1. **Subject Matter Jurisdiction 12(h)(3)-** Power of court to hear and dispose of given case, questions of constitutional dimension (Federal) concerning basic division of judicial power among the states and between state and federal courts. Not venue- a statutory device designed to facilitate and balance objectives of optimum convenience for parties and witnesses and efficient allocation of judicial resources.
   1. Constitutional Authourity
      1. Art. I §8- Allowing Congress “to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by Constitution”
      2. Art III §1- “The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. Congress cannot grant more power than granted to Federal Courts under Art. III §2.
      3. Art. III §2- Judicial power (Federal) over items Arising under Constitution/Laws and Treaty of USA/Public Officials/Ambassadors/Admiralty/ US Party/ 2 or more States/ Citizens claiming lands in 1 state with 2 land grants/ Where State and Public Officials are party/Appellate for all other law and fact cases except for regulations made by Congress.
      4. Art. IV § 1: State cannot escape constitutional obligation to enforce rights and duties created under laws of other states by simply removing jurisdiction from its courts. “Full faith and credit shall be given in each state to the blah blah of every other state” and §2 “the citizens of each state shall be entitled to all privileges and immunities of citizens in several states”
   2. Statutory Authourity
      1. Determine using 1331 (Arises Under) with Art. 1 §8; or 1332 (Diversity) with Art. III §2- which requires minimal diversity.
      2. **States have concurrent jurisdiction unless action is expressly limited to Federal Courts by Constitution (Patent, etc)**
         1. *Capron v. Noorden*- P brings action against D for trespass on case in Federal Court w/o estb. Personal j(x). After verdict, P moves to dismiss the verdict on basis of lack of personal jurisdiction even though P chose the court. **Supreme Court ruled that allowing unscrupulous P to escape the verdict and waste resources was better than expanding federal jurisdiction beyond constitutional and statutory limits.** Extending Capron would mean no judgment ever final.
      3. **Relitigation of Final Judgment Only When Abuse of Discretion/ Infringement on Special Court/No SMJ existed (12h3)- This upholds Res Judicata (Final Judgment)-and Full Faith and Credit Clause.**
         1. *Des Moines v. Iowa Homestead* (this particular case is being relitigated in State Court)- This case had been litigated in court before between the litigants (State court and then moved to Federal where P claims jurisdiction did not exist so judgment is not binding) There was no SMJ at that point because no diversity existed b/t P and D. Now trying to re-litigate in New York Supreme Court🡪US Supreme Court. NY court has no right to adjudicate something that has binding adjudication. **The parties should have contested jurisdiction earlier, when they both had the opportunity. US Supreme Court says that you cannot relitigate a final judgment unless you have:** 
            1. Manifest abuse of authourity;
            2. Substantially infringing on other tribunal, such as a special court.
            3. CAN challenge if first case is default judgment.
      4. **State Court has concurrent j(x) unless Constitution proscribes it for Federal Court only.** 
         1. *Lacks v. Lacks* - Married couple wants a divorce, this is in State Court. Man claims cruelty of woman in the marriage. She keeps trying to get him back/keep him. Two years after judgment for P, D wants to vacate because court does not have SMJ. **Causes that don’t involve jurisdiction but involve substantive elements for relief are not liable under SMJ. State court can hear anything not specifically proscribed for Federal courts.** Absence to reach merits d/n deprive courts of subject matter, but absence of competency does. Merits are substantive elements in the cause of action.
2. **Subject Matter Jurisdiction - Diversity J(x)** 
   1. **1332- Amount in Controversy and Complete Diversity (Required by Statute). Minimal Diversity (Required by Constitution)**
      1. *Strawbridge v. Curtiss* – Justice Marshall- **No diversity jurisdiction if any P is a citizen for the same state as any D, no matter how many parties are involved in litigation.**
   2. **Historically-** Diversity J(x) to avoid discrimination against out of state residents, and in order to avail a federal tribunal in Southwest to protect creditors.
   3. **Policy-** Like Diversity because it solves problems of national significance in areas traditionally grabbed by state law- national debates about consumer protection, medical malpractice, corporate accountability, tort law. Jurisdictional reform helps deal with large complex disputes straddling multiple states and multiple parties.
   4. **Cons**
      1. Creates congestion in Federal Courts,
      2. Requires State law application on Substantive issue b/c of Erie v. Tompkins. Federal courts diverting these cases steps on State autonomy.
      3. Retard’s development of state law.
      4. Diminishes incentive for state courts to reform by influential professional groups that choose through diversity j(x) to be heard in Federal Court.
      5. Unfair to be able to bring into court not in State just on basis of diversity.
   5. **Pros-**
      1. Prejudice against people from out of state does exist (Hornbook- Actually it was a class war thing, were trying to protect commercial interests from democratic states)
      2. This implements constitutional guarantee that all citizens are entitled to all privileges and immunities of citizens of other states.
      3. Federal courts are institutionally superior
      4. Out of state litigants are spared state courts swayed by public pressure and lower standard of law.
   6. **Suggestions** by American Law Institute (of which only raising amount in controversy was accepted)- Prohibit citizens from forum state from invoking diversity j(x) because resident of that state can’t really claim prejudice.
   7. Federal courts will not exercise jurisdiction in probate cases (property is in actual possession of one court of competent jurisdiction, such possession cannot be disturbed by process out of another court. So cannot probate will or appoint administrator because estate involves property already under j(x) of state probate court and domestic relations (federal courts will not adjudicate cases involving marital status, divorce/alimony/child custody because family relations are state policy and interest. But they will enforce obligations of defaulting spouse under final state court decree).
   8. Burden of proof- on party seeking diversity j(x).
   9. **Determined when action is commenced- when complaint is filed in district court. Later change of domicile doesn’t change anything. FCRP 3**
   10. Ultimate Interests tests- Look beyond pleadings and arrange parties according to sides in disputes. realignment- Court has to look at nature of issues at controversy and if necessary realign the parties to reflect the actual class of interests in the case, and then check the diversity.
   11. **In order to bring diversity case- two things must be satisfied (Domicile and Citizenship)**
       1. 1) Party must be domiciled within a state (state citizenship of natural person is synonymous with domicile)
       2. 2)party must be citizen of U.S.
   12. **Domicile- Residence in fact, combined with intention of making place of residence one’s home for an indefinite period. It must be the true fixed home, and place where a person whenever is absent, intends to return.`** 
       * 1. Married woman- possesses husband’s domicile
         2. Minors- share domicile of parent who is supporting them
         3. Students- out of state are deemed to retain pre-school domicile, typically that of their families. If emancipated or of age, acquire domicile at location of school
         4. Military personnel and criminals possess domicile prior to enlistment or incarceration
         5. Administrators of estates or representatives of mentally incompetent/children/or deceased- have domicile where those people are.
         6. Non-American Citizens- 1332(A)(2)- jurisdiction over actions b/t alien and citizen of a state (**Alienage Jurisdiction**)- but must be citizen by the laws of the foreign country of the foreign country.
            1. Amended to say that an alien admitted to US for permanent residence is citizen of state where domiciled. So can no longer used alienage j(x) if you’re a permanent resident. But can use diversity against other permanent resident aliens from other states or nonresident aliens. Used because state courts tend to disrupt international relations and discourage foreign investment

*Blair v. Rubenstein-* Not a US citizen, but had a NANSEN passport from League of Nations. **Then they made the amendment that permanent resident is citizen of state where domiciled.**

*Saadeh v. Farouk-* **Complete diversity is destroyed in lawsuits b/t aliens. At least one person must be natural born or naturalized citizen for j(x) under 1332 to be proper.**

*China Nuclear v.* *Arthur Anderson*- **having alien corporations on one side and permanent resident aliens on the other side destroys diversity b/c you end up with alien on both sides.**

*Intex USA v. Engle-* rejects *Singh*. **Where jurisdiction was available under 1332(a)(3) permanent resident alien v. non-resident alien.**

* + - 1. **Corporation-** Citizen of wherever it is chartered. Modified by 1332C- to be any state where incorporated and state in which it has principal place of business. To determine principal place of business:
         1. Nerve Center Test- Where corporate policy is made, locus of exec and admin functions of corporation. (Most often used)- Locus of corporate decision making authourity and overall control
         2. Corporate Muscle Test- Where major production/service activities, generally equivalent to major corporate assets
         3. Total Activities (most recent)- All circumstances surrounding corporations business to determine principal place of business.
         4. Bankrupt or Inactive corporation- Either where principal place of business was during last transaction of business, or citizen where state of incorporation.
         5. Forum Suit Rule - If incorporated in more than one state- Diversity j(x) domicile is determined in state in which bringing suit. Regardless of where adversary is from (like if from another state in which that company is located). Inconsistent with *Strawbridge v. Curtiss*. If it is a national bank, citizen of every state where located (bc of statute 1348).
         6. Alien corporations- only the foreign corporation’s incorporated country is relevant.
         7. Insurance- In direct action suit- citizen of the state of which insured is citizen, and any state where insurer is incorporated and of state where it has principal place of business. Responding to LA forum shopping v. insurances that were incorporated outside of Louisiana.
         8. Unincorporated corporations- labor unions, partnerships, religious or charitable organizations, each member’s citizenship counts. Statute 1332(d)(10)
  1. **Statute 1359- Collusion is prohibited.** 
     1. If assignee is nominal party, with assignor retaining actual substantial interest in suit, it is collusive
     2. If assignee possesses and independent interest or right of action prior to assignment – court will take jurisdiction over assigned claim
     3. **Cannot Manufacture Federal j(x):** If assignor solicited the assignee to bring suit, contributed to expenses of litigation, or controlled conduct- collusive when assignee merely functions as collection agent for assignor
        + 1. *Kramer v. Caribbean-* **Panamanian corporation assigned interest to Kramer, in TX. Suit against a company in Haiti on basis of diversity in USA federal court. Court of appeals said assignment was improper, collusive under statute 1359.**
          2. *Rose v. Giamatti*- attempting to destroy diversity- Rose filed in Ohio to restrain based on Giamatti being biased. Named another major league team as defendant and said no diversity because the team is from Ohio too. The court says nope, take most relevant party’s citizenship.
  2. **Statute 1489- American women do not lose citizenship because of marriage to alien.** 
     1. *Mas v. Perry*- Mas sues Perry for peeping tom. Mrs. Mas is from Missouri, Mr. Mas is from France, and Mr. Perry is from Louisiana. Mrs. Mas had no intention of staying in Michigan, Louisiana, or Illinois, and is legally not a citizen of France so she cannot claim alienage j(x) against Mr. Perry. This case was appealed on lack of subject matter jurisdiction- diversity. Normally Mrs. Mas would be considered domiciliary of France because she would take her husband’s domicile. But her husband is from France and she is not legally a citizen by France laws of France. This case is Citizen of Mississippi v. Citizen of Louisiana.
  3. **Statute 1332 to Meet Amount in Controversy**
     1. *St. Paul Mercury Indemnity v. Red Cab*- Sum claimed by the P controls amount in controversy cases if they are made in good faith. Cited by Supreme Court in determining AFA v. Whitchurch.
        1. **You can only throw out a case if you have legal certainty that AinC is not correct**
     2. *AFA Tours v. Whitchurch*- Whitchurch resigns from company operation and has a list of old prospective clients he is using. Sued for using confidential information and must show amount in controversy. The Supreme Court ruled that there was a chance AFA could show AinC so the court cannot grant summary judgment for Whitchurch on his argument that he is not going to cost the company a lot of money.
     3. Determining Amount in Controversy:
        1. Supreme Court way- *Glenwood Light Water v. Mutual Light Heat*- Only the value to the P is used to determine j(x) amount. This is regardless of value to D.
        2. Point of View of party seeking diversity j(x) in Federal Court- If D chooses to remove to Federal court from state court through diversity j(x), then see what value of case is to D.
        3. Ragazzo’s favourite view- Look at what the P is trying to accomplish. Determine the pecuniary result to either party which judgment would produce.
        4. Rule 23- Exxon v. Allahpattah- when named representative in case meets amount in controversy, federal court can exercise supplemental j(x) over everyone else in the case.
           1. CAFA- you can aggregate claims if they don’t individually exceed limit for class action suit as long as ONE individually exceeds.

1. **Subject Matter Jurisdiction: Federal Question Jurisdiction**
   1. Constitution- Art. III §8 and Art. III §2- because you have to show Congress has granted power to federal courts or that Congress has power to make federal courts.
   2. Statute- 1331 – Arising Under. Purpose:
      1. Promote Uniform Federal Law
      2. Encourage judicial expertise in interpreting law
      3. Protect against hostility b/t courts.
   3. **Ingredient Test**- Did the action originate in and is it based on federal laws or the Constitution/ Is there a federal/Constitutional ingredient in the original cause?
      1. *Osborn v. Bank of the USA-* State is attempting to put tax on Federal bank. Does this fall under the state law from the K made in the state or is it a federal issue. Did the Bank have the right to make the K? **Federal government gives bank existence under Article III Section 2, therefore these questions are determinations of federal power and arise under Federal Law. When a question to which judicial power of the Union is extended by the constitution forms an ingredient of the original cause, it is in the power of Congress to give lower federal courts j(x) of the cause, although other questions of fact or law may be involved in it.**
      2. Osborn can be read to permit federal j(x) wherever federal proposition might be challenged. Broad reading of Art.III.
      3. Protective j(x)- species of federal question j(x) that permits federal courts to hear state law claims even though claims don’t incorporate an original federal ingredient or seek to enforce rights inferred by federal law.
      4. *American Well Works v. Layne and Bowler*- P suing for damages to business caused by D’s slander on P infringing patent that belonged to D. **Questions of patent law are normally federal, but the cause of action here was state Common Law. So even though ingredient was federal it went to state.**
   4. **Cause of Action must be based on federal law or constitution/be origin of the claim.**
      * 1. **Anticipation of a Defense**:
           1. *Louisville& Nashville Railroad v. Mottley*- P alleges that D will use defense that Act of Congress prevents life pass. P then says due process means they should be in Federal Court. **Court held “complaint does not raise federal question if it does so only in anticipation of some defense”**. Mottley can’t predict defense of court, but also that the cause of the action itself (not getting the life pass) has to be a direct result of the Act of Congress. **Well Pleaded Rule-** Although there was a federal statute (ingredient), they could have just put in the claim for state law. She did not need to raise the federal issue in order to establish her claim. No anticipated defenses can raise federal issues.
           2. Efficiency- Court can look at the pleading from the P and not have to wait for D before deciding j(x) of the case. Want to streamline important cases.
        2. **Implied Federal Right of Action- You can assume it exists when:**
           1. How to determine whether there is cause of action (Holmes) for determining Federal Law Federal Claim Question:

P is within the class for whom the statute is created or does the statute create a federal right in favour of the P?

Any explicit or implicit indication of legislative intent either to create or deny remedy?

Does it make sense in legislative scheme to give remedy to P?

Is any part of it exclusive to State law and would be inappropriate for Federal law to get into?

* + - * 1. *Bell v. Hood-* not essential that the statute expressly provide for civil cause of action for an alleged violation. Federal Question j(x) exists in an action involving alleged violation of 4th and 5th amendments. Although neither the Constitution nor act involved creates a remedy for wrong of which P complains.
        2. *Cort v. Ash*- **Not all federal provisions creating duties are held to create an implied private right of action.**
  1. **Holmes Creation Test**- The federal law or legislation must be cause of action in order to be federal jurisdiction. NARROWS OSBORN
     1. *T.B. Harms v. Eliscu*- **Narrow** **law interpretation (overrules Osborn**). The copyright ownership issues in this case do not fall under copyright infringement because the ownership is actually breach of contract. This is a similar case to *Cort v. Ash*.

1. **Subject Matter J(x)-Intertwining J(x)- State law claims turning on important federal issue-** 
   1. Exception to Holmes
      1. *Smith v. Kansas*- Federal question j(x) exists in action by stockholder rto enjoin corporation from purchasing bonds that they contend are created by unconstitutional statute. Here, despite being a state issue of bond issuance, **Federal courts held that it arose under Federal issue because the Federal Statute was being contested**, thus the Federal Question was substantive.
         1. Contradicts *Moore v. Chesapeake Rail Road*- P alleges D didn’t comply with federal law so P can’t be held liable under state liability act for contributory negligence. **Here, no federal j(x) because the main authourity in the case was the State law. So this went to State courts, not Federal because of the FSAA stuff.**
         2. **Lower courts believe that if there is a statute without private right of action then the federal question is insubstantial and does not meet Smith. Therefore there is no federal issue possible and reverses Merrel Dow.**
   2. *Merrel Dow v. Thompson*- **Rejects jurisdiction based one embedded Federal issues- federal issue must be Substantial**. P sues for damages caused by drug made by company, and say warning d/n meet requirements of FDCA. Is there federal SMJ for Canadian and Scottish P to sue corporation? State cause of action (negligence) but P could prove by showing violation of federal statute. But judges said no private right to action from FDCA. Can’t create federal court remedy where Congress d/n provide one.
   3. *Grable v. DaRue*- IRS gives Grable notice by mail, takes his land, sells to DaRue. Grable sues DaRue for bond saying that wasn’t provided proper notice under federal statute. Court held that **the action arose under state law (quiet property title) but the only way to estb. Right to reclaim property was by proving federal law. Meaning of federal statute was in dispute.**
      1. **Does a state claim necessarily raise a federal issue that is actually disputed and substantive which the federal form can entertain without disturbing the balance of Congress/ State and Federal jurisdiction?** 
         1. **Necessary to the Outcome**
         2. **Outcome is Significant to Federal Law**
         3. **One can Apply the Standard to Multiple Cases**
         4. **Does not Affect the Congress/State/Federal balance.**
   4. *McVeigh v. Healthchoice*- Ginsburg applies test from Grable- the Federal health benefit plan has no information about third party insurance. Therefore no federal private right of action was created, and there was not a state law claim that allowed intertwining jurisdiction. There was no substantial or controlling federal question.
      1. *Grable and McVeigh* resuscitate *Smith*. They let you consider the constitutional importance of what is being decided. So the final determination is
         1. Is the Federal Issue necessary to the outcome?
         2. Does it have an important resolution for the Federal system?
         3. Does it have a question that will decide many other cases?
         4. How does it affect balance b/t gov’t, congress, state.
         5. Smith is no longer as dead as Merrell Dow would have made it.
2. **Supplemental J(X)- Supplemental jurisdiction if the cases arise from a common nucleus of operative facts.** 
   1. Policy Reasons: Judicial efficiency, keeping federal questions in federal court
   2. Implementation: You can remand cases when the state has many different pieces of the claims, not just one small section. Also when there is a private state court that can hear the state issues.
   3. Art. III §2- Constitution gives power to hear cases and controversies, so there is no problem by Constitution because all claims create one case.
      1. Common Law- Arise from same operative nucleus of fact.
   4. Statutory- 1367- reviewable by petition for mandamus
      1. 1367A
         1. Claim must fall under court’s original j(x) by 1331
         2. The piggyback claim must be closely related to the original j(x) claim- Using the GIBBS test- common nucleus of operative fact
      2. 1367B- Congressional Oversight- d/n realize they hadn’t barred P from joining each other under rules in exceptions, only from joining Ds.
         1. Is the case under 1332? If not, don’t worry about this 1367B (only for Diversity and Amount in Controversy)
         2. Claims that cannot come under supplemental j(x) during diversity actions.
            1. Did P use Rule 14,19,20, or 24 to get D?
            2. Are the claims by someone added under 19 or intervene under 24
         3. Gaping Hole in Statute- The P can add a nondiverse P through rules of joinder and supplemental j(X) can still exist. Addressed through contamination theory.
   5. Contamination Theory- A non-diverse person contaminates every other claim in the complaint, depriving the court of original jurisdiction over any of these claims. The presence of non-diverse parties on both sides of a lawsuit eliminates the justification for providing a federal forum. This is a way to get around the Gaping Hole in the 1367 b portion of the statute.
   6. *UMW v. Gibbs*- P sues D in federal claim using Labor Management Relations act and a second claim in state law for interference with contractual relations. Both claims based on same dispute of the openin of the mine. Court says- Art. III grants j(x) over entire cases, court can hear everything out of a common operative nucleus of facts.
      1. Osborn- Any Federal portion means federal jurisdiction
      2. Holmes- if you only have that one federal question as part of the cause of action, you get jurisdiction!
   7. *Hurns*- If in a car accident, and you injure yourself and your car, under Hurns you’d have to file two separate claims because they’re two separate causes of action. Under Gibbs, you’d get federal j(x) because same operative nucleus.
   8. *Aldinger v. Howard-* P sues one D In Federal court, and then uses a State cause with a second D. Court did not want to use supplemental j(x) because the claim was based on state law and not j(x) proper. Court said it COULD be viewed under Gibbs, but the second case would be inconsistent with congressional intent, so no statutory basis. **But according to 1367 now, even if another party is being sued, you can piggy back the claim (v. two D).**
   9. *Owen v. Kroger-* P sues Oklahoma (Diverse) who impleads Owen (not diverse). P asserts claim against Owen (TPD) using Rule 14A. Court said- Constitutionally, claims were under same nucleus. But under 1332- Congress did NOT intend to grant j(x) over ancillary claims when they lacked complete diversity.
      1. Court dicta- could exercise over counterclaim/cross claim/third party claim. Could have j(x) over original (D) claim v. TPD despite diversity requirement.
   10. *Finley v. United States*- P sues USA under Federal Tort Claims Act, statutory under 1346. Also asserted state claim v. CA. No diversity between her and the CA defendants. Same as *Owen*.
   11. *Exxon Mobil v. Allahpattah*- P brings 100k class action lawsuit v. D. Only the named P has AinC. Is there j(x) on smaller claims? YES!
       1. What if all claims are aggregated and fit amount in controversy? Yes, by CAFA Act of 2005, you can aggregate the claims to exceed amount in controversy as long as ONE person’s claim exceeds amount of controversy by itself. See Statute 1453 and 1332 (D).
   12. Hypothetical Mas v Perry. Mas is from France, sues Perry for 5k in Louisiana. Mrs. Mas from Missouri sues 15k. Can Mas use supplemental to piggy back? Well, Diversity, and A in C, Exxon Mobil case. The P **join their own claims by Rule 20, and that doesn’t technically violate the statute so the court CAN exercise supplemental j(x).**
3. **Removal Jurisdiction**
   1. Constitutional- Article III, §2 + Judiciary Act of 1789
   2. Statutes- 1441 and 1446
      1. 1441- You can remove to federal court If there is federal question. Tthe Federal courts have jurisdiction under diversity- Cases with in-state defendants cannot be removed. The entire purpose of helping D to avoid prejudice.
      2. Can remove using 1441
         1. Any civil action with original j(x) is removable without regards to citizenship or residence of parties
         2. Any other action is only removable if none of the D’s are from the state where the action has been brought.
         3. If 1331 case is joined, there is supplemental j(x), you can remove to Federal courts. Matters which state law predominates can be sent back to state.
         4. Any civil action brought in state court v. foreign state can be removed by foreign state to decide where action is pending- such as a court without a jury, or enlarging time limitations of 1446 b.
         5. If 1441b d/n apply, the defendant in the state court can remove action to district court where action is pending if the action could have been brought there by 1369
         6. Can also remove if the D is party of action that is or could have been under 1369 in Federal court and comes from the same accident as state court action, even if you can’t have original j(x).
         7. If the action is moved under e, district court has made liability determination requiring further damage proceedings remanding action to state court for damages, unless for justice and convenience should decide damages by self
         8. Movement for remand not effective until 60 days after district court issues order and certifies intention of remand
            1. In those 60 days you can appeal liability and law determination in court of appeals. Then, the remand isn’t effective until appeal is disposed.
         9. Any decision under e is non-reviewable (damages)
            1. Must be made using 1369, 1407, 1697, or 1785
         10. Nothing in E restricts DC authourity to transfer/dismiss action for *forum non conveniens*
         11. The court to which the action is removed is not precluded from hearing and determining any questions because original court d/n have SMJ.
      3. 1445- Can’t remove Railroad cases, Workers Compensation, Violence against Women
      4. 1446- Procedure for Removal
         1. D file pending notice of removal signed Rule 11 with statement of grounds for removal and process, pleadings and orders
         2. Within 30 days after receipt of copy of initial claims and pleadings for relief will be filed. OR right after service of summons on D.
         3. If not Removable- notice of removal within 30 days after receipt of D, a copy of amended pleadings, motions or whatever showing case is removable.
         4. You can’t remove a diversity case more than 1 year after the action was started.
      5. 1447 After Removal –
         1. Motion to remand on all but lack of SMJ can be made within 30 days after filing notice of removal by 1446A. If before final judgment, the court lacks jurisdiction, case is remanded
         2. Remanding case to state court not removable except order remanding case from which it was remanded by 1443
         3. If after remand P wants more D, which under which would destroy SMJ, deny joinder and remove to state.
   3. *American Fire and Cas. Co. v. Finn*- Court has held that claims are not separate and independent "where there is a single wrong to plaintiff, for which relief is sought, arising from an interlocked series of transactions. Must be separate and independent cause of action to be removed.
   4. *Borough of West Mifflin v. Lancaster*- Federal court wants to remand case back to state court. D makes movement to compel District Court to accept remand under 1441.
      1. If you have Federal and State claims- The federal and state claims must be separate and independent for remand to occur. (Supplemental state claims that meet Gibbs test can’t be remanded).
         1. If there is a single injury and you are seeking relief- the claims are not separate and independent (*Finn*)
4. **Personal Jurisdiction- Traditional Basis**
   1. Constitutional-These amendments give power to force the D to respond as well as the notice and opportunity to be heard. (Due Process Amendments)
      1. States use 14th Amendment
      2. Federal courts use 5th Amendment
   2. Under Rule 4 (if State can hear the case, Federal Court can hear the case)
      1. Is there a long arm statute?
      2. Is it constitutional under the BK test? (Sovereignty/Fairness)
   3. General
      1. *In Rem-* Ask court to declare that you are the owner of the property against everyone/anyone. AKA Quiet Title Action
      2. *Quasi in Rem-* P wants courts to determine title of property against one person only.
      3. *Quasi in Rem II-* I have a claim against the D, but there is no land issue, but P wants to take the land and proceed against it anyway. You don’t have j(x) over the person here so take property.
      4. *In personam-* jurisdiction over the person they must be served in boundaries of court.
   4. Must serve a person within land/they must be domiciled/must have property for personal j(x) if you’re serving *in personam*.
      1. Pennoyer v. Neff- *Q in Rem II* , Neff is in IA, property in Oregon, lawsuit with a case on them. Court ruled that he had to be served in person for *in personam* j(x). Otherwise the land seizure should have been a *Q in rem* proceeding type II and in order for that to work, it’d need to have been seized at the beginning. State has exclusive j(x) over people and property within its borders. Field Theory by Stevens: **No state can exercise j(x) over people and property in other states. Judgments *in personam* without personal service cannot be upheld. Judgments *in rem* can be upheld if they have constructive service. Full faith and Credit clause only applies if you had j(x) estb. Before judgment.**
         1. **Linked Due Process Clause to Full faith and Credit Clause of Article IV- Any judgment invalidated for lack of personal j(x) would be denied full faith and credit by other courts.**
   5. Not discussed in P v. Neff
      1. Express Consent- if you do arbitration in a court, or if you take an in state agent to accept process in K litigation. Corporations- get process served on agent specifically designated by corporation for that purpose.
      2. Implied Consent- By virtue of conducting business in forum, corporation impliedly appoints agent designated by state to receive service of process on its behalf for any disputes within state.
5. **Personal J(x)- Specific Long- Arm Jurisdiction**
   1. Don’t have to serve person in the land where you are suing them for *in personam* if they’ve consented to j(x)- Due Process Amendment 14 (States)
      1. *Hess v. Pawloski-* **If state can exercise police powers to exact and express consent as precondition to driving motor vehicle in forum, then state can imply that nonresident motorist consented to j(x) by appointing a local official agent for process when motorist drove within state.** 
         1. Hess causes accident in MA, Pawloski sues him in MA, local official is served in MA and then Hess is contacted in PA. Hess says no personal j(x). Implied consent to interstate judicial issues. MA allowed residents and non-residents to be sued. This is a stretch, courts didn’t like Pennoyer. Moving it along.
         2. Pennoyer= no j(x) because Oregon didn’t have express law about non-res/res
      2. *Hanson v. Denckla-* Donner (PA) had a trust in a Bank in Delaware. Reassigned beneficiaries after moving to FL. FL tried to claim j(x)- but courts said no. **Restricts personal jurisdiction- you have to have purposeful affiliation between D and forum in order to have personal j(x).**
      3. (SHOE TEST- Minimal Contact)- If defendant has continuous/systematic business, large volume of business, can use the court to protect itself- then enough Contact in forum state to establish jurisdiction and suing them will not offend traditional notions of fair play and substantial justice.
         1. *International Shoe v. WA-* WA sues Shoe w/state statute that company must pay unemployment fund. Shoe says they can’t be served b/c no ppl/no business/and so no Due Process. Court holds **due process only requires for *in personam*, if not present, he have minimum contacts with it such that he does not offend traditional notions of fair play and substantial justice.**
            1. Minimum Contacts- Continuous and systematic and have given rise to the cause of action sued upon (*International Shoe)*
            2. Sporadic and casual activities of D in forum, or single isolated act are not enough to subject for suit if there is purposeful availment and can defend self with state laws(*Hanson v. Denckla)*
            3. Continuous activity may subject to suit even with causes of action are unrelated to activity in forum (*Pekins v. Benguet)*
            4. Sporadic forum activity, even a single act, may suffice under certain circumstances to render j(x). (*McGee v. Int’l Life Ins. Co.)*
            5. In Sum: Were the activities continuous and systematic, or were they sporadic and casual? And two, is the cause of action sued upon related or unrelated to D activities in forum?
      4. (GRAY- **HIGH WATER MARK Civil Pro**)- **If product is in stream of commerce, company should expect/foresee being sued outside state. Not in just unilateral action by consumer.**
         1. Gray v. American Radiator- Gray injured when water heater explodes in Illinois because of safety valve manufactured by Titan.
            1. In order to sue must have:

**Constitutional for Long Arm**- 14th amendment and International Shoe Test

**Statutory for Long Arm**- Illinois has Statute that says anyone that commits tort in Illinois can be sued there

* + - * 1. **Broad Reading:** You are liable because your items can be sold anywhere and everywhere- must defend wherever product is in market.
        2. **Narrow Reading:** You are ONLY liable if you have substantial revenue and contact.
    1. *McGee v. International Life Insurance* (**High Water Mark Contracts**)- McGee insurance in TX (originally Empire, then International). Paid them for 2 years, died, insurance won’t pay beneficiary, TX says no J(x) in CA.
       - 1. Constitutional- 14th amendment due process and Shoe Test- The ins. Co did business there over a long period of time. It does not offend fair play and justice, and even if one sporadic contact, was cause of action, so still (j(x)).
         2. Statutory- CA has manifest intent statute- matches the national statute long arm. Can pull in person w/contact in state.
         3. **Contradicts Titan and Gray. Consistent with Shoe-Denckla**
    2. *World Wide Volkswagon Corp. v. Woodson-* Gas tank was in wrong place, so rear end and an explosion takes place. Manufacturer is in NY, accident in Oklahoma, while Plaintiffs driving through on their way to AZ for their new home. Seaway, the NY Audi dealer did not purposefully avail of opportunities in Oklahoma, although it could foresee buyers might take cars there. D/n seek any direct benefit from Oklahoma sufficient to require jurisdiction.
       1. **Supreme Court says: Must have purposeful conduct by direct D acts or by conduct outside state that D could foresee being sued. Majority- product placement does not mean contact with the forum**
       2. **Consistent with the Narrow Reading of Gray-** you are only liable if you haves substantial revenue and contact.
       3. **Inconsistent with Broad Reading-** It is foreseeable that a care will move throughout states. If a product is in stream of commerce, this will happen. In Gray, it was not regular that a heater would move from state to state naturally in stream of commerce. So the court under BROAD reading would’ve held liable and said personal j(x).
    3. Burger King Test- D had wanted Franchise in Michigan. Got late on payments and was sued by BK (P) in diversity action. Is there jurisdiction? DC says there is jurisdiction through long arm statute. Appealed by D, but Supreme Court says Due Process not offended by FL long arm statute.
       1. Constitutional- 14th amendment allow D to be dragged into Fl? Take the Shoe test and split it into two! (Sovereignty/Minimal Contact and Fairness and Substantial Justice)
          1. **Sovereignty Branch- Minimal Contact -**

O’Connor- Is there intent? (Purposeful availment)

Brennan- Is there knowledge?

* + - * 1. **Fairness and Substantial Justice-** Plaintiff/Defendant/Forum State/Inter-state Judiciary (who has most interest should be most on the fairness scale)
      1. **Consistent with *World Wide Volkswagon?***
         1. No- because in WWV, only interests of D were considered
         2. Yes- because here, the D looked for Burger King for business. In WWV, the majority of the test was based on the sovereignty branch, not fairness.
      2. **Policy-** Normally, the small person is the P, and by this ruling, the small person will be helped in lawsuits, not the larger corporation.
    1. Asahi- Zurcher was in motorcycle collision with a tractor and his wife dies because something is wrongly manufactured by a couple of companies (Cheng Shin, Asahi). All cases get thrown out except 3rd party (Cheng Shin v. Asahi). Is awareness on part of foreign D that the product might end up in CA satisfactory for minimal contact?
       1. Modify Sovereignty Branch- Minimum Contact by O’Connor- if there is purposeful direction by D into forum. Minimum Contact by Brennan- the D must have some knowledge that they could contact in state.
       2. **Brennan- Broad reading of Gray; O’ Connor- Narrow reading of Gray**

1. **General Long Arm Jurisdiction and State Long Arm Laws**
   1. Continuous activity may subject to suit even with causes of action are unrelated to activity in forum (*Pekins v. Benguet)*
   2. *Helicopteros v. Hall-* Crash of plane in Columbia in a company joint project between a USA corporation and Columbian corporation (Helicol). Wrongful death suit against Helicol, and the two TX companies. Court says there is not personal jurisdiction over Helicol using long arm statute because the contacts don’t fit the higher threshold for General Jurisdiction. They use general jurisdiction because of the way the P pleaded the case in the first trial. So the way Helicol got training, the meeting that happened once, and the bank transactions did not count because the cause of action did not arise out of these contacts.
      1. **General j(x)-** Requires extensive contacts with the forum. Used when cause of action does not arise out of D’s forum related activities. Threshold for establishing contacts is a lot higher than that for specific jurisdiction.
      2. **Specific j(x)-** Requires claim against the D be connected to the forum. Asserted when forum contacts of D are sporadic, but cause of action is from those specific contacts.
   3. *McIntyre Case 2010*- Application of Sovereignty Branch now has 3 possible uses.
      1. Breyer- You must service the market substantially (Narrow view of Gray)
      2. O’Connor- Completely removes Gray ruling. D must have purposeful directed contact to forum state.
      3. Ginsburg- Repeats Brennan- The D must defend in any place where their product is in stream of commerce (any minimal contact)
2. **Personal Jurisdiction – Internet and Other**
   1. *Pebble Beach Co. v. Caddy*- Golf course resort in California is suing a small business owner in England for a B&B of the same web address. **Applies Calder v. Jones- Was the harm foreseeable and intentional? No. Also, this is a non-interactive website. It is entirely passive and is not aimed**. It is like a print advertisement. (Applies minimum contact test and d/n find it). Caddy d/n purposefully avail self. (Apply shoe, Pennoyer v Neff is irrelevant here, no statute, and the facts its Quasi in Rem II dn matter).
   2. *Calder v. Jones*- Supreme Court said that D must have committed an intentional act, expressly aimed at forum state, and caused harm, the brunt of which is suffered and which the D knows is likely to be suffered in forum state. This is O’Connor/Kennedy version of sovereignty **(Is it foreseeable).**
   3. *Zippo Manufacturing v. Zippo Dot Com*- Is the website passive/static? Or is it active? J(x) depends on how interactive the website is. **This test has been replaced by Caddy.**
   4. *Bellino v. Simon*- 2 D are supposedly harmin`g sales of autographed baseballs in website by defaming him in emails and telephone calls with potential buyers. By sovereignty test, since Simon actively used email option on website and called through company website. Simon estb. J(x) in Louisiana with purposeful availment by directing the emails to Louisana where Bellino was.
3. **Personal Jurisdiction- *In Rem Jurisdiction***
   1. *Harris v. Balk*- Harris debtor owed Balk in NC money. Harris was served in Maryland, an d notice was posted. Neither debtee nor debtor showed up in court, to defauls judgment against Balk. Balk later sues in second suit, but Harris says already judgment against him**. Supreme Court says NC has to give credit to judgment by Full Faith and Credit Clause because debt follows person wherever they are, so when Harris was served in Maryland it was okay.**
   2. *Shaffer v. Heitner*- Here the court said you must apply the Shoe test for contacts in all assertions of jurisdiction. Heitner brings shareholder suit v. individuals that are part of Greyhound. Allegedly they violated their fiduciary duties with criminal activities. No one was domiciled or resident in Delware. None of the acts that gave rise to cause of action were in Delaware.
      1. **Court held no j(x)- all proceedings are against people- can’t base jurisdiction just on seizure of stocks, and w/o considering other contacts between defendants and forum. If you can’t exercise *in personam* j(x), you can’t circumvent due process rights by doing *quasi in rem* over property.**
      2. **Is this consistent with Pennoyer?**
         1. No- No property located in Delaware and how do you seize a stock?
      3. **Should you apply International Shoe?**
         1. Yes- because you are really using lon arm jurisdiction
         2. No- because international show is based on “traditional” notions of fairplay and justice, and nothing is more traditional than Pennoyer
4. **Personal Jurisdiction- Based on Physical Presence**
   1. *Burnham v. Superior Court*- (m) Burnham travels to CA to visit kids with divorced wife who is in CA. Served while is there with separate set of divorce papers she started there. **Scalia says there is j(x) because they always give j(x) when you are in the state and served (procedure)- EFFICIENT. Brennan says not history, but because Burnham availed himself of services of state… like the roads- FAIR.**
      1. Is this fair by International Shoe?
         1. Minimal contacts are there. Fairness to P, Court in Ca has strong interest, by Brennan- fair to D but here’s the rub: Can’t really apply Shaffer her. Shaffer was about Quasi in Rem II. This is about *in personam*  and QinRem 1 . So this is fundamentally unfair to the D. The Therefore in the statement in Shaffer limits the international shoe stuff and by Scalia doesn’t apply at all.
5. **Personal Jurisdiction- Federal Court**
   1. Rule 4
      1. Rule 4(K)(1)(a)- General service- when federal statute d/n authorize j(x), federal court can piggy back using statute of state in which it sits.
      2. Rule 4(K)(1)(b)- special service- parties joined by 14 and 19 can be served according to Bulge rule (within judicial district of USA and not more than 100 miles away from where summons issued)
      3. Rule 4 (K)(1)(c)- Service when authourized by federal statute like Anti Terrorism Act in any district where D resides/found/or has agent.
      4. Rule 4 (K)(2)- limited long arm provision estb. Personal jurisdiction for claim arising under federal law if D is not subject to j(x) in any state court w/general jurisdiction and exercising j(x) is consistent with USA Constitution and Laws.
         1. *Omni Capital Int’l v. Wolff-* P sues Omni corp. (Louisiana), which impleads British Wolff, from London. Louisiana could not reach the foreign D. Supreme Court agreed. Dismissed for lack of personal jurisdiction. Rule 4k2 established to reach foreign defendants doing business in USA.
   2. Dejames v. Magnificence Carriers Co. – Man injured on ship that was modified in Japan at port. Claims that there is enough contact for government to have personal jurisdiction over the company from Japan. Court rules the there is not enough contact even using State’s 14th amendment Due Process Statutes and the Burger King test. Hitachi fails the Ginsberg test. This case was done under 4k1, where the court uses state statute when it can’t claim service of due process on its own. After the case was done, would’ve been able to use 4k2.
      1. Can you sue anywhere and is that Constitutional? Amendment 5.
         1. Burnham case- which indicates that a state can service anytime in its borders, which means by that the USA should’ve been able to serve anyone in its borders at any time by Amendment 5 (Analogous). So if Burnham’s holding is Scalia’s efficiency, then you could serve Japanese company. If it is Brennan’s you can’t because there was no purposeful availment involved in the USA.
6. **Personal Jurisdiction- Procedural Due Process**
   1. *Mullane v. Central Hanover Bank and Trust Co.*- 3 mill common trust fund administered by bank. Had 113 trust estates that were pooled. Allow small investors to use professional money managers. Mullane was a separate guardian for all ppl w/ interest in common trust fund. Mullane challenged NY j(x) because first notice by publication was not adequate for service of process.
      1. Court held that one must make best efforts to reach those that it could reasonably serve notice via mail since it was easy/cheap. So balancing cost of action v. how easy it is to do action. Service of process does not have to be impracticable and extended.
   2. **Opportunity to be Heard**
      1. *Fuentes v. Shevin-* Court held that FL and PA statutes permitting replevin without prior hearings are unconstitutional. They d/n serve general public interest sufficient to justify postponement of D right to hearing, even though owner permitted to regain possession of property by posting bond- here, the entire judgment was also based on how the property could be repossessed based on allegations and affirmed by clerks etc.
         1. Broad- W/o prejudgment sequestration that d/n provide notice and opportunity to be heard prior to attachment was constitutional suspect
         2. This lets companies get away with replevin if they put in the contract that the people are waiving rights on pre-deprivation hearings.
         3. Fuentes specifically seems to say you should always have pre-deprivation hearing.
      2. *Mitchell v. W.T. Grant Co.-* Since LA write requires judicial approval, involves vendor’s lien, and makes available a procedure enabling buyer to reclaim possession immediately, and forced P to demonstrate basis for sequestration, the debtor was protected and replevin prior to action was not illegal.
         1. Does Mitchell overrule Fuentes?
            1. Yes- Because in Fuentes, the statute for replevin was unconstitutional for violating due process w/o pre-deprivation hearing. But in Mitchell, you can have post deprivation
            2. No- Louisiana statute has additional protections that Fuentes’ didn’t. So Mitchell is like an addendum.
      3. *North Georgia Finishing v. Di-Chem Inc*- Supreme court ruled against Georgia garnishment statute that lets you defendant account be garnished on basis of affidavits and double bonds. No early hearing, D could repossess through counter bond, but county clerk did writ. Not the safeguards the courts set forth in *Mitchell*.
      4. *Connecticut v. Doehr*-Supreme court denied P using prejudgment attachment statute v. defendant’s real estate for potential judgment in assault and battery case. Connecticut statute only required a filed affidavit under oath. Too great a risk of erroneous deprivation. The diff. b/t CT and Mitchell is that P in Mitchell had vendors lien on attached property , and risk of error was minimal. P in this case had no prior interest in Doehr’s real estate and was only seekin availability of assets.
         1. Does CT overrule Mitchell?
            1. Yes- Mitchell has satisfied DP when judge is decision maker and there is an affidavit explaining interest in property.
            2. No- Because there is no interest in the property, The suit here was about assault and battery (unrelated).
7. **Venue- establish SMJ and P(j(x)) before determining Venue.**
   1. **General Rules:** 
      1. Statutory provisions- Federal Venue Decision §1391- In diversity cases, venues are where D resides if all D in same state; where substantial part of events or omissions giving rise to claim occurred or substantial part of property is; or where any D is subject to personal j(x) when action is commenced, if there is no other district where you can bring claim.
      2. 1391b- Where not on diversity of citizenship- judicial district where any D resides if all D in same state; judicial district in which substantial part of the events or omissions giving rise to claim occurred, or part of property is situated; judicial district In which any D may be found, if there is not district in which action may otherwise be brought.
      3. 1391 C- Corporation (DEFENDANTS)- subject anywhere they can get personal j(x) when action is commenced. Corporation also in multi j(x) state- venue proper is where contacts are sufficient to get personal j(x) if that district would be like another state. If no district, corporation resides in district where it has most contacts.
      4. Venue Waiver- Defendant waives it if they don’t object by raising objection in response (12h1).
      5. Specialized Venue exists- for Patent infringement claims, copyright suits, interpleader against federal officials.
      6. Local Actions- Must be prosecuted in county or district in which land is located.
8. **Venue- Local Action Rule-** Not really used as much, but it does exist and it hasn’t been overruled.
   * 1. Livingston v. Jefferson: Dirt from batture in front of Livingston estate is claimed by Government as public on order of Jefferson as president. Livingston sues Jefferson for trespass in VA court (action took place in Territory of New Orleans). Court says **Local Action rule** applies, which means- title and injury to land is local, if you sued for conversion instead of trespass it wouldn’t be local action rule. Would be better if it was possible to sue Jefferson in Louisiana. If you have a local action, you can’t seize the land if you’re in another state and effectively have process occur. Justification- old common law, Louisiana can just handle title issues. Local action rule means that local action is where the land is!
9. **Venue -Federal Venue - Statute 1391**-
   1. Bates v. C&S Adjusters- C&S owed debt by Bates, send collections to collections agency that sends Bates a letter, forwarded from old address in PA to new address in NY by the USPS. SMJ because of the Holmes Creation Test. The claim arises out of federal law. But there is no federal j(x), should’ve been dismissed. The courts determined that the claim could be brought under NY law in NY Federal Court against PA company because a substantial part of the action occurred in NY (Claim was under Federal Debt Collection Act preventing harassment of debtors); 1391 (B)(2) is appropriate venue (Adjusters believe it was the wrong venue).
10. **Venue- Transfer §1404**
    1. Statutes
       1. 1404- How to move venue when the venue is okay, but you would like to move to another venue that also has SMJ and Pj(x)
       2. 1406- Where to move when the venue is improper
    2. Cases
       1. Hoffman v. Blaski- Blaski sues Howell and co. (from TX) in TX (Federal) , Defendant. Wants case moved to Illinois. According to the courts, 1404A is not THAT broad, one cannot just transfer it anywhere. Howell, D, did not have significant contacts, and the 1404A could not be so construed as to allow D to move to wherever it chose. 1404A says where Plaintiff has right to bring case- it has nothing to do with where D wants case. So if the P could not bring case in Illinois, the case cannot be moved there.
       2. Policy- There should always be (by *forum non conveniens)* two possible venues where D can be amenable to process. But 1404 interpreted too broadly discriminates against P.
11. **Venue- Transferor case applies when transferring.**
    1. Transferor court’s law applies in transferee court (*Van Dusen)* Van Dusen- Wrongful death accident when plane flies from Boston into Boston Harbor on way to Philadelphia. 40 of the claims are made in Pennsylvania, which has no cap on damages. D wants to move it to MA where there is cap on damages. You can only transfer cases with a single sovereign. 1404A is a procedural statute- so it doesn’t affect the substantive case action. It can be used to transfer to another place even if the other place is prejudicial because the sole purpose of 1401 A is housekeeping. Plaintiff gets a super advantage because it can choose where it wants the case to go and the law applies despite getting a transfer to another venue where D could have been brought successfully.
    2. Consistent with Erie! Policy- Don’t want forum shopping to increase by allowing 1404A to let D choose which law applies. This gives P bias because the laws P chooses follow everywhere even though the convenience of the witnesses to the case might be elsewhere. The intent of 104 is to replace how prior to 1948 you had to make a forum non conveniens action in order to move to a different court.
12. ***Forum non conveniens****-* more likely to be done in Federal Court than in State court.
    1. *General Idea-* Use the Gulf Oil test- which is where is it most convenient to bring the case
       1. Ease of access to proof, availability to compulsory process, view of premises, practicality, expense, enforceability (Private Interests) vs. (Public Interests) Administrative difficulty (congestion in courts); jury that has no interest in case, and preference of state law.
       2. Forum non conveniens is a discretionary doctrine whereby the court which has jurisdiction over a case may decline to exercise it as there is no substantive reason for the case to be brought there, or if in presenting the case in the court would create hardship on the defendant or witnesses
       3. If you want the case in other sovereign – use FNC; If you want the case moved to a state court but it was filed in Federal, can use FNC
       4. If you make FNC movement, you’re conceding that the court can hear the case if it wants.
       5. If there is a forum selection clause, it is likely to be accepted as enforceable.
    2. Piper v. Reyno- Reyno sues Piper and Hartzell on behalf of Scottish decedents in CA State court (gets moved to District court of California, then to Pennsylvania, then forum non conveniens using the Gulf Oil Test- Balance the interests of the private litigants and public interest in each nation/ or state in order to determine whether you will dismiss based on *forum non conveniens*. Determine forum non convenience (agreed with DC, not appeals) because most of the rest of the case was being tried in Scotland.
    3. **Policy-** Do not want foreign people coming to sue in American courts because American law is applicable/would be easier.
       1. After Piper- Statute 1631 was passed so that personal j(x) could be established through a transfer of venue (Hartzell was transferred from CA to Illinois in order to estb. Personal j(x) over Hartzell to serve properly). §1631- Transfer to cure want of jurisdiction.
       2. Repercussions: It is easier to get a *forum non conveniens* to go to Scotland from Texas than to another American court because of the trouble in proving a correct venue as to 1391.
13. **Choice of Law (Federal Law or State Law?)**
    1. Single Factor tests were originally used to determine which law you used. The more modern tests say you apply the place with the most significant contact to the case.
    2. You can choose the law which applies to the cases (General vs. Local). See section 1652
       1. The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decisions in civil actions in the courts of the United States in cases where they apply.
       2. **Swift v. Tyson**- If there are no statutes/treaties/provisions, judges in Federal court have right to ascertain a “general” body of law. The purpose of this was to have a general Federal body of law across the nation. General- making laws out of cold clothe, acting as legislation, based on logic and society (Supported by Brandeis- dissenter in *Erie*)
       3. **Erie v. Tompkins**- 34 Section in Act is unconstitutional- There is no ability to have a “federal” general law when you are looking at state and federal j(x) questions. In this case, Tompkins was walking by a train and trespassing on property when hit by train (PA). In PA can’t recover damages. So, P brings case in NY federal court. Federal court by TYSON can apply a general law. NY law would allow NY rule that train had duty of ordinary care. Purpose of Erie: To limit forum shopping and discrimination of residents v. non-residents, and then getting rid of the weird Federal Common Law idea. Arguments for the interpretation of statute 1652 and whether or not they should apply state law or Federal law:
          1. Linguistic Argument: Section 1652 (made in year 1789)-
             1. The term “laws” only applies to statutes : So LAW is actually referring to statutory legislation, because that is what the common man would believe.
             2. The term “laws” applies to judge made law: Judges create rules of law, they don’t just find them. So 1652 would include common law made by judges, which can apply in cases as necessary if no statue.
          2. Legislative History
             1. The language in first draft was probably taken out because they did not want common law included in statute 1652
             2. The first draft said – statute law and common law is used. So Brandeis argues that intent was common law to be included in condensed language of Act.
          3. Policy
             1. Is it a good idea to overrule Swift? No, Federal courts would have consistent decisions/uniform decisions; States might look up to those decisions
             2. Even after Swift, States d/n care about federal decisions that were made, plaintiffs were able to forum shop, there was discrimination against in state residents. States act as sovereign law making bodies. In state court Defendants cannot remove if they are from that state, so this actually discriminates against Defendants if the Plaintiff can bring anywhere.

Ex. If Tompkins liked NY state court, 1441b makes Erie stuck in NY (can’t remove). Defeats purpose of diversity j(x).

Reversing Swift v. Tyson will remove federal court uniformity but also reduces chance that you’ll have plaintiffs moving and destroying diversity jurisdiction.

* + - 1. Jurisprudence (Finding the Law vs. Making the Law)
         1. In Roe v. Wade , court ruled that w/in first three trimesters, there was right to abortion and one can’t unreasonably burden the right. Two schools of thought- Courts MAKE law or Courts FIND law. So people believed the court was FINDING the law in the Constitution.

If you believe federal judges can find the law the way State judges do, then Tyson holds.

Legal Realism= Erie. If you think that federal judges must make the law, then you don’t like Tyson, because making the law should only be with States in their states and Congress in Congress.

* + - 1. Constitutional Level- How is *Swift v. Tyson* Unconstitutional
         1. Constitutional, upholding *Swift* : Article 1 Section 8- Congress can regulate commerce. Congress can make lower courts. And then make laws as necessary and proper to apply.

The unconstitutionality is just dictum, not holding.

* + - * 1. Unconstitutional: There are 2 grounds where Congress does not get case

10th Amendment- because the government is one of limited powers and can only do what is granted. Article 1 §8- lists government powers that are granted and making a “general” body of federal law is not one of them.

* + - 1. Statutes (Governing Courts)
         1. Section 2072- Gives courts the ability to apply Federal Law when things are purely procedural, not substantive. Basically the *Sibbach v. Wilson* test.
      2. Why is the Unconstitutional part of the holding?
         1. It is dicta- In order to determine whether you apply state common law or not, you just decide whether §1652 requires you to apply common law.
         2. Holding- According to Brandeis- the case would have not overruled *Swift* if it was only about section 1652. In their opinion the Constitution requires overruling *Swift*.
  1. Outcome Determinative Test
     1. **Guaranty v. York**- York sues Guaranty for breach of fiduciary duty b/c Guaranty was supposed to take care of note holders. State statute of limitations was done, but federal had no statute of limitations. Court says if State law changes the outcome, then you must apply the State law not the federal law. Also doesn’t differentiate b/t substantive and procedural
     2. Erie did not apply because equitable law is separate from common law. Erie applies to substantive questions (rules that govern person’s conduct)
  2. Balancing Test
     1. **Byrd v. Blue Ridge Rural Electric**- South Carolina claims Workman’s Compensation applies against P that is suing employer for negligence. P suing them for negligence and says the WC d/n count since they are not his direct employer. Court says must balance Federal Interests v. State Interests- here the interest was in maintaining jury trial (7th amendment) and procedural law of judge trial in State law cannot be greater interest.
     2. Overrules Guaranty- b/c you’re going to apply whichever law is the most important, not apply state law that is “substantive”.
     3. Consistent with Erie: Procedure question- jury or judge trial, creating room for procedure being involved in issues that affect outcome.
     4. Inconsistent with Erie: P in court, Federal law can apply on diff outcome, forum shopping- this fails the outcome determinative test!
  3. Hanna Test
     1. **Hanna v. Plumer**- Hanna sues for damages from Osgood, but service of process doesn’t meet MA criteria, but meets the Federal requirement for serving. Case is in Federal court and meets Federal rules. Court says Federal rules apply despite Erie because otherwise violating Supremacy clause. Supreme Court has right to create rules of procedure for federal tribunals. Congress can give guidance for them if it wants. Also applying York is actually relevant if you have issues of forum shopping, not just this simple procedural filings.
        1. Uses test from *Sibbach v. Wilson*- Is the rule procedural by does it really affect procedure aka §2072*.*
        2. Contradicts Erie- if Federal Rule/Statute, overrules State. But by Erie, you would be using the STATE statute.
        3. Does Hanna Overrule Cohen? Cohen- D want P to have indemnity bond as required by NJ state law. Court said it is not just procedure, it’s a new liability to make sure D gets compensation if P can’t make case. So they did allow it, instead of following Federal Rules
        4. Does Hanna overrule *Ragan*? Diversity action where accident in Kansas. Kansas had 2 year statute from accident occurrence, Federal started statute from when complaint filed. Court ruled dismissal because should follow state. But *Hanna v. Plumer* would say follow Hanna.
     2. **FINAL Hanna Test Three Questions**
        1. Is there a federal rule or statute that is broad enough to govern the issue?
           1. If there is a direct conflict between the two rules, is the rule that we’re using a valid exercise of power under the Rules Enabling Act (§2072 Sibbach Wilson test of whether it affects procedure)

Does the Supreme Court have right to make it by Art. 1 §8 and the Supremacy clause means that it’ll work if it meets all of the above.

* + - 1. If not federal statute or rule broad enough to cover, you go to Byrd- Is there a substantial federal interest/federal policy for the case? Or is the state policy/interest more important?
         1. If not, use York Test the Hanna way (Outcome Determinative)-Does the outcome affect forum shopping? If it does use State law, not Federal.
    1. *Walker v. Armco Steel*- Plaintiff from Oklahoma sues Armco Steel from foreign state for damages. Must a diversity action follow state law or Rule 3 for commencement in tolling a statute. Here the court reaffirms Ragan. Hanna applies if federal rule is broad enough to control issues. Hanna grandfathers in all cases. So in Walker, they say that Rule 3 isn’t broad enough, where they say the court was right in saying Rule 4 was broad enough in Ragan.
    2. *Stewart v. Ricoh*- There was a contract with a forum selection clause. There is a federal rule that is broad enough to cover the forum selection clause. The case was brought in Alabama, but the K said you have to bring in Manhattan. So D tried to get it removed or dismissed. The state said Alabama law controls- appealed. Federal statute was decided to control because it was broad enough and took into consideration a number of factors. Alabama just did not allow forum selection at all. Court holds that the federal congress had right to make statute and since statute is broad enough and conflicts, Federal had right to make it so by Hanna test, keep it.
       1. Consistent with Walker?- Walker said that is federal rules don’t speak directly, then you don’t apply the ruling. But this is revisionist history and says that it is broad enough because it is one of the factors that goes into the decision of convenience (forum selection) so it DOES speak directly. In reality, it is really broad and doesn’t describe forum selection.
    3. *Gasperini v. Center for Humanities*- Gasperini sues the center for losing his photographic slides. Center of Humanities argues that the verdict was too huge of an award and that the federal court should’ve applied NY statute to be more critical about the award. Appeals court affirmed Trial court but also ordered new trial.
       1. Two separate halves, the trial court issue and the appeals court issue. Rule 59 is not broad enough to govern, is there a federal interest in the case(Byrd)? No, This is more of a state issue because of tort reform. Does applying Federal law affect forum shopping (York)? Yes. Therefore, use the State rule.
          1. In reality- Rule 59 should have applied but courts wanted to make room for NY state law about tort reform, so they ignore Federal j(x) option.
          2. Gasperini adds to Hanna Test- Will the state law hurt the Federal Law? If it does, then you use Federal law. If it doesn’t you use state law.
          3. You can see Garden Variety of Application

Hanna – Is there a Federal Rule broad enough and valid by 2072 and Art. 1 §8? Yes, the Rule 59 controls- it is valid by 2072 and Art 1 §8.

Byrd – Is there a Federal policy interest that should be weighed over state interests? Not in this case because NY was in the middle of a huge tort reform. So you’d want to apply state.

York by Hanna- will this include more forum shopping- would applying Federal law change substantively? Yes! There’d be an entire new trial. Therefore you use state law

So by the Hanna and Plumer test, we would’ve applied State law.

* + - 1. At the appellate level- Supreme Court said appeals court should have shown abuse of discretion in order to order *de novo*. Supreme Court says apply 7th amendment, precludes application of state law.
    1. Is Hanna consistent with Erie?
       1. Inconsistent- promotes forum shopping – for more likely that Federal rules will govern
       2. Consistent- Erie says you apply state law for substantive matter, doesn’t address procedure. Hanna d/n change the substantive issue technically.

1. **Federal Common Law**- Different from General Common Law (which is what Brandeis d/n like) because it makes up law (judges) from already existing law and applies to cases with intent. There must be a federal question. Really the issue is whether there is an implied right of action.
   1. Congress did not intend that you have Erie general law which is made independently (the law that Erie said was not good from the Swift v. Tyson case).
      * 1. Dice v. Akron- we have interstitial common law making. Dice v Akron says nothing about nullifying the release, so you use federal common law to fill in the FELA.
   2. Controversial- Feds hear admiralty cases only. So courts are making up law completely. Property law, some decisions completely federal- like the Shoshone mining case because they fell under Federal law only.
   3. Legal relations of the USA- Parnell- when the USA creates commercial paper and there is the question of who owns it, the state determines who does. But in Clefiller Trust case the USA argued that there ought to be a federal rule so that the USA doesn’t have to worry about fifty state laws. Feds d/n have to worry about that anymore, excepted from the normal rules.
   4. International relations- Sabotino (before Cuba revolution) Ny wanted to buy sugar cane, and then the factory was nationalized after revolution and they d/n want it any more, so Cuba sued Sabotino. US Supreme Court ruled for Cuba. NY State couldn’t entertain court because it would’ve screwed up international relations with Cuba- so Supreme Court essentially made common law
2. **Which State ‘s Law Should be Used?**
   1. According to Klaxon Co. v. Stentor- You apply the law of the state in which the Federal Court sits to determine which state law is used.
3. **What is the State Law?**
   1. *Mason v. Emery*- Mississippi plaintiff sues Rhode Island defendant in diversity case in Federal Court. Which state law is applied? Supreme Court holds that you apply the Rhode Island state law because that is the state in which the Federal court sits, therefore apply Rhode Island law, not Mississippi law. The Rhode Island state law says that you apply law of state where injury occurred, so here, would apply Mississippi law- Mississippi requires privity of K normally, but the Federal courts says since generally the trend is towards not requiring privity of K to sue, Mississippi would probably change its mind if the case was in front of it, therefore rule that there is no requirement for privity of contract under Mississippi law when applying Rhode Island.
      1. To figure out the law of the state- Look at old cases, see what the old holdings were, and then you either apply the old holdings or predict what that same court would do. (Think your *Chester v. Mustang* (IA) case.)
      2. Inconsistent with Erie- Because here Federal judges are allowed to make up some sort of hazy law for the state regardless of whether history really supports it.
      3. Consistent with Erie- You can get same result in Federal court that you would get in state court when the Federal court is applying the law of the state.
4. **Federal Law in State Courts**
   1. Dice v. Akron- Plaintiff sues under Federal Employee Liability Act- for damages from employer. Could have sued in federal court under 1331. Defendant would not be able to remove it to federal court because of §1445, which says FELA cases are not removable giving plaintiffs absolute forum choice. FELA is legislatively pro plaintiff and a purely substantive issue. Do we apply state or federal law?
      1. According to Hanna- State law should apply to procedure of case and federal law should apply to substance of case. Because procedurally otherwise, Federal application would change the outcome. Court holds that this is a Federally created question of fraud, and in federal law jury decides, but in this state’s law, judge decides. Since this is a pro-plaintiff federal issue, court insists jury will hear case.
      2. How is Dice inconsistent with Byrd?- Byrd says if there is a policy interest of the state, then you should allow the state to be more important in application. Here there was probably a policy interest or something…
      3. Why do States have to apply Federal Procedural Rules?- Because of the Hanna – Sibbach v. Wilson test!
5. **Joinder**
   1. Joinder Rules: 15, 18, 20, 21, 42
      1. Rule 15a- Party can amend pleading any time before the response. After, you can only amend with the court’s leave or the written consent of the party
      2. Rule 20a1b (Joining a Plaintiff) and Rule 20a2b (Joining a Defendant) *Transactional Test*- Rule 20a- Transactional Test- The acts and omissions related to the claims are logically related events that the court can regard as arising out of the same transaction, occurrence, or series of transactions or occurrences. B)-Question of law or fact common to all parties?
      3. Rule 21- Would order result in undue delay or prejduce to or against any party
      4. Rule 42b- Court can sever claims to avoid prejudice to any party or to decrease jury confusion
      5. Rule 18a- Claimant can join all claims against the D regardless of transaction.
      6. Main Packaging Devices- Rules 15, 18, and 20.
   2. Historical Limitations on Permissive Joinder of Claims
      1. *Harris v. Avery-* Old school. Avery was detained unlawfully by Harris and his horse was stolen. Wanted to sue Harris in one case, but court said because of equitable law, this would not be possible.
   3. Rule 18: Permissive Joinder of Claims by Plaintiffs- you can join all claims against a single party regardless of how unrelated they are.
      1. *M.K. v. Tenet-* Plaintiffs v. CIA director on basis of violation of privacy act and civil rights act, denying adequate evidence to counsel. 6 plaintiffs, three claims, same common fact/law in question. Meet 18a which allows claimant to join all claims against the D regardless of transactions involved because same D. Plaintiff uses Rule 15 to amend their complaint, and the Defendant wants to use Rule 21 to sever the claim. The court denies the severance and the attempt to stop joinder because it was properly done.
      2. *M.K v. Tenet-* Plaintiffs v. CIA director on basis of violation of privacy act and civil rights act, denying adequate evidence to counsel. 6 plaintiffs, three claims, same common fact/law in question (according to P). Court determines that rule 20A and B are met by P, so D’s desire to have dismissal via Rule 21 is denied. Judges agree w/ UMW v. Gibbs that they should have joinder on basis of convenience and efficiency as well.
      3. *Sporn v. Hudson*- Attempt to join five causes of action for negligence that resulted in personal injuries with one cause of action that was for malicious prosecution. Court declined to join because the questions of law per the malicious prosecution different from personal injuries and would confuse the jury.
   4. Rule 20: Permissive Joiner of Parties – Must have same transaction and one common question of law and fact. Scope of transaction is typically in the eye of the beholder.
      1. *Ryder v. Jefferson Hotel* (historical)- The couple are kicked out of hotel based on being “unmarried”. They sue together because they are married. Court uses Hurns (Common Law) Standard: How many injuries exist and are they the same? By this, they must sue separately because there are two separate causes of action because each person was injured separately(Hurns). But court ruled Gibbs, which, if this had been in Federal Court would be Rule 20- The two people can join together for this rule if it was the same transaction and there is one common question of law and fact.
         1. Rule 20 – The first part is same transaction- this is “scope of transaction” and is in the eye of the beholder (They were in the room and got thrown out). The second part is whether there is one common question of law and fact. (Is the couple married)
         2. Why is Common Law different from the modern rule? The common law rule was inefficient. Moved to this Rule 20 because its more efficient.
         3. Texas does not allow federal rule 20.
6. **Joinder: Necessary and Indispensable Parties**- Rule 19
   1. General
      1. Necessary- those who may and must be joined or the complaint will be dismissed
      2. Indispensable- Those who cannot be joined but the complaint can’t proceed without them.
      3. Dead man’s statute- A person’s testimony cannot be included if it would be adverse to that of the dead man.
   2. Equity and Good Conscience Test
      1. Must examine if Plaintiff has interest in Forum
         1. Before trial- depends on whether satisfactory alternative forum exists
         2. On appeal if P has won, interesting preserving judgment, D may wish to avoid multiple litigation/inconsistent relief/sole responsibility
         3. After trial- consider it foreclosed
      2. Interest of the outsider whom it would have been desirable to join- judgment is not *res judicata* against non-party.
         1. Court can still issue judgment that affects nonparty
         2. Court cannot always proceed w/o considering potential effect just because not technically bound
      3. MUST consider as a practical matter whether judgment will impair or impeded ability to protect subject matter interests.
         1. On Appeal- judgment may not affect interest of any outsider even though before trial there was a possibility it’d happen. But appeals should still try to protect non party
      4. Interest of Courts and public on consistent and efficient controversy settlement- Don’t want to try the entire case over again.
   3. Court should consider possibility of shaping relief to accommodate the above four interests. Greater attention to potential solution to a joinder stymie.
   4. *Provident Tradesmens Bank and Trust Co.(Lynch) v Patterson (Cionci)*- There are four lawsuits involved, two of which are pending in state court, one of which was settled b/t Lynch estate (PTB) and Patterson (Cionci’s). Then there was a motion to dismiss the claim because Dutcher had not been joined. Court held that the test for joinder is to balance the harms done to P and D if the person is not joined + judicial efficiency.
7. **Joinder- Impleader and Interpleader**
   1. **Impleader**
      1. Rule 14- If the party is or may be liable to the original third party plaintiff for all or part of the claim against it, then you implead the party.
      2. Rule 13g- Allows cross claim if there may be liability by co-party.
      3. *Jeub* *v. B.G. Foods*- Jeub sues B/G foods for the canned ham making them sick. B/G says they want to implead Swift because they had no control over the quality of the canned ham.
         1. *Contingent Impleader-* you can implead at the same time because it is fair and efficient (before the first case has been concluded). Otherwise you’d have to retry the same facts and you’d have inconsistent results.
            1. If Swift is not made a party, Pennoyer v. Neff says that that Swift can relitigate and not be bound by the other result outcome. This would be super unfair to Original defendant.
      4. *Too, Inc. v. Kohl’s Department Stores, Inc. and Windstar*- Abraham was aware of designers copy right infringement on Too Inc., but sold the line of clothing to Kohl’s department store anyway. Too sues Kohl’s for copyright infringement, Kohl’s wants to implead Abrahamas and DeCaro.
         1. Court holds you can implead the employees because it is a copyright infringement issue, federal issue under Federal rules.
         2. Criteria
            1. Is the impleader timely?- Yes because it is before the trial date is set
            2. Is the impleader going to prejudice the third party D?- Neither this or the concern of an unmeritorious claim outweigh judicial efficiency
            3. Is this efficient?- Yes! Otherwise court will have to hear the claim again, same facts, same transaction.
   2. **Interpleader**
      1. General- Interpleader can only be used when there is one fund for prospective claimants/one source.
         1. Rule 22- if all normal requirements for bringing th suit are met, interpleader is a legitimate form of joinder. *CANNOT* USE STATUTORY INTERPLEADER WITH RULE 22.
            1. Use this when diversity is not estb. Under §1335; d/n want to post a bond; not clear on contingent claims being impleaded but you can use Pan Americanto estb.
            2. Establish SMJ by 1331 or 1332
            3. Personal Jurisdiction under Rule 4 and the Burger King Test
            4. Venue under 1391
         2. §1335- Special SMJ, PJ, and Venue provisions as well as interpleader requirements
            1. Minimal Diversity (Art. III §2)- Between claimants (not D and P)
            2. AinC= 500
            3. Personal j(x)- determined by §2361- District court can block other claimants from prosecuting any proceedings in any other court affecting whatever is in interpleader until court further orders. Can make permanent injunctions. Cannot use injunction if you’re using a broad interpretation of 2361 under Act of Congress.

§2361 gives nationwide j(x)

Rule 4 and the Burger King test give jurisdiction over international claimants

Amendment V to make sure you have due process by federal, and 14 for due process in state.

* + - * 1. Venue- §1397- Any civil action of interpleader or in nature of interpleader under 1335 can be brought in judicial district where one or more claimants reside. Also allows contingent claims.
        2. Injunctions- Can be granted using §2283 to protect j(x) over interpleader case.
    1. *Pan American Fire and Casualty Co v. Revere*- Tractor hits school bus, lots of ppl die, another collision when two cars behind bus collided. P can’t admit liability, but deposited 100k bond. Can’t concede negligence. Liability insurer wants interpleader action because it wants all claimants in the same suit. Court holds to allow interpleader because it protects from multiple liability from the same fund, claimants are all trying to get money from the same fund
    2. *State Farm Fire & Casualty v. Tashire*- Collision between bus and trick. Insurance policy coveres truck to a certain amount. Insurance company wants that everyone has to establish claims against Clark and in Oregon. They joined Clark, Glasgow, Nauta, Greyhound, all claimants and said that they could do it through Federal Interpleader act. District court gave injunction. Supreme Court said this doesn’t work because you can’t have an injunction barring pending claims when the claimants can also recover for other sources of money and tort action. It would be unjust and block litigation.

1. **Joinder- Intervention**
   * 1. Rule 24a- Permissive Intervention
        1. STANDARD- Interest in property/action, decision may impeded ability to protect you interest, applicant interest not adequately measured by party
        2. Only intervene when you have an interest in the subject matter of the original action and it was not adequately represented by the parties.
        3. Interest is not determinative- whether you are determined to intereven is on practical harm and the adequate representation
        4. Intervention- in majority of cases- not allowed after judgment if final.
        5. Other reasons you can intervene (show inadequacy of representation):
           1. Applicants interests are not represented at all
           2. Applicant and representing attorney are antagonistic
           3. Collusion between representative and adverse parties
     2. *Smuck v. Hobson*- Parents of the black kids sue the school district in Federal court using Civil Rights Act. The parents win and the Board votes to not appeal. Then, Hansen and Smuck appeal separately and the district court grants their attempt to intervene (they weren’t part of the original lawsuit). Supreme Court Holds- they can intervene under Rule 24a because they have an interest in the subject matter of the original action which was not adequately represented by existing parties.
     3. *Note*- Martin v. Wilks- Justbecause you know of a lawsuit does not mean you must intervene in it.
2. **Joinder Class Actions- The exception to Pennoyer v. Neff. .**
   1. For Diversity- Citizenship of the named Plaintiff v. D
   2. For supplemental – Named plaintiff must have above amount in controversy
   3. Personal jurisdiction- must exist for defendant, and named plaintiff. If money is sought, plaintiff class that is absent does not need personal jurisdiction or presence.
   4. Policy
      1. Pro- Cheapens individual claims by giving one litigation cost. Equalize difference in power b/t individuals and corporations. Amplify ability to litigate, negotiate, settle disputes
      2. Cons- Limits choices and options, espec. For unnamed plaintiffs. Binds all. Can be difficult and expensive to litigate, require more time.
   5. Rule 23- Judicial efficiency- allows you to have one representative for lage group of people. Four main requirements
      1. A- Four main requirements
         1. Is it a Common question of law or fact?
         2. Is the Plaintiff claim typical of the rest of the Class?
         3. Are the claims numerous? (Greater than 40)
         4. Will there be adequate representation?
      2. B- Three types of class actions (must meet at least 1)
         1. 23b1- If individual actions by members of class would create risk of inconsistent decisions or would impair the interests of other class members who are not part of the individual cases. Prejudicial because if you cannot interplead, there is no money for claimants who are not interpled by stakeholder
         2. 23b2- If the party opposing the class has acted or refused to act on grounds generally applicable to class, making final injunctive or declarative relief appropriate to class. Problem if you have any injunctions and damages claims, which is the most important ot the claims
         3. 23b3- Class action allowed when court finds question of law or fact common to the class members predominate and that a class action is superior to all other alternatives to dealing with the issue.
      3. C- Notice rules- MUST comply for class action to succeed.
         1. Opt out of the rules of 23b3 class actions- You absolutely have to give notice, people can waive their right to participate, but they are still bound by Res judicata.
         2. If the action is 23b1 or 2, you don’t have to give notice which contradicts Mullane and Due Process
   6. §1453-Allows you to remove class actions to district court of USA.
   7. *General Telephone Co. v. Falcon*- Man was not being promoted as the other people were, wanted class certification in Civil Rights Ac. Court held- no class action because there must be clear link b/t individual and class claims. Falcon was denied promotion, but there was no link showing that the others were denied for the same reason.
   8. *Walmart Stores v*. *Dukes-* Class action suit was brought in Federal court against Wal-Mart for gender discrimination in promotion practices/culture of discrimination. Court said there was no commonality fo claims among the women because there were many stores. Ragazzo- this is a questionable decision to reject case because court is using merits to certify the class 23b3 instead of 23a2 by itself. According to Ragazzo if they met 23a2, they wouldn’t have met 23a3, typicality- because some walmart managers might not promote women because of unwillingness to move, others because of degree and injunctive relief wouldn’t have helped. Court also says can’t use 23b2- because individual monetary claims go in 23b3. But court themselves have said you can’t use statistical sampling in order to determine money. §2072, procedure can’t be used to diminish party rights.
3. **Right to Jury Trial- General** 
   1. Cons of 7th Amendment- Juries are Pro plaintiff; people wonder if juries actually cross section of population; whether they can sit on complicated cases
   2. Amendment 6 and 7 are not applicable to states, so states are not required to have jury trials
   3. Amendment 7 is not symmetrical- If you are entitled to jury trial, you’ll get jury. If not entitled to jury title, might still get jury
   4. Amendment 7- Preserves right to jury trial
      1. From 1791 English Courts. Which had Equity and Chancery.
      2. Court of Law= Monetary claims and used juries
      3. Court of Chancery/Equity- Lord Chancellor. Injunctions, Special Performances, Damages, no jury
      4. Reasons why it is hard to determine preservation
         1. English court itself was changing/mixing around
         2. Today, new causes of action
         3. No longer separate courts system, system is all merged.
   5. Different Category of Legislative Claim
      1. Congress can create courts to adjudicate issues that are not normal (tax court, bankruptcy court). They may be questionable but have never been challenged
      2. Do not require jury
      3. Can only hear newly created rights. (Not in 1791).
4. **Right to a Jury Trial- Joinder**
   1. Beacon Theatres v. Westover- P has exclusive rights for area with movie distributer. Beacon notifies box it says the K is violation of antitrust. P sues for injunction and declaratory relief (Would go to Court of Chancery/Equity). The antitrust is like tortuous interference with a K. This is something that wold go to a court of law in 1791, and would be in jury. The declaratory relief wouldn’t go to trial, but 7th amendment is procedure and therefore we’ll do the antitrust matter before the declaratory relief matter. For the declaratory relief, you look at what the underlying claim is to decide what you’d do with it.
      1. In 1791- No antitrust, so you use the Ross test to determine what to do with it.
         1. What is the claim like?
         2. How does it compare to 1791?
         3. Would you use judge or jury?
         4. What is the relief?
         5. Can a jury understand it? So probably trial by jury.
         6. Historically- equitable actions were solved first. Because you couldn’t join claims.
      2. The purpose of the Federal Rules and Declaratory Judgment Act – make procedure reform, retain distinction b/t jury and non jury, leave substantive rights alone. Before this was passed, courts used to separate equity and legal actions because the legal actions might not protect equity actions. But now you have Declaratory Judgment and Federal Rules.
      3. Federal court decides that you can only do the equity claim separately an difrst when legal remedies are inadequate. Since now you can try both in one trial (judicial efficiency), you try them together because you want to protect jury trial.
   2. *Dairy Queen v. Wood*- P agrees to D to pay 150k for right of DQ trademark, P sues D for b/k because payments were late, wants temporary and permanent injunction, and what money is owed. D makes mvmt. For trial by jury.
      1. *In 1791*-  *This case would have been an equity case (In the Chancery Court) because it is so complicated and because equity courts typically decide injunctions!*
      2. Court holds – Beacon Theatres applies whether the legal issues are piggybacking or not. This is basically b/k only and for compensatory damages. You d/n need a special master because Rule 53B makes it so that you can bring one into the law court for testimony here, and lastly, the nature of the claim is legal.
      3. Does DQ enlarge or preserve the right of jury trial?- Wouldn’t this normally NOT be a jury trial? (Yes). DQ enlarges the right.
   3. *Ross v. Bernhard*- P (shareholders) sue directors of company for excessive fees and then in derivative suit join brokers. Demand jury trial. Court holds – if corporate claim is legal issue that would allow corporation jury trial in 7th amendment, then jury trial right is not forfeited just because stockholder right to sue has to be adjudicated as equitable issue first. This is something though that would normally have fallen under chancery court.
      1. *Ross Test*- What kind of 1791 Claim is this Like?, What Type of Relief?, Is the Issue Suitable for the Jury?
      2. Here, the court stops asking what would you do back in 1700, now it is asking “If you had the Federal Rules of Civil Procedure back in the 1700s, what would happen?”
5. **Right to a Jury Trial- Statutory Actions**
   1. *Curtis v. Loether*- P sues D because D won’t sell her apartment and on basis of race. D wants jury trial because you’ll get a discriminatory jury. Court says- what is this claim most like? It is most like duty of the innkeeper/defamation🡪 similar to a new tort. Court then says, what is relief like? Dropped injunction claim, so just damages, no need for clean up relief. And then court says how complex is the issue?--> Court says if the 1st two questions point in one direction, you don’t really have to worry about the third.
      1. *Marshall*- using this case to expand the 7th amendment.
      2. This case was brought under a statute (the civil rights) but court neglects the statutory question anyway and just goes through the Ross test.
      3. Normally Civil Rights going to jury violates the purpose of the Act.
      4. Legislative Rights Doctrine: Art 1 Section 8 and Article 3 section2 , congress creates courts. Congress can create new rights that are not know before and in that case you do not have right to jury trial.
   2. *Tull v. United States*- Gov’t sues in federal court to impose monetary penalty on D for violating Clean Water Act. D wants jury trial because its like debt decided by courts of law. Gov’t said equity because you want to abate nuisance, Supreme Court says
      1. Compare to 18th century actions in law and equity- The claim is like a court of law and a chancery court action. Well this prong isn’t as impt., so move on to second prong.
      2. What is the Remedy (Remedy here is civil penalty)- It is punitive like it is in the law courts because it is based on a fine. Chancery court only gives disgorgment, restitution, and clean up relief. Penalty is based on punishment.
      3. Is this suitable for jury? Yes! Because the issue is whether the lands count as wetlands.
      4. Differentiating Substance v. Procedure- York test- no difference b/t substance and procedure. Tull is the opposite side of that. One issue to jury and one to judge. So statute of limitations is procedure, and the core of the right is protected by substantive seventh amendment.
      5. **Tull only applies to situations that could not have happened in 1791.**
   3. Final Standard then by the courts is 1) Whether you could have brought this case in the 18th century, what is it similar to; 2) What is the available remedy/relief?
6. **Right to a Jury Trial- Conclusion**
   1. *Chaffeurs, Teamsters, and Helpers Local 391 v. Terry-* P goes to company for seniority and then asks Union to file claim on his behalf. Sues Union when they refuse. P must show Union did not do due diligence when it rejects his claim.
      1. Test to determine where court can hear case-
         1. Was this a cause of action in 1791? NO- Collective Bargaining d/n exist.
         2. What is the claim like?- Breach of K or malpractice (Court here says equity element mostly)
         3. What is the remedy like? – Monetary! Normallymonetary are before courts of law. Chancery CAN give restitution, but this is not a restitution action, since this is against the Union that was not unjustly enriched.
            1. The Remedy prong is more important
         4. Third prong- Hasn’t been discussed yet
            1. Conservatives say part 1 and 2 are impt.
            2. Brennan says part 1 is useless
            3. **Majority says history is relevant but not dispositive**
7. **Taking Cases from the Jury- General Introduction**
   1. Three ways:
      1. Summary Judgment- Before the case gets to court
      2. Directed Verdict- Once the case is in court using Rule 50
      3. JNOV- After the judge has delivered the verdict.
   2. Types of taking cases from jury:
      1. JMOL (Judgment as a matter of law)- same thing as a directed verdict- During the trial, make the motion (you can only make it after opposition has presented case,. Standard: Would a reasonable jury have enough evidence to find for the non-movant?.
         1. If you make JMOL after the verdict, you are making JNOV (also known as renewed JMOL). – In order to make JNOV, you must have made JMOL movement before the verdict.
         2. Otherwise- 7th amendment violation to review the verdict w/o JMOL mvmt.
   3. Three part Anderson Standard:
      1. Procedure- A Reasonable Jury
      2. Substantive- By Clear and Convincing Evidence that \_\_\_\_\_\_
      3. Substantive- By Clear and Convincing Evidence of \_\_\_
   4. Different standards of evidence
      1. Preponderance<Clear and Convincing Evidence< Reasonable Doubt<Overwhelming Evidence (How do you determine which you use?)
   5. Public Policy- You prefer jnov than DV because
      1. A jury may enter a good verdict
      2. Jnov and appeal allows the court of appeals to affirm, and if not , the Court of Appeals can remand it with a different verdict. This is the dissent in *Slocum* ☺
8. **Taking Cases from the Jury- Summary Judgment**
   1. *Lundeen v. Cordner-*Wife sues company on behalf of her two children that were the original beneficiaries of the husband’s insurance policy against the insurance provider. The second wife intervenes using Rule 24. The NW company interplead by insurance person because N.W. is the trustee and gets 75%. Second wife moves for summary judgment because the witness already signed an affidavit. If P had wanted to challenge the issue on credibility than she should have done so already.
      1. Four witness requirements: (1) Perception (2) Remembered Perception (3) Articulate Perception (4)Tell the Truth
      2. To Grant Summary Judgment
         1. Show no genuine issue of material fact
         2. Movant must be entitled to the judgment as a matter of law
      3. Policy- to avoid unnecessary trials, simply trial, can dispense with particular issues and claims using partial summary judgment.
   2. *Adickes v. Kress*- P (white teacher) at school for black children, went to store that didn’t serve her because she was white in company of blacks, and then she was followed from store and addressed on vagrancy. Sues for damages because denial of services and the arrest were a conspiracy against equal protection rights. Kress moved for summary judgment, Summary judgment denied because Movant’s burden of evidence is really high. Must show absolutely that there is no absence of general issue- burden not presented on movee to oppose the evidence of the summary judgment. Also, all evidence is taking in light most favourable to the movee party, not movant when considering summary judgment.
   3. *Celotex Corp v. Catrett-* P sues the corp. (D) for asbestos in material that the husband was exposed to. D says you can’t prove that the asbestos is cause in fact. **Standard in Civil Action**: Celotex has to show that No reasonable juror can find by the preponderance of evidence that Celotex made asbestos that killed P’s husband.
      1. *To avoid inefficiency, the burden of proof on the movant considers only proof that’s already available.* Otherwise you’d have to go through the entire case to determine summary jdgmt. So they use interrogatory to see let us see all plaintiff evidence.
      2. If you have the burden of proof, you must show overwhelming evidence. If you don’t have the burden of prove you’re just showing affirmatively that the other side can’t uphold the case. What does this mean?!
      3. Revolution of law because you’ve relaxed standards for judicial efficiency.
      4. Does summary judgment take away jury power?- it is more of a deviation from jury power because the judge is deciding whether the cases should go to court.
         1. Alternatively- it is not a removing a jury case because a reasonable jury is \_\_\_\_\_\_ what is a reasonable jury?
      5. Does it help with efficiency?- Yes, because it ends cases before they go through full trial. No because you have to review all the evidence anyway.
      6. How is Summary Judgment constitutional?
         1. Because it is procedural- it is housekeeping and does not affect the merits of the case.
         2. Substance- it is outcome determinative and the judge changes the outcome of the case by deciding whether to SJ or not!
   4. *Anderson v. Liberty Lobby*- Dude sues because articles are libelous. If there is a preponderance of evidence that a reasonable jury will return for the non-movant for summary judgment, then the case stands and there is enough chance that the jury could find either way. **Standard for summary judgment**
   5. Matsushita v. Zenith
9. **Taking Cases from the Jury- JMOL (Judgment as a matter of law)/ Directed Verdict**
   1. Galloway- Man from army claims that he has insanity. But the court d/n really believe that because there is an 8 yr gap between when he was in military and his testimony now- so how come no signs in between. Standard: Would any reasonable juror find by the preponderance of evidence that Mrs. Galloway Proved that Mr. Galloway is crazy. Court dictum- you cannot sue the government unless it waives sovereign immunity and then it says that you have no right to jury trial. Can you take the case away from jury? The directed verdict did not offend the spirit of the 7th amendment because of historical demurrer of evidence, where didn’t have enough evidence the case can be taken away from the jury. Galloway did not bring enough preponderance of evidence that a reasonable jury would find for him. Court Held in this particular case that 7th amendment d/n apply because it was for a monetary claim against the United States which d/n normally go to jury.
      1. Differences between Directed Verdict and Summary Judgment
         1. Back in 1791 demurrer means you’ve admitted that all the facts are true. So if the jury decides you can’t demurr and you lose on merits of case. A Directed Verdict however, you don’t take those risks. You just say that you should get a directed verdict, and if you don’t get it, it still goes to jury.
         2. Also, back then, if there was a scintilla of evidence, then you could not get demurrer/directed verdict. But according to courts now to beat directed verdict he’d have to show preponderance.
         3. The 7th amendment is not violated because even historically if there is not enough evidence the case can be dismissed.
      2. Substance v. Procedure-
         1. Substance- you’ve changed the outcome with directed verdict- otherwise case would go to trial
         2. Procedure- but majority say this is just a change in procedure because its another way to see if the case has enough material to go to trial.
      3. What if he’d been able to go to tirla, and it was found for plaintiff. D makes Rule 50 motion, what happens next? By the 7th amendment, no fact found by a jury can be re-examined. Demurrers only happen before evidence retires.
      4. Is Slocum consistent with Galloway?
         1. Slocum-7th amendment reexamination taken away by DV JNOV.
         2. Inconsistent- Slocum said it was about the core of right to have jury trial. But case was taken away from jury before it returned with a verdict. Slocum said that is unacceptable. But in Galloway, DV lets you take it away before jury. Galloway overrules Slocum, except for the part where you HAVE to make Directed Verdict motion before the jury retires.
         3. No judge can grant jnov unless directed verdict motion made before jury retires. Otherwise the court can always play with jnov.
         4. **Is the jnov movement Constitutional?**
         5. Rule 50B- Judge’s decision is always deemed reserved. You can make JNOV after directed verdict. If you don’t make directed verdict motion, then with a JNOV you can only get a new trial (Redman).
            1. Redman- judge reserved ruling to discuss with others and upset verdict if wrong decision was made.
10. **Taking Cases from the Jury- New Trial**
    1. *Aetna Casualty v. Yeatts*- Ins. Co. sues physician for abortion that isn’t covered by his insurance policy and want declaratory judgment. Jury found for the physician. Appealed by P because P wanted judgment not withstanding the verdict (JNOV) and a movement for a new trial
       1. Federal standard for setting aside a verdict: (1) Must be against the clear weight of the evidence (2)based on false evidence (3) result in miscarriage of justice
       2. Granting a new trial vs. directed verdict (just changing the verdict)
          1. If there is evidence that the jury can make a decision one way or the other, judge cannot grant DV
          2. But you can set aside a verdict supported by substantial evidence that is based on false evidence or contrary to the clear weight of evidence even though its sufficient to preclude the direct
          3. Court will not review the action of a federal trial court in granting or denying a motion for new trial for error of fact. 7th amendment- you can’t review a fact tried by the jury already/reexamining.
    2. *Dimick v. Schiedt*- P sues D to recover damages for negligent operation of a car. Jury gives verdict to P, 500. P wants to have new trial, unless D will pay $1500. D agrees. P appeals because he wanted a new trial. Goes to Supreme Court- holds that judges have no right to do additur. You can reduce excessive awards but not increase inadequate awards.
       1. Remittitur is acceptable because in 1791 they routinely gave Remittitur
       2. Supreme Court could’ve said that additur and remittitur are just procedure. Instead they took the history as a strait jacket view (like Slocum) and said whatever history does, only that we allow.
          1. Inconsistent with Beacon/Galloway- History is not the only guideline, we’re going to expand our criteria for where you get trial by jury.
          2. Consistent with Slocum
          3. States can apply additur because 7th amendment does not apply to them.
    3. *Slocum*- There was a jury trial that came out for P, and D made a motion for directed verdict. The Supreme Court said that directed verdict was a 7th amendment violation when found for D because the lawyer hadn’t made the JMOL movement initially and verdict had not been reserved, so you can’t just overturn the verdict. Inconsistent with Galloway.
       1. In 1791- you can’t just overturn verdict after jury gives the actual verdict.
    4. *Redman-* makes jnov constitutional- Trial court reserved the decision on the directed verdict for the P pending judgment. So it let you have an alternate disposition (See 50B). This entire case is the Federal court making up stuff because they want to allow for JnoV
       1. *Slocum*- confined to where Directed Verdict denied, not reserved
       2. Now by Rule 50 Directed verdict is considered reserved
11. **Introduction to Preclusion- Prevents argument in new case**
    1. Res Judicata- Claim Preclusion- You cannot argue the Claim again
    2. Collateral Estoppel- You are precluded from the particular facts being litigated again
12. **Preclusion- Compulsory Counter Claims**
    1. General- a claim made by one party against adverse party in response to that party. Federal courts should give broad meaning to language of rule
    2. Required for Preclusion
       1. Final, valid, on the merits judgment= preclusive
       2. Parties in the next action must be identical to the parties in the first action
       3. Claim in the second suit must involved matters properly considered included in the first suit.
    3. Rule 13A- if it arises out of the transaction or occurrence that is the subject matter.
    4. *United States v. Heyward-Robinson co*.- D’agostino company brings claim against company based on Miller Act for two jobs that they did, asking for compensation. Breach of contract damages question. One contract to pay both jobs, but the jobs were for different projects. So was there a compulsory counterclaim necessary? Court Holds that the basis of both claims is the lack of progress payments and they are considered together for the purpose.
       1. Ask whether the events are from the same transaction or occurrence- this is to avoid multiplicity of lawsuits
       2. Federal government cannot stop state proceedings (when state court parties do not file compulsory cc) but in Federal court use Res Judicata.
       3. Hypothetical- What is D’Agostino sued only on the navy K, could Heyward sue under separate K for Stelma if the jury already found for D 40k? No because of 13a- should’ve brough the claim at the same time. Res Judicata because similar law suit. ALWAYS litigate one transaction in one case. Only you can bring Supplemental jurisdiction, or its barred by RJ, CC, or 13a.
       4. Always litigate two claims in first lawsuit, so if you guess wrong, you can get them both thrown out and there won’t be any res judicata against you when you bring your claim again. You might have preclusion.
          1. If you’re bringing a second claim and you’re not sure if you can get through with UMW/Gibbs, if the first claim was kicked out a week ago, assume they won’t hear the supplemental claim.
13. **Preclusion- Res Judicata-** bars you on claims you brought and claims that are similar that you can bring in the future.
    1. A person that once asserts a claim cannot assert that claim or a similar claim aagain. If the person wins, the claim is merged into the other claim. If they lose, the claim is barred. Regardless of how it works the old judgment remains.
    2. Res judicata cannot be raised sua sponte.
    3. Most recent judgment is the one that is considered preclusive if there are two inconsistent judgments.
    4. Holding- Decides what is necessary to the outcome. It deals with material in the question and the legal issue. It’s impact is *stare decisis*. The reason it is *stare decisis*:
       1. People are not confident about dicta- courts are not as adversarial in arguing dicta
       2. Nothing turns on dicta, we don’t know how much courts believe it (courts apply however they like dicta)
       3. Why Art 3 section 2 does not allow Federal court to give advisory opinion- leads to complete lack of uniformity
    5. *Vasu v. Kohlers*- Allowed (minority) that it is okay to bring different actions splitting personal injury and injury to property even if it occurred because of the same transaction. Vasu did not have a holding because it had two options. Neither was necessary and both were sufficient.
       1. Why Vasu was determined by rush to have cause of action as dicta? Because judges pick the narrower option as Holding.
    6. *Rush v. City of Maple Heights*- P fell on motorcycle on road that was probably broken, sues city for negligence for damage to bike (wins on case 1). Sues the county in another court for personal injury (Case 2). Wins based on Res Judicata. The county failed to say claim preclusion. The court holds, that she should have brought all the claims as one. They are all one transaction. By res judicata, the only thing different to litigate would be the damages. In res judicata you can’t bring a claim if it is similar to one you’ve already done. This case disregards *Vasu*’s idea that you could have multiple causes from same transaction as separate claims. Must be together.
       1. Binding by stare decisis, res judicata, and collateral estoppel
    7. *Matthews v. NY Racing Assoc.-* Says assault occurred in case 1 and then sues again in case 2 with same facts and evidence but this time for kidnapping, false arrest and imprisonment. D makes movement for summary judgment and injunctive relief. Court holds after judgment on merits reached for case you cannot litigate again. Collaterally stopped, and by res judicata. Can’t sue exact same parties or those in privity to those parties after you’ve already sued them once. If it is more efficient to try claims in one case, the court will opt for that.
    8. *Federated Department stores v. Moitie-* Even if the case on which the appeal has been made is overruled, you are still bound by res judicaata and can’t bring the claim. However if the case was appealed and overturned on Fraud or jurisdiction defect, there is no preclusive effect.
    9. *Jones v.* *Morris Bank*- D owed $428 in monthly installments and if they weren’t made the entire balance was due. The title was with the bank. In the first case, the bank sued jones for his one missed payment and won. In the second case the bank sues again and the defendant says there is Res Judicata. The bank voluntarily withdraws its claims, without prejudice. At this point you could argue there was no R.J. because July payments are diff. for May/June. Case 3: Court says bank basically has no more rights to K after the R.J. So found for Jones on keeping the car that the bank tried to repossess.
       1. Is R.J. substance or procedure?- No court will enforce the bank’s title because of R.J. If you have no remedy, do you have no right?
       2. Rule 41- dismiss without prejudice.
       3. But if you don’t make the motion by 12b6, you can’t voluntarily dismiss
    10. *Mitchell v. Federal Intermediate Credit Banks-* Bank sues Mitchell for b/k and he defends that he paid and the bank employee ran away with the $$ and the bank actually owes Mitchell money. Then Mitchell sues the Bank for the money that the bank paid him. Defense preclusion- you can’t use the exact same defense that you used in the first case to attack someone in the second case. Can’t use something as a shield in the first case and a sword in the second. Would have been compulsory CC but that was not available in the state.
        1. Defense preclusion is only allowed in Federal Courts where Rule 13 d/n apply, and in states where compulsory counterclaim does not exist.
14. **Preclusion- Collateral Estoppel**
    1. General- Once you lost on a fact, you lose forever.
       1. Collateral estoppels closes the loopholes in res judicata.
          1. Ex. If you have one case where the insured gets damages for 400k aginst 10 insurance companies, and then brings another case against the other five insurance companies- is the insured bound by the first case? No, because it gives the wrong incentive (split claims so you get more $$). But if he thought he chose everyone, is it unfair to hold him to judgment? No. No relitigating just because it went against you. Efficiency! Must happen. So mutuality of estoppel is not really applied because we want to be able to prevent situations like the above.
       2. Collateral estoppels- if you would not be bound if first case went in the other direction then you are not bound at all.
       3. When deciding what kind of preclusion- always determine if it is R.J., then look at collateral estoppels.
       4. Judges don’t like special questions – (1) jury does not really ever understand special questions (2) whenever they use special questions they always end up with an appeals process.
       5. Issue Preclusion- only on fact of issue, not law issues.
       6. Courts aren’t as specific. You have to be precise about the preclusion involved (Issue or Claim)
       7. No way to do this unless you know everything involved in both cases
       8. Need to know procedural history
       9. Like all waiver doctrine- elevates efficiency over truth, even if the case is right on the merits, you can still use.
       10. Collateral estoppels never applies to pure questions of law.
       11. 6 criteria for collateral estoppels
           1. The issues in both cases must be exactly the same
           2. Losing party must have had a full and fair opportunity to litigate
              1. Incentive to litigate – could say Rush case, no incentive in the first part because the city didn’t realize they were at a risk to lose so much $$
              2. Available procedures- Or if this was in justice of peace case, where in the first case you don’t have discovery or litigating attorneys, etc.
           3. **Issue must have been actually litigated. Not as broad as *Res judicata***.
           4. Decision on issue in question must be necessary to holding- not like *Vasu* where it could go either way.
           5. Must be valid, final, on the merits judgment
           6. Must have been mutuality on estoppel (must be same party)
    2. *Cromwell v. County of Sac*-Case 1- Cromwell sues the city for payment on his coupons prior to 1868. The city says those were fraud, so there is exception to paying. Court finds for city. Case 2- Cromwell sues the city for the coupons from 1868 to 1871. First- is there R.J.- d/n bar you from brining claims that you couldn’t have brought in the first case. And these second set of bonds hadn’t matured yet, so no R.J. Collateral estoppels?- Same issue, it was lititgated, it was necessary, there was a final on merits, there was mutuality on preclusion, but the collateral estoppel was on Fraud. In this case, Cromwell is saying he bought the coupons in good faith.
    3. *Russel v.* *Place*- P sues for patent infringement. Case 1: wins and gets damages. Case 2: sues again, not barred by R.J. because D hadn’t infringed again yet. P tried to say in second case that there was collateral estoppels against D using the same defense it had in case 1 as a defense again- but court said no CE because they did not know exactly what the P had won damages on (the first process, the second process, or both infringements together). You can’t tell what was necessary to the holding.
       1. Burden of proof is on the person trying to claim estoppels
          1. Even if you can’t figure it out from the jury information, you can try to figure out the information from extrinsic evidence and from trial.
    4. *Rios v. Davis-* First case- Everyone accuses everyone else of negligence. Court finds that all three were negligent, so Davis had to pay. Second case- Rios sues Davis for negligence. Davis says there is contributory negligence. He also says there was RJ. The court agrees. Rios appeals against Davis, says there can’t be RJ, because he wasn’t allowed to defend himself against the negligence finding (had no way of appealing). The finding that Rios was negligent was NOT necessary to the case because if they’d found Davis negligent only, the holding still would have Davis paying.
       1. Policy- If the finding is not necessary, we do not have collateral estoppels because
          1. Winning parties cannot appeal- so no chance to clear their name/no confidence in finding of court because you d/n know how much importance was placed on that finding
          2. We can’t have full faith /confidence/how much the jury meant it
          3. Don ‘t know if anything turned on the finding.
       2. 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.
    5. *U.S. v. Moser*- Moser sues US because he wants the paygrade of the officer one level up even though he is in school since the USA passed a thing that if you were in service during the civil war you can get the next grade. Court grants him the first payment installment. He then sues for his second payment installment and Supreme Court says- even if they got it wrong on the facts of the case, Res Judicata still applies. The only cases you can’t dispute are pure question of law (estop).
    6. *Commissioner v. Sunnen*- Case 1 Sunnen wins because income goes to his wife. The court’s standard is whomever is legally entitlted to receive the money owes the taxes. Then they bring case 2- because their standard has changed to who controls the money. Court holds there is no collateral estoppels because it is not exactly the same case- the legal standard changed. The issue is not the same, new tax year.
       1. Inconsistent with Moser.
    7. *Bernhard v. Bank of America-* Case 1: Bernhard represents the beneficiaries and sues the executors. Probate says executor was not stealing, finds for D. Case 2: Bernhard is new executor, sues the bank because gave away money. Bank says power of attorney AND preclusion on the claim. Court holds- no res judicata because the bank wasn’t a party in first case. But there is collateral estoppels because the same money she is claiming was the executors. This is judicially efficient. Court relaxes requirement of mutual estoppels. You should sue everyone in one case is what the court is implying.
       1. *Bernhard-DEFENSIVE COLLATERAL ESTOPPEL*
    8. *Parklane Hosiery-*  SEC sues Parklane for proxy fraud and asks for injunctive relief. Find for P, appealed, declaratory judgment but no injunction. Then, a class action suit comes against Parklane. Plaintiffs are trying to say that since Parklane lost to SEC, should also be collaterally stopped against shareholders. 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.
       1. *Diff.* from Bernhard because in Bernhard, collateral estoppels was being used as a defense by the bank. Here it is OFFENSIVE COLLATERAL ESTOPPEL
       2. Square rejection of the idea that you need a jury trial (because in the first case in probate court).
          1. 7th amendment- (1) common law routinely permitted prior equitable cases to preclude getting a jury in a legal case.
          2. Beacon theatres- no real baring because in Beacon theatres 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. So by Beacon and Common Law, nothing wrong with Parklane’s square holdings.
       3. Is the right to jury trial narrower?- Yes because in 1791, more of a right to jury trial. Change in procedure by removing the mutuality.
    9. *Martin v. Wilks-* Case 1: Consent judgments with black firefighters for promotions and goals. Case2: white firefighters sue city and board for promotion and raise denials. City defends that the consent decree precludes the suit. 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 persona jurisdiction for a party to be bound.
          1. 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 ays well holding is actually about rule 24 in M v. Wilks, not the Due Process so everything (including statute) is still Constitutional.
          2. *Provident Tradesmen-* Dutcher would have been bound by the Congressional rule ideals but wouldn’t be bound if you followed *Martin v. Wilks.*
    10. *Taylor v. Sturgell-* two guys (one after another) try to get ahold of some plane documents using the free information act against a company (in federal court). That company holds that it has a right not to be sued multiple times for the same thing and these people should be estopped. Supreme Court says burden of proof is on the FAA to show that the two parties are conspiring in order to show preclusion (or that one is the agent of the other).
15. **Preclusion- Full faith and Credit**
    1. General
       1. Four kinds of Full Faith and Credit requirements
          1. Art. 4 §1
          2. §1738
          3. When Federal Court decides the first case and States decides the second case
          4. When other Federal Courts give each other Full faith and Credit (As required by the Supreme Court of Congress because of common Law)
    2. *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. USA says non mutual collateral estoppels against him. Court holds that there is collateral estoppels because they’re going to give full faith and credit by section 1738 to the criminal state court proceedings- even though in the criminal court proceedings he didn’t have all the procedures. What he did have was a ton of incentive to litigate well. 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.
       1. *Non mutual defensive estoppels-* similar case is Parklane! So whenever you do non mutual defensive estoppels, worry about Full and Fair opportunity to litigate.
    3. *Fauntleroy-* P sues D for breach of K in Mississippi. Goes to arbitration. Missisippi arbitrators find for P. In order to enforce arbitration, P follows D to Missouri and sues in Missouri. Missouri for p. D demurs. Case goes to Supreme Court in Mississippi because land to pay must be seized (local action rule/Livingston v. Jefferson)- found for D b/c the gambling was illegal. P appeals. Court holds that you must give Full Faith and Credit between states by Article IV Section 1- So Missouri was correct in upholding verdict because it had already been tried in Mississippi. The lawyer for D screwed up when during arbitration he didn’t bring that gambling debt was illegal in Mississippi as a question of law. (The federal question was whether Mississippi violated Art. IV Section 1.
       1. You cannot give more effect as a second state to a judgment than the rendering court would have given. You have to give the same weight to judgment/same treatment to judgment that the first rendering court would have.
       2. Federal court must give Missouri Full Faith and Credit because of section 1738.
       3. Policy – Congress enacted 1738 because the Constitution did not predict federal trial court, only a a Supreme court.
          1. 1983 might be “implied”exception to section 1738
          2. Or, in 1871, since Congress put the 1983 as concurrent j(x), it is NOT an implied exception.
          3. One coulrd argue that in 1871, Congress would not have predicted this because they only allowed mutual estoppels. D/n know anything about non-mutual estoppels.
       4. 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.
    4. *Semtek International v. Lockheed Martin-* Case 1: Semtek (CA) sues for b/k against Lockheed (MD) in CA state court. Lockheed removes it to CA federal court. The federal district court dismisses the case with prejudice because it is barred by California State of Limitations. In this case, federal court says their dismissal is not on the merits (Rule 41b d/n apply- but this is an exception). Case 2: Semtek sues for b/k in MD state court. Lockheed Martin removes it on federal question defense to Federal Court. Federal court remands case to state court, so State court of Maryland- does it have to give Full Faith and Credit to the Federal Court in California? (Lockheed claims that Res Judicata means that the claim is precluded). Court holds that Art 3 §2 which gives federal power to hear cases also gives federal government right to determine preclusion, as well as Art. 6 which gives Federal courts supremacy. California’s state law about preclusion is that the suit is not precluded. Therefore, Federal courts dismissal, interpreted by CA state law, means that MD is not precluded from hearing the lawsuit again.
       1. In cases that are removed based on diversity, or in cases where the state law is used to make decision (like supplemental claims)- preclusion decided by Federal Common Law, which adopts state law where the federal court sits unless the state law will injure federal interest.
       2. If the state law would damage federal law on preclusion, then you do not want to follow it- when is this true? (There is only one point in time where this is true).
       3. California applies its own Statute of Limitations because it believes SoL is substantive (disagree with York).
    5. International Cases- We give Full Faith and Credit only to international cases where the countries extend the same to our cases
       1. Rule of Reciprocity
       2. Full and Fair Opportunity to Litigate
       3. Hilton v. Godhill- French don’t get FFC from USA because they don’t do the same for us.
    6. Administrative Agencies- If their processes have procedures similar to an actual litigated trial, then we give FFC to their rulings as well.

US Supreme Court- Look at Nerve Center for corporations

Foreign Corporation- Either place of business/incorporated or

1. Can Congress Constitutionally pass statute overruling Mottley- 1443 Federal Officer defends state charge on state charge- based on Federal defense. So they could make it broader

2. Patent claims – counter claim patent- can it be removed to federal court? No can’t remove based on counter claims. So state court couldn’t hear the claim, so wouldn’t allow it. BC no j(x).

3. Collateral attack= new case.

4. SMJ can be challenged at any time of original proceeding

5. Hurns completely overruled by Gibbs

6. Contamination Theory-not used by him

7. True in rem- declared against anyone. Q in REm 1- title against all parties in case.

8. P v N overruled by its ONLY allowed service in territory- Shaffer also partly overruled

9. Using bank acct. for personal j(x)- then searching Quasi in rem type 1 or 2, has to be 2 unless you’re suing for bank account.

10. 4k1- use 14th amendment to determine if they can pull in due p

11. Shaffer- Q in Rem must be international shoe too. Would matter if Q in rem II is basis for j(x)

12. No more demurrer in Federal Court. 12h.

13. Redman overrules Slocum (basically) duh, you know this. And jnov is constitutional because Redman says that.

Any random notes:

* Email him after grades are posted, and he’ll go over them with you if you like. And will suggest a time
* Also hires his research assistants out of his first year of class. Do work in corporate area- send him an email after new semester begins (Drop resumes in box outside office etc. )
* Grades!