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Civil Procedure (Quickstudy: Law)

AMERICAN LEGAL REFERENCE CHART
CROSS-REFERENCED MATERIAL

CIVIL PROCEDURE

JURISDICTION	SUPPLEMENTAL JURISDICTION (28 USC 1367)	PERSONAL POWER TO BIND PARTIES BEFORE COURT AND BIND THEM TO A JUDGMENT
SUBJECT MATTER COURT'S POWER TO DECIDE THE TYPE OF CASE BEFORE IT	ANCILLARY JURISDICTION 1. Defendant with counter-claims, cross-claims or third party claims may bring them in Federal court as long as Federal court has jurisdiction over original claim a. Allows claims by defendant parties who would otherwise lose their right to claim or be required to answer when no issue exists b. Tolling provision (12076d) does not apply to claims filed in federal court against nondefendant parties (Reggie v. Regent of U.S.M.) 2. Applies to diversity and Federal question claims a. Compulsory Counterclaims (FRCP 13(a)) b. Joinder of Additional Parties or Counterclaims (FRCP 17) c. Cross-claims (FRCP 13(g)) d. Impleader (FRCP 22, 28 USC 1367) 4. Does not apply to: a. Permissive Counterclaims (FRCP 13(b)) b. Joinder of Third Party Defendants (FRCP 14) c. Joinder of Claims (FRCP 18) d. Joinder of Parties Needed for Just Adjudication (FRCP 19) e. Joinder of Parties (FRCP 20) f. Intervention of right (FRCP 24(a)) g. New actions in which a federal judgment creditor seeks to impose liability for a money judgment on a person not otherwise liable for the judgment (Franko v. Thomas) 3. Does not allow jurisdiction over parties requirement	INTRODUCTION 1. COURT HAS POWER TO ACT UPON THE PERSON OR PROPERTY OF: a. Defendant b. Plaintiff c. Plaintiff's counterparty d. Plaintiff's counterparty's property 2. COURT TYPES OF JURISDICTION 1. In Personam a. Power of Court to act upon the person or property of a party b. Judgment in personam is confined to full faith and credit in other States 2. In Rem a. When Court has power over Defendant's property or claims b. It is action to quiet title to property; abatement of nuisance 3. Quasi In Rem a. Power of Court to attach or garnish property to gain jurisdiction over Defendant (Shaffer v. Heitner) b. Plaintiff requires this to be served under "minimum contacts" standard of International Shoe c. Judgment affects only the property seized
FEDERAL QUESTION (28 USC 1331) -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 within realm of statute for subject-matter jurisdiction to apply (Dobson v. Dorn) 3. Admiralty cases 4. Jurisdiction over state statutes that involve federal of national issues (Erie v. Tompkins) 5. Interstate Commerce, Copyrights and Patents 6. Construction of patent, including terms of an within claim, is within court's exclusive province (Mitsubishi v. Chrysler) 7. Cases where the U.S. is a party 8. Controversies between States 9. Controversy between U.S., citizens and foreigners NAMING 1. The amount in controversy does not matter if there is a Federal question involved	PERMISSIVE CLAIM JURISDICTION 1. Plaintiff with valid Federal question claims may bring along a state-based claim in Federal court a. Must derive from common nucleus of operative fact b. Up to court's discretion whether to hear parallel claims based on considerations of judicial economy, convenience and fairness to litigants PERMISSIVE PARTY JURISDICTION 1. Plaintiff with valid Federal claims against one defendant may bring state-based claims against second defendant over whom no independent basis of Federal jurisdiction exists a. Must derive from common nucleus of operative fact b. Does not apply to diversity jurisdiction	TRADITIONAL TEST (PENNSYLVANIA v. NEFF) -PRINCIPLE OF FEDERAL STATE and 1. Defendant's, Plaintiff's, or Counterparty's presence in State essential to activity in lawsuit filed within State -DEFENDANT MUST BE SERVED WITH NOTICE OF LAWSUIT AGAINST HIM/HER WITHIN STATE'S BOUNDARIES 1. Court of Defendant is only within the State's a few hours, he may be served with process there 2. Service in a place far from State State is valid
DIVERSITY (28 USC 1332) -MEANS- 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 -ACTION LAW APPLICABLE IN DIVERSITY JURISDICTION 1. Federal courts may still apply to specific jurisdiction 2. When alternative dispute resolution is used - Federal courts defer to their own jurisdiction if questions of State law presented or the Federal litigation in State court 3. When diversity is obtained from joinder or substitution of parties a. When parties issue are the same part of the suit b. When diversity relations are more part of the suit COMPLETE DIVERSITY 1. No one Plaintiff can be a citizen of the same State as any one Defendant 2. Plaintiff declares diversity (Court note) a. The action you are physically heard in b. With the court to verify their diversity 3. Diversity must exist at the time the Complaint is filed with the Clerk a. It need not exist at the time of trial or when the cause of action arose b. Complete diversity must be met at the time judgment is entered (Kane v. Lavin) 4. Citizenship of Corporations a. The State of incorporation b. State where principal place of business is located 5. Cases Arising a. The natural representative is the person whose citizenship is considered b. U.S. citizens living abroad c. Non citizens of any State, National, cannot sue other citizen jurisdiction	REMOVAL FROM STATE TO FEDERAL COURT -BASIS FOR REMOVAL- 1. Federal question jurisdiction existed at time action was filed 2. "No Federal Court jurisdiction when complaint does not allege federal cause of action (Hobbs v. Wilson) 3. Federal courts preserve cause of action (Hobbs v. Wilson) 4. Diversity jurisdiction existed at time action was filed 5. Basis of personal jurisdiction provides subject matter jurisdiction (Hague v. Boardman) 6. Time to remove is triggered by formal service of process, not by informal receipt of complaint (Morgan v. Michael Page) RIGHTS OF DEFENDANT'S OPTION 1. Does not apply to Plaintiff's defending counterclaim 2. Claims that do not fit state court should be dismissed because of prior Federal ruling is not basis for removal under FRCP 12(b)(1) (Holt v. Boardman Bank of LA) 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 REMOVAL IS UNDESIRABLE 1. Both under FELA Act, Jones Act, Violence Against Women Act, and State workmen's compensation laws (28 USC 1445) OTHER ISSUES 1. Cannot use "artificial phrasing" disguising the existence or lack of Federal question 2. Cause goes to the "diverse" court of the U.S. for the district and the removal is not possible if the State is not a party to the suit	MODERN BASIS -DEFINITION OF A MINIMUM CONTACTS, BROWNE, BOWLE, OR CONTACT MINIMUM CONTACTS (INTERNATIONAL SHOE v. WASHINGTON STATE) 1. Court does not reflect "traditional notions of fair play and substantial justice" 2. Constitutional elaboration a. Jurisdiction must be systematic and continuous (International Shoe v. Washington State, A. A. Hall) b. Activities must be purposefully directed towards State (Goetz v. United Industries Co., S. Superior Court) c. Defendant must purposefully avail himself of privileges of the forum State (Shannon v. Dowling) d. Possibility of litigation must be foreseeable (Shook v. Sullivan v. Shook) e. There must be connection between litigation, Defendant and forum State 3. State government of property is not enough unless Defendant had necessary "minimum contacts" under (Shook v. Sullivan v. Shook) UNDESIRABLE 1. Jurisdiction over person domiciled within forum State, even if temporarily, not within State 2. Residence - common dwelling place 3. Intention to indefinitely remain a. They may domicile at a time b. Forum must intend to make that place his home, for the time or more CONSENT 1. Jurisdiction over persons by contract, even if no contacts with forum State 2. Consent by filing an action a. Counterclaim can be filed against original Plaintiff and its counterparty must answer the action 3. Advance Contract a. U.S. to Contract, designating an agent 4. Voluntary Appearance in Court

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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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Customer Reviews

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

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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 can 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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