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2.4 other jurisdictional statutes

Updated 2013 by [Jeffrey S. Gutman](#)

Two less commonly used jurisdictional statutes in legal services practice are those involving diversity jurisdiction and with declaratory judgments. They are discussed briefly below.

2.4.A. Diversity Jurisdiction

Article III, Section 2, Clause 1 of the Constitution provides that federal judicial power extends to cases between citizens of different states and between a citizen of a state and a citizen of a foreign country. The diversity statute, [28 U.S.C. § 1332\(a\)\(1\)](#), grants original jurisdiction to U.S. district courts over cases between citizens of different states when the matter in controversy exceeds \$75,000.^{1/} Federal jurisdiction based on diversity of citizenship requires “complete diversity.” All plaintiffs must be citizens of states different from the state of citizenship of any defendant.^{2/} If there is any overlap of state citizenship between any plaintiff and any defendant, diversity is defeated and the case cannot be brought in, or removed to, federal court unless there is an independent basis for federal jurisdiction.^{3/} Diversity must exist at the time of filing, not when the claim arose^{4/} unless the diversity-destroying party is dismissed prior to judgment.^{5/}

Citizenship for purposes of diversity jurisdiction requires citizenship of the United States and a particular state. State citizenship turns on domicile—the concurrent establishment of state residence and subjective intent to remain there indefinitely.^{6/} The District of Columbia, the territories (e.g., U.S. Virgin Islands, Guam, American Samoa), and the Commonwealth of Puerto Rico are considered states for purposes of diversity.^{7/} Aliens admitted for permanent residence are citizens of the state in which they are domiciled.^{8/} A corporation typically has dual state citizenship—the state in which the corporation is incorporated and the state in which it has its principal place of business.^{9/}

The policy of diversity jurisdiction, to protect out-of-state parties against possible home-state bias, is manifested in the provisions governing removal. A case may not be removed to federal court on the basis of diversity if any defendant is a citizen of the forum state.^{10/}

Federal courts have historically applied a domestic relations exception to limit their jurisdiction, refusing to entertain cases otherwise within their diversity jurisdiction.^{11/} In *Ankenbrandt v. Richards*, the Supreme Court traced to *Barber v. Barber* the origin of the doctrine.^{12/} *Barber* held that federal courts had no jurisdiction over suits for divorce or alimony.^{13/} The *Ankenbrandt* Court dealt with a tort dispute brought in federal court by a mother against her former husband and his companion, alleging physical and sexual abuse of the couple's children. The Court found federal jurisdiction of the action since the domestic relations exception specifically served only to “divest . . . the federal courts of power to issue divorce, alimony, and child custody decrees.”^{14/}

A similar “probate exception” has been read into the diversity statute. The Supreme Court analyzed this exception and generally limited it in *Marshall v. Marshall*.^{15/} There, the Court held that “the probate exception reserves to state

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probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.”/16/

The Class Action Fairness Act of 2005/17/ imposed significant changes to [28 U.S.C. § 1332](#), applicable to civil actions filed on or after February 18, 2005. The changes define the jurisdiction of the federal courts to hear class actions which do not raise federal questions. In brief, the federal courts have original jurisdiction to entertain class actions in which the amount in controversy exceeds \$5 million and in which any member of the plaintiff class is diverse from any defendant./18/ Considering the factors set forth in [28 U.S.C. § 1332](#)(d)(3)(A)-(F), the court may decline jurisdiction over such cases in which more than one-third, but less than two-thirds, of the members of the plaintiff classes and the primary defendants are citizens of the forum state. The federal court must decline jurisdiction over two categories of class actions: 1) when more than two-thirds of the members of the plaintiff classes are citizens of the forum state, at least one important defendant is a citizen of the forum state, the principal injuries were incurred in the forum state, and either no similar class actions had been filed during the prior three year period or 2) when two-thirds or more of the plaintiffs and the primary defendants are citizens of the forum state./19/

2.4.B. Declaratory Judgment Act

The Declaratory Judgment Act is not, strictly speaking, a jurisdictional statute./20/ Under the Act, federal courts have the power in cases of “actual controversy” to “declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”/21/ In suits against federal agencies or officials for review of adverse agency action, plaintiffs often seek judgments declaring the action illegal as well as (occasionally in lieu of) injunctive relief. The Act does not confer or expand federal jurisdiction./22/ Therefore, the Act cannot be used defensively to raise federal issues that would not appear on the face of a well-pleaded complaint./23/ Rather, the Act creates an additional remedy that is available to a district court in a case in which (1) the case or controversy requirement of Article III of the Constitution is met and (2) the court independently has subject-matter jurisdiction because of either the presence of a federal question or diversity of citizenship./24/

1. [28 U.S.C. § 1332\(a\)\(1\)](#). Section 101 of the Federal Courts Jurisdiction and the Venue Clarification Act of 2011, [Pub. L. No. 112-63](#), 125 Stat. 758 (2011), amended [28 U.S.C. § 1332\(a\)\(2\)](#) which now more clearly eliminates federal jurisdiction in cases between a citizen of a state and a citizen of a foreign state when the foreign citizen is a lawful permanent resident and domiciled in the same states as the same citizen. As before, diversity jurisdiction also exists when the parties include “citizens of different States and . . . citizens or subjects of a foreign state are additional parties,” *id.* [§ 1332\(a\)\(3\)](#), and “a foreign state as plaintiff and citizens of a State or different States,” *id.* [§ 1332\(a\)\(4\)](#).

2. See *Strawbridge v. Curtis*, 7 U.S. (3 Cranch) 267 (1806); see also *Exxon Mobil v. Allapattah Services*, 545 U.S. 546, 553 (2005).

3. See *Ankenbrandt v. Richards*, [504 U.S. 689](#) (1992). Removal jurisdiction is discussed in this Chapter in [Section 2.7](#).

4. See *Freeport-McMoran v. KN Energy*, 498 U.S. 426, 428 (1991) (per curiam).

5. See *Grupo Dataflux v. Atlas Global Group*, [541 U.S. 567](#), 574 (2004) (explaining *Caterpillar v. Lewis*, [519 U.S. 61](#) (1996)).

6. See *Garcia Perez v. Santaella*, [364 F.3d 348](#), 350 (1st Cir. 2004).

7. [28 U.S.C. § 1332\(e\)](#); see *National Mutual Insurance Co. v. Tidewater Transfer Co.*, [337 U.S. 582](#), 603(1949).

8. [28 U.S.C. § 1332\(a\)](#).

9. [28 U.S.C. § 1332\(c\)\(1\)](#). In *Hertz Corp. v. Friend*, [130 S. Ct. 1181](#) (2010), the Supreme Court resolved decades of confusion over a corporation's principal place of business when a firm's operations are directed from one state, but significant corporate activities occur elsewhere. Essentially adopting what has been known as the “nerve center” test, the Court held that the principal place of business or ordinarily where the company maintains its headquarters so long as the

headquarters is the location where corporate officers "direct, control, and coordinate the corporation's activities." *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1186, 1192 (2010). Section 102 of the Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, 125 Stat. 758, amended 28 U.S.C. § 1332(c)(1) by clarifying that any corporation, foreign or domestic, is a citizen of its place of incorporation and principal place of business wherever those may be.

10. See 28 U.S.C. § 1441(b); *Lincoln Property Co. v. Roche*, 546 U.S. 81, 83 (2005).
11. Most courts have not applied this exception in cases resting on federal question jurisdiction.
12. *Ankenbrandt*, 504 U.S. at 693.
13. *Barber v. Barber*, 62 U.S. (How.) 582, 584 (1858); see *Ankenbrandt*, 504 U.S. at 693.
14. *Ankenbrandt*, 504 U.S. at 703–04; see also *Dunn v. Cometa*, 238 F.3d 38, 41 (1st Cir. 2001) (tort claims regarding management of former spouse not barred by domestic relations exception); *Friedlander v. Friedlander*, 149 F.3d 739, 740 (7th Cir. 1998) (tort claims not barred by exception). A similar exception excludes probate matters from federal jurisdiction. Federal courts may not probate a will or administer an estate but may entertain claims against administrators and executors as long as they do not interfere with probate proceedings. See generally 13E Charles A. Wright et al., *Federal Practice and Procedure* § 3609 (5th ed. 2009).
15. *Marshall v. Marshall*, 547 U.S. 293 (2006).
16. *Id.* at 311.
17. Class Action Fairness Act of 2005, Pub. L. No. 109-2 (codified in parts of 28 U.S.C. §§ 1332, 1335, 1453, 1711-15).
18. 28 U.S.C. § 1332(d)(2)(A). This does not apply to class actions in which the "primary defendants are States, State officials, or other government entities against whom the district court may be foreclosed from ordering relief," or in which there are less than 100 class members. 28 U.S.C. § 1332(d)(5).
19. *Id.* § 1332(d)(4).
20. Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.
21. 28 U.S.C. § 2201(a). See *Medimmune v. Genentech*, 549 U.S. 118, 126 (2007) (plaintiff did not have to terminate licensing agreement before seeking a declaratory judgment that underlying patent was invalid).
22. See *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950); cf. *Franchise Tax Board*, 463 U.S. 1, 18-19 (1983) (state declaratory judgment acts do not expand removal jurisdiction).
23. See *Franchise Tax Board*, 463 U.S. at 15; *Skelly Oil Co.*, 339 U.S. at 671–72.
24. See *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 240(1937).

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◀ 2.3 Federal Question Jurisdiction

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