KERN COUNTY COLLEGE OF LAW

CIVIL PROCEDURE

MIDTERM EXAMINATION

FALL 2025

Professor L. Peake

General Instructions:
Answer Three (3) Essay Questions
Total Time Allotted: Three (3) Hours

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QUESTION #1

Harveen, a California domicile, and George, a Nevada domicile, decided to produce and present a paywalled podcast on California law and used an advertisement on the Internet directed to Californians. Mason, a Nevada domicile residing in California while attending a law school in Bakersfield, failed to pass the California first year "Baby Bar" exam assertedly because the information on the podcast was wrong. Mason has hired Attorney Elias who has sued Harveen and George in Clark County, Nevada state court, with Elias having his law clerk, Jessica, hire a process server to sue Harveen at a raisin farm in Kern County and personally serve George while George was in Clark County Superior Court where he was appearing as one of the plaintiffs in a class action lawsuit against the MGM Grand. Both Harveen and George now challenge personal jurisdiction in a motion filed with Clark County Judge M. Gonzalez. Nevada has an unlimited long arm statute and has adopted Federal Rule of Civil Procedure 4.

How should Judge Gonzalez rule on each of the defendant's motions challenging personal jurisdiction?

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Fall 2025

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QUESTION #2

Amritpal and Rebecca, both California domiciles residing in Bakersfield, have a paywalled law podcast partnership which Ashley, a Nevada domicile residing in Bakersfield while attending law school, has purchased. Ashley did not pass the California Bar's "Baby Bar" assertedly due to erroneous information on Federal law given on the podcast. She has hired Attorney Elias to sue both Amritpal and Rebecca in Federal District Court in Clark County, Nevada for $75,000 in damages, the suit asserting a claim of negligent misrepresentation of Federal Law has caused her to fail the exam. Amritpal and Rebecca have hired Attorney Zandate who has filed a motion for each before Judge Gonzalez to dismiss the suit for lack of subject matter jurisdiction.

How should Judge Gonzalez rule?

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QUESTION #3

Esmeralda, Al and Iz are partners in a paywalled podcast called, "California Law and You." Esmeralda writes and transmits the podcast from Medford, Oregon, where she lives. Al and Iz live in Bakersfield. Kaitlyn, who lives in Nevada where she grew up, purchased the podcast, and listed to it while remotely attending law school in Bakersfield. After failing to pass the California first year law student exam ("Baby Bar") assertedly due to erroneous Federal law instruction from the podcast, Kaitlyn has filed suit in Clark County, Nevada state court against the three partners for negligent misrepresentation of Federal law, seeking $1 million in damages. Prior to service of suit upon Al or Iz, Esmeralda has filed a timely motion with State Court Judge Gonzalez to remove the suit from state court to Federal Court and to transfer the suit from Clark County, Nevada to Southern District Federal Court in Oregon on two grounds: that (1) Nevada is not a proper venue; and (2) for convenience of witnesses.

How should Judge Gonzalez rule on the motion?

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1)

Question 1:

Does the State of Nevada have personal jurisdiction over Harveen?

Personal Jurisdiction

Personal jurisdiction grants the courts power to exercise their jurisdiction over a particular defendant or item of property. There are three types of personal jurisdiction: (1) in personam which refers to the courts right to exercise jurisdiction over a defendant; (2) in rem which refers to the courts right to exercise power over property located in the state; and (3) Quasi in rem which refers to the court's ability to determine ownership of property located in the state. Because Mason is suing Harveen the type of personal jurisdiction that would apply in this case is in personam.

To establish in personam jurisdiction the defendant must be (1) present in the forum state and must be served service of process; (2) be domiciled in the forum state; (3) must consent to jurisdiction in that state; and (4) an act by the defendant is substantial enough to invoke that state's long arm statute.

Physically Present

Mason is suing Harveen in Clark County, Nevada. However, Harveen is domiciled in California. Mason's attorney hired a process server to sue Harveen at a raisin farm in Kern County. Because Harveen was not present in the state of Nevada when she was given the service of process this element would not be met.

Domiciled

For a defendant to be considered "domiciled" they must have their permanent residents in the forum state with no intention of moving. Here, Harveen is domiciled in the State of California. Because Mason filed a suit in the State of Nevada and Harveen is domiciled in California she would not meet this requirement.

Consent

A defendant can consent to jurisdiction either through express or implied means as well as voluntary appearance. Because Harveen is being sued by Mason because of paywell podcast and used an

internet advertisement directed towards Californians, Mason could make the argument that she consented to possibly being sued. However, Harveen's is located in California and her advertisement was directed towards law students in California. Harveen did not consent to be sued in Nevada because her content was strictly for California.

Long Arm Statute

A long arm statute grants the court the right to exercise jurisdiction over an out-of-state defendant for acts they performed while in the state or a result that occurred in the state that was a result of an out-of-state occurrence. Here, Harveen produced a paywell podcast on California law and used an advertisement on the internet directed towards Californians. This indicates that she was aware that her podcast would reach the targets audience such as Mason who was a law student located in California. Because the advertisement was directed towards Californians, Harveen would be subject to California's unlimited long arm statute.

However, Mason could argue that because Nevada also has an unlimited long arm statue, he is able to sue Harveen even if she is domiciled in California. This argument would fail, because as previously mentioned Harveen's target audience for the podcast was directed towards California. Mason also failed to pass the California "Baby bar" which has nothing to do with Nevada. Therefore, the long arm statute would not apply.

Purposeful Availment

Purposeful availment refers to the defendant having substantial minimum contact with the forum state as to invoke the benefits and protections under their state laws. Harveen is located in California and stated a podcast that talked about California law, and her advertisement was directed towards Californians. Under these circumstances, Harveen has purposefully avialed herself under California law, not under Nevada's.

Foreseeability

Foreseeability requires a defendant to reasonably foresee their actions as potentially leading to a lawsuit in a different state. As previously mentioned, because Harveen's podcast focused on California law, was directed towards Californians it was not foreseeable that a person from Nevada would sue her.

Relatedness to claims:

General Jurisdiction

General jurisdiction grants the courts jurisdiction over any defendant regardless of whether the act was committed within the forum state. Here, Mason filed a suit in Nevada against Harveen because he failed the California baby bar. He could make an argument that because her podcast is accessible to people living in Nevada wanting to take the California state bar. But, because the advertisement was mainly for California bar takers his argument would likely fail.

Specific Jurisdiction

Specific jurisdiction applies to cases that arise from in-state causes of action. Since Mason sued Harveen in Nevada for something that occured in California, specific jurisdiction would not apply.

Fairness

Requires convenience and state interest. Because Mason filed the suit in the state of Nevada against Harveen who is domiciled in the state of California, it is reasonable to assume that it would be burdensome for her to appear for court hearings since she would need to travel out of state. Mason is suing Harveen because he failed to pass the California baby bar because he claims the information given in the podcast was wrong. Seeing as this all occurred in California, Nevada would not be able to redress the damage to Mason since he failed a different state's baby bar.

The State of Nevada does not have personal jurisdiction over Harveen and her motion to dismiss should be granted.

Question 2:

Does the State of Nevada have personal jurisdiction over Gorge?

Personal Jurisdiction

(please see rule above)

Because Mason is suing George this case would fall under in personam jurisdiction.

In Personam (NEEDS SPECIFIC P.J. ANALYSIS AS TO GEORGE)

(Please see rule above)

Here, George is domiciled in Nevada and was served process while he was at the Clark County Superior Court appearing as a plaintiff for a class action lawsuit against MGM. One of the exceptions to the service of process rule is that it cannot be done through force or fraud, and it cannot be done while the defendant is in town to attend a court proceeding. Here, George was summoned to court as one of the plaintiffs in the class action. Because the service of process to George was invalid the Court of Nevada does not have in personam jurisdiction over George.

The State of Nevada does not have personal jurisdiction over George and his motion to dismiss would be granted.

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2)

Amirtpal & Rebecca (Partnership) NEED BETTER ISSUE STATEMENT. THIS IS NOT AN ISSUE.

Subject Matter Jurisdiction (SMJ)

The courts authority to hear a specific type of case or controversy.

SMJ arises out of either: (1) Federal Question Jurisdiction (FQJ), or Diversity Jurisdiction (DJ)

FQJ

The plaintiff asserts a claim under federal law which means the federal court has jurisdiction. The claim must be a Well-Pleaded Complaint meaning it must be a question of federal law on it's face. The defendant's defense is irrelevant as to whether the court has federal jurisdiction. Here, the claim which Ashely is suing Amirtpal & Rebecca for, under their partnership, is negligent misrepresentation, which is not considered a federal issue on it's face. Ashley may argue that Amirtpal and Rebecca negligently misrepresented federal law, however, her defense cannot be used to assess whether the issue of negligent misrepresentation is a federal issue. Because negligent misrepresentation is not a federal issue, Ashely cannot sue them under FQJ.

Because the court cannot exercise jurisdiction under FQJ, they may assess the case under diversity jurisdiction.

Diversity Jurisdiction

Requires:

1. Complete Diversity
2. Amount in Controversy to exceed $75,000

Complete Diversity

All citizenship of the plaintiff's is different than all citizenship of the defendant's.

Citizenship:

Individuals - place of domicile means place of residence with intent to remain indefinitely

Corporations - (1) state of incorporation, or (2) Principle place of business aka "nerve center"

A PARTNERSHIP IS NOT INCORPORATED. LOCATION IS AS TO EACH INDIVIDUAL PARTNER

Here, Amirtpal and Rebecca have a partnership. There are not facts to indicate where they are incorporated, however, they both reside in Bakersfield, CA. so their place of domicile is considered California. Even though Ashley is temporarily residing in Bakersfield while attending law school, she is still considered to be domiciled in NV because the facts do not indicate she has not permanently moved to CA. Because both Amirtpal and Rebecca's citizenship (domiciles of CA) are completely different than Ashely's citizenship (NV) the complete diversity element is met.

Amount in Controversy

Must exceed $75,000, not including interest and costs, but can include reasonable contracted attorney's fees.

Here, Ashely is suing Amirtpal and Rebecca for $75,000 exactly so it does not meet the amount in controversy requirement.

Conclusion

Because Ashley's claim fails under both FQJ and DJ, Judge Gonzalez must dismiss the suit against Amirtpal and Rebecca for lack of subject matter jurisdiction.

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3)

Question 1:

Should the case be removed from state court to federal court?

Venue

Venue refers to the geographical location where the case can be brought to court. In order to establish whether venue is proper the court must look for: (1) federal district court where any of the defendant's reside; (2) where the majority of the act or omission that gave rise to claim occurred; or if neither apply (3) where any of the defendants are subject to the court's personal jurisdiction.

Here, we have Kaitlyn, who lives in Nevada, suing Esmeralda, who lives in Oregon, and Al &Iz, who live in California. Because Kaitlyn lives in Nevada she filed the suit in the state court against Esmeralda, Al, and Iz and is seeking $1 million in damages. Although none of the defendants live in Nevada, Kaitlyn may still establish proper venue because the State of Nevada was where she purchased the podcast and listened to it while remotely attending law school in Bakersfield which is where the omission that gave rise to the claim occurred. Proper venue was established.

DID SHE PURCHASE IN NEVADA ?

Removal

In order for a case to be removed from state court to federal court the defendant must establish that the federal court would have had original jurisdiction over the claim. In order for a case to be filed in federal court it must establish subject matter jurisdiction. **Subject matter jurisdiction** are cases that arise from Federal law which fall under two categories: Diversity jurisdiction and Federal question jurisdiction. Diversity jurisdiction requires for there to be complete diversity between the plaintiff and defendant while Federal question applies to cases that arise from federal statutes. To establish diversity jurisdiction the amount in controversy must also exceed $75,000.

Here, Kaitlyn is suing Esmeralda, who lives in Oregon, and Al & Iz, who live in California. This satisfies the first prong of diversity jurisdiction which requires complete diversity between the plaintiff and the defendants. The second prong is whether the amount in controversy exceeds $75,000. Here, Kaitlyn is suing Esmeralda, Al, and Iz for $1 million in damages. The amount in controversy is met. Therefore, diversity jurisdiction would apply which would give the federal court original jurisdiction over the case.

In order for removal to be granted the defendant must file a motion of removal within 30 days of receiving the complaint. The motion must be signed and include a short statement indicating reason for removal. A copy of the notice should then be provided to the parties as well as filed with the state court. Here, the facts indicate that Esmeralda filed a timely motion with Judge Gonzales to have the case removed and stated it was because Nevada is not proper venue and for convenience of witnesses. Under these circumstance, Esmeralda satisfied the process of filing for removal.

Judge Gonzalez should grant the motion to remove the case from state court to federal court.

Question 2:

Should the motion for case be transferred from Clark County, Nevada to the Southern District Federal Court in Oregon be granted?

Venue

Venue refers to the geographical location where the case can be brought to court. In order to establish whether venue is proper the court must look for: (1) federal district court where any of the defendant's reside; (2) where the majority of the act or omission that gave rise to claim occurred; or if neither apply (3) where any of the defendants are subject to the court's personal jurisdiction.

Here, we have Kaitlyn, who lives in Nevada, suing Esmeralda, who lives in Oregon, and Al &Iz, who live in California. Because Kaitlyn lives in Nevada she filed the suit in the state court against Esmeralda, Al, and Iz and is seeking $1 million in damages. Although none of the defendants live in Nevada, Kaitlyn may still establish proper venue because the State of Nevada was where she purchased the podcast and listened to it while remotely attending law school in Bakersfield which is where the omission that gave rise to the claim occurred. Proper venue was established.

Transfer

Although venue could be established as proper, a case may be transferred to a different court depending on issues involving improper venue or convenience to the parties.

Improper Venue

In cases where venue is considered improper the court will either dismiss the case or has discretion to transfer it over to the proper district. Here, Esmeralda filed a motion with Judge Gonzalez on the grounds that Nevada is not a proper venue. Although it is true that none of the defendants are domiciled in the State of Nevada, Kaitlyn was able to establish proper venue because she

SEE FACTS - DO THEY CLEARLY STATE THIS? ARGUE BOTH SIDES?

purchased and listened to the podcast in Nevada which she claims is the reason for why she failed the California baby bar. The act of purchasing and listening to the podcast served as the act or omission that led to the claim to be brought up in court.

Esmeralda could argue that because she lives in Oregon, and because that is where she writes and transmits the podcast from, it would be considered the "more proper" venue as she is one of the defendants domiciled there, and the act or omission that gave rise to the claim arose there as well.

Although Nevada would not be considered "improper venue" as Kaitlyn could make an argument that she suffered the damage in Nevada, Oregon meets more of the elements needed to establish proper venue because Esmeralda is one of the defendants, and wrote and transmitted the podcast from Oregon.

KAIG)?

Convenience

Transfer is also acceptable in cases where convenience is at issue. If the venue is unduly burdensome to the parties and witnesses transfer will be acceptable. Here, we have Esmeralda who is located in Oregon, and Al and Iz who are in California. Esmeralda is claiming transfer of venue on the grounds for convenience of witnesses. However, there is not enough evidence in the fact pattern to support this finding.

Choice of law

If the case were to be transferred, because venue is presumed to be proper, then Oregon would have to apply Nevada's state laws. If venue were presumed improper, Oregon law could apply its own laws to the case.

Erie Doctrine

This is where federal courts must apply the substantive law of the state in which the court is sitting in. Federal courts may apply federal procedural law. However, this does not seem to be at issue in the case.

Judge Gonzalez should grant Esmeralda's motion to transfer the suit from Nevada to Oregon.

END OF EXAM