

Question 4

Pat, a resident of State A, received a letter from Busco, a tour bus company that had been in business for about two months. Busco was incorporated and had its principal place of business in State B. The letter invited Pat to go on a tour of State C at a special introductory price. After Pat sent in her money, Busco sent Pat a tour brochure and ticket.

Ed, also a resident of State A, saw an ad that Busco had placed once a week for the last several weeks in Ed's hometown newspaper for the same State C tour. The ad listed a State A telephone number to call for tickets. Ed called the telephone number and ordered and bought a ticket for the same tour as Pat and for the same price.

Pat and Ed boarded the tour bus in State B. Upon entering State C, the bus veered off the road and hit a tree. Ed was not hurt, but Pat suffered serious injuries. The tour was canceled. Busco refused to reimburse passengers the price of their tickets.

Ed sued Busco for breach of contract in state court in State A to recover the price of his ticket. Busco moved to dismiss the suit based on lack of personal jurisdiction. The court denied the motion. After trial, judgment was entered in favor of Ed.

Thereafter, Pat sued Busco in state court in State A for breach of contract to recover the price of her ticket and for tort damages for her personal injuries. After Busco filed its answer, Pat filed a motion for summary judgment on both claims on grounds of res judicata and collateral estoppel. The court denied Pat's motion.

State A has a long-arm statute that authorizes the exercise of personal jurisdiction over nonresident defendants on any basis not inconsistent with the Constitution of the United States.

1. Did the court rule correctly on Busco's motion to dismiss Ed's suit for lack of personal jurisdiction? Discuss.
2. Did the court rule correctly on Pat's motion for summary judgment on each of her claims on grounds of res judicata and collateral estoppel? Discuss.

Answer A to Question 4

4)

I. The Court CORRECTLY Ruled in Finding Personal Jurisdiction Over Busco in State A.

A. An Overview of Jurisdiction

In order for a court, be it state or federal, to gain jurisdiction over an individual or entity (such as Busco (“B”)), it must either assert in personam jurisdiction (jurisdiction over the person or entity itself), in rem jurisdiction (jurisdiction over property within the jurisdiction in which the court has authority and is related to the cause of action), or quasi-in rem jurisdiction (jurisdiction over property within the jurisdiction which the court sits but is not related to the cause of action). It must comply with due process requirements of state and federal constitutions such that a defendant is not called into a court in a jurisdiction in which it would be deemed to be unfair or unforeseeable.

B. In Personam Jurisdiction Requirements

Here, the Court in State A, upon Ed (“E”) bringing his claim in State A, asserted jurisdiction over B using in personam jurisdiction. In personam/personal jurisdiction comes in two types: general and specific.

1. General Personal Jurisdiction

A court can exercise general personal jurisdiction over a defendant when it has systematic and continuous contacts with the forum. This requires more than just drawing on a bank account in the forum, or communicating with entities or individuals in the forum. The defendant’s involvement must be intentional. The reason why the standard for contact here is so strict is that the [sic] under general jurisdiction, a court can take jurisdiction over a defendant even if the cause of action is completely unrelated to its contacts with the forum. Thus, the law has been crafted such that a defendant is deemed to have subjected himself to the laws of the forum, and benefited from their protection, to such an extent, as to be susceptible to suit there[,] no matter where the cause of action arises.

Without knowing what grounds upon which the Court in E’s suits against B used to sustain personal jurisdiction, I must assume that general jurisdiction was not the grounds upon which the court relied. B had only been in business for a few months, and having been incorporated in State B, as well as having its principal place of business (“PPB”) in state B, it’s unlikely to have “systematically and continuously” availed itself to State A.

The US Sup Ct has also shown that general jurisdiction can also be attained over a defendant in several more “traditional” ways. For instance, if the defendant was served with process in the jurisdiction (absent fraud or coercion), if the defendant consented to jurisdiction (either expressly or by failing to timely raise an objection to jurisdiction), or if a

defendant is deemed to have consented constructively by nominating an agent to accept service. In this case, B meets none of these standards, assuming it challenged jurisdiction in a timely fashion.

2. Specific Personal Jurisdiction

The more likely way the Court in E's claim asserted jurisdiction over B in this case is through the use of specific personal jurisdiction. Although not available historically at common law (only general jurisdiction was available), this developed in the face of a more mobile and economically integrated society. Under this doctrine, specific personal jurisdiction requires two elements. First, jurisdiction must be permitted under state law, which usually means it must fall under a state long-arm statute, permitting courts within the state to "reach out" of the forum to grab defendants for suit within the forum's courts. As we're told, State A has a long-arm statute (similar to that of California's) which permits jurisdiction to the same extent that the due process requirements of the US Constitution will allow. Thus, this takes [us] two [sic] our second requirement: the jurisdiction is permitted if the due process requirements are satisfied pursuant to the US Constitution.

Under due process, a defendant's contacts need not be "systematic and continuous" to sustain jurisdiction. However—and this is a major caveat—the cause of action must be related to the defendant's contacts with the forum. What contacts are required? Specific personal jurisdiction requires the satisfaction of two elements: 1) the defendant must have minimum contacts with the forum, and 2) exercising jurisdiction must not offend traditional notions of fair play and substantial justice.

A. Minimum Contacts

First, for the Court in state A to get jurisdiction over B, it must show that B had minimum contacts with state A. This requires an investigation into whether B purposefully availed himself of state A and whether it would be foreseeable for B to be haled [sic] into court there.

Under these facts, B, although incorporated in state B, had reached out to state A by placing an advertisement in the newspaper in that state, by providing a phone number for folks in that state to call to order tickets, and purposefully solicited patronage from state A. These facts are not all that different from the facts in the Asahi case in which the US Sup Ct found jurisdiction when a company provided phone numbers for customers and advertised in the forum. B was taking advantage of the laws of state A by directing its business to that state, and thus it was quite foreseeable that it would be haled [sic] into court there. Thus, minimum contacts are likely satisfied here.

B. Fair Play and Substantial Justice

Second, it must also be fair to exercise jurisdiction over B, even if B had minimum contacts with state A. This requires an investigation into several factors, including the interests of state A in protecting its citizens from “foreign” tortfeasors, the interests of the plaintiff in being able to seek the protection of the laws of his domicile, the fairness accorded to B in forcing him to a different state to defend himself, and administrative details associated with litigating in state A, such as the location of witnesses, etc. Here it’s not entirely clear how far State B or State C is from State A, but it’s likely quite close in distance. Moreover, State A has a significant interest in defending its citizens from foreign tortfeasors, or in the case of E, contract breachers. Granted, because the price of the contract is likely not great, it’s possible the interest here is not all that significant. However, on the other hand, there is likely to be little unfairness in pulling B into State A, so I would conclude that it comports with traditional notions of fair play and substantial justice to find jurisdiction here. Again, these facts are quite similar to [a case] where the Sup Ct did find jurisdiction. Granted, there were forum non conveniens issues in that case, but an international defendant was involved there – which is not the case with B.

Finally, a note should be made again about the action arising out of the contacts with the forum. Because this is specific personal jurisdiction (ie, not general), it requires that the minimum contacts with the forum be related to the cause of action. Here, B’s contacts with the forum—its attempt to get business from E—are directly related to the breach of contract action.

II. The Court did NOT Rule 100% Correctly on Pat’s SJ Motion[.]

When Pat (“P”) brought claims against B, [s]he brought two causes of action: breach of contract and tort damages. Although the former had already been litigated, the latter had not yet been litigated. This makes a significant difference when applying rules of Res Judicata and Collateral Estoppel.

A. Res Judicata

In order to invoke the doctrine of Res Judicata (“RJ”), three elements must be satisfied. First, the claim at issue must be related to the same transaction or occurrence of a previously litigated claim. Second, it must involve the same parties as the previously litigated claim. Finally, the previously litigated claim must have resulted in a final judgment on the merits.

Here, although the contract claim that P brings against B is the same as that brought against B by E, and although there was a final judgment on the merits, P was not [a] party to the earlier litigation. This means that RJ is not applicable to P’s claims. In other words, collateral estoppel (below) is all that [s]he has available to try to sustain [her] summary judgment motion.

B. Collateral Estoppel

The doctrine of Collateral Estoppel (“CE”) requires 5 elements. First, it must involve a previously litigated issue of law or fact. Second, the previously litigated issue must have been actually litigated, and third, it must have been litigated to a final judgment on the merits. The issue must have been a central (non-collateral) issue in the previous litigation, and at least one of the parties from the previous litigation must be present.

1. P’s Tort Claim

First, here the issues that P would like to assert CE over pertain to the liability of B to its patrons resulting from the bus accident. Although the issue of liability resulting from B’s breach of contract for not refunding the ticket price has been litigated to a final judgment on the merits by one of the parties, the issue pertaining to tort liability has not! Thus, so far as P’s summary judgment motion regarding B’s liability for P’s injuries, the court did rule correctly because the issue of B’s liability had not been previously litigated (it wasn’t even an issue in E’s litigation against B). Thus, showing that B was negligent, or that the driver was drunk, or whatever the tort claim may rely upon must still be shown by P. Given that P brought his [sic] SJ motion immediately following B’s answer [s]he [is] asking the court to find that there is no material issue of disputed fact with regard to B’s tort liability. Obviously, without affording B an opportunity to provide evidence to the contrary, and without P fulfilling his [sic] prima facie obligations as to his negligence claim, the Court ruled correctly here.

2. P’s Breach Claim

On the other hand, P’s second claim, his [sic] action for breach of contract was actually litigated in the previous action by E against B, and it would satisfy all of the above requirements for CE. However, there are two additional requirements that must be noted.

First, the party against whom CE is being asserted must have been the party to the previous action. This is satisfied here—B was a party to E’s litigation.

Second, there’s a question as to whether there must be mutuality. Traditionally, both parties had to have been party to the earlier litigation for CE to apply. However, modernly this is changing. The US Sup Ct has recognized that non-mutual defensive CE can be used quite easily so long as the other requirements of CE are satisfied. What that means is that, if B had won in his earlier litigation against E because the trier of fact had found that there was no breach (for example), then B would be entitled to assert CE against P’s claim here. The more questionable assertion of non-mutual CE is when it’s used offensively, as P is attempting to do here. Although this is less likely to be permitted, courts have begun to permit it more often so long as the defendant had an opportunity to litigate the issue competently in the previous case, it was foreseeable to the defendant that CE may arise in the future from the issue, that it’s fair to the defendant, and that the plaintiff who’s trying to assert CE could not have been joined in the previous litigation.

In applying this to the facts before us, it's likely that the court in State A decided that because P could have brought his[sic] contract action at the same time as E, CE should not apply. If that's the case, then the court was correct. On the other hand, it seems as though, for judicial efficiency[s] sake, the court could have at least granted CE on the breach of contract claim in this case, leaving the tort claim to go to the trier of fact.

Answer B to Question 4

4)

1. Did the court rule correctly on Busco's motion to dismiss Ed's suit for lack of personal jurisdiction?

Personal jurisdiction

Personal jurisdiction ("PJ") refers to the power of the court to render a judgment that will be binding on the defendant. The exercise of PJ is proper if it is authorized by statute and does not violate Due Process.

Traditional bases

States usually have a PJ statute that authorizes personal jurisdiction where the defendant (1) is domiciled in the forum state[,] (2) is personally served with process while physical present in the forum state[,] or (3) expressly or impliedly consents to jurisdiction in the forum state. A corporation is domiciled in any state in which it is incorporated and in which it has its principal place of business.

Here: (1) defendant Busco was incorporated in and had its principal place of business in State B. It was therefore not domiciled in State A. (2) No evidence suggests that any representative of Busco was personally served while physically present in State A. (3) Ed might argue that Busco consented to jurisdiction when it appeared in State A court, but this argument will fail if Busco's appearance was specially limited to the sole purpose of contesting the court's PJ over it.

Thus, no traditional bases for PJ are present.

Long-arm statute

State A's long-arm statute provided for PJ over any non-resident defendant if such PJ is not inconsistent with the Constitution of the United States. The issue therefore becomes whether State A's exercise of PJ was constitutional.

Constitutional limitations on personal jurisdiction

The Due Process clause of the Fourteenth Amendment limits a state's power to exercise PJ over a non-resident defendant to those cases where (1) the defendant has minimum contacts with the state[,] and (2) exercising PJ would not offend traditional notions of fair play and substantial justice. International Shoe v. Washington.

Minimum contacts

Minimum contacts analysis focuses on (1) whether the defendant's contacts with the forum were systematic and continuous (in which case the state has general personal jurisdiction over the defendant and the defendant is subject to PJ in the state for any act[]); (2) whether the defendant purposefully availed itself of the benefits and protections of the laws of the state; and (3) whether the defendant could foresee being haled into court in the state.

Here, Busco's contacts with State A were the following. It sent a letter to Pat, a State A resident, inviting Pat to go on a tour of State C at a special introductory price. After Pat sent in her money, Busco sent to Pat in State A a tour brochure and ticket. Busco also placed an ad once a week for several weeks in a hometown newspaper in State A advertizing the same tour. The ad listed a State A telephone number to call for tickets. Ed called the telephone number and ordered and bought a ticket for the tour. Although it is not stated, Busco probably also sent Ed a ticket to his residence in State A.

(1) Systematic & continuous

General jurisdiction is found where the contacts are systematic and continuous. Here, Busco is a State B corporation which has only been in business for two months. It has placed an ad several times in a State A newspaper. It has sent tickets to two State A residents. It sent a letter to a State A resident. These sporadic and short-term contacts are not the sort of continuous activity sufficient to find general jurisdiction.

(2) Purposeful availment

The next issue is whether Busco purposely availed itself of the benefits and protections of State A law.

Ed would point out that Busco deliberately placed an ad in a State A newspaper. This was a contract with the newspaper and was likely governed by the contract law of State A, on which Busco would rely for protection if the newspaper were to breach the agreement. Moreover, Busco maintained a State A telephone number for potential customers to call. This involved contracting with a telephone service provider in State A and again Busco would have availed itself of the protections of State A law in negotiating this agreement. Finally, after receiving an order from two State A law residents, Busco sent tickets to both Ed and Pat in State A. These were contracts and again would likely have been governed by State A law.

On the other hand, Busco did not conduct its business in State A - the tour began in State B and went to State C. The state A telephone number might simply have connected to a call center in State B. Busco also has only been in business for two months so there has not been much opportunity for purposeful availment.

On balance, Busco did purposely avail itself of the benefits and protections of State A law.

(3) Foreseeability

The third element of minimum contacts is whether the defendant should reasonably have foreseen being haled into court in State A.

Ed will argue that, based on the analysis under 'purposeful availment', Busco should have foreseen the possibility of a contract dispute based either on the ad, the telephone number, or the tour contracts with Pat and Ed. Busco knew that these contracts were negotiated with State A entities and that there was a strong likelihood that any dispute might be litigated in State A. Moreover, Busco was offering a tour service which involved the possibility of causing personal injury to tour participants if there was an accident. Busco knew that at least two persons on the tour were State A residents, and thus should have foreseen that any tort suit they brought might well be brought in their state of residence, State A.

Busco will counter that it was domiciled in State B and that any contract actions would probably have been brought there. Further, the tour never visited State A, so tort suits in State A were unforeseeable.

On balance, however, it was reasonably foreseeable that Busco might have been sued in State A.

Fair play and substantial justice

Even if minimum contacts are found, personal jurisdiction is only proper if it does not offend traditional notions of fair play and substantial justice. The court will consider three factors here: (1) the relation of the contact and the claim[;] (2) the convenience of the parties[;] and (3) the forum state's interest in providing a forum for resolving the dispute.

(1) Relation of contact and claim

Personal jurisdiction is more likely proper if the claim arose out of the contact with the forum state. Here, Ed is claiming for breach of contract for the tour. This contract was entered into as a direct result of Busco's placing an ad in Ed's State A hometown newspaper. Thus, this element is met.

(2) Convenience of parties

The court will not impose personal jurisdiction where requiring the defendant to defend in the forum would impose an unreasonable burden on the defendant.

Busco would argue that the witnesses to the formation of Ed's contract are its employees in its State B principal place of business, that the records relating to the contract are there, and that it would be unreasonable to require Busco to produce these in State A.

Ed would counter that Busco is a corporation which can surely spare a few employees for the limited purpose of testifying. Further, much evidence is in State A - the newspaper in which the ad ran, the telephone number through which Ed placed his order, and the tickets.

Since the inconvenience to Busco is not extreme, the convenience of parties favors State A.

(3) State A's interest in providing a forum

The forum state must have an interest in providing a forum for the dispute.

E will assert that he is a resident of State A and negotiated a contract from his residence in State A using a State A telephone number after seeing an ad in a State A newspaper. This contract action will probably be governed by State A law. State A has a strong interest in providing a forum for its residents to obtain damages.

Busco will argue that the action likely raises no new issues of contract law, and since no new law is to be made, State A has little interest in having the issue litigated there.

On balance, State A's interest favors PJ in State A.

Conclusion

In view of the factors in favor of and against finding PJ, the court probably was correct to deny Busco's motion to dismiss for lack of personal jurisdiction.

2. Did the court rule correctly on Pat's motion for summary judgment on each of her claims on grounds of res judicata and collateral estoppel?

Summary judgment

Summary judgment is a ruling that the moving party is entitled to judgment as a matter of law. It is proper where there is no triable issue of material fact, and, after viewing the evidence most favorably to the non-moving party, the court concludes that no reasonable trier of fact could find in favor of the non-moving party.

Here, Pat will argue that Busco's previous action against Ed should result in judgment as a matter of law for Pat on both her contract and tort claims on theories of res judicata and collateral estoppel. Each claim will be examined in turn.

Breach of contract claim

Res judicata

Res judicata, or claim preclusion, bars relitigation of an action (1) by the same plaintiff against the same defendant (or their privies) (2) when the previous action ended in a final judgment on the merits and (3) the previous action involved the same claim (it arose out of the same transaction or occurrence, or series of transactions or occurrences).

Here, Busco will argue that Pat's contract action related to a different contract from the one negotiated by Ed because the parties were different. Pat will argue that it was the same contract because the terms and the price were the same. Ed's action ended in a final judgment on the merits because after trial, judgment was entered in favor of Ed. But the earlier lawsuit was between Ed and Busco, and this claim is between Pat and Busco.

Since the plaintiff is not the same in each case, res judicata will not apply.

Collateral estoppel

Collateral estoppel, or issue preclusion, bars relitigation (1) of the same issue (2) against a party to the previous action (3) when the issue was actually litigated[,] (4) the resolution of the issue was essential to the judgment[,] (5) and the previous action ended in a judgment on the merits.

Here: (1) the issue of whether Busco's refusing to reimburse the four passengers the price of their tickets after the tour was cancelled was a breach of contract is the same issue in Pat's case as in Ed's, because both likely had the same contract with Busco for the tour, and both were on the same bus. (2) Busco was a party to the previous action by Ed. (3) The issue of Busco's breach was actually litigated in Ed's action and (4) was essential to the judgment, because Ed could not have won his contract suit without a finding that Busco's refusal to reimburse was a breach of contract. (5) The judgment was on the merits because after trial, judgment was entered in favor of Ed.

Non-mutual offensive collateral estoppel

Since Pat was not a party to the previous action, traditional mutuality rules should bar her use of collateral estoppel. But modernly, courts will allow non-parties to use collateral estoppel against parties to a prior action because mutuality is not required by Due Process. Use of non-mutual collateral estoppel against a defendant ('offensive') is permissible under Parklane Hosiery where the defendant had a full and fair opportunity to litigate the issue in the prior action and the forum of the previous action did not unfairly limit the defendant's litigation strategies or use of evidence.

Here, Busco was a party to the prior action, and had the same opportunity and motive to argue that its actions were not a breach of contract against Ed as it had to argue this against Pat. Both actions were brought in State A court so the forum rules of litigation and evidence were the same.

Conclusion

Since offensive collateral estoppel is allowed under these circumstances, the court incorrectly denied Pat's motion for summary judgment on her contract claim.

Tort claim

Res judicata

For the same reasons as the breach of contract claim, res judicata will not apply to the tort claim.

Collateral estoppel

The issue of Busco's tort liability for the accident when the bus hit a tree was not actually litigated in Ed's action, which was solely for breach of contract because Ed was not hurt. Accordingly, collateral estoppel will not apply to Pat's tort action.

Conclusion

The court correctly denied Pat's motion for summary judgment on the tort claim.

Question 5

Marla is a manufacturer of widgets. Larry is a lawyer who regularly represents Marla in legal matters relating to her manufacturing business. Larry is also the sole owner and