

KERN COUNTY COLLEGE OF LAW

CIVIL PROCEDURE

Midterm Examination

Fall 2022

Prof. L. Peake

Instructions:

There are three (3) questions in this examination.

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

Question #1

Mo, a Missouri domicile, has a podcast broadcast from her home primarily directed to audiences in Arizona, Utah and California called, "Save All Dogs" (SAD). On one of her broadcasts, as a favor to her friend Bria, a Kansas domiciliary, Mo recommended dog food that Bria was making in Bria's garage with ingredients that Bria was buying from Bryn and having shipped from Bryn's permanent residence in Texas.

Flor, while vacationing with her dog named "Dog" in California from Flor's home in Arizona, heard Mo's podcast's dog food recommendation, went online and had a bag of Bria's dog food shipped to Flor's hotel in San Diego, where Dog started to become sick from its ingredients.

Flor returned to Arizona and had Dog treated at significant expense by Arizona veterinarian Dr. Camille.

Flor has filed suit against Mo, Bria and Bryn in Arizona state court, where Arizona has an unlimited long arm statute. All three defendants have filed objections to any assertion that there is personal jurisdiction over each of them by the Arizona state court.

How should the Arizona state court rule as to each defendant's objection to assertion of personal jurisdiction?

KCCL
Civil Procedure
Midterm Examination
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Question #2

Mike, a California resident permanently residing in Arizona, operates a partnership with Augie, a Nevada domicile, called "Ma's Rounds" which manufactures bullets out of Augie's Nevada garage using copper alloy jackets shipped to them by Long from Long's permanent residence in California.

Raquel and Clarissa, both California domiciles, were standing next to each other at a shooting range in Bakersfield, California when Raquel's gun, loaded with Ma's Round bullets sent by Augie to Raquel in Bakersfield, misfired causing bullet and gun fragments to injure both Raquel and Clarissa.

Raquel and Clarissa have joined together as plaintiffs to file a civil suit in the nearby Eastern District Federal Court in Fresno alleging California state law products liability claims against Mike, Augie and Ma's Rounds as the defendants, with Raquel claiming \$75,000 and Clarissa \$100,000 in damages.

In response to the service of the lawsuit, Ma's Rounds as a third party plaintiff has impleaded Long as a third party defendant for indemnity, claiming that the bullet jackets that Long provided to Ma's were defective.

Raquel and Clarissa, upon learning of Long's asserted contributory fault for their injuries, have now named Long as an additional, direct defendant to their Federal suit against Mike, Augie and Ma's Rounds.

Long has now filed a timely FRCP 12(b)(1) motion to dismiss plaintiffs' suit for lack of subject matter jurisdiction. How should the court rule?

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Question #3

Assume the same facts as in Question #2, along with the following new facts:

Upon receiving Long's FRCP 12(b)(1) motion, plaintiffs Clarissa and Raquel immediately contacted Long and settled their claims with Long and dismissed Long as a defendant from their suit, thus restoring diversity SMJ to the court.

Augie then filed a motion for change of venue from Eastern District Federal Court in Fresno to the Nevada Federal Court in Las Vegas, where Augie lives and operates Mo's Rounds, asserting that the convenience of parties and witnesses appropriately required that the plaintiffs' suit be heard in Nevada Federal court as opposed to Federal Court in California.

Should the Eastern District Federal Court in Fresno grant Augie's motion?

KCCL Civil Procedure 2022-23 Midterm: Question #1 Answer Outline

PJ OF ARIZONA STATE COURT OVER DEFENDANT MO

Rule: A court may assert personal jurisdiction over a defendant where “Traditional” means of obtaining personal jurisdiction are present; or, in the alternative, where an applicable long arm statute that is consistent with due process exists and “minimum contacts” are present between the defendant and the forum state court.

Analysis:

Here, no Traditional means of obtaining personal jurisdiction (“PJ”) are stated to be present. Thus, for PJ to exist, there must be an applicable long arm statute (“LAS”) that is consistent with due process present.

A LAS is stated to be present for the forum state court of Arizona that is unlimited in nature (i.e., extending to any facts which are consistent with due process consistent with traditional notions of fair play and substantial justice). Thus, this element of the Rule allowing imposition of PJ in the forum state court is present.

Next, there must be such “minimum contacts” from defendant’s purposeful availment of the benefits of defendant’s presence in the forum state such as to make it foreseeable that the defendant may be haled into the forum state court where suit arises from such acts of purposeful availment.

Here, Mo directed her broadcast to California (as well as Arizona and Utah) recommending - not SELLING - a product (dog food) as a favor to Mo’s friend (Bria).

The arguably defective product was not sold by Mo, nor shipped by Mo, to Arizona; and while Mo’s podcast was directed to Arizona (as well as California and Utah), it would appear questionable that there were sufficient minimum contacts by Mo with Arizona to allow imposition of PJ upon Mo in Arizona.

Further, there is a question as to whether the harm to Plaintiff Flor arose from the contact of Mo with Arizona: While Mo’s podcast was to Arizona, it was HEARD by Flor in California, and acted upon (dog food was ordered) by Flor in California.

There is an additional element of the minimum contacts rule which may also be absent so as to allow imposition of PJ on Mo: that is, Flor’s dog became sick in California, and thus the harm occurred arguably in California, not in Arizona, albeit Flor’s vet bills were apparently incurred in Arizona.

Conclusion: It appears more likely than not that there were insufficient minimum contacts and purposeful availment by Mo with Arizona so as to allow imposition of PJ upon Mo by the Arizona forum state court.

PJ OF FORUM STATE COURT ARIZONA OVER DEFENDANT BRIA

Rule: See above.

Analysis:

There are no facts presented which allow imposition of PJ upon Bria on a Traditional basis (no domicile, service of process, or consent to PJ by Bria in the Arizona forum state). Thus, any imposition of PJ on Bria must be on the basis of a constitutional and applicable LAS being present in the forum state, with minimum contacts present. In such regard, analysis is as follows:

Bria has asked her friend, Mo, to recommend Bria's dog food to listeners of Mo's podcast that is directed to Arizona, California and Utah residents. Flor would argue that it would be foreseeable to Bria that her product would thus end up on Arizona and cause potential harm in Arizona.

Bria would argue on such issue of foreseeability that the facts are not clear that Bria requested - or even knew - that Mo's podcast was directed to Arizona.

Further, Bria shipped the dog food to California, not Arizona, thus vitiating such possible basis for assertion of purposeful availment by Bria.

Flor would likely further argue that Bria, by placing her dog food into the stream of commerce, should have reasonably foreseen that her dog food might cause harm in states other than California, where the dog food was shipped by Bria.

However, mere foreseeability that a product might end up in another state is insufficient to satisfy the necessary due process requirement of purposeful availment by the defendant with the forum state.

That the monetary harm to Plaintiff Flor (vet bills) occurred in the forum state (Arizona) also is insufficient to satisfy the purposeful availment requirement for due process.

Conclusion: The forum state court in Arizona should properly find that it does not have PJ over Defendant Bria.

PJ OF ARIZONA FORUM STATE COURT OVER DEFENDANT BRYN

Rule: See above.

Analysis:

There are no facts establishing a traditional basis for PJ over Bryn. Thus, PJ must be based upon the presence of a LAS that is compliant with due process and applicable to the facts as they apply to Bryn upon a showing of minimum contacts by Bryn with the Arizona forum state.

Bryn has provided ingredients for dog food that Bryn ships from Texas to Kansas. While Arizona has an unlimited LAS sufficient to impose PJ over out of state domiciliaries (such as Bryn), there must also be sufficient minimum contacts with Arizona as the forum state by Bryn with harm arising from acts of purposeful availment to allow imposition of PJ by Arizona upon Bryn.

Here, there are no facts showing purposeful availment by Bryn with Arizona, nor foreseeability by Bryn that she would be haled from Texas to Arizona to respond to suit. The facts do not indicate that Bryn was aware of Mo's podcast, or of the states to which the "SAD" podcast was directed; nor that Bryn was aware that Bria was shipping Bryn's dog food ingredients outside Bria's state of Kansas.

Conclusion: The Arizona state court should not find that it has PJ over Bryn.

KCCL Civil Procedure 2022-23 Midterm: Question #2 Answer Outline

Issue: Whether Federal Court in California has Subject Matter Jurisdiction over plaintiffs' suit against four named defendants

Rule: A Federal Court has Subject Matter Jurisdiction ("SMJ") over two types of suits: First, those which fairly plead a Federal Question (violation of a Federal law which authorizes private actions for its violation) and diversity actions where all plaintiffs and defendants are domiciled in different states. At least one of the plaintiffs, if multiple plaintiffs are present, must have claims fairly alleging a total of over \$75,000 in damages.

Analysis:

The facts state that plaintiffs suit is based upon asserted violation by defendants of California state law addressing harm resultant from defective products. As no federal law violation is claimed, SMJ must be based upon diversity between plaintiffs and defendants, with at least one of the plaintiffs asserting in excess of \$75,000 in damages.

The facts provide that Clarissa asserts \$100,000 in damages. Thus, such plaintiff's claim meets the statutorily required amount.

However, Raquel's claim is stated to be in the amount of \$75,000, and 28 USC 1332 requires that the amount of damages claimed (including value of any equitable relief sought) must EXCEED \$75,000, not including costs incurred.

The Rule concerning multiple plaintiffs which applies to this fact situation is that Raquel's claim, if it arises from the same occurrence as that of Clarissa's "anchor" claim, is that the Federal Court has supplemental SMJ over Raquel's claim.

Thus, the appropriate conclusion for the court to reach on this issue is that both Clarissa and Raquel's claims meet the statutory requirement of amount in controversy.

Diversity of citizenship issue:

Here, the facts state that plaintiffs are both domiciled in California. All four defendants must be domiciled in different states for diversity SMJ to exist.

As to defendant Mo's Rounds: as a partnership, it is the domicile of each partner which must be examined (i.e., Mike and Augie).

Here, Mike is stated to be a California resident. This does not vitiate diversity where, as here, both plaintiffs are California domiciles, as Mike's PERMANENT residence is in Arizona. Domicile is not synonymous with residency: domicile requires intent of an individual to return to and permanently reside at a particular location. Thus, it appears that there is diversity as between Mike and both plaintiffs.

As to Augie: Augie is stated to be a domicile of Nevada, and thus diversity is present as between Augie and both plaintiffs.

Mo's Rounds domicile, being determined by the domicile of its partners and being operated out of Augie's garage in Nevada, is also diverse as to both plaintiffs for determination of Federal SMJ.

Issue as to Third Party Defendant Long by impleading of Long by Ma's Rounds:

The Rule regarding diversity SMJ when, by impleader, a third party defendant is added to the Federal Court suit, is that even if the third party defendant's domicile is that of one of the plaintiffs (or here, both plaintiffs), the Federal Court retains ANCILLARY jurisdiction over the action under FRCP 14, and does NOT lose diversity SMJ.

Here, the facts state that Long is a "permanent resident" of California, the same state as the domicile of both plaintiffs.

However, as ancillary SMJ exists as to Long as a third party defendant, diversity SMJ is retained by the court.

Issue of Long as an added direct defendant by plaintiffs:

The Rule regarding whether diversity SMJ continues to exist if one of the plaintiffs in a Federal suit adds a new defendant who is NOT diverse to each of the plaintiffs is, in the majority view, that diversity SMJ is lost.

A growing but minority of Federal jurisdictions hold that Federal courts have discretion to retain diversity SMJ even if a third party defendant is added as a direct defendant by plaintiff(s).

Here, more probably than not, the Federal Court does NOT retain diversity SMJ when plaintiffs, both California domiciles, directly added Long, a California domicile, as a defendant to their suit.

Conclusion: The Federal Court should properly grant Long's FRCP 12(b)(1) motion to dismiss plaintiffs' suit for lack of subject matter jurisdiction.

KCCL Civil Procedure 2022-23 Midterm: Question #3 Answer Outline

Issue: Whether the Eastern District Federal Court in Fresno should grant defendant Augie's motion to transfer venue to Nevada Federal Court

Rule: A court may transfer venue based upon convenience of witnesses and parties (28 USC 1404). However, transfer must be to a court which has both personal jurisdiction over the parties ("PJ") and subject matter jurisdiction over the action ("SMJ"). Venue lies in a judicial district in which any defendant resides (is domiciled) or a substantial part of the events or omissions giving rise to the claim occurred (28 USC 1391).

Analysis:

First examining whether convenience of witnesses and parties is present so as to justify a transfer of the action from California Federal Court in Fresno to Nevada Federal Court in Las Vegas:

Augie will argue that the copper alloy jackets for the bullets were assembled in Augie's Las Vegas garage, thus making the place of manufacture of the bullets the most appropriate venue for trial. Augie will likely argue that Mike, as a permanent resident of Arizona, would not find Las Vegas as an inconvenient place for trial as opposed to Fresno (although the facts do not specifically indicate in what part of California Mike is currently residing). Augie would argue that Raquel ordered the bullets from Ma's Rounds in Nevada, and thus should be willing to go to Las Vegas for trial. Augie would also argue that Long, as still a party to the suit (third party defendant), shipped the bullet jackets to Las Vegas, so should also be willing to appear in Las Vegas for trial. Augie would likely point out that while medical treatment was rendered to plaintiffs most likely in Bakersfield that it is not particularly more inconvenient for such care providers to travel to Las Vegas than to Fresno.

On the other hand, the other parties are all either domiciles (Long, Raquel, Clarissa) or residents (Mike) of California; the injuries were sustained and treatment by medical care providers given in California, making California (and the Fresno Eastern District Court) the preferable place for trial.

Conclusion: More probably than not, the Eastern District Federal Court would likely DENY Augie's motion under 28 USC 1404 for transfer of venue.

Issue of PJ and SMJ in Nevada:

Assuming, arguendo, that the Eastern District Federal Court were inclined to grant Augie's motion to transfer venue to Nevada Federal Court in Las Vegas, the Court must determine that the Nevada Court has both PJ and SMJ.

Issue of SMJ in Nevada Federal Court:

Analysis:

The facts do not show a Federal Question as a basis for SMJ. Thus, SMJ would need to be based upon diversity jurisdiction.

Here, with Long having been dismissed as a direct, additional defendant by both plaintiffs, the Federal Court in Nevada would appear to have diversity SMJ, as all defendants are diverse from both

plaintiffs in their domicile.

Thus, it appears that transfer to Nevada Federal Court would be allowable based upon analysis of SMJ.

Issue of PJ in Nevada Federal Court:

Analysis:

For transfer under section 1404 to be allowed, the Nevada Court must have PJ over all defendant parties.

PJ over Augie:

The Nevada court has PJ over Augie on a Traditional basis as Augie is domiciled in Nevada.

PJ over Mike:

While there is no PJ over Mike in Nevada on a traditional basis, assuming a long arm statute exists in Nevada which is factually applicable (if a limited LAS) or is unlimited in nature so as to pass Constitutional muster/due process, Mike would appear to have minimum contacts with Nevada and purposeful availment of Nevada's laws and benefits by participating as a partner in Ma's Rounds in Nevada, with the subject suit arising out of such purposeful availment.

Thus, it would appear that, more likely than not, the Nevada Federal Court has PJ over Mike.

PJ over Long:

Rule: PJ exists if either on a Traditional basis or by virtue of minimum contacts of the defendant with the forum state.

Analysis:

Here, Long directed the supplied product (copper alloy jackets for bullets) to Ma's Rounds in Las Vegas, Nevada. Assertedly, it was a defect in one of such rounds that caused Raquel's weapon to misfire so as to result in injuries to both plaintiffs.

Thus, assuming an applicable long arm statute exists in Nevada, there appear to be minimum contacts sufficient and consistent with due process to allow imposition of PJ over Long in Nevada.

PJ over Ma's Rounds:

PJ over Ma's Rounds, as a partnership, is determined by the existence of PJ over each of its partners.

Here, as discussed above, PJ would appear to exist over Ma's Rounds as a partnership composed of two individuals who are subject to Nevada PJ.

Issue of venue as the place where a substantial part of the events or omissions occurred:

Section 1391 provides that venue is proper where a substantial part of the events or omissions occurred.

Here, the bullets were assembled/made in Nevada that were assertedly defective.

Arguably, while the gun misfiring occurred in California, Nevada would be an additional and appropriate place of venue for the plaintiffs' suit on the basis that a substantial part of the omissions - arguably ALL of the relevant omissions in the plaintiffs' product liability action - took place.

Thus, assuming PJ and SMJ exist, and assuming the Federal Court were to find that convenience of parties and witnesses also to be present, the Court would potentially be able to correctly transfer venue of plaintiffs' action from California to Nevada.

Conclusion: More probably that not, while the Court could potentially find that venue could lie in Nevada for Plaintiffs' action, that Augie's motion to transfer venue from California to Nevada base upon convenience of parties and witnesses is properly denied.

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Raquel and Clarissa, both California domiciles, were standing next to each other at a shooting range in Bakersfield, California when Raquel's gun, loaded with Ma's Round bullets sent by Augie to Raquel in Bakersfield, misfired causing bullet and gun fragments to injure both Raquel and Clarissa.

Raquel and Clarissa have joined together as plaintiffs to file a civil suit in the nearby Eastern District Federal Court in Fresno alleging California state law products liability claims against Mike, Augie and Ma's Rounds as the defendants, with Raquel claiming \$75,000 and Clarissa \$100,000 in damages.

In response to the service of the lawsuit, Ma's Rounds as a third party plaintiff has impleaded Long as a third party defendant for indemnity, claiming that the bullet jackets that Long provided to Ma's were defective.

Raquel and Clarissa, upon learning of Long's asserted contributory fault for their injuries, have now named Long as an additional, direct defendant to their Federal suit against Mike, Augie and Ma's Rounds.

Long has now filed a timely FRCP 12(b)(1) motion to dismiss plaintiffs' suit for lack of subject matter jurisdiction. How should the court rule?

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Question #3

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Upon receiving Long's FRCP 12(b)(1) motion, plaintiffs Clarissa and Raquel immediately contacted Long and settled their claims with Long and dismissed Long as a defendant from their suit, thus restoring diversity SMJ to the court.

Augie then filed a motion for change of venue from Eastern District Federal Court in Fresno to the Nevada Federal Court in Las Vegas, where Augie lives and operates Mo's Rounds, asserting that the convenience of parties and witnesses appropriately required that the plaintiffs' suit be heard in Nevada Federal court as opposed to Federal Court in California.

Should the Eastern District Federal Court in Fresno grant Augie's motion?

KCCL Civil Procedure 2022-23 Midterm: Question #1 Answer Outline

PJ OF ARIZONA STATE COURT OVER DEFENDANT MO

Rule: A court may assert personal jurisdiction over a defendant where “Traditional” means of obtaining personal jurisdiction are present; or, in the alternative, where an applicable long arm statute that is consistent with due process exists and “minimum contacts” are present between the defendant and the forum state court.

Analysis:

Here, no Traditional means of obtaining personal jurisdiction (“PJ”) are stated to be present. Thus, for PJ to exist, there must be an applicable long arm statute (“LAS”) that is consistent with due process present.

A LAS is stated to be present for the forum state court of Arizona that is unlimited in nature (i.e., extending to any facts which are consistent with due process consistent with traditional notions of fair play and substantial justice). Thus, this element of the Rule allowing imposition of PJ in the forum state court is present.

Next, there must be such “minimum contacts” from defendant’s purposeful availment of the benefits of defendant’s presence in the forum state such as to make it foreseeable that the defendant may be haled into the forum state court where suit arises from such acts of purposeful availment.

Here, Mo directed her broadcast to California (as well as Arizona and Utah) recommending - not SELLING - a product (dog food) as a favor to Mo’s friend (Bria).

The arguably defective product was not sold by Mo, nor shipped by Mo, to Arizona; and while Mo’s podcast was directed to Arizona (as well as California and Utah), it would appear questionable that there were sufficient minimum contacts by Mo with Arizona to allow imposition of PJ upon Mo in Arizona.

Further, there is a question as to whether the harm to Plaintiff Flor arose from the contact of Mo with Arizona: While Mo’s podcast was to Arizona, it was HEARD by Flor in California, and acted upon (dog food was ordered) by Flor in California.

There is an additional element of the minimum contacts rule which may also be absent so as to allow imposition of PJ on Mo: that is, Flor’s dog became sick in California, and thus the harm occurred arguably in California, not in Arizona, albeit Flor’s vet bills were apparently incurred in Arizona.

Conclusion: It appears more likely than not that there were insufficient minimum contacts and purposeful availment by Mo with Arizona so as to allow imposition of PJ upon Mo by the Arizona forum state court.

PJ OF FORUM STATE COURT ARIZONA OVER DEFENDANT BRIA

Rule: See above.

Analysis:

There are no facts presented which allow imposition of PJ upon Bria on a Traditional basis (no domicile, service of process, or consent to PJ by Bria in the Arizona forum state). Thus, any imposition of PJ on Bria must be on the basis of a constitutional and applicable LAS being present in the forum state, with minimum contacts present. In such regard, analysis is as follows:

Bria has asked her friend, Mo, to recommend Bria's dog food to listeners of Mo's podcast that is directed to Arizona, California and Utah residents. Flor would argue that it would be foreseeable to Bria that her product would thus end up on Arizona and cause potential harm in Arizona.

Bria would argue on such issue of foreseeability that the facts are not clear that Bria requested - or even knew - that Mo's podcast was directed to Arizona.

Further, Bria shipped the dog food to California, not Arizona, thus vitiating such possible basis for assertion of purposeful availment by Bria.

Flor would likely further argue that Bria, by placing her dog food into the stream of commerce, should have reasonably foreseen that her dog food might cause harm in states other than California, where the dog food was shipped by Bria.

However, mere foreseeability that a product might end up in another state is insufficient to satisfy the necessary due process requirement of purposeful availment by the defendant with the forum state.

That the monetary harm to Plaintiff Flor (vet bills) occurred in the forum state (Arizona) also is insufficient to satisfy the purposeful availment requirement for due process.

Conclusion: The forum state court in Arizona should properly find that it does not have PJ over Defendant Bria.

PJ OF ARIZONA FORUM STATE COURT OVER DEFENDANT BRYN

Rule: See above.

Analysis:

There are no facts establishing a traditional basis for PJ over Bryn. Thus, PJ must be based upon the presence of a LAS that is compliant with due process and applicable to the facts as they apply to Bryn upon a showing of minimum contacts by Bryn with the Arizona forum state.

Bryn has provided ingredients for dog food that Bryn ships from Texas to Kansas. While Arizona has an unlimited LAS sufficient to impose PJ over out of state domiciliaries (such as Bryn), there must also be sufficient minimum contacts with Arizona as the forum state by Bryn with harm arising from acts of purposeful availment to allow imposition of PJ by Arizona upon Bryn.

Here, there are no facts showing purposeful availment by Bryn with Arizona, nor foreseeability by Bryn that she would be haled from Texas to Arizona to respond to suit. The facts do not indicate that Bryn was aware of Mo's podcast, or of the states to which the "SAD" podcast was directed; nor that Bryn was aware that Bria was shipping Bryn's dog food ingredients outside Bria's state of Kansas.

Conclusion: The Arizona state court should not find that it has PJ over Bryn.

KCCL Civil Procedure 2022-23 Midterm: Question #2 Answer Outline

Issue: Whether Federal Court in California has Subject Matter Jurisdiction over plaintiffs' suit against four named defendants

Rule: A Federal Court has Subject Matter Jurisdiction ("SMJ") over two types of suits: First, those which fairly plead a Federal Question (violation of a Federal law which authorizes private actions for its violation) and diversity actions where all plaintiffs and defendants are domiciled in different states. At least one of the plaintiffs, if multiple plaintiffs are present, must have claims fairly alleging a total of over \$75,000 in damages.

Analysis:

The facts state that plaintiffs suit is based upon asserted violation by defendants of California state law addressing harm resultant from defective products. As no federal law violation is claimed, SMJ must be based upon diversity between plaintiffs and defendants, with at least one of the plaintiffs asserting in excess of \$75,000 in damages.

The facts provide that Clarissa asserts \$100,000 in damages. Thus, such plaintiff's claim meets the statutorily required amount.

However, Raquel's claim is stated to be in the amount of \$75,000, and 28 USC 1332 requires that the amount of damages claimed (including value of any equitable relief sought) must EXCEED \$75,000, not including costs incurred.

The Rule concerning multiple plaintiffs which applies to this fact situation is that Raquel's claim, if it arises from the same occurrence as that of Clarissa's "anchor" claim, is that the Federal Court has supplemental SMJ over Raquel's claim.

Thus, the appropriate conclusion for the court to reach on this issue is that both Clarissa and Raquel's claims meet the statutory requirement of amount in controversy.

Diversity of citizenship issue:

Here, the facts state that plaintiffs are both domiciled in California. All four defendants must be domiciled in different states for diversity SMJ to exist.

As to defendant Mo's Rounds: as a partnership, it is the domicile of each partner which must be examined (i.e., Mike and Augie).

Here, Mike is stated to be a California resident. This does not vitiate diversity where, as here, both plaintiffs are California domiciles, as Mike's PERMANENT residence is in Arizona. Domicile is not synonymous with residency: domicile requires intent of an individual to return to and permanently reside at a particular location. Thus, it appears that there is diversity as between Mike and both plaintiffs.

As to Augie: Augie is stated to be a domicile of Nevada, and thus diversity is present as between Augie and both plaintiffs.

Mo's Rounds domicile, being determined by the domicile of its partners and being operated out of Augie's garage in Nevada, is also diverse as to both plaintiffs for determination of Federal SMJ.

Issue as to Third Party Defendant Long by impleading of Long by Ma's Rounds:

The Rule regarding diversity SMJ when, by impleader, a third party defendant is added to the Federal Court suit, is that even if the third party defendant's domicile is that of one of the plaintiffs (or here, both plaintiffs), the Federal Court retains ANCILLARY jurisdiction over the action under FRCP 14, and does NOT lose diversity SMJ.

Here, the facts state that Long is a "permanent resident" of California, the same state as the domicile of both plaintiffs.

However, as ancillary SMJ exists as to Long as a third party defendant, diversity SMJ is retained by the court.

Issue of Long as an added direct defendant by plaintiffs:

The Rule regarding whether diversity SMJ continues to exist if one of the plaintiffs in a Federal suit adds a new defendant who is NOT diverse to each of the plaintiffs is, in the majority view, that diversity SMJ is lost.

A growing but minority of Federal jurisdictions hold that Federal courts have discretion to retain diversity SMJ even if a third party defendant is added as a direct defendant by plaintiff(s).

Here, more probably than not, the Federal Court does NOT retain diversity SMJ when plaintiffs, both California domiciles, directly added Long, a California domicile, as a defendant to their suit.

Conclusion: The Federal Court should properly grant Long's FRCP 12(b)(1) motion to dismiss plaintiffs' suit for lack of subject matter jurisdiction.

KCCL Civil Procedure 2022-23 Midterm: Question #3 Answer Outline

Issue: Whether the Eastern District Federal Court in Fresno should grant defendant Augie's motion to transfer venue to Nevada Federal Court

Rule: A court may transfer venue based upon convenience of witnesses and parties (28 USC 1404). However, transfer must be to a court which has both personal jurisdiction over the parties ("PJ") and subject matter jurisdiction over the action ("SMJ"). Venue lies in a judicial district in which any defendant resides (is domiciled) or a substantial part of the events or omissions giving rise to the claim occurred (28 USC 1391).

Analysis:

First examining whether convenience of witnesses and parties is present so as to justify a transfer of the action from California Federal Court in Fresno to Nevada Federal Court in Las Vegas:

Augie will argue that the copper alloy jackets for the bullets were assembled in Augie's Las Vegas garage, thus making the place of manufacture of the bullets the most appropriate venue for trial. Augie will likely argue that Mike, as a permanent resident of Arizona, would not find Las Vegas as an inconvenient place for trial as opposed to Fresno (although the facts do not specifically indicate in what part of California Mike is currently residing). Augie would argue that Raquel ordered the bullets from Ma's Rounds in Nevada, and thus should be willing to go to Las Vegas for trial. Augie would also argue that Long, as still a party to the suit (third party defendant), shipped the bullet jackets to Las Vegas, so should also be willing to appear in Las Vegas for trial. Augie would likely point out that while medical treatment was rendered to plaintiffs most likely in Bakersfield that it is not particularly more inconvenient for such care providers to travel to Las Vegas than to Fresno.

On the other hand, the other parties are all either domiciles (Long, Raquel, Clarissa) or residents (Mike) of California; the injuries were sustained and treatment by medical care providers given in California, making California (and the Fresno Eastern District Court) the preferable place for trial.

Conclusion: More probably than not, the Eastern District Federal Court would likely DENY Augie's motion under 28 USC 1404 for transfer of venue.

Issue of PJ and SMJ in Nevada:

Assuming, arguendo, that the Eastern District Federal Court were inclined to grant Augie's motion to transfer venue to Nevada Federal Court in Las Vegas, the Court must determine that the Nevada Court has both PJ and SMJ.

Issue of SMJ in Nevada Federal Court:

Analysis:

The facts do not show a Federal Question as a basis for SMJ. Thus, SMJ would need to be based upon diversity jurisdiction.

Here, with Long having been dismissed as a direct, additional defendant by both plaintiffs, the Federal Court in Nevada would appear to have diversity SMJ, as all defendants are diverse from both

plaintiffs in their domicile.

Thus, it appears that transfer to Nevada Federal Court would be allowable based upon analysis of SMJ.

Issue of PJ in Nevada Federal Court:

Analysis:

For transfer under section 1404 to be allowed, the Nevada Court must have PJ over all defendant parties.

PJ over Augie:

The Nevada court has PJ over Augie on a Traditional basis as Augie is domiciled in Nevada.

PJ over Mike:

While there is no PJ over Mike in Nevada on a traditional basis, assuming a long arm statute exists in Nevada which is factually applicable (if a limited LAS) or is unlimited in nature so as to pass Constitutional muster/due process, Mike would appear to have minimum contacts with Nevada and purposeful availment of Nevada's laws and benefits by participating as a partner in Ma's Rounds in Nevada, with the subject suit arising out of such purposeful availment.

Thus, it would appear that, more likely than not, the Nevada Federal Court has PJ over Mike.

PJ over Long:

Rule: PJ exists if either on a Traditional basis or by virtue of minimum contacts of the defendant with the forum state.

Analysis:

Here, Long directed the supplied product (copper alloy jackets for bullets) to Ma's Rounds in Las Vegas, Nevada. Assertedly, it was a defect in one of such rounds that caused Raquel's weapon to misfire so as to result in injuries to both plaintiffs.

Thus, assuming an applicable long arm statute exists in Nevada, there appear to be minimum contacts sufficient and consistent with due process to allow imposition of PJ over Long in Nevada.

PJ over Ma's Rounds:

PJ over Ma's Rounds, as a partnership, is determined by the existence of PJ over each of its partners.

Here, as discussed above, PJ would appear to exist over Ma's Rounds as a partnership composed of two individuals who are subject to Nevada PJ.

Issue of venue as the place where a substantial part of the events or omissions occurred:

Section 1391 provides that venue is proper where a substantial part of the events or omissions occurred.

Here, the bullets were assembled/made in Nevada that were assertedly defective.

Arguably, while the gun misfiring occurred in California, Nevada would be an additional and appropriate place of venue for the plaintiffs' suit on the basis that a substantial part of the omissions - arguably ALL of the relevant omissions in the plaintiffs' product liability action - took place.

Thus, assuming PJ and SMJ exist, and assuming the Federal Court were to find that convenience of parties and witnesses also to be present, the Court would potentially be able to correctly transfer venue of plaintiffs' action from California to Nevada.

Conclusion: More probably that not, while the Court could potentially find that venue could lie in Nevada for Plaintiffs' action, that Augie's motion to transfer venue from California to Nevada base upon convenience of parties and witnesses is properly denied.

1)

1. Flor v. Mo

A) Whether Flor has personal jurisdiction over Mo

6000

Personal jurisdiction is a court's ability to make binding decisions over the rights of a legally recognized person, place, or thing. There are three types of personal jurisdiction: in personam jurisdiction, or jurisdictions over the parties of a case; in rem jurisdiction, or jurisdiction over a piece of property, such as in eminent domain cases; or quasi in rem jurisdiction, where there is jurisdiction over the attachment of a piece of property, such as in foreclosure cases. The court may determine personal jurisdiction through traditional, statutory, or constitutional bases.

a. Whether Flor has any traditional bases to establish personal jurisdiction against Mo

There are three traditional bases that may establish personal jurisdiction. Presence in the jurisdiction at the time the defendant is served requires the defendant to be in the jurisdiction voluntarily, without trickery or fraud. So long as the defendant is there on his own volition and is duly served while in the required jurisdiction, his presence provides the court with personal jurisdiction. Domicile is one's residence coupled with the intent to remain at that domicile. If someone leaves their residence but intends to return there, that is sufficient to establish domicile, so long as they return there. In the event that a defendant consents to personal jurisdiction, the court has valid and constitutionally protected personal jurisdiction over the defendant. This may include express or implied consent, such as verbally consenting to the jurisdiction during a special appearance, or by driving on the roads in a state, thereby subjecting one's self to the rights and protections of that state's laws.

Here, Mo is a resident of Missouri, although her podcast is primarily directed to audiences in Arizona, Utah, and California. Her podcast itself is not being sued — she is being sued as an individual. Because she is domiciled with the intent to stay in Missouri, there is no indication that she was present in Arizona when she was served, and there is likewise no indication that she consented to personal jurisdiction in Arizona.

Flor does not have any traditional bases to establish personal jurisdiction against Mo and does not have general jurisdiction.

b. Whether Flor has a statutory base to establish personal jurisdiction against Mo

A long arm statute ("LAS") allows a court to hale an out-of state defendant into court in the forum state. An unlimited LAS, as is provided in Arizona, there are no restrictions or limitations on who can or from where one can be haled to the forum court, subject to the Fourteenth Amendment's due process clause.

Here, Flor has filed suit against Mo in Arizona state court. Mo is domiciled in Missouri. Arizona has an unlimited long arm statute, which permits the court to hale Mo into court in Arizona.

POTENTIAL

i) Whether the LAS does not violate notions of fair play and substantial justice (constitutional bases)

In order for the LAS to be constitutional under the 14th Amendment's due process clause, there must be minimum contacts which do not violate notions of fair play and substantial justice. This means that the minimum contacts, or the contacts the defendant had with the forum state, was caused by conduct making it reasonably foreseeable that the defendant could be haled into the forum court. The defendant must also have purposely availed herself, which means the defendant must have subjected herself to forum state in a way that would invoke the rights and protections of the forum state's laws.

Mo's podcast is broadcast from her home in Missouri and primarily reaches audiences in Arizona, Utah, and California. It is reasonably foreseeable that her contacts with the forum state, by broadcasting her podcast there, would subject her to the laws, rights, and protections of Arizona. When Mo recommended to her audience Bria's homemade dog food, it was reasonably foreseeable that at least some of her audience would buy it, thus subjecting her to any repercussions caused by the consumption of Bria's dog food. When Flor bought the dog food based on Mo's good word, which subsequently made Dog sick, Mo purposely availed herself, and it was foreseeable that any poorly thought out recommendation causing harm would result in her being haled to Arizona.

Because Mo's contacts with Arizona were reasonably foreseeable, and because she purposely availed herself to Arizona through her podcast, Arizona's court has *in personam* personal jurisdiction over Mo based on the LAS and thus has specific jurisdiction. Mo's objection to any assertion that there is personal jurisdiction over her in Arizona would likely be denied.

2. Flor v. Bria

A) Whether Flor has personal jurisdiction over Bria

DOUBT: SEE FLOR V. MO, 124-128 + barbi: CPPCA-10 ON PURPOSEFUL AVAILMENT ON INTERNET CASES; MO DOING ANNOUNCEMENT AS UNPAID FEELER FOR A FRIENDLY MATTER? HARM ARISE FROM CALL, OCCURRENCE OR NOT? SEE V. LORRAINE (FLOR V. MO, 124-128)

Personal jurisdiction is a court's ability to make binding decisions over the rights of a legally recognized person, place, or thing. There are three types of personal jurisdiction: in personam jurisdiction, or jurisdictions over the parties of the case; in rem jurisdiction, or jurisdiction over a piece of property, such as in eminent domain cases; or quasi in rem jurisdiction cases, where there is jurisdiction over the attachment of a piece of property, such as in foreclosure cases. The court may determine personal jurisdiction through traditional, statutory, or constitutional bases.

a. Whether Flor has any traditional bases to establish personal jurisdiction over Bria

There are three traditional bases that may establish personal jurisdiction. Presence in the jurisdiction at the time the defendant is served requires the defendant to be in the jurisdiction voluntarily, without trickery or fraud. So long as the defendant is there on his own volition and is duly served while in the required jurisdiction, his presence provides the court with personal jurisdiction. Domicile is one's residence coupled with the intent to remain at that domicile. If someone leaves their residence but intends to return there, that is sufficient to establish domicile, so long as they return there. In the event that a defendant consents to personal jurisdiction, the court has valid and constitutionally protected personal jurisdiction over the defendant. This may include express or implied consent, such as verbally consenting to the jurisdiction during a special appearance, or by driving on the roads in a state, thereby subjecting one's self to the rights and protections of that state's laws.

Here, Bria lives in Kansas. She resides there with the intent to stay. There is no indication that Bria was present in Arizona at the time she was served. Had she been, however, the court would have personal jurisdiction over Bria based on presence. However, Bria's dog food was recommended on Mo's podcast, presumably with her knowledge and consent. There is no indication that Bria is considered a corporation, as she is simply making dog food out of her garage. Had she been considered a corporation, she could be considered domiciled where she does substantial business and where her business is incorporated, as well as where the principal place of business is. Based on the facts, however, it is not clear that Bria's garage-based dog food "business" is a larger corporation, and thus it is likely that she is being sued as an individual. There is also no indication that Bria consented to jurisdiction.

BRIA
PERSONALLY
IN ARIZ.
WAS
SERVED
W/ CONSENT
AND
CONSENT

Therefore, there are no traditional bases to establish personal jurisdiction over Bria and does not have general jurisdiction.

b. Whether Flor has a statutory base to establish personal jurisdiction against Bria

A long arm statute ("LAS") allows a court to hale an out-of state defendant into court in the forum state. An unlimited LAS, as is provided in Arizona, there are no restrictions or limitations on who can or from where one can be haled to the forum court, subject to the Fourteenth Amendment's due process clause.

Here, Flor has filed suit against Bria in Arizona state court. Bria is domiciled in Kansas. Arizona has an unlimited long arm statute, which permits the court to hale Bria into court in Arizona.

i) Whether the LAS does not violate notions of fair play and substantial justice (constitutional bases)

In order for the LAS to be constitutional under the 14th Amendment's due process clause, there must be minimum contacts which do not violate notions of fair play and substantial justice. This means that the minimum contacts, or the contacts the defendant had with the forum state, was caused by conduct making it reasonably foreseeable that the defendant could be haled into the forum court. The defendant must also have purposely availed herself, which means the defendant must have subjected herself to forum state in a way that would invoke the rights and protections of the forum state's laws.

Bria sells dog food out of her garage, and Mo, as a favor, promoted her dog food on her podcast. Bria was reasonably aware that Mo's podcast had a statewide reach, which would include Arizona. However, Bria's dog food was not shipped to Arizona; rather, it was shipped to California, where Flor was vacationing with Dog. Bria's minimum contacts are more aligned with California than Arizona, as the dog food was shipped there. It would be reasonably foreseeable that Flor would bring an action against Bria in California, but not Arizona. It would likely violate notions of fair play and substantial justice by haling Bria into an Arizona court. In response, Flor would likely argue that because she was domiciled in Arizona and Dog was treated at a significant expense by Dr. Camille in Arizona, that was enough to establish sufficient contacts with the state. However, any purposeful availment was established in California, not Arizona, thus making it unconstitutional to hale Bria into Arizona.

Because Bria's contacts were with California, not with Arizona, and no traditional bases were established, Flor likely would not have personal jurisdiction over Bria, and she thus wouldn't have specific jurisdiction. Her objection would likely be granted.

3. Flor v. Bryn

A) Whether Flor has personal jurisdiction over Mo

Personal jurisdiction is a court's ability to make binding decisions over the rights of a legally recognized person, place, or thing. There are three types of personal jurisdiction: in personam jurisdiction, or jurisdiction over the parties; in rem jurisdiction, or jurisdiction over a piece of property, such as in eminent domain cases; or quasi in rem jurisdiction, where there is jurisdiction over the attachment of a piece of property, such as in foreclosure cases. The court may determine personal jurisdiction through traditional, statutory, or constitutional bases.

a. Whether Flor has any traditional bases to establish personal jurisdiction against Bryn

There are three traditional bases that may establish personal jurisdiction. Presence in the jurisdiction at the time the defendant is served requires the defendant to be in the jurisdiction voluntarily, without trickery or fraud. So long as the defendant is there on his own volition and is duly served while in the required jurisdiction, his presence provides the court with personal jurisdiction. Domicile is one's residence coupled with the intent to remain at that domicile. If someone leaves their residence but intends to return there, that is sufficient to establish domicile, so long as they return there. In the event that a defendant consents to personal jurisdiction, the court has valid and constitutionally protected personal jurisdiction over the defendant. This may include express or implied consent, such as verbally consenting to the jurisdiction during a special appearance, or by driving on the roads in a state, thereby subjecting one's self to the rights and protections of that state's laws.

Here, Bryn permanently resides in Kansas with the intent to stay indefinitely. There is no indication that Bryn was present in Arizona at the time she was served, though had she, the court would have personal jurisdiction over Bryn based on presence. Bria bought her ingredients from Bryn, who sold and shipped them out of her permanent residence in Texas. The facts do not stipulate that Bryn was aware that her products were being used to make dog food that would be sold statewide. Likewise, there is no indication that Bryn is considered a corporation, as she is simply selling ingredients out of her residence in Texas. Had she been considered a corporation, she could be considered domiciled where she does substantial business and where her business is incorporated, as well as where the principal place of business is. Based on the facts, however, it is not clear that Bryn's business of selling ingredients for dog food was considered a business. It can therefore be understood that Bryn is being sued as an individual, not a corporation.

Flor has no traditional bases to establish personal jurisdiction over Bryn.

b. Whether Flor has a statutory base to establish personal jurisdiction against Bryn

A long arm statute ("LAS") allows a court to hale an out-of state defendant into court in the forum state. An unlimited LAS, as is provided in Arizona, there are no restrictions or limitations on who can or from where one can be haled to the forum court, subject to the Fourteenth Amendment's due process clause.

Here, Bryn is domiciled in Texas and is being sued by Flor in Arizona. Arizona has a LAS, which permits the court to hale Bryn into the forum state.

i) Whether the LAS does not violate notions of fair play and substantial justice (constitutional bases)

In order for the LAS to be constitutional under the 14th Amendment's due process clause, there must be minimum contacts which do not violate notions of fair play and substantial justice. This means that the minimum contacts, or the contacts the defendant had with the forum state, was caused by conduct making it reasonably foreseeable that the defendant could be haled into the forum court. The defendant must also have purposely availed herself, which means the defendant must have subjected herself to forum state in a way that would invoke the rights and protections of the forum state's laws.

Bryn sells ingredients to make dog food out of her residence that Bria purchases to make dog food. She shipped her ingredients from Texas to Kansas, where Bria is domiciled. As far as the facts state, Bryn was simply selling ingredients to Bria, who was domiciled in Kansas. There is no indication that Bryn was aware that Bria was selling dog food statewide and not just using the ingredients for her own dogs. The harm would be reasonably foreseeable if Bryn knew that Flor was purchasing the dog food, and if Bryn had minimum contacts with Arizona in connection with her conduct in the allegations against her. Bryn did not purposely avail herself to Arizona, as she simply shipped her ingredients from her home in Texas to Bria's home in Kansas. While Flor may argue that Bryn should have reasonably suspected that the dog food was going to be sold and purchased by individuals throughout the country, this will likely fail, as Bryn would still need to establish sufficient minimum contacts. With those states. It would be a violation of fair play and substantial justice to hale Bryn into the forum state despite having insufficient minimum contacts that did not reasonably and foreseeably purposely avail her to the laws of Arizona.

Thus, the court will likely not have personal jurisdiction over Bryn in Arizona. Neither traditional bases nor statutory and constitutional bases were established. The court neither has general nor specific jurisdiction over Bryn. Her objection would likely be granted.

WOULD BE
PERSONAL
JURISDICTION
SHIPPED
INGREDIENTS
SEPARATELY
ADDRESSING
PURPOSEFUL
AVAILING
FORUM STATE
ETC.

Conclusion

It is likely that the court in Arizona will have personal jurisdiction over Mo, based on the long arm statute and constitutional considerations. It is not likely, however, that the court in Arizona will have personal jurisdiction over both Bria and Bryn, based on traditional, statutory, and constitutional considerations. Overruled as to Mo, sustained as to Bryn and Bria.

(50)

2) NEED BETTER STATEMENT OF ISSUE

Subject Matter Jurisdiction (SMJ)

The authority for a court to hear a case. SMJ can be obtained two ways. When the case deals with a federal question or by diversity of parties. This is a diversity case.

NEED EXPLANATION AS TO WHY NOT A FEDERAL QUESTION CLAIM.

Diversity

DEPENDS ON PARTIES
Parties must be from different states.

Mike lives in California, but is permanently domiciled in Arizona, thus making Arizona Mike's permanent home. Augie is domiciled in Nevada. Raquel and Clarissa the plaintiffs are from California. There is diversity.

AS BETWEEN PT'S AND D'S

For a case in diversity, there must be an amount of controversy over \$75,000 and parties have to be from different states.

NO, ALL D'S MUST BE OF DIVERSE DOMICILE FROM ALL PT'S DOMICILES

Amount of Controversy

ACT OR OCCURRENCE

Raquel is claiming \$75,000 in damages and does not meet the statutory amount. It has to be over \$75,000. Clarissa has a claim of \$100,000 and meets the statutory amount. Raquel would not be eligible under diversity due to not meeting the amount required of over \$75,000.

ALONE

Supplemental Jurisdiction

Clarissa's claim can serve as an anchor claim for Raquel and help Raquel become part of the lawsuit. Since Clarissa's claim meets the statutory requirements, Raquel can attach herself to Clarissa's claim because they stem from the same act or occurrence. Clarissa's claim of \$100,000 will serve as the anchor claim, and Raquel's claim of \$75,000 would attach to that as supplemental jurisdiction. Diversity in still and fact and Supplemental Jurisdiction will apply.

APPLY TO FACTS BEEN PRESENT AT THE TIME SUIT WAS FILED

Long's FRCP Motion 12

INTER

Since Mike resides in Arizona, Augie in Nevada, and Clarissa and Raquel in California there is diversity.

OF CITIZENSHIP?

Domicile

Where a natural person lives with the intention to remain permanently. Here, the fact pattern states that Long resides in California permanently. This makes him domiciled there.

Long has filed a timely 12b motion in court and Long resides in California. Raquel and Clarissa, the plaintiff's also reside in California. When Raquel and Clarissa named long as an additional party, the diversity was lost. This was due to Raquel, Clarissa and Long being domiciled in California.

The court will rule in favor of Long and dismiss due to SMJ.

NEEDED DISCUSSION OF IMPEDANCE OF LONG AS
POSSIBLE BASIS FOR LOSS OF DIVERSITY SMJ
WITH LONG AS 2ND PARTY DEFENDANT



3)

Should the Eastern District Federal Court in Fresno grant Augie's motion to change venue to the ^{Good} Nevada Federal Court in Las Vegas?

I: Does the Eastern District Federal Court in Fresno have the power to be the transferor court?

R: A transferor court must have SMJ to transfer a case.

^{Good} A: Upon receiving Long's FRCP 12(b) motion, Clarissa and Raquel settled their claims with Long, and dismissed Long as a defendant, thus restoring diversity subject matter jurisdiction to the Eastern District Federal Court in Fresno. Now that the Eastern District Federal Court in Fresno has SMJ, it now has the power to transfer a case.

C: The Eastern District Federal Court in Fresno has SMJ, and thus has the power to be the transferor court.

I: Could the case have been originally filed in NV?

R: In order to transfer a case, it must be transferred to a court where it could have been originally filed. The transferee court must have PJ and SMJ.

A: Here, the case could have been originally filed in NV fed court because it would have SMJ and PJ. It has SMJ because it satisfies complete diversity: each P is from a different state than the defendants, and the amount in controversy is over \$75,000. The NV court would also have PJ because it's ^{AVOID COMPLETE DIVERSITY} where a defendant (Augie) is domiciled. Mike is Domiciled in AZ, and the Ps are domiciled in CA.

- SUPPL. SMJ over RAQUEL?
- D.J. over MIKE IN NV?

C: The case could have been originally filed in NV because NV fed court has PJ and SMJ.

I: Is Nevada Federal Court a proper venue?

R: Venue is proper is (1) where all the Defendants are domiciled, (2) where a substantial portion of the events occurred, and (3) if neither one or two can be satisfied, then where any defendant is domiciled.

A: Here, not all the defendants are domiciled in NV, only Augie. A substantial portion of the events occurred in NV, where Augie manufactures the bullets. Clarissa and Raquel may argue otherwise because they were harmed in CA. Augie and Mike will argue, for the purpose of changing venue, that if there was a defect in the rounds, it substantially arose from the manufacturing process in NV, and not the use of their product in CA. This argument could not be used against Augie and Mike.

C: The Nevada Federal Court is proper venue.

I: What other factors do courts assess when determining proper venue?

R: When determining if venue is proper, courts will assess whether the plaintiff's interest in the forum state is proper, the state's interest in adjudicating the case, the burden on the jurors, and the location of the parties, witnesses, and evidence.

A: Here, the claim is over product liability. The ammo is manufactured in Augie's garage. The court may put significant weight on the evidence being in Augie's garage, because that's where the ammo is manufactured. Conversely, the ammo that harmed the Plaintiffs could be easily transported. Further, NV would have an interest in this case because it concerns ammo being made, and probably sold to NV residents. If there was a manufacturing defect, NV would have an interest in resolving that for the health and safety of its residents.

C: The other factors would sway the NV fed court to accept transfer of this case, and venue would be proper.

I: Could the parties agree to an improper venue? — NOT AN ISSUE BECAUSE TO 1409(a)
MOTION TO TRANSFER VENUE

R: Venue can be stipulated to by the parties, even if it were improper.

A: Even if the court determined venue was improper based on convenience of parties and the interest of justice, venue in NV fed court could be stipulated to by all parties. Mike may have a

desire to go to Las Vegas to enjoy gambling. Raquel and Clarissa may want to visit Las Vegas for the indoor shooting ranges. They might know that shooting ranges in Las Vegas offer rentals of fully automatic rifles of various calibers. Raquel and Clarissa already enjoy shooting as hobby, so they might stipulate to venue in NV fed court for personal enjoyment and a vacation.

C: Even if venue were improper, parties could stipulate to an improper venue.

I: Should the Eastern District Federal Court in Fresno grant Augie's motion?

R: see above

A: see above

C: Yes. Venue is proper for the above mentioned reasons, and even if it were improper, parties could stipulate to an improper venue.

END OF EXAM

↳ IN APPLICATION OF FACTS TO (404(a))
RULE (TRANSFER MOTION BASED UPON
CONV. DL W/1 + PRACTICE), NEED
FOLLOW ARGUMENTS BY AUGIE IN
SUPPORT, THEN (CONV. DL) BY
P's ARGUMENTS IN OPPOSITION