

“The etiquette of ritualized battle”

SELECTING THE PROPER COURT

PERSONAL JURISDICTION, the first ring

- the power of a court to order a person to appear before it
- a state having jurisdiction over a *defendant*, this applies if the person has significant connections (lives in or does business in the state) **focuses on fairness to the defendant** *because the defendant is the involuntary party*
 - domicile
 - in state service ☞ *Pennoyer*
 - consent
 - continuous/substantial contacts
 - minimum contacts ☞ *Int’l Shoe*

Pennoyer v. Neff: plaintiffs are not free to bring suit wherever they choose

- Holding: due process requires that a defendant be served in the forum state in person or must consent

14th Amendment: no state shall deprive life, liberty or property without due process

- Due process = state must have personal jurisdiction over defendant before state can adjudicate rights and responsibilities

FRCP 12 (b) defenses, (g) joining motions, (h) waiving and preserving defenses
12(b)(6) motion = dismissal for failure to state a claim

Article 4: Full faith and credit clause

International Shoe v. Washington

- Establishes minimum contacts test “minimum contacts jurisdiction is limited to claims arising from the defendant’s contacts with the forum state”
- Jurisdiction depends upon the “quality and nature” of the contacts

General Jurisdiction: “continuous and systematic contacts”; appropriate when the defendants activities in the state are so substantial and continuous that she can be subject to suit in that state for ANY CLAIM

Individuals ☞ domicile

Corporations ☞ incorporated, principal place of business

The Shoe Spectrum

No contacts	Casual/isolated contacts	Single act	<i>Continuous but limited contacts</i>	<i>Substantial or pervasive contacts</i>
No juris	No juris	Specific jurisdiction	Specific jurisdiction	General jurisdiction
		<i>McGee v. Int'l Insur.</i>	<i>Burger King v. Rudzewicz</i>	<i>Helicopteros Nacionales</i>

SPECIFIC V. GENERAL JURISDICTION

Specific ☞ COA/claim must arise from the minimum contacts

General Jurisdiction ☞ person can be sued for any COA/claim in that state

PLACING PRODUCTS INTO THE STREAM OF COMMERCE

- *Worldwide VW v. Woodson*
 - no diversity b/c defendant had not yet arrived in his new home state (recal domicile requires presence plus intent to remain indefinitely)
 - Requires **purposeful availment** of the benefits and protections of the state's laws
 - Purposeful availment = expectation of purchase by forum state consumers
 - Requires efforts at marketing and active sales in forum state
- *Asahi*
 - Stream of commerce
 - components manufactured out of state
 - Holding: no PJ b/c **awareness** that products will reach a forum state **is not enough** to establish minimum contacts with offending notions of fair play and substantial justice
 - Reasonableness Test:
 - (1) burden on defendant
 - (2) interests of forum state
 - (3) interests of plaintiff
 - (4) interstate efficiency
 - (5) social policies

Creating Ongoing Commercial Relationships *Burger King v. Rudzewicz*

- Purposeful availment to the protections of FL law
- Quality and nature of contacts (continuous but limited)

CONSENT TO JURISDICTION: *Carnival Cruise v. Shute*

- Enforcement of a forum selection clause
- Courts acknowledge that there was no bargaining parity, BUT
 1. Special interest in limiting forum

2. Eliminates confusion
3. Conserves resources
4. Passengers save money
5. No bad faith motives

*this provision allows defendant to hale an unsuspecting and unwilling plaintiff to a distant forum

What remains of Pennoyer v. Neff?

Hanson v. Denkla: necessity of defendant's purposeful availment to the protection of the laws of the forum state

McGee: solicitation of business

In Rem (the thing) and Quasi-In Rem (against persons rather than property)

Shaffer v. Heitner: extends Int'l Shoe min. contacts test to all types of jurisdiction; this does away with classifications of jurisdiction

- If def. voluntarily travels to and is served in forum state, there is PJ
- If you have property in a state, and the dispute is over the property (in rem)
- If you have property in a state, and the dispute is not over the property (quasi in rem)

Long Arm Statutes laws that authorize courts to exercise PJ over defendants based on certain types of contacts with forum state (for example owning land or transacting business)

Gibbons v. Brown standard: substantial & not isolated

Constitutional Requirement of Notice

Mullane v. Central Hanover Bank

- Constructive notice (publication) is not enough for a known person whose whereabouts are also known
- Supreme Court shift toward reasonableness

Rule 4 Summons

- Serving a summons establishes PJ if: court has jurisdiction, properly joined, federal statute authorizes

SUBJECT MATTER JURISDICTION, the second ring

To determine individual state citizenship

- Present domicile
 - Intent to remain indefinitely
- Recall: *Hawkins v. Masters* "floating intent" to move is not enough

Article III, Sections 1 and 2

1. Establishes supreme court and gives congress power to establish district courts
2. Federal Jurisdiction over cases of federal questions or in diversity

Amendment X Gives states powers not delegated to the Feds

28 USC 1331 and 1332

- District courts have juris. over all civil actions arising under the Constitution, laws or treaties of the U.S. (federal question)
- District courts have juris. over civil actions where that matter in controversy exceeds \$75,000 and is between diverse parties

How to determine citizenship of a state:

1. Domicile (def: physical presence + intent to remain)
 2. intent to remain indefinitely
- * you retain domicile until you establish a new one

Diversity Jurisdiction

Hawkins v. Masters

A floating intention to move is not sufficient to satisfy the intent prong of the Strawbridge Rule

Strawbridge Rule

- The existence of a single party w/same state citizenship as that of an opposing party will destroy diversity
- b/c both are home state litigants
- Exception ☹ class action suits

Complete Diversity: when plaintiff and defendant are from different states

Redner v. Sanders

- No diversity of citizenship

Sadeh v. Farouki

- Language of the statute seems to expand diversity juris.
- 2 exceptions to literal interpretations of statutes
 1. Intent was different than applied language
 2. plain language raises constitutional problems

28 U.S.C. 1332 (c) Rule for determining Corporation citizenship

1. incorporation
2. principal place of business (you can only have one principal place of business)
 - Nerve Center Test (executive decisions)
 - Muscle Test (everyday business activities)

Kelly v. U.S. Steel

Amount in Controversy must exceed \$75,000

- amount in controversy is determined at the beginning of the proceedings
 - St. Paul Mercury Rule: dismissal only if it appears to a legal certainty that the claim is for less than \$75,000
- the required amount applies to DIVERSITY ONLY, not federal question cases
- Aggregation

- A single plaintiff can aggregate separate claims against a single defendant
- 2 plaintiffs can't aggregate against a single defendant if the claims are separate and distinct
- 2 plaintiffs can aggregate if they have a common undivided interest
- Class actions: only 1 plaintiff must meet the amount requirement

28 USC 1367 Supplemental Jurisdiction

** before you apply 1367, don't forget to ask if there is independent jurisdiction, if so, you don't need supplemental juris. rules*

(a) district courts have supplemental jurisdiction over claims that are related to a claim in which there is original jurisdiction as long as they form part of the same case or controversy, arises from the same nucleus of operative facts

(b) restricts (a) no supplemental jurisdiction over claims by plaintiffs if founded on diversity over persons made a party under rules 14, 19, 20 or 24

(c) district courts may decline to exercise jurisdiction if

1. the claim raises a novel or complex issue of state law
2. the claim substantially predominates over the claim with original juris.
3. the district court has dismissed all claims over which it has original jurisdiction
4. other compelling reasons

Louisville & Nashville Railroad v. Mottley

Def of "arising under" from 1331 © if it is apparent from the face of the plaintiff's complaint that the COA was created by federal law or federal law is an essential component of the claim

Rule 12 (h)(3) If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.

Removal

28 USC 1441 Actions Removable Any civil action brought in state court of which the district courts of the U.S. have juris, may be removed by the defendants

1446 Procedure for Removal a short and plain statement

1447 Procedure After Removal

1448 Process After Removal

VENUE, the third ring

1391 Venue

1404 (a) Courts can transfer cases

Transfer and Forum Non-Conveniens

- allows for transfer in federal court
- only to another court where case could have been brought
- reasons: local prejudice, availability of witnesses
- Recall © Piper v. Reyno
 - Scottish plane crash, American manufacturer

- Motion to dismiss granted b/c “if the possibility of an unfavorable change in law is given substantial weight in the FNC inquiry, dismissal would rarely be proper”

STATE LAW IN FEDERAL COURTS

The **Erie Doctrine** in a diversity case, federal district courts must apply the same law that state courts would have applied (including state conflict of law statutes)

- There is no nationwide common law
- Vertical uniformity, not horizontal uniformity

1652 State Laws as rules of decision (Rules of Decision Act)

2072 The Supreme Court has the power to proscribe district court practices, procedural only...no substantive rules allowed

Limits of State Power in Federal Courts:

1. *Swift* ☹ fed court doesn't have to follow case laws of the state, only statutes, federal common law
2. *Erie* ☹ RDA, follow law that state court would have applied
 1. Prevent forum shopping
 2. Promote fairness, prevent inequity of administration of law
3. *Klaxon* ☹ if the case is transferred, law of original state applies (avoids forum shopping), application of state's conflict of law rules
4. *Guaranty Trust v. York* ☹ outcome determinative test (whether the case would have been determined differently in state court)
5. *Byrd* ☹ retreat from *Guaranty*, constitution is more important than Erie policy of maximum uniformity; fed courts can use their own procedural rules
6. *Hanna* ☹ State procedural rules do not override federal rules, removes Federal Rules from the scope of Erie

So ask yourself: is the rule constitutional?

- If yes, follow the rule
- If a rule of civ pro, and a rule under the rules enabling act, and it is constitutional, then the rule applies and is procedural

LITIGATION PROCESS

Damages: no damage, no recovery

1. What is the COA? (i.e. does a legal remedy exist)
2. What is the harm?

Remedies

- Specific: restore directly and specifically that which def has taken from plaintiff
- Substitutionary ☹ \$, most claim are substitutionary b/c most claims are for debts and we are a credit economy

Punitive Damages: designed to punish def for wrongful behavior (must be willful and

wanton)

- *State Farm v. Campbell* ☹ victims of a car crash join forces to go after Ins. Co., policy to meet corporate fiscal goals by capping payouts, exposed an egregious pattern of behavior
 1. Degree of reprehensibility
 - a. Physical vs. economic harm
 - b. Tortuous conduct
 - c. Financial vulnerability
 - d. Repeated actions or isolate incidents
 - e. Intentional malice or mere accident
 2. Disparity between the harm and the punitive damages awarded
 3. Difference between damages awarded and those awarded in comparable cases

Specific Remedies Rule 65

- Equitable relief = injunction, constructive trust, rescission, cancellation, reformation, an accounting, an action to quiet title
- *Sigma v. Harris* ☹ employee agrees not to work for competitor, does it anyway, court must balance interests
 - Injunction not to work for competitor
 - Balancing of interests, hardship on plaintiff (irreparable injury of losing trade secrets) vs. hardship on defendant (job loss)

Declaratory Relief: you know someone isn't going to pay back a loan, but loan isn't due for 3 years

Provisional Remedies (preliminary injunctions and temporary restraining orders)

Preliminary Injunctions Rule 65

- Granted prior to litigation: time sensitive
- *Inglis v. Continental Baking Co.*
 - The walmart effect, def is selling bread for unfairly low prices, undercutting competition to put him out of business
 - Change in standards for granting provisional remedies from "probability of success on the merits" to "a fair chance of success"
- Judge will employ test to decide
 - Irreparable injury
 - Will P likely prevail?
 - Will D be harmed less than P will be helped
 - Public interest

Temporary Restraining Orders

- a. must be immediate need to stop irreparable injury
- b. must be for a limited amount of time
- c. does not require notice to the other party

Fuentes v. Shevin ☹ notice is required before deprivation of property in order to provide the opportunity for a hearing

- Follow Due Process even if it is a temporary deprivation of property
 - Notice
 - a hearing

PLEADING (THE LAWSUIT)

The Complaint

Rule 3: Commencing an Action ☺ file a complaint with the court

Rule 8: General Rules of pleading

- 8 (d) (2) you can make alternative statements
- Short and plain statements including
 1. Grounds for jurisdiction
 2. Claim
 3. Demand for relief sought

Pleading is about allegations, proof comes from discovery etc...

A legal claim has 2 elements

1. Invokes some body of law
2. The set of facts fall under the body of law

Rule 11 Signing Pleadings, motions, other papers; representations to the court; sanctions

- By signing a paper, attorney certifies that claim is not improper, is warranted by law and has evidentiary support
- Ethical standards in pleading motions (not other behavior or communication)

Christian v. Mattel the Barbie Case, Hicks was a jerk but that is no reason to dismiss, actions fell outside the scope of Rule 11

Responding to the Complaint

1. Default: failure to respond, courts don't like default judgments
2. Pre-Answer Motions/Motion to Dismiss
 - 12 (b) (6)
 - 12 (g) joining motions
3. Answer, Affirmative Defenses
 - responds to the allegations,
 - states any counter claims,
 - should mirror the complaint
4. Ethical Standards

Rule 15 Amending the Pleadings

- 15 (a)(1) may amend pleading once (2) or if other side or court allows it
- 15 (c) when the amendment relates back, statute of limitations
- *Beeck v. Aquaslide*

PRETRIAL DISPOSITION

Discovery broad rights to demand testimony and documents that are relevant

- Interrogatories **33 (b) (3)** best for basic info at the start of litigation
- Requests for documents **34** requires opponent to open files
- Depositions **30 (b) (1)**

Frequently leads to settlement b/c it helps the parties value their claims

Rule 26 Discovery Rules

26 (a) (1) automatic disclosure of certain information

26 (b) (2) (c) motions to limit discovery if

- Duplicative
- Ample opportunity to obtain
- Burden of expense outweighs the benefit

26 (b) (3) work product privilege

- Not discoverable if prepared in anticipation of litigation, unless there is a substantial need for materials and there is no other way to get those materials
- 26 (b) (3) (B) from *Hickman v. Taylor*: protects against disclosure of mental impressions, conclusions, opinions or legal theories of a parties attorney/representative

26 (f) requires parties to meet and confer, planning for discovery

Rule 30 Depositions by Oral Examination

30 (c) (2) objections on the record

- **Relevance 26 (b) (1)**
 - governs the scope of discovery
 - any non-privileged matter that is relevant to the any party's claim or defense
 - Privileged = atty./client communications or other protected relationships
 - Relevant = proves or disproves something at issue or something that the law says matters (issues framed by the parties' pleadings)
 - Something may even be discoverable if it could lead to discovery of admissible evidence
 - *Davis v. Precoat*: discrimination case, lead to discovery of relevant evidence
 - *Steffan v. Cheney*: the issue was the statement, not the conduct...so questions re: conduct were not relevant to the deposition
- **Duty to Preserve Evidence** Duty to preserve evidence(anything that is vital to prove or disprove case): parties have a duty not to destroy evidence; duty to prevent spoliation begins when litigation is foreseeable *Silvestri v. GM*
- **Stages of Discovery**
 - Required disclosures 26 (a) (1) and (2)
 - Interrogatories and admissions 33, 36, 37
 - Documents and other tangible things 34, 35
 - Depositions 27-32
- **Privilege and Trial Prep**
 - **26 (b) (1)** "Unless otherwise limited by court order" court has some authority to limit discovery
 - "non-privileged" information: bars inquiry into communications between atty and client in the course of legal representation, also other

- privileged relationships
 - work product protection **26 (b) (3) Hickman v. Taylor**(attempts to secure mental impressions, oral statements and written statements)
 - barred: documents prepared in anticipation of litigation that can be obtained in another way
 - not barred: if you show a substantial need
 - barred: “opinion work product” **26 (b) (3) (B)**
 - not discoverable if prepared in anticipation of litigation
 - work product privilege
 - unless: substantial need for materials and no other way to get those materials
- **Experts 26 (a) (2)**
 - Typically testify about inferences that could be made from the facts using their special knowledge
 - The rules require disclosure of expert testimony at least 90 days before trial
 - **26 (b) (4) (B)** non-testifying experts not usually subject to discovery of facts known or opinions held
 - ii exceptional circumstances: if there is no other way to get the info, and it wasn’t your fault (*Thompson v. Haskell*)
 - *Chiquita v. Bolero* ☹ court doesn’t allow discovery b/c Bolero was not precluded from their own examination
 - Before and expert can testify: establish expertise
 - Expectation that each side will do his own work
- **Privacy**
 - **26 (c) (1)** protective orders to prevent annoyance, embarrassment, oppression, or undue burden or expense
 - *Kmart v. Stalnacker*: sexual harassment case, discovery is ok for involuntary relations, but not voluntary ones
 - **35 Mental/Physical Examinations** condition must be in controversy, for good cause, must specify time, place manner, conditions, scope, who will perform
- **E-discovery**
 - **26 (b)** if not privileged, Rule 34 recently amended to clarify that e-data is subject to discovery as outlined by Rule 26
 - **26 (f)** discussions about data preservation
 - **34 (a) (1) (A)**
 - **34 (b) (2) (E) (ii)** you can’t sanitize documents
 - *Aguilar v. Customs* ☹ Meta data is discoverable if
 1. Relevant and
 2. Not privileged
- **Sanctions**
 - **37** parties can move to compel disclosure, but must try informally first, court may define scope of required discovery + compelling discovery + sanctions
 - **30** sanctions for impeding fair examination
 - **26 (g)** sanctions on the signer for non-compliance
- **Controlling Discovery Abuse Zubulake v. UBS**

- Duty to preserve evidence: relevant to litigation (or likely to lead to relevant information)
 1. Duty to preserve
 2. Destroyed w/culpable state of mind (in bad faith)
 3. Destroyed evidence was relevant
 - * if you can prove #2, #3 is also proved

Resolution w/out Trial

- **Default & Dismissal**
 - **Default 55** allows plaintiff to get a result if defendant ignores
 - **Dismissal 41 (b)** if plaintiff fails to prosecute, defendant can move to dismiss...an adjudication on the merits
 - *Peralta* ™ courts don't like default judgments
- **Negotiation & Settlement** cheaper and faster than trials, benefits: parties agree and it controls risk
 - *Matsushita v. Epstein* a settlement in 1 court can settle claims in other courts
- **Summary Judgment 56** no need to proceed b/c there is not "genuine issue as to material fact"
 - **56(e)** Affidavits must be: based on personal knowledge, admissible at trial, competent to testify
 - *Celotex* ™ non-moving party (defendant) can't show they were exposed, "she can't prove it was me!" Rather than "it wasn't me"
 - *Bias v. Advantage* ™ basketball star dies from coke overdose, affidavits from parents and teammates were not contradictory, therefore, no issue as to material fact
 - **12(b)(6) vs. 56(e)**: 12b6 after pleadings (court only looks at complaint), 56e after discovery (court looks beyond the pleadings)

Parties and Claims

-Remember: Join the parties first with rule 20, then join claims with 13 or 18

-Principal of broad joinder clashes with requirement of subject matter jurisdiction over every claim 28 USC 1367

- **Joinder of Claims**
 - **By plaintiff 18** authorizes a pleader to assert as many claims as he has against any party involved
 - **18** plaintiff may join all claims (not compulsory)
 - **14(b)** plaintiff can assert claims against the 3rd party defendant if they arise out of the same transaction as the original claim
 - **WARNING** subject matter jurisdiction rules still apply
 - **By defendant** ™ **Counterclaims** "arises out of a transaction that is the subject matter of the opposing party's claim"
 - **13 (a) compulsory** arises out of the transaction or occurrence and does not require adding another party over whom the court cannot acquire jurisdiction, use it or lose it
 - *Plant v. Blazer* ™ Logical Relation Test: counterclaim must arise from the same aggregate of operative facts as the original claim
 - If compulsory, Federal Court has jurisdiction (ancillary jurisdiction)

- Other possible tests to determine if a claim is compulsory
 - Are the issues of fact and law largely the same?
 - Would res judicata bar a subsequent suit?
 - Same evidence?
 - **13 (b) permissive** the counter claim must have an independent jurisdictional basis
 - **Crossclaims 13 (g)** claims asserted by a defendant against a co-defendant must arise “out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim”
- **Supplemental Jurisdiction 1367** Unless jurisdiction is based on diversity OR the courts decide not to, the district courts have jurisdiction over claims that “form part of the same claim or controversy” (arises from the same nucleus of operative facts)
 - No supp. juris. if founded on diversity or made a party under rules 14, 19, 20, 24
 - Court may decline juris. if:
 - Novel or complex issues of state law
 - Substantially predominates
 - No more claims remain w/original juris.
 - Catch-all, exceptional circumstances
- **Joinder of Parties**
 - **By plaintiff 20 (1)** arising out of the same transaction/occurrence AND common question of law or fact
 - **By defendant 13, 14**
 - **Compulsory Joinder 19 Essentials**
 - 19 (a) Parties to be joined if feasible
 - i. 19(a)(1)(A) court can’t accord complete relief without th party
 - ii. 19(a)(1)(B) ability to protect her interest will be impaired, exposure to multiple/inconsistent obligations
 - 19 (b) What do when the absentee should be joined but cannot be
 - Go forward without party
 - Dismiss b/c it would be improper to proceed
 - Go forward, but try to craft the judgment to provide adequate relief
 - **Intervention 24 Interlopers** permits a litigant to force her way into litigation
 - 24(a)(1) Intervention as a right
 - 24(a)(2) Permissive intervention
 - claim of interest relating to the subject matter of the action
 - the interest may be impaired if not allowed to intervene
 - absentee’s interest is not adequately represented by the parties
 - **Interpleader 22, 1335, 1397, 2361** “persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants” a device that gets everyone in the courtroom and results in a judgment that binds everyone ex: multiple claims to the same \$100 bill

Cohen v. Republic of the Philippines ☹ policy reasons

- **Class actions 23**
 - **Certification**
 1. must meet all requirements of 23 (a) [do common issues predominate] AND
 - Numerosity
 - Commonality
 - Typicality
 - Adequacy
 2. must fit into one of the categories in 23 (b) [is class action a superior method of adjudication]

TRIAL

Recusal 455, lawyers can request recusal and judges can refuse

1. courts must seem to be free from bias
2. we can't have recusal on demand

In Re Boston's First

Judgment as a Matter of Law/Directed Verdict 50 (a) (1) a party has been fully heard on an issue and the court finds that no *reasonable* jury would have a “legally sufficient evidentiary basis to find for the party on that issue”

Judgment Not Withstanding the Verdict 50 (b) renewed motion for judg. as a matter of law; this is the same as 50 (a), it just is delayed until after the jury makes a decision

- so why not just grant the d.v. in the first place? appeals
 - judge grants d.v. ☹ p appeals ☹ appellate court reverses d.v. ☹ case must be retried from beginning
 - D requests d.v. at close of evidence ☹ judge denies or defers ☹ case goes to jury, finds for P ☹ D renews motion for JNOV ☹ Judge grants JNOV ☹ p appeals ☹ appellate court finds evidence legally sufficient to go to jury ☹ appellate court orders judgment entered on jury verdict, no retrial necessary
- Limitations: 1. 10 days after entry of judgment 2. You can only renew if you made the same motion before the verdict

Motion for a New Trial 50 (c) (d), 59 flawed procedures, flawed verdicts “against the clear weight” of the evidence

- Its easier to get a new trial b/c the standard is “against the clear weight” rather than reasonability of the jury (as in jug. as matter of law)

FORMER ADJUDICATION

CLAIM PRECLUSION Res Judicata

Prerequisites to Claim Preclusion

1. there must be a final judgment
2. judgment must be “on the merits”
3. claims must be the same in the first and second suits

4. the parties in the second action must be the same as those in the first (or have been represented by/in privity to a party in the previous action)

Federal definition of a single claim comes from the joinder rules ☞ transaction or occurrence test

“On the merits”

On the merits (precludes claim)	Not on the merits (no preclusion)
Full trial with verdict and judgment	Dismissal for improper venue
12 (b) (6) motion to dismiss...according to the supreme court, although jurisdictions differ	Dismissal for lack of personal jurisdiction
Summary judgment	Failure to join a party under rule 19
Most dismissals: rule 41(except for lack of juris, improper venue and failure to join under rule 19)	

ISSUE PRECLUSION Collateral Estoppel

- dissects issues and excludes properly decided issues
- Prerequisites
 1. issue in 2nd case must be same as the first
 2. issue must have been actually litigated
 3. even if an issue was litigated, no bar unless it was actually decided
 4. no bar unless the decision on the issue was necessary to the court’s judgment

APPEAL

Presumption that trial court’s decision is correct

On appeal, courts only make decisions about specific issues, not about the entire case

What can be reviewed?

- If you would have gotten the same relief, you can’t appeal
- You must have an adverse judgment
- You must present to the trial court the contentions upon which you want rulings

Final Judgment Rule

- Jurisdiction of Appellate Courts is jurisdiction over appellate review
- A decision is final when litigation ends “on the merits and leaves nothing for the court to do but execute the judgment”
- An Exception: 1292
 - (a) establishes jurisdiction over interlocutory decisions
 - (b)controlling question of law, substantial ground for difference of opinion, immediate appeal from the order may materially advance ultimate termination of the litigation

Standard of Review 52 (a) (6) findings of fact, whether based on oral or documentary evidence, must not be set aside unless clearly erroneous

Anderson v. Bessemer City ☞ appeals ct. cannot substitute its judgment of the facts,

reverse only if there is a definite and firm conviction that a mistake has been committed; as long as it could be correct, its not a clear error

1. De Novo: appeals ct makes a fresh determination of questions of law
 - Most invasive type of review
 - Only for questions of law
2. Middle Tier: review on rulings as to facts, appellate court normally defers unless definite and firm conviction that a mistake has been made
3. Clear Abuse of discretion: undisputed error, very rare