

Civil Procedure

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Room 206

Mondays, Wednesdays, & Fridays, 1:30 – 3:15 pm

Personal & Subject Matter Jurisdiction

These facts apply to both questions:

Burnley Mills, a textile manufacturing company incorporated and headquartered in the State of Ealing, hired Sidney Stratton as a chemist in its stain prevention research and development department. Stratton left her long-time home in the State of Pinewood and moved to Ealing when she started work at Burnley. She is unsure how long she will remain with the company, as she has considered returning to school at Pinewood State University to pursue a doctorate in chemistry.

In her first month on the job, Stratton makes a remarkable discovery: a chemical process rendering fabric indestructible and impervious to stains. Realizing the enormous profit potential, Burnley immediately commences production of the miracle fabric, dubbed “Impervitex”.

Before going to work for Burnley, Stratton was employed by DuMond Chemical Corp., incorporated and headquartered in the State of Pinewood. At DuMond, Stratton was part of a team developing a chemical process to make indestructible fabric. DuMond believes that Burnley relied on DuMond’s proprietary information—to which Stratton had access during her former employment—to make its Impervitex fabric.

DuMond sues Burnley and Stratton in Pinewood state court, asserting state-law claims for unfair trade practices and theft of trade secrets. DuMond seeks the following relief: (1) an injunction prohibiting Burnley from marketing Impervitex; (2) compensatory damages against Stratton in the amount of \$50,000; (3) punitive damages against Stratton in the additional amount of \$50,000.

Two weeks after DuMond files its suit and serves the defendants with process, Burnley

removes the action to the U.S. District Court for the District of Pinewood. In the notice of removal, Burnley identifies two bases for federal jurisdiction: (1) diversity of citizenship, and (2) federal question, on the theory that DuMond's claims are completely pre-empted by the federal Trade Secrets Protection Act of 2012 ("TSPA").¹ DuMond moves to remand, arguing that the requirements for diversity jurisdiction are not satisfied, and that TSPA does not pre-empt DuMond's state-law claims.

Question 1

You are a clerk for the federal judge assigned to the case. Draft a memo indicating how the court should rule on the motion to remand. (You may assume that both defendants are subject to personal jurisdiction, and should not discuss that issue.)

These additional facts apply to Question 2

To promote sales of Impervitex, Burnley places advertisements in various national fashion publications, such as *Vogue* and *GQ*, aimed at both clothing designers and consumers. As with all its products, Burnley sells Impervitex through an independent distributor, Fabricorp (incorporated and headquartered in Ealing). Barry Lyndon, Inc., a clothing design and manufacturing company incorporated and headquartered in the State of Cackalacky, orders several thousand yards of Impervitex through Fabricorp, for use in its new line of women's clothing. For many years, Barry Lyndon has exclusively used Burnley fabrics in its designs, because they are known for being of particularly high quality. All Barry Lyndon garments include a label identifying the fabric as being manufactured by Burnley. Barry Lyndon sells its clothing through its flagship boutique in Gotham City (located in the State of Gotham), and through select retailers in other states (which do not include Ealing).

Barry Lyndon launches its new women's clothing line featuring Impervitex at the annual Gotham City Fashion Week, at which Burnley and Barry Lyndon jointly sponsor a gala reception. The new fabric makes its public debut in a dress worn by top fashion model Hilda Klutz. As she strides down the runway, Klutz is initially greeted by a chorus of "oohs" and "aahs" – which quickly turn to loud gasps and howls as the crowd sees the dress suddenly fall away in shreds. As it turns out, exposure to extremely bright and hot lights, like those at the fashion show, causes the Impervitex fabric to decay immediately, a flaw that product testing had failed to reveal. Mortified, Klutz rushes off backstage, but not before the paparazzi manage to capture the image for posterity. The next day, a photo of a nearly-nude Klutz appears on the front-page of the Gotham City Post, accompanied by the headline, "Dress Slide Shows Hilda's Hide".

Question 2

Devastated by the adverse publicity, Klutz hires you to represent her in a defective product suit against Barry Lyndon and Burnley Mills. Given the options of Ealing and Gotham (see the long-arm statutes reproduced below), in which state(s) may she file her suit against both defendants?

¹A fictional federal statute invented for purposes of this problem.

Long-Arm Statutes

Gotham

A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

Ealing

A court of this State ... has jurisdiction over a person ... under any of the following circumstances:

- (1) Local Presence or Status. – In any action, whether the claim arises within or without this State, in which a claim is asserted against a party who when service of process is made upon such party:
 - a. Is a natural person present within this State; or
 - b. Is a natural person domiciled within this State; or
 - c. Is a domestic corporation; or
 - d. Is engaged in substantial activity within this State, whether such activity is wholly interstate, intrastate, or otherwise.
- (2) Local Act or Omission. – In any action claiming injury to person or property or for wrongful death within or without this State arising out of an act or omission within this State by the defendant.

Model Answers

Question 1: Subject Matter Jurisdiction & Removal

Standard & Procedures for Removal & Remand

Removal of a case from state to federal court is proper where the complaint states claims within federal subject matter jurisdiction, so that it could have been filed in federal court to begin with. Where the sole basis for federal subject matter jurisdiction is diversity of citizenship, removal is not allowed if any defendant is a citizen of the forum state. But where the complaint states a claim arising under federal law, removal is permitted without regard to the citizenship of the defendants.

To remove a suit, the defendant files a notice of removal with the federal court. The notice must be filed within 30 days after service of the complaint (or within 30 days after service of an amended complaint that first raises a removable claim). The notice of removal here was timely filed two weeks after service of the complaint.

If a plaintiff believes a suit has been removed improperly, they may move for remand to state court. Where a motion to remand is based on a lack of federal SMJ, there is no time limit. Otherwise the motion must be filed within 30 days of the notice of removal. Here, the remand motion is based on lack of jurisdiction, so there is no issue of timeliness.

Subject Matter Jurisdiction

In this case, the defendants assert two bases for removal: (1) diversity of citizenship, and (2) federal question. The notice of removal was timely filed less than 30 days after service

of the complaint, and it appears that both defendants agreed to removal.

Diversity Jurisdiction

The first basis for removal is diversity of citizenship. A federal court has SMJ over any case in which (1) there is complete diversity of citizenship between the plaintiff(s) and defendant(s), and (2) the amount in controversy exceeds \$75,000.

The first requirement of diversity jurisdiction is diversity of state citizenship between the plaintiff(s) and the defendant(s). While the constitution merely requires minimal diversity (i.e. at least one plaintiff-defendant pair be citizens of different states), the diversity statute (sec. 1332) has been interpreted to require complete diversity (i.e. no plaintiff-defendant pair are citizens of the same state).

In this case two of the parties, DuMond Chemical and Burnley Mills, are corporations. For purposes of diversity jurisdiction, a corporation is a citizen of (1) its state of incorporation, and (2) the state in which it has its principal place of business. Here, the facts state that DuMond is incorporated and headquartered in the State of Pinewood, so DuMond is a citizen of Pinewood. Burnley is incorporated and headquartered in the State of Ealing, so Burnley is a citizen of Ealing.

The remaining party, Stratton, is an individual. Her citizenship is based on her domicile, which is the state in which she (1) resides or has resided, with (2) an intent to remain or return indefinitely. The facts state that Stratton moved from Pinewood to Ealing to work for Burnley, that she is unsure how long she will remain in that job, and that she has considered returning to Pinewood for graduate school. Under these facts, the most likely result is that Stratton is a citizen of Ealing. She moved there for her job, and has no definite plans to leave. Domicile requires an "indefinite" intent to remain, not an intent to remain forever or for any definite period of time. The possibility that she might, at some undetermined time in the future, move back to Pinewood for grad school is probably too uncertain to support an intent to return to that state.

Assuming that Stratton is a citizen of Ealing, there is complete diversity of citizenship between the plaintiff DuMond, a citizen of Pinewood, and the defendants Burnley & Stratton, both citizens of Ealing. However, if a court concluded that Stratton was a citizen of Pinewood, diversity would be defeated.

The second requirement for diversity jurisdiction is an amount in controversy exceeding \$75,000. This is merely a statutory requirement, not a constitutional requirement of diversity jurisdiction.

The requirement is likely satisfied as between Lyndon & Stratton. In determining the amount in controversy, a court will generally take the plaintiff's claim for relief at face value, provided the amounts claimed are legally recoverable. A single plaintiff asserting a claim against a single defendant may aggregate all relief sought against that defendant. Here, assuming that the applicable law would permit recovery of compensatory and punitive damages in the amounts stated, the amount in controversy would be sufficient.

The requirement is also likely satisfied as between Lyndon & Burnley. To determine whether an injunction satisfies the amount in controversy requirement, the court will consider either the value to the plaintiff or the cost to the defendant. It seems likely that Burnley ex-

pects sales of the fabric to generate more than \$75,000 in revenue, and that DuMond would similarly stand to make more than \$75,000 if it has the exclusive rights to the fabric.

Assuming diversity is the sole basis for removal, the forum defendant rule does not apply, as neither defendant is a citizen of Pinewood, where the suit was filed. For removal based solely on diversity, each defendant must join in or consent to removal. Assuming Stratton does not object, removal based on diversity is proper.

Federal Question Jurisdiction

The defendants' second stated ground for removal is federal question jurisdiction. Under both the constitution and the jurisdictional statute (sec. 1331), federal courts have SMJ over any claim that "arises under" federal law. The citizenship of the parties is irrelevant, and there is no minimum amount in controversy required.

To determine whether a claim arises under federal law, the court looks to the face of the complaint, without regard to any defenses or additional matter raised by the defendant. A claim arises under federal law where federal law is the source of the plaintiff's right to sue, or, in some cases, where a federal law issue is raised as a necessary element of a state law claim.

Here, the complaint on its face asserts claims arising under state law. However, the defendants contend that these state law claims are pre-empted by federal statute. Pre-emption means that federal law provides the only permissible cause of action. A plaintiff may not avoid removal by artfully pleading a cause of action as a pre-empted state law claim. The court will simply treat the claim as if it had been properly pleaded under federal law.

If the court agrees that the TSPA pre-empts DuMond's state law claims, then the court will conclude that the claims arise under federal law & removal would be proper.

Conclusion

The court should deny the motion to remand. Removal was proper based on diversity jurisdiction (assuming Stratton is a citizen of Ealing), and potentially also proper based on federal question jurisdiction (depending on how the court resolved the pre-emption issue).

Question 2: Personal Jurisdiction

Personal jurisdiction refers to a court's power to bind a party to its judgments. The reach of personal jurisdiction is limited by both constitutional (due process) and statutory (long-arm) provisions. The requirement of personal jurisdiction ensures that a party will not be haled into court in a remote forum without being on notice (actual or constructive) of the possibility. Because personal jurisdiction protects this personal interest, it is waivable by a party. In practice, the issue of personal jurisdiction arises only for defendants, as the plaintiff implicitly consents to jurisdiction by choosing to sue in the forum state.

General Jurisdiction

A party is subject to general jurisdiction in its home state, even for suits that have no connection to the state. A corporation may be subject to general jurisdiction in a state other than its official home state, where, because of the corporation's extensive activities within that state, it may be considered virtually at home there.

In this case, the first defendant, Burnley, is incorporated & headquartered in Ealing. It is thus subject to general jurisdiction in that state. Burnley's activity in Gotham is not so extensive as to support general jurisdiction there.

The second defendant, Lyndon, is incorporated & headquartered in Cackalacky. Lyndon's activity in both Ealing or Gotham is too limited to support general jurisdiction in either state.

Specific Jurisdiction: Minimum Contacts

For an out-of-state defendant, the modern test for personal jurisdiction is whether the defendant has minimum contacts with the forum state so that the exercise of jurisdiction will not offend traditional notions of fair play and substantial justice. The test looks to acts by which the defendant has purposefully availed itself of the benefits of the forum state, or directly aimed its conduct there. Independent actions by the plaintiff or third parties do not count. For example, where the plaintiff buys goods from the defendant in the defendant's home state, takes those goods to some other state, and is injured there, the defendant will not be subject to jurisdiction in the remote state, absent some conduct by the defendant purposefully aimed at that state.

Contacts with Ealing.

Because Burnley is subject to general jurisdiction in its home state of Ealing, it is not necessary to apply the minimum contacts test.

On the stated facts, Lyndon's contacts with Ealing are limited to the purchase of fabric from the Ealing-based Burnley Mill, through the Ealing-based distributor. The plaintiff might argue that her claims arise out of, or are at least related to, Lyndon's purchase of the fabric from Ealing. In *Helicopteros*, the Court held that the purchase of helicopters and training of pilots in Texas were insufficient to establish jurisdiction over the foreign defendant in Texas, where the cause of action arose out of a crash in Peru. While the majority framed its decision in terms of general jurisdiction, it implied that the Texas purchases were too peripheral for the claim to be said to arise out of the defendant's Texas contacts. Lyndon may likewise argue that this single contact is too peripheral to satisfy the minimum contacts test. The plaintiff might counter with the dissenting opinion in *Helicopteros*, which suggested that the Texas contacts, including the helicopter purchases, could support specific, if not general, jurisdiction. The fact that Lyndon regularly and exclusively buys its fabric from an Ealing manufacturer, through an Ealing distributor, might be regarded as relevant contacts where that fabric was at the center of the claim.

Contacts with Gotham

On the stated facts, each defendant has multiple contacts with Gotham.

Burnley sold its fabric to Lyndon, presumably knowing that the fabric would be used in clothing sold at Lyndon's Gotham boutique. Those sales alone might not suffice to satisfy the minimum contacts test. This is analogous to the stream of commerce scenario in *Asahi*. There, the Court split on the question of whether a foreign manufacturer of component parts could be subject to jurisdiction in California, where its parts were incorporated into a finished product, distributed to, and sold in California by independent third parties. Jus-

tice O'Connor concluded that the mere foreseeability or knowledge that the parts would end up in California was not enough, absent some further conduct by the defendant deliberately aimed at the California market. Justice Brennan, in contrast, believed that the sale of parts in a global supply chain, where the manufacturer knew its goods would be sold with some predictable frequency in the forum state, would suffice.

Unlike *Asahi Metal*, in this case Burnley has several contacts with Gotham beyond the sale of its fabric. Together with Lyndon, Burnley sponsored a reception at the Gotham City Fashion Week to promote its fabric. Burnley also advertised its fabric in national publications aimed at both designers and consumers. Though the facts do not specifically say so, these publications are presumably sold and read in Gotham, which the facts suggest is a center of the fashion industry. Burnley thus directly aimed its marketing of the fabric at, and purposefully availed itself of the benefits of, Gotham.

Lyndon likewise has sufficient contacts with Gotham to satisfy the minimum contacts test. First, it owns and operates a retail boutique in Gotham. While the particular dress at issue in this case was not sold there, the location of the boutique indicates ongoing activity by which Lyndon purposefully avails itself of Gotham in marketing its clothing. Lyndon further co-sponsored the Fashion Week reception with Burnley to promote the new fabric, and had the plaintiff model its dress at the Fashion Week show.

The plaintiff's claims arise out of the defendants' activity in Gotham. It was in Gotham that she suffered public humiliation because of the defective fabric. Her appearance there was part of the defendants' joint marketing efforts. Accordingly, the minimum contacts test is satisfied as to both defendants.

Reasonableness Factors

In *Asahi*, Justice Brennan opined that, even where the minimum contacts test is satisfied, there may be other considerations making the exercise of jurisdiction unreasonable in a particular case. While Justice O'Connor found that the minimum contacts test was not satisfied in *Asahi*, she agreed with Brennan that the reasonableness analysis was also relevant.

The reasonableness analysis turns on four factors:

- 1) The defendant's interest in not being required to defend in a remote and inconvenient forum,
- 2) The plaintiff's interest in obtaining relief,
- 3) The forum state's interest in protecting persons within its borders, and in avoiding the burdens of litigation unrelated to the state, and
- 4) The interstate judicial system's interest in respecting the sovereignty of the several states.

In this case, the facts do not indicate that the exercise of jurisdiction in Gotham would be unduly onerous for either defendant. Lyndon operates a boutique there, and thus has an ongoing connection with the state. Burnley too presumably has some ongoing connection with Gotham as a center of the fashion industry. And both defendants chose to promote and showcase their products in that state.

The plaintiff has an interest in obtaining relief for injuries that she experienced in Gotham. It was at the Gotham City Fashion Week that she was exposed because of the defective

fabric, and it was a Gotham City newspaper that published the embarrassing photo.

Because the incidents giving rise to the suit occurred in Gotham, that state has an interest in opening its courts to the suit. The exercise of jurisdiction in Gotham would not appear to infringe on the sovereignty of any other state.

Accordingly, the reasonableness factors support the exercise of specific jurisdiction in this case.

Long-Arm Statutes

While the constitution sets an outer limit on the reach of jurisdiction, the courts in a given state will not exercise jurisdiction unless the state's long-arm statute permits it. A long-arm statute may confer jurisdiction to the full extent constitutionally permitted, or may restrict the exercise of jurisdiction more narrowly. However, a long-arm statute may not confer jurisdiction beyond what the constitution permits.

Ealing Long-Arm Statute

Ealing has an enumerated long-arm statute, which spells out specific acts and circumstances subjecting a defendant to jurisdiction. Sec. 1 provides for jurisdiction over "a domestic corporation" and a person "engaged in substantial activity within this State". Sec. 2 provides for jurisdiction in a suit for injury "arising out of an act or omission within this State by the defendant".

As an Ealing corporation, engaged in ongoing business within the state, Burnley is subject to jurisdiction under sec. 1. The plaintiff claims injury arising from Burnley's defective fabric, which was designed and manufactured in Burnley. Thus, sec. 2 also confers jurisdiction over Burnley.

Assuming that Lyndon's purchase of fabric were deemed sufficient to satisfy the minimum contacts test, it is doubtful that either provision of the Ealing long-arm statute would confer jurisdiction. Sec. 1 would not apply, as Lyndon is not an Ealing corporation and its purchase of fabric alone unlikely to be substantial activity within the state. The plaintiff's injuries did not arise from any acts or omission by Lyndon in Ealing, so sec. 2 would not apply.

Gotham Long-Arm Statute

The Gotham long-arm statute confers jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States." The long-arm analysis is thus the same as the constitutional analysis discussed above.