1. Service
   1. “Statutory interpretation”
      * 4(c) Service
        1. 4(c)(2) - By Whom. Any person who is at least 18 years old and not a party may serve a summons and complaint.
           1. Problems – what if a corporation is the plaintiff? Who is prohibited fom serving then?

Main ideas – first find out what term in the statute or rule you are trying to interpret (here it is “not a party”)

Then, if the language does answer your question, consider why the statute or rule exists – what purpose is it serving?

Here the worry is that a party serving will be tempted to falsify an affidavit

Then try to come up with a reading that satisfies the purpose

* + - 1. 4(e)(1) – how to serve on individual refers to law of state where fed ct is located or where service is effected

does not mean state law applies in fed ct but that drafters of R 4 assumed that servers would be familiar with state law methods and so would rely on them

* + - 4(h)(1)(A) - Service on corporations or unincorporated associations

(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;

suggests that you should serve a corporation like you would serve an individual under state law

* + - * 1. Professor Green (and Glannon): *This is absurd...*must means look to the relevant state law concerning service on corporation or unincorporated ass’n
    - 4(h)(1)(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent…
      1. what does “Managing or General Agent” mean
      2. Green: did some research – tends to be read more generously than he thought
      3. less about the formal title, but more about if the person will be likely to get the summons and complaint to the correct person in the corp or assn
      4. Delivering is also a vague term in 4(h)(1)(B) – notice that it does not say delivering personally the way 4(e)(2) does
         1. possible that you cn deliver to the managing agent without giving it to the person in hand

1. Venue in Federal Court
   1. Venue is statutory, not constitutional
      * About federal districts not states
        1. Only applicable in the federal court system
        2. State court systems have their own statutes or rules for venue
      * Rough measure of convenience
      * exists because even though fed courts restrict their PJ reach to what a state court could do in the state where the fed ct is located (under 4(k)(1)(A)) it can still be an inconvenient district – eg because you got PJ in the state through tagging
   2. Sec. 1391 Venue Generally (there are specific venue statutes for specific fed cause of action, we will ignore them)
      * A judicial district in which any D resides (means to be domiciled for indiviudals), if all Ds are residents of the State in which the district is located
        1. Residential Venue
      * A judicial district in which a substantial part of the events of omissions giving rise to the claim occurred
        1. Transactional Venue
        2. One of the main reasons is because that district is likely to have witnesses there (convenience)
      * Residency for venue purposes
        1. A natural person, including an alien lawfuly admitted for permanent residence in the U.S. shall be deemed to reside in the judicial district in which the person is domiciled.

**EX 1:** P (N.D.Cal.) sues D1 (S.D.N.Y) and D2 (W.D.N.Y.)

Suit is under 42 U.S.C. 1983 re: unlawful arrest that occurred in an airport in NJ (D.N.J.)

Where is there venue?

D.N.J., S.D.N.Y., and W.D.N.Y.

**EX 2:** P (N.D.Cal.) sues D1 (S.D.N.Y) and D2 (D. Conn)

Suit is under 42 U.S.C. 1983 re: unlawful arrest that occurred in an airport in NJ (D.N.J.)

Where is there venue?

D.N.J. only

**EX 3:** P (San Francisco - N.D.Cal.) sues D1 (S.D.N.Y) and D2 (D. Conn.)

Suit is under California state law breach of contract action re: a contract signed in San Francisco for construction of a hospital in Albany (N.D.N.Y.)

Where is there venue?

N.D.N.Y. and N.D. Cal.

**EX 4:** P (San Francisco - N.D.Cal.) sues D1 (Germany) and D2 (D. Conn)

Suit is under California state law breach of contract action re: a contract signed in San Francisco for construction of a hospital in Albany (N.D.N.Y.)

Where is there venue?

N.D. Cal., N.D.N.Y., and D. Conn

\*German is not domiciled in the U.S. - 1391(c)(3) P may choose ANY venue but PJ may not exist.

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.

Is there SMJ?

Yes, Diversity under 1332(a)(3)

**EX 5:** P (San Francisco - N.D.Cal.) sues D1 (An illegal alien domiciled in N.D. Cal)

Suit is under California state law breach of contract action re: a contract signed in San Francisco for construction of a hospital in Albany (N.D.N.Y.)

Where is there venue?

- Maybe anywhere because 1391(c)(3), D1 is not a resident in the United States

\*Although that provisions specifically refers to “alien lawfully admitted” and says that they are residents of a district if they are domiciled there it doesn’t say anything about ILLEGAL aliens so there is an argument that they should be treated as aliens domiciled abroad – not clear though

otherwise only N.D.N.Y. and N.D. Cal.

Is there SMJ? (assuming the amount in controversy is satisfied?

Yes, alienage

III. Residence of Corporations and unincorporated associations:

1. 1391(c)(2)
   1. Corporation, when a Def., will be deemed to reside in any judicial district in which such Corporation is subject to court’s personal jurisdiction w/ respect to the civil action in question
      1. Includes general (Principal Place of Business and State of Incorporation) and specific personal jurisdiction
      2. Probably just speaking of 14th Amendment contacts for PJ – do not consider the state’s longarm statute – otherwise criteria for corporate residence in a district would vary from state to state
2. 1391(d)
   1. Residency for Corporations in States w/ multiple districts
      1. Corp, when a Def., will be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if the district were a state
      2. What if it is subject to PJ in state but not in any district in that state?
         1. Deemed to reside in the district within which it has the most significant contacts
         2. Might be useful when a corp is incorporated in a multidistrict state but does not have any other contacts with that state
         3. – rather than assuming that it resides in every district in state could conclude it resides only in district where it has most sign contacts (where it sent the incorporation papers)

**EX 6:** P (San Francisco - N.D.Cal.) sues D1 Corp and D2 Corp.

Suit is under California state law breach of contract action re: a contract signed in San Francisco (N.D. Cal) for construction of a hospital in Albany (N.D.N.Y.)

D1 corp. Built foundation; D2 Corp. built structure

D1 corp. Incorporated in D. Del, main office S.D.N.Y. and large branch office in E.D. Pa

D2 corp incorporated in D. Del, main office in W.D. Pa., and large branch office in D. Mass

Where is there venue?

Transaction venue : N.D. Cal & N.D.N.Y.

Residential venue: D. Del. **AND S.D.N.Y and N.D.N.Y.**

\*D1 and D2 are subject to specific personal jurisdiction in the N.D.N.Y. and therefore reside there – so venue in SDNY exists since D1 resides there and D2 resides in same state (namely in NDNY)

**\*\*\* What if venue does not exist under (b)(1) or (2)?**

**That would mean the following:**

* no substantial part of the events or omissions giving rise to the claim occurred in US
* AND the defendants, although domiciled in US (if they were all domiciled abroad there would be venue in any district) are not domiciled in the same state
* If so then…

1. 1391(b)(3) – then venue in any judicial district in which any Def. is subject to PJ may be used.
2. In the end they will all have to be subject to PJ though

**EX 7:** P (S.F. - N.D. Cal) sues D1 (S.D.N.Y.) and D2 (E.D. Pa)

Suit is breach of contract action concerning a contract signed in S.F. for Construction of a hospital in Paris

D1 built foundation; D2 build structure

Where is venue?

**1391(b)(3) does not apply** because there is a district with venue under 1391(b)(1)-(2), namely the NDCal (where the contract was signed)

**EX 8:** P (S.F. - N.D. Cal) sues D1 (S.D.N.Y.) and D2 (E.D. Pa)

Suit is breach of contract action concerning a contract signed in London. for Construction of a hospital in Paris

Here 1391(b)(3) would apply – venue in any district in which a D1 or D2 is subject to PJ

Venue and Removal

1. State Court -> Remove to Federal Court = There IS venue in that Federal Court – even if 1391 is not satisfied

**EX. 9:** Assume WWVW action had been brought in the Fed Court E.D. Okla. (where accident occurred). Set aside PJ and SMJ.

Is there venue? Yes because transactional venue

Green: notice that there can be transactional venue even though the D does not reach out to the district in the way that is necessary for specific PJ

No specific PJ over Seaway in OK in WWVW but there would be venue in district in OK if it had been brought in federal court

**Note, however that 8th Cir. has a more restrictive understanding of what is necessary for transactional venue**

* **8th cir demands that the D reach out to the district in a manner similar to specific PJ (Green: this is wrong)**
* **and also demands that event in district be part of cause of action**

**Uffner v. La Reunion Francaise (2001)**

-Claim originally brought in Dist. of PR

P’s boat sank but insurer denied coverage because did not have out of water survey done

-PJ was an issue but the Ds did not bring it up. Dist court dismisses sua sponte on PJ grounds. Ct App says it can’t do this, Ds basically consented to PJ by not bringing it up on their own.

But Ds did object to venue

-Does D.P.R. fall under the language of 1391(b)(2) “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred”?

-Test used by District Court: similar to evidence Test for “arising out of or related to” for specific PJ (what happens in the district must be part of the cause of action)

- the sinking was not an element of the cause of action – the disute was about the contract, the out of water survey, and the denial of the claim

-Court of Appeals uses a “But for” test (“But for” the sinking in Puerto Rico there wouldn’t be this dispute) – rejects 8th Cir approach

\*\*Professor Green loves the fact that the P in Uffner is from Virgin Islands results in the same issues as diversity/alienage cases wiith someone from DC because D.C. because it is not technically a state

IV. Venue

1. Dismissal of for lack of Venue
2. If there is no venue in the district the D can move to dismiss
   1. Waiver of Venue
      1. Def can consent to venue by failing to bring lack of venue up
      2. some think court may dismiss a case for lack of venue sua sponte (rare and must be done carefully) for the purpose of convenience
3. but in addition to dismissing can also transfer to a district with venue under 28 U.S.C. 1404
   1. From a district without venue to one with venue
      1. transfer only occurs within a court system
4. In addition, a court can (at the request of a party – usually a defendant – or sometimes sua sponte) transfer from a district with venue to one with venue because the transfree district is more convenient
5. 28 U.S.C. 1404 Change of Venue

**EX. 10:** P (SDNY) sues D (WDNY) under PA contract law in the D. Del concerning a contract entered into in ED Pa. with performance to occur in ED Pa.

May the court transfer to E.D. Pa under 1406?

No – no SMJ must dismiss

**EX. 11:** P (SDNY) sues D (D. Mass) under PA contract law in the D. Del concerning a contract entered into in ED Pa. with performance to occur in ED Pa. Amount in controversy reached.

May the court transfer to E.D. Pa under 1406?

No PJ in D. Del, but it can still be transferred

But cannot use 1406 solely to transfer from a district without PJ to one with PJ -