1. 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 – majority said it was OK but do agreement on reason
      4. one possibility – DC is a “State” as the term is used in Art. III
      5. another is “protective jurisdiction” (don’t worry about details)

***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
* 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
* 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
* Citizenship of corporations for diversity/alienage purposes
  + Corporations are treated as separate entities from their shareholders
  + For a long time corporations were considered only citizens of the state in which they were incorporated
    - That is still probably the view about corporations as far as Art. III is concerned
  + 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

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

Yes - 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

Green says this mistake does occur with respect to the Class Actions Fairness Act – which allows some class actions under state law into federal court if they have minimal diversity

* Green has seen courts accept that minimal diversity exists when the defendant corporation’s principal place of business (not its state of incorporation) is what is different from the plaintiff’s citizenship
* This is a mistake – and a missed opportunity for the party wanting to argue no SMJ
* 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
  + 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
    - 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