Subject Matter Jurisdiction: Federal Question Jurisdiction
Questions for Class Discussion

1. Comparing the constitutional and statutory grants of federal question jurisdiction

U.S. Constitution: Article III, section 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…"	Art III, sec 2 interpreted to only require a federal ingredient somewhere in the case Example: P v. D (Texas) (Texas) $\longrightarrow$ P's state law claim $\longleftarrow$ D's federal law counterclaim
28 U.S.C. §1331	"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."	Two critical common law interpretations of §1331: 1. Federal issue must be not "wholly insubstantial and frivolous" (*Bell v. Hood*) 2. Federal issue must arise as part of the plaintiff's well-pleaded complaint (*Mottley*) (both of these are discussed below)

2. Comparing diversity jurisdiction and federal question jurisdiction

Diversity Jurisdiction	**Federal Question Jurisdiction**
is about status of parties	is about the substantive nature of the plaintiff's claim That is, Congress has authorized the case to be in federal either 1. by a grant of original jurisdiction to the federal court; or 2. by a grant of a private right of action
amount-in-controversy requirement	no amount-in-controversy requirement (though there once was one)
Constitutional grant of jurisdiction is not self-executing (Note: Congress has statutorily endowed federal courts with diversity jurisdiction since 1789)	Constitutional grant of jurisdiction is not self-executing (Note: With one brief exception [in 1801], Congress did not statutorily endow federal courts with general federal question jurisdiction until 1875)

3. "Wholly insubstantial and frivolous"

The P's federal claim will support jurisdiction under §1331 unless the claim "clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous." *Bell v. Hood*, 327 U.S. 678, 682-83 (1946).

- You might think of this as a kind of *prima facia* burden by the plaintiff who wants to be in federal court to make enough of a showing for a court to conclude the federal claim is not "wholly insubstantial and frivolous."

- Very similar burden as to amount in controversy under 1332, except that we often frame the D's equivalent burden as very high (remember: we are only going to dismiss a case brought in federal court that alleges the AIC is over $75K if the D can show that "to a legal certainty" the P can't recover more than $75K).

<u>Example</u>: Plaintiff (Texas) alleges that Defendant (Texas) breached a contract that they had together. Plaintiff brought her action in federal court, asserting that she was entitled to recover under the Torture Victims Protection Act, a federal statute. Defendant moves to dismiss under Rules 12(b)(1) and 12(b)(6) on the ground that, even if everything Plaintiff alleges is true, the statute has nothing to do with breach of contract. Thus, Defendant argues, b/c P's claim under the TVPA is "wholly insubstantial and frivolous," it can't support federal jurisdiction.

Example: Plaintiffs (Nigeria) sued Defendant Tex-a-Pharm (Texas) in connection with its sale of the drug Trovan. Plaintiff brought her action in federal court, asserting that she was entitled to recover under the Torture Victims Protection Act, a federal statute. Defendant moves to dismiss under Rules 12(b)(1) and 12(b)(6) on the ground that its actions did not violate the TVPA. The court denied the Defendant's motion to dismiss. After trial, the jury returned a verdict for Defendant. Even though D won, the TVPA claim was not "wholly insubstantial and frivolous."

4. Well-pleaded complaint rule – one of the two critical common law interpretations of §1331

Example:

P v. D
(KY) (KY)

→

P's state law contract claim

Elements of a contract claim:

1. The parties entered a contract
2. The D breached the contract
3. D's breach was the cause in fact of P's damages
4. P suffered damages

A graph of the procedural history in *Mottley*

USSCT ← KY Supreme Court

(appellate jurisd over all lower fed ct cases and even of state cases involving fed law issues)

Fed Court of Appeals

State Court of Appeals

Fed District Court

second suit- KY state court

Mottleys (KY) v RR (KY)
[state law breach of K claim]

Mottleys (KY) v. RR (KY)
[state law breach of K claim]

5. Substantial federal question doctrine – the other primary common law interpretation of §1331

- Rarely invoked successfully (but it is invoked with a fair bit of frequency)

- It usually arises in this same context as above: a P brings suit in state court alleging a state law claim; a D then removes the case to federal court and claims that the case comes within §1331 because the state claim actually raises a substantial federal question to meet the SFQ doctrine.

<u>Example</u>:

P v. D

(Texas) (Texas)

⟶

(state law claim)

<u>Elements of *Grable*'s quiet title claim</u>:

1. Ownership (I am the rightful owner of the property)
2. Conflicting title claim (someone else thinks they are the owner, but they are wrong)
3. Relief (enter a declaratory judgment that I am the owner and, if someone else is on the land, an eviction order to kick them out).

So nothing in these steps obviously raises a federal law issue. Yet, in *Grable*, Court found that there was a federal issue to satisfy §1331 under the SFQ doctrine.

- **How square with WPCR?** We just got through saying that for a case to come within §1331, the federal issue must appear as part of the plaintiff's well-pleaded complaint. The substantial federal question doctrine is not an exception to the well-pleaded complaint rule since the idea behind SFQ doctrine is that the federal issue does arise as part of the plaintiff's *well-pleaded* complaint.

- **Holmes' Creation Test.** The vast, vast majority of the time, when the plaintiff asserts a claim arising under state law, it will not satisfy §1331 and when the plaintiff asserts a claim arising under federal law, it will satisfy §1331. This idea is embodied by the Holmes Creation Test (from Justice Oliver Wendell Holmes's opinion in the *American Well Works* case). In other words, under the Creation Test the starting presumption is that if the plaintiff sues under state law, no §1331 arising under jurisdiction exists; if sue in federal law (and so the federal issue appears as part of the plaintiff's well-pleaded complaint), §1331 met.

- **But the Creation Test is just a presumption**: in rare cases, it is still possible for §1331 to be satisfied even when the plaintiff to sues under state law. This is the substantial federal question doctrine (discussed at length in *Grable*).

6. Complete preemption doctrine – also a common law interpretation of §1331(but quite infrequently seen)

Example:

P v. D
(Texas) (Texas)

P's state law claim

D's federal law defense of ordinary preemption

There is a special category of preemption known as "complete preemption"

[redacted] [redacted]

We apply *Mottley*'s well-pleaded complaint rule. To come within 1331, we must confirm that the federal issue appears as part of the plaintiff's well-pleaded complaint. If the plaintiff is suing under federal law, the answer will almost always be yes (this is just the presumption of the Holmes Creation test at work).

Substantial federal question doctrine – one potential way D can remove and keep case in federal court

("artful pleading")

Complete preemption doctrine – another potential way D may be able to remove and keep case in federal court

(also "artful pleading")

[redacted]

Even if it satisfies the WPCR, we must also apply *Bell v. Hood*: P's federal claim will support §1331 jurisdiction unless the claim "is wholly insubstantial and frivolous." Burden is on the party seeking to be in federal court to make this minimal showing; but, practically speaking, the burden is on the party opposing federal jurisdiction. One last important note: the "insubstantial" reference in this *Bell v. Hood* analysis has nothing to do with the *Grable* question "Is the federal issue in the case substantial."

Grable's SFQ test

Step 1:

Is the federal issue in this case substantial?

Is the federal issue necessary to outcome of the case?

Is the federal issue actually in dispute?

Step 2: Even if the federal issue is substantial, necessary and actually in dispute, would it upset the balance of federal and state relations that Congress intended to conclude that the plaintiff's claim comes within §1331?

Complete preemption test apparently is asking whether a federal law so completely preempts state law that it eviscerates state law out of existence

Analysis steps when dealing with §1331

Step 1: Analysis varies based on context in which claim is filed.

Step 1A: If the plaintiff initially brings suit in federal court and seeks to come within the grant of federal question jurisdiction in §1331 (or if the plaintiff initially brings suit in state court, asserting a federal claim for relief and the defendant removes the case to federal court under 1441/1331), then:

Step 1A(i): We apply *Mottley*'s well-pleaded complaint rule. To come within §1331, we must confirm that the federal issue appears as part of the plaintiff's well-pleaded complaint. If the plaintiff is suing under federal law, the answer will almost always be yes (this is just the presumption of the Holmes Creation test at work).

Step 1A(ii): Even if it satisfies the WPCR, we must also apply *Bell v. Hood*: P's federal claim will support §1331 jurisdiction unless the claim "is wholly insubstantial and frivolous." Burden is on the party seeking to be in federal court to make this minimal showing; but, practically speaking, the burden is on the party opposing federal jurisdiction. One last important note: the "insubstantial" reference in this *Bell v. Hood* analysis has nothing to do with the *Grable* question "Is the federal issue in the case substantial."

Step 1B: If plaintiff originally sues in state court, asserting a claim under state law, then we begin by applying the Holmes Creation test, which means that our starting presumption is that the case does not come within §1331. However, in rare instances it is still possible for §1331 to be satisfied. To figure out if this is one of those rare cases, we must go to Steps 2 and 3, which means considering the substantial federal question doctrine (Step 2) and the complete preemption doctrine (Step 3).

Step 2: If you have a claim that is brought under state law, it might still satisfy §1331 under SFQ doctrine

Step 2A (SFQ first step): When does a state law claim nevertheless come within §1331?

1. Is the federal issue in this case substantial? Substantial is best understood as meaning the federal issue is *important*. And not important to the parties; it will always be that. But to society/people generally. In *Grable*, the Court thought the question of whether §6335 required personal service was a substantial one because of the tax law implications.

2. Is the federal issue necessary to outcome of the case? Necessary means that the case could turn on addressing the federal issue. In *Grable*, the Court thought that the federal issue was outcome determinative because if §6335 required personal service then the P would win; if it doesn't require personal service, then the D would win.

3. Is the federal issue actually in dispute. Actually in dispute means that the parties disagree about the meaning of the issue. In *Grable*, that was true as there was a dispute over whether the statute required personal service.

Step 2B (SFQ second step): Even if the federal issue is substantial, necessary and actually in dispute, would it upset the balance of federal and state relations that Congress intended to conclude that the plaintiff's claim comes within §1331. Example: Compare *Grable* to *Merrell Dow*

Step 3: If you have a claim that is brought under state law, even if no SFQ, might still satisfy §1331 under the complete preemption doctrine.

29 S.Ct. 42

Supreme Court of the United States.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appt.,

v.

ERASMUS L. MOTTLEY and Annie E. Mottley, His Wife.

No. 37.

Submitted October 13, 1908.

Decided November 16, 1908.

Opinion

Mr. Justice **Moody,** after making the foregoing statement, delivered the opinion of the court:

Two questions of law were raised by the demurrer to the bill, were brought here by appeal, and have been argued before us. They are, first, whether that part of the act of Congress of June 29, 1906 (34 Stat. at L. 584, chap. 3591, U. S. Comp. Stat. Supp. 1907, p. 892), which forbids the giving of free passes or the collection of any different compensation for transportation of passengers than that specified in the tariff filed, makes it unlawful to perform a contract for transportation of persons who, in good faith, before the passage of the act, had accepted such contract in satisfaction of a valid cause of action against the railroad; and, second, whether the statute, if it should be construed to render such a contract unlawful, is in ***152** violation of the 5th Amendment of the Constitution of the United States. We do not deem it necessary, however, to consider either of these questions, because, in our opinion, the court below was without jurisdiction of the cause. Neither party has questioned that jurisdiction, but it is the duty of this court to see to it that the jurisdiction of the circuit court, which is defined and limited by statute, is not exceeded. This duty we have frequently performed of our own motion.

There was no diversity of citizenship, and it is not and cannot be suggested that there was any ground of jurisdiction, except that the case was s 'suit . . . arising under the Constitution or laws of the United States.' 25 Stat. at L. 434, chap. 866, U. S. Comp. Stat. 1901, p. 509. It is the settled interpretation of these words, as used in this statute, conferring jurisdiction, that a suit arises under the Constitution and laws of the United States only when the plaintiff's statement of his own cause of action shows that it is based upon those laws or that Constitution. It is not enough that the plaintiff alleges some anticipated defense to his cause of action, and asserts that the defense is invalidated by some provision of the Constitution of the United States. Although such allegations show that very likely, in the course of the litigation, a question under the Constitution would arise, they do not show that the suit, that is, the plaintiff's original cause of action, arises under the Constitution. In Tennessee v. Union & Planters' Bank, 152 U. S. 454, 38 L. ed. 511, 14 Sup. Ct. Rep. 654, the plaintiff, the state of Tennessee, brought suit in the circuit court of the United States to recover from the defendant certain taxes alleged to be due under the laws of the state. The plaintiff alleged that the defendant claimed an immunity from the taxation by virtue of its charter, and that therefore the tax was void, because in violation of the provision of the Constitution of the United ***153** States, which forbids any state from passing a law impairing the obligation of contracts. The cause was held to be beyond the jurisdiction of the circuit court, the court saying, by Mr. Justice Gray (p. 464): 'A suggestion of one party, that the other will or may set up a claim under the Constitution or laws of the United States, does not make the suit one arising under that Constitution or those laws.' Again, in Boston & M. Consol. Copper & S. Min. Co. v. Montana Ore Purchasing Co. 188 U. S. 632, 47 L. ed. 626, 23 Sup. Ct. Rep. 434, the plaintiff brought suit in the circuit court of the United States for the conversion of copper ore and for an injunction against its continuance. The plaintiff then alleged, for the purpose of showing jurisdiction, in substance, that the defendant would set up in ****44** defense certain laws of the United States. The cause was held to be beyond the jurisdiction of the circuit court, the court saying, by Mr. Justice Peckham (pp. 638, 639):

'It would be wholly unnecessary and improper, in order to prove complainant's cause of action, to go into any matters of defense which the defendants might possibly set up, and then attempt to reply to such defense, and thus, if possible, to show that a Federal question might or probably would arise in the course of the trial of the case. To allege such defense and then make an answer to it before the defendant has the opportunity to itself plead or prove its own defense is inconsistent with any known rule of pleading, so far as we are aware, and is improper.

'The rule is a reasonable and just one that the complainant in the first instance shall be confined to a statement of its cause of action, leaving to the defendant to set up in his answer what his defense is, and, if anything more than a denial of complainant's cause of action, imposing upon the defendant the burden of proving such defense.

'Conforming itself to that rule, the complainant would not, in the assertion or proof of its cause of action, bring up a single Federal question. The presentation of its cause of action would not show that it was one arising under the Constitution or laws of the United States.

The only way in which it might be claimed that a Federal question was presented would be in the complainant's statement of what the defense of defendants would be, and complainant's answer to such defense. Under these circumstances the case is brought within the rule laid down in Tennessee v. Union & Planters' Bank, supra. That case has been cited and approved many times since.'

It is ordered that the judgment be reversed and the case remitted to the circuit court with instructions to dismiss the suit for want of jurisdiction.

125 S.Ct. 2363
Supreme Court of the United States
GRABLE & SONS METAL PRODUCTS, INC., Petitioner,
v.
DARUE ENGINEERING & MANUFACTURING.
No. 04–603
|
June 13, 2005. Rehearing Denied Aug. 22, 2005. See 545 U.S. 1158, 126 S.Ct. 25

SOUTER, J., delivered the opinion for a unanimous Court. THOMAS, J., filed a concurring opinion, *post,* p. 2371.

Justice SOUTER delivered the opinion of the Court.

The question is whether want of a federal cause of action to try claims of title to land obtained at a federal tax sale precludes removal to federal court of a state action with nondiverse parties raising a disputed issue of federal title law. We answer no, and hold that the national interest in providing a federal forum for federal tax litigation is sufficiently substantial to support the exercise of federal-question jurisdiction over the disputed issue on removal, which would not distort any division of labor between the state and federal courts, provided or assumed by Congress.

I

In 1994, the Internal Revenue Service seized Michigan real property belonging to petitioner Grable & Sons Metal Products, Inc., to satisfy Grable's federal tax delinquency. Title 26 U.S.C. § 6335 required the IRS to give notice of the seizure, and there is no dispute that Grable received actual notice by certified mail before the IRS sold the property to respondent Darue Engineering & Manufacturing. Although Grable also received notice of the sale itself, it did not exercise its statutory right to redeem the property within 180 days of the sale, § 6337(b)(1), and after that period ***311** had passed, the Government gave Darue a quitclaim deed, § 6339.

Five years later, Grable brought a quiet title action in state court, claiming that Darue's record title was invalid because the IRS had failed to notify Grable of its seizure of the property in the exact manner required by § 6335(a), which provides that written notice must be "given by the Secretary to the owner of the property [or] left at his usual place of abode or business." Grable said that the statute required personal service, not service by certified mail.

Darue removed the case to Federal District Court as presenting a federal question, because the claim of title depended on the interpretation of the notice statute in the federal tax law. The District Court declined to remand the case at Grable's behest after finding that the "claim does pose a 'significant question of federal law,' " Tr. 17 (Apr. 2, 2001), and ruling that Grable's lack of a federal right of action to enforce its claim against Darue did not bar the exercise of federal jurisdiction. On the merits, the court granted summary judgment to Darue, holding that although § 6335 by its terms required personal service, substantial compliance with the statute was enough. 207 F.Supp.2d 694 (W.D.Mich.2002).

The Court of Appeals for the Sixth Circuit affirmed. 377 F.3d 592 (2004). On the jurisdictional question, the panel thought it sufficed that the title claim raised an issue of federal law that had to be resolved, and implicated a substantial federal interest (in construing federal tax law). The court went on to affirm the District Court's judgment on the merits. We granted certiorari on the jurisdictional question alone,[1] 543 U.S. 1042, 125 S.Ct. 824, 160 L.Ed.2d 610 (2005), to resolve a split within the Courts of Appeals on whether *Merrell Dow Pharmaceuticals Inc. v. Thompson,* 478 U.S. 804, 106 S.Ct. 3229, 92 L.Ed.2d 650 (1986), always requires ***312** a federal cause of action as a condition for exercising federal-question jurisdiction.[2] We now affirm.

II

Darue was entitled to remove the quiet title action if Grable could have brought it in federal district court originally, 28 U.S.C. § 1441(a), as a civil action "arising under the Constitution, laws, or treaties of the United States," § 1331. This provision for federal-question jurisdiction is invoked by and large by plaintiffs pleading a cause of action created by federal law (*e.g.,* claims under 42 U.S.C. § 1983). There is, however, another longstanding, if less frequently encountered, variety of federal "arising under" jurisdiction, ****2367** this Court having recognized for nearly 100 years that in certain cases federal-question jurisdiction will lie over state-law claims that implicate significant federal issues. *E.g., Hopkins v. Walker,* 244 U.S. 486, 490–491, 37 S.Ct. 711, 61 L.Ed. 1270 (1917). The doctrine captures the commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues, see ALI, Study of the Division of Jurisdiction Between State and Federal Courts 164–166 (1968).

The classic example is *Smith v. Kansas City Title & Trust Co.,* 255 U.S. 180, 41 S.Ct. 243, 65 L.Ed. 577 (1921), a suit by a shareholder claiming that the defendant corporation could not lawfully buy certain bonds of the National Government because their issuance was unconstitutional. Although Missouri law provided the cause of action, the Court recognized federal-question jurisdiction because the principal issue in the case was the federal constitutionality of the bond issue. *Smith* thus held, in a ***313** somewhat generous statement of the scope of the doctrine, that a state-law claim could give rise to federal-question jurisdiction so long as it "appears from the [complaint] that the right to relief depends upon the construction or application of [federal law]." *Id.,* at 199, 41 S.Ct. 243.

The *Smith* statement has been subject to some trimming to fit earlier and later cases recognizing the vitality of the basic doctrine, but shying away from the expansive view that mere need to apply federal law in a state-law claim will suffice to open the "arising under" door. As early as 1912, this Court had confined federal-question jurisdiction over state-law claims to those that "really and substantially involv[e] a dispute or controversy respecting the validity, construction or effect of [federal] law." *Shulthis v. McDougal,* 225 U.S. 561, 569, 32 S.Ct. 704, 56 L.Ed. 1205. This limitation was the ancestor of Justice Cardozo's later explanation that a request to exercise federal-question jurisdiction over a state action calls for a "common-sense accommodation of judgment to [the] kaleidoscopic situations" that present a federal issue, in "a selective process which picks the substantial causes out of the web and lays the other ones aside." *Gully v. First Nat. Bank in Meridian,* 299 U.S. 109, 117–118, 57 S.Ct. 96, 81 L.Ed. 70 (1936). It has in fact become a constant refrain in such cases that federal jurisdiction demands not only a contested federal issue, but a substantial one, indicating a serious federal interest in claiming the advantages thought to be inherent in a federal forum. *E.g., Chicago v. International College of Surgeons,* 522 U.S. 156, 164, 118 S.Ct. 523, 139 L.Ed.2d 525 (1997); *Merrell Dow, supra,* at 814, and n. 12, 106 S.Ct. 3229; *Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for Southern Cal.,* 463 U.S. 1, 28, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983).

But even when the state action discloses a contested and substantial federal question, the exercise of federal jurisdiction is subject to a possible veto. For the federal issue will ultimately qualify for a federal forum only if federal jurisdiction is consistent with congressional judgment about the sound division of labor between state and federal courts governing ***314** the application of § 1331. Thus, *Franchise Tax Bd.* explained that the appropriateness of a federal forum to hear an embedded issue could be evaluated only after considering the "welter of issues regarding the interrelation of federal and state authority and the proper management of the federal judicial system." *Id.,* at 8, 103 S.Ct. 2841. Because arising-under jurisdiction to hear ****2368** a state-law claim always raises the possibility of upsetting the state-federal line drawn (or at least assumed) by Congress, the presence of a disputed federal issue and the ostensible importance of a federal forum are never necessarily dispositive; there must always be an assessment of any disruptive portent in exercising federal jurisdiction. See also *Merrell Dow,* 478 U.S., at 810, 106 S.Ct. 3229.

These considerations have kept us from stating a "single, precise, all-embracing" test for jurisdiction over federal issues embedded in state-law claims between nondiverse parties. *Christianson v. Colt Industries Operating Corp.,* 486 U.S. 800, 821, 108 S.Ct. 2166, 100 L.Ed.2d 811 (1988) (STEVENS, J., concurring). We have not kept them out simply because they appeared in state raiment, as Justice Holmes would have done, see *Smith, supra,* at 214, 41 S.Ct. 243 (dissenting opinion), but neither have we treated "federal issue" as a password opening federal courts to any state action embracing a point of federal law. Instead, the question is, does a state-law claim necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.

III

A

This case warrants federal jurisdiction. Grable's state complaint must specify "the facts establishing the superiority of [its] claim," Mich. Ct. Rule 3.411(B)(2)(c) (West 2005), and Grable has premised its superior title claim on a failure by the IRS to give it adequate notice, as defined by federal ***315** law. Whether Grable was given notice within the meaning of the federal statute is thus an essential element of its quiet title claim, and the meaning of the federal statute is actually in dispute; it appears to be the only legal or factual issue contested in the case. The meaning of the federal tax provision is an important issue of federal law that sensibly belongs in a federal court. The Government has a strong interest in the "prompt and certain collection of delinquent taxes," *United States v. Rodgers,* 461 U.S. 677, 709, 103 S.Ct. 2132, 76 L.Ed.2d 236 (1983), and the ability of the IRS to satisfy its claims from the property of delinquents requires clear terms of notice to allow buyers like Darue to satisfy themselves that the Service has touched the bases necessary for good title. The Government thus has a direct interest in the availability of a federal forum to vindicate its own administrative action, and buyers (as well as tax delinquents) may find it valuable to come before judges used to federal tax matters. Finally, because it will be the rare state title case that raises a contested matter of federal law, federal jurisdiction to resolve genuine disagreement over federal tax title provisions will portend only a microscopic effect on the federal-state division of labor. See n. 3, *infra.*

This conclusion puts us in venerable company, quiet title actions having been the subject of some of the earliest exercises of federal-question jurisdiction over state-law claims. In

Hopkins, 244 U.S., at 490–491, 37 S.Ct. 711, the question was federal jurisdiction over a quiet title action based on the plaintiffs' allegation that federal mining law gave them the superior claim. Just as in this case, "the facts showing the plaintiffs' title and the existence and invalidity of the instrument or record sought to be eliminated as a cloud upon the title are essential parts of the ****2369** plaintiffs' cause of action."[3] ***316** *Id.*, at 490, 37 S.Ct. 711. As in this case again, "it is plain that a controversy respecting the construction and effect of the [federal] laws is involved and is sufficiently real and substantial." *Id.*, at 489, 37 S.Ct. 711. This Court therefore upheld federal jurisdiction in Hopkins, as well as in the similar quiet title matters of *Northern Pacific R. Co. v. Soderberg,* 188 U.S. 526, 528, 23 S.Ct. 365, 47 L.Ed. 575 (1903), and *Wilson Cypress Co. v. Del Pozo Y Marcos,* 236 U.S. 635, 643–644, 35 S.Ct. 446, 59 L.Ed. 758 (1915). Consistent with those cases, the recognition of federal jurisdiction is in order here.

B

Merrell Dow Pharmaceuticals Inc. v. Thompson, 478 U.S. 804, 106 S.Ct. 3229, 92 L.Ed.2d 650 (1986), on which Grable rests its position, is not to the contrary. *Merrell Dow* considered a state tort claim resting in part on the allegation that the defendant drug company had violated a federal misbranding prohibition, and was thus presumptively negligent under Ohio law. *Id.,* at 806, 106 S.Ct. 3229. The Court assumed that federal law would have to be applied to resolve the claim, but after closely examining the strength of the federal interest at stake and the implications of opening the federal forum, held federal jurisdiction unavailable. Congress had not provided a private federal cause of action for violation of the federal branding requirement, and the Court found "it would ... flout, or at least undermine, congressional intent to conclude that federal courts might nevertheless exercise federal-question jurisdiction and provide remedies for violations of that federal statute solely because the violation ... is said to be a ... 'proximate cause' under state law." *Id.,* at 812, 106 S.Ct. 3229.

Because federal law provides for no quiet title action that could be brought against Darue,[4] Grable argues that there can be no federal jurisdiction here, stressing some broad language in *Merrell Dow* (including the passage just quoted) that on its face supports Grable's position, see Note, Mr. Smith Goes to Federal Court: Federal Question Jurisdiction over State Law Claims Post-*Merrell Dow,* 115 Harv. L.Rev. 2272, 2280–2282 (2002) (discussing split in Courts of Appeals over private right of action requirement after *Merrell Dow*). But an opinion is to be read as a whole, and *Merrell Dow* cannot be read whole as overturning decades of precedent, as it would have done by effectively adopting the Holmes dissent in *Smith,* see *supra,* at 2368, and converting a federal cause of action from a sufficient condition ****2370** for federal-question jurisdiction[5] into a necessary one.

In the first place, *Merrell Dow* disclaimed the adoption of any bright-line rule, as when the Court reiterated that "in exploring the outer reaches of § 1331, determinations about federal jurisdiction require sensitive judgments about congressional intent, judicial power, and the federal system." 478 U.S., at 810, 106 S.Ct. 3229. The opinion included a lengthy footnote explaining that questions of jurisdiction over state-law claims require "careful judgments," *id.,* at 814, 106 S.Ct. 3229, about the "nature of the federal interest at stake," *id.,* at 814, n. 12, 106 S.Ct. 3229 (emphasis deleted). And as a final indication that it did not mean to make a federal right of action mandatory, it expressly approved the exercise of jurisdiction sustained in *Smith,* despite the want of any federal cause of action available to *Smith's* shareholder plaintiff. 478 U.S., at 814, n. 12, 106 S.Ct. 3229. ***318** *Merrell Dow* then, did not toss out, but specifically retained, the contextual enquiry that had been *Smith's* hallmark for over 60 years. At the end of *Merrell Dow,* Justice Holmes was still dissenting.

Accordingly, *Merrell Dow* should be read in its entirety as treating the absence of a federal private right of action as evidence relevant to, but not dispositive of, the "sensitive judgments about congressional intent" that § 1331 requires. The absence of any federal cause of action affected *Merrell Dow's* result two ways. The Court saw the fact as worth some consideration in the assessment of substantiality. But its primary importance emerged when the Court treated the combination of no federal cause of action and no preemption of state remedies for misbranding as an important clue to Congress's conception of the scope of jurisdiction to be exercised under § 1331. The Court saw the missing cause of action not as a missing federal door key, always required, but as a missing welcome mat, required in the circumstances, when exercising federal jurisdiction over a state misbranding action would have attracted a horde of original filings and removal cases raising other state claims with embedded federal issues. For if the federal labeling standard without a federal cause of action could get a state claim into federal court, so could any other federal standard without a federal cause of action. And that would have meant a tremendous number of cases.

One only needed to consider the treatment of federal violations generally in garden variety state tort law. "The violation of federal statutes and regulations is commonly given negligence per se effect in state tort proceedings."[6] Restatement ***319** (Third) of Torts § 14, Reporters' Note, Comment *a,* p. 195 (Tent.Draft No. 1, Mar. 28, 2001). See also W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 36, p. 221, n. 9 (5th ed. 1984) ("[T]he breach of a federal statute may support a negligence per se claim as a matter of state law" (collecting authority)). A general rule of exercising federal jurisdiction over state claims resting on federal mislabeling and other statutory violations would thus have heralded a potentially ****2371** enormous shift of traditionally state cases into federal courts. Expressing concern over the "increased volume of federal litigation," and noting the importance of adhering to "legislative intent," *Merrell Dow* thought it improbable that the Congress, having made no provision for a federal cause of action, would have meant to welcome any state-law tort case implicating federal law "solely because the violation of the federal statute is said to [create] a rebuttable presumption [of negligence] ... under state law." 478 U.S., at 811–812, 106 S.Ct. 3229 (internal quotation marks omitted). In this situation, no welcome mat meant keep out. *Merrell Dow's* analysis thus fits within the framework of examining the importance of having a federal forum for the issue, and the consistency of such a forum with Congress's intended division of labor between state and federal courts.

As already indicated, however, a comparable analysis yields a different jurisdictional conclusion in this case. Although Congress also indicated ambivalence in this case by providing no private right of action to Grable, it is the rare state quiet title action that involves contested issues of federal law, see n. 3, *supra.* Consequently, jurisdiction over actions like Grable's would not materially affect, or threaten to affect, the normal currents of litigation. Given the absence of threatening structural consequences and the clear interest the Government, its buyers, and its delinquents have in the availability of a federal forum, there is no good reason to ***320** shirk from federal jurisdiction over the dispositive and contested federal issue at the heart of the state-law title claim.[7]

IV

The judgment of the Court of Appeals, upholding federal jurisdiction over Grable's quiet title action, is affirmed.

It is so ordered.

Justice THOMAS, concurring.

The Court faithfully applies our precedents interpreting 28 U.S.C. § 1331 to authorize federal-court jurisdiction over some cases in which state law creates the cause of action but requires determination of an issue of federal law, *e.g., Smith v. Kansas City Title & Trust Co.,* 255 U.S. 180, 41 S.Ct. 243, 65 L.Ed. 577 (1921); *Merrell Dow Pharmaceuticals Inc. v. Thompson,* 478 U.S. 804, 106 S.Ct. 3229, 92 L.Ed.2d 650 (1986). In this case, no one has asked us to overrule those precedents and adopt the rule Justice Holmes set forth in *American Well Works Co. v. Layne & Bowler Co.,* 241 U.S. 257, 36 S.Ct. 585, 60 L.Ed. 987 (1916), limiting § 1331 jurisdiction to cases in which federal law creates the cause of action pleaded on the face of the plaintiff's complaint.

Id., at 260, 36 S.Ct. 585. In an appropriate case, and perhaps with the benefit of better evidence as to the original meaning of § 1331's text, I would be willing to consider that course.*

Jurisdictional rules should be clear. Whatever the virtues of the *Smith* standard, it is anything but clear. *Ante,* at 2367 (the standard "calls for a 'common-sense accommodation of judgment to [the] kaleidoscopic situations' that present a federal issue, in 'a selective process which picks the substantial causes out of the web and lays the other ones aside' " (quoting *Gully v. First Nat. Bank in Meridian,* 299 U.S. 109, 117–118, 57 S.Ct. 96, 81 L.Ed. 70 (1936))); *ante,* at 2368 ("[T]he question is, does a state-law claim necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities"); *ante,* at 2370 (" '[D]eterminations about federal jurisdiction require sensitive judgments about congressional intent, judicial power, and the federal system' "; "the absence of a federal private right of action [is] evidence relevant to, but not dispositive of, the 'sensitive judgments about congressional intent' that § 1331 requires" (quoting *Merrell Dow, supra,* at 810, 106 S.Ct. 3229)).

Whatever the vices of the *American Well Works* rule, it is clear. Moreover, it accounts for the " 'vast majority' " of cases that come within § 1331 under our current case law, *Merrell Dow, supra,* at 808, 106 S.Ct. 3229 (quoting *Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for Southern Cal.,* 463 U.S. 1, 9, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983))—further indication that trying to sort out which cases fall within the smaller *Smith* category may not be worth the effort it entails. See R. Fallon, D. Meltzer, & D. Shapiro, Hart and Wechsler's The Federal ***322** Courts and the Federal System 885–886 (5th ed.2003). Accordingly, I would be willing in appropriate circumstances to reconsider our interpretation of § 1331.

* This Court has long construed the scope of the statutory grant of federal-question jurisdiction more narrowly than the scope of the constitutional grant of such jurisdiction. See *Merrell Dow Pharmaceuticals Inc. v. Thompson,* 478 U.S. 804, 807–808, 106 S.Ct. 3229, 92 L.Ed.2d 650 (1986). I assume for present purposes that this distinction is proper—that is, that the language of 28 U.S.C. § 1331, "[t]he district courts shall have original jurisdiction of all *civil actions arising under* the Constitution, laws, or treaties of the United States" (emphasis added), is narrower than the language of Art. III, § 2, cl. 1, of the Constitution, "[t]he 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 ..." (emphasis added).

Supplemental Jurisdiction Notes

I. General Discussion of SJ

A. When is supplemental jurisdiction necessary or unnecessary? We don't ever need supplemental jurisdiction if there's an independent basis of original jurisdiction for a case to be in federal court.

Examples:

P v. D
(TX) (TX)
→
federal claim

This one's easy:
28 USC §1331 is an independent basis of original jurisdiction (SMJ)

P v. D
(TX) (OK)
→
$100K

Also easy:
28 USC §1332(a) is an independent basis of original jurisdiction (SMJ)

B. Every claim asserted in federal court must have its own source of ~~original~~ jurisdiction to satisfy the federal constitutional and statutory subject matter jurisdiction requirements

Examples:

P v. D
(TX) (OK)
→
$100K (1)
←
$100K (2)

(1) No problem here. 28 USC §1332(a) is an independent basis of SMJ.

(2) D's Rule 13 counterclaim against P? Also, no problem. Again, 28 USC §1332(a) is an independent basis of SMJ for D's cc.

But what about this example?

P v. D
(TX) (OK)

→ \$100K (1)

← \$50K (2)

(1) 28 USC §1332(a) is an independent basis of SMJ.

(2) D's Rule 13 counterclaim against P? There's no original SMJ over this claim. Why not?

C. What if we have at least one claim that comes within the court's original jurisdiction but we also have a claim that does not have an independent basis of original jurisdiction to be in federal court? In this situation, we must consider whether the claim over which the court does not have original jurisdiction can be heard in federal court as an exercise of the court's supplemental jurisdiction.

Example:

P v. D
(TX) (OK)

→ §1331 (1)

← \$50K (2)

Do we have an anchor claim (that is, at least one claim that comes within the court's original jurisdiction)? Of course. That's Claim (1) [P's claim against D]. 28 USC §1331 is an independent basis of original jurisdiction as to that claim.

Do we have a claim that doesn't have an independent basis of original jurisdiction to be in federal court? Again, yes. That's Claim (2) [D's cc against P]. It's not a federal question claim; and it is for less than the minimum AIC for §1332.

Thus, the only way that Claim (2) can be heard in the same federal case is if it comes within the court's supplemental jurisdiction.

D. What does it mean to come within the federal court's supplemental jurisdiction? The answer requires that we consider both the constitutional and statutory aspects to supplemental jurisdiction.

1. The constitutionality of supplemental jurisdiction: *UMW v. Gibbs*

As you know, federal courts are courts of limited jurisdiction. So how can a federal court hear a claim that doesn't come within one of the limited grants of original jurisdiction given to it by the Constitution and Congress?

The Court answered that question (at least partly) in *UMW v. Gibbs*:

> "Pendent jurisdiction, in the sense of judicial power, exists whenever there is a claim 'arising under (the) Constitution, the Laws of the United States, and treaties made, or which shall be made, under their Authority . . . and the relationship between that claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional 'case.'"

CM at 344.

To illustrate, here's the example that *Gibbs* was talking about:

P v. D
(TX) (TX)

$\xrightarrow{\hspace{3cm}}$
§1331 (1)

$\xrightarrow{\hspace{3cm}}$
$50K (2)

We'll come back to what "a close enough relationship" means, but let's first finish with why *Gibbs* thought it was constitutional to exercise jurisdiction in the example above over Claim (2). The key idea is in the word that I've highlighted in green: "case." Where does that word come from? Can you now articulate *Gibbs*' rationale for why it's constitutional for the court to exercise what the Court called "pendent" jurisdiction (and what today we refer to as "supplemental" jurisdiction over Claim (2)?

Note that the quote above from *Gibbs*, strictly speaking, is only saying that it would be constitutional to exercise jurisdiction in the specific example above—that is, where the anchor claim arises under section §1331 <u>and</u> the plaintiff wants to assert a second claim against the same defendant over which the court does not have a basis of original jurisdiction to hear. But, as we'll see, the Court later confirmed that it would also be constitutional to exercise jurisdiction over claims lacking an independent original source of jurisdiction in a number of other contexts as well. There were two common law doctrines that were invoked: "pendent" and "ancillary" jurisdiction.

Examples:

P v. D
(TX) (TX)
→
§1331 (1)
→
$50K (2) Pendent jurisdiction

P v. D
(TX) (OK)
→
$100K (1)
←
$50K (2) Ancillary jurisdiction

2. The statutory aspect of supplemental jurisdiction

And so this was the state of the world until 1990. That is, until 1990 the federal courts exercised these common law doctrines of "pendent" and "ancillary" jurisdiction to hear claims that did not come within a grant of original jurisdiction but were closely enough related to a claim that did.

Query: We've emphasized before that the constitutional subject matter jurisdiction heads are not self-executing, meaning that just because it is constitutional does not mean that the courts have power to hear a case. Why, then, did the Court allow for exercises of pendent and ancillary jurisdiction solely because it found them to be constitutional (but before Congress had acted to reach up into Article III section 2 and give it statutorily to the federal courts)?

The answer seems to be that the Court thought this kind of extended jurisdiction was proper as long as Congress had not prohibited it:

> "In *Finley*, we nonetheless reaffirmed and rationalized *Gibbs* and its progeny by inferring from it the interpretive principle that, in cases involving supplemental jurisdiction over additional claims between parties properly in federal court, the jurisdictional statutes should be read broadly, on the assumption that in this context Congress intended to authorize courts to exercise their full Article III power to dispose of an 'entire action before the court [which] comprises but one constitutional 'case.'"

Exxon Mobil v. Allapattah Services (citing *Finley v. United States*, 490 US 545, 548 (1989)) [CM at 350]. The term "supplemental jurisdiction" in the quote above comes from the statute that Congress finally enacted in 1990—and it's to that statute that we now turn our attention.

28 U.S.C. §1367(a)

1. This is the grant of the type of jurisdiction the Court in *Gibbs* (and other cases) used to call "pendent" or "ancillary" jurisdiction and found to be constitutional. The statute uses the term "supplemental" to replace the prior terms "pendent" and "ancillary."

2. The statute is meant to track the idea articulated in *Gibbs* that if a claim that was not within the court's original jurisdiction had "a close enough relationship" to an anchor claim—that is, a claim that was within the court's original jurisdiction—then the two can be heard together if the two arose from a "common nucleus of operative fact." Thus, "so related" as it is used in section §1367(a) is meant to be the same as "common nucleus of operative fact" as *Gibbs* used that phrase.

A. But what does "so related" and "common nucleus of operative fact" mean? How are they applied by courts? Below are some quotes from commentators and courts (the bold highlights are mine):

From Wright & Miller, Federal Practice & Procedure (section 3567.1):

In practice, § 1367(a) **requires only that the jurisdiction-invoking claim and the supplemental claim have some loose factual connection**. This standard is broad and fact-specific, and should be applied with a pragmatic appreciation of the efficiency promoted by supplemental jurisdiction. ...

On the other hand, of course, the standard is not without limit. For example, **a mere causal relationship between the two claims may not suffice**. Likewise, the fact that claims arise from an employment relationship will not necessarily mean that they are sufficiently related to support supplemental jurisdiction. In Lyon v. Whisman, the court rejected supplemental jurisdiction over state-law claims for failure to pay a bonus entirely or timely. Those claims were joined to an underlying Fair Labor Standards Act claim for failure to pay overtime wages. The court found that the only common element in the claims—the employment relationship—was insufficient to satisfy § 1367(a).

From an Eleventh Circuit case:

Generally, claims arise out of a common nucleus of operative fact when they "**involve the same witnesses, presentation of the same evidence, and determination of the same, or very similar, facts.**" Palmer v. Hosp. Auth. of Randolph Cty., 22 F.3d 1559, 1563–64 (11th Cir. 1994); see also Lyndonville Sav. Bank & Trust Co. v. Lussier, 211 F.3d 697, 704 (2d Cir. 2000) (a sufficient relationship will be found if "**the facts underlying the federal and state claims substantially overlap[ ] ... or where presentation of the federal claim necessarily b[rings] the facts underlying the state claim before the court**"). However, state-law claims that only "relate generally" to federal claims through a broader dispute and do not share any operative facts are insufficient for supplemental jurisdiction. Chelsea Condo. Unit Owners Ass'n v. 1815 A St., Condo. Grp., LLC, 468 F.Supp.2d 136, 141 (D.D.C. 2007).

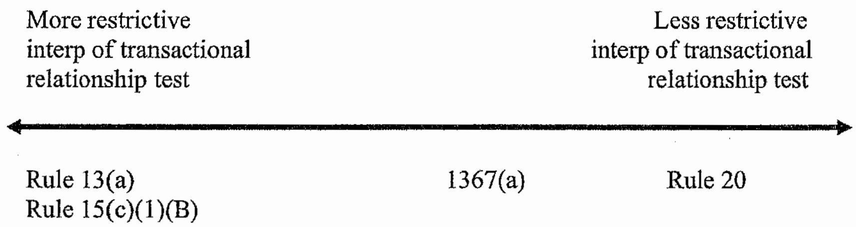
From a Seventh Circuit case:

In Baer v. First Options of Chicago, Inc., 72 F.3d 1294, 1298-1301 (7th Cir.1995), we concluded that § 1367 has extended the scope of supplemental jurisdiction, as the statute's language says, to the limits of Article III — which means that **"[a] loose factual connection between the claims"** can be enough, quoting from Ammerman v. Sween, 54 F.3d 423, 424 (7th Cir.1995).

From a Second Circuit case:

"We have routinely upheld the exercise of pendent jurisdiction **where the facts underlying the federal and state claims substantially overlapped**, or where the presentation of the federal claim necessarily brought the facts underlying the state claim before the court."

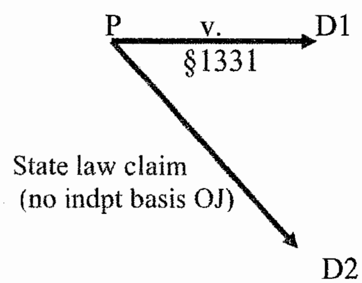
B. May also be useful to include a spectrum of transactional relationship tests:



Query: If a counterclaim would be deemed compulsory under Rule 13(a), do you think it would necessarily satisfy section §1367(a)?

Query: Do you think that a counterclaim deemed to be permissive under Rule 13(b) could satisfy section §1367(a)?

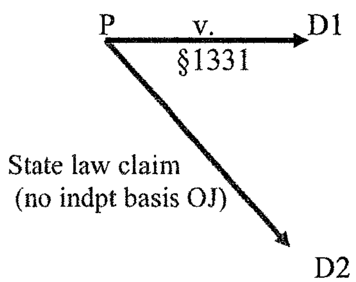
3. The last sentence of section §1367(a) makes clear that supplemental jurisdiction includes claims involving additional parties. Example:



In *Finley* (decided in 1989), the Court had refused to recognize "pendent jurisdiction" over the state law claim. Congress's enactment of §1367 in 1990, thus, changed the result in *Finley* for future cases.

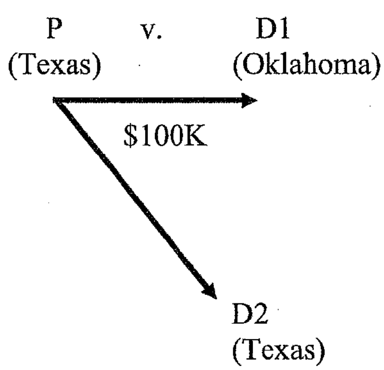
4. But don't forget that *Allapattah* says that in "order for a federal court to invoke supplemental jurisdiction, it must first have original jurisdiction over at least one claim in the action" and that incomplete diversity "destroys original jurisdiction with respect to all claims, so there is nothing to which supplemental jurisdiction can adhere." ~~CM 376~~. This is what the Court meant by the contamination theory and its statement that "the presence of nondiverse parties on both sides of a lawsuit eliminates the justification for providing a federal forum." ~~CM 384~~.

A. We never have to worry about contamination theory when the anchor claim is §1331.

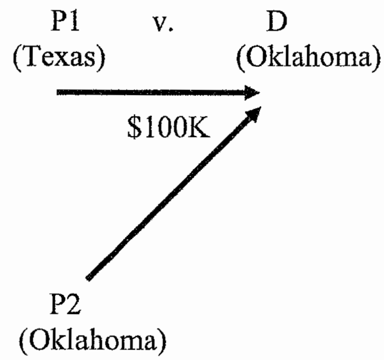


B. But it gets more complicated when we are talking about diversity jurisdiction.

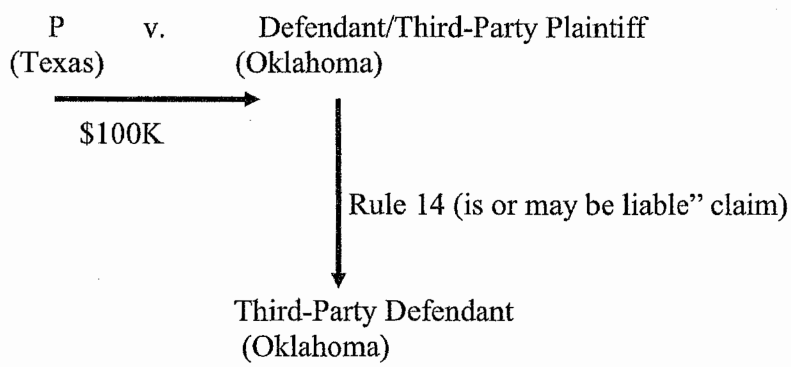
-We know that there can't be supplemental jurisdiction over P's claim against D2 because there's no original jurisdiction: D2's presence contaminates complete diversity



-And just as surely, we know that there can't be supplemental jurisdiction over P2's claim against D for the same reason: P2's presence in the case contaminates complete diversity

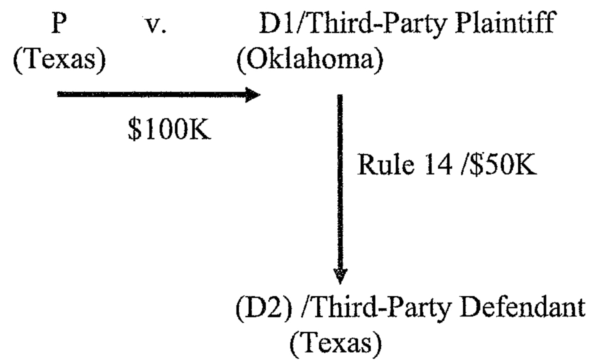


But what about this situation. Does the TPD, who is nondiverse as to the TPP (but not as to the original P) contaminate original jurisdiction under §1332?



Although perhaps one could read *Allapattah* as saying that the presence of nondiverse TPD contaminates OJ under §1332, that isn't how courts typically have read it. Partly, that's because before *Allapattah*, in *Kroger*, the Court distinguished what had been known as ancillary jurisdiction, which covered claims "by a defendant party haled in to court against his will, or by another person whose rights might be irretrievably lost unless he could assert them in an ongoing action in a federal court." *Kroger*, 537 U.S. 365, 377 (1978).

But then what about this situation? We know for sure that P could not originally assert a claim against a nondiverse TPD. That's Kroger and is now an exception to SJ listed in §1367(b) ("claim by a plaintiff against a person made a party under Rule 14"). But does the assertion of a claim by TPD, who is nondiverse to P, contaminate original jurisdiction under 1332?



[Just for the moment, leave aside the §1367(b) aspect to this. Instead, just think about whether *Allapattah*'s contamination theory would apply if nondiverse TPD asserts a claim against P. Remember that if TPD's claim against P contaminates any source of original jurisdiction under §1332, then we never even reach §1367.]

Assuming we do have a basis of original jurisdiction under §1332, then it is time to consider §1367(b).

<u>28 U.S.C. §1367(b)</u>

1. While §1367(a) broadly recognizes supplemental jurisdiction, §1367(b) sets limits on how far supplemental jurisdiction can go.

2. Section 1367(b)'s limitations on supplemental jurisdiction only apply when the source of original jurisdiction is diversity (§1332).

Examples:

P v. D
(TX) (TX)

$\xrightarrow[\S 1331\ \ (1)]{\qquad\qquad}$

$\xrightarrow[\$50K\ \ (2)]{\qquad\qquad}$

P v. D
(TX) (TX)

$\xrightarrow[\S 1331\ \ (1)]{\qquad\qquad}$

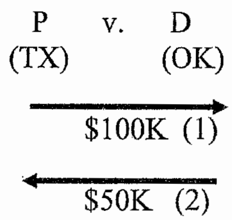
$\xleftarrow[\$50K\ \ (2)]{\qquad\qquad}$

Rule 13(a) cc

Section 1367(b) is irrelevant in both of these examples because the source of original jurisdiction is §1331, not §1332.

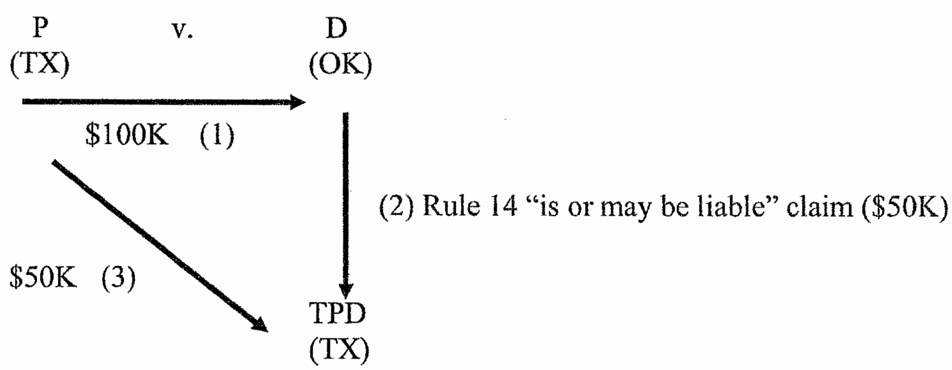
3. Section 1367(b)'s limitations on supplemental jurisdiction only apply to claims asserted by plaintiffs

Example:



Section 1367(b) must now be considered because the source of original jurisdiction over Claim (1) is §1332. However, the claim in green is not a claim by a "plaintiff." What is it? We call it a claim by the defendant, who also goes by the name "counter-plaintiff." Thus, the limitations that Congress imposed in §1367(b) on the exercise of supplemental jurisdiction are inapplicable in this situation. As long as Claim 2 is "so related" to Claim 1 (within the meaning of §1367(a)), the court has supplemental jurisdiction to hear Claim 2.

Here's one more example. It's important to consider this one because it seems to be behind Congress's thinking—at least in large part—in enacting the §1367(b) limitations. The example is based on *Kroger*, 437 U.S. 365 (1978):



(1) – *Kroger* recognized that there was no problem exercising jurisdiction over this claim because it has an independent basis of original jurisdiction (§1332)
(2) – As noted earlier, *Kroger* recognized that there was no problem exercising jurisdiction over this claim because, as a Rule 14 claim, it necessary will arise from the "common nucleus of operative fact" as the P's claim against D. Today, we would also say that there's no problem because §1367(b) doesn't apply
(3) – *Kroger* held that there should not be ancillary jurisdiction over this claim because it potentially could allow the P to do an end run around the complete diversity rule. Today, it's clearly prohibited by §1367(b) because this claim is a claim by a P against a person made a party under Rule 14.

4. Finally, I want to mention now (but we'll come back to it later) that there's uncertainty about how to read the last proviso of section 1367(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) ... when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332."

But before we discuss the last proviso of §1367(b), let's finish walking through the rest of the statute.

28 U.S.C. §1367(c)

1. Even if a claim comes within the grant of supplemental jurisdiction in §1367(a) and is not otherwise prohibited by §1367(b), Congress has given the courts discretion courts must still decide whether to exercise their discretion not to exercise supplemental jurisdiction under §1367(c). As the statutory section reads:

> (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.

2. The majority view among courts is that unless one of the §1367(c) factors are met, the court must exercise supplemental jurisdiction—that it does not have discretion to decline jurisdiction.

3. What is clear is that if a court exercises its discretion and declines supplemental jurisdiction, it only dismisses the claim that lacks an independent basis of original jurisdiction; the jurisdiction-invoking claim (the anchor claim, as I call it) can remain.

P v. D
(TX) (TX)

1331 (1)

$50K (2) (assuming claim raises, e.g., a novel issue of state law)

Although a court might have supplemental jurisdiction under §1367(a) [assuming that Claims (1) and (2) are "so related"], if it declines to exercise that jurisdiction, e.g., because the state law claim raises a novel issue of state law, then it just dismisses the state law claim; the §1331 federal question claim can remain in federal court.

Of course, the P is free to dismiss the §1331 claim and file both in state court (assuming the statute of limitations has not run).

[Note that talking about the statute of limitations would take us into a discussion of §1367(d)'s tolling provision, but that's going into more detail than I want to cover in this class. But I will mention that a fairly recent USSCT case addressed the meaning of §1367(d) and held that §1367(d) should be read broadly as a "stop-the-clock" type of tolling provision. *See Artis v. District of Columbia*, 138 S. Ct. 594 (2018).]

Example:

Let's say the P files suit 75 days before SOL expires

P v. D
(TX) (TX)

§1331 (1)

$50K (2) (but claim raises a novel issue of state law)

If the p refiles the state law claim in state court 50 days after §1367(c) dismissal, what result? Under *Artis*, it would be timely.

Putting it all together: how to approach a supplemental jurisdictional problem:

Step 1: Search for original jurisdiction. Examine each claim to see if it has a source of original jurisdiction

Step 1A: For federal question claims, you have to do the regular FQ analysis

- Does the claim pass the *Bell v. Hood* test? [Reminder: the P's federal claim will support jurisdiction under §1331 unless the claim "clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is **wholly insubstantial and frivolous**." *Bell v. Hood*, 327 U.S. 678, 682-83 (1946)].

- Does the federal issue arise as part of the **P's well-pleaded complaint**? [Reminder: normally, this will only be met when the P asserts a claim under federal law. But, very infrequently, there will be state law claims that still arise under §1331: either because the satisfy (1) the substantial federal question doctrine (discussed in *Grable*); or (2) the complete preemption doctrine (which we mentioned briefly, but you don't have to know well for class).

Step 1B: For diversity cases, we look for complete diversity under §1332(a) (though remember it's possible for Congress to require only minimal diversity); and we look for a sufficient AIC (which requires application of the "to a legal certainty" test from *St. Paul Mercury Co.* **And remember *Allapattah* instructs that in order for there to be a basis of original jurisdiction under §1332, there must be complete diversity between the P and any parties adverse to the plaintiff.** Which also leads to a reminder that there's another sub-step to take if the source of OJ is diversity: we have to ask if the second claim would divest the court of OJ because it would contaminate complete diversity. If it would, then that's it; no OJ and so no SJ. If not, keep going to 1367.

Step 2: Section 1367(a). Assuming that there is an anchor claim (that is, at least one claim for which the court has an independent basis of original jurisdiction), we next examine whether all other claims for which there is no independent basis of original jurisdiction are "so related" to the jurisdiction-invoking claim to come within §1367(a).*

* Probably useful to add that when the anchor claim is a federal question claim the second step is §1367(a), but that if the anchor claim's jurisdiction is based on §1332, then a more efficient second step would be to consider if any of the limitations in §1367(b) apply before doing the §1367(a) analysis. If Congress has withheld supplemental jurisdiction under §1367(b), then it doesn't matter that the claims are related under §1367(a).

Step 3: Section 1367(b). If the source of original jurisdiction for the anchor claim is diversity under §1332(a), then we must consider whether any of the limitations in §1367(b) prohibit the exercise of supplemental jurisdiction. There are basically two questions:

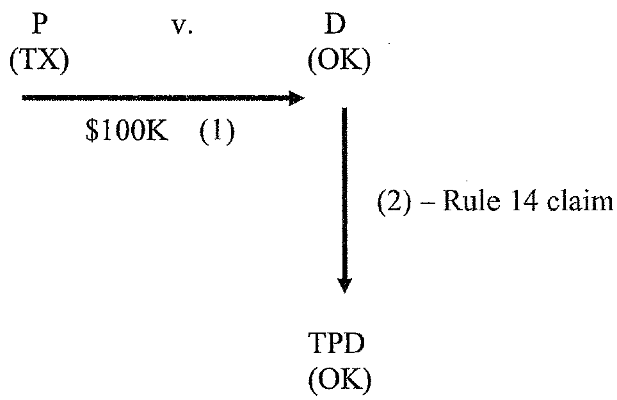
- Is the claim over which the court would need to exercise supplement jurisdiction a claim that's prohibited by §1367(b)?

- But what about the last proviso of §1367(b)?

Step 4: Section 1367(c). Finally, even if we satisfy §1367(a) and §1367(b) does not otherwise withhold supplemental jurisdiction, the court must decide whether to exercise its discretion to decline supplemental jurisdiction under §1367(c).

Working through the examples from the problems in the CM:

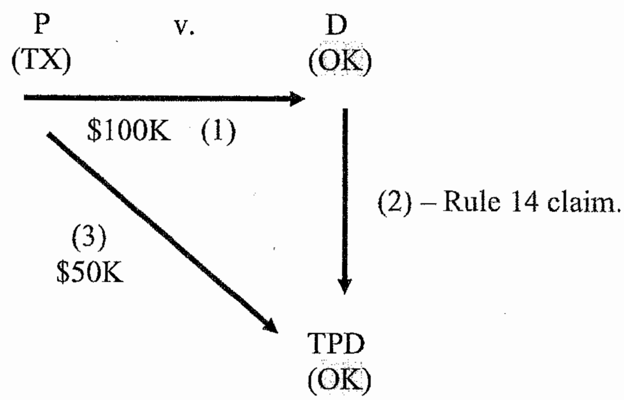
<u>Question 1</u> (note: I'm breaking this question down into pieces so it's easier to discuss):



(1) – There's no problem exercising jurisdiction over this claim. Try to articulate why.

(2) – There's no problem exercising jurisdiction over this claim either. Try to articulate why.

<u>Question 1</u> (here's the rest of it):



(3) – How do you analyze whether there is supplemental jurisdiction to hear this claim? This, finally, gives us the opportunity to discuss the last proviso of §1367(b). Here, again, is the relevant part of §1367(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) … when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332."

<u>One construction: the last phrase should be read to mean "when exercising supplemental jurisdiction over such claims would be inconsistent with the [complete diversity requirement] of §1332."</u>

If "when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332" means that you can't exercise supplemental jurisdiction over any claim if it would destroy complete diversity **or if it doesn't have a sufficient amount in controversy**, then how does §1367(b) have any meaning at all? As Professors Wright & Miller put it in their Federal Practice and Procedure treatise (section 3567.2): "This clause is curious. Indeed, at one level, it seems meaningless. After all, if the claim was consistent with the requirements of §1332, there would be no need for supplemental jurisdiction; the claim would invoke diversity of citizenship jurisdiction. Clearly, then, it must be referring to the requirements of diversity for the underlying dispute, and not this single claim."

In other words, it may be that the best reading of the last proviso is that by "jurisdictional requirements of §1332" Congress just meant the "complete diversity" requirements of §1332. That's a plausible reading. It's certainly consistent with the Court's only concern in *Kroger*—that the P was trying to do an end run around the complete diversity requirement. For all of these reasons, this is the interpretation I favor. But note that there are plenty of courts that have not read it this way. (e.g., they would not allow a P to assert a less-than-$75K claim against a diverse Rule 14 TPD).

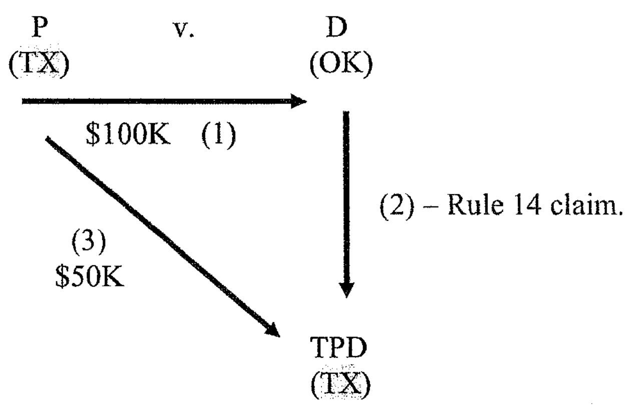
Other construction: the last phrase imposes no additional requirements

But there's another possibility: that the last phrase wasn't meant to have independent meaning (i.e., wasn't meant to impose additional requirements)—it was just meant to clarify why Congress was prohibiting supplemental jurisdiction over the various claims. As in, what Congress meant when it said "when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332" was something like this: *We're prohibiting supplemental jurisdiction in the various situations listed above because we think exercising supplemental jurisdiction in those situations would be inconsistent with what we intended in §1332.*

On this reading, there would be no supplemental jurisdiction over a less-than-$75K claim by a P against a diverse Rule 14 TPD.

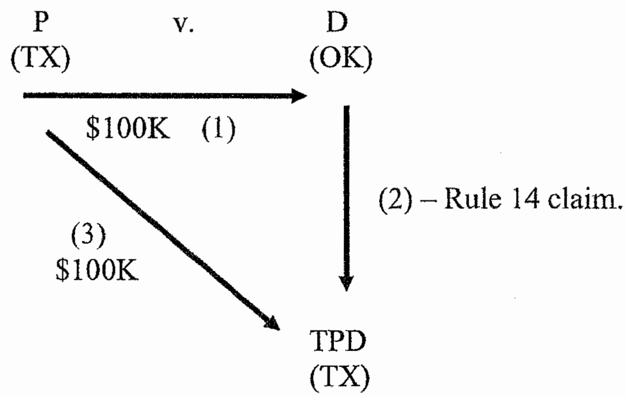
As I say, my view is that this reading is far more strained, but it certainly is another possibility—and one that a great many courts have adopted.

Question 2:



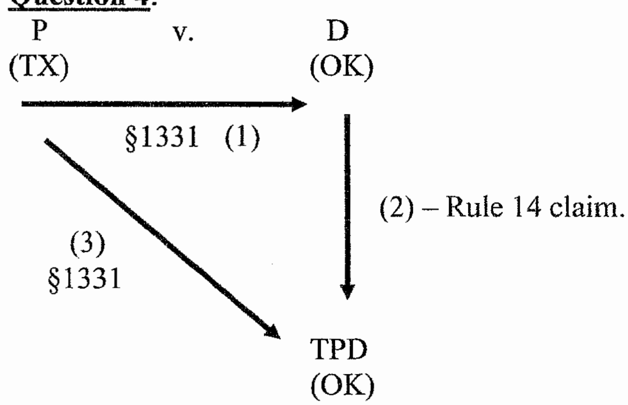
(3) – How do you analyze whether there is supplemental jurisdiction to hear this claim? Note that on either construction of the last proviso of §1367(b), the answer is the same.

Question 3:



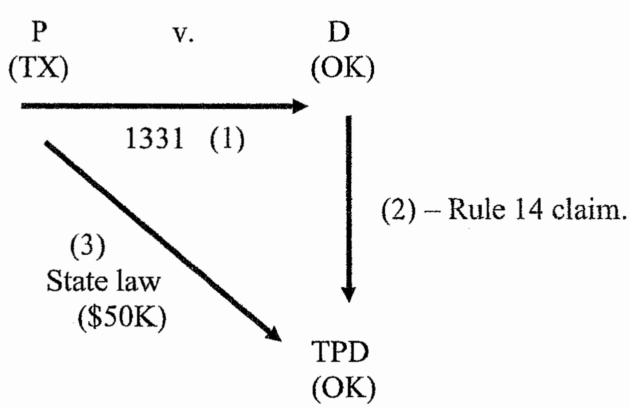
Does your answer change if P's claim against T in this fact pattern is for $100K?

Question 4:



Can all claims be adjudicated in the same federal action?

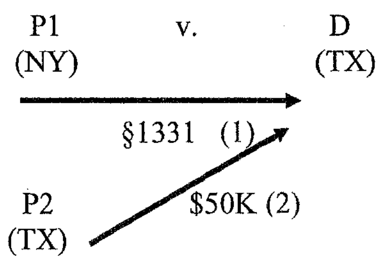
Question 5:



Can Claim 3 now be adjudicated in the same federal action?

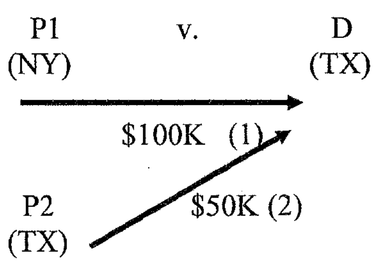
Additional:

Question 6:



Can all claims be adjudicated in the same federal action?

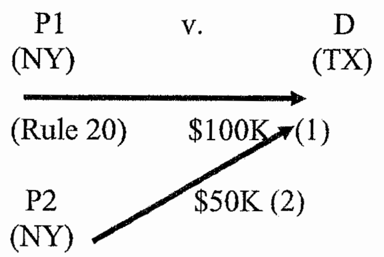
Question 7



Can all claims be adjudicated in the same federal action?

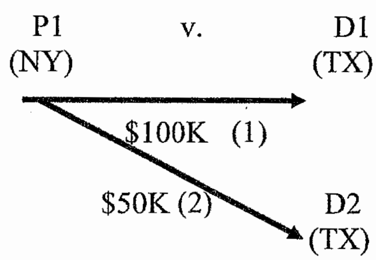
What if the second claim actually was a 1331 claim?

Question 8



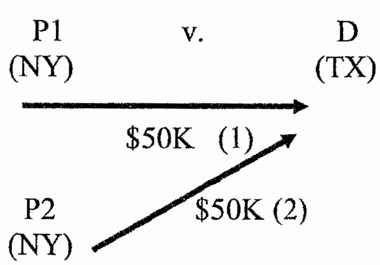
Can all claims be adjudicated in the same federal action?

Question 9



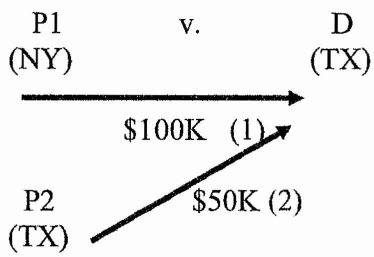
Can all claims be adjudicated in the same federal action?

Question 10



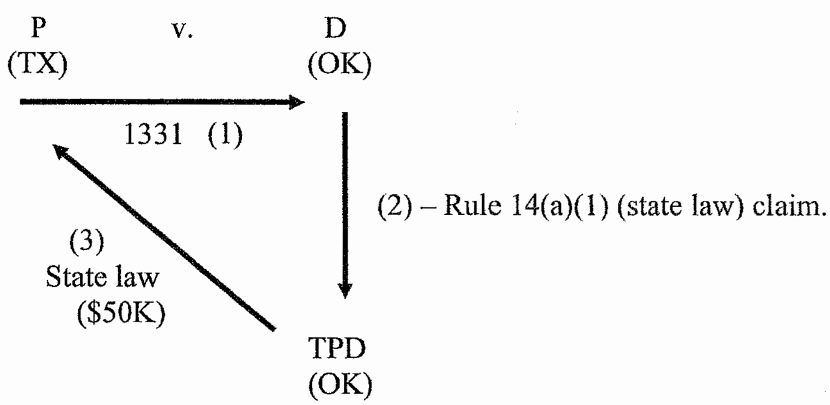
Can all claims be adjudicated in the same federal action?

Question 11



Can all claims be adjudicated in the same federal action?

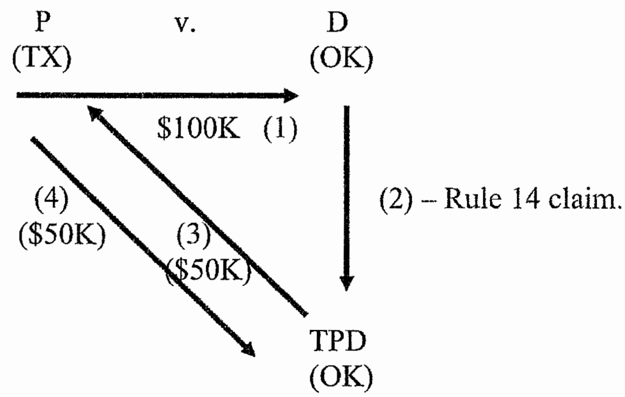
Question 12:



Can all claims be adjudicated in the same federal action?

NB: the A+ answer is the one that asks: what rule authorizes the TPD to bring a claim against P. Doing so would reveal that the answer is Rule 14(a)(2)(D), which provides that the TPD "may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff." So, for the A+ answer, how does Rule 14(a)(2)(D) bear relevance to the 1367(a) analysis?

Question 13:



Can all claims be adjudicated in the same federal action? Does your answer change if Claim 4 is a compulsory counterclaim [Rule 13(a)] v. a permissive one [Rule 13(b)]?

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86 S.Ct. 1130
Supreme Court of the United States
UNITED MINE WORKERS OF AMERICA, Petitioner,
v.
Paul GIBBS.
No. 243.
|
Argued Jan. 20, 1966.
|

Opinion

Mr. Justice BRENNAN delivered the opinion of the Court.

Respondent Paul Gibbs was awarded compensatory and punitive damages in this action against petitioner United Mine Workers of America (NMW) for alleged violations of s 303 of the Labor Management Relations Act, 1947, 61 Stat. 158, as amended,[1] and of the common law of Tennessee. The case grew out of the rivalry between the United Mine Workers and the Southern Labor Union over representation of workers in the southern Appalachian coal fields. Tennessee Consolidated Coal Company, not a party here, laid off 100 miners of the UMW's Local 5881 when it closed one of its mines in southern Tennessee during the spring of 1960. Late that summer, Grundy Company, a wholly owned subsidiary of Consolidated, hired respondent as mine superintendent to attempt to open a new mine on Consolidated's property at nearby Gray's Creek through use of members of the Southern Labor Union. As part of the arrangement, Grundy also gave respondent a contract to haul the mine's coal to the nearest railroad loading point.

On August 15 and 16, 1960, armed members of Local 5881 forcibly prevented the opening of the mine, threatening respondent and beating an organizer for the rival union.[2] The members of the local believed Consolidated ***719** had promised them the jobs at the new mine; they insisted that if anyone would do the work, they would. At this time, no representative of the UMW, their international union, was present. George Gilbert, the UMW's field representative for the area including Local 5881, was away at Middlesboro, Kentucky, attending an Executive Board meeting when the members of the local discovered Grundy's plan;[3] he did not return to the area until late in the day of August 16. There was uncontradicted testimony that he first learned of the violence while at the meeting, and returned with explicit instructions from his international union superiors to establish a limited picket line, to prevent any further violence, and to see to it that the strike did not spread to neighboring mines. There was no further violence at the mine site;

a picket line was maintained there for nine months; and no further attempts were made to open the mine during that period.[4]

Respondent lost his job as superintendent, and never entered into performance of his haulage contract. He testified that he soon began to lose other trucking contracts and mine leases he held in nearby areas. Claiming these effects to be the result of a concerted union plan against him, he sought recovery not against Local 5881 or its members, but only against petitioner, the international union. The suit was brought in the United States District Court for the Eastern District of Tennessee, see, and jurisdiction was premised on allegations of secondary boycotts under s 303. The state law claim, for which jurisdiction was based upon the doctrine of pendent jurisdiction, asserted 'an unlawful conspiracy and an unlawful boycott aimed at him and (Grundy) to maliciously, wantonly and willfully interfere with his contract of employment and with his contract of haulage.'[5]

The trial judge refused to submit to the jury the claims of pressure intended to cause mining firms other than Grundy to cease doing business with Gibbs; he found those claims unsupported by the evidence. The jury's verdict was that the UMW had violated both s 303 and state law. Gibbs was awarded $60,000 as damages under the employment contract and $14,500 under the haulage contract; he was also awarded $100,000 punitive damages. On motion, the trial court set aside the award of damages with respect to the haulage contract on the ground that damage was unproved. It also held that union pressure on Grundy to discharge respondent as supervisor would constitute only a primary dispute with Grundy, as respondent's employer, and hence was not cognizable as a claim under s 303. Interference with the ***721** employment relationship was cognizable as a state claim, however, and a remitted award was sustained on the state law claim.[6] 220 F.Supp. 871. The Court of Appeals for the Sixth Circuit affirmed. 343 F.2d 609. We granted certiorari. 382 U.S. 809, 86 S.Ct. 59, 15 L.Ed.2d 58. We reverse.

I.

With the adoption of the Federal Rules of Civil Procedure and the unified form of action, Fed.Rule Civ.Proc. 2, much of the controversy over 'cause of action' abated. The phrase remained as the keystone of the Hurn test, however, and, as commentators have noted,[9] has been the source of considerable confusion. Under the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.[10] Yet because the Hurn question involves issues of jurisdiction as well as convenience, there has been some tendency to limit its application to cases in which the state and federal claims are, as in Hurn, 'little more than the equivalent of different epithets to characterize the same group of circumstances.' 289 U.S., at 246, 53 S.Ct. at 590.[11]

This limited approach is unnecessarily grudging. Pendent jurisdiction, in the sense of judicial power, exists whenever there is a claim 'arising under (the) Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority * * *,' U.S.Const., Art. III, s 2, and the relationship between that claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional 'case.'[12] The federal claim must have substance sufficient to confer subject matter jurisdiction on the court. Levering & Garrigues Co. v. Morrin, 289 U.S. 103, 53 S.Ct. 549, 77 L.Ed. 1062. The state and federal claims must derive from a common nucleus of operative fact. But if, considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is power in federal courts to hear the whole.[13]

That power need not be exercised in every case in which it is found to exist. It has consistently been recognized that pendent jurisdiction is a doctrine of discretion, not of plaintiff's right.[14] Its justification lies in considerations of judicial economy, convenience and fairness to litigants; if these are not present a federal court should hesitate to exercise jurisdiction over state claims, even though bound to apply state law to them, Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188. Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law.[15] Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well.[16] Similarly, if it appears that the state issues substantially predominate, whether in terms of proof, of the scope of the issues raised, or of the comprehensiveness of the remedy sought, the state claims may be dismissed without prejudice and ***727** left for resolution to state tribunals. There may, on the other hand, be situations in which the state claim is so closely tied to questions of federal policy that the argument for exercise of pendent jurisdiction is particularly strong. In the present case, for example, the allowable scope of the state claim implicates the federal doctrine of pre-emption; while this interrelationship does not create statutory federal question jurisdiction, Louisville & N.R. Co. v. Mottley, 211 U.S. 149, 29 S.Ct. 42, 53 L.Ed. 126, its existence is relevant to the exercise of discretion. Finally, there may be reasons independent of jurisdictional considerations, such as the likelihood of jury confusion in treating divergent legal theories of relief, that would justify separating state and federal claims for trial, Fed.Rule Civ.Proc. 42(b). If so, jurisdiction should ordinarily be refused.

The question of power will ordinarily be resolved on the pleadings. But the issue whether pendent jurisdiction has been properly assumed is one which remains open throughout the litigation. Pretrial procedures or even the trial itself may reveal a substantial hegemony of state law claims, or likelihood of jury confusion, which could not have been anticipated at the pleading stage. Although it will of course be appropriate to take account in this circumstance of the already completedcourse of the litigation, dismissal of the state claim might even then be merited. For example, it may appear that the plaintiff was well aware of the nature of his proofs and the relative importance of his claims; recognition of a federal court's wide latitude to decide ancillary questions of state law does not imply that it must tolerate a litigant's effort to impose upon it what is in effect only a state law case. Once it appears that a state claim constitutes the real body of a case, to which the federal claim is only an appendage, the state claim may fairly be dismissed.

We are not prepared to say that in the present case the District Court exceeded its discretion in proceeding to judgment on the state claim. We may assume for purposes of decision that the District Court was correct in its holding that the claim of pressure on Grundy to terminate the employment contract was outside the purview of s 303. Even so, the s 303 claims based on secondary pressures on Grundy relative to the haulage contract and on other coal operators generally were substantial. Although s 303 limited recovery to compensatory damages based on secondary pressures, Local 20, Teamsters, Chauffeurs and Helpers Union, v. Morton, supra, and state law allowed both compensatory and punitive damages, and allowed such damages as to both secondary and primary activity, the state and federal claims arose from the same nucleus of operative fact and reflected alternative remedies. Indeed, the verdict sheet sent in to the jury authorized only one award of damages, so that recovery could not be given separately on the federal and state claims.

It is true that the s 303 claims ultimately failed and that the only recovery allowed respondent was on the state claim. We cannot confidently say, however, that the federal issues were so remote or played such a minor role at the trial that in effect the state claim only was tried. Although the District Court dismissed as unproved the s 303 claims that petitioner's secondary activities included attempts to induce coal operators other than Grundy to cease doing business with respondent, the court submitted the s 303 claims relating to Grundy to the jury. The jury returned verdicts against petitioner on those s 303 claims, and it was only on petitioner's motion for a directed verdict and a judgment n.o.v. that the verdicts on those claims were set aside. The District Judge considered the claim as to the haulage ***729** contract proved as to liability, and held it failed only for lack of proof of damages. Although there was some risk of confusing the jury in joining the state and federal claims—especially since, as will be developed, differing standards of proof of UMW involvement applied—the possibility of confusion could be lessened by employing a special verdict form, as the District Court did. Moreover, the question whether the permissible scope of the state claim was limited by the doctrine of pre-emption afforded a special reason for the exercise of pendent jurisdiction; the federal courts are particularly appropriate bodies for the application of pre-emption principles. We thus conclude that although it may be that the District Court might, in its sound discretion, have dismissed the state claim, the circumstances show no error in refusing to do so.

125 S.Ct. 2611
Supreme Court of the United States
EXXON MOBIL CORPORATION, Petitioner,
v.
ALLAPATTAH SERVICES, INC., et al.
Maria Del Rosario Ortega, et al., Petitioners,
v.
Star–Kist Foods, Inc.
Nos. 04–70, 04–79.
|
Argued March 1, 2005.
|
Decided June 23, 2005.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and SCALIA, SOUTER, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which BREYER, J., joined, *post,* p. 2628. GINSBURG, J., filed a dissenting opinion, in which Stevens, O'CONNOR, and BREYER, JJ., joined, *post,* p. 2631.

Opinion

Justice KENNEDY delivered the opinion of the Court.

These consolidated cases present the question whether a federal court in a diversity action may exercise supplemental jurisdiction over additional plaintiffs whose claims do not satisfy the minimum amount-in-controversy requirement, provided the claims are part of the same case or controversy as the claims of plaintiffs who do allege a sufficient amount in controversy. Our decision turns on the correct interpretation of 28 U.S.C. § 1367. The question has divided the Courts of Appeals, and we granted certiorari to resolve the conflict. 543 U.S. 924, 125 S.Ct. 314, 160 L.Ed.2d 221 (2004).

We hold that, where the other elements of jurisdiction are present and at least one named plaintiff in the action satisfies the amount-in-controversy requirement, § 1367 does authorize supplemental jurisdiction over the claims of other plaintiffs in the same Article III case or controversy, even if those claims are for less than the jurisdictional amount specified in the statute setting forth the requirements for diversity jurisdiction. We affirm the judgment of the Court of Appeals for the Eleventh Circuit in No. 04–70, and we reverse the judgment of the Court of Appeals for the First Circuit in No. 04–79.

I

In 1991, about 10,000 Exxon dealers filed a class-action suit against the Exxon Corporation in the United States District Court for the Northern District of Florida. The dealers alleged an intentional and systematic scheme by Exxon under which they were overcharged for fuel purchased from Exxon. The plaintiffs invoked the District Court's § 1332(a) diversity jurisdiction. After a unanimous jury verdict in favor of the plaintiffs, the District Court certified the case for interlocutory review, asking whether it had properly exercised § 1367 supplemental jurisdiction over the claims of class members who did not meet the jurisdictional minimum amount in controversy.

The Court of Appeals for the Eleventh Circuit upheld the District Court's extension of supplemental jurisdiction to these class members. *Allapattah Services, Inc. v. Exxon Corp.,* 333 F.3d 1248 (2003). "[W]e find," the court held, "that § 1367 clearly and unambiguously provides district courts with the authority in diversity class actions to exercise supplemental jurisdiction over the claims of class members who do not meet the minimum amount in controversy as long as the district court has original jurisdiction over the claims of at least one of the class representatives." *Id.,* at 1256. This decision accords with the views of the Courts of Appeals for the Fourth, Sixth, and Seventh Circuits. See *Rosmer v. Pfizer, Inc.,* 263 F.3d 110 (C.A.4 2001); *Olden v. LaFarge Corp.,* 383 F.3d 495 (C.A.6 2004); *Stromberg Metal Works, Inc. v. Press Mechanical, Inc.,* 77 F.3d 928 (C.A.7 1996); *In re Brand Name Prescription Drugs Antitrust Litigation,* 123 F.3d 599 (C.A.7 1997). The Courts of Appeals for the Fifth and Ninth Circuits, adopting a similar analysis of the statute, have held that in a diversity class action the unnamed class members need not meet the amount-in-controversy requirement, provided the named class members do. These decisions, however, are unclear on whether all the named plaintiffs must satisfy this requirement. *In re Abbott Labs.,* 51 F.3d 524 (C.A.5 1995); *Gibson v. Chrysler Corp.,* 261 F.3d 927 (C.A.9 2001).

In the other case now before us the Court of Appeals for the First Circuit took a different position on the meaning of § 1367(a). 370 F.3d 124 (2004). In that case, a 9–year–old girl sued Star–Kist in a diversity action in the United States District Court for the District of Puerto Rico, seeking damages for unusually severe injuries she received when she sliced her finger on a tuna can. Her family joined in the suit, seeking damages for emotional distress and certain medical expenses. The District Court granted summary judgment to Star–Kist, finding that none of the plaintiffs met the minimum amount-in-controversy requirement. The Court of Appeals for the First Circuit, however, ruled that the injured girl, but not her family members, had made allegations of damages in the requisite amount.

The Court of Appeals then addressed whether, in light of the fact that one plaintiff met the requirements for original jurisdiction, supplemental jurisdiction over the remaining plaintiffs' claims was proper under § 1367. The court held that § 1367 authorizes supplemental jurisdiction only when the district court has original jurisdiction over the action, and that in a diversity case original jurisdiction is lacking if one plaintiff fails to satisfy the amount-in-controversy requirement. Although the Court of Appeals claimed to "express no view" on whether the result would be the same in a class action, *id.,* at 143, n. 19, its analysis is inconsistent with that of the Court of Appeals for the Eleventh Circuit. The Court of Appeals for the First Circuit's view of § 1367 is, however, shared by the Courts of Appeals for the Third, Eighth, and Tenth Circuits, and the latter two Courts of Appeals have expressly applied this rule to class actions.

II

A

The district courts of the United States, as we have said many times, are "courts of limited jurisdiction. They possess only that power authorized by Constitution and statute," *Kokkonen v. Guardian Life Ins. Co. of America,* 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994). In order to provide a federal forum for plaintiffs who seek to vindicate federal rights, Congress has conferred on the district courts original jurisdiction in federal-question cases—civil actions that arise under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1331. In order to provide a neutral forum for what have come to be known as diversity cases, Congress also has granted district courts original jurisdiction in civil actions between citizens of different States, between U.S. citizens and foreign citizens, or by foreign states against U.S. citizens. § 1332. To ensure that diversity jurisdiction does not flood the federal courts with minor disputes, § 1332(a) requires that the matter in controversy in a diversity case exceed a specified amount, currently $75,000.

Although the district courts may not exercise jurisdiction absent a statutory basis, it is well established—in certain classes of cases—that, once a court has original jurisdiction over some claims in the action, it may exercise supplemental jurisdiction over additional claims that are part of the same case or controversy. The leading modern case for this principle is *Mine Workers v. Gibbs,* 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966). In *Gibbs,* the plaintiff alleged the defendant's conduct violated both federal and state law. The District Court, *Gibbs* held, had original jurisdiction over the action based on the federal claims. *Gibbs* confirmed that the District Court had the additional power (though not the obligation) to exercise supplemental jurisdiction over related state claims that arose from ***553** the same Article III case or controversy. *Id.,* at 725, 86 S.Ct. 1130 ("The federal claim must have substance sufficient to confer subject matter jurisdiction on the court.... [A]ssuming substantiality of the federal issues, there is *power* in federal courts to hear the whole").

As we later noted, the decision allowing jurisdiction over pendent state claims in *Gibbs* did not mention, let alone come to grips with, the text of the jurisdictional statutes and the bedrock principle that federal courts have no jurisdiction without statutory authorization. *Finley v. United States,* 490 U.S. 545, 548, 109 S.Ct. 2003, 104 L.Ed.2d 593 (1989). In *Finley,* we nonetheless reaffirmed and rationalized *Gibbs* and its progeny by inferring from it the interpretive principle that, in cases involving supplemental jurisdiction over additional claims between parties properly in federal court, the jurisdictional statutes should be read broadly, on the assumption that in this context Congress intended to authorize courts to exercise their full Article III power to dispose of an " 'entire action before the court [which] comprises but one constitutional "case." ' " 490 U.S., at 549, 109 S.Ct. 2003 (quoting *Gibbs, supra,* at 725, 86 S.Ct. 1130).

We have not, however, applied *Gibbs*' expansive interpretive approach to other aspects of the jurisdictional statutes. For instance, we have consistently interpreted § 1332 as requiring complete diversity: In a case with multiple plaintiffs and multiple defendants, the presence in the action of a single plaintiff from the same State as a single defendant deprives the district court of original diversity jurisdiction over the entire action. *Strawbridge v. Curtiss,* 3 Cranch 267, 2 L.Ed. 435 (1806); *Owen Equipment & Erection Co. v. Kroger,* 437 U.S. 365, 375, 98 S.Ct. 2396, 57 L.Ed.2d 274 (1978). The complete diversity requirement is not mandated by the Constitution, *State Farm Fire & Casualty Co. v. Tashire,* 386 U.S. 523, 530–531, 87 S.Ct. 1199, 18 L.Ed.2d 270 (1967), or by the plain text of § 1332(a). The Court, nonetheless, has adhered to the complete diversity rule in light of the purpose of the diversity requirement, which is to provide a federal forum for important disputes where state courts might favor, or be ***554** perceived as favoring, home-state litigants. The presence of parties from the same State on both sides of a case dispels this concern, eliminating a principal reason for conferring § 1332 jurisdiction over any of the claims in the action. See *Wisconsin Dept. of Corrections v. Schacht,* 524 U.S. 381, 389, 118 S.Ct. 2047, 141 L.Ed.2d 364 (1998); *Newman–Green, Inc. v. Alfonzo–Larrain,* 490 U.S. 826, 829, 109 S.Ct. 2218, 104 L.Ed.2d 893 (1989). The specific purpose of the complete diversity rule explains both why we have not adopted *Gibbs* ' expansive interpretive approach to this aspect of the jurisdictional statute and why *Gibbs* does not undermine the complete diversity rule. In order for a federal court to invoke supplemental jurisdiction under *Gibbs,* it must first have original jurisdiction over at least one claim in the action. Incomplete diversity destroys original jurisdiction with respect to all claims, so there is nothing to which supplemental jurisdiction can adhere.

In contrast to the diversity requirement, most of the other statutory prerequisites for federal jurisdiction, including the federal-question and amount-in-controversy requirements, can be analyzed claim by claim. True, it does not follow by necessity from this that a district court has authority to exercise supplemental jurisdiction over all claims provided there is original jurisdiction over just one. Before the enactment of § 1367, the Court declined in contexts other than the pendent-claim instance to follow *Gibbs*' expansive approach to interpretation of the jurisdictional statutes. The Court took a more restrictive view of the proper interpretation of these statutes in so-called pendent-party cases involving supplemental jurisdiction over claims involving additional parties—plaintiffs or defendants—where the district courts would lack original jurisdiction over claims by each of the parties standing alone.

Thus, with respect to plaintiff-specific jurisdictional requirements, the Court held in *Clark v. Paul Gray, Inc.,* 306 U.S. 583, 59 S.Ct. 744, 83 L.Ed. 1001 (1939), that every plaintiff must separately satisfy the amount-in-controversy requirement. Though *Clark* was a federal-question case, at that time federal-question jurisdiction had an amount-in-controversy requirement analogous to the amount-in-controversy requirement for diversity cases. "Proper practice," *Clark* held, "requires that where each of several plaintiffs is bound to establish the jurisdictional amount with respect to his own claim, the suit should be dismissed as to those who fail to show that the requisite amount is involved." *Id.,* at 590, 59 S.Ct. 744. The Court reaffirmed this rule, in the context of a class action brought invoking § 1332(a) diversity jurisdiction, in *Zahn v. International Paper Co.,* 414 U.S. 291, 94 S.Ct. 505, 38 L.Ed.2d 511 (1973). It follows "inescapably" from *Clark,* the Court held in *Zahn,* that "any plaintiff without the jurisdictional amount must be dismissed from the case, even though others allege jurisdictionally sufficient claims." 414 U.S., at 300, 94 S.Ct. 505.

The Court took a similar approach with respect to supplemental jurisdiction over claims against additional defendants that fall outside the district courts' original jurisdiction. In *Aldinger v. Howard,* 427 U.S. 1, 96 S.Ct. 2413, 49 L.Ed.2d 276 (1976), the plaintiff brought a Rev.Stat. § 1979, 42 U.S.C. § 1983, action against county officials in District Court pursuant to the statutory grant of jurisdiction in 28 U.S.C. § 1343(3) (1976 ed.). The plaintiff further alleged the court had supplemental jurisdiction over her related state-law claims against the county, even though the county was not suable under § 1983 and so was not subject to § 1343(3)'s original jurisdiction. The Court held that supplemental jurisdiction could not be exercised because Congress, in enacting § 1343(3), had declined (albeit implicitly) to extend federal jurisdiction over any party who could not be sued under the federal civil rights statutes. 427 U.S., at 16–19, 96 S.Ct. 2413. "Before it can be concluded that [supplemental] jurisdiction [over additional parties] exists," *Aldinger* held, "a federal court must satisfy itself not only that Art[icle] III permits it, but that Congress in the statutes conferring jurisdiction has not expressly or by implication negated its existence." *Id.,* at 18, 96 S.Ct. 2413.

In *Finley v. United States,* 490 U.S. 545, 109 S.Ct. 2003, 104 L.Ed.2d 593 (1989), we confronted a similar issue in a different statutory context. The plaintiff in *Finley* brought a Federal Tort Claims Act negligence suit against the Federal Aviation Administration in District Court, which had original jurisdiction under § 1346(b). The plaintiff tried to add related claims against other defendants, invoking the District Court's supplemental jurisdiction over so-called pendent parties. We held that the District Court lacked a sufficient statutory basis for exercising supplemental jurisdiction over these claims. Relying primarily on *Zahn, Aldinger,* and *Kroger,* we held in *Finley* that "a grant of jurisdiction over claims involving particular parties does not itself confer jurisdiction over additional claims by or against different parties." 490 U.S., at 556, 109 S.Ct. 2003. While *Finley* did not "limit or impair" *Gibbs'* liberal approach to interpreting the jurisdictional statutes in the context of supplemental jurisdiction over additional claims involving the same parties, 490 U.S., at 556, 109 S.Ct. 2003, *Finley* nevertheless declined to extend that interpretive assumption to claims involving additional parties. *Finley* held that in the context of parties, in contrast to claims, "we will not assume that the full constitutional power has been congressionally authorized, and will not read jurisdictional statutes broadly." *Id.,* at 549, 109 S.Ct. 2003.

As the jurisdictional statutes existed in 1989, then, here is how matters stood: First, the diversity requirement in § 1332(a) required complete diversity; absent complete diversity, the district court lacked original jurisdiction over all of the claims in the action. *Strawbridge,* 3 Cranch, at 267–268, 2 L.Ed. 435; *Kroger,* 437 U.S., at 373–374, 98 S.Ct. 2396. Second, if the district court had original jurisdiction over at least one claim, the jurisdictional statutes implicitly authorized supplemental jurisdiction over all other claims between the same parties arising out of the same Article III case or controversy. *Gibbs,* 383 U.S., at 725, 86 S.Ct. 1130. Third, even when the district court had original ***557** jurisdiction over one or more claims between particular parties, the jurisdictional statutes did not authorize supplemental jurisdiction over additional claims involving other parties. *Clark,* 306 U.S., at 590, 59 S.Ct. 744; *Zahn, supra,* at 300–301, 94 S.Ct. 505; *Finley, supra,* at 556, 109 S.Ct. 2003.

B

In *Finley* we emphasized that "[w]hatever we say regarding the scope of jurisdiction conferred by a particular statute can of course be changed by Congress." 490 U.S., at 556, 109 S.Ct. 2003. In 1990, Congress accepted the invitation. It passed the Judicial Improvements Act, 104 Stat. 5089, which enacted § 1367, the provision which controls these cases.

Section 1367 provides, in relevant part:

> "(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."

All parties to this litigation and all courts to consider the question agree that § 1367 overturned the result in *Finley.* There is no warrant, however, for assuming that § 1367 did no more than to overrule *Finley* and otherwise to codify the existing state of the law of supplemental jurisdiction. We must not give jurisdictional statutes a more expansive interpretation than their text warrants, 490 U.S., at 549, 556, 109 S.Ct. 2003; but it is just as important not to adopt an artificial construction that is narrower than what the text provides. No sound canon of interpretation requires Congress to speak with extraordinary clarity in order to modify the rules of federal jurisdiction within appropriate constitutional bounds. Ordinary principles of statutory construction apply. In order to determine the scope of supplemental jurisdiction authorized by § 1367, then, we must examine the statute's text in light of context, structure, and related statutory provisions.

Section 1367(a) is a broad grant of supplemental jurisdiction over other claims within the same case or controversy, as long as the action is one in which the district courts would have original jurisdiction. The last sentence of § 1367(a) makes it clear that the grant of supplemental jurisdiction extends to claims involving joinder or intervention of additional parties. The single question before us, therefore, is whether a diversity case in which the claims of some plaintiffs satisfy the amount-in-controversy requirement, but the claims of other plaintiffs do not, presents a "civil action of which the district courts have original jurisdiction." If the answer is yes, § 1367(a) confers supplemental jurisdiction over all claims, including those that do not independently satisfy the amount-in-controversy requirement, if the claims are part of the same Article III case or controversy. If the answer is no, § 1367(a) is inapplicable and, in light of our holdings in *Clark* and *Zahn,* the district court has no statutory basis for exercising supplemental jurisdiction over the additional claims.

We now conclude the answer must be yes. When the well-pleaded complaint contains at least one claim that satisfies the amount-in-controversy requirement, and there are no other relevant jurisdictional defects, the district court, beyond all question, has original jurisdiction over that claim. The presence of other claims in the complaint, over which the district court may lack original jurisdiction, is of no moment. If the court has original jurisdiction over a single claim in the complaint, it has original jurisdiction over a "civil action" ****2621** within the meaning of § 1367(a), even if the civil action over which it has jurisdiction comprises fewer claims than were included in the complaint. Once the court determines it has original jurisdiction over the civil action, it can turn to the question whether it has a constitutional and statutory basis for exercising supplemental jurisdiction over the other claims in the action.

Section 1367(a) commences with the direction that §§ 1367(b) and (c), or other relevant statutes, may provide specific exceptions, but otherwise § 1367(a) is a broad jurisdictional grant, with no distinction drawn between pendent-claim and pendent-party cases. In fact, the last sentence of § 1367(a) makes clear that the provision grants supplemental jurisdiction over claims involving joinder or intervention of additional parties. The terms of § 1367 do not acknowledge any distinction between pendent jurisdiction and the doctrine of so-called ancillary jurisdiction. Though the doctrines of pendent and ancillary jurisdiction developed separately as a historical matter, the Court has recognized that the doctrines are "two species of the same generic problem," *Kroger,* 437 U.S., at 370, 98 S.Ct. 2396. Nothing in § 1367 indicates a congressional intent to recognize, preserve, or create some meaningful, substantive distinction between the jurisdictional categories we have historically labeled pendent and ancillary.

If § 1367(a) were the sum total of the relevant statutory language, our holding would rest on that language alone. The statute, of course, instructs us to examine § 1367(b) to determine if any of its exceptions apply, so we proceed to that section. While § 1367(b) qualifies the broad rule of § 1367(a), it does not withdraw supplemental jurisdiction over the claims of the additional parties at issue here. The specific exceptions to § 1367(a) contained in § 1367(b), moreover, provide additional support for our conclusion that § 1367(a) confers supplemental jurisdiction over these claims. Section 1367(b), which applies only to diversity cases, withholds supplemental jurisdiction over the claims of plaintiffs proposed to be joined as indispensable parties under Federal Rule of Civil Procedure 19, or who seek to intervene pursuant to Rule 24. Nothing in the text of § 1367(b), however, withholds supplemental jurisdiction over the claims of plaintiffs permissively joined under Rule 20 (like the additional plaintiffs in No. 04–79) or certified as class-action members pursuant to Rule 23 (like the additional plaintiffs in No. 04–70). The natural, indeed the necessary, inference is that § 1367 confers supplemental jurisdiction over claims by Rule 20 and Rule 23 plaintiffs. This inference, at least with respect to Rule 20 plaintiffs, is strengthened by the fact that § 1367(b) explicitly excludes supplemental jurisdiction over claims against defendants joined under Rule 20.

We cannot accept the view, urged by some of the parties, commentators, and Courts of Appeals, that a district court lacks original jurisdiction over a civil action unless the court has original jurisdiction over every claim in the complaint. As we understand this position, it requires assuming either that all claims in the complaint must stand or fall as a single, indivisible "civil action" as a matter of definitional necessity—what we will refer to as the "indivisibility theory"—or else that the inclusion of a claim or party falling outside the district court's original jurisdiction somehow contaminates every other claim in the complaint, depriving the court of original jurisdiction over any of these claims—what we will refer to as the "contamination theory."

The indivisibility theory is easily dismissed, as it is inconsistent with the whole notion of supplemental jurisdiction. If a district court must have original jurisdiction over every claim in the complaint in order to have "original jurisdiction" over a "civil action," then in *Gibbs* there was no civil action of which the district court could assume original jurisdiction under § 1331, and so no basis for exercising supplemental jurisdiction over any of the claims. The indivisibility theory is further belied by our practice—in both federal-question and diversity cases—of allowing federal courts to cure jurisdictional defects by dismissing the offending parties rather than dismissing the entire action. *Clark,* for example, makes clear that claims that are jurisdictionally defective as to amount in controversy do not destroy original jurisdiction over other claims. 306 U.S., at 590, 59 S.Ct. 744 (dismissing parties who failed to meet the amount-in-controversy requirement but retaining jurisdiction over the remaining party). If the presence of jurisdictionally problematic claims in the complaint meant the district court was without original jurisdiction over the single, indivisible civil action before it, then the district court would have to dismiss the whole action rather than particular parties.

We also find it unconvincing to say that the definitional indivisibility theory applies in the context of diversity cases but not in the context of federal-question cases. The broad and general language of the statute does not permit this result. The contention is premised on the notion that the phrase "original jurisdiction of all civil actions" means different things in §§ 1331 and 1332. It is implausible, however, to say that the identical phrase means one thing (original jurisdiction in all actions where at least one claim in the complaint meets the following requirements) in § 1331 and something else (original jurisdiction in all actions where every claim in the complaint meets the following requirements) in § 1332.

The contamination theory, as we have noted, can make some sense in the special context of the complete diversity requirement because the presence of nondiverse parties on both sides of a lawsuit eliminates the justification for providing a federal forum. The theory, however, makes little sense with respect to the amount-in-controversy requirement, which is meant to ensure that a dispute is sufficiently important to warrant federal-court attention. The presence of a single nondiverse party may eliminate the fear of bias with respect to all claims, but the presence of a claim that falls short of the minimum amount in controversy does nothing to reduce the importance of the claims that do meet this requirement.

It is fallacious to suppose, simply from the proposition that § 1332 imposes both the diversity requirement and the amount-in-controversy requirement, that the contamination theory germane to the former is also relevant to the latter. There is no inherent logical connection between the amount-in-controversy requirement and § 1332 diversity jurisdiction. After all, federal-question jurisdiction once had an amount-in-controversy requirement as well. If such a requirement were revived under § 1331, it is clear beyond peradventure that § 1367(a) provides supplemental jurisdiction over federal-question cases where some, but not all, of the federal-law claims involve a sufficient amount in controversy. In other words, § 1367(a) unambiguously overrules the holding and the result in *Clark.* If that is so, however, it would be quite extraordinary to say that § 1367 did not also overrule *Zahn,* a case that was premised in substantial part on the holding in *Clark.*

In addition to the theoretical difficulties with the argument that a district court has original jurisdiction over a civil action only if it has original jurisdiction over each individual claim in the complaint, we have already considered and rejected a virtually identical argument in the closely analogous context of removal jurisdiction. In *Chicago v. International College of Surgeons,* 522 U.S. 156, 118 S.Ct. 523, 139 L.Ed.2d 525 (1997), the plaintiff brought federal– and state-law claims in state court. The defendant removed to federal court. The plaintiff objected to removal, citing the text of the removal statute, § 1441(a). That statutory provision, which bears a striking similarity to the relevant portion of § 1367, authorizes removal of "any civil action ... of which the district courts of the United States have original jurisdiction ... ." The *College of Surgeons* plaintiff urged that, because its state-law claims were not within the District Court's original jurisdiction, § 1441(a) did not authorize removal. We disagreed. The federal-law claims, we held, "suffice to make the actions 'civil actions' within the 'original jurisdiction' of the district courts .... Nothing in the jurisdictional statutes suggests that the presence of related state law claims somehow alters the fact that [the plaintiff's] complaints, by virtue of their federal claims, were 'civil actions' within the federal courts' 'original jurisdiction.' " *Id.,* at 166, 118 S.Ct. 523. Once the case was removed, the District Court had original jurisdiction over the federal-law claims and supplemental jurisdiction under § 1367(a) over the state-law claims. *Id.,* at 165, 118 S.Ct. 523.

The dissent in *College of Surgeons* argued that because the plaintiff sought on-the-record review of a local administrative agency decision, the review it sought was outside the scope of the District Court's jurisdiction. *Id.,* at 177, 118 S.Ct. 523 (opinion of GINSBURG, J.). We rejected both the suggestion that state-law claims involving administrative appeals are beyond the scope of § 1367 supplemental jurisdiction, *id.,* at 168–172, 118 S.Ct. 523 (opinion of the Court), and the claim that the administrative review posture of the case deprived the District Court of original jurisdiction over the federal-law claims in the case, *id.,* at 163–168, 118 S.Ct. 523. More importantly for present purposes, *College of Surgeons* stressed that a district court has original jurisdiction of a civil action for purposes of § 1441(a) as long as it has original jurisdiction over a subset of the claims constituting the action. Even the *College of Surgeons* dissent, ***564** which took issue with the Court's interpretation of § 1367, did not appear to contest this view of § 1441(a).

Although *College of Surgeons* involved additional claims between the same parties, its interpretation of § 1441(a) applies equally to cases involving additional parties whose claims fall short of the jurisdictional amount. If we were to adopt the contrary view that the presence of additional parties means there is no "civil action ... of which the district courts ... have original jurisdiction," those cases simply would not be removable. To our knowledge, no court has issued a reasoned opinion adopting this view of the removal statute. It is settled, of course, that absent complete diversity a case is not removable because the district court would lack original jurisdiction. *Caterpillar Inc. v. Lewis,* 519 U.S. 61, 73, 117 S.Ct. 467, 136 L.Ed.2d 437 (1996). This, however, is altogether consistent with our view of § 1441(a). A failure of complete diversity, unlike the failure of some claims to meet the requisite amount in controversy, contaminates every claim in the action.

We also reject the argument, similar to the attempted distinction of *College of Surgeons* discussed above, that while the presence of additional claims over which the district court lacks jurisdiction does not mean the civil action is outside the purview of § 1367(a), the presence of additional parties does. The basis for this distinction is not altogether clear, and it is in considerable tension with statutory text. Section 1367(a) applies by its terms to any civil action of which the district courts have original jurisdiction, and the last sentence of § 1367(a) expressly contemplates that the court may have supplemental jurisdiction over additional parties. So it cannot be the case that the presence of those parties destroys the court's original jurisdiction, within the meaning of § 1367(a), over a civil action otherwise properly before it. Also, § 1367(b) expressly withholds supplemental jurisdiction in diversity cases over claims by plaintiffs joined as indispensable parties under Rule 19. If joinder of such parties were sufficient to deprive the district court of original jurisdiction over the civil action within the meaning of § 1367(a), this specific limitation on supplemental jurisdiction in § 1367(b) would be superfluous. The argument that the presence of additional parties removes the civil action from the scope of § 1367(a) also would mean that § 1367 left the *Finley* result undisturbed. *Finley,* after all, involved a Federal Tort Claims Act suit against a federal defendant and state-law claims against additional defendants not otherwise subject to federal jurisdiction. Yet all concede that one purpose of § 1367 was to change the result reached in *Finley.*

Finally, it is suggested that our interpretation of § 1367(a) creates an anomaly regarding the exceptions listed in § 1367(b): It is not immediately obvious why Congress would withhold supplemental jurisdiction over plaintiffs joined as parties "needed for just adjudication" under Rule 19 but would allow supplemental jurisdiction over plaintiffs permissively joined under Rule 20. The omission of Rule 20 plaintiffs from the list of exceptions in § 1367(b) may have been an "unintentional drafting gap," *Meritcare,* 166 F.3d, at 221, and n. 6. If that is the case, it is up to Congress rather than the courts to fix it. The omission may seem odd, but it is not absurd. An alternative explanation for the different treatment of Rules 19 and 20 is that Congress was concerned that extending supplemental jurisdiction to Rule 19 plaintiffs would allow circumvention of the complete diversity rule: A nondiverse plaintiff might be omitted intentionally from the original action, but joined later under Rule 19 as a necessary party. See *Stromberg Metal Works,* 77 F.3d, at 932. The contamination theory described above, if applicable, means this ruse would fail, but Congress may have wanted to make assurance double sure. More generally, Congress may have concluded that federal jurisdiction is only appropriate if the district court would have original jurisdiction over the claims of all those plaintiffs who are so essential to the action that they could be joined under Rule 19.

To the extent that the omission of Rule 20 plaintiffs from the list of § 1367(b) exceptions is anomalous, moreover, it is no more anomalous than the inclusion of Rule 19 plaintiffs in that list would be if the alternative view of § 1367(a) were to prevail. If the district court lacks original jurisdiction over a civil diversity action where any plaintiff's claims fail to comply with all the requirements of § 1332, there is no need for a special § 1367(b) exception for Rule 19 plaintiffs who do not meet these requirements. Though the omission of Rule 20 plaintiffs from § 1367(b) presents something of a puzzle on our view of the statute, the inclusion of Rule 19 plaintiffs in this section is at least as difficult to explain under the alternative view.

And so we circle back to the original question. When the well-pleaded complaint in district court includes multiple claims, all part of the same case or controversy, and some, but not all, of the claims are within the court's original jurisdiction, does the court have before it "any civil action of which the district courts have original jurisdiction"? It does. Under § 1367, the court has original jurisdiction over the civil action comprising the claims for which there is no jurisdictional defect. No other reading of § 1367 is plausible in light of the text and structure of the jurisdictional statute. Though the special nature and purpose of the diversity requirement mean that a single nondiverse party can contaminate every other claim in the lawsuit, the contamination does not occur with respect to jurisdictional defects that go only to the substantive importance of individual claims.

It follows from this conclusion that the threshold requirement of § 1367(a) is satisfied in cases, like those now before us, where some, but not all, of the plaintiffs in a diversity action allege a sufficient amount in controversy. We hold that § 1367 by its plain text overruled *Clark* and *Zahn* and authorized supplemental jurisdiction over all claims by diverse parties arising out of the same Article III case or controversy, subject only to enumerated exceptions not applicable in the cases now before us.

C

The proponents of the alternative view of § 1367 insist that the statute is at least ambiguous and that we should look to other interpretive tools, including the legislative history of § 1367, which supposedly demonstrate Congress did not intend § 1367 to overrule *Zahn*. We can reject this argument at the very outset simply because § 1367 is not ambiguous. For the reasons elaborated above, interpreting § 1367 to foreclose supplemental jurisdiction over plaintiffs in diversity cases who do not meet the minimum amount in controversy is inconsistent with the text, read in light of other statutory provisions and our established jurisprudence. Even if we were to stipulate, however, that the reading these proponents urge upon us is textually plausible, the legislative history cited to support it would not alter our view as to the best interpretation of § 1367.

Those who urge that the legislative history refutes our interpretation rely primarily on the House Judiciary Committee Report on the Judicial Improvements Act. H.R.Rep. No. 101–734 (1990) (House Report or Report). This Report explained that § 1367 would "authorize jurisdiction in a case like *Finley*, as well as essentially restore the pre-*Finley* understandings of the authorization for and limits on other forms of supplemental jurisdiction." *Id.,* at 28. The Report stated that § 1367(a) "generally authorizes the district court to exercise jurisdiction over a supplemental claim whenever it forms part of the same constitutional case or controversy as the claim or claims that provide the basis of the district court's original jurisdiction," and in so doing codifies *Gibbs* and fills the statutory gap recognized in *Finley.* House Report, at 28–29, and n. 15. The Report then remarked that § 1367(b) "is not intended to affect the jurisdictional requirements of [§ 1332] in diversity-only class actions, as those requirements were interpreted prior to *Finley,*" citing, without further elaboration, *Zahn* and *Supreme Tribe of Ben–Hur v. Cauble,* 255 U.S. 356, 41 S.Ct. 338, 65 L.Ed. 673 (1921). House Report, at 29, and n. 17. The Report noted that the "net effect" of § 1367(b) was to implement the "principal rationale" of *Kroger,* House Report, at 29, and n. 16, effecting only "one small change" in pre-*Finley* practice with respect to diversity actions: § 1367(b) would exclude "Rule 23(a) plaintiff-intervenors to the same extent as those sought to be joined as plaintiffs under Rule 19." House Report, at 29. (It is evident that the ****2626** report here meant to refer to Rule 24, not Rule 23.)

As we have repeatedly held, the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms. Not all extrinsic materials are reliable sources of insight into legislative understandings, however, and legislative history in particular is vulnerable to two serious criticisms. First, legislative history is itself often murky, ambiguous, and contradictory. Judicial investigation of legislative history has a tendency to become, to borrow Judge Leventhal's memorable phrase, an exercise in "'looking over a crowd and picking out your friends.' " See Wald, Some Observations on the Use of Legislative History in the 1981 Supreme Court Term, 68 Iowa L.Rev. 195, 214 (1983). Second, judicial reliance on legislative materials like committee reports, which are not themselves subject to the requirements of Article I, may give unrepresentative committee members—or, worse yet, unelected staffers and lobbyists—both the power and the incentive to attempt strategic manipulations of legislative history to secure results they were unable to achieve through the statutory text. We need not comment here on whether these problems are sufficiently prevalent to render legislative history inherently unreliable in all circumstances, a point on which Members of this Court have disagreed. It is clear, however, that in this instance both criticisms are right on the mark.

First of all, the legislative history of § 1367 is far murkier than selective quotation from the House Report would suggest. The text of § 1367 is based substantially on a draft proposal contained in a Federal Court Study Committee working paper, which was drafted by a Subcommittee chaired by Judge Posner. Report of the Subcommittee on the

Role of the Federal Courts and Their Relationship to the States 567–568 (Mar. 12, 1990), reprinted in 1 Judicial Conference of the United States, Federal Courts Study Committee, Working Papers and Subcommittee Reports (July 1, 1990) (Subcommittee Working Paper). See also Judicial Conference of the United States, Report of the Federal Courts Study Committee 47–48 (Apr. 2, 1990) (Study Committee Report) (echoing, in brief summary form, the Subcommittee Working Paper proposal and noting that the Subcommittee Working Paper "contains additional material on this subject"); House Report, at 27 ("[Section 1367] implements a recommendation of the Federal Courts Study Committee found on pages 47 and 48 of its Report"). While the Subcommittee explained, in language echoed by the House Report, that its proposal "basically restores the law as it existed prior to *Finley,*" Subcommittee Working Paper, at 561, it observed in a footnote that its proposal would overrule *Zahn* and that this would be a good idea, Subcommittee Working Paper, at 561, n. 33. Although the Federal Courts Study Committee did not expressly adopt the Subcommittee's specific reference to *Zahn,* it neither explicitly disagreed with the Subcommittee's conclusion that this was the best reading of the proposed text nor substantially modified the proposal to avoid this result. Study Committee Report, at 47–48. Therefore, even if the House Report could fairly be read to reflect an understanding that the text of § 1367 did not overrule *Zahn,* the Subcommittee Working Paper on which § 1367 was based reflected the opposite understanding. The House Report is no more authoritative than the Subcommittee Working Paper. The utility of either can extend no further than the light it sheds on how the enacting Legislature understood the statutory text. Trying to figure out how to square the Subcommittee Working Paper's understanding with the House Report's understanding, or which is more reflective of the understanding of the enacting legislators, is a hopeless task.

Second, the worst fears of critics who argue legislative history will be used to circumvent the Article I process were realized in this case. The telltale evidence is the statement, by three law professors who participated in drafting § 1367, see House Report, at 27, n. 13, that § 1367 "on its face" permits "supplemental jurisdiction over claims of class members that do not satisfy section 1332's jurisdictional amount requirement, which would overrule *[Zahn]*. [There is] a disclaimer of intent to accomplish this result in the legislative history .... It would have been better had the statute dealt explicitly with this problem, and the legislative history was an attempt to correct the oversight." Rowe, Burbank, & Mengler, Compounding or Creating Confusion About Supplemental Jurisdiction? A Reply to Professor Freer, 40 Emory L.J. 943, 960, n. 90 (1991). The professors were frank to concede that if one refuses to consider the legislative history, one has no choice but to "conclude that section 1367 has wiped *Zahn* off the books." *Ibid.* So there exists an acknowledgment, by parties who have detailed, specific knowledge of the statute and the drafting process, both that the plain text of § 1367 overruled *Zahn* and that language to the contrary in the House Report was a *post hoc* attempt to alter that result. One need not subscribe to the wholesale condemnation of legislative history to refuse to give any effect to such a deliberate effort to amend a statute through a committee report.

In sum, even if we believed resort to legislative history were appropriate in these cases—a point we do not concede—we would not give significant weight to the House Report. The distinguished jurists who drafted the Subcommittee Working Paper, along with three of the participants in the drafting of § 1367, agree that this provision, on its face, overrules *Zahn*. This accords with the best reading of the statute's text, and nothing in the legislative history indicates directly and explicitly that Congress understood the phrase "civil action of which the district courts have original jurisdiction" to exclude cases in which some but not all of the diversity plaintiffs meet the amount-in-controversy requirement.

No credence, moreover, can be given to the claim that, if Congress understood § 1367 to overrule *Zahn,* the proposal would have been more controversial. We have little sense whether any Member of Congress would have been particularly upset by this result. This is not a case where one can plausibly say that concerned legislators might not have realized the possible effect of the text they were adopting. Certainly, any competent legislative aide who studied the matter would have flagged this issue if it were a matter of importance to his or her boss, especially in light of the Subcommittee Working Paper. There are any number of reasons why legislators did not spend more time arguing over § 1367, none of which are relevant to our interpretation of what the words of the statute mean.

D

Finally, we note that the Class Action Fairness Act (CAFA), Pub.L. 109–2, 119 Stat. 4, enacted this year, has no bearing on our analysis of these cases. Subject to certain limitations, the CAFA confers federal diversity jurisdiction over class actions where the aggregate amount in controversy exceeds $5 million. It abrogates the ****2628** rule against aggregating claims, a rule this Court recognized in *Ben–Hur* and reaffirmed in *Zahn.* The CAFA, however, is not retroactive, ***572** and the views of the 2005 Congress are not relevant to our interpretation of a text enacted by Congress in 1990. The CAFA, moreover, does not moot the significance of our interpretation of § 1367, as many proposed exercises of supplemental jurisdiction, even in the class-action context, might not fall within the CAFA's ambit. The CAFA, then, has no impact, one way or the other, on our interpretation of § 1367.

* * *

The judgment of the Court of Appeals for the Eleventh Circuit is affirmed. The judgment of the Court of Appeals for the First Circuit is reversed, and the case is remanded for proceedings consistent with this opinion.

It is so ordered.

Removal

Question 1:

Texas Citizen v. New York Citizen

$\longrightarrow$

State cause of action for $100,000

If Tx citizen wants to sue in Texas, in what court(s) may she do so?

Question 2:

NY Citizen v. Tx Citizen

$\longrightarrow$

(state cause of action for $100,000)

If case is filed in State District Court, Harris County, Tx, can Tx citizen remove the case? If not, why not?

Question 3:

STATE DISTRICT COURT, HARRIS COUNTY, TEXAS

Texas Citizen v. New York Citizen

$\longrightarrow$

(state cause of action for $100,000)

If D removes the case:

What documents does he file (and where)?
By what date must he remove?
What if D first filed an answer one week after being served and then, the next day, sought to remove the case? What result?

Question 4:

STATE DISTRICT COURT, HARRIS COUNTY, TEXAS

Texas Citizen ——————> New York Citizen
(state cause of action: damages not plead)

What does NY Defendant do now? What is the burden of proof in this circumstance and who bears it?

What if P wants to seek remand. What is the burden of proof in this circumstance and who bears it?

What if NY D asserts that in calculating AIC, you include punitive damages but the law in circuit is clear that you do not?

What if the court believes that the defendant was wrong to remove but the P does not make this AIC/punitive damage argument? Is the argument waived?

Question 5:

STATE DISTRICT COURT, HARRIS COUNTY, TEXAS

Texas Citizen ——————> Texas Citizen
(state cause of action: federal defense asserted by Defendant)

May D remove case to federal court?

If it does, what result?

Would the result change if instead of it being a federal defense, the D asserts a federal counterclaim?

Question 6:

STATE DISTRICT COURT, HARRIS COUNTY, TEXAS

Texas Citizen ⟶ Texas Citizen
(state cause of action)

If D wants to remove the case based on 1331, what arguments must she make to have a chance at successfully doing so?

Question 7:

STATE DISTRICT COURT, HARRIS COUNTY, TEXAS

Texas Citizen ⟶ New York Citizen
(state cause of action for $100,000)

⟶ Ohio Citizen

(state cause of action for $100,000)

If NY wants to remove the case now, what must it do?

What if NY Defendant does not do what it was supposed to do? How is P to challenge once case has been removed?

What if NY D does not do what it was supposed to do, and court is aware of this. But P does not make this argument? Is the argument waived?

Question 8:

STATE DISTRICT COURT, HARRIS COUNTY, TEXAS

Texas Citizen $\longrightarrow$ New York Citizen
(state cause of action for $100,000)

$\longrightarrow$ Texas Citizen

(state cause of action for $100,000)

If Tx citizen brings suit against NY and Tx originally (on January 2, 2009), case is not removable because there is not complete diversity of citizenship

But what if plaintiff voluntarily drops Tx defendant from case on Sept 22, 2009?

What if plaintiff drops Tx defendant from case on January 22, 2010?

What other means are there by which NY could argue that the case should be subject to removal?

Question 9:

STATE DISTRICT COURT, HARRIS COUNTY, TEXAS

Texas Citizen → New York Citizen
(state cause of action for $100,000)

Assume that NY Defendant removes case to federal court:

FEDERAL DISTRICT COURT

Texas Citizen → New York Citizen
(state cause of action for $100,000)

If Tx plaintiff, post removal, wants to add a Texas defendant after case is removed to federal court, what result? What rules and statutes bear relevance to this analysis?

Would it change the result if NY Defendant removes case to federal court based on federal question jurisdiction, like this:

FEDERAL DISTRICT COURT

Texas Citizen → New York Citizen
(federal cause of action – defendant removed case under §1331)

(Proposed)
Texas Citizen → Texas Citizen
(state cause of action)

126 S.Ct. 704
Supreme Court of the United States
Gerald T. MARTIN, et ux., Petitioners,
v.
FRANKLIN CAPITAL CORPORATION et al.
No. 04–1140.
|
Argued Nov. 8, 2005.
|
Decided Dec. 7, 2005.

ROBERTS, C. J., delivered the opinion for a unanimous Court.

A civil case commenced in state court may, as a general matter, be removed by the defendant to federal district court, if the case could have been brought there originally. 28 U.S.C. § 1441 (2000 ed. and Supp. II). If it appears that the federal court lacks jurisdiction, however, "the case shall be remanded." § 1447(c). An order remanding a removed case to state court "may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." *Ibid.* Although § 1447(c) expressly permits an award of attorney's fees, it provides little guidance on when such fees are warranted. We granted certiorari to determine the proper standard for awarding attorney's fees when remanding a case to state court.

I

Petitioners Gerald and Juana Martin filed a class-action lawsuit in New Mexico state court against respondents Franklin Capital Corporation and Century–National Insurance Company (collectively, Franklin). Franklin removed the case to Federal District Court on the basis of diversity of citizenship. See §§ 1332, 1441 (2000 ed. and Supp. II). In its removal notice, Franklin acknowledged that the amount in controversy was not clear from the face of the complaint—no reason it should be, since the complaint had been filed in state court—but argued that this requirement ****708** for federal diversity jurisdiction was nonetheless satisfied. In so arguing, Franklin relied in part on precedent suggesting that punitive damages and attorney's fees could be aggregated in a class action to meet the amount-in-controversy requirement. See App. 35.

Fifteen months later, the Martins moved to remand to state court on the ground that their claims failed to satisfy the amount-in-controversy requirement. The District Court denied the motion and eventually dismissed the case ***135** with prejudice. On appeal, the Court of Appeals for the Tenth Circuit agreed with the Martins that the suit failed to satisfy the amount-in-controversy requirement. The Tenth Circuit rejected Franklin's contention that punitive damages and attorney's fees could be aggregated in calculating the amount in controversy, in part on the basis of decisions issued after the District Court's remand decision. The Court of Appeals reversed and remanded to the District Court with instructions to remand the case to state court. 251 F.3d 1284, 1294 (C.A.10 2001).

Back before the District Court, the Martins moved for attorney's fees under § 1447(c). The District Court reviewed Franklin's basis for removal and concluded that, although the Court of Appeals had determined that removal was improper, Franklin "had legitimate grounds for believing this case fell within th[e] Court's jurisdiction." App. to Pet. for Cert. 20a. Because Franklin "had objectively reasonable grounds to believe the removal was legally proper," the District Court denied the Martins' request for fees. *Ibid.*

The Martins appealed again, arguing that § 1447(c) requires granting attorney's fees on remand as a matter of course. The Tenth Circuit disagreed, noting that awarding fees is left to the "wide discretion" of the district court, subject to review only for abuse of discretion. 393 F.3d 1143, 1146 (C.A.10 2004). Under Tenth Circuit precedent, the " 'key factor' " in deciding whether to award fees under § 1447(c) is " 'the propriety of defendant's removal.' " *Ibid.* (quoting *Excell, Inc. v. Sterling Boiler & Mechanical, Inc.,* 106 F.3d 318, 322 (C.A.10 1997)). In calculating the amount in controversy when it removed the case, Franklin had relied on case law only subsequently held to be unsound, and therefore Franklin's basis for removal was objectively reasonable. 393 F.3d, at 1148. Because the District Court had not abused its discretion in denying fees, the Tenth Circuit affirmed. *Id.,* at 1151.

We granted certiorari, 544 U.S. 998, 125 S.Ct. 1941, 161 L.Ed.2d 772 (2005), to resolve a conflict among the Circuits concerning when attorney's fees should be awarded under § 1447(c). Compare, *e.g., Hornbuckle v. State Farm Lloyds,* 385 F.3d 538, 541 (C.A.5 2004) ("Fees should only be awarded if the removing defendant lacked objectively reasonable grounds to believe the removal was legally proper" (internal quotation marks omitted)), with *Sirotzky v. New York Stock Exchange,* 347 F.3d 985, 987 (C.A.7 2003) ("[P]rovided removal was improper, the plaintiff is *presumptively* entitled to an award of fees"), and *Hofler v. Aetna U.S. Healthcare of Cal., Inc.,* 296 F.3d 764, 770 (C.A.9 2002) (affirming fee award even when "the defendant's position may be fairly supportable" (internal quotation marks omitted)). We hold that, absent unusual circumstances, attorney's fees should not be awarded when the removing party has an objectively reasonable basis for removal. We therefore affirm the judgment of the Tenth Circuit.

II

The Martins argue that attorney's fees should be awarded automatically on **709 remand, or that there should at least be a strong presumption in favor of awarding fees. Section 1447(c), however, provides that a remand order "may" require payment of attorney's fees—not "shall" or "should." As Chief Justice Rehnquist explained for the Court in *Fogerty v. Fantasy, Inc.,* 510 U.S. 517, 533, 114 S.Ct. 1023, 127 L.Ed.2d 455 (1994), "[t]he word 'may' clearly connotes discretion. The automatic awarding of attorney's fees to the prevailing party would pretermit the exercise of that discretion." Congress used the word "shall" often enough in § 1447(c)—as when it specified that removed cases apparently outside federal jurisdiction "shall be remanded"—to dissuade us from the conclusion that it meant "shall" when it used "may" in authorizing an award of fees.

The Martins are on somewhat stronger ground in pressing for a presumption in favor of awarding fees. As they explain, ***137** we interpreted a statute authorizing a discretionary award of fees to prevailing plaintiffs in civil rights cases to nonetheless give rise to such a presumption. *Newman v. Piggie Park Enterprises, Inc.,* 390 U.S. 400, 402, 88 S.Ct. 964, 19 L.Ed.2d 1263 (1968) *(per curiam).* But this case is not at all like *Piggie Park.* In *Piggie Park,* we concluded that a prevailing plaintiff in a civil rights suit serves as a " 'private attorney general,' " helping to ensure compliance with civil rights laws and benefiting the public by "vindicating a policy that Congress considered of the highest priority." *Ibid.* We also later explained that the *Piggie Park* standard was appropriate in that case because the civil rights defendant, who is required to pay the attorney's fees, has violated federal law. See *Flight Attendants v. Zipes,* 491 U.S. 754, 762, 109 S.Ct. 2732, 105 L.Ed.2d 639 (1989) ("Our cases have emphasized the crucial connection between liability for violation of federal law and liability for attorney's fees under federal fee-shifting statutes").

In this case, plaintiffs do not serve as private attorneys general when they secure a remand to state court, nor is it reasonable to view the defendants as violators of federal law. To the contrary, the removal statute grants defendants a right to a federal forum. See 28 U.S.C. § 1441 (2000 ed. and Supp. II). A remand is necessary if a defendant improperly asserts this right, but incorrectly invoking a federal right is not comparable to violating substantive federal law. The reasons for adopting a strong presumption in favor of awarding fees that were present in *Piggie Park* are accordingly absent here. In the absence of such reasons, we are left with no sound basis for a similar presumption. Instead, had Congress intended to award fees as a matter of course to a party that successfully obtains a remand, we think that "[s]uch a bold departure from traditional practice would have surely drawn more explicit statutory language and legislative comment." *Fogerty, supra,* at 534, 114 S.Ct. 1023.

For its part, Franklin begins by arguing that § 1447(c) provides little guidance on when fees should be shifted because ***138** it is not a fee-shifting statute at all. According to Franklin, the provision simply grants courts jurisdiction to award costs and attorney's fees when otherwise warranted, for example when Federal Rule of Civil Procedure 11 supports awarding fees. Although Franklin is correct that the predecessor to § 1447(c) was enacted, in part, because courts would otherwise lack jurisdiction to award costs on remand, see *Mansfield, C. & L.M.R. Co. v. Swan,* 111 U.S. 379, 386–387, 4 S.Ct. 510, 28 L.Ed. 462 (1884), there is no reason to assume Congress went no further than conferring jurisdiction when it acted. Congress could have determined that the ****710** most efficient way to cure this jurisdictional defect was to create a substantive basis for ordering costs. The text supports this view. If the statute were strictly jurisdictional, there would be no need to limit awards to "just" costs; any award authorized by other provisions of law would presumably be "just." We therefore give the statute its natural reading: Section 1447(c) authorizes courts to award costs and fees, but only when such an award is just. The question remains how to define that standard.

The Solicitor General would define the standard narrowly, arguing that fees should be awarded only on a showing that the unsuccessful party's position was "frivolous, unreasonable, or without foundation"—the standard we have adopted for awarding fees against unsuccessful plaintiffs in civil rights cases, see *Christiansburg Garment Co. v. EEOC,* 434 U.S. 412, 421, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978), and unsuccessful intervenors in such cases, see *Zipes, supra,* at 762, 109 S.Ct. 2732. Brief for United States as *Amicus Curiae* 14–16. But just as there is no basis for supposing Congress meant to tilt the exercise of discretion in *favor* of fee awards under § 1447(c), as there was in *Piggie Park,* so too there is no basis here for a strong bias *against* fee awards, as there was in *Christiansburg Garment* and *Zipes*. The statutory language and context strike us as more evenly balanced between a pro-award and anti-award ***139** position than was the case in either *Piggie Park* or *Christiansburg Garment* and *Zipes;* we see nothing to persuade us that fees under § 1447(c) should either usually be granted or usually be denied.

The fact that an award of fees under § 1447(c) is left to the district court's discretion, with no heavy congressional thumb on either side of the scales, does not mean that no legal standard governs that discretion. We have it on good authority that "a motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles." *United States v. Burr,* 25 F.Cas. 30, 35 (No. 14,692d) (CC Va. 1807) (Marshall, C. J.). Discretion is not whim, and limiting discretion according to legal standards helps promote the basic principle of justice that like cases should be decided alike. See Friendly, Indiscretion About Discretion, 31 Emory L.J. 747, 758 (1982). For these reasons, we have often limited courts' discretion to award fees despite the absence of express legislative restrictions. That is, of course, what we did in *Piggie Park, supra,* at 402, 88 S.Ct. 964 (A prevailing plaintiff "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust"), *Christiansburg Garment, supra,* at 422, 98 S.Ct. 694 ("[A] plaintiff should not be assessed his opponent's attorney's fees unless a court finds that his claim was frivolous, unreasonable, or groundless"), and *Zipes,* 491 U.S., at 761, 109 S.Ct. 2732 (Attorney's fees should be awarded against intervenors "only where the intervenors' action was frivolous, unreasonable, or without foundation").

In *Zipes,* we reaffirmed the principle on which these decisions are based: "Although the text of the provision does not specify any limits upon the district courts' discretion to allow or disallow fees, in a system of laws discretion is rarely without limits." *Id.*, at 758, 109 S.Ct. 2732. *Zipes* also explains how to discern the limits on a district court's discretion. When applying fee-shifting statutes, "we have found limits in 'the large objectives' ***140** of the relevant Act, which embrace certain 'equitable considerations.' " *Id.*, at 759, 109 S.Ct. 2732 (citation omitted).*

By enacting the removal statute, Congress granted a right to a federal forum to a limited class of state-court defendants. If fee shifting were automatic, defendants might choose to exercise this right only in cases where the right to remove was obvious. See *Christiansburg Garment, supra,* at 422, 98 S.Ct. 694 (awarding fees simply because the party did not prevail "could discourage all but the most airtight claims, for seldom can a [party] be sure of ultimate success"). But there is no reason to suppose Congress meant to confer a right to remove, while at the same time discouraging its exercise in all but obvious cases.

Congress, however, would not have enacted § 1447(c) if its only concern were avoiding deterrence of proper removals. Instead, Congress thought fee shifting appropriate in some cases. The process of removing a case to federal court and then having it remanded back to state court delays resolution of the case, imposes additional costs on both parties, and wastes judicial resources. Assessing costs and fees on remand reduces the attractiveness of removal as a method for delaying litigation and imposing costs on the plaintiff. The appropriate test for awarding fees under § 1447(c) should recognize the desire to deter removals sought for the purpose of prolonging litigation and imposing costs on the opposing party, while not undermining Congress' basic decision to afford defendants a right to remove as a general matter, when the statutory criteria are satisfied.

In light of these "'large objectives,' " *Zipes, supra,* at 759, 109 S.Ct. 2732, the standard for awarding fees should turn on the reasonableness of the removal. Absent unusual circumstances, courts may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal. Conversely, when an objectively reasonable basis exists, fees should be denied. See, *e.g., Hornbuckle,* 385 F.3d, at 541; *Valdes v. Wal–Mart Stores, Inc.,* 199 F.3d 290, 293 (C.A.5 2000). In applying this rule, district courts retain discretion to consider whether unusual circumstances warrant a departure from the rule in a given case. For instance, a plaintiff's delay in seeking remand or failure to disclose facts necessary to determine jurisdiction may affect the decision to award attorney's fees. When a court exercises its discretion in this manner, however, its reasons for departing from the general rule should be "faithful to the purposes" of awarding fees under § 1447(c). *Fogerty,* 510 U.S., at 534, n. 19, 114 S.Ct. 1023; see also *Milwaukee v. Cement Div., National Gypsum Co.,* 515 U.S. 189, 196, n. 8, 115 S.Ct. 2091, 132 L.Ed.2d 148 (1995) ("[A]s is always the case when an issue is committed to judicial discretion, the judge's decision must be supported by a circumstance that has relevance to the issue at hand").

* * *

The District Court denied the Martins' request for attorney's fees because Franklin had an objectively reasonable basis for ****712** removing this case to federal court. The Court of Appeals considered it a "close question," 393 F.3d, at 1148, but agreed that the grounds for removal were reasonable. Because the Martins do not dispute the reasonableness of Franklin's removal arguments, we need not review the lower courts' decision on this point. The judgment of the Court of Appeals is therefore affirmed.

It is so ordered.

67 S.Ct. 385
Supreme Court of the United States
HICKMAN
v.
TAYLOR et al.
No. 47.
|
Argued Nov. 13, 1946.
|
Decided Jan. 13, 1947.

Mr. Justice MURPHY delivered the opinion of the Court.

This case presents an important problem under the Federal Rules of Civil Procedure, 28 U.S.C.A. following section 723c, as to the extent to which a party may inquire into oral and written statements of witnesses, or other information, secured by an adverse party's counsel in the course of preparation for possible litigation after a claim has arisen. Examination into a person's files and records, including those resulting from the professional activities of an attorney, must be judged with care. It is not without reason that various safeguards have been established to preclude unwarranted excursions into the privacy of a man's work. At the same time, public policy supports reasonable and necessary inquiries. Properly to balance these competing interests is a delicate and difficult task.

On February 7, 1943, the tug 'J. M. Taylor' sank while engaged in helping to tow a car float of the Baltimore & Ohio Railroad across the Delaware River at Philadelphia. The accident was apparently unusual in nature, the cause of it still being unknown. Five of the nine crew members were drowned. Three days later the tug owners and the underwriters employed a law firm, of which respondent Fortenbaugh is a member, to defend them against potential suits by representatives of the deceased crew members and to sue the railroad for damages to the tug.

A public hearing was held on March 4, 1943, before the United States Steamboat Inspectors, at which the four survivors were examined. This testimony was recorded and made available to all interested parties. Shortly thereafter, Fortenbaugh privately interviewed the survivors and took statements from them with an eye toward the anticipated litigation; the survivors signed these statements on March 29. Fortenbaugh also interviewed other persons believed to have some information relating to the accident and in some cases he made memoranda of what they told him. At the time when

Fortenbaugh secured the statements of the survivors, representatives of two of the deceased crew members had been in communication with him. Ultimately claims were presented by representatives of all five of the deceased; four of the claims, however, were settled without litigation. The fifth claimant, petitioner herein, brought suit in a federal court under the Jones Act on November 26, 1943, naming as defendants the two tug owners, individually and as partners, and the railroad.

One year later, petitioner filed 39 interrogatories directed to the tug owners. The 38th interrogatory read: 'State whether any statements of the members of the crews of the Tugs 'J. M. Taylor' and 'Philadelphia' or of any other vessel were taken in connection with the towing of the car float and the sinking of the Tug 'John M. Taylor'.

Attach hereto exact copies of all such statements if in writing, and if oral, set forth in detail the exact provisions of any such oral statements or reports.'

Supplemental interrogatories asked whether any oral or written statements, records, reports or other memoranda had been made concerning any matter relative to the towing operation, the sinking of the tug, the salvaging and repair of the tug, and the death of the deceased. If the answer was in the affirmative, the tug owners were then requested to set forth the nature of all such records, reports, statements or other memoranda.

The tug owners, through Fortenbaugh, answered all of the interrogatories except No. 38 and the supplemental ones just described. While admitting that statements of the survivors had been taken, they declined to summarize or set forth the contents. They did so on the ground that such requests called 'for privileged matter obtained in preparation for litigation' and constituted 'an attempt to obtain indirectly counsel's private files.' It was claimed that answering these requests 'would involve practically turning over not only the complete files, but also the telephone records and, almost, the thoughts of counsel.'

In connection with the hearing on these objections, Fortenbaugh made a written statement and gave an informal oral deposition explaining the circumstances under which he had taken the statements. But he was not expressly asked in the deposition to produce the statements. The District Court for the Eastern District of Pennsylvania, sitting en banc, held that the requested matters were not privileged. 4 F.R.D. 479. The court then decreed that the tug owners and Fortenbaugh, as counsel and agent for the tug owners forthwith 'Answer Plaintiff's 38th interrogatory and supplemental interrogatories; produce all written statements of witnesses obtained by Mr. Fortenbaugh, as counsel and agent for Defendants; ***500** state in substance any fact concerning this case which Defendants learned through oral statements made by witnesses to Mr. Fortenbaugh whether or not included in his private memoranda and produce Mr. Fortenbaugh's memoranda containing statements of fact by witnesses or to submit these memoranda to the Court for determination of those portions which should be revealed to Plaintiff.' Upon their refusal, the court adjudged them in contempt and ordered them imprisoned until they complied.

The Third Circuit Court of Appeals, also sitting en banc, reversed the judgment of the District Court. 153 F.2d 212. It held that the information here sought was part of the 'work product of the lawyer' and hence privileged from discovery under the Federal Rules of Civil Procedure. The importance of the problem, which has engendered a great divergence of views among district courts,[1] led us to grant certiorari. 328 U.S. 876, 66 S.Ct. 1337.

The pre-trial deposition-discovery mechanism established by Rules 26 to 37 is one of the most significant innovations of the Federal Rules of Civil Procedure. Under the prior federal practice, the pre-trial functions of notice-giving issue-formulation and fact-revelation were performed primarily and inadequately by the pleadings.[2] Inquiry into the issues and the facts before trial was narrowly confined and was often cumbersome in method.[3] The new rules, however, restrict the pleadings to the task of general notice-giving and invest the deposition-discovery process with a vital role in the preparation for trial. The various instruments of discovery now serve (1) as a device, along with the pre-trial hearing under Rule 16, to narrow and clarify the basic issues between the parties, and (2) as a device for ascertaining the facts, or information as to the existence or whereabouts of facts, relative to those issues. Thus civil trials in the federal courts no longer need be carried on in the dark. The way is now clear, consistent with recognized privileges, for the parties to obtain the fullest possible knowledge of the issues and facts before trial.[4]

In urging that he has a right to inquire into the materials secured and prepared by Fortenbaugh, petitioner emphasizes that the deposition-discovery portions of the Federal Rules of Civil Procedure are designed to enable the parties to discover the true facts and to compel their disclosure wherever they may be found. It is said that inquiry may be made under these rules, epitomized by Rule 26, as to any relevant matter which is not privileged; and since the discovery provisions are to be applied as broadly and liberally as possible, the privilege limitation must be restricted to its narrowest bounds. On the premise that the attorney-client privilege is the one involved in this case, petitioner argues that it must be strictly confined to confidential communications made by a client to his attorney. And since the materials here in issue were secured by Fortenbaugh from third persons rather than from his clients, the tug owners, the conclusion is reached that these materials are proper subjects for discovery under Rule 26.

As additional support for this result, petitioner claims that to prohibit discovery under these circumstances would give a corporate defendant a tremendous advantage in a suit by an individual plaintiff. Thus in a suit by an injured employee against a railroad or in a suit by an insured person against an insurance company the corporate defendant could pull a dark veil of secrecy over all the petinent facts it can collect after the claim arises merely on the assertion that such facts were gathered by its large staff of attorneys and claim agents. At the same time, the individual plaintiff, who often has direct knowledge of the matter in issue and has no counsel until some time after his claim arises could be compelled to disclose all the intimate details of his case. By endowing with ***507** immunity from disclosure all that a lawyer discovers in the course of his duties, it is said, the rights of individual litigants in such cases are drained of vitality and the lawsuit becomes more of a battle of deception than a search for truth.

But framing the problem in terms of assisting individual plaintiffs in their suits against corporate defendants is unsatisfactory. Discovery concededly may work to the disadvantage as well as to the advantage of individual plaintiffs. Discovery, in other words, is not a one-way proposition. It is available in all types of cases at the behest of any party, individual or corporate, plaintiff or defendant. The problem thus far transcends the situation confronting this petitioner. And we must view that problem in light of the limitless situations where the particular kind of discovery sought by petitioner might be used.

We agree, of course, that the deposition-discovery rules are to be accorded a broad and liberal treatment. No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case.[8] Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession. The deposition-discovery procedure simply advances the stage at which the disclosure can be compelled from the time of trial to the period preceding it, thus reducing the possibility of surprise. But discovery, like all matters of procedure, has ultimate and necessary boundaries. As indicated by Rules 30(b) and (d) and 31(d), limitations inevitably arise when it can be shown that the examination is being conducted in bad faith or in such a manner as to annoy, embarrass or oppress the person subject to the inquiry. And as Rule 26(b) provides, further limitations come into existence when the inquiry touches upon the irrelevant or encroaches upon the recognized domains of privilege.

We also agree that the memoranda, statements and mental impressions in issue in this case fall outside the scope of the attorney-client privilege and hence are not protected from discovery on that basis. It is unnecessary here to delineate the content and scope of that privilege as recognized in the federal courts. For present purposes, it suffices to note that the protective cloak of this privilege does not extend to information which an attorney secures from a witness while acting for his client in anticipation of litigation. Nor does this privilege concern the memoranda, briefs, communications and other writings prepared by counsel for his own use in prosecuting his client's case; and it is equally unrelated to writings which reflect an attorney's mental impressions, conclusions, opinions or legal theories.

But the impropriety of invoking that privilege does not provide an answer to the problem before us. Petitioner has made more than an ordinary request for relevant, non-privileged facts in the possession of his adversaries or their counsel. He has sought discovery as of right of oral and written statements of witnesses whose identity is well known and whose availability to petitioner appears unimpaired. He has sought production of these matters after making the most searching inquiries of his opponents as to the circumstances surrounding the fatal accident, which inquiries were sworn to have been answered to the best of their information and belief. Interrogatories were directed toward all the events prior to, during and subsequent to the sinking of the tug. Full and honest answers to such broad inquiries would necessarily have included all pertinent information gleaned by Fortenbaugh through his interviews with the witnesses. Petitioner makes no suggestion, and we cannot assume, that the tug owners or Fortenbaugh were incomplete or dishonest in the framing of their answers. In addition, petitioner was free to examine the public testimony of the witnesses taken before the United States Steamboat Inspectors. We are thus dealing with an attempt to secure the production of written statements and mental impressions contained in the files and the mind of the attorney Fortenbaugh without any showing of necessity or any indication or claim that denial of such production would unduly prejudice the preparation of petitioner's case or cause him any hardship or injustice. For aught that appears, the essence of what petitioner seeks either has been revealed to him already through the interrogatories or is readily available to him direct from the witnesses for the asking.

The District Court, after hearing objections to petitioner's request, commanded Fortenbaugh to produce all written statements of witnesses and to state in substance any facts learned through oral statements of witnesses to him. Fortenbaugh was to submit any memoranda he had made of the oral statements so that the court might determine what portions should be revealed to petitioner. All of this was ordered without any showing by petitioner, or any requirement that he make a proper showing, of the necessity for the production of any of this material or any demonstration that denial of production would cause hardship or injustice. The court simply ordered production on the theory that the facts sought were material and were not privileged as constituting attorney-client communications.

In our opinion, neither Rule 26 nor any other rule dealing with discovery contemplates production under such circumstances. That is not because the subject matter is privileged or irrelevant, as those concepts are used in these rules.[9] Here is simply an attempt, without purported necessity or justification, to secure written statements, private memoranda and personal recollections prepared or formed by an adverse party's counsel in the course of his legal duties. As such, it falls outside the arena of discovery and contravenes the public policy underlying the orderly prosecution and defense of legal claims. Not even the most liberal of discovery theories can justify unwarranted inquiries into the files and the mental impressions of an attorney.

Historically, a lawyer is an officer of the court and is bound to work for the advancement of justice while faithfully protecting the rightful interests of his clients. In performing his various duties, however, it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. Proper preparation of a client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference. That is the historical and the necessary way in which lawyers act within the framework of our system of jurisprudence to promote justice and to protect their clients' interests. This work is reflected, of course, in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways—aptly though roughly termed by the Circuit Court of Appeals in this case (153 F.2d 212, 223) as the 'Work product of the lawyer.' Were such materials open to opposing counsel on mere demand, much of what is now put down in writing would remain unwritten. An attorney's thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of the clients and the cause of justice would be poorly served.

We do not mean to say that all written materials obtained or prepared by an adversary's counsel with an eye toward litigation are necessarily free from discovery in all cases. Where relevant and non-privileged facts remain hidden in an attorney's file and where production of those facts is essential to the preparation of one's case, discovery may properly be had. Such written statements and documents might, under certain circumstances, be admissible in evidence or give clues as to the existence or location of relevant facts. Or they might be useful for purposes of impeachment or corroboration. And production might be justified where the witnesses are no longer available or can be reached only with difficulty. Were production of written statements and documents to be precluded under such circumstances, the liberal ideals of the deposition-discovery portions of the Federal Rules of Civil Procedure would be stripped of much of their meaning. But the general policy against invading the privacy of an attorney's course of preparation is so well recognized and so essential to an orderly working of our system of legal procedure that a burden rests on the one who would invade that privacy to establish adequate reasons to justify production through a subpoena or court order. That burden, we believe, is necessarily implicit in the rules as now constituted.[10]

Rule 30(b), as presently written, gives the trial judge the requisite discretion to make a judgment as to whether discovery should be allowed as to written statements secured from witnesses. But in the instant case there was no room for that discretion to operate in favor of the petitioner. No attempt was made to establish any reason why Fortenbaugh should be forced to produce the written statements. There was only a naked, general demand for these materials as of right and a finding by the District Court that no recognizable privilege was involved. That was insufficient to justify discovery under these circumstances and the court should have sustained the refusal of the tug owners and Fortenbaugh to produce.

But as to oral statements made by witnesses to Fortenbaugh, whether presently in the form of his mental impressions or memoranda, we do not believe that any showing of necessity can be made under the circumstances of this case so as to justify production. Under ordinary conditions, forcing an attorney to repeat or write out all that witnesses have told him and to deliver the account to his adversary gives rise to grave dangers of inaccuracy and untrustworthiness. No legitimate purpose is served by such production. The practice forces the attorney to testify as to what he remembers or what he saw fit to write down regarding witnesses' remarks. Such testimony could not qualify as evidence; and to use it for impeachment or corroborative purposes would make the attorney much less an officer of the court and much more an ordinary witness. The standards of the profession would thereby suffer.

Denial of production of this nature does not mean that any material, non-privileged facts can be hidden from the petitioner in this case. He need not be unduly hindered in the preparation of his case, in the discovery of facts or in his anticipation of his opponents' position. Searching interrogatories directed to Fortenbaugh and the tug owners, production of written documents and statements upon a proper showing and direct interviews with the witnesses themselves all serve to reveal the facts in Fortenbaugh's possession to the fullest possible extent consistent with public policy. Petitioner's counsel frankly admits that he wants the oral statements only to help prepare himself to examine witnesses and to make sure that he has overlooked nothing. That is insufficient under the circumstances to permit him an exception to the policy underlying the privacy of Fortenbaugh's professional activities. If there should be a rare situation justifying production of these matters, petitioner's case is not of that type.

We fully appreciate the wide-spread controversy among the members of the legal profession over the problem raised by this case.[11] It is a problem that rests on what has been one of the most hazy frontiers of the discovery process. But until some rule or statute definitely prescribes otherwise, we are not justified in permitting discovery in a situation of this nature as a matter of unqualified right. When Rule 26 and the other discovery rules were adopted, this Court and the members of the bar in general certainly did not believe or contemplate that all the files and mental processes of lawyers were thereby opened to the free scrutiny of their adversaries. And we refuse to interpret the rules at this time so as to reach so harsh and unwarranted a result.
We therefore affirm the judgment of the Circuit Court of Appeals.
Affirmed.

Mr. Justice JACKSON, concurring.

The narrow question in this case concerns only one of thirty-nine interrogatories which defendants and their counsel refused to answer. As there was persistence in refusal after the court ordered them to answer it, counsel and clients were committed to jail by the district court until they should purge themselves of contempt.

The interrogatory asked whether statements were taken from the crews of the tugs involved in the accident, or of any other vessel, and demanded 'Attach hereto exact copies of all such statements if in writing, and if oral, set forth in detail the exact provisions of any such oral statements or reports.' The question is simply whether such a demand is authorized by the rules relating to various aspects of 'discovery'.

The primary effect of the practice advocated here would be on the legal profession itself. But it too often is overlooked that the lawyer and the law office are indispensable parts of our administration of justice. Law-abiding people can go nowhere else to learn the ever changing and constantly multiplying rules by which they must behave and to obtain redress for their wrongs. The welfare and tone of the legal profession is therefore of prime consequence to society, which would feel the consequences of such a practice as petitioner urges secondarily but certainly.

'Discovery' is one of the working tools of the legal profession. It traces back to the equity bill of discovery in English Chancery practice and seems to have had a forerunner in Continental practice. See Ragland, Discovery Before Trial (1932) 13-16. Since 1848 when the draftsmen of New York's Code of Procedure recognized the importance of a better system of discovery, the impetus to extend and expand discovery, as well as the opposition to it, has come from within the Bar itself. It happens in this case that it is the plaintiff's attorney who demands such unprecedented latitude of discovery and, strangely enough, amicus briefs in his support have been filed by several labor unions representing plaintiffs as a class. It is the history of the movement for broader discovery, however, that in actual experience the chief opposition to its extension has come from lawyers ****396** who specialize in representing plaintiffs because defendants have made liberal use of it to force plaintiffs to disclose their cases in advance. See Report of the Commission on the Administration of Justice in New York State (1934) 330, 331; Ragland, Discovery Before Trial (1932) 35, 36. Discovery is a two-edged sword and we cannot decide this problem on any doctrine of extending help to one class of litigants.

It seems clear and long has been recognized that discovery should provide a party access to anything that is evidence in his case. Cf. Report of Commission on the Administration of Justice in New York State (1934) 41, 42. It seems equally clear that discovery should not nullify the privilege of confidential communication between attorney and client. But those principles give us no real assistance here because what is being sought is neither evidence nor is it a privileged communication between attorney and client.

To consider first the most extreme aspect of the requirement in litigation here, we find it calls upon counsel, if he has had any conversations with any of the crews of the vessels in question or of any other, to 'set forth in detail the exact provision of any such oral statements or reports.' Thus the demand is not for the production of a transcript in existence but calls for the creation of a written statement not in being. But the statement by counsel of what a witness told him is not evidence when written plaintiff could not introduce it to prove his case. What, then, is the purpose sought to be served by demanding this of adverse counsel?

Counsel for the petitioner candidly said on argument that he wanted this information to help prepare himself to examine witnesses, to make sure he overlooked nothing. He bases his claim to it in his brief on the view that the Rules were to do away with the old situation where a law suit developed into 'a battle of wits between counsel.' But a common law trial is and always should be an adversary proceeding. Discovery was hardly intended to enable a learned profession to perform its functions either without wits or on wits borrowed from the adversary.

The real purpose and the probable effect of the practice ordered by the district court would be to put trials on a level even lower than a 'battle of wits.' I can conceive of no practice more demoralizing to the Bar than to require a lawyer to write out and deliver to his adversary an account of what witnesses have told him. Even if his recollection were perfect, the statement would be his language permeated with his inferences. Every one who has tried it knows that it is almost impossible so fairly to record the expressions and emphasis of a witness that when he testifies in the environment of the court and under the influence of the leading question there will not be departures in some respects. Whenever the testimony of the witness would differ from the 'exact' statement the lawyer had delivered, the lawyer's statement would be whipped out to impeach the witness. Counsel producing his adversary's 'inexact' statement could lose nothing by saying, 'Here is a contradiction, gentlemen of the jury. I do not know whether it is my adversary or his witness who is not telling the truth, but one is not.' Of course, if this practice were adopted, that scene would be repeated over and over again. The lawyer who delivers such statements often would find himself branded a deceiver afraid to take the stand to support his own version of the witness's conversation with him, or else he will have to go on the stand to defend his own credibility—perhaps against that of his chief witness, or possibly even his client.

Every lawyer dislikes to take the witness stand and will do so only for grave reasons. This is partly because it is not his role; he is almost invariably a poor witness. But he steps out of professional character to do it. He regrets it; the profession discourages it. But the practice advocated here is one which would force him to be a witness, not as to what he has seen or done but as to other witnesses' stories, and not because he wants to do so but in self-defense.

And what is the lawyer to do who has interviewed one whom he believes to be a biased, lying or hostile witness to get his unfavorable statements and know what to meet? He must record and deliver such statements even though he would not vouch for the credibility of the witness by calling him. Perhaps the other side would not want to call him either, but the attorney is open to the charge of suppressing evidence at the trial if he fails to call such a hostile witness even though he never regarded him as reliable or truthful.

Having been supplied the names of the witnesses, petitioner's lawyer gives no reason why he cannot interview them himself. If an employee-witness refuses to tell his story, he, too, may be examined under the Rules. He may be compelled on discovery as fully as on the trial to disclose his version of the facts. But that is his own disclosure—it can be used to impeach him if he contradicts it and such a deposition is not useful to promote an unseemly disagreement between the witness and the counsel in the case.

It is true that the literal language of the Rules would admit of an interpretation that would sustain the district court's order. So the literal language of the Act of Congress which makes 'Any writing or record * * * made as a memorandum or record of any * * * occurrence, or event,' 28 U.S.C.A. s 695, admissible as evidence, would have allowed the railroad company to put its engineer's accident statements in evidence. Cf. Palmer v. Hoffman, 318 U.S. 109, 111, 63 S.Ct. 477, 479, 87 L.Ed. 645, 144 A.L.R. 719. But all such procedural measures have a background of custom and practice which was assumed by those who wrote and should be by those who apply them. We reviewed the background of the Act and the consequences on the trial of negligence cases of allowing railroads and others to put in their statements and thus to shield the crew from cross-examination. We said, 'Such a major change which opens wide the door to avoidance of cross-examination should not be left to implication.' 318 U.S. at page 114, 63 S.Ct. at page 481. We pointed out that there, as here, the 'several hundred years of history behind the Act * * * indicate the nature of the reforms which it was designed to effect.' 318 U.S. at page 115, 63 S.Ct. at page 481. We refused to apply it beyond that point. We should follow the same course of reasoning here. Certainly nothing in the tradition or practice of discovery up to the time of these Rules would have suggested that they would authorize such a practice as here proposed.

The question remains as to signed statements or those written by witnesses. Such statements are not evidence for the defendant. Palmer v. Hoffman, 318 U.S. 109, 63 S.Ct. 477. Nor should I think they ordinarily could be evidence for the plaintiff. But such a statement might be useful for impeachment of the witness who signed it, if he is called and if he departs from the statement. There might be circumstances, too, where impossibility or difficulty of access to the witness or his refusal to respond to requests for information or other facts would show that the interests of justice require that such statements be made available. Production of such statements are governed by Rule 34 and on 'Showing good cause therefor' the court may order their inspection, copying or photographing. No such application has here been made; the demand is made on the basis of right, not on showing of cause.

I agree to the affirmance of the judgment of the Circuit Court of Appeals which reversed the district court.

Mr. Justice FRANKFURTER joins in this opinion.

Discovery Practice Exercises

Here are two questions from two different exams, relating to work product and attorney client privilege issues that we may discuss in class tomorrow. My guess is that we will have a bit of time to cover these but that you will probably be able to spend more time on them in your TA groups this week:

From Fall 2003 exam *[note, this was two different questions on the exam, and the work product/attorney client material only relates to the second question. Still, because the second question references the facts from the first question, I needed to include it here]:*

Ernst & Young, L.L.P. and Cendant Corporation are co-defendants in a securities case brought in the United States District Court for the Southern District of Texas. Assume that Ernst & Young is a Pennsylvania corporation and that Cendant is incorporated in Delaware, and that both have their principal place of business in New York.

The plaintiffs, a group of investors all of whom are from Texas, allege that the two companies conspired to defraud them as to the true financial condition of Cendant. They claim that they never would have bought shares in the company if they had known of Cendant's poor financial condition. They allege claims arising under federal securities law. In particular their claims are based on Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission (the "SEC"), Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder by the SEC. Section 10(b) of the Exchange Act and Rule 10b-5 prohibit "fraudulent, material misstatements or omissions in connection with the sale or purchase of a security."

Both Cendant and Ernst & Young file pre-answer motions for dismissal under Fed. R. Civ. P. 12(b)(2). In addition to its answer, Ernst & Young files and serves a cross-claim against Cendant under Federal Rule of Civil Procedure 13(g). Ernst & Young alleges that Cendant owes it indemnity, based on the terms of the audit contract between Cendant and Ernst & Young, for any monies it might pay—by judgment or by settlement—to the plaintiffs. That contract was negotiated and finalized in New York, following extensive discussions between Cendant and Ernst & Young in Cendant's New York office. Please note that the cross-claim necessarily is based on state law since, for purposes of the claim, neither Cendant nor its auditor are considered "purchasers" or "sellers" of securities within the meaning of Section 10(b) and Rule 10b-5. Cendant timely files an answer to the cross-claim, asserting as its principal defense that because Ernst & Young was negligent in preparing the audits, it does not owe contractual indemnity.

Exactly one month later, the plaintiffs settle all of their claims against Cendant and Ernst & Young. All parties appear before the court to announce that a settlement has been reached as to the plaintiffs' claims, and they ask the court to sign a judgment disposing of all of plaintiffs' claims. The judge enters the judgment and dismisses all of the plaintiffs' claims. At this same hearing, Ernst & Young emphasizes that its cross-claim against Cendant remains and asks for a trial setting. The judge acknowledges that the cross-claim survives the settlement, but says she wants to wait before setting the case for trial.

[the first question asked students the following: If Cendant does not want to have to continue to litigate in this federal district court, what argument(s) should it make. Prepare a memorandum outlining the options available to Cendant, citing any specific authority. Be certain to assess the likelihood of success for any option you discuss.]

In the same litigation, assume that Cendant decides it wants to remain in the United States District Court for the Southern District of Texas and does not take any of the actions you may have discussed in your previous answer. Instead, Cendant notices and takes the oral deposition of Simon Wood, a former Ernst & Young senior manager and auditor who prepared the Cendant financial statements at issue in the underlying litigation. At Wood's deposition, Cendant inquires into communications that took place between Wood, Ernst & Young's counsel (who also represented Wood) and Dr. Phillip C. McGraw of Courtroom Sciences, Inc. Dr. McGraw is a consulting expert in trial strategy and deposition preparation who was retained as a non-testifying trial expert to assist Ernst & Young's counsel in preparing the case. Dr. McGraw participated in a deposition preparation meeting with Wood and his counsel before the deposition was conducted.

At the deposition, Cendant's counsel specifically asks Wood, "Did Dr. McGraw provide you with guidance in your conduct as a witness?" and "Did you rehearse any of your prospective testimony in the presence of Dr. McGraw?

Counsel for Wood objects, citing the work product doctrine, and directs his client not to answer. After the deposition, Cendant brings a motion to compel. If you were the trial judge ruling on whether to allow these inquiries, how would you rule?

From Fall 2002 exam:

In May 2001, Mary Lou Scott was badly injured when a car in which she was a passenger crashed. Ms. Scott filed suit against XYZ Company, the manufacturer of the tire, alleging that defects in the tire design caused the accident. She has noticed the deposition of XYZ's general counsel for next month. You are an associate in a private law firm retained by XYZ. In interviewing the general counsel of the company you learn that he plays golf once a month with the company's chief of engineering and has done so for the last ten years. You learn further that at their last outing together, the chief of engineering informed the general counsel that he, the chief of engineering, had raised questions with a now-deceased XYZ vice-president concerning the safety of the company's X-12 tire in 1998, two years before the product was sold to the public.

Is the general counsel's conversation with the Chief of Engineering privileged from disclosure? Must the general counsel testify about his conversation if he is asked about it at the deposition? Write a memorandum to the file addressing these questions.