

To: 1L Students

From: Prof. Bodensteiner

Re: Assigned material—August 13, 2014 (9:00 a.m.)

Please review and be prepared to discuss the attached material; also, draft a complaint in accordance with the instruction in section 5-b, on page 3.

## ANATOMY OF CIVIL LITIGATION

### 1. Court Structure—Federal and State

<u>Federal</u>	<u>Courts</u>	<u>State</u>
U.S. Supreme Court	<u>Supreme Court</u>	_____ Supreme Court
U.S. Court of Appeals for the _____ Circuit	<u>Court of Appeals</u>	_____ Court of Appeals
U.S. District Court	<u>Trial Court</u>	Variety of titles, such as superior court, circuit court, etc.

The federal court system, which is authorized by Article III of the U.S. Constitution, exists separate from and independent of the state court systems. In many situations, the jurisdiction of the federal and state courts is concurrent, i.e., both court systems have the power to hear the case and the litigants, primarily plaintiffs, have a choice. There are some cases, usually designated by federal statute, where the jurisdiction of the federal courts is exclusive, i.e., state courts lack the power to hear such cases.

Federal courts are frequently referred to as courts of limited jurisdiction because they can hear only those types of cases over which Congress has explicitly provided jurisdiction. In providing federal court jurisdiction, Congress is limited by the categories of cases identified in Article III of the U.S. Constitution.

In contrast, each state has a court which is referred to as a court of general jurisdiction, meaning that the court can hear all cases except those where Congress has provided exclusive jurisdiction in the federal courts and those specifically excluded by state law. In addition to one or more courts of general jurisdiction, states will often have courts of limited jurisdiction, such as probate, family, small claims, criminal, etc.

With few exceptions, cases are initiated in a trial court. At the federal level, this is the U.S. District Court. Each state has at least one U.S. District Court, and in most states there is more than one district. Some districts are further divided into divisions.

As a general matter, cases do not move from the federal system to the state system, or vice versa. However, decisions of the highest court of each state, which determine federal questions, can be reviewed by the U.S. Supreme Court.

## 2. Factual Transaction

On August 15, 2010, Z was a resident of California and driving her automobile toward Indiana to attend law school at Valparaiso University School of Law. While driving east on 1-80 in Illinois she was struck by Y, an Indiana resident who was heading home on the same highway. Y struck Z's automobile while changing lanes (from the right lane to the left lane) in order to avoid a truck that was entering the right lane of 1-80 from the ramp. The truck was driven by X, a resident of New York, who was an employee of the owner of the truck, ABC Corporation, a Delaware corporation with its principal place of business in New York.

Although X was employed by ABC Corp. at the time of the accident, ABC contends it is not liable because X had deviated from the route specified by ABC in order to visit a friend. As a result of the accident, Z's car was destroyed and she suffered serious injuries, causing her to defer law school for two years. Z contacts you and asks you to represent her in her effort to recover damages.

## 3. Substantive Rights

Before initiating litigation, it is important to identify a source of substantive rights upon which the plaintiff can rely. In general, there are three sources of substantive rights: the U.S. and state constitutions, common law (usually state), and federal and state statutes, including the implementing regulations issued pursuant to a statute.

Based on the facts outlined above, Z's claim for damages would normally be based on the common law of negligence. ABC Corp. might have a defense, based on either common law or statute, if X was in fact not operating the truck in the course of his employment or ABC's business at the time of the accident.

## 4. Alternative Methods of Dispute Resolution

While litigation is one of the dominant methods of resolving disputes, this is changing. Because of dissatisfaction with litigation, parties are increasingly turning to other methods such as arbitration or mediation. Courts are experimenting with various types of alternative methods, some of which may be mandated before resort to litigation.

What are some of the potential advantages of mediation, or other alternatives to litigation?

## 5. Litigation—Trial Court

### a. Selection of Forum

One of the first decisions to be made by the plaintiff relates to the selection of a forum. As suggested in section 1 above, both federal and state court systems may be available and there may be options within each system. The ultimate selection often turns on strategy considerations, convenience or

"conflict-of-laws" rules (the body of law that determines which state's substantive law controls a transaction touching upon more than one state). However, before selecting a forum based on these factors, it is necessary to identify each forum legally available.

In order to identify each available forum, you must determine which courts have subject matter jurisdiction, i.e. the power to hear such a case. Since Z does not seem to have substantive rights based on federal law, the only apparent source of federal court jurisdiction is "diversity." See 28 U.S.C. § 1332(a)-(c) (attached). If Z had a claim based on federal law, then 28 U.S.C. § 1331 (attached) would provide federal court jurisdiction. Assuming the damages exceed \$75,000, Z has the option of federal court and, therefore, must choose between the two court systems.

If Z chooses federal court, it is necessary to identify a proper venue. This requires Z to consult 28 U.S.C. § 1391 (attached). In some circumstances, a change of venue is available. See 28 U.S.C. § 1404 (attached). At the federal level, venue determines which of the U.S. District Courts throughout the country can hear this particular case. If the plaintiff chooses a state court, venue is also a consideration, but in the state system venue generally determines which county's trial court can hear the case.

After identifying a proper venue in the selected court system, it is necessary to determine whether that court has "jurisdiction over the person" with respect to each defendant. Before a defendant can be subjected to suit in a particular state, in either state or federal court, it is necessary to determine whether that defendant has sufficient contact with the forum state. In the federal system, Federal Rule of Civil Procedure (FRCP) 4(e) directs us to state law to determine whether a non-resident defendant can be subjected to suit in that state. Most states have "long arm" statutes or rules that determine when a non-resident can be subjected to suit in the state. Of course, a state's assertion of jurisdiction over a person can be challenged on constitutional (due process) grounds.

b. Initiating a Case

A civil action is commenced by filing a complaint. See forms 1, 2, 7, and 11 (attached).

**Based on the facts in section 2 above, draft a complaint with Z as the plaintiff and X, Y and ABC Corp. as defendants. Identify each available forum and indicate which one you would select.**

After a complaint is filed, it and a summons must be served on each defendant.

c. Defendant's Reply

Within twenty-one (21) days of service of the summons and complaint, each defendant must respond to the complaint. This might take the form of an answer, which is a "pleading," or a "motion to dismiss." A motion to dismiss can raise a variety of issues, including lack of subject matter jurisdiction, improper venue, lack of jurisdiction over the person, and failure to state a claim. For example, in this case ABC Corp. might move to dismiss under Rule 12(b)(6) for failure to state a claim if ABC Corp. believes that the facts, as alleged in the plaintiff's complaint, do not state a claim against it because X was not engaged in company business at the time of the accident. Very briefly, a motion to dismiss for failure to state a claim accepts the factual allegations in the complaint as true and argues that those facts do not give rise to a legal claim.

d. Discovery

Rules of civil procedure provide for discovery, which is a formal method of obtaining information about the case from your adversary and other witnesses. The common types of discovery include interrogatories (written questions that must be answered under oath), requests for production of documents (written requests identifying certain documents that must be made available by another party), requests for admission (statements that must be admitted or denied by the other party), and depositions (examination and cross-examination of parties or witnesses under oath in the presence of a court reporter).

e. Disposition without Trial

Most civil cases, over 90% in the federal courts, settle or are otherwise resolved prior to trial. Obviously the parties can settle a case at any time. In addition, cases that do not involve factual disputes can be resolved by the court without a trial. The motion to dismiss, discussed above, is a common means of resolving a case, or certain issues in a case, without trial. Further, issues within a case and frequently an entire case can be resolved through "summary judgment," pursuant to Rule 56, FRCP, which provides a means by which courts can resolve disputes without a trial where the pleadings, affidavits and discovery demonstrate that there is no genuine issue of material fact. Note, however, that this is not a means of resolving conflicting versions of what happened.

f. Trial

If a trial is necessary, there can either be a "bench trial" or "trial by jury." At the federal level, the Seventh Amendment to the U.S. Constitution guarantees a trial by jury in most cases where a party seeks damages. Any party (plaintiff or defendant) can demand trial by jury. The right to jury trial in state courts depends upon the state constitution and/or state statute. The purpose of a trial, whether by the court or jury, is to resolve factual disputes. Thus, the trier of fact must determine who to believe when there are conflicting versions of what happened.

g. Judgment

After a case has been decided, by the court or by the jury, the clerk must enter a "judgment." A final judgment indicates that the case has been completed at the trial level and is now ready for an appeal, if there is to be one. As a general matter, an appeal is available only after entry of a final judgment. However, in certain circumstances a party can take an "interlocutory" appeal.

6. Appeals

In the federal system, and most state systems, the losing party is entitled to review by the intermediate appellate court. See section 1 above. Federal court appeals go to the appropriate circuit, which is determined by the location of the district court. Review of questions of law decided by the trial court is "de novo." This means the court of appeals gives little or no deference to the decision of the trial court because the court of appeals is in as good a position to determine questions of law as the trial court. However, factual findings of the trial court will not be overturned unless they are "clearly erroneous" because the trial judge is in a better position to resolve factual disputes.

After a determination by the court of appeals, further review is usually discretionary. In the federal system, the U.S. Supreme Court generally has the option of simply denying "certiorari." This means that the Court simply decides not to hear the case. In a few cases, there is an appeal as a matter of right. Many states follow this approach, with review by the state Supreme Court discretionary in most cases.

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Valparaiso University School of Law  
August 2014

**Form 7. Statement of Jurisdiction**

a. (For diversity-of-citizenship jurisdiction.) The plaintiff is [a citizen of Michigan] [a corporation incorporated under the laws of Michigan with its principal place of business in Michigan]. The defendant is [a citizen of New York] [a corporation incorporated under the laws of New York with its principal place of business in New York]. The amount in controversy, without interest and costs, exceeds the sum or value specified by [28 U.S.C. § 1332](#).

b. (For federal-question jurisdiction.) This action arises under [the United States Constitution, specify the article or amendment and the section] [a United States treaty specify] [a federal statute, \_\_\_ U.S.C. § \_\_\_].

c. (For a claim in the admiralty or maritime jurisdiction.) This is a case of admiralty or maritime jurisdiction. (To invoke admiralty status under Rule 9(h) use the following: This is an admiralty or maritime claim within the meaning of Rule 9(h).)

**Form 11. Complaint for Negligence**

(Caption--See Form 1.)

1. (Statement of Jurisdiction--See Form 7.)

2. On date, at place, the defendant negligently drove a motor vehicle against the plaintiff.

3. As a result, the plaintiff was physically injured, lost wages or income, suffered physical and mental pain, and incurred medical expenses of \$\_\_\_\_\_.

Therefore, the plaintiff demands judgment against the defendant for \$\_\_\_\_\_, plus costs.

(Date and sign--See Form 2).

**Form 1. Caption**

(Use on every summons, complaint, answer, motion, or other document.)

United States District Court  
for the  
\_\_\_\_\_ District of \_\_\_\_\_

A B, Plaintiff )  
 )  
v. )  
 ) Civil Action No. \_\_\_\_\_  
C D, Defendant )  
 )  
v. )  
 )  
E F, Third-Party Defendant )  
(Use if needed.) )

(Name of Document)

**Form 2. Date, Signature, Address, E-Mail Address, and Telephone Number**

*(Use at the conclusion of pleadings and other papers that require a signature.)*

Date \_\_\_\_\_

\_\_\_\_\_  
(Signature of the attorney or unrepresented party)

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(E-mail address)

\_\_\_\_\_  
(Telephone number)

**28 U.S.C.A. § 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.

**28 U.S.C.A. § 1332 Diversity of citizenship; amount in controversy; costs**

**(a)** The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between--

**(1)** citizens of different States;

**(2)** citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

**(3)** citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

**(4)** a foreign state, defined in [section 1603\(a\)](#) of this title, as plaintiff and citizens of a State or of different States.

**(b)** Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of \$75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

**(c)** For the purposes of this section and [section 1441](#) of this title--

**(1)** a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of--

- (A) every State and foreign state of which the insured is a citizen;
  - (B) every State and foreign state by which the insurer has been incorporated; and
  - (C) the State or foreign state where the insurer has its principal place of business; and
- (2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

### **28 U.S.C.A. § 1390 Scope**

**(a) Venue defined.**--As used in this chapter, the term "venue" refers to the geographic specification of the proper court or courts for the litigation of a civil action that is within the subject-matter jurisdiction of the district courts in general, and does not refer to any grant or restriction of subject-matter jurisdiction providing for a civil action to be adjudicated only by the district court for a particular district or districts.

**(b) Exclusion of certain cases.**--Except as otherwise provided by law, this chapter shall not govern the venue of a civil action in which the district court exercises the jurisdiction conferred by [section 1333](#), except that such civil actions may be transferred between district courts as provided in this chapter.

**(c) Clarification regarding cases removed from State courts.**--This chapter shall not determine the district court to which a civil action pending in a State court may be removed, but shall govern the transfer of an action so removed as between districts and divisions of the United States district courts.

### **28 U.S.C.A. § 1391 Venue generally**

**(a) Applicability of section.**--Except as otherwise provided by law--

(1) this section shall govern the venue of all civil actions brought in district courts of the United States; and

(2) the proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature.

**(b) Venue in general.**--A civil action may be brought in--

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;

(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

**(c) Residency.**--For all venue purposes--

(1) a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled;

**(2)** an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question and, if a plaintiff, only in the judicial district in which it maintains its principal place of business; and

**(3)** a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants.

**(d) Residency of corporations in States with multiple districts.**--For purposes of venue under this chapter, in a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.

**(e)** Actions where defendant is officer or employee of the United States--

**(1) In general.**--A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

**(2) Service.**--The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

## **28 U.S.C.A. § 1404 Change of venue**

**(a)** For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.

**(b)** Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which pending to any other division in the same district. Transfer of proceedings in rem brought by or on behalf of the United States may be transferred under this section without the consent of the United States where all other parties request transfer.

**(c)** A district court may order any civil action to be tried at any place within the division in which it is pending.