

Monterey College of Law
Civil Procedure
Midterm Examination
Fall 2024
Professor Isaac Adams

Instructions:

Answer: Three Essay Questions

Total Time Allotted: Three (3) Hours

Question One

Paul, a resident of California, purchased a lathe machine manufactured by Lathe Co., which is headquartered and has its manufacturing plant in Colorado. While using the machine, a metal shaving flew off, broke through the guard shield, and lodged in Paul's forearm.

As a result, Paul required multiple surgeries at a nearby hospital. The guard shield was manufactured by StrongGuard, a Canadian corporation.

Apart from Lathe Co., StrongGuard has no other clients in the United States. The contract with Lathe Co. generates approximately 10% of StrongGuard's annual revenue. Before the Statute of Limitations expired, Paul filed a lawsuit against StrongGuard in federal court in California. In response, StrongGuard filed a motion to dismiss for lack of personal jurisdiction.

After the Statute of Limitations had expired, Paul sought leave from the court to amend his complaint to join Lathe Co.

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

1. How should the court rule on StrongGuard's motion to dismiss? Discuss.
2. Should the court allow Paul to join Lathe Co.? Discuss.

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Question Two

While driving in State B, Perla and Pamela, both residents of State A, were rear-ended by a food truck owned by DelishFood, Inc. DelishFood, Inc. is incorporated in State B, the only state in which it conducts its business.

Perla and Pamela jointly filed a lawsuit against DelishFood, Inc. in federal court in State A. Perla sought \$70,000 in damages for personal injury and \$10,000 in property damage, while Pamela claimed \$15,000 in medical expenses. Later, Perla terminated her lease for her apartment in State A and moved to State B to attend law school.

Once in State B, Perla drove to DelishFood, Inc.'s headquarters and taped the summons and complaint to the door. The CEO of DelishFood, Inc. later found and read these documents. DelishFood, Inc. filed a motion to dismiss Perla and Pamela's lawsuit for lack of subject matter jurisdiction. One week later, DelishFood, Inc. filed an additional motion to dismiss on the grounds of improper service of process.

1. How should the court rule on DelishFood, Inc.'s motion to dismiss for lack of subject matter jurisdiction?
2. How should the court rule on DelishFood, Inc.'s motion to dismiss for improper service of process?

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Question three

InfiniteEnergy Inc., a maker of lithium batteries, was incorporated in State A. Most of its employees work at its sole manufacturing plant in the southern judicial district of State B.

Scarlett, a citizen of State B's northern judicial district, purchased an InfiniteEnergy battery for use in her alarm clock. When she placed the battery into the clock, it combusted, burning Scarlett's hand.

Scarlett hired Saul, a local lawyer, to sue InfiniteEnergy. She informed Saul that she believed InfiniteEnergy used cheap materials to make the batteries and that she wanted to sue for fraud.

Saul said he would take Scarlett's word for it and filed a complaint against InfiniteEnergy, alleging that the company had committed "fraud in the supposed value."

Saul filed the lawsuit in the State B northern judicial district. The federal court found that it had subject matter jurisdiction to hear Scarlett's lawsuit based on diversity of citizenship. Subsequently, InfiniteEnergy Inc. moved for a change of venue to the southern federal judicial district of State B and filed a 12(b)(6) motion to dismiss.

1. Did Scarlett properly lay venue in State B northern judicial district?
2. How should the court rule on InfiniteEnergy inc. motion to change venue?
3. How should the court rule on InfiniteEnergy inc's 12 (b)(6) motion?
4. What ethical violations, if any, has Saul committed?

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ANSWER OUTLINE
CIVIL PROCEDURE
FALL 2024
PROF. I. ADAMS

Question One:

1. *Personal Jurisdiction Over StrongGuard*

Traditional Bases for Personal Jurisdiction

- 1- *Domicile: A defendant who is domiciled in the forum state is subject to its jurisdiction. Here, StrongGuard is domiciled in Canada, so this does not apply.*
- 2- *Presence and Service in the Forum State: Jurisdiction can be established if the defendant is physically present and served with process within the forum state. Since StrongGuard has no physical presence in California, this basis does not apply.*
- 3- *Consent: A defendant can consent to jurisdiction either by agreement or by appearing and defending a case without contesting jurisdiction. StrongGuard has not consented to California jurisdiction and has, in fact, contested it by filing a motion to dismiss.*
- 4- *Waiver. StrongGuard did not waive because it did not make a general appearance in court and it did not fail to assert lack of personal jurisdiction in its first pleading.*

Modern Basis for Personal Jurisdiction (Long-Arm Statute and International Shoe Standard)

- *California's Long-Arm Statute: California's statute authorizes courts to exercise jurisdiction to the full extent permitted by the U.S. Constitution. Therefore, the test for jurisdiction over StrongGuard hinges on federal due process, as established in International Shoe Co. v. Washington.*
- *International Shoe*
 - *International Shoe set the standard that a defendant must have "minimum contacts" with the forum state so that exercising jurisdiction does not offend "traditional notions of fair play and substantial justice."*
 - *Minimum Contacts*
 - 1) *Purposeful availment. D must reach out to the forum. D purposefully avails itself of the privilege of conducting activities within the forum, thus invoking*

the benefits and the protection of its laws. Did StrongGuard purposefully availed himself to California?

Yes, because it made money in CA. "A defendant who has placed goods in the stream of commerce benefits economically from the retail sale of the final product in the forum state, and indirectly benefits from the state's laws that regulates and facilitate commercial activity" Asahi.

No, because StrongGuard did not target CA. "The substantial connection between the defendant and the forum state necessary for finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum state. The placement of a product into the stream of commerce without more, is not an act of the defendant purposefully directed toward the forum state." Asahi.

2) Foreseeability. D must have reasonably expected or anticipated to be haled into the forum state's court.

- Justice Brennan. Foreseeable exists if D puts a product in the stream of commerce and reasonably anticipates that it will enter the forum state.*
- Justice O'Connor. Foreseeable exists if D puts a product in the stream of commerce and reasonably anticipates that it will enter the forum state plus an intent to serve the market of the forum state, such as modifying a product to comply with the state law.*

3) Relatedness

General Jurisdiction: Requires continuous and systematic contacts with the forum state, allowing the defendant to be sued there for any matter. StrongGuard's limited business in California (through Lathe Co. sales) likely does not rise to this level.

Specific Jurisdiction: May apply if the claim arises from or is related to the defendant's activities within the forum state.

Fair Play and Substantial Justice Factors

- To satisfy due process, jurisdiction must also be fair and reasonable based on factors like:*
 - Burden on Defendant: Litigating in California could be burdensome for StrongGuard, a Canadian corporation.*
 - Forum State's Interest: California has a strong interest in protecting its residents and adjudicating harm from defective products sold in the state.*
 - Plaintiff's Interest in Convenient Relief: Paul would benefit from litigating in his home state, California.*
 - Efficient Judicial Resolution and Policy Concerns: California has an interest in ensuring an effective remedy for its residents and deterring harm from products within its jurisdiction.*

2. Amendment to Add Lathe Co. as a Defendant

Amendment as of right:

P has the right to amend her complaint once within 21 days after D served her 12 (B) response. A court may allow a party to amend after 21 days if "justice so required," i.e., the motion will be granted unless demonstrable prejudice can be shown, such as delay, prejudice, or bad faith.

Relation back doctrine

For statute of limitations purposes, an amendment to a pleading that arises from the same conduct, transaction, or occurrence that was set forth in the original pleading generally is deemed filed on the date that the original pleading was filed.

The amendment will relate back if:

- 2. It concerns the same conduct, transaction, or occurrence as the original;*
- 3. The new party knew about the lawsuit within 90 days of filing; and*
- 4. The new party also knew or should have known that, but for a mistake, it would have been named originally.*

Nothing in the facts suggests that Lathe Co. Knew of Paul's lawsuit against StrongGuard. Paul would not be allowed to add Lathe Co. as a party.

Question 2:

1. Motion to Dismiss for Lack of Subject Matter Jurisdiction

- Subject matter jurisdiction refers to a court's authority to hear a particular type of case. Federal courts have subject matter jurisdiction over cases based on either federal question jurisdiction or diversity jurisdiction.

Diversity Jurisdiction

For diversity jurisdiction to apply, the following two requirements must be met:

- a. Complete Diversity: The plaintiffs and defendants must be citizens of different states.*
- b. Amount in Controversy: The amount in controversy must exceed \$75,000, excluding interest and costs.*

1. Complete Diversity

- Perla and Pamela are residents of State A, while DelishFood, Inc. is incorporated in State B. This satisfies the complete diversity requirement because there is no overlap in state citizenship between the plaintiffs and the defendant.*

2. Amount in Controversy

- *Perla seeks \$70,000 for personal injury and \$10,000 for property damage. Perla can aggregate her claims against DelishFood. However, she cannot aggregate her claims with Pamela because their claims are separate and distinct.*

3- Supplemental jurisdiction

- *Can Pamela '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.*

2. Motion to Dismiss for Improper Service of Process

Proper service of process ensures that the defendant is notified of the lawsuit and has an opportunity to respond. Failure to properly serve process can result in dismissal of the case. Under Federal Rule of Civil Procedure (FRCP) Rule 4, service must be made to the defendant personally or by another authorized method. Corporations must be served through their registered agent, an officer, or another designated representative.

Perla attempted to serve DelishFood, Inc. by taping the summons and complaint to the door of its headquarters. This is not an acceptable method of service under the FRCP. The fact that the CEO of DelishFood, Inc. later found and read the summons does not retroactively validate the service. The service must be performed in accordance with the applicable rules. However, because DelishFood did not object to service of process in its first pleadings, it is deemed to have waived that defense.

Question three:

1. Did Scarlett Properly Lay Venue in the State B Northern Judicial District?

P can lay venue in:

- 1. A judicial district in which any defendant resides, if all defendants are residents of the state in which the district is located;*
- 2. A judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or*
- 3. If there is no district anywhere in the United States which satisfies (1) or (2), a judicial district in which any defendant is subject to the court's personal jurisdiction with respect to the action.*

A corporation is deemed to reside in any judicial district in which the defendant is subject to the court's personal jurisdiction.

Since the court found that complete diversity existed, It must have concluded that InfiniteEnergy is subject to personal jurisdiction in State A and, thus, a resident of State A.

Scarlett purchased the battery in the Northern District, used it there, and the injury occurred when the battery combusted. So, substantial part of her claim arose in northern district of State B. Scarlett properly laid venue in the State B northern judicial district.

2. *How should the court rule on InfiniteEnergy inc. motion to change venue?*

Transfer: D is asking the court to transfer the case from one federal court to another federal court. The original court where P filed is called Transferor and the court to which the case is sent is called Transferee. If P files the case in an improper venue, and D timely objects, the court can dismiss the case or transfer it, in the interest of justice, to any federal district in which it could have originally been brought. 28 U.S. Code § 1406. The transferee would apply its own law because the transferor was an improper venue.

Factors related to the case

- 1- D has to show that the transferee is the center of gravity*
- 2- Witnesses and evidence are in the transferee's district. Thus, it is convenient to the parties to litigate there.*

Factors related to the transferee's district

- 3- Should the transferee's community be burdened with the jury service?*
- 5- Should the current court keep the case because it is a local controversy, and it should be dealt with locally?*

3. *How should the court rule on InfiniteEnergy inc's 12 (b)(6) motion?*

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.*

4. *What ethical violations, if any, has Saul committed?*

Rule 11. When the lawyer or pro se party signs documents, she certifies that to the best of her knowledge and belief, after reasonable inquiry

- The paper is not for an improper purpose, and*
- The legal contentions are warranted by law (or*
- nonfrivolous argument for law change), and*

- *The factual contentions and denials of factual contentions have evidentiary support (or are likely to after further investigation).*

1)

1. StrongGuard's Motion to Dismiss for Lack of Personal Jurisdiction

Personal Jurisdiction

Personal Jurisdiction (PJ) is the right a court has to exercise a judgement on an individual. Invalid exercises of PJ violate the due process clause of the 14th Amendment. PJ may be found either through the traditional basis or the modern basis.

Traditional Basis

According to the rulings of *Miliken v. Meyer* and *Pennoyer v. Neff*, a court may exercise PJ over a defendant if service of process occurred while that defendant was within the bounds of the forum state or if the defendant is domiciled in the forum state, in which case they may be served anywhere. A defendant may waive their right to object to PJ or may consent to it either impliedly or expressly.

Presence

PJ may be exercised on defendants who are served within the bounds of the forum state.

Here, no facts suggest StrongGuard (SG) was served while within California. PJ may not be asserted through this manner.

Domicile

PJ may be exercised on those who are domiciled within the forum state. Citizens are domiciled in a forum state when that state is the fixed, permanent and true place of their residence and they intend to return to that residence whenever they are away.

Corporations are domiciled in a forum state when the nerve center of their business is

located there. The nerve center of a corporation is where the business is incorporated or where their key business leadership infrastructure resides.

SG is a Canadian corporation with no extensions of its business in the United States with the exception of Colorado. Consequently, SG does not have a nerve center located in California. The court may not exercise PJ over SG under this element of the traditional basis.

Waiver

A defendant may waive the right to object to a court's exercise of PJ if they appear generally before the court to argue the merits of the case and do not object to PJ at their first special appearance before the court.

Here, SG's first known response to the California Fed Court was to file a motion to dismiss for lack of PJ, so they have not waived the right to object to PJ and PJ may not be asserted over them for this reason.

Consent

A defendant may expressly consent to a court's exercise of PJ if they assign an agent in the forum state or sign a contract which would allow the forum state's laws to govern their conduct. A defendant may impliedly consent to PJ if the forum state has some statute which would make the defendants automatically subject to PJ due to specified conduct.

Here, SG did not expressly or impliedly consent to the court's exercise of PJ because they did not make a contract with Paul in California nor did they engage in any conduct that would impliedly subject them to PJ in California. PJ may not be exercised for this reason.

Modern Basis

Under the rulings of International Shoe and Asahi, the court may exercise PJ over a defendant if the defendant has minimum contacts with the forum state and the exercise of PJ does not offend traditional notions of fair play or substantial justice.

Long Arm

A long arm statute allows a forum to exercise PJ over a defendant not personally served in the forum state on any basis not inconsistent with the US Constitution.

Here, California has a long arm statute and PJ may be exercised under the modern basis.

Minimum Contacts

A defendant has minimum contacts with a forum state if they (1) purposely avail themselves to the state's laws, benefits and protections, (2) their conduct foreseeably would affect the forum state, (3) their conduct has some relatedness to the cause of action, (4) the frequency of their conduct suggests minimum contacts, (5) and the nature and quality of their conduct suggests minimum contacts.

Here, SG is a parts manufacturer for Lathe Co. As such, a special analysis is needed to prove minimum contacts seeing as SG did not themselves sell the product, the lathe machine, in California.

Purposeful Availment - Stream of Commerce Analysis

A defendant purposefully avails themselves to the forum state by placing their component into a product that enters the stream of commerce and the defendant does engage in conduct that would have a purposeful effect on the forum state.

Here, the facts suggest that SG has no other clients in the United States other than Lathe Co. SG should therefore be expected to know where Lathe Co.'s products are marketed inside the United States. SG should be aware that while Lathe Co. manufactures lathes in

Colorado, the business would likely sell lathes outside of Colorado because lathes are needed by wood turners across the United States. SG should be aware that their component, the guard shield, is a necessary component of a lathe because it is a piece of dangerous wood working equipment and that that component would be present in all lathes sold across the United States because ensuring safety is part of the proper use of the machine. SG likely knew that their component would enter the stream of commerce in the United States, and thus consequently in California, and that the component would be specifically present in all Lathes sold inside the forum state. As such, SG likely purposefully availed themselves.

Foreseeability - Stream of Commerce Analysis

Foreseeability under the stream of commerce analysis is divided between two interpretation of the law. Under the majority Brennan analysis, a defendant's conduct is foreseeable when they manufacture a component and place it into the stream of commerce and it is foreseeable that the component would enter the forum state. Under the O'Connor analysis, the defendant's conduct is foreseeable when they manufacture a component and place it into the stream of commerce and it is foreseeable that the component would enter the forum state and the defendant makes that component specifically marketable to that state by intentionally altering it to fit that market.

Here, SG's contact may be foreseeable under the Brennan analysis because, as reasoned above, they likely knew that Lathe Co, their only client in the United States, would be selling Lathes in California and the US at large. SG made a crucial safety component for a dangerous piece of equipment they knew would likely be included on all the lathes. As such, they foreseeably placed their product into the stream of commerce and it foreseeably could have entered California. Under the O'Connor analysis, no facts suggest that they intentionally made the guard shield for California markets, so this argument is less convincing. However, SG may still have acted foreseeably and minimum contacts are likely established here.

Relatedness

Minimum contacts may be established through an analysis between the defendants contact and the plaintiffs cause of action. If the defendants conduct is the cause of the plaintiff's injury or source of the cause of action, the court has specific PJ over the defendant. If the defendant's conduct is unrelated to the plaintiffs cause of action but the defendant is essentially at home in the forum state, then the court has general PJ over the defendant. Corporations are essentially at home in a forum where their business conduct is systematic and continuous.

Here, the defendants conduct, the fact that the component they manufacture broke and injured Paul, is the cause and source of Paul's action. As such, it is likely that the court may exercise specific PJ over SG. If specific PJ may not be exercised for some reason, the court may also have general PJ over SG if they find it convincing that SG is essentially at home in California. Paul may make the argument that SG is essentially at home in the forum because they receive ten percent of their revenue from their contract with Lathe Co., a company that operates in the US. However, this argument is likely unconvincing because no facts suggest SG gets a significant portion of their revenue, or a large amount of lathes, are based on California sales alone.

Frequency

The frequency of the defendant's conduct in the forum state informs the courts decision to exercise PJ.

Here, little facts suggest, other than the fact that Lathe Co. generates ten percent of SG's revenue, that SG frequently has their components enter into California. Lathe Co manufactures its lathes in Colorado and presumably sells their lathes across the US, meaning that the percent of revenue generated by California sales is low. Some courts

have ruled that one contact with the forum is potentially enough to meet the frequency element however, so PJ may likely be asserted on this ground.

Nature and Quality of Conduct

The nature and Quality of Conduct within the forum state informs the courts decision to exercise PJ.

Here, the breaking of their shield guard caused an injury which required Paul to have multiple surgeries. As such, the injury was likely severe. Because the quality of SG's conduct created great injury, a court may find an exercise of PJ is appropriate.

Fair Play and Substantial Justice

Traditional motions of fair play and substantial justice are considered by the court to ensure an exercise of PJ does not unfairly prejudice the defendant or remove rights away from the plaintiff.. Among the factors considered are: The plaintiffs' interest, the state's interest in providing courts for its citizens, the state's interest in regulating interstate commerce, alternative forum availability, and the possibility of conflicting adjudications.

Plaintiff's Interest

Here, the plaintiff has a significant interest to sue in his home state of California because it would be most convenient to him and his injury occurred in California. California may be the forum where crucial evidence and witnesses also reside, making it the best forum for Plaintiff to sue in. The court likely will find that the plaintiff has a valid interest in filing in California.

State Interest in Regulating Commerce

Here, California likely has some interest in making sure the products sold in the forum meet certain standards of quality and safety. As a lathe is a dangerous machine, the court may have an interest in seeing this case filed in California.

State Interest in Providing a court for its citizens

The California court likely had a interest in providing a court for its citizens

Alternative Forum availability

The California court may decide to not exercise PJ over SG due to the availability of other forums. According to the facts here, Courts in Canada can likely exercise PJ over SG, however this fact will not be too persuasive on the California Court as the injury occurred in the United States.

Conflicting Adjudications or lawsuits

The California court will likely not consider the possibility of conflicting adjudications or lawsuits in their determination not to exercise PJ because no facts suggest there could be any.

Overall, the a finding o

2. Should the Court allow Paul to Join Lathe Co?

Relation Back Doctrine

Under the relation back doctrine, a complainant, with the courts permission, may make an amendment to their original complaint once the statute of limitations of 21 days has run out if they seek to add a claim, add a party to the suit, or properly name an intended party.

When a complainant seeks to add/amend a claim after the statute of limitations has run out, they must do so in a forum which allows relation back, and they must do so only if the second claim or amended claim relates to the same transaction, occurrence or incident involved in the first claim. When adding a new party to the suit, the complainant must not do so in a manner which would unfairly prejudice the new party because the statute of limitations has already run. The new party must have had notice within 90 days that they would have been named in the suit but for a mistake in the naming of the original party or that they would have been named in the suit but not for a mistake due to a similar association.

Amendment by Right

A complainant has a right to amend a complaint within 21 days without the permission of a court for the purposes stated above.

Relation Back Doctrine - Adding a New Party

Here, A court must determine if Lathe Co will be unfairly prejudiced because they were not named in the original complaint. With Lathe Co only being named in the complaint after the statute of limitations had run, it must be proved that Lathe Co would have had notice of the suit against SG within the last 90 days.

No facts suggest that Lathe Co had explicit knowledge SG was being sued by Paul, but seeing as the two corporations were business partners, and LatheCo likely knew of the incident that injured Paul and implicated SG because of a fault in the guard shield, it is likely Lathe Co would not be prejudiced against being named in the lawsuit because they had some notice. However, if the the court does not find this convincing, they will not allow Paul to name Lathe Co in the suit as an added party, especially considering Lathe Co may not have had notice for some other reason.

2)

1. **DelishFood's Motion to dismiss for lack of Subject Matter Jurisdiction**

Subject Matter Jurisdiction

Federal Courts, courts of limited jurisdiction, may only hear suits where a substantial and material federal question is at issue or when then all parties of the lawsuit exist in complete diversity of citizenship and the amount in controversy is for an amount greater than \$75,000.

Here, Perla and Pamela have filed in the Federal Court of State A.

Perla v. Delish Foods in SMJ

Federal Question

Here, no facts suggest that Perla is filing suit for a constitutionally relevant issue or any other federal question because she is suing for personal injury and property damage. So the court may not assert Subject matter jurisdiction (SMJ) for that reason.

Diversity and Amount in Controversy

Parties exist in diversity of citizenship when every plaintiff is domiciled in a different state compared to every defendant. Citizens are domiciled in a forum state when that state is the fixed, permanent and true place of their residence and they intend to return to that residence whenever they are away. Domicile for purposes of SMJ is determined at the time of filing. Corporations are domiciled in a forum state when the nerve center of their business is located there. The nerve center of a corporation is where the business is incorporated or where their key business leadership infrastructure resides. A claim meets the amount in controversy requirement of greater than \$75,000 if the plaintiffs claims have a good faith reason for being that amount.

Here, Perla was a resident of State A at the time of filing, meaning that she was likely domiciled in State A. The facts suggest that at the time Perla was leasing an apartment in State A, and as such residence is very likely. DelishFoods (DF) is incorporated in State B and only conducts its business in State B. As per the nerve center analysis, the facts suggest that State B is where DF is at home, and thus domiciled. With Perla a resident at the time of filing of State A and DF at home and domiciled in State B, the parties exist in complete diversity. As such, the State A federal court may hear this case on the grounds of diversity. Additionally, the State A federal court may exercise SMJ over this matter, at least with respect to Perla, because the sum of her claims are greater than \$75,000.

Pamela v. DF in SMJ

Federal Question

Here, no facts suggest that Pamela is filing suit for a constitutionally relevant issue or any other federal question because she is suing for medical expenses. So the court may not assert Subject matter jurisdiction (SMJ) for that reason.

Diversity and Amount in Controversy

See Supra.

Pamela, at the time of filing was a resident of State A. As reasoned above, DF is domiciled in State B. As such, Pamela and DF exist in diversity. With both Perla and Pamela each existing in complete diversity to DF, the federal court of State A may hear this case, but only if the amount in controversy is greater than \$75,000 for each claim.

Aggregation

When there a suit contains one plaintiff and one defendant, the plaintiff may aggregate the sum of all their claims against the defendant in order to meet the above \$75,000 dollar

limit necessitated by a claim under diversity in federal court, even if the claims are unrelated. When there is a suit containing multiple plaintiffs and one defendant, the plaintiffs may only aggregate the sums of their claims if the plaintiffs' claims are common and indivisible. When there is a suit containing one plaintiff and multiple defendants, the plaintiff may not aggregate their claims unless the defendants are jointly sued.

Here, Perla and Pamela are jointly suing the DF under claims of personal injury, property damage, and medical expenses. Thus, this suit falls into the multiple plaintiffs - one defendant scenario. As such, Perla and Pamela may aggregate their claims if their claims are common and indivisible. Courts have ruled that in personal injury and property damage suits, all the injuries and damages must be the same for the claims to be common and indivisible. No facts suggest, and it is highly unlikely, that Perla and Pamela suffered the exact same injuries as a result of the truck collision and suffered the same amount in property damage or had the same medical bills, especially considering Perla and Pamela are claiming different amounts.

As such, Perla and Pamela may not aggregate their claims against DF because their claims are not common and indivisible.

Perla however may aggregate her own claims against DF because the sum of her claims need not be related for them to be aggregated, and as such Perla's claims meet the jurisdictional limit for SMJ under diversity.

Supplemental Jurisdiction

When a federal court already has SMJ over a case based on diversity, a plaintiff may seek to obtain Supplemental jurisdiction (SPX) to bring a new claim into federal court. When the claim that brought the case into federal court is based on a federal question, SPX may always be granted to bring in a new claim. When the claim that brought the case into the federal court is based on diversity, a second plaintiff is usually barred from obtaining SPX

to have the federal court hear a new claim. However, when the anchor claim (claim of first plaintiff) is based on diversity and the amount of controversy is met, a second claim may be brought into federal court as long as the second plaintiff also is diverse from the defendant and the only thing missing is the amount in controversy.

Here, Perla has the anchor claim, based on diversity, and her claim meets the amount in controversy. Because Pamela is not allowed to aggregate her claim of \$15,000 with Perla's claims, her claim is invalid. However, Pamela's claim may be brought into the federal court through SPX because Perla's anchor claim meets the requirements for this exception to exercising SPX. Both Perla and Pamela's claims are based on diversity and Perla's claim is valid because it aggregates to the amount of \$80,000. Pamela is only missing the amount in controversy requirement because her claim is worth \$15,000. However, she is diverse from DF.

As such, Pamela may join her claim with Perla's in their joint suit against DF under the exception to the SPX rule.

Conclusion

The federal court is valid in its exercise of SMJ over this matter because all the parties are diverse and Pamela is able to use SPX to add her claim to the suit. DF's motion to dismiss for lack of SMJ should be denied.

2. DF's motion to dismiss for Improper Service of Process

FRCP 12(b)(5) - Improper Service of Process

Under the federal rules, a defendant may file a motion to dismiss for improper service of process under FRCP 12(b)(5) when there is a problem with the manner of service itself. A defendant waives the right to object to improper service of process if they do not file the

motion in a timely manner. Once the right is waived, an court will allow an improper service of process as valid.

DF chose to, after they had filed a motion objecting to SMJ, to file an additional motion asserting improper service of process. DF had the opportunity to object to SMJ at any time during the suit, so it is not convincing to a court that the motion asserting improper service of process could not yet be filed or that the motion to dismiss because of lack of SMJ was more important. However, if a court determines that a week after an initial filing is still "timely" then DF's motion to dismiss for improper service of process will not be waived.

More likely than not, all of DF's motions to dismiss were filed within the 21 day statute of limitations and thus are "timely" under the courts understanding. As such, the court is warranted in granting DF's FRCP 12(b)(5) motion.

FRCP 4 Service of a Corporation

Under the federal rules, service upon a corporation must be in accordance with FRCP 4. FRCP 4 states that for service upon a corporation to be valid, the corporation must receive proper notice apprising them of the pendency of a lawsuit. Service must not be done by a party of the suit but rather a disinterested party. Service upon a corporation must be provided to either the agent of that corporation or to an employee of that corporation so integrally important to that corporation that they would know what to do with the service.

Perla attempted to properly serve DF by taping a summons and complaint to the door of DF's headquarters. This is improper as she did not provide the service to either an agent of DF or to an employee of DF so integral to the operation of DF's business that they would know what to do with the summons. It does not matter that DF's CEO was

integral to the corporation nor does it matter that he recieved notice to the pendancy of the lawsuit because the service was not proper as per FRCP 4.

3)

1. Venue in State B Northern DistrictVenue

A plaintiff lays proper venue when they file suit in a federal district court that has proper jurisdiction over a defendant. A venue is proper in any district in which all parties are diverse, where a significant part of the claim arose, or in any district where PJ may be exercised over a defendant. When determining diversity in the context of venue, each district is treated as its own state.

Diversity

Scarlett and InfiniteEnergy (IE) are citizens of State B, but they "reside" in two different districts so they are diverse in the context of venue. Scarlett is a citizen of the Northern district. IE is incorporated in State A but most of its employees work at its sole manufacturing plant in State B's Southern District. The federal court found that Scarlett and IE's matter is based on diversity, meaning that both the Northern and Southern districts are both potential districts where a federal court may host the lawsuit.

Where the Claim Arose

Scarlett's injury occurred in the Northern district, that is where she bought IE's battery and it burned her hand. As such, the Northern district is a proper venue for which the lawsuit may take place. Scarlett likely laid proper venue in the northern district because it is proper and the claim arose there.

Districts where PJ may be exercised on IE

IE likely has minimum contacts with the Southern district of State B because most of its employees and its sole manufacturing plant resides there. Furthermore, IE likely is also

essentially at home in the Southern District because if all of its work is being done there, its conduct may be classified as systematic and continuous. As such, an exercise of PJ on IE in the southern district is warranted.

Scarlett likely laid proper venue in the northern district because it is proper and the claim arose there, though the southern district is still a proper venue.

2. Motion to Change Venue

Transfer

Transfer is the act of changing venue from one federal district court to another within the same state. The original court is called the transferor, and the court that receives the suit is called the transferee. While the court wields a great amount of discretion when it comes to selecting the proper venue, the parties may select an even improper venue if they all consent. A defendant may put forth a motion to change venue, even if the transferor is proper, to an improper venue. A court may decide to change venue based on the interests of the convenience of parties and of preserving justice.

Forum Non Conveniens Exception

Even if a transferor is proper, a defendant may attempt to persuade a court that a transferee is proper under the forum non conveniens doctrine. Under this doctrine, the defendant must persuade the court that (1) the transferee should bear the burden of the litigation, (2) the transferee should take on the litigation because of a local controversy, and (3) that the transferee would be less burdensome and inconvenient to the defendant because the transferee is where the common nucleus of operative facts resides.

Here, the transferor northern district is a proper venue because that is where the claim arose. Even so, the IE is warranted in filing a motion to change venue to the transferee

southern district because that venue is proper as well seeing as it is a venue that can exercise PJ over IE.

The Transferee should bear the burden

In order for IE to convince the court to change venue to the southern district, he must persuade them that the southern district court is better suited to handle the lawsuit. No facts suggest however that the southern district is better suited for this purpose, so this factor may be not considered to great affect.

The Transferee Should Address a Local Controversy

IE's best chance at persuading the court to accept the change of venue motion would be to mention that IE's sole place of manufacturing is in the southern district, and that all the responsible employees are located there. However, the court will likely not be convinced that this controversy is "local" to the southern district seeing at the claim and injury to Scarlett's hand occurred in the northern district.

The Common Nucleus of Operative Facts

IE's may be able to persuade the court to accept the motion for the above reasoned points. Namely, all the evidence, employees, and witnesses to the manufacture of the battery exist in the southern district. It may be in the interest of justice and in the interest of the convenience of the witnesses likely called to testify that the venue be changed to the southern district where they reside.

Overall, because the southern district is proper, the court may decide to grant IE's motion to change venue based on the totality of the claims offered by IE.

3. FRCP 12(b)(6) Motion to dismiss for lack of well pleaded complaint

FRCP 12(b)(6)

A defendant named in a suit may put forth a motion to dismiss for a lack of a well pleaded complaint if the complaint does not plausibly assert the complainants entitlement for relief. Commonly called a Twiqbal motion, a defendant waives the right to object to a complaint if they do not do so in their first appearance.

FRCP 8 Pleading

In their complaint, a complainant must assert that there is valid subject matter jurisdiction, make a plain and competent assertion that they are entitled to relief, an assertion speaking to the type of relief sought, and enough claims to assert that, through discovery, the necessary and relevant information needed to provide a claim for relief will be found. They must provide notice to the defendant through an aprisal of the pendancy of the action against them.

Well Pleaded Complaint - Twiqbal

Under the rulings of Twombly and Iqbal, a well pleaded complaint is one that provides a facial plausible claim for relief. For complaints asserting an entitlement to relief based on cases like fraud, conspiracy, or assertions of special damages, the plain and competent assertion to relief must be supplemented with words of specificity and particularity that make relief plausible.

Surviving a Twiqbal motion

When determining if a plaintiff's complaint should be dismissed under FRCP 12(b)(6), the court should ignore all assertions that are conclusory in nature and focus on those that assert a plausible claim for relief. If the totality of these claims make an assertion that relief is facially plausible, (more than just a mere plausibility), then the motion will not be dismissed.

In considering whether or not to grant IE's motion to dismiss for a lack of a well pleaded complaint, they should look first to the language used in the complaint to see if "fraud in the supposed value" was actually supported by facially plausible assertions. Saul, in writing the motion, would need to use words of specificity and particularity to prove that there was more than the mere possibility the fraud occurred.

With no facts suggesting if Saul properly submitted a well pleaded complaint that adequately provided a claim for relief, it is uncertain if the court will grant IE's Twiqbal motion. However, if it is proven that Saul's failure to certify the complaint tarnished the complaint's ability to make an assertion of plausible relief, then it will be granted.

4. Ethical Violations of Saul

FRCP 11 - Certification

When an attorney provides writings, pleadings, complaints, or other documents to the court, and with that provision also signs, advocates for or otherwise presents for a legal purpose these writings, they certify that the documents are not being provided for improper or frivolous reasons. An attorney certifies before they provide documents to the court that they have done their due diligence in ascertaining the documents truth or proper purpose.

Here, When Saul said he would "take Scarlett's word for it," he did not exercise his due diligence in certifying that her claim of fraud in the inducement was valid and not frivolous. As such, he may be subject to sanctions due to this ethical violation. As an attorney, Saul is expected to know that cases like Scarletts, if they truly did involve fraud, would have to have a complaint bolstered by words of specificity and peculiarity supporting such a claim and entitlement to relief.

Safe Harbor Rule

An attorney is protected under the Safe Harbor rule to make an amendment to their complaint. The statute of limitations is 21 days and they must make the correction to their mistake after receiving notice that a mistake was present.

Saul will not be subject to sanctions for his lack of due diligence in ensuring Scarlett was actually subject to fraud if he amends the complaint within 21 days of filing.

END OF EXAM