

MONTEREY COLLEGE OF LAW

Civil Procedure

Midterm Examination

Fall 2018

Prof. J. Martin

INSTRUCTIONS:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

**Monterey College of Law**  
**Civil Procedure Exam -- Fall, 2018 -- Professor Martin**  
**Question One**

While he was a law student, PAUL had an emotional breakdown and was involuntarily hospitalized in State A where he was given shock therapy. During his confinement, PAUL composed and filed a Complaint in federal district court naming the following defendants: the United States, Mr. DON, and Mr. DILL.

PAUL's Complaint alleged that Mr. DON, a hospital orderly, beat him so he would submit to shock therapy. The only allegation concerning Mr. DILL's behavior stated, "Regarding DILL, same as DON". PAUL alleged that the United States, DON, and DILL, violated his federal civil rights protected within 42 USC s. 1983. PAUL also alleged that he was a citizen of State B, while DON and DILL were both residents of State A. PAUL requested damages of \$37,500 from DON and \$37,500 from DILL. There was no description in PAUL's Complaint of what actions by the United States deprived PAUL of his civil rights.

Each Defendant moved, on the basis of the pleadings alone, to dismiss for lack of subject matter jurisdiction. Each Defendant also moved to dismiss on the basis that the claims against each of them were not sufficiently pleaded.

PAUL's only response to the motions to dismiss was to file a hand-drawn picture of a polar bear riding a motorcycle.

The court ruled:

1. The court has subject matter jurisdiction on all claims.
2. The claims against the USA, DON, and DILL, are sufficiently pleaded.

Were the court's rulings correct? Discuss.

\* \* \* \* \*

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**Question Two**

PETER and PAM are newlyweds and permanent residents of State A. While on their honeymoon in State B, they traveled in a bus that left the road and tumbled down a ravine. The bus was owned by DEVO-CO, an Italian company that was incorporated under the laws of Italy, with its headquarters in Rome. DEVO-CO is additionally incorporated in State B.

State B is the only state in which DEVO-CO does business, due to State B's high population of Italian-related residents. DEVO-CO's drivers and employees speak both English and Italian and all are residents of State B.

PETER and PAM jointly file a lawsuit against DEVO-CO in federal district court in State A. In their Complaint, PAM alleges personal injuries caused by the accident and she demands damages in the amount of \$70,000, as well as property damages caused by the accident, for which she demands damages in the amount of \$10,000. PETER alleges personal injuries caused by the accident and demands damages in the amount of \$20,000.

DEVO-CO filed a Motion to Dismiss the Complaint for lack of personal jurisdiction and the federal district court denied the motion.

DEVO-CO has appealed on the grounds of lack of personal jurisdiction and, for the first time, lack of subject matter jurisdiction.

How should the Court of Appeals rule on:

1. Subject Matter Jurisdiction
2. Personal Jurisdiction

Discuss.

\* \* \* \* \*

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**Civil Procedure Exam -- Fall, 2018 -- Professor Martin**  
**Question Three**

PUGG, a citizen of State A, is discharged from a five-year state prison term and he returns to his dwelling in State A, intending to permanently remain there. Soon after, he hears from reputable sources that DICK, the detective who assisted the District Attorney with PUGG's prosecution, has been inquiring about PUGG since the date of his release. DICK is also a resident and citizen of State A.

PUGG becomes preoccupied with the idea that DICK is investigating other crimes that PUGG committed but was never arrested for. Soon terrified that DICK will do anything to return him to prison, PUGG decides to utilize the law he studied in prison and sue DICK in a federal lawsuit. PUGG composes a Complaint and the complete description of his cause of action against DICK reads:

Defendant won't leave me alone and maliciously makes me lose my peace of mind which places me in fear by troubling my emotions, and which trespasses upon my thoughts which are private. Those acts and others violate my federal civil rights found in 42 USC s.1985(3).

On March 1<sup>st</sup>, PUGG files the Complaint in federal District Court.

On March 10<sup>th</sup>, DICK receives by mail at his California dwelling/place of abode a proper waiver of service document, with Summons and Complaint, per Fed Rule 4(d), but DICK does not take the Complaint seriously. DICK discards the papers without signing.

On May 17<sup>th</sup>, PUGG makes a "courtesy" phone call to DICK asking if he intends to execute and return the service waiver. DICK explains that he did not take the March 10<sup>th</sup> papers seriously, but that he will now cooperate. The next morning, DICK is personally served at his dwelling by a professional process server. That same day, both PUGG and DICK hire attorneys.

1. Does a federal court have subject matter jurisdiction over PUGG's claim? What can DICK's attorney do to challenge in that regard? What is the timing of that move?
2. What further acts can DICK do to challenge PUGG's claim. What is the timing of those moves?
3. What is a Rule 4(d) service waiver and what are the possible results from DICK refusing to execute and return PUGG's request?

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**Monterey College of Law**  
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**Question One -- Model Answer**

I. Subject Matter Jurisdiction in Federal Court

A. Federal Question

Federal Question Jurisdiction requires that Plaintiff's well-pleaded Complaint sets forth a cause of action that arises under federal law -- namely, there is an allegation of a right or interest that is substantially founded on federal law. In this case, PAUL is alleging that his civil rights (protected by 42 USC s.1983) have been violated, likely by his loss of liberty and/or being beaten during his time in hospital custody. It appears that the Federal Court has jurisdiction based on a federal question.

B. Diversity

Diversity Jurisdiction requires (1) complete citizenship diversity when the suit is filed, and (2) an amount in controversy that exceeds \$75,000, excluding interest.

- (1) Complete diversity requires every Plaintiff to be of diverse state citizenship from each Defendant. In this case, PAUL alleges that he is a citizen of State B while DON and DILL are both citizens of State A. Given the truth of those allegations -- that each of those natural persons is domiciled (a permanent home where he intends to return) where alleged -- it appears that citizenship diversity is present.
- (2) PAUL is a single Plaintiff and must make a good faith claim that exceeds \$75,000. In this case, PAUL seeks \$37,500 from each of DON and DILL and his good faith pleading controls unless the court concludes to "a legal certainty" that he cannot recover that amount. Can PAUL aggregate his claims? While a Plaintiff may aggregate claims against a single Defendant, when Plaintiff joins Defendants to the same claim aggregation is not always permitted, even when there is a "community of interest". Claims against joint tortfeasors are ordinarily separate and distinct and must therefore stand alone. Without aggregation, the amount in controversy requirement is not met. Also, even if aggregation was permitted in this case, the two claims equal \$75,000 and do not exceed that amount. Therefore, the amount in controversy requirement is not met and there is not diversity jurisdiction.

C. Supplemental Jurisdiction

If a court does not have original jurisdiction over a claim, it may be able to hear the claim under Supplemental Jurisdiction, as long as it arises from a "common nucleus of operative facts". In this case, while there may not be Diversity Jurisdiction regarding DON and DILL, PAUL's claims come from the "same transaction(s) or occurrence(s)" involving PAUL's involuntary hospitalization and would likely be tried together during consideration of the Federal Question of

civil rights. As a result, the claims against DON and DILL may likely be heard in federal court under the court's Supplemental Jurisdiction.

In conclusion, the court was correct in finding Subject Matter Jurisdiction and should not dismiss.

II. Sufficiency of Pleading

PAUL's Complaint should contain a short statement of the grounds for the court's jurisdiction, a claim that PAUL is entitled to relief, and a demand for relief. The initial pleading should give the opposing parties "fair notice" of the claims.

- A. As to the United States, PAUL's pleading lacks any information and is insufficient. The court (even if it is sympathetic to PAUL's mental capacity) should not have deemed it to be sufficient pleading.
- B. As to DON, it appears that PAUL has articulated behavior that may give notice of a claim involving the deprivation of civil rights during violence and the court was correct to deem the Complaint being sufficiently pleaded as to DON.
- C. As to DILL, the court could find the Complaint's description of "same as" behavior as being adequate. On the other hand, the court may find the description of DILL's behavior as being insufficiently pleaded due to its brevity and uncertainty. The test is whether the Complaint gives fair notice of a plausible claim and any reviewing court may draw on its judicial experience and common sense. Applying that test, this writer believes PAUL's allegations as to DILL are nothing more than a conclusion without facts. As PAUL presumably has knowledge of the facts (the beatings), to omit them leaves the Complaint insufficiently pleaded as to DILL.

In conclusion, the court's ruling as to DON is correct but incorrect regarding the United States and DILL.

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**Question Two -- Model Answer**

PETER & PAM vs. DEVO-CO

1. Subject Matter Jurisdiction

- A. Subject Matter Jurisdiction refers to the court's ability to hear a type of case and Subject Matter Jurisdiction is not waived by failing to raise the issue at trial. The facts indicate that DEVO-CO raises the issue for the first time during a post-judgment appeal and that timing is neither defective nor prejudicial.
- B. In federal court there are two main bases for original jurisdiction: (1) Federal Question Jurisdiction, and (2) Diversity Jurisdiction. Each of the claims by PETER and PAM must have an independent basis for federal Subject Matter Jurisdiction. However, if either Plaintiff does not satisfy either of the bases referenced above, the claim may be heard in federal court under Supplemental Jurisdiction.

(1) Federal Question: As PAM and PETER are alleging claims for injuries due to a bus accident, those claims arise under state tort law, not federal law or a federal statute. Therefore, there is not a basis for Subject Matter Jurisdiction based on a Federal Question.

(2) Diversity: When there is (a) complete diversity when the suit is filed, and (b) an amount in controversy that exceeds \$75,000, excluding interest, a federal court may proceed in Diversity Jurisdiction.

(a) In this case, complete diversity is achieved as PETER and PAM have diverse state citizenship (State A) from the DEVO-CO corporation, which is a citizen of every U.S. state in which it is incorporated (State B) and the state or foreign country where the corporation's officers direct and control (Italy). Thus, the suit is diverse between two citizens of State A and a corporate citizen of Italy, under "alienage" jurisdiction.

(b) Amount in controversy is determined by Plaintiff's good faith claims in a well-pleaded Complaint, of an amount in excess of \$75,000. A single Plaintiff can aggregate claims against a single Defendant and therefore PAM's claims of \$70,000 and \$10,000 can be added and they will satisfy the amount in controversy requirement.

PETER's claim for \$20,000 does not meet the amount in controversy requirement. While multiple Plaintiffs may aggregate claims against a single Defendant when they are enforcing a common/undivided interest, the claims of PETER and PAM are of individual interests (each with unique bodily injuries) and cannot be aggregated. Therefore, while there

is Diversity Jurisdiction regarding PAM, the court does not have jurisdiction based on diversity/alienage over PETER's claim.

- (3) Supplemental Jurisdiction: In a diversity case, a claim that does not meet the amount in controversy requirement may be heard if it arises from "a common nucleus of operative facts" that also pertains to a claim that satisfies the requirement of Diversity Jurisdiction. Because PETER and PAM were injured in the same bus accident and the claims would likely be tried together, their claims arise from the same nucleus of common facts and PETER's claim may be heard in federal court under Supplemental Jurisdiction.

In conclusion, the federal court has Diversity/Alienage Jurisdiction over PAM's claim and Supplemental Jurisdiction over PETER's claim.

## 2. Personal Jurisdiction

### A. Traditional

In Personam Jurisdiction refers to the court's ability to exercise power over a particular Defendant and one way to acquire that jurisdiction is through the location of Defendant's domicile. In this case, the Defendant is a corporation and, per traditional jurisdiction, the corporation is domiciled both in State B and Italy as it is incorporated both in State B and Italy. Italy is also the location of DEVO-CO's headquarters. As DEVO-CO is not "domiciled" in State A and as there is no mention of consent or appearance by DEVO-CO, there are no traditional bases for In Personam Jurisdiction.

### B. Long Arm Statute

While a long-arm statute gives the court personal jurisdiction over an out-of-state Defendant, no such statute is discussed in the facts and In Personam Jurisdiction does not exist through statute.

### C. Specific Jurisdiction through Minimum Contacts

The minimum contacts test requires a showing of Defendant's "purposeful availment of the benefits and protections" of the forum state, including the privilege of conducting acts within the forum state. In this case, the facts state that DEVO-CO does all its business in State B and that the bus accident occurred in State B. Because of those circumstances that show a lack of contacts with State A by DEVO-CO, the purposeful availment test is not met.

Further consideration of the circumstances of this case show no connection with State A by Defendant DEVO-CO, nor does that Defendant appear to be "at home" in State A. Accordingly, it would be unfair to expect DEVO-CO to litigate in State A, nor would that experience be foreseeable by DEVO-CO. While State A has an interest in the regulation and protection of its citizens, those interests would not override DEVO-CO's lack of minimum contact with State A.



In conclusion, there are no tests/factors that support a finding for In Personam Jurisdiction and the Appeals Court should reverse the decision to deny DEVO-CO's Motion to Dismiss.

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**Question Three -- Model Answer**

1. Does federal court have subject matter jurisdiction over PUGG's claim? What can DICK do to challenge? What are timing issues?
  - A. Subject matter jurisdiction of federal courts is limited to that authorized by the Constitution, as implemented by federal statute and decisional law, which may be enumerated as follows:
    - (1) Diversity of Citizenship, per s.1332, requires complete diversity and that is absent in the present case as both parties are residents/citizens of State A.
    - (2) Federal Question, per s. 1331, requires an action "arising under" federal law. In the present case, PUGG alleges his interests (civil rights) under federal statutory law and that may be sufficient. Further, while there is no amount in controversy (demand for damages) stated in the fact pattern, there is no such requirement in federal question cases.
    - (3) Removal Jurisdiction pertains to an action brought in state court but brought to federal court by a Defendant. That is clearly absent in this case as the original filing was in federal court.
    - (4) Supplemental Jurisdiction, per s. 1367, allows a federal court to entertain a claim that does not have an independent basis of federal subject matter jurisdiction (Diversity or Federal Question) but arises from the same transaction or occurrence as a claim properly in federal court. It brings additional claims into the case but cannot be used to get the case into federal court in the first instance. Supplemental jurisdiction does not apply here.

Therefore, if PUGG's claim has federal subject matter jurisdiction, it will be because PUGG claimed a right/interest founded on federal law and it appears as part of Plaintiff's cause of action, as set out in a well-pleaded Complaint.

- B. Has PUGG filed a well-pleaded Complaint?
  - (1) Despite PUGG's mention of federal statute 42 USC s.1985, it may be argued that his claim is actually a state law claim, seeming to reference the tort claims of Intentional Infliction of Emotional Distress and Trespass. Further thoughts on a well-pleaded Complaint are below.
- C. DICK's attorney may accordingly file a Motion to Dismiss, per Rule 12(b)(1), for lack of subject matter jurisdiction. Typically, Rule 12 motions must be filed within 21 days after being served, likely March 21<sup>st</sup> in this case, but a challenge to subject matter jurisdiction may be entertained at any time.

1. What further acts can DICK's attorney do to challenge PUGG's claim? What is the timing of those moves?
  - A. DICK's attorney may also file a Motion to Dismiss, per Rule 12(b)(6), for failure to state a claim upon which relief can be granted. That federal motion is a counterpart to the common law Demurrer. Such a motion must be made before or at the time an Answer is filed; if not, the Defendant waives that defense.
  - B. A Complaint must contain (1) a short statement of jurisdiction, (2) a short statement of the claim showing that the pleader is entitled to relief, and (3) a demand for relief..
    - (1) DICK's attorney would argue that PUGG's Complaint does not recite any facts suggesting any violation of civil rights. PUGG's pleading is conclusory, as well vague, and cannot be responded to.
      - a. PUGG's attorney would respond that pleadings serve the function of giving notice to opposing parties, and the court, and that PUGG's Complaint does so.
    - (2) DICK's attorney would argue that PUGG's Complaint does not meet the current requirement of facts that support a plausible (not just possible) claim.
      - a. PUGG's attorney would respond that often leniency is shown towards certain claimants (such as inmates or other disadvantaged citizens) so they may have access to a courthouse.
      - b. DICK's attorney could respond that PUGG has been discharged from prison, is now a member of society again, and is not a member of a protected class.
  - C. DICK's attorney may also file a Motion, per Rule 12(e), for a more definite statement, due to PUGG's Complaint being so vague and ambiguous that a responsive pleading cannot reasonably be framed.
    - (1) That motion must be made before responding with an Answer. If granted, PUGG would have 14 days to obey the order and provide a more definite statement. If not obeyed, the court may strike the pleading or issue any other appropriate order.
2. What is a Rule 4(d) request of waiver and what are the possible results from DICK refusing to execute and return the service waiver?
  - A. Due to recent amendment, Rule 4 provides that Plaintiff may request the Defendant to waive service of process to speed proceedings and save costs. The present case states that PUGG send a "proper" waiver, with Summons and Complaint, which DICK received on March 10<sup>th</sup>.
  - B. Accordingly, DICK has 30 days from the date the waiver was sent to execute and obey. If he does obey, he has 60 days to file an Answer. If he does not obey, he is liable for the cost of such service.
  - C. In the present facts, the waiver is received on March 10<sup>th</sup> but DICK is personally served on March 18<sup>th</sup>, so he is within his statutory time to respond and would likely not be liable for any costs of service.

\* \* \* \* \*

*— nice organization (comments appreciated) and nice writing style*

1)

Question One

**Subject matter jurisdiction** determines the court that will hear a case. State courts can hear general claims, claims that pertain to state and federal questions. Federal courts can only hear cases that relate to Federal issue or when there is diversity of citizenship between the plaintiff and the defendants and there is a minimum dollar amount of \$75,001.

*TYPE OF*

*OK INTR*

A **federal question** is one that relates to constitutional issues and treaties. These subjects are admiralty, anti-trust, copyright, civil rights, immigration, internal revenue, patent, and military issues. Here, the issue is whether or not Paul's civil rights were violated. as he has alleged that the United States, Don and Dill violated his federal civil rights by forcing him into having shock therapy. If the federal question fails for any reason, it must be determined if diversity of citizen ship exists with a minimum amount of \$75,000 ~~or more~~ dollars.

*OR ANY FEDERAL LAW, ETC.*

*MORE THAN MUST EXCEED \$75,000*

**Diversity of citizenship** is when the plaintiff and the defendants are domiciled in different states.

*→ ISN'T PAUL LIVING IN STATE A? (???)*

*→ NO, HIS STAY IS INVOLUNTARY*

Here, Paul lives in State B and Don and Dill live in State A.

**Domicile** In order to determine where a person reside,s we must look to their intention. They must have an intention to reside their indefinitely. If they temporarily leaves the state, they are still a resident/citizen of State B. His domicile will not change until he intends to reside somewhere else indefinitely.

*★*

Paul: Paul resides in State B and although he is currently in a hospital he is not intending to reside their indefinitely and will remain a resident/citizen of State B.

Don and Dill: Domicile (see supra) They are residents of State A. It is not clear if they are citizens. In order to determine if they are citizens, their domicile and intend to reside indefinitely needs to be analyzed. If they are not citizens of State A, then they must be citizens of any State other than Paul's. They do not need to reside in different states as they are named as co-parties in the same claim. Don and Dill are named as co-parties in the suit and arise from the same nucleus of legally operative facts and therefore they can reside in the same state in order to claim diversity.

**Amount of claim:** A claim in federal court requires that the amount the plaintiff is seeking in damages, must equal \$75,001. Here, the claim is for \$37,500 for Don and \$37,500 for Dill.

OR AGGREGATED  
TIMING

ARE YOU SURE?  
SINGLE Δ = OK  
MULTIPLE Δs = NOT SO

**Joinder Claim:** the amount of damages may be aggregated in order to meet the minimum amount for damages. Here, Don and Dill's actions are part of the same claim and the separate amounts for damages can be combined to create one total. However, this does not equal \$75,000 and one dollar. Therefore the aggregate amount is not more than \$75,000 therefore, a claim in federal court cannot be met and this claim would be remanded to the State courts.

Suit against the United States: a party who sues the United States Government would do so in Federal court and there is no requirement for a minimum amount of damages. Therefore the \$75,000 plus one dollar is not applicable in this case and Paul may sue for a violation of his civil rights in federal court, with the assumption that this is a public hospital and therefore under the auspices of the County, thereby funded by public dollars and suing the United States government is acceptable.

**Supplemental jurisdiction**

This rule permits a federal court to hear a state claim at the same time it hears a federal claim in order to combine claims and not overtax the court system with claims related to the same subject matter being heard consecutively in different court systems. Here, the claims against Don and Dill are the same claims as against the hospital and may be joined as they arise out of the same nucleus of legally operative facts.

### Declining Supplement

The Federal court can decline to hear the supplemental claim if the State claim predominates over the federal claim; if the State law is unique or overly complex; if the federal claim is dismissed or if other extraordinary circumstances exist.

Here, the State claim predominates over the claim against the United States as it asks for damages in the amount of \$75,000. The other reasons do not appear to apply. Therefore the Federal court could decline the supplemental jurisdiction over the Federal claim and remand it to the State courts.

In response to the first question based on this analysis, the court does have subject matter jurisdiction based on a violation the law Paul cited and it is a violation of his civil rights it this is in fact a public hospital and the state claim can be added as supplemental jurisdiction, which is at the court's discretion, however, there is a problem with the pleading, which may dismiss the federal claim, thereby remanding the case to a state court.

### Complaint:

In order to file a complaint, a summons must be sent to the defendants giving them notice and an opportunity to be heard. The summons must contain the names of the defendants, the nature of the claim and the location for the claim. The defendant has 21 days to answer with either an answer in the affirmative or a denial or to make a motion. If the defendant waives service of process (service = delivery and process = the document



GOOD

"FAIR NOTICE"

with allegations), then they will not incur expenses related to service, which can be done by an person over the age of 18 or by a U.S. Marshall. Attached to the summons would be the complaint and the complaint must contain the parties, state that claim(s) with specificity, request a prayer for relief and damages. If the United States government is going to be sued, then the service of process must be sent to the State's attorney general or a representative from that office or the Attorney General of the United States.

Here, the claim contains the first names of the defendants and not their last names. It does contain one specific claim against Don, it contains a prayer for relief and damages. With regard to Dill, it is not clear if Dill actually did Dill actually do exactly what Don did. It does not contain specificity. It is not clear from the claim. It does contain the law that was allegedly violated, which is necessary when filing an claim and it must also be plausible. Federal claims require that a claim filed in federal court that relates to a federal question must contain the federal law that was violated. This element is met. However, there is no prayer for relief nor damages asserted against the United States.

claim  
← (?)

**Answer or motion:**

Answering a complaint. When a defendant receives complaint they must answer in 21 days unless they waive service of process and then they may have 60 days to respond. They must answer either affirmatively or denial each and every allegation or any allegation not denied or justified with affirmative defense will be considered an affirmative response. All answers must in the disjunctive in order to clear respond to each and every allegation.

Here, Don and Dill did not respond with an answer, they responded with a motion.

There are seven motions that can be filed in response to a complaint: lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, improper service,

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improper service of process, failure to state a claim and failure to join a party. They may also make a motion for failure to state a claim.

Here, Don and Dill responded with both a motion for lack of subject matter jurisdiction. This has merit as there is diversity of citizenship, however, the amount in question is not over \$75,000 and therefore does not meet the requirements to file in federal court, which leaves the question of the federal question. It is a federal question to violate an individual's civil rights, but the claim must meet sufficient requirements such as stating a specific claim, a prayer for relief and damages, the federal question is not adequately pleaded and therefore the federal question will be dismissed and supplemental jurisdiction will not occur with the state claim against Don and Dill.

**Defense:** Paul may have a defense for failure to state a claim as he appears to be incapacitated by mental illness from having a nervous breakdown and undergoing shock therapy. A person who is incapable of being served, must be appointed a guardian who can appropriately advocate for Paul. The court may appoint a guardian ad litem and permit his case to move forward once it has been amended to correct the pleading to comply with both specificity, prayer for relief against the US, damages and to be properly serviced.

**END OF EXAM**

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NEW MCEP  
@ 12/20/20  
1/3 ANSWER

2)

### Rog 1

### On Appeal

This case is on appeal from the lower district court and comes now with a motion to dismiss on both insufficient subject matter jurisdiction and insufficient personal jurisdiction.

### Federal District Court in State A

#### Subject Matter Jurisdiction

#### Rule 12 Considerations

Under Rule 12, if you fail to assert a motion to dismiss on subject matter jurisdiction in your rule 12 answer to the complaint, **fear not, 12(b)1 motion to dismiss for lack of subject matter jurisdiction is never waived, and can even come up for the first time on appeal** as seen here. You must assert 12(b)2-5: personal jurisdiction, venue, insufficiency of process and insufficient service of process in your initial rule 12 answer or you waive them forever.

#### SMJ Analysis

In order for a federal district court to have subject matter jurisdiction over the parties there must be a determination made based on 1331 and 1332, respectively for each defendant so named in the complaint. **1331** requires there to be a federal question alleged. **1332** requires that we further investigate whether or not there exists diversity of citizenship among the parties--that no plaintiff may be a resident of the same state as any defendant--and that the amount in controversy exceeds \$75,000.00. If there is a federal question or the case is diverse, the district court will have subject matter jurisdiction.

### Federal Question



There is no federal question arising from this negligence case. The case is of and concerning a state matter. (bodily injury)

### Diversity of Citizenship

In order for there to be diversity of citizenship, no plaintiff may be from the same state as any defendant named in the complaint. Here, we have Peter and Pam (PP) from state A who are citizens of same, and we have the DEVO-CO, a Rome corporation (DCO), and Does 1-50, DCO employees, who are all residents of state B. We will get into a deeper analysis of the resident status of DCO below. However, it should be noted here that we do have diversity of citizenship.

DIVERSITY  
WAS  
"ALLEGED" 2

### Amount in Controversy

In order for there to be diversity of citizenship, there must also be an amount in controversy which exceeds \$75,000.00. In order to achieve such an amount in controversy, the courts do allow aggregation of the of the claims. Aggregation allows for **multiple causes of actions** to be added together so long as they spring forth from a **single defendant** named in the complaint. You cannot simply add up all the damages alleged from all the defendants and arrive at the proper amount in controversy. That said, here, Pam has a claim for \$80,000.00, so the amount in controversy exceeds \$75,000.00 and we have complete diversity of citizenship. \*

### Supplementary Jurisdiction

Peter has a claim for \$20,000.00, as peter has joined the case jointly and the amount in controversy exceeds \$75,000.00 he reaps the benefit of SMJ as a supplementary impleader with his wife. Supplementary jurisdiction allows other plaintiffs to join a federal case that would not normally arise at the federal level so long as it relates to the same event or legally operative facts giving rise to the original cause of action that was properly within the district court.

### Conclusion

Here, although we do not have a federal question present, there is diversity of citizenship and for that reason the district court does have subject matter jurisdiction over the present case. The court should deny the motion by DCO

Rog 2

Venue Federal District Court in State A

Traditionally when we look at whether venue was proper we are looking for where D resides if all Defendants reside in the same state, where substantial factors concerning the cause of action arose, or where the courts have personal jurisdiction over any defendant. In federal cases, it is proper to have the case in district court where any defendant resides. If you have two defendants from two different districts in the same state, any district in the forum state will suffice. Here we have a state B defendant, a state A plaintiff and a state A district court.

### Personal Jurisdiction

A court must have personal jurisdiction over the person *in personam*, the property *in rem*, or over a person and their specific property *quasi in rem*. Traditionally we would look to *Pennoyer* to determine whether the parties had consented, been domiciled or been served process in the forum. However, modernly we look to *Intl. Shoe* to make the determination by making sure the defendant had minimum contacts with the forum state, relatedness of the contacts to the event giving rise to the cause of action and fairness.

### Traditional *Pennoyer*

#### Consent

For a party to have been said to give consent to the forums jurisdiction we would look to whether they expressly consented, for instance, by contract or by impliedly consenting through conduct such as making a general appearance. Here, we would say there is likely no consent to the forum in state A as there is no express consent to the forum and because making a special appearance in order to file a motion to dismiss for lack of PJ does not give rise to implied consent (only for general appearances).

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## Domicile

A corporation may be considered to be domiciled where they have their principal place of business. This may be construed to be where they have reach out and had continuous and pervasive contact with the forum state through ongoing business dealings, or where they have their nerve center of operations (often a board room or headquarters) or where they have their muscle (less common) such as where they manufacture their goods. Here, there is little to no connection to the forum state A as all the employees are within state B and the corporate nerve center (headquarters) in Rome.

## Service of Process

There are no facts to support where process was affected on the defendant here. However, typically if you can catch the defendant in the forum state without inducement by fraud or deceit, the forum state would have PJ over them.

## Modern

Under the modern view, we would look at whether or not the defendant had such sufficient minimum contacts with the forum state that it would be foreseeable they would be haled to court there to defend against claims related to those contacts without offending traditional notions of fair play and substantial justice. We would typically look for a state long arm statute allowing the state to reach out and grab tortfeasors who have offended the rights of the forum state's citizens. Because this is a case in federal district court we can skip this analysis and jump straight to the constitutional analysis.

## Constitutionality

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## Minimum Contacts / Foreseeability

In order for the defendant to be said to have minimum contacts with the state we must see whether or not the defendant has purposefully availed himself to the rights and privileges of the forum state. Here, again, the state where the district court is located is in state A. The facts do not indicate what level of contact the corporation, defendant, DCO and its employees have with state A. We can infer that to some degree there may have been some advertisement that would allow the state A plaintiff's to become aware of the state B tour bus lines, in which case we may say that there may be some entering of offers into the stream of commerce in state A. However, that is insufficient as we know it must be more than an internet contact, etc with the forum state in order to be sufficient. So we may also look to whether the principle place of business or nerve center exists within state A, again we find no such fact. The business has its nerve center in Rome and the federal district court is in state A. It would be foreseeable for DCO / who has sufficient minimum contacts with state B, having availed themselves of the rights and privileges of the state's laws, roads, and economy there to be haled into a state or district court within state B, but not in state A. (General jurisdiction with state B, could be haled there to defend against claims arising from anywhere in the world)

## Relatedness

For relatedness you must look at whether the minimum contacts sufficiently relate to the event that gave rise to the cause of action (specific jurisdiction). Here, again, the minimum contacts with state B would relate sufficiently to the events and circumstances giving rise to the complaint. However, the court is in state A, therefore no relatedness with state A.

## Fairness Factors

The final constitutional analysis for there to be personal jurisdiction requires that there be a balancing of states interests against those of the defendant. The state has an interest in resolving claims arising from actions that occur within the forum state. The state has an interest in ensuring their citizens receive adequate remedy from tortfeasors abroad who have caused harm within the forum. This is the best argument for the plaintiffs. They are falling on the state to reach out and grab tortfeasors who have wronged citizens of state A in state B, but this argument is fairly weak as it would make no sense for the defendant who has essentially no contact with state A to have to defend a claim there. The state has an interest making sure that the defendant is not so inconvenienced by coming to the forum state to defend against a claim that it would upset traditional notions of fair play and substantial justice. Here, it would be unfair to hale a state B defendant who was negligent in state B and is incorporated and headquartered overseas to come to state A to defend a claim.

## Conclusion

As discussed in great length above, it would be unconstitutional to burden the defendants in state B who caused harm in state B and who are headquartered abroad to come to state A to defend against a complaint there. They have no minimum contacts with and are not domiciled within or consented to or been served in state A. For this reason, the court of appeals should dismiss the case in federal district court in state A. When dealing with district courts, it is often impossible to transfer the case to another district out of state as the district court lacks jurisdiction in the other state to do so. If this were a state issue, county to county, that's one thing, but here there must be a dismissal for lack of PJ even though SMJ exists.

I  
AGREE  
😊

Exam Name: CivilProcMCI-F18

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**END OF EXAM**

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I know THIS  
WAS AN ODD  
QUESTION BUT YOU  
GOT IT.  
☺

NICE WAITING  
NICE AWAY SIS

3)

1. Subject Matter Jurisdiction

Subject Matter Jurisdiction

The court must have the authority over the controversy. Federal Courts are authorized to hear matters that arise from the constitution and federal law and treaties. Cases of diversity among the parties may also be heard in federal court providing that the plaintiff and defendant are citizens(domiciled defined as reside and intend to remain) from different states and the amount in controversy exceeds \$75,000. Plaintiff must plead Subject Matter Jurisdiction in the original complaint. Subject matter jurisdiction may not be waived.

Federal Question

The court must determine if the plaintiff complaint pleads a controversy arising from the constitution, federal laws, or treaties. The court will determine whether the federal issue is essential to the plaintiffs' claim.

PUGG alleges that his civil rights were violated and he cites his claim under federal law.

The court may likely determine on its face that the complaint is an issue of federal law.

Diversity

→ NOT A SOURCE  
of FED. JURISDICTION HERE

A Diversity claim in Federal Court requires that the parties are citizens from different states and the amount in controversy exceeds \$75,000. The amount in controversy may be aggregated for different claims, however they may not be aggregated for different

defendants. Citizenship for individuals is determined by where they are domiciled (where they reside and intend to remain).

There is not a diversity claim since both defendants are domiciled in State A. The facts do not indicate a demand for relief, therefore there is also not an amount in controversy.

### Dick's Attorney May Challenge

The complaint does not appear to include objective facts supporting the alleged violation under federal law. A challenge of subject matter jurisdiction may be filed at anytime during the lawsuit (pre-answer motion through appeal) His attorney may argue that the complaint did not provide a plausible claim required for a federal action. The court will determine plausibility based on the judges experience and common sense. There must be facts supporting the claim rather than just legal conclusions. The facts must support a plausible not possible claim. Here the Plaintiffs complaint does not provide objective facts (dates, location, statements) that support a claim that is plausible. The only indication that the claim arises under federal law is plaintiffs legal conclusion that his rights were violated under federal law. This argument could undermine a claim for subject matter jurisdiction - federal claim.

★  
12(b)(1)  
MOTION  
✓  
DISCUSS

2. Dick may challenge Pugg's claim by filing the following motions :

### Failure to State a Claim Upon Which Relief can be Granted 12 (b) (6)



A Failure to State a Claim Upon Which Relief can be Granted may be filed pre-answer and through the trial. Dick would claim that taken the facts stated in the complaint to be true there is no means for relief to be granted.

### Motion for a More Definite Statement

12(e) !!  
A hand-drawn smiley face with a circular outline, two dots for eyes, and a curved line for a mouth.

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A Motion for a More Definite Statement, ( filed prior to filing Answer within 21 days of service) would require Pugg to respond within 14 days with specific facts that would clarify the ambiguity of his complaint. The complaint is vague, lacking specific facts or statements made by defendant, dates, or locations. The vague and ambiguous complaint leaves the defendant without means to defend the claim. If plaintiff failed to respond sufficiently within 14 days the Complaint could be dismissed.

### Motion to Strike

A Motion to Strike is available at anytime during the proceedings and pre-answer. The court may also move to strike. The defendant would claim that the statements are redundant, immaterial, insufficient or scandalous. If the motion is granted the specific claim will be stricken.

Plaintiff's statements in the complaint allege a trespass upon privacy, while vague the statement could be construed as scandalous. The statements are redundant since they repeatedly claim vague fears and emotions. Additionally, the statements in the complaint are do not contain sufficient facts enabling defendant to determine an appropriate defense.

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### 3. Rule 4(d) Service Waiver

A valid service waiver includes a copy of the summons and compliant along with 2 copies of the waiver of service and a self-addressed stamped envelope that is mailed (certified) to the defendant. The waiver states that defendant is not waiving any jurisdiction or other rights, the waiver saves costs of providing service. Dick's refusal to execute and return the service waiver subjects him to costs related to service including related attorney fees. Additionally, as a result of being personally served, Dick will need to provide an answer to

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30 DAYS<sup>2</sup>,

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the court within 21 days. Had he executed and returned the waiver within 30 days he would have 60 days to respond with an answer.

**END OF EXAM**