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California Civil Procedure

1.

### **Proper Service**

Proper service is required to give defendants a notice and opportunity to be heard. It stems from the Due Process Clause of the US Constitution and general notions of fairness. In order for a defendant to be properly served in CA, the defendant must be served in person by a non-party individual who is over 18 years of age, through the defendant's agent, and via US mail. Furthermore, the serving party must fill out the service of process form and return that to the court clerk. In CA, the defendant must be served with a copy of the summons and complaint. Then the defendant has an opportunity to respond. Here, Paul attempted personal service on Valerie in San Francisco and Meyer Corp in Germany via US mail.

### **In Person Service of Valeria**

In order for in person service to be proper in CA and Fed Courts, the plaintiff must have a non-party individual serve a copy of the summons and complaint on the defendant. Any person over the age of 18 can properly serve someone, this includes police and process-servers.

Here, Paul personally handed Valerie a summons and copy of the complaint. A plaintiff cannot personally hand/serve the defendant. Thus, service on Valerie was improper because Paul violated the rule when he personally handed her a copy of the summons and complaint.

### **Service By Mail on Meyer Corp**

Unlike the FRCP, the CA Code of Civil Procedure allows for service of the complaint and summons by mail. This requires that a good faith effort was made on the part of the plaintiff to serve the defendant. Like personal service, the plaintiff cannot be placed in the mail by the plaintiff. An adult over the age of 18 must place the summons and complaint in the mail. Certified mail is preferred over ordinary mail, but ordinary mail is acceptable.

Here, the facts do not indicate whether Paul had another party place the summons and complaint in the mail, it just states that he sent the copy via ordinary mail. Thus, service may be improper over Meyer Corp because they were sent via ordinary mail. However, Meyer is a foreign corporation, so ordinary mail is fine because certified mail is not available internationally. Thus, service on Meyer Corp was proper under CA Civil Procedure.

**2. DOes the Superior Court of CA in San Diego have personal jurisdiction (PJ)**

In order for a court to hear a claim there must be both personal and subject matter jurisdiction. Personal jurisdiction in State Court is general, opposed to PJ in federal court. This is because state courts are courts of general jurisdiction and can hear any claim brought by their citizens, and even foreign entities.

### **PJ of Valerie**

A state court has personal jurisdiction over those that harm people in its state. California has different superior courts, and each have general jurisdiction to hear claims.

Here, Valerie is a resident of San Francisco that has harmed Paul who is a resident alien attending school in San Diego. Valerie is domiciled in California and it would not be improper for her to have to litigate in San Diego for harm she caused to a SD resident. Additionally this claim is for over 25k and claims of over 25k must be litigated in superior court instead of small claims court. Thus, the San Diego court has personal jurisdiction over Valerie.

### **PJ over Meyer Corp**

Again, a state court has general personal jurisdiction over defendants that cause harm in the state. This is because the state has a high interest in keeping its residents safe and able to bring wrongdoers to justice.

Here, the SD court has personal jurisdiction over Meyer Corp because the snacks that contained a toxic substance which sickened Paul who incurred medical expenses. Meyer Corp's sole place of business is in Germany. However, when a foreign corporation avails itself to the American market they can be hauled into state court to litigate when they cause harm. Thus, the SD state court has PJ over Meyer.

**3. Does venue properly lie in the Superior Court of California in SD?**

### **Proper Venue**

Under the CA Civil Procedure Code, venue is proper where any defendant lives. This is different from the FRCP in that if there are multiple defendants in federal court that are not domiciled in the same district, venue is only proper where the cause of action arose. Venue is not proper in a place where the plaintiff only resides. In order to determine if SD Venue is proper we must determine where each Defendant is domiciled.

### **Domicile of Valerie**

A person is domiciled where they intend to live indefinitely. If they intend to change their domicile, they must be physically located where that location is. Here, Valerie is a resident of San Francisco. Thus, if she were the only defendant, venue would be proper in San Francisco and not San Diego. However, there is another defendant which we must analyze.

### **Domicile of Paul, a resident alien**

A resident alien takes on the domicile of where they are living while in the US.

Here, Paul is attending college in San Diego on a student visa. Thus, for jurisdiction and venue purposes, Paul is domiciled in San Diego, CA.

### **Domocile of Meyer**

A foreign entity takes on the domicile of the state in which they are hauled into court. Generally, American corporations have two domiciles, they are domiciled where they have their principal place of business, which generally includes the offices of senior directors and presidents. They are also domiciled in every state in which they are incorporated, this means if a corporation is incorporated in multiple states, they are subject to PJ in each of those states. Here, Meyer is a German corporation, therefore it will take on the domicile of the state in which it is hauled into court. As mentioned above, Paul is domiciled in San Diego and is bringing the suit in SD Superior Court. Thus, Meyer will be considered domiciled in CA. Thus, Venue in San Diego is proper, but it may be best for Meyer to remove the case to the federal court.

### **4. Removal to federal court**

In order for a case to be removed to federal court, it must satisfy both personal and subject matter jurisdiction. A case may be removed if the cause of action involves a claim arising under a federal question or if there is diversity of citizenship. Here, neither of these instances are met. Thus the case cannot be removed to federal court as is.

### **Timing and procedure**

In order to remove a case to federal court, a motion must be filed with the federal court which encompasses the state court district (Southern district of CA). Furthermore, the plaintiff cannot move for a removal because they are the ones that brought the action in the particular venue in the first place. Once a case is discovered to be removable, the Defendant has 30 days to file a notice of removal in the federal court. This can be done as long as the case is in the first year. Here, it is presumed that the action has not been in the state court for a year. Thus the timing of the removal is proper.

### **Subject Matter Jurisdiction (SMJ)**

Federal Courts are not courts of general jurisdiction and thus they cannot hear all claims. In order for a court to have SMJ, there must either be a federal question presented or complete diversity of citizenship.

### **Federal Question**

A federal question is one that arises under federal law. A plaintiff cannot bring a case in federal court if they only anticipate that the defendant will assert a federal defense, it must arise under federal law. For example, the COA must involve a federal statute or constitutional claim. Here, Paul is bringing a personal injury and products liability claim against Valerie and Meyer Corp. Thus, the COA does not arise under federal law and the case is not removable to federal court based on federal question jurisdiction.

### **Diversity Jurisdiction**

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Each party must be domiciled in a different state to meet the requirements for diversity. Furthermore, the claim must be for over 75k. As mentioned above, Paul takes on the Domicile of CA and so does Meyer because they are aliens. Valerie is also domiciled in California, specifically the northern district of California. Thus, there is no complete diversity and the case cannot be removed based on diversity.

**amount in controversy**

Furthermore, the amount in controversy must be over 75k. A plaintiff may aggregate multiple claims against a defendant, but cannot assert claims against multiple defendants. Here, Paul is suing both for 50k. He cannot aggregate these to equal 100k because they are two different defendants. Thus, the amount in controversy is not met.

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