

## Question 1

Pam and Patrick are residents of State A. While visiting State B, they were hit by a truck owned and operated by Corporation, a freight business.

Corporation is incorporated under the laws of Canada and has its headquarters there, where its President and Secretary are located. State B is the only state in which Corporation conducts its business. Corporation's drivers and other employees work out of its warehouse in State B.

Pam and Patrick jointly filed a lawsuit against Corporation in federal district court in State A. In their complaint, Pam demanded damages for personal injury in the amount of \$70,000 and for property damage in the amount of \$10,000; Patrick demanded damages in the amount of \$6,000.

Corporation filed a motion to dismiss the complaint for lack of personal jurisdiction. The federal district court denied the motion. After trial, it entered judgment for Pam in the amount of \$60,000 and for Patrick in the amount of \$4,000.

Corporation has appealed on the grounds of lack of subject matter jurisdiction and lack of personal jurisdiction.

How should the court of appeals rule on each ground? Discuss.

## **ANSWER A TO QUESTION 1**

### **1. Did the Federal District Court of State A have Personal Jurisdiction over Corporation?**

#### **Waiver?**

Personal Jurisdiction is waived if not challenged. Here, Corporation ("Corp") filed a motion to dismiss for lack of personal jurisdiction ("PJ") at trial. Therefore, Corp did not waive its right to appeal based on lack of PJ.

#### **Personal Jurisdiction**

Personal jurisdiction is the power of a court to have jurisdiction over an individual or entity. Here, a corporation. The exercise of personal jurisdiction must comport with the requirements of Due Process.

#### **TRADITIONAL BASIS**

Traditionally, PJ could only be exercised if the defendant consented to suit in the forum, was served in the forum, or was domiciled in the forum. Here, there are no facts to indicate that Corp consented to jurisdiction ("JDX") because they did not make a general appearance, or in any way consent. Further, Corp is not domiciled in the forum. A corp is domiciled where it has its principal place of business, based on nerve center, and where it is incorporated. Both of those are in Canada for Corp. Finally, facts do not state where Corp was served or if they had an agent for service of process in State A, but assuming that they were not served in state A, there is no traditional basis in state A.

#### **LONG ARM STATUTE**

If there is no traditional basis for the exercise of Personal jurisdiction, the court will next look to the state's long-arm statute to determine whether the court has jurisdiction to reach out to another state, or country to exercise jdx over the defendant. Here, there

are no facts to indicate that state A has a long-arm. If it did, the federal district court would have jdx to the same extent as the state.

### **CONSTITUTIONAL ANALYSIS**

To comport with due process, personal jurisdiction is only proper if the defendant has such minimum contacts with the forum state that the exercise of jdx comports with traditional notions of fair play and substantial justice.

### **MINIMUM CONTACTS**

Minimum contacts requires a showing of purposeful availment and foreseeability.

### **PURPOSEFUL AVAILMENT**

A party purposefully avails itself of the forum state if it has taken advantage of the benefits and protections of that state's laws. Here, Corporation is incorporated in Canada and has its headquarters there. Further, its warehouse is in state B. Further, Corp operates a freight business and was driving in state B when the Accident occurred, and state B is the only state in which Corp conducts its business. There are no facts to show that Corporation had any contact at all with state A. Therefore Corp will argue it did not purposefully avail itself of the privileges and benefits of State A.

### **Foreseeability.**

Because State B is the only state in which corp does business, it will argue that it was not foreseeable that it would be haled into court in state A. P and P could argue that a trucking company should foresee being sued anywhere, but if the trucks are only on the road in state B, this argument will not likely prevail. It was not foreseeable that Corp would be sued in state A.

### **Relatedness of the claim to the contact**

The court will look at the quality and nature of the contacts. There is general jurisdiction if the defendant's contact is so systematic and continuous that he is essentially at home

in the forum. There is specific jurisdiction if the contact is less than systematic and continuous, but the claim arises out of the defendant's contact with the forum.

Here, there is neither general or specific jdx because the claim neither arises out of the contact with the forum nor is Corp "essentially at home" in the state A because its contact there is not systematic and continuous.

Specifically, the accident occurred while Pam and Patrick were visiting in State B, not state A, and therefore the claim does not arise out of contact with State A, and there can be no Specific Jdx as a result.

Additionally, Corp only does business in State B, has its warehouse in state B and is incorporated and has its president, secretary and headquarters in Canada. Therefore there is no general jdx because there is no contact with State, and certainly not systematic and continuous contact.

Therefore, there is neither specific nor general Jurisdiction.

### **Fairness**

The fairness factors include the convenience of the parties and witnesses as well as the forum state's interest. The court will also look at the interstate judicial system's interest. Although state A has an interest in providing a forum for redress for its citizens, and Pam and Patrick are State A citizens, State B has a stronger interest because that is where the accident occurred, on its roads. Further, because Corp operates in State B only, state B has a strong interest in adjudicating the claims against its citizens for their conduct while in the state. As to convenience, any and all witnesses and evidence would be located in State B, rather than the forum, state A.

Therefore, the fairness factors are in favor of not finding PJ over Corp.

## **RULING:**

Therefore, Under a Due Process Analysis, The court of appeals should rule that there was no personal Jurisdiction over Corp.

## **2. Did the Federal District Court have Subject Matter Jurisdiction over the matter?**

Federal courts are courts of limited jdx and must have jurisdiction under arising under/federal question jurisdiction or diversity jurisdiction.

In some cases, the court may be able to exercise supplemental jurisdiction.

Federal District Court must have had jurisdiction over each and every claim in the matter. Here, both Pam and Patrick brought claims. Therefore, each claim is considered separately below.

## **WAIVER?**

Here, it does not appear that Corporation contested subject matter at trial. However, subject matter is not waived if the party fails to raise it at trial, and may be raised at any time, even on appeal. Therefore, Corporation could appeal based on this ground.

## **SUBJECT MATTER JURISDICTION OVER PAM'S CLAIM**

May have SMJ under either federal question or diversity. Here, the claim arises from personal injury, a tort claim, which is a state claim. Therefore, Pam must show diversity jurisdiction.

Diversity jurisdiction requires complete diversity between the parties (Strawbridge v. Curtiss) and an amount in controversy in excess of \$75,000.

## **COMPLETE DIVERSITY**

Complete diversity requires that all plaintiffs are citizens of different states than all defendants. Or, as in the case here, that the suit be between a citizen of a state, and a foreign citizen.

A natural person is a citizen of the state in which she is domiciled. Domicile is physical presence plus intent to remain indefinitely. Here, facts state that Pam is Resident of State A. Therefore, Pam will be domiciled in state A.

A corporation is a dual citizen of every state in which it is incorporated and the state which is its principal place of business. ("PPB") PPB is determined by the "nerve center," or the place from which corporate managers run the corporation. (Hertz v. Friend).

Here, Corp is incorporated under the laws of Canada and thus is a citizen of Canada. Further, Corp has its "nerve center" in Canada because that is where its headquarters is located and where its President and Secretary are located. Although Corp keeps a warehouse in state B and its drivers and other employees work out of the warehouse in state B, no facts indicate that any direction of corporate activity occurs here. Therefore, this is the muscle center, not the nerve center, and the Supreme Court ruled that the Nerve center is the PPB.

Therefore, Corp will be deemed a citizen of Canada, meaning that it is a foreign citizen. Because Pam is a citizen of State A and Corp is a Foreign Citizen of Canada, there is complete diversity between the parties.

### **AMOUNT IN CONTROVERSY**

The amount in controversy must exceed \$75,000 exclusive of interests and cost. The plaintiff's good faith claim will control, unless it is clear to a legal certainty that plaintiff cannot recover the required amount (in excess of \$75,000).

Here, Pam demanded damages of \$70,00 for personal injury and \$10,000 for property damages. Neither amount alone satisfies the amount in controversy.

### **AGGREGATION**

Generally, aggregating claims is not required. However, a single plaintiff may aggregate all claims against a single defendant. This means that Pam can add together

her claims against Corp. Therefore, adding Pam's claims together, her good faith claim was for \$80,000. Because there are no facts to indicate this amount was not in good faith, or that there is a legal certainty prohibiting Pam from this recovery (such as a statutory damages cap), Pam has met the amount in controversy.

**RESULT IF PLAINTIFF RECOVERS LESS THAN THE AMOUNT IN CONTROVERSY:**

If the plaintiff recovers less than the amount in controversy, that will not defeat diversity jdx, because the good faith claim controls. However, in such a case, the plaintiff may be required to pay the defendant's fees in the litigation. Therefore, because Pam recovered on \$60,000 that will not defeat diversity, but she may be liable for costs.

**RULING:**

The federal district court had subject matter jurisdiction over Pam's claim by virtue of diversity jurisdiction. Therefore, the court should deny the appeal based on lack of SMJ over Pam's claim.

**SUBJECT MATTER JURISDICTION OVER PATRICK'S CLAIM**

As above, this is a tort claim, not arising under federal law, and therefore the court will not have "federal question" jurisdiction. Therefore, Patrick will have to meet the requirements of diversity jurisdiction for the federal district court to have had SMJ.

**COMPLETE DIVERSITY**

Like Pam above, Patrick is domiciled in state A and will therefore be a citizen of state A. Under the analysis above, Corp is a foreign citizen of Canada. Therefore, as above, there is complete diversity.

**AMOUNT IN CONTROVERSY**

Patrick requested only \$6000 in damages. This is less than \$75,000 and therefore does not meet the amount in controversy. Patrick may not aggregate his claim together with Pam, because plaintiffs may not aggregate claims with other plaintiffs.

Therefore, the court did not have diversity jdx over Patrick's claim.

## **SUPPLEMENTAL JDX**

Where the court has jurisdiction over one claim in a matter, it may exercise supplemental jurisdiction over other claims that arise from a Common Nucleus of Operative Fact. The common nucleus test is generally considered broader than the same transaction or occurrence test, and therefore any party that would meet the Same Tran. and Occ. test will meet the Common Nucleus of Operative Fact test.

Here, Pam and Patrick are both suing for injuries and damages arising from the same car accident. While visiting State B, they were hit by a truck owned by Corp, the same truck, in the same accident. The witnesses to both will be the same, as will the evidence. Therefore, Patrick's claim arises from a Common nucleus of operative fact with Pam's claim, and the federal district court could exercise supplemental jdx over Patrick's claim.

## **DIVERSITY LIMITATIONS ON SUPPLEMENTAL JDX**

However, where the underlying claim is in diversity, the court cannot exercise supplemental jdx over a claim by a plaintiff that would defeat complete diversity. Here, Patrick is a plaintiff. However, if supplemental jdx is exercised over Patrick's claim it will not defeat complete diversity because all Plaintiffs will still be citizens of State A, and all Defendants of Canada.

Where the supplemental claim does not meet the amount in controversy, but will not destroy complete diversity, the court may exercise supplemental jurisdiction over the claim. Here, Patrick's claim did not meet the amount in controversy, but will not destroy complete diversity and therefore the court may exercise supplemental jdx over the claim.

## **DISCRETION**

In some cases, a federal district court should exercise discretion not to exercise supplemental jdx, such as where there is a novel or complex issue of state law, or state claims predominate, or all federal questions have been dismissed. On these facts, this

is a tort claim for personal injury and therefore not novel or complex. Further, the claim is in diversity and not federal question, and thus there is no concern about the federal claims being dropped out.

This is not a claim over which the court should decline supplemental based on the discretionary factors.

**RULING**

The Federal district court had subject matter jurisdiction over Patrick's claim based on supplemental jurisdiction. Therefore, the appeals court should deny the motion on the basis of lack of subject matter jurisdiction.

## **ANSWER B TO QUESTION 1**

### **Pam and Patrick v. Corporation**

Pam and Patrick have raised a claim against Corporation (C) in federal district court in State A. Corporation attempted to dismiss the case based on lack of personal jurisdiction (PJ) and subject matter jurisdiction (SMJ). These motions were denied, Pam and Patrick were awarded damages in the case, and Corporation has appealed the case on the grounds listed above. The following considers how the court of appeal should rule on these claims.

### **Subject Matter Jurisdiction**

Subject matter jurisdiction (SMJ) considers whether the court has the power to hear the particular case. This case was brought in federal court; federal courts are courts of limited power, unlike state courts, which can generally hear any case save for several exclusively federal categories. In order for federal courts to have proper SMJ over a case, the case must either be based on a federal question, or meet the requirements for diversity of citizenship jurisdiction. Each of these will be examined in turn to see if the federal courts have jurisdiction over this matter.

### **Federal Question**

A case may properly be held in federal court when the case is based on a federal question. This requires that the plaintiff assert a claim arising under the federal constitution or a federal law. The "well pleaded complaint rule" dictates that the claim be asserted in plaintiff's complaint. It is not enough that a federal issue generally be raised by the case, nor that the defendant will defend on the grounds of a federal law.

Here, the case involves personal injury damages for the injuries that Pam and Patrick suffered when they were hit by a truck owned and operated by Corporation. Thus, it appears that the case is just a simple tort case, which would be based on state law, and not on the constitution or federal law.

Thus, there is no federal question here.

### **Diversity in Citizenship**

However, the federal courts have another means of jurisdiction available, in the form of diversity of citizenship. To be valid, all plaintiffs must be "diverse" in citizenship from all defendants, and the amount in controversy must exceed \$75,000.

### **Diversity**

There is an absolute diversity requirement, wherein each plaintiff must be entirely diverse in citizenship from each defendant. The federal rules allow for diversity between citizens of different states, or citizens of a state and a foreign country. Citizenship for individuals is based on their domicile, which is evidenced by physical presence and intent to remain. For corporations, citizenship is determined by place of incorporation, and principal place of business, which is where the owners, directors, and management manage and direct the company's affairs.

Here, Pam and Patrick are residents of State A. Though the facts do not give us any hints into whether they have the intent to remain there, it is reasonable to presume that they did have that intent. Thus, their citizenship is State A.

C is incorporated under the laws of Canada and has its headquarters there, where its President and Secretary are located. Thus, the place of incorporation and the principal place of business is in Canada. Of note, Corporation's drivers and other employees work out of its warehouse in State B. Several years ago, this may have met the "muscle" test, and thus demonstrated citizenship in State B for C; however, this test has been done away with. Nonetheless, there still would be diversity in citizenship even if C was a citizen of State B.

Thus, there is diversity in citizenship, because Pam and Patrick are citizens of State A, and C is a citizen of Canada. Because the rules of civil procedure allow for diversity between residents of a state and a foreign country, there is proper diversity.

### **Amount in Controversy**

Next, the amount in controversy must exceed \$75,000 excluding interest and attorney's fees. The court will examine this based off of a good faith pleading of damages by the

plaintiff. To reach this amount in controversy, any single plaintiff may aggregate as many claims together to meet the minimum requirement. However, multiple plaintiffs may not aggregate claims in order to reach the minimum requirement.

Here, Pam demanded damages for personal injury in the amount of \$70,000, and for property damage in the amount of \$10,000. This is an example of aggregation by one plaintiff against one defendant. This is proper. Further, because \$70,000 plus \$10,000 equals \$80,000, it exceeds the amount in controversy requirement.

Patrick demanded damages in the amount of \$6,000. This would not be able to be aggregated with Pam's claims in order to reach the amount in controversy; however, because Pam has reached the amount all on the basis of her own claims, this does not impact Patrick's claim. We will need to examine whether Patrick's claim can be joined, however. I will do this later under supplemental jurisdiction (see below).

The conclusion is that the amount in controversy is met, as Pam's claims exceed the required \$75,000 minimum amount.

### **The Effect of Receiving Less Than \$75,000 At End Of Trial**

C may argue that SMJ was invalid because Pam and Patrick ended up receiving less than \$75,000 in damages at the end of the trial. This is incorrect. The mere fact that the parties recovered less than \$75,000 at the end of the trial does not mean that the court loses jurisdiction, or never had it in the first place. All that is required is a good faith claim exceeding \$75,000. Thus, this will have no effect on the question of SMJ.

### **Supplemental Jurisdiction: Pat's Claim of \$6,000**

As discussed above, Pat's claim alone did not meet the amount in controversy requirement. Each and every claim must meet the requirement in order to satisfy SMJ. When the amount in controversy is not met, we can look to supplemental jurisdiction to see if the claim can nonetheless get into federal court.

Supplemental jurisdiction requires that the claim contain a common nucleus of fact with the other claims asserted. If the claim arises out of the same transaction or occurrence, then this test is always met. Supplemental jurisdiction cannot be invoked when it would defeat complete diversity in a diversity case. Here, Pat's claim is based on the exact same incident as Pam - the accident with C's truck. Thus, it is the same transaction or occurrence, and will be able to be heard. The federal courts do have discretion to not hear these claims, but it is likely that they would hear this to get the whole case out of the way at the same time. Further, adding Pat's claim does not defeat diversity, because he is a citizen of State A.

Thus, Pat's claim can properly be heard in federal court.

### **When Can SMJ Be Asserted?**

Finally, we must consider at what point can SMJ be raised as an issue. Some claims must be asserted before certain stages of the trial in order to be preserved, and if not raised, then they are waived. SMJ, however, is never waived, as it is a strict requirement that the federal courts have subject matter jurisdiction. Thus, it is of no concern that C apparently has not raised the SMJ issue prior to the appeal; they can still properly raise it.

Conclusion: The federal court system has proper SMJ over Pam and Patrick's claim.

### **Personal Jurisdiction**

Personal jurisdiction (PJ) considers whether this state can properly hear this claim against this defendant. It asks whether the state has the power to force the defendant to come into the state to defend the claim. To examine whether PJ exists over C in State A, we must look to the traditional bases of exercising jurisdiction, the state long-arm statute, and to the constitutional limitations on exercising PJ.

### **Traditional Bases of Exercising Jurisdiction**

Traditionally, PJ can be asserted over a defendant if the defendant (1) is domiciled in the state; (2) consents to jurisdiction; or (3) is served with process while in the state. As discussed above, C is not domiciled in State A, but is rather domiciled in Canada. Further, it does not appear that C has consented to jurisdiction in State A in any way (though we will later talk about the need to timely raise the argument of lack of personal jurisdiction). And finally, there is no indication that C was served in State A.

Thus, the traditional bases of exercising jurisdiction seem to not be present.

### **Long-Arm Statute**

A long-arm statute is a state statute that states when the state can reach and "grab" an out-of-state defendant, and force the defendant to defend in the state court. Some of these long-arm statutes require that the defendant commit a tortious act in the state, or break a contract in the state, while others simply grant the state the ability to reach out to grab defendants to the full extent as allowed by the U.S. Constitution.

Here, the facts do not mention the reach of State A's long-arm statute. It is reasonable to assume that it reaches the constitutional limits. Thus, we must examine the constitutional limits of PJ.

### **Constitutional Limitations**

To exert PJ over an out-of-state defendant, the constitution requires certain minimum contacts with the forum state such that maintenance of the suit there does not offend traditional notions of fair play and substantial justice. To determine if this is true in this case, we can break the above test down into three sections: minimum contacts, relatedness of the claim to the contact, and fairness.

### **Minimum Contacts**

The constitution requires the defendant to have some minimum contacts with the forum state in order for the state to exert jurisdiction. The defendant must have

purposefully availed himself in the state, such that being subject to a claim in that state would be foreseeable.

### **Purposeful Availment**

Purposeful availment requires that the defendant commit a voluntary act in the forum state. Defendant must avail himself in some way to the state, whether it be by using the state's roads, or attempting to make money in the state.

Here, C is incorporated in Canada, and has its principal place of business there. It conducts business solely in State B, which is also where it has a warehouse. Further, the accident occurred in State B. It is possible that C drives on State A roads from time to time, but the facts do not give this information. Also, there are no facts which say that C ships goods to State A, or otherwise tries to make money there. Simply put, on these facts, there seem to be no contacts whatsoever with State A, other than that Pam and Patrick are residents of State A.

The court of appeal should find that there was no purposeful availment.

### **Foreseeability**

The minimum contacts must be sufficient enough to make it foreseeable that defendant would be "haled into court" in the forum state. Here, as discussed, there appears to be nothing that C did that would make it foreseeable that they would end up in State A. The mere fact of driving on State B's roads does not make it foreseeable that they would end up in State A's court. I suppose if State A were located directly adjacent to State B that it would perhaps be more foreseeable, but again, the facts do not share that information. A case against C in State A court was not foreseeable.

### **Relatedness of the Claim to the Contact**

The more related the claim is to the contact with the forum state, the more likely the court will be to allow for jurisdiction over the defendant.

If the claim arises directly out of the contact with the forum state, this gives rise to specific personal jurisdiction. Here, there was no contact with State A, and so there cannot be specific jurisdiction.

Next, general personal jurisdiction may exist if the defendant consistently and regularly conducts activity in the forum state, such that he is "essentially at home there." Merely selling goods in a state does not give rise to general PJ, there must be an actual physical presence. Here, C is not in State A whatsoever, or so it seems. Thus, it is not essentially at home in State A. It may essentially be at home in State B, where it has a warehouse, but this does not affect the discussion of whether State A has jurisdiction.

The claim is not related to C's contact with State A, as C has no contact with State A.

### **Fairness**

Finally, the court will look to see if holding the suit in the state meets general standards of fairness. Under this, the court considers convenience to the parties and the witnesses, the forum state's interests, and the plaintiff's interests.

### **Convenience**

Under the convenience factor, the court will look to see how convenient it is to hold the case in the forum state, based on a variety of factors including where the parties are, where the witnesses are, where the evidence is, etc. If the inconvenience to the defendant grossly impacts his ability to defend against the case, the court will likely dismiss for lack of PJ.

Here, the accident occurred in State B, so any witnesses are likely in State B. It is unknown where the wreckage is located, but the vehicles are likely also in State B. Thus, a good portion of the pertinent materials needed would be in State B. Further, C has no connection with State A, and will have to travel there to defend against the suit. This is likely not entirely burdensome, because they are a corporation, and likely would have the resources to get there.

However, it was likely entirely inconvenient to have the case in State A, based on where the evidence, witnesses, and the defendant was located.

### **State's Interests**

Next, the court will look to see if the forum state has a strong interest in providing a forum for the claim. Here, State A is interested in providing a forum for its residents; it wants to be sure that they are compensated for their injuries. However, the accident occurred on State B's roads, and so State B would have more of an interest, because it wants to be sure that dangerous drivers are kept off of their roads.

In the end, a court would likely find that State A has a limited interest in holding this case.

### **Plaintiff's Interests**

Finally, the court looks to the plaintiff's interests in having the case in the forum state. It is likely that Pam and Patrick have suffered some injuries and thus would prefer to not have to travel. However, they had already been in State B on vacation, and could likely travel there again if needed. The court generally will be deferential to the plaintiff's choice of forum, however.

In the end, it is likely that it is simply not fair to have C defend in State A court.

### **When Can PJ Be Asserted?**

On a final note, PJ must be asserted either in a 12b motion prior to the answer, or along with the answer. If not, it is waived. Here, it appears that C raised the PJ motion at some point early on, and thus likely did not waive it, so that it can be heard on appeal. Some courts require that a party immediately appeal a decision on PJ by way of an extraordinary writ.

**Conclusion:**

The Court of Appeal should hold the court had SMJ over the matter, but not PJ. Thus, provided that PJ has not been waived, it should dismiss the case. If it has been waived, the court should reject the PJ argument as well.