Venue

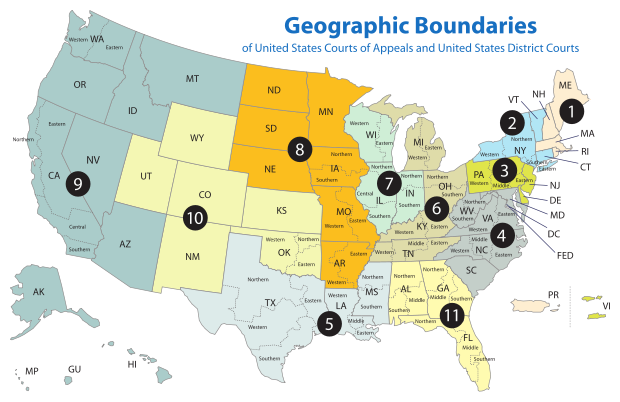
Venue in Federal Court

Why does venue exist?

* Restrict litigation to districts that are convenient.

What to remember about 28 USC 1391

* Statutory, not a constitutional issue
* About federal districts, not states
* Applicable only in federal court system
* Rough measure of convenience



Sec. 1391. - Venue generally   
(b) Venue in general.--A civil action may be brought in--  
(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;  
(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

*(residence of human being = domicile for purposes of venue)*

(c) Residency.--For all venue purposes—

(1) a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled;

**EX 1:** P (N.D.Cal.) sues D1 (S.D.N.Y) and D2 (W.D.N.Y.)

Suit is under 42 U.S.C. 1983 re: unlawful arrest that occurred in an airport in NJ (D.N.J.)

Where is there venue?

D.N.J., S.D.N.Y., and W.D.N.Y.

**EX 2:** P (N.D.Cal.) sues D1 (S.D.N.Y) and D2 (D. Conn)

Suit is under 42 U.S.C. 1983 re: unlawful arrest that occurred in an airport in NJ (D.N.J.)

Where is there venue?

D.N.J. only

**EX 3:** P (San Francisco - N.D.Cal.) sues D1 (S.D.N.Y) and D2 (D. Conn.)

Suit is under California state law breach of contract action re: a contract signed in San Francisco for construction of a hospital in Albany (N.D.N.Y.)

Where is there venue?

N.D.N.Y. and N.D. Cal.

**EX 4:** P (San Francisco - N.D.Cal.) sues D1 (Germany) and D2 (D. Conn)

Suit is under California state law breach of contract action re: a contract signed in San Francisco for construction of a hospital in Albany (N.D.N.Y.)

Where is there venue?

N.D. Cal., N.D.N.Y., and D. Conn

\*German is not domiciled in the U.S. - 1391(c)(3) P may choose ANY venue but PJ may not exist.

1391(c)(3)   
a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants.

Is there SMJ?

Yes, Diversity under 1332(a)(3)

III. Residence of Corporations and unincorporated associations:

1. 1391(c)(2)
   1. Corporation, when a Def., will be deemed to reside in any judicial district in which such Corporation is subject to court’s personal jurisdiction w/ respect to the civil action in question
      1. Includes general (Principal Place of Business and State of Incorporation) and specific personal jurisdiction
      2. Probably just speaking of 14th Amendment contacts for PJ – do not consider the state’s longarm statute – otherwise criteria for corporate residence in a district would vary from state to state
2. 1391(d)
   1. Residency for Corporations in States w/ multiple districts
      1. Corp, when a Def., will be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if the district were a state
      2. What if it is subject to PJ in state but not in any district in that state?
         1. Deemed to reside in the district within which it has the most significant contacts
         2. Might be useful when a corp is incorporated in a multidistrict state but does not have any other contacts with that state
         3. – rather than assuming that it resides in every district in state could conclude it resides only in district where it has most sign contacts (where it sent the incorporation papers)

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(c) Residency.--For all venue purposes—

(1) a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled;

**EX 6:** P (San Francisco - N.D.Cal.) sues D1 Corp and D2 Corp.

Suit is under California state law breach of contract action re: a contract signed in San Francisco (N.D. Cal) for construction of a hospital in Albany (N.D.N.Y.)

D1 corp. Built foundation; D2 Corp. built structure

D1 corp. Incorporated in D. Del, main office S.D.N.Y. and large branch office in E.D. Pa

D2 corp incorporated in D. Del, main office in W.D. Pa., and large branch office in D. Mass

Where is there venue?

Transaction venue : N.D. Cal & N.D.N.Y.

Residential venue: D. Del. **AND S.D.N.Y and N.D.N.Y.**

\*D1 and D2 are subject to specific personal jurisdiction in the N.D.N.Y. and therefore reside there – so venue in SDNY exists since D1 resides there and D2 resides in same state (namely in NDNY)

**\*\*\* What if venue does not exist under (b)(1) or (2)?**

**That would mean the following:**

* no substantial part of the events or omissions giving rise to the claim occurred in US
* AND the defendants, although residing in US (if they were all residing abroad there would be venue in any district) are not residing in the same state
* If so then…

1. 1391(b)(3) – then venue in any judicial district in which any Def. is subject to PJ may be used.
2. In the end they will all have to be subject to PJ though

**EX 7:** P (S.F. - N.D. Cal) sues D1 (S.D.N.Y.) and D2 (E.D. Pa)

Suit is breach of contract action concerning a contract signed in S.F. for Construction of a hospital in Paris

D1 built foundation; D2 build structure

Where is venue?

**1391(b)(3) does not apply** because there is a district with venue under 1391(b)(1)-(2), namely the NDCal (where the contract was signed)

**EX 8:** P (S.F. - N.D. Cal) sues D1 (S.D.N.Y.) and D2 (E.D. Pa)

Suit is breach of contract action concerning a contract signed in London. for Construction of a hospital in Paris

Here 1391(b)(3) would apply – venue in any district in which a D1 or D2 is subject to PJ

Venue and Removal

1. State Court -> Remove to Federal Court = There IS venue in that Federal Court – even if 1391 is not satisfied

**EX. 9:** Assume WWVW action had been brought in the Fed Court E.D. Okla. (where accident occurred). Set aside PJ and SMJ.

Is there venue? Yes because transactional venue

Green: notice that there can be transactional venue even though the D does not reach out to the district in the way that is necessary for specific PJ

No specific PJ over Seaway in OK in WWVW but there would be venue in district in OK if it had been brought in federal court

**Note, however that 8th Cir. has a more restrictive understanding of what is necessary for transactional venue**

* **8th cir demands that the D reach out to the district in a manner similar to specific PJ (Green: this is wrong)**

**Uffner v. La Reunion Francaise (2001)**

-Claim originally brought in Dist. of PR

P’s boat sank but insurer denied coverage because did not have out of water survey done

-PJ was an issue but the Ds did not bring it up. Dist court dismisses sua sponte on PJ grounds. Ct App says it can’t do this, Ds basically consented to PJ by not bringing it up on their own.

But Ds did object to venue

-Does D.P.R. fall under the language of 1391(b)(2) “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred”?

-Test used by District Court: similar to evidence Test for “arising out of or related to” for specific PJ (what happens in the district must be part of the cause of action)

- the sinking was not an element of the cause of action – the dispute was about the contract, the out of water survey, and the denial of the claim

-Court of Appeals uses a “But for” test (“But for” the sinking in Puerto Rico there wouldn’t be this dispute) – rejects 8th Cir approach

IV. Venue

1. Dismissal of for lack of Venue
2. If there is no venue in the district the D can move to dismiss
   1. Waiver of Venue
      1. Def can consent to venue by failing to bring lack of venue up
3. but in addition to dismissing can also transfer to a district with venue under 28 U.S.C. 1406
4. 28 U.S.C.§1406. CURE OR WAIVER OF DEFECTS

(a) the district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

* 1. From a district without venue to one with venue
     1. transfer only occurs within a court system

1. In addition, a court can (at the request of a party – usually a defendant – or sometimes sua sponte) transfer from a district with venue to one with venue because the transfree district is more convenient under 28 U.S.C. 1404 Change of Venue

28 U.S.C. §1404. CHANGE OF VENUE

(Although a venue is proper in the court where the lawsuit was filed, there is more appropriate federal district where the case should be litigated.)

• (a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.

• \*\* No statute authorized a FED CT to dismiss a case that was filed in proper venue, but they implement common law authority. A party can dismiss using forum non conveniens dismissal.

Dismissal from a district with venue so that it can be brought outside of the United States

Using forum non conveniens in Federal Courts means that though there is venue – in that court making the ruling – there is a better court outside of the United States that should hear the suit. They would dismiss on forum non conveniens.

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**MacMUNN v. ELI LILLY CO.**

**559 F. Supp. 2d 58 (D.D.C. 2008).**

**OVERVIEW:** *Looks at §1404 transfer motion.*

**PARTIES**

* Plaintiffs: Judith MacMunn and husband - Massachusetts
* Defendant: Eli Lilly Co – Indiana (PPB and Incorporation)

**CAUSE OF ACTION:** products liability

**RELEVANT FACTS**

* Suit originally filed in “state” court in DC: then removed to D.D.C.
* Why did P’s pick as forum?
  + DC is very favorable in regard to statute of limitations and tolling statutes
  + When suing in DC, you will be using the DC statute of limitations/tolling though you might be be using the Massachusetts product liability rules.
* **WHY IS THERE IS SMJ in DDC:** diverse citizens over the $75k threshold
* **WHY IS THERE PJ in DDC:** This is pre-Daimler and pre-Goodyear – probably arguing general PJ
* **WHY IS THERE VENUE in DDC:** always venue in district of removal
* P alleges her mother ingested DES while pregnant with her in 1962. The exposure of DES has led the P to suffer cervical malformations, infertility, physical and mental pain, medical treatments and expenses. Seeking 3 million dollars in compensatory damages and 3 million dollars in punitive damages.
* D motions to transfer this products liability case to D. Massachusetts.
  + P opposes transfer citing numerous cases involving the same defendant and subject matter that have resolved in this District.

**RELEVANT RULE**

1. The D must make two showings to justify transfer
   1. (1) D must establish P originally could have brought the action in the proposed transferee district
   2. (2) D must demonstrate that considerations of convenience and the interest of justice weigh in favor to transfer to that district
      1. Private interest
         1. (1) P’s choice of forum
         2. (2) D’s choice of forum
         3. (3) Whether the claim arose elsewhere
         4. (4) the convenience of the parties
         5. (5) the convenience of the witnesses
         6. (6) the ease of access to sources of proof
      2. Public interest
         1. (1) transferee’s familiarity with the governing laws
         2. (2) relative congestion of the calendars of the potential transferee and transferor courts
         3. (3) local interest in deciding local controversies at home

**HOLDING/REASONING:** Court grants D’s motion to transfer to Massachusetts.

You can get a transfer motion accepted under § 1404 if it promotes convenience of parties and witnesses.

The discretion in the district court to adjudicate motions to transfer are according to individualized case and must analyze fairness and convenience. In this case, the court grants it because the private interest: (1) witnesses are in Massachusetts, (2) that’s where the action of taking medicine occurred, (3) that’s where proof of doctor records are there.

The court further grants because of public interest: (1) less court congestion in Massachusetts, (2) the judge is fine and has experience with these cases (3) plus others.

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**SHOULDN’T THE TRANSFER in MacMunn LEAD TO DISMISSAL ON STATUTE OF LIMITATIONS GROUND?**

* No. You get the same statute of limitations, same substantive law, same choice of law of the *transferor* ct when transferred to another district under 1404. (*Van Dusen v. Barrack*, 376 U.S. 612 (1964).
* The fact is, it could have proceeded in the original venue; with that, you should still be able to use the law of the transferor ct.

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