

## CIVIL PROCEDURE

## DOES THE COURT HAVE JURISDICTION OVER THE PARTIES?

- Two steps:
  - o Satisfy long-arm statute if applicable
  - o Satisfy Due Process
- For Due Process must get ONE of:
  - o Domicile in state
  - o Present in state when served
  - o Consent to jurisdiction
  - o MAYBE put product into the stream of commerce that caused harm in forum state (Asahi)
    - Split of authority as to whether this is enough
  - o Approximation of presence in state sufficient for jurisdiction:
    - Contacts factors:
      - Minimum contacts with forum state, resulting from purposeful availment
      - Foreseeability that D would be haled into court there
    - Weighed against Fairness factors:
      - Relatedness between the minimum contacts and the harm done
      - Forum not so inconvenient as to put D at a severe disadvantage
      - State's interest in providing a forum for its citizens.
- If Due Process satisfied, the forum need not be convenient.
  - o Exception: If location puts D at a SEVERE disadvantage in the litigation.
- In rem jurisdiction
  - o Contact must still meet the Due Process test
  - o Property at issue is present in the forum state

## DOES THE COURT HAVE AUTHORITY OVER THE SUBJECT MATTER?

- Diversity jurisdiction
  - o Requirements:
    - Amount in controversy EXCEEDS \$75K AND
    - Complete diversity
  - o Domicile for diversity purposes:
    - Individual
      - Arrival in state
      - With intent to remain indefinitely
    - Corporation
      - ALL states where incorporated AND
      - The one state where principal place of business is located
        - o Use "nerve center" (HQ) unless all "muscle" activity all in one state
    - Unincorporated association
      - Citizen of every state where a member is a citizen
    - Decedents, minors and incompetents
      - Where they are citizens, not executor/guardian/etc.
  - o Amount exceeding \$75K
    - Not counting costs
    - Must be a good faith estimate
    - Not OK unless it is *clear to a legal certainty* that P could not recover more than \$75K.
    - Actual award of less than \$75K is irrelevant for subject matter jurisdiction, BUT P may be liable to pay the D's costs even if she wins.
    - Injunctions – measure value by EITHER:
      - Value to P
      - Cost to D to comply
    - Aggregation
      - One P can aggregate all the claims against one D.
      - If suing more than one joint tortfeasor, need not divide number among number of tortfeasors.
      - Class actions: Split of authority:

- 9<sup>th</sup> Circuit: OK if only REPRESENTATIVE'S claim is over \$75K
- Other courts: EVERY class member's claim must be over \$75K.
- Federal question jurisdiction
  - Well-pleaded complaint must be based on a right or interest grounded in federal law
    - P is enforcing a federal right
  - Whether federal DEFENSES will be raised is irrelevant
  - No diversity/amount in controversy requirements
- Supplemental Jurisdiction
  - When underlying claim is a Federal Question
    - Claims joined by PLAINTIFF
    - That arise from the same "common nucleus of operative fact" as the underlying claim
    - Court has discretion to hear or not hear:
      - Was federal question dismissed early in the proceedings?
      - Is the state law claim complex?
      - Would state law issues predominate?
  - When underlying claim can be either FQ or Diversity
    - Claims joined by ANYONE BUT THE PLAINTIFF
    - That arise from the same nucleus of operative fact as the underlying claim
    - Court has discretion to hear or not hear.
- Removal
  - Only Ds may remove
  - ALL Ds must agree to remove
  - Must remove to federal district that embraces state court where it was originally filed
  - For diversity cases only: Can't remove if ANY D is a citizen of the forum state.
  - Must remove no later than 30 days after service of the first removable document.

IS THE COURT THE PROPER PLACE TO RESOLVE THIS DISPUTE?

- Venue
  - In diversity cases:
    - Where all Ds reside, OR
    - Where a substantial part of the claim arose, OR
    - If no district meets these, where all Ds are subject to personal jurisdiction
  - In all other cases:
    - Where all Ds reside, OR
    - Where a substantial part of the claim arose, OR
    - If no district meets these, where any D can be found.
- Residence
  - Individuals → residence = domicile
  - Corporations reside in EVERY district where they would be subject to personal jurisdiction.
- Improper or inappropriate venue
  - Transfer
  - Forum Non Conveniens
    - Where transfer is impossible b/c it's a foreign country or state system
    - Factors court will look at:
      - Public factors
        - What law applies
        - What community should be burdened with jury service
        - Need for fact finder to visit site of events
      - Private factors
        - Where witnesses and evidence are

WHAT LAW GOVERNS THE DISPUTE?

- Erie Doctrine
  - Federal courts must apply state substantive law to nonfederal causes of action
  - Federal procedural rules can be applied
- Steps of analysis:
  - Is there a federal law on point that directly conflicts w/ state law?

- YES → Apply the federal law as long as it is valid (FRCPs are presumed valid so long as it is arguably procedural)
  - If no federal law is on point, but the judge wants to follow federal practice/customs, she can only do so if it is truly procedural and not substantive. If substantive, must apply state law.
    - Steps to analyzing if it's substantive:
      - Would it determine the outcome of the case?
        - If yes → probably substantive
      - Does either federal or state system have a strong interest in applying its rule?
      - Will applying the federal rule cause people to flock to state court (forum-shopping)?
    - Well-established as substantive in these situations:
      - Statutes of limitations
      - Rules for tolling statutes of limitations
      - Choice of law rules

#### WAS SERVICE PROPER?

- Ways of service:
  - Papers given to P personally
  - Process left at D's usual place of abode with a person of *suitable age and discretion who resides there*
  - Service on D's agent
  - Process mailed to D, who returns waiver of formal service form
    - If refuses to waive, may be charged with cost of personal service
  - Any way permitted by state law in either:
    - The state where the federal court sits OR
    - The state where service is being made.
  - Immunity from service when D in state only to appear in another case.

#### ARE THE PLEADINGS PROPER?

- Complaint
  - Statement of subject matter jurisdiction
  - Statement of the claim
  - Demand for relief
  - Special matters that must be pleaded with particularity:
    - Fraud
    - Mistake
    - Special damages
- Defendant's response
  - Answer
    - Respond to allegations of complaint (admit, deny, or lack sufficient info)
    - Raise affirmative defenses
  - Rule 12(b) motion
    - Waived if not raised in first response:
      - Lack of personal jurisdiction
      - Improper Venue
      - Insufficiency of process
      - Insufficient service of process
    - Other ones
      - Motion for a more definite statement (must be filed before a responsive pleading)
      - Motion to strike
      - Lack of subject matter jurisdiction
      - Failure to state a claim
      - Failure to join indispensable parties
- Counterclaim
  - Compulsory
    - Arises from the same T/O as P's claim
  - Permissive
    - Against the same P, but from a different T/O
  - Supplemental jurisdiction (if needed) for compulsory

- Cross-claims
  - o Offensive claims against a co-party
  - o Must arise from the same T/O as original claim
  - o Not compulsory
  - o Supplemental jurisdiction (if needed)
- Amendments and supplemental pleadings
  - o P can amend once before D answers as a matter of right
  - o D can amend once w/in 20 days of serving his answer
  - o Further amendments at discretion of court to allow
  - o Amendments relate back to original filing date
    - BUT if you are changing the D, only relates back if you sued the wrong D but the right D knew about it.
- Rule 11
  - o Certification
    - Must sign all papers certifying that:
      - To the best of her knowledge AND
      - After a reasonable inquiry
      - The legal contentions are either warranted by law or a nonfrivolous argument for changing the law.
    - Paper is considered re-certified every time it is “presented” to the court
  - o Sanctions
    - Party alleged to have violated Rule 11 gets a 21-day grace period to fix the problem.

#### ARE THE PROPER PARTIES AND CLAIMS BEFORE THE COURT?

- Joinder of parties
  - o Compulsory joinder – necessary parties should be joined if possible
    - Necessary parties:
      - W/o them, court can’t grant complete relief
      - Absentee’s interest may be harmed if she is not joined
      - Absentee claims an interest that could subject a party to multiple obligations.
      - Joint tortfeasors are not necessarily necessary parties!
  - o Permissive joinder – if joinder of necessary party not feasible, court must either proceed without absentee or dismiss.
    - Whether to proceed or dismiss:
      - Is there an alternative forum available?
      - What is the actual likelihood of prejudice?
      - Can the court shape relief to avoid that prejudice?
- Joinder of claims
  - o Class actions
    - Requirements:
      - Class so numerous that joinder is impracticable
      - Common questions of law or fact
      - The claims of the representative are typical of the class claims
      - Representatives will fairly and adequately represent the interests of the class
      - If damages class action:
        - o Common questions must PREDOMINATE
        - o Class action must be the best way to handle dispute
        - o Must provide notice to all reasonably identifiable class members, with ability to opt out
    - Types:
      - Prejudice – class treatment necessary to avoid harm to other members of class (race to courthouse)
      - Injunction/declaratory judgment
      - Damages
    - Once certified as a class, court approval required for:
      - Settlement
      - Dismissal

- Intervention
  - Absentee wants to join as either a P or D.
    - Court can realign if it thinks she joined on the “wrong” side.
  - Intervention as of right
    - Her interest may be harmed if she can’t intervene, and she’s not adequately represented now
  - Permissive intervention
    - Her claim or defense and the pending case have at least one common question.
  - Supplemental jurisdiction (if needed) for intervenor
    - Won’t usually get it if intervenor will mess up diversity, even for intervention as of right.
- Impleader
  - Claims involving a third-party defendant brought in by D
  - Must be for indemnity or contribution
  - Other claims
  - Supplemental jurisdiction (if needed) for these
- Interpleader
  - Person with property wants to bring everyone who claims that property into one lawsuit
    - Court can enjoin anyone who doesn’t participate from suing elsewhere
  - Rule 22 interpleader
  - Statutory interpleader

#### HAVE THE PARTIES PROPERLY PROPOUNDED AND REPLIED TO DISCOVERY?

- Types of discovery
  - Depositions
  - Interrogatories (to parties only)
  - Requests to produce
  - Physical or mental examinations (requires court order)
  - Requests for admission
  - Required disclosures
- Scope of discovery
  - Anything reasonably calculated to lead to admissible evidence
  - Privileged matter not discoverable
  - Work product or trial preparation materials not discoverable
    - BUT can discover facts (not mental impressions) if there’s no other way to get the info and there is exceptional need
- Enforcement of discovery rules (sanctions)
  - Total or partial failure to provide discovery: Motion to compel plus costs and certify good faith attempt to obtain discovery.
  - Sanctions include:
    - Treat matters as admitted
    - Disallow evidence on an issue
    - Establish the issue adverse to the violating party
    - Strike the pleadings
    - Dismiss the cause of action or the entire action (bad faith)
    - Enter a default judgment (bad faith)
    - Hold in contempt
      - NOT available for refusal to submit to a physical or mental exam

#### CAN THE DISPUTE BE RESOLVED WITHOUT A TRIAL?

- 12(b)(6) – failure to state a claim
  - Assuming all allegations are true, would P be able to win a judgment? If no, dismiss.
- Dismissal
  - Voluntary
    - P can dismiss once without prejudice → second, probably can’t refile even if first filing was in state court.
  - Involuntary
- Summary judgment

- The moving party must show:
  - No issues of disputed fact AND
  - Entitled to judgment as a matter of law
- Partial summary judgment may be granted

#### IF THERE IS A TRIAL, WHO WILL DECIDE THE MATTER?

- 7<sup>th</sup> amendment right to jury trial for:
  - Actions at law
  - NOT equitable actions.
  - P must demand a jury trial
- Jury selection
  - Each side has unlimited strikes for cause
    - Each side gets 3 no-cause strikes
    - Strikes MUST be used in a race and gender-neutral way
- If there is a jury, can its verdict be disregarded?
  - Judgment as a matter of law
    - By D → at close of P's case
    - By P → at close of all evidence
  - Renewed motion for judgment as a matter of law
    - Must have moved for JMOL initially
  - Motion for new trial
    - Grounds:
      - Prejudicial error at trial makes judgment unfair
      - New evidence that could not have been obtained by due diligence for the original trial,
      - Prejudicial misconduct of party, attorney, third party, or juror
      - Judgment is against the weight of evidence

#### CAN THE DECISION BE APPEALED?

- Final judgment before appeal can be taken
  - Nothing left for court to do on the merits
- Exceptions to the final judgment rule
  - Pretrial orders involving temporary remedies
  - Final judgment on collateral matters
  - Interlocutory orders of great importance that may be determinative of the ultimate decision

#### IS THE DECISION BINDING IN FUTURE CASES?

- Res Judicata
  - Claim preclusion
  - Already settled by a judgment on the merits
- Collateral estoppel
  - Issue preclusion
  - Issue must have been actually litigated and essential to the first judgment
- Who is bound by the judgment?
  - Can only assert collateral estoppel AGAINST someone who was a party to the original action (required by due process)
  - BUT some jurisdictions allow collateral estoppel to be asserted BY someone who was not a party to the original case if the other party had a fair and full opportunity to litigate it in the first trial.
    - When used defensively: A sues B and C, separately, as joint tortfeasors. In action A → B, court finds A was contributorily negligent. In A → C, C wants to collaterally estop on issue that A was contributorily negligent.
    - Can also be used OFFENSIVELY if not UNFAIR. Factors:
      - Party had full and fair opportunity to litigate in first case
      - Could foresee multiple suits
      - New party could not have joined easily in first suit
      - There are no inconsistent judgments on record.