

1)

85

QUESTION ONE

1. Does the U.S. District Court have personal jurisdiction over David?

Personal jurisdiction refers to the power of a court to engage in binding adjudication over a person or thing. Historically, the test for personal jurisdiction was *Pennoyer v. Neff*, where the Supreme Court of the United States held that courts of the forum shall have exclusive jurisdiction over persons or properties located within their territorial boundaries. Modernly, however, personal jurisdiction may be found in other ways. First, personal jurisdiction will be found to exist where a defendant is served within the forum state, even if only temporarily there (*Burnham v. Superior Court*). Second, a court will have personal jurisdiction over a person who is domiciled in the forum (residence with intent to remain), even if served outside of that forum state. Third, a defendant may consent to personal jurisdiction, whether by contract (*Carnival Cruise Lines*), or by making a general appearance, thus waiving any defect in territorial jurisdiction (*Cuellar v. Cuellar*). Fourth, personal jurisdiction will be found to exist where an absent, non-resident defendant has established such "minimum contacts" with the forum as to make the exercise of personal jurisdiction reasonable and just according to traditional notions of fair play and substantial justice (*International Shoe*). Later, this *International Shoe* standard of establishing *in personam* jurisdiction was extended to apply to action *in rem* and *quasi in rem*, following a three-part test that evaluates the relationship between the defendant, the forum, and the litigation (*Shaffer v. Heitner*). Fifth, a corporation that engages in conduct purposefully directed at the forum state (*J. McIntyre Machinery v. Nicastro*), or that purposefully avails itself of the privileges of conducting activity in the forum (*World Wide Volkswagen*), thus invoking the benefits and protections of its laws, has clear notice that it will be subject to suit there.

good use of cases

With regard to the *International Shoe* standard of minimum contacts, the number and quality of contacts that a party must demonstrate for a court to assert personal jurisdiction may vary, depending on the relationship between the contacts and the cause of action against the defendant. *General jurisdiction* is said to exist where the defendant's presence in the state is so systematic and continuous as to render that corporation "essentially at home" in the forum (*Goodyear Dunlop Tires*), except where that presence is the result of "mere purchases" in a cause of action not related to the purchase transactions (*Helicopteros*). *Specific jurisdiction*, in contrast, is said to exist where the contacts with the forum are directly related to the dispute sought to be adjudicated. Whenever specific jurisdiction is at issue, a court must consider the relationship between the contacts and the cause of action.

Here, David is domiciled in Los Angeles, California (that's where he maintains his residence, where he intends to remain). "We got the money" (hereinafter, "loan company") is located in Reno, Nevada. David was not served in Nevada, so *Burnham* is not the proper test. Neither did David make a general appearance, waiving personal jurisdiction under *Cuellar*. Even under an *International Shoe* minimum contacts analysis, David's contact with Nevada was a loan purchase transaction. Although *McGee* held that one contact was sufficient, at least where California had an interest in protecting its citizens, it is rarely enough to assert personal jurisdiction, especially in a case where California has no real interest in protecting citizens from home loans. The only way for Nevada to assert personal jurisdiction over David is if David's contract with the loan company provided for personal jurisdiction, similar to *Carnival Cruise Lines*. Here, the facts are silence on any contractual agreement to personal jurisdiction. For that reason, David is not subject to the personal jurisdiction of Nevada based on his one contact with the home loan company, and his 12(b)(2) motion (discussed *infra*) should have been granted.

2. Does the U.S. District Court have subject matter jurisdiction over David?

Federal courts are courts of limited jurisdiction. Subject-matter jurisdiction limits the authority of the federal district courts to hear only those cases and controversies conferred to it by Congress. Under 28 USC 1331, Congress has conferred federal question jurisdiction to the district courts. Under 28 USC 1332, Congress has conferred diversity jurisdiction to the federal courts. Here, there is no federal question--i.e., no dispute arising under the laws, treaties, or Constitution of the United States, so 28 USC 1331 will not confer subject-matter jurisdiction over this dispute. Under 28 USC 1332, however, the District Court may hear cases between parties from different states, as long as the value exceeds \$75,000, and there is complete diversity between the parties. Although each claim from the loan company was under the \$75,000, the plaintiff is entitled to aggregate their claims to reach the \$75,000 threshold. By aggregating its claims, the loan company surpasses the \$75,000 requirement. In addition, the loan company is from Nevada, and David is domiciled in California. Therefore, the U.S. District Court in Nevada does have subject-matter jurisdiction under 28 USC 1332 to hear the case. ✓

3. May David plead the affirmative defense of improper service?

The federal rules governing proper service are found within FRCP 4. Rule 4 states that service is proper by (1) any method authorized by the state rules governing service, or (2) personal service, or (3) substituted service by leaving a copy of the summons and complaint with a competent resident who is at least 18 years of age. Here, although substituted service was authorized, the loan company failed to leave a copy of the summons and complaint with a resident of the household. The loan company delivered the summons and complaint to the gardner. Under Rule 4 delivery to the gardner was not authorized, and service was therefore improper under FRCP 4. Nor was David properly served under the California Code of Civil Procedure, which would have allowed for substituted service (to a competent member of the household who is over 18) only after reasonable diligence to serve David in the preferred method of personal service. Nor was David properly *constructively* served, which would have required reasonable diligence at personal service, followed by substituted service, and needed to have been "reasonably calculated" to provide David with notice under *Mullane*. Therefore, David simply wasn't properly served.

However, under Rule 12(b)(5), David may, either in his first motion or answer, assert the defense of insufficient service of process. However, under Rule 12(g)(2) and 12(h), any later motion not properly joined originally under Rule 12(g)(1) is deemed waived. Here, David's first motion was a 12(b)(2) motion challenging personal jurisdiction. David *must* have included the defense of insufficient service of process under that same motion, by joining it under Rule 12(g)(1). David's failure to do so results in a waiver of insufficient service of process. Therefore, David may not plead the later 12(b)(5) motion. ✓

4. May David move the case to Los Angeles?

Transfer, or change of venue, can be made under 28 USC 1404. Under 28 USC 1404, a district court may, for the convenience of the parties and witnesses, if it be in the interest of justice, transfer any civil action to any district or division in which it might have been brought, or to any district or division to which the parties of consented. Therefore, the correct analysis is to first determine where the action *might have been brought*.

Venue refers to the geographic specification of the proper court or courts having jurisdiction to hear a dispute. Venue is defined generally in 28 USC 1390, and more specifically in rule 28 USC 1391. Under 28 USC 1391, venue is proper in (1) a judicial district in which any defendant resides, if all defendants reside in the same state in which the district sits; or (2) in a judicial district where a substantial part of the events or

omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated; or (3) if there is no judicial district in which venue is proper under (1) or (2), then venue is proper in any judicial district or division where the courts can exercise personal jurisdiction over the defendants.

Under the first prong of 28 USC 1391, venue is proper in Los Angeles, because all of the defendants reside there. The facts state that David "temporarily" moved to his parents house--a temporary change in residence is not the test of domicile for the purposes of venue. David had the intent to return to his home in Los Angeles. Therefore, Los Angeles is David's domicile for the purposes of venue. Therefore, venue would be proper in Los Angeles.

However, David still has an issue that will prevent his change of venue. Despite venue being *improper* in Nevada under 28 USC 1391, David must have asserted improper venue as a defense *in his first motion* under FRCP 12. By asserting improper venue under a 12(b)(3) motion, David would have forced the court to consider 28 USC 1406, which authorizes a district court to dismiss an action if venue is improper, or if it be in the interest of justice, transfer that action to a court where venue would be proper. David should have included a 12(b)(3) motion by joining it to his 12(b)(2) personal jurisdiction defense in his *first* motion. David failed to do that, and thus, under Rules 12(g)(2) and 12(h), David's request to move the trial from Reno to Los Angeles should be denied due to waiver. Furthermore, under 28 USC 1406(b), the court in Reno has authority to hear the case as a result of David's failure to "interpose" the Rule 12(b)(3) motion in a timely manner.

David could attempt to argue that the forum is inconvenient under *forum non conveniens*, but this argument will certainly fail. *Forum non conveniens* is a discretionary power that allows a court to dismiss an action where a more convenient forum is available, based on public and private factors set forth in *Piper Aircraft v. Reyno*. Here, there are no advantages to moving the forum--the contract was entered into between the defendants in Nevada, Nevada has an interest in vindicating the rights of its own citizens, and there is no hardship in Dan traveling to Nevada, like there was in *Piper*. Therefore, if David attempts to dismiss for *forum non conveniens*, the court will rightfully reject it.

----- END QUESTION ONE -----



2)

(84)

Will Paula's case remain in state court or be tried in federal court?

Removal. A case may be removed to federal court if the federal court had original jurisdiction and it could have been filed there instead of in state court. There is not 1331 federal question but there is diversity of citizenship under 1332. There must be complete diversity, no plaintiff may be a citizen of a state where any defendant is a citizen. Paula is a California resident and both defendants are located in Oregon. The amount in controversy, minus interest and costs, must be over \$75,000. Paula's claim is for \$100,000, so both diversity of citizenship and the amount in controversy requirements of 1332 are met. Ralston seeks to remove the case to an Oregon district court. To remove a case is a simple matter of noticing the intent to move within 30 days of service on the defendant under 1441. But all defendants must agree to the removal. Dan doesn't agree to removal, so the case will remain in state court. ✓

What will happen to the counter-claim filed by Dan?

The facts have us assume the case "remains" in federal court when the case was brought in state court and would have to be removed to federal court (but this would be unsuccessful (supra)). Assuming the case is in federal court and Dan files a counter claim against Paula, and then Paula files a Rule 12(b)(1) motion challenging subject matter jurisdiction, Dan could request the court obtain supplemental jurisdiction over his claim. Section 1367 codified the common law concepts of pendent and ancillary jurisdiction. A claim that is so connected to the claims at issue in the case that it essentially is the same case or controversy under Article III of the Constitution can, at the court's discretion, become a part of the action even if the claim, by itself would fail the requirements of subject matter jurisdiction. As the Court put it in **Gibbs**, if there is a common nucleus of operative facts, then a claim may be allowed under supplemental jurisdiction.

Dan's counter claim is for defamation which arose out of the dispute Paula had with the company. The facts are similar, the witnesses would be similar, and for the benefit of judicial economy, the federal court would find a common nucleus of operative facts in play. Dan's claim for \$50,000 does not meet the amount in controversy required but even if the claim fails to meet the threshold amount in controversy under 1332 diversity, the Court has held that a defendant may bring the claim under supplemental jurisdiction. (**Exxon**) Therefore, Dan's counter claim would still be brought in under supplemental jurisdiction if the court allows it to be brought in.

Does Dan have to participate in mediation before the case is tried?

Under the **Erie** doctrine, the federal courts follow federal procedure laws and state substantive laws. It can be difficult to know when a law is substantive. In **Guarantee v. York**, the court held that if there is a question about whether a law is procedural or substantive, if the law will determine the outcome of the case (such as the statute of limitations in the **Guarantee v. York** case) then the law is substantive and state law should be followed. In **Byrd**, the court held that the federal courts should balance the interests of the state with the interest of the federal government to come up with an answer. In **Hanna**, however, the court held that if a federal directive was on point, that under the Supremacy Clause of the Constitution, the federal directive should be followed (in **Hanna** the issue was the seventh amendment right to trial by jury). The **Hanna** court also held that if there is no federal directive on point, then the twin aims of **Erie** must be reviewed: 1) fairness in applying the law so that parties who have access to the federal courts aren't at an advantage compared to state citizens who might not have that option and 2) deterring forum shopping so that parties don't take advantage of more favorable laws in federal court. Here, the FRCP requires the parties to a new lawsuit to participate in mediation while the state court does not make mediation mandatory. This is not outcome-determinative under **York**. The choice of one law over the other will not determine the case. David will have to attend mediation which could be a waste of time and money but it might also lead to a settlement. There does not seem to be a need to balance state and federal interest. Both want mediation to happen; federal just wants to require it. Under this analysis, the law appears to be procedural in nature; the purview of the federal court. Lastly, and most importantly, **Hanna** requires any federal law such as this that can be considered a federal directive (FRCP is) to be followed. The federal rule will prevail.

Ex cellent

Where will the case be tried?

Venue is the geographical location where the case will be heard. In California cases, the case is either a local action or transitory. Under a local action, the case is one, for example, such as a real property case where the county where the real property is located is the proper, or in a dissolution of marriage case where the residence of the petitioner determines proper venue. Most cases (such as tort cases) are transitory actions. Generally, the place where the defendant resides at the time of the filing of the action is the proper venue. In a tort case, the place where the incident occurred or the place where the defendant resides is proper venue. And in a contract case, the place where the contract was entered into or was to be performed (as well as where the defendant resides) would all be proper for venue. It is also possible, in a contract case, for the parties to agree to a choice of venue in the contract when entering into it.

Paula was injured in Sonoma County and brought the action in Sonoma Superior Court. Dan's Sports and Ralston are both active in California and were most likely served through their agent for service of process since they are doing business in California.

All of the parties to the lawsuit have stipulated to having the case heard in San Francisco but San Francisco is not the proper venue and the court, of its own volition (*sua sponte*) may deny venue. If it does not and all the parties agree to venue and file answers in San Francisco, then the trial will be heard in San Francisco.

*not
civil
district
of their*

END OF EXAM