

## Civil Procedure

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Fall 2019

# Subject Matter Jurisdiction

## Essential Federal Element of a State Law Claim

Federal courts sometimes have jurisdiction under §1331, even though the plaintiff asserts only state-law claims, where those claims entail an “essential federal element”.

This is not really an exception to the “well-pleaded complaint” rule in *Mottley*. The federal question still arises on the face of the complaint, i.e. it is part of the elements of the plaintiff’s claim.

But it is an exception to the Holmes “creation test”. Even though state law creates the plaintiff’s cause of action (which, for Holmes, would mean the claim did not “arise under” federal law), the presence of a federal issue as part of the claim may nonetheless confer federal jurisdiction under §1331.

## Rule

A state-law claim raises a federal question, sufficient to confer jurisdiction under §1331, where,

1. The federal issue forms an “essential” part of plaintiff’s claim (not a defense) that is actually disputed, and
2. There is a substantial federal interest at stake.

### 1. Essential Federal Issue

The federal issue is “essential” where the plaintiff’s “right to relief depends upon the construction or application of the Constitution or laws of the United States.” *Smith v. Kansas City Title & Trust Co.* (US 1921). This requirement will generally be satisfied where the plaintiff relies on federal law to establish a right, interest, or duty at issue in the case:

### 2. Substantial Federal Interest

In assessing whether there is a “substantial federal interest”, the Supreme Court has considered these factors:

1. Whether uniform interpretation and application of federal law is important for fulfilling federal policy
2. Whether allowing a federal forum for private litigants would undermine a federal statutory enforcement scheme
3. Whether providing a federal forum would upset the balance between the state and federal judicial systems

## Illustrations

### 1. Federal Issue

#### Essential

##### *Grable*

- Grable brought a state-law “quiet title” claim against Darue, which purchased property that the IRS had seized from Grable in satisfaction of a tax delinquency.
- Under state law, Grable was required to specify “the facts establishing the superiority of [its] claim” to the property
- Grable relied on a federal statute to establish that the seizure and sale of the property were invalid, and that Grable, not Darue, was therefore still the rightful owner.
- Grable’s right to relief under state law thus depended on the construction and applicability of federal law (i.e. the statute governing property seizures by the IRS)

#### Not Essential

##### *Merrell Dow*

- The plaintiffs brought state law negligence and other tort claims against Merrell Dow for birth defects allegedly resulting from a drug manufactured and marketed by Merrell Dow.
- The plaintiffs relied on federal statutory and regulatory requirements to satisfy the negligence element, contending that federal law required a warning, and failure to provide the warning amounted to negligence under state law.
- The negligence claims asserted that Merrell Dow failed to provide warnings about possible birth defects, and that this failure was negligent (i.e. that a reasonably prudent manufacturer would have included the warning).
- Under state tort law, one way a plaintiff could satisfy the negligence element was by showing that the defendant failed to comply with an applicable state or federal legal standard.
- Unlike in *Grable*, non-compliance with federal drug labeling requirements was only one available theory. The plaintiffs might have been able to establish negligence even if the defendant had complied with federal law. In this sense, disposition of the federal issue was not really “essential”.

- There is a plausible argument that, if the plaintiffs relied on violation of the federal standard as their only argument for negligence, resolution of the federal was “essential” in their case. But the issue, under *Merrell Dow & Grable*, is really whether resolution of the federal issue is essential, not in one particular case, but more generally in a class of similar cases.

### *Gunn v. Minton*

- Minton sued Gunn under state law for attorney malpractice. The malpractice claim was based on a previous suit in which Gunn had represented Minton as the plaintiff in a patent infringement suit (governed by federal law).
- Under state law, Minton was required to allege (and prove) that Gunn’s representation in the underlying suit was negligent, and that Gunn would have prevailed in that suit but for Gunn’s negligence.
- Minton alleged that Gunn failed to raise a certain argument in the patent infringement suit, that a competent lawyer would have raised the argument, and that Minton would have won if Gunn had raised the argument.
- As in *Merrell Dow*, the federal issue was “essential” to Minton’s malpractice claim only in the narrow sense that under the particular facts of the case, the plaintiff was using federal law as a benchmark for establishing the defendant’s negligence under state law.

## 2. Federal Interest

### Substantial

#### *Grable*

- There is a strong federal interest in uniform interpretation of the statutory requirements for seizures of taxpayer property by the IRS. Inconsistent interpretations by various state courts would subject the IRS to conflicting standards in carrying out its tax enforcement responsibilities, and promote uncertainty about the rights and interests of taxpayers and purchasers of seized property.
- The absence of a private right of action to enforce the statutory notice requirements in IRS tax seizures does not weigh against the exercise of federal jurisdiction over state-law quiet title claims based on alleged violations of the federal statutory requirements.
- The federal statute provides no special enforcement mechanism for those requirements, so private suits aren’t interfering with anything.
- Because those requirements give individual taxpayers private rights, it makes sense for federal courts to adjudicate claims that depend on whether those rights were violated.
- Only rarely will a state-law quiet title claim depend on an issue of federal law, so there is little risk of opening the floodgates to claims that properly belong in state court.
- The strong federal interest at stake justifies opening the federal courts to the relatively limited set of cases in which the issue arises.

**Not Substantial:***Merrell Dow*

- While there is a federal interest in uniform interpretation of drug labeling requirements under the Federal Food, Drug, and Cosmetic Act (FDCA), that interest would not be impaired by conflicting state court interpretations in the context of state-law product liability claims.
- Decisions in those cases would not affect any rights, interests, or duties under the FDCA itself.
- The statute has its own mechanism for promoting uniform interpretation and application, through exclusive enforcement by the FDA. The state court determination would not be binding in an enforcement action by the FDA.
- The FDCA provides for exclusive enforcement by the FDA, and there is no private right of action under the statute.
- The statutory enforcement scheme evidences a Congressional intent that the federal courts not adjudicate private suits arising under the FDCA.
- Allowing plaintiffs to litigate FDCA non-compliance under the guise of state-law tort claims would undermine this statutory scheme.
- The plaintiffs in these cases asserted routine state-law claims, in which the federal issues were merely incidental to establishing the defendants' liability under state law.
- State law commonly allows plaintiffs to use federal legal standards as a baseline for establish the standard of care under state tort law.
- If every such case were regarded as arising under federal law for purposes of jurisdiction under §1331, this would effectively "federalize" much routine tort law, subjecting the federal courts to a flood of cases that raise no substantial federal interest, and interfering with the role of state courts as the primary forum for raising state-law claims.

*Gunn v. Minton*

- While there is a federal interest in uniform interpretation of federal patent law, that interest would not be impaired by conflicting state court interpretations in the context of state-law attorney malpractice claims.
- State court interpretations of federal patent law in the context of attorney malpractice claims do not actually affect any rights or interests under federal law.
- The federal issues arise only as counterfactual hypotheticals: what would have happened if the attorney had done something different?
- Uniform interpretation and application of federal patent law, in cases where rights under that law are actually at stake, is ensured by exclusive federal jurisdiction over patent claims (i.e. not only do federal courts have jurisdiction over those claims, because they arise under the federal patent statute, but state courts may not hear those claims at all).
- Parties asserting rights under federal patent law have a private right of action in federal court.
- Malpractice claims based on an attorney's conduct in a federal patent suit don't sufficiently implicate the rights or interests governed by federal patent law to warrant a federal forum, and allowing state courts to decide those malpractice claims won't interfere with the exclusive federal jurisdiction over patent claims themselves.