

Civil Procedure Skeleton

- I. Pleading**
 - a. Complaint
 - b. Allocating the Elements
 - c. Responding to the Complaint
 - d. Amendments
 - e. Ethical Limitations
- II. Discovery**
 - a. Modern Discovery
 - b. Tools of Discovery
 - c. Scope of Discovery
 - d. Privilege & Work Product
 - e. Ensuring Compliance
- III. Resolution Without Trial**
 - a. Default Judgement
 - b. Summary Judgement
- IV. The Trier and the Trial**
 - a. Choosing and Challenging Judges
 - b. Sharing Power with a jury
 - c. Judges Guiding Juries
 - d. Judgement as a Matter of Law (JML)
 - e. The New Trial
- V. Appeals**
 - a. Abc
- VI. Personal Jurisdiction**
 - a. Origins
 - b. Redefining Constitutional Power
 - c. Specific Jurisdiction: Modern Cases
 - d. General Jurisdiction
- VII. Notice**
 - a. Constitutional Requirements
 - b. Mechanics of Notice and Service
- VIII. Self-Imposed Restraints on Jurisdictional Power**
- IX. Subject Matter Jurisdiction of the Federal Courts**
 - a. The Idea and Structure of Subject Matter Jurisdiction
 - b. Federal Question Jurisdiction
 - c. Diversity Jurisdiction
- X. State Law in Federal Courts: Erie and its Entailments**
- XI. Respect for Judgements**
 - a. Claim Preclusion
 - b. Issue Preclusion
- XII. Additional Claims and Parties**
 - a. Joinder of Claims
 - b. Joinder of Parties

Civil Procedure Outline

I. Pleading

- Parties move lawsuit forward, pleadings tell the initial stories, why court should (or shouldn't) listen
 - o First step in lawsuit: π 's complaint and Δ 's response to that complaint
 - Gives Δ notice of disputed terrain, allows Δ to ask court to sort dead on arrival cases from those with merit, can motion for blueprint of litigation, open doors to discovery
 - o Pleadings stage used by lawyers to mean pleadings and the motions challenging the sufficiency of the pleadings
 - Sorting out of meritless claims mostly moved to discovery
- Pleadings may be inconsistent, lay out all possible avenues and narrow down road after discovery/ more info available
- **Rule 7(a)**- Only these pleadings are allowed: 1) complaint, 2) answer to a complaint, 3) answer to a counterclaim designated as a counterclaim, 4) answer to a crossclaim, 5) third-party complaint, 6) answer to a third party complaint, 7) reply to an answer (if the court orders one)
- **Rule 7(b)**- Request for a court order must be made by motion. The motion must, a) be in writing, b) state the particularity of the grounds for order, c) state relief sought
- Notice Pleading:
 - o Is generous to pleaders- lets stories be inconsistent, wants brevity
 - Short plain statement on why entitled to relief
 - o Δ needs to know what lawsuit is about, enough to answer
 - Allows Δ to see any parts they agree with (say, in facts) and answer where they differ
 - Narrows down what trial will actually be about, matters of complaint in contention
 - o 90% of litigation is discovery
- Complaint->[pre-answer motions, eg. 12(b)(6)] (if fails, Answer-> discovery)
- Final Judgement Rule= Cannot appeal any decisions until the end after final ruling of trial court
 - o Exceptions: preliminary injunction, mandamus
- Once you've lost you've lost
- Qualified immunity= protection for government officials, if applies, official freed from discovery, dismissed
 - a. **Complaint**
 - i. Π story
 - 1. **Rule 8(a)**- Claim for relief, lets π tell story and ask court to give remedy. All 3 of below must be in complaint
 - a. **8(a)(1)**- short plain statement of the grounds for the courts jurisdiction
 - i. In federal court, must tell why have jurisdiction
 - b. **8(a)(2)**- short plain statement of the claim showing pleader is entitled to relief
 - i. What law has been violated, what facts meet elements for valid claim under said law

1. Master rule- it categorizes the types of information subject to discovery and imposes discovery related requirements on the parties throughout the litigation
- iii. **Rule 26(f)**- instructs the parties to confer with each other at the outset of a case about predicted subjects of discovery, anticipated disputes about the discoverability of desired information, and other issues that the judge might be bale to resolve at an early stage
 1. Within 2 weeks of this planning meeting and before an initial conference with the judge parties must exchange the "initial disclosures required by
 2. After this meeting, production begins
 3. **Rule 26(a)(1)**
 - a. Requires the parties to exchange categories of information "that the disclosing party may use to support its claims or defenses"
 - i. Requires to turn over things may use to support your case (cannot hold damning evidence, show hands early)
 - ii. If fail to disclose, are barred from using at all
 4. **Rule 26(a)(1)(C)**- each party must offer such information without its having been requested by opponent and before initial conference with judge
 - a. **Rule 26(A)(1)(A)(i)**- don't have to disclose witnesses used solely to impeach the credibility of other witnesses
 5. **Rule 26(b)(1)**- allows a party to, without seeking the courts approval, seek discovery regarding any non-privileged matter that is relevant to parties claim or defense
 - i. to be admissible, must be relevant
 - ii. MUST BE proportional to the needs of the case, determined by parties resources
 1. Parties finance investigation
 - iii. relevance: links admissibility to the substantive law and common sense patterns of inference
 1. to be relevant, info must tend to prove or disprove something the governing substantive law says matters
 2. relevance specific to case
 - iv. info within the scope of discovery need not be admissible to be discoverable
 1. pleadings define limits of relevance
 - b. a party may object to a request if it is too broad or not proportional to the needs of the case
6. **Rule 26(e)**- obligation to continue updating and supplementing
 - a. Must continuously disclose, cannot hold evidence you get after initial disclosure
7. **Rule 26(g)**-

- b. Multiple parties
 - 2. Holding: SCOTUS said they cannot hear case because not proper under 54(b), there was no final judgment
 - a. Appealed even though one of two claims not final
 - 3. Facts: Wetzel suing for alleged breach of civil rights act due to maternity leave policy
 - a. No dispute of facts, what happened, only legal question: is §7 of CRA violated
 - b. Court certified under 54(b)
- e. §1291-
 - i. defines moment appeal is proper
 - ii. Grants jurisdiction for appellate court to hear appeal
- f. Objections can serve to “make a record” of contentions that the trial court rejects, can be basis for appeal
- g. Most jurisdictions grant at least one appeal in civil cases, though no SCOTUS mandate to

VI. Personal Jurisdiction

- Court cant exercise jurisdiction over Δ unless state in which court sits has connection with Δ (Personal) or with event giving rise to claim (subject matter)
 - o Individuals can be sued in their state of domicile for all claims (base of operations)
 - o In the absence of a cotrolling federal statute, the federal court system is required to respect the statutory/ common law rules of statutes
- Jurisdiction= the power to declare the law
 - o Personal jurisdiction- the power of court over this Δ
 - Due process clause
 - 5th and 14th amendment
 - Article iv full faith and credit
 - o Subject matter jurisdiction
 - Article III
- a. Overview
 - i. Personal Jurisdiction- States ability to assert power over a Δ in a civil lawsuit, constitutionally required
 - 1. Rule 4(k)(1)(a)- for courts to exercise jurisdiction over anyone, must get authorization from legislature
 - a. If state court can exercise jurisdiction, fed court can too.
 - b. Constitutional and statutory analysis is same
 - i. Legislatures typically enable to do what constitutional enables to do
 - 2. Law of place where incident occurred governs, even if filed in different state court
 - a. Does state have an interest in rectifying harm done in that state
 - 3. Domicile in state is alone sufficient to bring Δ in state
 - a. Authority of a state over citizens is not ended by citizen being outside the state

- vi. Special statutory schemes such as bankruptcy and probate proceedings
- 3. Holding: the court disapproves of the doctrine of preclusion by “virtual representation” and hold, based on the record as it now stands, that the judgement against Herrick does not bar Taylor from maintaining suit
 - a. 4/6 grounds have no application here, so not precluded remanded
- 4. Facts: A sued for info under FOIA, rejected, friend sued for same info, issue is if precluded, court said not precluded
 - a. Friends, same plane, request, same blueprints, working together on plane, same lawyer, issues
- ii. Frier v. City of Vandalia (1985)
 1. Rule: federal courts apply preclusion rules of state filed in
 2. Holding: majority didn't decide on 12(b)(6) and avoids deciding constitutional issues when can, so decided on preclusion
 - a. Inquiry is same for replevin and due process because to prove replevin, have to prove taken with process
 - i. Concurring said evidence put forward in replevin v. second case= different and claim raise different things, second suit had new claims and didn't arise out of same thing, first claim not with process
 3. Facts: Δ kept getting cars towed by city, replevin to recover what he said were seized improperly, had to pay fee to recover

Suit #1- state Replevin for cars back, denied	Suit #2- Federal Due process § 1983, claimed he should have had pre-siezure notice/ chance to be heard/ said process inadequate
	Dismissed on 12(b)(6)- if all asserted true- no relief

Identical Evidence:

Hypo: Isian v. Thomas

Suit 1: claim for property damage from car crash

Suit 2: suit for personal injury from crash

Evidence is not identical, even though cause of action is same

Why transactional test is more efficient-> incentivizes bringing on class while able to

c. Issue Preclusion – collateral estoppel

i. Comes into play when a claim is not barred from subsequent litigation, but some issues involved in that claim was previously litigated

ii. Same issue