Assignment

Federal Question Jurisdiction

Statutes:

28 U.S.C. §§ 1331, 1442(a), 1257

Federal Question Jurisdiction

> **28 U.S.C. § 1331. Federal Question:** The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Although most people now agree that federal question jurisdiction is one of the most important, if not the most important kind of jurisdiction exercised by the federal courts, it was not included in the original judiciary act of 1789, and in fact, was not passed until after the American Civil War in 1875. Until that time, a handful of specialized federal statutes allowed the federal courts to hear only a small number of very specific kinds of cases involving federal law, such as admiralty cases. The full range of cases based on federal law could only be heard, if at all, in the state courts. Although the passage of 28 U.S.C. § 1331 greatly expanded the kinds of cases that could be brought, we will soon see that it has not been interpreted to apply to every case which has a federal question somewhere in it that needs to be decided.

Keep in mind that the main purposes of including cases "arising under the Constitution and Laws…" of the United States in the Constitution was to provide a federal court when a party asserting federal law might fear discrimination by a state court judge who favored state law or state interests over federal law. For example, a state might pass a very popular statute allowing the police to round up and sterilize all previously convicted child molesters. A civil rights group would like to bring suit on behalf of all those affected by the law, asserting that it violates the Eighth Amendment ban on cruel and unusual punishment, and might prefer to bring suit in federal court.

There also might be situations where one of the parties needed the expertise of a federal judge in interpreting a complicated federal statute. For example, pursuant to a Congressional statute, the Federal Communications Commission might issue a set of very intricate regulations governing the ownership of television stations, making it very difficult for new stations to get a license. A new station has been denied a license and

would like to bring suit to reverse the decision. They might decide to bring suit in federal court to access the expertise of a federal judge in interpreting federal regulations.

Notice that the statute grants "original" jurisdiction to the district courts, meaning that a case is filed there in the first instance. Notice also that unlike diversity jurisdiction, where there must be more than $75,000 in controversy, Section 1331 does not contain any required amount in controversy. This is probably based on the notion that some questions of federal law, especially constitutional questions, might involve very important rights, such as the right to free speech, even though they do not have a high monetary value

Notice also, that the statute does not indicate whether the jurisdiction is concurrent with that of the state courts (meaning that plaintiff may bring it in either state or federal court) or exclusive (meaning it may only be brought in federal court). If the statute does not indicate whether it is concurrent or exclusive, how do you know which it is? Take a look at some of the more specific federal jurisdictional statutes: Sections 1333-1340. Are there any statutes that specify that jurisdiction is concurrent? Are there any that specify that jurisdiction is exclusive? Does that help answer the original question about Section 1331?

A third reason often given for why federal question jurisdiction was included in the Constitution was to provide uniformity in interpretation of federal law. Although the United State Supreme Court, through the use of its appellate jurisdiction, might be able to resolve differing interpretations of federal law by different states, it would be burdensome for the court to assume this role in all cases. While there is no guarantee that all federal judges will decide issues of federal law exactly the same, it is clear that a small number of federal judges, with an even smaller number of federal courts of appeals, would have less disparity among one another than would thousands of state-court judges in every state. If Congress is truly interested in promoting uniformity of decision in

federal law, or in specific areas of federal law, it would probably pass a statute granting exclusive, rather than concurrent jurisdiction. Why would that make more sense?

Since Section 1331 gives concurrent jurisdiction to the district courts over cases arising under federal law, plaintiffs have a choice of whether to bring suit in state or federal court, unless there is a more specific statute granting exclusive jurisdiction for the type of case in question. That does not end the matter, however. Congress has given the defendants the right to "remove" the case from state to federal court, if it is the kind of suit which plaintiff could have brought in federal court in the first place. The basic removal statute is 28 U.S.C. § 1441.

> **28 U.S.C. § 1441 (a). Actions Removable Generally:** Except as otherwise provided by Act of Congress, any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

Removal is a one way process, from state to federal court. If plaintiff files a lawsuit in federal court, the defendant may not remove the case to state court, even if it is one which does not belong in federal court because of lack of federal subject jurisdiction. The proper remedy in that case would be for the federal court to dismiss the complaint, forcing plaintiff to re-file in state court. There is a process of "remand" from federal to state court. This only applies, however, where plaintiff has filed in state court, defendant has petitioned to remove the case to federal court, but the federal judge determines that removal is not proper. In that situation only, the judge should remand the case back to state court.

We will further study removal jurisdiction later, but let's return to the question of original federal jurisdiction: when a plaintiff may bring suit in federal court. Not all cases containing a question of federal law fall within the jurisdiction of section 1331. As

the Court explained in the case of Louisville & Nashville Railroad Co. v. Mottley[1]: in order to be considered "arising under the Constitution and laws of the Untied States," as required by Section 1331, the plaintiff's cause of action must be based on federal, not state law. It is not sufficient that plaintiff anticipates that a question of federal law will arise in defendant's expected defense.

In the Mottley case, the railroad had contracted with the Mottleys to give them a renewable free pass every year for the rest of their lives, in exchange for their settling a personal injury claim against the railroad. The railroad performed the contract for thirty-six years until Congress passed a statute forbidding railroads from giving free passes. At that point, the railroad refused to renew their passes, giving the new statute as their reason. The Mottleys brought suit against the railroad in federal court, contending first that the law was not intended to apply in a situation like theirs; and second, if it were construed to apply to them, it would violate the Due Process Clause of the Constitution. Thus the case required interpretation of a federal statute and possibly interpretation of the United States Constitution. The federal judge held for the Mottleys and the railroad appealed to the United States Supreme Court.

The Supreme Court did not decide the merits of the case, but even though no party had raised the issue either below or in the Supreme Court, the justices held that the lower court had not had jurisdiction of the case. The Court reversed and remanded to the lower court with instructions to dismiss the case. The Court stated:

> "It is settled interpretation of these words, as used in this statute [§ 1331], 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."

[1] 211 U.S. 149, 29 S.Ct. 42, 53 L.Edd. 126 (1908)

Besides the main holding in the case, you should recognize two important procedural differences between how federal courts deal with lack of subject matter jurisdiction and how they deal with other defenses. First, although courts will not usually take action without being requested by one of the parties, a federal court can and must dismiss a case on its own, if it determines that federal subject matter jurisdiction is lacking. Second, although most jurisdictional matters (whether the court can hear the case) are and should be decided at the beginning of the case and not subject to reconsideration later, a federal court will dismiss a case for lack of subject matter jurisdiction any time during the lawsuit, even after trial, while the case is pending on appeal.

The problem here is not just one of just not knowing for sure, at the time the complaint was filed, whether the railroad would actually raise the federal statute as a defense. What if the Mottleys had brought suit in state court and the railroad had filed an answer raising the federal statute as a defense and immediately thereafter petitioning to have the case removed to federal court, pursuant to 28 U.S.C. § 1441 (a)? They would still not be successful, and the case would have to remain in state court. Can you see why?

Does this mean that there are some issues of federal law that cannot ever be decided by federal courts and will be left entirely to the states? Not necessarily. In the Mottley case, the Mottleys re-filed their breach of contract action in state court and as expected, the railroad raised the federal statute as a defense. The state court judge and the state appellate court held in favor of the Mottleys. Using an earlier version of what is now 28 U.S.C. § 1257, the railroad was able to appeal the case to the United States Supreme Court. This statute gives the Supreme Court the discretion to hear any case, decided by the highest court of a state, if it involved practically any issue of federal law. Thus, although not all cases involving issues of federal law can be heard, in the first instance by a federal court, Congress has given the Supreme Court the power to overrule almost all incorrect determinations of federal law by state courts, if it so desires.

Problem : Federal Question Jurisdiction

Before answering these questions, review the reasons for "federal question" jurisdiction under 28 USC § 1331 and keep those in mind while answering.

1. Consider the case of Louisville and Nashville Railroad Co. v. Mottley:

    a. Why were the Mottleys suing the railroad? What was the railroad's defense?

    b. What two issues of law did the Circuit Court judge have to decide before ruling in favor of the Mottleys? Were these issues of federal or state law?

    c. Why did the Supreme Court order that the case be dismissed?

    d. Does this make sense, given the purposes of "federal question" jurisdiction?

    e. The two "nicknames" for jurisdiction under 28 USC § 1331 are "federal question" and "arising under" (short for arising under the constitution or federal law). Which of these nicknames is more accurate?

2. When and how the issue of Federal subject-matter jurisdiction is raised.

    a. Who raised the issue of lack of jurisdiction and when did they do it?

    b. Does this result make sense? When should an objection to jurisdiction normally be made and decided? What should happen if Defendant does not object to the jurisdiction of the court?

    c. Why is federal subject-matter jurisdiction treated differently from other jurisdictional defenses?

3. Assume for this question that the Mottley's had brought their breach of contract claim in state court, and that the railroad had raised the federal statute as a defense in its answer. Could the railroad have had the case removed to federal court under 28 USC § 1441, based on the federal defense?

4. Compare the results in the next two cases and determine whether they make sense, given the purposes of "federal question" jurisdiction.

    a. Plaintiff, a very popular local politician, sues a local newspaper for libel in state court. The paper intends to base its defense on its first amendment constitutional right to print what it did. May the newspaper remove the case to federal court?

    b. Plaintiff claims that her house was illegally searched (in violation of her fourth amendment constitutional rights) by a local police officer. Although she could have brought her constitutional claim in federal court, she chooses to bring it in the local state court. The police officer's answer admits that there was an illegal search, but claims P has sued the wrong officer. May the officer remove the case?

5. Reconsider the libel case against the newspaper in question 4(a) above.

    a. If the state judge rules against the newspaper on the first amendment issue, the newspaper might still get it's federal defense heard by a federal court. How?

    b. Can you explain how that can be constitutional, given that 1)no federal court may hear a case that is not within the judicial power of the United States (either through the diversity of arising under jurisdiction) and 2) Mottley held that only cases in which plaintiff's claim was based on federal law qualified as "arising under" cases?

    c. To what extent does this result satisfy the purposes of federal question jurisdiction and to what extent does it fall short?

LOUISVILLE AND NASHVILLE RAILROAD Co. v. MOTTLEY.

SUPREME COURT OF THE UNITED STATES, 1908

211 U.S. 149; 29 S. Ct. 42; 53 L. Ed. 126

The appellees (husband and wife), being residents and citizens of Kentucky, brought this suit in equity in the Circuit Court of the United States for the Western District of Kentucky against the appellant, a railroad company and a citizen of the same State. The object of the suit was to compel the specific performance of the following contract:

"Louisville, Ky., Oct. 2nd, 1871.

"The Louisville & Nashville Railroad Company in consideration that E. L. Mottley and wife, Annie E. Mottley, have this day released Company from all damages or claims for damages for injuries received by them on the 7th of September, 1871, in consequence of a collision of trains on the railroad of said Company at Randolph's Station, Jefferson County, Ky., hereby agrees to issue free passes on said Railroad and branches now existing or to exist, to said E.L. & Annie E. Mottley for the remainder of the present year, and thereafter, to renew said passes annually during the lives of said Mottley and wife or either of them."

The bill alleged that in September, 1871, plaintiffs, while passengers upon the defendant railroad, were injured by the defendant's negligence, and released their respective claims for damages in consideration of the agreement for transportation during their lives, expressed in the contract. It is alleged that the contract was performed by the defendant up to January 1, 1907, when the defendant declined to renew the passes. The bill then alleges that the refusal to comply with the contract was based solely upon that part of the act of Congress of June 29, 1906, 34 Stat. 584, which forbids the giving of free passes or free transportation. The bill further alleges: First, that the act of Congress referred to does not prohibit the giving of passes under the circumstances of this case; and, second, that if the law is to be construed as prohibiting such passes, it is in conflict with the *Fifth Amendment of the Constitution*, because it deprives the plaintiffs of their property without due process of law. The defendant demurred to the bill. The judge of the Circuit Court overruled the demurrer, entered a decree for the relief prayed for, and the defendant appealed directly to this court.

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. 584), 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 violation of the *Fifth 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 a "suit . . . arising under the Constitution and laws of the United States." Act of August 13, 1888, c. 866, 25 Stat. 433, 434. 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*, 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 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 & Montana Consolidated Copper & Silver Mining Company v. Montana Ore Purchasing Company, 188 U.S. 632*, 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 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.

"It would be wholly unnecessary and improper in order to prove complainant's cause of action to go into any matters of defence which the defendants might possibly set up and then attempt to reply to such defence, 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 defence and then make an answer to it before the defendant has the opportunity to itself plead or prove its own defence 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 defenddant to set up in his answer what his defence is and, if anything more than a denial of complainant's cause of action, imposing upon the defendant the burden of proving such defence.

"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 defence of defendants would be and complainant's answer to such defence. Under these circumstances the case is brought within the rule laid down in *Tennessee v. Union & Planters' Bank, 152 U.S. 454*. That case has been cited and approved many times since, . . ."

****The application of this rule to the case at bar is decisive against the jurisdiction of the Circuit Court.

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.