

**San Luis Obispo College of Law**  
**Civil Procedure Mid Term Examination**  
**Fall 2021**  
**Prof. M. Rivas**

**General Instructions:**

Answer Two (2) Essay Questions.

Answer 20 MBE Questions.

Total Time Allotted: Three (3) Hours.

**QUESTION 1**

Dannie was an entrepreneur and loved creating new startups, making them profitable, and then selling them to the highest bidder. Dannie's latest startup was incorporated in State A, where Dannie had a commercial kitchen. There, Dannie made cupcakes that were marketed as "Fat Free" and sold at boutique gyms in the tri-state area, which included States A, B, and C. Dannie drove to each gym and personally delivered the cupcake orders weekly. In an effort to boost orders, and thereby make the startup more appealing to buyers, Dannie created a rewards program so that his current customers would help market the cupcakes to additional gyms outside of the tristate area.

The rewards program wasn't increasing sales, so Dannie contracted with Dana to supply cupcakes to gyms in states outside the tristate area. Under the agreement, Dana picked up the cupcakes from Dannie's kitchen and drove them to gyms in State D. Perry is a resident of State D and decided to try the fat free cupcakes at a gym in State D. Perry loved them, but noticed significant weight gain. Perry discovered the cupcakes were not fat free and sued Dannie and Dana in State D.

Assuming State D has a long arm statute that reaches constitutional limits, does the State D court have personal jurisdiction over Dannie? Over Dana? Discuss.

## QUESTION 2

David leased a State A apartment from Penelope for \$5,000 per month. All utilities were included in the lease amount and payable to Penelope's corporation, which was incorporated in States B and C, and had its principal place of business in State D. Unfortunately, Penelope thought that she was entitled to tell David how to vote, since she was giving him such a good deal on the utilities. This made David very upset, so he decided to stop paying rent and started putting political signs in the windows of his apartment. Penelope moved her principal place of business to State A in April 2021 and David moved to a new apartment in State B in May 2021.

Just before David stopped paying his rent, Penelope visited the apartment to perform some yearly maintenance. While she was there, David was practicing with the chainsaw he used for his ice sculpture hobby and accidentally cut off the right front fender of her vintage BMW. Penelope had the damage assessed at \$70,000. David thought \$70,000 for a missing fender was ridiculous.

In March 2021, Penelope brought an action in State B federal court against David. David filed a motion for lack of subject matter jurisdiction. How should the Court rule on David's motion?

## ANSWER OUTLINE- Civil Proc-Q1 & Q2 Essays-Fall2021-MRivas-SLO

### **Q1- Personal Jurisdiction-Dannie**

#### **Traditional Basis**

##### Consent or Presence

Here, there are no facts suggesting that Dannie consented to or was present for service of process in State D.

#### **Modern Basis**

##### Long Arm Statute

The facts state there is a long arm statute that reaches the limits of the Constitution.

##### Minimum Contacts

There must be such minimum contacts with the forum state so as to not offend traditional notions of fair play and substantial justice.

##### Purposeful Availment

Dannie created a rewards program specifically to sell to gyms outside of the tristate area. In addition, Dannie entered into a contract with Dana to sell to gyms in State D directly. It can be assumed that Dannie benefited monetarily from the contract with Dana. The contract certainly furthered Dannie's purpose of selling additional cupcakes outside the tristate area. The facts do not state where the agreement was made, but if it was made in State D, Dannie could sue under the laws of State D to enforce its provisions.

##### Foreseeability

It's more than foreseeable that Dannie would be sued in State D. Dannie actively tried to sell outside the tristate area, State D is nearby, and Dannie entered into an agreement with Dana to deliver the cupcakes to State D gyms.

##### Relatedness to Contact

Dannies contact with State D was for the sale of cupcakes, which is directly related to Perry's suit.

##### Specific vs General Jurisdiction

There is specific jurisdiction for suits related to Dannie's sale of cupcakes in State D. Perry's suit arises from Dannie's contact with State D—the sale of cupcakes. There are no facts to suggest that Dannie has such contacts with State D so as to be considered "at home" there.

##### Fairness Factors

There would likely be little burden on Dannie because State D is "nearby" the tristate area in which Dannie personally delivers cupcakes. State D would have an interest in adjudicating the dispute, as Perry is a State D resident, and the cupcake sales to Perry took place in a State D gym.

### **Personal Jurisdiction-Dana**

#### **Traditional Basis**

##### Consent or Presence

Here, there are no facts to show that Dana consented to or was present for service of process in State D.

#### **Modern Basis**

##### Long Arm Statute

The facts state there is a long arm statute that reaches the limits of the Constitution.

##### Minimum Contacts

There must be such minimum contacts with the forum state so as to not offend traditional notions of fair play and substantial justice.

##### Purposeful Availment

Dana entered into a contract with Dannie to sell to gyms in State D directly. It can be assumed that Dana benefited monetarily from the contract with Dannie. The facts do not state where the agreement was made, but if it was made in State D, Dana could sue under the laws of State D to enforce its provisions. Moreover, Dana drove in State D and would be able to use State D services in case of an accident or sue another driver for damages.

##### Foreseeability

It's foreseeable that Dana could be sued in State D in an action relating to the cupcakes. Dana entered into an agreement and then personally delivered the cupcakes to gyms in State D.

##### Relatedness to Contact

Dana's contact with State D was for the sale of cupcakes, which is directly related to Perry's suit.

#### Specific vs General Jurisdiction

There is specific jurisdiction for suits related to Dana's sale of cupcakes in State D. Perry's suit arises from Dana's contact with State D—the sale of cupcakes. There are no facts to suggest that Dana has such contacts with State D so as to be considered "at home" there.

#### Fairness Factors

There would likely be little burden on Dana because Dana personally delivers cupcakes in State D. State D would have an interest in adjudicating the dispute, as Perry is a State D resident, and the cupcake sales to Perry took place in a State D gym.

## **Q2 - ANSWER OUTLINE**

### Federal Question

#### Well-Pleaded Complaint

Here, Penelope's suit against David is not founded upon federal law. It is an action for damages based upon a breach of contract and upon a tortious act to her car. The federal nature of her claim must appear on the face of her well-pleaded complaint. She cannot anticipate a First Amendment defense from David based upon the political signs he's placed in the apartment windows.

### Diversity Jurisdiction

#### Citizenship

David is an individual, so citizenship is determined by domicile. David lives in State A, and the facts do not show that he has the intention of living anywhere else. Therefore, he is a State A citizen. Penelope's corporation is a citizen of the states of incorporation, States B and C, as well as the state which holds the principal place of business, State D. David and Penelope's corporation are not citizens of the same state, so there is complete diversity.

Citizenship is determined at the time of filing, so the corporation's move to State A in April and David's move to State B in May do not destroy diversity of citizenship.

### Amount in Controversy

Penelope's suit against David must exceed \$75,000, exclusive of interest and costs. Here, the damages from the non-payment of rent total only \$15,000, and the damage to Penelope's car was \$70,000. Each cause of action on its own would not meet the amount in controversy, but Penelope may be able to aggregate her claims to meet the required amount.

### Aggregation

A single plaintiff may aggregate all claims against the same defendant, so Penelope may add her \$15,000 claim to her \$70,000 claim to meet the amount in controversy.

### Amount Pleaded in Good Faith

Penelope's good faith claim for \$70,000 will satisfy the amount in controversy (after aggregation), unless it appears to a legal certainty to fail. Here, Penelope had the damaged assessed. The vehicle that was damaged was vintage, so parts may be rare and hard to get. David's belief that the dollar amount of the claim was ridiculous is not enough to defeat the amount claimed by Penelope.

There is no federal question jurisdiction. However, there is complete diversity, and the amount in controversy is met, so diversity jurisdiction exists and David's motion should fail.

1)

**Dannie****Personal Jurisdiction (PJ)**

PJ involves a court's ability to exercise authority over a person or entity that is involved with a lawsuit. PJ must exist for a court to determine the rights and liabilities of a party before it. Here, Perry sued Dannie and Dana because it was determined that the cupcakes were not fat free and that he gaining weight significantly. Therefore, we must determine if there is PJ over Dannie.

**Traditional Bases (Pennoyer v. Neff)**

PJ can be exercised if the defendant (D) was domiciled in the forum, consented to the suit in the forum, or was serviced while in the forum. <sup>new para graph</sup> Here, Perry brought suit in State D where he purchased the not so fat free cupcakes from Dana. Dannie, herself, had only been selling the cupcakes to gyms in States A, B, and C. Dannie had contracted Dana to supply cupcakes outside of the tristate area, in State D. First, Dannie is not domiciled in the forum because she was incorporated in State A and did not do business in State D. However, it may be argued that she hired Dana thereby constituting work in that area. This will not satisfy domicile because there was no place of business set up in that area. Second, there are no facts to indicate that Dannie consented to the suit. Lastly, Perry did sue Dannie and Dana in State D. However, this fact shows that is where he is bringing the suit, not necessarily that he served them in State D. <sup>new paragraph</sup> Therefore, assuming Dannie was not in State D, Dannie was not serviced while in the forum.

**Modern Bases**

If in personam jurisdiction is not satisfied through domicile, consent, or presence, a long arm statute may give the forum state power to exercise jurisdiction over the D. Here, State D has a long arm statute that reaches constitutional limits. Therefore State D has the power to exercise jurisdiction over Dannie.

### Constitutional Analysis (International Shoe)

If statutory requirements of PJ have been satisfied, constitutional requirements must be satisfied, meaning the exercise of PJ over the D there must not offend traditional notions of fair play and substantial justice.

#### *Minimum Contacts*

The D must have sufficient contact with the forum state such that exercise of jurisdiction would be fair and reasonable. This requires a showing of purposeful availment and foreseeability. Here, Dannie could have minimum contacts because Dana was hired to expand the cupcake business to other gyms in the tristate area and Dannie had taken advantage of the the benefits of the states in which cupcakes were sold.

#### *Purposeful Availment*

A party purposefully avails itself of the forum state if it has taken advantage of the benefits and protections of the state's law. Dannie is a creative entrepreneur and makes startups for profits, selling them to the highest bidder. Dannie's new start up being a fat free cupcake business which were sold to gyms. These cupcakes were sold in State A, B, C, and D for profit. Dannie's business is most likely protected by the state's laws in which she sells her cupcakes and she reaps the benefits of selling these cupcakes to the citizens of each state. However, it could be argued that Dannie only takes advantage of the benefits and protections of State A's laws because it is where the business is

what benefits? earned money? what else?  
ok to be (logically) speculative.  
I see you've done this a bit below.

incorporated. This will unlikely hold because business transactions were occurring in all states that cupcakes were being sold.

*conclusion*

### Foreseeability

The D must know or reasonably anticipate that his forum activities make it foreseeable that he could be held accountable in the forum state's court. Dannie hired Dana to increase sales by targeting gyms outside the tristate area, including State D. <sup>*new paragraph*</sup> Therefore, it is reasonably foreseeable that Dannie might be held accountable in State D because a transaction for the business is occurring there.

### *Relatedness between the Plaintiff's (P) claim and D's contacts*

The nature and quality of the D's contacts with the forum state must sufficiently relate to the P's claim. The level of relatedness between the P's claim and the D's contact in the forum state will determine whether the jurisdiction is general or specific. There is general jurisdiction if the D's contacts are so systematic and continuous that the D is essentially home in the forum. There is specific jurisdiction if the activity arises of the suit occurred in the forum.

Here, general jurisdiction may apply depending on the reoccurring times the cupcakes were sold to that gym and sold to Perry. It could be argued that Perry was enough of a customer of these cupcakes that he overtime noticed significant weight gain. That would depend on how many eat ate at one time and over course of time he had purchased the cupcakes. Although we are given no facts to indicate that Dana consistently sold cupcakes at that gym. It could be argued that Dana only sold them at that gym once and Perry purchased the majority of the cupcakes and gained weight. Therefore, there are not sufficient facts to indicate that general jurisdiction applies because we have no facts to

*remember, general jurisdiction means can sue for anything even if not related to contact. So definitely not general here.*

indicate there was systematic and continuous business of the cupcakes being sold to that gym or Perry.

Here, the activity of the cupcakes being sold to Perry at the gym occurred in the forum where the suit is being held in State D. Specific jurisdiction could apply.

### *Fairness Factors*

The exercise of jurisdiction over the D must be fair. The court will look at the inconvenience to the D, the P's interest, the forum state's interest, and the judicial efficiency. First, it would be in P's interest because Perry is a resident of State D. Second, the activity of Perry purchasing the cupcakes occurred in State D so it would be of the forum state's interest. Third, it would be judicially efficient to have the suit in the forum because it is where the activity occurred, it is where the gym is located, and it may even have some other witness's from the gym of the account of the cupcakes. However, Dannie may argue that it is an inconvenience because the company and the commercial kitchen are located in State A. This would depend on how far travel would be from State A to State D. Given the fact that Dannie could travel to State B and C, we could probably infer that it would not be too much of an inconvenience.

to what?  
protect its citizens?

### Conclusion

Although there are some arguments, the court does have personal jurisdiction over Dannie because of the application of the long arm statute as well as the constitutional analysis where there is sufficient minimum contacts (business in state D), there is relatedness between Perry's claim and the Dannie's contact (the cupcakes), and it is fair to hold jurisdiction in such forum.

— doesn't have to be a paragraph. — just this is enough.

### Dana



**Personal Jurisdiction**

Supra. Here, Perry sued Dannie and Dana because it was determined that the cupcakes were not fat free and that he gaining weight significantly. Therefore, we must determine if there is PJ over Dana.

Traditional Bases (Pennoyer v. Neff)

Supra. Dana was contracted by Dannie to pick up the cupcakes from the kitchen and drive them to gyms in State D. We are given no facts to indicate where Dana is domiciled. We are given no facts to indicate that she consented to the suit from Perry. We are given no facts to indicate that she was served in the forum. Although we could perhaps assume that Dana might be domiciled in State A where she was contracted to do work. Still this would not satisfy the traditional bases of personal jurisdiction.

Modern Bases

Supra. Here, applying the long arm statute, State D has the power to exercise jurisdiction over Dana.

Constitutional Analysis (International Shoe)

Supra.

*Minimum Contacts*

Supra.

Purposeful Availment

Supra. Here, if we consider the argument that Dana was acting on behalf of Dannie through the contract work, there may be some advantages of doing business in State D.

*could Dana have used State D's laws to sue for breach of contract?*

However, there is no substantial benefits or protection of State D's laws gained by Dana. Therefore, purposeful availment would not apply to Dana.

Foreseeability

Supra. Here, Dana could probably anticipate that by selling cupcakes at gyms in State D it was reasonably foreseeable that she could be held accountable. However, Dana may argue that she was working on the behalf of Dannie and her company. Therefore, she didn't think that she would be personally held accountable because she may argue she had no knowledge of the cupcakes being not fat free.

remember the line is between the contact + the suit. Not

Relatedness between the Plaintiff's (P) claim and D's contacts

about whether there was a "middleman" for purposes of liability.

Supra.

For general jurisdiction, it would depend on how many times Dana sold cupcakes to the gym and Perry. There are no sufficient facts to indicate that Dana sold cupcakes to a specific gym or to Perry consistently. For example, the facts stated were that Perry decided to try the fat free cupcakes at the gym. Not that he constitutently bought fat free cupcake after every workout at the gym. Therefore, general jurisdiction would not apply.

no. it's about the quality of the contact w/ the forum

yes, but not quite the reason.

For specific jurisdiction, Dana sold cupcakes to a gym, in State D, where Perry attended.

He later brought suit against Dana. Specific jurisdiction could apply.

would

don't be afraid to include.

Fairness Factors

Supra. The court will likely favor that P's interest, the forum state's interest, and judicial efficiency because the activity occurred in State D and the availability of witnesses, evidence and convenience would favored. We are given no facts to indicate where Dana is

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domiciled, but given the fact that she could pick up the cupcakes in State A and make the trip to State D we could assume it would not be too much of an inconvenience.

*what about State's interest in protecting citizens?*

**Conclusion**

Although there is an application of a long arm statute and that there is a strong argument that the court should have PJ over Dana, assuming that Dana believed the cupcakes were fat free, it was not foreseeable that she would be held accountable for this suit.

*not the only way to get PJ. There are contacts enough to give specific juris.*

**END OF EXAM**

2)



### Subject Matter Jurisdiction

Subject matter jurisdiction conveys unto the forum court the right to adjudicate on a particular case. Here, the forum court is a federal court, in State B. There are three possible ways of attaining subject matter jurisdiction in federal court: (1) Federal Question Jurisdiction; (2) Diversity Jurisdiction; and (3) Supplemental Jurisdiction.

### Federal Question Jurisdiction

Federal question jurisdiction allows the federal court to hear any case, which when plead in the initial complaint by the plaintiff, concerns a federal law, the U.S. Constitution, or a U.S. treaty.

Here, the law suit brought by Penelope ("P") contemplates a cause of action of negligence or an intentional tort by David ("D"). Neither negligence nor intentional torts are questions of federal law, they belong to the State. State court are courts of general jurisdiction, meaning that they contemplate such matters. The matter in controversy here is not a potential claim by D against P for Voting Rights Act violations. The controversy here is the damage that D did to P's car. As a result, P will be unable to support subject matter jurisdiction through a federal question.

### Diversity Jurisdiction

#### Diversity Jurisdiction - Complete Diversity - David - Person

Diversity jurisdiction requires that the plaintiff is domiciled in a different state than the defendant. Furthermore, complete diversity is required meaning that no plaintiff may reside in any same state as any defendant. Domicile of a person is the present location of

the defendant, along with their intent to remain in that state. For the purposes of this analysis, domicile is determined at the time of filing the law suit.

Here, D is domiciled in State A because he is present in that state at the time of filing (March 2021), and likely had the intent to remain. We are not provided any facts to consider if D was temporarily in State A, or if he contemplated moving into State B only after the action was filed in March. D would like to argue that he was domiciled in State B, because that would defeat complete diversity (see below), but this argument would fail because State A was the location of his permanent home, and (inferring from the facts) he had moved there with the intent to stay. If facts were otherwise and he was from some undiscussed state, diversity jurisdiction would be preserved. If he was returning to State B (perhaps back from college), he may have still been domiciled in State B, but we are not provided those facts. For the purposes of this analysis, we will assume that he was permanently domiciled in State A at the time of filing.

### **Diversity Jurisdiction - Complete Diversity - Penelope - Corporation**

Diversity jurisdiction requires that the plaintiff is domiciled in a different state than the defendant. Furthermore, complete diversity is required, which means that no plaintiff may reside in any same state as any defendant. Domicile of a corporation is determined by the state of incorporation and/or the principle location of business. A corporation may be domiciled in multiple states.

Here, at the time of filing, P is incorporated in two states, B and C. The principle place of business is State D. Therefore, P is domiciled in States B, C, and D because those are the states that they are incorporated in or are the principle place of business.

### **Diversity Jurisdiction - Conclusion**

~~Rule, see above.~~ not necessary

David is domiciled in State A at time of filing. P is domiciled in States B, C, and D.

✓ Therefore, because the plaintiff is domiciled in different states than the defendant, there is complete diversity.

### Amount in Controversy Requirement

✓ Diversity actions require that the amount in controversy exceeds \$75,000 exclusive of costs and interests. *yes!*

Here, the amount in controversy is \$70,000, which is \$5,000 lower than the requirement. Therefore, there is an insufficient amount in controversy to qualify.

*Aggregation of past due rent?*

### Questioning Amount in Controversy

✓ The amount in controversy, plead by the Plaintiff, should be accepted by the Court as true unless there is a legal certainty that the amount is less than the amount in controversy requirement.

Here, D states that the amount \$70,000 is "ridiculous." While that may seem like a lot for a fender, the facts provide that P was driving a vintage BMW, which means that the parts may be challenging to source, or that their installation requires a specialist. This analysis is very dependent upon the individual factors of the claim, and it is the defendant's burden to show. Because there is not a "legal certainty" as to whether that is an unobtainable amount in controversy, the court will be unlikely to support a motion reducing the amount. As such, David should try but is unlikely to succeed.

### Diversity Jurisdiction - Overall Conclusion

While there is complete diversity between the parties in terms of domicile, the amount in controversy does not meet the statutory requirements to qualify to seat this case based on diversity jurisdiction.

**Supplemental Jurisdiction**

*not @ issue because 170 v. 12*

Supplemental jurisdiction allows the court to attach a claim that otherwise lacks subject matter jurisdiction to a claim that has subject matter jurisdiction, when the supplemental claim and the main claim share a common nucleus of operative fact.

Unfortunately for P, there is no supplemental claim here because we are only provided a single claim regarding her damaged BMW.

*rental money?  
\* it's actually an aggregation issue.*

**Overall Conclusion**

The Court should grant D's motion because there is no federal question, and the amount in controversy requirement is not met.

**END OF EXAM**