject to jrsd. wherever tort occurs (where neg. effects felt)

### *McGee* (high-water mark of *Shoe* for contracts)

* Min. contacts even though only 1 insurance policy in state

## *World-Wide Voltzwagon*

* Even w/ proper long-arm statute, Δs should be able to reasonably anticipate suit in forum state.
* ‘foreseeability’ of product in state not enough *(Hanson v. Deckla)*
  + If it was, amenability to suit would travel w/ chattel
* Took narrow view of *Gray*
* Only looked at convenience to Δ.

## *Burger King*

* “purposeful availment” 🡪 minimum contacts
* Weigh burden to Δ against interest to Π, forum state, and judicial system

**\*Always do it the “Burger King” Way!!!**

## *Asahi*

* Justices split on reasoning for decision that PJ improper. 4 thought not min. contacts, others thought interest alone was insufficient.
* **Purposeful Availment:**
  + **O’Connor**: must have ***intent*** for goods to end up in forum state
  + **Brennan**: must have ***knowledge*** that goods end up in forum state
* Consistent w/ *Gray* if take narrow view of *Gray* and agree w/ O’Connor
* Inconsistent w/ *Gray* if narrow view and agree w/ Brennan OR broad view

Should not have analyzed interests at end of case! Under *Pennoyer*, PJ exists at beginning of case or not. T4, fact that only cross-complaint left at end should not have mattered, and they should have had PJ!

## General Jurisdiction

* ***Perkins v. Consolidated Mining*:** If claim has no relation to forum state, but Δ has sufficient contacts, Due Process neither compels nor prohibits state ct from hearing case. May choose to hear or decline
* ***Helicopteros*:** insufficient contacts – contact must be “systematic and continuous” if claim has nothing to do with forum state

**Sovereignty Branch**:

‘purposeful availment’

Intentional contact w/ forum?

(O’Connor in *Asahi*)

Knowledge of contact w/ forum?

(Brennan in *Asahi*)

**Fairness Branch**:

‘traditional notions of fair play and substantial justice’

Burden on Δ

Interest of Π

Interest of forum

Interest of jud’l system

v. v v.

# Power over Property

* Due process not diff. for inpersonam or in rem.
* Role played by property is basis for bringing Δ into ct.
* ***Shaffer v. Heitner (Greyhound)*:** DE statute that said all stock from DE corps located in DE 🡪 unconst’l b/c unacceptable risk of J w/o notice.
  + b/c would be bound by J under *Pennoyer*
  + Action in rem: seeks to bar all who might object to rt to be established, T4 must also pass test of *International Shoe & Burger King*

# PJ based on Physical Presence in forum state

## Plea in Abatement: Δ objects to place, time, or method of Π’s claim. Can be retried later on the merits if error is corrected

## *Tickle v. Barton (1956)*

* Attorney called Δ and got to come into jursd. by lying.
* Δ filed plea in abatement on appeal (couldn’t do that now b/c 12b2 only at beginning of trial)
* Granted b/c **can’t get PJ through fraud**

## *Burnham (divorce case)*

* Split ct based on jurisprudence (legal philosophy)

Scalia 🡪emphasizes history – “traditional notions” – service in state enough,

* + Validation = pedigree; ‘trad. notions of fair play and subst’l justice’ is an analogy for physical presence.
* Brennan 🡪more progressive – wants to *interpret* law – apply *Int’l Shoe to Q-R I*
* *Shafer* statement that all assertions must be evaluated by Int’l Shoe was extending power of quasi-in-rem. Should not be taken out of context.

# Providing Notice

## 5th Amendment: Due Process for Federal Cts

### Is there a federal rule or statute allowing service?

* + - There are some fed. long-arm statutes
    - Some nation-wide service of process statutes
    - **Rule 4(k)(1)**

1. Service ok if state ct would have jrsd *(DeJames – no jrsd.)*
   * + - T4, need D.P. of 14th Amd. + Statute
       - Do Burger King Test
2. OR, if party joined under R14 (3rd Party) or R19 (required) and served no more than 100 mi.s from place summons issued

(100 Mile Bulge Rule)

1. OR, if authorized by fed. statute
   * + Under R4(k)(1), state jrsd same as fed. jrsd. 95% time

### Is it constitutional?

* In action in rem, proceeding may deprive persons of property rts *(Pennoyer)*, so must have proper notice under Due Process

*(Mullane)*

* Notice satisfies Due Process requirement of 5th/14th Amd. when it is reasonably calculated to give actual notice.
* Notice by publication okay if names/addresses are unknown

**POLICY**: must balance benefit of ensuring notice against cost of providing notice

# Providing Opportunity to Be Heard

## *Fuentes*

* Narrow holding: D.P. requires that Δ must have pretrial hearing before any property may be seized
  + Repossession w/o pretrial hearing is justified in exceptional circumstances, by gov. for pub. policy
* Broad holding: balancing test 🡪private interest to be affected v. risk of erroneous deprivation/value of safeguards v. interest to party seeking prejudgment remedy

## *Mitchell* and *Di-Chem* (revisionist)

* Depending upon how replevin is ordered, predeprivation trial is not always necessary.
* Affidavit must explain reasons for claim and replevin must be ordered by a ‘neutral decision-maker’ (judge)
* Inconsistent w/ *Fuentes* if narrow holding requiring predeprivation hearing
* Consistent if *Fuentes* just requires balancing b/c justified claims to judge

## *Connecticut*

* Judge ordered attachment of prop. b4 case for assault/battery
* Statute unconst’l b/c facts submitted to judge were 1-sided
* Inconsistent w/ *Mitchell/Di-Chem* b/c affidavit more than conclusory and was issued by a judge
* Consistent w/ *Mitchell/Di-Chem* b/c more complicated. Property had nothing to do w/ 1-sided tort claim. Balance is different

**Levels at which the law operates:**

1. Language
2. Legal History
3. Policy
4. Jurisprudence (Legal philosophy)
5. Constitutional Law

**Questions for Choice of Law:**

1. Apply fed or state law?
2. If state, which state’s law?
3. How does fed. ct. apply that law?

# Rule of *Swift v. Tyson* (1842)

* Fed. cts bound by state statutes, but not state common law. Applied “fed. common law”
* **§1652 (Judiciary Act)** 🡪interpreted “laws” of states as statutes only

**Policy for overturning**:

* + Allowed discrimination by non-citizens against citizens in diversity cases
  + Promoted forum-shopping *(Taxicab cases)*
  + Prevented uniformity
  + In-state Δ’s couldn’t remove, so Π had only choice
  + Impossible for equal protection under the law

# *Erie* Doctrine:

* **§1652 (Judiciary Act)** 🡪interpreted “laws” of states as statutes + common law
* Law of states governs all cases, except matters governed by US Const/fed statutes
* No fed general common law

**POLICY**:

1) discourages forum-shopping,

2) avoid unfair administration of laws,

3) Federalism

* Is Const’l statement a holding or dictum???
* Arguably, interpreting §1652 is only thing necessary to decide case, so Const’l statement would be dicta.
* BUT, it is holding b/c Brandeis says explicitly that they would not have gone against such long history, but for the Const’l issue.

# *Guaranty Trust v. York* (OUTCOME-DETERMINATIVE TEST)

* Would disregarding state law significantly affect outcome? If YES, apply state
* Substantive (state) v. Procedural (fed)

*Hannah 🡪* careful, b/c anything is arguably procedural!

* Prevents forum-shopping (so consistent w/ *Erie*)
* (Statute of lims affects outcome, so apply state’s)

POLICY: Can’t give recovery if rt to recovery unavailable by state.

JURISPRUDENCE: Legal Realist 🡪 No right w/o remedy

(unenforceable right ≠ right)

* When fed Rule does not cover issue, state statute governs – i.e. tolling of statute of lims not covered by R3, so apply state *(Ragan)🡪(*reaffirmed by *Walker)*

# *Byrd v. Blue Ridge* (BALANCING TEST)

* Is there an important federal policy interest? If YES, balance fed v. state interest
  + Rt to jury not likely to affect outcome, but strong fed. interest b/c 7th Amd
  + Jury v. judge deemed procedural
* Seems inconsistent w/ *York* and *Erie* b/c promotes forum shopping and can affect outcome
* BUT, can be reconciled b/c no countervailing fed. interest in *York*

# *Hannah v. Plumer*

### Is there a fed. statute or rule that governs? Is it broad enough?

* + - Art 1, §8 🡪gives Congress power to make rules
    - §2072 🡪Rules Enabling Act: Congress gives US S Ct power to make rules of *procedure* (R valid under statute if *arguably* procedural)

### Is it w/n Const’l power of Congress to create?

* + - Art 6 – Supremacy Clause

### Does choice of law affect choice of forum? If NO 🡪 procedural, so fed. (more important than whether it will affect outcome)

* + R4 for process of service trumps state service rules in fed forum
  + Didn’t choose forum b/c R4; Used R4 b/c in fed. forum
* Inconsistent w/ Erie policy b/c app of fed. Rs invites forum-shopping
* Consistent b/c deals w/ procedures, not substantive issues

Rest of *Erie* progeny grandfathered-in 🡪 still valid law.

* + Broad enough = conflicting; If fed. R is silent on issue in state statute, they are not in conflict, T4 not broad enough 🡪 apply state statutory law

**POLICY**: swing away from state rts. Now, most important is that federal laws governed by uniform set of procedures

# *Gasperini*

* If you can honor state law w/o disrupting federal process, should make room for it where you can.

**2 Readings:**

### Consistent w/ Hannah, if…

* + - When applying Hannah test, not broad enough, subst’l state interest (b/c tort reform), and outcome determinative, so apply state law (deviates materially standard to review jury verdicts)

### Inconsistent w Hannah, if…

* + - Read to imply that it doesn’t matter even if broad enough and should apply state law whenever you can w/o injury

# *Stewart v. Ricoh*

* Diversity case about breach of K, w/ forum-selection clause for Manhatten
* Brought in AL, but AL doesn’t like f-s clauses
* Ignored state law and allowed xfer b/c said §1404 passed Hannah
  + BUT, under reasoning in Ragan/Walker/Cohen, §1404 does not seem broad enough b/c does not mention forum-selection clauses.
  + T4🡪possibly inconsistent w/ Hannah, etc.

**HANNAH TEST**:

1. Is there valid fed. rule/statute that governs and is broad enough (conflicts w/ state policy)?

**NO**

**YES**

1. Is it w/n Const’l power of Congress to create?

**NO**

**YES**

1. Does applying fed. law promote forum-shopping?

**NO YES**

**BYRD TEST**:

**Balance**

State interest stronger?

Federal interest stronger?

**YORK TEST**:

Would disregarding state law significantly affect the outcome?

**NO YES**

**Look through *Gasperini* lens**

Can you honor state law w/o disrupting federal process?

**NO YES**

# Choosing Appropriate State’s Law

## *Klaxon*

* Fed. cts must apply conflict-of-law rules of the states in which they sit
* Proper function is to ascertain what the state law is, not what it should be
* Consistent w/ *Erie* b/c discourages forum-shopping

## *Van Dusen*

* When case xferred (under § 1404[a]) b/t fed. cts, apply law of state where action was filed, not state xferred to
* Also discourages forum-shopping

# Ascertaining State Law

## *Mason v. Emery Wheel*

* When applying state common law, fed. judge must predict what the highest ct. of state would do NOW.

### Look at recent cases in high/lower cts

### Look at modern trend (other states, RST, etc.)

* Most recent case on point was 30 yrs old, “harsh,” and against modern trend
* **Inconsistent** w/ *Erie* b/c promotes forum shopping 🡪 go to fed. ct. if don’t like state common law, so you can ask judge to ‘predict’ that they would change it. Fed. ct can change law at trial level, but state ct. only at highest
* **Consistent** w/ *Erie* b/c if state law applied by fed. ct. was frozen, would also promote forum-shopping b/c state cts would potentially overrule old cases, but fed. cts would apply outdated laws.

\*Fed. cts need to be dynamic to mirror state cts

# Federal Common Law

*Erie 🡪* “no federal ***general*** common law”

**7 Areas of Federal Common Law:**

### Constitutional/Statutory Interpretation

* + Interpreting against Const’l backdrop
  + i.e. *Roe v. Wade* created right to privacy based on Due Process; statutory interpretation in *Dice* case (below)

### Implied Rights of Action

* + Apply private right of action by determining Congressional intent

**Clearly NOT *general* common law**

* + Only fed. law can determine meaning; looks at statutory backdrop
  + i.e. *Merrell Dow*

### Interstitial Laws

* + Filling in gaps in statutory scheme (i.e. ambiguous words)
  + Necessary that fed. law must solve problems not addressed by statute
  + Fits decision into existing framework
  + Only borrows as much as it wants to; sometimes local state law to make fed. common law
  + i.e. *Dice* case – no provision for fraud vitiating release in FELA

### Implied from Grant of Jurisdiction

* + If SMJ is federal, assume fed. common law okay.
  + i.e. Admiralty – concerns fed. relations; Labor – extensively regulated by fed. gov., so huge fed interest
  + More policy reasons than jurisdictional

**Arguably IS *general* common law, but it is NECESSARY**

### Property Interests Created by Federal Law

* + Exception, rather than rule
  + Only if sufficient need for fed. common law

### When Property Relations of US Involved

* + Also exception, rather than rule 🡪 only when necessary
  + i.e. *Clearfield Trust*

### When International Relations of US Involved

* + Whether to apply ‘Act of State doctrine is fed. Q
  + Avoid applying state law when could create another

# Federal Law in State Court

* All state courts apply federal law on fed. Q’s (no fed. Q jrsd. until 1875)
* State and fed. cts only obey direct line of appeal, not each other.

## *Dice v. Akron*

* Use fed. law b/c turns on federal statute – Employer’s Liability Act
* No federal common law on whether fraud vitiates release, so look to Congressional intent 🡪 wanted Π to have better chance of winning
* Also, issue of rt to trial by jury b/c j.n.o.v. used in trial ct. (jury pro-Π) 🡪 jury necessary for fed. Q, tied up w/ Congressional intent

**Apply federal law when:**

### Issue is bound up with the rights Congress though it created

### State law may not use its procedures to unduly burden federal claims

### (standard, not rule)

**Federal Law in State Courts:**

### If no federal common law, must determine Congressional intent

### behind the statute

### With state or fed. rules of procedure that can also be substantive, must

### also look at Congressional intent

### Consistent w/ *Byrd* b/c fed. interest was high in both cases, or b/c rt. to jury trial emphasized. Rely on Supremacy Clause 🡪 more imp. than 10th Amd (federalism - *Erie*)

* **Inconsistent w/ *Byrd*** b/c if required to apply fed. procedures in fed. ct, should be required to apply state law in state ct.

**Choice of Venue depends upon**:

1. Theory of claim
2. Subject matter of claim
3. Parties involved
4. Or, combination of 1 – 3

\*Usually governed by statute

**R 12(b)(3)** 🡪 motion to dismiss for improper venue – must be made at time of filing

# Local Actions

**Transitory Actions**: when transactions could have occurred anywhere.

**Local Actions**: when cause is by nature necessarily local 🡪 venue only allowed where land is located

*Livingston v. Jefferson* (1811)

* Could not have brought action in New Orleans (where property located) b/c could not serve there, so no PJ
  + Ok now b/c *Burger King’s* purposeful availment
* Π had clear right w/o a remedy (some would say T4 no right)

# Federal Venue Standards

# § 1391

###### When founded only on **DIVERSITY**, action can be brought only:

### Where any Δ resides, if all in same state

### Where substantial part of events giving rise to claim occurred, or subst’l part of property subject of action located

### Where any Δ subject to PJ at time of commencement, if no other place to bring

###### When **not** founded only on diversity, action can be brought only:

### Where any Δ resides, if all in same state

### Where substantial part of events giving rise to claim occurred, or subst’l part of property subject of action located *(Bates v. C&S Adjusters)*

### Where any Δ may be found, if no other place to bring

###### (c) Corporations reside where they are subject to PJ!!!

(d) Alien sued anywhere

(g) If supp’l jrsd under §1369, venue wherever Δ resides or subst’l events

- Does not matter whether contact was intentional.

(*Bates* 🡪 should have been dismissed for lack of PJ b/c R4k1 – 14th Amd. – fails sovereignty branch of Burger King b/c did not know or intend for letter to reach Π in NY when forwarded there, BUT, waived rt to object when failed to make motion at beginning of case!)

# Transfer

**§1404** 🡪DC can xfer to anywhere it may have been brought, for convenience of parties/witnesses, and in interest of justice *(Hoffman)*

**§1406(a)** 🡪 xfer or dismiss for improper venue

**§1407(a)** 🡪 xfer multidistrict claims for pretrial proceedings, then remanded back to original district

* 1st Circuit Ct to rule on xfer issue stands. Can’t go back and forth. *(Colt Industries)*
* ***Van Dusen*** – xferred to try and get lower dmgs under Mass Death Act
  + ***US S Ct***: Applicable law follows xfer. *(also Ferens v. John Deere, 1990* – filed in PA to get longer S of Lims, then xferred)
* Consistent w/ Erie b/c discourages forum-shopping
* Inconsistent if Erie viewed as requiring uniformity b/t state and fed. cts in same state

**To determine if xfer proper, must analyze SMJ, PJ, and Venue in xfer forum**

# Forum non Conveniens “An Unsuitable Court”

* Even if forum is appropriate under the law, look at convenience of litigants and witness to determine if proper to dismiss b/c another forum more convenient
  + Π’s choice usually given high deference, but not if just rep. for decedent *(Piper)*
  + FNC does not rely on whether it would cause change in applicable law (but remedy should still be available)
  + Purpose is to lessen burdens of complex comparative law
  + Finding that Π’s forum would be burdensome is sufficient to dismiss FNC
  + Fed cts grant FNC motions at much higher rates than state cts b/c deference to other countries
  + Usually motion made by a party, but can be made by ct on own motion. No Rule governing.
  + Only used to xfer to ct’s of another sovereign. T4, from 1 state to another state ct, from fed. ct. to state ct. or to any other country
  + From state ct to fed. ct. is removal

Ferens – even if Π makes xfer motion, state law follows the case (does not matter why)

§1391: where any Δ resides 🡪 not clear if it means domicile, could be many residences

# Permissive Joinder R20

**Π or Δ may join if:**

1. seek relief or relief sought against them arising out of the **same transaction** or occurrence (Gibbs); AND
2. **Common Q of law** or fact to all will arise in the action

* MK v. Tenet

# Necessary and Indispensible Parties R19

(a) (1) Can’t join if will deprive of SMJ; **required to join if…**

(A) ct can’t give **proper relief** in person’s absence

(B) **Indispensible party**: person has interest relating to subject of action and failure to join would impair ability to **protect that interest**, or risk causing multiple or inconsistent **obligations**

(2) Ct must join if Π doesn’t

(b) When joinder isn’t feasible, ct must decide whether to dismiss

***Temple v. Synthes***

* Temple sued mnfr of screw that broke off in his back.
* US S Ct 🡪 not required to join Dr. or hospital b/c they were not necessary in order to grant proper relief
* **R12(b)(7)** 🡪 motion to dismiss for failure to join under **R19**

***Provident Tradesmen***

# Impleader Rule 14

🡪 A procedure by which a 3rd party is brought in, especially by a Δ who seeks to shift liability to someone not sued by Π

###### (a) When Δ brings in 3rd party Δ, original Δ becomes 3rd party Π. Needs ct’s permission if more than 10 days after serving original answer

* Does not require waiting until recovery is awarded 🡪 may conflict w/ state law, but fed. applies *(Jeub v. B/G Foods)*

**POLICY**: determine rts of all parties in one suit - efficiency

# Interpleader

🡪suit to determine a rt to property held by a usually disinterested 3rd party (*stakeholder*) who is in doubt about ownership and who therefore deposits the property w/ the ct to permit interested parties to litigate ownership

* Typically, stakeholder initiates an interpleader both to determine who should rcv the property and to avoid multiple liability

***Lundeen v. Cordner*** (S Judgment case) 🡪 insurance company interpleaded the trustee of the will under R22 (through cross-claim) b/c they were exposed to multiple liability (should have also interpleaded wife #2, but she intervened)

**Common law**:

1. All claimants seeking exactly same debt
2. Claims to debt had to arise from exactly same source
3. Disinterested stakeholder
4. No other claims against stakeholder

**Rule Interpleader (R 22)**

* **Jurisdiction**:
* COMPLETE diversity 🡪 normal SMJ, PJ, and Venue requirements
* Service w/n state or by long-arm statute
* > $75K (unless fed. Q)
* **No bond/deposit required**
* **Stakeholder can deny liability**

**Statutory Interpleader (§ 1335)**

* **Jurisdiction**:
* Min. diversity b/t claimants (stakeholder irrelevant)
* Nationwide service
* Only need $500
* **Stakeholder MUST post bond/deposit**
* **Stakeholder can deny owing $**
* **Ct may enjoin any action in any other ct that may affect property**

**RULE 22**

* Claims that *may* expose Π to double or mult. *liability* 
  + any possibility okay *(Pan Am Fire v. Revere)*
* Don’t need common origin, but can be adverse and independent
* (2) Δ can seek to interplead through crossclaim or counterclaim
* (b) supplements, but does not limit, R20 joinder; also does not limit actions under §§ 1335, 1397, 2361

**§1335: Interpleader Act**

Interpleader for $500 or more if (1) two or more adverse claimants, diverse under §1332(a) or (d) *are* claiming or *may* claim to be entitled to $

* Claims to $ do not need to have common origin, but can be adverse and independent
* Π *must* post bond – deposit $ w/ ct.
* Only needs minimum diversity b/t **claimants** *(State Farm v. Tashire)*

**§1397: Venue**

* Actions brought under §1335 may be brought where any claimant resides

**§2361: Injunctions and Process**

* DC may enjoin proceedings in state or fed. cts that affect object of interpleader
* Nationwide service of process

# Intervention R24

###### By **Right**, if

##### granted by fed. statute, or

##### interest related to prop or transaction and not joining would impair/impede

##### ability to protect interest

* + - UNLESS existing parties adequately represent their interest

(*Smuck v. Hobson* – school board rep’d all parents, not whites)

##### (b) **Permissive**:

##### - Conditional right by fed. statute, or claim/defense sharing common Q w/ main action (attorney general given right to intervene when US)

- gov’t officers

- Court must consider whether intervention will unduly delay or prejudice adjudication of original parties’ rights

**POLICY**: judicial economy by resolving disputes in single lawsuit and to prevent suit from becoming fruitlessly complex or unending

* Bind all parties w/ interest in suit
* Supplemental Jrsd. no longer applies to interveners! Must satisfy requirements on own grounds!

***Lundeen v. Cordner*** (S Judgment case) 🡪 wife #2 intervened (should have been interpleaded by ins. co.) b/c the current parties did not represent her interests. Could have sued in a separate case, but risking the chance that the ins. co. wouldn’t be able to pay twice.

# Class Action Requirements R23

In ordinary civil rights class action,

MR. Hansberry’s privy is not bound b/c

* This is a fairness problem. Why is it fair to bind someone whose class rep clearly didn’t rep them. (might say b/c rep’d by other side – but Δ agreed w/ Π in Hansberry 🡪 how to square w/ R23? – can have person rep class of Δ’s!!!)

###### Prerequisites:

##### **Numerous**: Joinder of all members impracticable (usually > 40

##### members)

##### **Common Q** of fact/law

##### Claims/defenses of representative parties are **typical** of the class

##### **Adequate representation** ***(Hansberry)*** – no conflict of interest

###### Types of Class Actions:

##### When separate actions of class members would risk ***inconsistent*** ***rulings*** that would create ***incompatible standards*** of conduct for opposing party, or when separate actions would affect interests of other parties

* Can’t opt out, so absent parties *necessarily* bound
* Includes mass tort claims, i.e. med. malpractice for liability

##### Party opposing class has acted in a way that applies generally to the class, so **injunctive/declaratory relief** appropriate for class

* Can’t opt out, even if rep. doesn’t have same interests ***(Hansberry)***
* Civil rights cases, primarily

##### Ct finds that **Qs of law/fact common to class members predominates** over Qs concerning individuals, so class action is **superior method** b/c more fair/efficient.

Ct looks at:

A) members’ interest in individually prosecuting/defending,

B) extent/nature of any suits already begun individually,

C) desirability of having all suits in the particular forum,

D) possible difficulties in managing a class action

* Members can opt out! 🡪NOTICE REQUIRED
* Most common type of class action; includes securities fraud, antitrust
* Also mass tort such as plane crashes and mass products liability, BUT these can be seen as having individual elements predominating
* Must consider variations in state law

**Certification**:

* Ct must certify class action at beginning in order for it to go forward
* **Likely** to certify when chance Δ will become insolvent b/c of **limited funds**, or when 1 issue is truly **central** to the claim
* **Unlikely** to certify when required to apply many states’ **differing** **laws** (like for mass torts), when individual **claims are larger** b/c could proceed on own), or when claim has not been tried before (**novel**)

# Due Process Requirements

* Not opting out is equivalent to consent. That party has the burden to act.

# SMJ

* Diversity based on citizenship of named parties only

*(Supreme Tribe of Ben-Hur v. Cauble, 1921)*

* As long as 1 named party meets min. amount in controversy, others can piggyback, no matter how small their claim

*(Exxon v. Allapattah)*

* Allowed b/c § 1367(b) does not prohibit supplemental jurisdiction in

class actions

* Separate and distinct claims cannot be aggregated to meet min. amount

*(Snyder v. Harris, 1969)*, EXCEPTION for more than $5mill, under CAFA 🡫

**Class Action Fairness Act of 2005**

**Purpose**: provide fed. forum for “interstate cases of national importance under diversity jurisdiction”

* SMJ ok if minimum diversity when amount in controversy over $5 mill.
* Unincorporated association is citizen of state where it has principal place of business and state under whose laws it is organized

**Exceptions**:

* primary Δ’s are States
* less than 100 members of class
* sole claim involves certain securities and corp. governance issues

# Personal Jurisdiction

* Only named representatives must meet PJ requirements
* Absent Π may be bound by the decision, even if no minimum contacts.

***(Phillips Petroleum)* 🡪** Exception to *Pennoyer*!

# 7th Amendment

* Does not apply to states, but Congress can pass law requiring it
* Not symmetrical – Never have right to bench trial

**Historical Inquiry**:

* “Preserve” the right to jury trial
* How would it have been done in England in 1791?
  + King’s Court: legal claims for compensatory dmgs 🡪 JURY
  + Chancery Court: equitable claims for injunction, specific performance

🡪NO JURY

Today, joinder and new types of claims create problems.

1. Did the claim exist in 1791?
2. Look at underlying claim/issue for declaratory J claims
3. Analogize to claim that did exist

Must follow **R38** to claim right to jury

* + Must demand no later than 10 days after pleading to issue served
  + Can demand jury only on some issues

# *Beacon Theatres*:

* Legal claims go to jury before equitable claims (injunction) go to the judge.
  + Some issues will invariably be collaterally estopped
* INCONSISTENT w/ 7th Amd. b/c…
* chancery ct would’ve enjoined parties from proceeding w/ legal claims in other court, so equitable claims would’ve been decided 1st in 1791.
* CONSISTENT b/c
* Viewed as old procedure, not important to 7th Amendment. Reason they would’ve gone 1st before no longer relevant b/c only 1 ct now.
* This is Court’s view! 🡪 History still matters, but not as important
* Compare reasoning to *York* or *Hannah*

# Instructing the Jury R51

* Judge tells jury what the law is so they may render J
* Both sides’ counsels may request instructions. Judge resolves conflicts. May err.
* Parties may object to instructions. If fail to do so, they waive that right

(***Alexander*** – wrong instructions about who has burden of proof for contr. neg.)

* Case may be reversed/remanded on appeal for improper jury instructions if the court made a **Plain Error**
* Not a plain error when fed. judge instructs for majority rule and app. law happens to be that of a small minority ***(Alexander)***

# Form of the Verdict R49

* Allows judge to give jury special Qs, but not to withdraw them after deliberation
* But, if Q is necessary for verdict, jury doesn’t understand, can take back a bad Q;
* Careful, b /c gives jury impression that Q is not relevant (ok if they deliberate after for a long time) 🡪 ***Diniero v. US Lines –*** hurt back w/ reach rod – judge took back confusing Q

# Jury’s Deliberation

**Common-Law:**

* Juror’s are allowed to discuss their **general** knowledge relating to a case.
* **Misconduct** = relating **special knowledge** or expertise relating to a case
* i.e. ***TX Employers v. Price***: juror related personal experience of working in iron works in attempt to persuade.

# Appeal

**R52(a)(6):**

* Appellate ct must give deference to trial ct in their determination of the facts
* Can only overturn ruling on facts if trial ct’s decision was ***clearly erroneous***!

***Hicks v. US –*** appellate ct was WRONG in reversing b/c did not give deference to trial ct. Reversed decision that Dr. was erroneous in diagnosis, but not negligent (woman died next day)

* **US S Ct (1985) – *Anderson***:

“Where there are **2 permissible views** of the evidence, the factfinder’s choice b/t them CANNOT be clearly erroneous.

* Emphasis on trial judge’s expertise in examining the facts.
* Don’t want efforts repeated in higher cts
* Emphasis on ***efficiency***

***(Lavender v. Kurn)***

* Ct Appeals reversed jury decision that RR was negligent when worker killed w/o witnesses by “some fast moving wm rnd object” 🡪 said not enough ev. to justify giving case to the jury
* US S Ct 🡪 cannot undermine jury decision when there are two reasonable inferences to be drawn from the evidence
* Q of Law 🡪 de novo – no deference needs to be given on appeal

Quantums of proof to overturn:

1. damages/ remittitur = “shock the conscience”
2. new trial granted/denied = “abuse of discretion” (*Gasperini*)
3. jury verdict for liability = “against the clear weight of the evidence”

# Summary Judgment R56

* Motion by 1 party claiming that he is entitled to prevail as a matter of law b/c there is no issue of material fact. Allows speedy disposition of case w/o need for trial. Ct may grant or deny in whole or part.
* **Material Fact**: will affect the outcome of the case, and raises a genuine issue if a reasonable jury could reach different conclusions concerning that fact.

**2 Q’s to Consider:**

1. What does the law require to prove the case?
2. Does Π have the proof?

* **Standard:** Would a reasonable juror have to find by relevant quantum of proof for the moving party’s claim?
* SJ inappropriate when inferences parties seek to have drawn deal w/ questions of motive, intent, and subjective feelings and reactions
  + These are Qs for the jury!
* **US S Ct**: SJ mandated by R56 after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial *(Celotex v. Catrett)*
* Can argue that SJ is inefficient b/c forced to have a minitrial, so wastes time if motion not granted. 🡪 Enough have to be granted to make the Rule efficient
* R56 penalized parties who make frivolous SJ motions in order to delay the trial, etc. by making them reimburse other side for expenses, and possibly being held in contempt (subsection g – affidavit submitted in bad faith)

***Alderman v. Baltimore & Ohio RR:***

* Π sued for willful/wonton misconduct after train derailed, but had signed waiver for negligence.
* S.J. granted for Δ b/c using older rails is only negligence, and Π waived rt.

***Lundeen v. Cordner (old wife v. new wife):***

* SJ for Δ wife #2 b/c overwhelming amount of ev. that husband did everything he could to change the policy b4 he died, and wife #1 offered no ev. to contradict that conclusion.
* **SJ in favor of party w/ burden of proof is very unusual**, but appropriate if evidence is so overwhelming.

***(Celotex v. Catrett) – US S Ct:***

* Wife sued Celotex after husband died, claiming that they mnfred products containing asbestos that killed him
* SJ for Δ proper b/c she had very little ev. (all inadmissible hearsay) that could not establish proximate cause

# Judgment as a Matter of Law

**Standard**:

**Whether a reasonable juror could find, by the relevant quantum of proof that Π/Δ has shown what it is they are being asked to find???**

## Demurrer

* At the end of trial, moving party admitted all facts shown by other party, as well as all reasonable *inferences*, and asked for ruling of court on “the law of the case”
* If the ct determined that there was enough evidence (standard = scintilla) to go to the jury, moving party lost no matter what jury would think
* Moving party won only if no legally relevant evidence
* Stopped being used in England in 1793 and US in 1826

## Directed Verdict R50(a)

* Motion for J as a matter of law at any time BEFORE case submitted to the jury – motion must specify J sought and law/facts relevant
* Not usually granted, but reserved until after jury decision (denied = reserved)
  + If granted, risk reversal on appeal and need for new trial
* Better for moving party than demurrer b/c does not risk J against him if denied, just proceeds to jury
* Does not violate 7th Amd right to jury trial b/c it is procedural. Only intended to preserve substance of right ***(Galloway – soldier case)***

**🡪 compare to *Beacon Theatres, Hannah*, etc.**

## Judgment Notwithstanding the Verdict (j.n.o.v.) R50(b)

* Motion for J as matter of law AFTER jury verdict
* Renews R50(a) motion 🡪 court reconsiders legal Q’s it reserved
* UNCONST’L if allowed w/o prior motion for DV (R50a) b/c violates reexamination clause of 7th AMD. ***(Slocum)***

(*Slocum* appeared to hold that j.n.o.v. itself unconst’l, but problem fixed by R50)

* Alternative is motion for **new trial** (can be made concurrently)
* Can be granted on **appeal**, only if motion made in trial ct *(Neely)*
  + B/c if granted, verdict winner must have ability to make motion for new trial

# New Trial R59

* If motion made for **insufficient evidence**, usually made concurrently w/ motion for j.n.o.v. (R50b)
* If made on issue of **damages**, ct may ask for remittitur as alternative

Remittitur: parties agree to reduced dmgs

* + - Court determines range that would be reasonable. Majority rule is that highest amount in range is given on remittitur
    - Some jurisdictions give lowest or middle of range
    - Const’l under 7th Amd b/c it was **done in 1791**; also b/c it is w/n amount granted by jury ***(Dimick)***

Addittur: court grants increased dmgs as alternative to new trial

* + - UCONST’L under 7th b/c **not done in 1791** and is giving something that jury never gave ***(Dimick)***
    - States allowed to use b/c not bound by 7th Amd.
* BUT, aren’t remittitur/addittur just procedural???

# REMEMBER…

* Always ask Res J questions before C. Est. questions.
* Always exception to Res J when issue was unavailable in 1st case
* Even if issue/claim is not barred, the court may still rely on ***Stare Decisis***!

# Bar by Rule

* If you don’t do something when you’re supposed to do it, you can never do it.

***US v. Heyward Robinson***

Counter-claim: **R13** – failure to bring a compulsory c/c in 1st action will bar it from being brought later. c/c or supp. jursd. under §1367 requires claims to be from ***same transaction***

* *Transaction* is a word of flexible meaning.
* **Tests for compulsory c/c**: *(Moore v. NY Cotton Exchange)*

1. Are the issues of fact/law raised by c/c largely the same?
2. Would Res J bar later suit on Δ’s claim absent compulsory c/c?
3. Will substantially same evidence support/refute Π’s claim as well as Δ’s c/c?
4. Is there any logical relation b/t the claim and the c/c?

# Defense Preclusion:

“Cannot use same defense, first as a shield, and then as a sword”

* Barred from reasserting as a claim what was previously used as a defense (if don’t use as a defense in 1st case, even if available, can use as a claim later)
* Should make c/c in 1st suit
* 90% of defense preclusion doctrine has been covered by compulsory c/c
* Compulsory c/c is much broader!
* Now, D. Preclusion only relevant in state cts w/o comp. c/c rules, and when there is an exception to R13a

***Mitchell v. Bank***

Mitchell won 1st case as Δ, based on bank agent’s fraud, then tried to bring another action seeking an accounting for same transaction.

* Dismiss b/c claim barred under defense preclusion
* **Should have made c/c in 1st case if he wanted $ over what Π was seeking**
* In many states, doctrine only bars you if you lost in case #1, so Mitchell would have been allowed to proceed in those states

# Res Judicata (Claim Preclusion)

Res Judicata = “a thing decided”

* Bars claims that both *might* and *should* have been brought in 1st litigation
* Parties must be identical to 1st suit
* **Always an exception to Res J if claim was unavailable at time of 1st case!!!**

(i.e. lack of PJ or SMJ can mean claim unavailable)

* If won 1st case, related claims are ‘merged’ into judgment
* If lost 1st case, related claims are ‘barred’ from further action

**Common-law**: only barred claims that were part of same cause of action;

1 injury = 1 cause of action

**Modern**: bars claims from the same transaction

* Remember, transaction = *same nucleus of operative facts* (*Gibbs*)
* Can’t split cause of action!
* i.e. ***Rush***🡪can’t bring separate actions for personal injuries and property damage from same motorcycle accident

**POLICY**:

1. relieves parties of cost and vexation of multiple lawsuits
2. conserves judicial resources (efficiency!)
3. encourages reliance on adjudication by preventing inconsistent decisions

***Des Moines***

**US S Ct**: cannot challenge SMJ after a final decision has been reached in 1st case.

* Iowa Homestead brought 2nd case in state ct for same claim after losing in 1st case, challenging SMJ in 1st case
* Can’t do it – Res J and FF&C

***Jones v. Bank*** 🡪 **crazy effects of Res J:**

Jones didn’t make payments on car, K had acceleration clause that all became due on default; but, bank only sued for 2 mos. So, when they repo’d the car and Jones sued for conversion, they were barred from asserting that he owed them $. Waived rt by not seeking all $ due under the K in 1st action 🡪 so, Jones got the car w/o paying for it!

* Philosophy: legal realist – no remedy, so no rt **(compare to Frankfurter in York)**

LOOK UP: (when 2 independent holdings, like in *Vasu*, majority of cts choose narrower one, but some say both and some say neither)

# Collateral Estoppel (Issue Preclusion)

* **Always ask Res J questions before collateral estoppel questions!!!**
* Once a fact is decided, a party may not re-challenge the same fact
* Only applies to questions of fact or application of law to facts, not on purely legal questions (***US v. Moser*** – whether naval officer considered as serving in Civil War is an app. Q, so US was estopped)

**6 ELEMENTS:**

1. Issue has to be EXACTLY the same as in 1st case
2. Issue in 1st case is something losing party had **full and fair opportunity** to litigate

* Incentive to litigate - $1K v. $1 mill at stake
* Procedural opportunity – small claims ct v. District Ct.

1. Issue must have been **ACTUALLY litigated** (diff. than Res J)
2. Must have been **necessary** to judgment
3. Judgment must be **valid, final, and on the merits** (if lose on SMJ, that’s all that’s binding)
4. Traditional – must have been a party/privy in 1st case to be bound by it (this is changing! – most exceptions involve vicarious liability)

***Cromwell v. County of SAC***: no issue preclusion b/c issue of whether he was a bona fide purchaser was not actually litigated b4, not same issue; but issue of fraud would be precluded b/c already established

***IRS v. Sunnen***: US S Ct said C.Est. did not apply b/c 1st issue was ‘who rcvd the income?’ and 2nd issue was ‘who controlled the income?’

Really, this shows that tax policy makes it more important for uniformity among tax payers than uniformity among cadets, as in *Moser.* Or, could square with *Moser* by arguing that new conduct was involved in 2nd case here.

**Issues w/ Jury Decisions:**

* If many issues are litigated in 1st case, but judgment is unclear on which issue(s) it’s based, all issues can be relitigated (b/c don’t know if its necessary to judgment)
* T4, normal jury verdicts typically do not lend themselves to issue preclusion

(i.e. ***Russell v. Place*** – no way to tell if jury ruled that Process 1, 2, or both were novel)

* Party seeking preclusion in 2nd case can offer extrinsic ev. to remove uncertainty as to which issues were actually decided (i.e. ev. in trial, jury instructions, dmgs in 1st case)
* When jury uses special questions, tends to be clearer which issues were decided (i.e. ***Rios v. Davis*** – special Q’s showed that jury decided all were negligent)
* If you can change findings in regards to parties in 1st case, and get same result, that finding was NOT NECESSARY to the J! ***(Rios v. Davis)***

**Alternative and Independent Holdings:**

Majority: both possible holding are binding for C.Est. Unless loser appeals; then, any ground not decided by appellate court is no longer good C.Est.

Minority: neither holding is binding for C.Est. Unless loser appeals; then any issue decided by appellate court becomes binding for C. Est.

**Mutuality: *Berhard v. Bank of America***

* Due Process forbids asserting C.Est against a party unless he was bound by the 1st ruling. (bound only if party/privy)
* Now: party asserting C. Est. not required to have been party/privy (widely recognized)
* Unjust to allow one who has had day in ct to reopen same issue by switching adversaries
* *Bernhard*: b/c she lost issue of whether $ was gift or stolen, she lost the issue to all potential Δ’s; but, if she had won, would have been required to relitigated against other Δs. 🡪 this is **Defensive use of Collateral Estoppel**!

**Non-Mutual Collateral Estoppel:**

* Not 7th Amd violation: C. Est. is more procedural, so doesn’t matter that they didn’t have non-mutual in 1791 (non-jury) 🡪 see *Galloway, Redman, etc.*
* US S Ct says to look at it on a case-by-case basis. Consider:
* Whether party being estopped had full + fair opp. to litigate (incentive & procedures)
* Whether party seeking estoppel was sitting on the sidelines playing “heads I win, tails you lose”

**Offensive Use of Collateral Estoppel: *Parklane Hosiery v. Shore***

* If a Δ loses a first suit, others can bring subsequent actions and estop that Δ from asserting a defense on an issue that was already decided.
* Generally, not allowed when party could have easily joined 1st suit *(Parklane – can’t intervene w/ SEC)* or if it would be unfair to Δ (see above)
* Does not promote judicial economy in same way as defensive use.

**Impermissable Collateral Attack:**

* Failure to intervene in 1st case cannot have preclusive effect (US S Ct)
* Rules can require joinder (R19), but not intervention (R24)
  + Remember, Congress can change rules!

***Martin v. Wilks*** 🡪 white firefighters not precluded from arguing issue of reverse discrimination b/c not part of 1st case, so can’t be bound by it.

Black firefighters should have joined them so they would’ve been bound!

* Not bound by 1st case b/c ***Pennoyer*** & intervention is voluntary

**Previous Exam Q….**

***Civil Rights Act of 1991 overruled* Martin v. Wilks*, saying that if potential parties knew about the case and didn’t intervene, they couldn’t bring a new case. Is this Act unconstitutional?***

**Yes**: *Pennoyer* states that Due Process requires PJ for party to be bound – as stated in *Martin*

**No**: Class actions are exception to *Pennoyer*, if interests are represented by a party in the litigation. Also, could argue that *Pennoyer* was dicta in *Martin*, and real holding only about intervention under R24.

# Full Faith and Credit (Inter-System Preclusion)

# A4§1 🡪 governs FF&C b/t states

**§1738 🡪** fed cts must give FF&C to state ct decisions

**A3§2 and A6 🡪** state cts must give FF&C to fed cts

* **Once any court makes a ruling, any other court must give it at least as much preclusive impact as the original court.**
  + Majority believe can’t give more, only same
  + Now extends to decisions of fed. and state agencies, too. They can have preclusive effect.

***Fauntleroy v. Lum*: (state to state – A4§1)**

* Π can sue in one jurisdiction and collect judgment in another 🡪2nd jurisdiction must respect the ruling of the 1st and enforce it
* Often occurs when Δ has no assets in the state that renders decision
* Doesn’t matter if 2nd jursd. thinks 1st made a mistake.

***Allen v. McCurry*: (fed towards state – §1738)**

* §1738 is not lightly regarded. Must have overwhelming persuasive ev. that an exception should apply
* McCurry convicted for drugs, he claimed illegal search + seizure, but judge in suppression hearing ruled ev. ok b/c it was in plain sight 🡪
* Then McCurry tried to sue cops in Fed. Ct for civil rts violation; cops claimed collaterally estopped 🡪 defensive use of C. Est. against former Δ.
* He is estopped b/c full + fair opp. to litigate in 1st case, so fed. ct. must give FF&C to that ruling.
* C.Est from state to fed ct
* (diff. from *Parklane* b/c cops were Δ’s, not Π’s in 2nd case, same b/c not in 1st)

***Semtek v. Lockheed Martin*: (state towards fed – A3§2 or A6)**

* 1st case in CA removed to fed. ct. 🡪 for Π on issue of strict liability
* 2nd case in MD removed to fed. ct, then back to state ct b/c Δ was MD citizen, so removal was improper
* MD ct must give FF&C to fed. ct. in 1st case b/c A3 or A6 (supremecy)
* MD must apply CA law
* Fed Ct in 2nd case would’ve had to give FF&C to CA state ct

**EXP**: fed ct in diversity, applying state law 🡪 choose state law when deciding preclusive effect.

* Won’t apply state law if any injury to fed. interests (Gasperini), i.e. If CA had no compulsory c/c rule

***Des Moines***

**US S Ct**: cannot challenge SMJ after a final decision has been reached in 1st case.

* Iowa Homestead brought 2nd case in state ct for same claim after losing in 1st case, challenging SMJ in 1st case
* Can’t do it – Res J and **FF&C**

**SMJ:**

Court’s disagree about how much injunction is worth. Π’s view/Δ’s view/hybrid such as person who invoked fed. jurisd.

Legally indivisible ≠ closely related 🡪 must be impossible to legally divide case

R60(b) 🡪 how you can reopen case. If default, can reopen if you have a good reason to default. Different to decide though first case is final, whether it would be preclusive in 2nd case (matter of common law 🡪 if default J, may challenge PJ or SMJ, or if manifest mistake in 1st case)

* *Smith* is an exception to *Holmes* (some non-federally created claims can still arise under fed. law)
* §1441(c) – Δ can remove even if Π could not have brought. Also, §1443 (Civil Rts, Δ can remove if Δ has fed. Civil Rts defense) this is an example of removal jurisdiction being broader than regular.
* If state joinder rules allow unrelated claims to be joined, whole case can be removed, but fed. judge must remand state claim back to state court b/c of A3§2

But for the fact that the state had ridiculous joinder rules, there would have been two sep. cases filed in state ct only.

* Named Π’s in class actions must have $75K
* Under Class Action Fairness Act, minimal diversity and $5mill.

**PJ:**

* True in rem cases inevitably extinguishes some people’s claims (Holmes)
* Special appearances don’t exist in fed. ct.
* Calder only applies when you intend to cause bad effect in that state
* Specific jurisdiction is always better than general jursd. If you can do it under Int’l Shoe, would never sue under Helicopteros.
* Ask 4K Q 1st, then const’l Q 1st.
* Scalia in Shaffer argues that Int’l Shoe does not apply to Q-in-Rem I cases. Seizing prop is enough

**Choice of Law:**

Ask Gasperini Q at end of Hannah analysis

Test for whether rule is valid is if it is arguably procedural. Statutes is under Const.

Only time necessary to balance is when federal interest involved (York)

Hannah – no fed. rules have been found to be invalid

Woods – bringing something in fed. ct. that you can’t bring in state court would def. change the outcome (fed law silent, so no real conflict)

Legal realism – rights and remedies are part of the same problem (Frankfurter)

Formalism – rights exist in the air, problem is enforcement

Balancing always in eye of beholder

Look at Stewart – doesn’t make any sense!

In gasperini, standard about what applies at trial level, and standard of what applies at appellate level. At trial level, no 7th Amd problem, but problem at appellate level. Fed trial judge required to apply state standard when granting new trial

*Walker* says that R3 does not conflict w/ state statute lim. Tolling

**VENUE**:

Van Dusen leaves open Q whether law follows in forum non conveniens

Local action is common-law limitation on §1391

What if Penn law was such in Van Dusen that if FNC would’ve been granted and xferred to Mass. (either state or fed)

Temple case – absent party needed to be joined, but could not be joined, so dismissed from fed. ct b/c indispensible. Does not bar from refilling in state court!

Venue is supplemental as to 3rd party Δs

Exxon Mobile case – look at supp jurisd. of something