



CIVIL PROCEDURE



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Civil Procedure Complete Checklist

CIV PRO CHECKLIST

I. PROPER COURT

A. IPJ

1. Traditional Ways to Assert IPJ
 - a. Domicile
 - b. Presence in State When Served
 - c. Consent
2. State Long Arm Statute
3. Constitutional Limitations
 - a. Minimum Contacts
 - i. Purposeful Availment
 - ii. Foreseeability
 - b. Relatedness of Claim to Contacts
 - i. Specific JX
 - ii. General JX
 - c. Fairness
 - i. Convenience
 - ii. State Interest
 - iii. Other Factors

B. Federal SMJ

1. Federal Question
2. Diversity JX
 - a. Diversity of Citizenship
 - i. Person = Domiciled
 - ii. Corp = State Incorporated & PPB
 - b. Amount in Controversy Exceeds 75K
 - i. Aggregation of Claims vs. 1 Δ
 - ii. Joint Tortfeasors – Value of Claim
 - iii. Equitable Relief – Either Π or Δs Claim

C. Supplemental JX

1. Common Nucleus of Operative Fact
2. Same T/O
3. Πs Limitation in Diversity Cases

D. CA SMJ

1. Limited (25K or Less)
2. Unlimited (Exceeds 25K)
3. Reclassification

E. Removal (State → Federal)

F. Remand (Federal → State)

G. Venue

1. Transfer of Venue (Federal → Federal)
 - a. CA: (CA Court → CA Court)
2. Forum Non Conveniens
 - a. CA: “Inconvenient Forum”

II. GOVERNING LAW

A. Erie Doctrine

1. State Substantive Law
 - a. Elements of Claim/Defense
 - b. SOL, Tolling SOL
 - c. Conflict/Choice of Law Rules
2. Federal Procedural Rules

III. PLEADINGS

A. Complaint

1. Statement of SMJ
 - a. CA: not required
2. Statement of the Claim
 - a. CA: “Fictitious Δs”
 - b. CA: Heightened Pleading Requirement:

- i. Fraud, Unfair Business Practice, Civil Conspiracy, Tortious Breach of K, Products Liability from Exposure to Toxins

3. Demand for Relief

- a. CA: Π need not state damages for:
 - i. PI & Wrongful Death; &
 - ii. Punitive Damages Claim
- b. Δ may request a statement of damages

B. Δs Response (Federal)

1. Rule 12 Motion
 - a. Waived if Not Raised First:
 - i. Lack of IPJ
 - ii. Improper Venue
 - iii. Improper Process
 - iv. Improper Service
 - b. Can be Raised up Through Trial:
 - i. Failure to State a Claim
 - ii. Failure to Join Indispensible Party
 - c. Can be Raised Anytime:
 - i. Lack of SMJ
2. Answer
 - a. Admit, Deny, or Claim Lack of Info for Every Allegation
 - b. Compulsory Counterclaim

C. Δs Response (CA)

1. General Demurrer
 - a. Lack of SMJ
 - b. Failure to State a Claim
2. Special Demurrer (only for unlimited cases)
 - a. Failure to Join Indispensible Party
3. Motion to Quash
 - a. Lack of IPJ
 - b. Improper Process
 - c. Improper Service
4. Motion to Dismiss or Stay for Inconvenient Forum
5. Motion to Strike
 - a. Anti-SLAPP Motion to Strike

D. Counterclaim

1. Compulsory Counterclaim
2. Permissive Counterclaim
3. CA: Cross-Complaint v. Π

E. Cross-Claims

1. Always Permissive
2. CA: Cross-Complaint v. Co-Party

F. Amendments & Supplemental Pleadings

1. Right to Amend
2. Relation Back
 - a. New Claims
 - b. Changing Δ

G. Rule 11

1. Certification Requirement
2. Sanctions
 - a. CA: “Frivolous Tactics in Litigation”

IV. PARTIES & CLAIMS [always analyze IPJ, SMJ, Supplemental JX]

A. Joinder of Parties

1. Compulsory Joinder
 - a. Feasibility of Joinder
2. Permissive Joinder

B. Joinder of Claims

1. Impleader
 - a. CA: Cross-Complaint v. 3dp
2. Intervention

- a. Intervention as of Right
- b. Permissive Intervention
- 3. Interpleader
 - a. Rule 22 Interpleader
 - b. Statutory Interpleader
- 4. Federal Class Action – CAN'T
 - a. Requirements:
 - i. Commonality
 - ii. Adequate & Fair Representation
 - iii. Numerosity
 - iv. Typicality
 - b. Types:
 - i. Prejudice
 - ii. Injunction
 - iii. Damages (most common)
 - 1. Notice to Members
 - 2. Opportunity to Opt Out
 - iv. Court Appoints Counsel
- 5. CA Class Action - AWCAB
 - a. Requirements:
 - i. Ascertainable Class
 - ii. Well-Defined Community of Interest
 - 1. Commonality
 - 2. Adequate & Fair Representation
 - 3. Benefit to Members & Court
 - b. One Type of Class Action
 - i. No Notice Required
 - ii. No Court Appointed Counsel

V. DISCOVERY

A. Types of Discovery

1. Depositions
2. Interrogatories
3. Requests to Produce
4. Physical & Mental Exams
5. Requests for Admissions
6. Required Disclosures

B. Scope of Discovery

1. Privileged Matter Not Discoverable
2. Work Product
 - a. CA: Attorney Work Product

C. Enforcement of Discovery Rules (Sanctions)

1. Failure to Provide Discovery: Motion to Compel + Costs & Certify in Good Faith Attempt to Obtain Discovery
2. Sanctions
 - a. Treat Matters as Admitted
 - b. Disallow Evidence on an Issue
 - c. Establish the Issue Adverse to Violating Party
 - d. Strike the Pleadings
 - e. Dismiss the Cause of Action or Entire Action if Bad Faith
 - f. Enter a Default Judgment if Bad Faith
 - g. Hold in Contempt, Except for Refusal to Submit to Mental/Physical Exam
3. Immediate or Automatic Sanction

VI. PRETRIAL MOTIONS

A. 12(b)(6) Motion

B. Dismissal

1. Voluntary
 - a. Π Files Written Notice of Dismissal
 - b. Dismissal w/out Prejudice if Before Trial
2. Involuntary
 - a. CA Mandatory Dismissal:
 - i. Case Not Brought to Trial w/in 5 yrs. of Filing
 - ii. Or Process Not Served w/in 3 yrs. of Filing

C. Summary Judgment

1. Moving party must show that there is no triable issue of fact & entitled to judgment as a matter of law
2. Partial summary judgment can be granted

VII. JURY TRIAL

A. 7th Amendment

1. Guarantees Right to Jury at C/L, But Not Equitable Actions
2. State Constitutional Provisions & Statutes Also Guarantee Jury Trials
3. Written Demand
4. When Action Contains Legal & Equitable Claims, Legal Claim Tried First to Jury

B. Verdict

1. General Verdict
2. Special Verdict
3. General Verdict w/ Interrogatories

C. Disregarding the Jury

1. Nonsuit
2. Judgments as a Matter of Law
3. Renewed Motion for Judgment as a Matter of Law
4. Motion for a New Trial

VIII. FINAL JUDGMENT

A. Final Judgment Rule

1. Requires Final Judgment on Entire Case Before Appealing
2. Exceptions:
 - a. Pretrial Orders Involving Temporary Remedies
 - b. Final Judgment on Collateral Matters
 - c. Interlocutory Orders of Great Importance that may be Determinative of the Ultimate Decision
 - d. Class Action Review of Grant or Denial of Certification
 - i. Must Seek Review w/in 14 Days of Order

B. Appeals

1. Must be Made Within 30 Days from Entry of Judgment
2. CA Extraordinary Writ Proceeding
 - a. Must Show:
 - i. Irreparable Harm
 - ii. Normal Route of Appeal Inadequate
 - iii. Beneficial Interest in Outcome of Writ
 - b. Types:
 - i. Writ of Mandate
 - ii. Writ of Prohibition

IX. RES JUDICATA & COLLATERAL ESTOPPEL

A. Res Judicata (Claim Preclusion)

1. Same Π v. Same Δ
2. Valid Final Judgment on Merits
 - a. On Merits Except: JX, Venue, Indispensible Parties
3. Claim Actually Litigated or Could Have Been Litigated
4. Same Cause of Action or Claim (same T/O)

B. Collateral Estoppel (Issue Preclusion)

1. Valid Final Judgment on Merits
2. Issue Actually Litigated or Determined
3. Issue was Essential to the Judgment
4. Mutuality of Parties No Longer Required
 - a. Non-Mutual Defensive
 - b. Non-Mutual Offensive allowed if party asserted against:
 - i. Had Full & Fair Opportunity to Litigate First Case
 - ii. Could Foresee Multiple Suits
 - iii. Π Could Not Have Easily Joined First Case
 - iv. No Inconsistent Judgments on the Record



Civil Procedure Skeletal Checklist

- I. PROPER COURT**
 - II. GOVERNING LAW**
 - III. PLEADINGS**
 - IV. PARTIES AND CLAIMS**
 - V. DISCOVERY**
 - VI. PRETRIAL MOTIONS**
 - VII. JURY TRIAL**
 - VIII. FINAL JUDGMENT**
 - IX. RES JUDICATA AND COLLATERAL ESTOPPEL**
-

I. ARE WE IN THE RIGHT COURT?

- a. PJ
- b. SMJ
- c. Venue

II. WHAT LAW GOVERNS THIS DISPUTE?

- a. Erie Doctrine

III. ARE THE PLEADINGS PROPER?

- a. Notice Pleading
- b. Service of Process
- c. Pleadings – Complaints, Response, Counterclaim, Cross-Claims, Amendments & Supplemental Pleadings
- d. Rule 11

IV. ARE THE PROPER PARTIES AND CLAIMS BEFORE THE COURT?

- a. Joinder (compulsory & permissive)
- b. Impleader
- c. Intervention
- d. Interpleader (Rule 22 & Statutory)
- e. Class Actions

V. HAVE THE PARTIES PROPERLY PROPOUNDED AND REPLIED TO DISCOVERY?

- a. Required Discovery
- b. Discovery Tools
- c. Scope of Discovery
- d. Enforcement (Sanctions)

VI. CAN THE DISPUTE BE RESOLVED WITHOUT TRIAL?

- a. Involuntary Dismissal / Voluntary Dismissal
- b. Default + Default Judgment
- c. Failure to state a claim – 12(b)(6)
- d. Summary Judgment
- e. If case goes to trial → Conference and Meetings

VII. IF THERE IS A TRIAL, WHO WILL DECIDE THE MATTER?

- a. Jury Trial (7th Amendment)
- b. JMOL (Directed Verdict/motion for nonsuit)
- c. RJMOL (JNOV)
- d. Motion for New Trial
- e. Motion to Set aside Judgment
- f. Additur/Remitter
- g. Recovery

VIII. CAN THE DECISION BE APPEALED?

- a. Final Judgment Rule
- b. Interlocutory Review
- c. Extraordinary writ

IX. IS THE DECISION BINDING IN FUTURE CASES?

- a. Claim Preclusion (Res Judicata)
- b. Issue preclusion (Collateral Estoppel)



**Civil Procedure
Speedy Checklist
Federal/California**

CIVIL PROCEDURE

10 SECOND CHECKLIST (P^2 S^2: RAD CAVE)

- I. PJDX
 - II. SMJ
 - III. Joinder
 - IV. Venue
 - V. Erie
 - VI. Pleadings
 - VII. Service of Process
 - VIII. Discovery
 - IX. Adjudication
 - X. Appeals
 - XI. Res Judicata and Collateral Estoppel
-

DETAILED OUTLINE

- I. **PERSONAL JURISDICTION** – ARGUE **BOTH** WAYS, CONCLUDE **(CA Analysis Same)**
 - a. **Step 1: Traditional Ways of asserting JDX**
 - i. Domicile
 - ii. Presence in state when served
 - iii. Consent
 - 1. Appearing in action
 - 2. By contract
 - 3. Appointment of agent for service
 - 4. Implied consent
 - b. **Step 2: Assertion of JDX over non-residents**
 - i. Long arm statute
 - ii. Minimum Contacts (My Parents Frequently Forgot to Read Children's Stories)
 - 1. To have **personal jurisdiction** over the defendant, there must be such minimum contacts with the forum so that exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.
 - a. Contact
 - i. Purposeful availment – D's voluntary act reaches out to the forum state
 - ii. Foreseeability – it was foreseeable to D that he would get sued in this forum
 - b. Fairness
 - i. Relatedness between claim and contact: Does claim arise from the contact
 - 1. If no, is GENERAL jurisdiction Possible?
 - ii. Convenience
 - iii. State's interest – state has a legitimate interest in providing redress for its residents
 - iv. Systematic and continuous ties
 - 1. Consistent business
 - 2. Domicile
 - 3. Incorporation (for business)

c. In Rem and Quasi In Rem

- i. Here, jurisdiction is not based on the person but on the property. The statutory basis is an attachment statute. Constitutionally, jurisdiction, even in rem or quasi in rem must satisfy the minimum contacts test of International Shoe. Despite this, most courts hold that if the claim arises from the property, jurisdiction is constitutional. If it does not arise from the property, then it must satisfy International Shoe.

II. **SUBJECT MATTER JURISDICTION** – Which court can P sue

- a. State Courts are courts of unlimited jurisdiction. The only limits are stator – bankruptcy, copyrights, etc
- b. For a federal court to have jurisdiction over parties, the action must be one based on a federal question or diversity of citizenship
 - i. **Federal Question** –
 1. To have jdx over the parties, the well-pleaded complaint must arise under federal law, must show a right or interest founded substantially on federal law.
 - ii. **Diversity Action** (Test at **time of filing**)
 1. To have jdx over the parties, there must be
 - a. Complete diversity of citizenship (no P same as any D)
 - i. Citizenship
 1. Person (only one)
 - a. State of Domicile: Physical presence AND Subjective intent to make it home
 2. Corporation
 - a. All states of incorporation AND
 - b. Personal place of business
 - i. Muscle Center – where most of the work is done
 - ii. Nerve Center – where decisions are made
 3. Unincorporated Entities: Look at partners' state of citizenship, general or limited
 4. Decedents, minors, incompetents: Look at their citizenship, not the representative
 - b. Amount OVER \$75,000
 - i. You can aggregate 1P v. 1D, or 75,001 against joint tortfeasors
 - ii. Equitable relief (better = \$75,001)
 1. Plaintiff's viewpoint: How much does blocked view decrease value of house
 2. Defendant's viewpoint: How much to comply with order
 2. Fed Courts, if diverse don't hear divorce, alimony, child custody or probate

c. **CA Subject Matter JDX**

- i. **Superior Court:** Hears any kind of civil case
- ii. **Classifications:** (doesn't include fees/costs)
 1. **Limited:** \$25,000 or less (P must label case), P cannot have judgment for more than 25k
 2. **Unlimited:** Exceeds \$25,000
 3. **Small Claims:** If P is individual, \$7500 or less; If P is entity, \$5000 or less
- iii. **Reclassifications:**
 1. P amends = automatic reclassification by clerk; if amendment from limited to unlimited, P pays fee
 2. Party can reclassify OR court can on its own motion (notice required!)
 3. Court reclassification occurs if judge is convinced matter will necessarily result in a verdict in \$25,000 or less; or possibility of a verdict exceeding \$25,000.
- iv. **Aggregation:** Proper if one P v. one D.

d. Supplemental Jdx

- i. To have **supplemental jdx**, the court must have subject matter jdx over each claim
 1. **Test:** Must share a "common nucleus of operative fact" with the claim that invoked Federal SMJ
 - a. Must arise from the same transaction or occurrence as the underlying claim, even if the anchor claim is by a different party than the one attempting to get their claim in.
 2. **Limitation:** In a diversity action, no claims by P against a D that would destroy complete diversity
 3. **Discretion to Hear Supplemental Claims:** Court has discretion to NOT hear the supplemental claim if:
 - a. Federal question is dismissed early in the proceeding
 - b. State law claim is complex
 - c. State law issues would predominate

e. Removal

- i. To have **removal jurisdiction** over the defendant, the case can only be removed by the defendant to the federal district court embracing the state court in which the case was originally filed, it could have been heard in federal court, and is removed no later than 30 days after initial service of process.
 1. All Defendants must agree to remove
 2. Must be federal question or diversity case
 3. One year rule: have only 1 year from original filing date to remove, if opportunity arises later in case.
 4. Procedure for removal: notice in fed ct w/ grounds, sign FRCP 11, attach docs, copy parties, then file copy in state ct.
 5. Home Court Diversity Advantage: If P brings an action in a state court in which a D resides, the case cannot be removed.

III. JOINDER OF CLAIMS AND PARTIES

a. Joinder of Parties

i. Permissive Joinder (CA: same)

1. Proper Defendants and Plaintiffs: May be joined if arise from:
 - a. Same transaction or occurrence AND
 - b. Raise at least one common question (assess SMJ)

ii. Compulsory Joinder - Necessary and Indispensible Party (CA: same)

1. Who is necessary?
 - a. An absentee is necessary and indispensable and must be joined if:
 - i. Without B, the court cannot accord complete relief
 - ii. B's interest may be harmed if he isn't joined (harm to absentee), **OR**
 - iii. B's claims an interest which subjects a party to multiple obligations (harm to existing Ds in the lawsuit)
2. If necessary, is joinder feasible?
 - a. Is there personal JDX over him?
 - b. Will joining him destroy diversity?
 - i. If B CANNOT be joined:
 1. Proceed without him OR Dismiss the case
 - a. Factors:
 - i. Whether the judgment in the party's absence would prejudice the existing parties
 - ii. Whether the prejudice can be reduced in shaping the judgment
 - iii. Whether a judgment in the party's absence would be adequate
 - iv. Whether the P will be deprived of an adequate remedy if the action is dismissed.

iii. Impleader

1. is a claim involving a third-party defendant for indemnity or contribution and must do so within 10 days after serving answer (ASSESS SMJ)
2. **CA: same, but broader. Indemnity, contribution + any claim that TPD liable if same transaction/occurrence**

iv. Intervention

1. Allows an absentee to join a suit;
 - a. **As a matter of right**
 - i. Her interest may be harmed if not joined AND
 - ii. Her interest is not adequately represented now
 - b. **Permissive intervention**
 - i. allows the court to decide joinder if a claim or defense and the pending case have at least one common question (court discretion **unless** delay/prejudice)

v. Interpleader

1. One holding property forces all potential claimants into a single lawsuit to avoid multiple litigation and inconsistency
 - a. Rule 22
 - i. Diversity: Stakeholder must be diverse from every stakeholder
 - ii. Amount in controversy: Must exceed 75k
 - iii. Service: Regular service
 - iv. Venue: Like regular case
 - b. Statutory
 - i. Diversity: One claimant must be diverse from one other claimant (don't care about stakeholder)
 - ii. Amount in Controversy: \$500
 - iii. Service: Nationwide service (no personal JDX problems)
 - iv. Venue: Any district where any claimant resides

vi. Class Actions

1. Threshold Question

- a. Numerosity: too numerous for joinder
- b. Commonality: there are some questions of law or fact in common to class
- c. Typicality: representative's claims/defenses typical of those of the class; and
- d. Representative is adequate: the class representative will fairly and adequately represent the class

2. 3 types:

- a. Prejudice (avoid prejudice to a class)
- b. Injunctive/Declaratory (trying to get injunction)
- c. Damages (trying to get damages, mass tort)
 - i. Common questions predominate over individual questions AND
 - ii. Class action is the superior method to handle the dispute
 1. In class actions for **damages**, the court must notify all reasonably identifiable members, that they can opt out, that the class judgment is binding on all class members, and that they can enter a separate appearance through counsel.

3. Certification

- a. "At early practicable time" in **certifying the class** the court must define the class, claims, issues, or defenses and appoint a class counsel who must fairly and adequately represent the interests of the class.

4. Notice:

- a. Type 1 & 2 = no notice; no opt out right; Type 3 = notification required (by mail usually); can opt out and binds all reasonably identifiable members; may appear separately through counsel and court must give members a second chance to opt out

5. Settlement or dismissal of class claims require court approval

6. Under a class action involving **diversity of citizenship** only the representative must have diversity.

7. CA: CLASS ACTIONS

- a. **Threshold Question:**
 - i. ascertainable class;
 - ii. well-defined community of interest
 - 1. common questions predominate;
 - 2. substantial benefit to parties & court;
 - 3. representative is adequate
- b. **Types:** NO different types
- c. **Notice:** NO and can be by publication / cost determined by court
- d. **Opt Out:** Members are bound who do not opt out
- e. **Class Counsel:** No court appointment of class counsel
- f. **Settlement/Dismissal:** Approval by court required
- g. **Amount in Controversy:** Fed – only look at reps claim, CA – can aggregate claims so 76,000 people can be harmed for \$1.

IV. VENUE

- a. Tells us which federal court the case should be heard in.
 - i. **Local Action**
 - 1. Actions over land must be filed in district where land lies (**CA – county where land lies**)
 - ii. **Transitory actions**
 - 1. P may lay venue in “any district where”
 - a. All D’s reside, if in the same state;
 - b. A substantial part of the claim arose or
 - c. If (a) or (b) are not possible, in diversity, where any D is subject to personal jdx or
 - d. Where any D resides
 - 2. **CA - Venue proper in county where any D resides at case filing (in a k case → where entered or performed; personal injury or wrongful death → where injury occurred)**
 - a. **Corporations (PPB; K performance; breach occurrence/liability arises)**
- b. Where do D’s reside for venue purposes
 - i. Humans: Residence = domicile: physical presence and intent
 - ii. Corporations: Reside in all districts where they are subject to personal jdx when the case is filed
- c. **Transfer of Venue**
 - i. Can only go from federal district court to another where there is proper venue and personal jurisdiction over defendant.
 - ii. When venue is proper, still may be transferred because of convenience:
 - 1. Public Factors (what law applies; burden to community)
 - 2. Private Factors (location of witnesses/evidence)
 - iii. Venue improper: Case can be transferred if in the interest of justice or dismissed
 - iv. **CA:**
 - 1. **Original venue proper = reason to believe impartial trial cannot be had; convenience of witnesses and ends of justice promoted; or no judge qualified to act**
 - 2. **Original venue improper = D files and serves notice + proof of service on P**

d. **Forum Non-Conveniens**

- i. can allow a court to dismiss the case and let the plaintiff sue defendant in a far more convenient court because transfer is impossible
 1. based on public and private factors above
- ii. **CA:** Granted if “interest of substantial justice an action should be heard in forum outside of California”; if granted court may condition on D waive PJ or SOL.

V. **ERIE DOCTRINE**

a. **Erie doctrine:** in diversity cases, federal court must apply state’s substantive law

- i. If the issue is the following, it will use state substantive law:
 1. Elements of the claim or defense that touches state law
 2. SOL and Rules for Tolling SOL
 3. Conflict of law rules (choice of law)
- ii. If not above ask: IS there a federal law on point that directly conflicts with state law. If so, Fed law wins on Supremacy Clause
- iii. If still unsure ask:
 1. Under the **outcome-determinative test**, if applying or ignoring state rule affects the outcome, it is probably substantive and state law should prevail.
 2. In **balancing the interests**, the system with the stronger interests should have its law applied.
 3. In **avoiding forum shopping**, if the federal court ignores state law on this issue and causes parties to choose federal court, then state law should prevail.

VI. **PLEADINGS**

- a. **Rule:** Notice pleading (“put someone on notice”); **CA – Fact pleading; pleader must state the “ultimate facts”**
- b. **Rule 11:** requires attorney to sign all pleadings, motions and papers certifying 1) paper not for improper purpose, 2) legal contentions are warranted by law, 3) factual contentions and denials have evidentiary support (**CA - Same**)
 - i. **Continuous certification** effective every time presented
 - ii. **Purpose:** To deter, not punish (**CA – Same**) Does not apply to Discovery (**CA – Same**)
 - iii. **Motions for violations** are served but not filed with court for at least 21 days because of SAFE HARBOR to withdraw or fix problem. (**CA: No safe harbor if bad faith or frivolous tactics in litigation; punitive damages assessed by court if action by convicted felon and P guilty of fraud, oppression, malice**)
- c. **Complaint:** Commences action and states: 1) statement of SMJ, 2) short plain statement of claim, showing entitled to relief, 3) demand for judgment. **Special Matters:** Need pleading with particularity – fraud, duress, and mistake
 - i. **CA:** Statement of facts, demand for judgment (amount needed); Exception = Personal injury, wrongful death, punitives (must NOT state amount) but may seek statement of damages and P must provide within 15 days
 - ii. Fact pleading = heightened pleading (fraud, civil conspiracy); verified pleadings (signed under penalty of perjury; Doe Ds (genuinely unaware of identity + cause of action against Doe)

- d. **Responses** by motion or by answer within 20 days after service of process and must respond to allegations or raise affirmative defenses. (**Rule 12 motions**)
- i. **Form Issues:** motion for more definite statement (pleading so vague so cannot frame a response), motion to strike (immaterial things)
 - ii. **Defenses:** lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, insufficiency of process, insufficiency of service of process, failure to state a claim, failure to join indispensable party
 1. **Waivable motions** must be put in the first Rule 12 response or are waived: lack of personal jurisdiction, improper venue, insufficiency of process, insufficiency of service of process.
 - iii. **CA: 30 days after SOP complete (no extra time if waived by mail)**
 1. **Defensive Responses:** general demurrer (P failed to state facts sufficient to cause state of action; OK to use to challenge SMJ); special demurrer (complaint uncertain, ambiguous, unintelligible; not available in limited civil cases); motion to quash service of summons (to challenge PJ by special appearance; to challenge service of process; must be made before/with filing of demurrer/motion to strike; denial = moving party can only seek appellate review by writ of mandate from court of appeal within 10 days); motion to strike (improper, irrelevant; false matter)
- e. **Answer:** 10 days of denial of Ds 12 motion; or 20 days of SOP if no motions; or 60 days of date P mailed waiver if D waives
- i. D serves answer to complaint by: responding to allegations (admit, deny, lack sufficient info)(failure to deny = admission except on damages); raising affirmative defenses (if not plead = risk of waiver thus MUST raise)
 - ii. **CA: same; 30 days after SOP complete. If demurrer overruled, D must answer within 10 days of ruling.**
- f. **Counterclaims** are offensive claims against an opposing party.
- i. **Compulsory** if arises from the same transactions or occurrences; filed in Ds answer or waived
 - ii. **Permissive** if does not arise from the same transactions or occurrences.
 - iii. Note: Assess if counterclaim (compulsory or permissive) invokes federal SMJ (diversity or federal question); if counterclaim fails to invoke either of those, assess supplemental jx.
 - iv. **CA: Cross-complaints**
- g. **Cross-claims** are offensive claims against a co-party and must arise from same transactions or occurrences but are never compulsory.
- i. **CA: Cross-complaints against P (same as fed); against co-party (same as fed).**

h. Amended pleadings

i. Right to Amend

1. A **plaintiff** has a right to amend once before defendant serves his answer.
 - a. D must respond within 10 days or amount left on his 20 days, whichever longer
2. A **defendant** has a right to amend once within 20 days of serving his answer.
3. If **no** right = leave of court required and court will grant "if justice so requires" (granted unless delay/prejudice)
4. **CA: P may amend before D files answer/demurrer OR after demurrer/before trial is OK as a matter of course**
 - a. **Any party can seek leave to amend anytime (court discretion)**

ii. Relation Back (SOL)

1. Amended pleadings **relate back** to the date of the original filing if they concern the same conduct, transaction, or occurrence as the original pleading.
2. Amended pleadings **changing a defendant** after a statute runs relates back if same transaction or occurrence as original; new D knew of the action within 120 days of filing, and new D knew that but for the mistake it would have been originally named.
3. **CA: OK to change D after SOL run if misnomer (P sued wrong D, right D knew about it)**
 - a. **Fictitious Ds (Does):** Proper if original complaint filed before SOL (with Does); P genuinely ignorant of identity of Doe; pleaded ignorance in original complaint (3 years to substitute Ds and it will relate back)

VII. SERVICE OF PROCESS

- a. In addition to person JDX, must give notice to D by delivering to D 1) a summons (formal court notice of suit and time for response) and 2) a copy of the complaint (Both together = process)
- b. Who can serve: Any non-party who is 18 years old (**CA – same**)
- c. How effectuate service:
 - i. Personal service while the D is in the state, or on the agent, if within scope of agency.
 - ii. Substituted service: Process is left at:
 1. D's usual abode, with someone of suitable age and discretion, and that person resides there (sleep overnight)
 2. **CA – D's usual abode, competent member of house at least 18 years old, must be informed of contents, process must be mailed also to the address within 10 days**
 - iii. Waiver by mail
 1. Mailed to D. Returned within 30 days (**CA – 20 days**). Does not waive JDX defenses. If doesn't = pay for subsequent service.
- d. Limitations:
 - i. Cannot serve D in another state unless forum state allows (via long-arm statute); (**CA: OK in any manner allowed by CA law; by mail**).
 - ii. In federal court, use the methods permitted by the state

VIII. DISCOVERY

a. Discovery

- i. Required Disclosures (FRCP 26) **(CA – no such thing)**
 1. **Initial** (with 14 days of 26f conference): identify persons/docs; computation of damages claimed; copies of insurance agreements)
 2. **Experts**: those to be used at trial and produce reports, data used, qualifications
 3. **Pre-Trial**: No later than 30 days before trial, must give detailed information about evidence

- ii. Discovery Tools
 1. **Depositions**: (party or non-party); sworn oral statements by deponent to Qs (oral/written) by counsel; party's attendance compelled by notice of depo; non-party must subpoenaed or else **not** compelled; one day = 7 hours unless court order/parties agree
 - a. **CA**: Same except: **no limit on depositions unless court orders (time or #)**
 2. **Interrogatories**: Qs propounded in writing to another party (never non-party) and answered in writing under oath (w/i 30 days)
 - a. **CA**: Same. Also form interrogatories (no limit); specific interrogatories (may not contain subparts); maximum number in unlimited (35 but can request more)
 3. **Request to Produce**: Request to party/non-party (within 30 days); available for review and copy docs or things; permit entry on designated property for inspection
 - a. **CA**: Same except no express permission to party to use those to get info; but possible by taking non-party's depo and serve subpoena duces tecum = requires deponent to bring material with her
 4. **Physical/Mental Examinations**: (court order needed): health in controversy + good cause
 - a. **CA**: Same + lawyer right to attend if physical; if mental, requires court order
 5. **Request for Admissions**: request by one party to another to admit/deny any discoverable matters
 - a. **CA**: Same; maximum number in unlimited cases = 35; no limit to admit genuineness of docs; limited cases only 1 depo per party or combined total of 35; case questionnaire in limited case; no medical exams in limited cases
 6. **Duty to Supplement**: party must supplement its response
 - a. **CA**: no duty; requesting party can propound 'supplemental interrogatories' + can propound 'supplemental demands for inspection' for later/acquired/discovered docs/things. Allowed twice before trial date initially set; applicable only in unlimited cases.

iii. Scope of Discovery

1. **Relevance:** anything relevant to a claim or defense. Something is relevant if it is reasonably calculated to lead to admissible evidence
 - a. **CA** – anything relevant to the subject matter
2. **Privileged Matters:** not discoverable (**CA** – must keep privileged docs in a PRIVILEGE LOG)
3. **Work Product:** Generally protected from discovery if it is prepared in the anticipation of litigation, unless show 1) substantial need, 2) not otherwise available (**CA: only if denial = unfairly prejudice/injustice**), but absolutely protected if conclusions, opinions, legal theories
 - a. **CA** – more restrictive: only applies to attorney's work product, not his representatives
4. **Experts:** production of info required about experts used at trial (depo available)
 - a. **CA:** any party may request simultaneous exchange of witness info which includes: exchange of expert list; declaration of nature and substance of testimony; expert qualifications (note: no disclosure for consulting experts)

iv. Discovery Sanctions

1. **Violations:** Partial violations = receiving party answers some and objects to others and objections not upheld; total violations = receiving party fails completely to attend depositions/respond
 - a. Note: Before sanctions, party must certify good faith to obtain info without court involvement
2. **Sanctions:** Partial = order compelling party to answer + cost of bringing motion; if violated order = heavy sanctions + cost + possibly contempt; failure to make required disclosure = other party can elect to treat as partial/total + party in violation cannot use info at trial unless justified/harmless; total = heavy sanctions + costs (no contempt)
3. **Heavy sanctions:** order establishing facts as true; strike pleading regarding pertinent issues; disallow evidence of party regarding pertinent issues; dismiss Ps case (bad faith shown); OR default judgment (bad faith shown)
4. **California Rules**
 - a. **Meet and confer** (required unless total failure to respond) and if failure = monetary sanction;
 - b. **Misuse of discovery** (notice given to person sanctioned) occurs when not playing by rules, unjustified objections, abusive motions, failure to confer, refusal to respond;
 - c. **Sanctions** (party must indicate type it seeks) = 1) monetary; 2) establishment order; 3) refusal to allow party to support position with evidence; 4) striking pleadings; 5) default/dismiss the case



Civil Procedure Rule Statements

CIV PRO RULES

I. Does the Court Have the Authority to Decide the Dispute?

A. PERSONAL JX ANALYSIS (FEDERAL & CA)

IPJ

IPJ refers to the court's ability to exercise power over a particular Δ. Traditionally, IPJ is based upon where the Δ is domiciled, presence in the state when served, and consent. A person is domiciled where she lives & has a present intent to remain. A corporation is domiciled at the place of incorporation & PPB. If Δ was personally served w/in the borders of the forum state, IPJ is proper no matter how long the Δ was in forum when served. (i.e. being served at an airport during a layover is ok as long as Δ's presence was not obtained through fraud or trick).

Long Arm Statute

Since no traditional basis exists, Π must look to see if the state has a long arm statute that would allow IPJ over the Δ. A long arm statute gives the court IPJ over an out of state Δ. CA's long arm statute gives courts the power over any person over which the state can constitutionally exercise JX.

Constitutional Limitations

To be const'l, there must be sufficient contacts w/ the forum such that the exercise of JX would not offend traditional notions of fair play & substantial justice. There must be (1) minimum contacts, (2) relatedness, & (3) fairness.

Minimum Contacts

The Δ must have such minimum contacts with the forum such that the exercise of JX would be fair and reasonable. A court will look at two factors: purposeful availment & foreseeability.

Purposeful Availment

Through its contacts, Δ must have purposefully availed itself of the privilege of conducting business w/in the forum. (i.e. by owning property in forum, Δ purposefully availed himself of the benefits & protections of property ownership laws in forum state).

Foreseeability

Δ must also know or reasonably anticipate that its activities in the forum make it foreseeable that it may be haled into court in that forum state.

Relatedness of Claim to Contact

The claim must arise from the Δ's contacts with the forum. This requires a showing of either specific or general JX.

Specific JX

For a court to exercise specific JX, the claim must arise out of Δ's contacts with that forum.

General JX

Where there is no specific JX, the court will look to see if the Δ had systematic & continuous activity in the forum state such that the Δ is essentially at home in the forum.

Fairness

To assess whether exercise of JX is fair, the court will consider: convenience to the Δ, the state's interest, and other factors.

Convenience

The court will consider the convenience for Δ, its witnesses, and evidence to litigate in the forum state. The forum will be acceptable unless it puts Δ at a severe disadvantage in the litigation.

State's Interest

Generally, a state will have a legitimate interest in providing a forum to redress disputes between its citizens & non-residents who injure its citizens.

Other Factors

Other factors include the Π's interest & the judicial system's interest.

B. SUBJECT MATTER JX

Federal SMJ

The court must have SMJ to have power over the case. Federal courts are courts of limited JX & can only hear cases involving a federal question or diversity of citizenship. The case involves a federal question if the cause of action arises under the Constitution, laws, or treaties of the U.S.

Diversity JX requires the amount in controversy to exceed 75K & that the suit be between citizens of different states. Π can aggregate his claims against one Δ to meet the amount. But, multiple Πs cannot aggregate claims against one Δ. And, Π cannot aggregate claims w/ Δs counterclaims.

Domicile determines citizenship for a person, while corporation citizenship is determined by place of incorporation & PPB.

CA SMJ

CA Superior Court has general JX and can hear any civil case except those which are exclusively federal (bankruptcy, federal securities, patent).

Civil cases are classified as limited or unlimited. Limited cases are those where amount in controversy is 25K or less and unlimited cases are those where the amount in controversy is over 25K. Π initially determines what type of case based on the amount of demand or recovery sought. Limited cases must be so designated in the caption of the complaint, otherwise it is an unlimited case.

Reclassification

If the case is misclassified or subsequent events make it clear that the original classification should be changed, the case may be reclassified automatically if Π amends the complaint to change the amount in controversy. Also, a party can make a motion or the court can on its own reclassify the case if the court gives notice to all parties & holds a hearing. The court cannot consider the merits of the case, but may consider evidence beyond the scope of the pleadings (i.e. judicial arbitration awards & settlement conference settlements).

To reclassify an unlimited case to a limited case, it requires a showing that recovery of 25K is virtually impossible. To reclassify a limited case to an unlimited case, it requires a showing that there's a possibility the verdict will exceed 25K. To meet the amount in controversy, a Π may aggregate her claims against a single Δ. Π's claims & Δ's claims are both included for purposes of classification. Also, if case is unlimited based on one Π's claims, any other Π's claims included in the case are also part of the unlimited case.

Supplemental JX (Federal)

When a case is already in federal court (anchor claim), supplemental JX may be used to add a claim that would not otherwise on its own meet the requirements of SMJ. Supplemental JX requires that claim shares a "common nucleus of operative fact" w/ the anchor claim. This test is always met by claims that arise out of the same T/O. But, Π cannot use supplemental JX in a diversity case where it would destroy complete diversity.

The court has discretion not to hear a supplemental claim if (1) federal question has been dismissed, (2) state law claim is novel or complex, or (3) state claims would predominate.

Removal (state → federal)

A Δ sued in state court may be able to remove the case to fed court no later than 30 days after service of process. A case can only be removed to a fed district court embracing the state court in which the case was originally filed & only if the fed court would have SMJ over the case. To have SMJ, the case must involve a federal question or be based on diversity JX. But, in diversity cases, a case cannot be removed if any Δ is a citizen of the forum & no removal more than one year after the case was filed in state court unless the judge finds Π acted in bad faith to prevent removal. After removing to federal court, the case may be transferred to a fed court in another state.

However, if Δ files a permissive counterclaim (or cross-complaint) in state court, Δ waives his right to remove to federal court.

Remand (federal → state)

If removal was improper, the federal court can remand or Π can move to remand the case to state court within 30 days of removal. However, if there is no federal SMJ, Π can move to remand anytime. If there is federal SMJ, the court will be well w/in its discretion to deny Πs motion to remand.

Also, the court has discretion to remand once all federal questions have been resolved & only state claims remain on the case.

C. Is the Court the Proper Place to Resolve the Dispute?

Federal Venue

Venue is the proper district in which to bring an action. In federal court, a Π may lay venue in any district: (1) where all Δs reside when case was filed, (2) where a substantial part of the claim arose, or if no district satisfies 1 or 2, then (3) in any district where any of the Δs reside. Individuals reside where domiciled and corporations reside in all districts where they are subject to IPJ when the case was filed.

Transfer of Venue (federal → federal)

A case can be sent from one federal district to another federal district where the case could have been filed, meaning a court that has both SMJ & IPJ over Δ. [*make sure to analyze these for the other court*] Δ must raise this objection in 12b(3) motion or in answer, otherwise, it's waived.

If the original district is improper, the court may transfer to a proper venue in the interest of justice, or dismiss the case. Because original venue was improper, the law of that venue does not follow. Δ must raise this objection in 12b(3) motion or in answer, otherwise, it's waived.

If venue in the original district is proper, the court may transfer to another district based on the convenience for the parties & witnesses, & in the interest of justice. In deciding whether to transfer, courts will look to public & private factors showing that the other court is the center of gravity. When transfer is allowed, the original venue law follows and applies to the new venue (prevents Δ from forum shopping).

Public Factors

Public factors include: court congestion, local interest in keeping local disputes local, avoid conflict of laws, & unfairness of burdening citizens of an unrelated forum with jury duty.

Private Factors

Private factors include: ease of access to evidence, cost of obtaining witnesses, whether transfer makes trial more or less costly overall.

CA Venue

Venue is proper in any county where: (1) any Δ resides when the case is filed; (2) the K was formed or was to be performed; (3) the injury occurred; (4) corp Δ's PPB or where breach occurred. For non-resident Δs, venue is permitted anywhere in CA.

Transfer of Venue (CA court → CA court)

Transfer moves a case between superior courts in different counties. If original venue was improper, Δ can move to transfer to a proper county. Δs motion must be made with or before his responsive pleading.

If original venue was proper, the court may transfer on motion, if: (1) there is reason to believe an impartial trial cannot be held in original venue, (2) convenience of the witnesses & ends of justice would be promoted by transfer, or (3) no judge is qualified to act in the original venue. If the court determines transfer is appropriate, the case will be transferred to a county agreed upon by the parties. If the parties cannot agree, the court will choose.

Forum Non Conveniens (Federal)

Mechanism by which a court can dismiss a case because it is better litigated in a different legal system. The court has discretion to dismiss based on: (1) public factors (availability of alternate forum, Πs choice of forum, forum

state's interest in providing a forum for its residents, what law applies, what community should be burdened by jury service) & (2) private factors (convenience of parties & witnesses, where evidence is located, where cause of action arose).

CA "Inconvenient Forum"

Court may dismiss or stay a case where there is a far more appropriate and convenient court in another legal system. This arises when in the interest of substantial justice, the case should be heard in a forum outside of CA. The court will consider the same public & private factors as in federal court & if the court grants the motion, it may be on certain conditions (i.e. that Δ waives IPJ or SOL in the other forum).

Motion to Dismiss or Stay for Inconvenient Forum

This is waived if raised after a demurrer or motion to strike, but can make the motion after an answer.

II. What Law Governs this Dispute?

Erie Doctrine

The Erie Doctrine requires federal courts to apply state substantive law (in the state they sit) to nonfederal causes of action (i.e. diversity cases). Federal courts will apply state substantive law to elements of claim or defense, SOL, rules for tolling SOL, and conflict/choice of law rules. The Supremacy Clause allows federal courts to apply federal procedural rules.

If there is a conflict between state & federal law on a particular matter, and there is no arguably procedural federal directive on point, the court considers: (1) whether applying or ignoring state rule affects the outcome of the case (if so, apply state law); (2) whether federal or state system has a strong interest in its rule being applied; & (3) if federal court ignores state law on issue, whether it will cause parties to flock to federal court (if so, apply state law).

III. Are the Pleadings Proper?

A. COMPLAINT

Federal Complaint

Federal courts use notice pleading where Π only needs enough detail to put other party on notice & allow them to make a reasonable response. The complaint must have a statement of SMJ, a short & plain statement of the claim showing pleader is entitled to relief, & demand for judgment.

CA Complaint

CA courts use fact pleading where Π must allege ultimate facts on each element of each cause of action. There is a heightened pleading requirement for fraud, civil conspiracy, tortious breach of K, unfair business practice, & products liability from exposure to toxins.

The complaint must include a SOF constituting a cause of action, stated in ordinary & concise language, & a demand for judgment of relief. Generally, must state the amount of damages sought except for PI & wrongful death cases, & punitive damages claimed. In these cases, Δ can find out the amount of damages by requesting a statement of damages & Π must provide it within 15 days. There is no requirement for allegation of SMJ.

Fictitious Δs

If Π is genuinely unaware of the identity of Δ, she may name Δ as "John Doe" & allege that she is unaware of Δs identity & state a cause of action.

B. ΔS RESPONSE

Motions

Δ may respond with a pre-answer motion, which is a request for a court order and not a pleading. Δ must make objections for lack of IPJ, improper venue, improper process, or improper service in his first response (either motion or answer) otherwise, they are waived. But, a Δ does not waive any objections to JX if Δ made a special appearance to contest JX before filing his answer.

Δ may make objections for failure to state a claim on which relief can be granted [12(b)(6)] or failure to join an indispensable party through trial. Δ can raise lack of SMJ at any time.

Answer

An answer is a pleading that responds to the allegations in the complaint. Δ must admit, deny, or claim lack of info for every allegation in the complaint. Claim of lack of info acts as a denial & failure to deny is an admission on any matter except damages. Δ must raise certain affirmative defenses in the answer, otherwise they are waived. Counterclaims are usually filed w/ Δ answer.

General Demurrer (CA)

Pleading used to assert that either: (1) Π failed to assert facts sufficient to constitute a cause of action [treated like 12(b)(6)] & (2) lack of SMJ. These can also be raised in Δs answer as affirmative defenses or in a motion for judgment on the pleadings. Demurrer may be aimed at the entire complaint or individual causes of action. The court treats allegations as true & limits assessment to complaint & matters of judicial notice.

Special Demurrer (CA)

Pleading that can be used to assert many defenses, but can only be used for unlimited cases. Defenses include: (1) complaint is uncertain, ambiguous, or unintelligible, (2) lack of legal capacity, (3) existence of another case between the parties, (4) misjoinder of parties, (5) failure to plead if K is oral or written, (6) failure to file certificate (w/c is required to sue for professional negligence against architect, engineer, or land surveyor). If not raised in demurrer or answer, these defenses are waived.

Motion to Quash (CA)

This motion is used to allege lack of IPJ, improper service, or improper process & constitutes a special appearance. If Δ files a motion to quash before or at the same time as filing an answer, demurrer, or motion to strike, Δ will have preserved the jurisdictional objection. In contrast to FRCP, a CA Δ may not object to IPJ in an affirmative defense in the answer, then proceed to litigate the action & raise the objection at or close to trial.

If court denies motion to quash, party may seek only appellate review by writ of mandate with CA Court of Appeal within 10 days of written notice of denial.

Motion to Strike

Filed by Δ to strike all or part of a complaint. Court may strike irrelevant, false, or improper matters. A motion to strike does not extend time to which to answer or demur.

CA Anti-SLAPP Motion to Strike

When Π has filed a “strategic lawsuit against public participation,” Δ may make an anti-SLAPP motion & show that cause of action in the complaint arose from protected activity such as free speech. If such a showing is made, the burden shifts to Π to show probability of prevailing on the merits. A Δ who prevails on anti-SLAPP motion may bring SLAPP-back motion (i.e. for malicious prosecution).

C. COUNTERCLAIM

Compulsory Counterclaim

A counterclaim is a claim against Π & must be part of Δs answer. A compulsory counterclaim arises from the same T/O as Πs claim & must be raised in answer or it is waived. This will always get supplemental JX because it arises from a “common nucleus of operative fact” or same T/O & it is a claim by Δ (thus, the Π limitation in diversity cases does not apply).

Permissive Counterclaim

A counterclaim is a claim against Π & may be filed w/ Δs answer or asserted in a separate case. A permissive counterclaim is a claim that does not arise out of the same T/O as Πs claim & requires an independent basis for JX.

CA Cross-Complaint v. Π

Like a federal counterclaim but it is not a part of Δs answer. Instead, it is a separate document to be filed before or at the same time as the answer. A compulsory cross-complaint arises out of the same T/O as Πs claim.

D. CROSS-CLAIMS

Cross-Claim

A cross-claim is a claim against a co-party & must arise from the same T/O as the underlying action. A cross-claim is always permissive & is not waived if not brought. If cross-claim is brought by Δ, it gets supplemental JX. However, if brought by Π, Π cannot use supplemental JX to overcome lack of complete diversity.

CA Cross-Complaint v. Co-Party

Like a federal cross-claim & must arise from the same T/O as the underlying action. Always permissive & may be asserted in case as cross-complaint or sue in a separate case. If asserted in this case, it may be filed anytime before court sets trial date.

E. AMENDMENTS & SUPPLEMENTAL PLEADINGS

Right to Amend

Π has a right to amend once within 21 days after Δ serves answer/motion, whichever is earlier. Δ has a right to amend once within 21 days of serving his answer.

When there is no right to amend, then a party must seek leave of court & it will be granted if justice so requires. Court will consider delay & prejudice.

Relation Back – New Claims

Amended pleadings may be filed after SOL has run if they “relate back.” Amended pleadings to join a new claim relate back if they concern the same T/O as the original pleading. The court will treat amendment as though it was filed when original complaint was filed.

In CA, relation back is available to add new claims after SOL has run if new claim relates back to same general facts as originally alleged.

Relation Back – Change Δ

Amendment will relate back if: (1) it concerns same T/O, (2) new Δ knew of the action within 120 days of its filing, (3) new Δ knew that but for a mistake, Δ would have been named originally.

In CA, relation back is permissible if: (1) original complaint charged allegations against fictitious Δs, (2) Π genuinely ignorant of identity of Doe Δs, and (3) Π pleaded that ignorance in the original complaint. If Π substitutes true Δ within 3 years after filing, it relates back & gets around SOL.

F. RULE 11

Certification

Rule 11 requires all attorneys or pro se Δs to sign all papers (except discovery) certifying that: (1) paper is not for improper purpose, (2) legal contentions are warranted by law, (3) factual contentions & denials have evidentiary support.

Sanctions

If Rule 11 is violated, sanctions may be issued against the attorney, law firm, or party to deter bad conduct (not to punish). If a party violates Rule 11, the other party must serve motion for sanctions & give them 21 days (safe harbor) to fix the problem & avoid sanctions. If the party does not, then the motion can be filed with the court. But, a court can also issue sanctions sua sponte & there is no 21-day safe harbor, but offending party must be given a chance to argue why sanctions should not be issued.

In CA, the 21-day safe harbor applies in both situations.

CA “Frivolous Tactics in Litigation”

CA’s Rule 11 equivalent includes punishment for frivolous tactics in litigation. Frivolous means completely without merit or for the sole purpose of harassing the opposing party. This rule allows imposition of expenses & fees incurred by the other party resulting from the frivolous tactics & there is no safe harbor.

IV. Are the Proper Parties & Claims Before the Court?

A. JOINDER OF PARTIES

Compulsory Joinder

Necessary parties must be joined if feasible. A party is necessary if: (1) w/out him, court cannot accord complete relief, (2) absentee’s interest may be harmed if not joined, or (3) absentee claims interest w/c subjects a party (usually Δ) to multiple obligations. SC has held that joint tortfeasors are not considered necessary.

Permissive Joinder

A party may be joined as Π or Δ if (1) claim is in same series of T/O, and (2) there is a common question of law or fact.

Feasibility of Joinder

Joinder is feasible if: (1) there is IPJ over absentee, and (2) joining him will not destroy diversity. If joinder is not feasible, the court will determine whether the case could proceed in his absence or be dismissed. In making the determination, the court considers: (i) whether judgment in the party’s absence would prejudice him or the existing parties, (ii) whether the prejudice can be reduced in shaping the judgment, (iii) whether a judgment in the party’s absence would be adequate; & (iv) whether the Π will be deprived of an adequate remedy if the action is dismissed (i.e. can Π bring this to state court). If the court decides to dismiss, the absentee is deemed an **indispensable party**.

Impleader

Δ brings in (impleads) a 3dp who either owes indemnity or contribution to Δ on the underlying claim. Δ must file a 3dp complaint & serve process on 3dp. The court must have IPJ over 3dp. After 3dp is joined, 3dp can assert claims against Π that arise out of same T/O & vice versa. Court must have SMJ over all claims. Impleader claims usually get supplemental JX b/c they arise out of same T/O, but Π may not assert a claim if it would destroy complete diversity.

CA Cross-Complaint v. 3dp

Like federal impleader, except there is a right to join a 3dp for any claim that arises out of same T/O as underlying claim (not limited to indemnity or contribution).

Intervention

Application to intervene must be timely made by an absentee who wants to join the suit either as Π or Δ. **Intervention as of right** is when absentee may intervene where her interest may be harmed if not joined, & her interest is not adequately represented now. There must be an independent basis for JX (diversity case or FQ, b/c no supplemental JX).

Permissive intervention is when absentee’s claim/defense & pending case have at least one common question of law or fact. Usually allowed by a court unless it would cause delay or prejudice. In CA, absentee must have a direct & immediate interest in the matter in litigation or in the success of either party. Claim must not destroy complete diversity & like intervention as of right, it must be supported by its own jurisdictional ground.

Interpleader

When one (stakeholder) holding property forces all potential claimants into a single suit to avoid multiple litigation & inconsistency. Rule 22 interpleader requires that: (1) stakeholder must be diverse from every claimant, (2) amount in controversy exceeds 75K, (3) proper service of process, & (4) proper venue.

Statutory interpleader requires: (1) at least one claimant is diverse from another claimant, regardless of stakeholder’s citizenship, (2) amount in

controversy exceeds \$500, (3) nationwide service (so no IPJ issues), & (4) venue is in any district where claimant resides.

Class Action (Federal)

A class action is when a representative sues on behalf of class members. The action must either involve a federal question, or diversity of citizenship (consider only representative’s citizenship & amount in controversy). The representative must demonstrate: (1) commonality, meaning there is some question of law or fact in common to the class, (2) adequate & fair representation, (3) numerosity, meaning there are too many members for practicable joinder, & (4) typicality, meaning the representative’s claims & defenses are typical of those in the class.

There are three types: (i) prejudice (class treatment necessary to avoid harm either to class members or to opposing party), (ii) injunction or declaratory judgment sought b/c class was treated alike by other party, & (iii) damages, which requires that: (1) common questions predominate over individual questions & (2) class action is the superior method to handle dispute.

The court must certify the class by defining class, claims, issues, defenses, & appoint class counsel.

Notice for Damages Class Action

The representative, who pays for notice, must mail notice to all reasonably identifiable members informing them that: (1) they can opt out, (2) will be bound by the judgment if they don’t opt out, & (3) are allowed to enter separate appearance through counsel.

Class Action (CA)

In CA, there is only one type of class action & it requires: (1) a showing of an ascertainable class, & (2) a well-defined community of interest. In considering whether there is a well-defined community of interest, the court will look at whether: (i) common questions predominate, (ii) whether the representative is adequate, & (iii) whether class will result in a substantial benefit to the parties & the court. In determining whether action is a limited or unlimited case, aggregate all claimant’s claims.

The court must certify the class by defining class, claims, issues, & defenses. Unlike federal, the court does not appoint class counsel.

B. JOINDER OF CLAIMS

See Counterclaims & Cross-Claims Above.

V. DISCOVERY

A. Types of Discovery

1. Depositions
 - a. Deponent’s sworn oral answers to counsel’s questions
 - b. Nonparties must be subpoenaed
 - i. Subpoena Duces Tecum – for materials
2. Interrogatories
 - a. Questions propounded in writing to another party to be answered in writing under oath
3. Requests to Produce
 - a. Request to party or nonparty (w/ subpoena) to make docs/things available for copying/reviewing/inspection
4. Physical & Mental Exams
 - a. Court can’t compel except PI case
 - b. CA: lawyer can attend physical, but need court order to attend mental exam
5. Requests for Admissions
 - a. Request by one party to another party to admit truth of any discoverable matters (often used to authenticate doc)
6. Required Disclosures (no required disclosures in CA)
 - a. Materials that must be produced even if not requested
 - i. Identify persons/docs likely to have discoverable info that disclosing party will use to support his claim or defense
 - ii. Identify expert witnesses & their testimony
 - iii. Detailed info about docs/witnesses to testify live or by deposition

B. Scope of Discovery

1. Experts
 - a. Any expert used at trial required disclosure
 - b. Consulting Expert
 - i. Retained for litigation but will not testify (not discoverable absent exceptional need)
2. Privileged Matter Not Discoverable
 - a. Party must object w/ particularity that matter is privileged
3. Work Product
 - a. Materials prepared in anticipation of litigation
 - i. Includes: mental impressions, opinions, conclusions & legal theories
 - b. Federal: by attorney, party, or representative of party
 - c. CA: Attorney Work Product
 - i. Only work by attorney & attorney's agents

C. Enforcement of Discovery Rules (Sanctions)

1. Protective Order
 - a. May seek this if request is overly burdensome, involves trade secrets, info not reasonably accessible, or request seeks work product
 - b. CA: to protect against unwarranted annoyance, embarrassment, oppression, burden or expense
2. Failure to Provide Discovery: Motion to Compel + Costs & Certify in Good Faith Attempt to Obtain Discovery
3. Sanctions
 - a. Treat Matters as Admitted
 - b. Disallow Evidence on an Issue
 - c. Establish the Issue Adverse to Violating Party
 - d. Strike the Pleadings
 - e. Dismiss the Cause of Action or Entire Action if Bad Faith
 - f. Enter a Default Judgment if Bad Faith
 - g. Hold in Contempt, Except for Refusal to Submit to Mental/Physical Exam
 - h. Immediate or Automatic Sanction

VI. Can the Dispute be Resolved Without a Trial?

12(b)(6) Motion

Δ may move to dismiss for failure to state a claim for which relief can be granted and may raise this objection up through trial. Court looks at Πs complaint only and assumes that if all of Πs allegations are true, whether facts alleged state a claim that the law recognizes.

Summary Judgment

A motion for summary judgment requires the moving party to show: (1) there is no genuine issue of material fact, and (2) moving party entitled to judgment as a matter of law. The court usually views the evidence (i.e. affidavits) in light most favorable to the nonmoving party.

The summary judgment may be partial or complete. Partial summary judgment may be asserted when moving party is raising issue preclusion (thus, asking for summary judgment as to that issue).

VII. If There is a Trial, Who Will Decide the Matter?

A. RIGHT TO JURY TRIAL

7th Amendment Right to Jury Trial

The 7th Amendment, which applies only in federal court, guarantees right to jury trial for civil actions at law, but not suits in equity. CA only recognizes a right to jury trial for actions at law.

In deciding whether an action is legal or equitable, courts will look to the nature of the remedy & nature of the action. Legal actions seek money damages or recover property, while equitable actions involve specific performance, reformation, or injunctive relief.

Where legal & equitable claims are joined in one action involving common fact issues, CA courts will generally not permit jury trial if legal claims are

incidental. If legal claims are not incidental, then legal claims are tried first & then equity claims. Federal courts guarantee right to jury trial even for incidental legal issues – thus, legal claims are tried first to a jury & equitable claims to a judge.

A party must make a written demand for jury trial. In CA, a party must announce demand for jury at the time case is set for trial. Failure to make jury demand constitutes waiver.

B. DISREGARDING THE JURY

Motion for Judgment as a Matter of Law (Directed Verdict)

This is a court order taking the case away from the jury if reasonable people could not agree on the result. Courts will view evidence in light most favorable to the nonmoving party. Π may move for JMOL at the close of all evidence & Δ may move at the close of Πs evidence, and/or at the close of all evidence at trial.

In CA, Δ can bring nonsuit motion (similar to JMOL) after the close of opening statements or the close of Πs evidence.

Renewed JMOL (Judgment Notwithstanding the Verdict)

This allows a losing party to file JNOV after court entered judgment on the basis of verdict if reasonable people could not agree on result. If JNOV is granted, the court enters judgment in favor of the party that lost the jury verdict. In CA, there is no requirement that a party bring JMOL before moving for JNOV.

VIII. Is the Decision Binding in Future Cases?

Res Judicata (same Π v. same Δ)

Res judicata or claim preclusion is an affirmative defense that prevents reassertion of claimant's cause of action or claim if: (1) both cases were brought by the same Π against the same Δ, (2) the first case ended in a valid final judgment on the merits, (3) the claim was actually litigated or could have been litigated, and (4) both cases asserted the same cause of action or claim (same T/O).

Any judgment is considered to be on the merits except those based on JX, venue, or indispensable parties.

In CA, judgment is not final until conclusion or expiration of appeal. Also, under the **primary rights theory**, each person may raise one claim for each right invaded (i.e. bodily harm & harm to property).

Collateral Estoppel

Collateral estoppel or issue preclusion bars re-litigation of a particular issue already litigated & determined when: (1) there was a valid final judgment, (2) the issue was actually litigated & determined, (3) the issue was essential to the previous judgment, (4) asserted against one who was a party (or represented by a party) in the first case, & (5) asserted by one who was a party to the first case.

However, in JXs (CA) where the mutuality principle has been eroded, a 4-part test is used to determine whether a nonparty may rely on a prior judgment.

Non-Mutual Defense (shield)

This is used by one who was not a party to the first case & who is now a Δ in the second case.

Non-Mutual Offensive (sword)

This is used by one who was not a party in the first case & who is now a Π in the second case. Federal & CA law will allow if:

1. Issue decided in first case is identical to issue presented;
2. There was a final judgment on the merits;
3. Party against whom the judgment is to be used had a fair & full opportunity to litigate the issue
 - a. CA: Δ was a party or in privity w/ a party to prior case
4. Posture of the case must not be such that it would be unfair or inequitable to a party to apply collateral estoppel



Civil Procedure Essay Templates

CIVIL PROCEDURE

PERSONAL JURISDICTION

Personal Jurisdiction¹

Personal jurisdiction refers to a court's power to exercise its judicial authority over a particular defendant. There are three bases from which a court can derive this authority: traditional, statutory and constitutional.

Traditional Bases for Jurisdiction

Traditionally, courts had automatic jurisdiction when the defendant resided in the forum state, consented to jurisdiction in the forum state, or was served in the forum state.

Insert facts here²

Statutory Basis for Jurisdiction

Modernly, most states have adopted long-arm statutes, which have incorporated the traditional bases and identify the precise circumstances under which a court has personal jurisdiction over a defendant. Because states have the ultimate power to decide over whom their courts may exercise jurisdiction, if the state has a long arm statute, the statute will govern this issue.

Insert facts here³

Constitutional Basis for Jurisdiction

Even if an exercise of jurisdiction is proper under the state long-arm statute, it must still comply with the limitations set forth under the Due Process Clause of the Constitution. Those limitations require sufficient minimum contacts between the defendant and the forum state such that the exercise of jurisdiction over the defendant does not offend "traditional notions of fair play and substantial justice" and that the exercise jurisdiction is reasonable.

1 Keep in mind that personal jurisdiction is often tested in conjunction with other subjects. If that is the case, usually the elements below are EASILY MET (with only one or two elements being meaty) because there isn't enough time. So you need to be cognizant of getting through them quickly or merging them together (such as merging plaintiff's interest with state's interest and relative burdens). However, when personal jurisdiction is the entire question, most of these elements are meaty. Don't skimp on the factual analysis.

2 Discuss these only if they apply.

3 Discuss this only if it applies. Is there a statute?

Minimum Contacts

A defendant is said to have minimum contacts when there is purposeful availment of the laws of the forum state, such that it is reasonably foreseeable that she will be “haled into court” there.

Purposeful Availment

Purposeful availment occurs when the defendant, through her contacts with the forum state, has availed herself of the “privilege of conducting activities in the forum state, thus invoking the benefits and protections of its laws.”

Insert facts here ⁴

Foreseeability

Insert facts here ⁵

Fair Play and Substantial Justice

Courts have held that the traditional notions of fair play and substantial justice are not offended when: (1) the defendant has systematic or continuous contact with the forum state; or (2) the claim is related to the defendant’s contact with the forum state. Courts will also consider the state’s interest, the plaintiff’s interest and relative burdens of the parties.

Systematic or Continuous Contact

If the defendant does not have systematic or continuous activity in the forum state, the in-state activity can be the basis for lawsuit.

Insert facts here

4 The most common personal jurisdiction fact pattern involves a defendant *driving* through the forum state. This always stumps people because it’s difficult to come up with ways in which a person really benefits from a state by just driving through it. Here are some helpful hints: the roadways, protection of the laws, emergency roadside assistance, snow plows, high way rest-stops, gas stations and restaurants. It’s good to have these handy so that you don’t waste time pondering the issue.

5 This is where most of the factual analysis is. Talk about how being haled into court would be foreseeable to a reasonable person based on all of the defendant’s contacts with the forum state. For example, if you are driving on the roadway, it is foreseeable that you might be involved in a car accident, and car accidents typically result in suits for personal injury and property damage.

Related to the defendant's contact with the forum state

Insert facts here

Court's interest

Insert facts here⁶

Plaintiff's interest

Insert facts here

Relative Burdens

Insert facts here⁷

⁶ Keep this section short. The court's interest also means the forum state's interest.

⁷ Analyze facts relating to the convenience of the parties here. Is the forum so gravely difficult and inconvenient that the defendant will be seriously disadvantaged?

CIVIL PROCEDURE QUESTION

Personal Jurisdiction

Paul and Tom, both State X residents, were involved in an auto accident in State X. At the time of the accident, Tom, who was working as a delivery truck driver for Danco, was driving through State X to make a delivery to a customer located in State Y. Danco is incorporated in State Y and has its principal place of business in State Z. State Z is located adjacent to State X. Danco does no business in State X.

Paul filed a complaint against Danco in federal district court in State X on the basis of diversity jurisdiction, alleging \$70,000 in property and personal injury damages. Danco was properly served with the complaint at its principal place of business.

Appearing specially in the State X federal district court, Danco filed a motion to dismiss the complaint on the grounds that the district court lacked both subject matter and personal jurisdiction and that Paul's action could not proceed without joining Tom. The district court denied Danco's motion.

Danco then filed a counterclaim against Paul to recover \$20,000 in property damage to the truck Tom was driving at the time of the accident. Paul moved to dismiss Danco's counterclaim on the ground that the district court lacked supplemental jurisdiction to hear the counterclaim. The district court granted Paul's motion.

State X law provides that its courts may exercise jurisdiction over nonresidents "on any basis not inconsistent with the Constitution of the United States."

1. Did the district court rule correctly on Danco's motion to dismiss Paul's complaint? Discuss.
2. Did the district court rule correctly on Paul's motion to dismiss Danco's counterclaim? Discuss.

CIVIL PROCEDURE SAMPLE ANSWER

Personal Jurisdiction

1. Danco's motion to dismiss Paul's complaint

Personal Jurisdiction

Personal jurisdiction refers to a court's power to exercise its judicial authority over a particular defendant. There are three bases from which a court can derive this authority: traditional, statutory, and constitutional.

Traditional Bases for Jurisdiction

Traditionally, courts had automatic jurisdiction when the defendant resided in the forum state, consented to jurisdiction in the forum state, or was served in the forum state. Here, none of these apply.

Statutory Basis for Jurisdiction

Modernly, most states have adopted long-arm statutes, which have incorporated the traditional bases and identify the precise circumstances under which a court has personal jurisdiction over a defendant.

Here, the state long-arm statute provides that its courts may exercise jurisdiction over nonresidents "on any basis not inconsistent with the Constitution of the United States." Therefore, the constitutional bases will be considered.

Constitutional Basis for Jurisdiction

Even if an exercise of jurisdiction is proper under the state long-arm statute, it must still comply with the limitations set forth under the Due Process Clause of the Constitution. Those limitations require sufficient minimum contacts between the defendant and the forum state such that the exercise of jurisdiction over the defendant does not offend "traditional notions of fair play and substantial justice" and that the exercise of jurisdiction is reasonable.

Minimum Contacts

A defendant is said to have minimum contacts when there is purposeful availment of the laws of the forum state, such that it is reasonably foreseeable that he will be "haled into court" there.

Purposeful Availment

Purposeful availment occurs when the defendant, through his contacts with the forum state, has availed himself of the "privilege of conducting activities in the forum state, thus invoking the benefits and protections of its laws."

Here, although Danco does no business in State X, by driving back and forth to State Y (especially from its principal place of business, State Z) Danco purposefully avails itself of the roads in State X, the protection of the laws, the state emergency response system, the highway rest stops, the gas stations, etc.

Foreseeability

Because Danco presumably frequently uses State X roads, it is foreseeable that one of its drivers will get into an accident there, resulting in a lawsuit in which Danco will have to defend itself.

Fair Play and Substantial Justice

Courts have held that the traditional notions of fair play and substantial justice are not offended when: (1) the defendant has systemic or continuous contact with the forum state; or (2) the claim is related to the defendant's contact with the forum state. Courts will also consider the state's interest, the plaintiff's interest and relative burdens of the parties.

Systematic or Continuous Contact

If the defendant does not have systematic or continuous activity in the forum state, the in-state activity can be the basis for lawsuit.

Here, although Danco's contact with the state was likely not systematic enough to establish personal jurisdiction, the accident (in-state activity) formed the basis of this lawsuit. Moreover, since Danco's principal place of business is located adjacent to State X, it would not be a burden for Danco to defend itself in State X. Additionally, because the accident occurred in State X and most of the witnesses (Paul, other drivers, police, etc.) likely reside there, State X has an interest in seeing the matter resolved in its courts.

Therefore, Danco's motion to dismiss for lack of personal jurisdiction will likely be denied.

Subject Matter Jurisdiction

Subject matter jurisdiction refers to the court's authority to exercise its discretion over a particular controversy. Federal courts are courts of limited jurisdiction and therefore only have subject matter jurisdiction over: (1) cases involving diversity of citizenship; and (2) cases involving a federal question. There is generally a presumption against federal jurisdiction.

Federal Question

Federal question jurisdiction exists over cases involving the Constitution or other laws of the United States.

Here, the case involves a tort claim, which is a state, not federal question of law.

Diversity

Diversity of citizenship jurisdiction exists when the matter in controversy exceeds the sum of \$75,000 and the parties involved are citizens of different states. In order for diversity of citizenship to be present, all plaintiffs must be diverse from all defendants.

Citizenship

Citizenship refers to a person's domicile, which is determined by: (1) physical presence in the state; with (2) intent to permanently reside there.

Here, the facts indicate that Paul resides in State X.

Citizenship of a Corporation

For the purpose of diversity, corporations have dual citizenship. They are citizens of: (1) the place of incorporation; and (2) their principal place of business.

Here, Danco is incorporated in State Y and has its principal place of business in State Z. Therefore, regardless of which state is utilized, Paul and Danco are completely diverse.

Amount in Controversy

The amount in controversy is generally determined by looking at what is pled in the complaint by plaintiff. The plaintiff need only make a good faith estimate of his or her damages to meet this requirement.

Here, Paul claimed only \$70,000 in damages, which is insufficient to meet the jurisdictional requirement. Although Danco counterclaimed for \$20,000 in property damage, a counterclaim cannot be aggregated with the plaintiff's initial complaint to meet the jurisdictional requirement.

Therefore, Danco's motion to dismiss should be granted because the court does not have subject matter jurisdiction over this claim.

Joinder of Tom

Joinder is the process of adding parties to existing litigation who were not previously named. There are two types of joinder – permissive and compulsory.

Compulsory Joinder

Compulsory joinder exists when a party is needed for just adjudication. A party is necessary for just adjudication if: (1) complete relief cannot be afforded in his absence; or (2) his absence would expose existing parties to a substantial risk of double or inconsistent obligations. Also, compulsory joinder of a party must not destroy diversity.

Here, it is not clear that Tom is necessary for Paul's rights against Danco to be adjudicated. Since Danco is Tom's employer, Danco will be liable for all of Tom's actions under the doctrine of respondeat superior. Therefore, Tom would not have personal liability to Paul at all. For that reason, there would also be no risk of double judgments. Moreover, both Tom and Paul are residents of State X, which means that diversity would be destroyed if Tom were joined. Therefore, compulsory joinder of Tom is not permissible.

2. Paul's motion to dismiss Danco's counterclaim

Supplemental Jurisdiction of Counterclaim

Supplemental jurisdiction refers to the court's authority to hear a claim that does not otherwise have an independent basis for subject matter jurisdiction but is joined in a single suit with a jurisdictionally sufficient claim. There are two types of supplemental jurisdiction – ancillary and pendent.

Here, Danco's counterclaim does not meet the jurisdictional amount in controversy requirement and therefore the court would not have an independent basis for subject matter jurisdiction. Thus, the court must have supplemental jurisdiction.

Ancillary Jurisdiction

Ancillary jurisdiction allows a federal court to assert jurisdiction over claims brought by a defendant that arise from the same transaction and occurrence as an action properly within the court's subject matter jurisdiction. Compulsory counterclaims have ancillary jurisdiction.

Same transaction or occurrence

Here, Danco is claiming \$20,000 in property damage to its company truck as a result of the accident between Tom and Paul. Therefore, since Paul's complaint is based on the same accident, Danco's counterclaim arises from the same transaction and occurrence. Thus, the court will be able to hear the counterclaim based on supplemental jurisdiction.

SUBJECT MATTER JURISDICTION

Subject Matter Jurisdiction

Subject matter jurisdiction refers to the court's authority to exercise its discretion over a particular controversy. Federal courts are courts of limited jurisdiction and therefore only have subject matter jurisdiction over: (1) cases involving diversity of citizenship; and (2) cases involving a federal question. There is generally a presumption against federal jurisdiction.¹

Federal Question

Federal question jurisdiction exists over cases involving the Constitution or other laws of the United States.

Insert facts here

Diversity

Diversity of citizenship jurisdiction exists when the matter in controversy exceeds the sum of \$75,000 and the parties involved are citizens of different states.² In order for diversity of citizenship to be present, all plaintiffs must be diverse from all defendants.

Amount in Controversy

The amount in controversy is generally determined by looking at what is pled in the complaint by plaintiff. The plaintiff need only make a good faith estimate of his or her damages to meet this requirement.

Insert facts here ³

1 If the question is only about subject matter jurisdiction and you have time to expand on the rule statement for subject matter jurisdiction, you can also add that the parties must specifically plead the facts that confer such jurisdiction, parties may not consent to subject matter jurisdiction and its absence cannot be waived. These rules are not crucial though.

2 Don't forget that citizenship of different states can also mean citizens of a foreign (non U.S.) state or a foreign state as a party.

3 What is the amount pled? Is there any evidence that it was done in bad faith? If not, don't get into the good faith requirement; you won't have time.

Aggregation⁴

In order to meet the requisite jurisdictional amount, a plaintiff may aggregate two or more claims against a single defendant or aggregate a joint claim against different defendants (as in the case of joint tortfeasors).

Insert facts here ⁵

Value of Equitable Relief⁶

In situations where the plaintiff is seeking equitable relief (such as an injunction) as opposed to monetary damages, courts will look either to: (1) the value of the harm suffered by plaintiff; or (2) the cost of compliance with the order for equitable relief.

Insert facts here

Citizenship

Citizenship refers to a person's domicile, which is determined by: (1) physical presence in the state; with (2) intent to permanently reside there.

Physical Presence

Insert facts here

Intent to Reside

Insert facts here

Citizenship of a Corporation⁷

For the purpose of diversity, corporations have dual citizenship. They are citizens of: (1) the place of incorporation; and (2) their principal place of business.

Insert facts here

4 Discuss this ONLY if it applies.

5 Does the plaintiff need to aggregate his or her claims here?

6 Discuss this ONLY if it applies.

7 Discuss this ONLY if it applies.

Supplemental Jurisdiction⁸

Supplemental jurisdiction refers to the court's authority to hear a claim that does not otherwise have an independent basis for subject matter jurisdiction but is joined in a single suit with a jurisdictionally sufficient claim. There are two types of supplemental jurisdiction – ancillary and pendent.

Insert facts here ⁹

Ancillary Jurisdiction

Ancillary Jurisdiction allows a federal court to assert jurisdiction over claims brought by a defendant that arise from the same transaction and occurrence as an action properly within the court's subject matter jurisdiction.

Insert facts here ¹⁰

Pendent Jurisdiction

Pendent Jurisdiction allows a plaintiff who has a jurisdictionally sufficient federal question claim to join, in the original complaint, related claims that otherwise would not have subject matter jurisdiction.

Insert facts here ¹¹

⁸ Discuss this ONLY if it applies (in other words, there is a separate claim alleged that does not have an independent basis for subject matter jurisdiction). When a question asks about "jurisdiction" generally and supplemental jurisdiction is the only way to achieve subject matter jurisdiction of a particular claim, you MUST write about it. Even if the question specifically asks about only "subject matter jurisdiction," it is still appropriate to write about supplemental jurisdiction but only if it applies.

⁹ Is there a claim alleged that does not independently have subject matter jurisdiction? If so, just identify it and move on to whether it falls under ancillary or pendent jurisdiction.

¹⁰ Look for cross-claims and cross-complaints here.

¹¹ Look for state law claims brought in conjunction with federal claims by the plaintiff.



Civil Procedure Attack Sheets

Rule 11 Attack

1. **Rule 11:** Requires attorney (or pro se litigant) to sign all pleadings, written motions, and other papers (except discovery)
 - a. Signature = Certification by attorney that:
 - i. Paper is not for an improper purpose
 - ii. Legal contentions are warranted by law or non-frivolous argument to change the law
 - iii. Factual contentions and denials of factual contentions have evidentiary support, or are likely to have support after reasonable investigation
 - b. Certification is continuous: Occurs when papers are signed, filed, and later advocated to a court
 - c. Sanctions: If Rule 11 is violated, sanctions may be issued against an attorney, law firm, or party
 - i. Sanctions are supposed to deter bad conduct, NOT punish
 - ii. Sanctions may be monetary (usually paid to court) or non-monetary
 - iii. Before imposing sanctions, offending party must be given a chance to be heard
 - iv. If sanctions are sought by opposing party: Motion must be served on offending party who gets a 21-day safe harbor to correct the problem. If the issue is not fixed, the motion can be filed with the court.
 - v. If sanctions are issued sua sponte: No 21-day safe harbor, but offending party must be given a chance to say why sanctions should not be issued
 1. CA: Even sanctions issued sua sponte (by the court) require a 21-day safe harbor
 - d. CA has a Rule 11 equivalent
 - i. Includes punishment for “frivolous tactics in litigation.” Frivolous = Completely without merit or for the sole purpose of harassing the opposing party.
 1. Allows imposition of expenses and fees incurred by the other party because of the frivolous tactics against the party or his attorney
 2. No safe harbor: Can file safe harbor immediately.

Federal Subject Matter Jurisdiction, Supplemental Jurisdiction, Removal, Erie Attack

Subject Matter Jurisdiction

Rule: Federal Courts are courts of limited jurisdiction that may only hear cases that involve a federal question or Diversity Cases between parties of different states with an amount in controversy exceeding \$75,000.

Federal Question:

Rule: The complaint must present a claim for relief that arises under federal law in which the plaintiff is asserting a right or interest founded substantially on federal law.

↓ Or ↓

Diversity of Citizenship and Amount in Controversy

Diversity Rule: Diversity requires that no Plaintiff be from the same state as any defendant. Diversity is determined at the time of filing.

- Individuals are domiciled in the state where they have a physical presence and intent to remain. Can only have one domicile.
- Corporations are domiciled both in their State of Incorporation and in their principal place of business. Nerve center where decision occur or Muscle center where most activity occurs. Will either have one domicile if in same state or can have two domiciles
- Unincorporated associations (LLCs, partnerships): Are domiciled in every state where a member is a citizen. Can have unlimited domiciles based on who members are.
- Decedents, minors, and incompetents: Citizen under traditional individual domicile test. Only focus on the domicile of the Decedent, Minor, or Incompetent
Do NOT consider citizenship of their representation. Can only have 1 domicile.

Moving states to achieve diversity: It is ok if a party moves to establish diversity so long as the domicile test is met. Thus, argue intent to permanently remain element.

Amount in Controversy Rule: Plaintiff must in good faith allege an amount in controversy exceeding \$75,000 not counting interests and costs.

Aggregation of claims:

- A single P can aggregate as many claims as he wants against a single D to exceed amount in controversy even if claims are unrelated.
- A single P can aggregate claims against multiple D's so long only if the claims are against joint tortfeasors. Number of parties is irrelevant because any D in tort can be liable for the whole judgment.

Equitable Relief Rule: The amount in controversy can be met based on the benefit to the P **or** the cost to the D to comply.

Headnote both and see if you get over \$75,000.

Value of benefit to the Plaintiff: Here, compliance with the injunction would benefit the P by...

Cost to Defendant to comply: Here, compliance with the injunction would cost the D...

Trick: Can bring a claim against P for \$50,000 in damages and an injunction. If benefit or cost of injunction is \$25,000.01 you are good.

Trick: Might have two D's and aggregate claims to meet amount in controversy. Then, one party drop out because no Diversity. This could put you under the amount in controversy. Then you need to see if you can add the equitable claim to the amount of damages to put you over \$75,000.

Supplemental Jurisdiction:

Rule: A Federal court may hear a state claim if there is an “anchor” claim properly in federal court and the state claim share a common nucleus of operative facts arising out of the same transaction or occurrence (such that the P would reasonably expect them to be tried in one proceeding).

Limit: If a case is in federal court solely on diversity, there cannot be supplemental jurisdiction if the supplemental state claim would destroy diversity. (map out states)

Court Discretion: A court can choose not to hear a supplemental claim even if the requirements are met if:

- The federal question is dismissed early in the proceeding
- The state claim is novel or complex, or:
- The state law issues predominate.

Removal

Rule: Removal is a mechanism that allows a defendant to move a case from State Court to Federal Court. (One way street)

1. All D's must agree
2. There is proper Federal Subject Matter Jurisdiction
3. The case is removed to the federal district containing the state court where the case was originally filed
4. Removal is sought within 30 days of when the case becomes removable (usually the complaint. But if a new D is served, the 30 days starts over)

Limitations: No removal if any D is a citizen of the forum state and no removal more than one year after the case was filed in state court.

Procedure for Removal

1. D files notice of removal in Federal Court stating grounds for removal, attaching all docs. Also, serve copy of adverse party and state court.
2. If removal is improper: P must make a motion to remand within 30 days. If defect is improper SMJ, P can make a motion to remand at any time.
3. D who files a permissive counter Claim probably waives the right to remove. Filing a compulsory CC does not waive the right to remove.

ERIE

Rule: In diversity cases, a federal court applies its own procedural rules (necessary and proper clause) but applies the substantive law and conflict of law laws of the state in which is it sitting.

In addition, the Federal Court may apply some state procedural rules when there is no FRCP on point.

Substantive question: State law controls

- Elements of claim or defense, statute of limitations, rules for tolling SOL, conflict/choice of laws

Procedural question: Federal law controls

- Federal law applies even if question is only “arguably procedural”

Unclear whether substantive/procedural question:

- Conflict between state law and federal law (Constitution, procedural statute, or FRCP): Federal law controls (based on Supremacy Clause)

Conflict between state law and federal practice: Apply state law if applying federal law would:

1. Be outcome determinative (change result of the case)
2. Lead to forum shopping (more cases in federal court)
3. Balance of interests: Consider interest of each forum having its rule applied

JOINING PARTIES ATTACK

Proper Parties to Be Joined as Ps or Ds ← Who May be joined

Parties are proper to be joined if their claims:

1. Arise from same T/O, and
2. Raise at least one common question of law or fact
 - a. Or, in CA: If they have a claim adverse to D in the property or controversy at issue or such a claim adverse to them is asserted in the action

Must also have SMJ for each party's claim

Insert whole page on 61

Necessary/Indispensable Parties: Parties who must be joined to a case: Go through all 3 steps

Determine if party is necessary: A party is necessary if **any** of these three are met

- a. Without him, the court cannot accord complete relief (concern about multiple lawsuits), or
 - b. The Absent party's interests may be harmed if he isn't joined (practical harm), or ← most testable
 - c. The Absent party's claims an interest which subjects a party to multiple obligations
 - d. Note: Joint tortfeasors are NOT necessary. If you sue one tortfeasor, it is not necessary to add the other joint tortfeasor. ← Very testable.
2. Determine if joinder is feasible: Joinder is feasible if (a) court has PJ over absent party, and (b) joining absent party will not destroy diversity.
 - a. If joinder is feasible, absent party is brought into the case and court decides if he is a D or P
 3. If joinder is not feasible, determine if case should proceed without the party or if the case should be dismissed. The court will consider:
 - a. Availability of an alternative forum the case could go to
 - b. Actual likelihood of prejudice (if low likelihood of prejudice, the case will proceed)
 - c. Court's ability to shape relief to avoid any prejudice

Page 25: Any word that starts with "I" involves bringing in a new party

Third Party Practice

Impleader: Defending party brings in a 3P who (called 3rd party defendant) either owes indemnity or contribution to D on the underlying claim

1. Timing: D has a right to implead for 14 days after serving answer. After that, he must seek permission from the court

2. Steps to implead:
 - a. File 3rd Party complaint against the new 3rd party defendant
 - b. Serve process on 3rd party defendant
 - i. Court must have PJ over 3rd Party defendant.
3. After 3P is joined, he can assert claims against P that arise out of same T/O. Also, P can assert claims directly against 3P which arise out of same T/O.
 - a. Watch out for 1367(b) when claims are made by P against 3P
4. Court must have SMJ over all claims because of diversity or federal questions. Impleader claims usually get 1367 because same T/O. **If don't meet diversity or federal question, try supplemental jurisdiction.**

Intervention: Absentee party wants to join a suit, either as a P or D. ← **Read but hasn't been tested since 1986**

1. Application to intervene must be "timely"
2. Intervention of right: Person may intervene where her interest may be harmed if she is not joined, and her interest is not adequately represented now.
3. Permissive intervention: Person may want to intervene when her claim or defense and the pending case have at least one common question.
 - a. Discretionary with court, but usually permitted unless it will lead to delay or prejudice
 - b. **CA: Applicant must have an interest in the matter in litigation, or in the success of either party**
 - i. **Interest should be "direct and immediate"**
4. Typically no 1367 jurisdiction over an intervening D who is not diverse

Interpleader: One holding property forces all potential claimants into a single lawsuit to avoid multiple litigation and inconsistency. ← **had never been tested pg 26**

1. Parties
 - a. Stakeholder: Party with property
 - b. Claimants: Persons with potential interest in property
2. Rule 22 Interpleader
 - a. Diversity: Stakeholder must be diverse from every claimant
 - b. Amount in controversy: In excess of \$75k
 - c. Service of process: Traditional rules
 - d. Venue: Traditional rules
3. Statutory Interpleader
 - a. Diversity: One claimant must be diverse from one other claimant
 - i. Citizenship of stakeholder is irrelevant
 - b. Amount in controversy: In excess of \$500
 - c. Service of process: Nationwide service (so no PJ issues)
 - d. Venue: Proper in any district where any claimant resides
4. **CA: Not clear if stakeholder can interplead as potential owner**

CA Joinder → all the same thing but all called cross complaint in CA. Do not say counter or interpleader in CA

1. Cross complaint against P

- a. Against opposing party
- b. Compulsory if arises from same T/O: must assert here and can't sue separately
- c. Permissive if does not arise from same T/O:

2. Cross complaint against co-party (

- a. Against co-party
- b. Must be filed before court sets trial date
- c. Must arise from same T/O of the underlying suit
- d. NOT compulsory: may assert here or in different complaint.

3. Cross complaint against 3P D (just like interpleader)

- a. Defending party may join a 3P
- b. NOT compulsory
- c. 3P can raise defenses against P that D has against P
- d. Permitted for contribution, indemnity AND for any claim that 3P is liable on in underlying case, as long as it arises out of same T/O
- e. 3rd party D must respond within 30 days (answer, motion to quash, etc.
- f. Must be served on new party with summons (just like impleader. You are bringing in someone new so you have to give them service and summons.
- g. **We file these for indemnity or contribution.**

All three work just like federal but have different names. And because in CA, we don't have to worry about SMJ

Joinder Attack

Purpose of Joinder: To bring about a complete adjudication of all claims among all parties in the transaction involving common issues of law and fact.

1. **General Theme:** Claim must usually arise from same transaction of occurrence involving common questions of law and fact.
2. **Jurisdictional theme:** every claim against each party must be supported by an independent ground of subject jurisdiction, unless Supplemental Jurisdiction applies. (called Pendent Jx in Federal Questioning claim).

Tip: look for the transactional relationship and also look at independent ground for SMJ (Fed Question of Diversity and amount in controversy unless supplemental jurisdiction applies).

Rules for joinder determine which claims must and which claims may be included by the P and the D in their pleadings.

Joiner of parties:

Compulsory Joiner of Indispensible parties: When complete relief cannot be given in that person's absence. It is necessary to join a party when complete relief cannot be granted in that person's absence. When a third party must be joined but can't for some reason, then the action must be dismissed.

Ex: Co owners of property in partition action, or trust beneficiaries in litigation in a trust.

Remember, that joinder of a necessary party requires an independent basis of SMJ

Permissive Joinder of conditionally necessary parties: More common situation is when D attempt to bring in another party as a co- defendant. If a party can't be joined without that person and complete relief can still be given, then the action can proceed.

Ex: Joint tortfeasors.

Permissible Joinder: multiple parties may join as plaintiffs or be joined as defendants in one action if some claim made by each P and against each D arises from the same transaction or occurrence and presents a common question of law or fact.

Joinder of persons needed for just adjudication has two part test to see if party is indispensable or merely necessary.

If feasible (proper service and SMJ) then a party shall be joined if

1. In the person's absence, complete relief cannot be given to existing parties

2. If disposition in the person's absence might impair her ability to protect her interest in the matter or leave any existing parties subject to substantial to multiple or inconsistent obligation.

On other hand, where joinder is not feasible, the court must decide whether the action can proceed or must be dismissed. Factors court will consider:

- Whether a judgment in the parties absence might judgment prejudice him or existing parties
- Whether prejudice can be eliminated by shaping relief
- Whether a judgment in the persona's absence will be adequate
- Whether the P will have an adequate remedy if the case is dismissed.

Still need SMJ

Easier to join the parties first and then the claims.

A P can join as many claims against opposing party no matter what type of claims they are. No transactional relationship test is required (as long as we are here, lets jus get it all over with) Goal is to achieve complete resolution of the dispute between the parties.

Discovery Attack

Required Discovery: Material that must be produced even though no one asks for it. Initial disclosures:

1. W/in 14 days of rule 26(f) conference: (1) persons/documents likely to have discoverable info to support claims/defenses, (2) damages computation, (3) insurance for judgment
2. Expert: Identify experts who “may be used at trial” and produce their reports
3. Pretrial: No later than 30 days before trial, must give info re: experts, Ws, Docs
4. CA: None...no Required disclosures [REDACTED]

Discovery Tools

1. Deposition

- a. Written questions or oral
- b. Answered orally under oath
- c. Transcribed
- d. You CAN depose Parties or NON PARTIES.
- e. Party: Only required properly served notice to compel attendance. Don't have to subpoena.
- f. Nons party: Should be subpoenaed, otherwise not required to attend
- g. Only depose person once
- h. Can use subpoena duces tecum to require deponent to bring documents to deposition
- i. Time limit: One day of 7 hours per depo
 - i. CA: No presumptive time limit on depositions unless court orders
- j. Depo limit: 10 per trial
 - i. CA: No presumptive limit on number of depositions unless court orders

2. Interrogatories

- a. Written questions
- b. To another PARTY
- c. Can NEVER send to nons party
- d. Answered under oath w/in 30 days
- e. CA: Same as in Federal Court. Can only Send to parties.
- f. No limit to the number of form interrogatories
 - i. Specific interrogatories allowed up to 35 and they can't contain subparts
 1. If party wants more, he serves more with a declaration supporting the need for more, and the responding party can seek a protective order (keeps the court out of things)

3. Requests to Produce

- a. Party (no subpoena required) or Nonparty (with subpoena or he doesn't have to show up.)
- b. Must respond w/in 30 days

c. Purpose is to produce [REDACTED]

- d. CA: Sometimes called an inspection demand. Same as in Federal court.
 - e. If electric, must specify the form you desire them
 - f. Cannot be used against a nonparty ← can in Federal court.
 - i. **How do you get docs from a non party in CA: Get docs from nonparty by taking the non parties depo and serving them with subpoena duces tecum (means she must show up at depo with the documents.**
 - ii. **If all you are after is business records, you can just can just request and don't have to do depo and subpoena decus tecum.**
4. Physical or mental exam
- a. **ONLY available through court order** on showing that party's health is in controversy and good cause for examination (otherwise it would be a tool for harassment)
 - b. CA: D has right to demand one medical exam of plaintiff in a Personal Injury Case (don't need court order.)
CA: Lawyer has right to be at client's physical exam, but no right to be at mental exam if get court order.
5. Request for Admissions
- a. Parties only (can NEVER go to non parties)
 - b. Must respond w/in 30 days
 - c. Failure to deny = admission
 - d. CA: Permitted 35 requests for admission in unlimited civil case ← treat exact same as interrogatories.
 - i. If party wants more, he serves more, and if opposing party objects, he can file a protective order (keeps the court out of things)
 - ii. Unlimited requests to admit genuineness of docs
6. Parties sign substantive answers to discovery under oath (so take it very seriously)
- a. Counsel signs to certify: warranted, proper purpose, not unduly burdensome (similar to rule 11)
 - b. Duty to **supplement** if the party learn that response to any of the above is incomplete or incorrect: so monitor your answers.
 - i. CA: NO standing duty to supplement. Opposing party can propound supplemental interrogatories or requests for admission twice before trial date and once after that
7. **CA: Discovery in limited civil cases (\$25000 or less)**
- a. Depos: can only take 1 deposition per party
 - b. Interrogatories, inspection demands, and requests for admission: combined total of 35 in any combo
 - c. Parties can only get Additional discovery only with court order

Scope of Discovery

- 1. **Scope:** Party may seek all information **relevant to any claim or defense**, as long as it is not privileged.

- a. CA Scope: Party may discover anything **relevant** to the subject matter involved in the action
 - b. Discoverable is broader than admissible. Discoverable is anything that could possibly lead to admissible evidence.
 - c. Privileged matters and work product are not discoverable. Must object with particularity and submit privilege log to court.
 - d. CA balances the need for information against the need for privacy.
2. Relevant = Reasonably calculated to lead to admissible evidence, but discovery itself does not have to be admissible. Broader than test for admissibility.
 3. **Privileged** matter is not discoverable. Opposing party must state objection with particularity. → watch for a crossover with evidence here with attorney/client privilege.
 4. **Work product/trial preparation material:** Material prepared in anticipation of litigation (not just routine stuff) is generally protected from discovery.
 - a. Exception: Work product is admissible if a party can show (1) substantial need and (2) no other means of obtaining the same information
 - i. Exception: Mental impressions, opinions, conclusions, and legal theories are NEVER discoverable
 - b. Protection extends to any party and his representatives
 - c. **ADD MORE FROM pg 22**
 - i. CA Protection extends only to the attorney and his agents
 5. **CA Privacy Limit: Discovery can be limited where it interferes with the right to privacy. Court balances the need for discovery against the need for privacy.**
 6. **Experts:** Generally parties are required to produce info about experts who may testify as part of mandatory disclosures. Also, party may take depo of any expert who may testify at trial.
 - a. Exception: No discovery permitted regarding a consulting expert (retained in anticipation of litigation but will not testify at trial) absent showing of “exceptional need”
 - b. **See page 59 and 60 for CA**

Enforcement of Discovery Rules (rarely tested)

1. Protective order: Receiving party seeks a protective b/c request is over burdensome, involves trade secret, or some other limiting issue, or electronic data has been destroyed after reasonable time saving them.
2. Partial violation: Receiver answers some and objects to others. If objections overruled, light sanctions.
3. Total violation – receiver completely fails to attend a depo or attend anything, heavy sanction
4. Sanctions for violations
 - c. Party seeking sanction must certify to court that they tried in GOOD FAITH to resolve matter w/o court involvement
 - i. Partial violation: (1) get motion to compel, plus costs/fees for bringing motion, (2) if order not complied with then RAMBO sanctions and (3)

potential contempt (only time you can't get contempt is failure to comply with medical test.

- ii. Total violation: RAMBO plus costs (no need for order to compel)
- d. RAMBO (judicial discretion)
 - i. Establishment order (establishes a fact as true, or establishes that you are subject to personal jurisdiction)
 - ii. Strike pleadings
 - iii. Disallow evidence
 - iv. Dismiss P's case (if Bad Faith shown)
 - v. Enter default against D (if Bad Faith shown)

CA Enforcement of Discovery

1. CA: Parties required to meet and confer to work out problems before seeking court orders. Failure to do so may subject party to monetary sanctions.
2. CA prohibits misuse of discovery
3. Meet and confer is not required only when there has been a total failure to respond by opposing party
4. Court may sanction party who is misusing discovery (unjustified objections, abusive motions, failing to confer, etc)
5. Party must be given notice and chance to respond
6. Sanctions: Money, establishment order, refusal to allow party to support evidence at trial, striking pleadings, entering default or dismissing the Plaintiff's cause of action. Same RAMBO Sanctions! Court will usually start with monetary sanctions and look to see if abuse was willful.
7. When a party seeks sanctions for discovery abuse, the moving party must state what sanctions are sought.
8. Party may seek protective order against unwarranted annoyance, embarrassment, oppression, burden, or expense. (Same as in federal court. Book page 22)
9. A party may object that electronic info is not accessible (Same as in federal court).



Civil Procedure
Essay Issue Tracking

**Civil Procedure Essay
Tracking**

July 2000 (Q5)	Civ Pro	SMJ, joinder, PJ, res judicata
July 2001 (Q1)	Civ Pro	SMJ (Diversity - AIC: Valuing injunction/Aggregation), venue, final judgment rule (interlocutory appeal)
Feb 2002 (Q1)	Civ Pro	Choice of law, removal, motion for judgment as matter of law
Feb 2003 (Q1)	Civ Pro	Removal, SMJ (no diversity, but federal question), appellate review (collateral order?)
Feb 2004 (Q6)	Civ Pro	SMJ, diversity, PJ, joinder, supplemental JX
Feb 2006 (Q4)	Civil Procedure	PJ, RJ + CE
Feb 2009 (Q2)	Civ Pro	Venue, discovery
July 2009 (Q5)	Remedies x civ pro x P.R.	Injunction, res judicata, duty of confidentiality
July 2009 (Q1)	Torts x Civ Pro x P.R.	12(b)(6), S/L (Ultrahazardous Act.), Negligence, Malicious Prosecution
July 2011 (Q2)	Fed. Civ. Pro.	Discovery motion to compel, relation back, preclusion
Feb 2013 (Q5)	Civ Pro	Discovery (work product) + relation back
Feb 2014 (Q3)	Fed Civ Pro	Remand, Diversity, Erie, interlocutory appeal
Feb 2015 (Q3)	Fed Civ Pro	Mental & physical exam, deposition of nonparty(doctor) with privilege, right to jury trial
July 2015 (Q1)	Fed. Civ. Pro.	IPJ, remand (so SMJ), offensive issue preclusion
July 2016 (Q1)	Fed. Civ. Pro. CA Civ. Pro.	Service of process, IPJ, venue, removal
July 2017 (Q4)	Fed. Civ. Pro.	Joinder, sufficiency of pleading, SMJ, supplemental JX, erie doctrine, right to jury trial
Feb 2019 (Q4)	Fed. Civ. Pro x Evidence (FRE)	SMJ, relevance, hearsay, non hearsay, lay witness testimony, expert testimony, impeachment, subsequent remedial measures
July 2019 (Q1)	Fed. Civ. Pro	Discovery (scope of discovery), interrogatories, examinations, discovery of experts, objections, privileges.



**Civil Procedure
Condensed Study Sheet
Federal**

PERSONAL JURISDICTION – Are We in the Right Court?

PJ is about the courts power over **the parties**. B/c P filed he case, the court automatically has power over P – the BIG Q is PJ over the Defendant.
PJ involves one question: Can P sue D in this State?

Two-Step Analysis

- 1) We must satisfy a state statute, AND
- 2) We must satisfy the Constitution (Due Process)

Analysis SAME whether case will be filed in *federal or state court*
In Personam JX: P sues to impose a *personal obligation* on D

Statutory Analysis: Each state is free to have its own statutes for in personam JX. Most state statutes say JX okay if case meets the constitutional test.

Constitutional Analysis: Asks whether D has such **minimum contacts** w/ the forum state that JX does not offend **traditional notions of fair play and substantial justice**.

PJ clearly constitutional if D is: (1) Domiciled in the forum, or (2) Consents, or (3) Is voluntarily present in the forum when served with process.

IF *none* present, assess the following: **Contact – Relatedness – Fairness**

Minimum Contacts: There must be relevant contact b/w D and the forum state. There are two factors to be addressed:

1. The contact must result from **purposeful availment**: D voluntarily reaches out to forum (\$, roads, marketed product, tortious e-mail sent) – need *not* set foot in the forum so long as D caused an *effect* there.
2. It must be **foreseeable** that D could be sued in this forum.

Relatedness: There must be relatedness b/w this contact and P’s claim.
 Ask: does P’s claim arise from D’s contact with the forum? If yes → C’t might uphold PJ even if D doesn’t have much contact w/ the forum, A.K.A – **SPECIFIC PJ**

IF claim does *not* arise from D’s contact with the forum → JX ok ONLY if court has **General PJ**. General PJ → D can be sued there for claim that arose *anywhere* in the world. To have **General PJ** D must be “**at home in the forum**” – domiciled

Corporation is “at home” (1) every state where incorp. & (2) one state of PPB

Fairness: Whether JX would be fair (or reasonable) under the circumstances. *These factors assessed ONLY in a Specific JX case, NOT General JX.

- (1) **Burden on D & Witnesses**: DP does *not* guarantee suit will take place in the *most convenient* forum for D. Even if it’s hard for D to travel to the forum; unless D can show **severe disadvantage** in the litigation. & wealth is not determinative!
- (2) **State’s Interest**: Forum state *may* want to provide a courtroom for its citizens, who are allegedly being harmed by out-of-staters. This is *always* true if P is a citizen of the forum b/c state always has an interest in protecting its people.
- (3) **Plaintiff’s Interest**: maybe injured and wants to sue at home.

Contact	Relatedness	Fairness (specific only)
Purposeful Availment / Foreseeability	General v. Specific	Burden/Convenience State’s/Plaintiffs Interest

In Rem & Quasi in Rem: Here, power not over D herself, but over D’s property in the forum. *Must be attached* by the court at the outset of the case. To be constitutional, D’s contacts w/ forum must meet Const. test in personam cases.

SUBJECT MATER JURISDICTION – Courts Power over the CASE!

We know P will sue D in State X (PJ), now in *what court* in State X? (State/Fed)

State courts can hear *any* kind of case – they have General SMJ. *Except: patent infringement; bankruptcy, some federal securities & anti-trust claims. Federal Court, on the other hand, have “Limited SMJ” – **Two Types of Case**: (1) **Diversity of Citizenship** (including *alienage*) & (2) **Federal Question DIVERSITY of CITIZENSHIP & ALIENAGE**

Case is either (a) b/w citizens of different states (diversity) or (b) b/w a citizen of a state and a citizen of a foreign country (alienage), and AIC exceeds \$75,000.

Complete Diversity Rule: There is NO diversity if *any* P is a citizen of the same state as *any* D. If alien admitted to U.S. as **permanent resident** (green card alien), and is domiciled in the U.S. → She is an ALIEN, and *not* a citizen of that state – so litigating w/ her might invoke alienage, but *never* diversity. **Except**: NO alienage if green card alien is domiciled in same U.S. state as the litigant on the other side of the case. - Ex. P(AZ) v. D(Green Card Alien domiciled in AZ) in Federal Court → no SMJ. Ex. P(U.S. citizen domiciled in Japan) v. D(CA) in federal Court → no SMJ - no alienage b/c P is U.S. Citizen, not *alien*. Also, no *diversity* b/c P not a citizen of a U.S. state (b/c not domiciled in the U.S.)

We TEST for diversity when the case is filed, so don’t care what happens to citizenship *after* the case is filed or *before* the case was filed.

Citizenship of Persons/Corporation:

Person: Citizenship of *natural person* determined by the state in which person is **domiciled**. *A person can have ONLY one domicile

A person can have ONLY one domicile at a time & so citizen of only one state. **Establishing a NEW domicile requires**: (1) **Physical** presence, and (2) **Intent** to make that your permanent/indefinite home. **Intent Factors**: taking a job, buying a house, registering to vote, qualifying for in-state tuition, etc.

Corporation: *Citizenship* determined by 1) every state or country where **incorporated** AND the 1 state or country of its **principal place of business**.

PPB → Where managers direct, coordinate, and control corp. activities (“nerve center”) – usually the HQs. A corp. can t/f be a citizen of TWO states at a time.

Citizenship of Unincorporated Associations (Partnerships or LLCs) Determined by Citizenship of ALL its members (whether gen/limited partners).

Doesn’t matter where the unincorp. associated was formed, or its PPB (That’s only *relevant* for corporations).

Citizenship of Decedents, Minors, or Incompetents: Such persons must sue or be sued through a representative (no legal capacity, need rep). The rep’s citizenship is **irrelevant**. Use citizenship of decedent, minor, or incompetent.

Amount in Controversy: In addition to complete diversity & alienage, P’s claim must EXCEED \$75,000. This does *not* include costs or interest on the claim – its looks at the claim itself. Although, P might sue to recover interest *as* claim – ok! Whatever P claims in **good faith** is okay, UNLESS it is **clear to a legal certainty** that she cannot recover more than \$75K. (Ex. K claim \$50K & \$60K in punies) What P ultimately wins is irrelevant, but a P who wins less than \$75K may have to pay D’s “litigation costs” – basic exp. of litigation (filing & disco fees) not attny fees

Aggregation: Adding two or more claims to meet the AIC requirement. The court may agg claims of a single P against a single D to reach the req. AIC; The court may agg factually unrelated claims & there is no limit on the # of claims that can be agg. (P#1 v. D for \$50K, P#2 v. D for \$40K – not OK) Not by single P. **Joint Tortfeasors**: For joint claims, P can use the total value of the claim – the # of parties is irrelevant. - Ex. P (NY) can sue X, Y, & Z (CA) for \$75,000.1.

Equitable Relief: If P sues for *injunction*, AIC calculated by either of TWO TESTS P sues D for injunction to tear down part of his house that blocks Ps view.

Plaintiffs Viewpoint: ex: does harm decrease value of P’s property by > \$75K
Defendants Viewpoint: ex: would it cost D > \$75K to comply with equitable order

Exclusions: Even if reqs for diversity or alienage case are met, fed. c’ts decline to hear Divorce, Alimony, Child Custody, or Probate of an Estate cases.

Federal Question Cases: Claim in P’s complaint “arises under” **federal law** (e.g., federal constitution/legislation) Citizen & AIC irrelevant under *federal question*.

For FQ, c’ts looks for “**well pleaded complaint**” – not enough that some federal issue is raised by the complaint; the P’s claim itself must arise under fed law.

Ask: is P *enforcing a federal right*? If yes → FQ
Additional Claims: Once in fed c’t via Diversity or FQ – additional claims might be asserted by P, or counterclaim asserted, cross-claim – must be tested individually
 Must test every single addtl claim for SMJ (EVERY claim in fed ct must have SMJ)

If additional claim *cannot* satisfy Diversity or FQ, c’ts can hear via Supplemental JX

Supplemental Jurisdiction: This does not get a CASE into fed c’t. The CASE is already there via diversity or FQ. SJ gets CLAIMS into that case, even though they do not meet diversity of citizenship and do not meet FQ.

Two-Step Test: (1) **The Test**: the addtl claim must share a “**common nucleus of operative facts**” w/ the claim that invoked federal SMJ. *This* analysis is always met when claim arises out of same T/O as underlying case (narrower than nuc of op fact)

(2) **The Limitation**: certain claims (by statute) *cannot* invoke supp JX even if they meet the test: In a **diversity** case, P cannot use sup JX to overcome lack of diversity – so the limitation does not take sup JX away over claims by Ds or 3rdp Ds – also, doesn’t apply to FQ cases. Limitation *only* applies to P!

Discretionary Factors: Even if claim meets req for Supp JX, the c’t has discretion to **DECLINE** JX if: 1) State law claim is **complex**, or 2) state law issues would **predominate** in the case, or 3) **underlying claim** in the case is **dismissed** early.

REMOVAL

A D sued in state c’t might be able to **remove** the case to fed c’t (state → federal)

IF removal is improper, the fed c’t can **remand** case back to state (federal → state)

WHEN → D *must* remove w/in 30 days of service (not filing) of first paper that shows case is removable. Usually means 30 days after service of process. WHO → ALL Ds who have been served w/ process must unanimously join in the removal. *30 days start anew w/ service on D2. * P can *never* remove!

WHAT cases → any case can be removed if it meets req for diversity/FQ . You can remove if it belongs in Fed C’t – **BUT** Two Exceptions w/ **diversity**

Exceptions: if removing on basis of **diversity**: (1) NO removal if any D is a citizen of the forum state (in-state D rule) – *unless* in-state D is dropped, & (2) NO removal more than one year after case was filed in state court. – *unless P acted in bad faith* (Ex. joining D2 to prevent removal)

WHERE → D removes to fed district that geographically “embraces” the state court where case was filed. (Ex. SD Sup c’t → Southern District Fed c’t)

HOW → no need to get permission: (1) file “**notice of removal**” in **Federal C’t**, stating grounds for removal (SMJ); (2) Attach all documents served on her in state action. (3) file a copy of the “notice of removal” in state court.

REMAND

IF P thinks case should not have been removed, she moves to remand to state court. If P seeks to remove for reasons OTHER than SMJ, she must move to remand no more than 30 days after notice of removal is filed in state court. If P seeks to remove for lack of SMJ, she can move to remand at ANYTIME *C’t must remand if no SMJ; there is no time limit. **BUT**, if D removes a diversity case with an in-state D & P moves to remand, it’s NOT a “lack of SMH” issue (*procedural*), so P must move to remand w/in 30 days.

ERIE DOCTRINE – What Law Applies?

When in fed c’t on **diversity**. STEP 1 → is there some fed law (like fed const or statute, or FRCP/FRE) on point that directly conflicts with state law? If so, apply Fed law. FRCP valid if it does not modify substantive rights. Met if rule is arguably *procedural*. STEP 2 → If no Fed law on point, fed judge must apply state law if the issue to be determined is “substantive” – (1) Elements of a claim or defense (2) Statute of Lim (3) Rule for tolling SOL, and (4) Conflict (or choice) of law rules.

STEP 3 → If no fed law on point AND issue is not 1 of 4 listed above, fed judge must determine *whether* issue is “substantive” – 3 FACTORS:

- (1) **Outcome determinative**: applying or ignoring state rule affect outcome? If so, probably a substantive rule & c’t should apply state law.
- (2) **Balance of Interest**: fed/state systems strong interest in having rule applied
- (3) **Avoid Forum Shopping**: if ignoring state law will have ppl flock to fed

Federal Common Law: *Erie* means there's no GENERAL fed common law, but there are areas in which fed c'ts free to make up common law on own: International relations, admiralty, disputes b/w states, right to sue a federal officer for violating one's federal rights – "filling gaps" in fed statutes.

VENUE

SMJ tells us we can take case to fed c't. Venue = exactly *which* fed district! P may "lay venue" in any district where: **ALL** D's reside; or a substantial part of the claim arose. If all Ds reside in diff districts of the *same state*, P can lay venue in the district in which *any* D resides (Individual Ds "reside" in any district where domiciled; Corps "reside" where subject to PJ for this case).

Transfer of Venue: A fed district c't (transferor) may transfer the case to *another* fed dist court (transferee), **BUT** it can only transfer to dist where the case *could have been filed*. T/f transferee must be proper venue w/ PJ over Ds
Exception: C't can transfer to *any* district (even if improper) if: ALL parties consent (unlikely P will), **and** court finds cause for the transfer.

Was Original Dist a Proper Venue: If OG dist was **proper** → the c't can transfer based on (1) convenience of parties and witnesses, and (2) in interest of justice (discretionary) – no right to transfer. IF case is transferred, transferee applies law that transferor would have applied. **FACTORS:**
Is the transferee the "Center of Gravity": Public: what law applies, what community should be burdened w/ jury service, etc. Private: convenience, where evid/W's are, existence of a valid forum selection clause. If forum selection clause → will be transferred and transferor law *not applied*.

FORUM NON-CONVENIENCE

Available when: (1) Another c't is the center of gravity & makes more sense than the present c't, and (2) Transfer to that court is **impossible**, b/c the more convenient ct is in a *different judicial system* (ex. In a foreign country). In this case the court does *not* transfer...it **STAYS** or **DISMISSES** the case. Idea is that P will then sue in the other court – other court must be both **available** and **adequate**: Adequate = doesn't req the other permit a trial by jury or recover emotional distress, only that **P will get her Day**
FNC dismissal almost never granted if P is resident of present forum. Decision made on same public & private factors above. *But* this requires a stronger showing, since this results in a stay or dismissal.

SERVICE OF PROCESS

D is entitled to notice that she has been sued. Usually consists of (1) summons (formal c't notice of suit & time for response), and (2) a copy of the complaint. – Together, these two docs are called "**process**"

Service of Process: WHO can serve → any non-party at least 18y. HOW is process served → (1) Personal Service – papers personally given to D (anywhere) (2) **Substituted Service** – process is left at D's home; okay if at: D's "usual abode" (common sense) & person served resides there (suitable age & discretion) (3) Service on D's Agent – process delivered to D's agent if receiving service is w/in the scope of agency (i.e., corps registered agent, managing agent, or officer) P can use **any available method** of service, even if personal service is possible. Available methods also includes those permitted by state law of the state: (1) where the fed c't sits *or* (2) where service is made. (state law *may* permit by mail)
***In rem** action → whose addresses are known *must* be notified at least ord mail
Waiver By Mail: P may mail D a copy of complaint and two copies of a waiver form, w/ a prepaid means of returning the form (e.g., stamped envelope). If D executes & mails form to P w/in **30 days**, D waives formal service of process. If D fails to return the form, must be served personally or by substituted service. If D did not have "good cause" for failing to return waive, must pay costs of serv
Return of Service: Person who serves process must file report w/ court detailing how service was made. If server was a civilian, report is by affidavit – failing to file this report doesn't affect validity of service – makes it harder to prove service
Service of Other Documents: Other docs are served informally (i.e., mailing/delivering docs to party's attorney). Other docs: answers, motions, discovery. *Note: If MAILED → receiving party has 3 extra days to respond. Docs can be served by email if the party agrees.

PLEADINGS

Complaint: Case begins when the complaint is FILED.

Requirements: (1) Statement of grounds of SMJ (not PJ or Venue); (2) Short & Plain statement of claim showing entitlement of relief; (3) Demand for relief sought (i.e., damages, injunction, dec judgments). Fed c'ts use "**notice pleading**"

SC now req more detail; **plead facts supporting a plausible claim** – judge uses her own experience/common sense. D can challenge by making 12(b)(6) Motion

Particularity: Some matters *must* be pleaded w/ even more detail: w/ *particularity* or *specificity*: 1) Fraud (most tested), 2) Mistake, 3) Special Damages

D's Response: Rule 12 req D to respond by either:

(1) **motion** or (2) **answer**

To avoid default, D must do so within **21 days** after service of process, OR If D waived service, he gets **60 days** from when **P mailed the waiver form**

MOTIONS: Motions are NOT pleadings; they are *requests* for a court order
Issues of Form:

1) Motion for a more definite statement (when pleading is so vague D can't frame a response);

2) Motion to strike (immaterial/scand claims)

Rule 12(b) Defenses: (1) lack of SMJ, (2) PJ; (3) Improper Venue; (4)

Improper Process (problems w/ papers); (5) Improper Service of Process; (6)

Failure to State a claim; (6) Failure to Join an Indispensable Party. – These

defenses can be put *either* in a motion to dismiss OR in the answer. **BUT** –

Rule 12(b)(2)-(5) are **waivable** → means **MUST** put in **FIRST** response

(motion/answer) or waived.

12(b)(6)&(7) raised at any time, even through trial. **AND** 12(b)(1) *never* waived!

ANSWER: This is a pleading that performs two functions:

(1) it **RESPONDS** to allegations of complaint – D must admit, deny, or state he has insuff info to admit/deny (effect of denial) – D has a duty to investigate & failure to respond = admission. *But D never deemed to admit damages.

(2) it raises **AFFIRMATIVE DEFENSES**. These inject a new fact in the case that will permit D to win (Ex. SOL, SOF, res judicata). Failure to raise AD = waiver.

Counterclaims: claims against an **OPPOSING** party. Under rule 12, P must respond **w/in 21 days**, since P now a defendant.

Compulsory CC: Arises from **same T/O** as P's claim – *unless* D already filed claim in another case, he **MUST** file this claim or it's waived. ***ONLY** type of claim that's compulsory.

Permissive CC: NOT arising from same T/O – D **not** req to file this claim.

*Remember SMJ: must assess whether CC invokes diversity/FQ. If so, it's permitted in fed c't → if not, try supplemental JX.

Cross-Claim: This is a claim against a **CO-PARTY**. Must arise from same T/O as underlying action. **BUT not** compulsory (permissive).

Additional Claims: Once you file a counterclaim or cross-claim (or any claim), you can join additional claims, even those having nothing to do with the others. **BUT, ALL** additional claims must invoke SMJ – diversity, FW, or (if neither works), Supplemental JX

Amended Pleadings:

4 Fact Patterns:

(1) **Right to Amend:** P has a right to amend **ONCE** w/in **21 days** after D serves his first **Rule 12 response**. D has a right to amend **ONCE** w/in 21 days of serving his **answer**.

(2) **Leave of Court:** When no right to amend, party must seek leave of court, which will be granted if "justice so requires" – 3 factors: 1) Delay; 2) Prejudice, & 3) futility of the amendment

(3) **Variance:** Occurs where the evidence at **trial** does not match what was pleaded. At or after trial, P can move to amend complaint to conform E. *If objected to, E would be inadmissible b/c it's "at variance" w/ the pleadings.

(4) **Relation Back:** This is an amendment **AFTER** the **statute of limitations** has run. Relation back = c't treats amended pleading as though it was filed when original was filed, to avoid SOL problems.

A. To Join a New Claim: Amended pleading "relates back" if the new claim concerns the **same conduct, transaction, or occurrence** as the original pleading.

B. To Change the Defendant: Amended pleading "relates back" if: 1) it concerns the same conduct, transaction, or occurrence as the original; 2) the new party knew of this case w/in 90 days of its filing; and 3) new party knew that, but for the mistake, he would have been named originally. Applies when P sued wrong D, but right D knew about it.

Supplemental Pleadings: Set forth things that happened *after* the pleading was filed. Different from amended pleading, which set forth things happened *before* the pleading was filed, but were not asserted until later. *Always *discretionary*.

RULE 11

Rule 11 applies to all documents except discovery. Used to *deter* attorneys from filing baseless claims (not to punish). When lawyer (or *pro se*) signs a document, she certifies that, to the best of her knowledge and belief, *after reasonable inquiry*:

(1) paper is not for an **improper purpose**; and

(2) legal contentions are **warranted by law**, or by a non-frivolous argument for a change to the law; and

(3) factual contentions & denials have **evidentiary support**, or are likely to have evidentiary support after further investigation.

A lawyer must make this certification every time she "presents" a position to the court (i.e., when she later advocates a position taken in a document) – this is a continuing certification. *Note: rule applies to *all* docs, except discovery.

- If Rule 11 violated, c'ts can levy sanctions against → Party, Attorney, or Firm

If there is a **VIOLATION** (i.e., assertion of a baseless claim) → either: Court raises the issue sub sponte – c't usually issues "order to show cause" why sanctions shouldn't be imposed – *must* give chance to be heard before sanctions **OR**

Opposing party serves motion on party in violation, but doesn't file right away – Party in violation has a **safe harbor** of **21 days**, can fix prob and avoid sanctions

If *failed* to fix w/in 21 days → motion can then be filed.

Rule 11 Sanctions *may* be ordered against **party, attorney, OR the firm**: Sanctions may be either monetary or non-monetary (ex: professionalism classes); and monetary sanctions are often paid to the court, and *not* to opposing party. Could include payment of expenses or attorneys' fees incurred b/c of the improper paper. *But*, before imposing sanctions, court must give you a chance to be heard.

DISCOVERY

Required Disclosures: these materials must be produced even if no one asks for it
Initial Disclosures: unless a court order or stipulation says otherwise, within 14 days of the Rule 26(f) conference (where parties meet and confer about scheduling), each party must disclose:
 1) **Identities of persons who have discoverable info** that you the (disclosing party) may use to support your claims (names/phone numbers & subjects they have info on); *Note: does NOT apply to info that would HURT the disclosing party's case
 2) **Documents and things** you may use to support your claim/s defenses (includes photos/recordings/electronic info, even a defective tire from an auto accident)
Failure to disclose: cannot use that info unless failure was justified/harmless—only applies to documents/things/info in your control or custody)
 3) **Computation of monetary relief:** anyone claiming monetary relief must provide a “computation” supported by documents or ESI in the amount sought
 4) **Insurance coverage:** D must disclose insurance that might cover all or part of the judgment in the case (even if not admissible at trial)
Expert witnesses: when directed by the court, each part must identify expert witnesses to be used (does not include a consulting expert who helps prepare case)
-Facts and opinions held by experts are generally NOT discoverable
What gets disclosed: expert identity and a **written report** prepared by the EW with:
 1) *Opinions he will express*; 2) *basis for opinions*; 3) *facts used to form opinions*; 4) *his qualifications*; 5) *how much the expert witness is being paid*
Deposition of EW: can be done once the written report is made
Early drafts of EW report/communications with lawyer are protected work product
Non expert witness: s/ one can have expertise, i.e. doctor, but not testify AS an EW
Failure to identify EW/provide report: cant use EW unless failure justified/harmless
Pre-Trial Required Disclosure: No later than 30 days before trial, must give **detailed information about trial evidence**, including: *identity of witnesses to testify/documents/ESI and things to be introduced at trial*
Discovery Tools:
When can discovery first be requested: after the 26(f) Scheduling Conference
Depositions: live testimony in response to written questions by counsel or pro se parties—Can be oral or written and are done **under oath**, recorded via transcript
Deponent answers questions from memory, does NOT have study/review notes
Depositions of non-party: Yes, but should get subpoena to compel attendance—unless they agree otherwise, the farthest distance they can travel = 100 miles
Depositions of party: don't need subpoena, just need to serve notice of deposition
Subpoena “duces tecum” requires deponent bring certain materials to the deposition
Limits on depositions: cannot take more than 10 depositions; cannot depose the same person twice without court approval; and cannot exceed 7 hours in one day unless court ordered/stipulated by the parties
Use of depositions at trial: 1) impeach deponent; 2) any purpose if deponent is an adverse party; 3) any purpose if the deponent is unavailable at trial unless absence was procured by the person seeking to introduce the evidence
Interrogatories: written questions to be answered in writing under oath
Can be sent to: parties ONLY and parties
Time to respond: 30 days to respond with answers or objections
Answering Interrogatories: need to use information reasonably available—if answers can be found in buz records & too burdensome to answer= turn over records
Maximum number: 25 questions, including subparts
Using answers to your own interrogatories at trial = not allowed
Requests to Produce: requests to make documents/ESI available for review/copying
Response Time: within 30 days of service, can agree to produce/assert objections
Requests to Parties and non parties = Yes, but subpoena the non-parties
Format of ESI: requesting party specifies the form (i.e. hard copy)
Medical Exams: must get a court order and show that **health is in controversy** and there is “good cause” (applies to party OR non party in their custody/legal control)
Privilege: WAIVED Who chooses the licensed doctor: party requesting court order
Request for admission: written request to PARTIES that they admit something
Failure to respond within 30 days = it is deemed admitted
Response that someone doesn't know the answer = ok if made reasonably inquiry and not enough information to admit or deny
Under Oath: Every discovery request/response is signed counsel certifying 1) it is warranted; 2) has a proper purpose; 3) not unduly burdensome
Duty to Supplement: in light of new circumstances a previous response to a disclosure or interrogatory, etc., may now be incorrect, so you have a duty to supplement your response
Scope of Discovery: anything relevant to a claim or defense
Relevant = “reasonably calculated to lead to the discovery of admissible evidence” (Broader than what is actually admissible, i.e. it could include hearsay)
 E.g. net worth of D not relevant for compensatory damages BUT is for punitive

DISCOVERY

Proportionality: even if relevant, court can limit discovery that is cumulative or if burden outweighs importance of the issue (i.e. a lot of \$ to recover emails)
Privilege: can object to discovery on the basis of **evidentiary privilege**, i.e. confidential communications between attorney and client
Work Product: materials made in **anticipation of litigation** is generally protected from discovery—does not have to be generated by the lawyer himself
Electronic format = ok, can still be considered work product
How can work product be discoverable: **Qualified work product** = if there is a substantial need for a statement included in the work product and its not otherwise available
 BUT **absolute work product** cannot be discovered (impressions/opinions, etc.)
Identity of people: discoverable information NOT protected by work product
Right to ask for own statements = ok, NOT work product
Asserting Privilege/ Work Product: if you withhold discovery/seek a protective order you must claim protection **expressly & describe the material in detail**
Inadvertent receipt of protected materials: must **notify** the other party AND promptly and return, sequester or **destroy** the materials
Enforcement of Discovery Rules: 3 ways courts get involved in disputes
 1) **Protective Order:** if party thinks a discovery request subjects it to annoyance, embarrassment, undue burden or expense or request is cumulative
 -Moving party must first certify they tried to “meet and confer”
Court can: deny discovery; limit it; or permit on certain terms
Motion to compel answers where party object to some questions = First get an order to compel (plus costs of motion) then can get sanctions/contempt
No response to discovery, request for production, etc. = straight to sanctions--
 Establishment order, strike the pleadings of disobedient party, disallow evidence of disobedient party, dismiss the case, enter default judgment
Note: no sanctions if loss of material was in good faith/unintentional
 MULTIPARTY LITIGATION
Proper Plaintiffs and Defendants
 Multiple Plaintiffs MAY sue together as co-plaintiffs if there claims:
 1) **Arise from the same transaction or occurrence AND 2) raise at least one common question** (same test arises for multiple Defendants)
 → Then with these parties assess whether there is **diversity OR federal Q**
Necessary and Dispensable Parties:
 An absentee is **necessary** if the court
 1) Cannot accord complete relief among existing parties without A
 2) A's interests would be harmed if not joined
 3) OR A claims an interest that subjects a party threat of multiple obligations
Can the party be joined?
 → Court must have **PJ over you** and adding you does not destroy diversity
If you can't be joined? Can proceed without you or dismiss the entire case
 -To decide, court will look at whether alternative forums are available, the likelihood of harm to you, can the court offer relief to avoid that harm?
Joinder Rules start with “C”—Counter claim and cross claim
Impleader: bringing in a new third party defendant
 An impleader claim does NOT have to be asserted (not compulsory)
 An impleader claim is usually for indemnity or contribution
Steps: 1) D filed a third party complaint; 2) serves process on the third party; 3) court must have personal jurisdiction over the third party
After a TPD is joined, can P assert a claim against a TPD? YES, is same transaction or occurrence as the underlying case
After a TPD is joined, can TPD assert a claim against P? Yes if it is the same transaction or occurrence as the underlying claim
Can D implead a 3P from the same state as P? YES
Can P then bring a claim against the 3P from the same state? NO
Intervention: non party brings themselves into the case as either a P or D
Intervention of right: A's interest will be harmed if not joined and adequately represented now
Permissive Intervention: A's claim or defense in the pending case have at least one common question—court has discretion over whether to allow
SMJ: assess the claim by/against the intervenor for SBJ, then try supplemental)
Class Action: rep dues on behalf of a group
Requirements: **numerosity** (too many for joinder); **commonality** (same issue); **typicality** (reps claims typical to the class) and **adequate representation**
3 classes: 1) **Prejudice** (class treatment necessary to avoid harm to class members); 2) class seeks and **injunction or declaratory judgment** (no damages)
 3) **Damages** (common questions predominate over individual questions AND the class action is the superior method to handle the dispute

In a **type 3 class**, court must notify the class members that they are in a class—this means individual notice, usually by mail
 -Notice says can opt out/bound if they don't/can enter separate appearance w/counsel
For all classes: Rep's complaint will say “class action” BUT not a class action until the court certifies (after certification court will define the class and its claims/defenses)
 -Court must also certify the class counsel—i.e. appoint the lawyers to the class
Can parties settle or dismiss a class action? Only with court approval
For Diversity class actions, look at the citizenship of the rep (against all D's) and the amount of the rep's claim (i.e. must exceed 75k)

ADJUDICATING THE DISPUTE

Preliminary Injunctions: the function of a preliminary injunction is to **maintain the status quo until trial**—adverse party must be given notice & opportunity to be heard
 Burden on Applicant to show: 1) likely to suffer **irreparable harm**; 2) he likely to **win on the merits**; 3) the **balance of hardship** favors him; 4) injunction is in the **public interest** (Can NOT be granted ex parte)
TRO: can be issued if irreparable injury will occur before the hearing on the preliminary injunction—generally the adverse party must be given notice
Ex Parte TRO (No Notice): issued for up to 14 days (max 28 if good cause) IF:
 1) **Applicant files papers under oath** clearly showing he will suffer **irreparable injury**
 2) Moving party certifies in writing the steps **they made to notify** the adverse party and the **reasons why notice** should not be required
 3) Moving party **provides security** to pay for damages to other party in the event that they are wrongfully restrained
 *If issued, what can D do? He can move to dissolve or modify the TRO
Voluntary Dismissal: If P wants to withdraw the case, he can make a motion for dismissal at any time, BUT must do so **before D answers or motions for MSJ**
If P makes a timely notice of dismissal, the case is dismissed without prejudice
Default and Default Judgment: if D does not respond to complaint within 21 days after 60 days from mailing waiver of service
Does court automatically enter default judgment on 22nd day? NO. P must motion
Until Default is entered: (notation on docket sheet by Clerk) D can still respond beyond the 21 days, but once it is entered it cuts off the right of D to respond
Ho to get a default judgment: CLERK can enter judgment if: 1) D has made no response at all; claim is sum certain; claimant gives sworn affidavit of \$ owed; D is not a minor or incompetent
If clerk cannot enter, the judge will hold hearing (D gets notice if he has appeared)
Max recovery on default judgment = what you pleaded/ cannot get s/g different
Motion to Set Aside: Used by D if he can show **good cause and viable defense**
Motion to Dismiss for failure to State a Claim—12(b)(6) whether the case belongs in the litigation stream at all; looks at the allegation of facts and asks, “**if these were true, would P be entitled to judgment?**” (Court does NOT look at evidence, just facts of the complaint)
Motion for judgment on the Pleadings: same as 12(b)(6) but AFTER D answers
Motion for Summary Judgment: must show: 1) there is no genuine dispute on a material fact and 2) she is entitled to judgment as a matter of law
 Ruling by judge is **discretionary**/motion can be made any time until **30 days after the close of discovery**/ motion can be “**partial**” if there are several claims
Court looks at evidence in light most favorable to the non-moving party (pleadings, affidavits, discovery on file, interrogatory answers, etc. all sworn to under oath)
Denial of motion: NOT appealable
Judgment as a matter of law (Directed Verdict) Can be granted for either party if the court finds that a **reasonable jury could not have a legally sufficient basis** to find for the non-moving party (after conclusion of P or D's case in chief)

CONFERENCES AND MEETINGS

Rule 26(f) Conference: At least 21 days before the scheduling conference, both parties must “**meet and confer**” to discuss production of required initial disclosures, claims, defenses, settlement AND THEN **present a detailed discovery plan**
Scheduling conference: courts enters a scheduling order limiting the time for joinder, motions, and discovery
Pre-trial conferences: may be held to **expedite trial and foster settlement**; the **FINAL pretrial conference** may be held to **formulate a plan for the trial including a program for the admission of evidence**

TRIAL, JUDGMENT AND POST TRIAL MOTIONS

Jury Trial: A jury determines the facts the returns verdict

Right To A Jury Trial: The 7th Amendment preserves the right to a jury trial in federal "civil actions at law" where the AIC exceeds \$20, but not in suits at equity
-When a case involves *both law/equity*, the jury decides the facts underlying only the damages claim (Jury issues are tried first and Judge handles remainder)

Requirements: A party must demand the jury *in writing*, no later than 14 days after service of the last pleading raising jury-triable issues → otherwise, the right waived
Jury Selection & Composition In the jury selection process (voir dire), each side may ask the court to strike (remove) potential jurors

There are TWO kinds of challenges to jurors: (1) *For Cause* – when the potential juror will not be impartial (unlimited) (2) *Peremptory* – for no reason (3 per side)
Challenges must be used in a *race- and gender-neutral manner*

Minimum/maximum: There must be a minimum of 6 and a maximum of 12

-When only 6 jurors are empaneled, the verdict MUST be unanimous (must be 6)

-Generally, all participate in verdict unless excused for good cause

-If 6 jurors, 1 excused, no verdict – must have at least 6 unless parties agree o/w

-And, unless the parties agree otherwise, the jury vote is generally *unanimous*

Jury Instructions: The jury decides the facts, but is instructed by the judge on law At close of evidence (or earlier), *parties submit proposed jury instructions* to judge Before final argument & instruction, the court informs the parties of what instructions it will give and which it will reject (parties must object BEFORE final argument)

When objections must be made: BEFORE the jury is "charged" (instructed), or else the issue cannot be raised on appeal, unless plain error & affects substantial rights

Types Of Verdicts: The judge determines what verdict form the jury will use

1. General: The jury says who wins and, if P wins, what the relief will be

-The clerk of court then enters the judgment on the general verdict

2. Special: The jury answers specific questions about the facts in dispute

-The judge then reaches legal conclusions based on the facts found

3. General Verdict + Special Interrogatories

The jury gives a general verdict but also answers specific questions submitted to it The Q's ensure the jury considered and understood important issues

Entrv of Judgment

General verdict → the clerk enters the judgment

Special verdict/gen verdict + special interrogatories, and the **answers are consistent** w/ each other and with the verdict → **the judge approves judgment & clerk enters** If the jury did **not follow instructions**, or the verdict is **internally inconsistent** (i.e., answers inconsistent w/ the result) → no judgment is entered

The court can either: Instruct the jury to reconsider its answers, or order a new trial

Juror Misconduct: The court can set aside the verdict and order a new trial based on juror misconduct (i.e. if false testimony on voir dire/juror not actually qualified A verdict may be "impeached" based on external matters (Ex: jurors were bribed, based their verdict on their investigation of matters outside of court)

Juror testimony: NOT allowed if relates to anything said DURING jury deliberations BUT, a juror cannot testify if to show extraneous prejudicial info or outside influence
Set Aside: a verdict will not be set aside if the misconduct was harmless

Bench Trial: When there is no jury, the judge determines the facts at trial

She must record findings/conclusions of law by stating them on record/in writing
She must also enter the judgment (who wins, what relief)

Motions at and after Trial:

Judgment as a Matter of Law (see above)

Renewed JMOL: The SAME as JMOL, but made after trial

-The motion must be made w/in 28 days after entry of judgment

-It is an absolute prerequisite that you already moved for a JMOL

-If RJMOL is granted, the court enters judgment for the party that lost the jury verdict **Motion For A New Trial:** When some error at trial requires we start over with a new trial

-Can be based on any non-harmless error that makes judge believe we need a do-over
Party must move w/in 28 days after judgment

Examples: serious error

1. Judge gave an erroneous jury instruction
2. There is new evidence that could not have been found before w/ due diligence
3. Misconduct by a juror or party or lawyer
4. Judgment is against the weight of the evidence (serious error of judgment)
5. Inadequate or excessive damages

Note: if a party was entitled to RJMOL, but waived it by failing to move for JMOL, CAN STILL move for a new trial

Difference from granting a RJMOL: Less dramatic because we are starting over; the same party might still win (RJMOL takes judgment from one party and gives to the other)

Remittitur & Additur To avoid a new trial, the judge might order remittitur or additur instead

Remittitur = the judge gives P a choice: take a lesser amount or go through a new trial (this is allowed in state and Federal court)

Additur = the judge gives D a choice: pay a greater amount or go through a new trial (Unconstitutional in federal court BUT permissible in state Ct.)

Offer of Judgment: At least 14 days before trial, if D offers to pay \$50K to settle P's claim. P can accept and judgment will be entered for that amount—If P rejects and recovers LESS, liable for costs incurred to D after the offer was made

Motion for Relief from Order/Judgment:

- 1) Clerical Error= can make motion ANYTIME
- 2) Mistake/Excusable Neglect = reasonable time (<1 Year)
- 3) New Evidence discovered = Reasonable time (<1 year)
- 4) Judgment is void, i.e. no SMJ (reasonable time <1 year)

APPEALS

Final Judgment Rule: general rule, you can appeal only from final judgments

Final Judgment = an ultimate decision by the trial court on the *merits of the entire case*

Ask: After making this ruling, does District Court have anything left to do on the merits of the case? If yes, not final judgment

Ex. Denial of a motion for a new trial = Yes Final Judgment BUT NOT Grant of motion for a new trial

Ex. Denial of MSJ-case still alive and well

Ex. Grant of motion to transfer or remand-case still alive

"**Notice of Appeal**" must be filed *in the trial (district) court* w/in 30 days after entry of final judgment

Interlocutory (Non Final) Review: may be appealable even though no final judgment

Interlocutory Orders reviewable as of right: Any order refusing, granting, etc. an injunction

Interlocutory Appeals Act:

(a) Trial judge certifies that it involves a controlling issue of law (b) as to which there is substantial ground for difference of opinion *and* the (c) court of appeals agrees to hear it.

Collateral Order Exception: Appellate court has discretion if:

a) It is distinct from the merits of the case; b) involves an important legal question; and c) is essentially unreviewable if parties await final judgment
Class Action: court of appeals has discretion to review an order granting or denying certification of a class (review must be sought within 14 days of order)

Extraordinary Writ:

Writ or Mandamus or Writ of Prohibition

This is an original proceeding in the appellate court to compel the trial judge to make/vacate an order

This is NOT a substitute for appeal; available only if the lower court is violating a clear legal duty

Standard of Review: When the district judge decides questions of law → de novo (no deference)

-Ex: the *content* of jury instructions, burden of proof put on wrong party

When the judge or jury decides questions of fact → clear error

-Appellate court will affirm unless the findings are clearly erroneous (some discretion/deference)

On discretionary matters → abuse of discretion

Appellate court will affirm unless the district court abused its discretion
Must be more than "I would have found the other way"

PRECLUSION

Basic Idea: Whenever there has been an earlier case watch out for issues concerning the *preclusive effect of a prior judgment* on the merits

Question: Does a judgment already entered in case 1 preclude litigation of any matters in another case?

When to use federal law for preclusion: if first case litigated in federal court and second case in state court, apply federal law (or vice versa)

Claim Preclusion: you only get to sue on a claim once

Requirements:

- 1) Case 1 and case 2 brought by Same P against same D
Majority view: claim – right to relief from same transaction or occurrence
Minority view: separate claims for property damage/property rights b/c they are different "primary rights"
- 2) Case 1 ended in a valid judgment on the merits
(Does NOT include Jurisdiction/venue/indispensable parties)

Issue Preclusion: A party cannot re litigate the same issue twice

Requirements:

- 1) Claim 1 ended in a valid judgment on the merits
- 2) The same issue was *actually litigated and determined* in claim 1
- 3) The issue was essential to judgment in claim 1 (this means the finding on the issue was the basis for judgment, i.e. finding P negligent
- 4) It is *asserted against* a person who was a party or in privity in claim 1
- 5) Its is *asserted by a person* who was a party or in privity in claim 1
*If asserted by a non-party → non mutual issue preclusion
a) **Defensive; not a party, now the Defendant**
-Generally OK so long as P had a chance to fully litigate in claim 1
I.e. Your roommate gets in accident driving your car and gets sued by driver and your roommate wins. NOW driver sues you. Can issue preclude
b) **Offensive; Not a party, now the plaintiff**
MIGHT be ok, turns on fairness
I.e. same hypo but you bring suit against driver instead of driver suing you

Fairness factors:

- 1) Driver had a *fair opportunity* to litigate claim 1
- 2) Driver had *strong incentive* to litigate the case
- 3) You could *not have easily joined* in case 1
- 4) There are *no inconsistent findings on the issue* (i.e. if there were multiple cases on this accident and sometimes driver was negligent and sometimes he wasn't)



Civil Procedure
Condensed Study Sheet
California

Personal JX.	Venue	PLEADING CONT.	
<p>Basic Q: <u>CAN P SUE IN THIS STATE?</u> -2 Step analysis: 1) Satisfy a State Statute AND 2) Satisfy the Constitution (Due Process). Same as Fed. In Personam JX. P sues to impose a personal obligation on D. 1, Statutory analysis, have In Personam JX over (1) D's served with process in State, OR (2) are domiciled in the State, OR (3) do certain things in state. 2, © Analysis, same as fed. (1) Contact from purpose availment, and foreseeability; (2) Relatedness Gen. vs. Specific; (3) Fairness (specific JX. Only) Burden/convenience, State's interest, P's interest.</p>	<p>Transfer of Venue Sup. Ct. of one county → Sup. Ct. of another county. -Original venue is improper. Motion to trans. made w/ or before answer, demurrer, or motion to strike. -If Orig. Venue proper, Ct. can trans. if: (1) reason to believe impartial trial in orig. venue, OR (2) convenience of witnesses & ends of justice would be promoted; Or (3) No judge qualified to act. Ct. chooses new Venue. Inconven. Forum (forum non conveniens). -In Fed. Ct., this is where ct. dismisses (or stays) bc the more convenient & approp. Ct. in a different judicial system (e.g. state ct. of TN.). D may have to waive PJ or SOL objection in other forum.</p>	<p>2) Punitive Dam.). Anytime there's a claim for pun. Damages D finds out by Stat. of Damages. P provides in 15 days. 2) Fact pleading req. Show Ultimate Fact. 3) Heightened Pleading Req: FRAUD pleaded w/ particularity. Also, civ. Conspiracy, tort breach of K, unfair bus. Practices, & Prod. Liab. 4) Fictitious D: Doe D. Must state or lose. 5) Verified Pleading: signed under oath by party. Rare but req. Can be used as evid. for SJ. D's Response: Must respond w/in 30 days after service of process. 1) Gen. Demurrer: Failure to state facts sufficient to COA. Similar to Fed motion to dismiss for failure to state a claim. So court takes factual allegations as true and limits its assessment to the complaint (and matters of which it takes judicial notice). Can also raise lack of smj. Instead of Gen. Dem. Can raise defense in answer instead. Could also be used for "judgment on the pleadings" if it is raised after D has pleaded and time for dem. expired. 2) Special Dem: Can be used to assert many (pretty minor) defenses. Can charge the complaint as unclear about which theories of liability are asserted against each D. Lack of legal capacity. Existence of another case btwn same parties on same COA. Defect or misjoinder of Parties. Failure to plead whether K is oral or written. Failure to file a "cert. of merit." Not avail. In lim. Civ. 3) Motion to Quash Serv. Of Summons: Used to assert Lack of PJ, improper Process, Impropr. Serv. Of Process. Called SPECIAL APPEAR. Made BEFORE OR W/ Dem. or waived. If ct. denies quash D must dem or answer w/in 15 days. Only way for appellate review is Writ of mandate. 4) Forum Non.: Waived if raised after dem or mot. To strike. Not waived after an answer. 5) Motion to Strike: Fed ct. strikes all or part of any pleading as "irrelevant, False, or improper." Anti-SLAPP: Leg. Concerned w/ lawsuits against public part. Suits that chill 1st amend. Rights. 6) Answer. Same as Fed. Deny parts of complaint. 7) Timing: No later than 30 days after service. Claims by D: As in Fed. Ct. D can assert a claim (1) against the P (an opposing party), (2) against a co-D, or (3) against an impleaded 3rd-P D. Fed Ct. these claims had different names—(1) counterclaim, (2) X-claim, & (3) impleader. CA called X-comp. 1) X-Complaint against P. Like Fed. Counter claim. Except: not part of answer (sep. doc.). Filed before or same time as answer. 2) X-complaint against Co-Party. Like Fed cross claim. May be filed anytime before the court has set a trial date. A) Claim against Co-P, by a defending party, B) Arise out of same T/O</p>	<p>C) It is <i>never</i> compulsory. Party may assert it here as a x-complaint or may sue in a sep. case. 3) X-complaint against 3-P D. Like fed. Impleader. Filed anytime before the ct has set a trial date. Never compulsory. Usually for indemnity or contribution. 4) Person against whom x-complaint asserted must respond w/in 30 days of service. 5) If x-complaint asserted against person who has not appeared in case, MUST serve summons. Amended Pleadings: -P has right to amend (matter of course) before D answers or dem. After dem. but before hearing issue raised by dem, any party has right to amend once. -any party can seek leave to amend anytime. -If ct. sustains dem or grants mot. To strike, ct will usually do so "with leave to amend." Relation back & fictitious D. Relation back OK if: a) original complaint was filed before the SOL ran & contained charging allegations against fict. D. b) P genuinely ignorant of the identity of Doe D & c) P pleaded ignorance in original compl. (get 3 y).</p>
<p>SUBJECT MATTER JX. HERE: We've decided we have PJ over D in CA and that we'll sue in state (not Fed) court. Only one trial court in CA, The Superior Court. 58 counties, 1 Sup. Ct. Sup. Ct., has general SMJ (It can hear any case). Exception: Cases under Fed. Law (patent infringe., bankruptcy, fed. Securities, & antitrust). Limited Civ.: Amount in controversy (AIC)= \$25K or less. Can't recover more than \$25k. Also, limited discovery & no "Special Demurrer's." Unlim. Civ.: AIC= 25K or more. In disputes to determine title to land or seek gen. equit. relief can get permanent injunction or declaratory judgment. Small Claims: AIC for Individual= \$10K or less. AIC for Entity= \$5K or less. Classification and Reclassification -P initially determines classification (lim., unlim, small claims) by the amount of demand, recovery sought, or value of property. Doesn't include interest on claim. Reclassification: If case is misclassified OR subsequent events make it clear classification should change. Either happens automatically (clerk reclass.) or on motion (court gives notice to all parties and holds hearing). Ct. can look beyond pleading, but not merits of case. Multiple Claims: Can aggregate claims of 1 P v. 1 D to go from lim to unlim. Counter claim where P claim is unlim and D claim is lim=unlim.</p>	<p>Service of Process Basic: D must be served w/ process (summons & a copy of the complaint). Non-party, person over 18 can serve process. Methods of service are 1, Personal service (done 1st), 2, Substituted service (effective 10 days after mailing). Req: 1, D's abode; 2, competent member of the household at least 18; 3, Person informed of contents; and Process mailed by 1st-class mail, postage prepaid to D. Service effective 10 days after mailing. For Corps., deliver process to agent, officer, or Gen. Manager, at USUAL hours. Service by Mail: Copy of summons & complaint, and two copies of acknowledgment mailed to D, with self-addressed stamped envelope addressed to P. Similar to Fed except this is "service" not waiver. D has 20 days rather than 30 (Fed). Service complete when D executes waiver. Service by Pub.: Only available on affiid. from P's attorney showing D cannot be served, after showing reasonable diligence to serve D in another way. Service outside CA: Any manner allowed by CA. Immunity: No immunity if you avail. To state Subseq. Doc.: As in Fed., can be delivered or mailed.</p>	<p>PLEADING Basic: Timing and some terms diff. from Fed. Frivolous Lit.: 2 Gen. statutes in State practice: 1) CA has a statute that mirrors FRCP 11. Except: Diff. from Fed Ct.: 21-day safe harbor applies not only in motions brought by a party, but also when Ct. raises the issue on its own. 2) another statute allows the ct. to order a party/attorn. (or both) to pay expenses & attorn. Fees incurred bc of bad faith or frivolous tactics in lit. "Frivolous" means something raised was completely w/o merit or asserted for the sole purpose of harassing an opposing party. Complaint: CA always used "fact pleading" Req: 1) Contents: a) State of facts constituting the COA, and b) Demand for judgment for the relief to which the pleader claims to entitled. Particulars: P must allege SMJ, state whether lim/unlim., must state the amount (Exception: 1) PI & WD,</p>	<p>Discovery -Discovery disclosures not required. P must get a court order to take discovery from D w/in 10 days after D was served w/ process (w/in 20 days D depo). -Deposition (oral & writ. Q). Same as fed. as to basics. Diff. from Fed as to no presump. Limit on # depos (fed no more than 10, unless ct. order or parties agree). -Interrogatories: Same as Fed. No limit on form rogs. Special rogs can be served, but no subparts. Max # of rogs allows on Unlim. Civ.=35. For more need dec. Responding party can seek protect order. -Request to Produce: Like request to produce in Fed. ct. Elect. stored info, specify form desired (hard copy or electr.). No statut. limit in unlim. Civ. -Non-parties: subpoena & depo notice. Subpoena duces tecum=bring specified things with you. For business just subpoena w/o depo. -Medical Exam: Same as Fed. D has right to demand 1 physical exam (Need ct. order except for PI). Lawyer right to attend, mental=needs ct. order. -Request for Admission: Same as Fed. Max=35. No limit on req. to admit genuineness of doc's. -Supp. Disc.—unlimited cases only: Unlike in Fed, no standing duty to supplement disc. Response, as long as info give was accurate and complete. Instead requesting party can propound "supp. Interrogatory" to elicit later-acquired info being answers previously made. Can also propound "sup. Demand for inspection," which demands inspection of later-acquired or later-discovered doc. Or things. Can propound supp. Interrogatory or supp req. for prod either twice before trial date is set. Or once after it is set.</p>
<p>VENUE Basic: Where to file in CA? Appropriate County. -Land cases, venue in county where land lies. -Transitory action, Gen. Rule is venue proper where any D resides when case is filed. Venue in K cases= county where K was entered or to be performed. Venue in P.I. or wrong, death= where injury occurred. Venue for corp.= (1) PPB, OR (2) where it entered or is to perform K, OR (3) Where breach occurred or liability arises. Unincorp. Bus.= Venue Ok in county of PPB on file w/ Sec. of State. Non-resid. Of CA= Venue OK in any County.</p>			

TRIAL, JUDGMENT, & POST-TRIAL MOTIONS

-Recovery: Recover whatever the evid. shows. The complaint only limits recovery in default judgment. Cases.

-Jury Trial. Right to jury. The 7th amend. Does not apply in state ct. CA (c), grants right to jury trial along the same law/equity split as the 7th Amend. You get a jury to determine issues of fact relating to causes of action at law, not equity. If case involves both law and equity, jury determines, the facts on the law COA, and Judge determines the facts on the equity of action. But Unlike fed. ct. Generally in CA we try Facts of Equity COA first (Equity first rule). In CA, if legal issues are incidental then NO trial rule.

-Requirement of Demand: a party must “announce” her demand for jury (orally or in writing), at the time case is set for trial or w/in 5 days after notice of the setting of trial. Usually, this is made in the Case management. Stat. Failure to demand constitutes waiver.

-# of Jurors: In CA 12 for Civ cases, unless parties agree in open court to lesser number. If juror excused, find alternate, if no alternate continue unless objection.

-Selection- *In voir dire*, each party may raise unlimited challenges for cause. 6 preemptory challenges (fed its three). Preemptory challenges may be used on basis of “race, color, religion, sex, national origin, sexual orientation, or similar grounds.” (broader than Fed).

-Verdict: Fed ct., jury verdict must be unanimous unless parties agree otherwise. State. it is 3/4, 9 of 12.

-Motion for directed Verdict. In fed=JMOL. Standard is reasonable people could not disagree as to result.

Supposed to move for this at close of evid. If D moves at close of P’s opening state. or at the close of P’s evid. at trial, called Motion for Non-Suite (directed Verdict).

-Motion for Judgment notwithstanding Verdict (JNOV):

Fed cts renewed motion for judgment as matter of law (RJMOL). Standard= same as directed verdict. So court is saying jury reached a conclusion reasonable people could not have reached. Same as in Fed. Timing, must file notice of intention to move either before entry of judgment or the earlier of these: -15 days of mailing or service of notice of entry of judgment or -180 days after entry of judgment. **In fed ct., must move for JMOL at trial to preserve right to move for RJMOL after trial. In state Ct, no pre-requisite to move for JNOV during trial.**

-Motion for a new Trial: Timing is same as JNOV. Bases. Same as in Fed. ct; something convinces judge that parties should retry case—“Error was miscarriage of justice.” One ground for new trial is excessive or inadequate damages. Standard for ordering new trial is whether damages figure shocks the conscience. CA cts use remittitur and additur (**not in Fed**). **-Motion to set aside judgment:** a party may move to set aside judgment bc of “mistake, inadvertence, surprise, or excusable neglect.” Must made in reasonable time. Can’t exceed 6 months after entry of judgment. Ct must set aside judgment if party’s application accompanied by lawyers affidavit of mistake.

PRECLUSION

-Basic idea: The Q is whether a judgment already entered (Case 1) precludes litigation of any matters in another case (Cases 2).

-Apply issue preclusion law of system that decided Case 1. Claim and issue preclusion are affirmative defenses, so D should raise them in answer. ON BAR THIS COMES UP ON MSJ.

-CA v. Fed. Suppose judgment in case 1 has been appealed (or the time for appealing has not yet expired). Is the judgment entitled to claim or issue preclusion? In Fed Yes, in CA No.

-Merits of Issue Preclusion: Gen Rule is on the merits unless, it is based on JX, venue, or indispensable parties. Under CA law, it would also NOT be “on merits” if Case 1 was dismissed in SOL.

-Def. of claim for claim preclusion (Res judicata). Fed law adopts the majority rule: claim is all rights relief arising from transaction or occurrence. CA law adopts “primary rights”—you get a separate COA for each right invaded.

Joining Parties

Proper P & D. Must be Necessary & indisp parties. Also impleader in CA is x-complaint. Intervention same as Fed. **Interpleader** where someone (stakeholder) is in possession of prop. but knows several people (claimants) want it. Stakeholder does not want to get sued, so sues in interpleader.

Class action: The state statute uses vastly diff. language than Fed. Rule.

Req: If it is a problem of common or gen. interest, and impracticable to bring all claims to court, or or more may sue or defend for the benefit of all.

- 1) Show ascertainable class. &
- 2) Well defined Community of interest. Ct. looks at whether 3 things are true: 1, whether common Q predominate, 2, whether rep. is adequate, 3, whether class will result in substantial benefit to ct.

-Types of Class Actions. No Separate types.

-Notice, Ind. Notice not required. Can do pub notice

In pub notice, state decides who pays.

-Class mem. who don’t opt out, bound by judgment.

-CA doesn’t require ct. to appoint class counsel.

-Settlement or dismiss. Approved by ct.

-Determine AIC by aggreg. Claims (lim/ unlim?)

MSJ: Same as Fed. Moving party must file and serve separate state. of material fact she claims to be undisputed, w/ supporting evid. of each fact. Opp. party responds w/ facts & evid indicating dispute. Moving Party must serve all papers at least 75 days before hearing motion. Opposition papers must be filed at least 14 days before hearing. Reply papers by moving party must be filed no more than 5 days before hearing.

DIFFERENCES

P’S COMPLAINT

CA: A stat. of fact w/ demand for relief is required. Amounts for PI, WD, & Pun. May not be stated.

Fed: Notice Pleading generally allowed

Where case is filed, subject to SMJ, PJ, Venue.

CA: Cts arranged by county

Fed: Cts arranged by judicial district

Process

Service in Fed and CA state courts are similar. Either personal or mail service on D or substituted service is permitted. Rule 4 allows fed cts to use state methods of service.

D drafts and files his pleading

Procedures in Fed and CA state cts basically the same, except for timing and labeling difference (in CA counterclaims & X-claims are all called X-complaints).

Lack of PJ.

Fed. Ct. analyzes PJ as if it were state ct. sitting in JX. **Substantive legal analysis the same.** BUT for:

CA: motion to quash service of summons or motion to set aside default.

Fed: Raised by motion to dismiss or in answer.

Lack of SMJ.

CA: Raised by Gen. Dem., motion for Judgment on Pleadings; or motion for reclassification.

Fed: Raised by motion to dismiss or answer.

Improper Venue

CA: Venue proper; where D resides; in K actions=K entered or performed; P.I. & WD= where injury occurred. “location actions” brought where prop is.

Fed: Where D resides if all reside in same state OR Subs Part of COA arose, or where subs. property is.

Forum Non Conveniens

CA: stayed or dismissed if more conven. Forum.

Fed: Transferred to more conven. Fed district; or other country if more conven.

Insufficient Service of Process

CA: Raised by motion to quash service of summons.

Fed: Raised by motion to dismiss or answer.

Failure to state a Claim

CA: Use Gen. Dem or judgment on pleadings

Fed: Raise in Rule 12(b) motion or answer.

Failure to Join a Required Party

CA: Raised by Special Demurrer

Fed: Raised by Rule 12 (b) motion or answer.

Vague pleading

CA: Must be made before responding; raised by special dem. On ground that pleading “uncertain”

Fed: Made b4 responding; raise by mot. For more definitive statement.

Motion to Strike

Gen., to strike irrelev. or improper matter from pleading.

CA: Also has Anti-slapp motion to strike

Fed: No fed counterpart, but Fed D can bring an anti-SLAPP motion to strike a CA state law claim.

Amended Pleading

CA: allows P to sue “Doe” D and amend Complaint to substitute true names later.

Fed: May amend complaint to add D sued & served in wrong capacity.

Discovery

CA: No automatic disclosures. Material must be relevant to the subject matter of litigation (broader). No limit on depositions (move for protective order); 35 special rogs & requests for admis. w/o ct order.

Fed: Initial automatic disclos., Material must be relevant to claim or defense of a party; 10 depositions or 25 rogs w/o court order or stipulation.

Duty to supplement discovery

CA: NO DUTY unless opposing party asks

Fed: duty to update prior responses to discov.

Move for Summary Judgment before trial

CA: Must include stat. of undisputed facts w/ motion; burden shifts in a technical manner; partial msj=summary adjudication.

Fed: No stat. of facts; burdens don’t shift in technical manner, but as a practical matter, party who fails to present evid. will lose motion.

Voluntary dismissal by P

CA: P may vol. dismiss “before trial.”

Fed: Leave of court not required if before D files answer or motion for summary judgment.

Involuntary dismissal by Ct.

CA: No trial w/in 2 year (ct discretion); 5 yr= mand.

Fed: Ct discretion (“abuse of discretion” stand.)

Jury Demand

CA: Must be made when case set for trial or w/in 5 days notice of setting case for trial. (No 7th amend)

Fed: Jury demand w/in 14 days of filing pleading.

Judgment on Partial findings

CA: Usually supported by state. Of decision

Fed: Supported by findings & conclusion of law

JNOV

CA: Need not have moved for directed verdict

Fed: Must have moved for directed V. during trial

Motion for New trial

CA: Remittur & additur. **Fed:** only Remittur

Appeals

CA: W/in 60 days of notice of judg. W/in 180 days of judgment if no notice service.

Fed: Filed w/in 30 days of entry of judgment To be final, the judgment must dispose of all claims and parties, but judge may determine no just reason to delay appeal.