Lect 21

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 Del. (D. Del.); 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 Del./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. Yes both reside there

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