

# Diversity Jurisdiction in the Federal Courts

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## I. Introduction

The first two chapters introduced basic principles about civil procedure. This chapter will analyze one category of federal subject matter jurisdiction—jurisdiction over diversity cases—in detail.

The Framers evidently created federal jurisdiction over diversity cases—cases “between citizens of different states” in the language of Article III, Section 2—to provide a neutral forum for cases involving a risk of local bias. When such cases are brought in state court, one litigant or the other will end up litigating in the local courts of the other party’s state and may doubt that it will be treated fairly by local judges. The Framers—many of them men\* of means—were also concerned that state courts would not adequately protect out-of-state creditors trying to collect debts from local citizens. In many states, judges are elected rather than

\* We use the term advisedly—they were all men.

appointed. The Framers likely anticipated more even-handed treatment of out-of-state litigants from federal judges, who are appointed for life by a government with a national perspective. See generally Jack H. Friedenthal, Mary Kay Kane & Arthur R. Miller, *CIVIL PROCEDURE* § 2.5 (5th ed. 2015). Despite debate on the original rationale for diversity and whether it is still needed, it remains a major category of federal jurisdiction. About a third of cases filed in federal court are based on diversity jurisdiction.

Constitutions establish grand principles, but they cannot cover the details. The phrase “between citizens of different states” in Article III, Section 2 grants diversity jurisdiction in general terms. It has fallen to the federal courts to determine which cases qualify as diversity cases. Here are some major issues that have arisen concerning the meaning of diversity jurisdiction:

- What does it mean for a person to be a citizen of a state? Is it enough to live in a state, to own property there, to visit there? In what state is Corey, from Chapter 1 (p. 12), a citizen? Massachusetts, where he goes to school? Or New Hampshire, where he lived before starting college? What test should courts use to determine state citizenship?
- Is a corporation a citizen of a state? If so, how do we determine a corporation’s state citizenship? In Corey’s case, of what state or states should Barristers be considered a citizen?
- Suppose the parties are diverse at one point during the litigation, but not at another. For example, suppose that the plaintiff and the defendant are both Utah citizens when an accident takes place, the plaintiff moves to a different state and sues the defendant, and then moves back to Utah while the case is still pending. What date (or dates) should be used in determining diversity?
- Is a case a “diversity case” if Corey, a Massachusetts citizen, sues Barristers, a Rhode Island citizen and the bartender who hit him, who is from Massachusetts? There is some diversity (Corey and Barristers are from different states), but there is not “complete diversity,” since there is a Massachusetts plaintiff and a Massachusetts defendant.
- When Congress creates federal district courts, must it authorize them to hear *all* diversity cases, or can Congress grant jurisdiction over *some* diversity cases but not all of them? For example, can Congress require that a minimum dollar amount be in dispute for the federal court to hear a diversity case (an *amount-in-controversy* requirement)?

Case law has clearly answered the last question. The Supreme Court has held that Congress may authorize the federal district courts to hear *some* diversity cases, but not others. *Kline v. Burke Construction Co.*, 260 U.S. 226, 233–34 (1922). And Congress has always limited its grant of diversity jurisdiction. For example, 28 U.S.C. § 1332(a), the statute by which Congress authorizes the federal district courts to hear diversity cases, includes a minimum amount-in-controversy requirement.

**28 U.S.C. § 1332.** (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.

Under § 1332(a), a case between a citizen of Missouri and a citizen of Arkansas, involving a \$25,000 contract claim, could not be brought in federal court based on diversity jurisdiction, because the amount in controversy is below the required amount.

The following materials will explore these and other issues concerning diversity jurisdiction. The problems they explore should help you to appreciate a basic fact about law: that statutes and constitutions cannot anticipate and address all issues that arise in their administration. Consequently, courts must interpret statutes and constitutional provisions to fill in the interstices and elaborate their meaning. This process of construing statutes and constitutions is one of the great creative challenges of judging—and lawyering.



## II. State Citizenship of Individuals: The Domicile Test

To determine if a federal court has diversity jurisdiction the federal courts have had to determine the meaning of the term “citizen of a state.” This section explores the standard federal courts use to determine an *individual's* (that is, a person's) state citizenship.

Although it is frequently obvious that a person is a citizen of a particular state, it isn't always so. States don't issue passports or grant social security cards, so what legal standard should a court apply to ascertain a person's *state* citizenship? Since neither Article III, Section 2 nor § 1332 answers this question, judges must establish rules of interpretation in individual diversity cases.

READING *GORDON v. STEELE*. In the *Gordon* case below, the court considers how to determine the state citizenship of a student. The court notes that an individual's state citizenship for diversity purposes turns on her domicile. Great, one conundrum exchanged for another. Consider these questions in reading *Gordon*:

- What test for domicile does the court apply?
- What date does it choose for comparing the state citizenship of the parties?
- What factors does it look to in applying the domicile test to the facts of Susan Gordon's life?
- The practical factors seem to point both ways. What do you think is the basic reason that the court concludes that Gordon is domiciled in Idaho?

**GORDON v. STEELE**

376 F. Supp. 575 (W.D. Pa. 1974)

Knox, District Judge.

The problems of students have lately become numerous with respect to their legal status and the law with respect to them is in a constant state of flux. In recent years, there has been a deluge of litigation with respect to the residence of students for voting purposes. . . . It was inevitable that the federal courts would soon feel the impact of this litigation with respect to problems arising under diversity jurisdiction. . . . Thinking of the courts in this area is probably colored by numerous constitutional and statutory provisions in various states to the effect that no one shall be deemed to have gained or lost a residence by attendance at an institution of higher learning.

The thinking is also colored by the traditional rule that the fact that a college student is supposedly maintained by his or her parents is a strong circumstance indicating no gain of residence in the college town. *See* 44 A.L.R.3d 822 and this is in accord with Restatement of Conflicts of Laws, Section 30, that a minor child has the same domicile as its father. In these days when nearly all the state legislatures have reduced the age of majority to 18, this poses a more pressing problem with respect to college students who can no longer be put off with the explanation that those under 21 are minors and hence continue their residence with their parents. . . .

The plaintiff Susan Gordon is one of those who was benefitted by the provisions of the aforesaid emancipation acts of June 16, 1972. She was born November 20, 1953 and hence was 18 years of age at the time the cause of action herein mentioned arose and was 19 at the time this action was brought, April 10, 1973.

The action is one for malpractice against two physicians and an osteopathic hospital in Erie County, Pennsylvania. All of the defendants are citizens of Pennsylvania. There seems little question that prior to August 9, 1972, the plaintiff was also a citizen of Pennsylvania, residing at 227 Goodrich Street, Erie, Pennsylvania, with her parents and if this continued to be her address, her suit must fail for lack of diversity jurisdiction.

She complains that she suffered an injury to her wrist on February 25, 1972, and there was wrongful diagnosis as to the existence of fractures in the bones by the defendants at that time. She claims that they concluded that there were no such fractures and that as a result she endured continuing pain and disability resulting in hospitalization and medical attention and that her wrist and right hand remain at least partly disabled as the result of the alleged malpractice.

On August 9, 1972, plaintiff enrolled in Ricks College at Rexburg, Idaho where she rented an apartment which she has retained ever since. Defendants on January 21, 1974, moved to dismiss for lack of diversity. Briefs have been filed, arguments held and the court postponed decision on the matter until further depositions of the plaintiff could be taken. The matter is now before the court for disposition.

We approach the problem recognizing, of course, that it is citizenship at the time of filing suit, in this case April 10, 1973, which is controlling. Further, the rule is unquestioned that where plaintiff is challenged on her claim of diversity, the burden is upon her to show by convincing evidence that diversity jurisdiction exists.

As is required in all of such cases, we must reckon up the indicators pointing for and against acquisition of a new domicile for diversity jurisdiction purposes. Defendant claims that the following indicate that plaintiff is still a citizen of Pennsylvania and has not acquired a new residence or citizenship in Idaho:

- (1) At the time of application for admission to the college at Rexburg, Idaho, she gave her address as Erie, Pennsylvania.
- (2) The college records dated in 1972 show her address as Erie, Pennsylvania. The same is true of the college records dated May 4, 1973.
- (3) During summer vacations, she worked in Erie, Pennsylvania.
- (4) She held a Pennsylvania Driver's License and had a bank account in Erie.
- (5) She came to Erie for Christmas vacations.
- (6) While Ricks College is a Mormon Church Institution, the supplemental depositions which were taken at the request of the court indicate that females unlike males are generally not required to participate in the missionary activity of the church and that she has no present intentions of participating in such missionary work which, of course, might take her to any part of the world.

On the other side of the ledger, plaintiff points to the following:

- (1) Her expressed intention is not to return to Pennsylvania. This, of course, is a very strong factor in a situation where subjective intent plays a part in determining what is her *animo manendi*.
- (2) She has an apartment in Rexburg which she regards as her residence and this is not sublet during various times of the year but remains hers.
- (3) She states she came back to Erie only one summer in 1973 because of her eye problems and that she took eye treatment in Erie and Cleveland.
- (4) She claims that her purpose in visiting at Christmas 1973 was to be deposed and for medical appointments. She has not returned to Erie during Spring or Thanksgiving vacations.
- (5) Her religious desires as a sincere Mormon are to further her faith and insure that she marries in a Mormon Temple to someone of her faith. At the present time, she has no present plans of marrying anyone but she does desire to marry in her faith and claims that the opportunities for such a marriage in Erie are very small and that she would be unable to marry in a Temple here.
- (6) She has introduced exhibits showing that she is a member of the Blue Cross of Idaho, becoming a subscriber in 1972.
- (7) She claims she may locate after graduation in any other of the 49 states or abroad. She may, of course, return to Pennsylvania. She, like many other females, has vague intentions of marrying some day but does not know to whom and in such case it is likely that she would follow her husband where his work may take him.

We recognize that the problem of students' residence is not altogether a new one but has concerned the federal courts since *Chicago and Northwestern Railway Company v. Ohle*, 117 U.S. 123 (1886), where the court held that determinations of a domicile were a matter to be determined by the trier of fact.

The most recent exposition of the law on this subject for our edification by the Third Circuit is found in *Krasnov v. Dinan*, 465 F.2d 1298 (3d Cir. 1972), from which we quote at length:

*"It is the citizenship of the parties at the time the action is commenced which is controlling. Brough v. Strathmann Supply Co., 358 F.2d 374 (3d Cir. 1966). One domiciled in a state when a suit is begun is 'a citizen of that state within the meaning of the Constitution, art. 3, § 2, and the Judicial Code....'"*

*"The fact of residency must be coupled with a finding of intent to remain indefinitely. Proof of intent to remain permanently is not the test. 'If the new state is to be one's home for an indefinite period of time, he has acquired a new domicile.' Gallagher v. Philadelphia Transp. Co., supra, 185 F.2d (543) at 546. Where jurisdictional allegations are traversed, as here, 'the burden of showing... that the federal court has jurisdiction rests upon the complainants.' ... 'In determining whether a party has intended to establish a domicile in the state to which he has moved, the factfinder will look to such circumstances as his declarations, exercise of political rights, payment of personal taxes, house of residence, and place of business.'"* ...

*"Applying these principles to the evidence before the factfinder, we cannot construe, as clearly erroneous, its finding that the defendant 'intended to remain in the Commonwealth for an indefinite period of time.' Because animus manendi is at best a subjective manifestation, Dinan's own declarations of intent are important, as were his explanations of the lack of compulsion in religious order assignments and his failure to obtain a Pennsylvania driver's license."*

We also have further instruction on this subject in the case in Judge Hastie's opinion in *Gallagher v. Philadelphia Transportation Company*, 185 F.2d 543 (3d Cir. 1950), in which the lower court was criticized as putting too much emphasis on permanence of the attachment to a given state. We also quote at length from this decision.

*"The emphasis of the court on the permanence of the anticipated attachment to a state, in our opinion, required too much of the plaintiff...."*

*"It is enough to intend to make the new state one's home. It is not important if there is within contemplation a vague possibility of eventually going elsewhere, or even of returning whence one came. If the new state is to be one's home for an indefinite period of time, he has acquired a new domicile. Finally, it is the intention at the time of arrival which is important. The fact that the plaintiff may later have acquired doubts about remaining in her new home or may have been called upon to leave it is not relevant, so long as the subsequent doubt or the circumstance of the leaving does not indicate that the intention to make the place the plaintiff's home never existed."*

In the light of the foregoing and in view of the current tendency to treat students 18 years of age and above as emancipated and particularly in view of [the] fact

that in this case the plaintiff has rented an apartment in Rexburg and with due regard for Judge Goodrich's statement from his Handbook of the Conflict of Laws that the possibility of eventually going elsewhere or even returning whence one came does not defeat the acquisition of a new domicile, we conclude upon the facts of this case considering the student's connection with Idaho and her subjective intention of not returning to Pennsylvania in the foreseeable future that she is a citizen of Idaho for the purpose of diversity jurisdiction and the motion to dismiss must be denied.

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## Notes and Questions: Applying the Test for State Citizenship

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1. The common law concept of domicile. The court holds that Susan Gordon's state citizenship depends upon her domicile. To determine *that*, the court uses a further test, residence with the intent to remain "indefinitely." This test was not created out of whole cloth: The common law concept of domicile has long been used for several purposes. It may, for example, be used to determine the power to exercise personal jurisdiction over a person, to grant a divorce, to impose a tax or to determine the persons entitled to inherit property. *Restatement (Second) of Conflict of Laws* § 11 cmt. c (1989).

2. Losing and gaining a domicile. Courts hold that a person does not lose her old domicile until she acquires a new one, that is, until she goes to another state with the intent to reside indefinitely in the new state. With this corollary of the domicile test in mind, consider the following scenario.

Susan Gordon, after growing up in Pennsylvania, goes to Ricks College, in Idaho, planning to get a two-year nursing degree and return to practice nursing in Pennsylvania. Two months after starting school, she files suit in a Pennsylvania federal district court against Dr. Rodriguez, a Pennsylvania citizen who treated her in Pennsylvania for an injury. She claims jurisdiction based on diversity. The court probably

- A. lacks diversity jurisdiction, because Gordon is still domiciled in Pennsylvania.
- B. lacks diversity jurisdiction, because the treatment took place in Pennsylvania.
- C. has diversity jurisdiction, because she was living in Idaho when she filed the suit.
- D. would have diversity jurisdiction, if she brought the action in an Idaho federal court.

Several of the "distractors" (wrong choices) here reflect misconceptions about diversity. B is wrong because the court's jurisdiction in a diversity case has nothing to do with *where the claim arose*, only with the state citizenship of the parties. If Kim, from Texas, has an accident with Olsen, from Michigan, in Tennessee, that's a diversity case, since the parties are from different states. The federal court will have subject matter jurisdiction over it whether it is brought in a federal court in Texas or Tennessee or Alaska.

D is also wrong because diversity does not have anything to do with which federal district court the suit is filed in, only whether the plaintiffs and defendants are from different states. C fails as well, because a person may be living in a state, but not be domiciled there under the test, if she plans to leave at a definite time. Based on the domicile test, the best answer is A. Since Gordon is in Idaho for a definite time only, she did not acquire a new domicile when she went to Ricks College. Thus we look back to her last domicile, Pennsylvania.

With that warm-up, consider where Susan Gordon would be domiciled in the following examples.

- A. Susan Gordon goes to Ricks College, planning to get a two-year nursing degree and then move to California to work in a hospital there. Before leaving for Ricks College, she announces to her friends that she is never coming back to Pennsylvania. Two months after starting school, she sues the Pennsylvania doctors.
- B. Susan Gordon goes from Pennsylvania to Ricks College, planning to get her degree and practice nursing in Idaho. After three months at college, she decides that she does not like Idaho and will return to Pennsylvania after she completes her degree. The next week she brings the suit.
- C. Susan Gordon goes from Pennsylvania to Ricks College, planning to get her degree and practice nursing in California. After three months at college, she decides she likes Idaho and will stay and practice nursing there after she completes her degree. She brings suit a month after she makes that decision.
- D. Susan Gordon goes from Pennsylvania to Ricks College, planning to practice nursing after she finishes her degree, but with no plan as to where she will do so. A month after starting school, she sues the Pennsylvania defendants.

A. Pennsylvania. She has not formed a new domicile in Idaho, since she is only in Idaho for a definite period. She hasn't formed one in California either, because she hasn't moved there yet. Ironically, though she swears she will never set foot in Pennsylvania again, she does not lose her Pennsylvania domicile until she forms a new one.

B. Idaho. When Gordon arrived in Idaho planning to stay, she acquired domicile there. Although she now intends to leave Idaho, she won't lose her Idaho domicile until she goes to another state with the intent to remain there indefinitely.

C. Idaho. Gordon did not acquire domicile when she moved to Idaho but did when her intent changed while she was living there. The statement quoted in *Gordon* that "[i]t is the intention at the time of arrival which is important" is

misleading. Even though Gordon did not form a domicile on the day she moved there, she does form it later when she is living there and decides to stay.

D. Here, Gordon has no clear intent to leave Idaho. She might, but has no definite plan to do so or to do anything else. The better answer is that she acquires domicile in Idaho. This is close to the actual facts of the case.

3. Meaning of "indefinite" intent. What does it mean to intend to remain "indefinitely" in a state? It is often said that this prong of the domicile test is not met if a person goes to a state temporarily, that is, to visit. On the other hand, it is not necessary to intend to remain permanently to meet the test. (How many Americans today could testify that they live in a state permanently?) Often, courts state that it is enough that the party "intend[s] to make the new state home and that the person has no present intention of going elsewhere [to live]." *Wright & Kane* § 26. If so, the person is in the state on an open-ended basis and establishes a new domicile.

**Q** 4. Applying the test. In *Holmes v. Sopuch*, 639 F.2d 431 (8th Cir. 1981), the plaintiff, Holmes, had been living in Missouri and working for the federal Defense Mapping Agency. The DMA sent him to a one-year program at Ohio State University during the 1978–79 academic year. He and his wife moved to Ohio, where they leased an apartment for one year. In February 1979, while he was still living in Ohio, he brought a diversity action against two Missouri citizens.

Holmes testified that "after finishing his studies at Ohio State he would obtain the best position available with the DMA and that he never intended Ohio to be his permanent home. Moreover, there is no DMA facility in Ohio which Holmes might have chosen upon the completion of his studies. Holmes also testified that he might have chosen to return to the St. Louis DMA facility." Did Holmes acquire domicile in Ohio?

The court held that Holmes did not acquire domicile in Ohio during his time there. Although he resided there, he was not there "indefinitely." He intended to leave Ohio at a definite time, since he planned to resume his work for the DMA, and he could only do so by leaving Ohio.

The result would likely have been different if the DMA had a facility in Ohio, and Holmes might have been hired there. In that case, he might have remained in Ohio after the one-year program. Even if there were more DMA offices in other states, it would not be clear that Holmes was going to leave Ohio at a definite time.

**Q** 5. An alternative formulation of the domicile test. Some courts may state the domicile test a little differently. "To establish a domicile of choice a person generally must be physically present at the location and intend to make that place his home for the time at least." *Sadat v. Mertes*, 615 F.2d 1176 (7th Cir. 1980). This test is meaningfully different from the intent-to-remain-indefinitely test. How would Holmes's case in note 4 come out under this test?

Under this test Holmes would become a citizen of Ohio, since he was there "for the time at least." However, most diversity cases have applied the intent-to-remain-indefinitely test. (The *Holmes* court rejected plaintiffs' argument for the alternative test. 639 F.2d at 433–34.) As previously noted, domicile is a

common law concept used in many contexts, so it may be applied somewhat differently in one context than another.

6. The date for determining diversity. The *Gordon* court states the long-established rule (see, e.g., *Smith v. Sperling*, 354 U.S. 91, 93 (1957)) that the parties must be diverse on the day the complaint is filed. If the parties are diverse on that date, the case is a proper diversity case, even if the parties were *not* diverse at the time of the events giving rise to the claim, or later in the litigation. In *Leavitt v. Scott*, 338 F.2d 749 (10th Cir. 1964), the plaintiff was from Utah and had an accident with another Utah citizen. He moved to Colorado briefly and brought suit against the defendant. Although he returned to live in Utah after filing suit, the court upheld diversity jurisdiction since the parties were diverse on the date of filing.

If the underlying rationale for diversity is prejudice against an out-of-stater, why determine diversity based on a single day? And why choose the day of filing? Wouldn't the day of trial make more sense? Or why not require the parties to be diverse throughout the litigation? Or on the day the claim arose, a date likely beyond the power of either party to manipulate?

Ultimately, the choice to focus on the parties' domicile on a single day is a matter of administrative simplicity: The court has to know whether it has jurisdiction or not. Choosing the date of filing provides this certainty. Using the date the claim arose would be dubious in cases that arise over a period of time (such as claims for unfair competition or sexual discrimination toward an employee). If the court used the day of trial, a court might process a case through the pre-trial stages for a year or more, only to discover (because a party moved) that it no longer had jurisdiction. The day of filing seems a bit arbitrary, but it promotes efficiency by providing a clear test for jurisdiction, which will not change even if the parties later change their domiciles.

7. Evidence of domicile contrasted with the test for domicile. The courts consider a wide variety of evidence in determining a party's domicile. In *Gordon*, the court considers evidence about Susan Gordon's driver's license, her health insurance, her apartment, her religious affiliation, and other facts. Yet these practical facts are not the test itself; they are evidence relevant to applying the test. In some situations most of these facts would point to one state, but the person would still lack the subjective intent to remain there indefinitely.

Consider, for example, a student who graduates from medical school in Indiana and starts a three-year residency at a Texas hospital, planning to return to Indiana to establish a practice. Wouldn't she rent an apartment, join a health plan, get a driver's license, pay local taxes, and do other things suggesting a local affiliation? Probably so, but if it is clear that she plans to leave at a particular point, these indicia would not establish a Texas domicile. It is, after all, the person's intent that is the test. The practical facts described in *Gordon* represent evidence that can be useful—or at times, deceiving—in trying to prove that subjective fact.

Very likely the *Gordon* court's fundamental reason for concluding that Susan Gordon had acquired a domicile in Idaho (though not too clearly articulated in the opinion) was not her Blue Cross membership or her apartment in Rexburg, but the fact that she simply didn't know what she would do after she finished school.

**Q** 8. Corey's case. In light of the principles discussed above, what kinds of questions would you want to ask Corey (our plaintiff from Chapter 1) to determine his state citizenship?

**A** You would ask him about the practical facts of his life, such as whether he had changed his bank accounts, driver's license, and voting registration. But you would be particularly interested in Corey's plans after school. If he is quite clear that he is going back to New Hampshire or to some third state, he would not acquire domicile in Massachusetts. If he has little or no idea of his future plans, a court would likely conclude that he was in Massachusetts "indefinitely" and therefore a Massachusetts citizen.

**Q** 9. If diversity exists, which federal district court has jurisdiction? Gordon brought her suit in the Federal District Court for the Western District of Pennsylvania. Would the diversity analysis be different if she brought it in the Northern District of California? Or the Southern District of Texas?

**A** No, it wouldn't. The diversity statute, 28 U.S.C. § 1332(a), provides that "the [federal] district courts" shall have jurisdiction over cases between citizens of different states. If the plaintiff and defendant are from different states, *any* federal district court will have diversity jurisdiction over the case. The particular federal district the plaintiff chooses matters in determining whether the court has personal jurisdiction over the defendant or is a proper venue, but is irrelevant in determining whether the court has subject matter jurisdiction over the case. The court has diversity jurisdiction as long as the plaintiff and defendant are citizens of different states (and the amount-in-controversy requirement is met, as we will see later).

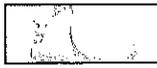
**Q** 10. Diversity cases in state court. Gordon, from Idaho, brings suit against the Pennsylvania doctors in a state court in Pennsylvania. Would the state court have subject matter jurisdiction over the case?

**A** Yes. Recall a crucial point made in Chapter 1. The fact that a case could be filed in federal court as a diversity case does not mean that it *must* be filed in federal court. As a general rule, the state courts also have jurisdiction over cases within federal subject matter jurisdiction. Even if Gordon is diverse from the defendants, state courts have broad jurisdiction to hear tort cases as well, and Gordon may have strategic reasons for preferring to sue in state court.

11. Issue analysis: Applying the domicile test. Here's a nice scenario one of the authors used to test domicile on an exam.

Originally from Massachusetts, Ruggles drifted from one New England state to another, staying for a while and then getting itchy feet and moving on. At one point, he drifted up to New Hampshire, where he took a job on a lobster boat for the summer season. He had a contract to work on the boat for six months. During this period, Ruggles was injured when he was hit by Quan's car. May Ruggles sue Quan, a New Hampshire citizen, in federal court under the diversity jurisdiction?

*A suggested analysis.* If a student wrote the following analysis of Ruggles's domicile, she would do very well: "To invoke diversity jurisdiction Ruggles would have to be a citizen of a different state than Quan. This turns on where Ruggles is domiciled (that is, the last state he has resided in with the intent to reside indefinitely) on the day he files suit. If, as the question suggests, Ruggles brings suit while he is still working in New Hampshire, he will likely be found a citizen of New Hampshire. True, he is a 'drifter,' tends to move on after a while, and probably will leave New Hampshire at some point. But the question does not indicate that he has any specific plan to do so at a particular time. Although his contract is only for six months, the facts do not suggest that he has any plans as to what he will do at the end of the six months. Presumably, Ruggles's only plan at that point is to see what turns up, and if nothing does, then perhaps he'll move on. If this is so, Ruggles does not have a fixed future plan, is living in New Hampshire on an open-ended basis, and is domiciled in New Hampshire. Consequently, he cannot sue Quan in federal court based on diversity jurisdiction."



### III. The Complete Diversity Rule

Another question unanswered by the broad language of Article III, Section 2 is how courts should assess diversity in a case with multiple plaintiffs or defendants. Suppose, for example, that Corey sues both Barristers, Inc. and Brummell, the bartender who hit him. Assume further that Corey is a New Hampshire citizen and Brummell and Barristers are Massachusetts citizens. The case looks like this:

Corey (NH) v. Barristers (MA)  
Brummell (MA)

Is this a proper diversity case, even though two of the parties are Massachusetts citizens? Or suppose that Corey and Brummell are both from New Hampshire? Now the case looks like this:

Corey (NH) v. Barristers (MA)  
Brummell (NH)

Is this a proper diversity case, even though there is a New Hampshire plaintiff and a New Hampshire defendant?

**READING *MAS v. PERRY*.** The *Mas* case below addresses the complete diversity rule, as well as the problem of applying diversity jurisdiction to a case involving citizens of another country. In reading *Mas*, note that the court rejects the old common law rule that a woman automatically takes the domicile of her husband. Thus, it must assess the domicile of three parties, the two plaintiffs and the defendant. Consider the following questions in reading *Mas*.

- If Mr. Mas alone sued Perry, could he do so in federal court? Could he do so if he were domiciled in Louisiana?

- Why does the court conclude that Mrs. Mas did not acquire a domicile in Louisiana while there as a student? Is its analysis consistent with *Gordon v. Steele*?
- Note that at the time of *Mas* the amount in controversy was required to exceed \$10,000, not \$75,000.
- Students often find this case frustrating, because it appears to contradict *Gordon v. Steele*. The *Mas* court concludes that the Mases did not acquire domicile because they were "in Louisiana only as students and lacked the requisite intention to remain there." Consider whether the court adequately explains its conclusion that Mrs. Mas never acquired domicile in Louisiana. And, perhaps, ask yourself why the coursebook authors might include the case if it somewhat "muddies the waters" with regard to the domicile test.

## MAS v. PERRY

489 F.2d 1396 (5th Cir. 1974)

AINSWORTH, Circuit Judge:

This case presents questions pertaining to federal diversity jurisdiction under 28 U.S.C. § 1332, which, pursuant to article III, section II of the Constitution, provides for original jurisdiction in federal district courts of all civil actions that are between, *inter alia*, citizens of different States or citizens of a State and citizens of foreign states and in which the amount in controversy is more than \$10,000.

Appellees Jean Paul Mas, a citizen of France, and Judy Mas were married at her home in Jackson, Mississippi. Prior to their marriage, Mr. and Mrs. Mas were graduate assistants, pursuing coursework as well as performing teaching duties, for approximately nine months and one year, respectively, at Louisiana State University in Baton Rouge, Louisiana. Shortly after their marriage, they returned to Baton Rouge to resume their duties as graduate assistants at LSU. They remained in Baton Rouge for approximately two more years, after which they moved to Park Ridge, Illinois. At the time of the trial in this case, it was their intention to return to Baton Rouge while Mr. Mas finished his studies for the degree of Doctor of Philosophy. Mr. and Mrs. Mas were undecided as to where they would reside after that.

Upon their return to Baton Rouge after their marriage, appellees rented an apartment from appellant Oliver H. Perry, a citizen of Louisiana. This appeal arises from a final judgment entered on a jury verdict awarding \$5,000 to Mr. Mas and \$15,000 to Mrs. Mas for damages incurred by them as a result of the discovery that their bedroom and bathroom contained "two-way" mirrors and that they had been watched through them by the appellant during three of the first four months of their marriage.

At the close of the appellees' case at trial, appellant made an oral motion to dismiss for lack of jurisdiction.... The motion was denied by the district court. Before this Court, appellant challenges the final judgment below solely on jurisdictional grounds, contending that appellees failed to prove diversity of citizenship among the parties and that the requisite jurisdictional amount is lacking with

respect to Mr. Mas. Finding no merit to these contentions, we affirm. Under section 1332(a)(2), the federal judicial power extends to the claim of Mr. Mas, a citizen of France, against the appellant, a citizen of Louisiana. Since we conclude that Mrs. Mas is a citizen of Mississippi for diversity purposes, the district court also properly had jurisdiction under section 1332(a)(1) of her claim.

It has long been the general rule that complete diversity of parties is required in order that diversity jurisdiction obtain; that is, no party on one side may be a citizen of the same State as any party on the other side. *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806). This determination of one's State citizenship for diversity purposes is controlled by federal law, not by the law of any State. As is the case in other areas of federal jurisdiction, the diverse citizenship among adverse parties must be present at the time the complaint is filed. The burden of pleading the diverse citizenship is upon the party invoking federal jurisdiction... and if the diversity jurisdiction is properly challenged, that party also bears the burden of proof. ...

To be a citizen of a State within the meaning of section 1332, a natural person must be both a citizen of the United States... and a domiciliary of that State. For diversity purposes, citizenship means domicile; mere residence in the State is not sufficient.

A person's domicile is the place of "his true, fixed, and permanent home and principal establishment, and to which he has the intention of returning whenever he is absent therefrom..." *Stine v. Moore*, 5 Cir., 1954, 213 F.2d 446, 448. A change of domicile may be effected only by a combination of two elements: (a) taking up residence in a different domicile with (b) the intention to remain there.

It is clear that at the time of her marriage, Mrs. Mas was a domiciliary of the State of Mississippi. While it is generally the case that the domicile of the wife—and, consequently, her State citizenship for purposes of diversity jurisdiction—is deemed to be that of her husband, we find no precedent for extending this concept to the situation here, in which the husband is a citizen of a foreign state but resides in the United States. Indeed, such a fiction would work absurd results on the facts before us. If Mr. Mas were considered a domiciliary of France—as he would be since he had lived in Louisiana as a student-teaching assistant prior to filing this suit—then Mrs. Mas would also be deemed a domiciliary, and thus, fictionally at least, a citizen of France. She would not be a citizen of any State and could not sue in a federal court on that basis; nor could she invoke the alienage jurisdiction to bring her claim in federal court, since she is not an alien. On the other hand, if Mrs. Mas's domicile were Louisiana, she would become a Louisiana citizen for diversity purposes and could not bring suit with her husband against appellant, also a Louisiana citizen, on the basis of diversity jurisdiction. These are curious results under a rule arising from the theoretical identity of person and interest of the married couple.

An American woman is not deemed to have lost her United States citizenship solely by reason of her marriage to an alien. 8 U.S.C. § 1489. Similarly, we conclude that for diversity purposes a woman does not have her domicile or State citizenship changed solely by reason of her marriage to an alien.

Mrs. Mas's Mississippi domicile was disturbed neither by her year in Louisiana prior to her marriage nor as a result of the time she and her husband spent at LSU after their marriage, since for both periods she was a graduate assistant at LSU. Though she testified that after her marriage she had no intention of returning to her parents' home in Mississippi, Mrs. Mas did not effect a change of domicile

since she and Mr. Mas were in Louisiana only as students and lacked the requisite intention to remain there. Until she acquires a new domicile, she remains a domiciliary, and thus a citizen, of Mississippi.<sup>2</sup>

Appellant also contends that Mr. Mas's claim should have been dismissed for failure to establish the requisite jurisdictional amount for diversity cases of more than \$10,000. In their complaint Mr. and Mrs. Mas alleged that they had each been damaged in the amount of \$100,000. As we have noted, Mr. Mas ultimately recovered \$5,000.

It is well settled that the amount in controversy is determined by the amount claimed by the plaintiff in good faith. Federal jurisdiction is not lost because a judgment of less than the jurisdictional amount is awarded. That Mr. Mas recovered only \$5,000 is, therefore, not compelling. As the Supreme Court stated in *St. Paul Mercury Indemnity Co. v. Red-Cab Co.*, 303 U.S. 283, 288-290:

[T]he sum claimed by the plaintiff controls if the claim is apparently made in good faith.

It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal. The inability of the plaintiff to recover an amount adequate to give the court jurisdiction does not show his bad faith or oust the jurisdiction....

His good faith in choosing the federal forum is open to challenge not only by resort to the face of his complaint, but by the facts disclosed at trial, and if from either source it is clear that his claim never could have amounted to the sum necessary to give jurisdiction there is no injustice in dismissing the suit.

Having heard the evidence presented at the trial, the district court concluded that the appellees properly met the requirements of section 1332 with respect to jurisdictional amount. Upon examination of the record in this case, we are also satisfied that the requisite amount was in controversy.

Thus the power of the federal district court to entertain the claims of appellees in this case stands on two separate legs of diversity jurisdiction: a claim by an alien against a State citizen; and an action between citizens of different States. We also note, however, the propriety of having the federal district court entertain a spouse's action against a defendant, where the district court already has jurisdiction over a claim, arising from the same transaction, by the other spouse against the same defendant. In the case before us, such a result is particularly desirable. The claims of Mr. and Mrs. Mas arise from the same operative facts, and there was almost complete interdependence between their claims with respect to the proof required and the issues raised at trial. Thus, since the district court had jurisdiction of Mr. Mas's action, sound judicial administration militates strongly in favor of federal jurisdiction of Mrs. Mas's claim.

Affirmed.

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2. The original complaint in this case was filed within several days of Mr. and Mrs. Mas's realization that they had been watched through the mirrors, quite some time before they moved to Park Ridge, Illinois. Because the district court's jurisdiction is not affected by actions of the parties subsequent to the commencement of the suit, the testimony concerning Mr. and Mrs. Mas's moves after that time is not determinative of the issue of diverse citizenship, though it is of interest insofar as it supports their lack of intent to remain permanently in Louisiana.

## Notes and Questions: The Complete Diversity Requirement

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1. The "complete diversity" rule. As *Mas* indicates, the diversity statute has been interpreted to require *complete diversity* between all plaintiffs and all defendants. *Strawbridge v. Curtiss*, 7 U.S. 267 (1806). To be a proper diversity case, no plaintiff can be a citizen of the same state as any defendant. The first example before the *Mas* case, between a New Hampshire plaintiff and two Massachusetts defendants, satisfies the requirement. (It would also satisfy the requirement if there were twenty-five, or one hundred, Massachusetts defendants.) But the second case, in which Corey sues a Massachusetts citizen and a New Hampshire citizen, would not be proper because there is a New Hampshire citizen on both sides of the case. There is *minimal diversity* in that case—that is, *someone* on the defendants' side is diverse from the plaintiff—but not the complete diversity that *Strawbridge* requires.

A good way to think about the complete diversity requirement is to imagine that each plaintiff had sued each defendant in a separate action. If they had, would all the cases be proper diversity cases? If so, then there is diversity jurisdiction if they all join in one action. But if the plaintiff could not have sued one of the defendants in federal court under diversity, she cannot add that defendant to the case simply because the other defendants are diverse.

Although the complete diversity rule has been criticized, it makes a certain amount of sense. After all, a New Hampshire plaintiff could not sue a New Hampshire defendant in federal court on the basis of diversity, so why should she be able to bootstrap the case into federal court just because she also sues someone from Massachusetts? At any rate, complete diversity remains the current interpretation of § 1332(a).

2. The "alienage jurisdiction." In *Mas*, Mr. Mas was a citizen of France, suing an American citizen. The Framers authorized federal courts to hear such cases. See Article III, Section 2 (allowing federal jurisdiction over cases "between a State, or the Citizens thereof, and foreign States, Citizens or Subjects"). And Congress has authorized such jurisdiction in the diversity statute:

28 U.S.C. § 1332. (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—...

(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....

Under § 1332(a)(2), Mr. Mas could sue Perry in federal court, if his claim meets the amount-in-controversy requirement and he is not a permanent resident domiciled in Louisiana. The question, however, was whether his wife could join with

him as a coplaintiff. If she was a citizen of Louisiana, there would not be complete diversity, since she and the defendant would be from the same state. If she was a citizen of Mississippi, the case would fall under § 1332(a)(3); it would be a case between citizens of different states with a citizen of a foreign state (Mr. Mas) as an additional party.

**Q** 3. State citizens and national citizens. Suppose that Mr. Mas was domiciled in Louisiana, that is, he was living there and planning to do so indefinitely. Could he sue Perry in federal court based on diversity?

Maybe. If Mr. Mas were admitted to the United States for permanent residence and domiciled in Louisiana, the exception in § 1332(a)(2) would bar him from suing Perry under the diversity jurisdiction. The logic for the exception is that Mas would effectively be a local citizen and not at risk of prejudice. If he were not admitted for permanent residence, he could sue Perry in federal court based on diversity. It would be a case between a citizen of a state and a citizen of a foreign state.

The exception in 28 U.S.C. § 1332(a)(2) for foreign citizens admitted to the United States for permanent residence was not in the statute at the time that *Mas* was decided. Even if it had been, there is no suggestion that Mr. Mas had been admitted for permanent residence, so he was treated as a foreign citizen under § 1332(a)(2).

4. United States citizens who are not state citizens. Consider the following question, which involves both foreign citizens and U.S. citizens.

Assume that Mr. and Mrs. Mas were both domiciled in Louisiana while in school, but after finishing their degrees they move to France, planning to live there indefinitely. After arriving in France, they bring suit on a state law claim against Perry in federal court in Louisiana.

- A. The court lacks jurisdiction, because Mrs. Mas is not a citizen of a state or a foreign citizen.
- B. The court lacks jurisdiction, because Mrs. Mas remains a citizen of Louisiana.
- C. The court has jurisdiction, since neither Mr. Mas nor Mrs. Mas is domiciled in Louisiana.
- D. The court has jurisdiction, because Mr. and Mrs. Mas have become foreign citizens. Thus, the case is between a state citizen, Mr. Perry, and citizens of a foreign state.

Let's take these choices in reverse order. **D** is wrong, because Mrs. Mas does not become a citizen of France just by moving there. She is still a U.S. citizen, unless she renounces that citizenship. So it is not a case of a state citizen (Perry) against two French citizens.

**C** fails as well. To invoke diversity, it is not enough that the Mases are not from Louisiana. The case must fit into a category of jurisdiction in Article III, Section 2. Here, Mrs. Mas is not a citizen of any state, because she is not domiciled in any state (even though she is a U.S. citizen). Mr. Mas, as a foreign citizen, could

sue Perry in federal court, but Mrs. Mas cannot join with him because she does not satisfy diversity jurisdiction. Nor is she a citizen of France, since she is still a U.S. citizen.

B is wrong, because Mrs. Mas does not remain a citizen of Louisiana. To be a citizen of Louisiana, she must be a U.S. citizen domiciled in Louisiana. She remains a U.S. citizen after moving to France, but is now domiciled in France, since she is living there with no definite intent to leave.

So A is right. Once she moves to France, Mrs. Mas loses her Louisiana citizenship. She remains a U.S. citizen, but she is not a citizen of any state since she is domiciled in France. See *Twentieth Century-Fox Film Corp. v. Taylor*, 239 F. Supp. 913 (S.D.N.Y. 1965) (no diversity jurisdiction in suit against Elizabeth Taylor, a U.S. citizen domiciled in England when suit was commenced, since she was not a state citizen).

**Q** 5. A follow-up question. Where could the Mases sue Perry in the last example?

**A** They could sue him in state court in Louisiana. The subject matter jurisdiction of the state courts in every state is quite broad and would include tort claims such as the Mases' claims against Perry. They could not sue in federal court, for lack of subject matter jurisdiction. They probably could not sue him in France, since he would not be subject to personal jurisdiction there for the Mases' claims.

6. Did the *Mas* court get it right? In *Mas*, the court concluded that Mrs. Mas had not acquired domicile in Louisiana, since she and her husband "were in Louisiana only as students and lacked the requisite intention to remain there." 489 F.2d at 1400. Yet, as the *Gordon* case indicates, a student can acquire domicile in the state where she studies.

In the 1970s, jobs for students finishing graduate school were tough to come by. Let's hypothesize that Mr. and Mrs. Mas, when they sued Perry, would have gratefully accepted academic positions anywhere they could get one (or two). On that assumption, it would seem that their intent was open-ended; they would probably leave Louisiana (since most potential jobs would be in other states) but might not (since presumably some jobs would be there).

On this assumption, the court's conclusion that Mrs. Mas did not acquire domicile in Louisiana seems dubious. The court suggests that Mr. and Mrs. Mas lacked "intent to remain permanently in Louisiana." 489 F.2d at 1400 n.2. Compare *Gordon v. Steele*, which notes the difference between "indefinite" and "permanent" intent, suggesting that a "permanence" test demands too much. If the Mases were willing to stay in Louisiana, they probably were not sure they were leaving at the end of their studies and arguably were Louisiana domiciliaries.

**Q** 7. The consequences of finding that subject matter jurisdiction is lacking. The opinion in *Mas* was issued by the Fifth Circuit Court of Appeals, responding to defendant Perry's appeal claiming that the federal district court that tried the case had lacked subject matter jurisdiction over it. If the court of appeals had agreed with Perry's argument that the trial court lacked jurisdiction, what would it have ordered?

**A** There are few truly ineluctable rules in law. One that is close, however, is that a court cannot decide a case if it lacks subject matter jurisdiction. If the court

of appeals had concluded that the trial court lacked subject matter jurisdiction over the Mases' case, it would have had to order it dismissed from federal court. As the Seventh Circuit stated in dismissing a case for lack of diversity:

After eight years in federal court and consideration by four federal judges... this case comes before us on appeal. This substantial consumption of federal resources makes it all the more regrettable that we must now order the dismissal of the case for lack of subject matter jurisdiction rendering everything that has occurred in those eight years a nullity.

*Hart v. Terminex International*, 336 F.3d 541, 541-42 (7th Cir. 2003). In *Mas*, the entire course of the litigation, including the completed trial, would have been wiped out if the court of appeals concluded that Mrs. Mas was domiciled in Louisiana, at least as to her claim against Perry. It seems possible that this consequence, in a factually close case, may have influenced the court's analysis.

In the last paragraph of the *Mas* opinion, the court notes that "sound judicial administration" favors hearing Mrs. Mas's claim with Mr. Mas's. This bit of dicta should be approached with caution. In many situations efficiency would be served by hearing a claim along with others but the court will not be able to do so for lack of jurisdiction. Judicial efficiency cannot substitute for a recognized basis of subject matter jurisdiction.

8. The domestic relations exception to diversity jurisdiction. The Supreme Court has long held that the diversity statute does not authorize jurisdiction over domestic relations cases. See *Akenbrandt v. Richards*, 504 U.S. 689 (1992) (divorce cases); *Markham v. Allen*, 326 U.S. 490 (1946) (probate of an estate). The Court has not held that such cases fall outside the grant of diversity jurisdiction in Article III, Section 2. Rather, *Akenbrandt* reasoned that the *diversity statute* has long been read to exclude domestic relations matters. This interpretation avoids interference with the administration of state probate or family courts, which handle most family law matters and have specialized resources for doing so. An unstated consideration may also lie behind this exception: "federal judges understandably lack enthusiasm for burdensome, fact-bound, and often protracted domestic relations disputes." *Shreve, Raven-Hansen & Geyh* § 5.04[3] (footnote omitted).

While the *Akenbrandt* line of cases bars direct interference with state court procedure in divorce and administration of estates, nice questions arise concerning the reach of this exception to diversity jurisdiction. Not all claims among family members are barred simply because they arise out of the marital relationship. See, e.g., *Marshall v. Marshall*, 547 U.S. 293 (2006) (action claiming that son of decedent tortiously interfered with creation of trust for decedent's wife not within the "probate exception").



## IV. State Citizenship of Corporations and Other Entities

Lawyers representing corporations have generally favored litigating in the federal courts, especially in cases between local citizens and an out-of-state corporation. So