

QUESTION 1

Paul, a citizen of Mexico, was attending college in San Diego on a student visa. He drove to San Francisco to attend a music festival. While there, he bought and ate a bag of snacks from Valerie, a resident of San Francisco. The snacks had been manufactured in Germany by Meyer Corp., a German company with its sole place of business in Germany. The snacks contained a toxic substance and sickened Paul, who incurred medical expenses in the amount of \$50,000.

Paul filed an action pro se against Valerie and Meyer Corp. in the Superior Court of California in San Diego. In his complaint, he alleged that Valerie and Meyer Corp. should have known the snacks were contaminated and demanded \$50,000 in compensatory damages.

Paul drove to San Francisco where he personally handed Valerie a summons and copy of the complaint. He sent a summons and copy of the complaint to Meyer Corp. by ordinary mail to the company in Germany.

1. Did Paul validly serve the summons on:
 - a. Valerie? Discuss.
 - b. Meyer Corp.? Discuss.
2. Does the Superior Court of California in San Diego have personal jurisdiction over:
 - a. Valerie? Discuss.
 - b. Meyer Corp.? Discuss.
3. Does venue properly lie in the Superior Court of California in San Diego? Discuss.
4. Is Paul's action properly removable to federal court? Discuss.

QUESTION 1: SELECTED ANSWER A

I. Service of Process

The issue is whether Paul properly served process over Valerie and Meyer Corp.

Service of process in California can be accomplished in a variety of ways. First and foremost, a defendant may be personally served with a summons and a copy of a complaint. When in-person service does not work, substituted service may be attempted by leaving the summons and a copy of the complaint with the defendant's registered agent or another person who resides at the defendant's domicile. The summons and complaint must also be sent via certified mail to the defendant's address of record. However, process must be served by a person over the age of 18 who is not a party to the case.

A. Valerie

Here, Paul personally served Valerie with process. Paul might be over the age of 18, but he is a party to the case and therefore cannot properly effect service himself. Though service by handing the defendant process personally is proper, Paul was not a proper process server. Accordingly, Paul did not validly serve process on Valerie.

B. Meyer Corp.

Paul's service of Meyer Corp. suffers from the same defect as his service of Valerie: he is not a proper process server because he is a party to the case. Additionally, service of process on an international is subject to different rules: process may be served either in compliance with governing international treaties, or via certified mail with a return receipt.

Here, Paul mailed the complaint via ordinary mail, rather than certified mail. Further,

there does not appear to be an international treaty governing service of process. Accordingly, Paul cannot have validly served process using ordinary mail; he did not validly serve process on Meyer Corp.

II. Personal Jurisdiction

The issue is whether the San Diego Superior Court has personal jurisdiction over Valerie and Meyer Corp.

In personam jurisdiction describes the personal jurisdiction of a court over the parties before it. There are three traditional bases of in personam jurisdiction: when a defendant consents to the court's jurisdiction, when a defendant is domiciled in the jurisdiction in which the court sits, and when a defendant is present in the jurisdiction and is properly served with process while present. When the traditional bases of in personam jurisdiction do not apply, a state long-arm statute may provide an alternative basis for jurisdiction.

A. Valerie

Here, Valerie appears to satisfy one of the traditional prongs of in personam jurisdiction. She is a resident of San Francisco, and so is domiciled in California and therefore subject to the personal jurisdiction of California state courts. While Paul personally served Valerie in San Francisco after driving there, this service of process was improper as discussed above. Nonetheless, because another of the traditional bases has been met, Valerie is properly subject to the San Diego Superior Court's personal jurisdiction.

B. Meyer Corp.

1. Traditional Bases

Here, Meyer Corp. does not appear to satisfy any of the traditional bases of in

personam jurisdiction. It does not appear that it has consented to California state courts' jurisdiction. Further, it is domiciled only in Germany. Finally, Paul did not serve process on Meyer Corp. in state. Accordingly, none of the traditional bases apply.

2. Long-Arm Statute and Constitutional Limitations

However, California also has a state long-arm statute that may provide an alternative basis for personal jurisdiction. California's long-arm statute goes to the full extent of the federal Constitution, subject only to Due Process limitations. For a court's exercise of personal jurisdiction to comport with Due Process, the defendant must have sufficient minimum contacts with the jurisdiction, the exercise of jurisdiction must be related to the defendant's contacts, and the exercise of jurisdiction must not offend traditional notions of fair play and substantial justice.

a. Minimum Contacts

For a defendant to have sufficient minimum contacts with California, it must have purposefully availed itself of California, such that it was foreseeable that its minimum contacts would cause it to be haled into the California courts. In stream-of-commerce cases, purposeful availment consists of some action by the defendant deliberately targeting the jurisdiction. Here, it is not clear whether Meyer Corp. has purposefully availed itself of California, as it is incorporated in Germany, headquartered in Germany, and conducts all of its manufacturing in Germany. More information is needed into its distribution chains. For example, if Meyer Corp. specifically shipped its snacks to Valerie for distribution in San Francisco, then Meyer Corp. will have purposefully availed itself by intending that its products be sold in California. By contrast, if Valerie purchased the snacks in Germany and decided on her own volition to sell them in California, then Meyer Corp. will not have purposefully availed itself. In the absence of such evidence, it appears that Meyer Corp. does not have sufficient minimum contacts with California.

b. Relatedness

Relatedness is satisfied either in a specific sense when a cause of action arises out of a defendant's contacts with a jurisdiction, or more generally when a defendant is domiciled in a jurisdiction and is essentially "at home" in that jurisdiction. Here, Meyer Corp. is domiciled in Germany and conducts all of its activities in Germany. Accordingly, it is not "at home" in California and does not satisfy the general relatedness criteria. However, the action arises out of Meyer Corp.'s snacks being consumed in California. Accordingly, the specific relatedness criteria is met.

c. Fair Play and Substantial Justice

Even when a defendant has sufficient minimum contacts and relatedness is satisfied, the exercise of personal jurisdiction must not offend traditional notions of fair play and substantial justice. In considering whether the exercise of personal jurisdiction does so, a court considers a multitude of factors, including the plaintiff's interest in relief, the forum state's interest in providing a forum such that the plaintiff can seek redress, and whether other forums might be more appropriate. Here, Paul was sickened quite extensively and incurred substantial damages. He has a strong interest in relief. Further, California has a strong interest in providing a forum. Even though Paul is not a citizen of California, California nonetheless has an interest in making sure that contaminated food products are not distributed within the state. Finally, while Meyer Corp. might claim that Germany is a more appropriate forum, given that the snacks were manufactured there and it conducts all of its business there, California nonetheless may be more appropriate, given that Valerie, Meyer's co-defendant, is a citizen of California. Given that she ultimately sold the snacks to Paul and is being sued jointly with Meyer Corp., California is a more appropriate forum than Germany. Accordingly, a California court's exercise of personal jurisdiction over Meyer Corp. would not offend traditional notions of fair play and substantial justice.

Therefore, whether the San Diego Superior Court can properly exercise jurisdiction over

Meyer Corp. depends on whether Meyer Corp. has sufficient minimum contacts with California. While more evidence is needed, it does not appear that Meyer Corp. has purposefully availed itself of California, and therefore, the court cannot properly exercise personal jurisdiction.

III. Venue

The issue is whether venue properly lies in San Diego Superior Court.

Venue in California is organized by each of the 58 counties in the state. Different rules apply based on whether the action is a local action or a transitory action. Venue is proper in a local action, one involving real property, in the county in which the real property lies. For a transitory action, venue is generally proper in a California Superior Court in any county where any defendant resides. For contract actions, venue is additionally proper in the county where the contract was entered into and the county where the contract was expected to be performed. For tort actions, venue is proper in the county where the act or omission giving rise to the tort occurred. If no venue is proper following the application of these rules, then venue is proper in any county in which a court has personal jurisdiction over the defendants.

A. Residence

Here, the action at issue is a transitory action as it does not involve any real property. Therefore, venue is proper in any county in which a defendant resides. In this case, the two defendants Valerie and Meyer Corp. are residents of San Francisco County and Germany, respectively. Because only Valerie's residence, San Francisco, is a county within California, the first venue provision only provides that the Superior Court in San Francisco is a proper venue.

B. Tort Actions

Here, Paul's claim appears to be a tort claim: he appears to be arguing negligence on behalf of Valerie and Meyer Corp. in producing the snacks, or possibly strict products liability. Accordingly, the venue rules for tort actions may also provide an alternative basis for proper venue. In this case, the acts or omissions giving rise to Paul's action occurred in both San Francisco County, where Valerie sold him the snacks, and Germany, where the snacks were manufactured. Accordingly, under the analysis for a tort action, venue remains proper only in San Francisco.

C. Contract Actions

Paul could also plausibly allege that his action is a contract action, and that Valerie breached, for example, an implied warranty of fitness for a particular purpose when she sold him the snacks. Accordingly, venue is additionally proper in the county in which the contract was entered into, as well as the county in which the contract was expected to be performed. Here, both of those locations are the City and County of San Francisco: Paul agreed to purchase, and did purchase, the snacks from Valerie there. Accordingly, under the analysis for a contract action, venue is proper only in San Francisco.

D. Fallback Venue

Because venue is proper in at least one county in California, the fallback venue provision of any judicial district in which the court has personal jurisdiction over the defendant does not apply.

In conclusion, venue is only proper in San Francisco County Superior Court. Venue is not proper in San Diego Superior Court.

IV. Removal to Federal Court

The issue is whether Paul's action is properly removable to federal court.

A case initially filed in state court is properly removable to federal court when the case could originally have been brought in federal court. Removal is accomplished by filing a notice of removal in federal court within 30 days of service of a document that shows the case to be removable, but cases removable to federal court solely on the basis of federal diversity jurisdiction cannot be removed more than one year after the filing of the action in state court. Here, nothing indicates that Paul's case would be subject to these time restrictions. Accordingly, the issue is whether the case could have initially been brought in federal court.

For a case to be properly brought in federal district court, the federal court must have subject matter jurisdiction. A federal court may have federal question jurisdiction or diversity jurisdiction over a case. In cases where at least one "trunk" claim is within the court's federal question jurisdiction or diversity jurisdiction, the court may have jurisdiction over additional claims that share a common nucleus of operative fact with the federal trunk claim.

A. Federal Question Jurisdiction

Federal question jurisdiction consists of claims arising under the Constitution, treaties, and federal laws and regulations. The question must appear on the face of a well-pleaded complaint. Here, Paul does not appear to be asserting any federal rights. Unless he is asserting any causes of action under federal food safety regulations, for example, he appears solely to be asserting state-law tort claims -- that Valerie and Meyer Corp. were negligent in failing to detect that the snacks were contaminated. Accordingly, the federal court does not have federal question jurisdiction over Paul's action.

B. Diversity Jurisdiction

Diversity jurisdiction arises when there is a diversity of citizenship between the parties and the amount in controversy in the action exceeds \$75,000.

1. Diversity of Citizenship

To satisfy diversity of citizenship, each plaintiff must be fully diverse from each defendant. A U.S. citizen or permanent resident alien is considered to be a citizen of the state in which she is domiciled, an alien is considered to be a citizen of the country of his citizenship, and a corporation is considered to be a citizen both of all jurisdictions in which it is incorporated and the state in which it has its principal place of business. However, even when each plaintiff is fully diverse from each defendant, a federal court still will not have subject matter jurisdiction if both the plaintiffs and defendants are aliens and U.S. citizens are not present on both sides of the action.

Here, Paul is not a permanent resident alien, as he is present in the country only on a student visa. Accordingly, for diversity jurisdiction purposes, he is a citizen of Mexico. Valerie resides in San Francisco, which is her domicile. Accordingly, for diversity purposes, Valerie is a citizen of California. Meyer Corp is incorporated in Germany only and has its principal place of business in Germany. Accordingly, Meyer Corp is a citizen of Germany.

Accordingly, the parties are fully diverse from each other: Paul does not share citizenship with either Valerie or Meyer Corp. However, the alienage restriction nonetheless bars Paul's action from satisfying the diversity requirements. Paul, as the only plaintiff, is an alien. Valerie is a U.S. citizen, but Meyer Corp. is also an alien, as it is only a citizen of Germany. Accordingly, aliens are present on both sides of the action, but U.S. citizens are not. Therefore, diversity of citizenship is not met.

2. Amount in Controversy

The amount in controversy is the amount, when plaintiff asserts a monetary damages claim, that a plaintiff seeks from the defendants. When a claim asserted jointly against two defendants, the amount in controversy is the total relief sought from the defendants. For a federal court to have jurisdiction, the amount in controversy must exceed \$75,000.

Here, Paul seeks \$50,000 in compensatory damages jointly from Valerie and Meyer Corp. Accordingly, the amount in controversy is \$50,000, which does not exceed \$75,000. Therefore, the amount in controversy requirement is also not met for diversity jurisdiction purposes.

Because neither the diversity of citizenship nor amount in controversy requirements are met, a federal district court would have not diversity jurisdiction over Paul's action. Accordingly, because a federal court has neither federal question jurisdiction nor diversity jurisdiction over Paul's action, it could not have originally been brought in federal district court. Therefore, Paul's action is not removable from California state court to federal district court.

QUESTION 1: SELECTED ANSWER B

1. SERVING A SUMMONS

A. WAS VALERIE SERVED PROPERLY

The issue is whether Paul properly served Valerie by personally handing her a summons and copy of the complaint.

PROPER SUMMONS

The Federal Rules of Civil Procedure allow for a party member to be served with process in a number of ways. One accepted method of service is personally serving the summons and complaint on the Defendant. A person may be served personally by any non-party who is 18 years or older. To effect proper service the Defendant should be given a summons and two copies of the complaint. Under California civil procedure, a person may similarly be personally served by a non-party 18 years or older by the same rules. This case has been filed in the superior court so it is under California rules. The CA rules prefer personal service.

In this case, Paul, a party to the case, drove to San Francisco where Valerie lived and handed her a summons and one copy of the complaint. This was improper. Paul was not allowed to serve Valerie because he is a party to the case. Further, there are no facts as to Paul's age, but service must be given by someone who is 18 years of age or older. Valerie was given one summons and one complaint. The rules require that Valerie be given two copies of the complaint. Because of this, service was not valid on Valerie.

B. WAS MEYER CORP SERVED PROPERLY

The issue is whether mailing a copy of the complaint and a summons by ordinary mail to Meyer Corp. in Germany was proper. The Federal Rules of Civil Procedure dictate

that it is proper to serve a Defendant by mail. The summons and two copies of the complaint must be sent by first class mail, postage paid, with a waiver and a pre-addressed and prepaid envelope in which the Defendant can return the signed waiver. California rules of civil procedure also allow service by mail to a person out of the country in a similar manner. CA rules prefer personal service, but the California rules specifically say that a defendant who is out of the country may be served by mail according to the California rules. However, in CA (which governs in this case) the mailing of service is not technically a waiver as it is in federal court but it operates in the same manner.

In this case Paul sent a summons and a copy of the complaint to Meyer Corp. in Germany by ordinary mail. This was improper. First, the complaint needed to be sent with one summons and two copies of the complaint. It should have been sent by first class mail, postage paid, and should have included a form for the Defendant to sign with a pre-addressed and prepaid envelope to send the signed documents back to the plaintiff who will file them. Under the California rules, the mailing of a summons and complaint is not actually waiver (it is a form of service) but it operates like the federal waiver. Thus, Meyer Corp. was not properly served.

2. PERSONAL JURISDICTION

A. DOES THE SUPERIOR COURT OF CALIFORNIA HAVE PERSONAL JURISDICTION OVER VALERIE

Personal jurisdiction over the Defendant is required for a court to hear a case. It refers to the court having authority over the defendant. To have personal jurisdiction (PJ) over a defendant traditionally occurs when a Defendant is served with process while voluntarily in the state, the defendant is domiciled in the state, or the Defendant consents to the court exercising its power over him/her. If there is not a traditional basis for jurisdiction the court will look to see if there are minimum contacts with the forum state so as not to offend traditional notions of fair play and substantial justice. In evaluating this the court looks to three factors: (a) contacts with the forum state focusing

on whether the defendant has purposeful availment and reasonably foresees being sued in the forum state; (b) Relatedness which occurs with general or specific jurisdiction in the forum state; and (c) fairness looking at if the defendant will be so gravely inconvenienced as to cause a substantial unfairness. The court will also look at the plaintiff's interests and the state's interest in effectuating justice under the fairness prong.

In this case Valerie is a resident of San Francisco. This means that Valerie is domiciled in California because she lives in a city (San Francisco) that is located in California. Therefore the court has personal jurisdiction over Valerie because she is domiciled in the forum state (California). Further, the court also has a traditional basis of jurisdiction over Valerie because she was personally served while voluntarily in California. Valerie was in San Francisco voluntarily because she lives there and was served with process while there. Thus, the court does have personal jurisdiction over Valerie according to two of the traditional bases of PJ.

B. DOES THE SUPERIOR COURT OF CALIFORNIA HAVE PJ OVER MEYER CORP

Personal jurisdiction over the Defendant is required for a court to hear a case. It refers to the court having authority over the defendant. To have personal jurisdiction (PJ) over a defendant traditionally occurs when a Defendant is served with process while voluntarily in the state, the defendant is domiciled in the state, or the Defendant consents to the court exercising its power over him/her. If there is not a traditional basis for jurisdiction the court will look to see if there are minimum contacts with the forum state so as not to offend traditional notions of fair play and substantial justice. In evaluating this the court looks to three factors: (a) contacts with the forum state focusing on whether the defendant has purposeful availment and reasonably foresees being sued in the forum state; (b) Relatedness which occurs with general or specific jurisdiction in the forum state; and (c) fairness looking at if the defendant will be so gravely inconvenienced as to cause a substantial unfairness. The court will also look at the plaintiff's interests and the states interest in effectuating justice under the fairness prong.

California's long-arm statute allows PJ over a defendant as long as it does not offend the constitution. Therefore the analysis of California's long-arm statute is merged with the constitutional analysis. The constitutional analysis is the minimum contacts test described above and analyzed below.

Meyer Corp. is a German company. It is incorporated in Germany with its sole place of business in Germany. Meyer Corp. was not served while voluntarily present in California. Further, there is no evidence that Meyer Corp. has consented to California having PJ over it. Because of this there is no traditional basis for personal jurisdiction. Therefore we must analyze PJ with the constitutional test of Minimum Contacts.

MINIMUM CONTACTS

There must be minimum contacts so as not to offend the traditional notions of fair play and substantial justice. This is analyzed looking at purposeful availment and foreseeability of being dragged into court.

PURPOSEFUL AVAILMENT

To have PJ Meyer Corp. must have purposefully availed itself into the forum state (CA) as such that it used the protections of its laws. In this case Meyer Corp. is a snack company. Its sole place of business is in Germany; however, the snack did get to California. If the company sold its products, advertised its products, or in some other way targeted California there will be purposeful availment. If Valerie brought these snacks back from Germany and the corp did not in any way reach out to CA, there will be no purposeful availment. There will be purposeful availment if Meyer Corp. directed sales to CA. It is unclear where and how Valerie came to get these snacks so the purposeful availment prong is unclear.

FORESEEABILITY

If Meyer Corp. did target CA in any way (by selling there, advertising there, selling

candy to CA over the internet) then it is foreseeable that they would be sued there. If, though, Valerie got these snacks in Germany and then sold them when she was in California then it is not foreseeable that Corp. would be dragged into court in CA.

RELATEDNESS

If the defendant is essentially at home in the forum state there will be general jurisdiction. Corp. is located only in Germany with its sole place of business in Germany. Therefore no general jurisdiction.

If the defendant's contact with the forum state results in the cause of action there will be specific jurisdiction. This is unclear because we don't know if Corp. was in any way targeting to sell in California. If they were then specific jurisdiction, if not then no specific jurisdiction.

FAIRNESS

We look at if it is so gravely inconvenient that it will put Defendant at severe disadvantage. In this case Defendant is a corporation and monetary concerns are not good arguments. Therefore it is probably fair. Further CA has an interest in adjudicating for its citizens. Paul the plaintiff is in CA.

CONCLUSION

There is PJ over Valerie. PJ over Meyer depends on its operations and how the snack got into CA.

3. VENUE PROPER

Under CA civil procedure, venue depends on the type of action. If it is not a local action (land action where the venue is where the land is) then venue is where any defendant resides. Further for a personal injury case venue is proper where the injury took place.

This is a personal injury case because Paul was sickened. Therefore venue is proper in San Francisco (where injury took place) and in San Francisco (where a Defendant lives). Neither of the defendants lives in San Diego (Valerie lives in San Fran and Meyer lives in Germany). Therefore venue in San Diego was improper. Proper venue would be in San Francisco.

4. ACTION REMOVABLE?

An Action is removable to federal court when there is a federal question jurisdiction. This occurs when the plaintiff is enforcing a federal right - when the cause of action arises under federal law. In this case the cause of action arises under state law because it is a tort or personal injury action. There is no federal law at issue. Any federal defenses do not matter in determining whether there is federal question jurisdiction. Therefore action cannot be removed under federal question jurisdiction.

An action can also be removed if there is diversity jurisdiction. Diversity jurisdiction requires that there be complete diversity (no plaintiff can be a citizen of the same place as any defendant) and that the amount in controversy be in excess of \$75,000. Further, an action cannot be removed if the defendant is a citizen in the same state as the action is brought. A plaintiff may aggregate her claims against multiple defendants if the defendants are jointly and severally liable.

In this case the amount in controversy is \$50,000. Paul can assert this amount against both defendants because it is a case where he is saying both are jointly and severally liable for the entire amount. This amount is below the required \$75,000 so there is no diversity jurisdiction. Further Valerie is a citizen of California because she is domiciled in CA. This means that Valerie is a citizen of the forum state - this prevents her from removing the case to federal court in CA because she is a citizen of CA. Further, the case cannot be removed because there are aliens on both sides of the case. Paul is a citizen of Mexico and is the plaintiff. Meyer is a citizen of Germany and is a defendant. We have an alien on each side which prevents diversity. To remedy this there must be diverse citizens of the United States on each side.

In conclusion, the action cannot be removed.