9/19 Civ Pro Notes

1. Last time:
   1. Domicile, citizenship of corporations under 28 USC § 1332(c)
   2. Devices to create diversity / alienage
   3. Kramer case: assignment not sufficient.
      1. Non-diverse party was still the one interested in the lawsuit.
      2. Violated 28 USC §1359
      3. But if the new owner of the lawsuit is truly interested in the lawsuit, it is acceptable.
         1. Not very many lawsuits can be assigned
            1. Eg tort suits cannot
            2. Although you can buy even a tort lawsuit if the tort action is a corporation’s and you buy shares of the corporation...
   4. If you legitimately sell your part of the law suit to another party, which then creates diversity, that still works because that lawsuit then legally belongs to that other party – no longer you
      1. Not very many parts of law suits can be assigned, remember (so, these are rare situations)
   5. Relatively hard to create diversity
   6. Destroying diversity is pretty easy
   7. Devices to destroy diversity:
      1. Assignment = Assigning part of the lawsuit to a co-plaintiff to destroy diversity and make case non-removable
         1. Some courts have allowed smaller parts of suit being assigned, but generally a reasonably substantial part must be assigned
            1. (1/100 of a part is almost definitely not enough)
      2. Joinder of a diversity-destroying defendant
         1. *Rose v. Giamatti*
         2. You can be very creative about why another D is liable, without counting as fraudulent joinder (and without violating Rule 11)
            1. There was no lying involved in this case, but there was not a story as to why these diversity destroying D’s could provide the requested relief

This would not be a problem if Rose had been asking for damages; Rose was not

1. Removal
   1. *All* D’s must consent to removal
   2. With a few exceptions, D can remove if P’s suit in fed court would have had fed subject matter jurisdiction
      1. Must remove to fed court whose district encompasses the state court where the suit was originally filed
      2. Unless doctrine of fraudulent joinder applies, all Ds must stay with suit
         1. i.e. one D, who is diverse from the P, cannot split the suit and remove to fed court while other Ds stays in state court due to lack of diversity
   3. Defeating removal:
      1. You can defeat removal of a state law case not merely by joining a diversity destroying defendant, but also joining a defendant against whom the amount in controversy is below the jurisdictional minimum of greater than $75,000
         1. E.g. A (CA) sues B (NY) and C (NJ) for battery; A suing B for +$75,000, C for only $20K
            1. case cannot be successfully removed by B and C
            2. *However*: amount in controversy concerning C *might be* more than $20K that A is asking for – we will deal with this below – if it is more than $75K, then case could be removed
      2. Rule: amount in controversy for *all* D’s must be above jurisdictional minimum *and* maintain complete diversity
         1. *However*: if two P’s are suing a D, and one P is asking for >$75K, and other is suing for less, they both still can remove, so long as there is still complete diversity
            1. Small loophole for supplemental jurisdiction amount in controversy requirement
            2. We will deal with this exception (created by the Supreme Court in Allapattah) later
            3. Hypos:

Will supplemental jurisdiction work?

π NY + π CA sue a ∆ NY

Supplemental jurisdiction is **NOT** allowed concerning π NY against ∆ NY

Would be end run around complete diversity requirement

π CA sue a ∆ CA + ∆ NJ

Supplemental jurisdiction is **NOT** allowed concerning π CA against ∆ CA

Would be end run around complete diversity requirement

π NY sue a ∆ CA + ∆ NJ

π NY action against ∆ CA for more than $75k

π NY action against ∆ NJ for $75k or less

**No** supplemental jurisdiction for π NY action against ∆ NJ

Would be end run around requirement that amount in controversy requirement must be met for actions against each party

**BUT...** π NY + π NJ sue a ∆ CA

π NY against ∆ CA for more than $75k

π NJ against ∆ CA for $75k or less

THERE IS SUPPLEMENTAL JURISDICTION FOR π NJ against ∆ CA under Allapattah

* 1. Exception for removal if diversity/alienage cases:
     1. In any D is citizen of state wherein action is brought, than no D can remove
        1. Because diversity was created in order to protect people from out of state, so the D who is a citizen of that state wouldn’t need the protection of the federal court
           1. MSG likes this rule ☺
        2. This rule is not applicable to removal of federal question cases!
  2. Defenses are not waived by virtue of removal (R 1441)
     1. i.e. Permissible if D removes and then makes motion to dismiss due to lack of personal jurisdiction
  3. FELA - Federal Employment Liability Act – one of the few fed causes of action that stays in state court if it begins in state court – Ds cannot remove it, even though P could have brought it originally in federal court
  4. Only a few fed causes of action can only be brought in fed court
     + 1. Fed antitrust, securities law actions, etc.
  5. What effect do counterclaims have on removal?
     1. A (CA) sues B (CA) in CA state court for battery; B counterclaims for violation of fed civil rights law
        1. B cannot remove (*Mottley* rule) – P is suing under state law
        2. A cannot remove either
           1. R 1441 - only D’s can remove
     2. Counterclaims cannot be pointed to as grounds for removal by plaintiffs– This is true for diversity counterclaims too
        1. *Shamrock Oil & Gas Corp. v. Sheets*
        2. Facts: P (citizen of Delaware) sued D (citizen of Texas) in “Texas state court on a contract claim for more than the federal jurisdictional amount.”
        3. D counterclaimed on a separate contract issue, “also in excess of jurisdictional amount”
        4. P removed to fed district court (diversity); D moved to remand
        5. Ruling: District court denied D motion; gave judgment for P for both claims
        6. 5th Circuit reversed, remanded to state court
        7. SCOTUS affirmed court of appeals’ decision
           1. § 1441 removal “by the defendant or the defendants”

Plaintiffs cannot remove, regardless of jurisdictional amount in question

1. Amount in controversy
   1. does not mean the amt that P gets
      1. Ex: if P sues for $100K and only gets $3K, suit is not dismissed for want of diversity (lack of meeting the jurisdictional minimum)
   2. Punishment for exaggerating amt in controversy:
      1. Rule 11
      2. 1332(b)
         1. Usually loser pays winner’s costs (does NOT include attorney’s fees – just filing, witness fees etc)
         2. BUT under 1332(b) if P wins, but doesn’t win +$75K, court can refuse to make D pay P’s costs and can make P pay D’s costs
   3. What determines amount in controversy when P sues in federal court under diversity?
      1. Not just that P asks for that amount
      2. *Saint Paul Mercury Indemnity Co. v. Red Cab Co.*
      3. Facts: Red Cab Co. sued St. Paul Mercury Indemnity Co. because D failed to “pay workers’ compensation claims”
         1. D removed to Fed district court (diversity)
            1. P filed amended complaint; trial without jury awarded damages to P

D appealed; court of appeals wouldn’t hear case because amt. in question did not exceed $3000

SCOTUS reversed

* + - 1. St. Paul Mercury standard
         1. “It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal.”
         2. In other words, if it is legally possible for P to win amt in controversy, P is in
      2. Generous to P
      3. What to do about injunctive relief? (not asking for damages)
         1. How much is it worth to you that this relief is granted?
      4. Easy to argue that St. Paul Mercury standard is satisfied when P is asking for punitive damages, pain and suffering, etc.
  1. How to you determine amount in controversy when the defendant is removing?
     1. Although P asks for $75K or less, the amount in controversy can be +$75K
        1. Usually in state court you can get more than you ask for
        2. Unless Plaintiff waives their rights and refuse to take any more money than $75k – that would assure that amt in controversy is not satisfied
     2. Standard for defendant removing used to be subject to disagreement
        1. Now answered by Clarification Act of 2011
        2. Preponderance of the evidence that amount in controversy is met
        3. See 1446(c)(2)

1. Aggregation to reach amount in controversy for diversity actions
   1. An individual P may aggregate actions against an individual D to get above jurisdictional minimum
   2. several P’s *cannot* aggregate their actions against an individual D to reach jurisdictional minimum
      1. i.e. P(1) and P(2) sue D for $40K each. They cannot sue in fed court together under diversity
   3. a P *cannot* aggregate his actions against several Ds to reach jurisdictional minimum
   4. several P’s *cannot* aggregate their actions against several Ds to reach jurisdictional minimum
   5. The only time aggregation works is when individual P is aggregating actions against an individual D
   6. Exception to rule that several P’s cannot aggregate their actions against an individual D together to reach jurisdictional minimum
      1. Two children bring action against executor of an estate that they are entitled to; allege that D has absconded with $80K. $40K should go to P(1) and $40K to P(2)
         1. This can be aggregated
         2. Why? Common and undivided right – P1 gets relief only if P2 does as well – that is not usually true
2. § 1441 (f) fed courts not precluded from hearing cases originally brought in state court where the court lacked jurisdiction
   * 1. (Before, fed courts couldn’t hear removed cases that the fed court had exclusive jurisdiction over)