**Lect 9**

**Repeated points about power –**

**Service on corporations and unincorporated associations**

4(h) Serving a Corporation, Partnership, or Association.   
…must be served:  
(1) in a judicial district of the United States:  
    (A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or  
    (B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and — if the agent is one authorized by statute and the statute so requires — by also mailing a copy of each to the defendant...

One

* P files an action against the D Corp. in the E.D. Va. for violation of federal law.
* P serves D by having a process server leave a copy of the summons and complaint with a foreman at a D. Corp. plant in Pa.
* The D. Corp. appears in the E.D. Va. and makes a motion to dismiss the complaint for insufficiency of service of process.
* What result?

- OK?

- not officer managing or general agent or agent for service of process

- but under 4(h)(1)(A),service on a corporation is OK if “in the manner prescribed by Rule 4(e)(1) for serving an individual”

4(e)(1), it will be remembered, says “(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 does this reference in 4(h)(1)(A) to 4(e)(1) mean?

It does not mean that you can use state law methods for service on an *individual* – it means you can use state law methods for service on a *corporation or unincorporated association*

(admittedly pretty poorly drafted)

That is what federal courts have concluded, probably because using state law methods for service on an *individual* for serving a *corporation* would make no sense

Two

* P files an action against the D Corp. in the E.D. Va. for violation of federal law.
* P serves D by having his lawyer leave a copy of the summons and complaint leaves at house of the CEO of the D. Corp. in Pennsylvania with his 18 year old son
* The D. Corp. specially appears in the E.D. Va. and makes a motion to dismiss the complaint for insufficiency of service of process.
* What result?
  + OK for indiv but suing *corp*.

- real question: is this delivering copy to an officer

- is this “delivering”? notice that 4(h), unlike 4(e) does not speak of delivering “personally” – maybe this is delivering

- leaving w/ secretary of CEO has been allowed

- don’t want to read delivering too broadly – for example,

- even if not OK under 4(h)(1)(B), need to check Pa and Va law due to 4(h)(1)(A)

Note again about the following language:

(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, *or any other agent authorized by appointment or by law to receive service of process and — if the agent is one authorized by statute and the statute so requires — by also mailing a copy of each to the defendant...*

This language is meant to deal with a very specific situation, which we will deal with later – do not rely on this

States have specific statutes that say that a corporation can do business in the state only if they appoint a certain state official as their agent for service of process

The goal was that service on the official would create personal jurisdiction for the corporation – in a way we will deal with later

* Of course, delivering to a state official isn’t going to notice the corporation – so then there is also a provision for mailing to the corporation (which would help it satisfy Mullane)

To repeat – do not rely on this language for service on a corp

May a lawyer serve for his client?

* YES

NOW – other defenses

We have already discussed…

- service, process

* failure to state a claim

now

lack of SMJ

Really nothing like it in other legal systems

We could have no lower federal courts

* Constitution requires only Supreme Court
* It allows Congress to create lower federal courts, but does not require it
  + federal courts can be allowed by Congress to take cases only if they are within the federal judicial power as specified in Art III
* State courts are understood as capable of taking all cases, including cases under federal law

So why have federal courts – what purpose do they serve?

Must be addressing some deficiency with state courts

Let’s start with why we should allow federal courts to have federal question (a.k.a. arising under) SMJ

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

What good does arising under jurisdiction serve?

Maybe state courts would do a bad job of enforcing federal law?

US SCt could keep them in line to some extent, but they could eviscerate it in many ways that the SCt would not catch

Also-

Lower federal court decisions allow for more interpretation of federal law that would keep the state courts from having too much disagreement

* The US SCt may not be able to answer all such disagreement

Problem – not clear state courts are bound by lower federal court decisions interpreting federl law…

Why have diversity jurisdiction? State courts might have prejudice in favor of in-staters

Need to distinguish constitutional question

* What type of case can Congress send to federal court – that is a question of Art. III

From statutory question

* What kind of case has Congress decided to send to federal court – that is a question of 28 USC 1331

Louisville & Nashville RR Co. v. Mottley

- suit by Mottleys (of Ky) against railroad (citizen of Ky)

- to compel spec performance of contract allowing them free passes

- settlement for personal injury suit

- railroad refused to comply due to passage of federal law forbidding free passes

- Mottley’s argue that statute does not apply to such passes as theirs

- and argue that if it does it is a taking w/o just compensation in viol of 5th A

- j for P and appeal

- SCt sua sponte dismissed for want of SMJ

- ground?

- federal issues are only in anticipated defenses

- arising under 1331 means that the P’s statement of his own cause of action is one that is based upon fed law

- what are Ps cause of action here?

- state law

- breach of contract

- does this make sense when the real issue might be one of a fed defense?

- problem is expansion of fed q jurisdiction

- and problem of guessing how litigation will proceed

- it would be too easy for Ps to manufacture SMJ

Why must court bring up lack of SMJ sua sponte, evem on appeal

Hasn’t it been waived

No – it is not a personal right of the defendant (like the right to adequate service)

It is a limitation on the power of federal courts – protecting state court powers

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 – although at one time it was thought that such a collateral attack for lack of SMJ was possible

In that sense SMJ has been waived

BUT it can be brought up (and must be brought up by ct) any time during the original proceedings, even on appeal

AND if the defendant defaulted, he can collaterally attack for lack of SMJ