This collection of resources covers many of the topics that are included in typical civil procedure courses that focus on the Federal Rules of Civil Procedure. The specific topics covered range from personal jurisdiction to motion practice. While many of these concepts are similar to procedure under state law, students taking state procedure courses should consult Practical Law™ resources that cover relevant state law.

ABOUT PRACTICAL LAW
Practical Law provides legal know-how that gives lawyers a better starting point. Our resources are written by a team of expert attorney-editors. We go beyond primary law and traditional legal research to give lawyers the resources needed to practice more efficiently, and law students can use that same efficiency when studying.

Practical Law publishes the following types of resources:

• Practice Notes – Straightforward how-to guidance and clear explanations of current law and practice, ranging from primers to detailed analysis for specialists.
• Checklists – Checklists, timelines and flowcharts to make sure you've covered all the bases.
• Legal Updates and Articles – Shorter pieces that focus on a change in the practice of law, such as precedential caselaw or a new law or regulation.
• Standard Documents and Clauses – Up-to-date precedents that reflect current law and practice with practical drafting and negotiating guidance. Law students may especially find the introductory drafting notes helpful, as they provide a preface for the particular document or clause.
• State Q&A Comparison Tools – Easy-to-use tools that compare the law across most states (in many cases, all states) and an easy-to-read question-and-answer format.
• Toolkits – A collection of resources on a particular subject area.

For the law student, these resources provide clear explanations and distill complex legal concepts to information that is essential to mastering those concepts. Additionally, most Practical Law resources are “Maintained,” which signifies that our teams of attorney-editors are continually monitoring law and practice to ensure accuracy.

These resources, however, are not intended as a substitute for traditional methods of studying and learning. To that end, most of these resources were drafted for practicing attorneys and, as such, the material they cover can extend beyond the scope of your class.

PERSONAL JURISDICTION
The term personal jurisdiction refers to a court's power to adjudicate the rights and obligations of persons, corporations, or other legal entities within its jurisdictional reach.

For information on personal jurisdiction, see:

Practice Notes

• Commencing a Federal Lawsuit: Initial Considerations – Does the Court Have Personal Jurisdiction Over the Defendant?
• Commencing a Federal Lawsuit: Filing and Serving the Complaint
• Securities Litigation: Jurisdictional Defenses – Personal Jurisdiction
• Trademark Litigation: Pre-suit Considerations: Does the Court Have Personal Jurisdiction Over the Alleged Infringer?
NOTICE AND SERVICE OF PROCESS

The terms notice and service of process refer to the means by which defendants, and other parties to litigation, become aware of and have an opportunity to respond to litigation, as required by the Due Process Clause of the US Constitution. The most typical means for plaintiffs to satisfy the due process requirements for notice and service of process is to file a lawsuit and to affect personal service on the defendant, in accordance with the appropriate statute, of a summons and complaint. However, this is not the only means that satisfies due process.

For more information, see:

Practice Note
- Commencing a Federal Lawsuit: Filing and Serving the Complaint

Checklist
- Commencing a Federal Lawsuit: Drafting the Complaint Checklist

Standard Document
- Affidavit of Service (FRCP 4)

SUBJECT-MATTER JURISDICTION

The term subject matter jurisdiction refers to a court’s power to preside over a particular type of case. Each state usually has at least one state court with subject-matter jurisdiction over all types of cases brought in that state. By contrast, federal courts are courts of limited jurisdiction, meaning they only have subject-matter jurisdiction over certain types of cases (see 28 U.S.C. §§ 1330-1369).

The types of jurisdiction through which a federal district court may decide a case are:

- Federal question cases arising under the US Constitution, federal laws, or international treaties to which the US is a contracting state (28 U.S.C. § 1331).
- Diversity cases between citizens of different states or citizens of a US state and a foreign state, where the amount in controversy exceeds $75,000, exclusive of interest and costs (28 U.S.C. § 1332).
- Supplemental jurisdiction, under 28 U.S.C. § 1367, a federal district court may exercise jurisdiction over state-law claims that the court would not otherwise have subject-matter jurisdiction to hear, as long as the claims are part of the same case or controversy as the claims over which the court has original jurisdiction (28 U.S.C. § 1367(a)).
The Eerie Doctrine

When a federal court exercises its diversity jurisdiction, the court and parties are confronted with choice-of-law decisions that may be challenging. Many of these questions are answered in accordance with the US Supreme Court’s holding in *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), which, when considered with a line of subsequent cases is commonly referred to as the “Erie Doctrine.” For an example discussion of the Erie doctrine, in conjunction with state choice-of-law principles, see the article, *Navigating the Complexity of Choice of Law Analysis*.

VENUE & FORUM NON-COVENIENS

The court in which a lawsuit is pending is referred to as the case’s *venue*. The plaintiff initially chooses the venue when it commences the action. However, cases brought in an improper venue can be *transferred* to another US District Court with proper venue. These motions can be referred to under the doctrine of *forum non conveniens*. For information on venue, see:

Practice Notes
- *Motion to Transfer Venue (Federal)*
- *Commencing a Federal Lawsuit: Initial Considerations – Determine the Proper Venue for the Lawsuit*

Legal Updates
- *Fifth Circuit Holds Venue Statutes Trump Forum Selection Clause*
- *Supreme Court Explains How to Enforce Forum Selection Clauses*

Standard Document
- *Motion to Transfer Venue (Federal): Memorandum of Law*

REMOVAL

Removal is the process by which a party in a state-court action (typically a defendant) moves the lawsuit from state court to federal court. Removal procedure is governed generally by 28 U.S.C. §§ 1441-1455. For more information, see:

Practice Notes
- *Removal: Overview*
- *Removal: Why Remove?*
- *Removal: How to Remove a Case to Federal Court*

Checklist
- *Removal Checklist*
PLEADINGS

Pleadings refer to the formal document in which a party to a legal proceeding sets forth or responds to allegations, claims, denials, or defenses. Complaints are the pleadings by which most lawsuits are initiated. If the allegations of a complaint are sworn to by the plaintiff, the complaint is referred to as a verified complaint. The term answer refers to a defendant’s first pleading that addresses the merits of the case, but responsive pleading can take many forms and can include claims against the plaintiff or other parties to the litigation.

For information on the initial stages of a lawsuit and pleading, see:

Practice Notes
- Initial Stages of Federal Litigation: Overview
- Commencing a Federal Lawsuit: Drafting the Complaint
- Responsive Pleadings: Answering the Complaint

Checklists
- Common Deadlines in Federal Litigation Chart
- Computing Time in Federal Litigation Checklist
- Initial Pleadings and Motions Flowchart
- First Stages of Litigation Timeline

Standard Documents
- Complaint (Federal)
- Answer (Federal)
- Rule 7.1 Disclosure Statement

12(B)(6) MOTION TO DISMISS

A motion to dismiss under FRCP 12(b)(6) is a dispositive in which a defendant argues that the plaintiff has not stated a claim on which relief can be granted through the complaint and subsequent pleadings.

For more information on motions to dismiss, under 12(b)(6) and otherwise, see:

Practice Notes
- Motion to Dismiss: Overview
- Initial Stages of Federal Litigation: Overview – Pre-answer Motion to Dismiss
- Motion to Dismiss: Drafting and Filing a Motion to Dismiss, Opposition, and Reply

Checklist
- Motion to Dismiss Checklist

JOINER OF CLAIMS AND PARTIES

The term joinder broadly refers to the addition of claims or parties to a single lawsuit, both of which can be categorized as permissive or mandatory. The following specific concepts can fall under the umbrella of joinder:

- Counterclaims – A claim made by the defendant in its responsive pleadings against the plaintiff.
- Cross-Claims – In multiparty litigation, a cross-claim is a claim made by a defendant against another defendant, including, in tort cases, claims for contribution in the case of liability made between joint tortfeasors.
- Impleader – The process by which a defendant brings another party into a lawsuit because the party may be liable for all or part of the plaintiffs claims against the defendant. (FRCP 14)
- Interpleader – A term that refers to situations where a plaintiff makes claims against multiple parties in a single lawsuit. Interpleader is also available to defendants that make counter- and cross-claims, so long as the notice and service of process requirements are satisfied for all parties, including those not yet party to the litigation. (FRCP 22)
• **Necessary and Indispensable Parties** – These are parties that are so essential to the facts and circumstances of a lawsuit that meaningful adjudication of the dispute requires their being a party to the litigation. The interplay of the federal rule on required parties for which joinder is not possible, and other case-dispositive doctrines (such as personal jurisdiction and forum non conveniens) can potentially result in the dismissal of an entire case. (FRCP 19)

• **Intervention** – Refers to a non-party joining a lawsuit because it either has a right to or has the court’s permission. A right to intervene is present when a statute unconditionally provides the right to intervene or the party has a substantial interest in the litigation, the protection of which requires presence in the lawsuit. (FRCP 24)

When taken together with the other rules of procedure, the joinder of claims and parties (sometimes referred to as “Third Party Practice”) can be daunting, involving multiple procedures for each aspect of litigation.

For more information relating to these and other related concepts, see:

**Practice Notes**
- Responsive Pleadings: Answering the Complaint
- Responsive Pleadings: Counterclaims and Crossclaims
- Responsive Pleadings: Third-party Practice
- Plaintiff-Side Employment Discrimination Litigation: Intervening and Litigating with the EEOC
- Motion to Intervene Under FRCP 24

**Checklists**
- Responsive Pleadings: Answering the Complaint Checklist
- Responsive Pleadings: Asserting Counterclaims Checklist
- Responsive Pleadings: Asserting Crossclaims Checklist
- Responsive Pleadings: Asserting Third-Party Claims Checklist
- Common Deadlines in Federal Litigation Chart

**Standard Documents**
- Third-party Complaint (Federal)
- Answer and Counterclaims (Federal)
- Answer and Crossclaims (Federal)

**CLASS-ACTION LAWSUITS**

A **class-action** lawsuit is a mechanism through which a group of similarly situated plaintiffs (or defendants) may prosecute a civil lawsuit as a group (referred to as a class) instead of individuals (FRCP 23). To be considered a class, the group of similarly situated persons must meet certain criteria set forth in the federal rules. Diversity jurisdiction is governed by a federal statute, the **Class Action Fairness Act of 2005**.

For information on class action lawsuits, see:

**Practice Notes**
- Class Actions: Overview
- Class Action Fairness Act of 2005 (CAFA): Overview
- Class Actions: Certification
- Product Liability Class Actions

**Checklists**
- CAFA Jurisdiction Comparison Chart
- Class Actions: Certification Checklist
- Class Action and Multidistrict Litigation Comparison Chart
Articles
• Hot Topics in Class Action Litigation
• How Defendants Can Use Class Certification to Their Advantage
• Navigating Deceptive Advertising Consumer Class Actions

Legal Updates
• District Court May Decertify a Class After Jury Verdict and Before Final Judgment: Second Circuit
• Class Action Waiver Cannot be Invoked by Uber Technologies CEO Travis Kalanick
• Classwide Claims for Injunctive Relief Not Moot Under Picking Off Exception: Third Circuit
• Class Actions Are Dead. Long Live Class Actions

DISCOVERY
Discovery refers to the pretrial phase of litigation, during which the parties disclose to each other information and documents that may be relevant to the claims and defenses in the case. The Federal Rules of Civil Procedure (FRCP) authorize several methods of discovery, including:
• Initial Disclosures (FRCP 26(a)(1))
• Depositions (Glossary) (FRCP 27-32)
• Interrogatories (FRCP 33)
• Requests for production of documents or inspection (FRCP 34)
• Requests for admission (FRCP 36)
• Expert testimony (FRCP 26(a)(2))

For information on discovery, see:

Practice Notes
• Document Requests: Initial Considerations
• Interrogatories: Initial Considerations
• Requests for Admission (Federal): Initial Considerations
• Depositions: Taking a Deposition
• Sanctions in Federal Civil Litigation
• Asserting the Attorney-Client Privilege and Work Product Protection
• E-Discovery in the US: Overview
• Practical Tips for Preserving ESI
• Evidence in Federal Court: Basic Principles
• Subpoenas: Using Subpoenas to Obtain Evidence (Federal)

Checklists
• Discovery: Overview (Federal) Checklist
• Computing Time in Federal Litigation Checklist
• Common Deadlines in Federal Litigation Chart
• Federal Civil Sanctions Comparison Chart
• Rule 26(f) Conference Checklist

Legal Update
• The FRCP Amendments: Small Step or Giant Leap?
ADJUDICATION WITHOUT TRIAL & DISPOSITIVE MOTION PRACTICE

Motion to Dismiss – Motions to dismiss allow a party to dispose of claims at the beginning of the case. Rule 12 sets forth the grounds on which parties can file a motion to dismiss. In addition to a failure to state a claim on which relief can be granted under 12(b)(6) (discussed above), the grounds for a motion to dismiss under the rule are:

- Lack of subject-matter jurisdiction (FRCP 12(b)(1))
- Lack of personal jurisdiction (FRCP 12(b)(2))
- Improper venue (FRCP 12(b)(3))
- Insufficient process (FRCP 12(b)(4))
- Insufficient service of process (FRCP 12(b)(5))
- Failure to join a party under FRCP 19 (FRCP 12(b)(7))

Summary Judgment – A motion for summary judgment asserts that, through discovery, it can be determined by the court that no triable issue of fact exists such that a trial is required (FRCP 56). A rule 56 motion for summary judgment differs from a motion to dismiss under rule 12(b)(6) in that:

- A motion for summary judgment asserts that all the facts are known and the moving party has met its burden of proof.
- A motion to dismiss under 12(b)(6) asserts that no set of facts could exist such that the non-moving party could satisfy its burden of proof.

Default Judgment – A party to litigation can make a motion seeking the court to enter a default judgment against the non-moving party, where the party fails to appear or properly respond to pleadings requirements (FRCP 55).

For information on these and other related concepts, see:

Practice Notes
- Motion Practice in Federal Court: Overview
- Motion to Dismiss: Overview
- Summary Judgment: Basic Principles
- Twombly’s Effect on Antitrust Pleading Standards
- Seeking Default and Default Judgment Under FRCP 55
- Computing and Extending Time in Federal Litigation

Checklists
- Motion to Dismiss Checklist
- Summary Judgment Checklist

Standard Documents
- Motion to Dismiss: Memorandum of Law
- Summary Judgment: Statement of Material Facts
JUDGMENTS AND POSTJUDGMENT MOTIONS

Judgments, once entered with the responsible federal court clerk (FRCP 58), have preclusive effects through the doctrines of:

- **Res Judicata** – prevents a party to a lawsuit from relitigating any claim or defense.
- **Collateral Estoppel** – prevents a party from relitigating an issue that was resolved in a previous lawsuit or administrative proceeding, even if the issue relates to a different claim.

However, litigants can seek relief from judgments through several types of postjudgment motions, as well as on appeal. In some cases, the failure to make such a post-judgment motion can serve as a waiver of the issue on appeal.

For information on these and other related issues, see:

**Practice Notes**
- Post-Judgment Motions: Overview
- Motion for Judgment as a Matter of Law: Basic Principles
- Motion for Judgment as a Matter of Law Under FRCP 50(a): Drafting and Filing
- Renewed Motion for Judgment as a Matter of Law Under FRCP 50(b): Drafting and Filing
- Issue Preservation: Protecting the Record on Appeal
- Motion for a New Trial: Basic Principles
- Motion to Alter or Amend a Judgment Under FRCP 59(e)
- Motion to Correct Clerical Mistakes Under FRCP 60(a)
- Motion for Relief from Judgment Under FRCP 60(b)

**Checklists**
- Post-Judgment Motion Comparison Chart
- Issue Preservation Checklist