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# Personal Jurisdiction

1. **STEP ONE:** Is there **General Jurisdiction** over the party? (cause of action can be unrelated to contacts)
   1. **General Jurisdiction**: continuous and systematic activity in the forum state – *not semi-regular* (**Helicopteros**)
      1. **People**
      2. **Domicile**: “state where you have taken up residence and intend to reside indefinitely”
         1. Domicile changes when you (a) move somewhere with (b) an intention to stay (**Mas v. Perry**)
         2. Must be a US citizen to be domiciled in a state (**Dred Scott v. Sanford**)
         3. Domiciliary Indicia: where you vote, driver’s license state, state taxes
      3. **Physical Presence**: where the party is physically present **→** transient service (**Burnham**; **Pennoyer**)
      4. **Consent**: parties may consent to GJ over them expressly or impliedly (**Hess**)
      5. **Corporations**: GJ where the corporation is *at home* (**Daimler**), meaning:
      6. Their **states of incorporation** (**Marshall v. Baltimore & Ohio R.R.**); and
      7. **Their principal place of business** (i.e., their *nerve center* – **Hertz Corp. v. Friend**)
      8. You can *maybe* get them under an expanded conception of SJ (i.e., massive contacts – **Helicopteros**, Brennan’s dissent)
      9. **Subsidiaries:** *ongoing and continuous* activity in forum (**Goodyear**) **→** causes legit regulatory concerns
      10. **Temp. Relocation:** Conducting activities essential to operating a business counts as *at home* (**Perkins**).
   2. **Associations**, **partnerships** and **unions**: test domiciles of each member (**Deveaux**).
2. **STEP TWO**: is there **Specific Jurisdiction** over the party? (i.e., cause of action *related* to the contacts)
   1. Does a **long-arm statute** give the state court power over the parties? Does this statute comport w/ due process?
   2. Are there **minimum contacts** with the forum such that bringing the Δ into court wouldn’t offend traditional notions of **fair play** and **substantial justice** (**Int’l Shoe**)?
      1. Has the Δ **purposefully availed** herself of the forum such that being sued there is **foreseeable** (**Asahi**)?
   3. **TESTS** for **Minimum Contacts**:
      1. **Stream of Commerce**: placement in SOC alone is insufficient (*O’Connor,* **Asahi**); placement in SOC with *high volume* is sufficient (*Stevens,* **Asahi**); placement in SOC alone is sufficient (*Brennan*, **Asahi**).
         1. *O’Connor Vote*: requires intentional targeting of the forum (**McIntyre**)
         2. General foreseeability that a product might enter SOC isn’t enough (**WWVW**)
         3. NOTE: exporting children into the SOC doesn’t count as a matter of policy (**Kulko**)
      2. **Five Factors of Fairness**: (1) *burden on Δ*; (2) forum-state interest in litigation; (3) π’s interest in litigating in forum; (4) interstate efficiency; and (5) interstate policy interest **→** should point to the Δ not being surprised at being hailed into court here.
      3. **Contracts**-**Plus Test**: is there a contract between the parties impliedly connecting the Δ to the forum state (**Burger King**)? Is there a contract with substantial connections to the forum (**McGee**)?
         1. **Considerations**: prior negotiations in the forum; contemplated future consequences in the forum; terms of the contract (i.e., forum selection clause, choice-of-law provision); payments to the forum; trips to the forum; agreed to in forum
      4. **Purposeful Availment**: did the ***defendant*** purposefully avail *herself* of the forum?
         1. Π’s unilateral activity in the forum cannot impute contacts to the Δ (**Walden, WWVW, Hanson**)
      5. **Effects Test** (Torts): did Δ reach into and commit a tortious act in the forum state that harmed π?
         1. Was it *generally foreseeable* that the tortious activity might harm π in forum (**Keeton**)?
         2. Was it *specifically foreseeable* that Δ’s targeting would affect π in the forum (**Calder**)?
         3. Did Δ sell a defective product into the forum (**Gray**)?
3. **Quasi in Rem (QIR)**
   1. **QIR 1**: property related to suit, where overlap b/w liability facts and jurisdictional facts may create minimum contacts
   2. **QIR 2:** seizing property pre-judgment to get adjudicative authority is only possible where the long-arm statute has a hole precluding IPJ (**Shaffer**), use *Mathews/Doehr* analyses to determine opportunity to be heard

# Subject Matter Jurisdiction

**Central Question:** does the court have the AUTHORITY/POWER to render a judgment over the CLAIMS? To analyze, the following must be considered:

Federal Question Jurisdiction

Diversity Jurisdiction

Removal Jurisdiction

Supplemental Jurisdiction

# Federal Question Jurisdiction

1. **FQJ** is created by Article III of the Constitution and 28 u.s.c. § 1331
   1. **“Arising Under”** (**Constitution, Article III, § 2**): “the judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority”
      1. Broader authority. Federal issues raised by either party constitute a “federal ingredient.”
   2. **“Arising Under” 2** (**U.S.C 1331**): “the district courts shall have original jurisdiction of all actions arising under the Constitution, laws or treaties of the United States.”
      1. Complaint must plead an issue implicating a federal law from π’s perspective; this form is narrower and more commonly pleaded.
2. **Action Plan**: assess whether the source of π’s entitlement is a federal law
   1. **Step 1:** is there a clear statutory cause of action?
      1. **NO** → look for silent, private cause of action in the Constitution (**Bivens v. Six Unnamed Federal Agents**)
      2. **YES** → step 2
   2. **Step 2**: does the statutory cause of action *arise under* federal law? (**Osborne v. BOTUS**)
      1. **YES →** FQJ
      2. No, but **Reasonably relies** on construction of a federal law (**Smith v. K.C. Title & Trust**) **→** YES
      3. Federal issue is a defense (**Louisville & Nashville R. Co v. Mottley**) or anticipates a defense (**Skelly Oil Co v. Philips Petroleum Co.**) → **NO FQJ**
      4. Yes, but Congress didn’t intend to provide a COA for that statute (**Merrell Dow v. Thompson**) **→** NO
      5. federal law redirects you to follow state law/custom (**Shoshone Mining v. Rutter**) **→ NO**
   3. **Step 3**: No federal cause of action **→ Grable & Sons Metal Prods. v. Darue Mfg. & Engineering** test:
      1. Is the issue of pure fact, rather than law?
      2. Is the sovereign interest that of the federal, rather than state, government?
         1. If federal revenue or agencies are involved, federal courts are more likely to grant FQJ (**Grable**)
      3. Would this case distort the judicial division of labor (high/low volume)? (**Moore v. C&O Ry. Co.; Empire v. McVeigh**)

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| **Criteria** | **Federal Court** | **State Court** |
| **Uniformity** | * Frequency of similar cases begs uniformity * Will have *high precedential impact* | * States reasonably differ on law * One-off (narrow) case |
| **Fact v. Law** | * Question of pure law | * Fact-driven or mixed question |
| **Sovereign Interest** | * Federal issue antecedent to state claim * Federal issue is the real crux * Issue essential to gov’t (revenue, agency) | * Mostly state claims * State judges could rule on the case without difficulty |
| **Volume of Cases** | * Will lead to few cases entering federal court | * Will trigger many cases getting into federal court |

# Diversity Jurisdiction

1. **Constitutional Diversity Jurisdiction** (**Article III, § 2**): applies to a wide variety of parties so long as at least one party is diverse from another across the versus (*minimum diversity*) – U.S. is a party, cases involving ambassadors, ministers, and foreign citizens, and cases between states.
2. **Statutory Diversity Jurisdiction (28 U.S.C. § 1332):** applies to four subsets of the constitutional parties and requires πs and Δs have no common domicile (maximum diversity).It declares that:
   1. District courts have original jurisdiction over all civil actions where the AIC exceeds $75k and is between:
      1. Citizens of different states (dual citizens treated as US citizens);
      2. Citizens of a state and citizens or subjects of a foreign state, unless foreigner is permanent resident domiciled in the same state;
      3. Citizens of different states and in which citizens or subjects of a foreign state are additional parties; and
      4. A foreign state, defined in section 1603(a) of this title, as π and citizens of a state or of different states.”
3. **Establishing Diversity Jurisdiction (DJ)**
   1. **STEP ONE:** ensure there is complete diversity – no π may share citizenship with a Δ (**Strawbridge v. Curtiss**).
      1. Citizenship measured by domicile – the principal abode where you always return (**Mas v. Perry**)
      2. Must have U.S. citizenship to have state citizenship (**Dred Scott v. Sanford**)
      3. Class actions: the named parties must satisfy complete diversity with Δs (**Supreme Tribe of Ben-Hur v. Cauble**)
      4. Corporations: citizenship is determined by state of incorporation (**Louisville v. Letson**) and principal place of business / nerve center (**Hertz Corp. v. Friend**)
   2. **STEP TWO:** ensure the claim meets the amount in controversy requirement (AIC, $75K+, **28 U.S.C. § 1332**)
      1. AIC is good so long as the amount π claims is claimed in good faith (**St. Paul Mercury Indemnity Co. v. Red Cab Co.**)
      2. Burden of proof for AIC is on party invoking diversity (**St. Paul Mercury**)
      3. NOTE: a single π’s claims against a single Δ may be aggregated to satisfy; and claims of separate πs’ may be joined to those of a π who satisfies AIC via supplemental jurisdiction, so long as all against the same Δ (**Exxon v. Allapattah**)
   3. **STEP THREE**: ensure the claim isn’t excluded from diversity jurisdiction
      1. **Family Exception**: divorce, alimony and custody cases must be heard in state court – but *only* those (**Ankenbrandt v. Richards**)
      2. **Probate Exception**: probate claims must be heard in state court, unless they are paired with tort claims (**Marshall v. Marshall**)

# Removal Jurisdiction

1. **Removal jurisdiction (RJ**) allows a Δ, after π has chosen a state court, to remove the case from a state court to a federal court. While the entire suit is removed, the court may remand or dismiss supplemental state law claims if appropriate (**Gibbs**).
2. **Statutory basis** (**28 U.S.C. § 1441**): except as otherwise expressly provided by Act of Congress, any civil action brought in a state court of which the district courts of the United Stated have original jurisdiction, may be removed by the Δ or the Δ’s, to the district court of the United States for the district and division embracing the place where such action is pending.
   1. **§ 1441(a)**: only if federal court had original jurisdiction (could’ve been brought in federal court, but wasn’t)
   2. **§ 1441(b)**: no home-state Δ removal solely on basis of diversity
   3. **§ 1441(c):** the entire claim may be removed even if certain supplemental claims are unremovable, so long as one claim is removable.
   4. **§ 1441(f)**: federal court can hear a removed claim even if the state court lacked jurisdiction over it
3. Counterclaims: π cannot remove on the basis of a federal counterclaim – *only defendants* (**Shamrock Oil v. Sheets**)
4. Class-actions: a pre-certification damage stipulation doesn’t preclude the application of CAFA (**Standard Fire Ins. v. Knowles**)

# Supplemental Jurisdiction

1. **Supplemental Jurisdiction**: SJ has replaced common law pendent and ancillary jurisdiction with **28 U.S.C. § 1367**: need IPJ?
   1. Reversed **Finley**, but codifies **Kroger** and **Gibbs** 
      1. **Finley v. U.S.**: parties that otherwise could not be sued in federal courts cannot be brought into federal court solely because of having their claims share the same facts as the claim mandated to the federal courts. (no pendent parties) (*overvuled*)
      2. **Owen Equipment v. Kroger**: π cannot sue a TPD impleaded by Δ if it would break diversity – Rule 14
      3. **United Mine Workers v. Gibbs**: π may pendent a state claim to a federal claim in federal court if they arise from the same **CNOF**. The state claim may proceed even if the federal claim is dismissed.
      4. If one π’s claim against Δ meets the AIC, then other πs may join against Δ so long as the claims arise from the same CNOF, even if they fall short of AIC (**Exxon Mobil v. Allapattah**; **Starkist Tuna**)
         1. **Contamination Theory**: if what occurred is vert inconsistent with what Congress appears to want in the federal courts, then we should not allow it (**Allapattah**; Ginsberg, J., dissenting).
      5. After a settlement has been reached in a court that had subject-matter jurisdiction, that court loses jurisdiction to enforce the settlement unless it specifically retains it in the settlement – waiver of jurisdiction (**Kokkonen v. Guardian Life Ins. Co.**)
   2. **§ 1367(a)**: courts with original jurisdiction over a case have supplemental jurisdiction over all other claims that form part of the same case or controversy (CNOF), as determined by Article II of the Constitution – parties and claims.
   3. **§ 1367(b):** in *diversity,* no supplemental JX over π’s claims against Rule 14/19/20/24 parties if it would break diversity, as well as claims by persons to be added as πs through rule 19 – codifies **Kroger**, overturns **Aldinger** & **Finley**.
      1. **Note**: class actions are still permissible; multiple πs can join claims against a Δ if one π meets the AIC (**Allapattah**).
      2. **Neuborne:** poorly drafted – someone will argue **1367(b)** overturns **Ben-Hur**
   4. **§ 1367(c)**: the district court may decline to exercise SJ if:
      1. Claim raises novel/complex issues of state law more appropriate for a state court
      2. State supplemental claim substantially predominates the jurisdictionally sufficient federal claim
      3. The district court has dismissed all claims over which it had original jurisdiction (only state left)
      4. In exceptional circumstances, there may be other compelling reasons for declining SJ (rare)
   5. **Claims *Not Requiring* Independent Subject-Matter Jurisdiction**:
      1. Rule 13(a) counterclaims and 13(g) crossclaims;
      2. Πs brought in under Rules 20 and 23
      3. Δ’s claims against a third-party Δ he impleads via Rule 14
   6. **Claims *Requiring* Independent Subject-Matter Jurisdiction**:
      1. Π’s claims against parties brought in through Rules 14/19/20/24, if the parties would destroy diversity
      2. All Rule 13(b) counterclaims (new cases)
2. **Efficiency Policies:** 
   1. Judicial economy, convenience to the parties, confusion to the jury and fairness to the litigants
   2. Because trying all issues in one case is most efficient, the court ought to hear the whole case if federal issues are present.
   3. Judicial discretion: if a federal question is dismissed late, the federal court may still hear out the case because of energy and money already invested.
   4. If state claims/issues predominate and should be heard by a state judge, then those claims should be dismissed to state court (can happen at any time)

# Venue

1. **Venue** defined (**28 U.S.C. § 1390(a)**): the geographic specification of the proper court or courts for the litigation of a civil action that is within the subject-matter jurisdiction of the district courts in general, and does not refer to any grant or restriction of subject-matter jurisdiction providing for a civil action to be adjudicated only by the district court for a particular district or districts.
2. **Venue in General** (**§ 1391(b)**): a civil action may be brought in –
   1. a judicial district in which any Δ resides, if all Δs are residents of the state in which the district is located;
   2. a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated (**Bates**); or
   3. if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any Δ is subject to the court’s personal jurisdiction with respect to such action.
3. **Residency** (**§ 1391(c)**): for all venue purposes –
   1. A natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled;
   2. An entity with the capacity to sue and be sued (corporation) in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a Δ, in any judicial district in which such Δ is subject to the court’s personal jurisdiction with respect to the civil action in question and, if a π, only in the judicial district in which it maintains its principal place of business; and
   3. A Δ not resident in the United States may be sued in any judicial district, and the joinder of such a Δ shall be disregarded in determining where the action may be brought with respect to other Δs.
4. **Residency of Corporations in States With Multiple Districts** (**§** **1391(d)**):
   1. Consider each jurisdiction a separate state. Any district with sufficient minimum contacts for personal jurisdiction is an appropriate venue.
   2. If there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.
5. Venue is proper in the district where the events giving rise to the claim occurred (**Bates v. C&S Adjusters**).

# Transfer of Venue

1. **Change of venue** (**§** **1404(a)**): for the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.
   1. Either party may move for this transfer, but it is contingent on judicial discretion.
   2. The transferee court must be one where it could have been brought originally, i.e., PJ/SMJ and venue are proper (**Hoffman v. Blaski**)
   3. Under a § 1404(a) transfer, the laws of the transferor court, including its choice-of-law provisions, will apply – “change of courtrooms” (**Van Dusen v. Barrack**; **Ferens v. John Deere**)
2. **Cure or Waiver of Defects** (**§ 1406(a)**): the district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.
   1. A § 1406(a) transfer may be initiated even though the transferor court lacks personal jurisdiction (**Goldlawr v. Heiman**)
   2. However, the law of the transferee court applies under a **§ 1406(a)** transfer.
3. **Policy Considerations:** (1) interests of and burdens on parties; (2) ease of access to evidence/witnesses; (3) local interest

# Forum Non Conveniens Dismissal

1. A **state** or **federal court** may dismiss an action if a more appropriate forum for the π exists.
   1. Either party may invoke forum non conveniens; if the motion is granted, the case is immediately dismissed.
2. Appellate courts typically review only for abuse of discretion, and usually apply it where foreign entities are involved.
3. Granting forum non usually moves to a more appropriate forum (**Piper Aircraft**) and has a negative impact on π, because they chose the previous forum strategically (favorable laws, etc.); the π’s choice is rarely disturbed.
4. Court balances the private parties’ interests against the public’s interest in considering a FNC dismissal motion (**Gulf Oil**)
5. **Piper Aircraft v. Reyno** gives an alternate test:
   1. Whether π has a fair shot to win in the new forum;
   2. Whether there’s a strong material advantage in moving to the new forum; and
   3. Economic efficiency.
   4. Moreover – change in substantive law should be given *little weight* in assessing FNC

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| **Forum Non Conveniens Balancing Test (Gulf Oil v. Gilbert)** | |
| **Private Parties’ Interests** | **Public Interests** |
| * Relative ease of access to proof/evidence * Availability of witnesses * Availability of compulsory process for attendance of unwilling witnesses * The cost of obtaining attendance of willing witnesses * Possibility of view of the premise, if appropriate * Hardships for the Δ * Available alternative forum | * Forum/local interest in the case (is this case irrelevant to the community?) * Court’s familiarity with the laws being applied * Political conditions of the forum * Diversity case apply forum’s law should stay |

# Commencing the Action – Rule 4 FRCP

1. **Due Process** exists in two places – the Fifth Amendment (federal) and the Fourteenth Amendment (state) – and does four things:
   1. It limits the territorial power of the various states to impose *in personam* jurisdiction;
   2. It limits the **procedures** used by the states to cause deprivation of life, liberty or property;
   3. It provides **substantive due process**, which demarcates the line between the acts by persons that courts hold are subject to government regulation or legislation and the acts that courts place beyond the reach of governmental interference; and
   4. It bridges to Bill of Rights to bear against the states, but only those provisions that are fundamental to the concept of liberty.

# Fair Notice

1. The ***primary method*** of giving fair notice is through **personal service**. Substitute service (i.e., **constructive notice**) is also available. Personal service must be reasonably calculated under the circumstances to apprise interested parties of the action and give them an opportunity to object – more simply, personal service must be done to the best of one’s ability, given the circumstances (**Mullane v. Central Hanover Bank & Trust Co.**).
   1. If other methods are available, service by publication alone is insufficient (i.e., direct or certified mail).
   2. Land disputes: personal service is required
   3. The right to receipt of fair notice may be waived, especially through a cognovit note between sophisticated parties (**D.H. Overmyer Co. v. Frick**).
   4. Due process requires follow-efforts when certified mail is return unmarked, esp. for property seizure (**Jones v. Flowers**).
   5. Heroic efforts need not be undertaken, especially when notifying an incarcerated person (**Dusenbery v. U.S.**).
   6. **4(k). Territorial Limits of Effective Service.** 
      1. **(1). In General.** Serving a summons or filing a waiver of service establishes personal jurisdiction over a Δ:
         1. who is subject to the jurisdiction of a court of general jurisdiction in the state where the district is located;
         2. who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than **100 miles from** where the summons was issued;
         3. when authorized by a federal statute (long-arm).
      2. **(2). Federal Claim Outside State-Court Jurisdiction**. For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a Δ if:
         1. the Δ is not subject to jurisdiction in any state’s courts of general jurisdiction; and
         2. exercising jurisdiction is consistent with the United States Constitution and laws.

# Opportunity to be Heard

1. Each party must be provided with an **opportunity to be heard** before, rather than after, a deprivation that may violate his/her property rights (**Snidach**). A Δ has an adequate **opportunity to be heard** when – considering the interests at stake in the litigation – she can develop the facts and legal issues in the case and present them to the court. Whether a pre-seizure hearing is required depends in part on the nature of the deprivation.

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| **Pre-Seizure Hearing Required?** | |
| **YES** | **NO** |
| * *Lifeblood* Interests: Wage garnishments, bank account garnishments and public assistance (**Snidach v. Family Finance Corp. of Bay View**; **N. Ga. Finishing, Inc. v. Di-Chem, Inc.**; **Goldberg v. Kelly**) * Consumer goods w/ significant possessory interest (**Fuentes v. Shevin**) * Real Property (**Conn. v. Doehr**) | * Social Security Benefits (**Mathews v. Eldridge**) * Consumer goods where there is judicial review, π posts bond, and post-seizure hearing (**Mitchell v. W.T. Grant**) |

1. **Doehr** resolved the conflict between **Fuentes** and **Mitchell**:
   1. **Fuentes** required pre-seizure hearings for consumer goods;
   2. **Mitchell** permitted pre-hearing seizures if the risk of wrongful taking was low b/c judicial discretion, a post-seizure hearing could be held immediately, and bond is posted.
   3. **Doehr** requires a pre-seizure hearing unless the π has a pre-existing interest in the property, exigent circumstances endanger the security of the proper, and an immediate post-seizure hearing is available.
2. **Mathews Balancing Test** for whether there should be a pre-attachment hearing:
   1. Private interest of the party being deprived; (extent to which Δ may be condemned to suffer grievous loss – **Goldberg**)
   2. Risk of erroneous deprivation; and
   3. The private interest of the party seeking attachment.

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| **Considerations for Judges & Clerks** | |
| * Shared ownership of property * π posting bond to mitigate risk of erroneous seizure * strength of π’s claim * time lapse between seizure and post-seizure hearing | * clerk or judge making seizure decision * risk of harm to party being deprived * risk of harm to property if not seized |

1. **Bright line exceptions**:
   1. Securing something for the gov’t for which there is a strong public interest
   2. A special need for prompt action (**Mitchell**)
   3. The party requesting seizure is a gov’t official responsible for determining that the action was necessary given the circumstances (Nat’l war effort, protection from economic disaster, protection of the public from misbranded drugs or food).
2. **Policy Reasons Against Pre-Hearing Seizure/Attachment**:
   1. We want to minimize erroneous seizures (**Di-Chem**); and
   2. We want to respect the dignity of man. Due process keeps the gov’t honest; it balances the playing field by putting the weak on part with the strong (**Fuentes**).

# Pleading Requirements: Civil Probable Cause

Rule 8 Modern Pleading

1. **Rule 8. General Rules of Pleading** 
   1. **Claim for Relief.** A pleading that states a claim for relief must contain:
      1. A **short** and **plain** **statement** of the **grounds** **for** the court’s **jurisdiction**, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
      2. A **short** and **plain** **statement** of the **claim** **showing** that the **pleader** is **entitled** to **relief**; and
      3. A **demand** for the **relief** **sought**, which may include relief in the alternative or different types of relief.
   2. **Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.** 
      1. ***In General.*** Each allegation must be simple, concise, and direct. No technical form is required.
      2. ***Alternative Statements of a Claim or Defense.*** A party may set out two or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.
      3. ***Inconsistent Claims or Defenses.*** A party may state as many separate claims or defenses as it has, regardless of consistency.
2. **Impact of Information Asymmetry** 
   1. If the case is antitrust (i.e., expensive discovery), the higher standard of **Twombly** will likely apply
      1. Allegations of conscious parallelism will have a heightened standard, because that activity is a protected behavior.
   2. If a weak party is challenging a strong one who has all the information, then a lower standard may be *implied* (**Conley**/**Swierkiewicz**).
3. Trans-substantive pleading standard that applies to all civil actions (**Swierkiewicz** & **Iqbal**)
   1. Neuborne: becomes “probable cause” as the burden rises from **Conley** to **Twombly**
   2. **Burden of Proof:** enough evidence that a reasonable finder of fact could believe that X exists – *plausibility* 
      1. **Liberal Cases**
         1. Rule 8(a)(2) was originally interpreted to provide a minimal possibility standard – the π must plead a claim such that there is a set of facts that could possibly entitle them to relief (**Conley v. Gibson**)
         2. The possibility standard of **Conley** is upheld in cases of pro se representation (**Erickson v. Pardus**)
         3. In cases of information asymmetry, like workplace discrimination, the standard is also *impliedly* lower (**Swierkiewicz v. Sorema SA**).
      2. **Conservative Cases**
         1. **Bell Atlantic v. Twombly:** heightens pleading standard under Rule 8(a)(2) with respect to antitrust actions – pleading must state enough facts to state a claim to relief that is *plausible* on its face
         2. **Ashcroft v. Iqbal:** extends **Twombly’s** plausibility pleading standard to *all civil actions*
         3. **Consequences**
            1. Generates higher judicial efficiency
            2. Standard won’t let you into court if the only thing you have will cause the jury to jump to conclusions (conclusory statements, no real facts, simple recitation of the law, etc.)
            3. Worsening of information asymmetry (**Neuborne**): absurd to tell someone to plead facts they can’t know because they can’t access the information necessary to prove it (i.e., it’s gathered in discovery)
   3. **Impact** 
      1. Prior to **Twombly,** 12(b)(6) was a pure law motion asking whether the complaint, if true, could be recognized under the law; it now involves evaluating pleading on the merits.
         1. *Heighted Factual Importance*: If a claim doesn’t state how the facts suggest/prove the cause of action, but instead lists the components of the cause of action, then the court must declare it insufficient and dismiss the case.
      2. Erosion of class-action antitrust cases (40% reduction)
   4. **Response**: some district judges allow limited discovery prior to deciding 12(b)(6) motions to dismiss

Rule 9 Modern Pleading

1. **Rule 9. Pleading Special Matters**
   1. **(b). Fraud or Mistake; Conditions of Mind.** In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud of mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.
2. A **strong inference** in favor of the story alleged must be present in special pleading matters, like fraud or mistake; π must state with particularity the circumstances constituting fraud or mistake (**Tellabs v. Makor Issues**).
   1. **Strong Inference**: must be at least as compelling as the alternative possibility (50% or greater)
      1. **Neuborne:** the “good story” is at least as plausible as the “bad story”
      2. Scalia’s dissent: should be 51% or higher
   2. **Policy**: protect businesses from damaging allegations of fraud
   3. **Neuborne:** this is terrible because it invites judges to use their worldview to determine which account is more plausible or compelling (subjective). Neuborne agrees with Scalia in that “strong inference” should mean preponderance of evidence (>50%); he believes **Tellabs** and **Twombly** are the exact same.

Summary Judgment – Rule 56 FRCP

1. **Summary Judgment**: motion brought by Δ after discovery claiming the π doesn’t have enough evidence to win.
   1. The moving party (Δ) may not be granted summary judgment unless they can show there is no genuine issue of fact (**Adickes v. Kress**) – civil rights case where Δ couldn’t show white cop wasn’t in restaurant.
   2. The moving party no longer needs to supply its own evidence: where the π has and fails to meet the burden of production, the Δ need only show that π lacks evidence sufficient to support its case (**Celotex Corp. v. Catrett**).
   3. In ruling on a summary judgment motion, the court must use the substantive standard of proof that would apply at the trial on its merits, i.e., clear and convincing for libel (**Anderson v. Liberty Lobby, Inc.**).
   4. The evidence is viewed in the light most favorable to the non-movant
2. **Rule 56 Summary Judgment**
   1. **Motion for Summary Judgment or Partial Summary Judgment.** A party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

# The Erie Doctrine: The Governing Law in Federal Diversity cases

|  |  |  |  |
| --- | --- | --- | --- |
| **Vertical Choice-of-Law Tests** | | | |
| **Test** | **Rule** | **Possibilities** | **Case(s)** |
| **Twin-Aims Test (Deep Erie)** | Would use of federal law either (1) encourage forum shopping or (2) lead to inequitable administration of the law? If so, then use the state law  (2): affect outcome of case? Change in courtroom invite change in outcome? | * + - * 1. Yes **→** state law         2. No **→** federal law | **Erie R.R. v. Tompkins** |
| **Outcome-Determinative Test** | Does the choice of law determine and/or strongly influence the outcome of the case? If so, apply the state law | * + - * 1. yes **→** state law         2. no **→** federal law | **Guaranty v. York** |
| **Collision Test (Shallow Erie)** | Do a federal rule/practice/norm *directly* conflict with a state rule/practice/norm? | * + - * 1. yes, valid and procedural **→** federal law         2. yes, valid and modifies a substantive right **→** state law         3. no **→** state law | **Hanna v. Plumer**  **Stewart v. RICOH Corp.**  **Walker v. Armco Steel**  **Shady Grove v. Allstate** |
| **Sovereign Interest Test (**Brennan) | Between the federal government and the state, which sovereign’s interest in having their rule applied is greater? | * + - * 1. Federal **→** apply federal rule         2. State **→** state rule | **Byrd v. Blue Ridge** |
| **Primary Behavior Test** | Does the choice of law affect primary behavior of litigants, i.e., what they do in their lives? | * + 1. Yes **→** state law     2. No **→** federal law | **Hanna v. Plumer** (Harlan’s concurrence) |

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| **Erie Issues** | | | | |
| **Issue** | **Test** | **Analysis** | **Result** | **Case(s)** |
| **Statute of Limitations** | Outcome-determinative test | Whether the state or federal statute of limitations is applied determines whether the case could be brought. SOL is substantive b/c it affects sovereign’s signals (volume control). | **State law** | Guaranty v. York |
| **Choice-of-Law** | Deep Erie | Applying federal choice-of-law would introduce asymmetry, encouraging forum shopping and discriminating against residents. | **State law** | Klaxon v. Stentor |
| **SOL Tolling** | Collison Test | Marshall decides there’s no conflict between Rule 3 and OK’s tolling provision, because Rule 3 doesn’t address the SOL. Tolling is an intimate part of SOL (substantive) | **State law** | **Walker v. Armco Steel** |
| **Judge v. Jury** | Sovereign Interest Test | Brennan holds that the federal interest in upholding the 7A right to jury trial > SC state interest in their judge-decision policy. | **Federal law** | **Byrd v. Blue Ridge** |
| **Transfer of Venue** | Collision Test | 28 U.S.C. § 1404(a) is valid and procedural, so it trumps the AL policy of not honoring forum-selection clauses. | **Federal Law** | **Stewart Org. v. RICOH Corp.** |
| **Service of Process** | Collision Test / Primary Behavior Test | MA practice directly collides with Rule 4, which is arguably procedural. Also, service of process doesn’t affect primary behavior. | **Federal Law** | **Hanna v. Plumer** |
| **Jury Re-examination & Damage Caps** | Shallow Erie | Damage caps are substantive, but the NY judicial appellate review policy is procedural. | **Federal Law** for review, **State law** for damage caps | **Gasperini v. Center for Humanities** |
| **Class-Action Provisions** | Collision Test | Rule 23 is procedural and allows class-actions, so it trumps the conflicting NY statute. | **Federal Law** | **Shady Grove v. Allstate** |

\*\*NOTE: for state-federal conflicts, mention that Scalia would say STOP and use FRCP, while Stevens would still look into abridgement of substantive rights

# Resolving Conflicts of Law

1. **Horizontal Choice of Law** between two states: if litigation is pending in one state and an argument claiming another state’s law would be more appropriate is made, which state’s law should apply?
   1. In horizontal choice-of-law, the *procedural* law of the forum state always applies.
   2. State *substantive* law is determined by the state with more significant contact or aggregation of contacts, creating state interests, such that choice of its law is fair and not arbitrary (**Allstate Ins. Co. v. Hague**).
      1. **Class Actions**: the forum must have significant contacts w/ class (**Philips Petroleum Co. v. Shutts**)
   3. Federal courts sitting *in diversity* must apply the choice of law rules of the states in which they sit (**Klaxon v. Stentor**).
   4. In diversity cases, the law of the transferor forum applies even after the § 1404(a) transfer of the action (**Van Dusen v. Barrack**)

# No Do-Overs

1. The doctrines of *finality* tell us that enough is enough; even if we get it wrong, we must live with what we’ve done.
   1. There are two aspects of finality, **precedent** (*stare decisis*) and **preclusion** (freezing).
   2. Finality affords us **stability** and **predictability**.
2. There are three common law doctrines of **stability**:
   1. **Issue preclusion** (*collateral estoppel*): an individual gets only one crack at persuading a court that she is right on a particular issue; this exists both at the level of fact and law.
   2. **Claim Preclusion** (*res judicata*): you only get to litigate your claim once, and you cannot litigate it in pieces (i.e., split your claim); the claim is a cluster of issues, and how “claim” is defined is where the heavy lifting is done.
   3. **Comity**: an international principle that represents the discretionary willingness of one country to defer to what the courts of another country have done.
3. The common-law stability doctrines have four principles:
   1. You only have **once chance** to litigate a claim;
   2. You only have **one chance** to litigate an issue;
   3. As a matter of **due process**, you are **entitled** to your one fair chances to litigate your claims and issues (i.e., if the parties in the cases overlap, you may have preclusion issues); and
   4. Preclusion is an affirmative defense, and the judge cannot raise it; it generally must be raised immediately.
4. **Misc.** 
   1. The preclusive effect of **administrative court judgments** is undecided, but Neuborne doesn’t think they’ll be preclusive.
   2. Preclusion doesn’t apply to the judgments of foreign governments. Soft comity (int’l *stare decisis*) applies instead.

## Claim Preclusion (*Res Judicata*)

1. **Central questions**:
   1. Same parties?
      1. The parties in the second action must be the same as those in the first (or adequately represented) – must have *full and fair opportunity* to litigate your claims.
      2. If your privies appeal and you do not, then you are precluded from raising that claim (**Federated Dept. v. Moitie**)
   2. Same evidence?
      1. The claims in both suits must arise from the same transaction and occurrence or the same liability facts
      2. Claims arising from the same factual transaction between the parties must be brought together (**Rush v. City of Maple Heights**)
      3. A transaction represented by a single and indivisible contract can give rise to only one claim (**Jones v. Morris Plan Bank of Portsmouth**)
      4. Compulsory counterclaims *must be raised:* Δ cannot use the same defense first as a shield, then as a sword (**Mitchell v. Federal Intermediate Credit Bank**) – farmer potato case, codified in Rule 13(a)
      5. Failure to raise *a permissive counterclaim* is not preclusive (**Linderman Machine Co. v. Hillenbrand Co.**) – FRCP 13(b)
   3. Final adjudication?
      1. **Factual Evolution**: no claim preclusion in case two if the facts change, but this bar is *very, very* high (**Whole Women’s Health v. Hellerstedt** is unique).
      2. **Change of Law**: you cannot benefit from waiting and seeing for a party taking the risks of appealing – appeal yourself (**Moitie**).
      3. The judgment must be **on the merits** (incl. summary judgment and 12(b)(6), but not dismissal). Dismissal for lack of PJ would *not* be preclusive, but courts differ on whether SOL should be (Neuborne: shouldn’t be).
         1. 12(b)(6) dismissal is claim preclusive (**Moitie**), but argue it for Neuborne’s sake
2. **Justifications** 
   1. **Efficiency**: cram as much as possible into case one, b/c more efficient to deal with one complicated case than several.
      1. **Assumption**: forcing litigants to “bring the kitchen sink” conserves judicial resources
   2. **Protection**: we preclude previously-litigated claims to prevent the blind-siding of Δs – we protect them from facing a multiplicity of suits.
3. **Common Liability Fact Test**: is the central fact controlling liability present in both cases?
   1. **CLF:** *switch* controlling the legal case b/w the parties **→** central fact making Δ liable to π in the present case, and future cases. If there are common liability facts, then the claims should probably be brought together.
   2. If cases 1 and 2 share the **CLF**, then the claims should be brought together: doing otherwise would be *splitting the claim*.
   3. If the resolution of the key fact in case 2 would be decided on summary judgment because of prior resolution in case 1, then these claims should be brought together.

## Issue Preclusion (Collateral Estoppel)

1. **Questions to Ask**:
   1. Is this issue **identical** to that of the preceding case?
   2. Was this specific issue **actually adjudicated** in the first case?
      1. It is not enough that the issue *could have been brought* in case one (**Cromwell v. County of Sac**)
   3. Was the issue **necessarily adjudicated**?
      1. An issue is only preclusive if it was *necessary* to the judgment (i.e., not all findings of fact) in case one (**Rios v. Davis**).
      2. If a general verdict is given on two alternative determinations – either sufficient – and you don’t know which was decided first, then neither issue was necessarily adjudicated; neither is preclusive, either (**Russell v. Place**).
2. **Non-Mutual Collateral Estoppel** 
   1. The party invoking collateral estoppel need not have been a party to the first case so long as the party it is invoked against was (**Bernhard v. Bank of Cal**.)
   2. Parties with pecuniary interests and control over litigation in case one are precluded from relitigating the same issues in case two as different nominal parties (**Montana v. U.S.**).
   3. Theories of virtual representation are not ascribed to in issue preclusion (**Taylor v. Sturgell**)
   4. **Defensive Non-Mutual Collateral Estoppel**: if π loses to Δ1 in case one and had a full and fair chance to adjudicate his claims, then when he brings his second claim, that second Δ may assert non-mutual collateral estoppel *as a shield*, precluding π’s charges (**Blonder-Tongue Laboratories v. Univ. Ill. Foundation**).
      1. Heightens stakes of case one: losing kills you, but winning grants only the chance to keep fighting.
      2. This dynamic tells πs to join as many Δs as they can in case 1 to equal the odds and avoid a second case
      3. This doctrine is *mandatory* in a defensive role → don’t fool around with serial litigation (only in Neubornia)
   5. **Offensive (Affirmative) Non-Mutual Collateral Estoppel**: if π1 beats Δ in the first case, then π2 (and more) can use that verdict *as a sword* against Δ to preclude Δ’s defense and get summary judgment (**Parklane Hosiery Co. v. Shore**).
      1. This doctrine makes it in the best interest of each additional π to hover and vulture Δ once he loses
      2. **Limitation**: applies *only if* you could not have joined the first case, because we don’t want πs fence-sitting and pouncing on weakened Δs after they lose – allowing is a matter of **Judicial Discretion.**
      3. **Economic Capital Punishment:** This creates an enormous gov’t weapon: the gov’t can threaten Δs with future liability against multiple πs who can invoke issue preclusion to force them to settle
3. **Government**
   1. The government is a pervasive party, so should they get a different set of estoppel rules?
   2. **Mutual**: no → the gov’t cannot relitigate issues they lost against the same party
   3. **Non-mutual**: yes → *gov’t is exempt from the application of non-mutual collateral estoppel*. They get to relitigate issues repeatedly. If they couldn’t, then they would have to appeal to the Supreme Court, who would have to take the case, because the consequence of a loss would be everyone being able to sue the gov’t and auto-win.
4. **Federal-State Preclusion**
   1. If a federal court sitting in diversity dismisses a cause because of the state SOL expiring, and the court is obliged to apply it, the claim-preclusive effect of that decision is governed by what the state would give it. If the state would give it full preclusion, then so shall the federal; if only partial, then only partial. (**Semtek v. Lockheed Martin**) – **Erie** issue
5. **State-Federal Preclusion** 
   1. Federal courts are obliged to give preclusive effect to qualified state court judgments; it is more important to give FF&C to state court judgments than ensure federal forums for state claims (**Allen v. McCurry**).

|  |  |
| --- | --- |
| **Table of Preclusion** | |
| **Issue Preclusive** | **NOT Preclusive** |
| * Jury verdicts * Opinions disposing a claim * Rule 56 summary judgments * Criminal convictions of guilt * Guilty plea | * Injunctions (??) * Default judgments * Settlements * Nolo pleas * Dismissal on (PJ/SMJ/venue) * Habeus corpus |
| **Possibly Preclusive →** | * 12(b)(6) motions and the SOL |

# Joinder of Claims

1. **Rule 18. Joinder of Claims** – joinder of all claims against an *opposing party*, both unrelated and related.
   1. **In General.** A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.
   2. **Restrictions**: personal jurisdiction, subject-matter jurisdiction, preclusion.
   3. **Neuborne**: You better join everything that’s party of the same claim, or you can’t bring it again. You can join all claims together, provided that you satisfy all of the other aspects of the rules (jurisdiction, etc.). You can’t join everything you want, however, if you can’t get personal jurisdiction over them.
   4. Rule 18 permits the claimant to join all claims the claimant may have against the Δ regardless of transactional relatedness (**M.K. v. Tenet**)
2. **Rule 13. Counterclaim and Crossclaim.** 
   1. **Compulsory Counterclaim –** π must raise counterclaims from the same T&O, granting SJ, don’t need PJ. (**Heyward-Robinson**).
      1. ***In General.*** A pleading must state as a counterclaim any claim that – at the time of its service – the pleader has against an opposing party if the claim:
         1. Arises out of the transaction and occurrence that is the subject matter of the opposing party’s claim; and
         2. Does not require adding another party over whom the court cannot acquire jurisdiction.
      2. **Neuborne**: anything from the same T&O *must be brought* (**door-closing**). No independent base of jurisdiction is necessary, because there is clean ancillary/supplemental jurisdiction.
      3. **Logical Relationship Test**: counterclaims need only have similar circumstances to the subject matter of the litigation to be compulsory – identical facts are unnecessary (**U.S. v. Heyward-Robinson Co.**).
   2. **Permissive Counterclaim**. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory. Optional, unrelated (new case)
      1. **Restriction**: must have an independently JX basis (FQJ/diversity)
      2. **Neuborne**: because this is like a new case, there must be an independent base of jurisdiction. Because this is not mandatory, there is no shutting out (**door-opening**). Codifies **Kroger**.
   3. **Crossclaim against a Coparty**. A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant. At co-Δ, same T&O, gets in via supplemental JX, no need for independent basis.
      1. **Neuborne**: There is no such thing as a compulsory crossclaim – all door-opening. If you bring a crossclaim, then anything adjudicated thus becomes issue preclusive. The T&O standard controls this rule: you can bring a crossclaim only for something arising out of the same transaction and occurrence **→** no need for an independent base of jurisdiction.
      2. Crossclaims can be filed against co-Δs if the claims arise from the same T&O of the initial claim **→** satisfied if the claims are centered on the same legal issue involved in the initial claim (**Lasa v. Alexander**).

# Joinder of Parties

1. **Rule 20. Permissive Joinder of Parties**. π brings in new Δs, requiring PJ & SMJ.
   1. **Persons Who May Join or Be Joined**.
      1. ***Plaintiffs***. Persons may join in one action as πs if:
         1. They assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
         2. Any question of law or fact common to all πs will arise in the action.
      2. ***Defendants***. Persons – as well as a vessel, cargo, or other property subject to admiralty process in rem – may be joined in one action as Δs if:
         1. Any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
         2. Any question of law or fact common to all Δs will arise in the action.
      3. ***Extent of Relief***. Neither a π nor a Δ need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more πs according to their rights, and against one or more Δs according to their liabilities.
   2. **Protective Measures**. The court may issue orders – including an order for separate trials – to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.
   3. **RESTRICTIONS**: πs just must have a right to relief from same T&O, Δs must be involved b/c T&O and have independent JX
   4. **Neuborne**: get everybody you can in for whom there is reason to join, so we can preclude them in case one. *ONLY* the π can use this rule: if π chooses to sue Δ1 and not Δ2, Δ1 cannot add Δ2 under this rule. The party sued may use rule 19 for a party that must have been joined, or use 14 against an indemnitor. This rule may be used by a Δ, but only when Δ asserts a counterclaim (??).
2. **Rule 19. Required Joinder of Parties. Necessary & Indispensable Parties.** Δ1 & Δ2 need Δ3 even if it breaks PJ/diversity.
   1. **Persons Required to Be Joined if Feasible**.
      1. ***Required Party***. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:
         1. In that person’s absence, the court cannot accord complete relief among existing parties; or
         2. That persons claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may:
            1. As a practical matter impair or impede the person’s ability to protect the interest; or
            2. *Leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest*.
   2. **When Joinder Is Not Feasible**. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:
      1. The extent to which a judgment rendered in the person’s absence might prejudice that person or the existing parties;
      2. The extent to which any prejudice could be lessened or avoided by:
         1. Protective provisions in the judgment;
         2. Shaping the relief; or
         3. Other measures;
      3. Whether a judgment rendered in the person’s absence would be adequate; and
      4. Whether the π would have an adequate remedy if the action were dismissed for nonjoinder.
   3. **Pleading the Reasons for Nonjoinder**. When asserting a claim for relief, a party must state:
      1. The name, if known, of any person who is required to be joined if feasible but is not joined; and
      2. The reasons for not joining that person.
   4. **Neuborne:** this is the addition of parties where the law requires that they be brought in. It is a judgment that a case shouldn’t go forward in the absence of some party who has not been joined, because we’re worried about a case two – someone is out there with the capability of doing real harm to a party to the first case because of a lack of preclusion. Thus, focus on people in and out of court, and tell a compelling story about how either will be hurt.
      1. **Necessary Parties**: if you can, you must bring him in (i.e., breaks diversity **→** go to state court)
      2. **Indispensable Parties**: if no PJ **→** dismiss litigation(**Pimentel**); cut up case to avoid issue (**Bank of Cal**.)
         1. Distinction: spectrum consisting of the degree of risk that leaving the party out creates for either in-house or out-house parties.
         2. Do Rule 19 analysis: more extreme it gets, closer you are to an indispensable party (judicial discretion)
      3. **Outhouse People**: those who will be hurt because the money to which they might be entitled will be used up in case one
      4. Reasons (choose 1):
         1. In-house prejudice: if Δ3 not brought in, turns on preclusion and case II will be impossible situation (*Hanson v. Denckla*: bank was indispensable)
         2. Out-house prejudice: Δ3 will be unfairly treated. (i.e. limited funds will be used up)
         3. Public interest in efficiency
         4. Plaintiffs interest in the forum
   5. A party is required to join all necessary and indispensable parties. a party is indispensable only if its rights will definitely be disposed of in the case at bar; it is not enough for the party to only have interest in the case (**Bank of Cal. v. Superior Court**).
   6. The interests in Rule 19(b) must be evaluated by the court prior to disposition of the case in order to determine whether a case should be dismissed for failure to join an indispensable party. The decision rendered should always be consistent with equity and good conscience (**Provident Tradesmen Bank v. Patterson**).
3. **Rule 14. Third-Party Practice** (**Impleader**): 3PΔ indemnitor from same T+O (NOT just a co-Δ). Need PJ + 100mi bulge, no SMJ.
   1. **When a Defending Party May Bring in a Third Party.**
      1. ***Timing of the Summons and Complaint***. A defending party may, as third-party π, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the calim against it. But the third-party π must, by motion, obtain the court’s leave if it files the third-party complaint more than 14 days after serving its original answer.
      2. ***Third*-*Party Defendant’s Claims and Defenses***. The person served with the summons and third-party complaint – the “third-party Δ”:
         1. Must assert any defense against the third-party π’s claim under Rule 12;
         2. Must assert any counterclaim against the third-party π under Rule 13(a), and may assert any counterclaim against the third-party π under Rule 13(b) or any crossclaim against another third-party Δ under Rule 13(g);
         3. May assert against the π any defense that the third-party π has to the π’s claim; and
         4. May also assert against the π any claim arising out of the transaction or occurrence that is the subject matter of the π’s claim against the third-party π
      3. ***Plaintiff’s Claims Against a Third-Party Defendant***. The π may assert against the third-party Δ any claim arising out of the transaction or occurrence that is the subject matter of the π’s claim against the third-party π. The third-party Δ must then assert any defense under Rule 12 and any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(g).
      4. ***Motion to Strike, Sever, or Try Separately***. Any party may move to strike the third-party claim, to sever it, or to try it separately.
      5. ***Third*-party *Defendant’s Claim Against a Nonparty***. A third-party Δ may proceed under this rule against a nonparty who is or may be liable to the third-party Δ for all or part of any claim against it.
   2. **When a Plaintiff May Bring in a Third Party**. When a claim is asserted against a π, the π may bring in a third party if this rule would allow a Δ to do so.
   3. (**Jeub v. B/G Foods, Inc.**): a Δ may implead a third party that may be liable in a lawsuit under Rule 14 even though the Δ may not be able to bring an independent action against the third party at the time the third party is impleaded. The policy behind Rule 14 is to have the rights of all parties resolved in one proceeding. If the trial court has means to prevent any prejudice ensued from impleading a third party, then impleader is permitted.
   4. **Neuborne**: this rule is used to bring in indemnitors, not new parties.
4. **Interpleader** (Generally)
   1. Someone has something that people are contesting, and he’s afraid that if he’s sued piecemeal, there will be case 2’s unless all the πs are in the first case. Thus, he puts the asset into court and has an in rem proceeding.
   2. (**N.Y. Life v. Dunlevy**): an action in interpleader is separate from a related action on a valid judgment notwithstanding the fact that the interpleader action is brought to determine the disposition of assets being garnished for the judgment. Therefore, there must be an independent basis for personal jurisdiction over the claimant in order for the claimant to be bound by the court’s decision in such action.
   3. (**Pan American Fire & Cas. Co. v. Revere**): Rule 22 and the Interpleader Act permit an interpleader action to be maintained concerning the management of unliquidated claims on one insurance policy.
      1. Rule 22 permits interpleader when the π may be exposed to multiple liability – she need only be exposed. Therefore, even the remote possibility of multiple lawsuits satisfies Rule 22.
   4. (**State Farm Fire & Cas. Co. v. Tashire**): The Interpleader Act should only be used in mass tort situations when the target of the potential claims is a common fund that is of such a small amount as to make the πs have little interest in the potential aggregate amount of claims. Moreover, the court should only control the underlying litigation in very rare circumstances.
   5. **Neuborne**: the beauty of interpleader is that it enables you to bring in people whom you would’ve otherwise lacked in personam jurisdiction over, thereby avoiding case 2’s → expands adjudicatory reach.
   6. **Problem 1**: how tangible must the asset be to be interpleaded?
      1. **Neuborne**: must have *some tangibility*, interpleading abstractions is not generally acceptable **→** assume the asset to be real.
   7. **Problem 2**: is its presence in the state contingent upon some litigated matter (**Dunlevy**)?
      1. **Neuborne:** for the exam, assume that a tangible thing that clearly exists without any argument about where it is can be interpleaded.
5. **Rule 22. Interpleader.** In rem, tangible property, requiring maximum diversity and AIC of $75k.
   1. **Grounds**.
      1. ***By a Plaintiff***. Persons with claims that may expose a π to double or multiple liability may be joined as Δs and required to interplead. Joinder for interpleader is proper even though:
         1. The claims of the several claimants, or the titles on which their claims depend, lack a common origin or are averse and independent rather than identical; or
         2. The π denies liability in whole or in part to any or all of the claimants.
      2. ***By a Defendant***. A Δ exposed to similar liability may seek interpleader through a crossclaim or counterclaim.
   2. **Relation to Other Rules and Statutes**. This rule supplements – and does not limit – the joinder of parties allowed by Rule 20. The remedy this rule provides is in addition to – and does not supersede or limit – the remedy provided by 28 U.S.C. § 1335 . . . An action under [that] statute must be conducted under those rules.
   3. **Neuborne**: a regular lawsuit between the stakeholder (π) who sues all of the complainants who are conceptualized as Δs. Ordinary diversity rules apply (AIC, complete diversity). If one claimant has common citizenship with the stakeholder, then you must use state interpleader instead.
   4. **Republic of Philippines v. Pimentel**: cannot interplead the assets of an indispensable party invoking sovereign immunity
6. **28 U.S.C. § 1335** – *Statutory Interpleader*. Requires minimum diversity.
   1. **Neuborne**. The stakeholder, having no legally cognizable role, does nothing more than bring the asset in to court (not π). Claimants are viewed as πs and Δs against each other (adversarial parties). Must test diversity among the claimants (minimum diversity) **→** one claimant must be diverse from another (on each side). The stakeholder may use statutory interpleader even when he owns the asset, thus he may be a claimant.
      1. **AIC**: $500
      2. Nationwide service of process.
      3. Limit: cannot use when all claimants are from the same state **→** Rule 22.

# Class Actions

1. Rule 23
2. **Prerequisites** – all must be satisfied
   * 1. **Numerosity**: must have enough people to make the class work (>12)
     2. **Commonality**: there must be something linking the class together in a legal way; usually share a common legal issue for resolution in order to win, or a common factual use
     3. **Typicality**: the claims or defenses of the representative parties must be typical of the claims or defenses of the class
     4. **Adequacy**: representative must fairly and adequately protect the interests of the class (*Autonomy*)
3. **Types of Class Actions** A class action may be maintained if Rule 23(a) is satisfied and if:
   1. Prosecuting separate actions by or against individual class members would create a risk of:
      1. Inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
      2. Adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the others members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;
   2. The party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or
   3. The court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.
4. **Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.** 
   1. The judge has discretion to order notice in B1 and B2 classes – only time you give is if there is a settlement.
   2. Neuborne thinks the DPC requires notice to be given
   3. You *must give* notice to a B3 class and the π must pay for it (**Mullane**). There must be notice and a chance to opt out → not opting out = in class.
   4. **Timing**: notice must be given before class-certification. If you settle, you have to again give notice for people to challenge.
5. **Settlements**. The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court’s approval.
   1. Look for post-certification settlements **🡪** huge stakes for both sides to secure a settlement; Δ should offer a lowball settlement, to guarantee the π gets paid, rather than chance getting nothing.
   2. Before the suit can be settled, notice must be given to the whole class; and a hearing must take place, wherein the judge declares the settlement a fair and adequate resolution of the case.
6. **Fees**.
   1. *Collective Mechanism*: benefit to πs is that no one falls through he cracks – takes care of the poor, unsophisticated and ignorant – cost of a class action is enormous.
   2. B3 Classes (big damages): you can create a common fund through litigation that benefits individuals via distribution, and, as a matter of fundamental fairness, levy a small tax on each distribution (huge sum).
   3. B2 Classes: either lawyers don’t get paid, or fee-shifting statutes apply – if π wins, Δ has to pay the class’s fee (incentive for π’s lawyers).
7. (**Hansberry v. Lee**): there must be adequate representation of the members of a class action in order for the judgment to be binding on the parties not adequately represented.
   1. A party is not bound by res judicata from a previous class action if the party was not adequately represented at the prior proceeding. A case cannot be considered a class action if a class member’s failure to enforce a right would create a conflict of interest with another class member’s enforcement.
8. (**Walmart Stores v. Dukes**): the commonality requirement as applied here would have required the 1M+ women to prove they were all subject to the same discriminatory employment policy to be certified as a class.
   1. Statistical analyses showing that there is a gross difference between the sexes in matters of pay, promotion or representation also do not prove a commonality of fact and issue.
   2. Claims for monetary relief are not applicable under 23B2 if the claim is not ancillary to an injunctive or declaratory relief.
9. (**Comcast v. Behrend**): if the liability rules are such that they don’t apply to everyone, then you don’t have a class (commonality).
10. (**Snyder v. Harris**): separate and distinct claims cannot not be aggregated. Aggregation has been permitted only (1) in cases in which a single π seeks to aggregate two or more of his claims against a single Δ and (2) in cases where two or more πs unite to enforce a single title or right in which they have a common or undivided interest.
11. (**Zahn v. International Paper Co**.): each π in a Rule 23(b)(3) class action must satisfy the jurisdictional-amount requirement.
12. (**Ben-Hur v. Cauble**): determinations of diversity of citizenship in class actions should be based on the citizenship of the named parties only.
13. (**Exxon Mobil v. Allapattah**): 28 U.S.C. § 1367 grants supplemental jurisdiction over the claims of πs certified as a class so long as one claim satisfies the AIC and there are no jurisdictional defects
14. (**Phillips Petroleum Co. v. Shutts**): in order to bind absent class members to a class action involving monetary judgment, due process requires that all absent class members receive notice describing the litigation, their right to appear, and their right to opt out of the litigation.
15. (**Cooper v. Federal Reserve Bank of Richmond**): A finding against a class *does not preclude* a member from relitigating individually.
16. **Rule 23 Class actions**

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| **(a):** | * Numerosity (too many plaintiffs for Rule 20) * Commonality: issues/law for IP (*Wal-Mart*-women, *Comcast*) * Typicality: Named P must have typical claim * Adequacy: Name P and Counsel must adequately represent class | **(e):** notice & hearing req. & judge must say settlement is fair before final  **Virtual Representation:**   * Loyalty of Rep to Class—no conflicts of interest (*Hansberry*) * Exit: need to be allowed to exit (*Shutts*) * Voice: let class have input (settlement: individuals ask judge not to approve) |
| **(b)(1):** | **Remedy to Rule 19:** (a) in-house + (b) out-house issue, rare  Compensation: $; Notice not required |
| **(b)(2):** | **Civil Rights Injunction** Prospective  Govt does NOT have O NM IP (*Mendoza*)  Compensation: P wins, Δ pays attorney fee; Notice not required |
| **(b)(3):** | **Controversial Catch-all** Retrospective  Claims too small on own to bring  Compensation: hourly OR percentage of winnings  NOTICE required: opt-out [before classification & before settlement] |