

- Geographical Location/Personal Jurisdiction (History)
- Background
- In personam jurisdiction: Permits a court to enter judgement that is personally binding on the defendant.
- In rem jurisdiction: Permits a court to adjudicate the rights of all possible claimants to a specific piece of property.
- Quasi in rem jurisdiction:
 - *Individual disputes related to property under the courts control-* continues to provide a constitutional basis for the exercise of jurisdiction.
 - *Personal disputes where the court could not assert personal jurisdiction over D*, but had jurisdiction over property belonging to D. That property would be seized by P and used to satisfy the claim if P prevailed. This type of jurisdiction has been severely limited on constitutional grounds.
- Pennoyer v. Neff: The court found that for the state to exercise power over individuals or property there must be a *valid service of process* on the individual (in personam cases) *or attachment of property* (in rem cases). The ct held that because property was seized after the judgement rather than before the judgement, the court did not have jurisdiction. The methods of obtaining jx have broadened since Pennoyer.
- Territorial Limits: Court in Pennoyer determined that a state cannot serve an individual domiciled in another state, unless that individual is within the state at the time served (called transient jurisdiction). This is no longer true because of the shift to “minimum contacts.”
- Terms
 - Appearance: If D appears in court, D waives any geographical jurisdiction objections (see FRCP 12(h)).
 - Special Appearance: D can appear only for the purpose of challenging jurisdiction, thereby not submitting to jurisdiction.
 - Full Faith and Credit: Clause in the constitution- every state must honor the judgements of every other state.
 - Geographic Location Jurisdiction (Modern Law) (gives court power over D)
 - State Long-Arm Statutes
 - Most long-arm statutes designate specific acts as warranting the exercise of

jurisdiction.

- Analysis:
 - Must look at terms and figure out what they mean.
 - Most courts say they will give the words of the statute their ordinary meaning.
 - Some overextend this reading. In **Grey v. American Radiator** the court that Illinois statute's provision for a "tortious act" covered the manufacture in Ohio of an allegedly defective valve that was shipped to a manufacturer in Penn and incorporated into a boiler made there, because the injury occurred within the state. This is a very broad reading that not all courts follow.
 - Must determine whether Ds activities fall within the terms of the statute.
 - If so, whether the exercise of jurisdiction in this case is constitutional.
 - Many states have a fallback position that as long as it is constitutional (doesn't violate due process) it is okay.

1. CA Civil Code _ 410.10- authorizes the exercise of jurisdiction so long as it does not violate the Constitution.

2. FRCP 4: authority of Fed. Cts to exercise jurisdiction comes from the state law in which it sits. 4(k) exceptions:

1. D is third party- even if local law does not permit service, a third party can be subject to jurisdiction if joined under rules 14 or 19.
2. If there is no place in the US where jurisdiction can be satisfied, but it is constitutional for the US to exercise jurisdiction, than the Fed Cts may do so.

3. Specific or Personal Jurisdiction

1. Specific Jurisdiction: asks whether it is appropriate for *this* case to be in the forum. Claims must be related to the minimum contacts with the forum.

2. Minimum Contacts:

1. **International Shoe**- held that to subject a D to a judgement in personam, due process requires only that "he have certain *minimum contacts* with the forum such that the maintenance of the suit does not offend *traditional notions of fair play and substantial justice*."

2. **Elements:**

1. Purposeful availment

2. Reasonableness

3. **Analysis:**

Did D receive benefits of the state?

Does the claim arise out of Ds "minimum contacts?"

What is the State's interest?

Balance the conveniences/hardships of D and P.

Purposeful Availment Requirement:

Hanson v. Denckla- Court held that there must be “some act by which D *purposefully availed* itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.

Requires that the court look for some voluntary action by D establishing a relationship with the forum that D seeks to benefit from.

Relates to a concept of foreseeability- whether what D chose to do was something that should have put it on notice it might be sued in the forum. Standing alone, however, reasonable foreseeability is not sufficient.

Found more easily if it is commercial activity rather than noncommercial activity. A court is less likely to find minimum contacts when D has not sought any commercial benefits from contacts with the forum (i.e. family law).

Examples:

D entered into a *long-term relationship* with the forum state.

D *served or sought to serve* the forum market.

D delivered products into the *stream of commerce* with the expectation that they would be purchased in the forum state (but additional conduct toward the forum may be required)

WWV held that the stream of commerce ends with the retail sale of the product, even if it is foreseeable that the purchaser will take the product to another state.

The circumstances under which a manufacturer will be found subject to jurisdiction in a state because its product was sold there remains unclear (compare Gray with Asahi).

D *targeted activities* or intended effects in the forum.

This is limited to wrongful activity outside the state causing injury within the state or commercial activity affecting state residents.

May not be applicable to all intentional torts.

Plaintiff must have felt the brunt of the harm of the intentional tort in the forum, and defendant must have expressly aimed its conduct at the forum.

Internet: evolving area. Same analysis applied.

Ability of forum residents to access site usually not enough.

Level of interaction and nature of website is relevant.

If the site is *passive* jurisdiction will not be found.

Even a Web page that permits interaction may not support jurisdiction if it is essentially “local” in

nature (see Millennium).

Reasonableness:

Criteria:

Burden on D of defense in the forum.

Interests of the forum state

in providing a forum to P.

in regulating the activity involved.

Relative burden on P of prosecution elsewhere.

Whether Ds activity in the forum is systematic and continuous.

The extent to which the claim is related to Ds local activities.

Shared interest of the several states in furthering fundamental social policies.

Interstate judicial system's interest in efficiency- the avoidance of multiple suits and conflicting adjudications.

Cases:

International Shoe- Upheld jurisdiction based on D's *systematic and continuous contacts with the State*, and because the amount of the claim was related to activities in the state (*contacts gave rise to the liabilities sued on.*)

McGee- *Single contact with the forum*. An insurance company (D) sent a contract for reinsurance to an insured in California. Because this contact was initiated by D and the claim arises directly out of this contact, California has jurisdiction over D.

Worldwide Volkswagen- Customers that perform the *unilateral act* of taking the product to the forum is not enough to exercise jurisdiction because there is no purposeful availment by D.

Gray v. American Radiator- *Stream of commerce*. Jurisdiction upheld over a component supplier whose product was sent into the forum state as part of a product manufactured by its customer.

Asahi- 4-4 split. 4 justices stick to stream of commerce view in WWV. 4 justices disagree. O'Connor's opinion indicated that stream of commerce is not enough, and that some additional conduct is necessary. Greater concern with foreign defendants- all justices agreed that it was unreasonable to exercise jurisdiction, because there was no Plaintiff or State interest in having the suit proceed in the forum.

Calder v. Jones- *Targeted conduct*. Looks to whether D has knowledge that the likely effects of its conduct are going to be felt in the forum. The author of an allegedly libelous story about a CA plaintiff was subject to jurisdiction in CA because CA was the focal point, both of the story and of the harm suffered.

Indianapolis Colts v. Metro- *Trademark infringement*- D must

have realized that using the same name as P would hurt P in the forum, so jx was upheld.

Green v. Advance Ross- Ct held that *fiscal impact* felt at headquarters not enough to support jx.

Burger King- *Is a K a contact?* K not necessarily enough, must still look to whether D sufficiently established a contact with the other party to justify subjection to jx in the forum. Here, this was an unusual K relationship because Burger King controlled almost every feature of the relationship, and it had a 20-year duration along with a choice of law clause making it easy to justify jx in FA where Burger King's headquarters are located.

Keeton v. Hustler- *Defamation case*. Ct upheld jurisdiction even though it seemed unreasonable to do so. P sued in New Hampshire only because SOL had expired in all other states. Court found that Ds regular sale of 10,000-15,000 magazines in the state constituted purposeful availment.

Kulko v. Superior Court- Ex-wife moved to CA then sued ex-husband there. The court held that ex-husband's act of buying daughter a ticket to move to CA was not sufficient to support jx because he did not purposefully derive any benefits from activities related to CA, and he had no other relevant contact with CA. Thus, he could not reasonably anticipate being haled into court there.

Millennium- Ds interactive website about its retail outlets in NC insufficient to support jurisdiction in Oregon because content was essentially local, and *when it became aware* of Ps trademark concerns, D posted a notice that it would not fill orders from Oregon. (Emphasis added to show why this differs from Colts case).

Special Due Process Issues

General Jurisdiction

Definition: the defendant is subject to suit on *any claim* in the forum.

Is a fallback to specific jurisdiction, it usually comes into play when Ds contacts with the jurisdiction and the claim sued upon is not sufficient for specific jurisdiction. Gen. Jx may be a fallback if there is enough connections and activities by D in the forum.

Individuals- Available in a person's domicile. One acquires domicile by being present in a state with the intent to make it one's home for an indefinite period.

Corporations:

State of incorporation

State where headquarters are located

Suits on unrelated claims in states in which they conduct

continuous and substantial activity.

Cases

Bryant v. Finnish- office in forum sufficient- upheld jx over a claim for injuries sustained in Europe based on D's operation of a small office in NY, even though D had no flights to or from American airports. (Broad view- trend is away from this)

Nichols- sales in forum not sufficient- had 17 to 21 employees regularly working in forum to market products, but court found this insufficient to support general jurisdiction. (Narrow view)

Helicopteros- purchase of equipment and execution of contract in forum not sufficient to support general jurisdiction.

Property Present

Shaffer v. Heitner- Held that International Shoe minimum contacts applies to in Rem jurisdiction.

Analysis:

Is it an assertion to a pre-existing interest in the property?
(True in Rem)

If not, is there a sufficient connection between the property and the claim? Jurisdiction is found where the claim relates to the duties of the owner. (Example- negligence in maintaining property causes injury).

Still must satisfy minimum contacts, but it is unusual for ct not to have jx if 2nd prong is satisfied.

Tangible Property- is located in a state if it is physically present therein.

Intangible Property- states may declare that intangible property is located within there jx if some transaction related to the property occurred within the state. When it is embodied in an instrument (i.e. paper) it is usually said to be located where the instrument is located.

Transient Jurisdiction

Ds can be served in the forum, in personam jx.

Due Process limitations:

D must be voluntarily and knowingly there.

D must be actually there.

Cannot be fraudulently induced into the forum.

Consent

D can consent to being served in the forum, minimum contacts analysis does not apply.

Forum Selection Clauses

Are limited by a review for “fundamental fairness.”

Carnival Cruise v. Shute- Clause on ticket (after purchase) that says if any dispute arises, it must be litigated in Florida. S.C. took freedom of K approach and upheld clause, did not address specific or general jx issues. But, Carnival could not say P must litigate in Afghanistan because that would be unreasonable and probably be seen as trying to deter people from instigating suits.

Notice

Rule: Notice must be reasonably calculated, under all the circumstances, to let all interested parties know of the action and afford them an opportunity to present their objections.

FRCP 4: conventional way is personal delivery.

Sometimes mail is deemed sufficient. CA law allows for this for a D outside of CA. Can do this in Fed Ct under FRCP 4 in CA- applies state law where it sits.

If can't identify the persons- can't do the impossible, but still must make reasonable efforts.

Litigating Jurisdiction

What D can do:

Object

FRCP 12(h)(1)- must challenge personal jx the first time you make a motion or it is lost.

By objecting to jx, one submits to the jx of the Court to resolve the question as to whether there is jx. Resolution of the Q may turn on factual disputes, which may call for discovery.

Problems:

If you object and win, you don't gain anything. You could have waited for default judgement and then object, thereby avoiding expensive discovery.

But if you wait for default, can only raise jx issue as a defense to full faith and credit. Therefore, you never get to litigate on the merits of the claim and defend the lawsuit.

If D loses, must go to trial. D can appeal, but when D gets to do this depends on the Ct system. In Fed. Cts, D must wait till the end of the case.

CA _ 418.010(c)- D has a time period to decide whether to seek immediate review of jx judgement in a Ct of appeal. If D doesn't, it is waived. If D

does, the suit can't go forward until that issue is resolved.

Venue

Venue v. Jurisdiction

Jurisdiction involves the power of the court to decide a case

Venue involves the proper place to bring the action.

1391

Forum is residence of D (broad for corporations)

All defendants must reside in the same state.

Place where a *substantial* part of *acts or omissions* giving rise to the claim occurred, or where a substantial part of the property is that is the subject of the action is situated.

This is different from jx minimum contacts analysis. Does not stand on whether there were sufficient contacts, but on the location where the event occurred.

Issue- where do events or *omissions* occur? Can be debated.

A district in which any D may be found, if there is no district in which the action may otherwise be brought.

D not a resident of any district

Events and omissions occurred outside this country.

Residence of Corporations _1391(c)

Corporations can be sued anywhere it is subject to personal jurisdiction. This is where the corporation is said to reside.

With _1391(c) personal jx and venue are the same because if jx is okay, than venue is okay.

Unincorporated Associations

Venue is proper in the place in which they are doing business.

Most cts say partnerships should be treated like unincorporated associations, although some older cases have used the residence of the partners to determine venue.

State Court

If you can't satisfy _1391 but really want to sue in a particular location- can go to the state courts. They have there own rules for venue.

Like the Fed Cts, State cts say that "aliens" can be sued in any district of the state. So, a P in CA can sue any D outside of CA in state ct.

Transfer

Moving cases out of where they can be filed under jx, venue, and due process can happen for one of two reasons:

1404-

For the *convenience* of parties and witnesses
in the interest of *justice*

a district court may transfer any civil action to any
other district where it might have been brought
(proper venue and valid personal jx)

Upon court order or motion.

P's initial choice of forum should be respected, and
*transfer is only proper when the balance of
conveniences strongly favors transfer.*

Forum selection clause- is a "significant
factor" in determining whether to tx the case
to the forum designated.

Forum Non Conveniens- A Fed. Ct. can throw a case out
(Ds motion) on grounds of inconvenient forum if the
appropriate forum is in another country.

Only applies to parties from outside countries,
because otherwise the cts can tx. Where P is
foreign, no deference given to Ps choice of forum.
Must be an adequate alternative forum.

Conditions have to be extreme to say legal
remedies in other countries are so
inadequate as to justify keeping claim in US.
The fact that the law in the more convenient
forum is less favorable to P usually has no
significant weight.

Phoenix Canada v. Texico- removal to
Ecuador not allowed because no legal
remedy for claim there.

Stronger showing must be made to justify dismissal,
D must show forum is *grossly inconvenient*.

Looks to private v. public interests-

Private factors considered:

Relative ease of access to sources of proof
Availability of compulsory process to
compel unwilling witnesses
Cost of obtaining attendance of willing
witnesses
Need to view premises

Public factors considered:

i) Local interest in having controversies solved
at home

- ii) Interest in having trial in forum familiar with the law to be applied

There are no venue problems in cases transferred from state courts to federal courts, because § 1391 only applies to cases filed in federal courts.

Choice of Law- In Fed. diversity jx cases, transfer could effect choice of law because Fed Ct's are required to look to the *choice of law rules* of the state in which it sits.

§ 1406- If a case is filed where venue is proper but jx is not, court can:

dismiss or
transfer to any place the action could be brought (strongly preferred).

No choice of transfer in state courts, can only dismiss.

Cases

Bates v. C&S Adjusters- P lived in Penn. P moved to NY. D mailed debt collection to P's old address which was forwarded to P. P sued in NY. D didn't object to personal jx. If it had, may have had an argument no jx. (No purposeful availment b/c they thought they were sending letter to Penn) therefore no venue under § 1391(c). Ct says this event (act) occurred at the place of injury- which is the place where P received the letter. CONTRAST: **Database v. Bellsouth-** letter sent claiming copyright infringement. Ct held that the letter does not constitute "substantial activity."
Piper Aircraft v. Reyno- *Forum Non Conveniens- Unfavorable change in law does not, by itself, bar dismissal.* Plane crash in Scotland, wrongful death action filed in CA. Tx to Fed ct, then tx to Fed Ct in Pennsylvania (jx lacking, tx under 1406(a)). Then dismissed under *Forum Non Conveniens-* foreign Ps and Ds, event happened in Scotland, witnesses in Scotland.

Subject Matter Jurisdiction (for Fed Ct, **created by Article III**)

Diversity

Constitution- (broad)

Article III, Section 2: Wherever there is *minimal diversity*, jx can be exercised.

Minimal diversity requires that only one P be of different citizenship from one D.

§ 1332- (narrow) Most of the time this applies. Constitution only comes into play when a party is relying on some other statute (i.e. interpleading).

Elements

Diversity of Citizenship

Must be complete diversity- no D can have the

same citizenship as any P.

Citizenship = Domicile:

physical presence

with the intention to remain.

Corporations- domicile is place it is incorporated as well as its *principle place* of business.

Partnership & Associations- citizenship of each partner/member must be diverse.

US national living abroad- No domicile within the US therefore cannot sue or be sued in Fed Ct on ground of diversity jx (even if she is a citizen).

Aliens- an alien admitted to the US for permanent residence is a citizen of the state in which he is domiciled.

Possible constitutional problems here because minimal diversity does not exist between two aliens.

Original jurisdiction- looks at citizenship on the date when case was filed. Thus, diversity is assessed at the time the action is filed.

Amount in Controversy

Ps claims must be over \$75,000. Ps claim must be made in good faith- there need only be some legal possibility of recovering the minimum amount. Some claims may be stricken from complaint if there is a legal reason.

substantive law has cap

does not allow punitive damages

punitive and compensatory damages must be proportionate.

Ds can use extraneous material to show Ps claim is worth a lot of money, even if Ps claim states otherwise, to remove it to Fed. Ct.

Exception

Family Law- judicial decision not to exercise Fed. Ct. jurisdiction in cases thought to be of paramount interest to the state (i.e. divorce, child custody, etc.).

FRCP 12(h)(3)- motion to dismiss for lack of subject matter jx can be brought up anytime. Not waivable.

Federal Question

Constitution (very broad) Article III, Section 2

Osborn v. Bank of US- If Fed. law is an *original ingredient* in the case, jurisdiction is allowed. Jx is okay even if the defense is the

Federal Q, and even if such defense is not even raised by D. Because this broad view applies to the Supreme Court, it often has Federal Q jx when the lower Fed. Cts. do not.

1331 (narrow)

Look to Ps complaint to determine it arises under federal law. A defense based on Fed Q is not enough.

Well-pleaded complaint rule (*Merrell Dow*)-P's statement of his own cause of action must show that it *arises* under Fed. Law or Constitution. Not enough that there is some federal issue in the claim- Q is whether the Federal law *has* to be brought up in order to state the claim..

The question is whether Ps assertions under federal law are properly there:

as a matter of substantive law
as a matter of pleading

A federal claim per se suffices- a claim created by federal law.

Exception- *Bell v. Hood*: a frivolous claim is not good enough.

But if it is found to be invalid, doesn't mean no jurisdiction (see Gibbs case).

Problem area- Non-Federal claim that turns on construction of Federal law. Complaint is based on state law, but there is reference to or reliance on federal law. Is this a case that arises under federal law? Merrell Dow 4-step analysis:

Is it a well-pleaded complaint?

Does the resolution of the fed. issue properly included in the complaint affect the outcome of the case?

Centrality concern- How significant is the Fed Q to the lawsuit? Must be a substantial Q on which the outcome of the case will turn.

Is there significant federal interest in how the issue will be resolved in this case?

Smith compared with Moore- Federal interest in Constitutionality of Congress Act much greater than one-time non-compliance with federal safety statute.

Trump card- main ground for decision in Merrell Dow- Implied cause of action analysis: If congress did not intend an implied private cause of action in fed. law, then its intention was to not allow a state claim based on the statute. To allow this claim in Fed Ct would flout the intention of Congress.

Highly debatable- if you take away the assumption of no private cause of action in law, then it becomes a good case to be in federal court.

Cases

Merrell Dow- P sued D based on Ds violating Food, Drug... Act by not properly labeling drug Bendectin (not warning against use by pregnant women), which caused harm to Ps subsequent children. Ps sued in Ohio, Ps from Scotland and Canada. D headquartered in Ohio. Under removal statute, a local D may not remove on grounds of diversity. Ds tries to remove on Fed Q. Ps don't want to remove because of risk on dismissal on Forum Non Conveniens. Both parties assume no private claim of action in Act. Court uses trump card to keep it in State Ct- said it would flout the will of Congress to allow Fed jx. COMPARE:

In Re Bendectin Litigation- Ps claimed that Act did give rise to implied causes of action, this was held sufficient to support federal Q jurisdiction. Appellate Ct said- until the S.C. holds that there is no implied cause of action under the Act, the opposite position cannot be deemed frivolous or insubstantial

Smith v. Kansas City- Claim was created on state law. The validity of an act of Congress was drawn into question. Because there was substantial federal interest in this question, the Ct upheld jx.

Moore- Claim based on negligence. The federal issue related to the employer's compliance at one time and place with a federal safety standard, and there was little federal interest in this isolated incident. No jx.

Supplemental Jurisdiction

Definition- A court exercising federal question jurisdiction has the power, under supplemental jurisdiction, to decide all issues in a case, not just the federal questions.

Effect- A Ct exercising supplemental jx can base its decision entirely on issues of state law. Where constitutional issues are raised, this is the preferable approach because courts try to avoid unnecessary decisions of matters of constitutional law.

Constitutional "One Constitutional Case" elements:

Claim must be within Fed. Ct. jurisdiction.

Common nucleus- between this claim and whatever else a party says belongs in federal court.

The claims must arise out of essentially the same facts and use basically the same evidence.

Common nucleus does not mean everything- there may be peripheral things that are important to one claim and not the other.

One Judicial Proceeding- the federal and non-federal claims must

be such that P would ordinarily be expected to try them in one judicial proceeding.

Once the courts power to hear the state claims is established based on the above elements, the court has the discretion whether or not to decide the claim (will dismiss and P can sue in state court).

Grounds used:

Court threw out federal claim.

State law claims are the main substance of the case.

Involves a tricky issue of state law.

1367 (more aggressive than other statutes- enacted to overrule Finely)

1367(a)- Goes to constitutional limit: Whenever a Fed. Ct. has jx over a claim than it has supplemental jx over all other claims that are so related that they form part of the same case or controversy under Article III of the Constitution. (Uses same elements as above) This includes claims that involve the joinder or intervention of additional parties.

1367(b)- takes back some of this broadness, makes specific limits for claims based on diversity jx. No supplemental jx over claims by persons made parties under FRCP 14, 19, 20, 24 when it would be inconsistent with diversity jx requirements. Affirms holding in *Owen v. Kroger*.

Rationale: If no such limitation, Ps could circumvent the requirement of complete diversity by suing only diverse potential Ds and waiting for them to implead other non-diverse, potentially responsible, parties.

Gaps in these limits (rule 20- permissive joinder): Thus, a majority of courts have held additional *plaintiffs* may be joined under the court's supplemental jx using this rule. Such a reading could undermine complete diversity requirement.

1367(c)- If jx is provided by 1367(a) and not taken away by 1367(b), the judge can still use discretion in certain circumstances to decline to exercise jurisdiction. Fed ct. does not have discretion on any other grounds:

The claim raises a novel or complex issue of state law.

The claim substantially predominates over the claims the fed. ct. has original jx over.

The fed. ct. has dismissed all claims over which it has original jx.

In exceptional circumstances, there may be other reasons for declining jx.

“Other Extraordinary Circumstances” are *rare*.

Cases

United Mine Workers v. Gibbs- Federal Q jx. P claimed D violated

fed. labor laws and committed the state law tort of interference with contract by pressuring customers of P not to employ his services. Both fed. and state claims arose from the same series of actions by D's agents. S.C. ruled that the federal ct could grant P judgements on state law claims even if it decided after trial that P had not established a violation of Fed. law.

Owen Equipment v. Kroger- P sued a power district for causing the death of her husband when a crane hit a high tension wire. The power district impleaded the operator of the crane and later obtained summary judgement against Ps claim. P amended her complaint to assert a claim against the operator of the crane, but there was no diversity between P and the third-party D. S.C. held that there was no jx over Ps claim against third-party D.

Finley v. US- Even where there was federal jx over a federal claim against one D, the S.C. held that there could be no jx. over a related non-federal claim against a non-diverse party because "a grant of jx over claims involving particular parties does not itself confer jx over additional claims by or against different parties." This was nullified by _ 1367.

Removal

Constitutional- no real provision in the constitution

1441- If P could have filed in federal court than D may remove to federal court.

_ 1441(b) limits this- removal on grounds of diversity when the D is local is not allowed. No prejudice would be involved.

P may try to defeat removal by suing non-diverse Ds. May work, but D can show can show that the other Ds were fraudulently joined- must show that there is no sufficient claim against them.

There is a built-in preference for removal under this statute, a party who wants it in Fed. Ct. will get it if Fed. Ct. has jx.

Removal Procedure-

Timing _ 1446(b)- 30 days.

30 days after *formal service* (Murphy Bros).

Exception- If the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by D of a copy of an *amended* pleading, motion, order, or other paper from which it may first be ascertained that case is removable.

Lovern fudges this a bit. The case was originally removable (no later changes), D was not in position to know if it was removable based on the complaint. Court held that clock only where an initial pleading

reveals a ground for removal otherwise it doesn't start running until D finds out.

Remand

Usually forbidden except for when the case was improperly removed.

— 1447(e) authorizes courts to permit the addition of non-diverse new defendants and remand back to state court.

Judges should look to see if this is proper under fraudulent joinder standard- if no possible success against added Ds, cts will deny joinder.

Cases

Murphy Bros- — 1446(b) says that the time to remove starts when D receives a copy of the complaint through “service *or otherwise*.” However, the S.C. held that the 30 days do not begin to run until D is formally served.

Erie Doctrine (determining whether to apply state or federal law)

Background

Rules of Decision Act (1789)- The laws of the states, except where the Constitution or Acts of Congress otherwise require or provide, are the rules of decision in civil actions in the cases where they apply.

Question as to whether state common law also constituted laws under this act:

Swift v. Tyson- state “laws” do not include state common law. Fed. Cts followed their own view of what the “general” common law was or should be. This caused different rules of law to be applied to the same transaction in state v. federal courts. Overruled by Erie.

Erie Railroad v. Tompkins- As to substantive matters, Fed Cts must follow applicable state common law principles rather than developing and applying its own general common law.

Rule: In diversity or supplemental jx cases in the federal courts, state substantive law and federal procedural law govern.

Major issue: What about laws that aren't clearly substantive or procedural? Do we apply the state law or federal law? Analysis (in more detail below):