Notes Civil Procedure Lect 4

Complete diversity/alienage

for 1332(a)  
  
if you are 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 are trying for 1332(a)(2) you need complete alienage  
 all aliens must be on one side of the v. and all citizens of a State on the other

U.S. nationals domiciled abroad fall through the cracks of the diversity/alienage statute  
Californian v. Eliz. Taylor cannot be a diversity or alienage case because she is not a citizen of a state nor a citizen or subject of a foreign state

But that is distinguishable from

Californian v. Nevadan and Eliz. Taylor  
and  
Californian v. German and Eliz. Taylor

Californian v. Nevadan and Eliz. Taylor  
is, one might say, a complete diversity case because no American on one side of the v. is a domiciliary of the same state as any American on the other side of the v.

Californian v. German and Eliz. Taylor

is, one might say, a complete alienage case - all aliens are on only one side of the v. and all citizens of a State on the other

but federal courts have decided even in these cases that Eliz. Taylor destroys diversity

Green thinks the best argument for this is that there is no discussion in 1332(a) about extra parties being added to diversity or alienage cases except 1332(a)(3) and that only mentions adding aliens to diversity cases – it does not mention adding Eliz. Taylors

**Sec. 1332. - Diversity of citizenship; amount in controversy; costs**   
  
(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**…

* 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
  + 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 arguably 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

It would be a different matter if the definition of corporate citizenship in 1332(c)(1) was used to create diversity

Here is an example:

NOTE: Congress could send the following to federal court:  
Delawarean v. New Yorker and Delawarean

Because there is minimal diversity (will discuss later – just accept for the moment)

BUT assume that Congress used 1332(c)(1) to send the following to federal court

Delawarean v. Delaware Corporation with its principal place of business in New York

That would be unconstitutional – this is, by constitutional lights, a Delawarean suing a Delawarean

* How to determine a corp’s principal place of business?
* Hertz v Friend
  + SCt holds that 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
  + Hertz is a Delaware citizen because that is its state of incorporation
    - (class got this wrong…)
  + But what about its principal place of business?
  + District Court concludes that Hertz is also 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? Etc. we can ignore
  + P (Germany) sues D (Cal.) and the X Corp. (Del. Corp., PPB France) in federal court  
    P subsequently settles against X Corp. and prevails at trial against D  
    the D moves to have the case dismissed for lack of SMJ (not a complete alienage case because aliens on each side)  
    Result?
  + Valid judgment – there was smj at the time of judgment – it does not matter that there was a problem initially

**NOTE: Green is not happy with his discussion in class of the next two questions – the notes here in bold are a *corrected* version – he will discuss this Wednesday**

* + **assume instead that P and X Corp. had not settled and that P had prevailed against both the D and X Corp. at trial  
    on appeal the 7th Cir notices the problem  
    can anything be done?**

**1st let us ask what the district court could do on remand**

**It can vacate the judgment (which it has to do, because there was no SMJ) and it can drop the X Corp. to perfect diversity and issue a *new judgment* (now with SMJ) if dropping the X Corp. does not prejudice a party**

* **would probably not work if P objected - if P would rather have no judgment and proceed in state court than a judgment without the X Corp**
  + **if P objected the whole case would have to be dismissed**
  + **after all, P is the master of the complaint**
  + **Can the court of appeals do this rather than remanding to the district court to do it?**
  + **In a highly contested case (Newman-Green cited on p. 73 of Glannon) the USSCt said yes – it can vacate the judgment and issue a new one without the X Corp – (but, again, it is unlikely that it could do so if P objected – P is the master of the complaint)**

**P (Germany) sues D (Cal.) and the X Corp. (Del. Corp., PPB France) in federal court  
the district court recognizes the problem and dismisses P’s action against X Corp., *without P’s consent*, in order to retain jurisdiction  
OK?**

**language in Glannon on p. 73 suggests this is OK (this confused some of you). But Glannon does not consider circumstances where P wants the X Corp. in (where dismissal is done *without P’s consent*)**

* **P is the master of the complaint (with the exception of necessary parties, which we will discuss later)**
* **So even the court cannot generally change the configuration of the parties if the plaintiff does not want it (though the fact that there is no SMJ with the X Corp. in means that the whole case must be dismissed)**
* **There are cases where the court on its own motion dismisses diversity destroying parties but this is in the end with the plaintiff’s consent**
* **If the plaintiff doesn’t like the new configuration he can voluntarily dismiss the case - he cannot be forced to sue**

P (Germany) sues D (Cal.) and the X Corp. (Del. Corp., PPB France) in state court in IL  
the D removes the action against him alone to federal court, leaving P v. X Corp. in state court  
OK?

No – not OK – P is the master of the complaint. He can keep the case from being removed by joining a diversity destroying party – D cannot carve out a diversity case from it to remove

* 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
* 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)
    - Green likes to say it must be **legally possible** to get above $75K to satisfy amt in controversy requirement
* 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

Should have gone beyond the bad stuff that happened on the plane.

How much can you inflate in your complaint to get above the jurisdictional minimum…?

Well Rule 11 (which requires evidentiary support for factual allegations) puts a limit on plaintiffs

But there is also this interesting provision…

28 USC § 1332(b)   
Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

Costs are small (NOT atty’s fees) bit usually the winner gets his costs paid by the other side. Here if the P wins and gets less than the jurisdictional minimum (think of the Mas case) he doesn’t get his costs paid and may have to pay the costs of the other side…