

CIVIL PROCEDURE OUTLINE

CIVIL PROCEDURE- Course about **where** lawsuits can be brought (*personal AND subject matter jurisdiction* must be satisfied) and **how** litigation is conducted)

- **Federal Courts-** limited jurisdiction
- **State Courts-** general jurisdiction

PERSONAL JURISDICTION- determines where courts can enter an enforceable judgment against the *D*; is a geographic limitation on the places where P may choose to sue D for particular claim determines which courts can enter enforceable judgment against D (focus on which states) & how D can challenge it; *if personal jurisdiction is not raised, it is waived*

- **OVERVIEW**
 - **Constitutional requirement-** personal jurisdiction is a constitutional requirement for both state and federal courts. A judgment rendered against a person over whom the court has no personal jurisdiction violates that person's right to *due process*
 - **Common law statutes for personal jurisdiction:**
 - **Long-arm statutes-**
 - Long arm statutes usually constitution when there are min contacts and service
 - Ability of local courts to exercise jurisdiction over foreign ("foreign" meaning out-of-state) defendants, whether on a statutory basis or through a court's inherent jurisdiction (depending on the jurisdiction).
 - This jurisdiction permits a court to hear a case against a defendant and enter a binding judgment against a defendant residing **outside** the jurisdiction concerned.
 - Generally, *the authority of a court to exercise long-arm jurisdiction must be based upon some action of the defendant, which subjects him or her to the jurisdiction of the court*
 - **Venue statutes- a civil action can be brought:**
 - A judicial district in which any defendant resides, if all defendants are residents of the state in which the district is located
 - A judicial district in which a substantial part of the events or omission giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated
 - If there is no district in which an action may otherwise be brought, any judicial district in which any defendant is subject to the courts personal jurisdiction with respect to such action
 - **Transfer statutes-** Can change venue for convenience of the parties and witnesses to any other district where it might have been brought or where all parties have consented
 - **Forum non-convenience (Judicial doctrine)-** courts will occasionally dismiss case pursuant to this so that it can be brought in another forum (usually not used)
 - **Two categories of personal jurisdiction:**
 - **In personam** (jurisdiction over person)- needs to be provided with personal service of process *within* state
 - **In rem** (jurisdiction over property)- property has to be *within* state and property has to be *attached at outset of cases*
 - Differences between *in personam* and *in rem*:
 - In personam jurisdiction is obtained by serving defendant personally with process. In rem is obtained by seizing property.
 - **POWER THEORY OF JURISDICTION-** states have jurisdiction over people and property within their borders
 - **Forms of Jurisdiction (*in personam, in rem, consent, domiciled in state*)**
 - *In personam*
 - **Service of process-** proper service of process is also necessary before a court may exercise personal jurisdiction over a defendant. Any judgment rendered without reasonable notice violates defendant's due process rights and therefore is invalid
 - *Rule 4- Can Serve Someone by:*
 - Following the state law

- Delivering a copy to the individual
 - Leaving a copy at the individual's dwelling or usual place of abode with someone of a suitable age
 - Delivering to an agent authorized
 - Mullane (1950)- "an elementary and fundamental **requirement** of due process in any proceeding which is to be accorded finality **is notice** reasonably calculated, under all the circumstances, **to apprise interested parties of the pendency of the action and** afford them an **opportunity to present their objections**"
 - *Personal service is ALWAYS adequate*
 - *Person needs to have adequate notice*
 - *Personal service is to tell people about law suit and give them a chance to object*
 - *Personal service needs to be reasonable under the circumstances*
 - In rem
 - Consent-
 - **Personal appearance**- waiver
 - **Statutory Consent** - If you conduct business within state, have to appoint agent within state to accept services
 - **Contract**- agreement
 - **Implied Consent**
 - Domiciled in State (general jurisdiction) (*Hawkins*)
 - **People**- physical presence in state and intent to remain
 - **Corporations**- "principal place of business"
 - Place where a corporation's high level officers direct, control, and coordinate the corporation's activities
 - Place of incorporation and corporate headquarters- "nerve center"
- **PROCEDURES FOR CHALLENGING PERSONAL JURISDICTION (*has to be challenged immediately or the court will deem you to have consented*)**
 - Take a default judgment and conduct a collateral attack
 - Risky
 - Special Appearance
 - Available in some states
 - People can show up and challenge personal jurisdiction without being personally served while doing so
 - Motion to dismiss for lack of personal jurisdiction
 - File an answer in response to complaint and raise personal jurisdiction as an "affirmative defense" and then move to dismiss the case
- **MODERN CONSTITUTIONAL TEST OF PERSONAL JURISDICTION**- these decisions developed the current *minimum contacts test*
 - Important Aspects of Minimum Contacts:
 - 1) Minimum contacts applies to both individuals and corporations
 - 2) Limitations on minimum contacts found in long-arm statutes
 - 3) D may have sufficient contacts within a state to support minimum contracts even though she did not act within the state
 - If D commits act outside the state and knows it will cause harmful effects within the state, she will be subject to jurisdiction for claims arising out of that act
 - 4) Minimum contacts analysis focuses on the time when the D acted, not at the time of the lawsuit

- parties who conduct activities in a state accept the risk that those activities will give rise to suits and understand that they may have to return to the state where the activity was conducted to defend the suit
- jurisdiction based on in-state service only requires D to be present in the state at the time that the summons and complaint are served upon her
- Pennoyer (1877)- Oregon st ct lacked personal jurisdiction to enter enforceable judgment against Neff because Neff was neither personally served with process in the state (**in personam jurisdiction**) nor was his property attached prior to the initiation of the lawsuit (**in rem jurisdiction**)
 - Person or property in state:
 - **Presence sufficient**- a state jurisdiction had jurisdiction over a person merely passing through the state provided they be service within the state
 - **Notice required**- in personam jurisdiction requires being served while in that state; in rem requires exercising dominion over the property at the outset of the action
 - Exceptions to having in personam jurisdiction for someone only in the state:
 - **Status**- court has authority to determine the status of one of its citizens in relation to a nonresident; jurisdiction over the citizen gave the court jurisdiction over the status, too
 - *Exp.* a court could grant a divorce even though only one spouse was a resident
 - **Consent**- consenting to jurisdiction in the state
- International Shoe (1945)- the corporations only connection with Washington was that it employed salesmen in the state, but court said that due process requires only that the defendant have certain "**minimum contacts**" within the forum state such that the maintenance of the suit does not offend "**traditional notions of fair play and substantial justice**"; court found that the connection to Washington was adequate (*Shoe only dealt with in personam; still use minimum contacts test today*)
 - Recognizes two categories of in personam jurisdiction:
 - **1. General Jurisdiction**- when *contacts are so substantial* and of such a nature as to justify suit against [the defendant] on causes of action arising from dealings entirely distant from those activities—"continuous and systematic" contacts
 - *People*- where they are domiciled
 - *Corporations*- "principal place of business" / "nerve center"
 - Place of incorporation
 - Place where a corporation's high level officers direct, control, and coordinate the corporation's activities
 - **2. Specific Jurisdiction**- jurisdiction over person for a particular type of claim
 - Minimum contact? (2-prong test):
 - **1. sufficient minimum contacts**
 - Level of activity (is it a single isolated or continuous and systematic contact?)
 - Relatedness to claim
 - **2. traditional notions of fair place and substantial justice**
 - Fairness (traditional notions of fair play and substantial justice)
 - Reasonable form of notice?
 - Can't put notice in a newspaper that won't be seen
- McGee (1957)- TX insurance company contacted a person in CA to ask to do business with them
 - the Due Process clause did not preclude a CA ct from entering a binding judgment on a TX insurance company because (1) the suit was based on a contact that had a substantial connection with the state; (2) CA has a manifest interest in providing effective means of redress for its residence when their insurers refuse to pay claims; and (3) there was no

- contention that the defendant did not have adequate notice of the suit or sufficient time to defend itself
- Hanson (1958)- Donner went to a trust company in DE when she lived in PA and got a trust; Donner moved to FL; although Donner received trust income and carried on some trust administration in FL, the trust company did not have minimum contacts with FL
 - Essential that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities in the forum state, thus invoking the benefits and protections of its law
 - D must have made a deliberate choice to relate to the state in some meaningful way before she can be made to bear the burden of defending there
 - Criteria:
 - **1. purposefully avails itself to the forum state**
 - **2. invokes the benefits and protections of its law**
 - Shaffer (1977)- DE ct can't obtain personal jurisdiction over defendant bc defendant did not have minimum contacts; *just bc defendant has property within the state, without other ties, does not constitute minimum contacts*
 - Issue- Whether a DE Statute allows a ct of that state to take jurisdiction of a lawsuit by sequestering any property of the defendant that happens to be located in DE?
 - NO, defendants only allowed to be tried in states where they have "minimum contacts" with the state
 - Criteria for personal jurisdiction:
 - 1. Need **minimum contacts**
 - property is only one form of contact
 - 2. All assertions of state court jurisdiction must be evaluated according to the **International Shoe standard.**
 - sufficient minimum contacts
 - traditional notions of fair place and substantial justice
 - World Wide Volkswagen (1980)- Ps sued in OK for injuries suffered by an accident involved the defective car that was purposed by D; P purchased the car in NY while they were NY residents; D did not do business in OK; OK ct could not exercise personal jurisdiction over a car dealer and regional distributor from NY bc defendants had no contacts, ties, or relations with OK → *did not seek any direct benefit from OK activities sufficient to require it submit to jurisdiction there*
 - Was it foreseeable that a car would go to OK?
 - Yes, but foreseeability is not enough alone to establish personal jurisdiction
 - **Foreseeability is NOT minimum contacts**
 - What is necessary for defendant to have minimum contacts?
 - **Purposefully avails itself** of the privileges of conducting activities in the forum state
 - Delivery **products into the stream of commerce** with expectation they be bought in the forum state (exp. customizing an item for a market)
 - Stream of commerce- when a defendant distributes its goods in multiple states through a third party; although defendant knows that some of its goods go to a particular state, it does not know exactly which products go where
 - Ways D's goods can reach the forum state:
 - 1. An out-of-state component manufacturer sells components to a manufacturer of a finished product outside the state; then that manufacturer incorporates the component into a finished product and distributes the finished product in the forum state
 - The party at the beginning of the stream of commerce DID NOT import the product into the forum state itself
 - Exp. Asahi

- 2. Manufacturer sells finished products to a wholesaler outside the state, the wholesaler then resells to a retailer in the forum state, and the retailer resells to the consumer
 - The party at the beginning of the stream of commerce DID NOT import the product into the forum state itself
 - *Issue with personal jurisdiction*: Whether purposefully injecting goods into the stream of commerce constitutes purposeful availment with a state in which one of those goods causes injury?
- Reasons for minimum contacts test:
 - **Fairness to defendants**- shouldn't have to go defend themselves in places where they have no contacts
 - **Federalism**- maybe have jurisdiction in NY, but not in OK
- **APPLICATION OF THE MODERN CONSTITUTIONAL TEST**
 - Asahi (1987)- brought suit in CA st ct claiming the rear tire was defective; Asahi ships valve from Japan to Taiwan; the Japanese manufacture sold tires with the value throughout the world, including in the U.S.; There was evidence that Asahi was aware that the valves sold to Japan would end up in the U.S.; Asahi made no direct sales in CA and had no offices or agents there, and didn't control the system of distribution that carried its products into the state
 - Whether the mere act of selling goods outside the forum state that will likely be imported into the forum state for resale suffices to support jurisdiction?/ Whether purposefully injecting goods into the stream of commerce constitutes purposeful availment with a state in which one of those goods causes injury?
 - **(A) Minimum Contacts?**
 - O'Connor Plurality (not binding bc only 4/9 justices)-Asahi had no minimum contacts in CA bc **didn't take any purposeful action directed towards the forum state**
 - Difference between "mere awareness" and "purposeful availment":
 - The "substantial connection" between a defendant and the forum State necessary for a finding of minimum contacts must derive from an action purposely directed toward the forum State, and the mere placement of a product into the stream of commerce is not such an act, even if done with an awareness that the stream will sweep the product into the forum State absent additional conduct indicating an intent to serve the forum state market
 - Brennan's Concurring- Asahi did Asahi has minimum contacts because they put their products into commerce and the product is ending up in CA
 - injecting goods into the stream of commerce with **foreseeable destination**
 - As long as a participant in this process is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise.
 - sending goods into the stream of commerce in **substantial quantities** constitutes purposeful availment whether or not the original maker knows that the goods will be sold in a particular state
 - Stevens Concurring- CA jurisdiction over Asahi would be "unreasonable and unfair"

- whether or not conduct rises to the level of purposeful availment requires a constitutional determination that is affected by **the volume, value, and hazardous character of the components**)
- **(B) Fair Play and Substantial Justice (reasonableness)**
 - **Test to determine whether "traditional notions of fair play" would permit the assertion of personal jurisdiction over a foreign (meaning out-of-state) defendant:**
 - 1. Burden on the defendant- this considers not only the distance defendant must travel but also any other circumstances that make defending in the forum burdensome on defendant
 - 2. Interests of the forum state- a state is interested in hearing a case if any of the parties are from that state or if the dispute directly affects that state
 - 3. Interests of the plaintiff- this is satisfied if plaintiff is from the forum or if the forum is convenient place to try the case because of the availability of witness or other evidence
 - 4. Interests of federal system (especially foreign nations)
 - Personal jurisdiction in this case **would violate "traditional notions of fair play and substantial justice"** because the exercise of jurisdiction would be unreasonable even if minimum contacts existed
 - Burger King (1985)- FLs exercise of personal jurisdiction didn't violate due process bc defendant deliberately reached out beyond MI and negotiated with a FL corporation for the acquisition of a long-term franchise and the benefits that would derive from affiliation with a nationwide organization
 - Where the D has purposefully directed activities to the forum state, jurisdiction is presumptively reasonable
 - **Test for Determining if there is Personal Jurisdiction:**
 - (1) **Minimum contacts**- purpose of this test is to provide individuals with fair warning that their activities within a forum may subject them to suit there
 - **"Fair Warning" requirement**- satisfied if the defendant has "purposefully directed" his activities at residents of the forum and the litigation results from alleged injuries that "arise out of or relate to" those activities
 - (2) **Fair play and substantial justice**- once it has been decided that a defendant purposefully established minimum contacts with the forum state, these contacts may be considered in light of other factors to determine whether they comport with "fair play and substantial justice"
 - These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required.
 - On the other hand, where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other consideration would render jurisdiction unconstitutional
 - Why was defendant subject to personal jurisdiction?
 - Deliberately reached out to FL to form/enter into contract (long-term franchise)
 - Choice of law clause
- **THE LATEST WORD ON PERSONAL JURISDICTION**
 - **INTERNET CASES:**
 - Pavlovich (2002)- the exercise of personal jurisdiction over defendant in CA would violate due process because his website was neither interactive nor specifically targeted toward the forum and he lacked knowledge that his activities would cause concrete harm within the state
 - If someone posts something on the Internet, there are minimum contacts, BUT then everyone would get personal jurisdiction and it would be a free for all

- **Sliding Scale Test** (3-prongs)
 - 1. Clearly doing business in forum= minimum contacts
 - 2. Interactive websites (viewer may enter information that affects the site but not enter into a transaction; courts look to all the circumstances, including the level of activity and whether the site is commercial in nature)
 - 3. Posting information= no minimum contacts
- Calder- D subject to personal jurisdiction in CA for allegedly defamatory article written in FL, since the article was to be circulated in CA the P lived there, and the P's career was centered there
 - **Effects Test** (Calder) (2-prongs)
 - Defendant must have expressly aimed intentional conduct at the forum state
 - Defendant must have known that this intentional conduct would cause harm in the forum
- **"STREAM OF COMMERCE" CASES**- USUALLY A DEFECTIVE PRODUCT THAT ENDS UP IN THAT STATE'S COMMERCE
 - McIntyre v. Nicastro (2011)- employee was hurt using a machine that was from an English company; Supreme court specified how to analyze stream of commerce cases (says there needs to be more than 4 products put into the stream of commerce)
 - NJ courts could NOT exercise personal jurisdiction over an English manufacturer that neither marketed goods in the state nor shipped them there
 - Merely placing the product into the stream of commerce is not enough to subject a defendant to personal jurisdiction, even if the defendant knows the product will end up in the forum
 - **Plurality (Kennedy; 4 justices)**- defendant did not take purposeful action that was directed at the forum state
 - 1. Due process protects petitioner's rights to be subject only to lawful authority (as determined by "traditional practice"; at no time did petitioner engage in any activities in NJ that reveal an intent to invoke or benefit from the protections of its laws
 - 2. Criticizes Brennan's Asahi opinion and the dissent on the grounds that they are "inconsistent with the premises of lawful judicial power"; "Freeform notions of fundamental fairness divorced from traditional practice cannot transform a judgment rendered in the absence of authority into law"
 - DUE PROCESS= POWER (stemming from traditional practice; NOT FAIRNESS (or Reason)
 - Would say wealth matters
 - **Breyer Concurring (2 justices)**- plaintiff failed to meet his burden to demonstrate that it was constitutionally proper to exercise jurisdiction over McIntyre based on previous court proceedings (Volkswagon)
 - Claims that "this is an unsuitable vehicle for making broad pronouncements that refashion basic jurisdictional rules," because this case does not implicate "modern concerns," such as those raised by the Internet
 - **Ginsburg Dissenting (4 justices)**- defendant was subject to personal jurisdiction in NJ because it put its product in the stream of commerce, knowing that it could be sold there (irrespective of its use of a national distributor)
 - DUE PROCESS- FAIRNESS AND REASON; NOT SOVEREIGN POWER (or tradition)

- *Would say wealth doesn't matter*
- **GENERAL JURISDICTION AND THE CONTINUED IMPORTANCE OF CONSENT**
 - **GENERAL JURISDICTION- "CONTINUOUS AND SYSTEMATIC" CONTACTS**
 - Goodyear (2011)- bus accident outside of Paris killing two boys from NC; attribute to the Goodyear tiers from Turkey
 - The foreign subsidiaries of the Goodyear USA were not subject to general jurisdiction in NC bc their attenuated connections to the State **fall short of the "continuous and systematic general business contacts"** necessary to empower NC to entertain suit against them on claims unrelated to anything that connects to the State
 - Supreme Court acknowledged that general jurisdiction could exist in the proper case, but found that there were insufficient contacts for general jurisdiction
 - **PRESENCE IN STATE- ALLOWS A STATE TO EXERCISE JURISDICTION OVER ANYONE WHO WAS SERVED WHILE PRESENT IN THE STATE**
 - Burnham (1990)- CA court may exercise personal jurisdiction over a non-resident who was personally served with process while temporarily in the state; **Tag Jurisdiction**= state can assert jurisdiction over a person who temporarily enters the state
 - **Scalia view (4 justices; Part II)**
 - Bright Line Rule- among the most firmly established principles of personal jurisdiction in American tradition is that the courts of a state have jurisdiction over nonresidents who are physically present in the state
 - *"Traditional practice" from Pennoyer*- jurisdiction based on physical presence alone constitutes due process because it is one of the continuing traditions of our legal system that define the due process standard
 - **Scalia (3 justices, Part III)**
 - Criticizes "the subjectivity, and hence, inadequacy, of Brennan's approach"
 - **Brennan's view (4 justices, concurring)**
 - Case by Case Inquiry- the Due Process Clause generally permits a state court to exercise jurisdiction over a defendant if he is served with process while voluntarily present in the forum state. Nonetheless, it is necessary to "undertake an independent inquiry into the fairness of the prevailing in-state service rule." The critical insight of Shaffer is that all rules of jurisdiction, even ancient one, must actually satisfy contemporary notions of due process.
 - Concurring in judgment because "in this case, it is undisputed that petitioner was served with process while voluntarily and knowingly in the state of CA" = CA court has general jurisdiction
 - Knowingly and voluntarily present in the forum state
 - **Stevens's view (concurring)**- didn't join either side bc it was a "very easy case" and jurisdiction was present
 - Tradition + Fairness + Common Sense = Easy Case
 - **CONSENT- PERSONAL JURISDICTION IS A PERSONAL DEFENSE, SO A PARTY MAY WAIVE IT EITHER EXPRESSLY OR BY TAKING ACTIONS INCONSISTENT WITH THE DEFENSE**
 - Carnival Cruise (1991)- got tickets for a cruise and was injured on cruise, and the ticket had a clause on it stating that any suit must be filed in FL
 - Forum selection clause is **enforceable**
 - "fundamental fairness" did not preclude the enforcement of a forum-selection clause contained in tickets issued by cruise line to its passengers when there was **no bad faith, fraud, or overreaching** (i.e. FL was a sensible place to conduct the litigation) and plaintiffs **"essentially conceded" that they had notice of the provision**

- *Hypos:*
 - *If there was no forum clause, where would carnival cruise have jurisdiction?*
 - WA bc minimum contacts (specific jurisdiction)
 - FL bc domiciled there (general jurisdiction)
 - CA bc minimum contacts (specific jurisdiction)
 - *What if carnival cruise wants to sue Shutes for property she destroyed?*
 - *If there is no forum selection clause:*
 - Probably cannot in FL bc Shutes have no minimum contacts, BUT can possibly use the Burger King precedent
 - *If there is a forum selection clause:*
 - If Shutes knew of clause:
 - Notice? Bad faith? Fraud? Overreaching?

HOW TO ANALYZE PERSONAL JURISDICTION:

Start with these questions:

1. IS THERE GENERAL OR SPECIFIC JURISDICTION?

a. If General:

i. IS D "DOMICILED" IN THE FORUM STATE? *Hawkins*

1. If yes, there is valid personal jurisdiction

ii. DOES D HAVE "CONTINUOUS AND SYSTEMATIC CONTACTS WITH THE FORUM STATE? *Goodyear*

1. If yes, there is valid personal jurisdiction

b. If Specific:

i. DID D CONSENT TO PERSONAL JURISDICTION? *Carnival Cruise*

ii. WAS D PRESENT IN THE FORUM STATE WHEN "PROCESS WAS SERVED" ON HIM (IN PERSONAM JURISDICTION)? *Pennoyer* and *Burnham*

1. If yes, there is valid personal jurisdiction

iii. DOES D HAVE "MINIMUM CONTACTS" WITH THE FORUM STATE? *International Shoe*

1. If yes...

a. Are the contacts sufficient?

- i. Level of activity (is it a single isolated or continuous and systematic contact?)
- ii. Relatedness to claim

b. Does the maintenance of the suit offend "traditional notions of fair play and substantial justice"?

- i. Fairness (traditional notions of fair play and substantial justice)
- ii. Reasonable form of notice?

To support arguments for PL or DF for specific jurisdiction:

- Would it be fair play and substantial justice for the court to have jurisdiction?
 - Is there a burden on the defendant (distance to travel), does the forum state have an interest, does the plaintiff have interest (plaintiff from state or it is convenient), does the federal system have interest? *Asahi*
- Does D have "substantial connections" with state, does the state have a manifest interest, and did D have adequate notice? *McGee*
- Did D "purposely avail itself" to the privilege of conducting activities in the forum state, thus invoking the benefits and protections of its law? *Hanson*
- Did D "purposefully direct" his activities at residents of the forum and the litigation results from alleged injuries that "arise out of or relate to" those activities? *Burger King*
- **For internet:** Did D clearly do business in the forum (min. contacts), have interactive websites (look at circumstances), or just post information (no min. contacts? *Pavlovich*)
 - Sliding Scale or Calder
- **Stream of Commerce:**
 - Did D "purposefully avail itself" of the privileges of conducting activities" in the forum state by delivering products into the "stream of commerce" with expectation they'd be bought in the forum state? *World-Wide Volkswagen*
 - Did D take purposeful action directed towards the forum state? *Asahi- plurality*
 - Did D inject goods into the stream of commerce with a foreseeable destination? *Asahi- concurrence*
 - Did conduct rise to the level of purposeful availment, which requires a constitutional determination that is affected by the volume, value, and hazardous character of the components? *Asahi- Steven's concurring*
 - Did D take purposeful action that was directed at the forum state by placing the product into the stream of commerce, knowing the product would end up in forum? (*merely placing product into stream of commerce is not enough*) *McIntyre*

SUBJECT MATTER JURISDICTION- whether the court has authority to adjudicate a particular type of case; *if subject matter jurisdiction is not raised, it is not waived because a court may still not have the power to hear a case*

- **GENERAL:**
 - Federal Court has jurisdiction if:
 - **Federal questions (1331)**- cases that “arise under” federal law
 - **Diversity cases (Article 3, 1332)**- complete diversity in citizenship and greater than \$75,000 in claim
 - **Supplement jurisdiction (Article III and 1367)**
 - **Removal**
 - Positives about federal court:
 - Shorter dockets
 - Moves faster
 - Diverse jury pool
 - Experienced lawyers
- **FEDERAL QUESTIONS (1331)**- requires that the claim “arise under” federal law; must be a *substantial* federal claim
 - **3 sources of “federal questions”:**
 - cases arising under the national Constitution
 - cases arising under federal law
 - cases arising under treaties
 - **Well-pleaded Complaint Rule**- asks whether the federal element is necessary to plaintiff’s case
 - Plaintiff has to raise cause of action in complaint
 - Purpose- efficiency (helps sort cases before too much money and time has been spent)
 - Louisville (1908)- Plaintiff was injured while riding a train; settled by giving Plaintiff free transportation for life; then a act of Congress was past and forbade the giving of free passes
 - There was no federal subject matter jurisdiction because issues of federal law were used as a defense; the actual claim was for breach of contract under state law
 - A suit arises under the Constitution and laws of the U.S. for purposes of 1331 only when the plaintiff’s well pleaded complaint is based upon federal law
- **DIVERSITY CASES (ARTICLE 3, 1332)**
 - **How to establish diversity:**
 - Diversity must exist at the commencement of the action
 - Plaintiff must include a statement in her federal complaint alleging diversity is satisfied
 - Plaintiff bears the burden to prove diversity
 - **2 Requirements of 1332:**
 - 1. Diversity- pl and df who are “citizens of different states” or “citizens or subjects of a foreign state”
 - 2. Must involve an “amount in controversy” in excess of \$75,000
 - **Article III**- citizens of different states; nothing at \$75,000 or more (that is a statutory requirement)
 - **1332:**
 - (a) complete diversity in citizenship and greater than \$75,000 in claim
 - Actions between:
 - (a)(1) citizens of **different states**
 - Redner (2000)- fed. District court dismissed a case against NY defendants for lack of sub. matter jurisdiction bc there was no diversity of citizenship. Plaintiff wasn’t a citizen of France (while would have authorized diversity under 1332(a)(2)) nor a citizen of CA (which would have established diversity jurisdiction under 1332(a)(1))
 - (a)(2) **citizens of a State and citizens or subjects of a foreign state**, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

- (a)(3) citizens of **different States** and in which citizens or subjects of a **foreign state are additional parties**; and
 - (a)(4) a **foreign state**, defined in section 1603 (a) of this title, **as plaintiff and citizens of a State or of different States**.
 - (c)(1) a **corporation** shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of—
 - (c)(1)(A) every State and foreign state of which **the insured is a citizen**;
 - (c)(1)(B) every State and foreign state by which the insurer has been **incorporated**; and
 - (c)(1)(C) the State or foreign state where the insurer has its **principal place of business**
 - Hertz (2010)- a corporation shall be deemed to be a citizen of any state by which it has been incorporated and of the state where it has its principal place of business
 - **“Nerve Center Test”**- where the corporations high level officers direct, control, and coordinate the corporations activities
- *Hypos:*
 - **Is there diversity jurisdiction in:**
 - CA v. NY?- Yes, under 1332(a)(1)
 - CA v. Mexico and Japan?- Yes, under 1332(a)(2)
 - CA and Mexico v. NY and Japan?- Yes, under 1332(a)(3)
 - CA and Mexico v. Japan?- No, because there is foreign nations on both sides
 - Mexico v. Japan (aliens living in NY)?- No, even if they were aliens living in NY, can only be litigated in state court, but not fed. Court
 - ***no diversity jurisdiction for any aliens involved because they are not technically citizens → they can only go to state court
 - CA v. NJ (divorce case)?- No, family law is not in diversity jurisdiction
 - NY citizen v. NY corp. (if company does most business in NJ)? No, the “nerve center” is in NY, so there is not diversity
- **SUPPLEMENT JURISDICTION (ARTICLE III AND 1367)**- The two claims (federal and state) must be: **“a common nucleus of operative facts”**
 - There is supplemental jurisdiction if:
 - 1. Primary claim arises under federal law
 - 2. Besides federal claim, plaintiff also claims a state claim (exp. breach of contract with is state law) and the state claim is tact on then by supplemental jurisdiction → can exercise authority over the claim
 - **Article III**- if the claims are close enough to the same controversy, they are sufficiently related
 - Article III- “district courts shall have the original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the U.S.”
 - **1367(a)**- relationship test
 - whether the two “form part of the same case or controversy under Article III of the U.S.C.”
 - In any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United

- States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties
 - *In re Ameriquest Mortgage Co. (2007)*- district court denied defendants motion to dismiss plaintiff's state law claims for lack of supplemental jurisdiction because the state and federal claims were connected by common and operative facts (they were intertwined) and there was no compelling reason for the court to decline to exercise supplemental jurisdiction
- **1367(c)**- prevents the use of supplemental jurisdiction over claims brought by plaintiffs against parties joined under certain listed rules
 - The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—
 - (1) the claim raises a novel or complex issue of State law
 - (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction such that federal court doesn't want anything to do with it (if state case is strong, federal court dismisses because doesn't want it)
 - *Szendrey-Ramos (2007)*- the district court granted defendant's motion to dismiss plaintiff's state law claims for lack of supplemental jurisdiction because the Puerto Rico law claims predominated over plaintiff's federal claim under Title VII and there were novel and complex issues of Puerto Rico law
 - (3) the district court has dismissed all claims over which it has original jurisdiction, or
 - (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction
- **Hypos:**
 - 1: Employer sues company for sexual harassment under federal statute → Can sue in federal court
 - What if plaintiff wants to add a state law claim for IIED?
 - Can there be supplemental jurisdiction?
 - Yes
 - Is there any reason for federal court to decline?
 - No because the state claim doesn't substantially dominate
 - What if plaintiff wants to add a state law claim for assault and battery?
 - Is there supplemental jurisdiction?
 - Yes
 - Is there any reason for federal court to decline?
 - No because the number of state law claims does not matter!!
 - What if plaintiff also wants to sue the perpetrator for assault and battery (perpetrator is an employee as well and all of them are from the same state)?
 - Is there diversity jurisdiction?
 - No because they are all from the same state
 - Does the claim derive from the same nucleus (is there supplemental jurisdiction)?
 - Yes because it is still the same story
 - 1367(a)- "Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties"
 - 1367(b)- only applies in diversity cases
 - What if the federal claim is dismissed and there is only a state claim left? What should the federal court do?

- Dismiss state claim pursuant to 1367(c)
 - ◻ What if supplemental state law claims are dismissed?
 - under Statute of Limitations, defendant has 30 days to re-file in state court
- 2: Plaintiff (employee) from Michigan → Defendant (employer) from Illinois
 - ◻ Suing for sexual harassment, but it is a state law claim
 - Does federal court have jurisdiction?
 - Yes because diversity jurisdiction of citizenship
 - ◻ New plaintiff → supervisor from Michigan
 - Is there supplemental jurisdiction?
 - No because of 1367(b)- if the source of federal jurisdiction is diversity, cant use supplemental jurisdiction to get around complete diversity
- **REMOVAL- CASES FROM STATE COURT TO FEDERAL COURT (1441)**
 - **1441:**
 - **When is case removable?** generally a case in state court may be removed when it could have been filed originally in federal court
 - ◻ The federal court to which the case is removed must have diversity, federal question, and/or supplemental jurisdiction over all claims in the case
 - ◻ Certain expectations to the well-pleaded complaint rule apply when removal is based on a federal question
 - **1441(a)-** general rule
 - if complaint is filed in state court and the case complies with federal court, defendant can remove case to federal court.
 - **1441(b)-** exceptions → diversity jurisdiction
 - removal is not allowed if one or more defendants is a member of the state where case is brought
 - diversity must be at the time judgment it entered, rather than at the time the case is removed from state to federal court
 - When removal is based on diversity, special rules apply:
 - prevents a defendant sued in her home state from removing
 - diversity must exist both when the case is filed and at the time of removal
 - a diversity case ordinarily cannot be removed more than one year after it was filed
 - **1441(c)-** allows removal of federal claims brought along with certain "separate and independent" claims that are not removable
 - state law claim that doesn't arise out of the same nucleus of federal claim cannot be removed
 - but if original complaint has federal law claims and state law claims related the federal claim
 - if the state law claims are not related to federal claim, federal court can remand the claims not related to federal claim back to state court.
 - **1446**
 - **1446(a)-** notice of removal takes case from state court to federal court
 - ◻ must be within 30 days to file notice of removal from the time defendant is served with notice of complaint
 - ◻ all defendants must consent to removal.
 - **1446(b)(3)-** a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable
 - **1446(c)-** new "bad faith" clause attached to this section
 - ◻ diversity based on citizenship

- cant remove diversity case if been pending for more than a year, UNLESS plaintiff has been acting in bad faith to prevent defendant from removing the case
 - *bad faith example*: plaintiff lied about how much money is in controversy
- **1446(d)**- defendant have to give written notice to adverse parties and state court
 - once notice of removal is filed, state court cant proceed any further unless or until case is remanded
- **1447**- motion to remand if don't think defendant complied with statutes, then filed within 30 days
 - plaintiff files the remand back to state court
 - if federal court lacks subject matter jurisdiction, case should be remanded to state court at ANY time OR whenever federal court figures it out
 - **1447(d)**- to remand a case to a state court, the order is unreviewable upon appeal
- *Hypos: Can there be removal?*
 - Lewis (KT) & LM (MA) v. C (DE/IL) & WS (KT)
 - No removal because there is not complete diversity.
 - KT v. DE/IL
 - Yes because diversity, but also must be more than \$75,000
- **The Erie Problem: What law applies in a diversity case?** (*diversity can be a tip as to whether its an Erie problem (where federal court is opposing state law)*)
 - For diversity cases- state substantive law and federal procedural law
 - **Rules of Decisions Act (Statute 1652)**-(Erie stems from this Act)—The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.
 - What are the applicable “laws of several states?”
 - Substantive Positive Law- written rules adopted by state government (statutes, etc.) → *does apply in federal courts*
 - Rules of Evidence and Procedure- federal courts don't apply
 - State Common Law (decisions in state courts)-
 - State v. Tyson says can overrule state common law → *does not apply in federal courts*
 - Swift v. Tyson (1841)- court held that **decisions of state court are not “law”** (courts do not engage in lawmaking but rather “find” the law_ and that Rules of Decision Act applied only to substantive positive law)
 - Federal courts otherwise free to apply “general law,” i.e., whatever rules they preferred (often favoring business interests)
 - **Erie Railroad said that Swift should be overruled, thereby requiring federal courts to apply state common law in diversity cases**
 - Erie Railroad (1938)- P was hit by a train while walking along the tracks of D railroad in PA; he sued the railroad in a federal district court based on diversity jurisdiction, claiming that the railroad had acted negligently by leaving the door to one of the cars open
 - **Federal courts are supposed to predict how state law would apply and therefore, applying general law (although unconstitutional to apply general law)**
 - Under PA law, P could recover only upon showing of “wanton” negligence because he would be considered a trespasser on the railroad's right-of-way
 - P, however, argued that the federal court should apply the “general” or federal common law rule, which required the railroad to act with ordinary care
 - Overturned earlier holding in Swift, finding that the reference to “laws” in Rules of Decisions included not only state statute law but also state judicial opinions interpreting the common law
 - What should influence which law to apply (PA law or general federal law)?
 - Sources of authority
 - **U.S. Constitution**- federal government is one of the limited and enumerated powers (federal government can only do that authorized by Constitution)

- There is NO provision of Constitution that authorizes federal courts to apply general law in diversity cases
 - Article III
 - Article I- gives congress certain powers
- **Statutory/Statute** (RDA)
- **Precedent** (Swift v. Tyson)
- Results in:
 - **Forum shopping (plaintiff will choose forum that will be most favorable)**
 - **Inequitable administration of the law (no uniform decisions)**
- **Developing a Test AFTER Erie**
 - Guaranty Trust (1945)- lower court erred by refusing to apply the state statute of limitations based on a contrary federal practice
 - **Court held that Erie applied only to matters of substance, not procedural**
 - Court held that the issue (Statute of limitations) should be treated as a substantive rule under Erie
 - Any rule that could affect the outcome should be considered substantive under Erie.
 - **Outcome-determinative Test:**
 - Federal courts sitting in diversity should apply a state law that conflicts with federal practice when disregarding the state law would significantly affect the outcome of the litigation
 - Problem with this test: virtually any procedural matter can change the outcome of a case; therefore, the test would require federal courts to apply many state rules that seem clearly procedural
 - After this case, everything was seen as outcome- determinative_test → state will always win under this test, which was problematic because then applying state law ALL the time
 - Byrd (1958)- the federal court was not required to follow a State Supreme Court decision holding that the trial court, rather than a jury, should determine whether the plaintiff was a statutory employee who was covered by the state workers' compensation statute.
 - The requirement appeared to be merely a form and mode of enforcing the immunity, and not a rule intended to be bound up with the definition of the rights and obligations of the parties, and *the importance of the federal practice outweighed the likelihood of a different result in state court*
 - Question: whether disregarding state court would change the outcome? → says it might!
 - **Balancing Test**- court balances federal practice versus the likelihood of a different outcome in state court
 - federal court follows own practice
 - *Exp.:* Differences between state and federal law in determining if person was a "statutory employee":
 - State law would say the judge decides
 - Federal law would say jury decides
 - Issue: Whether a judge or jury decided the case could affect the outcome?
 - **Is this a substantial/procedural issue?**
 - Procedural- because a judge/jury decision is a manner or mode of enforcing legal rights
 - Substantive- because could affect the outcome of the case if a judge or jury

- decides (therefore, who decides does matter)
 - juries are more sympathetic to individuals (especially against large corporations)
 - judge will just interpret statute the way thinks appropriate
 - Current Relevance- still used to apply to judge-jury questions and is often invoked by the lower courts on other issues
 - Hanna (1965)- service of process in a diversity case in federal court is governed by Rule 4 of the Federal Rules of Civil Pro.
 - Rule 4- governs service of process in federal court, even in a diversity case
 - **Disregarding state law would not facilitate forum shopping → would just make plaintiff follow Rule**
 - Article III requires lower federal courts and creating rules of procedure for them to follow
 - Would the decision in Hanna change the outcome in the Guaranty Trust case?
 - Guaranty Trust involved Statute of Limitations
 - There was no FRCP that governed state law in Guaranty Trust
 - If federal court disregarded Statute of Limitations, there is a likelihood of a different outcome in Guaranty Trust
 - Under Byrd balancing, still apply the Statute of Limitations → therefore, Guaranty would still be good law
 - **If don't follow state law:**
 - **Would prevent forum shopping-** a practice where Ps choose a legal forum simply because of the probability of a more favorable ruling
 - **Would lead to inequitable administration of the law**
- **Hypo: What if looking at:**
 - *Pleadings*
 - State Law has a very detailed pleading requirement
 - Federal Law requires providing notice of pleading
 - Which applies?
 - Federal law applies if you do the above application for the Rules Enabling Act and therefore, Rule 8 can apply (above application= forum shopping and inequitable admin)
 - *Voir dier*
 - State law includes detailed questions by lawyers
 - Federal law includes cursory question by judge
 - If there is a diversity case in federal court, then does the state or federal rule apply?
 - Voir dire would be procedural, BUT who is on jury can have influence on outcome (substantive) → therefore, it's a gray area
 - Voir dier is not in FRCP and not a codified act → it is just how federal judges conduct this
- Area of debate:
 - **Whether there is a federal rule of statute governs situation, would applying it conflict with state law?**
 - 3 approaches:

- 1. Federal Court- taking broad view of federal law
- 2. Hybrid Approach- (rare) accommodate competing policy concerns between state and federal, and supreme court made new federal rule to respect policy of both
- 3. Opposite of #1- (*most common*)- Narrow view of federal law
 - narrowly construe federal rule and therefore allow state law to apply
- **Test to determine what law (state or federal) applies:**
 - **1.** Substantive rules of state law apply under Erie.
If however, state law rule or practice is “rationally capable of classification” as either substantive or procedural then...
THEN
 - **2.** Does Fed. Rules of Civil Procedure (FRCP) or federal statute govern the situation and conflict with state court?
 - (A) If so, is FRCP permissible under the Rules Enabling Act (REA)? → i.e. have to be rules of practice and procedure and can't modify substantive rules
 - (B) If so, is FRCP or federal statute constitutional?
 - (C) If so, federal rule applies under Hanna.
 - IF #2 IS YES, Federal Rule Applies!
 - IF #2 IS NO, need to determine whether federal or state should apply
 - Guaranty Trust- outcome determinative test?
 - Hanna says that anything can be outcome determinative and you actually need to look at Erie
 - **3. If answer to (2) is no (if they do not conflict) court should:**
 - (A) Balance the importance of a conflicting federal practice against the likelihood of a different outcome in state court under **Byrd Balancing Test**
 - (B) Examine, under Hanna, whether disregarding the state law would: (use **twin goals of Erie**)
 - (i) Encourage unseemly forum shopping, or
 - (ii) Lead to inequitable administration of the laws
 - ***Erie test and Byrd test are still good law
 - ***Courts have flexibility with how to analyze! → judges may pick which test to use that they think will be better OR judges may apply both

HOW TO ANALYZE SUBJECT MATTER JURISDICTION:

Start with these questions:

1. IS THE CLAIM A FEDERAL QUESTION? (“ARISE UNDER” FEDERAL LAW?)
 - a. If yes, federal court has subject matter jurisdiction
2. IS THERE COMPLETE DIVERSITY OF CITIZENSHIP?
 - a. If yes, federal court has subject matter jurisdiction
 - i. Corporation: nerve center *Hertz*
 - ii. People: domicile
3. IS THERE SUPPLEMENTAL JURISDICTION? (FEDERAL AND STATE CLAIM)
 - a. If yes, federal court has subject matter jurisdiction
 - i. Primary claim arises under federal law
 - ii. Besides federal claim, plaintiff also claims a state claim (exp. breach of contract with is state law) and the state claim is fact on then by supplemental jurisdiction → can exercise authority over the claim
4. CAN THERE BE REMOVAL TO FEDERAL COURT? (CASE COULD HAVE ORIGINALLY BEEN FILED IN FEDERAL COURT)
 - a. If yes, federal court has subject matter jurisdiction
 - i. Federal court to which the case is removed must have
 1. Diversity,
 2. federal question, AND/OR
 3. Supplemental jurisdiction

To support arguments for PL or DF for FEDERAL QUESTION:

- **Arise Under Federal Law? 28 USC § 1331**
 - Fed'l questions requires that the claim “arise under” federal law
 - Must be a *substantial* federal claim
- **Is the Federal Element Necessary? Louisville**
 - Well-pleaded Complaint Rule- a suit arises under the Constitution and laws of the U.S. for purposes of 1331 only when the plaintiff's well-pleaded complaint is based upon federal law (asks whether the federal element is necessary to plaintiff's case)
 - *Louisville (1908)*- There was no federal smj because issues of federal law were used as a defense; the actual claim was for breach of contract under state law
- **Is the Federal Element used as a Defense? Louisville**
 - Can't use the federal claim as defense

To support arguments for PL or DF for DIVERSITY:

- **Are the parties NOT citizens of different states? Redner, 1332 (a)(2)**
 - Lack of smj because not from different states
- **Where are the people domiciled? Hawkins**
 - Established by physical presence in a place in connection with a certain state of mind concerning one's intent to remain there.
- **Where is the corporation domiciled? Hertz**
 - A corporation shall be deemed to be a citizen of any state by which it has been incorporated and of the state where it has its principal place of business
 - “Nerve Center Test”- where the corporations high level officers direct, control, and coordinate the corporations activities

To support arguments for PL or DF for SUPPLEMENTAL jurisdiction:

- **Do the two claims (federal and state) arise from “a common nucleus of operative facts”? In re Ameriquest**
- **Are the two claims (federal and state) sufficiently related? Article 3**
- **Does the state claim substantially predominate over the federal claim? Szendrye-Ramos**
 - State law claims that are predominate over federal claim
 - If there are *novel and complex* issues of state law
- **Do the claims “form part of the same case or controversy”? Article 3**

To support arguments for PL or DF for REMOVAL:

- **Are the federal jurisdictional requirements met at the time judgment is entered? Caterpillar**
- **Did the party file notice of removal within 30 days from the time defendant is served with notice of complaint? 1446(a)**
- **Did the party try to remove a diversity case after it was pending for more than a year? 1446 (c)**
 - Bad faith clause
 - UNLESS plaintiff has been acting in bad faith to prevent defendant from removing the case
- **If federal court lacks subject matter jurisdiction, when can the case be remanded? 1447**

If federal court lacks subject matter jurisdiction, case should be remanded to state court at ANY time OR whenever federal court figures it out

LITIGATION AS A MEANS OF RESOLVING DISPUTES AND SECURING REMEDIES

- **General Facts:**
 - Most disputes are resolved outside of the litigation process
 - 3% of cases result in trial → ½ bench trial, ½ jury trial
 - More than 97% of litigation is in state courts (this is because of the subject matter jurisdiction that federal courts have)
- **Reasons not many cases go to litigation:**
 - Defendants don't defend (result in default judgment for plaintiff)
 - Many cases settle
 - The cost of litigation is usually a big driver in deciding to settle
 - Federal courts will make decisions to dispose of the case before trial (like lack of jurisdiction, etc.)
 - Cases can take a long time to be resolved if go to trial (maybe years)
- **Why to engage in litigation:**
 - Seeking Damages
 - Compensatory- the "make whole" belief
 - Restore injured party into place they would have been if weren't for the other party
 - Punitive- done after compensatory damages
 - To deter/punish
 - The size of this award is low
 - Specific Relief- injunction (to do/refrain from doing something)
 - Declaratory judgment- can seek declaration of their rights (typically where plaintiff is seeking to be protected)
 - Provisional Remedies (emergency relief)- granted by court before court has time to reach a final decision on merits
 - Potentially troubling
 - When waiting until the final decision will be too late
 - Exp. abused spouse who wants temporary restraining order
- **Rule 65**
 - **(a)- Preliminary Injunction (PI)**
 - cannot be issued without notice to defendant
 - is an immediately appealable order → don't have to wait until final decision is made.
 - *Winter (2008)*- Plaintiffs complained that the Navy's sonar training program harmed marine mammals, and that the Navy should have prepared an environmental impact statement before commencing its latest round of training exercises; Navy argues the plaintiffs should demonstrate a likelihood of irreparable injury, and not just a possibility in order to obtain preliminary relief.
 - Court suggest that the 9th Cir. Court's standard that only requires a "possibility" of irreparable harm in some circumstances is too lenient and that Ps must demonstrate that irreparable harm is "likely" in the absence of a preliminary injunction
 - **Irreparable harm must be LIKELY and not be "possible"**
 - Even if Ps have shown irreparable injury from the Navy's training exercises, any such injury is outweighed by the public interest
 - Therefore, these factors require denial of the injunctive relief
 - **Elements for obtaining a preliminary injunction:**
 - 1. That he is likely to succeed on the merits
 - Is P going to prove his side?
 - 2. That he is likely to suffer irreparable harm in the absence of preliminary relief
 - P has to show that he or should would suffer a likelihood (not just possible) irreparable harm in the absence of injunction
 - 3. That the balance of equities tips in his favor, and
 - to make sure court is helping P more than hurting D
 - 4. That an injunction is in the public interest
 - **(b)- Temporary Restraining Order (TRO)**
 - typically occurs before decision is made
 - typically ask for TRO first, then when that expires, will ask for a PI

PLEADINGS

- SEQUENCE OF A CASE: (PLEADINGS → DISCOVERY → SUMMARY JUDGMENT → TRIAL)
 - PLEADINGS: (Ps complaint → Ds answer or motion to dismiss)
 - P complaint
 - **Rule 8(a)**- A pleading that states a claim for relief must contain:
 - (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
 - (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
 - **Twombly and Iqbal Issue**
 - **Iqbal**: A complaint must contain sufficient factual matter accepted as true, to "state a claim to relief that is plausible on its face value"
 - Cant just have legal conclusions
 - (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.
 - **Heightened Pleading Requirements**
 - Sradford (2002)- Ds counterclaim failed to plead the circumstances constituting fraud with sufficient particularity under Rule 9(b) because it didn't specifically identify Ps alleged lies, but subsequently satisfied the requirements of the rule
 - **Rule 9(b)**- federal rules require heightened pleading requirement (Creates 2-track):
 - 1. In alleging fraud or mistake, party can plead with particularity/specifity to identify fraudulent statements
 - 2. Malice, intent, knowledge, and other conditions of a person's mind can be proved generally
 - **Ethical Limitations in Pleading (Rule 11- goal is deterrence of improper conduct)**
 - 11(b) By presenting to the court a pleading...an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
 - (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
 - (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
 - (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
 - (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.
 - Walker (1996)- Ps complaint violated Rule 11 bc it didn't even allege that complete diversity of citizenship existed
 - Attorney ignored the D when they asked to dismiss pursuant to Rule 11
 - Attorney violated 11(b)(2) because didn't do research about diversity and 11(b)(3) because had obligation to make reasonable efforts
 - Mattel (2002)- District Ct didn't abuse its discretion by awarding under Rule 11 based on the lawyers inadequate factual investigation, the court's order was tainted by its consideration of other misconduct that cannot be the basis for sanctions under Rule 11—such as discovery abuses, misstatements made during oral arguments, and conduct in other litigation

- Sanctions may be imposed on courts inherent authority for “bad faith” actions by counsel
- **Amendments to Pleadings/Adding new Pleading- Rule 15**
 - Moore (1993)- district court didn’t abuse its discretion by denying Ps motion to amend her complaint after the statute of limitations had run on her negligence claim bc that claim didn’t arise out of the same conduct, transaction, or occurrence as the claims in her original complaint
 - **Rule 15(c)(2)**- an amendment relates back to the original file when “the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading”
 - *Issue of Rule 15(c)*- whether the original complaint gave notice to the defendant of the claim not being asserted?
 - Bonerb (1994)- the amended complaint arose out of the same conduct, transaction, or occurrence as the original complaint and therefore, “related back” to the filing of the original complaint for the purposes of the notice of the claim that the P later sought to add
 - **The Relation-Back Doctrine (Rule 15(c))**- based upon the principle that one who has been given notice of litigation concerning a given transaction or occurrence has been provided with all the protection that states of limitations are designed to afford.
 - In determining whether a claim relates back, courts look to the “operational facts” set forth in the original complaint to determine whether the defendant was put on notice of the claim that the plaintiff later seeks to add.
 - The allegations in the original and amended complaints derive from the same nucleus of operative facts involving injury suffered by P
- D answer or D motion to dismiss
 - **Responding to Complaint**
 - Phili Piers (1956)- D violated Rule 8(a) by failing to provide a more specific answer, which would have provided P with the information necessary to determine that he sued the wrong D
 - **Rule 8(b)**
 - 1) In General. In responding to a pleading, a party must:
 - (A) state in short and plain terms its defenses to each claim asserted against it; and
 - (B) admit or deny the allegations asserted against it by an opposing party.
 - 2) Denials—Responding to the Substance. A denial must fairly respond to the substance of the allegation.
 - 3) General and Specific Denials. A party that intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.
 - 4) Denying Part of an Allegation. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.
 - D made a general denial instead of a specific denial from allegation to allegation
 - 5) Lacking Knowledge or Information. A party that lacks knowledge or information sufficient to form a belief about

the truth of an allegation must so state, and the statement has the effect of a denial.

- **Amendments to Answers**
 - Aquaslide (1977)-
 - district court didn't abuse its discretion by allowing the D to amend its answer to deny manufacturing the slide bc the D had a good reason for initially admitting that it manufactured the slide and the P would not be unduly prejudiced by the amendment
 - **Rule 15(a)**- a party may move to amend the pleadings at any time.
 - leave to amend shall be "freely given as justice so requires." The party opposing the motion to amend must demonstrate prejudice from such amendment.
 - ****Note that the burden is on the party opposing the amendment to show prejudice or any misconduct by the moving party.
 - *This rule means:*
 - (a) that the would-be amender should have a good reason for not getting the pleading right the first time
 - (b) that allowing the change now shouldn't hurt the other side too much (prejudice)
 - The district court didn't abuse discretion by ordering a separate trial on the issue of whether the corp. manufactured the slide bc a separate trial would advance the goals of efficiency and fairness
 - **Rule 42(b)**- Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any federal right to a jury trial
 - **Motion to Dismiss (Rule 12(b)(6))**
 - Rule 12(b)(6)- failure to state a claim upon which relief can be granted
 - **Legally Sufficient?**
 - Haddle (1998)- a motion under Rule 12(b)(6) attacks the legal sufficiency of the complaint
 - A court should not dismiss a complaint for failure to state a claim UNLESS it is clear that the plaintiff can prove "no set facts in support of his claim which would entitle him to relief."
 - **Factually Sufficient?**
 - Twombly (2007)- Ps complaint didn't state a claim for relief bc "stating such a claim requires a complaint with enough factual matter (taken as true) to suggest that an agreement was made"
 - Iqbal (2009)- To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face
 - To survive a motion to dismiss:
 - A complaint must contain sufficient factual matter accepted as true, to "state a claim to relief that is plausible on its face value"

- Apparent Analytical Framework:
 - 1. Disregard legal conclusions--- there has to be more than just legal conclusions
 - “We begin our analysis by identifying the allegations in the complaint that are not entitled to the assumption of truth”
 - 2. Assess whether remaining factual allegations “plausibly give rise to an entitlement to relief?”
 - “We next consider the factual allegations in respondent’s complaint to determine if they plausibly suggest an entitlement to relief”
 - a. Is it more likely than not that D is liable based on the well-pleaded facts?
OR
 - b. Is there a (significantly) more plausible, alternative explanation?
 - If D files a motion to dismiss, the D doesn’t have to answer the Ps complaint unless the motion to dismiss is denied
- **DISCOVERY (Initial disclosures → Party-initiated discovery → Pre-trial disclosures)**
 - Discovery has a two-fold purpose (Hickman):
 - (1) to narrow basic issues between parties; and
 - (2) as a device for ascertaining the facts, or information as to the existence or whereabouts of facts, related to those issue
 - **Rule 26- Blueprint of discovery**
 - **Witnesses:**
 - Must provide the name and, if known, the address and telephone number of each individual likely to have discoverable information (witness) and the information that the witness may use to support its claims or defenses, unless the use would be solely for impeachment
 - **Scope of Discovery-** “any non privileged matter that is ‘relevant’ to any party’s claim or defense”
 - *The discovery must be:*
 - Non privileged info- Matter relevant to parties claim or defenses
 - Relevant- Reasonably calculated to lead to discoverable info
 - **“Relevant” info-** if the info makes a material fact (something that actually matters in a case) more or less likely to be true (*even if something is relevant, it might be “unduly burdensome”*)
 - Davis- D was compelled to produce complaints of race discrimination that were recently filed by other employees in the same plant because this **info was relevant** and Ps requests were narrowly tailored to the specific claims in the case
 - Judge said info about other complaints and discrimination were relevant because it was a “pre-text”—looking at the history
 - If there were a lot of complaints of discrimination, it is more likely that the P experienced it

- Steffan- District Courts discovery order and subsequent dismissal of the case was based upon an error of law bc judicial review of an administrative action is **confined to “the grounds upon which the record discloses that the action was based.”** Since P was discharged for declaring his sexual orientation, whether he had engaged in homosexual conduct was irrelevant
- Not Cumulative/unduly burdensome
 - the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
- **Court must limit discovery if it:**
 - **Is unreasonably cumulative or unduly burdensome**
 - **Party seeking info has had ample opportunity to obtain the info in discovery**
 - The burden or expense of the discovery outweighs its likely benefit
- **Duty to Preserve Evidence** (Spoliation)- must give the opposing party a fair and equal opportunity to inspect/assess the evidence --
 - Rule 26- The producing party must preserve the information until the claim is resolved.
 - **Spoliation**- to the destruction of material alteration of evidence or the failure to preserve property for another’s use as evidence in pending or reasonably foreseeable litigation
 - Spoliation is usually harsh
 - Dismissal maybe necessary if the prejudice to the defendant is **extraordinary or bad faith**, denying it the ability to adequately defend its case
 - Silvestri- Dismissal of Ps complaint as a sanction for spoliation of evidence was not an abuse of discretion because P violated his duty to notify D of the existence of the evidence, and D suffered **extraordinary prejudice** as a result
 - *To prove spoliation was highly prejudicial:*
 - 1. By not having access to the vehicle, D couldn’t develop a “crush” model to prove that the airbag properly failed to deploy
 - 2. D couldn’t resolve the critical question of how P injured his head
 - What can be done if you don’t use the ultimate sanction of spoliation?
 - Can bar P from using the testimony
 - Can make P give D info about the accident reconstruction expert info
 - What is next after this case?
 - P can file claim against the attorney because the attorney should have known to notify GM, and the experts told him to notify GM
 - **Duty to Preserve** material evidence- arises not only during litigation but also extends to that period before the litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation

- If a party cannot fulfill this duty to preserve bc he doesn't own or control the evidence, he still has an obligation to give the opposing party notice of access to the evidence or of the possible destruction of the evidence if the party anticipates litigation involving the evidence
- **Stages of Discovery**
 - **1) Initial disclosures (Rule 26)**- info that every party has to give to opposing party (this is automatic and you don't have to ask for it)
 - **Need only disclose info used to support claims or defenses**- info and docs that may be sued solely for impeachment need not be disclosed
 - **Must provide-**
 - Witness's name and, if known, the address and telephone
 - Info that witness used to support its claims or defenses, unless the use would be solely for impeachment;
 - A copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;
 - Computation of each category of damages claimed by the disclosing party
 - Must also make available for inspection and copying the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered
 - **Must be:** in writing, signed, and served.
 - **Time for disclosures:** must be made within 14 days
 - **Time to Respond:** must be made within 30 days
 - **Expert Witness:** must submit a report with:
 - (i) a complete statement of all opinions the witness will express and the basis and reasons for them;
 - (ii) the facts or data considered by the witness in forming them;
 - (iii) any exhibits that will be used to summarize or support them;
 - (iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;
 - (v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
 - (vi) a statement of the compensation to be paid for the study and testimony in the case.
 - **2) Party-initiated discovery**- info that one party requests from the other side (this is voluntary and most discovery is done in this stage)
 - **3) Pre-trial disclosures (Rule 26)**- info that every party has to provide to opposing party right before trial (this is different from "initial disclosure" because it is based on info that is learned in the "party-initiated discovery")
 - **Must present:**
 - (i) the name and, if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises;
 - (ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

- (iii) an identification of each document or other exhibit, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.
- Must be: in writing, signed, and served
- Time to file: disclosures must be made at least 30 days before trial.
- Time to object: Within 14 days after the disclosures are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections
- **Tools of Discovery**
 - **Depositions (Rule 30)**- interview of witness or party and is done under oath; it is transcribed→
 - Who: any person with discoverable info can be served with a deposition (witnesses, parties)
 - Length of Time: Generally can only be deposed for 1 day for 7 hours
 - **Interrogatories (Rule 33)**- send questions to a party and ask them to answer
 - Who: only served on parties
 - Amount: Only 25 questions
 - Time to answer/object: Can answer interrogators or object within 30 days of interrogatories being served
 - Answering:
 - Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.
 - The person who makes the answers must sign them, and the attorney who objects must sign any objections.
 - Exception: If the other party can get answers to their questions by looking at documents, then you can tell the party they need to do so, BUT responding party must provide the documents to look at and give them reasonable amount of time to examine them
 - **Production of Documents (Rule 34)**- get party to turn over documents/info→ limited to just parties
 - To who: Can be issued to parties AND non-party witnesses
 - May serve request to:
 - (1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:
 - (A) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or
 - must produce the documents, organize and label them
 - if there is not a specified form for producing electronically stored info, must produce it in a form or forms which it is ordinarily maintained or in a reasonable usage of the form
 - (B) any designated tangible things; or
 - The request must include:
 - (A) must describe with reasonable particularity each item or category of items to be inspected;

- (B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and
 - (C) may specify the form or forms in which electronically stored information is to be produced.
 - Time to respond: party must respond in writing within 30 days after being served
 - The response: must respond to EACH ITEM
- **Physical and Mental Exams (Rule 35)**- only allowed if it is important to case
 - Who: limited to just parties
 - The physical/mental state/condition has to be:
 - 1) in controversy
 - 2) must be “good cause” for the exam
 - 3) must be important to the case
 - For the request:
 - Court must first approve the examination.
 - (A) may be made only on motion for good cause and on notice to all parties and the person to be examined; and
 - (B) must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.
 - Waiver of privilege: can get information on the same condition that is in controversy
 - The party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition
 - Examiners Report:
 - Must be in writing
 - must set out in detail the examiner’s findings, including diagnoses, conclusions, and the results of any tests.
- **Request for Admissions (Rule 36)**- get party to admit facts from the case that are undisputed)
 - The motion must include:
 - a certification that the movant has in **good faith** conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action
 - Can be sanctioned for:
 - Not giving info that is clearly discoverable
 - Asking for info that is clearly not discoverable
 - If doesn’t follow order: If a party fails to obey an order to provide discovery, the court may issue further just order
 - When: happens towards the end of discovery
 - Time to respond: have to respond with in 30 days of being served
- **Test to determine what discovery to let in**:
 - 1) Is the info privileged?
 - 2) is the info relevant? (does it make the material fact more or less likely to be true?)
 - 3) How important is the info?
 - **If #1 is no, and #2 is yes**, then is the info unduly burdensome to the case
- **What is Privileged from Discovery?**
 - **Attorney-client privilege**
 - **5th amendment privilege against self-incrimination**
 - **Doctor-patient privilege**- every state has a statute to require P to waive that privilege in personal injury cases
 - **Deliberative process privilege**- pre-decisional advise rendered by public officials on policy matters
- **Limitations on Discovery**

- *Categories of Info:*
 - **Underlying Facts**- not protected from discovery
 - **Attorney's Memos**- work-product privilege → qualified privilege potentially overcome by "necessity" (facts are disclosed but not case theories)
 - Hickman- at attempt, without purported necessity or justification, to secure written statements, private memoranda, and personal recollections **prepared or formed by an adverse party's counsel in the course of his legal duties falls outside the arena of discovery** and contravenes the public policy underlying the orderly prosecution and defense of legal claims
 - Not discoverable because:
 - 1. It is attorneys work product (qualified privilege)
 - want to preserve making lawyers work hard for the client by not having to just turn their work over
 - important not to disclose mental strategies or legal theories
 - 2. P could have easily got info from other sources
 - **Mental Impressions**- absolutely protected
 - Where relevant and non-privileged facts remain hidden in an attorney's file and where production of those facts is essential to the preparation of one's case, discovery may be properly had. Such written statements and documents might, under certain circumstances, be admissible in evidence or give clues as to the existence or location of relevant facts. Or they might be useful for the purposes of impeachment or corroboration. And production might be justified where the witnesses are no longer available or can be reached only with difficulty
 - Expert Information- testifying v. non-testifying experts: distinction is not between fact and opinion testimony but *between those witnesses whose information was obtained in the normal course of business and those who were hired to make an evaluation in connection with the expected litigation*
 - Thompson- there were "exceptional circumstances" justifying the disclosure of a non-testifying physiologist's observations because P's mental and emotional state ten days after her termination was "highly probative" to an **essential element of her case** and the defendant "**could not obtain** the info contained in the report **by other means**"
 - Chiquita- there were no exceptional circumstances warranting discovery of the observations of the Ps non-testifying expert witness bc the D was not precluded from sending its own expert to the scene by forces beyond its control
 - Don't want to reward the failure to hire someone to look at the condition of their OWN ship (not going to let them freeloader off of Chiquita)
 - **** the difference between Chiquita and Thompson Is that in Chiquita, they could sent their own expert because it was their ship!**
- **To Get Discovery or Protect from Discovery:**
 - P can ask for a **protective order** to protect from answer
 - Kmart- court granted a protective order to preclude discovery of voluntary sexual activities of non-party witnesses, except to the extent that they involved

the alleged perpetrator of sexual harassment, and showed conduct on his party to encourage such activities

- D can file a **motion to compel** to make the P give the info

Summary judgment prior to trial→ TRIAL→ **Ps case**→ **Ds motion for a directed verdict**→ **Ds case**→ **Cross motions for a directed verdict**→ **Jury's Verdict**→ **Judgment notwithstanding the verdict or motion for a new trial**→ **Appeal**

- **Summary Judgment**- prior to trial
- **Directed Verdict**- at trial
 - Ds motion for "directed Verdict"- if denied Ds case, then P can appeal
 - Cross motions for a directed verdict- both parties can move for a "directed verdict" at this time
 - ***if no one moves for a directed verdict, it goes to the jury
- **Judgment notwithstanding the verdict or motion for a new trial (JNOV)**- if denied, then party appeals
 - If don't move for directed verdict, cannot raise JNOV

Judgment as a matter of law includes: directed verdicts and jnov

- **SUMMARY JUDGMENT (Rule 56)**- is the case so one-sided that there is no reason to even have a trial? (only based on *admissible* evidence, not on allegations) (*done before trial*)
 - Difference between Summary Judgment and 12(b)(6)- failure to state a claim upon which relief can be granted
 - **Standard for Judgment as a Matter of Law (Rule 50)**
 - Whether there is evidence in the record that would allow a rational jury to find for the moving party?
 - **Rule 56(a)**- A party may move for summary judgment, if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law
 - **Requirements of Moving v. Nonmoving Party**- (in the process order)
 - 1) **Moving Party**
 - **MUST:**
 - Bear the initial responsibility for providing the basis for the motion and identifying those portions of the record that it believes demonstrates the absence of a genuine issue of material fact
 - Is supposed to explain their rationale for summary judgment
 - Need only show that the opposing party lacks sufficient evidence to support its case
 - 56(c)- "showing" that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.
 - Therefore, point out that there is an absence of evidence to support the non-moving party's case
 - **DOES NOT HAVE TO:**
 - Provide any evidence to support its motion with affidavits or other similar materials *negating* the opponents claim
 - 2) **Non-moving Party: (bears the burden of proof)**
 - **MUST:**
 - Canvas the record to show how it explains their claim and that the P cannot prove

- Product cognizable evidence that establishes genuine issue of material fact for trial
 - 56(c)- mandates the entry of summary judgment after adequate time for discovery, against a party who fails to make a showing to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial
 - *To defeat a motion for summary judgment*- must provide evidence of a dispute of material evidence
- 3) **Moving Party**: The burden then goes to the P to show/establish a genuine material fact
- Celotex- P didn't have evidence that he was exposed to Ds product
 - So then, P produced:
 - Depo of the decedent
 - Letter from former employer
 - Letter from insurance comp
 - **These are problematic because they are "letters" and not "affidavits"**
- Bias- summary judgement was granted in favor of Ds because it was "undisputed" that Bias was a drug user who could not have obtained a valid life insurance policy prior to his death
- **Types of Summary Judgment**
 - 1) **Cross-motion for Summary Judgment**- undisputed facts; just deciding whether something is a matter of law (therefore, the motion for summary judgment should be granted)
 - 2) **Judgment as a Matter of Law**- facts are so 1 sided- no genuine dispute as to genuine material facts, but trial is unnecessary because it is one-sided
 - 3) **Motion in Opposition to Motion to Summary Judgment**- there is a dispute as to the matter of law (nonmoving party in response to moving party)
- Hypo: Seller (P) delivered goods, buyer (D) refused to pay (breach of K for sale of goods)
 - **What would P need to show for summary judgment?**
 - 1. Existence of a K
 - provide court with the contract and an affidavit from seller declaring that it is a genuine document
 - 2. That seller delivered the goods
 - Can show:
 - Receipts or Documents
 - Depo of the person who signed for the goods when they were delivered
 - Interrogatories to other party saying, "isn't it true that we delivered the goods on ___ date?"
 - **Affidavit** submitted saying they delivered the goods – **THIS IS THE CHEAPEST AND EASIEST WAY!**
 - 3. That buyer failed to pay
 - Can show:
 - Documents- accounting records
 - Depos
 - Interrogatories
 - **Affidavit**
 - **After filing a motion for summary judgment and filed all the info/docs showing buyer didn't pay, then what? (assuming facts are true)**
 - There is no dispute as to the facts, but the facts are so one-sided → therefore, subject to judgment as a matter of law
 - **What if D says the contract is unenforceable because it was a gift (and thus no consideration)?**
 - Then can file a cross-motion to summary judgment because there is a dispute as to the matter of law (dispute= is K enforceable?)

- **What if there is a dispute as to whether the goods were delivered? What does D do in response to summary judgment by P?**
 - D provides evidence:
 - Depo of deliver person of P
 - Interrogatories
 - Documentary evidence
 - Affidavit submitted saying never received the goods
 - THEN, COURT DENIES MOTION FOR SUMMARY JUDGMENT because there is a dispute to material fact
- TRIAL
 - **Directed Verdict and JNOV-**
 - *Judgment as a matter of law- there is no evidence that would allow for a jury to find for the party*
 - Standard- Whether there is evidence from which a favorable jury could have found for the non-moving party?
 - Rule 50(b)- must move for a directed verdict before being submitted to the jury in order to preserve their right to move for jnov (*if don't move for directed verdict, jnov is waived*)
 - Directed Verdict
 - PA Railroad- P is entitled to a directed verdict bc a reasonable jury could not conclude that Ds negligence caused the accident; where there is a direct conflict of testimony upon a matter of fact, the question must be left to the jury to determine
 - 1. Ps circumstantial evidence supported conflicted inferences
 - 2. D presented uncontradicted, direct evidence to defeat liability (if there is a contradiction in the testimony, it is an issue for the court to hear)
 - 3. The testimony of Ps witness was not credible
 - JNOV
 - A JNOV is appropriate only if:
 - the judge determines that no reasonable jury could have reached the given verdict.
 - Reversal of a jury's verdict by a judge occurs when the judge believes that there were insufficient facts on which to base the jury's verdict, or that the verdict did not correctly apply the law.
 - Why grant JNOV and deny a directed verdict when they are assessed under the same standard?
 - Because if jury makes a "wrong" decision, then judge can grant JNOV
 - Immediately appealable
 - **New Trial (Rule 59)**
 - Rule 59
 - Must be filed within 28 days of jury's decision
 - Can be entered sue sponte by the court
 - Standard- Whether the jury's verdict "shocks the conscience"
 - Not immediately appealable
 - Can also order a new trial solely to collect damages
 - Reasons to Grant a New Trial:
 - 1) To correct flawed procedures (sometimes when wrong at trial to make it difficult for a jury to make a decision)
 - Exp. Jury instructions were erroneous
 - 2) If jury/party's engage in misbehavior to prevent an erroneous decision by the jury
 - 3) To corrected flawed verdicts that are against the "great weight of the evidence"

- Exp. Evident is so one-sided—I cant believe the jury bought that evidence and it wouldn't be right to let the decision stand
- Hypo: court grants motion for directed verdict in favor of D, which prevents the case from going to the jury—if the Court of Appeals is reversed on appeal (like in Chamberlin), then it could be reversed and remanded for a new trial
- Lind- the district court substituted its judgment for that of the jury and therefore abused its discretion by granting Ds motion for a new trial and should have deferred to the jury
 - Case turned on credibility determinations\
 - Dissent- should be referring to the trial judge; seems jury verdict was against the “great weight” of the evidence (Ps evidence was hard to believe.
- Peterson- district court abused its discretion by ordering a new trial based on ex parte comments made by jurors to the court indicating that the jury had disregarded its instructions; the jury's verdict cannot be impeached based on evidence of its deliberations; a court may only consider evidence of improper outside influences for this purpose
 - Problem with case- trial judge didn't grant new trial based on “weight” of the evidence, but rather because of what the jurors said
 - Final Judgment Rule- makes a party wait to appeal for a new trial until there is a final judgment in a case
- *Hypos*:
 - Jurors told judge they flipped a coin to decide because they wanted to leave
 - It is within the jury deliberations
 - Could say it would be abuse of discretion for judge to grant new trial
 - Counter- flipping a coin is really not a deliberation
 - Pressure from one juror to another juror to make a decision; juror tells judge and judge grants new trial
 - Abuse of discretion?
 - NO if the pressure was so extreme, then it can be construed as an “outside influence”
 - Yes if it was more of persuasion, which is jut considered deliberation
 - **Rule: If there is an “improper outside influence,” can grant new trial because not within the jury deliberations.**
- If judges grants both JNOV and New Trial, then both are immediately appealable (called a dual contingent ruling)
- **Jury Trials:**
 - Special v. General Verdicts- gives the jurors a roadmap of the relevant legal issues helping them to fous on each question as (and if) it becomes relevant → guides the jurrors
 - Special- answers of particular questions
 - General- the overall, general answer
- **Former Adjudication/Preclusion (used as defenses)**
 - **Claim preclusion**- forbids party from re-litigating a claim that was/should have been litigated in an earlier/previous law suit (eliminates claims that were or should have been litigated earlier)
 - Two Tests:
 - **Traditional Test- “Same Cause of Action” Test**- One suit precludes a second where the parties and the cause of action are identical
 - Illinois Central Gulf Railroad
 - **Modern Test- “Restatement of Judgments” Test** (federal courts follow this approach)- All claims arising from a single transaction must be litigated in a single, initial lawsuit, or be barred from being raised in subsequent litigation

- *Frier*- Frier should have asserted his constitutional claim against the city in the initial lawsuits bc both actions involved the same “common core of operative facts” and the same transaction
- Partnership:
 - *Searle Brothers*- partnerships claim not barred because
 - partnership was not a party to the earlier proceeding (partnership interest was not legally represented in divorce suit and Mr Searle was not acting in a representative capacity for the partnership)
 - If the subsequent suit involves different parties, those parties cannot be bound by a prior judgment
 - Courts generally hold that litigants not parties in past case cannot be held to the earlier proceeding, BUT courts may apply different for cases where there is a close relationship between the litigants and parties
- Virtual Representation
 - *Taylor*- virtual representation—court disagrees that when parties and cases are close enough, the court should find virtual representation bc of the fundamental rule that a litigant is not bound by a judgment to which he was not a party
 - Deep rooted historical tradition that everyone is entitled to their one day in court (Taylor)
 - Six Exceptions to Precluding nonparties:
 - 1) P A nonparty may **agree** to be bound to a judgment;
 - 2) A nonparty may be in **privity** with a party--in other words, there may be an existing substantive legal relationship between the two persons that justifies binding the nonparty to the party's judgment;
 - 3) A nonparty may be **adequately represented** by a party acting in a representative capacity.
 - Adequate representation requires that the party and representative have aligned interests and EITHER (a) the representative capacity was understood; or (b) the deciding court took care to protect the interests of the nonparty.
 - 4) A nonparty may **assume control** over litigation to which he is not a formal party;
 - 5) If a party is bound by a judgment, the party may not use a **representative or an agent to relitigate** an adverse judgment.
 - 6) A special **statutory scheme** may foreclose successive litigation (this scheme, like any exception to nonparty preclusion, must satisfy the Due Process Clause).
- “Totality of the Circumstances” Theory
 - *Searle Brothers (dissenting)*- these Ps the sons of the parties to the divorce action, were sufficiently involved and interested therein that they should properly regarded as parties in privity thereto
 - Based on the totality of the circumstances, the partnership should be barred
 - *Taylor*- rejects totality of the circumstances theory

- Taylor's claim was not precluded on the theory that he was virtually represented in prior litigation by Herrick because Taylor was not a party to the first suit, and the application of claim and issue preclusion to non-parties runs up against a deep rooted historic tradition that everyone should have his own day in court
- How do we know which test applies
 - (state v. federal court- diversity v. fedl questions)
- View: Gets one chance to win the case
 - Deep rooted historical tradition that everyone is entitled to their one day in court (Taylor)
- 4 Tests to determine applicability of claim preclusion as a basis for issue preclusion: (Searle Bros)
 - 1. Was the issue decided in the prior adjudication identical with the one presented in the action in question?
 - 2. Was there a final judgment on the merits?
 - 3. Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?
 - Privity- one whose interest has been legally represented at the time
 - 4. Was the issue in the first case competently, fully, and fairly litigated?
- Court lacks SMJ over case:
 - Gargallo- a prior state court judgment doesn't bar a subsequent federal lawsuit based on the same cause of causation when the state court lacked SMJ
- Promotes:
 - Efficiency
 - Finality
 - Inconsistency
- Full Faith and Credit Clause
- Exp.: There is a traffic accident; P sues D for negligence; D wins; If P re-sues D for negligence 1 month later, the earlier case will come into play (be used as precedent)
 - If one month after that, P sues D for damages from the accident, claim preclusion is raised and P can't bring up this new claim because P should have raised this 2 months ago when P raised the initial claim
- **Issue preclusion**- when a claim isn't barred from subsequent litigation, but when an issue in the claim has been previously litigated (can extend to different causes of action, but can only preclude issues that were actually litigated, but it doesn't have to be the same claim (bars only those issues actually litigated and determined from relitigation)→ to protect litigants from requiring them to litigate an issue more than once)
 - **Elements**: (elements 1-4: Restatement 2nd of Judgments § 27)
 - 1. An issue of fact or law is
 - 2. Actually litigated and determined by
 - 3. A valid and final judgment, and
 - 4. The determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.
 - **Full and fair opportunity to litigate the issue once:**
 - Collateral estoppel may be avoided as a defense if the claimant did not have a full and fair opportunity to litigate the issue decided by a state court, which means he may file suit in federal court to challenge the adequacy of state procedures. Note that in this case the plaintiff's suit would be v. the state, not v. the other party in the prior suit

- **Alternative Grounds for Decision When there is an Appeal:** (jurisdictions are split on which Restatement to apply)
 - How courts handle issue preclusion where there are alternative grounds for a decision?
 - **1st Restatement of Judgments-** when alternative grounds for decision existed, both issues should be precluded in subsequent litigation
 - **2nd Restatement of Judgments-** neither issues are precluded or should be binding in subsequent litigation
 - *If the case is appealed, alternative grounds for decision should not given preclusive effect*
 - Efficiency considerations- with alternative grounds for decisions, the court will likely not look carefully at the case
 - Confidence in the reliability of the earlier judgment (only will give an issue preclusive effect in subsequent cases if we are confident in the earlier decisions)
 - **Decision of Court of Appeals-** issues that are affirmed on appeal have preclusive effect, while those that are not addressed by the appellate court do not, even when the district court's judgment is affirmed
- **Analysis of Preclusion:**
 - **Step 1:** Does claim preclusion apply? (Is the entire second claim precluded based on an earlier litigation?)
 - *If claim is not precluded, then ask whether certain issues may be precluded (go to step 2)*
 - **Step 2:** Does issue preclusion apply? (Are there some issues that are precluded from being relitigated?)
- **Types of Collateral Estoppel:**
 - **Offensive Collateral Estoppel (used by P)**
 - Offensive Mutual Collateral Estoppel- Used against the defendant from the first suit by the plaintiff (from the first suit) in a subsequent suit thereby preventing relitigation on an issue already decided
 - Offensive Non-mutual Collateral Estoppel- Used by a new plaintiff in a subsequent suit who wants to assert a final judgment on an issue(s) against the defendant from the first suit
 - This creates incentive for subsequent P to wait and see what happens in the first case
 - **4 "Fairness Factors"** from Parkland to determine validity of the Offensive Non-Mutual Collateral Estoppel: (balancing test)
 - Could the party trying to assert Collateral Estoppel have intervened in the earlier suit?
 - Did defendant have incentive to litigate the first action?
 - Are there multiple, prior inconsistent judgments?
 - Are there any procedural opportunities available to defendant in the second suit that were not available in the first suit?
 - In cases where a plaintiff could easily have joined in the earlier action, or where, either for the reasons discussed above or for other reasons, the application of collateral

estoppel would be unfair to a defendant, a trial judge should not allow the use of collateral estoppel.

- **Defensive Collateral Estoppel (used by D)**
 - Defensive Non-mutual Collateral Estoppel- Used by a new defendant in a subsequent suit who wants to assert a final judgment on an issue(s) against the plaintiff from the first suit
 - this is great bc creates an incentive for P to sue everyone at once in the first case
 - P has good incentive to sue everyone at once
- Types of Claims:
 - Claim- P v. D
 - Counterclaim- D v. P (rule 13)
 - Cross-claim- D v. D (rule 13)
 - more than one D in case and one D wants to sue another D
 - Third party claim- D v. 3rd Party D
 - Original D wants to assert a claim against a 3rd party
 - If D is held liable to P, the third party is held liable to D who can then give that to the P
- **Joinder**- when claims and parties can be joined (very broad rules)-- To allow entire transaction to be litigated at once
 - **Joinder of Claims**- rule 13, 18, Gibbs
 - **Joinder of Parties**- rule 14, 19-24
 - Rule 18(a)- Joinder of Claims in Federal Court: A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party
 - Rule 13
 - Counterclaims and Crossclaim
 - Compulsory Counterclaim- **arises out of the transaction or occurrence** that is the subject matter of the opposing party's claim
 - *Test for whether a counterclaim is compulsory*-- whether the claim arises out of the same transaction or occurrence as the original claim asserted by the P
 - Exceptions: (need not state a claim if)
 - does not require adding another party over whom the court cannot acquire jurisdiction.
 - the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.
 - when the action was commenced, the claim was the subject of another pending action
 - Permissive Counterclaim- A pleading may state as a counterclaim against an opposing party any claim that is not compulsory. (**does not rise out of the same occurrence or transaction**)
 - ***if don't bring up counterclaim, it is barred later*
 - **Compulsory Counterclaim**
 - Plant-
 - **Four Tests to determine whether a claim/counterclaim arise from the same transaction**: (An affirmative answer to ANY of the four indicates the counterclaim is compulsory)
 - 1) Are the issues of fact and law raised by the claim and counterclaim largely the same;
 - 2) Would res judicata bar a subsequent suit on Df's claim absent the compulsory counter claim rule;

- 3) Will substantially the same evidence support or refute Pl's claim as well as Df's counterclaim;
- 4) Is there any logical relation btwn the claim and the counter? (logical relation test) ****
 - Besides looking at whether the issue "arises out of the transaction or occurrence," court have also looked at whether there is a logical relation between the claim and the counterclaim, which exists when the same aggregate of operative fact serves as the basis of both the claim and the counterclaim.
 - A logical relationship exists when the same aggregate of operative fact serves as the basis of both the claim and the counterclaim
 - The obvious interrelationship of the claims and rights of the parties, coupled with the common factual basis of the claims, demonstrates a logical relationship between the claim and counterclaim.
- *Why should have compulsory instead of permissive?*
 - The federal court would have supplemental jurisdiction over a compulsory counterclaim, but not over a permissive counter claim
 - If it is a permissive counterclaim, doesn't arise out of the same occurrence/common nucleus of operative facts, so then there is no supplemental jurisdiction in federal court → no federal jurisdiction if no supplemental or diversity
 - A permissive counterclaim must have an independent jurisdictional basis, while a compulsory counterclaim generally falls within the ancillary jurisdiction of the federal courts ("same nucleus of operative facts= supplemental)
- **Analysis of joinder:**
 - Is joinder allowed by the Rules?
 - If so...
 - Does the court (federal court generally) have jurisdiction over the claims and the parties?
 - If D is not subject to pj in the forum, the court cant exercise jurisdiction over them
 - If court doesn't have smj over claim, cant exercise jurisdiction
 - Generally, courts have supplemental jurisdiction over joinder claims
 - If compulsory counterclaim, then it arises out of the common nucleus of operative founds, then it is supplemental jurisdiction in federal court
 - Counterclaim needs to be compulsory or else it cannot be heard in fed court-- Plant

- **Rule 20- Permissive Joinder**
 - The purpose of Rule 20 is to promote trial convenience and expedite the final determination of disputes, and prevent multiple lawsuits.
 - Two specific requisites to the joinder of parties: (both must be satisfied)
 - (1) a right to relief must be asserted by each plaintiff relating to or arising out of the same transaction or occurrence, or series of transactions or occurrences, and
 - Case-by-case basis to determine whether a particular factual situation constitutes a single transaction or occurrence for purposes of Rule 20
 - (2) some question of law or fact common to all the parties must arise in the action.
 - The fact that each plaintiff may have suffered different effects from the alleged discrimination is immaterial for the purposes of determining the common question of law or fact
 - Doesn't require that all questions of law and fact raised by the dispute be common
- **Rule 18-** joinder only comes into play when there are already claims against the party
 - Relationship between joinder and adjudication- Rule 18 doesn't require parties to join claims, but failure to do so may cause claim/issue preclusion
- Relationship btw joinder and jurisdiction- also has to ensure court has smj over claims and parties, even if joinder of parties is permissible under the rules
- **Rule 21-** misjoinder of parties—use when they want to challenge the joinder of a claim or party
- **Rule 42-** authorizes court to consolidate cases that involve the same thing
- Other than compulsory counterclaims, rules don't generally make parties assert additional claims in original lawsuit (claim preclusion and joinder work together to promote parties bringing their claims in the original suit)