

FALL-2019



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THE PROFESSOR

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LOCATION: Office 236B
OFFICE HOURS: Tuesday and Thursday
10:00 am – 10:40 am
12:30 p.m.-2:30 p.m.
(other times by appointment)

MY TEACHING PHILOSOPHY:

Introduction: My teaching philosophy is based on my own life experiences as a law student and law professional. I wanted to be a lawyer since I was 7 years old after my paternal grandfather told me that I'd make a great one. But through all those years of dreaming of becoming a lawyer, I never once dreamed of becoming a law student.

When I went home after the first day of law school orientation, I vowed never to go back; but my husband convinced me that I should give it at least a quarter (semester). I took his advice and I went back to law school but I never enjoyed the classroom/school experience.

What I did enjoy was my work with a local law firm where I clerked from late my first year through the end of third year. It was my experience at the firm where I would develop my perspective on law school vs law as a profession. I perceived law school as a barely tolerable means to the end that I desired. To me, law school was a hazing that I would have to endure to join the private club of legal professionals.

Years later, I would realize that I was much more wrong than right about that. I now recognize that law school is an essential part of the learning process that, if exploited properly, can lead to great monetary reward and emotional satisfaction throughout your professional career.

Goal: My goal as a law professor is to help my students successfully address the challenges that a rigorous learning environment requires. I have core beliefs in this regard:

1. While my job is to teach; the student's job is to learn. Learning in law school is far more than rote memorization. It will not be enough to write down what I say. The student must commit themselves to doing what it takes to learn. The student must read the work assigned. **The student must attend classes.** The student must study with a view to understanding the material, what the lessons are that the material teaches and how to transport those lessons to other situations. Note: I use TWEN to post important notices,

to email information to you, to clarify concepts, and to provide additional information. You should monitor TWEN regularly.

2. I believe that I should assist the student in developing their analytical skills. This requires the student to be able to identify the problem that she is being asked to solve, know the applicable law required to address the problem, identify the significant facts and their relevancies, apply the law to the facts and solve the problem.
3. To achieve these ends, I believe I need to clearly communicate my expectations from you. So throughout this syllabus, I identify the areas of knowledge that I expect you to master, the vocabulary I expect you to know and the outcomes I expect from you. This class is a three hours class. **I expect you to study this course outside of class between 9-15 hours each week (this includes your reading and briefing).**
4. **I expect students to be fully engaged in class discussion and exercises.**

My fellow students there were very smart, but the really novel thing was that they actually seemed to put a lot of effort into their school work. By the end of my first semester there, I began to get into that habit as well.

(Eric Allin Cornell)

izquotes.com

5. I treat the classroom as a safe intellectual place to discuss legal theories, applications, judicial opinions and legal rationale. I encourage students to think critically, not just accept whatever information is given to you, to innovate, to envision alternate approaches to problem solving, to develop strategies based on law and fact.
6. I will employ various teaching strategies including **in-class assignments**, mini-lectures, powerpoints, **quizzes**, reviews, **practical materials** including complaints, answers, real life documents, peer reviews of assignments, essay writing and constant oral and written feedback.
7. I believe an effective teaching experience requires a professional environment where all of us respect each other and our varying abilities and capacities.
8. I am open to your ideas. If you have teaching/learning strategies that you believe might enhance our experiences, please let me know. I don't promise to use everything but I do promise to consider all your ideas with the view toward adoption.
9. I believe that students need to be aware of their oral and written skills and that one of my responsibilities is to help them develop and improve both.
10. I believe that as lawyers and aspiring lawyers we have to be aware of our ethical responsibilities and to measure the actions that we take, in part, on ethical considerations.

COURSE BOOKS & MATERIAL REQUIRED TEXTS

1. *Civil Procedure: A Coursebook*, Joseph W. Glannon, Andrew M. Perlman, and Peter Raven-Hansen (Wolters Kluwer)
2. *A Student's Guide to the Federal Rules of Civil Procedure*, Baicker-McKee (Thomson-West) (latest edition) or any book that contains the Federal Rules of Civil Procedure and selected provisions from the United States Code, Title 28. (Latest edition)

Suggested supplements:

1. *The Power of Procedure: The Litigation of Jones v. Clinton*, Nan D. Hunter (Aspen Publishers).
2. *Acing Civil Procedure*, A. Benjamin Spencer. Thomson West (Second Edition).

COURSE DESCRIPTION& OBJECTIVE

COURSE DESCRIPTION

Civil Procedure covers the process of litigation in the federal courts. Through an examination of federal procedural rules, statutes, and cases, it examines the seven basic stages of litigation: investigative, pleadings, discovery, pre-trial, trial, post-trial, and appeal. The fall semester covers important civil procedures before filing a civil action: including personal and subject matter jurisdiction, and venue.

Civil Procedure is a one-year course. I will teach the following areas in the fall semester:

- Federal Subject Matter Jurisdiction, including Supplemental Jurisdiction and Removal
- Personal Jurisdiction
- Venue
- Introduction to Pleading

During the spring semester, you may expect to cover the following topic areas:

- Pleading including Joinder
- Discovery
- Disposition Without Trial (Default, Dismissals, and Summary Judgment)
- Erie
- Juries
- Trials
- Appeals

CLASS OBJECTIVES

My objective is to help students understand what civil procedure is and its importance in processing cases through the judicial system. It is also my objective to help students learn to use the processes available to them to maximize their chances to obtain favorable disposition of cases in future practice of law.

STUDENT LEARNING OUTCOMES

The student learning outcomes are included throughout this syllabus.

GRADING

The grade for Civil Procedure will be as follows: my grade, which constitutes fifty percent of the total grade; and, the “uniform” exam at the end of the fall semester, which constitutes the other fifty percent of the total grade.

My portion of the grade is derived from your graded quizzes, assignments and exams that I give during the course of the semester. I allocate 100 points to my fifty percent portion of the grade. Each assignment is based on a 100% maximum scale.

In class quizzes:	30%
In class assignments:	15%
Attendance and Class Participation	5%
Midterm	50%

Class assignments: Class assignments consist of exercises, drafting assignments, and other assessments that are given throughout the semester.

EXAM NUMBERS

The use of multiple exam numbers not only protracts the grading process, but also causes confusion in the recording process, which could be detrimental to your grade.

You should use only three (3) exam numbers in my class:

- 1. one number for all class assignments and quizzes (provided by my assistant)**
- 2. one number for the mid-term (provided by the law school administration), and**
- 3. one number for the final examination (provided by law school administration).**

Unless I have explicitly authorized it, the use of multiple exam numbers, will cause you to have 5 points deducted from my portion of the final class grade. Please act accordingly.

ACCOMMODATIONS

Students requesting accommodations may do so through the Office of Student Affairs.

PARTICIPATION, ATTENDANCE & PROFESSIONALISM

PARTICIPATION AND ATTENDANCE

Class attendance and participation are mandatory. (See Students Rules of Matriculation for details on absences and grade reductions.)

TWEN

Most of my supplemental materials will be posted on TWEN. It is an integral component of this class. You should review my TWEN page as soon as possible and become familiar with all postings.

To use TWEN, you need a WESTLAW password and access to the WEB. You will also need to sign into my TWEN page during the registration period (first two weeks of class).

PROFESSIONALISM

In keeping with the professional school environment, students should remember to respect their fellow classmates and the Professor at all times. Please refrain from excessive side conversations or other distracting conduct. You are expected to enter the classroom on time and prepared to work.



ACADEMIC CALENDAR



TEXAS SOUTHERN UNIVERSITY THURGOOD MARSHALL SCHOOL OF LAW
*******TENTATIVE*******ACADEMIC CALENDAR 2019– 2020

FALL SEMESTER ACCELERATED (TURBO) COURSE

First Day of Accelerated Summer	Monday	August 5, 2019
Last Day to Add/Drop Classes	Monday	August 5, 2019
Last Day of Classes	Friday	August 16, 2019

FALL SEMESTER 2019 (SEVENTY DAYS OF CLASSES)

Orientation	Monday-Friday	August 12-16, 2019
First Day of Class	Monday	August 19, 2019
Last Day to ADD/DROP	Wednesday	August 21, 2019
Labor Day (NO CLASSES)	Monday	September 2, 2019
<i>Purge of all unpaid course selections</i>	Wednesday	September 18, 2019
Mid Term Examinations	Mon – Fri	October 14-18, 2019
Last Day of Classes	Monday	November 25, 2019
Last Day to Drop a Class	Monday	November 25, 2019
First Year Professors' Grades due	Monday	November 25, 2019
Reading Period (NO CLASS)	Tue- Wed	November 26-27, 2019
Thanksgiving Holiday	Thurs – Fri	November 28-29, 2019
Reading Period (NO CLASS)	Sat- Sun	November 30 – Dec 1, 2019
Final Examinations	Monday - Friday	December 2 -Dec. 13, 2019
Commencement Exercises	Saturday	December 14, 2019

SPRING SEMESTER 2020 (SEVENTY DAYS OF CLASSES)

School Opens	Thursday	January 2, 2020
First Day of Class	Monday	January 13, 2020
Last Day to ADD/DROP	Wednesday	January 15, 2020
M L K Holiday (No Classes)	Monday	January 20, 2020
<i>Purge of all unpaid course selections</i>	Friday	February 7, 2020
Mid Term Examinations	Mon – Fri	March 9-13, 2020
Spring Break	Mon – Fri	March 16 – 20, 2020
Spring Break (University Closed)	Wed-Fri	March 18- 20, 2020
Good Friday (No Classes)	Friday	April 10, 2020
Last Day of Classes	Tuesday	April 28, 2020
Last Day to Drop a Class	Tuesday	April 28, 2020
First Year Professors' Grades due	Tuesday	April 28, 2020
Reading Period (No Classes)	Wed – Sun	April 29 - May 3, 2020
Final Examinations	Mon- Fri	May 4 – May 15, 2020
Hooding Ceremony	Friday	May 15, 2020
Commencement Exercises	Saturday	May 16, 2020

Please note that the calendar events and /or dates are subject to change.

Updated April 2019

POLICIES & PROCEDURES

CLASS ETIQUETTE

No laptops in the classroom

Law school policy prohibits the use of laptops in the classroom, except for quizzes and tests.

Cell phones

The use of cell phones in the classroom during class is **strictly** prohibited. All electronic devices must be turned off during class.

Attendance

Please refrain from coming to class late or departing during class instruction.

20 Tips for Success in Law School

<https://www.chapman.edu/law/student-resources/achievement-program/20-tips-success.aspx>

rev'd by Professor Johnson

1. **DO THE READING.** Do all of the reading assigned for your courses. Do not fall behind; you may never catch up. Do your reading at times of the day when you are most alert. Also, do your reading in a location where you will not be distracted or tempted to do something else. Otherwise, you will find that it takes you far longer than necessary to prepare for class.
2. **BRIEF THE CASES.** Take notes while reading. For each assigned case, write down the *legally significant facts*, the *holding of the case*, and the *rationale for the court's decision*. This is what is referred to as “briefing” cases. Your case briefs should be just that-brief.
3. **REVIEW BEFORE EACH CLASS.** Review your reading notes (case briefs) right before class. That way, the cases will be fresh in your mind, and you will substantially increase your ability to follow the class discussion (not to mention avoid the embarrassment associated with being unprepared when called upon by the professor).
4. **GO TO CLASS.** Most professors cover some material in class that is not discussed in the reading, so failure to attend class will put you at a big disadvantage when you take the final exam.
5. **PAY ATTENTION IN CLASS.**
6. **PARTICIPATE IN CLASS.** Students learn best when they are actively engaged in the learning process.
7. **TAKE CLASS NOTES.** Do not, however, get so caught up in trying to take down everything your professor says that you are not *actively engaged in the class discussion*. Review your class notes before starting your next reading assignment and analyze how the new cases you read affect those cases you already have reviewed in class.

8. **PREPARE AN OUTLINE FOR EACH OF YOUR CLASSES.** Outlines prepared by more senior students or commercial outlines are not acceptable substitutes for making your own outlines. The analysis necessary to prepare a course outline helps you determine the rules of law applicable to the subject matter of the course, as well as determine how the rules relate to one another. If you do not go through this process, you are less likely to master the subject matter. Also, not all professors teach a subject the same way. In fact, many professors do not even teach a course the same way from one year to the next. The only way to get an outline tailored to your course is to make it yourself. Do NOT wait until the reading period to prepare your outlines; you'll never get them done in time. Some students like to outline once per week, others once per month. Still others prefer to outline whenever a topic is completed. Pick whatever schedule works best for you and stick to it.
9. **CONSIDER FORMING A STUDY GROUP.** Study groups can be a valuable learning tool. Talking through material with classmates can increase your understanding and retention of course material. You also can obtain helpful study tips from your peers. If you decide to form a study group, seek out other students who are well-prepared for class and have similar academic goals. Do not let your study group meetings become social or gossip sessions. Also, do not use study groups as a way of sharing the workload. Last[], if you find that you are not benefiting from your study group, resign from the group.
10. **REVIEW, REVIEW, REVIEW.** Just because you don't have an exam until the end of the semester does not mean that you should wait until the reading period to begin your review. This is not undergraduate school. You cannot cram right before finals and get good grades. Therefore, make time for frequent review over the course of the semester.
11. **ATTEND REVIEW SESSIONS CONDUCTED BY YOUR PROFESSORS AND/OR THEIR ACADEMIC FELLOWS.** Some professors and/or Academic Fellows hold review sessions prior to exams. This is a great way to clarify the issues about which you are confused without having to stand in line outside your professor's office. Moreover, helpful tips regarding how to write your exam answers in a way that will earn you the most points are often shared during review sessions.
12. **TAKE ADVANTAGE OF FEEDBACK FROM YOUR PROFESSORS.** If your professor distributes a practice question and says that she will review your answer if you submit it by a certain time, DO IT! This is a great opportunity to get your professor's input and make any necessary adjustments before your performance is graded.
13. **ATTEND THE WORKSHOPS CONDUCTED BY THE ACADEMIC [SUCCESS GROUP].** These workshops cover a number of topics such as outlining, time and stress management, and how to prepare for and write law school exams-skills essential to success in law school.
14. **TAKE PRACTICE EXAMS.** Lots of them. Exams previously administered by your professor are preferable. This will help you determine how your professor drafts his or her exams. Whenever possible, select a prior exam for which there is a sample answer on file. This will allow you to check your answer against the sample and evaluate your performance. If there is no sample answer on file, ask you professor if he/she will review and comment on your answer. Do not, however, wait until right before finals to ask your

professor to review your answer. The earlier you ask, the more likely your professor will have time to review your answer.

15. **CREATE A STUDY PLAN.** Many students complain that they do not have enough time to brief cases, prepare outlines and/or take practice exams. They're wrong! By planning your time in advance, you will have enough time to meet all of the demands of law school and have time to enjoy some outside activities. If you need help managing your time, see Professor April Walker.
16. **DON'T WAIT UNTIL THE LAST MINUTE TO PREPARE YOUR LRW PAPERS.** Again, this is not undergraduate school. You cannot throw a paper together the night before it is due and expect to receive a good grade (or for that matter, a passing grade). Good legal writing takes time and lots of editing so start working on your LRW assignments as soon as possible.
17. **REVIEW YOUR EXAMS.** Meet with your professors to review your exams after grades have been posted. This is the best way to determine what you did well and what you need to improve.
18. **MINIMIZE YOUR STRESS.** Law school can be stressful, but there are a number of steps you can take to keep stress to a minimum. Humor is a great stress reliever. Make time for exercise-carrying 100 pounds of law books every day doesn't count. Eat fruit, vegetables, and whole grain foods on a regular basis-a diet Coke and a package of Ding-Dongs are not a balanced breakfast. Don't overdo your caffeine intake; drink lots of water instead. Get at least seven hours of sleep per night. Maintain a life outside of law school. You don't need to give up all of the things you enjoyed doing before you went to law school; you just won't be able to do them as often. Finally, if you think that your stress level is getting out of control, talk about it with your significant other, a family member, a close friend, a faculty member, or Dean Virgie Mouton.
19. **DON'T GET CAUGHT UP IN THE COMPETITION ASPECT OF LAW SCHOOL.** Face it. Only one student can finish at the top of the class. Be supportive of and respectful to your classmates. It will make for a more positive law school experience for you and your peers.
20. **GET HELP IF YOU NEED IT.** It is not uncommon for students to be confused about the substantive law covered in their classes, how to prepare for class, how to study for exams, how to manage their time or how to take law school exams. Indeed, it is the rare student who does not have questions about these subjects from time to time, particularly during the first year of law school. If you have questions, there are a number of resources available to you. Every professor holds weekly office hours. The Academic Success Team also are available to help you. Please visit, email or call me if you have any questions. We're here to help.

**THIS SYLLABUS IS NOT A CONTRACT AND IS SUBJECT TO CHANGE
WITH OR WITHOUT NOTICE.**

READING AND CLASS ASSIGNMENTS

INTRODUCTION TO CIVIL PROCEDURE AND THE AMERICAN LEGAL SYSTEM

Casebook pp 3-38

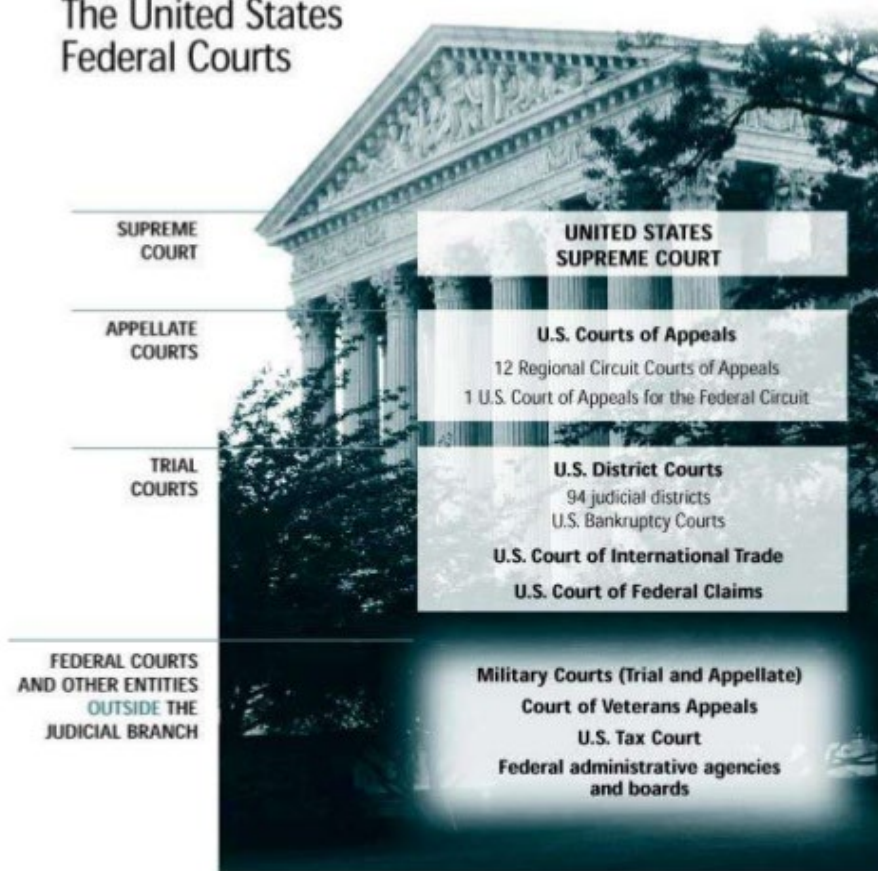
August 20-22, 2019

- | | |
|-------------|--|
| 8/20 | Overview of class and of litigation process
Chapter 1, An Introduction to American Courts, pp. 3-19;
Chapter 2, A Description of the Litigation Process and Sources of
Procedural Law, pp. 21-38. |
| 8/22 | Quiz; Discussion of quiz |

Core Concepts:

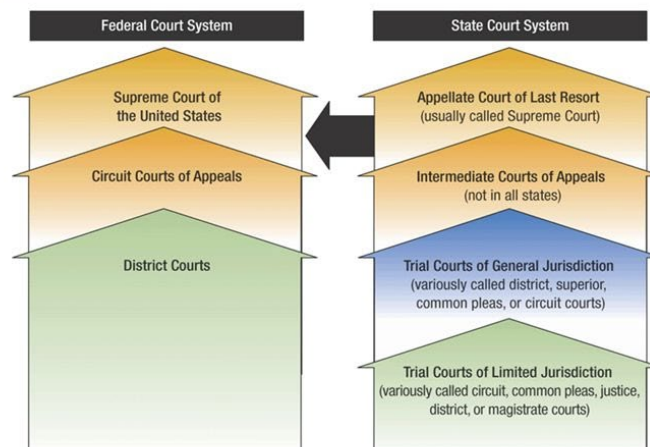
1. In order to fully understand federal civil procedure, students should (1) know the structure of the state and federal courts, and (2) become familiar with the myriad rules and regulations that govern the many aspects of litigation.
2. Every state has its own court system. The types of cases that can be heard in state courts are established by state legislatures and states' constitutions. The U.S. Constitution provides for a separate federal court system, and the categories of cases that the federal courts can hear are established by federal statutes.
3. Federal litigation commences with the filing and service of pleadings, followed by pre-trial procedures that include discovery, motions, and investigation, and ultimately a resolution. Most litigation does not end in trial because most cases settle or are resolved by dismissal or summary judgment.
4. Discovery, the process of gathering and exchanging information to prepare for trial or to attempt to settle, dominates litigation practice, and can often be a source of heated contention and abuse.
5. If a case proceeds to trial, it may be tried to the court or to a jury. The federal rules of civil procedure (FRCP) govern primarily the litigation process, while the federal rules of evidence (FRE) predominate during trial proceedings.
6. Even after a judgment has been entered, the case is not over since the losing parties may file a number of post-judgment motions and appeals.

The United States Federal Courts



Dual Court System of the United States

FIGURE 8.1 Dual Court System of the United States



Vocabulary

Judicial System

1. Subject matter jurisdiction
2. Jurisdiction
3. Limited jurisdiction
4. Original jurisdiction
5. Federal statue
6. State statue
7. Diversity jurisdiction
8. Federal question jurisdiction
9. Article III § 1, U.S Constitution
10. Article III § 2, U.S Constitution
11. Exclusive jurisdiction
12. Concurrent jurisdiction
13. Unit
14. Unit of certiorari
15. Arising under

Litigation (Civil Procedures)

16. Aggrieved Party
17. Plaintiff
18. Defendant
19. Pleading
20. Motion Practice
21. Summary judgement
22. Answer
23. Complaint
24. Discovery
25. Jury Trial
26. Bench Trial
27. Res Judicata
28. Claim Preclusion
29. Federal Rules of Civil Procedure
30. Notice

STUDENT LEARNING OUTCOMES

Students should know:

1. While technically inaccurate, the court system in America is commonly referred to as a dual court system.
 - a. Federal
 - b. State
2. Courts must have power (authority) to hear cases and resolve certain subject areas. This power is called subject matter jurisdiction.
3. Article III of the United States Constitution authorized the creation of a federal court system.
4. Be familiar with the vocabulary associated with the civil courts systems

SUBJECT MATTER JURISDICTION

**August 26-30, 2019
September 2-6, 2019**



Subject Matter Jurisdiction – Diversity

Casebook pp 41-91

August 26-30, 2019

September 2-6, 2019

Core Concepts:

- 1) A federal court generally asserts subject matter jurisdiction based on diversity jurisdiction or federal question jurisdiction
- 2) For diversity jurisdiction to be established the amount in controversy must exceed \$75,000 [exclusive of interest and costs] *and* the dispute is between
 - a. Citizens of different states
 - b. Citizens of a state and citizens of a foreign state (with exceptions) see pg 42-43
 - c. Citizens of different states AND where citizens or subjects of a foreign state are additional parties; and
 - d. A foreign state is plaintiff and citizens of a state or of different states
- 3) To determine an individual's citizenship rely on domicile
- 4) Domicile \neq Residence
- 5) To assert diversity jurisdiction complete diversity must be established.
- 6) Complete diversity requires no plaintiff can be from a state of any of the defendants
- 7) Minimal diversity requires at least one plaintiff is from a state different from at least one defendant
- 8) Diversity is determined on the day of filing

Vocabulary:

- | | |
|--------------------------|---|
| 1) Alienage Jurisdiction | 9) Domestic Relations Exception |
| 2) Complete Diversity | 10) Aggregation of Claims |
| 3) Minimal Diversity | 11) Federal Question |
| 4) Amount in Controversy | 12) Abstention Doctrine |
| 5) Citizenship | 13) Courts of Limited Jurisdiction |
| 6) Domicile | 14) Alienage |
| 7) Residency | 15) Legal certainty standard for establishing amount in controversy |
| 8) Resident Alien | |

Subject Matter Jurisdiction—Federal Question
September 9-20, 2019
Casebook pp 91-125

CORE CONCEPTS:

1. A federal court has federal subject matter jurisdiction if the controversy “arises under” the United States Constitution, the Laws of the United States and Treaties made, or which shall be made under their authority 28 USC § 1331
2. Under the United States Constitution, federal question jurisdiction may be invoked by the Plaintiff in the complaint or by the Defendant in the answer
3. The Federal Statute 28 USC § 1332 has been interpreted to limit the federal court’s federal question jurisdiction to those claims that federal question subject matter jurisdiction must be based on the face of the Plaintiff’s well pleaded complaint
4. The well pleaded complaint cannot presume a federal question defense or that an issue federal law will arise during the course of the lawsuit
5. Subject matter jurisdiction is non-waivable and may be brought for the first time on appeal
6. If on the face of a well pleaded complaint, the plaintiff’s remedy must be based substantially on the interpretation of a federal law, a federal court will be able to assert federal question subject matter jurisdiction

VOCABULARY

- | | |
|--------------------------------|-------------------------------|
| 1) Federal question | 7) Removal |
| 2) Arising under | 8) Declaratory judgment |
| 3) Well pleaded complaint rule | 9) Exclusive jurisdiction |
| 4) Artful pleading doctrine | 10) Preclusion |
| 5) Concurrent jurisdiction | 11) Supplemental jurisdiction |
| 6) No counter-claim rule | |



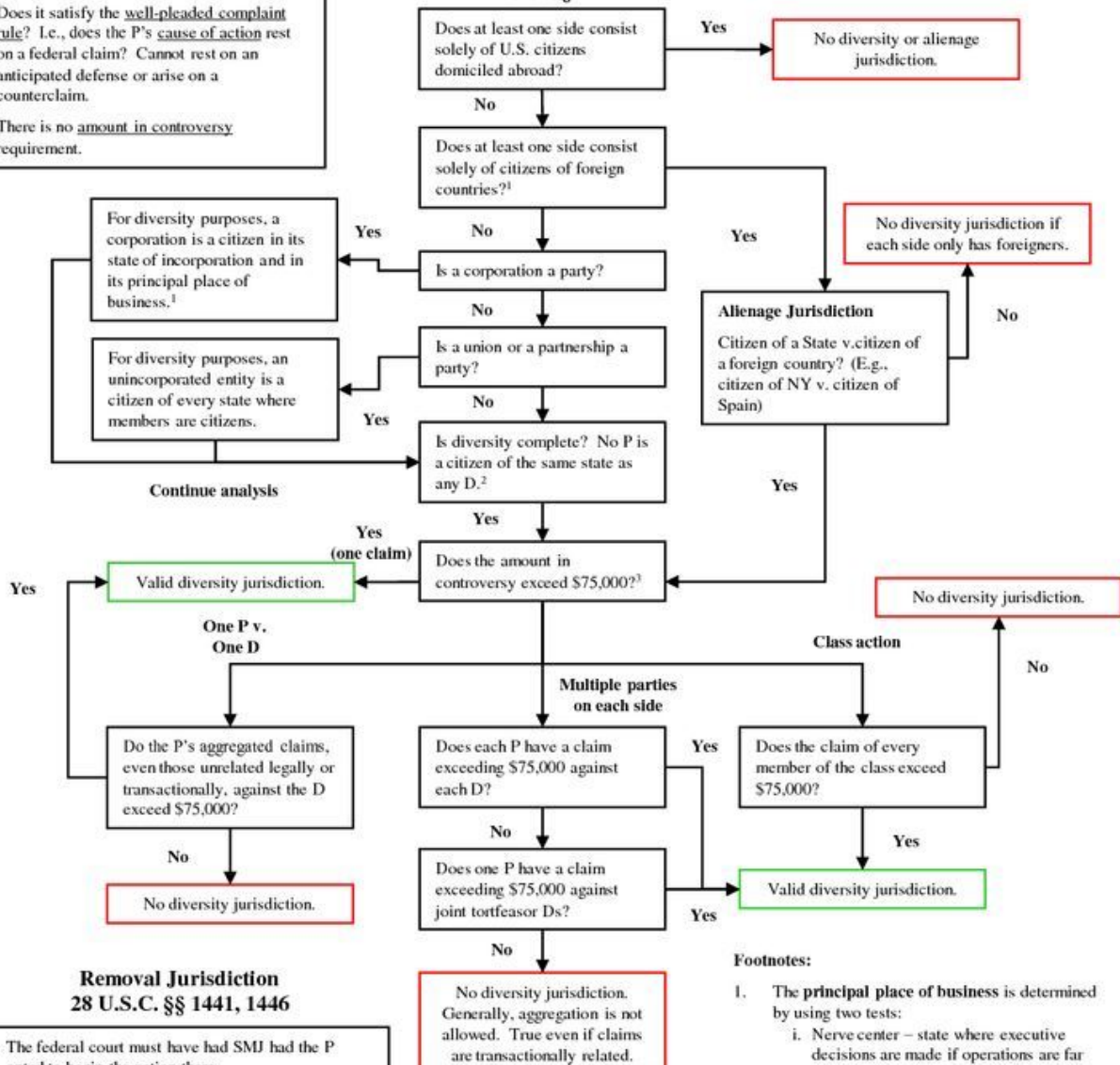
Subject Matter Jurisdiction

2 Ways: Diversity of Citizenship or Federal Question

Federal Question Jurisdiction 28 U.S.C. §1331

1. Does the claim "arise under" a federal statute, the Constitution, or a treaty of the U.S.?
2. Does it satisfy the well-pleaded complaint rule? I.e., does the P's cause of action rest on a federal claim? Cannot rest on an anticipated defense or arise on a counterclaim.
3. There is no amount in controversy requirement.

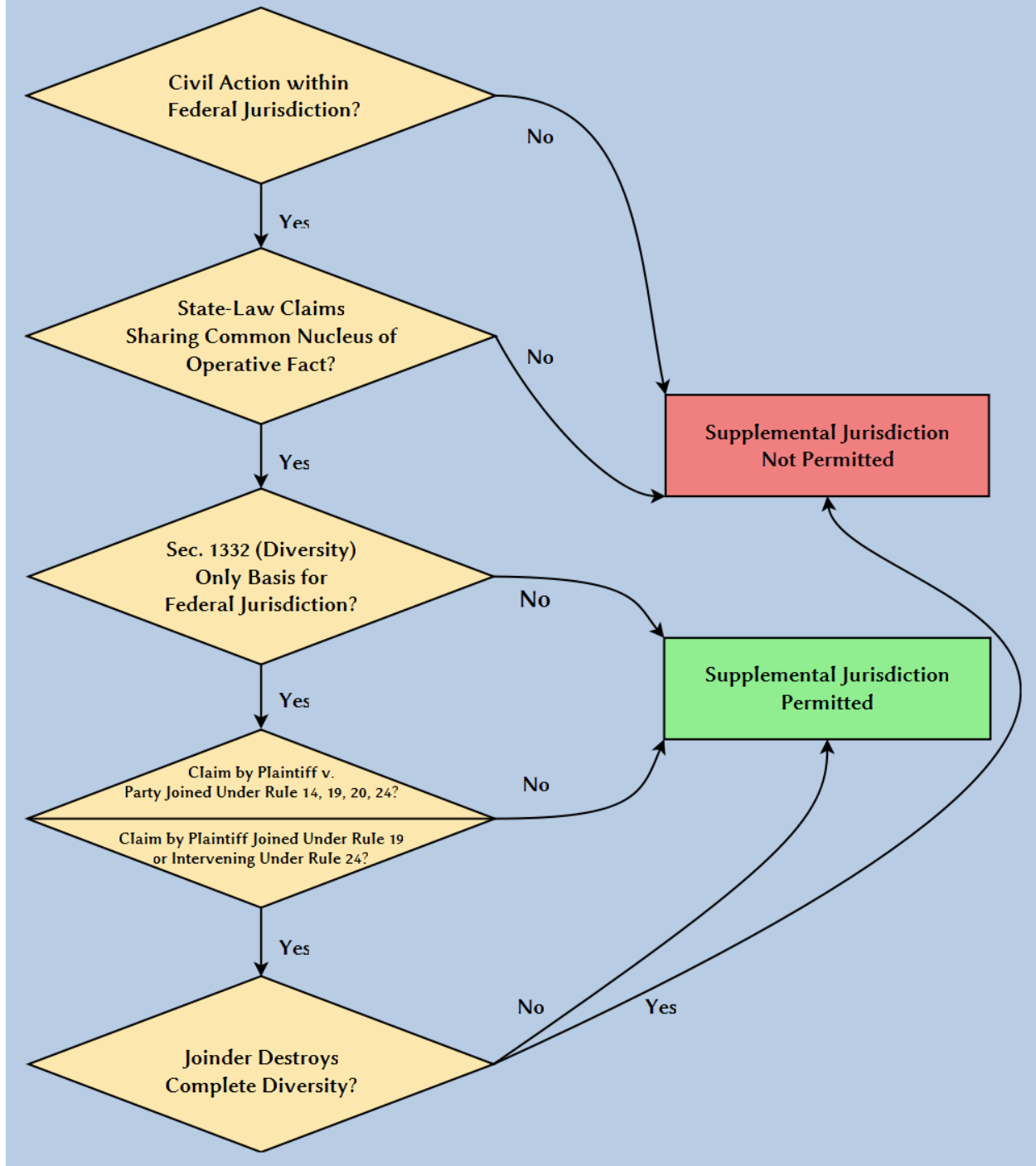
Diversity of Citizenship & Alienage 28 U.S.C. §1332



Removal Jurisdiction 28 U.S.C. §§ 1441, 1446

1. The federal court must have had SMJ had the P opted to begin the action there.
2. Only Ds can remove and all Ds must agree to do so.
3. The **home state exception rule** – In diversity cases, only nonresident Ds can remove if no Ds from state
4. Removal must take place within **30 days** of service or of the case becoming removal.
5. In a diversity case, removal must take place within **1 year** of the commencement of the action.
6. No need to apply §1391 venue requirements if case is properly removed. Still can transfer.

Supplemental Jurisdiction Under 28 USC sec. 1367



REMOVAL
28 USC §1441(a)
Casebook pp 127-144

September 23-27, 2019

Core Concepts:

1. When state and federal courts have concurrent jurisdiction, the case may be filed in either state or federal court
2. The defendant has the power to remove a case that the plaintiff filed in state court to federal court when there is concurrent jurisdiction **unless** any defendant in the suit resides in the state where the lawsuit is brought
3. When the federal court has exclusive jurisdiction and the plaintiff files the case in state court, the defendant will seek dismissal of the case for lack of subject matter jurisdiction
4. If a defendant fails to **timely** remove a case from state court to federal court, then the case remains in state court
5. If the case that is removed to federal court that lacks subject matter jurisdiction, plaintiff may timely file a motion to remand the case back to state court

Vocabulary

1. Forum defendant
2. Removal
3. Concurrent jurisdiction
4. Remand
5. Original jurisdiction
6. Artful pleading
7. Pendent jurisdiction
8. Forum shopping
9. Interlocutory appeal
10. Preliminary injunction
11. joinder
12. Fraudulent joinder
13. counterclaim

Summary – Subject Matter Jurisdiction: Federal courts must have subject matter jurisdiction over the types of cases before them, and as we have already learned, federal courts are courts of limited jurisdiction. Congress authorized jurisdiction in federal district courts “of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. 1331. Also, Congress has enacted specific statutes authorizing federal district courts to hear causes of actions relating to certain areas of federal law. These chapters explore the federal courts’ limited jurisdiction, pertinent statutes, and landmark cases. In particular, they explore the two predominant types of subject matter jurisdiction: diversity and federal question.

Federal courts often assume jurisdiction of a case based on the removal statutes, which authorize defendants sued in state court to remove certain cases to federal court, that is, to take the case out of the state court and refile it in federal court. The rationale for allowing removal is that the defendant should have the same option as the plaintiff to choose a federal court to hear a case that is within federal subject matter jurisdiction.

Federal cases often assert multiple claims, some that support original federal jurisdiction, and others that do not. For example, a plaintiff may sue a non-diverse defendant on a federal claim and a state claim. In a diversity case, a defendant may counterclaim for less than the jurisdictional amount, bring in a third party defendant from the same state, or assert a state law cross-claim against a codefendant from the same state. Before enactment of 28 U.S.C. § 1367, the supplemental jurisdiction statute, such claims were analyzed as either pendent claims or ancillary claims depending on their posture in the case. Today, both types of added claims are referred to as supplemental claims.

STUDENT LEARNING OUTCOMES

1. You should be familiar with all pertinent sections of Title 28 of the U.S. Code.
2. Understand diversity jurisdiction.
3. Understand federal question jurisdiction.
4. Understand the “well-pleaded” complaint and the essential federal requirement.
5. Understand the artful pleading rule and
6. Understand supplemental and removal jurisdiction.



PERSONAL JURISDICTION

CB 147-178

October 1-15, 2019

PERSONAL JURISDICTION

Casebook pp 147-178

October 1-15

Core Concepts:

1. Personal Jurisdiction relates to the court's authority over a person or property in such a manner that it can order an action against them to which they must abide
2. Unlike Subject Matter Jurisdiction which is non-waivable, personal jurisdiction is waivable and failure to timely make an appropriate challenge will result in waiver
3. Personal jurisdiction may be asserted against a person or property that is within the state's geographical borders (Pennoyer) or on the basis of minimum contacts (International Shoe)
4. Presence in the state for purposes of Personal jurisdiction includes place of domicile, place of residency, place of significant contact, place of fleeting presence (Tag).

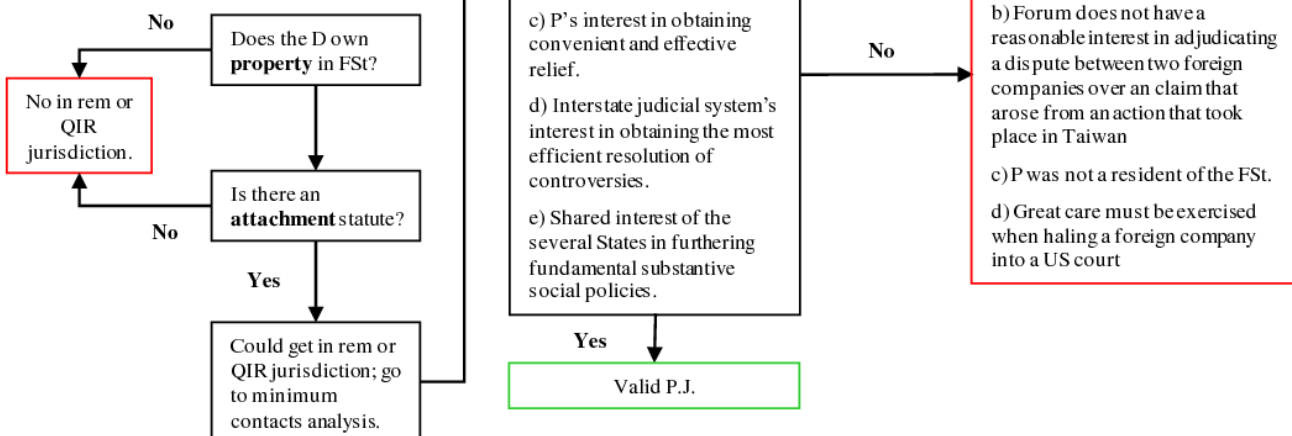
Vocabulary:

- 1) Personal jurisdiction
- 2) Subject matter jurisdiction
- 3) Due process
- 4) In personam
- 5) In rem
- 6) Quasi in rem
- 7) Writ of attachment
- 8) Full Faith and Credit Clause

Personal Jurisdiction

Footnotes:

1. All states have some kind of statute that allows for a traditional basis for asserting jurisdiction.
2. A person may consent to PJ long in advance of the litigation. Sometimes parties to a contract agree to litigate only in a designated forum. Such provisions have been upheld even if it is burdensome for one party. *Carnival Cruise Lines*.
3. Consent to jurisdiction can be manifested by appoint of an agent for service of process within the state. *National Equip. Rental Ltd.*
4. Parties may also consent to jurisdiction by virtues of their conduct in litigation. The S. Ct. held that by filing a complaint, the P consent to a counterclaim filed against the P by the D. *Adam A D* has a right to object to PJ that can be waived at any time. A failure to raise a timely objection constitutes a waiver
5. All states have nonresident motorist statutes similar to *Hess*. An example of implied consent and specific jurisdiction.
6. The intent of the individual to make a particular location a permanent home and facts indicating that the party had physically located there. Must be at the time the cause of action arose. *Milliken*. A state can assert jurisdiction to dissolve a marriage if either spouse is domiciled there.
7. Weigh nerve center v. place of activity. *Olson*. See Subject Matter Jurisdiction flowchart.
8. Some are enumerated acts and some are coextensive with 14th Amendment. Most LAS are not D friendly. Usually must defeat by showing LAS is unconstitutional. Most allow PJ for tortious acts committed w/in the FSt and for tortious injury in the FSt caused by an act or omission outside of the FSt. Argue both.
9. Every state has one. PJ is only proper if falls within terms of LAS and jurisdiction is constitutional (*Shoe test*).
10. See Minimum Contacts Framework flowchart.

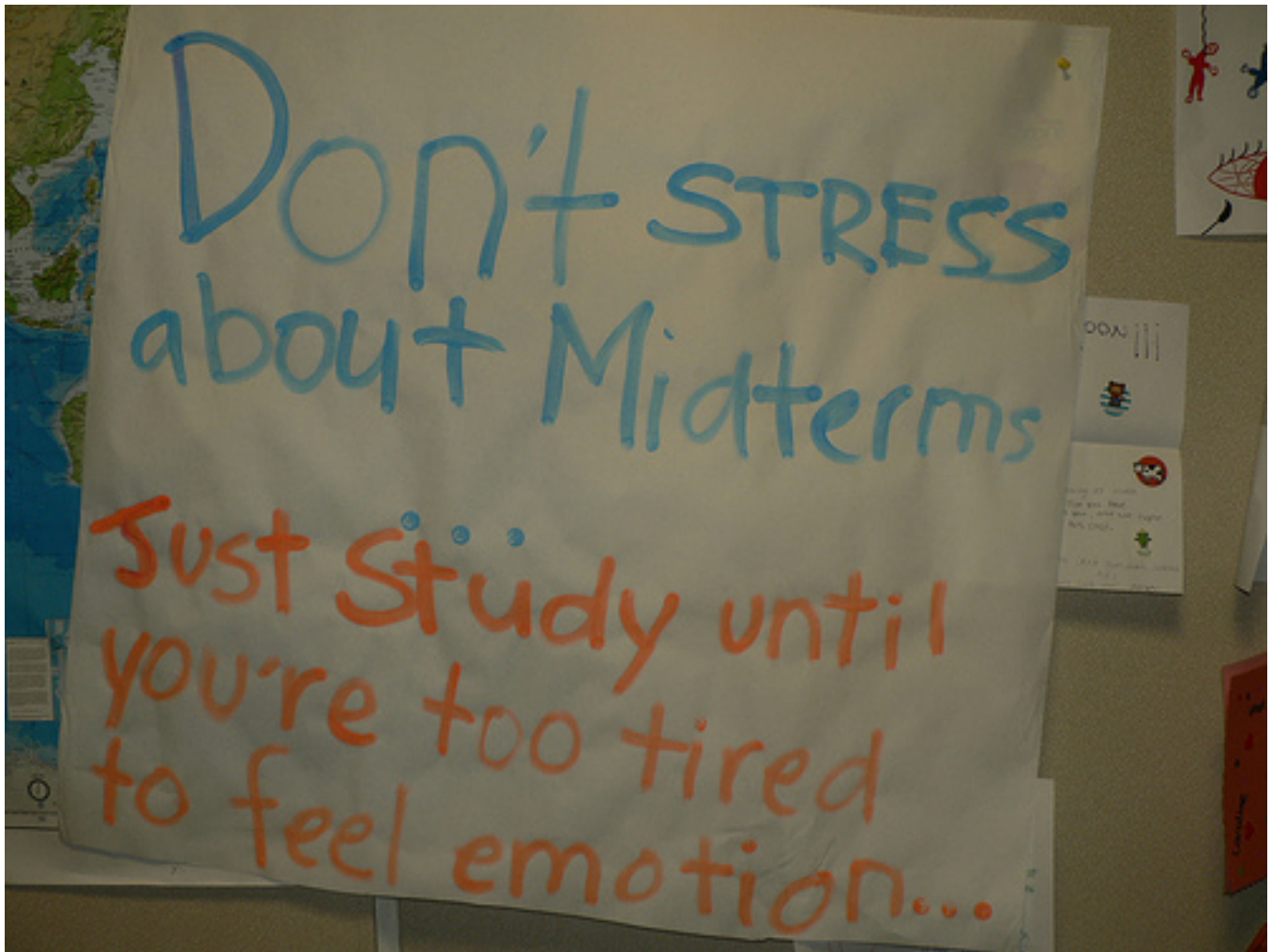


Summary Personal Jurisdiction: Before a federal trial court may exert personal jurisdiction over a defendant, it must satisfy the due process standard of the 5th and 14th Amendments of the Constitution. This requirement must be met for each defendant. The 14th Amendment bars a state from depriving a person of life, liberty, or property without due process of law, that is, without a basically fair procedure. If it's a court that's doing the depriving - by entering a judgment against a person and forcing her to pay it – basic fairness requires that the defendant have some relationship to the state where the court sits that will make it fair to conduct the litigation. In civil procedure, this means that the court must have a basis to exercise personal jurisdiction.

Although the Federal Rules of Civil Procedure control many aspects of a civil suit in a district court, the Rules do not contain all the elements that must be satisfied before the suit can be prosecuted successfully. Concepts of jurisdiction and venue are of great importance in the litigation process, but for the most part these elements are not discussed in the rules. These chapters review the pertinent sections of Title 28 and a number of landmark cases that have marked the evolution and application of personal jurisdiction in the federal courts.

STUDENT LEARNING OUTCOMES

1. Be familiar with the pertinent statutory laws that govern personal jurisdiction.
2. Understand the historical roots of the doctrine.
3. Understand the modern personal jurisdiction doctrine.
4. Understand the differences between general and specific jurisdiction.
5. Understand the alternatives to specific jurisdiction.
6. Understand how to answer personal jurisdiction bar exam questions.
7. Understand the long arm statute and the constitutional bases for service.



Midterm, Thursday, October 17, 2019

Notice and Service

October 21-25, 2019

Core Concepts:

1. Due Process requires a person have notice and an opportunity to defend against the taking of life, liberty or property before the taking occurs.
2. Procedural due process protects individuals from government power by ensuring that the process is fair
3. Substantive due process requires the law that is relied on to support the taking is fair
4. For an individual to have notice sufficient to meet procedural due process standards, the method of notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”.
5. Every court system has procedures that govern service of process and service generally.
6. Service of process constitutes delivery of notice that provides a copy of the complaint and summons to appear and defend
7. All other service must be made in compliance with applicable law
8. Service may be waived
9. Service does not confer personal jurisdiction; the sufficiency of and for each requiring independent analysis

Vocabulary

- | | |
|---------------------------------|-----------------------------|
| 1. Service of process | 9. Complaint |
| 2. Service | 10. Summons |
| 3. Notice | 11. Procedural due process |
| 4. Personal jurisdiction | 12. Substantive due process |
| 5. Alternative means of service | 13. Reasonable |
| 6. Personal service | 14. Special appearance |
| 7. Service by publication | 15. FRCP 4 |
| 8. Waiver of service of process | 16. FRCP 12 |

STUDENT LEARNING OUTCOMES



VENUE
October 29-31, 2019

VENUE

October 28-November 1, 2019

Core Concepts:

1. Venue refers to the particular court within the court system where a case may be heard
2. Personal jurisdiction refers to the power a court has to exercise authority that will bind a person individually or through property
3. Subject matter jurisdiction refers to the authorization a court has to hear a certain type of case
4. Venue is waivable; personal jurisdiction is waivable. Subject matter jurisdiction is non-waivable and may be challenged for the first time on appeal.
5. When a court lacks venue, upon challenges, the court must dismiss the case for lack of venue 28 USC §1406
6. When the court may assert venue but venue is more convenient a court may transfer venue 28 USC §1406
7. A case filed in a court of proper venue but which justice supports an alternate foreign site of proper venue, the case may be dismissed under the common law principle of 'forum non conveniens'.
8. A foreign
9. Venue is a part of the overall paradigm that mandates justice. It ensures that a case is resolved in a court that is convenient to the parties (particularly the defendant) AND is connected to the lawsuit.
10. USC § 1391 provides the basic rule of venue in federal district courts. It provides:
 - a. That when all defendants reside in the same state venue is proper in a judicial district in which any defendant resides
 - b. Venue is also proper in a judicial district where a substantial part of the events or omissions giving rise to the claim occurred
 - c. Where a substantial part of the property that is subject of the civil action is located
 - d. When no district meets any of the first three criteria then the default district for purpose of establishing venue is any district where any defendant is subject to the court's personal jurisdiction in the civil action

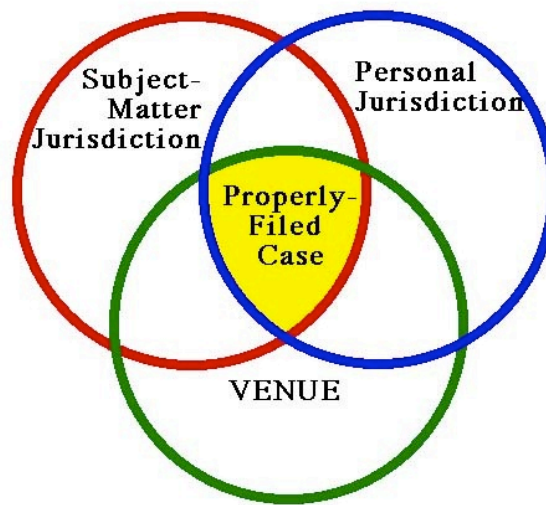
Introduce concept of divisions (within districts) and explore the case of the Galveston decision written by a judge castigating a lawyer for not knowing difference

Vocabulary:

Personal Jurisdiction
Subject Matter Jurisdiction
Venue
Districts
Division
Resident

Transfer of Venue
Forum non-conveniens
Motion to Transfer Venue
Proper Venue
Improper or lack of venue

Domicile
Substantial Part



► **Summary – Venue:** The requirement of venue sets the appropriate federal districts in which a particular case should be heard. Requirements to satisfy venue are additional to the jurisdictional prerequisites. Thus, even if a plaintiff satisfied both kinds of jurisdiction, the case might still be dismissed if venue was lacking. For certain specific causes of action, Congress has enacted special venue statutes.

A defendant, however, may want a case heard in another judicial district. To achieve this purpose, a defendant will file motions to change venue. There are generally two types of venue-motions. First, and most obviously, a defendant can make a motion that the case was filed in an improper venue. The second type of motion contends that the venue chosen by the plaintiff is not improper, but that there is a more appropriate federal district.

Forum non conveniens is a doctrine that allows a court to dismiss a case so that it can be filed in a more convenient forum. A forum non conveniens dismissal is premised on the assumption that the plaintiff can, in fact, refile the case in a foreign venue.

STUDENT LEARNING OUTCOMES

1. Understand the pertinent statutes under Title 28 of the U.S. Code.
2. Understand venue and transfer of venue.
3. Understand forum non conveniens.



PLEADINGS
November 4-19, 2019

PLEADINGS

November 4-19, 2019

Core Concepts:

1. Pleadings communicate the nature of the lawsuit, define and shape the issues, furnish a basis for the evidence, and provide a foundation for res judicata.
2. Pleadings generally include complaint, answer, replies and counter and cross claims.
3. A complaint should set out facts sufficient to support a legal claim for relief and damages, giving the defendant fair notice of the claim and the bases for which the claim(s) is/are asserted
4. An answer sets out the party's response to a claim for relief, generally through general or specific denials or affirmative defenses designed to shield the respondent from liability.
5. When drafting pleadings, the parties should comply with federal and local rules.
6. Courts require proper decorum from those before it and all actions including pleadings are required to have merit; frivolous claims and defenses are prohibited except in certain circumstances prescribed by the FRCP
7. If one plaintiff asserts a single claim against one defendant, and that is the entire scope of the lawsuit, there is no issue raised about joinder of claims and parties. Seldom, is litigation that simple.
8. Modern joinder provisions are constructed to foster a complete resolution of all claims, involving all of the players to the same transaction or occurrence that raise common issues of law or fact.
9. Joinder rules repeatedly sound the theme of transactional relationship. Running parallel with the transactional analysis is a cardinal rule of the federal system: Every claim against each party must be supported by an independent ground of subject matter jurisdiction, or by the discretionary principles of supplemental jurisdiction.

Vocabulary

- | | |
|---------------------------|--------------------------|
| 1. Pleading | 13. Defenses |
| 2. Motion | 14. Affirmative defenses |
| 3. Complaint | 15. Consolidation |
| 4. Answer | 16. Waiver |
| 5. Counterclaim | 17. Relation back |
| 6. Cross claim | 18. Res judicata |
| 7. Joinder | 19. Collateral estoppel |
| 8. Heightened pleading | 20. Notice pleading |
| 9. Damages | 21. Code pleading |
| 10. Counts | 22. Class action |
| 11. Voluntary dismissal | |
| 12. Involuntary dismissal | |



Pleadings are procedural devices that parties in a civil action used to state or deny claims.

To initiate a civil action, generally, a plaintiff must file a complaint <But see an interpleader action>

FRCP 8(a) governs the sufficiency of a complaint. The Rule provides that a sufficient complaint must:

- (a) Be short
- (b) Be concise
- (c) State ground for subject matter jurisdiction
- (d) Constitute a statement of the claim
- (e) Show entitlement to relief
- (f) Make a demand for relief

Once the complaint is filed, the defendant files his/her/its response to the claim. Defendant may

- (a) File a general denial
- (b) File a specific denial
- (c) File affirmative defenses
- (d) File a counter claim or cross claim
- (e) Implead a new party
- (f) Various dispositive motions e.g. 12(b)(6) failure to state a claim on which relief can be granted, motion to transfer venue etc. – look at Rule 12 motions

The primary purpose of the Rule 8 pleadings is to provide notice that there is a claim and what the claim is so that defendant may mount his/her/its defense. The concept of code pleading may alter that view by requiring more specific facts to support claims.

But a well-pleaded complaint implicates various strategies of import

- (a) Frames the case by providing relevancy boundaries
- (b) Develop or inhibits discoverable information
- (c) Chooses/elects remedies sought
- (d) Elects parties to hold liable

Vocabulary

Pleading	Notice Pleading	Inconsistent Pleading
Motion	Code Pleading	Heightened Pleading
Complaint	Pleading at Equity	Respondent Superior
Answer	Pro Se	Special Damages
Civil Action	Pleading Alternative Theories	
Element Pleading	Pleading with Particularity	
Fraud	Compensatory Damages	With Prejudice
Mistake	Punitive Damages	Without Prejudice
Damages	Actual Damages	Impleader
Plausible Pleading	General Damages	Affirmative Defense
Amended Pleading	Supplemental Pleading	Interpleader
General Denial	Specific Denial	Non-denial Denial

PLEADINGS – COMPLAINT, MOTION, ANSWER, & REPLY (“IT’S A LIBERAL, WAIVEABLE THING”)

Start Here

THE COMPLAINT

Three Essential Elements of the Complaint – FRCP 8(a)

1. **Jurisdiction** – π must allege case is w/in SMJ (some states require PJ & Venue)
2. **Statement of the Claim** – π needs to only state facts, not legal theory relied upon
3. **Relief** – demand for specific relief (i.e. money damages, injunction, etc.)

Special Pleading Rules

1. **9(b)** – must plead fraud with particularity
2. **9(g)** – must plead any special damages
3. Other Claims do not demand a specific pleading – **Leatherman**

Pleading in the Alternative – 8(e)(2)

1. A party may set forth two or more statements of a **claim or defense** alternately or hypothetically (applies to both π & Δ) must be a **reasonable basis (11)**

Voluntary Dismissal

3 ways – **FRCP 41(a)**

1. **Notice** – **once before** either answer or motion for summary judgment (w/out prej)
2. **Stipulation** – parties agree (w/out prej)
3. **Court Order** – court order (w/out prej)

Involuntary Dismissal

FRCP 41(b) – for failure follow procedural rules; Default is w/ prejudice

- (**Exceptions** - PJ, SMJ, Service, Venue, Indispensable Party)

FRCP 60 – allows π to argue for relief against judgment to dismiss

MOTIONS AGAINST THE COMPLAINT

- **Defenses – 12(b)** – defenses against the validity of the complaint
- **Motion for More Definite Statement – 12(e)** – if complaint is so “vague and ambiguous that Δ cannot reasonably be required to frame a responsive pleading”
- **Motion to Strike – 12(f)** – if π has included “redundant, immaterial, impertinent or scandalous” material in complaint, Δ may move to have material stricken from pleading
- **Consolidation** – Δ is limited to **one pre-answer motion**
- **Waiver – 12(h)** – Certain defenses that can be raised by 12(b) motion will be waived if they are not included in the 12(b) motion
 - i. PJ, Venue, Insufficient service of process; but SMJ can never be waived
- **Motions Delay Δ 's Obligation to Answer**
 - i. **12(a)(1)** – states that a Δ must file answer w/in 20 days of complaint
 - ii. **12(a)(4)** – filing motions alters time allowed b/c Δ is then not required to answer until 10 days after court answers motion

Defenses against validity of the complaint – 12(b)

Δ can plead either in answer or by separate motion...

1. Lack of SMJ
2. Lack of PJ
3. Improper Venue
4. Insufficient Service or Service of Process
5. Failure to state a claim upon which relief may be granted

Liberal interpretation of the complaint – no dismissal unless appears beyond doubt that the π can prove no set of facts in support of his claim

THE ANSWER

- **3 Possible Responses** to Each Allegation
 - i. Admit, Deny, Lack Sufficient Information – any not admitted = denied
- **Affirmative Defenses**
 - ii. Defenses that **must be explicitly pleaded in the answer** if Δ to raise in trial
 - iii. **8(c)** – non-exclusive list of affirmative defenses (including: contributory negligence, fraud, res judicata, SOL, illegality)
- **Counterclaim** – claim against the π offering reason why the π is liable to the Δ

THE REPLY

π 's response to counterclaim (π does not respond to affirmative defenses)

Amendment

- **Amendment as of Right – FRCP 15(a)** – Pleading may be amended **once** as a matter of right
 - i. **Complaint** – may be amended **once** at **any time before Δ serves his answer** (If no responsive pleading, w/in 20 days)
 - ii. **Answer** – an answer may be amended **once within 20 days** after Δ has served it
- **Amendment by Leave of Court – FRCP 15(a)** – freely given but based on **actual prejudice** the other party
- **Amendment to Conform to Evidence – FRCP 15(b)** issues, not raised by pleadings, tried with **express or implied consent**
- **Waiver Policies – FRCP 12(h)** – Cannot use amendment to **void waiver** of affirmative defenses
 - i. Unless if they are **amended** in the time period allowed as a **right**
- **Relation Back – FRCP 15(c)** – **The amendment relating back allowed if...**
 - i. it is permitted by law by the statute of limitations, **OR...**
 - ii. not changing name of Δ 's and same conduct, transaction, occurrence, **OR...**
 - iii. changing Δ , **AND...**
 - a. same conduct, transaction, occurrence, **AND...**
 - b. knew/should have known it was proper party

STUDENT LEARNING OUTCOMES

1. Demonstrate knowledge of the Federal Rules that govern pleadings: FRCP 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 15, and 55.
2. Know the six stages of litigation: investigative, pleading, discovery, pre-trial, trial and appeals, and how the FRCP apply to each of the stages.
3. Demonstrate knowledge of how a civil action is commenced, and the various steps in the pleading stage of litigation.
4. Understand notice pleading and the sufficiency of the complaint under the Federal Rules.
5. Know the heightened pleading requirement.
6. Demonstrate knowledge of the various ways of responding to a complaint and familiarity with Rule 12 motions.
7. Know the process of amending pleadings and the applicable rules. Know Rule 11 and demonstrate knowledge of its application.
8. Be familiar with the procedure for presenting a Rule 11 motion.
9. Know FRCP 13, 14, 18, 19, 20, 21, 22, 23, and 24.
10. Know joinder of multiple parties.
11. Know the difference between affirmative defenses, counterclaims, and cross claims, and how the joinder rules applies.
12. Know the difference between interpleader and intervention.
13. Understand statutory interpleader -28 U.S.C. §1335.
14. Understand class actions.
15. Understand how to answer exam questions in joinder.

SEMESTER REVIEW

LAST DAY OF CLASS THURSDAY, NOVEMBER 21, 2019

