

Civil Procedure

Darden

Is there Personal Jurisdiction?

- Is defendant a resident of proposed state?
 - If it's a corporation was it incorporated or have its principal place of business in the proposed forum?
 - If not analyze contact with forum state
 - Is there a long-arm statute?
 - Analyze contact with state
 - Was there proper notice given?
- **Black Letter Law**
- Defendant must purposefully avail itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws (Hanson)
 - The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state
- **Black Letter Law**
- The “substantial connection” between the defendant and the forum state necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed towards the forum state
 - The placement of a product into the stream of commerce without more is not an act of the defendant purposefully directed towards the forum
 - Need additional contact such as: designing the product for the market in the forum, advertising in the forum, marketing product through distributor sales agent in the forum
- **Black Letter Law**
- Contract alone not sufficient to support personal jurisdiction over a nonresident defendant
 - Contract is usually an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction
- **Black Letter Law**
- Reasonableness factors
 - Burden on the defendant
 - Interests of the forum state

- Plaintiff's interest in obtaining relief
- Interstate judicial system's interest in obtaining the most efficient resolution of controversies
- The shared interest in the several states in furthering fundamental substantive social policies

Was there proper service of process?

- Personal service of nonresident in forum equates to PJ
 - Cannot serve by trick
 - Can flush out of hiding
 - Cannot serve on a Sunday or Sabbath
- Not necessary that defendant actually received notice, but must be reasonably likely that he was informed
- Corporations may be served in several ways
 - Some states require corporations to designate an official
 - Rule 4(h)(1)(B) says that notice for corporation can be given to "an officer, a managing or general agent, or any other agent authorized by appointment or law to receive service of process"
- Answering the complaint
 - 20 days to respond if you are served
 - 60 days to respond if you waive service
- **Black Letter Law:**
 - "Where the entire object of the action is to determine the personal rights and obligations of the defendants, that is, where the suit is merely in personam, constructive service in this form upon a non-resident is ineffectual for any purpose"
 - Constructive service in the forum state cannot create the obligation for a non-resident defendant to appear in court
 - Either can constructive or personal service outside the forum state
 - If the suit involves merely the determination of personal liability of the defendant, he must be brought within its jurisdiction by service of process within the forum state or voluntarily
 - Otherwise the judgment is void when rendered and will always remain void

Is there Subject Matter Jurisdiction?

- Is there a federal question?
- Is there diversity jurisdiction?
 - No defendants and plaintiffs are citizens of the same state
 - Not taking place in a defendant's "hometown"

- **Black Letter Law**
 - A suit arises under the Constitution and laws of the U.S. only when the plaintiff's statement of his own COA shows that it is based upon those laws or that Constitution
 - It is not enough that the plaintiff alleges some anticipated defense to his COA and asserts that the defense is invalidated by some provision of the Constitution

Should the court apply the Erie Doctrine?

- Should state law be used in federal court?
 - If there is no federal law on the subject use state
 - If there is a federal policy does it conflict with the state law or procedure?
 - If no conflict use federal policy
 - If there is conflict check if the federal rule conflicts with the REA or if it is unconstitutional, if it does either use state
 - Use federal common law in some areas
 - If state policy or rule is substantive follow state (Erie)
 - If state policy or rule is procedural consider outcome determinative test and forum shopping

- **Black Letter Law:**
 - Where the Constitution did not control and Congress could not legislate, the laws of the states necessarily governed; and when state law governed, state judge-made rules were every bit as binding on the federal courts as were state statutory provisions

- **Black Letter Law:**
 - ❖ **Guaranty Trust Co.**
 - Outcome determinative test- federal court should have the same outcome of litigation, so far as legal rules determine the outcome of a litigation, as it would be if tried in a state court

- **Black Letter Law**
 - The preclusive (preventative) effect of a federal judgment in a diversity case was dictated solely by federal common law—and that the best principle to follow would be, in most situations, to give such judgment the same effect as they would have been given by the courts of the state in which the federal diversity action was determined

Is this a proper venue for this case?

- If it's a federal case the venue is determined by statute, 28 U.S.C. sec. 1391 which provides for venue based mainly on:
 - Defendant's residence
 - Place where a substantial part of the relevant events occurred
 - Place where defendant can be made subject to PJ

Can this case be removed?

- If the case is brought in state court and federal court would have had original jurisdiction it can be removed to federal court by defendant
 - Right to removal is statutory not constitutional (28 U.S.C. sec 1441)
 - It is removed to the US district court of the state where the suit was pending
 - In a diversity case, action may be removed only if no defendant is a citizen of proposed state
 - Exception to this rule is if it is a class action suit, removal is allowed even if there are defendant citizens of the proposed state
 - If a federal question can remove even if a defendant is a citizen of proposed state
 - Where there are multiple defendants all must sign the notice for removal

What about provisional remedies?

- **Black Letter Law:**
 - "...does not affect its root requirement that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations..."
 - Provisional monetary relief- attachment and garnishment
 - Seizure- in the case of real property can be anything from physical occupation to the land to the symbolic posting of a notice
 - Garnishment- 3rd party (ex: employer) asked not to pay def because plaintiff has a claim on it

What about Pleading?

- ❖ Iqbal
- **Black Letter Law:**
 - The that the court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions

- Only a complaint that states a plausible claim for relief survived a motion to dismiss

Rules To Live By

Rule 4- Summons

- Service

Rule 8- General Rules of Pleading

Rule 11- Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

- Rules for lawyers

Rule 15- Amendments

Article III

- Section 1- Supreme Court
- Section 2- Supreme Court has jurisdiction in div. Jur.

Article VI

- Supremacy Clause

V Amendment

- Federal due process

XIV Amendment

- State due process

Section 1331- Federal Question

Section 1332- Diversity of Citizenship, Amount in Controversy; Costs

Section 1367- Supplemental Jurisdiction

Section 1391- Venue Generally

Section 1404- Change of Venue

Section 1406- Cure or Waiver of Defects

Section 1441- Actions Removable Generally

Section 1631- Transfer to Cure Want of Jurisdiction