

## Civil Procedure Outline

### I Personal Jurisdiction –Tip: VERY HEAVILY TESTED

#### A) 3 types of jx

- 1) In personam: power over a particular D
- 2) In rem: power to adjudicate rights of all persons in world concerning a particular item of property
- 3) Quasi in rem: power to determine rights of particular individuals w/r/t specific property. Does not bind D personally, can't be enforced against any other property belonging to D

#### 4) General Rule & Steps:

(a) Personal jx addresses whether the P can sue the D in this state

(b) Steps: 2 part analysis

(i) Satisfy a statute (E.g., state long arm statute) and

(ii) Satisfy Q requirements for due process

(1) Note that CA's long arm statute "reaches to the Q limit" (so only address Q reqs).

**Mnemonic: My parents frequently forgot to read children's stories**

(c) Q Requirements for Due Process: Blurb "D must have "such minimum contacts w/the forum so that the exercise of jx does not offend traditional notions of fair play & substantial justice."

Requires:

(i) D must have Minimum contacts w/forum state resulting from D's purposeful availment – not accidental, D reaches out. E.g., making \$, using roads, putting defective product.

(ii) It must be foreseeable: D knew/ reasonably should have known that activities made it foreseeable that D may be "haled into ct"

(iii) Fairness: Haling the D into ct must not offend "traditional notions of fair play & substantial justice." Consider:

(1) Relatedness bw contact & P's claim:

a. If claim related to the D's contact w/forum state: specific jx

b. If D engages in "systematic & continuous activity" in forum state: ct has general jx (E.g., can be sued by CA for act in Haiti). E.g., domicile, incorporated etc.

(2) Convenience: **Tested**. Difficult standard. Forum ok unless it puts D at a severe disadvantage in litigation. Difficult stnd

(3) State's interest: in providing redress. **Tip**: watch if facts indicate special law.

(iv) Notice: D must be notified of lawsuit by + reasonable method & given opportunity to appear & be heard

(d) Misc: 1) Service + transitory presence sufficient to establish personal jx 2) D consents to jx: e.g., general appearance. Not if makes a special appearance

### II Subject Matter Jurisdiction (Tip: Highly tested) – Step 2

#### A) State Ct Subject Matter Jx

1) State cts: cts of general subject matter jx. Basic trial ct is Superior Court. Only few cases w/exclusive federal jx: federal sec, bankruptcy, antitrust, patent infringement.

2) 3 different classifications:

(a) Limited Civil Cases: civil cases in which amount in controversy does not exceed \$25K. Claimant may not recover more than \$25K. Limited discovery. Must note in caption.

- (b) Unlimited Civil Cases: Amount exceeds \$25K & claimant may recover any amount
- (c) Small Claims: Where P is individual, up to \$7,500. If entity: no more than \$5K
  - (i) Amount doesn't include attorney's fees/costs.
  - (ii) Reclassification: If case is misclassified/needs to be changed: reclassification automatically OR on motion (party's or sua sponte: Requires notice + Hearing). Ct will not "try the case to determine the amount" (will not consider merits in determining whether it should reclassify).

**Imp**

- (1) Classifying from unlimited → limited: **if judge convinced that either 1) the verdict will not exceed \$25K or 2) more than \$25K is virtually unattainable (cite both).**
  - (2) Classifying from limited → unlimited: if judge convinced there is a possibility verdict > 25K
  - (3) Effect of multiple claims on reclassification: entire case is either limited or unlimited. (E.g., may aggregate cls from 1 P v 1 D, or counterclaim in case >\$25K).
- B) Federal Ct Subject Matter jx: P must state basis of subject matter jx in complaint. Federal cts can hear only 2 types of cases 1) Diversity of citizenship cases & 2) Cases arising under Article III of Q
- 1) Diversity of Citizenship:
- (a) Basic Requirements: AT time when action commences, 1) the **action is between "citizens of different states" or bw a citizen of a state & a foreign citizen** – i.e., alien. **Every P must be of diverse citizenship from every D** 2) the amount in controversy **must exceed \$75K.**
    - (i) E.g., P (CA) sues D (AZ). After filing, P moves to AZ. Still diversity.
    - (ii) **Tip: Ensure you have both elements – physical presence + subjective intent.**
  - (b) Determining a litigant's citizenship:
    - (i) Natural Person: If the natural person is a U.S. citizen, her citizenship = the state of her domicile.
      - (1) Domicile based on 1) physical presence in state & 2) subjective intent to make it her permanent home (e.g., in state tuition, voting, buying property etc)
      - (2) Natural person has only ONE domicile
    - (ii) Corporation: UNLIKE Humans, may have more than one citizenship.
      - (1) Citizenship = 1) state where incorporated AND 2) the one state where the corporation has its principal place of business
        - a. Determining what THE principal place of business is:
          - i. The state where corporation predominantly has its physical operations OR
          - ii. "Nerve test" – if corporation has operational activity in many states, the situs/head-quarters where decisions made.
    - (iii) Unincorporated Associations (E.g., Partnerships, LLC, labor union): Possible to have multiple citizenship; considered a citizen of each state in which any member is a citizen. Don't consider principal place of business. E.g., P (CA) sues Labor union which has a member in CA.
    - (iv) Decedents, minors & incompetents: Look to their citizenship & not citizenship of representatives (E.g., If P is executrix for Elvis & sues D from TN, no diversity)
  - (c) The Amount in controversy: P must have a **good faith allegation that her claim exceeds \$75K, exclusive of interests & costs. Tip: Heavily tested.**

- (i) **Not permitted if it is clear to a legal certainty P can't recover > \$75K** (e.g., statutory ceiling).  
But if P had good faith believe her claim exceeds \$75K, doesn't matter that she doesn't recover it.
- (1) **BUT: P who wins less than \$75K may have to pay D's litigation costs bc loser pays winner's costs, which don't include L's fees. Tip: Heavily tested**
- (ii) Aggregation:
  - (1) A P may aggregate claims against a single D, even if claims unrelated. (E.g., P can aggregate claims for assault & breach of K against D but 1 P v 2 Ds can't aggregate unless alleging joint tortfeasors).
  - (2) A P who has an action against several Ds may only aggregate if alleging Ds are jointly liable (e.g., joint tortfeasors)
- (iii) Equitable Relief (**Tip: not tested since 1999**)
  - (1) Common scenario: P sues D for injunction to tear down part of his house that blocks P's view. If either of 2 tests met: amount in controversy satisfied.
    - a. Either the blocked view decreases value of P's property by more than \$75K
    - b. Or it would cost the D more than \$75 to comply w/the injunction
  - (iv) Issues commonly excluded from federal cts: divorce, alimony, child custody, probate.
- 2) Federal Question Cases: **Heavily Tested: 2003**
  - (a) Requirements under the well-pleaded complaint rule: P's claim must show a right or interest founded substantially on federal law/arising under federal law & P must be seeking to enforce that federal right. Parties citizenship or amount in controversy not relevant, unlike diversity jx
    - (i) Note: existence of defense based on federal law/anticipates some defense doesn't qualify
    - (ii) E.g., D gives P a lifetime pass but doesn't honor it bc states federal law prohibits him from honoring it. P files suit in federal ct & claims statute doesn't apply to him. No Fed Quest bc not seeking to enforce fed right.
- 3) **If claim satisfies diversity/arising under jx, additional claims may get into federal ct if based on diversity jx/federal question. But if not:**
  - (a) Supplemental/Pendent jx: **Tip: heavily tested**
    - (i) Permits fed ct to hear a claim that does not meet federal question/diversity req if P has at least one claim over which fed ct has diversity or subject matter jx.
    - (ii) Test – Federal ct may hear such claims if the claims: “share a common nucleus of operative fact”/arise out of the same transaction or occurrence as the claim on which the fed ct has subject matter jx.
  - (1) **Important statutory limitation – 1) Applies only to diversity cases & 2) Applies only to Ps.**  
In a diversity case, P can't use supplemental jx to overcome lack of diversity. E.g., P (CA) sues D (UT) for \$76,000 in fed ct. P then sues D2 (CA) based on supp jx. Diversity case + claim brought by P. P can't overcome lack of diversity using supp jx if fed ct's subject matter jx over original claim based on diversity.
  - (2) Narrowness of above statutory limitation: Very **Heavily Tested**
    - a. **P can use supplemental jx to overcome lack of amount of controversy** for claim in diversity case. E.g., P (CA) v D (UT). Diversity jx. Then P v D2 (CA) claim is transactionally related but only for \$12K. OK

- b. P can use supplemental jx to overcome lack of diversity for a claim where fed ct has original jx based on federal question E.g., P (CA) sues D (CA) for violation of federal anti-trust laws. Arising under jx. P then brings claim against D for violation of state anti-trust laws. Same Transaction/occurrence. Ok.
- c. Any party - but the P can use supplemental jx to overcome either lack of complete diversity or amount in controversy in ANY case (e.g., diversity of Federal question).
- (3) Ct's discretion not to hear supplemental claims: 1) if fed question dismissed early) 2) state law claim is complex or 3) state law issues will predominate.
- C) Removal: Allows **Ds** to have a case that is filed in state ct "removed" to federal ct. If improper, federal ct **remands** to state ct.
  - 1) When D can remove: if the case could be heard in federal ct – if federal subject matter jx exists (e.g., diversity/arising under)
  - 2) Procedure for Removal: D must file notice of removal in BOTH federal AND state ct + state grounds for removal + serve notice on all adverse parties.
    - (a) If removal procedurally improper: P may move to remand to state ct within 30 days.
    - (b) **But if no federal subject matter jx: no time limit for P/federal ct sua sponte to remand. May remand anytime.**
    - (c) **D who files permissive counterclaim in state ct waives right to remove. But D who files compulsory counterclaim doesn't**
- D) Erie Doctrine: **Applies in a diversity case.** Approach:
  - 1) Step 1: Does the c/a arise under the federal Q, statutes, laws or treaties?
    - (a) If N → apply Erie
    - (b) If Y → federal law applies under the Supremacy Clause
  - 2) Step 2: Is there a conflict bw state & federal law on a particular matter?
    - (a) If N: No Erie Problem. Apply federal procedural & state substantive law
      - (i) E.g., Clearly substantive law: 1) elements of a claim/defense 2) SOL 3) rules for tolling of SOL 4) conflict/choice of law
    - (b) If Y:
      - (i) Ask: 1) If there an "arguably procedural" federal law (FRCP/FRE, Fed Q, Fed statute)?
        - (1) If Y → federal rule applies (Note: FRCP always arguably procedural)
        - (2) If N → If no federal law on point + issue not one of substantive law (where judge must follow state law), judge considers 3 factors:
          - a. **Outcome determination: would applying/ignoring state rule affect outcome? If Y: substantive rule – use state law**
          - b. **Balance of interests: Does either federal or state system have strong interest in having rule applied?**
          - c. **Avoid forum shopping: If fed ct ignores state law will it cause parties to flock to fed ct? If so, apply state law.**

### III Venue: Distinguish between Federal & CA Rules

- A) Federal Rules: (district where the case may be heard)
  - 1) Venue proper in district where land in issue lies

- 2) Venue proper in 1) judicial district where lawsuits' events/omissions occurred or where property is located OR 2) where any D resides – if all reside in same state
  - 3) But if neither can be satisfied: 1) Where any D is subject to personal jx – in diversity cases or 2) Where any D may be found (non-diversity cases)
- B) CA Rules: (the county where the case may be heard)
- 1) Local actions: Actions involving land (possession, injury, trespass) must be brought in county ct where land located
  - 2) Transitory actions: If not a local action, P may lay venue in any county where: 1) D resides at commencement of action or 2) **Where a substantial part of the claim arose.**
    - (a) If all Ds reside in different counties: P can lay venue in the county in which any of them resides.
      - Tip: Heavily tested.**
      - (b) If K case: venue ALSO proper in county where K entered into/to be performed. If PI/wrongful death: where injury occurred.
    - 3) "Reside" equivalent to "domicile" – the same place as citizenship.
    - 4) Corporations: Venue proper where PPB, entered into/performed K, breach occurred
- C) Transferring Venue: **Tip: Heavily Tested**
- 1) Fed ct:
    - (a) Sending a case from one federal district ct to another federal dsirtict ct, may transfer venue even if venue is proper
    - (b) If venue is proper, ct may transfer to a district where the case could have been filed originally (e.g., transferee forum has personal & subject matter jx over the D).
    - (c) If venue improper: may transfer if "**in the interests of justice.**" Re convenience to the parties & unlike subject matter jx may be waived w/o timely objection. Ct considers 1) public factors & 2) private factors
      - (i) Public factors: What law applies, what community should be burdened w/jury service
      - (ii) Private factors: Where Ws are, evidence etc.
  - 2) State ct:
    - (a) Transfer of venue occurs from one superior court in a county to another (to a fed district ct).
    - (b) If oriinal venue is improper: D motions to transfer to proper county
    - (c) If original venue is proper: ct may, sua sponte, transfer if any of 3 true 1) prbs w/impartial jury 2) conveience of Ws & ends of justice or 3) judge not qualified
- D) Forum non CONveniens: If there is a much more appropriate ct, ct may dismiss w/o prejudice OR stay to let P sue D there.
- 1) Rationale to dismiss: where transfer is impossible (e.g., because it is in a different judicial system, - foreign country).
  - 2) Requires a very strong showing. Irrelevant that P would recover less. Motion almost never granted, esp if P is resident of present forum. Consider public & private factors above.
  - 3) State ct: called "inconvenient forum." Considers same public & private factors as in federal ct." Ct may grant a motion on a condition (e.g., D must waive objection to personal jx/SOL)

#### IV Service of Process

##### A) Federal court

- 1) D Must be given service of process sufficient to give D notice of the proceedings
- 2) How accomplished:
  - (a) D must be served w/documents called “process” 1) a Summons ( formal ct notice of suit and time for response) & 2) a copy of the complaint
  - (b) Time limit: P has 120 days after filing the case to serve the D w/process OR the case is dismissed without prejudice (Case will not be dismissed w/o prejudice only if P can show good cause for delay in serving)
  - (c) Who can serve process: Any non-party who is at least 18 years old, whether or not ct appointed
- 3) Various Ways to Serve Process:
  - (a) Personal Service to the D anywhere in the forum state
  - (b) Substituted service: Process if left at 1) D’s usual place of abode 2) with someone of suitable age and discretion who resides there (E.g., not babysitter). **CA differs.** (infra)
  - (c) Service on D’s agent: if D’s agent receiving it w/in scope of agency (e.g., agent appointed by K, by law, or corporation’s resident/managing agent/officer
  - (d) Waiver by mail: Process mailed to the D by first class mail, postage prepaid sufficient if D returns waiver w/in 30 days. Result: D waives only formal service of process (nothing else, e.g., personal jx). If D fails to do so & later personally served/substitute service, D may be required to pay cost of service.
  - (e) Geographic limitation: Process may be delivered to D in another state permitted state’s forum allows (e.g., long arm statute, i.e., CA)
  - (f) Immunity from service: Fed v CA
    - (i) Fed: If D is served for a federal civil case while she is in state for purpose of being a W or a party in another civil case, she is immune from suit
    - (ii) CA: NA no immunity
- B) Service of Process: State ct Differences
  - 1) Substituted Service: **Tip – Imp.** Can only use substituted service to serve individual if personal service “can not w/reasonable diligence be had.”
    - (a) Requirements: 1) service must be made at D’s usual abode/ mailing address NOT counting a post office box 2) Must be left with a competent member of the household at least 18 (contrast w/ fed: merely suitable age & discretion who resides) & 3) person must be informed of contents AND 4) process must also be mailed by pre-paid postage first class mail to D. (e.g., clinic).
      - (b) Deemed effective 10 days after mailing.
  - 2) Service by publication: Last resort. Only permitted on L’s affidavit that D cannot be served, after demonstrating reasonable diligence to serve D.
  - 3) Serving outside of CA: by mail – postage prepaid & return receipt. Completed 10 days after mailing
  - 4) Waiver of service by mail: state ct - D has 20 days to respond. Fed ct D has 30 days.

## √ Pleadings: FEDERAL

- A) Standard Required for Pleadings: Federal ct
  - 1) Traditionally, federal courts have used “notice pleadings” – requiring only enough detail to allow other side to 1) be on notice of pending lawsuit & 2) make a reasonable response. BUT in 2007, Supreme Ct requires parties to “plead facts supporting a plausible claim.” **Tip: tested**

(a) Special matters must be pleaded w/additional particularity/specificity. E.g., **fraud**, mistake and special damages (that do not normally flow from an event).

(b) **State ct** difference (infra)

B) Rule 11: **Tip – rarely tested**

- 1) Requires Ls/pro se parties to sign all written pleadings, motions & papers – except discovery documents. Signature serves to certify that to best of her knowledge & belief, after reasonable inquiry 1) the paper is not for improper purpose 2) **legal contentions warranted by law or non-frivolous argument for changes in law and** 3) factual contentions/denials have evidentiary support or are likely to after further investigation
- 2) “Continuing certification” – certification is effective every time a position is “presented” to the ct (e.g., at signing, at filing, when later advocating a position).
- 3) Sanctions may be levied against L, firm or party. **Purpose: deter not to punish. May be monetary (paid to ct, not other party)**. Before imposing, **ct must give chance to be heard**
- 4) L/Pro Per Parties Motion for Violation of Rule 11: Motion for Rule 11 Sanctions served on other party but not filed w/ct until 21 days – a safe harbor for OP to withdraw/fix the problem.
- 5) Ct may raise Rule 11 problemss sua sponte & NO SAFE HARBOR APPLIES.
- 6) State ct difference (infra)

C) Complaint:

- 1) Principal pleading by the P. P’s filing of it commences the action. Requirements 1) statement of subject matter jx 2) short & plain statement of the claim, showing that P is entitled to relief & 3) demand for j’ment
- 2) Note: heightened standard 2007 “plead facts supporting a plausible claim” & special matters etc

D) D’s Response under Rule 12: D must respond within 20 days after service of process or ELSE risk default. D must respond in EITHER of 2 ways: 1) by motion or 2) by answer

1) Motions: Not pleadings – but requests for ct order.

(a) Issues of form: E.g.,

- (i) Motion for a more definite statement – pleading so vague D can’t frame a response
- (ii) Motion to strike: P has presented pleadings regarding immaterial matter (e.g., P makes a demand for jury trial when no right to jury trial exists)

(b) 12 B Defenses: **may be raised by either motion or answer**

- (i) Non-Waivable defenses: 1) lack of subject matter jx 2) failure to state a claim 3) failure to join an indispensable parties
- (ii) Waivable defenses: 1) lack of personal jx 2) improper venue 3) insufficiency of process (prob w/papers) 4) improper service.
  - (1) Waived if not pleaded first in the first rule 12 response (motion or answer). E.g., P sues D & D files motion to dismiss but doesn’t bring up lack of personal jx. Lost 12B defense v may bring up at trial P’s failure to join an indispensable party. May bring up after trial ct never had SMJ. **Tested.**

2) The Answer:

(a) Timing:

- (i) If D makes no motions under Rule 12: D must serve answer w/in 20 days after service of process.

- (ii) If D makes a Rule 12 motion + motion is denied: D must serve answer w/in 10 days after ct rules on motion
- (iii) BUT if D has waived service: D has 60 days from P's mailing of the waiver form in which to answer

(b) Components of the Answer: **Tested**

- (i) **D responds to allegations of the complaint: D must 1) admit 2) deny or 3) state that D lacks sufficient information to admit/deny.** This acts as denial; D can't state this if information is public knowledge OR in D's control.
  - (1) **Note: Failure to deny a claim may constitute an admission on any matter EXCEPT damages.** E.g., P's complaint alleges X & D's answer says "P can't prove X." Admission. **TESTED**
- (ii) **D raises any affirmative defenses:** E.g., SOL, res judicata, SOF, SOL, self-defense. If D fails to plead, considered waived.

E) **Counterclaims and Cross Claims: TIP: HEAVILY TESTED**

- 1) Counterclaim: Offensive claim against an opposing party + that must be filed with D's answer. 2 types of counterclaims:
  - (a) Compulsory counterclaim: Arises from the same transaction or occurrence as P's claim and must be filed in the pending case or deemed waived. Cannot be asserted in another action.
    - (i) If in fed ct: Assess whether counterclaim gets in: 1) Under federal question jx 2) diversity jx or if both fail 3) under supplemental jx.
      - (1) E.g., P (CA) sues D (NY) for \$76K under diversity jx. D files a compulsory counterclaim against P for \$22K. Both claims involve state law. D's compulsory counterclaim doesn't get in under federal question jx or diversity jx. Supplemental jx: relates to same transaction or occurrence + special limitation not applicable bc D is asserting a claim so can overcome lack of diversity w/supplemental jx. **Tip: very heavily tested**
  - (b) Permissive counterclaim: Does not arise from the same transaction or occurrence as P's claim. It may be filed in answer in this pending case OR asserted in a separate case
- 2) Cross Claim: An offense claim against a co-party. It must arise from the same transaction or occurrence as the underlying action. E.g., P (CA) sues D 1(NY) & D 2(NY). P v D1 gets in under diversity jx. D2 wants to sue both P & D1. D2 can bring counter claim against P under diversity. D2 v D1: D2 can bring cross claim against D1 under supp jx.

VI Pleadings: STATE: order – complaint, answer, demurrer, various motions & cross complaint.

- A) Standard of Pleading: Unlike federal ct – use "fact pleading:" more detail. **Tip: Imp**
- B) Frivolous Litigation governed by 2 statutes:
  - 1) Statute identical to Rule 11 **EXCEPT:** 21 safe harbor ALSO when ct raises Rule 11 issue sua sponte
  - 2) Ct may order party/L/both to pay expenses & L's fees incurred bc of another party's bad faith in litigation or frivolous tactics (no merit, harassing is sole purpose) + but motion & opportunity to be heard required. No safe harbor or need to give notice. E.g., Linda's motion against OC
- C) Complaint: **Tip: Tested.**
  - 1) P must provide statement of ultimate facts of each element constituting c/a in ordinary & concise language. Like federal ct, heightened pleading reqs for special damages.
  - 2) No need to provide statement alleging subject matter jx.

- 3) **Unlike fed ct: must state amount of damages requested.** EXCEPTIONS: 1) PI/wrongful death 2) if P claims punitive. D in a PI/wrongful death/punitive case may request Statement of Damages: P must provide before taking a default & w/in 15 days of request.
- D) CA & Fictitious Ds: Not permitted in fed ct **TIP: VERY HIGHLY TESTED**
- 1) General Rule: If P is unaware of identity of D, P may name D as a "Doe" D + must allege she is unaware of D's true identity + must state c/a against Doe D (a 'charging allegation). If does so, P may get "relation back" so long as files original claim w/in SOL.
  - 2) P will have 3 yrs to ascertain D's identity.
- E) D's Response: w/in 30 days after service of process completed (Fed ct: 20 days!). D may respond in 1 of 6 Ways! **Tip: Crosses over w/many claims**
- 1) Pre Answer Motions:
    - (a) General Demurrer: May be used where:
      - (i) P fails to state facts sufficient to constitute a c/a (like 12b6 fed motion to dismiss). Ct wil. Permit P to allege again
      - (ii) Lack of subject matter jx (rare)
      - (iii) D can assert these defenses in the answer instead, in a motion for "judgement on the pleadings"
    - (b) Special Demurrer: Used to assert a variety of defenses. **NOT available in limited** civil cases. 1) Complaint is uncertain, ambiguous or unintelligible 2) comp unclear @ theories of liability 3) lack of legal capacity 4) duplicative lit 5) misjoinder 6) failure to plead whether K oral/written 7) failure to file cert (required to sue for proff neg)
      - (i) **In both general & special demurrers: ct only considers allegations pleaded in comp & matters subject to judicial notice.** Also, demurrers are "overruled" & "sustained" not granted
    - (c) Motion to Quash Service of Summons: TIP: VERY Heavily Tested.
      - (i) **Used when D contests ct's personal jx, improper process (prb w/summons/comp) or improper service of process.**
      - (ii) Motion must be made before or with the filing of a demurrer, answer or motion to strike OR deemed waived! Deemed a "special appearance." (if files above 3 w/o contesting personal jx, deemed a "general appearance." **TIP: ESSENTIAL!!**
      - (iii) If ct denies motion: moving party may ONLY **Seek appellate review by writ of mandate** from Ct of Appeal w/**in 10 days** of service of written notice of entry of order denying. **Tip: Imp.** Can't appeal lack of personal jx from final j'ment but must raise it w/a writ of mandate (versus fed ct, may be raised after final affirmative j'ment)
      - (iv) CONTRAST w/fed ct: D may object to personal jx in an ANSWER and is not deemed to have waived defense.
    - (d) Motion for a More Definite Statement
    - (e) Motion to Dismiss or Stay for Inconvenient Forum:
    - (f) Motion to Strike: Ct may strike "irrelevant, false or improper matter." (E.g., D files suit alleging proff neg & fails to inc cert. May strike/special demurrer).
      - (i) Anti-SLAPP motion to strike: When P sues D for act D took in furtherance of D's free speech rights or right to petition the govt on public issue, D can make an anti-SLAPP motion.
        - (1) Requirements: D must show that P's c/a arises from D's protected activity.

- (2) Effect: If D wins: The burden shifts to P to show a probability of winning on the merits + D may sue P for malicious prosecution!
- (3) Limitations on use: not available against P whose case is “truly in the public interest” (e.g., P doesn’t seek greater relief than that sought for the public – no \$ damages).
- 2) Answer: Same as federal about admission of allegations not denied etc. BUT: in state ct – may make a GENERAL DENIAL: short document in which D denies EVERY allegation of P’s complaint + so long as not frivolous.
  - (a) If D’s answer insufficient: bc she fails to state facts sufficient to constitute affirmative defense, P can file a demurrer to answer.
  - (b) If P filed a “verified” complaint, D must file a “verified” answer
  - (c) D’s answer can not include a demand for recovery against P . D must file a Separate cross-comp!
  - (d) D must answer w/in 30 days after service deemed to have been complete to avoid default.
- F) Claims by the D:
  - 1) Same rules as federal ct (E.g., Counterclaim, Cross claim, impleader) but all claims called “cross complaints” in state ct. Never refer to any other.
  - 2) Cross complaints must be in a separate document from the answer + filed before or after the answer.
  - 3) One exception: Rules for joining Third party D (impleader) are broader in state ct: May join TPD not only for indemnity/contribution (fed ct) but for any claim in which 1) TPD liable on underlying case 2) or arises from same Transaction or occurrence or 3) involves interest in controversy which is basis for underlying cl
  - 4) Person against whom cross-complaint is filed has 30 days to respond
- G) Joinder of Parties: Same rules but diff class action requirements. **Tested**
  - 1) Class Action Requirements: Must show 1) ascertainable class & 2) a well defined community of interests. Factors to assess in defining if “well defined community of interests”
    - (a) Whether common questions predominate, whether representative is adequate, and whether class will result in substantial benefit to the parties in the case.
    - (b) No separate types of class actions (unlike Fed ct)
    - (c) Differences in notice:
      - (i) Individual notice not required (v fed ct).
      - (ii) notice may be done by publication & ct’s discretion as to who pays (unlike in fed ct: rep pays)
    - (d) Ct’s discretion to permit opt out – not a right (unlike Type 3 class actions in fed ct) + ct’s discretion to appoint class counsel. (like fed: settlement/dismissal approved)
    - (e) Amount in controversy: May aggregate the claims to reach

## VII Amended Pleadings **Tip: Tested**

- A) P has right to amend once before serves D answer.
  - 1) If P amends: D must respond w/in 10 days OR amount of time remaining on his 20 days – whichever is longer.
- B) D has right to amend: once w/in 20 days of serving his answer

- C) If no right to amend: ct may grant a party opportunity to amend if “interest of justice so requires.”  
Cts consider 1) delay & 2) prejudice
- D) Variance: Party may amend its pleadings to reflect what was tried in court. **Tip: highly tested.** E.g., P didn’t plead assault but presented E of it at trial w/o D’s objection. P has leave to amend so that the pleadings are not at variance w/E presented at trial
- E) Amendment After the SOL has run: P may amend pleadings after the SOL has run so long as P can demonstrate relation back to the underlying transaction/occurrence or conduct of the original pleading
  - 1) May amend pleading to join a new claim: If new claim relates back, it won’t be barred by the SOL even if the SOL on the original pleading has run (E.g., P files on July 1 & SOL runs July 10).
  - 2) May amend pleadings to change a D after the statute has run – relation back if 1) it concerns the same conduct, transaction or occurrence as the original 2) the new party knew of the action w/in 120 days of its filing & 3) the new party knew that, but for a mistake, she would have been named originally. (E.g., P files a complaint & mis-names D. E.g., Sam Store, Inc instead of Sam, LLC

## VIII Joinder of Parties

- A) Permissive Joinder: Parties may join as Ps or Ds whenever 1) Some claim is made by each party against each D relating to/arising out of same occurrence/transactions AND 2) there is a question of fact/law common to all parties. (Jx requirements remain)
- B) Compulsory joinder:
  - 1) General Rule: Party should be joined if 1) complete relief can’t be given to existing parties in his absence 2) disposition may impair his ability to protect his interest in the controversy OR 3) his absence would expose existing parties to substantial risk of inconsistent obligations
  - 2) If joinder not feasible : E.g., w/lud destroy diversity in federal ct, no personal jx or venue: ct must decide if action can proceed in party’s absence OR must be dismissed. Ask whether:
    - (a) The j’ment in the party’s absence would prejudice him/existing parties
    - (b) Whether prejudice can be reduced
    - (c) Whether j’ment in party’s absence would be adequate and
    - (d) Whether P will be deprived of adequate remedy if action dismissed
  - 3) **Tip:** Joinder rules that start w/”C” are claims bw present parties but claims that start w/”I” involve joining someone new to the case.
- C) Impleader: **Tip: Very heavily tested**
  - 1) Impleader: 3<sup>rd</sup> party practice. A defending party wants to bring in someone new (e.g. TPD) to indemnify him or for contribution of the underlying claim.
  - 2) Steps for impleader:
    - (i) Ensure the ct would have personal jx over the impleader
    - (ii) Analyze all the rules of subject matter jx - is there diversity or federal question jx?
    - (iii) Serve process on the TPD
    - (iv) After TPD joined: P may assert a claim against the TPD & TPD may assert a claim against P if the claim arises from the same transaction or occurrence.
      - (1) E.g., No fed Question & all claims > \$75K. P is citizen of CA. D is citizen of NV. TPD is citizen of CA. SMJ over D’s claim against TPD. But no SMJ over P’s claim against TPD – no diversity,

no FQ & no supplemental bc of limitation (P can't overcome lack of diversity via supplemental).

D) Intervention: **not tested since 1986**

- 1) Absentee wants to join a pending suit as either P or D. Application to intervene must be timely.
- 2) Intervention as of right: A's interest may be harmed is not joined AND interest not adequately represented
- 3) Permissive intervention: A's claim or defense and the pending case have at least one common question. Discretionary w/ct. OK unless delay or prejudice
- 4) Not a way to achieve supplemental jx. E.g., Diversity case. P not diverse from D. No supp jx by or against intervenor.

E) Interpleader: **Never tested**

- 1) General Rule: One holding property forces all potential claimants into a single lawsuit to avoid multiple litigation & inconsistent obligations.
- 2) 2 types of interpleader:
  - (a) Rule interpleader:
    - (i) Diversity requirements: stakeholder must be diverse from EVERY claimant
    - (ii) Amount in controversy: must exceed \$75K (federal)
    - (iii) Nationwide service of process
    - (iv) Venue: general rules apply
  - (b) Statutory interpleader:
    - (i) Diversity requirements: one claimant must be diverse from one claimant. Stakeholder' citizenship irrelevant
    - (ii) Amount in controversy: \$500 OR more
    - (iii) Venue: any district where ANY claimant resides

IX Class Actions: Representative sues on behalf of a group

A) Requirements (4) + 1 of the requirements from "types of class actions"

- 1) Numerosity: the class is so numerous that joinder of all members is impracticable
- 2) Commonality: Questions of law/fact common to the class
- 3) Typicality: Named parties' interests are typical of the class
- 4) Adequate representation: Named parties will adequately represent the class members

B) Types of class actions

- 1) Separate actions would create a risk of inconsistent results or impair interests of unnamed parties. "prejudice" – E.g., claimants to a fund may deplete the fund. **Tip: never yet tested.**
- 2) D has acted/refused to act on grounds applicable to class and injunctive/declaratory relief is appropriate for the class as a whole (e.g., employment discrim)
- 3) Damages: Common questions predominate over individual questions AND class action method superior method to handle dispute (e.g., mass tort). **TIP: MOST HIGHLY TESTED OF THE THREE**
  - (a) Only type of class action (B3) that requires notice to the class members + allows opting out.

C) Requirements that the Class Action be Certified

- 1) Timing: Ct must determine whether to certify class at an "early practicable time"

- 2) Subject Matter jx: diversity, arising under. (For diversity: only look to the class representatives citizenship and not the other class members + the representative's claim must be greater than \$75K – no aggregation).
  - (a) Class Action Fairness Act of 2005: Grant of subject matter jx – allows fed cts to hear a class action if any class member is of diverse citizenship from any D AND if aggregated claims exceed 5 M.
- 3) Court's considerations when deciding whether to certify: have all the requirements been met, extent & nature of litigation, desirability of joint trial, difficulties in managing class action.
- 4) When ct certifies: Ct defines class, class claims, issues & defenses + MUST appoint a class counsel WHO can fairly + adequately represent class interests.
- 5) Requirements for notice of pendency of action:
  - (a) Notice only required for B3 – individual notice required by mail to all reasonably identifiable parties. Notice must tell members 1) they can opt out 2) they will be bound by any j'ment if they fail to opt out & 3) they can enter a separate appearance through counsel. Class representative must pay for notice
- 6) Who is bound by j'ment: All class members except those who opt out in Type 3 action
- 7) Settlement/Dismissal of Class Action: **requires ct approval + notice to all class members** (all types). **Tip: highly tested.**
  - (a) Also in Type 3: ct must give members A SECOND chance to opt out

#### X Discovery – **not tested since 1993**

- A) **Required Disclosures: Tip – never yet tested.** Materials must be provided w/o request
  - 1) Initial disclosures: w/in 14 days of Rule 26(f) conference, must identify persons & documents “**likely to have discoverable information that disclosing party may use to support its claims or defenses.**”
  - 2) Experts: who may be used at trial
  - 3) Pretrial: Trial E, docs & identity of Ws to testify live/depo. 30 days before trial
- B) Discovery Tools: May not be used until AFTER 26(f) conference unless ct order/stip
  - 1) **Which tools can be used to get information from non-party: Tested**
    - (a) Depos: Non-party must be subpoenaed or not compelled to attend. If want deponent to bring material must serve w/subpoena duces tecum. (Party need not be subpoenaed merely given notice)
      - (i) Can't take more than 10 depositions/depose same person 2x/exceed 1 day of 7 hrs
    - (b) No interrogatories for non-party. But if party: must respond to interrogatories w/in 30 days w/answers or objections that are specific. No more than 25
    - (c) Requests to produce: if to another party – must give subpoena. Requests to produce (e.g., available for review/copying/enter property for inspection). Must respond w/in 30 days stating that material will be produced/with objection. Includes Electronically stored information.
    - (d) Physical/mental examination only available through ct order on showing that party's health is in actual controversy & good cause exists.

- (e) Request for admission: A request to another party to admit the truth. Used to authenticate docs etc. Must admit, deny or lack info if reasonable inquiry. Failure to deny is admission but can amend if failure not in bad faith. 30 days to respond.
- (f) Parties sign substantive answers under oath that all requests are warranted, not improper purpose & not unduly burdensome.
- (g) Duty to supplement: if party learns that its response to required disclosure, request for production or request for admission incomplete or incorrect – continuing duty to disclose.
  - (i) CA: doesn't exist (e.g., clinic)
- 2) Scope of discovery: Can discover anything relevant to a claim or defense.
  - (a) Relevance: anything “reasonably calculated” to lead to discovery of admissible evidence.
  - (b) Privileged material not discovered. **TIP: PRIME AREA FOR CROSS OVER WITH EVIDENCE. ALSO RELEVANCE HIGHLY TESTED HERE W/DISTINCTION BW MEANING IN E.**
- 3) **Work Product: MOST HIGHLY TESTED**
  - (a) Definition: Material prepared in anticipation of litigation that is generally protected from discovery
  - (b) General Rule: Work product of Ls & others in anticipation of litigation discoverable only upon showing of 1) substantial need AND 2) to avoid undue hardship in obtaining materials in alternative way. Absolute privilege from disclosing 1) mental impressions 2) opinions 3) conclusions & 4) legal theories. **Highly tested.**
- 4) Experts: parties may take deposition of any expert “whose opinions may be presented at trial.” Consulting expert (retained in anticipation but not to testify) not discoverable w/o “exceptional need”
- C) Enforcement of Discovery Rules: 3 main ways.
  - 1) Protective order: E.g., request overly burdensome or trade secret, privileged etc
  - 2) Partial violation: Receiving party answers some & objects to others. If objections not upheld, light sanction. **Tested**
    - (a) Remedy: May get a ct order compelling party to answer unanswered questions plus costs (including L's fees) of bringing motion
  - 3) Total violation: Receiving party fails completely to respond. Sanctions usually heavy
    - (a) No need to get an order compelling answers – may go straight to “RAMBO” sanctions.
      - (i) Establishment order (establishes facts as true)
      - (ii) Strike pleadings of disobedient party: as to issues regarding discovery
      - (iii) Disallow E from disobedient party: As to issues re discovery
      - (iv) Dismiss P's case: if bad faith
      - (v) Enter default judgment against D (if bad faith)
  - 4) Seeking sanctions:
    - (a) Party seeking sanctions must certify to the ct that she has attempted to get information needed in good faith w/o ct involvement
- D) Discovery in STATE ct:
  - 1) **NO REQUIRED DISCLOSURES**: biggest difference
  - 2) Depositions: don't have the fed limits (e.g., time limits, 7 hrs etc). P must get ct order on showing of good cause to notice D's depo w/in 20 days after D served w/process. “chill pill.”

- 3) Interrogatories: No limit to number of Judicial Council form interrogs BUT drafted interrogs: max 35 + can't have subparts. Caveat: If party wishes to draft more + serve additional drafted interrogs w/declaration supporting need for more. Burden on opposing side to seek protective order. P must obtain court order on good cause to propound w/in 10 days of D being served w/process.
- 4) "Inspection demand" (fed ct: called requests to produce): No statutory limit for unlimited civil cases but must wait 10 days (supra).
  - (a) Fed ct: subpoena a non-party
  - (b) State ct: do not expressly permit party to use inspection demands to get information from non-party. Must take the non-party's depo (subpoena) + serve non-party w/subpoena duces tecum
- 5) Med Exam: If physical exam L's right to attend
- 6) Requests for admission: Like interrog, 35 max but NO limit for requests to admit genuineness of docs (authentication). But still 10 day chill pill
- 7) Discovery in limited cases: strict limits. ONLY 1 depo per party + combined total of interrogs, inspection demands & requests for admission of only 35! Additional discovery only thorough ct order – no party stipulation
- 8) **Supplemental Discovery: ONLY available in unlimited civil cases. TESTED HIGHLY. UNLIKE** fed ct, no standing duty to supplement discovery responses so long as information accurate/complete when given. Responding party may propound supplemental interrogs to get later-acquired info @ interrogs already propounded/supplemental demands for inspection twice before trial date set & once after trial date set.
- E) **CA on Privilege:** When discovery request would intrude on privilege, responding party must object w/particularity by identifying doc for which privilege is claimed, doc's author, date prepared, all recipients & specific privilege. Record called "privilege log." **TIP: HIGHLY TESTED**
- F) **CA on Work Product: FEDERAL V STATE. TIP: MOST HIGHLY TESTED**
  - 1) Federal: work product may be generated by party or ANY representative of party – not just L Just "work product" not "Attorney work product."
  - 2) State ct: Work product only generated by L OR her agent. So only "attorney work product."
- G) **Protective orders: Highly tested.** Party may seek them to protect against 1) unwarranted annoyance 2) embarrassment 3) oppression 4) burden or expense. Ct **BALANCES** need for discovery against parties' interest.

## XI Pretrial Adjudication

- A) Voluntary Dismissal: **Tested**
  - 1) May be allowed by ct order or P may simply file a writing notice of dismissal.
  - 2) P may voluntarily dismiss without prejudice before D serves her answer or a motion for summary j'ment
  - 3) But if you refile and then dismiss a second time – it is a dismissal with prejudice and CAN NOT refile ANYWHERE (e.g., even if P refiles in state ct). **VERY HIGHLY TESTED**
- B) Default & Default J'ment – **never yet tested**
  - 1) Default: If D has failed to respond w/in 20 days after being served w/process. P not yet entitled to recover but needs a j'ment to enforce & recover.

- 2) Default entered for P if 1) D made no response at all 2) Claim is for a certain sum of money 3) Claimant gives affidavit of the sum owed & D is not minor/incompetent
  - (a) If any of above not true → claimant must go to ct for j'ment. Hearing + discretion. D only gets notice if made some appearance in case.
  - (b) Default j'ment can't exceed what claimant sought in complaint
  - (c) D may try to set aside by showing good cause & excusable neglect.
- C) D May move to dismiss for failure to state a claim:
  - 1) Tests the sufficiency of P's claims. Ct assumes all allegations are true & even so, would P win. Ct does not look to the E of the complaint (unlike w/MSJ).
  - 2) Also, if P sets forth elements of complaint but on the face of the complaint is a bar to recovery (e.g. complete defense, SOL). The ct may dismiss under Rule 12(b)(6).
  - 3) **CA: Motion to dismiss (FRE) is called "Motion for J'ment on the Pleadings). Tested**
- D) Involuntary Dismissal: All cts have authority to dismiss for failure to prosecute/abide by ct orders etc
- E) Summary J'ment. **Highly tested**
  - 1) **Timing: unlike JMOL, may move for summary j'ment at any time** (claimant may not do so until 20 days after commencement of action or after adverse party). **CA: 60 days**
  - 2) **Moving party must show 1) there is no genuine dispute as to material issue of fact 2) that she is entitled to j'ment as a matter of law. Motion may be for partial summary j'ment (e.g., as to one of the claims).**
  - 3) Ct considers all the Evidence – ct considers the E in light most favorable to non-moving party
  - 4) Affidavits: Sworn statements made under the penalty of perjury so considered evidence. E.g., D moves for summary j'ment & attaches affidavits. P answers w/o any E – just pleadings & no affidavits. MSJ granted. Pleadings not E – unless "verified" (signed under penalty of perjury by party, required in SH derivative suits & suits against govt. treated as affidavits). **Tip: highly tested**
    - (a) Affidavits are evidence AND must be based on first hand knowledge
    - (b) Do not weigh the credibility of Ws & E in deciding whether to grant a MSJ
  - 5) Relevance of pleadings; may be relevant to show an admission
- F) STATE LAW:
  - 1) Voluntary Dismissal:
    - (a) P can move to dismiss ANYTIME before trial actually commences + ct **has discretion to grant if w/o prejudice.** (unlike fed ct: P can move to dismiss w/o prejudice only before D serves answer/MSJ).
    - (b) If P moves for voluntary dismissal AFTER trial starts, may be granted ONLY w/prejudice UNLESS parties stipulate/ct finds good cause
  - 2) Involuntary Dismissal: **TIP: HIGHLY TESTED**
    - (a) CA: ct has discretion to dismiss if case not brought to trial w/in 2 yrs of filing
    - (b) **MANDATORY dismissal:** in CA – if not brought to trial w/in 5 years OR process not served w/in 3 years after filing. **TESTED!!**
  - 3) **Motion for Summary J'ment in CA: TIP: ESSENTIAL**
    - (a) If D moves for SJ & shows P c/a lacks merit OR P moves for SJ & shows there is no defense: Burden shifts to OP to produce E that a triable issue of fact exists. (e.g., P must plead all elements & doesn't. Burden shifts)

- (b) Moving party MUST file + Serve a separate statement of material facts of claims she asserts are undisputed + supporting E for each fact or motion denied.
- (c) OP must then respond by indicating facts she believes are in dispute + supporting E of each fact.  
Or ct grants MSJ

## XII Conferences and Meetings

- A) Rule 26(f) Conference: **Not yet tested** – At least 21 days before scheduling conference, parties discuss claims, defenses & settlement. Must form discovery plan & present it to ct in writing w/in 14 days
- B) Scheduling order: Ct enters order scheduling ct-offs for joinder, amendment, motions etc
- C) Pretrial Conferences: **highly tested**
  - 1) Ct may hold them to expedite case & foster settlement
  - 2) Final pretrial conference: determines issues to be tried AND E to be offered.
  - 3) Pretrial conference order supersedes pleadings + may be amended to prevent “manifest injustice” (difficult standard). “Roadmap” of E to be presented at trial to eliminate surprise & trial by ambush
    - (a) Or amend by conforming to E if E beyond the pretrial conference order is proffered & not objected to .E.g., like variance
- D) State Ct:
  - 1) No Rule 26f conference – parties don’t have to confer re discovery planning etc BUT ct holds initial case management conference w/in 180 days after filing of complaint.
  - 2) “Fast track” – ct reviews & determines if case eligible for fast track. Want majority of unlimited & limited cases to be heard w/in 1 yr.
  - 3) Ct may order mandatory settlement conference + sanction parties for not complying w/fast track orders.
  - 4) Parties may agree to arbitration: binding even if error

## XIII Trial, Judgment & Post-trial Motions: **SECTION HIGHLY TESTED**

- A) Jury trial
  - 1) Right to jury trial in federal ct: 7<sup>th</sup> A civil cases (but not made applicable to the states through 14<sup>th</sup> A). **In federal ct – right to jury trial limited to “civil actions at law” & NA to “suits in equity.”**
    - (a) If case involves both law & equity: jury decides facts underlying the legal claim but not the equity claim. Jury issues tried first. **(unlike CA).**
    - (b) Requirement for demanding a jury **trial in writing no later than 10 days after service of last pleading raising jury triable issue. OR waived!**
    - (c) Jury selection:
      - (i) EACH SIDE: voir dire has unlimited challenges for cause but a limited number of peremptory challenges (can’t be based on race/gender. Q law). Rationale: jury selection is state action bc traditional public function.
- B) Motion for J’ment as a Matter of Law: (Used to be called “directed verdict”). Effect – is to take the case away from the jury. **Tip: highly tested**
  - 1) When brought: After the other side has been heard. So D may bring it twice – after the close of P’s case & after D’s case. P can bring it only once – at the close of all the evidence.

- 2) Standard for granting the motion: Reasonable people could not disagree on the result. The ct generally views the E in light most favorable to the non-moving party
- C) Renewed Motion for J'ment As a Matter of Law: Tip: Always consider w/JMOL
- 1) Filed after the judge has permitted the case to go to the jury & the jury returns a losing verdict for the party. The losing party may file a RJMOL, which – if granted – would result in an entry of j'ment for him. BUT must move w/in 10 days after entry of j'ment.
  - 2) Standard: same as w/JMOL. Reasonable persons could not disagree with the result.
  - 3) **Pre-requisite: Must have made a JMOL. TIP: VERY HIGHLY TESTED**
- D) Motion for a New Trial: Tip: not tested since 1996
- 1) Situation where applicable: J'ment has been entered but errors at the trial level require a new trial. MUST move w/in 10 days after j'ment.
  - 2) Grounds: 1) prejudicial error at trial makes j'ment unfair 2) new E that could not have been obtained w/due diligence for original trial 3) prejudicial misconduct 4) j'ment against the weight of the E (serious error of j'ment by jury) & 5) excessive/inadequate damages (REMITTUR & ADDITUR PERMITTED, SEE STATE LAW SECTION BELOW)
- E) Motion to set aside j'ment **tip: never yet tested**
- 1) Grounds: clerical error, mistake, excusable neglect, new E that could not have been discovered w/due diligence for a trial motion, J'ment is void (for J'ment being void – you have a reasonable time).
  - 2) Usually should move to set aside w/in 1 yr
- F) State Ct Issues
- 1) Default j'ment: claimant can't recover more than what's sought in comp
  - 2) Limited civil cases: Claimant can't recover > \$25K
  - 3) Right to a Jury Trial:
    - (a) Federal ct: 7<sup>th</sup> A right to a jury trial not applicable to the states via the 14<sup>th</sup> A. BUT CA State Constitution grants right to jury trial along law/equity split (i.e., case involves facts underlying both a c/a w/legal remedy & equitable remedy, jury trial for c/a w/legal remedy).
      - (i) BUT distinction: In state ct: the equitable issues TRIED FIRST & then jury hears c/a for legal remedy (v fed ct: where jury tries c/a for legal remedy first).
      - (ii) If complaint alleges c/a in equity & damages merely incidental: in state ct – no right to jury trial under the “equitable clean p doctrine.” (V fed ct – if legal damages any part of remedy sought, jury trial). Rationale: 7<sup>th</sup> A doesn't apply to states
    - (b) Requirement for demanding a jury: Party must “announce” at time case set for trial/within 5 days after notice of trial setting. Failure to demand: waiver.
    - (c) Number of jurors: 12 jurors in civil case (unless parties agree in open ct to less). Alternate jurors. If no alternate: trial continues unless a party objects.
    - (d) Verdict: Federal ct requires unanimity in civil but state ct only ¾ (so 9/12).
    - (e) Voir dire: Federal v state
      - (i) Federal ct: Each side has a limited number of peremptories – not each party. Peremptories can't be based on race or gender

- (ii) State: Each PARTY has 6 peremptories (so if 2 Ps then 12!) AND peremptory challenges can't be based on race, color, religion, sex, national origin, sexual orientation or similar grounds.  
Broader. **TIP: VERY HIGHLY TESTED**
- 4) Motion for Directed Verdict: Equivalent of Fed cts JMOL.
  - (a) If D moves for Directed verdict at close of P's opening statement OR at close of P's E: called Motion for Non-suit or demurrer to the E. **TIP: VERY HIGHLY TESTED.**
- 5) Motion for JNOV: Equivalent of fed ct RJMOL
- 6) Motion for New Trial: Timing is same as JNOV. Standard "the error complained of has resulted in a miscarriage of justice."
  - (a) Common grounds for motion for new trial is excessive OR inadequate damages. Ct can order new trial if "damages figure shocks the conscience."
  - (b) To avoid need for new trial, ct may order remittur OR Additur. **TIP: VERY HIGHLY TESTED**
    - (i) Remittur: P awarded large amount for suffering minor damages "shocks the conscience." Ct can't simply lower figure determined by jury but must give P the choice of a new trial OR a lower figure. Both state & fed ct same.
    - (ii) Additur: P awarded very small amount for huge damages – "shocks the conscience." State & fed ct distinction. State ct: May give D the choice of paying more or a new trial. Fed ct: Not allowed bc 7<sup>th</sup> A.
  - (c) Motion to set aside j'ment (**tip: NOT yet tested**)
    - (i) Requirements: Mistake, inadvertence, surprise or excusable neglect.
    - (ii) Motion must include D's answer + "affidavit of fault" (demonstrating the above) + reasonable time (not more than 6 mo after entry of j'ment)
- G) Appeal: TIP: HIGHLY TESTED – RECENT!
  - 1) How Appeal: Federal system – appeal from federal district ct to US Ct of Appeals usually in same district
  - 2) Final J'ment Rule:
    - (a) Generally: may only appeal from final j'ments – an ultimate decision by the trial ct of the merits of the entire case. Must file NOTICE TO APPEAL in 30 days after entry of final j'ment IN THE TRIAL CT. **Tested.**
    - (b) Determining if there has been a final j'ment: Ask if after making this order the trial ct has anything left to do on the merits? If Y → not final.
      - (i) Denial of motion for summary j'ment: Not final
      - (ii) Granting of Motion for new trial: not final
      - (iii) Denial of motion for new trial: Final
      - (iv) Granting of motion to remand to state ct: not final so no appeal
      - (v) Granting/Denying Renewed JMOL: Final
    - (c) Interlocutory Appeal: Non-final review – appealable even w/o final j'ment
      - (i) Interlocutory orders reviewable as of right: orders re to injunctions, re to appointment of receivers, patent infringements, re possession of property
      - (ii) Interlocutory Appeals Act: allows appeal if trial judge certifies it involves a controlling issue of law as to which there is substantial ground for difference of opinion AND ct of appeals agrees to hear it

(iii) Collateral order exception: discretion to hear issue that is distinct from merits, involves important legal question that is unreviewable if parties away a final j'ment.

(iv) Class action: must seek review of cert w/in 10 days

H) State Issues: Appeal

1) Consider if unlimited or limited civil case:

(a) Unlimited civil case: appeal from Superior Ct to Ct of Appeal in district in which county assigned

(b) Limited & small claims: Appeal to the appellate division of the superior ct

(c) MUST file notice of appeal with TRIAL CT w/in 60 days after notice of entry of j'ment

2) Final j'ment rule: CA follows – with ONE distinction. A judgment as to ONE of the several parties is considered a FINAL j'ment that can be appealed (e.g., P sues D1 & D2. P gets summary j'ment against D2. Fed ct not appealable bc not final j'ment. State ct: final j'ment & so appealable).

3) If ct sustains demurrer w/o leave to amend: the final j'ment of dismissal NOT the order is appealable

4) Extraordinary Writ: **TIP – ESSENTIAL**

(a) General rule: If order is NOT otherwise appealable, party may seek a WRIT OF MANDATE OR WRIT OF PROHIBITION – both issue by a ct to an inferior ct (e.g., Ct of Appeal → Superior, appellate division → small claims)

(i) Definitions: Writ of mandate: compels a lower ct to do something law requires v writ of prohibition: stops a lower ct from doing something law forbids

(ii) Requirements: 1) the party will suffer irreparable harm if writ not issued 2) normal route of appeal from final j'ment is inadequate & 3) party has a beneficial interest in outcome of writ proceeding. More likely granted if novel issue or conflicting trial interpretations of imp question (e.g., usually not for discovery. Commitment in mental hospital).

XIV Effects of J'ment on Future Cases: Claim and Issue Preclusion **TIP: SO HIGHLY TESTED → BREATHE IT!**

A) Spotting the Issue:

1) If there has been an earlier cases, consider the preclusive effect of prior j'ment on the merits. Ask whether a j'ment already entered precludes litigation on any other matters

2) Deciding which law to adopt: If case 1 & Case 2 are in different court systems (i.e, one in federal & he other in state), adopt the law of the system that decided Case 1. (E.g., case 1 fed ct. case 2 state, fed ct law).

3) If the j'ment in Case 1 was appealed – consider if fed or state law applies. Under federal law: a j'ment that has been appealed still has issue preclusion effect. Under state law: it doesn't.

4) Defenses timely raised: Claim & issue preclusion affirmative defenses. Must be raised in answer. Often tested on Bar in MSJ. **TIP**

B) Res Judicata: Claim Preclusion (Terminology: If P won in Case 1, Res Judicata called “merger” but if lost in Case 1: called “bar”)

1) General Rule: Blurb “*Once a final j'ment on the merits is rendered on a particular claim/cause of action, P is barred by res judicata from trying the same case in a later suit.*”

2) Requirements:

(i) Case 1 & Case 2 were brought by the same claimant against the same D

(ii) Case 1 ended in a valid final j'ment on the merits.

- (1) General Rule: unless the ct states otherwise, any j'ment is on the merits UNLESS based on
  - 1) jx, venue, indispensable parties or SOL – even if nothing was litigated.
- (2) Default j'ment on merits. **TIP: HUGE**
- (3) J'ment based on discovery abuse on the merits
- (iii) Case 1 & Case 2 assert the same c/a or claim:
  - (1) Federal law: Claim means same transaction nor occurrence. E.g., even if produces PI or breach of K
  - (2) State law: Primary Rights Theory – 1 c/a for each right invaded. (E.g., Suffer a tort & a breach – 2 c/a).
- C) Issue Preclusion (CA: called “collateral estoppel”)
  - 1) General Proposition: Precludes relitigation of a particular ISSUE litigated & determined.
  - 2) Requirements: 5
    - (i) Case 1 ended in a valid, final j'ment on the merits (same as in res judicata)
    - (ii) The same issue was actually litigated + determined in CASE 1 (v res judicata where the issue didn't have to be actually litigated; default j'ment sufficient to give res judicata but not issue preclusion)
    - (iii) The issue was essential to the j'ment in Case 1 – meaning that w/o the issue the j'ment would have been different
    - (iv) The issue preclusion is ONLY being asserted by one who was a party to the case/represented by the party. Required by due process
    - (v) A proper person is asserting issue preclusion: Depends on view
      - (1) Traditional view: Mutuality. Only a party to case 1 may assert the defense
      - (2) Minority (CA) view: Non-mutuality: No requirement that person asserting the defense be a party to Case 1, may be a P or a D in case 2
        - a. If the D in Case 2 asserting the defense of issue preclusion: Called “non-mutual defensive issue preclusion.” O through above 4 reqs again.
        - b. If the P in Case 2 asserting the defense: called “non-mutual offensive issue preclusion.” Go through 4 reqs again + consider “fairness.” Relevant factors:
          - i. Whether OP had a full & fair opportunity to litigate
          - ii. Whether OP could foresee multiple suits
          - iii. Whether inconsistent j'ments etc

## XV KEY ISSUES

- 1) Personal jx
- 2) RES JUDICATA
- 3) FEDERAL SUBJECT MATTER JX (esp diversity & removal)
- 4) D'S RESPONSES
- 5) D'S CLAIMS
- 6) FICTITIOUS Ds (DOE)
- 7) PLEADING DAMAGES IN STATE CT
- 8) EXTRAORDINARY WRITS