

Civil Procedure :

Quiz 1: Personal Jurisdiction

Eric M. Fink
Elon Law School
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Answers & Explanations

Question 1

Peter lives in Pennsylvania, where he also has a business called “Peter’s Produce”. In search of new items to sell, Peter travels to New Mexico to sample the local peppers. During his trip, Peter visits Pepe’s Pepper Paradise, which makes artisanal pickled peppers from New Mexico Pueblo chiles. Predicting that pickled Pueblo peppers would prove popular with his patrons in Pennsylvania, Peter proposes to Pepe that they enter into a business partnership, promising profuse profits. Pepe declines, explaining that he only sells the peppers locally and isn’t interested in expanding his business. Peter purchases two pecks of pickled peppers, telling Pepe he plans to sell them in his store in Pennsylvania.

After returning home, Peter sells a jar of Pepe’s pickled peppers to one of his customers. Shortly after eating the peppers, the customer becomes violently ill and is diagnosed with botulism, a severe and potentially fatal type of food poisoning. The customer asks Peter where the peppers came from, and Peter explains he bought them from Pepe in New Mexico. The customer files a suit against Pepe in a Pennsylvania court, alleging that the botulism resulted from Pepe’s failure to sterilize the pepper jars properly. Is personal jurisdiction over Pepe in Pennsylvania proper?

- a. Yes, because the customer bought the peppers in Pennsylvania.
- b. Yes, because Peter told Pepe he was going to sell the peppers in Pennsylvania.
- c. No, because Pepe doesn’t live in Pennsylvania.
- d. No, because Pepe wasn’t responsible for the sale of the peppers in Pennsylvania.

The correct answer is D. Pepe has no relevant contacts with Pennsylvania. He rejected Peter’s suggestion that they enter into a business partnership to distribute Pepe’s pepper in Pennsylvania. The sale of the peppers there resulted from Peter’s unilateral actions, which Pepe did nothing to encourage or facilitate. Pepe’s mere awareness that Peter intended to sell the peppers in Pennsylvania is not sufficient to satisfy the minimum contacts standard.

Question 2

During his trip to New Mexico, Peter also met Carmen, a local chef renowned for her Calabacitas (a traditional dish made from sauteed roasted green chile, summer squash, and corn). Carmen has been canning and selling her Calabacitas locally, and is interested in expanding her market. Peter and Carmen enter into a contract under which Carmen will ship cases of canned Calabacitas from her production facility in New Mexico to Peter in Pennsylvania, and Peter will distribute them to retailers in Pennsylvania, New Jersey, Maryland, and Delaware. The contract provides that Peter pay for advertising in local newspapers in those four states to promote interest in the product. Peter will keep 25% of the revenue from sales he generates and remit the balance to Carmen in New Mexico.

Peter sells a case of Carmen's Calabacitas to Dan's Delicacies, a retail shop in Rehoboth Beach, Delaware. Sam a New York resident who is on vacation in Rehoboth, samples some of Carmen's Calabacitas at Dan's Delicacies and finds them so delicious he buys several cans to take back to New York. When Sam arrives home, he opens one of the cans and cuts himself on a sharp edge, badly injuring his hand. If Sam wishes to bring a lawsuit for his injury, in which state(s) would a court have personal jurisdiction over Carmen?

- a. New Mexico only.
- b. New Mexico and Pennsylvania.
- c. New Mexico, Pennsylvania, and Delaware.
- d. New Mexico and New York.

The correct answer is C. A court in New Mexico would have general jurisdiction (i.e. even if the claim didn't arise out of anything that happened there) over Carmen, since she resides there. Carmen entered into a business relationship with Peter, under a contract that specifies distribution and promotion within Pennsylvania & Delaware (along with Maryland & NJ, which aren't relevant here). It was not merely foreseeable, but expressly intended that Peter distribute Carmen's Calabacitas in Delaware and that Carmen receive a share of the profit from Delaware sales. Carmen has thus "exercise[d] the privilege of conducting activities within [those] state[s], [and] enjoys the benefits and protection of the laws of [those] state[s]". See *Int'l Shoe*, 326 U.S. at 319. But Carmen has no relevant contacts with New York. The can of Carmen's Calabacitas ended up there through Dan's unilateral actions, not any purposeful act by Carmen.

Question 3

Daisy Duke, a Philadelphia resident, broke her tooth on a foreign object in some store-brand canned luncheon meat (a.k.a. generic "Spam") she purchased at her local Colossus Foods grocery store. She met with a lawyer about bringing a suit to recover damages for the expensive dental work she required, as well as the emotional distress she suffered from the traumatic experience. After some investigation, the lawyer learned that Colossus Foods (based in Maryland and operating retail stores in both Maryland and Pennsylvania) buys its store-brand products from a wholesale distributor called Zysco, based in Indiana. Zysco in turn contracts with various manufacturers, including Harmer Meats (based in Arizona), which made the generic Spam that caused Duke's injury. The

contract between Harmer and Zysco authorizes Zysco to distribute Harmer's products in 35 states, including Pennsylvania. The contract also provides that Harmer will submit samples of its products to the Pennsylvania State Department of Agriculture for testing, as Pennsylvania law requires for all packaged foods sold in the state.

Duke's lawyer files a suit against Colossus, Zysco, and Harmer in Pennsylvania state court. Which of the defendants are within the court's personal jurisdiction?

- a. Only Collosus.
- b. Collosus and Zysco, but not Harmer.
- c. Collosus and Zysco, and Harmer.
- d. None of the above.

The correct answer is C. Daisy's claim arises out of the sale of good distributed in a Pennsylvania by Zysco at a Pennsylvania store owned by Collosus. This is certainly enough to satisfy the minimum contacts requirement. Even though Harmer did not directly ship its product to Pennsylvania, and does not have any direct contractual or other relationship with Collosus, the contract between Harmer & Zysco specifically authorizes distribution in 35 states including Pennsylvania, and calls for Harmer to send samples to the Pennsylvania for testing by a state agency. This is enough to show that Harmer specifically aimed its products at Pennsylvania and took specific steps to facilitate sales there.

Note: Believe it or not, this question is based on a real case I handled when I was in practice. But personal jurisdiction was not actually an issue in that case, since the manufacturer didn't dispute that it had the requisite contacts.

Question 4

Neff, a resident of California, hires Mitchell, an Oregon lawyer, to represent Neff in the acquisition of some land in Oregon. Neff has never actually been to Oregon, and his dealings with Mitchell took place by mail and telephone. After the transaction is completed, Neff refuses to pay Mitchell's fee. Mitchell sues Neff for breach of contract in an Oregon court. After filing the suit, Mitchell has a copy of the complaint and summons served on Neff in a manner authorized by the Federal Rules of Civil Procedure. Neff ignores the summons, neither responding to the complaint nor appearing in court on the appointed day. The court enters a default judgment in favor of Mitchell. Is the default judgment against Neff valid?

- a. No, unless Mitchell has the Oregon court attach Neff's Oregon property at the outset of the suit.
- b. No, because Neff lives outside Oregon and has never been to the state.
- c. Yes, because Mitchell's suit arose out of Neff's hiring Mitchell, an Oregon attorney, to represent Neff in the acquisition of Oregon property and Neff's subsequent failure to pay Mitchell's fee.
- d. Yes, because Neff failed to appear for the purpose of objecting to the Oregon court's jurisdiction.

The correct answer is C. By hiring an Oregon lawyer to represent him in the acquisition of Oregon property, Neff has purposefully availed himself of the benefits and protections of Oregon law. Mitchell's claim arises out of that representation. Answer A is incorrect, because under the modern standard, attachment of the property is unnecessary to confer jurisdiction on these facts; if the property was Neff's only contact with Oregon and the suit did not arise out of anything related to that property (e.g. if Mitchell's suit arose out of a car accident with Neff in California), attachment of Neff's Oregon property would not suffice to confer jurisdiction, since the property would have no connection with the suit (see *Shaffer v. Heitner*, 433 U.S. 186 (1977), holding quasi in rem jurisdiction must satisfy the same minimum contacts standard as in personam jurisdiction). Answer D is incorrect, because due process requires only notice and an *opportunity* for a hearing. As long as the defendant receives valid notice (which is given in the facts here) and the court has personal jurisdiction, due process is satisfied and the court may enter a default judgment if the defendant fails to appear.

Question 5

Tiger Foods (based in North Carolina) is a supermarket chain with stores located in North Carolina & Virginia. US Broadcasting Corp. ("UBC", based in New York), produces television programs that air nationally, in some places on local TV stations owned by UBC, in other places on independent stations that contract with UBC for programming. Linda Lewis (a resident of Virginia) is a reporter employed by UBC.

For a program on unsavory practices in the retail food industry, UBC assigned Lewis to go undercover at Tiger Foods. Lewis got hired as a deli counter clerk at a Tiger Foods store in Virginia and secretly videotaped activity there. Among other things, she recorded store managers instructing employees to re-label past-date foods (including spoiled meats and dairy products) and return them to sale displays.

Kari Kaplan, a UBC employee at the company's New York headquarters, produced the program. Kaplan included parts of Lewis's video footage, with a voice-over stating that the practice of re-labeling and selling past-date and spoiled foods "violates state and federal laws". Kaplan also contacted Steve Shill, Director of Public Relations for Tiger Foods, by email and telephone at his office in North Carolina, inviting him to comment on behalf of the company. Parts of Shill's comments were included in the program.

After the program airs, sales at Tiger Foods stores fall by 25%. Tiger Foods sues UBC for defamation, alleging that the undercover video footage and Shill's comments were deceptively edited or presented out of context, and that none of the company's stores ever sold past-date or spoiled foods in violation of any state or federal laws. Tiger Foods files its suit in a North Carolina court. Does the court have personal jurisdiction over UBC?

- a. Yes, but only if the program aired in North Carolina on a station owned by UBC.
- b. Yes, even if the stations that aired the program in North Carolina were not owned by UBC.
- c. No, because neither Lewis nor Kaplan ever went to North Carolina in connection with the program.
- d. No, unless Lewis or Kaplan owns property in North Carolina.

The correct answer is B. Even if UBC didn't own the North Carolina stations, it contracted with those stations to air UBC's programs. That alone would likely be enough to satisfy the minimum contacts standard (see, e.g., *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), holding New Hampshire court had jurisdiction over Ohio publisher of defamatory article, where the publisher distributed its magazine to subscribers and retailers in the state). In this case, UBC's producer also reached out to Tiger Foods at its North Carolina headquarters, seeking the company's comments on the story. This additional contact with the forum state further supports jurisdiction (see, *Calder v. Jones*, 465 U.S. 783 (1984), holding California court had jurisdiction over editor and reporter for Florida company that published defamatory article, where the employee-defendants contacted plaintiff and her husband at their home in California for their comments on the article).