

I. A Survey of the Civil Action

a. Illustrative Cases

i. The Authority of the Court to Proceed With the Action

1. Litigation values:

- a. Efficiency and economy
- b. Search for truth
- c. Federalism
- d. Equity and fairness
- e. Coherence and consistency
- f. Adversarial based

2. *Carpon v. Van Noorden*: federal courts are not authorized to hear state law claims between citizens of the same state; parties cannot consent to jurisdiction or waive it; if jurisdiction is lacking, the case must be dismissed and any judgments entered before the dismissal are void.

3. *Tickle v. Barton*: fraudulent inducement cannot be utilized to gain personal jurisdiction

II. Jurisdiction over the parties or their property

a. The traditional bases for Jurisdiction

- i. Personal jurisdiction can be consented to.
- ii. Personal jurisdiction without consent is only allowed if it is allowed by both a statute and the Constitution.
- iii. Personal jurisdiction requires physical presence.
- iv. *Pennoyer v. Neff*: there is a difference between in rem jurisdiction (over property) and personal jurisdiction; if the cause of action had been over the land, then the state would probably have had jurisdiction; the suit, however, had nothing to do with land; it was only sold as a way to exercise personal jurisdiction in satisfying a judgment against Neff; there are three ways to gain personal jurisdiction over a party: (1) serve the person when he's in the state; (2) serve a citizen of that state anywhere; (3) attach property of the person that's located in the state;

due process requires states to stay within their borders; service is effective only against residents, people who are currently within the state's boundaries, or on the person's property if property is taken under the jurisdiction of the court at the time; most courts say that ownership of personal property in a state is enough to force that person to defend a lawsuit in that state, even if that person is not a resident, because they are taking advantage of the laws of the state, though the court in this case disagrees.

- v. A state has jurisdiction over all of its citizens, even those who are not residents.
- vi. The act of filing a lawsuit in a jurisdiction is enough to establish personal jurisdiction over an individual for the filing of a lawsuit against him.

b. Expanding the Bases of Personal Jurisdiction

- i. *Hess v. Pawloski*: the state may appoint the registrar at the DMV as an agent for those who drive on the state's highways, thereby allowing non-residents to be served in state through the agent, thereby establishing personal jurisdiction over the non-resident, even if the individual is not in the state at the time of the serving, so long as the individual is notified of the lawsuit; this case represents an attempt to get around *Pennoyer*.

c. A New Theory of Jurisdiction

- i. *International Shoe Co. v. Washington*: State has jurisdiction over a corporation if there is minimum contact such that suit does not offend traditional notion of fair play and substantial justice. Underlying principles are: (1) burden on defendant to defendant in that state; (2) state interest; (3) defendant gets benefits and privileges of the laws of a particular state. Minimum requirements include: (1) continuous and systematic contacts, not isolated or unconnected; (2) activities sufficient to establish presence; (3) quality and nature of contacts; (4) the contact gives rise to the cause of action.

d. Specific Jurisdiction and State Long-Arm Laws

- i. Specific jurisdiction: where the contact gives rise to the lawsuit.
Specific jurisdiction, as opposed to general jurisdiction, requires only one contact, if it's that contact that gives rise to the action.
- ii. In considering specific jurisdiction, courts consider:
 1. benefits and privileges
 2. purposeful availment
 3. foreseeable result
 4. interest of state
 5. convenience of defendant
- iii. The Development of Long-Arm Laws
 1. *Gray v. American Radiator & Standard Sanitary Corp.*: The injury occurred in Illinois, but the defective product was not made in Illinois. Defendant contests that tort occurred in Illinois, but court disagrees, holding the defendant knew that his product was sold in Illinois, and so he should have been able to foresee that his product would be used in Illinois, could cause injury there, and therefore could be sued there. It is reasonably foreseeable, and Illinois has a duty to protect its citizens.
 2. *McGee v. International Insurance*: This case requires less than *International Shoe* in establishing sufficient minimum contact. Defendant insurance company had contact with California only by receiving premiums from one person in the state. The contacts must give rise to a cause of action. There does not have to be consistent and systematic contact with the jurisdiction.
 3. *Hanson v. Denckla*: Unilateral activity of one party is not sufficient to establish jurisdiction over the defendant.
- iv. Due Process and Long-Arm Statutes
 1. *World-Wide Volkswagen Corp. v. Woodson*: Minimum contacts tests: foreseeably; whether the contacts are such that the defendant should reasonably expect to be haled into court there. If the defendant puts its products into the stream of commerce

with the expectation that his products will be put into the forum state, then there is reasonable expectation and personal jurisdiction.

2. *Burger King Corp. v. Rudzewicz*: Court ruled that defendant Michigan resident took advantage of Florida law by signing a contract that stated that Florida laws would apply. The court also said that there was reasonable foreseeability. Reasonable foreseeability and purposely availing oneself to the benefits and laws of the forum state are critical elements of personal jurisdiction. Personal availment should give rise to reasonable foreseeability. Jurisdiction arises out of defendant's contact.

a. After minimum contacts are established, fair play and substantial justice must still be met. Courts will consider:

- i. Forum state's interest
- ii. Plaintiff's interest
- iii. Interstate efficiency
- iv. Other state's interest

3. *Asahi Metal Industry Co. v. Superior Court*: In order to purposefully avail itself of the jurisdiction in a state, a person must make an action purposefully directed toward the forum state. The mere fact that you sell a product that you expect to end up in that state is not enough for that state to establish jurisdiction. Burdens on the defendant including defending a suit in a foreign nation or the interest of the forum state. Purposeful availment must be intentional; it can't just be an expectation. However, this is according to O'Conner's plurality, which is not law. Brennan's test does not require the plus factor, requiring only reasonable expectation. Both must be understood for the exam.

e. General Jurisdiction and State Long-Arm Laws

- i. *Helicopteros Nacionales de Columbia, S.A. v. Hall*: There is a distinction between specific jurisdiction and general jurisdiction. Before this case, it wasn't clear that there was a distinction, parties just argued for jurisdiction. *International Shoe* used the catch phrase "continuous and systematic." And the conduct gave rise to the cause of action (both general and specific jurisdiction) but those terms weren't used. This is the first case to separate out general jurisdiction from specific jurisdiction and gave another doctrine that justifies the exertion of personal jurisdiction. After this case, there are two ways to exert personal jurisdiction over a defendant. This is really the only case we have from the Supreme Court talking about general jurisdiction. Even if there are minimum contacts, they still have to comport with fair play and substantial justice. It's unclear whether the continuous and systematic contacts still have to comport.
- f. Arkansas Long Arm Statutes
 - i. Long arm statutes serve as additional limitations on the state's power to exercise jurisdiction. States are free to impose these on top of due process limitations. Many just say we want to have jurisdiction to the limits of the due process clause, in which case there is no middle circle, it's just the due process clause. In other states, the long arm statute limits the reach of that court significantly. Arkansas' statute extend jurisdiction to the due process clause. Appropriate for the Arkansas courts to cite to South Carolina precedent because federal law is the only restriction. Other states without a far stretching long arm statute, you have two inquiries: due process confines and long arm statute's confines.
- g. New Bases of Jurisdiction—Technological Contacts
 - i. *Bellino v. Simon*
- h. Jurisdiction Based Upon Power Over Property
 - i. In personum deals with individuals. In rem deals with property without regard to the individuals.

- ii. In rem jurisdiction is proper if the property is in a state, even if the court wouldn't be able to maintain jurisdictions over potential claimants.
- iii. A debt can be property for the purpose of in rem jurisdiction. A debt is property in the state in which it is owed.
- iv. A debt follows an individual wherever he goes. If you can get personal jurisdiction over the debtor, you can garnish his wages. Garnishment proceedings are limited to the award given to defendant from a third party.
- v. *Shaffer v. Heitner*: Minimum contacts are necessary to establish quasi in rem jurisdiction. Quasi in rem is when there is a specific interested property and so the property cannot be gone after without justice. Having property in the jurisdiction will usually satisfy minimum contacts. If the property is only tangentially related to the action, then a more thorough test of minimum contacts must be taken.
- vi. Quasi in rem: when an individual does not have a claim against an individual but rather the personal property or debt.
- i. A refrain: Jurisdiction Based upon Physical Presence
 - i. *Burnham v. Superior Court*: Wife moved to California and filed for divorce in California. Husband filed for divorce in New Jersey. Wife served husband in California while he was on a business trip and visiting his kids. Husband moves to quash services, because California did not have authority to serve him. Court says that if you're in the state and served in the state, then you fall under jurisdiction, even if there aren't necessary minimum contacts.
 - ii. *Insurance Corp. of Ireland*: party's refusal to provide information in discovery relating to jurisdiction issues resulted in the courts determining that there was jurisdiction.
 - iii. *Carnival Cruise Lines*: Plaintiff was bound by forum selection clause on his ticket.
- j. Another Basis of Jurisdiction: Consent
- k. Jurisdictional Reach of the Federal District Courts

- i. Most states follow the federal rule, which says that you don't have to make a personal appearance. If you challenge personal jurisdiction in a Rule 12(b) motion or in the answer, then you've presented that defense. This avoids your having to appear to challenge personal jurisdiction only to be served in that state.
- ii. Raising the Jurisdictional Issue Directly
- iii. Collateral Attack on Personal Jurisdiction
- iv. The Limited-Appearance Problem
- m. Personal jurisdiction in federal courts is the same as personal jurisdiction in the state courts, with some exceptions. If a federal statute authorizes jurisdiction, the federal statute controls, not the state long arm statute. If the defendant is a foreigner, then the court can exercise jurisdiction if the defendant is amenable to jurisdiction in the United States.

III. Providing Notice and an Opportunity to be Heard

- a. The Requirement of Reasonable Notice
 - i. *Mullane v. Central Hanover Bank & Trust Co.*: The due process clause that governs personal jurisdiction also governs notice. The due process clause requires notice be reasonably calculated under all the circumstances to appraise interested parties of the action and give them the opportunity to present their objections. There are two prongs of notice: method and content. Notice by newspaper may be sufficient when there is no other feasible way to give notice to claimants, though it is normally insufficient. It's all about reasonableness. Weighing the cost of the notice against the effectiveness of the notice. At the same time, actual notice may be irrelevant. The method of notice may be challenged.
- b. The Mechanics of Giving Notice
 - i. Introduction
 - ii. Specific Applications of the Service Provisions
 1. Federal Rule 4(d): "Waiver of Service"

- a. *Maryland State Firemen's Association v. Chaves*:
Plaintiff served the defendant by first class mail. The service was invalid, because the federal rules govern service in federal court. Rule 4(c) allows service by first class mail, but only if the service is acknowledged by the defendant. The new Rule 4(c) requires that the defendant be asked to waive service, and if he does not, then service is not valid. Also, service may be made according to state rules. Exceptions for actual notice are not allowed, because there are evidentiary difficulties in proving that actual notice has occurred. Actual notice is not the standard, however, generally speaking, but rather compliance with the rules.
2. Federal Rule 4(e): Personal Delivery on Natural Persons
3. Rule 4(e)(2): Service on a Person Residing in Defendant's Dwelling House or Usual Place of Abode
 - a. Allows for service by leaving service at a dwelling place. Service may be left at a dwelling place with a person of suitable age and discretion.
4. Rule 4(e)(2): Delivery to an Agent Authorized by Appointment
 - a. *National Equipment Rental, Ltd. V. Szukhent*
5. Federal Rule 4(h): Service on Artificial Entities: Corporations, Partnerships, and Unincorporated Associations
 - a. Allows for service upon an agent of the corporation. Any person capable of effectuating service may be served. Must be someone high up enough to ensure that process must get through in a timely fashion. After service has been made, the process server must file a return setting forth the facts and circumstances of service. A suit is commenced such that the statute of limitations is usually satisfied when process is served.

6. Rule 4(f): Service on Individuals in a Foreign Country
- iii. Return of Service
- iv. Service of Process and Statutes of Limitations
- c. Immunity from Process and Etiquette of Service
 - i. Immunity from Process
 1. *State ex rel. Sivnksty v. Duffield*: Many states have a common law immunity from process doctrine. If an individual is in a state for the purpose of facilitating court proceedings, then while he is in the state, he is immune from service of process for other actions.
 - ii. Etiquette of Service
 1. *Wyman v. Newhouse*
- d. Opportunity to be Heard
 - i. *Dusenberry v. United State*: No special procedures are required to give notice to a federal inmate when the suit is by the federal government.
 - ii. Values underlying notice: efficiency, accuracy, fairness.
 - iii. The law does not require actual notice, but only constructive notice, that is, a reasonable likelihood that notice will be given.
 - iv. *Fuentes v. Shevin*: A prehearing seizure usually violates the due process clause. Certain extraordinary circumstances may permit seizure without a hearing: a time of war, certain economic crisis, contaminated food or misbranded drugs.
 - v. *Mitchell*: When there are a lot of safeguards for the debtor, then due process will not require prior notice and hearing before seizure of property.
 - vi. *North Georgia*: A lack of a judge's overview may make a difference in determining whether a prehearing seizure is valid.
 - vii. *Connecticut v. Doebr*: Connecticut law allowed for an attachment of defendant's property in order to ensure that there would be sufficient assets should a judgment be entered against the defendant without prior notice if the judge found probable cause and the applicant swears under

oath that the claims will succeed. No bond is required, and there are double damages without attachment. The law was struck down, because due process requires consideration of three things: (1) the interest affected; (2) the risk of erroneous deprivation and the probable value of additional safeguards; (3) the applicant's interest and fiscal and administrative burdens to the state.

IV. Jurisdiction Over the Subject Matter of the Action—The Court's Competency

- a. If a case arises under federal law (federal statutes and treaties or the Constitution) then a federal court has subject matter jurisdiction to hear the case. Article III of the Constitution is not self-executing. A federal court has to have power extended to it by Congress, which the Congress did in 28 U.S.C. § 1331, in extending jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.
- b. Subject-Matter Jurisdiction in State Courts
 - i. *Lacks v. Lacks*: Preference is against declaring there to be no jurisdiction, so that judgment won't be unraveled. Statute limitations are often considered to be affirmative defenses, and so can be waived. The Supreme Court has said that the effect of characterizing a limitation as jurisdictional would result in too great of costs. Unless Congress specifies that it's jurisdictional, then it's just an element of the claim.
 - ii. *Osbourne*: The Supreme Court says "arising under" is very broad, meaning there must only be some essential ingredient to the case that bears on federal law. This allows for federal jurisdiction over any state based lawsuit against the national bank, because the bank is chartered under federal law. After this case, "arising under" is still incredibly broad. There must only be some federal issue. This gives Congress broad flexibility to provide jurisdiction wherever it wishes. The presence of state law issues doesn't necessarily remove the case from federal jurisdiction.
 - iii. *Louisville*: Only matters pertaining to federal law arising on the fact of the plaintiff's claims allow for federal jurisdiction. Potential defenses

that pertain to federal law do not give federal courts subject matter jurisdiction.

iv. The well pleaded complaint rule: only allegations that are material and give rise to the plaintiff's claims will be evaluated in determining federal law jurisdiction under U.S.C. § 1331. Nothing can be based upon what the defendant does. This, however, allows the plaintiff to allege just one federal claim, no matter how tenuous, or to completely avoid federal law claims, should he desire to stay in state court.

c. The Subject-Matter Jurisdiction of the Federal Courts—Diversity of Citizenship

i. § 1332 executes Article III of the Constitution pertaining to diversity jurisdiction. It requires complete diversity. No one on the plaintiff's side can be from the same state as anyone on the defendant's side.

Diversity, however, does not require that the case be heard in federal court.

ii. Individuals can only be citizens of one state at a time. Corporations can be citizens of up to two states at a time, wherever they were incorporated and wherever their principal place of business is. Unincorporated businesses reside in each state of its member's corporation.

iii. Only real parties in interest count for diversity jurisdiction purposes. Joinder can destroy diversity jurisdiction.

iv. Alien is one citizenship. If two aliens sue each other, there is no diversity, even if they are citizens of different countries.

v. The terms of the debate

vi. New developments

vii. Determining citizenship

1. *Mas v. Perry*: Court says citizenship for diversity jurisdictional purposes means domicile, which is a subjective intent to reside there permanently or indefinitely plus some physical presence there. In this case, despite moving to Louisiana for graduate school, the plaintiff's original jurisdiction never changed.

viii. Amount in Controversy

1. § 1332: there is an amount in controversy requirement of more than \$75,000.
 2. There is an amount in question requirement for diversity jurisdiction, not for federal question.
 3. Domestic relation cases, probate matters, and similar cases are except to diversity jurisdiction.
 4. *A.F.A. Tours, Inc. v. Whitchurch*: The test for the amount in controversy is that the plaintiff's good faith complaint controls, unless defendant proves otherwise to a legal certainty. A legal certainty would be when punitive damages put the amount in controversy over the top, but that state does not allow for punitive damages. Measurement of damages can be done either by plaintiff's losses or by defendant's gains in such cases as misappropriation of trade secrets. Punitive damages are included when determining damages for jurisdictional purposes. The measurement is made from several different perspectives and determined by what law is controlling in that jurisdiction. Amount in question is determined for jurisdictional purposes at filing.
- d. The Subject-Matter Jurisdiction of the Federal Courts—Federal Questions
- i. *Louisville & Nashville R. Co. v. Mottley*: the well-pleaded complaint rule. § 1331.
 - ii. § 1332 requires complete diversity and 75K.
 - iii. *T.B. Harms Co. v. Eliscu*
 - iv. *Merrell Dow Pharmaceuticals Inc. v. Thomason*
- e. The Subject-Matter Jurisdiction of the Federal Courts—Supplemental Claims and Parties
- i. *United Mine Workers of America v. Gibbs*: Plaintiff filed a federal claim and a state law claim in federal court. The federal law claim was dismissed, but the federal court still heard the state law claim. The federal court had the power to do this, because once there is one claim

that meets the jurisdictional requirements, other claims may be heard if they meet the requirements for supplemental jurisdiction, which occurs if the state law claim arises out of a common nucleus of operative facts. Claims can form one constitutional case, depending on how related those claims are. If those claims are so related that they arise out of a common nucleus of operative facts, they equal one constitutional case. Therefore, any question that arises out of that one constitutional case can satisfy jurisdiction. If the claims do not arise out of a common nucleus of operative facts, however, then each claim is evaluated separately. This is for the establishment of supplemental jurisdiction at the outset. Supplemental jurisdiction is not required, however. The general rule is that if the federal case is dismissed before trial, then the state courts should really adjudicate those claims. If the state law issues predominate in the case, then the federal court may dismiss the whole case without prejudice, so that it may be refilled in state court. The problem with this case is that there is no statutory authorization to hear such claims. It is a Constitutional, rather than a statutory, decision.

- ii. *Aldinger v. Howard*: Restricted *Gibbs* to the facts of *Gibbs*. Said that courts cannot be in the business of manufacturing their own jurisdiction without Congressional authorization.
- iii. *Owen Equipment*: when there is a conflict between diversity jurisdiction and supplemental jurisdiction, then supplemental jurisdiction must yield.
- iv. *Finnley*: When there are multiple claims that don't form a common nucleus and one by law must be adjudicated by federal courts, the state claims must be litigated by state courts, thereby requiring the plaintiff to maintain two different causes of action.
- v. § 1367: (b) carves out exceptions to supplemental jurisdiction cases when claims would destroy diversity jurisdiction. (c) If the district court determines that it has diversity jurisdiction under (a) and they are not excluded under (b), then the district court can still decline to exercise supplemental jurisdiction. There are four guideposts to assist them in

their determination: (1) If the claims raises a novel or complex issue of state law where the state court would be better suited to decide the issue; (2) if the claim predominates over claims over which the federal court has jurisdiction; (3) if the district court had dismissed all claims in which it had original jurisdiction, then the court has the discretion to dismiss the state law claim for no other reason than that it should be heard in state court; (4) exceptional circumstances, or other compelling circumstances for declining jurisdiction. (d) statute of limitations that run on supplemental claims are put on hold for the time the case is pending in federal court and for 30 days after it is dismissed.

vi. § 1367: enacted to overrule *Finnley* and codify *Gibbs*. (a) There is no distinction between parties and claims, as long as the claims are related, that is, as long as there is at least one claim dealing with a federal question; (b) creates exceptions to (a) for diversity cases, by codifying *Kroger*; (c) supplemental jurisdiction is a discretionary doctrine and sets out guidelines to deny supplemental jurisdiction, even when it would be statutorily authorized.

vii. Compulsory claims are so related that they are amendable to supplemental jurisdiction. This does not apply to permissive counterclaims, however, which cannot form one constitutional case.

viii. *Executive Software North America, Inc. v. United States District Court for the Central District of California*

f. The Subject-Matter Jurisdiction of the Federal Courts—Removal

i. § 1441: (a) any civil action brought in a State court of which the district court has original jurisdiction may be removed by the defendant or the defendants to the district court. All defendants must consent in order for removal to be valid. It must be removed to the federal district that oversees the geographical area in which the state court is located. (b) a civil action of which the district courts have original jurisdiction founded on a claim or right arising under the constitution or laws of the United States shall be removable without regard to the citizenship or

residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought. (c) as long as there is at least one federal question in the case, you can remove the whole case, but if the other claims in the case are separate and independent from the federal question, then the district court has discretion to remand all matters in which state law predominates.

- ii. § 1446: (a) all that needs to be done for removal is for a filing in the district court, pursuant to Rule 11. (b) You have to file a notice of removal within 30 days of being served with the initial complaint. The filing of an amended complaint does not restart the clock for removal, unless the initial complaint did not contain a basis of removal and the amended complaint does. In such a case, there is a 30-day time limit from the time removal becomes permissible. The exception is for cases removed on the basis of diversity jurisdiction. Those cases cannot be removed more than one year after the initial complaint is filed. (d) After filing the notice of removal in federal court, the defendant needs to immediately give notice to the parties and to the state court. Once notice is received, the state court is divested of jurisdiction.
- iii. § 1447: (a) the district court may issue all necessary orders and process to bring before it all proper parties. (c) a motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made with 30 days after the filing of the notice of removal under § 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. Improper removals may result in attorney fees sanctions. (d) Any order remanding a case to the State court from which it was removed is not renewable on appeal.
- iv. A plaintiff cannot be removed. Even if a federal counterclaim is leveled, the plaintiff cannot be removed.
- v. Federal law questions are always removal.

- vi. Forum defendant rule prevents removal when the defendant is being tried in the state of which he is a resident.
- vii. *Borough of West Mifflin v. Lancaster*:
- g. Challenging the Subject-Matter Jurisdiction of the Court
 - i. Direct Attack on a Court's Lack of Subject-Matter Jurisdiction
 - 1. Any litigant may challenge subject matter jurisdiction at any time prior to the entry of final judgment.
 - 2. *Marathan Oil*: It is ok for a district court to dismiss for lack of personal jurisdiction, before deciding on the matter of subject matter jurisdiction. There is no rigid jurisdictional hierarchy. The Court did say that the safer route is to determine subject matter jurisdiction first, and that's what courts generally ought to do. When the subject matter issue is difficult and the personal jurisdictional issue is very easy, it's ok for the court to decide the personal jurisdiction issue first. When a federal court says that that state lacks personal jurisdiction over defendant, that is binding, and so the complaint cannot be refilled in that state. This case potentially allows the courts to make substantive and meaningful rulings that will affect the case later on, even though it may lack subject matter jurisdiction. Dismissal for forum nonconvenience may also be made before subject matter jurisdiction is determined.
 - 3. Even if the court lacks subject matter jurisdiction, it may still control the proceedings before it while it determines whether or not it has subject matter jurisdiction.
 - ii. Collateral Attack on a Judgment for Lack of Subject-Matter Jurisdiction
 - 1. While rulings without subject matter jurisdiction are considered void, this is not always the case. Otherwise, finality would be affected.
 - 2. Restatement: collateral attack may not be made unless there is no justifiable issue of reliance that must be protected and one of

three facts are present: the subject matter was plainly beyond jurisdiction, allowing the judgment to stand would infringe on the authority of another tribunal.

3. It is tricky to collaterally attack subject matter jurisdiction, because of finality issues.

V. Venue, Transfer, and Forum Non Conveniens

a. Venue

i. General Principles

1. Venue is not a jurisdictional issue, but rather merely a matter of convenience. Venue can be consented to.
2. Two questions:
 - a. What venue is appropriate?
 - b. Should venue be transferred from one appropriate venue to a more appropriate venue?
3. Venue is based on convenience and fairness, and states have broad leeway to set their venue rules as they see fit.
4. Most contracts have forum selection clauses, which the federal system considers presumptively valid. Some states, however, consider forum selection clauses invalid per se.

ii. Local and Transitory Actions

1. *Reasor-Hill Corp v. Harrison*: Local action rule: for land disputes, the venue is only where the land is located. Plaintiff should sue defendant before defendant leaves the jurisdiction. Courts can't adjudicate land outside its borders. Demonstrates a reluctance to be fair to out of staters. This court throws out this rule.
2. General venue rule for diversity cases: where all defendants reside; or where the event occurred; or defendant, where there is personal jurisdiction over the defendant.

3. General venue rule for cases not based on diversity: where all defendants reside; or where the event occurred; or default, the district in which any defendant may be found.
4. Many courts treat the two as being the same.
5. Venue depends on residency, rather than domicile.
6. For a corporation, a defendant is a resident of any place in which it is subject to personal jurisdiction.

iii. Venue in the Federal Courts

1. If a state has more than one district, you look at each district as if they were separate states for determining personal jurisdiction.
2. An alien may be sued in any district.
3. *Bates v. C. & S Adjusters, Inc.*: § 1391(2) allows a case to be brought in a judicial district in which a significant part of the events occurred. Within the range of venues that § 1391 directs, the plaintiff gets the first shot in determining which of the allowable venues he wants. There can be more than one proper venue; just because one is more proper and convenient than another doesn't mean the case must be filed there.
4. § 1391
 - a. Diversity: venue should be in the district in which the defendant resides;
 - b. Where a substantial part of the events or omissions occurred, or any other district where as substantial part of the events or omissions occurred.
5. § 1406: a district court hearing a case in which there is improper venue shall dismiss the case or, if it is in the interest of justice, transfer the case to any district in which it could have been brought.
6. Improper venue must be objected to immediately, or it is waived.

iv. Transfer of Venue in Federal Courts

1. *Hoffman v. Blaski*: Under § 1404, a court may change a venue from a proper venue to another proper venue for the convenience of the parties or the witnesses. Transfer to any other district in which it might have been brought means where it might have been brought at the time of filing. § 1406 allows a court without personal jurisdiction to transfer a case. If plaintiff files in an improper venue, if the case is transferred to a proper venue, there is no statute of limitations concern.

v. Forum Non Conveniens

1. Forum Non Conveniens occurs when there are international venue issues. A court may dismiss a case even when personal jurisdiction, subject matter jurisdiction, and venue are all proper, in order to allow refiling in a foreign jurisdiction on the basis of
 - a. Ease/access of evidence
 - b. Availability of process for getting witnesses
 - c. Cost/efficiency
 - d. Minor factors include public interest, whether the forum would apply its own law or another.
 - e. The court may also dismiss the case on conditions.

2. *Piper Aircraft C. v. Reyno*:

VI. Ascertaining the Applicable Law

a. State Law in the Federal Courts

i. The Rules of Decision Act

1. State law applies unless there is question of federal law.
2. The Act only applies to federal Courts.
3. The Constitution does not specify what law applies in federal courts.

ii. The Rule of *Swift v. Tyson*: This case makes a distinction between statutes of the several states and the common law of the several states under the RDA. Law of several states only applies to state statutes and constitutions and local law (common law that is consistent and has been

passed down from generation to generation). General common law (evolving common law) is not the “law of several states” referred to by the RDA. Federal courts then began developing their own general common law, which state courts disregarded.

iii. The *Erie* Doctrine: The Rules of Decision Act and the Rules Enabling Act

1. *Erie R. Co. v. Tompkins*: This case overruled *Swift*, stating that there is no federal general common law and “laws of the several states” includes judge-made law. Legal realism provided much less reason for federal courts to be involved in the making of law. Courts under *Swift* were implying the power to create common law based on the diversity statute. Yet the diversity statute did not give federal courts that right. In federal court diversity cases, the court must apply state substantive law and federal procedural law. Federal common law still exists, but only when a federal statute is unclear. Admiralty and to some extent international law are also still part of the federal common law.
2. *Guaranty Trust Co. v. York*: Federal courts must apply the state’s statute of limitations. The outcome of the case should be substantively the same whether it is heard in state or federal court. This court applies the outcome-determinative test. If the conflict of law would result in a different outcome, then the state law has to apply to ensure uniformity and consistency. It is still difficult to determine if the difference in the rules is outcome-determinative. Some differences may be somewhat speculative as far as the impact on the case.
3. *Byrd v. Blue Ridge Rural Electric Cooperative, Inc.*: This case modifies the *York* decision to add federal interest as a factor in the outcome-determinative test. If the state’s law undermines federal interests, such as a right to a jury trial, then federal rules may apply, particularly when there is an ambiguity in the

outcome-determinative test. A countervailing federal interest ought to be balanced with the interest of the state in having its laws apply. The twin aims of *Eerie* were the avoidance of forum shopping and reducing the inequitable administration of the laws by having two different laws in the same location. The outcome-determinative test is applicable only when it touches these two aims.

4. *Hanna v. Plumer*
5. *Walker v. Armco Steel Corp*
6. *Stewart Organization, Inc. Ricoh Corp.*
7. *Gasperini v. Center for Humanities, Inc.*

b. The Problem of Ascertaining State Law

- i. Determining Which State's Law Governs
- ii. Ascertaining the State Law

1. *Mason v. American Emery Wheel Works*

c. Federal "Common Law"

- i. *Clearfield Trust Co. v. United States*
- ii. *Miree v. DeKalb County*
- iii. *Boyle v. United Technologies Corp*

d. Federal Law in the State Courts

- i. *Dice v. Akron, Canton & Youngstown R. Co.*