

EMPIRE COLLEGE OF LAW  
CIVIL PROCEDURE MIDTERM EXAM  
PROF. MARTIN L. SEEGER, IV  
FALL 2024

Instructions:

Answer two (2) Essay Questions

Answer fifteen (15) Multi Choice Questions in Exemplify. To select the answer you believe is correct, click on that answer. Use the 'Next' and 'Previous' buttons to navigate between questions. Read each question carefully and choose the best answer. Review your answers for accuracy before you finish.

Time Allotted: Three (3) Hours.

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**QUESTION ONE**

Patty, a San Francisco resident, was visiting in Nevada when she bought a used 4 wheel drive Jeep from Dan's Used Cars. Patty intended to register the car in California upon her return. While passing through Sacramento, the steering coupling broke causing the vehicle to leave the highway and roll down an embankment, destroying the car, which cost \$25,000. Patty suffered minor personal injuries in the accident.

Upon her return to San Francisco, Patty files suit in the local Superior Court for both property damage, as well as personal injuries. The summons is personally delivered to Dan in Reno. Dan challenges the court's jurisdiction over him. The court rejected the challenge. Dan thereafter filed a Complaint in Reno, Nevada in the U.S. District Court against Patty for missed purchase price payments, and for damage to his reputation.

Patty was served at her home where the summons was left with a PG&E repair man, who was fixing her water heater at the time. Patty objects to the court's jurisdiction over her.

Following the Superior Court's rejection of the jurisdiction arguments, Dan removes the case to the Federal District Court located in Reno, Nevada. After removal, Dan files a motion challenging the sufficiency of the service on him. The District Court denied the motion. Dan then filed an Answer and included the affirmative defense that the venue in Nevada was wrong. Patty now seeks to have that affirmative defense stricken.

Several months later, Dan files a motion claiming that the District Court has no jurisdiction since the plaintiff was seeking only \$25,000 in property damages and had only minor injuries. Patty challenges both the timing of the motion and the substance of the motion.

**ANSWER THE FOLLOWING QUESTIONS:**

1. How should the Superior Court have ruled on the challenge by Dan to the court's jurisdiction?
2. Does the Nevada District Court have jurisdiction over Patty?
3. Will Patty prevail in her efforts to have Dan's affirmative defense stricken?
4. How should the District Court rule on Dan's motion to dismiss Paula's complaint?

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**QUESTION TWO**

Paula runs a construction company in Stockton, CA. She purchases an earthmover from two brothers David and Dan. The earthmover cost over \$200,000. David lives in Reno, Nevada and Dan lives in Sacramento. Paula files suit in the US District Court in San Francisco. She claims that the defendants violated the Federal Fair Financing Act by charging too much interest. She also adds a cause of action for breach of contract since, when she cancelled the contract, the brothers refused to return her deposit of \$50,000. Assume the rules permit this joinder, can the defendants have the case dismissed?

Before filing his answer, Dan seeks to change the venue of the case to Sacramento, since that is where the contract was signed. Will the court change the venue?

Assuming the breach of contract claim stays in the case, David seeks to force the plaintiff to list all of her witnesses and documents immediately. California has a rule that requires this, but the federal court does not. Paula seeks to strike Dan's answer since he did not file a Statement of Interested Parties. This Statement is required in the US District Court, but not in state court.  
How should the court rule on these motions?

At the same time that Dan tried to change venue, he challenged the service on him of the complaint. Paula's process server could not find Dan and simply taped the summons and complaint on his door with a red sign. Dan found this when he got home, but ignored the paperwork.

**ANSWER THE FOLLOWING QUESTIONS:**

1. Can the defendants get some or all of the case dismissed?
2. Will the court change the venue of the case based on Dan's motion?
3. How should the court rule on the defendant's motion to force the plaintiff to identify her witnesses and the plaintiff's motion to strike the answer?
4. How should the court rule on the challenge to the service on Dan?

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Civil procedure  
Fall 2024  
Prof. M. Seeger

NO ESSAY ANSWERS PROVIDED

1)

**(1) How should the Superior Court have ruled on the challenge by Dan to the Court's jurisdiction?**

Dan is challenging the local Superior Court of San Francisco ("SF") jurisdiction over him, as he is a resident and is domiciled in Reno, Nevada. Here, Dan is challenging this state Court's ability to assert Personal Jurisdiction over him.

**Applicable Rules:**

**Personal Jurisdiction** ("PJ") is the courts ability to exercise power and control over a person and/or property. There are three types of PJ: (1) in personam, (2) in rem, and (3) quasi-in rem. In personam is the courts ability to assert power over the person. In rem is the courts ability to assert power over property. Quasi-in rem is the courts ability to assert power over the person through their property. Quasi-in rem is no longer common, as the new standard is the sufficient minimum contact test established in *International Shoe* (Discussed below). There are statutory and constitutional limits on PJ. State statutes outline who the State can exert PJ over. Constitutional limit is the due process clause, which is designed to protect the Defendant ("DF") from litigation in a forum that does not have PJ over the DF.

**General Jurisdiction** is the states ability to exert power and control over people and property within the state. A state will have general jurisdiction over people who are domiciled within that state. **Domicile** is where a person resides, and intends to remain for the foreseeable future. A states ability to exert PJ was cemented in the historic case of *Pennoyer v. Neff*. This case established that states have general jurisdiction over a DF, and established rules such as PJ can be established if a DF is served in the forum state. The law established in *Pennoyer v. Neff* has sense evolved. Now, service can happen in any state and not only the forum state. The **Forum State** is the state in which the claim is filed. The case of *International Shoe* further expanded the Courts understanding of PJ. *International Shoe* asserted that PJ is established where there is sufficient minimum contacts with the forum state so as to not offend traditional notions of fair play and substantial justice. The courts have had a difficulty discerning exactly what constitutes as "traditional notions of fair play and substantial justice." *Hansel v. Deckla* further established that PJ is established when a DF purposefully avails themselves to the forum state. Purposeful availment includes doing business (i.e. making money) in the forum state and using the road ways (via the motorist and roadway act). PJ is also established if a substantial part of the claim arose in the forum state. *International Shoe* helped to establish that states also have specific jurisdiction. **Specific Jurisdiction** is asserted when a substantial part of the claim arose in the forum state. Specific Jurisdiction is also asserted when the DF have sufficient minimum contacts. There is no specific number of contacts that must be met in order for PJ to be asserted, as it is a case by case basis.

PJ over a business can be asserted wherever the business is incorporated and where ever its principle place of business ("PPB") is located. A business can be incorporated in many states, but it only has one PPB, which is considered to be where the "nerve center" of the business is (*Hertz v. Friends*.)

PJ can be waived if the DF consents to the jurisdiction. A DF can also file a Rule 12 motion (discussed below) to dismiss the case for lack of PJ, and it will not constitute as a the state

acquiring PJ over the DF. If the DF's motion is denied, the DF is provided with an additional 14 days to answer the claim.

Not  
Necessary

### Analysis:

Patty is a resident of SF who purchased a car from Dan's used car business, and is now trying to sue Dan in CA state court for damages due to the breaking of a steering coupling. The issue with filing this case in a CA state court, is that there is a lack of personal jurisdiction over Dan and over his business. Under *International Shoe*, Dan needs to have sufficient minimum contacts with the forum state in order for PJ to be established. The facts clearly state that Dan resides in Nevada, which means that CA state court does not have General Jurisdiction over him, as Dan would need to reside in CA for this to apply. The facts also do not indicate that Dan does any business in CA, nor is his used car business incorporated in CA. Further, it appears as if the used car business' PPB is also in Nevada. The only contact Dan has with CA is that Patty is a resident who lives in SF, and purchased the car with the intent of registering it in CA upon her return to the state. Based on these facts, all contacts Dan has with the forum state is due to his limited interact with Patty. Because of this, the court was wrong to have denied Dan's challenge of jurisdiction. Dan did have the ability to consent to the CA court's PJ over him, but that clearly did not happen here, as he instead challenged the jurisdiction. There is no valid reason the court should have denied his motion for lack of jurisdiction.

Not  
So

✓

### (2) Does the Nevada District Court have jurisdiction over Patty?

Dan files a counterclaim in Reno's Federal District Court against Patty regarding missed purchase price payments and seeking damages for his reputation. Patty was served at her home, where the summons was left with a PG&E repair man. Patty objects to the Federal courts jurisdiction over her.

### Applicable Rules:

Not  
Necessary

**Subject Matter Jurisdiction** ("SMJ") is the way in which the court system determines where a claim can be heard. State Courts have general SMJ, in which they can hear any claim (excluding bankruptcy, patent infringement, and tax issues, as those must be in a specific Court that is neither Federal District Courts nor State.) Federal Courts have limited jurisdiction in which they can only hear cases in which there is a diversity of citizenship, with an amount of controversy exceeding \$75,000, or if the claim arose under a Federal law. **Diversity of Citizenship** occurs when the DF does not reside (is not domiciled) in the forum state. A complete diversity of citizenship exists when the PL and the DF reside in different states.

**Service of Process** is the way in which notice is provided to the DF that a claim has been filed. **Process** is the Summons and Complaint. Service must be done by someone who is over the age of 18, who is not a party of the case. Service can be personal or constructive. Personal service occurs when the party is served in person with the process. Constructive service can be service by mail, service by publication, or service by leaving a copy of the process at the residence of the served party, so long as it is left with someone of suitable age and discretion who is also residing in the home. The standard of service was established in *Mullane v. Central Hanover Bank*, in which service must be done in such a way that a reasonable person would have received notice of the complaint and had an opportunity to be heard. It is rarely, if ever sufficient for service to be by publication only. This type of service is reserved only for such situations in which all other options have been exhausted. Once process has been served, a DF has 21 days to respond. If the DF signs a waiver of personal service, they will have 60 days

Not  
Necessary



to be able to respond. If the DF fails to waive personal service without good cause, they may become liable for the costs incurred in order for personal service to be completed.

**Analysis:**

(a) Issue of SMJ: Here, there is most certainly a diversity of citizenship, as discussed above. Dan is a citizen of Reno, Nevada, and Patty is a citizen of SF, CA. Federal courts can hear diversity of citizenship cases, so long as the amount in controversy exceeds \$75,000. The main issue here, is that Dan does not assert a specific value for damages, so it is impossible to determine if the amount in controversy would exceed \$75,000. The car cost \$25,000, but Dan fails to state the amount in damages he is seeking for his reputation. We also do not know how many payments Patty has already made for the purchase price of the car. It is impossible to determine if the amount in controversy would exceed \$75,000. For this reason alone, the Nevada District Court would not have jurisdiction over Patty and would be unable to hear Dan's claim. good!

(b) Issue of Improper Service: If, for some reason, the Nevada District Court allowed Dan's claim to be heard under diversity of citizenship, Patty could file a motion or in her answer assert a ~~Rule 12~~ affirmative defense (defined below) for insufficiency of process and insufficiency of service of process. Patty was improperly served with Dan's complaint. The first issue is that Patty was only served with the summons. Process is both the summons and complaint. There was a failure to serve Patty with the actual complaint, as she only received the summons. Further, the insufficient process was served on a PG&E worker who was at the residence for a temporary purpose. In order for constructive service to be allowed, in this case, the process would have needed to be left with someone of suitable age and discretion who resides at the home. While the PG&E worker was undoubtedly someone of suitable age and discretion, they were not someone who resided at the home. Based on the insufficiency of process and insufficiency of service of process, Patty would be able to challenge this complaint and would likely have the case dismissed. ✓

The Nevada District Court does not have jurisdiction over Patty as there is a lack of SMJ, due to the amount in controversy not exceeding \$75,000, and due to there being insufficiency of process and insufficiency of service of process.

**(3) Will Patty prevail in her efforts to have Dan's affirmative defense stricken?**

After the Superior Court wrongfully denied Dan's jurisdictional challenge, Dan removed the case to Federal District Court in Nevada. Dan now files a motion challenging the sufficiency of the service on him, which is denied. Dan then files an answer and includes an affirmative defense that the venue in Nevada is wrong. Patty now seeks to have the affirmative defense stricken. ✓

**Applicable Rules:**

**Service, supra.**

**Rule 12:** Is the way in which a DF can request to dismiss a case for failure of one of the following categories: (1) lack of subject matter jurisdiction; (2) lack of personal jurisdiction; (3) improper venue; (4) insufficient process; (5) insufficient service of process; (6) failure to state a claim in which damages can be received/requested; (7) failure to join an indispensable party as outlined in Rule 19. Items 2-5 must be raised in either a motion or in DF's answer to a complaint. If the DF fails to include one of the affirmative defenses of 2-5 in their first motion or ✓

answer, they waive the right to ever assert these defenses again. Items 6 & 7 can be raised at trial. A DF is always able to raise a claim that there is a lack of SMJ.

**Venue** is proper where (1) the court is in a district in which the DF resides, (2) where a substantial part of the claim arose, and if neither option (1) or (2) are possible, venue is proper in any district in which the court would have PJ over the DF. Under rule 1404(a) venue can be transferred when there is an issue of convenience for the parties and relevant witnesses, when there is an interest in justice, and when the parties consent and stipulate to a transfer of venue.

A DF has the ability to **remove** a case from State court to Federal court, so long as there is SMJ, i.e. there is a diversity of citizenship or the claim arose under a Federal law. It is not possible for a case to be removed from a federal court to a state court. A DF has 30 days to remove the case after being served with process.

*remand  
or  
dismissal*

#### Analysis:

(a) Service of Process: The District Court was correct in denying Dan's motion challenging the sufficiency of service of process. Under Rule 12, challenging the sufficiency of process must be done in the DF's first motion or their answer. If they file a motion first, and do not raise one of the defenses of (2) lack of personal jurisdiction; (3) improper venue; (4) insufficient process; or (5) insufficient service of process, the DF loses the right to raise these defenses again, as they have essentially waived this right. Dan should have raised this issue of insufficient service of process when he first challenged the superior court's jurisdiction over him.

(b) Issue of Venue: Dan is now trying to raise the issue of improper venue, which is a terrible idea, as he was the one who removed this case from state court to the Nevada District Court. Venue is proper in the Nevada District Court as Dan is a resident of Reno, Nevada, where this district court sits. It is a proper venue, whereas the SF superior court was not a proper venue. Nevada has PJ over Dan, so a Nevada Federal Court would be a proper venue to preside over his case. In addition, Dan has waived his right to raise Venue as an affirmative defense. As discussed with Dan's motion for insufficient service of process, venue is one of the 4 affirmative defenses that if they are not waived in the first motion/answer, the DF then waives their right to challenge it later. Because Dan already challenged the court's jurisdiction over him in the SF superior court, he used his one chance to address all applicable Rule 12 affirmative defenses that may be waived. Dan is not able to now assert this defense in his answer, as he already had his opportunity to raise this issue in his first motion.

Patty will prevail in her efforts to have Dan's affirmative defense stricken as Dan had already waived his right to assert this defense when he failed to do so in his first motion, in addition, venue is proper as Dan is domiciled in Nevada, where this District Court sits.

#### (4) How should the District Court rule on Dan's motion to dismiss Paula's complaint?

Several months after Dan's answer, he files a motion stating that the District Court lacks jurisdiction since Patty is only seeking \$25,000 in property damages and had only minor injuries (i.e. did not have large medical bills that could be aggregated to the claim to increase the amount in controversy.) Patty responds challenging the timing and substance of the motion.

#### Applicable Rules:

SMJ, *supra*.



Rule 12, supra.

Analysis:

Dan is essentially challenging the District Court's ability to hear this case as there is a lack of SMJ. Under Rule 12, a DF can raise the issue of lack of SMJ at any time during the proceedings. Lack of SMJ is not waived if it not discussed in an initial Rule 12 motion. While there is a diversity of citizenship here, the amount in controversy is only \$25,000, and there is not further facts to indicate that the potential damages awarded for the minor injuries Patty sustained would allow Patty to aggregate her claims to exceed the \$75,000 requirement. Because of this, Dan's motion to dismiss should be confirmed and the case should be dismissed as there is a lack of SMJ due to insufficient amount in controversy. Patty's challenge of timelines is unfounded as there is no time limit on a DFs ability to raise the issue of lack of SMJ. There are no obvious substantive issues wrong with Dan's motion.

good answer

2)

(1) Can the Defendants ("DFs") get some or all of the cases dismissed?

Here, Paula has raised a federal law issue against the DFs for their violation of the Federal Fair Financing Act. She also wishes to add a claim for breach of contract. DFs wish to dismiss the claim.

Applicable Rules:

**Subject Matter Jurisdiction ("SMJ")** is the way in which the court system determines where a claim can be heard. State Courts have general SMJ, in which they can hear any claim (excluding bankruptcy, patent infringement, and tax issues, as those must be in a specific Court that is neither Federal nor State.) Federal Courts have limited jurisdiction in which they can only hear cases in which there is a diversity of citizenship, with an amount of controversy exceeding \$75,000, and is the claim arose under a Federal law. **Diversity of Citizenship** occurs when the Defendant does not reside (is not domiciled) in the forum state. A complete diversity of citizenship exists when the PL and the DF reside in different states.

**Supplemental Jurisdiction** allows claims to be tacked onto a claim that is already properly seated in a federal district court, so long as the claim arises from a common nucleus of operative fact.

### Analysis:

Paula cannot bring this cause of action under the guise of diversity of citizenship, as brother Dan lives in the same state that she does. There would not be a complete diversity of citizenship. However, her claim arises from a Federal Law. Because of this, there is SMJ over this claim, and Paula is able to bring this case into Federal Court. Since Paula has a claim that is properly seated in the federal district court, she is able to bring in other claims, so long as they arise from a common nucleus of operative fact, due to the rule of supplemental jurisdiction. Paula cancelled her contract for the purchase of the earthmover due to the fact that there was too much interest charged. The DFs then refused to return her money. Both claims arise from the purchase agreement made for the earthmover, which would be a common nucleus of operative fact.

✓  
yes!

The DFs do not have a way to get this claim dismissed on a basis of lack of SMJ. The amount in controversy of \$50,000 is not applicable as a way to dismiss this case as this case is not in federal court under diversity of jurisdiction.

✓

### (2) Will the court change the venue based on Dan's motion?

Dan is challenging the venue and wishes to move it to Sacramento as this is where the contract was signed.

### Applicable Rules:

**Venue** is proper where (1) the DF resides, (2) where a substantial part of the claim arose, and if neither option (1) or (2) are possible, venue is proper in any district in which the court would have PJ over the DF. Under rule 1404(a) venue can be transferred when there is an issue of convenience for the parties and relevant witnesses, when there is an interest in justice, and when the parties consent and stipulate to a transfer of venue.

**Rule 12:** Is the way in which a DF can request to dismiss a case for failure of one of the following categories: (1) lack of subject matter jurisdiction; (2) lack of personal jurisdiction; (3) improper venue; (4) insufficient process; (5) insufficient service of process; (6) failure to state a claim in which damages can be received/requested; (7) failure to join an indispensable party as outline in Rule 19. Items 2-5 must be raised in either a motion or in DFs answer to a complaint. If the DF fails to include one of the affirmative defenses of 2-5 in their first motion or answer, they waive the right to ever assert these defenses again. Items 6 & 7 can be raised at trial. A DF is always able to raise a claim that there is a lack of SMJ.

### Analysis:

Venue can be challenged in the first motion a DF makes to dismiss a case under Rule 12.

✓

Venue is proper where the DFs reside. If the DFs reside in different districts, venue is proper where any one DF resides. Here, Dan is a citizen of CA, and venue would be proper in the US District Court as there is SMJ. Just because David lives in Nevada, does not mean that the venue is improper. Dan is asserting that the transfer should take place as Sacramento was where the contract was signed. Just because the contract was signed in Sacramento does not mean that this is where a substantial part of the claim arose. The facts do not detail where the

(3) How should the court rule on the DFs motion to force Paula to identify her witnesses and Paula's motion to strike the answer?

**Applicable Rules:**

When a case is in Federal Court under diversity of citizenship, the rules of Erie will apply. Historically, under *Smith v. Tyson*, a Federal court could apply their own rules to a diversity case and create a federal common law. *Erie* overruled this case. *Erie* established that when there was a substantive issue state law would be applied to resolve it. A substantive issue was later clarified as an issue that is outcome determinative, in *Guaranty Trust Co.* The standard for outcome determinative is whether or not the applying federal law would result in a different outcome than if state law had been applied. The court in *Guaranty Trust Co.* held that issues such as statute of limitations would be outcome determinative. There is also a balancing of interest test that was established in *Byrd v. Blue Ridge Electric Co.*, in which the Federal court's personal interest in the case would be considered if there was a matter of substantive issue. This typically means that there would be a public policy issue that the Federal court would take note of. *Byrd v. Blue Ridge* has not yet been revisited by the courts in subsequent case law. The final test comes from *Hannah v. Plummer* in which, due to the supremacy clause, Federal Law will be applied only if there is a federal law on point that contradicts a state law. Because of the federal law's supremacy over state law, in issues where there is a federal law that contradicts state law, the federal law will be applied. *Hannah v. Plummer* also confirmed that the twin aims of *Erie* was to ensure that there was not forum shopping (due to people favoring the laws in Federal court as opposed to state court) and that there was not an unequivocal absence of justice.

Erie applies when there is a diversity of citizenship case, and since this case is in federal court under federal issue, an Erie analysis would not apply. The court should be applying Federal law as this case is in Federal Court under a federal claim. *yes*

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determinative if Paula is successful in striking Dan's answer. But again, since this case is in Federal court under federal law, federal law is applied, as there is no diversity of citizenship.

The court would likely rule in Paula's favor in both motions.

#### (4) How should the Court rule on the challenge to service on Dan?

Dan challenged service of process at the same time that he challenged venue.

##### Applicable Rules:

**Service of Process** is the way in which notice is provided to the DF that a claim has been filed. **Process** is the Summons and Complaint. Service must be done by someone who is over the age of 18, who is not a party of the case. Service can be personal or constructive. Personal service occurs when the party is served in person with the process. Constructive service can be service by mail, service by publication, or service by leaving a copy of the process at the residence of the served party, so long as it is left with someone of suitable age and discretion who is also residing in the home. The standard of service was established in *Mullane v. Central Hanover Bank*, in which service must be done in such a way that a reasonable person would have received notice of the complaint and had an opportunity to be heard. It is rarely, if ever sufficient for service to be by publication only. This type of service is reserved only for such situations in which all other options have been exhausted. Once process has been served, a DF has 21 days to respond. If the DF signs a waiver of personal service, they will have 60 days to be able to respond. If the DF fails to waive personal service without good cause, they may become liable for the costs incurred in order for personal service to be completed.

##### **Rule 12, supra.**

##### Analysis:

Dan is able to challenge sufficiency of service as he included this in his initial motion where he challenged venue. He did not waive this right as it was preserved in his initial motion.

Paula's process server served Dan by taping a copy of the summons and complaint on his door. This would not constitute as proper service, unless there was some state statute that allowed service in this manner. Service of process would need to be done on Dan's person or left with someone of suitable age and discretion who is also residing in the home. One attempt at service would not be sufficient, and additional attempts should have been made. There is also an issue with David never having been served with the Summons and complaint. If David and Dan were working as an incorporated business, then it would be sufficient to serve only one party, however the facts do not indicate that they had an incorporated business. So, Paula needs to also serve this process on David to join him in the claim. Just because Dan did find the summons and complaint on his door, unless there was an applicable state statute, it would not be reasonable for a person to have received notice in this manner. There are a plethora of issues that could have occurred that could have resulted in this process being removed from the door. There is no guaranty that Dan ever saw this process. The court should rule in favor of Dan's challenge for insufficient service of process.



Defenses (6) and (7) may be raised for the first time at Trial, and lack of SMJ can always be raised, even for the first time on appeal. Since Dan filed a motion to challenge (5) improper service of process, he has waived his right to raise defenses 2, 3 and 4 at a later time. The Court denied Dan's motion challenging service of process. However, in his answer, Dan tries to raise defense 3, improper venue, which he cannot do because he waived it by failing to include it in his first Rule 12(b) motion. Since Dan waived improper venue, Patty should prevail in her effort to have Dan's affirmative defense stricken from his Answer. ✓

#### 4. How should the District Court rule on Dan's motion to dismiss Paula's complaint?

Several months later, Dan files a motion claiming that the District Court has no jx since Patty was seeking only \$25,000 in property damage and had only minor injuries. First, Dan is the one who removed this case to Federal Court so it is odd that he is now wanting to challenge SMJ. Removal allows a Defendant to remove a case from State Court to Federal Court if the case could have been properly brought under SMJ. See discussion of SMJ above. The Court granted the removal to Federal Court; however, SMJ can always be challenged, even for the first time on appeal. Therefore, Dan is still able to challenge SMJ. No

SMJ, *supra*.

Diversity of Citizenship. As discussed above, Dan and Patty are citizens of different states. The case is in the District Court in Nevada, and Dan is a resident of Nevada.

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#### Paula v. David & Dan

##### 1. Can the defendants get some or all of the case dismissed?

Personal jx (PJ) is the ability of the Court to have power over the defendant. Courts may acquire PJ over the Defendant because they have power over Defendant's: (1) person (known as in personam jx) or (2) property (known as in rem or quasi-in-rem jx). In personam jx may be general or specific. General jx is the ability for the Defendant to be sued in the forum for his conduct that arose anywhere in the world. In the landmark case, *Pennoyer v. Neff*, the Supreme Court established that a state court did not have PJ over a non-resident defendant who was not served with process in the forum. In *Pennoyer*, the Court lacked general jurisdiction over the Defendant. Later, in *International Shoe*, the Court expanded personal jurisdiction to encompass specific jurisdiction. Specific jurisdiction allows PJ over the Defendant for any conduct that occurred in the forum state. Under *International Shoe*, the Court set forth the benchmark for establishing specific jurisdiction, that the Defendant must have such minimum contacts with the forum state as to not offend the traditional notions of fair play and substantial justice. Since the historic decision in *International Shoe*, the Court has grappled with what it means to establish "minimum contacts." While there is no set number of contacts to establish "minimum contacts" under *International Shoe*, the Court should evaluate the *quality* and *nature* of the Defendant's contacts with the forum. Further, in *Hanson v. Deckla*, the Court ✓

outlined the concept of purposeful availment. Purposeful availment supports PJ when the defendant purposefully avails themselves by their contacts with the forum.

Dan is a resident of California. Defendants are subject to general PJ in the state in which they are domiciled. Therefore, Dan would be subject to PJ in California where Paula brought the suit. The facts indicate the defendants were properly joined so David's domicile in Nevada is not at issue.

Subject matter jurisdiction (SMJ) addresses what court the Plaintiff can sue Defendant in - Federal or State. State courts have general SMJ, whereas Federal Courts have limited SMJ. To bring a case in Federal Court, the case must be brought under (1) diversity of citizenship or (2) federal question.

To acquire SMJ under diversity of citizenship, the case must be (1) between citizens of different states and (2) the amount in controversy must exceed \$75,000. In *Mas v. Perry*, the Court set forth 4 principles to address the first prong of diversity of citizenship: (1) complete diversity rule, (2) citizenship of a human, (3) citizenship of a corporation and (4) citizenship. Under the complete diversity rule, if the Plaintiff is a citizen of the same state as any Defendant then there is no diversity. In this case, Paula is a citizen of California and so is Dan so there is not diversity among the parties and Paula would not be able to bring this claim under diversity of citizenship.

To acquire SMJ under federal question, the complaint must raise an issue that arises under federal law. It is not enough, that the complaint mentions federal issues. To determine whether a federal question is raised under the well pleaded complaint rule, the Court looks only at the complaint (nothing raised by the defendant) to determine whether a federal question has been raised. Paula's complaint alleges that the Defendants violated the Federal Fair Financing Act by charging too much interest. Since this claim raises a question of federal law, under the Federal Fair Financing Act, Paula's claim may be properly brought in Federal court under federal question SMJ.

When a case is already in Federal Court under diversity jx or federal question, supplemental jx allows a Plaintiff to bring other claims into the case that would not otherwise be able to be heard in federal court. To do so, the claim must arise from a "common nucleus of operative fact". Since Paula's second claim for breach of contract, arises from the same transaction as her claim under the Federal Fair Financing Act, both causes of action would be heard by the federal court under supplemental jx. Therefore, Dan/David would not be able to dismiss the second claim for improper SMJ.

Rule 12(b) allows a party to file a Motion to Dismiss based on 7 affirmative defenses: (1) lack of SMJ, (2) lack of PJ, (3) improper venue, (4) improper process, (5) improper service of process, (6) failure to state a claim, or (7) failure to join an indispensable party. Defenses (2)-(5) must be raised in the first Rule 12(b) motion otherwise, they are waived. Defenses (6) and (7) may be raised for the first time at Trial, and lack of SMJ can always be raised, even for the first time on appeal. Defendants may be able to dismiss under a Rule 12 affirmative defense, discussed separately below but they would not be able to have either claims dismissed on jurisdictional basis.

## **2. Will the court change the venue of the case based on Dan's motion?**

Venue is the Court in which the claim is brought. Here, the initial venue is the US District Court in San Francisco where the claim was filed. Venue is proper (1) in the district where all



defendants reside, or if defendants reside in the same forum then it may be brought in any district in that forum; (2) in the district where a substantial portion of the claim arose; or (3) if (1) and (2) are not met, then any district where the Defendant is subject to PJ. Dan resides in Sacramento, so venue would be proper. 3 n/0

Under 1404(a), venue may be transferred to another proper venue for (1) convenience of the parties; (2) in the interest of justice, or (3) when all parties consent. Dan clearly has a personal interest in having the case transferred to Sacramento since that is where he resides, but convenience for Dan alone is not enough to warrant transfer. Dan also argues that since the contract was signed in Sacramento, the venue should be transferred. The mere fact that the contract was signed there does not alone warrant transfer. However, if Dan was able to show that more witnesses and evidence reside in Sacramento than do in San Francisco that may be sufficient grounds to move for convenience but there are no stated facts that indicate that. Finally, since Paula brought the case in San Francisco, it is unlikely she would be willing to consent to a change of venue. Based on the information presented, there is not sufficient support showing why venue should be transferred to Sacramento at this time and thus, the Court will probably deny the motion. ✓

### 3. How should the court rule on the defendant's motion to force the plaintiff to identify her witnesses and the plaintiff's motion to strike the answer?

When a case is brought in Federal Court and conflicts arise between state and federal law arise, the Eerie doctrine applies. The Eerie doctrine applies when cases are brought under diversity of citizenship. In *Smith v. Tyson*, the Court held that Federal Courts were able to establish federal common law. However, this case was overruled by Eerie. Under Eerie, the court held that when conflicts between federal and state law arise, Federal courts must apply state law on substantive issues. After Eerie, the Court grappled with what it means to be a substantive issue. In *Guaranty Trust v. York*, the Court outlined the outcome determinative test. This means that when the outcome of the case would be different under state versus federal law, state law must apply. Then in *Byrd v. Blue Ridge Electric Company*, the Court developed a balance of interest test. Under this test, the Court must determine whether the federal or state court has a significant interest in the law applied. While this has not been overturned, the court has not revisited this analysis since. Then, in *Hanna v. Plumer*, the Court clarified that when state and federal law contradict, and there is a federal rule directly on point, federal law should be applied. Further, *Hanna v. Plumer* outlined the twin aims of Eerie: (1) to avoid forum shopping and (2) to avoid inequitable administration of the law. ✓ good!

Here, since this case is brought under federal question and not diversity of citizenship, an Eerie analysis would not apply. Thus, federal law should apply here. For this reason, the court should grant Paula's motion to strike Dan's answer.

### 4. How should the court rule on the challenge to service on Dan?

To challenge service of process, Dan may do so under Rule 12, *supra*. As long as Dan didn't file his other motions during Rule 12, he challenge service now under Rule 12.

The Court defined the constitutional standard for service in *Mulane v. Central Hanover Bank*, where they held that "service must be reasonably calculated as to apprise the defendant of the proceeding." Rule 4 further governs the rules for service. Under Rule 4, (1) Defendant must be served with a copy of the summons and the complaint (2) by a non-party over the age of 18 (3) by personal, substituted or service on an agent. Personal service is service on the defendant

anywhere in the world. Substituted service may occur at the Defendant's resident by leaving the Summons and the Complaint with someone other than the Defendant as long as the other person is suitable and resides there. The process service cannot simply leave it at the door and not with someone else unless state law would permit this. Therefore, service was improper and hopefully Dan saved his Rule 12 motion for this.

**END OF EXAM**

*good answer*