

General Approach to Diversity Jurisdiction:

- 1) Sketch Geography / parties / courts
- 2) What does the claim arise out of.. really?
- 3) Possible Motions / statutes applicable
- 4) Non-productive avenues
- 5) Other factors (Rule 11, transfers)
- 6) Pros/Cons → Counterarguments & strength

I - Approach to Personal Jurisdiction:

Constitutional Analysis (5th, 14th, Rule 4, Due Process, Full Faith & Credit):

- 1) Look for a contact (*no contact* → *all the fairness in the world won't help / Burger King*)
 - a. Sufficient contact with forum
(*Single contact tied to Cause of action/Specific jur./McGee*) ("systematic & continuous contact" → *general/Helicopteros*)
 - b. Resulting from purposeful availment (*Liability & Internet*)(*general/no/Helicopteros*)(*no/Hansen v. Denkle*)
 - c. Foreseeability of being sued in the forum
(*American Radiator*)(*no/World-Wide Volkswagen*)(*no/intangibles/Shaffer v. Heitner*)(*split-no/Asahi*)
- 2) Look at fairness factors - always talk about these even if contact is debatable (*Fairness/in personum/Int. Shoe*)(*interpreted in Burger King*)(*no/Asahi*)
 - a. Relatedness (*Split-yes/specific statute/Burnham*)
 - b. Does this claim arise out of D's contact with the forum. (*Single contact tied to Cause of action/Specific jur./McGee*)
 - c. Convenience
 - i. Tough burden on *defendant* .. must be a severe disadvantage (*Burger King*)
 - ii. Forum just has to be acceptable under Due Process (*split-yes/Burnham*)(*split-no/Asahi*)
- 3) Forum state's Interest (statutes?). (*McGee*)(*no/Asahi*)

Special problems:

- 1) Stream of commerce.. no clear law about what constitutes a contact. (*American Radiator*)(*split-no/Asahi*)
Advertises, office, customer help, website vs. just hopes to make money.
- 2) Pure presence idea.. is presence alone sufficient? (*split-yes/Burnham*)(*old power theory/Pennoy - not negated by Int. Shoe*)

Statutory Analysis (*Constitution is not self exercising*):

Look at the kind of statutes that the state has.

- Presence gives us general jurisdiction type of statute.. constitutional? Yes (*Burnham*)
- Domicile gives us general jurisdiction.. absolutely constitutional (*Helicopteros*)
- Consent gives us jurisdiction (*implied consent, limited contact, gives specific jurisdiction/Hess v. Pawloski, statutes: Non-Resident Motorist Act*)
- The long arm statutes:
 - o California variety = reach to the full extent of the constitution ("collapses into the constitutional analysis.")
 - o Laundry list variety (most states) = **specific** jurisdiction because the cause of action arises out of D doing something in the state/forum: (*e.g. Transacts business, Breaches contract, Tortious act, Insures a risk, Owns real property, Matrimonial domicile*)

No In Personum jurisdiction: if the long arm statute doesn't reach defendant - but there might be **in rem** jurisdiction.

II - Approach to Federal Subject Matter Jurisdiction (Art III, S1331):

Address all the viable arguments one at a time. Each claim must be authorized by:

- 1) Statutory authorization
- 2) Constitutional authorization
Diversity §1332(a)1 [instate D can't remove], Alienage (§1332(a)2-4, Fed Q §1331, Justiciability (Art III)

III – Venue

Corporations: Usually collapses into Personal Jurisdiction analysis

People: §1404 transfer, §1406 transfer, Forum non-conveniens. (Domicile etc.)

Civ Pro, Stages of a Law Suit

<u>Stage</u>	<u>Elements</u>	<u>Motions</u>
Pleadings (7)	P Complaint , summons (4), notice (4), affidavits, diversity (1332a1), jurisdiction (1331)	Motion to produce, Motion to Remand, Transfer (1404/6), Forum non conveniens (com law)
	D Answer , jurisdiction (subj Art. III , personal), demurr (<i>immunity</i> , 11 FIG_E)	Motion to dismiss (12-b) , Motion to quash service of process, Motion to remove (§1441)
Discovery (26)	P Develop Evidence: Depositions (27-32), Interrogatories (33), Doc Production (34 & 26), Examination (35), Request for Admission (36), Subpoena (45)	Motion for summary judgement (56), Motion to compel, "settlement?"
	D Develop Evidence: Doc Production, Depositions, Interrogatories, etc.	Motion for summary judgement, Motion for protective order (26c)
Trial	P Right to trial by jury (7th amnd., 38), [Selection of jurors (28 U.S.C. §1780), Number of Jurors (48), Special verdicts (49)].	Motion for judgement as a matter of law (i.e. no jury - directed verdict, after P and after P&D, 50a)
	D Right to trail by jury	"
Verdict	P	Motion for New Trial (57), Motion for judgement not withstanding the verdict (50b) N.B. Only if 50a invoked at trial, Appeal (§1291).
	D	"
Appeal (§1291/5)	P Losing party, or Subject matter jurisdiction Q (§1331), or Question of law (52-a, on record only)	Collateral order - 3 part test (no statute), Interlocutory i.e. injunctions - 3 part test (28 U.S.C. §1292-b)
	D "	"

Rules & Statutes from Syllabus by Number:

28 U.S.C.A. Statutes:	Rules:
1291 Appeals "from all final decisions"	4 Summons/Notice
1292 Interlocutory orders a) injunctions (65) b) judgment not appealable	7 Pleadings and motions
1331 Federal Question Jurisdiction	9 Pleading special motions
1332 Diversity of citizenship; amount in controversy	11 Signing Pleadings (Lawyer's conduct)
1367 Supplemental jurisdiction a) "over all other claims.. include claims that involve joinder.." b) exceptions: (14) Impleader, (19) Necessary Party, (20) Multiple Parties, (24) Intervention.	12b6 Motion to dismiss. 12b: Objections & Defenses: 1) SMJ 2) Personal Jurisdiction 3) venue 4) process 5) service 6) state claim 7) join per Rule 19
1391 Venue: a) where (diversity) b) where (federal Q) c) corporations (= personal jurisdiction)	13/14 Joinder
1404 Change of venue	26-37 Discovery & disclosure: Depositions, Interrogatories (33) etc.
1406 Authorization to transfer if no jurisdiction	45 Subpoena
1441 c/d Removal jurisdiction	50, 52 JMOL (jury + new trial , non-jury)
	56 Summary Judgment
	59 New trials