

Personal Jurisdiction

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 - b. Consent**
 - i. Express**
 - ii. Implied**
 - c. Waiver**
 - d. Presence in the Jurisdiction**

OR,

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OR,

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Jurisdiction

In Personam

Judgment against the person, usually in contract or tort.

A state has personal jurisdiction. The judgment can be collected on in any state under the full faith and credit clause of the constitution.

[*Pennoyer v. Neff*, (in personam v. in rem jurisdiction, state has power over people and property within its borders not out)]. Limited by due process clauses of the 5th and 14th amendment.

Governed by;

State law – State has absolute power over people when served in the state.

Limited by due process –

In Rem Jurisdiction

Determining title to land and who owns it. Jurisdiction is where the land is located. State has absolute power over property because of presence of property in state.

Jurisdiction Based Upon Power Over Property

In rem jurisdiction is when all claims to a property are dealt with. Not, just 1. So just to restrict your rights is actually in personam jurisdiction.

[*Tyler v. Judges of Ct.*]

Status

Changing status is kind of like in rem jurisdiction. There is no need for personal jurisdiction. [*Kulko v. Superior Court*] Examples include;

1. Divorce;

2. Emancipation;
3. Child custody;
4. Mental Capacity.

Quasi-in-rem Jurisdiction

This is an action against property to collect a debt not associated with the property. It is against the person based on property. Typically used to satisfy contract claims. State has absolute power over property because of presence of property in state.

This type of jurisdiction is gone and no longer allowed. You now must use due process analysis on any non-resident.

[*Shaffer v. Heitner*, Greyhound Bus case].

Due Process

5th Amendment – Due process clause, limits Federal government.

14th Amendment – Due process clause that limits the states.

Personal Jurisdiction

I. Amenability

Personal Jurisdiction – The power of a court to enter a judgment against a specific defendant. Defined by statute and the due process clause. You have to have both the forum law and the due process analysis.

A. Due Process

You satisfy amenability by two different ways, Traditional Bases OR Minimum Contacts, then always apply the fair play

and substantial justice test. We are doing this test to show that personal jurisdiction does not violate due process.

1. Traditional Bases

a. By Residence

(Not citizenship).

b. Consent

Personal jurisdiction is a right which can be waived.

[Insurance Corp. of Ireland v. Compagnie].

You can waive any objection to personal jurisdiction, either expressly or impliedly, usually by contract or appointment of agent.

i. Express

By contract, forum law, or appointment of agent.

[M/S Bremen v. Zapata Off-Shore Co. you can contract your way out of personal jurisdiction].

[Carnival Cruise Lines, Inc. v. Shute]

ii. Implied

By law, like a non resident motorist.

[Hess v. Polawski, appointing agent of motor vehicle registrar.].

c. **Waiver**

d. **Presence in the Jurisdiction**

If the defendant is served in the state while present, then that is enough to get personal jurisdiction which complies with due process.

[*Burnham v. Superior Ct.*]

OR,

2. **Minimum Contacts**

2 separate types General Jurisdiction or Specific Jurisdiction, use either/or.

[*International Shoe v. Washington*, created minimum contacts jurisdiction.]

a. **General Jurisdiction**

Contacts are not related to the lawsuit. You don't have to argue that the contacts must be with the law suit, only that there are continuous and systematic contacts. [*Perkins v.*].

i. **Continuous and Systematic Contacts Test.**

You need continuous and systematic contacts within the forum state to have general jurisdiction.

[*Helicopteros v. Hall*, held that purchases and training were not enough for continuous and systematic contacts].

b. Specific Jurisdiction

Defendant had contacts in the jurisdiction of specific jurisdiction which gave rise to the lawsuit. Established by 4 tests. Contacts must be related to the cause of action. Contacts must be between forum, the defendant and the actions giving rise to the lawsuit. You must find one of the four test then test for fair play and substantial justice.

[*Burger King v.* , best case that walks through the test.]

[*McGee v. Int'l Life Co.*, it is quality of contacts not quantity. Only 1 contact needed]

i. Purposeful Availment

Usually used in Contracts.

[*Hanson v. Dankla*, vague concept that minimizes the contacts test and puts emphasis on purposeful availment.]

ii. Foreseeability

Usually used in Tort.

[*World Wide Volkswagen v. Woodson*,
Limits minimum contacts test with
foreseeability and reasonable anticipation.]

iii. Reasonable Anticipation

Usually used in Tort.

iv. Stream of Commerce

D has zero contact with the forum, usually
a products liability case.

Also, called “effects jurisdiction”.

State can exercise its jurisdiction if you do
an activity that effects a problem in
another state. Like shooting a gun into
another state.

[*Grey v. American Radiators, Inc.*, (creates
stream of commerce test, expands
minimum contacts)].

]

[Ashai]

Then test for,

c. Fair Play and Substantial Justice Test

Always do after satisfying the general or specific
jurisdiction test. 5 Factors.

i. Burden on the Defendant

What are the Defendant's resources? (a. vs. b.).

ii. Plaintiff's Interest in Convenient Relief

What is the Plaintiff's right to chose a forum? (a. vs.b.).

iii. Forum State's Interest

What is the forum state's interest? (c. vs d.).

iv. Interstate Judicial System's Interest

What is the other states interest in furthering their social policy? (c. vs. d.).

v. Shared Interests of Several States

This is the concern for the interstate judicial system.

3. Pendant Personal Jurisdiction

If federal court can exercise personal jurisdiction over a defendant in one claim then they will "piggyback" other claims, which it lacks personal jurisdiction, onto that claim, provided that all the claims arise form the same facts as the claim over which it had proper personal jurisdiction.

4. Technological Contacts

Still use either specific or general jurisdiction. Use the same frame work.

[*Bellino v. Simon*, Ct found no contacts under either specific or general jurisdiction on internet baseball case.]

B. Forum Law

Limited by due process analysis as indicated above. But, you also have to have a specific state long–arm statute to get jurisdiction.

1. State Long Arm Statutes

Most states have aggressive long arm statutes. Differs from state to state. 2 types of long arm statutes;

a. Laundry List Long Arm

Have to show activity specified in the statute.
Like, breach of K with a resident.

b. Limits of Due Process Long Arm

Allows for anything that doesn't violate due process. With this statute you just have to satisfy minimum contacts analysis for due process.

2. Federal Long Arm Statutes

Federal court “piggybacks” on the long–arm statute of the state in which it sits. Fed. R. Civ. Pro. 4(k)(1)(A). Except, if congress has created a Federal long arm statute. Examples would include violations of securities law. FRCP 4 is the federal service of process rule that

II. Notice

(Actual notice is NOT goods notice)

Waiver of Service

Know suitable age and discretion.

A. Due process

Again this is a limits on the forum law's notice statute so that it does not violate due process.

The limits are found in the Mullane test which says that "notice must be reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." [*Mullane v. Central Hanover Bank and Trust*, the reasonable notice test].

B. Forum Law

This is the mechanics of notice spelled out in the statute.

1. Federal Courts: FRCP 4

Federal Rules of Civil Procedure Rule 4 is the Federal Service Rule for mechanics of service.

The federal court piggy backs on state long arm statute. FRCP 4(k)(1)(A)(state long arm statute). There are some exceptions, especially when you have a

foreign defendant or violations of securities law. Can't be served by the party themselves.

2. 3 Sets of Rules: Fed, State 1, State2.

You can use either federal or state rules or state where served rules. FRCP 4 allows service under the Federal rules, State 1's rules, where the court sits, or State 2's rules, where the defendant is served. FRCP 4(e)(1).

3. Substituted Service

Court ordered can serve neighbor or family member. [See note #7, page 193].

4. Waiver of Service

FRCP 4(d) allows for waiver of service. If you sign waiver then no need for personal service. If you don't sign waiver the costs of service can be put back on to you.

[Maryland State Firemen's Assoc. v. Chaves].

5. Service by Mail

Only allowed in waiver of service by first class mail. Not by Fed Ex. [See note #2, page 200].

6. Service by Email

Allowed if represented and agreed to. FRCP 5(b) allows if it is "consented to in writing" by the person served.

7. Service on a Person Residing in Defendant's House

FRCP 4(e)(2) allows service on a person of suitable age and discretion residing with the defendant. Does NOT have to be related to the defendant.

8. Service on an Agent Authorized by Appointment

Also, allowed by FRCP 4(e)(2). Service on a appointed agent is OK.

[*Nat'l Equip. v. Szukent*, court allowed the D to contract his appointment of an agent in original sales agreement.]

9. Service on Artificial Entities: Corporations, Partnerships and Unincorporated Associations.

Service of process to a corporation is done by service to a officer, a managing agent, or a general agent. FRCP 4(h).

This rule is liberally construed and courts have held that service is sufficient when made upon an individual who stands in such a position as to render it fair, reasonable and just to imply the authority on his part to receive service. [*Ins. Co. of N. America v. S/S "Hellenic Challenger"*]

10. Service on Individuals in a Foreign Country

3 ways to serve process on foreign defendant. Governed by FRCP 4(f).

a. Hague Convention Countries

Governed by treaty and Hague Convention. Other country will have a central authority to serve process by the government.

b. Non-Hague Convention Countries

You are required to get “Letters Rogatory” by court to ask an official in another country to serve defendant. Old way prior to Hague convention.

c. Foreigner Visiting US

This is OK. If you serve him in the US then valid service.

11. Return of Service

Must file return and affidavit. FRCP 4(L). But, that is only strong evidence and can be rebutted with overcoming evidence. Sewer service is where the process server dumps the process in the gutter and fake the return.

12. Service of Process and Statutes of Limitations

FRCP 4(m) requires service within 120 days after filing of complaint. If not court may dismiss. You can request an extension under Rule 6(b) Enlargement of Time.

FRCP 3 requires that commencement of an action is date complaint filed. The court also may have to consult local law if diversity case. This is a procedural

and substantive law provision. Therefore, the court has wide discretion if you can't serve the defendant and that kills you on a statute of limitations issue.

13. Immunity from Process

Granted for the benefit of the court. Used for attorneys, witnesses, and parties who are needed in the jurisdiction. You can't serve them while involved in another suit.

[*State Ex Rel. Sivnksty v. Duffield*, allowed service of guy who voluntarily came in state and got arrested for car wreck killing person.]

14. Etiquette of Service

You can't trick the person into the jurisdiction by use of fraud or trickery to get a defendant into a jurisdiction. [*Tickle v. Barton, Wyman v. Newhouse*].

Subject Matter Jurisdiction

I. Types of Jurisdictions

A. General v. Limited Jurisdiction

1. General

Everything but,...

2. **Limited**

Only , this....

B. Original v. Appellate

1. **Original**

Some appeals small...

2. **Appellate**

Errors of law and discretion, except mandamus actions, U.S. Supreme Court.

C. Concurrent v. Exclusive

1. **Concurrent**

You can file the action in three different courts.

2. **Exclusive**

You can file in only one court. (i.e. Divorce, Patent).
federal courts have exclusive jurisdiction under bankruptcy, patent and copyrights, actions against foreign consuls and vice consuls, actions to recover a fine, penalty or forfeiture under federal law, and actions involving certain seizures.

[*T.B. Harms Co. v. Eliscu*, could have chosen breach of contract, state case, or trademark case.]

II. Establishing Subject-Matter Jurisdiction

The court's power to hear a case because of the nature of the dispute. Federal courts are limited by Article III, Section 2 of the constitution concerning what cases they may hear.

Can be based under 4 different types of jurisdiction. Under federal question jurisdiction, diversity jurisdiction, supplemental jurisdiction and removal jurisdiction.

A. Federal Question Jurisdiction

Article III, Section 2 gives federal courts the power to hear cases arising under the Constitution, Federal Law and US Treaties. [*Osborne v. Bank of US*].

28 U.S.C. § 1331. Federal Question Jurisdiction – Premised on idea that the judiciary should have the authority to interpret and apply federal law.

Any claim under federal statute, common law, international law, administrative agency or executive order.

The federal question must be based on the plaintiff's claim. Not, the possible asserted defense of the defendant. [*Louisville & Nashville R. Co. v. Mottley*]

Under federal law, federal question can be determined by federal law allowing a cause of action if the following factors are present;

1. the P's are part of a class for whose special benefit the statute was passed;
2. the indicia of legislative intent reveal a congressional purpose to provide a private cause of action;

3. a federal cause of action would further the underlying purpose of the legislative scheme;

4. the plaintiff's cause of action is not a subject that is traditionally relegated to state law.

[Merrell Dow v. Thompson].

B. Diversity Jurisdiction

Must satisfy 2 prongs, citizenship AND amount in controversy.

1. Determining Citizenship

Different tests for people, corporations and partnerships/associations. [28 U.S.C. § 1332 Diversity of Citizenship]

Complete Diversity

No diversity jurisdiction if any plaintiff is a citizen of the same state as any defendant. [Art. III, Sec 2].

Federal courts can't hear state court claims with same state defendants.

Except for:

1. For particular large scale class actions, so long as there is minimal diversity, on D and one P are from different states.

2. Catastrophic accidents – Fed court has jurisdiction where at least 75 people die in an accident at a discrete location. So long as there is minimum diversity requirements met. 28 USC § 1369

3. Any class action over \$5 million or more, and minimum diversity. 28 USC § 1369

Minimum diversity requirements – 1 defendant and at least 1 plaintiff are from different states. Required for [28 USC § 1367 Supplemental Jurisdiction]; [28 USC § 1369 Multiparty Catastrophic Accidents/Class Actions] & [28 USC § 1335 Interpleader].

a. People

Based on the individual's domicile.

Citizenship = Domicile; Domicile ≠ Residence.

Domicile – includes the physical presence of the individual and intent to remain indefinitely.

Domicile is the place of “his true, fixed and permanent home and principle establishment, and to which he has an intention of returning whenever he is absent therefrom.” To change domicile, a party must “(a) take up residence in a different domicile with (b) the intention to remain there.” [*Mas v. Perry*].

b. Corporations

2 tests are used to determine a corporation's citizenship. You can use either.

i. State of Incorporation

Under 28 U.S.C. § 1332(c)(1). Whatever state they are incorporated in is where citizenship is.

OR,

ii. Principal Place of Business

2 different tests to decide citizenship for diversity jurisdiction based on the defendant's principal place of business. The U.S. circuits are split on which one to use.

(1.) Nerve Center Test

The locus of corporate decision making authority and overall control constitutes a corporation's principal place of business for diversity purposes.

(2.) Bulk of Activities Test

Weight given to production and service activities in determining place of business.

c. Partnerships and Associations

Unincorporated associations, like partnerships, labor unions, and charitable organizations, citizenship is determined by the citizenship of its

partners or members. If a corporation is a partner then do corporation test.

2. Amount in Controversy

Must be *over* \$75,000. So, no claim less than \$75,000.01. Claim can include actual, consequential and punitive damages. No interest or attorney fees can be included. However, if the claim is a breach of contract and the contract authorizes those damages then it is OK.

THIS CLAIM MUST BE MADE IN GOOD FAITH.
DEFENDANT MAY OVERCOME BY PROVING CLAIM DOES NOT HAVE REQUIRED AMOUNT BY A *LEGAL CERTIANTY*.

Injunctions may be viewed from plaintiff's viewpoint.

a. Aggregation

Single P's can aggregate claims against single defendant. 2 P's may not aggregate if they have separate and distinct claims. If there is a single indivisible harm, plaintiffs may aggregate. [page 266]. You can't add the arrows.

3. Judicially Created Exceptions to Diversity Jurisdiction

Federal courts have a judicially created exception that they won't hear divorce, child custody and alimony matters. Good judicial economy reasoning. Can be heard only if there is a federal question issue.

[*Marshall v. Marshall*, Anna Nicole Smith probate v. bankruptcy issue].

C. Supplemental Jurisdiction

1. Pendant Jurisdiction

State law claim is related to a federal law claim.

Ancillary Jurisdiction – State law claim attached as a counterclaim, cross-claim or third party complaint. (no basis for federal question jurisdiction). Prior to § 1367, any other joined claim other than the state claim joined with a state claim, was ancillary.

Federal court can only join claims not parties. [*Aldinger v. Howard*]; [*Finely v. U.S.*]. And, you must keep complete diversity. [*Owen v. Kroger*].

2. Gibbs Test for Pendant Jurisdiction

Supplemental jurisdiction is allowed if there is a “common nucleus of operative fact”. It is also discretionary to keep claims based on 4 factors mentioned in 28 USC §1367(c):

1. Difficult issue of state law then court may decline jurisdiction.
2. If all federal claims are dismissed before trial then court may decline jurisdiction.
3. If state law dominates then the court may decline jurisdiction.

4. If jury will be confused then the court may decline jurisdiction. [*United Mine Workers v. Gibbs*]

3. 28 U.S.C. § 1367 Supplemental Jurisdiction

The USSC said that there were pendent claims not jurisdiction under the constitution. So, you could not join parties. They needed congress to pass a statute to authorize supplemental jurisdiction.

You don't need supplemental jurisdiction when you have a state diversity claim and a federal question claim. You remove anything if related.

a. § 1367(a)

Authorizes supplemental jurisdiction as long as the claims "form a part of the same case or controversy" (part of the common nucleus), except as limited by B. Counter claim is compulsory and removable.

b. § 1367(b)

Must keep complete diversity. This allows permissive party joinder though by not specifying it in the statute. If you have permissive party joinder you can have plaintiffs and defendants from the same state. You must be diverse unless under FRCP 20 Permissive Plaintiffs or FRCP 23 Plaintiff Class Members. [*Exxon v. Allapatah Svcs. Inc.*]

c. § 1367(c)

Court *may* decline jurisdiction, based on Gibbs test now in statute form;

1. complex or unusual state law;
2. state law claims predominate;
3. all the federal claims dismissed;
4. other exceptional circumstances.

The court does not have to decline. This is discretionary. If the do, the claim is dismissed not, remanded.

Court has to specify which one of these when they decline jurisdiction. [*Executive Software v. US Dist Ct.*]

d. § 1367(d)

Tolls the statute of limitations for 30 days for those claims voluntarily dismissed. Unless, state law provides for longer. This part of the statute is designed to allow the plaintiff to re-file the complaint in state court.

D. Removal Jurisdiction

State cases can be removed if;

1. the could have been capable of original filing in federal court, and;
2. if the proper removal procedure was followed.

1. Jurisdictional Standing

Power to hear the claim. The jurisdiction exists if the plaintiff's pleading in the state court demonstrates;
a federal question, or;
a diversity claim. 28 USC § 1441.

Jurisdictional grounds are voidable and are never waived by the plaintiff.

a. Federal Question Removal

Defendants may remove to federal court regardless of their citizenship. 28 USC § 1441(a).

Under 28 USC 1441(c), defendants removing a federal question consistent may remove along with it a separate and independent claim that lacks original jurisdiction. If the court wants it can remand the state issues after deciding the federal ones.

b. Diversity Removal

Only a nonresident defendant may remove. If the case involves one or more forum-residing defendants, then the case cannot be removed.

c. Class Action Removal

Class actions are governed by 28 U.S.C. § 1332(d)[diversity class actions]; and § 1453[removal of class actions].

2. **Procedural Standing**

The initial burden is on the defendant to show removal.

The procedural grounds may be waived by the parties.

Removal procedure is in 28 USC §§ 1446–47.

a. **Notice of removal.**

Must be filed in the nearest federal court. § 1446(a). Served on all adverse parties. § 1446(d). Notice must also be filed with the state court clerk. The notice must have attached to it copies of all state process, pleadings and orders.

b. **30 days to remove.**

Defendant has 30 days to file a notice to remove, measured from the defendant's receipt of the initial pleading. § 1446(b). Or, if you find out it is removable in the case it is measure 30 days after the defendant's receipt of the amended pleading, motion, or order.

c. **Local defendant rule (diversity)**

Only a non-resident defendant can remove to federal court. All defendants must be non resident defendants Corporation and partnerships must have complete diversity.

d. **One year rule (diversity)**

For cases not initially removable, in diversity cases you have to get removed within 1 year of after the case commences and still have to allow for the 30 days notice. So, 30 days before the 1 year deadline expires.

e. Defendant's only

In diversity removals, only a non-resident defendant may remove.

f. Must be all defendants

All defendants must agree to removal with limited exceptions.

g. Objections to Removal.

Objections to jurisdictional grounds – no time limits.

Objections to removal procedure – 30 days from the filing of the notice to remove. So your motion to remand must be filed 30 days after the notice is filed.

Venue

Local Venue

Fixed in rem action. You sue in the district in which the property is located. [*Reasor Hill Corp. v. Harrison*]

Transitory Venue

Transitory causes of actions moves with the defendant. Now there is a long arm statute which “brings back” the defendant.

Competent Jurisdiction

Includes the venue (distributes work load geographically) and subject matter jurisdiction (distributes the category of court).

Venue v. Jurisdiction

Venue is not constitutional and is decided by the state legislature. Jurisdiction is based on the constitution. Venue is waivable. Jurisdiction is to the whole state. Venue is geographically located. Jurisdiction is the category of court that can hear the action.

Purpose of Venue:

1. Fair to the defendant, and;
2. Judicial efficiency.

Typical Venue Statutes

Typically, the statutes are based on

1. where the defendant resides, or;
2. where the claim arose.

In the case of multiple defendant's you default to either 2 or where any of the defendant's reside.

28 USC § 1391 Venue Generally

This is the general default venue statute for the federal rules of civil procedure. This governs unless there is another statute which overrules

this. There is a duplicative section for diversity and federal question.

Allows venue by;

1. If all defendant's reside in the same state, then any judicial district where the defendant resides, OR;
2. Any judicial district where a substantial part of the activities giving rise to the claim occurred, or where the property is located, OR;
3. If 1 and 2 don't work, then any place where a district court has personal jurisdiction over any defendant.

28 USC § 1404(a) Change of Venue

For convenience and in the interest of justice a court may transfer any action to any other district "where it might have been brought originally." You must have this element. This transfers the action to a district in the same state.

1. The first filing must be correct venue, we are just transferring because of inconvenient forum.
2. The place where it might have been brought originally is based on the plaintiff's right to file, not defendant's possible waiver. [*Hoffman v. Blaski*].
3. When the court transfers, the transferrer's court keeps the choice of law. This results in high forum shopping. They get to keep the choice of law of the first court. [*Reyno v. Piper*].

28 USC § 1406 Cure or Waiver of Defects

If wrong venue, you can satisfy the 1. above under § 1404, then the court can either dismiss or transfer "to a district where it might have been brought originally." [*Hoffman v. Blaski*].

Forum Non-Convens

Old common law doctrine that allows the court to move venue. This is not based on statute. We used 2 sets of factors for transferring cases. [*Gulf Oil v. Gibbert*]. This is used to transfer from state to state. [*Piper aircraft v. Reyno*].

1. Public Factors;
 - a. Backlog of cases?
 - b. Burden for location?
 - c. Does the case touch the affairs of many persons?
 - d. Local interest in a local controversy?
 - e. Is this the same place as the choice of law? Is the court familiar with the law?

2. Private Factors;
 - a. Access to evidence?
 - b. Access to witnesses?
 - c. Inspection of the premises?
 - d. Any other practical factors?

Choice of Law

Lex Locus Delicti

The law in the place of the wrong. Remember, that the wrong in a tort action doesn't occur till the injury, traditionally. In contract at the breach. Lex locus contractus. Or, in status the event. Lex celebrations. Marriage, divorce.

Horizontal v. Vertical Choice of Law

Horizontal is between coequals like KS v. TX law.

Vertical is between US and TX, federal versus state law. This is where the Erie doctrine comes in.

**Rules of Decision Act 1789
28 USC § 1652**

This was a housekeeping act by congress which specified that in diversity cases:

1. The laws of the several states, except where,
 - a. the constitution,
 - b. treaties,
 - c. and acts of congress provide other wise.
2. shall be the rules of decisions
3. in federal courts.

(In Federal courts state law applies).

Swift Rule

In *Swift v. Tyson*, this was meant to be regarded as the substantive law of all of the states. The majority rule of the states. The federal courts used the law of the states for common law. If there is a state statute on point, then the statutes of the state in which the court sits. If common law then the general substantive law. [*Swift v. Tyson*].

Erie Rule

Got rid of the Swift rule and interpreted the Rules of Decision Act to mean that a federal court should apply the common law of the state they sit in and the statutes of the law they sit in. [*Erie v. Tompkins*].

The Twin Aims of Erie

1. To avoid inequitable law..

2. To avoid forum shopping.

Use this as a litmus test after the Byrd Balancing test to make sure.

Rules Enabling Act of 1938

This was passed in the same year as *Erie*. Corollary to the Rules of Decision Act Congress passed this to give

1. The Supreme Court;
2. shall have the power to prescribe general rules of practice and procedure;
3. for federal courts
4. as long as they don't;
 - a. abridge,
 - b. enlarge, or
 - c. modify;
5. a substantive right.

Conflicting State and Federal Procedure

Court uses its own procedural law. Pleadings are forum specific law. If there is conflict in procedural law, you use the outcome determinative test. If the outcome is affected, then apply state law. We don't blend the law. We use the state. [*Guaranty Trust co. v. York*].

When to Use the Rules Enabling Act?

1. The conflicting federal law must be a FRCP, FRE, FRAP?
2. Is the law on point? (Almost never the case).
3. Does the rule abridge, modify or enlarge a substantive right?

If yes to all of these then the rule is unconstitutional. This never happens as the USSC would effectively be saying its own rule is not up to par.

See my chart.

Horizontal State Choice of Law Test

3 types of tests;

1. Lex Locus Delicti
2. Government Interest Analysis (Never really accepted).
3. Most Significant Relationship Test (What we use today).
Looks at the contacts in a test of 7 factors. [*Duncan v. Cessna Aircraft*].

No State Law?

Then the court looks at the binding authority and makes a guess at what the state court would do. The federal court acts as a state court and decides on where the law might go. Also, the federal court can use certification to clear the issue. Not, in all states.