Lect 7

**Discussion of Gunn v. Minton (2013):**

* Minton sues in federal court for patent infringement but his patent is determined to be invalid because he had licensed it to someone for over a year
* then sues his lawyer in Tex state court for malpractice, saying that had the lawyer brought up the experimental use argument his patent would have been held valid
* on appeal the Tex SCt holds no SMJ in Texas state court because the action had exclusive federal SMJ
  + if it arises under federal patent law state courts do not have SMJ because of:
  + 28 US Code §1338 – “district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to parents… no state court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents…”
* US SCt reverses - it does not arise under federal patent law
* this is a case like Smith – state law creates the cause of action but a well-pleaded complaint refers to both state and federal law
  + federal law has been absorbed into the issue of causation under state malpractice tort law
* The US SCt offer the following standard for determining whether there is arising under jurisdiction (under 1331 or 1338) for Smith cases
* Grable & Sons v. Darue Engineering 🡪 Grable Rule: arising under for 1331 (and 1338) if the federal issue is
  + Necessarily Raised (satisfied in this case)
  + Actually Disputed (satisfied in this case)
  + Substantial (not satisfied in this case)
  + No disruption of congressionally approved balance of federal and state judicial responsibilities (not satisfied in this case)
* Why not substantial?
  + “[I]t is not enough that the federal issue be significant to the particular parties in the immediate suit… The substantiality inquiry under Grable looks instead to the importance of the issue to the federal system as a whole.”
  + this is not important to the federal system
  + it is important to the federal system that the validity of patents are litigated in federal court
  + BUT Minton is precluded concerning the validity of the patent – No relitigation of validity of patent after the federal action - that has already been settled.
  + The validity of the patent was NOT going to be decided by this state court case. The patent would continue to be invalid no matter the case’s outcome. If Minton had won, he would have received damages from his lawyer to compensate for his loss of the patent. He would never have gotten the patent back.

Why is the “congressionally approved balance of federal and state judicial responsibilities” requirement not satisfied?

* state law malpractice actions are the sort of things that state courts have an especial interest in

*Hypo -*

*The LMRA completely preempts state contract law concerning collective bargaining agreements between unions and employers and replaces the whole area of state law with federal law. The union sues the employer under state contract law in state court. Employer removes on ground that the cause of action of really federal.*

* This is an example where the Mottley argument doesn’t work. While it is true that the issue of federal preemption is a defense, because federal law *completely preempts* the whole area of state law, the case has been determined to have federal subject matter jurisdiction under 1331 – it is essentially a federal action that the union sues the employer under
* this exception to Mottley has been found in LMRA (Labor Management Relations Act) and ERISA (Employee Retirement Income Security Act – which preempts the field of state law having to with pension plans)
* In Mottley, the preemption of state law by federal law was much smaller – just the issue of free passes

*Hypo -*

*P sues a municipality in federal court for damage under 42 USC* §*1983 for violations of his civil rights. The US Supreme Court has never decided whether a municipality can be sued under* §*1983. The federal court concludes that municipalities cannot be sued under* §*1983. How is the case dismissed?*

* It arises under federal law (and so has federal SMJ) but P fails to state a claim under federal law
* so a case can arise under federal law (as far as SMJ is concerned) even though there really is no federal law for the P to successfully sue under (which is why it is dismissed for failure to state a claim)

does that mean you can always just chose a federal law under which you fail to state a claim to get into federal court? if you could then getting into federal court would be easy

– also if the federal action got in (even if it was later dismissed for failure to state a claim) other state law actions could have supplemental jurisdiction.

*Hypo -*

*P and D get into a fight. P wants to sue D in federal court. So P sues D for violating federal securities law by hitting him in the face.*

* won’t work
* Dismissed for lack of federal SMJ - NOT for failure to state a claim
* where do you draw the line?
* fuzzy but depends upon whether federal action is not colorable and is simply an attempt to gin up federal SMJ

*Hypo -*

*P (NY) sues D (NY), a state officer, in federal court for violating his federal civil rights in the course of an arrest. P joins a state-law battery action against the officer.*

* This is not a Smith/Gable/Gunn type case.
* these are separate causes of action – the first clearly satisfies the creation test and the second clearly doesn’t (but will have supplemental jurisdiction)

**Removal**

* Removal vs. Transfer:
  + Transfer – moving between federal district courts / or moving within one state court system
  + Removal – starting in state court and defendant requesting that the action be brought up into the federal court system
* A case removed from state court will be removed to the federal district court that encompasses that state court
* Is removal possible?
  + This is answered (with one exception) by asking: Would federal jurisdiction have been possible if the action had been originally brought in federal court?
    - Does the case satisfied §1331 or §1332?

*Hypo -*

*A (CA) sues D (NY) and C (CA) for battery in state court in Nevada. Can B and C remove?*

* No, not complete diversity – A could not have brought this originally in federal court

*Can B remove?*

* No! Plaintiff is the master of the complaint. If P wants to sue the two defendants, he gets the two defendants.

*Hypo -*

*A (Nev.) sues B (CA) and C (Oreg.) in California state court for battery. A asks for $80k each from B and C. May B and C remove?*

* Because A is suing in the CA (the home state of one of the defendants), B cannot remove the case to federal court. (In-state defendant bar)
  + this is the exception to the rule that removal is possible if the action could have been brought originally in federal court
* 1441(b)(2)  
  A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.
* A could have filed the case in federal court if she wanted.

*Hypo -*

*A (CA) sues B (NY) and C (NJ) for battery. A asks B for more than $75k but C for only 20k. May the case be successfully removed by B and C?*

* No, the case does not meet the amount-in-controversy requirement. (A plaintiff may not aggregate claims against different defendants to meet amount requirement).

So how does a D show that the amt in controversy is more than the P is asking for?

* 1446(c)(2)   
  If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that-  
  (A) the notice of removal may assert the amount in controversy if the initial pleading seeks--   
  (i) nonmonetary relief; or   
  (ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and   
  (B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).
  + Some states will allow you get more than what you ask, in this case if there is a possibility that the amount could be higher than AIC - it may be removable
    - St. Paul Mercury Test is not the standard for removal
    - 1446(c)(2)(b)
      * If the defendant can show by a preponderance of the evidence shows that the amount in controversy exceeds $75,000
      * Tougher standard than the St. Paul Mercury Test
      * Preponderance of the evidence is a slightly confusing and ambiguous term
        + evidence is always considered to determine AIC – one looks to the pleadings – not sure what preponderance of the evidence means in that context

Devices Defeating Diversity/Alienage

* Adding diversity-destroying plaintiffs to defeat diversity
  + Or plaintiffs who are asking for the less than the minimum
  + You can assign a fraction of your contract to another party to defeat diversity
  + Much less common to assign part of your lawsuit
    - Much more likely find another Plaintiff who was affected by defendant’s action
* Adding defendants to defeat diversity
  + Find another defendant that they can add (co-defendant) who is below the minimum or is diversity-destroying (or is in-state)
  + Often used when you sue a corporation and then you also include an individual employee in the suit to defeat diversity

Joining defendants to defeat diversity often works, but keep in mind…Fraudulent Joinder

* Rose v. Giamatti
  + Pete Rose from Ohio sues Giamatti (MLB Commissioner) – joins Cincinnati Reds as defendants to attempt to defeat diversity and keep the case in Ohio state court
    - The Reds were fraudulently joined so the case can be removed
    - “In fraudulent joinder cases the underlying reason for removal is that there is no factual basis upon which it can be claimed that the resident [!] defendant is jointly liable or where there is such liability there is no purpose to prosecute the action against the resident defendant in good faith….”
    - Green: the issue is not just that Rose failed to state a claim against the Reds
      * the plaintiff’s claim against the fraudulently joined party has to be even worse than that e.g.
      * defendant cannot provider the relief requested at all
      * or the claim is not even colorable – there is no possibility that you state a claim

1446(b)(2)(A)

* You need *all* defendants to agree to remove the case to federal court
* You can defeat removal if you add a defendant who does not want to be removed

1441(f)

* The court to which such civil action is removed is not precluded from hearing and determining any claim in such civil action because the state court from which such civil action is removed did not have jurisdiction over that claim
* If you tried to remove a case from state court that had exclusive subject matter jurisdiction in federal court (e.g. patent claim), the feds can accept the federal claim
* before 1441(f) that was not so