

Question 3

Paul, a resident of State A, had worked as a manager at the only hotel in State A owned and operated by Hotel, Inc. (Hotel), a large national chain. Paul's compensation was \$100,000 per year. Hotel was incorporated in State B, where the majority of its hotels are located. Hotel's main corporate offices are located in State C.

Hotel terminated Paul's five-year employment contract when it had two years remaining. Paul immediately found new employment with compensation of \$90,000 per year.

Paul timely sued Hotel in state court in State B, alleging wrongful termination of his employment contract. In his complaint, he sought reinstatement or, in the alternative, damages of \$200,000 for the two years remaining on his employment contract at the time of termination. In State B, the measure of damages for wrongful termination of an employment contract is the amount a plaintiff would have earned absent the termination, less what the plaintiff actually earned during the post-termination contract period.

After the complaint was served on Hotel at its main corporate offices in State C, Hotel timely removed the case to federal district court in State B. Paul then filed a motion in federal district court to remand to state court. The federal district court denied the motion. Paul appealed the denial to the federal court of appeals.

Paul meanwhile filed a motion in the federal district court for an injunction requiring Hotel to reinstate him to his job. The federal district court granted Paul's motion and issued the injunction. A month and a half later, Hotel appealed the injunction to the federal court of appeals.

1. Did the federal district court correctly deny Paul's motion to remand the case to state court? Discuss.
2. How should the federal court of appeals rule on Paul's appeal? Discuss.
3. How should the federal court of appeals rule on Hotel's appeal? Discuss.

QUESTION 3: SELECTED ANSWER A

1. Did the Federal Court properly deny Paul's Motion to Remand?

The answer to this question is no. The remand should have been granted.

- (a) Diversity Jurisdiction

The issue is the nature of the federal court's jurisdiction in this case. Article III of the Constitution limits the jurisdiction of the federal courts to specific types of jurisdiction, that is, jurisdiction based on diversity of citizenship and jurisdiction based upon questions of Federal law. There are no Federal laws raised in this fact pattern, so the basis for jurisdiction must be diversity of citizenship. The other areas of justiciability will not be discussed here as they appear to be satisfied (i.e. Paul has standing to bring a claim that ripe for resolution, satisfying standing, mootness, ripeness, and a case or controversy, because he was terminated, harmed and the harm is complete).

To establish diversity jurisdiction, every plaintiff must be diverse from every defendant, based upon a party's domicile if it is an individual person, or a corporation's state of incorporation and/or principal place of business, if it is a corporation. An individual may only have one domicile; a corporation may have up to two: its state of incorporation and where it conducts its principal place of business.

Here, Paul is a resident of State A. Hotel, Inc. is incorporated in State B, so Hotel is a resident of State B. Hotel's "main corporate offices" are located in State C. If we assume that "main corporate offices" is equivalent to the corporation's "nerve center" or locus of operations, then Hotel is also a resident of State C.

Hence, it is a citizen of State A v. a citizen of State B and State C, even though there is only one defendant.

The Federal diversity statute (28 USC 1332) not only has a citizenship test; it also has an amount in controversy test. This means that the amount in controversy for a cause of action (or aggregated causes of action) must be greater than \$75,000, exclusive of interest and costs. If a plaintiff alleges such an amount, the court will generally not look behind that amount, unless it amounts to a legal certainty that plaintiff cannot recover it.

Here, Paul has asserted a claim for damages as a result of the breach of employment contract for \$200,000 for the two years remaining on his employment contract or, in the alternative, he seeks reinstatement, which means he wants his old job back.

We are told that the law in State B is that the measure of damages for wrongful termination of an employment contract is the amount a plaintiff would have earned absent the termination, less what the plaintiff actually earned. Here, Paul has mitigated as he was contractually required to do and found new employment for \$90,000 per year. But this will not defeat the amount in controversy for several reasons. First, Paul seeks as one of his remedies reinstatement to a job valued at \$100,000 per year for two years — thus readily satisfying the "value of his complaint" in excess of \$75,000. In addition, we do not know to a "legal certainty" that Paul will actually be employed by the new employer at \$90,000 per year for the next two years. He might be fired again or he may not like the job and quit — perhaps it isn't a truly comparable position. And finally, it isn't even abundantly clear that State B law will apply. Paul was working in State A and he is a resident of State A. Generally speaking, the law of the state in which an employee performs services governs employment contract disputes (unless provided otherwise in the employment agreement). Accordingly, the amount in controversy is satisfied.

(b) Removal

A party is permitted to remove an action to federal court from state court pursuant to 28 USC 1441 if federal jurisdiction exists and the party acts to effectuate

removal within thirty days after receiving notice (not service) of a state court action upon which removal may be based. A removal is effective upon the filing of the notice of removal in state court. The action will then proceed as an originally filed federal action thereafter, except certain pleading timing rules are modified. But there is one other requirement not met here: only nonresident defendants may remove.

Hotel is a resident of both State B (where it is incorporated) and State C (its principle place of business). The case was filed in state B state court. Because Hotel is a resident of State B, Hotel cannot remove a case from State B court to a Federal court in State B, and the court should have granted Paul's motion to remand.

2. Paul's Appeal of the Denial of Remand

The Federal court of appeals should dismiss Paul's appeal because a denial of remand is not a final judgment from which an appeal may be taken to the Federal Circuit Court of Appeals ("CTA"). It would rather be deemed to be an interlocutory appeal. With a few limited circumstances, one of which is discussed below, a litigant may only prosecute an appeal to the CTA upon the issuance of a final judgment by the district court (i.e., final judgment after trial, a dismissal of a case pursuant to Fed R. Civ P 12b6 or a Fed. R. Civ. P. 56 summary judgment motion). Exceptions may exist, i.e., the district court may give permission to a litigant to file an appeal prior to a final judgment if it appears that it would be more efficient to proceed in that manner, i.e., the CTA may upon ruling, direct the district court to proceed in a particular manner that might impact the trial of the case. A denial of a motion to remand, however, is not an immediately appealable order and absent permission from the district court, it will not be entertained by the CTA. Paul otherwise must wait until the matter is concluded.

3. Hotel's Appeal of the Injunction

The CTA will deny Hotel's appeal as untimely. But it otherwise would have likely sustained Hotel's appeal on substantive grounds.

A party has thirty days to appeal from a district court's judgment or appealable order to the CTA. Here, we are told that Hotel did not appeal the injunction until a month and a half after its issuance. Hotel was late. Injunctions are an exception to the final judgment rule — if a party is mandated by a federal court to do something, that party may immediately (or within thirty days) appeal that order. This order is in the nature of a mandatory injunction.

A mandatory injunction differs from a prohibitory injunction in that the federal court mandates or orders a party to act. A prohibitory injunction is an injunction based upon a directive to a party to cease doing something. In this case, the court has ordered Hotel to reinstate Paul to his position as manager at Hotel A. This effectively requires Hotel to reinstate an employee it has just fired.

Courts typically do not grant mandatory injunctions for personal services contracts, like the one at issue here. There are several reasons for this view. It is simply not feasible to enforce these orders: requiring an employer to have an employee on the premises who may or may not discharge his work obligations may impact the employer's business. This is particularly apt here where the employee is a manager at a hotel — he may well come into contact with the public and may be in a very sensitive position. Second, a mandatory injunction in this context inserts the court directly into the business of the employer — it just isn't feasible for a court to determine whether the employee is being treated well, paid right, advanced, compensated, managed properly, carrying out the Hotel's instructions, etc. Setting those policy issues aside, however, there is an adequate money damages remedy here — a written employment contract with two years remaining, and clearly sets compensation for those two years (regardless of mitigation issues or which state's law applies). And there is no irreparable harm — again, even on balance of all the interests here, this a simple breach of employment contract case, remedied easily through money damages. Balancing the harms, as the court would do on an injunction, clearly favors Hotel: it is far more burdensome to require Hotel to take back Paul and supervise him where Paul

can ultimately recover a money judgment against a presumably solvent defendant, a large national hotel chain.

QUESTION 3: SELECTED ANSWER B

Denial of Motion to Remand

The federal court erred in denying Paul's motion to remand to state court.

In order for a case to be removed to federal court, the federal court to which the case is removed (the district court for the district in which the state court is located) must be a court in which the case originally could have been filed. This requires that the court have subject matter jurisdiction, personal jurisdiction over the defendant, and that venue be appropriate in that court.

Subject matter jurisdiction can be based either on diversity jurisdiction or federal question jurisdiction. Federal question jurisdiction exists when, from the face of a well-pleaded complaint, plaintiff's claim "arises under" federal law. Here, there is no basis for federal question jurisdiction. Paul's claim is one purely in contract, based on a state law cause of action for wrongful termination. There is no indication whatsoever from the facts that his claim arises under federal law or that he is enforcing any federal right. Accordingly, there is no federal question jurisdiction.

Accordingly, the federal court can have jurisdiction only if there is diversity jurisdiction. Diversity jurisdiction is present in a suit between citizens of different states where the amount in controversy is at least \$75,000. First, it does appear that Paul and Hotel, Inc. are citizens of different states. An individual is a citizen of the state in which he is domiciled, i.e., where he resides and intends to remain permanently. Here, the facts indicate that Paul is a resident of State A, and there is nothing to indicate that he resides in any other state or does not intend to remain permanently in State A; thus, he is a citizen of State A for purposes of diversity jurisdiction. A corporation, by contrast, is a citizen of both (1) the state in which it is incorporated and (2) the state in which it has its principal place of business, i.e., its "nerve center" from which responsible managers control the corporation's affairs. Here, Hotel is incorporated in State B, and its main

corporate offices are in State C. There is no indication from the facts that Hotel has its principal place of business in another state, and it thus appears that its principal place of business would be its corporate offices in State C. (It is certainly clear that Hotel does not have its principal place of business in State A, in which it has only a single hotel.) Thus, Hotel appears to be a citizen of both State B and State C for purposes of diversity jurisdiction. Therefore, Paul and Hotel are citizens of different states, and there is the requisite "complete diversity" for purposes of diversity jurisdiction.

However, it is unclear that the requisite \$75,000 amount in controversy is satisfied on these facts. Paul's complaint advances claims for both damages and injunctive relief. When damages are at issue, the plaintiff's good faith assessment of damages will govern the amount-in-controversy analysis, unless it appears clear to a legal certainty that those damages are unobtainable. With respect to injunctive relief, the monetary value of the relief can be based on the greater of either (1) the benefit to the plaintiff or (2) the harm to the defendant.

Here, Paul's claim for damages does not appear to satisfy the amount-in-controversy. A plaintiff seeking damages is entitled only to his expectation damages (as well as incidental damages). Every plaintiff has a duty to mitigate damages, which Paul did here by obtaining another job at a rate of \$90,000 per year. Accordingly, expectation damages — which are designed to return the plaintiff to the position he would have occupied absent the breach of contract — would be only \$10,000 per year, or \$20,000 total. It appears that State B has adopted this measure of damages and, under the Erie doctrine, State B's substantive law should apply to this case, since a federal case sitting in diversity is obligated to apply a state's substantive law. There is no federal law in direct conflict with State B's rule of damages; accordingly, it is necessary to consider whether applying State B's damages computation methodology would be outcome determinative, whether it would lead to forum shopping (causing plaintiffs to flock to federal court), and whether the state has a particular interest in having its law applied. It is clear based on these factors that the damages methodology is substantive in nature and should be applied — the amount of damages that a plaintiff can recover in a matter

are certainly outcome determinative, are highly likely to affect a plaintiff's choice of forum, and reflect the state's policy determination as to the matter at issue. In any event, the value of Paul's monetary damages claim is the same — and short of the amount in controversy requirement — whether one applies general contract law principles or State B's damages rule.

However, the injunctive relief Paul seeks does satisfy the amount-in-controversy requirement. If the injunction were granted, the benefit to Paul would only be the additional \$20,000 in income over the next two years; but if granted, the harm to Hotel would be in the amount of \$200,000, i.e., the two years of additional salary that it would be required to pay to Paul. Accordingly, the \$75,000 amount in controversy is satisfied.

Nevertheless, although both requirements for diversity jurisdiction are met here, the federal district court erred in denying Paul's motion to remand. A defendant (or defendants) may not remove a case from state court to federal court if any defendant is a citizen of the forum state. Here, as discussed above, Hotel is a citizen of State B. Thus, Hotel was not entitled to remove the case, removal was procedurally improper, and the district court should have granted Paul's motion to remand.

Paul's Appeal

The Court of Appeals should refuse to hear Paul's appeal.

As an initial matter, a grant of a motion to remand is never appealable. Here, by contrast, the district court denied Paul's motion. However, under the final judgment rule, one has a right to appeal as of right only from a final judgment of the district court. A final judgment is one that is final as to all claims at issue and all parties involved, i.e., one that leaves nothing more for the trial court to do. A denial of a motion to remand is not such a final judgment, and is thus not appealable as of right.

Moreover, there is no indication in the facts that any of the exceptions to the final judgment rule apply here. For example, the Court of Appeals may choose to hear an appeal based on the "collateral order doctrine" where a decision of the district court is collateral to the merits of the case, involves an important issue of law that has been finally decided, and the party appealing would be effectively precluded from achieving review of the decision absent an immediate appeal. Here, however, while the district court's denial of Paul's motion to remand is collateral to the merits of the case and final, Paul will have the opportunity to obtain appellate review of that decision through a normal appeal at the conclusion of the matter. Accordingly, the collateral order doctrine does not apply. Nor is there any indication from the facts that the district court has certified this ruling for immediate appeal under the Interlocutory Appeals Act (or that the Court of Appeals has accepted such an appeal), or that any statutory exception to the final judgment rule applies.

Hotel's Appeal

The Court of Appeals should dismiss Hotel's appeal, because it is untimely.

As an initial matter, the order granting Paul's requested injunction is an appealable order. Although the grant of this motion would otherwise not be a final judgment under the final judgment rule, there is an exception for orders granting, modifying, or dissolving injunctions. Accordingly, though the case remains pending, the district court's order granting Paul's motion for an injunction was an appealable order.

However, Hotel, Inc. did not timely appeal from the district court's order granting Paul's injunction. A party must appeal within 30 days of an appealable order. Here, the facts indicate that Hotel, Inc. noticed its appeal "[a] month and a half later." The facts do not contain any indication of excusable neglect on Hotel's part, and Hotel's appeal should thus be dismissed as untimely.