

## THEMES OF CIVIL PROCEDURE

<b>DISCOVERY</b>	<p><b>Consistency:</b> Rules provide for consistent means of obtaining information, thus treating the litigants consistently and <b>fairly</b>.</p> <p><b>Efficiency:</b> Fine tune and narrow the issues. Eliminate bogus claims. Promotes settlement (through full disclosure) which clears the dockets of most cases. Supposedly conserves judicial resources but also generates satellite litigations.</p> <p><b>Accuracy:</b> takes surprise and drama out; promotes exchange of proper and relevant info. Enable a decision based on the merits. Add necessary claims through amendments.</p> <p><b>Fairness:</b> a more accurate decision incorporates fairness.</p>
<b>CHOICE OF LAW</b>	<p><b>Consistency:</b> Maintain same standards for parties in the same state.</p> <p><b>Efficiency:</b> Don't waste as much time arguing which law should apply.</p> <p><b>Fairness:</b> You know which law will apply.</p>
<b>DEFAULT JUDGMENTS</b>	<p><b>Efficiency and Fairness:</b> Providing incentives for efficient litigation (and penalties) keeps the case moving and prevents uncertainty and prejudice against D (case hanging over him).</p> <p><b>Accuracy:</b> We want cases to be decided on the merits, not for lack of diligent prosecution.</p>
<b>SETTLEMENT</b>	<p><b>Efficiency:</b> Usually costs less time, money, and emotion to settle.</p> <p><b>Fairness:</b> Psychologically more assuring to compromise. More likely to be carried out effectively if consensual. Better tailor the result.</p> <p><b>Accuracy:</b> Equal reflection of evidence rather than sympathetic jury. BUT Merits may get lost in shuffle without application of law.</p> <p><b>Consistency:</b> Decision would have set precedent.</p>
<b>ARBITRATION</b>	<p><b>Efficiency:</b> Not tying up the courts. BUT at the beginning &amp; end a lot. Takes less time and money (rules are less complex).</p> <p><b>Fairness &amp; Accuracy:</b> Rules are there to aid these aims and there are sometimes unbalances in arbitration. Can tailor remedies better. Arbitrators often know the law better b/c expertise.</p> <p><b>Consistency:</b> Doesn't create precedent in the court system.</p>
<b>SUMMARY JUDGMENT</b>	<p><b>Accuracy:</b> When the case is so one-sided we already know who should win. Decide it on merits instead of risking a jury.</p> <p><b>Efficiency:</b> Prevent unnecessary trials. Narrow the issues with partial summary judgment.</p> <p><b>Consistency:</b> Won't have faulty precedent.</p>
<b>JUDICIAL MGMT. (Orders)</b>	<p><b>Efficiency &amp; Fairness:</b> Make decisions early on. Keep parties on same schedule so they see docs at same time. Adhere to the schedule to maintain fairness and avoid prejudice/costs. Allowing amendments may involve considerable prejudice (&amp; time &amp; money).</p> <p><b>Accuracy:</b> Meeting with judge may bring new issues to light, like contrib. neg. in <u>McKey</u>.</p>
<b>RIGHT TO JURY</b>	<p><b>Efficiency:</b> Letting it go to jury instead of granting 50(a) increases efficiency in case you need to grant a 50(b) but still preserve a verdict in case grant of JMOL is reversed.</p> <p><b>Fairness:</b> Prized right to jury ingrained in national conscious.</p> <p><b>Accuracy &amp; Consistency:</b> Questionable.</p>
<b>APPEALS</b>	<p><b>Accuracy:</b> Trial judges will be more careful. Appellate courts are better at analyzing law via expertise. A second look with three judges promotes accuracy.</p> <p><b>Consistency:</b> Appellate courts impose consistent precedent across trial judges.</p> <p><b>Fairness:</b> Heightened accuracy is fair. Penalty for frivolity. Combat bad judges.</p> <p><b>Efficiency:</b> More opportunities for accuracy = less efficiency. Trial judges usually affirmed.</p>
<b>PRECLUSION</b>	<p><b>Consistency:</b> Different juries shouldn't look at the same events &amp; facts w/different results.</p> <p><b>Fairness &amp; Finality:</b> Everyone gets their day in court. Don't want already litigated things hanging over your head.</p> <p><b>Accuracy &amp; Efficiency:</b> These are often balanced against each other. Want accurate decisions on merits of this case but don't want repetitive and unnecessary litigation. Claim preclusion makes you sue exhaustively the first time. Bringing claims together promotes efficiency - even if severed, pre-trial and discovery is joined.</p>

