

In federal district court, every count in a case must satisfy:

- Jurisdiction over persons or things (constitutional + statutory, applies to every cause of action)
- Subject matter jurisdiction (statutory, ability to hear a certain kind of claim) (applies to every cause of action)
- Venue (statutory, only applies to claims brought by P; decided after PJ and SMJ)

## **I. JURISDICTION OVER PERSONS OR THINGS**

a. Every count must satisfy jurisdictional requirements:

i. Statute

1. Can grant full constitutional authority
2. Can limit a state's power to assert PJ

ii. Due process

1. Constitution (Due Process Clause) sets the outer bounds of PJ

b. Jurisdiction must be constitutionally fair

c. If jurisdiction over person or thing is not satisfied, typical remedy is to dismiss the claim

### **d. PERSONAL JURISDICTION**

i. Three ways to get PJ:

1. In-state service of process OR
2. Consent OR
3. Minimum contacts
  - a. Due Process +
  - b. State Long-Arm Statute

#### **ii. In-state service of process**

1. Cannot entice D into state fraudulently
2. Doesn't matter if D lives in the state or is just there temporarily
3. If a domiciliary is physically absent from the state, he is still within the state's jurisdiction

#### **iii. Consent**

1. Contract (prior to litigation)
  - a. Usually allowed even if the court would not have had J otherwise
  - b. Can be implied – automatic appointment of an agent
2. Waiver
  - a. If objection not raised in a timely manner, it is waived
  - b. Must be raised in answer or before answer is filed
  - c. D does not waive even if he files a counterclaim, cross-claim, 3d party impleader, as long as D does not join new parties.
3. Counterclaims (P sued on a counterclaim may consent to personal J on the counterclaim by filing the original complaint).
4. Consent to determine J = special appearance
  - a. D objects to jurisdiction, but consents for the limited purpose of allowing the court to determine whether PJ exists.

#### **iv. Non-consenting, out-of-state D = Long-arm analysis + due process analysis (minimum contacts)**

1. Allows D to be served out of state

**2. DUE PROCESS: Minimum Contacts**

- a. International Shoe: Establishes minimum contacts as a basis for personal jurisdiction
  - i. **Minimum contacts J is limited to claims arising from (related to) D's contacts with the forum state**
  - ii. "Sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligations which appellant has incurred there."
  - iii. Shoe's activities were "continuous and systematic" within the state. They resulted in a large volume of interstate business, in the course of which the appellant received the benefits and protection of the laws of the state, including the right to resort to the courts for the enforcement of its rights.
  - iv. PJ cannot offend "traditional notions of fair play and substantial justice"
    1. A corp's single or isolated items of activities in a state...are not enough to subject it to suit on causes of action unconnected with the activities there.
- b. McGee (1957): Minimum contacts can be minimal indeed, as long as they are sufficiently related to the lawsuit. One insurance policy in CA subjected D to PJ in CA.
- c. Hanson: To be a contact, the contact must result from D's purposeful availment of the forum. D must reach out to the forum in some way.
  - i. Minimum contacts must have a basis in some act by which D purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. (Hanson)
- d. WWVW v. Woodson (1980): "Purposeful availment"
  - i. When a corporation purposefully avails itself of the privileges of conducting activities within the forum State, it has clear notice that it is subject to suit there and can act to alleviate the risk of burdensome litigation.
  - ii. In order for the defendant to foresee that his product will be used in a state, his conduct and connection with the forum State must be such that he should reasonably anticipate being haled into court there.
  - iii. Nonresident D not subject to PJ unless he has purposefully directed acts toward the forum State.

- iv. Unilateral act of P (driving car to OK) not sufficient.
  - v. Dissent: Minimum contacts must exist between the defendant, the litigation, and the forum State.
- e. Burger King (1985): So long as a commercial actor's efforts are "purposefully directed" toward residents of another State...the absence of physical contacts does not necessarily defeat PJ there.
- i. Commercial actor's efforts "purposefully directed" toward residents of another state = minimum contacts (contract)
- f. Asahi (1987): (Note: This is a plurality opinion, not rule of law) Placement of a product into the stream of commerce, without more, is not an act of D purposefully directed to the forum State. D must "indicate an intent or purpose to serve the market in the forum state," such as:
- i. Designing the product for the market in the State,
  - ii. Establishing channels for providing regular advice to customers in the State
  - iii. Marketing the product through a distributor who has agreed to be a sales agent in the state
  - iv. D's awareness that the stream of commerce may or will take the product into the State is not enough to support a claim that D purposefully directed its acts towards the state
- g. **Minimum contacts "Due Process" analysis:** Based on constitutional fairness
- i. **Magnitude of D's contacts**
    - 1. Dollar value of activity
    - 2. Nature and size of the wrong that D committed
    - 3. Volume of business
    - 4. Is the contact large?
    - 5. Does D close sales or perform services in the state?
    - 6. D does not have to actually act within the state
  - ii. **Purposefulness of D's contacts**
    - 1. Intentionally or deliberately engaged in activity w/in state?
    - 2. Did D purposefully avail herself of the protections & benefits of the forum?
    - 3. Or, no deliberate contact, but could reasonably foresee that activities could have consequences in state asserting J (Gray)
    - 4. Selling products into "stream of commerce" expecting they will go into state?
      - a. Mere awareness that the product will enter the state probably ≠ purposeful availment
    - 5. Advertising or marketing in the state?
    - 6. Contracts w/ state? (Burger King)

7. When the facts of a case will only support “specific jurisdiction” the court may require more purposefulness
8. Minimum contacts must be based on an act by D
  - a. Unilateral act of another party is not enough (e.g. unilateral act of the Robinson’s driving their Audi to OK)

**iii. Systematic & continuous nature**

1. Longer the contacts endure
2. Long-term domicile
3. A single contact for a short period of time can be OK if contact is large, purposeful, and sufficiently related to a cause of action so J is not unfair (specific J)
4. Casual, isolated, irregular ≠ minimum contacts
5. Did D receive benefits & protection from the state?

**iv. Relation b/n D’s contacts and cause of action**

1. If contacts closely related to cause of action, J more likely to be upheld
2. Unrelated contacts, if continuous & substantial, may support general J
3. Even a single contact may support J when the cause of action arises out of that contact

**v. Availability of witnesses & evidence**

1. Burdensome to produce? J difficult.

**vi. Forum interest in a suit (\*\*rarely used\*\*)**

**vii. General questions:**

- 1. Relevant contact b/n D and forum + fairness**
2. Is assertion of PJ reasonable and fair? Based on the corp’s contacts with the state, is it reasonable to require the corp to defend a suit there?
  - a. Even if the burden on the corp would be minimal, D will not have to defend in the state if minimum contacts not present.
3. To what extent does D take advantage of privileges associated with doing business in the state?
  - a. Usually focuses more on the corp’s activities towards the state, not the buyer’s unilateral act (e.g. taking car to OK).
4. Did the activity in question take place in the state?
5. Is the cause of action related to the corp’s activities within that state?
6. Are the contacts related to the controversy or not?
7. Is it foreseeable that D would get sued in that forum?
8. How inconvenient is it for D to defend in the forum?

viii. Purpose:

1. Prevent D's from litigating in a distant & inconvenient forum
  2. Prevent states from reaching beyond the limits imposed on them as coequal sovereigns under the Constitution
  3. Interstate judicial system's interest in obtaining the most efficient resolution of the controversies
  4. State's interest in deciding the matter, providing forum for citizens to obtain relief
  5. P's interest in obtaining relief in a convenient forum
- ix. **Specific jurisdiction** – D's contacts not large or systematic & continuous, but may sustain PJ if contacts are closely related to cause of action and purposeful
1. Single contract solicited in state – McGee
  2. Continuous but limited activity – ongoing business relationship in Burger King
  3. One court required three elements:
    - a. Direct relationship b/n cause of action and D's contacts
    - b. Contacts constitute purposeful availment of laws and benefits of forum state
    - c. Overall fairness, on facts of case, of exercise of PJ
- x. **General jurisdiction** – D's contacts substantial, systematic & continuous, but not related to a particular cause of action
1. Activities are so substantial & continuous that D can expect to be subject to suit there on any claim
  2. D would suffer no inconvenience from defending there
3. **STATE LONG-ARM STATUTE:** State limitations on the authority of the state courts to exercise PJ
- a. Authorizes exercise of PJ beyond boundaries of state in which court sits
  - b. Required before court can assert PJ over non-consenting, out-of-state D  
IN ADDITION TO obligations of fairness imposed by Const.
  - c. May not exceed constitutional limits of due process, but may not allow PJ to the full extent of const. due process
  - d. Not necessary if D is served w/in state or if D consents
  - e. Not necessary to do a long arm analysis if state statute allows PJ to the fullest extent of constitutional due process
- e. **QUASI IN REM JURISDICTION: Alternative to PJ**
- i. Basis of jurisdiction is not in-state service or consent: Court usually brings D to court by attaching property w/in state where court sits

- ii. The court's J is limited to the value of the property that is within the state
- iii. Long-arm statutes not relevant in QIR analysis b/c you are seizing something that is within the state
- iv. States generally discourage the use of QIR if PJ is available
- v. Six requirements (all must be satisfied):
  - 1. Thing of value
    - a. Value of asset determines monetary limit of court's jurisdiction – can only enforce up to value of asset seized
    - b. If D comes into the state to defend, P can serve process in-state, and then sue for full amount
    - c. Otherwise D could default
    - d. Some courts allowed limited appearance for the case, no service
  - 2. Territorial limit
    - a. Asset must be seized while w/in territorial confines of state in which court sits
    - b. Intangible assets (accounts receivable, stock ownership) – arbitrary state law
      - i. Stocks – Either where the certificate is located or where company is incorporated
      - ii. Bank accounts: P wants to sue D, who has a bank account with Wachovia. D is the “creditor” (holder of the account). P would sue in the state where the bank is located and seize the account. Bank is the debtor.
      - iii. Accounts receivable: (Harris v. Balk) Location of a debt is wherever the debtor is
    - c. Long-arm statutes irrelevant b/c these statutes apply only when the court is attempting to reach outside of its own state's territory
  - 3. D's asset
    - a. Title need not be absolutely clear
  - 4. Seizure or attachment
    - a. Action cannot begin until court has control of asset
    - b. Land – freeze title in local records office
    - c. Stock – Halt trading on shares
  - 5. Pursuant to notice
    - a. Must satisfy constitutional due process + Rule 4 service of process requirements
    - b. Similar to PJ, but may require less notice to D (seizing property may be reasonable notice)
  - 6. Minimum contacts satisfied (fair play)
    - a. Added by Shaffer
    - b. Due process requirement of “traditional notions of fair play and substantial justice” applies

- c. **Usu. requires that property is related to cause of action, or would not otherwise be unfair**
  - d. Not required if P brings suit to enforce judgment (rather than on merits)
  - e. Usually courts will not find that QIR is fair to D if the asset seized is not substantially related to the cause of action
- vi. If a P wins against a D in QIR, but doesn't get the full amount of the judgment, P can sue for the remainder if D comes into the state and P serves D w/in the state
- vii. Quasi in Rem in Federal Courts (Rule 4(n))
  - 1. If federal statute authorizes it
  - 2. In absence of federal statute, allowed if court is unable to obtain PJ over D
    - a. J obtained according to process of state in which district court sits

**f. IN REM**

- i. Usually involves trying title to property (e.g., drug dealer seizures), usually to quiet title
- ii. Requirements:
  - 1. Thing of value
  - 2. Territorial requirement
    - a. Property must be located within state in which the court sits at the onset of the action
  - 3. Seizure by court
    - a. Cannot begin until court has control of asset
  - 4. Notice requirement
    - a. Must satisfy due process + Rule 4
    - b. Due process – publication in newspapers rather than personal service can be OK if defendant unknown
  - 5. Fair play (usually not a problem)

**II. CONSENT TO JURISDICTION**

- a. Three ways to manifest consent:
  - i. Express agreement in a valid contract
    - 1. Forum-selection clause – must be reasonable under the circumstances
    - 2. Some foreign corps file a consent form w/ state authorities in order to do business in the State – confers J for all causes of action arising w/in State
  - ii. Performing certain acts that constitute a waiver of objections to PJ
  - iii. Failing to assert a defense of lack of PJ
    - 1. Rule 12(h)(1) provides that a D who fails to contest J in an answer or an initial motion is precluded from raising the issue

### III. PERSONAL JURISDICTION IN FEDERAL DISTRICT COURTS

- a. The reach of PJ in a federal court is the same as the reach of PJ in the courts of the state in which it sits
- b. Rule 4(e)(1): Service upon individuals within a judicial district of the U.S. – Pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon the D in an action brought in the courts of general J of the State
- c. Generally similar to state courts
  - i. 4(k)(1): In actions other than federal questions and interpleader cases, the federal district court may assert PJ over a D in a state when a court of that state would be empowered to do so.
  - ii. 4(k)(1)(a): State long-arm statutes: Reaches Ds who are amenable to suit in the state where the district court is sitting, in accordance with that State's long-arm statute.
  - iii. 4(k)(1)(b): 100 Mile Bulge Rule: Federal courts can serve outside the forum state (but within 100 miles of the court where the action is commenced) if such service is necessary to add a party under special rules – does not apply to original D.
  - iv. 4(k)(1)(c): Federal Interpleader Statute:
  - v. 4(k)(1)(d): Federal long-arm statutes: Congress in some instances has authorized nationwide (or even worldwide) service of process.
- d. See p.168 for rules on the exercise of federal personal jurisdiction
- e. Nationwide personal jurisdiction
  - i. Applies to some federal causes of action
  - ii. Can be heard by any federal court
  - iii. Even if that court could not reach D under normal PJ rules
    1. When there is a federal question for which Congress has given the federal district courts nationwide PJ, you do not have to go through the minimum contacts test, but you do still have to have good service
  - iv. Nationwide PJ ≠ Worldwide PJ
    1. Action filed in Baltimore, D in Brazil
    2. Court would have to use minimum contacts and either state long-arm statute or special provision of 4(k)(2)
    3. Rule 4(k)(2) allows PJ in federal causes of action where D has sufficient contacts w/ U.S. as a whole, but not with any particular state

### IV. CHALLENGING PERSONAL JURISDICTION

- a. D has one opportunity to challenge PJ
- b. Challenges must be timely raised (usually in answer)
- c. If you challenge PJ, you agree to submit to the court's decision (subject to appeal) and you have to abide by the court's procedures for determining PJ



- d. **Special appearance:** Procedure at common law by which a D presented a challenge to the court's exercise of PJ without submitting to the court's jurisdiction for any other purpose.
  - i. D can raise any defenses on the merits of the case
- e. **General appearance:** Voluntary submission to the court's J and a waiver of any defects in the court's J
- f. **Limited appearance:** Allows D to appear in a QIR action to defend his interest in the attached property without submitting to the full in personam J of the court
- g. **Collateral attack**
  - i. D does not appear in court to challenge J or to argue the merits
  - ii. Challenges PJ when P attempts to enforce the judgment
  - iii. Required by Due Process – not forcing D to defend a case when (he believes) no PJ
  - iv. A sues B in State 1 - B doesn't show up in court (b/c doesn't believe the court has PJ) - court enters default judgment
    - 1. By not showing up, B has not consented or waived his objection
    - 2. A goes to State 2, where B has assets, to enforce the default judgment = separate litigation
    - 3. B asks State 2 to evaluate whether State 1 had PJ over B
      - a. If State 2 decides that State 1 did not have PJ, B does not have to pay
      - b. If State 2 decides that State 1 did have PJ, B has lost his collateral attack and has to pay
      - c. Court always can decline to hear a collateral attack
  - v. A sues B in State 1 – B shows up and defends on the merits, but does not object to PJ – B loses and A attempts to enforce judgment in State 2
    - 1. State 2 will not allow a collateral attack – B had his opportunity to object to PJ but did not
  - vi. Not available in QIR cases. Court 1 can only enforce a judgment up to the value of the asset seized in the state. P can't go outside the state to enforce any more than this amount.
- h. **Direct attack**
  - i. D appears at beginning to challenge PJ (usually because D has significant assets in the State)
  - ii. If D loses the challenge and loses the case on the merits, D can object to PJ on appeal (this is still part of the original litigation)
    - 1. In order to make a direct attack during appeal, D must have raised the challenge in the original litigation

## V. NOTICE AND SERVICE OF PROCESS

- a. PJ, SMJ, and venue must be present before a D can be served properly with a summons + complaint
- b. Notice & service (or waiver of service) are prerequisites to the district court's exercise of PJ over any D
- c. **Notice & opportunity to be heard** = Constitutional requirements
  - i. Must meet due process requirements
- d. **Service of process**
  - i. Statutory - Controlled by state or federal requirements
  - ii. 4(k)(1)(a): Federal court sitting in a state can serve process out of the forum state only if a state court could
    - 1. Exception: Parties joined as third-parties, necessary parties or indispensable parties may be served with original process anywhere in the "bulge" region – within 100 miles of the place from where the summons issued, even if out of state
      - a. Does not apply to service on the original parties to the lawsuit – cannot be used by a P seeking to initiate a suit against a D
      - b. Does not constrict the range for service when a statute authorizes broader service of process
      - c. Applies only w/in the U.S.
  - iii. **Process** = Summons directing D to respond or appear in court on penalty of default + copy of complaint
  - iv. **Service** = Formal means by which process is delivered to D (statutory requirement)
    - 1. Permissible methods of serving process are found in Rule 4(e-j)
      - a. Personal delivery on natural person
      - b. Service on a person of suitable age & discretion residing in D's dwelling house or usual place of abode
      - c. Delivery to an agent for appointment (National Equipment Rental)
      - d. Pursuant to state law: Either where the court is located or where D is served
    - 2. Waiver of service (Rule 4(d))
      - a. Constitutional notice still required
      - b. P files complaint, mails a copy of service to D w/ form
      - c. D can sign the form and waive service
      - d. Receipt of the letter is not service
      - e. Duty to avoid unnecessary costs of serving the summons – court can impose cost of service on D who refuses to waive w/o good cause
      - f. If D waives, he gets 60 days (instead of 20) to respond to complaint

g. Does not mean D consents to jurisdiction

e. **Basic test for notice:** Reasonableness under the circumstances (Greene v. Lindsey)

i. Must be of a quality that is reasonably likely, in all the circumstances of the case, to apprise D of the pending action and afford an opportunity to make a defense

ii. Ascertained Ds - Notice via first-class mail usually OK

1. See Rule 4

2. Notice by publication cannot substitute for individual notice when individual notice is practicable.

iii. Unascertained Ds – Where names & addresses are not known and cannot reasonably be known, little is required

iv. Attachment of property, together with publication, can provide adequate notice (assumes that property owners are usually aware of and concerned about the status of their property)

v. Mullane

1. An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is **notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections...The notice must be of such nature as reasonably to convey the required information..., and it must afford a reasonable time for those interested to make their appearance.** But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied.

2. When notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected, or, where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.

f. Rule 4(d), (e), (g), (h), (k)

i. 4(e): Service Upon Individuals Within A Judicial District of the U.S.

ii. 4(h): Service Upon Corporations And Associations

g. Derives from due process clauses (5 & 14)

## VI. SUBJECT MATTER JURISDICTION IN FEDERAL DISTRICT COURT

a. SMJ must be satisfied on each count in a case before federal court will hear that count (PJ over each D must be satisfied as well)

i. If a count does not satisfy SMJ, it is dismissed

ii. Counts that satisfy SMJ remain in federal court

- b. Court may dismiss a case for lack of SMJ even when the parties have not raised the issue – court required to raise the issue sua sponte if the parties have not
- c. May be challenged at any time, as long as the case is alive
- d. **Federal question jurisdiction (28 USC § 1331)**
  - i. Congress authorized jurisdiction in federal district courts of all civil actions arising under the Constitution, laws, or treaties of the United States.
  - ii. Is P enforcing a federal right?
  - iii. Congress has authorized federal district courts to hear certain causes of action by statute
    - 1. A(ny) sues B(ny) alleging a violation of federal antitrust laws = federal question J (lack of diversity does not prevent the case from going to federal court)
  - iv. **Exclusive SMJ:** If exclusive J over a cause of action, claim cannot be brought in state court (e.g. admiralty under 1333)
    - 1. 1331 usually concurrent with state courts
    - 2. If a federal cause of action is silent as to exclusive or concurrent J, it is concurrent (can be brought in federal or state trial court)
  - v. **Well-pleaded complaint rule:**
    - 1. For federal district court SMJ based on a federal question (1331) must appear on a fair reading of a well-pleaded complaint (not in defense or answer)
      - a. Federal question for Supreme Court can come from the answer/defense
    - 2. Facts alleged in complaint must establish a cause of action arising under the Constitution, law or treaties of the United States
    - 3. If the true nature of P’s claim is federal, she may not “artfully plead” it as a state law claim to avoid federal court
    - 4. Anticipated defenses based on federal law do not count (Mottley)
      - a. Mottley’s sued for breach of contract, and anticipated the RR’s defense under federal law – not sufficient for fed quest J
      - b. Their cause of action arose under the contract, not the federal legislation
      - c. Even though the case turned on federal question, it was not part of the original cause of action
    - 5. In areas where fed law has completely preempted state law, P cannot avoid fed court by pleading only state law
  - vi. No requirement for diverse citizenship or amount in controversy for federal question cases
  - vii. Good PJ and good service of process still required
  - viii. Citizenship of parties has no relevance – both parties can be citizens of the same state or the same foreign country

**e. Diversity jurisdiction**

- i. Requires diversity of citizenship + amount in controversy
- ii. Diversity of citizenship:
  1. P must be citizen of a state or jurisdiction other than that in which D is a citizen, at the time the complaint is filed
  2. Complete diversity: All Ps must be diverse from all Ds (Ps don't have to be diverse from other Ps) at the time the complaint is filed
    - a. Unaffected by subsequent changes in the parties' citizenship
  3. Parties must be diverse at time the suit is filed (not when cause of action arose)
  4. Parties cannot consent to federal SMJ
  5. Diversity is not a substitute for PJ – even if the parties are diverse, the court must have PJ over D

**a. 28 USCA 1332**

- i. P is a citizen of an American state other than D's state of citizenship
- ii. Parties on one side are citizens of American states, and opposing parties are citizens or subjects of foreign states
- iii. Parties are citizens of different American states, and additional parties are citizens or subjects of foreign states
- iv. Foreign state (P) suing citizens of American states

**b. 28 USCA 1332(a) = Individual citizenship**

- i. Citizenship for an individual = domicile
- ii. Domicile = Intent to reside in the state indefinitely + physical presence
- iii. 1332(a)(2): **Corp** that is not citizen of American state and does not enjoy full citizen status under a foreign sovereign = citizen or subject of a foreign sovereign for diversity purposes.
  1. Can sue American citizen in diversity, if amount in controversy is met.
- iv. Two foreign citizens (i.e. Brazil and Great Britain) cannot sue each other in a U.S. federal court, unless an additional party was a citizen of an American state
- v. Alien admitted to U.S. as a permanent resident is a citizen of the state in which such alien is domiciled

1. A (citizen of Israel w/ no U.S. connections) sues B (U.S. citizen domiciled in Madrid) in federal district court
  - a. Not diverse b/c neither a citizen (= domiciliary) of a U.S. state
2. A (citizen of Texas) sues B (U.S. citizen domiciled in Madrid) in federal district court
  - a. Not diverse b/c B not a citizen of any U.S. state, and not a citizen of a foreign state

**vi. American citizens domiciled abroad** cannot be sued in diversity b/c not domiciled in any American state and not citizens of a foreign country

1. Can be sued on a federal question or based on supplemental J

**c. 28 USCA 1332(c) = Corporate citizenship**

- i. Citizen of state where incorporated + principal place of business
  - ii. Can be incorporated in more than one state
  - iii. Only one PPB possible
    1. Location of corp headquarters (“nerve center”)
    2. Place where the bulk of the corp’s assets may be found (“corporate activities/assets”)
    3. If an American corp’s PPB is in a foreign country, the corp is a citizen of the state of incorporation, and no PPB
    4. Example:
      - a. GM incorporated in DE, PPB in MI
      - b. To sue GM, a P must be diverse from DE + MI
  - iv. If a corp has citizenship in more than one J, the opposing party must be diverse from ALL the citizenships
  - v. Unincorporated associations (partnerships, JVs, labor unions) treated as citizens of every state in which one or more members is a citizen
  - vi. Limited partnerships – For diversity purposes, not a citizen of state under whose laws it was created; citizenship determined by citizenship of each of its partners
- d. Where P sues D’s **insurance company** directly, insurance company = citizen where tortfeasor is a citizen + citizen of states where insurance co. has citizenship (only applies in three states)
- e. **Representatives of decedents’ estates, infants, or incompetent persons** = take citizenship of state of person whom they represent
- f. **Fraudulent joinder:** P cannot join a nondiverse D against whom he has no cause of action to prevent removal

- iii. **Amount in controversy** must exceed \$75,000 exclusive of interest and costs
  - 1. For diversity jurisdiction, additional to the diversity of citizenship requirement (**both must be met**)
  - 2. Measured at time suit is filed
  - 3. Based on P's well-pleaded complaint, so long as it is made in good faith & reasonable
  - 4. Punitive damages questionable
  - 5. If P seeks more than \$75,000 but ultimately recovers less than that amount, court may deny recovery costs and may assess costs against P
  - 6. **In equity:**
    - a. Try to measure the value of the right P seeks to enforce
    - b. Measure value of vindication to P
    - c. Measure by costs of compliance D will face (e.g. not letting water out of a dam)
  - 7. **Aggregation of claims:**
    - a. Single P may aggregate against a single D, no matter how dissimilar the claims
      - i. If each claim is an alternative theory for one possible recovery, amount based on total potential recovery
    - b. Two or more Ps can add claims only if truly joint
      - i. If two Ps each own half of an \$80,000 car, and D destroyed the car, they could probably add their \$40,000 claims to meet amount (single indivisible harm)
      - ii. If two Ps suffered injuries in the same accident caused by D, each worth \$40,000 – cannot aggregate
      - iii. Narrowly construed – usu. joint interest in the same property
- iv. Cases that meet these requirements (diversity of citizenship + amount in controversy) are within the concurrent J of fed and state courts

## VII. SUPPLEMENTAL JURISDICTION

- a. Title 28 U.S.C.A. 1367 (enacted in 1990)
  - i. Prior to 28 USCA 1367: Pendent and ancillary jurisdiction
- b. Means by which parties may add state law counts in a federal court case, even though the state law counts could not have been brought in federal court on their own
  - i. Because the state counts do not satisfy the requirements of either federal question or diversity jurisdiction
  - ii. Example: P(ny) sues D(ny) on two counts:

1. Count one: Federal antitrust law (OK b/c federal antitrust claims are within the exclusive subject matter J of federal district courts)
  2. Count two: State law (Not OK for federal court, b/c the parties are not diverse)
- iii. Policy:
1. Reduce inefficiency by forcing Ps to try suits in two courts
  2. Avoiding piecemeal litigation
  3. Limit the circumstances under which nondiverse state claims can be tried in federal court
- c. When a party asserting a nondiverse claim has not attempted to invoke supp J, it is unclear whether the court will raise it sua sponte
- d. Preliminary requirement:
- i. Counts in federal court based on supplemental J must be able to attach to some other count already properly present in the lawsuit that satisfies federal SMJ (federal question J, diversity J, suit where U.S. is a party)
  - ii. At least one count in the case must satisfy one of the kinds of federal SMJ
- e. **1367(a): Grants Supplemental J (“Same Case or Controversy”)**
- i. Grants supplemental J in any civil action of which the district courts have original J
  - ii. Supplemental J available (if at all) only over nondiverse state claims that “form part of the same case or controversy” as other count(s) in the action (over which federal district court has original J)
  - iii. Usually based on how much similarity exists between witnesses and evidence (facts) relevant to the counts
  - iv. Supp J May be invoked to include counts involving joined or intervening parties
- f. **1367(b): Limits Supp J (Three Strikes) – Go here if basis of original J is diversity (1332)**
- i. Usually precludes use of supp J by a P if the original basis of federal SMJ is diversity J under 1332
  - ii. Limits supp J, so that even if the state count meets the “same case or controversy” requirements of 1367(a), it still may not qualify for supplemental jurisdiction IF
    1. Strike One: The counts already satisfying federal SMJ are based on diversity (1332) AND
    2. Strike Two: Claims by plaintiffs
      - a. If D brings in another D, doesn’t count for purposes of this strike (only applies to claims brought by Ps)
    3. Strike Three: Against persons made parties under Rule 14, 19, 20, 24
      - a. The non-diverse counts are claims by Ps in the original action against persons made parties under Rule 14 (impleader), Rule 19 (joinder), Rule 20 (permissive joinder) or Rule 24 (intervention)



- b. Or, the non-diverse counts are claims by persons who entered the case as plaintiffs under either Rule 19 (joinder) or Rule 24 (intervention)
  - 4. No supplemental J if these three elements are present
- iii. Note: If original basis of federal J is something other than diversity (1332), such as federal question J, 1367(b) does not apply
- iv. Example:
  - 1. P(ny) sues D1(ma) and D2(ny) in tort (state law)
  - 2. D2(ny) will be excluded because he is not diverse
  - 3. So, P will sue D1(ma) and wait for D1 to implead D2 under Rule 14
  - 4. Once D2 is in the case, P would attempt to bring a new count against D2
  - 5. 1367(a) would be satisfied b/c part of the same case or controversy
  - 6. 1367(b) prevents this from happening

**g. 1367(c): Limits Supp J (Court's Discretion)**

- i. Available if supp J is granted under (a) and not prevented under (b) – allows the court discretion in refusing to hear supp counts
- ii. Reminder: Court will almost always retain the federal questions
- iii. Allows a federal court to dismiss a count that otherwise qualifies for supp J if:
  - 1. Difficult questions of state law
    - a. State court would be better equipped to decide the difficult or novel question
  - 2. Non-diverse state claim predominates over the claim(s) that formed the original basis of the court's SMJ
  - 3. Original counts dismissed
    - a. When federal court has dismissed claims over which it has federal question or diversity J
    - b. If federal court dismisses federal claims because it finds that it lacked original J, the supplemental claims must be dismissed
    - c. If federal court dismisses federal claims on the merits, it may have discretion to hear the supplemental claims
      - i. If dismissed federal question or diversity counts on the merits at the outset, probably will dismiss the supp counts immediately (or remand if came to federal court through removal process)
      - ii. If federal court had proceeded through the case and informed itself of the merits of the supplemental claims, then dismissal of the federal claims probably would not justify dismissing the supp claims
  - 4. Other exceptional circumstances

**h. 1367(d): Statutes of Limitations**

- i. Claims filed in federal court under 1367(a), and subsequently dismissed, usually will not be barred by a statute of limitations because of time lost while in federal court
  - ii. P has at least 30 days after a claim is dismissed in which to refile in state court
    - 1. If state law allows more than 30 days, the state law prevails
  - iii. Also applies when a supp count is dismissed, and as a result P voluntarily dismisses all other claims so that she can refile in state court
- i. If non-diverse state claims are dismissed or remanded , P can always bring all of the claims in state court
- i. Effect of 1367(c) is uncertain:
    - 1. Federal court can dismiss a state count under 1367(c) without prejudice, so that P can refile in state court

**VIII. REMOVAL (1441 and 1446)**

- a. Allows D to move case (not claims) from state trial court to federal court
- b. Controlled by federal law
- c. Kinds of cases that may be removed (1441):
  - i. Most diversity suits
  - ii. Most federal question suits
  - iii. Non-diverse state claims which are joined with federal questions
  - iv. Suits against foreign states
  - v. A case can be removed even in circumstances where a state court lacked J over the case when it was originally filed (1441(e))
- d. Requirements:
  - i. At least one claim filed by P must fall within the original SMJ of the federal district court (e.g. federal question or diversity)
  - ii. Case must have been in state court at the time the removal petition was filed
  - iii. **1441(a)**: Removal is only available to Ds to the P's case in chief
  - iv. Case law has established that an action generally cannot be removed to federal district court unless all Ds join in the notice of removal
  - v. If parties have an enforceable forum selection clause, an otherwise removable claim will be remanded to state court
  - vi. Personal Jurisdiction & Venue:
    - 1. If D removes a case, does not necessarily lose the opportunity to challenge PJ

2. While a removed claim does not have to satisfy the federal venue statute, it must have satisfied the venue rules governing the state court from which it was removed
  - a. Case is removed to the district and division embracing the place where such action is pending, even if that federal district would not have been a proper venue if the case had been brought there initially
- vii. P can choose to avoid federal court by pleading only state law claims or joining parties who will destroy diversity jurisdiction. Exceptions:
  1. Fraudulent joinder: Occurs when P joins a nondiverse D for the purpose of defeating removal of an otherwise diverse claim
  2. If there is no colorable basis for the claim against the nondiverse D, federal court will disregard that nondiverse D when making a decision about remanding to state court
    - a. If no connection b/n the claims against the diverse and nondiverse D
  3. P may not disguise federal causes of action that would make the case removable

**e. 1441(b):**

- i. D can remove any cause of action based on original federal SMJ (federal question) without regard to citizenship
- ii. Exception: You can't remove a state question to federal court if you are sued in your home state court, even if the court satisfies diversity.

**f. 1441(c):**

- i. If at least one separate and independent count would qualify for federal question J, then 1441(c) provides that a notice of removal will cause all counts in the case to be removed to federal district court.
  1. Separate and independent = different labels for different claims
  2. A count can be "separate and independent" so that it will be removed to federal court, but still part of the "same case or controversy" in order to meet supplemental jurisdiction. (See 11/04 notes, e.g. battery and 1983 claim))
- ii. When basis for removal is federal question, the entire case is removed and the federal judge decides whether to keep the non-diverse state counts.
- iii. Separate and independent questions that don't by themselves qualify for removal get removed as long as justification for the removal is a federal question count. A federal question can be removed and can take with it counts not otherwise eligible for removal.
- iv. When federal question + non-removable claims are removed, the "district court may determine all issues...or, in its discretion, may remand all matters in which state law predominates."
  1. Discretion = The court can decide whether or not it wants to keep the "matters in which state law predominates."
  2. Non-removable counts will have to satisfy supplemental J to stay in federal court.

3. Federal court does not have discretion as to federal questions.
- v. No authority to remove nondiverse state claims to federal court when the basis for removal is a diverse court
  1. Diverse claims may be removed under 1441(b) and nondiverse claims must remain in state court
  2. However, D can get around this by removing the diverse claim and then, when the case is in federal court, filing a nondiverse counterclaim and try to sustain the federal court's supplementary J over the nondiverse claim (1367)

**g. Multi-count cases:**

- i. Once a multi-count case has been removed, the federal district court has discretion to retain J over the "non-removable" counts
- ii. The court generally will keep the non-removable counts which form part of the "same case or controversy" as the counts which qualified for removal on their own
- iii. Any counts which the court does not want to retain are remanded to state court from which they were removed
  1. For remand to be proper, the remanded claim must be:
    - a. Separate and independent claim or cause of action
    - b. Joined with a federal question
    - c. Otherwise non-removable
    - d. Matter in which state law predominates

**h. Result:**

- i. If the federal court decides that removal was inappropriate, it may remand all or part of the case to the state court. Dismissal is not appropriate.
- ii. Reminder: If the count is originally filed in federal court as a supplemental count and the judge decides it shouldn't be there, the remedy is dismissal or remand. P can refile in state court.

**i. Process:**

- i. Notice of removal must be filed by D in the appropriate federal court within 30 days of receiving P's original pleading (service)
- ii. Automatically removes the case from the J of the state court, and federal court will decide how to handle the case
- iii. 1446(b): A case may not be removed on the basis of diversity more than one year after commencement of the action.
  1. A sues B and C. Not eligible for removal b/c no diversity & state question. B is dismissed, now eligible for removal. C can file to remove anytime within 30 days of B's dismissal. (1446(b)).
  2. Exception: If B is dismissed more than one year after the case was commenced, C cannot remove.
- iv. Motion to remand must be filed within 30 days of the date of the petition to remove unless the basis for remand is lack of SMJ

1. If basis for motion to remand is lack of SMJ, can be made at any time prior to final judgment
- v. If the federal district court notices its own lack of SMJ, it does not have to wait for a motion to remand from either party; the court can & must remand of its own initiative **(1447(c))**
  1. However, if basis for remand is a procedural error, it is an error for the court to remand sua sponte
- j. Title 28 USC 1441(a), (b), (c)
- k. Title 28 USC 1446 (a) and (c)

## IX. CHALLENGING SUBJECT MATTER JURISDICTION

- a. If SMJ is lacking, it is not for the parties to consent or waive
- b. Court has duty to raise lack of SMJ if it notices it
- c. Direct attack
  - i. Available at any time while original case is alive (can be raised for the first time during appeal)
  - ii. In federal district court, you can appeal solely on the basis of lack of SMJ
  - iii. If a case is removed, P can directly challenge SMJ in federal district court to show that removal is improper
- d. Collateral attack:
  - i. D doesn't show up for original proceeding and suffers a default judgment. P brings suit to enforce judgment. D tells 2nd judge that the 1st court lacked SMJ.
  - ii. Collateral challenge will be heard, but might not be granted.
- e. Policy: Keeping spheres of judicial power separate

## X. VENUE

- a. Title 28 USC 1391(a), (b), (c), (d): Federal Venue Statute
- b. Sets the appropriate federal districts in which a particular case should be heard
- c. Additional to jurisdictional requirements: If P satisfied both kinds of jurisdiction, the case might still be dismissed if venue lacking
  - i. D might be served w/in the state where the federal district court sits, but venue still might be lacking
  - ii. **Different from jurisdictional requirements, for which every count in a case must satisfy some form of both jurisdiction over persons or things and SMJ**
- d. Usually only P has the burden of satisfying requirements of venue
- e. Venue objection are original D's right & are waived if D does not object (except aliens)

f. **Consent to venue:** If the parties consent to jurisdiction in a particular district or state, it appears settled that they also consent to venue there

1. If P files a case in a particular district where venue is improper, the court may still hear that case if D does not object to it
2. D must object to venue within a certain time, or will lose his opportunity

g. Governed by legislation:

- i. State courts governed by their own venue legislation
- ii. Federal courts governed by venue requirements as set by Congress
  1. In absence of special venue provision, 1391 governs venue for diversity suits and federal questions
  2. Some specific causes of action have special venue statutes (civil suits under federal copyright laws, stockholder's derivative suit)
  3. P's choice of whether to use between general venue provisions and specific venue provisions depends on whether Congress intended to make the more specific provision the exclusive source of venue

**h. Section 1391**

- i. Restricts P's choice of federal district court to those districts that Congress deems "fair"
- ii. Only applies to cases commenced in federal court
- iii. "Federal judicial district in which a defendant resides"
  1. Federal judicial district can be an entire state
  2. Or, a state can be broken down into multiple districts
  3. Districts can be subdivided into "divisions"
  4. Residence, when applied to venue requirements, is roughly similar to "citizenship" and "domicile"
    - a. If a person has several homes across the U.S., only one can be a domicile, and only one probably can be a residence for venue purposes

**iv. Removal**

1. 1391 does not apply when claim removed from state to federal district court
2. Applicable state venue standard in court where case was originally filed applies to removed claims
3. But, party who seeks removal of a claim does not thereby waive a challenge to the state court's venue (may raise challenge in federal court)

**v. Remedies**

1. Court may dismiss; P can refile (if SOL hasn't run)
2. With SOL problems in mind, Congress enacted 1406, which allows a federal court to transfer a case to another federal district court where venue is proper if it finds venue to be faulty

- i. **1391(a): Where SMJ based solely on diversity of citizenship** – 3 opportunities for venue (P may file in any of these districts)
  - i. (a1) Where Ds reside – in a judicial district in which any D resides, provided all D’s live in the same state
  - ii. (a2) Where substantial events or omissions occurred – usu. considers acts of both parties
    - 1. Where a substantial amount of property that gave rise to the action is found
    - 2. District in which damage occurred (tort)
    - 3. Where performance was to have occurred (contract)
  - iii. (a3) Where any D is subject to PJ at the time the suit is filed
    - 1. PJ measured by boundaries of federal judicial dist, in states w/ more than one fed judicial dist (“in that portion of the state” which comprises the fed jud dist)
    - 2. May not be used if (a)(1) or (a)(2) apply
  - iv. Defers to federal venue statutes – whether P may employ venue opportunities under 1391 depends on
    - 1. Whether a litigant may employ 1391 depends on:
      - a. Whether Congress enacted venue statute
      - b. Whether Congress provided for its exclusive use
- j. **1391(b): When SMJ not based solely on diversity – 3 opps for venue**
  - i. (b1) Where Ds reside
  - ii. (b2) Where substantial events or omissions occurred
  - iii. (b3) A judicial district in which any D may be found, if there is no district in which the action may otherwise be brought
    - 1. Only difference from (a)(3) is “judicial district in which any D may be found” vs. “judicial district in which any D is subject to PJ at the time the action is commenced”
    - 2. Only available if (b)(1) and (b)(2) fail
  - iv. Like 1391(a), defers to federal venue statutes – whether P may employ venue opportunities under 1391 depends on
    - 1. Whether a litigant may employ 1391 depends on:
      - a. Whether Congress enacted venue statute
      - b. Whether Congress provided for its exclusive use
- k. **1391(c): Residence for corporations for purposes of venue**
  - i. Corp venue based on PJ: Corps residents of any judicial district in which they would be subject to PJ at the time action is commenced.
  - ii. Multi-district states: If a state has more than one judicial district, corps are residents only of the judicial districts within the state in which they would be subject to personal J, if the judicial district was a separate state.

1. Small company based in San Diego. Does all business in San Diego. Resides in San Diego. Subject to PJ in entire state, but only subject to venue in San Diego (Central District of CA).
  2. Large corps such as GM or Microsoft are usually subject to venue in virtually every judicial district in the country
- iii. Corp. activities dispersed throughout a multi-district state: If the corp has contract throughout the state, so that it might have PJ in the state as a whole, but the contacts are not sufficient in any one district to satisfy venue, the corp resides in the judicial district with which the corp has “the most significant contacts.”
  - iv. Focuses on “residence” not citizenship or domicile
    1. Residence = any judicial district in which its contacts would suffice to support PJ
    2. Much smaller quantum of corporate activity required to establish venue than to establish PPB for diversity purposes or “substantial & continuous activities” for general PJ
    3. A single act by an employee can support venue in a district if the act gave rise to the claim

**I. 1391(d): Aliens**

- i. Aliens may be sued in any judicial district
- ii. Applies to alien corps and alien natural persons
- iii. Issue: Non-U.S. citizen domiciled in a U.S. state
  1. Citizen of the state for diversity purposes under 28 U.S.C.A. 1332(a)
  2. Not clear if that person is an “alien” for purposes of 1391(d)
- m. Purpose: Fairness to D, imposed through legislation – area where the case is tried must be reasonably fair to D within the state

**XI. FORUM NON CONVENIENS**

- a. Based on case law; treated differently in different states
- b. Court selected by claimant will not hear a cause of action if the court is an “inappropriate” forum
- c. Courts have substantial discretion to decide whether it is an appropriate forum for the case
- d. Independent of jurisdiction and venue: Even if PJ, SMJ and venue are satisfied, the court still can refuse to hear a case if the forum is inappropriate
  - i. Court typically will not address FNC until it first determines J and venue are appropriate
- e. Timing: Motion to dismiss or transfer to a more appropriate forum under FNC usu. made early in the case by D; post-judgment motion will not be considered.
- f. **Requirement:** Before court dismisses case on forum non conveniens grounds, the court must determine that an adequate alternative forum exists
  - i. D has burden of demonstrating availability
  - ii. Court will retain case if no other adequate forum exists



- iii. Evaluating the adequacy of an alternative forum:
  - 1. Are D's subject to service of process in the alternative forum?
  - 2. Will the alternative forum hear the case?
  - 3. D can consent to J in the alternative forum
  - 4. If alternative forum is in a foreign country:
    - a. Same questions as above PLUS
    - b. Does the foreign court have the capacity to provide an adequate remedy?
    - c. Integrity of the foreign court?
    - d. Will P have a reasonable opportunity to present his case?
  
- g. Deference to P's choice of forum
  - i. To prevail, D must prove that P's choice of forum was significantly inappropriate, notwithstanding the existence of satisfactory jurisdiction and venue
  - ii. In most cases, a FNC motion will not be granted unless the factors below weigh heavily in favor of trial in the alternative forum
  - iii. Exception: Non-American Ps – receive substantially less deference than American Ps
  - iv. Exception: Certain declaratory judgment Ps – If P had a “bad faith” motive
  - v. Modification: Corporate Ps in int'l business
  
- h. Courts weigh public & private interest factors
  - i. Court can impose conditions on its decision
  - ii. Public interest factors:
    - 1. Having local disputes settled locally
      - a. Local court congestion
      - b. Burdens on jurors
    - 2. Avoiding problems of applying foreign law
      - a. Courts may be reluctant to take cases where they will have to apply foreign law
      - b. This consideration usually only carries limited weight
    - 3. Avoiding burdening jurors with cases that have no impact on their community
      - a. Should local citizens have to carry the burden of trying a case unrelated to their community?
      - b. Do citizens of another area have a greater interest in the outcome of the case?
    - 4. Enforceability of a judgment:
      - a. If enforcement of a prospective judgment could require further litigation outside the U.S., the court may decide to hear the case in the U.S. in the first instance
      - b. If the judgment is likely to end up being unenforceable outside the U.S., it might be a waste of time to hear the case in the U.S.
    - 5. Public policy
  - iii. Private interest factors:
    - 1. Ease of access to evidence
    - 2. Cost for witnesses to attend trial

3. Availability of compulsory process
  4. Other factors that might shorten trial or make it less expensive
  5. Enforceability of a judgment
- i. Who raises the issue?
    - i. Normally raised by D
    - ii. Parties are free to waive the issue
    - iii. But, court may raise the issue sua sponte
  - j. USCA 1404: Transfer**
    - i. Federal district court may **transfer** a case if it is an inappropriate forum
    - ii. Will transfer to another federal district in which the case may have been brought
    - iii. Because a transferred case is not dismissed, there are usu. no SOL problems
    - iv. Transfer is now the standard remedy where it can be applied
    - v. If the only other appropriate forum is outside the U.S., the case must be dismissed
      1. Court usually requires D to agree to submit to J in the foreign court, and to agree not to challenge the suit on SOL grounds

## **XII. ERIE DOCTRINE**

- a. When a federal court hears a state cause of action, it should apply the same substantive law that the state court would apply
- b. Erie: Federal courts would defer to state common law as well as state statute
  - i. Courts use state law to determine if P has a cognizable cause of action AND
  - ii. To determine if any applicable substantive defenses block the suit
  - iii. Erie defeated federal general common law, but left open the question of what procedure the court should use: federal or state?
    1. Substantive law: Law that determines whether a party has a claim cognizable in court, and whether D has a legal defense that bars such a claim on the merits
    2. Procedural law: Governs the way in which both P and D must present their sides of the case to the court; how the case will be processed, service of process, housekeeping.
      - a. Reed: “The line between procedural and substantive law is hazy, but no one doubts federal power over procedure.” Federal procedural law is eminently constitutional.
- c. Guaranty Trust directs federal courts to use state procedure over federal procedure whenever the choice of procedure would determine the outcome of the case
  - i. If choice of procedure does not affect the outcome of the case, federal court should use federal procedure

- ii. State SOL barred claim, while federal SOL did not – sufficient difference in outcome to justify barring the use of the federal procedure
  - iii. This tends to be an overly broad assessment
- d. Now, application of federal procedure (over state procedure) in diversity cases depends heavily on the source from which the federal procedure emanates.
- i. Three sources of law, three approaches to determining whether to use federal or state law.
  - ii. Source of the state procedure doesn't matter
  - iii. **Federal case law** (Byrd v. Blue Ridge Rural Electric): Weighing of interests
    - 1. Example: Forum non conveniens almost purely case law
    - 2. Factors in addition to outcome determination are relevant
    - 3. Three-factor balancing test:
      - a. Relative strength of state interests behind state procedure
        - i. In Byrd, the state practice of allowing judge to determine the statutory employer issue had developed for no special reason = no strong state interest
      - b. Relative strength of federal interests behind federal procedure
        - i. Uniformity among federal courts in how they handle this question
        - ii. Influence/command of 7th Amendment (jury trials in fed courts)
      - c. Likelihood that application of federal procedure will significantly affect the outcome of the case
        - i. If the procedure is outcome determinative, it is an argument for applying state procedure
        - ii. No outcome determination favors federal procedure
  - iv. **Federal Rules** (Hanna v. Plumer): Two-part test
    - 1. Includes the actual federal rules plus the body of law that construes them
    - 2. Will be called a Rule (e.g. Rule 4)
    - 3. If you have a difference b/n federal and state procedure, and the federal procedure originates in a Rule (or a case construing a Rule), use a two-part analysis (both elements must be met):
      - a. **Is it a lawful federal Rule?**
        - i. Is it purely procedural in nature?
        - ii. Was it made pursuant to the delegation from Congress?

**b. Does the Rule conflict with the otherwise applicable state procedure?**

- i. If Rule is lawful and conflict = federal rule applies
  - ii. No conflict = Procedures do not address the same concerns = state procedure applies
4. Rule: If a federal rule of civil procedure is a lawful exercise of rule-making power under the Rules Enabling Act, and the rule conflicts directly with state procedure, the federal rule applies.
  5. Federal Rules usually win. So far none have been found to be unlawful.
  6. Concurrence: Forum shopping/outcome determination should matter. If the lawyer would choose the federal forum b/c federal procedure more favorable to his client, federal court should use state procedure. If lawyer can foresee an advantage in one set of procedure over the other.
- v. **Congressional Enactments** (*Stewart Organization v. Ricoh Corp.*): Applies federal procedure if:
1. **Federal statute is on point**
  2. (If it is a lawful exercise of authority – so far no rules have been found to be unlawful)
  3. Federal court hearing a state cause of action should use federal procedural statute if the statute is on point
  4. Rule: Federal courts are bound to apply procedure enacted by Congress, provided only that Congress was within its Constitutional authority and that the statute was relevant to the issue before the court.
- e. If federal district court decides to apply state law, and state law is uncertain, the federal district court has three possible courses of action:
- i. Abstention (send to state court)
  - ii. Certification (ask state supreme court to answer the question but keep case in fed court)
  - iii. Decide the case

**f. Erie Summary**

- i. Federal statute (Hanna, Stewart)
  1. As long as the statute is on point and Congress had the authority to enact it, the statute should be used over state procedure
- ii. Federal Rule
  1. If a Federal Rule conflicts with state law, the Federal Rule applies if it is valid (purely procedural)
  2. If no conflict, apply state law

iii. Common law

1. Diversity could should choose state procedure if the difference between it and the federal practice could prove outcome determinative (forum shopping/inequitable administration of the laws)

## **28 USC 1367 (Supplemental Jurisdiction) interpreted:**

### **Subsection (a): General definition of supplemental J.**

- In any civil action of which the federal district courts have original jurisdiction (see 1331, 1332, 1333, etc.),
- The district court shall have supplemental jurisdiction
- Over all claims within the same case or controversy (under Article III).
  
- Includes claims that involve the joinder or intervention of additional parties.
  
- EXCEPT when (b) and (c) provide otherwise OR
- EXCEPT as provided by Federal statute

### **Subsection (b): If the three strikes in this section are present, no supplemental jurisdiction. If you answer yes to all three strikes, no supplemental J.**

If the federal district court has original jurisdiction based on diversity of citizenship + amount in controversy, AND the plaintiff makes a claim, AND the defendant joins another party under one of the Rules listed below – no supplemental jurisdiction.

Policy: Plaintiffs could bring a claim in federal court against a party, but not include another party who should be in court, and then wait for D to join that party. Then P can stay in federal court.

- In any civil action of which the federal district courts have original jurisdiction
- Based solely on section 1332 (diversity of citizenship + amount in controversy) **(STRIKE 1)**
  
- District courts shall NOT have supplement jurisdiction
  
- Over claims by plaintiffs **(STRIKE 2)**
- Against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure..**(STRIKE 3)**
  
- When exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

### **Subsection (c): Allows district courts to decline to exercise supplemental J.**

District courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) IF:

- The claim raises a novel or complex issue of State law
- The claim substantially predominates over the claim(s) over which district court has original J.
- District court has dismissed all claims over which it has original J.
- Other compelling reasons for declining J.

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## **STATUTE 28 USC 1441(c): Removal**

Whenever a separate and independent claim or cause of action

- Within the jurisdiction conferred by section 1331 (federal question) of this title

Is joined with

- One or more otherwise non-removable claims or causes of action

The entire case may be removed

- And the federal district court may determine all issues therein

**OR**

In its discretion, may remand all matters in which state law predominates.

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