

Monterey College of Law

Civil Procedure

Midterm Examination

Fall 2023

Professor Isaac Adams

Instructions:

Answer: Three Essay Questions

Total Time Allotted: Three (3) Hours

Question One

Paul, a resident of State X, bought a greenhouse kit from GreenGrowth, a State Y company that operates a store in State X. In the purchase and sale contract, GreenGrowth warranted that its fire-resistant greenhouse kits were equipped with smart anti-fire sensors.

HydroFlora, a company with its sole headquarters in State Z, supplies the sensors for GreenGrowth's kits. HydroFlora does not have any stores or agents in State X.

Shortly after Paul set up the greenhouse, a malfunction in the anti-fire sensor caused a fire that ruined the greenhouse and spread to Paul's home, severely damaging it.

Paul filed a lawsuit against GreenGrowth and HydroFlora based on diversity jurisdiction in the Federal District Court of State X, seeking \$500,000 in damages. In his complaint, Paul alleged that GreenGrowth committed "fraud in the contract."

HydroFlora filed a motion to dismiss for lack of personal jurisdiction, and GreenGrowth filed a 12(b)(6) motion.

State X law provides that its courts may exercise jurisdiction over nonresidents "on any basis not inconsistent with the Constitution of the United States."

How should the court rule on each motion? Discuss.

Civil Procedure

Fall 2023 Midterm Exam

Professor Isaac Adams

Question Two

While in Miami, Paul, a resident of New York, and Pam, a citizen of France, were clipped by a delivery scooter owned and operated by QuickBite, a limited liability partnership. QuickBite is jointly owned by Jordan, a resident of Georgia, and Taylor, a resident of Illinois.

QuickBite's principal office is in Florida and registered to operate there. Paul and Pam jointly filed a lawsuit against QuickBite in the Federal District Court of Florida. In the suit, Paul filed a negligence claim for \$70,000, and for negligent infliction of emotional distress, he claimed \$10,000. Pam claimed \$5,000 for conversion. Paul and Pam emailed the summons and the complaint to QuickBite.

QuickBite filed a motion to dismiss for lack of subject matter jurisdiction, which the court denied. Subsequently, QuickBite filed a dismissal motion based on Rule 12(b)(5).

How should the court rule on each motion? Discuss

Civil Procedure

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Question Three

Paul, a citizen of California, was visiting his family in Texas when he went to Dave's Market store to buy food. While Paul was walking to his car in the parking lot of Dave's Market, Diane, a resident of Arizona, struck Paul with her car, injuring him.

Paul sued Dave's Market and Diane in State Court in Texas. Dave's Market filed a notice of removal with the Federal Court in Texas, which the court granted. Subsequently, Diane filed a motion to transfer to the Federal Court in Arizona, which the court denied.

1- Did Paul properly lay venue in Texas? Discuss.

2- Did the court err in granting Dave's Market's notice of removal? Discuss.

3- Did the court err in denying Diane's motion to transfer? Discuss.

4- If the case remains with the Federal Court in Texas, what law should the Federal Court apply? Answer prong number four in one to two sentences.

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Civil Procedure -ANSWER OUTLINE

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Suggested answer to question one:

Motion to dismiss for lack of PJ over HydroFlora in State X:

- 1- No traditional bases
 - 2- Long arm
 - 3- International shoe
- Minimum contact. No contact with X.
 - Purposeful availment. Asahi & McIntyre- stream of commerce
 - Foreseeability
 - Justice Brennan and Justice O'Connor split.
 - Fair play and substantial justice

Motion to dismiss for failure to state a claim upon which relief can be granted.

- Pleadings- well-pleaded complaint
- FRCP 12 (b)(6)
- Bell Atlantic v. Twombly and Ashcroft v. Iqbal. Two-step process.
- Fraud must be pled with specificity and particularities.

Suggested answer to question two:

Motion to dismiss for lack of subject matter jurisdiction

Paul v. QuickBite

- 1- Diversity of citizenship
 - Citizenship of the partnership
- 2- Amount in controversy—good faith
 - Aggregation: One plaintiff can aggregate his claims against a defendant to meet the amount in controversy.

Pam v. QuickBite

- 1- Diversity of citizenship
 - Citizenship of the partnership
 - Alienage jurisdiction
- 2- Amount in controversy
 - Can Paul and Pam aggregate their claims? No. Their claims are separate and distinct.
- 3- Supplemental jurisdiction
 - Can Pam's claim get into the federal court under supplemental jurisdiction? Yes, because complete diversity exists, and the only thing missing is the amount in controversy.
 - Does Pam's claim share a common nucleus of operative fact with Paul's? Yes, the claims arise from the same transaction or occurrence.

Motion to dismiss based on Rule 12(b)(5)

- Improper service of process. FRCP 4.
- The motion should be denied because the defense of insufficient service of process must be asserted in the first responsive pleading.

Suggested answer to question three:

1- Did Paul properly lay venue in Texas?

P may lay venue in any district where: a. any defendant resides in all defendants reside in the same state; or b. A substantial part of the claim arose. Since there is no state where all defendants reside, P may lay venue in a district where a substantial part of the claim arose, Texas, where the accident happened.

2- Did the court err in granting Dave's Market notice of removal? Discuss.

Yes. In-state defendant rule prevents the defendant from removing the case to federal court in Texas.

3- Did the court err in denying Diane's motion to transfer? Discuss.

Transfer is allowed if Texas is a proper venue and Arizona has jurisdiction over the defendants. Since Texas is not the proper venue and Arizona does not have jurisdiction over Dave's Market, transfer is not allowed.

4- Assuming the case remains with the federal court in Texas, what law should the federal court apply? Answer this prong in one to two sentences.

The federal court should apply the choice of law of the state embracing the federal court.



1) *Paul v. Hydroflora*
HYRDOFLORA V PAUL Q 1 85

The court will likely find that they have personal jurisdiction over Hydro based on modern jurisdiction.

Personal Jurisdiction

Personal Jurisdiction is a court's power or authority to render a judgement that binds the defendant's person. An improper assertion of personal jurisdiction will result in a violation of the defendant's due process clause under the 14th amendment. Any judgement rendered by the court that is in violation of the defendant's due process clause will be invalid and unenforceable.

To satisfy the due process clause, the court must find jurisdiction under a traditional basis (listed under *Pennoyer v. Neff*) or under a modern basis (detailed under *International Shoe*).

Traditional Basis

Personal Service

A state has jurisdiction over a defendant who is physically present while served with formal legal process. This applies even if the defendant is in the state for a brief period of time, unless brought in through fraud.

Here, there are no facts that indicate that Hydro was physically present while served with process in State X.

Thus, the state will not find jurisdiction under personal service.

Domicile

A state has jurisdiction over a defendant who is domiciled in the state, regardless of whether they were served with process while in the forum state.

Here, Hydro has its sole headquarters in State Z. Hydro does not have any stores or agents in State X.

Thus, they are not domiciled in State X.

Consent

A defendant may consent to a court's personal jurisdiction regardless of their connection to the forum. Consent may be either express or implied. Express consists of a writing or a declaration by the court. Implied consent can be a state statute that gives D power to assert personal jurisdiction over a defendant who commits a tort in the forum state.

Here, while there may be a governing contract between Greengrowth and Hydro which dictates jurisdiction, no facts indicate that this is present. There is no express consent dictated in the fact patter. The court will most likely find that it does not have an implied consent over Hydro because Hydro limits its dealings with with Greengrowth and only supplies the sensors to Greengrowth's kits.

Thus, the court will most likely find that Hydro did not consent to State X jurisdiction.

Waiver

There are two types of waivers. General appearance is when a defendant appears in court to argue the case's merits. Special appearance is when the defendant limits his appearance to argue the courts lack of personal jurisdiction, or the defendant may be found to waive consent based on a failure to contest personal jurisdiction in their per-answer motion or their answer.

Here, as the facts state that Hydro filed a motion to dismiss for lack of personal jurisdiction, or a 12(b)(2) motion, and no facts indicate that hydro made a special appearance to argue against the court's lack of personal jurisdiction, hydro did not waive their consent.

Thus, the court will not have jurisdiction based on waiver of consent.

Traditional Conclusion

The court will not find personal jurisdiction under a traditional basis.

Modern Basis

State Statute (Long Arm)

Allows for the service of summons to be done outside the forum, i.e. seizing the defendant outside the state. California long arm reaches the constitutional limit.

Here, state X law provides that its courts may exercise jurisdiction over nonresidents on a basis that is not inconsistent with the constitution of the US.

Thus, the state has a proper long arm statute.

AND

International Shoe

The defendant must have certain minimum contacts with the forum, such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. This is a two-step approach.

Minimum Contacts

There must be relevant minimum contacts between the defendant and the forum state. The court will consider whether there is purposeful availment, a foreseeability factor, frequent and regular contact, the court will assess the nature and quality of the contact, and the relationship between the cause of action and defendant's contact with the forum state.

Purposeful Availment

Defendant must reach out to the forum state. Defendant purposefully avails itself of the privilege of conducting activities within the forum, thus invoking the protections and benefits of its laws.

Here, Hydro does not have any stores or agents in State X and is headquartered in State Z. Hydro will argue that they did not purposefully avail itself to State X because they did not target State X. However, because this is a stream of commerce or Asabi and McIntyre situation, Paul would argue that purposeful availment has been satisfied because Hydro made money in State X, and supplied the sensors to Greengrowth's kits, which were placed into the stream of commerce in State X.

Thus, the court will likely find purposeful availment was met.

Foreseeable

Defendant must reasonably anticipate or expect to be haled into the forum state's court. In a stream of commerce, or Asabi and McIntyre situation, Justice Brennan states that foreseeability is met when defendant places a product into the stream of commerce and reasonably anticipates that it will reach the forum state. Justice O'Connor expands on Justice Brennan's belief, stating that foreseeability is met when defendant places a product into the stream of commerce and reasonably anticipates that it will reach the forum state and the defendant has an intent to serve the market of the forum state (purposeful availment), such as modifying a product to comply with the forum state's laws.

Here, the court may reasonably hold that Hydro reasonably anticipated to be haled into the court of State X because Hydro provided the sensors to Greengrowth and being that Greengrowth operates in State X, should have reasonably expected that a suit may arise in State X. Foreseeability would be met under a Brennan approach as Hydro placed the sensor into the stream of commerce, and could have reasonably expected that it would have entered State X, as that is where the store is operated. However, foreseeability would not be met under an O'Connor approach as the facts do not indicate that there was any specific modification to comply with State X law, instead Greengrowth purports that their product was equipped with an anti-fire sensor, not that the sensor complied with State X law.

Thus, foreseeability would be met and would be met under a Justice Brennan understanding of foreseeability.

Frequent and Regular Contact

Defendant's contact must be so systematic and continuous (even if the contact is unrelated to the cause of action), that defendant is essentially at home in the forum state. Systematic and continuous must not be based on purchases and sales, but must instead be based on physical presence (Goodyear and Asahi). The court found under Mcgee that frequent and regular contact was met when the insurance company had a single claim in California, as this is a heavily regulated industry.

Here, Hydro was constantly supplying sensors to State X, while it may be argued that this is based solely on purchases and sales, there is most likely a governing contract that oversees the continued flow of Hydro products into State X. Further, as interstate commerce is highly regulated, the court may find, as per Mcgee, that the contact is so continuous and systematic that Hydro is essentially at home in State X.

Thus, the court will most likely find that there is frequent and regular contact.

Nature and Quality of the Contact

Here, the contact is continuous as Hydro is constantly supplying Green with the anti-fire sensor that is needed for their greenhouse kits.

Thus, the nature and quality is substantial.

Relationship between plaintiff's cause of action and defendant's contact with the forum

If the injury to plaintiff arises from defendant's contact with the forum state then the court has specific jurisdiction over the action. General is when a defendant is domiciled in the state and is essentially at home.

Here, the claim arises from the faulty fire sensor which caused a fire in Paul's home in state X.

Thus, the relationship is specific.

Fair Play and Substantial Justice

In assessing the minimum contacts inquiry, the court must find the reliance on the minimum contacts are fair and reasonable under all the circumstances. Factors the court considers are: 1) the forum state's interest in regulating the activity and in providing a forum; 2) if an alternative forum exists; 3) the relative convenience for the parties in terms of location of the witnesses and evidence; and 4) the need to effectively resolves interstate judicial disputes.

Here, Paul, a resident of State X who had purchased a product from Greengrowth, a store located in State X, was injured in State X. The court may consider this assertion of PJ as being fair due to the interest in regulating the products that are sold within the forum and in providing a forum for their own residents who were injured while in the forum state. Hydro may argue that this action would be better suited for Sate Z, however, the bulk of

the witnesses and parties, along with the growth kits, are located within State X. Further, State X may assert a great degree of interest in ensuring that the products that are arriving into the forum State do not injure their residents.

Thus, under all the circumstances, the factors are fair and reasonable.

Modern Conclusion

The court will be able to assert personal jurisdiction over Hydro through a modern basis.

Hydro v. Paul Conclusion

The court should dismiss Hydro's 12(b)(2) motion for dismissal.

Paul v. Green

The court should grant the 12(b)(6) motion (TWIQBAL) under the failure to state a claim in asserting fraud.

Complaint (Rule 8(a))

The complaint must state a ground of the subject matter jurisdiction; a short and plain statement of the facts asserting entitlement to relief, and a demand for relief sought. The court sets out a two-step approach (Iqbal) to determine whether the complaint should survive a motion to dismiss. First, the court should disregard all conclusory allegations. Second, the court should look at all remaining well-pleaded factual allegations to determine whether the pleader is entitled to relief. A well-pleaded factual allegations that only allows the court to infer the mere possibility of misconduct does not show the

pleader is entitled to relief. Iqbal and Twombly. Except, if the plaintiff or pleader is asserting fraud, mistake or special damages they must assert with specificity and particularity the circumstances that constitute fraud, mistake, or special damages.

Here, the lawsuit does assert grounds of subject matter jurisdiction, however, there are no facts that indicate where Greengrowth is incorporated or has its principal place of business, despite the \$500,000 assertion of damages. Paul merely states that fraud was committed in the contract, however, because Paul is alleging fraud, he must specify with particularity and specificity how the contract contained fraud and how Greengrowth committed fraud. Paul does not do this, and merely states an assertion without any well-pleaded factual statements.

Thus, the court should grant Greengrowth's 12(b)(6) motion (TWIQBAL).

CONCLUSION

The court may be able to find personal jurisdiction over Greengrowth, yet this is not being challenged, so, the court will grant Greengrowth's motion for failure to state a claim.



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PAUL V QUICKBITE

The court will have SMJ over Quickbite based on the diversity requirements and the 12(b)(1) motion filed by Quickbite should be denied, but the court should grant the insufficient service of process motion 12(b)(5).

Subject Matter Jurisdiction

Subject matter jurisdiction is the power of the federal court over the types of claims asserted. Subject matter jurisdiction is non-waivable. Any party may contest subject matter jurisdiction even for the first time on appeal. good

Federal Question

A court has federal subject matter jurisdiction over a civil claim if the plaintiffs well-pleaded allegations arise under federal law or poses a substantial question with significant federal interest.

Here, the claim that is being asserted is for injury that arose due to being clipped by a delivery scooter. There is no federal tort law, nor does the claim pose a substantial question with significant federal interest.

Thus, the federal court will not have jurisdiction over the claim that is arising under through a federal question.

Diversity Jurisdiction

A federal court will have jurisdiction over a civil claim if there is complete diversity between the parties (no plaintiff is from the same state as any defendant, this is the complete diversity rule) and the amount in controversy exceeds the statutory jurisdictional

amount required. The claim must exceed \$75,000. Diversity is tested at the time of filing, subsequent changes do not matter. Alienage jurisdiction applies when there is a foreign subject involved, the court will ignore the foreign subject as long as a party member from both sides, plaintiff's and defendant's, are United States citizens.

Diversity

An American citizen of the state where they are domiciled. Domicile is the place of their principal home where they intend to remain indefinitely. In determining the residency of an partnership or LLC, or unincorporated entity, the court looks to the residency of all the members.

Here, Paul is a resident of New York and was simply visiting Miami. No facts indicate that he had any intention of leaving New York or changing his residency. Therefore, Paul is a resident of Miami. Quickbite is a limited liability partnership, in this situation the court looks to the residency of the individual members. Jordan is a resident of Georgia and Taylor is a resident of Illinois. Excellent.

Thus, there is a complete diversity between the parties.

Amount in Controversy

There is a good faith requirement to this amount. There is only a dismissal if there is a legal certainty that the claim will not meet the statutory amount required. The only exception is if the law states that damages for a specific cause of action will be a specific amount.

Here, Paul filed a negligence claim asserting \$70,000 and also filed a negligent infliction of emotional distress claim in which he claimed \$10,000. There are no facts that state that these claims were filed maliciously or that Paul is trying to trick the court, however, his claims on their own do not meet the amount in controversy requirement.

Thus, the amount in controversy is not required, however, Paul is not without remedy as he may aggregate his claims.

Aggregation

Combining multiple claims or parties to meet the statutory requirement for a case to be heard in federal court. Aggregation allows for the plaintiff to combine multiple claims or parties to meet the diversity jurisdiction statutory requirement. One plaintiff versus one defendant may aggregate. One plaintiff versus multiple defendant's may aggregate if the defendants are jointly liable. Multiple plaintiffs may aggregate against one defendant if they are asserting a single title. Aggregation may occur when the claims arise from the same transaction or occurrence or series of transactions or occurrences.

Here, Paul may aggregate his two claims because it is one plaintiff, Paul, versus one defendant, Quickbite, and because his claims arise from the same transaction or occurrence, which in this case is being clipped by a delivery scooter.

Thus, Paul may successfully aggregate his claims.

Conclusion

Quickbite's motion to dismiss 12(b)(1) should be denied.

Service

Process consists of a summons and a copy of the complaint. Process may be effected by any non-party who is at least 18 years old. Service must be effected within 90 days of filing the complaint. If this is not done, the court will dismiss without prejudice, unless there is a showing of good cause for the delay.

Service on a Corporation

Service must be done on an officer, agent, or manager of the corporation. Service must be done upon a representative so integrated with the company that they will know what to do with the papers.

Here, if service required on Quickbite as a corporation, then the service must have been served upon the organization's agent, manager, or officer, and must not be effected by a party to the suit. Paul and Pam emailed the summons and the complaint to quickbite. Paul and Pam are members of the suit, and therefore this is not allowed, despite being emailed to an individual so integrated in the company. Further, the email could have been sent to their customer service department, or any department for that matter, and could have possibly not been done on an agent, manager, or officer.

Thus, there was an improper service on a corporation.

Service on an Individual

If service for an LLC is to be done upon the individuals, then service may be effected in four different ways: 1) personal service: this occurs when the papers are handed directly to the defendant, this may occur anywhere in the forum state; 2) substituted service: this occurs by delivering service to the defendant's dwelling or usual place of abode and must be done upon an individual of suitable age or discretion; 3) agent service: this is done by delivering the service to the agent; 4) constructive service: this is a last resort if all other means are impossible and occurs through publication of service.

Here, as stated above, the service was effected by Paul and Pam, two party members of the suit, and without even applying the different methods, this would be an improper service. The papers were never handed to defendants, delivered to the defendant's dwelling, given to their agent, or published as a last resort and this was not done by a non-party member. Individual service is most likely not necessary as the court uses service on a corporation in terms of process.

Nevertheless, there was an improper service effected by two party members in the suit.

Notice

Notice reasonably calculated under all the circumstances to apprise the interested parties of the pendency of the suit and afford them an opportunity to raise objections. (Mullane v. Central Hanover)

Here, the company will have notice that a suit has been filed, and did afford them to raise objections, as they filed a 12(b)(5) motion or insufficient service of process motion.

Thus, there was adequate notice.

Conclusion

Due to the party members emailing the service, the court should grant the 12(b)(5) motion which asks for dismissal based on an insufficient service of process.

PAUL V QUICKBITE CONCLUSION

The court should not grant the 12(b)(1) motion, or lack of subject matter jurisdiction motion, as the requirements were met by Paul after he aggregated. The court may grant the 12(b)(5) motion, as there was an improper service of process.

PAM V QUICKBITE

Pam will be able to supplement her claim with Paul's, thus bringing her claim into federal court. Therefore, the court has subject matter jurisdiction over Quickclaim.

As stated with Paul, there was an improper service, and the court should grant the 12(b)(5) motion.

SUBJECT MATTER JURISDICTION

SEE SUPRA

FEDERAL QUESTION

SEE SUPRA

Here, as stated above with Paul, Pam's claim does not pose any federal significance and does not raise a substantial question for the court to consider, instead, the case is an assertion of \$5,000 for conversion.

Thus, the court will not have jurisdiction through a federal question over Pam.

DIVERSITY

See Supra

Diversity

See Supra. Alienage jurisdiction applies when there is a foreign subject involved, the court will ignore the foreign subject as long as a party member from both sides, plaintiff's and defendant's, are United States citizens.

Here, Pam is a citizen of France, and Jordan is a resident of Georgia and Taylor is a resident of Illinois. The court can ignore the foreign subject and properly assert diversity jurisdiction because Paul is a citizen of the US and Georgia and Taylor are residents of the US, however, this does not mean that Pam's claim will be ignored.

Thus, there is complete diversity between the citizens.

Amount in Controversy

See Surpa

Here, the claim asserted by Pam is \$5,000. As with Paul, there are no facts that indicate that this was done maliciously or mischievously, instead there seems to be a good faith assertion in regards to this claim. However, Pam's claim does not meet the statutory requirement of exceeding \$75,000.

Thus, Pam's claim does not meet the minimum requirement, but Pam is not without recourse.

Aggregation

See Supra

Here, Pam cannot assert a claim under aggregation and combine her own with Paul's as they are not enforcing a single title, but are instead asserting their own damages that they claimed through their injuries.

Thus, Pam may not aggregate, however, Pam may supplement her claim.

Supplemental Jurisdiction

Supplemental jurisdiction allows additional claims into federal court if the primary claim satisfies the diversity requirements or the federal question, and the entire claim, including the primary claim (anchor claim) is already within federal jurisdiction. Supplemental jurisdiction gets a claim into federal court, not a party. The claims must share a common nucleus of operative fact (*United Mine Workers of America v. Gibbs*). This is usually satisfied if the claim arose from the same transaction or occurrence or series of transactions or occurrences. With federal claims, either party may supplement. In diversity cases, only the defendant may supplement, however exception 6 allows plaintiffs to

supplement. The exception states that: the case must already be in federal court, there are multiple plaintiffs, one plaintiff meets the diversity requirements (complete diversity and amount in controversy), the second plaintiff meets diversity but not the amount in controversy, and the claims share a common nucleus of operative fact, then the second plaintiff may assert supplemental jurisdiction which allows the claim into federal court under diversity.

Here, this is a diversity case. Paul's case is already within federal jurisdiction, as he aggregated his claims to meet the statutory requirement. Paul meets the diversity requirements. Pam meets the diversity requirement, but not the amount in controversy, as she is only claiming \$5,000, but their claims share a common nucleus of operative fact, as Paul and Pam were clipped by Quickbite's bike.

Thus, Pam may supplement her claim with Paul's and the court may hear her claim in federal court under diversity.

Conclusion

Quickbites motion to dismiss due to lack of subject matter jurisdiction 12(b)(1) should be dismissed.

Service

See Supra

Service on a corporation

See Supra

Here, as stated with Paul, Pam and Paul emailed the summons, and because they are both party members in the suit, this is improper, despite service being delivered to representatives of the company.

Thus, service on a corporation was improper.

Service on an individual

See Supra

Here, as with Paul, they are serving Quickbite, a LLC, however, if personal service is needed, this would still be improper as service was not done personally, through substituted service, agent service, or through constructive service. Further, Pam is a party member.

Thus, if deemed to have required service on an individual, service would have been improper.

Conclusion

The court should grant Quickbite's 12(b)(5) motion or their motion of insufficient service of process.



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QUESTION 1

Venue

Venue refers to the proper location or district where a case may be filed. Plaintiffs lay venue. Venue is proper: 1) if all defendants reside in the same state, venue is proper in any district of the state where the defendant's reside; 2) venue is also proper where a substantial part of the claim arose; 3) if there is no other district where the action may otherwise be brought, venue is proper in any district where any defendant is subject to the court's personal jurisdiction regarding the action.

Here, while Dave is a store operating in Texas, Diane is a resident of Arizona, and due to this, all defendants do not reside in the same state. However, the venue may be proper in Texas as this is where a substantial part of the claim, in fact, where the entire claim arises from. Therefore, venue is proper in Texas state court. If the court waivers, Dave's market is subject to the court's personal jurisdiction regarding the action, so the Texas state court would still be proper.

Thus, Paul properly layed venue.

Question 2

REMOVAL

A defendant may remove a case from state court to federal court within 30 days as long as the federal court has federal jurisdiction, through a federal question or diversity requirements. Any case that meets the federal question or diversity requirements may be removed except: 1) in-state rule: there is no removal if the defendant is a citizen the forum of the federal court in diversity cases only. A defendant may not add a party in bad

faith to delay the court for the in-state rule; or 2) the case was filed in state court and more than one year has passed. The process is that the case is removed to the federal court embracing the state court where the action was filed. The plaintiff must file a notice of removal with the federal court; give the federal court all of the case documents; give a notice of removal to the plaintiff; and file a notice of removal with the state court.

Here, the case was filed in the State Court of Texas, and thus would be removed to the federal court embracing the state court where the case was filed, however, due to the in-state rule, Dave is precluded from doing so because Dave is a resident of Texas, and there is no removal if the defendant is a citizen of the forum of the federal court in diversity cases. Paul is a citizen of California and Diane is a resident of Arizona, while the amount in controversy is not stated, due to the parties differing residencies, one may presume that this case would be a diversity case.

Thus, the court erred in granting Dave's notice of removal.

Transfer

Transfer involves moving a legal case from one federal court (transferor) to another federal court (transferee). Transfer requires that the transferee court be a proper venue and have personal jurisdiction over the defendant's without needing the defendant's consent or waiver. Except, if the transferor court is proper, the transferor may transfer the case in the interest of convenience and justice. Factors that are considered include: Related to the Case (Private Factors): the court considers the transferee's court center of gravity and assesses the convenience of the locations of the witnesses and evidence. Related to the Forum (Public Factors): transferee court considers whether the forum should bear the burden of jury service and if this is a local controversy best suited for local resolution. The transferee court also applies the transferor court's law.

Here, while Diane is a resident of Arizona, Dave's market seems to be a resident of Texas, as this is where it is based. Due to this, Dave would most likely have to consent to personal jurisdiction which is not allowed while transferring the case. However, because the Texas court is a proper venue as this is where a substantial part of the claim arose, Diane may argue that the transfer would be best as it is in the interest of convenience and justice. However, the center of gravity of the case is in Texas, as would be the the witnesses and evidence, as the claim arose in Texas. Further, Arizona should not bear the burden of jury service over a claim that arose entirely in Texas, and the controversy is not in any way a local controversy.

Thus, the court did not err in denying Diane's motion to transfer.

Question Four

Conflict of Law

Generally, the federal court must apply the choice-of-law or conflict-of-law of the state where the federal court sits. Typically, the law of the state with the greatest connection to the issues governs.

Here, the federal court sits in Texas and Texas has the greatest connection to the issue.

Thus, Texas should apply the Texas conflict of law

END OF EXAM
