**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
    - A foreign national domiciled in a US state is NOT a citizen of a state!
  + 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)
* 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 probably 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.
  + Assume Gordon intends to remain indefinitely in Idaho once she gets there  
    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 *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

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

***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

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.   
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. the mean Californian state court might say the New York but not the Cal defendant is liable to the California plaintiff.
3. German sues a Frenchman: No – is not covered by 1332(a).
   1. Also Congress could not send to federal court
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.
   1. 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.