

Common Law Civil Procedure



Univ.- Prof. Dr. Walter Buchegger
walter.buchegger@jku.at

Reading Material

Mary Kay Kane, Civil Procedure in A Nutshell

7th edition (2013)

West Nutshell Series

Chapter I

US Court System

Chapter I Section I

**Historic survey and
Constitutional Basis**

I. State and Federal Courts

State Court systems based on State Constitutions

- ▶ 52 state court systems,
- ▶ most of the state court systems are three-tiered systems, Maine uses a two-tiered system

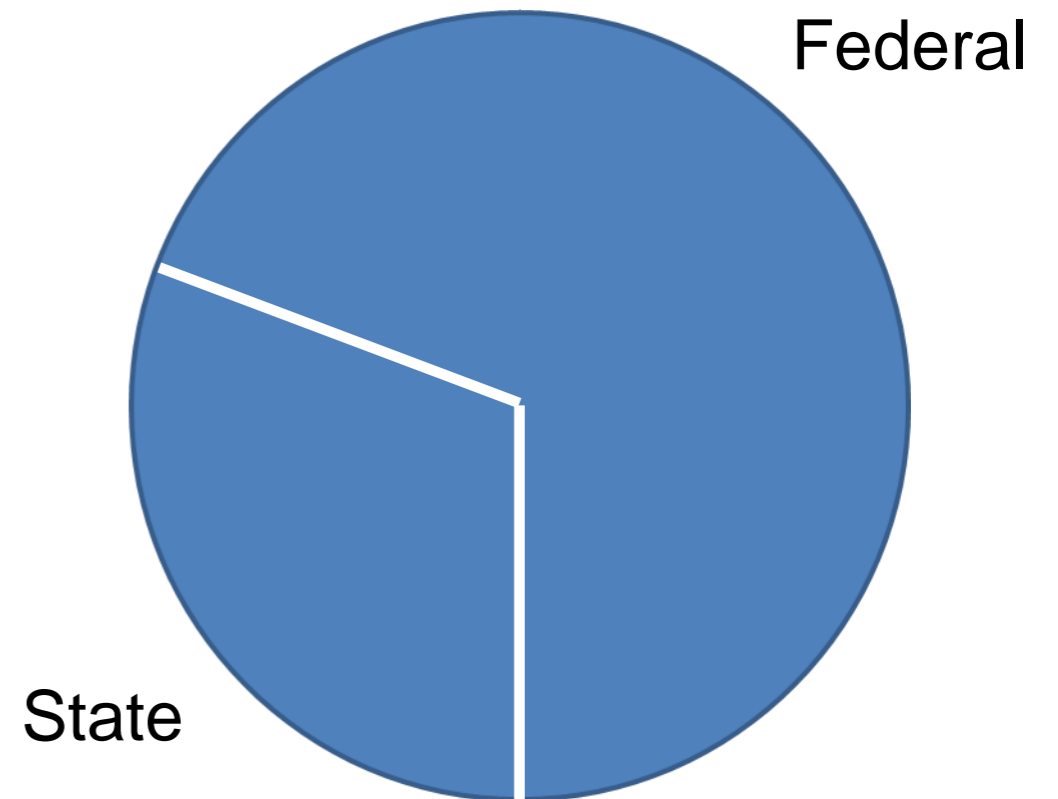
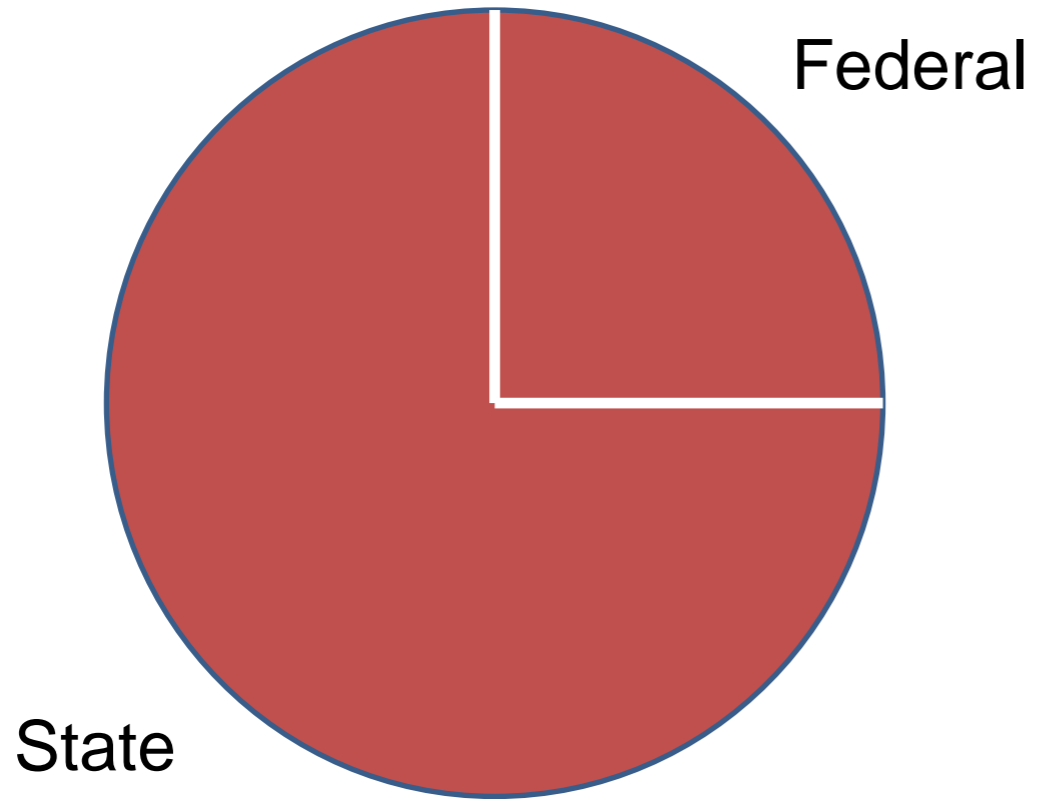
District of Columbia

- ▶ District of Columbia has its own (federal) court system (see infra)

State Court systems developed upon the principle of state sovereignty

- ▶ US Constitution provides for federal judicial power

II. Development of Federal Power



III. Art III U.S. Constitution

Art. III section 1

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

III. Art III U.S. Constitution

Art. III section 2 par. 1

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;--

to all cases affecting ambassadors, other public ministers and consuls;--

to all cases of admiralty and maritime jurisdiction;--

to controversies to which the United States shall be a party;--

III. Art III U.S. Constitution

Art. III section 2 par. 1

The judicial power shall extend

to controversies between two or more states;--[between a state and citizens of another state](#) (Amendment XI);--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

III. Art III U.S. Constitution

Art. III section 2 par. 2

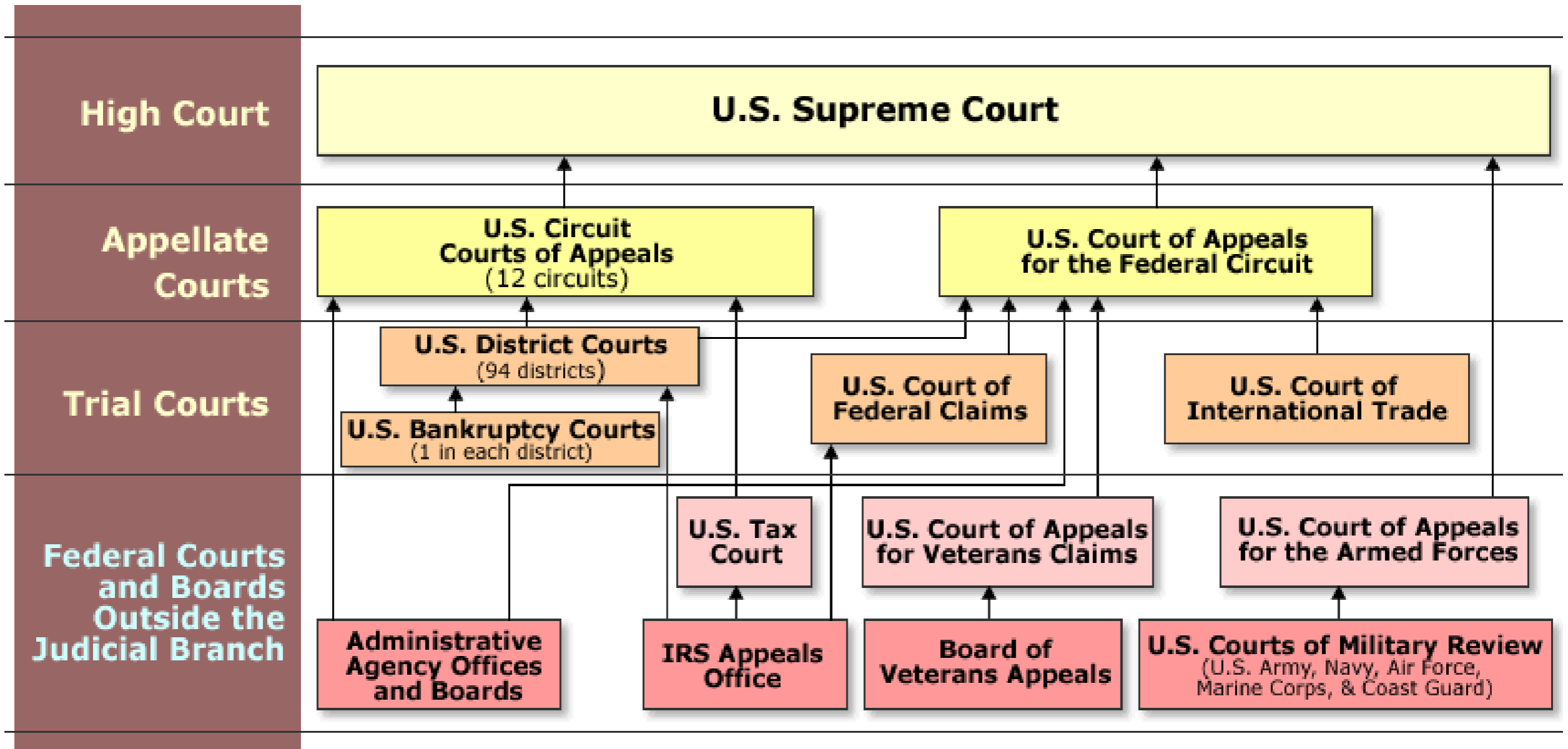
In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction.

In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

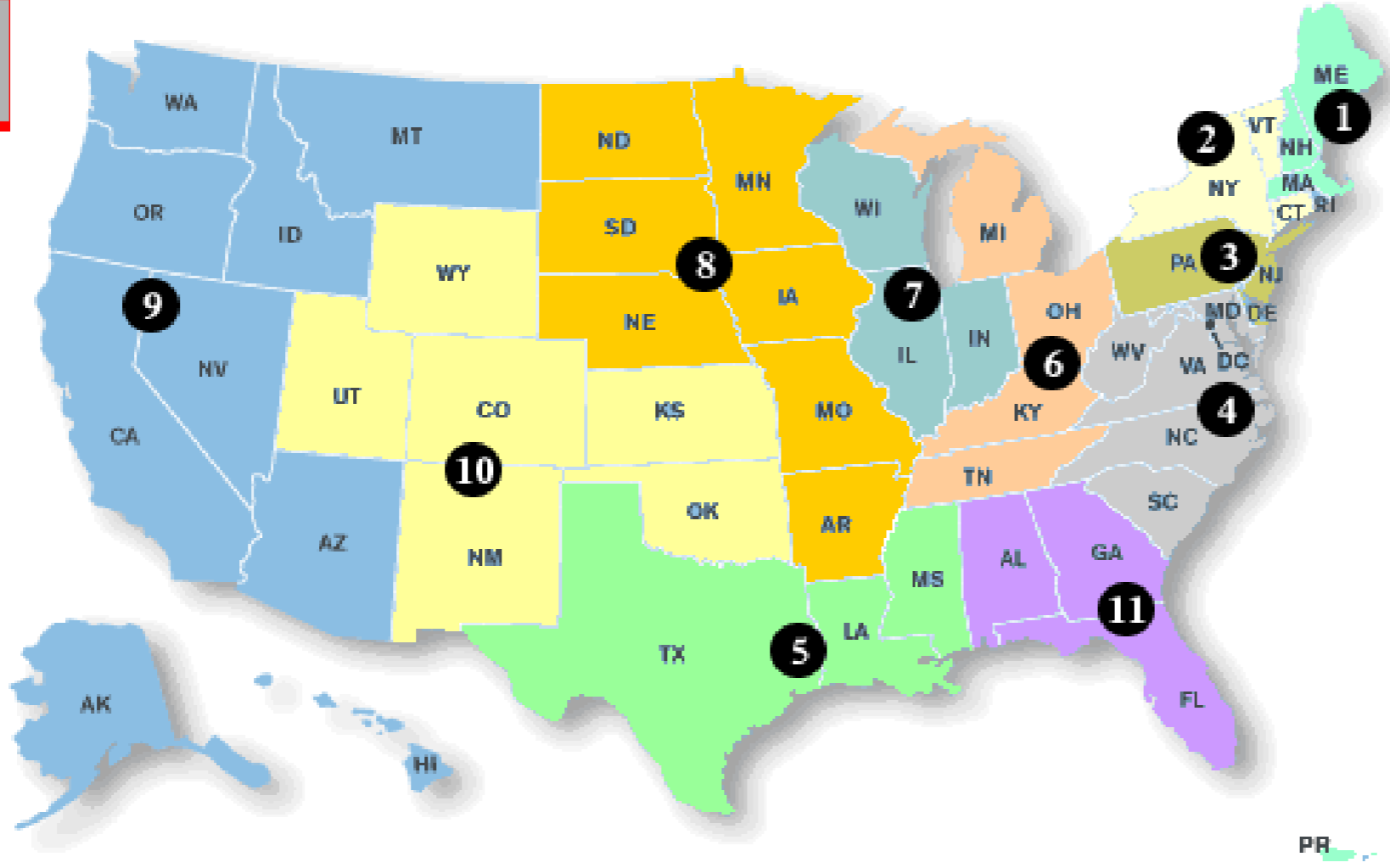
IV.

The United States Federal Courts





V.



Federal Circuits

11 Regional Circuits
D.C. Circuit

V. Circuit System – District of Columbia

Court System in the District of Columbia

▶ **US District Court for the District of Columbia (D.D.C.)**

– federal district court

Superior Court of the District of Columbia

– a trial court with special jurisdiction (civil actions and actions in equity, temporary restraining orders outside of domestic violence, real property, lease)

▶ **US Court of Appeals for the District of Columbia**

– Appellate Court

▶ **District of Columbia Court of Appeals**

– Highest Appellate Court in the District of Columbia

Chapter 2

Structure of a Civil Procedure

Federal Civil Procedure – Overview

- ▶ Choosing the proper Court
- ▶ Pre-Trial Stage
 - Pleadings: Complaint and Response
 - Discovery
 - Pre-Trial Conference
 - Cases of Adjudication without a Trial
- ▶ The Trial
- ▶ Judgments, their legal effects
- ▶ Appeals

Federal Civil Procedure – Overview

Sources of Law

- ▶ US Code, Title 28: Judiciary and Judicial Procedure (28 U.S.C.A.)
- ▶ Federal Rules of Civil Procedure (FRCP)
- ▶ Federal Rules of Evidence (FRE)
- ▶ judgments:
 - Common Law Setting: to be understood as sources of law
 - Civil Law Setting: to be understood as the application of black letter law (codifications)
 - note: Austrian Supreme Court also develops „judge-made“ law

Chapter 3

Jurisdiction

Chapter 3 Section 1

Subject Matter Jurisdiction

I. Subject Matter Jurisdiction

Within the respective state court system

▶ distribution of subject matters by way of statutory regulation

state courts hear i.e.: family law issues (marriage, divorce, property settlements, child custody), cases involving rights in land, landlord-tenant disputes, probate and inheritance, private contracts, personal injury, corporate governance

Among federal and state trial courts:

- ▶ federal courts have subject matter jurisdiction in cases under Art. III, Section 2 USC
- ▶ distinguish between original (trial level) and appellate jurisdiction!

III. Art III U.S. Constitution

Art. III section 2 par. 1

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;--

to all cases affecting ambassadors, other public ministers and consuls;--

to all cases of admiralty and maritime jurisdiction;--

to controversies to which the United States shall be a party;--

I. Subject Matter Jurisdiction

Art. III section 2 par. 1

The judicial power shall extend

to controversies between two or more states;--[between a state and citizens of another state](#) (Amendment XI);--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

I. Subject Matter Jurisdiction

Art. III section 2 par. 2

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction.

In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

II. Federal Subject Matter Jurisdiction

„arising under federal law...“

- ▶ federal questions: cases arising under the USC or federal law
 - a case is a federal one, if the plaintiff's claim, properly pleaded, shows that it is based on federal law (Osborn v. Bank of the United States, 22 U.S. 738 [1824])

II. Federal Subject Matter Jurisdiction

diversity of citizenship and state involvement

- ▶ federal questions: cases involving citizens of different states or where a state is party to the litigation
 - citizens of the US v. citizens of foreign states (aliens)
 - among citizens of different states of the US
 - state v. citizen of this or another state
 - between citizens of the same state claiming lands under grants of different states

II. Federal Subject Matter Jurisdiction

defining „citizen“

- ▶ citizenship is defined by the person's domicile,
→ not by mere residence
- ▶ a business entity, which is incorporated in state A and maintains the principal place of business in state B is not regarded as citizen of both state A and B:
Supreme Court in Hertz v. Friend, 130 S.Ct. 1181 (U.S. 2010)
applies the „nerve center“ theory (corporate headquarters)

II. Federal Subject Matter Jurisdiction

reducing diversity caseload

- ▶ amount at stake is used as a tool to grant or deny access to federal courts
- ▶ currently, the amount at stake has to exceed \$ 75.000 to bring the case before the federal district court

Concurrent jurisdiction of both state and federal courts

- ▶ may often be given; counsel of plaintiff may try to have the case heard before a state court on the grounds of costs and a jury more sympathetic to party and case

II. Federal Subject Matter Jurisdiction

Supplemental Jurisdiction

- ▶ 1990 codification of two earlier forms of non-statutory subject matter jurisdiction: ancillary and pendent jurisdiction
- ▶ jurisdiction over all related claims that arise in the case
- ▶ governing standards set forth by the USSC in *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966)
 - a) is there a common nucleus of operating fact?
 - b) will supplementary jurisdiction foster judicial economy as well as fairness to the parties?

II. Federal Subject Matter Jurisdiction

Removal Jurisdiction

- ▶ concurrent jurisdiction, plaintiffs chooses state court
- ▶ defendant may have the case removed to the federal courts according to 28 U.S.C.A § 1441
- ▶ note: removal may be barred according to the well pleaded complaint rule:
 - removal may not be based on defendant's federal question brought forward in the answer

Chapter 3 Section 2

Venue

III. Venue

Venue

- ▶ place of proceeding: in state court systems usually reference to the county; varying venue statutes
- ▶ federal courts (2011): venue is given - 28 U.S.C.A. § 1391(b)
 - district in which any defendant resides, if all reside in the same state
 - 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 subject to the action is situated
 - (otherwise) district in which any defendant is subject to the court's personal jurisdiction

III. Venue

Venue

- ▶ federal courts (2011): venue is given - 28 U.S.C.A. § 1391(c)(2)
 - business entity defendants are deemed to reside in any district to which they are subject to personal jurisdiction
 - residence of business entity plaintiffs is the principal place of business

III. Venue

Venue

- ▶ local action
 - ownership of, possession of, injury to real property
- ▶ transitory action
 - covers all other lawsuits
- ▶ full faith and credit rule