

Monterey College of Law

HYBRID

Civil Procedure I - Section 1

Midterm Examination

Fall 2022

Prof. M. Christensen

Instructions:

Question 1: Short Answer Essays (Parts 1, 2, & 3)

Question 2 Essay Question

Question 3 Essay Question

Total Time Allotted: Three (3) Hours

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Question 1: Short-Answer Essays

PART 1

PETER filed a complaint in federal court against DRIFTWOOD INC. A process server went to the home of DRIFTWOOD's President and CEO. The President was not home, so the process server gave the summons and complaint to their spouse. The spouse left the documents on the kitchen table. Later that night, their teenage kids spilled soda on the documents and, without looking at them, threw them away. Luckily, the President saw the envelope in the trash, fished it out, dried the documents, and gave them to the company's lawyer.

DRIFTWOOD timely moved to dismiss the complaint based on insufficient service of process, lack of personal jurisdiction, and failure to state a claim upon which relief can be granted.

How should the court rule on DRIFTWOOD's motion to dismiss for insufficient service of process?

PART 2

PAM, a resident of Monterey, is suing DEREK and DONALD in federal district court, Northern District of California. The case arises out of an accident that occurred in Sacramento, which is in the Eastern District of California. DEREK resides in Sacramento. DONALD resides in Arizona. The court has personal jurisdiction over the defendants. Defendants moved to dismiss for improper venue.

Can the court dismiss for improper venue?

PART 3

PRIYA filed a complaint against DANA in federal court in State Q. The case arises out of an accident that occurred 4 years ago in State Q. State Q law has a 3-year statute of limitations for this claim. DANA moved to dismiss, arguing that the statute of limitations prohibited PRIYA from pursuing her claim. PRIYA argued that State Q's statute of limitations is procedural and does not apply in federal court.

How should the court rule on DANA's motion to dismiss?

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Exam Essay Question 2

PABLO resides in State A and loves fancy cars. One day PABLO was flipping through “Car Bro” magazine when he saw an ad that the first ever self-driving car— “the Swan”—was now available for purchase! He had to have one!

“The Swan” was designed by SUNFLOWER MOTORS, which is incorporated in the country of Westeros. The company has its headquarters office in the capital city of King’s Landing, which is also where their cars are designed and manufactured. Usually, SUNFLOWER only does business in their local region. But, due to the current war in that country, the President and Chief Engineering Officer of SUNFLOWER left Westeros and have been running the company from a temporary office space in State A for the past year. Under the direction of the President and Chief Engineering Officer, the rest of the team stayed behind in King’s Landing and completed the process of designing and testing the Swan. Knowing that war conditions prohibited them from manufacturing and selling Swans in Westeros, the President and Chief Engineering Officer sent the design specifications to DRIVEN, INC., a boutique car manufacturer incorporated and doing business solely in State B, for production.

SUNFLOWER decided to launch the Swan in a very limited release, because they weren’t sure what the demand would be for a self-driving car. SUNFLOWER and DRIVEN entered into an agreement that DRIVEN would only make 300 Swans, and that all 300 vehicles would be sold out of DRIVEN’S showroom in State B. SUNFLOWER and DRIVEN promoted the Swan only with ads in “Car Bro” magazine. “Car Bro” is a hobby magazine with millions of subscribers throughout the United States.

PABLO took a bus to the showroom in State B and purchased a Swan. Road conditions on the ride home were stormy, and the Swan veered off the road into a ditch, causing injuries to PABLO. The accident occurred in State A.

PABLO filed a complaint in U.S. District Court for the Central District of State A, alleging claims against SUNFLOWER for defective design, and against DRIVEN for manufacturing defects. PABLO hired a process server who served both the President of SUNFLOWER and the CEO of DRIVEN while the two were having a meeting at DRIVEN’s office in State B. In their first timely response to the complaint, both SUNFLOWER and DRIVEN moved to dismiss for lack of personal jurisdiction.

Does the court in State A have personal jurisdiction over:

1. SUNFLOWER MOTORS? Discuss.
2. DRIVEN, INC.? Discuss.

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Exam Essay Question 3

PATTY and PENNY are college students at State X university and rent an apartment together. One night their neighbor, Daniel, left a cheesy croissant in the toaster, causing a fire. PATTY was out with friends during the fire, but PENNY was in bed sleeping at the time and suffered injuries. Both roommates lost all of their belongings. Apparently, the fire spread particularly fast because Daniel had been living there for over 15 years and had books piled in every corner of the apartment.

After the fire, PATTY went to stay with her parents in the home she grew up in, on the other side of town. PENNY had to stay there too until finding a new apartment because her parents' house was further away, in State Y.

PATTY and PENNY consulted with an attorney and decided to sue DANIEL for their injuries in a State X court of general jurisdiction. PATTY sought \$15,000 for her lost property. PENNY sought \$15,000 for her lost property and \$70,000 for her injuries. They had DANIEL properly served at his new apartment, a few blocks away from where the fire had happened.

Two weeks after being served the complaint, DANIEL removed the case to federal court in the District of State X. The roommates filed a Motion to Remand the action to state court, arguing that the federal court lacked subject matter jurisdiction over their claims.

How should the district court rule on the roommates' motion to remand?

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**Civil Procedure I -SEC 1  
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**Question 1: Short-Answer Essays  
MODEL ANSWER**

**Part 1**

1. Service must be constitutional under Mullane and compliant with FRCP 4
2. Leaving summons and complaint with person of suitable age and discretion is not an option for serving a corporation, 4(h)
3. Actual service is not a cure for defective service (Mullane)
4. Plaintiff is not responsible for mishaps after service, like spilled soda (Mullane)
5. Could waive improper service defense if not raised in first responsive pleading, but D raised in first MTD
6. Service not proper, because not served personally on corporate officer

**Part 2**

1. Venue is proper where any D resides if all Ds reside in same state
  - a. Here not all Ds reside in same state
2. Venue is proper where cause of action arose
  - a. Accident was in E.D. Cal., not N.D. Cal.
3. Venue is not proper
4. Court can dismiss

**Part 3**

1. Erie rule: must apply law of the forum state
2. SOL is substantive law, not procedural (York, Outcome Determination Test)
3. MTD should be granted

**Question 2**  
**MODEL ANSWER**

- I. PJ over SUNFLOWER
  - a. No Traditional Bases Apply
    - i. Domicile = No (incorp and headquartered in Westeros, only temporary office in State A)
    - ii. No facts for consent.
    - iii. No waiver. Raised PJ defense in initial response.
    - iv. SUNFLOWER 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. This case is like Perkins, running the company from the forum state
      - 2. Contacts are continuous and systematic. 2 officers are running the company while physically present and renting an office space in the forum state.
      - 3. General PJ likely applies. SUNFLOWER can be sued on any claims whether or not they arise out of or relate to SUNFLOWER's contacts with State A.
    - ii. Specific PJ: claim arises out of or relates to the contacts + purposeful availment + fairness
      - 1. SUNFLOWER'S contacts with state A are renting an office space => claim does not arise out of or relate
      - 2. PA: SUNFLOWER didn't market the Swan in State A. Nationwide marketing is not directly targeting the forum state.
      - 3. Specific PJ doesn't seem to fit because there's a relatedness issue, but General PJ works
- II. PJ over DRIVEN
  - a. No Traditional Bases
    - i. Domicile in State B
    - 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 A. Nationwide marketing is not directly targeting the forum state. Knowing that a car will be driven to other states, foreseeability, is not enough (WWVV v. Woodson).
      - 2. Fairness: Burden on D is significant because they have no contacts, evidence is all in State B and Westeros, but State A has a strong interest in protecting its residents from dangerous cars
      - 3. Because no PA, specific PJ is likely not available

### Q3 MODEL ANSWER

#### Motion to Remand

- I. Penny v. Daniel
  - a. No Fed Q
  - b. Diversity
    - i. Yes diversity of citizenship
      1. Penny Domicile = Y
      2. Daniel Domicile = X
    - ii. AIC
      1. Penny's claims aggregate to 85k
    - iii. Yes original diversity SMJ
  - c. BUT AT HOME D CANNOT REMOVE
  - d. Remand GRANTED for Penny
- II. Patty v. Daniel
  - a. No Fed Q
  - b. Diversity
    - i. No diversity of citizenship
      1. Patty Domicile = X
      2. Daniel Domicile = X
    - ii. AIC
      1. Only 15k
      2. Cannot aggregate with Penny, individual injuries
  - c. Supplemental JD?
    - i. Not available if it would destroy diversity
  - d. AT HOME D CANNOT REMOVE
  - e. Remand GRANTED for Patty

96100

1)

Mullane - 1515  
R4 + R12 - 17/18.3

32

Part 1

Rule: Service of process should be conducted in the manner most reasonably calculated to provide actual notice to the defending party. For a corporation, service can be effected on any of the corporate officers, any high level managing manage, or any person authorized to accept service on behalf of the corporation. ✓

Analysis: Here, the process server followed proper procedure in hand delivering the summons. The process server was not wrong to effect service at the CEO and President's personal residence. However, the process server improperly gave the documents to the CEO's spouse. When serving an individual, this would be proper, because a process server can leave the summons and complaint with any person of suitable age and discretion who resides at the individual's residence, even if that person is not a party to the lawsuit. Thus, if the CEO was being sued in a personal capacity, service here would be proper. However, because the lawsuit is against Driftwood Inc., as a corporate entity, and not the CEO personally, the process server needed to personally serve the CEO for service to be proper.

yes

Further, although the CEO did end up with actual notice of the lawsuit, because he noticed the documents in the trash, this does not make service proper. Actual notice does not cure defective service of process, thus, despite the fact that the CEO saw the papers and gave the to the corporate lawyer, the lawyer properly moved to dismiss based on insufficient service of process, because the CEO's spouse is not an agent authorized to accept service.

incorrect

Conclusion: The court should grant Driftwood's motion to dismiss for insufficient service of process, without prejudice.



Part 2

Rule: Venue refers to the geographical location where the court sits. Venue is proper in either in the district where a substantial portion of the events giving rise to the action occurred, or within any district where at least one defendant resides, so long as all defendants are from the same state, so long as the court has proper personal (PJ) and subject matter jurisdiction (SMJ). If no venue is proper, the plaintiff can sue in any district that has PJ over the defendants.

per fed

Analysis: Here, venue is improper in the Northern District of California. It is likely that CA is an appropriate forum, because the accident that gave rise to the lawsuit took place in Sacramento, which is within the state of CA. The facts are silent as to whether or not the federal court has proper SMJ, through federal question, however, the court does not have diversity jurisdiction, because Pam and Derek are both from CA which destroys diversity. For this analysis, I will assume that there is appropriate federal question and the Federal court can hear this matter. The facts indicate that the court has PJ over the defendants. Since only one defendant resides in CA, we cannot remove the district that he lives in based on that fact alone. However, the defendant that resides in CA happens to live in the district where a substantial portion of the events giving rise to the lawsuit occurred, which is the Eastern District of California. Thus, removal to the Eastern District of California is most likely to be the proper venue. This is because that is where a substantial portion of the events occurred, and because the court has proper PJ over the defendants.

ED CA

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transfer or dismissal

Conclusion: The court can dismiss for proper venue, because there is an alternative venue that can hear the claim and is more appropriate.

Part 3

Rule: When a federal court is hearing a case that has state law claims, they must apply the substantive state law, and the procedural federal law. If it is unclear whether the law is substantive or procedural, courts will analyze whether the law is (1) outcome determinative, (2) whether the parties are engaging in forum shopping, and (3) whether the federal court has a substantial interest in applying federal law. Through precedent, courts have established that statutes of limitations are substantive, and thus the state law regarding statutes of limitation are applicable.

Analysis: Here, the accident occurred 4 years prior to Priya (P) filing the lawsuit. Although the suit is filed in federal court, if the court is exercising jurisdiction over a state law claim, they must apply the substantive state law. While applying the outcome determination test and weighing the relevant factors a court could reasonably conclude that a statute of limitations is either procedural or substantive. In one sense, it is procedural, because it defines the methods and rule regarding how and when a claim can be brought to court; it is not necessarily an element of the claim that determines the outcome. On the other hand, it is substantive, because it is different for every claim. The statute of limitation for breach of contract is not the same as the statute of limitations for conversions, which makes it more akin to an element of a specific cause of action that determines its outcome. However, through case law, the Supreme Court has held that statutes of limitation are substantive and, thus, state law governs, regardless of the outcome of the test. Thus, because the state law statute of limitations is 3-years, and the lawsuit was not filed until 4 years after the accident, P's lawsuit is barred by the statute of limitations.

Conclusion: The court should grant Dana's motion to dismiss.

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1. Does the US District Court of State A have personal jurisdiction (PJ) over Sunflower Motors?

### Personal Jurisdiction (PJ)

PJ has to do with the court's authority to enter a judgement against a defendant.

#### Traditional Bases for PJ

A forum state can exercise PJ over defendants in certain situations that don't offend due process including if the defendant is domiciled in the forum state, if the defendant was physically present in the forum state when validly served with process, if the parties have consented to PJ through a Forum Selection Clause in their contract, or if a defendant waives PJ by failing to object to PJ in their initial answer.

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agree

For a corporate defendant, the corporation is domiciled in every state in which they are incorporated and in the state in which they run business operations (or their nerve center). Here, the facts state that Sunflower Motors (SM) is incorporated, headquartered and operates its design and manufacturing in the country of Westeros. SM's President and Chief Engineering Officer (CEO) have a temporary office in State A out of which they are running the company due to a current war in their country. They have been in State A for a year. Pablo (P) will argue that they are domiciled in State A since they are running the business from the state. SM will argue that they are only in the State temporarily and that they left the rest of their team in King's Landing to complete the process of designing and testing the Swan. Since SM intends on returning to Westeros after the war and they left their team to continue the business process, it is likely the court will find that SM is not domiciled in State A. Additionally, the facts state that SM objected to PJ in their first timely response, therefore, they did not waive PJ. **Thus, there is no traditional basis for PJ over SM.**

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## **In Personam Jurisdiction**

In personam jurisdiction requires that the exercise of jurisdiction be allowed by statute and be constitutionally fair.

### Long Arm Statute

In order for a court to exercise jurisdiction over an out of state defendant, the state must have a long arm statute that covers that defendant and exercising jurisdiction over that defendant must be constitutionally fair. Here, the facts do not state whether State A has a long arm statute so we will move forward assuming they do.

### Constitutional Requirements

The Supreme Court in *International Shoe* held that constitutional fairness for personal jurisdiction requires that the defendant have minimum contacts with the forum state and that exercising jurisdiction does not offend traditional notions of fair play and substantial justice. The constitution also requires that a defendant have proper notice and an opportunity to be heard. There are two types of in personam jurisdiction, general and specific, which depend on relatedness.

## **General Jurisdiction**

General Jurisdiction exists where the defendant's contacts with the forum state are so continuous and systematic that the defendant is essentially at home in the forum state and it is fair to exercise jurisdiction over them. Jurisdiction can be exercised even if the events giving rise to the claim did not occur in the forum state. Here, SM has a temporary office operating in State A and their President and CEO have temporarily relocated to State A to run business operations. Even though SM is incorporated, headquartered and their design and manufacturing process occur in Westeros, their presence in State A creates contacts that are continuous and systematic. They have an office running business

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20  
yes!  
P  
SM

operations that is based in State A where they are also benefiting from the privileges and protections of State A laws. P will argue that SM is essentially at home in State A because the design and manufacturing operations that are occurring in Westeros are under the responsibility of the President and CEO, who are now operating an office in State A. Additionally, the war conditions are prohibiting SM from manufacturing and selling Swans in Westeros which means that the President and CEO are completing business deals and with US based companies to produce their cars and are making deals to advertise and sell their cars in the US which further increase the amount of business operations that are being overseen and run out of State A. All of these business operations are happening out of State A and are systematic and continuous contacts that are necessary to keep their business running. The Supreme Court has held that foreign companies that are temporarily operating out of a US jurisdiction due to unfavorable conditions in their home country are essentially at home in that jurisdiction. **Thus, the court will likely find that SM is essentially at home in State A and that State A court has general jurisdiction over SM.**

### Alienage Jurisdiction

thus is SMS

Alienage jurisdiction exists when a dispute arises between a US resident and a foreign resident. Here, P is a resident of State A which is a US jurisdiction. SM is a resident of Westeros, a foreign country. **Thus, there is alienage jurisdiction.**

### Notice

Federal Rule 4 governs service of process and states that service to a corporation must include a copy of the summons and complaint and be completed by someone over the age of 18 years old that is not a party to the lawsuit. In order to validly serve a corporation, the process server must personally serve an officer, manager or authorized agent of the corporation. Here, P hired a process server who presumably is over the age of 18 and served a copy of the summons and complaint. They are not a party to the

lawsuit. The process server personally served the President of SM and the president qualifies as an officer, manager or authorized agent of the corporation. **Thus, process was validly served fulfilling the constitutional requirement.**

**Therefore, State A can exercise general jurisdiction over SM.**

Specific Jurisdiction, see below

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SM could argue that they have not established continuous and systematic contacts with State A. Thus, the court could consider their claim under specific jurisdiction. Here, SM has purposefully availed themselves of State A because they are running business operations out of the state which provides them with the privileges and protections of the state's laws. Running an office out of State A temporarily establishes minimum contacts, especially since the contacts could be found to be sufficient for general jurisdiction. Here, the injury could be argued to have arisen from SM's contacts with State A because it is because of the war in their country that they had to relocate and shift their manufacturing to the US since they knew the conditions would not allow them to manufacture in their country. All business operations that led to the selling of the car were done out of state A, including setting up business deals and sending design specifications to Driven, Inc. **Thus, there is specific jurisdiction over SM.**

INTERESTING!  
I'm not sure about  
relatedness here.

2. Does State A have personal jurisdiction over Driven, Inc.?

**Personal Jurisdiction (PJ), see supra.**

Traditional Bases for PJ, see supra.

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Here, Driven (D) filed a timely response objecting to PJ so there is no waiver and none of the other traditional bases for PJ apply.

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**In Personam Jurisdiction, see supra.**

Long Arm Statute, see supra.

Here, the facts don't state whether Driven is covered by State A's long arm statute so we will move forward assuming that it does.

Constitutional Requirements, see supra.

**General Jurisdiction, see supra.**

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Here, D is incorporated and runs its business operations solely from State B. The only contact that D has with state A is the business relationship they have with SM. Even within that business relationship, the agreement is for D to produce only 300 cars and to sell them out of D's State B showroom. Therefore, this business agreement with a business being operated out of State A is not a strong enough contact to be considered so continuous and systematic as to make it fair to exercise jurisdiction over D for acts that occurred outside of State B. **Thus, there is no general jurisdiction over D.**

**Specific Jurisdiction**

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Specific jurisdiction exists when a defendant's contacts with a forum state are single, isolated or infrequent but the defendant established minimum contacts and those contacts gave rise to the claim against the defendant. Minimum contacts requires that the defendant purposefully availed themselves of the forum state by targeting actions at the state such that the defendant benefited from the privileges and protections of the state's laws. Foreseeability that a potential plaintiff would be harmed upon placing their product in the stream of commerce on its own is not sufficient if the defendant did not take action to purposefully avail themselves of the forum state. Exercising specific jurisdiction over the defendant must be constitutionally fair.

### Foreseeability

Here, it is possible that D could have foreseen that by producing Swan cars and selling them out of their showroom in State B, a potential plaintiff from out of state would drive the car in another US state and be harmed. However, without actions directed at the forum state (discussed below), this foreseeability will not be sufficient to exercise PJ over them.

### Purposeful Availment

Purposeful availment means that the defendant took action to target the forum state and in doing so engaged in contacts where the defendant benefited from the state's privileges and protections. Here, D is incorporated and runs their business solely in State B. They have a business relationship with SM which is being temporarily run out of State A. The cars that are being produced by D are being sold out of their showroom in State B and, given that there are only 300 cars, this is a short-term operation. The cars are being advertised in Car Bro magazine which has millions of subscribers throughout the United States. P could argue that D has purposefully availed itself of State A by advertising through a magazine that has nationwide reach. In fact, P learned about the Swan through Car Bro magazine. However, this is a weak argument because the Supreme Court has

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found that corporations that advertise their product to the entire country are not purposefully availing themselves of any one state unless they take actions that are targeted at that state. Placing an ad in a nationwide magazine is not targeting any specific state. P will also argue that D purposefully availed themselves by selling models out of their showroom that potential plaintiffs had to drive to their home which could be out of state. However, again this is a weak argument because D did nothing to target the home states of those that come into State B to purchase a Swan. This could have been different if D delivered cars to buyers in their home state or operated repair facilities in various states. However, that is not the case here since D's operations are limited to State B. **Thus, there is likely no purposeful availment.**

### Fairness Factors

In addition to minimum contacts, the exercise of jurisdiction must be fair. Here, P will argue that his interests in having the case heard in State A are substantial because he resides in State A, the accident occurred in State A, he suffered his injuries and all records of his injuries are in State A. Additionally, all evidence and witnesses are in State A. D will argue that their interests are substantial because they operate only out of State B and is not prepared to defend itself in State A and does not have knowledge of State A laws or their judicial system since he isn't operating in that state. The interests of State A will also weigh towards fairness of jurisdiction because they have an interest in keeping their residents safe from defective products and keeping their roadways safe since this type of accident could have affected more than just P. **It is likely the court will find the fairness factors weigh towards fairness in exercising jurisdiction.**

Notice, see supra.

Also said in B re manufacturer, + witness re design

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↳ Having already concluded no PS, instead conclude here that the burden on D + scattered evidence outweighs P's interests + further shows exercise of PS would be unfair

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As above, the process server personally served the CEO of Driven who qualifies as an officer, manager or authorized agent. Thus, service of process is valid.

**Although the court will likely find the fairness factors are in favor of exercising jurisdiction, D did not purposefully avail themselves of State A and, therefore, State A will likely not exercise PJ over D.**

9/6/100

3)

Motion to Remand to State X Court

### **Subject Matter Jurisdiction**

Subject matter jurisdiction (SMJ) has to do with the court's authority to hear a certain type of claim. Federal courts can hear claims that arise out of either federal question jurisdiction or diversity jurisdiction.

#### Federal Question

20 Federal question jurisdiction exists when a claim arises from rights provided by a federal statute. Here, the claims brought by Patty and Penny are for personal injuries and property loss which are state tort law claims. **Thus, there is no federal question jurisdiction.**

#### Diversity Jurisdiction

Diversity jurisdiction requires (1) complete diversity and (2) a jurisdiction amount in controversy.

#### Complete Diversity

Complete diversity exists when no plaintiff is resident of the same state as any defendant. Residence is where a person is domiciled. A person is domiciled in the state of their permanent home in which they live and when they leave, they intent to return to. Here, Patty and Penny are renting an apartment in State X because they are university students. Generally, when someone moves to university, they are there for the time of their studies and may not intend to live there permanently or return once they graduate. Therefore, for

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diversity purposes, their residence will be considered their last permanent home where they lived before going to college.

Patty lived with her parents in the next town over from her university, so she is a resident of State X. Penny lived with her parents in State Y, therefore, she will be considered a State Y resident. It could be argued that she is not a State Y resident because even after the fire, she stayed with Patty at her parents house while looking for an apartment. However, the facts state that she was staying there because her parents house was further away in State Y, not because she is considered to permanently reside in State X. Thus, Penny will be considered a resident of State Y.

30 Daniel is a resident of State X since the facts state that he had been living in State X for 15 years. This indicates that Daniel considers State X his permanent home. Additionally, Daniel found a new apartment just a few blocks away from his previous apartment, also in State X.

Patty v. Daniel

30 Here, Patty and Daniel are both residents of State X. **Therefore, there is no complete diversity.**

Penny v. Daniel

Here, Penny is a resident of State Y and Daniel is a resident of State X. **Therefore, there is complete diversity.**

### Amount in controversy

For diversity jurisdiction, the amount in controversy must be more than \$75,000. The plaintiff must allege the amount of their injuries in good faith. A court cannot dismiss for

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not meeting the jurisdictional amount unless there is legal certainty that the plaintiff cannot recover the jurisdictional amount. The plaintiff must be given an opportunity to prove their claimed amount in controversy. This amount does not include interests or costs or any collateral damages that may be suffered.

Patty v. Daniel

Here, Patty is seeking \$15,000 for lost property. **This amount does not meet the jurisdictional amount in controversy requirement.**

Penny v. Daniel

Penny is seeking \$15,000 for lost property and \$70,000 for her injuries since she was asleep when the fire occurred and was injured. Together she is seeking \$85,000 which does meet the jurisdictional amount requirement. There is not indication that she is alleging these amounts in bad faith or that there is legal certainty she can't recover the amount claimed, **thus she meets the amount in controversy requirement.**

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### Aggregation of Claims

Claims may be able to be aggregated in order to meet the jurisdictional amount in controversy. Where there are two or more plaintiffs filing a case against a single defendant, their claims must share a common interest in order to be aggregated. Here, Patty and Penny's injuries are for personal losses of property and personal injuries. Their claims do not have a shared interest. **Therefore, their claims cannot be aggregated.**

blatant

yes!

**Thus, Penny's claims do meet the requirements for diversity jurisdiction. Patty's claims do not meet the requirements for diversity jurisdiction on their own,**

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however they could still be heard in federal court if the federal court can exercise supplemental jurisdiction over her claim.

### Supplemental Jurisdiction

A court can exercise supplemental jurisdiction over a claim that does not meet federal question or diversity jurisdiction requirements on its own if the claim arises from the same core events or occurrences as a claim that does have original jurisdiction.

Supplemental jurisdiction cannot be exercised if doing so would defeat complete diversity. Here, Patty and Penny's claims arise from shared core events since their injuries arose from the fire that was set to the apartment that they shared together. However, Daniel is a resident of State X and adding Patty to the claim would destroy complete diversity because she is also a resident of State X. **Thus, the federal court cannot exercise supplemental jurisdiction over Patty's claims.** *excellent*

**Therefore, the federal court should deny Penny's motion to remand since it can exercise diversity jurisdiction over her claims. The federal court should grant Patty's motion to remand to state court since the federal court does not have subject matter jurisdiction over her claims.** *but in-state D*

### Removal to federal court

Only a defendant can remove to federal court. The defendant must file to remove to federal court within 30 days of receiving notice. In federal claims based in diversity jurisdiction, an in-state defendant cannot remove to federal court since there is not danger of bias against an out of state defendant. Here, the facts state that Daniel (an in state D)

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did remove, therefore the court can exercise discretion to dismiss or transfer to a proper venue if it is in the interest of justice.

*In situation of improper removal, court would just remand to state ct.*

**END OF EXAM**

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