

CIVIL PROCEDURE: SECTION 4

Weeks 3 and 4

- I. Unit B continued
 - a. Federal question jurisdiction
 - i. *Osborn v. Bank of United States*: if there is a small amount of federal law in the case, the Constitution would allow jurisdiction
 - ii. *Mottley & others*: the well pleaded complaint rule, issue must arise under federal, constitutional, or treaty. Congress has limited federal jurisdiction question within the limit of what the Constitution allows.
 - iii. The Holmes Test: a suit arises under the law that creates the cause of action. But this test is insufficient to decide when the claim arises under state law but depends on federal laws as well, or vice versa.
 - iv. Can't piggyback state claims onto federal law claims (but can if you also have diversity jurisdiction).
 - v. *Gunn v. Minton*, 133 S. Ct. 1059
 1. Trial one: Gunn represents Minton in a patent dispute. Gunn failed to bring up an exception to one of the defendant's defenses, and Minton lost. Trial two: Minton sues Gunn for malpractice in Texas state court, and loses, leading to the present appeal.
 2. Minton appeals on the grounds that, because the malpractice was over patent law, and successful malpractice suit requires a showing that it is more likely he would've won his patent case if the attorney was competent, the state court didn't have jurisdiction (because patent law is exclusive to federal courts). Asks for the adjudication against him to be dismissed/vacated so that he can start over in federal district court.
 3. Doesn't happen. Intermediate appeal said yes, you can have federal jurisdiction. Defendant's appeal to Texas Supreme Court results in a no, which was appealed by Minton, resulting in a final no from SCOTUS. The claim does not arise under patent laws, even if it involves a question of patent law (is it more likely than not that Minton would've won if his attorney had raised the exception).
 4. Are there circumstances where this would be allowed? *Grable*, Does the state law claim necessarily (1) raise a stated federal issue, (2) actually disputed and substantial, which (3) a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities?
 - a. There is a stated federal issue here: patent law, would the trial have been successful if the attorney was competent?
 - b. It is disputed and substantial, his claim depends on it. But the requirement here is substantial to federal law. This really won't have an effect on federal law, will have no precedential value.
 - c. The federal forum may not entertain it: it depends on state attorney regulation laws, the federal court doesn't really care about that.

5. This is really an add on to the Holmes' test.
 6. What is the justification for this flexible test? Making sure that when a federal right is actually in question, it is a federal court that decides it so that it doesn't mess up the uniformity of federal court or the rights of the government.
- vi. Federal question jurisdiction based on a counterclaim.
 1. A counterclaim on a federal issue is not grounds to grant federal subject matter jurisdiction.
 2. You look at the plaintiff's complaint, not the defendants. But what if you are in a state court with a compulsory counterclaim law? Too bad.
 3. Results in races to the courthouse, first one there is the plaintiff.
 - vii. Assessing federal jurisdiction in declaratory judgment actions
 1. 28 USC 2201: If there is an actual controversy within its jurisdiction, the court may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment of decree and shall be reviewable as such. Sort of an injunction or preliminary ruling...
 2. Does not expand jurisdiction. Basically, to determine who has jurisdiction, use your imagination to figure out what the trial would've been. Who is the natural plaintiff?
 - viii. Can Congress pass laws restricting jurisdiction based on federal question? Constitutional arguments against it, content regulation and telling courts how they should decide things.
 - ix. Note: due process clause (14th amendment) extends every part of the bill of rights except for number 7 (trial by jury) to the states.
- b. Removal jurisdiction
 - i. 28 USC 1441: any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.
 - ii. Usually a strategic move—a defendant is sued in state court, and if allowed removes to federal court to gain some strategic advantage. Circumstances in which defendant can remove are limited (easier to dismiss for lack of jurisdiction, and that is typically the first route). Also works where there is concurrent jurisdiction.
 - iii. Limitation
 1. A defendant sued in state court where they are a resident cannot remove on the basis of diversity jurisdiction.
 2. A defendant sued by an out of state court = removal.
 - iv. 28 USC 1446 governs the procedure for removing a case to federal court. Most importantly, defendant has 30 days from service of initial complaint to file for removal.
 - v. 28 USC 1448: if it really belongs in state, the federal court must remand it back down to state in 30 days.
 - vi. Hohlbein v. Heritage Mutual Insurance Co.

1. A group of plaintiff's join their claims against the WI based insurance co. in federal court. No reason they shouldn't be in federal court.
2. Defendant wants to sever the cases, arguing that the joinder is improper. This is a memorandum and order on that decision.
3. Note: no one is bound by this decision other than the parties to the lawsuit, it has not precedential value (although depending on the rules of the jurisdiction, it may have persuasive value).
4. Defendant's arguments: none of the plaintiff's cases arise from the *same occurrence*
5. , rather from similar occurrences. (As required under rule). Further, this will prejudice the jury and introduce irrelevant evidence (none of the plaintiff's facts are relevant to the others).
6. Ordered: plaintiffs won't be severed yet but judge reserves the right to separate them later. The majority of cases don't make it to trial anyways. There is discretion on this issue, so it isn't strongly appealable. Would require a large abuse of discretion to be overturned (which appeals courts don't find often).
7. Is it the same transaction or occurrence? Plaintiffs argue that the misrepresentations made by the company to them were part of a pattern of behavior. The "transaction or occurrence" is not sufficiently defined, which ultimately makes it also discretionary.

II. Counterclaims and cross claims

- a. FRCP 13: a pleading must state as a counterclaim any claim that – at the time of its service – the pleader has against an opposing party if the claim arises out of the same transaction or occurrence.
- b. King v. Blanton, 735 S.E.2d 451 (N.C. App. 2012)
 - i. Plaintiff sues defendant under theory of negligence after MVA, case settles. Later the defendant attempts to sue the plaintiff. Allowed?
 - ii. Was it a compulsory counterclaim? If so, it was required to be asserted in response to Plaintiff's earlier petition under FRCP 13 (a)(1)(A). This means that it must be dismissed.
 - iii. Why this result? Policy. We don't want to hear two lawsuits where one would do, and the potential dismissal of your claim is a good incentive to consolidate. We also want consistency—it is completely possible that, dividing these claims into separate trials, can lead to inconsistent results. The legal system doesn't want to look bad by coming out two different ways on the same transaction or occurrence.
 - iv. Problems? The defendant was represented by an attorney paid for by her insurance company. Was there some bad advice involved to save the insurance company money? Who does the attorney actually represent? Under coverage laws, the attorney's primary allegiance is to be to the insured.
- c. Permissive Counterclaim 13 (b): a pleading may state as a counterclaim against an opposing party any claim that is not compulsory. Basically, any claim that would offset the amount you would owe as damages for any reason, because the other party owes you something.