9/16/13 In Class Notes

Review

The rules of diversity do not make sense in terms of the goals of diversity jurisdiction (protecting from prejudice against out-of-staters in state court)

-Don’t try to make sense of the law in this area, just try to remember what the law is.

Scope of federal question jurisdiction

 1. What can Congress send to federal court Article III, Section 2

 2. What has Congress sent to federal court? 28 U.S.C. Section 1331

Federal Question

1. Congress can send any suit involving a federal issue to the federal courts.

2. In 1331 Congress has sent suits under which the law the plaintiff is using to request relief is federal.

-Note –You don’t have to sue in federal court if the actions falls under 1331 - you can usually bring that in federal or state court.

Problem:

 -What if both state and federal law must be used together to get relief - case where state law is broken because federal law has been violated. (Trustee example: break fiduciary duty BECAUSE they broke federal law about what securities they can invest in).

-There is no hard and fats rule that the cause of action has to be based solely on federal law, but federal law has to play a significant role in the cause of action for the case to fall under 1331

-Declaratory judgment actions cannot be used as an end around the Mottley rule.

-The court considers what the declaratory judgment would look like if it were a claim for concrete relief, and if federal law is not the basis of the request for relief, the declaratory judgment cannot be heard in federal court under 1331

**Hypo:**

- D lies to P in connection with the purchase of a financial instrument
- P sues D in federal court under the federal Securities Exchange Act (SEA), claiming the instrument is a “security” and so also covered by the Act
- federal question is the source of SMJ
- P also brings a state law fraud action in under supplemental jurisdiction
- court concludes that the instrument is not a “security” within the meaning of the Act
- it therefore dismisses the SEA action
- failure to state a claim or lack of SMJ?

If the court said there was a failure to state a claim, the court would be implying they had jurisdiction. They couldn’t make that ruling without jurisdiction.

\*The court would rule that there was a failure to state a claim. So there was federal question SMJ for the SEA action. Because SEA action has SMJ, the state fraud action concerned the same transaction as the federal claim was in federal court under supplemental jurisdiction can stay in federal court. (Although the court might choose to abstain from hearing it... we will talk about this later)

But doesn’t that mean you can always get state law actions into federal court through supplemental jurisdiction? Just trump up a federal cause of action and even if it is dismissed for failure to state a claim, the state law actions in under supplemental jurisdiction can remain

**EG:**

-You hit me in the face and I bring an action against you in federal court using federal question jurisdiction for a violation of the Securities Exchange Act.

-I join a state law battery action under the supplemental jurisdiction.

- If the SEA action is dismissed for failure to state a claim, the battery action could remain in federal court

- solution: the SEA action must be dismissed for lack of SMJ – it is a mere pretext to get into federal court

\*In this case state law action would have to go too, dismissed for lack of subject matter jurisdiction, since it can’t have supplemental jurisdiction if the SEA action didn’t in have federal question SMJ

Diversity

I. Constitution

 a. Controversies between citizens of different states (diversity)

b. Controversies between citizens of a state and citizens or subjects of a foreign state (alienage).

-Citizen of a state = US national who is domiciled in a US state.

 c. Constitutional scope of diversity in Art III is Minimal Diversity = is *any* P a citizen of a different state than *any* D?

 i.e. P (NY) sues D (NY) and D (CA) (this is minimal diversity)

II. Sec. 1332(a)(1) and (3); What has Congress decided to send to federal court as a diversity case

 a. Controversy exceeds the sum of $75,000

 b. Complete diversity – IF any P is a citizen of the same state as any D then NOT complete diversity

 i.e. CA v. CA & NY – Not complete diversity

III. Alienage

 A. Constitution

a. Controversy between citizens of a state, and foreign citizens of subjects

foreign citizens or subjects = foreign nationals even if domiciled in US

b. Constitutional scope of alienage - Need minimal alienage – is any one on onr side of the “v.” a citizen of a state and anyone on the other side of the “v.” a foreign citizen or subject.

 i.e. German v. New Yorker and German – minimal diversity

 i.e. German v. Italian – No minimal diversity

 B. Sec. 1332(a)(2)

 a. Need complete alienage **-** all aliens on one side of the “v.” and on the other side are there citizens of states? Cannot have aliens on both side of the “v.”

 i.e. German v. Californian and New Yorker – Complete alienage. **[NOTE: Professor Green changed this example. It was originally a German and a Californian sue a New Yorker. But that can be characterized as a diversity case in which aliens are added as extra parties under 1332(a)(3) – I have now made this case a clear example of alienage under 1332(a)(2)]**

i.e. German and New Yorker v. Californian and Italian – Not complete alienage. (but could be in federal court under diversity under 1332(a)(3))

**Examples**:

 -Assume the jurisdictional minimum is met.

 -Assume the plaintiff is bringing the case in federal court.

1. A New Yorker sues a Californian who impleads his insurer, a New Yorker

-We care only about plaintiffs and defendants when determining whether plaintiff’s actions have SMJ. If the NYer would have been a codefendant we would have cared. Do not look at other parties that the defendant has brought in through impleaders. Do look at ALL the defendants and plaintiffs.

2. Californian sues a German

 -Yes 1332(a)(2)

3. German sues a Frenchman

-No, there are aliens on both sides of the v. And there are no citizens so it couldn’t be under diversity either.

4. New Yorker sues Californian and Frenchman

 -Yes, this falls under diversity in which foreigners are added. 1332(a)(3)

5. New Yorker and a German sue a Californian and a German

-It is not an alienage case because aliens are on both sides of the v. CAN use 1332(a)(3), citizens of different states with aliens as additional parties.

6. Californian sues a French citizen admitted for permanent residency in the United States who is domiciled in Californian

-Congress could send such a case to federal court, but they have not. 1332(a)(2) doesn’t allow federal jurisdiction when its between citizens of a state and subjects of a foreign state who are admitted for permanent residency in the United States (have a green card) and domiciled in the same state

7. A German sues a French citizen admitted for permanent residency in the United States who is domiciled in California

-No, aliens who are domiciled in CA are not treated as Californians except to keep out certain 1332(a)(2) cases (see above). This would be an attempt to get the case into federal court under 1332(a)(2). Also probably unconstitutional even if Congress did want to send such a case to federal court.

8. Californian sues Elizabeth Taylor, an American national domiciled in France.

-No diversity jurisdiction. Elizabeth Taylor is not a citizen or subject of a foreign state, because she is not a foreign national. Also, she is not a citizen of a state, because she is not domiciled in a US state. She is not anything for diversity purposes. Case must proceed in state court.

9. Dred Scott, a slave owned in Missouri, is taken by his master to Wisconsin Territory (a free territory).

-Scott lives there for a while and then returns with his master to Missouri.

-Sanford, a New York citizen becomes Scott’s master.

-Scott sues Sanford in federal court to establish that his time in a free territory had made him free under state law.

-Diversity jurisdiction?

- In the Dred Scott case, the US SCt held that blacks, even free blacks, are not citizens of a state for the purposes of diversity jurisdiction. (Obviously not the case now.)

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10. A German sues a Frenchman and New Yorker.

 -Can’t use diversity because there isn’t a U.S. citizen on both sides.

 -Can’t be alienage because there is an alien on both sides of the “v.”

11. A citizen of DC sues a Virginian under Virginian law in federal court.

-1332(e) The word “states” is used to include the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

\*\*Congress has sent these actions to federal court but it doesn’t appear that it can be justified through the language in Art. III extending federal judicial power to controversies between citizens of different states. The Constitution only discusses states which probably did not include DC.

\*\*Congress justified this by the fact that there was potentially a federal law at issue here., making it fall under arising under jurisdiction in Art. III. NOTE: Mottley is not about the Constitution, it is about the statute in sec. 1331, this is about the constitutionality of 1332.

-If you are appealing to 1331 then you must meet the Mottley rule.

-1331 is irrelevant to 1332. Supreme Court had trouble justifying suits between a DC’er and another state having diversity jurisdiction. The language in the Constitution clearly means state, and not DC. Instead Congress looked to the phrase “arising under,” which under the Constitution can be very liberally applied to any federal issue. DC is a federal enclave so there is a federal interest that could bring up federal issue.

IV. What is a Domicile? \*\*For diversity only

\*It is not relevant what your residence is when discussing diversity. Residence does not care about your intent. Citizen is equivalent to domicile for our purposes. Domicile tries to get at where your home is.

*Baker v. Keck*

Facts

-Baker moved from Illinois to Oklahoma. He then sued individuals and the Progressive Mine Union because someone in that group blew his arm off.

-Moves to Oklahoma to create federal jurisdiction. He is suing under Illinois state law.

-The Progressive Miners Union is not incorporated (law firms, unions) has the domicile of all of its members.

-Baker had to go to a state where there were no members of the Progressive Miners Union.

\*\*\*MSG thinks the domicile rule for unincorporated associations is dumb. Domicile of the unincorporated union is the domicile of all of its members.

Restatement of Conflict of Laws

Definition of Domicile

-To acquire a domicil of choice, a person must establish a dwelling-place with the intention of making it his home.

-The fact of physical presence at a dwelling-place and the intention to make it a home must concur; if they do so, even for a moment, the change of domicil takes place.

\*\*\*MSG you don’t actually have to have dwelling-place in a narrow sense. Could be sleeping on a friend’s couch while you find a place.

**Hypo:** I’m domiciled in New York. I then establish the intent to move to Arizona permanently, but on my way get into an accident in Oklahoma, where I remain for rehab. Where is my domicile?

-Still in New York, because the intent does not coincide with presence in the state.

**Hypo:** Prisoners?

 -until recently courts would conclude that prisoners cannot create a domicile of choice where they are imprisoned. But are now more open to the idea - If you intend to stay after your release, then you are arguably domiciled in that state.

**Hypo:** Students?

* Can depend on your intention after graduation.