

**NOTE:** If a fact pattern is strongly indicative of a case, put down the case name!!

## Personal Jurisdiction

### a. Long-Arm Statute

#### i. State

- 1) **Constitutional Authority** -- State long arm statutes are bound by the Constitutional limits of due process.
- 2) **Analysis** -- Ask first if the personal jurisdiction issue is within the long arm statute.
  - a) Yes: Proceed to due process analysis
  - b) No: No Personal Jurisdiction (will probably never happen on an exam)

Long arm statutes can only limit the scope of P/J

#### ii. Federal

- 1) **Federal "Long-Arm" Statute** -- FRCP rule 4(k)(1)(A)

### b. General Jurisdiction

If a court has general jurisdiction over a defendant, any claim can be filed against her.

#### i. Natural Persons

General jurisdiction is available in the state of a natural person's domicile.

#### ii. Corporations

- 1) **State of Incorporation**
- 2) **Principal Place of Business (i.e. Home Office)**
- 3) **Substantial Activity**
  - a) Systematic and Continuous -- To establish general jurisdiction based upon a corporations substantial activities within the forum there must have been systematic and continuous contacts with the forum (Helicopteros).
    - i) Analysis -- Consider the contacts "*in toto*" (in entirety) versus as discrete contacts.

Helicopteros did not do this but Fairman thinks they should have

### c. Specific Jurisdiction

#### i. The Shoe Test (*International Shoe*)

A two prong approach:

- 1) **Minimum Contacts** -- Seeks to evaluate the quality and nature of the contacts that the defendant had with the forum. Only one contact can be enough (McGee)
  - a) Purposeful Availment (Hanson) -- A defendant must have purposefully availed itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.
    - i) Foreseeability -- Defendant's conduct with respect to the forum state must be such that he should reasonably anticipate being haled into court there.  
Note: Simply having a K is not enough!! (Burger King)
    - ii) Relation of Claim -- Contacts with the forum must be related to plaintiffs claim.
    - iii) Inconvenience -- to the defendant cannot outweigh purposeful availment.
  - b) Stream of Commerce -- Merely putting something into the stream of commerce is enough to establish that the defendant purposefully availed itself to the privilege of conducting activities within the forum state.
    - i) Stream of Commerce Plus -- Alternative view that something more than just placing something into the stream of commerce is required. Could be (among other things):
      - (1) Designing a product for the forum
      - (2) Advertising in the forum
      - (3) Providing customer service in the form
      - (4) Marketing the products through sales agents in the forum
- c) Zippo Test -- A special analysis for use with websites.
  - i) Spectrum Analysis -- The level of interactivity of the website is evaluated on a spectrum. On one end the site is completely passive (no jurisdiction) and on the other the site is completely active (jurisdiction). Analyze the facts for the level of interactivity and make a call one way or the other.
- 2) **Fair Play and Substantial Justice** -- Does the assertion of personal jurisdiction comport with the traditional notions of fair play and substantial justice? The courts evaluate five principals (Asahi):
  - a) Defendants burden -- The interests of plaintiff and forum will often justify jurisdiction even with severe burdens placed upon the defendant.
  - b) Interests of the forum
  - c) Interests of the Plaintiff
  - d) Efficiency
  - e) Policy

\*\*SOC Must be Related to the claim  
\*\*Use SOC to establish purposeful availment!

Plaintiff is entitled to forum choice

## d. Miscellaneous Personal Jurisdiction Issues

### i. Rule 4 -- Summons

- 1) **Rule 4(c)2** -- Person served must be 18.
- 2) **Waver of Service, Rule 4(d)** -- Waver provides a carrot (get more time) and a stick (pay the cost of your service if you don't wave) process. Defendant has 30 days to wave and 60 days to file a responsive pleading. Defendant does not give up right to fight P/J or venue by waving.
- 3) **Territorial Limits of Acceptable Jurisdiction, Rule 4(k)** -- A federal court can generally hale a defendant if state courts in the state where the federal court is located also have jurisdiction over that defendant.----> the federal court's jurisdictional reach is equal to that of a trial court in that state.

### ii. Transient Jurisdiction

Personal service within the forum satisfies due process (**Burnham**)

### iii. Consent (Forum Selection Clauses)

- 1) **Forum Selection Clause** -- A forum selection clause, if proper, trumps all due process analysis (**Carnival**).
- 2) **Applicability** -- The court will determine whether a forum selection clause is applicable:
  - a) Determination is based on a question of *fundamental fairness*
  - b) It presumably must be pretty unfair for a court to nullify a forum selection clause (**Carnival Cruise Lines** -- Big cruise line against little Washington couple. Forum selection clause enforced)

### iv. Notice

A necessary and fundamental requirement of due process in any proceeding is notice that is reasonably calculated to apprise interested parties of the pendency of the action.

- 1) **Mullane** -- A method of service of process must either be 1) reasonably certain to provide actual notice, or 2) the lesser of several evils

## e. Venue

### i. General

- 1) **Definition** -- Venue specifies a specific court within a jurisdiction where parties can litigate. The venue analysis often collapses into a jurisdiction analysis.
- 2) **Unwritten Rule** -- The rule of venue that is not in the statute is "venue for one is venue for all"

### ii. 28 U.S.C. §1391, Model for State Venue Statutes

- 1) **Structure:**
  - a) Diversity Only Claims
  - b) Non-Diversity Cases, or Federal Question Type Cases
  - c) Special Part for Corporations
  - d) For Aliens
  - e) And f) Governments

### iii. Rule 12 Motions

- 1) **Rule 12(b)(3) Motion** -- Motion for improper venue. Can be waved, see below.
- 2) **Waver** -- Just like with personal jurisdiction, a defendant's right to proper venue can be waved under FRCP rule 12(g) and (h) if not made an issue before the answer.
- 3) **Sua Sponte** -- Rule 12(h)(3) specifies that a federal court may challenge SMJ defect sua sponte (on its own).

### iv. Forum Non-Conveniens (Forum Not Agreeing)

- 1) **General Rule:** A court may dismiss a case if there is another forum that is more appropriate for the parties.
- 2) **Gilbert Factors** -- The courts balance several factors to determine if dismissal is appropriate:

Public Factors

  - a) Administrative -- Court congestion
  - b) Local interests -- having localized controversies at home
  - c) Substantive Law -- How familiar is the forum with the governing law?
  - d) Conflicts of Law -- Potential for problems arising from conflicts of law or with application of foreign law.
  - e) Local Citizens -- Don't want to burden citizens in an unrelated forum with jury duty

Private Factors:

  - a) Sources of proof -- relative access to source of proof
  - b) Getting Unwilling into Court -- The availability of compulsory process for attendance of the unwilling.
  - c) Willing Witnesses -- Cost of attendance
  - d) Going on Location -- Possibility of viewing premises if relevant to the action.
- 3) **Resubmittal** -- Once the case is dismissed for forum non-conveniencs the burden is on the plaintiff to resubmit the case to an alternate forum (it is not automatic).

## Subject Matter Jurisdiction

★ **Note:** You may see a fact pattern with only 1 issue (diversity, fedQ, or Supplemental). Need to include a brief statement for those jurisdictional basis not present identifying why they don't exist.

### a. Removal

#### i. 28 USC §1441(a)

- 1) **General Grant of Removal** -- Defendant (only the defendant) can remove from state court pursuant to §1441(a). Federal district court must have original jurisdiction (diversity or Federal question).

#### ii. 28 USC §1441(b)

- 1) **Applicable to Diversity Only** -- Removal is not available if any defendant is a citizen of the forum because to allow that would go against the rationale for diversity jurisdiction. From a strategic perspective, a plaintiff could try to sue a defendant in his home state to anchor the case there.

#### iii. 28 USC §1446

- 1) **Procedure for Removal** -- The procedure moves quickly.
  - a) General Procedure
    - i) *Notice* -- Defendant signs a notice for removal
    - ii) *Then-and-Now Rule* -- The defendant must allege that the amount in controversy is over \$75,000 both "then and now"
    - iii) *Timing* -- Defendant must file within 30 days of when the case becomes removable with an absolute cap of 1 year.
  - b) Improper Removal -- If removal is improper the plaintiff must make a motion to remand under 28 U.S.C. §1447(c)

### b. Federal Question Jurisdiction

#### i. 28 USC §1331

- 1) **The Rule** -- The district courts have original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the United States.
- 2) **Well Pledged Complaint Rule** (*Mottley*) -- The courts look for a federal question on the face of the complaint, as filed by the plaintiff. If the claim does not state a federal question, then there is not federal question. Anticipated defenses are not enough to establish a federal question.

### c. Diversity Jurisdiction

#### i. Diversity -- 28 U.S.C. §1332

- 1) **The Rule of Complete Diversity** (*Redner*) -- No party on one side of the "v" may be a citizen of the same state as any party on the other side of the "v." This rule comes from an interpretation of §1332.
  - a) Practical Note -- If a party is alleging diversity they must allege citizenship. It is not enough for the party to say something like the other party worked in X.
- 2) **Establishing Citizenship: Domicile** (*Gordon*) -- Domicile is established by a two part test:
  - a) Residency
  - b) Intent -- Intent to remain indefinitely.
    - i) *Intent to Remain* -- is established objectively

**Note:** Once domicile is established, it remains until a new domicile is established.
- 3) **Aliens**
  - a) Originating Country -- Aliens are all from the same "country." Thus an alien from England is the same as an alien from France.
  - b) Permanent Resident Alien -- A permanent resident alien is considered a citizen of the state where they are domiciled.
  - c) Alien Anchor -- A permanent resident alien cannot be the anchor of a case (*Saadeh*). This is an interpretation of §1332(a)(2) where the statute is used only to limit jurisdiction, not expand it.

**Note:** Some courts take the opposite view on this -- *Saadeh* was only a circuit court decision.
- 4) **Amount in Controversy**
  - a) General Rule -- A plaintiff's good faith claim for more than the amount required controls unless it appears to a legal certainty that the claim is really for less.
  - b) Injunctions -- Injunctions do not ask for a specific dollar amount. How then are they quantified?
    - i) Value of the injunction to the plaintiff
    - ii) Cost for the defendant to comply with the injunction
    - iii) Value or cost to the party that invoked the federal jurisdiction (P. filing or D. removing)

**Note:** Courts will sometimes have one of the above as a rule or use all of the above

- c) **Aggregation**
  - i) One Plaintiff, One Defendant -- Plaintiff can aggregate claims
  - ii) Multi Plaintiff, One Defendant -- Cannot aggregate when claims are separate and distinct
  - iii) Diversity Class Action -- Every class member must have a claim in excess of \$75,000 unless this rule is modified by §1367 (The rule of **Zahn**)
  - iv) Counterclaims -- Two situations:
    - (1) *Compulsory* -- Can be heard regardless of the amount
    - (2) *Permissive* -- Need independent jurisdictional basis.
  - v) Punitives? -- Generally: cant be aggregated but the courts are split in this area.

#### d. Supplemental Jurisdiction

##### i. Historic Supplemental Jurisdiction

###### 1) Important Historic Terms

- a) Pendant Jurisdiction (**Gibbs**) -- If there is a federal question claim to anchor the case then state law claims may also be added as long as the arise from a common nucleus of operative fact.
- b) Ancillary Jurisdiction -- Applies in diversity actions, when a party brings an action -- that is "logically related" to the initial claim -- that would otherwise destroy diversity (i.e. If there is a federal diversity claim and the defendant impleads a third party who is not diverse).
- c) Pendant Party Jurisdiction (**Finley** --> Not pendant party, §1367 overturns) -- If there is a federal question claim, state law claims can be made against 3rd parties if the claims arise out of a common nucleus of operative fact.

##### ii. Modern Supplemental Jurisdiction

<---For diversity actions only!!

- 1) **28 U.S.C. §1367(a)** -- Broad grant of supplemental jurisdiction
  - a) Plaintiff Brings Proper Claim --If a plaintiff brings a proper federal question or diversity claim the court may hear all the claims that are of the same "case or controversy under Article III..."
    - i) *Case or Controversy* -- The courts use the *Gibbs* test (common nucleus of operative fact) to decide if a claim satisfies this requirement.
- 2) **28 U.S.C. §1367(b)** -- Tempers §1367(a)'s broad grant of jurisdiction
  - a) Claims Made by Plaintiffs-- Supplemental jurisdiction is not granted to persons made parties under Rule 14, 19, 20 or 24
  - b) Plaintiffs Joined by Rule 19 -- Claims made by plaintiffs joined under Rule 19
  - c) Interventions Under Rule 24 -- persons seeking to be added
- 3) **28 U.S.C. §1367(c)** -- Courts can exercise discretion in deciding to extend supplemental jurisdiction. The court uses several factors in making its determination:
  - a) Novel Issue -- The claim raises a novel or complex state law issue
  - b) Substantial Predomination -- The claim substantially predominates over the claim or claims over which the court has original jurisdiction
  - c) No Original Jurisdiction -- The courts have dismissed all claims that created original jurisdiction.
  - d) Exceptional Circumstances -- There can be exceptional circumstances where there are other compelling reasons to decline supplemental jurisdiction.

# The Erie Doctrine

## a. Underlying Statutes

### i. Rules Decision Act (RDA) -- 28 U.S.C. §1652

The federal courts shall use the laws of the several states to decide diversity cases.

### ii. Rules Enabling Act (REA) -- 28 U.S.C. §2072

The federal rules shall not abridge, enlarge, or modify any substantive right.

## b. **Erie v. Tomkins**

### i. RDA Interpretation

The RDA did not confer upon the courts the power to decide substantive common law.

### ii. General Rule, Substance v. Procedure

Matters characterized as substantive would be governed by state law and those characterized as procedural would be governed by federal law.

### iii. Rational

Lack of uniformity resulting in discrimination -- to prevent forum shopping.

### iv. RDA v. REA Tension

The REA gives the federal courts the power to create their own procedural rules but the RDA makes the courts apply state law in diversity cases. This creates a tension where it is ambiguous whether a law is procedural or substantive.

## c. York Outcome Determinative Test

The first test was purely outcome determinative. If the outcome of litigation was substantially effected by the application of state vs. federal law, state law was used.

## d. Byrd Balancing Test

### i. Three Inquiries:

- 1) **Is the Rule Bound up with Rights and Obligations?** -- Is the rule about the forum and mode of the enforcement or the actual rights of the parties?
  - a) Yes -- State law applies, no further analysis is needed.
  - b) No -- Need to proceed to the next question
- 2) **Will Applying the State Rule Dictate the Result?**
  - a) Yes -- Must go onto the next question.
- 3) **Are there Countervailing Considerations?**
  - a) Is the interest in favor of the state forum or federal forum?

## e. **Hanna**

### i. The Modified Outcome Determinative Test

- 1) **Twin Aims of Erie** -- To be applied in a relatively unguided Erie choice (i.e. where no Federal rule, statute or constitutional provision is on point).
  - a) To Discourage Forum Shopping
  - b) To Avoid Inequitable Administration of the Laws

### ii. Respecting Federal Rules, Statutes and Constitutional Provisions

- 1) **Power Under the REA** -- The REA gives the supreme court the authority to adopt the Federal Rules regarding the procedure of the federal courts provided that they do not abridge, enlarge, or modify any substantive right.
  - a) Congress -- This power is delegated to the courts by congress.
  - b) Strong Presumption of Validity -- For the court to strike down a federal rule the rules advisory committee, the supreme court and the congress all must have erred.

**General Note:** The conflict will always be state law v. federal rule (common law or frcp or something). The trick is to isolate the specific "laws" in conflict. ALWAYS isolate the specific state law and the specific federal law!!