**Ten Clusters for Procedure**

**Cluster 1. Jurisdiction and related matters**

**Traditional Basis for Jurisdiction:**

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

Types of jurisdiction:

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

**Subject Matter Jurisdiction:**

1. *Diversity of citizenship jurisdiction:* 
   1. § 1332: Diversity of Citizenship; amount in controversy; costs (Article III allows incomplete D.O.C. 🡪 1332 requires complete D.O.C)
      1. diversity jurisdiction to avoid bias
      2. §1332(a)(3): citizens of different states can have complete diversity even if there are additional foreign parties 🡪 an alien admitted to the US for permanent residence is deemed a citizen of the state in which they are domiciled
   2. Need COMPLETE diversity of citizenship 🡪 everyone on the left of the “v.” in an action must come from a different state from everybody on the right of the “v”
   3. Citizenship for each party is determined on day complaint is filed
   4. Determining citizenship of particular parties:
      1. Individuals: An individuals citizenship is their domicile. Domicile = Residence + Intent to Stay
      2. Corporations: 2 citizenships, [i] citizen of state in which it is incorporated, and [ii] state in which corporation has its principal place of business (nerve center test and muscle test)
      3. Unincorporated associations: is a citizen of every state where any member is a citizen
      4. Parties in representative actions (estate holders, children): citizenship based on the represented (not the representative)
2. *Federal question jurisdiction:*
   1. §1331: plaintiffs own claim must arise under federal law
   2. Plaintiffs cause of action must arise under the constitution, treaties, or laws of the U.S.
   3. Constitution is a balance of power between the states and the federal government
      1. 10th amendment: all powers not expressly given to the federal government are given to state governments
      2. there is no federal question jurisdiction in a US District Court by anticipating a defense related to a constitutional issue or federal question
   4. No jurisdictional amount requirement for a federal question case
   5. Two forms of federal question jurisdiction:
      1. Exclusive federal jurisdiction (congress wants national uniformity under federal courts)
      2. Concurrent federal question jurisdiction (civil rights cases, FELA cases) can be taken to federal or state court (plaintiffs choice)
   6. *Osborne Rule*: ANY federal ingredient question ANYWHERE in the case gives federal court jurisdiction (regardless of how speculative) – applies article III section 2 (not 1331 which is a more narrow view)
   7. *\*Holmes/Harms test*: (Justice Holmes in the Harms v Eliscu case) 🡪 in order to be considered a federal question case, the plaintiffs claim must arise UNDER federal law (applies article III sec 2 AND §1331/§1338)
   8. *\*Grable Test*: 4 parts
      1. Is the federal question disputed OR substantial? (apply Harms test)
      2. Is resolving the federal issue necessary to resolve the state law claim?
      3. Will the resolution of the case in federal court definitively resolve all future cases over the issue? (federal interest in resolving or clarifying), not usually true in very fact specific cases
      4. Will federal court hearing the case disrupt the balance of power between federal and state courts?
3. *Amount in Controversy:*
   1. For diversity jurisdiction cases – congress puts amount in controversy prevent flooding of federal court system
   2. Matter in controversy must be *more* than $75,000 exclusive (not counting) interest and cost
   3. Aggregating claims to meet amount in controversy:
      1. For a single plaintiff and single defendant, you can aggregate multiple claims (no matter how unrelated they are) to meet an amount in controversy requirement
      2. Rule is reverse when you are adding up the claims of more than one plaintiff or more than one defendant, you cannot aggregate in the multi-party situation unless they are really joint claims
      3. Legally indivisible costs can be aggregated even if multiple parties (own a home as joint tenants, someone burns down house, 2 parties can sue for arson)
   4. Court accepts plaintiff’s allegation of jurisdictional amount unless they are convinced to a *legal certainty* that the plaintiff cannot recover that amount
   5. Ancillary jurisdiction allowed plaintiffs to bring a case and defendants to assert jurisdictionally insufficient counter-claims, cross claims, and third party claims
4. *Supplemental Jurisdiction: §1367:*
   1. §1367(a): in any civil action of which the district courts have original jurisdiction, the district courts will have supplemental jurisdiction over all other claims that are related to claims- if both issues come from a *common nucleus of fact* 🡪 more efficient and economical to try cases together rather than parcel the issues amongst multiple courts
   2. §1367(b): prohibits use of supplemental jurisdiction when case is based solely on diversity jurisdiction and jurisdictionally insufficient claim is won by a plaintiff under federal rules 14, 19, 20, and 24
   3. §1367(c): supplemental jurisdiction is discretionary, lists situations in which a federal court should decline supplemental jurisdiction even if there is an incidental federal question prudence says not to take the case
   4. need something legitimate to piggy back on, other claims must be closely related
   5. Pendant jurisdiction: when the plaintiff in complaint appends a claim lacking an independent basis for federal subject-matter to a claim possessing such a basis
   6. Ancillary jurisdiction: when either a plaintiff or defendant injects a claim lacking an independent basis for jurisdiction by way of a counterclaim, cross-claim, or third-party complaint
   7. Both can also be called supplemental jurisdiction
   8. Rule 20: join multiple defendants
   9. *Gibbs test:* did the supplemental issues arise from the same transaction
   10. United Mine Workers v. Gibbs: federal and state claims brought in same case; after judgment by jury, judge throws out federal claim; federal court still has jurisdiction to decide on state claim
       1. State law claims are appropriate for federal court determination if they form a separate but parallel ground for relief also sough in a substantial claim based on federal law.
       2. Question is whether the state and federal claims arise from a “common nucleus of operative fact.”
       3. Pendant jurisdiction exists where there is a federal claim and state claim, and their relationship permits the conclusion that the entire action is but one case. The federal claim must have substance sufficient to confer subject matter jurisdiction (federal question section).
       4. Due to res judicata, plaintiffs often HAVE to try all claims in one judicial proceeding, so pendant jurisdiction is absolutely necessary then.
5. *Removal Jurisdiction:*
   1. when case commences in state court
   2. When case has been removed to federal court, state court is powerless, federal court can refuse to hear case and send back
   3. Only defendants can remove case to federal court
   4. §1441(a): Removal of civil actions: if plaintiff could have filed case in federal court then defendant can remove to federal court
   5. §1445: Nonremovable actions: sometimes removal jurisdiction is narrower than original jurisdiction (certain matters cannot be removed ie. FELA claims)
   6. §1442, §1443: instances where removal jurisdiction is broader than original jurisdiction in this case, (if you sue federal officers in state court and they assert federal defense, they can remove to fed court, plaintiff could not file in fed court, but defendant can remove)
   7. §1441(c): if there are 2 claims, one could be removed to federal court and the other could not, sever claims and send state law claim back to state court (only when there is no supplemental jurisdiction over state claims)

**Personal Jurisdiction:**

1. If there is a traditional basis of personal jurisdiction, then you don’t need personal jurisdiction
2. If no traditional base for jurisdiction is there a long arm statute and does it apply? Is the application of the long arm constitutional? (most of what you need to know)
   1. Most long arm statutes indicate if a cause of action arises out of the commission of a tortious act in the state, doing business in the state, or ensuring of a risk in the state (specific jurisdiction), then the forum state can assert personal jurisdiction over a non-resident of the state based on the commission of that act

4 Types of Personal Jurisdiction:

1. In personam: exercised over the defendant himself because he has the appropriate connection with the forum, requires service of process to the defendant
   1. Full Faith and Credit: Article IV of constitution 🡪 provides that valid judgments of the courts in one state are entitled to enforcement in the courts of other states

True in rem, Q-IR-1, and Q-IR-2 are all *based on property the D has in the forum that gives the court there jurisdiction over them*, property had to be seized within boundary of court and within state where property exists, seizure of property MUST take place at the OUTSET of litigation to ensure there is something over which the court actually has power (did not happen in Pennoyer)

1. True in rem: these cases are very rare, involves dispute over ownership of the property that is the jurisdictional predicate and purport to determine the ownership interest in that thing as to *every person in the world*
2. Quasi in Rem I: (D’s property in the forum might give the court there jurisdiction to adjudicate matters that affect the D) ask court to say that your title over property is *greater* than that of the D’s
3. Quasi in Rem II: there is no dispute over who owns the property, dispute can be about anything, P uses this when they are unable to get in personam jurisdiction and D owns property in the forum state

Pennoyer v. Neff: Q-IR-2 case, plaintiff (Neff) is in IA, property is in OR, Neff failed to appear in a judgment against him where personal jurisdiction was not exercised. To satisfy the judgment Mitchell seized land owned by Neff and sold it to Pennoyer. Neff sued Pennoyer in federal district court in Oregon to recover possession of the property, claiming that the original judgment against him was invalid for lack of [personal jurisdiction](http://www.lawnix.com/cases/personal-jurisdiction.html) over both him and the land. The court found that the judgment in the lawsuit between Mitchell and Pennoyer was invalid and that Neff still owned the land. Pennoyer lost on appeal and the Supreme Court granted certiorari.

* A court may enter a judgment against a non-resident only if the party 1) is personally served with process while within the state, or 2) has property within the state, and that property is attached before litigation begins (i.e. quasi in rem jurisdiction).
* No state can exercise jurisdiction 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 jurisdiction established before judgment.
* Linked Due Process Clause to Full faith and Credit Clause of Article IV- Any judgment invalidated for lack of personal jurisdiction would be denied full faith and credit by other courts.

Constitutional Principals for Personal Jurisdiction/Case law:

International Shoe v. Washington: MI corporation shipping shoes into Washington state, Washington wanted to tax it, corporation had established elaborate mechanism whereby it wasn’t selling shoes directly in Washington, Supreme court considered whether International Shoe had corporation presence, said realistically they should be vulnerable to jurisdiction in Washington

* “a state can assert jurisdiction over a non-resident when the non-resident has *minimum contacts* with the forum so that it is fair play and substantial justice (due process clause of 14th amendment) to say to the non-resident, you must *stand and defend* in this court” – breathing life into the due process clause, made it relevant to 20th century America
* International Shoe reaped the benefits of Washington state law
* Justice Black (concurring) 🡪 “fairness” standard inquiry could restrict or open up federal court jurisdiction

Hanson v Denkla: wealthy woman from PA establishes DE trust but later moves to FL and dies there, FL claimed jurisdiction over estate of decreased because it was the state of probation (where she died), DE trust did not do business in FL they simply maintained their relationship with the trustee, *contacts must be volitional, cognitive, and beneficial*. Did not apply in this case, DE trust did NOT have minimum contacts with Florida

Gray v. American Radiator: Gray (P) was injured in IL when a water heater exploded. P brought suit in Illinois against both Titan Valve Manufacturing Company (Titan) and American Radiator & Standard Sanitary Corporation (Defendant) alleging negligence. Water heater was assembled by American Radiator in PA and Titan manufactured the valve in OH. Titan’s only connection with IL was the selling of its valves to American Radiator which were used in IL. American Radiator filed cross-claim for indemnification against Titan.

* RULE: In a products liability action, a defendant who sells products that he knows will be used within a given forum may be required to defend an action within that forum state if the product sold in fact causes injuries within the state.
* Anyplace you serve a market, directly or indirectly, you must defend there

World-Wide Volkswagon: Robinson family who purchased a VW car while living in NY. Family moves to Arizona, on their way they drive through OK and the car is hit from the back and the gas tank explodes, Robinson family decides to sue in an OK state court, evoking OK long arm statute because that is where tortious act occurred. Seaway Motors and WW VW filed to dismiss for lack of jurisdiction.

* P’s sue: VW AG (manufactures of Audi – German co.), VW of N. America (US importer of Audi), WW Volkswagon (sold cars in NJ, NY, CT), and Seaway motors (retailer, NY)
* Does the due process clause of the 14th amendment allow OK to have jurisdiction over WW and Seaway?
* Supreme Court said there was NO personal jurisdiction in OK
  + Seaway and WW could not have reasonably apprehended being hailed before a court in OK
  + Automobiles are mobile chattels by nature, it could have been foreseeable that car ended up there, but that was not enough
  + D’s did not purposefully avail itself of the protections of OK
* Section 1446, (at time of case) you can remove case within 30 days as soon as case becomes removable, when Seaway and Audi dropped out, Audi would have had 30 days to remove case – (now) have 1 year to do that

Burger King: Michigan residents opened BK franchise in FL, court held that the FL court had jurisdiction over them, federal court applied states long arm statute, BK had real interest in hearing the case in FL and protecting its citizens, outweighed the interest of D’s, court says that P reached out to FL to sign franchising K (distinct from BK case). Case broke International Shoe test into two parts

1. Sovereignty Branch – are there minimum contacts with the forum, did D purposefully avail himself of the forum state (in this case, Yes)
   1. Justice Kennedy: knowledge of business in forum is enough
   2. Justice Bryer: must do a lot of business in the forum
   3. Justice Ginsberg: stream of commerce theory, doing any business in the forum, even if indirectly is enough because they are profiting from their products being bought there
2. Fairness Branch: does it offend notions of fair play and substantial justice? Look at the interests of the plaintiff, defendant, forum, and judicial system in having the case brought in the forum

Asahi: Californian is driving Honda motorcycle, bike wipes out and he hits tractor killing his passenger wife, plaintiff sues tire manufacturer Shin Cheng in Taiwan who files files indemnity cross-claim against Asahi (Japanese Co) who manufactured the valve. (case eventually settled)

* can a manufacturer who puts a product into the stream of commerce automatically jurisdictionally vulnerable wherever the product alights? (stream of commerce problem),
* 4 justices thought it passed sovereignty branch of BK test (Brennan’s opinion) , 4 did not (O’Connors option - intent v. knowledge argument of stream of commerce theory)
* Insisted that the manufacturer must both put the product in the stream of commerce and ALSO engage in specific conduct *directed* to the forum state in order to be jurisdictionally bound,- not the case in the Asahi matter

McIntyre Machinery v. Nicastro:

* P was involved in accident in NJ resulting in loss of 4 fingers. Accident occurred while operating a recycling machine used to cut metal which was manufactured by McIntyre (British company). McIntyre only sold to the U.S. through its exclusive US distributor (made no direct sales).
* manufactures in UK, sends to US through a distributor, only 1-4 items ended up in the state of NJ
* Justice Kennedy: stream of commerce is NOT enough (O’Connor’s view in Asahi), there was no indication that McIntyre intended to serve the NJ market (5 judges disagreed)
  + Justice Bryer concurs but says that intent to sell in forum may be enough if there is a “regular flow” of business to the forum, one machine sold in NJ is not enough
  + Justice Ginsberg (dissent): D may not have targeted NJ specifically but they wanted to serve US market and knew their products could end up in NJ, was using distributor as a way to avoid the US legal system, enough if you do any business in that state

General jurisdiction: D contacts with forum are continuous, systematic, and substantial, D can therefore be sued in forum state for anything D did anywhere in the world

* Perkins case: moved company to Ohio while Japanese occupied their previous location in the Philippines, lawsuit came up re: stock ownership, found that Perkins could be sued in OH based on general jurisdiction, unusual case, usually takes a lot to constitute general jurisdiction
  + Rule: need continuous and systematic business contacts AND substantial contacts
* Helicopteros case: Columbian Corp crashed helicopter in Peru, company bought supplies from TX, sent pilots to TX for flying school, court ruled TX did not have general jurisdiction over them (substantial aspect of Perkins test was not met)
  + Rule: small amounts of purchases or sales over time in forum is not enough for general jurisdiction

Specific jurisdiction: long-arm jurisdiction, arises out of a particular connection between the out of state defendant and the forum, tort, breach of contract, broken marriage in dispute

Goodyear Dunlop Tires v. Brown: bus accident happened in France, killing three American children, Court held that the connection between Goodyear and its subsidiaries with the state of North Carolina was not strong enough to establish general personal jurisdiction over the companies

* applying Perkins test, business and contacts was not substantial enough
* normally consider corporations and its subsidies separate and apart from owners, courts normally respect separate corporations

Community Trust Bancorp v. Community Trust Financial:

* issue over use of banking website in state of Kentucky, plaintiff claims it was using the trademark ‘Community Trust’ for Kentucky bankers to confuse them into believing they were associated with the plaintiff’s bank, Defendants have no employees or offices in KY, located only in TX, LA, and MS, 4 customers who moved to Kentucky signed up for online banking with D
* Was there general or specific jurisdiction over the D? Does the case arise out of D’s contacts with the forum (Judge Blackman’s test) – Yes.
* D passed the BK test under J. Ginsberg’s stream of commerce rule but would not satisfy either Kennedy or Bryer’s requirements
* Websites: can you be pulled into court anywhere? Ginsberg – yes (too broad), Bryer – middle ground, only if you do a lot of business in forum

Shaffer v. Heitner:

* Heitner (P) owned one share of Greyhound stock. P filed a motion for sequestration of stock owned by 21 of the defendants in order to obtain quasi-in-rem jurisdiction. The legal situs of the stock was deemed to be in Delaware. Used DE sequestration statute to seize stocks against Greyhound (incorporated in DE, main place of business in AZ).
* Quasi in Rem II: seize property solely to bring D into courts jurisdiction
* State cannot obtain personal jurisdiction over a party based only own party’s ownership of property in the state
* Quasi in rem jurisdiction is subject to the constitutional requirements of minimum contacts per BK. ALL assertions of state court jurisdiction must be evaluated per Int’l Shoe and BK
  + Sovereignty branch met because company incorporated in DE, purposefully availed itself of the benefits there
  + Fairness branch reaches in both directions, probably not met
* Court ruled it did not meet sovereignty branch – got it wrong (J. Marshall)
* mere ownership of property in a state is not a sufficient contact to subject the property owner to a lawsuit in that state, *unless* that property is the issue of the lawsuit.
* The state in which property is located will still generally have personal jurisdiction over disputes concerning the *ownership* of property within that state, because the owner will be receiving the benefits and protections of that state

Limited appearance v. Special appearance:

* A special appearance is a procedural device which enables the defendant to appear solely for the purpose of raising the jurisdictional question, and if so limited does not subject the defendant to the consequences of a general appearance.
* A limited appearance seeks to avoid conversion of in rem jurisdiction into personal jurisdiction by defending the action on the merits. It enables the defendant to appear ‘for purposes of litigating the merits but limited to those claims which could be constitutionally adjudicated by the court in his absence by virtue of its in rem jurisdiction.’"

*Territoriality:*

Burnham v. Superior Court:

* divorce case, husband travels to CA for business where wife has him served with process
* Court held in personam jurisdiction is enough on its own even if he was there temporarily and did not have substantial contacts with the forum (uphold tradition)
* Brought up 2 prongs of Pennoyer:
  + Seizing property in Quasi in Rem II action (Shaffer killed this prong)
  + In personam service of process (still upheld)

*Federal Court jurisdiction:*

DeJames v. Magnificence Carriers Inc.

* DeJames sues in NJ District Court against Hitachi for defectively converting ship into automobile carrier in Japan, defendant had contacts with U.S. but not NJ where the federal case would be heard; no jurisdiction
* In looking for minimal contacts, the court looks only to the contacts with the forum state, not the entire nation, when a case is heard in federal court.
* Apply FRCP 4k1A
* Where service is effected by means of a state statute, a federal court must look to contacts within the state.
* When service is effected by means of a federal law, national contacts may be used as a basis (Rule 4k1D).
* Rule 4: Federal Summons Rules
  + Rule 4k1A: party is amenable to federal suit whenever the party would be amenable to suit in the courts of the state in which the district court sits (state’s long-arm) – if NJ state court can assert jurisdiction, then so can federal court
  + Rule 4k1B: joined party not more than 100 miles away from place where summons issued
  + Rule 4k1D: party amenable when authorized by U.S. statute

*Issue 3: Notice and Opportunity to be heard:*

Mullane v. Central Hanover:

* settlement of trust conglomerate failed to give adequate notice
* The means employed to provide notice must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.
* The form chosen must not be substantially less likely to bring home notice than other of the feasible and customary substitutes.
* A service process that is a mere gesture is not due process. -For parties whose addresses are known, service must be given. For unknown addresses, publication is adequate

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

Opportunity to be heard requires due process protections:

1. decision to issue the writ of attachment or garnishment or replevin must be a decision made my a judge
2. judge must make decision based on a full presentation by the creditor of why the creditor believes it has the right to immediate possession (fact based statement of right to the debt or property)
3. creditor must post bond to protect the debtor against wrongful attachment or replevin
4. debtor must be given an immediate right to a hearing on the merits, you can seize it but not dispose of it

Fuentes v. Shevin:

* a taking of property under a writ of replevin absent prior court proceedings (summary writ) violates due process
* Central meaning of due process: Parties whose rights are to be affected are entitled to be heard, and in order that they may enjoy that right they must be notified.
* An opportunity to be heard must be granted at a meaningful time and in a meaningful manner.

Mitchell v. W.T. Grant:

* in creditor default, so long as the hearing comes occurs quickly after the repossession (meaningful time) in front of a judge, both parties do not have to be present
* Creditor’s proceedings one of the few exceptions that do not require summary proceedings.

North Georgia Finishing v. Di-Chem:

* must at least cite a facially valid reason why property must be seized immediately; court adheres to Fuentes

Doehr:

* required affidavit and judges review, does not overrule Mitchel and Di-Chem
* in this case plaintiff had no interest in property that was seized (distinct from Mitchell and Di-Chem)
* it is essential that P post bond to defray expenses that D occurs due to improper seizure of property 🡪 constitutionally necessary to justify post-seizure hearing

*Issue 4: Service of Process*

* can’t entire people to come into the jurisdiction to serve them, but you can flush them out or use trickery to serve them if they are in jurisdiction already

*Issue 5: Venue*

Application of rules of venue for particular system:

Choice of venue depends on:

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

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

**Transitory Actions**: when transactions could have happened anywhere

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

* Now, LAS and BK make it easier to get PJ over someone.

1. Rules of venue for a particular system: §1391: (basically, venue ok where subs’t events or subject to PJ)
   1. 1391(a): when civil action is based solely on diversity of citizenship
      1. defendant residential venue
      2. substantial part of the claim venue
      3. venue based on a place where the defendant is subject to personal jurisdiction at the time the action is commenced (can be used only if there is no other venue in which the action can be brought)
   2. 1391(b): for federal question cases or mixed federal question and diversity cases
      1. venue is proper in any district where any of the defendants reside, all defendants must reside in that state
      2. in a judicial district in which a *substantial part of the events* giving rise to the claim is situation, where the tort occurred, where the K was formed or breached, ect.
      3. Judicial district in which the defendant may be found,(wherever the defendant can be found in jurisdictional terms), you can always use defendant residential venue you can always use substantial part of the claim venue, you can only use the “found” venue base when neither of the first two venues are available
   3. Aliens may be sued in any district
   4. Corporations can be sued in any district in which there is personal jurisdiction
   5. Venue in property actions: local action venue
      1. land actions that fall within the local action principal – must bring action in which the land is located (ancient rule)
      2. land is tied up with the sovereignty in which the land is located

**Doesn’t matter if Contact was intentional**

***Bates v. C&S***- should have been dismissed for lack of PJ b/c R4k1- 14th Amd. – fails sovereignty of BK b/c did not know or intend for letter to reach P in NY when forwarding there, BUT, waived rt to objection when failed to make motion at beginning of case! Waived PJ to court🡪 accepted PJ and subject to venue.

Transfer of Venue:

In determining if transfer is proper, must analyze SMJ, PJ, and Venue of that forum

1. General transfer of venue principals
   1. all states have transfer of venue provisions
   2. case might be located in fed court in NY but it doesn’t seem like it belongs in the right place, maybe it belongs to the fed court in Boston, system has safety valve that allows you to transfer
   3. every system uses approximately the same standard for transfer “in the interest of justice” 🡪 fact dependent
   4. “interest of justice” – where the events occurred, where the parties are, where the witnesses are, the records are, ect.
2. Federal transfer provision §1404(a)
   1. action can only be transferred to a place where it *could have been commenced*, for convenience of parties/witnesses, and interest of justice (Hoffman)
      1. Hoffman v. Blaski: Blasi sues Howell (TX) in TX (federal). D wants case moved to IL. According to court, 1404A is not THAT broad, cannot just transfer case anywhere, we must apply the words of statute literally, can only transfer to a court that would have had original subject matter and personal jurisdiction, and original venue
   2. GILBERT TEST – balance public and private interests of both venues
   3. What to look for in exam: test is on Hoffman v. Blaski test 🡪 is there subject matter jurisdiction, personal jurisdiction? Would §1391 permit you to lay venue in that court?
3. § 1406: only applies when venue is improper and you want to transfer it

Van Dusen v. Barrack

* wrongful death accident where plane flies from Boston into Boston Harbor on way to Philadelphia, 40 claims made in PA (no cap on damages). D wants to move it to MA where there is cap on damages. You can only transfer cases within a single soverign. 1404A is a procedural statute – doesn’t affect substantive case action
* Plaintiff gets superior advantage because it can choose where it wants the case to go and law applies despite getting transfer to new venue, transfer should not change legal principals, must apply same law original court would have applied
* Consistent with Erie: uniformity of choice of law discourages forum shopping
* Inconsistent with Erie: creates lack of uniformity between state and federal courts in the same state; if the case should have been tried in MA, why is it that we get a different result in MA fed court (applying PA law) than a MA state court (applying MA state law)?

Forum Non Conveniens: “unsuitable court”

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

Removal:

* Can only remove from state to federal court
* if removal is improper case will be remanded
* Rules of Removal: Removal statute
  + You can only remove an action that could have been brought in a federal court originally (Fed. Question, diversity of citizenship + amount in controversy)
  + Only defendant can remove case
  + In a case based on federal question, the action is removable by the defendant without regard to the citizenship of the parties (in and out of state defendants can remove fed question cases) – when action is based on diversity of citizenship, then the only D who can remove is a D who is not a citizen of the state in which the action was brought (in state D can not remove, if multiple D none of the D can be in state Ds – because there is no rational claim against prejudice)
  + You remove a case to a federal court covering the geographical area embraced by the state court, once you remove an action (under 1441) you can seek to transfer the federal action to another federal court under section 1404(a)
    - 1441(c): sometimes you have a completely separate fed question that has been joined with a completely state claim that would be non-removable; congress said you can remove the separate federal claim only – enables removal defendant to remove federal question issue AND otherwise un-removable state matter, form of supplemental jurisdiction, in discretion of district court to keep entire thing or send entire thing back

**Choice of Law:**

* Traditional basis for choice of law questions: single factor test: law of state where accident happened (tort), state where K was to be performed (B of K cases) 🡪 this oversimplified the issue
* Majority of states began applying standards instead of single factor test – what is most “fair”?
* Questions to consider:
  + In a federal diversity case, when do you apply state v. federal law?
  + If state law – which state?
  + How can you tell what state law is?
* Rules of Decision act §1652: federal courts must apply state law as the rules of decision in civil cases, except where federal law applies
* Supremacy Clause: part of constitution, federal law is “the supreme law of the land”

Swift v. Tyson:

* In a diversity case with a claim based upon the state law, a federal court should apply federal substantive law to the state claim unless that claim involved state legislative law or matter of custom of usage
* This was the interpretation of the Rules Decision Act for Almost 100 Years.
* Interpretation of “laws of several states from the RDA” resulted in the outcome: RDA applies only to statutory law – the federal courts are only required to defer to the state law when the law in conflict is a statute.
* Created enormous incentive for forum shopping, parties would “manufacture” diversity of citizenship jurisdiction to bring case to federal court
* Theory/hope of Swift was that federal courts would divine the one true general common law for state courts to follow –failed

Erie Railroad v. Tompkins:

* Tompkins running parallel to train tracks, gets hit by door which severs arm, Erie claims he was trespassing on property
* Under PA law (where incident happened), duty of care owed to a trespasser is only willful or wanton negligence
* Tompkins sued railroad in NY federal court (attempt to avoid PA law)
* Erie could not remove case to state court because of § 1441(b)
* Court applied federal common law to the case which only required an ‘ordinary’ standard of care (much more lenient than PA law)
* Should federal courts have to apply state common law (would overturn Swift v. Tyson)
* Court ruled that Swift v Tyson prevented uniformity between state and federal courts (in the same state) and encouraged forum shopping
* Justice Brandeis, “no such thing as federal common law” – nothing in the constitution gives the federal judiciary general power to make common law, there was no judicial authority for application of federal law
  + Common law is what judges say it is
  + There is no overarching, general federal common law, each state is free to decree its own
* Court held that federal court must apply the substantive law of the forum state (statutory AND common law), overruled Swift v. Tyson, constitution does not give the federal courts the power to create substantive common law that governs state dominated actions
  + substantive law: system of rules, rights, and duties that run between people and institutions (torts, contracts, property, corporations, estates, ect.), substantive is everything that is not procedure
  + RULE: substantive law of the FORUM state must be applied in diversity actions
* Policy: dual aim
  + Discourages forum shopping
  + Avoid unfair administration of laws (would it hurt a party?)

Jurisprudence: do courts “find” law through interpretation of constitution or do they make law?

* the legislature “makes” law, allowed to do unprecedented things 🡪 values flowing from ppl elected by citizens of states (fed courts should not overrule these or ignore them)
* § 1652: courts must value and respect statutory law
* modern theory is that judges make the law (same as legislature) and both should be utilized in courts

Guaranty Trust Co. v. York (Outcome-Determinative Test)

* statute of limitations problem, suit for breach of fiduciary duty in NY, federal court (in NY state court, suit would have been barred by SoL) 🡪 procedural issue
  + tolling of SoL was not covered in R3 so apply state law
* Federal law: breach of fiduciary duty actions are equitable in nature, doctrine of laches (court thinks you took too long to file, no strict test)
* Rules of Decision Act: only applies to legal issues, not equitable issues
* § 1652 only applies to substantive questions, statute of limitations is a procedural issue
* Conformity Act: apply local state civil procedure in Federal Court 🡪 changed after 1938
* If something can significantly affect the outcome of the case, apply state law
  + Statute of limitations problem would affect outcome 🡪 substantive
* Substantive (state) v. Procedural (federal)
* Rights depend on the remedies available. If no remedy = no right
* Justice Frankfurter recognized difference between substance and procedure
  + Substance: elements of your claim (ie. prima facie case for negligence)
  + Procedure: limitations question, will change the outcome of your case
* Consistent with Erie, federal court should not apply federal law that would cause a different outcome if used over state law
  + Strong leaning towards federalism
  + Prevents forum shopping, keeps things uniform between state and federal courts
* York test: will the use of federal v. state law have a significant effect on the outcome of the case?
* Problem with York: leaves no room for application of federal law, substance is everything because everything affects case outcomes, where does procedure fit in?

Byrd v. Blue Ridge: (Balancing Test)

* Question of whether an issue should be decided by a judge (state law) or jury (federal law)
* Under York Test – decision of judge or jury would make a significant difference in the outcome of the case (J. Brennan doesn’t buy this)
* Is there an important federal policy interest? If yes, balance federal v. state interest
  + Court rules that this is just a housekeeping, non-substantial issue, York test does not apply, use federal law
  + 7th amendment trumps SC “housekeeping” statute
  + if Federal policy is involved, even if it has a significant effect on outcome, apply federal policy when state issue isn’t very significant
* Does not overrule York 🡪 confines it to smaller subset of cases
  + only apply outcome test when there’s no federal interest
* Inconsistent with Erie and York – allows/influences forum shopping and can affect outcome (however, in York there was no major federal interest issue)
* State laws cannot alter the essential character of the federal court.
* There is a strong federal policy against allowing state rules to disrupt the judge/jury relationship in federal court.
* Byrd test: State substantive interest; Federal procedural interest; Outcome effect
* Byrd test: apply state law if:
  + Failing to do so would be outcome determinative AND
  + No federal system interest in the allocation of duties outweighs the state interest
* Step 1: Pure substance and bound up. Tenth amendment applies, apply state law
* Step 2: Form and mode and outcome determinative. Policy applies: apply state law UNLESS federal systemic reason not to do so
* Step 3: Pure procedure. No need to follow state law (Chart on page 502 of supp)

Hanna v. Plumer: (arguably procedural)

* Federal rule controls over an inconsistent state rule or policy – even if it results in different outcomes UNLESS it violates the Rules Enabling Act
  + only applies when there is a direct conflict between a federal procedural rule and a state rule or common law policy
* state and federal service of process rules in conflict; federal rule prevails
* If solely regarding procedure (FRCP), then federal rule prevails over state rule.
* The twin aims of Erie (discouragement of forum shopping and inequitable administration of the law) will not be injured by applying the service of process law or other purely procedural laws
* Anything related to the elements or defenses or claims on merits is substantive, everything else is arguably procedural
* Hanna Test:
  + (1) Is there a federal statute or rule that is broad enough to govern the question (sufficiently broad to cause a direct collision with state law)? Is it procedural (valid exercise of rulemaking authority under Rules Enabling act)?
    - Article 1, §8: gives Congress power to make rules
    - § 2072: Rules enabling act, Congress gives US S. Court power to make rules of procedure as long as it doesn’t abridge any substantive right (Rule is valid under REA if it is *arguably procedural*)
    - Supremacy Clause: federal law is the “supreme law of the land”
  + (2) Is it within Constitutional power of Congress to create? Is it valid?
    - Is it substantive or procedural
    - Regulate how litigation goes through court?
    - For federal rules: it must fall within constitutional authority of Congress to prescribe procedural rules for federal court, “must be arguably procedural” and must fall within Rules Enabling Act, must deal with “practice or procedure” in federal courts, no federal rule has ever been held to violate §2072
  + (3) Does choice of law affect forum shopping? If no, procedural so federal (more important than outcome determinative)
  + If no to question 1, then apply twin-aims analysis of Erie (state substantive interest, federal procedural interest, outcome effect – would choosing federal law influence the outcome in a way that encourages forum shopping?)

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

Gasperini:

* the 7th amendment does not preclude appellate review of jury awards (state law prevails over federal practice)
* No collision because 7th amendment does not specifically say that there is to be no reexamination of jury awards (is just federal procedure)
* Consider whether you can apply state law without doing damage to federal law, court interpreted federal rule narrowly so it did not pass the first prong of Hanna
* Would encourage forum shopping to hold otherwise
* Gasperini Test:
  + First, do laws conflict and is federal law only about procedure?
    - If yes, then balance state substantive interest, federal procedural interest, and outcome effect.
    - Federal law dominates in purely procedure cases.
    - The determination of whether laws collide is often made in looking ahead to the balancing considerations.
  + If no federal question broad enough to govern question, look to twin aims of Erie: discourage forum shopping, inequitable administration of law
* Consistent with Hanna?
  + Yes, if when applying Hanna, not broad enough, substantial state interest, and outcome determinative, so apply state law
  + No, if read to imply that it doesn’t matter even if broad enough and should apply state law whenever you can without injury

Synthesis of Rules: (P. 523 of supp)

Shady Grove v. Allstate:

* Apply Hanna test: is rule 23 broad enough to govern this question? Yes, applies to anything “all class actions are governed”; is it fairly arguable that rule governs procedure? – not about the elements of claims or defenses on merit? Yes- federal law Rule 23 should control here
* Supreme Court says that 2072 = 1652 saying if it is broad enough it applies
* Dissent says that 2072 does not = 1652 and while it may be valid and broad enough under 2072, doesn’t mean it trumps state law
  + 4 with Scalia – Gasperini hasn’t changed anything, says Apply Hannah like Gasperini never happened, if it is broad enough, its ok
  + 4 with Ginsberg – if important state interest examined, and not broad enough then state law > federal law. Says Gasperini has changed Hanna and tries to apply it (trying to say Hanna was wrong)
* Different way of interpreting first prong of Hanna – if there’s an important state interest, apply it to the first prong when deciding if a federal rule is broad enough

**Which State’s Law Governs?**

Klaxon v. Stentor:

* federal courts must apply the conflicts-of-laws rules of the state in which they sit, choice of law rules are substantive
  + whatever conflict of law rule a state court would use, the fed ct must also use
* each state has a conflicts-of-laws rule that determines which state’s law applies when several choices are available

Van Dusen v. Barrack: the law applicable to the transfer forum follows the transfer

* when cases transferred under §1404(a) between federal courts, apply law of state where action was filed, not state transferred to
* No matter which party transfers the suit, the law of the transferee forum applies (could lead to forum shopping, but oh well)
* Result: Federal courts follow the language of state conflicts-of-laws rules to determine which state law to apply, and the law follows the transfer.

**Ascertaining State Law:**

* when there isn’t a state statute or constitutional provision, must look at if highest court has decision, if not, court looks at intermediate courts, dissenting opinions, then other state courts, restatements and then may make its own law
* Goal is to mimic as closely as possible how a state court would rule. In doing so, the federal court can look to dicta in other cases, lower court decisions, and decisions from other states.
* Some states allow federal courts to “certify” an issue to state’s highest court to determine how that court would decide, avoiding problem of looking at other sources (can be inefficient for time)

Mason v. American Emery Wheel:

* When applying state common law, fed. Judge must predict what the highest court of the state would do today
  + Look at recent cases in higher/lower courts
  + Look at modern trends (other states, restatement)
* federal court in diversity is not bound to follow state case law that is clearly outdated and not in accordance with current state law dicta
* Consistent with Erie, applies state law 🡪 considers state law issues, discourages forum shopping
* Inconsistent with Erie 🡪 go to federal court if you don’t like state common law, ask judge to ‘predict’ that state court common law will change

**Federal Law in State Court**

* when states adjudicate cases arising under federal question, Supremacy clause (A6) requires application of Federal law
* Inverse Erie

Dice v. Akron

* is the matter bound up with the rights and obligations that congress thought it was creating? Would the congress that passed this statute have cared about this?
* When there is a rational argument that the law is both procedural and substantive, and the law is closely bound with federal rights or obligations, federal law should govern the claim.
* State law cannot use its procedures to unduly burden federal rights. The state court should apply the federal standard of full trial by jury when passing judgment on a federal claim when the jury trial is a substantial part of the rights afforded under the federal act.
* Is this consistent with Byrd?
  + Yes, because in both cases, federal law trumps state law when the federal interest of a jury is greater than state interests
  + No, because if Dice is accurate, then shouldn’t state procedural law be used to decide a state claim in federal court if federal law is used to decide a federal claim in state court?
  + Courts in Byrd and Dice care more about the Supremacy Clause than the 10th Amendment – supremacy of federal govt is more important than federalism.

**Apply Federal Law When:**

1. Issue is bound up with rights Congress thought it created?
2. State law may not use its procedures to unduly burden federal claims (standard, not rule)

**Federal Law in State Courts:**

1. If no federal common law, must determine Congressional intent behind statute
2. With state of federal rules of procedure that can also be substantive, must also look at congressional intent

**Is there federal common law?**

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

**Joinder:**

Joinder of Claims Rule 18:

* permits joinder of both legal and equitable actions, regardless of how unrelated claims are, can aggregate to meet 1332 amount in controversy requirement
* If a party has multiple issues from multiple transactions with another party, you can sue them for all claims in the same suit
* Only restriction imposed is SMJ

**Permissive Joinder**: Rule 20 (what parties may do)

* P or D may join if
  1. Seek relief or relief sought against them ARISING out of the SAME transaction or occurrence (Gibbs); AND
     + *Ryder v. Jefferson Hotel*: husband and wife could not join together because there were two injuries resulting from one cause of action (would not be the case today)
  2. Common Question of Law or fact to all will arise in the action

Rule 21: Misjoinder: is not grounds for dismissal, parties can be dropped or added by court at any point, claims can be severed as needed for efficiency or legal purposes

Rule 42: Consolidation/Separation (what judge may do): if actions before court have a common question of law or fact, court can join all matters at issue, consolidate actions, or do anything else to avoid delay/cost. Court can order separate trials

**Compulsory Joinder**: Rule 19 (Required Joinder)

1. Can’t join party if it there is no SMJ, required to join if
   1. Court cant give proper relief without the party
   2. Necessary party: person has interest in relating to subject of action and failure to join would *impair ability to protect that interest,* or risk causing multiple, inconsistent obligations (court must join a required party if P doesn’t)
2. When joinder isn’t feasible, court must decide whether party is indispensable, whether to dismiss for nonjoinder
   1. Consider:
      1. Prejudice to those already parties
      2. Extent to which prejudice can be lessened/avoided
      3. Whether the judgment in person’s absence would be adequate
      4. Whether P will have an adequate remedy if action is dismissed for nonjoinder

Rule 19:

* 19(a): Necessary parties, those that CAN and MUST be joined
* 19(b): Indispensable parties, parties that cannot be joined and in absence can’t proceed 🡪 court must look at considerations and determine if indispensible, look to four factors to consider in deciding whether party is indispensable (Provident Tradesmen)
  1. Plaintiffs interest in adequate forum
  2. Defendant’s interest in avoiding relitigation and inconsistent judgments
  3. Absent parties interests at stake
  4. Interests of the court and general public in complete, consistent settlement of controversies

Rule 12(b)(7): Motion to dismiss for failure to join under Rule 19, you waive right to complain under 12(h) only with respect to make motion to join person under Rule 19

**Impleader:** procedure by which a 3rd party is brought in (indemnification), especially by a D who seeks to shift liability to someone not sued by P

Rule 14: liability does not have to already be established before you implead third party

* when D brings in 3rd party D, original D becomes 3rd party P
* need courts permission if more than 10 days after serving original answer
  + court does not have to wait to see if D is liable for D to indemnify a third party (Jeub v. B/G Foods)
* must arise from same aggregate core of facts
* Standard: if 3rd party MAY be liable to 3rd party P because 3rd party P is “dependent upon the outcome of the main claim” or the 3rd party D is “potentially secondarily liable as contributor to D”
* Policy: determine rights of all parties in one suit, efficiency

**Interpleader:**

“Interpleader”: I owe $ to somebody but I don’t know whom, so I’ll let the court decide who I owe so I don’t have to pay twice”

* one trial, all claimants, payout once
* don’t have to risk inconsistent judgments
* stakeholder, as P, sues claimants not to impose liability on them, but to force them to assert their claims to the property in the interpleader proceeding

Suits to determine a right to property held by a usually disinterested 3rd party (stakeholder) who is in doubt about ownership and who therefore deposits the property with the court to permit interested parties to litigate ownership

* Normally, stakeholder initiates an interpleader to both determine who should receive property and to avoid multiple liability

Interpleader requirements – common law

1. All claimants have to be seeking recovery for the same debt (same amount)
2. Most be claiming under the same source
3. Stakeholder required to be “disinterested” in who payout goes to 🡪 relaxed requirement
4. No liability to anyone else, want clean and neat as possible, no independent liability

2 types of Interpleader: cannot mix and match these 2

1. Rule 22: if all ordinary threshold requirements are met interpleader is legitimate joinder mechanism, essentially just a diversity of citizenship case
   1. Jurisdiction Requirements
      1. Complete diversity 🡪 normal SMJ, PJ and venue requirements
      2. Service within state or by LAS
      3. > $75,000 (unless federal question)
   2. No bond/deposit required
   3. Stakeholder can deny liability
   4. Must show reasonable probability of double vexation
   5. Not barred from Supp. Jurisdiction §1367(b)
2. § 1335: Federal interpleader statute: if you meet its requirement, it is easier for court to have subject matter jurisdiction
   1. Jurisdiction Requirements
      1. Minimum diversity between claimants A3§2 (*any* P is a citizen of a different state from *any* D)
      2. Stakeholder irrelevant
      3. Nationwide service
      4. Only need $500
   2. Stakeholder MUST post bond/deposit
   3. Stakeholder can deny owing $
   4. Court may enjoin any action in any other court that may affect property
3. Can use 22 when diversity wouldn’t be complete under 1335, doesn’t require bond to be posted

Rule Interpleader:

Rule 22:

* claims that *may* expose P to double or multiple liability
  + any possibility is enough
* don’t need common origin, but can be adverse and independent
* 2 Ds can seek to interplead through cross-claim or counterclaim
* basically just a diversity of citizenship case, same SMJ, personal jurisdiction, and venue principles apply
  + permits venue where “a substantial part of property that is subject of action is situated”

Statutory Interpleader:

Three statutes used for statutory interpleader – 1335 creates the claim for interpleader, 1397 creates a special venue provision, and 2361 permits nationwide service of process

§ 1335: Interpleader Act

* Interpleader for $500 or more if (1) two or more adverse claimants, diverse under §1332(a) or (d) *are* claiming or *may* claim to be entitled to $
* Claims to $ do not need to have common origin but can be adverse and independent
* Stakeholder must post bond – deposit $ w court
* Only needs minimum diversity between *claimants,* any claimant must be of diversity of citizenship from any other claimant, stakeholders citizenship does not matter

§ 1397: Venue for interpleader

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

§ 2361: Injunctions and Process

* Process can be served for §1335 actions in any state in the US.
* Provides that the federal court overseeing an interpleader case may “enter its order restraining the claimants from instituting or prosecuting any proceeding in any state or U.S. court affecting the stake”
* Allows for nationwide service of process

State Farm v. Tashire:

* collision between Greyhound bus and truck
* maximum of $20,000 insurance coverage
* Court entered injunction requiring all claims against Start Farm, Clark (driver), Greyhound, and Nauta (bus driver) must be prosecuted in the interpleader proceeding
* Interpleader could determine only who gets the $20,000 of State Farm insurance money for claims against Clark

**Class Actions:**

* Efficiency and economy device that tries to aggregate claims so you have representative suing on behalf of the entire class, you can adjudicate everybody’s rights against one D, federal courts have shown some distaste for large class actions
* Jurisdiction in class actions: if class action is based on a federal question (ie. securities, civil rights) then normal SMJ rule continues, problem arises with diversity based class actions, class action is representative action 🡪 determine diversity by looking at the citizenship of the representative, amount in controversy 🡪 in class actions you can aggregate claims in class action, personal jurisdiction (over absent class members) representative advancing claims of non-present parties, court said absent class members are entitled to due process but since absent class members don’t need to appear and aren’t vulnerable to costs of litigation, they can get away w due process protections, must have 1) adequate representative 2) notice of litigation and 3) right to opt out of class action
* Meritorious method for small claimants to go against big D, or big D can settle of dispute many small claims at once
* Every class member is bound by judgment even if they didn’t take part in suit as named party – exception to Pennoyer

1. Rule 23(a) requirements
   1. Numerosity: over 40 is good enough, under 22 questionable, bigger claim smaller number of people required to be numerous
   2. Common question of law or fact: need at least one
   3. Named representative must be a typical member of the class, subjected to treatment being alleged, typicality
   4. P must be adequate representation of class, if absent class members are being subjected to litigation that is binding on them, they must be adequately represented, otherwise
      1. Conflict of interest? Reason named P will not represent every member of class w same enthusiasm
      2. Did they pick and adequate lawyer to represent class?
2. Rule 23(b)
   1. Prejudice class action: to party opposing class to absent members of class
      1. “if you don’t proceed on a class basis, you have individual litigation which can lead to inconsistent results, if inconsistent judgments would harm class then legitimate to make a class”
   2. Injunctive relief: complaint states legitimate claim for injunctive relief, everybody wants the same thing 23(b)(2)
   3. Damages class action if common question of law or fact 🡪 must predominate over individual questions, class action must be best method for resolution 🡪 mass tort action, notice is required to opt out (so they are not bound by the judgment), this is the heart of controversy over modern class action, group of people with no prior association (ie. injured by same toxic substance), court must find common issues predominance of common question
3. Rule 23(c)
   1. Requires notice

Walmart:

* prior to Walmart, people thought 23(a)(2) was easy to satisfy
* court denies class because of lack of commonality
* 23(b)(2) injunction case, is class action the most suitable method of resolution?

**Intervention:**

* absentee intervenes, brings herself into a pending case
* Rule 24 governs intervention as of right and permissive intervention
* An absentee who qualifies to intervene of right is not required to do so
* Permissive intervention should be granted only if court determines that its benefits outweigh burdens it creates

Smuck v Hobson:

* Hansen (P) representing poor black children in DC school district, parents sue DC board of education, superintendent Hansen, and Smuck (board member)
* Parents of white children want to intervene, satisfy rule 24(a)(2)
* More efficient to try one case and bind parents to judgment

Rule 24:

* Rule 24(a)(2): Intervention as of right
  + Non-party has interest in outcome of case
  + Would be harmed if not a class member, disposing of the action may as a practical matter impair or impede the [intervener’s] ability to protect its interest
  + Are not adequately represented by existing class members, cannot intervene if an existing party adequately represents their interest
* Rule 24(b): permissive intervention
  + Can intervene if a federal statute confers a “conditional right to intervene”
  + When absentee has a claim or defense that shares a common question of law or fact with main action
  + Court must consider whether intervention unduly delay or prejudice adjudication of original parties’ rights

**Right to a Jury Trial**

* whether you have right to a jury depends on what the English court system would have done in 1791
* Kings court (common law, jury) v Chancery court (equity, no jury)
* Downside of jury trials:
  + belief juries are pro-plaintiff
  + juries not well equipped to handle complex cases
  + takes juries longer to try cases than judges

Rule 38:

* Trial by jury as in 7th amendment is PRESERVED (as it was in 1791), NOT created

7th Amendment: right to a jury trial, only applies to federal courts

1. Applies to suit at common law
2. Amount in controversy > $20
3. Right shall be preserved (does not create the right, depends on English practice in 1791, what would have happened then?)

How would this claim have been handled in 1791?

* Kings court for legal claims and compensatory damages = JURY
* Chancery court for equitable claims for injunction, specific performance = No JURY

1. Did claim exist in 1791?
   1. Look at underlying claim/issue for declaratory judgment claims
   2. Is it in chancery court for purely procedural reasons?
      1. If purely for procedural reasons 🡪 jury
      2. If substantive 🡪 equitable
         1. Class actions can be legal now because chancellor would not have heard it only for procedural reasons
2. Analogize to claims that did exist (*Ross Test*)
   1. What is claim like? In comparison to claims in 1791, which court would it have gone to? (if not important move to b)
   2. What is relief like? More like claims that would be heard in kings court or chancery court? (more important question – *Tull*)
   3. Suitable for jury interpretation? (only if the first two questions don’t determine)

Legal Claims MUST go to jury before equitable claims go to judge (*Beacon*)

* this is important because whoever gets to go first gets to make a decision that is binding on the parties forever

Example of mixed legal/equity claim: If P and D are adjacent land owners separated by river, P claims D is polluting the river and therefore his land, an equity case, P wants an injunction 🡪 P would go to court of equity, P and D went before judge with no jury, judge can provide injunction, then P seeks money to repair damages already done by D, in equity court judge would not grant monetary damages, would have to go to separate law court for money damages

Clean up doctrine 🡪 court granted equitable remedy in equity courts, judge would also clean up case by giving money damages rather than send to law court to start case over again (no jury), US courts inherited clean up doctrine

Rule 38: 7th amendment is not symmetrical, judge can always give a jury trial, P never has a “right” to bench trial, judge can decide

2 test prior to Beacon Theatre case:

1. Clean up doctrine
2. Center of gravity test – is the nature of suit more equitable (no jury) or legal (jury)?

*Beacon Theatres v Westover*

* legal claims go to jury before equitable claims (injunction) go to judge
* Today we preserve substantive right to jury trial, but not necessarily procedures
* Even if statutory right to bring case, don’t lose right to jury
* Fox sues Beacon for monopolizing movie industry, anti-trust action, want dec. judgment and injunction
* Beacon counter-claims, wants declaratory judgment (§2201) saying they are not violating Sherman anti-trust act, also want injunction to stop them from suing them again, Beacon wants jury trial
* Only “unreasonable” restraints of trade would make it an anti-trust violation (these claims didn’t exist in 1791)
* Apply Ross test
* New claims in Beacon (break down claims)
  + Kings court claim (anti-trust claim is newly created tort claim, unfair competition)
  + As for treble (triple) damages (1/3 compensatory, 2/3 punitive) – more like relief given by kings court
  + Anti-trust cases not usually suitable for a jury (when brought as the sole issue)
* For declaratory judgment claims: look at nature of declaration, if underlying claim were brought, would that be a jury trial? Yes, underlying claim is anti-trust claim which is a matter for a jury trial
* 3 categories of claims:
  + Purely legal (juries)
  + Purely equitable (judge)
  + Mixed legal and equitable (legal issue to first go to jury whose resolution is then binding on the judge who makes the decision re the equitable claim)

Dairy Queen v Wood:

* May have killed “clean up relief” (back pay)
* Even if equitable claim > legal, must go to jury before judge
* Court said that breach of contract is a legal claim which would have gone before jury, even though claim was essentially equitable in nature (injunctive relief)
* Extension of Beacon Theatre – look to the *nature* of the underlying claim
* Expanded right to jury trial

Curtis v Loether (Civil rights case)

* P said under civil rights act, there was no jury trial guarantee or provision
* Use Ross test – prongs 1 and 2 would suggest jury trial, court essentially ignored 3rd question bc jury would have been discriminatory
* Right to a jury trial in this case had merit but was insufficient to overcome the command for a jury trial in the Seventh Amendment

Chauffeurs, Teamsters v. Terry:

* Trucker case, Ps say they weren’t adequately represented, sues union for not bringing action on his claim, says it was a breach of duty of fair representation
* Relate claim to breach of fiduciary duty
* Judges disagreed on application of Ross Test:
  + Brennan – get rid of “what’s it like” game, only should have remedy prong
  + Stevens – action is like malpractice, a legal action
  + Kennedy – action is like fiduciary, an equitable action

**Taking the case away from the jury**

Taking case away from the jury:

1. Summary judgment – no trial
2. Directed verdict – court rules as matter of law, no jury decision
3. Judgment not withstanding the verdict
4. New trial motion

Summary Judgment (Rule 56)

* Use to resolve disputed questions of fact, if no question of fact then judge can resolve case as a matter of law with S.J.
* Standard: moving party is entitled to S.J. if he can show that there is no genuine issue of material fact, if granted, judgment is entered and case is dismissed
* Judges place heavy burden of persuasion on moving party, draws inferences in favor of non-moving party
* 3 contexts in which S.J. is appropriate
  + no legal basis for the claim, no recognized “wrong doing” on part of D
  + all material on the motion sings the same song, no triable issue
  + S.J. material looks very powerful for P but D has iron clad defense (ie. SoL, res judicata), D stops case from moving forward
* 4 possible situations where something seems fishy about S.J.
  + moving party puts forward powerful evidence but something is off (ie. all deponents are related)
  + Issues of credibility
  + Court will rarely grant a motion for S.J. in favor of the party w ultimate burden of persuasion at trial
  + When there is a gap in material presented on motion

*Celotex Corp v Catrett*:

* P claims D made dangerous product with asbestos that killed her husband
* D moves for summary judgment, claims P cannot prove with preponderance of evidence that their product killed husband
* Rule 56: D doesn’t need affirmative evidence to make summary judgment motion
* 3 items of proof – proof must be admissible, need to demonstrate, not just assert that P can prove their case

Directed Verdict Motion R50(a) (before verdict)

* same as summary judgment except at the end of the case, before verdict
* Party has been fully heard on issue during trial, and a reasonable jury would not have sufficient evidentiary basis to find for the party on the issue
* *Galloway* (important for comparisons) - Directed verdicts do not deprive litigants of their Seventh Amendment constitutional right to a jury trial.
  + Not against 7th amendment right to a jury bc in 1791 right to demurrer with “scintilla” of evidence
  + 7th amendment doesn’t bind to procedure, JUST substantive, right to jury trial so DV, JNOV, ect is all ok
* Justice Black thinks it cuts back on rights (consistent w Frankfurter) – outcome only

Judgment not withstanding the Verdict/JNOV R50 (b) (after verdict)

* Second crack at directed verdict motion
* Good way for judges to prevent new trials, bc if he thinks there would be DV he lets it go to verdict and if he is right, that’s good, if he was wrong and he had granted DV there would have to be a new trial
* Standard is what would a reasonable jury believe
* Today, judge can reserve his decision for DVM until after jury verdict
* *Slocum*: says JNOV is wrong and unconstitutional when no DV made
  + JNOV wasn’t available in 1791
* Is Slocum consistent w Galloway?
  + No, Galloway says that it was just procedural difference of same thing but Slocum says it didn’t exist
* *Redmon*: goes with dissent in Slocum, saves JNOV, says theres a difference between denying DV and reserving right for after

Conditional New Trial R59

* even if there’s not enough evidence DVM, judge can set aside verdict and grant new trial
* Reasons for new trial:
  + Jury threatened
  + New evidence
  + Bad evidence
  + Forgot to make DV or JNOV last ditch effort
* Standard: verdict is contrary to the clear weight and evidence (Aetna Casualty)
* Judge may base his action on his belief or disbelief in some of the witnesses, while on a DVM he may not (*Dyer*)

Altering a verdict to prevent a new trial:

* Additur v Remmititur
* Remmititur ok, additur is not *Dimick v Sheidt*)
* Remmititur: verdict too high, D files new trial motion for grossly excessive verdict, judge tells P that he will deny motion or new trial if P consents to lower judgment otherwise will grant new trial motion (remmititur was permitted in 1791, additur was not – only real possible explanation for courts decision)

Is Dimick Consistent with other 7th Amendment cases we’ve studied?

* **Inconsistent** with Galloway bc Galloway (procedural) said that you don’t need to rely on a specific thing in history. As long as something similar, you should be able to do it and you could do it both ways (so could do Additur and remittitur). TULL, BEACON, REDMON
* **Consistent** with Slocum bc it says that it must be done exactly the same way as it was done in 1791. There was no way to take the case from the jury after the verdict. Similar doesn’t count. Remititur okay in 1791, Additur not.

**Preclusion:**

Rules of preclusion based on efficiency. Efficiency > Truth

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

Barred by Rule:

If you don’t do something when you’re supposed to do it, you can never do it (claim preclusion/defense preclusion)

* *U.S. v. Heyward Robinson* – failure to bring compulsory c/c in 1st action will bar it from being brought later, c/c or Supp. Jurisdiction requires claims to be from same transaction
* Test for compulsory counterclaim: Rule 13(a)(1)
  + Are the issues of fact/law raised by c/c largely the same?
  + Would res judicata bar later suit on D’s claim absent compulsory counterclaim?
  + Will substantially same evidence support/refute P’s claim as well as D’s counterclaim?
  + Is there any logical relation between the claim and the counterclaim?
* Permissive counterclaim: Rule 13(b)
  + not out of same transaction, but related, or between the parties

Res Judicata

Ask res judicata question BEFORE collateral estoppel question

Requirements of Res Judicata:

1. Valid + Final Judgment + On the Merits (NEED ALL 3)
   1. Valid – hasn’t been overturned
   2. Final – judgment final in trial court, doesn’t matter if there is a pending appeal
   3. On the merits – doesn’t apply if case was dismissed, overruled due to jurisdictional issues or SoL. 12(b)(6) motions are on the merits
2. Must be the same parties

* Once a claim is brought or should have been brought, it cant be relitigated
  + Both those issues that were raised and should have been
* Who is precluded
  + Parties and privys
* Common-sense principles of Res J
  + Party gets one chance to litigate a claim
  + One chance to litigate a factual or legal issue
  + Party is entitled to at least one FULL AND FAIR chance to litigate
  + Preclusion may be waived unless it is claimed at an early stage of the litigation
* If win 🡪 merged, prevented from seeking more litigation
* If lose 🡪 barred from bringing claims brought or could have brought
* If you don’t bring all claims in c/c you are barred later, both sides are forced to bring anything within same transaction now or never
  + Must bring compulsory c/c in 1st suit
  + Must bring any defense that you would possibly use instead of waiting and using as defense in 2nd suit (can’t first use a defense as a shield and then a sword)
* Still need supplemental jurisdiction (Gibbs test – one cause of action one lawsuit)
* If 1st claim is pending, 2nd claim normally put off until 1st case is concluded (including appeals)
* *Rush* test: a plaintiff must raise all causes of action arising from a single wrong in one lawsuit – supplemental jurisdiction
  + Illustrates ways a case can be binding: stare decisis (can be beound by a case you weren’t a part of), res judicata
* *\*Transaction Test* – ONE transaction, ONE lawsuit (overruled Vasu test which held you can assert several causes of action as long as injuries are different)
  + Res judicata defined by scope of transaction, not claims that arise under the transaction

Holding/Dicta: when you have 2 holdings/dictum issues:

1. Both part of holding
2. Neither is part of holding
3. Narrower ground is holding, general is dicta

*Jones v Morris Plan Bank of Portsmouth:* installment payments on car, K had acceleration clause (if you miss any payments the whole sum becomes due), second case barred by res judicata July payment because bank should have asked for whole sum in first case where they asked for May and June payments

Does res judicata extinguish a right or bar a remedy? Substance v. Procedure

* J. Frankfurt 🡪 if you have no remedy you have no right, substance, if courts done enforce it, its not really a right

Defense Preclusion R13

* Only when compulsory c/c rule doesn’t apply
* Cant use the same defense, first as a shield, and then as a sword
* Barred from reasserting as a claim what was previously used as a defense (if you don’t use a defense in 1st case, even if available, can use as a claim later)
* Should make c/c in first suit
* Some state courts say that if you win first case, you are not barred from defense preclusion

Collateral Estoppel

6 Elements:

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

If can’t tell exactly what jury ruled on in first case, not going to be CE, needs to be necessary to the judgment (jury decisions in cases with multiple issues are hard to determine CE, don’t specific which issues damages are allocated to)

Would be inefficient to make Ps bring up every possible argument in every case because there might not be a second case

* Rush case: city negligent for not maintaining streets, incentive problem, city thought it was only $100 case, didn’t have full incentive to try case, then brought $12,000 claim

Party asserting estoppel has burden of proving all elements are met

*?? REVIEW - Cromwell:* P got bonds to build court-house, never build court house, judge kept bonds, first case 🡪 P sues for pre-1868 coupons, D argues coupons were obtained by fraid, judgment for D. Second case 🡪 P sues for interest on bonds

*Russell v Place:* sue regarding 2 patented leather treatment processes, in first case want damages (J. verdict for P), in second case want injunction + damages

* no res judicata: new infringing conduct
* no collateral estoppel: unclear what jury ruled on, which of 2 processes were infringed

*Rios v. Davis:* negligence related to car accident

1) PDG 🡪 Davis 🡪 Rios (D. for Davis)

2) Rios 🡪 Davis (Davis’s negligence or lack of negligence wasn’t really established in first case so Rios can bring this case – at this time there was no c/c requirement otherwise would have been barred)

No collateral estoppel on pure legal questions (ie. who bears on burden of proof)

* Moser case: wasn’t fact or legal question, was in between
* Application of law is what changed, how to apply law to facts 🡪 collateral estoppel
* “Once a right is established, it is established forever”

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.

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

*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 – only thing that changed was courts view of income