

San Luis Obispo College of Law

Civil Procedure

Mid Term Examination

Fall 2024

Prof. M. Rivas

General Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours.

**Question One**

Donni handmakes bicycles at their home in Portland, Oregon, and has a booth at the local maker's faire. Due to the uniqueness of each bicycle, Donni rarely sells to people from out of town. Once a buyer decides to order one of Donni's bicycles, Donni has them sign a contract that includes a payment schedule and a description of the bicycle's specifications and compatibility issues. Some compatible parts, like inner tubes, are only available through Donni.

Pipp lives just across the river, in Vancouver, Washington, and was visiting Portland when they met Donni at the maker's faire. Pipp loved the idea of a bicycle that would be unique to them and ordered one before going home to Washington. Over the next couple of months, Pipp and Donni became friends, so Donni kept working on the bicycle even when Pipp stopped making payments according to the agreed-upon schedule. When the bicycle was finished, Pipp took it home. Donni reached out several times for the payments that Pipp owed, but Pipp refused to answer any of Donni's phone calls or emails.

Eventually, the inner tubes on Pipp's bicycle needed to be replaced. Instead of buying the tubes through Donni, Pipp bought new inner tubes locally from DriveTube. DriveTube manufactures and sells their tubes in Washington, and is incorporated in Idaho and California. A week after installing the new inner tubes, Pipp was riding their bicycle when the front inner tube burst violently. This caused Pipp to crash into a parked car and become severely injured. Upon investigation, Pipp discovered that the design of the bicycle's rims significantly increased the force of the inner tube burst. Pipp filed suit against both Donni and DriveTube in Washington state court.

After filing suit, Pipp gave a friend a six-pack of a rare vegan beer in exchange for coming with them to Portland the following week. Pipp and the friend went back to the maker's faire, and Pipp's friend served Donni. Donni responded by handing Pipp a summons and complaint, and stating that they had filed suit in Oregon against Pipp for non-payment. When Pipp got back home, they went to DriveTube and personally handed the court documents to the owner.

1. Did Pipp validly serve a) Donni and b) DriveTube?
2. Assuming it has a long arm statute that reaches the limits of the Constitution, does the Washington court have personal jurisdiction over Donni?
3. Assuming it has a long arm statute that reaches the limits of the Constitution, may the Oregon court exercise personal jurisdiction over Pipp?

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**Question Two**

Pret is a singer in a prominent “metal” rock band. When the band isn’t touring, Pret stays at their party house in State C. Pret’s band had a big tour coming up, so Pret visited a radio station to do an interview and promote the tour.

The radio station is located in State A and is owned by Datura, Inc., which is incorporated in State A, State B, and State P. Datura, Inc. also has an office in State D, where its board of directors meets annually.

Under Pret’s contract with the station, Pret was to receive \$10,000 for doing the interview. The contract also stated that, in the event of a breach, the breaching party would pay stipulated damages in the amount of \$15,000. Unfortunately, the interview ended a couple of minutes early when a large speaker fell on Pret’s head. Pret was taken to the hospital, treated for a small brain hemorrhage, and thereafter received a bill for \$63,000. A month later, Pret reached out to Datura, Inc. for payment under the contract. Datura, Inc. refused to pay Pret, citing the incomplete interview.

Pret sued Datura, Inc. in State C federal court for damages resulting from the accident and breach of contract. Datura, Inc. counterclaimed for breach of contract and argued that the amount of damages claimed by Pret was ridiculous for “a simple bump on the head” and the Court should dismiss the case for lack of jurisdiction.

1. Does the court have subject matter jurisdiction over Pret’s suit against Datura, Inc.? Discuss.
2. Does the court have subject matter jurisdiction over Datura, Inc.’s counterclaim? Discuss.

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Professor Melodie Rivas

### **Question Three**

Dorian was born and raised in Alaska, where they live to this day. Dorian has a portrait of their great-uncle, which they inherited when the great-uncle finally died. Dorian believes that the painting has been damaged by age because the portrait doesn't look anything like Dorian's great-uncle, so they decided to hire a specialist to restore the portrait.

Pastiche lived in New York, but was growing tired of the art scene there. Wanting to do something radically different, Pastiche placed an ad in the Alaskan Gazette inviting commission work. Dorian saw the ad and arranged for Pastiche to come to Alaska to see the painting. When Pastiche came to visit, they executed a contract with Dorian to restore the portrait. The contract did not have a venue provision. Over the next six months, Pastiche traveled back to New York as required to learn additional techniques for the restoration of Dorian's portrait in Alaska.

Finally, Pastiche completed the job. They left an invoice for Dorian and returned to New York for good. After Pastiche's requests for payment via phone call, email, and certified letter all went unanswered, Pastiche filed suit against Dorian in New York state court for breach of contract.

Dorian made a special appearance and filed a motion to request transfer of the case to Alaska, which the court granted. Once in Alaska, Dorian filed for removal to federal court.

1. Did Pastiche properly lay venue in New York?
2. Was the court correct to grant Dorian's motion for transfer?
3. Upon transfer, which state's law will apply to the case?
4. How should the court rule on Dorian's motion for removal?

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**Question One-Answer Outline**

**1. Did Pipp validly serve a) Donni and b) DriveTube?**

**a) Service on Donni**

**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, Pipp had a friend serve Donni at the maker's faire. It is not necessary to use a professional or paid process server, so it is irrelevant that Pipp paid their friend in vegan beer. Though we can assume from that fact that Pipp's friend is of drinking age and therefore over 18 years old. Thus, service on Donni was valid.

**b) Service on DriveTube**

**SERVICE OF PROCESS**

See above rule

Here, Pipp was the one to serve DriveTube. This is invalid service because Pipp is a party to an action and therefore unable to personally effect service. Thus, service on DriveTube was invalid.

**2. Assuming it has a long arm statute that reaches the limits of the Constitution, does the Washington court have personal jurisdiction over Donni?**

**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.

Donni does not live in Washington state, was not served there, and did not consent to personal jurisdiction there. Thus, there is not personal jurisdiction over Donni under the traditional bases.

**MODERN BASES**

**LONG ARM STATUTE**

A long arm statute is required to reach an out of state defendant.

Here, the call of the question assumes that there is a long arm statute that extends to limits of Constitution.

**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, Donni never purposefully avails themselves of the benefits of Washington state. Instead, all of their bicycle-related activity occurs in Oregon. They make bicycles from their home in Oregon and

conducts all sales activity at their local maker's faire. Pipp reached into Oregon and went to Donni's local faire, where they bought the bicycle. Donni did not reach into Washington state.

### **FORESEEABILITY**

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

Since Donni never left Oregon to transact any bicycle-related business, they could not have foreseen that they would be haled into a Washington court. Pipp could argue that Donni knew they were selling to a person that would take the bicycle back to Washington, but a court will likely not hold one person's unilateral act to move a product to another forum does not create a liability in that forum.

### **FAIRNESS FACTORS**

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

Here, Pipp would likely argue that Washington has an interest in protecting her as a citizen. Moreover, Washington is where the accident occurred. However, Oregon is not that far away. In fact, it is "just across the river" from where Pipp resides. In addition, a bicycle is easily transportable and witnesses could easily travel across the river. Given the lack of purposeful availment and foreseeability, it would be unconstitutionally unfair to hear the case in Washington.

Thus, the Washington court does not have personal jurisdiction over Donni.

However, if the court did have personal jurisdiction, they would need to determine whether it was general or specific.

### **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.

Assuming the Washington court has personal jurisdiction at all over Donni, such jurisdiction could only be specific to the bicycle sold to Pipp. There would not be general jurisdiction because Donni could not be deemed "at home" in Washington and Donni's contacts were limited to the sale of one bicycle to a Washington citizen.

- 3. Assuming it has a long arm statute that reaches the limits of the Constitution, may the Oregon court exercise personal jurisdiction over Pipp?**

### **TRADITIONAL BASES**

See above rule

Pipp does not live in Oregon state and did not consent to personal jurisdiction there.

### **SERVICE OF PROCESS WITHIN THE STATE**

See above rule

Here, Pipp was served by Donni at the maker's faire. However, this is invalid service because Donni is a party to an action and therefore unable to personally effect service. Thus, there is not personal jurisdiction over Pipp under the traditional bases.

### **MODERN BASES**

#### **LONG ARM STATUTE**

See above rule

Here, the call of the question assumes that there is a long arm statute that extends to limits of Constitution.

### **MINIMUM CONTACTS**

See above rule

### **PURPOSEFUL AVAILMENT**

See above rule

Here, Pipp purposefully avails themselves of the benefits of Oregon state. First, they travel there to visit family, which means they likely used state infrastructure. Thus, they could avail themselves of the protection of the state for things like emergency services after an accident upon an Oregon highway, or a lawsuit against an Oregon business. Moreover, Pipp came into Oregon, went to the maker's faire, entered in a contract, and purchased a specialized product there from an Oregon citizen. There was nothing accidental about Pipp's contact with the state.

### **FORESEEABILITY**

See above rule

Since Pipp purposefully went to Oregon and entered into a purchase contract for a specialized product from an Oregon citizen, it would be foreseeable that they would be haled into an Oregon court.

### **FAIRNESS FACTORS**

See above rule

Here, Oregon has an interest in protecting Donni as a citizen. Pipp will argue that it is inconvenient to require them to travel to Oregon, but it is unlikely that a court would find it unconstitutionally inconvenient for Pipp to travel. In fact, Oregon is "just across the river" from where Pipp resides. Thus, the Oregon court would have personal jurisdiction over Pipp.

### **RELATEDNESS TO THE CLAIM-SPECIFIC JURISDICTION**

See above rule

Here, jurisdiction could only be specific to contract between Donni and Pipp. There would not be general jurisdiction because Pipp's contacts with Oregon are less than systematic and continuous. Pipp lives in Washington state and only visits Oregon, which would not be enough to make them "at home" in Oregon.

## **Question Two-Answer Outline**

- 1. Does the court have subject matter jurisdiction over Pret's suit against Datura, Inc.?**  
**Discuss.**

### **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, there are no facts to suggest Pret's claim arises under federal law.

### **DIVERSITY OF CITIZENSHIP JURISDICTION**

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

#### **DIVERSITY OF CITIZENSHIP**

Every plaintiff must be of diverse citizenship from every defendant. Citizenship is determined by domicile. A person is domicile in the state in which they live and intend to remain. A corporation is domiciled in every state in which they are incorporated and in the one state that contains their principal place of business. The principal place of business is the "nerve center" of the corporation, and the place from where the business is run.

Here, Pret is a citizen of State C because they live in their party house there. Datura, Inc. is a citizen of States A, B, and P, because those are the states in which it is incorporated. Datura, Inc. is also domiciled in State D because that is the state where the board of directors meet annually to run the corporation's business. Because Pret and Datura, Inc. are citizens of diverse states, there is complete diversity between Pret and Datura, Inc.

#### **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, Pret's claim for medical damages is \$63,000. This does not meet the amount in controversy on its own. However, Pret 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.

Pret can aggregate the \$63,000 claim for medical costs, and the stipulated damages amount of \$15,000 for breach of contract. Here the claims are all arguably related to the same transaction (the radio interview), but they needn't have been. Even if the claims are deemed unrelated (contract claim and injury claim), Pret could aggregate them. When Pret aggregates these claims, the total amount in controversy equals \$78,000, 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, Datura, Inc. argues that the damages claimed by Pret are ridiculous for "a simple bump on the head." By asking the court to dismiss for lack of jurisdiction, Datura, Inc. is basically stating that Pret cannot meet the amount in controversy required for diversity jurisdiction. However, Datura, Inc. 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 court has subject matter jurisdiction over Pret's suit against Datura, Inc.

- 2. Does the court have subject matter jurisdiction over Datura, Inc.'s counterclaim? Discuss.**

### **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, Datura Inc.'s claim arises under the same facts as Pret's claim because both are based upon the interview at the radio station. The facts of the accident will be a necessary part of both Pret and Datura, Inc.'s claim. It was the accident that cut the interview short, and it is the premature end of the interview that is the basis of the breach in Datura, Inc.'s claim. Conversely, the accident is Pret's defense to breach and the basis of their injury claim. There is no issue with the destruction of diversity here, as there is complete diversity of the parties here (see above discussion).

Thus, the court can exercise supplemental jurisdiction over Datura, Inc.'s counterclaim.

### **Question Three-Answer Outline**

#### **1. Did Pastiche properly lay venue in New York?**

##### **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, Dorian resides in Alaska, so Alaska would be a proper venue under the first prong. The contract was executed and work was performed in Alaska, so Alaska 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). The only connection to New York is that it's Pastiche's domicile and Pastiche returned there for training. However, neither of these facts make New York a proper venue.

#### **2. Was the court correct to grant Dorian's motion for transfer?**

##### **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, Alaska is a proper venue under the first and second prongs of the venue rule. In addition, Alaska has jurisdiction over Dorian because they are domiciled there. Pastiche will argue that hired a New York artist and thus venue is proper in New York. Dorian will argue that Pastiche reached into Alaska for commission work so Alaska is the proper venue in the interest of justice. Moreover, Alaska is a more convenient venue for Dorian and any witnesses they may have. Finally, the original forum was improper, so transfer in the interest of justice would be proper.

##### **WAIVER**

Venue can be consented to by the parties.

Here, there was no venue provision in the contract by which Dorian could have consented to venue. In addition, Dorian made a special appearance in the New York court and filed a request for transfer. Thus, Dorian did not waive their objection and the court correctly granted Dorian's motion for transfer.

#### **3. Upon transfer, which state's law will apply to the case?**

##### **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, as discussed above, venue in the original forum (New York) was improper. Thus, Alaska's law would apply to the case.

#### **4. How should the court rule on Dorian's motion for removal?**

##### **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, Dorian is trying to remove to Alaska federal court. This will not be possible because Dorian is a resident of Alaska and removal is not allowed for in-state defendants. The court should deny Daria's motion for removal.

1)

## QUESTION 1

(1) Did Pipp validly serve (a) Donni and (b) DriveTube?

(a) Pipp validly served Donni

*it's ok to put this as your heading,  
but I prefer sticking to the outline  
given by the question itself.*

### Service of Process

Service of process must be reasonably calculated to apprise the parties of the pendency of the claim and provide an adequate opportunity to be heard. Service cannot be affected by a party to the action, and the person rendering service must be at least 18 years old. For people, service may be given personally or given to the person's place of abode with someone who dwells there (generally said person must be at least 14). For corporations, service may be given to an official or agent.

Here, "Pipp's friend served Donni" in Portland, Oregon. The facts do not specify the friend's age, but presumably the friend is old enough to consume a six-pack of vegan beer. ✓ Ideally, this means Pipp's friend is at least 21.

*Also good to point out that the  
friend is not a party to  
the action.*

Therefore, Pipp validly served Donni.

(b) Pipp did not validly serve DriveTube

### Service of Process

See rule above.

✓ Here, Pipp "personally handed the court documents to the [DriveTube] owner." Because Pipp, a party to the claim, served DriveTube, service is not proper.

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Therefore, Pipp did not validly serve DriveTube.

## Conclusion

Although Pipp validly served Donni, Pipp did not validly serve DriveTube.

## (2) The Washington court does not have personal jurisdiction over Donni

### Personal Jurisdiction

Personal jurisdiction (PJ) is the court's power over the parties to a claim. PJ must comport with due process. There are three types of PJ: (1) in personam; (2) in rem; and (3) quasi in rem. PJ may be established under a Traditional Basis or the Modern Basis.

#### *Traditional Bases*

Under *Pennoyer v. Neff*, PJ may be established by (1) consent; (2) domicile in the forum state; and (3) service in the forum state.

#### *Consent*

Consent may be express or implied. For example, making a general appearance in the court is implied consent.

Here, the facts do not indicate Donni consented to PJ in Washington.

Therefore, there is no PJ under consent.

#### *Domicile*

When you know ~~there~~ there aren't any valid paths to PJ here, you can lump it all together. Kind of like a raise/dish

Ex. Here, Donni did not consent to PJ, is not domiciled in the forum, and was not served in the forum.

Domicile for people is determined by where the person lives and intends to remain. For corporations, domicile is every state where they are incorporated and the one state that contains the principal place of business (PPB). The PPB is the "nerve center" where high-level officials direct and make decisions about the corporation.

Here, Donni is domiciled in Oregon.

Therefore, there is no PJ under domicile.

### *Service*

The court may refuse to exercise jurisdiction if service is procured by fraud. ? Is there fraud here?

Here, Pipp's friend served Donni in Oregon -- not in Washington, the forum state.

Therefore, there is no PJ under service.

### *Conclusion*

There is no PJ over Donni using a Traditional Basis.

### *Modern Basis*

Under *International Shoe*, PJ may be established if there is (1) a long-arm statute that satisfies (2) a constitutional analysis (i.e., minimum contacts).

### *Long-arm Statute*

There must be a long-arm statute that reaches the out-of-state defendant.

✓ Here, the call of the question indicates that Washington has a long-arm statute "that reaches the limits of the Constitution."

Therefore, there is a long-arm statute reaching Donni.

### *Minimum Contacts*

The defendant must have such minimum contacts with the forum state such that exercise of PJ over the defendant does not offend traditional notions of <sup>play</sup>fairness and substantial justice. The minimum contacts analysis involves the following: (1) purposeful availment; (2) foreseeability; (3) fairness factors; and (4) relatedness to the claim.

### *Purposeful Availment*

The defendant's contacts with the forum state must not be accidental; rather, the defendant must purposefully avail herself of the protections and benefits of the forum state.

✓ Here, Donni "rarely sells to people from out of" Portland, Oregon. When Donni sells a bike, both parties "sign a contract" in Oregon, and Donni would likely rely on Oregon contract law for remedy if the contract was breached. Donni sells their bikes at "the local maker's faire," and the facts do not indicate Donni advertises anywhere, let alone in states other than Oregon.

Therefore, Donni did not personally avail themselves of the protections and benefits of Washington.

### *Foreseeability*

The defendant's contacts with the forum must be such that it is reasonably foreseeable that the defendant would be haled into the court.

Here, the facts do not indicate that Donni conducts business anywhere other than Portland, Oregon. Rather, Donni "rarely sells to people from out of town." Donni would

nice  
not likely anticipate or foresee being haled into Washington's courts. Pipp may argue that Donni should have foreseen being haled into Washington because Donni knew Pipp was from Washington; Pipp and Donni became friends, after all. Furthermore, because the states are neighboring, Pipp will argue Donni should reasonably anticipate being haled into Washington courts because Donni may have customers from Washington despite rarely selling to people out of town. However, such knowledge is likely insufficient to cause Donni to anticipate or foresee being haled into Washington courts. Furthermore, the facts do not indicate where the rare instances where out-of-towners who bought Donni's bicycles hailed from.

Therefore, it is not reasonably foreseeable that Donni would be haled into the Washington court.

#### Fairness Factors

✓ The fairness factors involved include the state's interests in efficiency and protecting its citizens and the defendant's interests in convenience. Regarding the latter, it must be so gravely inconvenient so as to put the defendant at a severe disadvantage in comparison to the other party.

Here, because Donni lives in the state neighboring the forum state, it would not be so gravely inconvenient for Donni to appear in court there. In fact, the facts indicate "Pipp lives just across the river," suggesting Donni is fairly close to the state. In any case, the facts do not indicate Donni travels a great distance to reach the maker's faire. Washington state has great interest in protecting its citizens from shoddy and negligent manufacturers.

Therefore, the fairness factors alone do not indicate Donni would be put to an unfair disadvantage from appearing in Washington.

You could argue it's unfair given the fact that Donni has never reached in to WA state.

#### Relatedness to the Claim

✓ The court can have general jurisdiction or specific jurisdiction of the parties, hinging upon the nature and quality of the defendant's contacts with the forum state. If the defendant's contacts are systematic and continuous such that the defendant is essentially "at home" in the forum state, then the court has power over any type of claim or action arising from anywhere in the world (i.e., general jurisdiction). If, however, the defendant's contacts are less than systematic and continuous, then the court only has power over claims arising from or related to the defendant's contacts with the state (i.e., specific jurisdiction).

✓ Here, Donni's only contact with Washington, so far as the facts indicate, is that Pipp took the completed bicycle home to Washington. Because Donni's contacts with Washington are less than systematic and continuous, then the claim must arise from or relate to the contacts with the forum state. Pipp will argue that the bicycle rim design caused the crash: the design was such that the "rims significantly increased the force of the inner tube," thus causing them to burst. Furthermore, the design necessitated parts "only available through Donni." Thus, Pipp will argue, the poor design caused the crash from which Pipp's claim arises. Donni, however, will argue that it was DriveTube's inner tube that burst, not Donni's. Furthermore, Donni will point out that the contract Donni and Pipp signed included "a description of the bicycle's specifications and compatibility issues," such as Donni's inner tubes being the only ones compatible with the bicycle rims. Thus, Donni will argue, Pipp was on notice to the potential "compatibility issues" of the unique bicycles. After all, it was the bicycle's uniqueness that prompted Pipp to purchase it.

Therefore, because Pipp's claim arises from Donni's only established contact with the forum state, the court may have specific jurisdiction over Donni.

Conclusion

if the court had PJ at all, it could only be specific juris. yes

Although Pipp's claim arises from Donni's contact with the forum state, Washington does not have PJ over Donni because Donni did not personally avail himself of the forum state and it was not reasonably foreseeable that Donni would be haled into court there.

### (3) The Oregon court has personal jurisdiction over Pipp

#### Personal Jurisdiction

See rule above.

#### *Traditional Bases*

See rule above.

Here, Pipp did not consent to PJ in OR, nor is Pipp domiciled in OR. However, Pipp was personally served in Oregon, the forum state. ~~Unfortunately for Donni,~~ <sup>However,</sup> the service of process is invalid because Donni, a party to the action, personally served Pipp.

Therefore, the Oregon court has PJ over Pipp through personal service.  
\_\_\_\_\_? service is invalid so no PJ

#### *Modern Basis*

See rule above.

#### *Long-arm Statute*

Here, the call of the question indicates Oregon has a long-arm statute that reaches the limits of the Constitution.

Therefore, Pipp can be reached by Oregon's long-arm statute.

### *Minimum Contacts*

See rule above.

### *Purposeful Availment*

See rule above.

Here, Pipp signed Donni's contract in Oregon. Thus, in the event that Donni breached the contract, Pipp would likely avail themselves of the benefits and protections of Oregon's contract law. Pipp also traveled to Oregon "while visiting Portland." Though the facts do not indicate how Pipp traveled to Oregon, it would not be a stretch to imagine Pipp drove, thus availing themselves of the benefits and protections of Oregon's driving laws.

Therefore, Pipp may have purposefully availed themselves of Oregon's benefits and protections.

### *Foreseeability*

See rule above.

Here, because Pipp signed a contract in Oregon, it would be reasonably foreseeable for Pipp to be haled into the court if Pipp breached the contract (which they did).

Therefore, the foreseeability element is satisfied.

### *Fairness Factors*

See rule above.

Here, as with Donni, Pipp would not be put to so grave an inconvenience so as to be put at an unfair disadvantage compared to Donni if Pipp were brought to Oregon's courts.

*Especially since Pipp has traveled there before.*

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Furthermore, Oregon has great interest to protect its residents, including residents suffering breaches of contract from out-of-staters.

Therefore, the fairness factors are satisfied.

Relatedness to the Claim

See rule above.

Here, because Pipp's contacts with the state are not systematic and continuous such that they are at home in the forum, the claim must arise from Pipp's contacts. So far as the facts indicate, Pipp's only contact with Oregon involved Pipp's purchase of the bicycle in question. Donni's claim arises from Pipp's breach of contract.

✓ Therefore, because Donni's claim arises from Pipp's contact with the forum state, Oregon has specific jurisdiction over Pipp.

### **Conclusion**

Oregon has PJ over Pipp.

**END OF EXAM**

2)

**QUESTION 2**

**(1) The court has subject matter jurisdiction over Pret's suit against Datura**

**Subject Matter Jurisdiction**

✓ Subject matter jurisdiction (SMJ) is the court's power over a case. SMJ can be established through (1) federal question or (2) diversity of citizenship. SMJ cannot be waived or consented to, but may be challenged at any point in the proceedings, even during appeal.

*Federal Question*

The claim must invoke federal law (e.g., federal common law; federal statutory law). The federal claim must arise from a well-pleaded complaint, and cannot be invoked through an anticipated defense.

✓ Here, Pret's claim is "for damages resulting from the accident and breach of contract." No federal claim is invoked.

Therefore, SMJ is not established by federal question.

*Diversity of Citizenship*

✓ Diversity of citizenship requires (1) complete diversity of citizenship and (2) the amount in controversy exceed \$75k, exclusive of costs and interest.

*Complete Diversity of Citizenship*

Every plaintiff must be of diverse citizenship from every defendant (*Strawbridge*).

Citizenship is determined by domicile. A person is domiciled where they reside and intend to remain. A corporation is domiciled in every state and country where they are incorporated and the one state containing their principal place of business (PPB). The PPB is the "nerve center" where high-level officials make decisions about the corporation.

Here, Pret is arguably domiciled in State C because that is where Pret stays when not touring. The facts do not indicate any other place Pret stays, so Pret likely resides and intends to remain at the band's party house in State C. Datura is domiciled through incorporation in States A, B, and P. Datura is also domiciled in State D because that is "where its board of directors meets annually." There is no overlap between Pret's domicile and Datura's domicile.

Therefore, there is complete diversity between Pret and Datura.

### *Amount in Controversy*

The amount in controversy must exceed \$75k, exclusive of costs and interest. <sup>this could have own heading</sup> The plaintiff's claim must be made in good faith, and it is not necessary that the plaintiff actually receive the amount claimed. The court cannot dismiss a plaintiff's claim unless it can establish to a legal certainty that the amount is unreasonable.

Here, Pret has three different claims yielding damages: (1) Datura's failure to pay \$10k; (2) Datura's \$25k penalty for breaching the contract to pay Pret; and (3) the \$63k in damages from the accident. Although no one claim meets the requisite amount in controversy, Pret may aggregate their claims. The facts do not indicate that Pret's claim was made other than in good faith; the hospital bill was \$63k. It is immaterial that Datura argued that "the amount of damages claimed by Pret was ridiculous for 'a single bump on the head.'" <sup>stipulated damage is instead of 10</sup> Unless the court can prove to a legal certainty that Pret's claim is unreasonable or made in

bad faith, Pret's claim stands. The facts do not indicate the court made any such judgment against Pret's claim.

### Aggregation

*single*  
A plaintiff may aggregate claims against a single defendant to meet the amount in controversy. A plaintiff cannot aggregate claims against multiple defendants unless pursuing a joint claim against all defendants. Multiple plaintiffs cannot aggregate claims against a defendant unless enforcing a single title or claim of right.

✓ Here, Pret can aggregate their claims against the sole defendant Datura. In doing so, Pret's damages equal \$88k, far surpassing the requisite amount.

Therefore, the amount in controversy is met.

### Conclusion

The court has SMJ over Pret's suit against Datura.

**(2) The court has subject matter jurisdiction over Datura's counterclaim**

### Subject Matter Jurisdiction

See rule above.

### *Federal Question*

See rule above.

Here, Datura's counterclaim is for breach of contract. No federal claim is invoked, not even as an anticipated defense (which would be invalid anyway).

Therefore, there is no SMJ under federal question.

### *Diversity of Citizenship*

See rule above.

### *Complete Diversity of Citizenship*

Here, as discussed above, there is complete diversity of citizenship between Datura and Pret. Datura is domiciled via incorporation in States A, B, and P, and Datura's PPB is in State D. Pret resides in and intends to remain (so far as the facts show) in State C.

Therefore, there is complete diversity of citizenship.

### *Amount in Controversy*

See rule above.

Here, Datura is pursuing \$15k from Pret's alleged breach of contract. The facts do not indicate any other claim for damages.

Therefore, Datura's claim fails the requisite amount in controversy. Datura's only hope is to satisfy the requirements for supplemental jurisdiction (see below).

### ★ *Supplemental Jurisdiction*

*You did a good job of raising/denying above, but better to just start with, cannot make 75k, so need supp. juris.*

✓ A court can exercise supplemental jurisdiction (SJ) over claims that arise from a common nucleus of operative fact provided the claims do not destroy diversity. Counter-claims

similarly must arise from a nucleus of operative fact or independently satisfy requirements for federal court.

Here, Datura's breach of contract claim arises from a common nucleus of operative fact as Pret's claim: both claims involve the same contract, and the falling light that ended the interview "a couple of minutes early" supports Pret's claim for damages from the accident and Datura's claim for breach of contract. Furthermore, diversity of citizenship would not be destroyed by the counterclaim.

Therefore, Datura's claim will likely see the light of federal court through supplemental jurisdiction.

*don't get too sassy on the bar.*

### **Conclusion**

The court has SMJ over Datura's counterclaim through supplemental jurisdiction.

**END OF EXAM**

3)

1) DID PASTICHE PROPERLY LAY VENUE IN NEW YORK?

VENUE

Nice!

Venue is proper (1) in any judicial district in which any defendant resides, if all defendants are residents of the state in which the judicial district is located, (2) in the judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or (3) if there are no judicial districts in the United States under 1 and 2, any judicial district in which any defendant is under the court's exercise of personal jurisdiction with respect to the action. Venue may be consented to.

PRONG 1: RESIDENCE/DOMICILE

Prong 1 above essentially refers to domicile. Individuals are domiciled in the one state in which they reside and intend to permanently remain.

Here, venue would have been proper in Alaska because Dorian is the only defendant in the action, and Dorian is domiciled in Alaska. Dorian was born and raised in Alaska and still lives there to this day. Thus, Dorian resides and intends to permanently remain in Alaska.

nice job using the facts.

Thus, venue was proper under prong 1 in Alaska.

PRONG 2: LOCATION OF EVENTS, OMISSIONS, OR PROPERTY

Prong 2 above refers to where the incident, dispute, or property at issue in the lawsuit occurred.

Here, venue would have been proper in Alaska because Pastiche placed the ad in the Alaskan Gazette (it can be inferred that the Alaskan Gazette is an Alaskan publication), the contract was executed in Alaska, the portrait is property located in Alaska, and although the facts are not specific, it seems that Pastiche went back and forth between Alaska and New York but did most or all of the restoration work in Alaska.

Yes, the Plaintiff did not leave. (we can infer, since P went back + forth)

Therefore, venue was proper under prong 2 in Alaska.

✓ YES! Analysis under prong 3 is not required because venue in Alaska satisfied prongs 1 and 2.

Thus, Pastiche did not properly lay venue in New York because the proper venue was Alaska.

## 2) DORLAN'S MOTION FOR TRANSFER

A case may be transferred from one state to another if venue in the transferee court is proper and the transferee court has jurisdiction over the defendants. If venue in the original court was proper, the court may transfer the case with the parties' consent or in the interests of justice. If venue in the original court was improper, the court may with or for convenience & parties witnesses transfer the cases in the interests of justice or dismiss the case.

Here, the court was correct to grant Dorian's motion for transfer because it is in the interests of justice. Again, Alaska is the more appropriate forum because Pastiche placed the ad in the Alaskan Gazette (it can be inferred that the Alaskan Gazette is an Alaskan publication), the contract was executed in Alaska, and although the facts are not specific, it seems that Pastiche went back and forth between Alaska and New York but did most or all of the restoration work in Alaska. Further, Dorian made a special appearance to file a motion to request transfer of the case to Alaska, which means that Dorian did not waive

Also, there was no venue provision in the contract.

his objections to venue, nor did he consent to venue prior to moving for transfer. In sum, Dorian followed the correct procedural measures for objecting to venue and requesting transfer of the case from New York to Alaska. *more about interest of justice.*

Therefore, the court was correct to grant Dorian's motion for transfer and to exercise its discretion to transfer the case to Alaska.

### 3) CHOICE OF LAW UPON TRANSFER

If venue was proper in the original court, the laws of the state of the transferor court will apply. If venue was improper in the original court, the laws of the state of the transferee court will apply. These rules are in place to discourage parties from filing lawsuits in states in which the laws are beneficial to them, even though venue is improper, then being able to take the improper state's laws with them to the transferee court.

*not part of rule statement. You can make part of your analysis.*

Here, the laws of Alaska will apply to the case because New York was an improper venue when the case was originally filed. Although there is no indication that Pastiche filed his claim in New York for any sort of nefarious reasons, or any reason beyond mere convenience to him personally, he is not allowed to file his action in an improper venue then take the laws of that state with him to the transferee court. Because venue is proper in Alaska, the laws of Alaska will apply.

Therefore, Alaska's laws will apply to the case.

### 4) DORLAN'S MOTION FOR REMOVAL

A defendant may remove a case from state court to federal court if the matter could have originally been filed in federal court, and if there are multiple defendants, all defendants must join in the removal or consent to it in order for the case to be removed. In-state defendants may not remove a case to federal court.

✓ Here, the court should deny Dorian's motion for removal because Dorian is a resident of Alaska, and in-state defendants cannot remove a case to federal court. Because the case has been transferred to Alaska, where Dorian is domiciled, Dorian is barred as an in-state defendant from removing the case to federal court.

Therefore, the court should deny Dorian's motion for removal.

**END OF EXAM**