

Monterey College of Law

HYBRID

Civil Procedure I - Section 2

Midterm Examination

Fall 2023

Prof. M. Christensen

Instructions:

Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

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### **Essay Question 1**

PAM resides in State X and loves skincare. She is always on the lookout for the latest serums and creams to give her face, as she puts it, “a youthful glow.”

DEREK is PAM’s cousin. He lives and works as a photography teacher in State Y. In addition to his teaching job, DEREK also travels to State X every month to participate in a regularly occurring art fair, where he sells prints of his photographs. On average, Derek earns 15% of his monthly income from sales at the art fair.

A few months ago, DEREK went to State X for the sole purpose of visiting PAM for her birthday. During his visit, DEREK shared with PAM that he had recently discovered an amazing new face serum called FRESH FACE. He had a bottle with him that he had been using for a few days. PAM had never heard of FRESH FACE before. She was so excited to try it that DEREK agreed to give her his partially used bottle. DEREK returned home to State Y a few days later.

FRESH FACE is made by a new small business called DEVA BEAUTY, Inc. DEVA BEAUTY is incorporated and manufactures its products in State Y. DEVA BEAUTY only sell its products to a local chain of beauty supply stores State Y, which is where DEREK had purchased it. DEVA BEAUTY has social media accounts to promote its products, and the company hopes to one day expand its business, but so far their products are not available for purchase online.

After a few weeks of using FRESH FACE every night, PAM developed a terrible rash. She filed a complaint in U.S. District Court for the District of State X, alleging claims against DEVA BEAUTY for defective design and manufacturing, and against her cousin DEREK for negligence. PAM hired a process server who properly served DEREK and DEVA BEAUTY in State Y. In their first timely responses to the complaint, both DEREK and DEVA BEAUTY moved to dismiss for lack of personal jurisdiction.

Does the court in State X have personal jurisdiction over:

1. DEREK? Discuss.
2. DEVA BEAUTY, Inc.? Discuss.

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**Civil Procedure I Sec. 2**  
**Fall 2023**  
**Midterm Exam**  
**Prof. M. Christensen**

**Essay Question 2**

PETE lives in State A and writes novels for a living. He has owned his home in State A for 10 years. Last year, PETE was accepted into a prestigious in-person writers' fellowship program at a university in State B. The program was six months in duration.

PALOMA is PETE's sister. She lives near the university in State B. During PETE's fellowship, the siblings decided to go on a bus trip to visit the ski slopes of neighboring State C. While they were on the bus, driver DAN fell asleep at the wheel and crashed. PETE and PALOMA both suffered serious injuries.

DAN lives in State C and at the time of the accident was working as a bus driver for DASH Transit Inc. DASH operates buses throughout the region, and is incorporated and has its principal place of business in State B.

PETE and PALOMA consulted with an attorney and decided to sue DAN and DASH for their injuries in U.S. District Court in State B. PETE sought \$80,000 for his injuries. PALOMA sought \$40,000 for her injuries. They properly served DAN and DASH.

DAN and DASH each timely moved to dismiss for lack of subject matter jurisdiction.

How should the district court rule on...

1. DAN's Motion to Dismiss PETE's claim?
2. DASH's Motion to Dismiss PETE's claim?
3. DAN's Motion to Dismiss PALOMA's claim?
4. DASH's Motion to Dismiss PALOMA's claim?

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**Civil Procedure I Sec. 2**  
**Fall 2023**  
**Midterm Exam**  
**Prof. M. Christensen**

**Essay Question 3**

PAUL lives in the Central District of State Z. While driving through the Southern District of State Z, he was in an accident with two other vehicles. One was driven by DANIELLE, a resident of State Y, and the other was driven by an employee of DREAM Corp. DREAM Corp. is based in the Northern District of State Z.

PAUL filed a complaint for negligence against DANIELLE and DREAM Corp. in federal court in the Central District of State Z. PAUL served DANIELLE by sending a process server to DANIELLE's workplace. She was not in the office, so the process server left the summons and complaint with DANIELLE's paralegal. PAUL served DREAM Corp. by sending a process server to the CEO's home. The CEO was not home, so the process server left it with her husband.

DANIELLE and DEREK timely moved to dismiss the case for insufficient service of process and improper venue.

1. How should the Court rule on the Motion to Dismiss for insufficient service?
2. How should the Court rule on the Motion to Dismiss for improper venue?

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**Civil Procedure I, Fall 2023, Midterm Exam**  
**M. Christensen**

**MODEL ANSWER OUTLINE Q1 (100 pts total)**

- I. PJ over DEREK (50 pts)
  - a. No Traditional Bases Apply
    - i. Domicile in State Y
    - ii. No facts for consent.
    - iii. No waiver. Raised PJ defense in initial response.
    - iv. Was properly served outside the forum state, so no physical presence PJ
  - b. Modern In Personam
    - i. General PJ: continuous and systematic contacts so that essentially at home
      - 1. D goes to X every month to earn income through photography sales.
      - 2. Contacts are continuous and systematic.
      - 3. General PJ likely applies. Derek can be sued on any claims whether or not they arise out of or relate to Derek's contacts with State X.
    - ii. Specific PJ: claim arises out of or relates to the contacts + purposeful availment + fairness
      - 1. Derek's contacts are monthly photography sales => claim does not arise out of or relate
      - 2. Specific PJ doesn't seem to fit because there's a relatedness issue, but General PJ works
      - 3. Fairness: burden on D limited because he goes to X monthly, State X has an interest in protecting its consumers, but evidence about D's purchase and understanding of the product is in Y. On the whole fairness weighs moderately in favor of PJ.
  - c. Likely general PJ over DEREK
- II. PJ over DEVA BEAUTY (50 pts)
  - a. No Traditional Bases
    - i. Domicile in State Y
    - ii. No consent or waiver or physical presence (same as above)
  - b. Modern In Personam
    - i. General PJ: no continuous or systematic contacts
    - ii. Specific PJ
      - 1. Purposeful Availment: D has no contact with State X. Social media accounts without online sales is not specifically targeting State X. Knowing that a product can be brought to other states, foreseeability, is not enough (WWVW v. Woodson).
      - 2. Fairness: Burden on D is significant because they have no contacts, evidence is all in State Y, but State X has a strong interest in protecting its residents from dangerous products. On the whole the factors weigh against hearing the case in State X.
      - 3. Because no PA, specific PJ is likely not available
  - c. No PJ over DEVA

## MODEL ANSWER OUTLINE Q2-(100 pts total)

- I. PETE v. DAN (20 pts)
  - a. No Fed Q (for all claims)
  - b. Diversity
    - i. Yes diversity of citizenship
      1. PETE = A
      2. DAN = C
    - ii. Yes AIC
      1. 80k is enough
  - c. CONCLUSION: YES original SMJ. MTD denied.
- II. PETE v. DASH (20 pts)
  - a. Diversity
    - i. Yes diversity of citizenship
      1. PETE = A
      2. DASH = B
    - ii. Yes AIC
      1. 80k is enough
  - b. CONCLUSION: YES original SMJ. MTD denied.
- III. PALOMA v. DAN (30 pts)
  - a. Diversity
    - i. Yes diversity of citizenship
      1. PALOMA = B
      2. DAN = C
    - ii. No AIC
      1. 40k is not enough
      2. Cannot aggregate with PETE, individual injuries are not a shared interest
  - b. NO original SMJ
  - c. Supplemental jurisdiction:
    - i. Yes same case or controversy, common nucleus of operative fact because same accident.
    - ii. Including this claim would not destroy diversity.
  - d. CONCLUSION: YES supplemental jurisdiction. MTD likely denied.
- IV. PALOMA v. DASH (30 pts)
  - a. Diversity
    - i. No diversity of citizenship
      1. PALOMA = B
      2. DASH = B
    - ii. No AIC
  - b. Supplemental jurisdiction:
    - i. Yes same case or controversy, same accident
    - ii. Not available if it would destroy diversity
  - c. CONCLUSION: No original SMJ or supplemental jurisdiction. MTD granted. This claim would likely be severed.

### MODEL ANSWER OUTLINE Q3-(100 pts total)

#### 1. MTD for Insufficient Service (50 pts)

##### A. Service on DANIELLE

- a. Service must be constitutional under Mullane and compliant with FRCP 4
- b. FRCP 4(e)(2)(B): Can only leave with someone of suitable age and discretion at the dwelling, to someone who also resides there, not a co-worker at the office
- c. No mention of this service being valid pursuant to State Z law
- d. Service not proper

##### B. Service on DREAM

- a. FRCP 4(h): Cannot leave summons and complaint with someone of suitable age and discretion at the dwelling. That's only an option under 4(e) for serving an individual defendant. CEO or other officer/agent must be served personally or pursuant to state law.
- b. No mention of this service being valid pursuant to State Z law
- c. Service not proper

##### C. MTD likely granted

#### 2. MTD for Improper Venue (50 pts)

##### A. 28 USC 1391(b)(1): Venue is proper where any D resides if all Ds reside in same state

- a. Here not all Ds reside in same state. DANIELLE is from Y and DREAM is from Z.

##### B. (b)(2): Venue is proper where cause of action arose

- a. Accident took place in the Southern District of Z, not the Central District

##### C. (b)(3): if no district satisfies the above, venue is proper anywhere where court has PJ

- a. Southern District of Z would have proper venue

##### D. Venue is not proper in Central District of Z

##### E. Court would likely dismiss, or potentially transfer if in the interests of justice

1) 80/100

Personal Jurisdiction (PJ): Whether the court has power to enter a judgment over the defendant (D). (Court's power over a person)

### 1. PJ over Derek

A. Traditional bases of Pj: Traditionally a court would have PJ over the D if the D was physically present in the state while being served, consented to being sued in a forum state, waive her right to raise a motion to dismiss for lack of PJ, or if she is domiciled in the forum state. A D's domicile is her permanent resident and where she intends to stay.

Here, Derek lives and works in state Y therefore his domicile is state Y and not state X. He was served in state Y. The fact don't mention that he consented to being sued in state X or whether he waived his right to dismiss for lack of PJ. Therefore, none of traditional bases for PJ is met here. Good

### B. Modern In personal jurisdiction

-Long Arm Statute: Regardless of D being served within and outside of the forum state, the court would have PJ over the D if the court could constitutionally have PJ over her as long as the incident that gave rise to the claim arose out of the forum state.

Relatedness is not required for general PJ. LA statute only means that the state has to have a law that grants PJ over out of state defendants including Derek, and that exercising PJ would be constitutionally permitted under Int'l Shoe.

Here, the facts don't mention Long Arm Statute, therefore, the D is not covered by Long Arm statute. No, instead need to assume State X has a LA statute that covers D.

-International shoe= minimum contact and fairness factor

-General Jurisdiction (GJ): The court would have GJ over the D when the contact with forum state is continuous and systematic and the D is basically at home (Home away from home.) The incident that gave rise to the claim could arise from anywhere.

Here, Derek was travelling to state X every month to participate in a regularly occurring art fair where he sold his photographs and 15% of his income was from state X. He also went to state X for Pam's birthday. Derek can argue that 15% income is not enough to constitute Continuous contact. However, Pam can argue that these facts show that Derek's contact with state X was continuous and systematic since it was happening every month regularly and he was coming over to see his cousin, Pam. The facts don't mention that Derek was planning to stop coming to state X as he was coming every month on a regular basis. The incident occurred in state X (forum state). Therefore, the court in state X has GJ over Derek.

Excellent. I agree. Going to state X every month to earn income sounds like continuous and systematic, so he can be sued there on anything whether or not it relates to those sales.

-Specific Jurisdiction (SJ): The court would have SJ over the D when the contact with forum state is isolated and infrequent and the incident that gave rise to the claim arose from the forum state.

Here, Derek's contact with state X was not infrequent since it was happening every month and he was generating a revenue from state X. Therefore, SJ does not apply.

Not exactly. The SJ analysis is about whether his visit for P's birthday and giving her the serum (an isolated or infrequent contact) shows purposeful availment.

- Purposeful availment: Whether D purposefully targeted the forum state and subject herself to the privileges of forum state. The contact can not be accidental.

Here, Derek made money in state X on monthly bases, specifically by targeting customer in the art fair. However, 15% revenue is not enough to constitute purposeful availment.

There's no PA because of the relatedness issue and because giving the serum to P probably doesn't show deliberate targeting of the forum state, he was just letting her keep it.

- Fairness: Whether it is fair for the D to come to the forum state to attend the court and the burden would not be high on D. Here, Since Derek is already coming to state Y every month and attends his cousin's celebrations, therefore it doesn't seem like it would be a big burden on him to have the court in state X.

In conclusion, state X has GJ over Derek.

Good!

## 2. PJ over Deva Beauty (Deva)

A.Traditional bases of Pj: Traditionally a court would have PJ over the D if the D was physically present in the state while being served, consented to being sued in a forum state, waive her right to raise a motion to dismiss for lack of PJ, or if she is domiciled in the forum state. A corporation's domicile is the state that it was incorporated in and the principle place of business which is the nerve center and where the president and manager work.

Here, Deva was incorporated in state Y and was only selling product there. therefore, their domicile is state Y. Deva was served in state Y. The fact don't mention that Deva consented to being sued in state X or whether he waived his right to dismiss for lack of PJ. Therefore, none of traditional bases for PJ is met here.

## B.Modern In personal jurisdiction

-Long Arm Statute: Regardless of D being served within and outside of the forum state, the court would have PJ over the D if the court could constitutionally have PJ over her as long as the incident that gave rise to the claim arose out of the forum state.

Here, the facts don't mention Long Arm Statute, therefore, the Deva is not covered by Long Arm statute.

-General Jurisdiction (GJ): The court would have GJ over the D when the contact with forum state is continuous and systematic and the D is basically at home (Home away from home.) The incident that gave rise to the claim could arise from anywhere.

Here, Deva had no contact with state X. They were selling their product only in store in state Y. Their social media advertise their products but they were not available for online purchase. The stream of commerce by itself is not enough to constitute GJ. Deva Officers or President or CEO had no contact with state X. Therefore, court does not have GJ over Deva.

-Specific Jurisdiction (SJ): The court would have SJ over the D when the contact with forum state is isolated and infrequent and the incident that gave rise to the claim arose from the forum state.

Here, Deva's contact with state X was not infrequent since there was no contact with state X at all. The fact that Derek brought their product to state X does not constitute SJ. Pam can argue that it was foreseeable for Deva to know that their product might be moved to state X; however, Deva can argue that foreseeability by itself does not constitute SJ. Therefore, court does not have SJ over Deva.

Good!

- Purposeful availment: Whether D purposefully targeted the forum state and subject herself to the privileges of forum state. The contact can not be accidental.

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Here, Deva did nothing to target state X. The contact was accidental because they weren't even selling their product in state X. Purposeful availment requirement is not met.

Good!

- Fairness: Whether it is fair for the D to come to the forum state to attend the court and the burden would not be high on D. Here, Since Deva is domicile and manufactures product in state Y, it would be a big burden for Deva to attend to court in state X and bring all of her witnesses. It would cost a lot of money for Deva to have this matter in state X. Therefore, it would not be fair for state X court to have PJ over Deva.

In conclusion, state X does not have PJ over Deva.

2) 90/100

## DAN's Motion to Dismiss PETE's Claim

### Subject Matter Jurisdiction

A federal court may hear a claim if it has subject matter jurisdiction. Subject matter jurisdiction exists if (1) there is a federal question, (2) there is complete diversity of citizenship between the the parties and the amount in controversy exceeds \$75,000. Diversity of citizenship exists when is when all parties of the plaintiff's side are different from all parties on the defense's side. Citizenship of an individual is based on their place of residence without developing the intent to move. Citizenship of a corporation is based on its state or country of incorporation and (2) it's primary place of business, its 'nerve center.'

Does the Federal Court have SMJ over Dan?

Pete brought a tort claim as he is suing for "injuries." a tortuous claim is not a federal question. Pete is a Citizen of state A, though he lives in state B his program is only 6 months a no facts indicates a intent to move. Dan is a citizen of state C according to the facts. Therefore a complete diversity of citizenship amongst Pete and Dan exist, since Pete is seeking \$80,000 in damages the court has SMJ based on diversity jurisdiction.

Good

### Conclusion

Though the motion for dismissal was filed timely and properly, diversity jurisdiction exists, thus Dan's motion to dismiss based on lack of SMJ will fail.

## DASH's motion to dismiss PETE's claim

SMJ, defined supra, Pete brought a tort claim as he is suing for "injuries." a tortuous

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claim is not a federal question. Pete is a Citizen of state A, though he lives in state B his program is only 6 months a no facts indicates a intent to move. DASH is a citizen of state B as it is their primary place of business as well as its state of incorporation. Though Pete has lived in state B, he is a citizen of state A. Diversity of citizenship exists between PETE and DASH and the amount in controversy by PETE is \$80,000.

### Conclusion

Good

DASH's motion to dismiss on lack of SMJ will fail. because diversity jurisdiction exists DAN's motion to Dismiss PALOMA's claim.

SMJ, defined, supra. PAOLA claim is tortuous and does not meet the bar for federal question, PAOLA is a citizen of state B, DAN is a citizen of State C, diversity of citizenship exists, however PAOLA is seeking \$40,000 for her injuries which do not meet the threshold of excess of \$75,000. For diversity jurisdiction purposes claims can only be aggregated when there is one plaintiff and one defendant, unless the defendants are jointly liable. An additional pathway for a claim under the \$75,000 dollar claim is if the claim is allowed into Federal Court under Supplemental Jurisdiction. Since PAOLA claim does not meet federal question or diversity, does it meet the bar for supplemental jurisdiction?

Great!

Supplemental Jurisdiction - a federal court can hear a claim under supplemental jurisdiction of that claim arises out of the same claim or occurrence, meaning it is part of the same cluster of fact, or it is in the same transaction or occurrence. PAOLA and PETE's accident and injuries resulted from the bus trip provided by DASH inc, with the bus being driven by DAN, meaning the injuries occurred from he same occurrence arising out of the same cluster of facts. However supplemental jurisdiction cannot be applied if it destroys diversity jurisdiction, since the call of the question asks me to analyze DAN only, his a citizen of state C and PETE is a Citizen of stat A, and PAOLA is a citizen of State B, thus diversity would not be destroyed if admitted under

supplemental jurisdiction.

Conclusion

Excellent

DAN's motion to dismiss PALOMA's claim would be denied as her case would be heard under supplemental jurisdiction under PETE's diversity jurisdiction claim.

Court would likely exercise its discretion to hear the claim under supplemental SMJ

DASH's Motion to Dismiss PALOMA's Claim

SMJ, defined supra, PALOMA does not have federal question jurisdiction, analyzed supra, she does not have diversity jurisdiction because of she does not meet the threshold for amount in controversy, analyzed supra.

Does PAOLA have supplemental jurisdiction? Supplemental Jurisdiction defined supra, under diversity jurisdiction cannot be applied if it destroys diversity of citizenship. DASH is a citizen of state State B, as their primary place of business is State B and they are incorporated in state B, analyzed supra. PAOLA is a citizen of state B, as she "lives near the university, located in state B." Under a theory if supplemental jurisdiction hearing PAOLA's claim would destroy diversity jurisdiction as both PAOLA and DASH are citizens of state B.

Conclusion

DASH's motion to dismiss PALOMA's claim would be successful because diversity jurisdiction would be destroyed if the federal court heard this claim.

Excellent!

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3) 90/100

## 1. INSUFFICIENT SERVICE

### PAUL V. DANIELLE

#### Notice

Notice must be reasonably calculated, under the circumstances, to apprise the defendant to the pendency action and allow the defendant the opportunity to be heard. Service of process, which includes the claim and summons, can be served by anyone who is not a party to the case, and at least 18 years of age. Actual service is not required, nor does it cure any defects with the service of process. Insufficient service of process must be raised during the initial motion or it can be waived. An individual can be served personally, or through substituted means, such as at their usual place of abode with someone who is of suitable age and discretion, or through their authorized agent. Business can be served through their officers, general or managing agents, or other authorized agents. Publication is only permissible in instances where the parties are missing or have unknown addresses - even in those instances, mailing is still required.

Good rule

Here, Paul sends a process server (assumably at least 18) to Danielle's workplace. Danielle isn't in the office so the server leaves the process with Danielle's paralegal. Although Danielle's paralegal may be a person of suitable age and discretion, the service is not being made at Danielle's usual place of abode. Additionally, there are no facts to suggest that Danielle has authorized her paralegal to be able to accept service of process on her behalf. Lastly, even if the paralegal delivers the process to Danielle, this will not cure the defective service. Good. It's not danielle's home and paralegal doesn't live with danielle.

Thus, service of process to Danielle will likely fail because it was not properly served, and because Danielle included it in her first motion to dismiss.

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**PAUL V. DREAM (Although the question is raised for DEREK, I am answering for DREAM based on the facts provided)** (thank you! Derek was a mistake!)

## **Notice**

Supra.

As mentioned above, a business may be served through their officers, such as a CEO, or their general or managing agents, or other authorized agents. But, here, the CEO was not home when the process server came so they left it with the husband of the CEO. Because of this, the service of process will be insufficient as it was given to someone not authorized by the company to be able to accept service of process, and not an officer or general or managing agent. Additionally, even if the CEO were to come home and receive the process from their husband, this actual delivery not cure the defect.

Good

Service of process to DREAM will be deemed insufficient and the motion to dismiss should be granted.

## **Conclusion**

Service of process to both Danielle and Dream was insufficient and the court should grant the motion to dismiss because Danielle and Dream raised it in their first response.

## **2. IMPROPER VENUE**

### **PAUL V. DANIELLE & DREAM**

#### **Venue**

Venue concerns the geographic location of a specific court. A plaintiff may lay proper venue (a) in any district where a defendant resides, as long as all defendants are citizens of the same state, or (b) the district where a substantial part of the claim arose, or (c) if neither (a) or (b) apply, then to a fallback venue, which would be anywhere where a court

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would have personal jurisdiction over a defendant. The residence of an individual will be their permanent residence; courts can look to their physical presence and to their intention to remain there or make somewhere else their permanent home. For business, it will be the state of their incorporation, but more importantly, their principal place of business or their "nerve center."

The facts tell us that Danielle, an individual, is a resident of State Y. There are no facts to suggest that this is not her permanent residence, nor that she intends to move elsewhere. DREAM is a resident of State Z, and is based in the Northern District of State Z.

Here, Paul, a resident of the Central District of State Z, is bringing a claim in the federal court in that district. However, Danielle is a resident of State Y, and the accident occurred in the Southern District of State Z. Additionally, DREAM is a resident in the same state as Paul (State Z) and is based in the Northern District. Because of this, Paul has improperly laid venue, as (1) Danielle is not a resident of the forum state, defeating (a), and (2) the car wreck, the substantial part of the claim, occurred in the Southern District of State Z. Paul would have been able to properly lay venue in the Southern District of State Z, but he has improperly laid venue in the Central District of State Z.

Right! Good job!

### **Transfer/Dismissal**

When there is a lack of personal jurisdiction of subject matter jurisdiction, a court may not transfer the case as they are required to dismiss it. For claims with improper venue, the court may either dismiss the claim or transfer it in the interest of justice and Excellent convenience for the parties. For a claim with proper venue, a court may transfer the case to a district where the claim could have originally been brought or to a venue where the parties consent to.

Here, Paul has laid improper venue in the Central District of State Z. Because the court is likely to have subject matter and personal jurisdiction over both Danielle and Dream, and because Paul has laid improper venue, the court will either grant the motion to dismiss for proper venue, or they may transfer the case to the Southern District of State Z,

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where the incident took place, out of convenience to the parties and the service of justice. To understand whether the court may transfer the case, or if they will need to dismiss it outright, its important to determine if the court has personal jurisdiction and subject matter jurisdiction.

Very thorough! Good thinking! The court doesn't have power to transfer if there's a defect in PJ or SMJ.

## **DANIELLE**

### **Personal Jurisdiction** (did not expect you to have time for this, wow!)

Personal jurisdiction is a court's ability to exercise a judgement against an individual.

### **Traditional Bases**

Under the traditional bases, a court could only exercise jurisdiction over someone who was (1) domiciled in the forum state, (2) served while physically in the forum state, (3) consented to personal jurisdiction, or (4) waived personal jurisdiction. An individual will be domiciled in the state they are a permanent residence of. When assessing domiciliary, courts will look to the physical presence of the person and to their intent to either remain there or make another location their personal residence. Businesses are domiciled in their state of incorporation, and the state where they have a principal place of business, or "nerve center."

Here, the facts state that Danielle is a resident of State Y, and not State Z. Therefore, because she is not a domiciliary of the forums state, she must either be served physically while in the state or consent to or waive personal jurisdiction. Danielle is a resident of State Y, and its reasonable to assume that her place of business, where she was served, is in State Y, as well. Danielle, however, does not challenge personal jurisdiction in her answer, effectively waiving it, and has possible consented impliedly to the non-motorist statute of State Z, if they have one.

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Because Danielle did not challenge personal jurisdiction in her initial motion, she will likely have waived it and will be subject to State Z's personal jurisdiction.

### **Modern Bases**

Under the modern bases, a court may exercise personal jurisdiction over a non-resident defendant as long as that state has a long arm statute that will reach the constitutional limits, and where the defendant had sufficient minimum contacts with the forum state so that exercising personal jurisdiction would not offend traditional notions of fairness.

### **Long Arm Statute**

There are no facts to suggest that State Z has a sufficient long arm statute, but it will be assumed that they do for the remainder of the discussion.

### **Minimum Contacts (Purposeful Availment)**

A defendant will be said to have minimum contacts when the purposefully avail themselves to the forum state in a way that they enjoy the benefits and the laws of that state.

Here, as discussed above, Danielle has purposefully availed herself of the benefits of State Z by driving her vehicle in the forum state. This allows Danielle to take advantage of the forum state's safety laws and other benefits. Right

### **Relatedness**

Relatedness requires that the action arose out of the defendant's contacts with the forum state or that the action arose while in the forum state.

The action here is being brought through a car accident that happened in State Z. Here, Danielle was driving her car in State Z and caused an accident in doing so.

### **Fairness**

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When assessing fairness, courts will look at the interest of the plaintiff in seeking redress, the forum state's interest in providing redress for its citizens, the burden on the defendant, and interstate efficiency.

### **General Jurisdiction**

General jurisdiction allows a court to exercise authority over a non-resident who has such continuous and systematic contacts with forum state that they are basically "at home."

Danielle's contacts are not continuous and systematic enough for her to be considered at home.

### **Conclusion**

Although Danielle is a resident of State Y, it is likely that State Z will be able to exercise personal jurisdiction over her because of her implied consent to the non-resident motorist statute, because she has minimum contacts with the forum state, and because she waived PJ by not including it in her first response. Very good

### **DREAM**

#### **Personal Jurisdiction**

Supra.

#### **Traditional Bases**

Supra. Here, the facts expressly state that Dream is based in the Northern District of State Z, making it a resident of State Z. Because Dream is a resident of State Z and because it failed to include lack of personal jurisdiction in its initial response, State Z will have personal jurisdiction over Dream.

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## **Conclusion**

State Z will be able to exercise personal jurisdiction over Dream.

## **Subject Matter Jurisdiction**

Subject matter jurisdiction is a court's ability to hear a particular type of case. Federal courts, which are courts of limited jurisdiction, unlike state court's which are courts of general jurisdiction, may only hear cases that bring a federal question, where there is diversity jurisdiction, or where there is supplemental jurisdiction.

## **Federal Question**

A federal question is one that arises out of federal law such as the Constitution or federal statute. Here, there is a tort theory claim being brought, which does not raise a federal question.

## **Diversity Jurisdiction**

For a claim to qualify for diversity jurisdiction, there must be complete diversity, this means that no plaintiff can reside in the same state as any defendant, and the claim must exceed the amount in controversy requirement of \$75,000. A defendant will be a citizen of the state in where there permanent residence is. Courts may look at the physical presence of the defendant and their intention to either remain there permanently or to move elsewhere and make that place their permanent residence. A plaintiff stated amount in controversy will be presumed if made in good faith and will govern unless there is a legal certainty that they won't be able to recover that much.

## **Overall Conclusion**

Because the court will likely have personal jurisdiction over Danielle and Dream, and assuming it will also have subject matter jurisdiction over the claim itself, the court may decide, in its discretion, whether to dismiss the case, or transfer it to a venue where it

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could have originally been brought, being the Southern District of State Z, in the interest of justice and for the convenience of the parties.

**END OF EXAM**