Lecture 3

***Residence vs Domicile***

Residence is a term that is commonly used in statutes and regulations – it usually requires a certain period of time (eg residence for one year)

* Residence does not require any particular intent
* Domicile can be acquired in an instant but it does require a certain intent

***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 where she will go 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.

Now – complete diversity requirement

**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.. . .   
  
(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 states 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. May not even be constitutional for Congress to send this case to federal court?
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. 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

***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 national.
* 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.
* 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.
  + Does that mean no SMJ
  + Maybe, but there is a distinction between this and the E Taylor case – this is adding E Taylor to what is otherwise a perfectly fine alienage case
  + E Taylor case involved only Californian suing Taylor
* 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
  + does it matter that Jean Paul only recovered $5000?
    - No – can still be the amt in controversy
  + 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?
  + SCt has read a domestic relations exception into 1332 – even if a diversity case technically will not take probate, wills, divorce, custody cases in federal court
  + Important that they remain in state court