

KERN COUNTY COLLEGE OF LAW

**CIVIL PROCEDURE**

Midterm Examination

Fall 2021

Prof. L. Peake

Instructions:

There are three (3) questions in this examination. You will be given three (3) hours to complete the examination.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead, try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

KCCL  
Civil Procedure Midterm Exam  
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Question 1

Krusty Burger, Inc. is a corporation incorporated in State Y with its home office in State Y and its most profitable restaurant in State X (where its President and his wife live). Also living in State X are Marge and her husband, Homer. Marge's twin sisters, Patty and Selma, live in State Y, a lovely state where Patty and Selma hope to open up a cantina some day.

Patty and Selma, while visiting Marge and Homer in State X, suggested going out to the local Krusty Burger to get its popular Egg Burgers. Marge volunteered Homer to go buy some and bring them back to the house, which Homer did, but only after buying them for Patty, Selma and Marge and leaving their Egg Burgers in the back seat of his hot car while Homer took a six hour detour to watch a doubleheader ball game at Homer's favorite sports bar.

Patty, Selma and Marge all got food poisoning from their Krusty Burger's Egg Burgers. Patty and Selma went home to State Y and filed suit against Homer and Krusty Burger, Inc. in State Y state court, where State Y had adopted the Federal Rules of Civil Procedure on service of process and an unlimited long arm statute.

Selma asked Marge to come and visit twins Selma and Patty at their home in State Y and Selma asked Marge to bring Homer along supposedly to get Homer's ideas on the twin's dream cantina. While visiting the twins in State Y, Selma personally served Homer with summons and complaint on the twin's food poisoning suit.

Selma then hired a process server to serve Krusty Burger and the process server did so by serving the President's wife at the President's State X home.

Does the state court in State Y have personal jurisdiction for both Selma and Patty over Homer?  
Does it have personal jurisdiction over Krusty Burger?

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Question 2

Twin sisters PATTY and SELMA were tired of living in State X, near their annoying brother-in-law Homer. PATTY and SELMA had always dreamed of moving to State Y so they could open up a small cantina on the beach and live out their days in margarita-filled bliss. They quit their jobs at the State X DMV, packed all their belongings, and moved into a little bungalow they had purchased in State Y. A few years later, after finally opening "Maggie's Margs," their sister MARGE called in distress. She and Homer were getting divorced, and she needed her sisters' help and support. PATTY and SELMA flew to State X and planned to stay at MARGE's house for a few weeks.

On the third day of their visit, the three sisters were walking to Krusty Burger for lunch when all of a sudden they saw a man, SMITHERS, open the door to his car and release a pack of angry hounds. The dogs attacked the sisters, causing each of them injuries. After weeks of medical treatment, PATTY and SELMA return to State Y. But before they left, the three sisters consulted with an attorney and decided to sue SMITHERS for negligence, assault, battery, and intentional infliction of emotional distress. Their attorney filed the complaint in a court of general jurisdiction in State X, and properly served SMITHERS at his place of residence and employment, Burns Manor, in State X. The complaint stated that PATTY and MARGE each claimed \$80,000 in damages for their injuries, and that SELMA, who managed to hide behind her sisters for most of the attack, claimed \$10,000.

Two weeks after being served the complaint, SMITHERS removed the case to federal court in the Central District of State X. The sisters filed a Motion to Remand the action to state court, solely on the basis that the federal court lacked subject matter jurisdiction of each of their claims.

1. How should the district court rule on the sisters' motion to remand?
2. On the same day that SMITHERS removed the action to federal court, he filed a counterclaim against MR. BURNS, who resides at Burns Manor. SMITHERS' complaint alleges that he is employed as MR. BURNS' assistant in all matters, and that he released the hounds upon the sisters because MR. BURNS had ordered him to do so. His complaint against MR. BURNS states claims of indemnity and contribution under State X law. If any claims are to remain in federal court, would the district court also have subject matter jurisdiction over SMITHERS' claims against MR. BURNS?

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Question 3

Maggie's Margs, a State Y partnership of twin sisters Patty and Selma and doing business exclusively in State Y as a cantina where Patty and Selma are permanent residents, was assisted in its planning by their sister, Marge, a State X resident and former wife of now ex-husband Homer, a State X resident himself.

Homer has filed suit in State X Federal Court (which has only one judicial district) against Maggie's Margs, Patty and Selma for \$100,000 in damages, asserting breach of oral and implied contract against each of those three defendants, claiming that he was promised a one third ownership in Maggie's Margs in exchange for consulting services that he asserts he provided in State X in the development of Maggie's Margs.

Homer has successfully obtained service of process upon Selma and Patty who each have filed motions twenty days after such service upon them to transfer venue in State X Federal Court to State Y Federal Court.

Homer has also served Maggie's Margs; and Maggie's Margs, thirty days after service of process upon it, has now also filed a motion for change of venue seeking an order from State X Federal Court to transfer Homer's suit to State Y Federal Court. Homer has filed opposition to all three motions to transfer venue.

How should the Federal Court in State X rule upon each of the three motions to transfer venue from State X to Federal Court in State Y?

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## Civil Procedure Midterm Essay Question #1: Personal Jurisdiction

Krusty Burger, Inc. is a corporation incorporated in State Y with its home office in State Y and its most profitable restaurant in State X (where its President and his wife live). Also living in State X are Marge and her husband, Homer. Marge's twin sisters, Patty and Selma, live in State Y, a lovely state where Patty and Selma hope to open up a cantina some day.

Patty and Selma, while visiting Marge and Homer in State X, suggested going out to the local Krusty Burger to get its popular Egg Burgers. Marge volunteered Homer to go buy some and bring them back to the house, which Homer did, but only after buying them for Patty, Selma and Marge and leaving their Egg Burgers in the back seat of his hot car while Homer took a six hour detour to watch a doubleheader ball game at Homer's favorite sports bar.

Patty, Selma and Marge all got food poisoning from their Krusty Burger's Egg Burgers. Patty and Selma went home to State Y and filed suit against Homer and Krusty Burger, Inc. in State Y state court, where State Y had adopted the Federal Rules of Civil Procedure on service of process and an unlimited long arm statute.

Selma asked Marge to come and visit twins Selma and Patty at their home in State Y and Selma asked Marge to bring Homer along supposedly to get Homer's ideas on the twin's dream cantina. While visiting the twins in State Y, Selma personally served Homer with summons and complaint on the twin's food poisoning suit.

Selma then hired a process server to serve Krusty Burger and the process server did so by serving the President's wife at the President's State X home.

Does the state court in State Y have personal jurisdiction for both Selma and Patty over Homer? Does it have personal jurisdiction over Krusty Burger?

Model Answer: PJ CivPro Fall 2021

Did State Court have personal jurisdiction (“PJ”) over Homer?

Rule: State Courts have personal jurisdiction over defendants when lawfully served with summons and complaint where “Traditional” methods exist for invoking personal jurisdiction or Specific Jurisdiction (“SJ”) exists.

Application:

Homer is a domicile of State X and is subject to suit in the forum state of State Y if lawfully served with summons and complaint in accordance with State Y’s adoption of Federal Rules of Civil Procedure, Rule 4, and if service is not effected through use of fraud, force or deceit. *Copas v Anglo-American Provision; Tickle v Barton* (1956) 142 W. Va. 188. As an out of state domiciliary, State Y must have a long arm statute (“LAS”) that passes Constitutional muster which allows imposition of PJ over Homer.

Here, Homer was arguably tricked into coming into State Y by Selma on the pretext of getting his ideas on the Plaintiffs’ “dream cantina” so as to render service of process (“SOP”) within State Y ineffective for imposition of PJ.

In addition, SOP was effectuated by a plaintiff (Selma) in a manner not compliant with FRCP 4(c)(2) (SOP cannot be served by a party).

Thus, no “Traditional” method for imposition of PJ on Homer is shown. This is so even though Patty does not appear to be involved in any asserted “deceit” nor noncompliant SOP on Homer: Patty has not independently been indicated by the facts to have obtained Traditional PJ over Homer.

As to whether Specific Jurisdiction over Homer is present:

A Constitutional “unlimited” LAS is stated as having been adopted by State Y. In order for SJ to exist, there must be minimum contacts by Homer with State Y, purposeful availment by Homer with State Y which results in harm to the Plaintiffs in State Y. *International Shoe v Washington* (1945) 326 US 310; *World-Wide Volkswagen v Woodson* (1980) 444 US 286.

Here, the facts do not establish minimum contacts by Homer with forum State Y to be present, nor purposeful availment by Homer with State Y with resultant harm to Plaintiffs so as to establish SJ over Homer in State Y.

Conclusion: No PJ over Homer exists in State Y court where, as here, SOP was not properly effectuated on Homer, SOP was arguably obtained through deceit, and SJ does not appear to lie.

Did State Court Y have personal jurisdiction over Krusty Burger?

Rule: See above

Application:

Krusty Burger is stated to have its most profitable restaurant in State X, with its home office and place of incorporation in State Y. A corporation may be sued and PJ lie over a corporation where it is incorporated, as well as where its principal place of business is located. 28 USC 1332(c)(1).

If SOP is properly effected, State Y may obtain PJ over Krusty Burger, Inc.

However, the facts state that SOP on Krusty Burger was effected through service of summons and complaint on its President's wife. FRCP 4(h)(1)(B) requires SOP, if served upon an officer of the corporation, to be personally served as opposed to sub served.

Conclusion: State Court Y has not obtained PJ over Krusty Burger due to SOP on Krusty Burger failing to comply with State Y's adoption of Federal Rules of Civil Procedure, including service on a corporation.

## Civil Procedure Fall 2021, SMJ Exam Essay Question

Twin sisters PATTY and SELMA were tired of living in State X, near their annoying brother-in-law Homer. PATTY and SELMA had always dreamed of moving to State Y so they could open up a small cantina on the beach and live out their days in margarita-filled bliss. They quit their jobs at the State X DMV, packed all their belongings, and moved into a little bungalow they had purchased in State Y. A few years later, after finally opening "Maggie's Margs," their sister MARGE called in distress. She and Homer were getting divorced, and she needed her sisters' help and support. PATTY and SELMA flew to State X and planned to stay at MARGE's house for a few weeks.

On the third day of their visit, the three sisters were walking to Krusty Burger for lunch when all of a sudden they saw a man, SMITHERS, open the door to his car and release a pack of angry hounds. The dogs attacked the sisters, causing each of them injuries. After weeks of medical treatment, PATTY and SELMA return to State Y. But before they left, the three sisters consulted with an attorney and decided to sue SMITHERS for negligence, assault, battery, and intentional infliction of emotional distress. Their attorney filed the complaint in a court of general jurisdiction in State X, and properly served SMITHERS at his place of residence and employment, Burns Manor, in State X. The complaint stated that PATTY and MARGE each claimed \$80,000 in damages for their injuries, and that SELMA, who managed to hide behind her sisters for most of the attack, claimed \$10,000.

Two weeks after being served the complaint, SMITHERS removed the case to federal court in the Central District of State X. The sisters filed a Motion to Remand the action to state court, solely on the basis that the federal court lacked subject matter jurisdiction of each of their claims.

1. How should the district court rule on the sisters' motion to remand?
2. On the same day that SMITHERS removed the action to federal court, he filed a counterclaim against MR. BURNS, who resides at Burns Manor. SMITHERS' complaint alleges that he is employed as MR. BURNS' assistant in all matters, and that he released the hounds upon the sisters because MR. BURNS had ordered him to do so. His complaint against MR. BURNS states claims of indemnity and contribution under State X law. If any claims are to remain in federal court, would the district court also have subject matter jurisdiction over SMITHERS' claims against MR. BURNS?



## MODEL ANSWER

### Motion to Remand

- I. PATTY v. SMITHERS
  - a. Remand must be granted if the District Court lacks SMJ (FRCP 12(h)(3), 28 USC 1447(c))
  - b. All 3 sisters bring tort claims, therefore Fed Q SMJ does not apply and the Court must have diversity jurisdiction (28 USC 1332)
  - c. There is complete diversity between Patty and Smithers
    - i. Patty's citizenship for diversity purposes: Changed domicile from X to Y.
    - ii. Smithers' citizenship for diversity purposes: X.
  - d. Amount in controversy is sufficient because Patty individually claims \$80,000
  - e. Patty's argument for remanding her claim based on lack of SMJ fails
- II. SELMA v. SMITHERS
  - a. Complete diversity is met
    - i. Selma also changed domicile from X to Y
  - b. Amount in controversy, \$10,000, is not sufficient
  - c. Selma cannot aggregate her claim with Patty's because they are not claiming based on a common, undivided interest. Rather, they're seeking damages for their respective injuries.
  - d. The Court would likely exercise Supplemental Jurisdiction over Selma's claim (28 USC 1367)
    - i. Same case or controversy (1367(a))
      1. Common nucleus of operative fact (*Gibbs*): same incident, lots of common evidence
    - ii. Would not destroy diversity (1367(b))
  - e. Court would likely reject Selma's argument for remand, because it can be tried together with Patty's, and Patty's remand argument fails.
- III. MARGE v. SMITHERS
  - a. Amount in controversy is met, but...
  - b. Complete diversity is not met
  - c. Supplemental Jurisdiction over Marge's claim is not permissible, because it would defeat complete diversity for the action as a whole (1367(b))
  - d. The Court would sever Marge's claims from the action and remand them to state X court (28 USC 1441(c))

Plaintiffs' Motion to Remand would be granted as to Marge's claims and likely denied as to Patty & Selma's claims.

### SMJ over SMITHERS v. BURNS

- I. Fed Q SMJ is not available: Smithers seeks indemnity or contribution under state law
- II. Complete diversity is not met: Burns' citizenship for diversity purposes is X
- III. Supplemental jurisdiction over this claim is not permissible because it would defeat complete diversity for the action as a whole (1367(b))
- IV. The Court would likely sever this claim

Civ Pro Fall 2021, Venue Midterm Exam Question

Maggie's Margs, a State Y partnership of twin sisters Patty and Selma and doing business exclusively in State Y as a cantina where Patty and Selma are permanent residents, was assisted in its planning by their sister, Marge, a State X resident and former wife of now ex husband Homer, a State X resident himself.

Homer has filed suit in State X Federal Court (which has only one judicial district) against Maggie's Margs, Patty and Selma for \$100,000 in damages, asserting breach of oral and implied contract against each of those three defendants, claiming that he was promised a one third ownership in Maggie's Margs in exchange for consulting services that he asserts he provided in State X in the development of Maggie's Margs.

Homer has successfully obtained service of process upon Selma and Patty who each have filed motions twenty days after such service upon them to transfer venue in State X Federal Court to State Y Federal Court.

Homer has also served Maggie's Margs; and Maggie's Margs, thirty days after service of process upon it, has now also filed a motion for change of venue seeking an order from State X Federal Court to transfer Homer's suit to State Y Federal Court. Homer has filed opposition to all three motions to transfer venue.

How should the Federal Court in State X rule upon each of the three motions to transfer venue from State X to Federal Court in State Y?

## Civ Pro Fall 2021 Venue Midterm Model Answer

Issue: Whether Patty's motion to transfer venue should be granted by State X Federal Court

Rule: Venue in Federal Court may be brought (1) in a judicial district where any defendants reside (if all defendants are residents of the State where the district is located; or (2) where a substantial part of the events or omissions giving rise to the claim occurred; and venue in Federal Court may be transferred in the interests of justice for convenience of parties or witnesses. A district court in which venue is improper may, in response to a timely and sufficient objection to venue, dismiss the case or, in the interests of justice, transfer the case to any district in which the case could have been brought. 28 USC 1391, 1404 and 1406.

Application: Patty has filed a timely, within twenty one days: FRCP 12(b)(3), motion to transfer venue from Federal court in State X to Patty's state of residence, State Y. 28 USC 1391(b)(1), (c)(1) (venue is proper in a judicial district in which any defendant resides, if all defendants are residents of the State where the district is located. Defendant Selma is also a resident of State Y. Partnership Maggie's Margs is also a resident of State Y (28 USC 1391(c)(2).

Thus, venue would not lie in State X Federal Court based upon defendants' residency.

However, venue will lie where a substantial part of the events or omissions giving rise to the claim occurred. Here, the facts state that Plaintiff Homer alleges in his complaint that the oral and implied contracts arose from consulting services Homer provided to the defendants in State X, where he was promised a one third ownership of defendant Maggie's Margs.

Conclusion: The State X Federal Court should appropriately deny Defendant Patty's motion for change of venue, as venue properly lies in State X as a substantial part of the events or omissions giving rise to Plaintiff Homer's claims occurred there.

Issue: Whether Selma's motion to transfer venue to Federal Court in State Y should be granted by the Federal Court in State X

Rule: Same as above.

Application: Same as above where, as here, Selma and Patty's applicable facts are the same.

Conclusion: Same as above as to Defendant Patty.

Issue: Whether Defendant partnership Maggie's Margs for change of venue from Federal Court in State X to Federal Court in State Y should be granted.

Rule: Same as above.

Application: Here, while venue would ordinarily properly lie in State X Federal Court to as to render Defendant Maggie's Margs appropriately subject to denial as discussed above.

In addition, Maggie's Margs motion for transfer of venue was untimely (made 30 days, not within 21 days, as required. See FRCP 12(b)(3).

Conclusion: The Federal Court in State X should appropriately deny Maggie's Margs' motion for transfer of venue as untimely, and as venue in State X appears proper based upon application of 28 USC 1391(b)(2).

1)

### **(1) Present Possessory Interests**

#### Oscar

##### Fee Simple Absolute

A fee simple invests the holder of the fee with full possessory rights now and in the future.

Here, the facts show that Oscar owns Blackacre in fee simple absolute.

#### Alice

##### Life Estate

A life estate is an estate this is not terminable at any fixed or computable period of time, but cannot last longer than the life or lives of one or more persons.

Here, the facts Oscar created a will and state that he leaves Blackacre to Alice for life, and upon her death, to Brad for life....

#### Brad, Xena, and Yuri

##### Future Interest in Remainder

An estate that does not entitle the owner of possession immediately but possession in the future. It is a present legally protected right to property. A future interest in remainder is a future estate created upon the natural termination of the proceeding estate.

Here, the facts show that Oscar created a will and left Blackacre to Alice for life, but upon her death, Brad would get Blackacre. His ownership of Blackacre will take place in the future upon the natural termination of Alice. The same is for Xena and Yuri upon the termination of Brad.

### **(2) Rule Against Perpetuities (RAP)**

The RAP states that no interest in land is good unless it vests no later than twenty one years after some life in being at the creation of the interest.

Here, the facts show that Alice is 75 years old, Brad is 55 years old, Xena is 21 years old, and Yurie is 18 years old. Oscar's will violates the Rule Against Perpetuities because his will affects Xena and Yuri. The will vests significantly after twenty one years.

85

2)

1. Motion to Remand ← NEED BETTER STATEMENT OF ISSUE BEING ADDRESSED

### Federal Court Subject Matter Jurisdiction (SMJ)

Federal Court Subject Matter Jurisdiction is based either on the presence of a Federal Question, or diversity.

#### Does State X Fed. Court have Federal Question SMJ?

Federal Question SMJ arises out of a constitutional question, federal rules, exclusive jurisdiction (copyright, patents, maritime, etc.), or issues involving the United States.

Here, the claims that the sisters are suing on, negligence, assault, battery and IIED, are all state level claims. There is no Federal question SMJ.

State X Fed. Court does not have federal question SMJ.

#### Is there SMJ based on diversity on Patty's claim?

SMJ based on diversity requires complete diversity and a satisfaction of the amount in controversy (AIC). Complete diversity means that all defendants are not citizens of any state that any plaintiff is a citizen of. The amount in controversy that must be satisfied is \$75,001. This can be met through one plaintiff having that amount in controversy through multiple claims against the same defendant, not including costs or interest, IF SUPPL. SMJ IS PRESENT.

Patty and Selma are citizens of State Y. Although they initially lived in State X, and were present in State X when the incident occurred, and had been staying at Marge's house in State X for a few weeks, they had quit their state X jobs, and moved into a bungalow in State Y years prior, where they intended to live from then on. State Y is their domicile. The amount in controversy is satisfied by Patty having damages from her injuries of \$80,000. Smithers resides in State X, so he is not a citizen of the state that Patty is.

There is SMJ based on diversity for Patty's claim.

#### Is there SMJ based on diversity on Selma's claim?

Rule supra

Here, Selma's citizenship is the same as Patty's since they live together and is discussed above. Selma's amount in controversy, however, does not reach the \$75,001 limit, since hers is only \$10,000. She cannot aggregate her claim with either of her sister's to reach the AIC.

### **Supplemental Jurisdiction**

A claim by a plaintiff that does not satisfy the AIC for diversity jurisdiction can be added to a claim by a plaintiff that does satisfy the AIC through supplemental jurisdiction. In order for the claims to be joined they must arise from a common nucleus operative fact as the claim by the plaintiff that does meet the AIC.

Here, Selma was injured in the same attack that her sisters were injured in. This is a common nucleus of operative fact between the multiple claims, and Selma can assert her claim as part of the same transaction as her sisters, even if she doesn't meet the AIC. The court will use supplemental jurisdiction to take the claim.

AVOID CONTRADICTIONS

There is SMJ based on diversity for Selma's claim.

### **Is there SMJ based on diversity on Marge's claim?**

Rule supra.

Marge is a Citizen of State X, and Smithers is a Citizen of State X. Since Marge is a plaintiff, and a citizen of State X, and Smithers is a defendant, and a citizen of State X, there is not complete diversity. Marge meets the AIC by having damages for her injuries of \$80,000.

There is not SMJ based on diversity for Marge's claim.

Since all three sisters sued together, their claims are put together.

### **Was removal to State X Federal court for the central district proper?**

Removal must be initiated by the defendant, or all defendants must be in agreement if there are multiple defendants. The federal court must have SMJ over the cause of action. Motion to remove to federal court must be initiated within one year of the claim.

Here, Smithers was the defendant and thus was allowed to file to remove the case to federal court. At this point in time he is the only defendant so he does not need anyone else's agreement. As discussed above, the federal court in State X does not have SMJ based on either a federal question,



or through diversity, since Marge is a citizen of State X as is Smithers. The motion was filed within the statutory time frame, since it was filed in 14 days after Smithers was served.

Removal to State X federal court was not proper.

→ 1441(b)(2)?

**Must the federal court grant the sister's motion to remand?**

A plaintiff can file a motion to remand a removed case back to state court based on the federal courts lack of SMJ. If the plaintiff is challenging the federal courts SMJ, this motion can be filed at any time, since SMJ can be challenged at any time, even up to and after judgment.

Here, since the federal court did not have SMJ based on a federal question or diversity, the motion to remand must be granted. The challenge to SMJ can happen at any time.

The court must grant the <sup>SISTERS' ? PLURAL?</sup> sister's motion to remand.

**2. Counterclaim (cross claim? Mr. Burns wasn't a plaintiff right?)**

**Does the district court have SMJ over Smithers' claims against Mr. Burns?**

Cross Claims/compulsory counterclaims/<sup>IMPLEADERS</sup>interpleaders are all allowed to be filed in federal court if a case is removed there, and are not considered waived if not filed previously in state court. The district court must have independent jurisdiction based on a federal question or diversity on these new claims.

Here, Smithers is adding Mr. Burns as a third party defendant, so by not filing this motion in state court before removal, he has not waived his ability to file once it is in federal court. The claims that Smithers was filing against Mr. Burns arose under State X law, so there is no federal question. Mr. Burns resides in State X, so there is also no complete diversity. Since the district court does not have an independent jurisdiction over this new claim, the court can't keep it in federal court, and must sever or dismiss it.

The district court does not have SMJ over Smithers' claims against Mr. Burns.

90

3)

A. Did Homer properly lay venue?

Venue is the physical location of the presiding court. A plaintiff can lay venue in any district where all defendants reside or a substantial part of the claim arose.

None of the defendants reside in State X, but Homer could argue that the breach of contract took place in State X, since that is where he provided the consulting services to the plaintiffs.

ADVISABLY However, the entity at the center of this case, Maggie's Margs, is located in State Y. [The alleged breach took place in State Y once the entity was established and Homer did not receive his share. The only aspect tying this case to State X is Homer's alleged consulting services he provided in State X.

MADE WYERLY THAN NOT, Thus, Homer did not properly lay venue. AS A "SUBSTANTIAL PART" OF THE EVENTS OR OMISSIONS DO NOT APPEAR TO HAVE OCCURRED IN STATE X.

B. Did Selma and Patty properly file their motions for a transfer of venue?

Requesting a transfer of venue must be in the interest of justice and for the convenience of the parties and witnesses. The transferee must be a proper venue that has personal jurisdiction over the defendant without the defendant waiving jurisdiction. If the transferor is a proper venue, the court has the discretion to send the case to any district—proper or not—in the interest of justice. A request for transfer must be made within twenty one days of service.

Because Selma and Patty filed their motions in twenty days, they satisfied the timing element of a transfer of venue. All defendants are domiciled in State Y, so State Y has personal jurisdiction over all three defendants. Thus, it is a proper venue to request transfer to.

Additionally, because State X is not the proper venue, it is likely Selma and Patty's motions, respectively, will be granted.

C. Did Maggie's Margs properly file its motion for a transfer of venue?

Requesting a transfer of venue must be in the interest of justice and for the convenience of the parties and witnesses. The transferee must be a proper venue that has personal jurisdiction over the

defendant without the defendant waiving jurisdiction. If the transferor is a proper venue, the court has the discretion to send the case to any district--proper or not--in the interest of justice. A request for transfer must be made within twenty one days of service.

Maggie's Margs filed its motion thirty days after service of process upon it, exceeding the time frame permitted by law. However, because State X is an improper venue, it is likely the case will be moved to State Y Federal Court regardless, but there is a possibility, however slight, that the court may force Homer to dismiss and refile his claim against Maggie's Margs in the proper venue.

D. Conclusion

The court should grant Patty and Selma's motions for a transfer of venue but deny Maggie's Margs's motion for exceeding the time frame, though it is likely the case will be transferred to State Y Federal Court regardless.

**END OF EXAM**