

Final Examination
Civil Procedure I – Sections LS1 & LSN
Professor Ted Kionka
Fall 2007
Suggested Or “Model” Answer

[**Note:** This problem is derived from *Bredberg v. Long*, 778 F.2d 1285 (8th Cir. 1985). You may wish to read this opinion, and also district court decisions at *Bredberg v. Long*, 1983 WL 2142 (D.Minn. Dec 31, 1983), and *Bredberg v. Long*, 1984 WL 49367 (D.Minn. Dec 12, 1984).]

1. Personal Jurisdiction

A. (8 points) In order for a federal court to have personal jurisdiction over a defendant, there must be both statutory and constitutional authority. First, there must be a long-arm statute that reaches this defendant, and then the application of that statute under the facts of the particular case must be constitutional under the 14th Amendment. In federal court, under FRCP 4(k), the federal courts “piggy back” on the state long-arm statute of the state in which the court is sitting (in this case, MN). The MN long-arm statute authorizes personal jurisdiction over a foreign corporation that “makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota,” or if the foreign corporation commits a tort in whole or in part in Minnesota. It also reaches any foreign corporation or nonresident individual who commits any act in Minnesota causing injury or property damage, or commits any act outside Minnesota causing injury or property damage in Minnesota, provided the cause of action arises from the acts in question. Does the MN statute reach these defendants?

Looking first at the individual defendants there are two claims here: (i) common law fraud and breach of contract, and (ii) violation of the Fair Labor Standards Act for failing to pay proper wages and overtime. The latter acts were clearly done in Arkansas, so they cannot themselves be the basis for MN jurisdiction. The former, however, were arguably committed in part in MN when the Shorts visited the Swensens’ farm and then came back to MN to assist them sell their property and move, inducing them to perform their contract under false pretenses and (perhaps) duress. So some of the wrongful acts that give rise to the plaintiffs’ alleged claims occurred in MN, and allegedly caused damage in MN. In addition, it can be argued that the FLSA violations were the direct result of the misrepresentations that occurred in MN and in the contract. So it appears that the individual defendants committed acts in MN that caused injury there within the meaning of the quoted long-arm provisions.

As to the corporation, the Shorts were acting at all times as agents of Goodlife, Inc., so the corporation can be said to have allegedly committed wrongful acts in MN. In addition, the contract between Ps and Goodlife was to be performed by Ps in part in MN. Therefore, the MN long-arm statute also reaches Goodlife, Inc.

B. (10/5 points) Does the assertion of PJ over the defendants comport with due process? Under *International Shoe* and its progeny, the exercise of personal jurisdiction over a nonresident defendant first requires sufficient “minimum contacts” between the defendant and the state that it does not offend “traditional notions of fair play and

substantial justice” to require the defendant to come to that state to litigate the claim. This is sometimes called the first “prong” of the due process analysis. When the P’s claim arises out of the alleged contacts that are used to support jurisdiction, it is called “specific jurisdiction,” and requires fewer contacts than when the contacts are unrelated to the P’s claim. In the latter case, D’s contacts with the forum state must be substantial, systematic, and continuous, such that D has the equivalent of residency in the state. The latter is referred to as “general jurisdiction.” In this case, Ds have no such contacts, so Ps must show sufficient minimum contacts from which their claims arise.

Under U.S. Sup. Ct. case law since *IS*, there is no one simple test for determining when D’s contacts are sufficient. Depending on the type of case, the courts may look at the foreseeability that D’s acts will have consequences in the forum state; whether D intended consequences in the forum state; whether D acted directly in the forum state; whether the acts in question are isolated or part of a continuing activity directed at the forum state; and whether the D has purposefully availed itself of the benefits and protections of the forum state and its laws. Here, Ds reached out to the Ps in MN to induce them to leave that state and move to Goodlife Ranch in AR. We do not know what solicitations were sent by Ds into MN before Ps contracted with them; this should be explored. But the Shorts did go to MN and actively assisted Ps in liquidating their MN assets, which were then turned over to Ds, and the Shorts made more than one visit to MN to participate in the liquidation. They assisted in the transfer of farm property not sold in MN from MN to Goodlife Ranch. Ds entered into a contract with Ps knowing and expecting that it would be performed in part in MN, and participating in that performance in MN. *Cf. Burger King*. All these acts are directly connected to Ps’ claims. See also *Bellino*. Therefore, it is likely that the court will find minimum contacts sufficient for specific p.jx.

If the court finds sufficient minimum contacts, it must then apply the second prong of the due process analysis, to determine if it would be fair and reasonable to require the defendant to litigate in the forum in question. As stated in *Burger King* and *Asahi*, the factors to be evaluated are (1) the burden on the D, (2) the interests of the forum state, (3) the plaintiff’s interest in obtaining relief, (4) interstate efficiency, and (5) furtherance of the substantive social policies of the states involved. It will be somewhat of a burden for the AR Ds to litigate in MN, but not an excessive burden. MN certainly has a strong interest in protecting its once and future citizens, and allowing them to litigate in MN will facilitate the plaintiffs’ remedies. The other factors are neutral. The burden is on D to show a compelling case that these factors render jurisdiction in MN unreasonable. It does not appear that this burden can be met.

2. Venue I

A. (10 points) Is venue proper as to the diversity claim (Count 1)? Venue is based on residence. As the case was originally filed, it was based on common law fraud and misrepresentation. It appears that, as to this claim, federal jurisdiction must be based on diversity. Ps are citizens of MN (citizenship at time of filing is what counts) and Ds are not (Ds are probably citizens of AR), and the amount in controversy requirement is undoubtedly met. Under 29 U.S.C. § 1391(a), if jurisdiction is based solely on diversity, venue is proper in a judicial district (1) where any D resides, if all Ds reside in the same state, or (2) where “a substantial part” of the events or omissions giving rise to the claim

occurred. Under 1391(a)(3), if, but only if, “there is no district in which the action may otherwise be brought,” venue is proper in any district in which any D is subject to PJ. However, (3) is out, because there is another district in which the action may be brought (AR). (1) does not work because none of the Ds reside in MN. So, the question becomes, did “a substantial part” of the alleged fraud occur in MN? Case law has held that “substantial part” does not mean the majority; more than one district can have a “a substantial part” of the events or omissions. *Bates v. C&S Adjusters*. Here, it is at least arguable that a “a substantial part” occurred in MN, where the Shorts contracted with the Ps when they were MN residents, and then came to MN to assist in taking the Ps’ property and cash pursuant to their alleged scheme. Therefore, the court can hold that venue is proper in MN under § 1391(a).

If the court were to hold that a substantial part of the events giving rise to the fraud claim did NOT occur in MN, then venue would be improper in MN, and the court would have to transfer or dismiss the case under § 1406 (transfer would be preferable).

B. (7 points) Assuming venue is proper in MN, should the case be transferred to Arkansas on the ground that AR is a more convenient forum? Under 28 U.S.C. § 1404(a), for the convenience of parties and witnesses, in the interest of justice, a district court may transfer a civil action to any other district where it might have been brought. Clearly, venue would have been proper in the Eastern District of AR under § 1391(a), and of course Ps could get personal jurisdiction over Ds there. Federal courts applying § 1404(a) use essentially the same factors as in a common law *forum non conveniens* determination. The private interest factors include relative ease of access to sources of proof; availability of compulsory process for witnesses; cost of obtaining witnesses and other proof; possible view of the premises, if any; and any other practical considerations that make the trial easy, expeditious, and inexpensive. The public interest factors include relative court congestion, the burden of jury duty, and the interest of the community in having localized controversies tried locally. These are weighed against plaintiff’s right to choose his/her forum, which is given more weight if P is a resident of his/he chosen forum and less weight if not.

Applying these factors here will probably require more factual investigation, but it does appear that most of the facts, evidence, and witnesses will be found in AR. Also, it seems that AR has more of an interest in the controversy, since Goodlife Ranch, which is the focus of this case, is located there. On the other hand, Ps and their damages evidence are located in MN. On balance, the court probably has discretion to go either way.

3. Venue II

(10 points) Is venue proper as to the FLSA claim (Count 2), a federal question claim? Since this is a civil action not founded solely on diversity, 29 U.S.C. § 1391(b) applies. Under (b), venue is proper in a judicial district (1) where any D resides, if all Ds reside in the same state, or (2) where “a substantial part” of the events or omissions giving rise to the claim occurred. Under 1391(a)(3), if, but only if, “there is no district in which the action may otherwise be brought,” venue is proper in any district in which any D “may be found.” Just as before, (3) is out, because there is another district in which the action may be brought (AR). (1) does not work because none of the Ds reside in MN. So, once again, the question becomes, did “a substantial part” of the “events or omissions” giving

rise to the FLSA claim occur in MN? I think not. The FLSA claim is based on Ds' failure to pay sufficient wages and overtime for Ps' work at Goodlife Ranch, which is located in AR. So, it appears that venue is not proper as to Count II in MN. The court would have no choice but to transfer or dismiss the case under § 1406.

This raises the interesting question as to whether the district court could transfer only Count 2 to the Eastern District of AR. Perhaps it could, if it is a "separate and independent claim." Regardless of whether it could or not, however, that would not make much sense, and undoubtedly Ps would not want the case so divided. Therefore, the court would probably either dismiss Count 2 or transfer the entire case to AR. Ps would likely prefer the latter.

There is a slim chance that the court would find Ds' conduct in MN sufficiently related to the FLSA claim to support venue under § 1391(b)(2). If so, then the analysis would be the same as in the answer to Question 2, above.

[Some of you spent time discussing federal subject matter jurisdiction and supplemental jurisdiction. These were not issues in the problem, so should not have been discussed. The questions asked only about personal jurisdiction and venue. It was not necessary to decide any subject matter jurisdiction issue to answer the questions. Such discussion didn't affect your grade, except in that you spent exam time on a nonissue that you might have used on what counted. For purposes of the venue issue, you should just assume that Count 1 was diversity and Count 2 federal question jurisdiction, as I did in the model answer. Otherwise, the case wouldn't have been in federal court in the first place; either Ds would have moved to dismiss for lack of SMJ (they didn't) or the district court would have dismissed the case sua sponte.]

FYI: Since each count had an independent basis of federal jurisdiction, there would have been no issue of supplemental jurisdiction.]