

Outlining

October 16, 2007

Types of Outlines

- Course outline
 - Puzzle pieces, one piece at a time
- Problem-solving outline
 - How the pieces fit together

Course Outline

Just what it sounds like: your course notes

Linear: outline follows course

Civil Procedure starts with jurisdiction

Contracts starts with remedies

Case oriented

Study of law = case law method

Not analytical (i.e., how to solve problems)

Historical

Policy concerns, underlying thematic concepts

Course Outline: Subject Matter Jurisdiction (Federal Question Jurisdiction)

- **Subject Matter Jurisdiction: Federal Questions**
- 28 U.S.C. § 1331: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.
- **Topic Notes:**
- **subject matter jurisdiction:** the jurisdiction of a court over the subject, type, or cause of action of a case that allows the court to issue a binding judgment (Example: housing court lacks *subject matter jurisdiction* to adjudicate fraudulent conveyance actions)
- Note: Diversity jurisdiction, federal question jurisdiction, and jurisdiction over admiralty and bankruptcy cases are examples of the federal courts' subject matter jurisdiction. Subject matter jurisdiction is generally established by statute.
- **Key Case(s): *Franchise Tax Bd. of CA v. Construction Laborers Vac. Trust (1983)***
- **Cause of action:** The cause of action for declaratory judgment for back taxes under the theory that the back taxes came from workers who had funds in a trust, they were subject to SMJ within the state of CA via statute. CLVT alleges their back taxes are protected by the federal Employment Retirement Income Security Act of 1974, which preempted the State's power to attach funds held in trust for beneficiaries under this vacation plan.
- **Facts:** CLVT was created by a collective bargaining agreement between employer associations and local unions in So. CA as a mechanism for funding annual paid vacations for the union members. Three of these members did not pay back personal income taxes, so the state went after the fund.
- **Issue(s):** Under federal rules of civil procedure, does the Employment Retirement Income Security Act of 1974 permits state tax authorities to collect unpaid state income taxes by levying on funds held in trust for taxpayers under an ERISA-covered vacation benefit plan?
- **Court's Rationale/Reasoning:** The Court cites reasons which are most historic than logical in its holding. Primarily of note is the "well-pleaded complaint rule," which states that a DF may not remove a case to federal court unless the cause of action establishes that the case "arises under" federal law. Further, the court deems "jurisdiction" to mean the kinds of issues which give right of entrance to federal courts (Skelly Oil case). The Court determines that CLVT cannot bring its first cause into federal court for the reason it simply is not arguing a cause of action which is a federal question. If CLVT were bringing suit for declaratory judgment to enforce its rights, it could survive as a federal question under the premise already stated. However, here the argument is simply to remove the case from state court on a federal question which has nothing to do (ERISA v. CA back taxes) with a state action. ERISA suits are limited to parties whom Congress was necessary to further the statute's purposes. This claim for declaratory judgment is removed from the spirit of the gist of the Act. CLVT says their action arises under ERISA policy, however CA Tax Board is neither a participant, beneficiary or fiduciary of a plan covered by ERISA who may seek relief.
- **Rule:** 28 U.S.C. § 1331: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. DF may not remove a case to fed. ct. unless cause of action establishes that the case "arises under" federal law.
- **Holding:** No. The lower federal courts had no jurisdiction to decide the declaratory judgment issue before the Court, or when the case is removed, when a federal question is presented by a complaint for a state declaratory judgment. A suit by state tax authorities both to enforce its levies against funds held in trust pursuant to an ERISA-covered employee benefit plan, and to declare the validity of the levies notwithstanding ERISA, is neither a creature of ERISA itself nor a suit of which the federal courts will take jurisdiction b/c it turns on a question of federal law.
- **Notes after *Franchise Tax Bd.*:**
- In *Cort v. Ash (1975)*, the Court found 4 factors to consider whether the right of action should be implied from a federal statute: (1) whether the PL is a member of the protected class; (2) whether there is evidence of Congressional intention to create a remedy either explicitly or impliedly; (3) whether implying a remedy would be in accord with the underlying objectives of the statutory scheme; (4) whether the cause of action is traditionally regulated to state law so that implication of a federal remedy would infringe on an area that is ordinarily left to State regulation.

Problem-Solving Outline

A way of translating a course outline into a systematic approach to solving legal problems

Does not follow linear course outline

Follows analytical process

How to spot issues

How to analyze issues:

rule statement/application

what facts are legally significant

Geared to fact-pattern problems

How do I solve a contracts problem?

What is the first step? Second step?

What questions do I ask?

Incorporates key course outline notes

Creating a Problem-Solving Outline

E.g.: Subject matter jurisdiction

Course outline: Relevant cases/rules

Federal question jurisdiction

Franchise Tax Bd. (1983): facts/reasoning/holding/etc.
case = what legal rule?

Problem-solving outline: Translate rules into analytical steps

Ask relevant analytical questions.

E.g.: Is there federal question jurisdiction?

Ask questions that force you to state the rule

& minority rule

& any exceptions to the rule.

Asking Questions

Be sure to understand the questions you ask.

Ask same question multiple ways:

Is there federal question jurisdiction?

Is there a claim arising under federal law?

Ask questions that drive the legal analysis.

Is there a Federal Statute? Treaty? Const?

Does federal law create the cause of action?

or

Does relief depend on question of federal law?

Incorporate Course Outline

Is there a federal question?

Is there a federal statute? Treaty? Const?

Is there a claim arising under law?

Does federal law create the cause of action?

e.g.:

factual examples

key cases: facts/reasoning/holding/etc.

policy concerns

Does relief depend on question of federal law?

e.g.:

factual examples

key cases: facts/reasoning/holding/etc.

policy concerns

Let the Outline Evolve

- Is there federal question jurisdiction?
- Is there subject matter jurisdiction?

Is there complete diversity?

Is any party on the left side of the v. . . ?

Is the amount in controversy > \$75,000?

Is claim worth \$75,000 to plaintiff?

Can single plaintiff aggregate claims?

Do plaintiffs have undivided interest?

Let the Outline Evolve

- Is there a claim or party subject to supplemental jurisdiction?
- Is venue proper?
- Is removal proper?

Put It All Together

- Is there federal question jurisdiction?
- Is there subject matter jurisdiction?
- Is there supplemental jurisdiction?
- Is venue proper?
- Is removal proper?

What is the big question?:

Does the court have jurisdiction?

Am I in the right court?

Am I in the Right Court?

- **Is there federal question jurisdiction?**
 - Is there a Federal Statute? Treaty? Const?**
 - Is there a claim arising under law?**
 - Does federal law create the cause of action?**
 - e.g.:
 - factual examples**
 - key case**
 - policy concerns**
 - Does relief depend on question of federal law?**
 - e.g.:
 - factual examples**
 - key cases**
 - policy concerns**
- **Is subject matter jurisdiction?**
 - Is there complete diversity?**
 - Is any party on the left side of the v. . . ?**
 - Is the amount in controversy > \$75,000?**
 - Is claim worth \$75,000 to plaintiff?**
 - Can single plaintiff aggregate claims?**
 - Do two plaintiffs have undivided interest?**
- **Is there supplemental jurisdiction?**
- **Is venue proper?**
- **Is removal proper?**

One More Time: Contracts

- Is there an offer?

Is there an objective manifestation to be bound?

E.g:

factual examples
cases

Outlining Contracts

- Is there an acceptance?
Is there an objective manifestation to be bound?
E.g:
 - factual examples
 - cases
 - policy concerns
- Is there consideration?
Is there a bargained-for exchange?
Did each party . . . ?
E.g:
 - factual examples
 - cases
- Is there a substitute for consideration?
E.g:
 - factual examples
 - cases

Outlining Contracts

What is the big question?:

Is there a contract? Is there a legally enforceable agreement?

- Is there an offer?
 - Is there an objective manifestation to be bound?
 - E.g:
 - factual examples
 - cases
- Is there an acceptance?
 - Is there an objective manifestation to be bound?
 - E.g:
 - factual examples
 - cases
 - policy concerns
- Is there consideration?
 - Is there a bargained-for exchange?
 - Did each party . . . ?
 - E.g:
 - factual examples
 - cases
 - policy concerns
- Is there a substitute for consideration?
 - E.g:
 - factual examples
 - cases
 - policy concerns

Now, Put All the Big Questions Together

E.g.: Contracts

Do I have a legally enforceable contract?

Are there any defenses to contract formation?

What are the terms of the contract?

Rights conferred/duties imposed on 3rd parties?

Have performance duties matured (conditions)?

Have duties been performed? Excused?

If duties matured and not performed/excused,
what remedies?

Final Notes

Know how your professor tests.

Some courses outline better than others.

Unit-by-unit outlining: Con Law I & Property

Complete outline on day course ends.

Use your outline to study for exam.

Practice exams using only your outline.