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Civil Procedure (Quickstudy: Law)

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CIVIL PROCEDURE

JURISDICTION

SUBJECT MATTER

CHIEF'S POWER OVER CASE AND THE TYPE OF CASE BEFORE IT

FEDERAL QUESTION (28 USC 1332)

BASIS

1. A Federal law creates the cause of action
2. Plaintiff's right to relief depends on the resolution of a substantial question of Federal law

EXAMPLES

1. Federal Statutes
2. Cause of action arises under within system of statute the subject-matter jurisdiction to apply (Brennan v. Galt)
3. Admiralty cases
4. Jurisdiction over state licensing fees received from independent licensees (Elliott v. Galt, 134 F.2d 882)
5. Interstate Commerce, Copyrights and Patents
6. Construction of patent, including terms of an estate, claim, to which court's exclusive power (Brennan v. Galt)
7. Cause where the U.S. is a party
8. Controversy between U.S. citizens and foreigners

CAUTION

1. The amount in controversy does not matter if there is a Federal question involved

DIVERSITY (28 USC 1332)

SCOPE

1. Controversy is between citizens of different States, or between citizens of a State and citizens or subjects of a foreign State and the action is for more than \$75,000
2. Action for contract to marriage wrongful death, death and recovery under Federal statute (Brennan v. Galt)
3. Jurisdiction over state licensing fees received from independent licensees (Elliott v. Galt, 134 F.2d 882)
4. When diversity jurisdiction is used - Federal courts defer to state courts based on difficulty of questions of State law presented by the relevant litigation on State court
5. When diversity is obtained from improper or collusive joinder of parties
6. When parties have the same part of the suit
7. When parties have the same part of the suit

COMPLEX DIVERSITY

1. No one Plaintiff can be a citizen of the same State as any one Defendant
2. Diversity disappears (diversity is lost) (a) The party you are previously found to be (b) Is the same as the party you are currently found to be (c) Diversity must exist at the time the Complaint is filed with the Clerk
3. It need not exist at the time of trial or when the cause of action arose
4. Complete diversity must be met at the time judgment is entered (See *Waller v. Lewis*)
5. The State of incorporation (a) The State where principal place of business is located
6. New Actions
7. The named representative is the person whose case should be considered
8. A citizen living abroad
9. Two citizens of any State, therefore, cannot sue their own jurisdiction

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SUPPLEMENTAL JURISDICTION (28 USC 1367)

ANCILLARY JURISDICTION

1. Defendant with counter-claim, cross-claim or third-party claim may bring them in Federal court as long as Federal court has jurisdiction over original claim
2. Plaintiff's claims by defendant parties who would otherwise have their right to claim or be required to sue their claims in State court
3. Tolling provision (DIPRA) does not apply to claims filed in Federal court against noncontroversial states (Rogers v. Rogers, 415 F.2d 101)
4. Applies to diversity and Federal question claims
5. Applies to:
6. Compulsory Counterclaims (FRCP 13(a))
7. Joinder of Additional Parties to Counterclaims (FRCP 13(b))
8. Cross-claims (FRCP 13(c))
9. Interpleader (FRCP 22, 28 USC 1335)
10. Does not apply to:
11. Permissive Counterclaims (FRCP 13(b))
12. Impleader of Third Parties (Schubert v. FPC 14)
13. Joinder of Claims (FRCP 18)
14. Joinder of Parties Needed for Just Adjudication (FRCP 19)
15. Joinder of Parties (FRCP 20)
16. Intervention of right (FRCP 24)
17. New actions in which a Federal judgment creditor seeks to enforce liability for a money judgment on a person not otherwise liable for the judgment (Pascucci v. Shuman)

Does not affect jurisdiction over parties requirement

PERMISSORY CLAIM JURISDICTION

Plaintiff with valid Federal question claims may bring along a state-based claim in Federal court

1. Must derive from common nucleus of operative fact
2. Up to court's discretion whether to hear parallel claims based on considerations of judicial economy, convenience and fairness to litigants

PERMISSORY PARTY JURISDICTION

Plaintiff with valid Federal claim against one defendant may bring state-based claim against another defendant over whom no independent basis of Federal jurisdiction exists

1. Must derive from common nucleus of operative fact
2. Does not apply to diversity jurisdiction

REMOVAL FROM STATE TO FEDERAL COURT

BASIS FOR REMOVAL

1. If Federal courts would have had original jurisdiction
2. Federal question jurisdiction existed at time action was filed
3. No Federal Court jurisdiction when complaint does not state Federal question (see *Chen v. United States*)
4. Federal courts may remove cause of action (See *28 USC 1441*)
5. Diversity jurisdiction existed at time action was filed
6. Issue of personal jurisdiction procedure subject matter jurisdiction (See *28 USC 1441*)
7. Time to remove is triggered by formal service of process, not by informal receipt of complaint (See *28 USC 1441*)
8. Does not apply to Plaintiff defending uncontested claims that dispute in state court should be dismissed because of prior Federal ruling is not final for removal under FRCP 12(c) (See *28 USC 1441*)

MULTIPLE CLAIMS

1. If a cause of action which can be removed is joined with a cause of action that has no independent claim to Federal jurisdiction, then the entire case can be removed to Federal court together

CASES WHERE ARE NOT REMOVABLE

1. In suits under FELA Act, Jones Act, Violence Against Women Act, and State anti-bullying compensation laws (28 USC 1441)

OTHER BASIS

1. Cannot sue "artificial plaintiff" alleging the existence or lack of Federal question
2. Cause goes to the "Federal court of the U.S. for the district and division embracing the place where the State is located" (See *28 USC 1441*)

PERSONAL JURISDICTION (POWER TO BIND PARTIES BEFORE COURT AND BIND THEM TO A JUDGMENT)

INTRODUCTION

DEFINITION OF PERSONAL JURISDICTION

1. Court has power to act upon the person or property of another
2. Jurisdiction exists with the forum State and is limited to claims arising under jurisdiction

THREE TYPES OF JURISDICTION

1. In Personam
2. In Rem
3. Quasi In Rem

IN PERSONAM

1. Where Court has power over Defendant's property or status
2. Action to quiet title to property; dissolution of marriage
3. Power of Court to attach or garnish property to gain jurisdiction over Defendant (See *Shaffer v. Heitner*)
4. Jurisdiction to issue writs of "sequestration" (See *Shaffer v. Heitner*)
5. Jurisdiction affects only the property seized

IN REM

1. Where Court has power over Defendant's property or status
2. Action to quiet title to property; dissolution of marriage
3. Power of Court to attach or garnish property to gain jurisdiction over Defendant (See *Shaffer v. Heitner*)
4. Jurisdiction to issue writs of "sequestration" (See *Shaffer v. Heitner*)
5. Jurisdiction affects only the property seized

QUASI IN REM

1. Where Court has power over Defendant's property or status
2. Action to quiet title to property; dissolution of marriage
3. Power of Court to attach or garnish property to gain jurisdiction over Defendant (See *Shaffer v. Heitner*)
4. Jurisdiction to issue writs of "sequestration" (See *Shaffer v. Heitner*)
5. Jurisdiction affects only the property seized

TRADITIONAL TEST (DUE PROCESS - NEFF)

PRESENCE IN FORUM STATE AND

1. Defendant's, Significant, Limited, Temporary presence in State connected to activity in lawsuit falls within protection of law
2. Defendant must be served with notice of lawsuit against him within 60 days of filing
3. Notice of lawsuit is only within the forum State if the lawsuit, may be served with process that is
4. Served on a place lying near forum State is valid

MODERN BASIS

DEPENDENT MEET-AND-RE-MEET

CONFLICT, DOMESTIC, OR CONSENT

MINIMUM CONTACTS (INTERNATIONAL)

1. Due process not required "traditional notions of fair play and substantial justice"
2. Constitutional elaboration
3. Activities must be systematic and continuous (See *International Shoe Co. v. Washington*)
4. Activities must be purposefully directed towards forum (See *Shaffer v. Heitner*)
5. Defendant must purposefully avail himself of privileges of the forum State (See *Shaffer v. Heitner*)
6. Possibility of litigation must be foreseeable (See *Shaffer v. Heitner*)
7. Defendant must be connected to forum State, litigation, Defendant and forum state
8. State protection of property is not enough unless Defendant had necessary "minimum contacts" under (See *Shaffer v. Heitner*)

MINIMUM CONTACTS

1. Jurisdiction over person domiciled within forum State, even if temporarily not within State
2. Jurisdiction - certain dwelling place
3. Jurisdiction to individuals residing
4. They are treated as a state
5. Jurisdiction must be made that place his home, for the time or term

CONSENT

1. Jurisdiction over person by consent, even if no contacts with forum State
2. Consent by filing an action
3. Consent by counterclaim or cross-claim against Plaintiff and by counter-claim against Defendant
4. Voluntary Appearance in Court

Continued on next page



Synopsis

Civil law is extending into areas undreamt of just a few years ago, and our study guide helps you stay informed. Â

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well, the idea is great. Having something so clearly written out and easy to read is awesome. My only problem is that it is outdated, therefore some of the information is outdated and incorrect, which is a big issue.

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I love these... I am a list person. Love top 10's and all that kind of stuff, so these fit the bill. Breaks down several areas with basic/top info to know. Nice quick review in sturdy lamination.

I bought two huge supplemental textbooks, won a supplement via a Lexis raffle, and hauled around

two of the commercial outlines that Bar prep programs give away. Ultimately, it came down to this bad boy. Because of this product, my highest exam grade was in Civ Pro. Trust me, I thought I was on my way to getting a D in that course. Definitely buy!

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What these laminates do better than nearly any other resource is to give you a general overview and guide so you can understand where the material is going. Similar to the artist's technique where you have to create a vague rough sketch to understand proportion and relevance, these allow you to understand the significance of minutia and detail in the bigger schematic. Also great refresher if you are return after a long time away and your own notes don't make sense anymore. The Bad: These cannot replace the actual text or class material, though of the entire series Constitutional Law, Civil Procedure and Criminal Procedure come closest. Also, some of the case references are outdated. In particular, they do not have the 2007 amendments to FRCP which have been in effect for some time now. The Ugly: For those gunners out there, the laminate surface also makes these perfect to buy a second set to keep in the car for those "first thing in the morning" study sessions.

go and simple easy to follow and understand. a great companion to have in your brief case at all times. Excellent for a Pro Se

SUPER easy and convenient chart. When I was studying for the Civ Pro final, this chart really brought things together and put it in a format that was easy to study. I would recommend it for anyone taking Civil Procedure, or studying for the bar.

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