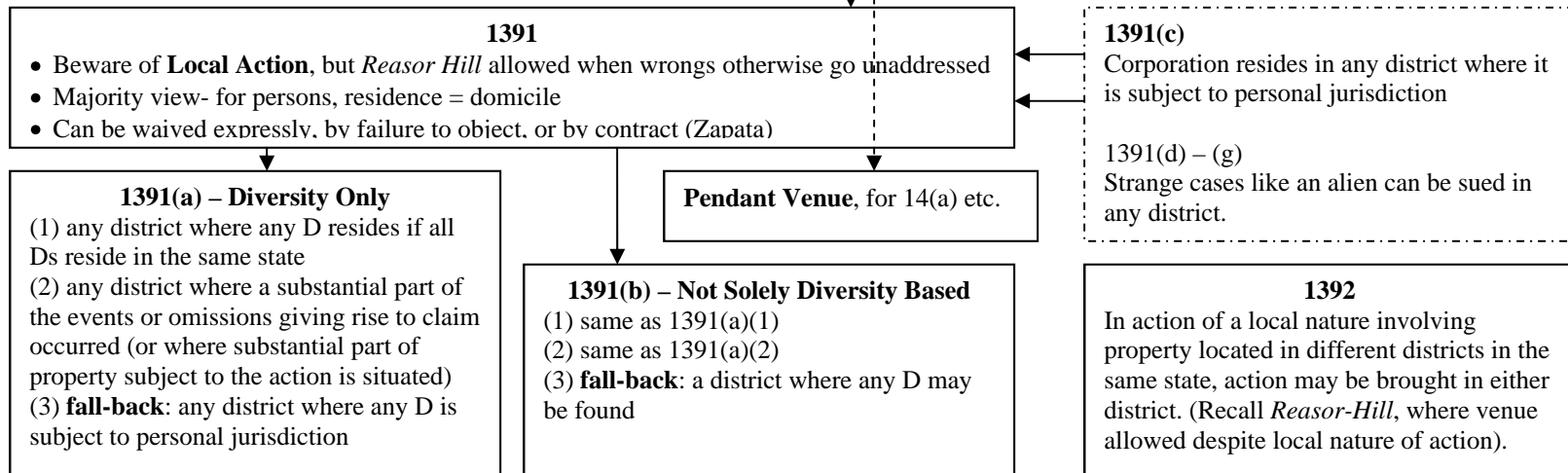


## Venue



## Transfer & Removal

**1404(a)- Change of Venue**

For convenience of parties and witnesses, district court may transfer case to another district where it might have been brought.

- Diversity case - law travels with case
- Federal question case – new law applied

- On its own or by petition at any time.
- New court must have had three rings.
- Original court had three rings.

**1406(a)- Cure of Defective Venue**

District court of a case having venue in the wrong district shall dismiss, or in the interest of justice, transfer to any district or division it could have been brought.

- Venue was improper, new courts law applies

**Forum non conveniens**

Judicial doctrine. Discretionary dismissal – court allowed case to go to Scotland (*Piper Aircraft*).

- Is there an alternate forum?
- Will D waive statute of limitations and consent to alternate forum?
- Factors like cost, witness location, convenience, etc. make another choice overwhelmingly obvious.

**1407**

Civil actions with one or more common questions of fact may be transferred to any district for consolidated **pre-trial** proceedings. They are then remanded.

**1441- Removal**

- 1441(a) - remove any federal question case.
- 1446(a) - all Ds must agree to remove [except class actions, 1453]
- 1441(c) – **removal jurisdiction**: whenever a separate and independent claim or cause of action within the jurisdiction conferred by 1331 is joined with one or more otherwise non-removable claims or causes of action, the entire case can be removed and court will determine all matters, or, in its discretion, it may remand all matters in which State law predominates.
  - *American Fire* – where there is a single wrong to P for which relief is sought, arising from an interlocked series of transactions, there is no separate claim or cause under 1441(c).
  - possibly unconstitutional when it allows removal of claims that bear no relation to federal question and have no diversity
- 1441(f) removal even if state court had lacked jurisdiction
- 1447(c) motion to **remand** within 30 days for anything besides SMJ
- FRCP 11(b)(2) – **fraudulent joinder** to prevent removal

**Diversity Specific**

- 1441(b) – remove diversity cases if no Ds are citizens of trial state [except class actions, 1453] must have original / supplemental juris.
- Diversity must also exist at time of trial or time non-diverse D was dropped, not just time of removal
- 1446(b) - if a federal claim is added, removal is proper
- 1447(e) - non-diverse D added: denial of joinder or remand of case

## CLASS ACTIONS

- **Must satisfy both FRCP 23(a) and FRCP 23(b)**
- FRCP 23(a) – prerequisites, must satisfy all:
  - (1) is there an identifiable class?
    - Every member need not be identified or identifiable
  - (2) are those purporting to represent that class members of it?
  - (3) class is so **numerous** that joinder of all members is impracticable
    - (1) the nature and complexity of the action
    - (2) the size of the individual claims
    - (3) the geographic distribution of members of the class
  - (4) questions of law or fact common to the class
    - All questions of law or fact need not be common.
  - (5) the claims or defenses of the representative are typical of those of the class
    - Typicality only denied when representative claim is markedly different
  - (6) the representative parties will fairly and adequately protect the interests of the absent class members
    - Due process dimension. Need not have explicit authority by class. Basic objective is court is certain representative will prosecute the action with forthrightness and vigor.
    - FRCP 23(g) requires adequate class counsel. Court considers:
      - Work counsel has done in finding/investigating potential claims
      - Counsel’s experience in class-actions and of this type of claims
      - Counsel’s knowledge of applicable law
      - Resources Counsel will commit to representing the class
- FRCP 23(b) – categories of class actions
  - FRCP 23(b)(1) – “anti-prejudice” class action; individual actions would result in prejudice to class members or the party opposing the class
    - (1) Prosecution of separate actions might result in inconsistent or varying adjudications that would establish incompatible standards of conduct for the party opposing the class
      - Not just liability to some claimants and not others. When entity is required by law or practical necessity to act in the same manner to each class member and separate cases might force D to violate its legal duty to some class members.
    - or (2) Individual litigation might result in judgments that would be dispositive of the interests of other members of the class who are not parties to those individual actions
      - e.g., common fund may be gone before some class members litigate
  - FRCP 23(b)(2) – “injunction” or “declaratory judgment” class action
    - (1) the party opposing the class has acted or refuse to act on grounds generally applicable to the class as a whole
    - and (2) the class representatives are seeking final injunctive relief or corresponding declaratory relief (not preliminary injunctions).
    - Damage claim does not stop certification as long as it is only incidental
  - FRCP 23(b)(3) – “common question” or “damage” class action
    - (1) common questions of law or fact predominate over questions that affect only individual class members
    - and (2) the class-action procedure must be superior to the other means of adjudicating the controversy
      - Possibility of separate actions
      - Extent and nature of any litigation already commenced.
      - Desirability of concentrating the litigation in this forum.
      - Difficulties to be encountered in managing the class action.
      - *Amchem* – common issues concerning the health consequences of asbestos exposure was outweighed by individual questions posed

concerning class members with varying levels of exposure from different products, over different time periods, as well as those who suffered unique injuries or no injuries at all. Different state law exacerbated the problem.

- and (3) the best notice practicable must be given to the class members of the institution and nature of the action and of their right to exclude themselves from the class
- FRCP 23(f) - allows appeal of denial of class action certification.
- *Shutts* – it is not necessary to satisfy the minimum contacts standard normally applied to Ds to bind out-of-state, absent Ps. Applies only to money claims.
- *Allstate / Shutts* - Which law to apply in a multi-state class action? No problem if laws aren't in conflict. Due Process and Full Faith and Credit Clause provide the modest restriction that choice of substantial law must be selected in a Constitutionally permissive manner, State must have significant contact or aggregate of contacts, creating state interests, such that the choice of law is neither arbitrary or fundamentally unfair.
- Only citizenship of the representative is used in determining diversity.
- *Allapattah* overruled *Zahn* now we follow 1367(b). *Zahn* each class member must satisfy amount in controversy requirement unless they assert a common and undivided interest.
- FRCP 23(c)(4)(A) – court may maintain class suit only with regard to particular issues or as to certain parties or it may divide class into subclasses with separate counsel.
- FRCP 23(d) – orders judge may issue
  - (1) orders to determine course of proceeding and to prevent repetition or confusion in the presentation of evidence or argument.
  - (2) can order notice to some or all members of the class or order class members to signify whether they consider the representation fair and adequate, to intervene to present claims or defenses, or to otherwise come into the action
  - (3) impose orders on class representative or intervenors
  - (4) may order all allegations as to the representative suit stricken from the pleadings and the suit to proceed as an individual action.
  - (5) other orders dealing with similar procedural matters
- FRCP 23(c)(2) – notice
  - Court may direct notice to FRCP 23(b)(1) or (2) classes
  - Court must direct the **best practicable** notice to FRCP 23(b)(3) members, including individual notice to all members who can be identified through **reasonable effort**. Notice must state in plain language six elements listed.
    - Notice does not have to meet personal service standards.
- FRCP 23(e) - Court must approve any settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class.
  - FRCP 23(e)(1)(C) – standard is “fair, reasonable, or adequate.”
    - (1) extent to which class members object to the settlement
    - (2) likelihood of class ultimately succeeding in litigation
    - (3) complexity of factual and legal issues in the case
    - (4) amount of settlement compared to what might be recovered
    - (5) costs incurred if the action went forward
    - (6) the plan for distributing the settlement and its likeliness to succeed
    - (7) whether absent class members have been notified properly
  - FRCP 23(e)(2) – requires a filing of a statement identifying any agreement made in connection with the proposed settlement, voluntary dismissal, or compromise.
  - FRCP 23(e)(1)(B) – requires notice of settlement to class members.
- The class action judgment will be binding on all class members unless the representation was inadequate or the notice was insufficient.
- 1332(d)(2) – district courts **shall** have jurisdiction over class actions with amount in controversy over \$5mil and minimal diversity is met. 1332(d)(3) outlines when district courts may decline jurisdiction and 1332(d)(4) outlines when they must decline jurisdiction.

**Erie R. Co. v Tompkins**, p. 364, US Supreme Court, 1938

- Tompkins (PA) hit by protrusion from Erie train (NY) and lost arm
  - RR liability is question of substantive law – should state law or federal general common law apply?
- **SC struck down *Swift v. Tyson* and ruled state substantive law applies to Diversity cases**
  - *Swift* ruling unconstitutional since power to create federal general common law was never given to Court in Constitution – Article 10: all non-specified powers to states
    - Also said Congress has no power to declare substantive rules of common law applicable in a state whether they be local in nature or general
    - Rules of Decision Act (1789) – state law must be applied when there is no federal law on point

**Guaranty Trust Co. v. York**, p. 372, US Supreme Court, 1945

- How to determine statute of limitations – state law or federal practice of laches?
- Statute of limitations defines the longevity of a right so considered substantive law. Thus **federal courts must adhere to state statute of limitations standards**. Act like a state court.
  - Avoid forum shopping – federal court may allow a case when state won't
  - Avoid inequitable application of the law – out-of-state advantage since can remove to federal court where case may be adjudicated more favorably to that party
- Emphasis on **outcome determination** in deciding which type of law applies

**Ragan v. merchants Transfer & Warehouse, Co.**, US Supreme Court, 1949

- P filed complaint for Diversity Suit in Sept, but marshal didn't serve D until Dec, after state SOL passed
- SC held that Rule 3 was not intended to govern questions concerning the tolling of SOL's, and therefore state law would determine in diversity when statute was tolled. Reinforced York, outcome determinative
- Decision caused lots of anger (appeared unjust to P as well)

**Byrd v. Clue Ridge Rural Electric Cooperative, Inc.**, p. 379, US Supreme Court, 1958

- Primary issue for SC is whether a judge (state) or jury (federal) should decide if P a statutory employee
  - South Carolina lets judges decide; Feds allow jury to decide facts in civil trials
- SC used **balancing test** rather than saying Byrd has Const. right to jury trial
  - State interest – procedural, not very important
  - Federal interest – significant, since “influence is not the command” of 7<sup>th</sup> amendment upholds jury
  - Likelihood of outcome determination – not inevitable based on judge/jury decision
- Case is a slight retreat / adjustment from *Erie* and *York*

**Hanna v. Plumer**, p. 385, US Supreme Court, 1965

- Service of process according to federal or state practice?
- Like *Byrd*, *Hanna* holds that **if there is a federal interest, Federal Rule trumps State Rule**
- **To control, a Federal Rule must be**
  - **(1) applicable** – on point and in direct conflict with state rule
  - **(2) valid** – doesn't violate RDA (procedural, doesn't abridge, enlarge or modify substantive right)
  - **(3) Constitutional** – none found un-Constitutional so far
- **Conflict with federal practice**, see if outcome-determinative by twin-aims of *Erie*:
  - prevent forum shopping
  - prevent inequitable administration of the laws

**§1652 – Rules of Decision Act** (*Erie*/*York* – substance/procedure; measures state created rights)

Based on Supremacy Clause of Constitution