

**JULY 1998 CALIFORNIA BAR EXAMINATION
ESSAY QUESTIONS AND SELECTED ANSWERS**

Civil Procedure

QUESTION

Pat, involuntarily hospitalized in a State A hospital, filed a pro se complaint in federal district court in State A naming in the caption the following defendants: the United States, State A, Smith and Jones. The complaint alleged that State A violated State A law by hospitalizing him and that Smith, a hospital orderly, viciously beat him. The only allegation concerning Jones appeared immediately after the allegation concerning Smith and stated, "Regarding Jones: see Smith above." There was no mention of the United States other than in the caption.

Pat further alleged that the defendants' actions violated his federal civil rights under 42 U.S.C. S 1983, that he was a citizen of State B, and all defendants were State A citizens. He requested damages of \$6,000,000 on his claim against State A, \$37,500 from Smith and \$37,500 from Jones.

Each defendant moved, on the basis of the pleadings alone, to dismiss the complaint on the ground that the court lacked jurisdiction. State A also moved for its dismissal on the basis that it was not a proper defendant. The United States, Smith and Jones also moved for their dismissals on the basis that the claims against them were not sufficiently pleaded. Pat responded that his complaint was "just fine."

The trial judge, relying only on the pleadings, ruled as follows:

- a. The court has jurisdiction;
- b. State A is not a proper defendant; and
- c. The claims against the United States, Smith and Jones are sufficiently pleaded.

Was the court correct as to each of these rulings? Discuss.

JULY 1998 CALIFORNIA BAR EXAMINATION ESSAY QUESTIONS AND SELECTED ANSWERS

Civil Procedure

ANSWER A

a. DOES THE COURT HAVE JURISDICTION?

Pat filed his complaint in a federal court in State A. This means that the court will apply the Federal Rules of Civil Procedure. Under the FRCP, each claim alleged by a plaintiff must have subject matter jurisdiction. There are three possible ways for a court to have subject matter jurisdiction over a claim:

(1) federal question jurisdiction; (2) diversity jurisdiction; and (3) supplemental jurisdiction. Each of these is discussed below.

FEDERAL QUESTION JURISDICTION

Pat can properly assert a claim in federal court if the claim is grounded in a federal question. Under the “well-pleaded complaint rule,” one examines whether there is a federal question in the complaint had the complaint been adequately pleaded. This analysis does not examine where the defendants might be asserting a defense based on federal law. The source for a federal question could be the U. S. Constitution or a federal statute.

Here, Pat has alleged that State A hospital has violated his federal civil rights under a commonly invoked statute, Section 1983. Since Pat has plainly stated that he is invoking this statute, and since State A hospital and Smith are both state actors, Pat has properly asserted a federal question. The citizenship of the parties and the amount in controversy (e.g., 6 million dollar damages against State A) is irrelevant as to the federal question jurisdiction of the court.

Conclusion. As to those defendants implicated in the Section 1983 claim (clearly State A hospital and Smith), the court has subject matter jurisdiction and can hear that claim.

DIVERSITY JURISDICTION

Diversity jurisdiction is a separate basis for jurisdiction. Two requirements need to be satisfied. First, there must be complete diversity. This means that no plaintiff and no defendant is from the same state. Here, the facts indicate that P is a citizen of state B, and that all defendants are citizens of State A. Assuming this is true, then there is complete diversity, and this requirement is satisfied.

Another requirement for diversity jurisdiction is that each claim must meet the amount of controversy. The amount in controversy must be over \$75,000. This amount is changed from time to time (e.g., before it was \$50,000). Pat’s allegation of damages must be made in good faith. The court will accept the claimed amount if there is a legally tenable possibility that the plaintiff would prevail. On the other hand, if the court concludes that it is “clear to a legal certainty” that a plaintiff could never recover the amount that he or she has alleged, then the court must dismiss the claim for lack of jurisdiction.

JULY 1998 CALIFORNIA BAR EXAMINATION ESSAY QUESTIONS AND SELECTED ANSWERS

Civil Procedure

Here, as indicated above, the damages against State A (\$6 million) need not be analyzed under the federal question jurisdiction. Because Pat has properly asserted a claim under Section 1983, it is not necessary that he also satisfy diversity jurisdiction. Nonetheless, for purposes of this discussion, assuming that \$6 million is a good faith allegation (which is possible because a state employee beating a mentally ill patient in a state hospital is a serious civil rights violation), and assuming that Pat and State A are diverse, then the court properly concluded that the court has jurisdiction over the Section 1983 claim.

Diversity Jurisdiction over Smith and Jones - Aggregation

Here, Pat has asserted separate claims against Smith and Jones that are each in the amount of \$37,500. As noted above, each claim must exceed \$75,000. Since \$37,500 is below the amount in controversy that is required, it appears that there is no diversity jurisdiction even though the parties are diverse.

However, can Pat argue that he can aggregate the claims of Smith and Jones because then the amount in controversy would exceed \$75,000? Pat would lose this argument on two grounds. First, the amount in controversy must be greater than \$75K. Here, even assuming that aggregation is proper, the amount in controversy would only be exactly at the \$75K mark. This would not be sufficient. Second, as to aggregation, it is possible only when there is one plaintiff and one defendant, and the amount in controversy as to each claim taken together exceeds \$75K. This is not the case here. Pat is asserting the same claim against two different defendants. Thus, the aggregation rule does not apply and, therefore, no diversity jurisdiction as to Smith and Jones. However, as to Smith, he would be a proper defendant under the Section 1983 claim as discussed above.

SUPPLEMENTAL JURISDICTION

Assuming that the court has proper jurisdiction under a federal question claim or under diversity of citizenship, the federal court has discretion to consider claims grounded only in State law. Here, the facts indicate that Pat claims that a State A law has been violated.

Under pendant supplemental jurisdiction, Pat can bring in a state claim if there is a substantial federal question and the state issue arises out of the same transaction or occurrence as the federal question. This is sometimes referred to as “a common nucleus of operative fact.” Here, the Section 1983 claim is clearly a substantial federal question, and the state A law appears too similar to the issues that would be litigated under Section 1983 (e.g., improper hospitalization, beating). Thus, the court does have jurisdiction over the state law claim, and would also have jurisdiction over Smith and Jones (assuming they are proper defendants because they are “pendant parties.”

Finally, even though the court can properly have supplemental jurisdiction over the state law claim, the court’s exercise of jurisdiction is discretionary, which means that the court can decline

**JULY 1998 CALIFORNIA BAR EXAMINATION
ESSAY QUESTIONS AND SELECTED ANSWERS**

Civil Procedure

to hear the state law claim if the federal question is dismissed, if the state law issue is complex, or the state issue predominate the litigation.

b. IS STATE A, A PROPER DEFENDANT?

The federal courts are “creatures of Congress” and have limited jurisdiction as discussed above. Furthermore, because of our tripartite system of government with three separate branches, the exercises of power by a federal court also raises separation of powers issues and federalism (e.g., conflicts between the powers exerted by state and federal governments).

Here, there is a federalism issue because a federal court is being asked to adjudicate a claim against a state. Under the 11th Amendment to the U. S. Constitution, the federal courts are barred from hearing claims against state governments because states are immune. Thus, it appears that state A has a good claim under the 11th Amendment.

Waiver of Immunity.

Although states, such as State A, are protected under the 11th Amendment, this immunity can be waived. One way in which it can be waived is if the state government expressly authorizes plaintiffs to sue the government. Another way that the 11th Amendment immunity can be waived is if Congress has clearly intended that state governments can be sued in federal court. The rationale is that since Congress is comprised of state representatives, then the states have authorized their being sued if Congress so legislates.

Here, Section 1983 is a classic example of how Congress can enact a federal law that waives 11th Amendment immunity. Because Section 1983 authorizes suits against state officials (not state governments), the claim against state hospital or Smith, a state employee, is proper.

c. WERE THE CLAIMS SUFFICIENTLY PLEADED?

Under the FRCP, there are minimal requirements for filing a complaint. The complaint must include the basis for subject matter jurisdiction, a statement of the claim, and the relief requested. Furthermore, the FRCP merely requires “notice pleading,” which means that Pat just needs to include enough information in the complaint such that it is sufficient to put the defendant on notice as to the nature of the claim. The only matters that need to be pleaded with particularity include matters such as fraud or special damages, which does not appear to apply here.

As to the United States, it was only mentioned in the caption, and the facts don’t suggest how the Section 1983 claim, the alleged illegal hospitalization, or the beating would implicate the United States. Therefore, the claim (or lack thereof) against the United States has not been sufficiently pleaded.

As to Smith, the complaint is sufficiently pleaded because that defendant is on notice because of the explicit referral to Section 1983. The defendant can research the statute, and has adequate

JULY 1998 CALIFORNIA BAR EXAMINATION ESSAY QUESTIONS AND SELECTED ANSWERS

Civil Procedure

notice that the issues as to illegal hospitalization or a beating by a state employee could implicate Smith.

As to Jones, the facts indicate that this defendant was mentioned only in relation to Smith (e.g., see Smith above). We do not know what the status is of Jones as to Pat. On the one hand, if Jones is a state hospital administrator or another state employee that was involved in the beating, then arguably Jones would be a property defendant. However, Pat must include some facts that give notice to Jones as to how he might be liable.

AMENDING THE COMPLAINT

Assuming that Pat has not properly pleaded his complaint as to the United States and as to Jones, the FRCP has liberal rules for amending pleadings. Thus, assuming that the defendants have not answered, Pat can amend the complaint one time as a matter of right. After the complaint has been answered, and assuming that the defendants will object to the insufficiency of the allegations, then Pat can seek leave to amend so long as justice requires, and the new allegations relate to the same transaction and occurrence.

ANSWER B

1. Whether the Federal Court has Subject Matter Jurisdiction Over the Claims Presented

Federal courts are courts of limited jurisdiction. Thus, in order for a federal court to hear a claim, the claim must be based on (1) diversity jurisdiction; or (2) federal question jurisdiction; and (3) if there is an existing claim based on one of the bases then a claim may be joined under supplemental jurisdiction.

A. Diversity Jurisdiction

In order to assert a claim based on diversity jurisdiction (1332), there are two requirements: (1) the parties (plaintiff and all the defendants) must be completely diverse; and (2) the amount in controversy must be more than \$75,000.

Diversity of the parties is determined by where the parties are domiciled at the commencement of the law suit. "Domiciled" means where the party is living - with an intent to stay there indefinitely. Here, P is a citizen of state B and there are no facts to suggest that he moved there in order to engineer diversity for the purposes of jurisdiction. All the defendants, namely, State A, Jones and Smith, are citizens of state A. And likewise, there are no other facts to suggest that state A is not their domicile for the purposes of determining diversity. Thus, the parties are completely diverse.

As a general rule, the amount in controversy must be met by P with respect to each defendant. P has met the amount in controversy as to state A since his complaint prays for damages in the amount of \$6,000,000, well over the required \$75,001. With respect to Jones and Smith, under the general rule, P has not met the amount in controversy since he seeks damages in the amount of \$37,500 against each of the defendants separately. However, where, as here, P is

JULY 1998 CALIFORNIA BAR EXAMINATION ESSAY QUESTIONS AND SELECTED ANSWERS

Civil Procedure

alleging an indivisible harm for which the defendants may be held jointly and severally liable, a single plaintiff may aggregate his claims to meet the amount in controversy. Thus, because P has alleged that Smith “beat him” and Jones “did the same,” and assuming that P is referring to a single beating done by the two defendants, then P may aggregate his \$37,500. Claims against each of them. However, even when they are aggregated, the claims must be greater than \$75,000. And the amount in controversy with respect to Jones and Smith is still not met for this reason.

B. Federal Question Jurisdiction

In the alternative, P can try to base his claims on federal question jurisdiction. In order to bring a claim based on federal question jurisdiction, P must bring a cause of action which raises a substantial federal question (Merril Dow). Moreover, under the Mottley rule, P must comply with the requirements of the well-pleaded complaint rule: Alleging the fewest number of allegations necessary to state his cause of action, the federal question must appear on the face of P’s complaint.

Here, P brings a claim based on 42 USC 1983. This is a federal statute under which P seeks a claim for relief. Moreover, this statute, and whether P is entitled to relief there under is a substantial federal question that has appeared on the face of P’s complaint. Thus, P has posed a federal question, namely whether his federal civil rights have been violated, sufficient for the court to exercise federal question jurisdiction.

C. Supplemental Jurisdiction

Assuming the case is heard based on federal question jurisdiction, the court may assert supplemental jurisdiction over any of P’s related state law claims that arise out of the, “common nucleus of operative fact.” Thus, P’s claim that State A violated state A law by hospitalizing him, may be heard by the court under supplemental jurisdiction.

However, if the court finds that the state law claim is one which raises an important state law question, the court may sever the state law claim and remand it back to state court, keeping the others.

D. Conclusions

The court was correct in its finding that the federal court had subject matter jurisdiction over the claims presented. The federal court has diversity jurisdiction over P’s claims against State A; it may have diversity jurisdiction against Jones and Smith if the “greater than \$75,000” amount in controversy is loosely interpreted to include claims which, correctly aggregated equal \$75,000. In the alternative, the court has federal question jurisdiction based on P claims under 1983, and the state law claims may be heard under supplemental jurisdiction.

II. Whether State A is a Proper Defendant

JULY 1998 CALIFORNIA BAR EXAMINATION ESSAY QUESTIONS AND SELECTED ANSWERS

Civil Procedure

The Eleventh Amendment of the United States Constitution prohibits suits in federal courts by citizens against states without their consent. This immunity prevents P from bringing suit against State A in federal court for his alleged injuries.

Exceptions exist to this 11th Amendment immunity. Specifically, P could sue the officers of state A for injunctive relief (which doesn't apply here); or for damages (against them personally). Other exceptions allowing P to sue state A in federal court would be if (1) state A consented to being sued; (2) it waived its 11th Amendment immunity; or (3) Congress specifically abrogated that immunity pursuant to Section 5 of the 14th Amendment.

The only argument that P may raise is that State A waived its immunity by making an appearance. However, this argument will ultimately fail since waiver needs to be unequivocal and moreover, state may appear solely for the limited purpose of contesting jurisdiction without waiving its 11th Amendment immunity.

Thus, because none of those exceptions apply here, P cannot sue State A in federal court because doing so is in violation of State A's 11th Amendment immunity.

III. The Sufficiency of the Pleadings Against the United States Jones and Smith

Federal Rules of Civil Procedure require notice pleading. Specifically, the rules are designed to require P to make allegations in his complaint sufficient to put the defendant notice of the claims against him.

A. The United States

All that P did with respect to the United States was name it as a defendant. In order to file a proper complaint against the U.S., P would have had to (1) name the party (which is the only thing P did); (2) state a claim upon which relief may be granted; (3) state a prayer for relief.

Here, P neither stated a claim upon which relief could be granted, nor did P state a prayer for relief. Thus, P's complaint is entirely defective with respect to the United States, and the U. S.'s motion to dismiss should have been denied.

B. Jones and Smith

Similarly, P's claims against Jones and Smith lack the requisite specificity required to put the defendants on notice with respect to the material facts surrounding the charges against them. Jones and Smith properly made motions to dismiss based on the insufficiency of the pleadings.

Particularly, Jones, about whom P only said "see Smith above." There is not notice for the defendants as to whether P is talking about being beaten once by both of them, or several times by each of them, whether such beatings allegedly took place within the scope of their employment.

Moreover, P was given a chance to respond to their motions to dismiss based on insufficiency of his pleadings, and he failed to clarify his allegations, responding instead that his complaint "was just fine." In fact, the complaint lacked sufficient facts to put the defendants on notice as to the particular facts surrounding the claims against them.

**JULY 1998 CALIFORNIA BAR EXAMINATION
ESSAY QUESTIONS AND SELECTED ANSWERS**

Civil Procedure

C. Conclusion

The court erred in ruling that the claims against the U. S. were proper because P failed to satisfy the requirements of a complaint with respect to the U. S. Likewise, the court erred in ruling that the pleadings were sufficient with respect to Jones and Smith because P failed to plead sufficient facts to put them on notice as to what charges specifically against them, and what facts support those charges. The cases should not be dismissed for insufficient pleading since P has been given an opportunity to cure the defects and has not.