**Civil Procedure Lecture 8/24/17**

**Federal Subject Matter Jurisdiction:**

* Diversity and alienage jurisdiction
* Statutory scope stated in Sec. 1332
  + but should also consider if any statutory source of subject matter jurisdiction is constitutional
  + that means looking to judicial power in Art. III

To be a citizen of a State for the purposes of 1332 one must:

1. Be a U.S. national and
2. Be domiciled in a state

* How to determine what state someone is domiciled in?

**Gordon v. Steele**

***Facts/Background:***

* Prior to age of adulthood being 18 and college students living away from home, students were generally considered domiciled with their parents.
* PA defendants tried to dismiss for lack of diversity; argued that plaintiff was a citizen of Pennsylvania at the time of filing.
  + Makes sense to look at domicile for diversity at time of litigation. Diversity exists to give a federal forum for those who would suffer bias in state court. State court judge would be biased against out-of-staters at the time of the litigation, not necessarily at the time of the event being adjudicated.
  + Had to choose a specific point during litigation (to keep a case from losing jurisdiction due to later changes), so time of filing makes sense
* Domicile of choice. Has she established a new domicile?
  + Keep old domicile until a new one is established.
  + Two different standards:
    1. Intent to remain indefinitely
    2. Intent to make it your home
  + Burden of proof for diversity is on the plaintiff, Gordon, who is trying to get into federal court.
    - Note: Who decides the factual question of domicile? Judge even though it is a factual question.

***Hypotheticals:***

1. Under both Idaho and Pennsylvania law, Gordon is domiciled in Pennsylvania does that matter?
   1. No, because this is not a question of state law. Is a question of federal law – interpreting 1332.
2. Gordon intends to remain indefinitely in Idaho/to make Idaho her home. She leaves for Idaho, but gets in a car accident in Illinois on the way, remains there for recovery. Domiciled in Idaho?
   1. No. Must have both intent and be present at the same time
3. Would it matter that she visited Idaho before the accident?
   1. Depends on if she got a place and just went back to get her stuff or if she was just visiting and saying. “I will like it when I make it my home.” Presence alone is not sufficient without the intent.

***Evidence vs. Domicile:***

Establishing domicile is something that just happens to you. Not like residence. Do not have to officially do anything. Becomes your home. Can use evidence to prove domicile, but there is not a piece of paper that domiciles you. Can be in a hotel or homeless and still domiciled.

***Intent to remain indefinitely v. intent to make it your home***:

* How does Gordon come out under each test?
  + *Intent to remain indefinitely*: Would be domiciled in Idaho. She does not know if she will leave when school is done. Presence + intent to remain indefinitely.
  + *Intent to make it your home*: Would be domiciled in Pennsylvania. Does not have an intent to make Idaho her home. There only for the purpose of going to school, not making it her home. Even if she does not intend to return to Pennsylvania, it is still her domicile until she moves somewhere else intending to make it her home.

***What evidence did the court look to in Gordon?***

* Apartment in Idaho that she rents and does not sublet.
* Only returned to Pennsylvania for one summer to deal with eye problem and during Christmas.
* She put college address as Pennsylvania.
* License is still PA.
* Her own testimony is important. Court takes her word.

Krasnov v. Dinan (3d Cir. 1972): “Applying these principles to the evidence before the factfinder, we cannot construe, as clearly erroneous, its finding that the defendant ‘intended to remain in the Commonwealth for an indefinite period of time.’”

* appellate court generally defers to trial court (e.g. under clearly erroneous standard) for factual questions. Deferential standard of review v. de novo (where the appellate court does not defer to trial court)
* domicile is a fact based question here that is reviewed under deferential clearly erroneous standard

***Problematic for Intent to Remain Indefinitely Standard:***

* What if Gordon intended to go to Colorado after graduation?
  + She would be domiciled in Pennsylvania, because she has not yet established a new domicile in Idaho (does not intend to remain indefinitely).
* Michael Green, a Californian, moved to Virginia to take a job at W&M Law School. Intends to return to California on his 65th birthday.
  + Would not be domiciled in VA under intent to remain indefinitely standard.
  + Intend to remain indefinitely case cannot be right in all cases.
    - Works in Gordon case.
      * But Glannon incorrect to say it is always the correct standard.
  + This situation works well with home standard.
  + perhaps it is an either/or matter (if either one works then is domiciled)?

***Other Points:***

* Residence: DO NOT USE (for diversity). IT IS CITIZENSHIP that is relevant for diversity
* Can establish domicile in a place where you are compelled to be: prison, military. Could look out and say, “VA is my home” (would be shown by the fact that you intend to stay after you get out)
  + If in prison for life, it would be harder to show intent to make your home – but still could be true –
  + if not domiciled in place of emprisonment would keep your old one.

**28 U.S.C. 1332(a)**

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between--  
(1) citizens of different States;  
(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;  
(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and  
(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.. . .   
  
(e) The word ''States'', as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico

Complete diversity: If you are trying for diversity under 1332(a)(1) or (3)

No defendant can be a citizen of the same State as any plaintiff.

i.e. no American on one side of the v. can be a domiciliary of the same State and any American on the other side of the v.  
  
Complete alienage:

If you are trying for 1332(a)(2) you need complete alienage  
 all aliens must be on only one side of the v.

***Examples: is there federal SMJ under 28 USC 1332(a)?***

**Assumptions:**

* jurisdictional minimum is met
* action is brought in federal court by the plaintiff
* foreign national is domiciled in his own country (unless otherwise stated)

1. Californian sues a German: Yes, under (2) – alienage case.
2. Californian sues a New Yorker and a Californian: No – not complete diversity
   1. Does it make sense that there is no diversity? No.
      1. If the lawsuit says one of them did it, the mean Californian state court might say the New Yorker did it.
   2. So why?
      1. Prevents more cases from going to federal court.
      2. Prevents a sneaky plaintiff from adding another defendant just to get into federal court by generating diversity.
3. German sues a Frenchman: No – is not covered by 1332(a).
4. New Yorker sues a Californian and Frenchman: Yes, under (3) – citizens of different state and can add subjects of foreign states as parties.
5. New Yorker and a German sue a Californian and a German: Yes, under (3) – fine to add foreign parties. Does not say what side the foreign parties are on.
6. Californian sues a French citizen admitted for permanent residency in the U.S. who is domiciled in California: No, not a proper alienage case under 1332(a)(2) – once a person has permanent residency and is domiciled in the same state as the plaintiff, assumption of bias is eliminated. Person has a sufficient connection to California. Do not say that the Frenchman is a citizen of a state – just say no alienage jurisdiction under 1332(a)(2)
7. German sues French citizen admitted for permanent residency in the U.S. who is domiciled in California: No – Frenchman may be domiciled in a state, but he is not a citizen of a state. If Frenchman were citizen of a state, this case would be treated as an alienage case under 1332(a)(2)
   1. Is it constitutional for Congress to send this case to federal court?
      1. Not between citizens of different states
      2. Not between citizens and citizens of a foreign state
8. California sues Elizabeth Taylor, an American national domiciled in France:
   1. Taylor is a U.S. national, but is not a citizen of any state. Is not an alienage case or a diversity case under 1332(a). Probably not even constitutional for Congress to send it to federal court.
9. Dred Scott diversity jurisdiction:
   1. State law case. Only way to get into federal court was for Scott to be a citizen of a state and the court concluded he was not.
10. A German sues a Frenchman and a New Yorker: No, does not fit under alienage jurisdiction. No complete alienage. There are aliens on both sides of the v. Need a co-plaintiff who is a citizen of a state (other than New York) (to fit it under 1332(a)(3)) or drop Frenchman to sue in federal court.
11. Notice that plaintiff ca determine the contours of the lawsuit. In general the defendant cannot bring in a co-defendant in the attempt to destroy diversity/alienage. BUT could be possible if the party the defendant brought in was a “necessary party” – will discuss later
12. A citizen of D.C. sues a Virginian under Virginia state law:
    1. “States” include D.C., Territories, and Puerto Rico under 1332(e)
       1. Is that Constitutional?
       2. problem – no place it seems in Art. III
          1. not arising under federal law
          2. not between citizens of different States (DC is probably not a “State” as the term is used in Art III)
       3. US SCt. dealt with issue – three different opinions giving three different arguments saying it was okay
       4. one possibility – DC is a “State” as the term is used in Art. III
       5. another - Maybe Article III is not exclusive source of judicial power: dangerous road to go down. We know founders did not want too many cases going to federal court.

***Mas v. Perry (5th Cir. 1974)***

***Facts & Background:***

* Mr. and Mrs. Mas rented an apartment from Perry who spied on them using two way mirrors.
* Mr. Mas is a French citizen.
* Mrs. Mas was a Mississippi citizen prior to her marriage.
* Mr. and Mrs. Mas were both students in Louisiana before and after their wedding in Mississippi.

***Have Mr. and Mrs. Mas established domicile in Louisiana?***

* Do not have to worry about Mr. Mas as a French national domiciled in Louisiana (before permanent residency rule in 1332(a)(2)).
* Mrs. Mas has not established domicile in Louisiana.
  + Court uses the “home” standard. Incompatible with Gordon.
* As Mrs. Mas has not established domicile in Louisiana, she still has Mississippi domicile.
* Moving to Illinois could help show that they had no intention of remaining in Louisiana.
* What happens to SMJ if Judy Mas receives Jean Paul Mas’s domicile at marriage?
  + She would not be a citizen of any State and not a citizen or subject of a foreign state – like Elizabeth Taylor. – case would have no federal SMJ
* What if the 5th Circuit has reversed the district court concerning SMJ?
  + Judgment would be annulled. Would have to start over in state court.
  + How to avoid this situation where the trial court accepts that there is SMJ, the case is litigated and then the appellate court concludes no SMJ?
    - Interlocutory appeal: bring immediate appeal on an issue before case has reached a judgment.
    - usually only final judgments are appealable but sometimes interlocutory appeal for SMJ