Fall 2013 Exam

With better scoring student answers

Question 1 (worth one-third of final exam grade). Your answer should not exceed 1500 words.

Paul (a citizen of Texas) and David (a citizen of Ohio) entered into an agreement for David to supply valves to Paul. Paul intended to incorporate the valves into water heaters he manufactures. David failed to deliver the valves on time, however, and Paul was forced to find another valve supplier at the last minute. Paul ended up paying much more for the valves.

Paul sued David in federal court asserting a state law cause of action for breach of contract. He sought $100,000 for damages he claimed he suffered as a result of David's breach. David filed a timely answer and, at the same time, also impleaded Tim, a citizen of Texas. David alleged that he gave the valves to Tim with directions to deliver them to Paul on time. David alleged that he had a contract with Tim and that an express term of their contract was that Tim would indemnify David for any losses David might suffer, up to $50,000, in the event that Tim failed to adequately and timely deliver the valves.

Tim, in response, timely filed an answer to David's claim against him and also asserted a claim against Paul. He alleged that his failure to deliver the valves on time was actually Paul's fault (he alleges Paul gave him erroneous delivery directions) and asserted a state common law contribution claim against Paul.

At a routine conference with the court six weeks later, Paul orally (not in a written motion) raised concern that the court lacks subject matter jurisdiction over David's claim against Tim, and over Tim's claim against him (Paul). Immediately after the conference, the judge turned to you, her law clerk, and asked you to research whether subject matter jurisdiction exists over these two claims. What will you tell the judge?

Better Scoring Student Answers To Question 1

START OF EXAM

-->Question -1-

Does the court have subject matter jurisdiction over DvT or TvP? If either of these claims do not have original or supplemental jurisdiction, then these claims will be remanded to state court.

D v T

Is there original subject matter jurisdiction(smjx)?

In order for a federal court to have smjx over a claim there must either be (1) diversity of citizenship and amount in controversy (AIC) of at least $75,000, or (2) a claim involving a federal question. This claim is a state cause of action (breach of K), and becasue there does not appear to be a federal question at issue, I will assess if this claim has smjx on a diversity basis.

Constitutional and Statutory Authority

To impose jurisdiction, the federal court must be authorized not only by the constitution, but also by congress. Art. 3 Sec 2 of the constitution only requires there me minimal diversity to satisfy fed smjx. Sec 1332 was interpreted more narrowly that the constitution in *Strawbridge* and requires complete diversity. This means that every party on the left side of the "v." must have different citizenship than everyone on the right side. This standard is satisfied becasue David is from Ohio and Ted is from Texas. However, there

also needs to be an AIC of at least $75,000. This element is not satisfied becasue the claim is only for $50,000. Therefore we will need to assess if there is supplemental jurisdiction over the claim.

Supplemental Jurisdiction

Constitutional Grant

The constitution has been interpreted by *Gibbs* to allow supplemental jx when there is an "anchor" claim with original jurisdiction, and the claim is "so related" such as to form the same case or controversy.

There appears to be original jx over Pauls claim against David. The two men are of differnt citizenship, and the AIC is over $75,000 (its $100,000). The next question is, are these claims "so related". It would appear that they are because they both relate to the failure of the delivery of the valves. In *Gibbs* the court allowed a state claim with a federal claim ruling they were so related as they both related to the same issue, where Gibbs assaulted laborers upset that he employed laborers of a rival union. David's claim is similary so related because it relates to the issue in Paul's claim. David is allowed to implead Tim because of their prior agreement that Tim would indemnify David for any losses if Tim failed to deliver the valves on time. Tim alledgedly is the reason Paul did not recieve his valves on time. David is essentially claiming, if it wasn't for you this issue would not have arised. Both claims relate to the failed delivery, thus this claim forms the same case or controversy as Paul v. David.

Statutory Grant

Supplemental Jurisdiction must also be athorized through Sec 1367. 1367 is similar to the *Gibbs* test, as it grants supplemental jx when there is original jx of an anchor claim, the claim is so related it forms the same case or controversy, and the court would not use its discretion to disallow the claim.

1367a

1367a is similar to the *Gibbs* test described above. I have already concluded that there is orignial jx over Paul's claim against David, and that D v. T is so related because the indemity claim is a direct result of Paul's agrievment with David.

1367b

If this was a federal question issue, the analysis would be finished at 1367a. However, with diversity cases there are further limitations. 1367 b requires an assement of the claim to identify if David's claim is against a D brought in under rule 14,19,20, or 24. Tim was brought in under rule 14. 1367 b disallows claims against rule 14 defendants, by the P. Here, this claim is by a third party plaintiff. The purpose of this rule is to disallow Ps to circumvent the diversity rule by waiting for a D to be impleaded. If diversity is destroyed, it is offends the purpose of 1332. Tim can argue that diversity is destroyed becasue of the lack of AIC. However, the *Ortega* case has told us

that AIC and diversity or diferentiated. As long as no other jurisdictional requirements are violated other than AIC, supplemental jx will be allowd. Thus, D v. T has satisfied 1367 b becasue diversity is not destroyed becasue the parties are of diverse citizenship and *Ortega* allows us to disregard AIC.

1367 c

Even if a claim is allowed supplemental jurisdiction through the constituion and the statute, the statute athorizes judges to use their discretion to disallow a claim for numerous reasons including: novel or complex issue of state law, the state law claim predominates, or the "anchor" claim is dismissed. This claim is a non complex indemity claim for $50,000. It does not appear that this is novel or complex, and it surely doesn't predominate over the anchor claim which is worth double the AIC. The court would likely not use their discretion to disallow this complaint.

D v T has satisfied both the constituional and statutory requirements for supplemental jurisdiction. Thus, the court will likley allow this claim to be heard in federal court with P v D.

T v P

The same analysis will apply to Tim's claim against Paul for contribution.

Is there original smjx?

The court would not find original smjx over this claim becasue the parties are not of diverse citizenship. Additionally, we are not given the AIC, however, it will not be relevant for the purposes of the analysis becasue of the ruling in *Ortega,* which allows us to only focus on diversity of citizenship in determining complete diversity.

Constituional Grant

The first question to ask is, is there an anchor claim? The anchor claim for this claim would also be Paul's claim against David. Which has been concluded above to have original jurisdiction becasue of diversity of citizenship and an AIC of more than $75,000.

Next we ask, is the claim "so related" as to form the same case or controversy. The court would likley find that Tim's contribution claim is of the same case or controversy. Tim is asserting that the failure of of the delivery of the valves was actually Paul's fault. This claim is saying that Paul is the actualy source of his aggrievments against David. This surely should be considered "so related". In *Gibbs* the P asserted a federal claim was similar to a state c/a becasue they both related to the same case, his injuries from a revolt of members of a union when he employed workers represented by a rival union. This is similar to *Gibbs* because the claims related to the same case: the failure to deliver to valves. Where Gibbs claims were related to the same injuries.

Supplemental jurisdiction should be allowed n a constitutional basis because Tim's claim against Paul is "so related" to the anchor claim, P v. D.

1367a

Again, this is similar to the Gibb's test and satisfying the Gibb's test will satisfy 1367a.

1367b

Again, becasue this is a diversity case we must assess the claim under the limitations of 1367 b. Is the claim from Tim against a D brought in under rule 14,19,20, or 24? No, Tim is suing the original P to the case. 1367 b does not have any language regarding the a claim against the original P from a D brought in under rule 14. Only the alternative. This is likely becasue a rule 14 D was impleaded into the case and should have the opportunity to bring any claims they have which are "so related", additionally, rule 14 allows them to do so. Again, the purpose behind 1367 b is to disallow Ps from circumventing the diversity requirement by waiting for a D to be impleaded. This rule was established in Kroger when a third party D was thought to be from Neb, and the P from Illinois. When the court discoverd the third party D to also be from Illinois, supplemental jx was not allowed.

Just as before, although a claim has satisfied the requirements up to this point, the court can still use its discretion to disallow a claim.

1367 c

The court would likely rule in the same way for this claim as it likely would for D v. T. There does not seem to be anything which would make this claim novel or complex or predominate over the anchor claim. If the AIC is determined to be of higher value than the anchor claim, the court might indeed use its discretion to remand this claim to federal court. However, with the facts given, the court will likley not use its discretion to sever this state law contribution claim.

Conclusion

Both claims D v. T and T v. P have satisfied both the constitutional and statutory basis for supplemental jurisdiction. More specifically, because the claims are "so related" to the anchor claim with original jurisdiction and don't destroy diversity, the court is likely to allow supplemental jurisdiction.

D v T
14

T v P
14

28

Question 1 Word Count = 1508

START OF EXAM

-->Question -1-

The issue here is whether the Ct. can exercise supplemental jurisdiction under 28 USC § 1367 on the basis of a diversity case (§1331) when a counter-claim may be in violation of the statute or may destroy the complete diversity requirement. Following the Ct.'s precedents, the weight appears to be that adding a non-diverse party will destroy diversity jurisdiction - even if the statutory grant allows it.

Power of Ct.'s to Hear §1332 cases.

The Constitution grants US courts broad jurisdictional powers to hear cases between parties from different states, as well as all cases arising under any of the laws of the United States - an issue not pertinent here. Art. III § 2 states that "the judicial power shall extend to ... all controversies ... between citizens of different states."

Although the Constitution grants the power, Congress must enact the power and Congress has limited the Ct.'s authority. The Congressional statute for diversity jurisdiction, 28 USC § 1332, grants Fed. dist. ct.'s the same powers the Constitution does but with the added limitation that the amount in controversy must be $75,000.

The Supreme Court has further limited the power of Fed. dist. ct.'s to hear diversity cases. In *Strawbridge* the Ct. held that §1332 required commplete diversity, meaning that all parties on each side of the action had to be in different suits.

In this matter, the original claim of Paul against David satisfies the § 1332 requirements. Paul and David are from different states, and the amount in

controversy requirement is met. The real issues arise with the multipe supplemental claims.

Power of Ct.'s to Hear §1367 cases

Fed. dist. ct.'s also have the power to exercise supplemental jurisdiction over claims that would not have original jurisdiction on their own but are attached to an "anchor" claim that does have original jurisdiction in Fed. Ct.. If the supplemental claims arise from a "common nucleus of operative facts", *Gibbs*, as the claim with original jurisdiction, then the Ct. can exercise supp. jurisdiction under § 1367(a). Ct.'s may decline to exercise supp. jurisdiction under § 1367(c) for a number of reasons, most notably if there are novel issues of St. law involved, or if the St. law claims predominate over the claim with original jurisdiction.

§1367(a) gets its formulation from *Gibbs*, where the Ct. provided that if a state and federal claim derived from a "common nucleus of operative fact", and that the "claims would ordinarily be expected to [be tried] all in one judicial proceeding, then ... there is power in federal courts to hear the whole." In *Gibbs*, an employee of a mine claimed that a labor union had broken federal labor law (a fed. claim), and also interefered with a contract (a St. claim). The Ct. exercised pendent jurisdiction (now supp.) over the St. claims in the Fed. case, and the Ct. found that a rightful exercise of supplemental jurisdiction even after the Ct. found that the Fed. claims were improper.

In general, and reflecting the decision in *Gibbs*, Ct.'s have interpreted §1367(a) extremely broadly. In *Allapattah*, the Ct. read §1367(a) as meaning that when even only one claim in a complaint satisfies §1332, and all other claims have no jurisdictional defects, than the Fed. ct. "beyond all question

has original jurisdiction" over the supplemental claims.

In this case, there is no question between the parties that all of the claims involved arise from the same "common nucleus". D brought T in on 14(a)(1) and T sued P under 14(a)(2)(D), which requires that the claim be based on the originally pleaded claim. Thus §1367(a) would grant the Fed. Ct. supplemental jurisdiction over those claims. Further, there is little question that the claim with original jurisdiction, Paul v. David, is the predominant issue in the case - thus satsifying §1367(c).

§1367(b)

This is not the end of supplemental jurisdictional analysis however. § 1367(b) adds further rules for joinder of parties when original jurisdiction is granted by §1332. The first part of §1367(b) states that supplemental jurisdiction is improper when 1) original jurisdiction is based on diversity (§1332), and 2) when the supplemental claims are by P's against D's arising under Rule 14, 19, 20, or 24 or when the supplmental claim's are by P's to be joined against D's under Rule 19 or 24.

In this case, the claims to be asserted are by a third party defendant against a plaintiff. The first part of §1367(b) only precludes supplemental jurisidiction over claims by plaintiffs against other party's joined, it allows claims by any other parties against any other parties. Thus, both David and Tim's counterclaims are allowed by the first part of §1367(b) since neither of them are plaintiffs and are the Ct. is not precluded of exercising supp. jurisdiction over the claims.

Does Tim's counterclaim destroy §1332 jurisdiction?

However, the second part of §1367(b) does not allow Fed. Ct.'s to exercise supplemental jurisdiction over claims if original jurisdiction is not satisfied. By Tim, the third-party defendant and a resident of Texas, bringing suit against the Paul, the plaintiff and a resident of Texas, complete diversity may have been destroyed, and thus the Fed. Ct. no longer has original jurisdiction under §1332.

Does a Fed. Ct. still have orig. jurisdiction when a third-party defendant brings a supplemental claim that would destroy diversity? Reading *Strawbridge* at its most literal, the Ct. says that "the presence in an action of a single plaintiff from the same St. as a single defendant deprives the Dist. Ct. of original diversity over the entire action."

The possible way around this is mentioned in *Allapattah*. In *Allapattah*, the Ct. pointed out that as long as there is "original jurisdiction over at least one claim in the action" then supplemental jurisdiction could be invoked under §1367. In this instance, if we separate the claims as three separate claims, then there is at least one case where the Fed. Ct. has orig. jurisdiction (P v. D), and thus the supplemental claims would be adhering to the original claim.

Even if it was ruled that supp. jurisdiction over T v. P was improper, in *Allapattah* the Ct. mentioned that claims that are jurisdictionally problematic by dismissing offending parties.

This seems an abomination of the Ct.'s intent however. In *Gibbs* and again in *Allapattah*, the Ct. emphasizes that the basis of supplemental jurisdiction is that the case itself is a single civil action. Thus by allowing nondiverse parties, diversity of the entire civil action is

destroyed.

In *Gibbs* the Ct. says that the Ct. exercises supplemental jurisdiction when the claims come together to form "a single constitutional case." In *Allapattah* the Ct. goes further and argues that supplemental jurisdiction rests on the idea of cases invoking them being a "civil action" as a whole instead of each case in the action having to satisfy OJ.

Indeed, the Ct. even indicates that the "contamination theory" put forward by the D's in Allapattah, that adding a claim without original jurisdiction into a claim w/ orig. jurisdiction, makes some sense "in the special context of the complete diversity requirement."

Conclusion

While the Ct. definitely has SMJ over David's claim against Tim under § 1367, and it has SMJ over Tim's claim against Paul under the statuory languge of §1367, the basis of supplemental jurisidiction would seem to be contravened by adding Tim to the suit.

P (Tx) sues D (Oh)	1332
D (Oh) answers timely, sues T (Tx)	14(a)(1), 1367(a)/(b)
T (Tx) answers timely, sues P (Tx)	14(a)(2)(D), 1367(a)/(b)

19 12

Question 1 Word Count = 1247

Character Count = 7570

25

Line Count = 121

->End of Question 1

START OF EXAM

-->Question -1-

I. Whether federal SMJ exists over D's claim against T?

There are three possible ways that this claim may be heard in federal court: either the federal court has original jurisdiction through diversity of citizenship, it has orginal jusidiction through federal quesiton doctrine, or it has supplemental jurisdiction via an original claim that has satisfied one of these heads of original jurisdiction.

A. Does D's claim against T satisfy diversity of citizenship?

Article 2 § 3 of the US Constitution specifies that federal courts will have original jurisdiction over claims that arise between citizens of different states. This constitutional grant has been interpreted very broadly in the sense that minimum diversity is sufficient and there is no native amount in controversy requirement. Since D is a citizen of Ohio and T is a citizen of Texas, this constitutional requirement is easily satisfied.

However, the Constitution is not self-executing and Congress has considerably limited the constitutional grant of jurisdiction in § 1332 of the US Code. This section, as interpreted by Strawbridge v. Curtiss, requires complete diversity and sets an AIC requirement at greater than $75,000. The complete diversity requirement is not relevant in this determination since there is only one plaintiff and one defendant and they are citizens of different states. But the amount in controversy between them is only $50,000, which does not meet the statutory requirement.

Because the claim does not meet this AIC requirement, the federal system does not have SMJ through diversity of citizenship.

B. Does D's claim against T satisfy federal question doctrine?

Article 2 § 3 also grants the federal courts jurisdicition over claims arising under the Constitution and the Law of the United States. Again, the constitutional grant has been interpreted very broadly. Loosley speaking, the claim meets the constitutional requirement if there is even a whiff of a federal question. This claim however, does not meet this very low requirement. The claim in question is about indemnification for a breach of contract and even that original contract - as we will see later - does not invoke a federal question.

There is also statutory execution for federal question jurisdiction that limits the breadth of the constitutional grant. I will treat this briefly since it is clear that even the broader constitutional requirement is not met.

This statute, § 1331 of the US Code, mirrors the Constitution's language but has been narrowed by interpretation in a couple of ways. One simple test for federal question jursidiction in the Holmes creation test, which says that the federal courts have jurisdiciton when a private right of action is created by federal law. This is not the case here. This is a contract claim whose cause of action is rooted in state law.

Additionally, there is the *Grable* test for substantial federal question. This test allows federal SMJ if there is a substantial question of federal law that is necessary to the outcome of the case and is actually in dispute. Again, there is no doubt that this requirement (or three requirements) is not met. If they were met we would continue the test, checking if granting federal jurisdiction in this case would upset the division of labor between state and federal courts. This analysis is not necessary.

It is clear that this claim does not meet the requiements for federal question jurisdiction.

C. Can supplemental jurisdiction be exercised over D's claim against T?

Supplemental jurisdiction, as expressed in § 1367 of the US Code, allows claims that are so related to claims that do have original jurisdiction to be heard by federal courts in certain situations. I will approach the statute according to its subsections.

i. 1367(a)

This first question in this subsection is whether there is a claim with original jursidiction. I take it that the SMJ of P's claim against D is not in doubt. That claim meets the diversity of citizenship requirements discussed above in that P is a Texas citizen, D is an Ohio citizen, and the AIC is $100,000 (i.e., greater than $75,000).

Once this original claim is established, we must ask if D's claim against T is "so related." D's impleading of T is done through Rule 14 which says that "[a] defending party may, as a third-party plaintiff, serve a summons on a nonparty who is or may be liable to it for all or part of the claim against it." These derivative liability claims are always "so related" in regard to § 1367 supplemental jurisdiction. One could say that they automatically pass the "common nucleus of operative facts" test that the Supreme Court laid out in *Gibbs*.

Subsection (a) being satisfied, we move on to subsection b.

ii. 1367(b)

This subsection only applies when the original claim has federal jurisdiction because of diversity of citizenship. Since P's claim against D

is such a claim, this subsection is relevant to our current inquiry.

This subsection withdraws supplemental jurisdiction over parties joined by certain rules. Since it was earlier established that T is being impleaded under Rule 14, this subsection tells us that jurisdiction will not be granted to "claims by plaintiffs against persons made parties under Rule 14...when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdicitonal requirements of section 1332."

Somewhat surprisingly, this subsection does not withdraw jurisdiction over D's claim. This exception applies only to claims by plaintiffs and since D, in impleading T, is a third-party plaintiff, this exception does not apply.

Therefore, subsection b does not withdraw the grant of supplemental jurisdiction found in subsection a and we can move to subsection c.

iii. 1367(c)

1367 grants federal courts the power to exercise jurisdiction, but it does not require the exercise of that power. This subsection lists the factors that should guide the exercise of this discretion.

First, does the claim raise a novel or complex issue of State law? It probably does not. This is a routine contract claim.

Second, does the claim substantially predominate over the original claim? Again, probably not. The contract in question is for indemnification on the original contract. It is difficult to imagine this being anything other than derivative.

Third, has the district court dismissed the original jurisdiction claim? Again the answer is no. P's claim against D is still going to be litigated.

The fourth factor is a catch-all, looking for any exceptional circumstances. There do not appear to be any exceptional circumstances in this contract case.

According to this analysis, it seems that the federal court can excercise supplemental jurisdiction over this claim.

II. Whether the federal court has SMJ over T's claim against P?

I will need to go through the preceding analysis again with this claim but, having explained most of the nuances above, I will try to keep things briefer. Paul and Tim are both citizens of Texas so there is no diversity of citizenship. Federal jurisdiction cannot be gained this way.

There is no federal private right of action, so the Holmes test is not satisfied. And there is no substantial, necessary, actually in dispute federal question to the claim.

This brings us back to supplemental jurisdiction and § 1367.

1367(a)

The first criterion, that of an claim of original jurisdiction, is met again by P's claim against D.

There could be a valid argument here for and against the "so related" requirement. However, since T's liability depends on P's behavior in the original suit, the claims are probably "so related" in the sense of a "common nucleus of operative facts." Additionally, if D is found liable and T is indemnified, T will only file a new claim in state court. Handling the claims in one trial increases the efficiency of the administration of justice.

Allowing that 1367(a) probably grants supplemental jurisdiction, we can move on to 1367(b)

1367(b)

The analysis here is very similar to that above. Since any claim asserted by T would be asserted as a third-party plaintiff, none of the exceptions are applicable, regardless of the rule by which he was joined. Thus, this subsection does not withdraw supplemental jurisdiction.

1367(c)

The situation is the same as above in regard to the discretionary factors. None of them militates against the federal court exercising jurisdiction over this claim.

Conclusion

According to the above analysis, the federal district court should have supplemental over both of these claims.

14 14

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Question 1 Word Count = 1390

Character Count = 8550

Line Count = 140

-->End of Question 1

Question 2 (worth one-third of final exam grade). Your answer should not exceed 1500 words.

Modern Motion Pictures (MMP) is a California company that produced a motion picture titled "Dreamer." MMP alleged that a number of individuals were sharing the movie using an internet protocol called BitTorrent and that this sharing violated federal copyright laws. MMP made the following allegations:

¶With the file distribution process known as BitTorrent, an individual initially obtains a copy of a movie or song (which he might have obtained legally or illegally). This person is known as the "initial seeder."

¶The initial seeder uses the BitTorrent software, which takes the original large digital file and divides the large file into thousands of smaller digital files. The initial seeder then posts these thousands of smaller .torrent files to one of various websites on the internet that host .torrent files.

¶ When someone else is interested in obtaining a copy of the movie, he or she can search the internet to find a . torrent file associated with it and then is able to download one of the smaller pieces of the entire digital file. Once a user downloads this single .torrent file piece, the BitTorrent software automatically locates the computers of other people from whom the remaining pieces of the same file came be downloaded. This is possible because the BitTorrent software, by default, offers for download any piece of a digital file that it has previously downloaded.

¶Thus, everyone who downloads a piece of the digital file using the BitTorrent software becomes a part of an interacting network of users, known as a "swarm." Anyone in the swarm is able to download the entire movie because the BitTorrent software re-assembles all of the small bits from various sources to a single large file. Thus, everyone who participates in the swarm commits copyright infringement.

MMP was able to obtain 50 IP addresses that were being used to share and download the movie file without permission. Subsequent research confirmed that all of these addresses belonged to individuals located in California. MMP filed suit against all 50 individual defendants in federal court in California alleging violation of federal copyright laws. One of the defendants moved for dismissal or severance of the action under Fed. R. Civ. P. 21, arguing that under Fed. R. Civ. P. 20 the joinder of the 50 individual defendants was improper. How should the court rule? If you think that you cannot definitely rule on the motion, based on the plaintiff's current allegations, what additional allegations would you require be made before you would be able to rule?

Better Scoring Student Answers

To Question 2

Question 1 Word Count = 1083

Character Count = 6406

Line Count = 101

->End of Question 1

-->Question -2-

Question 2

Rule 20 allows parties to be joined if they satisfy a two part transaction-relationship and common question test. Specifically for defendants Rule 20(2) sets out that persons may be joined in one action as defendants if 1) the claims against them arose out of the "same transaction, occurance, or series of transactions or occurances and 2) the claim have a common question of law or fact.

Same Transaction or Occurance Test

First, the claims against all of the defendants must arise out of the same transaction, occurance, or series of transaction or occurances. The goal of the courts system by allowing transactionally related claims to be joined is to increase effeciancy.

The claims that MMP is making against these 50 individuals all arose out of the same series of occurances based on the present facts. Similarly to that in Schwartz, the dammage done was the cumulative effect of all of the defendants sharing their individual peices of the movie with each other so that the end result is that they all have the complete movie. This is very similar to to several theives stealing part of a painting. Each takes a small portion of it and then later they all put their peices together to recreate the original image. Each defendant is responsible for 1) illegally downloading the movie which is copyright infringement and 2) sharing their peice of the

movie with others to continue the violation. None of them would have had the complete movie if it had not been for the others. THey all worked in concert with each other (knowingly or not) and so the same transaction or occurance occured when each of the defendants participated in "the swarm" and worked together to recreate the movie and then share it among themselves.

An argument could be made that the defendants were not working together and probably didnt even know of the existance of each other. While that is a good arguement, the test is not that they worked toether but simply that the claims arose out of the same transaction or occurance. Each one of them downloaded a file off of the same website, collected more files until they had a final product, and then shared that with other people. Without the help of each other, they wouldnt have a watchable movie and instead would have a small worthless piece of unwatchable movie.

However there is a peice of information that is neccessary before the court should determine whether it all of the claims arose from the same transaction or occurance. It would be necessary to know whether all of the defendants were a part of the same "swarm" or different "swarms". If it were possible that there are several swarms that a person could download the same movie then it would nto be the same transaction or occurance. For example, say Defendant A used only Swarm A and Defendant B used only Swarm B, although they committed the samevolation in the exact same manner, they did not do so in the same transactino or occurance. If two people steal the same movie from blockbuster a thousand miles apart from each other then it cannot be assumed to be appart of the same transaction or occurance. But if two people steal the same movie from blockbuster by cutting hte movie in half and then meeting up

and later to put the movie back together, it would be the same transaction or occurance.

In the interest of effeciancy, the courts will want to allow the claims to be joined because MMP will bring in the same witnesses, the same evidence, and essentially the same claim against all of the defendants. Instead of having 50 exact same trials, it would be more efficent to have 1 trial. Thus it would seem that MMP's claim would satisfy the policy reason for allowing the joiner of defendants.

Common Question of Law or Fact

The second step to rule 20 is that there must be a common question of law or fact. There are infact several ways that this case satisfys this second requirement. Firstly, there are several common facts among all of the defendants. They all downloaded a starter .torrent file, they all reached out to the "swarm" to complete their movie, and they are all being sued for the exact same violation. Thus the plaintiff is asking whether each of the plaintiff commited copyright infringement which is a commone question of fact.

Lastly the court must look at whether it as subject matter jurisdiction over all of the parties as well as supplemental jurisdiction if that issue arises. Here is would appear that the court may not have SMJ because there is no diversity of citizenship. MMP is a california company and all of the defendants are from California. HOwever there may be a federal question (copyright infringement) that may allow the fenderal courts to have SMJ.

Question 2 Word Count = 819

Character Count = 4706

Question 2 Word Count = 1495

Character Count = 8738

Line Count = 182

->End of Question 2

-->Question -3-

THIS IS QUESTION 2: I ACCIDENTALLY TYPED QUESTION 3 IN THE SPOT FOR QUESTION 2

The issue here is whether or not this copyright infringement action

should either be entirely dismissed, or at the least, severed, based on improper joinder of defendants under Rule 20(a)(2).

Rule 20 stipulates that a misjoinder is not a sufficient basis for dismissing an entire action, but that the court may add or drop parties, OR sever an action against individual parties *"at anytime, on just terms."* Thus, if the court has "just terms" for removing a party or severing a claim against it, it can do so. A possible "just term" for taking such action, as suggested by a defendant, is that the joinder was improper under Rule 20.

I. Same transaction of occurrence

The first basis for the joinder of defendants is that a right to relief is asserted against them "with respect to the same transaction, occurrence, or series of transactions or occurrences." Here we must analyze the meaning of transaction or occurrence to determine if the joinder was proper.

MMP will argue that the "transaction" in question was the entire "swarm" in which the users were downloading the movie. However, we would need more information about the nature of a swarm. For example, do all the downloads take place at the same time, or do they occur at different times ? If they occur over a period of time, is this over a period of days, weeks, or months? Depending on the time span that the illegal action occurs over is key to determining if the actions arise out of the same transaction, as the Ds

will point out. However, MMP will point out that even if the downloads occurred over a period of time, they were all the same series of transactions. Not only were all the actions illegal copyright infingements, but they were copyright infringements of the same movie. Additionally, the nature of this software indicates that Ds do not even choose at what time and for how long they participate in a swarm, as the software automatically offers up for download anything its user has already downloaded.

Ds might argue that the transaction in question is not the swarm, but the action of the initial seeder, without whom the swarm and the subsequent downloads would not have been possible. However, the law is not concerned with how a violation of the law began, but only with the fact that it occurred. Theough the initial seeder may have been the instigator, it does not relieve the other 49 Ds of their violation of the law and doesn't mean that their ilelgal transaction did not occur. The seeder may have started the transaction, but the other 49 Ds still independently participated of their own accord. Additionally, the way torrenting works shows that an intial seeder does not even have to take action to begin a swarm, because the software, by default offers its downloads anything its user has already downloaded.

Ds might also argue that the joinder was improper because the intial seeder in a swarm could have obtained his copy of the movie legally.

Additionally, different Ds could have contributed to the swarm in different amounts/ways, altering everyones liability. Depending on the software, it might not be clear who contributed what and in what amounts. However, even if the initial seeder obtained his copy legally does not mean he still did not committ copyright infringement by aiding others in downloading. And just because the liabilities will be different for all involved does not mean that they are not all still liable. Perhaps the litigation for the initial seeder may take a different course than the other 49 defendants. Perhaps litigation will be inconclusive and MMP will be unable to prove who did what, meaning no one is liable. **This doesn't mean that the initial joinder is improper.** FRCP 20 (3) specifies that when you are a D in a joined action with other Ds, you do not need to be interested in "defending against all the relief demanded," as a court can grant a judgment to each D based on his liability. The stratification of liability each D might face because they acted independently and contributed in various amounts is not sufficient reason to not litigate these 50 claims efficiently in one court, even if the final outcome is inconclusive. Additionally, the courtin Moore defined transaction as a word with flexible meaning that could allow several occurences and not on the imdiateness of their relation.

The Ds might argue that each illegal download was not the same

occurrence because each took place in a different location. However, this argument is irrelevant because though the Ds did not act in concert with each other at one location, but independently of each other in several locations, they all still acted in one general location, California. The very nature of this type of copyright infringement makes it impossible for the illegal downloads to occur at one exact place and time, as it is committed by hundreds of people who have no other connection to each other, except downloading media. Had the Ds been residents of different states or nations, this may have been a stronger argument because it might implicate different laws. However, it seems a state boundary is enough to refute this argument.

MMP can further bolster their argument by analogizing to case law in different areas of federal civil procedure. For example, "arising out of the same tranasaction or occurrence" under Rule 13 carries the almost exact same meaning as "arising out of the same common nucleus of operative facts" under 1367(a), when we are deciding if a Rule 13 compulsory counter-claim satisfies the Gibbs test for supplemental jx. In this case, "same transaction" has a very general and broad meaning, and encompasses most claims that are related in a logical and obvious way. The reason for this interpretation is to allow efficiency of justice and litigation when claims are so related that it would save time and money for all involved to have one court hear the entire

dispute. In our case, it would seem logical to attribute this same meaning to "same transaction", when it would be efficient for one court to hear the claim by one defendant in violation of one law, concerning one specific movie, that so happens to have been committed by fifty people instead of one.

Overall, the copyright infringement in question seems so related and arising out of the same transactions or occurrences, that it seems improper to *not* join the defendants as parties.

II. Common Question of Fact or Law

MMP will also indicate that a common question of law exists amongst the potential litigation against all 50 defendants: copyright infringement. The facts do not indicate that any other question of law will be involved in litigating these claims. Even if state law claims might become part of the litigation, all the defendants are from California, and assuming they are all domiciled in California, they will be subject to jurisdiction to California and its state laws. If other questions of law may be implicated in the litigation, this might be a basis for alleging an improper joinder, but more facts would be needed.

Also, there is the information that all the defendants are implicated in the download of one single file. Had the alleged infringement been of several different files, the suit may have required additional facts and maybe even additional parties for liitgation. From the information given, it appears that all the relevant facts, the movie involved, the illegal methods involved, are the same for all the defendants.

Conclusion

Overall, it appears that joining the defendants under Rule 20 is not only proper, but an excellent way of achieving the judicial efficiency that Rule 20 was doubtless designed to achieve. Rule 21 explicitly stipulates that a misjoinder is not a basis for dismissal of an action, and it also appears from the facts of the case that the court has no "just terms" for dropping or severing the claim against any individual defendant.

Question 3 Word Count = 1350

Character Count = 7968

Line Count = 140

->End of Question 3

-- THE END --

Total Word Count = 4345

Total Character Count = 25625

Total Line Count = 473

-->Question -2-

The sole question in this case is whether MMP properly joined the 50 defendants under Rule 20(a)(2) of the FRCP. There is no question of jurisdiction, the Ct. has SMJ through §1331 (Fed. Question) and as all defendants are residents of Cali. the Ct. has PJ. We assume all other aspects of the litigation are not in question.

FRCP 20(a)(2)

The Federal Rules of Civil Procedure grant for permissive joinder of parties under Rule 20. Specifically, Rule 20(a)(2) governs the joinder of defendants. Subsections (A) and (B) of 20(a)(2) states that persons may be joined in one action as defendants if: "(A) any right to relief is asserted against them jointly, severally, or in the alternative, out of the same transaction, occurrence, or series of transactions and occurrences; and (B) any question of law or fact common to all defendants will arise in the action."

Strict Common Facts

This case will turn on the framing of the terms "facts common to all defendants" and "out of the same transaction, occurrence, or series of transactions and occurrences". The defendants will argue that the Ct. should interpret fact as narrowly as possible. While the legal theories may be the same (copyright infringement) - the factual circumstances surrounding each case could not be more different. There was no single transaction or

occurrence, or even series of occurrences that could be related together for each one of them.

The Effron article points out that Ct.'s often use the class action's rules requirements for "predominence" under 23(b)(3) which require that common questions of law or fact common to [...] members predominate over any questions affecting any indivdual members. Effron points out that this was used in a case where the only common facts between each plaintiff was that they took a medicine containing an active ingredient by which they all suffered injury and stated that "the absence of any common issues of fact outweighs each plaintiff's reliance on similar law." (p. 182)

Further, the Ninth Circuit uses a fact only definition of "transaction of occurence" when defining the phrase. (p. 184) Meaning that the Ninth Circuit looks only to whether or not the same transaction, occurence, or series of transactions and occurrences implicate the same facts.

The D's will argue that their situation is very similar to the case presented in the Effron article. The only common fact alleged are that each of the parties illegally downloaded the movie off a torrent server. None of the defendants, for example, ever met one another. There was no concerted effort to illegally download the movie. One defendant's child may have been guilty of the downloading, while one defendant may have seen the movie 34 times and had downloaded the movie solely because they couldn't wait to see it again on DVD once it left the theaters, and another defendant may have downloaded the movie to sell it illegally.

Using the reasoning of Rule 23, each of those scenarios present a different factual occurrence that would be highly relevant to the outcome of each case. Also following the Ninth Circuit's reasoning, and the reasoning of the Ct. mentioned in the Effron article then, their actions are not connected enough to arise out of the same facts, or the same transactions, occurences, or series of transactions or occurences.

P might argue that series of transactions or occurrences is more forgiving to them than the above analysis suggests. This wouldn't change that the facts in every case are still different. It's true that every defendant, at some point or another, booted up their computer to download the movie from the Torrent. However, such a situation is no different from the case where each plaintiff, at some point or another, took a pill that caused them injury.

MMA could attempt to quibble over the legal issues - perhaps no single injury was asserted in the pharma case, while here the injury in every case is copyright infringement. However, this is a common legal argument, which is separate from the fact argument.

Broad Common Issues

MMA will attempt to argue for a broad framing of "facts common to all defendants" and "out of the same transaction, occurrence, or series of transactions or occurrences." MMA will focus the facts on the requirement of a "swarm" to download the film, and that none of the defendants could have gotten the film without each individually participating in the "swarm."

MMA will counter with its own legal argument. The Effron article also pointed out that "in some instances the analysis focuses on the 'permissive application' of Rule 23(a)(2) as an analog to Rule 20 instead of 23(b)(3)." (p. 182) Rule 23(a)(2) is quite permissive, allowing plaintiffs claims to be aggregated when "there are questions of law or fact common to the class." Given that Rule 20 is acknowledged to be more permissive than Rule 23, some Ct.'s clearly believe there is a light standard for showing that facts are common to all defendants.

The Kane article even suggests that this reading is the preferred one. Kane points out that the S.C. suggested that "transaction is a word of flexible meaning depending not so much upon the immediateness of their connection as upon their logical relationship." (p. 176) She further points out that many Ct.'s have used the logical relationship test to join defendants under Rule 20, and argues that the underlying philosophy is that joinder should be allowed if doing so will expedite the resolution of the entire controversy between the parties.

MMA will argue that their case is one where there are common question of law or fact to the parties. There are enough common law and facts in the claim, each party committing copyright infringement by illegally downloading a movie, that would lead a Ct. to at least consider certifying a class action. Given the more permissive standard of joinder under Rule 20, it should be a slam dunk that joinder of defendants would be allowed.

MMA can also claim that the facts are so logically related that it would be an error not to allow them to be joined. Each of the plaintiffs attempted to download the movie illegally, and each plaintiff joined the same "swarm" - which could not have existed without each of the plaintiffs. Since the movie could not have been downloaded without the action of each plaintiff, the claim against each is logically related to the other.

MMA will also point out that the policy concerns behind the FRCP is to allow the efficient operation of the Ct.'s. Suing 50 defendants individually is bound to muck up the machinery of Ct. and will be extremely inefficient. Allowing the claims to be joined together would expedite the resolution of the entire controversy.

Conclusion

As the issue currently stands, the Ct. should likely grant the Rule 21 motion to sever. Given the above interpretations, especially with the appropriate weight for the Ninth Circuit, MMA would need to assert more facts regarding the commonality of the defendant's situations in order to join them via Rule 20.

30

Temifo

Question 2 Word Count = 1174

Character Count = 7014

Line Count = 109

-->Question -2-

Issue: 1) Whether joinder of the defendants was improper under Rule 20 such that a Rule 21 motion to drop or sever party should be granted. 2) If there is not adequate information to determine if joinder was improper, what information is lacking?

Rule 20: Permissive Joinder

Rule 20 provides the requirements for permissive joinder of parties. Before moving to the specific terms of the Rule, it necessary to consider the intention of Rule 20. Being a permissive rule, Rule 20 does not stipulate any instance in which joinder is required (compulsory joinder is addressed in Rule 19). Thus, the question raised by Rule 20 is really one of convenience. While the word 'convenience' does not appear the rule, that fact that the rule makers took time to draft a permissive rule suggest that there intention was to expressly allow joinder when doing so will create efficiency in a case (which is something to keep in mind through the rest of the analysis).

Rule 20(a)

Rule 20(a)(1) concerns permissive joinder of plaintiffs, which is not applicable to the case at hand.

Rule 20(a)(2) provides the conditions for when defedants (Ds) can be joined in an a claim. 20(a)(2) indicates that Ds may be joined when: (A) any right

to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurences; and (B) any question of law or fact common to all defendants will arise in the action.

Addressing first the issue of 20(a)(2)(A): the rule uses the terms 'transaction or occurrence' (T/O) or 'series' thereof. While the terms T/O appear elsewhere in the FRCP, in Rule 13 and 15, they are only accompanied by the word 'series' in Rule 20. This suggests that the rule makers saw some potential utility to allow Rule 20 joinder when the T/O did not necessarily occur on the same date. In the case at hand, the use of 'series' in Rule 20 is particularly applicable because the question involves events that occured at multiple dates and times. In the instant case, it is possible that the D's motion, the contents of which is unknown, asserts that joinder is unproper because of events occuring on multiple dates. If that is the basis of the D's motion, then it is likely to fail because the use of 'series' in the Rule seems to intentionally allow that exact application.

There is, however, the question of what constitutes a transaction or occurrence. The case at hand, it appears that the allegation indicates that the illegal transaction is the downloading any part of a of a movie through BitTorrent. While it is obvious that each D will likely have been invovled in a different 'transaction,' the substance of which was unique to their usage

of BitTorrent, there is a strong argument to make that the activity of each D strongly resembled that of the other Ds in terms of how the software was used. The question then becomes whether each unique activity should be treated as the same transaction or series thereof.

A review of the use of the terms T/O in the FRCP may shed some light on this issue. The terms T/O also appear in Rule 15 and in Rule 13. Rule 15 uses T/O when addressing when a claim, for which the statute of limitations has run, can be revived through an amendment. Thus, there is an argument that T/O in Rule 15 be interepreted narrowly because they allow a court to override applicable state law, which is something courts do not take lightly. Similarly, in Rule 13, the terms T/O are used to determine when a counterclaim must be brought, the consequence of which might be losing the ability to bring that claims. Thus, Rule 13, also requires a strict and thoughtful use of T/O and the potential consequences of applying it to liberally or narrowly.

Unlike 13 and 15, Rule 20 is a permissive rule. As mentioned earlier, the Rule is about efficiency. In the event that a court later disagrees with the application of T/O to a particular case or party, the court has discretion to sever parties as it sees fit.

Additionally, some courts have used the terms "logically related" when

considering the use ot T/O in the FRCP. The underlying intention of asking if there is a 'logical relationship' is to consider what expediency can be gained from allowing the Ds to be tried in one case. While courts are obviously interested in the rights of each party, they are also interested in adjudicated cases in a manner that is most efficient. In the instant case, there is a strong suggestion that the Ds are logically related because of the connectedness of BitTorrent usage. Even if each D is acting independently, the fact that BitTorrent is built on a system of users, sharing information piece-meal, there is a very strong argument of the logical relatedness of their activities. Also, for the sake of efficiency, it might be very expeditious to bring all the Ds in one case if their behavior was virtually identical, a fact which is not currently known. And again, in the event that dissimilarity in Ds behavior becomes burdensome, the court may use discretion to sever them at that time.

Thus, taking a liberal interpretation of T/O in the instant case, there is no reason to not treat each D's use of BitTorrent as a 'transaction,' and to use 'series' in the Rule to justify their being properly joined.

Rule 20(a)(2)(B)

Subsection (B) of Rule 20 asks if there is a common question of law or fact among the Ds. More specifically, the common question must be a meaningful question for the resolution of the controversy. In the instant case, there

are potentially both. Perhaps the most obvious common question of law is wether downloading one segment of a movie, in the manner described in the allegations, constitutes copyright infringement. If, for example, there is a time or quantity threshold that one must pass in order to cross over from legal usage to copyright infringment, there is likely a significant question in of law in the instant case as to whether the conduct described constitutes copyright infringment. Also, this question is certainly a meaningful question in the case as it will determine, to an extent, which users are liable and which are not.

Regarding a common question of fact, there may be a common question of fact as to whether MMP's movie was actually downloaded, in whole or in part, by the D's. There may also be a question of which whether the named Ds were the users of the protocol at the time the download occurred.

While the variables in the questions may be numerous, which is an aspect that might suggest severing the parties would be appropriate, there is likely a manner in which the court can set guidelines or parameters for how such questions of fact or law can be determined. Put another way, even if a determination must be made concerning each individual user's activity, there is likely some convenience to be gained by keeping them together and allowing the court to apply one standard for how each user's activity will be

assessed. In the long term, such an approach may also provide for equittable treatment among the Ds, as well.

Rule 20(a)(3)

Subsection (a)(3) of the rule concerns the relief sought and indicates that joinder of plaintiffs or Ds does not stipulate that relief must be uniform. The amount of relief sought in this case is not specified. Whatever the amount is, Rule 20(a)(3) will allow a relief amount to be assessed against each D pursuant to their individual liabilities.

Rule 20(b)

Rule 20(b) allows the court to use its discretion to protect joined parties from prejudice or embarrassment. While Rule 20(b) may come up in the course of this case, it is not relevant in the current discussion of whether joinder was proper.

Conclusion

With the current information available, there is does not appear to be misjoinder that would warrant the severing of the parties and the court should deny the motion to sever.

However, the question was raised concerning what additional information may

be needed to make a decision on the motion. While I think denial of the motion would be warranted based on the information currently known, in the event that the court were interested in collecting additional information before ruling on the motion the court should consider the following:

What, specifically, did the defendant party seeking severence cite in his motion? If there is compelling information about his involvement and how it might significantly differed from other users, that information might create grounds for dismissal. Similarly, there is little information, other than IP addresses, about how the Ds are similar. It may be prudent to see what the Ds have in common before making a final determination about severance of the parties.

Question 2 Word Count = 1500

Character Count = 8725

Line Count = 146

-->End of Question 2

Question 3 (worth one-third of final exam grade). Your answer should not exceed 1500 words.

There was a plane crash in Greece. All of the decedents' survivors were residents of Greece. The plane had been permanently based, maintained and serviced in Greece. It was operated by a Greek company. It was not designed or manufactured in Texas. It was never owned by a Texas resident. It had never been repaired or serviced in Texas. The plane's manufacturer, Learjet, is a Delaware corporation with its principal place of business in Kansas, where it designed, manufactured and sold its products.

At the time, a relevant state law in Texas read:

> Each foreign corporation authorized to transact business in this State shall have and continuously maintain in this State . . . a registered agent [for service of process and if] a foreign corporation authorized to transact business in this State shall fail to appoint or maintain a registered agent in this State, . . . then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served.

In compliance with state law, Learjet had a duly registered agent for service in Dallas. This gave it the right to do business in Texas. However, Learjet has done very little business in the state. They have never had an employee, officer or director, an interest in real property, a deposit in any financial institution, or a facility or office located within the state. All sales were made from products warehoused in Kansas or Arizona. In total, only slightly over 1% of Learjet's sales, consisting of spare parts, have gone to buyers with Texas addresses.

Plaintiffs, the Greek survivors of those who died in the crash in Greece, brought suit against Learjet in state court in Dallas, Texas. They contend that Learjet is subject to general jurisdiction in Texas for one reason and one reason only: because process was served in Texas on the company's designated corporate agent for service. Learjet files a special appearance, asking the court to dismiss the case for lack of personal jurisdiction. How should it rule?

Better Scoring Student Answers To Question 3

common question test for that claim.

Question 2 Word Count = 1369

Character Count = 7668

Line Count = 133

->End of Question 2

-->Question -3-

Does the Texas state court have personal jurisdiction over Learjet (L)?

Personal juridction (PJ) is the power the court needs over the parties of the case. The P automatically consents to PJ in the jurisdiction by filing the claim there. There are three steps to establish PJ: 1) proper notice, 2) statutory amenability, and 3) constituonal authority.

Was Notice Proper?

Process was served in TX on L's designated corporate agent for service, pursuant to the relevant state law. After meeting the statutory requirement, we must still ensure notice conforms to due process requirements. Notice was given to an agent of the company, the agent can relay the information, to the company back in Greece. It appears, therefore, that notice is proper and does not violate Due Process or the relevant statute.

Statutory Amenability

In order to exercise PJ over L, there must be sufficient statutory authority. There are three types of long arm statutes (LAS). Some LAS expressly grant PJ to the full extent of due process. Others do not expressly grant PJ to the full extent of due process, but have been interpreted by courts to extend that far anyway. The final type of LAS limits PJ to a list of certain claims, and has not been interpreted to go all the way to due process by the courts.

We do not have the applicable long arm statute provided to us. We know from class that the TX LAS is interpreted to the full extent of due process, but what we do not know is if L has done enough to constitute doing business in the forum. Maybe slightly over 1% of L's sales is enough to constitute doing business in TX. We have determined that they were authorized to do business in TX from the applicable law provided, but that does not necessarily mean they were doing business there. L does not have any of the traditional means of determining if you do business in a forum like employees, real property, or a facility in TX. Moving forward I will assume that L has met the requirements for doing business in TX, and we have met the statutory amenability test.

Constitutional Authority

The traditional bases of PJ from *Pennoyer* are presence in the forum, voluntary/involuntary consent, and being domiciled in the forum. L's 'domicile" from *Goodyear* is its PPB (Kansas) or its place of incorporation (Delaware). So we know P's can bring suit in Kansas or Delaware, but still

have not determinted TX. There does not seem to be voluntary consent by L, and they have not involuntary consented because they are filing this 12(b)(2) motion.

P's main argument as to why L is subject to jurisdiction in TX is that the agent was there for service. Presumably, they are trying to make the argument that L is present in the forum, because they have a registered agent there, and are therefore present in the forum. While their argument is not hard to follow, it seems to have massive underlying policy concerns. Many states could require an agent be in the State to serve process, and following L's argument corporations would be subject to PJ in every single state that requires this agent. While corporations have been known to shift around and avoid being nailed wiht jurisdiction in a forum, a court should be hesitant to hold that merely having an agent present for service of process makes a corporation present in the forum. There likely is not a traditional bases for PJ, and we must next asses the Shoe Test.

The constitutional amenability aspect of PJ arises from the due process clause of the fourteenth amendment, designed to protect not-resident D's from having to defend in unfair forums. In *Shoe*, the court said that PJ can be established if a non-resident has minimum contacts such that a suit does not offend "traditional notions of fair place and substantial justice." Courts have subsequently interpted this to be a two part test: 1) did the D purposefully avail or direct action in the forum so that it is reasonably forseeable to

them that they were subject to being sued there (minimum contacts) and 2) an assessment of the fairness/reasonbleness factors. *Shoe* also indicated that the standards for sufficient minimunm contacts are different when the claim either 1) arises out of activities in the state (specific) or 2) when the claim is related to activities outside of the state (general).

Specific Jurisidiction (SJ)

Ps only contend that L is subject to general jurisdiction, but I will analyze this briefly. SJ is appropriate when the contacts in the state are highly related to the cause of action. Here, not one part of this cause of action has anything to do with L's sales in TX. The crash was in Greece, the plane was not manufactured in TX, and it had never been repaired or serviced in TX. The claim is unreated to L's contacts in TX, and therefore th court will need general jurisdiction over D for the claim to be constitutional.

Step 1: Minimum (sufficient) contacts

General jurisdiction exists when the activites D conducts are "continuous and systematic" so that D can be said to be at home in the forum. *Goodyear* provided that a corporation is essentiall at home where it is incorporated or where its principle place of business is. This is in Delaware and Kansas, respectively, for L. *Goodyear* did leave open that there could be another way to find a corporation essentially at home, but this was based off of the fact

that we want one safe place to sue everybody, including corporations. Here, P could have sued L in Delaware or Kansas and been perfectly fine. *Goodyear* left room for an additional way to find them essentially at home in the case of foreign corporations. The court should not find PJ, but I will move forward and assess the reasonbless/fairness factors for completeness.

Step 2: Reasonbleness/Fairness Factors

Even if the court found sufficient contacts or purposeful availment by L, they should probably still not find PJ under this part of the test. *WWV* explained that these factors include:

burden on D
forum state's interest
p's interest in obtaining convenient effective relief
interstate's judicial system's interest in obtaining most efficient resolution of controversies
shared interest of states in furthering substantive principals

There is not a huge burden on the D to send witnesses from Kansas/Delaware to TX, its 2013 and we have planes, skype, etc. to help in alleviating this minor burden. TX has 0 interest in hearing this case. All the P's are Greek, the corporation does very, very little business in their state, and those spare part sales are irrelevant to the cause of action anyway. P's interest in

obtaining convenient and effective relief is probably best served in Greece. If for some reason Greece is not available to hear this case, P could still get convenient and effective relief in Kansas or Delaware and just as good off as they would be in TX. It is not really more or less efficient for TX or Kansas or Delaware to hear this case, because Greek laws likely apply. In Kulko the courts declined to find jurisdiction over the husband because they did not want to discourage parents from accommadting the interest of family harmony. There is nothing similar in this case.

The courts should dismiss this case for lack of PJ, because they likely do not meet specific, general, or the fairness factors.

Question 3 Word Count = 1249

Character Count = 7245

25

Line Count = 125

->End of Question 3

-- THE END --

Total Word Count = 3966

Total Character Count = 22338

Total Line Count = 399

However, a court probably will not refrain from exercising its jurisdiction over a claim simply because the outcome might serve justice by uncovering the fact that the original claim was unmeritorous.

13

Question 1 Word Count = 1500

Character Count = 8919

Line Count = 151

->End of Question 1

-->Question -2-

THIS IS QUESTION 3:

The issue is whether or not Learjet's 12(b)(2) motion to dismiss for lack of personal jurisdiction should be granted.

I. Proper Service

The first requirement for obtaining personal jurisdiction ("PJ")is that service needs to be proper. For proper service, a P must correctly follow the **statute** that delineates the criteria for service, and service must be **constitutional** (reasonably calculated so that the D is made aware of it). For our purposes, we will assume service was proper.

II. Personal Jurisdiction

A. In-state Presence

Once notice has been satisfied, there are several ways for a state to obtain PJ over a D such as waiver, consent, citizenship, etc. In the era of **Pennoyer,** in-state service of process not only gave that state PJ over the party, it was a requirement for PJ under the territorial theory of jurisdiction. This inflexible rule was easy to apply but precluded states from being able to exercise PJ on anyone outside state lines. Eventually, the court in **Shoe** abandoned this requirement in favor of a more flexible test of "minimum contacts." It is important to note that the advent of the minimum conacts test did not do away with the concept of tag-jurisdiction, in which a state can still obtain PJ over a party by serving process on that party within state lines. Here, the Greek survivors have properly served process on the corporate agent for service in Dallas, and PJ appears to be proper. However, assuming that for some reason obtaining PJ in this way was not proper, we now look to an alternative form of obtaining PJ.

B. International Shoe: Minimum Contacts

1. Statutory Amenability

The first step to obtain PJ is to satisfy the state statute. The extent of jurisdicton that a state court can exercise is defined by the constitution, but the grant of the power to actually exercise this jurisdiction is given by each state's legislature. There are three types of state statutes that grant PJ. Some statutes will generally either allow a court to exercise its Jx to the full extent of due process, or expressly limit it to certain types of claims (long-arm statutes). Some statutes are silent on this issue and the intent of the legislatures is determined by the courts. We will assume the relevant state statute allowed exercise of jurisdiction for this type of case.

2. Constitutional Amenability: The Minimum Contacts Test

The **Shoe** test for exercising PJ says that a court may now exercise PJ over a party if the party has minimum contacts with that state, and if PJ would not offend "traditional notions of fair play and substantial justice." It is important to note that the court in Shoe used teh term "minimum contacts" which some might interpret as implying there is a certain discrete number of contacts that is a minimum requirement for a court to exercise PJ. However, the better interpretation of this term is "sufficient" contacts, meaning it is not the number of contacts that is important, but the "nature and quality of the contacts."

Arriving at the constitutional issue, the first question to ask is whether or not the cause of action arises out of the Ds contacts with the forum. The cause of action is an accident that took place in Greek and implicates a Delaware corporation who manufactured the plane (in Kansas) involved in the accident. It appears the cause of action is not linked to Learjet's contacts with Texas. We will proceed under an analysis of general jurisdiction ("GJ").

a. General Jurisdiction

In **Shoe,** GJ was defined as having contacts with a forum that are "continuous and systematic." Courts initially had difficulty interpreting this term, especially in the case of corporations, but **Goodyear** finally clarified "continuous and systematic" to mean continuous enough that the party could be considered "essentially at home." It then defined "essentially at home" for corporations as place of incorporation and principle place of business. Learjet is incorporated in Delaware and has its principle place of business in Kansas, meaning it is not subject to GJ in Texas on these two bases.

The interesting thing to note about Goodyear, however, is that it did not preclude *other* states, besides principle place of business and state of incorporation from being states in which a corporation was also subject to GJ. In an opinion where it could have easily restriced "essentially at home" for a corporation to mean only these two places, the fact that it did not do as such

implies that there might be other states where a corporation is "essentially at home" and subject to PJ.

b. Purposeful Availment

To determine if Learjet might be subject to GJ outside of Delaware and Kansas, namely in Texas, we must still look at if its contacts with Texas are "continuous and systematic" in a way that the company purposefully availed itself in the forum so that it would be foreseeable to have to litigate in that forum. Learjet does almost no business in Texas. They have no offices, employees, property, or financial ties with the state. The facts seem similar to that of **Helicopteros,** in which a company had weak ties to Texas, occasionally sending the CEO there, and doing small amounts of purchasing and training there. In this case, GJ was not proper. Though the facts of our case seem similar to **Helicopteros,** there is one caveat. The company in Helicopteros was not licensed to do business in Texas, whereas Learjet is licensed to do business in Texas. Ps can argue that despite the weakness of the quality of the contacts with Texas, the proactive steps Learjet took to register itself to do business in Texas means they have purposefully availed themselves of the laws of Texas and could foresee having to litigate in Texas as a result of their actions to get licensed and register an agent for service of process. This act, however ministerial it may have seemed to Learjet who probably only complied in order to be able to do business, put them on notice that they

might be called into court in Texas as they are seeking the protection of Texas laws by doing business there, however minimal. The entire purpose of the constitutional/minimum contacts analysis is to ensure that states are not subjecting defendants to litigation in a forum to which they little or no reason to believe they would have to litigate in. It seems that the act of appointing an agent for service or process, shows that they not only knew, but are facilitating the court's obtaining of PJ over them.

However, the analysis still focuses on the fact that for GJ, contacts must be enough to render the corporation "essentially at home," and despite their action of registering an agent, the contacts with Texas are weak and few. Additionally, though Goodyear left open-ended that a corporation might be subject to PJ in a state aside from its PPB/Incorp., the consensus seems to be that this for the exercise of GJ over foreign companies, and those companies that do such large amounts of business in states outside PPB/Incorp. that they have availed themselves to that forum so that PJ is proper.

c. Fairness Factors

A court will also look at the "fairness" factors to determine if PJ is valid. These factors are secondary to purposeful availment, and however compelling they may be, do not eliminate the need to satisfy the minimum

contacts requirement.

First, the court will consider the Ps interest in obtaining effective relief. It seems here the foreign litigants may have chosen Texas as a forum because they do not want to litigate under the laws of their own country. However, if the Ps are able to litigate in America at all, they have the more favorable options of Delaware and Kansas available. Next, we look at the state forum's interest, and it does not seem that Texas has much interest in hearing a dispute involving a company who barely conducts business in Texas and non-US citizens. We also look at the burden of litigation on the D. If Learjet is able to appoint an agent for service in Texas and has some business there, litigation in Texas might not be entirely burdensome, though it would be much more convenient in Delaware or Kansas. Next we look at the interstate judicial system's interest in obtaining the most effective resolution. It seems an effective resolution might most easily be obtained in a state where both the Ps and D have access to witnesses/evidence involved in the litigation. For example, manufacture of the plane will come up in litigation, and Kansas would be a much more convenient forum for this, as the plane in question was likely manufactured there. A Texas court likely will not want to litgate a claim that so obviously belongs to another state.

PJ is not propert on the basis of GJ, though it might be on the basis of in-state service.

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->End of Question 2

-->Question -3-

The question before the Ct. is whether one of the traditional bases of jurisdiction, through an agent in the St., makes a defendant amenable to any suit in the state. In this matter, the only question is how the Ct. should rule on Lear's 12(b)(2) motion. Although a Forum Non Coveniens motion might have been more appropriate given the foreign nature of the dispute, that is not in question.

Requirements of Modern Personal Jurisdiction

There is a 3-part test for determing whether a Ct. has personal jurisdiction over a defendant. First, a plaintiff must give defendant proper notice. Second, the forum must be willing to hear the case. Deciding this is done by looking at a St.'s long-arm statute. There are three types of long-arm statutes: those that list the c/a that may be brought against D's, the same as previous except that the list has been interperted to reach to the fullest constituional extent available by the State S.C., and an explicit statute granting the state's Ct.'s the fullest constitutional extent.

Finally, it must be determined whether it is constitutional for the Ct. to exercise personal jurisdiction over the defendant. Modern jurisdictional analysis is based of *International Shoe*. In *International Shoe* the Ct.

established that personal jursidction required only that the D "have certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."

Two quotes from Shoe have been used to establish the bases of modern jurisidction. General jurisdiction is granted when "the continuous corporate operations within a state [are] thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct frim it's activities." Specific jurisdiction occurs when some transaction related to the company's operations in the forum gives rise to suit. (*see* p. 206)

In this case, notice has been properly served. There may be some question as to whether Texas' long arm statute grants jurisdiction over Lear, but it is unclear. Also, the modern bases for personal jurisdiction are clearly not available to the plaintiffs.

General jurisdiction requires that the defendant be "essentially at home", *Goodyear*, in the forum state. This is clearly not true here as Lear is not incorporated in Texas, does not have its PPB in Texas, and has no continuous corporate activities here. Further, specific jurisdiction is not available since there is no connection between the P's alleged injuries and the forum, given that all the alleged injuries happened in Greece.

Traditional Jurisdiction

The plaintiff's seem to admit that modern jurisdictional thoery is not in their favor, and instead rest their entire basis of jurisdiction on one of the "traditional" bases of jurisdiction. There are, traditionally, six bases of personal jurisdiction.

Tag jurisdiction is available if a person is served with process in the forum. D's are also amenable to jurisdiction if they voluntarily appear, if they are domiciled in the forum, through property held in the state (if the property is seized at the outset, can be considered part of tag jurisdiction), through implied consent, and through an agent in the St. appointed to receive - essentially express consent.

Traditional jurisdiction's foundational decision is *Pennoyer v. Neff*, where Justice Field held that territoriality was the bedrock of jurisdiction, and thus in-state service was required to establish jursidiction. As we saw above, this view has been significantly liberalized since the 1860's. What made the ruling so key though, is that Justice Field articulated that what made in-state service neccesary was that without it, the ensuing proceeding lacked due process - thus making the judgment unenforceable.

As a result of *Pennoyer*, many St.'s began to require that in order to

operate in the St., a corp. had to appoint an agent in the state with which to serve process so that St. ct.'s could exercise jurisdiction over corp.'s doing business there. Here is where the plaintiff's argument lies. They argue that by serving Lear in Texas they have satisified the traditional territorial requirement required for jurisdiction by *Pennoyer*.

The Ct. should grant Lear's MTD

Although the plaintiff's have certainly engaged in some creative legal thinking in attempting to subject Lear to suit in St. Ct. in Texas (Matagorda cty. perhaps?), the Ct. should grant Lear's 12(b)(2) motion without a second thought. The Greek plaintiffs will attempt to say that *Pennoyer* means that Texas has personal jurisdiction over Lear.

However, *Pennoyer* is not to be interpreted so literally. The key ruling in *Pennoyer* (as stated above) was that personal jurisdiction (in Field's day, defined by territoriality) was neccesary because without it the proceeding lacked due process. The key element to the proceeding's constitutionality then is whether there was due process.

In subsequent years, the Supreme Court has almost solely focused on the due process element. Thus, *International Shoe* and the bases of modern jurisdiction should not be seen as additions to *Pennoyer* but a further

articulated version of the question of whether or not a proceeding will have due process. That is the main question resulting from *Pennoyer* that the Ct. should ask when doing a jurisdictional analysis is "whether maintenance of the suit [...] offend[s] traditional notions of fair play and substantial justice?"

In this case, maintaining suit against Lear offends due process. It is patently unfair to subject Lear to a forum where Lear is not a citizen and has no real significant contacts. So while the St. Ct. has theoretical territorial jurisdiction over Lear according to *Pennoyer*, such jurisidction would offend due process, and thus even *Pennoyer* would object.

Further, subjecting Lear to jurisdiction in Texas would also be against the logic of territorial jurisdiction used in *Pennoyer*. *Pennoyer* was very concerned about state power. Each state, Field claimed is its own sovereign - and thus each state should have the power to hear cases about its own individuals. The logic of forcing corp.'s to appoint representatives in order to be amenable to be process is so that the a St. could try it's citizens causes of action in its own court, which is its sovereign power. (*see* WWV, bottom left column, p. 264)

The maintenance of a suit against a Kansas or Delaware citizen by a non-

Texan would mean that the St. is exercising authority that it does not have. The power to try Lear resides in Kansas or Delaware courts, thus impliedly limiting Texas' jurisdiction over Lear to only claims where Texas residents may be implied. This is what *Pennoyer* would say. Thus, the Ct. should grant Lear's 12(b)(2) motion.

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