

Monterey College of Law

HYBRID

Civil Procedure I - Section 2

Midterm Examination

Fall 2024

Prof. M. Christensen

Instructions:

Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

**Hybrid
Civil Procedure I, Sec. 2
Fall 2024,
Prof. M. Christensen**

Exam Question 1

PETE and his family live on a farm in State A. The farm is 40 acres large and has a lot of grass. Keeping the grass cut is a hugely time-consuming job. Six months ago, PETE went to a farm equipment trade show in State B where he bought a new riding lawn mower.

PETE had been looking forward to this tradeshow because he had heard a lot about the new “Speed Racer” riding lawn mower from DIAMOND Tractors, Inc., a new company. All of his farmer friends were talking about it on social media. He had seen ads for it in Gentleman Farmers Quarterly, a popular magazine with subscribers nationwide. But none of the equipment stores in State A were carrying it. PETE was thrilled to discover that representatives from DIAMOND were at the tradeshow and taking orders for the Speed Racer. He ordered one and it arrived at his farm a few weeks later.

Unfortunately, the first time PETE took the Speed Racer out for a spin, the brakes locked and he went careening into a ditch, causing him serious injuries. After consulting with an attorney, PETE sued DIAMOND in a court of general jurisdiction in State A for defective manufacturing and defective design. He also named DELTA, the company that manufactured the brake lines inside the Speed Racer, as a defendant.

DIAMOND is incorporated and headquartered in State C. All of the Speed Racers are manufactured by DIAMOND in State C. DELTA is a Belgian company that makes and sells brake line parts to DIAMOND. DELTA also regularly sells brake lines to Squeaky Inc., a scooter company based in State A, and earns about 10% of its annual revenue from its business dealings with Squeaky. Both defendants were properly served at their headquarters.

DIAMOND and DELTA timely moved to dismiss for lack of personal jurisdiction.

How should the Court rule on:

1. DIAMOND’s motion to dismiss for lack of personal jurisdiction?
2. DELTA’s motion to dismiss for lack of personal jurisdiction?

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Civil Procedure I, Fall 2024, Exam Essay Question 2

PAM is a college student in State X. She had always found her hometown in State Y to be boring, so going to college in State X was an exciting adventure for her. For spring break, she and her friend POPPY decided to meet up at DESTINY RESORTS, a beachy getaway at the southern tip of State X. POPPY and PAM had met each other on social media, and because POPPY lives in France this trip was their first time meeting in real life!

They had a great time until the last night of their trip. After having dinner at the resort's nicest restaurant POPPY felt sick, and PAM decided to take her to the hospital. They called the front desk and asked to use the resort's complimentary shuttle service to get a ride to the emergency room. During the ride, driver DEREK was looking at his phone, ran a red light, and they were hit by another car. POPPY was unhurt, fortunately, but PAM was seriously injured. At the hospital, POPPY had to stay for 3 weeks to recover from a bacterial infection caused by the restaurant food. PAM had to stay for 2 months to recover from her injuries.

DESTINY RESORTS is incorporated in State Z. Their corporate offices are located at their flagship resort in State X. DEREK normally works at a different resort in State Y, but he was on a temporary assignment at the resort in State X when the accident happened.

After consulting with an attorney, PAM and POPPY decided to file suit in U.S. District Court in State X for their injuries. PAM sought \$100,000 in damages against DEREK and DESTINY. POPPY sought \$75,000 in damages against DESTINY.

DESTINY and DEREK moved to dismiss the claims against them for lack of subject matter jurisdiction. How should the Court rule on:

1. DESTINY's motion to dismiss PAM's claim?
2. DEREK's motion to dismiss PAM's claim?
3. DESTINY's motion to dismiss POPPY's claim?

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Exam Essay Question 3

PACO owns and operates an upscale vegan restaurant in the State of Washington. Every month, PACO purchases dairy alternative products from DANDELION FOODS Inc., a wholesale distributor based in San Francisco, California. DANDELION failed to deliver their shipment for November 2022, causing PACO to have to cancel his Thanksgiving Banquet and lose \$80,000.

The purchase order form that PACO regularly submits to DANDELION states in the fine print that by entering into a purchase agreement, customers agree that any dispute will be heard in California. The agreement did not specify what law would govern resolution of disputes.

PACO filed suit in U.S. District Court for the Southern District of California. PACO served DANDELION by sending his friend Steve to the home of the company's President. The President wasn't home, so Steve left the forms with his adult brother who assured him he would give the documents to the President, which he did.

DANDELION timely moved to dismiss for improper service and improper venue.

How should the Court rule on:

1. DANDELION's motion to dismiss for improper service?
2. DANDELION's motion to dismiss for improper venue?

DANDELION also argued that the claim is barred by California's statute of limitations. PACO argued that the agreement did not specify what law would apply to the dispute and that Washington law, which has a much longer statute of limitations, should apply.

3. How should the Court analyze whether PACO's claim is barred by statute of limitations?

MODEL ANSWER OUTLINE Q1 (100 pts total)

- I. PJ over DIAMOND (50 pts)
 - a. No Traditional Bases Apply
 - i. Domicile in State Y
 - ii. No facts for consent.
 - iii. No waiver. Raised PJ defense in initial response.
 - iv. Was properly served outside the forum state, so no physical presence PJ
 - b. Modern In Personam
 - i. General PJ: continuous and systematic contacts so that essentially at home
 - 1. D doesn't sell Speed Racer in forum state, and it's a new company so it likely doesn't sell anything in the forum state. Therefore, no contacts, not continuous or systematic.
 - ii. Specific PJ: claim arises out of or relates to the contacts + purposeful availment + fairness
 - 1. Relatedness: D's contact was that the product ended up in forum state through the stream of commerce.
 - 2. Purposeful availment (PA): deliberate targeting of the forum state
 - a. Promotion in nationwide magazine is not a deliberate targeting
 - b. Tradeshow was in B, not in A. But was the tradeshow inviting farmers from certain states?
 - c. Social media talk does not show PA from D
 - d. ☐ probably no PA. Foreseeability is not enough (WWVW)
 - 3. Fairness: burden on D to litigate where it doesn't do business, State A has an interest in protecting its consumers, but evidence about D's design and manufacturing is in C. On the whole fairness weighs moderately against PJ.
 - c. Likely no PJ over DIAMOND
- II. PJ over DELTA (50 pts)
 - a. No Traditional Bases
 - i. Domicile in Belgium
 - ii. No consent or waiver or physical presence (same as above)
 - b. Modern In Personam
 - i. General PJ:
 - 1. Regularly conducting business and generating 10% of revenue = continuous and systematic ☐ can be sued on A on any claims.
 - 2. General PJ likely applies
 - ii. Specific PJ
 - 1. No relatedness. Contacts with A are about Squeaky, not Diamond.
 - 2. Purposeful Availment: D does PA, but no relatedness.
 - 3. Fairness: D burden low b/c does regular business in A, and State A has a strong interest in protecting its residents from dangerous products. But evidence about design and manufacturing is outside of A.
 - 4. Because no relatedness, specific PJ is likely not available
 - c. Yes general PJ over DELTA

MODEL ANSWER OUTLINE Q2 (100 pts total)

- I. PAM v. DESTINY (33 pts)
 - a. No Fed Q (for all claims)
 - b. Diversity
 - i. Yes diversity of citizenship
 - 1. PAM = Y (probably did not change her domicile yet, unclear where she will go after finishing her college studies)
 - 2. DESTINY = Z and X
 - ii. Yes AIC
 - 1. 100k is >75k
 - c. CONCLUSION: YES original SMJ. MTD denied.
- II. PAM v. DEREK (33 pts)
 - a. No Fed Q (for all claims)
 - b. Diversity
 - i. No diversity of citizenship
 - 1. PAM = Y
 - 2. DEREK = Y
 - ii. Yes AIC
 - 1. 100k
 - c. CONCLUSION: No original SMJ
 - d. Supplemental jurisdiction:
 - i. Yes same case or controversy, same accident
 - ii. Not available if it would destroy diversity
 - e. CONCLUSION: No original SMJ or supplemental jurisdiction. MTD granted. This claim would likely be severed.
- III. POPPY v. DESTINY (33 pts)
 - a. No Fed Q (for all claims)
 - b. Diversity
 - i. Yes diversity of citizenship
 - 1. POPPY = France
 - 2. DESTINY = Z and X
 - ii. AIC is not enough. Must be over 75k
 - c. Supplemental jurisdiction:
 - i. The car food poisoning is not the same case or controversy as the car accident in PAM's claims
 - d. CONCLUSION: No original or supplemental SMJ

Q3 - MODEL ANSWER OUTLINE (100 pts total)

1. MTD for Insufficient Service (40 pts)
 - a. Service must be constitutional under Mullane and compliant with FRCP 4
 - b. FRCP 4(h): when suing a corporation, can't leave service with someone of suitable age and discretion, must serve on an officer or designated agent
 - c. Service not proper

2. MTD for Improper Venue (40 pts)
 - A. 28 USC 1391(b)(1): Venue is proper where any D resides if all Ds reside in same state
 - a. Here D does not reside in the Southern District. D resides in the Northern District
 - B. (b)(2): Venue is proper where cause of action arose
 - a. Events giving rise to the complaint did not happen in the southern district, more likely in the northern district.
 - C. Venue is not proper in Southern District of CA
 - D. Court would likely dismiss, or potentially transfer if in the interests of justice to NDCA

3. MTD for SOL (20 pts)
 - a. Federal courts apply federal procedural law and state substantive law, and SOL is considered substantive law (York case)
 - b. Federal court must look to the contract first, and if the contract is silent on applicable law, then look to California choice of law rules.

1)

80/100

Good arg + grasp of most rules,
focused on relatedness.

1. Diamond's MTD

Personal Jurisdiction

Personal jurisdiction is required for a forum state to exercise a judgement over a person or a thing. A forum state is the state in which the cause of action is being brought. In order for the forum state to have PJ it must not violate the due process established by the 14th Amendment.

Traditional Bases

A forum state has PJ over a individual in certain situations that do not violate an individual's due process. These traditional bases for PJ are if the individual is domiciled within the forum state, the individual has consented to PJ by the forum state, the individual was served while physically present in the forum state, or waived their right to object to PJ by the forum state.

Here, Diamond is a corporation, not an individual. A corporation's domicile is determined by where they are incorporated and/or where they have their headquarters or the "nerve center" of their operations such that the decision makers operating out of the headquarters. Diamond is incorporated and headquartered in State C so they are domiciled in State C. Pete is bringing the action in State A not State C so state A does not have PJ over Diamond due to domicile.

Diamond was served at their headquarters, State C, not while they were physically present in State A, therefore PJ by presence does not apply. There is nothing to indicate that Diamond consented to PJ by State A. And Diamond timely filed for a dismissal for lack of PJ, thereby NOT waiving their right to be subject to PJ by State A.

State A does not have PJ over Diamond due to traditional bases. ✓

In Personam Jurisdiction

In personam jurisdiction was established by the court in it's decision in *International Shoe*.

In *International Shoe* the court established that a forum state can exercise PJ over an out-of-state defendant, if they had minimum contacts with the forum state and exercising PJ over the defendant did not offend the notions of substantial justice or fair play.

Long Arm Statute

In order for a forum state to exercise PJ over an out-of-state defendant, they must have a long arm statute in place that specifically states that the forum state can exercise PJ over out-of-state defendants. Here, there is no indication that State A has an established long arm statute, however it will be assumed that there is a long arm statute in place.

General Jurisdiction

In order for a court to have PJ over a defendant under general jurisdiction the defendant's contacts with the forum state must be so frequent and continuous that the defendant is essentially "at home" in the forum state. If the forum state has GJ over a defendant, it could be for all claims brought in the forum state, not necessarily just claims that were related to their contact with the forum state. *good*

Here, Diamond is domiciled in State C. They are incorporated in State C and are headquartered in state C. Further all of the speed racers that Diamond manufactured were manufactured in State C. Diamond had no interaction with State A, with the exception of having one delivered to Pete on his family farm in State A. In fact, Pete purchased the Diamond Speed Racer from a trade show in State B.

good
Because Diamond's contacts are not frequent or continuous, State A does not have general jurisdiction over Diamond.

Specific Jurisdiction

A forum state can exercise PJ over a defendant, if the defendant's contacts were infrequent if the defendant had minimum contacts with the forum state and the claim arises from those contacts. The defendant would have to have purposefully availed themselves to the forum state and the court would have to determine that it was fair for the forum state to exercise PJ over the defendant.

Purposeful Availment

"deliberately targeting"
Purposeful availment will be found if the defendant committed specific acts within or to the forum state. This can be things such as targeted products or ads. Pete had seen about the Speed racer lawn mower in an ad in Gentleman Farmers Quarterly. This ad was in a popular magazine that had nationwide subscriptions. This ad would not rise to being considered purposeful availment because merely advertising across the country is not specifically targeting State A, the forum state. Also, while

Diamond sent representatives to a tradeshow to take orders for the Speed Racer, the tradeshow was in State B, not State A. In fact, Pete was not able to find any equipment stores in State A that were carrying the product.

Because Diamond did not target sales or actions specifically to State A, they did not purposefully avail themselves to the forum state.

Great!

Fairness

Alongside purposeful availment, the court will also determine whether exercising PJ over a defendant is fair. The court will consider things such as the burden on the defendant, the interest of the forum state, and the interest of the plaintiff.

Here it would be difficult for Diamond to defend themselves within State A because they have no presence in State A. They do not have staff there that could easily appear as witnesses, and their products are not within State A.

It is likely that State A exercising PJ over Diamond would be unfair.

Conclusion

Because State A does not have a traditional basis for PJ and cannot meet the requirements for general jurisdiction or specific jurisdiction over Diamond, State A cannot exercise PJ over Diamond and their motion to dismiss for lack of personal jurisdiction should be granted. ✓

2. Delta's MTD

Personal Jurisdiction

Personal jurisdiction is required for a forum state to exercise a judgement over a person or a thing. A forum state is the state in which the cause of action is being brought. In order for the forum state to have PJ it must not violate the due process established by the 14th Amendment.

Traditional Bases

A forum state has PJ over a individual in certain situations that do not violate an individual's due process. These traditional bases for PJ are if the individual is domiciled within the forum state, the individual has consented to PJ by the forum state, the individual was served while physically present in

the forum state, or waived their right to object to PJ by the forum state.

Here, Delta is a corporation, not an individual. A corporation's domicile is determined by where they are incorporated and/or where they have their headquarters or the "nerve center" of their operations such that the decision makers operating out of the headquarters. Delta is a Belgian company and they make and sell brake line parts to Diamond as well as Squeaky Inc., that is based in State A. Making and selling parts into a State is not enough to be considered it's "nerve center" as it is not part of their manufacturing operations and all of their decision makers are headquartered in Belgium. Because Delta is incorporated and headquartered in Belgium, they are not domiciled in State A.

Delta was served at their headquarters in Belgium, not while they were physically present in State A, therefore PJ by presence does not apply. There is nothing to indicate that Delta consented to PJ by State A. And Delta timely filed for a dismissal for lack of PJ, thereby NOT waiving their right to be subject to PJ by State A.

State A does not have PJ over Delta due to traditional bases.

In Personam Jurisdiction

In personam jurisdiction was established by the court in its decision in *International Shoe*.

In *International Shoe* the court established that a forum state can exercise PJ over an out-of-state defendant, if they had minimum contacts with the forum state and exercising PJ over the defendant did not offend the notions of substantial justice or fair play.

Long Arm Statute

In order for a forum state to exercise PJ over an out-of-state defendant, they must have a long arm statute in place that specifically states that the forum state can exercise PJ over out-of-state defendants. Here, there is no indication that State A has an established long arm statute, however it will be assumed that there is a long arm statute in place.

General Jurisdiction

In order for a court to have PJ over a defendant under general jurisdiction the defendant's contacts with the forum state must be so frequent and continuous that the defendant is essentially "at home" in the forum state. If the forum state has GJ over a defendant, it could be for all claims brought in the forum state, not necessarily just claims that were related to their contact with the forum state.

Here, Delta is domiciled in Belgium. They regularly sell break line parts to Diamond that is incorporated and headquartered in State C. Selling break line parts to Diamond in State C does not allow State A general jurisdiction as it would only show potentially frequent contacts with State C, not State A, the forum state. *good*

Delta does however ^{*regularly*} sell break lines to Squeaky Inc., that is based in State A. Delta earns about 10% of its annual revenue from its business dealings with Squeaky. The court will consider the amount of revenue that is earned by Delta in determining whether it would be considered continuous. While 10% can be a considerable amount of revenue for a company, it does not necessarily indicate that their contacts within State A would be so frequent and continuous that they would essentially be "at home" in State A. *but facts say regularly sells - probably enough for general*

Because Delta would not be considered "at home" in State A, State A does not have general jurisdiction over Delta.

Specific Jurisdiction

A forum state can exercise PJ over a defendant, if the defendant's contacts were infrequent if the defendant had minimum contacts with the forum state and the claim arises from those contacts. The defendant would have to have purposefully availed themselves to the forum state and the court would have to determine that it was fair for the forum state to exercise PJ over the defendant.

Purposeful Availment

Purposeful availment will be found if the defendant committed specific acts within or to the forum state. This can be things such as targeted products or ads. Delta regularly sells break lines to a company based in State A. While 10% of Delta's revenue is not likely to be viewed as continuous or frequent such that they would be at home in the State where Squeaky, Inc. was located, it can be inferred that Delta must have purposefully availed themselves to State A to have such a lucrative contract with Squeaky.

Because Delta likely targeted sales or actions specifically to State A, they purposefully availed themselves to the forum state. *But this is not altered*

Fairness

Alongside purposeful availment, the court will also determine whether exercising PJ over a defendant is

fair. The court will consider things such as the burden on the defendant, the interest of the forum state, and the interest of the plaintiff.

Here Delta is located in Belgium and it may be difficult for them to defend a cause of action in the US as it is a different country. However, they sell to at least two American companies so they are likely to have some infrastructure or knowledge of the laws in the US. While they may not be familiar with the laws of State A, they likely have more resources than Pete and his family have to defend the claim against them. State A is also likely highly interested in protecting their citizens from injuries that are suffered by poorly manufactured brake lines. Because the fairness factors likely weigh heavily on extending PJ to Delta, the court will likely determine that it would not be considered unfair.

Relatedness

If the forum state can exercise PJ over a defendant through specific jurisdiction, it can exercise PJ over claims that arise out of the contacts with that state. Here the speed racer that Pete bought was a Diamond scooter, not a Squeaky scooter, so the court may find that the claim is not arising out of Delta's contacts within State A. However, because it is still the brake lines that were manufactured and sold across the country, the court may consider it closely related enough to extend PJ.

Conclusion

Although State A does not have a traditional basis for PJ and cannot meet the requirements for general jurisdiction, Delta purposefully availed themselves to State A and it is fair for State A to extend PJ over Delta so State A can exercise PJ over Delta for claims arising out of their contacts with state A. The court should deny Delta's motion to dismiss for lack of personal jurisdiction.

NO PA.

Prosserly general PJ over Delta
+ no specific

2)

20/100

- excellent grasping all the issues + having IRACS for all!

1. Destiny MTD Pam's Claim

Subject Matter Jurisdiction

State courts are courts of general jurisdiction, meaning they can hear all types of claims. However Federal courts are courts of limited jurisdiction and they are limited to hearing claims that arise out of a federal statute or claims with diverse plaintiffs and defendants. ✓

Federal Question

Federal courts can hear claims that arise out of a federal statute and are considered to be a federal question claim.

Here, Pam is suing Destiny because she was injured during a shuttle ride she received by Destiny Resort's shuttle and driver, Derek. She will likely claim negligence by Derek, Destiny's employee. This is a tort cause of action and does not arise from a federal statute, therefore the US District Court will not have subject matter jurisdiction due to a federal question. ✓

Diversity

Federal courts can hear claims where there is a diversity of location between the defendant(s) and the plaintiff(s). In order for the claim to be considered diverse there must be complete diversity and an amount in controversy that is over \$75k before interest and costs.

Complete Diversity

Complete diversity is where there are no defendants or plaintiffs that are domiciled within the same state.

Here, Pam is a college student in State X, but her hometown is State Y. An individual is considered domiciled, or a citizen, of the state in which they have their permanent residence or where they intend to return to. Although Pam finds her hometown of State Y boring, she views being in State X as an exciting adventure, not a home base. Also, she is a college student, and will likely not have the resources to permanently stay in State X immediately after graduation. Therefore, although Pam is a college student in State X, she is likely returning to her hometown of State Y after graduation, she

excellent analysis well explained
+ great use of facts from the hypo
details

would be a citizen of State Y.

A corporation is considered domiciled, or a citizen, of the states in which they are incorporated and states in which they are headquartered. Here, Destiny Resort is incorporated in State Z. Further, they have a resort location within State X and are headquartered within State X. Therefore Destiny is a citizen of State Z and State X.

Because Pam is a citizen of State Y and Destiny is a citizen of States Z and X, there is complete diversity between Pam, the plaintiff and Destiny, the defendant. *Good*

Amount in Controversy

The defendant must have a good faith claim of over \$75k before interest and costs to meet the amount in controversy threshold for a federal diversity claim.

yes Here Pam was seriously injured when she was in the Destiny shuttle being driven by their employee, Derek. She had to stay for two months to recover from her injuries. She is seeking \$100k in damages against Derek and Destiny. Although she is seeking damages against two defendants, they are likely to be jointly and severably liable for the \$100k, so the amount would not be split. \$100k is reasonable for a two month stay in a hospital, so it is likely a good faith claim, and is well over the \$75k amount in controversy threshold required for a federal diversity claim.

Conclusion

Because Destiny and Pam are citizens of two different states and the amount in controversy is over \$75k before interest and costs, the US District Court has diversity subject matter diversity of Pam's claim against Destiny and the motion to dismiss should be denied. *Good*

2. Derek's MTD Pam's Claim

Subject Matter Jurisdiction

State courts are courts of general jurisdiction, meaning they can hear all types of claims. However Federal courts are courts of limited jurisdiction and they are limited to hearing claims that arise out of a federal statute or claims with diverse plaintiffs and defendants.

Federal Question

Federal courts can hear claims that arise out of a federal statute and are considered to be a federal question claim.

Here, Pam is suing Derek because she was injured during a Destiny Resort's shuttle ride she received where Derek was the driver. She will likely claim negligence by Derek, Destiny's employee. This is a tort cause of action and does not arise from a federal statute, therefore the US District Court will not have subject matter jurisdiction due to a federal question.

Diversity

Federal courts can hear claims where there is a diversity of location between the defendant(s) and the plaintiff(s). In order for the claim to be considered diverse there must be complete diversity and an amount in controversy that is over \$75k before interest and costs.

Complete Diversity

Complete diversity is where there are no defendants or plaintiffs that are domiciled within the same state.

Here, Pam is a college student in State X, but her hometown is State Y. An individual is considered domiciled, or a citizen, of the state in which they have their permanent residence or where they intend to return to. Although Pam finds her hometown of State Y boring, she views being in State X as an exciting adventure, not a home base. Also, she is a college student, and will likely not have the resources to permanently stay in State X immediately after graduation. Therefore, although Pam is a college student in State X, she is likely returning to her hometown of State Y after graduation, she would be a citizen of State Y.

Very Good
Derek was driving for Destiny Resort's at the time of the accident at their State X location, however he normally works at a different resort in State Y and was only covering on a temporary assignment in State X. Therefore it can be inferred that after his temporary assignment he intended to return to his normal place of employment in State Y. It is also likely that he lives closer to his employer in State Y and not by the temporary assignment in State X, therefore Derek would be a citizen of State Y.

Because Pam is a citizen of State Y and Derek is a citizen of State Y, there is not complete diversity between Pam, the plaintiff and Derek, the defendant.

Amount in Controversy

The defendant must have a good faith claim of over \$75k before interest and costs to meet the amount in controversy threshold for a federal diversity claim.

Here Pam was seriously injured when she was in the Destiny shuttle being driven by their employee, Derek. She had to stay for two months to recover from her injuries. She is seeking \$100k in damages against Derek and Destiny. Although she is seeking damages against two defendants, they are likely to be jointly and severably liable for the \$100k, so the amount would not be split. \$100k is reasonable for a two month stay in a hospital, so it is likely a good faith claim, and is well over the \$75k amount in controversy threshold required for a federal diversity claim.

Supplemental Jurisdiction

Supplemental jurisdiction can be found if a claim that shares a common nucleus of operative fact with a claim that meets the requirements of subject matter diversity, the cause of action can be brought in a federal court. This is only if it does not destroy the complete diversity of the claim.

Excellent Here, although the claim is against both Derek and Destiny and it is from the exact same accident, allowing Derek's claim to be added as a supplemental claim would destroy the complete diversity so supplemental jurisdiction cannot be applied.

Conclusion

Because Derek and Pam are citizens of the same state there is not complete diversity and the US District Court does not have diversity subject matter diversity of Pam's claim against Destiny and the motion to dismiss should be granted.

3. Destiny's MTD Poppy's claim

Subject Matter Jurisdiction

State courts are courts of general jurisdiction, meaning they can hear all types of claims. However Federal courts are courts of limited jurisdiction and they are limited to hearing claims that arise out of a federal statute or claims with diverse plaintiffs and defendants.

Federal Question

Federal courts can hear claims that arise out of a federal statute and are considered to be a federal question claim.

Here, Poppy is suing Destiny because she became sick after having dinner at the resort's restaurant. She was ill enough that her friend Pam decided to get her to the hospital. Pam and Poppy were in an accident on the way to the hospital, however Poppy was not injured in the accident. She did however have to stay in the hospital for three weeks to recover from a bacterial infection caused by the food eaten at Destiny's restaurant. She will likely claim negligence by Destiny. This is a tort cause of action and does not arise from a federal statute, therefore the US District Court will not have subject matter jurisdiction due to a federal question. ✓

Diversity

Federal courts can hear claims where there is a diversity of location between the defendant(s) and the plaintiff(s). In order for the claim to be considered diverse there must be complete diversity and an amount in controversy that is over \$75k before interest and costs.

Complete Diversity

Complete diversity is where there are no defendants or plaintiffs that are domiciled within the same state.

Here, Poppy is a citizen of France. She was merely visiting her friend Poppy at Destiny Resort for a fun getaway. An individual is considered domiciled, or a citizen, of the state in which they have their permanent residence or where they intend to return to. If Poppy was also a student in State X, she would be considered a citizen of State X for determining diversity. However, she was merely a visitor, so she will be considered a citizen of France. ✓

A corporation is considered domiciled, or a citizen, of the states in which they are incorporated and states in which they are headquartered. Here, Destiny Resort is incorporated in State Z. Further, they have a resort location within State X and are headquartered within State X. Therefore Destiny is a citizen of State Z and State X.

Because Polly is a citizen of France and Destiny is a citizen of States Z and X, there is complete diversity between Polly, the plaintiff and Destiny, the defendant. ✓

Amount in Controversy

The defendant must have a good faith claim of over \$75k before interest and costs to meet the amount in controversy threshold for a federal diversity claim.

Here Poppy is seeking \$75k in damages. Although it is a good faith amount for three weeks in a hospital, it is not greater than \$75k that is required for a federal diversity claim.

Aggregation

Poppy will argue that her claim should be aggregated with Pam's claim as they were in the same accident. However, Poppy's damages were from eating bad food and Pam's damages were from the accident on the way to the hospital. They were not both caused by the accident. Further, the damages each received are personal damages and should be separated. *Good catch*

Supplemental Jurisdiction

Supplemental jurisdiction can be found if a claim that shares a common nucleus of operative fact with a claim that meets the requirements of subject matter diversity, the cause of action can be brought in a federal court. This is only if it does not destroy the complete diversity of the claim.

Here, Poppy was unhurt by the accident, but instead spent time in the hospital recovering from a bacterial infection. Pam was injured in the accident. Therefore their claims do not share a common nucleus of operative fact and Poppy cannot bring her claim in under Supplemental Jurisdiction.

Conclusion

Although Destiny and Polly are citizens of two different states, the amount in controversy is not over \$75k before interest and costs, the US District Court does not have diversity subject matter diversity of Polly's claim against Destiny and the motion to dismiss should be granted. *Well done!*

Student ID

Civil Procedure Final Question #3

How should the court rule on:

80/100

1. DANDELION's motion to dismiss for improper service?

The issue is whether the court will grant or deny DANDELION's motion to dismiss PACO's claim due improper service.

Service of process a defendant must be properly notified of a pending action by a reasonable method. I must be given an opportunity to be heard. Service of process means to provide a defendant with a notice of a pending action by delivery to a defendant of a summons (formal court notice of suit and time for a response) and a copy of the complaint.

Service must comply with FRCP rule 4: individuals: personal service is always adequate and occurs when the notice is directly delivered to the defendant by someone 18 and older, who is not involved in the suit substituted service: service the process can be left at a defendant, usual dwelling, and served upon someone of suitable age (18 and older) and discretion whoever's resides there: or serve two defendants, authorize agent: or served by methods permitted by state law. Service by registered mail is permitted if the defendant waives formal service. Deadline for waiver of formal service is 30 days. If defendant chooses not to waive service, they may be subject to pro process of service fees incurred by plaintiff. Corporations must be served on an officer, managing agent or an agent authorized to accept service. Service must occur within 90 days of filing the complaint less extended for good cause.

good — Here, PACO was correct in sending someone 18 or older, unrelated to the claim, to issue service of process (his friend Steve). Unfortunately, it appears PACO followed FRCP rule 4 for individuals, rather than corporations. He completed personal service to the defendant's home by delivering the papers to someone suitable, 18 and older. But for corporations, service of process must occur on an officer, managing agent or an agent authorized to accept service. Although Steve issued the forms to DANDELION's president's brother, who then promptly issued them to the president, this did not meet the requirements for proper service of process for a corporation. Therefore, service of process was improper.

In conclusion, DANDELION's motion to dismiss PACO's claim for improper service should be granted.

- good memory!
2. DANDELION's motion to dismiss for improper venue?

Venue is governed by 28 U.S.C. §1391(b) is which geographic district is the proper place for a particular case to be heard. There must still be jurisdiction over the subject matter of the claim (PJ and SMJ over the parties.) Venue is selected by one of the three: where any defendant resides, if all defendants reside in the same state, where a substantial part of the events or emissions, giving rise to the claim occurred, accident occurred or contract entered into, or where the landing disputes located. If no other venue is proper, any district where the defendant is subject to PJ. Forum non-conveniens is one avenue is denied because a more appropriate form exist elsewhere, particularly in international cases.

Here, the purchase order form contains a forum selection clause required disputes to be heard in California. While the forum selection clause does not mention a specific court, courts generally enforce such clauses if they are reasonable, and not contrary to public policy. DANDELION is based in San Francisco, which is in the northern District of California. Since PACO filed suit in the southern District of California venue does not comply with the forum selection clause.

This isn't the reason venue is improper. Why/how does the test from 1371(6)(i) fail for District of Southern CA?

DANDELION also argued that the claim is barred by California's statute of limitations. PACO argued that the agreement did not specify what law would apply to the dispute and that Washington law, which has a much longer statute of limitations, should apply.

3. How should the Court analyze whether PACO's claim is barred by statute of limitations?

The court must determine which state statute limitation apply. California's or Washington's. This involves a choice of law analysis under California law because the forum selection clause places the case in California. According to the contractual choice of law, the agreement does not specify the governing law, so the court must determine the applicable law. The significant relationship test since California applies the governmental interest test resolved choice of law issues. This involves three steps first, to identify whether the laws of the two states, California and Washington materially differ. Second, determine each state interest in applying its law to the dispute third, if both states have an interest supply, the law of the state, who's interest would be more impaired if it's law we're not applied. California has a shorter statute of limitations favoring, finality, and disputes involving local businesses like Dan and Diane DANDELION Washington has a longer statute of limitations, reflecting a policy protecting businesses operating within its borders, like PACO's restaurant the courts likely to find a California has a stronger interest because the defendant is a California based business, and the agreement is performed, largely in California as DANDELION ship the products from California.

Additionally, forum selection clauses often suggest an implied choice of law favoring the forum states laws. Therefore, the court is likely to apply California statute limitations. If the claim is time barred under California's law, Paco claim will be dismissed in conclusion, the court should grant the motion to dismiss for improper service, but PACO will likely be given the opportunity to reserve properly. The court should grant the motion to dismiss for improper venue, as the proper venue is in the northern District of California. The court should analyze the statute of limitations using California choice of law rules, and as light used to apply California's shorter statute limitations, potentially barring PACO's claim.

*Wow very thoughtful choice of law discussion!
Should also explain Erie (fed. cts. ^{indeterminacy} apply state substantive law) + York (SOL a substantive).*