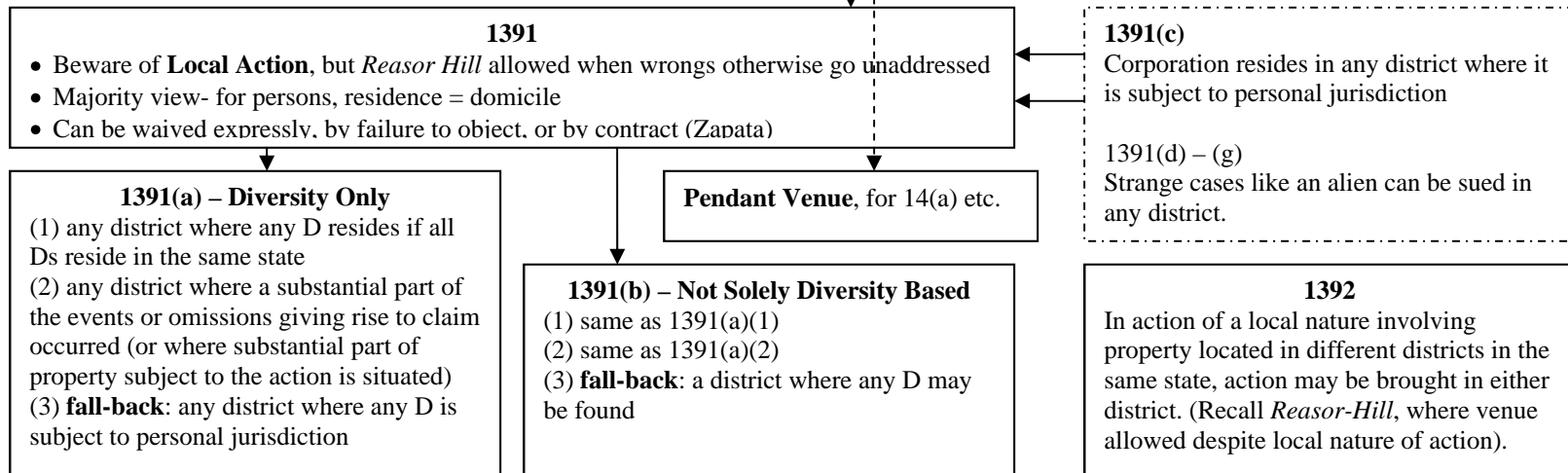


Venue



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