

MONTEREY COLLEGE OF LAW

CIVIL PROCEDURE

Midterm Examination

Fall 2019

Prof. Melodie Beard

Instructions:

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

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

Question 1

Dean lives in Carson City, Nevada, and makes boutique-style cupcakes. He's become quite famous, locally, and has begun to grow his business. He recently began selling his cupcakes throughout the Lake Tahoe area, on both the Nevada and California sides of the lake. Once a week, he makes a circuit of the lake to deliver cupcakes to his customers.

Dean had always made the cupcakes at home but, as he became busier, he found his tiny kitchen just wasn't big enough. Dean finally decided to rent a commercial kitchen to handle the increased volume of cupcakes. After searching several locations, Dean decided to rent a space in South Lake Tahoe, California. The space was perfect, except for significant upgrades necessary for Dean to install a beautiful new commercial oven, especially designed for mass production of cupcakes.

Dean hired Paige to handle the upgrades and install the oven. Paige lived in South Lake Tahoe, California. She met with Dean at the South Lake Tahoe space and they signed a contract there. The contract stated that Paige would upgrade the gas lines at the location to accommodate Dean's oven. In addition, she and Dean agreed that Paige would buy the new oven using her trade discount and charge Dean under the contract. Finally, Paige would install the oven. The total contract amount was \$76,000.

Three months later, Dean's new location was up and running. Dean was able to keep up with the demand for his cupcakes, and he was gaining even more attention and business. Meanwhile, Paige had not received any payments from Dean. After many phone calls and angry letters, Paige finally decided to file suit against Dean in Federal District Court in California for damages of \$80,000, including interest.

- 1) Assume California has an appropriate long-arm statute. Does the Federal District Court in California have personal jurisdiction over Dean? Discuss thoroughly.
- 2) Is Federal District Court in California an appropriate venue? Discuss.

Question 2

Dahlia lives in Arlington, Virginia and works as a real estate salesperson. She mostly sells homes in Arlington, but she recently sold a home in Bethesda, Maryland, to Patricia. The house was being sold far below market price and, towards the end of the sales process, Dahlia and Patricia began to argue over the terms of the contract. The disagreement went so far that Patricia began to accuse Dahlia of trying to ruin the sale so that she could buy the house herself for an investment property. However, Patricia and Dahlia were finally able to come to an agreement and the sale was completed.

Six months after the sale, Patricia had not moved into the new home. Patricia had always lived with her mother in Virginia. Patricia's mother wanted her to stay and continue to live with her, so Patricia remained in Virginia. Patricia had no definite plans to move into the Maryland house and it remained vacant.

One day, Patricia decided to visit the Maryland house. When she got there, she saw that the antique stained-glass windows had been broken and the front door had been spray painted with the words "Move out!" Patricia walked to the neighborhood coffee shop to calm down and saw several flyers posted along the way that noted the Bethesda house address and read: "Houses are meant to be lived in, not 'stolen' and left vacant!" Really upset now, Patricia went to her neighbors and found out that they all had damage and graffiti spray painted on their properties within the last six months. However, the words "Move out!" only appeared on Patricia's house and there were no flyers posted that listed any of the neighbors' addresses.

Patricia believed that Dahlia had always wanted the property for herself, and was convinced that Dahlia was responsible for all of the damage, graffiti, and flyers. After meeting with the neighbors, they all decided to file suit in the Federal District Court in Virginia. Patricia claimed \$75,500 in damages, and 11 neighbors claimed \$7,000 in damages each.

Does the Federal District Court in Virginia have subject matter jurisdiction? Discuss both Patricia's and the neighbors' claims.

Question 3

Dana is a citizen of California. She was driving through New Mexico and was involved in a car accident when her car failed to stop at a red light. The other car was driven by Paula, who is a citizen of New Mexico. Paula filed suit against Dana in New Mexico state court, claiming \$76,000 in damages. Dana made a motion to remove the case to the Federal District Court in New Mexico. The motion was properly granted, based upon diversity jurisdiction.

Once in Federal Court, Dana made a motion to transfer the case to the Federal District Court in California. At the hearing on the motion the Court heard that, after the accident, Dana had taken her car back to California to be examined by her mechanic. The mechanic determined that the brakes had failed due to an engineering defect. The brakes had been engineered in California. Dana planned to call both the mechanic and engineer to testify. In addition, Dana intended to call as witnesses the two passengers that had been in her car at the time of the accident. They would testify that they had seen Dana attempt to apply the brakes just prior to the accident. Both passengers are citizens of California. The Court granted the motion to transfer the case to the Federal District Court in California for convenience of the parties and witnesses.

Once in California, the Federal District Court advised the parties that it would apply the substantive law of California to the case.

Did the Federal District Court in New Mexico properly transfer the case to California?

Was the Federal District Court in California correct to rule that it would apply California law to the case?

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Answer to Question 1

Venue

- 1) *Judicial district in which any defendant resides, if all defendants are residents of the state in which the district is located.
Dean = Nevada, so no.*
- 2) *Where a substantial part of the events or omissions giving rise to the claim occurred.
Performance of contract occurred in California, so yes.*
- 3) *Otherwise, if there is no district in which an action may otherwise be brought, ... any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.
Since there is venue under #2, above, this is N/A.*

Personal Jurisdiction

Long Arm Statute-assumed

Constitutional Limitations

Traditional Rule-Pennoyer

Consent-Dean could consent

Presence-serve Dean when he's working in California

Modern Rule-International Shoe

Requires sufficient minimum contacts with the forum so as to not offend traditional notions of fair play and substantial justice

*Contacts: Dean contacts customers in California and sell cupcakes, drive to deliver cupcakes in California, works at California location to make cupcakes
Minimum Contacts: purposeful availment, reasonably foreseeable to be haled into CA court, contact is systematic and continuous, cause of action is related contact*

Fairness: convenience to all parties, CA's interest in providing forum to Paige, CA's interest in regulating Dean's conduct

Civil Procedure Exam

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Answer to Question 2

Subject Matter Jurisdiction

*Diversity Jurisdiction: No diversity jurisdiction as to Patricia b/c there's no diversity of citizenship.
No diversity jurisdiction as to Neighbors b/c doesn't meet amount in controversy and cannot aggregate.*

Citizenship: there is complete diversity between Dahlia and Neighbors, but not between Dahlia and Patricia

Dahlia = Virginia

Patricia = Virginia, not Maryland

Physical presence in Virginia

Never moved from mother's house

Intends to remain at mother's house

Has no definite plans to move to Maryland

Neighbors = Maryland
Amount in Controversy: must exceed 75K
Dahlia = \$75,500 good
Neighbors = \$7,000 each so, no
Aggregation: cannot aggregate separate harms

Supplemental Jurisdiction

Must attach to diversity or federal question jurisdiction. Even if there is diversity jurisdiction, is all the harm from the same set of operative facts?

Words of graffiti don't match
No flyers as to Neighbors
Damages occurred over six-month period

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Answer to Question 3

Transfer

Where venue is proper:

- 1) Judicial district in which any defendant resides, if all defendants are residents of the state in which the district is located.*
Dana = California so, no
- 2) Where a substantial part of the events or omissions giving rise to the claim occurred.*
Accident occurred in New Mexico so, yes
- 3) Otherwise, if there is no district in which an action may otherwise be brought, ... any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.*
Since there is venue under #2, above, this is N/A.

Also,
Diversity jurisdiction present, so federal court proper
Dana = California
Paula = New Mexico
Amount in controversy = \$76K

Convenience

Dana's car caused the accident
Dana's car is in California
Mechanic is in California
Engineer is in California
Passenger-witnesses are in California

Choice of Law

Where original venue is proper, original substantive law applies = New Mexico

1)

1)

Personal jurisdiction is jurisdiction over a person or property and can be found in three ways: in rem, quasi in rem, and in personam jurisdiction.

In Personam Jurisdiction

In personam jurisdiction requires a state long arm statute and constitutionality (due process clause). This state has an appropriate long-arm statute.

Constitutional Limitations

Traditional Rule

Traditionally, based on Pennoyer v. Neff, there needed to be consent, domicile, or presence while served. Nevada does not have personal jurisdiction over Dean via the traditional rule.

Consent

There are no facts to indicate that Dean expressly consented to personal jurisdiction in California. He could also consent through waiving by appearing generally or if he had signed a contract with a clause waiving personal jurisdiction. Neither is applicable.

Domicile

Domicile is a person's permanent home where they intend to reside permanently. Dean lives in Carson City, Nevada, making Nevada his domicile. He does rent a commercial kitchen in California, but he does not have a home there and does not have a noted intent to live there.

Presence while served

There are no facts to indicate where Dean was served, so it will be assumed he was not served in California.

Modern Rule

The modern rule, based on International Shoe, requires there to be enough minimum contacts so as to not offend traditional notions of fair play and substantial justice. Factors normally considered

include whether it was foreseeable (fair) for the defendant to be haled into court in the forum, whether they purposefully availed themselves of the forum, etc.

Dean purposefully availed himself of the rights and responsibilities of the forum state, California, by operating a business there. He rents a commercial kitchen for his cupcake business in South Lake Tahoe, California. He makes a circuit of the lake (both Nevada and California sides) to deliver cupcakes to his customers weekly. His contacts with his business are so continuous and systematic that a California court should have general jurisdiction over any claims against him in California. He also personally availed himself by hiring Paige.

It was foreseeable for Dean to be haled into court based upon both his business and the contract that he signed. As mentioned above, he operates his business and sells to customers in California so it would make sense for him to go to court in California. He also signed a contract with Paige, who is a California citizen, in California, for work to be done at his California business location. She was supposed to upgrade the gas lines to accommodate an oven, buy a commercial oven using her trade discount, and install the oven. This was a significant contract, not only because of the impact on his business, but also monetarily (\$76,000).

In Rem and Quasi in Rem

In rem and quasi in rem relate to property. Dean does have property in the state, however the issue is over an unpaid contract for work done on the property. There is not an issue regarding the property itself. Since it is not about property rights, neither in rem or quasi in rem apply.

Conclusion

Dean does have minimum contacts in California, and therefore the California court has personal jurisdiction over him based on in personam jurisdiction (via the modern rule).

2)

Venue

Venue is the geographic location of the court. Venue is proper in one of three ways: 1) in any district in which a defendant resides if all defendants live within the same state, 2) in any district where a substantial portion of the events occurred or property is located, or 3) if venue is not proper in any U.S. district, then where any defendant is subject to personal jurisdiction.

Residence

Residence for venue is determined by domicile for individuals or, for corporations where they are subject to personal jurisdiction. While Dean has a business, it is not stated that it is a corporation. There is only one defendant, Dean, and he lives in Nevada. A Nevada district would be proper based on his residence, not a California district.

Substantial Portion of Events

A substantial portion of the events occurred in California. Dean hired Paige to work on his new California-based business location. The contract was negotiated in California. The contract was breached by his inaction (lack of payment) in California. Based on this, venue is likely proper in the Federal District Court in California.

Personal Jurisdiction

Venue is proper in two U.S. jurisdictions, in California and Nevada, so this prong should not be reviewed. However, were it not proper, then there is personal jurisdiction over Dean in California (see above), so California would be a proper venue. Venue would also be proper via personal jurisdiction in Nevada because Dean is domiciled in Nevada and domicile is one way that personal jurisdiction is proper via the traditional rule.

Conclusion

The Federal District Court in California is an appropriate venue.

END OF EXAM

2)

Does the Federal District Court in Virginia have SMJ? - Yes, it is likely that the neighbors claim will be attached to P's case and be heard in federal court though supplemental jurisdiction.

Patricia's Claim

Subject Matter Jurisdiction (SMJ)

Subject matter jurisdiction allows a court to hear a certain type of claim. Federal courts are courts of limited jurisdiction. In order for a court to have subject matter jurisdiction it must have federal question jurisdiction or diversity jurisdiction.

Federal Question Jurisdiction

Federal question jurisdiction is where the claim arose under federal law, meaning the claim is brought to enforce or decide a federal right.

Here Patricia (P) is filing a suit for damages done to her property. This is a criminal matter but does not decide or enforce a federal right. Federal question jurisdiction will not be met.

Diversity Jurisdiction

Diversity jurisdiction is when all P's are diverse of citizenship from all D's and the amount in controversy is over \$75K

Diversity of Citizenship

Complete diversity is required for diversity of citizenship, meaning all P's must be diverse from all D's. Citizenship is determined when the action is filed. Individuals have citizens where they are domiciled. Domicile is where one resides with intent to stay.

Dahlia (D) lives in Arlington, Virginia (VA) and P currently lives with her Mother in Virginia. P will argue that she owns a home in Bethesda, Maryland (MD) where she intends to make her home. P will also argue that even though she currently lives in VA she does not have any intent to remain there. P is only living with her Mother temporarily and does not have any intent to live in VA any longer than necessary. P will show that because she does not intend to remain in VA she is not domiciled there. P does not want to be considered domiciled in VA because it will destroy citizenship and the federal court will likely dismiss her case, so P will claim she is domiciled in MD.

D will argue that P has owned her home in MD for 6 months and made no effort to move in or make MD her permanent residence. D will argue that there is no diversity of citizenship because both P and D live in VA.

If the court finds that P does not intend to reside in VA and that she is in fact domiciled in MD, complete diversity will be found between P and D.

Amount in Controversy

The amount in controversy must exceed \$75k and the P good faith claim will prevail. the court will not dismiss unless it is clear to a legal certainty that the P will not be able to recover \$75k.

P's claim is for \$75,500 in damages. The facts state that antique windows were broken and the front door had been spray painted. Because the value of the windows are unknown it does not appear to a legal certainty that P will not be able to recover \$75k.

Neighbors Claim

Subject Matter Jurisdiction (SMF) - supra

Federal Question Jurisdiction - supra

This claim does not arise out of federal law

Diversity Jurisdiction - supra

Diversity of Citizenship - supra

It is presumed that because P is filing with her neighbors in the neighborhood she purchased her home, all her neighbors reside in Bethesda, Maryland (MD). D resides in VA and if all the P's reside in MD diversity of citizenship will be found.

As discussed earlier D will argue that Patricia is not domiciled in MD, however Patricia will argue that she is. If the court finds that Patricia does not intend to reside in VA and that she is in fact domiciled in MD, complete diversity will be found between all P's and D.

Amount in Controversy - supra

Each of the 11 neighbors are suing for \$7k. Individually they do not meet amount in controversy requirements

Aggregation

One P can aggregate all claims against one D in order to meet the amount in controversy requirement. This is possible even if the claims are not factually or legally related. However multiple P's cannot aggregate against one D unless the claims are joint.

Here we have 11 individual claims, each for \$7k. These claims cannot be aggregated to meet the amount in controversy requirement.

Supplemental Jurisdiction (SJ)

Every claim must meet the SMJ requirements of federal question or diversity. When a claim does not meet the SMJ requirements we can look to supplemental jurisdiction to see if a federal court can still hear a claim.

Supplemental jurisdiction allows a claim to get into a case that is in federal court when the claim itself would not have been able to be heard in a federal court. If the claim arises out of a common nucleus of operative fact it may be able to be heard in federal court.

The facts state the P suffered damage to her home and that her neighbors experienced similar damage to their homes. It would be reasonable to assume that the same vandal committed all the

acts against the neighbors. If it is found that each of these 12 total claims rises out of a common nucleus of operative fact the court may exercise supplemental jurisdiction over the neighbors claim so they too can be heard in federal court.

Dismissal of Supplemental Jurisdiction

A court may use discretion and not exercise supplemental jurisdiction if the claim is a novel or complex state issue, the state issue predominates or all the federal claims get dismissed.

Novel or complex state issue

Here this case is for vandalism. It is not a novel or complex state issue.

State issue predominates

Patricia's claim is the predominate claim and if she is found to be domiciled in MD it will be her claim that allows for SMJ.

All the federal claims get dismissed.

If P's claim for \$75,500 gets dismissed then the neighbors claim will not be able to remain in federal court because even though the neighbors meet the diversity requirement they do not meet the amount in controversy.

It is not likely that the federal court will use discretion and refuse to exercise supplemental jurisdiction. It is likely that the neighbors claim will be attached to P's case and be heard in federal court though supplemental jurisdiction

END OF EXAM

3)

1)

Transfer of venue

If the proper venue is outside of the judicial system, then it must be dismissed. This is a transfer from one Federal District Court to another, so it can be transferred, instead of dismissed.

If venue is improper, it can be transferred to a court within the same judicial system. There are different rules for proper venue (see forum non conveniens below). It must be determined if venue is proper or improper in New Mexico, before it is considered whether a discussion of forum non conveniens is needed.

Venue

Venue is the geographic location of the court. Venue is proper in one of three ways: 1) in any district in which a defendant resides if all defendants live within the same state, 2) in any district where a substantial portion of the events occurred or property is located, or 3) if venue is not proper in any U.S. district, then where any defendant is subject to personal jurisdiction.

Residence

There is only one defendant, Dana, and she resides in California because she is a citizen of California. This would make California a proper venue, not New Mexico.

Substantial Portion of Events

A substantial portion of the events occurred in New Mexico because that is where the car accident occurred. This makes New Mexico a proper venue.

Personal Jurisdiction

Discussion not required as both New Mexico and California are proper venues.

Forum Non Conveniens

Since venue is proper in the transferor court, then moving to another proper venue would be done via the court's discretion based on forum non conveniens. Typically the venue choice of the plaintiff

is prioritized, however great inconvenience is a reason for the court to transfer. Factors typically considered include access to evidence, convenience of witnesses, where the harm occurred, etc.

Paula would argue that the car accident occurred in New Mexico. She may want to bring in New Mexico witnesses (e.g. medical personnel or police who arrived on the scene, eye-witnesses other than those Dana will bring in, etc.). She also may want to show damage to her own car. However, all of this except for the location of the accident is just inference, and is not specifically stated.

Dana's argument for forum non conveniens is more compelling because there are specific facts to back it up. She lives in California. She took her car to a California mechanic who found that an engineering defect related to the brakes was the cause of her not being able to stop at the red light. This shows she is not at fault. The California mechanic would be called to testify. The company that engineered the brakes is in California and she plans to call the engineer to testify. She also wants to call as witnesses the two passengers in her car during the accident who saw that she attempted to apply the faulty brakes. Those witnesses are both California citizens. It would be quite burdensome for all of these witnesses (mechanic, engineer, and two passengers) to travel to New Mexico and their presence is key to the success of Dana's case.

It is also important for Dana to have access to evidence. Her damaged car was taken to a mechanic in her home state of California and would be much easier to transport within the state. In addition to the car itself, the mechanic may have other evidence he wishes to share. The engineer may also have evidence he wishes to share.

Dana has a very good case for forum non conveniens.

Proper forum

Another factor to consider is transfer is only allowed to a forum that is proper. A proper forum must have personal jurisdiction, venue, and subject matter jurisdiction.

Venue

As mentioned above, venue is proper in California because this is where the defendant resides and she is the only defendant.

Personal Jurisdiction

Traditionally, based on *Pennoyer v. Neff*, there needed to be consent, domicile, or presence while served. Domicile is a person's permanent home where they intend to reside permanently. Dana is

domiciled in California because she is a citizen there. Therefore, there is personal jurisdiction in California.

Subject Matter Jurisdiction (SMJ)

Subject matter jurisdiction can be granted via diversity jurisdiction. This requires a claim in excess of \$75,000 and complete diversity (no plaintiff is a citizen of the same state as any defendant). The claim is \$76,000 and the defendant, Dana, is a citizen of California, and the plaintiff, Paula, is a citizen of New Mexico, so there is diversity jurisdiction.

Conclusion

Venue was proper in the Nevada court, so a transfer needed to be done via forum non conveniens. It would be greatly burdensome to the defendant's witnesses to go to Nevada and she would have more access to evidence in California, so forum non conveniens is proper. Then, before a transfer could occur on that basis, it needed to be determined if the new forum has personal jurisdiction and subject matter jurisdiction, and if it is a proper venue. It is, so the case was properly transferred.

2)

Which law is proper?

When the original court is proper (see analysis above), then the law of the transferor court is used. When the original court is not proper, then the law of the transferee court is used. Here, venue was proper in New Mexico (the transferor court), so the law of New Mexico should be used. The Federal District Court was not correct in applying the substantive law of California to the case. It could have only used the procedural law of California.

END OF EXAM