**CLASS NOTES: SEPTEMBER 28, 2017**

Three Considerations to see if in right forum:

1. SMJ
2. PJ
3. Venue

**Venue §1391**

* + (b) venue is 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 the property that is the subject of the action is situated; or
    - (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 PJ with respect to such action.
  + [Several venues may be proper; and (3) rarely occurs]

residence for a human is domicile:

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;

in addition: 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.

clear that suit against a single D domiciled abroad has venue in any district and if there are multiple Ds the person domiciled abroad can be ignored for venue

BUT what about an illegal alien domiciled in a district in US - 1391(c)(1) says that an alien with a green card resides in district of domicile, but does the omission of illegal aliens mean that they should be considered to reside abroad?

Not clear

* One Argument: expression unius est exclusio alterius – to say “alien lawfully admitted for permanent residence in the United States” in 1391(c)(1) is to exclude one not lawfully admitted from the scope of 1391(c)(1) – so must treat them as residing abroad
* another argument: Venue is all about convenience. For someone domiciled abroad all districts are pretty much the same, so it make sense that there should be venue in any district
  + but an illegal alien domiciled in a district in US would find it inconvenient to go to another district – so they should fall under the scope of 1391(c)(1) with the legal aliens

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***Uffner v. La Reunion Francaise* (1st Cir. 2001).**

1. **RULE OF LAW:** Venue – for transactional venue, you should not look for a single trigger event in the district constituting a part of the cause of action, but look to the entire sequence of events underlying the claim. basically adopting a but for test of transactional venue - The district where the sinking of the boat occurred was substantial for venue purposes because but for the sinking there would be no cause of action
2. ultimate goal is a convenient place for a venue for a suit.
3. *Uffner rejects 8th Circuit approach:*
   1. for 8th Cir. defendant must be responsible for the event/omission in district and it has to be an element of the cause of action
   2. Green doesn’t like 8th Cir approach
   3. 8th District confused PJ and venue

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**CORPORATIONS:**

* They are residents of district where they subject to PJ – this includes general PJ (1) incorporated, (2) principal place of business ***and specific PJ***

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|  | **Cases Filed in the Wrong Venue** | **Cases Filed in the Correct Venue** |
| **Motions to Transfer** | 28 U.S.C. § 1406 | 28 U.S.C. § 1404 |
| **Motions to Dismiss** | 28 U.S.C. § 1406 + Fed. Rule 12(b)(3) | Forum Non Conveniens (Common Law Doctrine) – this is only for a case dimsised to be brought abroad |

**28 U.S.C.§1406. CURE OR WAIVER OF DEFECTS**

(A defendant can make a motion that asserts that the case was filed in an improper venue.)

* (a) the district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

**UNDERSTANDING §1406:**

* + Dismiss or Transfer? Federal Courts usually conclude that a transfer is in the *interests of justice* when a proper federal venue exists. Transfers will save P time and expenses of having to refile.
  + Limitations on Intersystem Transfers: a judge only has the authority to transfer cases within the same court system.
    - TX state court has no power to transfer case to OK state ct
    - also no power to transfer to fed court
      * State cases can be removed to fed ct, but the state court cannot do it itself
    - a Fed District judge can transfer to another federal district court
      * FD judge has no authority to transfer case to foreign ct
  + Waiving objections to venue: a party is considered to waive a motion to dismiss for lack of proper venue unless the motion is made at an appropriate time, usually quite early (Fed. R. 12g-h).
  + May a court bring up lack of venue sua sponte? Rare to do this, but some think they can.

**[you can’t just transfer under 1406 to fix PJ alone; you can only transfer to fix lack of venue but it is OK if there was no PJ in the transferor ct and there is in the transferee ct]**

**28 U.S.C. §1404. CHANGE OF VENUE**

(Although a venue is proper in the court where the lawsuit was filed, there is more appropriate federal district where the case should be litigated.)

* (a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.
* \*\* No statute authorized a FED CT to dismiss a case that was filed in proper venue, but they implement common law authority. A party can dismiss using ***forum non conveniens dismissal****.*
  + - Dismissal from a district with venue so that it can be brought outside of the United States
    - Using *forum non conveniens* in Federal Courts means that though there is venue – in that court making the ruling – there is a better court outside of the United States that should hear the suit. They would dismiss on forum non conveniens.
  + §1404: Though a convenient district giving rise to proper venue, there is a possibility that there is a BETTER venue for this case.

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**MacMUNN v. ELI LILLY CO.**

**559 F. Supp. 2d 58 (D.D.C. 2008).**

**OVERVIEW:** *Looks at §1404 transfer motion.*

**PARTIES**

* Plaintiffs: Judith MacMunn and husband - Massachusetts
* Defendant: Eli Lilly Co – Indiana (PPB and Incorporation)

**CAUSE OF ACTION:** products liability

**RELEVANT FACTS**

* Suit originally filed in “state” court in DC: then removed to D.D.C.
* Why did P’s pick as forum?
  + DC is very favorable in regard to statute of limitations and tolling statutes
  + When suing in DC, you will be using the DC statute of limitations/tolling though you might be be using the Massachusetts product liability rules.
* **WHY IS THERE IS SMJ in DDC:** diverse citizens over the $75k threshold
* **WHY IS THERE PJ in DDC:** This is pre-Daimler and pre-Goodyear – probably arguing general PJ
* **WHY IS THERE VENUE in DDC:** always venue in district of removal
* P alleges her mother ingested DES while pregnant with her in 1962. The exposure of DES has led the P to suffer cervical malformations, infertility, physical and mental pain, medical treatments and expenses. Seeking 3 million dollars in compensatory damages and 3 million dollars in punitive damages.
* D motions to transfer this products liability case to D. Massachusetts.
  + P opposes transfer citing numerous cases involving the same defendant and subject matter that have resolved in this District.

**RELEVANT RULE**

1. The D must make two showings to justify transfer
   1. (1) D must establish P originally could have brought the action in the proposed transferee district
   2. (2) D must demonstrate that considerations of convenience and the interest of justice weigh in favor to transfer to that district
      1. Private interest
         1. (1) P’s choice of forum
         2. (2) D’s choice of forum
         3. (3) Whether the claim arose elsewhere
         4. (4) the convenience of the parties
         5. (5) the convenience of the witnesses
         6. (6) the ease of access to sources of proof
      2. Public interest
         1. (1) transferee’s familiarity with the governing laws
         2. (2) relative congestion of the calendars of the potential transferee and transferor courts
         3. (3) local interest in deciding local controversies at home

**HOLDING/REASONING:** Court grants D’s motion to transfer to Massachusetts.

You can get a transfer motion accepted under § 1404 if it promotes convenience of parties and witnesses.

The discretion in the district court to adjudicate motions to transfer are according to individualized case and must analyze fairness and convenience. In this case, the court grants it because the private interest: (1) witnesses are in Massachusetts, (2) that’s where the action of taking medicine occurred, (3) that’s where proof of doctor records are there.

The court further grants because of public interest: (1) less court congestion in Massachusetts, (2) the judge is fine and has experience with these cases (3) plus others.

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* SCt has ruled that dist ct can dismiss a case or lack of PJ without first determining whether the court has SMJ, but cannot engage in dismissal that involves a decision on merits (like failure to state a claim) without deciding SMJ
* A P can move to transfer its own case
* Consenting to venue
  + **Waive objection to venue:** by failing to raise the issue at appropriate time
  + **Consent to venue:** 
    - Most commonly “consented” to during *forum selection clauses.* Forum selection clauses carry great weight and will typically mean dist ct will enforce such clause.
      * Done under §1404 when the P sues in a different, however proper, venue, but since the forum selection clause was within original contract, the D will usually get it transferred.

**SHOULDN’T THE TRANSFER in MacMunn LEAD TO DISMISSAL ON STATUTE OF LIMITATIONS GROUND?**

* No. You get the same statute of limitations, same substantive law, same choice of law of the *transferor* ct when transferred to another district under 1404. (*Van Dusen v. Barrack*, 376 U.S. 612 (1964).
* The fact is, it could have proceeded in the original venue; with that, you should still be able to use the law of the transferor ct.

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**PIPER AIRCRAFT CO. v. REYNO**

**(look in book; only had to skim).**

**OVERVIEW:** *Looking at forum non conveniens*

**SUMMARY:** A forum non conveniens dismissal is permissible even when the law of the foreign forum would likely give the P a less desirable remedy than the P could get in fed ct.

**RULING:** Court ruled that dist ct’s dismissal was reasonable and that Scotland was an appropriate alternative venue. The factors point to Scotland and the P has the ability to refile in Scotland, making way for dismissal since a United States Federal Court can’t “transfer” a case to Scotland.

**UNDERSTANDING FORUM NON CONVENIENS – criteria are very similar to 1404**

* When is dismissal of under forum non conveniens clearly improper? It is improper when the remedy provided by the alternative forum is so clearly inadequate or unsatisfactory that it so no remedy at all…
* Take into account the same factors as transferring for §1404

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**DRAFTING A COMPLAINT**

**RULE 10: Form of Pleadings**

* Captions; names of parties
* Every pleading must have a caption with the court’s name, a title, a file number and Rule 7(a) designation (that is, what type of pleading it is)
* The title of the complaint must name all parties

**Body of Complaint:**

1. Why there is SMJ, PJ, and Venue
2. Facts stating why you should get relief
3. And the type of the relief requested (monetary, etc).

**RULE 8. General Rules of Pleading**  
(a) Claim for Relief. A pleading that states a claim for relief must contain:  
(1) a short and plain statement of the grounds for the court’s jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;  
(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and  
(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

**RULE 10(b) FORM OF PLEADINGS:**

* Address the form of pleadings and requires numbered paragraphs, each limited as far as possible to a single set of circumstances. Though it does not require the identification of claims.
* However, small errors of form are unlikely to be fatal; indeed, it could well be reversible error for court to penalize the pleader for minor errors.

**PURPOSE**

* **WHAT PURPOSES DOES A COMPLAINT SERVE?** 
  + Giving notice of the nature of a claim on defendant
  + with the admissions in the answer will narrow the scope of dispute – allowing for more focused discovery/trial
  + with allegations of jurisdiction can allow quick dismissal of case that should be brought in another forum
  + allegations allow a D to also dismiss quickly for failure to state a claim
  + also might allow D to quickly bring up some affirmative defenses that will dispose of action. like statute of limitations

Here is the big question: perhaps you can use the complaint to weed out at the pleading stage actions that arefrivolous – inadequate evidentiary support

* 1. if the claim has insufficient evidentiary support, then the D shouldn’t have to go through this burden of discovery and trial.
  2. A P’s autonomy isn’t sufficient to “get their day in court”; the P must have to have some evidentiary support or the likelihood of such support in discovery

**HOW DO FEDERAL RULES LIMIT FRIVOLOUS ACTIONS?**

* If you have inadequate evidentiary support, you can be sanctioned later (F. R. Civ. Pro. Rule 11)
  + The fear of the punishment (sanctioned) will make you stop alleging frivolously and not do it.
  + How do we stop trial? Summary Judgement. At the end of discovery, a person can move for summary judgment to get a judgement on the suit before it actually goes to trial.
  + Frivolous actions are dealt with after discovery usually – during summary judgement and through R 11 motions
  + pleading standards *are not used* to dismiss actions without adequate evidentiary support

**HISTORY OF PLEADING:**

1. Common law pleading
2. Equity pleading