Understanding Federal Courts and Jurisdiction

LexisNexis Law School Publishing Advisory Board

Bridgette Carr

Clinical Professor of Law University of Michigan Law School

Steven I. Friedland

Professor of Law and Senior Scholar Elon University School of Law

Carole Goldberg

Jonathan D. Varat Distinguished Professor of Law UCLA School of Law

Oliver Goodenough

Professor of Law Vermont Law School

Paul Marcus

Haynes Professor of Law William and Mary Law School

John Sprankling

Distinguished Professor of Law McGeorge School of Law

Understanding Federal Courts and Jurisdiction

Second Edition

Linda Mullenix

Rita and Morris Atlas Chair in Advocacy University of Texas School of Law

Martin Redish

Louis and Harriet Ancel Professor of Law and Public Policy Northwestern University School of Law

Georgene Vairo

Professor of Law David P. Leonard Chair Loyola Law School, Los Angeles



Print ISBN: 978-1-6304-4792-2 E-book ISBN: 978-1-6304-4793-9

Library of Congress Cataloging-in-Publication Data

Mullenix, Linda S., 1950- author.

Understanding federal courts and jurisdiction / Linda Mullenix, Rita and Morris Atlas Chair in Advocacy, University of Texas School of Law; Martin Redish, Louis and Harriet Ancel Professor of Law and Public Policy, Northwestern University School of Law; Georgene Vairo, Professor of Law, David P. Leonard Chair Loyola Law School, Los Angeles. -- Second edition.

Includes index.
ISBN 978-1-63044-792-2
1. Courts--United States. 2. Jurisdiction--United States. I. Redish, Martin H., author. II. Vairo, Georgene, author. III. Title.

KF8719.M85 2014 347.73'12--dc23

pages cm

2014025390

This publication is designed to provide authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender and the Matthew Bender Flame Design are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2015 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved.

No copyright is claimed by LexisNexis or Matthew Bender & Company, Inc., in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material may be licensed for a fee from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

NOTE TO USERS

To ensure that you are using the latest materials available in this area, please be sure to periodically check the LexisNexis Law School web site for downloadable updates and supplements at www.lexisnexis.com/lawschool.

Editorial Offices

121 Chanlon Rd., New Providence, NJ 07974 (908) 464-6800 201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200 www.lexisnexis.com

Editorial Offices 630 Central Ave., New Providence, NJ 07974 (908) 464-6800 201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200 www.lexisnexis.com

MATTHEW & BENDER

Table of Contents

DIVISIO	N I FEDERAL COURTS AND JURISDICTION	1
Chapter	THE STRUCTURE OF THE FEDERAL JUDICIAL SYSTEM	3
§ 1.01	ARTICLE III AND THE SCOPE OF FEDERAL JUDICIAL POWER	3
§ 1.02	THE SALARY AND TENURE PROTECTIONS OF ARTICLE III JUDGES	3
§ 1.03	LIFE TENURE OF ARTICLE III JUDGES DURING "GOOD BEHAVIOR"	
§ 1.04	ARTICLE III JUDGES' PROTECTION AGAINST SALARY REDUCTIONS	6
[1]	Determining the Methodology of Compensation Clause Analysis	6
[2]	Prohibition of Direct Reduction in Salary of an Article III Judge	7
[3]	Indirect Reductions in Judicial Salaries: A State of Doctrinal	
	Uncertainty	8
[4]	Provision of Cost of Living Adjustments Left to the Discretion of	
	Congress	0
§ 1.05	CONGRESSIONAL POWER TO CONTROL LOWER FEDERAL COURT JURISDICTION	1
[1]	The Madisonian Compromise: Congressional Discretion Not to	
	Create Lower Federal Courts	1
[2]	Congress's Broad Power to Control Lower Federal Court Jurisdiction 1	2
[3]	Congressional Power to Control Lower Federal Court Jurisdiction:	
	A Brief Overview of the Scholarly Theories	3
[a]	Martin v. Hunter's Lessee: The View That Judicial Power	
	Must Be Vested in Some Federal Court	3
[b]	Theory of Mandatory Federal Judicial Review of State Court	
	Constitutional Determinations	4
[c]	The View That Some, But Not All, Cases Must Be Heard in a	
	Federal Forum	8
[4]	Congress May Impose Procedural Prerequisites to Federal	
	Jurisdiction	9
§ 1.06	DUE PROCESS LIMITS ON CONGRESS'S POWER TO CONTROL LOWER FEDERAL COURT JURISDICTION	20
[1]	Must Congress Provide Federal Jurisdiction to Hear Constitutional	
		20
[2]	The View That State Courts Provide Sufficient Independent	
	3	22
[3]	Limits on Federal Jurisdiction May Violate Due Process if State	

Table	of Contents	
	Courts Are Unavailable or Inadequate	22
§ 1.07	CONGRESSIONAL POWER TO LIMIT FEDERAL COURT	
	JURISDICTION AND SEPARATION OF POWERS	25
[1]	Separation of Powers and Due Process Are Separate and Distinct	
	Limitations on Congressional Power over Federal Jurisdiction	25
[2]	Hayburn's Case: First Recognition of Separation of Powers Limitation .	26
[3]	United States v. Klein: Congress May Not Dictate the Result of a	
	Particular Case	27
[4]	Yakus v. United States and Adamo Wrecking Company: Foreclosing	
	Review of Validity of Regulations	28
[5]	United States v. Sioux Nation: Congress May Waive Defense of Res	
	Judicata in Cases against Federal Government	30
[6]	Plaut v. Spendthrift Farm: Congress May Not Reopen Final	
[~]	Judgments	31
§ 1.08	CONGRESSIONAL POWER TO VEST ARTICLE III COURTS	
3 1.00	WITH NON-ARTICLE III POWER	32
[1]	Congressional Power to Assign Non-Article III Cases to Article III	
[-]	Courts	32
[2]	Allocation of Non-Article III Functions to Article III Courts and	-
[-]	Judges Is Generally Unconstitutional	35
[a]	The Unique Role of the Judiciary Precludes Performance of	
£3	Nonjudicial Functions	35
[b]	Morrison v. Olsen: Judiciary May Appoint, Administer, and	
	Terminate Special Counsel	37
[c]	Mistretta v. United States: Members of the Judiciary May Be	
	Required to Sit on Sentencing Commission	38
§ 1.09	ARTICLE III COURTS HAVE ULTIMATE POWER TO RESOLVE	
	QUESTIONS OF "CONSTITUTIONAL FACT"	40
§ 1.10	CONGRESS HAS POWER TO MAKE EXCEPTIONS TO THE	
	SUPREME COURT'S APPELLATE JURISDICTION	42
[1]	The Exceptions Clause Allows Congress to Limit the Supreme	
	Court's Appellate Jurisdiction	42
[2]	Ex parte McCardle: The Supreme Court Gives the Exceptions	
	Clause Broad Scope	42
[3]	Possible Limits on Congress's Broad Powers Under McCardle and	
	the Exceptions Clause	44
§ 1.11	CONGRESS POSSESSES LIMITED AUTHORITY TO VEST THE	47
§ 1.12	JUDICIAL POWER IN NON-ARTICLE III ADJUDICATORS	47 48
	THE ORIGINS OF LEGISLATIVE COURTS	48
[1] [2]	Military Courts	
[3]	Other Legislative Courts	
$\lceil \gamma \rceil$	Onici Legislative Courts	23

Table	of Contents	
[4]	Administrative Agencies	54
§ 1.13	PALMORE v. UNITED STATES: CONGRESS MAY CREATE	
	NON-ARTICLE III COURTS IN THE DISTRICT OF COLUMBIA	54
§ 1.14	THE EVOLUTION OF MODERN LEGISLATIVE COURT	
	DOCTRINE: THE BANKRUPTCY COURTS AND THE	57
0 1 15	NORTHERN PIPELINE DECISION	57
§ 1.15	THE RISE OF THE BALANCING TEST AS THE LEGISLATIVE COURT STANDARD	61
[1]	Thomas v. Union Carbide: Retreat from the Public-Private Rights	
	Dichotomy	61
[2]	Commodities Futures Trading Commission v. Schor: The All-But-	
	Total Departure	64
§ 1.16	REASSERTION OF THE PUBLIC-PRIVATE RIGHTS	
	DICHOTOMY	65
§ 1.17	THE USE OF MAGISTRATE JUDGES UNDER 28 U.S.C. § 636	
	DOES NOT VIOLATE ARTICLE III	68
[1]	The Role of Magistrate Judges in Federal Adjudication	68
[2]	Magistrate Judges May Conduct Suppression Hearings in Criminal	
	Cases	69
[3]	Magistrate Judges May Conduct Full Trials with the Consent of All	
	Parties	70
[a]	Consent Required	70
[b]	Consent May Be Inferred From Conduct	70
Chapter	r 2 ISSUES OF JUSTICIABILITY	73
§ 2.01	NATURE OF JUSTICIABILITY	73
§ 2.02	THE CONSTITUTIONAL REQUIREMENT OF ACTUAL CASE	
	OR CONTROVERSY	74
§ 2.03	HISTORICAL ROOTS OF THE JUSTICIABILITY DOCTRINE:	
	THE PROHIBITION ON ADVISORY OPINIONS	75
§ 2.04	JUSTICIABILITY AS A BLEND OF CONSTITUTIONAL	76
8 2 05	REQUIREMENTS AND POLICY CONSIDERATIONS	76
§ 2.05	STANDING	76 76
[1] [2]	Nature of Standing Doctrine	70 79
[3]	Traceability	94
[4]	Redressability	95
[5]	Prudential Standing Limitations	97
[6]	_	104
[7]		105
§ 2.06		108
§ 2.07		113

Table	of Contents	
§ 2.08	POLITICAL QUESTION DOCTRINE	122
[1]	Theoretical Underpinnings of Political Question Doctrine	123
Chapter	DIVERSITY JURISDICTION	147
§ 3.01	HISTORICAL BASIS OF DIVERSITY JURISDICTION	147
§ 3.02	THE MODERN VIABILITY OF THE DIVERSITY	
9	JURISDICTION	148
§ 3.03	SUGGESTED MODIFICATIONS OF DIVERSITY	149
§ 3.04	PARTIES OVER WHOM DIVERSITY JURISDICTION MAY BE	
S	EXERCISED	150
§ 3.05	"STATES" INCLUDES TERRITORIES, DISTRICT OF	
	COLUMBIA, AND PUERTO RICO	151
§ 3.06	THE COMPLETE DIVERSITY REQUIREMENT	151
§ 3.07	TIME OF DETERMINATION OF DIVERSITY	154
§ 3.08	28 U.S.C. § 1359 PROHIBITS DISTRICT COURT JURISDICTION	
	IF JOINDER IS COLLUSIVE	155
§ 3.09	DIVERSITY AND REMOVAL	159
§ 3.10	FRAUDULENT JOINDER	161
§ 3.11	JURISDICTION OF DISTRICT COURTS UNDER CLASS	
	ACTION FAIRNESS ACT OF 2005 (CAFA)	162
§ 3.12	DETERMINING CITIZENSHIP OF INDIVIDUALS	167
§ 3.13	DETERMINING CITIZENSHIP OF CORPORATIONS AND	170
	OTHER ENTITIES	170
§ 3.14	CITIZENSHIP OF NONCORPORATE ENTITIES IN ALL OTHER	174
0215	ACTIONS	
§ 3.15	DIVERSITY ACTIONS INVOLVING ALIENS JUDICIALLY CREATED EXCEPTIONS TO THE DIVERSITY	176
§ 3.16	JURISDICTION	178
[1]	Domestic Relations Exception	178
[2]	The Probate Exception	180
§ 3.17	JURISDICTIONAL AMOUNT IN CONTROVERSY	182
8 3.17	JORISDICTIONAL AMOUNT IN CONTROVERST	102
Chapter	4 FEDERAL QUESTION JURISDICTION	193
§ 4.01	NATURE AND PURPOSES OF FEDERAL QUESTION	
3	JURISDICTION	193
§ 4.02	THE CONSTITUTIONAL PROVISION	195
[1]	Constitutional Origins	195
[2]	The Osborn Decision	195
[3]	Post-Osborn Developments: Textile Workers Union v.	
	Lincoln Mills	199
[4]	Current Status of Constitutional Scope of Federal Question	
	Jurisdiction	200

Table	of Contents	
[5]	Protective Jurisdiction	207
§ 4.03	28 U.S.C. § 1331: THE FEDERAL QUESTION STATUTE	212
[1]	Constitutional and Statutory Federal Question Provisions	
	Compared	212
[2]	Interpretation of the General Federal Question Jurisdiction Statute	213
[a]	Creation Test: Case Arises Under Law That Creates Cause of	
	Action	214
[b]	Substantial Federal Question Test for State Law Claims	216
[c]	Supreme Court Retreats: Merrell Dow Pharmaceuticals, Inc. v.	
	Thompson	218
[3]	To Fall Within Federal Question Jurisdiction, the Federal Issue	
	Must Be "Substantial"	225
§ 4.04	THE WELL-PLEADED COMPLAINT RULE	226
[1]	Historical Origins	226
[2]	Rationale for Rule	226
[3]	Application in Removal Actions	229
[4]	Application to Declaratory Judgment Actions	229
[5]	Application of Well-Pleaded Complaint Rule to Defense of Federal	
	Preemption	237
Chapte	r 5 SUPPLEMENTAL JURISDICTION	243
§ 5.01	THE BACKGROUND OF SUPPLEMENTAL JURISDICTION	243
§ 5.02	NOMENCLATURE	244
[1]	Supplemental Jurisdiction	244
[2]	Pendent Claim Jurisdiction	244
[3]	Pendent Party Jurisdiction	245
[4]	Ancillary Jurisdiction	245
§ 5.03	HISTORICAL BACKGROUND OF SUPPLEMENTAL	
	JURISDICTION	247
[2]	Development of the Judge-Made Doctrine of Pendent Jurisdiction	248
[3]	Enactment of the Supplemental Jurisdiction Statute	251
§ 5.04	SUPPLEMENTAL JURISDICTION STATUTE: AN OVERVIEW	252
[1]	Background	252
[2]	Subsection (a): Supplemental Jurisdiction over Claims That Are	
	"Part of the Same Case or Controversy," and that Involve	
	Joinder or Intervention of Additional Parties	253
[3]	Subsection (b): Refusal to Extend Supplemental Jurisdiction to	
	Diversity Claims Brought by Plaintiffs Under Specified Joinder	22.
F / 3	Devices	254
[4] [5]	Subsection (c): Discretionary Decline of Supplemental Jurisdiction Subsection (d): Statute of Limitations	258
		/ ~ ()

Table	of Contents	
§ 5.05	SAME CASE OR CONTROVERSY UNDER ARTICLE III	259
§ 5.06	JOINDER OR INTERVENTION OF ADDITIONAL PARTIES	261
§ 5.07	DISCRETIONARY DECLINE OF SUPPLEMENTAL	
	JURISDICTION	265
[1]	Scope of Statutory Factors	265
[2]	Novel or Complex Issue of State Law	267
[3]	When Supplemental Claim Substantially Predominates	267
[4]	Dismissal of Jurisdiction-Conferring Claim	268
[5]	Reasons to Retain Jurisdiction	268
[6]	Compelling Reasons Under Exceptional Circumstances	269
Chapter	REMOVAL JURISDICTION	271
PART	A NATURE AND PURPOSE OF REMOVAL JURISDICTION	271
§ 6.01	OVERVIEW OF REMOVAL JURISDICTION	271
§ 6.02	COMPARING REMOVAL JURISDICTION TO FEDERAL COURT	
	ORIGINAL JURISDICTION	274
§ 6.03	REMOVAL STATUTES STRICTLY CONSTRUED	275
PART	B BASIS OF REMOVAL JURISDICTION	276
§ 6.04	FOUR BASIC ELEMENTS FOR REMOVAL	276
§ 6.05	DEFENDANTS' OPTION TO REMOVE	276
[1]	Only Defendants May Remove	276
[2]	Determining Status as Defendant	277
[a]	Federal Law Governs Determination	277
[b]	Whether Additional Counterclaim Defendants, Cross-Claim	
	Defendants, Third-Party Defendants, or Defendant	
	Intervenors May Remove	278
[i]	Additional Counterclaim Defendants and Cross-Claim	
	Defendants Generally May Not Remove	278
[i	Third-Party Defendants	279
[i	ii] Defendant Intervenors	280
[c]	Generally All Defendants Must Join in Removal	280
[3]	Removing Defendants Have Burden of Proving Removal Is Proper	283
[4]	Defendant's Waiver of Right to Remove	284
[a]	Forum Selection Clauses	284
[b]	Other Methods of Waiving Right to Remove	285
§ 6.06	CASES ORIGINALLY FILED IN "STATE COURT" MAY BE REMOVED	287
§ 6.07	CASES MUST BE REMOVED TO FEDERAL DISTRICT COURT	
	FOR DISTRICT AND DIVISION EMBRACING STATE	
	COURT ACTION	289

Table of Contents § 6.08 FEDERAL DISTRICT COURT MUST HAVE ORIGINAL [1] "Original Jurisdiction" Defined [2] [a] [b] [c] [d] Removal Precluded if Any Defendant Is Citizen of State in Which [e] [f][g] Amount Must Exceed \$75,000 in Cases Outside Class Action [i] [ii] Amount Must Exceed \$5,000,000 in Class Action Fairness Act of 300 Removal May Be Possible When Later Developments Create [h] [3] [a] [b] "Federal Question" Defined [c] [4] Removal of Claims Under Section 1441(a) and (b) That Are [5] Removal When Federal Question Claim Is Joined to Nonremovable Claim Entire Case Removed: Nonremovable Claims Remanded 307 [a] Only Defendants to Federal Question Claim Must Consent to [b] Removal 307 [6] [a] Class Actions Generally May Be Removed to Federal Court [b] CAFA Makes Removal of Class Actions More Common [i][ii] [c] [d] [e] [f][i] [ii] Defendant's Local Citizenship Does Not Preclude Removal 317 [iii] One-Year Limitation on Removal Does Not Apply [g] Accelerated Appellate Review of Remand Order Is Possible

Table o	of Contents	
[i]	Standard for Discretionary Review	318
[ii]	Time for Application for and Resolution of Discretionary	
	Appeal	319
PART (C REMOVAL PROCEDURES AND EFFECT OF REMOVAL	320
§ 6.09	PROCEDURES FOR REMOVAL	320
[1]	Notice of Removal	320
[2]	Time for Removal	
[a]	When Notice of Removal Must Be Filed	321
[i]	Within 30 Days After Defendant Receives Copy or Service of	
[-]	Initial Pleading Showing Basis for Removal	321
[ii]	Within 30 Days After Defendant Receives Paper First Showing	
[]	Basis for Removal	322
[iii]		322
[111]	Diversity Case	323
[iv]	•	324
[b]	Initial Pleading Commencing Removal Time	325
[c]	Receipt May Be by Service or "Otherwise"	326
[d]	Effect of Lack of Service on All Defendants	
[e]	Other Paper	
[3]	Whether Court Should Evaluate Subject Matter Jurisdiction Before	321
[5]	Personal Jurisdiction	330
§ 6.10	EFFECT OF REMOVAL	331
[1]	Federal Court May Issue All Orders and Process Necessary	331
[2]	State Court Divested of Jurisdiction	331
[3]	Effect of Prior State Court Orders	
[4]	Law to Be Applied in Removed Case	333
[5]	Venue Objections After Removal	
[-]	·	
PART I	D POST-REMOVAL PROCEDURES	334
§ 6.11	PROCEDURES AFTER REMOVAL	334
[1]	Remand	334
[a]	Who May Seek Remand	334
[b]	Defects in Removal Procedure	335
[c]	Time for Making Motion for Remand	336
[d]	Denial of Remand Based on Futility Exception	337
[e]	Remand of Entire Case or Part of Case	338
[2]	Effect of Post-Removal Changes in Case	339
[a]	Federal Claims Dismissed; State Claims Remaining	339
[b]	Diversity Cases	340
[c]	Addition of Nondiverse Parties	341
[d]	When Plaintiff Dismisses Nondiverse Party	341

Table	of Contents	
[3]	Costs and Attorney's Fees	342
§ 6.12	STATE COURT JURISDICTION AFTER REMAND	344
§ 6.13	APPELLATE REVIEW OF REMAND ORDER	345
[1]	Orders Denying Remand	345
[2]	Orders Granting Motion to Remand	346
[3]	Standard of Review	349
Chapter		251
	COURTS	
§ 7.01	OVERVIEW OF PERSONAL JURISDICTION	
[1]	Legislative and Judicial Jurisdiction Distinguished	
[2]	Basis and Process Requirements for Personal Jurisdiction	
[a]	Basis Establishes Required Connection with Sovereign	351
[b]	Process Establishes Required Steps to Subject Person or Thing to	
		352
[3]	Categories of Jurisdiction	352
[a]	In Personam Jurisdiction Defined	352
[b]	Jurisdiction over Property Distinguished	353
[4]	Consequences of Lack of Jurisdiction	354
[a]	Effect of Lack of Jurisdiction	354
[b]	Jurisdictional Error Can Be Grounds for Collateral Attack on	
	Judgment	354
[c]	Defect May Be Waived	354
[5]	Jurisdiction over Persons and Property Distinguished From Related	
	Concepts	355
[a]	Subject Matter Jurisdiction or "Competence"	355
[b]	Subject Matter Jurisdiction of Federal and State Courts	
	Distinguished	356
[c]	Venue	
[d]	Jurisdiction and Choice-of-Law	358
§ 7.02	PERSONAL JURISDICTION IN FEDERAL COURTS	358
[1]	Due Process Clause of Fifth Amendment Limits Federal Courts'	
	Exercise of Jurisdiction	358
[2]	Relation Between Jurisdiction and Rule 4 (Summons)	360
[3]	Procedures for Invoking Jurisdiction ("Process") Under Rule 4	361
[a]	Defendant May Waive Service of Process	361
[b]	Service of Process May Be Effected by Several Methods	362
§ 7.03	LIMITATIONS ON BASES FOR PERSONAL JURISDICTION UNDER RULE 4	363
[1]	Service of Process Generally Establishes Personal Jurisdiction Only	503
[1]	Over Defendants Who Could Be Amenable to Jurisdiction	

Table	of Contents	
	in State in Which Federal Court Sits	363
[2]	Personal Jurisdiction in Federal District Courts Is Subject to State	
	Long-Arm Statutes	364
[a]	Fourteenth Amendment Due Process Limits Stem From Territorial	
	Scope of State Sovereignty	365
[b]	Due Process Limits Exercise of State Court Jurisdiction	365
[3]	Statutory Exceptions Authorize Broader Personal Jurisdiction	366
[a]	100-Mile Bulge Service for Certain Parties	366
[b]	Nationwide Service of Process for Certain Claims	366
[c]	Rule 4(k)(2) Confers Jurisdiction for Claims Arising Under	
	Federal Law When No Federal Statute Authorizes Nationwide	
	Service and No State Authorizes Jurisdiction	368
[d]	Supplemental Personal Jurisdiction: Service Based on Nationwide	
	Contacts May Be Available to Reach Defendant Sued on Claim	
	Giving Rise to Supplemental Jurisdiction	369
§ 7.04	LIMITATIONS ON JURISDICTION OVER PROPERTY IN CIVIL ACTIONS	371
§ 7.05	RULE 45 (SUBPOENAS): JURISDICTION OVER WITNESS REQUIRES PROPER JURISDICTIONAL BASIS AND PROPER	
	SERVICE OF PROCESS	372
§ 7.06	OBJECTIONS TO JURISDICTION MAY BE FORFEITED BY FAILURE TO COMPLY WITH DISCOVERY ORDERS	373
§ 7.07	COURT WILL NOT EXERCISE JURISDICTION OBTAINED BY FORCE OR FRAUD	373
§ 7.08	SOME PARTIES MAY BE IMMUNE FROM JURISDICTION	374
§ 7.09	PROCEDURES FOR CHALLENGING JURISDICTION	375
[1]	Defendant May Challenge Jurisdiction in State Court by Making	
	Special Appearance or by Default and Collateral Attack	375
[2]	Defendant May Challenge Jurisdiction in Federal Court by Filing	
	Rule 12 Motion to Dismiss or Raising Jurisdictional Defense	
	in Answer or by Default and Collateral Attack	375
DIVISI	ON II VENUE	377
Chapte	r 8 VENUE	379
§ 8.01	OVERVIEW OF VENUE	379
[1]	Venue Defined as Proper District Court in Which to File Action	379
[2]	Federal Statutes Control Venue of All Civil Actions in Federal	
	Courts	380
[3]	Venue Is Determined by General Venue Statute Unless Special	
	Statute Exists	381
[4]	Plaintiff Generally May Choose Among Proper Venues	382

Table	of Contents	
[5]	Pleading and Burden of Proof as to Venue	383
§ 8.02	GENERAL VENUE STATUTE GOVERNS MOST CIVIL ACTIONS	386
[1]	Overview of Venue Possibilities	386
[2]	District Where Any Defendant Resides, If All Defendants Reside in	
	Same State	386
[3]	District Where Substantial Part of Events or Omissions Occurred or	
	Where Property Is Situated	387
[4]	If No Other Option Applies, Where Any Defendant Is Subject to	
	Personal Jurisdiction	388
§ 8.03	WHERE PARTY "RESIDES" DEPENDS ON NATURE OF PARTY	389
[1]	Individual Resides in District of Domicile	389
[2]	Residence of Aliens	391
[3]	Public Official Sued in Official Capacity Resides Where Official	
	Performs Official Duties	392
[4]	Residence of Corporation or Other Legal Entity	392
[a]	Defendant That Is Corporation or Other Entity Resides Where It	
	Is Subject to Personal Jurisdiction	392
[b]	Personal Jurisdiction Determined with Respect to Each District	
	in Multidistrict States	393
[c]	Unincorporated Associations Are Treated as Corporations	395
[5]	Personal Jurisdiction for Residence Purposes Must Be Determined	
	with Respect to the Civil Action in Question	396
§ 8.04	DISTRICT WHERE SUBSTANTIAL PART OF EVENTS OR	
	OMISSIONS OCCURRED IS DETERMINED BY FACTS OF	200
8 0 0 <i>5</i>	CASE	396
§ 8.05	VENUE MUST BE PROPER FOR EACH JOINED CAUSE OF ACTION	308
§ 8.06	COUNTERCLAIMS, CROSS-CLAIMS, AND THIRD-PARTY	370
, 0.00	CLAIMS NOT AFFECTED BY VENUE RULES	399
§ 8.07	CLASS ACTIONS: VENUE DETERMINED AS TO NAMED	
	PARTIES	399
§ 8.08	ACTION IS REMOVED TO DISTRICT IN WHICH STATE	
	COURT ACTION PENDING	399
Chapter	9 CHANGE OF VENUE	401
PART	A SIGNIFICANCE OF DIFFERENCES IN TRANSFER OR	
	DISMISSAL DEVICES	401
§ 9.01		101
	LAW DISMISSAL DEVICES	401
PART	B TRANSFER WHEN VENUE IS PROPER BUT	

Table	of Contents	
	INCONVENIENT	403
§ 9.02	PURPOSE OF SECTION 1404(a) CONVENIENCE TRANSFER	403
§ 9.03	TRANSFEREE COURT MUST BE ONE IN WHICH ACTION	
	"MIGHT HAVE BEEN BROUGHT" OR TO WHICH ALL	101
F4.3		404
[1]	1	404
[a]	Transferee Court Must Have Proper Venue, Subject Matter, and	40.4
		404
[b]	Transfer to Any District Possible Based on Consent of	40.4
503		404
[2]	Options When Venue in Proposed Transferee Court Is Proper	40.5
507		405
[3]	Party Moving for Transfer Has Burden of Proving Transferee Court	
	1	406
§ 9.04	TRANSFER MUST BE BASED ON "CONVENIENCE OF PARTIES	107
£13	,	407
[1]	11 3	407
[2]		407
[3]		408
[4]		412
[5]		415
§ 9.05	STANDING TO BRING MOTION TO TRANSFER ON CONVENIENCE GROUNDS	417
[1]		417
[2]	Courts Split on Whether Third-Party Defendant Has Standing to	
[-]	·	418
[3]		419
§ 9.06	CHOICE OF LAW FOLLOWING SECTION 1404(A)	
3 7.00	· · · · · · · · · · · · · · · · · · ·	419
[1]	Choice of Law in Diversity Cases	419
[a]	Generally, Transferor State's Law and Choice of Law Rules	
	•	419
[i	** *	419
ſi	i] Ferens Extended Van Dusen Rule to Cases in Which Plaintiff	
		421
[b]	Transferor State's Choice of Law Rules May Dictate Application	
		422
[2]	Choice of Law in Federal Question Cases: Generally, Transferee	
	- · · · · · · · · · · · · · · · · · · ·	422
PART	C TRANSFER OR DISMISSAL IF VENUE IS IMPROPER	423
§ 9.07	PURPOSE OF SECTION 1406(a) IMPROPER VENUE	
		423

Table	of Contents	
§ 9.08	TRANSFEROR COURT'S PREREQUISITES FOR TRANSFER	
	FOR IMPROPER VENUE	424
[1]	Transferor Court Needs Subject Matter Jurisdiction	424
[2]		424
[3]		424
§ 9.09	PREREQUISITES FOR PROPOSED TRANSFEREE COURT WHEN	.2.
8 7.07	VENUE IS IMPROPER IN TRANSFEROR COURT: TRANSFEREE	
	COURT MUST BE ONE IN WHICH ACTION "COULD HAVE	
	BEEN BROUGHT"	425
§ 9.10	COURT MAY TRANSFER IN INTEREST OF JUSTICE OR	
	DISMISS WITHOUT PREJUDICE WHEN VENUE IS WRONG	425
[1]	Transfer Should Be Usual Remedy for Improper Venue	425
[2]	Court May Transfer If in Interest of Justice	426
§ 9.11	STANDING TO OBJECT TO IMPROPER VENUE	428
§ 9.12	WAIVER OF OBJECTION TO IMPROPER VENUE	428
§ 9.13	CHOICE OF LAW FOLLOWING TRANSFER FOR IMPROPER	
Ü	VENUE	430
PART		40.1
	MATTER JURISDICTION	431
§ 9.14	SECTION 1631 IS BROADLY PHRASED TO ALLOW TRANSFER	421
0.015		431
§ 9.15	PREREQUISITES FOR TRANSFEREE COURT	432
PART	E APPELLATE REVIEW OF TRANSFER ORDERS	432
§ 9.16	TRANSFER ORDERS USUALLY NOT IMMEDIATELY	
Ü	APPEALABLE	432
§ 9.17	DETERMINATION OF PROPER CIRCUIT IN WHICH TO SEEK	
	APPELLATE REVIEW	435
[1]	Appellate Review If Motion to Transfer Denied	435
[2]	Appellate Review If Motion to Transfer Granted	436
PART	F COMMON LAW DOCTRINE OF FORUM NON CONVENIENS	126
0.010		436
§ 9.18	PURPOSE OF FORUM NON CONVENIENS DOCTRINE	436
§ 9.19	DOCTRINE APPLIES IN FEDERAL COURTS ONLY WHEN	126
8.0.20	ALTERNATIVE FORUM IS ABROAD	436
§ 9.20	CONVENIENC	127
8021	CONVENIENS	437
§ 9.21	NON CONVENIENS MOTION	437
[1]	Doctrine Is Flexible	437
[1]		
[2]	Two Elements Required for Dismissal	438
[a]	First Element: Alternative Forum Must Be Adequate	438
[b]	Second Element: Convenience of Parnes and Ends of Justice	

Table	of Contents	
	Must Be Best Served by Dismissing Action	441
§ 9.22	DEFERENCE TO PLAINTIFF'S CHOICE OF FORUM	442
[1]	Courts Give Deference to American Plaintiff's Choice of Forum	442
[2]	Foreign Plaintiff's Choice of Forum Generally Given Less	
	Deference	443
§ 9.23	COURT HAS NO POWER TO DISMISS ACTIONS ARISING	
	UNDER CERTAIN FEDERAL STATUTES	444
§ 9.24	FORUM SELECTION CLAUSE MAY AFFECT ANALYSIS OF	
		445
[1]	Mandatory Forum Selection Clause Enforced Through Motion to	
	Dismiss Under Forum Non Conveniens Principles	445
[2]	Normal Forum Non Conveniens Analysis Applies to Permissive	
		446
§ 9.25	PROCEDURES ON FORUM NON CONVENIENS DISMISSAL	446
543		446
[1]	6	446
[2]	Court May Dismiss on Forum Non Conveniens Grounds Without	4.47
F03	8	447
[3]	C	447
§ 9.26		448
[1]	Grant of Forum Non Conveniens Motion Is Appealable as Final	4.40
[0]		448
[2]	Denial of Forum Non Conveniens Motion Subject to Limited	4.40
[2]		448
[3]	Court's Grant or Denial of Motion Subject to Abuse of Discretion	4.40
	Standard	449
Chapte	r 10 MULTIDISTRICT LITIGATION	451
§ 10.01	CONDUCT OF MULTIDISTRICT LITIGATION	451
[1]	Overview of Multidistrict Litigation Statute	451
[a]	Purpose of Multidistrict Litigation Statutory Scheme	451
[b]	Operation of Judicial Panel on Multidistrict Litigation	452
[c]	Jurisdiction of Judicial Panel on Multidistrict Litigation	453
[2]	Multidistrict Litigation Defined	454
§ 10.02	PRACTICE AND PROCEDURE BEFORE JUDICIAL PANEL ON	
	MULTIDISTRICT LITIGATION	455
[1]	Practice Before Panel and Representation in Transferred Actions	455
[2]	Who May Seek Transfer and Consolidation	455
[3]	Conditional Transfer Orders for Tag-Along Actions	456
[3]	Termination and Remand	457
§ 10.03	BASES FOR ORDERING TRANSFER OF AN ACTION	458
[1]	Prerequisites for Transfer	458

Table	of Contents	
[a]	Balancing Statutory Prerequisites	458
[b]	Actions Involving Common Questions of Fact	459
[c]	Convenience of Parties and Witnesses	460
[d]	Just and Efficient Conduct of Actions	461
[e]	Mass Actions May Not Be Transferred	462
[2]	Selection of Transferee Forum	463
[3]	Selection of Transferee Judge	466
§ 10.04	JURISDICTION AND AUTHORITY OF TRANSFEROR COURTS	467
[1]	Orders Issued Prior to Transfer and During Pendency of Action	
	Before Judicial Panel	467
[2]	Motions and Orders Before Court at Time of Transfer	468
[3]	Upon Remand of Action	469
§ 10.05	JURISDICTION AND AUTHORITY OF TRANSFEREE COURT	470
[1]	Scope of Authority	470
[a]	Judicial Authority	470
[b]	Conduct of Pretrial Proceedings	470
[2]	Governing Substantive Law	474
[a]	Choice of Law Principles	474
[b]	State Law	474
[c]	Federal Law	475
[3]	Power to Remand, Retain, or Transfer Actions	476
[a]	Authority over Remands	476
[b]	No Power to Retain or Transfer Actions	476
[c]	Power to Retain Actions for Settlement Purposes	478
[4]	Appeal of Decisions of Transferee Court	478
DIVISI	ON III INTERRELATIONSHIP OF STATE AND FEDERAL	
	COURTS	481
Chapte	r 11 DUAL FEDERAL-STATE JUDICIAL SYSTEMS	483
§ 11.01	HISTORICAL BASIS FOR THE ESTABLISHMENT OF STATE	
	AND FEDERAL SYSTEMS	483
[1]	Colonial Courts	483
[2]	Admiralty Courts	483
[3]	Federal Courts Under the Articles of Confederation	484
[4]	Constitutional Creation of a Federal Judiciary	485
[5]	State Courts at the Ratification of the Constitution	486
§ 11.02	THE DUAL COURT SYSTEM AND THE JUDICIARY ACTS OF 1789 AND 1875	486
§ 11.03	VARIATIONS AMONG CONTEMPORARY STATE COURT	T00
3 11.03	SYSTEMS	487

Table	of Contents	
§ 11.04	THE CONTEMPORARY FEDERAL COURT SYSTEM	488
[1]	Courts of Limited Jurisdiction	488
[2]	Article III Courts	488
[3]	Article I Courts	489
§ 11.05	CONSEQUENCES OF A DUAL COURT SYSTEM	490
[1]	Parallel State and Federal Proceedings: Repetitive Lawsuits	490
[2]	Parallel State and Federal Proceedings: Reactive Lawsuits	491
[3]	Duplicative Litigation and Preclusion Doctrine	492
[4]	Mechanisms for Coping with Duplicative Litigation	493
Chapter	12 THE ANTI-INJUNCTION ACTS	495
§ 12.01	HISTORY OF THE ANTI-INJUNCTION ACTS	495
[1]	Early Anti-Injunction Legislation	495
[2]	Theory of the Anti-Injunction Statutes	495
[3]	Judicial Interpretation of Federal Injunctive Power Before 1948	496
[4]	The <i>Toucey</i> Decision	496
[5]	Legislative Reaction to <i>Toucey</i> Decision	497
§ 12.02	THE MODERN ANTI-INJUNCTION ACT	497
[1]	The Anti-Injunction Acts	497
[2]	Purpose of Anti-Injunction Acts	498
[3]	Broad Prohibition on Federal Injunctive Power	498
[4]	Application of Anti-Injunction Act	499
[a]	What Constitutes a Court	499
[b]	What Constitutes an "Injunction"	500
[c]	What Constitutes a "Proceeding"	500
[5]	Parties and Proceedings Beyond Scope of Act	502
[a]	United States Government	502
[b]	Federal Agencies	502
[c]	Strangers to Earlier Litigation	502
[d]	Commencement of Proceedings	503
[e]	Arbitration Proceedings	503
[f]	Suits in Foreign Countries	504
[g]	Temporary Restraining Orders	504
§ 12.03	EXCEPTIONS TO THE ANTI-INJUNCTION ACT	505
[1]	First Exception: "Expressly Authorized" by Act of Congress	505
[a]	Function of Exception	505
[b]	Recognized Express Exceptions	505
[i]		505
[ii		506
[ii		507
Γiν	Antitrust Actions	508

Table of Contents [c] Inconsistent Application of "Expressly Authorized" Exception [2] Second Exception: "When Necessary in Aid of" Federal Court 510 [a] [b] [i][ii] [iii] [iv] Exception Does Not Apply to In Personam Proceedings 516 [v][vi] Class Actions and Complex Multidistrict Litigation 517 [vii] [3] Third Exception: "To Protect or Effectuate Federal Court Judgments" 519 [a] [b] [c] Relationship to Res Judicata and Collateral Estoppel 521 [d] [e] [f]§ 12.04 EQUITABLE ENTITLEMENT FOR RELIEF § 12.05 THE ANTI-INJUNCTION ACT AND DECLARATORY [1] Declaratory Judgments Under Declaratory Judgment Act [2] § 12.06 THE ANTI-INJUNCTION ACT AND THE ALL WRITS STATUTE 529 THE TAX ANTI-INJUNCTION ACT § 12.07 [1] [2] Application of the Tax Anti-Injunction Act 530 [a] [b] [c] [d] Exceptions to Tax Anti-Injunction Act [e] [i] [ii] [iii]

Table of Contents

C	hapter	THE ABSTENTION DOCTRINE	535
ş	13.01	ABSTENTION IN FEDERAL COURT PROCEEDINGS:	
_		INTRODUCTION	535
	[1]	Declining the Jurisdiction of Federal Courts	535
	[2]	Rationales Underlying the Abstention Doctrines: General	
		Approaches	535
§	13.02	ABSTENTION TO AVOID FEDERAL CONSTITUTIONAL	
		RULINGS: PULLMAN ABSTENTION	537
	[1]	Origin of <i>Pullman</i> Doctrine	537
	[2]	Prerequisites for <i>Pullman</i> Abstention	539
	[a]	Required Elements	539
	[b]	Uncertain Question of State Law	539
	[c]	State Construction Limiting Need for Federal Constitutional	
		Ruling	540
	[i]	Statute Must Be Susceptible of Construction	540
	[ii]		541
	[iii	• • •	541
	[3]	Balancing Costs of Abstention	542
	[a]	Considerations of Federalism Outweigh Concerns over Cost and	
		Delay	542
	[b]	Litigation Involving Fundamental Rights	
	[c]	Adequate State Procedure	544
	[4]	Criticism of <i>Pullman</i> Abstention	544
§	13.03	ABSTENTION BECAUSE OF UNCLEAR STATE LAW IN	
		DIVERSITY CASES: THIBODAUX ABSTENTION	546
	[1]	Diversity Jurisdiction and the Propriety of Federal Abstention	
	[2]	Thibodaux Case	
	[3]	The Mashuda Case	
	[4]	Reconciling the <i>Thibodaux</i> and <i>Mashuda</i> Decisions	
	[5]	Prerequisites for <i>Thibodaux</i> Abstention	
	[6]	Application of <i>Thibodaux</i> Abstention	
a	[7]	Pullman Abstention Distinguished	550
8	13.04	ABSTENTION IN DEFERENCE TO COMPREHENSIVE STATE	551
	[1]	ADMINISTRATIVE PROCEDURES: BURFORD ABSTENTION Burford Case	551
	[2]	Development of Doctrine Since Burford	
	[2]	Alabama Public Service Commission Case	552
	[a] [b]	Criticism of Alabama Public Service Commission	553
	[c]	The NOPSI Decision	554
	[d]	Post-NOPSI Applications of Burford Abstention	555
	[e]	The Quackenbush Decision: Application to Legal Claims	556
	[3]	Pullman Abstention Distinguished	
	[-]	1 minum 1 tosumon Distinguished	220

Table of Contents § 13.05 ABSTENTION TO AVOID INTERFERENCE WITH PENDING STATE PROCEEDINGS: "OUR FEDERALISM" 558 [1] 558 [2] Younger Decision and Rationale 559 [3] Relationship of *Younger* Doctrine to Anti-Injunction Act [4] 562 [5] [a] Pending State Proceedings: Availability of Declaratory and 563 [i] 563 [ii] [b] Absence of Pending State Proceedings: Availability of Availability of Declaratory Relief [i]565 [ii] 565 [iii] [c] [i] [ii] [d] Application to Pending State Administrative Proceedings Application to Executive Branches of State and Local [e] [6] [a] [b] [c] [d] § 13.06 ABSTENTION FOR REASONS OF SOUND JUDICIAL ADMINISTRATION: COLORADO RIVER ABSTENTION Parallel, Duplicative Litigation, and Judicial Efficiency [1] 578 [2] [3] The Colorado River Decision: Exceptional Circumstances Defined . . . [4] The Will Decision: Exceptional Circumstances Revisited [5] The *Moses Cone* Decision: Exceptional Circumstances Expanded [a] [6] [a]

[b]

[a]

[b]

[7]

Table	of Contents	
[8]	Unresolved Questions in Colorado River Abstention Stay of	
	Proceedings — Retention of Federal Court Jurisdiction	588
[a]	Defining and Balancing Exceptional Circumstances	588
[b]	Claims Within Exclusive Federal Jurisdiction	589
§ 13.07	PROCEDURAL OPTIONS IN ABSTENTION PROCEEDINGS	590
[1]	Stay of Proceedings, Retention of Federal Court Jurisdiction, or	
	Dismissal	590
[a]	Pullman Abstention	590
[b]	Thibodaux Abstention	591
[c]	Burford Abstention	591
[d]	Younger Abstention	591
[e]	Colorado River Abstention	592
[2]	Dismissal without Prejudice	592
[3]	Certification of Questions to State Court	593
[4]	Appeal of Abstention Orders	594
[5]	Standard of Review	595
Chapter	THE ELEVENTH AMENDMENT AND STATE SOVEREIGN IMMUNITY	597
§ 14.01	HISTORICAL BACKGROUND: SOVEREIGN IMMUNITY IN	
ō	ENGLAND	597
§ 14.02	THE EARLY AMERICAN EXPERIENCE	600
[1]	Nineteenth Century Views on Sovereign Immunity	600
[2]	The Doctrine of Ex Parte Young	601
§ 14.03	MODERN STATE SOVEREIGN IMMUNITY: THE	
	IMPORTANCE OF THE ELEVENTH AMENDMENT FOR	
0.1.1.0.1	FEDERAL-STATE RELATIONS	601
§ 14.04	BASIS AND RATIFICATION OF ELEVENTH AMENDMENT	
[1]	Chisholm v. Georgia	
[2]	Reaction to <i>Chisholm</i> ; Ratification of Eleventh Amendment	605
§ 14.05	SCOPE OF CONSTITUTIONAL IMMUNITY: INTERPRETIVE THEORIES OF ELEVENTH AMENDMENT	605
[1]	Significance of Interpretive Theories	
[2]	Constitutional Limitation on Subject Matter Jurisdiction	
[3]	Restoration of Common-Law Immunity From Suits	607
[4]	Restriction of Federal Diversity Jurisdiction	609
[5]	Literal Reading of Eleventh Amendment	610
[6]	Alden v. Maine	611
§ 14.06	APPLICATION OF THE ELEVENTH AMENDMENT: ACTIONS	V11
	BARRED	612
[1]	Suits Against State by Citizens of Another State	612
[2]	Suits Against State by Citizens of Foreign Country	612

7	able o	f Contents	
	[3]	Suits Against State by Its Own Citizens	612
	[4]	Suits Against States in Admiralty	613
	[5]	Suits Against States by Foreign Countries	614
	[6]	Suits Against States by Native American Tribes	614
	[7]	Suits Against Persons and Entities Other Than State Governments	616
	[a]	Suit Against State Officer in Official or Representative Capacity	616
	[b]	Supplemental (Pendent) State-Law Claim Against State Officer	617
	[c]	Suit Against Political Subdivision That Acts as Arm of State	618
	[d]	Suits Against State Agencies and Boards Acting as Arm of State	619
	[1]	General Rule	619
	[2]	Tests for Determining Whether Agency or Board Is Acting as	
		Arm of State	620
	[3]	Source of Payment and Legal Liability Are Critical Factors	621
	[4]	Federal Law Controls	621
	[e]	Administrative Actions	621
§		ACTIONS PERMITTED CONSISTENT WITH ELEVENTH	
		AMENDMENT SOVEREIGN IMMUNITY	624
	[1]	Suits by United States Government Against State	624
	[2]	Suits by One State Against Another	625
	[3]	Suits Against States in State Courts	626
	[a]	Suits in Courts of Defendant State	
	[b]	Suits in Other States' Courts	
	[c]	Supreme Court Review	626
	[4]	Suits Against Political Subdivisions Such as Municipalities and	
		Counties	627
§		EXCEPTIONS TO THE ELEVENTH AMENDMENT	
	[1]	Suits Against State Officers in Individual Capacity	
	[a]	Distinction Between Official and Individual Capacity	627
	[b]	Determining Whether Officer Is Being Sued in Individual	
	503	Capacity	
	[2]	Suits Against State Officers in Official Capacity	
	[a]	Suits for Monetary Relief Barred	629
	[b]	Suits for Injunctive Relief Permitted	629
	[c]	Enforcement of Federal Consent Decree Permitted	630
	[3]	Suits Against Individual State Officers for Injunctive and	CO.1
	F 3	Declaratory Relief	631
	[a]	Ex parte Young Doctrine	631
	[i]	Suits Permitted for Prospective Relief	631
	[ii]	Ex parte Young Case	633
	[iii]		634
	[b]	Consequences of Ex Parte Young	635
	[4]	Suits Against State Officers in Individual Capacity for Monetary	

T 11		
Table	of Contents	
	Relief	636
[a]	Prospective vs. Retroactive Relief	636
[b]	Determining Whether Relief Sought Is Prospective or	
	Retroactive	638
[5]	Ancillary Relief	639
§ 14.09	WAIVER AND CONSENT	640
[1]	Explicit Waivers	640
[2]	Waiver by Removal	642
[3]	Participating in Federal Program Expressly Conditioned on Waiver	643
[4]	Implicit or Constructive Waivers Barred	645
§ 14.10	SUITS PURSUANT TO FEDERAL STATUTES	646
[1]	Statutes Adopted Pursuant to Section 5 of Fourteenth Amendment	646
[a]	Congressional Power to Abrogate State Sovereign Immunity	646
[b]	Determining Congressional Intent to Abrogate Eleventh	
	Amendment Immunity	647
[c]	Enactment Must Fall Within Congress's Section 5 Enforcement	
	Powers Under Fourteenth Amendment	649
[i	i] Abrogation Only Pursuant to Section 5	649
[i	ii] Legislation Must Enforce Not Expand Rights	650
	[a] Statutes Abrograting State Sovereign Immunity	652
	[b] Statutes Not Abrogating State Sovereign Immunity	653
[2]	Statutes Adopted Under Other Congressional Powers	654
Chapte	r 15 APPLICABLE LAW IN FEDERAL COURT:	
•	THE ERIE DOCTRINE	657
PAR	Γ A DEVELOPMENT OF THE <i>ERIE</i> DOCTRINE	657
§ 15.01	HISTORICAL BACKGROUND TO THE APPLICABLE LAW	037
8 13.01	PROBLEM	657
[1]	Section 34 of Judiciary Act of 1789 and Doctrine of	
	Swift v. Tyson	657
[2]	The Erie Decision	659
[a]	Facts and Holdings	659
[b]	Is Erie A Constitutionally Based Decision?	659
[c]	Purposes of Erie Doctrine: The "Twin Aims" of Erie	660
[d]	Promulgation of the Federal Rules of Civil Procedure	660
§ 15.02	EARLY EFFORTS TO DISTINGUISH SUBSTANCE FROM PROCEDURE; OUTCOME-DETERMINATION ANALYSIS	661
[1]	The Outcome-Determination Test: The Guaranty Trust Decision	661
[2]	Refinement of the Outcome-Determination Test	662
§ 15.03	BALANCING OF COMPETING STATE AND FEDERAL	
	INTERESTS: THE BYRD TEST	663

Ta	able	of Contents	
§ :	15.04	HANNA v. PLUMER: DETERMINING WHETHER TO APPLY STATE LAW OR FEDERAL RULE OF CIVIL PROCEDURE	665
	[1]	General <i>Hanna</i> Analytical Approach: Federal Rule Applies if	003
	[1]	Pertinent and Valid Under Rules Enabling Act	665
	[2]	Rules Enabling Act, Not Outcome-Determination, Is Test for	003
	[4]		665
	[3]	Determining Scope (Pertinence) of Federal Rule Under Rules	005
	[0]	Enabling Act	666
	[a]	Federal Rule Must Be Sufficiently Broad to Control Situation	666
	[b]	Rule Must Regulate Procedure	668
	[c]	Rule May Not Abridge or Enlarge Substantive Rights	669
8	15.05	ACCOMMODATION OF COMPETING STATE AND FEDERAL	
Ü		INTERESTS; GASPERINI v. CENTER FOR HUMANITIES	671
	PART	B SPECIFIC APPLICATIONS OF ERIE DOCTRINE	673
§ :	15.06	RULE 3 DOES NOT DISPLACE STATE LAW GOVERNING	
		TOLLING OF STATUTE OF LIMITATIONS	673
§ :	15.07	RULE 4 DOES NOT DISPLACE STATE LAW GOVERNING	
		PERSONAL JURISDICTION	
_	15.08	RULE 15(c) INCORPORATES STATE RELATION-BACK RULES	675
8	15.09	RULE 23.1 AND STATE SECURITY REQUIREMENTS IN SHAREHOLDER DERIVATIVE SUITS	676
8	15.10	RULE 68 AND STATE LAW ON ATTORNEYS' FEES OR	070
8 -	13.10	PENALTIES ON LOSING DEFENDANTS	676
8	15.11	STATE LAWS AFFECTING ACCESS TO STATE COURTS:	0,0
		STATE DOOR-CLOSING STATUTES	677
§ :	15.12	SANCTIONS UNDER FEDERAL COURT'S INHERENT POWER	678
§ :	15.13	JURISDICTION AND VENUE ISSUES: CONTRACT CLAUSES	
		PURPORTING TO CONFER PERSONAL JURISDICTION	679
_	15.14	FORUM NON CONVENIENS	679
_	15.15	FUNCTIONS OF JUDGE AND JURY	680
	[1]	Federal Policy Favoring Jury Trial Applies	680
	[2]	Federal Law Generally Governs Review of Jury Verdicts	680
§ :	15.16	FEDERAL RULES OF EVIDENCE AND STATE EVIDENTIARY	CO 1
	F43	PROVISIONS	681
	[1]	Federal Rules Generally Apply in Federal Court	681
	[2]	Some State Evidentiary Rules Are Substantive and Are Applied in	600
		Federal Court	682
	PART	T C DETERMINING THE CONTENT OF STATE LAW	682
§	15.17	BINDING EFFECT OF STATE COURT DECISIONS	682
	[1]	Decisions of State's Highest Court Are Binding on Federal Courts	682
	[2]	Decisions of Intermediate State Appellate Courts Usually Must Be	
		Followed	684

7	able	of Contents	
	[3]	Trial Court Decisions Usually Are Not Binding	685
§	15.18	APPELLATE COURTS MUST APPLY CHANGE IN STATE LAW	
		THAT OCCURS WHILE APPEAL IS PENDING	686
§	15.19	DETERMINING STATE LAW WHEN IT IS UNSETTLED	687
	[1]	Difficulty in Determining State Law Does Not Justify Dismissal	687
	[2]	Federal Court Must Predict How State's Highest Court	
		Would Rule	688
	[3]	Policy Against Expanding State Law	690
	[4]	Interpreting Statutes Never Construed by State Court	690
§	15.20	COURT OF APPEALS DE NOVO REVIEW OF STATE LAW	
		DETERMINATION	691
	PART	T D CHOICE OF STATE SUBSTANTIVE LAW	692
§	15.21	DETERMINING WHICH STATE LAW APPLIES IN DIVERSITY	
		CASES	692
	[1]	The Klaxon Rule: Court Generally Must Apply Choice of Law	
		Rules of State in Which It Sits	692
	[2]	After Transfer of Venue for Convenience, Transferor State's	
		Choice of Law Rules Apply: The <i>Van Dusen</i> and <i>Ferens</i> Rules	693
	[3]	After Transfer Because of Improper Venue, Transferee Court	
		Applies Choice of Law Rules of State in Which it Sits	695
	[4]	Applicable Law When Transferor Court Lacks Personal	
		Jurisdiction	696
	PART	TE FEDERAL COMMON LAW	697
§	15.22	AUTHORITY OF FEDERAL COURTS TO CREATE FEDERAL	
		COMMON LAW	697
	[1]	General Principles	697
	[2]	Areas in Which Federal Courts Create Common Law	698
	[a]	Interstitial Federal Common Law	698
	[b]	Suits Involving Proprietary Interests of United States	700
	[i		
		Not Affecting Rights and Duties of United States	700
	[i	i] Federal Common Law Is Not Applied to Private Litigation	
		Not Affecting Rights and Duties of United States	701
	[i	ii] Adopting State Law as Federal Common Law in Interstitial	
		and Proprietary Interest Cases	702
		v] Borrowing State Statutes of Limitations	703
	[c]	Application of Federal Common Law in Suits Between States	705
	[d]	Federal Common Law and International Relations	707
	[e]	Federal Common Law in Maritime and Admiralty Cases	708
	[f]	Federal Common Law and Native American Relations and Land	
		Rights	709

7	able d	of Contents	
	PART	F APPLICATION OF FEDERAL LAW IN STATE COURTS	710
§	15.23	STATE COURTS MUST HEAR FEDERAL CLAIMS IF THEY HAVE APPROPRIATE JURISDICTION UNDER STATE LAW	710
§	15.24	STATE COURTS MAY REFUSE JURISDICTION OVER FEDERAL CLAIMS UNDER NEUTRAL STATE	
		PROCEDURAL RULES	711
§	15.25	STATE COURTS MAY NOT APPLY STATE LAW IN FEDERAL	
		CLAIMS TO DEFEAT FEDERAL RIGHTS	712
CONSTITUTION, THE F		SELECTED PROVISIONS OF THE UNITED STATES CONSTITUTION, THE FEDERAL RULES OF CIVIL PROCEDURE, AND TITLE 28, UNITED STATES	
_		CODE	713
T	ABLE (OF CASES T	C-1
Т	ABLE	OF STATUTES	ΓS-1
II	NDEX		I-1