Civil Procedure Notes

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1. Question from Review Session:
   1. Dual Citizenship
      1. The district courts that have dealt with it have tended to ignore the foreign citizenship
2. Federal Subject Matter Jurisdiction: Diversity and Alienage Jurisdiction
   1. Note that Glannon does not consider Alienage Jurisdiction
   2. Constitutional Scope:
      1. U.S. Const. Article III.   
         Section. 2. Clause 1: The judicial Power shall extend …to Controversies …between a State and Citizens of another State;--*between Citizens of different States*…and *between a State, or the Citizens thereof, and foreign States, Citizens or Subjects*.
      2. Minimal diversity, minimal alienage
   3. Statutory Scope:
      1. Sec. 1332. - Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—

(1) citizens of different States.

(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

* + 1. (e) The word ''States'', as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico
    2. Complete diversity, complete alienage

1. Hypos
   1. P (a citizen of New York) sues D (a citizen of California) for divorce in Federal Court
      1. Diversity Case?
         1. Although Federal Courts have the power to accept a divorce case, they decline to do so.
            1. “Family Law Exception”

Family Law matters are not only *really a matter for state law*, but they are better handled by state courts.

Modern example of separately domiciled, divorcing spouses: P(NY) sues D(CA) for divorce in federal court. Usually not taken due to above exception.

1. What is Domicile?
   1. Domicile determines citizenship for diversity purposes
   2. It is important to employ the words “citizenship” or “domiciliary,” rather than “resident” when discussion diversity cases.
   3. I’m domiciled in New York. I then establish the intent to move to Arizona permanently, but on the way I get in an accident in OK, where I remain for rehabilitation. Where is my domicile?
      1. Because the individual in question has yet to establish a new domicile of choice, he or she retains his or her old domicile.
      2. In the event that the individual in question required lengthy rehabilitative care, and wanted, subsequent to receiving said care, to “do something in the oil industry” (which OK has, but NY does not)
         1. Glannon contends that that individual is domiciled in OK
         2. Professor Green concurs to the extent that this case could go either way.
         3. The most important two factors necessary for determining one’s domicile are…
            1. Physical Presence
            2. The Desire to Make a Place your home.
   4. Restatement of the Conflict of Laws, Section 15
      1. To acquire a domicile of choice, a person must establish a dwelling-place with the intention of making it his home. (See *Baker v. Keck* for exhaustive list of factors that helped determine domicile, i.e. voter registration. Non-exhaustive list at V below)
      2. “Magic words” – “To remain indefinitely.”
   5. Story:
      1. “It will be observed that, if there is an intention to remain, even though it be for an indefinite time, but still with the intention of making the location a place of present domicile, this latter intention will control, even though the person entertains a floating intention to return at some indefinite future period.” Read the word “domicile” as “home”
         1. One need not merely indefinitely intend to remain at a given location. One must intend to make that place his or her *home*
            1. Ignorance regarding the duration of one’s stay is insufficient grounds for establishing a locale as one’s domicile.

E.g. CA lawyer working 9 years on antitrust case in NY (and not knowing when it will end) was held not domiciled in NY

* + - * 1. Conversely having a definite end to one’s stay does not mean you are not domiciled

E.g. Green is domiciled in VA even though he will return to CA when he turns 65

* + - 1. Idea of home will give us a good idea of what considerations come into play (i.e.., what evidence to consider when evaluating whether an individual has established a particular locale as their domicile)

1. Baker v. Keck
   1. Evidence for domiciliary
      1. Baker moved his family to Oklahoma
      2. Baker moved the majority of his possessions to Oklahoma
      3. Baker registered to vote in Oklahoma
      4. Baker’s house in Illinois burned down.
      5. These, combined supported Mr. Baker’s contention. However, none of them alone are dispositive.
      6. Does it matter that Mr. Baker moved to Oklahoma in part for the expressed purpose of establishing diversity jurisdiction?
         1. One might say that one cannot truly intend to make a place his or her home *instrumentally* (that is, for a purpose other than making said place a home)
         2. Could we say that the purpose of diversity jurisdiction (i.e., to prevent biased rulings in state courts) justifies the court’s holding?
            1. If it true that if a state court is prejudiced against out-of-staters, would not they likewise be biased against an individual who left that state for the sake of establishing diversity jurisdiction?

The state court judge would likely have treated Baker as an Oklahoman

Prejudice would remain, and, possible, be exacerbated.

* + - 1. One might argue, on the other hand, that if an individual *created* the basis for their former home state’s having a prejudice against him, he ought not be granted legal recompense.
  1. Corporations used to purposely create diversity jurisdiction with frequency by incorporating in another state.
     1. This is now far more difficult given that their state of citizenship is not only the state(s) in which they are incorporated, but also their principal place of business. So, now, they would have to move their principal place of business in order to establish diversity jurisdiction.

1. Corporations
   1. 28 U.S.C. Section 1332 (c)
      1. For the purposes of this section and section 1441 of this title—(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business….
   2. When there is a subsidiary that is owned by a parent company, the home state of the subsidiary is not considered for the sake of diversity jurisdiction
   3. Only a corporation’s principle place of business determines its citizenship
      1. Not each and every state in which it does business.
      2. Principal Place of Business
         1. The Nerve-Center Test (See *Hertz Corp. v. Friend)*
            1. A corporation’s principal place of business is that state in which its administrative headquarters are located, but also to be considered are the locations of a corporation’s senior staff, Board, or agents concerned with managing the corporation’s business affairs.

The location where the bulk of its business is conducted is irrelevant.

* + - * 1. Objection to the Nerve-Center-Test

A court would be less likely to harbor a negative bias against a corporation in a state where it does the most business (thereby employing the greatest number of individuals)

* 1. Hertz. Corp v. Fried (US 2010)
     1. This Supreme Court case established the “Nerve-Center-Test”
  2. The P Corp, incorporated in Delaware with its US PPB in California but its total world-wide PPB in Germany, sues D, a Frenchman. Alienage case?
     + 1. No
       2. The court, when considering a corporation’s citizenship does not ignore alienage, and merely search for the most appropriate state within the United States.
  3. When a corporation has two citizenships (e.g. U.S. state and a foreign country) it is treated, in effect, as as two parties for the purpose of determining whether there is diversity/alienage jurisdiction.
     + 1. Note that this is different from the way in which the court treats individuals with dual-citizenship – then the foreign alienage is ignored

1. Devices to Create Diversity/Alienage
   1. Kramer v. Caribbean Mills (US 1969)
      1. Facts
         1. Panama and Venezuela Finance Company (Panama) made a contractual agreement with Caribbean Mills (a Haitian corporation), whereby Caribbean would purchase 125 shares of corporate stock. This was in effect a contingency fee agreement masquerading as their lawyer having an ownership interest in the corporation.
         2. Caribbean Mills did not finalize payment.
         3. Venezuelan Finance Company sold their case against Caribbean to a Texas (Kramer) attorney for a contingency fee ($1 and 5% commission), so that the case could be brought in federal court.
      2. Holding:
         1. The case was remanded to state court
         2. Kramer did not have any vested interest in the case.
      3. This manipulation was not illegal, per se, but could not create diversity jurisdiction
   2. Hypo:
      1. X (Cal.) slips and falls in a store owned by D (Cal)
         1. Can X generate diversity jurisdiction by assigning his lawsuit to P (Nev)?
            1. No. It is not legal for tort suits to be sold.
            2. Contracts actions, like in Kramer v. Caribbean Mills can, however, be sold.
      2. Imagine that the contract right had been assigned to Kramer for $100,000, reserving no interest in the contract claim.
         1. If the transfer is absolute, then this *would* constitute a diversity action.
   3. Assignment to create diversity is not, in and of itself, impermissible. It is solely impermissible in cases such as Kramer, in which the parties are attempting to perpetuate a “sham.”
2. Devices to Defeat Diversity/Alienage
   1. Diversity-destroying plaintiff
      1. P (TX) sells its contract right against D (NY) to Kramer (NY) for $1, with Kramer promising to pay back 95% of any recovery as a bonus. Kramer sues D in state court in Texas. May D remove to federal court?
         1. Can we have successful removal?
            1. No. Kramer does not have a genuine interest in the law suit.
      2. P (TX) assigns 1/10 of his contract against D (NY) (worth $8,000 if the action prevails) to Kramer (NY) for $1,000. P *and* Kramer sue D in state court in Texas. May D remove to federal court?
         1. Question: Does Kramer have a genuine interest in this law suit?
            1. Yes. Because Kramer was financially invested in the suit.
         2. Some courts will not allow a plaintiff to defeat diversity if only a very small percentage of the lawsuit (e.g. 1/100) is sold to a coplaintiff.
3. Rose v. Giamatti
   1. Facts:
      1. Pete Rose was going to be sanctioned by Bart Giamatti, the Commissioner of Baseball (as well as being the former President of Yale and actor Paul Giamatti’s father) Rose sought to stop these sanctions via an injunction.
      2. Rose did not want the case to be removed to Federal Court from Ohio.
      3. So, Rose, a Ohio domiciliary, joined Cincinnati Reds and Major League Baseball (all unincorporated associations with members domiciled in Ohio) as defendants
         1. With respect to the Reds the claim was that they had a contractual duty to Rose to assure that Giamatti abided by his obligations
      4. Procedural History:
         1. The court was removed to Federal Court (which would determine if, in fact, the case had federal jurisdiction)
         2. The court held that Rose added the other defendants despite their having no interest in the case.
            1. Fraudulent Joinder

In fraudulent joinder cases, the underlying reason for removal is that there is no factual basis upon which it can be claimed that the resident defendant is jointly liable or where there is such liability there is no purpose to prosecute the action against the resident defendant in good faith

* + - * 1. How might Rose have re-crafted his argument in order to attain his injunction?

He could have sought damages for breach of contract from the Cincinnati Reds – that is relief they could have provided

* + - * 1. Joinder to defeat diversity occurs frequently, and, in most cases, is successful
        2. Rose’s case failed because the co-defendants he named had no ability to provide the relief Rose sought.

1. Removal
   1. When a plaintiff files in state court, and the defendant seeks to have the case removed to Federal Court. (Section 1441(a). Any civil action in a state court (where district courts have original jurisdiction) may be removed by a Δ to the district court for that division)
      1. case can be removed to Federal court *if* the plaintiff *could have* sued originally in Federal Court
      2. There are a few exceptions to this rule through
   2. The removal is always to the district court in which the state is located.
   3. - A (Cal.) sues B (Cal.) under 42 USC § 1983 for illegal search and seizure   
      - Suit is brought in California state court in San Francisco  
      - May B successfully remove to N.D. Cal.?
      1. Yes. Federal Question Action.
   4. - A (Cal.) sues Officer B (Cal.) in California state court in San Francisco in connection with an arrest.   
      - A has two causes of action against B: violation of federal civil rights and state law battery concerning the same arrest  
      - May B remove to the N.D. Cal.? Yes, as all of the actions could have been heard in federal court. – the state law action has supplemental jurisdiction
   5. The plaintiff is the master of the complaint, and in choosing defendants, all of the defendants have to be able to be removed to federal court, or the case *cannot* be removed to Federal Court. (Unless the defendants can show that fraudulent joinder applies.)