II. Jurisdiction Over the Subject Matter

Need to qualify for federal court
(see 28 USC sec 1330-1368)
        1330. actions against foreign states
        1331. federal question case
        1332. diversity of citizenship > $75,000
        1333. admiralty & maritime (exclusive)
        1334. bankruptcy (exclusive)
        1335. commerce and antitrust > $10,000
        1336. patents, plant variety protection,
        copyright, trademark (exclusive)

Assuming federal court, how do we determine between Maine and Nevada?

All other subject matter in state courts.
Assuming state court, how do we determine between Maine and Nevada?

First to sue?

Venue

The location of the court in which a case is brought

Decision is often made contemporaneously with deciding the issue of state court versus federal court.

However, all other jurisdictional requirements need to be satisfied before resolving the issue of venue.

Venue (con'td.)

In what geographic location may case be heard?

As a general proposition, appropriate to hold where:
  a. any **defendant resides**
  b. substantial part of the **events** or omissions
     giving rise to the claim occurred
  c. substantial part of the **property** giving rise to
     the claim is situated
  d. in the jurisdiction where **personal service**
     may be had

Venue: State Court Actions

Generally:
1. All or some parties in the state? … home county of any party typically acceptable
2. Real property involved? … county in which located
3. All parties out of the state? … the state county in which the action or event occurred that gave rise to the cause of action

Any of these initial considerations may be overridden or affected by "forum non-conveniens" considerations or forum selection clauses in contracts.

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forum non-conveniens
- doctrine that allows a case to be dismissed or transferred because it can be better held elsewhere

  • where witnesses and evidence are located
  • in some states, weight towards location where plaintiff brought the case
  • if one state's law is determinative in a case, motion to transfer to that state may be supported
  • criminal cases: prejudicial jury pool as a result of media coverage

Venue: Federal Court Actions

Generally: What type of action? Venue may be controlled by statute.

    1. Copyright – any fed district where D resides or may be found
    2. Patent - any fed district where D resides or where D committed infringement acts and has a regular place of business
    3. Stock shareholder – anywhere corporation can sue the shareholder can sue

Venue: Federal Court Actions

Venue is typically proper where D or P resides.

Typically for venue purposes:
• Human can have only one legal residence (domicile)
• Corporation may have many .. where doing business

One may consent to venue.

Even if venue is proper, court may choose to transfer
    • interest of justice
    • convenience of parties and witnesses
    • where primary events occurred, etc.

Which law to apply?

Common Law:
Law resulting from judicial decisions rather than laws passed by legislatures. When in conflict, legislation typically controls ... unless constitutional issue involved.

Supremacy Clause:
When there is substantive federal law on a subject, that law must be applied over state law.

Which law to apply? (cont'd)

Where the laws of two states may apply to a case in federal court, the federal court must typically apply the laws of the state in which the federal court is located. (i.e. law is a factor in determining venue)

What happens when there is no federal or state statutory law on point? Should the federal court apply federal common law or state common law?

Erie Doctrine

Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938)

When a federal court is confronted with the issue of whether to apply federal common law or state common law, must apply **state law** on issues of <u>substantive law</u>. Where the legal question is based on a <u>procedural</u> issue, federal courts should apply **federal law**.

Choice of Law

- rules to select which jurisdiction's laws apply to a controversy

- need to choose most frequently arises in diversity of citizenship cases (i.e. many modern Internet federal court cases) where laws of two or more states are evoked

Choice of Law (cont'd)

- primarily a factor of personal jurisdiction, venue and
   enforcement of judgements
- court looks at all of these

Traditional Rule:
- which state has the most significant relationship with
   the transactions and the parties?
- use laws of the jurisdiction where injury to P occurred
- most significant interest is ***where the sting was felt***
   • results in bias towards where P resides & thus
   that substantive law often controls

Choice of Law (cont'd)
- primarily a factor of personal jurisdiction, venue and
   enforcement of judgements
- court looks at all of these

Torts:
- laws of the jurisdiction where injury to P occurred
   (contra: plane crash in Iowa)
- choose state with most significant relationship with
   the transactions and the parties
- most significant interest is ***where the sting was felt***
   • results in bias towards where P resides & thus
   that substantive law often controls

Choice of Law (cont'd)

Real Property:
- laws of jurisdiction where located

Contracts:
- law of place where contract executed,
- law of place where contract was to be performed, or
- express choice of law clause (strong deference if
jurisdiction also exists there)

Enforcement of Judgments

- full faith and credit clause of U.S. Constitution
  - • makes judgments enforceable in other states
  - • recognition required unless D can show violations of procedural due process, lack of personal jurisdiction of claiming court, or violation of public policy
- same typically true with foreign nations
  - - state statutory law (Uniform Foreign Judgements Monetary Act) or comity

Practical matter: somewhat more difficult to enforce in jurisdiction of another court

Geographic Scope of Injunctions

Federal court
  - clear that injunctions run nationwide

State courts
  - varies, however it is notice that should count and not formalities of service
  - thus injunctions by state courts also generally should apply nationwide

The law encourages use of contracts to agree on all jurisdictional issues up front

In commercial relationships, contracts addressing personal jurisdiction, enforcement & choice of law are common

Cooperation seen among states has similarly developed in international context

What about criminal law jurisdiction?

Example:
- see Statement of Minnesota Attorney General
  on Internet Jurisdiction (old)

- positions of various nations including U.S.
  statutes similar

Minnesota's general criminal jurisdiction statute:

A person may be convicted and sentenced under the law of this State if the person:
(1) Commits an offense in whole or in part within this state; or
(2) Being without the state, causes, aids or abets another to commit a crime within the state; or
(3) Being without the state, intentionally causes a result within the state prohibited by the criminal laws of this state.

Example: Gambling
Services outside of Minnesota that offer those inside Minnesota the opportunity to place bets.

Attorney Generals Position:
1. Gambling organizations criminally liable - gambling service is illegal
2. Accomplices liable - Internet access providers and credit card companies that continue to provide services to gambling organizations after notice that activities are illegal, are subject to accomplice liability
3. Gamblers criminally liable - betting by Minnesota residents is illegal

Likelihood of numerous gambling companies around the world being sued in Minnesota?

Even if a judgment passed, state cannot take a measure that violates another state's sovereignty.

• U.S. - "full faith and credit" clause of constitution

• International level - illegal to send an agent in to another nation to arrest a person convicted of a crime. Must gain approval of the nation - multilateral or bilateral agreements may apply

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More likely that Minnesota will take care of business at home

• crime to place a bet - confiscate computers and winnings, prosecute violators

• control ISPs and credit card companies doing business in the state - prosecute violators

Problem: moving target, priority?