Civil Procedure Notes 9/13/13

**Removal.** There is a distinction between removal and transfer

* Removal: originally filed in state court; D makes it proceed in corresponding federal court district
* Can generally be removed if P could have originally sued in fed court (except FELA cases and cases when D is domiciled in state that P originally filed in and wants to remove based on diversity or alienage)
* To defeat removal of what otherwise would be a diversity case:

🡪join a D that destroys diversity

🡪join a D against whom the jurisdictional minimum is not met (less than 75k)(can’t join a P whose award request is less than 75k because court will assume supplemental jurisdiction over that additional action – see Allapattah, which we will discuss later)

🡪join an in-state D

* All D’s must consent in order for removal to work
* Counterclaims: if D counterclaims on a federal cause of action, D can’t remove (Mottley), P can’t remove either (because he’s not really a full blown D, just a P or a counterclaim-defendant
	+ Removal by the P is also not possible if the counterclaim is a diversity action (Shamrock Oil v. Sheets)
* Venue statute talks about particular districts where actions can be brought in federal court by a plaintiff. When D removes, there always “is venue” even if venue statute isn’t fulfilled (can’t get it dismissed for lack of venue)
	+ May be transferred to another district that also has venue though
* §1441(f)
	+ certain federal causes of action must be brought in federal court
	+ if they are brought in state court, D is allowed to remove
	+ before 1441(f) removal was not possible because the action was not rightly before the state court
* removal does not waive defenses (personal jurisdiction, etc)
* sometimes defenses will be different in federal court than in state court
	+ can remove and assert federal defense
	+ eg some state courts don’t have Twombly standard, can remove and then use Twombly as a defense
* §1446: removal procedure. Amended in 2011 through Federal Court Jurisdiction and Venue Clarification Act, which filled in a lot of the holes.
* You have 30 days from when you found out about the removability to remove

🡪basically have a year to remove; beyond that, even if you discover that it is removable, you can’t remove. What’s done is done and after a year in state court it’s too late. Unless the P was tricking you into not realizing it was removable.

* Transfer: moved from one *federal* district to another.
	+ Transfer between state court systems is not possible. Action must be dismissed by first state court system and refilled in the second.

**Amount in controversy.**

* Rule 11 helps protect D from a P asking for an unreasonably high amount in order to satisfy the amount in controversy.
* 1332(b): If P ends up winning less than $75000.01, then D doesn’t have to pay your court costs (and maybe you have to pay D’s)
* St. Paul Mercury test – applies to P suing in federal court: it must appear to a legal certainty that the claim is really for 75k or less in order to justify dismissal. The burden of proof is on the P to show that this is not the case. This isn’t really hard to prove.
* What about D seeking to remove? §1446(c )(2)- if P is asking for nonmonetary judgment, or an undisclosed monetary amount, or is asking for less than the jurisdictional minimum but D can show that under state law the actual award can be for more than the amount requested , then D can still remove if the district court finds, by the *preponderance of the evidence*, that the amount in controversy is satisfied. This is harder than the St Paul Mercury
* Injunctive relief: how do you satisfy the minimum amount in controversy? Base it on value to the plaintiff? Cost of compliance with the injunction for D?
* 7th circuit rule (MSG’s rule):

🡪If P is suing in federal court, use the value to the P

🡪If D is removing to fed court, use the cost to the D

**Aggregation to meet amount in controversy requirement**

* Only claims by individual P against individual D can be aggregated, except if
* Multiple P’s file claims against one D that assert a common and undivided right (the estate suit where two guys are suing the administrator of the estate and neither will get $ unless both do)
* P1 and P2 sue D for injunction valued at 70k each. D says cost will be 140k to him. Some jurisdictions say that jurisdictional minimum is satisfied in this case in this case if an injunction in favor of P1 would have to benefit P2 also

**Supplemental Jurisdiction and Aggregation distinguished**

* P1(CA) sues D(NY) for 80k, P2(NV) joins action against same for 50. P1’s claim has diversity and meets the minimum; P2’s claim has supplemental jurisdiction – this follows from Allapattah
* Supplemental jurisdiction in a diversity case requires that one P’s actions against the D be over the minimum in order to have something for the second claim to be supplemental to.
* This is different from aggregation of Ps’ claims when they have a common and undivided right – in that case no P’s action against the D need to meet the jurisdictional minimum on its own

**Personal Jurisdiction in State Court**

* A defense. Only about defendants and their rights
* Think about Kazhakstan. They can’t adjudicate against you. Nor can a state where you have no personal ties.
* This is a matter of due process
* PJ is not a choice of law issue.
	+ PJ in a state does not mean you can apply the state’s substantive law: If you get into a fight in NY and then are in OR on a visit and you get served there and the complaint is filed in OR, there is PJ in Oregon but Oregon court must use NY battery law to adjudicate D—using OR’s law would violate due process
* PJ is different from SMJ
* PJ is different from service (but service in forum state will establish PJ)

*Pennoyer v. Neff*

* Took prevailing international law on PJ and read it into the 14th amendment due process clause
* If a state court asserts PJ over a D in violation of international law, it is also a violation of the constitution
	+ Note that the interstate doctrine on PJ under the 14th Amendment has migrated away from international doctrine lately
* This is only thing that is important for us about Pennoyer
	+ Technical problem at issue in Pennoyer was whether quasi in rem actions require that things in a state be *attached* at the beginning of the lawsuit in order for state to have jurisdiction
	+ Pennoyer said it did
	+ But this requirement got ignored shortly after
* Why is lack of PJ a violation of due process?
* If an illegitimate court (a body that has no sovereignty over you) takes something away from you (life, liberty, property), it is a due process violation

Pennoyer Framework for Personal Jurisdiction (actually predates Pennoyer)

* *In personam*: source of PJ is presence of D at initiation of suit (*NOT at time of event being adjudicated*), aka the time when the court wants to begin asserting itself, if you’re there, they have PJ over you
* Tagging the summons and complaint by serving them to D within bounds of the state
* Where the cause of action occurred is utterly irrelevant
* *In rem*: source of PJ is presence of property belonging to D at initiation of suit
* Concerns ownership of property and is binding upon all possible claimants (quiet title action)
* *Quasi in rem*: two types
* Source of PJ is D’s property in state at initiation of suit, but suit does not concern ownership of that property (but if P wins, P might use that property to execute judgment)
* Suit concerns ownership of property, but is only binding on certain named parties (“do you own this or do I own this? I shall sue to find out”)
* Challenging PJ
* Motion to dismiss for lack of P—show up and object
* Motion to set aside judgment—default and then ask rendering court to void judgment because there was no PJ
* Collateral attack—default, P brings new suit to obtain award won in original suit, D says earlier judgment is invalid because no PJ
* Even assuming that there is PJ, why does one state have to respect the judgments from another state?
* It’s mandatory. Full faith and credit (Art IV, §1) is given in each states to the valid judgments from other states
* One state court has to afford another state court full faith and credit (“the iron law”). If there was PJ in rendering state, then every other state must treat the judgment the same as the rendering state does
* What about federal court’s obligation to respect a state court’s judgment?
* Also mandatory, but it’s a statute: 28 U.S.C. § 1738 says full faith and credit applies to federal court. Congress has the right to deny full faith and credit if it feels like it (like in the Terri Schiavo case)
* What about state court’s obligation to respect federal court’s judgment?
* Mandatory too, through the Supremacy Clause. Federal law is supreme over state law and therefore federal law concerning the preclusive effect of the judgment is supreme over state law in state court