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CIVIL PROCEDURE

JURISDICTION

SUBJECT MATTER
THE TYPE OF CASE BEFORE IT

FEDERAL QUESTION [28 USC 1331]

BASIS

1. A Federal law creates the cause of action or
2. Plaintiff's right to relief depends on the resolution of a substantial question of Federal law

EXAMPLES

1. Federal Statutes
3. Cause of action may come within system of statute for subject-matter jurisdiction to apply (*Reichman v. LHM*)
2. Admiralty cases
4. Jurisdiction must not stem from dispute itself of independent source (*Harbutt's Great Lakes Oil Corp.*)
3. Intellectual Property, Copyrights and Patents
- a. Construction of patent, including terms of art within claim, is within court's exclusive province (*Marathon v. Marathon*)
4. Cases where the U.S. is a party
5. Controversies between States
6. Controversy between U.S. citizens and foreigners

CAUTION

1. The amount in controversy does not matter if there is a Federal question involved

SUPPLEMENTAL JURISDICTION

[28 USC 1367]

ANCILLARY JURISDICTION

1. Defendant with counter-claims, cross-claims or third-party claims may bring them in Federal court as long as Federal court has jurisdiction over original claim
4. Alliance claims by defendant parties who would otherwise lose their right to claim or be required to settle claim in State court
5. Tying provision [IMW] does not apply to claims filed in Federal court against nonsevering states (*Reggie v. Regent of S. MN*)

APPLIES TO:

2. A. Plaintiff to diversity and Federal question claims
3. A. Compulsory Counterclaims [FRCP 13(a)]
4. Counterparty to Additional Parties to Counterclaims [FRCP 13(b)]
6. Cross-claims [FRCP 13(c)]
4. Interpleader [FRCP 22, 28 USC 1335]

DOES NOT APPLY TO:

- a. Personal Counterclaims [FRCP 13(b)]
- b. Interpleader of Third Party Defendants [FRCP 14]
- c. Counterparty to Parties [FRCP 14]
- d. Counterparty to Parties [FRCP 14]
- e. Counterparty to Parties [FRCP 14]
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- q. Counterparty to Parties [FRCP 14]
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- t. Counterparty to Parties [FRCP 14]
- u. Counterparty to Parties [FRCP 14]
- v. Counterparty to Parties [FRCP 14]
- w. Counterparty to Parties [FRCP 14]
- x. Counterparty to Parties [FRCP 14]
- y. Counterparty to Parties [FRCP 14]
- z. Counterparty to Parties [FRCP 14]

PERSONAL POWER TO BRING PARTIES BEFORE COURT AND READ THEM TO JUDGMENT

INTRODUCTION

SUBSTANTIVE DUE PROCESS

1. Court has power to act upon the person or property through:
 - a. Minimum contacts with the forum State and
 - b. Long arm statute governing such jurisdiction

THREE TYPES OF JURISDICTION

1. **In Personam**
 - a. Forum State (State in which we are suing) has jurisdiction over the Defendant's person
 - b. Judgment in forum State is confined to full faith and credit in other States
2. **In Rem**
 - a. When Court has power over Defendant's property or status
 - b. Ex. Action to quiet title to property; dissolution of marriage
3. **Quasi In Rem**
 - a. Power of Court to attach or garnish property to gain jurisdiction over Defendant (*Shaffer v. Heitler* requires this to be served under "minimum contacts" involved in International Shoe)
 - b. Judgment affects only the property seized

DIVERSITY [28 USC 1332]

SCOPE

1. Controversy is between citizens of different States, or between citizens of a State and citizens or subjects of a foreign State and the action is for more than \$75,000
2. State law controls in matters wrongful death where defendant not covered under Federal statute (*Donahue v. Catlin*)
3. Aggregation of claims: some claims may be added together to satisfy jurisdictional amount
4. Federal courts may still decline to exercise jurisdiction
5. When abstention doctrine is used - Federal courts defer to State courts based on difficulty of questions of State law presented or the refusal to litigate in State court
6. When diversity is obtained from support or collusion similar of parties
 - a. When parties litigate in the State court of the suit
 - b. When domestic relations are more part of the suit

COMPLETE DIVERSITY

1. No one Plaintiff can be a citizen of the same State as any one Defendant
2. Domestic relations diversity (2-part test)
 - a. The parties are physically located in
 - b. With the intent to remain there indefinitely
3. Diversity must exist at the time the Complaint is filed with the Clerk
 - a. It need not exist at the time of trial or when the cause of action arose
 - b. Complete diversity must be met at the time judgment is entered (*Caterpillar v. Lewis*)
4. Citizenship of Corporations
 - a. The State of incorporation and
 - b. State where principal place of business is located
5. Class Actions
 - a. The named representative is the person whose residence is considered
 - b. U.S. citizens living abroad
 - c. Non citizens of any State, therefore, cannot sue diversity jurisdiction

REMOVAL FROM STATE TO FEDERAL COURT

REASONS FOR REMOVAL

1. If Federal courts would have had original jurisdiction
2. Federal question jurisdiction existed at time action was filed
 - a. No Federal Court jurisdiction when complaint does not allege Federal question (see claim) (*Harris v. Tyndall*)
 - b. Federal courts exercise removal of action (*Shelton v. N. Bank v. Anderson*)
 - c. Diversity jurisdiction existed at time action was filed
3. Issue of personal jurisdiction precedes subject matter jurisdiction (*Harless v. Marathron, LLC*)
4. Time to remove is triggered by formal service of process, not by informal receipt of complaint (*Morgan, Ben v. Marthel Fine*)

EXCLUSIVELY OF DEFENDANT'S OPTION

1. Does not apply to Plaintiff defending counterclaim
2. Claim that dispute in state court should be dismissed because of prior Federal ruling is not basis for removal under FRCP 12(b) (*Reiss v. Regent Bank of LA*)

MULTIPLE CLAIMS

1. If a cause of action which can be removed is joined with a cause of action that has no independent claim to Federal jurisdiction, then the entire case can be removed to Federal court together

CASES WHICH ARE NOT REMOVABLE

1. Suits under FEEL Act, Jones Act, Violence Against Women Act, and State workmen's compensation laws [28 USC 1442]

OTHER ISSUES

1. Cannot sue "actual plaintiff" disputing the existence or lack of Federal question
2. Cases go to the "district court of the U.S. for the district and division in which the defendant resides or where the State is located" (28 USC 1441)

TRADITIONAL TEST (PENNOVER v. NEFF)

PRESENCE IN FORUM STATE and

1. *Brannan v. Superior Court* temporary presence in State considered to activity in lawsuit falls within presence of law

DEFENDANT MUST BE SERVED WITH NOTICE OF LAWSUIT AGAINST HIM WITHIN FORUM STATE

1. Even if Defendant is only within the forum State a few hours, he may be served with process there
2. Service on a plane flying over forum State is valid

MODERN BASIS

DEFENDANT MUST HAVE MINIMUM CONTACTS, DOMICILE, OR CONSENT

MINIMUM CONTACTS (INTERNATIONAL SHOE v. BARRETT)

1. State does not offend "traditional notions of fair play and substantial justice"
2. Constitutional elaboration
 - a. Activities need be systematic and continuous (*Helicopteros Nacionales de Colombia, S.A. v. Hall*)
 - b. Activities need be purposely directed towards forum State (*World Metal Industries Co. v. Superior Court*)
 - c. Defendant must purposely avail himself of privileges of the forum State (*Keeton v. Ostler*)
 - d. Possibility of litigation may be foreseeable (*World Wide Volkswagen v. Woodson*)
3. There must be connection between litigation, Defendant and forum state
 - a. Mere presence of property is not enough unless Defendant had necessary "minimum contacts" under *Shaffer v. Heitler*

DOMICILE

1. Jurisdiction over person domiciled within forum State, even if temporarily not within State
2. Residence - current dwelling place
3. Intent to indefinitely remain
 - a. Only one domicile at a time
 - b. Person must intend to make that place his home, for the time at least

CONSENT

1. Jurisdiction over person by consent, even if no contacts with forum State
2. Consent to filing an action
 - a. Counterclaim can be filed against original Plaintiff and not counterparty to the action
3. Advance Consent
 - a. Ex. In Contract, designating an agent
 - b. Voluntary Appearance in Court

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