PERSONAL JURISDICTION

Traditional Bases for Jurisdiction

- **TRICKERY OR FRAUD -** Tickle v. Barton **–** NO, PJx Courts cannot gain jurisdiction over someone served by means of trickery or fraud.
- **PHYSICAL PRESENCE -** Pennoyer v. Neff – NO, PJx **TAG JURISDICTION – TERRITORIALITY – REINFORCES SOVEREIGNTY OF STATES**
    - One of three requirements (none of which were met in the instant case)
        - If personal service of process made in the state (to defendant or defendant's agent)
            - Local statute is a fiction – assumes everyone reads newspaper
        - If defendant is a domiciliary of the state (this can also give rise to General Jurisdiction)
            - Having property in the state is not enough. This case isn't related to the property (in rem).
        - If defendant consented to jurisdiction (agreement – some courts later call this a fiction)
    - Case establishes the 3 types of jurisdiction and type of process that goes with each:
        - In personam – defendant or defendant's agent needs to be served in state
        - In rem – publication
        - Quasi in rem – publication
- **DOMICILE –**
- **CONSENT –**
    - **IMPLIED –** Hess v. Pawloski (Mass. 1927) - YES, PJx – **LONG ARM STATUTE – FIRST HINTS OF DUE PROCESS BALANCE**
        - **Facts**: Hess (Pennsylvania) crashes with Pawloski (Massachusetts) in Massachusetts. Hess did not wait around to be served (this would fit the Pennoyer requirement). Occurs with backdrop of Pennoyer's narrow territorial notion of sovereignty vs. new mobile America
        - Court tries to get around **Pennoyer** by passing a Massachusetts law **creating consent** (third Pennoyer requirement)
            - **Consent** – Any person who drove into Massachusetts would consent to local courts for any accidents occurring in the state.
            - **Service of Process** - One also consented to be represented by the Massachusetts state registrar to receive summons
        - **Due Process** (important change) **–** Massachusetts statute required notice to be mailed to non-resident (with receipt). Defendant was *guaranteed* notice.
            - This case begins investigation of **fairness** and **reasonableness** (although these actual words weren't used)
            - Court puts forward unmistakable sovereign interest in protecting its citizens and encouraging safety in roads.
        - Criticism: This implied consent is fictional because one can't assume the non-resident read the Massachusetts statute.
    - **EXPRESS –** Carnival Cruise v. Shute (1991) – YES, PJx – **CONSENT BY CONTRACT**
        - forum selection clause should be honored, but scrutinized for fairness (i.e. interest, foreseeability, other party benefit) – This is in a post-Shoe World
        - no contacts in FL needed for jurisdiction
        - honor selection clause between sophisticated and non-sophisticated party

- **WAIVER –** Rule 12(h): a party may waive any defense in 12(b) (personal jurisdiction NOT subject matter jurisdiction); automatically waived if not challenged in responsive pleading (1st motion)
    - Appearing before state court beyond special appearance often (depends on state procedural rule) leads to waiver of personal jurisdiction
    - Utilizing a court waives ability to deny personal jurisdiction (cross-action against Pl allowed because brought suit in court) ADAM p. 85
    - Noncompliance/obstructing the court leads to waiver of pj INS. CO. of IRELAND p. 191

Specific Jurisdiction

Quadrants (You need to go through all of these)

1. Baseline: COA MUST ARISE FROM MINIMUM CONTACTS

- Bristol-Meyers Squibb - NO, PJx **CAUSE OF ACTION MUST ARISE FROM CONTACTS**

- **Facts:** BM is global pharmaceutical comp, sells Plavix nationwide and in Cal. 5 officer, 4 research facilities, 250 sales reps.
- **Holding (Alito):** For a state court to assert specific jurisdiction, there must be an affiliation between the forum state and the specific claim at issue. It is not sufficient for the defendant to have other contacts with the forum state; **the contacts must be related to the claim at issue.**
- **Dissent (Sotomayor):** majority opinion would make it unnecessarily difficult to hold a nationwide corporation liable for acts that harm Ps in different states. There's traditional notions of fair play and justice and CA should have had SJ

2. Does the long arm apply?

- **Rule 4(k)(1)(A):** serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant who (A)-(C)

- if long-arm makes defendant subject to jurisdiction of state
    - **Two Questions to Ask**
        1. Does the long arm statute apply or capture the defendant?
            a. Types of NY long arm statutes
                i. Transacts business within the forum state (Shoe)
                ii. Commits a tortious act within the forum state (Hess) – not defamation
                iii. Commits tortious act outside the state causing injury in person/property within the state if (Asahi)
                    1. Regularly does business and derives revenues for goods used in the state
                    2. Should expect act to have consequences in state and derives revenue from interstate or international commerce
                iv. Owns or uses real property within the forum state
        2. Is the long arm statute constitutional?
            a. State's long arm statute may extend to the constitutional limits (California, Rhode Island, etc.)
            b. Application of statute to facts is always constitutional

3. Are there minimum contacts? Go through the 3 quadrants for specific

3 ways to establish minimum contacts: (1) **purposeful availment,** (2) **stream of commerce,** (3) **Calder effects**

- Remember you also need the cause of action to arise from the minimum contacts (Bristol Meyers)

Quadrant 1: Continuous, COA arises

International Shoe v. Washington (1945) YES, PJx

- **Facts:** Plaintiff Washington State served subpoenas on International Shoe's Washington sales representatives. They also mailed the subpoenas to offices in St. Louis, Missouri (it was also a Delaware corporation) (**due process**)
- **Holding:** Supreme Court rejects narrow territorial view of **Pennoyer** in favor of transactional assessment of **whether defendant's conduct was sufficient.** For a defendant not present within the territory of a state to be subjected to a judgment in personam, due process requires that he have certain minimum contacts with the state so we can ensure fair play and justice.
- **Reasoning:**
    - **2 Part Test of Adequate Presence (no consent necessary):**
        - **Minimum contacts**
            - Continuous and systematic activity/flow of goods into the state = sufficient to be said to be "doing business" in the forum state
                - Just doing business might not be enough
            - Activity gives rise to liability - Operation which is here sued upon arose from those activities
        - **THEN - Due process notion of fair play and substantial justice**
            - This was culmination of inquiries into "fairness" that began with **Hess**
            - Defendant should have reasonably expected to be hailed to court in the forum state
- **Criticism** – Justice Black feared that fair play and substantial justice would end up denying states the ability to police conduct within their own borders

Quadrant 3: Isolated, COA Arises

McGee v. International Life (1957) YES, PJx **(MINIMUM CONTACTS ESTABLISHED WITH SINGLE ACTION) – BIG JURISDICTIONAL REACH**

- **Facts**: Policy holder (California) bought policy from insurance company (Arizona) that later got acquired by another company (Texas). Company refused to pay. **California long arm statute** specifically for insurance companies.
- **Holding**: A state court has jurisdiction over an out-of-state company if the company has substantial connections with the state.
- **Rationale**: Contract delivered to California resident (**minimum contacts requirement**) & company derived revenue/solicited business (policy holder sent payments by mail). California has interest in protecting its insured residents. Not undue burden for company to respond to suit there.
- After this shift, more focus on **fair play** and **substantial justice** part

Hess v. Pawloski (Mass. 1927) YES, PJx **IMPLIED CONSENT**

- **Facts**: Hess (Pennsylvania) crashes with Pawloski (Massachusetts) in Massachusetts. Hess did not wait around to be served (this would fit the Pennoyer requirement). Occurs with backdrop of Pennoyer's narrow territorial notion of sovereignty vs. new mobile America
- **Holding:** A state law may declare that a nonresident motorist impliedly consents to state court jurisdiction and substituted service of process for claims arising from the nonresident's use of the state's highways.
    - Court tries to get around **Pennoyer** by passing a Massachusetts law **creating consent** (third Pennoyer requirement (discussed above)

    - **Due Process** (important change) **–** Massachusetts statute required notice to be mailed to non-resident (with receipt). Defendant was *guaranteed* notice.
    - This case begins investigation of **fairness** and **reasonableness** (although these actual words weren't used)
- Court puts forward unmistakable sovereign interest in protecting its citizens and encouraging safety in roads.

Gray v. American Radiator (1961) YES, PJx **STREAM OF COMMERCE AND FORESEEABILITY**

- **Facts:** Plaintiff (Illinois) was injured by faulty valve in water heater she had bought in Illinois. Valve had been produced by **Titan (Ohio company)** and sold to American Radiator in Ohio. Water heater had been produced by American Radiator (Illinois)
    - **Illinois Long Arm** – Nonresident who commits tortious act in Illinois submits to jurisdiction
- **Holding:** A forum state may exercise personal jurisdiction over a corporation that delivers products into the **stream of commerce** with the **expectation (foreseeability)** that they will be purchased in the state
    - If a corporation elects to sell its products for ultimate use in another state, it is not unjust to hold the corporation answerable in those other states for any damage caused by defects in those products.
    - Court believes it's reasonable to assume that Titan's products reach others in Illinois. Because it has business there, it enjoys protection of the law there purposeful availment
- **Moveable Tort** – Titan (Defendant) said they committed no "acts" in the state (referring to statute's "tortious act" part). They only acted where the valve was produced, which was in Ohio.
    - Court's Response: You can't have a tortious act without injury, and since the injury occurred in Illinois, it's a tort.

Keeton v. Hustler Magazine (1984) YES, PJx **STREAM OF COMMERCE**

- **Facts:** Keeton (New York) sues Hustler (Ohio corporation) for libel. She sues under diversity in federal court in New Hampshire (statute of limitations)
- **Holding:** Personal jurisdiction is proper over a nonresident magazine in any state where that corporation has sold and distributed a **substantial number of copies** (CA: Asahi's numerator/denominator approach)
    - **Stream of commerce**
    - Magazine's contacts were sufficient because circulation, although low, was systematic. Regular monthly sales of thousands of magazines cannot be characterized as random or isolated.

Calder v. Jones (1984). YES, PJx **CALDER EFFECTS TEST**

- **Facts:** While the "contacts," traditionally speaking, of Calder with California are fairly limited, the focal point of their article in question is California. Harm of libel was suffered in California.
- **Holding:** - Injury is jurisdictionally relevant insofar as it shows the defendant has established contact with forum state
- **Reasoning:** Even though defendant didn't have minimum contacts as traditionally contemplated, jurisdiction is appropriate because the effects of the act were felt in California.
    - California jurisdiction isn't unfair

Burger King v. Rudzewicz (1985) YES, PJx **CONTRACT + PLUS ADD. CONDUCT – MIN. CONTACTS + PURP. AVAILMENT**

- **Facts:** Burger King was headquartered in Florida and they sued two franchisees who had established a franchise in Michigan (negotiating with both Michigan and Florida offices and participating in some trainings in Florida). The contract is the minimum contact we are evaluating.

    - **Florida Long Arm:** Jurisdiction based on breach of contract is allowed
- **Rule**: To determine if minimum contacts exist, court needs to look at **purposefully directed activities** of the defendant toward forum state and whether COA arises under these activities.
- **Holding:** Mere signing of a contract isn't sufficient for minimum contracts, but a contract plus some additional conduct has been deemed sufficient. **Court used minimum contacts + purposeful availment test as the standalone test for jurisdiction.**
    - They discuss the second prong for fair play and substantial justice, but none are found.
- **Reasoning: (Brennan)**
    - Minimum contacts: Ongoing commercial relationship; finalized deal with corp. he knew was in Florida; fees were sent to Florida.
        - **Foreseeability:** Rudzewicz should have known that because he was affiliating himself with Florida entity, then he could be hailed to court there relating to his conduct; contract with choice of law provision
    - Fair Play and Substantial Justice: Found nothing objecting to it.
        - Court found no support in the record that Florida's interests in adjudicating were minimal or that the burden of defending in Florida for the plaintiffs would be great. Court said that plaintiff couldn't show how litigating in Florida would be unfair to the plaintiff.
        - **Established 5 factors**: Burden on defendant, interests of forum state, plaintiff's interest in obtaining relief, interstate judicial system's interest in obtaining most efficient resolution, shared interest of several states in furthering fundamental substantive social policies
- **Dissent: (Stevens)** He never entered Florida and he could not have reasonably assumed he would be brought to court there. Defendant's principle point of contact throughout relationship was Michigan office.
    - Reliance on contracts (one contact) to establish jurisdiction is fundamentally unfair
    - He couldn't have reasonably thought he would be hailed to court there

WW Volkswagen v. Woodson (1980) NO, PJx **FORSEEABILITY ALONE ISN'T SUFFICIENT – PURP. AVAILMENT**

- **Facts:** A family that purchased a car in NY sued the auto manufacturer and retailer after they became involved in an accident in Oklahoma while driving to Arizona.
    - Oklahoma claimed to have jurisdiction because car company derived **substantial revenues** from cars they sell that "from time to time" can be driven in Oklahoma.
- **Rule:** Foreseeability alone, without purposeful act, is not sufficient to authorize a state court's assertion of personal jurisdiction over a non-resident defendant that has no contacts, ties, or relations with the forum state.
- **Holding:** That the plaintiffs could foresee the automobile's use in Oklahoma is not sufficient to grant in personam jurisdiction in Oklahoma.
- **Reasoning:** Court deemphasized interests of forum state **more focus of non-resident defendant's expectations**. Puts **Hanson's** issue of **purposeful availment** in the forefront.
    - Minimum Contacts: **Very important** to protect defendant and sovereignty (purpose)
        - To meet purpose, court should look at contacts first. If no contacts, second prong is irrelevant.
        - No connection between Oklahoma and NY defendants. **Foreseeability** of cars entering into Oklahoma was insufficient. Foreseeability alone, without **purposeful availment**, isn't enough.

        - **Chattels -** If so "every seller of chattels would in effect appoint the chattel his agent for service of process so that amenability to suit would travel with the chattel"
            - Car's presence in Oklahoma was a **unilateral act by the plaintiff,** not by the defendant.
    - Fair Play and Substantial Justice: **Less important**
        - Forum convenience and economic burden faced by parties is a secondary consideration. This may affect the balance of factors as to whether jurisdiction is fair, **but these issues alone, without finding minimum contacts, cannot justify a court's jurisdiction.**
- **Dissent: (Brennan) – Focuses on second prong (fair play and substantial justice)** – Theoretically there might not be sovereignty because there is a massive inconvenience.
    - Oklahoma had legitimate interest in the case because it involves enforcement of its traffic laws.
    - Defending this action would not unduly inconvenience the plaintiffs
    - Not wholly unconnected with Oklahoma – **purposeful injection into stream of interstate commerce**
    - In cases where defendant's contacts with state are less significant, but **strong state interest** and **low burden**, assertion of personal jurisdiction can be justified.

Asahi Metal Industry v. Superior Court of California (1987) NO, PJx **AWARENESS OF S. OF COMMERCE; CONVENIENCE OUTWEIGHT SOVEREIGNTY**

- **Facts:** Zurcher lost control of his Honda motorcycle and got in an accident. He was injured. Filed a product liability action naming manufacturer of the motorcycle Cheng Shin, who then files indemnification suit against Asahi (manufacturer of faulty valve). Everything else settled except Cheng Shin's indemnification against Asahi.
- **Rule:** Awareness/foreseeability of stream of commerce is enough to establish minimum contacts, but convenience factors can outweigh sovereignty and defeat jurisdiction.
- **Holding:** Unanimous that California can't exercise jurisdiction over Asahi because it would offend fair play and substantial justice. The fact that product getting there through stream of commerce is foreseeable doesn't create jurisdiction.
- **Reasoning:** Court used two step analysis from International Shoe. **Convenience outweighs sovereignty**
    - **Minimum Contacts:**
        - **O'Connor's Plurality** - **(Stream of commerce PLUS)** – Understood teaching of WWV to be that contacts needed to be more purposefully directed than the mere act of placing a product in the stream of commerce.
        - **Brennan's Concurrence (Binding) – Stream of commerce is predictable.** Found no requirement for any additional conduct beyond the placement of a product into the stream of commerce (regular and anticipated flow of products from manufacture to distribution to retail sale).
            - As long as defendant is aware final product is being marketed in forum state, possibility of lawsuit can't come as a surprise.
                - **Foreseeability is touchstone of jurisdiction**
            - You don't need purposeful act to reap the benefits
    - **Fair Play and Substantial Justice: (Agreed it's super unfair)**
        - Burden on defendant would be severe (foreign legal system; coming from Taiwan)
        - Interest of forum state is negligible – plaintiff isn't even from California

J. McIntyre v. Nicastro (2011) NO, PJx **PURPOSEFUL AVAILMENT – NOT STREAM OF COMMERCE**

- **Facts:** Plaintiff (NJ) injured using machine manufactured by defendant (English corporation). Products are distributed through nationwide distribution system (American distribution company).
- **Rule:** Defendant must **purposefully avail itself of the privilege of conducting activities within forum state**, thus invoking benefits and protections of its laws.
    - **Defendant's actions, not expectations (foreseeability) establish minimum contacts**
    - Consent comes from intention to go into the stream of commerce
- **Holding:** Defendant did not engage in any conduct purposefully directed at New Jersey. Because of this, there is no personal jurisdiction.
- **Reasoning:**
    - **Plurality (Kennedy): Forum by forum analysis (sovereignty).** Defendants are targeting the US market in general, so they are not purposefully availing themselves of the benefits and protections of New Jersey.
    - **Concurrence (Breyer, Alito controlling):** There is no purposeful availment because it was just one product. "Drip" of commerce, instead of "stream." Similar to WWV in that there is just one product.
- **Dissent (Ginsburg):** This case completely ignores International Shoe's emphasis on reasonableness and fairness. One should evaluate contacts forum by forum, but instead from a US perspective. When you target the US as a whole, courts could have jurisdiction in individual states.
    - This is a get out of jail free card for foreign manufacturers with US distributors
- **Notes:** This opinion is lazy and ignores "portable tort"
- **Policy:** Inconvenient to get legal help in UK

Quadrant 4: Isolated, COA Doesn't Arise

Hanson v. Denckla (1958) NO, PJx **DEFENDANT MUST PURPOSEFULLY AVAIL ITSELF / COA DOESN'T ARISE**

- **Facts:** Pennsylvania person (Donner) executed a trust in Delaware (trustee). Person moved to Florida. Daughters brought action in Florida. Florida court said it had jurisdiction over Delaware trustee and parallel action in Delaware refused to recognize Florida judgment.
- **Holding:** Defendant's acts **must purposefully avail itself** privileges of conducting activities in state to invoke benefits and protections of forum state's laws.
    - No minimum contacts **(They have to be analyzed first)**
        - **No purposeful availment:** No solicitation, no assets, no offices = no obligation
        - **Unilateral act** of settlor wasn't enough to create jurisdiction (her move to Florida). **You need a purposeful act by the defendant.**
    - **COA doesn't arise from contacts of trustee in Florida** (trust was signed din Delaware)
- Compare to **McGee** where insurance company **solicited** contract in California.

Walden v. Fiore NO, PJx **NARROWING CALDER EFFECTS – PLAINTIFF CAN'T BE ONLY LINK TO FORUM STATE**

- **Facts:** Plaintiff brought suit in Nevada for a seizure of money in a Georgia airport by an officer of the airport.
- **Rule:** Personal jurisdiction is substantial if defendant has **substantial personal contacts** with forum state
- **Holding:** Court determined defendant had no link to the forum state other than the plaintiffs he supposedly injured
- **Reasoning:** The plaintiff cannot be the only link between the defendant and the forum. It's the defendant's conduct that must form the necessary connection
    - **(Narrowing of Calder Effects) -** The consequences of the act against the Nevada plaintiffs were only felt by them and no other 3rd parties in Nevada. In order for an injury to be jurisdictionally

relevant, it has to show that the defendant has formed a contact with the state. No other party except plaintiffs had an injury by the Georgia man.

Purposeful Availment	Stream of Commerce	Calder Effects
McGee – YES, PJx Single contact. Minimum contacts were established because suit arose from the contract and there was a substantial connection to California. - Company derived revenue from and solicited business in California	**Gray (1961) –** YES, PJx Min. contacts exit when defendant delivers products into the **stream of commerce** with the **expectation (foreseeability)** that they will be purchased in the state - S. of commerce + foreseeability	**Calder (1984) -** YES, PJx Reputation based "effects" of alleged libel connected defendants to Calif., not just the plaintiff. - Tort only if comm. to 3rd parties - Tort's effects felt in Calif. - Injury is jurisdictionally relevant insofar as it shows the defendant has established contact with forum state
Hanson (1958) – NO, PJx **First mention of p. availment** Defendant's acts must purposefully avail itself of privileges of conducting activities in the state. - **No purposeful availment:** No solicitation of business, no assets, no offices = no obligation - **Unilateral acts of defendant don't count.**	**WWV (1980) –** NO, PJx **Foreseeability of stream of commerce isn't enough.** - Unilateral act of plaintiff to bring product into stream of commerce not enough. - Affirms **stream of commerce** for the first time.	**Walden** (2014) - NO, PJx – Just because conduct of defendant affected plaintiffs with connection to forum state doesn't mean there is a connection. - Narrows Calder - Defendant's conduct, not if plaintiff suffered injury in state. - Only plaintiffs lacked funds in Nevada (no 3rds)
WWV (1980) – NO, PJx Foreseeability alone isn't sufficient. Must **purposefully avail.** - Focus on **defendant's expectations,** but not just this. - Contacts directed at forum state to obtain benefits. - **Unilateral act by plaintiff isn't purposeful availment** - **Chattels -** If not "every seller of chattels would in effect appoint the chattel his agent for service of process so that amenability to suit would travel with the chattel"	**Keeton (1984) –** YES, PJx (kind of stream of commerce…) - Distribution of magazines into state was sufficient to establish minimum contacts. - Here there was purposeful distribution	
Burger King (1985) – YES, PJx Defendant needs to have **min. contacts + p. availment** - Contract alone (single act) wasn't sufficient. - Defendant's conduct + the contract allowed for personal jurisdiction. - **Conduct:** Ongoing commercial relationship, deal with Florida corp., payments sent to Florida - Defendant should have known he could have been hailed to court there (**foreseeability)**	**Asahi (1987)** NO, PJx – Awareness that product will reach forum state through stream of commerce is enough to establish minimum contacts. *(Decision for NO PJx was made by convenience not sovereignty/min. contacts here)* - **O'Connor (Plurality)** – Need stream of commerce PLUS - **Brennan (Concurrence/Binding)** – Stream of commerce is predictable. **No additional conduct beyond placement of product needed.** o He concedes there were min. contacts	

Nicastro (2011) – NO, PJx **Purposeful availment, not expectations foreseeability** (via stream of c) - Defendants actions, not expectations, establish min. contacts - Consent comes from intention to go into the stream of commerce. - **Product arriving there just by stream of commerce isn't sufficient.**	**Nicastro (2011)** NO, PJx – Defendant must purposefully avail. Expectation that product will reach forum state in the stream of commerce isn't enough	

4. Do minimum contacts comport with fair play and substantial justice?

Standard is set up in International Shoe:

International Shoe v. Washington (1945) YES, PJx **MIN. CONTACTS / FAIR PLAY AND SUBS. JUSTICE**

- **Facts:** Plaintiff Washington State served subpoenas on International Shoe's Washington sales representatives. They also mailed the subpoenas to offices in St. Louis, Missouri (it was also a Delaware corporation) (**due process**)
- **Holding:** Supreme Court rejects narrow territorial view of **Pennoyer** in favor of transactional assessment of **whether defendant's conduct was sufficient.** For a defendant not present within the territory of a state to be subjected to a judgment in personam, due process requires that he have certain minimum contacts with the state so we can ensure fair play and justice.
    - **"**The defendant needs to have a certain minimum contact such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice"
- **Reasoning:**
    - **2 Part Test of Adequate Presence (no consent necessary):**
        - **Minimum contacts**
        - **THEN - Due process notion of fair play and substantial justice**
            - This was culmination of inquiries into "fairness" that began with **Hess**
            - Defendant should have reasonably expected to be hailed to court in the forum state
            - Having the **privilege** of conducting business in a state (being protected by that state's laws) gives rise to **obligations**
            - If **obligations** arise out of business activities in the state, it would be reasonable to be **expected to respond to a lawsuit there**.
    - International Shoe created a large volume of interstate business and in this process received protection from laws of Washington.

Burger King v. Rudzewicz (1985) YES, PJx **GO THROUGH FIVE FACTOR TEST**

- **Facts:** Burger King was headquartered in Florida and they sued two franchisees who had established a franchise in Michigan (negotiating with both Michigan and Florida offices and participating in some trainings in Florida). The contract is the minimum contact we are evaluating.
    - **Florida Long Arm:** Jurisdiction based on breach of contract is allowed
- **Rule**: To determine if minimum contacts exist, court needs to look at **purposefully directed activities** of the defendant toward forum state and whether COA arises under these activities.

- **Holding:** Mere signing of a contract isn't sufficient for minimum contracts, but a contract plus some additional conduct has been deemed sufficient. **Court used minimum contacts + purposeful availment test as the standalone test for jurisdiction.**
    - They discuss the second prong for fair play and substantial justice, **but none are found.**
- **Reasoning: (Brennan)**
    - Fair Play and Substantial Justice: Found nothing objecting to it.
        - Court found no support in the record that Florida's interests in adjudicating were minimal or that the burden of defending in Florida for the plaintiffs would be great. Court said that plaintiff couldn't show how litigating in Florida would be unfair to the plaintiff.
        - **Established 5 factors**:
            - Burden on defendant
            - interests of forum state
            - plaintiff's interest in obtaining relief
            - interstate judicial system's interest in obtaining most efficient resolution
            - shared interest of several states in furthering fundamental substantive social policies

General Jurisdiction – Remember You Don't Need to Apply Long Arm!

Quadrant 2: Continuous, COA Doesn't Arise

Perkins (1952) YES, PJx **GENERAL JURISDICTION**

- **Facts:** Action for which company was being sued arose in the Philippines. Cause of action did not arise in Ohio. Company was being sued in Ohio.
- **Holding:** General jurisdiction appropriately exercised over Philippine corporation sued in Ohio.
- **Reasoning:** Philippine corporation had relocated its companies headquarters to Ohio during WWII. The company's affairs were overseen from Ohio.

Helicopteros (1984) NO, PJx **PURCHASES DON'T CREATE GENERAL JURISDICITON FOR UNRELATED COA**

- **Facts:** Helicopter owned by Colombian corporation crashed in Peru. Deceased were U.S. citizens and their relatives sued the Colombian company in Texas. Colombian company had in the past made some purchases in Texas.
- **Holding:** Purchases were insufficient to subject Colombian company to general jurisdiction in state court of Texas.
- **Reasoning:** Mere purchases, even if regular, did not create general jurisdiction in causes unrelated to the cause of action.

Goodyear Dunlop Tires v. Brown (2011) NO, PJx **CONTINUOUS AND SYSTEMATIC / ESSENTIALLY AT HOME**

- **Facts:** Plaintiff sues foreign subsidiaries of Goodyear (Turkey, Lux, France) and Goodyear USA (Ohio) in North Carolina for wrongful death of children in accident in France. Bus was using tires made by Goodyear Turkey.
    - Goodyear USA doesn't question JX but other subsidiaries do. No activities in N.C.
    - Small number of 3 other petitioner's tires had reached N.C. through custom orders (type involved in accident never shipped to N.C.)
- **Rule:** A state court can't exercise personal jurisdiction over a foreign subsidiary of a US company unless it engages in **continuous and systematic activities** in the forum state.
- **Holding:**
- **Reasoning:** Seems like it's firms **intentional/purposeful acts** that are guiding this

- Two Parts:
  - **Continuous and Systematic = Essentially at Home -** "When their affiliations with the state are so continuous and systematic as to render them essentially at home in the forum state"
  - **Discredit "Stream of Commerce" as a Consideration for General Jx-** "Stream of commerce analysis and other types of ties with the forum state that served to bolster specific jurisdiction do not warrant a determination that, based on those ties, the forum has general jurisdiction over the defendant"
    - **Intentional acts become focus of this analysis**
- **"Essentially at Home" Substantial Threshold**
  - **Headquarters** or **Incorporation** (as opposed to place where sold goods or engaged in transactions unrelated to cause of action of suit)

Daimler AG v. Bauman (2014) NO, PJx **GENERAL JURISDICTION – PROPORTIONALITY**

- **Facts:** Argentinean family members of victims of dirty war sue Daimler (Germany) in California federal court alleging that the corporation's wholly-owned Argentinean subsidiary had collaborated. The company had a subsidiary Mercedes Benz USA (Delaware) that distributed cars in California.
- **Holding:** Selling products in a state is not enough for general jurisdiction. Consider **proportionality.**
- **Reasoning:** Ginsburg. This case clarified what it means to have contacts so continuous and systematic to be at home:
  - **Size Matters:** Daimler has very slim contacts. Not enough to render it at home.
    - **Implicit Proportionality:** Compare defendant's contacts in forum state with contacts in other states. MBUSA's California sales account for 2.4% of Daimler's worldwide sales.
  - **Predictability of Where Suit Can Be Brought:** Proportionality analysis will increase certainty in structuring conduct.
  - **International Comity:** Other nations don't have such an uninhibited approach to personal jx. Europe uses "domicile only" approach for corporations. Expansive general jx would hurt international reciprocal recognition and enforcement of judgments.
- **Concurrence: Sotomayor** joins opinion in concurrence, **citing objection with proportionality**
  - "Too Big to Fail" = "Too Big for General Jurisdiction"
  - Disagrees that contacts are insufficient to render it "at home"
  - If we accept proportionality, the proposition of purposeful availment of benefits and protections of a forum fails.

5. Jurisdiction Based on Property: In Rem and Quasi in Rem

Quasi in Rem Jurisdiction: Only used when the state long-arm statute does not extend to constitutional limit (i.e. NY -defamation). Can be used to fill gap left by long arm statute!

- A court's jurisdiction over property which may **not be the source of the dispute** but is sought in compensation by the suing party.
  - Property is attached as the person. Property satisfies the obligation (this is a fiction)
  - Notice is usually posted on property
  - Not all states have good long arm statutes. There might be no other way to get jurisdiction other than quasi in rem. **You use it when you have a gap between long arm statute and constitutional limits.**
- **Pennington Rule:** Jurisdiction extends to both tangible and intangible property

- **Harris Rule:** A judgment of garnishment or attachment against a debt that is handed down in one state is entitled to full faith and credit when the parties to the debt are residents of another state.
- **Shaffer Rule:** International Shoe standard should be applied to the assertion of all forms of jurisdiction. Shaffer doesn't eliminate 3 jurisdictional categories, rather abolishes discrepancy that existed in constitutional test for each.

Pennington v. Fourth National Bank (1917) YES, PJx **QUASI IN REM / TANGIBLE AND INTANGIBLE PROPERTY**

- **Facts:** Defendant challenged attachment of his bank account to pay alimony. Defendant did not live in the forum state.
- **Rule:** Jurisdiction extends to both tangible and intangible property
- **Holding:** Court held that attachment of his in-state property did not violate due process.
- **Reasoning:** 14th Amendment did not, in guaranteeing due process of law, abridge jurisdiction a state possessed over property within its borders.
    - Indebtness due from resident to a non-resident (bank accounts being an example) is considered property within the state
    - Substituted service on non-resident has no legal basis for in personam
    - Garnishment of property is a proceeding quasi-in-rem.
    - Thing belonging to absent defendant is seized and applied to satisfaction of his obligation

Harris v. Balk (1905) YES, PJx **QUASI IN REM / INTANGIBLE PROPERTY / DEBT CLINGS TO DEBTOR / CAN BE SERVED**

- **Facts:** Epstein (Maryland) alleges Balk (North Carolina) owes him $. Harris owes Balk $. While Harris is in Maryland, Epstein attaches (garnishes) property of Harris (debt owed to Balk).
    - Garnishment is against Balk using Harris (as a representative of the debt) as property
    - Notice to Balk was posted on Maryland Courthouse door
    - Judgment entered against Balk (Harris's debt is settled) in Maryland and Balk sues
- **Rule:** A judgment of garnishment or attachment against a debt that is handed down in one state is entitled to full faith and credit when the parties to the debt are residents of another state.
- **Holding:** The Maryland court obtained valid quasi-in-rem jurisdiction over Balk's property (debt owed by Harris) by personally serving Harris in Maryland.
- **Reasoning:** The situs of the debt is wherever the debtor is located. Thus, debt owed by Harris to Balk travelled with Harris to Maryland where it could be attached.
    - Jurisdiction over the person of the garnishee confers jurisdiction on the courts of the state where the writ is issued.
    - No defense that Harris was in state temporarily

Criticism: Permits personal jurisdiction over defendant in a forum with which neither defendant nor defendant's activities had any logical connection.

Shaffer v. Heitner (1977) NO, PJx **INTL SHOE STANDARD FOR ALL 3 CATEGORIES / PROPERTY = PEOPLE**

- **Facts:** Heitner brings shareholder derivative suit in Delaware against 28 defendants (officers of Greyhound Corp.) alleging violation of fiduciary duties related to anti-trust judgment against Greyhound.
    - Greyhound: Incorporated in Delaware; Principal Place of Business in Arizona
    - No one was domiciled in Delaware nor COA for anti-trust judgment
    - **Delaware Law:** Courts can assert quasi-in-rem by attaching property. Securities issued by Delaware corporations have situs in Delaware.
    - **Defendants:** Can't do this because situs is a fiction based on Delaware statute. Due process!!
        - Under International Shoe, no minimum contacts (Court said this was irrelevant)
- **Rule:** Exercise of jurisdiction over a thing should be evaluated under International Shoe standard.

- **Holding:** Assertion of jurisdiction violated due process because it was based solely on seizure of stock under Delaware statute and didn't include consideration of minimum contacts of defendants and forum.
- **Reasoning:** Distinction between in personam, in rem, and quasi-in rem is artificial. Must balance minimum contacts and due process
    - All proceedings are really against persons **(Jurisdiction over a thing = jurisdiction over the interests of persons in a thing)**
- **Seems to put nail in coffin for Pennoyer – but not so! (See Burnham)**

Burnham v. Superior Court of California (1990) **TAG JURISDICTION IS STILL ALIVE**

- **Facts:** Burnham (NJ) was served while temporarily in California to conduct business and visit children. Subject of suit (divorce) did not arise or relate to activities in California. Burnham challenged saying he didn't have enough minimum contacts.
- **Rule:** Tag jurisdiction is still alive.
- **Holding:** Personal jurisdiction can be asserted over Burnham
- **Reasoning:** Different analytical approaches to get to unanimous holding:
    - **Scalia** (Judgment of Court): Traditional theory of transient/tag jurisdiction is still valid for in personam. Jurisdiction based on physical presence alone doesn't violate due process and doesn't need to be subjected to International Shoe standard.
        - **Territoriality**: Pennoyer lives! Being able to serve defendant within boundaries of state is a **tradition** of our legal system (hundred years). Tag jurisdiction comports with fair play and substantial justice.
        - "Minimum contacts" was developed to address issues of absent defendants. **Burnham can't use Shaffer** because it was only for **absentee defendants.**
    - **Brennan** (Concurrence): Recognizes that personal service within forum is ***usually sufficient,*** but he refused to make a categorical rule. In some cases, tag jurisdiction may be unreasonable and violate due process.
        - **Must undergo minimum contacts analysis**
        - **Tradition can be relevant:** Because of tradition of tag jurisdiction, he should have foreseen he would be hailed to court there. Transient rule is consistent with reasonable expectations and is entitled to a strong presumption that it comports with due process.
        - **Also identifies purposeful availment in those three days**
        - Burden on defendant was slight.

NOTICE AND OPPORTUNITY TO BE HEARD (Rule 4)

Notice

Rule 4

- Need it because party can be deprived of property rights, so notice and hearing must meet **due process standard.**
- Constitutional obligation to provide defendant with proper notice and opportunity to be heard is an additional aspect of the due-process limitation on a court's ability to exercise jurisdiction.
- **Process:** Set of papers consisting of a **summons** and a copy of the **complaint**
- **Improper Notice:** Court's power to adjudicate is imperfect and **any judgment it renders is vulnerable to a collateral attack.**
- **Notice by publication** is ordinarily deemed **insufficient** for actions in personam

    - Usually only upheld when a **state domiciliary** couldn't be served in any other way
- **Mere knowledge of pending lawsuit does not satisfy the requirement**
    - This is true even when defendant allegedly evaded service and the lawsuit was brought to his attention through personal correspondence and publicity in media
- **Mullane Standard:** Applies regardless if in personam, in rem and quasi in rem. Notice must be ***reasonably calculated under the circumstances*** to give actual notice.

FORM OF NOTICE – RULE 4 (e)

Mullane v. Central Hanover Bank Trust Company (1950) **NOTICE REASONABLY CALCULATED UNDER CIRCUMSTANCES TO GIVE ACTUAL NOTICE**

- **Facts:** $3 MM trust fund administered by Hanover Bank as trustee. An audit of first accounts was required by law. Notice to beneficiaries was made by publication in local newspaper + trust mailed known beneficiaries seeking approval for trustee's actions (before suit). Mullane was court appointed to represent persons with interest in income in fund. Decision would foreclose subsequent challenges
    - Mullane alleged:
        - **No adjudicatory authority** - This was in personam b/c adjudicated pers. rights of beneficiaries (in that they can't sue after) & they weren't served personally (Pennoyer)
        - **Notice by publication wasn't adequate** & no due process
    - Bank says this is an **in rem** action & they obviously have adjudicatory authority
- **Rule:** Notice must be ***reasonably calculated under the circumstances*** to apprise interested parties of the pendency of the action and present them with an opportunity to present their objections (must seem that you actually want to inform absentee party)
    - Reasonably convey required info
    - Reasonable time
- **Holding:** Notice by publication in this case was sufficient only for beneficiaries who were unknown or absent. For beneficiaries for which there were addresses, nothing less than notice by mail would be adequate.
- **Reasoning:** You must balance need to give notice to those affected and the practical difficulties of identifying every beneficiary. It would have been too demanding for trust to tell everyone.

McDonald v. Mabee (1917) **FORM MOST LIKELY TO REACH DEFENDANT**

- **Facts:** Service attempted on Mabee after he left Texas un a newspaper for 4 weeks (family lived there). Never appeared and judgment entered against him.
- **Rule:** In absence of personal service, substitute must be most likely to reach defendant
- **Holding:** Texas judgment was void under 14th Amendment. was insufficient

Wuchter v. Pizzutti (1928) **NOTICE BY MAIL**

- **Facts:** Questioning constitutionality of nonresident motorist statute permitting in-state service on Secretary of State.
- **Rule:** Every statute of this kind should require notice sent by mail too
- **Holding:** Statute violated due process, even though defendant actually had notice and was served by secretary.

Mennonite Board of Missions v. Adams (1983) **THEME**

- **Facts:** Mortgagee challenged state's use of publication and posting to give notice of pending sale (for nonpayment of taxes)
- **Rule:** Constructive notice by publication must be supplemented by notice to mortgagee's last known address or by personal service
- **Holding:** State statute violated due process.

- **Reasoning:** Unless mortgagee is unidentifiable, constructive notice alone doesn't satisfy **Mullane.**

Tulsa Professional Collection Services v. Pope (1988) **ACTUAL NOTICE & TIME TRIGGER**

- **Facts:** Statute allowing notice by publication and 2-month limit on creditor's claims
- **Holding:** Due process required **actual notice (if names easily ascertainable)** given it wouldn't adversely impact probate proceedings
- **Reasoning:** Because claimant's names were easily found & action would trigger time bar that could affect property interests,

Greene v. Lindsey (1982) **UNDER THE CIRCUMSTANCES**

- **Facts:** Constitutionality of notices posted on doors in public housing (known to be removed by kids)
- **Holding:** Service by mail is required because we know posting isn't reliable.

Dusenbery v. US (2002) **HEROIC EFFORTS NOT REQUIRED**

- **Facts:** Certified mail notice to prisoner. He didn't get it.
- **Rule:** Heroic efforts not required
- **Holding:** Certified mail satisfied due process even though actual notice wasn't achieved.

Jones v. Flowers (2006) **ADDITIONAL REASONABLE STEPS IF PRACTICAL TO DO SO**

- **Facts:** Government used certified mail (need signature), got returned and did nothing else.
- **Holding:** Government required to take additional reasonable steps if practical to do so. Unreasonable to find no address, but reasonable to send via normal mail.
- **Reasoning:**

TIME OF NOTICE – RULE 4 (m)

Roller v. Holly (1900) **MUST BE GIVEN ADEQUATE TIME TO RESPOND**

- **Holding:** Notice to defend action 5 days later violated due process

War Eagle Village Apartments v. Plummer (2009) **MUST BE GIVEN ADEQUATE TIME TO RESPOND**

- **Holding:** 7 days is unreasonable despite having been sent via certified mail. Iowa statute unconstitutional.

CONTENT OF NOTICE – Rule 4 (a)

Aguchak v. Montgomery (1974 Alaska) **NEED TO INFORM PARTY OF RIGHTS IN PLEADING**

- **Facts:** Summons didn't inform them they could respond to summons by written pleading or that they had right to request change of venue.
- **Rule:** Summons in small claims must include parties' rights to respond by written pleading and change of venue

Finberg (1980) **NEED TO GIVE RECIPIENT ENOUGH INGO TO CONSIDER RESPONSE**

- **Rule:** Creditor must inform debtor of existing exemptions
- **Holding:** PA post-attachment procedure violated due process because must inform debtor of these exemptions.

Opportunity to be Heard and Attachment – Rule 64 (b)(2) Seizing Property

- **What process is due and when is it due (ex ante or ex post)?**

Sniadach v. Family Finance Corp. (1969) **MUST HAVE OPPORTUNITY TO BE HEARD EX ANTE**

- **Facts:** Service of the garnishee froze the debtor's wages during the period **before trial** and wage earner had no opportunity to be heard prior to attachment
- **Rule:** A state government must provide notice and an opportunity to be heard prior to taking property
- **Holding:** Struck down Wisconsin wage garnishment procedure as a violation of due process.
- **Reasoning:** Consequence of this garnishment was to "drive a wage-earning family to the wall."
    - Tremendous hardship on family

- **Open question:** What kind of extraordinary situations justify garnishment prior to hearing?
  - **Protection of flight of property (e.g. transfers to Swiss bank accounts)**

Fuentes v. Shevin (1972) **OPPORTUNITY EX ANTE + (EXCEPT EXTRAORDINARY CIRC – NONE HERE)**

- **Facts:** Defendant bought appliances on credit. Florida statute mandates automatic replevin once defendant receives complaint. No notice or opportunity to challenge. No ne reviews request for writ. Property kept by plaintiff pending final judgment.
- **Rule:** Parties whose rights are to be affected are entitled to be heard, and in order that they may enjoy that right they must first be notified.
- **Holding:** Florida and Pennsylvania statutes permitting replevin without prior hearing were unconstitutional.
- **Reasoning:** Court recognized that pre-hearing garnishment can be appropriate in extraordinary circumstances. Replevin laws **did not serve any general public interest** sufficient to justify postponement of the defendant's right to a hearing, even though the owner was permitted to regain possession of the property by posting a bond.
  - Defendant hadn't waived rights to due process in conditional sales contract

Mitchell v. W.T. Grant (1974) **APPROPRIATE SEQUESTRATION BEFORE PRIOR HEARING**

- **Facts:** Louisiana statute allowed sequestration without prior hearing if (1) applicant claimed possessory interest in property or (2) defendant could dispose of property during pendency of suit.
- **Rule: Fuentes doesn't apply** to a state statute that requires clear showing of nature of claim and grounds relied upon to issue writ.
- **Holding:** Court upheld writ because and Louisiana statute because there were adequate "safety" features and this case satisfied exception (2)
- **Reasoning:** Unlike Fuentes, statute required judicial approval and required that plaintiff demonstrate basis for sequestration (no conclusory allegations). Risk of wrongful taking was minimized by vendor's interest in preventing waste of property, court's involvement in authorizing writ, and immediate availability of post-seizure hearing.

Goldberg v. Kelly (1970) **PUBLIC BENEFITS AND REQUIREMENT OF PRE-TERMINATION BENEFITS**

- **Facts:** Recipient of government funded public assistance. His funds were terminated without opportunity to be heard.
- **Rule:** Termination of public assistance requires pre-termination hearing.
- **Holding:** Termination violated due process.
- **Reasoning:** One needs to balance the kind of hearing required with the importance of the plaintiff's interest in the benefit being withheld. Recipient had a **brutal need for assistance (livelihood)**

Matthews v. Eldridge (1976) **NO HEARING BEFORE TERMINATION OF SS / BALANCING TEST / BENCHMARK**

- **Facts:** Party's social security benefits were terminated.
- **Rule:** For pre-hearing sequestration/termination, one needs to use balancing test to see what comports with due process.
- **Holding:** Termination of social security before hearing didn't violate due process
- **Reasoning:** This wasn't a strong showing of hardship as the loss of public assistance (versus Goldberg).
  - **Balance Test**
    - Private interest at stake
    - Risk of erroneous deprivation & probable value of any additional/substitute safeguards
    - Government's interest (admin. Burdens that additional or substitute procedural requirements would entail)

Sniadach Line of Cases – Not Overall Test BUT gives us things to consider … but Matthews is a benchmark

- **Who:** Whether judge or clerk is decision maker
- **What:** Whether party seeking relief has pre-existing interest in the property to be seized
- **When:** Whether the seizure is affected before notice or hearing or is followed by an immediate post-seizure hearing.
- **Why:** Whether seizure is to establish jurisdiction or for security purposes
- **How:** Whether plaintiff must show probable cause or meet a lesser burden of proof

Connecticut v. Doehr (1991) **USING MATTHEWS BALANCING TEST / CONCLUSORY EVIDENCE NO**

- **Facts:** Connecticut statute allowed pre-judgment attachment w/o notice or hearing, exceptional circumstances and w/o plaintiff having to post bond for protection of property
- **Rule:** Use balancing test when determining if attachment without prior notice or hearing violates due process.
- **Holding:** Pre-judgment attachment **violated due process.** Court requires plaintiff to at least post bond, but this isn't enough. A bond cannot remedy for a number of situations that can arise out of mistaken property deprivation.
- **Reasoning:** Plaintiff only needed to give conclusory evidence.
    - Connecticut statute posted too great a risk of erroneous deprivation since it allowed attachment on little more than plaintiff's belief that the defendant was liable and ability to prepare a facially valid complaint.
    - Used **Matthews balancing test (see factors above) –** Distinguished decision in **Matthews**
        - Plaintiff had no prior interest in property – was seeking to ensure availability of assets to satisfy judgment if he prevailed in assault and battery action,
        - This interest is insubstantial since no allegation that defendant was to transfer or encumber real estate in process of action.

SUBJECT MATTER JURISDICTION

Three Types: Diversity of Citizenship **§ 1332** (Complete Diversity + Amount in Controversy), Federal Question Jurisdiction **§1331**, Supplemental Jurisdiction **§1367**

- **Constitution Article 3 Section 2:** Defines scope of federal judicial power.
    - **Federal Courts** (as opposed to state courts) are courts of **LIMITED SUBJECT MATTER JURISDICTION.** They must first establish their ability to hear a claim.
    - Parties **cannot waive or consent to SMJ** (Capron)
    - **Rule 12**
        - **(b) (1) -** How to Present Defenses – Lack of SMJ
        - **(h) (3) –** If court determined at any time that it lacks SMJ, court must dismiss action

1. Is there SMJ from diversity of citizenship? (28 USC §1332):

Need both COMPLETE DIVERSITY AND AMOUNT IN CONTROVERSY

COMPLETE DIVERSITY – No overlap of citizenship across the v. Plaintiffs and defendants can have same citizenship amongst themselves but cannot have citizenship across the line.

Strawbridge v. Curtiss (1806) – **COMPLETE DIVERSITY**

- **Holding:** Federal Jurisdiction is barred if any plaintiff is a citizen of the same state as any defendant.

Determining citizenship:
- **People:** Domicile = citizenship (resident in fact + intent to stay) (Mas v. Perry)
    - **Evidence:** current residence, voting registration, location of personal/real property
    - **Domicile:** Until it is extinguished, it remains
- **Corporations:** 1332(c)(1) Every state/foreign state of incorporation, every state/foreign state where it has principal place of business – US HQ for foreign corporations
    - **Nerve Center/Decision Making Place Test** – (Hertz v. Friend) **MAJORITY**
    - **Corporate Activities/Muscle Test –**; production or service activities **MINORITY**
    - **Total Activity –** Locates citizenship in light of all of the facts and circumstances **UNCOMMON**
- **Unincorporated associations –** All members' citizenships (Carden)
    - Partnerships, law firms, unions, MLB
    - Other party must be different than every member of the association
    - Class Actions Fairness Act 1332 (d) (10) – Different rule. One looks at **all members** but you need only **minimal diversity**

Complete Diversity & Alienage Jurisdiction: 1332(a), citizen v. noncitizen, but it can be destroyed IF:
- ☠ Adversaries are domiciliaries of the same state, one is a citizen and one is a permanent resident
    - 1332 (a) (2) - Permanent residents are citizens of their state of residence (their domicile)
- ☠ A US citizen without a state domicile (i.e. living abroad)
- ☠ Alien adversaries without citizen adversaries (no one with US domicile on any side of v)

Manufacturing Diversity (Prevent)
- § 1359: There is no jurisdiction when any party has been improperly or collusively made or joined to invoke diversity of the court
- Court can realign case (get rid of nominal parties) in order to ensure diversity (Giamatti)

CASES ABOUT COMPLETE DIVERSITY

PEOPLE

Mas v. Perry (1974) **A PERSON'S CITIZENSHIP IS HIS OR HER DOMICILE / INTEND TO STAY**
- **Facts:** Mr. and Mrs. Mas got married in Mississippi. Mr. Mas was from France and Mrs. Mas was born in Mississippi. They lived in Louisiana where they were studying. Discovered landlord (Louisiana) had 2-way mirror and was spying on them. Couple sued in federal court in Louisiana.
    - Defendant challenged SMJ jurisdiction saying Mrs. Mas wasn't diverse from him (lack of complete diversity)
- **Rule:** A party is domiciled in the state where her true, fixed, and permanent home is located.
    - To change domicile, one must move and **intend to stay.**
    - Marriage to alien doesn't change domicile. Getting married doesn't change it.
- **Holding:** There is complete diversity in this case.
- **Reasoning:** Logic indicates Mrs. Mas was domiciled in Mississippi. She is only temporarily in Louisiana as a student. Even though Mrs. Mas does not intend to return to Mississippi, she hasn't acquired a new domicile, so she sticks with old one.

Dred Scott v. Sandford (1856) **MUST BE US CITIZEN TO INVOKE DIVERSITY JURISDICTION**

- **Holding:** A person may invoke diversity citizenship jurisdiction only if the person is a citizen of the U.S. (except in Alienage Jurisdiction)

Connectu LLC v. Zuckerberg (2008) **DETERMINING PERSON'S DOMICILE – CENTER OF GRAVITY TEST**

- **Rule:** Center of gravity test factors
    - Where you live (and for how long)
    - Where you work
    - Where you vote
    - Where you pay taxes
    - If you have real property in the state
    - Where your driver's license is from
    - Where your kids go to school

CORPORATIONS

Hertz v. Friend (2010) **NERVE CENTER TEST – CORPOTATIONS**

- **Holding:** A corporation's principal place of business/domicile is where the decisions are made.
- **Reasoning:** 1332 (c)(1) refers only to the corporation's nerve center

Wachovia v. Schmidt (2006) **NATIONALLY CHARTERED BANKS – MAIN OFFICE**

- **Holding:** National bank (chartered under federal law) is a citizen of state where main office is found, as set out in the Articles of Incorporation.
- **Note:** Left open whether it could also be a citizen of the state in which it has principal place of business

Carden v. Arkoma Associates (1990) **UNINCORPORATED ASSOCIATIONS – EACH MEMBER**

- **Holding:** Associations are not treated as entities. The state citizenship of all partners/members must be considered for diversity purposes

MANUFACTURING FEDERAL JURISDICTION - DIVERSITY - §1359

Kramer v. Caribbean Mills (1969) **CAN'T MANUFACTURE PARTY TO GET DIVERSITY**

- **Facts:** Panamanian corporation assigned its interest under contract with Haitian corporation to Kramer (Texas) for $1. Panamanian involved U.S. party just to get federal court jurisdiction. Kramer sued Haitian company.
- **Rule:** Can't manufacture parties to get diversity
- **Holding:** Assignment to the Panamanian company was improperly or collusively made within the meaning of 28 USC § 1359.

Rose v. Giamatti (1989) **CAN'T MANUFACTURE DIVERSITY WITH NOMINAL PARTY**

- **Facts:** Rose wanted to be in state court.
- **Rule:** A district court should not consider the citizenship of parties who are not real parties to the controversy for the purposes of diversity jurisdiction
- **Holding:** Must disregard nominal/formal parties added to action to destroy diversity; only real parties of interest count for diversity purposes.
- **Reasoning:** This is done to discourage gamesmanship.
    - **Real Party:** has duty sought to be enforced or enjoined
    - **Formal/Nominal party:** no interest in result of suit or no actual or legal interest or control over subject matter of the litigation.

AMOUNT IN CONTROVERSY

- Must **EXCEED** $75,000 - **§1332** (a)
- Issues arise when states do not require AIC in pleading, then fed court must make its best guess
- If the remedy is just an injunction, then federal court must try to evaluate its equal monetary worth.

2. If no diversity jurisdiction, is there Federal Question Jurisdiction?

- **28 USC §1331**: "The district courts shall have **original jurisdiction** of all civil actions **arising under** the Constitution, laws, or treaties of the United States."
- **Constitution Article 3 Section 2**: Grants federal question jurisdiction "**arising under** this Constitution, the laws of the US, and Treaties made…
- **Well Pleaded Complaint Rule: Issues of counterclaims or defenses don't take into account** (Mottley)
    a) No matter how important or decisive they turn out to be in the end
    b) Must be raised as a legitimate part
- **Justifications (Policy)**:
    a) Promote uniformity of federal law
    b) Protect against state court hostility arising out of claims in federal law
    c) Encourage judicial expertise in interpreting federal law

"Arising under" definitions: (Need one)

- ❒ Federal question/ingredient arising from cause of action (Osborn)
- ❒ The fact that it "arises under" must be in well pleated complaint – not as an anticipated defense? (Mottley)
- ❒ Holmes Creation Test (American Well-Works)
    - X State law that includes federal ingredient is not enough (Harms)
    - X If federal law creates cause of action but does not confer FQJ (Shoshone Mining)
- ❒ Substantive federal interested / federal statute implicated / federal issue essential to resolution / relief only available under federal law (Smith)
    - X State statute that absorbs federal law (Moore)
    - X One way to tell: if express federal right of action in relevant statute (Merrell Dow) – None found in this case. Makes it clear not to establish bright line rules, reaffirms Smith.
- ❒ Balancing Test: federal issue outweighs clashing state issue (Grable)
  Applied in Gunn in which it was determined that there was no significant federal interest
    - Necessarily raise a federal issue?
    - Material dispute regarding federal issue?
    - *Factor added by Gunn:* Is the dispute substantial to federal interest? (as a whole, not just to the plaintiff)
    - Can the federal forum entertain the case without disturbing congressionally approved balance of state/federal judicial responsibilities?
- ❒ Issue of fact or law? (Empire Healthcare)
    - Fact: Empire Healthcare, Gunn – FQJ not conferred
    - Law: Grable – FQJ conferred

Osborn v. Bank of the United States (1824) YES, SMJ **ORIGINAL JURISDICTION – FEDERAL INGREDIENT**

- **Facts:** Congressional Act: Bank's capacity to sue and be sued. Considered constitutionality of a statute that gave the federal courts jurisdiction over actions involving the bank, a federally chartered corporation.
- **Rule:** Federal courts have original jurisdiction over **any matter that involves a federal question**

    - "when a question to which the judicial power…is extended by the Constitution, forms an **ingredient of the original cause**, it is in the power of Congress to give the Circuit Courts jurisdiction of that cause…"
- **Holding:** SCOTUS upheld statute.
- **Reasoning:** Because the Bank had been created by federal law, every act of the Bank necessarily grew out of the law that created it and endowed it with all the faculties and capacities it possessed. Since very right of bank to sue and be sued depended entirely on those laws, **every case automatically arose under the law of the United States.**

Louisville & Nashville R. Co. v. Mottley (1908) NO, SMJ **WELL PLEADED COMPLAINT / NO ANTICIPATED DEF.**

- **Facts:** Mottleys injured in railway accident. Railroad in settlement agreement, agreed to give them free passes forever. This happened for 29 years and then **1907 federal statute** is enacted: prohibiting free transport passes. Railroad didn't want to renew passes. Mottley sued in federal court saying statute didn't apply to them
    - Unconstitutional taking of property
    - Mottley alleges railroad is invoking statute to stop giving them free passes
- **Rule: Well Pleaded Complaint Rule**: For a litigant to invoke federal question jurisdiction, it is necessary both that the case
    - (1) cause of action must "arise under" Constitution or some other aspect of federal law and
    - (2) this fact must appear on the face of a well-pleaded complaint
- **Holding:** Even though the complaint raised federal issues, the actual cause of action didn't "arise under" the federal question.
- **Reasoning:** This was a simple contract case governed by state law. References to federal question **merely anticipated the railroad's reliance on the federal statute and the Constitution as a defense.**

Skelly Oil v. Phillips Petroleum (1950) NO, SMJ **NO ARTFUL PLEADING TO GET FQJ / CAN'T ANTICIPATE**

- **Facts:** Suit brought for declaration that certain contracts were still in effect because a necessary federal certificate had been timely issued. The plaintiff's complaint anticipated that the defendant will include an affirmative defense derived from federal law.
- **Holding:** A plaintiff cannot engage in "Artful pleading" to get FQJ.
    - **Artful Pleading:** An attempt by the plaintiff to create federal question jurisdiction through the anticipation and inclusion of a federal defense on the face of its complaint"
- **Reasoning:** Case needs to be able to have been brought **originally** in federal court. This case is completely state contract law. Mottley would not have been removable in federal court.

American Well Works Co v. Layne & Bowler Co. (1916) NO, SMJ **HOLMES – SUIT ARISES UNDER LAW CREATING COA**

- **Facts:** Case involved a claim by a manufacturer that a competitor had damaged the reputation by telling customers that plaintiff's pump infringed on defendant's patent.
- **Rule:** A suit arises under the law that creates the cause of action
- **Holding:** No FQJ because this is a libel case, not a patent infringement case. The suit arises under a state cause of action, not a federal cause of action.
- **Reasoning:** The plaintiff's cause of action for slander, however, was created by state common law, hence it doesn't arise under federal law (even though there is a federal ingredient)

T.B. Harms v. Eliscu (1964) NO, SMJ **STATE LAW WITH FEDERAL INGREDIENT NOT ENOUGH - FEDERAL COA ONLY WHEN REMEDY OR CONSTRUCTION**

- **Facts:** D sued P in NY state court for declaratory judgment that D owned 1/3 in of copyright of music. P then started suit against D in NY federal court for declaratory relief about the same thing.

        - Plaintiff says federal court had SMJ because of § 1338 (copyrights)
- **Rule:** A **cause of action** arises under federal law or Constitution and is thus a federal question **only when**
    - Complaint is for a **remedy expressly** granted by the statute, OR
    - Asserts a claim requiring the **construction (explanation) of the statute**
- **Holding:** No SMJ because federal statute does not create cause of action. Cause of action is from state law (property/contracts)
- **Reasoning: Applies Holmes test.** For a suit to arise under Copyright Act, the act must have granted relief/remedy for it (usually in the form of copyright infringement or royalties). This statute does not deal with the ownership of the copyright so there is no federal remedy.
    - This is merely a property and contracts issue – no remedy granted by statute
    - Complaint doesn't require an interpretation of the Copyright Act

Shoshone Mining v. Rutter (1900) NO, SMJ **EXCEPTION: WHEN FEDERAL STATUTE GIVES INSTRUCTIONS BUT SAYS IT WILL BE ADJUDICATED BY STATES**

- **Facts:** Involved federal statute establishing system allowing miners to resolve conflicting claims to land patents. Statute said they needed to abide by local customs as long as they weren't inconsistent with Constitution.
- **Rule:** A suit to enforce a state-law right that originates in federal law does not arise under the Constitution or federal law.
- **Holding:** Rutter's claim doesn't arise out of Constitution or federal law.
- **Reasoning:** Even though COA was created by federal statute, they ***didn't make it federal***. Federal government creating a state COA.
    - An act of Congress may have authorized the suit in the first instance, but this is not sufficient to establish federal jurisdiction by itself.
    - Federal statute said claims should be filed with state court.

Smith v. Kansas City Trust Co. (1921) YES, SMJ **CONSTRUCTION OF FEDERAL LAW ESSENTIAL TO RESOLUTION**

- **Facts:** Shareholder suit to enjoin trust company from investing in certain federal bonds on the ground that Act of Congress issuing those bonds was unconstitutional.
    - **Missouri Law:** investment in securities, issuance of which had not been authorized by valid law, was illegal.
- **Rule:** Where it appears from plaintiff's complaint that the right to relief depends upon construction or application of federal law or Constitution, then there is federal question jurisdiction.
- **Holding:** Action arose under federal law for purposes of § 1331

Moore v. Chesapeake & Ohio Railway (1934) NO, SMJ **STATE STATUTE ABSORBING FEDERAL LAW**

- **Facts:** Plaintiff brought action under Kentucky**'s** Employer Liability Act, which barred affirmative defense for contributory negligence if defendant failed to meet **state or federal** safety requirements.
    - Plaintiff said defendant's failed to comply with Federal Safety Appliance Act
- **Rule:** State COA that bases recovery/relief on some federal standard does not make it appropriate for FQJ.
- **Holding:** A suit brought under state statute which defines liability based on breach of duty imposed by federal statute, should not be regarded as a suit arising under federal law.

Merrell Dow Pharma v. Thompson (1986) NO, SMJ **STATE CLAIMS INVOLVING FEDERAL STATUTE - NATURE OF FEDERAL INTEREST AT STAKE**

- **FIST FIGHT BETWWN MOORE AND SMITH**
- **Facts:** Plaintiff sues drug manufacturer for negligence under **state law claims** on theory that defendant failed to comply with **labeling requirements under federal statute.**

    - Plaintiff trying to make a case of negligence per se for violating federal statute
    - Defendant removed to federal court based on FQJ
- **Rule:** When there is no federal cause of action, we can infer that nature of federal interest at stake is low and there is no FQJ. **(This isn't automatic and is kind of left open by this case – whether federal private right of action was required for FQJ)**
- **Holding:** There is no FQJ under FDCA simply because violation of federal statute would have to be shown by plaintiff in order to recover under Ohio tort law.
    - Because there is no federal right of action, there is no FQJ.
- **Reasoning:** In the FDCA, congress didn't create private right of action in the federal act to enforce federal labeling requirements because it probably thought it was **too insubstantial.** It also isn't implied. This is an **insubstantial federal interest.**
    - **Court focuses on congressional intent**
    - **Welcome mat is missing**
- **Dissent:** State claims with an essential federal element do arise under federal law because Congress created the lower federal courts to ensure a more correct and consistent application of federal law. FQJ is needed so that federal law can have intended effect.

Grable & Sons Metal Products Inc. v. Darue Engineering and Manufacturing (2005) YES, SMJ **LACK OF COA DOESN'T PRECLUDE FQJ / THREE FACTORS TO CONSIDER IN FQJ**

- **Facts:** IRS seized the plaintiff's land to satisfy a federal tax deficiency. IRS sold property to defendant, and plaintiff failed to redeem property within 180 days, as allowed by federal tax statute. 5 years later, Grable brought quiet title action in state court, claiming that the defendant's title was invalid because the IRS had failed to give Grable the type of notice required by federal statute.
    - Defendant removed to federal court.
- **Rule:** Lack of cause of action doesn't preclude removal for FQJ. There are 3 factors to consider for FQJ (only if)
    - the case necessarily raises a federal issue
    - the federal issue is substantial to the plaintiff (complaint) and in actual dispute
    - exercise of federal jurisdiction will not disturb congressionally approved balance between federal and state judicial responsibilities
        - **Veto** – Allows federal courts to deny jx over cases that would clog the courts, even if they involved substantial federal issues.
- **Holding:** Federal issue can outweigh clashing state issue. Grable's claim is appropriate for federal question jurisdiction because it properly arises under
- **Reasoning:** Considered all 3
    - Whether he received proper notice under federal statute was essential element of the quiet title claim and the meaning of a federal statute was in dispute.
    - Federal government had substantial interest in the prompt and certain collection of delinquent taxes
    - Granting jx wouldn't clog federal courts because a state title case would rarely raise a contested matter of federal law.

Empire Healthchoice Assurance v. McVeigh (2006) NO, SMJ **FEDERAL INTEREST BUT NOT FQJ**

- **Facts:** Plaintiff insurance carrier sued estate of McVeigh, a federal employee, under state contract law for reimbursement of medical expenses the company had paid. Estate had received a large settlement after suing 3rd party whose acts were responsible for McVeigh's death. The Federal Employees Health Benefits Act was silent on whether private carriers like Empire could recoup 3rd party medical payments made to

insured employee. However, Empire was under contract with federal OPM to take reasonable steps to recoup medical expenses it paid on behalf of federal employees.

- **Rule:**
- **Holding:** This has federal interest but not FQJ. Action failed to raise a federal question to support jurisdiction under §1331 and the claim raised only state issues.
- **Reasoning:** Going through the Grable factors and distinguishing from Grable:
    - **Yes, federal interest present –** any reimbursement would go to the federal government
    - **No federal cause of action** – Grable involved federal agency, and this came from a personal-injury action in state court. This came from state contract.
    - **Not substantial** – Grable would impact countless tax cases, while dispute here only involved private parties (not government). This case is fact-specific, would result in narrow holding.
    - **Weird division of labor** – Court found it unnecessary to place such a nonstatutory issue under federal law.

Gunn v. Minton (2013) NO, SMJ **QUESTIONS ABOUT SUBSTANTIABILITY AND IMPACT – FEDERAL/STATE BALANCE / CASE WITHIN A CASE - EXPANDING GRABLE**

- **Facts:** Minton brought malpractice action against Gunn (D), a lawyer. Gunn had represented Minton in a federal patent infringement case and Minton argued they lost because Gunn failed to raise the "experimental use" exception under federal patent law. On appeal, Texas SC found that case should have been brought in federal court.
- **Rule:** Bulk of cases of FQJ come from federally created COA, but small category (citing Grable) where cases that originate in state court might also arise under federal law IF:
    - Case necessarily deals with federal issue
    - Issue is actually disputed and substantial to the plaintiff
    - **Issue is of substantial federal interest as a whole (Factor added in this case)**
    - Federal forum can hear case without disrupting federal/state division of labor
- **Holding:** A state court's resolution of a hypothetical question of patent law is **not substantial enough** to mandate federal review and it would also **disrupt division of labor between federal/state courts**
  Reasoning:
    - **YES, But -** Defendant's malpractice **action necessarily deals with federal patent question BUT** in order to determine if there was malpractice court would need to decide if he would have won the case using "experimental use" exception. Basically, **court would need to decide a case within a case.**
    - **YES** - Issue **is disputed** (dispute over whether use would be successful)
    - **NO -** Federal issue is **not substantial to the federal system as a whole.** Deciding this matter would have no real-world consequences (consequences would only apply to the parties in this case). No greater applicability as the case within a case would **only be dicta and have no binding precedent.** No effect on uniform federal body of law.
    - **Would disrupt federal/state division of labor –** States have right to maintain standard for legal profession through malpractice cases.

3. If no FQJ…

- Claim cannot be brought by itself
- **Might be viable if brought via supplemental jurisdiction along with a claim that does have subject matter jurisdiction (see below)**

REMOVAL §1441

- Gives defendant a limited veto power to remove to federal court.
- **Depends on SMJ –** you cannot remove that which you could not initiate. So before you even get to the issue of removal, you need to decide whether the claim is one that **could have been brought initially in federal court.**
- **Removal is absolutely vertical** – if you are in NY state court, then it goes to the District Court in NY.
- **§ 1441 Actions Removable Generally**
  - **a)** if a federal court has **original jurisdiction,** then defendant can remove from state to federal court.
    - Shamrock Oil v. Sheets **ONLY DEFENDANT CAN REMOVE**
      - **Rule:** Only the defendant can remove, not plaintiff.
      - **Holding:**
        - **Well pleaded complaint rule applies –** Basis for removal must appear on plaintiff's complaint (but alleged by defendant)
        - A non-citizen plaintiff in the state court, against whom the citizen-defendant had asserted in the suit by way of counterclaim which, under state law, had the character of an original suit, was **not entitled to remove the cause.**
        - Plaintiff cannot remove even if the defendant interposes a counterclaim and he becomes the 3rd party defendant.
      - **Rationale:** Plaintiff has already submitted himself to the court's jurisdiction. Plaintiff is the 3rd party defendant in this counterclaim.
    - Bright v. Bechtel Petroleum **ARTFUL PLEADING TO AVOID REMOVAL**
      - **Rule:** A plaintiff will not be allowed to conceal the true nature of a complaint through artful pleading. Plaintiffs can't block removal by disguising federal nature of complaint
  - **b) In state defendant cannot remove case to federal court if the removal is based on diversity** (does not apply to FQJ cases – any defendant can remove in these)
    - **Lively v. Wild Oats Market**
      - **Rule:** In a multi defendant action, the presence of even one in-state defendant can block removal.
      - **Note:** Courts are actually divided on this issue

ATTACKS ON SUBJECT MATTER JURISDICTION

- **Direct attack: lack of jurisdiction can be asserted at any time prior to final judgment.**
  - **a) 12(b)(1)** motion for lack of subject matter jurisdiction
  - **b) 12(h)** states that it can be brought up at any point, never waived
  - **c) Must the district court determine that subject matter jurisdiction exists before making any other decision in the suit?**
    - Ruhrgas AG (1999): A federal court has the discretion to decide whether it has personal jurisdiction without first deciding its subject-matter jurisdiction.
  - d) **What are the consequences if a district court fails to remand an action that was improperly removed, but the jurisdictional defect is cured before a judgement on the merits is entered?**
  - e) Caterpillar Inc. v Lewis (1996): **MISTAKES IN SMJ – PROCEED**

- **Facts:** District court mistakenly retained removal jurisdiction despite the absence of complete diversity. Diversity became complete prior to trial when the non-diverse party was formally dismissed from the action. Circuit Court held it was error not to have remanded and vacated District Court's judgment.
- **Holding:** SCOTUS reversed. Federal court could hear the case (emphasizing the overwhelming effect of considerations of finality, efficiency and economy)

f) Grupo Dataflux v. Atlas Global Group (2004) **MISTAKES IN SMJ – DON'T PROCEED**

- **Facts:** Complete diversity became present when the citizenship of a plaintiff, a limited partnership, changed while action was pending due to withdrawal of two Mexican citizens who were partners at the time of filing.
- **Holding:** SCOTUS adhered to the **time-of-filing rule** and refused to extend the Caterpillar (see above) rationale to this case – i.e. the Federal court could not hear the case

- **Collateral attack:** You wait for a default judgment to be rendered and then challenge it upon enforcement
  - **a) Maxim:** Judgment rendered by a court that lacked jurisdiction over the subject matter is void and null.
    - **If court in initial action determined it had SMJ, then permissibility of collateral attack depends on:**
      - If lack of SMJ was clear
      - Determination as to jurisdiction depended upon a question of law rather than fact
      - The court was one of limited and not of general jurisdiction
      - Question of jurisdiction was not actually litigated.
      - The policy against the court's acting beyond its jurisdiction is strong

4. If no FQJ… SUPPLEMENTAL JURISDICTION!

- **Prerequisite for Supplemental Jurisdiction**: There must be an anchor claim with its own basis of original SMJ (FQJ or diversity)
- **Pendent Jurisdiction: Plaintiff** appended a claim lacking an independent basis for federal jurisdiction to a claim possessing such basis.
- **Ancillary Jurisdiction:** Plaintiff or Defendant injected a claim lacking independent basis for federal jurisdiction by way of counterclaim, crossclaim, or 3rd party complaint.

1. **Does the new claim have original SMJ? (federal question or diversity)**
   a. **Yes!** - Stop here. There is original subject matter jurisdiction for both claims (supplemental jurisdiction isn't needed)
   b. **No!** - Move to step #2 **1367 (a)**
2. **1367(a) - Is the new claim related to the other anchor claim? (Does the claim arise from the same common nucleus of operative fact? CNOF)**
   a. District Courts have supplemental jurisdiction over claims that are related to claims with original jurisdiction. This provision includes claims that involve joinder or intervention of additional parties.

b. Gibbs **–** New supplemental action has to come through **common nucleus of operative fact CNOF** and you would expect to hear them in the same case. Case refers to constitutional case of Article III. Overturns Hurn which said that you can only append claims if they are from the same cause of action COA.
    i. **Yes! -** Diversity anchor claim – Move to #3 // Federal question anchor claim – Move to #4
    ii. **No!** - Stop. No supplemental jurisdiction available.
c. Allapattah - 1367(a) requires that only one party in a diversity case meet the amount-in-controversy threshold, parties/claims joined with supplemental jurisdiction don't need to meet that requirement. Overturns Zahn/Clark
d. 1367 was enacted in reaction to and overturned Finley, which held that complaint filed in federal court against federal government could not be amended to include claims against state/municipality
e. 1367 somewhat overturns Aldinger - Plaintiffs can now bring additional defendants in FQJ cases (for diversity, see 1367 (b))

Cases:

Hurn v. Oursler(1933) **SAME CAUSE OF ACTION / REMEDIES (OVERRULED SUBSEQUENLTY)**

- **Facts:** Initial lawsuit was for copyright infringement
- **Rule:** If it's two claims in search of the same remedy/cause of action, then it's the same case.
- **Reasoning:** This case looks back at the action from the remedy.
- Note: **Brennan in Gibbs refers to Hurn as a *limited approach***

UMW v. Gibbs (1966) YES, SJ **SAME COMMON NUCLEUS OF OPERATIVE FACT & EXPECTATION TOGETHER – STATE AND FEDERAL CLAIMS**

- **Facts:** Tennessee Consolidated Coal company fired 100 miners. Miners were members of UMW (union). Subsidiary of TCC opened mine nearby and hired Gibbs as superintendent & gave him contract to haul coal from mine to train. Jobs at new mine mainly given to miners from another union. UMW miners prevented new mine from opening. Gibbs loss his job and contract and wasn't able to get other job because of UMW blacklist. Gibbs sues in federal court asserting two claims:
    - **Federal –** violation of Labor Management Relations Act § 303
    - **State –** Tennessee state law claim of conspiracy to interfere with employment
- **Rule:** T**wo step test**:
    - Does court have **power** to entertain claim?
        - Federal claims are **substantial** and expected to be heard in **single hearing**
            - **If too insubstantial to be basis for FQJ,** then no supplemental jurisdiction
        - Derived from **common nucleus of operative fact**
    - If court has power, does the exercise of **discretion** indicate that federal court should assert jurisdiction? Consider 4 things
        - Judicial economy, convenience and fairness to litigants
        - **Predominance -** Whether the state or the federal issue predominates – Or is the state claim so tied to federal policy that it should be decided in federal court?
        - **Federalism vs. Need for Federal Uniformity -** Which is stronger: desire to avoid needless state law issues in interest of federalism OR need to have federal court decide issues closely applicable to federal law
        - **Confusion of jury –** would they be confused combining state and federal claims?

- **Holding:** In this case, the § 303 claims and the Tennessee common law claims implicated questions of federal pre-emption. Decision not to dismiss state claim is affirmed.
- **Reasoning:** Both federal and state claims had a common nucleus of operative fact (even if federal claim failed and court only awarded damages for state claim). **Federal questions were substantial:** important element of Gibbs's case.
    - There might have been confusion of jury because of different standard of proof but this was fixed with special verdict
    -
- **Note: Commonly understood that §1367 Supplemental Jurisdiction codified analysis in Gibbs**
- **Policy:**
    - **Res Judicata:** We don't want one judgment to defeat another subsequent judgment.
    - This could create a flood because states have adopted a lot of federal statutes and use federal claims to hook onto state claims.

Aldinger v. Howard (1976) NO, SJ **CLAIMS INCLUDING PARTIES COURT DOESN'T HAVE JX OVER- UNLESS NEGATION**

- **Facts:** Defendant was treasurer of Spokane County. Defendant fired Aldinger, an employee, for living with her boyfriend. Aldinger sued under statute 42 U.S.C. § 1983 (damages against government officials for civil rights violations) and tries to add Spokane County (deep pocket) as defendant.
    - In this case, CNOF was established and not questioned.
- **Rule:** Federal pendant jurisdiction does not necessarily extend to claims against ***parties*** over whom a federal court would not otherwise have jurisdiction. You ***can add,*** but need to check...
    - Must check that:
        - Case falls within court's constitutional jurisdiction
        - Congressional statute conferring SMJ doesn't explicitly/implicitly remove the party in question from that jurisdiction
    - You can have federal jurisdiction if there is CNOF as long as Congress hasn't negated jx over that party.
- **Holding:** Supplementary jurisdiction couldn't be exercised. Lower court correctly determined it would be inappropriate to join municipalities as parties with pendant jurisdiction.
- **Reasoning:** Congress excluded municipalities explicitly from § 1983's scope. This indicates it would be inappropriate to join municipalities as parties through pendant jurisdiction.
    - ***There will rarely be a clear signal like this explicit one. Usually need to infer/argue***
- **Policy:** An alternative holding would run counter to idea that federal courts are courts of limited jurisdiction and state courts are courts of general jurisdiction.

Finley v. United States (2003) NO, SJ **1367 OVERTURNED THIS CASE – LEFT IT AT GIBBS TEST**

- **Facts:** Plaintiff sued Federal Aviation Admin for negligence and wrongful death. Jurisdiction under **1346 (b) - United States as Defendant.** Plaintiff later amended complaint to include state tort claims against San Diego and utility company. District Court allowed amendment. Finley was trying to append a state claim to the federal FTCA claim.
- **Rule:** A federal court may not assert pendant-party jurisdiction under FTCA with respect to additional parties over whom the court doesn't have independent jurisdiction.
- **Holding:** State claim can be appended and tried in federal court because hey
- **Reasoning:** Although this case meets the Gibbs test, (CNOF + expected to be heard together) it is different from Gibbs in that instead of a pendant claim, it raises an issue of a **pendant party.** Mere fact that Gibbs test was met isn't enough.

    - Text of FTCA defines scope of jx as being exclusively limited to actions where US is defendant
    - Thus, FTCA doesn't allow federal courts to assert pendant jx over additional parties.
    - Otherwise, it would be an usurpation of power to use pendant jx
- **Dissent:** Congressional silence on these parties didn't negate. This is too departed from Aldinger.
- **Note:** This case dramatically diminished access to pendant and ancillary jx but was later overturned by the passing of **§ 1367 – Supplemental Jurisdiction (combination of pendant and ancillary)**
    - Provides uniform standard with which a federal court may determine its authority to hear a nonfederal claim attached to a federal one.
    - **Commonly understood that this stature codified analysis in Gibb**s

Exxon Mobil Corp. v. Allapattah Services Inc. (2005) YES, SJ **THEME**

- **Facts:** Two cases and two different treatments of same issue
    - Exxon – Exxon CA **Rule 23** where not all plaintiffs meet jx minimum. Court holds that they properly used 1367 for claims of members who didn't meet minimum. Court had original jx in these cases even though not all met min.
    - Ortega – Girl sues Star Kist in PR. Her family joined suit under **Rule 20** seeking emotional damages. Family members didn't meet minimum. Court finds they did not have original jurisdiction over the family's claims that didn't meet minimum.
- **Rule: In a diversity case with multiple plaintiffs,** in order to have supplemental jurisdiction, case must
    - Have complete diversity
    - At least **once claim satisfies amount in controversy requirement**
- **Reasoning:** We can't read 1367 too narrowly
    - **1367(A)** "with the same case or controversy... as long as the action is one in which the courts have **original jurisdiction**"
        - When at least 1 claim meets minimum, court had **original jurisdiction.**
    - Once we know there is original jurisdiction, then ask are there statutory or constitutional bases for jx?
        - **1367(B)** - This qualifies broad rule of section A. Doesn't withdraw supplemental jx in this case because both Exxon and Ortega are adding PLAINTIFFS. Text of B restricts DEFENDANTS.
            - **Natural conclusion is that B extends supplemental jx to plaintiffs under Rule 20 and Rule 23**
            - **Note:** Plaintiffs under Rules 19 (required joinder) and 24 (intervention) not allowed
                - **19 –** Maybe to avoid circumvention of complete diversity. Nondiverse plaintiff might be omitted intentionally from original action but joined later under Rule 19.
    - Rejects arguments:
        - **Indivisibility Theory**: SCOTUS can't accept that for court to have original jurisdiction, it has to have jx over every claim in the complaint. This would require us to accept that all claims would need to fall under single indivisible action. This would **go against ruling in Gibbs.**
        - **Contamination Theory**: Inclusion of a claim or party outside the court's original jx doesn't contaminate every other claim in the complaint.
            - This makes sense in diversity, but no sense with amount in controversy.

- Diversity is meant to cure fear of home bias but presence of a claim that does not meet minimum does nothing to the other claims.

- **Dissent:** Ginsburg argues for a narrower construction of 1367 that don't overrule Clark (each plaintiff must meet min.) and Zahn (in CA, each member must meet min).
    - Legislative history of 1367's passing:
        - At this time, background was 1332 (**diversity**)
            - First, complaint must meet that original jurisdiction measurement.
            - Then, determine complete diversity and amount in controversy
    - Rule in Clark and Zahn form part of whether original jurisdiction exists in a diversity case

3. **1367(b) -** Regarding 1332 diversity cases – prohibits supplemental jurisdiction over claims made by Plaintiff against persons (Defendants) made parties under Rules 14, 19, 20, 23; or over claims by persons proposed to be joined/intervened as Plaintiffs under Rules 19, 24? - **YES – Move to #4, NO – No supplemental jx**
    a. If exercising supplemental jurisdiction claim destroys diversity, then there is no jurisdiction. But there is jurisdiction if diversity is maintained.
    b. P1 v. D2 must have diversity of citizenship – cannot bring a new defendant that would destroy diversity.
    c. Kroger - Must preserve complete diversity in context of supplemental jurisdiction. Worried about Plaintiffs fabricating diversity to get into federal court.
        i. **Rule 14 – Third Party Claim (P1 adds a D)**
            - ✗ P1 v. D2: Requires Diversity (Kroger)
            - ✓ D1 allowed to file a 3rd party claim against same state D2 if CNOF, because 1367(b) applies to ***original plaintiffs***
        ii. **Rule 19 – Required Joinder of Parties** (*Court* wants to bring in an additional party)
            - ✗ P1 Needs diversity from D2
            - ✗ P2 Need diversity from D1
        iii. **Rule 20 – Permissive Joinder** (Additional P or D permissively joined due to joint/several liability)
            - ✗ P1 needs diversity from D2
            - ✗ P2 needs diversity from D1
        iv. **Rule 24 - Intervening Party** (*Additional party wants to be brought in* – person learns of the case, realizes it applies to him, and wants to be brought in)
            - ✗ Intervening P or D needs diversity from opposing parties

Cases:

Owen Equipment & Erection Co. V. Kroger (1978) **CONSERVE COMPL. DIVERSITY IN SUPPLEMENTAL JX**

- **Facts: Diversity suit** and wrongful death of Kroger's husband (Iowa). Owen (thought initially Nebraska). OPPD files 3rd party claim against Owen saying it was in fact their negligence that caused death. Then discovered Owen's principal place of business was Iowa thereby destroying complete diversity. Owen moved to dismiss for lack of SMJ.
- **Rule:** Must preserve complete diversity in context of supplemental jurisdiction
- **Holding:** A claim asserted by the original plaintiff against a 3rd party defendant had to be supported by independent grounds of jurisdiction, even if the claim was transactionally related.

- **Reasoning:** To allow this would be inconsistent with principle of complete diversity because result would allow plaintiff who couldn't have joined originally, to join through indirect means.
    - Neither convenience of litigants nor considerations of judicial economy can suffice to find diversity.

4. **You have supplemental jurisdiction, UNLESS there is a 1367(c) discretionary reason of the court to decline supplemental jurisdiction.** *Are there any countervailing considerations such that the court may want to decline supplemental jurisdiction?*
    a. Claim raises novel/complex issue of state law
    b. State claim substantially predominates over jurisdictionally sufficient claim
    c. If the federal court has dismissed all claims over which it had original jurisdiction
        i. Gibbs - The court can still choose to hear the supplemental claim for economic or efficiency reasons
    d. Other compelling reasons

CHOICE OF LAW / ERIE DOCTRINE

- § 1652 – **Rules of Decision Act:** The laws of the several states, except where the constitution otherwise requires or provides, shall be regarded as rules of decision in civil actions in the courts of the United States.
- § 2072 – **Rules Enabling Act:**
    - (A) SCOTUS shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the federal district courts and courts of appeals
    - (B) but, such rules shall not abridge, enlarge or modify any substantive act

Swift v. Tyson (1842) **STATE STATUTES, NOT STATE COMMON LAW (OVERRULED)**

- **Facts:** Whether a pre-existing debt constituted sufficient consideration for the endorsement of a bill of exchange so that the plaintiff-endorsee would be treated as a holder in due course. Debt had been accepted by defendant as part of a fraudulent conveyance of property in Maine.
    - NY state court would not have regarded the debt as sufficient
- **Rule:** In diversity, the RDA does not bind federal law to state common law, only state statutes
- **Holding:** "Laws of the states" are state constitutions, statutes, and state judicial opinions interpreting
- **Reasoning:** The "laws of a state" are the rules and enactments promulgated by the legislative authority of the state.
    - **Promotion of Development of Uniform National Law of Commercial Transactions:** Federal interests of creating uniform body of commercial law justified independent evaluation of the issue by a federal court (even if court reached a contrary decision of forum state)
    - **Justice Story also believed federal judiciary should develop a body of substantive law**
        - "serve as a model for state courts" - Stimulating uniformity in law applied in state courts

Erie Railroad Company v. Tompkins (1938) **MUST USE STATE SUBSTANTIVE LAW (DOESN'T MATTER IF COMMON OR STATUTORY)**

- **Facts:** Plaintiff (Pennsylvania) brought tort action for injuries against defendant railroad in NY federal court (diversity). Train severed his arm while he was walking next to track.
    - **Penn. common Law:** Plaintiff was trespasser, so RR only liable if gross or willful negligence

    - **"General" federal common law:** Plaintiff was licensee, so RR could be liable for ordinary negligence
    - Defense is trying to define this as a **local issue** that deserves state law
    - Plaintiff is trying to establish this is a **general issue** that deserves federal law
- **Rule:** A federal court sitting in diversity must apply **state substantive law**, whether statutory or common
- **Holding:** Pennsylvania state law should apply because it's substantive. Federal courts in diversity actions must apply judicially announced state-created substantive law as well as state statutes and constitutions.
- **Reasoning (Brandeis):** Three reasons given to overrule Swift
    - **Tease Reason –** Previously unknown draft of RDA indicated so.
    - **Revealed Defects**
        - **No Uniform Outcomes / Separate systems -** Federal courts didn't develop uniform national law and persistence of state courts in ignoring federal decisions and applying their own state doctrines. **This led to forum shopping.**
        - **Great difficult distinguishing general from local issues**
        - **Discrimination - Equal Protection of Law Impossible –** Plaintiff (non-citizen) in diversity suit had privilege to choose whether to apply state or federal law. Lack of uniformity in the administration of the law of the state.
            - **One Instance –** Black and White Taxicab v. Brown & Yellow Taxicab – Corporate party reincorporating under other state to avoid diversity
    - **Unconstitutionality** – Swift was unconstitutional because it invaded state autonomy. Doesn't cite any section. We can assume it violated 10th Amendment which preserves state power in areas not delegated to federal gov.
        - **No federal judicial power to create substantive rules**
        - **Congress only has authority to do general procedural rules**
- **Dissent (Butler):** Constitutional questions weren't raised or argued by the parties nor were they necessary. Swift rule has been around for 100 + years. If there was an issue of constitutionality with an act of Congress, Attorney General should have been allowed to intervene.
- **Concurrence (Reed):** No need to say unconstitutional. Just say "laws" includes common law.

Guaranty Trust Co. v. York (1945) **APPLICATION OF ERIE TO STATUTE OF LIMITATIONS - OUTCOME DETERMINATIVE, THEN STATE LAW**

- **Facts:** Diversity suit instituted in New York federal court as a class action on behalf of a group of noteholders who alleged that Guaranty, in sponsoring an exchange offer, had failed to protect their interests.
    - **Guaranty:** claim had expired under New York's statute of limitations.
    - **FRCP** did not bar suit yet
- **Rule:** A federal court, exercising jurisdiction based strictly on diversity of citizenship, must abide by any state legal rule that would be **outcome determinative** if held in state court.
- **Holding:** New York state statute governed because it would materially affect the outcome.
- **Reasoning:** For Erie purposes, issue of **substantive or procedural** turned on the following question: **Does it significantly affect the result of a litigation to use federal law over state law?**
    - Says purpose of Erie was to avoid potential of state and federal courts in reaching different outcomes.
    - What Erie teaches us is that we must honor the substantive laws of states. **Federal courts need not follow state procedural laws.**
    - If state court closed its doors to Ms. York, then the federal court should too.

- Distinction between substantive and procedural is based on its effect on the litigation's outcome.
  - Substantive = outcome determinative
  - Procedural = not outcome determinative

Cases that took York the furthest – All decided on same day

Ragan v. Merchants Transfer Warehouse (1949) **OUTCOME DETERMINATIVE TEST APPLIED – EXTREME 1**

- **Facts:** Tort action with a 2-year statute of limitations (state). Complaint was made within two-year mark, but defendant was served a few months after to year mark.
  - **Federal:** Action is commenced by filing with clerk
  - **Kansas:** Action is commenced when **process is served** – BARRED
- **Rule:** A state cause of action that is time-barred in state courts is also time barred in federal courts.
- **Holding:** Under York, Ragan is barred from seeking recovery in federal court because he is barred in state. Applied state law.
- **Reasoning:** Kansas statute that created COA for wrongful death defined the 2 years commencement rule. Limitations period was built into the substantive statute that created the COA. State created a COA measured from death to service of process. (Not a 26-month cause of action). Court can't say it's good enough because of York's outcome-determination test.

Woods v. Interstate Realty Co. (1949) **OUTCOME DETERMINATIVE TEST APPLIED – EXTREME 2**

- **Holding:** Tennessee corporation that hadn't qualified to do business in Mississippi couldn't bring a diversity action in federal court in that state, if by virtue of its failure to qualify, Mississippi courts were closed to it. Applied state law.
- **Reasoning:** York case premised on theory that a right which local law creates but which doesn't supply with remedy is no right at all for purposes of enforcement in federal law.
  - **If barred from recovery in state court, then barred in federal court.**
  - Contrary rule would create **discrimination** (York justification)

Cohen v. Beneficial Industrial Loan Corp. (1949) **OUTCOME DETERMINATIVE TEST APPLIED – EXTREME 3**

- **Holding:** Federal court must apply New Jersey statute requiring plaintiff in a shareholder derivative suit to post bond even though Federal Rule 23 doesn't require this. Applied state law.
- **Reasoning:** Federal rule **did not contradict NJ statute, but rather addressed independent concerns.**

Competing Federal and State Policies – York Test Not Determinative (No Talisman)

Byrd v. Blue Ridge Rural Electric Cooperative (1958) **BALANCING TEST OF POLICIES UNDERLYING FEDERAL AND STATE STATUTES - A LITTLE CAUTIOUS OUTCOME DETERMINATION TEST THROWN IN**

- **Facts:** Plaintiff (NC) injured while connecting power lines for company (SC) and sues in a diversity action in federal court of South Carolina.
  - **State Law:** Whether or not he's a statutory employee under South Carolina's Workmen's Compensation Act should be decided by a **judge.** Citing: Adams v. Davison-Paxon **(state decision).** If statutory employee, then barred from federal court.
  - **Federal Law:** People are entitled to trial by **jury**
- **Rule:** Outcome determination test isn't conclusive. Instead, federal courts in diversity cases should compare the significance of competing federal and state policies to see which law to apply.
- **Holding:** Federal court should not follow state rule in this case.
- **Reasoning (Brennan):** Three parts:
  - **Weighing state and federal policies underlying rules -** We don't automatically need to respect manner in which state created rights were defined. Must balance policies underneath.

        - **State: No real justification for judge trial -** Court found nothing to suggest this was integral part of state right. Sounds like procedural law.
        - **Federal: Strong federal policy** against allowing state rules to disrupt **judge-jury relationship** in federal courts. **7th Amendment.**
    - **Essential Characteristic:** Herron v. Southern Pacific Co. – Held that state laws cannot alter the essential character or function of federal court. State statutes which would interfere with appropriate function are not binding on the federal courts. **Jury trial is essential characteristic.**
    - **Degree of Certainty:** Necessary to see if a different outcome would be probable. Predictability of outcome is low in this case. **This complicates York Test.**

Hanna v. Plummer (1965) **TWIN AIMS OF ERIE / COURT'S CONGRESSIONAL GRANT TO MAKE RULES**

- **Facts:** Plaintiff (Ohio) sued defendant (dead) in federal court of Massachusetts for damages from car accident in South Carolina. Defendant's executor said action couldn't be maintained because it violated state law for service and it was outcome determinative. (citing **Ragan** and **York**)
    - **State Law:** In-hand delivery of summons
    - **Federal Law (Rule 4):** Allows for summons to be left at party's house with a person of suitable age.
- **Rule:** For matters of **service of process**, in a diversity suit, **Rule 4 (substituted service) is the appropriate process** because rule **doesn't exceed congressional authority** or constitutional boundaries of jurisdiction.
- **Holding:** Federal Rule 4 controls in this case. Difference between federal and state law was an unsubstantial variation that wouldn't influence forum shopping. Additionally,
- **Reasoning (Warren):** Parts I and II

PART I – Erie's twin aims

- **Erie Aim #1: Discouragement of forum shopping:**
    - Even if using federal law would be outcome determinative, it wouldn't affect the choice of forum in this case. Every rule can be outcome determinative, so we have to look at it in this sense:
        - "**Substantial**" variation: are likely to influence forum choice
        - "**Unsubstantia**l" variations: aren't likely to influence forum choice
    - This is an **unsubstantial variation.** Hanna wouldn't bar recovery – would just change how service was made. Minor difference between service of process rules would not result in such a significant benefit to a noncitizen plaintiff to induce forum shopping.
    - Must view outcome determination test **ex ante**, **not ex post**
- **Erie Aim #2: Avoidance of unequal administration of the law/Equal protection:**
    - This service of process doesn't alter state created rights.
    - A substantial alteration in enforcement of state created rights must exist before problems under equal protection can be brought forward
    - Difficult to argue that permitting service of defendant's wife to take place of in hand service to the defendant himself alters to mode of enforcement of state rights.

PART II – Substantial Alteration of state created rights must exist before equal protection problems can arise

- **Erie reflects §2072** (Rules Enabling Act)**, but not §1652** (Rules of Decision)
    - **§2072** explains what "in cases where they apply" means in **§1652**
- **Congress gave federal courts right to create rules:** Federal Courts have the constitutionally granted power to prescribe housekeeping rules even though they might differ from comparable state rules.

        - Federal courts can make rules for practice and pleading. Maybe substantive/proc (gray)
    - **Whether to apply federal rule – SUPER IMPORTANT**
        - **Does federal rule govern practice under consideration?**
            - **Yes (broad) – Is there a conflict?**
                - **Go to the next bullet point**
            - **No (narrow) – Use state law! No interference with Federal Rule**
                - Ragan and Cohen – **State laws could be followed without violating Federal Rule**
        - **Is the rule constitutional?** (Article I: Necessary and Proper)
        - **Is the federal rule a valid exercise of the power granted by the Supreme Court under the Rules Enabling Act?**
            - **Not a big barrier:** Warren's analysis suggests that the Federal Rules are presumed to be a valid exercise of the Supreme Court's authority to promulgate procedural rules for the federal courts (see above)
            - **Is it a general rule of procedure? §2072(a)**
            - **Does the federal rule abridge, enlarge or modify the state substantive right? (e.g. if fed SOL is 1 year and state SOL is 2 years, then it abridges) §2072(b)**

Walker v. Armco Steel (1980) **APPLICATION OF HANNA TEST #1 – NOT IN CONFLICT - RAGAN GOOD LAW**

- **Facts:** Plaintiff injured while pounding nail into wall. Nail shattered, and he sued for defects. Armco was manufacturer. Sued in Federal Court of Oklahoma. Same SOL facts as Ragan.
    - **Oklahoma Statute:** Action is commenced when defendant is served
    - **Federal common law:** Rule 3 – Action is commenced with filing a complaint
- **Rule: Is the scope of the federal rule sufficiently broad to control this issue?**
    - **If yes,** then Hanna applies. This is when there is a **direct conflict** between the rules.
    - **If no,** then Ragan applies.
        - Because there is no Federal Rule which covers the point in dispute, Erie commands the enforcement of state law (substantive law).
- **Holding:** Federal rule 3 is not in conflict with a state statute that prescribes action as commenced when process is served. Because of this, state rule applies.
    - Rule 3 governs the timing of various other federal rules but does not toll a state statute of limitations or preempt state tolling rules.
- **Reasoning:** Court in **Hanna** distinguished from **Ragan** instead of overruling it. (See explanation of rule)
    - There is no indication that Rule 3 (rule that simple states when different actions start) was meant to displace state tolling rules for the purposes of statute of limitations.
    - Oklahoma SOL is a substantive decision made by the state and it's an integral process of state SOL.
        - **Rationale:** SOL establishes a deadline after which defendant may have peace of mind. Oklahoma considered it unfair for defendant to bring claim after this time. Rule 3 doesn't displace such policy determinations found in state law.
    - **Rule 3 and state law can exist without conflict.**

Burlington Northern R.R. Co. v. Woods (1987) **APPLICATION OF HANNA #2: YES IN CONFLICT**

- **Facts:** Conflict between Rule 38 (discretionary penalties for frivolous appeals) and Alabama law requiring penalties for all unsuccessful appeals of monetary judgments.
- **Holding:** FRCP implicitly "controls the issue" and so there is a conflict. FRCP trumps.

- **Reasoning:** Gives guidance on **what it means to conflict** with state law: sufficiently coextensive with the asserted purpose such that the Rule occupies the **statute's field of operation.**

Stewart v. Ricoh (1988) **APPLICATION OF HANNA #3: YES IN CONFLICT**

- **Facts:** Forum selection clause – Should venue transfer have been denied because state law practice?
    - Alabama state disfavored forum selection clauses – they say clause is invalid
    - § 1404 (a) – Change of venue: for the convenience of the parties…in the interest of justice…
- **Rule:** Uses the test set out in Hanna (see yellow)
- **Holding:** § 1404 trumps Alabama's distaste for forum selection clauses.
- **Reasoning:**
    - Is the statute broad enough to cover the state rule?
        - Yes, it is. So, it conflicts.
            - Federal statute gives discretion while Alabama makes a single concern dispositive. State rule defeats § 1404's command.
            - Policies can't exist side by side.
        - Designed to guide courts in viewing motions for transfer and suggests weighing multiple factors on a case by case basis (including forum selection clause)
        - Under §1404, we should give the forum selection clause its due weight (although not dispositive)
    - Is the statute a valid exercise of Congress's authority under the Constitution?
        - Yes. §1404 is procedural because it doesn't modify, enlarge or abridge the state law. It's just designed to guide. Seems a lot less like a rule.

Gasperini v. Center for Humanities (1996) **APPLICATION OF HANNA #4 – NO CONFLICT**

- **Facts:** Jury returns large verdict for Gasperini. Court of Appeals rejects large verdict. Court balances NY and federal laws controlling jury awards for excessiveness and the 7th Amendment.
    - **NY Law:** "Deviates materially" standard (CFH) – More review power to return excessive verdicts
    - **7th Amendment:** "shocks the conscience" (Gasperini – NY law is procedural)
    - Two issues?
        - Should court have applied state statute?
        - Did Second Circuit violate 7th Amendment?
- **Rule:** In federal diversity cases, the state standard for reviewing jury verdicts **can be applied** without offending the 7th Amendment.
- **Holding:** Finds that both standards can live together but judges that the state standard should be applied in this case.
- **Reasoning (Ginsburg):** Uses Hanna to answer Question 1 and Byrd to answer Question 2
    - **Using Hanna's focus on Erie's Twin Aims to determine if substantive of procedural**
        - "Both substantive AND procedural"
        - **Yes, induce forum shopping –** Applying federal would create substantial variation
        - **Yes, unequal administration of law -** Avoiding uneven administration of state laws
    - **Does NY law conflict with Reexamination Clause** (no de novo review of jury verdicts by appellate courts)?
        - **Court adopted Byrd Balancing Test** (weighing state and federal policies underlying statutes) – Court hinted that "essential characteristic of the federal court system" triggered need for Byrd analysis
            - We aren't reexamining facts. **Federal appeal courts can review trial court decisions on excessive verdicts for "abuse of discretion"**

- **Federal interests prevailed**

- **Dissent (Scalia):** The court never should have reached Hanna's "twin aims" test because the trial court's standard of review fell within the broad scope of judicial discretion on a new trail motion that is permitted by Federal Rule 59, and, in accordance with Hanna's interpretation of the rules Enabling Act, the Federal Rule should be applied.

Shady Grove Orthopedic Associates v. Allstate Insurance (2010) **STRAIGHTFORWARD HANNA ANALYSIS**

- **Facts:** Class action. Company failed to pay interest on overdue benefit payments. Suit dismissed because Rule 23 certification was inapplicable because of NY law.
    - NY Law: Precludes class actions to recover a penalty
    - Rule 23: Sets out requirements to certify class (no other eligibility requirements)
- **Rule:**
- **Holding:** NY law doesn't preclude a federal court from entertaining a class action under Rule 23.
- **Reasoning (Scalia):** Decides case in very straightforward Hanna's 3-Part Analysis.
    - **Hanna –** Scalia is textualist and wants a bright line.
        - Both rules govern the matter in dispute (whether Shady Grove can proceed with the CA)
        - There is a conflict
        - Rule 23 falls within scope of Rules Enabling Act
            - Only conditions for certification. Empowers to certify case meeting criteria.
            - **Sibbach Test** – What matters is substantive or procedural nature of federal rule. Validity of Rule 23 depends on whether or not it regulates procedure. If it does, which is the case at bar, it is authorized by § 2072 and is valid in all jurisdictions regardless of state-created rights.
- **Dissent (Ginsburg):** Criticized majority for finding a conflict between the rules when none was necessary. Also criticized mechanical reading that was insensitive to state interests.
    - NY law was one of substance. – We need a pure Erie analysis here
    - They didn't think there was actual conflict in the rules – Rule 23 is about conduct and NY law is about remedy (agreed with 2nd Cir.). Distinction is between eligibility and certifiability (although Scalia calls this artificial). Also points out strong state interest, as does Stevens concurrence.

Mason v. American Emery Wheel Works (1957) **ASCERTAINING THE STATE LAW - INFERRING FROM DICTA**

- **Facts:** Rhode Island federal court attempting to apply Mississippi law to tort case. Injury in Mississippi. Wheel had passed through many owners.
    - Mississippi Common Law: Required privity of contract for tort case (AEWW)
    - Dicta in other Mississippi case: Suggested state supreme court was ready to eliminate that
- **Rule:** A federal district court may infer from dicta what a different state court would hold if it were presented with a similar issue
- **Holding:** Case is decided on likely soon to be revised law of Mississippi and finds that privity is not required for Mason to recover.
- **Reasoning:** Federal judge should ask "what would be the decision of reasonable intelligent lawyers, sitting as judges of the highest court of NY and fully conversant with NY"

Federal Law in State Courts – COA created by federal statutes are ruled by federal law because of the Supremacy Clause.

Dice v. Akron (1952) **FEDERAL LAW IN STATE COURTS – THE REVERSE OF ERIE**

- **Facts:** Dice (fireman for railroad) was injured when an engine on which he was riding on jumped the track.

    - Ohio Law: fraud issues decided by judge
    - Federal Employment's Liability Act: decided by jury
- **Rule:** When you base a state case on a federal statute, you need to apply federal law.
- **Holding:** SCOTUS reversed and ordered issue to be submitted to jury because jury trials are just too important a part of the substantive rights provided by FELA to be eliminated in a state action
- **Reasoning:** Basing his suit on a federal statute, Dice ensured the law used to interpret the statute would also be federal.
    - Jury trial is part of the substantive rights granted by FELA. Can't be eliminated in state action.
    - Only if federal law controls can the federal act be given that uniform application throughout the country.

CLASS ACTIONS

Certifying a Class Action

- One of the reasons we put so many restrictions on class action is the right to a day in court (DP).
    - Class action is not a literal day in court. It's a **day in court by representation**, so we want to make sure it is used only when appropriate and when absent members can be protected.

Implied Prerequisites

- There **must be a class.** Not too broad, not too specific, not too vague or amorphous.
    - Properly defined?: "precise, objective, and presently ascertainable"
- Plaintiff Representative must be a **member** of the class (rarely an issue)
    - Personal stake in litigation offers some assurance that the representative will adequately protect the interests of absent P's

Express Prerequisites

- **NUMEROSITY - Rule 23(a)(1)**: Joinder impracticable, not impossible
    - 40 is enough; 20 may be too few.
- **COMMONALITY - Rule 23(a)(2)**: Common Question of Law or Fact
    - Usually needs to be an important issue. "Was the price fixed? Was there discrimination? Is the pharmaceutical defective?"
    - Discrete, individualized injuries can destroy
    - This used to be treated as a very low threshold, but post-*Wal-Mart* that is in danger (pushing towards (b)(3) predominance requirement
- **TYPICALITY Rule 23(a)(3)**: Is the plaintiff typical of the class?
    - Only when rep's claim is markedly different from that of the other class members will typicality be lacking.
    - Should not be motivated by a grudge or vulnerable to a specific defense
- **ADEQUACY Rule 23(a)(4)**: Class representative must fairly and adequately protect the interests of the class.
    - Due process concerns about absentees' day in court – Hansberry *Can't bind absentees who are not adequately represented*!
    - Critical: Do conflicting interests exist between reps and other members of the class? Also discussed in Hansberry
    - In Securities cases, representative must have biggest financial stake
    - Judge must be vigilant; serves as **guardian** of absent members.

Categories of Classes under 23(b) - (b)(1) and (b)(2) are natural classes; (b)(3) is more of a joinder device.

Prejudice Class Actions 23(b)(1): Purpose of class to avoid prejudice. Individual cases may cause risk of inconsistency and varying adjudication. Cannot opt-out.

- **23(b)(1)(A)**: Prejudice for *Non-Class Party*: Individual cases may create **incompatible standards of conduct** for defendant.
    - D engages in repeated conduct that may be challenged.
    - E.g. in 1 case, bond illegal; in another, not illegal. Bond-issuer confused.
- **23(b)(1)(B)**: Prejudice to *members of the class*: Risk of inconsistent adjudications: Individual actions might impede other class members' ability to protect interests.
    - Must be a real possibility that separate actions will be brought and would involve prejudice.

Injunctive/Declaratory Judgment Class 23(b)(2): The defendant has acted or refused to act on grounds generally applicable to the members of the class. Injunctive or declaratory relief necessary to protect the class.

- Defendant's conduct need only be generally applicable to class
- Cannot opt-out; notice not essential.
- Public Interest / Environmental / Due Process / Civil Rights
- Most discrimination cases fall under this category.
- When P's want injunction & money, hybrid (b)(2) and (b)(3).
    - BUT any money damages must be **incidental;** back wages are NOT incidental (Wal-Mart). Incidental means it's computational and flows naturally from the injunction.
        - NO (b)(3) when each CM would be entitled to an individualized award of monetary damages
        - BUT then how do the lawyers get paid?

Damage Class Actions 23(b)(3): Only thing class members have in common is that they were injured in the same fashion by D. Thus, 4 hurdles for 23(b)(3): **Predominance; Superiority; Notice; Opt-Out**

- Generally about money. Includes Mass Torts, consumer actions.
- Questions of law or fact common to class must **PREDOMINATE** over any questions affecting only individual members. (Most litigated)
    - This goes beyond (a)(2)'s "a common question."
    - Must be the guts of the case.
    - Individualized damages do not defeat 23(b)(3)?
    - Class Action However, different issues of causation may defeat.
    - Class Action must be **SUPERIOR** to other available methods.
        - Do a comparison (joinder, individual)
        - Consider:
            - ✓ CM's interests in individually controlling prosecution, or D's interest in separate action
            - ✓ Litigation concerning controversy already underway?
            - ✓ (Un)desirability of concentrating lit. in one forum
    - Key question to determine these 2 prerequisites: Are there difficulties likely to be encountered in managing the CA? **** manageability! ****

- **MANDATORY NOTICE**: Best practicable to give notice of institution and nature of action, and **RIGHT TO OPT-OUT.**

Hybrid (B)(2)/B(3) – Classes must meet higher standards of B(3)

Key moment comes at the moment of certification - you must define the class.

- Is there a class?
- Is the class represented by a class member?
- Joinder of all must be not practical, not impossible
- Commonality
- Typicality
- Adequacy

Hansberry v. Lee (1940) **THE REACH OF RES JUDICATA**

- **Facts:** Racially restrictive land covenant. Only effective if 95% of owners signed. Burke (other case) challenged this covenant and won. Hansberry bought home in neighborhood (he was black). Hansberry proved only 54% of owners signed. Trial Court agreed with Hansberry, but held the issue was res judicata by a previous case.
    - Did binding Hansberry litigants to the Burke judgment (they weren't parties) deprive them of due process?
- **Rule:** Res judicata may only apply to bind absent parties by prior litigation if they were present or adequately represented in the prior action
- **Holding:** Hansberry not bound. Burke litigants shared none of the same interests as Hansberry so Hansberry's interests weren't adequately represented in the Burke case.
- **Reasoning:** Usually, a person isn't bound by a judgment if that person wasn't a party or served with process.
    - Exception: Class Actions – but still only binds people that have been adequately represented. This requires that the original litigants and non-parties share the same interests.
    - Parties to a land covenant often **have conflicting interests** (not part of the same class by virtue of covenant alone)
    - **Burke and Hansberry had conflicting interests – so not represented – not bound**

Wal-Mart v. Dukes (2011) **CLASS CERTIFICATION UNDER RULE 23 – COMMON INJURY**

- **Facts:** CA with 1.5 MM employees. Alleging company engaged in "corporate culture" of discrimination (no express corporate policy). Local managers subjective discretion over pay and promotions favored men.
    - Seeking declaratory relief + backpay
    - Lower court certified a class under 23(a) and backpay claims under 23(b)(2)
- **Rule:** Class certification under Rule 23 is **improper** when there is **no common injury** that may be resolved across the entire class.
- **Holding:** Lower Court improperly certified the class under 23(a). No commonality because no proof of companywide discrimination policy. Little in common but sex.
- **Reasoning (Scalia):** No commonality!
    - **No common injury:** 23(a) Commonality **=** Actually means all members suffered same injury. Not enough to say violation of Title VII. Must depend on common contention that may be resolved across entire class.
        - Scalia defines it to exclude a culture of disparate impact. He focuses on express policies.

        - Because they provide no convincing proof of company
    - **Incorrect type of CA:** Expressly holds that monetary claims may not be certified under Rule 23(b)(2).
        - ***Rule 23(b)(2) applies only when injunction would provide relief to entire class***
        - Doesn't authorize certification when different members are entitled to ***different injunction/declaratory judgment against defendant or different monetary damages***
    - **Predominance –** Plaintiff's claim that their back-pay claims do not "predominate" over their claims for injunctive and declaratory relief is rejected because such an interpretation can't be justified by rule's text. They belong in (b)(3)!
- **Dissent (Ginsburg):**
    - Yes, commonality - Gender bias suffused corporate culture.
        - This is the key dispute common to the class
    - Blending/Confusion/Predominance
        - Holding blends (a)(2) with 23(b)(3) thereby elevating (a)(2) inquiry into one no longer easily satisfied
        - Majority confuses commonality (a)(2) with predominance (b)(3)

Phillips Petroleum v. Shutts (1985) **PERSONAL JURISDICTION - STILL NEED PJ OVER DEFENDANTS!**

- **Facts:** Defendant contesting certification of class because plaintiffs didn't meet minimum contacts with the forum state. Unless out of state plaintiff's **consent,** no JX. Failure to execute opt-out isn't consent.
- **Holding:** Absent plaintiffs are entitled to Due Process, but **do not need minimum contacts** because there are safeguards to protect them in Class Actions (no International Shoe).
- **Reasoning:** Absent plaintiff and defendant burdens are different.
    - Due process rights for all 23(b)(3) classes (damages classes) – this is enough protection
        - Adequate representation
        - Actual notice (best given circumstances – like in Mullane)
            - Describe action, rights, chance to participate (opportunity to be heard)
        - Opt-out provision (for damage class action only)
    - Opt-out letter is sufficient. There is no precedent for opt-in procedure.

Cooper v. Federal Reserve Bank of Richmond (1984) **PRECLUSION – GENERAL V. INDIVIDUAL CLAIMS**

- **Rule:** A judgment in a CA determining employer didn't engage in **general** discrimination against a certified class doesn't preclude a class member from maintaining a subsequent civil action alleging an **individual** claim of racial discrimination against employer.
- **Holding:** CA judgment doesn't preclude the petitioners from bringing their own individual claims
- **Reasoning:** Even though bank didn't have general pattern, it is still possible the bank discriminated against a number of individuals.
    - Clear difference between two actions.
        - **General pattern:** doesn't focus on individual hiring decisions – focus is general practices of company
        - **Individual suit:** focuses on one hiring decision

Class Actions and Diversity

- Which class members should court look at when determining diversity?
    - Individuals - Named Parties (See: **Supreme Tribe of Ben Hur v. Cauble**)
- Which class members should we consider for amount in controversy?
    - At least one must meet requirement

- **Zahn v. International Paper** - Each member under Rule23(b)(3) must satisfy requirement
- **Exxon Mobil v. Allapattah** - Court held enactment of 1367 Supplemental Jurisdiction overruled Zahn holding. When there is at least one that satisfies requirement, district court has jurisdiction over that claim.

Class Action Fairness Act 2005 - Mass Actions - CA seeking to try jointly monetary relief claims involving common questions of law or fact for 100 or more persons.

- **Amount in Controversy** - CAFA authorizes federal jx for CA where amount in controversy exceeds $5 MM Section 1332 (d) (6)
- **Diversity** - CAFA authorizes federal jx upon showing that any class member's state of citizenship is different from the state of citizenship of any defendant. Section 1332(d) (2) (a) - also for citizens of foreign state vs. citizen of US
- **Mandatory denial of federal jurisdiction**: CAFA excludes various categories of class actions from scope of statute
    - Local Controversy Exception: bars federal jx when > 2/3 of class are citizens of the state in which the action was originally filed; at least one of the defendants also citizen; principal injuries occurred in state
- **Discretionary Denial of Federal Jurisdiction:** CAFA gives district courts discretion to deny jx based on six factors. 1332 (d) (3) (A) - (F)
- **Removal:** CAFA expands ability to remove CA to federal court. Any defendant may remove, regardless of consent of other defendants. CAFA also permits defendant to remove even if he is from the state in which action was brought.