

**Class Preparation:**  
**Case Briefing Session**

**Marshall Inn of Court**

**Professor Joan Schaffner**

## Brief Introduction

### Civil Procedure

Civil Procedure is vital to a lawyer's understanding of our legal system. As the name suggests, the course focuses on process, specifically the rules in federal court that govern litigation—the most formal means by which parties seek to resolve their disputes.

Civil Procedure is organized chronologically beginning with a dispute and one person filing suit in court (the Plaintiff) to recover a remedy from another (the Defendant). The topics addressed range from the laws that govern selecting the proper forum to file the suit—federal subject matter jurisdiction, personal jurisdiction and venue, to the laws that describe the scope of a final decision of a court—claim and issue preclusion. Along the way we will discuss, among other topics, pleading, joinder, discovery, motion practice, and right to jury.

To acquaint you with the skill of case briefing, we will brief the case of *Gordon v. Steele*. *Gordon* addresses the topic of diversity jurisdiction, one ground for federal subject matter jurisdiction allowing the case to be filed in federal court instead of state court. The law of federal subject matter jurisdiction has its roots in the U.S. Constitution, but Congress must allocate power to the federal judiciary through statutes. The materials for the case briefing include not only the case but also an excerpt from Article III of the U.S. Constitution and an excerpt from 28 U.S.C. § 1332, the federal statute that empowers federal courts to assert diversity jurisdiction. Please read the case, the Constitutional excerpt, and the statutory excerpt. Then brief the case and be ready to participate!

**United States District Court, W.D. Pennsylvania.**

**Susan E. GORDON**

**v.**

**James R. STEELE et al.**

**Civ. A. No. 36-73 Erie.**

**May 31, 1974.**

**OPINION**

KNOX, District Judge.

The problems of students have lately become numerous with respect to their legal status and the law with respect to them is in a constant state of flux. In recent years, there has been a deluge of litigation with respect to the residence of students for voting purposes. See [Shivelhood v. Davis, 336 F. Supp. 1111 \(D.Vt.1971\)](#). See also [Carrington v. Rash, 380 U.S. 89, 85 S.Ct. 775, 13 L.Ed.2d 675 \(1965\)](#) with respect to military personnel in a state. The very size of this problem is shown by the extensive annotation on [voting-residence of students in 44 A.L.R.3d 797](#) annotating [Wilkins v. Bentley, 385 Mich. 670, 189 N.W.2d 423 \(1971\)](#). The other situation, which is a prolific source of litigation, is the question of tuition fees charged by state colleges and universities to non-resident students where the state is required to set up extensive standards in an endeavor to determine who is a resident and who is a non-resident. See e.g. [Wurzer v. University of Houston, 487 F.2d 612 \(5th Cir. 1973\)](#). It was inevitable that the federal courts would soon feel the impact of this litigation with respect to problems arising under diversity jurisdiction. 28 U.S.C. section 1332. Thinking of the courts in this area is probably colored by numerous constitutional and statutory provisions in various states to the effect that no one shall be deemed to have gained or lost a residence by attendance at an institution of higher learning.

The thinking is also colored by the traditional rule that the fact that a college student is supposedly maintained by his or her parents is a strong circumstance indicating no gain of residence in the college town. See [44 A.L.R.3d 822](#) and this is in accord with [Restatement of Conflicts of Laws, Section 30](#), that a minor child has the same domicile as its father. In these days when nearly all the state legislatures have reduced the age of majority to 18, this poses a more pressing problem with respect to college students who can no longer be put off with the explanation that those under 21 are minors and hence continue their residence with their parents. See the various acts of the Pennsylvania Legislature approved June 16, 1972, particularly 73 Purdon's Pa. Stats. § 2021 permitting persons 18 years of age and older to enter into legal contracts and depriving such persons of the defense of minority.

The plaintiff Susan Gordon is one of those who was benefited by the provisions of the aforesaid emancipation acts of June 16, 1972. She was born November 20, 1953, and hence was 18 years of age at the time the cause of action herein mentioned arose and was 19 at the time this action was brought, April 10, 1973.

The action is one for malpractice against two physicians and an osteopathic hospital in Erie County, Pennsylvania. All of the defendants are citizens of Pennsylvania. There seems little question that prior to August 9, 1972, the plaintiff was also a citizen of Pennsylvania, residing at 227 Goodrich Street, Erie, Pennsylvania, with her parents and if this continued to be her address, her suit must fail for lack of diversity jurisdiction.

She complains that she suffered an injury to her wrist on February 25, 1972, and there was wrongful diagnosis as to the existence of fractures in the bones by the defendants at that time. She claims that they concluded that there were no such fractures and that as a result she endured continuing pain and disability resulting in hospitalization and medical attention and that her wrist and right hand remain at least partly disabled as the result of the alleged malpractice.

On August 9, 1972, plaintiff enrolled in Ricks College at Rexburg, Idaho where she rented an apartment which she has retained ever since. Defendants on January 21, 1974, moved to dismiss for lack of diversity. Briefs have been filed, arguments held and the court postponed decision on the matter until further depositions of the plaintiff could be taken. The matter is now before the court for disposition.

We approach the problem recognizing, of course, that it is citizenship at the time of filing suit, in this case April 10, 1973, which is controlling. [Spears v. Ohio River Company, 406 F.2d 344 \(3d Cir. 1969\)](#). Further, the rule is unquestioned that where plaintiff is challenged on her claim of diversity, the burden is upon her to show by convincing evidence that diversity jurisdiction exists. [Krasnov v. Dinan, 465 F.2d 1298 \(3d Cir. 1972\)](#).

As is required in all of such cases, we must reckon up the indicators pointing for and against acquisition of a new domicile for diversity jurisdiction purposes. Defendant claims that the following indicate that plaintiff is still a citizen of Pennsylvania and has not acquired a new residence or citizenship in Idaho:

- (1) At the time of application for admission to the college at Rexburg, Idaho, she gave her address as Erie, Pennsylvania.
- (2) The college records dated in 1972 show her address as Erie, Pennsylvania. The same is true of the college records dated May 4, 1973.
- (3) During summer vacations, she worked in Erie, Pennsylvania.
- (4) She held a Pennsylvania Driver's License and had a bank account in Erie.
- (5) She came to Erie for Christmas vacations.
- (6) While Ricks College is a Mormon Church Institution, the supplemental depositions which were taken at the request of the court indicate that females unlike males are

generally not required to participate in the missionary activity of the church and that she has no present intentions of participating in such missionary work which, of course, might take her to any part of the world.

On the other side of the ledger, plaintiff points to the following:

- (1) Her expressed intention is not to return to Pennsylvania. This, of course, is a very strong factor in a situation where subjective intent plays a part in determining what is her *animo manendi*.
- (2) She has an apartment in Rexburg which she regards as her residence and this is not sublet during various times of the year but remains hers.
- (3) She states she came back to Erie only one summer in 1973 because of her eye problems and that she took eye treatment in Erie and Cleveland.
- (4) She claims that her purpose in visiting at Christmas 1973 was to be deposed and for medical appointments. She has not returned to Erie during Spring or Thanksgiving vacations.
- (5) Her religious desires as a sincere Mormon are to further her faith and insure that she marries in a Mormon Temple to someone of her faith. At the present time, she has no present plans of marrying anyone, but she does desire to marry in her faith and claims that the opportunities for such a marriage in Erie are very small and that she would be unable to marry in a Temple here.
- (6) She has introduced exhibits showing that she is a member of the Blue Cross of Idaho, becoming a subscriber in 1972.
- (7) She claims she may locate after graduation in any other of the 49 states or abroad. She may, of course, return to Pennsylvania. She, like many other females, has vague intentions of marrying some day but does not know to whom and, in such case, it is likely that she would follow her husband where his work may take him.

We recognize that the problem of students' residence is not altogether a new one but has concerned the federal courts since [Chicago and Northwestern Railway Company v. Ohle, 117 U.S. 123 \(1886\)](#) where the court held that determinations of a domicile were a matter to be determined by the trier of fact.

The most recent exposition of the law on this subject for our edification by the Third Circuit is found in [Krasnov v. Dinan, 465 F.2d 1298 \(3d Cir. 1972\)](#) from which we quote at length:

"It is the citizenship of the parties at the time the action is commenced which is controlling. [Brough v. Strathmann Supply Co., 358 F.2d 374 \(3d Cir. 1966\)](#). One domiciled in a state when a suit is begun is 'a citizen of that state within the meaning of the [Constitution, art. 3, § 2](#), and the Judicial Code, Title 28, section 1332 . . . . The fact of residency must be coupled with a finding of intent to remain indefinitely. Proof of intent to remain permanently is not the test.' If the new state is to be one's home for an indefinite period of time, he has acquired a new domicile." [Gallagher v. Philadelphia Transp. Co., supra, 185 F.2d \(543\) at 546](#). Where jurisdictional allegations are

traversed, as here, “the burden of showing . . . that the federal court has jurisdiction rests upon the complainants.” [Gibbs v. Buck, 307 U.S. 66, 72 \(1939\)](#). “In determining whether a party has intended to establish a domicile in the state to which he has moved, the factfinder will look to such circumstances as his declarations, exercise of political rights, payment of personal taxes, house of residence, and place of business.” Wright Federal Courts § 26, at 87 (2d ed. 1970); [Mitchell v. United States, 88 U.S. \(21 Wall.\) 350, 353 \(1874\)](#).’

“Applying these principles to the evidence before the factfinder, we cannot construe, as clearly erroneous, its finding that the defendant ‘intended to remain in the Commonwealth for an indefinite period of time.’ Because animus manendi is at best a subjective manifestation, Dinan's own declarations of intent are important, as were his explanations of the lack of compulsion in religious order assignments and his failure to obtain a Pennsylvania driver's license.”

We also have further instruction on this subject in the case in Judge Hastie's opinion in [Gallagher v. Philadelphia Transportation Company, 185 F.2d 543 \(3d Cir. 1950\)](#) in which the lower court was criticized as putting too much emphasis on permanence of the attachment to a given state. We also quote at length from this decision.

“The emphasis of the court on the permanence of the anticipated attachment to a state, in our opinion, required too much of the plaintiff. ’It is enough to intend to make the new state one's home. [Restatement, Conflict of Laws §§ 19, 20 \(1934\)](#); [Chicago & Northwestern Ry. Co. v. Ohle, 1885, 117 U.S. 123](#). It is not important if there is within contemplation a vague possibility of eventually going elsewhere, or even of returning whence one came. *Goodrich, Handbook of the Conflict of Laws* (3d ed. 1949) § 28; see [Gilbert v. David, 235 U.S. 561, 569](#). If the new state is to be one's home for an indefinite period of time, he has acquired a new domicile. [Mid-Continent Pipe Line Co. v. Whitely, 116 F.2d 871 \(10<sup>th</sup> Cir. 1940\)](#). Finally, it is the intention at the time of arrival which is important. The fact that the plaintiff may later have acquired doubts about remaining in her new home or may have been called upon to leave it is not relevant, so long as the subsequent doubt or the circumstance of the leaving does not indicate that the intention to make the place the plaintiff's home never existed.”

In the light of the foregoing and in view of the current tendency to treat students 18 years of age and above as emancipated and particularly in view of the fact that in this case the plaintiff has rented an apartment in Rexburg and with due regard for Judge Goodrich's statement from his *Handbook of the Conflict of Laws* that the possibility of eventually going elsewhere or even returning whence one came does not defeat the acquisition of a new domicile, we conclude upon the facts of this case considering the student's connection with Idaho and her subjective intention of not returning to Pennsylvania in the foreseeable future, that she is a citizen of Idaho for the purpose of diversity jurisdiction and the motion to dismiss must be denied.

**U.S. Const., Art. III**

**CONSTITUTION OF THE UNITED STATES  
ARTICLE III—THE JUDICIARY**

Section 1. The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

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;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

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**UNITED STATES CODE ANNOTATED  
TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE**

**§ 1332. Diversity of citizenship; amount in controversy; costs**

**(a)** The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000,<sup>1</sup> exclusive of interest and costs, and is between—

**(1)** citizens of different States;

...

**(c)** For the purposes of this section and section 1441 of this title--

**(1)** a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business,

...

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<sup>1</sup> The amount was \$10,000 in 1974.