

## Federal Jurisdiction and Procedure

<p><b>Fed Cts. Hearing SMJ</b> All federal courts are courts of limited SMJ. SMJ can only be conferred on federal courts in accordance with the limitations described in Article III and expressed by Congress in SMJ statutes. The parties cannot confer SMJ on a federal court by consent.</p> <p>The federal court will have subject matter jurisdiction (“SMJ”) under 1332 for the suit by Plaintiff and Defendant because complete diversity is satisfied and the amount in controversy exceeds \$75,000.</p>	<p><b>State Law v. State Law</b> Under the Rules of the Decision Act 1651 and the <i>Erie</i> doctrine, when interpreting state law issues in a diversity case, a federal court must apply the same “substantive” state law that would be used by the state supreme court in the state where the federal court is located. Under <i>Klaxon</i>, state conflict-of-law rules are “substantive” rules that must be applied under <i>Erie</i>.</p> <p>The Supreme Court has held that state law governing the amount of damages recoverable at trial is a substantive issue in a federal diversity suit and thus should be applied.</p>	<p><b>Non-Corp. State Citizenship</b> For non-corporate entities, courts determine state citizenship by looking to the state citizenship of each of the organization’s members.</p>	<p><b>1331 Fed Question</b> Article III and 1331 provide that federal courts have jurisdiction of cases arising under the Constitution, laws of the United States, and treaties. Courts look to the face of the plaintiff’s well-pleaded complaint to see if the plaintiff’s suit arises under federal law. This applies to plaintiffs invoking original federal question SMJ and defendants seeking to remove a suit from state court.</p>
<p><b>Defects in SMJ</b> The lack of SMJ may be raised by any party at any time from the time that the case is filed in federal court until judgment is final, through the trial and appeal, and during the final stage of litigation. A federal court judge can notice a defect in SMJ at any stage of the litigation before judgment is final. When the court notices the defect on its own motion, sua sponte, the suit may be dismissed.</p>	<p><b>State Law v. Fed Law: Procedure Conflict</b> Whenever Congress enacts a federal statute that establishes a procedural rule for the federal courts that directly conflicts with a procedural rule established by state law, the federal rule will govern. If there is a rule in the FRCP that is “on point” with regard to a particular issue, then that rule will be followed by the federal court.</p>	<p><b>Jurisdictional Amount</b> The plaintiff’s complaint must satisfy the jurisdictional amount in controversy for diversity by alleging that there is an amount in controversy that exceeds \$75,000, exclusive of interest and costs.</p>	<p><b>Claim Joinder Rule 18</b> It is possible for a party to join unrelated claims together against a single party opponent under Rule 18, which says that a party may join as an independent or alternative claims, as many claims as it has against an opposing party.</p> <p><b>Permissive Party Joinder Under Rule 20</b> Plaintiffs or Defendants may join together in one suit when they assert a claim to relief arising out of the same transaction or occurrence, and when a question of law or fact common will arise in the suit.</p>
<p><b>Diversity at Filing</b> The question whether complete diversity exists between the original plaintiff(s) and defendant(s) is ordinarily decided at the timing of the <u>filing</u> of the complaint. In 1332, all plaintiffs must be completely diverse from all plaintiffs. Ordinarily, subsequent post-filing events are not relevant to the inquiry and valid SMJ will be treated by a court as valid throughout litigation.</p> <p>For removal, the question is decided at the time the case is <u>removed</u> from state to federal court.</p> <p>All plaintiffs must be diverse from all defendants under the complete diversity rule.</p>	<p><b>People State Citizenship</b> State citizenship for individuals under 1332 is determined by domicile, and not by mere residence. The two requirements for domicile are physical presence in a state and the intent to remain indefinitely in that state. The Fifth Circuit will presume that a person’s old domicile and citizenship continues to remain the same unless that presumption is rebutted with sufficient evidence of a change.</p> <p>The court should consider a variety of relevant evidence from which the intent to remain indefinitely may be inferred: (1) location of person’s current residence; (2) where person is registered to vote and their voting practices; (3) where person rents or purchased or retained home; (4) where own real property; (5) where personal property located; (6) where spouse and family are located; (7) where person is a member of a club and engages in non-work activities; (8) where person has bank accounts or other investments; (9) location of place of business or employment; and (10) driver’s licenses and car registration; and (11) taxes.</p>	<p><b>Measuring JA</b> The pleading states a specific and sufficient amount that exceeds \$75,000, satisfying the facially apparent rules that requires a showing by a preponderance that it is likely the plaintiff will recover the required jurisdictional amount.</p> <p>If the pleading does not list a specific amount by lists other damages (e.g., lost wages or emotional distress), the plaintiff may satisfy the required showing by a preponderance by asking the federal court to rely on inferences to be drawn from the facts in the complaint.</p>	<p><b>Required Party Joinder Under Rule 19</b> Parties who are required to be joined if feasible are described as “required parties” under Rule 19(a). “Feasible” joinder means that the court will not be deprived of SMJ if joinder occurs.</p> <p>Required parties include: (1) a person whose absence from the suit will mean that complete relief cannot be accorded by the court among existing parties; (2) a person who claims an interest relating to the subject of the suit and is so situated that the disposition of the suit in this person’s absence will, as a practical matter, impair the person’s ability to protect his interest; or (3) a person whose absence will leave those who are already parties subject to a substantial risk of double, multiple, or inconsistent obligations because of the absent party’s interest.</p> <p>Assuming joinder is not feasible because it would deprive the court of SMJ, the court must determine if the existing suit should proceed or be dismissed in equity and good conscience.</p>
<p><b>State Law v. Fed Law</b> State laws apply in federal court except when the Constitution, treaties, or statutes of the US would otherwise apply.</p> <p>However, <i>Erie</i> does not require the state procedural law be used. Usually, it is the rules set forth in the FRCP that govern procedure issues in all federal cases when there is a federal rule on point. To determine if the rule is substantive or procedure, courts will use the outcome determination test, asking would the state rule be outcome determinative in the federal litigation. If so, it would be substantive and should be applied in the federal suit.</p>	<p><b>Corp. State Citizenship</b> A corporation is a state citizen of every state in which it is incorporated.</p> <p>A corporation is a citizen of the one location where it has its principal place of business. According to <i>Hertz</i>, the principal place of business of a corporation is its nerve center, defined as the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities. Normally, this is where the corporation maintains its headquarters.</p>	<p><b>Aggregating JA</b> Under 1332 case law, a single plaintiff can aggregate values of multiple claims against a single defendant.</p> <p>Under 1332 case law, a single plaintiff cannot aggregate values of claims against multiple defendants Under 1367(b), a single plaintiff cannot aggregate values of claims against multiple defendants.</p> <p>Under 1332 case law, multiple plaintiffs cannot aggregate the values of their claims against a single defendant when one plaintiff satisfies the jurisdictional amount requirement. Under 1367, multiple plaintiffs can aggregate the values of the claims against a single defendant when: (1) the suit is by multiple plaintiffs against only one defendant; (2) at least one plaintiff has one claim that qualifies as the “original” claim under 1367 because the value of the claim exceeds \$75,000; (3) the suit has complete diversity; and (4) the supplemental claim of the other plaintiff(s) satisfy the 1367 requirement that they are so related to the original claim that they form part of the same case or controversy by sharing a common nucleus of operative fact.</p> <p>Under 1332 case law, multiple plaintiffs cannot aggregate the value of their claims against a single defendant if no plaintiff can satisfy the jurisdictional amount requirement alone. Under 1367, the plaintiffs still cannot aggregate since neither plaintiff has a claim that exceeds \$75,000 and <i>Exxon-Mobil</i> requires at least one plaintiff must have such a claim.</p>	<p><b>Counterclaims Under Rule 13</b> A counterclaim is a claim that is brought by a party who has been sued in federal court against the party suing him. It should be brought in the answer when the defendant wishes to make a counterclaim against the plaintiff.</p> <p>A compulsory counterclaim is a claim against an opposing party that arises out of the same transaction or occurrence that is the subject matter of opposing party’s claim. Under 1367, supplemental jurisdiction attaches to compulsory counterclaims and so no independent jurisdictional basis is required.</p> <p>A permissive counterclaim does not need to have any factual overlap with the main claim. There must be independent jurisdiction under a statute such as 1331 or 1332 over a permissive counterclaim because 1367 is not available.</p> <p><b>Cross-Claims Under Rule 13</b> A cross-claim is a claim against a co-party. A party may assert a cross-claim against a co-party arising out of the same transaction or occurrence that is the subject of the original action or the subject of a counterclaim. Under 1367, jurisdiction attaches to compulsory counterclaims.</p>

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<p><b>Impleader Claim Under Rule 14</b> Impleader is a concept that allows a Third-Party Complaint to be filed by the defendant against a third-party defendant who may be liable to him for all or part of the plaintiff's claim against the original defendant. For a defendant, 1367 jurisdiction attaches. For a plaintiff in a diversity suit, she must show independent jurisdiction over the claim under 1331 or 1332.</p> <p><b>Interpleader</b> Interpleader devices address the same problem that arises when an individual or entity has “custody or possession of money or property” and wants to distribute the funds to every potential claimant who is legally entitled to a share, without wanting to be sued by those claimants in different state courts. Under 1335, the stakeholder must show that: (1) one claimant is diverse from one other claimant (all claimants cannot be from the state); and (2) the amount in controversy is at least \$500. Under FRCP Rule 22, the stakeholder must satisfy requirements more demanding than the rules under 1335 because the stakeholder must make an independent showing of federal SMJ through the 1332 requirements: (1) complete diversity exists between the Stakeholder and all the claimants; and (2) the amount in controversy exceeds \$75,000.</p>	<p><b>SJ: Joinder of Parties</b> Supplemental jurisdiction includes claims that involve the joinder of additional parties. When a CNOF relationship exists between an original claim against D1 and a state-law claim D2, this relationship creates the same power under section 1367 to hear the state law claim, as well as the same discretion to dismiss the claim if appropriate. It is not necessary for a plaintiff to bring an original SMJ claim against D2 to invoke section 1367.</p> <p>1331: If a plaintiff can satisfy the FRCP 20 requirement for party joinder in order to sue multiple defendants, then the plaintiff will succeed in showing that a CNOF is shared by the FQ section 1331 claim against D1 and the state law claim against D2. Rule 20 requires that claims against multiple opponents must arise from the same transaction or occurrence (“STO”), a relationship closer than CNOF.</p> <p>1332: If a plaintiff brings a 1332 suit against two defendants, and there is a flaw in SMJ for the claim against one of them (e.g. one of the defendants is non-diverse), that claim would be dismissed. Therefore, allowing the plaintiff to circumvent this rule by the simple expedient of citing 1367 to justify joinder would directly contradict and undermine 1332.</p>	<p><b>Removal: Timing – Removable When Filed</b> If a state court suit is removable based on good federal SMJ on the date the suit is filed in state court by the plaintiff, the defendant has 30 days to file the Notice of Removal in federal court, starting from the date when the Defendant <b>RECEIVES</b> formal service of the State suit, which is defined as the receipt of both the State court petition and also the state court citation or summons.</p> <p><b>Removal: Timing – Removable After Filing</b> If a state court suit is non-removable when filed by the plaintiff because of a lack of federal SMJ, it is possible for the suit to become removable at a later date (e.g., by dismissing a non-diverse party defendant), where the defendant has 30 days to file a Notice of Removal, starting from the date when the defendant <b>RECEIVED</b> through service or otherwise, a copy of any paper from which it first may be ascertained that the case has become removable.</p>	<p><b>Personal Jurisdiction: Specific</b> Specific jurisdiction encompasses cases in which the suit arises out of or relates to the defendant's contacts with the forum. First, Defendant's contact with the forum must result from his purposeful availment with that forum, e.g., the contacts cannot be accidental. Second, <i>International Shoe</i> requires that it be foreseeable that the defendant's activities make him amenable to suit in the forum. The defendant must know or reasonably anticipate that his activities in the forum render it foreseeable that he may be “haled into court” there.</p> <p>Contracts: A defendant's minimum contacts with the forum state must arise out of or relate to the plaintiff's claim. For contracts between parties, the facts must demonstrate the defendant's purposeful availment of the forum by considering the defendant's minimum contacts. Per <i>Burger King</i>, the factors include: (1) prior negotiations of the parties to the contract; (2) the terms of the contract; (3) the contemplated future consequences of the contract; and (4) the actual course of dealings between the parties.</p> <p>Even if the federal court determines that the defendant had sufficient minimum contacts to justify the exercise of specific jurisdiction, the court may find the exercise would violate traditional notions of fair play and substantial justice. The factors to consider are: (1) the relatedness of the claim asserted against the defendant arising out of his contact with the forum; (2) the convenience of the forum; (3) the forum state's interest in proving redress; (4) efficiency, considering the location of witnesses and evidence; (5) advancement of social policy, considering the availability of alternate forums.</p>
<p><b>Intervention Under Rule 24</b> Intervention of a right applies when a federal statute confers an unconditional right to intervene in a federal lawsuit. Intervention of a right applies when a person claims an interest relating to the property or transaction which is the subject of the federal action, and she is so situated that the disposition of the action in her absence will impair her ability to protect that interest.</p> <p>Under 1367, jurisdiction is available for a defendant-intervenor of a right in a suit where plaintiff's claim is based on 1332. However, 1367 jurisdiction is not available if the plaintiff-intervenor's presence would destroy complete diversity. This is true even though the party is an intervenor of a right. The plaintiff must find an independent basis for jurisdiction.</p> <p>A party is a permissive intervenor if her interest is adequately represented by the existing parties. Under 1367, jurisdiction is not available of the claims of a permissive intervenor and an independent basis for jurisdiction is needed, such as 1331 or 1332.</p>	<p><b>SJ: 13, 14, 24</b> Five Claims where SJ Always Available: (1) Compulsory counterclaim under Rule 13; (2) Cross-claim under Rule 13; (3) Impleader by Defendant who brings a Third Party Defendant into the Plaintiff's federal suit under Rule 14; (4) A rule 14 claim by an impleaded Third Party Defendant against the Plaintiff; (5) An intervenor of Right Claim under Rule 24 brought by a defendant-intervenor.</p> <p>Two Claims Where SJ Available Under P's ONLY UNDER Original 1331 Claim: (1) Rule 14(a)(3) claim by a plaintiff against a third-party defendant; (2) Rule 24 Intervention of Right Claim by Plaintiff-Intervenor.</p> <p>Two Claims where SJ Never Available: (1) Permissive counterclaim; (2) Permissive Intervention.</p> <p>Compulsory: A claim is compulsory if it arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim.</p>	<p><b>Remand</b> If a plaintiff wishes to remand a removed case based on a defect in removal procedure, the plaintiff has 30 days within the date the defendant file the notice of removal. The plaintiff can file a motion to remand at any time on the grounds for lack of SMJ between the parties.</p> <p>At any time before final judgment appears, the federal district court who lacks SMJ at the time of removal can remand.</p> <p>If a timely motion is not filed, the plaintiff will be deemed to have waived his objections to any potential defects in removal procedural, but will not have waived his objection to any potential defects in subject matter jurisdiction.</p>	<p><b>Personal Jurisdiction: Website</b> Fifth circuit precedents have endorsed the <i>Zippo</i> test established in the lower federal courts for defining the circumstances when the operation of a website may demonstrate purposeful availment. Under <i>Zippo</i>, when a non-resident operates an interactive website that allows customers to place an order thereby purchase goods or services, this conduct constitutes purposeful availment of the privileges of conducting activities in the state forums in which these customers reside. No evidence is needed to show the website “targeted” Louisiana customers or “focused on the Louisiana market through local advertising” and no evidence is needed to show the website purposefully directed activities towards Louisiana.</p> <p><b>Transfer Venue</b> If the party wishes to object to venue, that objection must be timely thru a pre-answer 12(b) motion to dismiss for improper venue or pleading in the answer filed within 21 days of summons of the complaint.</p> <p>The defendant may either waive the objection to improper venue, file a motion to transfer to a federal district court where venue was proper, or file a motion to dismiss for improper venue.</p>
<p><b>SJ: Joinder of Claims</b> Section 1367 Supplemental Jurisdiction allows for all additional state law new claims that are so related to claims in the action within the district court's jurisdiction that they form part of the same case or controversy under Article III. “So related” is the same as a common nucleus of operative facts, meaning a rough factual overlap of claims.</p>	<p><b>No Removal: Diversity Defects – Forum Defendant</b> A suit otherwise removable on the basis of 1332 SMJ may not be removed if any of the properly joined and served defendants is a state citizen of the state in which the plaintiff filed the state court suit.</p> <p><b>No Removal: Diversity Defects – 1 Year After Suit</b> A suit may not be removed based on 1332 more than 1 year after the plaintiff filed in state court. If a suit is nonremovable when filed and does not become removable under 1332 until more than 1 year, the removal of that suit will be in violation of the 1-year time limit and will create a removal procedure defect.</p> <p>However, the suit may be removable one year after the plaintiff filed the suit in state court if the plaintiff acts in bad faith, e.g., purposely fails to disclose the actual amount in controversy to prevent removal.</p>	<p><b>Personal Jurisdiction: General</b> Individual: The court has jurisdiction over an individual who was served with process within the forum state; a defendant who consented; and a defendant who is domiciled in the forum state. The paradigm forum for general personal jurisdiction is the person's home. The standard requires a defendant's contacts with the forum state be so constant and pervasive as to render the defendant “at home” in the forum state.</p> <p>Corporation: A court may exercise general jurisdiction when a corporation's affiliations with the state are so “continuous and systematic” as to render it “essentially at home” in the forum state, with the paradigm of “at home” being its state of incorporation and principal place of business.</p>	<p><b>Rule 56 Summary Judgment</b> The court shall grant a motion for summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. A party asserting that a fact cannot be disputed – or is genuinely disputed – must support that assertion through the citing what the record can establish through an affidavit or declarations, showing what cannot be established, or objecting to material cited as inadmissible. Each affidavit must be based on personal knowledge, set forth the facts that would be admissible in evidence, and show the affiant is competent to testify on the matters stated. The court cannot assess the credibility of witnesses or weigh the evidence when ruling on a 56 motion for summary judgment. The court must construe the facts in light most favorable to the non-movant.</p> <p><b>Rule 50 JML</b> A defendant can make a judgment as a matter of law after the plaintiff has been fully heard on an issue and before the case is submitted to the jury. The trial judge will grant the motion if there is no legally sufficient evidentiary basis for a reasonable jury to find for the plaintiff on the issue.</p>

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<p><b>Removal</b> There are six steps to remove the state suit to federal court. First, defendants should file a timely notice of removal in federal court. A 30-day period for each defendant to file the notice runs from the date of formal service of plaintiff's petition, filed in state court, was served upon each defendant.</p> <p>Second, the notice must provide a "short and plain statement" of the jurisdictional grounds for removal. Here, the damages exceed \$75,000 and complete diversity exists between the plaintiffs and defendants (in this statement, explain if P avoided providing information as to why the case is now removable).</p> <p>Third, the defendants must sign the notice and attach a copy of all state court process, pleadings, and orders. Fourth, the notice and attached documents must be filed in the federal district court that encompasses the location of the state court where plaintiff filed suit. Fifth, the plaintiff must be served with a copy of the notice and attached documents, and a memo explaining why the suit was removed. Sixth, a copy of the notice, documents, and memo must be filed promptly with the state court, effectuating the removal of the suit.</p>	<p><b>Exceptions to Remand: <i>Caterpillar</i></b> If the SMJ defect disappeared before the date when the trial began, the judgment at the trial is deemed to be jurisdictionally valid.</p> <p><b>Exceptions to Remand: <i>Fraudulent Joinder</i></b> When a plaintiff brings a state court suit against a diverse defendant and a non-diverse defendant, a federal court will allow the suit to be removed under 1332 by the diverse defendant, even though lack of complete diversity exists at the time of removal, as long as the requirements of the fraudulent joinder doctrine are satisfied.</p> <p>The Fifth Circuit requires the defendant to show that the plaintiff has no reasonable possibility of recovery against the non-diverse defendant. This showing allows the federal court to infer that the plaintiff's <u>purpose for joining the non-diverse defendant was to defeat removal</u>. The plaintiff must affirmatively produce evidence of the basis for a "reasonable possibility" of recovery against the non-diverse defendant.</p>	<p><b>Venue</b> Under 1391(b)(1) a federal suit may be brought in a federal district in which the defendants may be deemed to reside, based on the existence of a minimum contact that would make the defendant "subject to court's personal jurisdiction."</p> <p><b>One Defendant</b> A federal suit may be brought in a federal district in which the defendant resides, which will only be one federal district if the defendant is a person, and which may be more than one federal district if the defendant is an entity.</p> <p><b>Multiple Defendants</b> If there are multiple defendants in the federal suit, and if all the defendants reside in the same state, then the suit may be brought in a federal district in that state in which any of the defendant "resides".</p> <p><b>Substantial Part of Events</b> Under 1391(b)(2), a federal suit may be brought in a federal district in which a substantial part of the events or omissions giving rise to the claim occurred, or in which a substantial part of property that is the subject of the action is situated.</p> <p><b>Fallback Option</b> If a federal suit cannot satisfy the criteria required for the residency of the defendants or the substantial part of events, then and only then may the fallback option be used. Here, federal suit may be brought in any judicial district where any defendant is subject to the court's personal jurisdiction with respect to the federal suit in question.</p>	<p><b>Civil Rights Suits Under 1983</b> 28 U.S.C. Section 1983 allows suit to be brought against any "person" acting "under color of" state or local law for the deprivation of "any rights, privileges or immunities secured by the Constitution and the laws of the United States." A section 1983 suit may be brought against either local officials or local entities, either for damages or for declaratory or injunctive relief. For suits against a local entity or local official sued in his official capacity, the plaintiff must show the action taken or the action threatened was done pursuant to "custom or policy" of the entity to establish 1983 liability.</p> <p>"Persons" liable include state officials sued for damages in their personal capacities; state official sued for prospective relief in their official capacities; local officials sued in any capacity; and local government entities or subdivisions of such entities.</p> <p>The 11<sup>th</sup> Amendment prohibits suit against a state in federal court unless the state has consented. For state officials, the 11<sup>th</sup> Amendment bars damage actions against such officials in their official capacities, but not suits for prospective relief against them in their official capacities when such suits allege violations of federal law. The 11<sup>th</sup> Amendment does not bar suits against officials in their personal capacities.</p> <p>The 11<sup>th</sup> Amendment provides immunity from suit in federal court only to state defendants. Local defendants, namely cities and counties or parishes, and the officials who work for those entities do not have 11<sup>th</sup> Amendment immunity.</p>
<p><b>Rule 12(b)</b> The defenses in a Rule 12(b) motion that may be asserted are: (1) lack of SMJ; (2) lack of PJ; (3) improper venue; (4) insufficient process; (5) insufficient service of process; (6) failure to state a claim upon which relief may be granted; and (7) failure to join a party. The motion must be served within 21 days after service of the complaint.</p> <p><b>Defenses to Rule 12(b)</b> A party may fail to state a claim because the party asserted a claim that is based on a legal theory not cognizable as a matter of law.</p> <p>A party may fail to state a claim because of a failure to allege sufficient facts to support an otherwise cognizable legal claim. The standard from <i>Twombly</i> requires that sufficient facts must be alleged to raise a claim that is "plausible" and establishes an entitlement to relief. The court will grant a motion to dismiss when the facts are not sufficient to create a reasonably founded hope that discovery will reveal relevant evidence to support the claim.</p> <p><b>Rule 12(c)</b> After pleadings are closed, a party can assert as a matter of law that the complaint or answer is insufficient and seek a judgment on the pleadings. If the court is asked to consider matters outside of the pleadings, on a motion to dismiss under Rule 12(b) or 12(c), the court shall the treat the motion as one for summary judgment under rule 56.</p> <p><b>Rule 12(e)</b> If the pleading is so vague of ambiguous that the party cannot prepare a response, the party may move for a more definite statement of the pleading.</p> <p><b>Rule 12(f)</b> A court may strike from a pleading an insufficient defense or an immaterial matter</p>	<p><b>Rule 11 Motion for Attorney or Party Unreasonableness</b> Rule 11 Motions for attorney or party unreasonableness are filed when (1) the pleading is legally or factually baseless from an objective perspective; and (2) whether plaintiff's attorney conducted a reasonable and competent inquiry before signing and filing the complaint. Sanctions are not mandatory but may be appropriate.</p>		