

## Civ Pro Outline I - 2019

\* A court must have both subject matter jurisdiction (power) & personal jurisdiction (rights)

\* Court must also have statute authorizing jurisdiction & it must be constitutional

**Full Faith & Credit Clause:** Ensures that states honor valid judgements of other states, applicable only when the court rendering judgement had jurisdiction of the parties & subject matter.

**Personal Jurisdiction (rights)** – defendant/citizen/resident/connection

\* Plaintiff can sue anywhere, so you don't consider personal jurisdiction for plaintiffs

Service of Process – Serving defendant by letting him know that he's being sued.

**In Personam:** If one obtains over D, essentially no limitations from a jurisdictional perspective. Judgement can be executed in any state.

**In Rem:** Jurisdiction against property, seeking to determine ownership in property as to everyone in the world.

- 1) Attachment of property (1<sup>st</sup>) (only get value of property)
- 2) Constructive Service

**Quasi in Rem 1:** Ownership in property, BUT as to specifically named individuals.

**Quasi in Rem 2:** Attaching ownership in property to virtually get in personam jurisdiction.

\* Shaffer significantly constrained Quasi in Rem 2, by requiring personal service. Court reasoned that in Rem 2 was used to virtually obtain in personam.

**International Shoe:** Due Process requires for in personam jurisdiction, if he be not present within the territory of forum, that he have certain minimum contacts so it doesn't offend "traditional notions of fair play & substantial justice."

**Exception to Contacts Rule:** Personal Service of non-resident that is physically present within the forum state is always good enough for jurisdiction! (Burnham)

**Specific Jurisdiction:**

- A. Related Contacts "arise from" the cause of action "Purposeful Availment"
- B. Subject D to jurisdiction only for the particular suit.

Overall Contacts Test:

- 1) Identify contacts that D has with forum state that are related to Cause of Action (C.O.A)
- 2) Determine whether these contacts manifest to purposeful availment.
- 3) Is exercise of jurisdiction fair? (Burger King)

\*1 could potentially make up for deficiencies in the other!

**McGee**

- A) The company contacted the person in CA and created a policy in CA, premiums were mailed from there, and insurer was a resident of the state.

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- B) Minimum Contacts were sufficient for specific personal jurisdiction b/c the company personally availed itself to doing business in the forum state.
- C) Doing business in a state meets due process requirements for a foreign corporation b/c they have substantial contacts with the state.

### Hanson

- A) The policy was established in another state, and the  $\pi$  moved to the state where jurisdiction is being sought.
- B) Unilateral movement of plaintiff does not confer jurisdiction over D. The D Corp must purposefully avail itself of business in the forum state.

*(Unilateral activity = No Purposeful Availment)*

### World Wide Volkswagen (WWV)

- A) Minimum Contacts are not enough, fairness & substantial justice as well.
- B) Purposes of Minimum Contact Test:
  1. Protect D from litigation in distant or unfair forum.
  2. Limits a state's jurisdiction, sovereignty.
  3. Limits plaintiff forum shopping.
- C) What are the tests for fairness?
  - 1) Burden on D
  - 2) State's interest in the claim.
  - 3) Protection of the plaintiff.
  - 4) Procedural interests in convenient resolution.
- D) Purposeful Availment
  - 1) Test isn't foreseeability of a contact within the state, but if there is purposeful action to have a contact with a state.

### Assessing Contacts

#### Kulko

- A) Ex-wife lives in CA, got married in CA and has taken trips infrequently there. Sent his daughter a one-way ticket to CA.
- B) Court examines each contact individually, rules that they are insufficient for personal jurisdiction.
- C) D didn't purposefully avail himself of benefits of forum state, derives no benefit from children residing in CA.

#### Burger King

Refined the test of minimum contacts for personal jurisdiction.

Split the test into two parts

- A) Test for minimum contacts
- B) Test for fairness and substantial justice
  - 1) Once test for minimum contacts passes, can consider fairness/substantial justice

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- C) Here, minimum contacts was established by the franchise agreement which had a forum clause. Court found it to be fair as well b/c D was aware that he may be subject to jurisdiction in FL & it didn't disadvantage him.

### Coastal

Indicated that contact will only count as related for specific jurisdiction if it supports an element of the claim.

### Perkins

D Corp conducted minimal activities in forum state, but these consisted of all of its activities in the time period.

### Asahi

Suit resulted out of an indemnity claim, original C.O.A arose out of an incident in CA, however it was resolved.

#### A) Fairness Analysis

- 1) No interest from forum state in this case, both parties are foreign.
- 2) Burden is great for Japanese D to litigate in CA.
- 3) Judicial efficiency, choice of law
- 4) Jurisdiction not granted on fairness grounds, which majority agrees with.

#### B) Minimum Contacts Analysis

#### C) Stream of Commerce

- 1) Liberal – Placing product into stream of commerce is enough to satisfy minimum contacts.
- 2) Conservative – Placing product into stream is not enough, must purposefully avail itself to the forum state by specific design, advertisement, or seeking out customers within the state.
- 3) Bullshit Case, Case is a Tease

#### D) Majority ruled that targeting a state through stream of commerce can create jurisdiction\*\*

- a. Designing the product for market in the forum state.
- b. Advertising in the forum state.
- c. Establishing channels for providing regular advice to customers
- d. Marketing product through distributor who has agreed to serve as a sales agent in the forum state.

### McIntyre

- A) A single, isolated sale does not constitute purposeful availment.

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### Sufficient Contacts

Purposeful Availment

D is present & served (Burnham)

Intentional Tort across state lines (Hustler)

Choice of Law Provision (Carnival Cruises)

Domiciliary (Milikin)

### Insufficient

Unilateral acts by 3<sup>rd</sup> party (Hanson)

Sending mail to existing contacts (Mullane)

Selling to consumer who moves property into another forum (WWV)

Temporary Visits (Kulko)

Marriage in State (Kulko)

Isolated Sale (McIntyre)

Old Lawsuit? (Gibbons)

Stream of Commerce? (MacIntyre, Asahi)

### **General Jurisdiction:**

- A. So many contacts that D can be sued for anything in forum state. Contacts for D must be “so systematic & continuous to render a corporation essentially at home.” (Daimler).
- B. Subject D to jurisdiction in any suit in forum
- C. General Jurisdiction can be established if the D’s contacts with the state are substantial enough to make it fair for the state to exercise jurisdiction over claims unrelated to the contacts.

General Jurisdiction for corporations in forum states where:

- A) Corp is incorporated
- B) Principal Place of Business

General Jurisdiction for individuals in forum states where:

- A) Place of domicile
  - 1) Last place where person lived and planned to live indefinitely.
- B) Where the individual has such substantial contacts that it wouldn’t offend notions of fair play & substantial justice to establish jurisdiction.

### **Helicopteros**

- I. created distinction between specific and general jurisdiction!

The crash that the suit arises from has no specific contact with Texas. Must determine if corps contacts are sufficient for general jurisdiction in TX.

- A) Contacts Analysis
  - 1) Negotiation in TX not enough, as they weren’t continuous and systematic
  - 2) Accepting checks from TX not enough, as they are out of corp’s control
  - 3) Purchasing helicopters in TX not enough, buying a product in a state is not continuous and systematic.
  - 4) Contacts insufficient to support general jurisdiction

## Milken

- A. Domicile is enough for general personal jurisdiction
- B. Domicile is the (1) home or principal establishment of the person, (2) where they intend to remain indefinitely (3) or where they last had a domicile.

## Goodyear

- A. adopted home base element of Perkins & incorporated it into continuous & systematic test
- B. Creates stricter standard for general jurisdiction.

## Daimler

- A. Subsidiary corp **MAY Be Able** to attribute contacts to parents
- B. Stream of Commerce contacts *do not warrant* general jurisdiction & neither do “agents” of the corp.
- C. Replaced continuous & systematic with “*contacts must be so systematic & continuous to render the corp. essentially at home.*”

## Consent

By appearance

- 1) **General Appearance:** Consent to jurisdiction.
- 2) **Special Appearance:** Challenge to jurisdiction. Prevents you from being served.
- 3) In federal court you would file a 12(b)(2) motion to challenge jurisdiction.

## Ireland

- 1) D filed a 12(b)(2) motion to dismiss the suit for lack of personal jurisdiction.
- 2) D refused to comply with discovery orders that were needed to determine jurisdiction. Court dismissed motion as a result.
- 3) D claimed that it did not have to comply with court order b/c court didn't have personal jurisdiction.
- 4) Court ruled that by filing 12(b)(2) motion, D consented to jurisdiction for purposes of determining jurisdiction.

## Contract

Can consent be given in advance for jurisdiction? Yes if the forum chosen is fundamentally fair!

## Bremen

- A) Forum Selection Clause should control jurisdiction, absent a strong showing it should be set aside.
- B) Court reasoned that clause was freely negotiated, no overwhelmingly one-sided bargaining power & it was between corps.

## Carnival Cruise

- A) Forum selection clauses are valid if the forum would have jurisdiction if suit was brought there, and it is fair, meaning done in good faith and not discouraging to litigation.
- B) “*Florida is not a remote alien forum*”

## Notice

Pennoyer under International Shoe

- 1) Jurisdictional might be found constitutional under minimum contacts test, but should disallow for insufficient notice.
- 2) Power & notice should be examined separately.

**Mullane**

- A) Notice under Due Process requires:
  - 1) Notice reasonably calculated under all circumstances to give notice to people
- B) Not required
  - 1) Finding people who are missing or unknown
  - 2) Attaching real property & constructive service is enough.
  - 3) Giving notice to people who may have future interests.
- C) Required
  - 1) Mail service at a minimum, b/c it would be reasonably likely to reach most people.
  - 2) Plaintiff is responsible to give notice.

**Rule 4. Summons**

- A. Contents  
A summons must;

Name the parties, be directed to the D, state time in which D should appear, notify D that failure to appear will result in default judgement for P & be signed by clerk.

- B. Issuance

A summons or a copy of a summons that is addressed to multiple D's, must be issued for each D to be served.

- C. Service
  - 1) Summons must be served with a copy of the complaint. P is responsible for having the summons & complaint served within the time allowed.
  - 2) By Whom – Must not be the party & must be at least 18 years old.

- D. Waiver

Notice & request must be;

in writing & be addressed to the individual D or agent authorized by law to receive service of process.

name the court where complaint was filed.

contain a copy of the complaint.

give the D a reasonable time of at least 30 days after the request was sent or at least 60 days if request is sent to D outside of a U.S judicial district.

**Rule 4 General Stuff**

1. Gives D extra time to answer the complaint. 60 instead of 20 days. Effective once summons is mailed.
2. If the D does not waive service then he must bear the cost of personal service.

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3. Waiver of service does not waive objection to venue or jurisdiction.
- E. Timing
- 1) Service must be made 120 days after filing the complaint.

### ***Self-Imposed Limitations On Jurisdiction: Long-Arm Statutes, Venue, & Discretionary Refusal of Jurisdiction.***

#### **Long Arm Statutes**

- A. Jurisdiction must be authorized by the constitution & statute.
- B. Statutes authorizing states to reach beyond their borders are known as “long-arm statutes”
  1. Not enough that D has contacts sufficient under Due Process to establish jurisdiction, state must have statute that exercises jurisdiction.
  2. 14<sup>th</sup> Amendment doesn’t confer jurisdiction, it sets limitations.
  3. Some relations that satisfy Due Process Requirement:
    - A. Domicile
    - B. Continuous & substantial contacts
    - C. Minimum contacts that give rise to claim
    - D. Personal Service within state

#### **Gibbons**

- A. FL statute requires substantial & not isolated activity, contacts may have been constitutional, but they don’t fall within FL long-arm statute.
  - a. Previously bringing a suit, even related to current action is not sufficient for purposeful availment
  - b. Given the length of time after previous suit, and previous D not being named, court concludes there is no jurisdiction.

#### **Rule 4(k) Territorial Limits of Effective Service (Federal Long Arm)**

1. In general, serving a summons or filing a waiver of service establishes personal jurisdiction over a D:
  - a. Who is subject to jurisdiction of a court of general jurisdiction in the state where the district court is located;
  - b. (P1 sues D1 & D1 sues D2 over the same action) If D2 is within 100 miles from where the summons was issued & served within a judicial district of the U.S “100 mile bulge rule”
  - c. When authorized by federal statute
2. Federal Claim Outside State-Court Jurisdiction: For a claim that arises under Federal Law, serving a summons or filing a waiver of service establishes personal service if;
  - a. D isn’t subject to jurisdiction in any state’s court of general juris and;
  - b. Exercising jurisdiction is consistent with U.S Const.

#### **Venue 1391**

- B. Venue in General
  1. If all D’s reside in the same state, venue is proper in any district where one of the D’s reside.
  2. If all D’s do not reside in the same state, venue is proper where the actions took place. (Event based Venue)

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3. If there's no place where venue is proper, any court who has personal jurisdiction over D has venue.

### C. Residency

1. A natural person, including perm. resident, shall be deemed to reside in the judicial district in which the person is domiciled.
2. An entity with the capacity to sue or be sued in its common name under applicable law (clubs not applicable) wherever they have personal jurisdiction.
3. A D not resident in the U.S may be sued in any judicial district... If all D's are foreign, if not, disregard foreign D & focus on U.S resident.

### D. Residency of Corps in states with multiple districts

1. If corp is in state with multiple districts, imagine each district as a separate state, write down districts where D would be subject to jurisdiction.

If subject to jurisdiction in a state, but not enough contacts with a particular district, than pick district with most significant contacts.

2. Corporations – Venue is proper wherever the corporation is subject to personal jurisdiction.
3. Aliens/foreigners – Subject in any U.S District where personal jurisdiction can be found.

## Transfer & Forum Non Conveniens

### A. Federal Court 1404

- a. Transfer jurisdiction to another district/division for convenience of parties & witnesses

## Van Dusen

- A. When there is a 1404(a) D initiated transfer, transferor forum choice of law continues to apply
- B. Federal District Court will apply "choice of law" rules of state in which it resides
- C. 1404 should not deprive parties of state law advantages, & it **should not** create forum shopping advantages!

## Ferens

- A. Expands Van Dusen to cover P initiated 1404(a) transfer as well
- B. 1404 is about convenience, not the benefits of substantive law.

## Forum Non Conveniens "Forum is not convenient"

- A. Applicable only to federal cases
- B. If appropriate forum is not in U.S, dismiss case.

## Piper Aircraft

- A. Private Interest Factors- How it affects litigants
  - a. Evidence, witnesses
- B. Public Interest Factors
  - a. Local Interest, court congestion, choice of law
- C. If there is no remedy in appropriate forum, than court cannot reject jurisdiction & venue, however if it is only less favorable than it can.



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- D. Possibility of change in substantive law should not be given substantial weight in a forum non conveniens inquiry
- E. Amer. Courts are already too attractive to foreign plaintiffs.

## Subject Matter Jurisdiction

Article III § 2, Judicial power originates under Article III

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the U.S.

Federal courts are courts of limited subject matter jurisdiction

Need Constitutional & Statutory authorization for subject matter jurisdiction

Federal Court jurisdiction is permissible if:

- All cases arising under federal law (federal ? jurisdiction §1331)
- Citizens v citizens of another state (Diversity Jurisdiction §1332)
- Ambassador cases
- Admiralty cases
- U.S is a party
- State v. State
- State v. citizen of another state
- Alienage: Foreign country is a party

Federal Question Jurisdiction (Statutory Authorization - §1331)

- A) Constitution allows federal question jurisdiction for cases arising under federal law. This is interpreted to be very broad.
- B) Cases arising under federal law can also be brought into state court – known as concurrent jurisdiction

2201 Declaratory Judgement

- a) In a case of actual controversy arising within its jurisdiction except..., any court of the U.S upon the filing of an appropriate pleading may declare the rights & other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force & effect of a final judgement or decree & shall be reviewable as such.

**Motley:** P brought suit against D for failing to continue to provide free tickets for life. Congress had passed a statute banning free train tickets, however P & D had a prior agreement.

P argued that suit had subject matter jurisdiction based on 1331, however court fell on Well Pleased Complaint Rule that the suit arises under law of U.S only when the cause of action shows it is based on that

Not enough that P alleged an anticipated defense of D would fall under federal law

*Dictum:* For declaratory judgement (2201) consider hypo for w.p.c for usual P

### **Well Pleased Complaint Rule**

Contains everything the plaintiff must plead to establish a claim, and nothing else.

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Federal Question Jurisdiction (1331) can't be acquired over a case unless an issue of federal law appears on the face of the complaint

Need every element of each cause of action & facts supporting them

No anticipated defense & nothing else is to be included on Well Pleased Complaint

**Smith:** Shareholder of D sued to block D from investing in farm bonds authorized by Congressional Act. P argues that the act is unconstitutional.

Court ruled that controversy rests upon constitutionality of an act of Congress, offensive move by P which makes federal question jurisdiction appropriate (§ 1331)

**Merrel Dow:** Ps sued D for misbranding a drug & causing a child to be born with deformities. Claims were founded under a Congressional Act.

Court found that Congress did not intend for private remedies under this act, only for FDA.

If state law allows circumscription of congressional intent than the plaintiff can bring the claim in state court, but there is no federal claim here.

Thus, there can be no jurisdiction under 1331, b/c there is no legitimate question for a private party under federal law!

### §1332 Diversity Jurisdiction

- a. Fed has original jurisdiction of all civil actions where sum/value exceeds \$75k & is between
  - 1) Citizens of different states (complete diversity rule)
  - 2) Citizens of a state & citizens/subjects of a foreign state; except citizens of a foreign state who are permanent residents in U.S & domiciled in the same state. (all u.s citizens v. all foreigners)
  - 3) Citizens of different states & in which citizens of foreign states are additional parties (start with (a)(1) & add 1+ foreign citizen to either/or both sides) &
  - 4) A foreign state as a plaintiff & citizens of state or different states

**Strawbridge:** No P can have same citizenship as any D for juris under §1332. (complete diversity)

**Mas:** Ps were married in Miss. & lived for 2 years, before they lived in Louis. for nearly 2 years, & then moved to Illinois, husband is citizen of France. Ps sued in fed court Miss.

For diversity reasons, spouses domicile or citizenship doesn't change solely by reason of marriage to alien

### *Supplemental Jurisdiction*

Pendent Jurisdiction: P brings federal & state claim against same D.

Ancillary Jurisdiction:

- 1) Plaintiff sues D & then D sues someone else within the same suit.
- 2) P sues D, D sues 3<sup>rd</sup> party
- 3) P sues D, D sues P (counter-claim)
- 4) P sues D1 & D2, D1 sues D2 (cross-claim)

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- 5) Pendent Party – P sues D1 in federal court & D1 brings D2 into the suit or P brings D2 into the suit.  
(Third Party)

**Owen v. Kroger:** P sued OOPD for wrongful death, OOPD filed 3<sup>rd</sup> party complaint against Owen. P added Owen to the complaint. P was from Iowa & alleged that Owen (D) was from Nebraska. Owen accepted its Nebraska residence, and the trial began in federal court. Owen later disclosed that it was actually based in Iowa, thus diversity jurisdiction (1332) was destroyed.

Court ruled you can't use pendent jurisdiction to get around the diversity requirement. However, diversity was destroyed when P added additional D to the complaint.

Claim against D was entirely separate from original claim b/c liability did not depend on original D's liability.  
(Thus, no ancillary jurisdiction)

**Gibbs:** P sued labor union under federal labor statute and a state law claim. District court judge dismissed state claim & sent to state court.

- Pendent jurisdiction is doctrine of discretion, not P's rights.
- Situations in which state claim is closely tied to federal policy ?, creates strong argument for pendent jurisdiction

Tests Applied:

1. Constitutional Test
  - a. Supplemental jurisdiction has constitutional authority if the federal & state claim derive from a common nucleus of operative fact
  - b. Constitutional test is broad
2. Common Law Test
  - A. Doesn't go to full extent of Constitution
  - B. If state claim predominates federal claim, judge has discretion to dismiss
  - C. In determining supplemental jurisdiction judge consider:
    - a. Whether the evidence between the claims is linked
    - b. Whether the damages are similar
    - c. Whether there would be jury confusion from the differing laws or if it's a complex issue of state law that state courts should decide
  - D. If the federal claim is dismissed before trial, the state claim should also be dismissed

*Pendent Jurisdiction*

P (1) subject matter jurisdiction (Federal claim)

D (2) not under s.m.j (state non-diverse)

*Ancillary Jurisdiction*

Pendent Jurisdiction + claim against a party not originally added by P

**§1367 Supplemental Jurisdiction**

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i. (a) allow jurisdiction to maximum constitutional extent (common nucleus of operative fact), except as provided below;

ii. (b) codifies the *Owen* Case. Prevents supplemental jurisdiction where the claim is based on diversity (§1332) & then the plaintiff sues another party that would defeat diversity. Not applicable to defendants, if 3<sup>rd</sup> party non-diverse party is sued by defendant & not sued by plaintiff, then jurisdiction is allowed.

(d) Tolling provision. Tolls claims for period of filing plus 30 days.

**Exxon Mobil:** Issue was whether parties had to meet amount in controversy requirement under §1332 when using §1367 supplemental claims.

Held that §1367(a) confers supplemental jurisdiction over all claims including those that don't independently meet the amount in controversy requirements, as long as they arise out of the same case or controversy.

- No amount in controversy requirement for claims brought under §1367
- Court dismissed indivisible theory & contamination theory.

## Removal

Plaintiff can file in federal court from the start or defendant can remove to federal court, so either party can cause the suit to be in federal court.

### §1441; §1446; §1447

#### §1441 Removal of Civil Actions

(a) can remove to federal court if the original well pleaded complaint could have been brought in federal court

(b) The D cannot remove the suit if it could've been originally brought in federal court because of diversity §1332, but is filed in the state where the defendant has citizenship.

Reasoning: Suit is brought in defendant's home state, so there should be no fairness issue.

(c) might remove a case from state court to federal court b/c of supplemental jurisdiction (state non-diverse claim combined with federal claim). If the state claim arises out of the same nucleus of operative fact as the federal claim, then both may be removed to federal court.

(d) If a defendant of a state law claim is a foreign state they can remove the claim to federal court.

(f) Doesn't matter if jurisdiction was originally valid in state court. If jurisdiction wasn't valid in state court, it can still be removed to federal court. Deals exclusively with federal claims brought in state court.

#### §1446 Procedure for Removal of Civil Actions

(a) If you want to remove a claim, file a notice of removal in the federal court you want to remove to along with a short & plain statement on your grounds for removal.

(b) – have 30 days after receipt of summons and complaint to file for removal or 30 days from receipt of an amended complaint (if the amendment introduces new grounds that would allow removal). Removal based on diversity is never allowed one year after a suit is filed.

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(d) – defendant is required to send the papers to state court and other parties. The state court must stop proceedings while the federal court determines if removal is proper.

### §1447 Procedure After Removal generally

(c) – can file a motion to remand after removal has been filed. Court may remand if it has jurisdiction. For example, if diversity exists and federal court jurisdiction would have been proper, but the claim is filed in state court where the defendant lives, so removal would not be proper under § 1441(b).

(d) – a motion to remand is not appealable.

**Lewis:** P sued manufacturer of bulldozer and company who serviced the bulldozer in state court. Insurance company intervened as P, asserting claims for workers compensation paid to P.

- P settled with service company, manufacturer wanted removal to federal court b/c complete diversity existed now.
- P argued that complete diversity did not exist b/c insurance company had not settled with service company & they were still parties to the suit.
- District court denied P argument.
- Insurance corp & service company settled, and complete diversity existed at that point.
- Fed. District court sided with D after trial, however COA vacated the judgement b/c there was no diversity at time of removal.

Subject matter is not appropriate b/c of early court mistake, later there is subject matter jurisdiction & this was okay. Overriding consideration is that once a diversity case has been tried in federal court, overriding concern of finality, efficiency & economy.

**Williams:** Ps sued under breach of employment agreement in state court, but D argued that as a matter of law Ps employment agreements were superseded by collective bargaining agreement, federal jurisdiction.

- Court held only state actions that could have been originally filed in fed court may be removed to fed court by D.
- P is master of complaint, federal defenses do not provide basis for removal to federal court

## Joinder

### §18 Joinder of Claims

1) Any claims against another party may be joined in the same suit. All the claims that the person has, whether they are related or not, may be joined into the same suit. Once you have one claim, you may add as many as you want.

2) Still have to consider whether there is jurisdiction with each claim

3) Rule does not require that the claims be brought together, just that it is permissive.

### §13 Counterclaim & Crossclaim

Counterclaim is where the D brings a claim against the P, happens very often.

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(a) Compulsory Counterclaim – You don't have to bring up the counterclaim, but if you don't use it – you lose it. You are precluded from bringing a separate lawsuit about it. Compulsory counterclaims are those claims that arise out of the *same transaction or occurrence* of the claim.

(b) Permissive Counterclaim – Any claim can be brought as long as jurisdiction exists. This claim doesn't have to be related to the original suit.

**Plant:** P executed a note to D for \$2500, no payment was made. P sued D for failure to make disclosures, D counterclaimed on not for unpaid balance.

Permissive counterclaim must have independent basis, generally accepted that compulsory counterclaims fall under ancillary jurisdiction of federal courts.

Four Tests to determine whether the claim arises out of the same transaction.

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 defendant's claim absent the compulsory counterclaim rule?
3. Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim?
4. Is there a logical relation between the claim and counterclaim?

Logical Relations Test: Single aggregate of operative fact gave rise to both claims. )Claims are interrelated, common factual basis)

- Loose standard, interest in avoiding multiple suits

**Mosley:** Ps sued alleged discriminatory employment practices, D moved to sever the claims & court ruled in favor.

Ps asserted they had been injured by same general policy of D

- Reversed lower court ruling, held that §20(a) of joinder was met here. Case by case approach is generally pursued.
- §20(a) does not require that all issues of law & fact raised by dispute are common
- Fact that Ds suffered different harms as a result of policy is immaterial for purposes of determining common ? of law or fact

§20(a): Same transaction or occurrence (may be narrower than c.n.o.f)

**Price:** Corp was sued for alleged breach of construction contract & then it filed 3<sup>rd</sup> party complaint against nail manufacturer. Manufacturer argued it was improperly joined under §14.

§14(a): D may assert 3<sup>rd</sup> party claim against anyone not party to the original action if that 3<sup>rd</sup> party liability is in some way dependent upon outcome of original action.

- Not permitted when 3<sup>rd</sup> party claim is based upon a separate & independent claim
- 3<sup>rd</sup> party may be impleaded only when original D is trying to pass off some or all of the liability onto the 3<sup>rd</sup> party

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**Watergate:** Building hired a real estate management firm to oversee maintenance, firm hired engineer to draw specifications for repair & firm hired waterproofers. Didn't work, so building sued firm & engineer.

- Firm cross-claimed against engineer and 3<sup>rd</sup> party complaint (§14) against waterproofers.
- Court held that whether 3<sup>rd</sup> party's work was done negligently was not part of the main claim, & firm's claim is independent of outcome of main claim.
- "It was him not me" impleader situations fail.

### **Compulsory Joinder**

**Temple:** P sued D in federal court & joint tortfeasor in state court, declined to join defendants under §14. D filed motion for failure to join necessary parties under §19. P refused to join, and court dismissed.

Court held that lower court erred, not required for P to joint all joint tortfeasors in a single lawsuit.

Potential joint tortfeasors are merely permissive parties.

§19(1): Person who is subject to service of process & whose joinder won't deprive the court of subject-matter jurisdiction must be joined as a party if:

A: in that person's, the court cant accord complete relief among existing parties; or

B: that person claims an interest relating to the subject of the action & is so situated that disposing of the action in the person's absence may:

i: as a practical matter impair or impede the person's ability to protect the interest or;

ii: leave an existing party subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations b/c of the interest.

**Helzeberg's:** D leased area to P and then leased another area to 3<sup>rd</sup> party. P sued under breach of contract, b/c had agreement with D that it wouldn't lease that area to the same type of store.

- Held that 3<sup>rd</sup> party was a party to be joined if feasible under §19, however it was not feasible under §19(b) and the 3<sup>rd</sup> party wasn't indispensable
- 3<sup>rd</sup> party absence wont prejudice D, 3<sup>rd</sup> party doesn't become indispensable to an action to determine rights under a contract simple b/c the party's rights or obligations under a separate contract may be affected by the result of the action.

**Martin:** Black sued city for various discriminatory policies, & they reached consent decrees to end lawsuit. BFA objected, but court denied motion as untimely. BFA then sued city claiming discrimination.

Court held that one is not bound by in personam judgement in a litigation in which he isn't a party.

Parties to a lawsuit have burden to bring additional parties in, not the potential additional parties.

§24. Intervention

a) Intervention of right. On timely motion, court must permit anyone to intervene who:

- 1) Is given an unconditional right to intervene by federal statute

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2) Claims an interest relating to the property/transaction that is the subject of the action, & is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

**Atlantis:** Analyzed §24. A party may intervene when it has an interest in the same property/transaction & that a decision in favor of the adverse party may require courts in a subsequent trial to follow that decision under stare decises.

§19 -pulling 3<sup>rd</sup> party into litigation

§24 – 3<sup>rd</sup> party pushing into litigation

### **Interpleader**

**Cohen:** P's motion to intervene was granted based on several conditions; party can only be bound by a judgement if they are a party to the lawsuit. Difference btwn intervening & qualifying for intervening but chooses not to.

§23 Class Action Suits

**Ortiz:** Court granted Ps certification of class & approved the settlement. Intervenors objected, court overruled citing that the disputed insurance asset & alternatively the value of D plus insurance coverage was limited.

§23(b)(1)(B): Limited fund class action suits. Requires that the fund is definitely limited, entire fund must be used, and it requires equitable treatment among Ps.

Court must certify the class in a class action suit & must approve the settlement.

S.C ruled that parties failed to demonstrate that the fund was definitely limited, except by party agreement. Classes divided between present & future claims must be divided into subclasses with separate representation.

## Pleading

We need pleading to give a party notice about the complaint (stating the relevant facts). Weed out frivolous claims, narrow down or issues, separating legal & factual disputes.

Federal Rules of Civil Procedure

- Abolishes the forms of action & forms one action, the civil action!
- More streamlined approach, more flexible & allows a broad pleading whereas the previous Field Code required more narrowing down. Discovery was needed in the Field Code before claims were narrowed down.

### **The Complaint**

**Jones Complaint:** Illustration of how the complaint should be properly drawn out. Jones sold Clinton for sexual harassment, false imprisonment & IIED.

§8:

(a) Claim For Relief. Pleading that states a claim for relief must contain:



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(1) Short & plain statement of the grounds for the courts juris., unless court already has juris & claim needs no new juris support.

(2) Short & plain statement of complaint showing that the pleader is entitled to relief &

(3) A demand for the relief sought, which may include relief in the alternative or different type of relief

(b) Defenses; Admissions & Denials

(1) In General; in responding to a pleading, a party must:

(A) State in short & plain terms its defenses to each claim asserted against it &

(B) admit or deny the allegations asserted against it by an opposing party

(2) Denials – *Responding on the substance*. A denial must fairly respond to the substance of the allegation.

(3) General & Specific Denials. A party that intends in good faith to deny all the allegations of a pleading – including jurisdictional grounds – may do so by general denial. A party that doesn't intend to deny all allegations must either specifically deny designated allegations or generally deny all except those specifically contained.

(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 & deny the rest.

(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.

**Conley**: S.C ruled that a complaint shouldn't be dismissed for failure to state a claim unless it appears beyond doubt that the P can prove no set of facts in support of the claim which would entitle the P to relief.

FRCP doesn't require claimant to detail facts for bases of claim, just provide a fair notice of what P's claim is & grounds upon which it rests

\*\* Danger for P here is pleading yourself out of court, b/c court assumes what you say is true.

\*\*Notice pleading places the emphasis on discovery & not on pleading.

**Twombly**: S.C overruled *Conley* to some degree. A formulaic recitation of the elements of a cause of action are insufficient to state a claim.

- Factual allegations must be enough to raise likelihood of right to relief above the speculative level.
- Parallel conduct between companies in an anti-trust suit does not on its own suggest conspiracy, need enough facts to suggest an actual agreement.
- *Conley's* "no set of facts" language did not describe the minimum standard for adequate pleading to govern a complaint's survival.
- Once a claim has been stated adequately, it may be showing any set of facts consistent with the allegations.
- P has not pushed claim from conceivable to probable territory.

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**Iqbal:** S.C ruled that P failed to plead factual matters that if taken as true, stated a claim that D deprived P of constitutional rights.

“§8 doesn’t unlock the doors of discovery for a P armed with nothing more than conclusions”

Conclusory allegations are not entitled to be assumed as true.

### §9. Pleading Special Matters

(a) Capacity or authority to sue; legal existence

(1) In General. Except when required to show a court has jurisdiction, a pleading need not allege:

(A) A party’s capacity to sue or be sued.

(B) A party’s authority to sue or be sued in a representative capacity, or

(C) The legal existence of an organized association of persons that is made a party.

(2) *Raising Those Issues.* To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party’s knowledge.

**Stradford:** P sued D for \$1 million insurance claim, and D counter-claimed that P devised a scheme to defraud D of insurance money.

Court ruled that D failed to meet heightened standard of pleading concerning fraud/mistake. Party must state with particularity the circumstances constituting the fraud/mistake.

D’s counterclaim failed to identify statements/actions made by P that they claim to be false. D claims P lied, but fails to identify the lie.

Court dismisses, but in situations where there is no opportunity to replead, court grants a litigant who suffered dismissal under §9(b) leave to amend the complaint/counterclaim.

### Rule 9 Pleading Special Matters

(b) Fraud or Mistake; Conditions of Mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.

### Rule 12 Motion to Dismiss

(b) How to present defenses.

Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion;

(1) lack of subject matter jurisdiction

(2) lack of personal jurisdiction

(3) improper venue

(4) insufficient process

(5) insufficient service of process

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(6) failure to state a claim upon which relief can be granted

(7) failure to join a party under Rule 19