

FEDERAL JURISDICTION: INTRODUCTION

[2:1] “**Jurisdiction**”: The term “jurisdiction” delineates “the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a court’s adjudicatory authority.” [*Kontrick v. Ryan* (2004) 540 US 443, 454-455, 124 S.Ct. 906, 915]

This Chapter deals with the *subject matter jurisdiction* of federal district courts; i.e., the power to adjudicate *the particular type of case* involved. [See *Radil v. Sanborn Western Camps, Inc.* (10th Cir. 2004) 384 F3d 1220, 1224-1225]

1. [2:2] **Limited Subject Matter Jurisdiction**: Federal courts are courts of *limited jurisdiction*. Unlike state courts, they have neither “inherent” nor “general” subject matter jurisdiction. They can adjudicate only those cases that the Constitution and Congress authorize them to adjudicate: those involving diversity of citizenship or a federal question, or to which the U.S. is a party (see ¶2:3). [*Kokkonen v. Guardian Life Ins. Co. of America* (1994) 511 US 375, 377, 114 S.Ct. 1673, 1675; *Kelly v. Wengler* (9th Cir. 2016) 822 F3d 1085, 1094]

It is *presumed* that a cause lies outside this limited jurisdiction, and the burden of establishing otherwise rests on the party seeking to assert jurisdiction. [*Kokkonen v. Guardian Life Ins. Co. of America*, *supra*, 511 US at 377, 114 S.Ct. at 1675]

Lack of subject matter jurisdiction is *never waived* and may be raised by either party or the court *at any time*—even for the first time on appeal. [*Henderson ex rel. Henderson v. Shinseki* (2011) 562 US 428, 434, 131 S.Ct. 1197, 1202; *Kaplan v. Central Bank of the Islamic Republic of Iran* (DC Cir. 2018) 896 F3d 501, 511—“A defect of subject-matter jurisdiction is non-waivable”; see ¶2:13 *ff.*, 2:45 *ff.*, 9:43 *ff.*]

- a. [2:3] **Constitution as source of federal judicial power**: Federal judicial power derives from Article III, §2 of the Constitution. “This section delineates the absolute limits on the federal courts’ jurisdiction.” [*Ankenbrandt v. Richards* (1992) 504 US 689, 695-697, 112 S.Ct. 2206, 2211]

That power extends 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;

“ . . . all Cases affecting Ambassadors, other public Ministers and Consuls;

“ . . . all Cases of admiralty and maritime Jurisdiction;

“ . . . Controversies to which the United States shall be a Party;

“ . . . Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States;

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between Citizens of the same State claiming Lands under Grants of different States, and “. . . [Controversies] between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.” [U.S. Const. Art. III, §2]

- b. [2:4] **Statutes as source of federal court jurisdiction:** The Constitution vests the federal judicial power in the Supreme Court and “such inferior Courts as the Congress *may* from time to time ordain and establish.” [U.S. Const. Art. III, §1]

Congress therefore determines (1) what “inferior courts” shall be created, and (2) what jurisdiction shall be conferred upon them. Congress is *not* required to invest the inferior courts “with all the jurisdiction it was authorized to bestow under Art. III.” [*Ankenbrandt v. Richards* (1992) 504 US 689, 697-699, 112 S.Ct. 2206, 2212; *Hamer v. Neighborhood Housing Services of Chicago* (2017) 583 US 17, 19, 138 S.Ct. 13, 17—only “Congress may determine a lower federal court’s subject-matter jurisdiction” (internal quotes omitted)]

- (1) [2:5] **Statutes conferring jurisdiction:** The principal federal jurisdiction statutes are contained in 28 USC §1330 et seq.: 28 USC §1331 confers general “federal question” jurisdiction (*see* ¶2:324); 28 USC §1332 confers “diversity” jurisdiction (*see* ¶2:1133). Additional grants of federal jurisdiction are found in other statutes regulating specific subject matters, such as civil rights, antitrust, etc. (*see* ¶2:326).

- (2) [2:6] **Statutory jurisdiction no broader than Constitution:** For a federal court to exercise jurisdiction, generally the case must fall within *both* a statutory grant of jurisdiction *and also within* U.S. Const. Art. III, §2, above (¶2:3), which is the source of all federal judicial power. [*In re Estate of Ferdinand E. Marcos Human Rights Litig.* (9th Cir. 1992) 978 F2d 493, 502]

- (a) [2:7] **Compare—removal jurisdiction:** Federal removal jurisdiction (¶2:2192 *ff.*) is an exception. It is not mentioned in U.S. Const. Art. III, §2. But the statutes conferring federal court removal jurisdiction (28 USC §1441 et seq.) are upheld under *other* constitutional provisions (i.e., Congress’s power under the “necessary and proper clause,” Art. I, §8). [*Tennessee v. Davis* (1879) 100 US 257, 263-264; *see* ¶2:2193]

- (b) [2:8] **Compare—“supplemental” jurisdiction:** Under former law, “pendent” and “ancillary” jurisdiction were creatures of case law. [See *Finley v. United States* (1989) 490 US 545, 562, 109 S.Ct. 2003, 2014]

“Supplemental jurisdiction” has since been added by statute to encompass both of these concepts. [28 USC §1367, *discussed at* ¶2:826 *ff.*, 2:945]

- (3) [2:9] **Statutory jurisdiction often narrower than Constitution:** As discussed below, Congress has conferred upon the federal district courts only a *limited* measure of the judicial power available under the Constitution. [*United Transp. Union v. ICC* (DC Cir. 1989) 891 F2d 908, 915]

For example, the diversity statute (28 USC §1332) requires a minimum amount in controversy (\$75,000) although there is no such requirement in U.S. Const. Art. III, §2 (*see* ¶2:3). And, “citizenship” of corporations is defined in such a way as to prevent diversity in many cases where it otherwise would exist (*see* ¶2:1270).

- (a) [2:10] **Original jurisdiction may be conferred on appellate court:** Some statutes confer *original* jurisdiction on the federal courts of appeals rather than on the district courts. [See *Grand Canyon Trust v. Tucson Elec. Power Co.* (9th Cir. 2004) 391 F3d 979, 985—Environmental Protection Agency’s decisions under Clean Air Act (42 USC §7607(b)) are reviewable by court of appeals, not district court; *California Dump Truck Owners Ass’n v. Nichols* (9th Cir. 2015) 784 F3d 500, 504-505]
- (b) [2:11] **Original jurisdiction in Supreme Court:** Where the dispute is between “two or more States,” original jurisdiction is conferred *only* on the U.S. Supreme Court. [28 USC §1251; *South Carolina v. North Carolina* (2010) 558 US 256, 267, 130 S.Ct. 854, 863]
- (c) [2:11.1] **Extraterritorial jurisdiction:** Generally, federal courts do not have jurisdiction over acts of foreign corporations outside the United States (i.e., under Alien Tort Statute allowing victims of human rights violations to sue foreign entities accused of aiding such atrocities) *except* where the claims “touch and concern” the territory of the United States. [*Kiobel v. Royal Dutch Petroleum Co.* (2013) 569 US 108, 120-125, 133 S.Ct. 1659, 1667-1669; *Mujica v. AirScan Inc.* (9th Cir. 2014) 771 F3d 580, 591—claims must “touch and concern” territory of United States “with sufficient force” to displace presumption against extraterritorial jurisdiction; *Jara v. Núñez* (11th Cir. 2018) 878 F3d 1268, 1273—to overcome presumption against extraterritoriality, enough relevant conduct must occur with United States]

However, courts have held that the extraterritorial reach of federal statutes may not raise a *jurisdictional* issue but rather, one that simply means such a claim is lacking in merit and may be dismissed. [*Lotes Co., Ltd. v. Hon Hai Precision Industry Co.* (2nd Cir. 2014) 753 F3d 395, 405-406; *United States v. Hui Hsiung* (9th Cir. 2015) 778 F3d 738, 752 (distinguishing between true jurisdictional limitation and merits determination); *see also Morrison*

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v. National Australia Bank Ltd. (2010) 561 US 247, 254, 130 S.Ct. 2869, 2877]

- (4) [2:12] **Statutes strictly construed:** In addition, the federal courts have interpreted these jurisdictional statutes *narrowly* to prevent wasted effort if it turns out that jurisdiction is lacking. But the result has been to read in further limitations on federal subject matter jurisdiction. (For example, the requirement of “complete diversity” in diversity cases is a product of judicial interpretation; see ¶2:1406.)

Similarly, courts construe removal jurisdiction strictly with all doubts resolved in favor of remanding the action to state court (see discussion at ¶2:2225 ff.).

- c. [2:13] **Nature of federal subject matter jurisdiction:** Subject matter jurisdiction is an Article III as well as a statutory requirement that functions as a *restriction on federal power*. [*Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee* (1982) 456 US 694, 702, 102 S.Ct. 2099, 2104]

Several legal consequences directly flow from this proposition:

- (1) [2:14] **Court must examine its own subject matter jurisdiction:** Federal courts “have an *independent obligation* to ensure that they do not exceed the scope of their jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlook or elect not to press”. [*Henderson ex rel. Henderson v. Shinseki* (2011) 562 US 428, 434, 131 S.Ct. 1197, 1202 (emphasis added); *Allstate Ins. Co. v. Hughes* (9th Cir. 2004) 358 F3d 1089, 1093—sua sponte obligation to examine subject matter jurisdiction even if no party raises it; see ¶2:49 ff.]
- (2) [2:14.1] **Subject matter jurisdiction may be challenged at any time:** A party does not waive defective subject matter jurisdiction by failing to raise the challenge early in the proceedings. [*Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee* (1982) 456 US 694, 702, 102 S.Ct. 2099, 2104; *Henderson ex rel. Henderson v. Shinseki* (2011) 562 US 428, 434-435, 131 S.Ct. 1197, 1202—objections to subject matter jurisdiction may be raised even after party has lost at trial; *MTB Enterprises, Inc. v. ADC Venture 2011-2, LLC* (9th Cir. 2015) 780 F3d 1256, 1258—appellant permitted to challenge jurisdiction for first time on appeal]
- (3) [2:15] **Parties cannot confer subject matter jurisdiction:** The parties to a federal civil action *cannot create* subject matter jurisdiction (e.g., by stipulation, consent or inaction) where jurisdiction does not exist. [*Bender v. Williamsport Area School Dist.* (1986) 475 US 534, 541, 106 S.Ct. 1326, 1331; *Evergreen Square of Cudahy v. Wisconsin Housing & Economic Develop. Auth.* (7th Cir. 2015) 776 F3d 463, 465]

- (a) [2:15.1] **Compare—stipulations as to legal issues:** However, the parties' agreements about the *legal issues* involved may affect the court's determination as to the nature of the case, and thus its subject matter jurisdiction. [See *Hunter v. United Van Lines* (9th Cir. 1984) 746 F2d 635, 643, fn. 5—"We think that the parties' agreement as to the legal issues the case raises is *relevant to determining whether removal was proper* in this case" (emphasis added)]
- (b) [2:15.2] **Compare—supplemental pleading for jurisdictional defects:** FRCP 15(d) permits a party to supplement its pleadings in order to cure a defect in subject matter jurisdiction. [*United States ex rel. Gadbois v. PharMerica Corp.* (1st Cir. 2015) 809 F3d 1, 5-6 (collecting cases); *Northstar Fin'l Advisors Inc. v. Schwab Investments* (9th Cir. 2015) 779 F3d 1036, 1044—rule may be used to supplement pleading to correct a defect in standing]
- (4) [2:16] **Party's prior position on jurisdiction not binding:** A party may raise an objection to subject matter jurisdiction even if it previously *conceded* the existence of jurisdiction. [*Sebelius v. Auburn Regional Med. Ctr.* (2013) 568 US 145, 153, 133 S.Ct. 817, 824; *Da Silva v. Kinsho Int'l Corp.* (2nd Cir. 2000) 229 F3d 358, 361]
- (a) [2:17] **Compare—estoppel as to jurisdictional facts:** Arguably, however, a party may be estopped from changing its position regarding the jurisdictional facts. For example, if plaintiff first claims she is a citizen of State X in order to create federal diversity jurisdiction, plaintiff may be estopped from later claiming she is a citizen elsewhere in order to defeat such jurisdiction.
- Caution:* "playing fast and loose" with jurisdictional facts may lead to sanctions. [See *Itel Containers Int'l Corp. v. Puerto Rico Marine Mgmt., Inc.* (D NJ 1985) 108 FRD 96, 105; *Gentek Building Products, Inc. v. Sherwin-Williams Co.* (6th Cir. 2007) 491 F3d 320, 332—good faith belief in truth of jurisdictional facts alleged insufficient to avoid sanctions if no reasonable inquiry conducted to support objective reasonableness of belief]
- [2:18] Employer prevailed in a labor arbitration by claiming the parties had agreed the dispute was *not covered* by their collective bargaining agreement (CBA) and should be heard in state court. When Employee sued in state court, Employer removed to federal court, claiming the dispute was *covered* by the CBA and federal law completely preempted Employee's state law claims. Employer was judicially estopped from taking this position because it had prevailed on exactly the opposite position in arbitration.

[2:19 — 2:25.1]

[*Lydon v. Boston Sand & Gravel Co.* (1st Cir. 1999)
175 F3d 6, 12-13]

- (5) [2:19] **No jurisdiction based on “judicial economy”:** If federal jurisdiction does not currently exist, a federal court cannot invoke principles of “judicial economy” to retain a case on the premise it is likely to end up back in federal court (e.g., as where a removed case is remanded back to state court but likely to be re-removed, or where a dismissed case is likely to be refiled). [*Evergreen Square of Cudahy v. Wisconsin Housing & Economic Develop. Auth.* (7th Cir. 2015) 776 F3d 463, 468 (rejecting argument that because case would be removed by cross-defendant once remanded to state court, federal court should not dismiss for lack of jurisdiction)]

[2:20-24] *Reserved.*

- d. [2:25] **Jurisdictional vs. nonjurisdictional defects:** Defenses and objections that go to the *merits* of a federal claim and that are grounds for a motion to dismiss for failure to state a claim do *not* deprive a court of subject matter jurisdiction: “Branding a rule as going to a court’s subject-matter jurisdiction alters the normal operation of our adversarial system” because its absence must be raised *sua sponte*, it cannot be waived by the parties, and it can be raised at any time in the proceedings. [*Henderson ex rel. Henderson v. Shinseki* (2011) 562 US 428, 434-435, 131 S.Ct. 1197, 1202; *Litecubes, LLC v. Northern Light Products, Inc.* (Fed. Cir. 2008) 523 F3d 1353, 1362]

➡ [2:25.1] **PRACTICE POINTER:** Lack of subject matter jurisdiction has significant impact:

- The jurisdictional defect can *never be waived* and can be raised at any time—even after judgment (§2:14.1, 2:45 *ff.*).
- The court must raise the issue *sua sponte* even if the parties do not (§2:49).
- Dismissal for lack of subject matter jurisdiction deprives the court of power over *supplemental claims* (§2:838).
- Such a dismissal has no *res judicata* or collateral estoppel effect (§2:1024).
- The motion to dismiss for lack of subject matter jurisdiction is filed under FRCP 12(b)(1) and may be supported by declarations and other evidence; in contrast, a motion to dismiss for failure to state a claim is filed under FRCP 12(b)(6) and treats as true the allegations of the complaint (*see* §2:66).
- A default judgment rendered by a court lacking subject matter jurisdiction is *void* and must be set aside (§16:183). [See also *Henderson ex rel. Henderson v. Shinseki* (2011) 562 US 428, 434-435, 131 S.Ct. 1197, 1202]

- A jurisdictional defect is not subject to doctrines of estoppel or equitable tolling (see ¶2:16, 2:27 ff.).

(1) [2:26] **Test:** “If the Legislature clearly states that a threshold limitation on a statute’s scope shall count as jurisdictional, then courts and litigants will be duly instructed . . . But *when Congress does not rank a statutory limitation on coverage as jurisdictional*, courts should treat the restriction as nonjurisdictional in character.” [*Arbaugh v. Y & H Corp.* (2006) 546 US 500, 515-516, 126 S.Ct. 1235, 1245 (emphasis added)]

A “rule should not be referred to as jurisdictional unless it governs a court’s adjudicatory capacity, that is, its subject-matter or personal jurisdiction . . . Other rules, even if important and mandatory . . . should not be given the jurisdictional brand.” [*Henderson ex rel. Henderson v. Shinseki* (2011) 562 US 428, 435, 131 S.Ct. 1197, 1202 (internal cites omitted); see *EPA v. EME Homer City Generation, L.P.* (2014) 572 US 489, 513, 134 S.Ct. 1584, 1603—requirement that objections to EPA interpretation of rule be made with “reasonable specificity” not jurisdictional]

Courts consider:

- whether Congress *clearly labeled* the matter as jurisdictional;
- whether the requirement is *located* in a jurisdictional-granting provision;
- whether Congress authorized exceptions that are clearly not jurisdictional; and
- whether courts have *historically* treated the requirement as jurisdictional. [*Reed Elsevier, Inc. v. Muchnick* (2010) 559 US 154, 167-169, 130 S.Ct. 1237, 1247-1248; see *Day v. AT & T Disability Income Plan* (9th Cir. 2012) 698 F3d 1091, 1099-1100]

(2) [2:27] **Statutes of limitations—generally nonjurisdictional:** Many if not most federal statutes of limitations seek only to protect defendants against stale claims. Such statutes of limitations are *nonjurisdictional* and, therefore, may be subject to forfeiture, waiver and equitable tolling. [*United States v. Kwai Fun Wong* (2015) 575 US 402, 410-412, 135 S.Ct. 1625, 1632-1633]

(a) **Application**

- [2:28] Time limitations under the Federal Tort Claims Act are nonjurisdictional and subject to equitable tolling. [*United States v. Kwai Fun Wong* (2015) 575 US 402, 410-412, 135 S.Ct. 1625, 1632-1633 (resolving circuit split)]
- [2:28.1] The Title VII 90-day deadline for filing suit after issuance of an EEOC right-to-sue letter is not jurisdictional. [*Harris v. Boyd Tunica, Inc.* (5th Cir. 2010) 628 F3d 237, 239]

[2:28.2 — 2:36]

- [2:28.2] The RESPA one-year limitations period is not jurisdictional. [*Merritt v. Countrywide Fin'l Corp.* (9th Cir. 2014) 759 F3d 1023, 1036-1039]
- [2:28.3] The time within which to bring a Medicare reimbursement administrative proceeding is not jurisdictional. [*Sebelius v. Auburn Regional Med. Ctr.* (2013) 568 US 145, 153, 133 S.Ct. 817, 824]
- [2:28.4] The limitations period for filing a wrongful levy suit against the IRS is not jurisdictional. [*Volpicelli v. United States* (9th Cir. 2015) 777 F3d 1042, 1044]

- (b) [2:29] **Compare—jurisdictional statutes of limitation:** Some statutes of limitations, however, “seek not so much to protect a defendant’s case-specific interest in timeliness as to achieve a broader system-related goal,” such as facilitating the administration of claims, limiting the scope of a governmental waiver of sovereign immunity, or promoting judicial efficiency. [*John R. Sand & Gravel Co. v. United States* (2008) 552 US 130, 133, 128 S.Ct. 750, 753]

A statutory limitation is jurisdictional only where Congress has “clearly state[d] that the rule is jurisdictional; absent such a clear statement,” courts should treat the restriction as nonjurisdictional. [*Sebelius v. Auburn Regional Med. Ctr.* (2013) 568 US 145, 153, 133 S.Ct. 817, 824 (internal quotes omitted)]

[2:30-33] *Reserved.*

- (3) [2:34] **Exhaustion requirements?** Following the Supreme Court’s limitation of “jurisdictional” defects to those clearly identified by Congress as such (*see* ¶2:26), courts now often hold that a failure to exhaust administrative remedies is *not* a jurisdictional impediment. [*Davis v. Fort Bend County* (5th Cir. 2018) 893 F3d 300, 305-306—Title VII’s administrative exhaustion requirement not jurisdictional; *Allen v. Highlands Hosp. Corp.* (6th Cir. 2008) 545 F3d 387, 401-402—statutory requirement that discrimination charge be filed with EEOC before filing suit under ADEA not a limitation on federal court’s jurisdiction over claim; *Brown v. Whole Foods Market Group, Inc.* (DC Cir. 2015) 789 F3d 146, 153-154—Civil Rights Act requirement of giving notice to state or local authorities not jurisdictional; *Lee v. Willey* (6th Cir. 2015) 789 F3d 673, 677—exhaustion under Prison Litigation Reform Act not jurisdictional]

(4) **Other matters deemed jurisdictional**

- [2:35] *False Claims Act*—“original source” jurisdiction? *See discussion at* ¶2:39.10.
- [2:36] Time limits for filing a notice of appeal are jurisdictional. [*Bowles v. Russell* (2007) 551 US 205,

208, 127 S.Ct. 2360, 2363; see detailed discussion in Goelz, Batalden & Querio, *Rutter Group Prac. Guide: Federal Ninth Circuit Civil Appellate Practice* (TRG), Ch. 3]

- [2:37] The Civil Service Reform Act (5 USC §1101 et seq.) restricts federal court jurisdiction over federal employee suits challenging adverse employment action to suits based on discrimination; all other claims are limited to administrative remedies. [*Elgin v. Department of Treasury* (2012) 567 US 1, 13, 132 S.Ct. 2126, 2134; see *Kerr v. Jewell* (9th Cir. 2016) 836 F3d 1048, 1054-1058]
 - [2:38] The court lacks jurisdiction to issue a preliminary injunction prohibiting strikes under the Railway Labor Act unless the party seeking the injunction has made every reasonable effort to settle the labor dispute. [*Aircraft Service Int'l, Inc. v. International Brotherhood of Teamsters, AFL-CIO, Local 117* (9th Cir. 2015) 779 F3d 1069, 1077]
 - [2:39] There is no subject matter jurisdiction over a class action arising under the Medicare Act where class members fail to proceed through the special review channel of the Medicare statute. [*Haro v. Sebelius* (9th Cir. 2014) 747 F3d 1099, 1111-1113]
 - [2:39.1] The venue provision of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) is jurisdictional and thus not subject to waiver. [*MTB Enterprises, Inc. v. ADC Venture 2011-2, LLC* (9th Cir. 2015) 780 F3d 1256, 1257]
 - [2:39.2] The Court of Federal Claims has no jurisdiction over a claim if plaintiff has another suit relating to the claim pending against the United States or its agents. [*Solida v. United States* (Fed. Cir. 2015) 778 F3d 1351, 1353]
 - [2:39.3] District courts lack jurisdiction to order the United States Customs and Immigration Service to amend an agency-issued certificate of naturalization. [*Yu-Ling Teng v. District Director, U.S. Citizenship & Immigration Services* (9th Cir. 2016) 820 F3d 1106, 1108-1109]
- [2:39.4-39.9] *Reserved.*

(5) Compare—defects held nonjurisdictional

- [2:39.10] Congress amended the False Claims Act in 2010, replacing the phrase “no court shall have jurisdiction” with “[t]he court shall dismiss an action or claim under this section” (31 USC §3730(e)(4)(A)). Most courts now conclude that the current language is *not* jurisdictional. [*United States ex rel. Moore & Co., P.A. v. Majestic Blue*

Fisheries, LLC (3rd Cir. 2016) 812 F3d 294, 300—“amended §3730(e)(4) creates grounds for dismissal for failure to state a claim rather than for lack of jurisdiction,” quoting *United States ex rel. Osheroff v. Humana, Inc.* (11th Cir. 2015) 776 F3d 805, 811; see also *United States ex rel. Wilson v. Graham County Soil & Water Conservation Dist.* (4th Cir. 2015) 777 F3d 691, 695, fn. 1]

- [2:40] Title VII employment discrimination actions lie only against employers with 15 or more employees (42 USC §2000e(b)). This employee-numerosity requirement for establishing a Title VII defendant’s “employer” status is *nonjurisdictional* and is waived if not timely raised. [*Arbaugh v. Y & H Corp.* (2006) 546 US 500, 504, 515-516, 126 S.Ct. 1235, 1238-1239, 1245]
- [2:40.1] ERISA authorizes a “participant” (or beneficiary) to bring a civil suit in state or federal court to recover benefits or enforce or clarify his or her rights under an ERISA-governed employee benefit plan (29 USC §1132(a)(1)(B), (e)(1)). In a suit against an ERISA plan, the employee’s status as a plan “participant” is a nonjurisdictional substantive element of the ERISA claim. [*Leeson v. Transamerica Disability Income Plan* (9th Cir. 2012) 671 F3d 969, 979]
- [2:40.2] Likewise, courts generally hold that in a participant’s suit seeking relief under ERISA, the question whether plaintiff’s allegation of an ERISA-governed plan is correct does not affect the court’s jurisdiction to adjudicate the claim. [*Smith v. Regional Transit Auth.* (5th Cir. 2014) 756 F3d 340, 344-346—defendant’s argument that plan was governmental plan exempt from ERISA did not raise jurisdictional question and thus should not have been decided on motion to dismiss for lack of subject matter jurisdiction; see *Daft v. Advest, Inc.* (6th Cir. 2011) 658 F3d 583, 588 (collecting cases); *Dahl v. Charles F. Dahl, M.D., P.C. Defined Benefit Pension Trust* (10th Cir. 2014) 744 F3d 623, 629]
- [2:40.3] The statutory minimum age requirement for a cognizable discrimination claim under the ADEA is a nonjurisdictional substantive element of the ADEA claim. [*Day v. AT & T Disability Income Plan* (9th Cir. 2012) 698 F3d 1091, 1099-1100]
- [2:41] The 1933 Securities Act (15 USC §77f) provides that a “person purchasing” a covered security may sue either at law or in equity in any court of competent jurisdiction. This provision is nonjurisdictional and does not limit a federal court’s power to hear 1933 Act claims to cases brought by “person[s] purchasing.” [*Partington*