



CALIFORNIA CIVIL PROCEDURE ESSAY WORKSHOP

PROFESSOR CHRISTOPHER IDE-DON

UC DAVIS SCHOOL OF LAW

CHAPTER 1: INTRODUCTION AND SUBJECT MATTER JURISDICTION

A. Introduction to California Civil Procedure Essays

- Released essays from before 2015 are often less detailed than subsequent essays.
- CA Civil Procedure essays often test federal rules.
- Likely to include 3-5 enumerated calls of the question:
 - Begin by reading each call of the question to **identify high-value issues**.
 - Plan ahead to **allocate your time** between each section of the question.
 - Provide a **strong fact-based analysis** for each identified issue.
- Common issues include:
 1. Subject Matter Jurisdiction (SMJ)
 2. Personal Jurisdiction
 3. Discovery

B. Summary of the Issues Tested

1. Subject Matter Jurisdiction
2. Personal Jurisdiction
3. Venue
4. Erie
5. Pleadings
6. Joinder
7. Discovery
8. Trial Procedure
9. Post-Trial Procedure
10. Appeals
11. Claim Preclusion (Res Judicata)
12. Issue Preclusion (Collateral Estoppel)
13. California Distinctions

Exam Tip 1: California distinctions tested on past exams include choice of law, claim preclusion, and venue.

C. Subject Matter Jurisdiction

Refers to a court's competence to hear and determine cases

1. Federal Question Jurisdiction

- Infrequently tested in essays
- Exists only when the federal law issue is presented in the plaintiff's complaint
- Anticipated federal defense is not sufficient

2. Diversity Jurisdiction

a. Diversity

- Requires complete diversity between opposing parties
- Includes suits between a citizen of a state and citizens or subjects of a foreign state
- Place of citizenship:
 - Individuals—state of domicile (i.e., where the individual is present and intends to reside for an indefinite period)
 - Corporations—every state where it is incorporated or has its principal place of business
- At least one party must be a citizen of a state

b. Amount in controversy

More than \$75,000, but watch out for:

- Statutes that change the damages calculation
- Injunctive relief—can give monetary value to relief sought
- Multiple defendants—aggregate dollar amounts if jointly liable

3. Supplemental Jurisdiction

- Single plaintiff
 - Applies when plaintiff brings state law claim that relates to plaintiff's preexisting federal question or diversity jurisdiction claim
- Multiple plaintiffs
 - **Federal question jurisdiction**—additional plaintiff can join if claim relates to existing federal question claim
 - **Diversity jurisdiction**—additional plaintiff can join if (i) claim relates to existing claim and (ii) additional plaintiff does not destroy diversity

4. Removal and Remand

- Defendant(s) can unilaterally **remove** an action from state court to federal court.
- Plaintiff may respond by filing a motion to **remand** back to state court if the claim is not within federal jurisdiction.
- Approach: Was removal appropriate in the first place?
 - 1) Analyze whether the federal court has subject matter jurisdiction
 - 2) Analyze whether the other removal limitations apply:
 - If federal court only has diversity jurisdiction, no defendant can be a citizen of the state from which the claim was removed.
 - The motion for removal must be filed within 30 days of receiving the complaint.
 - All defendants must (i) join in the motion or (ii) consent.
- If all requirements are met, there has been a valid removal; there will not be a remand

CHAPTER 2: PERSONAL JURISDICTION AND VENUE

A. Personal Jurisdiction

Required for court to have power over persons or property involved in cases before it

1. Traditional Bases

- Proper service of process while voluntarily present in forum state
- Domicile in forum state
- Consent

2. Long-Arm Statute

- CA courts may exercise personal jurisdiction on any basis that is in accord with the California or U.S. Constitution

Exam Tip 2: If there is no long-arm statute in the fact pattern, assume the statute goes to the full extent allowed by the constitution.

- Due process requires sufficient **minimum contacts** and **fairness**

a. Minimum contacts

- Purposeful availment—requires purposeful and substantial contact with forum state
- Foreseeability—defendant should reasonably anticipate being sued in forum state
- Relatedness (conduct in relation to the action)
 - Specific jurisdiction (action arises out of contacts with forum state)
 - General jurisdiction (defendant “at home” in forum state)

Example 1: *Plaintiff is injured by a defective lawnmower in California that is made by Defendant. Defendant is incorporated in Delaware and its executive offices are in Nevada. Plaintiff may sue Defendant in Nevada and Delaware—even though the injury occurred in California—because there is general jurisdiction over Defendant. Plaintiff may also sue Defendant in California because the court likely has specific jurisdiction over Defendant.*

b. Fairness—must not offend traditional notions of fair play and substantial justice

Factors include:

- Interest of the forum state in adjudicating the matter;
- Burden on the defendant of appearing in the case;
- Interest of the judicial system in efficient resolution; and
- Shared interests of the states in promoting common social policies

B. Venue

Determines proper forum(s) among multiple courts having PJ and SMJ

1. Essay Approach

1. Is venue appropriate in the original district where the lawsuit was filed?
 - Proper in any judicial district where any defendant resides if all defendants reside in same state
 - Individual—residency established where domiciled
 - Business—residency requires a PJ analysis for that particular district
 - Proper in judicial district where a substantial part of the events or omissions occurred or the property is located
 - If neither of the above apply, proper where any defendant is subject to PJ
2. Should the case be transferred to the new venue?
 - Is venue appropriate in the original district?
 - Is venue appropriate in the new district?
 - Is there personal jurisdiction?
 - Is there subject matter jurisdiction?
3. Is transfer to the new venue in the interest of justice?

2. California Venue Rules

- Actions involving real property—county where property is located
- Contract actions—county where contract was entered into or expected to be performed
- Tort actions—county where act or omission giving rise to the tort occurred

CHAPTER 3: CHOICE OF LAW, CONFLICTS OF LAW, AND PLEADINGS

A. The Erie Doctrine

Exam Tip 3: If state laws are provided in the fact pattern, think of *Erie*.

1. Federal Question Jurisdiction

Federal substantive and procedural law will control.

2. Diversity Jurisdiction

- If the state law would change the outcome of the case, it is **substantive** and must be used.
- If the state law would not change the outcome of the case, federal law applies.

Exam Tip 4: Conflict of law rules, laws governing preclusion, laws altering the calculation of damages, laws governing a statute of limitations, and laws governing evidentiary privileges are considered **substantive law** for the purposes of *Erie*.

3. California Conflict-of-Law Rules

- Real property disputes—apply law of the jurisdiction in which the property is located
- Contract disputes—apply governmental interest test
 - But if contract has choice-of-law provision, honor provision unless contrary to public policy
- Torts claims—apply governmental interest test

B. Pleadings

1. Rule 4: Service of Process

- Personal service may be made by any non-party aged 18 or older
- Service on foreign individuals and corporations
 - Any method permitted by the law of the foreign country allowed
 - Personal service is not allowed on a foreign corporation
 - May serve by certified mail

2. Rule 8 and Rule 9: Complaints

a. Rule 8

- Must include short and plain statement of the claim sufficient to show that pleader is entitled to relief
- Must plead facts sufficient to show that the claim has substantive plausibility
- Recitation of elements of a claim and broad conclusory statements are insufficient

b. Rule 9

- Certain pleadings have heightened standards
- Complaint must state with particularity the circumstances constituting **fraud or mistake**

Editorial Note 1: California state courts require **fact pleading**. Accordingly, all pleadings in California state courts must contain a statement of facts constituting each cause of action and a demand for relief.

3. Rule 15: Amendments and Relation Back

a. General rule

Courts should allow plaintiff leave to amend complaint unless it would cause undue prejudice against the defendant.

b. Adding a new claim—relates back if:

- The original complaint was timely; and
- The new claim arises out of the same transaction or occurrence as the claims in the original complaint.

c. Adding a new party—relates back if:

- The claim arose out of the same conduct, transaction or occurrence;
- The new party received notice of the action within 90 days of the original complaint; and
- The new party knew or should have known the action would have been brought against him, but for a mistake concerning the proper party's identity.

C. Joinder

1. Rule 18: Permissive Joinder of Claims

May join as many independent or alternative claims of whatever nature as the party may have against an opposing party

2. Rule 13: Compulsory Counterclaims

Must be asserted if the claim arises out of the same transaction or occurrence that is the subject matter of the opposing party's claim

Example 2: *Plaintiff and Defendant are involved in a car accident. Plaintiff properly sues Defendant in federal court for property and personal injury damages. If Defendant wants to recover property damages from Plaintiff arising from the same accident, Defendant must bring a counterclaim against Plaintiff in that lawsuit.*

3. Rule 19: Compulsory Joinder of Parties

Exam Tip 5: Look for facts about a defendant arguing that the plaintiff's lawsuit cannot proceed without joining another party.

- Three requirements:
 1. Party must be necessary
 2. Court must have personal jurisdiction over the new party

3. Court must have subject matter jurisdiction (i.e., adding the party cannot destroy diversity)
 - If adding the party would ruin diversity, the court must decide whether to proceed without the party or dismiss the case.
- a. **Necessary party**

Party is necessary if:

 - Court cannot afford complete relief without the party;
 - There is a danger that the party would be harmed without joining; or
 - There is a risk of an inconsistent judgment or double liability
 - b. **Indispensable party**
 - If party is necessary but cannot be joined, court must determine whether party is indispensable
 - Indispensable—action dismissed
 - Not indispensable—action proceeds among the existing parties
 - Factors include:
 - Extent to which judgment would prejudice the parties in the person’s absence
 - Extent to which prejudice could be reduced or avoided by protective provisions
 - Whether a judgment rendered would be adequate
 - Whether the plaintiff would have an adequate remedy if action were dismissed for nonjoinder

CHAPTER 4: DISCOVERY

A. Scope of Discovery

1. Rule 26

- May discover any evidence, information, or facts relevant to a party’s claim or defense and proportional to case’s needs
- Court will consider whether the burden or expense of proposed discovery outweighs its likely benefit
- Cannot discover privileged information

Exam Tip 6: If a party objects to discovery based on relevance, your answer should address (i) an explanation of why the information is relevant, and (ii) any arguments regarding the burden or expense of the requested discovery.

2. Privileges

- Privileged information protected from discovery

- Privileges include:
 - Attorney-Client
 - Work Product
 - Physician-Patient—does not exist under Federal law, but does under CA law

a. Attorney-client privilege

- Protects communications made between a licensed attorney and a client for the purpose of seeking legal advice
- Also applies to agents of the lawyer and agent of the client

b. Work product privilege

- Protects materials prepared by a party in anticipation of litigation
- Exceptions:
 - Work product materials contain information not reasonably available by other means; and
 - Party seeking discovery would be substantially prejudiced if not allowed to access the materials

***Example 3:** Defendant interviews various witnesses prior to trial, and all of those witnesses have died. Plaintiff can argue that he cannot obtain the information another way and his case would be substantially prejudiced.*

- A party can never discover the mental thoughts and opinions about the case

3. Expert Witnesses

- Party is entitled to depose any expert witness of an opposing party whose opinions may be presented at trial
- Expert witness report drafts and communications between a party's attorney and an expert witness are protected
- Report of an expert retained in anticipation of litigation but not expected to be called as a witness is discoverable only on a showing of exceptional circumstances

B. Discovery Tools

1. Depositions

- Party can depose another party or nonparty after serving a subpoena
- Can also request that nonparty produce documents by serving a subpoena duces tecum

2. Interrogatories

- Federal limit: A party may serve no more than 25 interrogatories on any other party

Editorial Note 2: In California, a party may serve an unlimited number of Judicial Council form interrogatories, and up to 35 specially drafted interrogatories.

- May not serve interrogatories on nonparties
- May relate to any non-privileged matters relevant to any party's claim or defense, so long as it is proportional to the needs of the case
- Each interrogatory must be answered fully and separately under oath unless that party objects
- Grounds for objection must be stated with specificity.
 - Any ground not stated in a timely objection is waived unless the court excuses the failure for good cause.

3. Request to Produce Documents and Inspection of Land

- Party may serve a request to produce and permit inspection, copying, testing, or access the other party's documents or electronically stored information
- May object if burden or expense outweighs the likely benefit

4. Physical and Mental Exams

Can compel a physical or mental exam of a party if:

- That party's physical or mental condition is at issue; and
- There is good cause

C. Enforcement and Sanctions

- If party fails to make disclosures or respond to discovery, the other party may compel the party's responses
- Procedure:
 - Parties must meet and confer in good-faith to settle discovery dispute
 - If not resolved, party may file motion to compel discovery
- If granted, court may impose sanctions if other party fails to make disclosures or respond

CHAPTER 5: TRIAL PROCEDURE, POST-TRIAL PROCEDURE, AND PRECLUSION

A. Trial Procedure

1. Jury Trial

- Federal right arises from Seventh Amendment

Note 1: In California, the right to a jury trial arises from the state constitution instead of the U.S. Constitution.

- Does not apply to all types of actions
 - Actions at law (e.g., for damages)—generally may be tried on demand to a jury
 - Actions in equity (e.g., for injunction)—no right to jury trial

- Action involves legal and equitable claims—jury normally determines legal claims first, then court determines equitable claims
- Must demand federal jury trial in writing within 14 days after service of last pleading
- Party waives a jury trial unless demand is properly served and filed

2. Judgment as a Matter of Law (Directed Verdict)

Editorial Note 3: In California, this is called a motion for nonsuit or directed verdict.

- Motion made by either party at the close of plaintiff's evidence or the close of all evidence
- Granted only if no reasonable person could differ as to the outcome

3. Renewed Motion for Judgment as a Matter of Law (JNOV)

- Motion to override the jury's verdict after the jury deliberates and delivers a verdict
- Can only "renew" this motion under federal law if it was made earlier

Editorial Note 4: Unlike federal procedure, there is no requirement that a party move for a directed verdict before moving for JNOV to override a jury verdict under the California rules.

B. Post-Trial Procedure—Appeals

- Generally requires a final judgment
- Interlocutory appeal generally limited to:
 - Denial or grant of injunctive relief; or
 - Failure to certify a class action lawsuit

C. Preclusion

Exam Tip 7: Look for facts where there is lawsuit #1 between Plaintiff 1 and Defendant 1 in which Defendant 1 lost. Then there is lawsuit #2 in which Plaintiff 2 sues Defendant 1. Plaintiff 2 will try to assert the decisions or findings from lawsuit #1 against Defendant 1.

- Often tested in the context of a motion for summary judgment
- May be used offensively by the plaintiff or defensively by the defendant

Example 4: Plaintiff 1 won a negligence action against Defendant 1. Plaintiff 2 is suing on negligence grounds against Defendant 1 and seeks to use the judgment from the previous case. This is an offensive use of preclusion.

Example 5: Plaintiff 1 sues Defendant 1 in a negligence action and loses. Plaintiff 1 sues Defendant 1 again. Defendant 1 seeks to use the judgment against Plaintiff 1 in the subsequent action. This is a defensive use of preclusion.

1. Claim Preclusion (Res Judicata)

Three requirements:

1. Plaintiff and defendant sufficiently identical in Lawsuit #1 and #2
2. Lawsuit #1 ended in a valid final judgment on the merits
3. Claimant is asserting the same claim as in Lawsuit #1

Exam Tip 8: California courts do not apply the modern “transactional” approach in analyzing the “same claim” requirement under res judicata (as the federal rule does). Instead, California courts apply the minority “primary rights theory” to the “same claim” requirement.

Example 6: *Plaintiff sues Defendant in federal court based on diversity for breaking a vase while cleaning Plaintiff’s home. In the first lawsuit, Plaintiff sues under a negligence theory and loses at jury trial. Plaintiff does not appeal. Plaintiff later brings a second lawsuit against Defendant six months later for breaking the vase under a breach of contract theory. Defendant can assert claim preclusion defensively to prevent Plaintiff from bringing the breach of contract claim in the second action.*

2. Issue Preclusion (Collateral Estoppel)

Example 7: *Plaintiff 1 wins a negligence action against Defendant 1. The jury found that Defendant 1 owed Plaintiff 1 a duty. Plaintiff 2 sues Defendant 1 in a negligence action and Plaintiff 2 files a motion for summary adjudication asserting that Defendant 1 is precluded from re-litigating the issue of duty. If issue preclusion applies, Defendant 1 would be precluded from re-litigating the issue of duty.*

Four requirements:

1. Same issue was actually litigated
2. Final valid judgment on the merits
3. Issue was essential to the judgment
4. The party against whom issue preclusion is asserted must have been a party in the prior lawsuit or a successor-in-interest (fair for new plaintiff to assert same issue against the defendant)

D. California Distinctions

1. Pleadings

Issue	Federal Rule	CA Distinction
<i>Service of process</i>	Method—personally, D's place of abode, or agent	Required follow up mailing to D for substitute service
<i>Complaint</i>	Short/plain statement of court's SMJ, P's entitlement to relief, & demand for judgment	Must contain statement of all material, operative facts constituting each c/a and demand for relief, & amount of damages
<i>Rule 12(b) motion to dismiss</i>	Lack of SMJ, PJ, improper venue, insufficient process or service, failure to state a claim upon which relief can be granted, and failure to join necessary/indispensable party	General/special demurrer can also be filed, and motion to quash service of summons to object to PJ prior to filing answer
<i>Rule 12(b)(6) motion to dismiss</i>	Claim will be dismissed if it fails to assert legal theory of recovery cognizable at law or allege facts sufficient to support cognizable claim	N/A
<i>Rule 12(c) motion for judgment on pleadings</i>	Allows court to dispose of case when material facts not in dispute and judgment on merits can be achieved based on pleadings	N/A
<i>Motion to strike</i>	When pleading contains insufficient defense, or redundant, immaterial, impertinent, or scandalous material	Party can move to strike any irrelevant, false, or improper matter included in pleading
<i>Answer</i>	Timing—21 days after being served if no motion to dismiss (14 days after notice of court's action for motion to dismiss)	Timing—30 days after being served, and if D files motion to strike or demurrer, w/in ten days of service of notice of denial
<i>Amendments</i>	May amend a pleading once as of right w/in 21 days if no responsive pleading is required, or after being served with an answer or 12(b) motion	May amend once as of right before answer/demurrer is filed, or after trial starts but before demurrer issue is raised
<i>Relation back doctrine (new claim/party)</i>	Relates back to date of original pleading if amendment asserts claim/defense that arose out of same conduct, transaction, or occurrence as original pleading	New claim—amended pleading must also involve same accident/injuries, and refer to same offending instrumentality New party—no CA provision; allows P to correct misnomer in naming D even when S/L has run
<i>Rule 11 sanctions</i>	Court may impose sanctions limited to what deters repetition of conduct by others similarly situated	Movant must have exercised due diligence, violating party has 21 days to correct its conduct prior to court/movant's motion, and motions brought for an improper purpose are also subject to sanctions

2. Multiple Parties and Claims

Joinder of Parties		Permissive	Compulsory/By Right
<i>Joinder (Ps & Ds)</i>		>Ps & Ds may join/be joined in one action if any right to relief is asserted jointly, severally, or arising out of same transaction or occurrence >Need SMJ & PJ	>Necessary parties—complete relief cannot be provided to existing parties in absence of that person, and if can't be joined, court may dismiss case >Need SMJ & PJ
<i>Intervention (non-parties)</i>		Court must consider undue delay/prejudice to rights of original parties CA—intervenor's interest must be direct and immediate	If not through federal statute, non-party still has right to intervene if his interest is subject matter of c/a, disposition may impair non-party's interest, or interest not adequately represented by existing parties
<i>Interpleader (property owner forcing all claimants into single lawsuit)</i>		Rule 22—persons with claims that may expose P to multiple liability may be joined as Ds even though claims lack a common origin or are adverse and independent rather than identical, or when P denies liability	N/A

Joinder of Claims		Rule
<i>Permissive joinder</i>		>Party may join independent or alternative claims of whatever nature against opposing party >CA—must be at least one question of law or fact common to all Ds and court may sever claims if undue delay or prejudice would result
<i>Compulsory counterclaim</i>		Compulsory if at time of service it arises out of same transaction/occurrence that is subject matter of opposing party's claim and doesn't require adding another party over whom court has no JX
<i>Permissive counterclaim</i>		Party has discretion if counterclaim isn't compulsory
<i>Cross-claim</i>		Claim against co-party may be asserted if it arises out of same transaction/occurrence that is subject matter of original action or counterclaim and new parties subject to joinder rules
<i>Impleader</i>		>Defending party (3rd party P) can implead non-party (3rd party D) for liability on original claim >If c/a in cross-complaint adds new party, it must arise out of same transaction/occurrence as original P's c/a, or must allege claim in P's action against 3rd party P (who can then join new 3rd party Ds or c/a against them)

3. Discovery

Issue	Federal Rule	CA Distinction
<i>Scope</i>	Permitted with regard to any matter relevant to any party's claim or defense in action that isn't otherwise privileged	Applies to electronically stored information as well
<i>Relevance</i>	Information discoverable if reasonably calculated to lead to discovery of admissible evidence relevant to claim/defense	Disclosure of all material relevant to the subject matter of litigation
<i>Privileged info (not discoverable)</i>	Determined under federal common law for FQ cases & state law for DJ or SJ	Provides right to privacy and court balances it with need for discovery
<i>Trial/prep materials</i>	> Cannot discover documents and tangible things prepared in anticipation of litigation, unless other party shows substantial need and undue hardship > Mental impressions, conclusions, opinions, or legal theories of party's attorney or rep are protected	Attorney's impressions, conclusions, opinions or legal research are absolutely privileged and never subject to discovery
<i>Experts</i>	Expert report drafts and disclosure are protected, as well as any communications between party's attorney and expert witness unless they relate to compensation, facts/data used or assumptions relied upon by expert in forming his opinion	All parties must disclose expert witness lists, details of prospective trial testimony, and all writings/reports
<i>Discovery conference</i>	Parties must confer at least 21 days before scheduling conference to consider nature and basis of their claims/defenses	Court must hold an initial case management conference w/in 180 days of filing complaint & parties not required to "meet and confer" regarding planning for discovery
<i>Depositions</i>	Can take place anytime after mandatory initial disclosure and limited to 10 per party (unless showing of good cause to court)	20-day time limit upon notice of deposition & no amount limitation
<i>Interrogatories</i>	25 written interrogatories per party relating to non-privileged matters relevant to any party's claim/defense	Unlimited number of form interrogatories and up to 35 specially drafted interrogatories
<i>Physical/mental exams</i>	Court can force person to submit to physical/mental exam if in controversy	Attorney must be permitted to attend physical exam
<i>Requests for admission</i>	For any relevant, non-privileged matters relating to statements/opinions of fact or to application of law to fact	Limited to 35
<i>Motion to compel</i>	For failure to make automatic disclosures or respond to discovery requests	Make reasonable/good faith effort to informally resolve issues before filing
<i>Sanctions</i>	Court may impose sanctions subject to the abuse of discretion standard	Initial misuse of discovery process result is monetary sanction (additional \$250 if failed to respond or confer in good faith) unless party acted with substantial justification or sanction unjust

CHAPTER 6: PRACTICE QUESTION AND SAMPLE ANSWER

A. Practice Question; July 2015, Question 1

Doctor implanted a valve in Patient's heart in State A, where both Doctor and Patient lived. The valve was designed in State B by Valvco. Valvco was incorporated in State C, but had its headquarters in State D.

Patient was visiting State B when he collapsed due to his heart problems. Patient decided to remain in State B for the indefinite future for medical treatment.

Patient sued Doctor and Valvco in state court in State B for \$100,000, alleging that Valvco defectively designed the valve and Doctor negligently implanted it. Another patient had recently sued Valvco alleging that it defectively designed the valve, and had obtained a final judgment in her favor after trial on that issue.

Doctor and Valvco each moved the state court to dismiss the case on the ground of lack of personal jurisdiction. The state court granted Doctor's motion and denied Valvco's.

Valvco then filed a notice in federal court in State B to remove the case. Patient immediately filed a motion in federal court to remand the case to state court. The federal court denied Patient's motion.

Relying solely on the judgment in the other patient's action, Patient then filed a motion in federal court for summary adjudication of the issue that Valvco defectively designed the valve. The federal court granted the motion.

1. Did the state court properly grant Doctor's motion to dismiss? Discuss.
2. Did the state court properly deny Valvco's motion to dismiss? Discuss.
3. Did the federal court properly deny Patient's motion for remand? Discuss.
4. Did the federal court properly grant Patient's motion for summary adjudication? Discuss.

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B. Issue Checklist

1. Did the state court properly grant Doctor's motion to dismiss?

a. Timing of 12(b) Motion

b. Personal Jurisdiction

- 1) Traditional Bases
- 2) Long Arm
- 3) Minimum Contacts
 - a) Purposeful Availment
 - b) Foreseeability
 - c) Relatedness (Specific and General Jurisdiction)
- 4) Fair Play and Substantial Justice

2. Did the state court properly deny Valvco's motion to dismiss?

a. Timing of 12(b) Motion

b. Personal Jurisdiction

- 1) Traditional Bases
- 2) Long Arm
- 3) Minimum Contacts
 - a) Purposeful Availment
 - b) Foreseeability
 - c) Relatedness (Specific and General Jurisdiction)
- 4) Fair Play and Substantial Justice

3. Did the federal court properly deny Patient's motion for remand?

a. Subject Matter Jurisdiction in State B Federal Court

- 1) Diversity of Parties
- 2) Amount in Controversy

b. Limitations on Removal

- 1) None of the defendants are citizens of State B?
- 2) Timely Motion?
- 3) All defendants join/consent?

4. Did the federal court properly grant Patient's motion for summary adjudication?

a. Res Judicata (Claim Preclusion)

- 1) Same claimant (plaintiff) v. same defendant in both case #1 and case #2
- 2) Case #1 ended in a valid final judgment
- 3) The claimant is asserting the same claim as case #1

b. Collateral Estoppel (Issue Preclusion)

- 1) The same issue actually litigated and decided
- 2) A final judgment on the merits
- 3) The issue was essential to the judgment
- 4) Mutuality—is it “fair” to allow plaintiff to assert issue preclusion?
 - a) Did D have a fair & equitable opportunity to litigate the issue during prior lawsuit?

Editorial Note 5: A sample answer for this essay is included on the next page. Students are encouraged to review the sample answer independently after completing the lecture.

SAMPLE ANSWER

1. Doc's Motion to Dismiss

Timing of 12(b) Motion

A 12(b) motion to dismiss for lack of personal jurisdiction must be raised by the defendant in its first response. The facts are unclear when Doctor ("Doc") objected, but assuming the motion served as his first response, the motion was timely made.

In Personam Jurisdiction ("IPJ")

IPJ refers to the court's ability to exercise power over a particular defendant. Traditionally, IPJ is based upon where the party is domiciled, presence in the state when served, and consent. Here, Doc is domiciled in State A, and not State B, the forum state. Additionally, the facts are silent as to where Doc was served and no facts suggest that he consented to IPJ in State B. Thus, without more facts, it is unlikely that there is a traditional basis for IPJ.

Long Arm Statute

Since no traditional basis exists, the plaintiff must look to see if the state has a long arm statute that would allow IPJ over a non-resident defendant.

Here, if State B's long arm statute is non-specific, then it will allow personal jurisdiction to the full extent permitted by the United States Constitution, which means it must pass the constitutional limitations test as discussed below.

Constitutional Limitations

Even if a state long arm statute arguably grants the state court IPJ over the defendant, such exercise must still be constitutional. To be constitutional there must be sufficient contacts with the forum state so as to not offend the traditional notions of fair play and substantial justice.

Minimum Contacts

Minimum contacts requires a showing of purposeful availment & foreseeability.

Purposeful Availment

The defendant must have purposefully availed himself of the privilege of conducting activities in the forum state, thus invoking the benefits and protections of its laws. Here, Doc did not purposefully avail himself of the privilege of conducting business in the state because he has never had any contact with State B. There are no facts suggesting that he has ever conducted business or visited the state.

Foreseeability

The defendant also must know or reasonably anticipated that her activities in the forum render it foreseeable that he may be hauled into court there. Here, as analyzed above Doc has no relation to nor conducts any business in State B, the forum state.

Thus, these factor weigh strongly in favor of a finding of no IPJ over Doc.

Relatedness of the Claim to the Contact

Specific Jurisdiction may be found when a cause of action arises out of or closely relates to a defendant's contact with the forum state, and jurisdiction may be warranted even if that contact is the defendant's only contact with the forum state. Whereas, general jurisdiction exists if the defendant had systematic and continuous activity in the forum state such that the defendant is essentially at home in the forum.

Here, while State B is where Patient collapsed due to heart problems, the claim against Doc arose in State A, since that is where he performed the surgery. Thus, there is no specific jurisdiction in State B. In addition, since Doc had no contacts with State B, there are no circumstances wherein he would be essentially at home in the state. Thus, there is no general jurisdiction

Fairness

The court in determining whether exercising IPJ over a defendant is fair will look at the convenience to the defendant, the state's interest, and other factors.

Since Doc resides and works in State A and has had no contact with State B, it would be inconvenient to require him to litigate in that state. In addition, all the witnesses that Doc may call such as the nurses and other doctors present during the surgery would be in State A. Further, State B's interest in providing a forum for Patient may be low since he may not be a citizen of State B nor did the cause of action arise there. Alternatively, since a plaintiff's domicile is where he intends to be domiciled, State B may consider Patient to be a new resident since he intends to now reside there indefinitely. If this is the case, State B may have a higher interest in providing a forum for Patient.

Conclusion

In conclusion, the factors do not support a finding of IPJ over Doc, and thus the Court's ruling to grant defendant's motion to dismiss for lack of IPJ was proper.

2. Valvco's Motion to Dismiss

Timing of 12(b)(6) Motion

See rule above. The facts are unclear when Doctor ("Doc") objected, but assuming the motion was his first response, the motion was timely made.

Personal Jurisdiction

See rule above. For IPJ purposes, a corporation's domicile is both its principal place of business ("PPB") and place of incorporation ("POI"). The PPB is where the nerve center is located, which is where the managers direct, control, and coordinate the business. This is usually where the headquarters can be found.

Here, Valvco's POI is State C, and its PPB is likely State D since that is where its headquarters are located. Additionally, the facts are silent as to where Valvco was served or whether it consented to jurisdiction. However, it seems unlikely it consented since it is now contesting IPJ. Thus, no traditional basis for IPJ exist.

Long Arm Statute

See rule above. Here, assuming State B has a non-specific long arm statute, it may exercise personal jurisdiction to the full extent permitted by the United States Constitution.

Constitutional Limitations

See rule above.

Minimum Contacts

See rule above.

Purposeful Availment

See rule above. It may be argued that Valvco purposefully availed itself to the privileges of conducting business in State B, since Valvco's employees designed the valve that Patient is claiming is defective in State B. Having employees in the state means it availed itself of the work force there and benefits from the protections afforded by its laws. On the other hand, Valvco is headquartered in State D, incorporated in State C, and does not have any known offices in State B, except to the extent the design engineers may work there. Further, the facts do not indicate if they conduct any sales in the state. On balance, the court is likely to find that Valvco purposefully availed itself of the benefits of State B.

Foreseeability

See rule above. Here, having employees in State B, however limited it may be, makes it foreseeable Valvco may be sued in the state if they design a defective valve.

Thus, Valvco has sufficient minimum contacts with State B.

Relatedness of the Claim to the Contact

Specific Jurisdiction

See rule above. In this case, the exact heart valve that Patient is claiming was defectively designed was designed in State B. Thus, there is specific jurisdiction.

General Jurisdiction

See rule above. An out of state corporation is always at home in the state where it has its PPB and POI. Here, it may be argued that Valvco's contacts with State B were systematic and continuous since it maintained employees there. However, it is not known how many employees they have there, how long they have been employed in the state, or if it has any other business in the state. It is unlikely the court will find that Valvco's contacts have been so systematic and continuous such that it could be considered essentially at home there.

Fairness

See rule above.

Convenience

A forum is constitutionally acceptable unless it is so gravely difficult and inconvenient that the defendant is put at a severe disadvantage. Here, the main witnesses that Valvco would call to defend its case are likely the design engineers of the valve that are located in State B, which means that it would not be gravely inconvenient for it to litigate there.

State's Interest

The forum state may have a legitimate interest in providing redress for its residents. Here, as analyzed above the state's interest may be low if it does not consider P to be a citizen or may be higher if it does.

Other Factors

Other factors include the plaintiff's interest, the judicial system's interest, and the shared interests of the states. All states have a strong interest in ensuring the products that stem from its state are properly designed and not fatal to its citizens. Thus, it may have a strong shared interest in generally protecting the public.

Conclusion

The court's ruling to deny defendant's motion to dismiss for lack of personal jurisdiction was proper.

3. P's Motion to Remand

Removal

A case may be removed from state to federal court if notice of removal is filed within 30 days of service of the document that first makes the case removable and for cases based on diversity jurisdiction it may be not made after one year after the case is commenced; all defendants agree; and it could have originally been brought in federal court. Further, in cases based on diversity jurisdiction, the case may be removed only if no defendant is a citizen of the state in which the action was filed.

Timing

As analyzed below subject matter jurisdiction ("SMJ") is likely based upon diversity of citizenship. However, the facts are silent as to exactly when Valvco sought to remove the case. From the facts, it seems the motion for removal was made after Valvco's motion to dismiss was determined, which could have taken longer than 30 days. Without further facts, it is difficult to assess whether this element is met.

All Defendants Agree

In this case, Patient sued both Doc and Valvco in state court, but only Valvco sought to remove the case. However, since Doc's motion to dismiss his case was properly granted prior to Valvco filing its motion, Valvco was the only remaining defendant that needed to consent. Thus, this element is met.

In-State Defendant Rule

As analyzed above, Valvco is a citizen of both States C and D, and not State B, the state in which the action was filed. Therefore, the same state prohibition will not bar the removal action.

Could Have Been Brought in Federal Court: SMJ

A case “could have been originally brought in federal court” when there is a basis for SMJ. SMJ is the federal courts power to hear a particular case, and it can either be based upon a federal question or diversity of citizenship. Here, the case against Valvco was based on a products liability theory, which is likely a state claim and not a federal statute. Thus, SMJ must be based upon diversity of citizenship.

Diversity of Citizenship

Diversity of Citizenship requires a showing of both complete diversity and that the amount in controversy (“AIC”) must exceed \$75,000.

Complete Diversity

All plaintiffs must be from a different domicile than all defendants.

A plaintiff’s domicile is established by where he resides and his intent to make it his home state. In this case, Patient lived in State A prior to collapsing while visiting State B, which tends to suggest that State A is his domicile. However, the fact that Patient intends to remain in State B for the “indefinite future for medical treatment” tends to suggest that his domicile is now State B. This argument is likely to fail since it seems that his intention is not to reside there permanently, but rather for the duration of his medical treatment, which could be short or long term. Without further facts to evidence Patient’s intent, State A is most likely his domicile.

As established above, Valco’s domiciles are States C & D since its POI is State C and its PPB is likely State D, where its headquarters are located.

Thus, complete diversity exists.

Amount in Controversy

The AIC must exceed \$75,000. A plaintiff may aggregate claims against multiple defendants to reach the AIC if they are joint tortfeasors, i.e. jointly and severally liable. Here, the facts are not clear if Patient is suing Doc and Valvco for \$100,000 each, \$100,000 as joint tortfeasors, or for \$50,000 each but not as joint tortfeasors. Without further facts, it is difficult to assess whether this element is met.

If the AIC is met, then there is a valid basis for SMJ, and the case could have been brought in federal court.

Accordingly, if the timing requirement was satisfied and SMJ can be established, the case was properly removed to federal court. Otherwise, the case was improperly removed.

Motion to Remand

If at any time before final judgment it appears that the district court lacks SMJ, then the court must remand the case. However, if a party seeks to remand the case on any other basis, the plaintiff must make the motion within 30 days of filing of the notice of removal. Here, as analyzed above, the court may have SMJ over the case based upon diversity of citizenship, and even if no federal claims remain, it is not required to remand the case so long as there is a basis for SMJ. In said event, the court properly denied Patient's motion. However, if removal was defective because Valvco failed to file the motion within the allotted 30 days or due to the lack of SMJ, then the motion to remand should have been granted and the court's ruling was improperly denied.

4. Patient's Motion for Summary Judgment

Collateral Estoppel

Issues of fact actually litigated and essential to a judgment in a first action are conclusive in a subsequent, although different, action between the plaintiff and defendant or their privies. In jurisdictions where the mutuality requirement has been eroded, the following factors are weighed: (i) was the issue decided in the first case identical to that in the second, (ii) was there a final judgment on the merits, (iii) did the party against whom the judgment is to be used have a fair opportunity to be heard on the critical issue, and (iv) would it be unfair or inequitable to apply to collateral estoppel.

Here, the issue of whether Valvco's heart valve was defectively designed was likely actually litigated in the first action against Valvco since the plaintiff in that action received a final judgment in her favor after a trial. The issues litigated were also likely to have been essential to the judgment since the judgment was in her favor as to the design defect issue. In the present case, Patient is making the same claim that the valve was defectively designed against the same defendant, but he was not a party in the first case. Hence, if he wants to use collateral estoppel to prevent Valvco from re-litigating the issue, the jurisdiction must allow for non-mutual offensive collateral estoppel and the four factors must weigh in favor of it.

As analyzed above, the issue in the first case is identical to that in the second case, and there was a final judgment that was on merits wherein Valvco likely had a fair opportunity to be heard on the issue since it was rendered after a trial. Lastly, it would not be unfair for the court to apply collateral estoppel since it concerns the same defendant and the same defectively designed product that other consumers may be harmed by.

In sum, the court properly granted Patient's motion for summary adjudication.

Res Judicata

Res Judicata prevents re-assertion of the claimant's cause of action if there was a valid final judgment, on the merits, same parties, and same claim(s). Here, per the facts the plaintiff in the previous action against Valvco received a final judgment in her favor on the issue of the defectively designed valve, which is the same claim that Patient is basing its lawsuit against Valvco on. However, since Patient was

not the plaintiff in the first action, the “same parties” requirement has not been met. Thus, res judicata will not bar Patient’s motion for summary adjudication.

[END OF HANDOUT]