

## Subject Matter Jurisdiction: Federal Question Jurisdiction

### Questions for Class Discussion

#### 1. Comparing the constitutional and statutory grants of federal question jurisdiction

U.S. Constitution: Article III, section 2	“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...”	<p><b>Art III, sec 2</b> interpreted to only require a <b>federal ingredient</b> somewhere in the case</p> <p>Example:</p> <div style="text-align: center;"> <p>P                      v.                      D</p> <p>(Texas)                      (Texas)</p> <p>—————→</p> <p>P’s state law claim</p> <p>←————</p> <p>D’s federal law counterclaim</p> </div>
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.”	<p>Two critical common law interpretations of §1331:</p> <ol style="list-style-type: none"> <li>1. Federal issue must be not <b>“wholly insubstantial and frivolous”</b> (<i>Bell v. Hood</i>)</li> <li>2. Federal issue must arise as part of the <b>plaintiff’s well-pleaded complaint</b> (<i>Mottley</i>)</li> </ol> <p>(both of these are discussed below)</p>

2. Comparing diversity jurisdiction and federal question jurisdiction

Diversity Jurisdiction	Federal Question Jurisdiction
is about <b>status of parties</b>	is about the <b>substantive nature of the plaintiff's claim</b> <b>That is, Congress has authorized the case to be in federal either</b> 1. by a grant of original jurisdiction to the federal court; or 2. by a grant of a private right of action
amount-in-controversy requirement	no amount-in-controversy requirement (though there once was one)
Constitutional grant of jurisdiction is not self-executing  (Note: Congress has statutorily endowed federal courts with diversity jurisdiction since 1789)	Constitutional grant of jurisdiction is not self-executing  (Note: With one brief exception [in 1801], Congress did not statutorily endow federal courts with general federal question jurisdiction until 1875)

3. “Wholly insubstantial and frivolous”

The P’s federal claim will support jurisdiction under §1331 unless the claim “clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous.” *Bell v. Hood*, 327 U.S. 678, 682-83 (1946).

- You might think of this as a kind of *prima facie* burden by the plaintiff who wants to be in federal court to make enough of a showing for a court to conclude the federal claim is not “wholly insubstantial and frivolous.”
- Very similar burden as to amount in controversy under 1332, except that we often frame the D’s equivalent burden as very high (remember: we are only going to dismiss a case brought in federal court that alleges the AIC is over \$75K if the D can show that “to a legal certainty” the P can’t recover more than \$75K).

Example: Plaintiff (Texas) alleges that Defendant (Texas) breached a contract that they had together. Plaintiff brought her action in federal court, asserting that she was entitled to recover under the Torture Victims Protection Act, a federal statute. Defendant moves to dismiss under Rules 12(b)(1) and 12(b)(6) on the ground that, even if everything Plaintiff alleges is true, the statute has nothing to do with breach of contract. Thus, Defendant argues, b/c P’s claim under the TVPA is “wholly insubstantial and frivolous,” it can’t support federal jurisdiction.

Example: Plaintiffs (Nigeria) sued Defendant Tex-a-Pharm (Texas) in connection with its sale of the drug Trovan. Plaintiff brought her action in federal court, asserting that she was entitled to recover under the Torture Victims Protection Act, a federal statute. Defendant moves to dismiss under Rules 12(b)(1) and 12(b)(6) on the ground that its actions did not violate the TVPA. The court denied the Defendant's motion to dismiss. After trial, the jury returned a verdict for Defendant. Even though D won, the TVPA claim was not "wholly insubstantial and frivolous."

4. Well-pleaded complaint rule – one of the two critical common law interpretations of §1331

Example:

P v. D  
(KY) (KY)

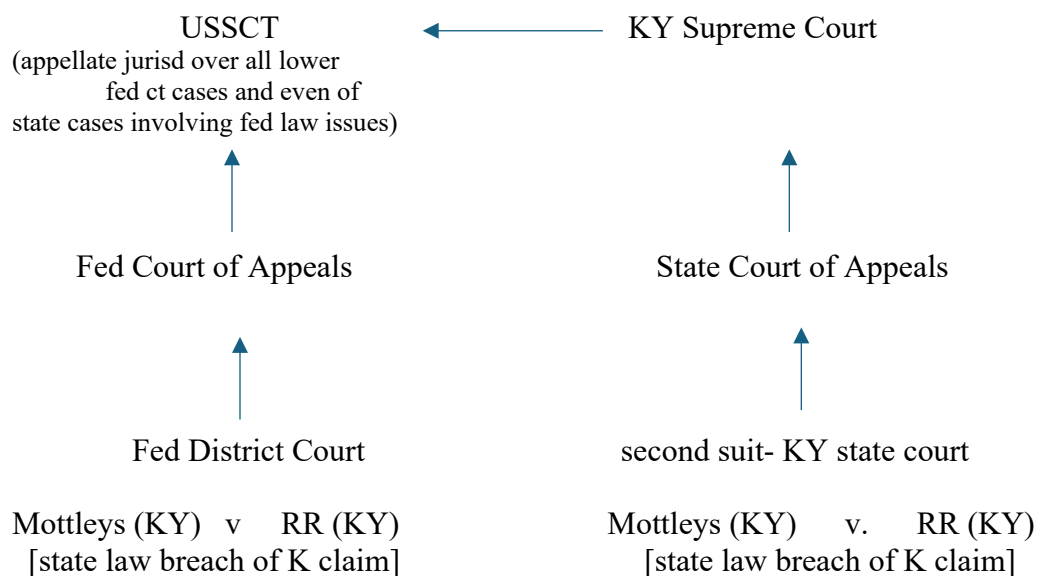


P's state law contract claim

Elements of a contract claim:

1. The parties entered a contract
2. The D breached the contract
3. D's breach was the cause in fact of P's damages
4. P suffered damages

### **A graph of the procedural history in *Mottley***



## 5. Substantial federal question doctrine – the other primary common law interpretation of §1331

- Rarely invoked successfully (but it is invoked with a fair bit of frequency)
- It usually arises in this same context as above: a P brings suit in state court alleging a state law claim; a D then removes the case to federal court and claims that the case comes within §1331 because the state claim actually raises a substantial federal question to meet the SFQ doctrine.

### Example:

P                      v.                      D  
  
(Texas)                      (Texas)



(state law claim)

#### Elements of *Grable's* quiet title claim:

1. Ownership (I am the rightful owner of the property)
2. Conflicting title claim (someone else thinks they are the owner, but they are wrong)
3. Relief (enter a declaratory judgment that I am the owner and, if someone else is on the land, an eviction order to kick them out).

So nothing in these steps obviously raises a federal law issue. Yet, in *Grable*, Court found that there was a federal issue to satisfy §1331 under the SFQ doctrine.

- **How square with WPCR?** We just got through saying that for a case to come within §1331, the federal issue must appear as part of the plaintiff's well-pleaded complaint. The substantial federal question doctrine is not an exception to the well-pleaded complaint rule since the idea behind SFQ doctrine is that the federal issue does arise as part of the plaintiff's *well-pleaded* complaint.
- **Holmes' Creation Test.** The vast, vast majority of the time, when the plaintiff asserts a claim arising under state law, it will not satisfy §1331 and when the plaintiff asserts a claim arising under federal law, it will satisfy §1331. This idea is embodied by the Holmes Creation Test (from Justice Oliver Wendell Holmes's opinion in the *American Well Works* case). In other words, under the Creation Test the starting presumption is that if the plaintiff sues under state law, no §1331 arising under jurisdiction exists; if sue in federal law (and so the federal issue appears as part of the plaintiff's well-pleaded complaint), §1331 met.
- **But the Creation Test is just a presumption:** in rare cases, it is still possible for §1331 to be satisfied even when the plaintiff to sues under state law. This is the substantial federal question doctrine (discussed at length in *Grable*).

## 6. Complete preemption doctrine – also a common law interpretation of §1331 (but quite infrequently seen)

Example:

P            v.        D  
(Texas)        (Texas)



P's state law claim



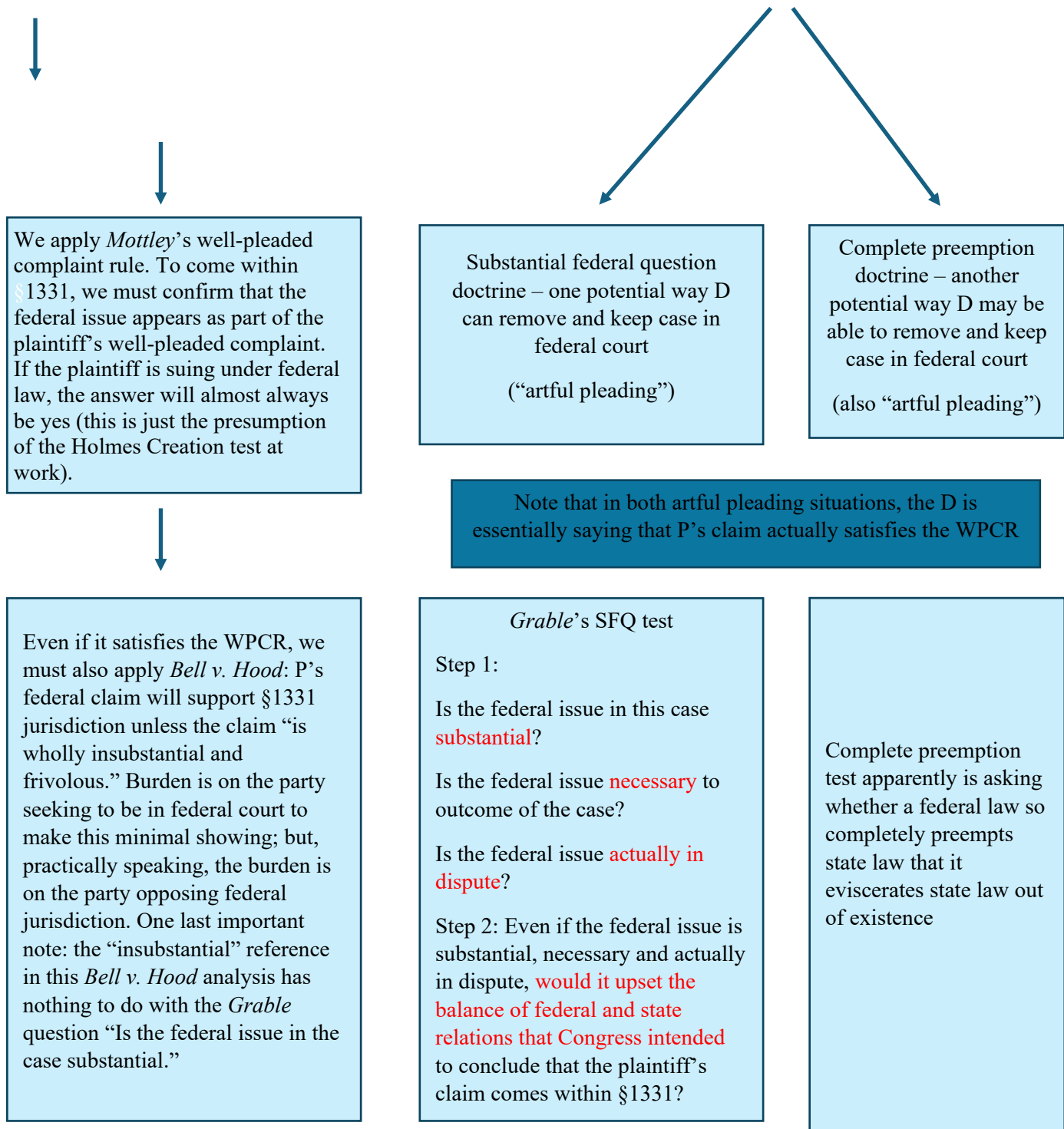
D's federal law defense of ordinary preemption

There is a special category of preemption known as "complete preemption"

**If the P initially sues in federal court and tries to come within 1331; or**

**If the P initial sues in state court but asserts a claim under federal law and the D removes the case to federal court**

**If the P initially sues in state court (and assuming there's no basis for original jurisdiction under 1332)**



### Analysis steps when dealing with §1331

**Step 1:** Analysis varies based on context in which claim is filed.

**Step 1A:** If the plaintiff initially brings suit in federal court and seeks to come within the grant of federal question jurisdiction in §1331 (or if the plaintiff initially brings suit in state court, asserting a federal claim for relief and the defendant removes the case to federal court under 1441/1331), then:

**Step 1A(i):** We apply *Mottley*'s well-pleaded complaint rule. To come within §1331, we must confirm that the federal issue appears as part of the plaintiff's well-pleaded complaint. If the plaintiff is suing under federal law, the answer will almost always be yes (this is just the presumption of the Holmes Creation test at work).

**Step 1A(ii):** Even if it satisfies the WPCR, we must also apply *Bell v. Hood*: P's federal claim will support §1331 jurisdiction unless the claim "is wholly insubstantial and frivolous." Burden is on the party seeking to be in federal court to make this minimal showing; but, practically speaking, the burden is on the party opposing federal jurisdiction. One last important note: the "insubstantial" reference in this *Bell v. Hood* analysis has nothing to do with the *Grable* question "Is the federal issue in the case substantial."

**Step 1B:** If plaintiff originally sues in state court, asserting a claim under state law, then we begin by applying the Holmes Creation test, which means that our starting presumption is that the case does not come within §1331. However, in rare instances it is still possible for §1331 to be satisfied. To figure out if this is one of those rare cases, we must go to Steps 2 and 3, which means considering the substantial federal question doctrine (Step 2) and the complete preemption doctrine (Step 3).

**Step 2:** If you have a claim that is brought under state law, it might still satisfy §1331 under SFQ doctrine

**Step 2A** (SFQ first step): When does a state law claim nevertheless come within §1331?

1. Is the federal issue in this case **substantial**? Substantial is best understood as meaning the federal issue is *important*. And not important to the parties; it will always be that. But to society/people generally. In *Grable*, the Court thought the question of whether §6335 required personal service was a substantial one because of the tax law implications.
2. Is the federal issue **necessary** to outcome of the case? Necessary means that the case could turn on addressing the federal issue. In *Grable*, the Court thought that the federal issue was outcome determinative because if §6335 required personal service then the P would win; if it doesn't require personal service, then the D would win.
3. Is the federal issue **actually in dispute**. Actually in dispute means that the parties disagree about the meaning of the issue. In *Grable*, that was true as there was a dispute over whether the statute required personal service.

**Step 2B** (SFQ second step): Even if the federal issue is substantial, necessary and actually in dispute, **would it upset the balance of federal and state relations that Congress intended** to conclude that the plaintiff's claim comes within §1331. Example: Compare *Grable* to *Merrell Dow*

**Step 3:** If you have a claim that is brought under state law, even if no SFQ, might still satisfy §1331 under the complete preemption doctrine.