Lect 5 9/5/18

A few issues from last time.

Hertz’s state of incorporation was Delaware

* Not mentioned in case, but should not confuse it with its headquarters, which was in NJ
* Due to Hertz, its headquarters will be its principal place of business
* BUT PPB is not the same as the state of incorporation – a corp has both as its citizenships

Some more comments on perfecting diversity

The plaintiff is the master of the complaint

He determines the defendants

* With two exceptions
	+ Fraudulent joinder – will get to
		- A party has been joined by the P to defeat diversity against whom the P has no colorable claim
	+ Necessary parties – will get to
		- Special circumstances where a party must be joined, whatever the P wants
* So…
	+ P (NY) sues D1 (Cal.) & D2 (NY) in state court in Illinois under state law
	D1 may not break apart the lawsuit and remove it
	a federal court should not either
* In addition
	+ P (NY) sues D1 (Cal.) & D2 (NY) in federal court under state law
	+ the district court cannot dismiss P’s action against D2, *without P’s consent*, in order to retain jurisdiction
* but doesn’t Glannon say the following…?
* Glannon: The court cannot hear the case as originally framed because there is not complete diversity. However, it need not dismiss the entire suit; it can order Delta dropped as a defendant, thus “perfecting diversity,” and continue with the case against the two individual defendants.
* This makes it sound as if the court could do it without the P’s consent
	+ That does not happen
	+ So Glannon is talking about something the court can do if the P accepts (because he wants to stay in federal court even with certain defendants gone)
* There is a rule that allows this:
	+ **Rule 21. Misjoinder and Nonjoinder of Parties**Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.
	+ But this rule exists primarily to solve the following problem: traditionally if the P chose certain Ds who destroyed diversity, the case would have to be dismissed
	+ This rule allows the problem to be fixed
	+ But still only with P’s consent
* Now, a more difficult problem –
	+ P (NY) sues D1 (Cal.) & D2 (NY) in federal court under state law
	the case comes to judgment
	+ No one noticed no SMJ
	+ what can the federal court do?
	+ It must vacate the judgment (because it had no SMJ) but it may be able to issue a new judgment with only the diverse parties, as long as the dismissal of the nondiverse party *would not prejudice  other parties to the action*
		- If it would the whole case will have to be relitigated
	+ Because so much effort has been put into creating the judgment, which is worthless unless diversity is perfected, there is good reason to perfect diversity, but there cannot be prejudice to a party
	+ So if it is important to the P that a judgment in his favor is against all the original Ds no new judgment will be able to be issued
	+ One last note – in a highly contested case Newman-Green, Inc. v. Alfonso-Larrain, 490 U.S. 826 (1989) the SCt said an appellate court can perfect diversity as well
		- * But remember it still cannot be done if a party would be prejudiced
	+ OK – new stuff
	+ Aggregation to meet the amt in controversy
	+ An individual P can aggregate claims (even unrelated claims) against a single defendant to get above the AIC, but:
	+ Multiple plaintiffs can’t aggregate claims against a single or multiple defendants
	+ A single plaintiff can’t aggregate claims against multiple defendants
* alternative theories of liability (only one of which can be successful) cannot be aggregated
* - P and D had an agreement for P to do work for D for $50,000
- P does the work but D doesn't pay
- in P's (NY) complaint against D (NJ), P asks for $50,000 under a theory of breach of contract
- alternatively - if it is found that there is no contract - he asks for $40,000 in quantum meruit (the fair market value of the labor he performed)
	+ No aggregation
* P is beaten up by D1 & D2; damages are $80,000 in total, $40K caused by D1 and $40K by D2
	+ if they are **jointly liable**, amount-in-controversy is satisfied
	+ D1 can be sued for the entirety of 80K and D2 can likewise can be sued for the entirety of 80K
	+ Here you don’t need aggregation
	+ When a plaintiff sues multiple co-defendants using diversity, the AIC must be satisfied with respect to each defendant
	+ BUT when co-plaintiff sues a defendant the AIC requirement does not have to be satisfied with concerning all plaintiffs if it is satisfied concerning one
		- this is due to the SUPPLEMENTAL JURISDICTION STATUTE: If you have multiple plaintiffs and one meets the AIC but the other does not, you may be able to still litigate together in federal court (provided that the complete diversity requirement is satisfied)
		- e.g.
		- D (CA) beats up P1 (NY) and P2 (NY) in a barroom brawl

		P1 asks for $80K damages and P2 asks for $40K damages
		diversity case? - YES
		- This doesn’t work for a plaintiff and multiple defendants
		- We will discuss this later when doing suppl jur
	+ **Common & undivided right exception to the no-aggregation rule**–
		- if theplaintiffs necessarily recover only if they all recover together, then aggregation is possible
		- this is rare
		- usually one plaintiff can win even if the other loses
		- there must be some sort of legal quality/financial arrangement that would prevent a plaintiff from recovering damages unless the other did so too
	+ Injunctions and AIC
		- how do you determine the AIC concerning injunctions?
			* disagreements out there among fed cts
				+ value to P
				+ cost to D
				+ either, whichever is larger
				+ cost to D if D is removing and value to P if P is suing in federal court?
		- what about aggregation?
			* if an injunction cannot be tailored and, by the nature of its grant, benefits all plaintiffs equally, then aggregation *may* be possible
			* it may be able to be understood as a common and undivided right

Constitutional Scope of Diversity Jurisdiction

* Complete diversity requirement is read into 1332, but it is not read into the Constitution
* Constitution requires only minimal diversity/alienage, & Congress sometimes takes advantage of this
	+ E.g., Class Action Fairness Act: federal courts have jurisdiction if there is minimal diversity (@ least one person on one side is from a different state from at least one person on the other side) or minimal alienage (at least one person on one side is a citizen of a State and at least one person on the other a citizen or subject of a foreign state) and the aggregated amount-in-controversy is >$5 million
		- Congress passed this Act because they didn’t like the fact that state courts were certifying lots of class actions – they thought the federal courts would be more pro-defendant

Federal Question Jurisdiction (“arising under” jurisdiction)

* Why have it?
	+ is it just natural that lower federal courts hear actions under federal law?
		- the problem with this theory is that it is constitutionally possible for all federal actions to be brought in state court (with US SCt providing appellate review)
		- that was how it generally was until after the Civil War
		- Congress then allowed for federal question jurisdiction in district courts because they worried that southern state courts would not readily enforce federal civil rights law
	+ best theory of federal question jurisdiction is probably that Congress should have the ability to allow lower federal courts to entertain actions arising under federal law if state courts are hostile to it - allows federal law to be properly interpreted and enforced
* Constitutionally, what does this mean? What type of actions *can* Congress allow federal courts to entertain in “arising under” in Art. III
	+ Must have a federal ingredient of any sort in the case
	+ Read very broadly
	+ that is important because Art III arising under jurisdiction is also binding on the US SCt, not just lower federal courts – it cannot take a case that does not fall under the judicial power of the United States in Art III
* But what about arising under as it applies to 28 U.S.C. 1331 – which determines the original jurisdiction of federal district courts?
	+ Read narrowly (perhaps to help prevent inundation of the federal court system)
	+ according to *well-pleaded complaint rule*

*Louisville & Nashville RR Co. v Mottley* (1908)

* Kentuckians sue Kentucky RR
* Requesting **specific performance** – we entered into a settlement agreement w/ railroad under which they promised to give us free passes for life
* railroad refused to give free passes because of a federal statute outlawing such passes
* Mottleys sued in federal court
* won, and RR appealed to US SCt
* Kicked out by Supreme Court because federal court didn’t have jurisdiction in the first place
* a well-pleaded complaint (that is, one that mentioned only what is necessary for justifying relief without considering possible defenses) would mention only Ky state contract law
* notice that even though federal trial courts didn’t have jurisdiction, the action can be brought on appeal to SCOTUS after it goes through state court system
	+ in fact that is exactly what happened in the case
	+ SCt decided the case on appeal after it was refiled in Ky state court
	+ Why is the USSCt appellate jurisdiction constitutional? Because the case has a federal ingredient (the defense calls up questions of federal law)
* Congress could change this interpretation of 1331 & make it possible for federal courts to hear cases involving a federal defense
* What if the Mottleys (or the RR) had brought a declaratory judgment action to determine the federal questions at issue in the case?
* If this satisfied a331 there would be a huge end-run around the well pleaded complaint rule
	+ You need to look behind the decl judgment action and consider what the case would look like if someone were asking for concrete relief (injunction or damages)
	+ Then use the well pleaded complaint rule for that case
	+ So even if the Mottleys or the RR were asking for a decl j, there would be no SMJ under 1331 because a case for concrete relief would be under Ky contract law