

QUESTION ONE

Alice lives in Stockton and owns numerous apartment buildings. She has very strict moral views, which she insists her tenants honor. She advertises vacancies in single page flyers which she distributes in Northern California. Bob lives in San Francisco and finds one of these flyers placed on windows of cars parked in his neighborhood. He reads the flyer and sees an ad for an apartment in San Francisco that sounds good. Bob has a long time girlfriend, but neither are interested in marrying. Bob and his girlfriend send a check for the first month's rent (\$1,000) to Alice, with a completed application. Upon determining that Bob and his girlfriend are unmarried, but co-habiting, Alice rejects the application and tells Bob that he forfeits the deposit for his "sins."

Bob files suit in the US District Court in the Northern District of California (San Francisco) alleging violation of the federal Civil Rights Act for discriminating against him and his girlfriend. He adds a tort cause of action for conversion of the deposit. He also adds a cause of action for creation of a public nuisance for allowing the fliers to be scattered around San Francisco.

Alice timely files a Motion to Change Venue from the Northern District, where it is filed, to the Eastern District (Sacramento). The motion is denied.

Alice then files a motion challenging the subject matter jurisdiction of the court over the claims in the Complaint. That motion is denied as well.

California state law requires that landlord/tenant disputes like this one be mediated before a lawsuit can be filed. Federal law has no such requirement. Bob did not mediate before filing suit and Alice seeks in a summary judgment motion to have the case dismissed. That motion is denied as well.

At trial, Alice moves to disqualify the only two jurors who are unmarried. Bob objects to this use of Alice's peremptory challenges. The Court disregarded that objection.

ANSWER FULLY THE QUESTIONS ON THE NEXT PAGE

EMPIRE COLLEGE OF LAW
FINAL EXAM - APRIL 2025
CIVIL PROCEDURE
PROF. MARTIN L. SEEGER

QUESTION ONE

ANSWER THE FOLLOWING QUESTIONS:

1. Was the Court's ruling on the motion to change venue correct?
2. Was the Court's ruling on the challenge to its subject matter jurisdiction correct?
3. Was the denial of the Motion for Summary Judgement correct?
4. Was the Court's handling of the objection to the use of the peremptory challenges correct?

QUESTION ONE

ISSUE OUTLINE

1. The issue in this part of the question is whether the USDC has subject matter jurisdiction over the three causes of action. The student will have to recognize that this is a federal question lawsuit and that the claim for the deposit is covered under the supplemental jurisdiction statute. The third cause of action is not and should be dismissed.

2. The issue in this case deals with federal venue and a discussion of the statute and the Rule 12 motion to change venue should be discussed.

3. The issue in this part is the Erie Doctrine and the student should discuss which law would apply in federal court. If federal law applies the MSJ should be denied and the reverse is true if state law applies.

4. This issues concerns the Batson/Edmonson restrictions on the use of peremptory challenges to potential jurors. The student will have to discuss whether unmarried couples are in a protected category or not.

**EMPIRE COLLEGE OF LAW
CIVIL PROCEDURE
APRIL 2025 – FINAL EXAM
PROFESSOR MARTIN L. SEEGER**

QUESTION TWO

David is a tax adviser who lives and works in San Diego. He usually advertises in the San Diego Gazette, but, wishing to expand his business, recently decided to advertise on the local cable channel run by Fox News. This cable station reaches the entire Southern California area, as well as parts of Arizona and Nevada. David's ad was heard by Peter who ran a car dealership in Arizona. After hearing the Ad extolling David, Peter did what the ad suggested and sent the last year's financial records for David to prepare his taxes. Somehow, the records were lost in David's office and the tax return for Peter was late. This cost Peter over \$100,000 in penalties and interest.

Peter sued David in the U.S. District Court in Scottsdale, Arizona, where he lives. He filed just two weeks before the statute of limitations on professional malpractice would have run. Peter had David served at his office in San Diego. David filed a Rule 12 motion to challenge the court's jurisdiction over him.

Several months later, Peter sees one of David's newspaper ads where he advertises that he does all his business as a professional corporation known as the "Tax King, Inc." From doing an asset search, Peter realizes that all of David's assets are held by the corporation and that David, himself, owns nothing. Peter now seeks an order from the Court allowing an amendment of the Complaint to add, as a new defendant the "Tax King, Inc." This is opposed by David.

During the discovery phase of the case, Peter learns from an investigator that 5 years before David was sued for malpractice and that, under an order from the judge, had to summarize all of his clients and their assets, as well as his own financial records. Peter sends a Document Request to David for these summaries. David objects.

After the Court denied the Motion to Amend, Peter proceeded to trial against David as an individual. He recovered \$50,000 from David, on the sole theory of negligence. After seeing that David could not pay the judgment, Peter sued the Tax King, Inc. for negligence and fraud. When the professional corporation denied liability, Peter moved for Summary Judgment on the issue of liability.

ANSWER FULLY THE QUESTIONS ON THE NEXT PAGE

PAGE 2
QUESTION ONE
APRIL, 2025

Answer the following questions:

1. Did the U.S. District Court have jurisdiction over David?
2. How should the Court have ruled on the Motion to Amend the Complaint?
3. Should the discovery be allowed?
4. How should the Court rule on the Motion for Summary Judgment?

**EMPIRE COLLEGE OF LAW
CIVIL PROCEDURE
APRIL 2025 - FINAL EXAM
ISSUE OUTLINE**

QUESTION TWO

1. This question calls for a discussion of Personal Jurisdiction, since the Defendant was served out of the State of California. The essence of the question concerns a discussion of the “Minimum Contacts” Rule. A secondary part of the Question involves a discussion of Rule 12 and its application to a challenge to personal jurisdiction.

2. This question calls for a discussion of the application of Rule 15, Federal Rules of Civil Procedure. Specifically, the question calls for a discussion of the “Relation Back” doctrine and Rule 15 (c) re the change in the name of the defendant.

3. This question deals with the topic of pre-trial discovery. Specifically, the question calls for a discussion of the scope of civil discovery and the partial privilege contained in the “Work Product” Rule. Privacy and the attorney client privilege are also implicated.

4. This question calls for a discussion of claim preclusion. Specifically, the question calls for a discussion of the difference between Collateral Estoppel and the doctrine of Res Judicata. There should be a discussion of the offensive use of non-mutual collateral estoppel.

Monterey College of Law

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1)

ALICE (A)

BOB (B)

1. VENUE

Venue is the geographic location of the court hearing a case. In federal cases, venue may be laid in any district where defendant resides, any district where a substantial portion of the claim arose, or if neither of those are applicable, any district with personal jurisdiction over the defendant. In state cases, venue depends on whether the action is local or transitory. A local action must be brought in the county where the dispute is located. A transitory action can be heard in any county where defendant resides, or where a substantial portion of the claim arose. If venue is improper a court may either dismiss the action, or transfer to a court where venue is proper. In cases where venue was properly laid, venue may be transferred for the convenience of the parties and in the interests of justice.

I will assume that the Eastern District is the federal district court that contains the Stockton area. Here, venue could have been laid in the Eastern District since that is the district that the defendant resides. However, it also could have been properly laid in San Francisco, which is the district where the a substantial portion of the claim arose given that the apartment for rent was located in SF, the flyers that prompted B to apply were located in SF, and B mailed his application and check from SF. Therefore, both districts could be proper venue for this action. However, since venue was appropriately laid in the Northern District court, the court would need to find that transfer is warranted for the convenience of the parties and in the interests of justice. Here, because the claim arose in SF and B lives there with his girlfriend, who may also be called as a witness, it would likely be more convenient to have the action proceed in the Northern District.

Therefore, while it may be more convenient for A to have the venue transferred, **the court was correct for denying her motion.**

2. SUBJECT MATTER JURISDICTION

Subject matter jurisdiction refers to a court's power to hear a case. It cannot be waived. Under section 1331 and 1332, there are two ways into federal court. The first way is to bring a federal question. Federal question refers to any type of claim involving federal law, whether that's the constitution or laws enacted by congress or federal agencies. Under the well pleaded complaint rule, the court must look at what the claim is actually alleging without regard to possible federal defenses. The second way to federal court is diversity of citizenship. In order to get into federal court through diversity two elements must be satisfied: (1) there must be complete diversity of

the parties, meaning that no plaintiff can be domiciled in the same state as any defendant, (2) the amount in controversy must exceed \$75,000. Whatever plaintiff claims as their damages will govern unless it is clear to a legal certainty that p cannot recover more.

Here, the primary claim brought is for alleges a violation of the federal Civil Rights Act. As the facts state, the Civil Rights Act is a federal law. This is not a possible federal defense, but rather the main claim at issue in this case.

Therefore, because this case involves a dispute concerning a federal law, this is a federal question. (See below for analysis of state law claims.)

SUPPLEMENTAL JURISDICTION

Supplemental jurisdiction allows a federal court to hear state claims if share a common nucleus of operative fact with the claim that got the case into federal court.

Here, in addition to the Civil Rights Act violation, B is bringing two additional state law claims for conversion and public nuisance. These claims share a common nucleus of operative fact with the civil rights violation because these claims are a part of the same transaction or occurrence- - A's advertising of the apartment for rent, and her subsequent failure to take B and his girlfriend as tenants after taking their deposit.

Therefore, even though the conversion and public nuisance claims are state law claims, they share a common nucleus of operative fact with the Civil Rights Act violation that got the case into federal court.

RULE 12

Under Rule 12, a party may move the court to dismiss an action based on any one of the following: lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, improper process, improper service of process, failure to state a claim, and/or failure to name an indispensable party. Of those defenses, lack of personal jurisdiction, improper venue, improper process, and improper service of process are considered the disfavored defenses because if they are not brought in the first responsive pleading (either the Rule 12 motion, or the answer), then they have been waived. Lack of subject matter jurisdiction is never waived and may be raised at any time.

Here, while A may have already filed a motion related to venue, she has not waived her right to bring the defense related to subject matter jurisdiction because that defense can never be waived and may be raised at any time.

For the reasons discussed above, **the court was correct in denying A's motion for dismissal** based on lack of subject matter jurisdiction.

3. ERIE

Under Erie, a federal court hearing a diversity case should apply state substantive law and federal procedural law. This rule is the culmination of several cases, beginning with *Swift v. Tyson*. In *Swift v. Tyson*, the court established horizontal uniformity among federal courts. *Swift* was later overruled by Erie, which established vertical uniformity between state and federal courts by holding that in diversity cases, the court should apply state substantive law and federal procedural law. Guaranty Trust created the Outcome Determinative Test, which determines what laws are substantive by comparing whether the outcome of a case would be altered if either state law or federal law were applied. *Byrd v. Blueridge* introduced the idea of balancing state and federal interests. Finally, *Hanna v. Plummer* held that when there is a relevant federal statute, the court should apply the federal law. *Hanna 1* says that the Outcome Determinative Test is not a automatic litmus test, and must be considered alongside the twin aims of Erie. *Hanna 2* says that the twin aims of Erie are (1) to avoid forum shopping, and (2) to avoid the unequal administration of law.

Here, the case between A and B is in federal court under federal question (discussion supra). Because the Erie doctrine only applies to cases that are in federal court under diversity, Erie would not apply to this case. The court should apply federal law.

Therefore, since federal law does not require mediation before filing suit, **the court was correct to deny A's motion for summary judgment** based on B's failure to pursue mediation prior to filing.

4. PEREMPTORY CHALLENGES / EDMONSON-BATSON

The 7th Amendment preserves the right to a jury trial in civil cases at law. When a case goes to trial, the parties must empanel a jury. The group of potential jurors from which the final jury is selected is called a venire. The process of jury selection is referred to as voir dire. During voir dire, the parties may exclude jurors through a challenge. There are two types of challenges: challenges for cause, and peremptory challenges. A challenge for cause is the exclusion of a juror due to the jurors expression of a clear bias. There are an unlimited number of these challenges. A peremptory challenge is the exclusion of a juror wherein the party does not need to disclose the reason for exclusion. There are a limited number of these, which varies depending on whether the case is in state or federal court.

Under the Batson-Edmonson cases, the court held that peremptory challenges cannot be used to exclude jurors on the basis of a protected characteristic, such as race, gender, age, religion, etc. If questioned, an attorney must be able to provide a neutral reason for exclusion that is not related to a protected characteristic.

Here, A disqualifies the only unmarried jurors. On one hand, marital status is technically a legal status and could be considered an identifiable class because it includes a distinct class of people that can easily be categorized or identified as either married or single. On the other hand, marital status is not generally included in the list of protected characteristics in the same way that race, gender, national origin, religion, or age are.

Therefore, because marital status does not share the same level of protection as characteristics such as race, gender, national origin, race, or age are, **the court's decision to**

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disregard B's objection was correct.

2)

DAVID (D)

PETER (P)

1. JURISDICTION OVER D

PERSONAL JURISDICTION

Personal jurisdiction (PJ) refers to a court's power over the parties. There are 3 types of personal jurisdiction: in rem, quasi in rem, and in personam jurisdiction. In rem refers to a court's power over a person's property due to that property's presence in the forum (the state where p sues d). Quasi in rem refers to a court's power over a person due to their property's presence in the state; this has since been overruled. In personam refers to a court's power over a person due to that person's contacts and connections to the forum. Under Pennoyer, the court established 4 methods of obtaining in personam jurisdiction over a person. (1) the person is domiciled in the forum, [Domicile is the state where a person resides, where they are physically present, and where they have the intent to make that state their permanent residence.], (2) the defendant is served with process while physically present in the forum, (3) the defendant's agent is served with process in the forum, and/or (4) the defendant consents to personal jurisdiction. Under International Shoe, the court expanded in personam jurisdiction to include out of state defendants. Under International Shoe, an out of state defendant must have such minimum contacts that the exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. Whether a contact with the forum is sufficient depends on whether the defendant has purposefully availed themselves of the laws of the state, such that he could reasonably anticipate being haled into court in that state.

Personal jurisdiction is further divided by whether there is general jurisdiction over the defendant, which occurs when the defendant's contacts with the forum are systematic and continuous. General jurisdiction allows the plaintiff to bring any type of claim against the defendant. Specific jurisdiction is permitted when the defendant's contacts with the forum are not systematic and continuous, so long as the claim arises out of or relates to the defendant's conduct within the forum.

Here, P is attempting to subject D (an AZ resident) to CA court's power. In order to obtain jurisdiction over D, D's contacts must be sufficient. In this case, D has intentionally advertised his business on a news channel that broadcasts not only to CA residents, but also Arizona and Nevada. D's intention to expand the reach of his business is explicitly stated in the facts. It is further supported by the fact that he moved from a local newspaper to a major, national news organization, like Fox News, in order to reach customers. When he took this step, it would be reasonable for D to anticipate that those who saw his ads would solicit his business. Similarly, it would be reasonable for D to expect that business generated out of state would result in contracts that he would potentially want to use other states' court systems to enforce. By opening himself up to contracts in other states, D has invoked the benefits and protections of the other states' laws and should have anticipated being haled into court there.

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class such as gender, sexual orientation, etc.). If one side uses a peremptory challenge, and the other side believes the peremptory challenge is being improperly used (i.e. it is based purely on race based motives) then they may challenge the use of the peremptory challenge under *Batson*. When the other party opposes a peremptory challenge under *Batson*, then the other side must state a race-neutral reason for dismissing the juror. If the side using the peremptory challenge cannot state a race neutral reason, then the peremptory challenge fails. However, if the party using the peremptory challenge does offer a race neutral reason for dismissal, then the burden shifts to the other party opposing the peremptory challenge to show why the peremptory challenge was discriminatory under *Batson*.

Here, A uses her peremptory challenges to disqualify the only two jurors who are unmarried. Being unmarried is not a protected class that would make a *Batson* objection appropriate. Thus, the Court was correct to overrule B's objection.

2)

1. Did the U.S. District Court have jurisdiction over David?

In order to bring suit against a defendant, the court must have personal jurisdiction (PJ) over the defendant. PJ is the court's ability to have power over that person (in personam jurisdiction). By the very nature of bringing the suit, the Plaintiff consents to PJ in the Court, thus, the focus is on whether the Court has PJ over the defendant. Peter (P) has brought this suit against David (D) in the US District Court in Scottsdale, AZ. Thus, in order to properly bring this suit, Arizona must have PJ over D.

A court may have either general or specific PJ over a defendant. General PJ is when a court has the power to hear a case based on the defendant's conduct that occurs anywhere, because they are a citizen of that a forum. A human being is a citizen in any state where they are domiciled. An individual's domicile is their true, fixed, and permanent residence. Here, D, is a citizen of California because he lives and works in San Diego. Thus, D is subject to PJ in CA for his conduct that occurs outside of the forum state. Arizona would not have general PJ over D.

A court may acquire specific PJ over a defendant based on their conduct that occurs in the forum state. However, simply because the Defendant was in the forum state at the time, does not necessarily guarantee specific PJ. Rather, through a series of cases, the Supreme Court has established what is required in order to establish PJ over a Defendant who is not a citizen of the forum state. In the historic case, *Pennoyer v. Neff*, the Supreme Court held that the fact that the Defendant owned property in the forum state was insufficient to establish PJ. Later in the landmark case, *International Shoe v. Washington*, the Court extrapolated on what is required to establish PJ over a defendant who is not a citizen of the forum state. Specifically, in *International Shoe*, the Court held that the defendant must have sufficient contacts with the forum state, "as to not offend the traditional notions of fair play and substantial justice." Conveniently, the Court left open, the question of how many contacts are required in order to meet the "sufficient" standard. Case law has grappled with this question since the historic decision in *International Shoe*. However, *International Shoe*, does suggest that the nature and quality of the defendant's contacts should be considered in order to determine whether the contacts satisfy the standard "to not offend the traditional notions of fair play and substantial justice."

Here, D ran an ad on Fox News that reaches the entire Southern California area as well as

parts of Arizona and Nevada. Given the network of Fox News, it is likely that D's ad was seen by a large audiences of people Arizona. However, the number of contacts alone is not sufficient to establish PJ as set forth in *International Shoe*. D will argue that his contact with Arizona was solely through an advertisement and is therefore not a quality contact since it was likely a short advertisement and not personalized to Arizonans specifically. However, in *Hanson v. Deckla*, the Court found that PJ exists when a Defendant purposefully avails themselves of PJ based on their contact with the forum state, such that they could reasonably be hailed into Court in the forum state. P has a strong argument that by running the ad in Arizona, D sought clientele from Arizona, and therefore should have foreseen that he could be subject to litigation in Arizona. For this reason, Arizona has PJ over D since he purposefully availed himself to being subject to litigation when he ran his ad in Arizona.

In addition to PJ, Courts must also have proper subject matter jurisdiction (SMJ) in order to hear a case. State courts have general jurisdiction, meaning they can hear claims on most topics (excluding bankruptcy, trademark and patent infringement). Whereas, Federal Courts have limited jurisdiction, meaning they can only hear cases that arise under (1) diversity of citizenship or (2) federal question.

Diversity of Citizenship occurs when (1) plaintiff and defendant are citizens of different states and (2) the amount in controversy exceeds \$75,000. First, the complete diversity rule requires that no defendant is a citizen of the same state as the plaintiff. As previously discussed, D is a citizen of CA. P is a citizen of Arizona. Here, D and P are citizens of different states, and thus complete diversity is achieved. Second, to determine the amount in controversy, the court will look only at the amount claimed by the Plaintiff, not what the Defendant thinks the amount in controversy is. While the facts do not indicate how much P asserted in his complaint specifically, he likely requested the \$100,000 in penalties and interest he incurred as a result of his late tax return. This amount certainly exceeds \$75,000 and would therefore satisfy the amount in controversy requirement needed to bring this case in Federal Court under diversity jurisdiction.

Federal Question cases are heard when the case raises a question of federal law. To determine whether the case raises a question of federal law, the Court utilizes the well pleaded complaint rule. The well pleaded complaint rule requires that the Court look solely at the Plaintiff's complaint to determine whether a federal question is being raised. It is not enough that the case raises federal issues, or that the Defendant's answer asserts federal issues, but rather it must be explicitly brought in the plaintiff's complaint. This case is regarding professional malpractice, which is not a federal question and therefore not able to get into federal court under federal question jurisdiction. However, luckily this case is already in Federal Court under diversity jurisdiction so federal question is not required.

For the above stated reasons, the District Court did have proper jurisdiction over D.

2. How should the Court have ruled on the Motion to Amend the Complaint?

Several months later, P sees one of D's newspaper ads and learns that D does his business through a professional corporation called Tax King, Inc. When P learns that D's assets are held by Tax King, he seeks an order from the Court allowing him to amend his complaint to add, Tax King as a defendant. Generally, a Plaintiff only has 30 days to amend their complain after it is filed; however, they can ask the court for permission to amend after that time period as passed. Here, several months have passed, and P has properly requested permission of the Court to amend his complaint.

The Court has discretion to allow P to amend his complaint. When deciding whether to grant a leave to amend, the Court will consider the potential prejudice to the other party. Here, D is already aware that he is being sued by P for his tax advertisements, so it should not come as a surprise to D that his corporation, Tax King is now being sued. Since D was already preparing for litigation, the Court will likely find that allowing P to amend his complaint would not prejudice D or Tax King. For this reason, the Court should have granted P's motion to amend the complaint.

Additionally, the relation back doctrine will apply when there is no prejudice to the other party, and if the amendment relates to the same transaction or occurrence pleaded initially. This means that P's amended complaint would relate back to the date of filing of his initial complaint, which was before the statute of limitations ran out.

3. Should the discovery be allowed?

Discovery allows parties to further investigate their claim in preparation for litigation. Discovery does not have to lead to *admissible* evidence, but rather evidence that *may* lead to admissible evidence. Here, P's claim is for professional malpractice against D. Thus, P can utilize discovery tools such as Request for Admissions, Form Interrogatories, Request for Production of Documents, etc. to obtain evidence that may lead to admissible evidence relating to P's malpractice claim.

Here, P seeks to obtain summaries of D's clients and their assets as well as D's personal financial records that was produced under a previous order from a judge. P can likely argue that these documents may lead to admissible evidence since the claim is regarding malpractice. Since D's client history is likely relevant to P's malpractice claim, P can provide a sound reason why these documents should be discoverable. P properly sent D a Document Request which is a proper discovery tool. Finally, there is no apparent burden on D to produce this information since he has already done so under a previous court order.

D could certainly object in his discovery response to this request. D may even seek a protective order for his client's information. However, if D is not able to produce a valid objection such as a recognized privilege, then P could seek a motion to compel the information if D does not produce it.

4. How should the Court rule on the motion for summary judgment?

A party can move for summary judgment when there is no dispute over material facts, and the party is entitled to a judgment as a matter of law. A party is entitled to a judgment as a matter of law when no reasonable person could find otherwise. Summary judgment is always at the Court's discretion.

P will try to argue that there is no dispute over material facts because they were settled in his first case against D as an individual and therefore he should be entitled to summary judgment since the Court already found D liable for negligence. However, D may be able to utilize a preclusion doctrine in order to bar P from bringing another suit against D's company.

The preclusion doctrines are rooted in the idea that each litigant only gets their day in court once and cannot keep relitigating the same issue or claim. There are two preclusion doctrines: res judicata and collateral estoppel.

Res Judicata is claim preclusion and requires the case be (1) the same parties in case 1 and case 2 (2) final judgment on the merits (i.e. not a judgment for jurisdiction, venue, or indispensable parties) and (3) the same claim is being raised in case 1 and case 2. Res judicata will bar a litigant from bringing the case. First, since P will likely be able to amend the complaint to name D's company as a defendant, that would satisfy the requirement for res judicata that the claims be between the same claimant and the same defendant. Second, P's first case ended in a final judgment of \$50,000 to P on the theory of negligence. This was a final judgment on the merits since it was not a judgment solely based on jurisdiction, venue, or indispensable parties. Finally, P is trying to move for summary judgment on liability. While this is not the same claim per se, it is based on the same transaction/ occurrence as case 1 and should have been brought in case 1 not after the fact. For this reason, D has a strong argument that P's case against Tax King should be barred under the theory of res judicata.

Collateral estoppel, is the concept of issue preclusion which requires that (1) the issue raised in case 2 was actually litigated and heard in case 1 (2) issue was material to the judgment in case 1 (3) case 1 ended in a final judgment on the merits (i.e. not a judgment based on jurisdiction, venue, or indispensable parties) (4) issue in case 1 is the same as the issue in case 2 and (5) the issue is being brought against someone who was a party in case 1. Since res judicata is more broad than collateral estoppel, and would allow D to bar the entire second case completely rather specific issues; D should only resort to collateral estoppel if he is unsuccessful with his res judicata argument.

It is clear that P is just trying to collect on his money and that is why he is trying to bring the second case. He did the right thing as discussed above seeking to amend the complaint to add Tax King. However, since the Court overruled that, he could always try to appeal. He also could have tried to get creative and tried to interplead Tax King as a party.

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A motion challenging SMJ can be brought at any time by any party. This is typically brought as a FRCP Rule 12(b)(1) motion, for lack of SMJ. If at any time the court realizes they do not have SMJ, they must dismiss the case for that reason. The court was correct in denying the motion that Alice filed challenging SMJ, as the case before us is regarding a Federal Question, and therefore, this court does have proper SMJ.

3) Was the denial of the Motion for Summary Judgment correct?

Motion for Summary Judgment (MSJ)

A motion for summary judgment, pursuant to Rule 56, is when a party files a motion for the court to decide their case. This is based on the idea that there is no genuine dispute as to any material facts, and that the party is entitled to a judgment as a matter of law. While California requires that landlord/tenants must bring disputes to mediation prior to filing a lawsuit, Federal court does not. Not to mention, Bob was never a tenant of Alice, and Alice was never his landlord. He submitted an application to be a tenant and was denied based on his marital status. There is a genuine dispute as to a material fact, as Bob believes it is a violation of the Federal Civil Rights Act to deny him tenancy for this reason, and Alice does not. The Court was proper in denying Alice's MSJ, as she is not entitled to it as a matter of law.

4) Was the Court's handling of the objection to the use of the peremptory challenges correct?

Peremptory Challenge & Restrictions

A preemptory challenge is where an attorney dismisses a juror without needing to give cause. Attorneys only get so many peremptory challenges. The *Batson* case established that an attorney cannot dismiss a juror simply due to their race or sex in a criminal case. The *Edmonson* case applied this rule to Civil cases. Alice made a peremptory challenge based on 2 jurors marital statuses. This is not precluded by *Batson/Edmonson*, and therefore, is a valid peremptory challenge. The Court was correct in disregarding Bob's objection.

2)

Essay Question #2:

1) Did the U.S. District Court have jurisdiction over David?

Personal Jurisdiction (PJ)

PJ is the courts power over a person or an item of property. There are 2 types of personal jurisdiction, in rem (over the property), and in personam (over the person). PJ can become an issue when the Defendant is not a citizen of the forum state.

Traditional Grounds

Traditionally, PJ was established when: (1) The Defendant was domiciled in the forum state

(*Pennoyer v. Neff*), (2) the Defendant was physically present in the state when served with service of process (*Burnham*), and (3) the Defendant gave express/implied consent to the PJ of the court (*Carnival Cruise Lines*). Following the traditional grounds, the US District Court in Arizona would not have PJ over David, as he is domiciled in California, was not physically present in Arizona when served, and never gave express/implied consent to the PJ of courts in Arizona.

Modern Grounds

Modernly, PJ is established by the minimum contacts test. The Minimum Contacts Test was established by *International Shoe Co.*, and stated that the Defendant must have sufficient minimum contacts with the state in order for PJ to be established. This case was further distinguished stating that PJ is established in the following ways: (1) if the defendant purposefully avails himself to the privileges of conducting activities in the forum state (*Hanson v. Denckla*), and (2) if the defendant's conduct or harms arising from that conduct should lead him to reasonably believe he will be haled into court there (*Burger King; Volkswagen*).

Modernly, the court in Arizona would have PJ over David, as he has minimum contacts with Arizona, and he purposefully availed himself to the privileges of conducting activities in Arizona, which included advertising and taking clients from that state. The facts state that Peter's documents got lost in David's office after hiring him, showing that David did take Peter as a client. This shows that David's advertising in Arizona was working and he was receiving clients from that advertising. If David is completing taxes for people in other states, he should know that his conduct could reasonably lead him to being haled into court wherever his clients live. Especially because David would have to be using Arizona tax laws for Peter's taxes, and any other clients he has that are outside the state of California. The US District Court in Arizona has personal jurisdiction over David.

Relatedness: Fairness & Convenience

Due Process is satisfied when the Defendant has sufficient minimum contacts with the state so as to not offend the traditional notions of fair play and substantial justice. The court also considers many factors when looking at the fairness and convenience, such as the defendant's travel expenses, the plaintiff's interest, and judicial efficiency. While the defendant will likely have large travel expenses, the Defendant also chose to advertise out of state, and should have known the risks when doing so. Due process is satisfied.

Relatedness: General Jurisdiction & Specific Jurisdiction

General jurisdiction exists when a defendant's contacts are substantially large (in quality and quantity), and allows any lawsuit to be brought against the defendant in the forum state. Specific jurisdiction exists when the defendant's contacts with the state are directly related to the cause of action or lawsuit against the defendant. In this case, the court would have Specific Jurisdiction over David, as his contacts with Arizona (advertising and taking clients from that state) are directly related to the current lawsuit/cause of action against David.

Rule 12(b)(2) Motion for Lack of PJ

The Court has proper PJ over David due to David having sufficient minimum contacts with the state. The court would have Specific Jurisdiction over David since his contacts with Arizona are directly related to the case at hand. The court was proper in denying David's motion for lack of

PJ.

2) How should the Court have ruled on the Motion to Amend the Complaint?

Amended Complaint - Rule 15

An amended complaint can be filed within (1) 21 days after filing the original complaint, 21 days after service of the responsive pleading (if required) or if not required, 21 days after a 12(b)(6) motion has been filed. Peter's original complaint was filed months prior to the time he attempted to file his amended complaint. This was well past the 21 days after filing the original complaint. The facts are silent as to whether a responsive pleading was filed, so we will assume that one was not. The facts also do not state that David ever filed a 12(b)(6) motion against Peter, so we will assume that he did not. When a plaintiff is past the time to file an amended complaint, they can still file one only if they get written consent from opposing counsel and leave from the court. Here, Peter is requesting leave from the court. However, the facts state that David is opposing this motion, and therefore, since Peter will not be able to get the written consent from David (the opposing party) this motion should be denied by the Court. (This is why it is always suggested to include "Doe's" in your original complaint (most do Does 1-20), just in case you believe there may be parties that you don't know about until discovery. That way, you can add the party in at a later time.)

3) Should the discovery be allowed?

Discovery is the process of obtaining information from the opposing parties. Typical discovery tools include: interrogatories, requests for admissions, requests for production of documents, site inspections, depositions, physical/mental health examinations, etc. The requested discovery must be: (1) Relevant, (2) Proportional, (3) not unduly burdensome, and (4) non-privileged. The Work Product Rule states that an opposing party cannot gain access to anything created in the anticipation of trial. This includes things such as attorney notes, witness statements, or any documents created in the preparation of the trial.

The Court should deny this discovery request from Peter. The information as to David's prior clients from 5 years ago, as well as his financial information from 5 years ago, is not relevant to the current case as to whether or not he lost the documents. Not to mention, this is likely unduly burdensome for David to have to go back and locate the summaries he made for the Court from 5 years ago. If David created these documents in preparation for a previous court trial, they would be excluded based on the Work Product Rule. However, the facts state that the Court requested these documents and was required to produce them, meaning they are likely not work product, as they were created for discovery purposes.

4) How should the Court rule on the Motion for Summary Judgment?

Motion for Summary Judgment

A motion for summary judgment, pursuant to Rule 56, is when a party files a motion for the court to decide their case. This is based on the idea that there is no genuine dispute as to any

material facts, and when the party is entitled to a judgment as a matter of law.

Res Judicata

Res Judicata is known as Claim Preclusion. This is a doctrine that prevents the same parties from bringing the same claim or case that has already been decided. The elements of Res Judicata include: (1) it must be the same parties, (2) the causes of action must be the same, (3) there must have been a judgment on the merits, and (4) the judgment must have been final. Res Judicata does not require actual litigation (trial). Peter is not bringing a claim against the same parties, as he is no longer naming David, but rather the corporation Tax King, Inc. Peter's prior lawsuit was against David for Professional Malpractice and Negligence. The current case Peter filed against Tax King, Inc. is for Negligence and Fraud. These causes of action are not the same as the prior case. Res Judicata would not apply here since these are not the exact same parties and not the same causes of action.

Collateral Estoppel

Collateral estoppel is known as Issue Preclusion. This is a doctrine that prevents (historically, the same parties) from bringing a lawsuit for an issue that has already been litigated. The elements of Collateral Estoppel include: (1) the issue is identical, (2) there was a final judgment, (3) the case was previously litigated and decided, (4) there was a full and fair opportunity to litigate, (5) the court in the prior case had SMJ (see analysis below), and historically, (6) which was mutuality of estoppel. Mutuality of estoppel is no longer a requirement. Collateral estoppel requires actual litigation (trial).

Subject Matter Jurisdiction

1. SMJ is the courts ability to hear a particular case.
2. SMJ generally applies to federal courts.
3. For a court to have SMJ, there must be one of the following: (1) Federal Question 1331; (2) Diversity of Citizenship 1332; (3) Removal Motion (from state court to federal court), or (4) Supplemental Jurisdiction.

Federal Question

- This arises when a substantial federal question stems from laws from the US Constitution, Federal Statutes, or Treatises.
- A Federal Question requires a Well Pleased Complaint. The Well Pleased Complaint rule states that the complaint must state a substantial federal question with federal issues, and not just rely on federal defenses to be used later in the case.

A Federal law/statute/treatise/constitution is not at issue in this case, therefore, there is no Federal Question.

Diversity of Citizenship

- Diversity of citizenship exists when: (1) no plaintiff is a citizen of the same state as any defendant, and (2) the amount in controversy is \$75,000 or more in good faith.
- When diversity of citizenship exists and the issue regards substantive law, the court must apply state laws.
- For diversity of citizenship, the citizenship is decided by where the person/corporation is

domiciled. For a natural person, their domicile is their true fixed residence with a manifested intent to remain. For a corporation, you use the "nerve center test" to determine their domicile. The "nerve center test" states that a corporation's domicile is either (1) their primary place of business, or (2) the place where the business was incorporated.

David and Peter are domiciled in different states: David in California and Peter in Arizona. The amount in controversy is over \$75,000 as Peter lost over \$100,000 for David's losing of his paperwork. Both prongs of diversity of citizenship are satisfied, and therefore, this is a diversity of citizenship case that gives the court the proper SMJ.

Removal Motion

- A removal motion gives a court SMJ when the case has been removed from a state court to federal court.
- A defendant can file a removal motion when: (1) there is diversity of citizenship, and (2) there is a joinder of federal and state law claims.
- A defendant cannot file a removal motion if they are a citizen of the forum state where the lawsuit is already filed.

No removal motion was filed in this case, so this does not apply.

Supplemental Jurisdiction

- Supplemental jurisdiction gives the court the power to hear a claim that it normally would not have SMJ over, but because the claim shares a common nucleus of operative fact (common set of facts), and the case is already filed in federal court. Supplemental jurisdiction does not apply to this case, as there are no facts indicating it would.

Collateral Estoppel Conclusion

The collateral estoppel doctrine would prevent Peter from bringing the Negligence claim against Tax Kings, Inc., as this is an identical issue to the prior case he had against David, there was a final judgment, the case went to trial and was decided, the parties had a full opportunity to litigate the case, and the prior court had proper SMJ to hear the claim. The collateral estoppel doctrine would not barr Peter from filing the Fraud claim against Tax Kings, Inc., unless he had also filed this fraud claim against David. The facts do not state that he filed a fraud claim against David, so we will assume that he did not. If this is Peter's first claim for fraud, the collateral estoppel doctrine would not apply and therefore, he would be allowed to bring the claim.

Conclusion on Motion for Summary Judgment

Peter can move for summary judgment based on liability, as there is no suggestion from the Defendant that there is any dispute as to material facts in the case. The Defendant is solely disputing their liability in the matter, rather than any material facts in the case. Since Tax Kings, Inc. was the company owned by David and this was the company that Peter hired, it is likely that they would face the liability for the mistakes made by David. The court should grant Peter's motion for summary judgment based on the facts we have.

END OF EXAM



Monterey College of Law

ID: [REDACTED] (Student ID)
Exam Name: CivProc-ECL-SP25-Seeger-OS
Exam Date: May 1, 2025
File Name: [REDACTED]_CivProc-ECL-SP25-Seeger-OS_20250501_final.xmdx
Exam Length: 180 minutes (Started @May 1, 2025, 6:30 PM; Ended @May 1, 2025, 9:30 PM)
Downloaded: Apr 30, 2025, 5:51 PM
Uploaded: May 1, 2025, 9:30 PM

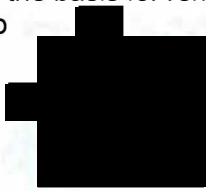
GRADE _____

Total Number of Words in this Exam = 3747

Total Number of Characters in this Exam = 21808

Total Number of Characters in this Exam (No Spaces, No Returns) = 18046

been forced to provide a legitimate reason for this disqualification. She likely could have claimed that these two unmarried jurors were unduly biased as this case centers around an unmarried couple. Bob could have then countered and done further inquiry to determine if the removal was based on Alice's religious beliefs, as she has discriminated against him for cohabitating with his girlfriend and living in sin. Bob's claim of discriminatory disqualification most likely would have been substantiated during jury responses to the Voir Dire process, in which both sides were afforded the opportunity to rigorously question the perspective jury. Had the facts indicated that both jurors were unmarried and were also cohabitating with their partners, then a strong argument could have been made for discrimination based on religious beliefs, as unmarried cohabitation seems antithetical to Alice's religious beliefs and she would have been discriminating against them for not holding the same beliefs. The facts do not indicate what occurred during the voir dire process, so it is impossible to determine Bob had a realistic claim that their disqualification was based in discrimination. The Court should have at least afforded Bob the opportunity to have heard this issue and force Alice to provide a legitimate causal reason for their dismissal. While the outcome would likely be the same (a finding that discrimination was not the basis for removal), Bob still had the right to have this issue addressed. The Court did not [REDACTED] s objection.



2)

2)

#2 90

1. Did the U.S. District Court have jurisdiction over David?

Personal Jurisdiction ("PJ") is the courts ability to have power over the person or their property, which was established in Pennoyer v. Neff. Power over the person is called in personum. Power over the property is called in rem. Power over the person through there property is called quasi-in rem, which is no longer a favored practice. PJ can be general or specific. General jurisdiction is established when the person is domiciled within that state. Domicile is where the person truly lives and permanently resides, often considered where the person calls "home". The person

may live in another state, but if that is for a temporary purpose (such as going to college), then the person is still considered a resident and therefore domiciled at their original state. Domicile can change if the person makes substantial steps to move to a new location and intend for that new state to be there permanently resides. These substantial steps would be opening bank accounts in that new state, changing your drivers license and/or purchasing a home. PJ can also be specific, which is established when the person avails themselves to the State. The standard set forth to determine specific jurisdiction is enshrined in *International Shoe*. *International Shoe* established that the defendant must have such minimum contacts as to not offend traditional notions of fair play and substantial justice.

Subject matter jurisdiction ("SJM") is the courts ability to hear a claim. State courts have general SJM, in which they can hear any type of claim, whereas Federal Courts have limited SJM. Federal Courts can only hear two types of claims: (1) those with a diversity of citizenship when the amount in controversy exceeds \$75,000; and (2) federal question. Complete Diversity of Citizenship occurs when the defendant is a resident (domiciliary) of a State different than the plaintiff. Federal question occurs when the claim arises out of a federal law.

Federal Rule of Civil Procedure 12 ("Rule 12") governs the process by which a party answers a complaint. A Rule 12(b) motion asserts defenses the answering party can claim to dismiss the complaint. There are 7 defenses an answering party can raise: (1) lack of subject matter jurisdiction; (2) lack of personal jurisdiction; (3) improper venue; (4) improper process (i.e. summons and compliant); (5) improper service of process; (6) failure to state a claim; and (7) failure to join an indispensable party. Defenses 2-5 MUST be stated in the first answer to the complaint, or before answering the party can make a motion to dismiss under Rule 12(b). If these defenses are not raised within the answering parties first moving papers, then they are deemed waived, and cannot later be asserted. Lack of subject matter jurisdiction can always be raised. Failure to state a claim is often the road by which Summary Judgment (discussed below) is sought.

Per the facts, David is not a resident of Arizona, so there cannot be general PJ over him. The next step would be to determine if the U.S. District Court of Arizona has specific PJ over David. David must have such *minimum contacts as to not offend traditional notions of fair play and substantial justice*. In this instance, David purposefully availed himself to Arizona when he allowed his advertisements to be run in Arizona. So long as he did not specify in his Ad that his services are only valid for California residents, it would be reasonably foreseeable that those in Arizona (and Nevada) would have heard his advertisement and reached out to him to do business. David did have minimum contact with the forum state, and should have reasonably expected people in Arizona reach out to him to complete their taxes. Thus, this court does have PJ over David.

As defendant David is a resident (domiciliary) of California, and plaintiff Peter is a resident (domiciliary) of Arizona, the parties have complete diversity. Further, Peter incurred penalties exceeding \$100,000 which he is seeking to recover from David. As there is complete diversity, and the amount in controversy exceeds \$75,000, the U.S. District Court of Arizona has SJM over David. David's Rule 12(b) motion for lack of PJ and lack of SJM should be dismissed.

2. How should the Court have ruled on the motion to Amend the Complaint? (the court denied it)

Joinder of an indispensable party. Once a cause of action arises, third parties can be joined if they have a substantial interest in the cause of action. They are indispensable if their interest is at stake and could be harmed if they are not joined or if complete relief could not be sought without them being joined.

Relation back doctrine comes into play when a the plaintiff seeks to amend their complaint and it preserves the complaint's date of entry so as to not allow the statute of limitations to prevent the claim from being litigated. A plaintiff can amend their complaint to join an indispensable party, if that party was aware of the complaint, and but for mistake of failure to be named, would have been properly joined and served with process. A Plaintiff can also amend their complaint to add any new claims that arise out of the same transaction or occurrence.

Impleader occurs when a defendant joins a third party who they claim is liable in some way to the cause of action, often on a basis of indemnity or contribution.

Peter seeks to join Tax King, Inc. as a defendant in this complaint. As the Ad was run by Tax King, Inc, the name in which David does business as (dba), they are an indispensable party as they are also liable for the failure to properly prepare the taxes as advertised. Further, complete relief cannot be sought without Tax King, Inc, being joined. The facts show that all of Davids assets are part of Tax King, Inc, and thus he would not have sufficient financing to be able to provide adequate relief. Tax King was an indispensable party who should have been joined.

Tax King, Inc. as a business would have been put on notice of the suit the second David was served, as it is his business. They are just as equally liable for the harm Peter suffered as David is. Peter was mistaken when he did not name them as a party, and he should have had leave to amend the complaint to join them to this party. David clearly wants to oppose this motion so that the deeper pockets of Tax King, inc are not at risk. The court should have ruled in favor of the motion to Amend the Complaint. If the court allowed Peter to amend his petition, the Statute of Limitations would not have run, as the amended petition would have related back to the original filing of the complaint.

The party may have been joined as an impleader, as a third party who is liable on the basis of indemnity/contribution, but only David, as the defendant, could have joined them in such a way. As this would be against his interest, he would not implead Tax King, Inc.

3. Should discovery be allowed?

Discovery is the process by which a party seeks to gather information from the other party in order to acquire evidence for a specific purpose, either in support of a claim or a defense. Each party is able to seek records (i.e. Request for Document Production), request responses to interrogatories (fact finding questions) or seek admissions (admittance or denials of specific statements). If the responding party is unable to provide a response to an interrogatory or is unable to produce a requested record, or denies an admission, they must provide a reason why and then further information for where the propounding party might be able to seek that information. A responding party is able to object to discovery requests. Discovery requests do not need to always lead to admissible evidence. Unless there is leave of court, or an agreement between parties, the responding party must provide a response to the propounding party within 30 days of service of discovery.

Peter propounded David with discovery to provide summaries of all his clients and their assets, as well as his own financial records. Peter's request should be allowed in part and denied in part. The request to provide summaries of all of David's clients and their assets is not relevant to this issue at hand and this request should be denied. This information would not support the claim that David failed to prepare his taxes and is therefore liable. This information is also likely privileged and would be a violation of David's clients privacy if this information was turned over. To seek these summaries is an overreach and has no basis in Peter's claim. However, David's financial records are relevant to the cause of action. When seeking damages, the court would need to know what funds David would have access to in order to adequately compensate Peter for the damages that were incurred. Access to Davids financial records could also help Peter in settlement negotiations as he would realistically understand what compensation David could provide.

4. How should the Court Rule on the Motion for Summary Judgment?

In order for a Motion for Summary Judgment to be granted, there must not be a material difference in fact and the judgment is a matter of law. If there is a material difference in fact, then the case needs to proceed and be heard in court. The court will review the pleadings from both parties and look upon the moving party most favorably.

Res Judicata is claim preclusion. It is the process by which a claim can be dismissed as there was already a judgment on the merits. In order for Res Judicata to apply, (1) the claim must be exactly the same as the prior claim that was litigated; (2) the claim must be brought by the exact same parties (same plaintiff, same defendant - there is privity between the two parties); and (3) there must have been a judgment on the merits.

Collateral Estoppel is issue preclusion. It is the process by which an issue does not need to be litigated because there was already a judgment on the merits. There are 5 factors in determining if collateral estoppel should be enforced to bar the issue from being re-litigated: (1) the issue was litigated in a prior lawsuit; (2) the issue was actually litigated; (3) the issue was essential to the judgment; (4) there was a final judgment on the merits; (5) the party who is defending themselves on the issue already had the opportunity to litigate the issue.

After Peter receives a favorable judgment against David on the sole theory of negligence, he seeks to sue Tax King, Inc as David is unable to pay the judgment. This is exactly the kind of situation that could have been avoided if the court granted leave to amend the petition. Now the courts time must be wasted as the same issues are being raised. Peter specifically moves for Summary Judgment on the issue of liability. As this would be summary judgment on a specific issue and not a claim, Res Judicata would not apply. Res Judicata would further not apply, as the defendant (Tax King, Inc.) is different than that of the parties in the original claim.

In order for Summary Judgment to be granted, there must not be a material difference in fact. The facts do not indicate that there would be any material difference in the pleaded facts. Next, the court would need to look to see if the judgment is a matter of law, thus does Collateral Estoppel apply? David operates his tax preparation business under the professional corporation Tax King, Inc., which would make him the acting party whom Tax King would be liable for. Tax King is trying to claim that they are not liable for the harm suffered by Peter. Peter is seeking a judgment as a matter of law based on liable under the theory of Collateral Estoppel. Tax Kings vicarious liability through David was already an issue in the prior claim Peter brought against

David. This issue was actually litigated and would have been essential to the judgment as liability can be conferred from actual and proximate cause (which is required elements to succeed in a negligence cause of action.) Liability would have been essential to the the judgment that found David negligent in his handling of Peter's tax information. There was a final judgment on the merits regarding this issue as it proceeded to trial. Technically, the party defending themselves on this issue (Tax King, Inc.) would have had the opportunity to litigate it through David, as it is his business and he quite literally dba Tax King. Tax King is not some third party who is not connected to this claim. Tax King also should have intervened (joining of a third party to a claim to protect one's interest) when Peter first brought this cause of action in order to protect their interests, but they chose not to. As to the issue of liability, all required elements of collateral estoppel are met, and thus Summary Judgment should be granted as the judgment would be a matter of law.

The court really should have given Peter leave to amend his complaint. David should have implead Tax King, Inc to bare some of the burden as insurance likely would have covered some of the costs incurred, and/or if Tax King was not joined in this manner, they should have intervened as their interests was put at stake through David, who is the owner operator.

END OF EXAM