October 21 Civ Pro Class Notes

* In oral argument of Daimler Chrysler case, Justice Ginsburg said you can only get general jurisdiction in place of incorporation and principal place of business since Goodyear
  + Green: Disagrees and believes that “at home” from Goodyear is more inclusive, shows that this question is still open
* Venue in Federal Court
  + Issue of whether district action is being brought in is appropriate given 28 USC §1391
    - The two largest ways to get venue in a district are found in §1391(b)(1) and §1391(b)(2)
      * (b)(1) all D’s are resident of the same state, choose any district in that state in which at least one of the Ds is a resident.
        + Residence is domicile for individuals
      * (b)(2) Transactional venue – where a substantial part of the cause of action occurred or where a substantial part of the cause of action relates to the property.
    - Aliens are ignored in venue inquiries
  + Corporations in Venue Statute
    - Residence of Corporations §1391(c)(2)
      * Corporation and unincorporated association deemed to reside in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question
    - Residence defined for corporation in state with multiple districts in §1391(d)
      * In a multi-district state, analyze whether if that district were a state, would that state have PJ? If, yes, then there is PJ in federal court and there is venue
      * Language in the last part of the statute on how to establish venue for corporate defendant who is subject to PJ in a state but isn’t subject to PJ in any particular district in a state
        + The corp. resides in the district with which it has the most significant contacts
  + Fallback Provision for Venue in §1391(b)(3)
    - If no venue in any district on basis of §1391 (b)(1) or §1391 (b)(2) then you have venue in any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action
    - Could only use this provision if everything related to the cause of action happened abroad – and the defendants are not residents (i.e. domiciliaries, for individuals) of the same state
    - The language of “any defendant is subject to court’s personal jurisdiction” is useful in a multi-district state but other than that the language serves no useful function according to Green – because must have personal jurisdiction over all defendants anyway
      * don’t muddle venue with personal jurisdiction
* Distinguishing SMJ, PJ, and Venue
  + Examples
    - P(NJ) sues D(NY) in D.N.J. for +$75k for breach of contract entered into in NY with performance in NY. D served in NJ.
      * There is SMJ – diverse and amount in controversy satisfied
      * There is PJ – defendant was tagged in NJ
      * There is not Venue – defendant does not reside in NJ and no substantial part of the cause of action giving rise to the claim did not occur in NJ
    - P(NJ) sues D(NJ) in S.D.N.Y. for +$75k for violation of his federal civil rights due to D’s arrest of P Manhattan (in the S.D.N.Y.). D is served in NJ.
      * There is SMJ – federal question
      * There is PJ – reached out to the state clearly due to arrest in Manhattan
      * There is Venue – substantial part of the actions giving rise to the claim took part in the district
    - P(NJ) sues D(NY) in D.N.J. for +$75k for negligence because he bought a pen from D in NY and took it home to NJ where it exploded. D is served in NY.
      * There is SMJ – diversity and amount in controversy satisfied
      * There is probably not PJ – similar to World Wide Volkswagon because the D did not purposefully reach out to NJ since consumer brought pen there
      * There is Venue – substantial part of the actions giving rise to the claim occurred in NJ
    - P(NJ) sues D(NJ) in the D.N.J. for +$75k for breach of a contract entered into in NJ with performance in NJ. D is served in NJ.
      * There is not SMJ – no diversity and no federal question
      * There is PJ – specific jurisdiction and general jurisdiction exist
      * There is Venue – both transactional venue and residence venue exist
    - P(NY) sues D(NJ) in the S.D.N.Y. for $40k for breach of contract entered into in the S.D.N.Y. with performance in the S.D.N.Y. and for $40k for a brawl that occurred between the two in NJ. D is served in NJ.
      * There is SMJ – diversity and the amount in controversy satisfied through aggregation, however once PJ is thrown out for one of the claims then SMJ is lost since that claim can no longer be aggregated to satisfy the amount in controversy
      * There is not PJ – only one claim occurred in NY, no specific jurisdiction in NY for brawl since it occurred in NJ, no general jurisdiction in NY since the D was served in NJ and is domiciled in NJ
        + Could a state assert PJ over Ds who make special appearances to contest PJ for one claim but not another

If NY state courts did this then under 4(k)(1)(A) the federal courts could as well

probably not constitutional by Scalia reasoning since it is generally not used by the states (*Shaffer* and *Burnham*)

Intl Shoe Analysis of Brennan? [Scalia would agree with Brennan here that if it satisfies Int’l Shoe it is constitutional] The D is reaching out to the state to litigate part of the case and is getting the benefit of the court of the state then the D can be said to have reached out to the state and perhaps there should be general PJ over the D.

However, D has been dragged to the state and did not reach out to the state.

* + - * There is not Venue – a substantial part of the events giving rise to the cause of action did not occur in S.D.N.Y. for the second claim and the D is not domiciled in NY
  + Alexandra’s example – what if in the previous case the brawl was due to the breach of contract? Would there be venue in the S.D.N.Y.?
    - Does the language of 1391(b)(2) answer this? Is the SNDY a judicial district in which “a substantial part of the events or omissions *giving rise* to the claim occurred”? Could say yes – *but for* the breach of contract in SDNY, there would be no battery in DNJ. The breach gave rise to to the battery.
    - Another method - try to a look at what statute does/purpose of statute. Transactional venue is tied to witnesses. Is this a case where there would be witnesses relevant to the battery action in SDNY? Is what motivated D to engage in battery (the contract dispute) relevant to whether P can prevail for battery? If so, then there would be an argument for venue in SDNY.
* Defenses
  + Defendant can defend on basis of:
    - 1) PJ, SMJ, Venue, Service, Process
    - 2) Failure to state a claim
    - 3) Negative Defenses
      * P makes allegations that add up to a violation of the law but D denies some of them
    - 4) Affirmative Defenses
      * Even if P states a claim and D admits all factual allegations in P’s complaint, D may allege facts that if shown to be true, will keep the P from prevailing. Examples, res judicata, contributory negligence etc
      * Burden of allegation and proof is on D for affirmative defenses
  + Some of these defenses (type 1 and 2) above can take the form of a pre-answer motion
    - FRCP 12(b) lists defenses that can be brought in the form of a pre-answer motion
      * 12(b) defenses are there in order to avoid wasting time and money if these defenses are satisfied – increases efficiency
      * Failure to state a claim is included because if the plaintiff is alleging something that is not a violation of the law there needs to be no fact finding and no need to answer the complaint
      * “No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.”
        + Meant to avoid special appearance approach, can raise defense on the merits (e.g. failure to state a claim) at the same time as PJ without waiving PJ
  + Motion for a more definite statement under rule 12(e) is becoming more common due to Twombly and Iqbal
  + Motion to strike - Rule 12(f) the court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The  
    court may act:  
        (1) on its own; or  
        (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with  
        the pleading.
    - Can be used to remove legally insufficient affirmative defense form an answer
  + Rule 7(a) Designated Pleadings:
    - (1) Complaint
    - (2) Answer to complaint
    - (3) Answer to a counterclaim designated as a counterclaim
    - (4) Answer to a cross-claim
    - (5) Third-party complaint
    - (6) Answer to a third party complaint
    - (7) Reply
  + Timing is in Rule 12(a)
    - 21 days is the amount of time allowed to answer if you have a complaint served upon you unless you’ve waived service, in which case you have 60 days
    - Also true for answering counterclaims, crossclaims and third-party complaints
    - If asked to reply to an answer, you have 21 days to reply from time you are asked
  + Rule 12(a)(4) Effect of a motion
    - If you bring a pre-answer motion, you do not have to answer unless pre-answer motion is denied
      * If it is denied you have 14 days to answer
    - If court grants motion for more definite statement, you have 14 days to respond