

**JULY 1999 CALIFORNIA BAR EXAMINATION  
ESSAY QUESTIONS AND SELECTED ANSWERS**

***Civil Procedure***

**QUESTION**

Pat was living in State X when he was arrested and charged with violating a State X criminal statute. Because of overcrowding in State X Penitentiary, however, Pat was forced to await trial while incarcerated in the security wing of Delta Hospital (D), a private hospital for persons with psychiatric disorders, located and incorporated in the neighboring state of Y.

Pat filed a class action complaint against D in a federal district court in State X on behalf of himself, on behalf of 25 similarly situated inmates who were incarcerated at D awaiting trial in State X and on behalf of all such future inmates. The complaint alleged violations of the State Y Prisoners' Rights Act, which guarantees prisoners, *inter alia*, the right to safe food. The complaint alleged that the food served at D was often spoiled and contaminated with vermin droppings and that, as a result, he suffered continual gastrointestinal disorders. Pat requested \$70,000 in damages and an injunction prohibiting D from serving tainted food. D was properly served with a copy of the complaint.

Before D responded to the civil complaint, Pat's brother paid Pat's bail. As a result, Pat is no longer detained at D and has returned to State X.

The federal district court:

1. Denied a motion by D to dismiss for lack of jurisdiction;
2. Declined to certify the class on the ground that the class was not large enough;
3. Denied a motion by D to change venue to a federal district court in State Y; and
4. Granted a motion by D to dismiss the action as moot.

Was each of the rulings correct? Discuss.

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**ANSWER A**

1. The issue is whether the federal district court should have denied D's motion to dismiss following lack of jurisdiction. A federal district court has subject matter jurisdiction in federal question cases and in cases where there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs. Here, the class is seeking relief under the State Y Prisoners' Rights Act, so no federal question is involved. The federal district court will be applying the state act to the claim and state law will be wholly dispositive on the claim. With respect to diversity jurisdiction, one looks at the citizenship of the named class representatives to determine if diversity exists, so in this case Pat appears to be domiciled in State X (he was living there when arrested and returned there after his brother posted bail and will be viewed as a Citizen of State X. The hospital is a corporation, so it is a citizen of all states in which it is incorporated (in this case, Y) and the one state in which it has its principal place of business (the facts tell us it is located in Y and, presumably, based on its location, conducts all of its operations there, so its principal place of business is State Y). Accordingly, we have a dispute between a citizen of X and a citizen of Y, so as long as the amount in controversy is adequate, the federal district court has subject matter jurisdiction. Here, Pat has only claimed \$70,000, so that amount is less than \$75,000. However, Pat has also asked for injunctive relief, and may join the amount of that claim to his \$70,000 to attempt to meet the jurisdictional amount in controversy requirement. The court will either look at the amount that Pat would be damaged from failing to grant the injunction (which could be more than \$5,000 since Pat could be jailed in the hospital after his trial if he loses) or the amount that granting the injunction will cost the hospital (which could be more than \$9,000 if the hospital's cooking procedures are grossly unsanitary and deficient). If the amount is more than \$5,000, the court's exercise of jurisdiction is proper as to Pat. With respect to the rest of the class, the traditional rule is that each class member must meet the amount in controversy requirement and the modern trend is that only the named class representative must meet the amount in controversy requirement. We don't know what the other members of the class are requesting and if, under the traditional rule, jurisdiction is proprias to them. If the modern trend is followed, since Pat may meet the jurisdictional amount, the denial of the motion may be proper (depending on the amount the court assigns to Pat's claim for injunctive relief).

2. The issue is whether class certification should have been denied because the class was not large enough. The standard for determining if the class is of sufficient size that class certification is appropriate is whether joinder of individual parties with individual claims is impracticable because the parties and claims are too numerous for a federal court to do so efficiently. Here, there are 26 named plaintiffs plus future plaintiffs who maybe incarcerated in the hospital later to consider. Each of those plaintiffs will have similar claims but will likely also have some separate claims depending on the circumstances of their confinement, and the hospital will likely have common defenses to certain of these claims but may, if individual plaintiffs are permitted to bring individual claims, have certain specific defenses against certain inmates and may also wish to include different parties with respect to different inmates' claims (for example, if the hospital changed food vendors at some point during the period in question). Some inmates may also want to individually sue officers of the hospital personally or sue State X for making

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them be subject to the bad conditions of the hospital. Claims could rapidly proliferate (particularly if future inmates intervene in the action while it is ongoing, so it seems that class certification based on class size is clearly the more practical and efficient approach. Accordingly, the class certification should not have been declined based on class size.

3. The issue is whether the federal district court should have denied a motion by D to change venue to federal district court in State Y. A federal district court may transfer venue to any other federal district court where the action could have originally been brought. That requires that the federal district court to which the action will be transferred have subject matter jurisdiction, personal jurisdiction over the defendants and be an appropriate venue. Whether the federal district court in State Y will have subject matter jurisdiction over the proposed class action depends upon the analysis in question # 1 above and ultimately upon whether Pat's claim for injunctive relief exceeds \$5,000. The federal district court in State Y has personal jurisdiction over the hospital because the hospital is domiciled there and is subject to service of process in that state. Venue is proper in any federal district court which is in a forum where all the defendants reside or where a substantial part of the events or omissions giving rise to the claim arose. Here, the hospital is located and incorporated in State Y and seems to conduct all its operations there, so it resides in State Y. Accordingly, a federal district court in State Y could have been the initial forum for the proceeding. The issue is whether the federal district court in State X initially had subject matter jurisdiction, personal jurisdiction and was proper venue for the initial lawsuit. It is unclear (as we have stated) whether that court had subject matter jurisdiction. In addition, while the hospital was properly served, it is unclear from the facts whether the State X court had personal jurisdiction over the hospital based on minimum contacts (it would seem that the hospital's contracting with State X to hold its inmates resulted in it being foreseeable that the hospital could be sued in State X so personal jurisdiction was proper). Moreover, based on the venue test elaborated above, it is unclear that venue was initially proper in the State X court (the hospital neither resided there nor did the events leading to the claims take place there). If the claim was initially brought in the wrong federal court due to an absence of subject matter jurisdiction, personal jurisdiction or venue, the court to which it is proposed to be transferred may dismiss the case and choose to accept the transfer in its discretion. Even if the case was properly brought initially in State X, the State Y court would have discretion not to accept transfer based on convenience of the parties, convenience of the witnesses and other similar factors. Here, since everything related to the claim factually and the defendant reside in State Y, the State Y court could reasonably conclude that it should exercise its discretion to accept the transfer.

4. A federal district court can only hear actual cases and controversies pursuant to the Constitution. One requirement to this provision is that an actual controversy must exist at all stages of the litigation, so that the controversy has not become moot. The fact that Pat is no longer detained at the hospital neither makes the controversy moot as to him or to the other members of the class. Pat could still be jailed after trial and held in the hospital. Furthermore, with respect to class actions, even if the controversy becomes moot with respect to the class representative, if other members of the class are still subject to the injury and their claim has not

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been resolved, the class action is not moot and can go on. Accordingly, the court should not have granted D's motion.

**ANSWER B**

I. D's Motion to dismiss for lack of jurisdiction

In order for a Federal District Court to hear a lawsuit, it must have both Subject Matter Jurisdiction over the claim and Personal Jurisdiction over the defendant. Both of these are potentially of issue here.

Subject Matter Jurisdiction (SMJ)

The Federal Courts have limited jurisdiction and can only hear certain cases between individuals. The two most common types of SMJ are diversity jurisdiction and federal question jurisdiction. In this case, Pat's claims are based on a State Y law, and therefore do not present Federal Questions. The focus of this case must therefore be Diversity Jurisdiction.

In order to assert diversity jurisdiction, there must be complete diversity of citizenship between the parties to the action. Here, the plaintiff, Pat, could be either a resident of State X or State Y. He was living in State X prior to his arrest, but then lived in State Y in D's hospital. The test for individual citizenship is place of residence with intent to stay.

Here Pat does not intend to stay in State Y, in fact he has since posted bail and returned to State X. Therefore it appears that Pat is probably a citizen of State X.

On the other side we have a corporation as a defendant. Corporate citizenship has two locations, (1) the place of incorporation; and (2) the place of the principal place of business (PPB). Here D is incorporated in State Y and located in State Y, so its citizenship is State Y.

It therefore seems that we have complete diversity because P is a citizen of X and D is a citizen of Y. D will argue here, that this is a class action, so we need to clock the citizenship of all class members. This argument will fail because class action diversity is determined only by looking to the class representative. Here P is the representative, so we have complete diversity.

Amount in Controversy

The ground requirement for diversity jurisdiction is that the dispute involve more than \$75,000. Here Pat has claimed \$70,000 in damages and an injunction. Looking only at Pat's damages request, it would seem to fail the amount in controversy requirement. However, when injunctions are sought a monetary value is assigned to that remedy and added to the damages. The amount is usually decided by looking to the value of an injunction to the plaintiff. Here that value is likely to be high. Avoiding food poisoning is very valuable, especially considering the actual damages already suffered by Pat. When considering the value of the injunction, the amount in controversy is probably met.

The court could properly assert diversity jurisdiction.

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### Personal Jurisdiction (PJ)

D will argue that even if there is SMJ they are not subject to suit in State X because they reside in State Y. Federal Courts normally can assert personal jurisdiction over defendants to the same extent as state courts in the state can. This is generally governed by both state statutes on point and a constitutional analysis. Because the facts do not provide a state statute the constitutional analysis should suffice.

Personal jurisdiction is proper where a defendant has such minimum contacts with the state so as not to offend notions of fair play and substantial justice by holding D for trial in that state. Here D satisfies these tests.

D had minimum contacts with State X because they accepted State X's prison overflow. D therefore purposefully availed itself of State X's laws. Also it was foreseeable that D could get sued based on this conduct because they assumed a duty of care over the prisoners. D therefore had maximum contacts.

These contacts also satisfy the fair play test because the suit at issue is directly related to D's contacts. Furthermore, States X and Y are neighbors so travel shouldn't be unduly harsh for D. It's therefore substantially best to assert PJ here.

The court properly denied D's motion because there is both SMJ and PJ.

### II Declined to Certify the Class

Class action certification requires all elements: (1) Numerous plaintiffs make joinder impractical; (2) Common claims for all members; (3) Representatives have typical claims and (4) There is adequate representation. Here the first element, numerous plaintiffs, is at issue.

Here we have a potential class of 25. This does not seem to be unduly burdensome to join these 25. However, the class also is designed to include all future inmates of D. This is important because it does make the class numerous. Joinder of future plaintiffs is impractical so that should satisfy the element. The 25 present inmates are not sufficient, but including all future such inmates and seeking an injunction to protect them is proper.

The court erred in denying certification on the ground of numerosity.

### III. Motion to Change Venue

The Federal Rules state that venue in a diversity action shall be: (1) wherever the events occurred; (2) where defendant resides; or, if neither of these applies (3) where any defendant subject to personal jurisdiction. If venue is not properly placed originally, a court may either dismiss the case or transfer it to a new venue. At anytime the court may transfer venue for the interests of convenience and justice.

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Here the selected venue, State X, does not satisfy either of the first two locations. The events of issue occurred in State Y and the defendant resides in State Y. It therefore seems that venue should have been in State Y. D is subject to PJ in State X, so venue would be proper in State X if there's a reason why venue is unavailable or unsatisfactory in State Y.

Here, the interests of the parties and the respective states indicate that venue is better and more proper in State Y. The law at issue is a State Y law, so State Y has a stronger interest in exercising this law. Also, the hospital, all the evidence and witnesses are in State Y. Clearly there is a strong convenience preference for State Y. By contrast, State X has an interest in protecting its citizens and P is a resident of State X. There are, therefore, some interests in State X. However, these are not strong enough to overcome the interests in State Y.

The court should have granted D's motion to change venue because it should have been filed in State Y initially and the interests of justice so require.

#### **IV. Motion to Dismiss is Moot**

The Constitution limits Federal courts to hear only cases and controversies. One of the requirements for a valid case or controversy is that the claim not be Moot. Here D has posted bail and been released from D, so D can argue that the case is Moot.

This argument will fail for several reasons. First, P has claimed damages against D. Those injuries have not been made whole simply by releasing P. P is still entitled to recovery for those injuries. Therefore P's damage claim is not moot.

Second, even P's injunction claim is probably not moot. When a class action is asserted, mooting the representative's claim does not moot the entire claim if there are members who still have live claims. Here there are at least 25 other plaintiffs who still have viable claims for injunctive relief. Therefore the injunction mootness claim will also fail.

The court erred in granting dismissal for mootness.