

***Implementing the Carnegie Apprenticeships of Knowledge and Practice:
A “Mystery Statute” Approach to Substantive Knowledge & Lawyering Skills***
Cynthia M. Ho, Loyola University of Chicago School of Law

Background

The Carnegie Report has generated substantial discussion and awareness of the need to improve legal education. However, an ever-present question is *how* to do so. This workshop aims to target one important lawyering skill that is frequently overlooked in traditional teaching methods and even most commercial study aids: the skill of statutory interpretation. This workshop takes an active learning approach to teaching statutory interpretation.

The Outlines of a Mystery Statute

What is it? A “mystery statute” is a statute given to students that they have never previously studied before, such that it is a “mystery”; it is given in conjunction with a question that aims to emphasize a key issue. Mystery statutes are not always popular with students because they can not easily answer them from commercial outlines. However, the approach is appreciated by some students who understand the exercise and are invested in becoming good lawyers. In addition, students can gain real benefits. A former student recently thanked me for using this approach; he told me that by applying the skills he learned, he found an issue that senior lawyers did not, which translated into a permanent job offer for him.

What is in a mystery statute? It depends. I sometimes give them “real” statutes that we have not covered in class, although I often further simplify the language and scope (and do not give them the actual number of the statute to avoid them easily finding the answer in a commercial outline). Alternatively, I may simply put a cosmetic gloss on a statute that we have already covered.

How hard are the questions? It depends. The questions can be simple, or very nuanced. In addition, you can ask questions that extend beyond the actual statutory text of the mystery statute. For example, you can ask how the statute would change existing law if it were enacted, if it supplants an existing statute, if other rules would apply, etc.

The Game Plan

The goal of this workshop is to illustrate that the mystery statute approach can effectively teach the skill of statutory interpretation as well as convey substantive knowledge. By the conclusion of the workshop, each participant will have helped to create a mystery statute question and answer, and have the requisite tools to create further such questions.

The workshop will begin with a brief overview, including a visual demonstration of how a mystery statute can be incorporated as one element of a slide presentation and also be used in conjunction with interactive clickers. I will share my own experiences, including examples of what I have found effective in my classes, which include a 1L Civil Procedure class (to first semester students), as well as intellectual property. After the introduction, participants will be split into groups by subject matter to create their own questions using guided instructions. The session will end with a discussion of our experiences, including how to effectively use this method beyond the session.

An Illustration

To emphasize what language indicates that federal courts have concurrent versus exclusive jurisdiction, I have created various versions of statutory language and question formats. The easiest format is a short-answer question. Another alternative is to ask a multiple-choice question that includes other issues but using the exam same statutory language. Both of these are shown below.

Common misconception: “shall” in the context of a federal subject matter jurisdiction statute means that the federal court has exclusive jurisdiction, such that state courts can not hear the case

Issue to emphasize: “district courts shall have jurisdiction” means that they must hear the case, but does not mean that the case can only be heard in federal court; state courts can also hear the case.

(Mini) Mystery Statute - Short Answer Question

A federal statute states that: "United States district courts shall have original jurisdiction of all cases arising under federal statutes concerning health care benefits for employees of Walmart."

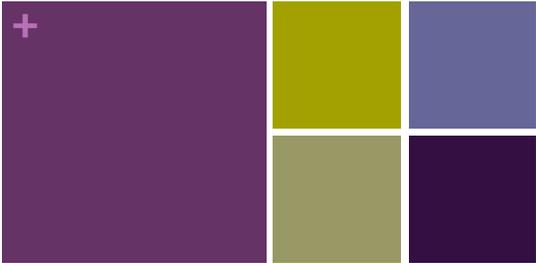
Do cases that fall within this provision need to be filed in federal court? Briefly explain why or why not?

(Mini) Mystery Statute - Multiple Choice Question

6. — A federal statute states that: "United States district courts shall have original jurisdiction of all cases arising under federal statutes concerning health care benefits for employees of Walmart."

Which of the following statements is true based upon this statute:

- I. The quoted portion provides a cause of action
 - II. The quoted portion provides federal subject matter jurisdiction.
 - III. Cases that fall within the quoted provision may still be filed in state court.
- A. All of the above (statements I-III) are true.
 - B. II only
 - C. I and II only
 - D. II and III only
 - E. I only



A "Mystery Statute" Approach to Substantive Knowledge & Lawyering Skills

Institute for Law Teaching & Learning
Summer 2013 Conference on "Hybrid Teaching"
Cynthia M. Ho



- Introduction
- Illustration
- DIY



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Background



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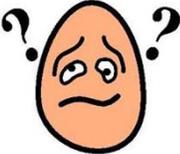
+ What is a "Mystery" Statute?

- What is it?
 - "Mystery" in that not familiar to students
 - Real statute not previously assigned
 - Proposed statute not previously assigned
 - Modification of existing statute
- Why?
 - Focuses on statutory interpretation skills, rather than rote memorization

+ Three Easy Steps

- (1) Identify the Problem
- (2) Illustrate
- (3) Assess (using Mystery Statute)

+ START HERE



+ My example (Civil Procedure) 7

- Misunderstanding:
 - Federal courts “shall have jurisdiction...” perceived to mean *must* hear such
- Basis for Misunderstanding (some ideas):
 - “Shall” sounds mandatory
 - Not aware of what language when exclusive
 - Forget that federal courts are courts of *limited* jurisdiction

+ How to Illustrate (and emphasize correct understanding) 8

Basics	Other Considerations
<ul style="list-style-type: none">■ Show & Tell■ Variation on the Original	<ul style="list-style-type: none">■ In Class demo<ul style="list-style-type: none">■ Slide (clickers optional)■ Group work■ Outside class<ul style="list-style-type: none">■ Assigned to prepare■ Post Class Quiz (TWEEN option)

+ How do these relate to each other? 9

28 USC 1331 (Fed “Question”)	28 USC 1334 (Bankruptcy cases)
<ul style="list-style-type: none">● The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States	<p>(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11 [of the US Code]</p>

+ Creating the Variation 10

Original	"Mystery"
<ul style="list-style-type: none">The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States	<ul style="list-style-type: none">A federal statute states that: "district courts shall have original jurisdiction of all cases arising under federal statutes concerning health care benefits for employees of Walmart."

Question: Do cases that fall within this provision need to be filed in federal court?

+ Fancier Fix – Tackling 2 Issues 11

A federal statute states that: "district courts shall have original jurisdiction of all cases arising under federal statutes concerning health care benefits for employees of Walmart."

Which of the following statements is true based upon this statute:

- The quoted portion provides a cause of action
- The quoted portion provides federal subject matter jurisdiction.
- Cases that fall within the quoted provision may still be filed in state court.

- All of the above (statements I-III) are true.
- II only
- I and II only
- II and III only
- I only

+ Example 2: Mystery Statute Assessment of Removal (midterm) 12

My Goal	Plan
<ul style="list-style-type: none">Knowledge of default statutes may need to be modified in context of new statute	<ul style="list-style-type: none">Use variation of existing exception to venue statuteCreate questions to test understanding of this statute in conjunction with goals

+ Removal Statutes 13

- 1441 – Removal of Civil Actions
- 1446 – Procedure for Removal of a Civil Action

- Template for Mystery Statute: 1454 – Plant, Patent Variety Protection and Copyright Cases

+ 28 USC 1454 – Patent, Plant Variety and Copyright Cases 14

- (a) In General.— A civil action in which any party asserts a claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights may be removed to the district court of the United States for the district and division embracing the place where the action is pending.
- (b) Special Rules.— The removal of an action under this section shall be made in accordance with section 1446, except that if removal is based solely on this section – (1) the action may be removed by any party; and (2) the time limitations contained in section 1446(b) may be extended at any time for cause shown.
- (c) Clarification of Jurisdiction in Certain Cases.—
- (d) Remand.— If a civil action is removed solely under this section,

+ 28 USC 1454 Modified 15

- (a) In General.— A civil action in which any party asserts a claim for relief arising under any Act of Congress relating to patents, ~~plant variety protection, or copyrights~~ may be removed to the district court of the United States for the district and division embracing the place where the action is pending.
- (b) Special Rules.— The removal of an action under this section shall be made in accordance with section 1446, except that if removal is based solely on this section – (1) the action may be removed by any party; and ~~(2) the time limitations contained in section 1446(b) may be extended at any time for cause shown.~~
- ~~(c) Clarification of Jurisdiction in Certain Cases.—~~
- ~~(d) Remand.— If a civil action is removed solely under this section,~~

+ 28 USC ZZZ (The Mystery Statute) 16

- **(a) In general** – A civil action in which any party asserts a claim for relief arising under any Act of Congress relating to copyrights may be removed to the district court of the United States for the district and division embracing the place where the action is pending.
- **(b) Special Rules** – The removal of an action under this section shall be made in accordance with section 1446, except that if removal is based solely on this section, the action may be removed by any party.

- Concepts to test
 - General Statutory reading
 - E.g. what courts does this apply to?
 - Exception to 1441 default
 - Changes usual rule about counterclaims (interpretation of 1441)
 - New statute can work with existing ones (s.a. timing rules in 1446)
- Application Question

+ Three Steps to a Mystery Statute for Assessment 17

1. **Identify**
 - What is a common misconception
 - What is the basis of the misconception
2. **Illustrate**
 - Is there an existing statute
3. **Assess** *[through creation of a mystery statute & questions]*
 - Modify existing statute
 - Write questions (and sample answers)
 - Test it

+ Create your Own Mystery Statute 18



- Materials
 - Sample Civil Pro Mystery Statute, 28 USC ZZZ
 - "Three Steps" handout
- Work with others on similar courses for 10 minutes
 - Brainstorm statutes and/or issues to "demystify"

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Advanced Use of a Mystery Statute

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- My experience
 - (Rule & Statutory) Interpleader
 - Class actions
- Method
 - In-class group work, followed by discussion
 - Answer keys posted online

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Three Steps to a Mystery Statute Method of Statutory Success

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Steps (which can be repeated with additional issue(s))

1. *Identify:*

- a. What is a common student misconception that relates to the statute?

- b. What is the basis of the misconception?

2. *Illustrate*

- a. Is there an existing statute to use as a comparison?

- b. If not, can you create your own?

3. *Assess (with a Mystery Statute)*

- a. Use an existing statute, or a modification

- b. Write a question that focuses on the common misconception

- c. Test it (with a colleague, prior student, tutor)

EXAMPLE: CREATING A MYSTERY STATUTE (AND QUESTIONS)

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Original: 28 USC 1454. Plant, Plant Variety Protection and Copyright Cases

(a) In General.— A civil action in which any party asserts a claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights may be removed to the district court of the United States for the district and division embracing the place where the action is pending.

(b) Special Rules.— The removal of an action under this section shall be made in accordance with section [1446](#), except that if the removal is based solely on this section—

(1) the action may be removed by any party; and

(2) the time limitations contained in section [1446 \(b\)](#) may be extended at any time for cause shown...

(c) Clarification of Jurisdiction in Certain Cases

(d) Remand

Mystery: 28 USC ZZZ

(a) In general – A civil action in which any party asserts a claim for relief arising under any Act of Congress relating to copyrights may be removed to the district court of the United States for the district and division embracing the place where the action is pending.

(b) Special Rules – The removal of an action under this section shall be made in accordance with section 1446, except that if removal is based solely on this section, the action may be removed by any party.

Short Answer Questions on ZZZ

1. Does ZZZ replace 28 USC 1441 for all removal cases? Briefly explain why or why not.
2. What does the reference to “any party” mean? In particular, explain what “any party” means – is this the defendant, plaintiff, the court, or someone else?
3. Does ZZZ permit removal of a case based solely based on a copyright law counterclaim? Why or why not?
4. Does ZZZ permit a defendant to remove at any time during the case since ZZZ does not provide any time restraints? Briefly explain why or why not.
5. Andy (IL) sues Pam (IL) for negligence based on a traffic accident. Pam’s answer asserts a counterclaim against Andy. The counterclaim asserts that Andy violated her federal copyright by posting a picture of Pam’s sculpture on Facebook without authorization. Pam seeks damages in the amount of \$10,000.
 - a. Can Pam remove the case under either ZZZ or the usual removal statutes?
 - b. Assume the original case of Andy v. Pam was filed in Cook County State Court, located in Chicago, IL. Would Pam be able to remove the case under ZZZ to the US District Court of the Northern District of IL if this is the federal district court that encompasses Chicago, IL? Briefly explain why or why not.

28 USC 1441 – Removal of Civil Actions

(a) Generally.— Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(b) Removal Based on Diversity of Citizenship.—

(1)In determining whether a civil action is removable on the basis of the jurisdiction under section [1332\(a\)](#) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.

(2)A civil action otherwise removable solely on the basis of the jurisdiction under section [1332\(a\)](#) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

28 USC 1446 – Procedure for Removal Of Civil Actions

(a) Generally.— A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) Requirements; Generally.—

(1)The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter. ...

(c) Requirements; Removal Based on Diversity of Citizenship.—

(1)A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section [1332](#) more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

(2)If removal of a civil action is sought on the basis of the jurisdiction conferred by section [1332\(a\)](#), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, ...