

KERN COUNTY COLLEGE OF LAW

Civil Procedure

Midterm Examination

Fall 2019

Professor L. Peake

INSTRUCTIONS:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

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QUESTION 1

Grant My Wishes, Inc., a California corporation with its office in Bakersfield, California, decided to go to Las Vegas to watch a band, Summit Grove, play a show. Brie, the singer/songwriter for Grant My Wishes, wanted to talk to Summit Grove while there about their bands possibly doing shows together in Los Angeles. Brie had previously sent emails to Summit Grove using Grant My Wishes computer server in Bakersfield discussing the music business. Grant My Wishes had a website that was viewed internationally, with some of the streaming of Grant My Wishes songs being done in Nevada. While driving the band's van into Las Vegas, lead guitarist Jordan, a Bakersfield resident, ran into a pedestrian.

Pedestrian, a Nevada resident who was planning a permanent move to Los Angeles in conjunction with a job transfer, filed a suit in Clarke County, Nevada state court for negligent operation of a motor vehicle against defendant Jordan, and included a cause of action against defendant Grant My Wishes, Inc. for negligently entrusting the operation of the van to Jordan. Brie (as president of Grant My Wishes, Inc.) and Jordan were both personally served with summons and complaint in Bakersfield. Nevada had a long arm statute that as broadly as legally possible provided for imposition of personal jurisdiction in all circumstances consistent with due process.

Both Grant My Wishes, Inc. and Jordan have filed motions to remove the Nevada suit to the Eastern District Federal Court in Fresno and concurrent motions in Nevada state court to quash service of process of the suit for lack of personal jurisdiction.

How should the Court rule on (1) Motions to remove the Nevada state court suit to Federal Court to the Eastern District Federal Court in Fresno; and (2) Motions to quash service of process for lack of personal jurisdiction as to each of the defendants?

QUESTION 2

Eighteen year old Kandis, a resident of State A, secured a medical marijuana card from Doctor CBD, Inc., a medical facility located in State B that advertised on a nationwide website that it would provide such cards for \$100 and a telephonic "examination". Kandis ordered the card on line and received the card without having the examination. State A initially paid for the card and medication through Kandis' State funded health insurance, until State A cancelled all of her health insurance coverage when Kandis could not provide proof of the examination having taken place. State A had enacted a statute allowing health insurance benefits to be cancelled without a hearing when State A's health insurance administrative personnel suspected possible fraud by one of its health insurance recipients, such as Kandis.

Kandis filed suit against State A in Federal District Court for violation of her 14th Amendment rights for cancellation of her health insurance, which Kandis needed for her chronic pain syndrome. In the same Federal Court complaint, she also sued Doctor CBD, Inc. for medical negligence and breach of contract. Kandis served both State A and Doctor CBD, Inc. consistent with the provisions of FRCP 4. State A has a long arm statute allowing suits arising out of negligence which takes place in State A.

Doctor CBD moved to dismiss the suit for lack of subject matter jurisdiction and lack of in personal jurisdiction. State A denies any violation of Kandis' 14th Amendment rights.

Should Doctor CBD prevail on its motions?

Should State A prevail on its denial of Kandis' 14th Amendment rights?

QUESTION 3

Defendant drug company Drugs R Us, Inc., incorporated in State A with its home office and plant in State B, retained a doctor located in State B to review Drugs R Us' falsified research data and prepare a video for nationwide on line viewing extolling the safety of Drugs R Us' CBD product line which would be made available over the counter without a doctor's prescription. Doctor glanced at the falsified data but did not attempt to determine if it was accurate before Doctor wrote the script and filmed the video, which he then sent to Drugs R Us for nationwide release, with Doctor excited about the national recognition he'd receive.

Kandis, suffering from chronic pain syndrome, saw the video while at her home in State C. Relying on Doctor's video, she purchased several of the CBD products and her chronic pain symptomology was exacerbated to the point that she required increased prescription medications.

Kandis has filed suit in her local State superior court of general jurisdiction. She sued Drugs R Us for product liability and fraud, and Doctor for fraud. She served both defendants pursuant to and consistent with State C's statute authorizing service of summons and complaint by serving Drugs R Us, Inc. by registered mail, return receipt requested, and serving Doctor by having her process server leave a copy of the summons and complaint on the windshield of Doctor's Toyota Prius and taping a copy to Doctor's office window, with the process server yelling at Doctor through the window, "You've been served"...to which Doctor yelled back, "No, I haven't."

Both Doctor and Drugs R Us, Inc. have now filed motions to dismiss the lawsuit for lack of personal jurisdiction. How should the State court rule as to each defendant's motion?

CIVIL PROCEDURE-ANSWER- FALL 2019-L. Peake-KCCL

QUESTION 1

Initially, review will be to see how students organize the order in which they address issues, consistent with class discussions on that subject.

Preferably, students will address issue of personal jurisdiction as to each defendant, followed by subject matter jurisdiction, and then removal issue.

Next, review will be to see how students have delineated Issue, Rule, Analysis and Conclusion, using headings and paragraphing effectively consistent with class discussions to present to the grader a clear and concise work product that shows that they see the issues and sub issues, know the applicable rules, analyze the relevant facts that apply to those rules, and then set forth a short, to the point conclusion that answers the issue posed.

PERSONAL JURISDICTION OF THE STATE COURT OVER JORDAN RULE:

Personal jurisdiction may be imposed upon an individual consistent with due process if suit is filed against the individual defendant where such individual is domiciled; consents to service; or is served with process in the forum state (absent fraud in inducing the individual to come into the forum state for purposes of service). PJ may also be imposed consistent with a Constitutionally enacted long arm statute.

ANALYSIS SUMMARY/OUTLINE:

Here, Jordan is not domiciled in Nevada, did not consent to PJ in Nevada, and was not served in Nevada.

However, Nevada has a Constitutionally enacted LAS and Jordan was in Nevada operating a vehicle, arguably benefiting from the use of Nevada's roads and state resources, and Jordan would reasonably anticipate that his operating the van in Nevada might result in his being sued in Nevada.

The scope of the LAS would extend to operation of the van by Jordan. Nevada would have a legitimate state interest in having auto accidents occurring in its state decided in Nevada.

Jordan would argue that he was a California citizen; that he did not consent to personal jurisdiction in Nevada, either expressly nor impliedly; that he was not served with summons and complaint in Nevada.

Jordan would further argue that due process would not fairly require him to travel to Nevada from California to answer for a single auto accident occurring when he was not engaged in purposeful availment of the benefits of engaging in any business activity in Nevada: i.e., he was only a musician driving a vehicle to see another band play.

CONCLUSION:

More likely than not, having been the driver of a vehicle who hit a pedestrian in Nevada, Nevada's long arm statute would-consistent with due process-allow Nevada state court to impose personal jurisdiction upon Jordan. (Hess v Pawloski).

PERSONAL JURISDICTION ON GRANT MY WISHES, INC. RULE:

(See above: in addition, a corporation is domiciled where it is incorporated and the state in which it holds its principal place of business...Goodyear Dunlop v Brown...and engages in systematic and continuous activity).

ANALYSIS OUTLINE/SUMMARY:

This analysis is intended to challenge the student on application of the facts to Internet use and its interface with due process. Where do emails exist? With the server? On the "Cloud"?

No where? Also, to see if students are carefully considering the concept of "purposeful availment": here, GMW, Inc. is in Nevada to watch another band play and to hopefully talk to another band while there about doing shows in Los Angeles, not Nevada. The facts do not state that GMW is looking to avail itself of any business opportunity in Nevada...so the facts are intended to elicit an argument both pro and con as to whether personal jurisdiction can be imposed on GMW in Nevada state court based upon minimum contacts.

Also, students should discuss additional GMW minimum contacts facts: e.g., their music being downloaded in Nevada in conjunction with a nationwide (international) streaming from GMW's website. This would appropriately be addressed by students as not indicating purposeful availment directed to Nevada

specifically (or even to a region of the United States). *Snowey v Harrah's Entertainment*. Students may also analogize GMW's Internet presentation of their songs as having placed a product into the stream of commerce (*Asahi Metal v Superior Court*), while noting that the downloading of GMW's songs on the Internet were not related to the subject auto v pedestrian accident.

CONCLUSION:

Students could conclude either way as to whether the Nevada state court had personal jurisdiction over GMW. What I am significantly interested in is how they handle whatever conclusion they come to when addressing the issue of subject matter jurisdiction/diversity jurisdiction per class discussions on organization of essay exam answers.

SUBJECT MATTER JURISDICTION MOTION TO DISMISS

DOES THE FEDERAL COURT HAVE SUBJECT MATTER JURISDICTION OVER PLAINTIFF'S SUIT FOR BODILY INJURIES?

RULE:

Diversity of citizenship provides subject matter jurisdiction (SMJ) if the plaintiff's complaint, in good faith, asserts a right of recovery in excess of \$75,000. SMJ may potentially be based upon a Federal claim.

ANALYSIS SUMMARY/OUTLINE:

Here, there is no assertion of a Federal right, nor facts establishing a good faith allegation in Plaintiff pedestrian's suit of a right of recovery in excess of \$75,000. Students may argue that the court should attempt to assess, where the amount has not been asserted, what the value of plaintiff's claim is (analogous to equitable relief) where a state court does not require (or in California, even allow) the amount sought in a bodily injury suit to be set forth in the complaint.

The exam question on this issue is seeking a discussion by the student as to the factors establishing diversity jurisdiction: Are both defendants diverse in citizenship from the Nevada domiciled Plaintiff? The plaintiff intends to move to California-however, students should note that the domicile of the parties is based upon the time of filing of suit.

I am looking for students to address the potential conclusion that GMW was

potentially subject to personal jurisdiction in Nevada, but that for diversity jurisdiction analysis, GMW was incorporated in California and had its principal place of business "nerve center" in California (Bakersfield).

CONCLUSION:

I would be looking for a short statement of no more than one or two sentences as to whether SMJ by way of diversity jurisdiction was present, that no Federal question SMJ existed, and whether it was more likely than not that Federal Court would grant the defendants' motions to dismiss for lack of SMJ.

REMOVAL MOTIONS

SHOULD THE FEDERAL COURT GRANT THE MOTIONS TO REMOVE THE NEVADA STATE COURT SUIT TO FEDERAL COURT IN CALIFORNIA?

RULE:

If all defendants join in the removal request, removal of a State court action may be made to a Federal court if the Federal court has SMJ and the matter is removed to the Federal district court whose territory encompasses the involved State court. If removal is based upon diversity, Removal cannot be had if any defendant is a citizen of the forum state to which the case is sought to be removed.

ANALYSIS OUTLINE/SUMMARY:

Defendants' motion to removal analysis should have students pointing out that the motion was filed in the wrong Federal District Court...e.g., Eastern District Court in Fresno, California, rather than District Court in Nevada, and should be denied on that basis alone.

The student's analysis should also discuss the issue of subject matter jurisdiction and the question as to whether there is diversity jurisdiction in Federal court in California.

That discussion by the student should include the issue of both GMW and Jordan being domiciled in California...the state to which the case is sought to be removed.

Students might note that separate motions have been brought for removal, rather than one defendant bringing the motion to remove and the other defendant joining in the request, and discuss whether separate removal motions should serve as a joinder in removal from Nevada State court to Federal court, albeit in California's

Eastern District.

Students might also note that a motion for removal may be considered a general appearance and constitute a waiver of a claim of lack of personal jurisdiction.

CONCLUSION:

It is anticipated that students will conclude that a motion to remove the Nevada State court suit to Federal District court in Fresno, California should be denied.

Answer - QUESTION 2

Question Number One was intended to focus upon students' understanding of due process considerations to imposition of personal jurisdiction by State courts on out of state defendants (both individual and corporate) and conditions for Federal court removal of State courts.

Question Number Two is intended to focus upon students' understanding of due process considerations on the right to be heard and personal and subject matter jurisdiction in Federal court.

SUBJECT MATTER JURISDICTION OVER DOCTOR CBD, INC.

RULE:

Federal courts have subject matter jurisdiction over suits concerning Federally protected interests, including those established by the Constitution, Federal statutory enactments and Federal Common Law, as well as diversity jurisdiction over suits with a good faith allegation of damages over \$75,000. Federal courts also have discretionary supplemental jurisdiction over State law claims that derive from a common nucleus of operative facts as does the claim(s) which provide Federal SMJ to the suit.

ANALYSIS SUMMARY/OUTLINE:

Plaintiff Kandis has filed a Federal court action against State A for violation of her 14th Amendment rights to due process for revocation of her claimed vested entitlement to health insurance, and included in the same complaint two state court causes of action against Doctor CBD, Inc. ("Doctor") for medical negligence and breach of contract for failing to provide her with a medical "examination" telephonically.

The student would be expected to note in responding to this issue of SMJ as to Doctor that the complaint invokes SMJ over State A for the 14th Amendment violation (Federal question), but that SMJ over Doctor would need to be predicated upon diversity jurisdiction, if DJ lies.

The analysis would then be expected to discuss the factors for finding diversity jurisdiction for the defendant corporation (Doctor): i.e., Doctor is located in State

B, but engaged in conduct that caused harm in State A that Doctor engaged in within State B...but that the fact pattern may not elicit sufficient information to conclude that Doctor, for DJ analysis, was domiciled in State A. 28 USC 1332: principal place of business; State of incorporation).

Additionally, students would note that the amount in controversy is not set forth in the fact pattern, thus speaking against finding DJ exists to establish SMJ as to Doctor.

Primarily, the questions is intended to evoke a discussion of supplemental jurisdiction in Federal court over PlaintiffKandis' claims against Doctor.

SUPPLEMENTAL JURISDICTION AS TO DOCTOR, INC.

RULE:

Supplemental jurisdiction lies at the discretion of the Federal court over state law claims that derive from a common nucleus of operative fact such that a plaintiff would generally try the claims in one lawsuit. *United Mine Workers v Gibbs*.

ANALYSIS:

Here, students would be expected to discuss the issue of "common nucleus of operative fact" as between the State's revocation of Kandis' health insurance due to Doctor's failure to provide the medical examination and Kandis' suit against Doctor for breach of contract and negligence for failure to provide the medical examination.

This is intentionally intended to be a tough call: while there is a "common nucleus" arguably present, the Federal vs. State causes of action involve nearly totally different element of proof. The students' discussion would be examined for reference to whether the suits would typically be tried together (suit against the State for 14th Amendment violation COULD be tried separately from State court suit against Doctor).

CONCLUSION:

The student's conclusion would likely be that the Federal court should not exercise its discretion to hear the State court causes of action against Doctor but should dismiss Doctor from the Federal court suit for Kandis to file her suit against Doctor in State court.

(Intentionally omitted from the fact pattern was a further question in order to not make Question Two too long was the issue as to whether State court A would have IPJ OVER Doctor should the Federal court elect not to exercise supplemental jurisdiction over the two causes of action...negligence, breach of contract...Kandis filed against Doctor).

PERSONAL JURISDICTION OVER DOCTOR

RULE:

Personal jurisdiction over parties in Federal court may be obtained through compliance with FRCP 4.

ANALYSIS:

The fact pattern states that Doctor was served with summons and complaint consistent with the provisions of FRCP 4.

This issue is intended to see if the students recognize the FRCP 4 has been determined by the Federal courts to be consistent with due process and that as Kandis' suit was filed in Federal court that the Federal rules of civil procedure...not State A's rules of civil procedure...apply to effectuate obtainment of personal jurisdiction over Doctor CBD, Inc. (Choice of law issue); and that State A's long arm statute does not come into play (absent a discretionary dismissal of the State court causes of action and Doctor as a defendant and new filing...in State court A...by Kandis of her suit against Doctor for medical negligence and breach of contract) based upon Doctor's contacts with State A and the SCOPE of State A's LAS: suits arising out of NEGLIGENCE (not breach of contract) which "take place" in State A, raising the issue of where a tort occurs: where the defendant's conduct took place, or where the defendant's conduct ultimately caused the harm to the plaintiff?

SHOULD STATE A PREVAIL ON ITS DENIAL OF KANDIS' 14th AM. CLAIM

RULE:

The Due Process Clause requires, at a minimum, that deprivation of life, liberty or property by adjudication is to be preceded by notice and opportunity for hearing appropriately to the nature of the case. *Mullane v Central Hanover Bank*; *Sniadach v Family Finance*; *Goldberg v Kelly*.

ANALYSIS SUMMARY/OUTLINE:

It is anticipated that students will discuss the concepts from the line of cases addressing due process rights to pre and post revocation of vested rights as against State actors...here, State A for revocation of health insurance held by Kandis.

The analysis would be expected to include discussion of the significance of the right to Kandis: health care needed for her chronic pain syndrome, and that here the revocation was NOT just as to CBD otc products, but for ALL of her medical care needs.

Further appropriate discussion would address that the revocation of benefits was done on SUSPECTED ... not established...fraud, and that the State A statute did not provide for either a pre OR post revocation hearing...let alone an evidentiary hearing with an established burden of proof. Mathews v Eldridge; Nelson v Colorado.

The importance of the benefit should be addressed by students in their answer. Goldberg v Kelly. Three "tests" should be addressed: (1) Impact on the individual; (2) Risk of mistake by the government if no hearing is provided; (3) Burden on the government to have to give a prehearing revocation versus a post hearing appeal.

CONCLUSION:

The conclusion should appropriately tend towards a finding that the State A statute as described violated Kandis' 14th Amendment due process rights.

ANSWER - QUESTION 3

Exam question number three focuses on due process application to State court exercise of our of state defendants under different fact scenarios as to each defendant, including concepts of minimum contacts and service of process.

PERSONAL JURISDICTION OF STATE C OVER DOCTOR:

RULE:

A state may exercise in personum jurisdiction over an individual when the individual is domiciled in the forum state; consents to jurisdiction; is served with summons and complaint while voluntarily in the forum state; or has sufficient minimum contacts to allow imposition of jurisdiction over the individual consistent with due process based upon a Long Arm Statute that passes Constitutional muster.

ANALYSIS:

Here, Doctor allegedly committed fraud while performing acts in State B that resulted in Plaintiff Kandis' harm in State C. Courts are divergent as to where a cause of action accrues for purposes of analyzing application of the minimum contacts rules to impose personal jurisdiction. Students should discuss this issue.

Doctor did not purposefully avail himself of the benefits of the forum state (State C) by directing his conduct towards State C...his video was for nationwide viewing...but Doctor may reasonably have anticipated that his video would potentially impact citizens in State C (and was intended to have an impact on State C's citizens, as well as those of all states). Students should discuss this issue and these facts in analyzing whether maintenance of suit against Doctor in State C would offend traditional notions of fair play and substantial justice.

No LAS is referenced in the facts (intentionally) to see how students address application of the concept of due process / *International Shoe v. Washington* in the absence of a described LAS including where, as here, the complained conduct was of fraud by Doctor.

CONCLUSION:

No particular conclusion need be expected: importance is that the analysis of the student support the conclusion reached here.

ANALYSIS OF PERSONAL JURISDICTION OVER DRUGS R US

RULE:

See above.

ANALYSIS:

Corporation is domiciled in State A. Issue for students is whether, assuming both whether a LAS is present in State Cor not present, there were sufficient minimum contacts of Corporation with State C to not offend traditional notice of fair play and substantial justice.

Corporation falsified safety research data sent it to Doctor in State B. There is no indication of contact by Corporation with forum state (State C) until a nationwide video was released.

This should have the student addressing where the cause of action accrued: in State A, where Corporation sent out the falsified research data? State B, where Corporation sent it to? All states (including State C), where the video was released? And purposeful availment issue. Triple Up LTD v Youku Tudou; Bez, LLC v. Ivanov; Advanced Tactical Ordnance v Real Action Paintball.

CONCLUSION:

No particular conclusion is preferred...just that the conclusion is supported by the student's analysis.

WAS SERVICE UPON DOCTOR CONSISTENT WITH DUE PROCESS

RULE:

Due process required notice be given of the existence of suit by a manner that is reasonably calculated to apprise the defendant of the pendency of the action and afford full opportunity to respond.

ANALYSIS OUTLINE/SUMMARY:

State A's statute is stated to have been followed by Plaintiff Kandis' process server leaving a copy of the summons and complaint on Doctor's car windshield and taping a copy to the Doctor's office window.

Students would be expected to discuss service of process by "posting" as to

whether it is compliant with due process. *Mullane v Central Hanover Bank; Jones v Flowfrs*. It is expected that students may note that the Doctor appears to have had actual knowledge of the service; and further to discuss whether State A's allowing for service by posting comports with due process...and, if not, that any service done in a manner authorized by state law but NOT consistent with due process would not yield IPJ over Doctor here.

CONCLUSION:

So long as supported by student's analysis, while likely posting of service (on car windshield; on office window) is not consistent with due process (nor by analagous application of FRCP 4), either conclusion reached by students is acceptable.

SERVICE OF PROCESS ON DRUGS R US

RULE:

See above.

ANALYSIS OUTLINE/SUMMARY

Drugs R Us is stated to have been served pursuant to State A's statute in a manner consistent with and authorized by State A: e.g., registered mail, return receipt requested.

This form of service, a student may note, is consistent with FRCP 4, and has been held sufficient to obtain jurisdiction over a defendant.

CONCLUSION:

It is anticipated that students will conclude that State A's service by return receipt of registered mail is consistent with due process to impart notice of suit on Drugs RUs.

1)

1. Motion to remove case from the Nevada state court to Federal Court to the Eastern District Federal Court in Fresno.

Removal

Removal allows defendants to remove or transfer a case from state to federal court if the claim could have originally been brought in federal court. Only defendants can remove and if there are multiple defendant's then they all must agree to remove. A case may only be removed to a federal district court embracing the state court in which the case was originally filed in. If the case is a diversity case, no removal is allowed if the defendant is a local defendant.

Here, the facts indicate that the negligent operation of a motor vehicle was filed in Clarke County, Nevada state court. Grant My Wishes, Inc. and Jordan have filed motions to remove to the Eastern District Federal Court in Fresno. Since the case was originally filed in Nevada the case can only be removed to a Federal District court embracing the Nevada state court. Although it appears both defendants have filed motion's concurrently, their petition for removal is not valid because they are seeking to remove to a different state.

The court will deny both Grant My Wishes, Inc and Jordan's petition for removal.

2. Motion to quash service of process for lack of personal jurisdiction

a. Grant My Wishes, Inc.

Personal Jurisdiction refers to a courts authority over a person. Personal jurisdiction must satisfy a state statute and due process under the Constitution.

Long Arm Statutes

Long arm statute is a state statute which is used to assert a state's jurisdiction over a non-resident. A federal court is bound to apply the long arm statute in which it sits. Long arm statutes will apply if the tortious acts occurred in the forum. A general long arm statute permits exercise of jurisdiction no matter where the harm occurred. A specific or laundry list long arm statute allows jurisdiction only if the harm occurred in the forum.

The facts indicate that Nevada had a long arm statute that as broadly as legally possible provided for imposition of personal jurisdiction in all circumstances consistent with due process.

Nevada has a general long arm statute in place.

Due Process

Assuming the court is authorized under Nevada's long arm statute to assert PJ over the defendant, we must now analyze whether the exercise of PJ over the defendants comport with requirements of Due Process clause.

Traditional Basis

Traditionally the court could only exercise authority over a defendant if 1) the defendant waived his right under the due process clause and consented to PJ 2) personally served with process within the state and process was not done by trickery or forced into a forum, and 3) if the defendant is domiciled in the state.

Consent:

The facts do not indicate that Grant My Wishes, Inc (GMWI) consented to PJ, this could be further evidenced by GMWI's motion for removal. There is no consent.

Personally Served:

GMWI was personally served with the summons and complaint in Bakersfield, California and not in Nevada. GMWI was not personally served in Nevada.

Domiciled:

GMWI is a Bakersfield, CA corporation. GMWI is not domiciled in Nevada.

Minimum Contacts

Under International Shoe, the court may exercise jurisdiction over a defendant who is not present the forum state only that D has minimum contacts with the forum state such that the maintenance of the suit doesnt offend traditional notions of fair play and substantial justice.

Purposeful Availment

The court must analyze if the D purposefully availed himself to the benefits and protections of the forum state. 1. purposeful or deliberate acts directed at the forum state. We must look at the frequency and regularity, the less frequent the more we focus on nature and quality. 2. foreseeable that d's activities make it likely that he be hauled into court there. 3. Relatedness between the contact and p's claim. specific- does the claim arise from d's contact with forum state. general- does p's claim not arise from d's contact with the forum state. If so, we need continuous, systematic, and substantial contacts with the forum.

Here, Brie, the singer/songwriter from GMWI is an agent of the corporation; therefore, GMWI is vicariously liable for her actions.

Emails to Summit Grove

Brie wrote emails to Summit Grove using GMWI's computer served in Bakersfield discussing music business. Further, GMWI had a website that was viewed internationally with some of the streaming of GMWI's songs being done in Nevada. GMWI's website is more of a passive action as their website provide listeners with the opportunity to get information as well an opportunity to listen to their music. The website is not soliciting business even though listeners are from Nevada. The website is not targeting the state of Nevada. Brie's emails however are soliciting business from Summit Grove, but the facts do not indicate that Summit Grove is from Nevada. If Summit Grove is from Nevada then there would be an interactive contact which they are seeking business.

GMWI would be hauled to court if doing business over the internet with Summit Grove but not for the website. However, none of these acts were the reason for the claim.

Travel to Las Vegas to watch Summit Grove

Brie and Jordan traveled to Las Vegas to solicit Summit Grove into playing concerts with them. In driving in the State of Nevada GMWI availed themselves to the laws of the road and protections of Nevada. In traveling in Nevada it is foreseeable that GMWI's activities make it likely for them to be hauled into court there. Here, GMWI was in Nevada when the injury occurred. There was a specific act and the claim arises from GMWI's contact with Nevada. Jordan hit the pedestrian in Nevada.

Fairness

Even if there were purposeful contacts the exercise of PJ can violate the due process clause if the assertion of PJ would be unfair and unreasonable. The following factors must be analyzed. 1. Burden on the Defendant (defendant must show that the burden is so gravely inconvenient that

defendant is at a severe disadvantage in the case) 2. interest of the forum state. If the plaintiff is a citizen of the forum, the state will always have an interest in providing a forum to the P. 3. P's interest. 4. The legal system's interest in efficiency, such as if all the witnesses and evidence are located in the state. 4. Ease of access to alternative forum.

Here, the injured Pedestrian is a citizen of Nevada. P's interest would be that the case is tried in Nevada because that is where the injury occurred and he does not currently live in California. Although Pedestrian intends to move to California at the time he filed the lawsuit he lived in California. GMWI must show it is gravely inconvenient for the case to be held in Nevada. However, The drive from Bakersfield to Nevada is only 4 hours away and is not a long commute if done in car, if they fly it is a shorter commute. Also, Nevada has an interest in providing Pedestrian a local forum to file their suit. Finally, all of the witnesses and evidence would most likely be in Nevada as that is where the accident occurred.

Balancing all of the factors the court will most likely rule that it would not be unfair to maintain the case in Nevada.

The Nevada court will have PJ over GMWI.

b. Jordan

Same analysis as GMWI. Jordan is a member of the band, but he is also liable as an individual. Jordan actually was driving when he ran into the pedestrian. GMWI will also be vicariously liable for Jordan's action.

The Nevada court will have PJ over Jordan.

Service of Process

Notice must be given that is reasonably calculated under all the circumstances to appraise the interested parties of the pendency of action. For process on an individual it can be through 1) personal service given to a defendant anywhere in the state personally, or substituted service with delivery to the usual place of abode and left with a competent person who resides there and is of suitable age and discretion. Service may also be done on a defendant's agents. For process of a corporation service can be done with 1) officer, 2) managing agent, 3) any other agent authorized by appointment or by law to receive process. Factors to consider are well integrated in the company and familiar with formalities.

GMWI was served through Brie. Brie is the president of the GMWI. As president, it can be inferred that Brie is well integrated in the company as she most likely has high decision making abilities. As president, it is most likely the case that she is familiar with the formalities of the operation and what to do in legal situations. Brie was properly served as she was personally served as an officer.

Jordan was personally served and therefore was properly served.

The court will most likely not grant GMWI and Jordan's motion to quash. The Nevada court will have PJ over GMWI and Jordan.

END OF EXAM

2)

Bonus: "Since the Magna Carta, there has been no justice in the legal system." - Prof. Peake.

Should the motion to dismiss based on lack of subject matter jurisdiction be sustained? A federal court must have original jurisdiction to hear a case or supplemental jurisdiction.

Is there supplemental jurisdiction? *Supplemental jurisdiction occurs when the case does not fall under federal original jurisdiction, but the case shares a common nucleus of events with a case that does fall under that jurisdiction that is already being heard.* Here, the claim about the 14th Amendment rights is a federal question that grants the case between Kandis and State A. The case regards the loss of medical insurance, which was used to pay for the doctor's prescription. The case will likely focus on the nature of that prescription and the use of the drugs provided to Kandis. It will also focus on the procedural aspects of the state law that do not involve the doctor at all. Although there is a common overlap of some facts, this is not sufficient to be a common nucleus of events. **The case between Kandis and the Doctor does not qualify for supplemental jurisdiction.**

Is there diversity jurisdiction? *Diversity jurisdiction requires complete diversity of the parties and damages exceeding \$75,000.* Here, Kandis resides in State A, which is a different jurisdiction than the Doctor in State B. There is complete diversity in the case between the Doctor and Kandis. Through the doctor's negligence, Kandis lost access to her health care. This means the damages extend beyond the doctor's care of Kandis and affect Kandis's medical care with all doctors. One could assert that the cost of the lost insurance (the damages) will total more than \$75,000 over the amount of time that Kandis is without coverage, which is presumably forever. **The case between Kandis and the Doctor qualifies for Diversity Jurisdiction.**

Is there federal question jurisdiction? *Original jurisdiction occurs where there is an issue of federal question. The federal question must be a primary claim to the case and not incidental or an anticipated defense.* Although Kandis is challenging the state statute under the 14th Amendment, she is not making that challenge in the case against the Doctor. The case against the doctor raises no federal questions or issues. **The case between Kandis and the Doctor does not qualify for federal question jurisdiction.**

The elements for diversity jurisdiction exist, which means the federal court has subject matter jurisdiction. **The case should not be dismissed based on lack of subject matter jurisdiction.**

Should the motion to dismiss based on lack of personal jurisdiction be sustained? *Where a state claims personal jurisdiction based on an unlimited long arm statute, the long arm statute must comport with the requirements of due process to be upheld. There must be minimum contacts that are fair and reasonable, and the defendant must be given notice that is sufficient to provide a meaningful opportunity to be heard.*

Did the Doctor have minimum contact with State a that were fair and reasonable? *Fair and reasonable minimum contacts are tested by three factors: relatedness, foreseeability, and personal availment. To be related, the minimum contacts must relate specifically to the cause of action. To satisfy foreseeability, a reasonable person should have foreseen that his or her actions would create a possible cause of action in the State. And to satisfy personal availment, one must have interacted with the forum in a way that benefitted from the state's protections and laws such that a reasonable person would have thought it possible to be sued within that forum.*

Did the Doctor personally avail himself of State A's resources?

Does the Doctor personally avail himself of State A's resources based on the websites content or management? *Where the website content is directly targeted toward a forum, that content may be sufficient to constitute personal availment. With business practices in general, the court will look toward whether the business specifically targeted the forum for business or if the forum happened to reach out to the business instead. The doctor maintains a website that accepts payments from locations nationwide. There is no mention whether the website content specifically targets State A, which means that State A cannot claim personal availment based on the website content. There is no mention about advertising practices and whether the doctor specifically paid for the website to be advertised in State A, which means that State A cannot claim personal availment based on advertising practices.*

Does the Doctor personally avail himself of State A's resources based on the interactivity test? *In the case of a website, the Supreme Court looks at interactivity as a sliding scale to determine whether the website subjects the owner to personal availment of a jurisdictions area. Although the website is interactive, the interactivity with the site is low. Residents of State A are not encouraged to comment or post. They do not upload photographs. They do not interview or receive treatment advice through chat. From all*

appearances, the only interaction is one of payment. Other than this, the site appears to be a static brochure of services that requires no interaction at all. **Under the Supreme Court interactivity test, this website does not meet the standard for minimum contacts in State A based on interactivity.**

Did the Doctor personally avail himself of State A's resources through a systematic and continuous series of contacts with State A through his business practices? Where a business's interactions with a forum are systematic and continuous, the personal availment standard is sufficiently met to grant the state general personal jurisdiction. When the interactions are not systematic and continuous, only specific personal jurisdiction may be obtained, which means that jurisdiction is only obtained through contacts related to the claim. The website is nationwide, which increases the likelihood that it systematically and continuously does business in State A. However, it is also possible that Kandis was the first patient from this forum. Without evidence regarding the amount of business conducted in State A or the nature of how long it has continued or how consistent it might be, there can be no claim that the Doctor has systematically and continuously availed himself of State A by simply making the site available in State A. **The Doctor does not meet the requirements of systematic and continuous contact through the website.**

Although the website is national, there is no evidence that the Doctor had minimum contacts with State A that would cause a reasonable person to expect to be sued there. The telephone consultation never actually occurred. There is no evidence that the doctor has other patients in State A through the website. Similarly, the website does not appear to target State A. **The doctor did not personally avail himself of State A's resources.**

Could the Doctor reasonably foresee being sued in State A? Where a person can reasonably foresee a lawsuit, it is more likely that the contact with that forum will satisfy the requirements of due process if the defendant was subjected to personal jurisdiction there. The nature of medicine is particularly litigious, which means that a medical website is more likely to anticipate a lawsuit than a website about bird watching. Lawyers and doctors require malpractice insurance because the likelihood of being sued by a patient or a client is high. Any doctor who prescribes medications over the internet could reasonably foresee being sued by a patient on the other end of that transaction. Here, however, the doctor is only providing a CBD card and is not providing regular care. The chance of being sued over a defective card is much less than the chance of being sued by regular ongoing care. The risk

to the patients was sufficiently low that it only required a single phone conversation. **Because the doctor was not performing ongoing treatment for any condition of a serious nature, the doctor can support an argument that he could not reasonably foresee a lawsuit for damages of this type.**

Did the Doctor have contacts with State A related to this cause of action? Where general jurisdiction does not exist through systematic and continuous contact, specific jurisdiction must arise through a series of contacts that specifically relate to the cause of action. Here, the doctor reviewed the order in State B. He wrote the prescription in State B. He hosted a website that was viewed in State A, and the credit card was entered in State A by a patient who he presented sales material to in State A. The doctor sent a CBD card to State A, but the doctor did not supply the regular prescription. The patient obtained the prescription from another source, the doctor only provided the CBD card. **The doctor had contact with the jurisdiction related to the transaction.**

Doctors are held to a higher standard than most because they hold our lives in their hands. However, this doctor worked in a field in which chances of injury to patients is extremely low. This risk was sufficiently low that he only required a phone conversation. In fact, the damage that occurred was not a result of the medication but a result of state legislation interacting with his business model in a case where the business model failed to operate in the usual protocol. This was not foreseeable, and nothing about the website or the doctors business raises to the standard of minimum contacts that would allow a fair and reasonable person to anticipate a lawsuit in State A. **The doctor did not have minimum contacts with State A that would make a lawsuit fair and reasonable.**

Did the doctor receive notice that provided a meaningful opportunity to be heard? Where a defendant receives notice by the methods prescribed by FRCP Rule 4, one may presume that the defendant has a meaningful opportunity to be heard. This is a rebuttable presumption. **Because the doctor received notice under FRCP 4 and no facts rebut the presumption of reasonable notice, the doctor is presumed to have a meaningful opportunity to be heard.**

Does the law that allows Kandis to be deprived of her medical insurance without a hearing comport with the requirements of due process? When reviewing a law's constitutionality, we look toward the analysis provided by the Sniadach line of cases. Under the 14th Amendment, no person may be denied property or liberty without a meaningful opportunity to be heard. After Sniadach, the court established a series of factors that are probative on the matter:

1. *Who is making the decision to seize the property?*
2. *Is the property being seized before or after a hearing?*
3. *What is the plaintiff required to provide to cause the seizure? Is a bond required? Is a sworn affidavit required?*
4. *Why is the item being seized? Is it to protect the item from damage or loss? Could the item be seized after trial without damage to the plaintiff?*
5. *Did the plaintiff have a prior ownership interest in the item being seized?*
6. *Does seizing the item place the person in a position of undue hardship while the matter is resolved?*

These will be analyzed briefly in turn:

1. Administrative personnel made the decision. This factor weighs against due process, since the State is the party making the seizure. Having an independent party make the decision like a magistrate would cause less injustice and lead toward a more fair process with less risk toward depriving citizens of due process.
2. The property is being seized before a hearing. This factor weighs against due process.
3. The State was not required to file an affidavit or post a bond. It only requires a suspicion of possible fraud. This weighs against due process.
4. The item is a right to benefits. It cannot be damaged or converted, but it can be used. In the amount of time that it takes to hold a hearing, it is not likely that Kandis could use it to rack up huge bills. The risk of loss to the state is low, which leans against a finding that the law complies with due process.
5. The State does not have an ownership interest in medical insurance. The interest is created and invested in the insured in the same document. When it is destroyed, it does not become owned by the State, it merely ceases to be. This factor weighs against the laws comportment with due process.
6. If the seizure only prevented Kandis from receiving CBD, the hardship on the defendant would be low. However, the seizure prevents Kandis from receiving all medical treatment. This is a severe hardship that again leans toward the statute being unlawful.

Based on the above factors, the law of State A does not comply with the requirements set forth under the US Constitution as analyzed by the Sniadach line of cases. **The State should not prevail in its denial of Kandis's rights to health insurance.**

END OF EXAM

3)

1) Doctor's motion to dismiss for lack of personal jurisdiction

Does local State C's superior court have have personal jurisdiction over Doctor who located in State B?

Personal Jurisdiction

Traditional basis (Pennoyer)

Personal jurisdiction grants the courts authority of a person that must satisfy state statute and constitutional due process, which are consent, defendant presence when served in the forum state, and domicile.

Consent

There is express and implied consent.

Here, express by contract does not apply because there's no express consent between Doctor, and Kandis. It would not be likely that Doctor would waive jurisdiction to defend a claim in another state.

As to implied consent by it is usually applicable to non-resident motorist case, which this case is not. Kandis claim is for fraud against Doctor.

Defendant presence when served in home state

The facts state Doctor was served by having a copy of the summons and complaint on its windshield to the Doctor's Toyota Prius. This method is posting and is a violation of due process because it does not import a party of reasonable notice. However, Kandis can argue that Doctor saw the summons and complaint and her server (presumably not a party to the action, at least 18 years old) yelled out that Doctor's been served.

However, a formal service should be required that would pass constitutional muster such as personal service or substituted service leaving a copy at Doctor's place of abode with and leaving a copy with a person of suitable age and discretion who lives there.

Therefore, service does is not satisfied under the traditional basis.

Domicile

Domicile for a natural person is the person's physical presence and intent to remain in the state indefinitely. For a corporation, domicile is the principle place of business and state it is incorporated.

Here, Doctor is located in State B and domicile would be in State B not of State C because Doctor's physical presence and intent to remain in the state B indefinitely.

Therefore, there is no domicile for Doctor in State C.

State C does not have personal jurisdiction of the Doctor under the traditional basis.

Modern (International Shoe)

Under modern, state's jurisdiction over a non-resident if maintenance of the suit does not offend traditional notion of fair play and substantial justice.

Contact

Purposeful availment and foreseeability

Here, Doctor is resident and domicile in State B and reviewed Drug R Us's (Drugs) falsified research data and prepared a video for nationwide online viewing extolling the safety of Drugs R US CBD produce. Doctor should reasonable know that its co-defendant/Drugs is made its service available to other state's resident and went it help filmed the video, it should be reasonably expected that others from other area, other state would view this video since video is easy accessible anywhere. The video is is not just a passive video for informational purposes only (passive website). Instead, it is a interactive video with intent to do business and Doctor has purposeful avail itself any forum state's resident who does business with Drugs. Doctors have to purposefully avail itself to use the protection and benefit of the forum state when it made products available to Kandis a State C resident and Doctor should be amendable for suit there.

There is a commercial nature of the video to do business with a forum state resident. By the business nature of this interactive video It is foreseeable that Doctor should be amendable to claims filed in State C. While Doctor will argue merely advertising is not enough to grant court the exercise of personal jurisdiction of the defendant. It must be advertisement couple with more such as sale

with forum state resident or business dealing with forum state resident, which Kandis saw the video while at her home in State C and suffered from purchasing the product.

This tortious act happened in Kandis home state.

Therefore contact is satisfy.

Relatedness

Specific jurisdiction refers to the plaintiff's claim arises out of the the defendant's contact with the forum state. Here, the product was sold to Kandis in State C. The injury happened in State C. Therefore plaintiff's claim arise out of Doctor's contact with Kandis in State C. When there is specific jurisdiction, only minimal contact is necessary, which is present.

Relatedness specific jurisdiction is satisfied.

General jurisdiction is used if specific jurisdiction is not met. General jurisdiction is when there's is not specific jurisdiction which requires continual, substantial, and systematic contact with the forum state. Since specific jurisdiction is satisfied, we no need to go through general jurisdiction scrutiny. However, there is continual contact when they made their video and product available and substantial and systemic due to it being their product.

Fairness

Fairness requires that the maintenance of the suit does not offend the traditional notice of fair play and substantial justice. Some consideration is defendant's gravely inconvenience, plaintiff's interest, legal system interest/judicial efficiency, and shared state substantial interest.

Here, Doctor is located in State B. There is some defendant's inconvenience, but the inconvenience must be gravely for the court to deny exercise personal jurisdiction on this basis alone. There's a higher plaintiff's interest in State C because Kandis is suffering from chronic pain and is unlikely as mobile to go out of state for a suit. The legal system interest is very strong in State C because the accident happened in State C and the location of witness and evidence will most likely be available there. State C has an interest in protecting its citizen from fraud and product safety. Kandis life is at issue and should will need to utilize medial and hospital in State C where she is located.

Therefore, fairness is satisfied.

State C has personal jurisdiction under modern basis.

Therefore, Doctor's motion to dismissal the lawsuit for lack of personal jurisdiction should be denied.

2) Drugs R Us Inc's (Drugs) motion to dismiss for lack of personal jurisdiction

Does local State C's superior court have have personal jurisdiction over Drugs who is incorporated in State A and office and plaintiff in State B?

Personal Jurisdiction

Traditional basis (Pennoyer)

Personal jurisdiction grants the courts authority of a person that must satisfy state statute and constitutional due process, which are consent, defendant presence when served in the forum state, and domicile.

Consent

There is express and implied consent.

Here, express by contract does not apply because there's no express consent between Drugs, and Kandis. It would not be likely that Drugs would waive jurisdiction to defend a claim in another state.

As to implied consent by it is usually applicable to non-resident motorist case, which this case is not. Kandis claim is for fraud against Drugs.

Defendant presence when served in home state

The facts state Drugs was served by registered mail, return receipt requested, of the copy of the summons and complaint according and consistent with State C's statute.

Service by mail would pass constitutional muster.

Therefore, service is satisfied under the traditional basis.

Domicile

Domicile for a natural person is the person's physical presence and intent to remain in the state indefinitely. For a corporation, domicile is the principle place of business and state it is incorporated.

Here, Drugs is incorporated in State A and its office and plant is in State B. A corporation's domicile is the place of incorporation (State A) and its principle place of business also known as its nerve center where decision are made. Here, the fact states State B is the office and plant, which does not appear to be its nerve center. Office usually is for general employee's to report to work and plant is where products are made. Therefore, Drugs's Domicile is State A.

Therefore, there is no domicile for Drugs in State C.

State C does not have personal jurisdiction of the Doctor under the traditional basis.

Modern (International Shoe)

Under modern, state's jurisdiction over a non-resident if maintenance of the suit does not offend traditional notion of fair play and substantial justice.

Contact

Purposeful availment and foreseeability

Here, Drugs is incorporated and domicile in State A and falsified research data and prepared a video for nationwide online viewing extolling the safety of Drugs R US CBD produce. Drugs should reasonable know its service available to other state's resident and in fact sold product to Kandic, a State C resident. It had to be shipped to her, so it would have known that she is from state C, not State B. It should reasonably expect that others from other area, other state would view this video since video is easy accessible anywhere. The video is is not just a passive video for informational purposes only (passive website). Instead, it is a interactive video with intent to do business and Drugs has purposeful avail itself any forum state's resident who does business with Drugs. Drugs have to purposefully avail itself to use the protection and benefit of the forum state when it made products available to Kandis a State C resident and Drugs should be amendable for suit there.

There is a commercial nature of the video to do business with a forum state resident. By the business nature of this interactive video It is foreseeable that Drugs should be amendable to claims filed in State C. While Drugs will argue merely advertising is not enough to grant court the exercise of personal jurisdiction of the defendant. It must be advertisement couple with more such as sale

with forum state resident or business dealing with forum state resident, which Kandis saw the video while at her home in State C and suffered from purchasing the product.

This tortious act happened in Kandis home state.

Therefore contact is satisfy.

Relatedness

Specific jurisdiction refers to the plaintiff's claim arises out of the the defendant's contact with the forum state. Here, the product was sold to Kandis in State C. The injury happened in State C. Therefore plaintiff's claim arise out of Drugs contact with Kandis in State C. When there is specific jurisdiction, only minimal contact is necessary, which is present.

Relatedness specific jurisdiction is satisfied.

General jurisdiction is used if specific jurisdiction is not met. General jurisdiction is when there's is not specific jurisdiction which requires continual, substantial, and systematic contact with the forum state. Since specific jurisdiction is satisfied, we no need to go through general jurisdiction scrutiny. However, there is continual contact when they made their video and product available and substantial and systemic due to it being their product.

Fairness

Fairness requires that the maintenance of the suit does not offend the traditional notice of fair play and substantial justice. Some consideration is defendant's gravely inconvenience, plaintiff's interest, legal system interest/judicial efficiency, and shared state substantial interest.

Here, Drugs is domicile in located in State A. There is some defendant's inconvenience, but the inconvenience must be gravely for the court to deny exercise personal jurisdiction on this basis alone. There's a higher plaintiff's interest in State C because Kandis is suffering from chronic pain and is unlikely as mobile to go out of state for a suit. The legal system interest is very strong in State C because the accident happened in State C and the location of witness and evidence will most likely be available there. State C has an interest in protecting its citizen from fraud and product safety. Kandis life is at issue and should will need to utilize medial and hospital in State C where she is located.

Therefore, fairness is satisfied.

State C has personal jurisdiction under modern basis.

Therefore, Drug's motion to dismissal the lawsuit for lack of personal jurisdiction should be denied.

END OF EXAM