**Subject Matter Jurisdiction- Federal Question**

1. Art. I §8, Art. III §2 and §1331 for the Holmes Creation Test
   1. General Idea
      1. States have concurrent jurisdiction unless the Constitution says otherwise (*Capron v. Van Noorden)*
      2. Relitigation of a final judgment is only possible if there is abuse of discretion or infringement on special tribunals (like tax courts). *Des Moines v. Homestead*.
         1. Manifest abuse of authourity
         2. Substantial infringement on special tribunal
      3. But you can challenge a final judgment if the first case was made on a default judgment (like DV/JMOL/SJ)
   2. Policy behind Federal Question Jurisdiction
      1. Promote uniform federal law
      2. Encourage judicial expertise in law interpretation
      3. Protect against hostility between courts.
   3. Osborn v. Bank of the USA- Osborn Ingredient Test- Mostly based off of Art. III §2
      1. Broad reading- permits federal jurisdiction wherever federal proposition might be challenged
      2. Protective jurisdiction- Permits federal courts to hear state law claims even though the claims do not include original federal ingredient or seek to enforce a right inferred by federal law
      3. *Well Works v. Layne*- Slander caused business damage (Slander about patent infringement)- not Federal because the cause of action was libel, a state claim
   4. Holmes Creation Test- This test narrows Osborn Ingredient Test. The cause of action must raise under Federal Law or Statute.
      1. *Louisville v. Mottley*- The P cannot predict D’s response and use that to get into federal court. We don’t like well-plead complaints that forum shop.
      2. Implied rights of actions for federal statutes and federal law
         1. Is the plaintiff within the class of people for whom the statute is created? Does the statute favour the plaintiff?
         2. Any explicit or implicit intent by legislature to provide a remedy?
         3. Any sense in giving a remedy in the entire legislative scheme?
         4. Any part exclusive to states and therefore inappropriate for the Federal courts to rule?
      3. *Bell v. Hood*- violation of amendments is a Federal Question
      4. *Cort v*.*Ash-* Not all federal provisions create an implied private right of action
      5. *T.B. Harms v. Eliscu*- Overrules Osborn entirely- copyright infringement case that was actually about breach of K, therefore not a Federal Question for federal courts, even if there was an ingredient by Osborn Ingredient test.
   5. Exceptions to Holmes
      1. The federal government land cases- The federal gov’t historically set up incentives for people to move West and gave land grants. They DID NOT litigate in federal court because it as seen as more of a state issue
      2. Intertwining jurisdiction
   6. Intertwining jurisdiction- State law claims that turn on Federal question
      1. *Smith v. Kansas*- if a state action requires federal question be answered, then federal jurisdiction exists. In this case, someone had bought USA bonds and wanted to cash them or something and it was in a state court- The D said the bonds were unconstitutional. Since that question of whether the bonds were Constitutional or not existed, it needed to be answered by Federal Court. So Federal Jurisdiction
      2. *Merrell Dow-* Federal issue must be substantial. There is no private right of action created by the FDCA for the drugs that kills some babies. Courts can’t create a remedy where one does not exist. Overrules Smith.
      3. *Grable v.* *DaRue*- Actions that are under state law but the only way to establish the case is by proving Federal Law- like disputes over the meaning of federal statutes. Gave a list of criteria for determining federal jurisdiction, refined by *McVeigh v. Healthchoice*- which uses *Grable* and resuscitates *Smith*.
         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 thebalance between Congress/State/and Feds?
   7. Federal Original Jurisdiction- Legislature ordered
      1. Bankruptcy Cases 1334; Trade related 1337, Patent 1338, Civil Rights 1343, US as a Plaintiff or D 1345, 1346.

**Subject Matter Jurisdiction: Supplemental Jurisdiction**

1. Use Art. III §2 and §1367- The constitution gives the right to hear cases and controversies, so supplemental jurisdiction is just putting multiple claims into a case.
2. Standard- The claim must arise from the same operative nucleus of fact (same transaction) (*Gibbs*). To test this- if filed separately, would the claims all relate back to the same event? If so, same operative nucleus of fact.
3. 1367- Reviewable only by mandamus
   1. 1367B-This restrictions are for diversity claims (1332). No supplemental jurisdiction if:
      1. P brings a D using Rule 14, 19, 20, or 24
      2. The claim is added by someone using Rule 19 or intervening with Rule 24.
      3. Gaping Hole in Statute – The P can add non-diverse plaintiffs through the rules of joinder and supplemental jurisdiction can still exist. But then the courts counteract this with the Contamination theory- where they say any non-diverse plaintiffs contaminate the entire claim.
      4. If P adds people onto the Plaintiff side with Rule 14, 19, 20, and 24, it is okay
4. *Hurns*- opposite of Gibbs- Separate injuries are separate causes of action and must be filed as separate claims (overruled by Gibbs)
5. Courts can have supplemental jurisdiction over counter claims, cross claims, third party claims despite the fact that 1332 was not intended to give power over non-diverse parties *Owen v. Kroger*.
6. As long as at least one person’s claim by itself exceeds amount in controversy, supplemental jurisdiction over all of the others is possible (*Exxon v. Allahpattah, CAFA*)
7. Courts can refuse supplemental jurisdiction if
   1. The claim raises a novel/complex issue of the law
   2. The State claim is substantially predominating
   3. All claims in the original jurisdiction are dismissed
   4. Exceptional circumstances or compelling reasons
8. 1447 D- if remand for lack of SMJ, you cannot appeal the remand.

**Removal Jurisdiction**

1. Art. III §2 and Judiciary Act of 1789
2. 1441 – if the plaintiff could have filed in federal court, the D can remove it to Federal court (true for any civil action). In diversity cases, the D can only remove to federal court if no Defendants are from the state where the action has been brought.
   1. If it is a 1331 claim- and you want supplemental j(x)- you can remove using 1441c to Federal court. Claims MUST be separate and independent. 1441c lets federal court remand stuff that is state only ( *Lancaster, Finn*)
   2. If you’re looking for the same remedy for federal and state claims, the court will grant removal for all of it, not just a remand of state claims (*Finn*)
3. Any civil action brought in state court v. foreign state can be removed by foreign state to decide where action is pending (court w/o jury or enlarging time limits of 1446b)
4. If 1441b does not apply, the D can remove case to federal court where action is pending if they could’ve done so by 1369
5. 1445- Cannot remove RR, WC, or Violence against Women cases
6. 1446- Procedure
   1. File notice of removal by Rule 11
   2. Within 30 days or receipt of initial claim copy OR after service on D
   3. Cannot remove 1332 cases after 1 year of the action starting
7. 1447
   1. Motion to remand made within 30 days after filing notice of removal by 1446A
   2. If the court lacks j(x) pre-judgment of the case, it is remanded.
   3. Remanding case to state court is not reviewable unless you’re using 1443.
   4. If after removal into Federal court, P wants to join more D and it would destroy SMJ, deny joinder, or allow it and remand to state.

**Subject Matter Jurisdiction- Diversity**

1. Art. III §2- Requires minimal diversity *State Farm v. Tashire*
2. 1332- need amount in controvery and complete diversity *Strawbridge v. Curtiss*
3. Diversity
   1. Generally- Court does not establish amount in controversy because it would be judicially inefficient. Don’t want to have to go through a trial of the finances. Can fine the P if the claim is not made in good faith/comes out to be less than though y 1332b.
   2. Party must be domiciled within a state. Domicile means- residence in fact, combined with intention of making place of residence one’s home for an indeterminate period
   3. Domicile rules
      1. Students- If out of state, domiciled where pre-school unless they are emancipated or of age. In that case, they acquire domicile and location of the school
      2. Non-American citizens by 1332(a)(2) and 1333- Alien v. citizen of a state is fine but the alien must be citizen of the foreign country by the laws of the foreign country
         1. If jurisdiction is possible under 1333(a)(3)- you can have a permanent resident alien v. non resident alien
      3. Corporations- have two places of domicile. Where they are incorporated and their principal place of business
         1. Principle place of business is determined by
            1. Nerve Center Test- locus of corporate decision making authourity
            2. Muscle Test- major production hub/manufacturing (Most often used)
            3. Totality Test- both
         2. Bankrupt/Inactive corporations- where principal place of business was during last transaction of business or by the state of incorporation of the business
         3. Forum Suit Rule- If incorporated in more than one state, diversity is in the state where the suit is brought
         4. Unincorporated Corporations- Labour unions/partnerships/organizations- each member, wherever there is citizenship is where it is incorporated. 1332(d)(10)
4. Collusion- 1359- prohibited - can’t manufacture diversity to get into federal court
   1. *Kramer v. Caribbean-* assigned someone in another state just to get diversity, *Rose v. Giamatti*- added another team as D in order to get diversity, but court said that you take the most RELEVANT party’s citizenship.
5. Amount in Controversy
   1. *St. Paul v. Red Cab-* Sum claimed by P made in good faith controls
   2. *AFA v. Whitchurch-* you can only throw out a case for amount in controversy not being met if you have LEGAL CERTAINTY it is not met.
   3. Ways to determine AinC
      1. *Glenwood v. Mutual Light and Heat*- Only the value to the P is used to determine jurisdiction amount. Regardless of value to D.
      2. P.O.V. of party that wants diversity j(x)- if D removes, see value of case to D.
      3. Raggazzo fav.- Look at what P is trying to accomplish and determine what monetary reward each side would receive
6. Aggregation
   1. Single parties- aggregate all claims if unrelated
   2. Multiple- can only aggregate joint claims( joint liability); P’s allegations of amount suffices unless disproved as legal certainty.
   3. Injunctions should be quantified in dollar value to meet AinC requirement.
   4. Situations
      1. 1p v. 1D- aggregate
         1. But not against two defendants
      2. 2p v. 1D- cannot aggregate unless the claims are legally indivisible or you’re bringing them with supplemental j(x)
      3. Lots of P can aggregate when they have a common undivided interest, otherwise at least 1 P must meet amount in controversy (Exxon)
      4. 1369- Federal court has SMJ if there are more than 75 killed in an accident and other exceptions do not apply.

**Personal Jurisdiction**

1. State personal jurisdiction- Uses the 14th Amendment (BK test) and a long arm statute
2. Federal personal jurisdiction- uses 5th Amendment (BK test), and either a long arm statute of the state, or the Bulge Rule 4k1b or 4k1c or 4k2
3. Must have due process (proper notice) as well as power
4. **Specific Jurisdiction**- the claim against D must be connected to the forum. The cause of action must be related to the D’s contacts in the forum, even if it is sporadic
   1. Historically-
      1. In rem- courts estb. Quiet title action to declare that one person owns property against everyone else
      2. Quasi in Rem I- courts det. Between two individuals who has the best title
      3. Q inR II- Defendant is not in state so you pursue the claim v. property
         1. Shaffer v. Heitner- this is not possible. All actions are against a person and their rights
      4. In personam- person served within court boundaries
   2. Pennoyer v. Neff
      1. Court must have both the power to force D to respond and must serve the D (allowing a response from D)
      2. Must seize property before the trial begin in order to use it
      3. Any judgment invalidated for personal jurisdiction gets no full faith and credit (Art. IV §1)
   3. Consent to jurisdiction
      1. Express consent- if you do arbitration in court or have an in-state agent to accept processes for K litigation. Corporations can have a specific agent for service.
      2. Implied Consent- Conducting business in a forum, impliedly appoints the corporation to accept process for K litigation. *Hess v. Pawloski*- drove through state, implied to have consented to state’s service process (a court fiction to enlarge PvN)
      3. *Hanson v. Denckla-* must have purposeful affiliation with D in forum for personal jurisdiction
   4. Long Arm – International SHOE test- must have contact in forum state and suing D must not offend traditional notions of fair play and justice. Minimum contacts!
      1. Gray- if a product is in the stream of commerce, the company should foresee the suit happening. (Exploding water heater)
         1. High water mark for Torts
         2. 14th amendment + Shoe minimal contacts/Fair play
         3. Interpretation
            1. Broad Reading- One is liable wherever the tort occurs
            2. Narrow Reading- One is liable only where one expects substantial revenue
      2. *McGee v. Int’l Life Ins. Co.*- one person contacted constitutes contact.
         1. High water mark for K
         2. Contradicts Gray- but is consistent with Shoe and Denckla
      3. *Volkswagon*- gas tank explodes. 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 forum
         1. Consistent with Narrow Gray- Only liable if substantial revenue and contact
         2. Inconsistent with Broad Gray- Foreseeable that a car is in stream of commerce and move through states, so there should be personal jurisdiction by the Broad view of Gray.
      4. Burger King-
         1. Minimum Contacts= Sovereignty Branch
            1. O’Connor- Is there purposeful availment/Intent
            2. Brennan- is there knowledge of possible contact
         2. Fair Play Justice- Fairness
            1. Defendant, P, State, National (Balance the interests)
         3. Inconsistent with VW- Because VW only considered D interests
         4. Consistent with VW- Because here, test focuses on fairness and sovereignty, not just sovereignty
      5. Asahi- motorcycle crashes and international company involved
         1. Sovereignty- O’Connor uses Narrow Gray- purposeful directed action by D in forum (Asahi overruled Gray). Brennan uses Broad Gray- D had some knowledge of contact possible (Asahi didn’t overrule Gray).
      6. Mcintyre – What Burger King looks like now
         1. O’Connor- D must have purposeful directed contact with forum
         2. Breyer/Brennan- D must service market substantially with revenue(narrow Gray)
         3. Ginsberg/Brennan- D must defend anywhere product is in stream of commerce.
5. **General Jurisdiction**- Requires extensive contacts in forum. Used when the cause of action does not arise out of the D’s forum activities.
   1. Contact must be continuous, systematic, substantial
   2. Continuous activity may be subject to suit even with causes of action unrelated to activity in forum *(Pekins v. Benguet)*
   3. *Helicopteros v. Hall*- General j(x) has a higher threshold of contact because the cause of action is unrelated to contacts.
6. Internet
   1. *Pebble Beach v. Caddy*- Uses the *Calder v. Jones* standard. Was the harm foreseeable or intentional? And *Zippo*, is the website active or passive? There was no j(x) because the harm was not intentional. Caddy did not purposefully avail self.
   2. *Calder v. Jones*- D must make intentional act, expressed at forum state, cause the harm, the brunt of which is suffered, and D knows will be suffered, In the forum state (*Bellino v. Simon as well)*
   3. *Zippo*- passive or active site? MOST j(x) use *Calder v. Jones test, NOT Zippo.*
7. Physical Presence-
   1. *Burnham v. Superior Court*- Scalia said that jurisdiction still exists anywhere within the bound of the state according to traditional notions, Pennoyer v. Neff. It is judicially efficient. Brennan says that it is fair that Burnham was served and can be in the courts because he availed himself of the state.
      1. Exception- Tickle v. Barton- Cannot trick someone into the state for personal jurisdiction
      2. Is this fair by the Shoe test?- No , Shaffer limits Shoe, and Scalia gets rid of it.
8. Federal
   1. Rule 4 and 5th amendment
   2. 4k2 – *Omni v. Wolff* – couldn’t get British foreign defendant (wasn’t in country). Passed 4k2
   3. *Dejames v. Magnificence Carrier-* Federal government can use Burnham by analogy to serve anywhere in USA.
      1. If Burnham’s holding is Scalia. But if the Burnham holding is Brennan, then no personal jurisdiction because no purposeful availment.
9. Due Process
   1. Whomever you can reasonable make effort to reach and it is not impracticable or overextension, you must try to reach. *Mullane v. Hanover*
   2. Opportunity to be Heard- Remember, that now, a company can just have customers waive DP rights in the K.
      1. D should have opportunity to be heard pre-replevin (*Fuentes v. Shevin*)
         1. Narrow reading- repossession without pre-trial hearing is only justified in exceptional circumstances by the government for public policy
         2. Broad reading- must balance private interests v. risk of erroneous deprivation v. interest of people seeking remedy
      2. Property can be replevined if judge is making the decision and the affidavit has WHY the property is wanted (*Mitchell v. Grant*)
         1. Mitchell overrules Fuentes- can have post deprivation hearing instead . This was used to deny Georgia court in North Ga. V. Dichem.
         2. Or Mitchell d/n overrule- Because Mitchell had different circumstances
      3. *Connecticut v. Doehr* – Does it overrule Mitchell?
         1. Yes- Mitchell satisfies due process with judge an explanation. Here, there was no interest for the P and too high risk of erroneous deprivation, although person had judge and explanation
         2. No- Suit was about assault and battery.

**Choice of Law**

1. *Swift v. Tyson*- Federal courts enforce state statutes, but not common law. Courts applied their own Federal General Common Law. Interpreted §1652 to mean that laws of states only meant statutes. This was because back then people thought courts FOUND the law, since it was something definite that could be found. Now people think courts MAKE the law.
   1. *Problems with Federal Common General Law* – (1) it allowed discrimination against citizens in diversity cases (2) Promoted forum shopping (3) prevented uniformity even though it was supposed to encourage it (4) P’s were over benefitted because D could not remove (5) No equal protection
2. *Erie*- §1652- interpreted as statues and common law. So state law governs all but what arises under Federal law and statutes. Erie says you must apply law of the state with the most contacts. ***Overrules Swift***
   1. *No Federal Common General Law*- Discourage forum shopping, unfair administration of law.
      1. Is Unconstitutionality Holding?- Maybe, Brandeis says they wouldn’t have changed the Swift rule if it wasn’t unconstitutional … so most likely.
   2. Two MAIN purposes
      1. Eliminate forum shopping
      2. Get rid of inequitable administration of law
3. How do you determine what law to use when you have cases in Federal court on diversity (1332)? Historically used Single Factor test. Now use Hanna three prong + *Gasperini*
   1. Is there a federal rule or statue broad enough to cover the case? (*Hanna*)
      1. If there is, is it valid by 2072/*Sibbach Wilson* test (does the rule affect the claim on the merits- substantive v. procedural)
      2. Did Feds have right to make the rule by Art. I §8? And Art. VI? Yes! Legislature can do whatever it wants.
   2. If no federal rule or statute- is there a federal policy interest that outweighs state interests? (*Byrd)*
   3. If neither the first or nor the second, would applying the federal rule affect the outcome of the case? Then apply state law (*York*)
   4. *Gasperini*- Would applying state law harm federal interests? Can it be accommodated? Then accommodate it!
4. Is the Hanna test consistent with Erie?
   1. Yes because it does not change substantive issues (Erie doesn’t ever address procedural rules)
   2. No because Hanna promotes forum shopping
5. After deciding state or federal law, how do you decide what state’s law to use?
   1. Apply the law of the state in which the federal court sits (*Klaxon)*
6. How do you figure out what the law of the state is?
   1. Look at old cases and holdings of the state and predict what the court would do if they had the case, as well as modern trends in other state courts. (*Mason v. Emery)*
      1. Inconsistent with Erie because prediction lets Federal courts basically make up law
      2. Consistent because you want the same result you’d get in state court in Federal court, otherwise you get forum shopping. Don’t want the law to be frozen- then ppl can file in state court for change and federal for static law.

**Federal Law in State Court**

1. Dice v. Akron- Should’ve applied state substantial law and federal procedural law by Hanna test. Court decides that congress and statute say it should all be Federal regardless of state because
   1. The issue is bound up in congressional rights and obligations
   2. The state rule/procedure puts a heavy burden on person’s rights
   3. Is this consistent with Byrd?- Yes because of federal interests and Art. VI.
   4. No b/c state has policy interest in applying its own laws.

**Federal Common Law v. Federal General Common Law**

1. Federal Common Law
   1. Constitutional/Statutory Interpretation
      1. Interpret things against constitutional backdrop
      2. Roe v. Wade created right to privacy using Due Process
      3. Dice v. Akron- statutory interpretation, use federal law if issue is mostly federal (FELA)
   2. Implied Rights of Action
      1. Apply private right of action by determining the intent of congress
      2. Only federal law can determine meaning- look at background of statute
      3. Merrell Dow
   3. Interstitial Law/Gap Fillers
      1. Fill in gap in statutes where they are ambiguous
      2. Fit those decisions into existing frameworks
      3. Borrow if you want what you like from state law
2. Federal Common General Law(Arguable) also NECESSARY
   1. Implied from grant of jurisdiction
      1. If SMJ is federal, assume you apply Federal Law (like Admiralty claims)
   2. Property interests created by Federal Law
      1. Exception to the rule
      2. Only if there is a need for federal law
   3. Property relations of the USA
      1. An exception
      2. *Clearfield Trust*
   4. When international relations of the USA are involved
      1. Whether to apply state action = a federal question
      2. Avoid applying state law if it will cause issue
      3. Cuba!

**Venue and *Forum non conveniens***

1. § 1391- A (*Bates*) is for diversity, B is for no diversity, and C is for corporations acting as defendants.
2. Venue (must have personal j(x) and SMJ THEN Venue) is waived if the objection to venue does not occur on time by rule 12h1
3. Local Action Rule- the case regarding the property must be prosecuted where land is located – title and inury to land is local (*Livingston v. Jefferson*)
4. Transferring venue can be done with two statutes
   1. §1401- moving to another venue even though this one has personal and subject matter jurisdiction (*Hoffman v. Blaski, Van Dusen)*. Use the Balancing Test – convenience of forum must greatly outweigh plaintiff’s interest in forum.
   2. §1406- Asking to move the venue because the current forum is inappropriate/wrong
   3. §1407A- Transfer multidistrict claims for pretrial proceedings, remand for regular trial.
5. When you transfer (move from one sovereign to another court of same sovereign) venue, apply the law of the transferor venue (first court). Part of §1404. (*Van Dusen)*
   1. Unless the original venue is improper- in which case you apply federal law
   2. Consistent with Erie because it limits forum shopping
   3. P is favoured because P gets law to follow them everywhere
6. FNC- discretionary doctrine. Court can choose not to exercise the option if there is no substantive reason to exercise option or if it’d really inconvenience the D in the original jurisdiction ( *Piper v. Hartzell)* (FNC is ONLY available if no transfer available)
7. If dismissed on FNC, want to bring case wherever it is convenient
8. FNC- more likely action in Federal court than state.
9. Test for FNC- Gilbert Test of Private v. Public interests. Also courts only really grant FNC is
   1. Alternative forum exists
   2. D waives statute of limitations
   3. D consents to jurisdiction
10. Policy Reasons
    1. D/n want foreigners coming to sue in the USA because its easier
    2. §1631- lets courts transfer cases to cure jurisdiction issues.
    3. It is easier for USA to use FNC to take cases internationally than to another US court because Venue is difficult to prove.
    4. Judicial efficiency- limit forum shopping and give convenience to party
    5. Consistent with Erie

**Joinder**

1. Packaging devices- Rule 15,18,20
2. Permissive Joinder of CLAIMS by P
   1. You can join all claims against a single party regardless of how unrelated they are (*M.K. v. Tenet)* Federal!
   2. Can’t join cases that are different causes of action (personal injury and malicious prosecution) (*Sporn v. Hudson*) States that follow the traditional rule say they must have the same transaction.
3. Permissive joinder of Parties
   1. Must have same transaction and one common question of law and fact. Scope of transaction is in the eye of the beholder (*Ryder v. Jefferson*).
      1. Common Law- Hurns- overruled by Gibbs
      2. Modern Rule- Rule 20- Gibbs
4. Necessary and Indispensable Parties/Compulsory
   1. Necessary- those who may and must be joined or complaint will be dismissed.
      1. Will parties be injured by failure to join outsider? Will outsider be prejudiced by the result o fthe case?
      2. Typically the only time not compulsory to join is when its another tortfeasor.
   2. Indispensable- those who cannot be joined but complaint can’t proceed without them.
   3. Four Main Interests of Courts – Equity and Good Conscience to Party
      1. Does P have interest in forum?
         1. Before trial- is there a satisfactory alternative forum?
         2. In appeal- If P won, interest in preserving judgment. If D won, interest in avoiding multiple litigation
         3. After- foreclosed!
      2. Interest of an outsider whom it would be desirable to join? (no *res judicata)*
         1. Court judgment can still affect non-party. Must consider possible effects
      3. Will judgment impede/impair subject matter (ability to protect interests in subject matter)- need to protect non parties.
      4. Court and public have interest in setline controversy efficiently without tons of retrial (*Provident Tradesman’s Bank v. Trust)*
5. Impleader
   1. Rule 14- if party is liable or may be liable to original TPP for all or part of claim, implead. (*Jeub v. B/G Foods and Too v. Kohls)*
      1. Contingent impleader- implead third party because it is fair, efficient, and otherwise you’ll get inconsistent results since the unimpleaded party is not bound by case results (Pennoyer v. Neff)
      2. Criteria for impleader –
         1. Impleader must be timely
         2. Must balance prejudice against TP and unmeritorious claims with judicial efficiency
   2. Rule 13G- allows cross claim if co party has liability (may have liability)
6. Interpleader (use when multiple claimants on one source of funding)
   1. Rule 22- interplead when no diversity and not sure about contingent claims (*Pan American v. Revere-* allow interpleader to protect from multiple liability on suit)
      1. SMJ= §1331
      2. PJ= BK/rule 4
      3. Venue =§1391
   2. §1335- Use alone, when you have diversity
      1. Art. III §2- minimal diversity b/t claimants
      2. A in C= $500
      3. Personal J(x)- §2361- for nationwide, Rule 4 and BK for international; Amendment V or 14 for Dp
      4. Venue under §1397- any judicial district where one or more claimants reside
      5. Can get injunctions using §2283
   3. *State Farm v. Tashire*- no interpleader and injunction because there are other possible causes of action and source of funds.
7. Intervention
   1. Rule 24- permissive intervention- the standard to intervene is
      1. If there is interest in property/action
      2. Decision may impede ability to protect your interest
      3. Interest is not adequately measured/represented
      4. Determinative factor- whether non intervention results in practical harm and you haven’t been adequately represented
      5. Show inadequacy- Applicants interests are not represented at all; applicants and attorney are antagonistic; collusion bt/ representative and adverse parties
8. Class Actions
   1. This has an exception to due process and personal jurisdiction
   2. To bring class action- must have personal j(x) over D and named P
   3. If class action for $$$; don’t need personal j(x) over absent P
   4. Rule 23-to make class action
      1. Part A- 4 requirements, all must be met
         1. Common Q of law and fact
         2. P typical of other class members
         3. Numerous claims (>40)
         4. Adequate representation
      2. Part B, 3 types, meet 1
      3. Part C, notice rules- must comply
         1. 23b3- P gives notice, ppl waive right to participate but still bound by R.J.
         2. 23b1 and b2- do not need to give notice (violates *Mullane v. Hanover*) and DP rights
   5. Remove class action using §1453.

**Right to Jury Trial**

1. General- 7th amendment preserves the right to a jury trial. It is asymmetrical, even if you do not have the right, sometimes you’ll get it anyway.
   1. People don’t like because juries are pro P, juries are not a good cross section of the population, they cannot sit on complex cases. And courts can give more jury rights than Congress.
2. How do you decide the right to jury trial?
   1. Where was this type of claim filed in 1791? Chancery or Law?
   2. If claim d/n exist back then, use the *Ross* test:
      1. What claim is it most like
      2. What is the remedy
      3. Can a jury understand the case?
   3. Court of law hear- b/k, torts, etc. Chancery hear- specific performance, injunctions etc.
   4. *Chaffeurs*- three understandings of Ross
      1. History is important and both prongs get equal weight
      2. History is useless (Brennan)
      3. Majority – history is relevant but not dispositive
   5. The FINAL standard is really “where you could you bring the case in 1791, and what is the remedy?”
   6. *Tull v. United States- what happens? It looks like it just says trial judge can determine $$$$*
3. If determining whether court for declaratory judgment look at the underlying action for what the declaratory judgment is desired (*Beacon v. Westover).* This is controversial because court can give opinion if something gets to point of controversy even if it isn’t the point of the controvery
4. For derivative lawsuits- use 23.1 to bring them to courts of law and then use the Ross test on underlying claim
5. Collective bargaining- look at equity element
6. If there is legal and equitable claim in one case jury gets it first. Historically, equity went first and the law question was enjoined until that was decided.
   1. Created a right to jury? Or preserved it?
      1. Preserved spirit of right to jury trial. All we changed was procedure since we’ve combined modern courts.
      2. By York- we’ve created a right to jury because it makes an outcome difference on whether you do Chancery or Law claims first
7. Complicated issues do not bar jury trial (*Dairy Queen v. Wood)*. No longer need special master separately since Rule 53B lets you bring one into jury trial
   1. Enlarges right to jury. Courts now ask- what would have happened in 1791 if they had the Federal Rules?

**Preclusion**

1. How do you determine if a case is barred by *res judicata?*
   1. Is the claim similar to the case brought before? (From one transaction)- *Rush v. City of Maple Heights* OR is the claim the exact SAME?
   2. Could the claim have been brought in a prior case? If not, then there is no R.J.
   3. Was the judgment on the merits? *Matthews v. NY Racing*
   4. If there Is res judicata and you win the second claim, the claim is merged into the old ruling. If you lose, the claim is barred anyway.
      1. Cannot bring a case with R.J. on an appeal where the verdict was overturned UNLESS it was overturned for abuse of discretion or jurisdictional defect
   5. If there are multiple cases with inconsistent judgment, res judicata applies. “Last Time rule” use whichever judgment is most recent
   6. Defense preclusion – if you used something as a defense in the first case you can’t use it as an offense in case 2. Rule 13
      1. In states that do not require compulsory counterclaim- if the defense claim was litigated in the first case, then you can’t bring in second action
      2. To decide whether defense preclusion exists- does the state have compulsory CC laws? Does it apply Federal Rule 13?
      3. In *Mitchell v. Bank,*  the bank claims defense preclusion because there is no compulsory cc possible in S.C. back then
   7. Policy- court wants judicial efficiency , so they interpret R.J. broadly. But they will interpret narrowly if the preclusion would be too harsh and unfairly burden P.
   8. PETM- Same **P**rimary Rights; **E**vidence; **T**ransaction; Judgment on the **M**erits= Res Judicata
2. **Collateral Estoppel**
   1. **Insurance= clear and convincing evidence/libel is also that standard. Everything else is preponderance (see RJ). Beyond a reasonable doubt (criminal).**
   2. **Certain privity relationship are exception to non mutual estoppels- employee/etc. See Taylor v. Sturgell**
   3. How do you decide collateral e?
      1. Are the issues in the cases exactly the same? (*Cromwell v. Sac)*
      2. Did the losing party have a full and fair opportunity to litigate? (Procedures and Incentive)
      3. Was the issue actually litigated?
      4. Was the decision necessary to the holding? (*Russell v. Place, Rios v. Davis)*
      5. Was it a final, valid judgment on the merits? (*Moser, contradicted by Sunnen)*
      6. Was their mutuality of estoppels? (*Bernhard)*
   4. Collateral e only applies to questions of fact or mixed fact. NOT pure law (*U.S. v. Moser)*
   5. Burden of proof is on party moving for C.E. (movant) (*Russell v. Place)*
   6. On cases with two findings (if you remove one finding, case holding still stands on the other)
      1. Majority View- when there is judgment on alternative independent findings, every finding is preclusive. If on appeal the appeals court chooses not to reach one or both then they are not preclusive
      2. Minority- neither is preclusive unless case is appealed and appeals court rules against one or both findings
   7. Non mutual defensive collateral estoppels-Collateral e can be used against any party that has litigated issue fully and fairly if used as a defense (*Bernhard v. Bank)*
   8. Non mutual offensive C.E.- Rejected because it encourages prospective P to stay out of case until judgment passed and then relitigate.
      1. Fairness
         1. Could a party have tried to intervene in suit
         2. Did D have incentive to litigate in first suit
         3. Are their multiple prior inconsistent judgments?
         4. Any procedures available in second suit that weren’t in first? (*Here, Parklane reduces idea of Jury trial)*
   9. (Catch- all test) If P in second action can appeal verdict during first action, the issue WAS litigated, so there IS estoppels.
   10. Policy- judicial efficiency, closes RJ loopholes by getting rid of mutuality. Judges make this harder because they d/n like special questions because jury d/n understand them and they typically get appealed.
       1. Do not estop if finding was not necessary to holding because you can’t have full faith that the jury gave weight to the issue they had decided, winning parties can’t appeal, and you don’t know what turned on the finding.
3. **Full Faith and Credit**
   1. Supreme court Federal Common Law- requires federal courts to give FFC to one another
   2. States must give FFC to other state rulings (Art. IV §1) (*Fauntleroy*)
   3. State court must give FFC to federal courts because of Art IV §1 and Art. III §2. (*Semtek)*
   4. Federal court must give FFC to state court because of §1738 (*Allen v. McCurry)*
   5. When giving FFC- give judgment the same weight you would have if you were in the court originally (*Fauntleroy)*
   6. In diversity cases and those where state law makes decisions, like supplemental claims, federal common law says you apply preclusion laws that would be applied by state laws of the state in which the Federal court sat in the first case
      1. Unless applying state law damages federal interest in preclusion (which only happens in one particular instance)- Semtek- diversity case Fed case 1 and fed case 2- Rule 13 counterclaim- if there was a compulsory counterclaim in the first case, then Rule 13 would be meaningless if you applied state law and got rid of compulsory counterclaim.
   7. **FFC- International Law**
      1. Rule of reciprocity- *Hilton v. Godhill*- We don’t give FFC to France because they don’t to us
      2. Full and Fair Opportunity to litigate- most nations w/ functional dem.
   8. **FFC - Administrative issues**
      1. If the process to determine the case is similar to a trial, then FFC to their findings as well
   9. Policy- for judicial efficiency, to avoid inconsistency, and separate federal and state powers.

**Taking Cases from the Jury**

1. **Summary Judgment**- Before the case gets to court by Rule 56
   1. Anderson Standard Test- (1) no disputed material facts from evidence/ no genuine issue of material fact (2) movant must be entitled to judgment as matter of law
   2. All the party objecting to S.J. has to do is show legally competent evidence upon which jury could find for him.
   3. Standard- no reasonable juror can find by preponderance of evidence that \_\_\_\_\_\_\_\_ did \_\_\_\_\_\_\_\_\_\_\_\_\_\_
   4. When using affidavits from witnesses, the witness must have the following : 1)perception; 2) remembered perception; 3) articulate the perception; 4) tell the truth
   5. Policy- avoid unnecessary trials- address questions where undisputeds
      1. Burden of proof on movant. Only consider available evidence so you don’t go through the entire case evidence and have a mini trial (*Celotex v. Catrett*)
      2. Evidence is taken in light most favourable to movee (*Addicks v. Kress)*
      3. Revolution of law- relaxed standards to encourage judicial efficiency. Ends cases before they go to trial. OR not efficient because you review evidence present for case anyway
      4. Removes jury power- because judge gets to be gatekeeper for what does or does not make it to jury
      5. Constitutionality
         1. Procedural- a housekeeping rule!
         2. Unconst- substantive! Outcome determining
2. **JMOL- Judgment as a Matter of Law/Directed Verdict**- Rule 50, first case is in court. Make motion after other side has presented evidence
   1. This is for if P d/n even meet the burden of production, which is the minimum evidence to show there might be a case). A case so weak, no reasonable jury could really do anything with it.
   2. Standard now- P must show preponderance of evidence that case can defeat a directed verdict. Back in 1791, they only needed to show with scintilla evidence to defeat directed verdict.
      1. In 1791, D.V. was not really possible. Just demurrer- because other side that wanted demurrer had to accept all facts as true, so if they lost demurrer, they also lost case. Now, JMOL/DV removes risk.
   3. Policy- same as summary judgment
   4. Federal Standard for JMOL- judge must consider non-moving party’s evidence in most favourable light, and if there is only one possible verdict, grant JMOL.
3. JNOV- Non obstante verdict… - This is basically a renewed JMOL. If losing party asserts, then saying that jury has irrational verdict
   1. How it works: 1) Party moves for JMOL 2) Judge denies but reserves right to rule 3) Jury comes back for other party 4) Judge disagrees and enters verdict for movant using jnov 5)Movee can appeal 6)Appeals court, if they disagree with trial judge, can just order the other verdict. D/n have to retry entire case.
   2. Procedure- motion for jnov must be filed within ten days of entry of jury verdict and can only make the jnov motion if you made a dv motion before the verdict (*Redman, Slocum)*. *Galloway* takes away the right to have jury trial before motion whereas *Slocum* insists that you must have a jury before the motion and can’t take the case away.
      1. 7th amendment d/n let any review of facts found by jury
      2. And this gives the opposing party a chance to review defects/cure defects in case
   3. Federal standard for JNOV (*Aetna v. Yeatts)*- The jury verdict must be against the clear weight of the evidence, based on false evidence, and result in a clear miscarriage of justice.
   4. *Slocum and Dimick*- History is a strait jacket- if only remittitur allowed in history, no additur now. Inconsistent with *Beacon, Galloway* where jury trial rights were expanded.
   5. States don’t have to worry about any of this, they can do additur.
   6. **New Trial- Rule 59**
      1. If there are errors in trial processes and you move immediately for new trial- judge can vacate verdict and retry case
      2. If fair trial with unfair results, must be against clear weight of evidence. Verdict won’t be vacated but new trial can happen.
   7. Policy- JNOV is less stringent than JMOL so it seems to limit jury- but the second trial is actually sending it to another jury so its not really limiting jury power.