

MONTEREY COLLEGE OF LAW

Civil Procedure

Midterm Examination

Fall 2015

Prof. S. Sanders

INSTRUCTIONS:

There are three (3) questions in this examination.

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

Question 1

Pete, a Wyoming citizen for over 20 years, loved to fly fish in the beautiful mountain streams near Yellowstone National Park. On a weekend fishing trip, Pete met Dave and Ed at a Yellowstone Wyoming lodge where all were staying. Dave was a Montana citizen whose delivery job brought him to Wyoming about 20% of his working time. Dave also came to Wyoming about three times a year to kayak in various lakes. However, Dave was not at the lodge for work or to kayak, but rather he joined Ed, a close friend, to attend their college buddy's wedding. This was Ed's first time in Wyoming since Ed, a chemist residing and working in New York City, NY, typically hated the "great outdoors."

Ed did make occasional trips to Montana to visit his best friend, Dave. In fact it was during one of Ed's visits to see Dave in Montana when Dave and Ed invented a new bear repellent designed to repel grizzly bear attacks. During one of Pete's conversations with Dave and Ed at the Yellowstone Wyoming lodge, Pete learned that Dave and Ed were scheduled to appear on the TV program, "Shark Tank," to seek additional funding to market their bear repellent. At Pete's request, Dave and Ed sold Pete a can of bear repellent. The very next day while fly fishing in a nearby stream, Pete was approached by a grizzly bear who attacked Pete. Pete discharged the Dave and Ed bear repellent which failed to deter the grizzly. Pete was badly mauled but survived the attack.

Pete later sued Dave and Ed in Federal District Court in Wyoming seeking \$750,000 in damages. Pete had Dave and Ed personally served in their respective home states.

- 1) Does Wyoming Federal District Court have in personam jurisdiction over Dave and Ed? Do *not* discuss issues concerning long arm statutes, in rem jurisdiction, quasi in rem jurisdiction or subject matter jurisdiction.
- 2) If the federal district court decides that it has in personam jurisdiction over Dave and Ed, how should the court rule on Dave's motion to change venue to Federal District Court in Montana if Ed has no objection to Dave's motion to change venue?

Question 2

Abel, a Utah citizen, owned a small plumbing business in Utah. Abel invented a new shower valve that allowed plumbers to change valves without having to tear up a large portion of the wall where the valve was located. Abel patented his invention.

Several years later, Abel believed his former employee, Bertha, infringed on his patent. Abel further believed Bertha, also a Utah citizen, took Abel's customer list to market the valve to Abel's customers. Bertha by virtue of her employment with Abel did have access to Abel's shower valve design and to his customer lists.

Abel sued Bertha in Federal District Court in Utah for two claims:

- 1) Patent infringement for \$50,000, and
- 2) A Utah state law cause of action for unfair business practices for improperly using both Abel's patented design and customer list, seeking \$400,000.

Abel's unfair business practices claim was based on a relatively recent Utah statute enacted to prevent employees from leaving their place of employment and thereafter wrongfully using information gained during their employment. The prohibited conduct was broadly defined and according to some (but not all) court of appeals decisions, may include patent infringements as well as using former employers' customer information. The Utah State Supreme Court has not yet ruled on the scope of the act with respect to these concerns.

Does the federal district court have subject matter jurisdiction to hear Abel's claims. Analyze fully, discussing all possible bases for subject matter jurisdiction for Abel's claims.

Question 3

AVT, Inc., is a corporation incorporated in the state of Delaware with corporate headquarters in Maine. AVT, Inc., is a high tech firm which manufactures components for all sorts of computer applications.

Pam, a Vermont citizen, sues both AVT, Inc., and its president, Carl, in Federal District Court in Maine for a breach of contract claim, alleging damages of \$100,000. Pam has Viola, the corporation's chief engineer for product development, personally served in Maine on behalf of AVT, Inc. Pam also has president Carl personally served in his personal capacity.

Service on Viola on behalf of AVT, Inc., is contrary to Maine law which requires that in any suit for breach of contract against a corporation, the president of the corporation must be named as a party and must be personally served in his or her personal capacity and on behalf of the corporation. The Maine law was a response to concerns that presidents of corporations must be made more accountable in managing corporate affairs. The Maine law imposed corresponding duties on all president of corporations in this regard.

- A) Under federal law and rules, did Pam validly serve AVT, Inc., by serving Viola?
- B) If so, should the federal court apply the state service requirement or the federal requirement as to AVT, Inc.,?

Answer to Question 1

(1) Jurisdiction over Persons/Property

- I. Rule 4(k)(1)(A)-Federal jurisdiction OK if state court has in personam
- II. Constitutional (Due process) analysis-In personam jurisdiction
 - A. Traditional bases-*Pennoyer*
 1. Consent-special appearance if D objects
 2. Presence when served-No; served in MT and NY, respectively
 3. Domicile-No; not WY citizens
 - B. Modern basis-*I-Shoe*
 1. Rule: If he be not present, sufficient minimum contacts with the forum so that the maintenance of the suit does not offend traditional notions of fair play and substantial justice
 2. Analysis
 - a. Dave
 - i. Contacts:
 - (A) Work 20% of time in WY
 - (B) Kayak trips 3x/year
 - (C) Wedding in WY
 - (D) Sold repellent to WY resident in WY
 - ii. Sufficient m/c?
 - (A) Purposely availed himself of the benefits and the protections of WY law?
-Often, work and kayak trips
 - (B) Reasonably foreseeable to haled into WY courts? If D took affirmative acts in WY a duty is imposed on him
 - (C) Systematic and continuous nature of contact? yes
 - (D) Specific v. general jurisdiction- relationship between contacts and c/a sale of product is the basis of suit
 - iii. Other Fairness factors:
 - (A) Balancing the conveniences -MT fairly close
 - (B) State interest in regulating D's conduct- high
 - (C) State's interest in opening state's courts to its residents-high
 - (D) Location of witnesses and evidence-many in WY

- b. Ed
 - i. Contacts:
 - (A) Wedding
 - (B) Sold repellent to WY resident in WY
 - ii. Sufficient m/c?
 - (A) Purposely availed himself of the benefits and the protections of Wyoming law? Ltd; repellent sale
 - (B) Reasonably foreseeable to haled into WY courts? As to sale, possibly
 - (C) Systematic and continuous nature of contact? no
 - (D) Specific v. general jurisdiction- relationship between contacts and c/a- yes
 - iii. Other Fairness factors:
 - (A) Balancing the conveniences-NY resident far away
 - (B) State interest in regulating D's conduct-high
 - (C) State's interest in opening state's courts to its residents-high
 - (D) Location of witnesses and evidence-many in WY

Conclusion

(2) Venue in Federal Court (1391(b))-

I. Judicial district in which any defendant resides, if all defendants are residents of the state in which the district is located: (1391(b)(1))

- Dave = MT resident
- Ed = NY resident
- No, neither defendant is WY resident

II. Where a substantial part of the events or omissions giving rise to the claim occurred (1391(b)(2))

- WY, but note that WY may have in personam jurisdiction over Dave but in personam jurisdiction over Ed is problematic

III. Otherwise, if there is no district in which an action may otherwise be brought, . . any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action. (1391(b)(3))

- WY, see above
- If MT can exercise in personam over both Dave and Ed; OK; <bonus for this discussion.>

Answer to Question 2

Federal Court Subject Matter Jurisdiction Question Analysis

(1) Claim #1- Patent infringement

II. S-M Jurisdiction re Claim #1?

- A. Federal Question? Yes, arises under a federal statute-patent law
- B. Diversity of Citizenship- N/A

(2) Claim #2-Unfair Business Practices

I. Need an independent basis of s-m jurisdiction

II. S-M jurisdiction

- A. Federal question? No
- B. Diversity of Citizenship No
 - 1. Complete diversity? No
 - a. Abel=UT citizen
 - b. Bertha= UT citizen
 - 2. Amount in controversy
 - a. Rule= Based on P's claim, if made in good faith, unless it appears to a legal certainty the claim's value is less
 - b. \$400,000-satisfied
- C. Supplemental jurisdiction as to claim #2?
 - 1. Same case or controversy?- Arise from same set of operative facts? The discussion should discuss both aspects of the state law claim as one part being based on the same operative facts and the other unrelated. Discuss the underlying rationale for supplemental jurisdiction.
 - 2. 1367(b) problem? FRCP 14, 19,20, 24 or joinders?-No
 - 3. 1367(c) exceptions?
 - a. Does claim raise a novel or complex issue of state law? Yes, the federal court may wish to defer hearing such claims until the Utah statute's interpretation is clear.
 - b. Does state claim predominate over claim of original jurisdiction?- in terms of value, yes.
 - c. Original jurisdiction claim dismissed? No
 - d. Compelling reasons in exceptional circumstances to decline jurisdiction?

Conclude

Answer to Question 3

(1) **Motion to Quash Service-Service on Corp**

- A. Rule 4(h)- within a federal judicial district
1. Service in accord with state law, or
 2. Delivery to
 - a. officer
 - b. managing or general agent
 - c. any agent authorized by appointment or law
- B. *Hellenic Challenger* factors as applied to Viola
1. Well integrated into the company? Yes, insofar as she would be considered a high ranking, important company employee
 2. Familiar with formalities?
It would seem so, given her high position; however, no facts indicate her familiarity with legal formalities.

(2) **Does the Federal Court apply the ME state rule re service of process or FRCP Rule 4(d)?**

- I. Identify the potential conflict of ME's service of process statute with the federal rule
- II. *Erie* rule
- A. Procedural or substantive- Typically service of process methods are viewed as a procedural rules-Fed
- B. *York* Outcome Determinative test- If apply ME rule, case is dismissed; otherwise, FRCP moves the case forward. It may be argued that neither rule will relate to merits; however, neither does S/L.
Conclusion: Federal (A)/State(B)
- III. *Byrd*- Balance
- A. the state interest (encouraging corporate responsibility by imposing on corp. pres. certain obligations and litigation responsibilities re receipt of service *personally*) vs.,
- B. the federal policy
1. favoring uniformity, and
 2. the federal interest of simplifying initiation of litigation and reducing costs
- C. Is there really an interference of state rule with FRCP? Maybe not. Fed is purely focused on service whereas ME scheme is an integrated corporate responsibility focus. Hence, may conclude no conflict. Otherwise, Fed rule would prevail. (See e.g.-*Hanna*)
Conclude
- IV. *Hanna*
- A. Unavoidable clash? See discussion above.
- B. If so, apply a validly enacted federal statute (or rule adopted thereto) If not, apply ME.

Conclusion?

Best approach/ *Hanna*?

Blue Book

NAME

~~Blank~~

SUBJECT

Civil Procedure

INSTRUCTOR

Sanders

EXAM SEAT NO.

SECTION

Q1 B31 of 1

DATE

Dec 8, 2015

GRADE

Pete v. Dave + Ed

Pete is civilly suing Dave + Ed for damages caused by a bear attack in Wyoming. Pete brought suit in fed district ct, in order to determine if this is proper, the state must have valid Personal Jurisdiction over Dave + Ed, and the claim must be in the proper venue.

1. Personal Jurisdiction - In Personam (PS)

A state must have valid PS over an out of state resident's person or property. Under in personam, meaning PS over the D: themselves, the state must have valid PS either under the traditional bases of Pennoyer, or if not personally served in the state, under the modern test in *I. Shoe*. By meeting either of these ^{standards}, PS is considered constitutional.

Traditional Bases

Under Pennoyer, a state has PS over a D in one of three ways: physical presence when served, domiciled in forum, or consent. Here, WY will not have PS under Pennoyer for D or E.

Both D + E were served in their home state, so no physical presence or fraud issues. D is domiciled, meaning physical presence + an intent to remain indefinitely, in Montana, while E resides in NY.

The facts do not indicate D or E gave consent, and they likely will contest it as they file a change of venue motion.

So we will only have PS over D if the I Shoe modern test is satisfied.

I Shoe

Under the modern rule, which does not override Pennoyer, if the D is not present in the forum when served, the forum can exercise PS if the D has sufficient minimum contacts so that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.

This test has two parts, contacts + fairness, and if satisfied the state may exercise either general or specific jurisdiction.

For general, the D has systematic and continuous contacts with the forum so that the D is essentially at home in the forum and they can bring a claim against D that arise anywhere.

If the D has at least one contact w/ the forum, and the claim arises from D's minimum contact, the forum can bring specific jurisdiction since they are related. So each D's contacts must be addressed to determine proper jurisdiction.

Contacts

For D, he was in WY for a friend's wedding. ~~His work brings him~~ Twenty % of his work brings him to WY for deliveries. Also, he comes to WY 3 times a yr to go kayaking.

While in WY for the wedding in Yellowstone,

D met P + sold him the bear repellent.

To exercise general jurisdiction, these contacts would have to be systematic and continuous. P will argue that D is in WY so frequently, for work and personal reasons, that D could reasonably expect being haled into a WY court. Also, because he has worked ~~canoe~~, fishes, and kayaks there, he is specifically targeting the forum since he is benefitting from WY laws. D would argue 20% is not a substantial amount of his work and he is doing nothing to target the forum. Also, b/c he is typically there for such a short amount of time, ^(weekend trips + electronics) he wouldn't expect being haled into court, and D didn't target P or WY to sell his product.

Also by selling his product in WY he specifically targeted WY.

The Ct. will likely conclude WY would have general jurisdiction over D.

Next, b/c P's claim w/ the bear against D arose out of a contact w/ WY, the forum will likely have specific jurisdiction while D was in WY, he sold P the bear repellent, + then P was injured in WY. So the contact + claim are related.

So WY will have specific jurisdiction over D, but WY ~~must~~ PS must be fair.

Fairness factors include burden on P, P, Ct, and location of evidence; witnesses. Burden is not often, so not difficult for him to travel. Also, the claim occurred in WY, so witnesses will be easy, and the WY has an interest. So PS over D will be fair. But WY must also have PS over E.

For E's contact, he had ~~not~~ been to WY before this trip like D, he was there for a wedding. So this one trip will not constitute systematic and continuous contacts w/ WY, b/c he did not purposely avail himself to WY, so he would not expect to be haled into a WY ct.

However, like D, WY will likely have specific jurisdiction over E while in WY, E met P and w/ D, sold P the beer repellent. Then P got injured by the beer & brought a claim against E so the claim arose from E's one contact w/ WY.

Therefore, WY has specific jurisdiction over E for this claim so if it is fair, then PS is valid.

E rarely travels to WY, as this was his only time, and haunts the outdoors. However, he travels to Mont. occasionally so P would argue traveling is not a burden physically or financially. Also, b/c the claim occurred in WY, WY has an interest and the witnesses and evidence are easy to access.

Conclusion

WY has valid PS over D + E under specific jurisdiction, since their contact led to the claim from P. So WY has in personam jurisdiction.

2 Venue - Montana

Once a claim is properly in federal ct., the rules of venue determine which district in fed. ct. is the proper one. Then, a D can move to transfer venue, either b/c the original one was improper, or proper but a different venue is more convenient.

B/c NY properly has PS over D + E, this instance is a change of venue from a proper venue to another proper venue. This means the D is moving to transfer to another venue where the claim could have been brought originally. If there are multiple Ds to a claim, they all must consent.

Here, D + E are multiple Ds, so and E is not objecting to the transfer. So the ct. must determine if a Mont. district court is proper.

A venue is proper ~~at~~ in any forum ~~in~~ the state where all the Ds reside, or where a substantial part of the claim arose. If neither of these options work, the last resort is any forum that has PS over the Ds.

D is domiciled in Mont, but E is in NY, so the first option fails. ~~However, E will agree to the claim~~ ~~submitted~~ Also, the claim substantially occurred in NY, not Montana, so the second option also fails.

So Mont. is only a proper venue if it has PS over the Ds.

D is domiciled in Mont, so he meets PS under Pennoyer. Also, b/c E is consenting to the motion to change venue, D would argue Mont. has PS over E also under Pennoyer. E is consenting to Mont. having PS over him for this claim. Mont. would likely not have PS over E under I shoe, b/c he only occasionally visits D in Mont, which is not systematic + continuous b/c he wouldn't reasonably expect being haled into a Mont. Ct.

However, b/c PS is valid under Pennoyer, not meeting I shoe does not effect D's motion.

B/c Mont. is considered a proper venue, the Ct. should grant D's motion to change venue.

Blue Book

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SUBJECT *Civil Procedure*

INSTRUCTOR *Sanders*

EXAM SEAT NO. SECTION *Q2 BB 1 of 1*

DATE *Dec 8, 2015* GRADE

A v BSubject Matter Jurisdiction (SMS)

A sued B in Fed. district court. Unlike state courts, federal cts are a court system of limited jurisdiction, meaning it can only hear certain types of cases. To have valid SMS, the claim must be a federal question (FQ) or have diversity of citizenship. Every claim must have independent SMS. If a claim fails to meet FQ or diversity, it may come in under supplemental jurisdiction if it meets the criteria.

Here, there are two claims, a patent infringement & Utah unfair bus. practice. Each must meet SMS.

Diversity

Under diversity, there must be complete diversity, meaning no P is a resident of the same state as any D. Also, the claim must ~~exceed~~ have an amount in controversy that exceeds \$75,000. When there ~~is~~ are multiple claims between one P + one D, the amounts can be aggregated.

Therefore, ~~the~~ the patent law claim for \$50,000 and Utah bus. law for \$400,000 can be aggregated to far exceed the amount in controversy.

However, both A + B are residents of Utah, so they fail to meet complete diversity.

So Fed. court only has valid SMS

if the claims are FQ.

FQ

Under FQ, the P's claim must arise under state law. This means the P's rights in the claim exist b/c of a federal law (Constitution or fed. statute.). The well-pleaded complaint rule requires the the court to only look at what the P pleads in the complaint to determine if it meets FQ.

The first claim is a patent infringement, which is a federal law. Therefore, claim 1 arises under a federal law and meets FQ.

Claim two arises under a Utah state law, which is not a FQ.

So claim one can validly come in fed. ct. under SMS. However, claim two must meet the criteria of supplemental jurisdiction. ^{if the federal ct. has SMS}

Supplemental Jurisdiction (SS)

Under SS, a claim that doesn't meet FQ or diversity still has a chance of being heard in fed. court.

Under rule 13c7a, if the claim ^{two} is from the same nucleus of operative fact as the claim w/ SMS, then it may come in. ^{constitutionally the same}

Here, claim one is based on a patent infringement based on a shower valve. A is alleging that his B, his former employee, stole his patented shower valve and marketed it to A's customers from a list B stole.

Under claim two, A ~~is~~ is alleging B engaged in unfair business practices by improperly using A's patented shower valve and stealing his customer list.

A will argue these are the same transaction and occurrence, so this meets the same nucleus of operative fact standard. In both claims, the conduct that led to the claim was B using A's shower valve design and marketing to A's clients. *in part*

B may argue they are separate nucleus of operative fact b/c one is a patent infringement w/ the valve, while the other is specific to B's business practice.

However, b/c both of these deal w/ B's act of stealing (allegedly) A's shower valve design + marketing to A's clients, they are the same transaction and occurrence and are the same nucleus of operative fact.

Therefore, under 1367a, claim 2 would have valid SJ to come into federal court w/ claim one.

However, the court must next determine if 1367b or 1367c takes away SJ.

Why? - Example of a claim that is not a patent claim

Under 1367b, SS can be taken away from claims made by P if the claim falls under certain specified scenarios. The facts do not indicate that P's claims fall under the specifications of 1367b, so it is safe to assume SS is not taken away under this rule.

Next, the court can decline to hear claims under 1367c. The ct. may decide to do this when the state law claim is particularly novel or complex, or if the state law claim substantially dominates over the claim w/ SMS. Lastly, the rules gives the court the discretion to decline to hear the case for any reason they see fit.

Here, the state law is a relatively recent law. The purpose behind it is to prevent employees from wrongfully using information they gained during their employment. The law is undeveloped, as the Utah ct. of appeals has given different scopes to whether it applies to patent infringements or just customer information. The Utah supreme court has not ruled on this yet to determine and finalize the law's scope.

B/c of these facts, the state law is likely considered novel and complex. With an undeveloped and new law, the state court should be the one interpreting it for their in state residents. Also, b/c there have been different rulings on the law during appeals,

it would be beneficial for Utah to hear this case and finalize the scope of the law. Therefore, the fed court will likely decline to hear this claim under ~~§~~ 55 b/c the law is novel and complex.

Next, the state claim may be considered as substantially dominating over the fed. law claim. The fed. claim has \$50,000 at stake, while the state claim is over \$400,000. This is a significant difference in the amount of damages alleged, so the ct may determine this is enough to conclude the Utah law substantially dominates. Also, b/c the state law is broad and undefined as to its scope, most of the trial would likely be dedicated to interpreting and deciding on it.

Therefore, the ct. will likely decline to hear claim 2 also b/c it substantially dominates over claim 1.

Lastly, under the catch-all portion of 1367c, the fed ct. may also decide that b/c ~~the state law~~ both the P + D are Utah residents, and most of the claim deals with a novel Utah issue, the proper forum is Utah. Typically, ~~the~~ states have an interest in hearing cases dealing w/ their own citizens, especially when both parties are their citizens.

B/c the fed ct is typically ~~usually~~

~~but~~ busy and overburdened, they may decline to hear this claim since their interest is small compared to Utah.

Conclusion

Claim one has valid SMS under FQ. Claim two does not meet FQ or diversity, and though it satisfies the SS standard, the Fed. Ct. will determine Utah is better suited to hear it, and it will be declined under SS and therefore SMS.

good job!

Blue Book

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SUBJECT

Civil Procedure

INSTRUCTOR

Sanders

EXAM SEAT NO.

SECTION

G3 BB 1 of 1

DATE

Dec 8, 2015

GRADE

Pam v. AVT, Inc. + Carl

P is suing Avt, a corporation, and its president, Carl, for breach of contract, alleging \$100,000 in damages. In order for the suit to go forward, notice must be proper.

A. Notice: Fed Law

Under Fed law, notice must be reasonably calculated under the circumstances to reasonably apprise the party (or parties) of the proceedings and give them an opportunity to be heard. This standard satisfies the due process clause.

For notice to be proper, the summons and complaint must be served by a nonparty over the age of 18. Here, this appears to be satisfied.

Next, for an individual, they can be personally served, their agent can be served, or there can be substituted service at the indiv.'s usual place of abode to someone of suitable age or discretion that also resides there. Here, Carl, an individual, was personally served.

Avt is a corporation, which changes the service rules. A ~~corporation~~ P can serve the corp's officer, managing or general agent, or somebody who is well integrated into the company and understands the formalities of service.

Here, the person served in behalf of AVT is Viola, their chief engineer of product development.

This position is likely not considered a managing or general agent. So in order for service to be valid, she must be considered well integrated into AVT & familiar w/ the formalities of service.

V is in a high level engineering position, being the "chief" engineer. So she has likely worked her way up ~~to~~ to be considered well integrated into AVT.

The court must then consider whether V understands and is familiar w/ the formalities of service.

V is an engineer, which requires a high education-level and great intelligence so P would argue she is intelligent enough to understand the formalities of service, and know that she must give the complaint and summons to AVT's legal department.

On the other hand, AVT would argue V has an engineering background, but no legal background. So she would not be familiar w/ the formalities of service or what exactly she should do with the complaint.

P would counter that the ~~set~~ standard does not require an intensive legal education or background, just someone high enough in the company that would know what to do w/ the complaint to make notice reasonable & proper.

AVT may also argue that b/c V is in Maine, while the state of inc. is Delaware. So P should have served them in their ~~state~~ Del. office. However, Maine is considered AVT's "headquarters" and at the HQ, P served a high ranking, well-educated employee. So notice is still valid.

The ct. will likely conclude service on V was proper, as her high-ranking job of chief engineer in AVT's HQ and her high level of education makes her well integrated in AVT and familiar w/ the formalities of service.

B. Fed. Service Law or State Service Law

Once a diversity case is properly in Federal court, the judge may need to determine whether the fed law or state law applies.

When there is a federal directive on point that is arguably procedure under the Rules enabling Act, meaning it doesn't extend, modify, or alter state law, then the fed. law applies b/c of the Supremacy clause.

However, when a state law + fed law are conflicting, the Erie doctrine says that the state law applies when it is substantive.

Though the Erie case didn't define or articulate the difference between a procedural rule or substantive law, the court has applied 3 different tests to determine when to apply the state substantive law: outcome determinative, weighing of fed. vs. state interests, and twin aims of Erie (also called forum shopping deterrence).

Here, the Maine law requires a corp. breach of K claim to have different notice standards. The president of the corp must be named, personally served, and served on behalf of the corp.

Core, the President, was served according to Fed. law.

B/c these laws conflict, Erie is invoked and the ct. must determine whether the Maine law is substantive or procedural.

Outcome Determinative (York)

In the York case, the ct. ruled that when the application of a state law determines the outcome, the state law is substantive and should be applied. When the application of a particular rule determines the entire case outcome, the courts do not like this and conclude the state law is substantive.

Here, if the fed. rule is applied, service of C is proper, as noted supra. However, if the Maine law is applied, service will be improper b/c ✓

was served on behalf of AVT, not the president as the rule requires. So service is invalid and the case may be dismissed.

P will argue this is not outcome determinative, b/c if the law is applied, she can then just properly serve C ~~as~~ on behalf of the corporation. So the claim will not be completely barred by the application of the state law. In both instances, the case may move forward, just ~~if~~ if Maine ~~is~~ law applies, it will take longer b/c P will need time to correct her mistake.

AVT would argue this is still determining the outcome, b/c the claim will likely be dismissed, even though she would later do proper service, this current claim would not go forward if main law applies, while it would in fed law.

However, b/c the overall outcome is not determined, since either way P will be able to bring a claim against AVT, the maine law will be considered ~~sub~~ procedural under this test.

Balancing Interest (Byrd)

If the state court has a particularly high interest in applying the state law, and this interest is higher than the fed ct's interest in applying the Fed law, then the state law is substantive. However, if the fed ct. has a higher interest, the law may be considered procedural.

As a general rule, federal cts have a strong interest in applying their own laws in their own court. Also, the fed laws for notice were made and formed so as to satisfy the due process clause. So the fed. law here is adequate to give AVT notice and an opportunity to be heard.

For Maine, the specified breach of the rule for notice to corps. was in response to concerns of Pres. of corps. being held accountable for corporate affairs. So Maine ct. would argue they have a particular need in this regard, so their interest outweighs fed ct.

Fed ct will argue that their fed. notice rules do hold Pres. accountable, b/c ~~they~~ the rule is found to be reasonable under due process and is constitutionally sufficient.

However, b/c Maine law specifically responds to concerns (likely concerns from their citizens) ~~specifically~~ addressing a particular issue, they will argue their interest is higher.

~~But the federal law is also a response to a particular issue.~~
~~But the federal law is also a response to a particular issue.~~
~~But the federal law is also a response to a particular issue.~~

Nonetheless, b/c Fed. law on notice stems from the due process clause of the const, the fed. interest will be higher. Interests stemming from the constitution will typically always outweigh state interests, and under fed law C is still being held accountable.

Twombly / Forum Shopping Deterrence (Hanna)

For this test, the judge asks whether applying the fed. law will cause people to flock to fed ct. If so, the ^{state} law is substantive. Fed. cts want to avoid forum shopping, and avoid the unfair administration of the law, since in state residents wouldn't bring a claim in the fed ct. b/c of diversity.

Here, the ~~fed~~ state law adds an additional standard to notice of a corp. in breach of K's. However, the standard is not particularly more difficult or strenuous, just requires the Pres. to be ~~noted~~ served personally as well as on behalf of the corp. So the fed law application will likely not cause a flock to fed ct or forum shopping.

So under this test, the state law is not substantive and fed law will apply.

Conclusion

B/c the fed. law stems from the constitutional clause of due process, the Balancing of Interest test of Byrd should apply. Therefore, Maine's law is procedural and the Fed. notice rule applies. So service to C was valid.