Civil Procedure

CASES, MATERIALS, AND QUESTIONS

NINTH EDITION

2025 SUPPLEMENT

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We are delighted to offer this Memorandum Update for professors and students using the nineth edition of the casebook. Page numbers in this Memorandum are to that edition of the casebook.

This update reflects the very few changes and developments that have occurred since publication of the 2024 Nineth Edition of the casebook.

Permission is hereby granted to distribute copies of this Update Memorandum free of charge to students using the book in their class.

Thank you for adopting our casebook. As always, we welcome any feedback, questions, or suggestions you may have about the casebook.

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Federal Rules of Civil Procedure

One amendment to the Federal Rules went into effect on December 1, 2024.

Rule 12(a) has been amended to clarify that if a statute sets a different response time for a responsive pleading, this supersedes the response time in the Federal Rules.

Chapter 2: Subject Matter Jurisdiction

C. Federal Courts and Limited Subject Matter Jurisdiction

4. Federal Question Jurisdiction

b. Narrow Interpretations of the Federal Statute

iii. Centrality of the Federal Issue to the Claim

At page 79, after Note 4, add the following note:

4a. Can a plaintiff who is determined to avoid a federal forum achieve their desired result, even after the defendant has removed the case and met the criteria for "arising under" jurisdiction established in *Merrell Dow* by amending her complaint to delete all references to federal law? According to a recent Supreme Court decision, the answer is yes. *See Royal Canin U.S.A. Inc. v. Wullschleger*, 604 U.S. ___ (2025) (discussed *infra* at Chapter 12.C.2).

Chapter 3: Personal Jurisdiction

B. Constitutional Limits on Personal Jurisdiction

8. Consent to Jurisdiction

c. Corporate Registration Statutes

At page 201, before section 9, please add:

What does *Mallory* mean for consent statutes based on conduct? While the non-resident motor vehicle statutes such as the one the Court upheld in *Hess v. Pawloski* will continue to exist unchallenged, other conduct consent statutes have been challenged. In 2025, the Supreme Court upheld a federal statute that deemed a defendant to consent to personal jurisdiction in the United States if it made certain types of payments to "terrorists" associated with the Palestine Liberation Organization or the Palestinian Authority. *Fuld v. PLO*, 606 U.S. ___ (2025). The Second Circuit had invalidated jurisdiction, holding that consent must be premised "on activities from which it was reasonable to infer a defendant's submission to personal jurisdiction," such as any "litigation-related conduct, or a defendant's acceptance of some in-forum benefit conditioned on amenability to suit in the forum's courts." *Fuld v. PLO*, 82 F.4th 74, 93 (2d Cir. 2023), distinguishing the consent statute from the statute at issue in *Mallory*, observing that the PSJVTA did not involve "litigation-related activities or reciprocal bargains" from which a court could "'infer . . . an intention to submit'" to jurisdiction in the United States. *Id*. at 90. But the Supreme Court, in a unanimous opinion, reasoned that the statute "tie[d] jurisdiction to respondents' activities on U.S. soil" because it tied consent to the organizations' continued establishment or maintenance of "headquarters, premises, or other facilities or establishments in the United States." *Id*.

C. Statutory Limits on Personal Jurisdiction

2. Personal Jurisdiction in Federal Court

At p. 213, ***replace*** the last two paragraphs of the section with the following text:

Nationwide service of process presents potential due process problems, although the issue is governed by the Due Process Clause of the Fifth Amendment, rather than the Due Process Clause of the Fourteenth Amendment.* With nationwide service of process, a defendant who lived his entire life in Florida and engaged in the alleged improper activities in Florida, might nonetheless be subject to suit in federal court in California. Would this be constitutional? Another question concerning Fifth Amendment limits on personal jurisdiction is whether that Amendment requires the same type of "purposeful availment" that is required under the Fourteenth Amendment. Until 2025, these questions were unanswered by the Supreme Court and instead governed by a patchwork of lower court decisions. See William S. Dodge & Scott Dodson, *Personal Jurisdiction and Aliens*, 116 Mich. L. Rev. 1205 (2018) (summarizing the doctrinal problem and arguing for a "national contacts" approach to personal jurisdiction over alien defendants in federal court).

This problem was especially acute when applied to foreigners who lack *purposeful* contacts with the U.S. For many, most courts and commentators have assumed that the requirement of purposeful availment developed in the Fourteenth Amendment context would likewise apply under the Fifth Amendment, see e.g., Douglass v. Nippon Yusen Kabushiki Kaisha, 46 F.4th 226 (5th Cir. 2022); Shatsky v. Palestine Liberation Org., 955 F.3d 1016 (D.C. Cir. 2020), but a few commentators have questioned this assumption. See Stephen Sachs, *The Unlimited Jurisdiction of the Federal Courts,* 106 Va. L. Rev. 1703 (2020); Wendy Perdue, *Aliens, the Internet, and "Purposeful Availment": A Reassessment of Fifth Amendment Limits on Per- sonal Jurisdiction*, 98 Nw. U. L. Rev. 455, 461, 470 (2004). Congress has, for example, created a civil cause of action for U.S. victims of international terrorism and has specified the conditions under which foreign defendants shall be subject to personal jurisdiction. See 18 U.S.C. § 2334(e).

In 2025, the Supreme Court upheld this statute and, in doing so, held that the Fifth Amendment imposes different due process limitations on personal jurisdiction than the Fourteenth Amendment. Writing for the Court, Chief Justice Roberts explained that:

> We have repeatedly described the due process limitations imposed by the Fourteenth Amendment as driven by two principles: (1) "treating defendants fairly," and (2) "protecting 'interstate federalism.' " Ford Motor Co. v. Montanta Eight Judicial Dist. Ct., 592 U.S. 351, 360 (2021). . . . The requirement that a defendant have minimum contacts with the forum, we have said, "can be seen to perform [these] two related, but distinguishable, functions." World-Wide Volkswagen v. Woodson, 444 U.S. 286, 291–292 (1980).
>
> This framing follows from "the principles of interstate federalism embodied in the Constitution," and the related protections of due process which ensure that individuals are "subject only to lawful power," J. McIntyre Machinery, Ltd. v. Nicastro, 564 U.S. 873, 884 (2011). State sovereign authority is bounded by the States' respective borders. . . .

* The Fifth Amendment prohibits violations of due process by the U.S. government, while the Fourteenth Amendment prohibits such violations by states.

> Our Fourteenth Amendment personal jurisdiction standards emerged in that vein, as "a consequence of territorial limitations on the power of the respective States." Those standards—and in particular, the requirement that a defendant have minimum contacts with the forum State—functionally "ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." World-Wide Volkswagen, 444 U.S. at 292.
>
> These interstate federalism concerns, however, do not apply to limitations under the Fifth Amendment upon the power of the Federal Government and the corollary authority of the federal courts. The Constitution confers upon the Federal Government—and it alone—both nationwide and extraterritorial authority. . . .
>
> Given the distinct territorial reach of the Federal Government's sovereign power, it makes little sense to mechanically import the limitations that the Fourteenth Amendment imposes on the authority of *state* courts, which is restricted consonant with the States' more constrained sovereign spheres. Indeed, when evaluating state court jurisdiction under the Fourteenth Amendment, we have emphasized that "personal jurisdiction requires" a "sovereign-by-sovereign ... analysis." Nicastro, 564 U.S. at 884. And we have acknowledged the straightforward premise that "the United States is a distinct sovereign." Id. That distinction makes a difference.
>
> Accordingly, to the extent that the Due Process Clauses of the Fourteenth and Fifth Amendments both implicitly limit the jurisdictional authority of courts, they do so with respect to the distinct sovereignties from which those courts derive their authority. Because the State and Federal Governments occupy categorically different sovereign spheres, we decline to import the Fourteenth Amendment minimum contacts standard into the Fifth Amendment. Rather, the Due Process Clause of the Fifth Amendment necessarily permits a more flexible jurisdictional inquiry commensurate with the Federal Government's broader sovereign authority.

Notes and Questions

1. Do you agree with Chief Justice Roberts that the primary focus of due process under the Fourteenth Amendment derive from principles of interstate federalism? Is this consistent with the Court's opinion in *International Shoe*?

2. While *Fuld* resolved the long-standing confusion over whether the Fifth and Fourteenth amendments have identical due process requirements, the Supreme Court was explicit in noting that its decision would not change the bulk of personal jurisdiction analysis subject to minimum contacts analysis under Rule 4(k)(1)(A), noting that even when a case originates in federal court, the court will " 'ordinarily follow state law in determining the bounds of their jurisdiction over persons.' " Fuld, at ___ (citing *Daimler*). Thus, "[a]ny difference between the Fifth and Fourteenth Amendments is therefore implicated in only a subset of federal cases . . . such as those in which personal jurisdiction is . . . authorized by a federal statute." Id.

3. Does *Fuld* stand for the proposition that the Constitution has no minimum contacts requirement for cases analyzed under the Fifth Amendment? While the above text indicates as such, the Court explicitly left open the question of whether "the Fifth Amendment might entail a similar inquiry into the reasonableness of the assertion of jurisdiction in the particular case," and then noted *Fuld* involved a "close connection" between the statute's predicate conduct and the United States. The Court also emphasized the "compelling interest" of the federal government in regulating "efforts to deter international terrorism." Does this suggest that the "interests of the forum state" might now play a bigger role in Fifth Amendment due process analysis than in Fourteenth Amendment analysis?

Chapter 6: Provisional Remedies and Other Remedies Topics

B. Maintaining the Status Quo

2. Temporary Restraining Orders and Preliminary Injunctions

At p. 304, replace Note 4 with the following text:

4. In some lawsuits, litigants seek to enjoin the government from implementing a law, rule, or executive order that they believe to be unlawful or unconstitutional. In doing so, the litigants will typically ask the trial court for a preliminary injunction, usually with the hope that the court can completely halt the implementation of the allegedly illegal law, rule, or order. Were a court to enter such an injunction, this could potentially affect non-parties to a case or bar conduct outside of the judicial district in which the lawsuit is brought. Such "nationwide," "national," or "universal injunctions" that imposed a blanket prohibition on government conduct had become increasingly common over the past few decades, with courts enjoining the laws and executive orders of presidents from both political parties.

This led to a heated debate among judges, lawyers, and scholars. Some criticized these "nationwide injunctions" on the grounds that they create de facto class actions and encourage forum shopping. See Michael T. Morley, *De Facto Class Actions: Plaintiff- and Defendant-Oriented Injunctions in Voting Rights, Election Law, and Other Constitutional Cases*, 39 HARV. J. L. & PUB. POL'Y 487, 556 (2016). Professor Samuel Bray has argued that, as both a historical and policy matter, the scope of injunctions should be limited to the named plaintiffs in an action and those they represent, even if this produces some disuniformity in the law across judicial districts. Maintaining a narrow scope would bring about a net positive result. "If the circuits all agree, their precedents resolve the question; if they disagree, the Supreme Court gains from the clash of opposing views. We sacrifice immediate resolution for what we hope will be better decisionmaking. The national injunction requires the opposite sacrifice, giving up deliberate decisionmaking for accelerated resolution." Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 HARV. L. REV. 417, 421–22 (2017). Others, however, have stressed the need for nationwide injunctions, because "in some cases, nationwide injunctions are also the only means to provide plaintiffs with complete relief and avoid harm to thousands of individuals similarly situated to the plaintiffs. And sometimes, anything short of a nationwide injunction would be impossible to administer. When a district court is asked to pass on the validity of certain types of federal policies with nationwide effects — such as those affecting the air or water, or the nation's immigration system — it would be extremely difficult to enjoin application of the policy to some

plaintiffs but not others." See Amanda Frost, *In Defense of Nationwide Injunctions*, 93 N.Y.U. L. REV. 1065, 1069 (2018); Mila Sohoni, *The Lost History of the 'Universal' Injunction*. 133 HARV. L. REV. 920 (2020).

In 2025, the Supreme Court issued its first major decision addressing the legality of "universal injunctions." Writing for a 6-3 Court, Justice Barrett elminated limited the use of such injunctions, holding that a district court may only issue an injunction broad enough to provide "complete relief" to the parties actually before the court. Trump v. CASA, 606 U.S. ___ (2025). In most cases, this would bar the use of nationwide injunctions, and limit relief to the named parties and those they represent. In the wake of the *CASA* decision, lower courts will undoubtedly parse the meaning of "complete relief" in deciding how far an injunction can reach, and litigants will almost certainly try to obtain class certification under Rule 23(b)(2) (discussed *infra* at Chapter 13.C.4.c) to try and obtain injunctive relief for the largest possible group of affected persons.

Chapter 9: Adjudication With and Without a Trial or Jury

B. Trial and the Right to a Jury

1. Scope of the Constitutional Right

c. Juries in Non-Article III Federal Courts

At page 473, at the end of the text, before part d, please add:

The Supreme Court clarified the "public rights" exception from *Atlas Roofing* and *Granfinanciera* by addressing the jury trial right for a defendant facing civil monetary penalties for securities fraud allegations before the Securities and Exchange Commission. In a 6-3 decision in SEC v. Jarkesy, 603 U.S. ___, 144 S.Ct. 2117, 219 L.Ed.2d 650 (2024), the Court held that there was a "close relationship between federal securities law and common law fraud" which resembles a common law cause of action, thus making these suits at common law protected by the Seventh Amendment.

D. Controlling and Second-Guessing Juries

4. Motions to Set Aside a Judgment or Order (Rule 60)

At page 528, after the Gonzalez v. Crosby citation, add the following sentence:

The "extraordinary circumstances" requirement applies to motions to reopen a case to amend a complaint, and the plaintiff must "first satisfy the Rule 60(b) on its own terms and obtain Rule 60(b) relief before Rule 15(a)'s liberal amendment standard can apply." Blom Bank Sal v. Honickman, 605 U.S. ___ (2025).

Chapter 12: Scope of Litigation – Joinder and Supplemental Jurisdiction

C. Claim joinder by plaintiffs

2. Jurisdictional Aspects

At page 671, after Note 5, please add:

Gibbs concerned a case in which the plaintiff asserted both state and federal claim in the initial pleadings. But what if the plaintiff brings the case in state court, asserting only state law claims, but making reference to certain federal laws and statutes? Recall from Chapter 2 that under 28 U.S.C. § 1441, the defendant can remove the case to federal court if such assertions would amount to a "federal issue" within the meaning of 28 U.S.C. § 1331 and the *Mottley* well-pleaded complaint rule. But what if the plaintiff then amends her complaint to delete all mentions and references to the federal laws that provided the basis for removal? Can the court still exercise supplemental jurisdiction over the state law claims? In *Royal Canin U.S.A. Inc. v. Wullschleger*, 604 U.S. ___ (2025) the Supreme Court held that § 1367 does not permit a court to exercise supplemental jurisdiction in this circumstance, and the court must remand the case to state court. Can you square this result with the opinion in *Gibbs*?