

Civil Procedure Template

I. Subject Matter Jurisdiction

Intro: Fed courts have limited jurisdiction, only over certain kinds of claims.

A. Diversity of Citizenship Jurisdiction.

1. Amount in Controversy over \$75,000, Exclusive of Costs and interests, Good Faith.

- a. One P, One D: Can aggregate all claims.
- b. One P, Many D's: If D's Jointly Liable, can agg.
- c. Several P's, One D: If Single title or right in which had undivided interest.

2. Complete Diversity between Opposing Sides. Based on Domicile of parties.

- a. Domicile of person: Intent + Relevant Facts.
- b. Domicile of Corp: Principle Place of Biz + Incorp.

B. Fed Q Jurisdiction: Federal Question (statute, rule, or constitution) must appear on the face of a well-pleaded complaint, Ingredient (constitutional requirement).

C. Supplemental Jurisdiction.

1. If both Federal & State Law claims, court has jurisdiction over State Law Claim if it arises from
2. Common Nucleus of Operative Fact.

II. Personal Jurisdiction.

Intro: Court must have the power to hale person into that particular court.

A. Constitutional Limitation (usually a Long-Arm Statute):
Due Process Standard, Minimum Contacts.

1. Systematic & Continuous Activity in state apply
2. Cause arising from that Activity
3. Purposeful Availment
 - a. O'Connor Concurrence
 - b. Brennan Concurrence (stream of commerce).
4. Reasonableness & Fair Play (Asahi).

III. Venue

Intro: Judicial District Where case to be heard.

A. Solely Diversity Cases:

1. Any D resides, if all in same state
2. Substantial Part of Events Occurred
3. Any judicial district where a D subject to PJ, if no where else possible

B. Other cases: Same, except "3" is where any D may be found

IV. Service of Process

1. Personal—Suitable Age & Discretion
2. Mail

Res Judicata—Claim Preclusion

1. Final Judgment
2. On the Merits
3. Same Claim

Precludes asserting the same Cause of Action in later lawsuit

Collateral Estoppel—Issue Preclusion

1. Same Issue in both cases
2. Issue Actually litigated
3. Issue Actually decided
4. Decision on Issue necessary to prior judgment

QUESTION #6 February 1999 – CIVIL PROCEDURE

Don is domiciled in Delaware. He rarely has had enough money to travel outside of Delaware. He is an insatiable Internet user, and often spends his time exploring various web sites and reading what he finds there.

His Internet service provider (the company whose computer allows him to have access to the Internet) is DeWeb, Inc., a Delaware corporation with its only office in Delaware. DeWeb provides Internet access for thousands of individuals throughout the nation. People who use this service can thereby bring the global computer network, known as the Internet, into homes and offices in virtually every city of the United States.

Don has designed his personal Internet web page and has it on the Internet through his Internet service provider. Don posts information there. Other Internet users may read Don's web page by typing in Don's web page address. Anyone who visits Don's web page can observe Don's attempts to become a famous writer--especially in Don's latest short story, which he has placed on his web page on the Internet.

Paul is domiciled in Pennsylvania. Paul is an inexperienced part-time writer, who recently published his first novel. Some of Paul's friends in Pennsylvania visited Don's web site and noticed the similarity between Don's short story and Paul's novel. Paul logs on to Don's web site and reads Don's short story. Don's short story is obviously a shortened version of Paul's book, which is sold only in bookstores. Paul's novel has not sold many copies, and it appears that sales have already reached their peak. Gross receipts are less than \$60,000.

Paul hires a lawyer who files a complaint against Don in a federal court in Pennsylvania. Paul's complaint seeks damage on two bases. One basis for this suit is a claim arising under federal copyright law, because Don infringed Paul's copyrighted book. The other basis seeks damages for fraud arising under state law, because Don has fraudulently passed off his short story as an original publication. Paul's lawyer serves Don by electronically transmitting a copy of the summons and complaint to Don's e-mail address, which is listed on Don's Internet web page.

Don hires a lawyer who files a motion alleging that there is neither subject matter jurisdiction nor personal jurisdiction. In the event that the court rules against Don, Don's attorney seeks to transfer this lawsuit to a federal court in Delaware.

Fully analyze and discuss how you believe the court should rule on Don's motion and why.

Scott's Answer to Question 6:

1. Subject Matter Jurisdiction. Pursuant to the US Constitution and Federal law, Federal Courts have limited jurisdiction, only over certain kinds of claims. There are three possibilities in this case:

A. Diversity Jurisdiction. Requires two things:

1. Amount in controversy must exceed \$75,000, exclusive of interests and costs. In this case, it is not clear how much damages P(aul) has suffered, but he has only had gross sales of \$60,000 for his book (and is now beyond peak sales), so it is hard to imagine how he could have damages (lost profits) in excess of \$75,000. This will defeat diversity jurisdiction.

2. Complete Diversity between Opposing Parties, which is based on the domicile of each party at the time the action is commenced.

Domicile of People is determined by intent of the person plus any other facts that support a conclusion regarding the person's domicile. Here, P is stated to be domiciled in Pennsylvania, and D(on) is stated to be domiciled in Delaware. So far, there is diversity between these two opposing parties.

Domicile of Corps is defined as the corporation's place of incorporation and its principle place of business. (While DeWeb is not currently a party to the action, if it is joined as a party—if, for example, the complaint is amended to include it, or D claims it as a co-Defendant, complete diversity of the parties must be maintained). DeWeb, the second Defendant, is a Delaware Corp with its principle place of business in Delaware. DeWeb is domiciled in a state different from P, so diversity is maintained.

Diversity jurisdiction is probably not present because the amount in controversy requirement has not been met.

B. Federal Question Jurisdiction. As an alternate basis for federal court jurisdiction, P has alleged that a federal question is involved. A federal Question is one that involves interpretation or application of a federal law, rule, or constitution. The Federal Question must appear on the face of a "Well-Pleaded Complaint," and, constitutionally, must be an "ingredient" in the cause of action.

Here, the federal law—copyright infringement—appears on the face of the complaint; it is an "ingredient," so Federal Question Jurisdiction is present.

C. Supplemental Jurisdiction. The Federal Court can exercise discretionary supplemental jurisdiction if two requirements are met:

1. There is one claim (in this case, a Federal Question claim based on Copyright Infringement) that meets federal jurisdiction requirements and another

claim (in this case, diversity jurisdiction over the state law fraud claim), which does not meet federal jurisdiction requirements, and

2. Whether the two claims arise from a “common nucleus of operative facts.” Here, there is a common nucleus—the operative facts are virtually identical, revolving around taking P’s book and disseminating a shorted version of the book on the Internet.

2. Personal Jurisdiction—Bringing Don into court in Pa. In order to force an individual to defend against a claim in a lawsuit, a court must have Personal Jurisdiction over that person. Under standards laid down by the US Supreme Court, the defendant in a civil suit must have sufficient “minimum contacts” with the jurisdiction where the suit is filed in order to force that person to defend the case in that jurisdiction (here, forcing D, from Delaware, to defend the lawsuit in Pennsylvania), thereby satisfying the requirements of the Due Process Clause of the 5th Amendment.

In deciding whether the Due Process Minimum contacts test has been met, the court looks at several different factors.

A. Was D’s activity systematic and continuous in the state where the lawsuit was filed? Here, D’s activity was in publishing a piece on his website, which was, at least, some small amount of contact with virtually every jurisdiction in the world, since the web can be viewed by anyone with a connection.

B. Did the cause of action arise from the activity that was the contact with the jurisdiction where the case was filed? Here, the contact related to the story being published on the net, so there is a clear connection between that activity and the contact with Penn.

C. Did D purposefully avail himself of the protections of the laws of Penn? At its broadest reading, this factor is met when the D put some item into the stream of commerce, and it was foreseeable that this would lead to harm. Here, the web is an instrument of commerce, and it was very foreseeable that harm would come from publishing another’s works.

D. Finally, the court looks at whether it is reasonable and fair to force a D to defend and action in the jurisdiction where the case has been filed. Here, Delaware is quite near to Penn, so the travel to Penn would not be very difficult.

Overall, the court seems to have personal jurisdiction over D—he knowingly put the story in the stream of commerce, it was very predictable that it would cause harm, and the activity of publishing it on the internet was directly related to the lawsuit involved here.

3. Transfer to Delaware Court:

[Issue not in our template, need to make some additions]

QUESTION #5, February 1997– CIVIL PROCEDURE

A bus owned and operated by Basic Bus Company strikes and kills pedestrian X. Y, the wife of X, brings a civil action against Basic in a federal district court, seeking to recover for the wrongful death of her husband. Y's cause of action for wrongful death is based entirely upon state law. She seeks damages against Basic in the amount of \$1,000,000 (CLAIM ONE).

Basic files an answer to Y's complaint, denying that it acted wrongfully in causing the death of her husband. In addition, Basic files a third party complaint against the Reliable Bus Repair Company, hired by Basic to service the bus shortly before the crash. Basic alleges that if the crash were caused by a malfunction of the bus, that malfunction was caused by Reliable's improper maintenance. Basic therefore seeks in its third-party complaint against Reliable, reimbursement (CLAIM TWO) for any judgment it might be required to pay to widow Y.

In its answer to Basic's third-party complaint, Reliable denies improper maintenance and counterclaims against Basic to collect for extensive repairs on two other Basic buses (neither involved in the crash). Reliable claims a repair charge of \$39,000 on one of these buses (CLAIM THREE) and \$37,000 for repair of the other (CLAIM FOUR).

Thereafter, Y amends her complaint to bring an additional wrongful death claim against Reliable in the amount of \$1,000,000 (CLAIM FIVE).

Y is a citizen of the State of Minnesota (as was her husband). Basic is incorporated in Wisconsin and has its principal place of business in Michigan. Reliable is incorporated in Minnesota and has its principal place of business in Michigan.

Analyze and discuss whether federal subject matter jurisdiction exists for each of the five claims above.

Past Bar Exam Questions

http://www.ble.state.mn.us/essay_questions.html

(Minnesota Web Site, contains representative good answers).

<http://stu.findlaw.com/thebar/samplebar.html>

Contains links to 4 other state websites (Minnesota Included).

http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?sImagePath=Examination_Results_Statistics.gif&sCategoryPath=/Home/About%20the%20Bar/Bar%20Exam&sHeading=Examination%20Results/Statistics&sFileType=HTML&sCatHtmlPath=html/Admissions_Old-Statistics.html

Old California Questions and Answers (you can just go to www.calbar.ca.gov and click on admissions and then look around to find this specific page).

<http://www.ncbex.org/tests.htm>

National Conference of Bar Examiners, the people who bring you the MPT & the MBE, have a variety of old tests if you look around the site a little.