

KERN COUNTY COLLEGE OF LAW

CIVIL PROCEDURE

Midterm Examination

Fall 2020

Prof. L. Peake

Instructions:

There are three (3) questions in this examination. You will be given four (4) hours to complete the examination.

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

Question 1

Plaintiff Brie, while attending a "Justice For All" (JFA) rally in downtown Los Angeles, was shot by an Arizona resident, Milo White, with a Gork, Inc. "Mini" 9mm handgun. Milo had seen an Internet posting about the planned rally; angered by ongoing protests, Milo took his Gork "mini" and drove his pickup from Arizona to L.A., determined to shoot the first protester he saw at the JFA rally. Milo specifically selected the "mini" from his gun collection given its ability to be concealed due to its small size and the number of 9mm rounds it could carry.

Milo had bought the Gork mini from a Prescott, Arizona gun dealer, "Penni's Pistols", a sole proprietorship owned by Penni Perro. Penni had ordered a shipment of the Gork mini's from Gork, Inc., a corporation incorporated in Delaware with headquarters in Texas. Gork, Inc. had a nationwide website, and sold various guns throughout the USA (including California) but never shipped any "Mini's" to California, as they could not legally be sold in California.

Brie filed a state court suit in downtown LA's Metropolitan District against Milo, Penni and Gork, Inc., and hired Lucas of "Never Fail Process Service" to serve all three defendants. Lucas was able to serve Gork, Inc.' registered corporate agent for service of process and Milo personally (in LA County jail). Lucas learned that Penni Perro had hired famed attorney Julian Miriam to defend her, so Lucas went to Attorney Miriam's office with Brie's state court summons and complaint, both of which he left with Miriam's secretary, who told Lucas to just leave the summons and complaint with her and she'd take care of it. After leaving Miriam's office, Lucas saw Attorney Miriam and Penni across the street going into LA Metropolitan courthouse, where Julian Miriam was taking Penni to explain to her the court process for the lawsuit. Lucas caught up with Julian and Penni and successfully handed a copy of both the summons and complaint to Miriam at the Courthouse lobby metal detectors.

California has an unlimited long arm statute allowing personal jurisdiction to be imposed consistent with due process. Assuming that California's service of process rules are the same as those in Federal court:

Discuss whether there is personal jurisdiction over Milo, Penni and Gork, Inc. in Federal court in Los Angeles, California.

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QUESTION 2

Pat owns Pubs R Us, a chain of English-style pubs, incorporated and operating solely in California. Drew owns Décor for U, a Nevada corporation that sells kitschy décor to bars across the United States. Décor for U has its warehouse and offices in Denver, Colorado.

Pubs R Us decided that the corporation could make lots of money by opening a location in Nevada on The Strip. Pubs R Us would move its headquarters to Las Vegas and use the rooftop office suite at the new location, where there would be a stunning view of the city. It would take time to effect the move, and Pubs R Us would continue to conduct its business in California in the meantime.

Pubs R Us entered into a contract with Décor for U to decorate all four floors of the new pub, for a total of \$75,000. Just before the agreed upon ship date, Décor for U sold the decorations to another company that offered more money. Pubs R Us was able to complete the order through another supplier, for a cost of \$150,000.

Pat wanted to repair the broken business relationship between Pubs R Us and Décor for U. To that end, Pat called Drew and asked why Décor for U had breached the contract. Things were going well until the conversation turned to politics. A heated argument ensued, in which Drew told Pat that not only was Décor for U able to get more money by selling to the other company, but that other company shared their political values. According to Drew, Décor for U had a First Amendment right to sell only to those companies that agreed with them politically. Later, Pubs R Us received a call from another of its vendors, stating that they were no longer going to honor their contract based on information received in a letter from Décor for U.

A week later, Pubs R Us filed suit against Décor for U in the Federal District Court in Nevada for breach of contract damages of \$75,000 and punitive damages in the amount of \$15,000. Pubs R Us also claimed \$5,000 against Décor for U in an action for interference with its contractual relationship with its 3rd party vendor. Nevada state law does not allow punitive damages in a breach of contract case.

After filing suit, Pubs R Us incorporated in Nevada. A few months later, the new location was up and running smoothly so Pubs R Us moved all of its business operations to Nevada.

Does the Federal District Court in Nevada have subject matter jurisdiction? Discuss.

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QUESTION 3

Answer only **FOUR** prongs. You have one-hour testing time. Therefore, I suggest that you allocate about 15 minutes to each prong. Do not discuss personal jurisdiction, subject matter jurisdiction, and supplemental jurisdiction.

In January 2018, Paul, a citizen of California, sued Dave, a citizen of Texas, and Dalila, a citizen of Arizona, in California state court for violation of federal employment discrimination law and breach of contract, alleging \$75,001 in damages. In March 2019, with Dalila's consent, Dave filed a notice of removal in Texas federal court.

- 1- Should the Texas federal court allow Dave to remove? Discuss.

Piper, a citizen of California, traveled to France. Once there, she rented a car manufactured in Detroit. During her tour, the rented car broke down, and she took it to a repair shop authorized by the manufacturer. The shop negligently repaired the vehicle. As a result, when Piper drove off, she lost control of the vehicle and collided with a tree. Piper sustained injuries.

Piper filed a lawsuit in the federal district court for the Eastern District of California against the car manufacturer and the repair shop.

- 2- Did Piper properly lay venue? Discuss.

After obtaining the repair shop's consent, the car manufacturer filed a motion to transfer the case from the federal district court for the Eastern District of California to Detroit's federal court.

- 3- How should the court rule on the motion to transfer? Discuss.

Suppose the mechanic filed a motion to dismiss based on forum non-conveniens.

- 4- How should the court rule on the motion? Discuss.

A mobile circus from state A traveled to state B to perform during the holidays. While attending the circus, Ringo, a state B citizen, was bit by one of the circus monkeys. Three years after the incident, in compliance with the state B statute of limitations, Ringo filed a lawsuit against the circus under diversity in federal court in state B. The circus filed a motion to dismiss alleging that the case was barred by state A statute of limitations.

- 5- Which state law should the federal court follow? Discuss.

KCCL Civil Procedure 2020-21 Midterm Personal Jurisdiction answer outline

The fact pattern in this essay question was written to include social justice themes (hopefully) consistent with Dean Winick's request that our curriculums address social justice issues.

ISSUE #1: Does California State court have personal jurisdiction over defendant Milo White?

Rule: A state court may assume personal jurisdiction over a defendant if either general jurisdiction or specific jurisdiction are present.

Analysis: The students are anticipated to analyze whether basis for general jurisdiction is present over Milo, a resident of Arizona. Milo was personally served in LA County jail with summons and complaint, thus indicating that there is a traditional basis for state court imposition of PJ over Milo.

However, while Milo was voluntarily in California (for the initial purpose of shooting a protester), when served he was in California in conjunction with a court process: i.e., potential criminal charges in LA state court for shooting Brie.

Thus, it is anticipated that students will address whether Milo is exempt from traditional method of state court imposition of PJ due to being served while present due to a potential/pending judicial proceeding.

Students should address whether specific jurisdiction lies as to Milo should general jurisdiction not be present; and discuss the criteria for specific jurisdiction imposition (purposeful availment of Milo with California; whether Brie's suit arose from such purposeful availment; Milo's minimum contacts with California being limited to one contact, etc.).

The facts posit the presence of an unlimited long arm statute, so student discussion should simply mention this without need for detailed discussion about long arm statutes.

Conclusion: Conclusion by the student should be consistent with their analysis, and preferably only one sentence long. My conclusion would be that California state court in LA has PJ both under general jurisdiction and specific jurisdiction

analysis.

Issue #2: Does California State court have personal jurisdiction over defendant Penni Perro?

Rule: See above as to Milo White; and, additionally, that service of process may be made consistently with FRCP 4 on an individual by personal delivery of the summons and complaint to the named defendant or by leaving a copy with a person of suitable age and discretion who lives with the defendant; or by delivery of the S&C to the defendant's agent authorized to accept service of process.

Analysis: First, students would be expected to analyze whether there is general jurisdiction over Penni, including through a traditional means of obtaining jurisdiction...and note that Penni is not a resident of California (she's from Arizona), has not consented to personal jurisdiction in California, but that she was arguably served with S&C in California.

Students will be expected to argue whether compliance with FRCP 4 was met here by either one of the two methods described in the fact pattern: first, process server Lucas' leaving the S&C with Penni's attorney's secretary (this is likely not good service, students should conclude: this fact scenario is taken from case discussion in Friedenthal textbook).

Second, students should discuss if service on Penni...in her presence...on her attorney was compliant with FRCP 4. Students would be expected to note that the service was arguably "on" Penni under the circumstances presented; and also to note, however, that even if thus FRCP 4 compliant, that the service was done inside LA County courthouse, and thus within the exception that the exception to assumption of PJ by the court applies since Penni was in California and in court in conjunction with the lawsuit.

Students would then be expected to discuss whether specific jurisdiction is present even if general jurisdiction/traditional method of obtaining PJ are not present. This should be able to be done briefly, since students can note the above rule and criteria addressed above with Milo White; and note that Penni Perro had no purposeful availment with California and no facts to support specific jurisdiction imposition here.

Issue #3: Does California State court have PJ over Gork, Inc.?

Rule: See above as to Milo White and Penni Perro.

Analysis: It would be expected that students would note that general jurisdiction is present by service pursuant to FRCP 4 service on Gork, Inc. By service of the corporation's authorized agent, but only if the S&C were also mailed to Gork, Inc. [FRCP 4(h)].

Students should also discuss that should general jurisdiction not lie, that specific jurisdiction would not appear to be present where, as here, Gork, Inc. did not have minimum contacts with California consistent with traditional notions of fair play and substantial justice; no purposeful availment (did not see/market any of its 9mm Mini's to California), not foreseeable that the weapon would end up in California, where they are illegal, etc.)

Conclusion: Students will likely conclude general jurisdiction through consent for service on Gork, Inc.'s agent for service of process; but no specific jurisdiction present as to Gork, Inc.

I have taken this exam myself and can answer the issues well within an hour; but students will likely take longer than it took me; but I believe students should be able to handle these issues in sixty minutes. Shashi, please let me know what you and Dean Franklin think. If he thinks this exam is too long; too currently topical/political, please let me know and I can change this one around or write an entire new one if you and he want.

-Larry Peake (661)331-2384; larry@peakemediations.com

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ANSWER OUTLINE Q2

Federal Question Jurisdiction

A federal court can hear cases that allege a right or interest that is substantially founded on federal law. The federal question must appear as part of the plaintiff's cause of action, and cannot simply anticipate a defense based on federal law.

Given Drew's statements regarding free speech, Pubs R Us might believe that Décor for U will defend against the breach of contract claim with a Free Speech argument. Pubs R Us cannot assert federal question jurisdiction based on an anticipated federal defense.

Diversity Jurisdiction

Citizenship

A corporation is a citizen of every state in which it is incorporated and the one state where it has its principal place of business. Citizenship is decided at time of filing.

Pubs R Us is a California citizen, because its state of incorporation is California and all business is done in California. The incorporation in Nevada occurred after filing and so does not destroy diversity. Pubs R Us deciding to move its operations to Nevada does not destroy diversity because all business is still handled in California.

Décor for U is citizen of both Nevada (where it is incorporated) and Colorado (where its warehouse and offices are located).

Amount in Controversy

The amount in controversy must exceed \$75,000, exclusive of interest and costs.

Good Faith Claim

A court must accept a good faith claim that meets jurisdictional amounts, unless it appears to a legal certainty that the jurisdictional amount cannot be met.

Choice of Law

Generally, a federal court applies state substantive law and federal procedural law.

The difference between the contract price and the amount paid to the new décor company was exactly \$75,000, and so does not meet the amount in controversy. The punitive damages cannot be included to meet the jurisdictional amount because there is a state substantive law that disallows punitive damages. Without the claim for punitive damages, the breach of contract claim cannot reach the jurisdictional amount to a legal certainty. Therefore, the amount in controversy is not met.

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Aggregation

A single plaintiff may aggregate all claims against a single defendant. In such a case, it is not necessary that the claims arise from the same nucleus of operative fact.

The breach of contract and tort claims are supported by different factual scenarios, but they are between the same plaintiff and defendant and so can be aggregated. Thus, the \$5,000 tort claim can be added to the \$75,000 breach of contract claim and the amount in controversy is met.

Suggested answers:

- 1- Should the Texas federal court allow Dave to remove? Discuss.

Rule:

If the plaintiff files a lawsuit in state court, the defendant can remove a case to the federal court that embraces the state court where the case was filed if the case meets the federal subject matter requirement.

Exceptions: 1) No removal if any defendant is a citizen of the forum in diversity cases (in-state D rule); AND 2) If the case is filed in state court and more than one year has passed since filing, the defendant cannot remove to federal court. However, removal after more than one year is allowed if the plaintiff (P) sued two defendants (D1 and D2), and D1 can show that P acted in bad faith by originally jointing D2 to prevent removal due to the in-state defendant rule. Further, each claim that the defendant wants to remove must meet the subject matter requirement.

None of the exceptions apply to the removal of a claim that raises a federal question. If more than one defendant, all must consent to removal

Analysis:

Claim 1 Paul v. Dave and Dalila for violation of federal employment law.

In January 2019, Paul (CA) sued Dave (TX) and Dalila (AZ) in California state court. In March 2019, with Dalila's consent, Dave filed a notice of removal in Texas federal court.

Here, since Paul is asserting a claim for violation of a right granted to him by the federal law, Paul's claim meets federal subject matter jurisdiction under a federal question.

Further, because claim 1 raises a federal question, defendants can remove even if more than a year has passed since filing the case with state court and even when one of the defendants is a citizen of the forum state. Further, all defendants must consent to removal.

The fact pattern states that Dalila consented to removal. Thus, Dave can remove claim 1.

Claim 2 Paul v. Dave and Dalila for breach of contract.

Claim two meets the diversity requirements for subject matter jurisdiction since all the defendants (Dave a citizen of TX and Dalila a citizen of AZ) are diverse from all of the plaintiffs (Paul a citizen of California), and the amount in controversy is met because it is more than \$75,000.

However, because it is a claim under diversity, two exceptions apply--the in-state defendant rule and the "more than one-year". Therefore, Dave cannot remove to Texas's federal court because he is a citizen of the forum. Also, Dave cannot remove because the case has been in the state court for more than a year. Thus, claim two cannot be removed because it meets the two exceptions.

Conclusion:

Dave and Dalila can remove claim one because it is a federal question, and the in-state defendant rule and the one-year exception do not apply.

However, claim two cannot be removed because, in diversity cases, D cannot remove if he is a forum state citizen. Also, no removal is allowed if more than one year has passed since filing the case with the state court.

Did Piper properly lay venue? Discuss.

Rule:

P can lay venue in any district where

1. All defendants reside;
2. If all defendants reside in the same state but different districts, then P lay venue in any district in which these defendants reside; and
3. A substantial part of the claim arose.

For venue, a corporation resides in all districts where the business is subject to personal jurisdiction.

Analysis

Piper (CA) sued the car manufacturer (Detroit) and the repair shop (France) in federal court for the Eastern District of California.

Since there is no district where all defendants reside and because defendants do not live in the same state, the venue is proper where a substantial part of the claim arose.

Assuming that Detroit has personal jurisdiction over the defendants, a proper venue for Piper to lay is in Detroit because it is the location where the car was manufactured, which qualifies as a proper district where a substantial part of the claim arose. Piper cannot lay a venue in France because it is a different judicial system.

Conclusion

The federal district court for the Eastern District of California is an improper venue. Piper should lay venue in Detroit.

2- How should the court rule on the motion to transfer? Discuss.

Rule:

The transferee must be a proper venue and have personal jurisdiction over D without D's waiver.

Exception:

If the transferor is a proper venue, the court, in its discretion, can transfer the case to any district (even an improper venue) based on the convenience of the parties and the interest of justice.

Analysis:

Here, the transferor is the federal district court for the Eastern District of California, and the transferee is the Detroit's federal court.

The transferee must be a proper venue and must have personal jurisdiction over all defendants without consent.

Because the repair shop is a citizen of France, it is safe to assume that Detroit does not have personal jurisdiction over it and because transfer does not allow the defendants to consent to jurisdiction, the transfer motion should be denied.

Conclusion:

The motion should be denied because the transferee forum must be a proper venue and have personal jurisdiction over the defendants without their consent.

3- How should the court rule on the motion? Discuss.

Rule:

Forum non-convenience doctrine gives the court the discretion to stay a suit - even though the forum is proper in a technical sense because it may be very inconvenient or burdensome for the defendant to defend in that forum (e.g., the forum may have little or no relation to the litigation) and there is a superior forum in another judicial system.

The basic idea is that the P will then sue in the more convenient forum. The decision to dismiss is based on public and private factors. The superior forum must be available and adequate.

Factors related to the case (Private factors)

1- D has to show that the superior forum is the center of gravity

2- Witnesses and evidence are in the superior forum. Thus, it is convenient for the parties to litigate there.

Factors related to the superior forum

3- Should the superior forum's community be burdened with hearing the case, such as jury service?

4- Should the current court keep the case because it is a local controversy and should be dealt with locally?

Analysis:

This fact pattern is analogous to *Piper Aircraft Co. v. Reyno*, where an airplane piloted by Scottish pilots, carrying Scottish passengers crashed in Scotland. The US Supreme Court ruled the case should be dismissed because there is a superior forum to litigate at—Scotland. Similarly, based on the factors above, the court should grant the motion to dismiss because France is the center of gravity. Thus, a superior forum.

Conclusion:

The motion to dismiss should be granted.

4- Which state law should the federal court follow? Discuss.

Rule:

In a diversity case, the federal court should apply the state substantive law where the federal court is sitting and federal procedural law. However, if there is a federal law on point, the federal court should apply it because it is the supreme law of the land.

The US Supreme Court developed three tests to determine if a law is procedural or substantive.

1. Outcome determinative: if the federal court applies or ignores state law to the case, will the state law if applied or ignored, change the outcome of the case? If the state law changes the case's outcome, then the federal court should apply state law. The federal court should apply state law where the federal court is located. (*Guaranty Trust Co. v. York*);
2. Balance of interest: federal court can ignore the state law if there is a federal interest, and that interest outweighs the state interest. (*Byrd v. Blue Ridge Rural Electric Cooperative, Inc.*); and
3. Avoid forum shopping: if the federal court ignores the state law, would the parties flock to federal court? If the answer is yes, then that means the parties will likely to forum shop.

Analysis:

In *Guaranty Trust Co. v. York*, the Supreme Court ruled, after applying the outcome determinative test, that the statute of limitation is a substantive law and the federal court sitting in diversity cases should apply state law.

Here, the federal court is sitting in state B.

Thus, the federal court should apply state B substantive law. Since state B's statute of limitations is a substantive law that allows Ringo's case to proceed to litigation, the federal court should apply it and deny the circus motion to dismiss based on state A statute of limitation.

Conclusion:

The federal court should apply state B statute of limitations.

1)

Does the Federal Court in Los Angeles have Personal Jurisdiction over Milo?

Personal Jurisdiction

Personal Jurisdiction refers to a court's power to exercise its judicial authority over a particular defendant. The exercise of personal jurisdiction is proper if it's authorized by statute and does not violate the Due Process Clause. There are three bases from which a court can derive this authority: Traditional, Statutory, and Constitutional.

Traditional Bases

Traditionally, courts had automatic jurisdiction when the defendant resided in the forum state, consented to jurisdiction in the forum state, or was served in the forum state. The facts indicate that Milo was is a resident of Arizona. A registered corporate agent for service of process personally served Milo which would mean that he was properly served, however, Milo will argue that the service of process was improper because he was in jail for the same reason he is being served. Defendant can be immune from service if he is in the state only to appear as a witness or party in another case. The facts show that Milo is in Jail because of his actions at the rally, and California has no immunity. Therefore, Milo was properly served and the traditional bases for personal jurisdiction is proper.

Statutory Basis for Jurisdiction

Modernly, most states have adopted long-arm statutes, which have incorporated the traditional bases and identify the precise circumstances under which a court has personal jurisdiction over a defendant. California has long-arm statute that reaches the constitutional limit. The facts indicate that California has an unlimited long-arm statute allowing personal jurisdiction.

Constitutional Bases for Jurisdiction

Even if an exercise of jurisdiction is proper under the state long-arm statute, it must still comply with the limitations set forth under the Due Process Clause of the Constitution. Those limitation require sufficient minimum contacts between the defendant and the forum state such that the

exercise of jurisdiction over the defendant does not offend traditional notions of fair play and substantial justice and that the exercise of jurisdiction is reasonable.

Minimum Contacts

A defendant is said to have minimum contacts when there is purposeful availment of the laws of the forum state, such that it is reasonable foreseeable that he will be "haled into court" there.

Purposeful Availment/Foreseeability

Occurs when the defendant, through his contacts with the forum state, has availed himself of the privilege of conduction activities in the forum state, thus invoking the benefits and protections of its laws. Here, although Milo is a resident of Arizona, he read on the internet of the planned rally and traveled to California. It was foreseeable that he would get into trouble since he packed his Gork mini handgun to take with him.

Fair Play and Substantial Justice

Courts have held that the traditional notions of fair play and substantial justice are not offended when: (1) the defendant has systemic or continuous contact with the forum state; or (2) the claim is related to the defendant's contact with the forum state. If the defendant does not have systematic or continuous activity in the forum state, the in-state activity can be the basis for the lawsuit. Here, Milo's contact with the state of California was not systematic enough to establish personal jurisdiction, the incident of the shooting formed the basis of this lawsuit.

Conclusion

There is personal jurisdiction over Milo in the Federal court in Los Angeles, California.

Does the Federal Court in Los Angels have Personal Jurisdiction over Penni?

Proper Summons/Service of Process

To have a proper service of process, the summons and complaint must be served on the defendant. The service can be made by anyone at least 18 years old who is not party to the lawsuit. Service can be made made by personal delivery to the defendant. The facts indicate that Lucas of "Never Fail Process Service" successfully handed a copy of both the summons and complaint to Miriam

(Penni's lawyer) in the Courthouse lobby metal detectors. It is unclear whether Penni's lawyer, Miriam, handed Penni the summons and complaint. Therefore, service may seem to be improper. Lucas leaving the summons and complaint with the secretary, however, is proper service.

Personal Jurisdiction

The court must have proper jurisdiction over the party to an action and it is proper where there is a sufficiently close relationship between the defendant and the forum state.

Traditional Basis

A traditional basis for personal jurisdiction exists where a defendant consents to the forum, is domiciled in the forum state, or is present when served with process in the forum state. It is not clear from the facts where Penni is domiciled, but she is a gun dealer that has a store in Prescott, Arizona so it is safe to assume that she is a citizen of Arizona. There is nothing in the facts that suggest that Penni consented. Penni was present in California going into an LA Metropolitan courthouse when he attorney was handed both the summons and complaint, but if the service was not proper than the traditional basis for personal jurisdiction in not met. If service to the secretary was proper tha

Long-Arm Statute

A long-arm statute is the mechanism that gives state power to reach beyond its borders and assert jurisdiction over a nonresident. California's long-arm statute is coextensive with the limits of the constitution so the minimum contacts analysis will be employed to determine if there is personal jurisdiction of Penni.

Minimum Contacts

Due process requires that minimum contacts must exist between the defendant and the forum state so the suit does not offend traditional notions of fair play and substantial justice.

Purposeful availment/foreseeability

The defendant's contacts with the forum state must be assessed to determine if the defendant purposefully availed herself of the benefits and protections of the forum state, such that it is reasonably foreseeable that her activities in the forum subject her to being haled into court there. Penni is a gun dealer operating out of Prescott, Arizona and the facts do not show that she does business in California or visits California, therefore minimum contacts do not exist.

General Jurisdiction

The court looks to see whether defendant's contacts with the forum state are so extensive, as to find that the defendant is essentially at home in the forum state, if so, the court has general jurisdiction over the defendant and the defendant is amenable to a wider range of lawsuits in the state. Here, Peni did not have sufficient contacts with California to show minimum contacts. Therefore, she is not at home in California.

Specific Jurisdiction

If general jurisdiction does not exist, the court looks to see whether the defendant's particular contacts with the state relate to or give rise to the particular cause of action. If so, the court has specific jurisdiction over the defendant. Here, the cause of action arises out of Milo shooting Brie with a gun that was purchased from Penni. This took place in California.

Conclusion

California has no personal jurisdiction over Penni.

Does the Federal Court in Los Angeles have Personal Jurisdiction over Gork Inc. ?

Personal Jurisdiction

The court must have proper jurisdiction over the parties to an action and it is proper where there is a sufficiently close relationship between the defendant and the forum state.

Traditional Basis

A traditional basis for PJ exists where a defendant consents to the forum, is domiciled in the forum state, or is present when served with process in the forum state.

There is no traditional basis for jurisdiction over Gork Inc. since Gork has not consented to jurisdiction, the corporation is domiciled in Delaware and was not present when served in California.

Long-Arm Statute

A long-arm statute is the mechanism that gives state power to reach beyond its borders and assert jurisdiction over a nonresident.

California's long-arm statute is coextensive with the limits of the constitution so the minimum contacts analysis will be employed to determine if there is personal jurisdiction over Gork Inc.

Constitutional Basis

Even if an exercise of jurisdiction is proper under the state long-arm statute, it must still comply with limitations set forth under the Due Process Clause of the Constitution. Those limitations require minimum contacts between the defendant and the forum state such that the exercise of jurisdiction over the defendant does not offend the traditional notions of fair play and substantial justice and that exercise of jurisdiction is reasonable.

Minimum Contacts

A defendant is said to have minimum contacts when there is purposeful availment of the laws of the forum state, such that it is reasonably foreseeable that he will be haled into court there.

Purposeful Availment

Purposeful Availment occurs when the defendant, through their contacts with the forum state, has availed himself of the privilege of conducting activities in the forum state, thus invoking the benefits and protections of its laws. Here, although Gork does not business in California, Gork Inc. has a nationwide website and sold various guns throughout the US, including California. Gork Inc. purposefully avails itself, the protections of laws.

Foreseeability

Because Gork Inc. sells goods to California, it is foreseeable that one of its guns will result in an accident, resulting in a lawsuit in which Gork will have to defend itself. Gork Will argue that the "mini's" are not sold in California because they are not legal, but it is still foreseeable that one of the mini's would make its way to California if they are sold nationwide.

Systematic or Continuous Contact

If the defendant does not have systematic or continuous activity in the forum state, the in-state activity can be the basis for lawsuit.

Here, although Gork's contact with the state was likely not systematic enough to establish personal jurisdiction, the accident formed the basis of the lawsuit. Moreover, since Gork conducts business practices online with a consumer base nationwide, it would not burden Gork to defend itself in California. Additionally, because the accident occurred in California and most of the witnesses likely reside there, California has an interest in seeing the matter resolved in its courts.

Conclusion

Therefore, Gork Inc. has personal jurisdiction in California.

END OF EXAM

2)

Subject Matter Jurisdiction (SMJ)

SMJ is concerned with whether a court has the authority to hear a case. There are two principal ways in which it arises, the first is through a federal question (FQ) and the second is diversity jurisdiction (DJ). If the court has either FQ or DJ it may also claim supplemental jurisdiction over other state related causes that do not meet the criteria for FQ or DJ on their own.

Whether the District Court in Nevada had SMJ through FQ

In order for a federal court to have SMJ through a FQ the cause of action must arise out of federal law.

In this case, the cause of action did not arise out of federal law because it consists entirely of state law claims of breach of contract. While the conversation that led to breach of contract was about the First Amendment, the actual cause of action was related to a First Amendment violation but solely the breach.

The court does not have SMJ through FQ

Whether the District Court of Nevada has SMJ through DJ

In order for a court to have DJ there are two facts that must be met. First, there must be complete diversity between the plaintiffs and the defendants. When the plaintiffs and defendants are businesses complete diversity exists when the plaintiffs and defendants "at home" in different states. A business is considered to be "at home" where they are incorporated and where their principal place of business, or "nerve center" is located. The nerve center of a business is most often where their HQ are located, or where the managers conduct and coordinate their business. Where the company is located for purposes of complete diversity is determined when the complaint is filed.

Secondly, to have DJ the amount in controversy must exceed over \$75,000. The court generally assumes the amount the plaintiff includes is correct unless it could not be correct to a legal certainty. The amount in controversy does not include costs and expenses of litigation. It can however include punitive damages if there is a state substantive law that allows for punitive damages to be added. If a plaintiff has multiple causes of action against a single defendant they may aggregate

their claims in order to reach the threshold necessary to satisfy the amount in controversy. If both of those criteria are met then the court will DJ which will give them DJ.

In this case, although Pubs R Us later incorporated in Nevada and moved all their business from California too Nevada, for the purposes of determining where they are "at home" in teh current action you look to where they were incorporated and where their principal place of business was when the complaint was filed. Since Pubs R Us was incorporated in California and solely did business in the state of California when the action for breach of contract was brought for the purposes of DJ they would be considered to be "at home" in California. The defendant, Decor for U was incorporated in Nevada and they had both their warehouse and offices in Colorado. Since the "nerve center" of Decor for U was in Colorado and they were incorporated in Nevada they would be considered "at home" in those two states. Since both companies are "at home" in different states the requirement for complete diversity has been met.

In the case of the amount in controversy, Pubs R Us brought two actions against Decor for U. The first action was for breach of contract which was in the amount of \$75,000. Pubs R Us also requested punitive damages of \$15,000 and filed a third action against Decor for U for \$5,000 claiming interference with a third party vendor for another \$5,000. The key question in determining whether or not Pubs R Us has met the amount in controversy is whether it has exceeded the \$75,000. Pubs R Us's first claim against Decor for U is for exactly \$75,000 which would indicate that they have not yet, met the amount in controversy. And since Nevada has a substantive law that does not allow for the addition of punitive damages, Pubs R Us may not add the \$15,000 to their total amount in controversy. However, since Pubs R Us included in their action a third claim for Decor for U's interference with a third party vendor which totaled an additional \$5,000 they will be able to reach the necessary threshold through aggregation. Decor for U is allowed to aggregate their total amount because this is action between a single plaintiff and a single defendant. Since there are no other parties, Decor for U may add up the total of all of their claims (excluding the amount for punitive damages) to reach the necessary threshold. The interference claim puts the amount in controversy at \$80,000 exceeding the required amount to get Diversity Jurisdiction.

Since there was complete diversity at the time the complaint was filed and the amount in controversy threshold has been met the Federal Court in Nevada will have SMJ over this claim.

END OF EXAM

3)

1) Should the Texas federal court allow Dave to remove?

A defendant can sometimes remove an action that was brought by the plaintiff in state court when the action could have originally been brought in the federal courts (the case satisfies the requirements for diversity or federal question jurisdiction).

Here, the defendant can attempt to remove the action since there is sufficient diversity jurisdiction. There is diversity of citizenship as Paul is domiciled in California, Dave in Texas, and Dalila in Arizona. The amount in controversy requirement suffices as it exceeds \$75,000.

Limitations on Removal in Diversity of Citizenship Cases

One Year Rule

A case cannot be removed on the basis of diversity of citizenship jurisdiction more than one year after it was commenced in state court. Further, a case must be removed no later than 30 days after the defendant discovers, through service of an amended pleading, order, etc., that the case has become removable.

Here, the facts are too vague to inform us of whether or not the defendants discovered through service that the case has become removable. In the fallback, one can look to the rule of the case not being removable after a year if it is on the basis of diversity jurisdiction. Here the case is based on diversity jurisdiction and Dave attempted to remove the case over a year after it was commenced in state court. The action was commenced January 2018 and was attempted to be removed by Dave in March of 2019. Therefore, Dave is violating the one year rule.

Thus, the Texas federal court should not allow Dave to remove.

2) Did Piper properly lay venue?

Venue

Venue relates to the proper geographic district in which to bring the action. Venue in civil actions in the federal courts is proper in: (i) a judicial district where any defendant resides, if all defendants are residents of the state in which the district is located; (ii) a judicial district where a substantial part of the events or omissions giving rise to the claim occurred, or a

substantial part of property that is the subject of the action is situated; or (iii) if there is no district anywhere in the United States which satisfies either of these, a judicial district where any defendant is subject to the court's personal jurisdiction with respect to the action. A business entity is deemed to reside, if a defendant, in any judicial district in which the defendant is subject to the court's personal jurisdiction with respect to the civil action in question. A defendant who is not a resident of the United States may be sued in any judicial district.

(i) A judicial district where any defendant resides, if all defendants are residents of the state in which the district is located

The car manufacturer resides in Detroit. Meanwhile, the repair shop was located in France but since it is not a resident of the United States, it may be sued in any judicial district. However, California is not a state where the defendants reside or are subject to personal jurisdiction. It would not be proper to lay venue in California here,.

(ii) A judicial district where a substantial part of the events or omissions giving rise to the claim occurred

The events giving rise to this action happened in France. The event did not happen within the United States. Thus, California would still be an improper venue.

(iii) If there is no district anywhere in the United States which satisfies either of these, a judicial district where any defendant is subject to the court's personal jurisdiction with respect to the action.

There is a district in the United States where a defendant is subject to the court's personal jurisdiction, that is Detroit. Piper may lay proper venue in Detroit.

Therefore, Piper's venue choice of the federal district court for the Eastern District of California is likely improper because she selected a district where neither defendants reside nor where a substantial portion of the claim arose. In fact, there was no contact at all with California. Piper seemed to only choose California because that is where she resides.

3) How should the court rule on the motion to transfer to Detroit's federal court?

Transfer of Venue

A transfer of venue occurs when a court in a judicial system transfers the case to another court within the same judicial system. In saying that, a proper transfer would be from the Eastern District of California to any other federal district court.

Original Venue Improper

If the original venue is improper, a court must dismiss, or transfer the case to a venue in which it could have been brought. Transferring the case is usually the more appropriate thing to do.

Here, it was already established that the original court had improper venue to hear the case. Thus, it is appropriate to transfer the case to Detroit's federal court. It should be noted that the applicable law would not follow this transfer meaning that the Detroit law would be applied.

Thus, the transfer is proper and the court will rule in favor of the defendants on the motion.

4) How should the court rule on the motion? (Mechanic filed motion to dismiss)

Forum Non-Conveniens

Forum non conveniens is a discretionary power that allows courts to dismiss a case where another court, or forum, is much better suited to hear the case. This dismissal does not prevent a plaintiff from re-filing his or her case in the more appropriate forum. A motion for FNC dismissal is for situations where there is a much better place to litigate and transfer is not possible. Even if a plaintiff brings a case in an inconvenient forum, a court won't grant forum non conveniens dismissal if there is not another forum that could hear the case.

Private Factors

Since the mechanic is from France and resides there, he would most likely want to be haled into court in France. However, Piper wants a court that is friendly to her and the United States has an obligation to protect its citizens. Since Piper is a citizen of the United States, it would be reasonable for her to file in a court within the United States. The mechanic will argue that it will be a great hardship traveling all the way to the United States for court due to the long travel and the expenses that come with it. The mechanic may also argue that he is not familiar with the English language and only speaks French, which creates even more of a hardship on him. But, in protecting its own citizens it may be more reasonable for the mechanic to be haled into court here. Piper may also argue that it is a hardship for her to travel back to France due to time and expenses as she just got

back from there. The mechanic will rebut this reasoning that she traveled to France before, she obviously has the money and time to do it again.

Public Factors

The trial would be confusing to the jury if it were held in the United States since the accident happened in France. Multiple sets of law may come into play, which can really confuse the jury. Having the jury in France would be more convenient because the accident happened in France. Jurors in the United States may be less efficient and knowledgeable to the details and geographics of the accident compared to jurors in France. But Piper may argue that she will receive less monetary remedies in France due to their lenient laws. The mechanic will then argue that all of the witnesses, the accident location, and the defendant are in France. Thus, it may appear reasonable and convenient for the case to be heard in France.

If the court does allow the mechanic's motion to dismiss, Piper may re-file her case. But the court is likely to find that it better serves justice for the action to be heard in France, in that case, the court may decline to exercise its jurisdiction under the doctrine of forum non-conveniens and can either stay or dismiss the action in whole or in part on conditions that the court deems just.

END OF EXAM