

Civil Procedure: Subject Matter Jurisdiction

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1 Limited Jurisdiction of Federal Courts

1.1 Constitutional Limits

U.S. Constitution, Article III, § 2

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

1.2 Statutory Implementation

28 U.S.C. §§ 1331, 1332, etc.

2 Diversity Jurisdiction

2.1 . Constitutional & Statutory Basis

Article III, § 2

- Diversity: “between Citizens of different states”
- Alienage: U.S. state/citizen v. foreign state/citizen

28 USC § 1332

- “between citizens of different states”
- “matter in controversy exceeds the sum or value of \$75,000”

2.2 Citizenship

- Minimal v. Complete diversity
 - Constitution requires only minimal
 - Statute interpreted to require complete diversity
 - Exception: Class actions
 - CAFA: § 1332(d)(2)(B)
 - “any member of a class of plaintiffs is a citizen of a State different from any defendant”
 - Applies where total amount in controversy > \$5 million
 - Non-CAFA: only named plaintiffs count
- Determining state of citizenship
 - Individual
 - Domicile = residence + intent to remain/return indefinitely
 - Indefinitely doesn't mean forever
 - Once domicile is established, it remains unchanged, even if person changes their mind about intending to remain, until the person actually moves elsewhere with an intent to remain
 - Evidence
 - exercise of civil & political rights
 - payment of taxes
 - ownership of real & personal property
 - possession of driver's and other licenses
 - maintenance of bank accounts
 - membership in clubs, churches, etc.
 - maintenance of home
 - Party's statement of intent is relevant, but gets little weight against contrary objective facts
 - Corporation
 - State of incorporation and principal place of business
 - Principal place of business=“nerve center”. *Hertz Corp. v. Friend* (US 2010)
 - Unincorporated association
 - Every state where members are citizens
 - Unincorporated associations include businesses organized as partnerships, labor unions, and other membership organizations that are not incorporated
- Citizenship is determined at the time of filing
 - Subsequent changes don't matter

Mas v. Perry, 489 F.2d 1396 (5th Cir. 1974)

- Facts
 - Defendant was citizen of Louisiana
 - Plaintiffs were married couple

- › Husband was French citizen
 - › At time of case, § 1332 did not include current provision treating lawful permanent residents as citizens of state of domicile
- › Wife was US citizen, originally from Mississippi
- › Couple lived in Louisiana while students
 - › Moved to Illinois
 - › Stated intent to return to Louisiana while husband finished degree
 - › No definite intent where to go after that
- Holding & Analysis
 - Wife is citizen of Mississippi
 - › Court rejects notion that wife share's husband's domicile
 - › If her domicile was in France, but she remained a US citizen, she would be neither a citizen of a state nor a citizen of a foreign state, and therefore could not sue in federal court based on diversity or alienage
 - › Court finds wife did not establish domicile in Louisiana, where she lived as a student without establishing the requisite intent to remain

Friedrich v. Davis, 989 F. Supp. 2d 440 (E.D. Pa. 2013)

- Facts
 - Plaintiff sued under state law for injury allegedly caused by defendant
 - Plaintiff brought suit in federal court, based on diversity of citizenship
 - › Plaintiff asserted she was citizen of Ohio and defendant was citizen of Pennsylvania
- Issue
 - Whether defendant, a U.S. citizen living in Germany, was a citizen of Pennsylvania for purposes of diversity jurisdiction
- Holding
 - Court lacks diversity jurisdiction, where defendant is domiciled in Germany, not Pennsylvania, and therefore not a citizen of any state for diversity purposes
- Analysis
 - Court reviewed evidence bearing on defendant's intent, and concluded that, on balance, it indicated intent to remain in Germany
 - A U.S. citizen domiciled abroad has no state of citizenship for diversity purposes. Consequently, suit is not "between citizens of different states"
 - › Also not a suit between a citizen of a state and a citizen of a foreign state, because defendant is a U.S. citizen, not a German citizen

2.2.1 Special Issues

Dual citizens

- *Coury v. Prot* (5th Cir. 1996) (holding diversity jurisdiction proper in case between US citizen domiciled in CA & dual US/French citizen domiciled in Texas; consensus is to

consider only US citizenship for dual citizen)

Business incorporated in US but with principal place of business outside US

- *MAS Capital v. Biodelivery Svcs Int'l* (7th Cir 2008) (Ignore foreign HQ)

Involuntary change in domicile

- Prisoners
- Children under guardianship

Assignment of interest

- D-MA owes debt to P-MA. P-MA assigns interest to A-NJ.
 - Does it matter if the assignment is bona fide for value
 - What if P-MA retains interest in A-NJ's recovery?

2.3 Amount in Controversy

- Must be > \$75k
 - Determined at outset of lawsuit, from face of the complaint
 - Doesn't matter if plaintiff ultimately recovers less
 - The amount must be legally recoverable
 - "Legal certainty" Test
 - See, e.g. *Mas v. Perry*
 - Punitive and other special damages may count
 - if law provides for recovery
 - if amount would not be so excessive as to be subject to certain reduction under Due Process clause
 - Attorney fees may count
 - if statute or contract provides for recovery
 - Interest and costs are normally excluded
 - Some special exceptions (not important for this course)
- Aggregation
 - Single P v. Single D
 - May aggregate all claims, whether related or unrelated
 - Single P v. Multiple Ds
 - May not aggregate if separate liability
 - Example: P seeks \$50,000 in damages against D1 and \$40,000 against D2
 - Alternate or Joint & Several Liability
 - Example: P sues D1 and D2, alleging that one of them caused a car accident. Plaintiff seeks \$75,000 for personal injuries and \$5,000 for property damages. Since plaintiff seeks to collect the full amount from one

or the other defendant, the amount in controversy requirement is satisfied as to both defendants.

- Example: P sues D₁ (manufacturer) and D₂ (retailer) for injuries resulting from defective product, seeking total of \$80,000 in damages. If defendants are jointly and severally liable (i.e. plaintiff may collect entire amount from either defendant), then amount in controversy requirement is satisfied.
- Multiple Ps v. Single D
 - Normally may not aggregate
 - At least one P must individually satisfy the amount
 - Court may then exercise supplemental jurisdiction over claims by additional Ps without regard to amount. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005)
 - Where multiple plaintiffs claim a joint interest in the same property in defendant's possession, the value of the property applies to each plaintiff for purposes of the amount in controversy
 - Example: A & B sue C to recover a painting that A & B jointly own. The painting is worth \$100,000. Each plaintiff satisfies the amount in controversy.

Harshey v. Advanced Bionics Corp. (S.D. Ind. 2009)

- After defendants removed suit to federal court based on diversity, plaintiffs filed stipulations stating that none of them sought recovery exceeding \$75,000
- Defendants, as parties asserting diversity jurisdiction, have burden of showing jurisdiction is proper
 - Court says defendants failed to produce sufficient evidence to show that any plaintiff's claims were worth more than \$75,000

Carroll v. Stryker Corp., 658 F.3d 675 (7th Cir. 2011)

- Plaintiff sued in state court asserting statutory and equitable claims for unpaid wages
- Defendant removed to federal court and moved for summary judgment, which trial court granted
- Court of Appeals questioned whether amount in controversy exceeded \$75,000
 - Court raised issue *sua sponte*
- Court found, based on evidence of Plaintiff's demands and settlement offers, that plaintiff sought more than \$75,000 in lost salary/commissions

2.4 Class Actions

- CAFA: § 1332(d)(2)
 - Total amount sought by all plaintiffs exceeds \$5 million

- Non-CAFA
 - Named plaintiff must satisfy normal amount in controversy requirement (\$75,000)
 - Court may exercise supplemental jurisdiction over claims by additional class members, regardless of amount. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005)

3 Federal Question Jurisdiction

3.1 Constitutional Basis

Article III, § 2

... all Cases ... arising under this Constitution, the Laws of the United States, and Treaties made ... under their Authority

Osborn v. Bank of the United States (US 1824)

- Facts & Procedural History:
 - Congress established the Second Bank of the United States by statute
 - State of Ohio passed a law imposing a tax on Bank.
 - After state auditor seized money from a branch of Bank, Bank sued in federal Circuit Court (then the lowest level of federal court, equivalent to U.S. District Court today), seeking return of the money.
 - Trial court ruled in favor of Bank, holding that state's imposition of tax on federally-chartered Bank was unconstitutional.
- Issue
 - Whether the statute establishing Bank granted federal courts jurisdiction over any case in which Bank was a party
 - If so, whether statutory grant of jurisdiction was valid under Art. III, § 2
- Analysis & Holding
 - Statutory provision authorizing Bank "to sue and be sued ... in any Circuit Court of the United States" was intended as a grant of jurisdiction
 - N.B. At this time, Congress had not enacted a general "federal question" statute
 - Statutory grant is valid only if within scope of Art. III, § 2
 - Constitution authorizes jurisdiction over any case "arising under" federal law
 - N.B. Constitutional jurisdiction over cases in which "the United States" is a party did not apply, because Bank was not "the United States", but a private corporation chartered by federal statute
 - Since Bank is created under federal statute, its capacity to sue and be sued, to enter into contracts, etc. is inherently "an original ingredient in every cause" to which the Bank is a party.

- It doesn't matter how that issue arises or even whether it is actually disputed in the case
- The fact that a case involves a mix of state and federal questions does not deprive federal courts of jurisdiction under Art. III, § 2
- As long as there is some federal "ingredient", Art. III, § 2 permits federal courts to take jurisdiction over the whole case

3.2 Federal Question Statute

28 USC § 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Louisville & Nashville RR v. Mottley (US 1908)

- Issue
 - When does a case "arise under" federal law for purposes of § 1331 (not Art. III, § 2)?
- Facts & Procedural History
 - Mottleys (citizens of KY) were injured while riding a train operated by the L&N (citizen of KY). To settle their personal injury claim, the RR gave them lifetime passes for free travel.
 - Congress subsequently passed a law prohibiting RRs from giving free passage (anti-corruption measure)
 - RR then refused to honor the Mottleys passes, saying they were prohibited from honoring them under federal law.
 - Mottleys sued in federal court for breach of contract
- Analysis and Holding
 - Breach of contract claim arose under Kentucky law
 - No diversity of citizenship between the parties (both KY)
 - Breach of contract claim under KY law did not entail any issue of federal law (e.g. validity of the passes).
 - Validity of passes arose only as a defense by L&N.
 - That's not sufficient to satisfy statutory requirement that the case "arise under" federal law
 - Jurisdiction under § 1331 must be determined solely with reference to the face of a "well-pleaded complaint"
 - Court relies on rules of Pleading & Defenses (code pleading)
 - Complaint should be limited to alleging the necessary elements (and supporting facts) of plaintiffs' claims
 - These are controlled by the law giving rise to the cause of action, in this case, state contract law
 - Defendant then answers the complaint

- › May deny elements of plaintiffs' prima facie case
 - › May assert affirmative defenses
 - › Affirmative defenses say "even if plaintiff proves their prima facie case, I'm not liable for some other reason"
 - › Example: Illegality of a contract
 - › Defendant has burden as to affirmative defenses
 - Governing substantive law determines whether to allocate burden to plaintiff, as element of claim, or to defendant, as affirmative defense
 - › What if applicable state law required plaintiff, in breach of contract case, to plead and prove legality of the contract as an element of the claim?
 - › See "essential federal element" cases, below.
- Effect of Mottley
 - Term "arising under" has narrower meaning in sec. 1331 than in Art. III, § 2
 - Key Principles:
 - › Plaintiff is "master of the complaint"
 - › Federal question must appear on face of "well-pleaded complaint"
 - › Well-pleaded = sufficient to state a claim under applicable pleading standards and substantive law
 - › i.e. contains sufficient allegations to make out prima facie case given elements of claim
 - › Ignore anything that is not part of prima facie claim

3.3 Federal Pre-emption and Exclusive Jurisdiction

- Pre-emption
 - Under the Supremacy Clause, U.S. Const. art. VI., § 2, a (constitutionally valid) federal law will displace a conflicting state law
 - In some areas of strong federal power, federal law may completely pre-empt any state law even where there is no direct conflict.
 - › Example: The National Labor Relations Act (NLRA), enacted pursuant to the federal power to regulate interstate commerce, completely pre-empts all state laws governing labor-management relations (except for state "right-to-work" laws expressly permitted under Taft-Hartley). A plaintiff suing over an alleged violation of a collective bargaining agreement must sue under NLRA sec. 301, not a state-law breach of contract claim.
 - A state-law claim that is pre-empted by federal law will not be "well-pleaded" and should be dismissed (usually with leave to file an amended complaint, or a new suit, asserting the appropriate federal claim).
 - › There is some disagreement over whether such a claim filed in state court may be removed to federal court, on the grounds that it really states a federal claim.
- Exclusive federal jurisdiction

- In some instances, federal courts have exclusive original jurisdiction over federal law claims.
- If such claims are filed in state court, they must be dismissed for lack of subject matter jurisdiction. Dismissal is typically without prejudice, allowing the plaintiff to refile the federal claim in federal court, or to file an amended complaint asserting (non-preempted) state law claim.
 - › Example: Federal antitrust and patent claims.
- Exclusivity and complete pre-emption sometimes go hand in hand, but not always
 - › Example: Federal patent law completely preempts state law, and federal courts have exclusive jurisdiction over federal patent claims.
 - › Example: Federal antitrust law does not completely preempt state antitrust law, but federal courts have exclusive jurisdiction over federal antitrust claims

3.4 Counterclaims

- Counterclaims to be covered as part of joinder
 - Compulsory counterclaim: Any claim that the defendant has against plaintiff, arising out of the same transaction or occurrence as the plaintiff's original claim
- Counterclaim arising under federal law does not make case removable based on federal question, if plaintiff's original claim was not removable. *Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.* (US 2002)
 - Note that in *Holmes Group*, the counterclaim arose under the federal patent statute, over which federal courts have exclusive original jurisdiction (i.e. claims may not be brought in state court).
 - To resolve that anomaly, Congress enacted a statute to clarify that patent claims (also plant variety & copyright claims) are removable, regardless of the posture in which they are asserted. 28 U.S.C. § 1454. But *Holmes Group* rule still applies to other federal law claims asserted as counterclaims (and crossclaims, etc.).

3.5 Essential Federal Element in a State-Law Claim

Smith v. Kansas City Title & Trust Co. (US 1921)

- Facts
 - Shareholder sues to enjoin Trust from investing in federal bonds, issued pursuant to the federal Farm Loan Act
 - › MO law prohibits trust from investing in unauthorized securities
 - › Invalidity of securities is an element of plaintiff's claim
 - › Smith contended that the Farm Loan Act was unconstitutional, and the bonds therefore invalid
- Holding

- Even though cause of action is created by MO law, the claim entails a necessary federal issue—constitutionality of the statute authorizing issuance of the bonds – that must be resolved to decide the claim
- Plaintiff's "right to relief depends upon the construction or application of the Constitution or laws of the United States"
- Dissent (Frankfurter)
 - Test should ask which law creates the cause of action
 - Advantage: simpler to apply

Merrell Dow Pharm., Inc. v. Thompson (US 1986)

- Facts
 - Plaintiffs asserted state tort claims (strict liability, negligence, etc.) against Merrell Dow for birth defects allegedly caused by benedictin.
 - Negligence claims alleged that Merrell Dow was negligent in failing to warn of the risk
 - Plaintiffs alleged drug was mislabeled in violation of FDA regulations
 - Under state law, violation of legal health or safety requirement is treated as negligence per se
- Holding
 - No federal question, based on state law incorporation of federal regulatory standard, where federal law does not provide for a private right of action, and where federal interest is insufficiently "substantial"
 - Exercise of federal jurisdiction would undermine the express statutory scheme, providing for exclusive enforcement by FDA
 - Federal interest in uniform interpretation of FDCA would not be adversely affected by inconsistent interpretations in the context of state tort claims
 - Extending federal jurisdiction to such claims would effectively federalize a vast number of state product liability suits, disrupting the balance between the state and federal judicial systems
 - Plaintiffs were merely using federal regulatory standard as evidence of what the standard of care under state law should be
 - Plaintiffs were not themselves asserting any rights, nor seeking any remedy, under federal law itself.
 - In this sense, federal law was not essential to their claim

Grable & Sons v. Darue Engineering (US 2005)

- Facts
 - IRS seized Grable's property to satisfy a tax delinquency
 - Grable had actual notice of the seizure and sale, but did not receive notice in the form specified under federal statute
 - Grable brought state quiet title action against Darue, which bought the property in the IRS tax sale.

- › Under state law, Grable was required to specify “the facts establishing the superiority of [its] claim” to the property
- › Grable contended that the seizure and sale of his property were invalid, because IRS did not provide notice in the form specified by federal statute.
- › The alleged invalidity of the seizure and sale was the sole basis for Grable’s claim that it was still the rightful owner of the property.
- Holding
 - Federal court has jurisdiction under sec. 1331 where state law claim “necessarily raise[s] a stated federal issue, actually disputed and substantial” and where exercise of federal jurisdiction will not “disturb[] any congressionally approved balance of federal and state judicial responsibilities”
 - Standard:
 - › Is the meaning of federal statute an essential element of the state law claim?
 - › Is the meaning of the federal statute actually in dispute
 - › Is the meaning of the federal statute “an important issue of federal law that sensibly belongs in federal court” – i.e. strong federal government interest
 - Merrell Dow distinguished:
 - › There, concern was opening the door to large number of routine state product liability claims based on violation of federal standard.
 - › Few quiet title claims will turn on a federal law issue, so permitting a federal forum for those rare claims won’t disturb the state-federal balance.
 - › Grable was relying on federal law to establish its rights to the property. Interpretation of federal law was essential to Grable’s claim, not merely an evidentiary reference point.
 - › Absence of private right of action under federal statute may be relevant to strength of federal interest, but it is not conclusive.
 - Here, there’s a strong federal interest in uniform interpretation of the statute, which would be directly implicated by a decision in this case.

Empire Healthchoice Assurance v. McVeigh (US 2006)

- Facts
 - Federal statute authorized federal government employers to enter into contracts for employee health insurance coverage.
 - › Under the terms of the contract with Empire, the company was required to seek reimbursement from employees if they received payment from a third party for any covered injury.
 - › Employees are notified of this requirement, and are bound by it as beneficiaries to the insurance contract.
 - Empire covered McVeigh’s medical expenses resulting from an injury.
 - McVeigh brought a personal injury suit in state court, and eventually settled with the defendant.
 - Empire sued McVeigh to recoup the amount it had paid for McVeigh’s medical expenses

- Holding
 - No federal question jurisdiction over Empire’s recoupment claim against covered employee.
 - The federal statute authorized government employers to enter into insurance contracts, and provided for federal jurisdiction over any claims against the U.S. government arising from such contracts.
 - But the statute did not say anything about carriers’ subrogation rights, and did not provide for federal jurisdiction in claims by carrier against covered employees.
 - The reimbursement claim arose out of a private settlement of McVeigh’s state court personal injury suit, not from any government action.

Gunn v. Minton (US 2013)

- Facts & Procedural History:
 - Minton sued Gunn in Texas state court, asserting attorney malpractice claim based on Gunn’s handling of a patent infringement suit.
 - Under state law, Minton had to plead and prove that Gunn’s conduct was negligent, and that Minton would have prevailed in the underlying patent suit, but for Gunn’s negligence.
 - The court must conduct a “mini-trial” on the underlying patent issue
 - Minton contended that Gunn negligently failed to raise an “experimental use” argument, and that Minton would have won if Gunn had not waived the argument.
 - After losing in state court, Minton sought to get a do-over, by arguing that the state court lacked subject-matter jurisdiction, because federal courts have exclusive jurisdiction over patent infringement claims.
 - If that’s correct, the state court judgment would be void, and plaintiff could refile in federal court
 - N.B. This raises the matter of claim preclusion, which will be covered in Civ Pro II.
- Issue
 - Whether the federal court had exclusive original jurisdiction over the malpractice claim, based on the underlying patent issue.
- Holding & Analysis
 - No federal question jurisdiction, where federal issue arises only as part of the “mini trial” in an attorney malpractice claim
 - Court applies the analysis in *Grable*
 - Resolution of the underlying patent issue was necessary to resolution of the malpractice claim, and disputed by the parties.
 - But the federal patent issue was not “substantial” in relation to the malpractice claim.
 - “Substantial” refers to “importance of the issue to the federal system as a whole”
 - Would allowing the state court to decide the patent issue here offend

- important interests of the federal system?
- In the malpractice case, the state court was not resolving an actual controversy under federal patent law (i.e. it wasn't determining the respective rights and liabilities of the parties to the patent dispute). Federal law arose only in a hypothetical sense (i.e. What if Gunn had raised the issue of experimental use?).
 - While the patent issue was important to the parties in this case, it was not "substantial" from the perspective of the federal system as a whole, because no rights under federal patent law were actually at stake.
 - "Balance of federal and state judicial responsibilities" tilts in favor of state court where the primary issue is attorney malpractice, a matter of traditional state concern.

4 Supplemental Jurisdiction

28 USC § 1367

- (a) *Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.*
- (b) *In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.*
- (c) *The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—*
- (1) *the claim raises a novel or complex issue of State law,*
 - (2) *the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,*

(3) *the district court has dismissed all claims over which it has original jurisdiction, or*

(4) *in exceptional circumstances, there are other compelling reasons for declining jurisdiction*

- A federal court must have subject matter jurisdiction over each claim in a suit.
- Where a suit includes both jurisdictional and non-jurisdictional claims, supplemental jurisdiction may allow a federal court to hear the entire suit.
- The otherwise non-jurisdictional claims must be factually related to a jurisdictional claim.
 - Example: Employee sues employer, alleging she was fired without cause, in violation of her employment contract, and on account of her religion, in violation of federal civil rights law. Employee and employer are citizens of the same state.
 - A federal court would have federal question jurisdiction over the federal civil rights claim, but would have neither federal question nor diversity jurisdiction over the state-law contract claim on its own.
 - The court may exercise supplemental jurisdiction over the contract claim, because it arises from the same set of facts (the firing) as the federal civil rights claim.
- Further restrictions apply where diversity is the sole basis for federal subject matter jurisdiction.
 - Covered in detail as part of Joinder.

5 Removal Jurisdiction

5.1 Overview

- The plaintiff has the initial choice of forum
 - Normally, even where a federal court would have subject matter jurisdiction, a plaintiff may still sue in state court if they prefer
 - Exception: Federal courts have exclusive jurisdiction over suits under certain federal statutes.
 - Examples: patents, trademarks, and copyrights; antitrust; securities and banking regulation; bankruptcy
- Removal allows a defendant to over-ride the plaintiff's choice of state court, where the case could have been brought in federal court to begin with.
 - One-way street
 - If plaintiff brings suit in federal court, and federal court has jurisdiction, defendant may not "remove" to state court
- Remand is the procedure for returning a case to state court where it was improperly removed to federal court

- But where the plaintiff brings suit in federal court, and there is no federal subject matter jurisdiction, the federal court cannot “remand” to state court, because the case didn’t originate there.
 - The federal court will dismiss for lack of jurisdiction, typically without prejudice to plaintiff’s ability to refile in state court.

5.2 Requirements for Removal

28 U.S.C. § 1441(a)

- There must be federal subject matter jurisdiction over the complaint (i.e. the plaintiff could have filed the suit in federal court, but chose to file in state court)
 - A defendant may not remove based on a federal-law defense.
 - Example: The Mottleys sue the L&NRR for breach of contract (a state-law claim) in Kentucky state court. Both parties are citizens of Kentucky.
 - The RR may not remove based on its defense that federal law makes the contract unenforceable.
 - A defendant may not remove based on a federal-law counterclaim
 - A counterclaim is a claim that a defendant asserts back against a plaintiff (to be covered under Removal)
 - Example: Creditor sues debtor under state law to collect on delinquent loan payments. Both parties are citizens of the same state.
 - Debtor may not remove based on a counterclaim against Creditor for unfair debt collection practices under federal law.

5.3 Limit on Removability

28 U.S.C. § 1441(b)

- “Forum defendant rule”
 - Where diversity is the only basis for federal subject matter jurisdiction, removal is improper if *any* defendant is a citizen of the state in which the suit was filed.
 - Example 1: P (Ohio) sues D1 (Pennsylvania) and D2 (Delaware & North Carolina) in Ohio state court, asserting claims under state law for more than \$75,000.
 - Defendants may remove, because the requirements for diversity jurisdiction are satisfied, and neither defendant is a citizen of Ohio.
 - Example 2: P (Ohio) sues D1 (Pennsylvania) and D2 (Delaware & Pennsylvania) in Pennsylvania state court, seeking more than \$75,000 for her injury.
 - Defendants may not remove, even though the requirements for diversity jurisdiction are satisfied, because one defendant is a citizen of Pennsylvania.

- › Example 3: P (Ohio) sues D₁ (Pennsylvania) and D₂ (Delaware & Pennsylvania) in Pennsylvania state court, asserting claims under both state and federal law.
 - › Defendants may remove, based on federal question jurisdiction, without regard to the citizenship of the parties or amount in controversy. (The federal court will have supplemental jurisdiction over the state-law claims, assuming they arise out of the same incident.)

5.4 Procedure for Removal & Remand

28 U.S.C. § 1446

- Notice of Removal
 - The defendant files a Notice of Removal in the appropriate federal district court
 - The notice must explain the basis for removal
 - If there are multiple defendants, they must all consent to removal
- Timing of Notice
 - Notice of removal must be filed within 30 days after defendant's receipt of the complaint
- Effect of Notice
 - The suit is automatically removed from state to federal court upon filing of the notice.

28 U.S.C. § 1447(c)

- Remand
 - Procedure for returning a case to state court where it was improperly removed
 - If removal was improper because there is no federal subject matter jurisdiction:
 - › The federal court must remand, even if the plaintiff does not object to removal
 - › There is no time limit on remand for lack of subject matter jurisdiction
 - If there is federal subject matter jurisdiction, but remand was improper for some other reason (e.g. forum defendant rule; lack of consent from all defendants; untimely notice of removal):
 - › Plaintiff may file a motion for remand
 - › Motion must be filed within 30 days after the notice of removal was filed
 - › If plaintiff does not make a timely motion for remand, the objection to removal is waived and the case will remain in federal court (because there is subject matter jurisdiction, and the other defects are merely procedural).