

SAN LUIS OBISPO COLLEGE OF LAW

CIVIL PROCEDURE

Midterm Examination

Fall 2020

Prof. M. Rivas

Instructions:

There are three (3) questions in this examination. You will be given four (4) 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.

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QUESTION 1

Dawna lived in Arizona, and owned a beach house in Laguna Beach, California. The beach property was rented out from March to October. Dawna and her family would then stay at the beach house starting at the end of October, through the Thanksgiving and Christmas holidays. After a few years, Dawna grew tired having to drive out to California every month to manage the property during the Spring and Summer months. Dawna decided to hire a property manager.

While still in Arizona, Dawna put an ad on richbeach.com, a website devoted to locating support staff for beach rentals. Perry, a resident of Laguna Beach, California contacted Dawna about the ad. Perry was retired and looking for something to take up the long hours of boredom that had set in. Perry had tried to take up various hobbies, but they had all been too monotonous. Dawna agreed to interview Perry, but insisted that Perry come to Arizona so they could meet in person. Perry agreed.

Dawna and Perry had a good interview, at which Dawna learned about some of Perry's hobby attempts. One of those hobbies was weaving, and Perry still had a 60-inch loom back at home. Dawna had been an avid weaver for some time and was looking to get a bigger loom, so Perry agreed to sell the 60-inch to Dawna. Though Perry had no actual property management experience, the two got along so well that Dawna hired Perry for the job.

In August, Dawna went to California with a trailer to pick up the loom from Perry. Dawna paid Perry for the loom and took it home to Arizona. Dawna then discovered that the loom wasn't functional due to damage that Perry had not disclosed. Perry was scheduled to start work the next week and was property manager at the beach house for two months before Dawna fired Perry.

In October, Perry filed suit against Dawna in federal district court in California. The next day, Perry hired a process server to serve the summons and complaint on Dawna. The process server knew that Dawna wouldn't be at the beach house until the end of October, so they left the summons and complaint on the door in a waterproof packet and notified the current renter to not disturb the documents. In November, Dawna filed suit against Perry in Arizona State Court for breach of contract as to the loom.

Assume Arizona and California both have long-arm statutes that reach constitutional limits.

- 1) Does the Federal District Court in California have personal jurisdiction over Dawna? Discuss.
- 2) Does the State Court in Arizona have personal jurisdiction over Perry? Discuss.
- 3) Should the court grant the motion to dismiss the federal case for improper service of process? Discuss.

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QUESTION 2

Pat owns Pubs R Us, a chain of English-style pubs, incorporated and operating solely in California. Drew owns Décor for U, a Nevada corporation that sells kitschy décor to bars across the United States. Décor for U has its warehouse and offices in Denver, Colorado.

Pubs R Us decided that the corporation could make lots of money by opening a location in Nevada on The Strip. Pubs R Us would move its headquarters to Las Vegas and use the rooftop office suite at the new location, where there would be a stunning view of the city. It would take time to effect the move, and Pubs R Us would continue to conduct its business in California in the meantime.

Pubs R Us entered into a contract with Décor for U to decorate all four floors of the new pub, for a total of \$75,000. Just before the agreed upon ship date, Décor for U sold the decorations to another company that offered more money. Pubs R Us was able to complete the order through another supplier, for a cost of \$150,000.

Pat wanted to repair the broken business relationship between Pubs R Us and Décor for U. To that end, Pat called Drew and asked why Décor for U had breached the contract. Things were going well until the conversation turned to politics. A heated argument ensued, in which Drew told Pat that not only was Décor for U able to get more money by selling to the other company, but that other company shared their political values. According to Drew, Décor for U had a First Amendment right to sell only to those companies that agreed with them politically. Later, Pubs R Us received a call from another of its vendors, stating that they were no longer going to honor their contract based on information received in a letter from Décor for U.

A week later, Pubs R Us filed suit against Décor for U in the Federal District Court in Nevada for breach of contract damages of \$75,000 and punitive damages in the amount of \$15,000. Pubs R Us also claimed \$5,000 against Décor for U in an action for interference with its contractual relationship with its 3rd party vendor. Nevada state law does not allow punitive damages in a breach of contract case.

After filing suit, Pubs R Us incorporated in Nevada. A few months later, the new location was up and running smoothly so Pubs R Us moved all of its business operations to Nevada.

Does the Federal District Court in Nevada have subject matter jurisdiction? Discuss.

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QUESTION 3

Answer only **FOUR** prongs. You have one-hour testing time. Therefore, I suggest that you allocate about 15 minutes to each prong. Do not discuss personal jurisdiction, subject matter jurisdiction, and supplemental jurisdiction.

In January 2018, Paul, a citizen of California, sued Dave, a citizen of Texas, and Dalila, a citizen of Arizona, in California state court for violation of federal employment discrimination law and breach of contract, alleging \$75,001 in damages. In March 2019, with Dalila's consent, Dave filed a notice of removal in Texas federal court.

1- Should the Texas federal court allow Dave to remove? Discuss.

Piper, a citizen of California, traveled to France. Once there, she rented a car manufactured in Detroit. During her tour, the rented car broke down, and she took it to a repair shop authorized by the manufacturer. The shop negligently repaired the vehicle. As a result, when Piper drove off, she lost control of the vehicle and collided with a tree. Piper sustained injuries. Piper filed a lawsuit in the federal district court for the Eastern District of California against the car manufacturer and the repair shop.

2- Did Piper properly lay venue? Discuss.

After obtaining the repair shop's consent, the car manufacturer filed a motion to transfer the case from the federal district court for the Eastern District of California to Detroit's federal court.

3- How should the court rule on the motion to transfer? Discuss.

Suppose the mechanic filed a motion to dismiss based on forum non-conveniens.

4- How should the court rule on the motion? Discuss.

A mobile circus from state A traveled to state B to perform during the holidays. While attending the circus, Ringo, a state B citizen, was bit by one of the circus monkeys. Three years after the incident, in compliance with the state B statute of limitations, Ringo filed a lawsuit against the circus under diversity in federal court in state B. The circus filed a motion to dismiss alleging that the case was barred by state A statute of limitations.

5- Which state law should the federal court follow? Discuss.

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ANSWER OUTLINE

1) PERSONAL JURISDICTION-FEDERAL CLAIM

Yes, the federal court has personal jurisdiction.

Traditional Basis

Under *Pennoyer v Neff*, personal jurisdiction can be asserted based upon physical presence in the state at the time of service, consent, or domicile.

Dawna was still in Arizona at the time of service. There are no facts suggesting Dawna consented to jurisdiction in California, nor is Dawna a resident of California. Dawna stays in California for the holidays, but lives in Arizona.

Modern Rule

Under *International Shoe*, a court can assert personal jurisdiction where there is a long arm statute that reaches the defendant and sufficient minimum contacts exist so that the exercise of personal jurisdiction does not offend "traditional notions of fair play and substantial justice."

Here, we are told to assume there is a long arm statute that reaches constitutional limits.

Minimum Contacts

To determine whether there are minimum contacts, courts will look to two factors: purposeful availment and foreseeability.

Dawna reached into California to make money by buying the beach house for the purpose of renting it out. She has protection of California laws if there is a dispute with a renter. Dawna also posted an ad on richbeach.com, specifically targeted to find an employee to manage the property in California. Dawna would also have protection of California employment law since she hired Perry to work at the house in California.

Dawna stays in California a few months out of the year. She drives on the roads and rents her California beach house. She hired a California resident to work at her property in California. Each of these facts make it foreseeable that Dawna could be haled into court in California.

Relatedness of the Claim

A court can exercise specific or general jurisdiction, depending on the nature and quality of defendant's contacts with the forum.

General Jurisdiction

Where contacts with the forum are systematic and continuous, the defendant is considered at home in the state and personal jurisdiction may be asserted for any cause of action.

Dawna owns property in California, and drives to California once a month to manage the property prior to hiring Perry. Dawna stays in California for November and December, and presumably uses the roads then as well. This is arguably enough for Dawna to be considered "at home" in California.

Specific Jurisdiction

Where the contacts are less than systematic and continuous, assertion of personal jurisdiction may be limited to those suits arising from defendant's contact with the forum.

The federal suit arises from Dawna's employment of Perry to manage the California property.

Fairness

Assertion of personal jurisdiction must not offend "traditional notions of fair play and substantial justice."

Dawna may argue that the forum is not convenient, but would likely lose given the amount of time she generally spends there and how often she would go back and forth from Arizona. California also has a legitimate interest in providing a forum to Perry, a state resident and employee within the state.

2) PERSONAL JURISDICTION-ARIZONA CLAIM

Yes, Arizona has specific personal jurisdiction.

Traditional Basis

Under *Pennoyer v Neff*, personal jurisdiction can be asserted based upon physical presence in the state at the time of service, consent, or domicile.

There are no facts as to where Perry was served with process, nor are there facts suggesting Perry consented to jurisdiction in Arizona. Perry is not a resident of Arizona.

Modern Rule

Under *International Shoe*, a court can assert personal jurisdiction where there is a long arm statute that reaches the defendant and sufficient minimum contacts exist so that the exercise of personal jurisdiction does not offend "traditional notions of fair play and substantial justice."

Here, we are told to assume there is a long arm statute that reaches constitutional limits.

Minimum Contacts

To determine whether there are minimum contacts, courts will look to two factors: purposeful availment and foreseeability.

The only contact Perry has had with Arizona was to go there for the interview with Dawna. At that time, though, the contract for the sale of the loom was formed.

Relatedness of the Claim

A court can exercise specific or general jurisdiction, depending on the nature and quality of defendant's contacts with the forum.

Specific Jurisdiction

Where the contacts are less than systematic and continuous, assertion of personal jurisdiction may be limited to those suits arising from defendant's contact with the forum.

The claim arises from Perry's only contact with Arizona. Perry traveled to Arizona and therein formed the contract for the sale of the loom which is at issue.

Fairness

Assertion of personal jurisdiction must not offend "traditional notions of fair play and substantial justice."

Perry may argue that the forum is not convenient, but cannot show that the forum is so gravely inconvenient as to be unfair. Perry traveled there once for the interview and can likely do so again. Arizona also has a legitimate interest in providing a forum to Dawna, a state resident, for a dispute about a contract formed in the state.

3) MOTION TO DISMISS

Yes, the court should grant the motion to dismiss.

Due process requires that service of process be reasonably calculated to apprise interested parties of the pendency of the action and afford them an opportunity to be heard.

Packet was left on the door and it was known that renters were present who could tamper with the documents. Process server also knew that Dawna would not be home until the end of the month. It is not enough that documents were protected from the elements, and courts have found that such methods of service do not comport with due process.

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Q2 ANSWER OUTLINE

Federal Question Jurisdiction

A federal court can hear cases that allege a right or interest that is substantially founded on federal law. The federal question must appear as part of the plaintiff's cause of action, and cannot simply anticipate a defense based on federal law.

Given Drew's statements regarding free speech, Pubs R Us might believe that Décor for U will defend against the breach of contract claim with a Free Speech argument. Pubs R Us cannot assert federal question jurisdiction based on an anticipated federal defense.

Diversity Jurisdiction

Citizenship

A corporation is a citizen of every state in which it is incorporated and the one state where it has its principal place of business. Citizenship is decided at time of filing.

Pubs R Us is a California citizen, because its state of incorporation is California and all business is done in California. The incorporation in Nevada occurred after filing and so does not destroy diversity. Pubs R Us deciding to move its operations to Nevada does not destroy diversity because all business is still handled in California.

Décor for U is citizen of both Nevada (where it is incorporated) and Colorado (where its warehouse and offices are located).

Amount in Controversy

The amount in controversy must exceed \$75,000, exclusive of interest and costs.

Good Faith Claim

A court must accept a good faith claim that meets jurisdictional amounts, unless it appears to a legal certainty that the jurisdictional amount cannot be met.

Choice of Law

Generally, a federal court applies state substantive law and federal procedural law.

The difference between the contract price and the amount paid to the new décor company was exactly \$75,000, and so does not meet the amount in controversy. The punitive damages cannot be included to meet the jurisdictional amount because there is a state substantive law that disallows punitive damages. Without the claim for punitive damages, the breach of contract claim cannot reach the jurisdictional amount to a legal certainty. Therefore, the amount in controversy is not met.

Aggregation

A single plaintiff may aggregate all claims against a single defendant. In such a case, it is not necessary that the claims arise from the same nucleus of operative fact.

The breach of contract and tort claims are supported by different factual scenarios, but they are between the same plaintiff and defendant and so can be aggregated. Thus, the \$5,000 tort claim can be added to the

\$75,000 breach of contract claim and the amount in controversy is met.

Suggested answers:

- 1- Should the Texas federal court allow Dave to remove? Discuss.

Rule:

If the plaintiff files a lawsuit in state court, the defendant can remove a case to the federal court that embraces the state court where the case was filed if the case meets the federal subject matter requirement.

Exceptions: 1) No removal if any defendant is a citizen of the forum in diversity cases (in-state D rule); AND 2) If the case is filed in state court and more than one year has passed since filing, the defendant cannot remove to federal court. However, removal after more than one year is allowed if the plaintiff (P) sued two defendants (D1 and D2), and D1 can show that P acted in bad faith by originally joining D2 to prevent removal due to the in-state defendant rule.

Further, each claim that the defendant wants to remove must meet the subject matter requirement.

None of the exceptions apply to the removal of a claim that raises a federal question. If more than one defendant, all must consent to removal

Analysis:

Claim 1 Paul v. Dave and Dalila for violation of federal employment law.

In January 2019, Paul (CA) sued Dave (TX) and Dalila (AZ) in California state court. In March 2019, with Dalila's consent, Dave filed a notice of removal in Texas federal court.

Here, since Paul is asserting a claim for violation of a right granted to him by the federal law, Paul's claim meets federal subject matter jurisdiction under a federal question.

Further, because claim 1 raises a federal question, defendants can remove even if more than a year has passed since filing the case with state court and even when one of the defendants is a citizen of the forum state. Further, all defendants must consent to removal.

The fact pattern states that Dalila consented to removal. Thus, Dave can remove claim 1.

Claim 2 Paul v. Dave and Dalila for breach of contract.

Claim two meets the diversity requirements for subject matter jurisdiction since all the defendants (Dave a citizen of TX and Dalila a citizen of AZ) are diverse from all of the plaintiffs (Paul a citizen of California), and the amount in controversy is met because it is more than \$75,000.

However, because it is a claim under diversity, two exceptions apply--the in-state defendant rule and the "more than one-year". Therefore, Dave cannot remove to Texas's federal court because he is a citizen of the forum. Also, Dave cannot remove because the case has been in the state court for more than a year. Thus, claim two cannot be removed because it meets the two exceptions.

Conclusion:

Dave and Dalila can remove claim one because it is a federal question, and the in-state defendant rule and the one-year exception do not apply.

However, claim two cannot be removed because, in diversity cases, D cannot remove if he is a forum state citizen. Also, no removal is allowed if more than one year has passed since filing the case with the state court.

Did Piper properly lay venue? Discuss.

Rule:

P can lay venue in any district where

1. All defendants reside;
2. If all defendants reside in the same state but different districts, then P lay venue in any district in which these defendants reside; and
3. A substantial part of the claim arose.

For venue, a corporation resides in all districts where the business is subject to personal jurisdiction.

Analysis

Piper (CA) sued the car manufacturer (Detroit) and the repair shop (France) in federal court for the Eastern District of California.

Since there is no district where all defendants reside and because defendants do not live in the same state, the venue is proper where a substantial part of the claim arose.

Assuming that Detroit has personal jurisdiction over the defendants, a proper venue for Piper to lay is in Detroit because it is the location where the car was manufactured, which qualifies as a proper district where a substantial part of the claim arose. Piper cannot lay a venue in France because it is a different judicial system.

Conclusion

The federal district court for the Eastern District of California is an improper venue. Piper should lay venue in Detroit.

2- How should the court rule on the motion to transfer? Discuss.

Rule:

The transferee must be a proper venue and have personal jurisdiction over D without D's waiver.

Exception:

If the transferor is a proper venue, the court, in its discretion, can transfer the case to any district (even an improper venue) based on the convenience of the parties and the interest of justice.

Analysis:

Here, the transferor is the federal district court for the Eastern District of California, and the transferee is the Detroit's federal court.

The transferee must be a proper venue and must have personal jurisdiction over all defendants without consent.

Because the repair shop is a citizen of France, it is safe to assume that Detroit does not have personal jurisdiction over it and because transfer does not allow the defendants to consent to jurisdiction, the transfer motion should be denied.

Conclusion:

The motion should be denied because the transferee forum must be a proper venue and have personal jurisdiction over the defendants without their consent.

3- How should the court rule on the motion? Discuss.

Rule:

Forum non-convenience doctrine gives the court the discretion to stay a suit - even though the forum is proper in a technical sense because it may be very inconvenient or burdensome for the defendant to defend in that forum (e.g., the forum may have little or no relation to the litigation) and there is a superior forum in another judicial system.

The basic idea is that the P will then sue in the more convenient forum. The decision to dismiss is based on public and private factors. The superior forum must be available and adequate.

Factors related to the case (Private factors)

1- D has to show that the superior forum is the center of gravity

2- Witnesses and evidence are in the superior forum. Thus, it is convenient for the parties to litigate there.

Factors related to the superior forum

3- Should the superior forum's community be burdened with hearing the case, such as jury service?

4- Should the current court keep the case because it is a local controversy and should be dealt with locally?

Analysis:

This fact pattern is analogous to *Piper Aircraft Co. v. Reyno*, where an airplane piloted by Scottish pilots, carrying Scottish passengers crashed in Scotland. The US Supreme Court ruled the case should be dismissed because there is a superior forum to litigate at—Scotland. Similarly, based on the factors above, the court should grant the motion to dismiss because France is the center of gravity. Thus, a superior forum.

Conclusion:

The motion to dismiss should be granted.

4- Which state law should the federal court follow? Discuss.

Rule:

In a diversity case, the federal court should apply the state substantive law where the federal court is sitting and federal procedural law. However, if there is a federal law on point, the federal court should apply it because it is the supreme law of the land.

The US Supreme Court developed three tests to determine if a law is procedural or substantive.

1. Outcome determinative: if the federal court applies or ignores state law to the case, will the state law if applied or ignored, change the outcome of the case? If the state law changes the case's outcome, then the federal court should apply state law. The federal court should apply state law where the federal court is located. (*Guaranty Trust Co. v. York*);
2. Balance of interest: federal court can ignore the state law if there is a federal interest, and that interest outweighs the state interest. (*Byrd v. Blue Ridge Rural Electric Cooperative, Inc.*); and
3. Avoid forum shopping: if the federal court ignores the state law, would the parties flock to federal court? If the answer is yes, then that means the parties will likely to forum shop.

Analysis:

In *Guaranty Trust Co. v. York*, the Supreme Court ruled, after applying the outcome determinative test, that the statute of limitation is a substantive law and the federal court sitting in diversity cases should apply state law.

Here, the federal court is sitting in state B.

Thus, the federal court should apply state B substantive law. Since state B's statute of limitations is a substantive law that allows Ringo's case to proceed to litigation, the federal court should apply it and deny the circus motion to dismiss based on state A statute of limitation.

Conclusion:

The federal court should apply state B statute of limitations.

1)

#1 CA Federal Court- PJ over Dawna?

Personal Jurisdiction (PJ)

PJ is the power of a court over an individual or parties. PJ can be general or specific, depending on the nature and quality of the defendant's contacts with the forum state. To determine if a state has PJ over the defendant, we look at the traditional basis of jurisdiction, the forum state's long-arm statute (if applicable), and constitutional and due process limitations (i.e modern basis)

Traditional Basis

Traditionally in Pennoyer V. Neff, PJ could be exercised only if the defendant (D) was 1) physically served, 2) domiciled (intends to resides), 3) has agent in , or 4) gave consent, in the forum state.

Here were are told Dawna (D) lived in AZ. She is domiciled in AZ. She does live at the CA beach house through the holidays, however, she grew tired of driving out each month to manage the property, and planned on hiring a property manager. Her domicile and intended domicile is AZ. We are not told that she gave consent or mention of waiver. She was not physically served in CA, as the process was attached to her CA rental home where she was not domiciled or located at. She was not physically served in the state. (This was likely improper service of process, as discussed more

below.) She does not have an agent in CA (Perry might have been, but he was fired and this is his suit.)

Traditionally, there is no basis for PJ over the D in CA.

Long-arm Statute

If there is no PJ based on the traditional basis, the court will look at the long-arm statute which tells us when a state can reach out of state to exercise jurisdiction over a D. (Even if it reaches the D, it must still meet constitutional requirements.)

Here, the case does not mention if CA has a long-arm state (although it probably does.)

PJ does not exist through statute.

Assuming there is unlimited long-arm statute, we now want to look to due process of constitutionality of PJ.

Constitutional Limitations of PJ

Modern Due Process Standard

Modernly, from International Shoe, PJ can now be exercised if the D has such minimal contacts with the forum state to comport with traditional notions of fair play and substantial justice. Minimum contacts look to purposeful availment in the forum state as well as foreseeability. Relatedness to the claim and fairness are also considered.

Purposeful Availment

Purposeful availment is an act by the D, where the D reaches out to the forum state and avails itself of the benefits and protections of that state's laws.

Here, D owns a beach house in CA which she usually lives in a few months a year, and was driving to each month. Although she will not be living there when she rents it, she still owns it. She is taking advantage of the state's benefits and protections. She likely uses city water and utilities. She also likely pays taxes that go to other benefits of owning a home in CA, including equity. She uses the road when she travels there that CA needs to protect and upkeep. D could also be considered a business, since she is renting out the home and has hired P to be the property manager. So her "business" is in CA.

The court should find that was purposeful availment of the D in CA.

Foreseeability

Foreseeability is that the D could anticipate being sued or "haled" into court in the state. A contract (even oral) may be foreseeable if there was a breach of contract to be haled into court.

Here, D owned a home in CA. She could likely expect to be sued in the state since she has a home there, and usually spends several months at the home. Home owners insurance policies in CA typically have a worker's comp policy, and if she has a policy, she would

understand people can sue if on your property, and that is why there are insurance policies. She could get in an auto accident and be sued. She made an oral contract in CA with Perry (P), which could have gone badly (and did.) She also was his "employer" and should know she might be sued by him as well.

It was foreseeable that D could get haled into court in CA.

Relatedness to the claim

The court must look at whether minimum contact sufficiently relate to the event that gave rise to the cause of action (specific jurisdiction.) If there is relatedness, there is specific jurisdiction. If not, we look to continuous and systematic contact with the forum state (general jurisdiction) then the party is at home in the state.

A breach of contract in another state may give rise to specific jurisdiction.

Here, P's claim against D is related to his being fired as D's property manager. The home he was to manage is in CA, where the suit is filed. D owns the CA home. D's contact with CA is sufficient and specific to the claim.

There is relatedness to the claim and specific jurisdiction.

Fairness/Convenience

Under this, the court considers convenience to the parties and the witnesses, the forum state's interest, and the P's interests. It is a balancing of state interest against those of the D. The state has an interest to protect its citizens and make sure they receive adequate remedy. and also has an interest in adjudicating matter that happen within its bounds.

Here, CA will want to protect P if there was a wrongful termination, or other wrong against P, who is a citizen of CA. D owns a home in CA, and it is not far from AZ. She has traveled there alot in the past to stay at the home. It does not seem like it would be unfair for D to go to CA for court (she can even stay in her beach home when she is there!)

This is fair, and convenient for the D and the state.

Notice

Notice must have a reasonable method under all circumstances to inform/apprise parties of pending lawsuits and reasonable time to make their appearance/argument.. It does not have to be exhaustive, but it needs to be reasonable.

(This is discussed more below.)

The court should find there is PJ over D. If there is not a proper service or federal statute, then it is possible the federal district court

does not have PJ over D. (A federal statute might be wrongful termination, since D would be considered an employer?)

#2 AZ- PJ over P?

Personal Jurisdiction (PJ)

PJ is the power of a court over an individual or parties. PJ can be general or specific, depending on the nature and quality of the defendant's contacts with the forum state. To determine if a state has PJ over the defendant, we look at the traditional basis of jurisdiction, the forum state's long-arm statute (if applicable), and constitutional and due process limitations (i.e modern basis)

Traditional Basis

Traditionally in *Pennoyer V. Neff*, PJ could be exercised only if the defendant (D) was 1) physically served, 2) domiciled (intends to resides), 3) has agent in , or 4) gave consent, in the forum state.

Here, D is suing P for breach of contract in AZ court. P is domiciled in CA. We are not told that he waived or gave consent. We are not told where he was served. If he was served in CA, this will not meet being served in the state (AZ)

Assuming he was not served in CA, there is not traditional basis for PJ.

Long-arm Statute

If there is no PJ based on the traditional basis, the court will look at the long-arm statute which tells us when a state can reach out of state to exercise jurisdiction over a D. (Even if it reaches the D, it must still meet constitutional requirements.)

We are not told if there is a long-arm statute.

PJ does not exist through statute.

Assuming there is unlimited long-arm statute, we now want to look to due process of constitutionality of PJ.

Constitutional Limitations of PJ

Modern Due Process Standard

Modernly, from International Shoe, PJ can now be exercised if the D has such minimal contacts with the forum state to comport with traditional notions of fair play and substantial justice. Minimum contacts look to purposeful availment in the forum state as well as foreseeability. Relatedness to the claim and fairness are also considered.

Purposeful Availment

Purposeful availment is an act by the D, where the D reaches out to the forum state and avails itself of the benefits and protections of that state's laws.

P is domiciled in CA. We are told he only went to AZ once to meet D, and we are not told if he had any other meeting in AZ, or took advantage of its laws or benefits. A single contact with the forum state is sufficient for PJ if the act was purposeful and the D benefits from it. We can consider P benefited from visiting AZ because he got a job, and made the oral contract with D to purchase his loom, and this is what the breach of contract is about.

P has purposeful availment with AZ.

Foreseeability

Foreseeability is that the D could anticipate being sued or "haled" into court in the state. A contract (even oral) may be foreseeable if there was a breach of contract to be haled into court.

It is unlikely P would think he would be sued from one visit to AZ, but that is where he made the oral agreement with D to sell his loom, and it is reasonable to think he could get sued making an oral contract.

There was foreseeability.

Relatedness to the claim

The court must look at whether minimum contact sufficiently relate to the event that gave rise to the cause of action (specific jurisdiction.) If there is relatedness, there is specific jurisdiction. If not, we look to continuous and systematic contact with the forum state (general jurisdiction) then the party is at home in the state.

A breach of contract in another state may give rise to specific jurisdiction.

P lives in CA. D went to CA to pick up the loom in CA. While P made an oral contract to sell the loom to D, there was nothing in writing saying where the parties lived or are from. It was an oral agreement. The oral agreement took place when he went to AZ to meet D. We are not told P went to AZ for any other reason or at any other time. However, if we consider the oral agreement was made while he was in AZ, we can consider the contract was formed in AZ, and there was specific jurisdiction.

There is relatedness.

Fairness/Convenience

Under this, the court considers convenience to the parties and the witnesses, the forum state's interest, and the P's interests. It is a balancing of state interest against those of the D. The state has an interest to protect its citizens and make sure they receive adequate remedy. and also has an interest in adjudicating matter that happen within its bounds.

While P does not live in AZ, he lives in the next state over. He has visited once, so we know he can travel. He made the contract in AZ so it is fair that he could go to AZ for court.

Notice

Notice must have a reasonable method under all circumstances to inform/appraise parties of pending lawsuits and reasonable time to make their appearance/argument.. It does not have to be exhaustive, but it needs to be reasonable.

We are not told about his notice.

There is PJ over P.

#3 Proper Service of Process?

Service of Process, Adequate Notice of Claim

Notice

Notice must be reasonably calculated under all circumstances to inform/appraise parties of pending lawsuits and reasonable time to make their appearance/argument. It does not have to be exhaustive, but it needs to be reasonable.

Leaving a summons on the door in a water proof packet where there is another person living in her rental home is not a reasonable notice. She could have been served in AZ where she is domiciled. There are many things that could happen to the notice, including it

being taken down or damaged with weather (even if D planned on returning to the home soon, like the process server thought.)

If personal service is not possible, substitute service can occur by leaving a copy of the process paper's at the D's dwelling with someone of suitable age and discretion. The recipient should be over 18 years old. It can be served in person, by an agent, or by state or federal statutes.

The service was not left with anyone. We are not told about state statute regarding service. The D has 21 days to answer the claim unless they waive service of process and then they have 60 days to respond. We are not told when D ever got the service. If this is her first response to the notice, then she should be able to file a motion to dismiss for improper service of process, as this was not reasonable notice.

The court should grant the motion to dismiss.

END OF EXAM

2)

Subject Matter Jurisdiction (SMJ)

Does the Federal District Court in Nevada have SMJ over the case?

SMJ is a federal court's ability to preside over a case. It can be based on a diversity of citizenship, a federal question, supplemental jurisdiction, or removal jurisdiction.

Diversity of Citizenship

In order to have Diversity of Citizenship, **the amount in controversy must exceed \$75,000 and no plaintiff can be a citizen of the same state as any defendant.**

Citizenship

Both parties are corporations. Corporations are citizens of every state in which they are incorporated and the one state where they have their principal place of business. The principal place of business would be their nerve center, which is where high-level officers of the business control activities. Pubs R Us is incorporated and operating solely out of California. They have citizenship in California because it is incorporated there and has its nerve center there. Decor for U is incorporated in Nevada and their offices and warehouse is located in Colorado. Decor for U is a citizen of Nevada because that is where it is incorporated. It is also a citizen of Colorado because that is where their warehouse and offices are, which is where their high officers of business control activities. It sells decor to bars all over the United States, but their principal place of business is not in California and they are not incorporated there as well.

Citizenship is determined when the claim is filed. When the claim was filed, Pubs R Us was still incorporated in California. Although, they became incorporated in Nevada later on, it does not change their citizenship for the purposes of the claim. The case has complete diversity because the two parties are not domiciled in the same state.

Aggregation

In order to have complete diversity, the total of all claims from one plaintiff against one defendant must exceed \$75,000. Multiple claims from one defendant against one defendant

can be combined, even if unrelated. Pubs R Us filed a claim for breach of contract damages of \$75,000 and punitive damages in the amount of \$15,000. They also claimed \$5,000 in an action for interference with its contractual relationship with its 3rd party vendor. Normally, you would be able to combine all three of these claims from the plaintiff to receive your total of aggregation. However, the Nevada state law does not allow punitive damages in a breach of contract case. Without the \$15,000 of punitive damages, Pubs R Us's aggregated claims still exceeds the \$75,000 amount needed.

But, we must still decide whether the Federal District Court will use the Nevada state law to see if Pubs R Us can include the \$15,000 in punitive damages to her claims total.

Erie Doctrine

If a case is in federal court based on diversity jurisdiction, there are two situations to evaluate before determining whether or not to follow state or federal court. **Under the Erie Doctrine, the federal courts apply federal procedural law and state courts apply state substantive law.**

1) If there is both a federal and a state procedure that cannot be followed simultaneously, we must see if the federal practice interferes with the state procedure. If it does not interfere, use federal. If it does conflict with state procedure, follow the federal practice, so long as the state procedure is not integral to substantive rights. If it is the Federal Rules of Procedure, follow state substantive law if it abridges, enlarges, or modifies a substantive right. We must determine whether the state law at issue is substantive or procedural.

2) To decide whether the law is substantive or procedural, we can use three tests.

1. Outcome Determination Test: An issue is substantive if it substantially affects the outcome of the case.

2. Balance of Interest Test: The court weighs whether who between the state and federal judicial system has a greater interest in having its rules applied.

3. Forum Shopping Deterrence: The explains that judges should follow state law on an issue if failing to do so would cause people to flock to federal court.

Under the balance of interest test, it appears the state has more interest. This is a state law and so it seems as though the state has more interest in making sure it is followed in their courts so they do not become overwhelmed with punitive damages on breach of contract cases. The federal court has an interest to not following the state law, and following their own procedural laws so that people do not flock to the federal courts.

Under the forum shopping deterrence, it would seem that people would want to go where the law is not used because then they have more opportunities to receive damages. So if the federal courts followed the law it would not cause people to flock to federal court because they wouldn't be able to claim more damages. This rule does not affect our issue.

For our case at hand, not allowing the plaintiff to file punitive damages in a breach of contract case could possibly affect her aggregated claims, and affect whether the court even has SMJ over the case. It seems as though that is a substantial affect on the outcome of the case. On the outcome determination test, the issue is substantive so the court should follow state substantive law and not allow the claim. As stated above, Pubs R Us reaches the \$75,000 even without the punitive damages.

With the state substantive law being used, and the court not allowing the punitive damages for breach of contract cases, the claims still aggregate to the needed amount for diversity of citizenship.

Federal Question Jurisdiction

Drew from Decor for U mentioned that they had a 1st Amendment right to sell only to those companies that agreed with them politically. This statement is an affirmative defense about a constitutional matter. However, the issue of the case must be founded on a federal law in order to fall under federal question jurisdiction. The issue of the case is a breach of contract issue, which is not constitutional/federal law. Using a federal law as a defense, will not give Federal Question Jurisdiction and give you SMJ.

Supplemental Jurisdiction

There is no need to analyze supplemental jurisdiction because the case meets the elements of diversity jurisdiction.

Conclusion

Based on the facts and analysis above, the Federal District Court in Nevada has SMJ based on Diversity of Citizenship.

END OF EXAM

3)

1) Dave's notice of removal

Removal

For an action to be removed to federal court, the original jurisdiction is necessary prior to removal. A defendant can remove the action to federal court as long as the action itself could have been brought before the federal court prior to removal. As a unanimous decision, both Dave and Dahlia (D1 and D2) can remove the case to federal court as long as both PJ and SMJ are present prior to the case's removal. However, certain steps are required prior to the case's removal

Original Jurisdiction

For removal to be proper, diversity must exist at the time of filing. Here, at the time of filing, P is a CA citizen, D1 is TX citizen and D2 is an AZ citizen. Diversity is present between all the parties, and the Court will agree.

Federal Question

A cause can be removed to federal court if the court has the ability to hear the case at bar. Since the federal court's jurisdiction is limited to certain areas, federal questions are those whose issues arise under federal law. Here, a federal employment discrimination law is the most applicable cause that would be deemed a federal question. This law likely involves federal statutory authority and Constitutional power, meaning it fits the definition of a federal question. The Court will agree that the case involves a federal question and will allow the case to proceed.

Venue

For venue to be ruled as proper, the court that hears the case must be in the proper geographic district in which to bring the action. The proper venue is one of the following options:

1) Anywhere the defendant resides, if all defendants are residents of the state where the district is located. All defendants have to be in the same state, but any district will be proper for diversity cases. Here, the defendants are from TX and AZ, meaning that TX could be a proper venue via consent. A limitation of removal requires that the defendant cannot be a citizen of the state where the case is being removed if the jurisdiction is based on diversity. Since the case is based on a federal question this rule does not apply. Additionally, under the 1-Year Rule provision, as the case

has gone on longer than a year (1/2018-3/2019), federal questions are already required to be heard within federal court, suggesting the case has been delayed. If the case were based on diversity, it would be non-removable, but the facts are not as such. The venue will be proper based on this option.

2) A district where a substantial part of the events giving rise to the claim occurred or substantial party of property that is subject in the action. Essentially, this proper venue is based on where the event occurred that caused the case at bar. Here, the facts are not specific as to where the case occurred, so analysis will be somewhat difficult. Assuming as such, the Court may find the venue proper as long as the federal employment discrimination occurred in one of the venues deemed proper.

3) Where any defendant is subject to the Texas federal court's personal jurisdiction (PJ). Here, PJ is difficult to determine based on the facts, but assuming as such, the Court may find the venue proper as long as the federal employment discrimination occurred in one of the venues deemed proper.

State Law Claim

Since removal transfers the case from state to federal court, state law claims must be severed and remanded to state court. Here, the breach of contract claim is a state law claim and is not appropriate for a claim based on a federal employment discrimination law. D1 and D2 will argue that their breach claim is a part of the common nucleus of operative facts in order to satisfy supplemental jurisdiction, while P will argue that federal employment discrimination is incongruous with a claim for damages. The Court will rule, in accordance with rules of removal, that state law claims be severed and remanded to the state court.

2) Did Piper properly lay venue?

Venue

For venue to be ruled as proper, the court that hears the case must be in the proper geographic district in which to bring the action. The proper venue is one of the following options:

1) Anywhere the defendant resides, if all defendants are residents of the state where the district is located. All defendants have to be in the same state, but any district will be proper

for diversity cases. Here, since Piper (P) sued the manufacturer (a Detroit corporation) and the repair (located in France, and possible Detroit since it was authorized by the manufacturer) in CA's Eastern District, this location does not fit where the defendants reside. CA's Eastern District's federal court will not find proper venue based on where the defendants reside.

2) A district where a substantial part of the events giving rise to the claim occurred or substantial party of property that is subject in the action. Essentially, this proper venue is based on where the event occurred that caused the case at bar. Here, the facts state the the collision occurred in France. As the Eastern District of CA is not located within any portion of France, this location does not comport with the proper venue's description. CA's Eastern District's federal court will not find proper venue based on where the events occurred that gave rise to the claim.

3) Where any defendant is subject to the Eastern District's federal court's personal jurisdiction (PJ). Based on the facts, it is nearly impossible to think that CA's Eastern District can extend its PJ to either France or Detroit. In the interests of fair play and substantial justice, the Court will dismiss P's case against the manufacturer and repair based on improper venue, unless different facts present themselves.

3) Car manufacturer's motion to transfer to Detroit's federal court

Transfer

A venue is transferable to any venue where personal jurisdiction (PJ) and subject matter jurisdiction (SMJ) are already present in the case. Additionally, the venue can be transferred to any forum where the action may have been brought properly or to where all other involved parties have consented. Two possible scenarios exist based on the facts:

1) If the original venue is proper, it can be transferred to another forum where the case may have been brought provided that PJ and SMJ are present or where the involved parties have consented. Here, it is impossible to determine whether any party has consented to any location, so analysis is difficult. However, Detroit's federal court is governed by the federal rules of civil procedure, which means that the action must comport with both federal PJ and SMJ requirements. Since both PJ and SMJ are difficult to determine, the next option is more likely

2) If the original venue is improper, it can be dismissed or transferred to the proper venue in the interests of justice. Even when no PJ is present, the ruling court can transfer the action to a venue where PJ is present or to where all the parties consent. Since the facts are non-specific as to whether the parties consent to any forum, and PJ is also difficult to determine.

Based on the facts, the Court will likely dismiss the case or transfer the case to any venue where the parties ultimately consent. A forum non-conveniens motion would also be a potential avenue to determine the proper venue for this case.

4) Mechanic's motion to dismiss

Forum Non-Conveniens (FNC)

When the reason to transfer is based on convenience for the parties, this is known as the forum non-conveniens doctrine. Under this rule, the court allows the case to be dismissed when the action is "seriously inconvenient" for all involved parties and no alternative forum exists. Alternative forums are decided based on public interests (i.e. dispute resolution, avoiding applying foreign law, and avoiding juror imposition) and private interests (ie. cost of attendance, ease of access to evidence, and compulsory process availability). In the case of *Piper Aircraft*, there was tremendous discussion over where to adjudicate a wrongful death action involving an airplane crash that occurred in Scotland by an aircraft made in Detroit and having multiple victims from different states. In a similar fashion, this case at bar mirrors the same concerns. The interests presented here, unless more facts are presented, warrants dismissal from the Detroit district. The private interests discussed affect the French citizens, as the evidence is most likely present within France's borders as well as available witnesses. Additionally, imposing on jurors from either France or the United States to travel across the Atlantic Ocean to hear the case at bar would be stressful for them as well as exorbitantly costly for the courts. The proper venue, considering the majority of the event occurred within France's borders, will be France itself and the appropriate law will transfer to this french venue.

END OF EXAM