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Exam Name: CivPro_LSN_(Stickgold)_Final_F08

Instructor: Marc Stickgold

Grade: _____

1)

1a Lorna and Rachel moved to remand case to Texas state court

Lorna (L) and Rachel Black (B) are suing Ricky (R) and Futura (F) in state court in TX for state claims. The defendants file a motion to remove the case to federal court. 1441 says that defendants can remove the case to federal court in the district it was filed. If it was a federal claim, citizenship of defendants wouldn't matter, but because they are filing for diversity of citizenship into federal court, we must figure out if the defendants are citizens of the state. The reason for this is that defendants cannot remove a case to federal court if they are citizens in the same state. The whole reason for removal was to avoid a home field advantage for in state plaintiffs and out of state defendants, but if both parties are from the same state, it's a moot point. subject matter jurisdiction is allowed with constitutional and statutory authority. The constitution grants such powers in article 3, Section 2 where it allows cases to be heard in federal jurisdiction if they arise under the constitution, laws, and treaties of the US. It also lists the 9 instances when cases can be heard in the federal judicial system. There is 1331 for federal issue cases, there is 1332 for diversity of citizenship cases, and there are 1333-1343, as well as many other statutes passed by Congress. 1332 allows original jurisdiction of cases to district court if they exceed \$75k in controversy and they are between (1) citizens of different states, (2) citizens of a state and citizens/subject of a foreign state, (3) citizens of different states when citizens/subjects of a foreign state are additional parties, and (4) the foreign state as plaintiff and citizens of different state(s). The jurisdictional amount must be stated by the plaintiff in good faith and only a legal certainty by the defendant stating the amount is not enough can dismiss the case (AFA Tours). 1332(c)(1) states that a corporation is considered a citizen of its state of incorporation and its state of PPB. There are 3 tests to determine PPB for a corporation. They are (1) nerve center test, where HQ and decision making is located, (2) corporate activities test where production/manufacturing takes place, and (3) total activities test which is hybrid of the two. In our case, we have R, who lives in CT. Citizenship of persons is determined by domicile which is where a person resides and intends to remain/return to if they leave (Mas v. Perry). F is a citizen of CT as well due to incorporation. It has offices in NJ and TX. CEO works in NJ handling accounts there. All the managing of accounts takes place in NJ, but the work takes place in TX. Under the nerve center test, NJ would be the state of citizenship. Under the corporate activities test, TX would probably be the citizenship state, and looking at the company as a whole, the total activities test could be either with more facts known, but it appears to lean to NJ. It would probably be considered a citizen of NJ. So, with R a citizen of CT, and F a citizen of CT and NJ, they would be able to remove the case to federal court, and under 1441(b), the case could be removed to the district court where the case is heard--Dallas, TX. If, however, F is a

citizen of TX and not NJ, then they couldn't remove the case, and the plaintiff's remand back to state court would be successful. A second point that must be considered is whether there can be a claim in federal court once it is brought to district court. In order to be a claim, there must be a claim allowed under 1331 or 1332 or another statute. For a 1331 claim, the district courts shall have original jurisdiction in all claims arising under the Constitution, laws, or treaties of the US. The federal question must be a main issue, with a question for the courts to decide, and it must be a well pleaded case by the plaintiff when it is filed, and not artfully pled to get it into federal court (Mottley). The claim must be one that is a federal question and not a proposed argument (Eliscu). There are no federal claims so this is not a 1331 claim. We see if it is a 1332 claim now. As stated before, it must be more than \$75k, which it is. It is at least \$100k. There must also be complete diversity of citizenship where every plaintiff is a citizen of a different state from every defendant (Strawbridge). We know the citizenships of the defendants. Let's examine the plaintiffs. Rachel Black (B) is a citizen of NY because that's where she resides with the intent to remain. As for L, we have to look at Georgia (G), because 1332(c)(2) states that the legal representative of the estate of the decedent is considered a citizen of the decedent. G lived in NJ, and moved to NY, living temporarily with B in NY. She has no intent to ever go back to NJ. While living in NJ she was a citizen of NJ, but the question is did she change domicile which is when a person changes residences with the intention of remaining? She intends to stay in NY, and she is living there now, but while looking for an apartment. It could go either way, but since she is living in NY with the intent to remain, she probably has changed domicile and is now a NY citizen too. So both plaintiffs are citizens of NY or NY and NJ and the defendants are citizens of CT, CT, and NJ or TX. If L is considered a citizen of NJ and F is too, then there is no 1332 diversity and the case can't be removed to federal court in TX for that reason too. If however, there is complete diversity, then the case can go to federal court.

1b Ricky Fixer (R) moves to dismiss for lack of PJ

Personal jurisdiction (PJ) requires constitutional and statutory authority. To be subject to PJ, it cannot violate the 14th amendment due process clause, and for out of state defendants there must be an applicable long arm statute. Under the traditional Pennoyer grounds, a defendant can be subject to PJ if they are (1) residents in the state, (2) served process in the forum state, (3) consent to appear in court in the forum state, or (4) quasi-in-rem where there is property in the state you can seize. Under International Shoe and progeny grounds there are two ways to be subject to PJ. One is general jurisdiction, and the other is specific jurisdiction. For specific jurisdiction, there are three tests. (1) There must be minimum contacts sufficient such that traditional notions of fair play and substantial justice won't be offended (FPSJ), (2) the defendants must have personally availed themselves upon the forum state, and (3) the plaintiff's claims must have sufficient connections to the defendant's contacts. Under general jurisdiction, the activities of the defendant in the forum state are so continuous and systematic that it would be fair and reasonable that the defendant would be subject to PJ even when the claims weren't connected to the contacts in the forum state. In this case, R is saying he is not subject to PJ in the state of TX. To figure this out, we first examine his contacts with TX. He had invested in F, a company with significant connections to TX, he probably dealt a lot with the company as an investor, and where the injury took place was TX. R appears to have minimum contacts with TX as to not offend the traditional notions of FPSJ, he personally availed himself towards that forum with the TX stocks, and there is a significant connection of the claim to R's connections, so it

would appear specific PJ can be established in TX.

Venue Rule

The rule governing venue where the case would be removed would be 1441(a) and (b) discussed supra. The venue would be the district where the case was filed, which is in Dallas, TX, so if there was removal it would be to USDC in Dallas, TX, which is M.D.TX. 1404 or 1406 rules would now apply in order to transfer venue. 1404 allows the district court to transfer venue in the consideration of witnesses and parties in the interests of justice where the case might have been filed. You can't change venue to any district. You must have been able to bring it to the proper district where it could have been brought when the claim was filed (Hoffman). For 1406, if the case is filed in the wrong district or division, the district court shall dismiss the claim or in the interests of justice transfer it to a district where it could have been brought. To find out where it could have been brought, we need to examine 1391 statute. 1391(a) deals with cases founded solely on 1332 diversity, while (b) deals with cases not founded solely on diversity, and (c) states that a corporation is considered to have residence where it is subject to PJ when the case was filed. Our case appears to be a 1392(b) case since the plaintiffs are probably from NY, and the defendants are probably from CT and NJ. 1391(a or b)(1) says that the case can be heard in the districts where defendants are residents if they are all residents of the same state. 1391(a or b)(2) says that the case can be heard in districts where a substantial amount of the events of the claim took place. 1391(a)(3) says claim can be heard where the defendant is subject to PJ when the case is filed if there is no venue under (1) or (2), while 1391(b)(3) says it will be wherever a defendant may be found if there is no venue under (1) or (2). R resides in CT. F resides in CT due to incorporation, so since they are both residents of CT, venue may be changed to CT. In order to change venue to E.D.NY, (a) doesn't apply because R is only a resident of CT. So, (b) would have to apply. Did a substantial amount of the events of the claim happen in NY? Probably so, because R works in E.D.NY where he advises on investments. Because this is where the transaction started, E.D.NY would be another location where venue could be changed to. Looking at forum non conveniens, there doesn't appear to be any reason why TX would be any better than CT or NY to change the venue due to local interests, witnesses, evidence, etc (Piper Aircraft).

Claim brought in S.D.NY

L and B file federal claim against R and F in S.D.NY. Under 1331, discussed supra, this should be allowed. Federal issue is the main question, it raises question for the courts to answer, because it is unsettled law, and there is no reason to believe the plaintiffs didn't file a well pleaded case. They could have also brought the case under 1332 jurisdiction, because only the plaintiffs are citizens of NY. If however, a plaintiff and defendant are both citizens of NJ, only the 1331 claim will work to get into federal court. Then, the plaintiffs will want to bring the state claims into federal court. They can do is using 1367 supplemental jurisdiction, if the state claim meets the Gibb's common nucleus of operative fact (CNOF) test to the federal original jurisdiction anchor claim and it is involving the same case or controversy under the Article III claim. The claims must be transactionally related, and there can't be any Aldinger exceptions--laws that don't allow the claim to go to federal court. The federal anchor claim is an Article III claim. It deals with Investor protection. The state law they are trying to get supplemented to the claim deal with fraud and breach of fiduciary duty involving the same CNOF that the federal claim deals with, so it appears to pass 1367(a). This is not a diversity of

citizenship anchor claim, so 1367(b) does not apply, but if it did the claim could be admitted it was not inconsistent with 1332. It would have to pass the \$75k minimum amount and complete diversity. If the anchor claim was diversity with the same defendants it would pass that test, and it would also pass the \$75k test, because damages were exceeding \$100k. We do need to look at 1367(c) exceptions, however. The district court may dismiss the 1367(a) claim if (1) there is a complex or novel state issue involved, (2) the issue predominates over the anchor claim federal issue, (3) the federal anchor claim has been dismissed, or (4) due to unexpected circumstances there are compelling reasons to dismiss the case. Here, we are dealing with simple state torts, the fed claim is still there, the state claims don't dominate, and there doesn't appear to be any exceptional reasons to not allow the state claims. As a result, the state claims can be added as supplemental claims to the federal claim. R then cross claims against F on two claims. The first is state fraud claims and the second is to indemnify him against all charges. The first one will not be allowed per 1367(a), because the claim has nothing to do with the anchor federal claim. It must be transactionally related and meet the Gibb's test. Based on the facts, a state fraud case is not enough to allow it as a supplemental claim in this case. The second claim, however should be allowed as a supplemental claim. There is a direct connection to the federal claim and R's attempt to gain indemnification for the same claim against F. So this claim will probably be allowed. There doesn't appear to be a 1367(c) reason for the district court to dismiss it either.

(c) All cases have been removed leaving only R's state claims against F in federal court. The court per 1367(c)(3) could dismiss the case out of federal district court now that the federal anchor claims have been settled. Depending on where in the trial the case is will have a big impact on whether the case will be dismissed. If it happens right away, district court will probably dismiss unless they feel there is some sort of compelling reason to hear the case. If the trial has progressed quite a bit, then chances are they will allow the case to continue on until completion.

END OF EXAM