**Lect 7**

* - review sessions this week
* Really have been dealing with the problem of frivolous actions
* Use pleading rules to screen out action pre-discovery or sanction under R 11, which is usually brought only after discovery
* Why not have a mini-R 11 proceeding at the initiation of the pleading period – if P fails, action is dismissed without sanctions
  + Like Twiqbal, it would allow an action to be screened out pre discovery
  + But like R 11, it would use informal proceedings, not pleading standards
  + Something like this has been created (by statute) for federal securities actions

**service**

* Way of providing notice and opportunity to respond
  + Due process limits on service
  + 5th A for fed cts
  + 14th A for state cts
* What is due process as far as giving notice is concerned
* Facts of Mennonite Board of Missions
  + Suit by purchaser from gov’t to quiet title
  + Government attached and sold due to original owner’s nonpayment of taxes
  + Mortgagee (the lender, which had a security interest in property) challenged title in the quiet title action because of lack of notice under due process in earlier proceeding
  + Indiana cts upheld method of notice
  + SCt reversed

What was notice?

* + Notice posted on court house, published a couple of times
  + Sent notice by certified mail to owner, but not to mortgagee
  + SCt said notice insufficient
  + Test is in Mullane
    - need notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”
  + What is relevant in determining what is reasonable
    - What does SCt look to
      * Fact that mortgagee has substantial property interest
        + When you have less of an interest (eg class action of very small claims), you may get only publication
      * Easy to get address of mortgagee
        + Title records will record interest
      * On the other hand, if can’t find D at all, publication might be enough
      * Debate about sophistication of mortgagee
        + But even though sophisticated

Not enough to absolve gov’t of simple expedient of sending notice

An example where lack of sophistication might mean more work is needed to satisfy due process –

Green v. Lindsey

Needed more than posting on door of apartment in public housing project for eviction proceedings, because of lack of sophistication of tenant

Now (subconstitutional) law on service in federal court

action commences with filing with court

R. 3

**Rule 3.  Commencement of Action**

A civil action is commenced by filing a complaint with the court.

2) Why might it matter when an action commences?

- race to the courthouse

- statute of limitations (maybe – might toll on service, not filing)

**Summons**

1) Need summons and complaint

- requirements for summons are in R 4(a)

what is summons for??

signed by clerk

drafted by P or his atty though

bears seal of ct, identifies ct and parties

states time in which defendant must answer

and makes it clear no answer will result in default

- see Form 3

- lets D know this is a real lawsuit

**Service**

What happens if service is improper? – how to enforce rules?

Two scenarios

* 1) assume because service is inadequate you don’t find out about the suit and so don’t respond at all - default judgment is issued against you
  + could go to rendering court and make a motion to set aside the judgment R 60b
  + but say you don’t make motion to set aside
    - P brings an action on the default judgment
    - Basically a suit to collect debt
    - D can collaterally attack on ground that default j was not valid
* 2) If you get notice even though service was inadequate you can attack in the action itself
  + - can put in answer the defense of insufficient service of process
    - or can bring pre-answer motion
    - this is allowed at least in fed court

- might seem weird that you challenge service if you got notice

- why allow? After all, if the action is dismissed for insufficient service, the P will simply file the suit again and serve you adequately

- why go through this meaningless gesture?

- if you don’t allow someone who got actual notice to challenge service, people will ignore service rules if they think there will be actual notice

3) waiver of service of summons

* Plaintiff sends two copies of a notice (see form 5) complaint, and waiver (form 6) through 1st class mail or other reliable means
* Prepaid return mail envelope provided
* Defendant must submit waiver within 30 days
* If he does he gets 60 rather than merely 21 days to answer
* If he doesn’t, then he has to pay costs of service, unless he shows good cause

4) When serving, must file proof of service,

If waiver, file waiver

How to serve,

We will study rules for service for actions filed in ***federal court*** concerning defendants that are ***individuals***, ***corporations, and unincorporated associations*** when service is effectuated ***in the United States*** - we will ignore:  
service in other countries  
service when the United States, a state, or a local government is the defendant  
service on infants or incompetent persons

**Examples of service on individuals**

Examples

**One**

* P files an action against D in the E.D. Va. for violation of federal law.
* D resides in Boston, Massachusetts.
* P drives to D’s home in Massachusetts and delivers the complaint to D personally at his home.
* D appears in the E.D. Va. and makes a motion to dismiss for insufficiency of service of process and insufficiency of process.
* What result?
* insuff process (no summons)
* insuff service – can’t serve if a party
* *4(c) Service.  
  (2) By Whom. Any person who is at least 18 years old and not a party may serve a summons and complaint.*
* Q – what about state law?
* *(e) …may be served in a judicial district of the United States by:  
  (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made…*What are the relevant states? MA and VA
  + - * What does MA and VA about who may serve?
        + MA only sheriff deputy
        + Va - sheriff or any person of age eighteen years or older and who is not a party or otherwise interested in the subject matter in controversy....
      * What if MA or VA law had said a party may serve? Would that mean service was OK?

Arguably not– R 4(c)(2) is an independent federal requirement on who may serve

the standard in R 4(e)(1) incorporating state law is only for how service is effected, not who may serve

we shall return to this question

**Two**

* P files an action against D in the E.D. Va. for violation of federal law.
* D resides in Boston, Massachusetts and has a summer home in Martha’s Vineyard.
* P waits 3 months after filing to have a process server deliver a copy of the summons and complaint to D at his summer home.
* D appears in the E.D. Va. and makes a motion to dismiss for insufficiency of service of process.
* What result?
* OK because delivering a copy of the summons and of the complaint to the individual personally in keeping with R 4(e)(2)
  + Might think not OK because not at dwelling place
  + But that’s not relevant when in hand
  + Can have in hand service anywhere