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2004 Civ Pro I Ex—Essay 3—Personal Jurisdiction

Traditional

(1) General Jurisdiction

1 Sovereignty / power principles

(1) For Corp Def NA= State of Inc, Registered, Appointed agent

But DONG BUSINESS IN FACT=Presence (4)

(1) + 3 5 7 Tauza- no precise test; systematic and continuous; more than mere solicitation; continuous shipments in; fair measure of continuity

Helicopeteros: reaffirms validity of general jur; there conceded c/a unrelated; only one trip to negotiate & some purchases & cash checks from f bank.

APPLIED

Systematic shipment of students into NM over long period of time

Branch Bank cashes checks over long period of time

One time shipment to Chicago, with forseeability will go to NM

Hold Probably not enough

Long Arm

Expansion

(1) Specific Jurisdiction

Optional/Long Arm RI and NM Type

(2) NM Reqts 1, 2, 3.

(1) + 0 In Person or Through AGENT

TAB

1 2 (3) 4 5

1 =DP but do the act anyway

(1) Pelton Factors & Applied

Who initiated (not phoney)

Where transaction entered (not NM)

Where Performed by Def (not NM)

Where heart of transaction (not NM)

(1) + (1) 2 3 TORTIOUS ACT

Where injury occurs

Here Injury occurred in NM so TA here

(1) ARISE FROM Cause of Action--Yes

DUE PROCESS

Mix of sovereignty of states and fairness to defendant; not just fairness
MC/FJ
Mix of sovereignty and fairness

WWVW

6 8 10 12 14 16 Prerequisite—Purposeful activity of Def directed at forum; Unilateral activity of plaintiff not sufficient

Then : 1) Convenience to D 2) Interest of the Forum: 3) Convenience to P

APPLIED—No MC/ Purposeful Activity Directed at NM.

FORSEEABILITY OF PRODUCT IN NM NOT ENOUGH/ need to foresee being haled into court.

But, unlike VW, Phoney seeks to serve the NM market at least indirectly (However, so did Asahi and that was not sufficient there)

1 2 3 4 5 BRENNAN –Interest and convenience factors if strong enough can overcome lack of purposeful activity

- Moreover, finds a contact when product put in stream of commerce and dealer intends it be used in nm ie purposefully direct activity at forum resident as here

1 +0 1 2 3 ASAHI—Similar but forum interest not high there (P of Cal settle

--Mree foreseeability and stream of commerce not enough

2 MARSHALL EFFECTS TEST

QUASI IN REM JURISDICTION

STATED Traditional three requirements

1 2 3 4 5 APPLIED Debt is where debtor is (Harris/Balk) Branch of bank is NM so $750g?

DUE PROCESS Anyway, Must meet Due Process and does not see supra.

QUESTION THREE

1. LJS wants to amend its complaint to include Phoney Corporation as a defendant, the issue is whether the court should deny the motion because NM court cannot obtain personal jurisdiction over Phoney Corp.
    a. MOTION TO AMEND (Rule 15)
        i. A plaintiff may amend his complaint anytime before a responsive pleading is filed up until a final judgment. LJS may also amend with leave of the court or with the permission of the other parties.
        ii. In order to amend to add a party's name, there are two factors that must be satisfied in order to allow the amendment:
            1 The party has received such notice of the action and will not be prejudiced in maintaining his defense on the merits and,
            2. that the party knew or should have known that, but for a mistake concerning the identity of the proper party, the action would be brought against him
        iii. In this case, it is clear that both factors are satisfied. Phoney's special appearance suggests that it had proper notice of the suit (notice does not have to meet the strict notice requirements of Rule 4) and was able to prepare a defense (SOL and PJ). NM courts require that notice not be unreasonable and it this case would likely

find that LJS was not unreasonably in failing to notify Phoney. Phoney was contacted by Holbrook and informed of the action (and knew such action applied to coils manufactured by them). Additionally, Phoney knew or should have known that if LJS knew that the coils were actually manufactured by the company, it would have named Phoney as a defendant in the action. In NM, both these factors have to be present in order to allow the amendment, it this case both factors are present.

b. PERSONAL JURISDICTION

Personal jurisdiction deals with whether a defendant has enough of a connection to the forum state to justify binding him to the court's judgment. It stems from the Full Faith and Credit clause dealing with state's rights (as enumerated in Pennoyer). It was later expanded (or limited, depending on the circumstances), but International Shoe and the Due Process clause of the 14th Amendment

ii. There are 4 ways for to assert PJ over a defendant corporation:

1. When corporation has registered to do business within a state and has appointed an agent for service of process
    a. In this case, Phoney has not registered to do business within NM or has appointed an agent, so this will not work
2. When a corporation owns property within the state

a. Phoney does not own property within NM. Its employees sent to school at UNM are not considered property, and its bank account in in Oregon. It could be argued that because its employees cash their checks in NM and the money is then drawn from Phoney's account, that its debt is located in NM (a debtor is where his debt it), but this will not likely work

3. Wherever a corporation is incorporated
   a. Phoney is incorporated in Manila, so this will not work
4. Wherever a corporation is present and doing business
   a. This is the factor that PJ will turn on. In order to determine if Phoney is doing business within NM, you must first examine the Tauza doing business principles for general jurisdiction and then consider whether Phoney falls under NM's long arm statute.

      GENERAL JURISDICTION – If a company is present within a state and is doing business, a court can obtain PJ over the company even if the connections with the state have nothing to do with the cause of

action. This type of PJ is still subject to due process limits.

ii. Doing business is the systematic and continuous act of business related activies within a state. In order to decide whether Phoney is actually doing business (as it has not appointed an agent), you must look at the quality and nature of its activities within NM. There is no precise test, but you should consider whether there is a fair amount of permance and continuity to its in-state activities, whether there are numerous business transactions occuring within the state and whether the company continuously solicits and ships products into NM

    1. In this case, Phoney has few connections to NM. It has sent 50 students in 10 years to study at NM, pays these students in NM.
    2. These activities, while a definite connection to NM, probably do not constitute doing business under Tauza. Phoney is not shipping

orders within the state, nor is is soliciting business. Additionally, although the act of sending students into NM is fairly continuous, it is not a commericial act of business. On the other hand, these students are sent for educational purposes, which benefit Phoney in the long run (by having more educated employees).

3. There would be no PJ over Phoney under Tauza general jurisdiction, because there aren't enough acts of doing business within the state.
4. Due process analysis will be done below under the long arm statute.

iii. SPECIFIC JURISDICTION – Even though NM courts cannot assert general PJ over Phoney, it may be able to gain PJ through NM's long arm statute. This statute is a result of the International Shoe holding which changed the PJ test (by fully explaining the parameters of PJ) and added a due process element as well.

1 NM LONG ARM – there are three elements to the statute, the action must be one of 5 enumerated activities, the cause of action must arise out of one of these activities and then due process must be satisfied.

a. The relevent activities can be transacting business within the state or committing a tortious act within the states

b. TAB – Transacting business is a lower standard than doing business and requires that the heart of the transaction occur within NM for it to be satisfied. This is done by looking at the 3 Pelton Factors

i. Who initiated the transaction? This is not satisfied because the transaction was

initiated by Holbrook from Chicago. Phoney did not initiate any transaction with NM.

ii. Where was the transaction entered into? This is also not satisfied, as it is determined by looking at Phoney's actions, which in this case suggest the agreement was made via mail with Holbrook in Chicago.

iii. Where was the transaction to take place? Again, this is determined by looking at Phoney's actions. Its part of the agreement was to take

place in Manilla and not in NM. Even Holbrook's actions did not take place in NM

c. Based on the Pelton Factors, Phoney was not transacting business in NM. An argument could be made that sending employees to NM and paying tuition to NM constitutes TAB, but as we will see under the second part of the statute, the cause of action does not arise from this.

d. TORTIOUS ACT – NM is a last act state, so the tort occurs where the final harm is.

    i. In this case the final harm caused by the faulty coils occured

within NM. Phoney therefore committed a tortious act within NM.

ii. ARISES FROM – this step determines whether the cause of action arises from Phoney's activities within NM. In this case it clearly does as the cause of action stems from the fire caused by the faulty coils which were in NM.

iii. DUE PROCESS ANALYSIS (for both specific and general jurisdiction)

1. Due process requires that in order to hold a defendant subject to a court's judgment, that the defendant have certain minimum contacts with the forum state so as not to offend traditional notions of fair play and substantial justice

2. The test to determine whether due process is met is whether there are sufficient minumum contacts and whether asserting PJ is fair and just (based on the number of factors)
3. MINIMUM CONTACTS – There is no standard test for MCs, so a court will look to the quality and nature of the contacts with the state. The absolute requirement is that the defendant purposefully acted.
    a. Other factors to consider are whether it was foreseeable that the company would be haled into court in NM, whether the company purposefully availed itself of the benefits and laws of NM, whether it placed it goods into a stream of commerce in which the good could end up in NM and whether the company knowingly caused effects in NM
    b. In this case, Phoney is based in Manila, but sends its goods worldwide (though only a small percentage of that gets to the US). Based on a stream of commerce theory, Phoney knowingly placed its goods into a worldwide market and therefore should have minimum contacts with NM. On the other hand, courts have often wanted something more than just placing goods into a market. These courts

have wanted the company to seek business within the state by marketing through an agent, advertising, etc – Phoney did none of these things (though you may argue that its employees acting as students in NM could also be soliciting business). Phoney's purposeful activity in sending the product to Holbrook in Chicago might qualify as MCs because it knew that by selling the coils to him that they might end up somewhere in NM, AZ or Texas. Phoney also purposely availed itself of the benefits of NM by sending employees there and paying tuition and room and board for them to stay in NM. In this way, Phoney obtained the benefits of the state (UNM is a state school, plus its employees were obtaining the privilege of NM law, etc.)

4. FAIR AND JUST - This is determined by looking at a number of different factors. The most important factor is the burden on the defendant.
    a. Other factors include:
        i. The plaintiff's interest in obtaining relief
        ii. The forum state's interest in adjudicating the matter

iii Interstate commerce desire to deal with issues efficiently

iv Pursuing a shared public/social policy

b In this case, the burden on Phoney is pretty high. It is located in Manila and does not send very many goods to the US (so it would not expect to be haled into court here) The plaintiff and forum state's interest is very high this fire caused a lot of trouble to both LJS and to NM, both interests weigh heavily on dealing with the matter in NM courts The interstate factor is probably fairly high states want to be able to deal with faulty products in a quick and efficient manner in order to prevent more harm The final factor could also be important, as it should be a shared policy to prevent the importation of faulty products into the US where people and corporations can be severly harmed.

2 CONCLUSION ON MOTION TO AMEND & PJ

a. The court should grant LJS's motion to amend. Both factors in Rule 15(c) are satisfied. Additionally, there is PJ over Phoney due to its having employees attend school in NM and by the fact that Phoney has manufactured and placed products in a worldwide market. This is further strengthened by the fact that it knew that the coils sold to Holbrook might

end up in NM. The burden on Phoney may be high, but the other fairness factors weigh in favor of PJ. As Brennan noted, fairness should be more important than minimum contacts and in this case that seems to be true. Additionally, it has been suggested by the US Supreme Court that the volume of goods shipped into a forum should be considered. This weighs in favor of Phoney's lack of PJ claim, but because the cause of action directly arose out of coils that Phoney knew were going to be in the US, the court will likely find MCs are satisfied (the closer the contacts to the cause of action, the fewer contacts are needed). Additionally, the court will consider issues of justice, which suggest that the proper parties to a suit should be held accountable so that justice can truly be served.

QUESTION FOUR

This question addresses whether Kidde's order to compel should be granted and whether its motions for sanctions against LJS for spoliation should be granted. I will deal with each motion individually.

a. MOTION TO COMPEL – this motion is sought when a party wants specific information through discovery and the opposing party refuses to produce it. In order to determine whether this should be granted, the court should first determine whether the desired information is discoverable.

   i Under NM law, information is discoverable when it is relevant and not privileged. There are also limitations on the discoverability of material prepared in anticipation of litigation and on certain types of experts. Information that is privileged is not considered discoverable

   ii RELEVANT - Under NM law, information is relavent when it is related to the subject matter of the case.

      1 In this case, the information is clearly relevant, both reports deal with the fire and the sprinkler system (for which Kidde may be liable for)

   iii PRIVILEGE – something is privileged (and therefore not discoverable) generally when two factors are present – the information is the subject of a intrapersonal relationship (doctor/patient, etc) and when such a privilege could be waived.

1. In this case, the reports are probably not privileged, both were created as a result of the investigation of the fire. Even if such communications (as they are between an independant contractor and an employer) are privileged, LJS has waived its privilege.
    a. Such a privilege is waived when the information sought is relevant to the issue of the case and,
    b. The party seeking the privilege has raised the issue by putting it into its claims
2. LJS has waived the privilege because the issue of the sprinkers is relevant to the case and LJS has raised the issue of the sprinkler system by choosing to sue Kidde for manufacturing the defective sprinkers.

iv. MPAL – even if information is not privileged, it can still be protected as materials produced in anticipation of litigation. MPAL can be discovered when the party seeking the information satisfies two factors and the information is not mental impressions, conclusions, opinions or legal theories. MPAL is sort of like a semi-privilege in which the party seeking the documents must demonstrate two factors in order to obtain the information:

1 The party must demonstrate a substantial need for the information

a. In this case the information would be very useful to Kidde's case. The reports address Kidde's sprinkler system and whether or not the system was functioning correctly at the time of the fire. It is important that Kidde obtain this information as the sprinkers are no longer available for inspections. On the other hand, Kidde did inspect the sprinklers just days prior to the accident, so it would know what the condition of the sprinklers were and doesn't really need this information.

2. The party must show that it can't get the information any other way without undue hardship (factors showing undue hardship include, memory lapses by witness, hostile witnesses and witnesses who are no deviating from prior statements)

   a. There is no other way for Kidde to obtain the information found in the reports because the restaurant has since been destroyed and the sprinklers are unavailable. On the other hand, Kidde will be able to depose both Watt and Azcarate and should be able to get the information they desire. Of course, Kidde will have no way of

knowing how truthful these witnesses are being without the reports.

v. EXPERTS - this is not relevant because Kidde is seeking reports, not the names of experts LJS wants to use.

b. CONCLUSION ON MOTION TO COMPEL

i. The trial judge should grant the motion to compel because the reports, although MPAL, are very relevant to the case and because of spoliation, Kidde has no access to the sprinklers in order to produce its own report. LJS can counter these arguments by asserting that the information in the reports is not only based on interviewing witnesses or other such action in anticipation of trial, but is based on the mental impressions and theories of both Watt and Azcarate dealing with the possible cause of the fire. On the other hand, this reports are based on first hand knowledge and do contain summaries of interviews done with witnesses (which were not spontaneous, but actual interview statements). If the court is reluctant to make all the information available, it can ask LJS to create a privilege log in which it lists all the information in the reports and details what and why certain parts of it should be privileged. Additionally, the judge can have an in-camera review of the reports and decide whether the contents should or should not be privileged. Overall, courts believe that discovery should be an open and liberal process and are reluctant to get involved. Because

the information in the reports will help justice to best be served by establishing liability (or lack thereof), the court should make such information available

c. SANCTIONS AGAINST LJS FOR SPOLIATION

i. A party can seek sanctions against another party for numerous reasons. In this case, Kidde seeks sanctions for LJS's request that the restaurant be destroyed, thereby making it impossible for Kidde to inspect its sprinkler system. Spoliation occurs when a party has negligently or purposefully destroyed or lost evidence. In particularly egregious cases of discovery issues (such as spoliation), the party seeking discovery can skip the motion to compel and ask the court directly for sanctions. In determining what time of sanctions should be imposed, the court looks at three factors:

The defendant's fault – was the defendant merely careless or did he purposefully destroy the evidence?

a. In this case, LJS did request that the building be destroyed, but it was not to destroy evidence, but rather, to prevent litigation by the city for creating a public nuisance. It could be argued, that because the report seemed to suggest that the sprinklers were functioning properly, that spoliation was LJS's only way to pursue a lawsuit against Kidde.

2. The prejudice done to the plaintiff by the spoliation – is the plaintiff still able to present a case?

    a. The sprinklers are pretty much key to any defense Kidde might raise. Because the sprinklers are material to the case, it is prejudicial to Kidde not to have access to them. On the other hand, Kidde did inspect them days before the fire and determined that they were in perfect condition (and they may have access to the reports), so they are probably not all that harmed by not having access to the sprinklers

3 Whether there is a lesser sanction available that would not be substantially unfair to the opposing party, and where the offending party is seriously at fault, would serve to punish or deter future conduct.

    a. Kidde is seeking a sanction of default judgment against LJS dismissing with prejudice its claim against Kidde. There are much lower sanctions that the court could apply, such as jury instructions that would explain the spoliation and LJS's possible fault in that. Because LJS does not really have a case against Kidde (based on its own reports and the prior inspection of Kidde), issuing a default

judgment may be the best sanction as there is really no evidence that Kidde did anything wrong (and if there was, Kidde has no way to inspect the sprinklers to contradict LJS's claims).

d. CONCLUSION ON SANCTIONS

i. The court should grant sanctions against LJS. Although it is unclear whether LJS acted purposefully in order to destroy evidence, it did request that the building be torn down, which ultimately made the sprinklers unavailable as evidence. Additionally, it is clear from the reports and from Kidde's own inspection that the sprinklers were probably not defective and LJS seems to be pursuing a frivolous lawsuit, courts should act as gatekeepers and prevent such fruitless claims from being presented to the jury.

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QUESTION FIVE

1. The issue in this question is whether summary judgment should be granted to Kidde. Summary judgment is an early termination device used after discovery.

Basically, the movant claims that there is no material issue of fact and therefore he is entitled to judgment as a matter of law. For the party who does not bear the burden of pursuasion at trial (such as Kidde), there are three steps that must be satisfied in order to obtain summary judgment. (NM and Fed interpretations of SJ differ and I will note such differences at such points)

a. STEP 1 – in order to establish a prima facie case of entitlement for summary judgment, the movant must establish that there is no genuine issue of fact and therefore he is entitled to a judgment as a matter of law.
    i. In NM courts, this is established by presening affirmative evidence that demonstrates that there is no genuine issue of fact by disproving the essential elements of the claim (this evidence is shown through the stuff of discovery, which includes pleadings, depositions, answers to interrogatories, admissions on file and affidavits)
        1. In this case Kidde used three affidavits that establish that the sprinkler system was in perfect working order and had no defects post-fire. Additionally, deposition suggests that the spoliation that occured made it impossible for LJS to get expert testimony to support their case.
        2. It is not enough for Kidde's evidence to disprove just one of the elements, summary judgment in NM will not be granted if the non-moving party can still support its other elements with facts. In this case, the only element at issue

is whether the sprinklers are defective. Kidde should successfully meet the first step because it has produced enough affirmative evidence to seriously disprove LJS's claim that the sprinklers were defective.

ii. Another way to establish this step is by pointing out the insufficiency of the evidence for each claim, but it is doubtful whether NM would allow this method due to its rejection of the Celotex trilogy.

1. The deposition from the president of LJS would fall into this category as it goes to the insufficiency of LJS's evidence to support its claim, so it is unclear how much weight would be given this deposition.

b. STEP 2 – Once Step 1 is met, the burden then shifts to the non-moving party to rebut the moving party's prima facie showing of entitlement to SJ. The non-moving party can rebut the evidence by rehabilitating existing evidence, adding more evidence (stuff of discovery) or by asking the court for more discovery under 56(f).

In this step under NM law, the non-moving party must just show that there are still factual issues and even if one element is completely disproven, SJ will not be granted in light of other issues. In this case, however, there is only one element at issue.

ii. In this case, LJS presented only one affidavit to rebut Kidde's step 1 showing. The standard at this step is not the slightest doubt as to

the factual issues, but whether there is reasonable doubt concerning factual allegations by both parties. LJS's affidavit does raise doubt because it is a first hand account of what happened at the fire (as opposed to Kidde's evidence which is pre and post fire). The court would likely rule that LJS has met this hurdle by producing new evidence to controvert Kidde's evidence.

c. STEP 3 – If the non-moving party is able to satisfy Step 2, the burden then shifts back to the moving party to further rebut or establish evidence supporting the claim that there is in genuine issue of fact.

In this case, this step is the proper time for Kidde to question the credibility of the affidavit presented by LJS in Step 2. If Kidde does not raise this issue properly, the court will accept LJS's affidavit. The three requirements for affidavits are that (1) it is based on personal knowledge, (2) that it is based on admissible evidence, (3) that the person is competent testify. LJS's affidavit probably satisfies all three of these requirements, so Kidde's objections should go to the credibility of Aber.

ii. In determining whether a person is credible, the court looks at a number of factors, including:

Whether the person is biased

2. Whether the information supplied is based on the person's regular course of duties

3. Whether the person is mentally competent

2004 Civ Pro I ESSAY 5 SUMMARY JUDGMENT OUTLINE OF ANSWER

State v. Federal Court Views of SJ

FAVOR or NOT

Celotex Trilogy- integral part of FRCP; impt role with notice pleadings
NM case law- Disfavored "drastic remedy"

STANDARD re DIRECTED VERDICT

Federal—Equated SJ and DV
NM—Rejected DV for SJ Motions; used Looser standard for SJ

GENERAL STANDARD

Federal (Liberty Lobby) Could a reasonable jury find for nonmoving party
Not merely a colorable claim
NM Rejects "Slightest doubt" in favor of "benefit of all reasonable doubts"
BARTLETT "If any issues of fact exist...." Discuss Fully

NM Procedure : Richardson Movant must number each alleged undisputed allegation w/ reference to record. (Richardson v. Glass)

Brennan Burdens and NM Bartlett Standard Applied Here.

Depends on if Movant has burden of proof at trial or not.
Defendant is moving for SJ and Does NOT have Burden of Proof at Trial so

STEP ONE

No naked motion;
Must Support with EITHER Proof of the opposite of what P must prove at trial sufficient to get a DV if not disputed at trial
OR that P lacks any substantial admissible evidence of an element of P's prima facie case.
Can use Affidavits and fruits of discovery
Did so here using combo of both
Coils gone
Only expert who viewed them cannot say more probable than not
They were inspected and working just before the fire.

STEP TWO

No need for P to do anything unless D meets step One (and D did)
ATTACK AFFIDAVIT of Flame: Competent; Personal Knowledge and Would be Admissible in Evidence at Trial (No apparent basis here)
CAN'T DO NOTHING MUST COME FORWARD
MUST SHOW ADMISSIBLE EVIDENCE OF
Fed. The Element attacked—here no defect/cause
✓ NM Apparently must show issues of fact even if no evidence of defect/cause
Here AFFIDAVIT of ABLE

4. Whether the person is honest

5. Whether the affidavit is consistent

iii. In this case, Kidde will point the court towards the fact that Able was arrested for perjury, which greatly brings into question his truthfulness in the affidavit. Additionally, there seems to be no mention of what Able witnessed anytime prior to this affidavit (presumptively, this assertion was not found in either report), this brings into question whether the affidavit is consistent with prior evidence put on by LJS. Able is now no longer available for Kidde to dispose, so his credibility cannot just be argued at trial, so Kidde will urge the court to grant SJ (in addition because the affidavit may have been presented in bad faith by LJS as it knew it had no case against Kidde).

2. CONCLUSION ON SUMMARY JUDGMENT

a. Based on the three steps noted above, the court should grant Kidde's motion for summary judgment. This likely would not happen in NM courts however, because the NM Supreme Court has suggested that it is an anti-summary judgment court, which prefers allowing cases to reach the jury, so that the case is decided by the peers of the parties. Kidde's affidavit from LJS's president would not be given much weight as it goes to the insufficiency of evidence rather than an affirmative showing that negates such evidence. All LJS had to do in NM courts, was to demonstrate that there are some factual issues still in dispute, which it

successfully did. Kidde's granting of SJ then turns on the admissibility and credibility of LJS's affidavit, which is seriously questionable. Even if the court does not grant Kidde's motion, it may lead LJS to drop the suit against Kidde because Kidde was successful at seriously bringing LJS's suit into question and would likely obtain a directed verdict after LJS presents its case.

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