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# Subject Matter Jurisdiction

## Diversity Jurisdiction

* **Date for determining diversity**: a party’s citizenship for diversity purposes is determined as of the commencement of the action
  + i.e. filing date
* **Domicile** : intent to remain indefinitely
  + Resident alien
    - Citizen of domiciled state
  + D­­­1 is Michigan D2 is Mexico; the fact that foreigner is a party does not destroy diversity between P and D1­­
* **Complete Diversity**: No P is a citizen of the same state as ANY D
  + Nominal parties are ignored
    - e.g. guardian sues on behalf of child, guardians citizenship doesn’t matter
* **Alienage Jurisdiction**: Suit between citizens of a state v. foreigner on the other
  + Resident alien is citizen of state resided in
* **Devices to create or destroy diversity**
  + Courts will not take jurisdiction in which any party has been improperly or collusively joined to obtain Jurisdiction
    - **28 U.S.C. § 1359**

#### Gordon v. Steele

##### Facts:

Gordon (P) was raised in Erie, Pennsylvania and received medical treatment in Pennsylvania. This lawsuit was brought after Gordon moved to Idaho to attend a Mormon college. She rented an apartment in Idaho and returned to Pennsylvania only for medical treatment and to attend to legal matters.

##### Issue

What decides domicile?

##### Holding and Rule

Intent to remain indefinitely

28 U.S.C. § 1332

(a) District courts shall have original jurisdiction of all civil actions where the amount in controversy in excess of 75k **and** is between

(1) citizens of different states;

(2) citizens of a State and citizens or subject of a foreign state;;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties

(4) a foregin state . . . As plaintiff and citizens of a state or of different states

For the purposes of this section . . . An alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

**Amount in Controversy**

* Does not include interest
* Only need to show *some possibility* that there is $75k in question; not prove
  + Must be disproven to a ***legal certainty*** by other party
    - Damages cap <$75k is legal certainty
  + Eventual recovery is irrelevant
    - **\*NOTE**: If the P ends up getting <$75k, the court may deny costs to P and may even impose costs on him
      * **§ 1332(b)**
* Typically POV of P
* Aggregation of claims by 1 P
  + Single P can add all of his claims against D to =$75k
  + If multiple Ds, must have $75k against each
* Aggregation of claims by 2+ Ps
  + 1 plaintiff has $75k worth of claims, others can piggy back
  + Cannot add claims of multi Ps to = $75k

#### Mas v. Perry

##### Facts

* Mases were grad students at LSU
* Mr. Mas->France Mrs. Mas->Mississippi
* At the time this lawsuit was filed the couple lived in Louisiana but had not decided where they would live after Mr. Mas completed his Ph.D.

##### Issue

What is required in order for a party to change its place of domicile?

##### Holding and Rule

* A person remains a domicile of one place until that person has adopted a new domicile through physical presence and intent to remain.
* Domicile is determined as a matter of federal law, not state law.
* Mr. Mas can establish diversity jurisdiction against Perry in any case because 28 USC 1332(a)(4) does not apply to aliens who are not permanent residents of the United States, regardless of their place of domicile.
* Formerly, the domicile of a wife was deemed to be that of her husband. The court abandoned that rule in this case and held that for diversity purposes a woman’s domicile does not change solely by marrying an alien

\*Note: the stateless U.S. Citizen. Mases move to France and establish domicile there. Mrs. Mas is not a foreign citizen nor has she retained citizenship of any state. She is not covered by § 1332 and therefore there is no diversity jurisdiction for Mrs. Mas.

**Corporate Citizenship**

* Diversity involving Corporations
  + Citizen of:
    - State incorporated AND
    - State where it has its principal place of business
      * Nerve center/ home office (some courts)
* Partnerships and LLC’s
  + citizenship of ***each partner*** counts towards that of the LLP/LLC

28 U.S.C. § 1332(c)

(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that **in any direct action against the insurer of a policy** or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, **such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business**; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

#### Hertz Corp. v. Friend

##### Facts:

* Ps brought suit in CA against Hertz
* Hertz did more business monetarily in CA than any other state
* Inc. in DE; Corp Headquarters in NJ

##### Issue

How do we determine *Principal Place of Business*

##### Holding

The Court must determine where the corporation’s **high level officers direct, control and coordinate the corporation’s activities** (i.e., the “nerve Center” test).

\*Note: **Burden** is on party trying to establish j/d

### Questions in Determining Diversity

## Federal Question Jurisdiction

28 U.S.C. § 1331

1. **Generally**: federal Ct.’s have j/d over “ all civil actions arising under the Constitution, laws, or treaties of the U.S.”
   1. **Federal Claim**: federal law must be the source of the P’s claim
      * 1. **Osborn Test**: as long as there is a ***Federal Ingredient***
      1. **Interpretation of Federal Law:** Not enough that a state claim is brought that requires the interpretation of a Federal Law
      2. **Anticipation of a defense** based on Federal Law is not enough
         1. Actual defense can raise Fed? though
2. **Supplemental Jurisdiction**: New parties and new claims may not have to independently satisfy SMJ, they can piggy back onto already valid SMJ claims
   1. **§ 1367(a)** : so related that they form the same case or controversy; Such supplemental j/d shall include claims that involve the joinder or intervention of add’l parties
      1. ***Closely related*** state claims can be heard along with Fed?
      2. The Supplemental Jurisdiction state claim can bring in other defendants even if there is no fed? between P and new Ds, nor diversity
         1. As long as the claim arises from the same chain of events as P’s original Fed claim against original D

#### Louisville & Nashville RR v. Mottley

##### Facts

* Mottleys were injured on RR, traded claims for lifetime RR pass
* CG passed a law saying no free passes
* Mottleys filed claimed Fed? in anticipation of RR would raise Con Defense

##### Issue

1. Does anticipation of Fed? defense satisfy SMJ?
2. May a suit be dismissed at app level for lack of SMJ?

##### Holding

1. No
2. Yes

##### Rule

Well pleaded complaint

### Questions in Determining SMJ

* What body of law ***creates the COA***?
  + Fed statutes authorizing a suit who’s decision is to be substantively governed by state law-> substantive state law CREATES the COA
    - Shoshone Mining v. Rutter

### State Law Claims Raising Substantial Questions of Federal Law

No Mechanical Test

1. Is fed issue essential to the case?
   1. Is there a COA without ruling on a fed?
2. Will this open the floodgates?
   1. Upset the balance btwn state/fed
3. Indication of CG intent?

Smith-Grable Test

* Smith – Claim turned on allegedly unconstitutional purchase of stock
* Grable – Admittance of case would not materially affect the normal currents of lit

\*Note: Fed? in a defense does not give district ct.’s j/d, but it does give the SCT appellate j/d

## Removal of Cases

28 U.S.C. §§ 1441, 1445-48

1. **Generally**: any action brought in state court that could be brought in fed is removable, typically
   1. \*\*\***Diversity Limitation**: In strict diversity cases, the action may be removed ONLY if ***no D is a citizen of the state in which the action is pending.*** \*\*\*
      1. i.e. if P/D are diverse but P sues D in D’s home state-> Tough Shit
      2. Does not apply to class action
2. P cannot remove; the dumbass should’ve filed fed to begin with
3. **Four corners of the Complaint**
   1. The plaintiff’s jurisdictional allegations reign supreme
      1. E.g. P sues for $60k, D cannot remove claiming that there is really $80k at stake
4. Removal of Multiple Claims
   1. If it is **a diversity case** in which there is one federal SMJ and one not, the presence of the not defeats the D’s ability to remove
   2. **Federal Question Case**: One claim with SMJ and one “separate and independent” claim for which there is no Fed SMJ, D may remove the whole case
5. Mechanics
   1. D must typically file within ***30 days*** of service
   2. P may move to remand to state court for lack of SMJ at any time before final judgment
   3. Other problems with removal (D missed 30 day period, removed without **consent of all D’s**, etc.) are waived if not raised within 30 days

# Personal Jurisdiction

1. 2 Requirements for PJ
   1. **Substantive Due Process**: (Due process clause) The ct. must have ***power*** to act
      1. Inherent in state sovereignty over affairs w/in its territories
   2. **Procedural Due Process**: D must have ***adequate notice*** and an ***opportunity to be heard***
2. Three Kinds of JD Over the Parties
   1. **In personam**: Jurisdiction over the D’s person; power to issue a judgment against her personally; able to seize all of D’s assets
   2. **In rem**: Jurisdiction over a thing, power to adjudicate a claim made about a piece of property or about a status (action to quiet title to real estate or dissolve marriage)
   3. **Quasi in rem**: Action is begun by seizing property or debt owed to D; any judgment affects only the property seized
   4. **Minimum Contacts Requirement**: if there is ***in personam*** or ***quasi in rem***, the court may not exercise j/d unless D has taken ***actions purposefully directed*** at the forum state
      1. Even if D has minimum contacts, Ct. will not subject her to j/d if considerations of “fair play and substantial justice” would make it unreasonable
3. **Long-arm Statute**
   1. Allows Ct.’s to obtain j/d over persons not present in state to be served
4. **Objecting to PJ**: D can make a special appearance to contest PJ without subjecting self to PJ(special appearance)(outdated)
   1. **Modern alternative**: modern Ct.’s have “jettisoned the technicalities” of special appearance. They allow D to object to PJ by filing a motion to dismiss or in answer
   2. **F.R.C.P.** 
      1. **12(b)(2):** can raise lack of PJ in answer or pre-answer mtn
      2. **12(h)(1):** if D is not raised in first filing, it’s waived
   3. **Collateral Attack:** ignore litigation and wait for P to come to you to enforce default judgment (Ballsy)

#### (Old Rule)

#### Pennoyer v. Neff

##### Facts

* + Mitchell sued Neff
    - Published notice of suit in Oregon newspaper w/o serving Neff
  + Mitchell default judgment; got land, ***land seized, not attached***
    - Sold to Pennoyer

##### Issue

Can a state court exercise PJ over non-resident who has not been served in the state, and who owns property in state ***that was not attached before the litigation***

##### Holding and Rule

No.

Ct. may only enter judgment if the party:

* + - 1. Is served within the state; OR
      2. Owns property, ***that is attached before litigation begins*** ;
      3. Consent
      4. Corporate Presence

#### International Shoe Co. v. Washington

##### Facts

* Shoe was DE corp. PPoB in MO
* 11-13 salesmen employed in WA for 3 yrs
* $31,000 in annual commissions
* Contracts & Prices went through PPoB MO

##### Issue

Did International Shoe’s actions in WA subject them to PJ?

##### Holding and Rule

Yes

Systematic and continuous actions carried out by corp. or its agents is enough to establish PJ. Did the corp. seek/receive the benefits and protection of forum state law?

## Specific In Personam Jurisdiction

Single or occasional acts GIVE RISE TO the litigation

* 1. **In personam**: Jurisdiction over the D’s person; power to issue a judgment against her personally; able to seize all of D’s assets

### Jurisdiction Over Corporations

1. **Domestic Corporations**: Any action may be brought against corporations incorporated in forum state
2. **Foreign Corporations (Specific J/D)**
   1. **Minimum Contacts**: Corp. must have mini contacts such that suit does not offend traditional notions of fair play and substantial justice.” (International Shoe)
   2. Usually a corporation will have mini contacts with forum state only if corp. has ***voluntarily sought to do business in*** or with residents of the forum state
3. **Use of agents**: if a Corp. uses another company as an agent to perform activities, the corp. can be sued in state where agent is doing work for principal, if work is significant

#### McGee v. International Life Ins. Co.

##### Facts

* Lowell Franklin buys life insurance from an AZ insurer.
* AZ insurer sells to International Life, Texas.
* International Life mails Franklin an offer to maintain the policy. Franklin says yes.
* Franklin sends premiums from 1948-50.
* Lulu McGee, beneficiary, attempted to claim under the policy. International Life refused.
* McGee sues International Life in CA.

##### Issue

Is a non-resident Corp. subject to PJ merely for contracting with resident?

##### Holding and Rule

Yes

It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with the state

\*\* Post *McGee*: *Hanson v Denckla* (1958): Need action by D purposefully directed at the forum state; language of “purposeful availment” of forum state’s benefits. \*\*

#### Hanson v. Denckla

##### Rule

“It is essential in each case that there be some act by which the D purposefully availed itself of the privilege of conducting activities within the forum state.”

I.e. P must have initiated a contact in forum state

#### World-Wide Volkswagen Corp. v. Woodson

##### Facts

* P’s purchased an Audi from Seaway Volkswagen, NY dealership
* 1yr later, while driving in OK the car burst into flames after rear ended
* P’s sued dealer and distributor

##### Issue

How extensive must contacts be in order to exercise in personam j/d?

##### Holding and Rule

* “Does not offend traditional notions of fair play & justice to make them defend there. Must be reasonable.”
* Foreseeability that car would end there isn’t enough; **D’s conduct and connection with the state must be such that he should reasonable foresee being haled into court there**.
  + Business (sales OR advertising directed @ forum state)
  + Must be ***FAIR WARNING***
    - Purposeful availment provides fair warning

##### Considerations

* Burden on D
* State’s interest in adjudicating
* P’s interest in obtaining convenient and effective relief
* Interstate judicial system’s interest in efficiency
* Shared interest of several states in furthering substantive social policies
* Availability of witnesses/evidence

­­­­­­­­­­­­­­­­­­­­­­­

#### Burger King Corp. v. Rudzewicz

##### Facts

* Ds entered into franchise agreement with FL corp. BK for MI restaurant
* Choice of law clause in K indicated FL law would govern K
* All $$ owed to FL and Ds received training in FL

##### Issue

* 1. Must a P show that an out of state D has both miniC and that it is fair?
  2. What factors does Ct. consider in addressing reasonableness?

##### Holding and Rule

1. No. Show minimum contacts, **burden shifts to D to show it unfair. (unfair prejudice, etc.)**
2. Factors in determining reasonableness
   1. Extent of D’s purposeful availment
   2. Burden on D
   3. Extent of conflict with sovereignty of D’s state
   4. Forum State’s interest
   5. Efficiency
   6. Importance of forum to P’s interest in convenience and effective relief
   7. Existence of alternative forum

#### Asahi Metal Industry Co. v. Superior Ct. of CA

##### Facts

* Zurcher lost control of moto, alleged that accident was result of defective tube
* Sued tube manu. (Cheng Shin) and Asahi (valve manu.)
* P settled all claims
  + - Only claim left is Cheng Shin cross-claim against Asahi
  + Asahi said their sale to Cheng Shin took place in Taiwan, CA has no j/d
  + Asahi did no biz in CA nor did they import to CA
    - 1.24% of Asahi sales were to Chen Shin
    - 20% Cheng Shin sales were U.S.A.
  + Cheng Shin said Asahi knew and was told products were going to CA

##### Issue

Is awareness that a product may reach remote j/d when put in stream of commerce sufficient to satisfy miniC under Due Process?

##### Holding and Rule

No.

MiniC require that there be some act of purposeful availment of the ***privilege of conducting activites*** in forum state. Asahi didn’t market or advertise in CA.

(even if miniC was satisfied, would it have been reasonable? Hell no, two non U.S. D’s)

#### J. McIntyre Machinery, LTD. v. Nicastro

##### Facts

* Mc purposefully availed itself of U.S.A. market
  + McIntire’s distributor agreed to sell machines in U.S.
  + Mc officials attendted trade shows in several states, NOT NJ
  + 4 Mc machines ended up in NJ

##### Issue

Can a foreign corp. he subjected to PJ in NJ for availing itself of the U.S. market, if it was reasonably foreseeable that their products would end up in NJ?

##### Holding and Rule

No.

“D’s actions, not his expectations, empower a state’s courts to subject to PJ”

D must engage in activities that reveal intent to invoke or benefit from forum state law

\*Note: PJ requires a forum-by-forum analysis

A D may subject himself to j/d of the courts of U.S.A. but not of any particular state

### PJ and the Internet

1. **Website**: did the website operator ***intend to target*** residents of the forum state?
   1. **Passive Website**: if the site is just posting info and is not targeted at in-staters, no miniC
   2. **Transactional Website**: if D runs an e-commerce site that actively tries to get in-staters to buy stuff, probably minimum contacts

#### Jackson v. California Newspapers

##### Facts

* Defamatory article on website
* Newspaper had no content w/ IL sources
* Didn’t focus on IL
* Didn’t know P lived in IL
* 1 print subscriber and no internet subscribers in IL

##### Issue

If the article was accessible in IL, is that enough for miniC?

##### Rule and Holding

No.

* Interactive sites that conduct biz/solicit sales grant PJ
* Interactive sites w/ a trade of info CAN get PJ
* Passive informational sites, NO PJ

Contrast with:

#### Calder v. Jones

##### Facts

* FL writer wrote defamatory article about CA resident Jones
* Nationally published in *National Enquirer*

##### Holding and Reasoning

CA had PJ over FL writer

* Story concerned CA activities (Hollywood) of CA resident
* CA sources
* Brunt of harm suffered in CA
* CA was focal point of story
* Tortious acts were aimed at CA

Caveat-> employees’ contacts are not to be judge by those of their employer

### Minimum Contacts Summary

Enough:

* Sending a contract to a forum state resident;
* entering into the contract with that resident;
* accepting payments for two years;
* contract involves life insurance for the state resident. McGee

Applying the Formula

* + - 1. identify contacts
      2. Assess Nature and Quality of Contacts
      3. Assess if they are what gives rise
      4. If ^3 are satisfied, apply fairness factors
         1. Burden on D
         2. Interest of forum state
         3. P interest in conv/eff relief
         4. Efficiency
         5. Shared interest of system in furthering policy goals

\*Note: Fed court’s ability to require out of state D to show up and defend is generally no broader

**F.R.C.P. 4(k)(1)(A)**

Give Rise To v. Related

**Evidence Test**: a claim arises out of D’s contacts only if “ the D’s forum contact provides evidence of one or more elements of the underlying claim.”

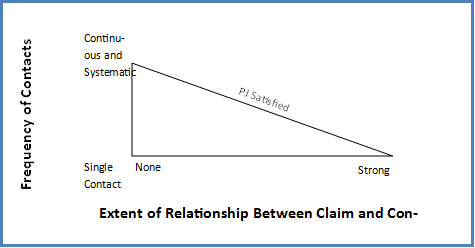
**But-for Test**: a claim arises out of a contact if the claim would not have arisen but for the D’s contact with the state (more expansive approach)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Contracts**:  *(Hanson)*, *McGee*, *Burger King* | **Products Liability:**  *World Wide Volkswagen*, *Grey* (mentioned in WWVW,); *Asahi; McIntyre* | **Intentional Torts and similar:**  *Jackson*, *Calder* | **Other**: *International Shoe* (Can State impose unemployment tax?) |
| **Minimum Contacts Prong**; additional language  (Did D purposefully avail him or herself of the benefits/privileges of laws and protections of the forums state?)  Note: Does purposeful availment language make sense in Calder/Jackson cases? Is it replaced by “aiming at forum state” concept? | Does K have a “substantial connection” to the forum state? (Did D reach out to P in f.s.? If not, did D nonetheless know that K created long-term, detailed relationship with f.s.?) | What standard?: Kennedy (from McIntyre); “submission through contact with and activity directed at” the forum state; O’Connor (product arrived in f.s. by stream of commerce and D engaged in some activity directed at the forum state,)  Brennan (D knew products go there; product arrived there and caused injury there)  Stevens (product arrived there plus some other indicia (amount of product, value, etc.?,) makes it fair to make D defend there)? | So-called “effects” test; even if behavior resulting in harm occurs outside the f.s., was it predictable to D that effects/harm would be felt in the forum state? Did D “aim” actions, even if wholly outside the f.s., at the f.s.? | Original language (are contacts “continuous and systematic?” if less, do they give rise directly to cause of action?) |
| Facts that mattered | D reaching out to P who resides in F.S. (*McGee*); Lengthy contract required ongoing relationship with D in the f.s. (*BK*); K governed by law of the f.s. (*BK*); Court’s assessment of sophistication of D? (*BK*, *McGee*?) | **“**Only product” that ever ended up there? Or just 1-4 total? (*McIntyre*, *WWVW*); type of product influencing assessment of foreseeability? (*WWVW* Brennan analysis); Whether D is upstream or downstream manufacturer/seller and whether this affects foreseeability of suit in F.S.? Does D sell to the entire national market? (note that this doesn’t matter to Kennedy); For O’C view, any advertising, service, marketing, directed at the forum state? | D’s knew and were writing about P’s behavior in f.s. (*Calder*); D’s absence of details about P and where they reside (*Jackson*; interactivity of site where allegedly damaging info was available (*Jackson*); Volume of circulation of allegedly defamatory material in f.s. (*Keaton v. Hustler*.) | Duration, sales volume, profits |

## 

## General In Personam Jurisdiction

* + - 1. Transient presence resulting in service
      2. Domicile
      3. Continuous and ~~systematic~~ substantial activities/contacts



#### Helicopteros Nacionales de Colombia, S.A. v. Hall

##### Facts

* Heli (D) purchased most of fleet and obtained training for pilots from TX manu
* Heli contracted to provide heli transport for a Peruvian company, alter ego of joint venture headquartered in Houston
* Crash, 4 American passengers killed
* Hall (P) decedents sued in TX

##### Issue

How extensive must party’s contacts with forum state be for GENERAL J/D?

##### Holding and Rule

Party’s contacts must be “***continuous and systematic*** (`SUBTANTIAL’)” in nature.

### In Personam Summary

* 1. In state service
  2. Consent
  3. Minimum Contacts & Fair/Reasonable
  4. Domicile
  5. Continuous & Substantial contacts

## In Rem/ Quasi in Rem

* 1. **In rem**: Jurisdiction over a thing, power to adjudicate a claim made about a piece of property or about a status (action to quiet title to real estate or dissolve marriage)
  2. **Quasi in rem**: Action is begun by seizing property or debt owed to D (writ of attachment); any judgment affects only the property seized
     1. Property is placeholder for desired D
     2. BUT the Ct. must have constitutional PJ over D to enter judgment against him
        1. i.e. in ordering the property sold to satisfy judgment

#### Shaffer v. Heitner

##### Facts

* Greyhound, DE Corp., lost large antitrust judgment
* Heitner (P) initiated shareholder derivative suit in DE against corp. officers (D Shaffer)
* P owned one share of Greyhound, non-res DE
* P asked for Quasi in rem j/d by seizing D’s stock

##### Issue

* 1. Can a state obtain PJ over party based on property in forum state?
  2. Is quasi in rem j/d subject to miniC requirements?

##### Holding and Rule

* 1. No
  2. Yes
* PJ must always be evaluated based on miniC
* Where, as in this case, the property serving as basis for j/d is unrelated to CoA, presence of property ALONE is not enough

## Long Arm Statutes

* Exercise of PJ only if:
  + Long Arm authorizes it AND
  + PJ is constitutional
    - One exception: tag j/d
* See state law
  + Most don’t authorize full constitutional limits
  + CA and others do
* If a ct. concludes a LAS authorizes PJ, but PJ would be uncon, the ct. will not strike down LAS as uncon
* Fed courts have fewer constitutional limits on their authority to exercise PJ
  + **F.R.C.P. 4(k)(1)(A)**
    - In most cases fed ct may only exercise PJ if a state court in the state where that fed ct is located could do so
* Congress has passed some rules/stats authorizing fed cts. To exercise nationwide j/d
  + Bankruptcy, and others
  + As long as D has relevant contact ***somewhere in the U.S.A.***

## Notice and Service

\*\*CHECK STATE LAW/ RULES IN RELEVANT DISTRICT\*\*

F.R.C.P. 4

(c) Service.

(1) In General.

A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

(2) By Whom.

Any person who is at least 18 years old and not a party may serve a summons and complaint.

(e) Serving an Individual Within a Judicial District of the United States.

Unless federal law provides otherwise, an individual — other than a minor, an incompetent person, or a person whose waiver has been filed — may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(h) Serving a Corporation, Partnership, or Association.

Unless federal law provides otherwise or the defendant’s waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(1) in a judicial district of the United States:

(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or

(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and — if the agent is one authorized by statute and the statute so requires — by also mailing a copy of each to the defendant; ***OR***

(2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

#### Mullane v. Central Hanover Bank & Trust Co.

##### Facts

* D was trustee of common trust fund, comprised of pooled smaller trusts
* D petitioned to NY Ct. for settlement of the trust
* Only notice provided to beneficiaries was via publication in newspaper

##### Issue

Is notice given to out-of-state parties by publication, *when addresses were known*, constitutional?

##### Holding and Rule

No.

Notice must be reasonably calculated to inform known parties.

However, constructive notice by publication was acceptable with regard to missing or unkown parties or for those whose whereabouts couldn’t be found ***by due diligence***

\*Note: Personal Service is always constitutional

F.R.C.P. 4(d)

Waiver of Service

The P may ask the D to waive formal service. P send D notice of action, 2x waiver form, complaint, prepaid envelope. 30 days to return waiver, 60 if outside U.S. If D does not return waiver, they must pay the costs of formal service, including attorney’s fees for any motion to later collect. If D waives Service, 60 days to answer complaint rather than 21 days after being served. 90 if outside U.S.

# Venue

1. ***Venue*** is the place within a j/d in which an action is brought. It only matters after j/d has been established
2. **State Action:** Venue is determined by statute, state can set up almost any venue rules
   1. **Basis:** Typically authorized based on county or city where ***defendant resides.*** Many states also allow where the CoA arose, D does business, etc.
   2. **Forum non conveniens:** (FNC) is a (mostly) common law legal doctrine whereby courts may refuse to take jurisdiction over matters where there is a more appropriate forum available to the parties. A concern often raised in applications of the doctrine is forum shopping.
      1. **Factors:** 3 factors in deciding whether to dismiss for FNC
         1. Whether the P is state resident
         2. Whether the witnesses and sources of proof are more available in different j/d
         3. Whether the forum’s own state laws will govern the action
3. **Federal Action:** Which fed district Ct. will try the action?
   1. Still need PJ
      1. Both PJ AND Venue must be satisfied
   2. 3 Methods for obtaining venue
      * 1. If ***any D resides*** in that district AND ***all Ds reside in the state containing district***
        2. If a “***substantial part of the events*** giving rise to the claim ***occurred***, or substantial part of property that is subject” lies in that district
        3. @least 1 D is “***reachable***” in the district, and no other district qualifies
   3. **D’s residence:** for Diversity and Fed?, venue lies in any district where **any D resides**, (domiciled) so long as **all Ds reside in state**
   4. **Place of Events or Property:** Diversity and Fed?; substantial part of the events or ommissions giving rise to claim occurred, or a substantial part of property that is the subject of the action is situated
      1. There can be **multiple venues** qualifying for place of events
   5. **Escape Hatch**: Diversity and Fed?; venue may be founded in a district with which some or all Ds have close ties **if there is no district in which the action may otherwise be brought**
      1. Typically actions where events occurred abroad
   6. There is no venue based on plaintiff’s residence
   7. **Corporate Residence**: for venue a corp. is deemed to be a resident of **any district as to which the corp. would have the miniC necessary to support PJ if that district were a state**
      1. Doing business isn’t enough
      2. Applies to partnerships
   8. **Removal:** Cases removed to Fed Ct. are removed to the district where the state action began
   9. **Federal Forum Non Conveniens:** when D successfully moves for FNC, the original Ct. transfers the case to another district, rather than dismissing it
      1. only transferrable to districts where P would have been able to file in beginning
      2. **State law of original district is applied**

28 U.S.C. § 1391 (a)&(b)

## Basic Venue

#### Uffner v. La Reunion Francaise

##### Facts

* D1 PPoB Paris
* D2 PPoB Bradford, England
* D3­ PPoB State of Georgia
* Ds issued insurance policy on P’s yacht
* Off Puerto Rican coast, yacht sank

##### Issue

Was venue proper in Puerto Rico?

##### Holding and Rule

Yes.

As long as what happened in the forum was an important part of the “sequence of events” or “historical predicates” giving rise to the case, venue is proper.

# Pleading

### Federal Pleading Generally

1. Approach Generally
   1. Attorney must sign (complaint, answer, reply) to verify that to the best of her belief, formed after reasonable inquiry, the pleading is not interposed for any ***improper purpose*** (F.R.C.P. 11)
      1. **Sanctions**: Violation of **Rule 11,** the Ct. must impose appropriate sanction; most commonly attorney’s fees for the other side
      2. **Safe Harbor**: Once Rule 11 motion is made, 21-day period in which lawyer can withdraw or modify the challenged pleading

### Complaint

1. Generally
   1. Commences action (Statute of Limitations)
   2. Elements of complaint
      1. **Jurisdiction**: short and plain statement of the grounds upon which the court’s j/d depends
      2. **Statement of the claim**: short plain statement of the claim showing the pleader is entitled to relief
      3. **Relief**: demand for judgment for the relief (pray)
2. **Specificity**: P must make a “***short and plain statement***” of claim showing she is entitle to relief; facts only, no legal theory
   1. Need not mention legal theory or establish prima facie case

## Drafting the Complaint

* Plausible Pleading Standard
  + Enough facts to state a claim to relief that is *plausible* on its face
  + Not just recitation of prima facie elements
  + Do the allegations plausibly give rise to an entitlement of relief?
* \*\*Err on the side of ***FACT PLEADING***, notice pleading is out\*\*

#### Bell Atlantic Co. v. Twombly

##### Facts

* Twombly filed anti-trust claim alleging collusive behavior

##### Issue

Can a claim survive 12(b)(6) when only legal conclusions have been alleged, no facts?

##### Holding and Rule

No.

Legal conclusions are not taken to be true on their face (**no conclusory statements)**

Facts must be alleged that make the claim *plausible*

#### Ashcroft v. Iqbal

##### Facts

* P alleges he was unconstitutionally detained and abused
* Alleges that it was under the direction of Mueller and Ashcroft

##### Issue

What is the minimum standard for a sufficiently pleaded complaint?

##### Holding and Rule

Twombly.

Conclusory statements aren’t assumed true

Facts sufficient to make a claim plausible are necessary, not just possible

“No set of facts” standard is out, even wholly conclusory complaint would pass that

Complaint must show P is entitled to relief, not merely allow for inference of misconduct

“**Needs to nudge complaint across the plausible/conceivable line**”

### Twombly-Iqbal Test (Plausible Pleading)

* 1. Prong 1
     1. Well pleaded allegations?
        1. More than a recitation of prima facie case? (conclusory statements)
  2. Prong 2
     1. Plausible?
        1. Have the scales been tipped away from other possibilities?

## Responding to the Complaint

### Motions Against the Complaint

1. **12(b)**
   1. Lack of **jurisdiction over the subject matter**
   2. Lack of **jurisdiction over the person**
   3. Improper Venue
   4. Insufficiency of **process(e.g. outdated summons)**
   5. Insufficiency of **Service(e.g. wrong person)**
   6. **Failure to state a claim** upon which relief may be granted
   7. **Failure to join** a necessary party under **F.R.C.P. 19**
2. 12(b)(6) Failure to state a claim
   1. No recovery possible under any legal theory
      1. e.g. barred by SoL
   2. ^typically pre-answer motions; 12(c) motion for “judgment on the pleadings” after answer
3. **Amendment**: almost always allowed if complaint is dismissed on motion
   1. **Amendment as of right**: P may automatically amend if complaint is dismissed on motion where answer hasn’t yet been filed
   2. **Amendment by leave of court**: If answer is served then 12(b) motion gets it dismissed, only by leave of court can P amend
4. **12(e)Motion for more definite statement**: if complaint is so “vague or ambiguous that D canoot reasonable prepare a response,” **12(elaborate)**
5. **12(f)Motion to strike**: if P included “redundant, immaterial, impertinent, or scandalous” material in complaint, **12(fuck that shit) Plaintiff’s version of 12(b)(6)**
6. **Waiver of Defense**: 12(b) (2)-(5) must be in 1st filing

### Answer

1. 4 matters can be addressed in Answer
   1. Leftover 12(b) motions( (1),(6)-(7) )
   2. Admit/deny factual allegations
   3. Affirmative Defenses
   4. Counter/Cross claims
2. Signed by attorney
3. **Denials**:
   1. **Where not denied**: averments in a complaint, other than those concerning $$ amounts, are deemed admitted if the allegation is not denied in the answer. **F.R.C.P. 8(b)(6)**
   2. **Kinds of Denials:** 5 kinds
      1. **General Denial**: each and every allegation denied
      2. **Specific Denial**: Deny allegations in specific ¶ or count
      3. **Qualified Denial**: denial of particular portion of particular allegation
      4. **Insufficient knowledge/info to form a belief**
      5. **Denial based on information/belief**: “to the best of my knowledge I reasonably believe it to be false”
4. **Affirmative Defenses**
   1. **F.R.C.P. 8(c)**

F.R.C.P. 8(b)

In responding to a pleading, a party must [respond to every allegation]

(6)

If answer contains new factual allegations, the complainer does not get a chance to admit or deny.

An allegation is considered denied or avoided if a responsive pleading is not otherwise req’d

## Care and Candor in Pleading

### Rule 11

F.R.C.P. 11(b)

By presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating it — an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information

**I.E.: presenter believes after reasonable inquiry that the paper has evidentiary support, legal basis, and proper purpose.**

#### Brown v. Federation of State Medical Boards

##### Rule

Rule 11 demands “**an objective determination of whether a sanctioned party’s conduct was reasonable under the circumstances.”**

Factors for determining reasonableness of inquiry:

* 1. Time
  2. Complexity of issues
  3. Extent to which pertinent facts were under control of opponents/3d party
  4. Extent to which lawyer relied on client for facts
  5. Whether the case was accepted from another lawyer and extent to which receiving lawyer relied on referring lawyer

### Improper Purpose

Objective Determination of Intent

* 1. Did the papers cause unnecessary delay?
  2. Needless increase in cost?
  3. Lack apparent legitimate purpose?

\*\***If a reasonably clear legal justification can be shown for the filing of the paper in question, no improper purpose can be found and sanctions are inappropriate\*\***

#### Sussman v. Bank of Israel

##### Rule

So long as there is legitimate basis in law and fact, subjective intent doesn’t matter. There are often **multiple purposes** for filing a claim.

\*Note: Sanctions are for deterrence, not punishment

## Amending Pleadings

### Amending Pleadings

1. Liberal Policy: Fed rules are extremely liberal in allowing amendment
2. Amendment as of right: once only
   1. Any time before answer is served
   2. W/in 21 days of D serving answer
   3. W/in 21 days of D filing 12(b) (e)or(f)
3. Amendment by leave of court
   1. **Ct. should freely give leave to amend when justice so requires F.R.C.P. 15(a)**
   2. Typically only denied if it would cause ***actual prejudice*** to the other party
      1. Burden is on party opposing amendment to show prejudice
      2. Need not grant for futile amendments
   3. Ct. Will consider:
      1. State of litigation
      2. Reason for amendment
      3. Viability of amended claim or defense
      4. Reason for NOT including in original
4. Original filing counts for SoL, not amendment
5. Grant of leave is reviewable only for abuse of discretion

F.R.C.P. 8(b)(6)

If answer contains new factual allegations, the complainer does not get a chance to admit or deny.

An allegation is considered denied or avoided if a responsive pleading is not otherwise req’d

F.R.C.P. 15(b)

(b) Amendments During and After Trial.

(1) Based on an Objection at Trial.

If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) For Issues Tried by Consent.

When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move — at any time, even after judgment — to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

### Implied Consent

When evidence is offered at trial that is relevant only to an unpleaded issue, the proffer gives notice that the unpleaded issue is being injected into the lawsuit. **To demonstrate lack of consent, the objection should be on the grounds that the contested matter is ‘not within the issues made by the pleadings’.** If a party does not object that the evidence is irrelevant, he has **impliedly consented to interjection of the new issue by his silence**. The presumption of implied consent is even stronger if the party opposing interjection of the new issue was himself the one who offered the evidence.

# Joinder

### Counterclaims

1. Federal Rules
   1. **Compulsory counterclaim**: if a claim arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim, it is a compulsory counter claim **F.R.C.P. 13(a)**
      1. Failure to state results in waiver except
         1. Counterclaim would require additional parties of whom the ct. cannot get PJ
         2. Claims by D in which the suit against D is in rem or quasi in rem
   2. **Permissive counterclaim**: Kitchen sink, any claim you got
   3. **Default by P**: if D counterclaims and P neglects to serve reply or file motion against, default judgment against P
2. **Claims by 3d parties**
   1. **3d party D:** 3d party D can counterclaim against P or D
   2. **By P:** P can counter-counterclaim. Claims relating to D’s unrelated kitchen sink counterclaim become compulsory
   3. 3d parties only relevant to permissive counterclaim may be brought in as D w/ P
3. SMJ
   1. **Compulsory counterclaim:** compulsory counterclaims enjoy supplemental jurisdiction
   2. **Permissive counterclaim:** not sup j/d, must independently satisfy SMJ requirements

### Crossclaims

1. Definition: claim by party against a co-party
2. Requirements:
   1. **Transaction requirements**: arisen out of the same ***transaction or occurrence*** that is the subject of original action or counterclaim **FRCP 13(g)**
   2. **Actual Relief**: must as for actual relief; can’t just claim that co-party is liable rather than you
3. **NEVER COMPULSORY**
4. Supplemental J/d

### Joinder of Claims

1. Generally: once a party has made a claim against some other party, he may then make any other claim he wishes against that party **FRCP 18(a)**
   1. **Claim Preclusion (Res Judicada):** a party cannot sue a D twice on the same set of facts
      1. If she could have joined a claim (based on same transaction or occurrence), she waives by not doing so
   2. SMJ not affected: Supplemental j/d probably does NOT apply to a claim joined with another,
      1. Joined claim must independently satisfy SMJ
         1. Can aggregate claims to total $75k in fed

### Joinder of Parties

1. Permissive Joinder: **FRCP 20** 2 types
   1. Joinder of **multiple P**s if:
      1. Claims arise from single transaction, occurrence, or series of transactions or occurrences **AND**
      2. There is a **common question of law** or there is **a fact common to all Ps**

\*Note: need not be seeking same relief (i.e. P1­ $$, P2 injunction)

* 1. Ps right to make several parties **co-defendants** to a claim
     1. Same 2 tests^
     2. **Option of the P**

1. J/d in permissive joinder:
   1. **PJ**: joinder of multiple ***defendants***, PJ requirements must be met by each individually
      1. Personal Service
      2. MiniC (In Personam J/d)
      3. Long arm limits (amenable to suit)
   2. **SMJ**: all parties joined under Rule 20 must meet federal SMJ requirements; supplemental j/d generally does not apply to joinder of multiple Ds; partially applies to joinder of Ps
      1. **Complete diversity**: no state may be represented on both sides of docket
      2. **Aggregation where on P meets amount**: Multiple Ps can aggregate claims to total $75k if one P individually meets amount; supplemental j/d for rest
         1. **Does not apply to Ds**: must have $75k claim against each D individually
2. **Compulsory Joinder**: **FRCP 19**
   1. Two categories:
      1. Necessary Parties **FRCP 19(a)**
         1. Must be joined if possible but claim will proceed in the absence (where j/d not met)
      2. Indispensable Parties **FRCP 19(b)**
         1. Whole action must be dropped if they cannot be joined

### Impleader

1. Generally: 3d party is liable to D if D is liable to P
2. **Claim must be derivative:** TPP cannot claim that TPD is the ***only*** one liable to P and that he himself is not liable
   1. Must be that TPD is liable only if TPP is liable
      1. e.g. indemnity, subrogation(Blue+BlueShield), contribution, and breach of warranty
   2. **Alternative Pleading:** TPP can plead in alternative that neither TPP nor TPD are liable
   3. TPP may allege that only a portion of the recovery is due from TPD **(contribution)**
3. If impleader is filed within 10 days after the time TPP served his answer to P’s claim, no leave of ct. req’d
4. P may implead on counterclaims from D
5. **J/d requirements relaxed**: PJ and SMJ are relaxed with respect to 3d party claim
   1. **100 mile bulge**: service of 3d party may be made in 100mi radius of ct. house, even if outside long arm statute
   2. **Supplemental J/d**: 3d party claims fall within supplemental j/d; domicile/amt don’t matter
   3. **Venue**: if venue is proper between original parties, proper with 3d
6. **Claims involving TPD**
   1. Once TPD has been impleaded she can claim:

Counterclaims against TPP (permissive or compulsory)

Cross-claims against any other TPDs

Any claim against original P arising from same trans/occ that is subject of P’s claim against TPP

Any counterclaim against the original P, if the original P has made claim against TPD

Impleader claims for 4th parties

* 1. **Claims by original P**: Any claims against TPD arising out of the transaction or occurrence that is the subject matter of P’s claim against TPP
     1. J/d: claim by P against TPD must independently satisfy j/d

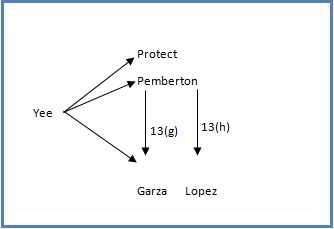
1. **Dismissal of main claim**: if the main claim is dismissed before or during trial, ct. has discretion to hear 3d party claims

## Joinder of Claims & Parties

Trial of unrelated claims:

P determines scope of litigation by joining whatever claims she wants, but judge retains control over course of litigation.

**FRCP 42(a)** authorizes judge to order separate trials



Lopez is a party to cross claim with Garza but is not D to main claim no opposing party to Protect

**13(g)** crossclaims against coparties

**13(h)** joining add’lt parties to counter OR cross claims

#### Erkins v. Case Power & Equipment Co.

##### Facts

* P fell out of Case Backhoe and died
* Fitzpatrick was general
  + ECRACOM was sub
    - Thomas J. Obeirne & Co. was P’s employer
* Suit filed against Case
  + Case sought contribution from Fitzpatrick and ECRACOM

##### Issue

Can D join 3d parties to a ***strict liability suit*** ?

##### Holding and Rule

Yes.

NJ law says that joint tortfeasors need to be liable under the same theories of liability.

# Tribal Courts

No

No

No

No

No

No

No

No

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

PJ

No PJ

Due Process

No PJ

Lack of MiniC

No PJ

Lack of MiniC

No PJ

Lack of MiniC

PJ

PJ

No PJ even w/ minimum contacts

Are D’s contacts with the forum state **systematic and continuous?**

Is any of the following true?

* D is domiciled/ PPoB in FS?
* D has consented to be sued in FS
* D owns property in the FS
* D regularly transacts business in FS

Are D’s contacts with the FS sufficiently great that they should be deemed **minimum contacts?** i.e. could D reasonably foresee being sued in FS?

Are at least some of D’s Contacts with the FS **voluntary?**

Does the CoA **arise out of** D’s contacts with the FS?

Is j/d **reasonable?**

Does the FS’s **long-arm statute** provide for jd over D?

Was D **present** in the FS when process was served?

Is there **diversity of citizenship?**

(No state appears on both sides)

Is there **alienage** JD?

Is there **Fed?** JD?

Is there **in personam** JD?

(Requires Minimum Contacts)

Is there **quasi in rem** JD?

(Requires Minimum Contacts)

Does the case involve **title** to real property making **in rem** JD appropriate?

Was D served within the state where court sits?

Was D served in a place where **long-arm** of the state Ct. sits reaches him?

Was D a 3d party D or indispensable party w/in **100 miles** of fed Courthouse?

Was **service appropriate?**

Does the case involve a Fed??

Would the state Cts. Where fed sits exercise JD over D?

Are the **venue** requirements satisfied?

Amenability req’mt auto satisfied if D has miniC w/in state where fed sits

Did D receive **notice** and **opportunity to be heard?**

No JD

Wrong venue; transfer

No JD

Fed JD

No JD

No JD

Was D served pursuant to fed stat allowing **nationwide service?** e.e interpleader suits

Was D a **foreigner** not subject to the JD of any state?

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

Yes

No

No

No

No

No

No

No

No

No

No

No

No

Yes

No

No