

Exam Name: CivPro_LS1_(Kibel)_Final_F08
Instructor: Mr. Paul S. Kibel

1)

PART I (A)

Federal Subject matter jurisdiction allows a plaintiff to bring a claim in a federal court based on either federal question jurisdiction or diversity jurisdiction. The basis of subject matter jurisdiction is the U.S. Constitution, Article III, section 2, which allows the federal court to hear actions arising under the constitution, or federal statutes or treaties, and also allows for federal courts to hear actions between citizens of different states. Federal question jurisdiction is codified in 28 U.S.C. section 1331, and diversity jurisdiction is codified in 28 U.S.C. section 1332.

Diversity Jurisdiction

Because Hardluck's claim does not contain any claims arising under or involving federal law, in order for the district court to have subject matter jurisdiction over his claim, it must be based on diversity jurisdiction. In order to establish diversity jurisdiction, Hardluck must prove that there is complete diversity, and that his claim reaches the requisite amount in controversy.

Complete Diversity

In order to establish complete diversity, no defendant and no plaintiff may be citizens of the same state. If a plaintiff and a defendant are found to be citizens of the same state, we say that diversity is 'wrecked'. Hardluck is a citizen of Colorado, so Lucky Penny (LP) must be determined to be a citizen of a different state in order for there to be complete diversity. A corporation is deemed to be a citizen of the state in

which it was incorporated, and states in which it conducts business.

Courts use three different tests to determine the citizenship of a corporation. 1) The "nerve center" test, looks to where the decision making part of the corporation is situated; 2) the "corporate activities" test looks to where the majority of the corporation's actual business is conducted; and 3) the "total activity" test determines citizenship based on a combination of the nerve center and corporate activities tests.

Under the nerve center test, LP's citizenship would most likely be found to be in Colorado, as that's where it's corporate headquarters are located. Under the corporate activities test, LP's citizenship would probably be found to be in Wyoming, as that's the location of it's largest mine, and most of LP's employees work in its mines. Under the "total activity" test, citizenship would probably determined to be in Colorado, because both LP's corporate headquarters and one of its mines are situated there.

If the court chooses to adopt either the total activity test or the nerve center test, then it is likely that LP will be found to be a Colorado citizen and diversity will be wrecked. In that case, the court should grant LP's motion to dismiss based on lack of subject-matter jurisdiction.

Amount in Controversy

In the case that it pleases the court to adopt the corporate activity test, and the court finds that LP is a Wyoming citizen, therefore preserving diversity, then the court will have to analyze whether the amount in controversy requirement has been met. For a diversity action, the court requires that the minimum amount in controversy be \$75,000. The plaintiff's stated amount in controversy is based on a good-faith estimation of his damages. In this case, plaintiff will reach the requisite amount in controversy, as his compensation damages and punitive damages combine for a total of \$80,000. The court will allow the plaintiff to aggregate his damages against a defendant so long as they are

premised upon the same claim. Punitive damages may be aggregated to reach the amount in controversy where they are provided for by statute. Because Colorado law allows for punitive damages in cases of wrongful termination, plaintiff's use of punitive damages to meet the amount in controversy requirement is appropriate.

If the court should choose to rely on the corporate activities test and find that LP is a citizen of Wyoming, thereby preserving the diversity, then LP's motion to dismiss should be denied, as plaintiff has proven total diversity and has reached the minimum amount in controversy as provided by 28 USC section 1332;

PART I (B)

A defendant may chose to file a motion to dismiss based on forum non conveniens rather than for a change of venue in a case where the federal court does not provide for another venue that is amenable for transfer. Because the tenants of 28 USC 1404 require that the action might have been originally brought in that venue (meaning that venue had personal jurisdiction over the defendant), if there is no proper venue for the action, a motion to dismiss on forum non conveniens grounds might be appropriate.

The doctrine of forum non conveniens provides that an action may dismissed where the forum selected by the plaintiff is not convenient for the purposes of trial, based on the burden on potential witnesses or an undue burden on the defendant. A court may dismiss an action based on forum non conveniens grounds only where there is another proper forum where the action might be brought, and bringing the action in the other forum does not substantially deprive the plaintiff of an opportunity to have their claim adjudicated. In most instances, a plaintiff's choice of forum will not be disturbed, but a plaintiff may not choose a forum that is inconvenient for the defendant merely as a means of vexing or harassing the defendant. The decision for a motion to dismiss based

on forum non conveniens is meant to be made at the outset of trial, so as to avoid possible conflicts before they arise.

This may be the case where the circumstances underlying the claim took place in another country and it would be a burden on the court to have to wrangle with the possibility of having to use foreign law to adjudicate the matter. Also, in this case, the witnesses and the evidence might be located in another country. So long as hearing the case in the other country does not substantially deprive the plaintiff of a judicial remedy, the court may decide that deciding the action in another country is more appropriate.

PART 1 (C)

In the case of a lawsuit filed in Federal District court based on federal question jurisdiction where a plaintiff has included state law claims that arises from the same common nucleus of fact, the District Court is said to have supplemental, or pendant jurisdiction over plaintiff's state law claims. The rules in regards to supplemental jurisdiction are codified in 28 U.S.C. 1367.

28 U.S.C. 1367(c) provides four cases in which a federal district court may decline to hear the attached state claims:

- 1) where state claims provide a novel or complex question of state law;
- 2) where state law substantially predominates;
- 3) where all claims based on federal law have been dismissed; or
- 4) where exceptional circumstances are present.

In practice, it is rare that a Federal District Court will be able to dismiss supplemental state claims that are based on the same underlying facts as the federal claims. Courts have held that the exceptions listed in 28 U.S.C. 1367(c) are to be

narrowly construed so as to avoid piecemeal litigation.

PART II

In determining questions of vertical choice of law, that is, where, solely based on diversity, a claim is brought in a federal court and there is a conflict between federal law and state law, this court utilizes a determination based on two prongs. One prong, where there is a federal rule of procedure in direct collision with a state law, we use the Supreme Court's decision in *Hanna v. Plumer* as a guide. In *Hanna*, a state law required that in an action against an estate, the executor be personally served, while the federal rule of civil procedure stated that service could be satisfied in compliance with Federal Rule of Civil Procedure 4(e)(2)(?), which allows for process to be left at a defendant's domicile with another person domiciled there, as long as they are of reasonable age and competence. In *Hanna*, the court upheld service, even though it violated the state rule, as the matter was purely procedural. In Justice Scalia's rather sardonic decision, the court held that where there is a federal rule of civil procedure on point, that so long as the rule does not violate the U.S. Constitution or the tenants of the rules enabling act, by enlarging, diminishing, or modifying a substantive right, then the federal rule shall be upheld. The court found that the decision of *Erie* was founded on the basis of deterring forum shopping, and that the choice of federal court in this case had nothing to do with an attempt by plaintiff to avoid an adverse state law.

In this case, there is no Federal Rule in direct collision with the California Probate Code statute of limitations, so this court will rely on the other prong, based on the Supreme Court's progressive decisions on vertical choice of law in *Erie*, *York*, and *Byrd*.

In *Erie*, a man who was struck by a passing boxcar while walking on a path adjacent to the railroad tracks brought his claim in federal district court to avoid an

adverse Pennsylvania law that would have left him without remedy. In its decision, the Supreme Court overturned its ruling in *Swift v. Tyson*, interpreting state court common law to be considered 'law' under the Rules of Decision Act of the 1789 Judiciary Act, and therefore applicable to district court decisions. The district court's holding was largely meant to discourage the practice of forum shopping, whereby a plaintiff might bring his action to federal court to avoid the application of adverse state law. This decision has been codified in 28 U.S.C. 1657 - The Rules of Decision.

The next progression of vertical choice of law took place in *York v. Guarantee Trust*, where a plaintiff sought to bring his claim in federal court, because the state statute of limitations had expired. Here, the court upheld the state law barring plaintiff's claim. The court based its ruling on the foundation of an 'outcome determinative' test, by which a court should not choose to apply federal law to a case, brought in federal court solely on the basis of diversity, where it would lead to a substantially different outcome than an application of state law.

The third part of the test is from the Supreme Court's decision in *Byrd v. Bluebird*. Here, in a diversity action, state law called for the adjudication of plaintiff's workmen's comp claims by a judge sitting without a jury. The court decided to dismiss the state precedent, finding that a jury trial was so fundamental to the process of district court adjudication as to outweigh the substantial probability of a different outcome. The court established a rubric for determining whether state law should supercede, by which, if the law was substantive in nature ('bound up in the rights and obligations of the parties'), state law should be applied. At the other end of the spectrum, where the conflicting rule was purely procedural, the federal rule should be applied. And in the middle, an outcome determinative test a la *York* should be applied, albeit with a strong preference for federal rule.

This formulation has long been referred to in this courtroom as the "*Byrd* Spectrum, With a Balancing Test in the Middle," and it is to the application of this venerable test that we now turn our attention.

In the case at hand, the court will grant defendant's motion to dismiss. Although many of my learned colleagues in the District Court system have held that actions are timely unless there was an "inexcusable delay," I see no reason not to grant credence to a state rule that is obviously substantive. The preface to the California Probate Code states that the objective of the provision is to encourage prompt settlement of the estate, and to protect the assets of the heirs from potential third-party claims. Without this preface, the provision might be viewed as arbitrary, but in light of the preface, it is my opinion that the purpose of the provision is "bound up in the rights and obligations of the parties." The provision serves the clear purpose of protecting an estate from attenuated claims, and is in line with other statutory provisions promoting the efficiency of probate settlement.

Further more, the case at hand is substantially factually similar to *York*, and I would have much trepidation about casting aside all notions of stare decisis and ruling against a famous holding of the Supreme Court.

PART III

Having read parties' motion papers, it is the decision of this court to grant defendant's motion for summary judgment on the grounds that this court lacks personal jurisdiction over the defendant.

Our modern analysis of personal jurisdiction begins with the Supreme Court's 1945 decision of *International Shoe*. In *International Shoe*, the court established a two step approach for establishing personal jurisdiction over out-of-state defendants, relying

on the state long-arm statutes, which provide for jurisdiction over foreign defendants who are present or conduct business in the state. The first part of the test is a determination of whether minimum contacts exist. The second part of the test determines whether the court's exercise of personal jurisdiction comports with traditional notions of fair play and substantial justice. The court determined two basis for personal jurisdiction: general jurisdiction and specific jurisdiction. General jurisdiction is established when the defendant's contacts with the state are systematic and continuous. Personal jurisdiction is appropriate where the claim is related to the contacts, and may be appropriate where it is unrelated. In the case of specific jurisdiction, contacts are limited or isolated, and personal jurisdiction may be appropriate where the claim is related to the contacts, but is probably not appropriate where the claim is unrelated to the contacts.

Purposeful Availment and World Wide Volkswagen

The plaintiff argues that jurisdiction is appropriate because from discussions with Fruit basket, ORCHARD had knowledge that their apples were shipped and consumed in Georgia. The court finds this argument unconvincing. In *World Wide Volkswagen*, the Supreme Court held that mere foreseeability that a defendant's product was entering the stream of commerce was not enough to constitute a finding of personal jurisdiction. The court held that it must be found that defendants purposefully availed themselves of the protections and benefits of the state. This case is similar in that, though ORCHARD had knowledge that their products might end up being consumed in Georgia, they did not purposefully avail themselves of the protections and benefits of the state.

In *Asahi*, the court upheld this decision, finding that mere foreseeability was not enough to establish purposeful availment.

Minimum Contacts

In this case, George's claim against ORCHARD is likely falls into the realm of

specific jurisdiction. ORCHARD's contacts with the state of Georgia cannot be said to be systematic and continuous, as ORCHARD does not directly do business with Georgia, but rather distributes its fruit through Fruit Basket. ORCHARD does not advertise in Georgia, though they did send one of their employees there to attend a Peach Grower's conference. Even if a determination of minimum contacts cannot be based on ORCHARD's sales to Georgia, plaintiff argues that it may be based on ORCHARD's employee's attendance of the peach grower's conference.

The court thinks this relationship to be too attenuated to base a finding of personal jurisdiction. In *Helicopteros*, the Supreme Court found that where defendant's contacts with the forum state were limited/isolated, and the cause of action was unrelated to these contacts, jurisdiction was improper. I think that the circumstances of this case are substantially similar to those of *Helicopteros*. In this case, ORCHARD's employee's one-time visit to Georgia is a limited or isolated contact, and plaintiff's claim is totally unrelated to this visit. Even without the precedent of *Helicopteros*, it is apparent that *International Shoe's* holding would not warrant personal jurisdiction in this context.

Fair Play/Substantial Justice

This court is loathe to dismiss this action, as the court believes that were it not for lack of minimum contacts, personal jurisdiction would be appropriate, as it would serve traditional notions of fair play and substantial justice. The basis for analyzing whether the rather obtuse elements of the second prong of *International Shoe* are present is found in the 5 factors provided by the Supreme Court in its decision in *Asahi Metals*. The five 'Asahi' factors are 1) the plaintiff's interest in having the case adjudicated in the chosen forum; 2) the burden on the defendant; 3) the state's interest in adjudicating the case; 4) the interstate court's interest in judicial efficiency; and 5) the interstate judicial systems interest in furthering substantive policies.

In this case the plaintiff's interest is fairly strong, as it would be a burden to be forced to initiate separate actions against the two defendants, one in Georgia Court, and one in California Court, ostensibly. The burden on the defendant is not substantial, as modern day and technology facilitates easy interstate communication and travel. The state's interest in the case is substantial, as the court has an interest in protecting its citizens from out of state corporations who export harmful food products. The interstate court's interest is also served by keeping plaintiff's cases against Fruit Basket and ORCHARD together, as it is a waste of judicial resources to have two separate cases based on the same facts heard in different courts. It would also further interstate substantive policies by providing a basis for protection against harmful food imports.

Unfortunately, because the court in *World-Wide Volkswagen* established a sequenced, methodological approach to an application of international shoe, by which minimum contacts must be established before the court enters an analysis of whether jurisdiction comports with traditional notions of fair play and substantial justice, this court is forced to dismiss this action. Were it not for the requirement that the court's decision be consistent with the Supreme Court's finding, we should find that the state's interest in hearing the case outweighs our inability to establish that defendant had minimum contacts with the state.

Fortunately, if the harm truly lies with ORCHARD, Fruit Basket may file an indemnity suit against them, effectively tying them to the present action.

END OF EXAM