

Professor Lonny Hoffman
Civil Procedure
Federal Question
Jurisdiction

Kind of Case	Const authority	Statutory authority	Judicial interpret of the statute
Diversity	III, §2	28 USC §1332	“complete diversity” <i>Strawbridge</i>
Federal Question	III, §2	28 USC §1331	“well pleaded complaint rule” <i>Mottley</i>

Strongest case for
13131; example:
15 USC 2622(d)

Express grant
OJ and private
right action

E.g., fed created
entities (36 USC
220501)

Express grant
OJ but no
private right
action

No express
grant of OJ but
private right of
action

No express grant
of OJ and no
right of action

Weakest case for 1331, but substantial
FQ doctrine could satisfy 1331

In most cases, P is master of her complaint

So if P
wants to
be in fed
ct suing
on fed c/a,
hard to
dislodge

Only dismiss if:

1. FQ not appear as part of P's well-pleaded complaint (*Mottley*); or
2. Federal claim “wholly insubstantial and frivolous”

Bell v. Hood

If P brings state law claim in state court

Starting
presumption is
case not arise
under 1331

*Holmes creation
test from
American Well
Works*

If sue under
state law, no
1331 original
jurisdiction

If sue under
fed law, 1331
jurisdiction

If P brings state law claim in state court

Can remove if
show
“artful pleading”

Two ways:

1. Complete
preemption
2. Substantial
FQ doctrine

Complete Preemption

Most federal questions that appear by way of defense—including most federal defenses on the basis of preemption—do not come within 1331 because of WPCR

Complete Preemption

But a few statutes are said to so “completely preempt” the field that even a purported reliance on state law cannot avoid 1331 jurisdiction

Substantial FQ Doctrine

Court

recognizes some
cases asserting
state law claims
can “arise
under” fed law
for 1331
purposes

Challenge is
how to figure
out which
ones do

Substantial FQ Doctrine: *Grable*

Step 1:

If federal issue is substantial,
necessary to the
determination and
actually in dispute

Substantial FQ Doctrine: *Grable*

Step 2:

If Step 1 met, would it upset
federalism balance

(dividing cases b/n state and fed ct)
that Congress intended in 1331?

Summing Up

If P files in fed ct claiming 1331 OJ exists:

D can only get case dismissed if:

1. FQ not appear as part of P's
well-pleaded complaint

(Mottley); or

2. Federal claim “wholly
insubstantial and frivolous”

Bell v. Hood

If P brings state law claim in state court

Starting point is Holmes creation
test:

If sue under state law, no
1331 original jurisdiction

If sue under fed law, 1331
jurisdiction

Presumption overcome only if

Can show
“artful pleading”

1. Complete
preemption
2. Substantial
FQ doctrine