

**JULY 1997 CALIFORNIA BAR EXAMINATION  
ESSAY QUESTIONS AND SELECTED ANSWERS**

*Civil Procedure*

**QUESTION**

Nearby residents were evacuated because of dangerous fumes released by a fire and explosion at an oil refinery owned by Danco in State A. Five of the evacuees, all of whom were residents of State A, filed a joint civil action in state court in State A against Danco based upon State A tort theories. Each plaintiff is seeking compensatory and punitive damages. Plaintiffs' compensatory damage claims, based on the injuries allegedly suffered distinctly by each plaintiff, range from \$30,000 to \$35,000 for each plaintiff. Their claims for punitive damages are for "amounts to be determined according to proof."

Danco is a State B corporation, with its corporate headquarters located in State C. Danco's day-to-day operations are run from its several regional offices in states where it operates refineries, the largest of which is located in State A. Danco's oil refining activities in State A are extensively regulated by a State A public regulatory agency. The regulatory agency is conducting an ongoing hearing to determine whether the fire and explosion were the result of any violations of the agency's safety orders.

Danco removed the action to federal district court in State A. The plaintiffs moved to remand the lawsuit to state court on the grounds that Danco's largest refinery is in State A and that there is an ongoing state regulatory hearing. The motion was denied.

Danco then filed its answer. Plaintiffs then moved to file an amended complaint naming Tom, a State A contractor, as a defendant, alleging that Tom had built the refinery and that Danco and Tom are jointly and severally liable for plaintiffs' damages. The court granted the motion to amend the complaint over Danco's objection. Plaintiffs then renewed their motion to remand, and, over Danco's objection, the renewed motion was granted.

Did the federal district court correctly rule on:

1. The plaintiffs' first motion to remand the lawsuit to state court? Discuss.
2. The plaintiffs' motion to amend the complaint to name Tom as a defendant? Discuss.
3. Plaintiffs' renewed motion to remand the lawsuit to the state court? Discuss.

**JULY 1997 CALIFORNIA BAR EXAMINATION  
ESSAY QUESTIONS AND SELECTED ANSWERS**

*Civil Procedure*

**ANSWER A**

1. The issue is whether the court correctly ruled on plaintiff's first motion to remand the lawsuit to state court.

Removal

A defendant may remove a state court case if the case could have originally been brought in federal court to begin with. Therefore, there must be subject matter jurisdiction for the federal court to hear the case.

Remand

The plaintiffs may file a motion to remand if in fact there is no subject matter jurisdiction.

Diversity-Jurisdiction

Whether remand should have been granted depends on whether there is diversity jurisdiction here. In order for there to be diversity jurisdiction, there must be complete diversity between the plaintiffs and defendant at the time suit is filed. No plaintiff can be domiciled in the same state as any defendant.

Here, plaintiffs are domiciled in State A. However, it must be determined which states Danco is domiciled in for purposes of diversity.

Danco's Domicile

A corporation is a resident of its state of incorporation and the state where it has its principal place of business. Danco is a State B corporation but it has refineries and several regional offices in states, including State A.

Courts use either the "nerve center" test or the "muscle center" test. A corporation can only have one principal place of business. On the one hand, its largest refinery is in State A. However, since it has many refineries and many regional offices, it is probably preferable to use the "nerve center" test here. That is, we should look to where the corporation has its corporate headquarters. Here, it's State C. Therefore, initially the court was correct in finding diversity of citizenship.

Amount in controversy

In order to have diversity jurisdiction, the plaintiffs must have a good faith claim for over \$75,000. Each plaintiff must claim over \$75,000.

# **JULY 1997 CALIFORNIA BAR EXAMINATION ESSAY QUESTIONS AND SELECTED ANSWERS**

## ***Civil Procedure***

Here, the claims were only for \$30,000 to \$35,000. However, they claimed punitive damages as well. The problem is that they didn't request a specific amount of punitives. They only stated "amounts to be determined." This arguable is not a sufficient claim to invoke diversity jurisdiction. However, as long as the plaintiff makes a good faith claim of over \$75,000, the court will hear the case unless "it's clear to a legal certainty" that the plaintiffs can't recover over \$75,000. Given the fact that the fire could have been the result of recklessness or wanton behavior, punitives may be proper. Therefore, diversity was probably satisfied.

### Federal question

A court may have jurisdiction if a claim founded substantially in a federal right is made. Here, there is no evidence of any federal claim. It's just tort theories. Therefore, the fact that Danco had a refinery in State A is not sufficient grounds for remand.

### Plaintiffs' other basis for remand - the ongoing regulatory hearing

A court may remand a case to state court after there has been removal if there are complex issues of state law that will dominate the case or if there are ongoing regulatory hearings. If there is extensive state regulation a federal court may remand in its discretion. Here there was an ongoing hearing, but it was within the federal court's discretion to not allow the remand if it deemed it proper to hear the case. Therefore, the court correctly ruled on this issue. The existence of ongoing hearings doesn't make remand mandatory.

## 2. Plaintiff's Motion to Amend the Complaint

### Right to Amend Complaint

A plaintiff has an automatic right to amend his complaint before the defendant answers. However, here, the defendant has already answered. Therefore, the plaintiffs could amend only if they received leave of court - with court permission - or if the defendants consented.

### Joinder

#### Permissive Joinder

A plaintiff may join another party as a defendant if the defendant's actions relate to the same transaction or occurrence and there is at least one common question. However, there has to be subject matter jurisdiction. Here, there is no supplemental jurisdiction to allow the defendant, contractor to be joined. Since contractor is a State A contractor, he would destroy diversity.

#### Necessary Joinder

A party is necessary if:

**JULY 1997 CALIFORNIA BAR EXAMINATION  
ESSAY QUESTIONS AND SELECTED ANSWERS**

***Civil Procedure***

- A. complete relief cannot be granted in his absence;
- B. party's interest will be harmed or;
- C. with party, it will subject existing party to inconsistent or excessive judgments.

However, Tom is a joint tortfeasor. While it may be argued that Tom is necessary because he may be responsible, the courts have generally decided that joint tortfeasors are not necessary parties. Even if he were considered necessary, there is no subject matter jurisdiction to bring him in.

Supplemental jurisdiction

With necessary parties, there is no supplemental jurisdiction. That means that there is no ancillary jurisdiction. Therefore, bringing Tom in destroys diversity and the court should not have allowed the plaintiffs to amend their complaint to bring him into the case.

There is no pendant jurisdiction because this is not a federal question case.

3. Renewed Motion to Remand

Once Tom was joined as a defendant, diversity jurisdiction was destroyed. In order to have diversity, there must be complete diversity between the plaintiffs and defendants. Here, since Tom was a State A contractor, he was a resident of State A for diversity purposes. Since the plaintiffs were also State A residents, diversity was destroyed. A federal court may remand if there is no federal subject matter jurisdiction.

However, since the joinder of Tom in the first place was improper, the court should not have granted the renewed motion to remand. The plaintiffs were responsible for bringing in the second defendant who should not have been allowed in the first place due to lack of subject matter jurisdiction.

**ANSWER B**

I. Motion to Remand to State Court

A. Removal - Federal Question or Diversity needed

The defendant, Danco, removed the action to federal district court. The defendant is the proper party to remove, but the action in federal court must be based on either federal question or diversity. The plaintiffs are seeking to remand the action to state court as a challenge to proper subject matter jurisdiction.

1. Federal Question

# **JULY 1997 CALIFORNIA BAR EXAMINATION ESSAY QUESTIONS AND SELECTED ANSWERS**

## ***Civil Procedure***

The action may be properly moved to federal court if based on a federal question. Here, the plaintiffs seek compensatory and punitive damages from tort theories, so there is no valid federal question.

### **2. Diversity - residence and amount in controversy**

The diversity requirement has two components. The defendants and plaintiffs 'residence' must be completely diverse, and an amount in controversy of \$75,000 must be met.

#### **Amount in controversy - not \$75 000 individually**

The federal court requirement is that the amount in controversy be \$75,000.

The issue here is that the plaintiffs claims are individually \$30,000-\$35,000, but in the aggregate exceed the \$75,000 requirement.

#### **Aggregate of claims**

Aggregate claims may be allowed if plead and brought as one claim. Here, there is a joint civil action and all were harmed by the same fire and explosion. The injuries by each, however, are distinct. Typically each defendant needs to be on notice of the amount of money claimed, while here it is unclear if the punitive damages will raise the amount to that which is required. Either way, these claims may not be aggregated.

#### **Notice pleading: Reasonable notice of punitive damage amount**

In a notice pleading jurisdiction, the claim need pay the defendant on reasonable notice. The plaintiffs' claim that punitives will be "determined according to proof." This may be insufficient to allow the punitive claim damage at all. The amount also won't be added to help meet the \$75,000 because it's not plead.

#### **Code pleading**

The punitive award would need to be specifically plead, and to state it "may be determined" will fail.

#### **Class action**

Even if the case were plead as a class action, the individual harms need to meet or exceed the \$75,000 requirement, so this has not been met.

### **B. Diversity requirement**

# **JULY 1997 CALIFORNIA BAR EXAMINATION ESSAY QUESTIONS AND SELECTED ANSWERS**

## ***Civil Procedure***

Assuming the jurisdiction does allow the aggregate of the claims, the parties must not be completely diverse to be heard in federal court. Here, the plaintiffs are all residents of State A, so if the defendant is a resident of State A, the diversity requirement fails.

### Corporation residence - two considered

#### Incorporation

A corporation has two residences looked at for diversity purposes. One is the state of incorporation, which according to the facts is State B. This does not destroy diversity.

#### Principle place of business

A corporation residence can be based on the corporation's principle place of business. Two tests are generally looked at, as follows.

#### Nerve center test

If the jurisdiction follows the nerve center test, it will look at where the main decisions of the corporation are made. Here, Danco is headquartered in State C and often that is where such decisions are made. Diversity is not destroyed under this test.

#### Muscle Test

If the muscle test is followed, the courts will look to where the main activity takes place, such as the manufacturing and where the warehouses are. Here, the largest refinery was in State A so much activity centered in "A." However, there were several other regional offices in other states, so this one refinery may not have that much weight in the determination as 'residence.'

#### Forum Non Conveniens

The plaintiffs state that the State regulatory hearing is in State A, and are possibly interested in keeping the State as the place most convenient to all. The federal court is also in State A, so this may not be a strong argument. Either way, the court has great discretion and their denial of the plaintiffs motion would be upheld.

## II. Tom as Defendant

### A. Amended Complaint

# JULY 1997 CALIFORNIA BAR EXAMINATION ESSAY QUESTIONS AND SELECTED ANSWERS

## *Civil Procedure*

The plaintiffs sought to amend the complaint after Danco filed an answer. Generally, after the responsive pleading has been sent, the court has the discretion to amend. However, the rules of court must be honored.

### B. Joinder-permissive-same case

The plaintiff may add a party that is based on the same case or controversy and has at least one law of fact similar. Here, the plaintiffs claim that the defendant built the refinery and so is jointly and severally liable. The issues may differ because Tom's negligence as a builder, rather than a company operator, will be looked at, but there is at least the similarity of the fire and fumes coming from the refinery, that one owns and operates, and the other built.

#### 1. Need Supplemental jurisdiction

The plaintiffs, however, need to maintain proper jurisdiction. Because this claim is based on diversity, the plaintiff's joinder can't destroy diversity. Tom is being added as a defendant, so he can't reside from State A where all the plaintiffs reside. The facts only indicate Tom is a State A contractor - if he also resides in State A, he destroys diversity and the motion to add him was improperly granted.

#### 2. Necessary - otherwise prejudiced

If the parties argue he is necessary to the case, whereas the plaintiffs will be prejudiced without him - he still needs to meet the diversity requirements.

#### 3. Indispensable

If the party is deemed indispensable, then the case must be dismissed (see below).

### III. Remand to State Court

#### A. Indispensable and diversity destroyed

If Tom as a party destroys federal jurisdiction, then the court has discretion to allow to hear in State Court.

#### B. Plaintiffs destroyed

However, it was the plaintiffs who destroyed the diversity, and if in bad faith they brought Tom in so the federal jurisdiction would be destroyed, the state court should not hear the case.