**Civil Procedure – 8/23/2017**

Review session – possibly Monday 10:00-11:20 am

**Last class**

* State courts can take actions under the law of other sovereigns, common for state courts to take civil actions under law of other states or under federal law
* States courts are courts of general subject matter jurisdiction
  + Exception with specific federal actions designated by Congress where only federal courts have subject matter jurisdiction
* For VA state court:
  + On issues of VA state law, appeal to VA state court
  + On issues of federal law, possible appeal after VA state court to US Supreme Court
  + On California law (for example) – cannot appeal from VA state court system to California Supreme Court
* Federal courts are courts with particular purposes – limited subject matter jurisdiction
  + Still can often take cases under state or foreign law too
  + Possible to appeal up to US Supreme Court on issues of federal law
  + Not so for state or foreign law
  + Ex. Decision by 4th circuit or federal court concerning Virginia law – not binding on Virginia state court
* Subject Matter Jurisdiction
  + More of an issue for federal courts, not state courts
  + Cannot be created through consent
* Personal Jurisdiction
  + Does the court system have the power to issue binding judgement on the defendant? – can exist through consent
  + Becomes an issue for state courts
  + Bringing a foreign national to federal court can create an issue of personal jurisdiction
* Venue – is the case in the right place in the court system?
  + With federal court, which district court should the case be brought in
* Congress has the power to create lower federal courts and determine their jurisdiction (as long as they don’t go beyond the judicial power of the United States in Art III)
  + Originally, federal district courts got diversity cases but not cases under federal law. This has since changed.
* US Supreme Court has not answered a federal law question, but the 4th circuit answered it – is this binding on a Virginia state court? Can a federal court and a state court in the same state have different interpretations on federal law?
  + Originally, the founders saw the state courts as “go-to” courts concerning federal actions and that their opinions on federal law arguably should have the same value as lower federal courts
  + Problem – if the state and federal courts have two different interpretations, how is a person supposed to know which law to follow?

**Sources of Federal Law that Regulate Federal Court Procedure**

* Constitutional Law
  + E.g. “due process” clause from the 5th Amendment – significant portion of the class
* Statutes
  + Why is Congress given the power to regulate federal courts? Can they overstep their bounds?
  + Since Congress can create the courts, in theory they can regulate what they do
* Fed R Civ P
  + US Supreme Court can create rules governing lower federal courts, since Congress delegated that power to them
* Federal Procedural Common Law
  + Preclusion law – a party often cannot relitigate issues (ex. If a patent is determined to be invalid from an earlier case, the party to the case can can be bound by that determination in a new case involving infringement on the patent )
    - Not in constitution or statute
    - Federal procedural common law
* State Procedural Law is also sometimes applicable in federal court
  + Statute of limitations, for example, will vary among states – can a federal court in VA entertaining VA action come up with its own common law time limit? No – it has to use the VA statute of limitations.
* Each state has its own sources of procedural law – state constitution, state statutes, state procedural common law – also some federal constitutional law is relevant in state court – esp the 14th Amendment due process clause
* Will federal procedural law ever have to be applied in state court?
  + A federal cause of action might be in a state court, so some federal procedure (like a federal statute of limitations) might follow the federal cause of action into state court as a result

**Process of Litigation**

* Choosing a court
  + Is there subject matter jurisdiction? Personal jurisdiction? Does the plaintiff not like procedural rules of that court?
* Drafting a complaint
  + Why are the grounds for relief and what kind of relief is desired?
  + Defendant can get case dismissed early if:
    - Lack of jurisdiction or venue
    - Failure to state a claim
      * Even if what the plaintiff claiming is true, if it doesn’t entitle relief, then it’s dismissed
        + Ex. - If P alleges D caused P emotional distress because P wasn’t invited to party, P is not entitled to relief since there’s no tort that entitles it
        + Good idea for plaintiff to identify the cause of action in complaint, but it’s not required
  + Defendant must then issue an answer to the complain
    - Defendant can dispute individual facts in allegations (wasn’t negligent, for example)
    - Or, defendant can agree with the allegations, but offer affirmative defenses
      * Contributory negligence
      * Statute of limitations
      * Claim preclusion
      * Claim already settled through contract (a waiver of rights, for example)
* Amendment – change the allegations or defenses from the original pleadings
* Discovery – learning the evidence the other side has/plans to use
* Summary judgement - motion for judgment if discovery shows that no reasonable jury could find for the other side
* Post-trial motions
  + Eg for new trial
* Appeals – issues with the way the trial was conducted
* Preclusion - Claim preclusion – barring a party from suing a defendant over the same claim also issue preclusion

**Subject Matter Jurisdiction**

* Diversity and Alienage Jurisdiction
  + Diversity – controversies between citizens of different states
  + Alienage – controversy between citizen of a state and citizen or subject of a foreign country
  + Justification for diversity/alienage
    - Issues of bias – a judge from Virginia might be biased against a citizen from North Carolina – reasoning behind giving cases between citizens of different states to federal courts
    - If diversity were tailored to its purpose, only the out-of-stater would be able to sue in a federal court
    - And if both plaintiff and defendant are out-of-staters, there should be no diversity even if they are from different states
* Domicile
  + Must be an American national in order to be a citizen of a State
  + If that is satisfied, then one is a citizen of the State where one is domiciled
  + Only one domicile, for diversity purposes
  + Always have a domicile – cannot relinquish old domicile until a person gets a new one
* ***Gordon v. Steele***
  + Plaintiff sues doctors over malpractice, resulting in a broken arm
  + Domiciled in PA at the time of the cause of action, but domicile only matters when the complaint is filed
    - Looking at the domicile at the time of filing is more consistent with the purpose of diversity