**Cluster 1. Jurisdiction and related matters (SMJ, PJ, Venue)**

Checklist:

1. Is there SMJ?
2. PJ?
3. Was D given Notice and Opportunity to be heard?
4. Was D served with process properly?
5. Does court have venue?
6. Can case be removed to Fed Court?
7. Have any issues been waived? 12(b) motions:
	1. (1): dismiss for lack of SMJ
	2. (2): lack of PJ
	3. (3): lack of proper venue
	4. (4): insufficient process
	5. (5): insufficient service of process
	6. (6) failure to state claim upon which relief can be granted
	7. (7) failure to join party under rule 19

**Traditional Basis for Jurisdiction:**

Pennoyer v. Neff: a state is all powerful within its borders, has complete territorial powers (this proposition has never changed)

Types of jurisdiction:

1. Territoriality: state has jurisdiction even when defendant is out of state on transitory basis
2. Domicile: follows you wherever you go, your domiciliary has power over you
3. Agency: agents are jurisdictional characters
4. Express consent: when you borrow money, rent an apartment you are consenting to jurisdiction
5. Implied consent: Hess v. Polasky, states passed statutes that said if you travel on state roads you are *impliedly* consenting to the registrar of motor vehicles as your agent
6. Consent that arises when defendant fails to assert a jurisdictional defense
7. Doing business or corporate presence

**Subject Matter Jurisdiction:**

The courts power to decide on the *kind* of case before it, questions should go to constitutional issues, FEDERALISM

Capron – no one ever waives the right to SMJ (12(h)(3)), Pleading 8(a)(1); can no longer challenge SMJ after final decision rendered (Des Moines)

1. *Diversity of citizenship jurisdiction:* need constitutional provision (A3§2 – minimum diversity) AND federal question/statute (§1331, §1332)
	1. **Complete diversity of all parties required** (Strawbridge v Curtis)
		1. A3§2: creates federal courts and defines their jurisdiction
		2. §1331: federal question cases
		3. § 1332: Diversity of Citizenship; amount in controversy; costs (A3 allows incomplete D.O.C. 🡪 1332 requires complete D.O.C)
			1. COMPLETE diversity of citizenship 🡪 everyone on the left of the “v.” in an action must come from a different state from everybody on the right of the “v”
			2. Citizenship for each party is determined on day complaint is filed
		4. §1332(a)(3): citizens of different states can have complete diversity even if there are additional foreign parties 🡪 an alien admitted to the US for permanent residence is deemed a citizen of the state in which they are domiciled
		5. 14th amendment: citizens are subject to jurisdiction wherein they reside
		6. Determining citizenship of particular parties:
			1. Individuals: Domicile = Residence + Intent to Stay (Mas v Perry)
			2. Corporations §1332(c): 2 citizenships,
				1. citizen of state in which it is incorporated, and
				2. state in which corporation has its principal place of business, nerve center test and muscle test

Company HQ

Where most activities are performed

* + 1. Unincorporated associations: is a citizen of every state where any member is a citizen
		2. Parties in representative actions (estate holders, children): citizenship based on the represented (not the representative)
	1. **Amount in Controversy must exceed $75,000**
		1. Amount claimed by P in good faith, court will accept estimate unless they are convinced to a *legal certainty* that P cannot recover that amount
		2. Prevent flooding of federal court system
		3. Matter in controversy must be *more* than $75,000 exclusive (not counting) interest and cost
		4. Aggregating claims to meet amount in controversy:
			1. Rule 18: single P can combine claims against single D to meet minimum $ (not matter how unrelated)
			2. Rule is reverse when more than one P or more than one D, cannot aggregate unless they are really joint claims
		5. Legally indivisible costs can be aggregated even if multiple parties (own a home as joint tenants, someone burns down house, 2 parties can sue for arson)
		6. Ancillary jurisdiction allowed plaintiffs to bring a case and defendants to assert jurisdictionally insufficient counter-claims, cross claims, and third party claims
1. *Federal question jurisdiction:* A3§2 and §1331
	1. §1331: plaintiffs own claim must arise under federal law
	2. Plaintiffs cause of action must arise under the constitution, treaties, or laws of the U.S.
	3. Constitution is a balance of power between the states and the federal government
		1. 10th amendment: all powers not expressly given to the federal government are given to state governments
		2. No federal question jurisdiction in a US District Court by anticipating a defense related to a constitutional issue or federal question
	4. No amount in controversy requirement for a federal question case
	5. Two forms of federal question jurisdiction:
		1. Exclusive federal jurisdiction (congress wants national uniformity under federal courts)
		2. Concurrent federal question jurisdiction (civil rights cases, FELA cases) can be taken to federal or state court (plaintiffs choice)
	6. A3§2: *Osborne Test*: ANY federal ingredient question ANYWHERE in the case gives federal court jurisdiction (regardless of how speculative) – applies article III section 2 (not 1331 which is a more narrow view)
	7. *§1331: Holmes*: (Harms v Eliscu) 🡪 in order to be considered a federal question case, the plaintiffs claim must arise UNDER federal law (A3§2 AND §1331/§1338)
	8. *Grable Test*: 4 parts
		1. Is the federal question disputed OR substantial? (apply Harms test)
		2. Is resolving the federal issue necessary to resolve the state law claim?
		3. Will the resolution of the case in federal court definitively resolve all future cases over the issue? (federal interest in resolving or clarifying), not usually true in very fact specific cases
		4. Will federal court hearing the case disrupt the balance of power between federal and state courts?
	9. Original Jurisdiction by statute:
		1. Admiralty §1333
		2. Interpleader §1335
		3. Antitrust §1337
		4. Patents, copyrights, trademarks §1338
		5. Civil rights §1343

Dismissal:

* 12(b)(1) - motion to dismiss for lack of SMJ, Rule 12B lists following defenses for 12b motions
* 12(h)(3) – dismissal for lack of SMJ, can be made any time before final decision
1. *Supplemental Jurisdiction: §1367:*
	1. Pendant Jurisdiction: P adds claims w/o independent basis for SMJ to one with basis for SMJ
	2. Ancillary jurisdiction: P or D adds claims w/o basis through c/c, cross-claim, or 3rd party
	3. §1367(a): in any civil action of which the district courts have original jurisdiction, the district courts will have supplemental jurisdiction over all other claims that are related to claims- if both issues come from a *common nucleus of fact*, are so related that they form part of the same case or controversy, claims must be closely related
	4. §1367(b): prohibits use of supplemental jurisdiction when case is based solely on diversity jurisdiction and jurisdictionally insufficient claim is won by a plaintiff under federal rules 14, 19, 20, and 24
		1. Claims made against joined D (14, 19, 20, 24)
		2. Claims by persons joined under 19
		3. Claims by interveners under 24
		4. If sup jurisdiction would destroy diversity
		5. NOT for Ps joined under 20
	5. §1367(c): supplemental jurisdiction is discretionary, courts can decline supp jurisdiction when:
		1. claim raises a complex issue of state law
		2. state claim predominates over claim or original juris claim
		3. district court has dismissed all claims in which had original jurisdiction
		4. other compelling reasons
	6. Rule 20: join multiple defendants
	7. *Gibbs test:* do claims arise out of the **same transaction, common nucleus of operative fact**
		1. State law claims are appropriate for federal court determination if they form a separate but parallel ground for relief also sought in a substantial claim based on federal law.
		2. Due to res judicata, plaintiffs often HAVE to try all claims in one judicial proceeding, so pendant jurisdiction is absolutely necessary then
2. *Removal Jurisdiction:*
	1. Taking case from state court where state court has jurisdiction into federal district court, used to reduce P’s control over litigation
	2. Only D can remove to federal court, D has 30 days to file for removal
	3. §1441
		1. (a): if P could file in federal court, D can remove it there
		2. (b): if SMJ based on Fed Q, can always remove, but cant remove from home state of D is based on 1332
		3. (c): district court can remove a federal claim but has discretion
			1. if pass Gibbs test, can remove all claims
			2. if fail Gibbs test, remove federal claim and send state claim back to state court
	4. §1445: Nonremovable actions: sometimes removal jurisdiction is narrower than original jurisdiction (certain matters cannot be removed ie. FELA claims)
	5. §1442: Federal officers sued for acts relating to duties
	6. §1443: Civil rights removable - instances where removal jurisdiction is broader than original jurisdiction in this case, (if you sue federal officers in state court and they assert federal defense, they can remove to fed court, plaintiff could not file in fed court, but defendant can remove)
	7. §1445: nonremovable, against RR, under state workmen’s, under violence against women
	8. §1453: class actions (R23)
	9. §1446: Procedure to remove
		1. (a) File notice of removal following R11 (pleadings)
		2. (b) Within 30 days of time D receives P’s pleading or is served OR within 30 days of time it becomes removable (filed w answer)
			1. But not more than 1 year after commencement if based on diversity under §1332 (on amended plea)
	10. §1447: Procedure after Removal
		1. (c): Motion to remand must be made within 30 days after filing of notice of removal, unless lack of SMJ which can be remanded ANY TIME before judgment
		2. (d): Remand to state court for lack of SMJ is not appealable

**Personal Jurisdiction:**

Can you ask D to come to the court of your choosing?

* Must satisfy DP clause of 14th amendment + statute
* Court needs Power + Proper Notice

Rule 12(b)(2) 🡪 motion to dismiss for lack of PJ, must be made when filing response

1. If there is a traditional basis of personal jurisdiction, then you don’t need personal jurisdiction
2. If no traditional base for jurisdiction is there a long arm statute and does it apply? Is the application of the long arm constitutional? (most of what you need to know)

4 Types of Personal Jurisdiction:

* In rem: (Put beside 2-4): *based on property the D has in the forum that gives the court there jurisdiction over them*, property must be seized within boundary of court and within state where property exists, seizure of property MUST take place at the OUTSET of litigation to ensure there is something over which the court actually has power
1. **In personam**: service in person under sovereign jurisdiction
2. **True in rem**: rare cases, dispute over ownership of property and purport to determine the ownership interest in that thing as to *EVERYONE*
3. **Quasi in Rem I**: ask court to say that your title over property is *greater* than that of the D’s or other parties
4. **Quasi in Rem II**: there is no dispute over who owns the property, used when P is unable to get in personam jurisdiction and D owns property in the forum state

In personam (power over person)

* General v. Specific
	+ General: systematic and continuous presence, and domicile of D give power to adjudicate
	+ Specific: consent and forum directed acts give power to adjudicate just on claims related to those contacts

*1) Specific Jurisdiction:*

1. Pennoyer v. Neff:
	1. You cant be bound by a court which has no jurisdiction over you
	2. 14th Amendment DP clause – cant deprive anyone of life liberty or due process
	3. A court may enter a judgment against a non-resident only if the party
		1. Is personally served with process while within the state, or
		2. Has property within the state, and that property is attached before litigation begins (i.e. quasi in rem jurisdiction).
		3. Judgments *in personam* without personal service cannot be upheld. Judgments *in rem* can be upheld if they have constructive service.
		4. Linked DP clause to Full faith and Credit Clause of Article IV- Any judgment invalidated for lack of personal jurisdiction would be denied full faith and credit by other courts.
2. International Shoe
	1. To establish PJ for someone not present in forum: 14th amendment requires *minimum contacts w forum state as not to offend “traditional notions of fair play and substantial justice”* (activities systematic and continuous)
	2. Not required to serve D in forum state as long as adequate notice
	3. Created standard, not rule. Examine fairness in each case
	4. Hanson v Denkla:
		1. DE trust, woman moves to FL, DE maintained jurisdiction
		2. *Contacts must be volitional, cognitive, and beneficial*
	5. Gray v American Radiator:
		1. P (IL) injured when water heater exploded, suit against party that assembled water heater (PA) and valve manufacturer (OH)
		2. Narrow holding: in prod liability actions, can be sued *wherever you expect to make money, if products sold in state*, probably proper
		3. Broad holding: subject to jurisdiction wherever tort occurs (where negligence effects are felt)
		4. *Anyplace you serve a market, directly or indirectly, you must defend there*
3. Long Arm Statutes (LAS)
	1. Seek to provide PJ over nonresidents who cant be found/served in forum
	2. Every state different, but most extend to limit of 14th Amd.
	3. Most LAS: if a cause of action arises out of the commission of a tortious act in the state, doing business in the state, or ensuring of a risk in the state (specific jurisdiction), then forum can assert PJ over non-resident of the state based on the commission of that act
4. World Wide VW
	1. Family purchase car in NY, gas tank explodes while driving in OK, sue in OK state court using OK LAS (where tortious act occurred), sue VW AG, VW of N. America, WW VW, Seaway Motors
	2. S.C. said NO PJ in OK for Seaway (NY) and WW VW (NY, NJ, CT)
	3. Foreseeability of product reaching state not enough, *must purposefully avail itself*
	4. D must be able to reasonably anticipate suit in forum state
	5. Only looked at convenience to D, fairness to P doesn’t matter
	6. Took narrow view of Gray (wherever you expect to make money)
5. Burger King
	1. MI residents opened BK franchise, HQ in FL, SC held FL court had jurisdiction over them using LAS, says P reached out to FL to sign franchising K (distinct from VW case).
	2. Broke International Shoe test into two parts
		1. Sovereignty Branch – minimum contacts with the forum, did D purposefully avail himself towards the forum state (in this case, yes)
			1. J. Kennedy: knowledge of business in forum is enough
			2. J. Bryer: must do a lot of business in the forum
			3. J. Ginsberg: stream of commerce theory, doing any business in the forum, even if indirectly is enough because they are profiting from their products being bought there
		2. Fairness Branch: does it offend notions of fair play and substantial justice? Look at the interests of P, D, forum, judicial system
			1. What is burden on D?
			2. What is forum states interest in hearing case?
			3. P interest in convenient relief
			4. Interstate interest in convenient dispute of resolutions
	3. Consistent w VW?
		1. Inconsistent: BK test takes into account fairness to P
		2. Consistent: D sought out BK so he availed himself of FL law, in VW, D didn’t seek out OK law or market
6. Asahi
	1. P in motorcycle accident which killed wife, sues tire manufacturer in Taiwan who files indemnity c/c against valve manufacturer (Asahi) in Japan
	2. Split in sovereignty branch:
		1. J. O’Connor – must have *intent* for goods to end up in forum state
			1. D in this case did not pass S. branch of BK
		2. J. Brennan – must have *knowledge* that goods end up in forum state 🡪 D in this case passed S. branch of BK
			1. Putting your product into stream of commerce, AND
			2. Product at issue is being sold in substantial numbers
	3. Insisted that the manufacturer must both put the product in the stream of commerce and ALSO engage in specific conduct *directed* to the forum state in order to be jurisdictionally bound – not the case in the Asahi matter
	4. Consistent with Gray?
		1. Yes, if take narrow view and agree w O’Connor “intent” test
		2. No, if you take narrow view and agree w Brennan “knowledge” test
	5. Overrule Gray?
		1. Kennedy – yes
		2. Breyer – maintained Gray but depends on whether amount is substantial
		3. Ginsburg – Gray still good
7. McIntyre:
	1. P involved in accident in NJ while operating a recycling machine manufactured by McIntyre (UK co.). McIntyre only sold to the U.S. through its exclusive US distributor (made no direct sales).
	2. J. Kennedy (plurality opinion): stream of commerce is NOT enough (O’Connor’s view in Asahi), there was no indication that McIntyre intended to serve the NJ market
		1. J. Breyer/Alito (conc.) – need knowledge of *substantial business*, one machine sold in NJ not enough (narrow view of Gray)
		2. O’Connor (conc.) – D must have purposeful directed contact w forum
	3. J. Ginsburg/Brennan (diss.) – D must defend in any place where product is put into *stream of commerce* (any minimal contacts enough)

*2) General Jurisdiction*

* When contacts with state are significant enough for court to entertain general jurisdiction over you even though case had nothing to do w forum state
* Basically, actions are *continuous, systematic and substantial*, so its fair to sue you there for anything you did, anywhere in the world
1. Perkins: moved company to Ohio while Japanese occupied previous location in the Philippines, lawsuit re: stock ownership, found that Perkins could be sued in OH based on general jurisdiction, unusual case, usually takes a lot to constitute general jurisdiction
	1. Rule: need continuous and systematic business contacts (more than minimum contacts)
2. Helicopteros: Columbian Corp crashed helicopter in Peru, company bought supplies from TX, sent pilots to TX for flying school, court ruled TX did not have general jurisdiction over them (substantial aspect of Perkins test was not met)
	1. Modifies Perkins test: contacts must not only be *continuous and systemati*c but must be of *substantial importance* when contacts don’t have to do with the case at hand
3. Goodyear Dunlop Tires v. Brown: bus accident in France killing three American children, Court held that the connection between Goodyear and its subsidiaries with the state of North Carolina was not strong enough to establish general personal jurisdiction over the companies
	1. Applying Perkins test, business and contacts was not substantial enough
	2. Normally consider corporations and its subsidies separate and apart from owners, courts normally respect separate corporations
	3. *Limited connection btw forum and the foreign corporation*, connection does not establish the “continuous and systematic” affiliation necessary to empower North Carolina courts to entertain claims unrelated to the foreign corporation’s contacts with the State
4. Community Trust Bancorp v. Community Trust Financial: issue over use of banking website in state of Kentucky, P wanted to confuse them into believing they were associated with the plaintiff’s bank, Ds have no employees or offices in KY, located only in TX, LA, and MS, 4 customers who moved to Kentucky signed up for online banking with D
	1. Was there general or specific jurisdiction over the D? Does the case arise out of D’s contacts with the forum (J. Blackman’s test)? – Yes.
	2. D passed the BK test under J. Ginsberg’s stream of commerce rule but would not satisfy either Kennedy or Bryer’s requirements
	3. Websites: can you be pulled into court anywhere? Ginsberg – yes (too broad), Bryer – middle ground, only if you do a lot of business in forum

*3) Power Over Property (in rem cases)*

* Limited by International Shoe
* Holmes says QIRII is basically in personam since dealing w rights of people in property rather than property itself, DP is the same
1. Shaffer v. Heitner: P owned 1 share in Greyhound, SH derivative suit against all directors and officers of Greyhound, anti-trust violation damaged stock value, legal situs of the stock was in DE, used DE statute to seize stocks against Greyhound (incorporated in DE, HQ in AZ), DE had no LAS
	1. Quasi in rem jurisdiction is subject to the constitutional requirements of minimum contacts per BK. ALL assertions of state court jurisdiction must be evaluated per Int’l Shoe and BK
		1. Sovereignty branch met because company incorporated in DE, purposefully availed itself of the benefits there
		2. Fairness branch reaches in both directions, probably not met
	2. Court ruled it did not meet sovereignty branch – got it wrong (J. Marshall)
	3. Mere ownership of property in a state is not a sufficient contact to subject the property owner to a lawsuit in that state, *unless* that property is the issue of the lawsuit
	4. Killed prong of Pennoyer which said if you seized property within state at commencement of case, that was enough

*4) Territoriality:*

1. Tickle v. Barton: Attorney called D and got him to come into forum jurisdiction by lying
	1. Can’t get PJ through fraud
2. Burnham v. Superior Court: divorce case, D travels to CA for business where ex-wife served him with process
	1. In personam jurisdiction is enough don’t need minimum contacts with the forum (uphold tradition)
	2. Brought up 2 prongs of Pennoyer:
		1. Seizing property in Quasi in Rem II action (Shaffer killed this prong)
		2. In personam service of process (still upheld)

*5) Consent to PJ*

1. D can consent to PJ by
	1. Expressly agreeing
	2. Performing certain acts that constitute waiver of objections to PJ, or
	3. Failing to make 12(b)(2) motion – Rule 12(h)(1)
2. Insurance Corp of Ireland v Compagnie:
	1. By submitting to jurisdiction of court for limited purpose of challenging jurisdiction, D agrees to abide by that court’s determination on issue of jurisdiction

*6) Providing Notice (Service)*

Due process clauses: 14th (state) and 5th (federal): court must give constitutionally adequate notice to those bound by judgment and an opportunity to be heard

* 5th Amend deals w geo limits on FED courts powers
* 14th Amend deals w geo limites on STATE courts powers

5th Amendment: DP for Federal Courts

1. Is there a federal rule or statute allowing service?
	1. There are some federal long arm statutes
	2. Some nation-wide service of process statutes
	3. Rule 4(k)(1): garbage can provision, if nowhere else, can get JD here
		1. Serving summons establishes PJ over D if
			1. Service ok if state court would have jurisdiction (DeJames- no jurisdiction)
			2. Parties joined under R14 or 19 who are served within judicial district of US not more than 100 miles from where summons was issued
			3. Need DP of 14th amendment + statute
			4. Do BK test
		2. Rule 4(k)(1)(a): general service rule, Fed court piggybacks on LAS of state (= 14th Amend. + Statute)
		3. Rule 4(k)(2): limited federal LAS, applies to Ds against whom “claims arising under federal law” are asserted when they’re *not amendable to suit in any of the states* (Trashcan provision)
	4. DP analysis, can’t violate DP of 5th or 14th amendment (Mullane)
2. DeJames v. Magnificence Carriers Inc: DeJames sues in NJ District Court against Hitachi for defectively converting ship into automobile carrier in Japan, D had contacts with U.S. but not NJ, no fed statute allowing service in admiralty actions, had to use NJ LAS + 14th Amd. + BK = no jurisdiction
	1. In looking for minimal contacts, the court looks only to the contacts with the forum state, not the entire nation, when a case is heard in federal court Rule 4(k)(1)(A)
	2. Where service is effected by means of a state statute, a federal court must look to contacts within the state
	3. When service is affected by means of a federal law, national contacts may be used as a basis (Rule 4(k)(1)(C)
3. Mullane v. Central Hanover: settlement of trust conglomerate failed to give adequate notice
	1. Noticesatisfies DP requirements of 5th/14th Amd. when it is reasonably calculated to give actual notice. Balance Cost/Benefit to determine reasonability.
	2. The form chosen must not be substantially less likely to bring home notice than other of the feasible and customary substitutes.
	3. For unknown addresses, publication was adequate
	4. Policy – balance benefit of ensuring notice against cost of providing notice

*7) Opportunity to be Heard*

Opportunity to be heard requires due process protections:

1. Decision to issue the writ of attachment or garnishment or replevin must be a decision made my a judge
2. judge must make decision based on a full presentation by the creditor of why the creditor believes it has the right to immediate possession (fact based statement of right to the debt or property)
3. creditor must post bond to protect the debtor against wrongful attachment or replevin
4. debtor must be given an immediate right to a hearing on the merits, you can seize it but not dispose of it
5. Fuentes v. Shevin:
	1. Narrow Holding: DP requires D must have pretrial hearing before property may be seized
		1. Repossession without pretrial hearing is justified in exceptional circumstances
	2. Broad holding: balancing test 🡪 private interest to be affected v. risk of erroneous deprivation/value of safegurads v. interest to party seeking prejudgment remedy (who needs it?) (she needs stove to feed family)
	3. Only required affidavit from clerk
6. Mitchel and Dichem:
	1. A pre-deprivation hearing is only required under circumstances of Fuentes
	2. Person may repossess property if he:
		1. Files an affidavit stating why property should be repossessed (give facially valid reason) and
		2. Hearing must come quickly after repossession in front of judge
	3. Consistent w Fuentes?
		1. Inconsistent if narrow holding requires pre-dep hearing
		2. Consistent if Fuentes just requires balancing
7. Doehr:
	1. Required affidavit and judges review, does not overrule Mitchel and Di-Chem
	2. When someone has no interest in property, higher standard
	3. Must show: interest + probably chance of winning (no bond required)
	4. It is essential that P post bond to defray expenses that D occurs due to improper seizure of property 🡪 constitutionally necessary to justify post-seizure hearing
	5. Consistent w Mitchell/Dichem?
		1. Inconsistent bc affidavit more than conclusory and was issued by judge but diff results
		2. Consistent bc more complicated, property had nothing to do w 1-sided tort claim

Limited appearance v. Special appearance:

* Special appearance: enables D to appear solely for the purpose of raising the jurisdictional question, does not subject the defendant to the consequences of a general appearance
* Limited appearance = D appears only to contest juridisdiction and does not consent to courts jurisdiction

*Issue 5: Venue*

Application of rules of venue for particular system, usually governed by statute

Choice of venue depends on:

1. Theory of claim
2. Subject matter of claim
3. Parties Involved
4. Combination of 1-3

Rule 12(b)(3)- motion to dismiss for improper venue- must be made at time of filing

**General Venue Standards:**

Transitory Actions: when transactions could have happened anywhere

Local Actions**:** specific and unique to area, venue only allowed where land is.

* Now, LAS and BK make it easier to get PJ over someone.
1. General Federal Venue Rules §1391
	1. 1391(a): civil action based only on D.O.C
		1. Where any D resides, if all in same state
		2. Where substantial part of events occurred
		3. Where any D subject to PJ at time of commencement (only when 1 and 2 unavailable)
	2. 1391(b): federal question cases or mixed federal question and diversity cases
		1. where any of the Ds reside, when all Ds reside in that state
		2. where *substantial part of the events* giving rise to the claim is situation
		3. Wherever the court has PJ over D (only when options 1 and 2 unavailable)
	3. §1391(c): residency
		1. Aliens may be sued in any district
		2. Corporations can be sued in any district w PJ
		3. Venue in property actions: local action venue - must bring action in which the land is located (ancient rule)

\*Doesn’t matter if Contact was intentional

***Bates v. C&S***- should have been dismissed for lack of PJ – fails sovereignty of BK, did not know or intend for letter to reach P in NY when forwarding there, but, waived right to objection when failed to make motion at beginning of case. Waived PJ to court🡪 accepted PJ and subject to venue.

**Transfer of Venue**

1. Transfer of Venue: analyze SMJ, PJ, and Venue
	1. General transfer of venue principals
		1. all states have transfer of venue provisions
		2. “interest of justice” standard for transfer (fact dependent) – where the events occurred, where the parties/witnesses are, ect
2. Federal transfer provision §1404
	1. action can only be transferred to a place where it *could have been commenced*, for convenience of parties/witnesses, and interest of justice (Hoffman)
		1. Hoffman v. Blaski: 1404 allows transfer to districts where P had right to file suit without cooperation from D, not where it might have been brought at any time during the trial
	2. \*\*Is there subject matter jurisdiction, personal jurisdiction? Would §1391 permit you to lay venue in that court?\*\*
	3. USE GILBERT TEST – balance public and private interests of both venues
	4. Law follows case to new venue
3. § 1406(a): transfer or dismiss for improper venue, transfer to place could have been brought, must be timely
4. 1407(a): transfer multidistrict claims for pretrial proceedings then remand back to original district
5. Van Dusen v. Barrack: wrongful death accident case, plane crashes into Boston into Boston Harbor on way to Philadelphia, 40 claims made in PA (no cap on damages). D wants to move it to MA where there is cap on damages. You can only transfer cases within a single sovereign.
	1. 1404 transfer doesn’t change applicable law. Law follows the case
	2. Consistent with Erie: uniformity of choice of law discourages forum shopping
	3. Inconsistent with Erie: creates lack of uniformity between state and federal courts in the same state; if the case should have been tried in MA, why is it that we get a different result in MA fed court (applying PA law) than a MA state court (applying MA state law)?
6. Ferens v John Deere – either party can file transfer motion since 1404 never changes law

**Forum Non Conveniens: “unsuitable court”**

1. Even if forum appropriate under law, look at convenience of litigants and witnesses to determine if proper to dismiss bc another forum more convenient
	1. Usually give high deference to P’s choice, but not if just a rep. for decedent (Piper)
	2. Meant to lessen burdens of complex comparative law
	3. Finding that P’s forum would be overly burdensome is sufficient to dimiss FnC
	4. Only used to transfer to courts of another sovereign
	5. Not used with great frequency, transfer more often used, must overcome presumption in favor of P choice of forum (just a disadvantage in law is not enough)
	6. Courts wont grant FNC unless they know there is an alternative forum, D must waive any statute of limitations defense that may have accrued in the time since institution of first action, D must agree to stand and defend in alternative forum
2. *Gulf Oil v*. *Gilbert* Test: \*\*balance private interest of litigants and public interest in choice of venue\*\*, factors to be considered in determining if forum is inappropriate:
	1. Private interest of litigant
	2. Relative ease of access to sources of proof
	3. Availability to compulsory process for unwilling witnesses and cost of transporting willing witnesses
	4. View of site of events, when necessary
	5. Enforceability of judgment
	6. All other practical problems involving efficiency and cost
3. *Piper Aircraft v Reyno*: US Supr. Court said you want to look at factors related to convenience of litigants, litigation elements (witnesses, documents), public factor (who has the interest in adjudicating the dispute)
	1. Every case states with rule 4(k)(1): federal court in CA can hear case if state court in CA can hear case
	2. Is there a state rule that reaches defendant? (ie. long arm statute)
	3. Is that assertion proper under due process clause of 14th amendment? Apply BK test
	4. Is venue proper?
4. §1631: (transfer to cure want of jurisdiction) transfer to proper court based on personal jurisdiction

**Choice of Law:**

**\*** Substance v. Procedure

§2072 – Rules enabling act

* Congress can make rules that Sup Ct must follow on procedure, as long as it doesn’t abridge any substantive right

Questions to consider:

* In a federal diversity case, when do you apply state v. federal law?
* If state law – which state?
* How can you tell what state law is?

Rules of Decision act §1652: federal courts must apply state law as the rules of decision in civil cases, except where federal law applies

* Supremacy Clause: part of constitution, federal law is “the supreme law of the land”

\*\* Ask choice of law questions by case tests in this order: Hanna 🡪 Bryd 🡪 York

1. Swift v. Tyson:
	1. Says §1652 applies only to statutory law, not case/common law of state
	2. Federal courts in diversity actions can exercise an independent judgment as to common law of the state
	3. Created enormous incentive for forum shopping, parties would “manufacture” diversity of citizenship jurisdiction to bring case to federal court
	4. Theory/hope of Swift was that federal courts would divine the one true general common law for state courts to follow –failed
2. Erie Railroad v. Tompkins:
	1. Says §1653 “laws” of states = statutes AND common law
	2. Federal court must apply the substantive law of the forum state (statutory AND common law), overruled Swift v. Tyson, constitution does not give the federal courts the power to create substantive common law that governs state dominated actions
		1. substantive law: system of rules, rights, and duties that run between people and institutions, substance is everything that is not procedure
	3. Justice Brandeis, “no such thing as federal common law” – nothing in the constitution gives the federal judiciary general power to make common law
	4. RULE: substantive law of the FORUM state must be applied in diversity actions
	5. Policy: dual aim
		1. Discourages forum shopping
		2. Avoid unfair administration of laws (would it hurt a party?)
	6. Jurisprudence: do courts “find” law through interpretation of constitution or do they make law? Modern theory is that judges make the law (same as legislature) and both should be utilized in courts
3. Guaranty Trust Co. v. York (Outcome-Determinative Test)
	1. Substantially modified by Hanna
	2. If something can significantly affect outcome of case, apply state law
		1. Here, SoL sig affects outcome 🡪 substantive
	3. §1652 only applies to substantive questions, statute of limitations is a procedural issue
	4. Substantive (state) v. Procedural (federal)
	5. J. Frankfurter: Rights depend on the remedies available. If no remedy = no right
		1. Substance: elements of your claim (ie. prima facie case for negligence)
		2. Procedure: limitations question, will change the outcome of your case
	6. Consistent with Erie, federal court should not apply federal law that would cause a different outcome if used over state law, prevents forum shopping, keeps things uniform between state and federal courts
	7. Problem w York: everything is arguably substantive
4. Byrd v. Blue Ridge: (Balancing Test)
	1. Question of whether an issue should be decided by a judge (state law) or jury (federal law)
	2. Is there an important federal policy interest? If yes, balance federal v. state interest
		1. Right to jury not likely to affect outcome, strong federal interest in jury trial bc of 7th amendment
			1. Court rules that this is just a housekeeping, non-substantial issue, York test does not apply, use federal law
	3. Where Federal policy is involved, even if it has a significant effect on outcome, apply federal policy when state issue isn’t very significant
	4. Does not overrule York 🡪 confines it to smaller subset of cases - only apply outcome test when there’s no federal interest
	5. Inconsistent with Erie and York – allows/influences forum shopping and can affect outcome
	6. Byrd test: apply state law if:
		1. Failing to do so would be outcome determinative AND
		2. No federal system interest in the allocation of duties outweighs the state interest
5. Hanna v. Plumer: (arguably procedural)
	1. Federal rule controls over an inconsistent state rule or policy – even if it results in different outcomes UNLESS it violates the Rules Enabling Act
	2. Only applies when there is a direct conflict between a federal procedural rule and a state rule or common law policy
	3. Twin aims of Erie not be injured by applying the service of process law or other purely procedural laws
	4. Anything related to the elements or defenses or claims on merits is substantive, everything else is arguably procedural
	5. Hanna Test:
		1. Is there a federal statute or rule that is broad enough to govern the question (sufficiently broad to cause a direct collision with state law)? Is it procedural (valid exercise of rulemaking authority under Rules Enabling act)?
			1. Article 1, §8: gives Congress power to make rules
			2. §2072: Rules enabling act, Congress gives S. Court power to make rules of procedure as long as it doesn’t abridge any substantive right (Rule valid under REA if it is *arguably procedural*)
			3. Supremacy Clause: federal law is the “supreme law of the land”
		2. Is it within Constitutional power of Congress to create? Is it valid?
			1. Substantive or procedural?
			2. Does it regulate how litigation goes through court?
		3. Does choice of law affect forum shopping? If no, procedural so federal (more important than outcome determinative)
	6. If no to question 1, then apply twin-aims analysis of Erie – would choosing federal law influence the outcome in a way that encourages forum shopping?
6. Gasperini:
	1. Consider whether you can apply state law without doing damage to fed law
	2. No collision because 7th amendment does not specifically say that there is to be no reexamination of jury awards (is just federal procedure)
	3. Interpreted federal rule narrowly so it did not pass the first prong of Hanna
	4. Gasperini Test:
		1. First, do laws conflict and is federal law only about procedure?
			1. If yes, then balance state substantive interest, federal procedural interest, and outcome effect.
			2. Federal law dominates in purely procedure cases.
			3. The determination of whether laws collide is often made in looking ahead to the balancing considerations.
		2. If no federal question broad enough to govern question, look to twin aims of Erie: discourage forum shopping, inequitable administration of law
	5. Consistent with Hanna?
		1. Yes, if when applying Hanna, not broad enough, substantial state interest, and outcome determinative, so apply state law
		2. No, if read to imply that it doesn’t matter even if broad enough and should apply state law whenever you can without injury Synthesis of Rules: (P. 523 of supp)
7. Shady Grove v. Allstate:
	1. Apply Hanna test: is rule 23 broad enough to govern this question?
	2. Is it arguably procedural? – not about the elements of claims or defenses on merit?
	3. Supreme Court says that 2072 = 1652 saying if it is broad enough it applies
	4. 4 with Scalia – Gasperini hasn’t changed anything, says Apply Hannah like Gasperini never happened, if it is broad enough, its ok
	5. 4 with Ginsberg – if important state interest examined, and not broad enough then state law > federal law. Says Gasperini has changed Hanna and tries to apply it (trying to say Hanna was wrong)
	6. Different way of interpreting first prong of Hanna – if there’s an important state interest, apply it to the first prong when deciding if a federal rule is broad enough

**Which State’s Law Governs?**

1. Klaxon
	1. Federal courts must apply the conflicts-of-laws rules of the state in which they sit, choice of law rules are substantive
	2. Whatever conflict of law rule a state court would use, the fed ct must also use
	3. Each state has a conflicts-of-laws rule that determines which state’s law applies when several choices are available
2. Van Dusen:
	1. when cases transferred under §1404(a) between federal courts, apply law of state where action was filed, not state transferred to
	2. Result: Federal courts follow the language of state conflicts-of-laws rules to determine which state law to apply, and the law follows the transfer.

**Ascertaining State Law:**

1. When there isn’t a state statute or constitutional provision, look if highest court has decision, if not, look at intermediate courts
2. Goal is to mimic as closely as possible how a state court would rule
3. Some states allow federal courts to “certify” an issue to states highest court
4. Mason v. Emery Wheel
	1. When applying state common law, fed. Judge must predict what the highest court of the state would do today
		1. Look at recent cases in higher/lower courts
		2. Look at modern trends (other states, restatement)
	2. Consistent with Erie, applies state law 🡪 considers state law issues, discourages forum shopping
	3. Inconsistent with Erie 🡪 go to federal court if you don’t like state common law, ask judge to ‘predict’ that state court common law will change

**Federal Law in State Court**

* when states adjudicate cases arising under federal question, Supremacy clause (A6) requires application of Federal law
	+ Inverse Erie
1. Dice v. Akron
	1. Is the matter bound up with the rights and obligations that congress thought it was creating? Would the congress that passed this statute have cared about this?
	2. State law cannot use its procedures to unduly burden federal rights.
	3. Is this consistent with Byrd?
		1. Yes, because in both cases, federal law trumps state law when the federal interest of a jury is greater than state interests
		2. No, because if Dice is accurate, then shouldn’t state procedural law be used to decide a state claim in federal court if federal law is used to decide a federal claim in state court?
	4. Courts in Byrd and Dice care more about the Supremacy Clause than the 10th Amendment
2. **Apply Federal Law When:**
	* 1. Issue is bound up with rights Congress thought it created
		2. State law may not use its procedures to unduly burden federal claims (standard, not rule)
3. **Federal Law in State Courts:**
	* 1. If no federal common law, must determine Congressional intent behind statute
		2. With state of federal rules of procedure that can also be substantive, must also look at congressional intent

**Is there federal common law?**

* According to Erie there is no general common law
* There are 7 areas defined as “not general”, where there may be common law
	1. Constitutional/Statutory Interpretation
		+ federal common law – matter of necessity
	2. Implied Rights of Actions and Defenses
		+ Implied rights of action under statutes, someone can file suit against another (common law), what constitutes elements of claim (common law)
	3. “Filling in the gaps” in Federal Statutory Law
		+ interstitial common law – federal statutes cant cover every issue that comes up (federal common law fills in gaps – Dice case)
		+ idea that no forward looking statute can forsee every problem that will arise under the statute – federal courts can fill in the gaps as time goes on or problems arise, federal courts can fill in gaps with state law
	4. Common law authority based on jurisdiction (ie, admiralty cases, labor cases)
		+ Occurs where federal courts have exclusive jurisdiction and there are sufficient policy reasons for uniform federal law, arguably creating new law
		+ Federal government has substantial interest in these areas
	5. Property interests created by federal law – US has fiscal interest
	6. Jurisdictional Grants
		+ Ex: federal issue of bonds
	7. When international relations of U.S. are involved

**Joinder:**

1. Joinder of Claims Rule 18:
	1. Permits joinder of both legal and equitable actions, regardless of how unrelated claims are, can aggregate to meet 1332 amount in controversy requirement
	2. If a party has multiple issues from multiple transactions with another party, you can sue them for all claims in the same suit
	3. Only restriction imposed is SMJ
2. Permissive Joinder: Rule 20 (what parties may do)
	1. P or D may join if
		1. Seek relief or relief sought against them ARISING out of the SAME transaction or occurrence (Gibbs); AND
			1. *Ryder v. Jefferson Hotel*: husband and wife could not join together because there were two injuries resulting from one cause of action (would not be the case today)
		2. Common Question of Law or fact to all will arise in the action
3. Misjoinder: Rule 21
	1. not grounds for dismissal, parties can be dropped or added by court at any point, claims can be severed as needed for efficiency or legal purposes
4. Consolidation/Separation: Rule 42 (what judge may do):
	1. If actions before court have a common question of law or fact, court can join all matters at issue, consolidate actions, or do anything else to avoid delay/cost. Court can order separate trials
	2. No requirement that they be from a single transaction
5. Compulsory Joinder: Rule 19 (Required Joinder)
	1. Can’t join party if it there is no SMJ, required to join if
		1. Court cant give proper relief without the party
		2. Necessary party: person has interest in relating to subject of action and failure to join would *impair ability to protect that interest,* or risk causing multiple, inconsistent obligations (court must join a required party if P doesn’t)
	2. When joinder isn’t feasible, court must decide whether party is indispensable, whether to dismiss for nonjoinder
	3. Consider:
		1. Prejudice to those already parties
		2. Extent to which prejudice can be lessened/avoided
		3. Whether the judgment in person’s absence would be adequate
		4. Whether P will have an adequate remedy if action is dismissed for nonjoinder
	4. 19(a): Necessary parties, those that CAN and MUST be joined
	5. 19(b): Indispensable parties, parties that cannot be joined and in absence can’t proceed 🡪 court must look at considerations and determine if indispensible, look to four factors to consider in deciding whether party is indispensable (Provident Tradesmen)
		1. Plaintiffs interest in adequate forum
		2. Defendant’s interest in avoiding relitigation and inconsistent judgments
		3. Absent parties interests at stake
		4. Interests of the court and general public in complete, consistent settlement of controversies
		5. Rule 12(b)(7): Motion to dismiss for failure to join under Rule 19, you waive right to complain under 12(h) only with respect to make motion to join person under Rule 19
6. Impleader Rule 14:procedure by which a 3rd party is brought in, indemnification, especially by a D who seeks to shift liability to someone not sued by P
	1. liability does not have to already be established before you implead third party
	2. court does not have to wait to see if D is liable for D to indemnify a third party (Jeub v. B/G Foods)
	3. must arise from same aggregate core of facts
	4. Standard: if 3rd party MAY be liable to 3rd party P because 3rd party P is “dependent upon the outcome of the main claim” or the 3rd party D is “potentially secondarily liable as contributor to D”
	5. Policy: determine rights of all parties in one suit, efficiency
7. Interpleader: Rule 22 & §1335
	1. “Interpleader”: I owe $ to somebody but I don’t know whom, so I’ll let the court decide who I owe so I don’t have to pay twice”
	2. one trial, all claimants, payout once, don’t have to risk inconsistent judgments
	3. Suits to determine a right to property held by a usually disinterested 3rd party (stakeholder) who is in doubt about ownership and who therefore deposits the property with the court to permit interested parties to litigate ownership
	4. Normally, stakeholder initiates an interpleader to both determine who should receive property and to avoid multiple liability
	5. Interpleader requirements – common law
		1. All claimants have to be seeking recovery for the same debt (same amount)
		2. Most be claiming under the same source
		3. Stakeholder required to be “disinterested” in who payout goes to 🡪 relaxed requirement
		4. No liability to anyone else, want clean and neat as possible, no independent liability
	6. Rule 22: if all ordinary threshold requirements are met interpleader is legitimate joinder mechanism, essentially just a diversity of citizenship case
		1. Claims that may expose P to double or multiple liability
		2. don’t need common origin, but can be adverse and independent
		3. 2 Ds can seek to interplead through cross-claim or counterclaim
		4. Jurisdiction Requirements
			1. Complete diversity 🡪 normal SMJ, PJ and venue requirements
			2. Service within state or by LAS
			3. > $75,000 (unless federal question)
			4. No bond/deposit required
			5. Stakeholder can deny liability
			6. Must show reasonable probability of double vexation
			7. Not barred from Supp. Jurisdiction §1367(b)
	7. §1335: Federal interpleader statute:
		1. 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 $
		2. Claims to $ do not need to have common origin but can be adverse and independent
		3. Stakeholder must post bond – deposit $ w court
		4. Only needs minimum diversity between *claimants,* any claimant must be of diversity of citizenship from any other claimant, stakeholders citizenship does not matter (*State Farm v Tashire)*
	8. §1397: Venue for interpleader: Actions under §1335 may be brought where *any* claimant resides
	9. §2361: Injunctions and Process
		1. Process can be served for §1335 actions in any state in the US.
		2. Provides that the federal court overseeing an interpleader case may “enter its order restraining the claimants from instituting or prosecuting any proceeding in any state or U.S. court affecting the stake”
		3. Allows for nationwide service of process
8. Intervention: Rule 24(requires SMJ or Supp Jur.)
	1. absentee intervenes, brings herself into a pending case
	2. Rule 24 governs intervention as of right and permissive intervention
	3. Rule 24(a)(2): Intervention as of right
		1. If granted by statute, if not must meet the follow req.
		2. Non-party has interest in outcome of case
		3. Not joining would impair/impede ability to protect interest
		4. Not adequately represented by existing parties (*Smuck v Hobson* – school board rep’d all parents, not whites)
	4. Rule 24(b): permissive intervention
		1. Can intervene if a federal statute confers a “conditional right to intervene” or has claim/defense sharing common question of law or fact w main action
		2. Would intervention unduly delay or prejudice adjudication of original parties’ rights
		3. An absentee who qualifies to intervene of right is not required to do so
		4. Permissive intervention should be granted only if court determines that its benefits outweigh burdens it creates

**Class Actions:**

* + - 1. Rule 23: Prerequisites
				1. Numerosity: over 40 is good enough, under 22 questionable
				2. Common question of law or fact: need at least one
				3. Claims “typical of class” - representative must be a typical member of the class
				4. P must be adequate representative of class, if absent class members are being subjected to litigation that is binding on them, they must be adequately represented, otherwise

Conflict of interest? Reason named P will not represent every member of class w same enthusiasm

Did they pick and adequate lawyer to represent class?

1. Rule 23(b): Types of Class Actions
	1. Prejudice class action (mandatory that you’re in)
		* Risk of inconsistent judgments would est. incompatible standards of conduct for opposing party OR
		* Judgments for individual members would be dispositive of members not parties to them or impede ability to protect their interest
	2. Injunctive relief (mandatory that you’re in)
		* Complaint states legitimate claim for injunctive relief, everybody wants the same thing 23(b)(2)
	3. Monetary damages (can opt out)
		* Common questions must predominate over individual questions
		* C/A must be most efficient way to resolve controversy
		* 4 factors to consider – look in sup
		* Controversy over modern class action, group of people with no prior association (ie. injured by same toxic substance), court must find common issues predominance of common question
2. Rule 23(c): Notice
	1. Only need to provide notice in monetary damages C/A
	2. Does cons’t require notice?
		* Only if party would want other counsel
		* Cost/benefit, probably not worth the cost
	3. Must have 1) adequate representative 2) notice of litigation and 3) right to opt out of class action
3. Purpose of C/A
	1. Efficiency and economy device, adjudicate everybody’s rights against one D in one case
	2. determine diversity by looking at the citizenship of the representative, amount in controversy 🡪 in class actions you can aggregate claims
	3. absent class members are entitled to due process but since absent class members don’t need to appear and aren’t vulnerable to costs of litigation, they can get away w due process protections
	4. Every class member is bound by judgment even if they didn’t take part in suit as named party – exception to Pennoyer
4. Walmart:
	1. prior to Walmart, people thought 23(a)(2) was easy to satisfy
	2. court denies class because of lack of commonality

**Right to a Jury Trial**

1. Whether you have right to a jury depends on what the English court system would have done in 1791
	1. Kings court (common law, jury) v Chancery court (equity, no jury)
	2. Downside of jury trials:
		1. belief juries are pro-plaintiff
		2. juries not well equipped to handle complex cases
		3. takes juries longer to try cases than judges
2. Rule 38: Trial by jury as in 7th amendment is PRESERVED (as it was in 1791), NOT created, 7th amendment is not symmetrical, judge can always give a jury trial, P never has a “right” to bench trial, judge can decide
3. How would this claim have been handled in 1791?
	1. Kings court for legal claims and compensatory damages = JURY
	2. Chancery court for equitable claims for injunction, specific performance = No JURY
4. Did claim exist in 1791?
	1. Look at underlying claim/issue for declaratory judgment claims
	2. Is it in chancery court for purely procedural reasons?
		1. If purely for procedural reasons 🡪 legal - jury
		2. If substantive 🡪 equitable – no jury
			1. Class actions can be legal now because chancellor would not have heard it only for procedural reasons
5. Analogize to claims that did exist (*Ross Test*)
	1. What is claim like? In comparison to claims in 1791, which court would it have gone to? (if not important move to b)
	2. What is relief like? More like claims that would be heard in kings court or chancery court? (more important question – *Tull*)
	3. Suitable for jury interpretation? (only if the first two questions don’t determine)
6. Clean up doctrine 🡪 court granted equitable remedy in equity courts, judge would also clean up case by giving money damages rather than send to law court to start case over again (no jury), US courts inherited clean up doctrine
7. 2 tests prior to Beacon Theatre case:
	1. Clean up doctrine
	2. Center of gravity test – is the nature of suit more equitable (no jury) or legal (jury)?
8. *Beacon Theatres v Westover*
	1. Legal Claims MUST go to jury before equitable claims go to judge (*Beacon*)
		1. important because whoever gets to go first gets to make a decision that is binding on the parties forever
	2. Today we preserve substantive right to jury trial, but not necessarily procedures
	3. Even if statutory right to bring case, don’t lose right to jury
	4. Apply Ross test for new claims
		1. anti-trust claim is newly created tort claim 🡪 kings court
		2. As for treble (triple) damages (1/3 compensatory, 2/3 punitive) – more like relief given by kings court
		3. Anti-trust cases not usually suitable for a jury (when brought as the sole issue)
	5. For declaratory judgment claims: look at nature of declaration, if underlying claim were brought, would that be a jury trial?
	6. 3 categories of claims: Purely legal (juries), Purely equitable (judge), Mixed legal and equitable (legal issue to first go to jury whose resolution is then binding on the judge who makes the decision re the equitable claim)
9. *Dairy Queen v Wood:*
	1. May have killed “clean up relief” (back pay)
	2. Even if equitable claim > legal, must go to jury before judge
	3. Court said that breach of contract is a legal claim which would have gone before jury, even though claim was essentially equitable in nature (injunctive relief)
	4. Extension of Beacon Theatre – look to the *nature* of the underlying claim
	5. Expanded right to jury trial
10. Curtis v Loether (Civil rights case)
	1. Applied Ross test, basically ignored 3rd prong
	2. Right to a jury trial in this case had merit but was insufficient to overcome the command for a jury trial in the Seventh Amendment
11. Chauffeurs, Teamsters v. Terry:
	1. Trucker case, Ps say they weren’t adequately represented, sues union for not bringing action on his claim- breach of duty of fair representation
	2. Relate claim to breach of fiduciary duty
	3. Judges disagreed on application of Ross Test:
		1. Brennan – get rid of “what’s it like” game, only should have remedy prong
		2. Stevens – action is like malpractice, a legal action
		3. Kennedy – action is like fiduciary, an equitable action

**Taking the case away from the jury**

Taking case away from the jury:

1. Summary judgment – no trial
2. Directed verdict – court rules as matter of law, no jury decision
3. Judgment not withstanding the verdict
4. New trial motion
5. Summary Judgment (Rule 56)
	1. Standard: moving party is entitled to S.J. if he can show that there is no genuine issue of material fact, if granted, judgment is entered and case is dismissed
	2. Judges place heavy burden of persuasion on moving party, draws inferences in favor of non-moving party
	3. 3 contexts in which S.J. is appropriate
		1. no legal basis for the claim, no recognized “wrong doing” on part of D
		2. all material on the motion sings the same song, no triable issue
		3. S.J. material looks very powerful for P but D has iron clad defense (ie. SoL, res judicata), D stops case from moving forward
	4. 4 possible situations where something seems fishy about S.J.
		1. Moving party puts forward powerful evidence but something is off (ie. all deponents are related)
		2. Issues of credibility
		3. Court will rarely grant a motion for S.J. in favor of the party w ultimate burden of persuasion at trial
		4. When there is a gap in material presented on motion
	5. *Celotex Corp v Catrett*:
		1. P claims D made dangerous product with asbestos that killed her husband, D moves for SJ
		2. Rule 56: D doesn’t need affirmative evidence to make summary judgment motion
		3. 3 items of proof – proof must be admissible, need to demonstrate, not just assert that P can prove their case
6. Directed Verdict Motion R50(a) (before verdict)
	1. same as summary judgment except at the end of the case, before verdict
	2. Party has been fully heard on issue during trial, and a reasonable jury would not have sufficient evidentiary basis to find for the party on the issue
	3. *Galloway* - Directed verdicts do not deprive litigants of their Seventh Amendment constitutional right to a jury trial.
	4. Not against 7th amendment right to a jury bc in 1791 right to demurrer with “scintilla” of evidence
	5. 7th amendment doesn’t bind to procedure, JUST substantive, right to jury trial so DV, JNOV, ect is all ok
	6. Justice Black thinks it cuts back on rights (consistent w Frankfurter) – outcome only
7. Judgment not withstanding the Verdict/JNOV R50 (b) (after verdict)
	1. Second crack at directed verdict motion
	2. Good way for judges to prevent new trials, bc if he thinks there would be DV he lets it go to verdict and if he is right, that’s good, if he was wrong and he had granted DV there would have to be a new trial
	3. Standard: what would a reasonable jury believe
	4. Today, judge can reserve his decision for DVM until after jury verdict
	5. *Slocum*: says JNOV is wrong and unconstitutional when no DV made
		1. Is Slocum consistent w Galloway?
		2. No, Galloway says that it was just procedural difference of same thing but Slocum says it didn’t exist
8. Conditional New Trial R59
	1. even if there’s not enough evidence DVM, judge can set aside verdict and grant new trial
	2. Reasons for new trial:
		1. Jury threatened
		2. New evidence
		3. Bad evidence
		4. Forgot to make DV or JNOV last ditch effort
	3. Standard: verdict is contrary to the clear weight and evidence (Aetna Casualty)
	4. Judge may base his action on his belief or disbelief in some of the witnesses, while on a DVM he may not (*Dyer*)
	5. Altering a verdict to prevent a new trial: Additur v Remmititur
		1. Remmititur ok, additur is not *Dimick v Sheidt*)
		2. Remmititur: verdict too high, D files new trial motion for grossly excessive verdict, judge tells P that he will deny motion or new trial if P consents to lower judgment otherwise will grant new trial motion (remmititur was permitted in 1791, additur was not – only real possible explanation for courts decision)
	6. Is Dimick Consistent with other 7th Amendment cases we’ve studied?
		1. **Inconsistent** with Galloway bc Galloway (procedural) said that you don’t need to rely on a specific thing in history. As long as something similar, you should be able to do it and you could do it both ways (so could do Additur and remittitur). TULL, BEACON, REDMON
		2. **Consistent** with Slocum bc it says that it must be done exactly the same way as it was done in 1791. There was no way to take the case from the jury after the verdict. Similar doesn’t count. Remititur okay in 1791, Additur not.

**Preclusion:**

Rules of preclusion based on efficiency. Efficiency > Truth

1. Barred by Rule
2. Claim Preclusion (Res Judicata)
	1. Can’t bring same or similar actions
	2. Merged or barred
3. Issue Preclusion (Collateral Estoppel)

Barred by Rule:

1. If you don’t do something when you’re supposed to do it, you can never do it (claim preclusion/defense preclusion)
2. *U.S. v. Heyward Robinson* – failure to bring compulsory c/c in 1st action will bar it from being brought later, c/c or Supp. Jurisdiction requires claims to be from same transaction

Defense Preclusion:

1. Cant use same defense first as a shield, then as a sword
2. Barred from reasserting a claim that was previous used as defense (if you don’t use it in 1st case, can use as claim later)
3. Should make c/c in 1st case
4. Compulsory counterclaim: Rule 13(a) – out of same transaction
	1. Are the issues of fact/law raised by c/c largely the same?
	2. Would res judicata bar later suit on D’s claim absent compulsory counterclaim?
	3. Will substantially same evidence support/refute P’s claim as well as D’s counterclaim?
	4. Is there any logical relation between the claim and the counterclaim?
5. Permissive counterclaim: Rule 13(b)
	1. not out of same transaction, but related, or between the parties
6. Some state courts say that if you win first case, you are not barred from defense preclusion

Res Judicata

Ask res judicata question BEFORE collateral estoppel question

1. Once a claim is brought or should have been brought, it cant be relitigated
2. Requirements of Res Judicata:
	1. Valid + Final Judgment + On the Merits (NEED ALL 3)
		1. Valid – hasn’t been overturned
		2. Final – judgment final in trial court, doesn’t matter if there is a pending appeal
		3. On the merits – doesn’t apply if case was dismissed, overruled due to jurisdictional issues or SoL. 12(b)(6) motions are on the merits
	2. Must be the same parties
3. Who is precluded
	1. Parties and privys
4. Common-sense principles of Res J
	1. Party gets one chance to litigate a claim
	2. One chance to litigate a factual or legal issue
	3. Party is entitled to at least one FULL AND FAIR chance to litigate
	4. Preclusion may be waived unless it is claimed at an early stage of the litigation
5. If win 🡪 merged, prevented from seeking more litigation
6. If lose 🡪 barred from bringing claims brought or could have brought
7. If you don’t bring all claims in c/c you are barred later, both sides are forced to bring anything within same transaction now or never
	1. Must bring compulsory c/c in 1st suit
	2. Must bring any defense that you would possibly use instead of waiting and using as defense in 2nd suit
8. Still need supplemental jurisdiction (Gibbs test – one cause of action one lawsuit)
9. If 1st claim is pending, 2nd claim normally put off until 1st case is concluded (including appeals)
10. *Rush* test: a plaintiff must raise all causes of action arising from a single wrong in one lawsuit – supplemental jurisdiction
11. Illustrates ways a case can be binding: stare decisis (can be beound by a case you weren’t a part of), res judicata
12. *\*Transaction Test* – ONE transaction, ONE lawsuit (overruled Vasu test which held you can assert several causes of action as long as injuries are different)
13. Res judicata defined by scope of transaction, not claims that arise under the transaction
14. Holding/Dicta: when you have 2 holdings/dictum issues:
	1. Both part of holding
	2. Neither is part of holding
	3. Narrower ground is holding, general is dicta
15. *Jones v Morris Plan Bank of Portsmouth:* installment payments on car, K had acceleration clause (if you miss any payments the whole sum becomes due), second case barred by res judicata July payment because bank should have asked for whole sum in first case where they asked for May and June payments
16. Does res judicata extinguish a right or bar a remedy? Substance v. Procedure
	1. J. Frankfurt 🡪 if you have no remedy you have no right, substance, if courts done enforce it, its not really a right

Collateral Estoppel

6 Elements:

1. Issue is exactly the same as first case
2. Issue is something loser had full and fair opportunity to litigate in the first case
	1. Incentive
	2. Adequate procedural opportunity (small claims court v district court) – OJ Simpson hypo
3. Issue was actually litigated (different than R.J. “could have been brought”) (*Cromwell*)
4. Issue was necessary to judgment (*Russel*)
5. Judgment is valid, final, and on the merits (if lose on SMJ, that’s all that is binding)
6. Traditionally – mutuality of estoppel – must have been a party/privy in 1st case to be bound (this is changing, most exceptions involve vicarious liability)

Applying Collateral Estoppel:

1. If can’t tell exactly what jury ruled on in first case, not going to be CE, needs to be necessary to the judgment (jury decisions in cases with multiple issues are hard to determine CE, don’t specific which issues damages are allocated to)
2. Would be inefficient to make Ps bring up every possible argument in every case because there might not be a second case
	1. Rush case: city negligent for not maintaining streets, incentive problem, city thought it was only $100 case, didn’t have full incentive to try case, then brought $12,000 claim
3. Party asserting estoppel has burden of proving all elements are met
4. *Cromwell:* P got bonds to build court-house, never build court house, judge kept bonds, first case 🡪 P sues for pre-1868 coupons, D argues coupons were obtained by fraud, judgment for D. Second case 🡪 P sues for interest on bonds
5. *Russell v Place:* sue regarding 2 patented leather treatment processes, in first case want damages (J. verdict for P), in second case want injunction + damages
	1. no res judicata: new infringing conduct
	2. no collateral estoppel: unclear what jury ruled on, which of 2 processes were infringed
6. *Rios v. Davis:* negligence related to car accident
	1. Davis’s negligence or lack of negligence wasn’t really established in first case so Rios can bring this case – at this time there was no c/c requirement otherwise would have been barred)
7. No collateral estoppel on pure legal questions (ie. who bears on burden of proof)
	1. Moser case: wasn’t fact or legal question, was in between
	2. Application of law is what changed, how to apply law to facts 🡪 collateral estoppel
	3. “Once a right is established, it is established forever”
8. Policy- If the finding is not necessary, we do not have collateral estoppels because
	1. Winning parties cannot appeal
	2. We can’t have full faith /confidence/how much the jury meant it
	3. Don‘t know if anything turned on the finding.
9. Two rules on preclusion with alternative findings
	1. Majority: When there is a judgment on alternative independent findings, every finding is preclusive unless you appeal and the appeals court decides not to reach one of the two grounds
	2. Minority: When there is a judgment on alternative independent findings, neither finding is preclusive except if you appeal and the court of appeals rules against you on one or both findings
10. *Commissioner v. Sunnen* – after case 1, courts standard changed re who controls the money. Court holds there is no collateral estoppel because it is not exactly the same case- new tax year, only thing that changed is courts view of income
11. *Parklane Hosiery –* Fraudulent proxy statement, Case 1 brought by SEC, case 2 class action, P claim class should also be collaterally estoppel.
	1. Court holds you cannot have offensive collateral estoppels because this would encourage plaintiffs to stay out of a case and see what the judgment is before trying their luck and claiming CE.
	2. *Diff.* from Bernhard because in Bernhard, collateral estoppels was being used as a defense by the bank. Here it is offensive
	3. Square rejection of the idea that you need a jury trial (because in the first case in probate court).
	4. 7th amendment- common law routinely permitted prior equitable cases to preclude getting a jury in a legal case.
	5. Consistent w Beacon theatres- in Beacon, it was two claims in the same case. It says nothing about decided legal cases, which is why jury went first, because if judge had gone first there’d have been preclusion.

Binding Nonparties: Exceptions

1. Agree to be bound by K (privity of K)
2. Bound if you are in privity with one party
3. Adequate representation binds you (ie. class actions, trustees on behalf of beneficiaries)
4. If you control litigation
5. Someone brings litigation on your behalf, as your agent
6. Statutory schemes that bind you (ie. bankruptcy proceedings)
7. *Martin v. Wilks-* (you can’t bind non-parties)Supreme court holds that (1) intervention is permissive, not required, so no penalty with not intervening other than you are stuck with the first case when you go to court and (2) white firefighters not bound because that’d be a due process violation. So they CAN bring their case.
	1. *Civil Rights Act of 1991-* If you know about proceeding and you are adequately represented, you are bound (overrules holding of this case). Unconstitutional? YES P v N requires personal jurisdiction for a party to be bound.
	2. No, *Pennoyer v. Neff* and *Martin v. Wilks* hold that you can’t bind nonparties. The part that dealt with *Pennoyer v Neff* was dictum is the way the court resolved the issue to itself. (Congress says well holding is actually about rule 24 in M v. Wilks, not the Due Process so everything (including statute) is still Constitutional.
	* *Provident Tradesmen-* Dutcher would have been bound by the Congressional rule ideals but wouldn’t be bound if you followed *Martin v. Wilks*

Preclusion – Full Faith and Credit

Four kinds of full faith and credit requirements:

1. Article 4 §1 (state courts must recognize other state court judgments)
2. §1738: federal court must give full faith and credit to state courts
	1. Standard: federal court must give at least as much preclusive effect to judgment as state court would
	2. Applies to res judicata and collateral estoppel
3. When Federal court decides first case and states decide second case
4. When other Federal Courts give each other full faith and credit (as required by Supreme Court of Congress because of common law)

*Fauntleroy-*  Court holds that you must give Full Faith and Credit between states by Article IV Section 1- Missouri was correct in upholding verdict because it had already been tried in Mississippi. The federal question was whether Mississippi violated Art. IV Section 1.

Or, in 1871, since Congress put the 1983 as concurrent j(x), it is NOT an implied exception.

* One could argue that in 1871, Congress would not have predicted this because they only allowed mutual estoppels. D/n know anything about non-mutual estoppels.
* Substance v. Procedure- Here, 1871, did not anticipate non mutual estoppels, but Congress probably saw 1738 applied. So this is all just procedure broadening non mutual estoppels.

*Allen v. McCurry*- Criminal D charged with possession of drugs. Says unlawful search and seizure. All in criminal court. Second case – civil suit for civil rights violation action. Sup. Court gives full faith and credit to criminal court case, enforces CE- even though in the criminal court proceedings he didn’t have all the procedures. D had incentive to litigate well to avoid jail. Doesn’t matter that he didn’t have a jury because of *Parklane*. They also say that he had opportunity for full and fair litigation.

* *Non mutual defensive estoppels-* similar case is Parklane, So whenever you do non mutual defensive estoppels, worry about Full and Fair opportunity to litigate.
* Questions: did D sit out in first case; full and fair opportunity to litigate; risking inconsistent judgments