

# FEDERAL JURISDICTION

## I. Personal Jurisdiction

- A. Purely a question of geography → can P sue in NY?
- B. Fed court must have *personal jurisdiction* over D, just as a state court must
- C. Fed court uses *state law*, including the NY long-arm statute, & the exercise of jurisdiction must satisfy the Constitution as well
- D. Fed court has no more power to exercise personal jurisdiction than the state court, (except for (i) the *bulge rule*, & (ii) *statutory interpleader* – see below)

## II. Subject Matter Jurisdiction

### A. Basic Idea

- Fed courts can entertain *only* certain types of suits – the 2 main types of fed court cases:
  - a. *Diversity* (including alienage); OR
  - b. *Fed question*

### B. Diversity of Citizenship

- Amount in controversy *must exceed 75K*, AND the action must be between (i) *citizens of different state*, OR (ii) *a citizen of a state & a citizen or subject of a foreign country* (“alien”)

#### 1. Diversity

- a. **Complete diversity rule** – there is no diversity of citizenship if *any P is a citizen of the same state as any D* (though, there can be co-Ps or co-Ds from the same state)
  - (i) Test for diversity **when the case is filed** – subsequent change in a party’s citizenship is irrelevant
  - (ii) E.g.: X (NY) wants to sue Y (NY) in fed court, so he moves to Connecticut & sues under diversity jurisdiction – diversity depends on when X’s intent to domiciled in Connecticut
- b. **Individuals** – citizen if the **domiciled** in a state, which is established by 2 concurrent factors:
  - (i) *Presence in state at some point WITH*
  - (ii) *Intent* (subjective) to make it a permanent or fixed home
    - NOTE: An alien admitted to the US for *permanent residence* is treated as a citizen of the state in which he is domiciled
    - An American domiciled in France is not a *citizen of a state* (because not domiciled)
- c. **Corporations** – citizenship equals: (i) all states where **incorporated**, AND (ii) the one state where the company has its **principal place of business** (PPB) (corporation, unlike a natural person, can be a citizen of more than one state at a time)
  - (i) PPB is determined in 2 ways – (i) *nerve center* (headquarters – where decisions are made) & (ii) *muscle center* (major production or service activity)
  - (ii) Generally, courts consider nerve center as the PPB
- d. **Unincorporated associations** – look to the citizenship of *all* members (for partnerships, that includes *general & limited partners*; so, a partnership can be a citizen of all 50 states)
- e. **Decedents, minors, & incompetents** – look to *their* citizenship, NOT the citizenship of their representative

#### 2. Amount in controversy

- a. **Good faith allegation** that the claim in the complaint exceeds 75K – unless it is “*clear to a legal certainty*” that P cannot recover more than 75K (exclude such as punitive damages)
  - NOTE: if P ultimately recovers less than 75K, jurisdiction is OK, but he *may be liable for costs*
- b. **Aggregation** – where P must add 2 or more claims to meet the amount in controversy requirement; as long as there’s 1 P & 1D, P can combine the claims, even if they’re totally unrelated
- c. **Valuing injunctions** – there is a split of authority (argue in both ways)
  - (i) *majority view* (P’s viewpoint) – does the encroachment hurt P by more than 75K?
  - (ii) *minority view* (D’s viewpoint) – would it cost D more than 75K to comply w/the injunction?

#### 3. Exclusions – even if diversity of citizenship are met, fed courts will NOT hear cases involving:

- *Issuance of a divorce; alimony or child custody decrees; probate a decedent’s estate*

4. **Collusion** – no subject matter jurisdiction when a party “has been improperly or collusively made or joined to invoke jurisdiction” (watch for an assignment to create diversity)

### C. Federal Questions Cases

1. Complaint must show a right or interest founded substantially on a fed law (e.g., fed constitution, legislation) – *citizenship is irrelevant*, & there’s *NO amount in controversy requirement* because P is alleging a fed right
2. Some F/Q cases have exclusive fed jurisdiction (e.g. *patent infringement, fed securities laws*, etc.)
3. Well-pleaded complaint rule – **ask whether P is enforcing a fed right**

### D. Supplemental Jurisdiction

1. For every single claim joined in fed court, *must have a basis* of subject matter jurisdiction

- a. Always ask whether a claim is supported by *diversity/alienage* or *F/Q* jurisdiction –
- b. If not, try *supplemental jurisdiction*
2. Allows fed court to entertain claims over which it would have no independent basis – must have at least one claim that satisfy diversity/alienage or F/Q, so the case is in fed court:
  - a. Claims must arise from a *common nucleus of operative fact* (i.e. the *same transaction/occurrence*)
  - b. *Court's discretion* – even if the supplemental jurisdiction requirements are satisfied, the court has *discretion* not to hear the supplemental claim if:
    - (i) F/Q is dismissed early in the proceedings (usually before trial); OR
    - (ii) State law claim is complex or state law issues would predominate
3. Types
  - a. **“Pendent”** – claims joined by *Plaintiff* ONLY in a F/Q case (do not care if a different party is involved)
  - b. **“Ancillary”** – claims joined by *Anyone BUT Plaintiff* in any kind of case (diversity or F/Q)

#### E. Removal

1. Allows *Ds (only)* to have case filed in state court *“removed”* (i.e., transferred) *to the fed court* embracing the state ct in which originally filed (e.g., a case from the Supreme Ct of NY in Manhattan goes to SDNY)
2. **General test** – case is removable if there's fed subject matter jurisdiction
  - a. If multiple *Ds*, *all Ds must agree to remove*
  - b. *P cannot* remove if *D* counterclaims against *P* (even though *P* is the *D* on the counterclaim)
3. **Special rule for diversity cases ONLY** (not F/Q cases) – NO removal *if any D is citizen of the forum* where *P* brings the case
  - NOTE: no removal more than 1 year after case has been filed in state court
4. *Timing* – must remove within *30 days* of service of process of the first removable pleading
5. *Procedure* – *D* must file *notice of removal* (it's not a motion) in fed court, setting forth grounds of removal; sign it under Rule 11; attach all documents served on *D* in the state action; copy to all adverse parties
  - a. *If removal is improper* – *P* must move to remand to state court; within 30 days if based on a defect other than subject matter jurisdiction
  - b. Court must remand *anytime it finds there is no fed jurisdiction*
6. *Waiving the right to remove*:
  - a. *D* who files a *permissive counterclaim* in state court probably *waives the right to remove*
  - b. *D* who files a *compulsory counterclaim* in state court probably does NOT waive the right to remove

#### F. The Erie Doctrine (concerns choice of law between fed & state law – only arises in *diversity* cases)

1. *Black letter law* – in diversity cases, *fed courts must apply* (i) *state substantive law* & (ii) *fed procedural law*
2. 2 step analysis (determining whether substantive or procedural):
  - a. *Is there some fed law* (e.g., FRCP or FRE) *on point that directly conflicts with state law?* – if so, apply the fed law, so long as it is valid (because of Supremacy Clause)
  - b. *If NO fed law is on point, 3 approaches*:
    - (i) *Outcome determinative* – apply state law if applying or ignoring the state rule affect the outcome of the case
    - (ii) *Balance of interests* – consider whether either the fed or state system have a strong interest in having its rule applied (e.g., if there's a strong fed interest in having a jury decide questions of fact, contrary state law won't be followed unless there's a strong state interest)
    - (iii) *Avoid forum shopping* – apply state law if not following state law on this point, will cause forum shopping
3. Following are substantive for *Erie* purposes (& therefore state law governs in diversity cases):
  - (i) *Statutes of limitation*; (ii) *tolling of statutes of limitations*; (iii) *choice of law rules*
4. *Review of tort damages awards* – is it substantive or procedural?
  - a. *NY tort reform law* provides that an app ct can order a new trial if a jury award of damages *“deviates materially”* from what would be reasonable compensation
  - b. *Fed court standard* for a new trial is tougher, & requires a jury finding that *“shocks the conscience”* – also, the fed dist court, NOT the fed appellate court, would order a new trial
  - c. Which law applies?
    - (i) The standard for granting a new trial is considered *substantive*, so NY law governs
    - (ii) Which court (trial or app) addresses the motion is considered *procedural*, so the fed court doesn't have to follow state law

### III. Venue

#### A. Basic Idea

1. Subject Matter Jurisdiction tell us we can go to fed court
2. Venue tells us which fed court (e.g., NDNY, SDNY) – *this applies to cases filed originally in federal court*

#### B. The Rules

1. In any case (F/Q or diversity) – *P may lay venue in any district where:*
  - a. *All Ds reside* (BUT, if Ds reside in different districts in the same state, venue is proper in the district where *any one of the Ds resides*); OR
  - b. *A substantial part of the claim arose*
2. If no district anywhere in the US meets either of these choices (i.e., there’s no district where all Ds reside, & the claim arose overseas), then:
  - a. In *diversity* cases, any district where any D is subject to personal jurisdiction
  - b. In *F/Q* – any district where any D is found
3. Special Rule – if Ds reside in different districts of the same state, venue is proper in the district where any one of the Ds resides

### C. Determining Residence

1. *Individuals* – residence = domicile (same as an individual’s citizenship for diversity jurisdiction purposes)
2. *Corporations* – “resides” in all districts where the corporation is subject to personal jurisdiction at the time the case commenced
  - a. NOTE: don’t confuse the corporation’s citizenship for diversity jurisdiction purposes – corporation is a citizen of incorporation & PPB, BUT, is a resident of every district where subject to personal jurisdiction

### D. Local Acts

- Actions regarding (i) ownership, (ii) possession or (iii) injury to land, must be filed in district where land lies

### E. Transfer of Venue

1. Venue can be only transferred to a venue where the case could’ve been filed (i.e., one that is a proper venue, & where there is personal jurisdiction over the D, without waiver by the D)
  - a. *If the original forum is proper* – court may transfer to another fed district, but will consider following factors: (i) convenience of parties; (ii) convenience of witness; (iii) “*interests in justice*”
    - NOTE: the court to which a case is transferred applies the choice of law rules of the original court, even if P initiated the transfer
  - b. *If the original forum is improper* – court may (i) transfer in the interest of justice, or (ii) dismiss

## IV. Service of Process

### A. Basic Idea

1. “*Process*” – deliver to D a *summons* (formal court notice of a suit & time for response) & a copy of *complaint*
2. Must serve process within 120 days of filing or else case will be dismissed without prejudice (if P shows good cause for failing to serve within 120 days, the case won’t be dismissed)

### B. Mechanics

1. Process may be served by any *nonparty* who is at least 18 years old
2. Fed district court may use any *method* of service permitted by (i) the FRCP, (ii) the law of the state in which it sits, or (iii) the law of the state in which service is effected
  - a. *Personal service* – papers are given to D personally (can be done anywhere in the forum state)
  - b. *Substituted service* – process is left with D’s butler at D’s summer home; this is okay if:
    - (i) *It’s D’s usual abode*
    - (ii) *P serves someone of suitable age* (no particular age) & *discretion who resides there*
  - c. *Waiver by mail* – process is mailed to D by first class mail, postage prepaid; this is OK if D returns waiver form within 30 days
    - (i) By returning waiver form, D waives service but nothing else (e.g. lack of personal jurisdiction defense)
    - (ii) If D does not return the waiver form – P must serve either personally or by substituted service, & D will have to pay the cost of such service
  - d. *Process can be delivered to D’s agent authorized to receive service* (e.g. serving a corporation)
    - NOTE: all NY corporations designate the NY Secretary of State as agent for service of process
  - e. *Process delivered to D in another state* – OK only if state law allows (e.g., with the long-arm statute); so, a fed court in NY basically can exercise personal jurisdiction over an out-of-state D only if NY state courts could

## V. Joinder of Parties and Claims

### A. Parties

1. **Proper D’s & P’s who may be joined**
  - Claims must – (i) arise out of the same transaction/occurrence & (ii) raise at least 1 common question
2. **“Necessary” & Indispensable D’s & P’s**
  - a. Some *absentees* – MUST be joined because they have some relationship with the action
  - b. 3 tests for who is necessary – if absentee falls into any of these categories, the court can order joinder:
    - (i) *Without absentee, cannot accord complete relief among those already joined* (worried about multiple lawsuits)
    - (ii) *Absentee’s interests will be harmed if he isn’t joined* (practical harm)

- (iii) *Absentee claims an interest which subjects a party (usually D) to the possibility of multiple obligations*
  - NOTE: *joint tortfeasors* are NOT necessary parties
- c. If joining a necessary D isn't "feasible," because either (i) there's no personal jurisdiction over him, (ii) D's joinder destroys diversity jurisdiction, or (iii) D has a valid objection to venue,
  - (i) Court must either – (a) proceed with the case without joining D, or (b) dismiss the pending case (only if the court considers D *indispensable*)
  - (ii) Court's determination on whether to proceed or dismiss – balances the following:
    - (a) *Is there an alternative forum* available where everybody (including the absentee) can be joined (maybe state court)?
    - (b) *What is the real likelihood of harm* to anybody if we proceed without the absentee?
    - (c) *Can the court do something to shape the order* in the pending case to avoid any such harm?

## B. Claims by the Defendant

- TIP: If it starts with the letter "C", we're suing an existing party (*counterclaim, cross-claim, etc.*), BUT If it starts w/the letter "I", we're bringing in a new party (*interpleader, impleader, etc.*)

### 1. Counterclaim

- a. An offensive claim against an opposing party (e.g., D makes a claim against P) – filed with the *responsive pleading* – 2 types of counterclaims:
  - (i) **Compulsory** ("use it or lose it") – arises from *same transaction/occurrence* as P's claim (if D doesn't file it **with the answer** in the pending case, it's waived, & D can NOT sue in a separate case)
    - NOTE: If D's motion to dismiss was granted before D filed an answer, then D can file his case against P (counterclaim was not waived because D never answered)
  - (ii) **Permissive** – does NOT arise from the same transaction/occurrence as P's claim, & therefore need not be asserted in the pending case (*D may assert this in the pending case, OR in a separate case*)
- b. *Fed subject matter jurisdiction* – counterclaim must be supported by either (i) F/Q jurisdiction or (ii) diversity jurisdiction
  - (i) *If there's no fed subject matter jurisdiction*, the claim can be supported by *supplemental jurisdiction* (ancillary) ONLY IF it's *compulsory* (NOT *permissive*)
  - (ii) Because compulsory counterclaims meet the test for ancillary jurisdiction (i.e., (a) anyone but the P, & (b) arises from the same transaction/occurrence as the underlying cause)

### 2. Cross-claim

- a. Offensive claim against co-party – may file if arises from same transaction/occurrence (*Not compulsory*)
- b. Example: P (NC) sues D1 (SC) & D2 (SC) for personal injuries of 300K arising from a car collision w/D1 – D1 was driving D2's car – D2 car is destroyed, & wants to recover for property damage of 80K
  - (i) First, D2 *should* file a compulsory counterclaim against P – it's compulsory because it's against an opposing party & arises from the same transaction/occurrence as P's claim against D2
    - There is subject-matter jurisdiction, because there's diversity
  - (ii) Then, D2 *may* file a cross-claim against P – it's a cross-claim because it's against a co-party, & it arises from the same transaction/occurrence as the underlying case
    - However, we'll have to go to supplementary jurisdiction (no F/Q or diversity), & there will be a *supplementary jurisdiction* (because (i) it's a claim by anybody but P, & (ii) it's the same transaction/occurrence – by definition, a cross-claim is the same transaction/occurrence)

### 3. Impleader

- a. Claims involving a 3<sup>rd</sup> party D (TPD) brought in (usually by the D) in a *vicarious liability situation*
- b. Claim against TPD must be *derivative*, meaning it's for (i) *indemnity* or (ii) *contribution* (e.g., TPD is a joint tortfeasor)
- c. D has the right to implead no later than 10 days after serving his answer – after that, he needs to get court permission to implead
- d. Procedure – in order to implead a TPD, D must
  - (i) *File a third-party complaint* naming the party (e.g., the insurance company) as a TPD
  - (ii) *Serve process on the TPD*, because he's never been joined before
- e. After TPD is joined:
  - (i) P can assert a claim against TPD – YES, if it arises from same transaction/occurrence
  - (ii) TPD can assert a claim against P – YES, if it arises from same transaction/occurrence
- f. Thus there can be 3 claims – for each claim, check to see if it invokes F/Q or diversity jurisdiction; otherwise, see if supplemental jurisdiction is available
- g. *Bulge rule* – absentees who are joined as (i) *necessary parties*, or (ii) *under impleader* may be served with process out of state, regardless of state law, within 100 miles of the courthouse in which the case is pending (not available for serving process on original Ds)

## C. Special Multiparty Joinder Situations

**1. Intervention**

- a. *Absentee wants to join a pending suit* – chooses whether the intervene as a P or as a D; court can realign the absentee if he came in on the “wrong” side; application to intervene must be “*timely*,” though there’s no specific day limitation
  - (i) *Intervention of right* – absentee’s interest may be harmed if he isn’t joined, & his interest isn’t currently being adequately represented
  - (ii) *Permissive intervention* – absentee’s claim or defense has at least 1 common question with the pending case (allowing intervention is *discretionary* with the court)
- b. *Jurisdiction issue* – supplemental jurisdiction generally NOT available for either *permissive intervention* or *intervention of right*

**2. Interpleader**

- a. One holding money or property wants to force all potential claimants into a single lawsuit to *avoid multiple lawsuits & the threat of inconsistent results*
  - (i) *Stakeholder* – the party holding the property
  - (ii) *Claimants* – the parties who want the property
- b. 2 types of interpleader – different standards for (i) *jurisdiction*, (ii) *venue*, (iii) *service of process*

	<u>“Rule” interpleader</u> <i>(treated like a regular diversity case):</i>	<u>“Statutory” interpleader:</u>
<i>Diversity of citizenship</i>	Stakeholder <i>must be</i> diverse from every claimant	1 claimant must be diverse from 1 other claimant (stakeholder’s citizenship irrelevant)
<i>Amount in controversy</i>	75K or more	\$500 or more
<i>Service of process</i>	Regular service rules, like any case	Nationwide service of process
<i>Venue</i>	Regular venue rules, like any case	District where any claimant resides

**3. Class Action** – representative sues on behalf of a group

- a. *Initial requirements* – P must show:
  - (i) **Numerosity** – too many claims for practicable joinder
  - (ii) **Commonality** – some questions of law or fact in common to the class
  - (iii) **Typicality** – representative’s claims/defenses are typical of those of the class
  - (iv) **Adequate representation** – representative, & his lawyer, will fairly & adequately represent the class
- b. *Next step* – case must fit within 1 of 3 types of class actions
  - (i) TYPE 1 – “*Prejudice*”: class treatment is necessary to avoid harm either to class members or to the party opposing the class (e.g., numerous claimants to a fund, & individual suits would deplete the fund, leaving some without a remedy)
  - (ii) TYPE 2 – *Injunction or declaratory judgment* (not damages): sought because the class members were treated alike by the other party (e.g., employment discrimination)
  - (iii) TYPE 3 – *Damages*: (i) *common questions predominate*, & (ii) class action is the *superior method* for resolving the dispute (e.g. mass torts)
- c. **Notifying the class** – in TYPE 3 ONLY, class representative pays to give individual notice to all members reasonably identifiable, telling: (i) they *can opt out*, (ii) they will be bound if they do not opt out, & (iii) they can enter a separate appearance through counsel (No notice is required for TYPE 1 or 2)
- d. *Who’s bound by a class judgment* – all class members, except those who opt out of a TYPE 3 class action (there’s no right to opt out of TYPE 1 or 2)
- e. *Settlement or dismissal* – must be approved by the court, which will then notify class members
- f. *Subject matter jurisdiction*:
  - (i) Class might invoke F/Q jurisdiction by asserting a claim arising under fed law (e.g., fed civil rights)
  - (ii) If the class seeks to invoke *diversity* jurisdiction,
    - (a) *Look to the citizenship of the representative only*, NOT all the class members
    - (b) *Amount in controversy* – there’s a split of authority, & the 2<sup>nd</sup> Cir hasn’t ruled yet
      - *Standard answer* – each member must claim 75K or more
      - *Modern trend* – representative’s claim must exceed 75K

**VI. Trial, Judgment and Post-Trial Motions**

**A. Jury Trial**

- 1. *Requirement of demand* – must demand jury trial in writing no later than *10 days* after service of the last pleading raising a jury-triable issue (may demand in pleading or in a separate document)
- 2. *Right to jury trial in fed court* – the 7<sup>th</sup> Amendment (which applies only to fed courts) preserves it in actions *at law*, BUT NOT in *suits at equity*
  - In a case involves both law & equity – jury determination on law, then judge determination on equity

3. *Selecting jury* (the *voir dire* process) – each side has unlimited strikes of potential jurors for cause; but each side also has 3 peremptory strikes, which must be used in a *race & gender-neutral way*
4. **Motion for judgment as a matter of law** (directed verdict – JMOL) – an exceptional order, the effect of which is to take the case away from the jury (standard is that *reasonable people couldn't disagree on the result*)
  - a. *D can move twice* – (i) at the **close of P's evidence** & (ii) again at the **close of all evidence**
  - b. *P can ONLY move at the close of all evidence*

#### B. Renewed Motion for Judgment as a Matter of Law (JNOV)

1. After the jury returns a verdict for one party, & the court enters judgment on the basis of that verdict, the losing party files *renewed motion for judgment as a matter of law*, which, if granted, results in entry of judgment for him – must move not later than *10 days* after entry of the judgment
2. *Standard* – same as for *judgment as a matter of law*, & generally, the court will view the evidence in the light most favorable to the nonmoving party
3. Motion for judgment as a matter of law **AT THE CLOSE OF ALL EVIDENCE** is a *prerequisite* – if you did not move for judgment as a matter of law at the close of all evidence, you cannot make the renewed motion

#### C. Motion for New Trial

1. Judgment entered, but errors at trial require a new trial – must move no later than *10 days* after entry of the judgment; some common grounds for retrial include:
  - a. Error at trial makes judgment unfair (e.g., wrong jury instruction, prejudicial evidentiary ruling);
  - b. New evidence that could not have been discovered in time for trial;
  - c. *Prejudicial misconduct* of party or juror (e.g., lied on *voir dire*)
  - d. *Judgment is against the weight of the evidence*, showing serious error of judgment by the jury
2. Courts prefer to grant a new trial than a renewed motion for judgment as a matter of law, because it's less radical – simply results in starting over

### VII. Pleadings

#### A. Defensive Responses – 1 of 2 ways: (i) motion, or (ii) answer (no later than **20 days** after service of process)

1. *Answer* – a pleading, in which D does 2 things:
  - a. *Responds to allegations* of the complaint (e.g. admitting, denying, etc), &
  - b. *Raises affirmative defenses*
2. *Motions* – not technically pleadings, ask the court to order something, such as (i) require P to make a more definite statement, or (ii) ordering that a pleading or a portion thereof be stricken, or (iii) that the case be dismissed for any of a variety of reasons
3. *7 defenses* – can be raised either in the answer or by motion:
  - a. **Lack of subject matter jurisdiction**
  - b. *Lack of personal jurisdiction*
  - c. *Improper venue*
  - d. *Insufficient process*: something is wrong w/the *summons & complaint*
  - e. *Insufficient service of process*
  - f. **Failure to state a claim on which relief can be granted**
  - g. **Failure to join an indispensable party**
4. Waiver of Defenses:
  - a. (b) ~ (e) must be put in the *first* Rule 12 response (motion or answer), or else they're *waived*
  - b. (f) & (g) can be raised *anytime* throughout the trial
  - c. **(a) can be raised any time in the case – NEVER waived**

#### B. Notice Pleading

1. *Complaint* – must contain:
  - a. *Statement of subject matter jurisdiction*
  - b. *Short & plain statement of the claim*, showing entitled to relief
  - c. *Demand for judgment* – does not limit what can be recovered except in default cases  
– NOTE: with a *pro se* litigant, the court is usually more lenient, but these requirements must be met
2. *Statement of claim* – need not be stated with great specificity or particularity
  - a. Fed Rules use what is often called “notice pleading,” under which the pleading is sufficient if it puts the other side on notice
  - b. 3 exceptions (where facts must be plead with specificity or particularity):
    - (i) *Circumstances establishing fraud*
    - (ii) *Mistake*
    - (iii) *Special damages* – those that don't normally flow from an event

## FEDERAL JURISDICTION – ESSAY QUESTIONS

### I. QUESTION – 85 (& TORTS)

- A. Whether court had personal jurisdiction
  - 1. Fed court may acquire personal jurisdiction over parties served outside the state under the state statute
  - 2. NY long-arm statute grants PJ – transaction of any business within NY OR *contracting* anywhere to supply goods or services to NY
- B. Summary Judgment
  - 1. Granted to the moving party only where there is NO genuine issue of material fact
- C. Failure to state a cause of action
  - 1. Proceeds on the theory that even if all the allegations of the complaint are taken as true, there is no grounds of relief

### II. QUESTION – 69 (& COMMERCIAL PAPER)

- A. Whether diversity jurisdiction exists
  - 1. Diversity is sustained when (i) there is complete diversity, existed at the time action is commenced; or (ii) amount of controversy exceeds \$75,000.
  - 2. Attempts to manufacture diversity (e.g. moving right before the action), does not destroy diversity, provided there is bona fide change of domicile
  - 3. BUT, though with SMJ, D can move because improper forum – where SMJ is based solely on diversity if:
    - a. All D's reside;
    - b. Substantial part of claims giving rise to the action occurred; or
    - c. All Ds are subject to personal jurisdiction when the case is filed
- B. Ancillary Jurisdiction – D as a third-party plaintiff
  - 1. Where third-party claim is *related to the main cause of action or underlying action*
  - 2. BUT ancillary jurisdiction does NOT apply to unrelated claim

### III. QUESTION – 3 (& TORTS & NY PRACTICE)

- A. Federal district court may exercise jurisdiction if have both (i) subject matter jurisdiction, & (ii) personal jurisdiction
  - 1. Personal jurisdiction – service is proper if made either within the state in which the district court is located, or if made under the state long-arm statute

### IV. QUESTION – 12 (& CONFLICT OF LAWS & NY PRACTICE)

- A. Whether Fed court has SMJ and PJ – P (NY) v. D (Canadian) for \$80,000; tort in NY
  - 1. SMJ – (i) federal question; or (ii) diversity claim over \$75,000
  - 2. PJ – use state jurisdictional bases for obtaining PJ
- B. Whether losing party may recover costs
  - 1. Generally, costs are awarded to the prevailing party, UNLESS to do so would be inequitable
  - 2. Losing party maybe awarded costs ONLY IF the losing party has won some part of the suit

### V. QUESTION – 40 (& CONFLICT OF LAWS & NY PRACTICE)

- A. Whether P (non-state) can have the case remanded to NY court
  - 1. Removed – when complete diversity exists, case can be removed from state to federal court
  - 2. Remand – UNLESS one of the D is a citizen of the state in the courts of which the action is originally brought

### VI. QUESTION – 72 (& CONFLICT OF LAWS & NY PRACTICE)

- A. Whether action can be removed to federal court
  - 1. Need compete diversity between opposing sides for diversity jurisdiction
  - 2. Removal
    - a. Federal court must have jurisdiction over the case
    - b. ONLY defendants can remove**
    - c. ALL defendants must join in the removal**
    - d. A case based on diversity may NOT be removed **if any defendant is a citizen of the forum state**
    - e. If the case contains a separate and independent claim based on a federal question, defendant may remove the whole case
    - f. Notice of removal must be filed within 30 days of the date defendant receives copy of the initial proceeding
  - 3. Remand – P can file a motion to have the case remanded to the state court