

Monterey College of Law
Civil Procedure
Midterm Examination
Fall 2022
Professor Isaac Adams

Instructions:

Answer: Three Essay Questions

Total Time Allotted: Three (3) Hours

MCL

Civil Procedure

Fall 2022

Prof. I. Adams

Question One

Orange Co. manufactures smartphone devices called oPhones. Orange Co. is incorporated in Canada, where it has its manufacturing plant. However, its headquarters are in New York. Orange Co. has a store in California, generating about 20% of the company's revenue. While in an Orange store in Hawaii, Paul, a resident of California, bought an oPhone that exploded in his pocket a day later, injuring him.

Subsequently, Paul hired an investigator, which determined that the oPhone's battery was the source of the explosion. The battery was manufactured by Cheap Co., which has its headquarters and is incorporated in country X. Cheap Co. sells its batteries to different electronic device manufacturers worldwide but not to the United States. Further, last year, 70% of Cheap Co.'s profit came from its business dealings with Orange Co.

Paul, who incurred \$75,000 in medical expenses, filed an action against Orange Co. and Cheap Co. in the Superior Court of California. Afterward, Paul flew to New York to serve Orange Co. with the summons and the complaint. Upon entering Orange Co.'s campus, Paul met with Gardener, who was trimming a tree. Paul asked Gardener if he worked for Orange Co. Gardener said that he has been a gardener with the company for 30 years and that he is a friend of the CEO. Paul gave the summons and the complaint to Gardener, which he gave to Orange Co.'s CEO. To serve Cheap Co., Paul mailed a copy of the summons and the complaint to Cheap Co. in country X.

Both Orange Co. and Cheap Co. filed motions to dismiss for lack of personal jurisdiction and challenged the validity of the service of process. California law provides that its courts may exercise jurisdiction over nonresidents "on any basis not inconsistent with the Constitution of the United States."

How should the court rule on each motion? Discuss.

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Question Two

While on a trip to Las Vegas, Paul, a resident of California, and Pam, a citizen of Spain, were struck by a food truck owned and operated by FastFood, a limited liability partnership.

FastFood is owned by Dave, a resident of Texas, and Dylan, a resident of Ohio. FastFood's headquarters are in Nevada, and it is registered to do business there.

Paul and Pam jointly filed a lawsuit against FastFood in the federal district court in Nevada. In the complaint, Paul demanded \$70,000 in personal injury damages and \$10,000 in property damages, while Pam demanded \$10,000.

FastFood filed a motion to dismiss for lack of subject matter jurisdiction, which the federal court denied. After the trial, the jury awarded \$60,000 to Paul and \$5,000 to Pam. FastFood appealed, contending that the court lacked subject matter jurisdiction. Paul and Pam counterargued that FastFood consented to subject matter jurisdiction by trying the case.

1- Did the court err in denying Fastfood motion to dismiss for lack of subject matter jurisdiction?

2- Did FastFood waive its right to contest subject matter jurisdiction on appeal by trying the case?

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Question Three

Paul, who owns a factory in San Jose, California, contracted with Dave, a resident of Texas, and Dalila, a resident of Arizona, to supply raw materials to Paul's factory. The parties signed the contract at Dave's house.

Several months later, Dave and Dalila informed Paul that they would no longer be able to supply raw materials due to supply chain issues. While on a business trip to San Diego, Paul filed a lawsuit against Dave and Dalila. In his complaint, Paul stated, "Dave and Dalila have committed fraud, and they are liable for breach of contract."

Subsequently, Dave and Dalila filed a motion with the Superior Court in San Diego to dismiss for failure to state a claim, which the court denied. Afterward, Dave and Dalila agreed to litigate in Texas and filed a notice of removal in the federal court in Texas. In response, Paul filed a motion to transfer to the Superior Court in San Jose.

- 1- Did Paul properly lay venue in San Diego? Discuss.
- 2- Did the court err in denying Dave and Dalila's motion to dismiss? Discuss.
- 3- Should Dave and Dalila be allowed to remove the case to the Texas federal court? Discuss.
- 4- How should the court rule on Paul's motion to transfer the case to San Jose? Discuss.

Civil Procedure

Fall 2022 Midterm Exam

Professor Isaac Adams

Suggested answer to question one:

Personal Jurisdiction (PJ) over Orange Co. (O) in California:

- 1- Traditional bases
 - Domicile. O has a store in CA.
 - At home or essentially at home in CA. Since O is at home in CA, it can be sued for anything arising from anywhere in the world.
 - CA has general jurisdiction over O
- 2- Long arm statute
- 3- Modern bases
 - International shoe
 - Minimum contact
 - O has minimum contact with CA. 20% of O's profit comes from CA
 - Purposeful availment because O purposefully avails itself of the privilege of conducting activities within the forum thus, invoke the benefits and the protection of its laws.
 - Foreseeability
 - Fair play and substantial justice.

PJ over Cheap Co. (C) in California:

- 1- No traditional bases
- 2- Long arm
- 3- International shoe
 - Minimum contact. No contact with CA.
 - Purposeful availment. Asahi & McIntyre- stream of commerce
 - Foreseeability
 - Justice Brennan and Justice O'Conner split.
 - Fair play and substantial justice

Service of process on O.

- 1- Service on company's employee

2- Is Gardener an officer of O? Is he so integrated into the organization? Probably not.

3- Probably invalid service of process.

Service of process on C.

- Does country X's law allow for service of process by mail?

Suggested answer to question two:

- I. Did the court err in denying Fastfood motion to dismiss for lack of subject matter jurisdiction?
No.

Paul v. FastFood

- 1- Diversity of citizenship
 - Citizenship of the partnership
- 2- Amount in controversy—good faith
 - Aggregation: One plaintiff can aggregate his claims against a defendant to meet the amount in controversy.

Pam v. FastFood

- 1- Diversity of citizenship
 - Citizenship of the partnership
 - Alienage jurisdiction
- 2- Amount in controversy
 - Can Paul and Pam aggregate their claims? No. Their claims are separate and distinct
- 3- Supplemental jurisdiction
 - Can Pam's claim get into the federal court under supplemental jurisdiction? Yes, because complete diversity exists, and the only thing missing is the amount in controversy.
 - Does Pam's claim share a common nucleus of operative fact with Paul's? Yes, the claims arise from the same transaction or occurrence.

- II. Did FastFood waive its right to contest subject matter jurisdiction on appeal by trying the case? Subject-matter jurisdiction cannot be waived and may be contested by a party or raised sua sponte at any point in the proceedings.

Suggested answer to question three:

- 1- Did Paul properly lay venue in San Diego?
No. P may lay venue in any district where: a. All defendants reside or b. A substantial part of the claim arose.
- 2- Did the court err in denying Dave and Dalila's motion to dismiss? Discuss.
Yes. Since P is alleging fraud, the allegation must be made with specificity and particularity. As for the breach of contract, the complaint must avoid being conclusory and include a short and plain statement of the claim showing that P is entitled to relief.

- 3- Should Dave and Dalila be allowed to remove the case to the Texas federal court? Discuss.
No. In-state defendant rule prevents the defendant from removing to Texas.
- 4- How should the court rule on Paul's motion to transfer the case to San Jose? Discuss.
Transfer is allowed if San Jose is a proper venue and CA has jurisdiction over the defendants.

76

Exam Name: CivProc-MCL-F22-Adams-R

good organization.
you missed Brennan v. O'Connor
and the fair play and substantial
justice. ID

1)

For a valid claim, the court must have personal jurisdiction (PJ), subject matter jurisdiction (SMJ) if in federal court, proper venue, proper notice to the defendant(s), and proper choice of law.

Here, Orange Co. and Cheap Co. have both filed motions to dismiss for lack of PJ as well as challenging the proper notice (service of process). In determining its ruling, the Court will consider each motion separately for both PJ and service of process.

Personal Jurisdiction (PJ)

Personal jurisdiction (PJ, *in personam jurisdiction*) establishes the court's authority to adjudicate the rights and obligations of the defendant(s), and may be established by the traditional basis (*Pennoyer v. Neff*) or the modern basis (*International Shoe*).

Orange Co. - Motion to Dismiss

Orange Co. filed a motion to dismiss for lack of PJ. The court will evaluate both the traditional basis and the modern basis in determining its ruling on this motion.

Traditional Basis for PJ (Orange)

PJ is established under the traditional basis (*Pennoyer*) when there is any of the following: (1) personal service while physically present; (2) domiciled in the state; (3) waiver; or (4) consent.

Personal Service - Orange

Orange Co. was not personally served while physically present in California. Paul served Orange Co. in New York.

Domicile - Orange the question here is orange domicile in CA?

Corporations have dual citizenship for purposes of domicile--one, the jurisdiction in which they are incorporated, and two, the jurisdiction in which they have their headquarters or "nerve center" a.k.a. primary place of business. Here, Orange Co. is incorporated in Canada and has headquarters in New York. Paul went to New York to serve Orange Co. If he provided service in New York to an appropriate agent for Orange Co., PJ would be established by serving the corporation where it has citizenship (is domiciled). The service of process must be delivered to an agent who is authorized or who would reasonably be expected to deliver the service to the appropriate party.

What is your conclusion?

we want PJ over Orange in CA

Waiver - Orange

A waiver of PJ happens when an entity makes a general appearance before the court to argue the merits of the case. Here, there is no waiver because Orange Co. is making a special appearance and arguing only that there is a lack of PJ.

Consent - Orange

Consent to PJ may be explicit if it is included in a contract, or implicit if the defendant acts in a manner governed by jurisdictional law, such as driving on the highways and being subject to PJ for traffic violations. Here, there is no indication of consent, either implicit or explicit, by Orange Co.

Modern Basis for PJ

PJ is established under the modern basis (*International Shoe*) when there is a long-arm statute that reaches the defendant, and minimum contact with the state. Minimum contact per *International Shoe* is shown by purposeful availment of the laws and regulations of the jurisdiction and the foreseeability that the defendant will be haled into court for any claims that arise in the jurisdiction.

Per *International Shoe*, PJ may be established by showing minimum contact with a long-arm statute that reaches the defendant. Here, Paul will argue that Orange Co. is subject to PJ in California because of its purposeful availment as seen in the stream of commerce (*Asahi*).

Long Arm Statute - Orange

California has a long-arm statute that allows its courts to exercise jurisdiction "on any basis not inconsistent with the Constitution." Orange Co. operates within the United States and is subject to the Constitution, therefore California's long-arm statute would be able to reach Orange Co. for purposes of jurisdiction (if the other elements are met).

Minimum Contact - Orange

Minimum Contact is based on the purposeful availment by Defendant of a state's laws, regulations, and marketplace, along with foreseeability that the defendant could be haled into court for some tortious event occurring within that state.

Purposeful Availment - Orange

the question here is did orange purposefully avail itself to CA?

When Paul approached Gardener, he was on the New York campus for Orange Co. Gardener volunteered that he was a long-time employee and a friend of the CEO, an officer of the Orange Co. In responding to Orange Co.'s motion to dismiss, Paul will argue that because Gardener was a long-time trusted employee close to the CEO, the service of process delivered to him was valid notice. One way to demonstrate purposeful availment is through the stream of commerce.

Stream of Commerce - Orange

what about the split of authority?

Per *Asahi*, when a party has a product that enters the stream of commerce, even if it is by way of a third party, and they are profiting from that commerce in the forum state, they

Brennan and O'Connor

Paul will argue that his service of process was valid because Gardener was physically present on Orange's campus and attested to his relationship with the CEO, thus implying an authorization to receive service of process. This is reinforced by the fact that Gardener did deliver the service of process to the CEO as promised.

Although Paul has a compelling argument that he correctly served Orange Co. via Gardener, there is one major flaw in his argument--he served the summons himself. In a service of process a third party must provide the service. This could be done through a legal authority, a private process server, or a third party. The person serving the process cannot be a party to the case. Therefore, Paul's personal service of process would be invalid even if Gardener was an authorized agent.

Conclusion - Service of Process to Orange Co.

Orange Co. will most likely prevail on its motion to dismiss for lack of proper service of process. They will first argue that Gardener was not an authorized agent, and further that because Paul was a party to the action, his personally serving the process was not valid.

Orange Co. Result

In responding to Orange Co.'s motion to dismiss, the court will likely find that Orange was subject to Personal Jurisdiction but that service of process was not valid because it was personally delivered by Paul himself, rather than a third party.

Orange Co. will claim in its motion to dismiss that Gardener was not authorized to accept service of process, and even though he delivered the summons and complaint to the CEO, that delivery was invalid because of the lack of authorization. *Any officer of the firm can accept service.*

If the court finds that Gardener was a representative of CEO to the extent that he could be designated as an agent, then they will find that this service of process was valid to establish PJ under domicile, and that appropriate notice was delivered. However, Orange

Co.'s assertion that Gardener is not an authorized agent, officer, or in any way a person designated to accept service of process, has merit.

Cheap Co. Motion to Dismiss

Personal Jurisdiction, Traditional - Cheap Co.

Supra. Paul mailed service of process to country X, not California. There was no citizenship or domicile for Cheap Co. within California. Cheap Co. did not waive nor consent to PJ in California. Therefore, there is no cause under the traditional basis (*Pennoyer*) for the court to assert PJ over Cheap Co.

Personal Jurisdiction, Modern - Cheap Co.

Long Arm Statute

As per *supra*, California's long-arm statute may reach to Cheap Co. even though it is in another country, so long as it is "not inconsistent with the Constitution of the United States." Here, there is no rule that prohibits California's long-arm statute from reaching Cheap Co.

Purposeful Availment & Stream of Commerce

Supra. Here, Cheap Co. made 70% of its profit from its business dealings with Orange Co. Even though it is based in country X, Cheap Co. is putting its products into the general marketplace within California. Per *Asahi* when a third party sells a product within a forum state, purposeful availment can be shown through the stream of commerce where the manufacturer or provider of the good to the third party is benefiting by way of profit from the economic activity happening in the forum state.

Because Cheap Co. has a majority of its profit based in its dealings with Orange Co., and Orange Co. is already shown to have purposeful availment and foreseeability to establish

jurisdiction, a court would reasonably conclude that Cheap Co. by way of stream of commerce is also subject to PJ in California.

Foreseeability - Cheap Co.

In addition to the purposeful availment / stream of commerce, there must also be foreseeability by Cheap Co. that they would be haled into court in California. A significant portion of Cheap Co's business is ultimately benefiting from California via its relationship with Orange Co. If 70% of Cheap Co. business is handled by Orange Co. and 20% of Orange Co.'s business is in California, that means approximately 14% of Cheap Co.'s business revenue comes from sales in California. It is reasonable for a company to expect they could be called to answer a claim in any jurisdiction where more than 10% of their business is conducted.

Therefore, the foreseeability element for Cheap Co. to be subject to PJ under the modern rule is likely met.

Conclusion PJ - Cheap Co.

Because California has a long-arm statute, and per the modern basis (*International Shoe*) Cheap Co. has purposefully availed itself by way of the stream of commerce (*Asahi*) and with foreseeability that they would be haled into California court, it is most likely that the Court in this case would rule against Cheap Co. for lack of personal jurisdiction. There is sufficient minimum contact to hold Cheap Co. subject to PJ in California.

Service of Process - Cheap Co.

Service of process for an international entity must be provided to an appropriate agent or directly to the headquarters of the entity. Here, Paul mailed a copy of the summons and complaint directly to Cheap Co. at their headquarters in country X. This is a reasonable

service of process assuming that the mail was sent certified and was accepted appropriately at the destination.

If the mail was not sent certified or was rejected, then it is possible that no effective service of process took place. In that case, the court would rule in favor of Cheap Co.'s motion to dismiss for lack of service of process. If, however, Paul did send the mail certified and it was accepted, he would prevail and the court would deny Cheap Co.'s motion.

Conclusion

Paul has a strong case to rebut both motions by Orange Co. and Cheap Co. on grounds of PJ. Each defendant could be shown to have minimum contact per *International Shoe* with purposeful availment and foreseeability. However, each of the defendants has a strong claim for lack of effective service of process.

Orange Co. will argue that Gardener was not an authorized agent, even though the service of process did eventually make it to the CEO. Paul will respond by emphasizing that Gardener volunteered his relationship with CEO, and did in fact deliver the service of process as promised. Here, the court will need to consider whether a close friend of the CEO and employee of 30 years makes for an effective agent even if not explicitly authorized. Most likely, because of Gardener's presence on the campus, personal attestation to his relationship, and eventual delivery, the court would lean in favor of Paul that this service of process was correct. However, if Orange could show that it is unreasonable to assume Gardener was an authorized agent, they would prevail on this motion.

If the court determines Gardener was a legitimate agent to receive process on behalf of the CEO, it will rule against Orange Co. in its motion to dismiss. If Gardener was not an appropriate agent, the court will grant the motion for lack of effective service of process.

Cheap Co. argues that they were not subject to PJ in California, but the stream of commerce per *Asahi* would likely lead the court to rule in Paul's favor that there was PJ for California to consider the rights and obligations of Cheap Co. because of its significant benefit received by participating in the California marketplace for its products.

Cheap Co. will also argue that the service of process was ineffective, however assuming that Paul mailed the summons and complaint to the company headquarters, this service of process is most likely correct and effective.

Therefore, the court will likely rule against Cheap Co.'s motion to dismiss.

81

you should have separated the two ps

2)

① Paul v. Fastfood

② Pam v. Fastfood

Rog 1

Subject Matter Jurisdiction

A federal court can assert subject matter jurisdiction (SMJ) if the plaintiff is raising a federal question, or by a diversity claim. A federal question is when a plaintiff files a well pleaded complaint that asserts a right derived from a federal source, be it the U.S. Constitution or a federal statute. Here, neither Paul nor Pam raised a federal question, therefore the NV federal court (FC) would not have SMJ under the federal question rule. Diversity exists when there is a complete diversity among the parties, and the amount in controversy is more than \$75,000.

Complete Diversity of the Parties

Complete diversity is determined by the domicile of all the parties at the time the lawsuit is filed. An individual is a domicile of the state or country they reside in as long as they intend to stay there indefinitely. A business is a domicile of both where they are incorporated, and where their headquarters (HQ) is located. Here, plaintiff Paul is a resident of California (CA), and plaintiff Pam is a resident of Spain. Alienage jurisdiction?

FastFood (F), the defendant company, has its HQ in Nevada (NV). It is a limited liability partnership, with owner Dave a resident of Texas (TX), and owner Dylan a resident of Ohio (OH). For complete diversity to exist, none of the plaintiffs can be a domicile of the same state as any of the defendants. Here, the plaintiffs are domiciles of CA and Spain, while the defendant is a NV domicile, whose owners are domiciles of OH and TX. Therefore, complete diversity of the parties exists.

what is the citizenship of a partnership?

Amount in Controversy

In a diversity case, the amount in controversy must be over \$75,000. Here, Paul is suing for \$70,000 in personal injury damages, and \$10,000 in property damages, while Pam is suing for \$10,000. None of these claims on their own meet the amount in controversy.

Aggregation

Under certain circumstances, the amount in controversy of different claims can be added together to meet the amount in controversy requirement for a diversity action. When a single plaintiff sues a single defendant, the amounts of all their claims are aggregated for purposes of the amount in controversy. Therefore, Paul's claims would be aggregated, bringing the total amount in controversy of his claims to \$80,000. Therefore, the federal court would have SMJ over his claims.

Multiple plaintiffs can only aggregate their claims if they have a single, undivided interest in the litigation. Here, Pam's injuries would necessarily be separate and distinct from Paul's (the wide difference in the amount each are seeking points to that). Therefore, Pam and Paul do not have a single, undivided interest in the litigation, and as such Pam's amount in controversy cannot be aggregated with Paul's.

Because all claims are evaluated separately and Pam's claim cannot be aggregated with Paul's, the federal court would not have SMJ over Pam's claim.

In this case, F will argue that although Paul's claims aggregated to over \$75,000, the fact that the judgement was for \$60,000 shows that the federal court did not have SMJ, and therefore the judgement should be vacated. However, a plaintiff need only assert a total cause of action for over \$75,000 with a good faith belief that they are entitled to that amount for the court to have SMJ. If a jury awards \$75,000 or less, it does not retroactively prevent the federal court from having SMJ. This can only be accomplished if the court finds to a legal certainty that the amount of damages that can be awarded must be \$75,000 or less, in which case the court will no longer have SMJ, and the case must be

remanded, dismissed, or judgement vacated. Here, the court did nothing to indicate Paul's damages were \$75,000 or less to a legal certainty, thus there is no grounds for the federal court to now find a lack of SMJ because of the jury awarding Paul \$60,000.

When there are claims against multiple defendants, they can only be aggregated if all the defendants are jointly liable. While neither Paul nor Pam sued F's owners Dylan or Dave, as co-owners of the LLP being sued, they would be jointly liable, meaning if either or both owners were sued by Paul or Pam those causes of action could be aggregated as well. However, the facts do not raise this issue as only F was sued.

Supplemental Jurisdiction

Supplemental Jurisdiction (SJ) is when a court brings a case into federal court that it would not normally have SMJ over. In a diversity of citizenship case such as this, the general rule is that only defendants can assert SJ. Therefore, under the general rule, Pam would not be able to request the federal court exercise SJ over her claim.

SJ Exception allowing plaintiff to invoke

An exception to the general rule stated above exists. When a second plaintiff has a claim that arises from the same nucleus of operative facts as a case already in federal court but does not meet the amount in controversy requirement, the second plaintiff can ask the court to assert SJ if complete diversity of the parties exists. Here, Pam will argue that her claim arises from the same nucleus of operative facts, as Pam was struck by the food truck of F at the same time as Paul. Pam will argue that because she, as a resident of Spain, has complete diversity from F, a domicile of NV with owners from TX and OH, the federal court would be within its rights to assert SJ over F. F may argue that Pam and Paul's claims do not arise from the same nucleus of operative facts, as the facts do not expressly state how Paul and Pam were both struck by the food truck. If, for example, Paul and Pam just happened to be both hit by the food truck on that same day, the court

would likely agree with F. However, the most likely way that both Paul and Pam would be struck by the same truck on the same day is either they were in the same car, and the car was hit by F's truck, or F's truck hit Paul and Pam as they were walking or standing together. Assuming Paul and Pam were together when they were hit by F's truck, a court would likely agree that Paul and Pam's claims arise from the same nucleus of operative facts.

SJ is discretionary, therefore even though Pam would likely qualify for SJ would not mean the federal court must grant it. However, considering how related the causes of action are, a court would most likely assert SJ over Pam's claim.

Rog 2

Defenses raised in an Answer

When a defendant files an answer to a complaint, certain defenses under FRCP rule 12b must be asserted or they are waived. These defenses are: lack of personal jurisdiction, improper venue, or a service of process that is improper, either due to its contents or the manner in which it is served. Here, F is contesting SMJ, and not any of the defenses that can be waived.

There are three defenses under rule 12b that can never be waived, even if the defendant attempts to. One is rule 12b6, which is failure to state a claim, and another is failure to join an indispensable party, neither of which F is raising. The final defense that cannot be waived is SMJ. SMJ can be contested at any time during or after a trial. If lack of SMJ is found during a trial, the case must either be remanded to a state court, or dismissed. If lack of SMJ is found after a trial, any judgment is vacated and the case must be remanded to state court. Here, F is contesting SMJ, which means that F has the right to contest SMJ

even after a trial is over. Therefore, F did not waive its right to contest SMJ on appeal by trying the case, as it is not possible to waive the defense of SMJ.

However, F's appeal will fail. As stated above, Paul's claims were properly aggregated and met the amount in controversy necessary for the federal court to assert SMJ. Additionally, as stated above, the court was within its rights to assert SJ over Pam's claim.

In conclusion, F has the right to contest the federal court's SMJ after a judgement has been rendered, but their appeal will fail and the judgement will stand.

3)

Rog 1

Proper Venue

A proper venue is determined by three method. The first method the court must use is that if all defendants reside in the same state, any venue located in a district where one of the defendant's resides is a proper venue. Here, the defendants are Dave and Dalila. Dave is a resident of Texas, while Dalila is a resident of Arizona. Because both of the defendants reside in different states, the first method would not apply.

The second method is if a venue exists substantially related to the incident leading to the lawsuit exists, it is a proper venue. The venue must be considered the "center of gravity" of the case. Here, the contract signed by all three parties was entered into in Texas (TX). However, the raw materials were sold to be used at a factory located in San Jose (SJ), California (CA). It could be argued that the center of gravity is either where the materials being sold will be used, which is SJ, or TX because it is the domicile of one defendant in addition to being where the contract was entered into. However, the lawsuit was filed in San Diego (SD) Superior Court. Paul (P) will argue that because there are two competing theories of the cases center of gravity that no center of gravity exists. Dave and Dalila will argue that a either TX or SD would be determined to be the center of gravity by a court, and because the lawsuit was filed in neither the venue of SJ was improper.

The final method for determining if a venue is proper is if a venue would have personal jurisdiction (PJ) over any of the defendants. Here, because no defendant was present in SD, a domicile of SD, or had any contacts with SD whatsoever, SD would not have PJ over either Dave or Dalila.

In conclusion, the first method of establishing proper venue does not apply to this case, while SD would not a proper venue by either the second or third method. Therefore, P improperly laid venue in SD.

Rog 2

Complaint

A complaint must contain a short and plain statement of facts including why the court has jurisdiction over the matter, a short and plain statement of facts supporting the claim being asserted, and the damages being sought. The facts state P's claim said, "Dave and Dalila have committed fraud, and they are liable for breach of contract".

Jurisdiction

The complaint does not mention any facts supporting that the court, San Diego Superior Court, has jurisdiction over this matter. However, because SD Superior Court is a part of the California state court system, the court would have jurisdiction over the matter since a court would likely find CA has PJ over Dave and Dalila under the modern basis.

However, as stated above, the venue was not a proper venue.

Claim

P's claim simply states that Dave and Dalila committed fraud breached a contract. Since the Iqbal case, a well pleaded complaint must include sufficient facts to make the claim being stated not just possible, but plausible. Here, P included no facts supporting his claim. This means that there would be no facts for a court to use to determine whether the complaint was even possible, let alone plausible. Additionally, when a plaintiff alleges another has committed fraud, the complaint must be plead with particularity. While the plaintiff need not attempt to speak to the defendant's state of mind, they must show specific facts that support a claim of fraud. As stated above, P included no facts. As such,

P's complaint would not be sufficient for either the fraud or breach of contract causes of action.

Relief Sought

Finally, a complaint must specify the relief being sought. This can be damages (money) or an equitable remedy, like an injunction. Here, the facts do not state that P asked for any relief. Relief can only be granted if it is sought in the complaint.

Rule 12b6

A motion to dismiss for failure to state a claim can be granted when a claim is raised that is either not plausible, there is no relief that can be granted, or both. Here, P did not give any facts to make his claims plausible. P also did not specify and relief sought in the complaint, meaning the court cannot grant any relief. Without any more facts regarding the contents of the complaint, it must be concluded that the court erred when it denied Dave and Dalila's motion to dismiss for failure to state a claim.

Rog 3

Removal

Removal is when a case is removed from a state court and brought to a federal court. A plaintiff cannot ask for removal. Here, Dave and Dalila have asked for the case to be removed to the federal court in Texas. For a case to be removed, the court must have subject matter jurisdiction (SMJ). If there are multiple defendants, all defendants must agree both on whether they will file for removal, and to which federal court they will ask the case to be removed to. Here, Dave and Dalila have agreed to remove the case to TX, where Dave is domiciled as he is a resident of TX.

Subject Matter Jurisdiction

A federal court can assert subject matter jurisdiction (SMJ) if the plaintiff is raising a federal question, or by a diversity claim. A federal question is when a plaintiff files a well pleaded complaint that asserts a right derived from a federal source, be it the U.S. Constitution or a federal statute. Here, P did not raise a federal question, therefore a federal court could not assert SMJ for this reason. SMJ can also exist under diversity. Diversity exists when there is complete diversity of the parties, and the amount in controversy exceeds \$75,000. Here, the domicile of Paul is never expressly stated. If we assume that P is a domicile of CA because his factory is there, complete diversity would exist, as the defendants are from TX and AZ, while the plaintiff is from CA. This means no plaintiff shares a domicile with any defendant.

However, the amount in controversy is not stated. Because of this, it is impossible to determine if the federal court would have SMJ over this case.

Process of Removal

If the amount in controversy for this case is over \$75,000, Dave and Dalila would need to follow up their notice of removal filed with the federal court by sending all the documents of the case to the TX federal court. Then if the TX federal court found SMJ exists, Dave and Dalila would need to file a motion to remove with the Superior Court of SD, and give P notice of the removal.

Remand

If the TX federal court deemed there was SMJ and removal was granted, P would have 30 days to file a motion to remand. Remand is when a case is sent from a federal court back to a state court. A plaintiff can assert any reason to argue for remand, and the granting of remand is completely discretionary by the court.

In-State Exception for Diversity Cases

A diversity case cannot be removed to a federal court in the same state that a defendant is a domicile of. Here, Dave and Dalila have requested the case be removed to the federal court in TX. However, because Dave is a domicile of TX and this is a diversity case, the motion to remove to TX federal court would be denied, even if the amount in controversy is over \$75,000.

Conclusion

Dave and Dalila should not be allowed to remove the case to the TX federal court regardless of the amount in controversy, since Dave is a resident of TX.

Rog 4

Transfer

A transfer is when a case is moved from one venue to another venue in the same jurisdiction. Here, the Superior Court of SJ and Superior Court of SD are both venues in the Superior Court of California jurisdiction. As such, the case would be eligible to transfer from SD Superior Court to SJ Superior Court. However, transfer is discretionary, and the court would weigh public and private factors to determine whether the case should be transferred.

Public Factors

Public factors have to do with factors relating to the communities where the courts lie. The court asks whether the community where the case is being transferred to should be burdened with the jury service, and whether the case is a local matter of the community where the court is being transferred from, and thus should be handled locally. Here, the

court would determine that because the factory at the nexus of this claim is located in SJ, it would be acceptable to burden the SJ community with jury service. Additionally, as stated above, the case has no connection with SD, and as such it is not a matter that needs to be handled locally in SD. Therefore, the public factors would lean towards the court granting the transfer.

Private Factors

Private factors relate to the court itself. The court will ask whether either of the courts in question are the location of a substantial amount of the matter; also referred to as the center of gravity of the case. Additionally, the court will look to whether the trial being in one venue will place a substantial burden on either the defendant or witnesses. Here, the court will most likely determine that because the matter involves raw materials being sold to be used at a factory in SJ, SJ would qualify as the center of gravity of the case.

Additionally, there would likely be many witnesses called that work at the SJ plant, and it would be a substantial burden to make them travel hundreds of miles when the SJ superior court would be local. Because both defendants are located fairly far from either SD or SJ, the court would likely determine the difference in venue from their perspective to be negligible, and it would not factor into their decision.

After reviewing the public and private factors, the court would likely determine both point towards SJ being a better venue than SD.

Transferring from an Improper Venue

When a transfer is sought, if the venue the case the currently at is proper, they can transfer the case to any venue, even an improper venue. However, if the case is currently at an improper venue, that court can only transfer to a proper venue. Here, as discussed above, P brought the case to an improper venue in SD. Therefore, the SD court can only transfer the case to a proper venue. Because of the reasons stated above, SJ would be a

proper venue for this case, thus the SD court could transfer the case to the SJ court. Transfer is discretionary, but there is no facts that would lead the SD court to deny the motion to transfer. Although if defendants had asserted an improper venue defense, the case would have likely been dismissed.

END OF EXAM