

PERSONAL JX BASEBALL

1. Does the states LONG-ARM STATUTE cover this claim?

- A. L/A Statutes authorize jx over out-of-state Ds,; they can limit jx narrowly (like NY) or extend it as far as constitutional limits (like CA)
 1. CA advantage of self-adjustment- if fed courts reinterpret constitutional limits, state long-arm automatically corresponds
- B. Federal Courts borrow the L/A statute of the state in which they reside
- C. Enumerated Statutes
 1. only authorize jx over out-of-state Ds with specifically enumerated types of contacts falling within constitutional limits
- D. Two Steps
 1. Does the applicable statute authorize jx?
 2. Would it be constitutional to do so?
 - Example: BLUE NOTE Café, trademark infringement arose over internet, NY long-arm statutes excluded it.

2. Is the D subject to personal jx via TRADITIONAL BASIS?

- A. CONSENT: has the D consented to personal jx?
 1. contractual consent expressly agreed to in K, like a forum selection clause (Carnival Cruise Lines) (contracts of adhesion exempted)
 2. consent by appearance if D fails to raise objections to personal jx or fails to make special appearance
 3. de facto, implied consent
- B. DOMICILE: is the D domiciled in the forum state?
 1. a person is domiciled where they live and intend to remain permanently
 2. a corporation is domiciled where they are incorporated and where they're principle place of business is.
- C. PRESENCE: was the D present in the forum state while served?
 1. Burnham service of process on a D while present in the forum state establishes personal jurisdiction (gotcha service)

3. Is the D subject to GENERAL JX in the forum?

- A. Have D's contacts within the forum state been so CONTINUOUS, SUBSTANTIAL, AND SYSTEMATIC that the forum can exercise personal jx over `em for any C/A?
- B. DISTINCT FROM FORUM STATE

4. If none of above, does the exercise of personal jx satisfy Constitutional right to due process?

- A. **MINIMUM CONTACTS** International Shoe: Does the D have sufficient contacts with the forum state such that maintenance of the suit does not offend notions of fair play and substantial justice?
 1. World Wide Volkswagen: Has the D purposefully availed himself of the rights and privileges of the forum state (thus invoking the benefits and protections of its laws) such that it is *foreseeable he will be hailed into court there*?
 2. Purposeful availment includes:
 - solicit contracts in forum state (McGee v. International Life)
 - D solicits and maintains ongoing business relationship with P in forum state (Burger King)
 - acts outside forum state *with effects* in the forum state (publishing defamatory remarks, harming reputation in forum state- Calder v Jones)
 3. Activities held not to be "purposeful availment"
 - mere *unilateral* acts of P in forum state toward out-of-state D (Hanson v. Denckla)
 - sale of car outside forum state that travels into forum state (WWV)
- B. Is the C/A **RELATED** to the forum state?
 1. Shaffer v. Heitner: all exercises of jx must meet minimum contacts standard, no em rem jx!
- C. exercise of personal jx **REASONABLE?** WWV TEST:
 1. How burdensome would it be for the D to defend this suit?
 2. What is the plaintiffs interest in obtaining relief in this forum?
 3. What is the interest of the forum state?
 4. Would it be the most efficient way of solving the case between different forums?
 - Products liability case: stream of commerce split:
 - If it is foreseeable that the product may hit the forum state and the company intends to benefit from the forum state, then purposeful availment is found. May be evidenced by advertising, co. channels of communication (web, help lines), distribution designed to get product in forum state
 - Is mere placement in stream of commerce, with awareness that products were ending up in forum state enough? plurality NO. Asahi

5. Attacking Jx

- A. **Direct attack**, Rule 12
 1. Put it as an affirmative defense *in answer*

2. Appear in court and make motion
 - can be coupled with merit based objections
 - must be made immediately or Waived!
3. Appear in court and make special appearance
 - appear before the court at the beginning of the action for the sole purpose of challenging its jx
 - doesn't not suffice for jx under "presence" principal, unless D makes the mistake of raising defenses going to the merits
 - NO SPECIAL APPEARANCES IN FED COURT, and only a minority of states still allow it
 - Exception: In Calif if you don't attack personal jx in a special appearance, you waive it at the general appearance

B. Collateral attack

1. ignore suit entirely
2. Risk: you are bound to default judgment if jx found to be valid

Four Doors to Subject Matter JX

A. General Principals of SMJ

- a. Art III, §2 of constitution lists categories of cases federal courts may hear
- b. Federal courts are "*courts of limited jx*"
- c. Party invoking federal jx carries burden of proving it exists
- d. Lack of Subject Matter jx can never be waived, can be raised at any time, and may be raised Sua Sponte
- e. Article III storehouse: Constitution enables more power than congress authorized.

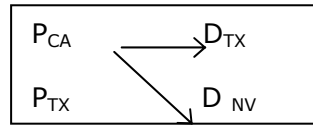
B. First Door: Federal Question Jx,

- a. The Constitution limits federal courts to hear only cases "arising under this constitution" and "the Laws of the United States..." BUT
- b. Federal courts can only assume that portion of the Article III §2 powers which Congress, by statute, entrusts to them. "Congress giveth, and Congress taketh away"
 - i. Arising under jx only occurs if federal law is necessary to prove the plaintiff's claim
 - Motley- couple sued railroad after it rescinded free passes. Supreme Court held lack of jx, because C/A was breach of contract, only *defense* was "arising under".
 - not enough that P refers to fed law in complaint, fed law must be *essential* to the claim
 - test: "suit arises under the law that creates the C/A"
- c. Issues so uniquely national in character that they could only be Fed Q (1) International relations (2) Indian rights (3) Air carriers (4) Fed gov't procurement contracts (5) Interstate tariffs
- d. Complete Preemption (fed law *displaces* and then *replaces* state law)
 - i. ERISA (Employee Retirement and Income Security Act)
 - ii. Copyright, Patent
 - iii. Railway Labor Act
 - iv. Labor Mngmnt Relations Act, Does resolution of the claim require interpretation of the CBA?
 - YES: Breach of K, Wrongful Discharge, Terms & Conditions
 - NO: Incidental reference, Non-negotiable rights, non- union employees
- e. Defensive Preemption: No C/A for
 - i. Cigarette labeling
 - ii. Medical devices
- f. Artful pleading doctrine: federal claims are federal no matter how P labels them.

C. Second Door: Diversity Jx

- a. So long as the P sues a diverse D and the claim is more than \$75,000, the federal court will have subject matter jx on the basis of diversity
 - i. Congress' statutory grant is narrower than Constitution enables, in that it includes amount in controversy requirement
 - ii. Complete diversity rule: all Ps are from different states than all Ds.
- b. State Citizenship, for purposes of diversity is defined as domicile, that is the state where P has take up *residence with the intent to reside permanently*.
 - i. If P domiciled in more than one state, domicile can depend on their subjective intent.
 - ii. Snapshot of diversity is at the time action is filed.
 - iii. To change domicile, D must (1) have intent to stay there and (2) get there
 - iv. US citizen domiciled abroad is a stateless alien
 - no rt to diversity jx,
- c. Corporate Citizenship, Split of authority
 - i. Nerve center: where corporate officers work, or where decisions are made
 - ii. Bulk of Activities test (and 9th Cir. Rule): where most of sales, manufacturing, or employes profits derived from)
 - If Company is a far flung corp., with a little bit of business everywhere and no dominance anywhere, nerve center becomes default.

iii. Complications



- where each claim has diversity but case as a whole doesn't there's a split: court may go by claim or whole motion.
- Subsidiaries not tagged with parent companies domicile, unless established as alter-ego of it.
- If company has gone out of business, use the last place of business
- Partnerships? Every artificial entity other than the corporation takes on the citizenship of each of their members.

Rule	Parties	Fed Diversity Jx?
1	A v. A	No
2	A v. A + Citzn	No
3	A v. Citzn	Yes, alienage
4	Citzn CA + A v. Citzn TX + A	Yes, diversity + alienage
Saddeh	Alien v. Resident Alien	No

iv. Representative Actions:

- In cases where the party in a suit represents children/insane, dead (called executor), retarded (called conservator) *refer to domicile of true party*, that is the party being represented
- Trust claim: look at trustee not beneficiary
- Insurance claim:
 - a. Majority: look at insured person, insurance company is not a party if c/a is regarding insured person (beware: t/f question confusing insurance company conduct with insured's conduct)
 - b. Direct Action: minority of states require insurance company to be defendant, with diversity of both insurance co. and insured person counting. (beware: all state is domiciled everywhere, gen. jx)
- Class action: look at named representative only
- Substituted Parties: no new snapshot
- Assignment (Party, assignor, sells legal rights to another, assignee): look at citizenship of assignee, aka buyer. Except:
 - a. If it's a collusive assignment (done improperly to create diversity), then it doesn't count
 - b. If assignment occurs mid-suit, majority of courts hold no new snapshot.

v. Beware: on exam, if P or D is "living" someplace, note the *assumption* that they are domiciled there (1/2 pt).

d. Amount in Controversy

- To dismiss for lack of A/C, must have legal certainty that P can't recover the amount. P gets benefit of doubt unless:
 - Diminutus lawsuit, ex. value of fraudulent term paper.
- Class action: A/C must be satisfied by each named member
- Multiple Ps: each P must satisfy A/C, unless
 - Right held only in combo (ex. common prop)
- One P with multiple claims: aggregate claims
- Unknown Ds: ignore their domicile; when identity known, new snapshot.

D. Third Door: **Removal Jx**

1. §1441 (a)

- D can ONLY remove "where District Courts of the US have *original Jx*"
- citizenship of unknown Ds is disregarded for purposes of removal
- only remove TO "district & division embracing the place where the action is pending"

2. §1441 (b)

- Arises under Fed Q, for removal
 - Concurrent Jx*: claims that can be heard in either federal or state court. If statute doesn't say, "must be brought in federal court" then it is concurrent.
 - Exclusive Jx*: claims that can only be heard in a federal court= COPYRIGHT, PATENT, A *fed court is not precluded from hearing a case because the state court lacked Jx* §1441 (e) If D doesn't remove a copyright case, court must dismiss!
- Parties Diverse (A/C= \$75,000)
 - "Local Defendant Rule"=if D is sued in his home state or "none of the parties in interest properly joined **and served** as Ds is a citizen of the of the state where the

action is brought." BEWARE: all *unserved* Ds count in diversity calculations, here only all *served* Ds need join in removal.

3. §1441 (c) when a claim is removed, all Supp claims go with it; Cases are removed, not claims
 4. §1441 (d) actions against a foreign state are removable, 30 day limits can be extended
 5. §1441 (e) You can remove a case to Fed Court even if (really because) the state court had no jx (as opposed to old law which required dismissal and refilling)
 6. §1442 US employes in trouble for acting on behalf of the govt. may remove
 7. §1442 (a) Members of the armed forces in trouble while acting as agents of govt. may remove
 8. §1443 you can remove cases where D is denied his civil rights, or D who thinks he acted according to a civil rights law
 9. §1445 actions you can bring in Fed Court, but you *cannot remove them*
 - a. against railroads
 - b. against carriers regarding shipments
 - c. arising under workman's compensation laws
 - d. arising under Violence Against Women Act
 - e. others (like the 1933 Securities Exchange Act) where statute expressly prohibits removal
 10. §1446 Procedural
 - a. Beware
 - i. removal w/in 30 days of proper service to D (SPLIT: whether first D or restart clock with each new D served)
 - b. Continuance:
 - i. Notice must include all pleadings, process and other papers on file in the state action
 - ii. Little interruption: like moving the Red Sox in 2nd inning to Pac Bell Park, and telling them to finish the game under the new rules.
 - iii. Burden on D to discover & *prove in filing*, grounds for removal - fill in holes for court.
 - c. Diversity Jx: 30 Days from "receipt of service" to file notice of removal
 - i. If A/C unclear, D has 30 days from "paper in the case" - deposition, complimentary copy, etc that declares A/C
 - ii. If new D joined to state case, making it diverse, D has 30 days from amendment EXCEPT: after 1 year (from receipt of service) courts won't remove on diversity
 - iii. Receipt of Service= proper service of state court complaint, no extensions counted, no complimentary copies counted, nada.
 - iv. Original Jx: removal can occur at *anytime*
 - d. IF new D joined to already removed case, therefore destroying diversity, court has discretion to remand or deny amendment
 - e. IF D counter claims, P CANNOT remove, because *only original D can remove*
 11. §1447 Remand
 - a. Like removal, continuous
 - b. Lack of Original Jx: can remand at anytime
 - c. Procedural Defects: must remand within *30 days*
 - i. Removal filed 31 + days after receipt of service of 1st served
 - ii. Local D, served, was allowed to remove
 - iii. Removal one year after commencement
 - iv. Failure of all Ds to join in Diversity (*regardless of service*)
 - v. Parties contractually agreed not to remove= waiver
 - d. "Sham Joinder"- Ds added to get Diversity. all Ds must be held proper "as a matter of law" ex: if employment K with company, boss not appropriate D
 - i. If, after removal, P seeks to join additional defendants whose joinder would destroy subject matter jx, court must either deny joinder or remand.
- E. Fourth Door: **Supplemental Jx**
- a. Supplemental Jx gets additional claims/parties to court when you *already have a claim there*. Rule: as long as the complaint sets forth the basis for subject matter jx, the district court may adjudicate claims that are transactionally related.
 - b. *pendant jx* is when P wants to bring state claims in federal court, *ancillary is* when D wanted to do it (inclusion of counter claims, cross claims, and other claims (rules 13, 14, 24) arising from the same transaction and "logically related" to main claim.)
 - c. Article III §2 of Constitution grants jx over *entire cases, not individual claims*
 - d. Refusal to hear a claim results in a dismissal but the claim can be filed separately in state court.
 - e. **§1367**
 - i. (a) Federal Questions Claims: Supp Jx is valid over all claims forming part of the same case or controversy under Article III, including the joinder or intervention of additional parties
 1. Fed claim doesn't have to be successful
 2. supports new claims and new parties
 3. transactionally related= common nucleus of operative fact

4. beware shame claims (ex. boss slanders guy's wife while firing him, can't join boss as P in claim for wrongful firing, or failure to pay overtime can't be joined with failure to pay bonus)
 - ii. (b) No supp jx over claims inconsistent with §1332 (Diversity) when plaintiff adds new parties under Rules 14, 19, 20, 24
 1. doesn't apply when claim/new parties asserted by Defendant (counterclaims and cross-claims)
 2. P cannot use Supplemental Jx to get around diversity. No automatic Supplemental Jx via rules 19 & 20 if new D not diverse.
 - SPLIT: read literally (B) prohibits a P from adjoining the other (?) when 2 Ps are suing the same D (one diverse, one not), but read teleologically, Congress obviously didn't mean to defeat diversity
 - SPLIT: read literally (B) omits Rule 23 on class actions, so that on all Ps be joined defeating diversity. Read teleologically, it's implicitly included.
 - i. (C) Discretion: reasons for a judge to decline to hear a pendant claim
 - Is there novel or complex issues of state law?
 - Does state claim substantially predominates over federal claim?
 - Has district court dismissed all claims over which it had original jx?
 - Exceptional Circumstances (ex. would hearing the cases together confuse the jury?)
2. **Steps**
- a. Does the court have constitutional power- does it arise from the same nucleus of operative facts?
 - b. Is there statutory grant of jx over the related claim?
 - c. Is court exercising discretion in hearing claim?

VENUE

1. §1391 **(a)** Diverse parties and **(b)** Non-diverse parties; Venue authorized in:
 - a. any district where any D resides (read: domicile), if all Ds live in the same state
 - if D1 is from Northern Dist of CA and D2 from Southern Dist of CA, no venue in Central Dist of CA
 - b. district in which a substantial part of:
 - the events or omissions giving rise to the claim occurred, **OR**
 - property under issue is located
 - c. district in which any:
 - D is subject to personal jx, (*Diverse Parties*) **OR**
 - district where any D may be found, (*Non-Diverse Parties*)
 - d. beware!
 - found = served, (possibly found there if D subject to personal jx there)
 - C is Last Resort! Only applies if there is no district in the US with proper venue under a & b
2. §1391 **(c)** Corporate Residence: for purposes of (a) and (b), a DEFENDANT company is considered to reside in every district there is Personal Jx, minimum contacts. In states with more than one district, address the Personal Jx of *each* district separately.
3. §1406 Improper Venue Transfer
 - a. If case is filed in the wrong district D uses:
 - Motion to transfer, **OR**
 - Motion to dismiss
 - b. Probably No sua sponte, depends on whether waived if D doesn't object, right to object waived
 - c. Always includes transfer of law
 - d. You can transfer even if you don't have ppx, but must have ppx to place your transferring to
4. §1404 Convenience Transfer
 - a. gives courts discretionary authority to dismiss (transfer) for the convenience of parties, witnesses and *in the interest of justice*
 - b. Does not include transfer of law, because that would encourage forum shopping
 - c. Sua Sponte (and by motion?)
5. Procedural
 - b. Venue is privilege of D and is waived if D fails to raise it as a defense in her answer or if D signs K with *forum selection clause*, no *Sua Sponte*
 - c. "local actions" = actions relating to land must be prosecuted in the district where the land lies
 - d. D has 30 days from service to bring transfer of venue motion
 - e. Don't forget to check! New venue must have:
 - Subject Matter Jx (Fed Q or Div with A/C)
 - Proper Venue
 - Personal Jx over all Ds

SERVICE OF PROCESS RULE 4

(a) **Form:** summons should... be addressed to P's attorney or P... state time within which P must appear and defend

(d) Waivers of Service

(1) waiving service of process doesn't waive objection to venue or jurisdiction

(2) (A) shall be in writing, addressed to officer/manager subject to service

(B) first class mail or other reliable means

(C) accompanies by complaint

(F) allow reasonable time to respond...minimum 30 days for US addresses, 60 for foreign addresses

(3) D that waives allowed 60 days to submit answer to the complaint or 90 days for foreign addresses from date waiver request was sent

(4) action shall proceed as if service was done on date of filing of waiver

(5) D that chooses not to waive service must pay cost of service & resulting collection (plus attorney fees) unless, infants/incompetent, govt. or foreign govt.

(e) Service within US

(1) by using laws of forum state or state where service is effected

(2) delivering it to D OR to Ds dwelling/abode w/person of "suitable age and discretion" that resides there, OR to an agent authorized to receive SoP.

(f) Service in foreign country

(1) by Hague Convention, OR

(2) (A) according to law in that country

(B) as directed by foreign authority

(C) unless prohibited by law of country (i) personal delivery (ii) mail w/signed receipt

(h) Corporations: delivery to officer, managing or general agent, or any other agent authorized by law, and by mail if agent authorized by statute to receive it or by (e) (1) above

(i) (1) if serving the govt. must serve US attorney in district or US Attorney General, if attacking order of officer or agency then also by sending copy registered mail to officer or agency sued.

(2) if serving an agency or corporation or officer or employee of US gov't

(k) (1) service of summons or filing of waiver establishes jx over D if

(A) D subject to general jx in the state where the district is located

(B) D is joined via Rule 14, 19 and served within 100 miles of place from where summons issues (bulge service)

(C) D is subject to 1335 (?)

(2) service of summons or filing of waiver establishes personal jx if D not subject to jx in any state and claim is Fed Q. (aggregates person's contacts with US like its one state to get jx)

1. ERIE

Step 1, FRCP on Point:

1. Does the FRCP violate the REA?
2. Split of authority:
Is the state rule irreconcilable?, or
Does the FRCP occupy the filed of this specific procedure?

Weighing Analysis:

Step 2, Twin Purposes of Erie:

Does this kind of law encourage forum shopping?
Would application of the Fed Procedural Rule lead to inequitable Administration of the Justice?

Step 3, Outcome Determinative:

Does the "procedural rule" go to the heart of recovery or does it simply regulate manner and mode?

Step 4, Strong Countervailing Fed. Interest:

Is there a strongly rooted federal interest (Constitutional) which outweighs the state interest in using their rule?

Step 5, Is there a hidden substantive goal behind the state procedural rule:

Would this goal be defeated if the court applied the federal procedural rule?