



THE EXAM SOLUTION®

Civil Procedure I



26170 Enterprise Way, Suite 500, Lake Forest, CA 92630

CALIFORNIA TOLL FREE 1 (800) LAW EXAM

(949) 770-7030 • Fax (949) 454-8556

EMAIL info@ffol.com • WEB www.ffol.com

All Rights Reserved (©2007/2008)

CONQUER THE BAR

with



LONG/SHORT TERM BAR REVIEW
ULTIMATE/PREMIER BAR TUTORIAL
ONLINE HOME STUDY BAR REVIEW



**5 Courses to
Choose From!**

**REGISTER
NOW!!!**

**Your \$250 Deposit
gives you:**

- 1. Bar Course
price freeze!***
- 2. 20% Discount
on all future
FFOL orders!**
- 3. Complimentary
Outlines****

*Short Term & Long Term Only
**Call FFOL for details

CHECKLIST TO CIVIL PROCEDURE I

I. SUBJECT MATTER JURISDICTION

- A. General Principles
- B. Federal Question Jurisdiction
- C. Diversity Of Citizenship Jurisdiction
- D. Supplemental Jurisdiction
- E. Challenge To Federal Subject Matter Jurisdiction
- F. Removal Jurisdiction

II. PERSONAL JURISDICTION

- A. The Due Process Clause
- B. Long Arm Statute

III. IN REM AND QUASI IN REM JURISDICTION

- A. Traditional Approach
 - 1. In Rem jurisdiction
 - 2. Quasi In Rem jurisdiction
- B. Modern Approach: **SHAFFER v. HEITNER**

IV. THE DUE PROCESS REQUIREMENT OF NOTICE: SERVICE OF PROCESS

- A. **MULLANE v. CENTRAL HANOVER BANK**
- B. Permissible Methods Of Service

V. CHALLENGING THE PERSONAL JURISDICTION OF THE COURT

- A. Direct Attack
- B. Collateral Attack
- C. Challenging the Merits in a Quasi In Rem Proceeding Without Consenting to Personal Jurisdiction - Limited Appearance

VI. VENUE

- A. Statutory Requirements Under Federal Venue Statute
- B. "Local Action" Rules - Suits Concerning Real Property
- C. Challenging Improper Venue In Federal Court
- D. Removal
- E. Transfer
- F. Inconvenient Forum

VII. CHOICE OF LAW

VIII. PLEADINGS

- A. Purposes
- B. Pleading Requirements
- C. Complaint
- D. Pleading Special Matters
- E. Challenges To The Complaint
- F. Answer
- G. Amendment

IX. JOINDER OF CLAIMS AND PARTIES (Testable)

- A. Joinder Of Claims
- B. Joinder Of Parties

I. SUBJECT MATTER JURISDICTION

Subject matter jurisdiction is the power of the court to hear and determine a particular type of claim or controversy.

A. General Principles:

1. Federal subject matter jurisdiction

- a. Federal courts are courts of limited subject matter jurisdiction, which means they can hear, for the most part, only two types of claims, i.e. claims supported by federal question jurisdiction and claims supported by diversity of citizenship jurisdiction.
- b. When a federal court finds that any claim in a complaint lacks its own independent basis of federal subject matter jurisdiction (i.e., federal question or diversity of citizenship subject matter jurisdiction), it must dismiss that claim, unless the court decides to assert some form of supplemental jurisdiction (i.e., pendent, pendent party or ancillary jurisdiction - see D. 2, infra, at page 8). If the claim is dismissed, the plaintiff may choose to assert that claim in a state court suit.
- c. Waiver
 - 1) The lack of federal subject matter jurisdiction cannot be waived, i.e. this objection can be raised for the first time at any stage including on appeal.
 - 2) Unlike personal jurisdiction, the parties cannot confer subject matter jurisdiction on a federal court by consent.
- d. Because federal courts have limited subject matter jurisdiction, a plaintiff must plead in his complaint the exact basis upon which federal subject matter jurisdiction is asserted.

2. State subject matter jurisdiction

- a. In contrast to federal district court, the **California state superior court is a court of general subject matter jurisdiction because it can hear all claims arising under state law and claims arising under federal law** (except claims over which the federal courts have exclusive jurisdiction).
- b. State courts which are inferior to the state superior court are courts of limited state subject matter jurisdiction because they are limited by state law to hearing only certain types of controversies

3. Concurrent and exclusive jurisdiction:

Concurrent jurisdiction means that both the federal courts and the state courts can hear a case. However, there are certain claims over which Congress has given the federal courts exclusive jurisdiction, meaning that these claims can be heard only by a federal court.

- a. Exclusive jurisdiction exists over the following cases:
 - 1) Admiralty cases
 - 2) Bankruptcy cases
 - 3) Patent and copyright cases
 - 4) Certain antitrust cases

- b. Unless Congress has specifically vested the federal courts with exclusive jurisdiction over a certain claim, concurrent jurisdiction over that claim is presumed.

B. Federal Question Jurisdiction (28 U.S.C.A. Section 1331): (*rarely tested*)

1. The federal courts can hear cases which arise under the Constitution, laws or treaties of the United States.
2. The "well pleaded complaint" rule:
In **LOUISVILLE & NASHVILLE R.R. v. MOTTLEY**, the U.S. Supreme Court held that a claim does not arise under federal law unless it appears on the face of a well-pleaded complaint. This means that a substantial federal issue must be raised as a legitimate part of the plaintiff's cause of action. Hence, a plaintiff cannot manufacture federal question jurisdiction by anticipating a federal defense (defenses can only be asserted by a defendant in his answer).
3. The federal issue must be "substantial", i.e. it must not be utterly frivolous or without merit.
4. The general federal question statute (28 U.S.C.A. Section 1331) does not require a minimum amount in controversy. (However, a few of the federal statutes that contain specific grants of federal question jurisdiction do require a minimum amount in controversy, e.g. the Consumer Safety Act.)

C. Diversity Of Citizenship Jurisdiction (28 U.S.C.A. §1332) (**Testable**) :

The federal district courts have original jurisdiction over all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and the controversy is between:

- * Citizens of different states, or
- * Citizens of a state and citizens or subjects of a foreign state, or
- * Citizens of different states and in which citizens or subjects of a foreign state are additional parties, or
- * A foreign state, as plaintiff, and citizens of a state or of different states

1. Rationale: To protect out-of-state citizens from local prejudice in state courts
2. Amount in controversy
 - a. The sum claimed by the plaintiff in his complaint controls if the claim is made in "good faith". The case can be dismissed only if it appears to be a "legal certainty" that the plaintiff cannot possibly recover in excess of \$75,000. Jurisdiction is not lost in the event that plaintiff ultimately recovers an amount below \$75,000.00.
 - 1) Effect of injunction
 - a) In a majority of states, injunctions are valued at their value to the plaintiff. A minority of states allow injunctions to be measured by their cost to the defendant
 - b. If the plaintiff ultimately recovers less than the sum or value of \$75,000, computed without regard to any setoff or counterclaim to which the defendant may be

adjudged entitled, and exclusive of interest and costs, the court, in its discretion, may penalize plaintiff either by refusing to award him costs or by imposing costs upon him.

1. CA RULE: In CA superior court, cases in which the amount in controversy is \$25,000 or less must be filed as “limited cases” (where access to discovery is more restrictive). (CCP § 86.) The small claims court has jurisdiction if the amount of the demand does not exceed \$5,000. (CCP § 116.220(a).)
2. Although the prayer for relief in the complaint initially determines whether an action should be classified as a limited civil case (unless the prayer is fraudulent or fictitious on its face), the court can, at any time during the course of litigation, reclassify a case that “necessarily”¹ involves less than \$25,000 as a limited civil case (CCP § 396.)² The court has authority to conduct a hearing at any time in order to obtain factual information, as distinct from federal court where the amount demanded in good faith in the complaint controls.
3. In California state court, defendant’s claims (asserted in a cross-complaint) are considered in determining the amount in controversy; thus, where a complaint is filed as a limited civil case, but the cross-complaint demands more than \$25,000, the clerk will reclassify the case as an unlimited civil case. (CCP § 403.030.)³ In federal court, only the plaintiff’s claims can be considered for purposes of satisfying the amount in controversy.
4. Effect of injunction:
Since equitable relief is generally sought only in superior court, there is no need to evaluate whether injunctive relief meets a specific amount in controversy.

¹ Walker v. Superior Court, 53 Cal. 3rd 257 We conclude section 396 permits a superior court to transfer a matter if, during the course of litigation, it reasonably concludes that the verdict will "necessarily" fall short of the superior court jurisdictional requirement of a claim exceeding \$ 25,000.

² (b) If an action or proceeding is commenced in or transferred to a court that has jurisdiction of the subject matter thereof as determined by the complaint or petition, and it thereafter appears from the verified pleadings, or at the trial, or hearing, that the determination of the action or proceeding, or of a cross-complaint, will necessarily involve the determination of questions not within the jurisdiction of the court, in which the action or proceeding is pending, the court, whenever that lack of jurisdiction appears, must suspend all further proceedings therein and transfer the action or proceeding and certify the pleadings (or if the pleadings be oral, a transcript of the same), and all papers and proceedings therein to a court having jurisdiction thereof that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter jurisdiction that is designated by law as a proper court for the trial or determination thereof.

³ If a party in a limited civil case files a cross-complaint that causes the action or proceeding to exceed the maximum amount in controversy for a limited civil case or otherwise fail to satisfy the requirements for a limited civil case as prescribed by Section 85, the caption of the cross-complaint shall state that the action or proceeding is a limited civil case to be reclassified by cross-complaint, or words to that effect. The party at the time of filing the cross-complaint shall pay the reclassification fees provided in Section 403.060, and the clerk shall promptly reclassify the case.

c. Aggregation

- 1) A single plaintiff may aggregate all his claims against a single defendant to meet the requisite amount in controversy.
- 2) Plaintiffs may only aggregate if their claims are based upon a "common undivided interest", e.g. a partnership suing for a \$80,000.00 debt. Two or more plaintiffs cannot aggregate their claims if their claims are "separate and distinct". Even if the claims are factually related, they may still be separate and distinct. Thus, a driver and his passenger suing another driver have "separate and distinct" claims. Note: Aggregation rules also apply to class actions. Thus, each member of the class with a "separate and distinct claim" must meet the amount in controversy requirement.
- 3) The U.S. Supreme Court held that where one plaintiff's claim exceeds \$75,000 and a second plaintiff's claim against the same defendant is less than \$75,000, district courts can exercise supplemental jurisdiction over the second plaintiff's claim. [Under §28 U.S.C. A. §1367] **EXXON MOBIL CORP. v. ALLAPATAH SERVICES.**
- 4) A plaintiff suing multiple defendants cannot aggregate his claims unless the defendants are jointly liable to the plaintiff, as where plaintiff sues individual partners of a partnership for damages in excess of \$75,000.

California aggregation rules to determine amount in controversy:

- a. In California *class actions*, the claims of the individual class members may be aggregated to determine the amount in controversy. In federal court, class members claims can only be aggregated (under the Class Action Fairness Act) if the aggregate amount exceeds \$5,000,000.
- b. *Single plaintiff vs. single defendant*: All claims are aggregated.
- c. *Single plaintiff vs. multiple defendants*: P vs D1 and D2 for \$50,000 on a *joint obligation* (e.g., partners on a partnership obligation, or joint and several tort liability), amount in controversy is \$50,000; P vs. D1 and D2 on *separate claims*, no aggregation; but, if claim against one of the defendants exceeds \$25,000, both claims are subject to rules governing unlimited cases.
- d. *Multiple plaintiffs vs. one or more defendants*: If two or more plaintiffs assert a *joint claim* (i.e., a common, undivided interest in the claim sued on: e.g., partners on a breach contract between the partnership and D (joint obliges), or cotenants of Blackacre), their total claim is the amount in controversy. But, if each plaintiff's claim is *separate*, no aggregation; but, again, if one claim exceeds \$25,000, all properly joined claims will adjudicated as an unlimited civil case.

3. "Complete" Diversity (**STRAWBRIDGE v. CURTISS**)

- a. Where jurisdiction is based upon diversity of citizenship [28 U.S.C.A. §1332(a)(1)] diversity between plaintiffs and defendants must be "complete," meaning that no plaintiff may be a citizen of the same state as any one of the defendants.

- b. Definition of citizenship of a state: The party must be (1) "domiciled" within a state and (2) a citizen of the United States. (One who is not a United States citizen may be able to invoke "alienage" jurisdiction [28 U.S.C.A. §1332(a)(2) or (3)]).
 - 1) A natural person's "domicile" is defined as the state where he:
 - (1) Physically "resides" (2) with the intent to remain for the indefinite future.
 - a) Residence: The person must actually have a fixed and permanent home in the state. It is not enough that the person intends to make a state his permanent home if he has not yet physically established a place to live in that state.
 - b) Intent: Many facts can be relevant to a person's intent: e.g., current residence, place of employment, voting or automobile registration, bank accounts, where his children go to school, where he pays taxes
 - 2) A person keeps his domicile until he acquires a new one.
(**MAS v. PERRY**) *Example*: A student attending college in Louisiana who has left her parent's home in Mississippi intending never to return to live with them after graduation is still deemed to be domiciled in Mississippi until she sets up a physical residence in another state with the intent to remain there indefinitely.
- c. Citizenship of corporations (dual citizenship): A corporation is deemed to be a citizen of any state in which it is incorporated and of the state in which it has its principal place of business.
 - 1) Incorporation
 - 2) Principal place of business: A corporation can have only one principal place of business. There are two tests to determine a corporation's principal place of business:
 - a) Corporate headquarters (the "nerve center" test) and
 - b) Where the corporation conducts most of its business (the "muscle" test)
- d. Unincorporated associations (e.g., labor unions, partnerships, religious or charitable organizations) are citizens of every state where a member is domiciled. This rule significantly limits federal subject matter jurisdiction.
- e. In an action by or against an estate, the estate is deemed a citizen of the same state as the decedent, the state in which the decedent was domiciled at the time of death.
- f. In a class action, only the citizenship of the named class representatives is considered in determining diversity. (see Class Actions, Section IX, *infra*, at page 46)
- g. Diversity of citizenship of the parties is determined as of the time the action is commenced (i.e., date of filing the complaint), not as of the date the injury occurs. Diversity need not continue after the suit is commenced.

* **The Class Action Fairness Act amended the diversity jurisdiction statute to provide for minimal diversity in which any one member of the class (named or not) has diverse citizenship from any one defendant and where the aggregate amount in controversy of all claims exceeds \$5 million.**

D. "Supplemental Jurisdiction": Pendent, Pendent Party And Ancillary Jurisdiction:

Under federal case law, federal courts determined that they had the power to hear certain non-federal, non-diversity claims (i.e., claims which lack an independent basis of federal subject matter jurisdiction) which are related to claims which do have an independent basis (i.e., federal question or diversity jurisdiction) in order that the entire controversy may be adjudicated in one federal lawsuit rather than multiple lawsuits (in federal and state courts). The judicially created doctrines of "pendent" and "ancillary" jurisdiction thus serve the goal of judicial economy.

1. Effect of "Judicial Improvements Act of 1990": In December of 1990, Congress enacted the Judicial Improvements Act of 1990. Section 310 of this Act drafted in response to **FINLEY v. U.S.** (decided in 1989 and which had cast doubt on the continued validity of pendent and ancillary jurisdiction), gives the federal courts explicit statutory authority to assert pendent, pendent party and ancillary jurisdiction (where not inconsistent with complete diversity), which the statute subsumes under the single label "supplemental jurisdiction." The purpose and effect of Section 310 is
 - a. To codify the existing case law of pendent and ancillary jurisdiction (including **UMW v. GIBBS AND OWEN EQUIPMENT & ERECTION COMPANY v. KROGER**) and
 - b. To overturn the **FINLEY** case which had refused to recognize "pendent party jurisdiction", the statute gives courts [Section 310(c)] discretion to decline to exercise all forms of supplemental jurisdiction where:
 - 1) The claim raises a novel or complex issue of state law,
 - 2) The claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
 - 3) The district court has dismissed all claims over which it has original jurisdiction, or
 - 4) In exceptional circumstances, there are other compelling reasons for declining jurisdiction"

EXAM TIP: Supplemental jurisdiction is needed to support a particular claim only where that claim does not have an independent basis of subject matter jurisdiction. Thus, carefully check each claim given to you in the facts and ask yourself whether that particular claim is supported by either federal question or diversity jurisdiction.

2. Pendent jurisdiction (UMW v. GIBBS)

Typical scenario: plaintiff asserts a federal claim against a defendant and has also joined with that federal claim a state claim against the same defendant that is related to the federal claim ("*common nucleus of operative fact*")

- a. Rule statement: For the court to have the statutory "power" under Section 310(a) to hear the state claim:

- 1) The federal claim must be "substantial" and
- 2) The federal and state claims must be so related that they form part of the same case or controversy under Article III of the United States Constitution (the case law expressed this principle with the requirement that the claims share a "common nucleus of operative fact")

EXAM TIP: Check the facts for fact issues and evidence common to the federal and state claims. The more fact issues and evidence the claims share, the more likely a court will find "common nucleus".

- 3) Even though the court has the statutory "power" under Section 310 (a) to hear the state claim, it may, exercising the "discretion" given to it under Section 310(c), decline to exercise that power and dismiss the state claim in situations set forth in Section 310(c).

Example: If shortly after the commencement of the lawsuit the court dismisses plaintiff's federal claim on summary judgment, the court (using its discretion) may also dismiss the state claim even though it still has the power to hear that claim.

3. Pendent party jurisdiction

Typical scenario: plaintiff asserts a federal claim against one defendant and has joined a related state claim against an additional, but "non-diverse" defendant

NOTE: This is the scenario in which §310 overturns **FINLEY** case.

Example: Plaintiff, a California domiciliary, asserts a claim against the U.S. under the Federal Tort Claims Act and joins a related state claim against an additional defendant who is also a citizen of California.

- a. Rule statement: Same as pendent jurisdiction, including discretion to decline exercise of jurisdiction
- b. Limitation on pendent party jurisdiction: The court cannot exercise pendent party jurisdiction over a claim against D2 where the only basis for the court's subject matter jurisdiction over the claim against D1 is diversity of citizenship.

Example: P, a Californian, sues D1, a New Yorker, for over \$75,000 on a state claim and joins D2, also a Californian, on a related state claim. Under Section 310 (c), the court does not have the statutory power to exercise pendent party jurisdiction over the related claim against D2 (the non-diverse defendant) because that would be inconsistent with the jurisdictional requirement of complete diversity.

4. Ancillary jurisdiction

Typical scenario: plaintiff asserts a claim (the "main claim") which is supported by an independent basis of subject matter jurisdiction (either federal question or diversity) and, subsequently, a defending party joins a claim which does not have an independent basis of subject matter jurisdiction, but which is logically related to the aggregate core of operative facts which constitutes the main claim.

(The defending party's claim is sometimes referred to as an "outgrowth" of the main claim.) Ancillary jurisdiction achieves the goal of judicial economy and spares the defending party, who has been involuntarily haled into federal court, the burden of having to defend against the plaintiff's main claim in federal court and prosecuting his own related claims in state court.

- a. Rule statement: The ancillary claim must be so related to the main claim that they form part of the same case or controversy under Article III of the United States Constitution (case law rule statement: the ancillary claim must be logically related to the aggregate core of operative facts which constitutes the main claim). As with the other two types of supplemental jurisdiction, exercise of ancillary jurisdiction is discretionary under Section 310 (under the prior case law, at least some cases had suggested it was mandatory). Federal courts may assert ancillary jurisdiction over:
 - 1) Compulsory counterclaims (Rule 13(a): "same transaction or occurrence"),
 - 2) Proper cross-claims (Rule 13(g): "same transaction or occurrence"),
 - 3) Additional parties to compulsory counterclaims or cross claims (Rule 13(h): "same transaction or occurrence" and "a common question of law or fact"),
 - 4) Proper impleader claims against third-party defendants (Rule 14(a): contingent claim), and
 - 5) Interpleader actions and intervention as of right [Rule 24(a)].

- b. Limitations on ancillary jurisdiction: Where the only basis for subject matter jurisdiction over the main claim is diversity jurisdiction, the court cannot assert ancillary jurisdiction over the following claims:
 - 1) "Claims by plaintiffs against persons made parties under Rule 14" (third party defendants joined through "impleader"). [codifies **OWEN EQUIPMENT & ERECTION COMPANY v. KROGER**].
 - 2) "Claims by plaintiffs against persons made parties under Rule 19" (i.e., "compulsory joinder" - "necessary and indispensable parties").
 - 3) "Claims by plaintiffs against persons made parties under Rule 24" (i.e., "intervention")
 - 4) "Claims by persons proposed to be joined as plaintiffs under Rule 24" (i.e., "intervention")

- c. Statute of Limitations tolling provision: Under Section 310, applicable state statutes of limitation are tolled as to all claims when a supplemental claim is asserted in a federal proceeding. This allows supplemental claims to be brought in federal court without fear that if they are ultimately dismissed, in the exercise of the court's discretion or otherwise, they may be barred by the statute of limitations if they are subsequently reasserted in state court.

Note that under this provision, the statute is tolled even on the main, jurisdictionally proper claim, so that the whole case (if plaintiff elects to dismiss it) may be reasserted in state court at a later time.

E. Challenge To Federal Subject Matter Jurisdiction:

1. Direct attack: Defendant may challenge subject matter jurisdiction through a pre-answer motion [F.R.C.P. 12(b)] or in the answer or at any other time during the lawsuit, including appeal. Subject matter jurisdiction may be raised by the court itself on its own motion
2. Collateral attack: In the absence of extraordinary circumstances, defendant cannot collaterally attack subject matter jurisdiction in a subsequent proceeding.

F. Removal Jurisdiction:

Where the plaintiff has brought suit in state court, the removal statute [28 U.S.C.A. Section 1441(a)] permits the defendant to force the case to be transferred to federal district court only if the case could have been originally brought in a federal court (i.e., the federal court must have federal subject matter jurisdiction over the case).

1. Where the sole basis of federal subject matter jurisdiction over the case is diversity jurisdiction, the case can be removed only if none of the defendants is a citizen of the forum state. (*Rationale*: There is no prejudice against citizens of the forum state in state court.)
2. Where the basis for federal subject matter jurisdiction includes federal question jurisdiction, the case may be removed without regard for the citizenship of the parties.
 - a. If federal law completely preempts state law on the matter and converts the plaintiff's claim into one of federal law, that satisfies the well-pleaded complaint requirement and makes the case removable.
3. All defendants must agree to removal of the case and only defendants can remove (plaintiffs sued on the state equivalent of a counterclaim cannot remove). However, when the ground for removal is a separate and independent claim, only the defendant against whom this claim is asserted need seek the removal.
4. If a non-removable case is removed to federal district court, the federal court will not dismiss the case but will remand it to the state court from which it came.
5. Notice of removal must be filed within 30 days of the date defendant receives a copy of the initial pleading unless the case becomes removable later (as by dismissal of a nondiverse defendant), in which case the case may be removed within 30 days of the date it becomes removable, but a case removable on diversity grounds may be removed only within one year after it was brought in state court.
6. A case may not be removed from federal court to state court.
 - a. *Compare--abstention*: Federal courts may, however, decline to proceed in certain situations where "abstention" is proper. This may be due to the presence of an uncertain issue of state law pertinent to a federal constitutional claim, or due to deference to litigation already pending in a state court.
7. Under the 1988 Judicial Improvements Act, the presence of Doe defendants in diversity jurisdiction cases does not close the door to federal courts. "For purposes of removal under the chapter, the citizenship of defendants sued under fictitious names shall be disregarded."

- a. If the joinder of Does or other new defendants after removal would destroy diversity, the court has discretion either to deny leave or permit joinder and remand the action.
- b. Diversity jurisdiction can no longer be manufactured by appointing out-of-state representatives. The citizenship of the infant, incompetent or decedent is controlling.

II. PERSONAL (IN PERSONAM) JURISDICTION **(JURISDICTION OVER THE PERSON)**

Personal jurisdiction is the power or authority of a court to render a judgment that binds the person of the defendant. The means by which a plaintiff seeks to assert personal jurisdiction is to serve a summons on the defendant. Service of summons (or "process") is the means by which the court symbolically seizes the defendant's person.

A. The Due Process Clause:

In **PENNOYER v. NEFF**, the U.S. Supreme Court held that an improper assertion of personal jurisdiction over a defendant violates the defendant's federal Due Process (14th Amendment) rights. Any judgment rendered by a court in violation of the Due Process Clause of the U.S. Constitution is invalid and unenforceable. The following are the permissible bases - under the Due Process Clause - for the assertion of personal jurisdiction:

CA RULE: Certain federal statutes permit nationwide service of process in federal court actions over a defendant who has contacts with the United States even if such defendant has no contact with the particular state in which the federal district court is located. This is constitutional under the Fifth Amendment due process clause. The Fourteenth Amendment, which governs state court exercise of personal jurisdiction, prohibits nationwide service of process in state court actions.

1. Personal service: On the defendant while physically present in the territory of the forum state: Under the Territoriality Rule, adopted by the U.S. Supreme Court in **PENNOYER v. NEFF**, every state possesses exclusive power and sovereignty over persons and property located within its territory and may assert that power over any defendant, resident or non-resident, by personally serving him with a summons while he is present in the forum state, no matter how briefly. Conversely, a state may not acquire personal jurisdiction by service of process outside the forum state on a non-resident defendant (to "seize" a non-resident defendant in another state would offend that state's sovereignty). In-state service of process on a non-resident defendant who is only briefly in the forum state was confirmed by the U.S. Supreme Court as a constitutionally permissible basis for personal jurisdiction in **BURNHAM v. SUPERIOR COURT** (1990). In **BURNHAM**, defendant's wife personally served defendant, a New Jersey citizen, with a California court summons in a divorce action while he was temporarily in California to conduct business. Even though the divorce cause of action was unrelated to defendant's business in California, a plurality of the court upheld personal jurisdiction under the Territoriality Rule. Thus, service of process accomplished in an airplane passing through the state's air space appears to be valid. (However, another plurality upheld personal jurisdiction under the Minimum Contacts rule)
2. Domicile: Service of process on a domiciliary (citizen) of the forum state even while he is outside the forum state is constitutional.

3. Consent: A defendant may waive his rights under the Due Process Clause and "consent" to personal jurisdiction. "Waiver" may occur, either before or after he is sued, in the following ways:
 - a. Waiver through failure by the defendant properly to raise the objection to personal jurisdiction:
 - 1) "General appearance" in state court, if the defendant defends himself on the merits of the action: (In a "special appearance", the defendant must strictly limit his objections to jurisdictional issues.)
 - 2) In federal court, a defendant may waive an objection to personal jurisdiction by failure timely to assert it. See F.R.C.P. Rule 12(h) (defendant must raise it by pre-answer motion or in the answer, if he makes no pre-answer motion)
 - b. Express consent
 - 1) Express consent provision in a contract: A defendant may consent in advance to personal jurisdiction in an otherwise valid contract, or to the appointment on behalf of the defendant of an agent for service of process who may be served in the forum state.
NAT'L EQUIPMENT RENTAL LTD. v. SZUKHENT
 - 2) Express consent by operation of law: *Example*: As a condition to being licensed to do business in a particular state, that state may require defendant to consent to the appointment of an agent empowered to accept service of process on behalf of defendant.
 - c. Implied consent (legal fiction): Before **INTERNATIONAL SHOE**, this legal fiction was used to uphold the constitutionality of state "implied consent" statutes which authorized state courts to assert personal jurisdiction over non-resident corporations (who were "doing business" in the forum state) and over non-resident individuals who committed torts within the forum state. The implied consent fiction was limited to corporate defendants or, with respect to individual defendants, to situations where the state had a strong regulatory interest (e.g., dangerous activities).

Example: **IN HESS v. PAWLOSKI** (1927), the U.S. Supreme Court used the "implied consent" fiction to uphold the constitutionality of a state non-resident motor vehicle statute which stated that a non-resident motorist using the state's highways was deemed to have appointed a state official as the motorist's agent to accept service of process in any action stemming from the use of his automobile within the state.
4. The "Minimum Contacts" rule [**INTERNATIONAL SHOE COMPANY v. WASHINGTON** (1945)]: This rule was formulated to expand the reach of state courts over non-resident defendants, under the Due Process Clause, beyond the narrow confines of the Territoriality Rule. The rule states: "[Due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum

contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice]". The federal district courts also adhere to the minimum contacts rule. Application of the "minimum contacts" rule involves a two-step analysis:

- a. **Purposeful availment (Step 1):** In **HANSON v. DENCKLA** (1958) and **WORLD-WIDE VOLKSWAGEN CORPORATION v. WOODSON** (1980), the U.S. Supreme Court declared that only purposeful acts or conduct (purposeful contacts) directed by the non-resident defendant at the forum state could support personal jurisdiction under the Due Process Clause. Contacts which exist only through the "unilateral acts" of third parties (e.g., the car buyer in Volkswagen) are insufficient. Purposeful availment is an essential requirement; if it does not exist, the forum state cannot assert personal jurisdiction, even if it were the most convenient court to try the suit and there would be minimal burden on the defendant.

RATIONALE: The rationale for the purposeful availment requirement is that it is unfair to the non-resident defendant to force him to defend in a particular forum state unless, given his purposeful activities, he should reasonably expect or anticipate being haled into the forum state's court. **EXAM APPROACH:** In assessing the question whether defendant has purposefully availed himself of the forum state's laws, focus on the contacts (activities) of the defendant directed at the forum state and:

- 1) Assess whether these contacts are purposeful or deliberate acts of the defendant directed at the forum state.

Example 1: In **HANSON v. DENCKLA**, the U.S. Supreme Court held that the Florida court could not assert personal jurisdiction over the Delaware trustee because there was no purposeful activity directed by the trustee at the Florida market; its contacts with Florida were generated through the "unilateral" acts of third parties. The court stated that it was essential that "there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protection of its laws."

Example 2: In **WORLD-WIDE VOLKSWAGEN v. WOODSON**, the U.S. Supreme Court held that the Oklahoma court could not constitutionally exercise personal jurisdiction over Seaway or the tristate dealer because they did nothing to solicit business in Oklahoma and, therefore, did not intend to serve the Oklahoma market. Mere foreseeability that the car could travel to Oklahoma and cause injury there is insufficient to support personal jurisdiction.

Example 3: Where the defendant's contact with the forum state is the act of entering into a contract with a citizen of the forum state, the court must assess the circumstances surrounding the contract to determine whether defendant purposefully availed himself of (i.e., "reached into") the forum state. In **BURGER KING v. RUDEWICZ**, the U.S. Supreme Court

enumerated the following factors: prior negotiations, the duration of the contract relationship, the place of performance, the terms of the contract, the parties' actual course of dealing.

Example 4: A non-resident defendant, in a commercial context, may purposefully avail himself of the forum state by indirectly serving the forum state's market through the use of middle-men distributors or, depending on the circumstances, through the sale of component parts to a manufacturer who incorporates them in its products which it then deliberately sells to the forum state's market.

- a) In **WORLD-WIDE VOLKSWAGEN**, supra, the U.S. Supreme Court, in dictum, approved the exercise of personal jurisdiction by the Oklahoma court over the German manufacturer and the American importer (the two other defendants in that case), even though they did not directly sell Audi cars in Oklahoma, because they intended to serve the U.S. market (which includes Oklahoma) by act of setting up a chain of distribution of Audi cars throughout the U.S.
- b) In **GRAY v. AMERICAN RADIATOR & STANDARD SANITARY CORP.**, the Illinois Supreme Court upheld the assertion of personal jurisdiction over an Ohio valve manufacturer ("Titan") who sold its valves to a Pennsylvania manufacturer ("American Radiator") for incorporation as a component in its radiators which American Radiator sold to the Illinois market. This case can be reconciled with Volkswagen on the theory that the court perceived Titan as deliberately using American Radiator as a distributor of Titan's valves to the market which American Radiator served, which included Illinois.
- c) In **ASAHI METAL INDUSTRY v. SUPERIOR COURT** (1987), another component parts case, the U.S. Supreme Court split on whether a Japanese tire stem manufacturer (**ASAHI**), who sold its stems to a Taiwanese tire tube manufacturer (**CHENG SHIN**) purposefully availed itself (indirectly) of the California market merely because Asahi was "aware" that Cheng Shin marketed its tire tubes in CA. A plurality opinion written by Justice O'Connor reaffirmed the view of purposeful availment in **DENCKLA** and **WORLD-WIDE VOLKSWAGEN** that the defendant must perform some act or conduct by which he purposefully directs the product towards the forum state's market; mere awareness that the product will be sold in the forum state is not sufficient. ("stream of commerce - plus") Another plurality opinion written by Justice Brennan argued that injecting goods into the stream of commerce is sufficient to satisfy purposeful availment. ("I cannot join the plurality's determination that Asahi's regular and extensive sales of component parts to a manufacturer it knew was making regular

sales of the final product in CA is insufficient to establish minimum contacts with CA.”)

- 2) Assess the frequency and regularity of defendant's purposeful contacts. The more frequent and regular defendant's activities with the forum state, the more likely it is that the court will find that defendant should have reasonably expected to be sued there and, thus, find "purposeful availment". Note, however, that even a single contact, or isolated or occasional contacts could satisfy the "purposeful availment" requirement if the "nature and quality" of the contacts have a sufficiently strong impact on the forum state (and the cause of action arises directly out of that contact).

Example 1: In **McGEE v. INTERNATIONAL LIFE INSURANCE COMPANY**, the U.S. Supreme Court upheld personal jurisdiction stating: "it is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with the state's [i.e., California's] courts." The nature and quality of this single contact - a life insurance contract - were strong since the insurance industry is heavily regulated to protect the public.

Example 2: A New York motorist drives to California and causes an accident in California. Before the plaintiff can serve the New Yorker with a summons, he drives out of the State and returns to New York. Plaintiff serves the defendant in New York, invoking the state's Long Arm statute. Based upon this single contact, the assertion of personal jurisdiction by a California court over the New York defendant would not violate the due process clause.

On the other end of the "frequency" spectrum, if the defendant engages in "continuous and systematic" activity with the forum state which is "so substantial" and of such a strong "nature and quality", the forum state's court may assert personal jurisdiction even if the cause of action does not relate to that activity. This kind of personal jurisdiction is known as "general jurisdiction".

Example: A New Yorker who buys a General Motors car in New York can sue GM in California even though the cause of action did not arise from GM's efforts to serve the California market.

- 3) Assess the "nature and quality" of defendant's contacts with the forum state. This is especially important where the frequency of the contacts are "isolated or occasional" and, also, where the plaintiff is attempting to assert "general jurisdiction".
- 4) Assess the relationship between plaintiff's cause of action and defendant's contacts with the forum state (**NEXUS TEST**). Where defendant's

contacts are merely "isolated or occasional", or even "continuous and systematic" - but not substantially so - plaintiff's cause of action must arise out of, or be sufficiently related to, those contacts.

- b. "Fair play and substantial justice" (Step 2): Once the court has determined that it is "fair" to assert personal jurisdiction over the defendant because his purposeful contacts with the forum state are such that he should reasonably expect to be sued in that state's courts, the court must then proceed to the second step of the "minimum contacts" analysis: to determine whether, in all other respects, it is fair and reasonable to assert personal jurisdiction.

This "second step" focuses on the forum chosen by the plaintiff and requires the court to consider those factors which relate to the appropriateness of this particular forum to litigate plaintiff's suit ("litigation" fairness). If it is "unfair" to require the defendant to defend himself in this forum, the court could find that the Due Process Clause prohibits the court from asserting personal jurisdiction, even though the defendant has purposefully availed himself of the forum state. The fairness factors include:

- 1) The relative convenience of the forum to the plaintiff and defendant. For example, if the burden on the non-resident defendant is too great, it may violate defendant's due process rights to require him to defend in the forum state. Factors relevant to inconvenience include the relative financial resources of the plaintiff and defendant and the location of evidence.
 - 2) The interest of the forum state in adjudicating this suit in its own courts. One relevant factor would be the interest of the forum state in regulating the type of activity in which the defendant has engaged in the forum state. For example, a state has a strong interest in regulating the insurance business or activity on its highways.
 - 3) The interest of the forum state in providing a local forum for its own citizens to enforce their rights. Hence, it is relevant whether or not the plaintiff is a citizen of the forum state.
 - 4) The ease of access to an alternative forum
- In **BRYANT v. FINNISH NATIONAL AIRLINE**, the New York Court of Appeal upheld personal jurisdiction over a foreign defendant in a suit by a New York resident on a cause of action unrelated to defendant's slight contacts with New York because the only alternative forum was in Finland which would effectively bar plaintiff from relief in a U.S. court.
- 5) The avoidance of multiple lawsuits and conflicting adjudications

- c. The relationship between "purposeful availment" and "fair play and substantial justice"

- 1) A strong showing of "fair play and substantial justice" can sometimes outweigh weak showing of "purposeful availment":
 - a) **McGEE v. INTERNATIONAL LIFE INSURANCE COMPANY**, supra.

- 2) A weak showing of "fair play and substantial justice" can sometimes outweigh a showing of "purposeful availment" which might otherwise be sufficient: **ASAHI METAL INDUSTRY v. SUPERIOR COURT**, supra.

B. There Must Be A State Statute That Authorizes The Forum State's Court To Assert Personal Jurisdiction (e.g., Long Arm statute):

Assuming there is a permissible basis under the Due Process Clause for a state court to assert personal jurisdiction, the state court must also be authorized by a state jurisdictional statute to assert personal jurisdiction. If the state legislature chooses not to take advantage of a permissible basis recognized by case-law under the Due Process Clause, the state court does not have the power to do so. For example, virtually every state has a statute authorizing the assertion of personal jurisdiction by personal service of process within the state.

Long Arm Statutes: There are two types of long arm statutes:

1. Specific act long arm statutes, which base the assertion of personal jurisdiction over nonresidents upon the commission of certain acts by the defendant in the forum state and
2. Non-specific long arm statutes, like California's, which authorizes state courts to assert personal jurisdiction to the full extent allowed under the Due Process Clause.

NOTE: The federal courts are also bound, under F.R.C.P. 4, by the long arm statute of the state in which the district court sits." Rule 4 also authorizes nationwide service of process of a summons in federal court where specifically authorized by federal statute, e.g. Federal Interpleader Act. Rule 4(k) (2), creates a special long arm provision, applicable only in federal court, which allows a federal district court to assert personal jurisdiction over a defendant (typically an alien) who is not amenable to service of process under any state's long arm statute (because the defendant's contacts with any single state are not sufficient to support personal jurisdiction). The amendment requires, however, that the defendant's contacts with the United States as a whole must be sufficient under the 5th Amendment to support personal jurisdiction. Amended Rule 4 (k) (2) applies even in the absence of a federal statute authorizing nationwide service of process."

EXAM TIP: The exam will usually state the terms of the state's long arm statute. If the exam gives you a "specific act" long arm statute, then you will have to apply the specific terms of the statute to the facts relating to defendant's contacts with the forum. If the exam does not give you a long arm statute, then assume that one exists and that its terms would allow the court to assert personal jurisdiction. Then, analyze the issue whether the Due Process Clause allows the state to assert personal jurisdiction.

General approach

1. Does the particular act or conduct of the defendant fall within the scope of the long arm statute?
 - a. A given long arm statute may permit personal jurisdiction only where the defendant commits a tortious act within the forum state. If the plaintiff seeks to assert personal jurisdiction under this particular provision, the court will have to consult state case-law interpreting the term "tortious act within the state". A

liberal jurisdiction may interpret this term to include the place where the injury occurs as well as where the negligent act occurred, whereas a more conservative jurisdiction may restrict the meaning of this term to the place where the negligent act occurred

2. Assuming the statute applies, is it constitutional under the Due Process Clause for the court to assert personal jurisdiction?

III. IN REM AND QUASI IN REM JURISDICTION **JURISDICTION OVER PROPERTY**

In rem and quasi in rem jurisdiction is the power of the court to render a judgment that binds property (real or personal). Derived from the Territoriality Rule, this form of jurisdiction is based upon the presence of the property (the "res") in the forum state at the time the suit is commenced.

A. Traditional Approach

1. In Rem jurisdiction

In rem jurisdiction enables the court to adjudicate the status of, and interest in, the property itself. An "in rem" proceeding is a proceeding against the property itself, not against an individual defendant personally. An in rem judgment is said to cut off the rights of "all the world" (including unknown claimants) in the property other than the person in whose favor judgment is entered.

- a. Rarely tested (beware of Remedies crossover)
- b. Involves both real and personal property
- c. A court cannot impose damages/injunction against a person unless that person is also subject to in personam jurisdiction

2. Quasi In Rem jurisdiction

Quasi in rem proceedings are brought against specified, known persons and enables the court to adjudicate the interest of only those persons in the property. Unlike in rem jurisdiction, which determines the claims of all the world (including unknown claimants), quasi in rem jurisdiction determines the rights of only known persons who are parties to the proceedings.

- a. There are two types of quasi in rem jurisdiction
 - 1) "Type 1" quasi in rem jurisdiction: The property itself is the subject of the dispute between the parties (i.e., the cause of action is related to the property). Because of the presence of the property within the state, the court in the forum state has the power to determine the rights of the named parties in that property, even though it cannot assert in personam jurisdiction over the party who is defending his rights in the property.
 - 2) "Type 2" quasi in rem jurisdiction ("attachment jurisdiction"): The property is not the subject of the dispute between the parties (i.e., the cause of action is unrelated to the property which is relevant only because it provides the court with a basis upon which to adjudicate the cause of action).

"Type 2" Quasi in rem jurisdiction is similar to personal jurisdiction in that the plaintiff attaches property of the defendant located in the forum state because he cannot obtain personal jurisdiction over the defendant in that state. Even a debt owed to the defendant is considered "property" located wherever the debtor may wander. **HARRIS v. BALK** ("the debt follows the debtor"). Thus, a defendant who is not subject to personal jurisdiction in the forum state could be sued in that state on a personal claim of the plaintiff

simply because the defendant owned some property there (even though the defendant had absolutely no other connection with that state and the cause of action arose elsewhere).

- a) The judgment is limited to the value of the property (unless the defendant enters a general appearance). Therefore, if plaintiff's damages exceed the value of the property, plaintiff can only recover the value of the property that has been attached.
- b) Since the judgment binds only the defendant's property, not the defendant personally, plaintiff may bring other quasi in rem actions in any state where he can locate other property of the defendant until he recovers the full amount of his damages. Res Judicata will not bar subsequent actions.
- c) If the value of the property exceeds plaintiff's damages, the excess proceeds are returned to the defendant.
- d) If the defendant appears in court and defends on the merits, he will be deemed to have entered a "general appearance" and, hence, to have consented to personal jurisdiction, and the ensuing judgment will bind him personally. In that event, the judgment will not be limited to the value of the property. Some states allow a defendant in a quasi in rem action to enter a "limited appearance" which allows the defendant to protect his property by defending on the merits and still limit any judgment against him to the value of the property.

B. Modern Approach: **SHAFFER v. HEITNER** (1977):

1. In **SHAFFER**, the U.S. Supreme Court held that the constitutionality, under the Due Process Clause, of exercising in rem and quasi in rem jurisdiction in a given case must be determined by applying the "minimum contacts" rule of **INTERNATIONAL SHOE**. Hence, today, the presence of property in the forum state alone will not support in rem or quasi in rem jurisdiction under the Due Process Clause. The property must not only be "there" (i.e., located in the forum state); it must be "fair" to the defendant for the court to assert jurisdiction over that property. The presence of defendant's property in the forum state is just another "contact" between defendant and the forum.
2. The Effect of **SHAFFER** on in rem and quasi in rem jurisdiction:
 - a. In Rem and Quasi In Rem "Type 1" Jurisdiction: Where the property (res) is related to the cause of action (as it is in all in rem and quasi in rem "Type 1" actions), it is "fair" to assert in rem and quasi in rem "Type 1" jurisdiction even though the presence of that property is defendant's sole contact with the forum state.

Example 1: A California defendant buys real property in New York; a New York plaintiff, also claiming title to the same property, brings an "in rem" action in a New York court to quiet title. It is "fair" to assert in rem jurisdiction even though the defendant has no other contacts with New York besides buying the real estate.

Example 2: A California defendant buys a condo in New York; plaintiff brings a quasi in rem "Type 1" action in a New York court for personal injury arising out of plaintiff's tripping on a torn carpet. Again, it is "fair" to assert quasi in rem "Type 1" jurisdiction because the Californian deliberately bought the property and should reasonably expect to defend this kind of lawsuit in New York.

- b. Quasi In Rem "Type 2" - "Attachment Jurisdiction": Where the property is unrelated to the cause of action, this type of jurisdiction will probably be "unfair" if defendant's sole contact with the forum state is the presence of the attached property. Other contacts will most likely be required to show defendant should reasonably expect to defend this suit in the forum state. Hence, **SHAFFER** has substantially undercut the traditional benefit of "attachment jurisdiction" as a substitute for personal jurisdiction.

Example: In **RUSH v. SAVCHUK**, the U.S. Supreme Court rendered unconstitutional the assertion of attachment jurisdiction in the following situation: A New York plaintiff, injured in an automobile accident in Vermont, attempts to obtain attachment jurisdiction in a New York court over a Canadian defendant by attaching his auto liability insurance policy issued in Canada by an insurance company doing business in New York (on the premise that the insurance company's obligation to defend the defendant is a "debt" which is located in New York). The assertion of jurisdiction by the New York court, based on attachment in New York of defendant's policy, would be unconstitutional under the "minimum contacts" test.

NOTE: Plaintiff could assert a third party claim directly against the insurance company only if the forum state has enacted a "direct action" statute.

IV. The Due Process Requirement of Notice: Service of Process

In order for a judgment to be valid and enforceable, the Due Process Clause requires not only that the court have power over the defendant's person or property, but that the defendant also receive proper notice of the suit and an opportunity to be heard. If defendant has not been given proper notice, the court does not have personal jurisdiction (or in rem or quasi in rem jurisdiction). This means that, if the court proceeds to adjudicate the action, the judgment it renders will be unenforceable and can be collaterally attacked in a subsequent proceeding to enforce the judgment.

A. MULLANE v. CENTRAL HANOVER BANK:

Notice must be given in such a manner that is "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."

B. Permissible Methods of Service:

1. Plaintiff can use only those methods of service, in state court actions, specifically authorized by state statute. In federal court, permissible methods of serving a summons are set forth in F.R.C.P. 4, which includes methods authorized by state law. If any other method is used, service is invalid (even if defendant actually receives the summons).
2. The methods of service authorized by state statute must be constitutional, i.e. they must meet the **MULLANE** due process standard. Even if plaintiff uses a method for service which is authorized by state statute, if that method does not meet the **MULLANE** test, service is invalid.
 - a. Types of service:
 - 1) Personal service
 - 2) Leaving the summons at defendant's "usual place of abode" with a person of "suitable age and discretion" ("substituted service")
 - 3) Registered mail. [Note: In federal court, Rule 4(d) provides a "waiver-of-service" system to replace the "service by mail" provisions of former Rule 4 (c) (2) (C)].
 - 4) Under very limited circumstances, publication

CA RULE: Substitute Service

3. Unlike federal procedure, substitute service for individual defendants requires a showing that the summons “cannot with reasonable diligence be personally delivered” to the individual defendant. (CCP § 415.20(a).)
4. Unlike federal procedure, which allows the summons to be left with a person “of suitable age and discretion,” California procedure requires the person to be at least 18 years of age. (CCP § 415.20(a).)
5. While federal procedure allows the summons to be delivered only at the defendant’s “dwelling house or usual place of abode,” California procedure also permits delivery of the summons at the individual defendant’s usual place of business. (CCP § 415.20(a).)
6. Copy of summons must also be mailed by first-class mail to the person to be served at the place where the summons and complaint were left.
7. No substitute service on nonresidents temporarily present in California; only personal service.

C. Immunity from Service for Nonresident Parties Entering the Forum to Testify as Witnesses:

- 1, Yes, in federal court.
2. Probably “no” in California court (immunity rule rejected in *Silverman v. Sup. Ct* (1988) 203 CA3d 145, 149.)

V. CHALLENGING THE PERSONAL JURISDICTION OF THE COURT

A. Direct Attack: A challenge to jurisdiction which is made before the court that is trying to exercise jurisdiction.

1. In federal court, defendant may challenge personal jurisdiction (and insufficiency of process) either in a pre-answer motion [Rule 12(b)] or in his answer.

Note - waiver of the personal jurisdiction objection: If defendant makes a pre-answer motion, he must include his objection to personal jurisdiction (and his objection to the sufficiency of process) in a pre-answer motion. If defendant makes a pre-answer motion and omits his personal jurisdiction objection (or his insufficiency of process objection), he will be deemed to have waived it, and cannot then assert the objection in his answer.

If defendant fails to raise his jurisdictional objection (or insufficiency of process objection) either in a pre-answer motion or his answer, he will likewise be deemed to have waived that objection. If the jurisdictional objection is waived, the objection cannot be raised on appeal or in a collateral attack in a subsequent proceeding to enforce the judgment. If the defendant properly (pre-trial) asserts his objection to personal jurisdiction, and his motion to dismiss on that ground is denied, defendant must wait until a final judgment has been rendered before he can appeal the denial of his motion.

2. In state court, defendant must make a "special appearance" and move to quash service.

CA RULE: In order to preserve the personal jurisdiction issue in California state court, defendant must first enter a special appearance before entering a general appearance. A special appearance is accomplished through a Motion to Quash Service of Summons on the ground of lack of jurisdiction of the court over the defendant.

- **In CA state court, a defendant who loses his or her Motion to Quash must seek early appellate review of the denial by filing a petition for a Writ of Mandate within 10 days of the denial of the motion. (CCP § 418.10(c).)**
 - a. A "special appearance" allows defendant to appear in court for the sole purpose of challenging jurisdiction without being deemed to have consented to jurisdiction.
 - b. Waiver of the personal jurisdiction objection: If defendant enters a "special appearance" and asserts any other defense (besides lack of jurisdiction), he will be deemed to have entered a "general appearance" and, thereby, to have waived his personal jurisdiction objection.
 - c. **If defendant's timely motion to dismiss for lack of personal jurisdiction is denied, California allows an immediate appeal by a writ of mandamus. See Section XIV, infra at page 76. However, if defendant fails to take an immediate appeal, and proceeds to defend the suit, his personal jurisdiction objection will be deemed waived and he will not be able to raise this objection as error on appeal from the final judgment for plaintiff.**

- d. In a few states, if defendant's timely motion to dismiss for lack of personal jurisdiction is denied, and defendant then proceeds to defend on the merits, he thereby waives his personal jurisdiction objection (i.e., if defendant loses on the merits, he will not be able to attack the judgment on appeal on personal jurisdiction grounds). Hence, if defendant wants to appeal the denial of his motion to dismiss, he must take a default judgment, and then appeal from the default judgment. This is risky because, if the appellate court affirms the lower court's denial, defendant may not then defend on the merits.
- e. If defendant's motion to dismiss for lack of personal jurisdiction is denied, and defendant either does not appeal or his appeal is unsuccessful, he may not collaterally attack the court's jurisdiction in another state. Once the forum state's court determines that it has jurisdiction, that determination is entitled to "full faith and credit" in every other state. Hence, defendant can collaterally attack the court's jurisdiction only if he does not appear at all and suffers a default judgment.

B. Collateral Attack: A challenge to jurisdiction of the court that rendered a judgment in a subsequent proceeding to enforce that judgment.

- 1. In either federal or state court, if the defendant does not respond to the summons and takes a default judgment, and the plaintiff seeks to enforce that default judgment in a second proceeding, defendant may seek to block the enforcement of that judgment by challenging the personal jurisdiction of the court that rendered the judgment.
- 2. If the collateral attack fails, the court will enforce the default judgment against the defendant (i.e., he will be bound by the first court's judgment). Because defendant defaulted, he cannot fight on the merits.

C. Challenging the Merits in a Quasi In Rem Proceeding Without Consenting to Personal Jurisdiction - Limited Appearance: Some courts permit the defendant, in a quasi in rem action, to make a "limited appearance" which allows him to defend on the merits of the case without thereby subjecting himself to personal jurisdiction. In states without a limited appearance procedure, if defendant attempts to defend his property by defending on the merits, he will be deemed to have entered a "general appearance" which confers personal jurisdiction on the court.

VI. VENUE

Venue requirements are designed to identify a convenient forum in which to litigate a suit.

A. Statutory Requirements Under Federal Venue Statute (28 U.S.C.A. §1391) [as amended in 1990]: (Memorize Rules)

- 1. In diversity cases, venue is proper only in a judicial district where:
 - a. Any defendant resides, if all defendants reside in the same state; or
 - b. A substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

- c. Any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought
 2. In federal question cases, venue is proper in the judicial district where:
 - a. Any defendant resides, if all defendants reside in the same state; or
 - b. A substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
 - c. Any defendant may be found, if there is no district in which the action may otherwise be brought. [The words "judicial district in which any defendant may be found" appears to refer to a judicial district where a defendant can be personally served with process.]
 3. Residence of corporations
 - a. Corporate defendant: A corporation's "residence" for venue purposes is any district where "it is subject to personal jurisdiction at the time the action is commenced". [This rule appears applicable to defining the residence of a corporate defendant for purposes of applying the venue rule in VI.A. 1.a and VI.A. 2.a, supra.

Example: If a New York corporation is subject to personal jurisdiction in California because it serves the Los Angeles market, venue would be proper only in the Central District of California (if the corporation restricted its operations to the Los Angeles area).

B. "Local Action" Rules - Suits Concerning Real Property:

1. Unwritten "venue" rule: Actions concerning real property (including trespass suits and actions for personal injury occurring on real property) may only be brought in the state where the real property is located. This venue rule was originally applicable in all state courts, but has recently been changed by statute in many states.
2. "Jurisdictional" local action rule: The courts of one state may not directly affect title to land in another state. This is not merely a venue rule, but concerns the power of the court to render an enforceable judgment.

Example: In a California divorce action to divide community property, Husband and Wife own land in Colorado. The California court is without jurisdiction to render a judgment that declares Wife the owner. Such a California judgment that directly affects title to the Colorado property may be ignored by a Colorado court (even under the Full Faith and Credit Clause). (If the California court has personal jurisdiction over Husband, it can issue an injunction acting in personam against Husband ordering him to transfer title.)

- C. Challenging Improper Venue In Federal Court: The procedure for raising a venue objection is the same as the procedure for challenging personal jurisdiction, i.e., improper venue must be asserted either in a pre-answer motion [Rule 12 (b)(3)] or in the answer, or else it is waived. If, however, defendant makes a pre-answer motion on some other ground, he must

include improper venue in that pre-answer motion, or it will be waived (i.e., it will be too late to assert improper venue in the answer.)

- D. Removal: An action removed from state court goes directly to the federal court of the district in which the state action was pending.
- E. Transfer: If plaintiff brings suit in a federal court with improper venue (and defendant timely objects), the court can dismiss the case or can transfer it to any federal district court in which it could have originally been brought. (28 U.S.C.A. §1406)
- F. Inconvenient Forum: Where plaintiff brings suit in a "proper" forum which is, nevertheless, inconvenient to the defendant
 - 1. Dismissal under "Forum Non Conveniens": This is a common law doctrine, in state and federal courts, which gives the court the discretion to dismiss a suit - even though the forum is proper in a technical sense (because it meets all jurisdictional and statutory venue requirements) - because it may be very inconvenient or burdensome for the defendant to defend in that forum (e.g., the forum may have little or no relation to the litigation).
 - 2. Transfer under 28 U.S.C.A. §1404: A federal court may, for the convenience of the parties and in the interest of justice, transfer a suit to any other district court where the suit might have originally been brought. This federal statute codifies the common law doctrine of forum non conveniens, but is more liberal than the common law rule in a few significant respects:
 - a. Unlike the common law doctrine, the federal court does not have to dismiss the case where dismissal would prejudice the plaintiff, e.g. if the statute of limitations has run. If the court transfers the case, plaintiff does not have to file another lawsuit and serve the defendants again. In federal court, the common law doctrine of "forum non conveniens" is applicable only where the more convenient forum is a foreign country (since a U.S. court cannot transfer a case to another country's courts). In state court, "forum non conveniens" is far more applicable because a state court cannot transfer a case to another state's court.
 - b. Transfers under §1404 requires a lesser showing of inconvenience to defendant than do dismissals under forum non conveniens.
 - 3. Exam tips:
 - a. A forum non conveniens or "1404" issue is raised only where plaintiff has brought suit in a technically "proper" forum (i.e., one which meets jurisdictional and statutory venue requirements) and defendant seeks dismissal or transfer because of inconvenience. If defendant seeks to dismiss or transfer the suit because the federal court does not have proper venue (i.e., does not meet the statutory venue requirements), he must do so under §1406.
 - b. In a "forum non conveniens" or "1404" issue, the court will balance the convenience to all parties. Relevant factors include:

- 1) Whether plaintiff is a resident of the forum state (if he is, that is a significant factor mitigating against dismissal or transfer, though not necessarily determinative)
- 2) Location of witnesses and other evidence
- 3) Relative costs of suit to plaintiff and defendant in forum state as opposed to the other forum
- 4) Whether the forum state court would have to apply the substantive law of another state or country (with which it, of course, is unfamiliar).
The forum state's interest in adjudicating the suit

CA RULE: Forum Non Conveniens:

1. While a federal court has the option to *transfer* a case to another federal district court under 28 U.S.C. § 1404, a California state court can only *dismiss* the action on grounds of forum non conveniens. (CCP § 410.30(b).)⁴ In federal court, where the appropriate forum is in another country, the federal court cannot transfer the case and, so, will dismiss the action based on the federal common law doctrine of forum non conveniens.
2. While the convenience of witnesses is a factor common to both state and federal practice, party convenience is generally not considered under CCP § 397 which provides for transfer “from one county to another within the state” “when the *convenience of witnesses* and the ends of justice would be promoted by the change.” Party convenience may be considered as a forum non conveniens factor when a party is seriously ill.
3. California courts will generally not dismiss a California plaintiff’s case on forum non conveniens grounds. Federal courts do not have such a strong preference for the local plaintiff; they just consider party convenience as well as the forum state’s interest in providing a forum for its citizens as factors. *See Exam Tips, F.3.b.*

VII. CHOICE OF LAW

Is a federal district court, sitting in diversity, bound to apply a state law or is it free to apply federal law to resolve a particular issue before it?

- A. **ERIE R.R. v. TOMPKINS** (1938): In diversity cases or federal question cases not governed by federal law, the federal courts must apply state substantive common law as well as state substantive statutory law, but are free to apply federal procedural law.
- B. **GUARANTY TRUST CO. v. YORK** (1945) - "Substantial outcome determinative test":

"The nub of the policy that underlies **ERIE R. CO. v. TOMPKINS** is that for the same transaction the accident of a suit by a non-resident litigant in a federal court instead of in a state court a block away should not lead to a substantially different result."

⁴ (a) When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just.

Suit in federal court, rather than state court across the street, should not substantially affect the enforcement of state-created rights.

Example: Under this test, a state statute of limitations is "substantive" in the **ERIE** sense because there would be a substantial difference in the outcome of a suit in federal court if the state statute of limitations on a state cause of action has run and the federal court ignores that statute of limitations. Hence, the federal court is bound, under **ERIE**, to apply state statutes of limitation to avoid forum shopping in federal court by plaintiffs whose claims would be otherwise barred in state court and who, therefore, seek to avoid the state statute of limitations by suing in federal court.

C. **BYRD v. BLUE RIDGE RURAL ELECTRIC COOPERATIVE, INC.** (1958): In determining whether the federal court is bound under **ERIE** to apply a particular state law, **BYRD** requires the court to balance (1) the state interest against (2) the federal interest, which is itself diminished by (3) any outcome determinative effect.

1. The state interest behind applying the state law (i.e., the policy underlying the state law). If the state law in question is integrally bound up with the definition of the state-created substantive rights and obligations of the parties, then the state interest in the federal court applying this state law is high.

Tip: Focus on the state law and ask yourself whether the intent behind the state law is to confer benefits on the state's citizens rather than merely to regulate procedure in state court [i.e., a state court "housekeeping" rule]. Also ask whether the particular law is intended to be an integral part of the enforcement mechanism of the state-created right being enforced by plaintiff in federal court. If so, the state interest is accorded much weight.

2. If the state law is not integrally bound up with the state-created substantive rights and obligations of the parties, but is one of "form and mode" (i.e., just a court housekeeping rule), balance the following factors:
 - a. The "substantial outcome determinative" test (**YORK**). How much difference in outcome would there be if the court did not apply the state law, against:
 - b. Affirmative countervailing "federal interest" of the federal courts in following their own housekeeping rules of procedure.

Tip: focus on the federal law and ask what federal policies would be served by applying the federal law (e.g., federal court system has a strong interest in uniform federal court "housekeeping" rules).

D. **HANNA v. PLUMER** (1965): In **HANNA**, The U.S. Supreme Court announced a twopart test for determining the **ERIE** issue (this simpler test was intended to be an improvement over the complex, subjective **BYRD** balancing test):

1. If there is a Federal Rule of Civil Procedure that is "on point" (i.e., intended to resolve the particular issue before the court), then it should be applied, even if there is

a conflicting state law and even if there would be a difference in outcome in applying the Federal Rule over the state law.

Exam tip: Suggested analysis

- a. Look for a Federal Rule of Civil Procedure (a rule promulgated by the U.S. Supreme Court under authority delegated to it by the Rules Enabling Act).
 - b. Is this Federal rule intended to resolve the issue confronting the court?
 - c. If the answer to "b." is "yes", then look to determine whether there is a conflict between the Federal rule and the state law, or whether the scope of the federal rule is narrower than the scope of the state rule, which would allow application of the state rule without undercutting the policy of the Federal Rule.
2. "Outcome determinative test": If there is no Federal Rule of Civil Procedure "on point", or if the federal rule and the state rule can both be applied without the latter undercutting the former, then there is still an **ERIE** issue to resolve. To decide whether the court is bound under **ERIE** to apply the state law, **HANNA** requires the court to apply the outcome determinative test of **YORK** in light of the twin policies of **ERIE**, i.e. the discouragement of forum shopping and avoidance of the inequitable administration of the laws.
- E. Conflicts Of Laws: If the court determines that it is bound, under the command of **ERIE**, to apply state law, there may be a question of which state's law to apply (where a controversy touches more than one state). This issue of "which state's law" is a "conflicts of laws" issue. To resolve this issue, every state has a body of law know as "conflicts of laws rules". Where this "conflicts" issue faces a federal court, the U.S. Supreme Court has held that, under **ERIE**, the federal court must apply the "conflicts" principles of the state in which it sits.
KLAXON COMPANY v. STENTOR ELECTRIC MANUFACTURING CO.

VIII. PLEADINGS

This term refers to the complaint, the answer and, if permitted, the reply which set forth the contentions of the parties.

A. Purposes:

Depending upon the particular jurisdiction, pleadings are designed, in varying degrees

1. To narrow the issues to be tried
2. To reveal the factual contentions of the parties to help the parties to prepare for trial
3. To give notice to the court and the parties of the nature of the case
4. To serve as a permanent record as a basis for res judicata
5. To dispose of cases without trial where the pleadings reveal no issues of fact (judgment on the pleadings - infra, at page 37)

B. Pleading Requirements:

1. Code pleading: (some states)

- a. Must set forth facts constituting the cause of action in ordinary and concise language (ultimate facts)
 - b. Must provide an allegation to cover each element of the cause of action
2. Notice pleading: (federal courts and most states)
- a. Must set forth a "short and plain statement of the claim showing that the pleader is entitled to relief." **CAVEAT: NEW U.S. SUPREME COURT CASE - BELL ATLANTIC CORP. V. TWOMBLY (2007) MAY REQUIRE MORE FACT DETAIL: Although the complaint does not need detailed factual allegations, it must set forth factual allegations sufficient to "raise a right to relief above the speculative level;" more than labels or conclusions are required.**
 - b. The purpose of the complaint is to provide fair "notice" to the defendant of the underlying transaction that is the basis of the lawsuit. The complaint need not contain detailed fact allegations; defendant can discover the details of plaintiff's case through discovery (which is liberally available in "notice" pleading jurisdictions). Notice pleading is not "theory" oriented. A complaint is sufficiently pleaded so long as the court can find some theory (cause of action) recognized by law under which plaintiff might recover.

C. Complaint: (**Rarely tested**)

1. In federal court, a civil action is commenced by the filing of the plaintiff's complaint.
2. Elements of the complaint
 - a. Complaint must have a caption naming the court and the parties to the action.
 - b. Jurisdictional statement:
 - 1) Federal courts: Allegations establishing the subject matter jurisdiction of the court should be set forth in the first paragraph as federal courts are courts of limited subject matter jurisdiction.
 - 2) State courts: Courts of general jurisdiction are presumed to have jurisdiction. However, some states require jurisdictional allegations especially for complaints filed in inferior courts (which are courts of limited state subject matter jurisdiction).
 - c. Statement of claim:
 - 1) Code pleading: A statement of facts constituting a cause of action.
 - 2) Notice pleading: A short and plain statement of the claim showing that the pleader is entitled to relief
 - a) The attorney must sign the pleading, which certifies that he has a good faith belief, formed after reasonably inquiry, in the viability of the pleading.
 - b) It is permissible to plead or deny facts on the basis of information and belief.
 - c) Alternative and inconsistent allegations are permitted if made in good faith. (code pleading contra in some jurisdictions)

- (1) Normally, plaintiff does not have to elect among alternative or even inconsistent claims; the jury will decide which claims are valid. The judge will instruct the jury carefully as to damages to avoid duplicative recovery by plaintiff.

CA RULE: Fact Pleading: In CA, the complaint must contain a “statement of the facts constituting the cause of action, in ordinary and concise language.” (CCP § 425.10(a).) The pleader must include facts which allege *each element* of each cause of action. To survive a demurrer, the pleader must allege only “ultimate” facts but should not plead “evidentiary” facts or legal conclusions. In federal court, under notice pleading, the pleader does *not* have to state each element of each cause of action but need only plead allegations sufficient to show that the pleader is entitled to relief under some cause of action and to give the defendant *fair notice* of plaintiff’s claim (not particular causes of action).

- d. Prayer for relief: Pleader is not limited to the relief prayed for in his complaint.
 - 1) Default cases: Where the defendant defaults, the relief granted cannot exceed or differ from that prayed for in the complaint
 - 2) Verdict in excess of amount demanded: Where the evidence at the trial indicates that plaintiff is entitled to more than the amount demanded in the complaint, plaintiff will be awarded the amount to which he is entitled. F.R.C.P. 54 (c). In those states where this is not the general rule, plaintiff may, in the discretion of the court, amend the damage allegations and the prayer for relief in the complaint.
 - 3) Federal subject matter jurisdiction: Prayer for relief is generally determinative of the "amount in controversy" for purposes of diversity of citizenship jurisdiction.

CA RULE:

1. Under FRCP 8(a)(3), the complaint must contain “a demand for judgment for the relief the pleader seeks.” Under FRCP 9(g), when “items of special damages are claimed, they shall be specifically stated.” By contrast, under CCP § 425.10(b), “where an action is brought to recover actual or punitive damages for personal injury or wrongful death, the amount demanded shall not be stated.” Under CCP § 425.11(b), “When a complaint is filed in an action to recover damages for personal injury or wrongful death, the defendant may at any time request a statement setting forth the nature and amount of damages being sought.”
2. Restrictions regarding claims for punitive damages:
 - a. In addition to the restrictions on damage claims imposed under CCP § 425.10(b), CCP § 425.13(a) prohibits the plaintiff from asserting *any claim for punitive damages in the initial complaint against healthcare service providers and religious corporations*. This section also provides: “The court may allow the filing of an amended pleading claiming punitive damages on a motion by the party seeking the *amended pleading*”

and on the basis of the supporting and opposing affidavits presented that the plaintiff has established that there is a *substantial probability that the plaintiff will prevail on the claim* pursuant to § [3294 of the Civil Code](#).”

- b. “Discovery restrictions to protect evidence of defendant’s financial condition with respect to punitive damage claims:

§ 3295. Protection of evidence of financial condition [to prove punitive damage claims]:

(a) The court may, for good cause, grant any defendant a protective order requiring the plaintiff to produce evidence of a prima facie case of liability for [punitive] damages pursuant to Section 3294, prior to the introduction of evidence of:

(1) The profits the defendant has gained by virtue of the wrongful course of conduct of the nature and type shown by the evidence.

(2) The financial condition of the defendant.

(b) Nothing in this section shall prohibit the introduction of prima facie evidence to establish a case for damages pursuant to Section 3294.

(c) No pretrial discovery by the plaintiff shall be permitted with respect to the evidence referred to in paragraphs (1) and (2) of subdivision (a) unless the court enters an order permitting such discovery pursuant to this subdivision. However, the plaintiff may subpoena documents or witnesses to be available at the trial for the purpose of establishing the profits or financial condition referred to in subdivision (a), and the defendant may be required to identify documents in the defendant's possession which are relevant and admissible for that purpose and the witnesses employed by or related to the defendant who would be most competent to testify to those facts. Upon motion by the plaintiff supported by appropriate affidavits and after a hearing, if the court deems a hearing to be necessary, the court may at any time enter an order permitting the discovery otherwise prohibited by this subdivision if the court finds, on the basis of the supporting and opposing affidavits presented, that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim pursuant to Section 3294. Such order shall not be considered to be a determination on the merits of the claim or any defense thereto and shall not be given in evidence or referred to at the trial.

(d) The court shall, on application of any defendant, preclude the admission of evidence of that defendant's profits or financial condition until after the trier of fact returns a verdict for plaintiff awarding actual damages and finds that a defendant is guilty of malice, oppression, or

fraud in accordance with Section 3294. Evidence of profit and financial condition shall be admissible only as to the defendant or defendants found to be liable to the plaintiff and to be guilty of malice, oppression, or fraud. Evidence of profit and financial condition shall be presented to the same trier of fact that found for the plaintiff and found one or more defendants guilty of malice, oppression, or fraud.”

e. Subscription

- 1) Federal court: F.R.C.P. 11 requires every pleading, written motion and other paper to be signed by the attorney which constitutes his certification that he has made reasonable inquiry and that the pleading is well grounded in fact and warranted by existing law or a “nonfrivolous” argument to change existing law. Violations of Rule 11 can be punished by sanctions upon motion by a party or by the court on its own motion.

Because the Advisory Committee perceived that Rule 11 has been abused by counsel who have been making numerous motions asserting violations of this rule as an adversarial litigation tactic to intimidate the adversary, Rule 11 has been significantly changed (and, for the most part, weakened) by amendments effective 12/1/93. The following are highlights of these amendments:

- a) Sanctions for violation of Rule 11 are no longer mandatory; even if the court finds a violation exists, it may choose not to impose any sanctions.
- b) The amendments create a "safe harbor" provision which allows the withdrawal or correction of positions which violate Rule 11.
- c) In defining the purpose to be served by sanctions for violating Rule 11, the amendments shift emphasis from compensating the movant for expenses incurred as a result of the violation to deterring repetition of the violation. Compensation for expenses incurred by the moving party is still a proper sanction, but compensatory awards should be limited to unusual circumstances.
- d) Rule 11 can be violated by persisting in advocating a position which did not initially violate the rule but which, in light of subsequently acquired information, has come to violate the rule.
- e) "Verification", which is an affidavit at the end of the pleading which avers that the allegations in the pleading are true to the best of the affiant's knowledge and belief, is not generally required in federal court (only required in specific cases, e.g. stockholder's derivative suit. F.R.C.P. 23.1).

(1) **BUSINESS GUIDES INC. v. CHROMATIC COMMUNICATIONS ENTERPRISES INC.** (1991):

The Supreme Court ruled federal judges can impose Rule 11 financial sanctions on clients, as well as attorneys, who fail to verify the facts in court papers before they are filed.

- 2) State courts: Some states require all pleadings to be verified. In other states, verification is optional with the plaintiff (though verification is required in a few cases). Where verification is optional, plaintiff, by verifying the complaint, can force the defendant to verify his answer.

D. Pleading Special Matters: Even in liberal notice-pleading jurisdictions, certain matters are required to be pleaded with particularity; general allegations are not sufficient.

1. Fraud

The circumstances constituting fraud or mistake shall be stated with particularity. 9(b).

2. Damages

- a. Special damages are those that are a proximate result of defendant's conduct but that occur only because of the specific situation of the plaintiff and, therefore, are not presumed to flow from defendant's conduct, e.g., hospital and medical bills. These damages must be pled with particularity.
- b. General damages are those which are a natural, expected result of the defendant's conduct and, therefore, presumed to flow from defendant's wrongful act, e.g., pain and suffering. These damages need not be specifically pleaded.

E. Challenges To The Complaint: The defendant may challenge the legal sufficiency of the complaint.

1. State practice

- a. Demurrer: A demurrer challenges only defects which appear on the face of the complaint/pleading.

- 1) Grounds for demurrer: (*examples*)

- a) Lack of subject matter jurisdiction (crossover)
- b) Defect or misjoinder of parties
- c) Failure to state cause of action

- 2) General v. special demurrer:

- a) A general demurrer is a challenge to the substantive sufficiency of the complaint or answer, i.e., assuming all the pleader's fact allegations are true, the pleading does not state a cause of action recognized by the law.
- b) A special demurrer is a challenge to the pleading on any other ground, e.g., an uncertain or ambiguous pleading.

- 3) Grounds for demurrer are waived unless raised in D's initial pleading.

- a) Exceptions: Failure to state a cause of action and lack of subject matter jurisdiction.

- b. Motion to strike: The only other challenge permitted as to the form or content of a pleading. Used to reach defects which are not subject to a demurrer.

- 1) Grounds for Motion:

- a) Pleadings contain irrelevant or redundant matter.

b) Pleadings contain a defect in form not subject to a demurrer, i.e., late filing, lack of verification

2. Federal practice: Rule 12(b) "Pre-Answer" motions (**Testable**)
 - a. Motion to dismiss for failure to state a claim [F.R.C.P. 12(b)(6)]:
 - 1) The demurrer has been abolished in federal court. Defendant may challenge the sufficiency of the complaint through a motion to dismiss for failure to state a claim, which is identical to the demurrer.
 - 2) Substantive use of "12(b)(6)" motion: Like a general demurrer, a "12(b)(6)" motion may be used to challenge the substantive sufficiency of the complaint, i.e., for "failure to state a claim" recognized by law. Issue: Assuming all allegations in the complaint are true, does plaintiff have a claim for relief recognized under law? This defense of "failure to state a claim" may be raised through a pre-answer motion [F.R.C.P. 12(b)(6)] or in the answer or at any other time during the lawsuit. Hence, the defense of "failure to state a claim" cannot be waived.
 - 3) Defects as to "form": The "12(b)(6)" pre-answer motion may also be used to challenge a complaint for defects in form. Since "notice" pleading rules are very liberal, it is uncommon for complaints to be dismissed on this ground. Detailed fact allegations are generally not required. However, in those exceptional cases, such as fraud, where detailed fact pleading is required, it is not uncommon for courts to dismiss complaints for failure to plead with sufficient particularity. Note, however, that even in these cases, the courts are very liberal in granting leave to amend. Note, also, that form defects, if not timely raised, may be waived.
 - b. Judgment on the pleadings [F.R.C.P. 12(c)]: (analogous to a demurrer or Motion to dismiss for failure to state a claim)
 - 1) Purpose: To challenge the adversary's pleadings on the ground that they are insufficient to establish any valid claim or defense
 - 2) Procedure: A motion for judgment on the pleadings may be made by either party at any time after all the pleadings have been closed, but within such time as will not delay the trial.
 - a) Motion generally heard by court before commencement of the trial.
 - b) If affidavits are presented to, and not excluded by, the court, the motion shall be treated as one for summary judgment. See Section XI, *infra*, at page 67.
 - c. Motion for more definite statement [Rule 12(e)]: Permits an attack on a vague or uncertain pleading (similar to a special demurrer). However, because the detailed facts of a case are to be revealed to the parties through discovery, not the pleadings, this motion can only be granted where the pleading is so vague or ambiguous that the opposing party cannot reasonably frame a responsive pleading.
 - d. Motion to strike [Rule 12(f)]: This motion may be used to strike any redundant, immaterial, impertinent, or scandalous matter in the pleading. Also, where the

complaint contains more than one claim, defendant can use this motion to strike a particular claim on substantive grounds (i.e., failure to state a claim). Finally, plaintiff can move to strike a legally insufficient defense or counterclaim in the answer.

e. Summary of "12(b)" defenses which are waived if not raised in a "12(b)" Pre-Answer motion or in the answer

Only seven enumerated defenses may be raised by "pre-answer" motion under F.R.C.P. 12(b). If the defendant omits the following four of those seven defenses from his pre-answer motion (if he makes one), or from his answer (if he doesn't make a pre-answer motion), he thereby waives these defenses:

- 1) Personal jurisdiction
 - 2) Improper venue
 - 3) Insufficiency of process
 - 4) Insufficiency of service of process
- However, the following three of those seven defenses are not waived (even if omitted from a pre-answer motion or the answer): **(Testable)**
- 5) Subject matter jurisdiction
 - 6) Failure to state a claim upon which relief can be granted
 - 7) Failure to join an indispensable party

CA RULE: Under CCP §1014, a demurrer is itself a pleading which is the procedure for challenging the sufficiency of the complaint on the grounds that it “does not state facts sufficient to constitute a cause of action.” (CCP § 430.10(e).) A demurrer constitutes a general appearance.

F. Answer: Defendant's responsive pleading to a complaint

1. Admissions: An allegation in the complaint which is admitted is not an issue in the case. At trial, plaintiff does not have to "prove up" an admitted allegation.
2. Denials: An allegation which is effectively denied makes the denied allegation an issue in the case. (Any of these issues may, during the course of the litigation, be ultimately knocked out of the case, e.g. through a "Rule 36" Admission or through a Pre-Trial Order.) Allegations which are not denied are deemed admitted.
 - a. General denials
 - 1) A general denial controverts all of the allegations in the complaint. In federal court, a general denial is proper only if defendant can, in good faith, controvert each and every allegation in the complaint. Since very few complaints contain no allegations which defendant in good faith cannot admit, proper general denials are rare. An improper general denial normally should have no adverse consequence for the defendant, especially in "notice pleading" jurisdictions. However, in rare cases, where an improper general denial misleads the plaintiff to his prejudice, and there is no other way to remedy that prejudice, a general denial may be deemed to be ineffective, i.e., an admission of the operative allegations of the complaint.
 - 2) A general denial may not be used in response to a verified pleading.

b. Specific denials

A specific denial involves a sentence by sentence or paragraph by paragraph analysis of the complaint and controverts only specific allegations of the complaint of specific facts within an allegation.

- 1) Negative Pregnant Rule: A carelessly worded denial may be pregnant with admission that the defendant is attempting to deny. The denial may be given in the negative but pregnant with the positive.

Example: Plaintiff alleges: "Defendant owes plaintiff \$20,000." Defendant, knowing that he owes plaintiff \$19,999, carelessly interposes the following denial: "Defendant denies that he owes plaintiff \$20,000." This denial, because it is misleading, may be pregnant with an admission that defendant owed any sum less than \$20,000 (e.g., \$19,999).

- a) In "notice pleading" jurisdictions, technical errors like this normally have no significant adverse consequence for the defendant.

- 2) If defendant is without sufficient knowledge or information, he shall so state in his denial and this will operate as an effective denial.

3. Affirmative defenses re "New Matter":

Assuming that all facts alleged in the complaint are true, defendant may rely on additional facts which, if true, establish a "defense" to plaintiff's claim. To be able to raise and prove such a defense at trial, defendant must affirmatively allege these additional facts in his answer as an "affirmative defense".

- a. Test: New matter that must be raised by an affirmative defense is matter which does not controvert the truth of the allegations in, plaintiff's claim, but which defendant must prove to avoid plaintiff's claim.
- b. If an affirmative defense is not pled affirmatively in the answer, it is not in issue and, therefore, defendant cannot offer evidence to prove up the defense at the time of trial, unless the court allows defendant leave to amend his answer or the plaintiff fails to object to defendant's offer of evidence.
- c. *Example:* The running of the Statute of Limitations is not placed in issue by a denial; it is new matter which must be proved by defendant at trial and, therefore, must be affirmatively pled by him in his answer.
- d. Remember that, in federal practice, seven enumerated defenses may, at defendant's option, be raised either in a "pre-answer" motion [Rule 12(b)] or in the answer. If raised in the answer, they must be affirmatively pled

4. Challenge to Answer

To challenge the legal sufficiency of the answer, P may file a demurrer (in state practice) or a motion to strike (in federal practice - Rule 12[f]).

G. Amended Pleadings: (Testable)

1. Amendments prior to trial [F.R.C.P. 15(a)]

- a. Amendment as of right: Either party may amend his pleading once, as a matter of right if no responsive pleading has been served or, if the original pleading is one to which no responsive pleading is permitted (e.g., an answer without a counterclaim), within 20 days after it is served.
 - b. Amendment by leave of court: If the pleading has already been amended as a matter of right, or the time for amending as a matter of right has passed, a party may amend his pleading only by leave of court, and F.R.C.P. 15(a) states: "leave to amend shall be freely given when justice so requires." Such leave is usually granted unless demonstrable prejudice to the other party is shown. The later into the lawsuit the amendment is sought, the more likely a court will find prejudice. (argue exam facts.)
2. Amendment to conform to proof at trial [F.R.C.P. 15(b)]: A party may seek leave to amend his pleadings to conform to proof presented at trial. Again, such leave is usually given unless demonstrable prejudice to the opposing party can be shown (e.g., surprise which leaves the opposing party unprepared to meet a new claim). Even if leave to amend is not sought, the pleading is deemed to be amended to conform to proof by implied consent of the parties if evidence is introduced by a party which is not relevant to pleaded issues and the opposing party does not object.
3. Amendments and the Statute of Limitations - "Relation Back" Rules [F.R.C.P. 15(c)]:
- a. Amendment to add a new claim against the same party after the Statute of Limitations has run:
Most states, and the federal courts [under Rule 15(c)], allow an amended pleading which adds a new claim against the same party to "relate back" to the date the original pleading was filed as long as the claim asserted in the amended pleading arose out of the same transaction or occurrence set forth in the original pleading.
 - b. Amendment to correct a misnomer
Where plaintiff has sued the correct defendant but has merely misspelled his name, amendments to correct such technical errors should be freely granted.
 - c. Amendment changing a party or the naming of a party after the Statute of Limitations has run:
Where plaintiff has made an error as to the identity of the defendant and, therefore, has mistakenly sued the wrong defendant, F.R.C.P. 15(c) permits an amended pleading, which changes the defendant or the naming of a defendant, after the statute of limitations has run, to "relate back" to the filing date of the original pleading if the claim arose out of the same transaction and occurrence and the "right" defendant, within the period required by law Rule 4(m) for service of the summons and complaint (i.e., 120 days), (1) received actual notice of the pendency of the action so that he will not be prejudiced in maintaining a defense and (2) knew or should have known that, but for the mistake concerning the identity of the proper defendant, the action would have been brought against him.
 - 1) **NOTE:** The phrase "period required by law" in Rule 15(c) had formerly been interpreted to refer to the statute of limitations period. In 1991, Rule 15(c) was amended to specify that "period required by law" means the 120

day period for serving the summons, effectively overruling SCHIAVONE v. FORTUNE (1986)

4. An amended pleading supersedes the original.

CA RULES: Fictitious “Doe” Defendants Practice:

Under CCP § 474, if a plaintiff is ignorant of the name of a defendant, “he must state that fact in the complaint, or the affidavit if the action is commenced by affidavit, and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly.” The plaintiff then has three years after filing the complaint containing the “Doe Defendants” to identify and serve these defendants. (CCP § 583.210) This so-called “Doe Practice” effectively permits a plaintiff to add a new named defendant up to three years after the filing of the complaint, thereby effectively tolling the statute of limitations as to the Doe Defendants. The federal rules have a more restrictive “relation back” rule. See G.3 (page 41). However, FRCP 15(c) allows relation back under more liberal state rules like California’s Doe Defendant rules. Thus, California’s more liberal relation back rules are applicable in federal court.

IX. JOINDER OF CLAIMS AND PARTIES (TESTABLE)

A. Joinder Of Claims:

1. Joinder of claims by a single plaintiff against a single defendant

- a. Federal practice: A single plaintiff may join any and all claims he has against a single defendant, even if they are unrelated. F.R.C.P. 18. There is no compulsory claims joinder rule, i.e., no joinder rule requires plaintiff to join claims - even if related - in one suit. However, the common law doctrine of Res Judicata, in effect, requires plaintiff to join related claims (no claim splitting). See Res Judicata, Section XV, *infra*, at page 77.
- b. State practice (code pleading): Some state claims joinder rules require that claims arise out of the same transaction or involve common questions of law.

2. Counterclaims and Cross-claims

a. Federal practice

- 1) **Counterclaims**: A counterclaim is an affirmative claim asserted in a defensive pleading (typically, the answer) that the pleader (typically, a defendant) has against an opposing party (typically, a plaintiff).
 - a) **Compulsory counterclaims**: If the counterclaim arises out of the same transaction or occurrence ("logical relation" test) as the opposing party's claim, it must be asserted or the claim will be barred in a subsequent suit.

NOTE - Ancillary jurisdiction cross-over: Federal courts assert ancillary jurisdiction over compulsory counterclaims.

b) Permissive counterclaims: If the counterclaim does not arise out of the same transaction or occurrence as the opposing party's claim, it may be asserted at defendant's option. Federal courts will not assert ancillary jurisdiction over permissive counterclaims.

2) Cross-claims: A cross-claim is:

- a) A claim by a party against a co-party (e.g., co-defendants)
- b) That arises out of the same transaction or occurrence that is the subject of the original action. ("Logical Relation" test)
Cross-claims are never compulsory; only permissive. They are asserted in the defensive pleading (typically, the answer).

NOTE - Ancillary jurisdiction cross-over: Federal courts assert ancillary jurisdiction over proper cross-claims.

b. State practice

1) Cross-complaint: California does not recognize the counterclaim or cross-claim, but rather provides that a defendant's claim against any party may be asserted by way of a cross-complaint.

- a) A cross-complaint is a separate pleading and is not part of the answer.

B. Joinder Of Parties:

1. Permissive party joinder: All persons may join in one action as plaintiffs or be joined in one action as defendants if:
 - a. A right to relief is asserted by, or against, each plaintiff or defendant relating to or arising out of the same transaction or occurrence, or series of transactions or occurrences (logical relation test); and
 - b. Any question of law or fact common to all these persons will arise in the action.

NOTE - Potential "pendent party jurisdiction" crossover.

2. Compulsory party joinder ("necessary and indispensable parties")
 - a. Necessary party (a party who should be joined, if feasible): F.R.C.P. 19(a) provides that a person who is subject to service of process (i.e., personal jurisdiction) and whose joinder will not deprive the court of jurisdiction over the subject matter (i.e., destroy complete diversity) should be joined as a party in the action if:
 - 1) In his absence complete relief cannot be accorded among those already parties, or
 - 2) His interest in the subject of the lawsuit is such that to proceed without him may either
 - a) As a practical matter impair or impede his ability to protect that interest in a later proceeding or
 - b) Expose those already parties to the lawsuit to a substantial risk of double, multiple or otherwise inconsistent obligations.
 - b. Indispensable party (a necessary party whom it is not feasible to join and in whose absence the lawsuit - "in equity and good conscience" - should be

dismissed): This issue arises where the court has determined, under Rule 19(a), that the person (i.e., "nonparty") should be joined but it is not feasible to do so, either because the nonparty is not subject to personal jurisdiction in the forum or his joinder would destroy diversity jurisdiction.

The court then faces the "indispensable party" issue whether, "in equity and good conscience", the lawsuit should proceed without the nonparty or should be dismissed because proceeding in his absence would be too prejudicial to the rights of both the nonparty and persons already parties to the action. If the court, weighing the following factors, determines "in equity and good conscience" that the suit should be dismissed, then the nonparty is labeled an "indispensable party":

- 1) To what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties;
 - 2) The extent to which the court, by the shaping of relief or other practical measures, can lessen or avoid prejudice;
 - 3) Whether a judgment rendered in the person's absence will be adequate;
 - 4) Whether the plaintiff, if his suit is dismissed for nonjoinder, will have an adequate alternative forum in which to bring his suit.
- c. Exam analysis: Attempt to argue against indispensability. Modernly, any interested party should be joined if practical considerations dictate (complete relief)
- d. Challenging nonjoinder of an indispensable party: Defendant can move to dismiss for failure to join an indispensable party either in a pre-answer motion [Rule 12(b)] or anytime thereafter in the lawsuit (even on appeal for the first time). Therefore, this objection is not waived during the life of the original lawsuit.
- e. Exam tip:
- 1) Permissive joinder issue asks: may the plaintiffs join in one suit or may they join several defendants in one suit?
 - 2) Compulsory joinder issue asks: must a nonparty (e.g., one not voluntarily sued by plaintiff and who does not seek to join the action through "intervention") be joined? Three step analysis:
 - a) "Necessary party" issue asks: Should the nonparty be joined? [Apply Rule 19(a)]
 - b) If so, is it feasible to join the necessary party?
 - c) "Indispensable party" issue asks: if the nonparty should be joined [applying Rule 19(a)], but it is not feasible to do so (because he is not subject to personal jurisdiction or his joinder will destroy complete diversity), should the court dismiss the suit rather than proceed in the absence of the nonparty? [Apply Rule 19(b)]
3. Impleader ("third party practice"): A defendant is permitted to bring into the lawsuit an additional party ("a person not a party to the action") who is or may be liable to the defendant for all or part of the original plaintiff's claim against the defendant. The additional party is called the third party defendant and the defendant is called the Third

Party Plaintiff. The purpose of impleader is to permit a defendant to join a derivative or contingent claim for indemnity against a person not sued by the plaintiff as a defendant.

CAVEAT: A defendant cannot use impleader to shift liability to a person defendant contends is directly liable to the plaintiff. Defendant can only join "derivative" or "contingent" (not independent) claims against Third Party Defendant.
e.g., **FRAZIER v. HARLEY DAVIDSON MOTOR CO.**

Example: P sues D and D impleads his liability insurer.

NOTE - Ancillary jurisdiction crossover: Federal courts will assert ancillary jurisdiction over properly impleaded claims.

4. **Intervention:** A nonparty, upon timely application, may voluntarily become a party to a lawsuit between other parties in order to protect his interest
 - a. Intervention of right: A nonparty must be allowed to intervene
 - 1) When a statute of the United States confers an unconditional right to intervene; or
 - 2) When one claims
 - a) An interest to the property or transaction which is the subject of the lawsuit and
 - b) The disposition of the action in the intervenor's absence will be likely to impair his ability to protect that interest and
 - c) Existing parties to the action cannot adequately protect the intervenor's interests

NOTE - Ancillary Jurisdiction Crossover: Federal courts will assert ancillary jurisdiction over claims asserted by one who intervenes as of right, except where to do so would be inconsistent with the statutory requirement of "complete diversity".

- b. Permissive intervention: A nonparty may be allowed to intervene:
 - 1) When a statute of the United States confers a conditional right to intervene; or
 - 2) When an applicant's claim or defense and the main action have a question of law or fact in common. (*key issue on exam*)

NOTE - No ancillary jurisdiction: Permissive intervention requires an independent basis of subject matter jurisdiction

5. **Interpleader**
 - a. Interpleader is a joinder device by which a person holding property (the "stakeholder"), who may be subject to inconsistent claims on that property (the "stake"), can join all the claimants in one interpleader action and require them to litigate among themselves to determine who has a right to the property.
 - b. Purposes

- 1) To protect the stakeholder from the risk of incurring double or multiple liability

Example: Husband dies leaving life insurance policy to "my wife". Wife 1 and Wife 2 both claim the total proceeds. Their claims are adverse (because they are mutually exclusive). If Insurer pays the full amount to Wife 1, it runs a substantial risk of having to pay Wife 2 also.

- 2) Interpleader can also be properly invoked where the claims against the stake are not technically adverse so that there is no risk to the stakeholder of incurring double or multiple liability, but the claims, in the aggregate, exceed a limited fund held by the stakeholder.

Example: Insurer issues a liability insurance policy to Insured limited to \$20,000 per accident. If Insured is involved in an accident with Bus Company, Insurer may properly file an interpleader action requesting the court to determine how to allocate the \$20,000 among the various bus passenger-claimants. Here, the purpose of interpleader is not to protect Insurer from multiple liability (because there is no such risk), but rather to protect the claimants from prejudice which could occur if the first few claimants to assert their claims totally depleted the \$20,000 leaving nothing for the remaining claimants.

- 3) Judicial economy

c. Federal interpleader ("Rule 22" and "Statutory"):

- 1) F.R.C.P. 22 provides one means of bringing an interpleader action in federal court. Allows stakeholder to assert a claim right in the stake in addition to the "claimants". Drawback to proceeding under Rule 22: All the normal limitations regarding personal and subject matter jurisdiction, and venue, apply.
- 2) "Statutory Interpleader" under the Federal Interpleader Act: (liberal approach) Facilitates bringing interpleader actions in federal courts by loosening the traditional limitations on personal and diversity jurisdiction, and venue. Courts have interpreted this Act as also allowing the stakeholder to assert a claim in the stake as well as the "claimants".

	Traditional (22)	Statutory (1335)
Amount in Controversy	\$75,000.00 plus	\$500.00 minimum
Diversity	Complete	Minimal (any 2 claimants)
Notice	Strict - Territorial limits of the state or state long arm	Nationwide process Federal Long Arm
Venue	Normal venue rules apply	Where any claimant resides

CIVIL PROCEDURE I APPROACHES

Federal Subject Matter Jurisdiction

1. Exclusive Jurisdiction
2. Concurrent Jurisdiction
 - A. Federal Question
 - B. Diversity
 - 1) Amount In Controversy
 - 2) Domicile

Minimum Contacts

1. Purposeful Availment
 - A. Purposeful Or Deliberate Acts
 - B. Frequency And Regularity
 - C. Nature And Quality
 - D. Nexus Test
2. Fair Play And Substantial Justice
 - A. Convenience Of Forum
 - B. Interest Of Forum In Adjudicating Suit
 - C. Interest In Providing Local Forum
 - D. Access To Alternative Forum
 - E. Avoidance Of Multiple Suits/Conflicting Adjudications

Choice Of Law

1. Erie
2. York- Outcome Determinative
3. Byrd- Balance
4. Hannah- Supremacy

CIVIL PROCEDURE I
QUESTION #1

Pat, a resident of State A, purchased an indoor hot tub from Leisure, a State B mail-order house that often advertises in State A newspapers. In the past year, Leisure has sold a dozen hot tubs to residents of State A. Dee, a corporation having its only place of business in State C, supplies pumps and heating elements for Leisure products, and occasionally fills parts replacement orders for individual tub owners, some residing in State A.

A few months after Pat's purchase, his hot tub overheated, burning Pat when he entered it and cracking the tub's shell. Water poured throughout the house, damaging hardwood floors, oriental rugs, artwork, and the ceiling in the room beneath the tub's location.

Pat brought a diversity suit in Federal District Court in State A against Leisure and Dee, claiming \$80,000 damages. The complaint was filed two weeks before the applicable State A statute of limitations lapsed. Service of process by mail in accord with State A's long-arm statute, which extends jurisdiction "on any basis not inconsistent with the Federal Constitution," reached Dee in six days. Because of delays caused by the Post Office, service did not reach Leisure for three weeks.

Dee moved for dismissal of the complaint as to it, on the ground that the court lacked personal jurisdiction over Dee. The motion was denied.

Leisure moved for summary judgment on the ground that the claim against it was barred by the statute of limitations. The motion was denied. The applicable State A statute tolls the statute of limitations on the date service is received. Rule 3 of the Federal Rules of Civil Procedure provides that an action "is commenced by filing a complaint with the court."

Dee next sought to implead Imco Instruments, Inc., a State A firm that supplies thermostats to Dee. Dee alleged that the Imco-supplied thermostat in Pat's tub failed to regulate the water temperature properly. Over Imco's objection, the motion to implead was granted.

Pat then amended his complaint by adding Imco as a defendant. Imco moved to dismiss the entire action or, in the alternative, to dismiss Pat's claim as to Imco, contending that the court lacked subject matter jurisdiction because of Pat's amendment. The court refused to dismiss the entire action but dismissed Pat's claim against Imco.

The jury returned a verdict for \$70,000 in damages against Leisure and Dee. Immediately after the verdict, Leisure and Dee moved to dismiss Pat's suit, contending that the court lacked subject matter jurisdiction because the amount awarded did not exceed \$75,000. The motion was granted.

Were the court's rulings correct as to:

1. Dee's pre-trial motion to dismiss? Discuss.
2. Leisure's pre-trial motion for summary judgment? Discuss.

3. Dee's motion to implead Imco? Discuss.
4. Imco's pre-trial motion to dismiss? Discuss.
5. The post-trial motions to dismiss? Discuss.

CIVIL PROCEDURE I
SUGGESTED ISSUE LIST QUESTION #1

1. Dee's Pre-trial Motion to Dismiss? Discuss

- A. Personal Jurisdiction
 - 1. Long Arm Statute
 - 2. Due Process - Minimum Contacts
 - 3. Service of Process

2. Leisure's Pre-Trial Motion for Summary Judgment? Discuss

- A. Summary Judgment
- B. Choice of Law

3. Dee's Motion to Implead Imco? Discuss

- A. Joinder
 - 1. Impleader - Indemnity

4. Imco's Pretrial Motion to Dismiss? Discuss

- A. Amendment of Pleading
- B. Subject Matter Jurisdiction
 - 1. Diversity
- C. Joinder - Indispensable Party?

5. The Post-Trial Motions to Dismiss? Discuss

- A. Subject Matter Jurisdiction
 - 1. Amount in Controversy

CIVIL PROCEDURE I
QUESTION #2

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

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

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

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

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

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

CIVIL PROCEDURE I
SUGGESTED MODEL ANSWER QUESTION #2

1. DID THE DISTRICT COURT RULE CORRECTLY ON DANCO'S MOTION TO DISMISS PAUL'S COMPLAINT?

A. SUBJECT MATTER JURISDICTION:

- 1) Complete Diversity exists between Paul, a State X citizen, and Danco, incorporated in State Y with principal place of business in State Z (Danco has dual citizenship in States Y and Z).
- 2) Amount in Controversy: \$70,000 falls below the required \$75,000 amount in controversy required for diversity jurisdiction. Normally, one looks solely to the amount demanded in the complaint to determine the amount in controversy. There is some uncertainty whether (and when) claims and counterclaims can be aggregated to satisfy the amount in controversy." ¹ Danco's counterclaim against Paul to recover \$20,000.00 in property damage to the truck Tom was driving at the time of the accident should not be aggregated with the \$70,000.00 alleged in the complaint.
- 3) Waiver- Lack of subject matter jurisdiction is never waived.
- 4) The district court erred in denying Danco's motion to dismiss.

B. PERSONAL JURISDICTION BY STATE X COURT OVER DANCO:

- 1) Waiver - Danco's special appearance is not the proper way to challenge personal jurisdiction in federal court and, therefore, it may have waived its objection to personal jurisdiction. Danco should have made a pre-answer motion under Rule 12(b) or asserted a defense in its answer. However, since this appears that Danco has simply mis-named the motion to dismiss as a special appearance, the court may overlook this error (especially since the federal rule's procedure is more liberal than the special appearance procedure in state courts).
- 2) Long Arm Statute: State X has a general long arm statute, which authorizes personal jurisdiction to the extent constitutionally allowed under the due process clause.
- 3) Due Process: Can State X federal court assert long-arm jurisdiction over Danco consistent with the due process clause?
 - a. Minimum Contacts-International Shoe

¹Shreve and Raven - Hansen, Understanding Civil Procedure page 130. Also see Teply and Whitten, Civil Procedure, 2nd Edition, page 100: When a counterclaim is involved in the action, the question arises whether the amount of the counterclaim can be aggregated with the plaintiff's claim to meet the amount-in-controversy requirement. This question arises when the plaintiff sues for \$75,000 or less, but the defendant possesses a counterclaim that exceeds \$75,000. It also arises when the plaintiff sues for \$75,000 or less and the defendant possesses a counterclaim that is also less than \$75,000, but the plaintiff's claim combined with the defendant's counterclaim exceed \$75,000. Because of a peculiar U.S. Supreme Court decision, doubt exists about the extent to which counterclaims can be taken into account in satisfying the jurisdictional amount requirement.

- i. Did Danco Purposefully Avail itself of the benefits and protections of the laws of State X? Yes, because the accident happened in State X while Danco's driver - while employed as a Danco delivery truck driver - was driving through State X en route to State Y to deliver goods. Although Danco does no business in State X, Danco -- through its driver, Tom - nevertheless has used the roads of State X for the business of delivering goods to a customer in State Y. Paul's cause of action directly arises out of this contact between Danco and State X. Therefore, Danco should reasonably expect to be haled into a State X Court on this cause of action.
 - ii. Fair Play and Substantial Justice: Paul and State X have a strong interest in providing a local forum for Paul, a State X citizen. State X is also a convenient forum if Danco decides to implead Tom for indemnity for whatever Danco may have to pay Paul under respondeat superior. State X is not an inconvenient forum for Danco because Danco's principal place of business is located in State Z which is adjacent to State X.
- 4) Procedural Due Process is satisfied as Danco was properly served with the complaint at its principal place of business.
 - 5) The district court properly denied Danco's motion to dismiss.

**C. IS TOM A NECESSARY(19a) AND INDISPENSABLE PARTY (19b)?
COMPULSORY JOINDER:**

Tom is not a party who should be joined under Rule 19(a). While he is a potential defendant, Paul does not have to join all potential defendants in one suit. Tom will not be prejudiced by the disposition of Paul's claim against Danco because he cannot be bound by the judgment if Danco loses (no privity between Danco and Paul). Tom's ability to protect his interest in not being found liable to Paul cannot be impaired because he cannot be bound by collateral estoppel regarding the finding in the suit against Danco that Tom was negligent.

Also, Danco will not be subject to double, multiple or otherwise inconsistent obligations if Tom is not joined. Danco can implead Tom for indemnity, however, to avoid otherwise inconsistent results on its indemnity claim against Tom and Tom is subject to personal jurisdiction in State X. Note: If it is determined that Tom is a party who should be joined under Rule 19 (a), then the issue arises whether it is feasible to join Tom. It would no be feasible to join Tom because it would destroy diversity as Tom is a resident of State X.

Since Tom is not necessary to the Paul v. Danco suit, the district court properly denied Danco's motion to dismiss.

2. DID THE DISTRICT COURT RULE CORRECTLY ON PAUL'S MOTION TO DISMISS DANCO'S COUNTERCLAIM?

A. SUPPLEMENTAL JURISDICTION OVER DANCO'S COUNTERCLAIM:

- 1) Compulsory Counterclaim - Danco's counterclaim against Paul to recover \$20,000.00 in property damage to the truck Tom was driving at the time of the accident arises out of the same transaction or occurrence as the original cause of action in the Paul v Danco suit. It is therefore, a compulsory counterclaim.
- 2) Supplemental Jurisdiction - The federal court can normally exercise supplemental jurisdiction over compulsory counterclaims. This ancillary jurisdiction concept has been codified in the supplemental jurisdiction statute. However, because the federal court does not have original jurisdiction over Paul's claim against Danco, due to the insufficient amount in controversy, there is no anchor claim to which the counterclaim transactionally relates under §1367(a).
- 3) The district court ruled properly on Paul's motion to dismiss.

CIVIL PROCEDURE
FEBRUARY 1988 CALIFORNIA BAR EXAM
QUESTION #3

On March 1, 1986, Paul, a citizen of State X, was involved in a three-car accident in State Y with Dave and Al, both of whom are State Y citizens. Wilma, Paul's wife, was a passenger in his car. Immediately after the accident, Wilma obtained signed statements from two witnesses. Later, Paul employed Len, a lawyer, to study the statements and advise him. Len made some handwritten notes on the statements and placed them in his files.

On February 15, 1987, Paul filed a complaint against Dave in the United States District Court in State Y. All allegations of the complaint and the prayer for relief are set forth below:

1. Plaintiff is a citizen of State X. Defendant is a citizen of State Y. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.
2. On March 1, 1986, Defendant negligently operated his automobile and collided with Plaintiff's automobile.
3. As a result, Plaintiff suffered personal injuries, pain of body and mind, and incurred medical expenses in the sum of \$25,000.

Wherefore, Plaintiff prays for a judgment against Defendant in the sum of \$250,000.

Dave timely answered Paul's complaint as follows:

Defendant neither admits nor denies the allegations of Plaintiff's complaint but demands strict proof of each and every allegation.

Paul did not amend his complaint but moved for judgment on the pleadings. Dave countered with his own motion for judgment on the pleadings. The district court denied both motions.

On May 1, 1987, Paul successfully moved to amend his complaint, adding Al as an additional defendant. After being properly served with a copy of the amended complaint, AL moved to dismiss on the ground that the applicable one-year statute of limitations for personal injury actions had expired at the time the amendment was filed and before he had any notice of Paul's action. A statute of Y provides:

If an action is filed within the limitations period provided by law, a new defendant added after the running of that period shall not be entitled to dismissal on the ground that the period has run if the claim against the new defendant arises out of the same occurrence as the original claim.

In the belief that this statute was controlling, the district court denied Al's motion.

Thereafter, Al served an interrogatory on Paul asking whether Paul took "the statement of any witnesses to the accident" and requesting the submission of "copies of any such statements." Paul asserted that the interrogatory was "objectionable on grounds of work product" and refused to provide any answer or produce any documents. AL moved for an order compelling 1) an answer to the interrogatory and 2) the production of the requested documents. The motion was granted.

Did the Court rule correctly on:

1. The motions for judgment on the pleadings? Discuss.
2. Al's motion to dismiss? Discuss.

CIVIL PROCEDURE I
QUESTION #3

DID THE COURT RULE CORRECTLY ON:

I. THE MOTIONS FOR JUDGMENT ON THE PLEADINGS?

A. Defined - Judgment on the pleadings [F.R.C.P. 12(c)]: (analogous to a demurrer (CA) or Motion to dismiss for failure to state a claim)

1. Purpose: To challenge the adversary's pleadings on the ground that they are insufficient to establish any valid claim or defense.
2. Procedure: A motion for judgment on the pleadings may be made by either party at any time after all the pleadings have been closed, but within such time as will not delay the trial.
 - a. Motion generally heard by court before commencement of the trial.

B. Dave's Motion – Paul's Complaint Defective

1. Notice Pleading: (**federal courts** and most states)
 - a. Must set forth a "short and plain statement of the claim showing that the pleader is entitled to relief".
 - b. The purpose of the complaint is to provide fair "notice" to the defendant of the underlying transaction that is the basis of the lawsuit. The complaint need not contain detailed fact allegations; defendant can discover the details of plaintiff's case through discovery (which is liberally available in "notice" pleading jurisdictions). A complaint is sufficiently pleaded so long as the court can find some theory (cause of action) recognized by law under which plaintiff might recover.
 - 1) Paul filed complaint against Dave in Federal District Court in State Y.
 - 2) Diversity (P from X and D from Y). Amount in Controversy \$250,000. Subject Matter Jurisdiction proper.
 - 3) **D's answer neither admits nor denies the allegations of P's complaint but demands strict proof of each and every allegation.**
 - 4) Complaint alleges D **negligently operated** his auto and collided with P's auto. P's complaint gives fair "notice" to D. The complaint clearly alleges negligence as the cause of action.
 - 5) The complaint was filed in Federal Court (notice pleading jurisdiction). Note under **choice of law (Erie)**, the federal court must apply federal procedure.
2. Code Pleading: (CA)
 - a. Must set forth facts constituting the cause of action in ordinary and concise language (ultimate facts).
 - b. Must provide an allegation to cover each element of the cause of action.

- 1) If Paul had filed complaint against Dave in **California Superior Court**, his complaint would have been subject to a demurrer for failure to state a cause of action.
3. Court made a proper ruling in denying D's motion.

C. Paul's Motion – Dave's Answer Defective

1. Defined - Answer: Defendant's responsive pleading to a complaint.
2. Denials: An allegation which is effectively denied makes the denied allegation an issue in the case. Allegations which are not denied are deemed admitted.
3. To challenge the legal sufficiency of the answer, P may file a demurrer (in **CA**) or a motion to strike (in **federal practice** - Rule 12[f]).
 - a. General denial controverts all of the allegations in the complaint. A specific denial involves a sentence-by-sentence or paragraph-by-paragraph analysis of the complaint and controverts only specific allegations of the complaint of specific facts within an allegation.
 - b. **D's timely answer neither admits nor denies the allegations of P's complaint** but demands strict proof of each and every allegation.
 - d. D's answer is defective in that it does not deny any of P's allegations. Allegations which are not denied are deemed admitted. However Dave should be granted leave to amend his answer. It should be noted that D does not require more facts to deny the allegations in P's complaint.
4. The court made a proper ruling in denying P's motion.

II. AL'S MOTION TO DISMISS?

A. Amendment Of Pleading (proper once as a matter of right)

B. Relation Back Doctrine

1. "On May 1, 1987, Paul successfully moved to amend his complaint, adding Al as an additional defendant. After being properly served with a copy of the amended complaint, AL moved to dismiss on the ground that the applicable one-year statute of limitations for personal injury actions had expired at the time the amendment was filed and before he had any notice of Paul's action."
 - a. "A statute of State Y provides: If an action is filed within the limitations period provided by law, a new defendant added after the running of that period shall not be entitled to dismissal on the ground that the period has run **if the claim against the new defendant arises out of the same occurrence as the original claim (Al was involved in the three-car accident in State Y)**. In the belief that this statute was controlling, the district court denied Al's motion."
 - b. **Relation Back" Rules** [F.R.C.P. 15(c):
 - 1) Where plaintiff has made an error as to the identity of the defendant and, therefore, has mistakenly sued the wrong defendant, F.R.C.P. 15(c) permits an amended pleading, which changes the defendant or the naming of a defendant, after the statute of limitations has run, to "relate back" to the filing date of the original pleading if the claim arose out of the same transaction

and occurrence and the "right" defendant, within the period required by law Rule 4(m) for service of the summons and complaint (i.e., 120 days), (1) received actual notice of the pendency of the action so that he will not be prejudiced in maintaining a defense and (2) knew or should have known that, but for the mistake concerning the identity of the proper defendant, the action would have been brought against him.

a) FRCP 15 (c) relation back doctrine does not apply under these facts.

C. Choice of Law

1. **ERIE R.R. v. TOMPKINS** (1938): In diversity cases or federal question cases not governed by federal law, the federal courts must apply state substantive common law as well as state substantive statutory law, but are free to apply federal procedural law.
 - a. Statute of Limitations is **substantive** in nature. Thus, the district court made a proper ruling in ruling the state statute was controlling.
 - b. The court made a proper ruling in denying Al's motion to dismiss.
 - c. Note: if student argued that the Statute of Limitations was **procedural** then under **Hannah (direct conflict)**, the court would have made an improper proper ruling in denying Al's motion to dismiss.

CIVIL PROCEDURE I
QUESTION #4

Arnold and Bates, residents of State Z, are plaintiffs in an action brought in the United States District Court in State X against Manco, a State Y corporation, and Storco, a State X corporation.

Manco's office and plant are located in State Y. At no time has Manco had an office or salesmen in State X. Storco's sole place of business is in State X.

The complaint alleges that each of the plaintiffs sustained serious personal injuries when a blade broke in an electric lawn mower while the mower was being demonstrated by a clerk in Storco's store in State X. Each plaintiff asked for damages in the sum of \$80,000.

The mower had been manufactured by Manco and shipped to Roe Distributors in State Z. Roe had a contract with Manco to act as exclusive distributor of Manco products in eleven states including states X and Z.

Process was served personally on the president of Manco at Manco's office in State Y and on the president of Storco at its office in State X.

Thereafter the following occurred:

- (1) Manco moved to dismiss on the ground that the court had no jurisdiction over it. The motion to dismiss was denied.
- (2) Both defendants filed motions asserting misjoinder of parties plaintiff and defendant. The trial court ruled there was no misjoinder and denied the motions.
- (3) Storco filed a counterclaim against Arnold for \$900 alleged to be due for merchandise previously sold to Arnold. Arnold's motion to strike the counterclaim was granted.
- (4) Manco filed a cross-claim against Storco for \$12,000 alleged to be due for merchandise previously sold by Manco to Storco. Storco's motion to strike the cross-claim was denied.

Assuming that all appropriate grounds were argued in support of and in opposition to each of the above motions, was the trial court correct in each of its rulings? Discuss.

CIVIL PROCEDURE I
SUGGESTED MODEL ANSWER QUESTION #4

ARNOLD AND BATES v MANCO/STORCO

(1) DISMISSAL FOR LACK OF JURISDICTION

a. Subject Matter Jurisdiction - Diversity

A federal court has the power to hear and determine a particular type of controversy if complete diversity exists between the plaintiff and defendant, and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

Arnold and Bates brought suit in the U.S. District Court in State X. Their complaint alleged serious personal injuries sustained when a lawn mower blade broke during a demonstration. Both Arnold and Bates are citizens of State Z. Defendant Manco is a State Y corporation with its office and plant located in State Y. As such, Manco is considered a citizen of State Y where it is incorporated and has its principal place of business. Defendant Storco is a State X corporation with its sole place of business in State X. It would be considered a citizen of State X. Therefore, because no defendant is a citizen of the same state as any plaintiff, there is complete diversity among the parties.

Arnold and Bates have each alleged damages of \$80,000. Each of their claims satisfies the jurisdictional requirement for an amount in controversy exceeding \$75,000 exclusive of interest and costs. Therefore, the U.S. District Court has the power to hear the controversy.

The U.S. District Court has diversity subject matter jurisdiction. Therefore, Manco's motion to dismiss was properly denied.

b. Personal Jurisdiction - Due Process

Assuming the court is authorized under State X's long arm statute to assert personal jurisdiction over Manco, does the exercise of personal jurisdiction over Manco comport with the requirements of the due process clause?

Under the case of International Shoe, the court may exercise jurisdiction over a defendant who is not present in the forum state only if that defendant has minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.

Manco was a State Y corporation. At no time was it physically present in State X nor did it have offices or salesmen in State X. Manco did not directly market its mowers in State X. However, it manufactured lawn mowers in State Y and shipped them to Roe Distributors in State Z. Manco had a contract with Roe making Roe Manco's exclusive distributor of Manco products in eleven states including State X. Manco indirectly transacted business in State X indirectly through Roe and made contracts enforceable in State X with Roe.

These ongoing activities give rise to obligations related to such business practice. Manco manifested its intent to serve the market in State X by its deliberate distribution of its lawn mowers in that state. In doing so, Manco purposefully availed itself of the economic benefits and protections of State X through its ongoing business contacts.

Manco purposefully set up this chain of distribution into State X. Manco directly benefitted from the State X market. Therefore, Manco should reasonably expect to defend a products liability suit in State X arising out of its product distribution and sale there. To the extent that Arnold and Bates' claims arose out of Manco's lawn mower sales in State X, Manco must be subject to the burdens of litigation associated with doing business in that forum.

Manco's authorization of lawn mower distribution in State X carries with it foreseeable products liability consequences in that state. Manco's acts constitute sufficient minimum contacts with State X such that the maintenance of the suit in that jurisdiction does not offend traditional notions of fair play and substantial justice for purposes of litigation fairness.

The court properly denied Manco's motion.

c. Notice - Service of Process

The defendant must receive service of process allowing notice reasonably calculated to apprise it of the pendency of the action and an opportunity to be heard sufficient to satisfy the requirements of constitutional procedural due process (Mullane).

The facts indicate that process was served personally on Manco's president at Manco's office in State Y. Since the president of a company is generally authorized to accept service of process on behalf of that company, service of process on Manco's president at the Manco office provides Manco with notice reasonably calculated to apprise it of the pendency of the Arnold/Bates action against it. This notice also affords Manco an opportunity to present any objection to the service of process that will be heard in the court in which the action was filed.

Therefore, service of process on Manco's president at Manco's office in state Y is sufficient to satisfy the requirements of constitutional procedural due process. State X may exercise personal jurisdiction over Manco.

The court properly denied Manco's motion.

(2) DEFENDANT'S MOTION ALLEGING MISJOINDER

a. Permissive Joinder of Plaintiffs

All persons may be joined as plaintiffs or defendants in one action when a right to relief is asserted by or against them jointly, severally or, in the alternative, the right to relief arises out of the same transaction or series of transactions and there is at least one question of law or fact common to all parties sought to be joined.

Arnold and Bates each alleged a right to relief in the amount of \$80,000.00 in their complaint. As such, each has a joint interest in a damage recovery. Each plaintiff sustained serious personal injuries when a blade broke during a lawn mower demonstration. As such, their right to relief arose out of the same transaction.

Since liability of the respective defendants must be determined, a common question of law and fact exists.

Based on the theory of judicial economy, permissive joinder is allowed. The court properly denied the defendant's motion.

b. Permissive Joinder of Defendants

Defined supra.

Plaintiffs alleged that both defendants were liable for their injuries giving both plaintiffs the right to seek relief separately or jointly. They may, therefore, exercise their option to sue the defendants jointly.

Their claims arose out of the same transaction. Common questions of law and fact exist as previously shown.

Defendants were properly joined. The court properly denied defendant's motion.

(3) ARNOLD'S MOTION TO STRIKE STORCO'S COUNTERCLAIM AGAINST ARNOLD FOR \$900.00

Compulsory Counterclaim

Where the defendant's claim against the plaintiff arises out of the same transaction as the claim set forth in the complaint, it is mandatory for the defendant to assert it by compulsory counterclaim or it will be barred. No independent subject matter jurisdiction is required.

Storco filed a \$900 counterclaim against Arnold for merchandise previously sold to him. Arnold's complaint alleged personal injuries resulting from an alleged lawn mower blade accident. Since Storco's claim did not arise out of the same transaction as the claim set forth in Arnold's complaint, it is not a proper compulsory counterclaim.

The court properly granted Arnold's motion to strike the compulsory counterclaim.

Supplemental Jurisdiction

Where a counterclaim does not have an independent basis of original federal subject matter jurisdiction, it can only be heard by the federal district court if the court can exercise supplemental jurisdiction. Under the Federal Supplemental Jurisdiction Statute, the court can

exercise supplemental jurisdiction over the counterclaim if it is sufficiently related to the plaintiff's main claim so that the goal of judicial economy would be served. Under the federal common law of ancillary jurisdiction, which existed prior to the Supplemental Jurisdiction statute, courts could assert ancillary jurisdiction over compulsory counterclaims, but not permissive counterclaims.

There exists no coincidence of citizenship between Storco and Arnold as discussed under Call #1. However, Storco's \$900 claim for merchandise previously sold does not meet the \$75,000 amount in controversy requirement that is necessary for independent subject matter jurisdiction on the basis of diversity.

Therefore, because no independent basis for original federal subject matter jurisdiction exists concerning this counterclaim, it can only be heard by the federal district court if the court can exercise supplemental jurisdiction.

Arnold's complaint alleged personal injuries resulting from an alleged lawn mower blade accident during a demonstration by a Storco clerk at a Storco store. Storco filed a \$900 counterclaim against Arnold for merchandise previously sold to him. Since Storco's counterclaim for merchandise previously sold to Arnold is completely unrelated to the main claim for personal injuries set forth in Arnold's complaint, under the Federal Supplemental Jurisdiction Statute, the federal court does not have the statutory authority to assert supplemental jurisdiction over Storco's counterclaim.

Applying the pre-statutory common law of ancillary jurisdiction, the court would have reached the same result by finding that Storco's counterclaim for failure to pay for merchandise previously sold to Arnold arises out of a different transaction or occurrence than Arnold's personal injury claim arising out of the defective lawn mower. Storco's counterclaim is permissive, not compulsory, and therefore requires its own independent basis of subject matter jurisdiction.

The court properly granted Arnold's motion to strike the compulsory counterclaim.

(4) STORCO'S MOTION TO STRIKE MANCO'S CROSS-CLAIM AGAINST STORCO FOR \$12,000.00

Cross-Claim

In federal court actions, the defendant may set forth in the answer any claims which he has against a co-defendant that relate to the transaction or occurrence or to any property that is the subject of plaintiff's complaint.

Manco filed a \$12,000 cross-claim against Storco, a co-defendant, for merchandise it had previously sold to Storco. Since the subject of the cross-claim was unrelated to the lawn mower accident that was the subject matter of Arnold and Bates' complaint, Manco's cross-claim was improper.

The court improperly denied Storco's motion to strike Manco's cross-claim.

Supplemental Jurisdiction

The Supplemental Jurisdiction Statute authorizes federal courts to assert supplemental jurisdiction over cross-claims that are not supported by an independent basis of subject matter jurisdiction if they are sufficiently related to claims that are supported by an independent basis of subject matter jurisdiction so that the goal of judicial economy will be achieved by hearing both claims in one federal court suit.

Manco filed a cross-claim against Storco for merchandise previously sold. Although Manco is from State Y and Storco is from State X, demonstrating a complete lack of coincidence of citizenship between them, Manco's \$12,000 cross-claim against Storco for merchandise it had previously sold to Storco does not meet the \$80,000 amount in controversy requirement.

As discussed, the subject of the cross-claim for the merchandise arises out of a completely different transaction. Thus, the cross-claim is completely unrelated to the main claim in the Arnold/Bates complaint.

Therefore, the court is not authorized to assert supplemental jurisdiction over the cross-claim.

The court would have reached the same result by applying the pre-statutory common law of ancillary jurisdiction. Under the law of ancillary jurisdiction, federal courts can assert ancillary jurisdiction over proper cross-claims. A proper cross-claim is one that arises out of the same transaction or occurrence as the main claim. As previously discussed, since Manco's cross-claim against Storco does not arise out of the same transaction or occurrence as the plaintiffs' claims against the defendants, the court could not assert ancillary jurisdiction over the cross-claim.

Thus, the court improperly denied Storco's motion to strike Manco's cross-claim.



PRICE LIST

Prices Effective August 15, 2010

FFOL Bar Review Courses:

Long Term Live Bar Review Course	\$3,195	Premier Tutorial Package	\$6,400
Short Term Live Bar Review Course	\$2,995	Online Home Study Bar Review	\$2,895
Ultimate Bar Tutorial	\$6,400		

FFOL Exam Solution® Review Courses:

With 4 Hour CDs, Outline, Hypotheticals & a Sample Written Model Answer included for Attached Hypothetical

	FFOL Bar Student @ 20% Discount	Non-Bar Student		FFOL Bar Student @ 20% Discount	Non-Bar Student
Agency/Partnership	\$68	\$85	PR for the MPRE Exam	\$68	\$85
Civil Procedure I	\$56	\$70	Property I	\$56	\$70
Civil Procedure II	\$56	\$70	Property II	\$56	\$70
Community Property	\$56	\$70	Remedies	\$68	\$85
Constitutional Law I	\$56	\$70	Torts I	\$56	\$70
Constitutional Law II	\$56	\$70	Torts II	\$56	\$70
Contracts I – U.C.C. Supplement	\$56	\$70	Trusts	\$56	\$70
Contracts II – U.C.C. Supplement	\$56	\$70	U.C.C./Sales Outline Only	\$20	\$25
Corporations	\$56	\$70	Wills	\$56	\$70
Criminal Law	\$56	\$70	Outlines only for individual subjects listed (excluding PR for MPRE Exam, Evidence Remedies, Agency/Partnership)	\$20	\$25
Criminal Procedure	\$56	\$70			
Evidence	\$68	\$85			

FFOL Courses and Seminars:

Legal Examination Writing Workshop			Baby Bar Review		
• Live Program	\$180	\$225	• Live Program	\$420	\$525
• Home Study Program	\$200	\$250	• Home Study Program	\$480	\$600
Performance Review – 4-Days			Final Review Videos (Viewed in Main Office)	\$40	\$50
• Live Program	\$380	\$475	Online “Science of the MBE”	\$120	\$150
• Online Program	\$340	\$425			

FFOL Publications & Study Aids:

Essay Examination Writing Workbook Volume I (Torts, Contracts/UCC, Criminal Law)	\$28	\$35	FFOL Multistate Examination Workbook, Volume I (Contracts/UCC, Crim. Law, Torts, Prof. Resp., Simulated Exam)	\$28	\$35
Essay Examination Writing Workbook Volume II (Evidence, Property, Civil Procedures)	\$28	\$35	FFOL Multistate Examination Workbook, Volume II (Civil Pro., Con. Law, Crim. Pro., Evidence, Property)	\$28	\$35
Essay Examination Writing Workbook Volume III (Con Law, Crim. Pro., Corps.)	\$28	\$35	Performance Exam Solution (CDs and Workbook)	\$84	\$105
Essay Examination Writing Workbook Volume IV (Com. Prop., Wills, Trusts, Remedies)	\$28	\$35	Professional Responsibility Exams & Answers	\$24	\$30

**Join
Today:**

With a \$250 non-refundable deposit towards any future FFOL Bar Review, you will receive the following benefits:

- ✓ Free Exam Solutions Outlines® for the semester in which you join FFOL
- ✓ A 20% Discount given on all future FFOL courses and materials during law school
- ✓ Attend all Final Review Courses Free in your last semester of law school
- ✓ Free Set of Exam Solution Outlines® in your last semester of law school
- ✓ Your Space is Reserved in the Bar Review and the course price is frozen.

Prices Do Not Include Sales Tax, Shipping & Handling. Prices are Subject to Change Without Notice. Visa, MasterCard, American Express, and Discover accepted. No COD's.