Class Notes for Thursday September 12th

Provision in 4(h) when defendant is a corporation

* Talks about delivering, does not specify delivering personally, as 4(e) does
* Courts have found that giving to the secretary of officer, managing or general agent satisfies.
* How far will the notion of delivering extend?
  + Mailing to officer?
    - No – courts have held not
  + If mailing counted as delivering, why be so “sniffy” about who can serve?
    - If you can merely mail it, what is the point of concerning yourself with “who” can serve, eg by saying that a party cannot serve
    - Could you say that the mailman is the deliverer?
    - No - a mailman would not file affidavit that is proof of service
    - In addition, mailing seems insufficient to provide level of notice to the defendant required under R. 4
  + What if you fail to adequately serve?
    - Defendant will make a motion to dismiss. If you are beyond the statute of limitations, the newly filed suit will be barred.

Federal Subject Matter jurisdiction

* “Arising under”
  + States were considered to be independent countries prior to the drafting of the constitution.
    - They gave only some of their powers to the federal government
    - True of not merely of legislative powers but also of adjudicative powers.
    - They granted only some judicial powers to federal courts.
  + SCOTUS is required to exist by the Constitution
    - Lower federal courts are not required to exist, although states gave Congress power to create lower federal courts
    - But states were nervous about the existence of federal courts, so they limited the types of cases they can take in Article III
    - E.g. “The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made,”
  + One question is: how far does “arising under” in Article III extend – how many cases *can* Congress send to federal court under this provision?
  + Another question: Congress has decided to send certain cases to federal court in 28 USC 1331 – the federal question statute. This provision was first enacted in 1875. What type of cases *did* Congress decide to send to federal court in 1331.
  + The language of 1331 follows exactly the language of the Constitution.
    - But SCOTUS has interpreted the law more narrowly than the Constitution

Mottley

* Facts: Contract was made between Mottleys and a train company for lifetime free service. A congressional act makes it illegal to provide free transportation, so defendants refuse to provide passes. Plaintiffs sue for passes, arguing that the federal statute does not apply and that if it does apply, their constitutional rights have been violated. They bring the case in federal court. They win in trial court and the case eventually reaches SCOTUS, which dismisses for lack of subject matter jurisdiction under 1331
  + Why?
    - The plaintiffs’ cause of action under state law - for breach of contract.
  + Federal issues were relevant only as defenses
    - P merely anticipated federal issues being raised by D.
  + Mottley rule: Look to the law the plaintiff needs to mention in the complaint to get the requested relief. If federal law need not be mentioned, then case does not have federal question jurisdiction. The Mottleys only had to refer to state law in their complaint to get their relief – federal law was relevant only concerning defenses
    - MSG: “Mottley rule is more restrictive than we might want” – after all, the real issues in the case was the federal defenses
  + Why read 1331 this way? What’s the problem with allowing a plaintiff to sue in fed court because the defendant will bring up fed defenses?
    - π can always get into fed court by saying that the defendant would say that the law π is suing under is unconstitutional.
    - Federal courts would be flooded
  + Why would someone want to forum shop between federal and state court?
  + MSG People think that which court they’re in can make a big difference to how the case turns out – eg “federal courts tend to be more pro defendant, particularly to corporate defendants.”
    - forum shopping
* 28 USC 1257:
  + Allows SCOTUS to take cases that address federal issues once the case has reached the highest state court.
  + After being brought again in state court, the Mottley case reached the USSCt again through this provision.
  + How is that constitutional?
    - The scope of “arising under” is quite broad in the US Constitution.
  + Any case that has any federal issue is subject to “arising under” in the Constitution
    - Hypothetically, congress COULD send any case that handles a federal issue to the federal courts.
      * But they don’t want to inundate the federal courts, hence narrow definition of “arising under” in 1331.
    - As far as the constitution is concerned, *Mottley* arose under the constitution or federal law
      * But it did not “arise under” as that term is used in 1331.

Hypo(s).

* P sues D to enjoin D from using a process protected by his patent. Federal question? Yes, because law that P needs to refer to in complaint to get the requested relief is federal.
* P and D sign a contract allowing D to make use of P’s patent for a fee. D breaks contract by not paying P. P sues for breach of contract. Federal Question? No, because the claim is for breach of contract, a state matter.
* I am a beneficiary of a trust and I sue the trustee because he has invested in illegal securities in violation of the trust. The securities are illegal because they are in violation of fed law. Federal question? Trust law is state law. But P needs to refer to both state and federal law to get his requested relief. Are such cases federal question under 1331? Federal court have held that such cases have subject matter jurisdiction under 1331 if the federal ingredient of the cause of action is significant. If it is not, then no federal subject matter jurisdiction under 1331.
  + Sometimes you need both Federal and State to show that you have a cause of action.
* What if the Mottleys had brought a declaratory judgment action to determine whether the federal statute overrode their contract and if it did whether it was a taking in violation of the Fifth Amendment? MSG, “This is a possible action.” But does it have federal SMJ under 1331?
  + Considered an end run around the Mottley rule. So federal courts have concluded that you can bring a declaratory judgment action in federal court under 1331 only if the action would have satisfied the Mottley rule if the plaintiff had actually requested concrete relief rather than a declaratory judgment.
* P sues D in federal court under federal Securities Exchange Act, claiming that a certain financial instrument is a “security.” The federal court concludes that the instrument is not a “security” within the meaning of the Act. Court therefore dismisses the action. Failure to state a claim or lack of SMJ? Failure to state a claim
  + Why? Complaint fail to allege facts that constitute a cause of action.
  + MSG says, “It can make a BIG difference how the complaint was dismissed”
  + If it fails to state a claim, the court MUST have SMJ.
* You hit me in the face and I bring an action against you in federal court (using federal question jurisdiction as my source of subject matter jurisdiction) for a violation of federal securities laws. How would it be dismissed? Lack of SMJ.
  + Note: Rule 11 sanctions might apply.
  + Why does it matter that the dismissal is for lack of SMJ not failure to state a claim?
  + Dismissals for lack of SMJ are without prejudice, dismissal for failure to state a claim are with prejudice unless court says otherwise.
  + If dismissal is for failure to state a claim, any state law actions also in the federal court under supplemental jurisdiction can remain (we will discuss later)
  + If dismissal is for lack of SMJ, supplemental jurisdiction for state law actions cannot exist
  + Thus, if the dismissal was for failure to state a claim, the P would have managed to create supplemental jurisdiction for his state law actions
    - It would therefore be too easy to create SMJ for state law actions. The dismissal should be for lack of SMJ, because the federal securities law action is a mere pretext to get into federal court

Diversity: Two questions:

1. What is the constitutional scope of Diversity in Article III?

2. What has Congress allowed federal courts to handle under the diversity statute – 1332(a)?

* Why did the founders think diversity cases were good cases to send to federal court?
  + Worry that state courts might be prejudiced towards citizens of another state.
    - Not about juries. Even in a federal case, juries will still be from that state.
* Let’s first talk about the constitutional scope of Article III (Diversity)
  + - P (NY) sues D1 (NY) and D2 (CA) under NY state law for damages in connection with a brawl in NY. Could Congress create a statute allowing for federal jurisdiction for the action? YES
    - Why? – the case has minimal diversity:
    - How can you tell if a case has minimal diversity?
    - If *any* plaintiff is a citizen of a different state than *any* defendant the case has minimal diversity
    - if you can find **one** plaintiff who is from a different state as **one** defendant, it is a minimal diversity case
* 1332(a): Statute that determines which cases can go to federal court under diversity. This requires *compete* diversity
* how can you tell if case has complete diversity?
  + - If *any* plaintiff is a citizen of the same state as *any* defendant the case does *not* have complete diversity

Is 1332(a) well drafted given its purpose of protecting out of state defendants against the prejudice of state courts? Consider the following…

* + Hypos: Californian sues a Nevadan in Federal Court in Oregon. Yes, subject to federal jurisdiction under 1332. But is this a case where there is a worry about prejudice? No – the Oregon state court would not favor one party over the other.
  + Californian sues Nevadan in Federal Court in California. Diversity? Yes. According to 1332 case can go to federal court. But is this a case where there is a worry about prejudice?
    - MSG: No – Californian does not need the protection of a federal court
  + Californian sues Californian and Nevadan in federal court in NV. Diversity? No. Because there is only minimal diversity (P and one of the D’s is a Californian). 1332 requires complete diversity.
    - MSG: still filled w/ possibility of prejudice in state court – the court might make sure liability rests on the Nevadan

MSG: diversity rule is poorly drafted given its goal of protecting against prejudice in state court against out of staters.