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Does the U.S. District Court of Washington have Personal Jurisdiction over Dave's Equipment?

Personal jurisdiction is the ability of the court to exercise its power over a person or item of property. The traditional notion of personal jurisdiction arose from the landmark case Pennoyer v. Neff. The court held that the forum state has personal jurisdiction of every person or property within its boundary. Modernly, personal jurisdiction may be found in several ways. First, if the person is served within the forum state (Burnham). Second, if the person is a domiciliary of the forum state. Third, if the person consents to jurisdiction by either contract (Carnival Cruise Lines) or by making a general appearance. And fourth, by showing that the defendants have minimum contacts with the state.

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not nec.

Sufficient contacts with the state are those that satisfy the traditional notions of fair play and substantial justice (International Shoes).

Under International Shoes standard for minimum contacts, the quantity and quality of contacts depends of the relationship between the cause of action and the contacts. General jurisdiction may be found when the persons activities with the forum and systematic and continuous or it can be said the corporation is at home the forum state (Goodyear Dunlop v. Brown). The court may also establish specific jurisdiction when the case arises out of the defendants activities within the forum state. This may be found when the defendant purposefully avails himself of the benefits and protections of the state (Hanson v. Denckla) or directs activity to the state (Burger King).

NOT PS SMJ

Here, Dave's Equipment Inc is located in Seattle Washington. Since the facts state that the business is located with the forum state of Washington is likely meets the domiciliary requirements as well as likely being served within the forum state. In addition, it appears he does business in the state and likely has continuous ties to meet general jurisdiction and the specific contract of this case may bring about specific jurisdiction.

The U.S. District Court of Washington has Personal Jurisdiction over Dave's Equipment Inc.

→ Q. was SMJ

Does the U.S. District Court of Washington have Subject Matter Jurisdiction over Dave's Equipment? How should the Court rule on the challenges to its SMJ?

Unlike State courts, Federal courts are courts of limited jurisdiction. In order for a federal court to hear a case it must have subject matter jurisdiction conferred to it by statutes and the Constitution. 28 USC 1331 provides federal district courts with original jurisdiction to hear cases and controversies arising out of the laws, treaties or Constitution of the United States (federal questions). 28 USC 1332 provides the federal district courts with original jurisdiction over cases in excess of \$75,000 between parties of different states (diversity).

OK

Since Titan does not raise a federal law question it is well-pleaded complaint, we must first establish that Titan and Dave's have diversity of citizenship. Under 1332, a corporation is deemed to be a citizen of each state it is incorporated in and the one state in which it has its principal place of business i.e. its nerve center. Dave's is clearly a citizen of Washington as that where it is located and the facts do not point to any ties in other states. Titan, while having a plant in Washington, has their offices and high level officers such as their President in Oregon. Since it appears Titan's principal place of business is in Oregon and Dave's is in Washington, the diversity requirement has been met.

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Next we must establish that the claim is in excess of \$75,000 exclusive of costs and interests. Titan has brought two claims against Dave, one for the loss of business for over \$100,000 and to recover the cost of the broken equipment \$40,000. The plaintiff may aggregate their claims but even without doing so Titan has met the requirement for damages.

Since Titan is attempting to bring two claims in Federal court, one of which does NOT meet the amount for diversity under SMJ, we should analyze if federal court can here the second claim under supplemental jurisdiction. 28 USC 1367 provides that the federal court may hear a claim not meeting original jurisdiction requirements if it arises out of the same case or controversy they do have SMJ over. In order to do so, the cases must arise out of the same common nucleus of operative facts as established in Gibbs. Here, we have one claim for loss of business due to the stoppage of production which the court does have SMJ over and a second claim for a return of the purchase price of the equipment. Since both claims arise out of the same contract and event, the federal court will likely use its discretion to hear this case under supplemental jurisdiction.

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While Dave may assert his Rule 12(b)(1) motion for lack of subject matter jurisdiction at any time and did properly bring it, the court will dismiss the motion as it has proper Subject matter jurisdiction over the dispute.

Will Dave be able to sue its engineer?

If Dave wishes to bring a cross-claim against the engineer for his fault in the equipment breakdown, he would have difficulty doing so since the case is in federal court depending on the citizenship of the engineer. While the case against the engineer may be found to fulfill the "common nucleus of operative facts" requirement to bring it in under supplemental jurisdiction, this cannot be used to override the complete diversity rule (Exxon Mobil v. Allapattah). If the engineer is a citizen of Washington which is likely since he performed the work there, he will not be diverse from Dave who seeks to bring suit. If this is the case, the court may not bring in the cross claim under 1367.

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issue

If the court does bring the case in, then the question becomes what law should be followed as Federal law does not allow suit while State court does. When adjudicating federal question cases, the federal court applies both federal substantive and federal procedural laws. However, when the court is sitting in diversity or supplemental jurisdiction hearing a state law claim, the court looks to the Erie Doctrine. Arising from the landmark case Erie Railroad v. Tompkins, the court held that when hearing diversity cases the court should apply state substantive law and

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yes

federal procedural law. The rationale behind this theory was to detur forum shopping and make for a more uniform and equitable outcome. This doctrine was defined further by subsequent cases.

In Guaranty Trust v. York the court established the outcome determinative test which said that if a state law would affect the outcome of the case it should be deemed substantive and applied. In Byrd v Blue Ridge this test was further refined that this the law will definitely affect the outcome, it should be applied while balancing states rights and federal courts objectives. Finally in Hanna v. Plumer the court came full circle and established that if a federal directive is on point it should trump state law while keeping in mind the twin aims of Erie: 1) detur forum shopping and 2) making a more uniform outcome between in-state litigants and those in federal court.

Here, the Washington State law would certainly affect the case as without it, Dave would have no relief as the Federal court does not. Using the Guaranty and Byrd analysis the state law would be applied. Using the Hanna v Plumer, there is a federal directive on point which should be used. However, since it would certainly encourage forum shopping (in one forum there is a remedy and not in another) and it makes for a vastly different outcome between the federal and state court, the State law should be applied in this case.

good

It should be noted though that Dave could bring a separate claim in Washington State Court against the engineer so his hope for recovery is not lost.

Will the court transfer to Oregon?

Venue is the geographical location of the specific court or courts which can hear the dispute. Under 28 USC 1391 venue is proper where 1) the defedant resides if all defedants are in same state, or 2) where a substantial part of the event occurred. Here, Dave resides in the forum state of Washinton and the contract/performance was done in Washington making it a proper court.

Under 28 USC 1404 even when venue is proper a court may transfer a case for the convenience of the parties or witnesses if it be in the interest of justice to do so to any place where venue is proper or where the parties consent. The courts like to guard the plaintiffs choice of venue selection and it take a strong showing to have it transferred when it is not consented to by the Plaintiff. Here, just transferring the case to Oregon as Dave believes would be a better outcome for himself would not meet the requirements to justify transfer.

In addition, since Dave filed a previous 12(b) motion without joining a 12(b)(3) improper venue request, he has waived his right under 12(h)(1) and the Washington district court will remain the venue.

Will the court dismiss the case for lack of personal jurisdiction?

After filing an answer, Dave now attempts to assert a 12(b)(2) lack of personal jurisdiction defense. Not only was this waived under 12(h)(1) by his previous motion and answer to complaint, but the court also does not lack personal jurisdiction over Dave as discussed supra.

Since he may be meaning to assert a 12(b)(5) motion for lack of personal service he may be right on the merits if he can establish service was not proper under FRCP 4 and notice was not reasonably calculated to apprise him of the pending litigation and afford him the change to be heard (Mullane). However, he waived this defense under 12(h)(1) when not first asserted in his initial 12(b) motion.

Since he is also trying to assert a fruitless motion that his appears to be confused on so close to trial the court could sanction him under Rule 11 for a waste of time.

END OF EXAM

A handwritten signature in black ink, appearing to be 'C. J. O' or similar, written in a cursive style.



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HOW SHOULD THE COURT RULE ON THE CHALLENGES TO SUBJECT MATTER JURISDICTION?

Subject matter jurisdiction is the power of a court to hear a case. Federal courts are courts of limited jurisdiction, and there are two types of cases a federal court can hear. They can hear cases based on a federal question (28 USC 1331), in which a federal question will be pled on the face of the complaint, or diversity jurisdiction (28 USC 1332), in which the Plaintiff and Defendant are citizens (based on domicile, which is where a person resides indefinitely) of different states (Mas v Perry held there must be complete diversity of the parties), and the amount in controversy is over \$75,000. A corporation's domicile will be based on either their place of incorporation, or where their "nerve center" is located.

good intro

Here, Titan Inc. has their main plant in Seattle, but their President and other officers are located in Oregon. If this is where the company was incorporated, they could be a citizen of Oregon. Dave's Equipment is based Seattle, Washington. Because one company's is located in Oregon, and one in Seattle, this would be complete diversity of the parties.



The second requirement for diversity jurisdiction is an amount in controversy over \$75,000. When there is one plaintiff and one defendant, the Plaintiff can aggregate their claims against the single defendant, as long as they arise out of the same case and controversy.

good

Here, the amount that Titan is suing for is \$40,000 worth of machine tools plus \$100,000 for lost income, and both claims arise out of the single order of machine tools. Titan will be allowed to aggregate these claims for \$140,000.

Titan, as the master of their complaint, could sue in US District Court in Washington under diversity jurisdiction.

A Rule 12 motion is a pre-answer motion that can be filed within 21 days after being served with a complaint (FRCP 12(a)). Rule 12(b) lays out 7 defenses to a pre-answer motion: lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, insufficient process, insufficient service of process, failure to state a claim and failure to join a party. Rule 12(h) deals with waiver and preservation of certain defenses, and if you don't plead the defenses of lack of personal jurisdiction, improper venue, insufficient process, or insufficient service of process in your first pre-answer motion, those defenses will be waived. The remaining defenses can be pled at any time.

Here, Dave's equipment files a Rule 12(b)(1) motion, challenging subject matter jurisdiction. They will argue that their "nerve center" is located in Washington, and that is where their main hub is, and therefore the court lacks subject matter jurisdiction due to lack of complete diversity between the parties. However, this argument will fail. Domicile for a corporation can be found via place of incorporation or the nerve center, and plaintiff, as the master of the complaint, can choose which court to file in, as long as the court has both subject matter and personal jurisdiction over a party.

Personal jurisdiction is the power of the court over the person. For out of state residents, it can be found if there are minimum contacts, such that the maintenance of the action does not offend our notions of fair play and substantial justice (International Shoe). It can also be found when a defendant purposefully avails itself to the forum state of the privileges and protections of that state (WorldWide Volkswagen).

Based on the diversity of the parties, and an amount in controversy over \$75,000, the Court should deny Dave's Rule 12 motion on lack of subject matter jurisdiction.

WILL DAVE BE ABLE TO SUE THE ENGINEER?

In order to be able to sue someone in court, the court must have personal jurisdiction over that person or corporation, meaning the power over that person or corporation. The case of Pennoyer v Neff held that states hold exclusive personal jurisdiction over people domiciled within their territory. Today, personal jurisdiction has

been expanded, and in addition to domicile, can be found via consent, either express or implied, or voluntary presence within the forum state, no matter how briefly one is there (Burham v Superior Court). For non-resident defendants, the court uses the minimum contacts standard from International Shoe (supra) and purposeful availment such that it is foreseeable to be brought into that court (Worldwide Volkswagen). Because the engineer would have been in Washington to work on the machine tools, and was personally served there if not domiciled there, the court would have personal jurisdiction over the engineer. At the very least, the engineer has minimum contacts such that it could be foreseen he would be brought into court there. ✓

✓ The Erie doctrine holds what law to use in a federal court. if in federal court for a federal question, federal law will always be used. if in federal court under diversity jurisdiction, the Court in Erie held state substantive law and federal procedural law would apply. The case of Guarantee Trust v York came up with an outcome determinative test, which held that if applying state law would change the outcome of the case, the law used should be substantive, and state law should apply. The Byrd case came up with a balancing test of weighing state vs federal interest. Then the Hanna case determined that if there is a federal law on point, the federal law will prevail. If there is no federal law on point, and state law will prevent the twin aims of Erie, forum shopping and an equitable administration of the laws, then state law should be used.

Here, assuming the engineer is domiciled in Washington with the other Titan officers, and Dave's in located in Washington, there will be complete diversity of the parties. The amount in controversy of the tools is \$40,000, but the loss that follows from the defective tools is \$100,000. Under 1367, Supplemental jurisdiction, which is where the district court wouldn't independently have jurisdiction over a claim, but since it arises from the same nucleus of operative fact, it would put the claims together to allow them to be resolved in a single judicial proceeding. ✓

Since the federal court would have both personal and subject matter jurisdiction over the claim, and there is no federal law on point for what he is suing for, loss of business and purchase price of equipment, he would be able to bring the case in federal court and follow state law.

WILL THE COURT TRANSFER THE CASE TO OREGON?

28 USC 1404 governs change of venue. Venue is the correct geographical location of the suit. For the convenience of the parties, and in the interest of justice, a district court can change a venue to any other appropriate venue. That would be a venue where the Defendant resides, if all defendants reside in the same state, or where a substantial part of the incident took place. If the venue is changed, the law of the original court will apply.

Dave is the defendant, but he does not reside in the venue he is asking the court to move the lawsuit too. If he wants to move the venue due to jury awards, it could be argued that he is forum shopping, which is frowned upon by the courts. The court will not transfer the case to Oregon.

If the case was filed in the wrong venue at the commencement of the action, under 28 US 1406, the court could move the venue due to an improper venue at the time of filing, or the court has the discretionary power to dismiss a case due to forum non-conveniens, which is although the court may have personal and subject matter jurisdiction, a more convenient forum is elsewhere. Neither is the case here.

WILL THE COURT DISMISS THE CASE FOR LACK OF SUBJECT MATTER JURISDICTION?

Based on Rule 12 (supra), a defendant can raise seven defenses in a pre-answer motion, prior to filing an answer. Rule 12(h) states that if some of the defenses are not raised in the first pre-answer motion, they are waived. Lack of personal jurisdiction is 12(b)(2), and is one of the waivable defenses as listed in 12(h). ✓

Here, the facts state that Dave files the motion to dismiss for lack of personal jurisdiction after he files his answer. However, Dave had also already filed a Rule 12 motion for lack of subject matter jurisdiction earlier. In order to raise the defense of lack of personal jurisdiction, Dave would have needed to waive it in his first pre-answer motion that he filed. Since he did not, that defense is waived and cannot be brought up at any time, and the motion to dismiss will be denied by the Court.

gold answer

END OF EXAM