**Lect 9**

* Now discussing a defense – lack of SMJ

Constitutional limits on subject matter jurisdiction

Article III, s 2

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, under their Authority

This identifies a type of case that Congress *can* send to federal court if chooses to do so

Why Congress? Because Congress has the power to create the lower federal court system and so has the power to regulate its jurisdiction.

What has Congress chosen to do?

Fed Q. 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

- What is “arising under” in 1331?

Mottley rule (will discuss)

Under 1331 federal SMJ is not exclusive

- a plaintiff can, but need not, bring actions that fall under 1331 in federal court
 - note: but if the plaintiff brings them in state court the defendant may *remove* to federal court if it satisfies 1331

Lack of SMJ can be brought up on appeal. Courts, even on appeal, have duty to bring it up if they recognize it.

In small number of cases, there is *exclusive* federal SMJ for a federal cause of action
 - federal securities fraud
 - federal antitrust

Is SMJ not waivable at all? Not exactly...

- P sues D in federal court.
- D appears (does not default)
- There is in fact no federal SMJ, but no one notices.
- P gets a judgment of $100,000 in his favor; there is no appeal and the opportunity for appeal is exhausted.
- The time period to make a motion to set aside the judgment has also passed.
- P then sues on the judgment in state court to garnish D’s wages.
- D collaterally attacks the judgment for lack of SMJ.

Will this work? No – the interest in finality trumps concerns about state courts’ powers

NOTICE that collateral attack would be possible if the defendant had defaulted

Mottley Rule

- 1331 applies only to cases in which plaintiff sues under federal law for relief

 - look at the law the P needs to get his relief – do not consider defenses of the sort that were at issue in Mottley

 - what law is the plaintiff appealing to as the grounds for his relief in the complaint?

 - SMJ under 1331 only if that law is federal

- does this make sense when the real issue in Mottley was only the federal defenses?

- the Mottley rule is tied to the desire to limit federal question SMJ – if anticipated federal defenses were included it would be too easy to manufacture federal SMJ

What if the Mottleys had brought their action in state court?
Could the defendants have removed to federal court? No – a federal defense is also not a ground for removal. The defendant can remove only if the Mottley rule is satisfied.

Notice although cases like Mottley must be brought in state court, there is in the end the possibility of appeal to the US SCt concerning the federal issue

- how is that possible? – how can the SCT have SMJ?

 - Congress allowed it

**28 USC § 1257 - State courts; certiorari**(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.
(b) For the purposes of this section, the term “highest court of a State” includes the District of Columbia Court of Appeals.

 - but how is it constitutional?

It is within the judicial power of the US because the case arises under federal law under Article III, s 2

“arising under” in Article III, s 2 includes any case with a federal issue, including a federal defense – the Mottley rule does not apply

Could Congress pass a statute giving original federal jurisdiction to all cases having a federal defense?

YES – e.g.

P(NY) sues D(NY) in state court under state law. D introduces the defense that the state law is unconstitutional.

Congress could pass a statute allowing the defendant to remove this action to federal court

Such a statute would be within Congress’s power because the case would “arise under” federal law for the purposes of Article III, s 2

Let us now return to whether there is federal SMJ under 1331

P sues D to enjoin D from using a process protected by his patent.
SMJ under 1331?

Yes – Mottley rule satisfied – P is appealing to federal law as his ground for relief

* 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 the fee
* P sues D for breach of contract
* Federal Question under 1331

No – Mottley rule not satisfied – breach of contract is state law –

Arising under for 1331 not always easy to determine

I am a beneficiary of a trust and 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 federal law

SMJ under 1331?

- court has held Yes in some cases (sometimes will conclude that 1331 is satisfied only if the federal element is sufficiently significant)

- in this case the plaintiff’s complaint needs to appeal to *both* state and federal law to show that he is entitled to relief

- notice that the federal law appealed to here is NOT a federal defense, as it was in Mottley

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?

If this could have federal question (arising under) jurisdiction under 1331, there would be an end run around the Mottley rule. Federal courts could again be flooded with cases where the only federal element is a defense

What courts do in such cases is look to see what the complaint would look like if concrete relief (damages or injunctive relief, rather than a declaratory judgment) had been requested – SMJ under 1331 will be allowed only if that complaint satisfies the Mottley rule

P sues D in state court under state contract law for breach of his pension plan contract

Congress has preempted state contract law concerning pension plans in – P’s only action is a federal action under ERISA
D attempts to remove to federal court
What result?

Since this is a question of federal preemption one might think that the matter falls under the Mottley rule, meaning that removal would not be allowed – but there is a difference here. In Mottley the federal defense was that the federal statute simply preempted Ky state contract law concerning free passes, leaving nothing in place. In that case federal preemption did not satisfy the Mottley rule

Things are different here – federal law does not merely preempt state law but also replaces it with a federal cause of action

So the defendant isn’t merely saying that the plaintiff has no state law cause of action – he is saying that the plaintiff’s state law cause of action is really federal – in such cases removal is possible

This is sometimes called (misleadingly) the complete preemption exception to the Mottley rule – it generally happens when the defendant seeks to remove to federal court under federal question jurisdiction a plaintiff’s state law cause of action that the defendant claims has been preempted and replaced with federal law. What was a field of state regulation is now a field of federal regulation. It is common in connection with ERISA (the Employee Retirement Income Security Act) which federalized state contract and trust law concerning pension plans

DIVERSITY SMJ

Constitutional scope

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, under their Authority; . . . --to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to **Controversies** between two or more States;--between a State and Citizens of another State;--**between Citizens of different States**,--between Citizens of the same State claiming Lands under Grants of different States, **and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects**.

Diversity and alienage –

What is the constitutional scope – in other words what cases CAN Congress send to federal court under Article III

All that is required is minimal diversity:

Is *any* P a citizen of a different state from *any* D?
If so, then there is minimal diversity.

Californian v. Californian and New Yorker? Minimally diverse

Californian v. Californian? No minimal diversity

Congress has at times chosen to allow some minimal diversity cases to be brought in federal court

E.g. Class Action Fairness Act
1332(d)(2)
The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which—
(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;
(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or
(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

Could Congress have said that *any* class action worth more than $5 million can go to federal court? NO

What has Congress chosen to do in 1332(a)?

1332 (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between

 (1) citizens of different States;
 (2) citizens of a State and citizens or subjects of a foreign state, 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;
(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
(4) a foreign state ... as plaintiff and citizens of a State or of different States.

* some obvious restrictions
	+ amount in controversy
	+ but also

strawbridge rule – **complete diversity is required for (a)(1) and (a)(3)**

Californian v. Californian and New Yorker?
 - no complete diversity

Californian and New Yorker v. Nevadan and Floridian?
 - complete diversity

Why does diversity jurisdiction exist?

Protection for out-of-staters against bias of state court judges in favor of in-staters

Does the scope of diversity make sense given this purpose?

1. A Californian sues a Nevadan in Federal Court in Oregon.

SMJ under 1332(a)? Yes

But there would be no bias in Oregon state court. No Oregonian is involved.

2) A Californian sues a Nevadan in Federal Court in California.

Is there SMJ under 1332(a)? Yes

But why should the Californian be given the ability to invoke the jurisdiction of the federal court? He would only benefit from bias if he were in state court in CA.

3) A Californian sues a Californian and a Nevadan in Federal Court in Nevada.

Is there SMJ under 1332(a)? NO – no complete diversity

But a biased Nev state court judge might still be able to benefit the Nevada defendant

How about alienage

* Art. III – constitutional scope – “between a State, or the Citizens thereof, and foreign States, Citizens or Subjects “

need only minimal alienage

Is *anyone* on one side of the “v.” a citizen of a state and *anyone* on the other side of the “v.” a foreign citizen or subject?

Is so then minimal alienage.

* German v. NYer and German - Yes
* German v. Italian - NO

These are the cases that Congress COULD send to federal court

What has it chosen to do in 1332(a)?

Statutory scope of “citizens of a State and citizens or subjects of a foreign state” in 1332(a)

* Requires complete alienage:
Are aliens on both sides of the “v.”?
Are citizens of a state on both sides of the “v.”?
If either is true, not complete alienage

German v. Californian and New Yorker
- complete alienage

German and New Yorker v. Italian
- no complete alienage (and no diversity)

German and New Yorker v. New Yorker
- no complete alienage (and no diversity)