**Jurisdiction**

**Personal**

* **Two inquiries**
  + Statutory
  + Constitutionality – of both statute and of application
* Special appearance – challenges in personam jx
* Limited appearance – challenges quasi-in-rem jx
* *Pennoyer v Neff* – P Neff used services of lawyer Mitchell, but did not pay, Mitchell obtained judgment in OR against P, waited til P bought land in OR, then sought writ of execution to recover, land sold by sheriff to Pennoyer (D), P sought recovery of land
  + OR statute gives jx over nonresident with property in state
    - **P’s property not attached at beginning of lawsuit, so OR lacked jx over him**
  + **Also no personal service to P 🡪 violates due process**
  + Traditional notions of **presence** and **territoriality**
  + **Exceptions to territoriality –** extraterritorial effects of judgments; status relations (marriage/divorce); nonresidents entering into agreements/transactions within the borders of a state
* If nonresident brings suit in state and D counterclaims, state has jx over nonresident (status exception) *Adam v Saenger*
* Implied consent statutes *Kane v NJ*
* *Milliken v Meyer* – WY statute provided out of state service to resident, WY Resident D did not appear in court so default judgment entered against him, Meyer sued in CO to nullify WY judgment
  + WY statue constitutional under 14th 🡪 PJ allowed over state citizen served out of state
  + Person can be sued in state of their **domicile** for all claims
* *Hess v Pawloski* – D Hess struck P Pawloski on MA hwy, D is resident of PA and has no property in MA, MA statute allows for out of state service y registered mail 🡪 D filed motion to dismiss on grounds that service violated due process
  + State regulatory interest; statute does not discriminate against nonresidents 🡪 **implied consent to service constitutional under 14th**
* *International Shoe*  - DE corp with salesmen employed and residing in WA; is corp subject to WA law?
  + Corp must have **minimum contacts** with state – continuous flow of business; employees in state with duties in state
  + Suit must not **offend traditional notions of fair play and substantial justice**
  + **Due process inquiry depends upon quality and nature of activity**
  + **Notice and jx decoupled**
* **Categories of contacts (4)**
  + Continuous and systematic which give rise to the COA – specific jx
  + Continuous and so substantial which do not give rise to COA – general jx (as if corp is present in forum)
  + Single/substantial acts related to COA 🡪 specific jx over COA related to the act
  + single/isolated acts which do not give rise to COA 🡪 probably no jx

**Specific Jurisdiction and Long-Arm Statutes**

* response to *Intl Shoe* 🡪 **long arm statutes**
  + enumerated acts
  + constitutional max
* *McGee v Intl Life Insurance* – P beneficiary to life insurance policy held by Franklin under D’s co; Franklin dies but D refused to pay P 🡪 P sued in CA law under CA long-arm giving jx over foreign corps engaged in contracts in CA 🡪 CA court found for P, but TX court would not enforce judgment claiming jx of CA violated due process
  + **Specific jx over isolated contact of particular quality or nature**
  + Contact demonstrated suit’s substantial connection with state (Franklin resident of CA); **not inconvenient for D** to litigate in CA; **state has manifest interest** in providing remedy to its residents for breach of contract
* *Hanson v Denckla* – trustee DE bank (Denckla), trust holder lived in FL before death 🡪 P beneficiary to trust who brought action in FL, claiming appointment of other beneficiaries was invalid, D claims FL has no jx over bank; other beneficiaries commenced action in DE
  + Every judgment entitled to full faith and credit unless judgment lacked PJ
  + No FL statute regulating nonresident trustees
  + **Convenience of forum does not grant PJ**
  + D did not **purposefully avail** itself of the benefits of the state; **unilateral activity on part of P does not grant PJ**
  + Black’s dissent: Fl has strong regulatory interest and suit in Fl not overly burdensome on D
  + **Distinction btw jx and choice of law**
* *World-Wide Volkswagen* – P bought car from D in NY, while driving in OK, P got into accident due to defect in car, P sued D in OK, D challenged jx
  + First inquiry is **minimum contacts** and **fair play and substantial justice**
  + **Minimum contacts should protect convenience to D and state sovereignty**
  + Then **reasonableness (5 factor test)**
    - Inconvenience to defendant
    - State’s regulatory interest
    - Plaintiff’s interest in litigating in forum
    - Interstate interest in efficient resolution
    - Shared interests of states in enforcing substantive norms
  + No minimum contacts found; only **one isolated contact** **with forum** 🡪 no PJ
  + **Reject Brennan’s foreseeability arg**
  + Brennan dissented – places too little weight on forum state interest; **entered good into stream of commerce so suit in other states is foreseeable**; emphasizes **totality of circumstances,** not just contacts
* *Burger King v Rudzewicz* – D Rudzewicz entered into contract with P to open BK restaurant in MI, D fell behind payments in contract, brought diversity action in fed dist ct in FL, D challenged jx
  + FL statute permits jx over nonresidents who breach contracts with FL residents (BK is FL corp)
  + Must be constitutional under 5th Am b/c fed ct
  + **Reasonableness may sometimes outweigh need for minimum contacts when only a weak showing of minimum contacts**
  + Purposeful availment by D; continuous communication with FL office; knowledge that BK was FL corp; contract 🡪 Q is whether jx comports with fair play and substantial justice? 🡪 bringing suit in FL not unfair to D
* *Asahi Metal* – D Asahi was impleaded in products liability case in CA, D is JPN corp who creates parts sold to Taiwanese corp who makes valves for Honda cars sold n US; D moved to quash summons under due process
  + Plurality: placement of product must be **purposefully directed (intentional)** towards forum for purposeful availment 🡪 did not happen in this case
    - foreseeability 🡪 O’Connor says you need additional conduct to satisfy notice requirement (**foreseeability + addl conduct test**) (ads, providing service to consumers, distribution)
  + Holding: 5 factor reasonableness test 🡪 **unreasonable**
    - burden on D severe
    - interests of state/plaintiff slight
    - unclear if applying CA law is appropriate
    - undermines intl trade interests
  + Brennan’s concurrence - **by placing product into stream of commerce, suit is foreseeable**; defendant is **benefitting economically** from forum; only a weak showing of minimum contacts needed
  + Stevens concurrence – is minimum contacts inquiry necessary when suit is unreasonable?
* *J McIntyre v Nicastro* – Nicastro (P) injured in NJ while working on machine created by English manufacturer (D); D sells no other products in US; P sued D in NJ
  + Sovereignty as basis for adjudicative power; D must submit to the power of the sovereign
    - **Purposeful availment may demonstrate consent,** but no purposeful availment here
    - **D’s actions, not expectations, subject him to jx** – rejection of *Asahi*
      * **Clear violation of state law** would subject him to jx (**exception for intentional torts**)
  + Breyer concurrence – single, isolated act is not sufficient for jx; use already-existing doctrine from WWV 🡪 specific jx can be based on SOC contacts
  + Ginsburg dissent – NJ jx does not tread on sovereignty; reasonable and fair to exercise jx (place of injury is appropriate forum)
* Overview of PJX
  + Pennoyer – presence and consent
  + Milliken – domicile
  + Int’l Shoe – continuous, systematic, substantial contacts
  + Nicastro - Consent, presence + service, citizenship/domicile, incorporation, principle place of business

**General Jurisdiction and Long-Arm Statutes**

* *Perkins v Benguet Mining* – D is Philippine corp sued in OH for cause of action unrelated to defendant’s activities in OH 🡪 is there general jx?
  + Foreign corp must participate in continuous and systematic activities which make it reasonable to subject it general jx 🡪 **sufficient contacts grant general jx**
  + D’s activities in OH sufficient
* *Helico v Hall* – P (Hall) killed when D’s (Helico) helicopter crashed in Peru; D is Columbian corp; P employed by Consorcio who hired D to fly helicopter; D had some business negotiations in TX; P sued in TX and D claimed lack of jx
  + **Purchases/trips not sufficient contacts for general jx 🡪 not continuous and systematic**
  + Int’l Shoe standard for minimum contacts is very high standard
  + Brennan dissent: not general jx, contacts gave rise to cause of action; **contacts sufficiently important and sufficiently related** b/c D purposefully availed itself
* **Does reasonableness inquiry apply to general jx?**
* *Goodyear v Brown* – Bus accident in Paris, tires made by D (Goodyear) in Turkey; P (Brown) killed, from NC; P sued in NC and D claimed lack of jx
  + **No continuous/systematic contacts, so no general jx**
  + Inquiry to determine **corp’s “home”**
* **In most cases, reasonableness inquiry will not offset minimum contacts result/corp’s home result**
* **Registration statutes** 🡪 are exercises of jx under these statutes subject to a reasonableness inquiry?
* *Burnham v Superior Court* – Petitioner is NJ resident served with divorce suit while visiting children in CA 🡪 claims lack of pjx
  + **Originalist** argument – use practices at time 14th Am was adopted; traditional assertion of jx
    - **Tradition holds that presence in the forum grants jx** 🡪 D present in forum
  + **Diff from Intl Shoe**, which was nontraditional assertion of jx
  + **Different from Shaffer**, b/c here D has transient presence, whereas in Shaffer D not present
  + Rule-based approach of Pennoyer (presence) more efficient than standard-based approach of Intl Shoe (contacts) 🡪 leave to state legislatures to decide nontraditional assertions of jx
  + Brennan’s concurrence – **should apply test of minimum contacts and fairness** 🡪 D present in forum and has reasonable expectation of being subject to suit; has contacts; purposefully availed himself; burdens to D slight 🡪 jx is fair
    - Purpose of presence in forum

**In rem Jurisdiction**

* **In-rem**: power to declare title to property
* **Quasi in rem I**: jx based on property + judgment runs to specific individuals (specific individuals fighting over land claim), binding to person and property
* **Quasi in rem II**: jx based on property but imposing personal liability on property owner up to value of property; COA unrelated to property (Pennoyer); binds property with respect to forum, but suit can still be brought against person in domicile (exception to res judicata)
  + Jx over intangibles – mortgage, security, bonds, etc
  + Used when D has minimum contacts but long-arm statue is enumerated and does not cover D’s actions
* *Harris v Balk* – quasi-in-rem II jx; **debt follows the debtor**, jx not dependent on original situs of debt; attachment of property in forum is constitutional basis for jx (QIRII)
* *Shaffer v Heitner* – P Heitner owns stock in Greyhound (DE corp), filed shareholder’s derivative suit in DE against 28 officers (D Shaffer) of Greyhound and filed to sequester their DE property (mostly stock); D not DE resident, claimed no jx (QIRII)
  + Jx over property = **jx over person’s interest in that property**
  + **Jx over property governed by traditional notions of fairness (use Intl Shoe for all jx Qs)**
    - **Not sufficient contacts**, property of appellants did not give rise to COA
  + Treats DE statute as constitutional max statute by analyzing minimum contacts
  + Brennan’s dissent - interest of DE in suit; stockholders in DE corp have reasonable expectation of DE suit 🡪 jx not unfair
* **General appearance law** – D whose property has been sequestered must subject themselves to in personam liability before defending the merits (no special/limited appearance) 🡪 using QIRII to pull D into in personam jx

**Consent to Jurisdiction**

* *Ireland Insurance v Compagnie des Bauxite* – P (Compagnie) bought insurance policy in PA from D (Ireland), a foreign insurance co, D refused to pay insurance claim and P sued in PA, D challenged jx, P attempted discovery to establish jx, D refused to comply, dist ct issued sanction
  + **Sanction upheld; pjx is a right that can be waived**
  + **By challenging jx, D agrees to abide by court’s determination on the issue of jx**
  + D is deriving benefits from forum so estopped from noncompliance with forum’s orders
* Do **registration statutes** confer general jx of the forum over parties who register to do business in the forum?
  + Yes if registration denotes agent (presence), deriving benefit of forum, suit not unreasonable b/c of business in forum
  + No, must be specific jx
* **Forum-selection clauses** – must be ex-ante, 2 types
  + **Consent** – parties waive objections to litigating in specific forum but do not waive right to litigate in other forums
  + **Ouster/prorogation** – parties agree on single forum to exclusion of all others
  + Courts at times have held that these clauses violate state sovereignty to exercise jx
* *Bremen v Zapata* – contract btw to parties that all disputes were to be litigated before London Court of Justice, Zapata filed suit in FL and Bremen contested jx
  + **3 Qs for forum selection clauses:**  **reasonableness inquiry**
    - is there true assent?
    - Does consent encroach on sovereignty?
    - Does admiralty law or diversity jx apply? 🡪 then needs to be in fed ct
      * admiralty courts may create law, fed cts must apply already-existing law
  + **Evenly matched corps so jx clause should be given weight**
* *Carnival Cruise Lines v Shute* – P (Shute) bought tickets for Carnival Cruise (D), tickets had clause stating that all disputes would be litigated in FL, P brought negligence claim in fed ct in WA, D contested jx
  + D’s interest in limiting fora
  + Reduces costs to D, so tickets less expensive
  + Limits confusion as to where to litigate
  + **Reasonable** 🡪 Binding
* Court did not look at constitutional Q when determining reasonableness of forum selection clauses
  + made a federal common law rule, creating law like a state court

**Federal Court Jurisdiction – FRCP**

* 4k1 – territorial limits of effective service; service of summons establishes pjx:
  + a – D subject to jx of state court in state where FC exists; FC can use LAS of state in which it exists, uses contacts w/ state and 14th Am for constitutional Q
  + b – D is party joined under R14 (indemnity) or R19 (required) and served within 100 mi of FC 🡪 **do you use fed/state jx rules? If state, then which state?**
  + c – when authorized by fed statute; claim must fall under fed statute, statute must specify service, and must pass contacts w/ US and constitutional Q under 5th Am 🡪 **must jx also be reasonable?**
* 4k2 – D outside state jx (use contacts w/ US and 5th Am); when claim arises under fed law, service of summons establishes pjx if
  + a- no state LAS applies
  + b - exercising jx constitutional under 5th Am
  + **burden shifted to D to prove its own amenability in SC**
* 4n – jx over property/assets
  + 1 – QIR under fed statute
  + 2 – QIR under state statute 🡪 must show in personam jx cannot be obtained
* **notice and jx decoupled** since Intl Shoe 🡪 under Pennoyer, in personam jx requires personal service, but after Intl Shoe notice and jurisdiction each have their own constitutional test

**Technological Contacts**

* *Best Van Lines v Walker* – D Walker owns nonprofit website that posted derogatory comments about P’s co, P brought defamation suit in NY, D claimed NY LAS did not cover jx
  + Under **4k1a**, NY law governs, no fed statute, no R14/19 parties
  + Statute covered persons transacting business in NY
    - Court used **totality of circumstances test** (must be relationship btw COA and contacts)
    - Use of website not transacting business – responding to user posts, accepting donations, making defamatory statements about NYers not “transacting business”
    - Defamation is not transacting business, so LAS does not cover D 🡪 no jx

**Notice & Opportunity to be Heard**

**Requirement of Notice**

* *Mullane v Central Hanover Bank* – D (Hanover) created common trust fund under NY statute; every year, challenges could be made by beneficiaries; only notice to beneficiaries was publication in local paper as allowed for by statute; P (Mullane) represents beneficiaries who challenge constitutionality of notice
  + **Reasonableness test** – notice must be reasonably expected to reach and inform those affected by action; P must make effort to provide notice to interested parties
  + Publication not reasonably expected to reach beneficiaries 🡪 incompatible with 14th Am by depriving them of property rights, application of statute unconstitutional
  + **Constructive notice allowed when D cannot be found and there are good reasons why P cannot locate D**
* *Greene v Lindsey –* notice by posting on apt door insufficient; dignity interest
* *Dusenberry v US* – D in prison, sent notice through certified mail but claims he never received them
  + **Notice was reasonably calculated and likely to work**
  + Ginsburg dissent – there were alternative measures that should have been taken
* *Jones v Flowers* – govt sent notice by certified mail to D, mail returned to govt, govt took no further steps to notify D of suit
  + Govt must take addl steps if mail returned and it is practical to do so 🡪 **what addl steps?** (regular mail, posting on door)
  + Thomas dissent – reasonable calculation is ex ante, notice does not need to be modified after it is sent
* **Federal Rules: Rule 4, Service**
  + **4a** – what summons must contains
  + **4b** – summons must be signed by clerk
  + **4c2** – D must be served by non-party over age of 18
  + **4d –** waiver of service 🡪 P can request D waive service by mail if personal service requires unnecessary expense
    - if D does not send back waiver in 30 days, P can impose costs of service on D
  + **4e** – if D cannot be served personally, copy can be left at D’s dwelling or given to an agent authorized by appointment or by law
  + **4g** – minors/incompetent served accd to state law of state where service is made
  + **4h** – corps may be served through managing director (**controversy: who may receive service on behalf of company 🡪** some courts look to status of individual within co, others claim individual must control co)
  + **4m** – summons must be served within 120 days, exceptions may be granted with good excuse
  + **service outside US** – some countries require service by govt agent
    - if service cannot be carried out consistent with US law, judgment will not be enforced
    - Hague Convention on Service - treaty signed by US governing delays in foreign service (?)
      * 120 day rule (Rule 4m)
      * unlimited time
      * “flexible due diligence” standard
  + court did permit **service by email** in case against Wikileaks in which other means of service could not be found

**Opportunity to be Heard**

* **FRCP 64** – fed ct may apply any provisional remedies of state in which it sits
* **Due process applies** to state action and to liberty/property involved 🡪 need both to make due process claim
* **Two approaches:** factor approach (*Sniadach, Mitchell, Di-Chem*) or 3 prong balancing test (*Mathews, Doehr*)
* *Fuentes v Shevin* – P Fuentes bought stove from D Shevin on sales contract w/ monthly payments; D retained title to goods but P was entitled to possession absent default; after dispute w/ D, P defaulted and D obtained writ of replevin to seize goods; P contested constitutionality of replevin
  + **Statute** allowed for seizure before D received complaint, after seizure there is opportunity for hearing
  + Only **extraordinary circumstances (3)** allow for delayed hearing
    - Seizure directly necessary to govt/public interest
    - Special need for prompt action
    - Govt controls the seizure
  + No extraordinary circumstances apply
  + Posting a **bond not a substitute for prior hearing**
  + P did not waive right through contract 🡪 due process implicated through state action, so any **waiver must be knowing and informed**; contract was not clear 🡪 replevin violates due process
* *Sniadach v Family Finance Corp –* P garnished debtors wages under statute allowing garnishment w/o notice and w/ authorization by clerk
  + **prejudgment wage garnishment violates due process**
* *Mitchell v WT Grant*  - sequestration of property of P by creditor (D) under statute; D feared waste of property
  + **Statute -** no prior notice or hearing; requires “clear showing” of ground for action and bond by P
    - statute entitles debtor to immediately seek dissolution, which is granted unless creditor can prove ground on which writ is issued; debtor can regain possession through bond
  + **Statute narrowly confined,** so little danger seizure will be mistaken 🡪 constitutional
* *North GA Finishing v Di-Chem* – GA statute allows garnishment when P makes affidavit before officer and files bond worth 2x sum attached to D; D may dissolve garnishment by paying bond in highest amt that can be rendered by judgment 🡪 constitutional?
  + **Bond not sufficient substitute** for prior hearing; **garnishment granted by clerk, not judge**, so greater danger of mistake 🡪 unconstitutional
* considerations for sufficiency of prior hearing: ***Sniadach* factors**
  + D’s interest (nature of property taken/impaired, limitations to liberty); temporary/permanent loss?
  + Prior hearing?
  + Can property be concealed/wasted?
  + Exigent circumstances? (govt/public interest, emergency)
  + P bond?
  + Evidence required for action? (written, verified, conclusory, subjective factors?)
  + Judge/clerk?
  + Can D dissolve writ by posting bond?
* *Mathews v Eldridge* –**3 factors for sufficiency of prior hearing for govt** provisional remedies, balance
  + Private interest of defendant
  + Risk of erroneous deprivation and value of addl safeguards
  + Govt interest – fiscal implications, procedural requirements
* *CT v Doehr* - 3rd party attached D’s (Doehr) home in conjunction with assault action; under **statute** no bond required, no prior hearing 🡪 constitutional?
  + **Court applied Mathews test to non-govt party**
    - Property interest of Doehr is significant
    - Risk of erroneous deprivation is substantial
    - Interest of 3rd party is minimal
  + Bond not a substitute for prior hearing, no extraordinary circumstances
  + statute violates due process
  + Rehnquist concurrence – is attachment of home property deprivation?

**Subject Matter Jurisdiction**

* Can object to lack of SMJ at any time in suit until appeals are over
* Cannot create SMJ through consent/waiver/estoppel; PJ can be created through any of these

**State Court Jurisdiction**

* *Lacks v Lacks* – P & D divorced in NY; 2 yrs after divorce, P claimed lack of SMJ b/c statute required parties to be resident of NY for 1 yr before action
  + **Legislature must limit jx explicitly**, must use word “jurisdiction” 🡪 **clear statement rule**
  + **Claim must be brought before appeals over**
  + **Claim of substantive elements of COA (merits), not SMJ**
* *Arbaugh v Y&H Corp* – Y&H appealed a judgment against it under Title VII, claiming court did not have SMJ as Title VII only applied to employers w/ 15 or more employees
  + **# employees requirement is element of claim (merits), not jx;** claim should’ve been brought at trial court
* *Sand & Gravel Co v US* – US waived a statute of limitations under fed law (consented to lawsuit) 🡪 can party consent to SMJ?
  + **Parties cannot consent to SMJ** 🡪 statute of limitations **facilitates administration of claims**, l**imits sovereign immunity, promotes judicial efficiency**
* **Determining if case raises Q of SMJ**
  + Clear statement rule
  + Real-world or courtroom activity?
  + Does requirement describe an attribute of a party?
  + Is requirement usually treated as jx?
  + Is the US a party? 🡪 sovereign immunity very important
* **State court SMJ**
  + State court SMJ defined by state law
  + **State courts have general/plenary power** (power to hear any case unless removed)
  + Is the requirement only related to entering judgment on a particular defendant (PJ) or is it related to the court’s power to entertain judgment on a type of case (SMJ)?
  + **Limitation/Fed Regulation** –
    - **art VI, sec 1** **full faith and credit** – state has duty to apply transitory COA of other states, but may apply its own procedural law
    - **supremacy** - state may not discriminate against FCOA
    - **exclusive jx**  - Congress may make jx exclusive to fed ct
    - **concurrent jx –** state courts may have concurrent jx under **art III** to hear fed claims
  + **State courts of general jx must hear transitory causes of action that are justiciable under the laws of another state**
    - Does not apply to penal proceedings and in-rem proceedings
  + *Hughes v Fetter* – action brought in WI predicated on IL wrongful deaths statute: WI has jx over D, but needed to use IL law b/c law must originate from same state as where tort occurred
    - **state may not carve out jx to refuse to hear cases** which it does not want to
    - **balancing test** – balance state’s policy for closing itself off from foreign law with full faith and credit (if one state creates a right, others should enforce it)
  + *Howlett v Rose* – state court ruled that under state-law sovereign immunity it need not hear a case against a state school board, even though the claim was of fed law and fed law does not prescribe state sovereign immunity
    - **state cannot decline to hear a case that falls under fed law on basis of policy disagreements**; article VI supremacy clause

**Federal Court SMJ**

* **article III, sec 1** – power vested in one SCOTUS and all inferior courts as established by Congress
  + **sec 2** – scope of Congr power to invest jx in fed ct
    - **party based jx** – based on status of parties
      * ambassadors, public ministers, consuls
      * when US is a party
      * 2 or more states; state and citizens of another state; citizens of diff states; foreign states/citizens
    - **claim based jx** – all cases arising under constitution, laws of US, treaties; all cases of admiralty and maritime jx
* *Capron v Van Noorden* – P claimed that both parties were from NC, so NC cir ct did not have jx
  + **SMJ of fed ct limited by art III, sec 2**
  + Record does not show that either party is from outside NC
  + **A party cannot consent to fed SMJ**
  + **Limiting fed jx under federalism** **🡪 court must be cautious to be sure it has jx**
* **Diversity jx** – diversity of citizenship and alienage
  + **Diversity jx**– state law claim x/ citizens of diff states
    - **Party invoking diversity jx has burden** of identifying citizenship of each and every aprty
    - 2 statutory requirements (**28 USC § 1332a**) – must have diversity jx and must meet amt in controversy (75k)
    - must be **US citizen** (*Dred Scott v Sanford*); art II, sec 2 (non-US citizens cannot sue other non-US citizens in fed ct unless US parties added)
    - must be **citizen of a state**
    - must have **complete diversity** (*Strawbridge*)
    - *Mas v Perry* – P Mas sued D Perry for invasion of privacy; after judgment, D appealed claiming no SMJ of fed ct as all parties were residents of LA
      * **Residence determined by domicile** **(§1332(2))** 🡪 person remains domiciliary of home until he finds a new domicile
      * **Intent to remain** – org membership, license, lease, voter registration
      * One P is citizen of Fr, other is domiciled in MS 🡪 diversity jx satisfied
    - **1332c** – corp is citizen of state/foreign state in which it is incorporated and state/foreign state in which it has principle place of business
    - *Hertz Corp v Friend* – P Friend sued D Hertz in CA state ct seeking damages for violations of CA law; D filed for removal to fed ct claiming diversity jx as it PPB was in NJ
      * **Nerve center test** – PPB = place of direction/control/coordination of corps activities 🡪 not offices, but HQ
      * facts suggest nerve center is in NJ
    - **1332(d)(10)** - unincorporated associations
      * citizen of state where it has PPB, state under which laws it was created; where its members have citizenship
      * **aggregate test** - determined by the citizenship of each of its members
      * insurance cos have citizenship of those they insure (**§1332c**)
  + **alienage jx**  - **art IV, sec 2** “btw a state/its citizens and foreign states/citizens/subjects”
    - **stateless aliens don’t meet requirements of 1332**
    - **1332a3** – citizens of diff states + foreign citizens joined
    - **1332a4** – foreign state party against a citizen of a state or diff states (foreign state must be recognized by executive branch)
    - **1332a** – **Deeming Provision** 🡪 a PRA shall be deemed citizen of state in which he is domiciled
    - **1332a2** – **Jurisdiction Clarification Act** – no fed jx over PRA domiciled in same state as US citizen on other side
    - **think about –** corps w/ mult citizenship, natl banks citizens where located, dissolved corps

**Collusion**

* + *Kramer v Caribbean Mills* – co assigned its interest for 1$
    - Assignment was **improperly or collusively made**
    - **Test** – is there a pre-existing relationship? Is business relationship valid in assignment? What are the usual practices of the company?
    - **§1359** – no jx over any party/assignment that has been improperly/collusively made when done so to created jx
  + *Rose v Giamatti* – **can’t frivolously add Ds w/o interest in suit** in order to defeat fed jx; court may sever parties w/o interest
    - **Rule 21** – court may at any time add/drop/sever claims against a party under; **may not dismiss action**
      * **Fraudulent joinder** – no basis for claim
      * **Improper joinder** – parties joined through incorrect procedure
    - **Rule 17** – action must be against real party in interest
    - Two parties’ citizenship ignored when determining diversity as they had no real stake in dispute

**Amount in Controversy**

* **Aggregation** – parties must be joined under **R20**, claims **R18**
  + **R18** – single P can join and aggregate all claims against single D
    - multiple P’s **cannot aggregate claims that are separate and distinct**, but **may aggregate claims that are common, single and indivisible** 🡪 look to substantive law (common/indivisible is not “arising out of same transaction)
  + **!!! supplemental jx may cure fed defect** when one claim does not meet amt in controversy and cannot be aggregated under R18
* Claims must be made in good faith; must be legal certainty that claim is really for more than amt needed for jx 🡪 **Red Cab Rule**
  + Sum by P controls if alleged in good faith and if it cannot be shown to legal certainty that amt falls short
  + Post-filing findings only admitted if they infer bad faith
  + If damages do not meet AIC, ct retains jx
* Valuing an injunction – P’s value of claim v D’s cost of compliance 🡪 is this original jx or removal?

**Exceptions**

* Divorces/alimony/child custody (**domestic relations**), **will** contests 🡪 fed ct may dismiss case of may abstain (declines to exercise diversity jx in favor of state ct)
  + Neither constitution nor state explicitly excludes these
* *Ankenbrandt v Richards* – physical/sexual abuse charges may be heard in fed ct
* *Marshall v Marshall* – no policy behind probate exception in case of tortious interference as state courts have no special proficiency in dealing with tortious interference with estates

**Federal Court Jurisdiction: Federal Question**

* **Need 2 things: fed issue** on face of complaint, which is **sufficiently substantial**
* **Art II, sec 2** “arising under”; also **§1331 (but 1331 read more narrowly than art II, sec 2)**
* Goals – forum hospitable to fed interests, uniform interpretation, institutional expertise, nationalist (protect fed power), federalist (protect states), democratic (protect majority), individual rights, commerce

**Constitutional/Federal Ingredient Test**

* + *Osborn v BUS* – fed ct enjoined state auditor (P) from collecting state tax from BUS, P appealed that fed ct did not have SMJ **(state law claim)**
    - BUS responded w/ constitutional issue, but **constitutional defense does not confer fed jx**
    - **Congress authorized fed jx** on all cases involving BUS, Congress has this power under **art II, sec 2**
    - **Once jx is attached, the presence of a nonfederal issue does not defeat jx**
    - **Federal ingredient test:** once case contains a fed ingredient, fed ct potentially has authority to resolve all issues of the case 🡪 broad application
  + **Q** – does arising under power support jx over cases in which fed statute gives jx but state law provides ROD? 🡪 under constitution yes; under statutory test, no
  + *BUS v Planters’ Bank of GA* – any case involving BUS falls under fjx regardless of nature of claim (state/fed)

**Statutory Test (§1331)**

* + *Louisville & Nashville v Mottley* – P (Mottley) brought breach of contract action in KY cir ct, D claimed breach was in compliance with Congressional act, P claims act violates 5th Am
    - **Anticipation of defense based on constitution may not be used to confer fjx;** original cause of action must arise under fed law or constitution
    - **must be well-pleaded complaint** 🡪 federal Q must be on the face of the complaint (not a defense)
  + States may include federal elements in statutes if they want fjx, and leave elements out if they don’t want fjx
  + Mottley argued as being over-inclusive (lets in too many cases); others argue its too narrow (doesn’t allow fed jx over fed claims brought as D)
  + Explicit/implied COA in statutes
    - *Shoshone Mining v Rutter*  - federal law defines how miner’s (Rutter) patent claim should be filed under state law
      * **There is a federal COA, but rule is state law, so not fjx**
      * **Fed ROA + state ROD = insubstantial**
      * Would cause avalanche of local property claims
    - *Smith v Kansas City Title & Trust* - bank (D) bought US bonds, Smith (P) shareholder brought suit against D claiming that this investment violated MO law; bonds were bought under federal program, constitutionality challenged
      * Action arises under fed law as **state COA turns on constitutional issue 🡪** relief depends on **constitutional interpretation**
      * Fed law claim **sufficiently substantial**
      * **State COA + const Q = substantial**
      * National fiscal interest
    - *Moore v Chesapeake RR* – P (Moore) sues employer (D) under KY law and also alleges D failed to comply with fed safety requirement
      * Case is largely state court action; **fed safety requirement only alters defenses** 🡪 no fjx
      * **State COA + federal Q in defense = insubstantial**
      * Only affects intra-state employment
  + *Merrell Dow v Thompson* – state tort action in OH ct by P (Thompson), D filed for removal (one claim was under FDCA)
    - fed law, but not fed ROA
    - ROA is under state tort claim
    - **Bright line rule – no fjx w/o independent fed ROA** (shows fed interest)
      * But there are **exceptions** after *Smith* and *Moore* depending on **substantiality of fed interest**
      * *Smith* – state COA invoking fed norms grants fjx
    - Brennan’s dissent – **existence of fed law expresses fed interest**
  + *Grable & Sons Metal v Darue* – IRS seized P’s property and gave it to D; P claimed notification by IRS of seizure violated fed statute in state ct; D removed to fed ct
    - **new test** **(4 prongs)**
      * state law claim must raise fed issue;
      * fed issue must be substantial
      * fed issue must be disputed
      * fjx must not disturb balance of federal/state judicial responsibilities
    - **MD does not make presence of fed ROA mandatory**
    - **Fed interest sufficient for jx**
  + *Empire Healthchoice v McVeigh* – P (Empire) insurers D (McVeigh), a fed employee; P sued D’s estate to recoup medical expenses after estate recovered from 3rd party; fed statue silent on whether insurers can recover from 3rd parties, but P has contract with fed office which requires taking measures for such recoupment
    - **Disputed fed issue** = disputed legal, not factual Q (ie – fed ROA or fed act triggering case?)
      * No disputed fed statute as required by *Grable* 🡪 no legal Q, Q was factual
      * Congress did not create fed ROA
    - US govt not a party
    - **Fjx would disrupt federalism and create avalanche of lit**
  + **Summary of Fed Q Jx**
    - *Mottley –* well-pleaded complaint
    - *Grable -* fed issue must be disputed
    - Substantiality *–* existence of ROA within statutory scheme *(Merrel Dow)*, involvement of govt (*Grable*), or constitutional ROD (*Smith*)
    - Must not disrupt federalism
    - *Grable* 4-prong test clarified by *Empire Healthchoice*

**Pendent/Ancillary Jurisdiction**

* **Pendent jx** – claims/parties joined in P’s complaint
* **Ancillary jx** – claims/parties joined after filing complaint
* *Hurn* – fed ct may exercise pendent jx over **state law claims that provides alternative ground for relief for substantial fed COA**
* *United Mine Workers v Gibbs* – P Gibbs brought COA against D UMX for violations of fed statute and TN law in fed ct
  + Applied *Hurn*
  + **Test for pendent jx:** must fall under art III, must be fed ingredient, must be substantial federal claim under §1331
  + State and fed claims must have **common nucleus of operative fact**
  + **Fairness and efficiency considerations**
  + **Exercise of power is discretionary**:
    - Were fed claims dismissed before trial?
    - Do state law claims predominate?
    - Jury confusion?
    - Is state claim closely tied to fed policy?
* **Specialty joinder rules**
  + **Rule 14** – impleader; seeking indemnification from 3rd party D
  + **Rule 19** – required/necessary party
  + **Rule 24** – intervention; stranger can join suit
* **Limiting pendent jx** 
  + *Aldinger v Howard –* P brought suit against officers for fed law violations, fed law did not apply to county, so P joined country under state law 🡪 fed jx?
    - **Cannot join D on state law claim w/o independent basis of fjx**
    - **Congress specifically declined** to include county as party who may be sued under this fed statute (**intent not to try these parties in fed ct**)
  + *Owen Equipment v Kroeger* – wrongful death suit w/ diversity jx, D impleaded 3rd party discovered to have same PPB where P had residency
    - **§1332a1** requires complete diversity; **circumstances of case do not negate express Congressional acts**
  + Aldinger and Owen favor pendent/ancillary jx unless specific grant of jx withholds such power
  + *Finley v US* – one claim against fed agency (exclusive fjx), other claim against nondiverse D under state law
    - Pendent-party jx requires Congressional authorization
    - Fed statute confers jx over action against US, which court infers as *only* actions against US 🡪 **no explicit grant of pendent-party jx**
    - **Bright line rule disfavoring pendent-party jx**
  + **Pendent claim –**common nucleus of operative fact
  + **Pendent-party** – explicit

**Supplemental Jurisdiction**

* In response to Finley, Congress passed **§1367**
  + A – supplemental jx allowed when
    - 1 – fed jx over original claim, and
    - 2 – supp claim is related and of the same controversy as original claim
  + B – if fjx of original claim rests on diversity, supp jx not allowed for R19 (required), R20(permissive), or R24(intervening) defendants; or for R19/24 plaintiffs
    - No supplemental jx over parties that will destroy diversity
  + C – fed ct may decline jx over
    - Novel/complex state law issues
    - State law claim predominates (like in Gibbs)
    - All claims with original fjx dismissed
    - Exceptional circumstances + compelling reasons
  + **Are these (c) the exclusive grounds for declining SMJ**
* *Exxon Mobil v Allpattah* – two cases, both which joined some Ps who did not meet amt in controversy
  + 1367b only excludes claims against Ds joined under R20, does not exclude Ps joined by R20/23 when **at least one other party meets AIC**
  + **amt in controversy not a constitutional Q like diversity**
  + **supplemental jx of other parties not meeting amt in controversy allowed as long as Strawbridge is satisfied**
* *Kokkenen –*SCOTUS confirmed existence of **ancillary jx when court needs to enforce orders**

**Removal Jurisdiction**

* **Removal - §1441** 
  + **1441b2**  - Ds properly joined and served may not remove case to fed ct
    - **1446b2A –** all Ds properly joined and served must consent to removal petition; “rule of unanimity”
    - **1446b2B** – each D in suit has 30 days to seek removal regardless of when served; “last served D” rule
  + **1446b3** – if suit not removable based on initial pleading, D may file notice of removal w/in 30 days of receipt of amended pleading/motion
  + **1446c1** – exception to one-year rule for diversity cases; applies when P acts in bad faith to prevent D from removing
  + **1446c2** – AIC base on P’s complaint unless D asserts
    - meets statutory req if nonmonetary, monetary but state law does not allow complaint to include specific amt, or state law permits recovery in excess of amt alleged in complaint
  + **1446c3A –** Ds who lack adequate info during 30-day window to use discovery to determine AIC
* **§1441** – removal only allowed to Ds; fed ct must have jx over original complaint
  + a counterclaim (**R13**) or affirmative defense cannot be basis for removal
    - but there will be fjx over counterclaim “so related that it is part of the same case or controversy”
  + **1441b –** in-state D cannot remove
  + **1441c** – removal allowed when fed claims are joined w/ state law claims (not transactionally related), but the unrelated claim must be severed and remanded to state court, if the fed claim would be removable on its own
  + **1441f** (derivative removal) – if court from which suit was removed did not have jx over a claim, fed ct is not precluded from exercising jx over that claim
* **§1446** – removal motion can be made for up to 1 yr after original filing, but must be made within 30 days of obtaining info that case can be removed
* **burden of proof** is preponderance of the evidence standard to demonstrate legal certainty
* SMJ can be challenged at any time during lawsuit (**direct attack**)
* Opportunity for **collateral challenge** limited
  + Restatement II of Judgment does not allow collateral challenge of SMJ

**Applicable Law**

* **28 USC 1652 – Rules of Decision Act** 🡪 laws of states shall be regarded as rules of decision in civil actions where they apply, except where fed law otherwise provides/requires
* **28 USC 2072 – Rules Enabling Act** 🡪 allows Congress/Supreme Court to enact rules of procedure for fed cts as long as such rules to not abridge or odify state’s substantive rights
* *Swift v Tyson* – diversity action to enforce bill of exchange; NY law would not allow for enforcement of note 🡪 did fed ct have to apply NY law under RDA?
  + Judicial decisions are not “laws” under RDA, they are evidence of the laws but not the laws themselves
  + In absence of state statute, fed ct has power to announce common law ROD, can base ROD on construction of general common law
  + b/c NY statute existed, ct applied it
* *Eerie v Thompkins* – P injured by train while walking on path next to D’s RR, PA law placed lower duty on RR than fed law, P took case to NY-based fed ct 🡪 what law applies?
  + **Law to be applied in any case is the law of the state, except in matters governed by constitution or acts of Congress**
    - State law encompasses actual statutes and state ROD
    - **Congress/fed cts have no power to declare substantive rules of general common law applicable in a state** (constitution confers no such power)
  + Substantive rules created by Congress/fed cts must be authorized by REA
  + **Dual aims** – prevent forum-shopping and inequitable administration of the laws
  + PA law applied
  + No such thing as general common law
  + Dissent – no constitutional Q; even if there was constitutional Q, US needs to be a party
  + Concurrence – RDA does not disclose fed cts from creating fed ROD under the constitution
* *Guaranty Trust v York* – charges of fraud brought in fed ct under diversity jx governed by equitable principles, does state SOL apply?
  + **Outcome-determinative test** – state rule must be applied if it would significantly affect the result of a litigation to apply fed law 🡪 seeks litigant equality and uniform application of laws
* *Ragan* – diversity action in fed ct; FRCP 3 states lawsuit begins at filing, KS law states it begins when service is made
  + **State law determines when SOL is tolled**
* *Cohen* - fed ct must apply NJ statute requiring posting of bond even if FRCP 23 does not require posting of bond 🡪 **outcome-determinative**
* *Woods* – TN corp **cannot file diversity action in fed ct in MS if MS state courts are closed to it**
* *Byrd v Blue Ridge Electric* **–**employee suing employer for injury; SC allows for judge to rule but 7th Am calls for trial by jury
  + Fed ct must respect rights and obligations created by state courts (Eerie)
    - Must enforce state substantive rules, but not procedural rules 🡪 **if in 2nd category, balance w/ fed interest**, **even if outcome-determinative**
  + Qualified interpretation of RDA 🡪 **Q is whether Congress, as a statutory matter, required displacement of fed law by state law or whether there are countervailing interests at play?**
    - **Must apply state law if bound up w/ state-created rights/onligations**
  + Countervailing fed interest of abiding by 7th Am (fed ct is not just another court of the state system) 🡪 jury trial necessary
* *Cooper v Aaron* – **supremacy** of both fed law and SCOTUS constitutional interpretations 🡪 states must follow both
* *Hanna v Plumer* – MA service rules require service to administrator of estate, while fed rules allow for it to be left with decedent’s wife (FRCP 4d1)
  + **Test** – is there FRCP on point/does it reach dispute? is rule under REA? (substantive/procedural (Sibbach, 2072A)? Modify/abridge state substantive right (2072B)?) conflict w/ state law? Effects on outcome?
  + **Incidental effects** of fed procedural rules permitted
  + Laws are conflicting but fed rule permitted under REA, 4d1 controls
  + Concurrence – states have primary authority to regulate everyday rights/obligations of citizens, Eerie important to federalism
* *Walker v Armco Steel* – conflict under SOL btw OK law stating lawsuit begins when service is made and FRCP 3 stating lawsuit begins at filing
  + **Where fed rule is not on point, Eerie commands enforcement of state law**
  + FRCP 3 does not toll state SOL, it merely states when statute commences, governs activity internal to FRCP
    - **Narrow reading of FRCP, finds no conflict**
* *Stewart v Rioch Corp* – forum-selection clause in contract btw P and D, D moved to transfer to forum stated in clause, dist ct claimed AL law controlled (looks unfavorably on forum-selection clauses)
  + **2 inquiries** – is fed statute sufficiently broad to control issue? Is statute valid under REA?
  + **Flexible analysis of fed transfer** rules allows for consideration of parties’ venue preferences 🡪 instructions of Congress supreme over state
  + Congress granted authority to govern rules of procedure by constitution
  + **Raises Q of what to do when there is a state interest involved?**
* *Shady Grove v Allstate* – NY law does not allow suits seeking to recover penalty to be filed as class action, FRCP 23 states criteria which must be met to file class action
  + Plurality: Is fed rule on point? Is it within REA? 🡪 if not on point, Eerie applies
    - **Under Hanna, fed rule applies if on point and valid under REA (outcome/competing state rule irrelevant)**; if not Eerie applies
  + Does not matter whether state law is substantive/procedural, but rather if fed law is (for abridge/modify test under 2072B) 🡪 **look to fed rule alone** 🡪 fed law passes test and applies
  + Broad interpretation of fed law shows it to be in conflict w/ state law
  + Concurrence – should look to state’s own interpretation of its law (in 2072B), not impose an interpretation on the state 🡪 **look to state rule to see if there is conflict and if it is part of state’s framework for substantive rights and remedies**
    - state and fed law may coexist 🡪 class action allowed under R23, could look for diff remedies than those precluded by state law
  + Dissent – NY rule applies as it is substantive (money award), related to statutory damages, so must apply, but does not conflict with fed rule
* *Klaxon* – fed cts in diversity must apply conflict of law rules of state in which they sit 🡪 creates litigant equality within a state but massive forum shopping btw states
* Look to highest court of the state to ascertain content of state law, when state law uncertain:
  + Look to all relevant sources – analogous state decisions, dicta of highest state court (McKenna)
  + Certifications
  + Abstain/stay proceedings
  + **Problem** – when state high court decision is old and lower state courts have decided diff or articles have been published

**Federal Common Law**

* Permitted by constitution, may be abrogated by Congress, states required to follow under Supremacy clause
* What are the scope/limits of this power?
  + Enclave theory – fed ct identifies enclaves in which is has interest
  + Article I theory – power coterminous with Congressional power to draft statutes, ct must identify const which gives it auth
  + Statutory theory – derived from Congress; requires strong connection to fed statute
* *Clearfield Trust v US* – check from US stolen and cashed at store, Clearfield endorsed check, 8 mos later YS syed Clearfield under guaranty of proor endorsements, PA law stated that guaranty suits are barred when there is unreasonable delay (8 mos unreasonable), does fed law apply?
  + Authority to issue fed checks has origins in constitution, not PA law; suit involves **constitutional function** of US disbursing funds
* Factors to consider in applying fed common law
  + US a party
  + Fed money involved
  + Need for uniform ROD
  + Is fed rule be essential or would fed interest be burdened by state rule? 🡪 in Clearfield, enough that it would be burdensome
  + Countervailing state interests
* *American Electric Power Co v CT* – suit claiming Am Elec violated fed common law by emitting excessive amts of CO2 (nuisance/interference w/ public rights); Congress passed statute regulating CO2 emissions
  + **May create fed common law in areas of natl concern, subject to natl legislative power**
  + If fed statute has been passed: **test**
    - If fed statute speaks directly to Q at issue (field occupied), fed common law displaced
* *Dice v Akron* – P signed release of D for injuries while working on D’s RR, was injured and sued under fed act, also claimed release was fraudulent; judge found P guilty of supine negligence; COA claimed fed law applied and that issues of fraud needed to be decided by jury (7th AM)
  + 7th Am guarantees right to trial by jury and is part of the act
* what if Congress had not made the procedure a part of the rights of the act?, factors to consider
  + will fed right be burdened/frustrated?
  + Outcome determinative test balanced w/ countervailing fed interests
  + How does state court ascertain the content of fed decisional laws?

**Litigation and FRCP**

* **R1** – principle of transsubstantivity; rules apply regardless of type of claim
  + sppedy, just, inexpensive determination of every action/pleading
* **R2** – one form of action, civil action, no right to aaty
* **R3** – action commenced by filing complaint w/ ct
* **R4** – serving
* **R5.1** – constitutional challenge to a statute
* **R5.2** – privacy protections for filings
* **R6** – computing time
* **R7** – pleadings, 3 types (complaint, answer, reply) and 7 ways to use the 3 types (a)
  + **(b)** – motion is a request for a court order
* **R8** – rules for pleading
  + **8a** – short and plain statement of claim showing pleader entitled to relief, basis for ct jx, and demand for relief sought

**Pleading**

* under FRCP
  + **R8a**
  + **R9b** – heightened pleading for fraud/mistake reqs statement “with particularity the circumstances constituting fraud/mistake”
  + **R84** – forms
* **12e** – move for more definite statement
  + **12b6** – MTD for failure to state a claim
* *Conley v Gibson* – challenged union’s failure to represent AA members on par w/ white members
  + is there a legal theory that would give P relief if his allegations were true?
  + P does not need to state legal theory in complaint
  + Insufficiency of facts not pertinent at MTD, unless no set of facts would grant P relief 🡪 **notice pleading**
* *Leatherman v Tarrant County Narcotics* – lowers cts imposed higher pleading standard on any action seeking to impose constitutional liability on municipality/local narcotics unit
  + **Fed ct ay not impose more stringent pleading standards, only notice to D req in complaint**
  + **Fed cts must relu on SJ and discovery to weed out unmeritorious claims, not pleading**
* *Swierkiewicz v Sorema* - employment discrimination case, lower court found P had not made out prima facie case and dismissed
  + Req of prima facie case is an evidentiary standard, not a pleading req; **cannot commit P to particular legal theory at MTD stage**
* Pleading under Conley
  + Notice
  + Premature to req factual detail
  + Certainty = presumption in favor of going forward to discovery
  + Function: R56 an trial are preferred procedural vehicles for merits disposition
* *Bell Atlantic v Twombly* – class action for violating Sherman Antitrust Act; lower ct found complaint only alleged conscious parallelism, not conspiracy, and dismissed as Act did not apply to legal violation
  + Do not need detailed allegations, but **formulaic recitation of elements of COA insufficient**
  + Allegations must rise above ere speculation 🡪 **must nudge complaint from merely speculative to plausible**
  + *Conley* describes breadth or opportunity of adequate claim, not minimum standard of adequate pleading
  + **Efficiency rationale**– spare corp Ds cost of burdensome discovery
  + Dissent
    - **Courts have necessary tools to control costs** – control of discovery, SJ, jury instructions
* *Erickson v Pardus* – applied Conley not Twombly; probably b/c pro se litigant
* *Ashcroft v Iqbal* – claim on violation of constitutional rights against federal officials (Bivens action)
  + **Twombly applies to all civil actions, cannot be modified**
  + More than naked assertion reqd in complaint, **ct must be able to draw reasonable inference** that D is liable for misconduct alleged
  + Plausibility standard, need not be probable, drawing **on judicial experience and common sense**
  + **2-step inquiry**
    - remove all conclusory statements, accept as true all other factual allegations
    - is plausible claim asserted based on remaining allegations?
  + Dissent (Souter)
    - **Forcing P to work under one legal theory**, rejected in *Swierkiewicz*
    - **Must take factual allegations as true even if ct is skeptical**
    - **Cannot look at allegations in isolation, but rather must look at them as a whole**
  + Dissent (Breyer)
    - Cts have necessary case management tools to limit discovery
* **Standard after Twiqbal**
  + Dist ct accepts allegations as true, except for conclusory statements
  + Excise conclusory statements and then assess whether allegations plausible suggest that D engaged in illicit conduct
  + If facts in equilibrium, plausibility favors P
  + **Issues** – what is conclusory? Probable v plausible?
* *American Nurses v IL* – class action for sex discrimination under Title VII, claiming unjustified difference in comparable worth btw primarily male and primarily female professions
  + **Complaint cannot be dismissed merely b/c it includes invalid claims along with valid ones**

**Answer/Counterclaim**

* **R12** 
  + **12e** – motion for more definite statement
  + **12f** – motion to strike redundant, scandalous, impertinent matter
  + **12b6** – motion to dismiss for failure to state a claim
  + **12b** defenses – lack of SMJ or pjx, improper venue/service, failure to state a claim, failure to join R19 party
* D can admit, deny, or deny he has knowledge/info sufficient to form belief
  + **Issue** – does Twiqbal apply to D’s answer, to D’s affirmative defenses?
    - Plausibility standard does apply to counterclaims (counterclaims governed by R13)
* **R13a** – compulsory counterclaim, transactional related to P’s original claim; does not req adding another party over which ct cannot exercise jx
  + Do not need original jx, will have supplemental
  + Exceptions – claim already pending; attachment of property as basis for jx of original claim
* **R13b** – permissive counterclaim, any claim not compulsory
  + Supplemental jx under 1367a (“so related”)

**Summary Judgment**

* Burden of proof always on party seeking relief to show COA through material facts
* also a burden of proof on party moving for SJ to show that P’s claims are not supported by the facts shown
* **R56** – D who does not bear burden at trial, must meet burden of production for MSJ
  + Must identify parts of record that negate element of P’s case or show that P lacks evidence
  + Burden then shifts to P, P can ask for continuance
  + Give credence to evidence favoring nonmovant
  + May credit evidence favoring movant only if it is not contradicted and it comes from a disinterested witness
* **R56(c)** – what docs can be used in MSJ 🡪 party must cite to record and show that cited materials don’t establish the absence/presence of an issue
* **R56(d)** – allows party to get continuance (more time to respond to MSJ) 🡪 difficult to get
* **Q** – how much evidence must moving party show to demand more facts from the nonmovant?
* *Adickes v SH Kress* – P white schoolteacher refused service at D’s store b/c she was with black students, when leaving store she was arrested for vagrancy; P claimed conspiracy btw store owner and officer
  + **D must show absence of material issue of fact** 🡪 **failed to foreclose** possibility that officer was in the store when P was there
  + **Shifting burdens** – if D meets its burden, P could need to come forward with evidence to counter or request continuance
* **Q** – what does it mean to foreclose the possibility of the existence of an issue of material fact? **And** Assuming this burden is met, what does nonmovant have to show?
* On R56 motion, look to sufficiency of evidence, not credibility
* P’s options after D moves for SJ
  + 1 - Seek continuance for further discovery (difficult to obtain)
  + 2 - Argue that D has failed to foreclose the possibility that a genuine dispute over a material issue of fact existed (jury could infer from record)
  + 3 - Mount evidentiary support
* *Celotex Corp v Catrett* – P sued claiming D caused her husband’s death from asbestos; D moved for SJ
  + P chose #2 above
  + Moving party who does not have burden at trial does not have to supply evidence negating opponent’s claim; must only identify parts of the record which show absence of material fact (burden of prod)
    - but does not need to negate nonmovant’s contentions
  + R56 req nonmoving party show through own facts that there is genuine issue for trial
  + Concurrence – seems to say that D has not met its burden b/c the plurality is permitting a “prove-it”/conclusory motion; moving party who does not have burden at trial can only use evidence in discovery record to meet its burden, not outside evidence
  + Dissent – conclusory assertion as MSJ is insufficient; movant had burden of establishing nonexistence of genuine issue; D cannot use MSJ to reallocate all discovery costs to P
* Adickes did not consider sufficiency of response of nonmovant but **Celotex found that jury had to determine adequacy of P’s response**
* Burdens of production under Celotex
  + Movant has trial burden 🡪 must produce evidence to support directed verdict (no jury would find for nonmovant)
    - Burden then shifts to nonmovant
  + Nonmovant has trial burden 🡪 can argue that nonmoving party’s evidence is insufficient or submit an affirmative defense
* Evidence must be admissible, **but when??** (at trial or at time of MSJ?)
* *Matsushita v Zenith* – P claimed D conspired to fix prices; D moved for SJ claiming that it would be unreasonable for jury to infer that there was concerted action
  + **If facts are in equipoise, SJ shouldn’t be denied**
  + **Nonmovant must show persuasive evidence** of a dispute over material facts
* *Anderson v Liberty Lobby* – P filed libel suit against D; D moved for SJ claiming that P had failed to prove by clear and convincing evidence that D acted with malice, standard req in libel cases
  + Aligned R56 standard with evidentiary burden that would be req at trial 🡪 would reasonable jury find for D?
    - **Court must take into acct substantive evidentiary burden that will be applied at trial**
  + **R56 close to R50** 🡪 genuine issue of material fact exists if a reasonable jury could return a verdict for the nonmoving party
  + **Is there a sufficient disagreement** or must one side prevail as a matter of law?
* After *Anderson* and *Matsushita*, **ct evaluates sufficiency of evidence and whether it raises a plausible claim** and decides if case goes to trial
* Pleading (plausibility) – facts in equipoise, P wins
* MSJ (probability) – facts in equipoise, P loses
* *Scott v Harris* – allegation of 4th Am violation against police officer for driving P off the road wit excessive force
  + **Evidence to be read in nonmovant’s favor only when evidence is not contested**

**Joinder Rules**

* **R18a** – party asserting claim/counterclaim/crossclaim/3rd party claim may join as many claims as it has against the opposing party
* Mandatory joinder
  + **R19** – required parties (Hanson)
    - **19a** – parties which are req to be joined if feasible
    - **19b** – allows dismissal of the req party if can’t be joined
  + **R22** – interpleader; allows one stakeholder in a property to hold a single action with all parties claiming title to the property to determine title
    - **28 USC 1335** – advantages to using 1335, but property must be attached to ct or bond must be posted at value of property
* **R20** - permissive joinder; two reqs (transactional relations and common Q of law/fact)
* **R13a** – compulsory counterclaims if transactionally related to P’s claims but does not join a nonparty over whom the ct cannot req jx (2 exceptions)
* **R13b** – permissive counterclaims; some cts believe permissive counterclaims need own basis for jx, other ct use broader reading of constitutional test of 1367 to allow logically related claims to be joined
* **R13g** – cross-claims; must arise out of the same transaction/occurrence
* **R24** – intervention, allows stranger to intervene in lawsuit by claiming that he must adequately represent his interests (mandatory and permissive)
* **R14** – impleader; D joins a party who may be liable for all/part of the claim against it; must get ct’s permission if done >10 days after serving answer

**Class Actions**

* Judgment **binds every unnamed class member** in suit
* **Judgment cannot be rendered unless named P fully and adequately represents** all unnamed class members (if not, due process has been violated)
* *Hansberry v Lee* – P bought house which had covenant which prevented blacks from living in house; P brought suit claiming that order of covenant did not apply to him as he was not a member of the class, so the judgment was not binding on him
  + Person not bound by a judgment in personam in a litigation in which he is not designated as a party
  + **Due process protected by reqing that those bound by judgments have their interests adequately represented by class representative**
  + In this case, interests of P were substantially diff than those of the class representative in the prior suit 🡪 not bound
* *Gen Telephone v Falcon* – fact that a complaint alleges racial discrimination does not itself ensure that the party who brought the lawsuit will be an adequate representative of class of victims of that discrimination
* *Achem v Windsor* – interests of those w/in a class of current/future asbestos-related claimants were found to have unaligned interests
* Class actions and SMJx
  + 1331 – no special rules
  + 1332 - Cauble – **citizenship of class actions based on named parties only**
    - **all members claims must meet AIC (*Zahn*), but in some cases suppjx will be available** (“so related” + non of 1367c)
    - *Snyder v Harris –* **separate and distinct monetary claims cannot be aggregated in class action** to obtain diversity jx
    - *Allapattah* – if at least one claim meets AIC and there are no other jx defects, the ct has original jx over the claims
      * Then ct can determine whether is has constitutional/statutory basis for supp jx over claims
* Class Actions and PJx – no special rule for Ds
  + *Phillips Petroleum Co v Stutts* – 33k class members notified that they could participate in a class action seeking to recover royalty payments from P Phillips, were informed that they would be bound unless they requested an exclusion; KSSC claimed that KS law was prevented from being applied to transactions in other states under the due process clause
    - **Rules for PJx over Ds (Intl Shoe) do not apply to Ps** as the burdens placed on absent Ps are not the same as those placed on absent Ds
    - **P does not need MC, but must have procedural due process protection (3 reqs)**
      * 1 – P must receive notice reasonable calculated to inform and afford P opp to present objection
      * 2 – P must be provide w/ opp to remove self from class
      * 3 – named P must adequately represent class interests
    - **state substantive law can only be applied if state has significant contact, creating state interests, such that choice of law is neither arbitrary nor unfair**
      * some leases involved held in TX and other states where KS does not have an interest
      * **expectation of parties** 🡪 KS may not abrogate the rights of parties beyond its borders having no relation or activity in KS 🡪 KS law does not apply to these leases
* Class Action Fairness Act (28 USC 1332d)
  + Reqs minimal diversity w/ at least 100 members and an AIC > $5 mil 🡪 original fed jx
  + This is protective jx 🡪 neither accepted nor rejected by SCOTUS
  + If jx falls under this statute (or any fed statute), rely on aggregation of natl contacts for constitutional analysis (5th Am)

**Res Judicata and Claim Preclusion**

* When is a judgment valid and entitled to recognition?
  + **Judgment will not be recognized if it lacked pjx**, D can always collaterally challenge a judgment by default
  + Res judicata in quasi in rem suits
    - Traditional rule: lacks preclusive effect except to prop rights
    - *Shaffer v Heitner* – all suits need to satisfy Intl Shoe contacts 🡪 modern rule: P has chosen forum, so he already litigated the claim and is barred from litigating claims that were/could have been litigated along with that claim
  + **Default judgment will not be recognized if it does not have SMJx,** can be collaterally estopped
    - Where **SMJx is contested** recognition will be withheld if there is a “manifest abuse of authority”, or judgment substantially infringes upon auth of another forum, or rendering ct lacked capacity to make “informed determination”
      * \*new arg that P chose the forum so should be bound
  + Notice & Opp – **can collaterally challenge for defective notice**
  + What kinds of judgments are not final? Interlocutory judgments (denial of MTD, preliminary injuction, etc)
* Who is bound by valid, final judgment?
  + Claim preclusion – **only parties/in privity in the original judgment**
* What is a claim?
  + Claim – form of action, right, wrongful act, transaction
  + **Barred from relitigating claims and ever litigating claims which are transactionally related to the already-litigated claim (\*what about logically related claims?)**
  + When are claims of **same transaction**? **Restatement II**:
    - Facts related in time/space/origin/motivation
    - Form convenient trial unit
    - Treating claims as one conforms to customary business usage
* *Mathews v NY Racing Assoc* – P removed from racetrack by private police, sued private police and lost, then tried to sue employer of private police (D)
  + **Cannot get another day in ct by giving a diff reason for recovery for the same invasion of rights**
* *Moitie* – state K claim brought and dismissed; Moitie goes to state ct, law changes while state case pending
  + **Case barred, shoul’ve appealed in fed ct, strong claim preclusion**
* **PP exceptions to strong claim preclusion**: jurisdiction, invasion of sovereign immunity of state/fed govt
* *Jones v Morris Plan Bank* – sales K w/ installment payments, whole amt became due if one payment missed; bank sued Jones for one missed payment, later tried to sue for full amt of K
  + **If seller sued on single payment, claim barred on all other payments (same transaction)**
* **Virtual Representation** – AvB, CvB, claim preclusion by B against C
* *Taylor v Sturgell* – parties w/ close relationship both filed lawsuit on same issue (gpvt did not provide issue reqd by fed statute), no evidence of comm btw parties regarding lawsuit; D attempted to preclude P’s claims
  + Everyone should have his own day in ct
  + 6 categories of virtual representation – K, consent, legal relationship, adequate rep, relitigation by proxy, statutory scheme
* **Claim preclusion analysis**
  + Are claims transactionally related?
  + Should claims be litigated together, is it efficient?

**Res Judicata and Issue Preclusion**

* What judgments are binding?
  + Broader reach than claim preclusion, so tougher reqs (4) 🡪 same issue, actually litigated/decided and necessary/essential to judgment
    - Prevents relitigation, does not bar issues that “shouldve” been brought
* What is an identical issue**: Restatement II**
  + Reasonableness of req party to produce all available evidence
  + Foreseeability that the issue would later arise
  + Effect of passage of time
  + Applicable legal standard
* *Cromwell v County of Sac* – suit brought against county to recover on one set of bond coupons, second lawsuit brought to recover on same bond but on diff coupons
  + **Issue not actually litigated, separate issue**
* *Rios v Davis* – Davis impleaded Rios in prior lawsuit and both found negligent, but P in that lawsuit couldn’t recover from either party, no appeal for Rios b/c he won although found negligent**;** Rios then sued Davis; Davis claimed Rios’ negligence issue was precluded
  + Rios’ negligence is **dictum, not given enough attention in previous lawsuit**
  + **Lack of appealability** also a factor
* Who is bound by prior judgment?
  + **Common law reqd mutuality** – named parties and privies; other parties still bound by stare decises
    - **Indemnification exception** – if two parties in indemnification agr, judgment against one precludes judgment against other on same issues
* **DNMIP –** AvB, AvC, issue preclusion used defensively by C to A
* **ONMIP -** AvB, CvB, issue preclusion used offensively by C to B
* *Bernhard v BOA* – P is estate beneficiary who sued estate trustee for stolen money from estate; P then sued BOA for allowing trustee to steal money
  + **No compelling reason to support doctrine of mutuality**
  + **Unfairness and inefficiency** – unfairness of relitigation simply by switching adversaries, cost-inefficiencies
* **Federal rule of DNIMP**
  + Ct must give P opp to show he **did not have full/fair opp** to litigate the issue (stronger standard than actually litigated)
  + Ct can deny defense of preclusion b/c of **justice and equality**
  + But **D who loses allowed to defend on all issues against new P**
* *Parklane* – P attempted to allege same issue as previous SEC lawsuit against same D (for false**/**misleading statements)
  + Would permitting offensive preclusion deny D right to jury (7th Am)
  + **Unfairness and inefficiency** – unfair to let P ride on prior judgment; inefficient to create two lawsuits when there could inly be one
* **ONIMP: factors to consider**
  + Could P have joined F1?
  + Is P riding on 1st suit? Consider SOL, D’s assets, rules on punitive damages, attys fees
  + may be unfair to repeat D – incentives/procedures/results may differ
    - were stakes in F1 nominal? is F1 inconsistent w/ prior judgments?

**Intersystem Preclusion**

* **28 USC 1738** – judgments have “full faith in credit in every ct in US as they have by the law or usage in the courts of such state”
* **state 🡪 state** 
  + Full faith and credit (**art IV, sec 1**)
  + **28 USC 1738** 🡪 **preclusive effect of judgment depends on claim preclusion rules of rendering ct**
* **state 🡪 fed**
  + only **28 USC 1738** applies 🡪 fed cts look to preclusion rules of rendering state
  + **under fed Q jx, fed rules of preclusion apply**
  + under **diversity** jx – eerie Q?
    - when controlling substantive law is state law, **state preclusion law used unless fed interests infringed**
* **fed 🡪 state** 
  + art IV doesn’t apply, most cts think 1738 doesn’t apply; must use **supremacy clause** to claim that state cts must respect fed judgments
  + **\*open Q as to what rule to apply**
    - general rule – use fed rule of preclusion if prior judgment rendered had fed Q jx (1331)
* *SEMTEK v Lockheed* – P sued D on state law claim in CA state ct, action removed by D to fed ct on basis of diversity jx and dismissed, then P attempted to bring action in another state ct
  + **Standard for determining preclusive effect of diversity judgment is federal**
  + **Fed ct can piggy-back on state rule if not incompatible with fed interests**
  + Issue preclusive effect of FRCP 41b dismissal means only that same action cannot be refiled in same court