



**EXAM STRATEGIES THAT WORK
AND SOME THAT DON'T**

[Civil Procedure as an Example]

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THE EXAM YOU WON'T SEE

“Describe the various bases upon which a court can exercise personal jurisdiction over an out-of-state defendant, and the difference between statutory and constitutional limits on personal jurisdiction in American courts”

ANOTHER EXAM YOU WON'T SEE

“Explain the holding of International Shoe v. Washington, and the reasons the court gives for establishing a new standard for personal jurisdiction.”

SAMPLE EXAM QUESTION -- THE GARCIA PROBLEM

(Suggested time: 45 minutes)

Garcia, an outdoor enthusiast who hailed originally from Massachusetts, was happy with his countercultural life style, at least for the moment. He had a small business running bicycle tours through the verdant hills of Vermont. From May to October, he led the tours, going from inn to inn with groups of happy cyclists. From January to March, he skied Vermont's finest mountains, working occasionally on the ski patrol and "flopping" with friends who lived near the ski areas. He spent November and April in Massachusetts, giving talks on cycling and soliciting customers for his bicycle tours. He also advertised the tours in several cycling magazines circulated throughout the Northeast.

Kent, the unhappy plaintiff in our story, was a pre-med student at the University of Vermont. He had grown up in Massachusetts. He hoped to go to U. Mass. Medical School after college, and then join his father's practice in Amherst, Massachusetts. He chose the University of Vermont in part because it had a good pre-med program, but also because he liked hiking and cycling and Vermont offered good opportunities for both. After two years of school, however, Kent's plan began to look dubious. His "C" in organic chemistry would certainly hurt his chances of getting into medical school.

Kent heard about Garcia's tours from a roommate, and signed up for a tour in June 2009. The tour was fine, but as he was putting his bike back on his car afterwards, he asked Garcia's help. His brakes weren't working right, and he thought they needed adjustment. As he mentioned to Garcia, he planned to do some cycling over the summer in Massachusetts, and wanted to make sure the brakes were working properly. Garcia adjusted the brakes, and they parted company. [continued next page]

Three weeks later, back in Amherst, Kent was riding his bike when a car pulled in front of him. He hit the brakes, but they failed and he collided with the car, suffering a compound fracture to his left leg. He was hospitalized for four weeks, incurred \$26,000 in medical bills, and was incapacitated for the rest of the summer. His leg has still not quite returned to normal.

In October 2009, after returning to school, Kent brought a negligence action against Garcia in federal district court for the District of Massachusetts. He sought \$90,000 in damages. Please discuss the jurisdictional issues raised by the suit. Assume that the applicable long-arm statute authorizes personal jurisdiction to the full extent permissible under the Fourteenth Amendment.

SORRY STRATEGY #1: THE KITCHEN SINK ANSWER

“Under Article III, cases between citizens of different states may be brought in federal court. The framers created diversity jurisdiction in order to prevent prejudice against out of state litigants in the local state courts. Diversity jurisdiction is granted to the lower federal courts in 28 U.S.C. s. 1332. In order to invoke the diversity jurisdiction, all the plaintiffs must be from different states than each defendant. Puerto Rico and the District of Columbia are treated as states for diversity purposes. If a diversity case is brought in state court, the defendant can remove it to federal court. Corporations are treated as citizens of the state of their incorporation and their principal place of business.

Also, Congress has included an amount in controversy requirement in s. 1332. This is to keep petty cases out of the federal courts. The amount used to be \$10,000+ but was raised to \$50,000+ and then they raised it again to \$75,000+. The amount requirement is met unless it appears to a legal certainty that the plaintiff is really suing for less than \$75,000.01. If the plaintiff is the representative of an estate or incompetent, her citizenship is measured by that of the decedent or represented party. Nonresident aliens who have been admitted to the United States for permanent residence are treated as citizens of the state where they are domiciled. 28 U.S.C. s. 1332(a).

A court must also have personal jurisdiction over the defendant before it can hear a case. There are five general bases for a court to exercise jurisdiction under the Due Process Clause. If the defendant is a corporation ... [and so on, in the same vein]”

SORRY STRATEGY #2 MESSAGE FROM DELPHI

“In this case the federal court will have subject matter jurisdiction based on diversity. However, Garcia will not be subject to personal jurisdiction in the Massachusetts court.”

ANALYSIS: DOMICILE OF GARCIA

"The federal court will only have diversity jurisdiction if Garcia and Kent are domiciled in different states. Since Garcia lives in Vermont, the only issue is whether he has intent to remain there indefinitely. He works there, lives there ten months of the year, and has no definite plan to go to another state on the occurrence of a definite event. (When he goes to MA he always plans to return to Vt to continue his business.) He need not announce that he will live in Vermont forever to be domiciled there. His intent need only be "indefinite," and it clearly is: he doesn't have any fixed future plan."

ANALYSIS OF THE GARCIA QUESTION: AMOUNT IN CONTROVERSY

"The \$75,000+ amount requirement in s. 1332 will likely be met. The requirement is met unless the court concludes, looking at Kent's injuries, that no reasonable fact finder could award more than \$75,000 for those injuries -- that is, that to a legal certainty the claim is for less than that amount. Here, there is \$26,000 in out-of-pocket loss, plus a summer of lost earning capacity, and serious injuries that could support a substantial pain and suffering award. There may even be some permanent disability, which a jury might value apart from the immediate pain and suffering from the injury. Some juries might award less than \$75K on these facts, but others could reasonably award more. Since that is true, the court will very likely find that the amount requirement is met."

SORRY STRATEGY #3: THE ISSUE SPOTTER

"Kent can't sue in federal court unless he is diverse from Garcia. There is an issue here as to where Kent is domiciled for purposes of diversity jurisdiction."

SORRY STRATEGY #4: THE TANTALIZER

- [ISSUE] "In order to determine whether there is diversity jurisdiction on these facts, it is necessary to determine where Kent is domiciled. He was going to school in Vermont at the time he filed suit, but plans to return to Massachusetts after
- [RULE] graduation. Whether he is diverse from Garcia will depend on whether he has the intent to remain indefinitely in Vermont (in which case there is no diversity) or to return to Massachusetts at a definite time, in which case there would be diversity."

A BETTER ANALYSIS OF KENT'S DOMICILE:

- [ISSUE] Kent is likely still domiciled in MA (and therefore a MA citizen for diversity) despite the fact that he resides in the dorm in Vermont at the time suit is filed.
- [RULE] Kent does not lose his old domicile until he resides in another state with the
- [ANALYSIS] intent to remain indefinitely. Here, Kent's stated intent is not to remain indefinitely in Vermont; he intends to return after graduation to go to medical school in MA, so his intent to remain is for a fixed period of time.

Even though Kent did poorly in Organic Chemistry, the court would probably still find he is domiciled in MA. One bad grade probably doesn't make his plan so unrealistic that the court would disregard it in assessing his domicile. After all, Kent's subjective intent is the test, not what ultimately happens. If the evidence shows that he still intends to go to U Mass Med School, and that plan is not totally unrealistic, the court will probably look back to his previous domicile (MA), since he has not formed an intent to remain indefinitely in Vermont.

The fact that Kent chose Vermont because he likes outdoor activities does not change the result. It makes sense that Kent would choose to go to college in a place he likes, even if he plans to leave that place for overriding reasons afterwards.

A MEDIOCRE RESPONSE ON KENT'S DOMICILE

"Kent is not domiciled in Vermont. While he does "reside" there, he does not satisfy the other prong of the test, since he plans to leave after graduation and return to medical school in MA"

A MEDIOCRE RESPONSE ON J/D OVER GARCIA

"Garcia may be subject to personal j/d in MA if he has minimum contacts with MA. International Shoe. Here he deliberately reached into MA by advertising there and going there to solicit customers for his bicycle tours. In addition, he knew when he worked on the brakes that Kent would use the bike there. Thus, he has minimum contacts with MA and will be subject to j/d there in Kent's suit."

THE GARCIA QUESTION: PERSONAL J/D OVER GARCIA

[ISSUE] “Kent will try to obtain personal j/d over Garcia in MA based on the minimum contacts test of Intern'l Shoe. That test allows Garcia to be sued in MA

[RULE] if he established deliberate contacts there which give rise to the plaintiff's claim.

[CONCL] The court will probably reject Kent's argument, since his claim does not arise out of Garcia's contacts with MA.

[APPLIC] Garcia does have contacts with MA: He solicited customers for his VT bike tours both in person and through ads in biking magazines circulated there. However, Kent's claim does not "arise out of" those contacts in any direct sense. Kent's presence on the tour did not result from Garcia's solicitations in MA. He learned of the tour from a roommate in VT, and his claim is for an act done on the tour in VT. Thus, it hardly seems that Garcia would expect to be sued in MA *for Kent's claim* just because he solicited other customers there. Although Kent's claim is, in a broad sense, “related to” Garcia's MA contacts, the court is unlikely to take jurisdiction of this claim for an act done in Vermont for a Vermont customer.

Nor would the fact that he knew Kent would use the bike there support j/d. Under World-Wide, that would effectively make the bike Garcia's "agent for service of process," allowing Kent to sue Garcia wherever he planned to use it. There is a difference between foreseeing that someone you deal with will go to Ma and establishing purposeful contacts with MA under the minimum contacts test.

[ALTERN ARG'T] Nor will Garcia be subject to general in jurisdiction based on his visits to MA and advertising there. Such occasional visits or contacts are not substantial enough to support jurisdiction for a claim unrelated to the contacts. See Helicopteros case, in which the S.Ct held that occasional visits and on-going purchases from Texas were not enough to support general in personam jurisdiction.”

SORRY STRATEGY #5: THE MAD CITATOR

“In this case, Garcia will not be subject to personal jurisdiction in Massachusetts. *World-Wide Volkswagen v. Woodson*.”

“Although Kent and Garcia are diverse, the amount in controversy requirement is not met. *Saint Paul Mercury Co. v. Red Cab Co.*”

AN EFFECTIVE USE OF A CASE REFERENCE

“The fact that Garcia knew that Kent would use the bike in MA does not support jurisdiction. In *World-Wide*, the court held that a defendant will not be subject to personal jurisdiction wherever *the plaintiff* takes her product. That would make the product the defendant’s “agent for service of process,” subjecting the defendant to jurisdiction wherever the plaintiff took the goods. Like the Robinsons in *World-Wide*, here it was Kent, not Garcia, who took the defective product to Massachusetts.”

ANOTHER EFFECTIVE ANALYSIS ... WITHOUT THE CASE CITATION

“If Garcia were subject to jurisdiction in MA because he was aware that *Kent* would take the bike there, he could be subject to j/d in CA if Kent had said he planned to bike over the summer in California. That makes no sense under the rationale of the minimum contacts test, that the defendant has deliberately chosen to engage in activities in a state. Surely Garcia does not reach into California just because Kent tells him that he plans to go there. Similarly, he does not reach into MA just because Kent tells him he will use the bike there. J/d should be based on Garcia reaching into the state, not Kent.”

SORRY STRATEGY #6: "PLAINTIFF WILL ARGUE/ DEFENDANT WILL ARGUE"

"Whether there is subject matter jurisdiction will turn on whether Kent is domiciled in the same state as Garcia. Garcia will argue that Kent is from Vermont because he goes to school there, likes outdoor activities, and will probably not get into medical school. Kent will argue that he is from Massachusetts because he is from there originally, went back there for summer vacation, and hopes to go back there to practice medicine. [student now proceeds to next issue]

The diversity statute also requires that the amount in controversy exceed \$75,000. Garcia will argue that the amount is not met because Kent's medical bills were only \$26,000 dollars and he only lost three months of work. Kent will argue that he might recover more than \$75,000 for all his losses combined, and therefore the amount is satisfied. [student now proceeds to next issue]"