

# Civil Procedure

## Personal Jurisdiction Practice Question

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### Facts

Tiger Foods is a supermarket chain with stores located in North and South Carolina, Virginia, Maryland, and Delaware. The company is incorporated and has its principal place of business in North Carolina.

US Broadcasting Corp. (“UBC”) is incorporated in Delaware with its corporate headquarters in New York. UBC produces television programs that air on its national network of stations, including independently-owned affiliates in North and South Carolina. UBC is licensed and regulated under federal law by the Federal Communications Commission.

Kari Kaplan (a resident of California) is a producer, and Linda Lewis (a resident of South Carolina) is a reporter, for UBC’s “Evening Exposé” news program, which airs weekly on the UBC network (including the NC and SC affiliates). For a story on unsavory practices in the retail food industry, Kaplan assigned Lewis to go “undercover” at Tiger Foods. Lewis applied for a job and was hired as a deli counter clerk at a South Carolina Tiger Foods store. Using a hidden camera, she secretly videotaped activity at the store. Among other things, the videos showed store managers instructing employees to relabel past-date foods (including spoiled meats and dairy products) and return them to sale displays. Kaplan included some of the videos in the program, along with a voice-over stating that the practice of relabeling and selling past-date and spoiled foods “violates state and federal laws”.

After the Evening Exposé story airs, sales at Tiger Foods stores fall by 25%. Tiger Foods decides to sue UBC, Kaplan, and Lewis for defamation.

Tiger Foods alleges that the video footage shown in the program was either doctored or out of context, and denies that it sold past-date or spoiled foods in violation of any state or federal laws. The company seeks \$1 million (the amount of lost sales revenue) in damages against the three defendants jointly and severally.

### Question

If Tiger Foods files its suit in North Carolina, will the court have personal jurisdiction over all three defendants?

## Explanation

### Question 1: Personal Jurisdiction

The main issue is whether the court would have specific jurisdiction over the defendants based on their contacts with the forum state.-

**Rule:** The exercise of personal jurisdiction satisfies due process if the defendant has minimum contacts with the forum state and the cause of action arises out of those contacts.

- The party asserting jurisdiction has the burden on this issue.
- Contacts are based on defendant's acts in or intentionally aimed at the forum state
  - The relevant acts are those "by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denkla*
  - Independent/unilateral acts of the plaintiff or third parties don't count.
  - Example: Independent distributor, without direction, control, or input by defendant manufacturer, sells machine to forum state, where plaintiff was injured. (*McIntyre v. Nicastro*)
  - Example: Manufacturer of finished goods, without direction, control, or input by defendant manufacturer of component parts, sells finished goods to forum state, where plaintiff was injured. (*Asahi*, O'Connor opinion)
  - But acts by intermediaries under the defendant's control or direction may establish contacts by the defendant.
    - Example: Defendant hires sales employees to generate orders through in-person solicitations in forum state. (*Int'l Shoe*)
    - Example: Manufacturer contracts with independent distributor, and contract specifically provides that distributor will market and sell manufacturer's products in forum state.
  - Each defendant's contacts must be assessed individually, based on their own activity. See below for analysis of the three defendants in this problem.
- The claim(s) must arise out of defendant's forum contacts.
  - That's not in serious dispute here. The claim arises out of the airing of the program in NC.
  - The fact that the program was also aired elsewhere doesn't matter. That's more an issue of substantive defamation law, under which a plaintiff may bring a single suit in one jurisdiction to recover for all harm resulting from the publication wherever it was published.

### Analysis

#### UBC

- Minimum contacts are satisfied based on UBC's arrangements with the affiliate station(s) in NC.
  - It doesn't matter that the local affiliates are independent. They're not unilaterally deciding whether and where to air UBC programs. This is simply the way UBC has organized its operation to get its programs on the air in NC (and elsewhere), and UBC receives benefits (revenue) as a result.

- This arrangement is analogous to Int'l Shoe (where the defendant decided where it wanted to distribute its goods and set up a system to accomplish that purpose) and distinguishable from Asahi or McIntyre (where the defendant manufacturer had no input or control over where the intermediary/distributor actually distributed defendant's goods).
- It also doesn't matter that UBC airs its programs nationally through this affiliate network. The specific arrangements with the NC affiliates are what count here.
- This is similar to Calder and Keeton, where the publishers distributed their publications (whether directly or through independent distributors) nationally, including the forum states.
- It's different from a website that is indiscriminately accessible anywhere (New Haven Advocate) and not specifically targeted at the forum state.
- The "effects test" (Calder) isn't really necessary to establish jurisdiction over UBC, because contacts are established more directly through the affiliate arrangement.

### *Kaplan & Lewis*

- Jurisdiction over Kaplan and Lewis must be based on their own contacts with the forum state. The mere fact that their employer has contacts with the state is not enough.
  - See *Calder v. Jones* (individual employee defendants' "contacts with [forum state] are not to be judged according to their employer's activity there. ... Each defendant's contacts with the forum State must be assessed individually.")
  - So the court would not have jurisdiction over Kaplan or Lewis merely based on UBC's airing its program through the NC affiliate stations (assuming Kaplan and Lewis have no role in the relationship between UBC and the affiliate stations).
- There's nothing in the facts to suggest that Kaplan or Lewis ever went to NC or reached-out to/communicated with anyone there in connection with the program. Rather, their activity appears to have taken place in SC and California.
- The best argument for jurisdiction over Kaplan and Lewis would be under the "effects test".
  - In *Calder v. Jones*, the editor had contacts with California based on his role in overseeing, editing, and approving an article that was "expressly aimed at California" where the plaintiff lived and worked. It didn't matter that the editor himself never went to California, communicated with anyone there, nor had any other contact with the state in connection with the story.
  - Also in *Calder*, the reporter had contacts with California based on his activity in preparing the story, which included contacting the plaintiff's husband and other sources in California.
- The analogy to *Calder* is somewhat unclear in this case.
  - Kaplan and Lewis might be able to argue that their activity was expressly aimed at SC, not NC.
  - Additional facts (e.g., Does Tiger Foods have its business headquarters in NC? Does NC account for the largest share of the company's stores/sales/revenue, etc.? Do the NC stations represent an especially significant share of UBC's audience?) might strengthen the argument that Kaplan and Lewis should have anticipated being sued in NC.
  - But the decision in *Calder* suggests that mere knowledge of these facts on the part of Kaplan and Lewis wouldn't be enough, without some act on their part specifically aimed at NC.

**Rule:** Assuming the defendants do have minimum contacts, the next issue is whether other special facts make the exercise of jurisdiction unreasonable despite the contacts.

- The party opposing jurisdiction has the burden on this issue.
- Courts analyze these factors:
  - Undue burden on the defendant
    - Has to be more than the usual inconvenience of litigating somewhere other than the defendant's home state
  - Plaintiff's interest in obtaining relief in the forum state
  - Forum state's interest in providing a forum for those who are harmed there
  - Interests of the interstate/international judicial system in efficient resolution of disputes and respect for other states'/nations' sovereignty.

### Analysis

- Assuming the minimum contacts requirement is satisfied, there's nothing in the facts here to support declining jurisdiction based on any of the "reasonableness" facts.