

**JULY 2001 CALIFORNIA BAR EXAMINATION  
ESSAY QUESTIONS AND SELECTED ANSWERS**

*Civil Procedure*

**QUESTION**

Pam took an indefinite leave of absence from her job, sublet her apartment in State A, and went to care for her elderly mother in State B. Approximately six months later, while Pam was walking to her car in the parking lot of Don's Market in State B, Rita, a resident of State C, struck Pam with her car. In Rita's car were three friends from State C who were traveling through State B with Rita. The friends told the police officer called to the scene of the accident that Pam was reading a magazine as she walked across the parking lot and was therefore not watching where she was going. Pam told the police officer that she had just walked out from behind a large concrete column in the parking lot when Rita's car struck her.

Pam sued Rita and Don's Market in federal court in State B. Pam's complaint sought \$60,000 in damages against each defendant. It also asked the court for an injunction ordering Don's Market to tear down the concrete column in the parking lot.

Don's Market moved to dismiss Pam's complaint on the ground that the court lacked subject matter jurisdiction. The court denied the motion.

Rita then moved for a change of venue of the action to federal court in State C on the grounds that she is a citizen of State C and that it would be a hardship for her and her witnesses to travel to State B for trial. The court denied Rita's motion for change of venue.

Rita then filed a notice of appeal of the court's denial of her venue motion. The appellate court dismissed Rita's appeal.

1. Was the trial court correct in denying the motion of Don's Market to dismiss the complaint on the ground that the court lacked subject matter jurisdiction?  
Discuss.
2. Was the trial court correct in denying Rita's motion for change of venue?  
Discuss.
3. Was the appellate court correct in dismissing Rita's appeal? Discuss.

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**ANSWER A**

I. Trial Court's Denial of Don's Market's Motion to Dismiss for Lack of Subject Matter

Jurisdiction

Federal courts are courts of limited subject matter jurisdiction (SMJ). Generally, a plaintiff's cause of action must be based on a federal question or on diversity of citizenship for a federal court to have SMJ.

A. Federal Question Jurisdiction

A federal question exists when plaintiff sues to vindicate a federal right, often under a federal statute or the Constitution. Here, it is not clear what Pam's lawsuit is specifically about. However, since the incident was a car accident in a private parking lot, it is probably a negligence action. Accordingly, this is not a federal question since no federal issue is raised, and so the court does not have federal question SMJ.

B. Diversity of Citizenship SMJ

For a federal court to have SMJ based on diversity, each plaintiff must be diverse from each defendant and the amount in controversy must exceed \$75,000.

a. Diversity of Citizenship

Rita (R) is a resident of State C. An individual's citizenship is that of their domicile; since R appears to be domiciled in C, where she resides, R is a citizen of C.

Don's Market is probably a corporation. A corporation's citizenship includes its state of incorporation and the state in which it has its principal place of business. We are not told in which state Don's Market (DM) is incorporated. The market itself is in State B. If this is the only store DM operates, then its principal place of business is in State B and so it is a citizen of State B. Accordingly, DM is probably a citizen of B.

Pam, as an individual, is a citizen of the state of her domicile. Pam originally lived in State A, but left her job there indefinitely, subletting her apartment, to come to care for her mother in State B. Domicile is determined by physical residence combined with intent to make the state a permanent home. Pam (P) is physically residing in B. Her indefinite leave of absence from her job in State A may indicate she intends to eventually move back to A. If she intended to make B her permanent home, she probably would have quit her job in A and terminated her lease rather than subletting it. Accordingly, P probably does not have the intent to make B her permanent home. She is therefore still domiciled in State A and is a citizen of A.

Because P is a citizen of A, and R is a citizen of C, and DM is a citizen of B, complete diversity exists.

b. Amount in Controversy

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For diversity SMJ, the amount in controversy must exceed \$75,000. Here, P is claiming \$60,000 from each defendant. A plaintiff's good faith claim in excess of the required amount is sufficient.

P may aggregate her claims for \$60,000 against each defendant. A plaintiff may only aggregate claims against multiple defendants if they are joint tortfeasors. Here, P appears to be claiming that R and DM jointly caused her injury through their individual negligence: R's negligence in driving and DM's negligence in placing the concrete column. Since these acts of negligence combined to cause P's injury, DM and R are joint tortfeasors. Accordingly, P may aggregate her separate \$60,000 claims together, making \$120,000, in excess of \$75,000.

Additionally, P is seeking an injunction. An injunction may be valued by either the value of the benefit to plaintiff or the cost of compliance for defendant. The value of removing the column to P is probably not great. However, if the cost to DM of removing the column is over \$15,000, then the injunction against DM plus the damages claim would exceed \$75,000. Note P may then argue she has supplemental jurisdiction over the claim against R. However, as a plaintiff in a diversity case, she may not join additional claims under the supplemental jurisdiction statute.

Accordingly, since the parties are all diverse, and the amount in controversy exceeds \$75,000 either through aggregation or the injunction, subject matter jurisdiction was proper.

The motion was therefore properly denied.

## II. Denial of Motion for Change in Venue

### A. Proper Venue in State B

To determine if R's motion should have been granted, we must see if venue was originally proper.

In a diversity case, venue is proper in any district where all defendants reside; or where a substantial part of the claim arose; or, if neither is possible, any district where any defendant is subject to personal jurisdiction.

#### 1. Residence

A corporation resides where it is subject to personal jurisdiction. Jurisdiction is proper under traditional bases, such as presence or citizenship in a state, or under minimum contacts analysis, in which the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice. Here, DM is a citizen of B since it has its principal place of business there. Personal jurisdiction will be proper under traditional grounds over a corporation present as a citizen in a state. Accordingly, DM is subject to personal jurisdiction in B as a citizen. Additionally, DM certainly has minimum contacts with State B. It does

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substantial business there, purposefully availing itself of State B's laws, since its market is in State B. Also, the accident arose directly out of DM's contacts with B, since its market parking lot is in State B and it was certainly foreseeable that DM could be sued in State B arising out of incidents involving its market in State B. Accordingly, DM is subject to personal jurisdiction in State B, and so, for venue purposes, it resides in State B as well.

R, as a citizen and domiciliary of State C, resides in State C.

Accordingly, since DM resides in B and R resides in C, there is no district in which all defendants reside.

2.     Substantial Part of the Claim

The accident occurred entirely in State B, in the DM parking lot.

Accordingly, a substantial (indeed, all) part of the claim arose in the district in which DM's store is located.

We are not told whether P's suit was filed in the district encompassing DM's market (sic). If State B only has one district, then venue is proper since the accident necessarily occurred within that district. If the accident and lawsuit are in different districts, then venue may not be proper where filed. More information is needed.

3.     Any District Where Any Defendant is Subject to Personal Jurisdiction

Here, R, as a citizen of C, is subject to personal jurisdiction in C; as noted above, DM is subject to personal jurisdiction in B. Accordingly, if no district fulfilling either of the first two requirements exists, then venue would be proper in R's home district or in B. However, as explained above, venue is proper in the district encompassing DM's market (sic), where the accident occurred.

Accordingly, assuming the lawsuit was filed in the same district encompassing DM's market (sic), venue was proper. Thus R's motion was properly denied on this basis.

B.     Transfer of Venue

Even if venue is originally proper, a court may still transfer venue to another court where the suit could originally have been brought, if the interests of justice so require.

R will argue that the interests of justice require transfer to C because her three witnesses reside in C, and travel to B would be highly inconvenient. Certainly R's witnesses are very important, since their testimony presumably will state that P, in reading a magazine while walking, was at least contributorily negligent. The convenience of witnesses is normally a valid reason to transfer venue.

However, the action must have been bringable in the transferee district. Here this means all defendants must be subject to personal jurisdiction in C, the C court must have had SMJ, and venue must be proper in C.

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1. SMJ in C

Diversity of citizenship would provide valid SMJ in C.

2. Personal Jurisdiction

R, a citizen and domiciliary of State C, is subject to personal jurisdiction in C under traditional bases.

DM may not be subject to personal jurisdiction in State C. We are not told State C's long-arm statute, but it does not appear that DM is a citizen of C, or even that it does any business there. Without any contacts with State C, DM cannot be said to have purposefully availed itself of C's laws, nor is it foreseeable that DM would be sued in C if it has no contacts there. Finally, the accident occurred in State B, so not only does State C have little interest in exercising jurisdiction over DM, but there is no relationship between DM and State C and the cause of action. Accordingly, it is highly unlikely that State C could exercise personal jurisdiction over DM, since no traditional bases exist, and there are apparently no contacts between DM and C, much less the constitutionally required minimum contacts.

Since DM is not subject to personal jurisdiction in State C, then the action could not have been brought originally in State C. Therefore, venue cannot be transferred to State C.

3. Venue

As explained previously, a district exists where a substantial part of the claim arose: the district encompassing DM's market (sic), in State B. Therefore, since such a district exists, venue would not be proper in State C, since the only means of proper venue in State C would be under the "last resort" option of any district where any defendant is subject to personal jurisdiction. This option is unavailable where, as here, a district exists where a substantial part of the claim arose.

Accordingly, since transfer of venue to State C could not have been proper since neither venue nor personal jurisdiction over DM existed in C, the trial court properly denied R's motion to transfer venue.

### III. Did the Appellate Court Correctly Dismiss Rita's Appeal?

Appellate courts generally review final judgments. Here, the denial of R's motion to transfer venue was not a final judgment. An appellate court may consider interlocutory appeals on certain matters, particularly if the matter is of great importance and, if not settled immediately by the appellate court, will substantially affect subsequent litigation.

Here, the denial of the motion to transfer venue was not a final judgment. In addition, since venue was proper in State B, since the accident occurred there and so the claim arose there (see previous analysis), the denial of transfer of venue did not confer improper jurisdiction on the

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trial court. Accordingly, there was no compelling need to consider the denial of the motion on immediate appeal.

Even had the appellate court heard the appeal, it would have reviewed the denial on an abuse of discretion basis. While the requirements of personal jurisdiction must be properly met, and cannot be waived, the determination of whether transfer would be in the interests of justice is for the discretion of the trial court. The court could have found that, while R and her witnesses would be inconvenienced in State B, that P and DM would be more inconvenienced in State C, especially since P cares for her elderly mother in State B. Since this decision would be one of the trial court's discretion, the appellate court would have been unlikely to overturn it.

Therefore, the dismissal of R's appeal was proper.

**ANSWER B**

(1) Subject Matter Jurisdiction

Pam brought suit in federal court in State B. For a federal court to have subject matter jurisdiction, there must be a federal question or complete diversity of citizenship between the parties. Because no federal statute or constitutional claim is involved, jurisdiction can only be based on diversity.

Diversity Jurisdiction

Federal court jurisdiction based on diversity requires complete diversity of citizenship between the parties and an amount in controversy over \$75,000.

A. Complete Diversity of Citizenship

For Pam to sue Don's Market and Rita in federal court, she must be a citizen of a different state than each of them.

1. Pam's Citizenship

An individual's citizenship is based on their domicile, or where they intend to make their permanent home. For Pam to be diverse from Don's Market, her domicile cannot be in State B. Pam will argue that she is domiciled in State A, because that is where she was living until 6 months ago. Pam will argue that she left only for a temporary period to care for her elderly mother in State B, and that her intent to return is evidenced by the fact that she did not give up her apartment, only sublet it. Also, she did not quit her job, but only took a leave of absence from it.

Don's Market will argue that Pam is a citizen of State B because she is living there presently. He will argue that Pam's subletting her apartment was giving up her residence there, and that it was sublet just so Pam could avoid breaking her lease. Don will argue that she did not merely take a vacation from her job in State A, but has left it indefinitely.

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Although it is a close question, the fact that Pam has retained both her apartment and her job in State A shows her intent to keep her permanent home there. The court should find that she is domiciled in State A.

2.     Don's Market's Citizenship

The citizenship of a business is its principal place of business and, if it is incorporated, where it is incorporated. The facts do not state whether Don's Market is a corporation, but its principal place of business is in State B, so it is a citizen of State B. Therefore Don is diverse from Pam.

3.     Rita's Citizenship

Since Rita is an individual, her citizenship, like Pam's, is based on her domicile. Since the facts state that she is from State C and was just driving through State B, her domicile can be assumed to be in State C, where she lives. Therefore, Rita is diverse from.

Since both the defendants, Don's Market and Rita, are diverse from the plaintiff, Pam, complete diversity of citizenship exists.

B.     Amount in Controversy

Diversity jurisdiction requires an amount in controversy of over \$75,000. The amount is based upon the plaintiff's good faith allegation and can only be challenged if it is clear to a legal certainty that she cannot recover that amount.

1.     \$60,000

Here, Pam claims \$60,000 in damages against each defendant. Presuming that is her total claim against each one, including punitives and attorneys' fees if available, it does not satisfy the jurisdictional amount.

However, a plaintiff can aggregate her claims to meet the \$75,000 requirement in certain circumstances. A plaintiff can aggregate her claims against the same defendant, but cannot aggregate her claims against different defendants unless they are joint tortfeasors against any of which she could recover the full amount. Here, there are facts to indicate that Don's Market and Rita are jointly liable, since they each caused the accident (Don's Market by placing a column improperly and Rita by driving carelessly). If they are jointly liable, Pam has met the jurisdictional amount because her claim is \$120,000. If they are not, she cannot meet the requirement solely through her claimed damages.

2.     Injunction

However, Pam is also asking for an injunction to make Don's Market tear down the offending column. In a majority of states, injunctions are valued at their value to the plaintiff. Here, the injunction has little value for Pam, as she has already been injured and is unlikely to be injured by the column again. In the majority of states, then, this would not help Pam reach the jurisdictional amount against Don.

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A minority of states allow injunctions to be measured by their cost to the defendant. Here, the cost to Don of tearing down the column may be high enough to raise her \$60,000 claim to the required \$75,000. If it does, the injunction will give the court diversity jurisdiction over Pam's claim against Don, but not over her claim against Rita. Nor is supplemental jurisdiction available over the claim against Rita based on the claim against Don, because this is not a federal question claim, and it is being brought by the plaintiff.

In conclusion, if Don's Market and Rita are jointly liable, the court's denial of Don's motion to dismiss for lack of jurisdiction was proper because there is complete diversity of parties and the amount in controversy exceeds \$75,000 when the claims are aggregated. If they are not jointly liable, jurisdiction over Don may still be proper due to the injunction, but not as to Rita.

### (2) Change of Venue

#### A. Venue in State B Federal Court

Venue is proper where any defendant resides if all reside in the same state, or where a substantial part of the events forming the basis for the claim arose.

Here, Don's Market resides in State B, where it is located and does business, but Rita resides in State C. However, since the accident that is the basis for the claim took place in State B, venue is proper there even though not all defendants reside there.

#### B. Transfer to State C

Where venue is proper to begin with, a court may transfer to any other venue where the case could originally have been brought for the convenience of the parties or witnesses or in the interests of justice.

##### 1. Convenience

Here, Rita argues for transfer to State C on convenience grounds because that is where she resides, and it would be a hardship for her and her witnesses to defend in State B. It is true that Rita and the three primary eyewitnesses, who also reside in State C (her friends who were in the car at the time of the accident and allege they saw Pam reading a magazine and not watching her step), would incur hardship in coming to State B to defend.

However, this hardship will be balanced against the hardship Pam and Don's Market will face in having to defend in State C, a foreign state for them. Pam is caring for her elderly mother and will find it hard to leave, and it will be hard for Don's Market to leave its business, especially as it is likely a sole proprietorship. Also, witnesses regarding the construction of the column, police who were called to the scene afterwards, and doctors who treated Pam are all located in State B. These factors weigh in favor of denying the motion to transfer.



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2.     Venue Proper in State C

Moreover, venue may not be proper in State C because the case could not have originally been brought there, nor did the claim arise there. Although Rita resides there, Don's Market resides in State B, so venue cannot be supported on this basis. Also, the only event involved in the claim, the accident, occurred in State B, so venue is not proper on that basis either.

In conclusion, because the convenience to the parties and witnesses weighs in favor of State B and because venue would not be proper in State C, the court was correct to deny Rita's motion.

(3)    Dismissal of Appeal

A.     Final Judgment

A case can only be appealed from a final judgment on the merits in the lower court. If there are issues remaining for the lower court to decide, appeal will not be taken.

Here, the lower court has dismissed Rita's motion for change of venue, but that is not a final judgment. The court has not dismissed the underlying case, which still must be tried and decided.

B.     Interlocutory Appeal

A party may appeal before a final judgment on certain matters by right, such as a granting of an injunction, or if the lower court certifies that the issue is a close one and the appellate court agrees.

Because there is no right to an interlocutory appeal for a denial of a change of venue motion and the lower court did not certify, the dismissal of the appeal was proper.