Civil Procedure Notes

August 31, 2017

We have completed our study of diversity and alienage jurisdiction (28 USC 1332)!

**Federal Subject Matter Jurisdiction: Federal Question/“Arising Under” Jurisdiction**

**Art III:**

* Determines what (1) SCOTUS can hear and (2) what Congress can send to federal district court
* The constitutional-scope of federal question jurisdiction (Article III, Section 2) is read broadly – any federal ingredient in the case is sufficient

**28 US** **§ 1331** Congress’s decision about what federal question cases can actually be brought in federal district court. This has been read narrowly according to the…

**Well-Pleaded Complaint Rule:**

* In order to determine whether a case arises under federal law for the purposes of §1331, you look to what a well-pleaded complaint would say.
* Well-Pleaded Complaint = Bare minimum that the plaintiff must show to get relief
	+ Ex: Mottley Case cannot be brought in federal court because there wasn’t a whiff of federal law in the well-pleaded complaint. Any mention of federal law was mentioned in anticipation of the defense which is not considered.

*Hypo - What if the Mottleys (or the RR) had brought a declaratory judgment action to determine whether the federal statute overrode their contract and if it did whether it was a taking in violation of the 5th Amendment?*

* if they could get into federal court, that would be a huge end-run around the well pleaded complaint rule
* so what to do with declaratory judgment actions?
* figure out what the action would look like if it was an action for concrete relief (damages or injunctive relief) and figure out what a well pleaded complaint would look like
* that means determining the natural plaintiff, which may not be the person bringing the declaratory judgment action
* here a declaratory judgment could not be brought in federal court because a well pleaded complaint for concrete relief (by the Mottleys, who are the natural plaintiffs) would only mention Ky state law.

**Declaratory Judgement** – Not asking for relief. You have a concrete dispute and you ask a court to issue a binding judgement about the legal rights of the parties

**Counterclaims** – Federal counterclaim will be treated like a federal defense as far as arising under jurisdiction is concerned. Counterclaim under federal law will *not* qualify the case for federal jurisdiction. Will discuss more later.

**Holmes “Creation Test”** (a way of reading a well-pleaded complaint rule): Does federal law create the cause of action in a well-pleaded complaint? If yes 🡪 federal question under 1331

* Good rule of thumb but doesn’t always work

*Hypo - P and D sign a contract licensing D to use P’s patent for a fee. D uses the patent but doesn’t pay the fee. P sues D for the fee*.

* Cause of action is created by state contract law 🡪 State Court

**Well-Pleaded Complaints w/ State & Federal Issues:**

What if a well-pleaded complaint (*just one cause of action)* must refer to both federal and state law?

two different types of problems

First: It could be that although a case satisfies the “Creation Test,” because federal law creates the cause of action, you cannot get into federal court because the federal action incorporates state law and state law will be what is really at issue in the case

* Example: Shoshone Mining (US 1900) – A federal statute created a cause of action to determining mining right (without specifying whether the action can be brought only in federal, in federal and state, or only in state court). The cause of action used local mining customs and statutes.
	+ SCOTUS concluded there should *not* be federal SMJ under 1331
	+ not that common

Second: What if a well-pleaded complaint must refer to both federal and state law because the cause of action created by state law necessarily raises federal issues?

* Example: I am a beneficiary of a trust and sue the trustee (under state law) because he has invested in illegal securities in violation of the trust. The securities are illegal because they are in violation of federal law
	+ similar to Smith v. Kansas City Title & Trust Co. (US 1921)
	+ SCOTUS concluded that the case *does* have “arising under” jurisdiction even though the creation test is not satisfied
	+ we can call cases where state law creates the cause of action but a well pleaded compliant necessarily refers to both federal and state law “Smith” cases
	+ which Smith cases get into federal court?

**Discussion of Gunn v. Minton (2013):**

* Minton sues in federal court for patent infringement but his patent is determined to be invalid because he had licensed it to someone for over a year
* then sues his lawyer in Tex state court for malpractice, saying that had the lawyer brought up the experimental use argument his patent would have been held valid
* on appeal the Tex SCt holds no SMJ in Texas state court because the action had exclusive federal SMJ
	+ if it arises under federal patent law state courts do not have SMJ because of:
	+ 28 US Code §1338 – “district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to parents… no state court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents…”
* US SCt reverses - it does not arise under federal patent law
* this is a case like Smith – state law creates the cause of action but a well-pleaded complaint refers to both state and federal law
	+ federal law has been absorbed into the issue of causation under state malpractice tort law
* The US SCt offer the following standard for determining whether there is arising under jurisdiction (under 1331 or 1338) for Smith cases
* Grable & Sons v. Darue Engineering 🡪 Grable Rule: arising under for 1331 (and 1338) if the federal issue is
	+ Necessarily Raised (satisfied in this case)
	+ Actually Disputed (satisfied in this case)
	+ Substantial (not satisfied in this case)
	+ No disruption of congressionally approved balance of federal and state judicial responsibilities (not satisfied in this case)
*
* Why not substantial?
	+ “[I]t is not enough that the federal issue be significant to the particular parties in the immediate suit… The substantiality inquiry under Grable looks instead to the importance of the issue to the federal system as a whole.”
	+ this is not important to the federal system
	+ it is important to the federal system that the validity of patents are litigated in federal court
	+ BUT Minton is precluded concerning the validity of the patent – No relitigation of validity of patent after the federal action - that has already been settled.
	+ The validity of the patent was NOT going to be decided by this state court case. The patent would continue to be invalid no matter the case’s outcome. If Minton had won, he would have received damages from his lawyer to compensate for his loss of the patent. He would never have gotten the patent back.

Why is the “congressionally approved balance of federal and state judicial responsibilities” requirement not satisfied?

* state law malpractice actions are the sort of things that state courts have an especial interest in

*Hypo -*

*The LMRA completely preempts state contract law concerning collective bargaining agreements between unions and employers and replaces the whole area of state law with federal law. The union sues the employer under state contract law in state court. Employer removes on ground that the cause of action of really federal.*

* This is an example where the Mottley argument doesn’t work. While it is true that the issue of federal preemption is a defense, because federal law *completely preempts* the whole area of state law, the case has been determined to have federal subject matter jurisdiction under 1331 – it is essentially a federal action that the union sues the employer under
* this exception to Mottley has been found in LMRA (Labor Management Relations Act) and ERISA (Employee Retirement Income Security Act – which preempts the field of state law having to with pension plans)
* In Mottley, the preemption of state law by federal law was much smaller – just the issue of free passes

*Hypo -*

*P sues a municipality in federal court for damage under 42 USC* §*1983 for violations of his civil rights. The US Supreme Court has never decided whether a municipality can be sued under* §*1983. The federal court concludes that municipalities cannot be sued under* §*1983. How is the case dismissed?*

* It arises under federal law (and so has federal SMJ) but P fails to state a claim under federal law
* so a case can arise under federal law (as far as SMJ is concerned) even though there really is no federal law for the P to successfully sue under (which is why it is dismissed for failure to state a claim)

does that mean you can always just chose a federal law under which you fail to state a claim to get into federal court? if you could then getting into federal court would be easy

– also if the federal action got in (even if it was later dismissed for failure to state a claim) other state law actions could have supplemental jurisdiction.

*Hypo -*

*P and D get into a fight. P wants to sue D in federal court. So P sues D for violating federal securities law by hitting him in the face.*

* won’t work
* Dismissed for lack of federal SMJ - NOT for failure to state a claim
* where do you draw the line?
* fuzzy but depends upon frivolousness of federal action and whether the federal action is simply an attempt to gin up federal SMJ

*Hypo -*

*P (NY) sues D (NY), a state officer, in federal court for violating his federal civil rights in the course of an arrest. P joins a state-law battery action against the officer.*

* This is not a Smith/Gable/Gunn type case.
* these are separate causes of action – the first clearly satisfies the creation test and the second clearly doesn’t (but will have supplemental jurisdiction)

**Removal**

* Removal vs. Transfer:
	+ Transfer – moving between federal district courts / moving within one state court system
	+ Removal – starting in state court and defendant requesting that the action be brought up into the federal court system
* A case removed from state court will be removed to the federal district court that encompasses that state court
* Is removal possible?
	+ This is answered (with on exception) by asking: Would federal jurisdiction have been possible if the action had been originally brought in federal court?
		- Does the case satisfied §1331 or §1332?

*Hypo -*

*A (CA) sues D (NY) and C (CA) for battery in state court in Nevada. Can B and C remove?*

* No, not complete diversity – A could not have brought this originally in federal court

*Can B remove?*

* No! Plaintiff is the master of the lawsuit. If P wants to sue the two defendants, he gets the two defendants.

*Hypo -*

*A (Nev.) sues B (CA) and C (Oreg.) in California state court for battery. A asks for $80k each from B and C. May B and C remove?*

* Because A is suing in the CA (the home state of one of the defendants), B cannot remove the case to federal court. (In-state defendant bar)
	+ this is the exception to the rule that removal is possible if the action could have been brought originally in federal court
* 1441(b)(2)
A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.
* A could have filed the case in federal court if she wanted.

*Hypo -*

*A (CA) sues B (NY) and C (NJ) for battery. A asks B for more than $75k but C for only 20k. May the case be successfully removed by B and C?*

* No, the case does not meet the amount-in-controversy requirement. (A plaintiff may not aggregate claims against different defendants to meet amount requirement).