Purpose Of The Course

The three words of this course’s title convey important information. First, this course covers federal, not state, procedure, though you will learn a bit about state procedure along the way.

Second, this course covers civil, not criminal, procedure. Criminal procedure constrains the government’s investigation, arrest, and prosecution of persons for crimes, while civil procedure governs lawsuits under civil law between private parties. Many actions have criminal and civil consequences: a death can be murder (a crime) and wrongful death (a tort).

Third, this course covers procedure, which gives the structure but not the substance of a lawsuit. Procedure tells you how to sue someone, while other areas of the law (contracts, torts, patent law, etc.) tell you what you can sue for (breach of contract, negligence, patent infringement, etc.).

This course begins with a 50,000-foot flyover of a civil lawsuit from start to finish. With that framework in place, the course then covers a number of civil procedure topics in detail, including jurisdiction, pleading (the papers filed to set up the lawsuit), discovery (the exchange of information among parties), judgment, and appeal. Upper-division courses such as Advanced Civil Procedure, Complex Litigation, and Conflict of Laws cover other civil procedure topics.

You will learn the policies behind modern civil procedure and how to interpret and apply procedural rules, statutes, and cases. You will learn where and how to file a lawsuit in federal court and how to pursue that lawsuit to its conclusion without trial. (Trial is an increasingly rare event and is covered in Evidence, Trial Ad, and other upper-division courses.)

Civil procedure uses the case method, where you read court cases to learn the legal rules used to resolve disputes, how the courts arrive at those rules, and how the rules evolve over time. But, because federal civil procedure is largely governed by statutes and rules implementing those statutes, this course also introduces you to statutory interpretation. Like all law school courses, civ pro will help you learn to “think like a lawyer.” More than most courses, civ pro also asks you to think about the strategies, tactics, etiquette, and, most important, ethics of lawyering.

Required Materials

The required materials for the course are

- the course CopyPak;
- 2017 Federal Rules of Civil Procedure (you must use the current version – I have had the bookstore stock the cheap version published by legalpub.com);
HARR, A CIVIL ACTION (1995) (any edition you can find, paper or electronic); and
i>Clicker+ (ISBN 1464120153) or REEF (the i>Clicker smartphone app).

Strongly recommended, but not required, are

- GLANNON, CIVIL PROCEDURE: EXAMPLES AND EXPLANATIONS (7th ed. 2013); and
- MEADOR & MITCHELL, AMERICAN COURTS (3d ed. 2010 or 2d ed. 2000).

Reading Assignments and Texts

In general: A list of reading assignments is attached to this syllabus, along with a separate document (“Class Dates and Assignments”) that matches those numbered assignments to the specific dates of this semester. Importantly, there are notes and questions given with each reading assignment in the attached document; make sure to read these carefully.

Texts: The primary text is the CopyPak; I may also hand out additional material from time to time. The other key text is the 2017 Federal Rules of Civil Procedure (Rules). You must use a current version of the Rules, as they are amended often. The bookstore has stocked a cheap version.

Problem sets: Sometimes the day’s assignment is a problem set. We will discuss the problems in class, so please answer them as part of your class preparation. You will not turn in your answers. I will publish model answers and explanations to the course website after class.

A Civil Action: Law students often find civil procedure abstract and difficult. The non-fiction account A Civil Action helps by giving you the real-world story of a tort case brought by ordinary people against two large corporations, in which the Rules play a key role. (The Rules have been amended substantially since the book was written; you need learn only the current Rules.)

I emailed everyone who was assigned to this course in early July and suggested that you read A Civil Action before school started; if you have not read it yet, you should plan on completing it by September 25. I will bring it into class discussion after that. John Travolta and Robert Duvall starred in a film based on the book; we will watch it together later in the semester.

Glannon: Joseph Glannon’s Examples & Explanations: Civil Procedure is a strongly recommended (but not required) text. You may purchase it or use it on reserve. It is best used to review and test of your understanding of each topic we cover. He covers more topics than we will; skip the parts that do not match our course coverage.

Other resources: Meador & Mitchell’s American Courts (purchase or use on reserve) is a useful introduction to the federal and state courts. Wright & Miller’s Federal Practice & Procedure (an enormous multi-volume treatise on reserve) is the gold-standard treatise on civil procedure, among other subjects; you can consult it during this course, and you are likely to use it as a practicing lawyer. For more real-world background, Civil Procedure Stories (use on reserve) provides the history and litigation strategy of a number of important civil procedure cases.
Class Scheduling and Participation

**Class participation:** Bring the CopyPak, the Rules, any handouts, and your i>clicker to class with you each day. You will participate regularly in two different ways.

First, you will use the i>Clicker (or i>Clicker’s REEF app) to respond to multiple choice questions in class. You will not be graded on your responses: the questions are for you to assess your understanding and for me to assess the class’s general understanding. The i>clicker system does record participation, however, and I will follow up with anyone who is not clicking.

Second, each day, I will “cold-call” (meaning at random, with no advance notice) on several students to help discuss the assigned material. **Always be prepared to discuss the material assigned for the current date, even if we carry over discussion from the previous class.**

**Two Free Passes:** Each of you has two free passes from cold-calling, but **to claim a pass** you must email me at least 30 minutes before class starts (at helliott@law.ua.edu) and **you must hand me a note claiming your pass when class begins. You must take both steps, or you are fair game.**

**A note on class participation:** Do your best to participate early and often; at the same time, stay on topic, be respectful of the others in the class, and do not monopolize the discussion. If I believe that someone is participating too much, too little, or inappropriately, I will contact that person. If cold-calling intimidates you, please come to my office hours so we can chat about it.

**A note about laptops:** Study after study shows that trying to transcribe a lecture word-for-word reduces your comprehension: your brain doesn’t do any work to paraphrase or understand the material but instead merely moves your fingers in response to the sounds you hear. **You do not learn when you are transcribing our class discussion on a laptop.** Those who take notes by hand learn far better, because to write notes by hand you must paraphrase – and thus must understand the material. Understanding is even better for those who take notes by hand and then type them up later. Experiment to see whether you learn better if you leave your laptop turned off.

**Grading**

**Final grades conform to the mandatory curve imposed by Law School policy.**

Your final grade is based solely on the following components:

- Final examination, letter-graded: 80%
- Two practice examinations, pass/fail: 10% each

**Final examination:** The final exam is a cumulative, open-book test given at 1:30 p.m. on December 4. You will take it anonymously, using your Law School exam number. The exam has multiple-choice and essay questions. The multiple-choice questions must be answered on a Scantron; the essays may be handwritten or typed using ExamSoft.
I will hold a final question-and-answer session on Friday, December 1, at 1 p.m. That final session will consist only of your questions and our answers to them. You may continue to ask questions until 3 p.m. on Sunday, December 3. I will not respond after that deadline.

**Grading the final examination:** Multiple-choice questions are graded simply for correctness; there is no penalty for wrong answers. I will grade your essays using several criteria:

- your ability to see the legal issues raised by the fact pattern given;
- your ability to provide the legal rules relevant to the issues, whether from the Federal Rules of Civil Procedure, the U.S. Code, or court cases;
- your ability to use the rules and the facts to analyze the issues and to show me the steps in your argument as you reach a particular conclusion to each issue;
- your recognition and analysis of potential flaws in your argument (because the facts cut both ways, the law is uncertain on this issue, or the like); and
- the persuasiveness with which you state your argument.

The better your answer is organized, the better I can see how you satisfy these criteria. I do not take off points for misspellings or grammatical mistakes, but such flaws may make it more difficult for me to understand your reasoning and thus may indirectly affect your grade.

**Mandatory practice examinations:** There will be two mandatory pass/fail practice examinations:

- An **in-class multiple-choice exam taken on Thursday, September 28**, covering material up through Thursday, September 21.
- An **in-class essay exam taken on Thursday, October 19**, cumulative through Thursday, October 12. If you will type your essay, you must install and test ExamSoft in advance.

A practice exam may be rescheduled only for an acceptable reason, such as a serious or infectious illness supported by a doctor’s note, a serious injury supported by a doctor’s note, a serious illness or death in your close family, or the equivalent. Unacceptable reasons include (but are not limited to) attendance at an away game or a social event such as a wedding.

Because each practice exam is pass/fail, anyone who turns in a response that reflects serious effort will receive full credit. If you miss an exam for an unacceptable reason, or if your response to the questions convinces me that you did not take the exercise seriously, you will receive an F and thus lose 10% from your final grade.

I will give feedback on these exams and return them to you; we may also take some class time to go over them. **I will not give letter grades on any of the practice exams, nor will I guess what final grade might be predicted from your practice exam performance.** Final grades are curved, and it is thus impossible to predict your final grade from your practice exams.
What “open book” means: On any test in this course, you may use any paper resources, such as the course materials, your outline, another student’s outline (with the author’s permission), and commercial outlines. You may not talk to anyone about the exam while you are taking it (other than to ask a question of the proctor or the Registrar’s Office), and you may not use any electronic resources (for example, the Internet or the electronic version of your notes). Print out, in advance, anything you wish to use during any test in this course.

Studying for exams: The materials discussed in the previous paragraph are helpful for studying. You cannot, however, plan to rely on such materials during any exam. No law school exam affords you time to look up much of anything, and if you plan to rely heavily on your materials, you will do poorly. You should prepare for all exams as if they were closed-book.

Course Webpage

The course webpage is hosted by The West Education Network (TWEN). There you will find this Syllabus, the Reading Assignments document, the Class Dates and Assignments document, discussion forums, sign-up sheets for activities (including the lunches discussed below), announcements, and links to supplemental material. I will also use the email function of the website to contact the members of the course if needed; in particular, I will email you if an emergency requires me to cancel, or to delay the beginning of, class. You must use an email address you actually check when you sign up for the TWEN site. Everyone should sign up at http://lawschool.westlaw.com/ (click on TWEN at the top of the page and set up your account; then click “Add Course” on the TWEN home page and add this course).

Course Policies

Office hours: Office hours are Monday, Tuesday, and Thursday from 2 to 2:50; these are times that fit your class schedule. For the first several weeks of the semester, most of those times will be used for the coffee get-togethers described below. You may always email me for an appointment at another time — helliott@law.ua.edu.

I encourage you to come to office hours as often as you wish, whether to talk about civil procedure, law school, life as a lawyer, or maintaining your well-being in the face of all three. If you know you plan to stop by, please email me so that I may schedule my time accordingly. If you have not given advance notice, you are still welcome, but you may need to wait while I talk with someone else who got there first or who made an appointment.

Coffee/tea/beverage: Early in the semester, I would like to meet with you in groups of six or seven to have a beverage and a snack, my treat. Please go to the TWEN site for this course, where you will find sign-up sheets (look in the left-hand column on the home page and click on “Signup sheets”). You are not required to come to one of these get-togethers, but I hope you will.

Emailing me: I check my email regularly, but only during work hours. I will try my best to respond to any email within 24 hours. Do not freak out if I do not respond immediately.
Attendance: Class attendance is mandatory. A roll sheet will be circulated each day. The law school’s attendance policy provides that “A student who is absent for any reason from more than three class hours per semester credit hour in a course may be dropped from the roll or not allowed to sit for the exam and receive an ‘F’ for the course.” (emphasis added). For this 4-credit course, you may miss no more than 12 hours.

**Do not email me to explain any particular absence** (seriously, don’t).

**However, if the total number of hours you miss approaches the maximum of 12, you must contact me.** The Honor Code provides that “Knowing failure to report having missed more than a certain number of classes to an Instructor who specifically requires all Students to do so constitutes an Honor Code violation.” Should it become clear that you may miss an inordinate number of classes, immediately contact the Associate Dean of Academic Affairs to make appropriate arrangements.

Electronic devices: Laptops are permitted in class only for taking notes and for viewing websites or other documents that I have asked you to pull up. Someone whose laptop use interferes with the classroom learning experience may be asked to leave and will be considered absent for that day. Laptops must be set up before class starts.

Cellphones, tablets, and similar devices must be off during class unless you are using i>Clicker’s REEF app. You may not send or receive calls, text messages, instant messages, or the like during class unless special circumstances (an imminent birth, for example) justify leaving your phone on. Someone whose use of such a device interferes with the classroom learning experience may be asked to leave class and will be considered absent for that day.

Recording devices: The use of any recording device in this course is prohibited without my prior written permission. I give permission only for disability-related purposes under a Law School accommodation or for absences due to circumstances beyond your control; you may not record a class simply because you believe it will aid your studying or because you will be out of town.

Disability accommodations: The Law School is committed to meeting the needs of students with disabilities and provides appropriate accommodations and services tailored to each person’s specific requirements. The Law School’s assistant deans and the University’s Office of Disability Services work together to help individuals with disabilities achieve and maintain individual autonomy. Students with disabilities are encouraged to contact Grace Lee, Associate Dean for Academic Affairs, at (205) 348-1125 or glee@law.ua.edu, so that their needs for support services can be evaluated and accommodated in a timely manner.

Notification of changes: I will make every effort to follow the guidelines of this syllabus as stated; however, I reserve the right to make changes as needed. I will notify you of such changes in class and/or via email and will do my best to provide reasonable time for you to adjust.

Ethical community statement: The University of Alabama is committed to an ethical, inclusive community defined by respect and civility. The UAct website (http://www.ua.edu/uact) provides extensive information on how to report or obtain assistance with a variety of issues, including issues related to dating violence, domestic
violence, stalking, sexual assault, sexual violence or other Title IX violations, illegal discrimination, harassment, child abuse or neglect, hazing, threat assessment, retaliation, and ethical violations or fraud.

I am a SafeZone Ally, one of many resource people on campus who provide an open door for individuals seeking information or assistance regarding sexual orientation, gender identity, harassment, and/or discrimination. Feel free to talk to me at any time if you or someone you know has questions or concerns.

Severe weather guidelines: Tuscaloosa can suffer severe thunderstorms and tornadoes. These weather events can be life-threatening. Please visit https://ready.ua.edu/severe-weather-guidelines/ to learn more about the University’s policies on severe weather and about what you can do to be prepared for such events.

The Honor Code

The Honor Code governs your conduct in this course, as it does any other activity in which you participate at the Law School. “The goal of the Honor Code is to ensure that no Student gains an unfair advantage in Law School over another Student and to promote those ideals of honor and integrity that are germane to the practice of law. Pursuant to this goal, all students while enrolled at the University of Alabama School of Law shall refrain from intentionally lying, cheating, stealing, or tolerating such action by another and shall refrain from other reprehensible acts.”

N. B. This syllabus, along with the Reading Assignments handout and the Class Dates and Times handout, is available on the TWEN site for this course, should you misplace it.
READING ASSIGNMENTS

The assignments below are numbered Class 1, 2, etc., and are labeled by the same numbers in the CopyPak. On a separate handout named “Class Dates and Assignments,” I tell you what day to read each assignment. Make sure to read the material assigned for each date, even if we did not finish discussing the previous assignment in class.

A typical assignment will include cases and/or other materials from the CopyPak, along with (for most classes) a Federal Rule of Civil Procedure (Rules) and, occasionally, a Federal Rule of Appellate Procedure (FRAP). Rules are assigned by Rule or FRAP number (not by page numbers) because you may have purchased a different version of the rules than the one I suggested. If your version of the Rules does not contain the FRAP, they are easily looked up online. Similarly, in some classes I have asked you to read a statute but have not necessarily included it in the CopyPak; those statutes are in the Rules book I assigned. If you have purchased a different version of the rules that does not include statutes, you may look them up online. As noted on the Syllabus, sometimes there is a problem set in addition to (or in lieu of) assigned reading.

Generally, you should determine:

1. what principle(s) each case stands for;
2. how/why the principle was followed, abandoned, or modified in other cases (including cases provided in short, “note” form);
3. how the cases and the assigned statute/rule interact;
4. how this reading fits in with prior readings;
5. your answers to the questions posed in the CopyPak/assignment list; and
6. what questions remain.

You should “brief” the cases. Briefing is a method of extracting the key information (parties, court, judgment, holding, etc.) from the case into a standard format. You should have learned about this during orientation. You are responsible for any note cases as well as the primary cases, though you will not usually need to fully brief the note cases – instead, ask what the note case adds to or changes about the primary case, and pay attention to which facts are most important in answering that question.

Some of the materials in the CopyPak are provided to give you an idea of what court documents look like. These are often marked in the assignment list with “skim” – when a document is so marked, just it look over to get a sense of it, rather than reading it carefully.

General assignments at the beginning of the semester: Read the Syllabus thoroughly (your rights and responsibilities in this course are set out there); read A CIVIL ACTION by September 25; read MEADOR & MITCHELL, AMERICAN COURTS if you need more of a background on the U.S. courts; register on TWEN (http://lawschool.westlaw.com) and sign up for coffee.
OVERVIEW

Class 1. The Course of the Course; 50,000 Foot View: Where and How to Start a Lawsuit

Read CopyPak Assignment One (pp. 3-7); Rules 1-3, 4(c), 4(k)(1), 4(m), 8(a), 10(b), 18.

A lawsuit “is commenced by filing a complaint with the court.” FRCP 3. The complaint must also be served on the defendant or defendants within 90 days after the date of filing (FRCP 4(m)).

The plaintiff must think carefully about whom to sue and what claims to bring. The Rules provide for what is known as “liberal joinder,” meaning that it is pretty easy to bring together multiple plaintiffs and/or multiple defendants, and it is also pretty easy to join together multiple claims. Indeed, a plaintiff may be required to join together several claims or risk losing them under principles of claim preclusion (which we will discuss briefly in the first class and in more detail at the semester’s end).

The plaintiff must also be careful to sue in a court that can hear her lawsuit. The lawsuit can be filed only in a court that has personal jurisdiction over the defendant, subject-matter jurisdiction over the matter, and venue (which can be determined by the parties and/or the matter). According to the complaint, what is the basis for jurisdiction and venue in Williams v. Bridgeport Music? If there are multiple courts that have jurisdiction and venue, what practical factors suggest one court or another?

Even though this case is filed in federal court, state boundaries are still relevant. Federal courts usually have personal jurisdiction over defendants based on state boundaries (you will often here this stated as “federal courts take the jurisdiction of the state in which they sit”). FRCP 4(k)(1)(a).

A plaintiff must also think carefully about what to say in her complaint. Notice that Rule 8(a) requires only a “short and plain statement” of the plaintiff’s claim. Reading the complaint in the Blurred Lines case, you can see that Pharrell Williams and Robin Thicke included more than just a short and plain statement. Why? Are they speaking to anyone other than the court and the other parties?

Notice also that Rule 10(b) requires the plaintiff to use separate numbered paragraphs and to limit each paragraph as narrowly as possible to “a single set of circumstances.” Why require this?

Robin Thicke and Pharrell filed a claim for “declaratory relief.” This means what they seek is a declaration from the court that their songs do not infringe on the copyrights of the defendants’ songs. When someone brings a claim for declaratory relief, she is making herself the plaintiff in the case in which she otherwise would be the defendant – such questions would often be asked and answered in a case by the copyright holders against Thicke and Pharrell for copyright infringement. Why go ahead and file the suit for declaratory relief, rather than waiting to be sued for copyright infringement? Could there be practical advantages to being the plaintiff rather than the defendant?

Class 2. 50,000 Foot View: Defending a Lawsuit, Counterclaims

Read the Syllabus thoroughly.
Read Handout; Rule 8(b)-(c).
Skim CopyPak Assignment Two (pp. 8-27); Rule 13.

Notice how mechanical much of the answer is: it basically marches through the numbered paragraphs of the complaint and gives the responses required by Rule 8(b). Now you see why Rule 10(b) requires the plaintiff to number her paragraphs. Do you also see why Rule 10(b) requires the plaintiff to limit each paragraph as narrowly as possible to “a single set of circumstances”?

What in that Rule makes it ok to answer “I don’t know” in the answer?

Marvin Gaye III not only makes an answer to the Blurred Lines complaint; he also raises “affirmative defenses” under Rule 8(c) (though some of the defenses he calls “affirmative” are actually not). A
plaintiff has the “burden of proof” for her claims: she has to produce enough evidence to persuade the trier of fact that she should win. The defendant wins if the plaintiff can’t meet her burden; he also wins, even if she does produce evidence, if he can respond with his own evidence and convince the trier of fact that his is better. But the defendant has the burden of proof for affirmative defenses.

When a plaintiff brings a lawsuit, she opens herself up to “counterclaims” by the defendants. A plaintiff must consider this before suing at all: would she be opening herself up to a problematic counterclaim?

What kinds of remedies does the Gaye family seek based on their counterclaims? Compare their prayer for relief with that in the original complaint by Pharrell Williams and Robin Thicke.

Class 3. 50,000 Foot View: Pre-Trial Procedures, Discovery

Read CopyPak Assignment Three (pp. 28-39); Rules 16, 26(b)(1), 30(a), 33(a), 34(a), 35(a), 36(a).

Once the plaintiff has filed her complaint and the defendant has answered, the issues for trial become clear. The parties will agree on some issues (for example, Marvin Gaye III agreed with Williams and Thicke on various facts, including those of Gaye’s domicile, Answer ¶¶ 5, 9. and about when Blurred Lines was released, Answer ¶ 6). The remaining issues – those on which the plaintiff and defendant disagree – are the ones that are subject to discovery and (if the case does not settle) later proof either to a judge or a jury. The Rule 16(b) report lays out the legal issues that must be resolved on pp. 32-33.

On pp. 36-37, the parties outline their discovery plan. Rules 30-36 lay out the methods of discovery: depositions, interrogatories, production of documents and things, inspection of real property, physical and mental examinations, and requests for admission. As you can see from the Rule 16(b) Report, the parties plan to use all methods except physical and mental examinations.

Many cases rely on expert witnesses to give their opinions. This Rule 16(b) Report discusses plans for how expert reports will be disclosed (p. 37).

Most federal district courts mandate that parties engage in alternative dispute resolution (ADR) to try to settle the case before too many resources are expended. A visit to C.D. Cal.’s website reveals that the court “offers three … ADR… options: 1) a settlement conference with the district judge or magistrate judge assigned to the case; 2) a mediation with a neutral selected from the Court Mediation Panel; and 3) private mediation.” Page 37 shows that the parties elected to engage in private mediation.

Class 4. 50,000 Foot View: Judgment, Appeal

Read CopyPak Assignment Four (pp. 40-60); Rules 48, 50(a), 56(a), 59(a)(1), FRAP 3(a), FRAP 4(a)(1).

The first document in today’s assignment is a motion for “summary judgment.” Such a judgment rests on the distinction between questions of law and questions of fact. Questions of law are for judges; questions of fact are for triers of fact (often a jury but sometimes a judge). If no facts need finding, no trial is needed. Thus, if only legal questions exist, a party can move for summary judgment (FRCP 56). The winner of a summary judgment motion receives judgment in his favor, and the case ends (at least in part– a party does not have to seek judgment on the whole case).

As you can see from p. 44, the plaintiffs’ motion for summary judgment was denied, and the case was tried to a jury. Juries usually enter general verdicts: “Plaintiff wins, damages are $200,000” or “defendant wins.” Sometimes, however, juries are asked to answer specific questions. The “special verdict” on pp. 44-51 show the juries’ answers to specific questions in the Blurred Lines trial. The judgment entered based on the jury’s verdict is presented at pp. 58-60.

Make sure to read p. 55 to understand the motion made by Thicke and Pharrell at pp. 52-53.
Anyone who receives an adverse judgment has the right to appeal to the next level of courts (there is no right to go on to the U.S. Supreme Court, except in rare cases). That party must notify the courts of the intent to appeal within 30 days of the entry of judgment. FRAP 4(a)(1)(A). Winners cannot appeal.

PERSONAL JURISDICTION AND VENUE

Class 5. Due Process: Notice

Read CopyPak Assignment Five (pp. 61-67)

There are two Due Process Clauses: one in the Fifth Amendment, which applies to the federal government, and one in the Fourteenth Amendment, which applies to the states. (State constitutions also provide state guarantees of due process.)

Due process has two aspects: procedural and substantive. Procedural due process, as its name indicates, has to do with what procedures are constitutionally required when the government takes action (either through courts or administrative agencies or otherwise). Substantive due process, which you will study in the first-year or an upper-division course on constitutional law, places certain areas of activity beyond government interference (for example, governments cannot pass laws, the substance of which prevent private individuals from taking drugs to prevent conception, Griswold v. Connecticut, 381 U.S. 479 (1965), though governments can reasonably regulate the safety and prices of those drugs).

One fundamental aspect of procedural due process is the requirement of notice. The Mullane case is the key case setting out the modern conception of what notice is for due process purposes (note that the case, like most in the next couple of weeks, has been heavily edited, with most citations removed).

Mullane involves “trusts,” where a “settlor” puts property (money, stocks, a rental house) into an account which is then administered by a “trustee” for the benefit of those the settlor designates (the “beneficiaries”). So, e.g., a rich aunt might put money in trust for her favorite niece, with orders that the niece receive the interest until she turns 30, at which point the trust is dissolved and the niece receives the principal. The trustee has a “fiduciary duty” – he must manage the trust in good faith for the beneficiaries. So, e.g., he may take excessive fees or subject the res to risky investments.

In Mullane, state law bundled many small trusts together, due to the cost of individual management. The bundled trust had a periodic “accounting,” where a court reviewed the trustee’s actions and, if it appeared that the trustee had fulfilled his fiduciary duty, entered a judgment settling the accounts. Afterwards, claim preclusion would prevent a challenge to the actions of the trustee for that period.

Mullane thus asks the question “what notice is required to the beneficiaries of those trusts when a court is going to sign off on an accounting?” Personal service? Notice by publication that mentions only the names of the trusts, and not their beneficiaries? Or is the answer somewhere in between? What does Mullane say the answer is?

On p. 67, the Court describes another aspect of due process: no one may be bound by a decision of a court that lacks jurisdiction. Personal jurisdiction is our topic for the next several classes.

Class 6. Jurisdiction over the Person: Presence, Absence, and Fairness

Read CopyPak Assignment Six (pp. 68-74)

What is the specific law (statute or other legal provision) that limits a State’s exercise of personal jurisdiction?

We don’t usually worry about personal jurisdiction over the plaintiff. She can usually sue wherever she wants to, so long as she can get jurisdiction over the defendant and meet other requirements we’ll discuss. Why is that? Why shouldn’t we ask about the plaintiff’s connections to the forum?
Is there virtue in the simplicity of Pennoyer’s definition of personal jurisdiction? What were the problems with the Pennoyer approach? How did Shoe attempt to solve the problems?

Even under Shoe’s more expansive definition of jurisdiction over the person, the relevant boundary for personal jurisdiction is still the State boundary. Federal trial courts take the personal jurisdiction of the States in which they sit (see Rule 4(k)(1)(A)). Do you agree with limiting personal jurisdiction by state lines? Why not have everyone in the U.S. subject to jurisdiction anywhere in the U.S.?

Importantly, Shoe involves an ABSENT defendant. Things are different when you are PRESENT in a state. For example, you have no due process objection to the jurisdiction of the courts in the State where you live. Why is that? (See Class 7.) And if you are served while present in the State, even if there only temporarily, you will be subject to the State’s jurisdiction (see Class 8).

You should also know that it is always possible to consent to personal jurisdiction (see Class 9): the lack of personal jurisdiction is a defense that is waivable. Thus if the defendant explicitly consents to personal jurisdiction in a particular forum, or fails to argue in a timely fashion that personal jurisdiction in that forum is lacking (thus waiving the defense), due process allows the case to proceed.

If a case is dismissed for lack of personal jurisdiction, this is not a decision on the merits of the plaintiff’s claim, and thus the case is not necessarily over. (The technical term here is that the case has been “dismissed without prejudice” to the filing of further proceedings.) The plaintiff is usually able to pursue her case by finding a court that does have personal jurisdiction. She must start over again, filing the proper papers in the new court within the time allowed by the statute of limitations.

**Class 7. Presence in the Forum: Where are You “At Home”?**

*Read CopyPak Assignment Seven (pp. 75-82)*

*Goodyear* addresses a loose end from Shoe, which had stated (in dicta) that contacts with a forum could be “so substantial and of such a nature” that the absent defendant could be subjected to suit for anything in that forum. Though Shoe did not use the term, later academic commentary came to label this “general” jurisdiction. Justice Ginsburg also calls it “all-purpose” jurisdiction.

The idea of general jurisdiction is that the lawsuit is unrelated to the forum and yet it is not unfair to sue the defendant in that forum for that lawsuit. For example, if Google were to be subject to “general” jurisdiction in Idaho, it could be sued in Idaho for an event that occurred in Florida and had absolutely no connection to Idaho. What does Goodyear tell you about when “general” jurisdiction is available?

Why is it more difficult to determine where a corporation is “at home”? Where is a human person “at home”? Should personal jurisdiction be different for human beings and corporations?

Note that “general” jurisdiction is in contrast to “specific” jurisdiction, where the defendant’s contacts with the forum do give rise to the lawsuit (e.g., as the International Shoe Company’s contacts with Washington State gave rise to the claim against the company for unpaid unemployment insurance premiums) (see classes 10-12). After Goodyear, though, the places where “general” jurisdiction are so limited that it seems silly to speak of such jurisdiction in terms of “contacts.” You might find it helpful to think about present and absent defendants. Absent defendants must satisfy the Shoe test: they must have minimum contacts that give rise to the lawsuit. Present defendants are (1) humans who are domiciled or reside in a state, (2) corporations who are “at home” in the state, or (3) those served while in the state (see next class). Thinking in these terms does not make all questions easy: it can be hard to determine when someone is “present” in a forum, or when an absent defendant satisfies the Shoe test.

**Class 8. Presence in the Forum: “You’ve Been Served”**

*Read CopyPak Assignment Eight (pp. 83-88); Rule 4(c), (e)-(m)*

Carefully count the Justices who joined each opinion. Notice all nine agreed in the outcome, but splintered over the reasoning. Does any of the opinions receive a majority?
Isn’t Justice Scalia right that tag jurisdiction comports with due process because we’ve always done it that way? Isn’t a process “due” if everyone knows to expect it? Does Shoe suggest a different answer?

What do you think of Justice Brennan’s analysis under the Shoe factors? Does it make sense to you? Is Justice Brennan really applying a minimum contacts analysis? What about Shoe’s repeated emphasis on the connection of the contacts to the lawsuit? Do Mr. Burnham’s contacts with California, as Justice Brennan describes them, have anything at all to do with the Burnham divorce?

Shaffer, which is referred to in both Justice Scalia’s and Justice Brennan’s opinions, involved the quasi in rem method of gaining jurisdiction that was described on p. 71 of the CopyPak. Remember that this involved getting personal jurisdiction over the defendant by seizing property he owned in the forum. Think through how Shoe would apply to the following situations:

- Sarah is walking along a public footpath in Alabama that crosses a piece of private property (there is an easement permitting the footpath, meaning that Sarah is not trespassing). A tree branch from the private property falls and hits Sarah as she passes under the tree. The property is owned by Jim, who lives in Georgia (the Alabama property is an investment). Sarah sues Jim in Alabama, attaching his Alabama property quasi in rem.
- Sarah is in Georgia, eating at a restaurant. She gets a terrible case of food poisoning. Jim owns the restaurant. Sarah wants to sue him and thinks she will be better off in Alabama court. Her lawyer does some research and finds that Jim owns an investment property in Alabama. Sarah thus brings a suit in Alabama, attaching his Alabama property quasi in rem.

Do not assume that Justice Scalia’s opinion is more precedential than Justice Brennan’s just because Scalia’s comes first. What probably happened is that Justice Scalia was originally writing for a majority, and the majority opinion always lays out the procedural history and the facts (concurrences and dissents typically lay out procedural history and facts only if they disagree with the way the majority puts them). But when Justice Scalia’s opinion didn’t receive a majority vote, and no other opinion did either, the Court kept the Scalia opinion first because it had the background sections. Had Justice Brennan swayed a fifth Justice to his side, his opinion would have become the majority opinion, would have come first, and would have been rewritten to include the background.

Class 9. Presence in the Forum; Consent to Jurisdiction

Read CopyPak Assignment Nine (104-108)

Skin first three cases (pp. 90-95), service documents (pp. 96-103)

The first set of cases for today show the limits on tag jurisdiction. How would you answer the following questions after reading those cases?

- What if you kidnap someone and take them across a state line to serve them? Is there personal jurisdiction?
- What if you are hoping to sue someone in California, and you are discreetly following him while he is hiking in Nevada, and he (without knowing he has done so) crosses the border into California? Can you serve him and get jurisdiction?
- What if you sue someone, and she shows up to argue that the court lacks personal jurisdiction, and you serve her while she is at the court? Is personal jurisdiction present?

A defendant can waive his objections to an exercise of personal jurisdiction and acquiesce in that exercise. That’s consent. Consent can also arise from a contract or other agreement. Does the contract at issue in Carnival manifest the Shutes’ consent to jurisdiction?
Class 10. Absent Defendants

Read CopyPak Assignment Ten (pp. 109-117)

How do McGee and Hanson implement/contradict Shoe? Are they consistent with each other? Why or why not?

One way to explain the difference between McGee and Hanson is through the maxim “bad facts make bad law”: some people think that the Court just found the sisters in Hanson so greedy that they wanted to reach the jurisdictional decision that hurt the sisters. But there is a good doctrinal explanation for the difference between the two. What is it?

Do you think World-Wide Volkswagen is consistent with Shoe?

What does the majority in WWVW mean by “foreseeability”?

As we will discuss in class today, even if an exercise of jurisdiction would be permissible under the U.S. Constitution, the State must have implemented that jurisdiction through a “long-arm” statute (so called because the State is reaching out its long arm to grab you). Some states (such as California) have long-arm statutes that exercise the full jurisdiction permitted by the Due Process Clause. Other states (such as New York) have long-arm statutes that list specific instances in which the State may assert jurisdiction and therefore exercise only portions of the jurisdiction authorized by the Due Process Clause. Why might a State choose not to exercise the full jurisdiction permitted?

Class 11. Absent Defendants, continued

Read CopyPak Assignment Eleven (pp. 118-123)

Read the notes cases very carefully, comparing and contrasting the facts and conclusions in each case. Link the name of each case to the principle it provides.

Calder is said to create an “effects” test – if you commit an intentional tort (like libel) that causes negative effects in a forum, you are subject to jurisdiction in that forum. Similarly, Burger King gives us the concepts of “purposeful availment” (you reached out and availed yourself of a State’s benefits, as in Shoe) and “purposeful direction” (you directed your activities at a State and caused harm there, even if you didn’t benefit therefrom). Why, if at all, are Calder and Burger King consistent with the Shoe test? What about unintentional torts? Could you be sued for negligence based on the effects test?

Why does Keeton say that the plaintiff’s connections with the forum are irrelevant? Is Keeton consistent with WWVW?

Why does Kulko come out differently from Burnham?

Remember the “stream-of-commerce” argument used about cars in WWVW. What about putting parts into commerce for inclusion in larger products? Is a manufacturer of widgets subject to jurisdiction in any state where its widgets end up, even if it sells widgets only to one assembler in one state, who uses the widgets in a gadget, and then distributes the gadgets to other states?

Burger King and Asahi seize on language from WWVW that the personal jurisdiction inquiry is about more than contacts: there are other fairness factors. What are those factors?

Do you have to consider fairness factors when a defendant is “at home” in a forum? The Court said no in Daimler (in a portion edited out of the version you read). Justice Ginsburg wrote for the Court: “True, a multipronged reasonableness check was articulated in Asahi, but not as a free-floating test. Instead, the check was to be essayed when specific jurisdiction is at issue. ... When a corporation is genuinely at home in the forum State, however, any second-step inquiry would be superfluous.”

Note that Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee (the sixth note case, mislabeled 5 on p. 123) gives another instance of “consent” to personal jurisdiction. Do you agree with the Court’s decision? What would be the consequences of the opposite holding?
Class 12. Limits on Shoe

**Read CopyPak Assignment Twelve (pp. 124-136)**

How does *Walden* refine on the notion of “availment” we have seen in earlier cases? Why is *Walden* not a *Calder*-effects-test case?

Does *McIntyre* mean that a foreign company need only use an independent distributor to avoid risk of suit in the U.S.? Does *McIntyre* make sense compared to *Shoe*? Does the *McIntyre* Court hold that there is a contacts problem, an *Asahi* problem, or both? Does the focus on New Jersey make sense? Would the result be different in federal court? See Rule 4(k)(2).

Class 13. Venue

**Read CopyPak Assignment Eighteen (pp. 169-175) (note that this is out of order in the CopyPak!); 28 U.S.C. §§ 1391(a)-(d), 1404, 1406**

A plaintiff can sue only in the specific federal district courts where she can show that venue is proper. She must also be able to obtain personal jurisdiction over the defendant in those courts. Would venue ever be proper in a place where personal jurisdiction is lacking? If not, what is the primary effect of venue?

Note that venue is different for corporations than for human individuals (compare 28 U.S.C. § 1391(c)(1) with 1391(c)(2) and (d)). Why these differences?

Do you think *Ferens* is an example of great lawyering, or of abuse of process?

A defect in venue is a waivable defect, and defendants frequently waive such defects for strategic reasons. Can the defense waive a venue defect in a *transfer* of venue?

SUBJECT-MATTER JURISDICTION

Class 14. Federal Question Jurisdiction

**Read CopyPak Assignment Thirteen (pp. 137-142) (note that this is returning to where we left off after Class Twelve); Rule 82**

A plaintiff must find personal jurisdiction over the defendant AND file in a proper venue AND file in a court that has *subject-matter jurisdiction* (SMJ) over her claim.

SMJ in the federal courts is determined both by the Constitution and by statute: Article III sets the limits of federal SMJ, and Congress then implements that SMJ by passing statutes. Congress has never implemented (and is not required to implement) the full scope of Article III. Federal subject-matter jurisdiction is also divided: while the district courts are the usual place to file claims that can be filed in federal court, some claims must be filed in specific courts or administrative agencies (e.g., tax claims in the United States Tax Court, claims against the United States for money damages in the Court of Federal Claims, claims for Social Security disability benefits with the Social Security Administration).

Federal courts are thus courts of limited jurisdiction, and oftentimes it is not possible to find SMJ over a claim in federal court. Such claims can almost always be filed in state courts. State courts are *not* courts of limited jurisdiction, but instead have courts of “general [subject-matter] jurisdiction.” Like the federal courts, they may allocate subject matters to different courts (it is common, for example, to have courts for family matters, juvenile matters, and probate matters).

SMJ may mean that a suit can be filed only in state court or only in federal court (called *exclusive jurisdiction*). Usually, *both* state and federal courts have SMJ over a claim (called *concurrent jurisdiction*), and the plaintiff may choose either. This means there is no necessary connection between
the court you are in and the law applied to your claim: state courts apply federal law, federal courts apply state law, and both courts apply the law of other forums (e.g., a federal court in Georgia can apply Alaska state law to a case; a state court in Idaho can apply New York state law to a case). These “choice of law” issues are covered in the course “Conflict of Laws.”

State courts hear federal-law cases all the time. Indeed (and ignoring a few exceptions), state courts were the only trial courts for federal-law cases until 1875, because that’s when Congress authorized federal SMJ over federal-law questions. The U.S. Supreme Court was the only federal court that heard federal-question cases before 1875, largely on appeal. (notes continue next p.)

Why is a defect in SMJ not waivable (as a defect in personal jurisdiction or venue is)?

Compare the language in Article III, section 2, with the language in 28 U.S.C. § 1331. Can you find any language supporting the idea that jurisdiction hinges on “the well-pleaded complaint”? Would it be constitutional to exercise federal-question SMJ over cases where the federal question arose only in the defendant’s answer?

“Well-pleaded” does not mean “well-written” or anything like that; it is in contrast to “artfully pleaded,” which means pleading that is trying to cheat on federal jurisdiction.

If a case is dismissed for lack of SMJ, this does not resolve the merits of the plaintiff’s claim, and thus the case is not necessarily over. (The case is “dismissed without prejudice” to the filing of further proceedings.) The plaintiff is usually able to pursue her case by finding a court that does have personal jurisdiction. She must start over again, filing the proper papers in the new court within the time allowed by the statute of limitations.

Class 15. Federal Question Jurisdiction, continued

Read CopyPak Assignment Fourteen (pp. 143-146); reread pp. 141-142

If the plaintiff sues directly under a federal law, so that the federal law creates her claim (or cause of action), there is always a federal question unless the plaintiff’s claim is so frivolous that it can’t proceed. But can there be federal SMJ when a state-law claim has a federal ingredient?

What is the test for “federal-ingredient-in-a-state-law-claim” SMJ as stated in Grable?

Merrell Dow, discussed in Grable, involved a state-law negligence claim against a large pharmaceutical company for selling a drug, Bendectin, that had caused horrible birth defects. 478 U.S. 804 (1986). Negligence requires that a plaintiff show that the defendant (1) had a duty of care to her; (2) breached that duty; and that (3) the breach caused (4) damages. The plaintiffs in Merrell Dow claimed that Merrell had a federal-law duty to use warning labels about the risk of birth defects; because they did not, that breach of duty caused the plaintiffs to have children with birth defects. Accordingly, the meaning of the federal Food, Drug, and Cosmetics Act (FDCA), was a key ingredient in the plaintiffs’ state-law negligence claim. The Court rejected federal-question SMJ over the claim, however, primarily because Congress did not authorize private suits under the FDCA; “We think it would *** flout, or at least undermine, congressional intent to conclude that the federal courts might *** exercise federal-question jurisdiction *** solely because the violation of the federal statute is said to be [an element of a claim] under state law, rather than a federal action under federal law.”

Many lower courts read the Merrell Dow decision as saying § 1331 required a federal claim to find federal-question SMJ; Grable rejects this, emphasizing that Merrell Dow itself emphasized the need for “sensitive judgments,” not “any bright-line rule.” Moreover, as Grable shows, there were other reasons to worry about federal-question SMJ in Merrell, foremost that allowing state-law negligence claims with federal ingredients into federal court would “attract[ ] a horde of *** filings ***. And that would have meant a tremendous number of cases *** [and] a potentially enormous shift of traditionally state cases into federal courts.”

Do you think the federal issue was of sufficient importance in Grable? Or did the Court wave the magic wand of “federal taxation” over the case?
In a later case, Gunn v. Minton, the Court clarified what it meant by the “necessary” and “substantial” prongs of the Grable test. Gunn involved a Texas attorney-malpractice case based on an allegedly improper interpretation of federal patent law. Even though the claim was under Texas law, its resolution depended on the interpretation of federal patent law. The Court clarified that a federal ingredient is necessary when it must be resolved to reach a judgment in the case; if there is an alternative, non-federal path to the judgment, the federal ingredient is not necessary. The patent-law issue was, in fact, necessary to the malpractice case: the plaintiff could not win unless he showed that the attorney screwed up federal patent law. 568 U.S. 251, 259 (2013). On the other hand, the Court clarified, a federal ingredient is substantial, not when it is important to the plaintiff’s case but when the implications of its resolution are important “to the federal system as a whole.” Id. at 260. In Gunn, only the malpractice case would be affected the interpretation of patent law:

Because of the backward-looking nature of a legal malpractice claim, the question is posed in a merely hypothetical sense: If [the] lawyers had raised a [particular patent-law] argument, would the result in the patent *** proceeding have been different? No matter how the state courts resolve that hypothetical “case within a case,” it will not change the real-world result of the prior federal patent litigation. [The plaintiff’s] patent will remain invalid. *** [T]he federal courts are of course not bound by state court case-within-a-case patent rulings. *** The present case is poles apart from Grable, in which a state court’s resolution of the federal question would be controlling in numerous other cases. *** There is no doubt that resolution of a patent issue in the context of a state legal malpractice action can be vitally important to the *** parties in that case. But something more, demonstrating that the question is significant to the federal system as a whole, is needed. That is missing here. [internal quotation marks and citations omitted]

Class 16. Diversity Jurisdiction over Human Persons

Read CopyPak Assignment Fifteen (pp. 147-156)

By definition, a diversity case involves a federal court hearing a state-law claim. If the claim arose under federal law, SMJ would be present under § 1331.

Look carefully at the way Article III, section 2 and 28 U.S.C. § 1332 define the diversity jurisdiction. How does the Court interpret § 1332(a)(1)’s term “citizens of different States”? (Note the Mas court’s reliance on Strawbridge v. Curtiss.) Why require complete diversity? Does the Constitution require it?

You are a citizen of the state where you are domiciled. What does that mean, according to Mas, Sheehan, and Lundquist? Humans have only one domicile, as the cases makes clear (otherwise Mr. Gustafson and Mr. Lundquist could presumably have been deemed a citizen of both states).

If the district court had reached the opposite conclusion in Sheehan, holding that Mr. Gustafson was a citizen of Minnesota, would the court of appeals have affirmed? What is the standard of review?

To be a citizen of a State, you must be also a citizen or permanent resident of the U.S.; if you are not a citizen or permanent resident of the U.S., then you are a citizen or subject of a foreign country under § 1331(a)(2) and (3). Oddly, however, you can be a citizen of the United States but not a citizen of a State! If you are domiciled abroad, then you are not domiciled in any State, and thus you are not a “citizen of [a] State[]” under §1332(a)(1). But if you have retained your U.S. citizenship, you are not a “citizen[] or subject[] of a foreign state” under §1332(a)2). Therefore no provision of 1332 confers diversity SMJ over you. When a Hollywood studio tried to sue Elizabeth Taylor for breach of contract in federal court in California, the case was dismissed for lack of diversity SMJ. She was domiciled in London, living with her husband Richard Burton, but she was still an American citizen.

Do we still need diversity SMJ in our interconnected, interstate United States? Why or why not? How do we benefit from having federal courts hear state-law cases? Why not leave those cases to the States?
Class 17. Diversity Jurisdiction over Corporations

Read CopyPak Assignment Sixteen (pp. 157-162); reread 28 U.S.C. §§ 1332(a)-(c), (e)

Note, again, how the artificial nature of corporations leads to complications in the law. Because corporations (unlike human beings) can be operating in multiple places at the same time, serious questions arise about what constitutes the “principal place of business.” Do you agree with the Supreme Court’s resolution in *Hertz*? (notes continue next page)

How does *Hertz* affect employees who live in Phenix City, AL, and work in a plant in Phenix City which manufactures 100% of the goods produced by a company headquartered in Columbus, GA, just across the Chattahoochee?

What does *Americold* say about unincorporated associations? If the United Mine Workers have members in virtually every state, where could it be sued by a plaintiff who has no federal question?

Class 18. Diversity Jurisdiction: Amount in Controversy

Read CopyPak Assignment Seventeen (pp. 163-168); Rules 18, 20-21, 82

What are the policy considerations behind limiting federal diversity cases to those matters that exceed $75,000? Is that figure outdated? Many federal judges recommend raising the amount in controversy for diversity cases to as much as $1,000,000.

*Quinones-Velazquez* illustrates the standards by which a court is to judge whether a plaintiff (or plaintiffs) meet the amount-in-controversy requirement. What does a defendant have to show to get a case dismissed for an inadequate amount in controversy?

What if a plaintiff sought $80,000 in its complaint, and later recovers only $60,000. Does that retroactively defeat diversity SMJ? Do you see why the answer has to be no?

What if a plaintiff seeks $80,000 in its complaint, and in later papers, after some discovery has occurred, decides that it is really owed $60,000? Does the court then have to dismiss the case? The general rule is that the amount in controversy “is determined on the basis of the facts and circumstances as of the time that an action is commenced in a federal court or arrives there from a state court by way of removal.” Wright & Miller, Federal Practice & Procedure § 3702.4. Thus later events cannot “cannot destroy the district court’s subject matter jurisdiction once it has been acquired.” *Id.* Some courts, however, have allowed dismissal (or remand after removal) based on newly acquired evidence or admissions regarding the amount in controversy. Make sure to research the law of the relevant jurisdiction if this issue arises in a case you are litigating.

What if a plaintiff has several claims, but no one claim by itself meets the amount in controversy? The rule is that an individual plaintiff may aggregate her claims against a single defendant. But multiple plaintiffs, each of whom has a claim for an insufficient amount, cannot aggregate their claims to meet the amount-in-controversy, nor can a single plaintiff aggregate claims against multiple defendants. Illustrations:

- Andre, a citizen of Alabama, has six claims against the Smith Motor Company, a citizen of California and Delaware. Each claim is for $15,000. Andre may add the claims together to reach an amount in controversy of $90,000. Because there is also complete diversity, § 1332 is satisfied.
- Maria and Joe, both citizens of Georgia living temporarily in Alabama, have claims against their Alabama landlord (who is a citizen of Alabama) for his violations of their rental agreement. They each claim $50,000. They are not allowed to aggregate, and neither’s claim is independently enough to meet § 1332’s amount in controversy requirement. Thus there is no diversity SMJ under § 1332.
- Sarah, a citizen of Alaska, was in a three-car accident while traveling in California. She sues the driver of the other two cars, both citizens of California, claiming $75,000 from each.
$75,000 is not enough to satisfy § 1332, which requires an amount that exceeds $75,000. Nor can Sarah aggregate her claims, because they are against different defendants. There is no diversity SMJ under § 1332.

What if one plaintiff meets the amount-in-controversy requirement, but her co-plaintiffs do not? So long as complete diversity is present, there may be “supplemental jurisdiction” over the co-plaintiffs’ claims. See 28 U.S.C. § 1367 (a statute covered in Advanced Civil Procedure or Complex Litigation).

Rule 18 provides for liberal joinder of claims, and Rules 20 and 21 provide for liberal joinder of parties. The Rules may seem to permit joinder so broad that a joined party or claim might create SMJ problems (for example, the party to be joined would defeat diversity). However, the Rules cannot—and do not claim to, see Rule 82—change the law of jurisdiction. If personal jurisdiction or SMJ would be lacking over the joined party or claim, the joinder is prohibited.

Rule 21 gives the courts ways to deal with improper joinder. So, for example, a judge can dismiss a party who is joined but then is discovered to defeat diversity SMJ.

You might be surprised to read that the federal question statute (28 U.S.C. § 1331) once had an amount-in-controversy limitation; cases involving $500 or less were left for the state courts to decide. When you remember that Congress did not implement federal question jurisdiction until 1875 (see Class 14) and left all federal-question cases to the state courts before then, this amount-in-controversy limitation is less surprising.

[READING ASSIGNMENTS FOR REMAINDER OF SEMESTER WILL BE PROVIDED BY THE END OF AUGUST]
CLASS DATES AND ASSIGNMENTS

Our class schedule is M/Tu/Th, 10:45-12. That gives us too many minutes for the 4 credits you are earning. Accordingly, we will not meet on Thurs., August 31, or Mon., November 20. (These are not law-school cancelations: they apply only to this class.)

On two of the scheduled class days (Thurs., September 28, and Thurs., October 19), you will take mandatory pass/fail practice examinations as described in the syllabus.

Your final is currently scheduled for Mon., December 4, at 1:30 p.m.; planning around your other exams, I have scheduled a review session for 1 p.m. on Fri., December 1 (room TBA).

In the schedule below, each class is numbered. That number corresponds to the numbered reading assignments on the syllabus. Make sure to read the assigned material for each class.

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### NOVEMBER

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### DECEMBER

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PLEASE READ THIS DOCUMENT CAREFULLY; YOU ARE RESPONSIBLE FOR ITS CONTENTS.