

CIVIL PROCEDURE

Midterm Examination

Fall 2023

Prof. L. Peake

Instructions:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

Question #1

Facts:

Assume that "Class One Mushrooms" are illegal under U.S. Federal law and under state laws of Kansas, Idaho and Nebraska; and that "Bug Death" pesticide is illegal under Federal regulations.

Mercedes, a Nebraska domicile, is the president of a Kansas corporation called "Mercedes Magic Mushies" ("MM") which grows Class One mushrooms in Kansas using Bug Death that is made by Samuel (an Idaho domicile) in his garage, which Samuel ships to MM in Kansas, where MM does all its business. MM has a website that advertises throughout the USA.

MM shipped some of its Bug Death grown mushies to Lidia, also a Nebraska domicile (and, in fact, Mercedes' roommate), who does business as a sole proprietor as "Lit by Lidia" selling various products over the Internet, including MM's mushrooms, to Idaho. Alondra, an Idaho domicile, purchased mushies from Lidia which Lit by Lidia shipped from Nebraska to Idaho.

Elvira, a California domicile, while visiting Alondra in Idaho, found and took some of Alondra's MM mushies and became ill. Following a week's hospital stay (incurring medical expenses of over \$80,000), Elvira is now staying in Idaho indefinitely until she is well enough to return to California.

Elvira hired David, an Idaho attorney working for his lawyer uncle, to file suit in Idaho District Federal court against Lidia and MM, Inc., asserting both Idaho state law negligence and product liability claims (including based upon violation of Federal pesticide standards), and a Federal law Racketeering and Corrupt Organizations Act (RICO) claim. Idaho state law includes an unlimited long arm statute allowing suit against out of state defendants consistent with due process.

James, an attorney working with David, has served David's complaint against MM, Inc. by publication in the Kansas Daily News; and has personally served Lidia by driving to Nebraska and serving Lidia by leaving the summons and complaint with Lidia's roommate, Mercedes.

IF both MM, Inc. and Lidia make timely motions to dismiss the Federal suit for lack of personal jurisdiction and failure of service of process, how should the Federal Court rule as to each defendant?

KCCL
Civil Procedure
Midterm Examination
Fall 2023
Prof. L. Peake

Question #2

Facts:

Assume all the facts contained in Question #1 along with the following:

Assume that neither Lidia nor MM, Inc. have filed motions to object to personal jurisdiction or service of process, each electing instead to file an FRCP 12(b)(1) motion for lack of subject matter jurisdiction as to Plaintiff Elvira's Idaho Federal Court complaint for violation of Idaho state law claims for negligence and products liability (based upon violation of Federal pesticide standards in use of Bug Death) and Federal law claim for RICO violation by named defendants MM, Inc. and Lidia.

How should the Federal Court rule on such motions?

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Question #3

Facts:

Assume all the facts contained in Questions #1 and #2 along with the following: Assume that the Federal Court denied both defendants' motions for lack of subject matter jurisdiction, and that both defendants have impleaded Samuel, the Idaho domicile, for indemnification as to his manufacturing and supplying of Bug Death contained in MM, Inc.'s mushies; and have also impleaded Alondra (also an Idaho domicile) for indemnification for Alondra supplying (or negligently possessing and allowing access to) MM's mushrooms to Elvira.

Forty days before the trial date, both have defendants filed a motion for change of venue from Idaho Federal District Court to Nebraska District Court. Elvira, Alondra and Samuel have all opposed such motions.

How should the Idaho Federal Court rule on defendants' motions for change of venue?

KCCL 2023 Civ Pro Midterm Question #1 Answer Outline

Issue: Whether the Federal Court has personal jurisdiction over MM, Inc.

Rule: A Federal Court has personal jurisdiction ("PJ") over a defendant if either general or special PJ exists. General jurisdiction exists if either defendant's domicile, consent or service of process ("SOP") (not based upon trickery or fraud perpetrated by the plaintiff) in the forum state are present. Specific PJ exists if a long arm statute ("LAS") that is consistent with due process has been adopted by the forum state with the defendant having minimum contacts from an act or acts of purposeful availment which have given rise to the subject suit unless otherwise unfair to a foreign defendant to be haled to the forum state to defend the suit. (Burnham v Sup. Ct.; Tickle v Barton; Int'l Shoe v. Washington; Hanson v Denckla; World-Wide Volkswagen v Woodson; Asahi Metal v Sup. Ct.). SOP in Federal Court must comply with Federal Rule of Civil Procedure 4.

Analysis: MM, Inc. ("MM") is stated to be incorporated in Kansas, and that it conducts its business of growing mushrooms (illegally) in Kansas. SOP on MM was made by publication in a Kansas newspaper.

Thus, general jurisdiction imposition of PJ on MM does not appear to lie, as neither domicile, consent or SOP in the forum state are present as to MM.

Specific jurisdiction would potentially appear to be present where, as here, a LAS has been adopted by the forum state (Idaho) that is consistent with due process.

However, special jurisdiction also requires minimum contacts of MM with the forum state (Idaho) from MM's purposeful availment with Idaho. Here, MM has shipped its product (mushrooms) from Kansas to Nebraska (to Lidia dba Lit by Lidia), and not to the forum state of Idaho. Further, MM's website advertising is not directed to Idaho, but to all states. (See Asahi Metal).

Thus, it would not appear that either general or specific jurisdiction would allow the forum state of Idaho to assert PJ over MM, Inc.

On the other hand, it would be anticipated that Plaintiff Elvira would argue that the president of MM is a domicile of Nebraska, and roommate of Lidia dba Lit by Lidia, and that it would thus be foreseeable by MM (through its president's association with Lidia) to know that MM's Kansas product would be shipped to

Idaho.

However, foreseeability that a product (here, mushrooms) would be shipped (illegally) to the forum state (Idaho) is not by itself sufficient to obtain due process compliance with imposition by Idaho of PJ over MM. (J. McIntyre Machinery v Nicastro; Asahi Metal v Sup. Ct.).

Service of process on MM:

In addition, Federal Court's rule on SOP is governed by FRCP 4. A corporation (here, MM) may be served with summons and complaint by personal service on an officer, managing or general agent or other authorized agent for the corporation with mailing of a copy to the corporation.

Here, service as attempted by attorney James was by publication in a Kansas newspaper. Such service is not compliant with FRCP 4, and arguably not compliant with due process requirement of notice to MM. Actual notice of the existence of the suit (by the substituted service by Elvira's attorney on codefendant Lidia through service on Mercedes, president of MM) does not satisfy the requirements of FRCP 4 or due process.

Conclusion: The Idaho Federal Court does not properly have PJ over MM where, as here, there was no purposeful availment of MM with the forum state of Idaho, nor was there compliance with FRCP 4.

Issue: Whether the Idaho Federal Court has PJ over defendant Lidia

Rule: See above.

Analysis: There does not appear to be a traditional method for imposition of PJ over Lidia where, as here, Lidia is a domicile of Nebraska; did not consent to PJ in Idaho; and SOP was not obtained over Lidia in Idaho.

As to specific jurisdiction, Idaho has an applicable LAS that is due process compliant. Lidia is stated to have shipped MM's mushrooms directly to Alondra in Idaho, thus engaging in purposeful availment of Idaho's laws and benefits of doing business in Idaho (albeit illegally where, as here, the product mushrooms are illegal for possession by Alondra in Idaho).

There being minimum contacts from purposeful availment by Lidia with Idaho; and where, as here, it would not appear unfair for Idaho to otherwise assert PJ over Lidia, particularly over a claim arising from a violation of Idaho law, it would appear that the Idaho Federal Court may properly hale Lidia from Nebraska to Idaho to answer to suit.

Service of process on Lidia:

However, imposition of PJ here requires compliance with FRCP 4 SOP rules. In this instance, SOP was attempted by James of the lawsuit prepared by David upon Lidia by substituted service of suit upon Lidia's roommate, Elvira.

One means of service which FRCP 4 allows is service by leaving a copy of the summons and complaint with a person of suitable age and discretion.

Here, summons and complaint were left by Elvira's attorney, James, personally with Mercedes. While Mercedes, the president of MM, would appear to be a person of suitable age and discretion, service cannot be made by a party to the lawsuit. James, as Elvira's attorney, is considered to be a "party to the suit" as though Elvira herself was serving the summons and complaint.

Conclusion: The Idaho Federal Court cannot properly assert PJ over Lidia despite Specific Jurisdiction being present where, as here, there has not been compliance with FRCP 4 as to Lidia.

KCCL 2023 Civ Pro Midterm Question #2 Answer Outline

Issue: Whether the Idaho Federal Court has subject matter jurisdiction over MM

Rule: A Federal Court has subject matter jurisdiction over suits that fairly allege a violation of a Federal law or where diversity jurisdiction exists. Diversity jurisdiction requires complete diversity between plaintiff and all defendants and over \$75,000 in damages.

Analysis: MM, Inc. ("MM") has been sued for violation of RICO, a Federal statute, and for Idaho state law violations for negligence based upon violation of Federal regulations regarding use of Bug Death on MM's product (mushrooms) and product liability.

Here, subject matter jurisdiction ("SMJ") would lie based upon assertion by plaintiff Elvira of a violation by MM of a Federal law: i.e., RICO.

As to possible assertion a a further Federal law violation by MM for failure of compliance with Federal regulations as to use of Bug Death, it would not appear that the substantive claim asserts a Federal claim where, as here, the Federal regulations regarding insecticides constitute a potential state substantive law violation: e.g., negligence. See *Gunn v Minton*; 28 USC 1331.

Assuming, arguendo, that Federal question SMJ did not lie, then diversity SMJ would appear to lie as to MM where, as here, plaintiff Elvira is either a California domicile (the facts appearing to suggest that, after she recovers in Idaho from her illness caused by MM's product that her ultimate residence is in California) or, now, an Idaho domicile (the facts suggesting that plaintiff Elvira intends to remain in Idaho "indefinitely" - until she recovers).

In either scenario, Elvira has complete diversity as to MM, a Kansas corporation which is state to do "all of its business" in Kansas. See *Hertz Corp v Friend*.

In addition, the facts state that the minimum amount in controversy required for assumption of SMJ in Federal court of over \$75,000 appears to be met where, as here, plaintiff's medical bills are stated to be over \$80,000. See, 28 USC 1332.

It would also be noted that plaintiff Elvira has not named Samuel, the manufacturer of Bug Death, as a direct defendant: rather, he has been impleaded as

a third party defendant. FRCP 14. The impleading of a third party defendant with the same domicile of plaintiff (where, as here, Samuel is a domicile of Idaho) does not defeat diversity SMJ.

Conclusion: The Federal court has Federal question SMJ over plaintiff Elvira's suit against MM; and MM, a Kansas corporation conducting its business in Kansas, yields diversity SMJ (with over \$80,000 amount in controversy asserted by plaintiff) if defendant Lidia's domicile is also diverse from plaintiff's domicile.

Issue: Whether the Idaho Federal court has SMJ over plaintiff's suit against Lidia

Rule: See above.

Analysis: Lidia is subject to SMJ as to plaintiff Elvira's suit based upon assertion by plaintiff of a Federal statute violation (RICO).

SMJ would not appear to lie as to claimed violation of Federal pesticide regulations so as to yield a potential state law negligence claim in favor of plaintiff, however.

SMJ would also appear to lie as to Lidia based upon diversity jurisdiction where, as here, plaintiff is a domicile of Idaho and Lidia is a domicile of Nebraska; and, as discussed above, codefendant MM, Inc. is a Kansas corporation.

Conclusion: The Idaho Federal court would appear to have SMJ over defendants MM, Inc. and Lidia.

KCCL 2023 Civ Pro Midterm Question #3 Answer Outline

Issue: Whether the Idaho Federal District Court should grant defendants' motions for change of venue to Nebraska Federal Court.

Rule: A Federal court may transfer venue where venue was initially proper upon agreement of all parties, or when appropriate for convenience of parties and witnesses. Venue may be transferred where venue was initially proper (or improper) to any Federal court that has both personal and subject matter jurisdiction over the action. 28 USC 1391, 1404, 1406. If venue was initially improper, however, the court must dismiss the suit if no venue exists where the transferee court would have personal and subject matter jurisdiction and venue would be proper.

Analysis: MM, Inc. has filed a motion for change of venue from Idaho to Nebraska's District Federal Court for convenience of parties and witnesses. Such motion has been made forty days before the scheduled trial date. Defendant Lidia dba Lit by Lidia has also filed a motion for change of venue from Idaho to Nebraska Federal court.

A motion for convenience of parties and witnesses may be brought at any time prior to trial, but will not be granted if the motion is untimely so as to potentially result in undue prejudice to one or more of the parties. The motion in such regard (28 USC 1404(a)) may be brought even if venue was initially proper.

Here, venue appears to have been properly in Idaho Federal Court as arguably a substantial part of the events giving rise to plaintiff Elvira's claim occurred in Nebraska: the injuries to plaintiff arose from MM's product being shipped by defendant Lidia from Nebraska to Idaho, and the use of the product (illegal mushrooms) occurred in Idaho. See, 28 USC 1391.

Thus, the Idaho court is not compelled to either dismiss or transfer the suit to Nebraska (or other Federal court) due to the original choice of venue by plaintiff Elvira being improper.

A transfer of venue may also be granted by the transferor (original) Federal court if consented to by all parties to the suit (even if venue in the transferor court was improper). However, in this instance the facts state that three parties: plaintiff Elvira; third party defendants Alondra and Samuel, both Idaho domiciles) oppose

the defendants requested transfer of venue from Idaho to Nebraska (where defendant Lidia is domiciled and MM's president, Mercedes, also resides).

A motion for transfer of venue pursuant to 28 USC 1404(a) is left to the discretion of the Idaho Federal court as to whether the convenience of parties and witnesses

In order to prevail on their motions for transfer of venue, Lidia and MM carry the burden of persuasion that Nebraska Federal Court has person jurisdiction, subject matter jurisdiction, and proper venue over plaintiff Elvira's suit.

Here, as to personal jurisdiction: Lidia is a domicile of Nebraska, and thus PJ exists as to such defendant. MM would appear arguably subject to PJ in Nebraska (assuming Nebraska has a long arm statute compliant with due process) based upon MM shipping its product in question to Lidia in Nebraska, thus establishing minimum contacts and purposeful availment by MM with Nebraska. SMJ would be present based upon Federal question jurisdiction where, as here, plaintiff has included a RICO Federal statute violation in her complaint. Venue would appear to be present in Nebraska (see 29 USC 1391) as a substantial part of the events giving rise to plaintiff's suit occurred in Nebraska (product shipped by MM to Nebraska; and shipped by Lidia from Nebraska).

As to 28 USC 1404(a) requirement that the transfer be appropriate for convenience of parties and witnesses, defendants will likely argue that for both Lidia and Mercedes, being residents of Nebraska, they would be benefitted by such transfer; and further argue that witnesses involved in the obtaining in Nebraska of MM's product (from Kansas) would also most likely be in Nebraska.

Plaintiff Elvira and third party defendants Alondra and Samuel, however, would in opposition note that they are all currently domiciles and/or residents of Idaho; that medical provider witnesses (including hospital personnel providing treatment to Elvira during her one week's hospitalization) are all in Idaho, and that it would be extremely inconvenient for such witnesses to have to travel to Nebraska to testify (and likely not subject to subpoena for trial).

In addition, the Idaho court would more likely than note find the defendants' motions (forty days prior to trial) to be untimely as likely causing prejudice to other parties' trial preparation, including retention of experts in anticipation that the trial would be held in Idaho, and decisions as to whether to depose key witnesses to preserve testimony had the trial been set for Nebraska as opposed to

Idaho.

Conclusion: More likely than not, it would appear that the Idaho Federal court would deny defendants' motions to transfer venue from Idaho to Nebraska, as such transfer would not be convenient for parties and witnesses, and would likely be unduly prejudicial as untimely (forty days before trial).

80

1)

Elvira v. Lidia: Motion for lack of Personal Jurisdiction:

Personal Jurisdiction: "refers to the courts ability to exercise jurisdiction over a (defendant)"

ACTUALLY, PLAINTIFF,
700:
FRCP 3

Personal jurisdiction can be established through traditional jurisdiction or Modern jurisdiction

Traditional Jurisdiction: is met when; " (1) the defendant is present while being served in the forum state (2) the defendant is domicile in the forum state (3) the defendant consents to personal jurisdiction in the forum"

(1) the defendant is present while being served in the forum state

Here, Lidia was not served in the forum state of Idaho (where the incident occurred). The defendant Lidia was served in her hometown of Nebraska.

Good

Thus, the element of the defendant being present while served in the forum state is not satisfied.

(2) the defendant is domicile in the forum state

Here, Lidia is domicile in the state of Nebraska. Lidia is not domicile in the forum state of Idaho, since it is shown that Lidia is domicile in the state of Nebraska. Lidia is domicile in the state of Nebraska because the facts clearly state that Lidia is domicile to Nebraska.

OKAY

Thus, the element of the defendant being domicile to the forum state is not satisfied.

(3) the defendant consents to personal jurisdiction in the forum"

Here, the defendant Lidia has not made any initial contract and/or statement that shows Lidia's willingness to be subject to personal jurisdiction. In order for Lidia to be subject to personal

jurisdiction under consent, Lidia needed to show her agreement and willingness (consent) to be subject to personal jurisdiction. Lidia did not make any consent to personal jurisdiction.

Thus, the element of the defendant's consent to personal jurisdiction in the forum state of Idaho is not satisfied. 6000

Thus, traditional jurisdiction, stemming from personal jurisdiction, is not satisfied.

Modern Jurisdiction: " (1) is authorized by statute and; (2) is constitutional"

Statutory:

Long-Arm Statute : "refers to the courts authority to exercise jurisdiction over non-residents, but is limited by the due process clause of the United States Constitution"

Here, the state of Idaho has a Long-Arm statute that allows Elvira to bring in Lidia to be subject to the authority of the Idaho state court.

Thus, the Long-arm statute is satisfied because Idaho does has an implemented law that allows for the Long-Arm statute to be applicable.

Constitutional: "is met through (1) Minimum contacts and; (2) Fair play and substantial justice"

(1) Minimum contacts: is satisfied through, (1) Purposeful Availment, and (2) Foreseeability

(1) Purposeful Availment- "Did the defendant purposefully avail itself from the benefits and protections of the forum state's laws"

Here, the defendant Lidia sold various products by the name handle "Lit by Lidia" over the internet. By Lidia selling her products over the internet she was not subject to any benefits and or protections that should have been provided to her for being a vendor/seller of products. 6000
SHE SOLD PRODUCTS DIRECTLY TO IDAHO... COULD SUE IN IDAHO FOR NON PAYMENT, ETC...

Thus, the element of purposeful availment is satisfied, since Lidia. actively sells products from the internet and is not subject to the benefits and or protections that are provided within the state that she sells her products in.

(2) Foreseeability - "When did the Defendant know or reasonably anticipate that they might have to defend a lawsuit from minimum contacts"

Here, the defendant Lidia was able to reasonably anticipate she might have to defend her herself from a lawsuit by minimum contacts. This is because Lidia had its primary place of business of selling products over the Internet. (By having Lidia sell various products over the she was not considered a seller in a specific state, which impeded her from receiving the benefits and protections that arise for seller in a domicile state.) ? I DON'T FOLLOW THIS.

Thus, the element of foreseeability is satisfied.

Thus, Minimum contacts is not satisfied. NOT CORRECT.

(2) Fair play and substantial justice: "Five Determining factors. (1) undue burden on the defendant (2) states interest (3) Plaintiff's relief interest (3) JUDicial system interest (5) Shared social policy interest"

(1) Undue Burden on the defendant-

Here, the undue burden on the defendant is not applicable. This is because there are no extraneous requirements unto the defendant that would require a great amount of financial or physical work that can become a potential hinderance to the case. Some potential hinderances would be having to pay for multiple witnesses and/or defendants to continuously travel back and forth to the forum state, in order to be subject to personal jurisdiction. However, there are no undue burden's unto Lidia given within the fact pattern.

Thus, undue burden on the defendant does not effect the fair play and equal justice of the case.

Thus, the element of fair play and substantial justice for modern jurisdiction is satisfied!

Thus, Lidia is subject to personal jurisdiction in the state of Idaho, but only if service of process is proper! AVOID EXCLAMATION MARKS, PLEASE.

Service of Process: "Service of Process is proper if the individual, who gives notice to the defendant, is at least 18 years of age and is not subject to the parties lawsuit. A lawyer who is representing a party in the lawsuit may not give service of process."

"Service of process is not proper under the due process clause, if notice is given by posting or publication"

Here, the notice that was given to Lidia, to inform her of the claim that is being filed against her, was given to her by James. James is an attorney who works for David. David is the plaintiff Elvira's lawyer. David and James are not allowed to give service or process since they are both lawyers who are subjects to the party in the lawsuit.

Thus, Service of Process is improper because service of process was made by James which is not applicable for a lawyer to serve a defendant if the lawyer is subject to the party in the lawsuit. *Good*

Thus, Lidia's motion for lack of personal jurisdiction and failure of service of process should be granted! This is because service of process was improper, and service of process must be proper for personal jurisdiction to apply.

Elvira v. MM inc. : Motion for lack of Personal Jurisdiction:

Personal Jurisdiction: "refers to the courts ability to exercise jurisdiction over a defendant."

Personal jurisdiction can be established through traditional jurisdiction or Modern jurisdiction

Traditional Jurisdiction: *is met when; " (1) the defendant is present while being served in the forum state (2) the defendant is domicile in the forum state (3) the defendant consents to personal jurisdiction in the forum"*

(1) the defendant is present while being served in the forum state

Here, the defendant MM Inc. was given service of process through publication by Kansas Daily News. Since MM inc. was given service of process by publication, she was not in the forum state of Idaho when being served. This is shown because the service of process that was published for MM inc was published in the Kansas Daily News.

Thus, the element of the defendant being present while served in the forum state is not satisfied.

(2) the defendant is domicile in the forum state

Here, MM Inc. is domicile in the state of Kansas. MM inc. is not domicile in the forum state of Idaho, since it is shown that MM Inc.'s primary place of business for her "magic mushrooms" occurs in the state of Kansas. MM inc. is domicile in the state of Kansas because the facts clearly state that Kansas is "where MM does all it's business."

Thus, the element of the defendant being domicile to the forum state of Idaho is not satisfied.

(3) the defendant consents to personal jurisdiction in the forum"

Here, the defendant MM inc. has not made any initial contract and/or statement that shows MM's willingness to be subject to personal jurisdiction. In order for MM inc. to be subject to personal

jurisdiction under consent, MM inc. needed to show her agreement and willingness (consent) to be subject to personal jurisdiction. MM inc. did not make any consent to personal jurisdiction.

Thus, the element of the defendant's consent to personal jurisdiction in the forum state is not satisfied. *DILAM*

Thus, traditional jurisdiction, stemming from personal jurisdiction, is not satisfied.

Modern Jurisdiction: "(1) is authorized by statute and; (2) is constitutional"

Statutory:

Long-Arm Statute : "refers to the courts authority to exercise jurisdiction over non-residents, but is limited by the due process clause of the United States Constitution"

Here, the state of Idaho has a Long-Arm statute that allows Elvira to bring in MM inc. to be subject to the authority of the Idaho state court.

Thus, the Long-arm statute is satisfied because Idaho does has an implemented law that allows for the Long-Arm statute to be applicable.

Constitutional: "is met through (1) Minimum contacts and; (2) Fair play and substantial justice"

(1) Minimum contacts: is satisfied through, (1) Purposeful Availment *+ CLAIM THROUGH FIRM ADV.* and (2) Foreseeability

(1) Purposeful Availment- "Did the defendant purposefully avail itself from the benefits and protections of the forum state's laws"

Here, the defendant MM inc. sold the product of "magic mushrooms" in state of Kansas. By MM inc. selling their products in the state of Kansas, MM inc is subject to the rules, benefits and protections that the state of Kansa has toward any vendors that sell products within their state borders.

Thus, the element of purposeful availment is not satisfied, since MM inc. actively sells products from the state of Kansas. *AND DOES NOT SEND PRODUCT OR OTHERWISE AVAIL ITSELF OF BENEFITS OR DOING BUSINESS IN IDAHO.*

(2) Foreseeability - "When did the Defendant know or reasonably anticipate that they might have to defend a lawsuit from minimum contacts"

Here, the defendant MM inc. was not able to reasonably anticipate she might have to defend herself from a lawsuit by minimum contacts. This is because MM inc. had its primary place of business in Kansas. By having MM inc's primary place of business in Kansas, MM inc could not have reasonably known they would potentially have to defend themselves from a case of minimum contacts, since MM inc. satisfied the idea of being domicile in one location

NO INDICATION THAT LIDIA WOULD SEND NOTICES TO IDAHO RESIDENTS
Thus, the element of foreseeability is not satisfied.

Thus, Minimum contacts is not satisfied. *CONCLUDE*

(2) Fair play and substantial justice: "Five Determining factors. (1) undue burden on the defendant (2) states interest (3) Plaintiff's relief interest (3) JUDicial system interest (5) Shared social policy interest"

(1) Undue Burden on the defendant-

Here, the undue burden on the defendant is not applicable. This is because there are no extraneous requirements onto the defendant that would require a great amount of financial or physical work that can become a potential hinderance to the case. Some potential hinderances would be having to pay for multiple witnesses and/or defendants to continuously travel back and forth to the forum state, in order to be subject to personal jurisdiction. However, there are no undue burden's unto Lidia given within the fact pattern.

Thus, undue burden on the defendant does not effect the fair play and equal justice of the case.

Thus, the element of fair play and substantial justice for modern jurisdiction is satisfied!

Thus, MM inc. is not subject to personal jurisdiction in the state of Idaho because the sub-element of minimum contacts was not satisfied!

Service of Process: "Service of Process is proper if the individual, who gives notice to the defendant, is at least 18 years of age and is not subject to the parties lawsuit. A lawyer who is representing a party in the lawsuit may not give service of process."

"Service of process is not proper under the due process clause, if notice is given by posting or publication"

Here, the notice that was given to MM inc., to inform her of the claim that is being filed against her, was given to her by publication in the Kansas Daily News. . Publication by Newspapers is not proper service of process under the due process clause of the United states constitution. Service of process must be directly handed to individual named in the lawsuit or if its a corporation the president of the corporation or an authorized agent may accept service. Mersades was the president of MM inc. so service of process to her would have been acceptable. However, service of process was done by publication in this fact pattern.

Thus, Service of Process is improper because service of process was made by publication, which is not applicable under the due process clause of the United States Constitution.

Thus, MM inc.'s motion for lack of personal jurisdiction and failure of service of process should be granted. This is because service of process and personal jurisdiction was improper.

(90)

2) ISSUE FIRST - ALWAYS - NOT RULES 1.1 /

Subject Matter Jurisdiction in Federal Courts, Generally

Subject matter jurisdiction refers to the ability of the court to decide a case before it. In other words, the court has the authority to decide something that is in controversy. A court is granted subject matter jurisdiction by the law. Parties may not confer subject matter jurisdiction on a court by agreement or stipulation - if the court is not granted SMJ by the law, it does not have it. Federal courts are courts of limited jurisdiction. They can only exercise jurisdiction over controversies and cases under limited circumstances.

Diversity Jurisdiction

Diversity jurisdiction is one way for a Federal court to obtain subject matter jurisdiction. For diversity jurisdiction, the amount in controversy must exceed \$75,000 (excluding interest and costs) and there must be complete *diversity* between the parties. *Diversity* refers to the citizenship of the parties. For complete diversity to exist, no plaintiff may be a citizen of the same state as any defendant.

Citizenship of a corporation is determined by the state in which the corporation is incorporated, or where it has its principal place of business. MM, Inc. is incorporated in and has its principal place of business in Kansas. MM, Inc. is, therefore, a citizen of the state of Kansas.

Lidia is domiciled in Nebraska (and is a citizen of the state of Nebraska) ^{NOT NEEDED}

Elvira is stated by the facts to be a California domicile. This would make her a citizen of California for the purposes of determining diversity jurisdiction. However, the facts also state that she is going to be in Idaho indefinitely while she recovers from her illness. If she sells or otherwise vacates her California home, then her presence in Idaho would make her a citizen of Idaho (But whether Elvira is a citizen of California or Idaho is immaterial - the point is, she is *not* a citizen of either Nebraska or Kansas, so there is complete diversity between her and the two defendants in this case.)

Correct

Amount in Controversy

The amount in controversy must exceed \$75,000 for diversity jurisdiction to exist. A plaintiff may aggregate as many claims as they have against one defendant to meet or exceed the amount in controversy requirement, so long as each of the claims arises out of the same act or transaction, but the plaintiff may not aggregate separate claims against multiple defendants to satisfy the amount in controversy. Here, Elvira has \$80,000 of medical expenses. It is likely that Lidia and MM, Inc. would

✓ THIS IS NOT A FACTOR ON 975K+ ISSUE
HAVE, IS IT?

be jointly and severally liable for this amount, if they were liable at all, so it appears that the amount in controversy does exceed the \$75,000 threshold. The only requirement here is that Elvira has pled in good faith that the amount in controversy exceeds \$75,000 against the two defendants jointly and severally. If, on the other hand, she alleged that MM, Inc. was responsible for \$50,000 of her claim and Lidia responsible for the other \$30,000, the amount in controversy would not be met.

Because there is complete diversity between Elvira and the two defendants, and the amount in controversy exceeds \$75,000, the federal court has subject matter jurisdiction based on diversity jurisdiction.

Federal Question Jurisdiction

A federal court may also have subject matter jurisdiction if the claim is based wholly, or in part, on federal law. If federal law is merely raised as a defense to the claim, (or a federal statute is relevant ??, to the analysis, it is not sufficient. The claim must arise out of a violation of a federal law that carries a private right of action. Here, Elvira is suing under two federal laws: the first is a violation of a federal pesticide standard, and the second is a RICO violation.

Federal Pesticide Standard

Not every federal law carries with it the ability to sue for its violation directly. Here, Elvira is suing MM, Inc. and Lidia for violating a federal pesticide statute. These statutes tend to be regulatory in nature - if someone violates one, these statutes empower a regulatory agency like the EPA to fine or otherwise punish violators. It may not carry with it a private cause of action. In other words, just because the conduct of MM, Inc. and Lidia was technically unlawful under a federal pesticide regulation, Elvira may not have the right to sue. She can point to the violation to establish that MM, Inc. and Lidia breached a duty of care by breaking a federal rule, but may not be able to recover damages directly for the breach. If this is the case, then there is no federal question presented by the violation of the federal pesticide standard and the court would not have federal question jurisdiction based on this theory. The federal trial court will examine the federal decisions in that circuit to determine whether or not there is a private cause of action allowed under the pesticide regulations. If there is, then a federal question has been presented and the court will have federal question jurisdiction. If, however, there is no private cause of action, then there is no federal question jurisdiction based on the pesticide standard.

RICO Violation

9/10/00
Racketeering Influence and Corrupt Organizations (RICO) cases generally carry private causes of action, and are prosecuted by private plaintiffs in both federal and state courts all the time. It is likely that Elvira will be able to proceed on the RICO violation directly. If she can plead a plausible cause of action for a RICO violation in her complaint, the federal court will likely have federal question jurisdiction. Again, the federal trial court will need to examine controlling federal law to determine whether a federal question is presented by the RICO claim.

Federal vs. Diversity Jurisdiction

4/23
If Elvira can successfully plead a RICO violation, a pesticide violation, or both, thus conferring federal question jurisdiction on the court, then there need not be either diversity of citizenship between Elvira and the defendants, nor must her amount in controversy exceed \$75,000. As stated above, though, it is likely that the federal court has diversity jurisdiction even if there is no federal question jurisdiction under either the pesticide violation or the RICO violation.

State Law Claims

4/27
Once a federal court has jurisdiction over a case through either diversity jurisdiction or federal question jurisdiction, then it also assumes jurisdiction over state law claims. Here, the negligence and product liability claims are strictly state law torts. The federal court will have jurisdiction over these claims regardless of the amount in controversy so long as diversity jurisdiction exists, or a federal question is still pending. If the court loses federal question jurisdiction, and all that remains are state law claims, the court can remand the state law claims back to Idaho state court for disposition, or may keep them and decide the claims based on supplemental jurisdiction. The same is not true, though, for diversity jurisdiction: if diversity is defeated for any reason (for instance, Elvira is a citizen of Idaho when her suit is filed, and later joins Samuel, who is an Idaho citizen), and no federal questions are before the court, the federal court must remand the state claims back to the state court. But, the facts do not state that any of these things have happened.

Because there is diversity of citizenship and the amount in controversy exceeds \$75,000, diversity jurisdiction exists and the motions of MM, Inc. and Lidia to dismiss for lack of subject matter jurisdiction will be denied.

And because there is at least one federal question that has been pleaded by Elvira, the court has federal question jurisdiction and the motions of MM, Inc. and Lidia to dismiss for lack of subject matter jurisdiction will be denied.

3)

PLEASE! START WITH YOUR MAIN ISSUE,
NOT A RULE

VENUE-

Venue is proper in a district where all defendants reside, or, if all defendants reside in the same state then venue is proper in a district where any defendant resides. Or, venue is proper where a substantial part of claim arose.

Here the original venue, the Idaho Federal district court, is proper because Idaho is where a substantial part of Elvira's claim arose (i.e., Idaho is where Elvira ate and was injured by the mushrooms, the mushrooms were purchased in Idaho).

TRANSFER-

A party may seek to transfer the venue of the case if it is granted by the transferor court (original venue).

ORIGINAL VENUE PROPER-

If the the original venue was proper, the Court may transfer to another court within the same judicial system (from one federal court to another) to a transferee court where the venue is proper and where personal jurisdiction and subject matter jurisdiction both would be upheld.

Here the original venue is proper (supra).

IS NEBRASKA A PROPER VENUE?

Nebraska would not be a proper venue in the geographical sense because Defendant Lidia resides in Nebraska, and Defendant MM resides in Kansas because it was incorporated in Kansas and has its principle place of business there. Additionally, it would be hard to say that a substantial part of Elvira's claim arose in Nebraska because the only relation that Nebraska has to Elvira's claim is that Defendant Lidia resides there.

The Idaho Federal district court will likely find that Nebraska as a venue is not proper.

WOULD NEBRASKA HAVE PERSONAL JURISDICTION OVER DEFENDANT LIDIA AND DEF. MM? GOOD

Personal Jurisdiction of Lidia:

The Nebraska federal district court would have personal jurisdiction over Lidia based on the traditional basis (Pennoyer) that Lidia is domiciled in Nebraska. *4/25*

Personal Jurisdiction of MM:

The Nebraska federal district court would not have personal jurisdiction based on a traditional basis in Nebraska because neither MM or its agent was served in Nebraska. Nor is MM domiciled in Nebraska.

Additionally, *OCEN, REALITY 2 DEFENDERS PRODUCT LIABILITY* MM did not have sufficient minimum contacts with Nebraska nor did Elvira's claim arise out of MM's contact with Nebraska. MM's advertising throughout the country is not sufficient to satisfy purposeful availment in the state of Nebraska. *CONSENT*

WOULD NEBRASKA HAVE SUBJECT MATTER JURISDICTION OVER ELVIRA'S CLAIMS?:

SUBJECT MATTER JURISDICTION- A federal court's power to exercise jurisdiction over the subject matter of case.

A federal court can exercise subject matter jurisdiction if the claim contains a federal question or there is a complete diversity (between plaintiffs and defendants) of the parties involved in the case.

FEDERAL QUESTION-

Federal courts can exercise valid subject matter jurisdiction if the plaintiff's claim arises out of federal law. More specifically if the plaintiff's claim seeks to enforce a federal right then the plaintiff's claim will constitute a federal question. One rule that comes into play is the well pleaded complaint rule that states that federal law must be integral to the claim in issue in order to constitute a federal question.

Here, Elvira's state law claims for negligence and products liability, while based on federal pesticide standards, would not be consistent with the requirement of the well pleaded complaint. The claim

would have to not just be based on federal law but it must utilize a federal law in order to comply and be rendered a federal question.

Elvira's second claim-- a federal law claim for RICO violation does constitute a well pleaded *complaint* complaint as federal law is integral to the claim.

Thus, Elvira's claim federal law claim for RICO violations would be able to be heard in federal court based on federal question while Elvira's state law claims for negligence and products liability would not.

DIVERSITY OF CITIZENSHIP

Federal courts can exercise valid subject matter jurisdiction in a case if there is complete diversity between plaintiffs and defendants in the case. That is no plaintiff can be a citizen of the same state that a defendant is a citizen of. Complete diversity must be present at the time of the commencement of the given action and is not defeated if a party moves after commencement. Additionally, for there to be valid diversity of citizenship the amount in controversy must exceed \$75,000

CITIZENSHIP- Citizenship as it pertains to individuals, is where a defendant is domiciled and intends to reside indefinitely. A corporation's citizenship is where a corporation is incorporated or where its principal place of business is located. The principal place of business is defined as the "nerve center" of the corporation where much of the coordination takes place.

Here, the facts show that Defendant Lidia is domiciled in Nebraska with her roommate in Nebraska. There are no facts that point to her having an intent to live anywhere else.

Elvira, the plaintiff, is a domicile of the state of California. *OR IDAHO?* (Though she will have to in Idaho indefinitely to recuperate, she intends to return to California after she is better.) *ORAZU*

Defendant MM, is incorporated in Kansas and has its principal place of business in Kansas.

Therefore, there is complete diversity between the plaintiff and defendants in the instant matter.

AMOUNT IN CONTROVERSY- In order for a case to be brought to federal court under diversity jurisdiction, the amount in controversy must exceed \$75,000.00

There are not any facts that point to the specifics of the amount in controversy included in Elvira's claims. However the facts reflect that Elvira incurred \$80,000 in medical expenses. So, if Elvira sues MM and Lidia jointly then the total value of her claim would exceed \$75,000.

The Nebraska federal court would have subject matter jurisdiction over Elvira's RICO claim by way of diversity jurisdiction or Federal Question. The court would have subject matter jurisdiction over Elvira's product liability claim only by diversity jurisdiction.

PUBLIC AND PRIVATE FACTORS:

Here, the motivations regarding defendant Lidia and Defendant MM's motion to transfer the venue to Nebraska are not stated. Generally the court would consider things such as the location of witnesses and evidence as well as other interests. The facts show that all other parties are opposed to the transfer. Importantly, the plaintiff Elvira's interests would strongly be hurt as she is hospitalized indefinitely in Idaho. Travelling to Nebraska would be difficult in her health.

CONCLUSION:

The court will reject the motion to transfer venue.

1404/TIMELINESS OF D's
MOTION TO CHANGE
VENUE TO NEBRASKA

END OF EXAM