Course Description and Objectives:
This course will provide you with an overview of how civil (as opposed to criminal) legal disputes are resolved in United States courts. Unlike your other first-year courses that focus on substantive law, our primary focus will be on the process, structure, and practice of the federal (as opposed to state) courts. Even if you do not plan to become a trial lawyer, it is essential for every attorney to have a general working knowledge of how cases are resolved and of fundamental jurisdictional principles. For example, if you are a transactional attorney drafting a contract for your client, you must know the various implications of forum-selection clauses on jurisdiction. Unlike your other first-year courses, this class actually comes with a set of written “Rules.” Although we will be studying these rules in-depth (more so second semester than first semester), civil procedure is much more than just following the rules. It includes the rules’ Constitutional underpinnings and the cases that bring the rules to life. The rules’ drafters also had certain policy goals in mind. Consequently, part of our task will be to discern the policies behind the rules and to examine whether certain policies are antiquated as we make our way through the dispute resolution system.

This course has several goals that include values and skills. Specifically, students should be able to understand the multiple roles of a lawyer in civil dispute resolution; identify ethical issues involved in civil dispute resolution; begin to formulate his or her version of the moral lawyer; and demonstrate honesty, reliability, responsibility, judgment, self-motivation, hard work, and critical self-reflection. As to skills, students should master the following areas:

1. **Case Analysis.** Students will master the following skills:
   a. Identification of the elements of a reported opinion: procedural facts, issue, holding, rationale, legal rules, policy.
   b. Synthesis of a line of related opinions.

2. **Statutory Analysis.** Students will master the elements of statutory analysis:
   a. Close reading of the words of the statute.
   b. Identifying the purpose of the statute.
   c. Fitting the statute into the broader statutory scheme.
   d. Using legislative history.
   e. Using cases interpreting the statute.

3. **Legal Problem Solving.** Students will master these problem-solving skills:
   a. Identifying legal issues in simple and complex fact situations.
   b. Identifying the relevant legal authority and policy.
   c. Identifying potential alternatives to achieve the client’s goals.

4. **Legal Argument.** Students will be able to make an effective legal argument by:
   a. Identifying the legal issues.
   b. Identifying the relevant facts, authority, and policy.
   c. Supporting the client’s position with facts, authority, and policy.
   d. Distinguishing unfavorable facts, authority, and policy.

6. **Critical Thinking.** Students will:
   a. Evaluate cases, statutes, arguments, documents, and attorneys' actions on their effects on (1) clients, (2) the civil litigation system, and (3) society.
   b. Evaluate the strategy and ethics of civil litigation procedural devices.
c. Challenge assumptions made by judges, legislators, attorneys, students, professors, and themselves.

**Course Materials:**
Stephen C. Yeazell & Joanna C. Schwartz, Civil Procedure (9th ed. 2016) (Required)
Stephen C. Yeazell, 2016 Federal Rules of Civil Procedure with Selected Statutes, Cases, and Other Materials (Required) (note that the supplement to the Civil Procedure case book is located in the back of the Federal Rules)
TWEN – course website

**Recommended:**
Joseph W. Glannon, Civil Procedure (Seventh Edition, Examples & Explanations Series, 2013). I’m often asked for supplement suggestions, this is the one that I always recommend, however, I will not assign any required readings from this text.

**Calendar Notes:**
We will not have class on Monday, November 14, 2016.

**Course Website:**
A Westlaw TWEN website for our class is available for student access. It contains a wealth of invaluable information including podcasts, outlines, course materials, announcements, the syllabus, links to other relevant information, course problems for the “problem days” noted in the syllabus, and other information. You should check the website the day before each class for new announcements. The announcements may articulate questions that you should consider for class or may direct you to specific problems in the text.

**Office Hours:**
My office is located in room 305 of Hirsch Hall. Absent the need to meet an urgent deadline and the hour immediately before class (which I typically reserve for class preparation), I regard all hours that I’m in my office as time available to meet with students. If you’d like to reserve a specific time to meet with me, please feel free to e-mail me. This is, of course, for your convenience—so that you can be sure that I’ll be in my office when you stop by—not for mine. You certainly don’t need an appointment to drop in.

I welcome the opportunity to answer any questions you might have about Civil Procedure, your general legal studies, or your future career or classes. Feel free to see me in person or, if it’s easier for you, to send me an e-mail. During the school week, I make a concerted effort to answer student e-mails with reasonable speed, consistent with whatever other obligations might arise during the day.

**Attendance & Participation:**
Class attendance is required for this course. I will be taking attendance using an attendance sheet that will be circulated during class. In accordance with the Law School’s accreditation requirements, if you miss more than 6 of the scheduled class meetings, you will not receive credit for the course. Be in class on time. Students who fail to sign the attendance sheet before leaving class will be presumed to have been absent. Students who are tardy may be counted as absent. Signing for another student is an honor code violation. Before you come to class, be sure all cell phones and other disruptive electronic devices are silenced or off.

Prepare for class, participate thoughtfully, and conduct yourself professionally. **DO NOT COME TO CLASS UNPREPARED.** If you are in attendance, I will assume you have read the applicable assignment and are prepared to answer questions that I may ask you. If I call on your and you are unprepared, I will deduct two points from your final grade. If you are unable to prepare due to extraordinary circumstances, you should contact me before class.
**How do I prepare for class?** I recommend reading the materials, briefing the cases, and outlining the text first. In so doing, be sure to write down questions that you have and leave room to take class notes directly into your prepared materials. Then be sure to work through the questions and problems assigned in the syllabus. We will generally review these in class but this is no substitute for you thinking through them on your own first. After class, make sure that you are able to answer your questions and send me an email or come by my office if not.

**What I expect in student participation.** Before class, I expect that you will have read the assignment carefully at least once, read any statute or Rule that I’ve assigned, attempted to answer the questions by yourself or with your study group, and worked through the problem or problems assigned in the syllabus by yourself or with your study group. In class, I’m looking for a good-faith effort to engage the material, answer the questions I ask, and play with the analysis. I don’t expect that you will have fully understood everything about the material that you have read, especially at the beginning of the semester when you’re still learning how to read cases. I also don’t expect that you can read my mind every moment of the whole semester – please feel free to ask me to rephrase a question if you have no idea what I’m talking about. If you get something wrong, you get something wrong – as long as you’re acting in good faith, it’s no big deal.

Finally, if I ask you to make an argument, there’s probably no one right way to do it. I’m looking for you to engage the facts and the law to your client’s advantage. I may well then turn around and ask someone else to argue the opposite side. Bottom Line: You’re generally NOT looking for absolutely “right” answers when it comes to applying the law to new facts – you’re looking for intelligent arguments that you can make in favor of one side or the other. A good lawyer always sees the strengths and weaknesses of both sides simultaneously.

During the course of the semester, we will have several “problem days,” which are clearly denoted in the syllabus as a “Problem Day.” I will post problems on TWEN several days before they are due. For these days, you should prepare two typewritten answers, one to turn in and one to review during class discussion. Your answers to the problem days are due at the beginning of class on the day that we discuss them regardless of whether you attend class that day. I will not accept late problems unless you have contacted me in advance with a valid reason that you cannot turn them in on time. Although you will not receive an explicit grade on these problems, I do review them when deciding whether to raise or lower grades at the margin (see below).

Attendance and participation can affect final grades at my discretion and excessive absence will affect grades in accordance with school policy. I reserve the right to raise a grade at the margin for exemplary participation and to lower one for failing to adequately prepare for class.

**Grading & the Exam:**
Grades will be determined by a final exam administered at the end of the semester. The examination will be a three-hour closed book, closed notes exam. You will be permitted to use your Rules supplement, which means that you may have with you during the examination your required Stephen C. Yeazell, *2016 Federal Rules of Civil Procedure with Selected Statutes, Cases, and Other Materials* supplement. No substitutions will be allowed.

Your Rules supplement may be annotated with handwritten notes, but shall not have any attachments other than tabs to mark the location of specific material (the tabs may have on them numbers and the short titles of the referenced material and nothing more). Only handwriting may cover the blank spaces and the original printing on the supplement. The use of stick-on labels or paper, white-out or any other method to eliminate any of the original printing is prohibited. Other than the addition of handwritten notes and tabs, the supplements shall be
in their original condition, no material may be added nor may any material be removed in any way. The supplements must be in their original bound form at the start of the examination. The UGA Honor Code applies throughout the course and during the exam. Cheating, plagiarism, or any dishonesty in your work is not tolerated at this University. Please refer to your student handbook for more information about UGA academic honor system.

Anything that I have assigned in the reading or that has been discussed in class is fair game for the exam. Although I reserve the right to modify the form and content of the exam, it will likely be a mix of short answer questions and essays. I reserve the right to adjust grades based on class attendance and participation, as described above. The Law School has established a grading curve for first-year courses, which is printed in your Student Handbook. I have NO discretion to deviate from that curve. We will be discussing the final exam toward the end of the semester and the “problem days” are designed to help prepare you for the exam. On the exam, I am looking for you to APPLY the relevant rules, case law, statutes, and constitutional provisions to the facts that I give you and reach a reasonable conclusion.

**Students with Disabilities:**
Students with disabilities needing academic accommodations should discuss those accommodations with, register with, and provide documentation to the Associate Dean for Academic Affairs, Lori Ringhand.

**Reading Assignments:**
We will generally spend **one class on each numbered assignment**, but in some cases we may spend additional time on the same assignment. These assignments are subject to change. If there is a change, I will try to let you know well in advance. Most of the specific problems in the syllabus come from Cross, Abramson, and Deason’s Civil Procedure casebook.

Abbreviations are as follows: “CB” = Yeazell casebook, “FR” = Federal Rules; “FR Forms” = the forms at the back of your Federal Rules of Civil Procedure.

**INTRODUCTION TO PERSONAL JURISDICTION, SUBJECT MATTER JURISDICTION, AND VENUE**

This class serves as a quick introduction to personal jurisdiction, subject matter jurisdiction, and venue, which we’ll spend the next few classes covering in detail (i.e., don’t worry if it’s a hazy mess after the first class).

1. **CB** (“case book” – Yeazell & Schwartz, Civil Procedure) 1-19 *United States ex rel. Mayo v. Satan and His Staff*, 54 F.R.D. 282 (W.D. Pa. 1971), and *How to Read a Legal Opinion*, both of which are posted on TWEN (be sure to go ahead and register for our class on TWEN and read through the first 4 pages of the syllabus). Note that the questions in the syllabus are not things that you need to turn in but are designed to help you check your understanding and apply the reading.
   - *Bridges v. Diesel Service, Inc.*
   - **Problem:** Bonnie was born in Oregon to Oregon citizens and has lived in that state her entire 35-year life. However, for as long as she can remember she has hated Oregon’s gray and dreary climate. In fact, for the past thirty years Bonnie has intended to leave Oregon and relocate to Arizona. Unfortunately, she still hasn’t saved enough money to make the change. What is Bonnie’s domicile? Does she even have a domicile?
     - Rethink your answer in light of the following general principles of the law of domicile:
       - (a) A person always has one – and only one – domicile; (b) An infant acquires a domicile at birth, which is almost always the domicile of her parents; (c) In order to
change her domicile, a person must both establish residence in a new state and have
the intent to remain in that state. The residence and the intent to remain must exist at
the same time, even if only for a moment.

• **Questions:** Where can suit be brought? (overview of subject matter jurisdiction, personal
  jurisdiction, venue, and service of process)
  - Read *U.S. ex rel. Mayo v. Satan* carefully. Part of your job as a lawyer is to advise your
    client regarding whether a lawsuit is worth the time and expense of bringing that
    lawsuit. If Mr. Mayo had walked into your law office, what advice would you have
    given him? (HINT: Why do you suppose that Mr. Mayo is proceeding without a
    lawyer?)
  - What is the Western District of Pennsylvania? Are we in federal court or state court?
    How can you tell?
  - What level of court is the Western District of Pennsylvania – trial court, court of
    appeals, or supreme court? How can you tell?
  - What statutes is Mr. Mayo relying on? Are those federal statutes or state statutes?
    How can you tell?
  - This is your first (admittedly limited) encounter with 42 U.S.C. § 1983, which allows a
    private litigant to sue state and local governmental officials and municipalities for
    violations of the individual’s constitutional rights. If this case had been resolved on
    the merits, would you foresee a problem with Mr. Mayo’s choice of a *cause of action*?
  - What does Mr. Mayo most immediately want from the court – *i.e.*, what *motion* is Judge
    Weber actually deciding in this opinion? What does Mr. Mayo ultimately want from the
    court?
  - How does Judge Weber use *civil procedure* to get rid of this case? Why would Judge
    Weber want to resolve this case early in the litigation process, rather than proceed to
    the merits?

**PART I. THE CONSTITUTIONAL FRAMEWORK FOR U.S. LITIGATION**

**PERSONAL JURISDICTION**

2. CB 63-88; U.S. Const. Art. IV, § 1, Amend. XIV, § 1
   - Approaching Civil Procedure; Constitutional Limits in Litigation
   - The Origins of Personal Jurisdiction
     - *Pennoyer v. Neff*
   - **Questions:** Personal jurisdiction is made up of a jurisdictional basis (what person or property
     is subject to court power) and service (notice to the defendant of the suit). What types of basis
     and service did the Oregon statutes allow? What did *Pennoyer* hold? Which type of jurisdiction
     (in rem, in personam, or quasi in rem) was being asserted? Why did the assertion of that
     jurisdiction not succeed? Based on the *Pennoyer* dicta, describe the two exceptions to the general
     rule that are available to invoke the jurisdiction of the court over the nonresident defendant.
   - **Problems:** Based on your reading of *Pennoyer*, check your understanding of the scope of its
     holding by answering the following problems:
     - If a Florida resident sues a North Carolina resident in a Florida state court, where
       does the defendant have to be served?
     - Can the North Carolina defendant be served while traveling through Florida?
     - The North Carolina defendant owns property in Florida. What can the Florida
       plaintiff do to obtain jurisdiction?
- What if the defendant voluntarily appears in Florida to contest the merits of the plaintiff’s claim?

- The Mechanics of Jurisdiction – Challenge and Waiver (be sure to work through these problems)

- The Modern Constitutional Formulation of Power
  - \textit{International Shoe Co. v. Washington}

- \textbf{Questions:} After \textit{International Shoe}, is \textit{Pennoyer’s} holding about power or presence still sound? Is the minimum contacts standard relevant when a nonresident defendant is served in the forum state? What did the court hold? What was Justice Black’s concern in his dissent? Was it legitimate?

- \textbf{A little guidance:} Draw a square with four cells, identifying the nature of the nonresident’s activities in the forum state across the top, dividing them as either “continuous and systematic” activities or as “isolated” activity. Then, down the left side, divide the square into claims arising from the defendant’s activity in the forum state and claims that do not arise from the activity there. Cell 1 represents the situation when the defendant has continuous and systematic activities within the forum state and the plaintiff’s claim arises from those activities by the defendant. Within Cell 2, the defendant again has continuous and systematic activities, but this time the plaintiff’s claim does not arise from those activities. Cell 3 would involve only an isolated contact by the defendant in the forum state and the plaintiff’s claim does not arise from that activity. Cell 4 indicates isolated activity by the defendant, but this time the plaintiff’s claim arises from that activity. Into which cells/parts of the table does \textit{International Shoe} belong?

3. CB 89-102

- \textbf{Absorbing In Rem Jurisdiction}
  - \textit{McGee v. International Life Ins. Co.}
  - \textit{Hanson v. Denckla} – Were the bank’s activities in Florida regarding the trust sufficient for the Florida court to have jurisdiction over the nonresident trustee? Can you reconcile the Court’s finding here with that in McGee?
  - \textit{Shaffer v. Heitner} – Where does the \textit{Shaffer} decision leave \textit{Pennoyer’s} principles? Is there anything left of \textit{Pennoyer’s} rules about power? Do the principles about power over persons and property in the forum state survive \textit{Shaffer}? After \textit{Shaffer}, what, if anything, remains of a meaningful distinction between in personam and quasi in rem jurisdiction?

4. CB 103-124

- \textbf{Specific Jurisdiction: The Modern Cases}
  - \textit{World Wide Volkswagen Corp. v. Woodson} – Take some time to sketch out the parties and the states of their various activities. Did the New York distributor and the retailer purposefully avail themselves of conducting activities in Oklahoma? Could (or should) they be able to foresee being subject to the jurisdiction over the Oklahoma Court? Why does foreseeability matter? Should a defendant be subject to suit anywhere a product malfunctions, even if it had nothing to do with the product’s location? How does the Court explain what it means by “fair play and substantial justice?”
  - \textit{J. McIntyre Machinery, Ltd. v. Nicastro} – Figure out which justices and how many justices are on which side of which issues. What does a plurality decision mean for the lower courts and for us?
After reading Nicastro, how would you argue that World-Wide Volkswagen is not a stream-of-commerce case? Were the defendants present in Oklahoma? Did any of them use a sales or distribution scheme in which their vehicles would reach Oklahoma as products for sale? Was the chain of events leading to the arrival of the Robinson’s vehicle in Oklahoma commercial in nature? Was the vehicle’s arrival in Oklahoma entirely due to the Robinson’s unilateral activity? Is a stream-of-commerce analysis different in the case of a manufacturer of a finished product, as opposed to the manufacturer of a component product? What is the nature of the distinction? Can the manufacturer of a finished product structure its conduct to limit the geographic scope of its liability? Can a component part manufacturer do the same?

- Burger King Corp. v. Rudzewicz – What is a choice-of-law clause? Carefully read the excerpt on pages 112-113.

5. CB 125-143

- Specific Jurisdiction: The Modern Cases continued – the Internet and beyond!
  - Abdouch v. Lopez
    - Be sure to read note 3 on Walden v. Fiore carefully.
- Problems:
  - A New Mexico software distributor posted on its Website and e-mailed to Arizona material that allegedly defamed the plaintiff there. The complaint alleged that the defamatory information in the e-mail was sent to Arizona with both the intent to harm the plaintiff there and the effect of actually causing harm. Is personal jurisdiction over the New Mexico defendant proper in an Arizona federal court? Is a defamatory statement on a passive Website different from a printed periodical? See Edias Software Int'l, L.L.C v. BASIS Int'l Ltd., 947 F. Supp. 413 (D. Ariz. 1996).
  - An Illinois defendant registered exclusive Internet domain names containing registered trademarks belonging to others. He demanded fees from well-known California corporation Panavision as his price for relinquishing rights to domain names that matched Panavision’s existing trademark registrations. Panavision sued the defendant in California. Is personal jurisdiction proper there? See Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316 (9th Cir. 1998).

- General Jurisdiction
    - Perkins v. Benguet Consolidated Mining Co
    - Helicopteros Nacionales de Colombia, S.A. v. Hall
  - Daimler AG v. Bauman
- What’s the difference between general and specific jurisdiction?

6. CB 143-59

- General Jurisdiction continued
Burnham v. Superior Court – Burnham confirms a fourth basis for the modern exercise of jurisdiction – what are the four bases? From a nonresident defendant’s point of view, how fair is it to be forced to defend in a place where you have no contacts apart from being served during a brief presence there?

- Problems: Evaluate the following problems from the perspective of due process contacts, for specific or general jurisdiction:

  - Tater Computer Chips, Inc. is a Delaware corporation manufacturing its products in Delaware and selling computer and electronic components to Swell Computer Corporation (which is incorporated in Tennessee). Tater Computer has assembly facilities in Maryland, Delaware, and Pennsylvania. Swell Computers uses the components to manufacture computers that it advertises and sells in every state except Alaska and Hawaii. Because of Swell’s nationwide sales, Tater Computer Chips has become a very profitable company. Klausing lives in Delaware and delivers the components to Swell in all three states. On his way to make a delivery in Pennsylvania, his truck collides with Grossman who lives in Pennsylvania but has never ventured outside the Erie, Pennsylvania metropolitan area. A) As counsel for Klausing, can Klausing sue Grossman in Delaware? In Pennsylvania? B) As counsel for Grossman, can Grossman sue Klausing in Pennsylvania? In Maryland?

  - Fidelow, who lives in Colorado, receives a call from the Miami store promoting Swell’s new line of laptop computers. Fidelow orders two of the laptops for her children, but neither of them ever works as speedily as the store manager told her it would. When Fidelow calls the Miami store to complain, the only message is that the phone number has been disconnected. When Fidelow calls the Swell U.S. national service center, the Swell representative denies that Swell ever had a store in Miami Beach. A) As counsel for Fidelow, can she sue the Miami Beach store for fraud in a Colorado court? B) As counsel for Fidelow, can she sue Swell Computer Corporation for fraud in a court in Colorado? In Florida?

- Consent as a Substitute for Power
  - Carnival Cruise Lines, Inc. v. Shute

7. CB 160-75 (be sure to work through the problems in #1, page 172); FR 4

- Service of Process (FRCP 4) Problems

  - Adams sues Bursen in federal court. Must or may the process server give the complaint and summons to Bursen personally?

  - Adams sues Bursen in federal court, and Adams personally takes the papers to Bursen’s home, leaving them with a 10-year-old girl who answers the door. Was service of process proper?

  - Adams sues Bursen in federal court for trespassing on his large estate, but the process server hands the papers to Bursen at his weekend lakefront cottage in a nearby county. Was service of process proper?

  - Adams sues Bursen in federal court, and Adams properly solicits Bursen to waive service of process. If Bursen fails to respond to Adams’s request, is Adams obligated to do anything further?

  - Adams sues Bursen, who does business as Bursen’s Bike Shop. The process server leaves the papers with Cohn at one of the three bike shops owned by Bursen. Cohn is the manager of the store where he receives the papers intended for Bursen. Was service of process proper?

  - Describe the difference between the defense of insufficiency of service of process under Rule 12(b)(5) and the defense of insufficiency of process under Rule 12(b)(4).

- The Constitutional Requirement of Notice
Restraints on Jurisdictional Power: Long-Arm Statutes, Venue, and Discretionary Refusal of Jurisdiction

8. CB 175-82 and Handout on Venue (Uffner v. La Reunion Francaise, S.A.) posted on TWEN; 28 U.S.C. § 1391
   - **Long-Arm Statutes as a Restraint on Jurisdiction**
     - *Gibbons v. Brown*
   - **Exercise:** For the state where you intend to practice after graduation, go to that state’s annotated statutes and research the long-arm statute typically used for exercising specific jurisdiction over nonresident defendants. Based on your research, print the statutory portion of the statute and bring it to class for discussion. Answer the following questions:
     - Identify whether the type of long-arm statute in your state is a laundry list or due process long-arm.
     - If it is a due process long-arm statute: (a) Does the legislative history of the statute show that at one time there was a laundry list long-arm used in the state instead of a due process long-arm statute? (b) If the answer to part (a) is yes, was the adoption of a due process long-arm statute in response to a judicial decision that the former laundry list long-arm should be construed as if it were a due process long-arm statute?
     - If it is a laundry list long-arm statute: (a) note the types of statutory conduct available for a plaintiff’s counsel to try to fit with the nonresident defendant’s factual conduct; (b) Note the specificity or generality of some or all of the provisions (e.g., “transaction business” or “contracting for services”); (c) Note whether the list includes the possibility that jurisdiction can be exercised over a nonresident defendant whose conduct outside the state has caused some harm within the state; (d) Note when it was enacted as well as how many times the legislature has amended the long-arm statute since it was enacted; (e) Note how the federal and/or state courts have interpreted the laundry list statute, i.e., despite its laundry list specificity, have the courts nevertheless interpreted the long-arm statute as if it were a due process long-arm statute?
   - **Venue as a Further Localizing Principle (handout on TWEN)**
     - *Uffner v. La Reunion Francaise, S.A.*
     - Read § 1391 carefully and use it to work through problems 1-8 in the handout

Transfer and Forum Non Conveniens

9. CB 186-199; 28 U.S.C. § 1404, 28 U.S.C. § 1406, 28 U.S.C. § 1631; Note on Simcochem posted on TWEN. We will not use class time to cover the assessment questions on p. 199-203, but they are quite helpful and the answers follow the questions in the book.
   - **Forum Non Conveniens**
     - *Piper Aircraft v. Reyno*
     - Invoking *forum non conveniens* requires that there is an adequate and alternative court in which the lawsuit can be maintained. What is an “adequate” forum? Does less favorable substantive law make the alternative forum “inadequate?” What are the *Gilbert* factors? Which comes first, the consideration of public or private factors? Who has the burden of proof on transfer?
If a defendant forgets or neglects to file a timely Rule 12(b)(3) motion to dismiss for improper venue, can she nevertheless file a motion to dismiss based on forum non conveniens? One premise for seeking a dismissal under forum non conveniens is that venue is currently proper, validating dismissal on forum non conveniens in favor of an alternative court. (On the other hand, if venue is improper, a court can dismiss the case under a Rule 12(b)(3) motion or can transfer the case under §1406(a).) While a belated motion is likely to be denied, the fairness and convenience related to the forum non conveniens motion inquiry may suggest that a delay could be justified because of a need to investigate alternative jurisdictions, foreign and domestic, in which the case could be heard. See Jacobs v. Felix Bloch Erben Verlag fur Buhne Film, 160 F. Supp. 2d 722 (S.D.N.Y. 2001).

Atlantic Marine Construction Co. v. United States District Court
- Transfer under 28 U.S.C. §1404, 1406, and 1631
  - A note on transfer: § 1406(a) transfer is an alternative change of venue statute to §1404(a). The primary difference between the two provisions is that the premise for using §1406(a) is that venue where the case currently sits is improper, e.g., it violates §1391. Another difference in the statutes is that the remedy available under §1406(a) is to either transfer the case or to dismiss it. Why the latter remedy? Because venue in the current district is improper. Both § 1406(a) and Federal Rule 12(b)(3) provide for dismissal of a lawsuit in which the venue is improper. Is a motion to dismiss under §1406(a) permitted, even when the time for filing a motion under 12(b)(3) to dismiss the complaint has passed? Compare Steward v. Up No. Plastics, Inc., 177 F. Supp. 2d 953 (D. Minn. 2001) (finding that the passage of significant time and motion practice precludes §1406) with Ptaszynecki v. Ferrell, 277 F. Supp. 969 (E.D. Tenn. 1967) (holding that transfer was permitted even though objection to improper venue was waived).

Note: the assessment questions and answers on pages 199-203 should give you an immediate check as to your understanding of the basics thus far. You don’t need to turn it in since the answers are in your book, but you should spend some time working through the questions.

10. PROBLEM DAY 1 DISCUSSION. Problems will be posted on TWEN before the previous class period, bring two written copies to class – one to hand in at the beginning of class and one to use while we review the problems. We will spend our class time working through the problems together.

SUBJECT MATTER JURISDICTION OF THE FEDERAL COURTS

Federal Question Jurisdiction:
  - Louisville & Nashville Railroad v. Mottley
  - Grable & Sons Metal Prods., Inc. v. Darue Engineering & Manufacturing
  - Problems:
    - When P learns that his employee D has been revealing certain sensitive company information, P sues D under state trade secret laws. P brings his action in federal court, seeking $50,000 in damages. D immediately files a $100,000 counterclaim. D’s counterclaim arises under the federal “whistleblower” statute, which provides a cause
of action for employees who reveal information that shows that their employers are committing a crime. Does the court have subject matter jurisdiction?

- P, a pharmaceutical company, produces a drug called Perk. P recently contracted to sell 10,000 lots of Perk to D, a pharmacy distribution company. However, after entering the contract, the federal government banned the production and sale of Perk based on evidence that it could cause brain damage. P obviously doesn’t want to go to the expense of producing the drug if there is no really market. Nevertheless, because D can sell the drug in other nations where it is still legal, P worries that D will sue it for breach of contract if it does not honor the terms of the contract. P therefore wants to bring a declaratory judgment action in which it will ask the court for a declaration that the contract is void because of illegality. May P bring the action in federal court, based on federal question jurisdiction?

- P, a private person, sues the D Tribe of American Indians in federal court for breach of contract. Under federal law, Indian tribes enjoy immunity to most civil actions. In his complaint, however, P argues the immunity should not apply to “commercial activities” such as those that gave rise to the contract between P and D. D moves to dismiss for lack of subject matter jurisdiction under Rule 12(b). Will the court grant D’s motion?

**Diversity Jurisdiction:**

12. CB 220-234; 28 U.S.C. § 1332; FR 12(b), (g), (h) (you may want to refer back to your notes from the first day of class on domicile)

- **Redner v. Sanders**  
- **Hertz Corp. v. Friend**  
- **Problems:** Review §1332 and determine whether a federal court may hear the following disputes:
  - P1 (a citizen of Mississippi) and P2 (a citizen of France) sue D, a citizen of Louisiana.
  - P (a citizen of North Dakota) sues D1 (a citizen of Sweden) and D2 (a citizen of Brazil).
  - P (a citizen of Indonesia) sues D (a citizen of India)
  - P1 (a citizen of Indonesia) and P2 (a citizen of Indiana) sue D (a citizen of India)
  - P1 (a citizen of Finland) and P2 (a citizen of Florida) sue D1 (a citizen of Minnesota) and D2 (a citizen of Finland).

**Supplemental Jurisdiction:** (note that we will revisit this topic in greater detail later in the semester)


- **In re Ameriquest Mortgage Co. Mortgage Co. Mortgage Lending Practices Litigation**  
- **Szendrey-Ramos v. First Bancorp**  
- **Problems:** work through the hypotheticals on p. 235-236 and consider the following:
  - During the 1960s, the United States experienced a rash of incidents where library patrons kept books long beyond the due date. In response to this major issue, Congress enacted the Federal Overdue Book Act [“FOBA”]. FOBA gives librarians a federal cause of action against patrons who keep books beyond the due date. The statute provides statutory damages for overdue books. Marion is the librarian at State University School of Law. For years, Marion has had trouble with Professor Boring.
Professor Boring checks out books but never returns them on time. Fed up, Marion sues Boring for $1,000 under FOBA, based on materials that Boring checked out on August 15. Marion is a citizen of Illinois, and Boring is a citizen of Missouri. In addition to the FOBA claim, Marion’s complaint includes a second claim for $10, which arises out of a bet between her and Boring concerning the outcome of the Vanderbilt vs. Georgia game. Will the federal court have subject-matter jurisdiction over both claims?

- In diversity cases, §1367(b) adds an additional wrinkle to the supplemental jurisdiction analysis. What is this wrinkle? Carefully re-read the language in §1367 and identify the language stating that §1367(b) applies only to diversity cases and not to federal question cases. What does that mean for our analysis of federal question cases?

- Problems: Would supplemental jurisdiction exist in the following cases? (Assume in every case that all claims arise from a common nucleus of operative fact.)
  - P1 and P2 sue D in federal court. P1 and P2 are both citizens of State Alpha, while D is a citizen of State Beta. P1’s claim is $60,000, but P2’s claim is only $30,000.
  - P1, from State Alpha, sues D1 and D2, both of whom are from State Beta, in federal court. P’s claim against D1 is for $100,000, while her claim against D2 is only for $50,000.
  - P1 and P2 sue D in federal court. P1 is from State Alpha, while P2 and D are both from State Beta. Each plaintiff claims over $100,000 in damages.
  - P, from State Alpha, sues D, from State Beta, in federal court. P seeks $100,000 in damages. D impleads (look up this term and remember it for later in the semester when we discuss impleader in detail) 3PD, a citizen of State Gamma, as authorized by Federal Rule 14. 3PD has signed a guaranty under which it is liable for up to $50,000 of D’s liability. P accordingly adds a claim against 3PD for $50,000.
  - P1 and P2, both from State Alpha, sue D, from State Beta, in federal court. P1 then files a $100,000 cross-claim (Rule 13) against P2.

**Removal:**

14. 28 U.S.C. § 1441; CB 242-251 (be sure to work through the problems on p. 243)

- *Supplemental Jurisdiction review problems from the last class.* Please check your understanding of the material we just covered by working through the following problems:
  1. P1 and P2 both sue D in federal court. The court clearly has jurisdiction over P1’s claim. Although P2’s claim arises from the same event as P1’s, it would not qualify for federal jurisdiction on its own. May P2 bring her claim in federal court along with P1’s claim? What additional information do you need to answer this question?
  2. After they were involved in an automobile accident, P sues D in federal court, relying on diversity jurisdiction. P seeks $100,000 in damages. O files a counterclaim in the action, seeking $15,000 for the injuries that D suffered in the same collision. P moves to dismiss D’s counterclaim for lack of subject-matter jurisdiction. How should the court rule?
  3. P, a farmer, hired D1 to treat his crops with an herbicide. D1 obtained the herbicide from D2, the manufacturer. Because of a labeling mistake, the herbicide turns out to be Agent Orange, a product that kills every plant, including P’s crops. P therefore brings a diversity action against both D1 and D2 in federal court, seeking $250,000 in damages. D1 files a cross-claim against D2 in this action, arguing that D2 must reimburse D1 for any injuries that D1 is required to pay. This cross-claim clearly meets the requirements of Rule 13(g). However, because D1 and D2 are citizens of the same state, D2 moves to dismiss the cross-claim for lack of subject-matter jurisdiction. How should the court rule?
  4. Same basic facts as Problem 3. D2 impleads Ins. Co., its liability insurance carrier into the
action. D2 and Ins. Co. are citizens of the same state. Ins. Co. accordingly moves to dismiss for lack of subject-matter jurisdiction. How should the court rule?

5. P1 and P2 sue D in federal court, relying on diversity jurisdiction. P1 then files a proper cross-claim against P2. Because P1 and P2 are citizens of the same state, P2 moves to dismiss the cross-claim for lack of subject-matter jurisdiction. How should the court rule?

6. P sues D in federal court, relying on diversity jurisdiction, for injuries P suffered in an automobile accident. D files a counterclaim against P for the injuries D suffered in the same accident. D also uses Rule 13(h) to join O, the owner of the automobile driven by P, as an additional party to the counterclaim. Because P and O are from the same state, D's counterclaim qualifies for diversity jurisdiction. P then files a claim against O, arguing that O must reimburse P for any sums that P must pay D. O moves to dismiss P's claim for lack of subject-matter jurisdiction. How should the court rule?

- Caterpillar, Inc. v. Lewis
- Problems:
  - P, a citizen of Nebraska, sues D, a citizen of Kansas, in state court. P seeks $500,000 in damages from D for breach of contract and unjust enrichment. D files a timely notice of removal. P moves for a remand. What additional facts do you need before you can determine whether the court will remand the case to the state court?
  - Same facts. Would your analysis differ if P had brought both a federal question claim and a diversity claim against D?
  - P, a citizen of Indiana, sues D1, a citizen of South Dakota, and D2, a citizen of Indiana, in an Indiana state court. P seeks $200,000 in damages from the defendants for conspiring to commit an intentional tort against P. Two weeks after the case is commenced, P and D2 settle. P immediately amends her complaint to drop D2 from the case. May D1 now remove the case? If so, what must D1 do, and when?
  - Same as the problem above, except that P waits for over a year after the settlement before filing the papers dismissing D2 from the case. Would it matter if P's tardiness was purposeful or merely an oversight?

Note: the assessment questions and answers on pages 251-254 should give you an immediate check as to your understanding of the basics thus far. You don't need to turn it in since the answers are in your book, but you should spend some time working through the questions.

Note: the assessment questions and answers on pages 251-253 should give you an immediate check as to your understanding of the basics thus far. You don't need to turn it in since the answers are in your book, but you should spend some time working through the review questions.

**THE ERIE PROBLEM**

**A. State Courts as Lawmakers in a Federal System**


- State Courts as Lawmakers in a Federal System (the issue in historical context, constitutionalizing the issue)
- *Erie Railroad v. Tompkins* – this case started out as a routine application of federal common law. The plaintiff chose federal court in hopes that he would receive the benefit of the more favorable federal common law rule (when you read the case, make sure to identify the clash in governing law). Although the parties disagreed as to the content of the state and federal rules,
no one on appeal questioned whether *Swift* ought to apply. And yet, as the first line of the Court's opinion makes clear, the Court had a different agenda.

- If *Erie* is a constitutional decision, which provision in the constitution is it based on?
- The *Erie* opinion is painted with a broad brush. Read literally, it suggests that federal courts are completely powerless to enact rules of law. But a court, by its very nature, makes a number of binding proclamations that are not directly supported by a statute. Suppose, for example, that a judge wants to close a potentially sensitive trial to the media. State law, however, allows media into all trials. Would the federal court have to follow the state practice and allow the media into the courtroom? Wouldn't a rule barring the media be a form of “federal common law?”

- The Limits of State Power in Federal Courts
- *Guaranty Trust Co. v. York* – consider the media hypothetical set out above. After this opinion, would a federal court be free to close a case to the media? Why or why not?
- *Byrd v. Blue Ridge Rural Electric Cooperative* – Does this case modify the Guaranty Trust test, or does it simply create an exception? Try to restate the rule of Byrd as a three-step exception.

16. CB 274-291

- *Hanna v. Plumer* – like all Erie cases, Hanna involves a clash between state and federal law. What is the federal law involved in the case? Did any of the earlier cases involve this type of federal law?
- Consider the following two hypothetical situations:
  - Situation One: A state legislature enacts a statute imposing a special $10,000 filing fee for complaints in malpractice cases. The filing fee for federal courts in that state is $150. The federal fee is set by the district clerk, not by the Federal Rules or any local rule. Must the federal court charge a $10,000 filing fee for federal diversity malpractice cases?
  - Situation Two: The judges in State X have proven to be extremely biased against out-of-state litigants, at least when those litigants are suing or being sued by citizens of State X. Plaintiff, from State Y, sues Defendant, from State X, in federal court in State X. Must the federal judge adopt a bias against Plaintiff?
  - In both situations, won’t the difference in federal and state practice lead to forum shopping? Does that mean that the federal court should ape the state court? If so, does that make sense?

- Re-read the portion of *Hanna* dealing with judge made law. What is the Court trying to say when it talks about the “twin aims” of *Erie*? What is the “inequitable administration of the laws?” Does that second aim affect how one applies the likely the likely to cause forum shopping test? Is all forum shopping equally objectionable?
- *Semtek Int’l Inc. v. Lockheed Martin Corp.*- once the Court determines that Federal rule 41(b) does not apply, it still must determine whether the state law controls in federal court. How does the Court analyze this question? Given that the clash is now one between federal judge-made law and state law, is it surprising that the Court makes no mention of forum shopping in this portion of the opinion? Is the way the Court deals with the element of forum shopping – employing it in the Rules Enabling Act analysis, but omitting it from the federal judge-made law analysis – simply carelessness? Or is the Court suggesting that the Erie analysis is not as rigidly compartmentalized as the Hanna opinion might lead one to believe?

**Problems:**

- P sues D in federal court for medical malpractice. D prevails at trial. D asks the court to award her the attorneys’ fees she incurred in defending the case. Under a recently
enacted “tort reform” law in the state, a doctor who is sued for medical malpractice is entitled to receive attorneys’ fees if she successfully defends the case. No such law exists at the federal level. Is D entitled to recover her attorneys’ fees?

- P sues D for trespass in a federal court in State X. D argues that P’s claim is barred by the statute of limitations. Under the law of State X, the claim would be barred. However, the land upon which D allegedly trespassed is located in State Y. Under the law of State Y, P’s claim is not barred. Is P’s claim barred?

Note: the assessment questions and answers on pages 292-293 should give you an immediate check as to your understanding of the basics thus far. You don’t need to turn it in since the answers are in your book, but you should spend some time working through the questions.

17. **PROBLEM DAY 2 DISCUSSION** (problem to be posted on TWEN before the previous class period)

**PART II. THE PROCESS OF LITIGATION**

**A. The Story of Pleading**

*The Complaint*

We now turn from the fundamental issue of choosing a proper court to consideration of the mechanics of how to commence suit, how the defendant is notified, and how the defendant may respond to commencement of the action. The pleadings are the official papers by which the parties set forth their positions on the case. In federal courts, the Federal Rules of Civil Procedure, especially Rules 8-11, govern the pleadings.

**Stating the Claim:** The proper elements of a complaint (the opening round of the litigation process) depend in part on substantive law and in part on the overall concept of the role of pleading under the Federal Rules of Civil Procedure. Under the Rules, that role is viewed as minimal, largely a matter of notice to the defendant. Yet many cases are still dismissed due to the inadequacy of the complaint.

Note: In this part of the course, we begin to examine the Federal Rules of Civil Procedure in detail. The Federal Rules have been promulgated by the Supreme Court to govern procedure in the federal district courts, the trial courts of the federal system. Read them carefully!

**Pleading:**

18. CB 367-386; FR 7-10

The art of pleading – telling stories

a. *Haddle v. Garrison*

b. Consistency in Pleading

c. Problems:

- P sues D for breach of contract. The operative language of plaintiff’s complaint reads simply, “D owes P $100,000 for goods that P delivered to D on August 9, 2015.” D objects to this language, arguing that it does not meet the standards of Rule 8 and 9. Will D prevail on her objection?
- Same as Problem 1, except that D received several large shipments of different goods from P on the date in question.
- Optional: CALI “Drafting a Complaint”
19. CB 386-403; FR 8
   a. Be sure to carefully read the excerpt on Bell Atlantic v. Twombly on p. 388-91
   b. Ashcroft v. Iqbal
   c. Work through the hypo’s below (credit goes to Alex Glashauser). The following are examples of hypothetical claims (omitting jurisdictional statements and demands for judgment). Do they meet the requirements of Rule 8(a)(2), or would they be subject to dismissal under Rule 12(b)(6)?
      i. “Plaintiffs allege upon information and belief that [the ILECs] have entered into a contract, combination or conspiracy to prevent competitive entry in their respective local telephone and/or high speed internet services markets and have agreed not to compete with one another and otherwise allocated customers and markets to one another.” (subset of allegations in Twombly)
      ii. On date, at place, D negligently drove a motor vehicle against P. As a result, P was physically injured, lost wages or income, suffered physical and mental pain, and incurred medical expenses of $_________.
      iii. On date, at place, D negligently drove a motor vehicle against P; the negligent act was steering with two hands on the wheel rather than one. [Note: that is not a typo.] As a result, P was physically injured, lost wages or income, suffered physical and mental pain, and incurred medical expenses of $_________.
      iv. On date, in Topeka, Kan., the Pope, while on a secret trip from the Vatican City to take in a Kansas City Royals game, negligently drove a motor vehicle against P while P was tooling around town with friends Anne Coulter and Hillary Clinton. As a result, P was physically injured, lost wages or income, suffered physical and mental pain, and incurred medical expenses of $_________.
      v. On date, at place, D engaged in an argument with P, during which D gave P the “evil eye.” As a result of the argument, P suffered physical and mental pain, and incurred medical expenses of $_________.
      vi. I was turned down for a job by D because of my age, which at the time was 38. [Note: the only relevant federal law protects only employees 40 and over.]

Pleading Special Claims under Rule 9 and Allocating the Elements of a Claim:

20. CB 403-415, FR 9
   a. Stradford v. Zurich Ins. Co.: Special Claims – Requiring and forbidding specificity in pleading
      a. Special damages: Very few claims require a showing of special damages as an element. Most of these claims evolved from libel and slander. This does not, however, mean that Rule 9(g) issues rarely arise. Courts have interpreted the term “special damages” to mean any injury that would not be expected to flow from the underlying event. As a result, Rule 9(g) can apply to any substantive claim.
      b. Problem: P sues D, a car dealer, for rescission of a contract for the sale of a used car. P’s complaint states, “D’s salesman purposefully lied to P about the condition of the car in question.” D objects to this language, arguing that it does not meet the standards of Rules 8 and 9. Will D prevail on her objection?
         i. P sues D, a car dealer, for rescission of a contract for the sale of a used car. P’s complaint goes into great detail about how D’s salesman lied about the conditions of the car, providing not only the dates upon which the representation occurred, but also the gist of what the salesman said and how it was false. However, because P is suing D rather than the salesman, P also includes the following language in the complaint, “Because D knew of the salesman’s activities, D is also liable.” D objects to the quoted
language, arguing that it fails to provide enough detail about what D knew and how she learned of it. Will D prevail on her objection?

c. Allocating the Elements of a Claim
   i. Jones v. Bock

B. Ethical Limitations in Pleading and in Litigation Generally:

21. CB 416-429, FR 11
   c. Christian v. Mattell
   d. While the rules governing pleadings are flexible, counsel are not entitled to plead anything that occurs to their imagination. There are ethical limits on the types of representations that can be made to a court. An important source of these limits (but not the only one) is Rule 11 of the Federal Rules.
   e. Problem: Before filing a Rule 11 motion for sanctions against Chumbley and Associates, plaintiff Boyer sent an e-mail to Chumbley warning her that he would file a Rule 11 motion against her unless she withdrew her “obviously groundless motion to dismiss his complaint.” How should Chumbley respond?
      vii. Defendant Chumbley responds to plaintiff Boyer’s complaint by filing one document with the court containing an answer, a motion to dismiss, and a motion for sanctions under Rule 11. How should Boyer respond?

C. The Defendant’s Response

The Answer: The usual response to the complaint is to answer, responding to the specific allegations in the complaint and asserting affirmative defenses. An affirmative defense is usually described as an avoidance of the plaintiff’s allegations in the complaint. Information contained in an affirmative defense doesn’t necessarily negate any allegations in the complaint, but it avoids those allegations by adding new information. The purpose of requiring an affirmative defense under Rule 8(c) is to give the plaintiff notice of the defendant’s intent to introduce new matter as a defense. When in doubt about whether a certain defense not listed in Rule 8(c) should be pleaded as an affirmative defense, the safe course is to plead it affirmatively, and in addition, any relevant allegations in the complaint should be denied. Because Rule 8(c) is mandatory, principles of statutory construction suggest that failure to raise the defense results in a waiver and exclusion of the defense from the case.

22. CB 429-445; FR 8(b), (c), (d), 12; American Idol Pro Se Complaint (posted in course materials on TWEN) – suppose you’re Carrie Underwood’s attorney, how do you respond? Do you use an answer or a motion? If you choose a motion, what kind of motion? What should it say?
   a. Responding to the Complaint
   b. Pre-Answer Motions
   d. The Motion to Dismiss: Rule 12(b) selects several types of objections for special preliminary treatment under a motion to dismiss. It also governs the way in which these preliminary objections can be raised or waived. It is important to master the mechanics of the rule; besides, it will give you a certain demonic satisfaction when you do.
   c. Problems:
      viii. P sues D for personal injuries sustained in a car accident. P’s complaint fails to mention that P previously sued D for property damage suffered in the same accident. Because P’s claim is barred by claim preclusion, D moves to dismiss for failure to state a claim. How will the court rule?
ix. Same as above except that P’s complaint discusses the prior case, and the fact that the court found D liable. Because P’s claim is barred by claim preclusion, D moves to dismiss for failure to state a claim. How will the court rule?

x. P sues D for fraud. D moves to dismiss the case for lack of subject-matter jurisdiction. The court denies the motion. D files an answer denying liability. Later, before the trial commences, D then moves to dismiss the case for failure to plead fraud with particularity. Assuming that D is correct that P’s complaint is insufficient, how should the court rule?

xi. Same as problem “iii” except that D titles his motion a “motion for judgment on the pleadings.”

xii. P sues D for fraud. D files an answer. D’s answer contains a counterclaim in which D alleges that P libeled D by accusing D of fraud in the complaint. Under governing law, statements in a court pleading cannot give rise to a cause of action for libel or slander. What should P do?

f. Optional: CALI “Waiver Under Rule 12”; Glannon, Chapter 18

23. FRCP 15; CB 445-458.

- Amendments. The basic test (at least before Twombly and Iqbal): under the liberal pleading theory of the Federal Rules, it is possible to initiate a law suit without detailed factual or legal investigation, most of which is left to the subsequent discovery phase of the litigation (but note the ethical constraints of Rule 11). It is likely then, that, as the lawyers learn more about the case through discovery and investigation, the pleadings may become outdated. New facts, parties, or theories of liability or defense may appear, or ones previously alleged may prove untenable. Since the main vehicles for discovery can be used only after the pleadings are filed, it seems only sensible that amendments to the pleadings be liberally allowed, to reflect the parties' fuller understanding of the case. And so they are, so long as the party opposing the amendment can not show bad faith, prejudice or undue delay.
  - Beeck v. Aquaslide 'N' Dive Corp.

- Statutes of limitation and relation back
  - Moore v. Baker
  - Bonerb v. Richard J. Caron Foundation

- Problems:
  - Hillary files her complaint against Ben. Before Ben answers, Hillary files an amended complaint adding new claims and seeking an additional $10 million in damages. Why did Hillary have a right to do this?
  - Hillary files her complaint against Ben, who files a motion to dismiss under Rule 12(b)(6). Hillary realizes that Ben is correct because she omitted important allegations of her claims. Before the hearing on Ben’s motion, Hillary files an amended complaint fixing the problem raised by Ben’s motion (thereby mooting the motion). Did Hillary have a right to do this?
  - Hillary files her complaint against Ben, who is served on September 15. Ben files his answer to the complaint and has it served on Hillary on October 3. His answer contains no counterclaims. On October 20, Ben files an amended answer, correcting some errors in the original answer. Does Ben have a right to do this?

- Optional Reading, Glannon, Chapter 19

Note: the assessment questions and answers on pages 458-461 should give you an immediate check as to your understanding of the basics thus far. You don’t need to turn it in since the answers are in your book, but you should spend some time working through the questions.
Optional Review Reading: Glannon, Chapters 29-30, 32

Discovery

Under modern procedure, parties have broad rights to demand that opposing parties and witnesses produce evidence in their possession. “Discovery” is the name given to the various procedures parties may use to force others to provide testimony and documents relevant to the issues in dispute.

Note that you should read the text of the federal rules very carefully! Because much of discovery is self-evident, we will focus our class time on the tricky parts, which means that you should familiarize yourself with the basics through carefully reading the text of the rules and working through the problems in your book. This frees us to spend additional time on former adjudication and joinder, both of which are fairly difficult.

A. The Stages of Discovery

24. CB 463-481; Federal Rules 26, 30, 33, 34, 36 (yes, really read them!)
   - Introduction and Overview
   - Required Disclosures, Interrogatories, Depositions, Examining things and people; Ensuring Compliance
   - Optional reading: Glannon, Chapter 21

B. The Scope of Discovery

25. CB 481-495; FR 26(b)
   - Relevance
     i. Favale v. Roman Catholic Diocese of Bridgeport
     ii. In Smith v. Jones, plaintiff Smith is seeking both compensatory damages for lost wages and for punitive damages. Can Smith send an interrogatory to Jones seeking his tax returns and other information about his assets, to prepare for the punitive damages claim? Can Jones send an interrogatory to Smith seeking his tax returns and other information about his assets to prepare for the lost wages claim?
   - Proportionality, Privacy, and Privilege
     i. Price v. Leflore Co. Detention Ctr.
     ii. Rengifo v. Erevos Enterprises, Inc.
   - Problems:
     i. In Smith v. Jones (based on the problems above), Jones wants to file a motion to dismiss Smith’s complaint because it fails to state a claim upon which relief can be granted. Jones has a copy of the statement from Smith that directly contradicts one of Smith’s claims. Can Jones send Smith an interrogatory asking, “State all facts that you have disclosed to your attorney and to all other persons about your claim.” How should Smith respond?
     ii. Consider whether any of the following meets the definition of a “statement” under Rule 26(b)(3), and must be provided on request to the person who made the statement:
       1. An attorney’s two-page memorandum, contemporaneously summarizing a one-hour interview with a witness to a vehicle collision.
       2. Same as above except that the witness signed the page on which the attorney had taken notes of the interview.
3. A ten-minute tape recording, by an attorney, memorializing a one-hour interview with a witness. The attorney’s recording was made the day after the witness interview.

iii. When the purchaser of a recreational vehicle (RV) returned it to the seller (Dixie RV) because of alleged defects and breaches of warranties, the seller sued the buyer for breach of contract. During discovery, the defendant-buyer sent several requests for information to Dixie RV:

   1. All written statements made by the buyer to any employee of Dixie RV preceding and following the buyer’s purchase of the RV.
   2. The law that governs Dixie’s view that it is entitled to recover damages from the buyer.
   3. Memoranda by any Dixie employee to any other Dixie employee about the buyer’s problems with the RV purchased by the buyer.

Is the buyer entitled to discover any of the preceding information? Governing law: FRCP 26(b).

C. Work Product and Experts

   26. CB 495-508

   • Work Product – Hickman v. Taylor
   • Experts - Thompson v. The Haskell Co.; Chiquita Int’l Ltd. v. M/V Bolero
   • Problems:
     o McCoy is a university expert in evaluating the effect of heat on metal wiring. He consults for Paulin Electronics occasionally, analyzing the effects of heat on the wire used in Paulin Electronics’ product line. Before Vesely’s accident, McCoy had performed tests on the wires used in the Paulin Deluxe electric drill. Vesely’s attorney sends a notice to Paulin to take McCoy’s deposition, but Paulin objects that McCoy’s deposition cannot be taken because he is a nontestifying expert. Evaluate the validity of the objection under Rule 26(b)(4)(B).
     o Vicki Victim was seriously hurt when a lawnmower manufactured by Lucky Lawnmower, Inc. and operated by Vicki, exploded. Vicki contacted Arnold Attorney who began an investigation of the case. Lucky Lawnmower’s investigation consists of the following:

       1. A report of a design engineer who was hired to determine the cause of the accident. She was the first person to look at the lawnmower after the accident. After disassembling the lawnmower, she concluded that the accident was probably caused by an improperly installed carburetor. Being a kind soul, she reassembled the lawnmower correctly. The report itself was inconclusive as to the cause of the accident and Lucky does not plan to use the design engineer at trial. Somehow, Arnold found out about the disassembly process even though he does not know the engineer’s identity.

       2. A report of a products safety engineer/expert who works for Lucky in the quality control department. The report states that there are two other reported explosions of the model involved in the lawsuit but, in his opinion, the other explosions were caused by improper consumer use of the lawnmower. The products safety expert will testify at trial.

         -May Arnold take the deposition of the design engineer to find out about both the opinions of the engineer and the re-assembly of the lawnmower?
         -Arnold wants to know about all prior complaints regarding the particular lawnmower model in controversy. May Arnold require the products safety engineer/expert to appear for a deposition and bring with him all prior
complaints and any reports he has prepared concerning other accidents? Governing rule: FRCP 26(b).

- Optional Review Reading: Glannon, Chapter 20

Note: the assessment questions and answers on pages 523-526 should give you an immediate check as to your understanding of the basics thus far. You don’t need to turn in since the answers are in your book, but you should spend some time working through the questions.

27. PROBLEM DAY 3 DISCUSSION (problem to be posted on TWEN before the previous class period)

Resolution without Trial

Adjudication or an Alternative

28. CB 527-536, 544-549, 563-73

- Peralta v. Heights Medical Center - Defaults and Default Judgments
  - Problem: Carter, a citizen of Georgia, loaned Clinton, a citizen of New York approximately $1 million for one year at five percent interest. Clinton signed a promissory note to signify her debt to Carter. At the end of the one-year period, Clinton refuses to pay and Carter immediately sues Clinton in a New York federal court requesting $1,050,000 in damages. Clinton does not answer Carter’s summons and complaint, appear in court, or otherwise defend the claim against her. The court clerk enters Clinton’s default and subsequently enters a default judgment against Clinton, awarding Carter $1,050,000. May a court clerk enter a judgment with such serious consequences to a defendant? Governing Rule: FRCP 55(a)-(b).
  - Avoiding Adjudication – Negotiation and Settlement
  - Contracting for Private Adjudication: Arbitration and its Variants
    - AT&T Mobility LLC v. Concepcion
  - Question: What are the benefits and drawbacks to private adjudication such as arbitration? Why might a party prefer to go through the court system? Are the rules of evidence used in arbitration?

Adjudication without Trial: Summary Judgment

29. CB 578-598; FR 56

- Summary judgment is a device for expeditious resolution of claims that do not pose triable issues of fact. It is also frequently invoked to resolve cases in part: to resolve some of the claims as to which no factual issue exists, or to resolve all or some issues as to particular parties. See Rule 56(a), (d).
  - Celotex Corp. v. Catrett -
    - In your own words, explain what the majority in Celotex requires a party moving for summary judgment to demonstrate in order to prevail. Do the dissenters disagree as to the rule, or as to how the rule is being applied to the facts of the case?
    - In Celotex, the party moving for summary judgment was the defendant. Would a court analyze the evidence in the same way if the plaintiff had moved for summary judgment?
  - Tolan v. Cotton
• *Bias v. Advantage Int’l, Inc.*

**Problem:**

- Arriving at his home after a grueling day at the office, Forest Green is shocked to discover that several trees have been removed from his yard. After some investigation, Green sues Lon’s Lawn Service. Green claims that Lon’s employees removed the trees without Green’s permission. Lon denies liability.

- Discovery reveals the following facts. Green has several witnesses who say they saw a crew of men wearing identical light blue shirts removing trees from Green’s yard on the date in question. Although the shirts had writing on them, none of the witnesses could make out the writing. In his answers to interrogatories that Green served upon him, Lon admits that his employees wear shirts of that color. Green also obtained affidavits from the owners of all the lawn and tree service companies listed in the yellow pages. All of these owners swear that their employees do not wear shirts of that color. Finally, one of Green’s neighbors testified in her deposition that she had arranged with Lon’s to have several trees removed from her yard that day, but that Lon’s employees never showed up to do the work.

- Lon has comparatively little testimony to back up his story. Turnover in the lawn service industry is high, and all of the workers who worked for Lon on the date in question have moved on to other positions. Neither Lon nor Green has been able to track down any of the employees who worked for him at that time. Lon nevertheless sticks by his original story: although he does not deny that the trees were removed he claims that neither he nor anyone who worked for him is responsible.

- Both Green and Lon are confident they would prevail at trial. Green feels that not only is his evidence overwhelming, but Lon has nothing that contradicts it. Lon, by contrast, feels that Green has no direct evidence that it was Lon’s employees who removed the trees.

- Is there a motion that either or both parties may make to have the judge decide the case, thereby obviating the need for a trial? If both parties file that motion, will either of them prevail? Governing Rule: FRCP 56

- (Optional: CALI “Summary Judgment”)

Note: the assessment questions and answers on pages 598-601 should give you an immediate check as to your understanding of the basics thus far. You don’t need to turn it in since the answers are in your book, but you should spend some time working through the questions.

Optional Review Reading: Glannon, Chapter 22

**The Trier and Trial**

**Choosing and Challenging Judges; Sharing Power with a Jury**


- Judge or Jury: Right to a Civil Jury Trial
  - When may a jury decide?

- How to select and challenge jurors under *Batson*

31. CB 629-650, FR 50

- What will trial be about? – *Monfore v. Phillips*
• Judges guiding juries through instruction and comment

• Controlling Juries before the Verdict (Directed Verdict/JMOL): Under long-standing practice in both state and federal courts, the judge has the power to direct a verdict—that is, to order the jury to find for the plaintiff or the defendant—if the evidence is sufficiently lopsided in favor of the moving party. As of 1991, the motion is no longer called a motion for directed verdict: it is now called a motion for “judgment as a matter of law.” However, practice under the Rule has not been radically altered.

• Controlling Juries after the Verdict – Renewed Judgment as a Matter of Law (Judgment Notwithstanding the Verdict (JNOV))
  o Reid v. San Pedro, Los Angeles & Salt Lake Railroad
  o Pennsylvania Railroad v. Chamberlain (note that our discussion of Chamberlain may continue into the next class, but you should be prepared to discuss it today)

• Questions: Read Rule 50 carefully and answer the following questions:
  o D is confident that P has failed to prove her case. D is accordingly surprised when the jury returns a verdict for P. D therefore first files for judgment as a matter of law following the jury verdict. May the court grant the motion?
  o D moves for judgment as a matter of law at the close of P’s case. The court denies the motion. D then presents his evidence and the case is submitted to the jury. When the jury returns a verdict for P, D against files a motion for judgment as a matter of law. May the court grant the motion?

• Problem: P owns a beachfront lot. Although the beach in this area is only 25 feet deep, P’s lot is 300 feet deep. Under state law, a party owns the beach and can prevent others from using it. P sues D for trespassing on his beachfront lot. D denies that she trespassed. At trial, P’s evidence consists of the testimony of two witnesses, W1 and W2. Neither W1 nor W2 actually saw D on P’s beach. W1 saw D at 8:00 p.m. on the beach of the lot immediately south of P’s land. W1 testifies that D was walking north. W2 saw D at 8:15 p.m., standing on the beach of the lot immediately to the north of P’s lot. D was completely dry when W2 saw her. Because no one saw D actually on P’s lot, D moves for judgment as a matter of law at the close of P’s case. Will the court grant the motion?
  o Same problem except that P moves for judgment as a matter of law at the close of his case. Will P prevail?
  o Same problem as the first one, where D moves for judgment as a matter of law. The court denies D’s motion. Is D precluded from raising the same challenge again at a later point in the trial, or after the jury returns with a verdict?

Judges Undoing Verdicts: The New Trial
32. CB. 651-59; FR 59, FR 60
  o New Trial
  ▪ Lind v. Schenley Industries

• Problem: Lincoln sued Kennedy Railroad Corp. for damages incurred from a train derailment that spilled toxic substances on Lincoln’s farm causing damage to his soil and animals. At the conclusion of the four-day trial, the jury returned a verdict in favor of the defendant. After the verdict, Lincoln’s counsel decided to file a motion for a new trial, in which Lincoln alleged several trial errors. After the second day of trial, without asking the trial judge’s permission, two jurors visited the site of the derailment and reported their observations to the other jurors. During the jury’s deliberations, the deputy bailiff told the jurors that they needed to find in favor of the railroad; otherwise, the railroad company could relocate its headquarters to another community. In addition to the allegations of jury tampering and misconduct, Lincoln’s counsel renewed objections she’d made during trial to
three of the court’s rulings on the admissibility of evidence and to one of the trial court’s instructions to the jury. Each of the court’s decisions on evidentiary issues and on the jury instruction appeared to help Kennedy Railroad defend against Lincoln’s allegations of negligence. Are the allegations raised by Lincoln in the motion for new trial proper subjects for seeking a new trial? Governing Rule: FRCP 59(a).

- Problem/assignment:
  - For the state where a) you intend to practice after graduation, and/or b) your law school is located, go to that state’s annotated statutes and research both the procedural rules by which new trial motions are evaluated and by which motions for relief from a judgment are evaluated. Based on your research, print the rule and bring it to class for discussion. In addition, answer the following questions:
    - Are the state rules a “laundry list” of grounds for granting a new trial (or a motion for relief from a judgment), or are they similar to the federal rules that simply incorporates case law by reference?
    - Describe whether the state rule establishes standards for the appealability of new trial grants.
    - Are the grounds for granting relief from judgments narrower or broader than FRCP 60?

Optional Review Reading: Glannon, Chapters 24, 25

Note: the assessment questions and answers on pages 666-668 should give you an immediate check as to your understanding of the basics thus far. You don’t need to turn it in since the answers are in your book, but you should spend some time working through the questions.

33. **PROBLEM DAY 4 DISCUSSION** (problems posted on TWEN; bring two copies with you to class)

**RESPECT FOR JUDGMENTS**

**A. Claim Preclusion (Res Judicata)**

34. CB 715-727; FR 13

- *Frier v. City of Vandalia*
- Note: we will also be discussing the common-law compulsory counterclaim rule

- **Problem:** While riding the Tilt-A-Whirl at a county fair, plaintiff hits her head on a protruding metal bar. Plaintiff sues the fair operator. After discovery is complete, the court enters summary judgment for the plaintiff for $5,000. Defendant pays the judgment in full. Five years later, plaintiff suffers a grand mal epileptic seizure. Plaintiff’s physician determines that the earlier accident was the proximate cause of this condition. Plaintiff accordingly sues the fair operator again, this time seeking $200,000 in damages. Defendant moves to dismiss the case, arguing that plaintiff has already litigated this claim. Is plaintiff’s claim barred? *See Faulkner v. Caledonia County Fair Ass’n, 869 A.2d 103 (Vt. 2004).*

- **Problem:** P recently purchased an office suite software package from D. When D demonstrated the software before the sale, P thought it looked highly similar to another office suite sold by the software giant Gil Bates. Accordingly, at P’s insistence, the contract between P and D contained a clause in which D warranted that the software does not infringe any copyright or violate any other rights of third parties. Shortly after the sale, Gil
Bates sued P for one million dollars for copyright infringement. Bates obtained a $600,000 judgment. One week after P paid the judgment to Bates, a design defect in the office suite program causes the computers in P’s headquarters to malfunction. P loses all of his data, including irreplaceable customer lists and tax records. P sues D for breach of the contractual warranty, seeking reimbursement for the money it paid to Bates. After a long and acrimonious trial, the court entered judgment for P for $600,000. P then brings a products liability action against D, seeking to recover the value of the lost data. D argues that this action is barred by claim preclusion. Is D correct?

35. CB 727-744
- Between the “same” parties
  - Taylor v. Sturgell
- After a Final Judgment “on the Merits”
  - Gargallo v. Merrill Lynch, Pierce, Fenner & Smith
- Problem: P sues D for a tort in State Alpha. The court grants summary judgment to D based on the one-year Alpha statute of limitations. P then brings the exact same claim before a court in State Beta, where the statute of limitations has not yet expired. D argues that the claim is barred by claim preclusion. Is D correct?

Optional Review Reading: Glannon, Chapters 25, 26

B. Issue Preclusion (Collateral Estoppel)

36. CB 744-765
- The same issue
- An Issue “Actually litigated and determined” (excerpt of Illinois Central Railroad v. Parks – read carefully)
- An Issue “Essential to the Judgment”
- Between which parties (Parklane Hosiery Co. v. Shore, excerpt of State Farm Fire & Casualty Co. v. Century Home Components on p. 762-63 – read carefully)

37. CB 765-774, FR 60 & Problems on the Preclusion Exceptions
- Boundaries of preclusion
- Collateral Attack and Reopened Judgments
- Full Faith and Credit as Bar to Collateral Attack
  - Durfee v. Duke
- Problem: P sues D in State A for breach of contract, and after a full trial, recovers a judgment for $100,000. When D does not pay the judgment, P sues D in State B based on the judgment. In this second action, D argues for the first time that the contract is invalid because D was a minor when it was signed. P argues that D cannot raise this issue in the second suit. Who is correct?
  - Same facts except that in the second case, D argues that the court in State A lacked personal jurisdiction over D. P argues that D cannot contest the State A court’s personal jurisdiction in the State B courts. Who is correct?
  - Same facts, except assume that the State B court holds (correctly or incorrectly) that the State A court lacked personal jurisdiction. The case goes to trial and the State B court enters judgment for D. P now sues in State C seeking to collect on the judgment from State A’s court. D argues that the State B judgment bars this action. Is D correct?
Note: the assessment questions and answers on pages 779-781 should give you an immediate check as to your understanding of the basics thus far. You don’t need to turn it in since the answers are in your book, but you should spend some time working through the questions.

Optional Review Reading: Glannon, Chapters 27-28

PART III: PROBING THE BOUNDARIES: ADDITIONAL CLAIMS & PARTIES--JOINDER

A. Joinder Claims (i.e., asserting additional claims against people already parties to the suit)
Suppose that a plaintiff (or other party) has two or more claims against an opposing party, either related, or completely unrelated. May she bring both claims in one suit? Must she?

Remember that every claim asserted in federal court must have a basis for federal jurisdiction.
Ask first if there is a rule permitting the joinder of the claim or the additional party. Second, is there a basis for original jurisdiction (i.e., federal question or diversity of citizenship) over the claim? If not, may the claim be asserted in federal court through supplemental jurisdiction?

38. No class on Monday, November 14.

39. 28 U.S.C. § 1367; CB 783-98; FR 13, 18
- Joinder of Claims by Plaintiffs and Defendants (Plant v. Blazer Financial Services)
- Because Rule 13(b) places no restrictions on the claims that a defendant can file as a counterclaim, there is relatively little case law dealing with permissive counterclaims. The vast majority of case law deals instead with compulsory counterclaims.
- In addition to mastering the rules, the civil procedure newcomer must also deal with technical and sometimes confusing terminology. We’ll discuss “counterclaims,” which are governed by Rule 13(a) and (b). We’ll also discuss Rule 13(g), dealing with “cross-claims.” What's the difference? Remember that Rule 13(g) cross-claims are filed against a “co-party,” whereas counterclaims are filed against an “opposing party,” a party on the opposite side of the “v” as opposed to the same side of the “v.”
- **Problems:**
  - P, who leases a house and yard from D1, is upset when D2 practices “offroading” with her large SUV in P’s yard. P learns that after D1 leased the property to P, he gave D2 a license to drive on the property. P uses D1 and D2. P’s claim against D2 is for trespass. His claim against D1 arises under the lease, in which D1 promised that he would do nothing to disturb P’s exclusive possession of the house and yard. D1 and D2 object to joinder, arguing that the trespass and contract claims are too dissimilar in nature and origin to be joined. How should the court rule?
  - The Springfield Dome is the newest landmark in the City of Springfield. The City hired Contractor to build the dome but because inflatable domes are tricky to build, Contractor subcontracted the roof work to Subcontractor. On opening day one of the fireworks pierced the roof, causing it to collapse on the crowd. The City sued Contractor for $1,000,000 in damages. Contractor impleads Subcontractor, arguing that the subcontract requires reimbursement. City wants to file two additional claims in the case. First, two years ago City hired Contractor to perform minor improvements to City Hall. Because the work was performed in a shoddy fashion, City had to have another company repair the problem. City therefore wants to add a claim for $50,000 to cover the cost of repair. Second, City wants to file a claim against Subcontractor for
$10,000 in unpaid city property taxes, which are due and owing on the Subcontractor’s office building. Does Rule 18 permit City to file these two additional claims?

- **Note:** Compare Rule 18 (joinder of claims) with Rule 20 (joinder of plaintiffs and defendants). Why should there be a difference? Is there any possible justification for a joinder rule as liberal as Rule 18? Will there be any real gains in efficiency from allowing claims to be joined? Isn’t jury confusion likely? Remember that in practice one must consider factors other than Rule 18 to determine if claims can be joined. One is the issue of subject-matter jurisdiction. Remember that each and every claim must be authorized under (1) a federal rule and (2) the federal court must have subject matter jurisdiction over it (either original – federal question or diversity of citizenship—or supplemental jurisdiction under §1367).

Optional Reading: Glannon, Chapter 13; Wright & Miller §1410 (volume 6).

B. Joinder of Parties (i.e., bringing new people into the lawsuit)

40. CB 798-812; FR 20, 42, 14

- **Joinder of Parties by Plaintiffs** (*Mosley v. General Motors Corp.*)
- **Questions:** Should courts interpret the phrase “same transaction or occurrence” the same way under Rules 13 and 20? What tests do the courts use to interpret this phrase?
- **Note:** Although Rule 20(a) may allow multiple plaintiffs to be joined, it doesn’t guarantee that all of the claims will be tried together. Rules 20(b) and 42(b) give a judge considerable discretion to dissect a case into convenient trial units, and to conduct a separate trial for each unit. Some of the reasons the rule gives for separate trials—“in furtherance of convenience” and “to avoid delay”—are obvious. On the other hand, both rules allow severance of claims or parties to avoid “prejudice.” How might a party be prejudiced by having claims by or against it heard at the same time as other claims?
  a. Rule 42(a) is the converse of Rule 20(b) and 42(b). It allows a judge to consolidate separate cases for a single trial. The standard for consolidation is much easier to satisfy than Rule 20. Does this offer a back-door way around Rule 20? Can a party achieve joinder of a case that doesn’t satisfy Rule 20 by the simple expedient of filing separate cases and consolidating them? Practically speaking, what is the crucial difference between this option and Rule 20(a)?
- **Problem:** P1 and P2 were both injured when they were struck by city buses. However, their injuries were caused by different drivers, operating different buses, at different locations, on different days. P1 and P2 would like to join as plaintiffs in order to sue the drivers and the city for their injuries. May they join as plaintiffs to sue all three of these defendants?

- **Joinder of Parties by Defendants** (third-party claims) (*Price v. CTB, Inc.*)
- **Note on indemnity:** Generally, a substantive right to indemnity or contribution can arise in two ways. First, it can be created by contract. Insurance contracts are but one form of a contractual right; other examples include contracts of surety, payment or performance bonds, and indemnity agreements. Second, the law may imply a duty of indemnity or contribution. The law will impose a right of indemnity when one party is held “vicariously” or “secondarily” liable for the actions of another, such as an employer’s liability for acts of an employee. I’m sure you recall all of this from your torts class as contribution generally arises in tort cases.
- **Problem:** P, D1, and D2 are involved in a three-way car accident at an intersection. P sues both D1 and D2. D1 was also injured in the accident. Because it is not clear who is
responsible, D1 wants to file claims against P and D2. May D1 file either or both claims in this action? Must D1 file either or both claims?

a. Same facts as above. Assume that the court allows D1 to file his claims against P and D2. Once the case is complete, D2 sues D1 for the injuries that D2 suffered in the accident. D1 argues that the claim should have been brought in the first action. How should the court rule?

41. CB 812-829; FR 19, 24
   • Compulsory joinder (Temple v. Synthes Corp.; Helzberg's Diamond Shops v. Valley West Des Moines Shopping Center)
   • Hint: Construct a flow chart or step-by-step analysis of the steps required for resolving a problem of Rule 19 joinder. (Feel free to be creative!) Use your analysis to work through the following problems.
   • Problems:
     o P is seriously burned when his toaster malfunctions. P sues D Corp., the company that manufactured the toaster. D argues that R, the retailer who sold the toaster to P, should be joined to the case as an additional defendant. D’s defense rests entirely on its assertion that R stored the toaster in a damp storeroom, leading to excess condensation that caused the toaster to short circuit. Is R a necessary party? If R is a necessary party and cannot be joined, should the case be dismissed?
     o Same facts as above except that the suit occurs in a jurisdiction that uses comparative fault. D realizes that the jury may find it partially at fault for designing a toaster that was susceptible to condensation. D argues, however, that it is necessary to join R to the case in order for the jury to accurately apportion fault. D correctly points out that if the jury in this case found D, for example, 80% negligent, the jury in a separate case against R might find R only 10% at fault. D argues that the possibility of inconsistency makes it necessary for P to sue both defendants simultaneously. Is R a necessary party? If so and R cannot be joined, should the case be dismissed?
     o Pat has a patent on the world’s best mousetrap, which uses a computer chip to ensure that no mouse can escape. Jealous of Pat’s success, Diane begins to produce and sell a similar mousetrap. Pat immediately sues Diane in federal court for patent infringement. Diane obtains the computer chips that she uses in her trap from Interel, Inc. Interel produces only one style of chip, which was custom designed for Diane’s trap. Interel sells its entire output of chips to Diane. Therefore, Interel is justifiably concerned with Pat’s suit against Diane. Although Interel is not liable directly to Pat – Pat’s patent covers a trap that uses the chip – not the chip itself – Interel fears that if Diane is held liable the demand for its product will disappear. Is there any way that Interel can become a party in Pat’s lawsuit? Governing law: FRCP 24(a) and (b).

42. **PROBLEM DAY 6 – SAMPLE FINAL EXAM DISCUSSION** (series of shorter review questions that you do not need to turn in followed by a sample final exam that you do need to turn in).
   • Note that this class may be a longer class, or we may have a separate session to discuss the shorter review questions.

43. Review session – Time and Date TBD.