Lect 22

PJ in Fed ct

Constitutional restriction

 Due process clause of the 5th Amendment

 Does the United States have power over the defendant for this cause of action?

 Look to contacts between ***the defendant*** and the ***United States***

Further limit in Fed. R. Civ. P. 4(k)

Fed R. Civ. P. 4(k)(1)(A)

does lion’s share of work

- service is sufficient for PJ over person in federal ct

- **(A) who could be subjected to the jurisdiction of a court of general jurisdiction in the state in which the district court is located…**

Exists to keep Ps from using broad constitutional PJ power of federal courts to bring suit in an inconvenient forum – e.g.

- P (NY) sues D (NJ) for a state law battery that occurred in New York City.
- P brings the suit in federal court in Alaska
- D is served in NJ
- D has never visited Alaska and has never had any contact with the state

- without 4(k)(1)(A) there would be PJ

4(k)(1)(C)

PJ also when authorized by a federal statute

* Some federal statutes have their own provision granting more generous PJ than 4(k)(1)(A)

Finally 4(k)(2)

(2) Federal Claim Outside State-Court Jurisdiction. For a claim that arises under federal law, serving a summons or filing a
waiver of service establishes personal jurisdiction over a defendant if:
(A) the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction; and
(B) exercising jurisdiction is consistent with the United States Constitution and laws.

 P (Va.) brings suit in federal court in Virginia against D, a German domiciliary residing in Germany, for a battery that the German committed against him in New York. The German has no other contacts with the United States besides the brief trip to NY during which the alleged battery occurred.

Is there PJ? NO. 4(k)(1)(A) does not allow it and 4(k)(2) does not apply because the suit is not under federal law and the D is subject to PJ in NY.

terrorist is sued under a federal antiterrorism act allowing for American victims of foreign terrorism to sue for damages. (The alleged acts of terrorism in this case occurred in Turkey.) The action is brought in federal court in New York.

Is there PJ? This is arguably a case for 4(k)(2), assuming that D has sufficient contacts with the US to satisfy 5th Amendment due process.

* In which of the following cases is there PJ – all are brought in SDNY
* a.     A federal civil rights action concerning the defendant’s arrest of the plaintiff in Buffalo (in the Northern District of New York). Defendant lives in Pennsylvania and is served there.
* There is specific PJ. The defendant’s actions in New York gave rise to the cause of action.
* b.     A California state-law product liability action brought as a diversity action by a California plaintiff against a corporation incorporated in Delaware with its principal place of business in Tennessee. The defendant corporation has a large factory in Buffalo, New York (in the Northern District of New York), but the plaintiff at no time has this asset of the corporation attached by the federal court. The defendant corporation is served (through service on its Chief Legal Officer) in Tennessee.
* Probably no PJ. Unlikely that there would be general personal jurisdiction over the defendant in NY under Goodyear and Daimler.
* c.     A California state-law diversity action concerning a brawl between the plaintiff and the defendant in California. The plaintiff is a citizen of California and the defendant a citizen of New York. The defendant is served while on a business trip in California.
* There is PJ in NY. The defendant is a citizen of New York and so is domiciled there. Domicile is a clear source of general personal jurisdiction.
* d.     An action by a New York citizen against a California citizen for violation of a federal antiterrorism act. The defendant’s alleged violations of the federal act were all committed in Iraq. The defendant has no contacts with the state of New York. The action is brought in the Federal District Court for the Southern District of New York.
* There would be no PJ in a state court in New York. There are no Int’l Shoe connections with the state of New York. Those who thought there was PJ might be thinking of FRCP 4(k)(2), which would allow for PJ even if a New York state court would not have PJ. But that provision would allow for PJ only if the defendant “is not subject to the jurisdiction of the courts of general jurisdiction of any state.” This defendant is a California citizen and so would clearly be subject to general PJ in California state courts.
* e.    An action by a New York plaintiff against a German defendant for breach of German contract law concerning a contract signed in Germany with performance in Germany. At the initiation of the suit the American plaintiff had the federal court attach the assets of a trust that had been created by the German’s mother with the German as the beneficiary. The assets of the trust and the trustee are located in New York City. Defendant is served in Germany.
* It is true that PJ in this case is somewhat suspect. This is a quasi in rem action. The property that is the source of PJ is the defendant’s New York financial assets (namely the corpus of a trust in his name). In the light of Shaffer, quasi in rem actions should be viewed with skepticism. But, as I mentioned often in class, they are often still brought, and the connection between the property and the forum in this case is clearer than it was in Shaffer (which involved shares that were considered to be located in Delaware under Delaware law because the corporation was incorporated in Delaware). Furthermore the exercise in PJ is more reasonably foreseeable in this case than in Shaffer. It is not surprising that one’s financial assets in New York might be seized for a quasi-in-rem action in New York.

Venue

- a number of venue statutes, e.g. for specific federal causes of action

- all you need to know is 28 USC 1391(a)-(d) – the general venue statute

Why venue?

- often can get PJ in federal court even though it is inconvenient to the defendant, especially wjhen PJ is through in hand service in the forum state

* venue is additional protection to make sure that there is adequate connection to the district

- remember, venue is about federal districts

- it applies to federal court only

- state court systems have their own venue statutes, but they are about where *in the state* the action can be brought

Sec. 1391. - Venue generally
(b) Venue in general.--A civil action may be brought in--
(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

Basic venue provision

assume individual defendant

1st

- in judicial *district* where any D resides, if all defendants reside in same *state*

- what is “resides”?

- it is domicile – includes aliens with green cards domiciled in a state

1391(c) Residency.--For all venue purposes--
(1) a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled;

What about other aliens (also includes Elizabeth Taylor – a US national domiciled abroad)

You can ignore them for venue purposes and if they are the only defendants there is venue in any district

1391(c)(3) a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants.

2nd

- venue is proper if the suit is in district where a substantial part of events or omissions giving rise to the claim occurred or district where a substantial part of the property that is the subject of the action is located

“transactional venue”

e.g.- product liability suit

- district where P bought product and was harmed

- district where defective product was made

- contract action

- district where contract was signed or negotiated

- district of performance

* P (San. Fran. – N.D. Cal.) sues D1 (NYC – S.D.N.Y.) & D2 (Buffalo – W.D.N.Y.)
* Suit is under 42 U.S.C. § 1983 concerning an allegedly unlawful arrest that occurred in an airport in NJ (D.N.J.)

•SMJ?

–Yes, Fed. Question

•Venue in

–N.D. Cal. No

–S.D.N.Y. Yes under 1391(b)(1)

–W.D.N.Y. Yes - same

–N.D.N.Y. No

–D.N.J. Yes under 1391(b)(2)

•PJ in

NY Yes Ds domiciled in NY

NJ Yes, arrest was there (specific PJ)

–Cal. No

* P (San. Fran. – N.D. Cal.) sues D1 (NYC – S.D.N.Y.) & D2 (Conn – D.Con)
* Suit is under 42 U.S.C. § 1983 concerning an allegedly unlawful arrest that occurred in New Jersey (D.N.J.)

•Venue in

–N.D. Cal. No

–S.D.N.Y. No

–W.D.N.Y. No

–N.D.N.Y. No

–D.N.J. Yes under 1391(b)(2)

* P (San. Fran. – N.D. Cal.) sues D1 (NYC – S.D.N.Y.) & D2 (Conn – D.Conn)
* Suit is a Cal. State law breach of contract action concerning a contract signed in San Francisco for the construction of a hospital in Albany (N.D.N.Y.)
* P claims hospital is not according to plans

SMJ? Yes diversity (assuming amount in controversy is satisfied)

•Venue in

–N.D. Cal. Yes under 1391(b)(1)

–S.D.N.Y. No

–W.D.N.Y. No

–N.D.N.Y. Yes under 1391(b)(2)

–D.Conn. No

Where does a corporation reside?

1391(c)

**Corporate residence provision:**§ 1391(c)(2)
(2) an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question

* clarifies that applies to unincorporated assn’s too

(d) Residency of corporations in States with multiple districts.--For purposes of venue under this chapter, in a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.

How could there be no district in the state where the D Corporation is subject to PJ if it is subject to PJ in the state??

- Dispersed contacts with state

- or PJ in state only because D is incorporated in state, but don’t want to consider incorporated in every district

* P (S.F. – N.D. Cal.) sues the D1 Corp. & the D2 Corp.
* Suit is a Cal. State law breach of contract action concerning a contract signed in San Francisco for the construction of a hospital in Albany (N.D.N.Y.)
* D1 Corp. built foundation; D2 Corp. built structure
* D1 Corp. incorporated in New York; main office in NYC (S.D.N.Y.); large branch office in Philadelphia (E.D. Pa.)
* D2 Corp. incorporated in Delaware (D. Del.); main office in Pittsburgh (W.D. Pa.); large branch office in Boston (D. Mass.)

Is there SMJ?

Yes – diversity - California sues a NY/NY Corp and a Del./PA Corp (assuming amount in controversy is satisfied)

•Venue in

– N.D. Cal. Yes subst. part of events occurred there

–N.D.N.Y. Yes subst. part of events occurred

–S.D.N.Y. **Yes** both corps reside in same state and one resides in that district

* D1 resides in SDNY because subject to general PJ there if it were a state
* D1 and D2 both “reside” in NDNY because both would be subject to specific PJ there if it were a state
* Tricky!

–E.D. Pa. No – given Daimler, probably not true that both Ds reside in PA - a large branch office in ED Pa is probably not enough to make D1 “at home” there and so subject to general PJ

–W.D. Pa. No – same reason as above

–D. Del. No

FALLBACK venue

3rd

If these don’t work and no venue exists elsewhere (bc events took place out of country and ds do not reside in same state)

(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

* P (S.F. – N.D. Cal.) sues the D1 (D. Mass.) & D2 (D. Del.)
* Suit is a Cal. State law breach of contract action concerning a contract signed in San Francisco for the construction of a hospital in Paris
* D1 built foundation; D2 built structure

This is not a case where the fallback provision applies because there is venue under 1391(b)(2) in ND Cal.

* P (S.F. – N.D. Cal.) sues the D1 (D. Mass.) & D2 (D. Del.)
* Suit is breach of contract action concerning a contract signed in London for the construction of a hospital in Paris
* D1 built foundation; D2 built structure

This is a case for the fallback provision.

There is venue wherever a D is subject to PJ.

Venue in

–D. Del. Yes

–D. Mass. Yes

–N.D. Cal. No

Distinguishing SMJ-PJ-Venue

Must satisfy each when in federal court – and must satisfy each with respect to each cause of action

P(NJ) sues D(NY) in the D.N.J. for +$75K for breach of a contract entered into in NY with performance in NY. D is served in NJ.

SMJ – yes diversity

PJ – yes – D served in NJ

Venue – No

P(NJ) sues D(NJ) in the S.D.N.Y. for +$75K for violation of his federal civil rights due to D’s arrest of P Manhattan. D is served in NJ.

SMJ – yes federal question

PJ – yes – specific PJ – D acted in NY in a way that lead to cause of action

Venue – Yes under 1391(b)(2)

P(NJ) sues D(NY) in the 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.

SMJ – yes diversity

PJ – No – D did not reach out to NJ in a manner to satisfy Int’l Shoe (this is like WW VW)

Venue – Yes under 1391(b)(2)

P(NJ) sues D(NJ) in the D.N.J. for +$75K breach of a contract entered into in NJ with performance in NJ. D is served in NJ.

SMJ – no

PJ – yes – served in NJ, specific PJ in NJ, and D is domiciled in NJ

Venue – yes – under 1391(b)(1) and (b)(2)

P(NY) sues D(NJ) in the S.D.N.Y. for $40K for breach of a 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.

PJ for contract action?

– yes – specific PJ in NY

PJ for brawl action?

* No

Venue for contract action – yes under 1391(b)(2)

Venue for brawl action? – no

SMJ?

No – the two actions could be aggregated to get above the jurisdictional minimum, but since the brawl action will be knocked out on PJ and venue grounds, there is no SMJ for the contract action either