

San Luis Obispo College of Law
Civil Procedure
Mid Term Examination
Fall 2022
Prof. M. Rivas

General Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours.

Question One

Date Co. manufactures smartphone devices. Date Co. is incorporated in Canada, where it also has its manufacturing plant. However, its headquarters are in New York. Date Co. has a store in California, which generates about 20% of the company's revenue. While in a Date store in Hawaii, Paxton, a resident of California, bought a phone that exploded in Paxton's pocket a day later, causing injury.

Subsequently, Paxton hired an investigator, who determined that the phone's battery was the source of the explosion. The battery was manufactured by Destructo Co., which is both incorporated in and has its headquarters in Country X. Destructo Co. sells its batteries to several electronic device manufacturers worldwide but not to the United States. Last year, 70% of Destructo Co.'s profit came from its business dealings with Date Co.

Paxton incurred \$75,000 in medical expenses, and filed an action against both Date Co. and Destructo Co. in the Superior Court of California. Afterward, Paxton flew to New York to serve Date Co. with the summons and the complaint. Upon entering Date Co.'s campus, Paxton met with Gardener, who was trimming a tree. Paxton asked Gardener if he worked for Date Co.. Gardener said that he has been a gardener with the company for 30 years and that he is a friend of the CEO. Paxton gave the summons and the complaint to Gardener. Gardener then gave the summons and complaint to Date Co.'s CEO. Paxton then properly served Destructo Co. in Country X.

Both Date Co. and Destructo Co. filed motions to dismiss for lack of personal jurisdiction and Date Co. challenged the validity of the service of process. California has a long arm statute that provides that its courts may exercise jurisdiction over nonresidents "on any basis not inconsistent with the Constitution of the United States."

1. How should the court rule on the motion for lack personal jurisdiction a) against Date Co. and b) against Destructo Co.? Discuss.
2. How should the court rule on the validity of service of process on Date Co.?

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Question Two

While on a trip to Las Vegas, Penn, a resident of California, and Pasha, a citizen of Spain, were struck by a food truck owned and operated by DirectFood, a limited liability partnership.

DirectFood, LLP is owned by Darby, a resident of Texas, and Darcy, a resident of Ohio. DirectFood's headquarters is in Nevada and it is registered to do business there.

Penn and Pasha jointly filed a lawsuit against DirectFood in the federal district court in Nevada. In the complaint, Penn claimed \$70,000 in personal injury damages and \$10,000 in property damages, while Pasha claimed \$10,000 in personal injury damages.

DirectFood filed a motion to dismiss for lack of subject matter jurisdiction, which the federal court denied. After the trial, the jury awarded \$60,000 to Penn and \$5,000 to Pasha. DirectFood appealed, contending that the court lacked subject matter jurisdiction. Penn and Pasha counterargued that DirectFood consented to subject matter jurisdiction by trying the case.

1. Did the court err in denying DirectFood's motion to dismiss for lack of subject matter jurisdiction a) as to Penn's claim and b) as to Pasha's claim?
2. Did DirectFood waive its right to contest subject matter jurisdiction on appeal by trying the case?

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Question Three

Peyton, who owns a factory in San Jose, California, contracted with Dale, a resident of Texas, and Dallas, a resident of Arizona, to supply raw materials to Peyton's factory. The parties signed the contract at Dale's house.

Several months later, Dale and Dallas informed Peyton that they would no longer be able to supply raw materials due to supply chain issues. While on a business trip to San Diego, Peyton filed a lawsuit against Dale and Dallas. In his complaint, Peyton stated, "Dale and Dallas have committed fraud, and they are liable for breach of contract."

Subsequently, Dale and Dallas filed a motion with the Superior Court in San Diego to dismiss for failure to state a claim, which the court denied. Afterward, Dale and Dallas agreed to litigate in Texas and filed a notice of removal in the federal court in Texas. In response, Peyton filed a motion to transfer to the Superior Court in San Jose.

1. Did Peyton properly lay venue in San Diego? Discuss.
2. Did the court err in denying Dale and Dallas's motion to dismiss? Discuss.
3. Should Dale and Dallas be allowed to remove the case to the Texas federal court? Discuss.
4. How should the court rule on Peyton's motion to transfer the case to San Jose? Discuss.

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Question One-Answer Outline

1. How should the court rule on the motion for lack personal jurisdiction a) against Date Co. and b) against Destructo Co.? Discuss.

a) Date Co.

Traditional bases: Consent, Domicile, Service while in the state.

No facts suggesting consent. Date Co. is domiciled in Canada and New York. Service was in New York.

Modern bases

Long arm statute: Facts state there is one that extends to limits of Constitution

Minimum contact: International Shoe. Must not offend traditional notions of fair play and substantial justice.

Purposeful availment: contacts with the forum must not be accidental. D must purposefully avail themselves of the benefits of the forum state.

20% of profit comes from CA

Date Co. purposefully avails itself of the privilege of conducting activities within the forum and invoking the benefits and the protection of its laws. Has a storefront, so potential for protection of CA laws as to landlord/tenant, breach of contract, employment issues.

Foreseeability: Date Co. sells its tech in CA, so it's foreseeable they'd be sued in CA regarding that tech.

Fairness Factors: CA forum has an interest in protecting its citizens. Date Co. will say not convenient because it's incorporated and has manufacturing in Canada, and its headquarters in NY, but that's not so inconvenient that it rises to a constitutional level.

Relatedness to the Claim: the claim is directly related to Date Co's contact with CA, but Date Co. has such systematic and continuous contact with the forum as to be at home in CA. Since Date Co. is at home in CA, CA has general jurisdiction over Date Co. and it can be sued for anything arising from anywhere in the world.

b) Destructo Co.

Traditional bases: Consent, Domicile, Service while in the state.

No facts suggesting consent. Destructo Co. is domiciled in Country X. Service was in in Country X.

Modern bases

Long arm statute: Facts state there is one that extends to limits of Constitution

Minimum contact: International Shoe. Must not offend traditional notions of fair play and substantial justice.

Purposeful availment: contacts with the forum must not be accidental. D must purposefully avail themselves of the benefits of the forum state.

Destructo has no contact with CA, but has contact with CA through Date Co.

Stream of Commerce: Destructo sells to Date Co. which sells to CA. However,? The phone was not simply brought into the state (as in Volkswagen), but did Destructo Co. have the expectation that the product would target consumers in CA? It might be enough that they would have known that Date Co. marketed the product in the forum state.

Foreseeability: Destructo Co. sells to Date Co., who makes 20% of their income by selling its tech in CA, so it's foreseeable Destructo Co. would be sued in CA regarding that tech.

Fairness Factors: CA forum has an interest in protecting its citizens. Destructo Co. will say not convenient because it's incorporated and has manufacturing in Country X, but they likely cannot escape liability due to inconvenience.

Relatedness to the Claim: the claim is directly related to Destructo Co's contact with CA, and they have no other contact with CA. Thus, CA would have specific jurisdiction and could only here claims relating to the battery.

2. How should the court rule on the validity of service of process on Date Co.?

Service of process: much be reasonably calculated to apprise the party of the pendency of the claim and provide an adequate opportunity to be heard. Service in a corporation must be to an officer or other agent of the corporation.

Here, service on company's employee, but that employee could not reasonably be assumed to be so integrated into the organization as to be the proper person for service. He was met in the garden, not inside the offices. There was no evidence, other than his claim, that he knew the CEO. Even if they were friends, that doesn't make him an agent of the corporation. Service would likely be deemed improper.

Question Two-Answer Outline

1. Did the court err in denying DirectFood's motion to dismiss for lack of subject matter jurisdiction a) as to Penn's claim and b) as to Pasha's claim?

a) Penn v. DirectFood

Diversity Jurisdiction: requires diversity of citizenship and must meet amount in controversy

Diversity of citizenship: Every plaintiff must be of diverse citizenship from every defendant.

Penn is a citizen of California.

Citizenship of the partnership: an unincorporated partnership takes on the citizen of its members. DirectFood would thus be a citizen of both Texas and Ohio.

Thus, there is diversity of citizenship.

Amount in controversy: must exceed \$75,000, exclusive of interest and costs. The claim must be made in good faith, and it is not necessary that the plaintiff actually win that amount.

Aggregation: One plaintiff can aggregate his claims against one defendant to meet the amount in controversy, even if they are unrelated.

Penn can aggregate the 70K and 10K claims. In this case the claims are related to the same transaction, but they needn't have been.

Therefore the amount in controversy is met.

b) Pasha v. DirectFood

Diversity Jurisdiction: requires diversity of citizenship and must meet amount in controversy

Diversity of citizenship: Every plaintiff must be of diverse citizenship from every defendant.

Pasha is a citizen of Spain.

Citizenship of the partnership: an unincorporated partnership takes on the citizen of its members. DirectFood would thus be a citizen of both Texas and Ohio.

Thus, there is diversity of citizenship

Amount in controversy: must exceed \$75,000, exclusive of interest and costs. The claim must be made in good faith, and it is not necessary that the plaintiff actually win that amount.

Aggregation: One plaintiff can aggregate his claims against one defendant to meet the amount in controversy, even if they are unrelated. Two plaintiffs can only aggregate claims if they are enforcing a single title or right.

Penn's and Pasha's claims are for separate injuries, so they cannot be aggregated.

Thus, the court does not have diversity jurisdiction over Pasha's claim.

Supplemental jurisdiction: A court can exercise supplemental jurisdiction over a claim that arises from a common nucleus of operative fact. However, the claim must not destroy diversity.

Here there is diversity of citizenship and Pasha's claim arises from the same accident.

Thus, the court can exercise supplemental jurisdiction over Pasha's claim.

2. Did DirectFood waive its right to contest subject matter jurisdiction on appeal by trying the case?

Subject matter jurisdiction: cannot consented to or waived. It may be challenged at any point in the proceedings, even for the first time on appeal.

Question Three-Answer Outline

1. Did Peyton properly lay venue in San Diego? Discuss.

Venue: is proper (i) in a district where all defendants reside, (ii) where a substantial portion of the action or omission took place, or, if no proper venue under (i) or (ii), in a district where personal jurisdiction exists.

Nothing happened in San Diego. The contract was signed at Dale's house in Texas. Nor do any of the defendants live in San Diego. Dale is from Texas and Dallas is from Arizona.

Thus, venue was not proper in San Diego.

2. Did the court err in denying Dale and Dallas's motion to dismiss? Discuss.

Complaint for fraud: allegation must be made with specificity and particularity. As for the breach of contract, the complaint must avoid being conclusory and include a short and plain statement of the claim showing that P is entitled to relief.

Here, there is a bald claim that fraud was committed, but nothing specific was included to support that claim.

Thus, the court erred and the complaint should have been dismissed.

3. Should Dale and Dallas be allowed to remove the case to the Texas federal court? Discuss.

Removal: Defendant may remove from state to federal court, provided the federal court has jurisdiction. Removal may not be made by in-state defendants.

Here, the defendants are trying to remove to Texas, but Penn is a resident of Texas.

Therefore, removal will not be allowed.

4. How should the court rule on Peyton's motion to transfer the case to San Jose? Discuss.

Transfer: is allowed if transferee court is a proper venue and the state has jurisdiction over the defendants.

Here, San Jose could be a proper forum as it's where the factory is located.



1)

1. a) Personal Jurisdiction (PJ) as to Date Co.

For a court to hear a case it must have personal jurisdiction (jx), subject matter jx (SMJ), be held in the proper venue, use the appropriate law, and provide the defendant with notice. PJ can be established through a traditional basis or a more modern basis as will be discussed below.

Traditional Basis

✓ Based on *Pennoyer v. Neff* PJ may be established over a defendant by the defendant's consent, domicile, or personal service in the forum when served (as long as that presence was not accomplished via fraud).

✓ Here, Paxton (P) was injured by a phone manufactured by Date Co (DC). P brought the suit in the Superior Court in California (CA) and served notice (discussion of service below) of process to an employee of DC in New York (NY). The facts do not state that DC consented to PJ as their first appearance in court was to challenge PJ and service of process. The domicile of a business is the state in which they are domiciled and the place in which they have their principle place of business (PPB). The facts state that DC has a store in CA that generates 20% of their business, but that DC is incorporated in Canada, with their "nerve center" in NY. Though the store in CA is profitable, this contact with CA is not enough to say that DC is domiciled in CA. The facts also state that P flew to NY in which to personally serve process to DC, so there was no personal presence in CA for DC when P served the notice.

Thus, under the traditional PJ basis, there is no PJ over DC in CA.

Modern Basis

Modernly, PJ requires a state long-arm statute (LAS) and constitutionality. CA has a LAS that allows the courts to hear anything that is constitutional. Based on the ruling in *International Shoe*, this requires that defendant have enough minimum contacts and relatedness between the forum and the defendant so as not to offend traditional notions of fair play and substantial justice.

Minimum Contacts

Minimum contacts requires and analysis of purposeful availment and relatedness.

Purposeful Availment

Purposeful availment addresses where the defendant purposely availed themselves of the privilege of acting in the forum invoking the benefits and protections of the forum's laws.

Here, DC has a store in CA that generates 20% of their business, but that DC is incorporated in Canada, with their "nerve center" in NY. Conducting a business in a state where 20% of a business's profits are earned is a systemic and continuous contact with CA as the forum. Though DC is not domiciled in CA, they have invoked many benefits and protections of CA law by having a store in CA. *Yes, but why? What benefits are they availing themselves of? Are they "at home" in CA?*
Thus, DC purposefully availed themselves of CA's privileges.

Foreseeability

Foreseeability addresses whether it is foreseeable that the defendant would be sued in the forum.

Here, DC has a store in CA that nets DC 20% of their profits. It is completely foreseeable that any store in any state could be sued for a variety of reasons by having a

brick-and-mortar store in a state. DC could be sued for a simple customer slip and fall in their store or for employment law violations, and much more. Also, the obvious → they sell tech in CA + it would be foreseeable to be sued over that tech in CA.
Thus, it is foreseeable that DC would be haled into court in CA.

Relatedness

Relatedness addresses the connection between the claim and the forum determining whether the forum has specific or general jx over the P. General jx would mean the contacts are so systemic and continuous with the forum that they are "at home" in that state. Under general jx a defendant can be sued for anything in that forum. Under specific jx, there just needs to be enough contact that the defendant can be sued for the specific conduct with the forum.

Here, P bought a phone manufactured by DC in Hawaii and was injured when it exploded. The store in CA that DC runs sells the same products and P could have just as easily purchased the phone in CA and had the same injury occur. Unless there is some fact established that the phones sold in Hawaii are significantly different than the phones sold in CA, it seems likely that a court would find the exploding phone sold in Hawaii is related enough to the phones sold in CA for the claim to be related to the forum. Had the phone waited to explode until P returned to his residence in CA, then there would be little doubt to the relatedness.

Thus, though DC would argue the claim for the exploding phone sold in Hawaii is not related to CA, because DC sells exactly the same phones in CA and P resides in CA, there is relatedness between the forum and the claim. What does this mean? You had a great set up of general vs. specific, but didn't follow through.

Fairness

Fairness is an analysis that is only needed for specific jx cases. In a specific jx fairness analysis a court would assess whether the forum puts the defendant at a severe disadvantage by hosting the court proceedings in the forum, if the defendant would lack access to witnesses, and more.

Here, as was stated above, DC is essentially at home in CA due to the level of contacts DC has with CA. *Yes, but could be fleshed out more.*

Thus, the court would have general jx over DC and DC can be expected to be sued for any reason in CA.

Conclusion

The CA court would have general PJ over DC.

How should the court rule on the motion to dismiss? You're right, but remember to answer the call of the question.

1. b) Personal Jurisdiction (PJ) as to Destructo Co.

See PJ rule above

To save time, you can always just say "see rule above" or "see discussion above." That way you don't have to tailor it every time.

Traditional Basis

See traditional basis statement above.

✓ Here, there are no facts showing that Destructo Co (DEC) consented to PJ as on their first appearance they objected to PJ. There are also no facts that DEC domiciled in CA. Lastly, the facts state that P flew to Country X to serve DEC so no agent of DEC was present for service in CA.

Thus, there is no PJ of the CA court over DEC under the traditional basis.

Modern Basis

See modern PJ statement above.

Minimum Contacts

Minimum contacts requires and analysis of purposeful availment and relatedness.

Purposeful Availment

Purposeful availment addresses where the defendant purposely availed themselves of the privilege of acting in the forum invoking the benefits and protections of the forum's laws.

Here, DEC is in Country X and sells batteries worldwide. 70% of what DEC sells is to DC and DC is incorporated in Canada and headquartered in NY. DEC may know where DC has its stores where DC sells phones with DEC's batteries in them, but the facts do show a few steps of separation between DEC and CA. Simply putting items into the stream of commerce is not enough to avail themselves of the benefits and protections of all places where DEC batteries are used.

Thus, as DEC did not in any way target its batteries to be sold in devices in CA, but only to a corporation in Canada, a court would likely rule that DEC did not purposefully avail themselves of CA's benefits.

Foreseeability

Foreseeability addresses whether it is foreseeable that the defendant would be sued in the forum.

Here, DEC is a foreign corporation selling to another foreign corporation and it is difficult to see that they would be haled into court in CA. As DEC sells worldwide, they would need to specifically target CA in some way to make it foreseeable that they would be haled into court. As there are no facts to indicate that DEC targeted CA in any way, or even the entire USA in any way, there is likely not foreseeability in CA for an issue that occurred in Hawaii.

Maybe discuss whether DEC should know that DC makes 20% of its revenue from CA? Wouldn't that make it foreseeable?

Thus, DEC would rightly claim it is not foreseeable that selling batteries to a Canadian corporation would lead them into a CA court.

Relatedness

See relatedness statement above.

Here, the DEC battery exploded in Hawaii and in no way targeted selling its batteries to corporations in CA or Hawaii. As DEC sells 70% of its batteries to DC that does show it makes much of its profits only from a Canadian and NY based company. DC does what it chooses with DEC's batteries.

✓ Thus, DEC could likely see the relatedness between a claim in Canada or NY, but DEC can hardly be held responsible for what DC does with each of its batteries. Though I think it unlikely, a court would at best say that it has specific jx over DEC as it is responsible for exploding batteries no matter where they are sold.

Fairness

See fairness statement above.

Here, as a court would at, at best, claim specific jx over DEC, they would have to balance if it is a grave disadvantage to DEC to have to fly lawyers, witnesses, counsel, and

more into CA for this trial. This seems to be a bit too fair for a court to go as a worldwide corporation would need teams of lawyers flying all over the world to hear claims such as these, and that seems to be unfair and a grave disadvantage.

Thus, a court would likely rule this to be unfair.

Can they escape liability based on inconvenience? Doesn't the firm have an interest in protecting its citizens?

Conclusion

The CA court would not have PJ over DEC.

Again, how should court rule?

2. Service of process to DC

Service of process is delivery of the complaint and the court notated summons. For service and notice to be Constitutional the notice needs to be reasonably calculated to ✓ apprise the parties of the pendency of the claim and to allow them to appear and be heard. Service can be made by a non-party over the age of 18, delivery to an agent or to a domicile where a person over 18 years old who resides there is given the complaint, or by whatever state laws allow.

Here, P flew to NY to personally deliver notice to DC. This is unconstitutional delivery. P is not allowed to personally deliver the notice as P is a party to the notice he is delivering. Though Gardener knew the CEO of DC and did actually deliver the notice to him, that does not cure the unconstitutionality of the service.

Also, is Gardener even an agent?

Thus, the court should rule the service of process is not valid.

END OF EXAM

2)

Did the court err in denying DirectFood's motion to dismiss for lack of subject matter jurisdiction as to Penn's claim.

Subject Matter Jurisdiction (SMJ): The ability of the federal court to hear a case. Jurisdiction is established by federal question and diversity jurisdiction.

✓ Federal Question Jurisdiction: Federal courts have the ability to hear well plead complaints based in federal law. Federal law includes constitutional rights and related issues, federal statutory law, federal administrative law, and treaties.

There is no federal question present.

✓ Diversity Jurisdiction: Federal courts have the ability to hear a case when there is complete diversity and the claim exceeds 75K exclusive of interest and cost.

Complete Diversity: Established when all plaintiffs are citizens of different states compared to the state citizenship of all defendants. People are citizens of the state where they are domiciled. Corporations and LLCs are citizens in all the states they are incorporated in and the one state they have their principle place of business. Their principle place of business is the state where the head officers direct and manage the activities of the LLC, (nerve center) *Unincorporated associations take the citizenship of each member*

Here, the facts establish that Pen is a resident of California. Thus, he is a citizen of California. Additionally Directfood is a LLP and headquartered in Nevada. [The fact that the owners are from Texas and Ohio does not play a role because Pen is suing the company, not the owners.] Because Directfood is headquartered in Nevada that is the place where the chief officers direct and control the management of the company. Thus,

DirectFood is considered a citizen of Nevada. Ultimately, the Complete diversity requirement is satisfied. *Yes, but should have included Darby + Darcy*
✓ exclusive of interest + cost
Claim is excess of 75K / aggregation: The P must make a good faith estimation that their claim is over the 75K requirement. There must be a legally tenable possibility that the necessary recovery will be made. A *✓ single* plaintiff is allowed to aggregate any and all claims they would have against a single defendant. Retroactive application is not allowed to defeat diversity jurisdiction.

Here Pen has a personal injury claim of ⁷⁰~~75K~~ and a property claim of ¹⁰~~5K~~. He is allowed to aggregate the claim to meet the 75K requirement. *watch the facts* this aggregation is his good faith estimation the the necessary recovery will be made. There is nothing in the facts to suggest that it was not legally tenable at the time it was made. Furthermore, the fact that he ultimately was only awarded 60K may not be used by DirectFood in their appeal for lack of subject matter jurisdiction. Thus the claim in excess of 75K requirement is established.

Conclusion: The court did not err when denying DirectFood's motion to dismiss for lack of SMJ.

Did the court err in denying DirectFood's motion to dismiss for lack of subject matter jurisdiction as to Pasha's claim.

Diversity Jurisdiction: Federal courts have the ability to hear a case when there is complete diversity and the claim exceeds 75K exclusive of interest and cost. Each and every claim must meet the diversity jurisdiction requirements.

Here, Pasha does not have the required 75K claim to get into court under diversity jurisdiction. This is due to the requirement that each and every claim must meet the diversity requirement.

Aggregation / Multiple P against one D: There must be an equal and undivided interest in a common right or title for the claims to be aggregated.

✓ Here, the injuries of Pasha are not related to the injuries of Pen. Thus, she may not aggregate the claims.

Supplemental Jurisdiction: When a claim is already in court a claim may be joined that does not meet the 75K requirement provided the claim arises out of a common ~~core~~ ^{nucleus} of operative facts.

^{Nucleus} Common ~~Core~~ of Operative Facts: There must be a logical relationship between the claims. All claims that arise out of a common transaction or occurrence will establish a common core of operative fact.

✓ Here, Pasha was struck by a food truck at the same time as Penn. The facts do not say that Pasha and Penn were in a car together but the fact that they were struck by the same truck while on their way to Los Vegas gives some credence the fact that their injury is related to the same occurrence, provided there was minimal time between the incidence. Thus, the common core of operative fact requirement for supplemental jurisdiction is established.

Limitation of Supplemental Jurisdiction: Joinder may not undermine the complete diversity requirement in diversity jurisdiction.

Here, Pasha is from Spain and while in America she is afforded the same same rights as a US citizen. Directfood is headquartered in Nevada and that is the place where the chief officers direct and control the management of the company. Thus, the company she she suing is from Nevada. Therefore, there is complete diversity. *Still true, but should be about Penn/Pasha + Darby/Darcy*

Conclusion: Pasha may be successfully joined under supplemental jurisdiction. Thus, the court did not err in denying DirectFoods motion.

Did DirectFood waive its right to contest SMJ on appeal by trying the case?

- ✓ Subject Matter Jurisdiction can not be waived and can be appealed at any point durring the trial. Thus, DirectFood did not waive its right to appeal by trying the case.

END OF EXAM

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3)

1. Proper Venue

Venue is the geographic location in which a case is heard. Venue is proper in: 1) A judicial district where any defendant resides as long as all defendants reside in the same state, or 2) A district where a substantial portion of the events occurred or the property is located, or 3) If no district is proper, then any district where any defendant is subject to personal jurisdiction (PJ). Residence for individuals is determined by domicile and intent to remain in that domicile.

Here, Peyton (P) is a resident of San Jose (SJ) California (CA) who contracted with Dale (DA) and Dallas (DL) who are residents of Texas (TX) and Arizona (AZ) respectively. The contract was signed at DA's home in TX. DA and DL breached their contract claiming they would not be able to supply F with the materials they contracted for. P filed suit in state court in SD. As DA is a resident of TX and DL is a resident of AZ they do not reside in the same state, thus, venue cannot be in where one of them resides. The contract was signed in TX and no other events occurred that were "substantial" regarding the breach of the contract. As the materials were supposed to be delivered to SJ and not SD, no other events occurred in SD other than P filing a claim in that district. There are not enough facts to show that either DA or DL had any contacts with SD's district, thus, I must assume the SD state court would not have PJ over either defendant.

Thus, P did not properly lay venue in SD.

2. Err in denying motion to dismiss? *for failure to state a claim.*

Issue here is complaint alleges FRAUD, but does not do so w/particularity.

(not contesting PJ)

To contest PJ a defendant must make a special appearance to contest jx. If a defendant makes a general appearance to file a permissive counter-claim then they have lost the ability to contest jx and have consented to general jx. *no facts supporting counter claim here. 1st response to complaint was motion to dismiss. But issue is FRAP anyway.*

Here, DA and DL did not make a special appearance to contest the SD court's jx. The defendants thus waived their right to appeal on a jx basis and have consented to the case being heard.

Thus, the court did not err in denying the motion to dismiss as the defendants made a general appearance and waived their right to contest jx.

3. Removal to TX Fed Court

A case can only be removed from state to federal court. All defendants must consent to the removal and removal must be applied for within 30 days of a case becoming removable. In a diversity jx case a defendant cannot remove a case to a federal court in the same district as that defendant resides.

nice! Here, there would have complete diversity of citizenship as P is a resident of CA, DA is a resident of TX, and DL is a resident of AZ. There are no facts indicating a dollar amount so there is no way to analyze amount in controversy. But, as this case is a breach of contract case and P is not asserting a federal right, this case would not get into federal court based on federal question jurisdiction, but would have a good chance under diversity of citizenship as long as the contract breach amount claim was greater than \$75,000. But, as DA is a resident of TX Da would not be allowed to remove the case to TX as that would violate the in-state-defendant rule.

Thus, even though all defendants agreed on the removal to TX, since DA is a resident of TX that would violate the in-state-defendant rule and that would be improper removal.

4. Court ruling on P's motion to transfer?

A case cannot be transferred from federal court to state court, only from federal to federal. A case in federal court would have to be dismissed so the plaintiff could re-file the complaint in the proper state court. If removal to a federal court is improper then a plaintiff can petition the court to remand the case back to state court.

✓ Here, the removal of the case from CA state court would have been improper as discussed above. As the materials P contracted for were supposed to arrive in the factory in SJ, that is where the property is located that is most affected by the breached contract. As venue can be proper where a substantial portion of the events occurred or the property is located, the property at issue here is in SJ.

Thus, the court should rule that transfer from state court in SD to state court in SJ is proper.

END OF EXAM