Lect 10

Constitutional scope of federal procedure

What can federal govt do with respect to the procedure of federal courts

Vs.

Subconstitutional scope – what has the federal government chosen to do

* Example –
	+ SMJ
		- Constitutional scope – Art III
			* Arising under
				+ Any federal issue in the case (including federal defense)
			* diversity, alienage
				+ minimal diversity, minimal alienage
		- What has Congress chosen to do?
			* 1331
				+ Mottley rule
			* 1332(a)
				+ complete diversity, complete alienage
	+ Notice
		- Constitutional scope – 5th A
			* Mullane standard
		- What has federal gov’t done
			* Congress delegated its power to SCt
				+ What has SCt done?

FRCP 4

If asked – what can federal government do (e.g. is this hypothetical federal statute valid)?
- look to U.S. Const.

If asked – what can a party do in a federal court in the context of current law?
- look to federal subconstitutional law (unless you have an argument that this law is invalid)

* Subconstitutional law = federal statutes, regulations (incl. FRCPs), and common law

**Is there federal SMJ under 28 USC 1332(a)?**

assumptions:

- jurisdictional minimum is met
- action is brought in federal court by the plaintiff

- plaintiff is suing under state law

New Yorker sues Californian and New Yorker

- no diversity under 1332(a)

New Yorker sues Californian and Texan

- diversity under 1332(a)(1)

New Yorker sues Californian and Frenchman

 Yes – 1332(a)(3)

A New Yorker and a German sue a Californian and a German

 **-** Yes – 1332(a)(3)

Californian sues a French citizen domiciled and admitted for permanent residency in the United States who is domiciled in California

 - NO – excluded from 1332(a)(2) by this language: “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”

German sues Fr citizen domiciled in Cal and admitted for perm residence

 No – (probably not even constitutional)

A from Cal sues B who is an american citizen domiciled in Fr

 - Eliz Taylor case – no diversity SMJ

- Not an alien and not domiciled in any state

Dred Scott, a slave owned by a master domiciled in Missouri, is taken by his master to Wisconsin Territory (a free territory). Scott lives there for a while and then returns with his master to Missouri. Sanford, a New York citizen becomes his master, and Scott sues Sanford in federal court to establish that his time in a free territory had made him free under state law. Does the case have diversity jurisdiction?

* No – in Dred Scott it was held that blacks, even if free, are not citizens of a state for the purpose of diversity jurisdiction
	+ Obviously Dred Scott is not good law anymore!

German sues Frenchman and New Yorker?

 - not allowed under 1332(a)

- Congress could send it to federal court though

A citizen of DC sues a Virginian under Virginia state law in federal court in Virginia

1332(e) says this falls under 1332(a)(1):

1332(e) The word ''States'', as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico

**Problem – is it constitutional?**

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*.

“Citizens of different States” probably did not include DC

In Nat. Mutual Insurance Co. of District of Columbia v. Tidewater Transfer Co. (U.S. 1949)

a majority of the SCt concluded that 1332(e) was constitutional, but they disagreed on the grounds

* One theory – this is an arising under case because the presence of a DCer means that a federal issue could arise

**Citizenship = domicile**

What does domicile mean?

Baker v. Keck

P (Baker) sued Keck other individuals and the Progressive Miners of America for a conspiracy out of which he was attacked and his arm was blown off.

- part of a controversy between United Mine Workers and Progressive Mine Workers

- Ds moved to dismiss for lack of diversity

 - alleged that Baker’s domicile was Ill

- What was domicile of the Ds?

 - Progressive Miners of America?

 - unincorporated associations have the domiciles of all of their members

 No Progressive Mine Workers in Okla? – so that is why Baker chose that state?

Baker was living in Ill at the time of the event being litigated, why shouldn’t that matter?

 - domicile is determined a time of filing (of commencement)

What is standard for domicile?

Rest confl 15

To acquire a domicil of choice, a person must establish a dwelling-place with the intention of making it his home.

 The fact of physical presence at a dwelling-place and the intention to make it a home must concur; if they do so, even for a moment, the change of domicil takes place.

present with the intention of making it your home

* Language about intent to remain indefinitely is unhelpful

Relevant evidence

- still had farm in Ill but house was burned down

 - after injury moved to Okla with most of his goods

- rented land in Okla to farm

- registered to vote in Okla

- Does it matter that a motive for moving was to create diversity?

 - doesn’t matter as long as he did become a n Okla domiciliary

Let’s say you are domiciled in NY, you are moving to AZ and intend to make it your home , but get in accident in OK where you remains for rehab

- Where is your domicile?

- Not AZ because no presence yet

- not OK because do not intend to make it your home

- so still NY

What about prisoners/military

* Used to be you could not establish a domicile in a place where you were compelled to be
* Now more relaxed approach – if you intend to make it your home (e.g. after getting out you will stay) – then it can be your domicile even while you are compelled to be there

NOTE domicile is not the same as residence

* To be a resident one usually has to be there for a particular period of time
* One can establish domicile in an instant
* To be a resident, one’s intentions are generally irrelevant
* For domicile one must have the requisite intent
* An individual always has a domicile and only one domicile for diversity purposes

Corporations

Use 1332(c)(1)

(c) 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…

Corp is citizen of its states of incorporation and of its ONE PPB

P (a citizen of New York) sues the D Corp (incorporated in California with its principal place of business in New York) under state law for more than $75K.

Diversity under 1332(a)?

NO

* P, a citizen of California, sues the D Corp. in federal court in the N.D. Cal. under state law for more than $75k
* The suit concerns a faulty lighter that P bought from a store in the N.D. Cal. and blew up in P’s home in the N.D. Cal.
* The D Corp. makes the lighters and is incorporated in NY
* The D. Corp. has its three of its four manufacturing plants and 2/3 of its employees in Texas
* Its other plant and around 1/4 of its employees are in Louisiana
* Its financial and administrative headquarters is in Los Angeles, where the President, Board of Directors and 1/12 of its employees are located
* SMJ?

Hertz Corp. v. Friend
(US 2010)

Use nerve center for PPB – so no diversity

Californian v. NYer/Californian

The P Corp., incorporated in Delaware with its US PPB in California but its total world-wide PPB in Germany, sues the D Corp., incorporated in France with its US PPB in California but its total world-wide PPB in France. Diversity case?

This is a Delawarean/German v. Frenchman – no diversity or alienage