

| CASE | FACTS | TOPIC | NOTES & QUOTES |
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| PERSONAL JURISDICTION | | | |
| <u>Pennoyer v. Neff</u> (1877) (77) | Judgment made against out-of-state P held invalid. | Personal Jurisdiction | Stated that “the authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established.” Violated due process to have judgment without proper notice. Attachment of property insufficient to gain <i>in personam</i> jurisdiction. For <i>in personam</i> jurisdiction, personal service is required. For <i>quasi in rem</i> or <i>in rem</i> , constructive service is sufficient if property is attached prior to suit. Full Faith & Credit : when a judgment is proper in State A, will be held valid in State B. |
| <u>Harris v. Balk</u> (1905) (88) | Harris owed balk \$; Balk owed Epstein \$. When Harris was in MD, Epstein attached debt for recovery. | Personal Jurisdiction: attachment of debt | <i>Quasi in rem</i> jurisdiction exercised over intangible property. Court reasoned it was valid since debts accompany debtor wherever they go. Under <u>Shaffer</u> , Balk could probably argue that being forced to defend in MD violated his due process. |
| <u>Hess v. Pawloski</u> (1927) (91) | D caused accident on MA highway. Statute allowed for service on SecretarySt. | Personal Jurisdiction: Non-Motorist Statute | Court sustained jd over nonresident D causing highway accident. Implied consent since driver had rights & privileges of highways. Would probably still be OK after <u>Shoe</u> based on relatedness. |
| <u>Intl Shoe v. Washington</u> (1945) (95) | Salesmen lived & operated there. Rented store windows as showroom. Commissions paid to WA salesmen. | Personal Jurisdiction: Contacts & Fairness | Contacts were sufficient and it would be fair to exercise jd. Due process requires that foreigner have certain minimum contacts with forum state such that the maintenance of the suit does not offend “traditional notions of fair play and substantial justice.” JD no longer limited by territoriality. Test of fair play may include estimate of inconveniences. |
| <u>Milliken v. Meyer</u> (1940) (103) | | Personal Jurisdiction: Domicile | Domicile in the state is enough to bring absent D within reach of state’s jd. |
| <u>Shaffer v. Heitner</u> (1977) (104) | Ds, officers of DE corp., had shares in DE. Ps attached shares as property to get JD. | Personal Jurisdiction: Property Attachment | Forbids adjudication of the merits of a case simply on the basis of the presence of property. Significantly limits <i>Quasi in rem</i> Type 2 jd - attaching such property to get jd is insufficient. Powell suggests real property may be sufficient. |
| <u>Carolina v. Uranex</u> (1977) (114) | P sought seizure of debt owed to D as security, since D had few U.S. assets. | Personal Jurisdiction: Property Attachment | Court refuses D’s <u>Shaffer</u> argument, noting that the seizure here was not for deciding the merits of the case, but was security. |

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| <u>McGee</u> (1957) (116) | Sent deceased a reinsurance offer to CA. Deceased sent payments from CA. | Personal Jurisdiction: Purposeful Availment | Insurance company sent reinsurance certificate to P in CA, thus constituting initiative on their part, sufficient to be subject to PJ. CA “has a manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims” - state interest. |
| <u>Hanson</u> (1958) (117) | Trustee of trust was DE bank; deceased (in FL) changed trust. FL court decided; DE trustee wasn't in that lawsuit. | Personal Jurisdiction: Purposeful Availment | Unilateral activity of those who claim some relationship with a nonresident D cannot satisfy the requirement of contact with forum state.” Depends on quality and nature of D's activity, but in each case there must be some act by which D “purposefully avails itself of the privilege of conducting activities within the forum state.” Cause of action didn't arise out of business done in FL. |
| <u>Kulko</u> (1978) | Sent daughter on plane one-way to mother. Sent child support. Got married there. | Personal Jurisdiction: Minimum Contacts | D did not purposefully avail himself of forum state; was only trying to keep family harmony. The marriage seems like a related contact, to the divorce, but not sufficient here. |
| <u>WorldWide VW v. Woodson</u> (1980) (119) | After car accident Ds brought product liability action against dealer and manufacturer. | Personal Jurisdiction: Foreseeability | There was no effort made to market in forum state. Important foreseeability is not whether it would make it to forum state but whether they would be sued. Putting object in stream of commerce, <i>combined w/expectation</i> it would be sold in forum state is enough. |
| <u>Helicopteros</u> (1984) | Purchased equipment from TX. Pres. attended one TX negotiation. Training in TX. Checks drawn on TX bank. | Personal Jurisdiction: General JD | Even when contacts are aggregated, not enough. Since not related, needed to be systematic and continuous to justify general jd rather than specific. Even regular purchases aren't enough for a claim not relating to those purchases. |
| <u>Burger King</u> (1985) | Partner trained in FL. Negotiations with FL. Contract required payments sent to FL. Contract had FL choice of law clause. | Personal Jurisdiction: Minimum Contacts | Choice of law meant purposefully availing D of FL protection. Contract and negotiations and clause meant no surprise. By signing such clause, foreigner has “purposely availed himself of the benefits and protections” of forum state's laws - a major factor. Other factors - prior negotiations, contract terms, dealings, bargaining power, choice of law provision. Stevens Dissent: based on negotiations, D lacked reasonable notice; D financially unprepared for FL litigation. |
| <u>Asahi</u> (1987) (129) | Sold valves to co. that sold tubes in CA. They knew they were sold in CA. | Personal Jurisdiction: Minimum Contacts | Five said yes minimum contacts: they were aware & received financial benefit. Four said no: question of actions purposefully directed to forum state (advertising, etc.) instead of object being swept there. Eight said not reasonable regardless of contacts. Fairness factors: burden to D, to P & state interest. Probably slenderest contact that was enough for jurisdiction. |

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| <u>Burnham</u> (1990) (150) | Man personally served with process while in forum state. | Personal Jurisdiction: Presence | Presence is sufficient. Doesn't violate traditional notions of fairness, and thus due process. 4: presence always enough based on history ; 4: enough here but there may be some situations where fairness test would make it unconstitutional. |
| <u>Wyman v. Newhouse</u> (159) | | Personal Jurisdiction | Fraudulent enticement into forum state to serve process is invalid. |
| <u>Washington</u> (1997) (148) | They had filed to do business in WA via permit. Had built two roads there 20 years before. | Personal Jurisdiction & Consent | Not related enough for specific jurisdiction. Even for general, could not be considered continuous and systematic. Permit doesn't mean consent. |
| <u>Ireland v. Bauxites</u> (1982) (160) | | Personal Jurisdiction & Consent | Adhering to the FRCP is required, even if challenging jurisdiction. Must submit to rules regarding discovery, specifically since that is one way of determining whether jurisdiction would be proper. |
| <u>Szukhent</u> (1964) (168) | D defaulted on lease, P served process on person designated by clause on lease. | Personal Jurisdiction & Consent | Supreme Court upheld this procedure, saying it didn't violate due process, treating clause as consent to PJ. Thus a contractual manipulation of jurisdictional rules, since NY jd wouldn't have been proper otherwise. Thus possible to consent before dispute arises. |
| <u>Carnival</u> (1991) (169) | Cruisers sued cruise line following slip and fall. Forum selection clause | Personal Jurisdiction & Notice | Benefits of forum selection clause: limit fora, conserve judicial resources, reduce fares via efficiency. They must be fundamentally fair, must not be gained through fraud, and must give notice. |
| <u>Mullane</u> (1950) (175) | Bank wanted to settle funds. Notice put in paper even though bank had names. P claimed requirement of reasonable notice not met. | Notice | Established constitutional standard for notice requirements. Expense of mail notification & availability of names & addresses are factors. Means of notice "employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it" - may be limited by economy. For known addresses, publication was insufficient notice; for unknown, it's OK. Limited by <u>Eisen</u> . |
| <u>Wuchter v. Pizzutti</u> | Non-resident motorist notified by service on SecSt | Notice | Statute provided for insufficient notice, mandating only constructive service on state official. Even though D found out, statute invalid. |
| <u>Gibbons v. Brown</u> (1998) (192) | G sued B's husband in FL. Two years later B sued G in FL. Is an old suit enough? | Long Arm Statutes as Restraint on JD | Filing previous lawsuit not sufficient contact under statute (but probably OK under Const.). FL is keeping a short long-arm here, as states do to limit suits and avoid magnet status. |
| <u>Saenger</u> (1938) (194) | | | P submits to court's JD by filing an action and cannot escape JD by dismissing the action or failing to prosecute. |

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| <u>U.S. ex rel. Mayo v. Satan</u> | | Notice | Court noted P didn't provide instructions for service on D. |
| <u>Dee-K v. Heveafil</u> (1997) (199) | P sues many Ds; some foreign. | Venue | D alleges no minimum contacts. Clayton Act allowed for worldwide service and 4(k)(2) allows for JD under aggregation of contacts theory, if consistent with federal law (Clayton Act) & Const. Satisfies Const.'s fair play and substantial justice test since they appointed U.S. agents and customized for U.S. market. Venue: §1391(d) allows aliens to be sued in any district, overriding Clayton. |
| <u>Piper v. Reyno</u> (1981) (204) | U.S. plane crashed in Scotland, killing all Scots. | Venue: Forum Non Conveniens | D moved for FNC dismissal (FNC: court concludes action more appropriately tried in another JD). P said law less favorable in Scotland. Court says that will not be substantial, let alone conclusive. FNC's essential purpose is that suit take place in most convenient forum. Fact that <i>foreign P</i> has chosen U.S. doesn't help. If alternative would offer no real remedy, that may be substantial. |
| SUBJECT MATTER JURISDICTION | | | |
| <u>Capron v. Van Noorden</u> | P sued D, improperly invoking diversity in fed ct. P lost; appealed to SupCt suggesting lack of diversity! | SMJ: Diversity | The court is required to raise the issue of SMJ on its own, even if P neglects to do so, or consented. Trial court thus erred. Supreme Court dismissed, leaving P free to bring suit in state court (assuming SOL) |
| <u>Mottley</u> (1908) (217) | P's claim was breach of contract (state cause of action). D's defense would point to new federal statute. | Federal Question | It is not sufficient that the complaint anticipates a federal question in the defense. Only the issues required by a well-pleaded complaint are relevant to SMJ: only those elements need to establish the claim. "A suit arises under the Const and laws of the U.S. only when the P's statement of his own cause of action shows that it is based upon those laws or that Const. . . A suggestion of one party, that the other will or may set up a claim under the Const or laws of the U.S., does not make the suit one arising under that Const or those laws." Efficiency argument: you'll know at first pleading where JD lies. |
| <u>Smith v. Kansas Trust</u> (1921) (221) | Ps wanted to enjoin corp from exceeding power under state law. P needed to prove fed statute unconst. to prove state law claim. | Federal Question | The claim itself was re: unconstitutionality of federal statute, not the anticipated defense. <u>Mottley</u> is distinguishable because here the federal issue is integral to the resolution of the state law claim in complaint. |

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| <u>Merrell Dow</u> (1986) | Ps brought state product liab suit, alleging violation of FDCA b/c mislabeling. D seeks removal to fed ct. | Federal Question | Ps' claim does not arise under federal law. Congress created an obligation, but did not include private right of action for FDCA violations, thus not like <u>Smith</u> . The state courts will interpret the federal law in this negligence claim. |
| <u>Franchise Tax Board</u> (1983) (224) | | Federal Question | In order for federal question to exist, must be "either that federal law creates the cause of action or that the P's right to relief necessarily depends on resolution of a substantial question of federal law." |
| <u>Mas v. Perry</u> (1974) (229) | M. Mas is French; Perry is LA. Mrs. Mas: from Miss., school in LA, filed from Ill. | Diversity | Mrs. Mas is Miss. domiciliary since she had no intent to remain indefinitely in LA or Ill. Her residence will be Miss. until she moves some place with intent to remain there indefinitely. Note that ex-pats may not sue or be sued. Without Mrs. Mas, would've been alienage. |
| <u>Saadeh v. Farouki</u> (1997) (236) | Greek Saadeh sued permanent resident Farouki b/c defaulted loan. | Diversity | A permanent resident is considered a citizen of the state in which he resides for diversity purposes (§1332). If read literally, could expand jd significantly (foreigner v. foreigner OK), but would violate Art III's diversity clause. Court limits, to avoid const problem. |
| <u>Gibbs</u> (1966) (244) | P sues federal claim under LRMA and state claim for conspiracy. Federal claim was set aside at trial. | Supplemental Jurisdiction | Established standard for supplemental jurisdiction: "derive from a common nucleus of operative fact" and must be so closely related that usually P "would be expected to try them all in one judicial proceeding." Codified in §1367: so related "that they form part of the same case or controversy." §1367(b) names exceptions. |
| <u>Finley v. U.S.</u> | State and federal claims not against the same D. | Supplemental Jurisdiction | Only where Congress had affirmatively indicated it wanted to allow new parties to be brought in on pendent state claims may they be added without separate jd grounds. Thus kept federal cases smaller, with more cases overall. OVERRULED by §1367. |
| <u>Owen v. Kroger</u> (1978) | K sues D who then sues O. K wants to then add claim against O. | Supplemental Jurisdiction | P's claim against third-party D will not be allowed when it will defeat the "statutory requirement of complete diversity." Otherwise they could sue only those that would maintain diversity, then wait for D to implead non-diverse parties. Codified in §1367(b). |
| <u>Free v. Abbott</u> (1995) | Class action (Rule 23) wherein many Ps didn't meet amount in controversy requirements. | Supplemental Jurisdiction | Following literal language of §1367. Rule 23 isn't listed; as long as the named class rep Ps each have claim in excess of AIC, unnamed members need not meet the amount since they'll fall within supp jd. Overruled <u>Zahn</u> that said each class member had to meet AIC. Some said they meant to include Rule 23 in the list and just forgot. |

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| <u>Caterpillar</u> (1996) (252) | At time of removal to fed ct there was no diversity; at trial and judgment there was since non-diverse parties had settled. | Removal | Focus on how jd was proper at case's end. Judge should have remanded case to state court, but focus on efficiency and economy. If the trial has not yet occurred, then the court may remand since there isn't the same concern of efficiency and economy: "To wipe out the adjudication postjudgment, and return to state court...would impose an exorbitant cost on our dual court system." |
| PLEADING | | | |
| <u>Bridges v. Diesel Serv.</u> (15) | Attorney made procedural error by not exhausting admin remedy before suit. | Lawyer's Responsibility | He didn't have a "right to sue." Ct says sanctions are meant for deterrence not punishment and court says he's deterred from making this EEOC mistake again. Concern with bringing meritless suits. |
| <u>Bell v. Novick</u> (18) | Complaint wasn't sufficient for state ct, but removed to fed, so FRCP then applied. | The Complaint | Minimum pleading requirements: a short and plain statement is sufficient. |
| <u>Houchens</u> (43) | P wanted insurance policy; husband disappeared, so no evidence his death satisfied policy requirements. | Summary Judgment | To make it through summary judgment, have to prove there was a genuine issue of material fact. Motion to Dismiss at beginning assumes all P's facts are true. After discovery if you have no facts to back you up, you may lose on summary judgment motion. |
| <u>Norton v. Snapper</u> (53) | Jury found one way, judge set it aside with JNOV. | JNOV | Why wait til after verdict? Jury finding has more credibility. JNOV says no reasonable factfinder could find a certain way. By waiting til after jury decides, if reversed on appeal, don't have to do it <i>de novo</i> . |
| <u>Apex v. Leader</u> (64) | | Appeals: Interlocutory | Fed courts of appeals have jd over appeals from all final decisions of fed district courts but no jd over appeals from judgments that are not final, called interlocutory orders. Permitting interlocutory appeals from every trial decision would protract litigation and avoiding such delay is more important than that every district ct ruling is correct. |
| <u>American Nurses</u> | Suing for discrimination based on lower pay for female jobs. | Stating a Claim | Discusses claim requirements in context of 12(b)(6) motion. Plead enough facts to show cause for relief, but not so many that you plead yourself out of court. Extra details may influence judge but may also show can't establish claim. Here, their claim re: comparable worth is not a valid cause of action but Posner helps out by suggesting they may mean to plead sex segregation or intentional discrimination. |

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| <u>Leatherman</u> (1993) (442) | P sues govt D under §1983 and D alleges P had to plead with particularity. | Pleading: Disfavored Claims | Since §1983 actions are not listed in Rule 9, their complaints do not need to be pled with particularity, and a short and plain statement suffices. |
| <u>Gomez v. Toledo</u> (1980) (446) | P alleges he was dismissed without a hearing. | Pleading: Burden of Pleading; Allocating Elements | Question of who must bring up good faith. Since it's not listed in statute, P does not have burden. Since it has arisen under judicial interpretation, D bears the burden. When something is likely to be in knowledge and control of one party, they should bear the burden. Acting in good faith has typically been an immunity, a defense. |
| <u>Mitchell v. EZ Way</u> | D says M failed to state claim. | Responding to Complaint | Ct says they're not enforcing heightened pleading standard by using 12(b)(6) as means for more information. Regarding motion for more definite statement, more info. is only warranted when complaint is so vague that D cannot "reasonably be required to frame a responsive pleading." 12(e) violation is insufficient for dismissal. |
| <u>Beeck v. Aquaslide</u> (1977) (470) | P sues D who concede it's their slide; then find out it's not & seek leave to amend. | Amendments: Prejudice | Consider bad faith and prejudice. Leave to Amend should be denied only if it would cause actual prejudice; the burden is on P to show such prejudice. P did not show here that D would prevail on manufacture issue, or that P couldn't sue other parties b/c SOL. |
| <u>Moore v. Baker</u> (1993) (477) | P sues Dr. D in fed ct alleging no informed consent; seeks to amend negligence claim. | Single "conduct, transaction, or occurrence" | D claimed no relation back. Ct agrees, noting that original suit didn't put D "on notice" about negligence claim. Original suit concerned pre-surgery actions; negligence concerns during surgery. Therefore not same transaction or occurrence and no relation back. |
| <u>Bonerb</u> (1994) (479) | P slip & fall during basketball therapy. First alleged neg. in maintaining court, then sought to amend counseling malpractice. | Relation Back | Concerns §1367's "same nucleus of operative fact" requirement. Here, the original claim mentioned "failure to properly supervise and/or instruct P" which put D "on notice" about malpractice, and alerted him to possibility of this claim, which is all that is required under 15©). |
| JOINDER | | | |
| <u>Plant v. Blazer</u> (1979) (895) | P sues on federal claim (truth in lending violation); B counterclaims on state claim (P's debt). Concern w/keeping claims together. | Counterclaims | She loses state claim & has to pay the debt, so argues there was no jd over state claim. "An action on the underlying debt in default is a compulsory counterclaim that must be asserted in a suit by debtor on a truth-in-lending cause of action." This case was pre-§1367, so claim had to compulsory to be included. |

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| <u>D'Agostino</u> (1970) | D claimed fed against H; H counterclaimed state & fed; D had reply state counterclaim against H. H loses. | Joinder of Claims | H alleges counterclaim was permissive and shouldn't have been included (like <u>Capron</u>); since claims were inseparable that would throw out judgment against them. B/c of inseparability it stems from one transaction, thus compulsory (13(a)). Dissent notes this may encourage parties to bring uncertain claims in, clogging system. |
| <u>Mosley</u> (1974) (904) | Ps allege D has practice of discrimination; allege ten incidents. D denies. | Joinder of Plaintiffs (Rule 20) | Comes close to line about whether one transaction or occurrence. Issue of whether common law or fact (same language as R.23). Cites <u>US v. Miss.</u> where individual discrimination acts were joined. They say they're lenient with R.23 and will be lenient here - harmonizing the jurisprudence. |
| <u>Watergate</u> (1987) (911) | P building sues D realty. D sues D2 waterproofer. "If I owe P, D2 owes me" is OK. "Him, not me" isn't allowed | Impleader (Rule 14) | Here D2 is not responsible for P's claim against D, so not permitted. D can still use D2 as a defense. If D2 was in, D could add non-related claims against D2 as long as court had jurisdiction @.18). Once D2 is in, he can raise defenses, implead D3, counter P and D... |
| <u>Fairview v. Monzo</u> (1977) | F sues M and R. State claim against R dismissed on the merits (not jd), so M's cross claim against R since no indep. basis for jd. | Cross-Claims | For inclusion of claim must stem from same case or controversy: "same nucleus of operative fact." This supp jd test is broader than R.13(g) test of "same transaction or occurrence." Thus if something would come in under the Rules, it will be allowed under supp jd. Here not all claims w/original jd have been dismissed so §1367©) doesn't apply. |
| <u>Helzberg v. Valley West</u> (1977) (930) | P sues D. D says judgment may be inconsistent w/ duty to L. L is not subject to PJ, so inquire if they are indisp. | Compulsory Joinder (Rule 19) | Because of chance of inconsistent judgments, L is necessary. Are they indispensable such that the case should be dismissed w/o them? Would there be prejudice to L if they're out? No, suit for breach of contract. Thus not indispensable and suit continues w/o L. Involuntary man - wanton, wilful or grossly neg. |
| <u>Tell v. Dartmouth Trustees</u> | Issue of whether Alumni Assoc. is indispensable since their entrance would defeat diversity. | Compulsory Joinder | Since they're necessary, inquire if indispensable. Ask if there would be prejudice to absent party. There would, since a victory for Tell would make them successors and would keep AA from that claim. Relief would affect AA but would not be enforceable against them. |

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| <u>NRDC v. NRC</u> (1978) (940) | Two parties want to intervene in this case concerning whether environmental impact licenses must be issued to get a license. | Intervention | For intervention as a right 3 requirements are needed under 24(a): claim an interest relating to the property or transaction which is the subject of the action; so situated that the disposition of the action may as a practical matter impair or impede ability to protect that interest; and must show his interest isn't adequately represented. They may intervene here because these three are satisfied; they especially had inadequate representation since UN might be willing to settle that impact statements must only be prospective (since they already had a license). |
| <u>Martin v. Wilks</u> (1989) (948) | Ps sued city alleging that an old settlement with black firefighters had led to discrimination against white Ps. | Intervention | Supreme Ct held that the black firefighters should have joined white firefighters as Rule 19 necessary parties in original suit creating a consent decree, since the result was likely to "as a practical matter impair or impede [the whites'] ability to protect [their] interest" with respect to their jobs since consent decree bound successors. Since they weren't joined, they could argue the settlement had no impact on them and their claims should be considered from scratch. |
| <u>NY Life v. Dunlevy</u> (1916) (955) | P's daughter Y claimed P had assigned life ins. to her. P denied. X garnished Y due to personal judgment. Bank wanted PA resolution through interpleader. | Interpleader | Y not subject to PJ in PA, where the court said the money was P's. Y sued in CA and they said it was hers, won, and the bank paid twice. Because the PA proceeding did not bind Y, since the court had no jurisdiction over her, she was not estopped by that proceeding from claiming that the policy was hers. The interpleader proceeding was an <i>in personam</i> proceeding, not <i>quasi in rem</i> , and was thus invalid without personal jurisdiction over Y. |
| <u>State Farm v. Tashire</u> (1967) (962) | Bus collides with truck, whose driver has \$20,000 policy limit which isn't enough for all injuries. | Interpleader | The insurer's duty to indemnify is limited to policy limit and thus interpleader assures Ps will share proportionately in proceeds, instead of having entire judgment go to first P. Interpleader will be allowed concerning the State Farm disputes, but not those involving Greyhound since that is unnecessary and overbroad. In this case, Supreme Ct said complete diversity was a statutory (not Const.) requirement; Congress can amend §1332 to allow minimal diversity. |
| <u>Cohen v. Philippines</u> (1993) (957) | Cohen interpleads B (M's agent) and Philippines since unsure who has ownership. M seeks intervention. | Interpleader & Intervention | M won't wait for completion to sue the winner since she'd have a problem suing the Philippines. For interpleader, you don't have to claim everyone with a potential interest. M is allowed to intervene since fits Rule 24(a)(2) requirements. |

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| <u>Trowbridge</u> (1971) (961) | | Interpleader | Interpleader unnecessary since liability to each P wasn't inconsistent with liability to the other; company was liable to both b/c own neg. |
| <u>MI H.S. Athletics</u> (1999) (968) | Suit involving Title IX and discrimination against women's sports. | Class Actions | There are some students who don't want things to change, yet their interests will be affected. Court says that will always be the case in class actions, and here the interests are related enough and the class satisfies Rule 23 requirements. |
| <u>Phillips v. Shutts</u> (1985) (990) | Class consisted of persons owning royalty interest in leases D exploited. Fewer than 1/8 Ps lived in KS and <1/4% land was there. | Class Actions & Constitution | D claimed non-KS Ps not subject to PJ and would thus re-sue later. Court said those who received notice of the suit and did not opt-out were bound. Court established requirement of minimal procedural due process protection for absent Ps: best-practicable and reasonably calculated notice (<u>Mullane</u>), opportunity to be heard, opt-out provision, named P must adequately represent absent class members. |
| <u>Eisen v. Carlisle & Jacquelin</u> | P class consists of odd-lot traders that should be reimbursed. Alleged monopoly and price-fixing. | Class Actions | Since P identification is a problem, District court suggested fluid recovery reimbursement for future traders. Supreme Ct says partial notice is insufficient. Under 23(b)(3) (but not others) there must be notice to every member reasonably identified (2 million here!) b/c R.23 was based on <u>Mullane</u> . Per 23©)(2), notice isn't discretionary and P must pay - no inquiry into who is likely to win on merits. |
| <u>Ortiz v. Fibreboard</u> | Asbestos case in which they had set aside \$1M per occurrence. F approaches Ps for global settlement, under 23(b)(1): limited fund. Not 23(b)(3) since they didn't want to allow opting-out. | Class Actions | Note there may be bad incentive for P attorneys since they'd get more from class settlement. Court notes that when parties come to court with a settlement all worked out, more attention must be paid to 23(a) and 23(b) requirements. Court notes that there is no show that either company would be bankrupted by settlement, esp F who is insured and will pay only \$500K: they must show it's "limited by more than the agreement of the parties." This type of settlement thus more OK when arms' length negotiation, or when it looks like they would go bankrupt if it went to trial (transaction costs). |