R 12(b) May be asserted in a motion to dismiss or in answer as an affirmative defense.

* ***R 12 (b) (6) Failure to state a claim = failed to state plausible claim.***

Themis 46

Dismissal for failure to state a claim: Legal sufficiency.

IDEA: complaints that do not state a claim establishing entitlement to relief should be dismissed.

* Claim dismissed if it is either
* 

What you have to say in order to satisfy R 12 (b) (6)?

Legal sufficiency

Ex. Deck

Issue: Is the claim legally sufficient? Is airspace trespass legally actionable?

Law 50 ft.

Fact: 7 ft. : then, yes, you violated the law.

* The court will look the complaint the most favorable to the plaintiff.
* Yes, so YES Defendant violated the law.

Ex. If Law says, “***reasonable*** use and enjoyment of the property for satellite.? 📡📡📡🛸🛰🚀🚁🗼?

* Judge will consider, “***as a matter of law***”, this is Unreasonable or reasonable.
* No no reasonable jury will find that these facts violated the law.
* The judge will grant the motion to dismiss.

Themis 47

Dismissal for failure to state a claim: Factual insufficiency

Twoqbal

* What factual allegations are required for a complaint to effectively state a claim?
* 예를 들어, 1월2일 지각한 학생에게 꾸짖은 교수: 집에 갔더니 1월 3일 앞 마당의 조화가 망가져 있었음. 교수가 컴플레인:
* 1. My pumpkins were smashed, and
* 2. Mr. Jones did it because
* 3. He had a motive (that Mr. Jones was mad at me)

🡪 this is LEGALLY SUFFICIENT because it describes an actionable violation of law.

HOWEVER< is it ***factually*** sufficient?

🡪 증거 없음

🡪 In order to make the complaint “***plausible***,” Complain must include enough facts to state a claim for relief.

🡪 Twombly (Antitrust CASE)

Independently not to compete agreement.

Violated

🡪 FACTS sufficient to support the violation of antitrust law?

🡪 The agreement itself is ….

🡪 Enough factual detail to make it plausible. The phone companies parallel conduct alone does not make the alleged agreement plausible.

Dissent: The behavior alleged is consistent with an agreement; that should be enough to survive a motion to dismiss and to allow discovery.

🡪 Plausibility

But Iqbal has an impact that has a lot of legal knowledge.

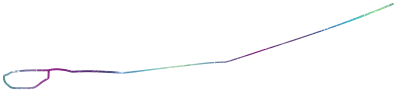
🡪 EX. Unemployment case: how much knowledge your employer has.

🡪 EX. Prison cell : it depends on how much knowledge people have about.

TA October 11th 2023

1. Proper Party (당사자주의)
2. Sufficient Process
3. R.12 Dismiss a Case
   1. R. 12 (b)

1367 Supplemental Jurisdiction



(b) If anchor is solely based on Federal Question, No supplemental jurisdiction.

헌법1332- Diversity: Federal Question + diversity

+ joinder

Themis 21

Tag-along claims: Supplemental jurisdiction.: Same case or Controversy?

Supreme Court: as long as the state law claim is so connected to the federal claim that it forms part of the “same” “case or controversy”, Article 3 permits the federal court to hear the claim.

Congress later codifies this principle by a statute specifically authorizing and limiting supplemental jurisdiction.

Oct 10th 2023

United Mine Workers v. Gibbs

* Unfavorable Labor Practices

🡪 Federal Claim / State Claim 🡪 Federal Court.

* + Unfavorable Labor Practices
  + No diversity jurisdiction members live in multiple states
  + Subsidiary open new mine nearby
  + They were angry.
  + It’s not my fault.
* Gibbs 💆🏼‍♂️🡪 Violent, peaceful🡪 9월 동안 시위.
* 1960s Tennessee Coal Company
* Closed the new mine.
* Gibbs 💆🏼‍♂️🡪실직.--> Sued the union.
* Retaliatory Boycott against him.
* Jury verdict
* UMWA: Federal Statute.
* Judgment as a matter of law: Grant summary judgment
* Unlawful conspiracy.
  + 303. Labor Act
  + Tennessee Law
  + Jury verdict was overturned by judge.
* 🡨 Pending or Pendent Jurisdiction.
* Federal Court can exercise over state and federal claims if the federal and state claims are the type that would be expected to be heard at a single hearing and are “derived from a common nucleus or operative fact.”
* What’s necessary?
* May a Federal Court hear a case based on a state claim if the federal claim is found to be wanting but the claims arise from the same factual bases?
  + Yes
* Pendent jurisdiction is a long-settled concept in Federal Jurisdiction permitting a federal court to hear a case that is premised both on Federal and State law.
* Court have been given significant latitude in deciding whether they hear a claim constituting pendent jurisdiction.
* Judicial economy and fairness
* Tennessee common law claims implicated Question of Federal preemption.

Joinder

**Whether or not to join**

* Efficient: multiple claims at once.
* Deposition🡪 more efficient. (여러 장소 갈 필요X)
* Rights are impacted.
* 2 drivers involved:
  + Traffic Accident or
    - + eyewitness? Or
    - +passenger?
* Federal Courts Joinder🡪 motion.
* More expansive than a single claim.

J’s note:

**+ element test**

* Made by plaintiff
* Anchor claim is diversity case
* Enumerated rule under the statute

1. Against persons joined under R 14, 19, 20, 24, or

2. Over claims by R 19 (compulsory) plaintiffs, OR

3. Over claim by R 24 intervener plaintiffs.

4. If these elements are not met, then the claim is good to go🡪 Disappear 의미같음…..

Does not apply to claims by defendant.

Procedural method to 🡪 join the party or claim.

SMJ🡪 1. Procedural rule, 2. Jurisdictional basis, and 3. Transactional relationship

What are the limits of supplementary jurisdiction by join the parties?

R 17 Real Party in interest (a) (3)

R 17: Real Party in Interest 60 Days.

🡪 Guardian- Child.

🡪 R 17: Parties

Federal Courts generally look to interest.

R 17 (b) Capacity to sue.

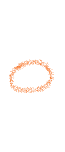
* Paula- Diana 150 K.
* Diversity of Citizenship
* 1783.
* Pamela
* Insurance Policy 🡪 100 K🡪 Company: Real party in Interest.
* Harl🡪 Insured 5k.
* Permissible Joinder of Claims
  + 교통사고 당사자: 이웃. R 18에 의해서 join시킬 수도 있고, 안 시킬 수도 있음.
* Claim or Issue Preclusion
  + If you don’t bring claims, “common questions of law or fact.”
* You may be precluded to bring a claim later
  + Rules: jurisdictional requirement
  + Transactional relationship
  + Preclusive effect 는 제외하고.

Procedural🡪 jurisdictional challenge로 인해 관련 없는 것은 join불가할 수.

 Fire UPON: R13 Counterclaim 1 R13 Counterclaim 2 ()

****** ***Same transaction or occurrence***



1331: Anchor R 18 R 13 **Crossclaim: Same transaction**

1367: Claim2 R 18

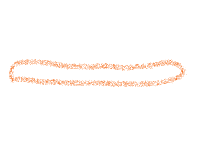
|  |
| --- |
| Rule 18(a) a party asserting a claim (an original claim, counterclaim, cross-claim, or third-party claim) may join as many claims as he has against an opposing party. 서로간의 관련성은 필요 없음. |
| Rule 13: Counter claim  Cross claim: against the co-party.   * A claim for ***contribution*** under joint and several liability D1 sues D2 * Efficient. * The same transaction or occurrence 요건 항상 있음(counterclaim crossclaim). Don’t hijack someone else’s lawsuit. |

Assumption: there is jurisdiction.

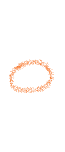
R 18 Joinder

Join additional claim ().

Pendent jurisdiction 🡪 don’t have original jurisdiction.

**As long as it is “Common nucleus of operative fact” 🡪 Gibbs: 모두 노동 문제.**

State, Fed. 🡪 Federal Anchor Claim 🡪 Article 3- 2 에 의해서 🡪 Court can hear it.

* The court can hear pendent claim (Article 3-2)
* 1331: Anchor R 18 Crossclaim
* 1367: Claim2 R 18
* Discretionary (가능할 수도/ 불가능할 수도)

1. Too confusing for jury to hear: jury verdict.
2. State issue too dominate over federal claim.
3. State claims can be dismissed before trial.

Jurisdiction SMJ over Pendent Claim

**Schwartz v Swan**

A screen shot of a diagram of a car crash

Description automatically generated

머리

목

몸통

팔

Each Accident contributed to the injury. But 잘 모름.

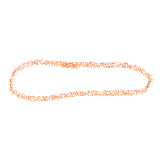
A cartoon of a car driving down a street

Description automatically generatedA screenshot of a video game

Description automatically generated

* Dorothy: Contributory Negligence
* Jury can be confused.
* Prejudicial.
* Trial Court severed.
* Appeal: Single Trial. It was not SEVERED.

R 20 Permissive Joinder.



* YES.
* Series of Occurrence.
  + August 13th :
  + August 23th…
  + Join and several or alternative liability.
  + 누구 책임인지 모를 때.

R 20 Permissibly join 🡪 OK

Personal injury

🡪 properly joined but

* If prejudicial,
* UNJOIN 🡪 OK.
  + R 20 (b)
  + R 42 (b)
  + Protective measure.

R 21 Protective measure if

Improperly joined.

* Are permitted to join in a single action when the relief sought relates to a series of wrongful acts which were committed by different If the wrongful acts involve related questions of law or fact?
* permitted to join
* Yes. Question of law or facts.
* Appellate review of judge’s decision.

**Impleader**

**Ex. Indemnification**

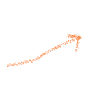
R 14

The third party practice.

Substantive law밑에 깔려 있음.

관련없는 자Responsible.

보험회사와의 계약 등. 하도급 계약 등. Legal relations





Subrogation (대리)

…to sever an action is limited to abuse of discretion review.

Bray, Sawn, Polivick🡪 jury would be confused.

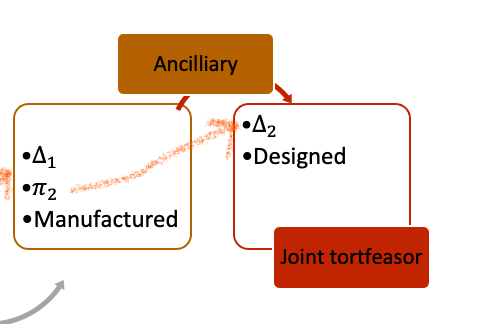
* Supplemental jurisdiction.
* Transactional nexus 🡪
  + So related
  + Anchor claim + alpha, + beta…. 🡪 needs supplemental jurisdiction.

Carteret Savings & Loan Assn. v. Jackson X

p.731

Impleader

Third Party Practice.



Civil defendant can sue another defendant and make claim.

The third party.



Filing the third party claim.

**Markvicka v. Brodhead-garrett Co.**

* Filing a 3rd party complaint
* MArkvicka was a minor student in
* He injured wood working class
* Federal district court
* Machine was defectively designed.
* Company complaint 🡺 sued school district.
  + Didn’t’ maintain the machine properly
  + didn’t Supervised the students.
* Can a defendant implead the 3rd party who could be liable to the defendants as a result of the case’s disposition?
  + Yes. Defendant can implead any 3rd party who could be liable to the defendant as a result of the case disposition.
  + The student was injured-manufactured by Brodhead, & maintained by the school district.
  + The school district must provide indemnification.
  + Indemnity is improper because indemnity arises soely from a contractual or legal relationship.
* No. Contract of indemnity of legal relationship like respondeat superior for the right to indemnification would arise
* 🡨 school can be.
* No absolute preclusion to a claim for contribution among joint tortfeasors.

**Owen Equipment v. Kroger**

* In an action which federal jurisdiction is based on diversity, may the court exercise jurisdiction over the plaintiff’s claim against the third party defendant if there is no independent basis for federal jurisdiction over that claim?
  + No.
* The court may not exercise jurisdiction over the plaintiff’s claim against the third party defendant if there is no independent basis for federal jurisdiction over that claim.
* 1332. Diversity jurisdiction.
* Ancillary jurisdiction over non-federal claims in circumstances involving impleader, crossclaims, counterclaims or intervention as of right.
* Kroger’s (IOWA) suit against Owen was not ancillary to the federal claim unlike the 3rd party who was dragged into Federal Court against his will, Kroger deliberately chose to bring her state law claim against Owen in Federal Court.
* OPPD (Omaha Public Power District)
* If Kroger had initially named both OPPD and Owen as defendants, the Court could not exercise diversity jurisdiction because there would have been Iowa citizens on both sides of the suit.
* OPPD filed a 3rd party complaint against Owen Equipment and Erection Company (Owen Defendant) and alleged that Owen owned and operated the equipment involved in the industrial accident and that Owen’s negligence was the proximate cause of Mr. Kroger’s death.
* The court🡪 Kroger to amend her complaint to include Owen as defendant.
* OPPD motion to summary judgment 🡪 leaving Kroger and Owen the parties.
* Kroger amended that Owen was NB corp,
* Owen’s answer🡪 Primary Place of Business was IOWA🡪 lack of jurisdiction 🡪 Both Iowa citizens.







No diversity.

* Rule 13 (g), Rule 14, Rule 13 (a) (b)
* “Supplemental jurisdiction” 🡪안됨.
* Lack of PJ.
* Closely related claim
* Pendent party who is ancillary to the original cause of action.
* No. Independent.
* Owen을 따로 소송하는 것은 가능.
* Dissent: White. : the majority takes, “unnecessarily grudging” approach.
* Diversity jurisdiction
* District Court has ability to entertain all claims among the parties even if a third party without diversity is impleaded.

**Haas v. Jefferson National Bank**

Joinder of the parties🡪Must under certain conditions.

Mandatory joinder causes to loose jurisdiction?

🙎‍♂️Haas : Ohio, 🡪 Sued the bank in Florida

💆🏼‍♂️Glueck : Ohio

1367

Issue stock or Pay USD?

For issuing me certain shares of its common stock.

R 22 Injunctive relief

Statutory Interpleader🡪 enjoin 다른 소송 가능????? 1391

Interpleader:

* Procedural rule for interpleader
  + R 22
* Alternative Basis for jurisdiction
* True interpleader
* 1332
* Statutory interpleader: minimal diversity
* Venue and service: statutory interpleader
* Service of process R 4 (k) (1) ©
* P.753 : 인종차별. Promotion list
* White firefighters: Rule 19
* Required party
* Interest of the city are impacted.

PPT 11 –

Rule 19 : Compulsory Joinder of Parties:

“I made Gluck to jointly buy the bank’s stock but the shares held in his name”

“The bank knew Hass I paid Glueck for may portion of the shares.”

Glueck was refused by bank 🡪 Gluck had debt. 🡪 Gluck is indebted to them under a promissory note: collateral.

* Require Glueck to assign them any property he owned that came into their possession
* Join Glueck as a party🡪 incomplete diversity.
* Must a plaintiff join a party if that party absence will prejudice either the current or prospective parties in such as way as to render judgment inadequate and incomplete in light of a controversy?
  + Yes. Plaintiff must join a party <Ct ordered HAAS to AMEND>
  + INDISPENSIBLE TO LITIGATION
* Parties absence is prejudicial.
* 🡪 bank can be prejudiced by Glueck’s absence🡪 jury shares rightfully belonged to Glueck🡪 bank can be inconsistently judged.
* Unable to protect his rights in property
* Whether prejudice can be avoided by shaping the litigation
* Exclude considerations of title.
* Court must analyze the potential adequacy of the judgment in light of the controversy at hand.
* Glueck’s ownership is central to the issue of conversion, disposition failed to determined ownership is inadequate
* Haas have other avenues of relief
* He🡪 in Ohio State Court🡪 he ahs a means of prosecuting his case.
* 💆🏼‍♂️Glueck : Ohio must join: 💆🏼‍♂️Glueck : Ohio’s absence prejudice both 💆🏼‍♂️Glueck : Ohio and the current parties🡪 inadequate and incomplete in controversy.

**Temple v. Synthes Corp**

“Rule of Law

It is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit because joint tortfeasors are merely permissive parties.”

1. Patient Mississippi
2. Dr. Louisiana: New Orleans: 🙎‍♂️DR: Surgery: 💇‍♂️Temple’s lower Spine 🪛Screwdriver시술
3. 🪛Screwdriver등 안에서 broke up🡪 🙎‍♂️DR sued in Louisiana
4. 🪛Screwdriver Device: PA Corp🡪 💇‍♂️Temple’s sued in Louisiana
5. 🙎‍♂️DR: 💇‍♂️Temple’s Failed to join as necessary parties : R 19.
6. Temple failed
7. Dismissed as prejudiced
8. 🙎‍♂️DR: and Hospital as
9. Whether joint tortfeasors are necessary and indispensable parties such that failure to joint tortfeasors requires dismissal of the federal claim?
   1. No.
10. Joint tortfeasors are not necessary and indispensable parties. BUT merely PERMISSIBLE PARTIES
11. Facility: Medical . PA Corp. Synthes

빠진 날:

**Interpleader**

* Join all parties in the insurance company with respect to policy coverage
* Beyond the insurance company
* Joinder Statute
* R 1928 Required party

|  |  |
| --- | --- |
| <https://en.wikipedia.org/wiki/Impleader>  Impleader is a United States civil court procedural device before trial in which a defendant joins a third party into a lawsuit because that **third party** is liable to an original defendant. Using the vocabulary of the Federal Rules of Civil Procedure, the defendant seeks to become a third-party plaintiff by filing a third party complaint against a third party not presently party to the lawsuit, who thereby becomes a third-party defendant. This complaint alleges that the third party is liable for all or part of the damages that the original plaintiff may win from the original defendant.[1]  Common bases of contingent or derivative liability by which third parties may be impleaded include indemnity, subrogation, contribution, and warranty.  Impleader is available only to defendants, not plaintiffs, unlike the similar interpleader action.  Impleader is frequently used for indemnification, such as an insurance policy or their employer. If for example a defendant is in a car accident, and their insurance policy includes an indemnification clause, they can implead their insurance company to pay out the lawsuit. An impleaded party may turn around and sue the original defendant in turn, which is called a crossclaim.  Federal Rules  Impleader Rule 14 ("Third Party Practice") | <https://en.wikipedia.org/wiki/Interpleader>  Interpleader is a civil procedure device that allows a plaintiff or a defendant to initiate a lawsuit in order to compel two or more other parties to litigate a dispute. An interpleader action originates when the plaintiff holds property on behalf of another, but does not know to whom the property should be transferred. It is often used to resolve disputes arising under insurance contracts.  In an interpleader action, the party initiating the litigation, normally the plaintiff, is termed the stakeholder. The money or other property in controversy is called the res (a Latin word meaning object or thing). All defendants having a possible interest in the subject matter of the case are called claimants.  Suppose a person dies with a valid life insurance policy in effect. The insurance company is ready, willing, and able to pay the policy proceeds in specified percentages to named beneficiaries as last directed by the policyholder, but becomes aware of a dispute among them and/or third parties as to who are the proper beneficiaries or the proper distribution of proceeds among the beneficiaries.  To resolve such a dispute, the insurance company can file an interpleader action. The insurance company is the stakeholder, the claimants are the persons who might be beneficiaries under the policy, and the cash value of the policy benefit is the res. |

Pan American Fire v. Revere

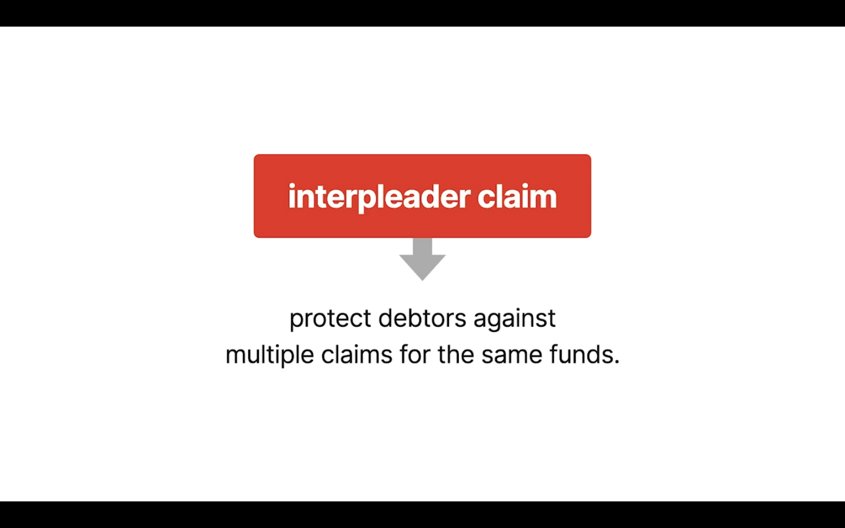
Single accident 🡪 23 injured and 4 died.

Truck School bus, Truck was insured.

A screenshot of a computer

Description automatically generated

Enjoin



* We will institute an interpleader action against all claimants.
* We have deposited a bond in the amount of policy limits.

A diagram of a problem

Description automatically generated with medium confidence

* Dismiss the interpleader action
* Issue: interpleader appropriate for competing, unreduced tort claims against an insurer?
  + Yes
* R 22: “Multiple claims on the same obligation allow equitable relief only in true interpleader cases.”
* Interpleader claim -🡪 possibility of owing more than is due.
* Pan American faced potential claims in excess of its policy limits.
* Must be adverse🡪 claimants were competing for the same pool of funds.
* Hazard the plaintiff seeks to avoid is his own fault X
  + Pan American is not to blame for actions of its insured.
  + Is interpleader available if multiple claims to be brought together are not mutually exclusive? YES.
  + Plaintiff for interpleader if the claims are adverse and may expose plaintiff to many, multiple liabilities.
  + Plaintiff will have to pay more than is owed. X
* Even if Pan American has set a policy limit of $ 100 K, 🡪
  + It can fact in excess
  + Sufficient adversity to satisfy the interpleader requirement.

**A person standing at a podium

Description automatically generatedA group of people with broken arm

Description automatically generatedState Farm v. Tashire ={**

A person standing at a podium

Description automatically generatedA white rectangular sign with red text

Description automatically generatedA group of people sitting in a parking lot

Description automatically generated

* 1967 Multiple Tort Action 🡪 One Forum.
* 1964: California Greyhound bus collided truck
* 2 died, 30 injured.
* Bus driver… truck driver + passengers…+ truck owner.
* Insurance policy
* 4 passengers injury 🡪 sued greyhound.
* 1 million damage in suit
* State Farm brought interpleader action in Oregon.
* Insurance Policy + lawyer’s fee
* Company gave 20 K USD to the court🡪 “The injured parties should be required to establish their claims in this action.”
* The court: “the accident must be litigated in this interpleader action in Oregon.”
* Is the use of interpleader to confine a litigation to a single forum and proceeding appropriate if there are multiple claimants to the same fund and a stake holder must acknowledge liability to either of the claimants? YES
* 28 USD 1335🡪 Federal court has original jurisdiction over an interpleader action filed by any person, corporation or association that has insured with a value of 500 USD or more.
* If there are multiple parties,
* Entitlement to policy benefits
* The amount due into the court’s registry
* 28 USC 2361: 🡪 any action under 1335, initiating or prosecuting any suit affecting the property instrument or obligation in the interpleader action
* State fram would be liable only for a MAX of $20K in action
* State farm is not obligated to wait until Clark is adjudged liable to each plaintiffs for each of several separate cases before interpleader
* 35 people: Unique claims against multiple defendants
* State farm’s relative small interest cannot control the entire litigation and force all plaintiffs to bring their claims, against any of defendants in the forum chosen by State farm
* The scope of injunction is inappropriate
* Dissent: Douglas: Clark is found legally obligated to pay damages to a claimant
* These cases have not gone to trial neither Clark nor State Farm is legally obligated to pay anyone anything
* The use of interpleader improper.

Themis 52 Joinder

Permissive Joinder:

FRCP 20. Parties can be joined if

1. The same transaction or Occurrence AND
2. Question of Law or Fact COMMON TO ALL PARTIES.

MANDATORY JOINDER RULE 19

Must be joined, and when failure to join necessary party demands dismissal.

Ex. I leased the painting and the man subleased the painting to laura.

LAURA!

R 19 necessary if

1. Cannot be provided …

2. Ability to protect his interest might be impaired by his absence OR

3. Current party can be subject to multiple or inconsistent obligations when Glueck absence.

J’s note:

Page 4

Amount in controversy exceeds 75 K USD (28 USC 1332)

* With a joint claim, just use the total value of the claim.
* The number of the parties is not relevant.
* Ex. Joint-tortfeasors 🡪 OK.
* It is because no defendant is liable for full amount.
* If it sjoint claim if it says the word, joint.
* Themis 23 Section 1367 © Discretion to Decline Supplemental Jurisdiction

Nov 24th 2023

Discovery

Themis 58 Work product

Hickman v. Taylor 1947:

* 의의: Conflict between 1) free exchange of information, and 2) adversarial nature of trials.
* One side to do work for the other side.
* Requires some degree of privacy in trial preparation.
* S Ct: Materials taken in anticipation of litigation and containing the personal recollections and thoughts of lawyer are protected from discovery.
* Exception to work product:
  + Party can always obtain their own statement.
    - Ex. Tugboat: the party suffered made a statement. 🡪 whipping, shivering, .. attorney, “can you tell me what happened? “ then, “***blablabla…..***” 🡪 this is disclosed. Plaintiff can obtain her own statement. 🡪 write down what she said to lawyer.
    - Information that is important to the other side, (big difference)
      * ***Substantial need,*** and
      * Cannot otherwise ***without substantial hardship***.
      * Ex. Carcrash: I call my lawyer and take interviews and notes and pictures.
      * If I ask the pictures, then, …. As far as… substantial NEED; HOW IMPORTANT PICTURES ARE. CRUCIALLY IMPORTANT UNABLE TO REPRODUCE? SCENES ARE ALREADY CLEANED UP….--> then, ok, even if work product🡪 give.
      * CAREFUL!: it doesn’t contain any ***MENTAL IMPRESSIONS, CONCLUSIONS, OPINIONS, AND LEGAL THEORIES***.: Absolute immunity.
      * EX. MP4 says, “oops, I made a mistake. Etc…” then, audio is cancelled out. Only video is disclosed.

Class Nov 8th 2023

* Work-product: R 26

1. Witness Statement, interview 📲 📲 📲 📲 📲 📲🡪 ok
2. Notes to himself:🡪 ok 📖 📖 📖 📖
3. Mental impression of lawyer 🡪 OK. ~~Mental impression of the parties~~ X
   1. Taken from the oral statement prepared by himself.
   2. Privacy: no production. 상대변호사빨려 쓸 수.
4. Outside sources. “Lawyer’s.” OK.
5. Opposing counsel must demonstrate NECESSITY, JUSTIFICATION, OR UNDUE PREJUDICE FOR ACCESS TO COUNSEL’S WRITTEN STS, PRIVATE MEMO, AND PERSONAL RECOLLECTIONS,
6. Proper legal preparation demands that attorneys have freedom to prepare their legal theories free from undue iteference or intrusion.
7. If opposing counsel had unrestricted access to the work product of counsel, attorneys would stop memorializing their work to avoid complete exposure of their ideas.
8. Fortenbaugh’s interviews and stswere secured through the 3rd parties not through his clients.
9. This information is not a privileged attorney-cleient communication and is not except from discovery demand.
10. The numerous interrogatories taken on public record and the free access to all the witnesses relevant to the case creates doubt why these open areas of investigation are not sufficient for opposing counsel.
11. Hickman’s counsel admits that the request for Fortenbaugh’s information is for the purposes of verifying his own information.

**Washington State Physicians & Ins Ex Assn v. Fisons Corp**

* Disclosing materials damaging to clients
* Child: Somophyllin: Pfizer
* Research study: Pediatric viral
* Baby: permanent brain injuries
* Klicpera and Fisons are liable for malpractice and product liability
* Dr. : I am filing a cross claim against Fisons.
* Parents: settled with Drs.
* Dr. 🡪 company: discovery: I want documents about their knowledge of the pediatric risks.
* < We’ll produce any document regarding Somophyllin
* < We don’t have any memo.
* < Dr. It wasn’t about theophylline toxicity in virus infected children.
* Can an attorney be sanctioned for failing to turn over docu that are responsive to a discovery request? YES. The analysis of the case begins with R 26 (g) patterned on FRCP.
* This is designed to prevent harassment and to avoid excessive litigation and its attendant legal cost. Implicit encouragement of sanctions against lawyers who violate this rule.
* Sanction:
  + Industry practice is different from attorney’s discovery.
  + Intent of the lawyer🡪 no need to show. Produce or not to produce🡪 no need.
* Sanctions are merited. Had fisons complied with the insurer’s discovery requests
* It would have produced 2 Dear. Dr. Letters at issue.
* Toxin: non-disclosure🡪 the court said, it is not intentional conduct.
* < We will produce any documents “regarding Somophyllin.” Memo🡪 3 years discovery. There are irrelevant things too.

Nov 1st 2023 Class

Discovery

1. What the difference discovery device?
2. Scope of permissible discovery
3. Role of court manages discovery
4. Professional responsibility lawyer: (R 11)
5. Policy reasons behind this rule
6. More information is better
7. Recognition🡪 of evidence is in hands of .
8. Meritorious claim
9. Discovery foster settlement.
10. 장점: Pleadings help facts and damages. What to admit or deny.
11. 단점:.Time consume. Labor. Expansive.
12. 7 hours deposition.
13. Document about discrimination in 1920s.
14. Digital data 🡪 ACCESS $$$$
15. Request for production of document:

Required disclosure:

1. Initial disclosure
   1. Supporting witness,
2. Disclosure of expert testimony
   1. In writing,
   2. Served
   3. Duty to supplement…….. a, b, c..--> signed and served.
3. Pre-trial disclosure

> United Oil Co. Parts Associates Inc X

Disclosure: 14 days

Motion

|  |  |  |
| --- | --- | --- |
| Witness impeachment credibility | 🡪 other than that, disclose discover. | |
|  | Green light | Red light |
|  | Out of trial | Trial |

Disclosure 26 (a)

FRCP 26 (a) Required Disclosures: initial disclosure: what is included?

1. ***Initial disclosures*** must be made based on information reasonably available to it.
   1. Ex. Audi tangible evidence, ESI
2. What if they didn’t include name of the corporation?
   1. Interrogatory: names, engineers, DOCX (request to produce), and Design of the car
   2. Notice of deposition🡪 knowledge of design of a car.
   3. 예. 차 디자인한 담당자 이름 모를 경우🡪 회사에서 알아서 찾아내게 함.
   4. Ex. Former employee 🡪 subpoena
   5. Etc. Eyewitness🡪 subpoena.
   6. Court order about medical exam.

Themis 63: Mandatory disclosures:

1. ***Expert testimony*** 🡪 FRCP 26 (a) (2)🡪
   1. ***Must provide written reports that contains:*** 
      1. Opinions expert
      2. Facts data to form opinions
      3. Exhibits
      4. Qualifications
      5. Cases at trial or depo,
      6. $$$ compensation to be paid for testimony
   2. (i) at least 90 days before the date set for trial or for the case to be ready for trial; or if used to contradict rebut evidence on the same subject by another party, within 30 days after that party’s expert disclosures.
   3. NOT DISCOVERABLE: Non-testifying expert: Consulted to prepare for trial, but not expected to testify as an expert witness simply says, “I don’t think you have a case.”
      1. Undiscoverable unless 1) extraordinary need, and 2) no other way to get such info.
   4. DISCOVERABLE: Testifying expert: “Wow, you ‘ve got a great case.” Expected to testify as an expert witness.
      1. Must disclose EXPERT REPORT.
      2. PARTY MAY ALSO REQUEST COMMUNICATIONS RELATED TO
         1. $$ THEIR COMPENSATION
         2. Assumptions, data, theory, principles that they take on.

Zubulake v. UBS X

1. ***Pretrial disclosures***: What and when R 26 (a) (3). At least 30 days prior to trial, parties must provide to the parties and ….--> all evidence that the party may present at trial. (no impeachment) that the party expects to offer, and what it may offer if the need arises.
   1. Name and contact infor for all witnesses the party may present at trial.
   2. Witness whose testimony…. Deposition and a transcript of the deposition, and ***exhibits***.
   3. Each party has 14 days to file objection. Ex. Pre trial motion: “this guy is not expert.”

***Discovery doesn’t need to be admissible.***

1. Hearsay is discoverable but not all admissible.
2. Court can limit the scope of discovery.
3. Relevance: for discovery purposes.
4. What to disapprove or APPROVE.
5. Credibility
6. Admissible evidence.

Hypo #3. The other company’s firing practices and patterns: discoverable?

YES.

1. Tends to prove or disprove claims.
2. Credible.
3. Not all evidence has to be admissible.

Depositions FRCP 30말.

* Party and non-party: subpoena no need
* 10
* Recording, audio, zoom interview, etc. party taking the deposition is responsible for all expenses.
* Sworn testimony from specific individual or if served on corporation, indicate subject matter. Can also seek documents.
* Themis 63: Rule: ***if admissible, a deposition may generally be offered against any party who was present or represented at the deposition or had reasonable notice of it.***
* ***When can you use deposition transcript at trial? Non-party that does show up? 🡪 impeachment evidence. Non-party absent: substantive or impeachment evidence. Party doesn’t show up- or doesn’t show up: for any purpose.***

Interrogatory FRCP 33글.

* Written Q and A: “Were you wearing your glasses?” “Do you contend that…”
* Within 30 days.
* Only for the parties.
* Non-parties need subpoena
* Answer the questions
* 25
* ESI,
* Tangible things in possession person from whom production is sought.
* Can include writing, drawings, graphs, pictures, sound recordings, images, etc.
* Describe item with particularity
* Specify reasonable tiem place and manner.
* Specify form in which you want ESI produced
* 21 days after the summons complaint are served can be delivered but are not considered served until meet to confer R 26 conference.
* Order or production: docu must be produced in the order in which they are normally stored.
* Request for Admission: can ask a party to admit or deny any relevant, non-privileged matters discoverable under R 26. 1. Yep 2. Yep 3. Yep 4. Yep 5. No. 6. Yep etc.
* ***Request for production***: cas ask a party to produce evidence in their custody or control
  + Can include documents and tangible property: ex. “I want to know what’s in your diary. Show me.”

Request for production of documents: response: or

* Object with specificity and state whether any responsive materials are being withheld on the basis of objection. Ex, “I am not gonna do it.” Ok.

Mental and Physical exams 35

* Must seek order court when parties mental or physical condition is “***in controversy” and “for good cause.” 35*** (a)
* Effect of request for report: if party requests a copy of the report, he effectively waives privilege of his own medical reports involving the same condition.
* Only under the court order.

Subpoena : 1. For documents, 2) For testimony.

Themis 59

Attorney-client privilege🡪 all about communication.

1. Relevance
2. Privilege <-- protect client from request information
3. Proportionality
4. Undue Burden to produce evidence: efficiency. : Please be as efficient as possible.
   1. If you can find it by google, use GOOGLE instead of spending money.
   2. Zubulake: who will share the cost? The court may order it of to protect against undue burden or expense.
5. E-Discovery
6. Limits: Protective order R 26 © : Annoyance, embarrass, oppress, undue burden

Themis 64

1. Adverse inference against party who destroyed.

2. Jury can be instructed so 🡪 INFER. (보통은 회사에서 증거를 보존함)

Themis 64 Compliance with Discovery Rules

Pam🡪 merit, positive만 공개.

Pam’s medical records:🡪 disclose.

Witness testimony🡪 disclose.

Pam’s traffic driving records 🡪 NO

Mechanic: name🡪 disclose, Address🡪 disclose.

* Undue prejudice; justification; necessity.

Pam🡪 Bill: not included in initial disclosure. Later, bring Bill.

* No need to supplement the initial disclosure.
* R 37 © (1)🡪 “substantially justified discloses harmless.”

Dan🡪 seeks Pam (a physician). Ask the court.

* Her physical injury🡪 in controversy / At issue🡪 disclosure.
* R 35 (a) (1) physical , mental exam.

Disclose or not?

* Email, all documents and memo.
* R 34
* ESI: final version.
* Interrogatories.
* Empire isn’t a party.
* R 33 (d) (1) 🡪 production 더 효율성이 있는 법이 있다면🡪Pam can compel.

**Pam Motions to Compel and Protective Orders R 37 (a)**

* If.. failure of disclosure🡪 a party can compel R 26 (a) required disclosure or a response to any discovery request under R 37 (a) (3).
* An evasive or incomplete disclosure, answer or response must be treated as a complete failure to disclosure answer or respond.
* On motion for protective order or after denying motion to compel, the court can order payment of opposing party’s expense and attorney’s fees.
* Failure to disclose, supplement or admit R 37 (a)
  + Not allowed to use info or witness to supply evidence, unless failure was substantially justified or harmless and or
  + ….
  + Failure to admit
  + Pay reasonable fees incurred … in proving the docu is genuine matter is true, unless request was held objectionable, admission was of no substantial importance reasonable ground to believe it may prevail, or other good reason.
* Failure to attend deposition, serve answers, or respond R 37 (d)
  + Motion for sanctions must include “meet and confer” certification.
  + Sanctions may include: anything listed in 37… and or payment of attorneys fees cause by failure unless substantially justified or other cir make it unjust.
* Failure to preserve ESI: R 37 ( e)
  + If lost , sanctions are: upon finding of prejudice for other party, measures no greater than necessary to cure the prejudice OR
  + Upon finding of intent to deprive other party of info’s use in litigation, presumption that it was unfavorable, jury instruction, or dismiss enter default judgment against R 37 €
* Avoid sanctions
  + In general, sanctions will not be imposed if the party can establish that:
    - The request was objectionable OR
    - That failure to produce was substantially justified or
    - Other cir exist that it would make it unjust.
  + Exception: can’t rely on it being objectionable for failure to attend produce witness for deposition, unless motion for protective order was filed R 37 ( d) (2).

***Themis 69 Motion to compel***

* Movant must try to ***confer*** with the opposing before filing a motion to compel.:
* Discovery plan : default rules:
  + Within 14 days after parties “meet and confer” conference parties submit to the court a written plan for discovery R 26 (f) (2)
* **Movant wins: movants gets lawyer fee.and cost related to making the motion.**
* **Movant lose: I only have to pay the fee if motion was made without substantial justification.**
  + **Sanctions may include: anything listed in 37… and payment of reasonable fees cause by failure unless substantially justified or other cir make it unjust.**
* ***If someone keeps me asking protective secret:***
* ***Motion for protective order***: ***protects against annoyance, embarrassment, oppression, or undue burden or expense resulting from discovery***.
  + May be also used to limit use of evidence collected in discovery.
  + Recipient of the information has to follow this this that.

* Scheduling order
  + Order has required provisions, as well as discretionary contents, designed to keep the case moving efficiently R 16 (b) (3) and (4).

Discovery Meet and Confer

* Meet and confer(상의하다)
  + Discuss and attempt to seek argument on a number of issues.
  + Protective orders on IP product
  + Pre-trial conferences
    - Parties may be required to attend, must authorize lawyer to make stipulations admissions and parties invariably need to be prepared to consider settlement R 16. C. 1.
    - At the final pretrial conference, the order will reflect both parties trial plans and can only be modified to prevent manifest injustice. R 16 (e )
  + R 26 (g): for required disclosures, they are complete and correct that time made. For requests, responses, and objections, ……. Both lawyers and parties must in good faith.
  + Docu can be stricken if no certifying sign.
  + R 26 (f) (1)
  + Scheduling order
    - Discretionary contents.
    - Pretrial conference
      * Pretrial disclosure

Nov 22nd 2023

Summary Judgment, and Judgment as a matter of law

Themis 65

1. One of the parties says, “we don’t need trial. Let’s do this for summary fashion.
2. R 56 : … SJ: ***movant shows***, ***no genuine dispute as to any material fact***… ***🡪 Judgement as a matter of Law🡪 Motion to dismiss… similar.***
3. ***Facts that are material to the result.***
4. ***Similar to motion to dismiss for lack of facts***
5. ***Motion for summary judgment : happens after discovery has concluded R 12 (d), up to 30 days after the close of discovery R 56 (b).***
6. ***R 12 (b) (6) motion to dismiss: occurs after initial pleading. But can be raised at trial.***
7. ***PPT: what is material fact? 🡪 substantive law of the claim at issue: the applicable rule of law. The pleader of the claim or defense must prove it to prevail. Either q of law or fact.***
8. Celotex Corp. v. Catrett 1986

> Plaintiff must show ***Celotex asbestos caused DEATH***.

> Defendant: Celotex.

Interrogatory: written.

🡪 Catrett **😡** says, “I don’t know.” “I don’t have evidence.” “is it our asbestos?” “I don’t know.”

***Then, why go to Trial? No need.?? NONONONONONONO***

* ***Defendant, the movant, has to show*** 
  + ***Where you keep asbestos? ACTUAL EVIDENCE +***
  + ***Or husband was not exposed to it.***
* ***Supreme court said, no again to it.***
  + Celotex did not have a burden of proof on the particular issue, then,
  + You can show that …
    - There is no genuine dispute as a matter of law.
    - Point to the record that***, there is absence of evidence, OR***
    - ***Show your own evidence***.
  + The husband would not be exposed to asbestos because
  + ***We produce it in Vermont and we distributed only to here and there, not your; OR Catrett has no evidence that husband had been exposed to our asbestos,***

1. Celotex v. Catrett
   1. R 56 ©
   2. Celotex company product liability: 미망인. 남편 죽음.
   3. 미망인: Moving party. Has to proof CAUSATION. But Lack of Evidence.
   4. Preponderance of Evidence. She didn’t proof she said, “I don’t know.”
   5. Summary judgement: Celotex .
2. Absence of any disputed material facts.
3. Affirmative Exidence
4. Burden of Production on Catrett
5. 1986.
6. Opposing party summary judgment.
7. Burden of production is on Catrett: Ex. ESI, Affidavit, declaration, initial disclosure, eyewitness, deposition, interrogatory, …..
8. Anderson v. Liberty Lobby

In deciding a motion for summary judgment, should the court consider the substantive evidentiary standard to proof that ‘d apply at a trial on the merits?

* 1. Yes. In deciding a motion for summary judgment, the court should consider the substantive evidentiary standard of proof that ‘d apply at a trial on the merits.
  2. Resolving a summary judgment motion requires the court to decide whether a ***reasonable juror could find for the non-moving party***.
  3. Inherent in this determination is ***the evidentiary standard***.
  4. The court can’t decide whether a juror ‘d reasonably find for the non moving party without consider evidentiary burden.
  5. The lower court held that liberty lobby didn’t satisfy the ***CLEAR and CONVINCING EVIDENCE standard***, even if this is the standard applicable to proof of ***actual malice***.
     1. Ex. NYTIMES v. Sullivan: actual malice. 증명수준:Public figure.
  6. This topic inappropriate for summary judgment
  7. Dissent: Brennan: Majority: evidentiary burden. 2 tried to weigh the evidence inconsistent with jury trial
  8. Affidavit:
  9. Anderson, sought summary judgment.
  10. Material🡪 Substantive law🡪 does it affect the outcome?
  11. Jury weighs the evidence.
  12. Is there genuine issue to dispute?--> as material fact.
  13. Colorable? X. Probative O evidence.
  14. Preponderance of evidence.
  15. Substantive evidence.
  16. Weigh evidence.: ex. 교통사고:

|  |  |
| --- | --- |
| Eyewitness 100명 | 🡪 Still |
| Eyewitness 1명 | 🡪 Still, dispute facts. |

* 1. Inference of facts🡪 jury’s job.
  2. Legal finding v. Factual finding.
  3. Whether there is genuine issue of fact.

1. Scott v. Harris
   1. Whether there is genuine dispute?
   2. 경찰이 보는 비디오 피고가 보는 비디오 버전이 다름.
   3. Record와 상반된 것: Court need not accept.
   4. Non-moving party🡪
   5. ***No genuine issue of facts created***.
   6. Summary judgment
2. Coble v. City of Whitehouse 2011
   1. 수백년전, Witness Testimony XXXXX
   2. Technology, or record: objective.
   3. GENUINE FACT OF DISPUTE EXISTS.
   4. Traffic violation🡪 Coble walked to the house. 경찰 명령 어김.
   5. Pepper sprayed🡪 tackled on the ground🡪 손목꺾음.

|  |  |
| --- | --- |
| Coble says, | Police says |
| “경찰관이 손목 분질러진 것을 잡고 끌고 갔다.”  Leg, bones, etc. Screamed, 콘크리트에 얼굴박음 | He informed me his ankle broken, so I sat him back down. |
| Audio recorded microphone🡪 it did not contain scream and Coble dropped on the ground. | |
| Excessive force? | |
| Audio: 일부만 담김. Audio doesn’t present what the plaintiff argues. | |
| Jury considers Coble on side of Plaintiff | |

* 1. The evidence should be viewed in the light ***most favorable to the non-moving party***
  2. Moving party has 상반된facts. 🡪 Then, version of non-moving party.
  3. Coble testified: 1) scream, and 2) dropped face first.
  4. Even if Court’s 🡪 recorded, Coble’s entire version of facts 🡪 no discredit.
  5. ***In the most favorable to Coble.***
  6. Since audio recording🡪 no reasonable jury ‘d believe any part of it.
  7. District court should not have granted summary judgment for Carney (police)🡪 reversed.

1. Tolan v. Cotton
   1. 경찰: Most favorable to the non-moving party.
2. Motion for judgment as a matter of law,
3. Motion for renewed trial
   1. Timing and standard?
4. R 50 Judgment as a matter of Law.
5. Summary judgment : Judge will deny summary judgement. Docu봄.
   1. Preservation to Right to jury trial Bench trial.
   2. R 50. Legally sufficient?
   3. Summary judgment Barbri CMR p. 28: no genuine issue of material fact and moving party is entitled to judgment as a matter of law. May support by pleadings, affidavits, discovery materials. Timing: defendant🡪 Anytime. Plaintiff🡪 anytime after 20 days from commencement of action, or after service of motion for summary judgment by adverse party.
6. No dispute
   1. no jury,
   2. Reasonable jury should have done.
   3. The most favorable to non moving party.
7. Judgment as a matter of Law.
   1. No genuine dispute.
   2. If jury deliveries,
   3. JMOV Barbri CMR p. 28: Motion for judgement as a matter of law (Directed Verdict) R 50 (a) :
      1. Evidence viewed in light most favorable to motion’s opponent leads reasonable person to conclusion in favor of moving party: timing: after opponent has presented case but before submission of case to jury
   4. 처음에 JMOL을 해 놓았으면, 그 다음 JNOV 즉시 가능.
   5. JNOV: Barbri CMR p 28. Renewed motion for judgment as a matter of law JNOV:
      1. R 50 (b) The verdict returned could not have been reached by reasonable persons. Moving party must have previously sought judgment as a matter of law at close of evidence. Timing: within 10 days after entry of judgment.
8. renew their motion a judgment as a matter of law
9. 28 days after enter of judgment.
10. JMOL : the 7th Reexamination Clause
11. Judge can defer.
12. Verdict
13. 처음부터 다시해야. 🡪 Wait and see🡪 jury verdict
14. The 7th Amendment + re-examination clause
    1. Different standard
    2. No reasonable jury will find the issue.
    3. ★ New Trials R 59.
       1. Common law standard.
       2. Great weight of evidence.
    4. Shocks the conscience🡪 discretionary ruling.
    5. Trial judge > legal ruling
    6. R 60: Relief🡪 misconduct and procedural similarity
15. Lavender v. Kurn

A. If the evidence at a jury trial permits inferences, one supporting and one opposing a critical fact in ’s case, a Court should take the case away from the jury, and enter judgment for .

Haney: Illinois Central Railroad Co. Frisco Railway. December:열차의 길을 놓아주기 위해 일. Fractured skull. Frisco 8-10 miles/ hours🡪 never returned. Found dead.

Lavender sued.

1. “Federal Employer’s Liability Act.” Allows for negligence actions in state or federal court against interstate railroad companies by their employees.
2. ***Dr. 🡪 Haney’s skull was fractured by small round object that can be part of train, pipe, similar object used as a weapon***.
3. Lavender says, “Haney was struck by the curled end of a mail hook, 우리책임 아님. Negligently hanging from the mail car. “We have evidence that the mail hook couldn’t have struck Haney, based on his body’s location and position.”
4. Company: Haney was murdered by vagrants. His pistol was found loose under his body. Haney’s gold watch and diamond ring were still on him. His wallet was missed from the body. His wallet had no money.”
5. Witness says, “a switchman told me Haney was struck by something protruding from the train. I examined the train and saw nothing.”
6. Railroad station owned by Illinois central.
7. contended that Haney was murdered
8. Can a jury verdict be reversed where it is based on the inference that was supported by probative facts and not totally unreasonable? 🡪 NO. This is true even if the inference was mere speculation and there was other evidence tending to show that opposite outcome is possible
9. Jury is also “free to discard or disbelief whatever facts are inconsistent with its conclusion.”
10. ‘s negligence?
11. What fact jury picks. Supreme Court reversed jury verdict.
12. Station 🡪 dark, uneven ground walk, hard,,, it’s entirely possible that a company controls hanging hook is what caused Haney’s fractured skull.
13. Facts contradict🡪 jury finds reasonable inference.
14. Jury inferences can be drawn.
    1. Ex. Why cow got on the railroad???
    2. ***INFERENCE*** 🡪 1) when it made? After or before?

1. Dadurian v. Underwriters at Lloyd’s of London
2. Jury: Weigh evidence
3. 12 pieces of jewelry from Rhode Islands.
4. 1977, 1980. $233,000 No receipt.
5. Insured.
6. < Robbers stole my jewelry!
7. Ineed to make a claim.
8. Lloyds’ 🡪 insurance void.: Cash🡨 bank loan. 13 bank loans financed my jewelry purchases. 🡨 falsely testified during examinations.
9. Dadurian sued : buy jewerly. Records>-- jewelor did not keep.
10. 직원: Loans were not enough to fund the records. Those purchases.” Testified Cash 🡪 no receipt.
11. Discrepancy: Wy? I accidentally selected the wrong loans due to time pressure.
12. Jury found, Dadurian did not knowlingly give Lloyd’s false information.
13. Lloyds: move for a judgment notwithstanding the verdict or a new trial.
14. Should a party’s motion for a new trial be granted when the jury’s decision is clearly contrary to the evidence produced at trial?
    1. Yes. A party’s motion for a new trial should be granted when the jury’s decision is clearly at trial contrary to the evidence produced.
    2. A new trial is appropriate when a jury’s findings are contrary to the great weight of evidence and where no reasonable jury would make such findings.
    3. To allow a clearly error verdict to stand would constitute a miscarriage of justice. Dadurian (보석, 보험 사기)provided false information about bank loans, the court decides🡪 he did so with knowledge.
    4. His representations as to the character of the loans were later refuted.
    5. Jury’s decision is clearly contrary to the evidence produced at trial.
    6. Neither Dadurian nor Howe maintained records corroborating purchases and both claimed that Dadurian bought jewelry with cash. Dadurian claimed that he got the cash necessary to buy the jewelry from the loans.
    7. The insurance policy excludes coverage if the insured knowlingly provides false information concerning a material fact.
    8. Court can assess Dadurian’s credibility.

★Motion for new trial: R 59. 28 days. JMOL. ???

R 59 After a jury trial, …. New trial has been given at law in fed court OR After non jury trial, for any reason equity in federal court.

Motion for new trial: when jury shocks the conscience.

★PPT : JMOL is functionally similar to the motion for summary judgment but JMOL occurs at trial, rather than prior to trial at the close of discovery. JMOL only applies in case tried to a jury, not bench trials.

★N’s note: Parties are seeking to take the matter out of the jury’s hands…..--> the judge thinks that both the client and the salesman look shifty and nervous on the stand, and he believes that the bartender is a much more credible witness…

Themis 67: Court asks: could a reasonable jury return a verdict in favor of the nonmoving party? The judge assumes that the non-moving parties are ***ALL TRUTH TELLERS***.

WEIGHT THE EVIDENCE: THE COURT MUST MAKE ALL REASONABLE INFERENCES IN FAVOR OF THE NON-MOVANT.

Themis 68: Summary judgment 마지막 시간.

R 56 “judgment as a matter of law.”

🡪Law decides what fact is relevant.

🡪 Law decides which facts are material.

EX.

Car accident: I question the opponent: the opponent says, “yep yep yep….. All admit.”

* Plaintiff entitled to SJ if the undisputed facts clearly establish a claim for relief.

Punch and Punch: the opponent says, “yep yep yep… “ all admit +

I file the affirmative evidence of the statute of limitation.

* Defendant entitled to SJ if law bars the claim.

Remember: SJ for affirmative defenses requires affirmative evidence.

Deposition🡪 quickly move to SJ. : OK

Jury Trial

The 7th amendment: everyone right. Can be waived.

LEGAL only: courts of ….. individual has a right to jury….. damage compensation unemployment etc.

NO equitable courts: breaches of contracts, etc. unjust enrichment.

Test: cause of action

1. Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry
   1. The 7th Amendment: Jury Trial for Certain Claims.
   2. 27 Truckers: 회사와 함께 소송해야.
   3. Struggling bus. Mclean Trucking Company
   4. < Sorry guys, but I have to let you go.--> Truckers fired. 🡪 they grievance.
   5. Health benefit. > salary and injunctive
   6. They were represented by union.
   7. Union represented the other union seemingly interest.
   8. Grievance🡪 sued🡪 lost.
   9. Union sued again. Truckers needed jury trial. Union wants bench trial.
   10. Does a breach of fair representation claim against a union qualify the 7th amendment right to jury trial? Yes. To decide whether a party has a right to a jury trial.
   11. A breach of fair representation claim against union qualifies for the 7th Amendment right to a jury trial.
   12. 2 step test: 1) historical analysis, and 2) analogizes a the closest 18th Cen action to determine a similar claim would have been heard in a court of law or equity.
   13. 2) remedy is equitable or legal in nature.
   14. E.G. If plaintiff is seeking restitution.
   15. Concurrent: Brennan: The remedy sought was legal however the majority’s resort to analogies🡪 X
   16. Dissent: Kennedy: Trucker’s claim is not eligible for the 7th right and should have gone to a judge.
   17. Fiduciary duty claim or breach of trustee🡪 beneficiary duty
   18. Client lawyer 🡪 Union has no control.
   19. Themis 70: Is this suit legal for which the ***employees can demand a jury***, ***or a claim at equity with no right to jury***?
   20. Themis 70: Union members sue over lost seniority rights.
   21. Analogous to Contract claims for damages. $$$$$$$
   22. ***Supreme Court: The claim seeking damages is analogous to suits at common law: the right to a jury should apply***.
2. Jury system.
   1. Bias: jury : fact find.
   2. Civil suit. Common law.
   3. Historic test: UK 1791: drafted jury trial.
   4. Provision: Right to jury trial.
   5. Equitable relief: jury trial X
   6. Legal action: compensatory damage: jury trial.
   7. R 38.
   8. (후순위): Both can request jury.
   9. If doesn’t request jury, then, 🡪 (후순위) request jury.
   10. Jury can hear: legal claims (), and equitable claims (후순위).

Themis 69

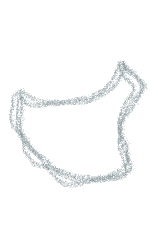
The Seventh amendment allows juries for claims in common law. But not claims at Equity.

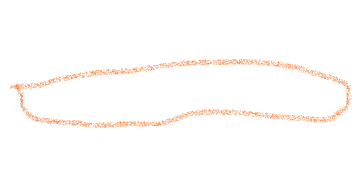
Erie

The 10th amendment : Erie🡪 What law can be applied?

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.



 When state-base case no exist. Congress cannot make this.

28 USC 1652

Laws of the several states.

Swift v. Tyson🡪 Statutory and constitutional law means, “laws of the several states” 🡪 overturned?

1. Statutory law

2. Local law

3. General law

Sitting in diversity: which law is applicable?

✪Summary judgment as a matter of law

✪Who can bring them?

✪Motion from a PARTY.

✪New trial 🡪 judge. >*sua sponte*>

Themis 28 Choice of Law:

Traffic accident: NE Car crashes in Utah. Nebraska and Utah have different state laws.

Choice of Law: Principles and rules by which court decide the substantive law and rules of procedure that will govern an action.

* Determines which state’s law control. That is, Conflict of laws analysis.
* ***Determines whether state or federal law applies in diversity actions. (that is, Erie analysis)***
  + What if ***Nebraska Federal Court***??>>>🡪 Utah state Law????
  + Then, FRCP conflicts with Utah state law?
* Why this issue? Balances sovereign interests.
* Simpler in nations without dual sovereignty
* Piper: plane crashed in Scotland. Choice of other nations implicated but much less.

Themis 29 Erie

Railroad

***Black & White Taxicab🡪 Forum Shopping problem.State court interpretation differs.***

The 10th.

Judicial interpretation of shared legal rules.

The UK: General Principles of Common Law.

Federal judges Statutory law. Statutory law🡪 ***state*** interprets.

Erie v. Tompkins

Choice of law problem.

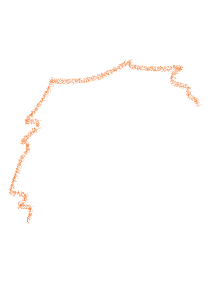
✪Vertical choice of law problem. What law to apply in the state based claim?

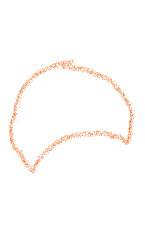
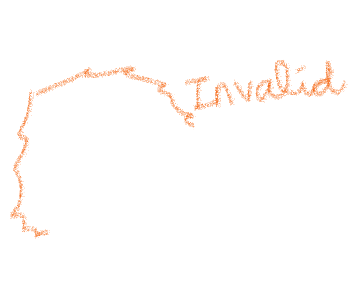
Bias against P🪓A 🧑‍🦱resident . 🧑‍🦱filed in NY🡪NY State law applied.

1. 🧑‍🦱resident Tompkins🡪 PA citizen🡪 Forum shopping. Erie Railroad: 팔짤림.
2. Railroad argued, “***PA law says, “you are a trespasser***.” We don’t have to take care trespasser.
   1. Wanton, negligent.
3. Tompkins says, “I am a licensee.” Duty owed.
4. Both railroad, and Tompkins are correct about the law. Does state common law or federal common law apply?
5. ***Section 34 of the Judiciary Act of 1789 provides that the “laws of the several states” apply in diversity cases.***
6. ***Federal Court Rules of Decision Act (RDA)***
7. Federal Court applied the “laws of the several states.” When deciding cases, unless Federal law controls. Federal Law courts sitting in diversity are bound to apply STATE LAW.
8. Swift v. Tyson 1842
   1. ***“Laws of the several states” only included Statutory and Constitutional law*** (i.e., positive law)
   2. ***Rules of Decision Act (RDA)🡪 Federal Court has to apply State statutory Customary law***
   3. Not state common law. In Diversity cases.
   4. Overturned.
   5. S. Ct: Laws of the several states” include state common law; in diversity cases, federal courts should apply state statutes and state common law. Not federal common law.
   6. ***Problem 1: Swift promotes Forum shopping. (picking the court with the most favorable law).***
   7. ***Problem 2: leads to inequitable administration of federal law. Suggests federal courts can create substantive laws. E.g., Federal courts can create tort law XXXX***
   8. ***Oversteps the limits of federalism. E.g., federal tort law applies everywhere, ppl will freak out. Government making law? XXXX***
9. Taxi Cab Case (1928)
   1. KY statute (interpreted by KY courts)-> no exclusive arrangements allowed.
   2. Taxicab company moves from KY to TN to create diversity – federal court more favorable than state.
10. Federal Courts can apply 🡪 “General Law.”
11. Commercial law
12. K that doesn’t depend on local laws.
13. Common law ought to be?
14. Many states, railroad owned a duty of ordinary care to people walking along a right way.
15. Must a federal court sitting in diversity apply ***state common law***?
    1. YES
    2. Swift v. Tyson, Federal courts exercise diversity jurisdiction 🡪 free to disregard state law and exercise independent judgment on matters of general jurisdiction.
    3. Discrimination and unequal treatment under law.
    4. Reincorp. New state to establish diversity
16. A federal court diversity jurisdiction must respect and enforce state law otherwise, unconstitutional. Invasion of state autonomy and deny independence.
17. Concurrent: Reed.
18. Swift🡪 erroneous. Not constitutional.
19. Federal Courts🡪 State decisions.
20. 따르길.--> Congress authority 🡪 Substantive law. 🡪 Govern federal courts X
21. Dissent: Butler: Tompkins🡪 Contributory negligent? YES
22. Swift “Foundation of government”
23. Majority🡪 the case for reargument of the constitutional issues
24. The general attorney to intervene.

|  |  |
| --- | --- |
| Rules Enabling Act (헌법2072) REA --- HANNAH | Rules of Decision Act (헌법1652) RDA ERIE |
| * Authorized the Supreme Court to create “general rules of practice and procedure” for lower fed courts * Rules cannot “abridge, enlarge or modify any substantive rights” * All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect. * *Validity* under Constitutional law * FRE FRCP * ***Substantive rights*** generally involve conduct outside of legal proceedings. | Constituent with Article 4, it mandates application of state, “rules of decision,” unless “the constitution or treaties of the US or Acts of Congress otherwise require or provide.” |







 Direct Collision.

|  |  |
| --- | --- |
| *Shady Grove* | *FRCP 23 State rule different 🡪class action* |
| *Hanna* | *FRCP4state rule different 🡪service methods* |
| If outcome is unclear, | also BALANCE. |
| Gasperini: | ***With sensitivity to important state interests.*** |

Sibbach test: is the FRCP really a rule of “practice and procedure,” that is, it involves “the manner and means” by rights are enforced.

Does the FRCP “abridge, enlarge, or modify” state substantive law, e.g., does it change rights, rules remedies of state-based claim?

* Under REA🡪 if there is a direct collision, federal courts will apply the federal rules.
  + Hanna: FRCP 4.
  + Shady Grove: FRPC 23.
  + Walker / Ragan: FRCP 3
  + Cohen FRCP 23.1
  + Twin aims in Erie: avoid forum shopping and unequal protection of law for litigants= inequitable outcomes.
* Under RDA, 🡪 federal courts are much more likely to apply the state rule
  + Erie: state common law : trespasser.
  + Guaranty Trust: State Statute of Limitation.
  + Gasperini in part: trial court review of verdict pursuant to state standard
  + Byrd: strong federal interest in trial by jury on questions of fact pursuant to the 7th amend.
  + Gasperini in part: appellate review guided by federal practice using “abuse of discretion” standard consistent with the 7th amend.

REA----- Hanna

Whether there is

1. Federal Statute or FRCP
2. Whether there is direct collision
3. Compare and Contrast 🡪전에는 어떤 케이스?
4. Purpose of Law: Co-existences?
5. Hanna FRCP R 4. Stat Rule for Service of Process purpose.
6. FRCP🡪 Grant discretion to judge. 모든 클레임 가능.
7. Stewart: Venue Transfer? 🡪 Forum Selection clause
8. Burlington: some desire to uphold decision making

* Is the state rule bound up 🡪 in substantive Rights? Shady Grove.

Cohen: State Rule있음. Federal Rule 없음. Bond Derivative Action.

Shady Grove: Class Action🡪 가능 불가능?

Gasperini: 사진사. State Interest

**🡪 Excessive jury verdict “shocks the conscience.”**

🡪 Direct collision

🡪 Appellate Review: Abuse of discretion?

Reexamine clause

Rules of Decision RDA

1. Outcome determinative test.
2. Fed , State 의 결과가 다를 경우, 🡪 Substantially -🡪 Deliberate Forum shopping.
3. Balance: between… Strong state interest OR Manner, mode, etc.

*1. Direct Collision or not*

*2. If there is no FRCP, State Rule?*

*3. Outcome determinative test*

*4. Practice, Custom, etc.*

????

\*

TA Zoom Dec 1st 2023

On point, collision, validity for REA.--> Hanna

Outcomes, Byrd, Twin Aims for RDA.--> Erie

Validity is the Sibbach test. Referenced in Shady Grove.

Themis 34

***On point: “SPEAK TO THE ISSUE”***

* Walker v. Armco Steel Corp:
* Federal Law has to speak for the same as what the state law says.
* S. Ct: The FRCP is to be given their plain meaning, and FRCP 3 has no relation to Statute of Limitations. Therefore, it is not on point with a state Statute of limitations.
* If FRCP impacts Statute of Limitations of Oklahoma, it might even violate the REA by enlarging a cause of action.
* Not the same as Hanna.

Themis 35

Outline for choice of law analysis

1. Write down the conflict: Whether it is state or federal law conflict
2. Determine whether the federal law is:
   1. Constitutional valid
   2. Statutory texts or
   3. Case law interpreting such text.
3. If yes, federal law controls as long as it is
   1. Valid : Rules Enabling Act and
   2. On point
4. If no, apply modified outcome determinative test : forum shopping anaylsis: litigant chooses the forum based on this. 🙆🏼‍♂️ will shop.
   1. Use examples from class
   2. Focus on thorough analysis

Shady Grove v. All State Ins Co

1. May a state law that prevents certain types of damages from being pursued via class action limit FC actions satisfy FRCP 23 requirements?
   1. NO. 🡪 recover penalty.
2. R 23: permits all class actions.
   1. “Court created rule” governs only “the manner and the means,” as long as they don’t “abridge, enlarge, or modify any substantive right”
   2. The court created rule governs only the manner and the means of enforcing litigant’s rights, it is valid.
   3. Concurrent: the scope of the FRCP is sufficiently broad to control the issue. Before the court, leaving no room, for the operation of conflicting stat law. Waler v. Armco Steel
   4. There is no congressional act governing the q and the court may conduct its anlysis.
3. Direct collision 🡪 then Federal law applies. (REA: Hannah) 🡪 both answering the same question.
4. “FRCP” 🡪 not abridge, enlarge, or modify any substantive right.”
5. Dissent: Ginsberg: F. Rule should be narrowly construed to accommodate important state interests.
   1. Substantive rights issue.
   2. 같은 목적 아님, 입법목적 다름 🡪 다른 판사: Direct Collision있다..
   3. No collision between

Insurance🡪 Lack of jurisdiction Penalty under 901 (b) 🡪 Class action.

* Outcome: how much it is different?
* Stronger review of jury verdict had substantive purpose for tort reform in NY.

\*

* Deciding whether there is direct collision?

1. What is the purpose?
2. Federal Rules Broader? OR STATE Rule?
3. Direct collision
4. FRCP🡪 있나 없나?
5. Hanna: FRCP좁았던 경우. 목적이 달랐던 경우.

Themis 32

Hanna v. Plumer : Modified Outcome Determinative Test.

* ***ERIE TWIN AIM: SUBSTNTIALLY INEQUITABLE:***
  + ***People will view that it is really unfair.***
  + ***Outcome determinative test***: ***the particular application of law will lead to different substantive outcomes***.
  + ***If it is substantially inequitable, and forum ship to avoid***:
* Modified outcome determinative test: no federal statutory rule applies, state law will prevail and it will prevent forum shipping.

*Themis 30*

Guaranty Trust and the Outcome Determinative Test

A rainbow reflecting light from a prism

Description automatically generated

Erie held that the rules of decision in diversity cases are the laws of the several states which include common law of the several states.



What does “rules of decision?”

Guaranty Trust Co. v. York 1945

* What rules are “substantive” and must be supplied by state law?
* You can’t identify procedural law.
* Goals is Federal Court to replicate (정확히 모사하다 복제하다) the state court experience.
* Problem: almost every rule can affect the outcome including procedural rules.
* Purely procedural
* Ex. I file in Nebraska: Defendant beat me up at the bar🡪 I file in California ~~Defendant beat me up at the bar~~
* We care about similar outcome.
* **OUTCOME DETERMINATIVE TEST**
* Diversity case litigated in federal court is🡪 identical experience that would be in State court?
* Re-create the entire experience that is perfectly the same as the state court🡪 Guaranty Trust.
* It is not necessarily the best result.
* Federal adjudication

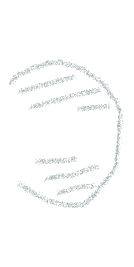
**Burlington v. Woods**

State rule 🡪 10 % penalty

FRCP 38: Control

* Broader or narrower? 🡪 if broader, then, direct collision.
* Discretionary or rather than mandatory state law?

**Stewart Organization Inc v. Ricoh Corporation**

* State common law
* Forum selection clause
* 헌법 1404에 따라 Discretionary
* Whether or not transfer
* State law: 아예 없는 경우??
* Alabama law: doesn’t like Forum Selection
* Should the Federal Court sitting in diversity apply Federal Law in adjudicating a motion to transfer a case to a venue provided in a K Forum Selection Clause? YES.
* The Court determines that this 28 USD 1404 (a) is broad enough to cover the issue.

p.574

Gift

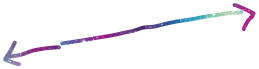
Federal court doesn’t need to apply

1. Equity

2. Equity Common law

3. Laches 🡪 untimely (delay의 이유있음)

4. Federal courts have equity jurisdiction.



Equity is different from Fed Cts, and must follow State Cts law.

Only if it substantively affects the outcome result of litigations

**Ragan v. Merchants**

Statute of limitation.

Substantially Outcome Determinative.

Kansas: 2 years🡪 expired.









Outcome determinative

* ***Is it substantially, and materially different?***

Themis 32: Substantial inequitable forum shop to avoid.

Hanna. Modified outcome determinative.

If no federal statutory rule, Federal Court apply state law to block forum shop.

* Post Erie State law applies there.
* What substantive law applies in diversity

|  |  |  |
| --- | --- | --- |
| Federal Court | | |
| Hanna | Byrd | Guaranty Trust v. York |
| Modified Outcome determinative:  If *no* federal statutory rule applies, F Cts will apply state law  When it has no grounded statute🡪 when only when state law. | Modified Test  🡪 Balance : Public interest v. State interests | Strict Outcome Determinative Test |
| FRCP 4 applied  Service of process | Court would balance state and federal interests | State law applied and defendant won. |
| Supremacy clause | Weigh two: state court system of personal service v. Federal interests | Replicate the state  Outcome determinative  We don’t want different result: just copy state law experience. |
| No Erie problem  F/ S: Difference is 🡪 only when it is *substantially inequitable*.  Substantial unfairness is 🡪 parties forum shop to avoid. |  | Erie Problem: forum shop and inequitable outcomes |

* 

Themis 31

Byrd

감전됨

* Byrd received compensation benefits
* Worker’s compensation plan
  + Lost wages and medical cost
  + No employee litigation
* The worker’s compensation law gives us employer immunity
* 회사의 immunity doesn’t apply here.
* Evidence
* Themis 31: State law is not bound with rights and obligation of the party.
* Does the federal policy of having the jury answer questions of fact prevail over state rules that would interrupt the judge jury relationship in federal court?
  + Yes. Erie. Federal Courts exercising diversity jurisdiction must respect state created rights and obligations.
  + The policy was to avoid inequitable justice by having different outcomes of similar cases based solely on whether the case was tried in Federal Court or State Court.
* Federal policy of having the jury answer questions of fact prevails over state rules that would interrupt the judge jury relationship in Fe Ct.
* The risk of a different outcome is slight since Fed judges have the power to grant a new trial if the verdict appears to be against the weight of the evidence.
* South Carolina Workmens Compensation Act (SCWCA)
* SCWCA doesn’t allow employees to sue.
* The employees must accept the statutory compensation benefits.

Jury’s question:💇‍♂️employee: 고용인인가 아닌가? ??? Question of fact.

고용인이 아님. Statutory employee.

Judge: question of law

Worker’s compensation act

* ***State created rights and obligation***
* Ex. ‘s immunity of independent suit
* Jury: fact finder.<-- Fed. Ct.

Supreme court: Court can weigh state and federal interest and apply the law whose policy is of greater importance; due to strong federal policy favoring jury decisions, federal interests outweigh state interests here.

State law: not bound up with the rights and obligations of the parties.

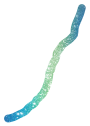
State law really matters🡪 public (more weight)? Or just a court (less weight)?

**Balancing test.**

Hanna v. Plumer



* State Substantive rights 에 영향이 없다면🡪 Federal Rule apply.
* ***If the plaintiff serves the defendant property under the federal rules***, the plaintiff can proceed with a state law claim that requires a different method of service for establishing liability.
* ***Fed Rule v. MA statute lies within the uncertain area between substance and procedure.***
* ***Erie: MA statute is rejected.***
* ***2 drivers crashed cars: Hanna alive. …. Driver died.***
* ***MA law: personal service🡪 진짜 person에게 해야.***
* ***FRCP Federal Law:아내🡪괜찮음***
* ***R 12 (b): dismissed in state court, not dismissed in federal court.***
* ***S. Ct: Reversed.***
* ***If a plaintiff serves the defendant properly under FRCP, can the plaintiff proceed with state law claim that requires a different method of service for establishing liability? Yes***
* ***FRCP1 federal rules apply to nearly all civil cases.***
* ***State law disregard🡪 OK***
* ***교통사고***
* ***The service satisfied Fed Rules but raised affirmative defense created by the MA Statute, noting that he had not been served personally.***
* ***Serving Plumer’s wife🡪 reasonble.***









\*

The 14th Due process issue.

Full faith credit clause.

Fairness

🡪 Issue and claim preclusions.

Note 내용 이어서.

Preclusion

Federal Practice

Joinder: Anticipation of proceeding

Ex. Collateral Attack.

Preclusive effect

|  |  |
| --- | --- |
| Claim Preclusion Res Judicata | Issue Preclusion Collateral Estoppel |
| Joinder | |
| Efficiency ETC any followup Cases |  |
| Judicial resources |  |
| Judicial authority |  |
| Stuck with bad judgement |  |

***Claim Preclusion Res judicata***

요건

Moitie

같은Claim\*2

교통사고 O.

Affirmative offense.

R 69 Force.

Then, relitigation X

Privity 🡪 Compulsory counter claim P1🡪 P2 Bound.

Bad judgment 🡪 Bound.

* Parties in Privity:
  + Opportunity to be heard 있어야 함.
* Claim and Issue Preclusion.
  + 관련성이 없는 당사자. 🡪 안됨 판례: Taylor.
* Preclusion: Federal V, State V.

Carter v. Hinkle

* Claim preclusion prevents parties from relitigating claism that were or should have raised in a previous action that ended in valid final judgment.
* Identity of claims between the 1st and the 2nd action
* 1946. 12. Claim identity?
* 🚖hinkle >>><<<🚘 Smith
* Virginia State Court: Hinkle damage
* I am suing to recover damages
* Taxi 🡪 *Property Award* 1,000 USD 받음.
* Again,
* Virginia State Court: Smith Sued. Carter Sued.
* *Personal injury*: Hinkle is barred from suing us because the final judgment in his 1st action.
* 법원 judge case to be proceed.
* Jury: another $1,000:이김.
* Can a plaintiff bring an action for property damage and a separate action for personal injury even if both harms resulted from a single act?
  + Yes

**Taylor v Sturgell 2008**

🙎🏻1 소송 짐. 🙎‍♂️2같은 소송을 또 할 수 있는가?

✈️

Freedom of Information act

Request: Greg Herrick Files F-45.

Plane’s manufacturer objected.

“Those documents contain trade secret.”

“Herrick v. Federal Aviation Admin

🡪 Reject your request (WY)

🡪lost

2. After a month, for the same agency, new request was filed🡪 같은 문서임.

His friend, Brent Taylor 🙎‍♂️2, made request. 2 men🡪 repair plane. The same hobby.

🡪 Agency noticed it and refused the request.

3. Taylor 🡪 Different District Court: District of Columbia filing.

🡪 The same lawyer.

🡪 case: the same legal theory.

dismissed, because virtual representation applied.

4. Virtual representation 🡪 is a form of res judicata

🡪 Taylor’s interests were de facto represented in Herrick’s earlier lawsuit and this prevents Taylor from brining the same claim.

D.C.

Can a claim be precluded if the litigant in the previous case was not the same as one in the current case and there is no legal relationship between them?

🡪 No. At the district Ct and Courts of appeals level, this case was dismissed by involing, “virtual representation”

🡪 litigant may be subject to claim preclusion if they bring a claim.

2. A close relationship between the old party 🙎🏻1 🙎‍♂️2

And new party participation by the present party in the current case, or “tactical maneuvering” by the present party in order to avoid preclusion in the first case 🡪 안맞음.

1. Litigants are not bound by the actions of another “virtual representation” contrasts this idea.

🡪 Claim preclusion is a process designed to relieve the court of needless litigation, not create it.

Virtual representation X

But if legal relationship between 🙎🏻1 🙎‍♂️2

existed, then, claim preclusion would apply.

Taylor: antique aircraft enthusiast: suit🡪 D.C. 🡪 Obtain FOIA

🡪 plans for a particular model plane’s engine.

Prior to Taylor’s suit, friend Greg Herrick filed a suit in WY seeking the same information.

Herrick’s 🡪 dismissed by FAA refusal.

Info🡪 trade secret on the part of the company that built the engine, Fairchild Corp.

Valid Final Judgment on the Merits

Judgment isn’t considered final

🡪 On the merits.

Preclusion

Voluntary dismissal without prejudice

Operation of Claim preclusion

TA November 20th

Intervention

Terry

|  |  |
| --- | --- |
| Legal Remedy | Jury Trial🡪 Party demand |
| Equitable Remedy |  |

Voluntary and involuntary dismissal

1- Discovery 끝난 후30일 내에.

2- Summary judgments

(bread butter of adjudication motions)

No genuine issue of material fact

Scott v harris

3- Summary judgment: Reasonable person would… do… in reasonable minds.

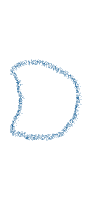
* + - Whether genuine issue of material fact exists?
    - Celotex.

Collateral estoppel : Issue Preclusion

🡪 if P1 and P2 are in PRIVITY, P2 can bring a same issue.

🡪 If P1 and P2 has no privity, then, not everyone can bring the same issue.

* Issue preclusion occurs in a subsequent action between the parties, whether on the same or a different claim when
  + The same issue of fact or law has been
  + Actually litigated and determined in the prior case,
  + By valid and final judgment and
  + The determination was essential to the judgment
  + Precluding re-litigation of specific issue.
* Benefits: avoids waste of time and expense of relitigating same issues and prevents undermining judicial authority
* Costs $$$: first filed action decides the issues, where a different judge or jury might decide differently or more in line with evidence presented in second proceeding.

The same issue: depends on…. 1) how closely related are claims, 2) whether events giving rise to the claim took place at different times, 3) whether the parties had the same burden in both action (civil : preponderance of evidence, and crime: beyond the reasonable doubt) 4) overlapping or different evidence, 5) same or different legal rules 6) whether pretrial preparation discovery would have been the same.

EX. Embezzlement of IRS agent:

* Issue of criminal suit (O) no issue preclusion
* Issue of civil suit (O) no issue preclusion
  + Because burden is different.

|  |  |
| --- | --- |
| Claim preclusion | Issue preclusion |
|  | Prevents re-litigation of specific issue. Rather than the whole claim, even if the subsequent claim is different – the same claim is not required. |
|  | Even if subsequent claim is not barred. |
|  | Even if no “on the merits” final judgement |
|  | Can be invoked by someone who was not a party in the initial proceeding. |

Cromwell🧑🏻‍🎨v. County of SAC 1876

* + - 1. Issue is decided
      2. They tried built courthouse but never did.
      3. Sac County Bonds 1860. 10 Bonds to Courthouse.
      4. Cromwell owned 20 coupons.
      5. 4 different times: 1868, 1869, 1870, and 1871🡪 Ct house built.
      6. Can Mr. Cromwell prove that he paid fair value for these coupons? NO
      7. Where a second action is between the same parties and involves the same transaction or occurrence as an initial judgment, does that judgment automatically bar the second action? NO
         1. If! The second action is on an issue that was not adjudicated in the initial action.
         2. There can be multiple issues in any given case besides the actual merits.
      8. Judgment on the merits is reached between 2 parties is not a reason that one of the parties may not litigate another, un***-adjudicated issue based on the same transaction or occurrence*** in the future.
      9. The fact that Cromwell couldn’t prove that he had paid value before maturity of the bonds in the Smith case is not even presumptive, much less conclusive of whether Cromwell paid value before maturity for the district bonds in the case.
      10. Cromwell should have been given a chance to offer that proof in this case and the lower ct did not give him that chance.
      11. Samuel Smith, on behalf of Cromwell🧑🏻‍🎨 had previously brought suit against the County, seeking to recover on early maturing coupons.
      12. Subsequently, Cromwell🧑🏻‍🎨 brought this suit against the county, seeking in cash in 4 different bonds and coupons for interest. 🡪 whether they reached maturity.

p.671

Jury General verdict🡪 requires the plaintiff to proof…….. whether it was litigated or not.

Special verdict requires….. the plaintiff to proof…

Rios v. Davis

Finality끝을 보기.

1960. 12.

Rios 🡨 joint tort feasor

Davis:

El Paso County TX

Three way motor vehicle collision

4 months later

* If findings of facts in a prior action are not essential to the judgment, then, is a later action, which is based on those facts, subject to collateral estoppel or res judicata? NO
* NOT essential. Incidental facts🡪 not for appellate review.
* Alternative determination.--> it is not about “essential facts.”
* Dry goods sued Davis for property damage, Davis defended the claim by alleging contributory negligent and join Rios 3rd 전case.
* Jury’s finding as to Rios’ negligence are immaterial.
* The lower Court judgment reversed, and the case is remanded.
* Car accident: Res judicata: Relitigating the fact that was decided by the other court.

Themis 76

Issue Preclusion

Requirements:

* Same issue as prior lawsuit
  + 예를 들어, Tort: negligence: breach, duty owed, standard of care, ….하나 하나의 이슈.
* ***Actually litigated*** or decided🡪Admissions and stipulations are NOT sufficient.
* ***Issue must be essential to judgement.***
  + ***Must have been outcome determinative 🡪 ON THE MERITS.***
* ***VALID FINAL JUDGMENT ON THE MERITS***
  + ***THE SAME STANDARD AS CLIAM PRECLUSION***
* ***The Second suit contains … the first-suit-loser.***
  + ***Issue can only be precluded against…***
  + ***First suit loser: party had a full and fair opportunity to litigate the issue in the first suit, and LOST.***
  + ***Does not require strict mutuality of parties between lawsuits.***

Mutuality 있음:

Mutuality 없음:

Themis 80

Offensive and Defensive Issue Preclusion

Defensive Use

* Defensive use allows a new 🧛‍♂️ to prevent the same 👨‍🦲1 in a prior action from asserting a claim that the 👨‍🦲1 had previously litigated and lost against 1🙆🏼‍♂️.
* Blonder -Tongue Laboratories v. IL foundation, Bernhard v. Bank of America
* Creates a strong incentive for 👨‍🦲1 to join1🙆🏼‍♂️🧛‍♂️ … in the same action, if possible.

Offensive use:

Class action.우버, 토요타 리콜 등.

Non-mutuality:

* Offensive Use: allows the 💆‍♀️ new to benefit from issue preclusion where the same lost in the prior suit, even if the new 💆‍♀️ would not be bound by issue preclusion from the prior suit.
* Reason: a claimant who loses doesn’t need to be afforded a second opportunity to defend on the same issue, assuming there has been full and fair opportunity to do so. It adis in judicial economy.

Parklane Hosiery Co v. Shore 1979

1st time 안되면, 2nd, 3rd, times…

🍎🥥🡪 second bite of apple 🡪 prevented

* Res judicata: claim preclusion: parties cannot litigate the same claim ***twice*** against the same opponent.
* Collateral Estoppel: issue preclusion
* Shore
* “Parklane violated Federal Securities law.”
* “Pending”
* SEC: sued Parklane too
* Bench trial: SEC v. Parklane
* Parklane’s proxy statement is False and mislead.
* Affirmed on appeal
* Shore sought Partial summary judgment on his own case
* Amendment 7th trial
* Parklane should not be allowed to relitigate the proxy statement and bound by the prior judgment.
* District Court denied: the 7th amendment jury
* Appeal: Shore won.
* May a litigant who was not a party to a prior judgment nonetheless use the judgment offensively to prevent from relitigating issues in the early proceedings?
  + Yes. The purpose of collateral estoppel is to protect the litigants from re-litigating an identical issue with the same party and promoting judicial economy by preventing needless litigation.
* Defensive use of collateral estoppel: 🡪 Blonder v. IL foundation🡪 was estopped from asserting a claim that had previously litigated and lost against another .
* Offensive use of collateral estoppel
* A basis of estoppel is non-consistent with one or more previous judgments in ’s favor.
* When offensive collateral estoppel should be applied?
* SEC injunction.
* Parklane had incentive to litigate SEC lawsuit fully and vigoriously due to the seriousness of the allegations
* Judgment in the SEC’s action was not inconsistent with any previous decision
* Parklane was not presented with any procedural disadvantages in the 1st action that might affect the outcome of the 2nd action.
* Dissent: the 7th: not repealed. Procedural.
* Even if offensive collateral estoppel does not run afoul of the constitution, it is improper.
* How the court look whether it is actually litigated issue?
  + Pleading, pretrial orders, final judgments, and verdicts…….
  + Issues: It can be after verdict in a trial, orders of dismissal, judgment on pleadings, summary judgment, directed verdict, etc.
  + No actual litigation of issues: default judgments, consent judgments, and judgments based on stipulations of fact or admissions will generally not be viewed as “aactually litigated”
  + Rule 2: Alternative determinations: the issue is deemed to be not essential to the judgment and thus neither have preclusive effect.
* Issue preclusion: the same parties and exceptions
  + Only the original parties and those in privity with them are bound by claims litigated in the prior action.
  + Taylor: 6 exceptions (앞의 claim preclusion과 반복)
    - Consent by parties to be bound by prior action
    - Preexisting substantive legal relationship
    - Adequate representation
    - Control
    - Re-litigation of prior judgment through a proxy agent
    - Special statutory schemes such as bankruptcy and probate proceedings

**Rule of Mutuality**

1. Only parties were bound by a judgment

Only parties and their privies were bound by a judgment and

2. only parties and their privies could benefit from a judgment

The risk of preclusion from the prior action was mutual for both parties.

This is still the case for claim preclusion, but not so for issue preclusion

|  |  |  |
| --- | --- | --- |
| A new party | Involved in a subsequent suit can be benefit by invoking issue preclusion against a party to the prior suit | No issue of Due Process  OK |
|  | Involved in a subsequent suit **cannot be bound** by issue preclusion by a party to the prior suit who is seeking to invoke it | Due Process Concerns.  Not OK |

Issue Preclusion Exception

1. Two actions involve claism that are substantially unrelated or
2. A new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoide inequitable admin of the laws. Or
3. A new determination of the issue is warranted by differences in the quality or extensiveness of the preocedures followed in the two courts or by factors relating to the allocation of juri between them
4. The party is sought had a significantly heavier burden of persuasion with respect to the issue in the initial action than in the subsequent action.
5. There is a clear and convincing need for a new determination of the issue