**Federal Jurisdiction**

Welcome to this podcast on Federal Jurisdiction brought to you by CALI. I am Professor Scott J. Burnham.

The topic of this podcast is federal jurisdiction in contracts cases, specifically 1) how the case got to federal court, and 2) what law the federal court will look to in deciding the case.

When you read a contracts case you will sometimes see that it has been decided by a federal court. You know that when the citation is U.S., it is a U.S. Supreme Court case, if it is F. (or F.2d or F.3d) it is a U.S. Court of Appeals case, and if it is F. Supp. (or F. Supp. 2d or F. Supp. 3d) it is a Federal District Court case. When you see this, you should always ask two questions: First, how did the federal court get jurisdiction? Second, what jurisdiction’s law applies to this contract?

The first question – how did the federal court get jurisdiction -- is a civil procedure question, but it often helps you to analyze the contracts issues. There are a number of possible answers. One rare possibility came up in the case of *Williams v. Walker Thomas Furniture Co.*, which was decided by the Court of Appeals for the District of Columbia Circuit. Prior to 1970, the District of Columbia did not have its own appeals courts but used the Federal Appeals Courts. So in that case the federal court was acting on behalf of the District. You might also notice that the case refers to the U.C.C. being passed by Congress. You might find that odd, since you know that the U.C.C. is state law and not federal law. The reason is that in those days the District did not have its own legislature and Congress enacted the law for the District.

Another possibility that does not come up very often is that the United States is a party, and therefore the federal courts have jurisdiction. Or it could be a case where there's a federal question. This is unlikely to come up in contracts, but it does sometimes happen. One example is *United States Naval Institute v. Charter Communications, Inc.*, a case involving Tom Clancy’s book, The Hunt for Red October. The case started off as a copyright question, and copyright is within the exclusive jurisdiction of the federal courts. But the copyright claim was dismissed and the case was decided just on the basis of contract law.

Another example of an area of exclusively federal jurisdiction is admiralty law, where the events took place on the high seas. In admiralty law there have been some significant contracts issues decided by the U.S. Supreme Court. For example, *East River Steamship v. Transamerica Delaval* involved warranty law and *Carnival Cruise Lines v. Shute* involved the enforceability of a choice of forum clause. Even though those cases were decided by the United States Supreme Court, they are not binding on a state court that faces the same issue. That is because the precedent is only binding in admiralty law cases. It may be *persuasive* authority when a state decides the issue, but it's not *mandatory* authority.

In those cases, even though the case is in federal court, there is no general federal contract law, and if the law of a particular state is not involved, the court will apply general principles of contract law.

Most of the contracts cases come to federal court on diversity jurisdiction, where the parties are citizens of different states and the case is worth over a designated dollar amount. If you haven’t learned it already, you will learn in civil procedure that under the *Erie* doctrine since 1938 there is no federal contract law and so the federal court that has jurisdiction in a diversity case must apply state contract law. So that brings us to our second question -- Which state's law is going to apply? In order to make the determination of what law applies, we have to go to another area of law called conflicts of law. There we find the choice of law principles that govern that question. By the way, you can look forward to taking a law school course called Conflicts that explores issues such as this.

One conflicts of law rule is that the parties in general have freedom of contract to choose the law that is going to govern their contract. Make sure that you understand here that we are not talking about the forum in which the case is going to be heard, but rather the law that will be applied by the forum that's chosen under civil procedure rules. The parties have freedom to choose the applicable law, but it is not an unrestricted freedom. The parties have to choose a jurisdiction that has some reasonable connection with the transaction. Another limitation is that the law chosen cannot conflict with a fundamental policy of the jurisdiction that would have had jurisdiction if the parties had not made their own choice. But within those parameters, the parties are free to choose the law and many contracts will have a clause stating, “This contract shall be governed by the law of such and such jurisdiction.” So when you see that a contracts case is in federal court, look to see if the court refers to the parties’ choice of law clause or if the parties have agreed that a particular jurisdiction’s law will govern.

If there is not a choice of law clause, then the federal court has to decide which state’s law is going to apply to the transaction. Unfortunately, there are two rules on this. There is the old rule where the court will apply the law of the jurisdiction in which the last act took place that resulted in the formation of a contract. While that's a mouthful, it won't surprise you that the last act that results in the formation of a contract is generally acceptance, so look for where the acceptance took place. It might, for example, be where the second party signed the contract. Or there might be a term in the contract saying something like, “This contract is not effective until countersigned by the home office in Omaha, Nebraska.”

The more modern choice of law rule is the jurisdiction that has the most contacts with the transaction. So you look at factors like where the parties to the contract are located, where the goods are coming from if it is a sale of goods contract, where the contract is going to be performed, where real estate is located if it involves real estate, and so forth. The court will look at those things and choose the state that has the most significant contacts as the state whose law will be chosen.

After it determines which state law applies, the federal court is in effect saying, “We are going to stand in the shoes of the highest court of the state who's law would govern this contract and we're going to decide it on the basis of what we think that court would do.” To be clear on that, it's not saying – we're going to decide it on the basis of what that state court *should* do, but what it *would* do. There is a wonderful case in the Seventh Circuit Court of Appeals where Judge Posner tells us what he thinks is the best rule to apply. But then he says that unfortunately Indiana doesn't look at it this way and since this is a diversity case, I have to follow the stupid Indiana rule instead of doing what I think is best.

You may wonder, suppose there isn't any precedent in that state, then how can the federal court decide what the outcome would be if that state court decided the case? Most states have a procedure for what they call a certified question, where the federal court will send the question to the highest state court and literally ask them, “How would you decide this case?” But some states don't have the certification process and the federal court just has to go ahead and do what it thinks the state court would do. Of course, this decision is not binding on the state court, so if the issue came up in the state court, it is perfectly free to say, “You may have thought we would decide it this way, but you were wrong, and here is how we are going to decide it.”

Note that this discussion has important implications when you are doing research to find authority on a contract law issue. Let’s assume you were researching the law of Montana and you find a case on point decided by the Ninth Circuit, which includes Montana. You need to check which state’s law the Ninth Circuit looked to when it decided the case. If it was a matter of New Mexico law, that might not be very authoritative in Montana. But remember that even if a federal court decided it as a matter of Montana law, it is still only persuasive authority for a Montana court.

Let’s briefly review this podcast. At this point, when you see that a Contracts case has been decided by a federal court, you should be able to determine how that court got jurisdiction and what law that court will use in deciding the issue. You should also appreciate how to use this information when conducting legal research.

I hope you’ve enjoyed this podcast on Federal Jurisdiction.

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