Lecture 2

8/29

the US SCt has not answered a question of federal law  
  
the 4th Circuit has answered it  
  
is that binding on the a VA state court?

There are arguments for and against it being binding (the matter has never been resolved)

For: not good to have two different interpretations of federal law in play in the same place (with only the USSCt to resolve disagreements)

Federal courts seem to be the best “appropriate” interpreters of federal law

Against:

there could have been no lower federal courts at all – with only the USSCt as a federal court taking appeals on issues of federal law from the state courts

so the US Constitution envisions the possibility of state courts as the lower courts that are the sole interpreters of federal law – why should this power disappear simply because lower federal courts are created

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

* Constitutional Law
  + E.g. “due process” clause from the 5th Amendment
    - This is what keeps federal courts from asserting power over out of country defendants when there is no PJ
* Statutes
  + Why is Congress given the power to regulate the lower federal courts?
  + Since Congress creates them, that power, in combination with the Necessary and Proper Clause, gives them the power to regulate what they do
* Fed R Civ P
  + In the Rules Enabling Act, Congress gave its power to regulate the federal district courts to the US Supreme Court
  + These are like regulations
* Local rules of districts and of individual federal courts
* But also
* Federal Procedural Common Law
  + Preclusion law – a party often cannot relitigate issues or claims (ex. If a patent is determined to be invalid from an earlier case, the party to the case 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 time limit? No – it has to use the VA statute of limitations, as we shall see later

Sources of procedural law in state court

US Constitution – esp. 14th Amendment due process clause – this is what keeps a state court from asserting power over an out of state defendant unless there is PJ

* Each state also has its own sources of procedural law for its courts – state constitution, state statutes, state procedural common law, state codes
* 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
  + Stating grounds for jurisdiction, what the P claims happened, and type of relief requested
  + 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 even if everything he says is true 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
    - Failure to state a claim does not get rid of all actions that lack merit:
      * E.g. P alleges in his complaint that D has created a ray-gun that he aims at P in secret, giving P severe headaches
      * This states a claim (it is a battery) but the problem is that what P says is false – this cannot be gotten rid of at this point
  + 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
* 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
  + This is where you would get rid of the ray gun case
* trial
* Post-trial motions
  + Eg for new trial
* Appeals
* 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 Virginia state court judge 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
    - So diversity is poorly drafted for its purpose
  + We will start on the scope of 28 USC 1332 – the diversity statute  
    later we will talk about how far Congress could go in sending diversity and alienage cases to federal court under Article III
* 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 at filing is what matters
    - Looking at the domicile at the time of filing is more consistent with the purpose of diversity
  + Doctors are domiciled in PA – they argue she is too so make motion to dismiss for lack of SMJ
  + Question is whether she is domiciled in Idaho, where she goes to school
  + Burden of proof is on party seeking federal jurisdiction
  + Question of fact concerning SMJ (like domicile) can be decided by judge
  + Domicile is a question of federal law – it does not matter what domicile she has under PA or ID law
  + For changing your domicile, you need…
  + Presence plus
  + A certain intent at that same time
  + Two tests out there
    - Intent to remain indefinitely
    - Intent to make it your home (even if there is a definite end to your time there)
  + Gordon intends to remain indefinitely in Idaho/to make Idaho her home  
    she leaves for Idaho but gets into an accident in Illinois on the way, remains there for recovery  
    domicile? Still PA because did not have presence
  + would it matter that she had visited Idaho before the accident? – not if she didn’t have the intent to remain indefinitely (or to make home) *at that moment*
  + Gordon court uses in “indefinitely” test, not “home” test
  + so concludes she is domiciled in ID even though she does not have a close attachment to the state
  + the reason is she has no plan to go anywhere else after graduation – it is open ended - she may remain in ID
    - what if she intended to go to Colorado after graduation?
    - Would not be domiciled in ID – would still be a PA domiciliary
  + assume that after the litigation is over Susan decides that after school she will return to Pennsylvania  
    where is her domicile at the time of her decision?
    - She had already established ID domicile, so she would still be a ID domiciliary, because she doesn’t yet have the PA presence
    - Had she had this intent before, she would never have established ID domicile

Problems with the indefinitely test:

Michael Green, a Californian, moved to Virginia to take a job at William and Mary Law School  
he intends to return to California on his 65th birthday

Looks like I’m not domiciled in VA under the indefinitely test

Here is where the home test works better

Green thinks courts tend to move back and forth between the tests – it is not as bivalent as Glannon suggests