**Federal Civil Procedure Outline**

1. **Personal Jurisdiction**: can plaintiff sue defendant in this state? Must satisfy a statute and constitutional due process. In Personam Jurisdiction: jurisdiction over the person because of contact between the defendant and the forum state.
   1. **Statutory Analysis**: CA statute reaches the Constitutional limit.
   2. **\*Constitutional Analysis**: requires “such minimum contacts with the forum so that exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.” Assess contact, relatedness, and fairness.
      1. Traditional Bases: domicile in form, consents, present in forum when served (unless brought by trick).
      2. **Contact**: with forum state: purposeful availment & foreseeability
         1. **Purposeful Availment**: D must reach out to the forum. E.g., marketing a product, using the roads, causing some effect. Defendant *need not* set foot in forum. An interactive website can be purposeful availment, but a passive website is probably not.
         2. **Foreseeability**: it must be foreseeable that defendant could be sued in forum
      3. **Relatedness**: must have either Specific or General PJ
         1. **Specific PJ**: exists where claim is related to defendant’s contact with forum (even if D otherwise has minimal contact with forum).
         2. **General PJ**: exists even for claims unrelated to defendant’s contact with forum if defendant has continuous and systematic ties with forum such that he is “essentially at home” there. Human always at home in domicile, business always at home where formed or where it has its principal place of business. Might be other places, but physical presence required, not just sales or purchases.
      4. **Fairness**: consider (1) convenience, (2) state’s interest, and (3) plaintiff’s interest.
         1. Convenience: forum OK unless puts D at *severe disadvantage*. Relative wealth of parties is not determinative.
         2. State Interest: e.g., providing forum for its citizens
2. **Subject Matter Jurisdiction**: must be met for *each* claim
   1. **\*Diversity of Citizenship**: requires (1) the case is either between (a) citizens of different states or (b) a citizen of a state and a citizen of a foreign country, and (2) amount in controversy *exceeds* $75,000. Measured at time case is *filed*.
      1. **Complete Diversity Rule**: no P can be citizen of the same state as any D.
      2. **Citizenship**
         1. Human: state of domicile: (1) presence in state and (2) intent to make it permanent home. Can only have *one* domicile.
         2. Corporation: both incorporated *and* principal place of business. PPB is where managers direct, control and coordinate corporate activity (the “nerve center”).
         3. Unincorporated Association: where any member is citizen.
         4. Decedents, Minors, Incompetents: their citizenship, *not rep’s*.
      3. **Amount in Controversy**: good faith claim (unless clear to a reasonable certainty cannot be) must *exceed* $75,000. Measured at time of filing, but a P who wins less than $75,000 may have to pay D’s litigation costs.
         1. **Aggregation**: claims of *one* plaintiff against *one* defendant may be aggregated, even if unrelated. This is only permissible aggregation, unless defendants are jointly liable, in which case number of defendants is irrelevant.
         2. **Equitable Relief**: amount met if either (1) action hurt plaintiff by more than $75,000 or (2) it would cost defendant more than $75,000 to comply with injunction.
   2. **Federal Question**: complaint shows right or interest founded substantially on federal law, and claim arises thereunder.
      1. **Well-Pleaded Complaint Rule**: plaintiff’s claim itself must arise under federal law; ask if plaintiff is enforcing a federal right. Federal defense is not enough.
   3. **Supplemental Jurisdiction**: exercised if claim shares a common nucleus of operative fact with claim that invoked federal SMJ (e.g. same T/O). Can use supplemental jurisdiction to meet amount requirement. But in a *diversity* case, plaintiff *cannot* use supplemental jurisdiction to overcome a lack of diversity (but a defendant can). Court has discretion not to hear if federal question dismissed early.
   4. **\*Removal**: a *defendant* sued in state court can remove to federal court within 30-days after *service*, which restarts after each defendant is served, *if claim could have been filed in federal court*. All defendants who have been served with process must join—i.e., unanimity required. Plaintiff can never remove, even on counterclaim.
      1. **Limitation in Diversity Cases**: If removal jurisdiction is based on *diversity*, cannot remove (1) more than 1 year after filing, or (2) if any defendant is a citizen of the forum state, even if complete diversity met.
   5. **Erie Doctrine**: in diversity case, federal court applies state substantive law and federal procedural law. First, if any federal law, including FRCP or FRE, if on point and conflicts with state law, is applied by supremacy clause if valid—i.e., if arguably procedural. Second, if no federal law on point, and issue is (1) elements of claim or defense, (2) SOL, (3) tolling SOL, and (4) conflict of law rules, state law applies—these are substantive. Third, if none of these, balance: outcome determinative, federal v. state interests, and avoidance of forum shopping.
3. **\*Venue**: plaintiff may lay venue in any district where (1) all defendants reside or (2) a substantial part of the claim arose.
   1. **Different Districts in Same State**: If all defendants reside in different districts of same state, venue proper in any of the districts.
   2. **Residence**: humans reside in district where domiciled (one). Businesses of any kind reside in all districts where subject to PJ for this case (many).
   3. **Transfer of Venue**: only to a district where case could have been filed—i.e., a venue that had PJ over defendant, unless all parties agree otherwise.
      1. Where Original Venue Proper: court has discretion to transfer for convenience and interest of justice, and considers whether following factors show that other venue is center of gravity: applicable law, keeping controversy in local community, burden of jury service, location of witnesses and evidence.
      2. Where Original Venue Improper: may transfer in interests of justice or dismiss.
   4. **Forum Non Conveniens**: dismissal or stay of case where transfer is impossible because more convenient court is in a different judicial system, based on same factors for change of venue. Requires a very strong showing. Other court must be adequate, even if not same remedies.
4. **Service of Process**: delivery to defendant of (1) summons and (2) complaint, within 120 days of filing complaint, or dismissal without prejudice.
   1. **Who Can Serve**: any non-party at least 18.
   2. **Mechanics**
      1. Personal Service: given to defendant personally, anywhere.
      2. Substituted Service: ok if service (1) at defendants usual abode and (2) on someone of *suitable age and discretion who resides there*.
      3. On Agent: ok if receiving service within scope of agency.
      4. State Law: can use methods permitted by law of state of forum or service.
   3. **Waiver**: mail complaint and two copies of waiver form with prepaid means of return. If D executes and returns within 30 days, waives formal service and gets 60 days from mailing to her to respond. Plaintiff files waiver in court, effective at filing. Does not waive any defenses. If D does not waive, must compensate P for costs of service if no good cause.
   4. **Geographic Limitation**: can serve process outside state only if state law allows.
   5. Immunity from Service: service not effective while in state to be witness or party in another case.
5. **Pleadings**
   1. **Rule 11**: attorney or pro se party must sign all papers except discovery documents. Signing certifies that to best of knowledge/belief after reasonable inquiry, (1) paper not for improper purpose, (2) legal contentions warranted by law, and (3) factual contentions have evidentiary support. This is a continuing certification each time advocated in court. Sanctions available to *deter* (rather than punish), and can be non-monetary. Prior to imposing sanctions, must give opportunity to be heard. If another party violates Rule 11, a party cannot immediately move for Rule 11 sanctions. Instead, party serves motion but does not file, and party in violation has 21 days to fix problem. If she does not, file the motion. Court, sua sponte, can raise Rule 11, and need not give 21-day safe harbor.
   2. **Complaint**: must contain (1) statement of grounds of SMJ, (2) short and plain statement of the claim, and (3) demand for relief. Must allege facts supporting a plausible claim. Fraud, mistake and special damages must be pled with particularity.
   3. **\*Defendant’s Response**: must be within 21 days after service of process
      1. Issues of Form: made by Rule 12 motion: for more definite statement; motion to strike—aimed at immaterial things (e.g. demand for jury).
      2. **Rule 12 Defenses**: made by Rule 12 motion or answer.

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| **Defense** | **When May be Raised** |
| Lack of SMJ | Anytime, even appeal |
| Lack of PJ | Must be raised in *first* defensive response, or they are *waived* |
| Improper Venue |
| Insufficient Process (problem with docs) |
| Insufficient Service of Process |
| Failure to State a Claim | Anytime through end of trial |
| Failure to Join an Indispensable Party |

* + 1. **Answer**: if D made Rule 12 motion and denied, must serve answer within 14 days of ruling on motion. In answer, must respond to all allegations by (1) admit, (2) deny, or (3) lack sufficient information to admit or deny. Cannot use (3) if information is public knowledge or in D’s control. May also raise affirmative defenses (e.g., SOL, SOF). You must plead affirmative defenses, or you risk waiving them.
       1. **Effect of Failure to Deny**: constitutes an admission on any matter *except damages*.
  1. **Counterclaim**: claim against an opposing party. Should be put in answer. Must assess SMJ for counterclaims as well.
     1. **Compulsory**: arises from same T&O, and must be filed or waived. This is the *only* compulsory claim. However, if never required to answer (e.g. dismissal succeeds, no waiver.
     2. **Permissive**: does not arise from same T&O. May file with answer or assert in a separate case.
  2. **Crossclaim**: claim against co-party. Must arise from the same T&O. Always permissive.
  3. **Amending Pleading**
     1. Right to Amend: plaintiff—once within 21 days after defendant serves first Rule 12 response. Defendant—once within 21 days after serving answer.
     2. If No Right: leave granted if justice so requires. Court looks to delay, prejudice, and futility of amendment.
     3. Variance: if evidence at *trial* does not match pleadings, at or after trial plaintiff can move to amend complaint to conform to evidence.
     4. **Relation Back**: amendment after SOL
        1. **To Join New Claim**: if concerns same T/O.
        2. **To Change Defendant**: relates back if (1) same T/O, (2) new party knew of case within 120 days of filing, and (3) knew that but for mistake, she would have been named originally.

1. **Discovery**
   1. Required Disclosures: must be produced even if nobody asks. Includes disclosure of experts who may be used at trial, written report containing their opinion, data used, qualifications, compensation, etc.
   2. **Discovery Tools**: after 26(f) conference unless order permits otherwise. All can be used to get info from parties, issue often is which can be used to get info from non-parties. There is a duty to supplement discovery responses if things change.
      1. **Depositions**: questions oral or written which deponent answers under oath, recorded. Can depose non-parties, but should be subpoenaed so compelled, and may duces tecum, requiring deponent to bring material. Party need not be subpoenaed, and notice of deposition is sufficient to compel presence of party.
      2. **Interrogatories**: questions propounded in writing to another *party*, answered under oath.
      3. **Requests to Produce**: request to another party or a *non-party* if accompanied by a subpoena, to make available certain material.
      4. **Physical or Mental Exam**: only available through court order upon demonstrating good cause, of party or someone relevant under party’s control. Physical or mental condition must be at issue.
      5. **Request for Admission**: to a party to admit truth of any discoverable matter.
   3. **Scope of Discovery**: anything relevant to a claim or defense, even if inadmissible, so long as reasonably calculated to lead to discovery of admissible evidence.
      1. **Privilege**: cannot discover communication protected by privilege.
      2. **\*Work Product**: cannot discover material “prepared in anticipation of litigation.” Factual WP (e.g. witness statements) can be obtained if (1) substantial need and (2) not otherwise available. Mental impressions, opinions, conclusions, and legal theories are absolutely protected from discovery. WP need not be generated by lawyer; can be by party or any representative of party.
      3. Claiming Privilege of Work Product: must claim expressly and particularly describe materials by date, author, recipient, and privilege.
      4. Inadvertent Production: notify other party as soon as possible, and other party must await decision on waiver.
   4. **Enforcement of Discovery Rules**
      1. Partial Violation Sanctions: where party responds to some but not all discovery: can get order compelling response and costs and fees for motion. If party violates order compelling, can get remedies for total violation, costs and fees of motion, and contempt (except no contempt for refusing to submit to medical examination.
      2. Total Violation Sanctions: costs and attorneys fees and, on judge’s choice:
         1. Establishment Order (establishes facts as true)
         2. Strike Pleadings (as to issues re the discovery)
         3. Disallow Evidence from disobedient party
         4. Dismiss case (if bad faith)
         5. Default Judgment (if bad faith).
      3. For ESI, if failure to produce was due to good faith loss in routine operation of system, no sanctions unless extreme case.
2. **Joining Parties**
   1. **Proper Parties**: those who may be joined: (1) arise from the same TO and (2) raise at least one common question. Then assess SMJ & PJ.
   2. **Necessary Parties**: absentee must be joined if necessary and joinder feasible.
      1. **Who is Necessary**: An absentee is necessary if (1) without absentee court cannot accord complete relief among existing parties; (2) absentee’s interest may be harmed if not joined; *or* (3) absentee claims an interest which subjects a party to multiple obligations. Joint tortfeasors are *not* necessary parties.
      2. **Can Absentee Be Joined**: feasible if (1) PJ over absentee and (2) joinder will not destroy diversity. If absentee cannot be joined, must proceed or dismiss the entire case, and might consider alternative forum, likelihood of harm, and whether court can shape relief to avoid potential harm.
   3. **Impleader**: defendant seeks to join a third-party defendant, usually for indemnity or contribution. Right to implead within 14 days of serving answer, otherwise leave is required. Not a cross-claim, because TPD is not yet a party. After TPD joined, plaintiff/TPD can assert claim against each other if arises out of same TO as underlying case. Always look for SMJ. However, so long as the third-party complaint does not involve a claim against the original plaintiff, there is no need for diversity among original P and TPD.
   4. **Intervention**: absentee wants to join pending suit, either as P or D, and court can re-align her. Intervention must be timely.
      1. Intervention of Right: absentee’s interest may be harmed if not joined and her interest is not adequately represented now.
   5. **Class Action**
      1. **Initial Requirements**
         1. Numerosity: too many members for practicable joinder
         2. Commonality: some questions of law or fact in common
         3. Typicality: rep’s claims/defenses typical of those of the class
         4. Adequate Representation: rep will fairly and adequately represent class
      2. **Must Fit Within One of Three Types**
         1. Prejudice: necessary to avoid harm to class members or party opposing class (e.g., many claims to a limited fund).
         2. Injunctive Relief: seeking for injunction or declaratory judgment because class was treated alike by the other party, but not damages.
         3. **Damages**: (1) common questions predominate over individual questions, and (2) class action is superior method for handling dispute.
            1. **Notice**:for this type *only*, must provide individual notice of class membership to all reasonably identifiable members, informing that they can opt out, will be bound otherwise, and may enter separate appearance through counsel. Class representative pays for this notice.
      3. Court must determine at an early practicable time whether to certify class, and if class certified, class and claims, issues, and defenses must be defined, and court must appoint class counsel.
      4. **Who is Bound?**  All class members except those who opt out of damages class. There is no right to opt out of any other class.
      5. **Settlement**: parties can settle or dismiss *certified* class action *only with court approval*. Court gives notice to class members of potential settlement/dismissal. Court may allow a second chance to opt out in damages suit at this point.
      6. **SMJ**: in diversity, for citizenship and amount in controversy, consider rep *only*.
3. **Adjudication**
   1. **Pre-Trial Adjudication**
      1. Voluntary Dismissal: may be allowed on court order, but plaintiff has right to voluntarily dismiss without prejudice by filing written notice of dismissal before defendant answers. If plaintiff dismisses second case by written notice, it is *with prejudice*, even if the first case was in state court.
      2. Default Judgment
      3. **Failure to State a Claim**: tests only sufficiency of allegations; court ignores legal conclusions and looks only to allegations of fact and asks if accepted as true, would plaintiff win a judgment. Facts alleged must support plausible claim. Same motion, if made after answer, is motion for judgment on pleadings.
      4. **Summary Judgment**: moving party must show (1) no genuine dispute on a material fact and (2) entitled to judgment as a matter of law. Evidence viewed in light most favorable to non-moving party. Pleadings can be relevant if they fail to deny or admit something, but otherwise not evidence. Hearsay or speculation is disregarded.
   2. **Pre-Trial Conferences**: court may hold to process the case and foster settlement, and the final determines *all* issues to be tried and evidence to be presented, recorded in a pretrial conference order, which *supersedes the pleadings*.
   3. **Trial**
      1. **Jury Trial**:
         1. Right: right to jury trial in federal court for civil actions at *law*. If case involves both law and equity, jury decides facts underlying the damages claim, but not the equity claim. Jury issues come first, then equity issues.
         2. Demand: must be demanded in *writing* no later than 14 days after service of last pleading raising jury triable issues. Otherwise waived.
         3. Selection: no limit to strikes for cause, but each side gets only 3 peremptory challenges. Peremptory must be used in race and gender neutral way, because jury selection is state action.
      2. **\*Motion for Judgment as a Matter of Law**: Directed Verdict: brought after other side has been heard at trial. Granted if reasonable people could not disagree on the result. Court views evidence in light most favorable to the non-moving party. Plaintiff typically can move once, defendant twice.
      3. **Renewed JMOL**: same, but occurs after verdict. Must move within 28 days after judgment. If did not move for JMOL at trial, *cannot renew*.
      4. **Motion for New Trial**: where judgment was entered but circumstances require new trial. Must move within 28 days after judgment. Many grounds, but common one is prejudicial error at trial makes judgment unfair. Also available for excessive (Fed & CA) or inadequate (CA) damages where figure “shocks the conscience.”
         1. Remittitur: gives plaintiff a choice: can take a lesser amount, or go through a new trial. Available in both state and federal court. Court cannot simply lower the figure.
         2. Additur: gives defendant choice: either pay more, or go through new trial. Available in CA, but is unconstitutional in federal court.
      5. Motion to Set Aside Judgment
4. **Appellate Review**
   1. **Final Judgment Rule**: generally, right to appeal only from final judgment—ultimate decision of merits of the entire case. File NOA in *trial court* within 30 days of entry of final judgment. To determine if final, ask if judge has anything left to do on *merits*. E.g., denial of motion for new trial is final, grant of remand not final.
      1. CA: final judgment as to one of several parties is final, whereas in federal it would not be.
   2. **Interlocutory Review**: a number of instances, but here is important one: Court of Appeals has *discretion* to review order granting or denying certification of class action. Must seek review in COA (not trial court) within 14 days or order. Appeal does not stay proceedings unless trial court or COA orders.
5. **\*Preclusion**: affirmative defense of preclusive effect of prior judgment on merits
   1. **Applicable Law**: preclusive effect of a judgment is determined by the law of jurisdiction of that initial judgment.
   2. **Judgment on Appeal**
      1. Federal: entitled to preclusive effect.
      2. CA: not entitled to preclusive effect.
   3. **Claim Preclusion**: claim cannot be brought if (1) both cases were brought by the *same claimant* against the *same defendant*, (2) first case ended in a valid final judgment on the merits, and (3) both cases asserted same cause of action or claim.
      1. **On the Merits**: presumed unless states otherwise or based on jurisdiction, venue, or indispensable parties. Default judgment is on the merits, as is judgment based on discovery abuse.
      2. **Same Cause of Action/Claim**
         1. Federal: same T/O
         2. California: same “primary right” invaded. If a single accident caused both personal injuries and property damage, there are two causes of action for different rights, and a later claim is allowed on the different right (even though same T/O).
   4. **Issue Preclusion**: precludes relitigation of particular issue if (1) first case ended with valid final judgment on the merits, (2) same issue was actually litigated and determined, (3) issue was essential to judgment, (4) preclusion sought *against* someone who was a party to the first case, and (5) preclusion sought *by* someone who was a party to the first case or falls into a non-mutuality exception.
      1. **Actually Litigated & Determined**: must actually have been decided, not default or judgment for discovery problems.
      2. **Sought By Whom**: traditionally, must be sought by someone who was a party to the first case (mutuality), but modern practice dispenses with this requirement and permits non-mutuality in some cases.
         1. **Non-Mutual Defensive IP**: used by non-party to first case who is a defendant in second case: permitted if party in first case had a full chance to litigate the issue there.
         2. **Non-Mutual Offensive IP**: used by non-party to first case who is plaintiff in second case: permitted if fair: consider whether (1) full and fair opportunity to litigate; (2) multiple suits foreseeable; (3) non-mutual party could not have joined easily in original suit; and (4) no inconsistent judgments as to issue on record.

Essay Tip:

1. Always assess SMJ and PJ on each claim and party.