Notes Civil Procedure 8/28/17

* Review Sessions= Monday at 10:00-11:20 Room 127
* State courts can take any type of case – they are courts of general subject matter jurisdiction (smj)
	+ The founders restricted the federal court system’s smj because they were worried the federal courts would displace the state court systems
	+ Congress is authorized to allow only certain cases into the federal court system
	+ Also when federal courts interpret the statutes through which Congress has allowed cases into the federal court system, they tend to read the statutes narrowly (and often arbitrarily), generally due to worries about overcrowding in federal courts
* We are currently doing diversity/alienage SMJ
* Last time we talked about competing tests for domicile
	+ Intent to remain indefinitely
	+ Intent to make your home (for the indefinite future)
	+ Could be that the appropriate thing to do is find domicile exists when either is satisfied
* Also talked about the complete diversity/complete alienage requirement
* This is a requirement read into 1332
	+ If you’re trying for 1332 (a) (1), or (3) you need complete diversity
		- no American on one side of the v. can be a domiciliary of the same state as any American on the other side of the v.
	+ If you’re trying for 1332 (a) (2) you need complete alienage
		- All aliens must be on only one side of the v. with all citizens of a State on the other.
	+ Also US citizens domiciled abroad fall through the cracks of 1332

Back to Mas v. Perry

* Does it matter that Jean Paul (from Mas v Perry) only recovered $5000? (when the amt in controversy was at the time +$10K)
	+ As long as it is legally possible for Jean Paul to get +$10k then is considered above the amt in controversy requirement (see St Paul Mercury standard)
	+ It does not matter what you actually receive
* P (NY) seeks to recover funds he believes are due to him under the will of X (CA)
	+ P sues X’s executor D (CA) for the funds in federal court
	+ SMJ?
		- NO (although it is constitutionally allowed)
		- 1332 has been read to not include such cases
		- Federal courts will not take family law or probate matters
			* Inheritance/divorce/child custody
		- These are thought to be matters that should be litigated in state court
* Citizenship of corporations for diversity/alienage purposes
	+ Corporations are treated as separate entities from their shareholders
	+ I am only liable for my investment in the corporation
	+ Without corporations we would be wary of investing in a business, since if the business went under our own assets would be vulnerable
		- Would probably be only family businesses where people would be willing to take that chance
	+ Corporations can sue and be sued; different than the shareholders
	+ For a long time corporations were considered only citizens of the state in which they were incorporated
	+ Definition of corporate citizenship was expanded by 1332(c)(1) which states that a corporation is a citizen of the states or nations in which it was incorporated and of state or nation where its principle place of business (PPB) is located
* Is 28 USC 1332(c)(1) constitutional? After all, it changes the definition of a citizen of a state (concerning a corp) beyond what the Art. III meant
	+ Yes because 1332(c)(1) decreases the potential number of diversity cases
	+ A corp is considered the citizen of more states – that, with the complete diversity requirement, means fewer cases go to federal court
* P (NY) sues the D Corp (incorporated in California with its principal place of business in New York) under state law for more than 75k.
	+ Diversity under 1332a?
	+ No. P and D Corp are citizens of the same state
		- You treat the D Corp as a citizen of CA and NY
* P (CA) sues the D Corp in federal court in the ND Cal under state law for more than 75k
	+ The D Corp has its three of its four manufacturing plants and 2/3 of its employees in TX
	+ Its other plant and around ¼ of its employees are in Louisiana
	+ Its financial and administrative headquarters are in Los Angeles where the President, Board of Directors and 1/12 of its employees are located
	+ D Corp is incorporated in Delaware
	+ SMJ?
	+ NO – bc of the nerve center test for a corp’s PPB
* Hertz v Friend
	+ A corporation’s principal place of business is located in its nerve center
	+ CA Ps sue Hertz on CA state law actions in state ct in CA
	+ Removed to federal court on grounds that it was a diversity case
	+ District Court concludes that Hertz is a California citizen (CA PPB) because the business activity was significantly greater in California than in any other state. Ordered case remanded. Order appealed.
	+ 9th circuit court agrees
	+ 1/5 of all Hertz employees were in California
	+ Corporate headquarters in New Jersey
	+ Supreme Court ultimately sides with nerve center approach instead of the 9th Cir standard
		- It’s easier to figure out; jurisdictional clarity
		- Legislative history shows that a > half-income test was rejected
		- The statute’s language supports this approach (statutory argument)
			* 1332(c)(1): “a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state *where it has its* principal place of business”
			* The thrust is toward a single location *within a state* and not the state as a whole
		- Given California’s size it would likely be the principal place of business for many corps without the nerve center test
	+ What are the problems with the nerve center test?
		- It might not be able to avoid bias
			* A biased state court would look toward how well known a corporation is in a state, not the nerve center
		- Not always easy to apply - Nerve center can also be dispersed among states
* P (NY) sues the D law firm with its one office in NY. The partners commute to the office from their homes in NJ and CT
	+ Diversity?
		- It’s based off the domiciles of the partners of the firm.
		- Therefore, yes.
* Unions? (not incorporated)
	+ Has the domicile of all of its members
* Limited partnerships?
	+ Situations where some partners are in control, others are passive
	+ Also considered to have domicile of all members
* Limited liability partnerships?
	+ Has domicile of all members, even though it functions much like a corp
* Professional corporations?
	+ Treated as a corporation so 1332(c)(1) is used
* General idea is the federal courts will generally look to what the state calls the business organization, not its function when determining whether 1332(c)(1) is used
* P (IL) sues the D Corp (a Venezuela corp with its ppb in Venezuela) and X (a US citizen domiciled in Venezuela) in federal court in IL
	+ P subsequently settles against X and prevails at trial against the D Corp
	+ The D Corp moves to have the case dismissed for lack of smj (because X destroyed diversity/alienage)
	+ Result?
	+ Valid judgment – there was smj at the time of judgment – it does not matter that there was a problem initially
	+ Assume instead that P and X had not settled and that P had prevailed against both the D Corp and X at trial
	+ On appeal the 7th Cir notices the problem
	+ Can anything be done?
	+ If P consents to X being dropped as a party to the judgment it’s okay
	+ The judgment against D will have smj and so will be valid
	+ “perfecting diversity”
* P (IL) sues the D Corp (a Venezuela corp with its ppb in Venezuela) and X (a US citizen domiciled in Venezuela) in federal court in IL
	+ The district court recognizes the problem and dismisses P’s action against X without P’s consent in order to retain jurisdiction
	+ Ok?
	+ No. Plaintiff is the master of the complaint
	+ The court can “perfect diversity” only if the plaintiffs accept that the diversity destroying party is dropped
* Note that the dismissal for lack of SMJ means you will have to file in state court again - might cause you to lose according to statute of limitations
* P (IL) sues the D Corp (a Venezuela corp with its ppb in Venezuela) and X (a US citizen domiciled in Venezuela) in federal court in IL
	+ The D Corp removes the action against it alone to federal court, leaving P v X in state court
	+ Ok?
	+ No. P gets to determine contours of lawsuit. If he joins a diversity destroying party the defendants and courts cannot change that to make the case removable (with one exception to be discussed later)
* Devices to create diversity/alienage
	+ Ps change domicile/state of incorporation/principal place of business
	+ Changing plaintiffs to create diversity (assign lawsuit to someone else)
	+ Limit defendants
* Can you assign a contract lawsuit to someone?
	+ not a tort lawsuit
	+ but you can do it for a contract lawsuit
	+ You can often assign your contract over to someone else – that will mean that they now own any contractual rights and can sue on them
	+ You cannot improperly or collusively assign to create smj though
		- That would be the case if you “assigned” the contract, but actually kept an interest in the lawsuit – eg by getting money back if the person you assigned it to won
* D (NY) and X (Cal) beat up P (Cal) in a bar in Texas. P sues D in federal court for the damages caused.
	+ This works. P can choose to sue only one of the tortfeasors to keep it in federal court
	+ There will be both a federal and state lawsuit over the same incident. The suit against X will have to proceed in state court, but the suit against D can proceed in federal court.
* Amount in controversy requirement
	+ St. Paul Mercury test
		- When a plaintiff is invoking diversity/alienage jurisdiction NOT when defendant is seeking to remove
		- “It must appear to a legal certainty that the claim is really for less than the jurisdiction amount to justify the dismissal” (it has to be legally possible for you to get more than 75k)
* Diefenthal v CAB (5th Cir. 1982)
	+ Bought smoking section ticket in first class but then not allowed to smoke because smoking section was full
	+ Apparently treated rudely by flight attendant
	+ Action brought in federal court
	+ Eastern airlines moves to dismiss for failure to state a claim
	+ Court dismisses for lack of SMJ - diversity amt in controversy requirement not satisfied
	+ Allowed to amend
	+ Plaintiffs changed complaint to make it clear that they were alleging intentional infliction of emotional distress in order to state some type of compensable claim
	+ But the reason for dismissal wasn’t failure to state a claim but rather failure to meet the amt in controversy requirement
	+ They never alleged any damages that could satisfy the St Paul Mercury standard
		- All they spoke about was the harm of not being allowed to smoke and the way that they were treated on the plane
		- Not legally possibly to get +10K for that
	+ What should the Diefenthals have said in their complaint to satisfy the amt in controversy requirement?
		- Green: it would have been easy
		- Could have alleged reputational damage that would occur elsewhere
		- Could have sought punitive damages (money beyond compensation that D has to pay in order to deter D or anyone else from doing the offending act in the future). It’s pretty easy to satisfy the amount in controversy with this type of claim
		- Should have gone beyond the bad stuff that happened on the plane. This focus made it nearly impossible for them to have legally possible damages >10k

Have a great day!