

**Monterey College of Law - Hybrid  
Civil Procedure – Sec. 1  
Fall 2025 Exam  
Professor Siobhan Kelley**

**Instructions:**

The final exam is composed of three essay questions. Each is intended to take approximately one hour to complete. Issues should be addressed in IRAC format. For each issue, your answer should clearly state the issue and the applicable rule. Then apply the law to the facts and analyze how the rule applies here. Come to a clear conclusion that directly answers the call of the question. While perfect spelling and grammar is not required, each rule must be stated correctly and use the correct terms. Make sure you are answering the questions in terms of civil procedure.

### QUESTION ONE

XYZ Corp manufactures high-end bicycles. The company primarily sells its products through a network of established distributors across the United States. Its sales are limited to customers who have an account with one of its authorized distributors. It advertises its products in magazines that are sold in every state.

XYZ Corp is incorporated in State A. It has a large manufacturing facility in State B, where it employs several hundred people. It's CEO, CFO, COO and their respective departments work out of an office in State C.

In June 2024, a State B resident, Tom, purchased a XYZ Corp bicycle through a local retailer in State D. He was riding the bicycle when it fell apart. Tom sustained significant injuries.

Tom filed a lawsuit against XYZ Corp in State B federal court, claiming product liability and negligence.

Tom arranges for XYZ Corp to be served. The process server went to the facility in State B and told the receptionist he was there to serve legal process on the corporation. The Facility Manager for the warehouse came out and said she would take the papers. "I'm supposed to give it to the CEO," the process server said. The Facility Manager stuck her hand out and motioned for the process server to hand her the papers, saying "It's okay, I can take it." He handed her the documents and she put them in her desk drawer and forgot about them.

XYZ Corp found out about the lawsuit because Tom's lawyer called the CEO's office to talk to him about the case.

XYZ Corp filed a motion to dismiss for improper service of process. The court denied the motion.

XYZ Corp timely filed an answer to the complaint.

XYZ Corp then filed a motion to dismiss for lack of personal jurisdiction. The court denied the motion.

Answer the following questions:

1. Was the court correct to deny the motion to dismiss for improper service?
2. Was the court correct to deny the motion to dismiss for lack of personal jurisdiction?

## QUESTION TWO

Paul Kendrick ("Kendrick"), a citizen of State A, worked for Drake Industries ("Drake") as an engineer at their research facility in State A. Drake is incorporated in State B. Drake asked Kendrick to develop a new type of electric bike and promised him a bonus of \$100k if he was able to meet the goals of the project. Kendrick developed the Malibu electric bike which can reach speeds of 50mph.

After the bike project was complete, Kendrick and the CEO of Drake Industries had a meeting at the headquarters of Drake in State B. Kendrick demanded that Drake pay the bonus. The CEO refused, explaining that just as the Malibu bike was in the final stages of development, Congress passed a law prohibiting the sale of ebikes that can exceed 25mph.

Furious that he was not going to be paid the bonus, Kendrick quit his job and stormed out of the building and got in his car. The CEO, realizing she was late for her pilates class, also ran out to the parking lot. As Kendrick was driving out of the parking lot he ran over the CEO's foot. The CEO's foot was broken as a result. The CEO lives with her family in State B, but after she broke her foot she temporarily moved into an apartment in State A to be closer to the hospital while she recovered.

Kendrick sued Drake Industries and the CEO as an individual in state court in State A for failure to pay the bonus.

Based on advice from someone in her pilates class, the CEO has instructed Drake's attorneys to try to have the case removed to federal court.

The CEO would like to sue Kendrick for her broken foot.

Answer the following questions:

1. Will Drake be able to remove the case to federal court?
2. Should the CEO sue Kendrick for the broken foot in the same lawsuit?

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### QUESTION THREE

Palmer Padilla is a social media influencer who lives in the federal district of State A. She has seen posts about a new cosmetic surgery that reduces nostril size. She is very interested in getting the surgery but is having a hard time finding a local surgeon who performs this procedure.

Padilla goes to Doctor Dubins, a cosmetic surgeon who owns his own practice in the Eastern District of State B. Dubins has recently started doing nostril-reduction surgery. Dubins and Padilla meet for a consultation at Dubins' office. Dubins explains that that he performs surgery at Elevated Surgery, a surgery center in the Western District of State C.

Padilla pays for the surgery and it is performed by Dubins at Elevated Surgery. Following the surgery, Padilla develops an infection and is hospitalized for several weeks. Padilla believes Dubins is responsible for her contracting the infection. She sues Dubins for medical malpractice in State A federal court, seeking to recover the cost of her hospital bills, and damages for her pain and suffering.

Dubins wants to move the lawsuit from State A federal court to State B federal court where it is more convenient for him to litigate.

Dubins believes that the infection is a result of the negligence of Elevated Surgery. He wants to join Elevated Surgery to the case.

Answer the following questions:

1. Discuss Dubins' options for joining Elevated Surgery to the lawsuit.
2. If Dubins joins Elevated Surgery to the case, how does that affect Dubins' options for moving the case to State B?

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## **QUESTION ONE**

### **Answer Outline**

#### **1. Service**

**Courts may accept service on a person who appears to be in charge at a corporate office if that person is a managing agent or someone reasonably calculated to give notice to the corporation. A strong answer will discuss the meaning of the facts in a thoughtful way:**

- **The Facility Manager was not shown to be a managing agent or authorized to accept service.**
- **The process server explicitly asked for the CEO, indicating he did not believe the Facility Manager was appropriate.**
- **The Facility Manager did not forward the documents, but instead put them in a drawer, suggesting a lack of understanding of the importance of the documents.**

**Service was not proper, however the call that put XYZ on notice shows that actual notice happened, which may affect how the court views the motion.**

#### **2. Personal jurisdiction**

**The answer must include the rule for minimum contacts and discuss the difference between specific and general jurisdiction. XYZ is not incorporated in the forum state and there are no facts to suggest systematic and continuous contact that would be a basis for general jurisdiction.**

**Advertising in a national magazine is a passive act and will not suffice as purposeful availment.**

## **QUESTION TWO**

### **Answer outline**

#### **1. Subject matter jurisdiction**

##### **a) Diversity**

**Subject matter jurisdiction by diversity requires that no plaintiff be from the same state as any defendant and that the amount in controversy exceed \$75k, exclusive of interest and costs.**

**The facts that need discussion here are that Drake is a citizen of state B (state of incorporation and headquarters) and the CEO is a citizen of State B as he is only temporarily in State A. The bonus is \$100k so amount in controversy will be met.**

##### **b) Federal Question**

**Subject matter jurisdiction by federal question requires that a cause of action arises under the Constitution, laws or treaties of the United States. The answer must explain that the Kendrick's complaint is for a state law claim and that the issue of federal law that Drake brought up is potentially an affirmative defense which is not a basis for federal question jurisdiction.**

**There is no federal issue in a "well-pleaded complaint" and therefore Drake cannot remove on federal question.**

**The answer should have a conclusion for the first call that explains that the case may be removed based on diversity jurisdiction.**

#### **2. Joinder of claims**

**A strong answer will compare compulsory and permissive joinder. At a minimum, the answer should discuss permissive joinder of claims.**

##### **Permissive vs Compulsory Counterclaim**

**The CEO is seeking to file a complaint against Kendrick related to his broken foot – a strong answer will explain the difference between permissive and compulsory counterclaims and discuss whether this arose out of the same "transaction or occurrence."**

##### **Supplemental Jurisdiction**

**Unlikely to be sufficiently related to the claim to be included under supplemental jurisdiction – but if students can make a strong argument that it is related then I will give them points for that as well.**

### **QUESTION THREE**

#### **Answer outline**

##### **1. Joinder**

**The answer should identify impleader as the mechanism for joining Elevated Surgery to the case, along with a rule statement that states that impleader applies because the defendant believes the third party is partially or wholly liable for the claim.**

##### **2. Venue**

**A solid answer must include an accurate venue rule (28 USC 1391(b)). The answer should identify that venue is proper in State A where it is now because that's where the events giving rise to the claim occurred (at the surgery center).**

**Venue must be proper for all defendants unless waived. So if Elevated Surgery is joined, they must agree to the request for transfer.**

1)

**1. Was the court correct to deny the motion to dismiss for improper service?**

Whether service of process on XYZ Corporation was sufficient when the process server delivered the summons and complaint to the facility manager at XYZ's State B manufacturing facility, who then placed them in her desk and forgot about them.

Due process requires that before a court can exercise power over a defendant, the defendant receive notice that is reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Actual notice is not required; what matters is whether method chosen was reasonably likely to inform the defendant. Additionally, in federal court, service is governed by FRCP 4. Rule 4(h)(1) provides that a corporation may be served by delivering the summons and complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process. Service need not be made on the CEO specifically, unless state law or corporate designation requires that.

*excellent  
wp*

*great  
NR*

Courts look at whether the person served is of sufficient rank or responsibility such that it is reasonable to expect that they would transmit the papers to the appropriate corporate officials. Defects in service are usually excused when the method was reasonably calculated to give notice, and any failure of actual notice is due to the corporation's own internal mishandling, not the plaintiff. *good discussion*

Here, the process server went to XYZ's large manufacturing facility in State B, told the receptionist he was there to serve legal papers on XYZ, and the facility manager came out. The processor stated they were supposed to "give it to the CEO" but then the manager stuck out her hand and motioned for the process server to hand her the papers saying "it's okay, I can take it," and accepted the summons and complaint. From the perspective of a

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reasonable process server, going to the company's major facility and handing the documents to the person who steps forward and affirmatively says "I can take it" is reasonably calculated to notify the corporation. Mullane does not require that the plaintiff monitor what the employee does internally with the papers. The fact that the manager put them in her desk and forgot about them goes to internal corporate negligence, not to the adequacy of the method.

great job

good analysis

XYZ did, in fact, learn of the lawsuit later when Tom's attorney called the CEO's office. Due process does not require actual notice, but here the corporation ultimately did receive actual notice as well. Under Mullane, this easily satisfies the constitutional requirement.

great use of facts!

The key question is whether the facility manager qualifies as an officer, managing or general agent or other agent authorized to receive service. The manager is described as the facility manager of a large manufacturing plant employing several hundred people. That title suggests significant responsibility over XYZ's operations in State B. Courts often find that plant managers, office managers, or similar supervisory employees to be "managing agents" for purposes of Rule 4 when they have substantial control over a facility or department. Even if XYZ never formally designated her to accept service, she held herself out to the process server as someone who could take the papers. This creates a level of apparent authority and when interpreted, Rule 4 is interpreted more practically. That is, if a reasonably prudent process server would believe the person is appropriate to accept service on behalf of the corporation, service is usually upheld.

very good!

XYZ will likely argue that service was improper because the manager said she was supposed to give it to the CEO, implying she was not an agent authorized to accept service. But that sentence cuts both ways, it shows she understands that she is responsible for forwarding an important document internally. The process server did satisfy Rule 4 by placing the papers into the hands of a supervisory employee at the company's own facility who expressly volunteered to take them. The fact that she put them in a drawer and

good

great!

forgot about them is an issue for XYZ, not Tom. Courts don't allow defendants to escape suit because their own employee mishandled the documents after valid service. There is no suggestion of prejudice to XYZ. Once the CEO's office learned of the suit, XYZ was able to hire counsel and file responsive motions. Because the method was reasonably calculated to provide notice under Mullane and delivery to the facility manager at the manufacturing plant constitutes service on at least a managing or general agent, or at minimum an apparent agent, service satisfies both Rule 4 and due process.

The court was correct to deny XYZ's motion to dismiss for improper service of process. Service on the facility manager at XYZ's State B facility was valid under both Rule 4 and due process.

*fantastic job here - Shows understanding of due process + FRCP and how they work together.*

## 2. Was the court correct to deny for lack of personal jurisdiction?

Whether the State B federal court may exercise PJ over XYZ corporation in Tom's product liability and negligence action arising from a bike that allegedly fell apart and injured him.

### Minimum Contacts

Due process allows a state to exercise jurisdiction over a defendant who has minimum contacts with the forum such that maintaining the suit does not offend the traditional notions of fair play and substantial justice.

*great rule*

good

The fairness factors also support jurisdiction. XYZ already has a major physical presence in State B. It cannot credibly claim that litigating there is unduly burdensome. State B has a strong interest in providing a convenient forum for its injured residents and in regulating the safety of products being used within the state. Tom is a State B resident injured there. Litigating at home is strongly in his interest. XYZ may argue that State D,

where the purchase occurred, or State A or C where it is incorporated and headquartered would be a more appropriate forum but due process does not require the best forum, only that the chosen forum be fair. Given XYZ's operations in State B and the injury, exercising jurisdiction is not unfair. Thus, even apart from waiver, the minimum contacts and fairness analysis supports specific minimum contacts/specific jurisdiction.

**There are two main types of jurisdiction over corporations: (1) General jurisdiction and (2) Specific jurisdiction.** *nice intro - frames issues*

### General Jurisdiction

General jurisdiction is the court's power to hear a claim which does not arise out of the defendant's contact with the forum state. In order for a court to exercise general jurisdiction over a corporation, it must: (1) be incorporated in the forum state; or (2) have its principal place of business in the forum state; or (3) have contacts that are sufficiently systemic so as to render it 'at home' in the forum state. *great rule*

XYZ is incorporated in State A. Its CEO, CFO, and COO and their departments operate out of State C. That strongly suggests that its principal place of business (PPB) or its "nerve center" is in State C. Under Goodyear and Daimler, a corporation is "at home" and subject to general jurisdiction in its states of incorporation and principal place of business, and only in exceptional circumstances elsewhere. Although XYZ has a large manufacturing facility in State B, that alone does not make it "essentially at home" there. BNSF made clear the extensive in state operations, revenue or employees does not automatically create general jurisdiction where the corporation is neither incorporated or headquartered. *good use of cases*  
*need to discuss systematic + continuous*

Therefore, State B court does not have general jurisdiction over XYZ.

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### Specific Jurisdiction

Specific jurisdiction refers to the courts exercise of jurisdiction when the claim arises out of defendant's voluntary contacts with the forum state. This requires: (1) purposeful availment - defendant deliberately engages with the forum, not random, fortuitous, or unilateral contacts. (2) The claim arises out of or relates to those contacts. (3) Jurisdiction is fair and reasonable, assessed under the fairness facts, such as burden on defendant, forum's states interest, plaintiff's interest in convenient and effective relief. *rule could be tighter, but overall good job*

XYZ manufactures high end bikes and uses a network of distributor across the US to sell them. It advertises its products in magazines sold in every state. It also operates a major manufacturing facility in State B. Those facts show that XYZ has deliberately engaged with the US market broadly and has specifically chosen to locate significant operations in State B. Operating a large facility in State B and employing hundreds of State B residents is purposeful availment of the forum's benefits and protections. XYZ uses State B's workforce, infrastructure and legal system to conduct its business. *"because..."*

XYZ might argue that it limits sales to customers with accounts with authorized distributors and sells bikes to distributors rather than directly to consumers, and Tom purchased his bike through a retailer in State D, not in State B. But purposeful availment does not require direct sales in the forum, it is enough that XYZ intentionally conducts ongoing business there. Here, XYZ's decision to place a manufacturing facility in State B is far more than a mere stream of commerce, it is an intentional, physical presence. Thus XYZ has purposeful contacts with State B. *good counter argument*

Tom is a state B resident who was riding the bike when it fell apart causing serious injuries. This suggests he was likely injured in State B, where he lives and where he filed suit. The claim therefore concerns an injury to a State B resident, occurring in State B,

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caused by a product manufactured and distributed by XYZ. Even though the bike was purchased in State D, modern law recognizes that a claim may 'relate to' the defendant's forum contact without strict but-for causation. XYZ's continuous operations in State B combined with its nationwide advertisement makes it entirely foreseeable that its bikes will be used in State B and may injure State B residents there. The alleged defect arises from XYZ's business of designing and manufacturing bikes the same business for which it uses its State B facility. *good*

Tom's product liability and negligence claims therefore arise out of and relate to XYZ's purposeful activities in State B. As mentioned above, specific jurisdiction is met.

### Waiver of Personal jurisdiction Defense - Rule 12(h) *clearly stated issue*

A defendant must raise lack of personal jurisdiction in its first Rule 12 response (either a pre-answer motion or the answer). If the defendant makes a preliminary Rule 12 motion and omits PJ, the defense is waived. *great rule*

★ Lack of PJ is a rule 12(b)(2) defense. Rule 12(h)(1) provides that a party waives his defense by omitting it from a motion under Rule 12 from its first responsive pleading. Here, XYZ's first filing was a motion to dismiss for improper service. It did not include lack of personal jurisdiction in that motion. Only after the court denied the 12b5 motion did XYZ file a separate motion to dismiss for lack of PJ. However, a defendant must consolidate all Rule 12 defenses that can be raised by motion into a single motion; defenses such as insufficient process and lack of PJ are lost if omitted from that first pre-answer motion. Because XYZ chose to file the 12b5 motion and left out 12b2, it waived the PJ defense. The court therefore had independent procedural basis to deny the motion, regardless of the underlying constitutional analysis. *good work*

### Conclusion

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The court was correct to deny XYZ's motion to dismiss for failure to raise it in the initial motion and even if not waived, the State B federal court has specific PJ over XYZ.

*nice! done!*

*great organization  
strong rules  
uses facts effectively*

*90*

2)

Put "subject matter jurisdiction" as your heading

1. Will Drake be able to remove the case to federal court?

The first issue is whether Drake may properly remove Kendrick's state-court action, filed in State A, to federal court. Removal is permissible only if the federal court would have had original subject matter jurisdiction, typically through diversity of citizenship and if no statutory bar applies. A defendant may remove a diversity case when complete diversity exists and the amount in controversy exceeds \$75k. However, removal is prohibited if any properly joined party and served defendant is a citizen of the state in which the action is brought. Diversity is determined at the time of filing and is based on each party's domicile, which requires both physical presence and intent to remain indefinitely. *What does "complete diversity" mean?* *great* *nice!*

*only addresses diversity - no federal g.?*

Here, Kendrick is a citizen of State A. Drake is incorporated in State B, making it a citizen of State B for diversity purposes. The CEO lives in State B and only moved temporarily to State A while recovering from her injury. A temporary move for medical treatment does not establish a new domicile because she lacks any intent to remain in State A permanently. Thus, both Drake and the CEO are citizens of State B. Because Kendrick is a citizen of State A, complete diversity exists. *good*

The amount in controversy requirement is also satisfied. Kendrick seeks a \$100k bonus which exceeds to jurisdictional minimum. Therefore, subject matter jurisdiction exists.

The next question is whether the forum-defendant rule bars removal. The case was filed in State A and removal is barred only if a defendant is a citizen of State A. Here, no defendant is a citizen of State A; both are citizens of State B. Thus, removal is not prevented. As long as all defendants consent - and nothing in the facts suggest otherwise - the procedural requirements of 1446 can also be satisfied. *good*

Accordingly, removal is proper because complete diversity exists, the amount in controversy is met, the forum-defendant rule does not apply and the defendants may jointly remove this action. The court should allow removal.

Conclusion: Drake will be able to remove the case to federal court.

*federal question? major issue is missing*

## 2. Should the CEO sue Kendrick for the broken foot in the same lawsuit?

The second issue is whether the CEO's injury claim against Kendrick for running over her foot may be asserted within the same federal action once removal occurs. The relevant doctrine concerns counterclaims and supplemental jurisdiction.

A defendant must assert a claim as a compulsory counterclaim if it arises out of the same transaction or occurrence as the plaintiff's claim; failure to assert it forfeits the claim.

Claims that do not arise from the same transaction are permissive counterclaims under

13B. Courts determine whether claims arise from the same "transaction or occurrence" by asking whether the claims share a common nucleus of operative fact, including

overlapping evidence, witnesses, or factual inquiries. Supplemental jurisdiction under 1367

extends to all claims that are part of the same case or controversy as the original claim. If

the claim is unrelated, a federal court may hear it only if there is an independent basis for jurisdiction, such as diversity jurisdiction.

Kendrick's original claim is a contract dispute which centers on the formation,

performance, and breach of an employment related promise. The CEO's potential claim is

for personal injuries that she suffered when Kendrick allegedly ran over her foot while

leaving the HQ. These claims involve entirely different legal theories, evidence, and

factual circumstances. The employment contract and bonus negotiation have no factual

*great analysis here.*

*great intro - also use headings*

*good note well stated*

*analyze these separately*

overlap with the negligent driving incident in the parking lot. Therefore, the CEO's injury claim does not arise from the same transaction of occurrence and is not a compulsory counterclaim.

Because the claim is not compulsory, the CEO may bring it only as a permissive counterclaim under 13B. However, permissive counterclaims require an independent jurisdictional basis unless supplemental jurisdiction exists. Here, there is no supplemental jurisdiction because the two claims do not share a common nucleus of operative fact. They are factually distinct and do not advance the same dispute. Thus, the only way the CEO could assert her claim in the same federal action is if it independently satisfies diversity jurisdiction. *good!*

Diversity jurisdiction likely exists for the CEO's tort claim. The CEO is domiciled in State B and Kendrick in State A. A personal injury resulting in a broken foot and medical treatment can plausibly exceed \$75k, allowing the CEO to invoke diversity if she filed a separate federal lawsuit. However, Rule 13B does not guarantee that every permissive counterclaim with independent diversity jurisdiction must be heard in the same case; courts retain discretion to reject unrelated claims because they complicate the litigation.

Here, the CEO's tort claim is entirely unrelated to Kendrick's contract claim. Trying them together would create confusion and inefficiency. The better and procedurally cleaner option is for the CEO to bring her personal injury claim as a separate diversity action in federal court.

Conclusion: The CEO should not assert her injury claim against Kendrick in this lawsuit. It is not compulsory, lacks supplemental jurisdiction, and although it has the potential to meet diversity requirements, it is procedurally improper and inefficient to join an unrelated tort claim to a contract action. She should file a separate suit.

*great job - sophisticated analysis of the counterclaim and supplemental jx*

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Missing the federal question/SMS issue  
hurt what is otherwise an outstanding  
essay.

85

3)

### IMPLEADER

*good issue spotting*

*good rule*

A defendant can join a non-defendant independent third party to the case if they believe that they partially or completely responsible for the damages/claim asserted. However, an impleader is to not shift all the blame to the other party, but is instead used as a diversion of liability where the impleader is used for the purposes of indemnity or contribution to the the damages / liability.

*lots of fact repetition - move into analysis*

Here, Padilla moves forward with a cosmetic nostril procedure with Dr. Dubins. Dubins then performs Padilla's procedure at Elevated Surgery Center. Following the surgery, Padilla develops an infection and is hospitalized for several weeks resulting a substantial medical damages. Padilla is pursuing a medical malpractice claim against Dubins to recover her damages: medical bills and pain and suffering. Padilla believes that Dubins is solely responsible for her contracting the infection. However, Dubins does not agree and can argue that he was either only partially to blame for her damages, or potentially not at all given Elevated Surgeries's role in her procedure. Dubins will argue that he did not fall below the standard of care and that Elevated must have played at least a partial role, if not larger. Dubins will paint the picture that Elevated should contribute to Padilla's damages either partly or in full. Dubins will argue that Elevated shares in the liability due to unclean medical tools, lacked a sterile environment, etc.

*good analysis*

Therefore, Dubins can bring Elvated Surgery into the case via impleader for indemnity and/or contribution purposes for Padilla's injury and damages.

*well done*

### PERMISSIVE JOINDER

A defendant can join a party to the lawsuit if it results from the same transaction or occurrence and is related to the claim or fact in question. The same nucleus of operative fact.

*good!*

Dubins could also bring Elevated in through permissive joinder as Padilla's injuries occurred subsequent to the surgery that Dubins performed at Elevated. The infection, injuries, damages that Padilla suffered involve both Dubins and Elevated, as Dubins performed the procedure at their facility. Assuming that Padilla also paid Dubins and Elevated either cash or via medical insurance. Therefore, there are valid arguments that its the same transaction (payment for surgery), occurrence (actual procedure), and nucleus of operative facts (injury occurred after the Dubins procedure that occurred at Elevated).

Therefore, permissive joinder is another option for Dubins but impleader is likely the better option if he believes that he should not be largely responsible for the damages or be indemnified completely from the claim.

*would benefit from  
necessary/indispensable*

## VENUE

A proper venue is in the district that the defendant is domiciled, if all defendants are domiciled there, the district where the the event occurred giving rise to the claim, or if neither of those are satisfied, a district where any defendant has personal jurisdiction.

*great  
note!*

Here, the following is accurate:

Padilla lives/domiciled in the federal district of state A, where the case is filed.

Dubins owns his practice in the eastern district of State B

Elevated Surgery Center is located in the western district of state C where the surgical procedure was performed.

Dubins and Elevated are not domiciled in the same place (B v C), however, the substantial events that occurred resulting in the claim happened in state C. Therefore, Dubins will not be able to transfer the case to State B federal court because both he and Elevated are not domiciled there.

*good job!*

Therefore, since substantial events occurred in State C, that would be the proper venue transfer. Had Dublins not added Elevated to the lawsuit, he would have been able to request venue transfer to state B because he would have been the only defendant and that's the state of his domicile.

*great job*

TRANSFER / LAW

If the case is considered in a proper venue, and the federal law doesn't rule, Erie will apply. State A law will be used in state B and federal procedure law.

*85*

**END OF EXAM**