

San Luis Obispo College of Law

Civil Procedure

Mid Term Examination

Fall 2023

Prof. M. Rivas

General Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours.

Question One

Davey is a resident of California and motivational speaker. Davey gives talks at universities up and down the West Coast, including California, Oregon, and Washington states. In those talks, Davey advises students to not overthink things, but to make quick decisions that feel good to them at the time. In addition to giving live talks, Davey has a website selling DVD versions of his talks. Davey has not sold many DVDs. In fact, they have only been purchased by consumers in Texas and Oklahoma. The website is hosted on a computer server in New York State maintained by Demetri, a New York resident. Demetri gets a commission on each DVD sold, in addition to payment for maintenance of the server.

Percy was a student at a local community college in upstate New York. A friend of Percy's went to college in California and saw one of Davey's talks live. Percy's friend was so impressed that he bought a DVD from Davey's website and had it sent to Percy in New York. One day, based upon the advice from the DVD, Percy decided to skip class and go cliff diving with his friends. As he was preparing to jump, Percy told his friends that he was going to follow Davey's advice and jump without any restrictions, because that felt good. Percy died.

Percy's parents filed a wrongful death suit against Davey and Demetri in the New York state court. New York has a long arm statute that provides that its courts may exercise jurisdiction over nonresidents "on any basis not inconsistent with the Constitution of the United States."

Percy's mother was brokenhearted and wanted to hand the summons and complaint to Davey herself. Percy's mother flew to California, looked Davey in the eyes, and handed Davey the summons and complaint.

Percy's parents hired a process server to serve Demetri. The process server went to Demetri's address and saw that Demetri lived in the penthouse of a high-rise apartment building. The process server then learned that the elevator was down for maintenance. Not wanting to walk up ten flights of stairs, the process server put the summons and complaint in a sealed envelope and affixed it to the front door of the apartment building. The process server made sure that no one was around to steal the envelope and that it was attached high enough on the door that only an adult could reach it.

1. May the New York court exercise personal jurisdiction over a) Davey and b) Demetri?
2. Discuss the validity of service of process on a) Davey and b) Demetri.

Question Two

Palmer resides in State C. Palmer was driving a company car in State C when they were in a car accident with Dawson's car. Dawson resides in State A.

The police report stated that Dawson lost control of the car when Dawson decided to see if they could drive with their eyes closed. Palmer suffered significant physical injuries, resulting in a \$73,500 hospital bill. Palmer also happened to have two very rare collectible cookie jars in the car when the accident occurred. One was a vintage "Popeye" cookie jar, valued at \$1,300.00. The other was a "Wizard of Oz" cookie jar, valued at \$450.00. Both jars were completely destroyed in the accident. Dawson told Palmer that there was no way any cookie jar could ever be worth so much.

A week later, Palmer was fired by DIM Transport for damaging the company car. DIM Transport is incorporated in States C, A, B, and its headquarters is in State O. Palmer filed a suit in State C federal court against Dawson for damages resulting from the car accident. At the same time, Palmer filed a suit against DIM Transport for wrongful termination under both federal and state laws.

1. Did the Dawson waive their objection to subject matter jurisdiction?
2. Did the court have subject matter jurisdiction over Palmer's suit against Dawson? Discuss.
3. Did the court have subject matter jurisdiction over a) Palmer's federal claim against DIM Transport or b) Palmer's state claim against DIM Transport? Discuss.

Question Three

Daria resides in Washington and owns a second house in Oregon, which Daria rents out to vacationers. Daria wanted to remodel the vacation rental so they could drastically increase the rental rate. Daria ran an ad in Oregon and nearby Idaho seeking a contractor to do the work. Paget resides in Nevada and just happened to see the ad when a friend, who was visiting Paget's house from Idaho, showed the ad to Paget.

Paget responded to the ad and met Daria at the vacation house to sign a contract for the work to be performed. Over the next year, Daria and Paget would periodically meet at the vacation house to discuss any issues that needed to be addressed as the work progressed.

When the work was done, Paget mailed an invoice to Daria's house in Washington. A couple of months passed and there was no response or payment from Daria. Paget filed a lawsuit in Nevada, where the laws were beneficial to Paget, for breach of contract against Daria. Daria filed a timely answer denying the allegations and made a general appearance in Nevada court. Prior to the next court date, Daria filed a motion to request a transfer of the case to Washington and removal to the federal court in Washington.

1. Did Paget properly lay venue in Nevada?
2. Should Daria's request for transfer be granted?
3. Assuming transfer is allowed, will Paget still benefit from Nevada's laws?
4. How should the court rule on Daria's motion for removal to federal court?

Question One-Answer Outline

1. May the New York court exercise personal jurisdiction over a) Davey and b) Demetri?

a) Davey

TRADITIONAL BASES

Under Pennoyer v. Neff, personal jurisdiction could be exercised over a defendant based upon consent, domicile within the state, or service while in the state.

Here, there are no facts suggesting that Davey consented to personal jurisdiction in New York. Davey is domiciled in California, and service was in California.

Thus, there is no personal jurisdiction under the traditional bases.

MODERN BASES

LONG ARM STATUTE

A long arm statute is required to reach an out of state defendant. Here, the facts state there is a long arm statute that extends to limits of Constitution. Thus, there is a long arm statute.

MINIMUM CONTACTS

In order for a long arm statute to reach an out of state defendant, it must be constitutional. Under International Shoe, exercise of personal jurisdiction must not offend traditional notions of fair play and substantial justice.

PURPOSEFUL AVAILMENT

Defendant's contacts with the forum must not be accidental. The defendant must purposefully avail themselves of the benefits of the forum state.

Here, Davey gives talks in California, Oregon, and Washington, and sells DVDs on a website. Because the computer server is located in New York state, Davey is purposefully availing himself of the laws of New York. Davey also hired a New York resident to perform server maintenance. Davey could thus potentially use the New York courts to enforce labor or contract laws. Davey is also making money from his presence in New York, even though he has no DVD sales to New York consumers. Davey will argue that he's never lived in New York or reached in to advertise or sell his DVDs, but the court will likely find that Davey has purposefully availed themselves of the benefits of New York state.

FORESEEABILITY

It must be foreseeable that defendant would be haled into the forum court.

Here, Davey operates a server in New York state. Though Davey does not advertise in New York and has not sold any DVDs, the server's physical placement in New York makes it foreseeable they'd be sued in New York regarding their in-state server and sales thereon.

FAIRNESS FACTORS

Factors to be considered are a forum's interest in protecting its citizens and convenience to the defendant and their witnesses.

Here, Davey will say it's not convenient to be haled into court in New York because they reside on the other side of the country, they don't give live talks in New York, and they don't sell DVDs in New York. However, the inconvenience that Davey would suffer does not make exercise of personal jurisdiction over them unconstitutional.

RELATEDNESS TO THE CLAIM-SPECIFIC JURISDICTION

Personal jurisdiction may be general or specific, depending on the level of defendant's contact with the forum state. If defendant's contacts with the forum are systematic and continuous, then they are essentially "at home" in the forum and may be sued for anything. If defendant's contacts are less than systematic and continuous, then suits against the defendant must be related to their contact with the state.

Here, Davey's only contact with the state is the physical presence of the computer server and the hiring of a New York resident to maintain that server. Thus, the contacts are less than systematic and continuous and any suit against Davey must be related to their contact with the state. The suit by Percy's parents is directly related to Davey's contact with New York, so specific personal jurisdiction is appropriate.

Therefore, there is specific personal jurisdiction over Davey.

b) Demetri

TRADITIONAL BASES

Here, there are no facts suggesting that Demetri consented to personal jurisdiction in New York. However, Davey is domiciled in New York. Service was also effected in New York, but was invalid (see discussion below).

Thus, there is personal jurisdiction over Demetri.

1. Discuss the validity of service of process on a) Davey and b) Demetri.

a) Davey

SERVICE OF PROCESS

Service of process must be reasonably calculated to apprise the party of the pendency of the claim and provide an adequate opportunity to be heard. Service cannot be effected by a party to the action.

Here, Percy's mother served Davey. Percy's mother is a party to the action, and service cannot be validly effected by a party.

Therefore, service on Davey was not valid.

b) Demetri

SERVICE OF PROCESS

Here, service was properly assigned to a non-party. However, affixing the envelope to the apartment door is not constitutional. The envelope could be stolen and such service would therefore not be reasonably calculated to apprise Demetri of the pendency of the action. The process server's wish to not climb ten flights of stairs is not relevant to constitutional service of process.

Therefore, service on Demetri was not valid.

Question Two-Answer Outline

1. Did the parties waive their objection to subject matter jurisdiction?

SUBJECT MATTER JURISDICTION

Subject matter jurisdiction cannot be consented to or waived. It may be challenged at any point in the proceedings, even for the first time on appeal.

Here, there are no facts that the defendants objected to the Court's subject matter jurisdiction, but they nevertheless do not waive the objection. They could make the objection for the first time on appeal.

Thus, the parties did not waive their objection to subject matter jurisdiction.

2. Did the court have subject matter jurisdiction over the Palmer's suit against Dawson? Discuss.

DIVERSITY OF CITIZENSHIP JURISDICTION

Diversity of citizenship jurisdiction requires diversity of citizenship and must meet amount in controversy.

DIVERSITY OF CITIZENSHIP

Every plaintiff must be of diverse citizenship from every defendant.

Here, Palmer is a citizen of State C. Dawson is a citizen of State A. Because Palmer and Dawson are citizens of different states, there is complete diversity between Palmer and Dawson.

Thus, the requirement for diversity of citizenship is met.

AMOUNT IN CONTROVERSY

The amount in controversy must exceed \$75,000, exclusive of interest and costs. The claim must be made in good faith, and it is not necessary that the plaintiff actually win that amount.

Here, Palmer's claim for medical damages is \$73,500. This does not meet the amount in controversy on its own. However, Palmer can aggregate their claims.

AGGREGATION

One plaintiff can aggregate his claims against one defendant to meet the amount in controversy, even if they are unrelated.

Palmer can aggregate the \$73,500 claim for medical costs, and the \$1,300 and \$450 claims for the collectible cookie jars. In this case the claims are all related to the same transaction (the car accident), but they needn't have been. When Palmer aggregates these claims, the total amount in controversy equals \$75,250, which exceeds \$75,000, exclusive of interest and costs.

GOOD FAITH CLAIM

A claim for damages can only be dismissed where it appears that there is no legal possibility of a recovery exceeding the jurisdictional amount.

Here, Dawson doesn't believe that the cookie jars are worth what Palmer claims they are worth and thus Palmer cannot meet the amount in controversy. However, Dawson is unlikely to be able to show that there is no legal possibility of a recovery in excess of \$75,000, exclusive of interest and costs.

Therefore, the amount in controversy is met.

Therefore, the court has subject matter jurisdiction over Palmer's suit against Dawson.

3. Did the court have subject matter jurisdiction over a) Palmer's federal claim against DIM Transport or b) Palmer's state claim against DIM Transport? Discuss.

a) Did the Court have subject matter jurisdiction over Palmer's federal claim against DIM Transport?

FEDERAL QUESTION JURISDICTION

Federal courts have subject matter jurisdiction over cases that arise under federal law, which consists of federal common law, federal statutory law, treaty law, and federal administrative regulations.

Here, Palmer filed a wrongful termination suit against DIM Transport under federal law.

Thus, Palmer's federal claim against DIM Transport arises under federal law and the court has subject matter jurisdiction.

b) Did the court have subject matter jurisdiction over Palmer's state claim against DIM Transport?

SUPPLEMENTAL JURISDICTION

A court can exercise supplemental jurisdiction over a claim that arises from a common nucleus of operative fact. However, the claim must not destroy diversity.

Here, the state claim against DIM Transport arises under the same facts as the federal claim because both claims are based on DIM Transport firing Palmer for the damage to the company car. There is no issue with the destruction of diversity here, as the main claim is not based upon diversity jurisdiction.

Thus, the court can exercise supplemental jurisdiction over Palmer's state claim.

Question Three-Answer Outline

1. Did Paget properly lay venue in Nevada?

VENUE

Venue is proper (i) in a district where all defendants reside, (ii) where a substantial portion of the action or omission took place, or, (iii) if no proper venue under (i) or (ii), in a district where personal jurisdiction exists.

Here, Daria resides in Washington, so Washington would be a proper venue under the first prong. The contract and work were performed in Oregon, so Oregon would be proper under the second prong. There is no need to analyze the third prong because there is proper venue under both i) and ii). Daria doesn't reside in Nevada and nothing happened in Nevada, so it is an improper venue.

Thus, Paget did not properly lay venue in Nevada.

2. Should Daria's request for transfer be granted?

TRANSFER

Transfer is allowed if transferee court is a proper venue and the state has jurisdiction over the defendants (without waiver). If venue in the original forum is proper, the case may be transferred based on convenience of the parties and witnesses, and in the interest of justice. If venue in the original forum is improper, the court may transfer the case in the interest of justice or dismiss.

Here, as discussed above, Washington is a proper venue under the first prong of the venue rule. Daria will argue that Washington is more convenient for them and any witnesses they may have. Paget will argue that Daria waived their objection to venue.

WAIVER

Venue can be consented to by the parties.

Here, Daria made a general appearance in the Nevada court and did not object to venue. Having failed to make a timely objection, Daria waived their objection.

Thus, the court should not grant Daria's request for transfer.

3. Assuming transfer is allowed, will Paget still benefit from Nevada's laws?

CHOICE OF LAW UPON TRANSFER

If venue in the original forum is proper, the law of the transferor court will apply. If venue in the original forum is improper, the law of the transferee state will apply.

Here, assuming the court granted Daria's request to transfer, Washington's law would apply to the case. This is because Nevada was an improper venue (as discussed above).

Thus, Paget would not still benefit from Nevada's laws.

4. How should the court rule on Daria's motion for removal to federal court?

REMOVAL

Defendant may remove from state to federal court, provided the federal court has jurisdiction. Removal may not be made by in-state defendants.

Here, Daria is trying to remove to Washington federal court. This will not be possible because Daria is a resident of Washington and removal is not allowed for in-state defendants.

The court should deny Daria's motion for removal.

1)

1(a). Personal Jurisdiction (PJ) over Davey

Personal Jurisdiction

PJ is the court's authority over a defendant or property. PJ can be either in personam, in rem, or quasi in rem.

Traditional Bases

Traditionally, under *Pennoyer v Neff*, PJ is established through service of process within the forum state, domicile within the state, or consent.

Here, the facts state that Davey is a resident of California, was served in California, and that the wrongful death suit was filed in New York State Court. There are no facts indicating whether Davey consented to PJ in New York or not. Since the Suit was filed in New York, and Davey was not served in the forum state, domiciled within the state, and possibly did not consent to PJ in New York, PJ in this instance would not be obtained via the traditional bases.

Modern Bases

Modernly, under *International Shoe v Washington*, PJ can be established where 1) there is a long arm statute ^{doesn't HAVE to. just needs to reach defendant.} that extends to the outer limits of the constitution, and 2) the defendant has sufficient minimum contacts with the state such that exercising jurisdiction over them would not offend traditional notions of fair play and substantial justice.

LONG ARM STATUTE

Here, the facts state that New York has a Long Arm Statute that allows courts to exercise jurisdiction over nonresidents "on any basis not inconsistent with the Constitution...".

Therefore, a analysis of the minimum contacts standard pursuant to *Intl Shoe v Washington* is warranted.

Minimum Contacts

The defendant must have sufficient minimum contacts with the forum state such that exercising jurisdiction over them would not offend traditional notions of fair play and substantial justice. To determine whether the defendant had sufficient minimum contacts, the factors below must be analyzed.

Purposeful Availment

The defendant must purposefully avail themselves of the forum state, meaning that they must reach into the state in some way and avail themselves of its resources.

Here, the facts state that Davey's website was hosted on a computer server in New York state which is maintained by Demetri, a New York resident. The facts also state that Demetri is paid for his efforts in maintaining the server. Generally, contact solely through the internet can be insufficient to establish purposeful availment. However, based on these facts, Davey reached into the state to find a server to host his website, and maintains at least one employee there (Demetri). He may also pay taxes to the state on the wages that he pays Demetri, he may advertise in the state, he may also use further in state tech support when issues arise with the server.

rents space for the server +
could use employment or contract
law in relation to Demetri.

As such, Davey is likely purposefully availing himself of New York's resources.

Foreseeability

reasonably

It must be foreseeable that the defendant's actions would make them likely to be haled into court in the forum.

Here, Davey is a motivational speaker who gives talks up and down the West Coast, and maintains a website to sell DVDs of his talks. The facts also state that Davey has not sold many DVDs and they have only been purchased by consumers in Texas and Oklahoma. Further, the DVD was sent to Percy by a friend who lived in a different state. Based on these facts, Davey is likely to argue that he could not foresee that his DVDs would land him in court in New York because they had never sold there and he could not guess that someone in California would buy one and send it to New York. However, there are also no facts suggesting that his website is not at least a nationwide site, and it is reasonable to assume that most websites in the United States are unless advised otherwise. As such it would be foreseeable that someone in any state could buy one of Davey's DVDs and end up in trouble based on his advice.

Did Davey advertise in NY? Is he trying to drum up word of mouth so that he should foresee a friend of a friend having issues in NY?

Therefore, it is arguably foreseeable that Davey's DVDs could get him haled into court in any state, including New York.

Relatedness to the Claim

✓ If the defendant's contacts with the forum state are systematic and continuous, they can expect to be sued for any reason within the forum state under general personal jurisdiction. If the defendant's contacts with the state are not systematic and continuous, they can only be sued for matters related to their contacts with the forum state under specific personal jurisdiction.

✓ Here, Davey hosts his website on a server in New York and pays Demitri, a New York Resident to maintain the server. Although Davey may be purposefully availing himself of New York's resources as discussed above, his contact with New York is likely not widespread enough to be considered systematic and continuous because he only maintains one employee and does not sell any product there. Therefore, Davey can only

be sued for matters related to his contacts with New York, which include his DVDs because the website that sells them is hosted there.

Fairness Factors

The court also examines additional factors such as convenience of the parties and witnesses, the interstate judicial system's interest in resolving conflicts, and the plaintiff's interest in relief to determine the fairness of exercising PJ in specific instances.

Here, Percy's parents live in New York, Percy died there, and it can be reasonably assumed that any potential witnesses to the events likely do as well so it would likely be the most convenient forum practically speaking. The interstate judicial system also likely has an interest in resolving such conflicts as the DVDs are available online ostensibly in any state (even if no one is buying them). Therefore it is unlikely that New York would be considered an unfair venue, as long as it is not a significant burden for Davey to travel there. *He travels for work, yes?*

Based on the facts as presented and the above analysis, New York would likely be able to exercise PJ over Davey under the Modern Bases.

1(b). PJ Over Demetri

Personal Jurisdiction

See PJ rule above.

Traditional Bases

See Traditional Bases Rule above.

Here, the facts state that Demitri was served in New York and is a New York Resident.

✓ There are no facts stating whether he consented to PJ or not. ^{new Paragraph} Therefore New York would be able to exercise PJ over Demitri based on the Traditional Bases.

2(a). Validity of Service on Davey

✓ Generally, service must be reasonably calculated to apprise the party of the pendency of the action and give them adequate notice and opportunity to be heard. Service of process must also be made by someone other than a party to the action. ^{YES!}

✓ Here, the facts state that Percy's mother flew to California and handed the summons and complaint to Davey herself. This is not valid service because Percy mother's is a party to the wrongful death suit.

Conclusion...

2(b). Validity of Service on Demitri

Generally, service must be reasonably calculated to apprise the party of the pendency of the action and give them adequate notice and opportunity to be heard.

Here, the process server hired to serve Demitri did not want to climb the stairs to his apartment so he sealed an envelope and fixed it to the front door of the apartment building high enough that only an adult could reach. As such, Demitri could have walked past the envelope not realizing it was for him, someone else could have taken it by mistake (or intentionally), or any number of other things could have happened that would have prevented Demitri from getting the envelope.

As such, this is not valid service because it does not provide adequate notice and opportunity to be heard to Demitri. ^{Talk about whether it matters that process server tried to prevent theft. Or whether it matters whether or not Demetri rec'd the notice. Also, "courts have deemed this type of service unconstitutional."}

ID:
Exam Name: CivPro-SLO-F23-Rivas-R

END OF EXAM

2)

Subject Matter Jurisdiction *Issue*

RULE

Subject matter jurisdiction is the power the court may exercise over the case itself. Federal courts have limited SMJ. SMJ for federal courts is limited to federal question or diversity of citizenship. Subject matter jurisdiction may be challenged at any time, even for the first time on appeal. SMJ may not be consented to.

1. Did Dawson waive objection to SMJ? *Issue*

Analysis

No, Dawson did not waive an objection to SMJ *nice* because SMJ may be objected to at anytime even on appeal for the first time. The court may even bring up SMJ itself even if parties do not challenge SMJ because the courts have a constitutional duty to make sure there is proper SMJ. SMJ may not be consented to, either.

Conclusion

Don't forget to IRAC in order, And don't forget the conclusion.

2. Did the court have SMJ over Palmer's suit against Dawson?

Subject Matter Jurisdiction

Subject matter jurisdiction is the power the court may exercise over the case itself. Federal courts have limited SMJ. SMJ for federal courts is limited to federal question or diversity of citizenship. Subject matter jurisdiction may be challenged at any time, even for the first time on appeal. SMJ may not be consented to or waived.

Federal Claim

Federal courts have the power to hear claims brought under federal law, when a plaintiff is exercising a federal right.

✓ Here, the case is about personal injury for the car accident caused by Defendant and damage caused to personal property in the accident. These are not federal issues. Thus, this is not a federal claim and P cannot go to federal court this way.

Diversity of Citizenship *Jurisdiction*

✓ Diversity of citizenship requires that the plaintiffs and defendants be citizens of different states and that the amount in controversy exceed \$75,000, exclusive of interest and costs.

Diversity of Citizenship

✓ All plaintiffs and all defendants in an action must be citizens of different states in order to meet diversity. People's citizenship is determined by the one state in which they physically live and have the subjective intent to remain. Corporations are citizens of every state of incorporation and the one state that has its principal place of business, the nerve center, where most of the business decisions are made, usually the HQ.

✓ Here, Plaintiff is a citizen of State C because he resides in State C and Defendant is a citizen of State A because he resides there. These are different states, thus diversity is met.

Amount in Controversy

✓ The amount in controversy must exceed \$75,000, exclusive of interests and costs. The plaintiff's claim amount controls so long as it is made in good faith.

✓ Here, Plaintiff's medical bills from the accident with Defendant are only \$73,500. This is not enough to meet the amount in controversy requirement. However, Plaintiff may aggregate the personal injury claim with the personal property damage.

Aggregation

One plaintiff may aggregate claims against one defendant in order to meet the amount in controversy. The claims do not need to be related. If more than one plaintiff, plaintiffs may aggregate their claims against a defendant but only if plaintiffs are enforcing a single title or right.

Here, plaintiff's personal property, the cookie jars, were completely destroyed in the accident. The estimated value of the cookie jars together is almost \$2000. Plaintiff may aggregate the Property damage claim with the personal injury claim for medical bills and meet the amount in controversy. Defendant will likely object because he has stated that it is impossible for cookie jars to be worth so much. To prevail, D will have to prove *to a legal certainty* that P cannot possibly recover \$2000 in damages for the collectable cookie jars. If P can demonstrate a source for P's estimation of damages, then P will prevail because P estimated the damages in good faith. Even if P does not recover this amount, that is still fine, so long as the claim for damages was made in good faith.

CONCLUSION

Yes, the federal court has SMJ over Dawson.

3. a) Did the court have SMJ over Palmer's federal claim against DIM Transport?

Subject Matter Jurisdiction

Subject matter jurisdiction is the power the court may exercise over the case itself. Federal courts have limited SMJ. SMJ for federal courts is limited to federal question or diversity of citizenship. Subject matter jurisdiction may be challenged at any time, even for the first time on appeal. SMJ may not be consented to or waived.

Federal Claim

Federal courts have the power to hear claims brought under federal law, when a plaintiff is exercising a federal right.

Here, Plaintiff is exercising a federal right because P brought a claim under federal wrongful termination laws. Thus, P can get to federal court under federal question or enforcing a federal right.

Diversity of Citizenship

Diversity of citizenship requires that the plaintiffs and defendants be citizens of different states and that the amount in controversy exceed \$75,000, exclusive of interest and costs.

Diversity

All plaintiffs and all defendants in an action must be citizens of different states in order to meet diversity. People's citizenship is determined by the one state in which they physically live and have the subjective intent to remain. Corporations are citizens of every state of incorporation and the one state that has its principal place of business, the nerve center, where most of the business decisions are made, usually the HQ.

Here, DIM Transport is a citizen of States C, A, and B because it is incorporated in those states. And D is a citizen of State O because that is where its PBB is located, the nerve center for the company.

Amount in Controversy

The amount in controversy must exceed \$75,000, exclusive of interests and costs. The plaintiff's claim amount controls so long as it is made in good faith.

Here, there are not facts that provide the amount of damages P is seeking under P's federal employment claim. However, it is reasonable that a year's salary could be used to calculate damages. If P's salary was over \$75,000, P may also be able to get into federal court under diversity.

~~CONCLUSION~~

Yes, the federal court has SMJ over Palmer's federal claim.

3b) Did the court have SMJ over Palmer's state claim against DIM Transport?

Supplemental Claim

The federal court may exercise jurisdiction over a claim that would not by itself meet requirements for diversity so long as the supplemental claim shares a common nucleus of operative facts with the claim that does meet federal diversity. Common nucleus of operative fact means that the case arises out of the same transaction or occurrence. *- or fed question in this case*

Here, because the accident with Dawson caused P to damage the DIM company vehicle, these two cases are able to be heard in federal court because they arise out of the same transaction or occurrence. P's state claim cannot be heard on its own because it does not meet diversity because DIM is a citizen of State C, where P is also a citizen and it is not enforcing a federal right. But P's claim can be heard in federal court because it shares a common nucleus of operative facts with the accident. The witnesses and experts for the

accident case will be the same as the state and federal wrongful termination case. In the interest of judicial economy it is proper for the court to exercise supplemental jurisdiction. Note, the court has discretion to exercise supplemental jurisdiction and does not have to take on the case. Sometimes federal courts will deny supplemental jurisdiction. Examples for doing so may be because a state law is niche or new or particular to the state and the court may deny jurisdiction at its discretion.

~~CONCLUSION~~

Yes, the federal court may exercise supplemental jurisdiction over DIM transport in the state claim.

END OF EXAM

3)

Venue is the geographic location of which court may hear the claim.

1. Did Paget properly lay venue in Nevada?

Venue

✓ Venue is proper (i) in the state in which all defendants reside, or (ii) the majority of the acts or omissions took place that gave rise to the claim. If neither (i) or (ii) is proper, then plaintiff may lay venue in any district in which there is PJ over any defendant.

Defendants Reside (Residential Venue)

People reside in their domicile, the place where they are physically present and live and have the subjective intent to remain. Corporations and General/Limited partnerships and businesses reside where the managers or partners are domiciled or where there is PJ.

Here, Defendant is a resident of Washington because she lives in Washington.

Additionally, because Defendant referenced the vacation rental and rental rate, D may have a personal business for claiming revenue from the vacation rental in Oregon. This is significant reaching out into the forum to make money and D's company may also be subject to PJ in Oregon for minimum contacts, making D's company a resident of this. *no evidence of* Oregon. Regardless, P laid venue in NV, and Defendant is not a resident personally nor is her potential vacation rental company. Thus, NV is not proper venue.

Claim Arose (Transactional Venue)

The transactional venue is where a substantial amount of the acts or omissions of the claim arose in the action.

Here, the vacation rental is located in Oregon, this is where the contractor work physically took place. The contract between parties was also in Oregon and the parties met at the vacation house to discuss how the contracted work was progressing. This is a substantial amount of the P's claim for nonpayment/breach of the contract that occurred in Oregon. Thus Nevada is not proper because nothing related to the claim arose out of Nevada.

~~CONCLUSION~~

No, Paget did not properly lay venue in Nevada.

2. Should Daria's request for transfer be granted?

Transfer

Transfer is proper so long as there is proper SMJ and PJ, without waiver. If more than one defendant, all defendants must agree to the transfer to a different district. If proper venue, the transferor laws apply. If venue improper, the transferee laws apply.

Here, there is only one defendant and defendant may motion the court for a transfer. It is proper for Defendant to motion to transfer. However, Defendant made a general appearance before motioning for waiver.

Waiver

Waiver can be express or implied. A general appearance is considered a waiver. A special appearance is not a waiver.

Here, Defendant made a general appearance in Nevada court, rather than a special appearance. Then D filed a motion for transfer. This general appearance constitutes a

ID:
Exam Name: CivPro-SLO-F23-Rivas-R

waiver and D will not be able to transfer because D waived venue when she appeared that first time on court under a general appearance.

~~Conclusion~~

Defendant's request for transfer should not be granted.

3. Assuming transfer allowed, will Paget still benefit from Nevada's laws?

Transfer

Transfer is proper so long as there is proper SMJ and PJ, without waiver. If more than one defendant, all defendants must agree to the transfer to a different district. If proper venue, the transferor laws apply. If venue improper, the transferee laws apply.

Here, P will not be able to benefit from Nevada laws because the original venue was improper. Improper venue transfers must follow the laws of the transferee court, Washington, where D resides.

~~CONCLUSION~~

No, Paget will not benefit from Nevada laws.

4. How should the court rule on Daria's motion for removal to federal court?

Removal

Removal from state to federal court may only be done by the defendant. Removal must be done within 30 days of service of process. In diversity, if the case becomes removable, defendant may remove no more than one year from the start of the case. After one year, defendant may not remove. In diversity, in-state defendants may not remove to federal court. If the case can be removed to federal court under federal question, then defendants may always remove to federal court.

Here, there is no federal question in the action because it is a breach of contract case. Thus Defendant may not remove under federal question.

Here, the parties are diverse citizens; Plaintiff is a citizen of Nevada and Defendant is a citizen of Washington, possibly a corporate citizen of Washington. Thus, diversity of citizenship is met. However, there are no facts that indicate the amount in damages. If defendant wanted to remove for diversity, the damages would need to exceed \$75,000 exclusive of interest and costs in order to meet the amount in controversy along with diversity in citizenship. Without knowing the damages amount this cannot be calculated.

Even if Defendant did meet the amount in controversy, Defendant still will not be able to remove to federal court because a general appearance constitutes a waiver. Defendant made a general appearance and did not file the motion for removal until after the general appearance. Defendant should have made a special appearance to preserve the removal request under diversity.

Where does defendant reside?

~~CONCLUSION~~

The court should deny Daria's motion for removal to federal court.

END OF EXAM

ID: 1
Exam Name: CivPro-SLO-F23-Rivas-R