

# **Monterey College of Law - Hybrid**

## **Civil Procedure – Section 1**

### **Fall 2024 Final Exam**

**Prof. Siobhan Kelley**

#### **Instructions:**

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

### QUESTION ONE

Emma and Lucas Peters (the “Peters”) owned their own accounting business for many years in State A, where they lived. When they decided to retire they sold the accounting business to Liam Murphy (“Murphy”) for \$500k. Murphy is a citizen of State B. The Peters decided to throw a big retirement party and invite all their friends, family and the clients from the accounting business. They also invited Murphy.

The Peters hired Danielle’s Catering Company (“Danielle’s Catering”) to provide all the food for the party. Danielle’s business is conducted entirely in State A. The party was held at a venue in State A.

The Peters wanted an elaborate fresh seafood bar at the party. Danielle contracted with Crazy Ivan’s Seafood Co. (“Ivan”) to provide the seafood and the ice. Ivan did not correctly store the seafood, and as a result many of the guests at the Peters’ party got very sick. Some of them, including the Peters and Murphy, were hospitalized for several days. When Danielle called Ivan to complain about the seafood, he told her that he abided by the applicable federal seafood storage standards.

Ivan runs his business out of his home in State B. It is a partnership with his father, Ivan Sr, who also lives in State B. Ivan has all the seafood he uses shipped to his State B warehouse, and then his drivers deliver the seafood to restaurants and catering companies throughout State B. He doesn’t know whether any other prior deliveries of his seafood ended up being served in State A. Working on the Peters’ party was the first time Ivan knew his seafood was being served in State A. The contract with Danielle’s Catering provides that State B will apply to any disputes about the contract.

The Peters sued Danielle’s Catering in state court. Danielle would like to join Ivan to the lawsuit.

After the lawsuit was filed, Murphy took over the day-to-day operations of the accounting business. He quickly realized that the Peters had overstated the value of the business by about \$100k. Murphy wishes to sue the Peters for this. He also wishes to sue Ivan for the illness caused by the bad seafood.

Address the following:

1. Describe Danielle’s Catering options for joining Ivan to the lawsuit.
2. Discuss Murphy’s options for joining the lawsuit for his claims against the Peters and his claims against Ivan.
3. Discuss any issues with subject matter jurisdiction in this case, including how they would be effected by the possible joinder of Ivan or Murphy.

Hybrid

Civil Procedure – Sec. 1

Fall 2024

Prof. S. Kelley

## QUESTION TWO

Sofia Padilla lives in State X where she attends medical school. She is planning to become a surgeon. Sofia bought a vegetable peeler manufactured by Doxo. The first time Sofia was using the vegetable slicer, the blade became loose and severely injured her index finger on her ring hand. She did not recover full flexibility of the finger. Her medical school advisor told her that she should probably consider a specialty that did not require surgery as she was unlikely to be able to perform surgery with her finger's limited mobility.

Doxo is headquartered and does all its manufacturing in China. Doxo products are sold all over the world. Doxo does not sell directly to retailers or online in the United States. Doxo partners with a distributor for all sales in the United States. Doxo products can be found in every state.

Every year, the company sends a representative from its headquarters in China to a trade show in State X for kitchen utensils. No direct sales are made at the trade show. The Doxo representative shows samples of Doxo products and hands out brochures about Doxo products. A sticker on the back of the brochure has the name and contact information for the distributor that has the exclusive contract with Doxo to distribute its products in United States.

Sofia sued Doxo in federal court in State X. Regarding the cause of action the complaint states: "Defendant did negligently cause Plaintiff's injuries due to Defendant's defect in design and/or manufacture."

The section on prayer for relief states: "Such relief as the court may deem appropriate of over \$75,000."

Doxo's CEO has a vacation home in State A where he and his family come for two weeks every year. He is vacationing there a month after Sofia's lawsuit against Doxo was filed. Sofia's lawyer hires a process server who goes to the house and the CEO answers the door. The process server hands her the summons for Sofia's suit against Doxo.

State X has a statute that reads: "A defendant may be subject to personal jurisdiction in State X if they have engaged in tortious activity that has harmed a citizen of State X. The defendant shall be subject to personal jurisdiction in State X regardless of the location of service in or out of State X."

Two weeks later, Doxo files a motion to dismiss for lack of personal jurisdiction.

Answer the following questions:

1. How should the court decide Doxo's motion to dismiss for lack of personal jurisdiction?
2. Does Doxo have a basis to attack Sofia's Complaint? If so, what motion(s) should it file?
3. What problems, if any, exist with service of process on Doxo?

\*\*\*\*

### QUESTION THREE

Paola, a citizen of State A, has a son who plays in a travel soccer league called the State A Aardvarks. She drove him to a game in State B. The game was played in the Eastern District of State B. Doreen, a citizen of State C, also attended the soccer game with her son, who plays for the State C Cougars. During the game, one of the players from the team from the State C Cougars violently elbowed a player from the State A Aardvarks. The parents watching the game began arguing and a fight broke out between the parents. During the fight Paola punched Doreen and Doreen shoved Paola. Paola fell, breaking her nose.

As both Paola and Doreen were leaving town, they stopped at the same drive-through restaurant to pick up food. As they were in both in drive-through, Paola's dog jumped out of her car and Doreen's car struck the dog. The dog had to be taken to the emergency vet, where it was treated for a broken leg. Although the dog made a full recovery, the cost of treating its injuries was \$15k.

Paola sued Doreen in federal court in State A. Paola claimed \$70k in damages from the fight at the soccer game and a further \$15k to recover the costs of the veterinarian.

Doreen filed a motion for a change of venue to State C, which the court granted. State A and State C each only have one federal district court.

Paola filed a motion with the court to place a lien on Doreen's house, arguing that Doreen might sell her house in an attempt to avoid any judgment against her in the case.

The court granted the motion but placed a hearing on the calendar for 30 days later. The court explained that the hearing was intended to give Doreen the opportunity to remove the lien.

Answer the following questions:

1. Can Paolo sue Doreen for the damages from the fight and the costs of the veterinarian in the same suit?
2. Was the court correct to grant Doreen's motion for a change of venue?
3. Is the lien Doreen's house proper? Why or why not?

\*\*\*\*\*

Professor Outline not provided.

1)

## 1. Danielle's Catering Options to join Ivan

### Impleader

good  
rule

Impleader allows a defendant to bring in a third party into a lawsuit if the third party may be liable for some or all of Plaintiff's claim. A defendant may be impleaded when 1) the third party is or may be liable to the defendant 2. for all or part of the claim. Danielle's Catering (DC) can potentially implead Ivan under a state law that permits a defendant to bring in a third party who may be liable to the defendant for all or part of the plaintiff's claims. Here, DC's claim against Ivan arises from contribution for damages caused by the bad seafood. Ivan, as the supplier, may bear some liability if DC can establish breach of contract or negligence. DC must seek leave with the court to file a third party complaint. The third party complaint would assert that Ivan's failure to store the seafood properly caused the harm for which DC is being sued. The claim may include breach of contract for failing to supply safe seafood and negligence for failing to meet the standard of care for seafood storage.

### Personal Jurisdiction over Ivan

*this is the main issue, so some discussion of why impleader is used would be helpful!*

For DC to join Ivan, the court must have personal jurisdiction over him. Personal jurisdiction is a court's power to act upon a person or their property. It is based on the constitutional right to due process. Personal jurisdiction is constitutionally permissible when a Defendant has sufficient minimum contacts with the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. Here, Ivan must have minimum contacts with the forum state. Ivan's delivery of the seafood to State A and its resulting harm could satisfy the minimum contacts requirement under the due process clause because he intended to send him food to State A and have it consumed by people in State A. Even though Ivan claims this is his first

---

delivery to State A, his seafood's foreseeable use in the state could establish sufficient *good use effects* contacts with the state. Ivan must also purposefully avail himself of the benefits of the forum state. In order to satisfy this rule, there must be some act by the Defendant to purposefully avail himself of the privilege of conducting activities within the forum state, and thus invoking the privileges and benefits of its laws. Ivan may argue that he did not purposefully avail himself of the privilege of conducting business in State A. However, the harm caused by his product's consumption in State A probably meets the specific jurisdiction test, given that the claim arises directly from that harm. The court will also assess fairness factors, including Ivan's burden of litigating in State A and State A's interest in adjudicating disputes involving harm to its residents.

Conclusion *very nicely done*

Through impleader, DC can attempt to pass liability for the seafood-related illnesses onto Ivan. *good*

## 2. Murphy's options for joining the lawsuit for his claims against the Peters/Ivan

### Claim against the Peters

#### Counterclaim

*if joined,*

Murphy may assert a counterclaim against the Peters. The counterclaim must arise out of the same transaction or occurrence as the opposing party's claim. If a compulsory counterclaim is not raised in the same suit, the defendant cannot raise it later. Here, the Peters' original claim involves damages from the seafood related illness and not the sale of the accounting business. As such, M's claim against the Peters is not related enough (or even at all) to the sale of the bad seafood. Murphy's claim thus would not qualify as a compulsory counterclaim. A permissive counterclaim is a claim that a defendant can make against the plaintiff in a lawsuit if the claim is not related to the same transaction or occurrence as the Plaintiff's claim. Here, because M's claim is not related to the original



suit, he can file a permissive counterclaim. If he fails to do so in this case, he can file his own lawsuit for personal injury against the Peters.

### Claim against Ivan

*would benefit from more facts from the question*

### Joinder and Intervention

*needs rule for intervention* // Murphy may join in the claim against Ivan. Joinder allows a plaintiff to join claims against multiple defendants if the claims arise out of the same transaction or occurrence and share common questions of law or fact. Here, M's claim against Ivan arises from the same underlying event (the party and subsequent illness) as the Peters' lawsuit against DC.

*buried rule* // Thus, M could seek permissive joinder to add his claim against Ivan to the existing lawsuit. Murphy could also intervene in the case. Intervention occurs when a third party, not originally named in the suit, is allowed to join the ongoing proceedings because the third party has a substantial interest in the outcome of the proceedings and could be directly affected by the decision. The intervenor must petition the court to be allowed to intervene. Here, M may intervene in the Peters' lawsuit if he can demonstrate a significant interest in the litigation. The court would likely grant his intervention because M's claims against Ivan share overlapping facts with the Peters' claims against DC and Ivan's potential liability. *not enough analysis*

### Conclusion

For M's claim against the Peters, a permissive counterclaim is allowed. He could also file a separate lawsuit. For M's claims against Ivan, M can use permissive joinder or intervention.

### 3. Issues with Subject Matter Jurisdiction

Subject matter jurisdiction refers to a court's authority to hear a case based on federal question jurisdiction or diversity jurisdiction.



---

Effect of Joinder of Ivan

## Diversity jurisdiction issue

Ivan is a citizen of state B. If DC impleads Ivan as a third party defendant, his presence does not destroy diversity jurisdiction because the original suit was filed in state court. *good!*  
However, if the case were removed to federal court and Ivan is joined, supplemental jurisdiction would need to be considered.

## Forum selection clause

The contract between DC and Ivan specifies that disputes are governed by State B law. While this clause could affect venue, it does not impact subject matter jurisdiction directly. Ivan may use this clause to argue for dismissal or transfer of claims against him.

## Effect of Joinder of Murphy

## Murphy's claim against the Peters

Murphy's claim against the Peters for overstating the business value is unrelated to the Peters' claims against DC and does not arise from the same transaction or occurrence. Therefore, it cannot be joined or brought as a counterclaim. Murphy could file his claim against the Peters as a separate lawsuit in federal court based on diversity jurisdiction because Murphy is a citizen of state B and the Peters are citizens of state A. The amount in controversy exceeds \$75,000, satisfying the jurisdictional requirements.

*↳ would benefit from further explanation*

## Murphy's claim against Ivan

M could attempt to join Ivan in the existing lawsuit by showing his claim arises from the same transaction or occurrence (the seafood illnesses) and involves a common question of law or fact. However, courts may lack supplemental jurisdiction if the claim is filed in federal court and no federal question exists. *good.*

---

### Supplemental jurisdiction over Ivan's claim

Supplemental jurisdiction allowed federal courts to hear claims closely related to the original action. If DC brings claims against Ivan for indemnity of contribution, the court can likely exercise supplemental jurisdiction because the claims arise from the same case or controversy.

### Supplemental jurisdiction over M's claims

For M's claims against Ivan, supplemental jurisdiction may not apply if M and Ivan share the same state citizenship. Diversity jurisdiction cannot be used to hear claims by plaintiffs against parties if it would destroy complete jurisdiction.

### Federal question jurisdiction

For a federal court to have jurisdiction, the claim must arise under federal law. The Plaintiff's cause of action must be based on federal statute or regulation. Ivan's reference to federal seafood storage standards does not automatically create federal question jurisdiction. The federal standards might serve as a defense or evidence but do not form the basis of Plaintiffs' claims.

### Conclusion

The lawsuit in state court avoids most subject matter jurisdiction issues because state courts have general jurisdiction. However, if the claims are moved to federal court or additional parties are joined, jurisdictional analysis changes. The joinder of M's claims against the Peters and Ivan or DC's impleader of Ivan could raise challenges under diversity and supplemental jurisdiction in federal court.

*very well done*

*Need to use the facts more. Too many subheadings in third section.*

*85*

2)

## **1. Motion to dismiss for lack of personal Jurisdiction**

### Personal Jurisdiction

A motion to dismiss on jurisdiction issues is proper when given the facts in the most favorable facts to defendant P has failed to satisfy elements of Jurisdiction

failure to object = waiver

### Traditional basis for PJ

PJ refers to the power the court has to adjudicate claims involving a particular party. Traditionally, PJ is based on 3 concepts: Consent, Presence, and Domicile.

### Consent

Consent can be formed through (1) court appearance, (2) registration in state, or (3) consent by contract.

Presence

Domicile

### Transient presence in the forum

Basis for PJ when a defendant is personally served in the forum state. it is not necessary to establish whether the defendant has minimum contact with the forum state.

### Long-arm Statutes

*this whole page is super confusing*

---

Many states have adopted long arm statutes to obtain PJ over non-residents. Long-arm Statutes must satisfy the constitutional requirements for the exercise of jurisdiction. In

order to satisfy the Constitutional Requirements for PJ, the defendant must have such minimum contact with the forum state as to not offend traditional notions of fair play and substantial justice.

*this is the main rule it should be first*

here, state X does have a statute that states a D is subject to PJ in State X if they have engaged in tortious activity that has harmed a citizen of state X. Because the claim against Doxxo is a tort, negligence, case, State X has personal JXD over Doxxo.

In determining whether such minimum contacts are present, the courts considered the level of contacts with the forum state, and relatedness to the cause of action

*these don't need to be broken up into elements*

1) level of contact with forum state

In order to justify and exercise PJ, court looks whether the D purposefully availed himself to the forum state and whether the exercise of JXD by the forum state would be foreseeable. Here, Doxxo does not sell directly to retailers or online in the United states, but the Doxo representatives show samples of the product and distribute brochures on Doxo's products with contact information to its distributors. Because Doxo visits state X year after year with the intent to expand its product in the states, and continue selling the product, it did not avail itself from t ?

2) relatedness with cause of action

*or a citizen*

General Jurisdiction- the court looks to see whether the defendants contacts with the forum state are so extensive as to find that the defendant is essential at home in the forum state. If so, the court has general JXD over the D. Here, Doxo is headquartered and all its manufacturing is done in China.



Specific Jurisdiction- if General JXD does not exist, then the court looks to see whether the D particular contacts with the state relate to or give rise to the particular cause of action. If so, the court has specific JXD over the D.

Here, the case of action arises out of the Doxo's negligence.

3) Exercise of JXD would be fair taking into account private and public consideration ?  
to determine whether JXD is fair, public and private

Public: plaintiff interest in chosen forum, states interest in providing redress for citizens that occur in its state and whether the exercise of JXD would be so unfair. Here, the forum does have an interest in providing redress for its citizens.

In conclusion, the court should deny Doxo's motion to dismiss for lack of personal jurisdiction

## 2. Basis to attack Sofia's complaint?

Well pleaded complaint:

To survive a rule 12(b)(6) a well pleaded complaint must the pleading must allege enough facts to give D notice of the cause of action and the facts for which the claim is based under Twabli and iqbl, two part test is applied. 1) court strikes legal allegations 2) court determines whether the facts as alleged would make it plausible to succeed

Here, Sofia's complaint with respect to Doxxo is solely based only on negligence which fails Twabli- Iquibl 2 part test. 1st step, pleading is conclusory legal allegation. complaint states only negligence through manufacturing defect. Sofias claim does not state a specific amount she wants to recover.

*What motions?*

---

Motion to dismiss based on lack of SMJ

Subject matter Jurisdiction

*This is not directed at the complaint.  
Not an issue*

a party can file a motion to dismiss for lack of SMJ at any time. in order to determine whether the order was denied properly it must be determined whether the court in fact has SMJ over the case at issue.

In order for a federal court to have SMJ, it must either have Federal Question JXD or Diversity JXD.

Federal question JXD: exist when the claim arises out of a federal law including constitutional rights, treaties, etc. Here, the claim is based on negligence which is based on state tort law, thus F JXD is not present and there must be Diversity in order to hear the case. Here, the cause of action is based on negligence, which is strictly a state law claim. Thus, Federal question does not exist and diversity jxd must exist in order for case to be heard in federal court.

Diversity: requires complete diversity between the plaintiffs and D and an amount in controversy exceed \$75,000.

complete diversity: each P is a residence of a different state than each D

residency is determined by domicile shown by physical presence in the state and with intent to remain there.

Corp: any state the corp is incorporated or state in which they have principle place of business. amount in controversy must exceed 75,000. this only requires be legally plausible that D can receive those damages based on the injury.

Here, Diversity JXD exists if Sofia is resident of state X and Doxxo is a resident outside of the country, and the amount of controversy is more than \$75,000.

---

### 3. Problems, if any, exist with service of process

The federal rules of Civil Procedure allow for a party member to be served in a number of ways, such as personally serving the summons and complaint on the D, and person may be served by a non-party who is 18 y or older. in order to effect proper service, a D must be given a summons, and two copies of complaint. For a corporation, service can be effected on any of the corporations officers , any high lever managing manager or any person authorized to accept service on behalf of the corp.

Here, because Doxxo is a corp., service can be effected on the corporations officer, high level manager, or any person authorized to accept service of behalf of the corp. Because the person being served is Doxxo's CEO, it can be reasonably expected that he is the corporations officer or person authorized to accept service. Thus, the person served was proper. In regards to how the service was made, it was personally served to him at his vacation home that he visits once a year for two weeks, which is proper because it is expected for him to reside there for two weeks every year. Lastly, the person serving Doxxo is a non-party process server. good

conclusion?

long-arm statute is not consistent w/ due process

70



3)

1. Can P sue D for damages for the fight and vet in same suit?

### Joinder

Joinder allows multiple claims to be brought against the same party in a single suit. A party may join as many claims as they have against an opposing party, including original claims, counterclaims, cross claims, and third party claims. Claims can be joined regardless of whether they are related. Here, P's claims against D for \$70k from the fight and \$15k for the vet costs are distinct and arising from different occurrences. Despite being unrelated, Rule 18 allows P to join these claims in the same suit because they are asserted against the same Defendant, D.

Federal subject matter jurisdiction

*aggregation of claims / supplemental jx*

P can aggregate her claims to meet the amount in controversy requirement for subject matter jurisdiction. Her claims amount to \$85k, which is over the \$75k threshold for the amount in controversy. Additionally, complete diversity is met here because P is a citizen of State A and D is a citizen of State C. As the party invoking federal diversity jurisdiction under diversity, P must be able to show complete diversity of the parties at the time she files her suit. She will be successful in doing so.

### Conclusion

P can sue D for damages from the fight and the vet costs in the same suit under Rule 18. Additionally, the court has subject matter jurisdiction under 28 USC 1332 because she will be able to show the parties have complete diversity and the aggregated amount of her claims exceeds \$75k.

2. D's motion for change of venue

*good but would like to see that "fed. Ct. will take supplemental jx over the vet bill claim..."*

Venue is the geographic district that is the proper place for a particular place to be heard. It is determined when the case is filed and can be waived by the defendant. In federal court, there are three ways to get venue. 1) If any D resides in that district, so long as all Ds reside in the state containing that district; 2) If a substantial part of the events or omissions giving rise to the claim occurred; and 3) If at least one D can be subjected to personal jurisdiction in the district and no other district qualifies under the first and second provisions. Here, D is a citizen of state C, not state A. Venue is not proper in state A because D doesn't reside there. Under prong two, the fight occurred in State B, and the car accident with P's dog also occurred in State B. As a result, State A, where P originally filed the suit, is not proper because State A is not where the substantial part of the events took place. Under prong three, Venue in state A can only be justified if no other district existed within which to file the suit. Venue is proper in State C because it is the location of D's residence. *good rule*

Venue transfer *This sounds like you are confusing venue + transfer*

A federal court may transfer a case to another district where it might have been brought originally. The transfer can be based on convenience of the parties and other interests of justice. Here, P could have filed the suit originally in state C because D resides in State C. Further, because D resides in State C, transferring the case to State C (her home state) reduces her travel and potential litigation burdens. Although P resides in State A, the events giving rise to the claim did not occur in the State A. Therefore, State A's limited connection to the dispute, other than P filing there, lends the court to consider transferring venue to State C. Witnesses to the fight at the game and the drive through accident are more likely located in State B and their travel to State C may be less burdensome than to State A. The interest of justice favors transfer of venue with a stronger connection to the parties and claims. State A's connection is limited to P's residency, while state C is D's home state (domicile) and a proper venue under FRCP 1391.

---

## Conclusion

The court correctly granted D's motion for change of venue to state C.

good, strong  
conclusion

### 3. Lien on D's house

Due process *good!*

*great*  
*note*  
A prejudgment seizure is permitted only in extraordinary situations. Courts must balance the need for provisional relief with the Defendant's right to notice and an opportunity to be heard. There is a three part test to determine whether a deprivation of property or other asset is permissible: 1) The strength of the private interest, 2) The risk of erroneous deprivation; and 3) The strength and interest of the party seeking the prejudgment remedy. Courts may issue liens or other provisional remedies without an immediate hearing if there is a compelling interest in preventing irreparable harm to Plaintiff. Here, the court imposed the lien and scheduled the hearing 30 days out to give D time to challenge it. It ensures timely notice as long as it gives D proper instruction of where and when the hearing will take place. The necessity of the lien is also in question. If P can argue the lien must be imposed so that D does not sell her house and flee the state, the court may deem D a risk and impose the lien. However, if there is little risk that D will sell her home and leave the state to avoid the judgment, D could argue the lien is an overly intrusive deprivation of her rights. Here, the risk of erroneous deprivation is high because D's interest in keeping her house is strong. If the court grants the lien, D may petition for a *wow!* writ of replevin, allowing D (who presumably holds title to her house) to obtain the property back from the court who she could argue wrongfully placed the lien on her home.

## Conclusion

*good conclusion*

The lien on D's house is likely improper unless P can demonstrate its necessity with credible evidence that D may flee otherwise cause harm by liquidating her assets.

---

80

**END OF EXAM**