

Civil Procedure

Final Exam: Answers & Explanations

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Question 1

Issue

- Subject Matter Jurisdiction

Rule

- Diversity Jurisdiction: sec. 1332
 - Two requirements
 - The plaintiff and defendant must be citizens of different states, and
 - The amount in controversy between the parties must exceed \$75,000.

Citizenship

- Determined at time suit is filed & subsequent changes don't matter
- Individual: Domicile
 - State of residence with intent to remain indefinitely
 - Indicia of intent: voter registration, taxes, etc.
- Corporation: State of incorporation & principal place of business
 - "Nerve center" test for PPB: Where high-level corporate decisions are made
 - If state of incorp. & PPB are different, both count (i.e. neither can match an opposing party's state of citizenship)

Amount in Controversy

- Determined at the time the complaint is filed.
 - Doesn't matter if the plaintiff ends up recovering less than the statutory amount.
- May be satisfied either based on the plaintiff's potential recovery or the cost to the defendant of complying with a judgment granting non-monetary relief (e.g. injunction)
- A single plaintiff may aggregate the value of all claims against the same defendant.

- Damages for emotional distress, punitive damages, and attorney's fees will count toward the amount in controversy, as long as the governing law permits their recovery.
- Legal certainty test
 - Court accepts the plaintiff's good faith allegation unless it is certain that the plaintiff could not recover more than \$75,000 under the applicable law, e.g. if the law caps possible recovery at a lower amount.
 - Where a party relies on a claim for attorney's fees to reach the jurisdictional amount, the court may assess whether the amount of fees is unduly speculative (Annie's Pooch Pops)

One or more additional points for explaining why federal question jurisdiction under sec. 1331 and supplemental jurisdiction under sec. 1367 are inapplicable in this case.

Analysis

Diversity is the Only Possible Basis for SMJ

- Harold's only claim is based on the Susquehanna Unfair Trade Practices Act (SUTPA).
 - This is a state statute.
 - There is nothing in the facts to suggest that disposition of the claim would involve any issue of federal law, so the *Grable* test for Federal Question jurisdiction would not apply.
 - Supplemental jurisdiction does not apply where the plaintiff asserts only a single claim against a single defendant.

Citizenship

- Harold is a citizen of California
 - He's lived there for 25 years and has only returned to Susquehanna twice in the past ten years
 - On these facts, it is evident that Harold does not have any intent to remain in Susquehanna and that he has established domicile in California long before this case arose.
- Whispering Glades is a citizen of Susquehanna
 - Incorporated there
 - Sole place of business there
- Since Harold & Whispering Glades are citizens of different states, the first requirement for diversity jurisdiction is satisfied.

Amount in Controversy

- Harold's actual monetary loss is \$500, i.e. the annual fees he paid for ground cover maintenance over the past five years, during which Whispering Glades did not maintain the ivy.
 - The \$5000 he initially paid for the burial plots doesn't count, because his claim only pertains to the annual maintenance, not to the burial plots themselves.

- SUTPA permits the court to award up to three times the plaintiff's actual damages, so Harold could recover \$1500 for his \$500 monetary loss.
- Harold also seeks damages for mental and emotional distress.
 - It is questionable whether recovery of such damages is allowed under SUTPA
 - The statute permits suits by someone who "suffers any loss of money or property as a result of an unfair or deceptive act or practice" to "recover actual damages or one hundred dollars (\$100), whichever is greater".
 - This suggests that the "actual damages" recoverable under the statute are limited to "loss of money or property" and do not include non-economic harms such as mental or emotional distress.
 - Assuming that's correct, then under the "legal certainty" test, Harold could not rely on damages for mental or emotional distress to reach the statutory amount in controversy.
 - Even if damages for mental or emotional distress are allowed under the statute, the complaint doesn't really allege sufficient facts to show that Harold suffered such distress as a result of Whispering Glades' actions.
 - The court could take this into account in analyzing whether such damages could count toward the amount in controversy requirement under sec. 1332, i.e. if the claim for emotional distress is legally insufficient, then it is not legally possible for Harold to recover such damages.
- Harold also seeks recovery of attorney's fees
 - SUTPA does permit the court to award a successful plaintiff reasonable attorney's fees in addition to any damages.
 - Assuming that SUTPA does not permit recovery of damages for mental or emotional distress, and assuming the court awards Harold \$1500 in damages (i.e. three times his actual monetary loss), the attorney's fees would have to exceed \$73,500 to bring the amount in controversy over the \$75,000 threshold.
 - The court would likely treat as unduly speculative a claim for attorney's fees that is nearly 50 times as much as the maximum possible damage award. Cf. Annie's Pooch Pops.

Conclusion

The complete diversity requirement for SMJ under sec. 1332 is satisfied here. But the amount in controversy requirement is most likely not satisfied, unless it would be legally possible for Harold to recover more than \$73,500 in damages for mental or emotional distress and/or attorney's fees. Assuming Harold cannot satisfy that requirement, the court lacks SMJ.

Potential Additional Points

- Explaining the significance and constitutional foundations of SMJ.
- Discussing the rationale behind diversity jurisdiction.
- Explaining that complete diversity is required under sec. 1332 but minimal diversity is enough to satisfy the Constitution, Art. III, sec. 2. .
- Explaining why neither federal question jurisdiction (sec. 1332) nor supplemental jurisdiction (sec. 1367) applies in this case.

Question 2

Issue

- Choice of Law

Rule

- In diversity cases, federal courts must apply state law as the “rules of decision”, i.e. the rules governing substantive issues. But federal courts follow federal law on procedural matters.
- There are two approaches to resolving state v. federal choice of law questions in diversity cases
 - The REA/Hanna analysis applies where the FRCP is the source of the federal rule in question
 - The Erie analysis applies where federal common law or judicial custom is the source of the federal rule in question.

Erie

- The RDA’s requirement that federal courts in diversity cases follow state law applies only to substantive rules, i.e. rules that define the rights, duties, and liabilities of the parties. But for rules of procedure, federal courts follow federal law.
- To distinguish between substantive and procedural rules, courts consider whether the difference between the state and federal rules would yield different outcomes, whether the application of federal rather than state rules would implicate the twin concerns of Erie, and whether there is any countervailing federal interest in following federal rather than state rules.
 - The outcome determinative test asks whether applying the federal rule rather than the state rule would yield a different outcome. If so, the federal court should follow the state rule.
 - Courts apply the outcome determinative test in light of the twin concerns of Erie: (1) discouraging forum shopping, and (2) avoiding the inequitable administration of law.
 - The problem that the *Erie* doctrine seeks to avoid is the inequity that would result from getting different outcomes in otherwise similar cases based on whether they are brought in state or federal court.
 - Because of the limits on diversity jurisdiction, not all parties are able to choose a federal forum in cases where the rights & duties at issue are established by state (substantive) law.
 - This type of forum shopping produces inequitable administration of law, i.e. inconsistent enforcement of rights and duties created under state law.
 - See *Guaranty Trust v. York* (holding federal court must apply statute of limitations under state law, not equitable doctrine of laches, where the suit would be dismissed under the former but not the latter)
 - See *Ragan v. Merchants Transfer* (holding federal court must follow state law requiring both filing of complaint and service of summons before statute of limitations runs out, rather than federal law)
 - Courts may also balance the policy interests behind the state and federal rules.

- Where there is a significant federal policy interest at stake, the federal court may follow the federal rather than state rule, especially when doing so won't undermine an important state policy interest.
- See *Byrd v. Blue Ridge* (holding federal court should follow federal practice of having the jury decide question of employee status, rather than the judge as in state court, where doing so advances the policy enshrined in the 7th Amendment and would not upset policy interests underlying the state's workers' compensation law).
 - Following the federal rather than state practice here isn't sure to produce different outcomes, where the jury and judge will both be applying the same (substantive) state law standard for employee and employer status under the workers' comp law.

REA/Hanna

- If the federal rule in question comes from the FRCP, and if there is a true conflict between the federal and state rules, the federal court will follow the federal rule, even if it has some incidental effect on the outcome, as long as it is valid under the REA.
- A true conflict exists where the federal and state rules have inconsistent provisions (i.e. it's not possible to follow both) or where the state rule imposes more stringent requirements. See, e.g. *Hanna* (state rule required personal service on the defendant; federal rule allowed both personal service on the defendant and service on any competent adult at the defendant's home or place of business)
- To be valid, rules must be adopted in accordance with the REA's process and must "not abridge, enlarge or modify any substantive right".
 - The outcome determinative/forum shopping/inequitable administration test under *Erie* does not apply to rules adopted under the REA.
 - Instead, the test under *Hanna* is "whether a rule really regulates procedure". If so, it is valid under the REA, even if it also has some incidental effect on outcomes.

Analysis

- This question raises a conflict between provisions of the FRCP and state law, so the *Hanna* analysis applies.
- There is a true conflict between the federal and state rules.
 - State law imposes an extra requirement on plaintiffs at the pleadings stage. Even though including the certification might be *permitted* under FRCP Rule 8(a), it is a more onerous requirement. Cf. *Hanna* (where manner of service required under state law is permitted but not required under FRCP, which also permits service by other means, the rules are in conflict)
 - State law and FRCP Rule 35 have different requirements for how and when a plaintiff must produce evidence to substantiate claims.
- FRCP Rules 8 and 35 are valid under the REA.
 - They were presumably adopted under the statutory process.
 - They really regulate procedure.

- Rule 8(a) governs the manner in which a plaintiff presents claims in a complaint, but does not alter any substantive rights.
- Rule 35 governs the manner and timing of physical and mental examinations and production of the examining practitioner's report, but does not alter the substantive standard of proof for claims of mental/emotional distress.

Potential Additional Points

- Analyzing the question under the *Erie* approach (instead of or in addition to *Hanna*)

Question 3: Dismissal for Failure to State a Claim

Issue: Sufficiency of the Complaint

Rule

- FRCP 8(a)(2)
 - Short and plain statement showing entitlement to relief
- FRCP 12(b)(6)
 - Insufficient allegations to establish elements, or
 - No such claim is recognized under any facts
- Twombly/Iqbal
 - Interpretation of “showing an entitlement to relief” under Rule 8(a)(2) & standard for dismissal under Rule 12(b)(6)
 - 3 step analysis
 - Distinguish factual allegations from legal conclusions in complaint
 - Legal conclusions merely recite the elements themselves
 - Assume factual allegations are true
 - Factual allegations must plausibly state a claim
 - Plausibility
 - Facts must be more than merely consistent with liability
 - They must be sufficient that a jury verdict based solely on the alleged facts (assuming they are supported by evidence) would be legally proper
 - Court assesses plausibility of the claim in light of any alternative interpretation/explanation of the alleged facts under which defendant would not be liable.
 - Court may rely on common sense and experience in making the plausibility determination
 - Inferences
 - Additional facts not expressly alleged but suggested by the factual allegations, i.e. “if these things alleged in the complaint did happen, this other thing must also have happened”
 - Plausibility standard applies to such inferences, as well as to the ultimate inference of liability

- Examples
 - Twombly: Plaintiffs alleged that defendants charged the same prices for the same services, and refrained from competing in locations already served by competitors. They also alleged that defendants did so pursuant to an agreement to limit competition.
 - Antitrust liability requires an agreement among competitors to restrain trade
 - Parallel conduct by competitors is not illegal, unless it results from such an agreement
 - Allegation of an agreement was conclusory, and factual allegations of parallel conduct were insufficient (under established antitrust law) to support a plausible inference that it was pursuant to an illegal agreement
 - Alleged facts could just as easily result from market competition without any agreement
 - Iqbal: Plaintiffs who were detained in the aftermath of the 9/11 attacks sued Attorney General and FBI Director for religious and national origin discrimination
 - Complaint alleged that plaintiffs were detained and subject to mistreatment because of their religion and national origin, pursuant to policy directives by the AG & FBI Director.
 - Under the applicable law, these high-level federal officials could only be liable for their own intentional discrimination.
 - No vicarious liability for conduct of subordinates
 - No liability based on disparate impact, absent showing of intent to discriminate
 - Allegations about the use of a religious/national origin profile to select plaintiffs for detention, and their treatment while in detention, were insufficient to plausibly support an inference that the AG & FBI Director adopted or implemented the detention policy with the intent to discriminate on the basis of religion or national origin
 - Alternative inference—that profile was used based on information about the 9/11 suspects, to identify others likely to have been involved or have information, and not out of discriminatory animus—was at least equally plausible

Analysis

- Elements of claim & allegations in complaint
 - Seller advertised goods or services
 - Allegation in ¶ 12 that Whispering Glades advertised the Eternal Rest Assured Plan may be conclusory on its own.
 - But ¶ 7 alleges facts about the plan and Harold's purchase of it. These factual allegations are probably enough to support a plausible inference that Whispering Glades provided some description of the plan before Harold's purchase, which would count as an advertisement under the statute as interpreted by the Susquehanna Supreme Court.
 - With intent not to sell them as advertised
 - Allegation in ¶ 12 that Whispering Glades did not intend to sell the services as advertised is conclusory. Cf. Iqbal.
 - Under the governing law, the defendant must have intended, *at the time they advertised the goods or services*, not to sell them as advertised.
 - ¶¶ 13 & 14 allege facts about Whispering Glades' ultimate failure to maintain the ivy. But this isn't enough to support a plausible inference that they never intended to do so.

- The fact that they maintained the ivy for the first five years supports the alternative inference that Whispering Glades originally intended to provide the service as advertised, but later changed its mind. Cf. *Twombly* (allegations of parallel conduct insufficient to support plausible inference of illegal agreement where alternative innocent explanation was at least equally plausible)
- The statement by Mr. Thanatogenos (that Whispering Glades removed the ivy because “it’s gone out of fashion and it’s a real nuisance to maintain”) is also inconsistent with the inference that Whispering Glades never intended to maintain the ivy as advertised and further supports the alternative inference that they only formed that intent five years later. This isn’t included in the complaint, perhaps because Harold’s lawyer knew it would hurt rather than help the claim.
- Seller did not provide goods or services as advertised
 - ¶¶ 9 & 10 allege facts sufficient to show that Whispering Glades ultimately did not provide the services as advertised.
 - But, as noted above, these factual allegations are insufficient to satisfy the intent element.
- Plaintiff lost money or property as a result
 - ¶¶ 7, 8, & 13 allege facts to show that Harold paid for the services that Whispering Glades failed to provide. This is sufficient to satisfy the monetary loss element.

Conclusion

- Assuming the allegations in the complaint are sufficient to satisfy the 1st, 3rd, and 4th elements, they are still not sufficient to satisfy the 2nd element. So the complaint should be dismissed for failure to state a claim.

Potential Additional Points

- Analyzing the claim for mental/emotional distress damages under the *Twombly*/*Iqbal* standard (i.e. the complaint lacks sufficient facts to plausibly show that Harold suffered emotional distress as a result of Whispering Glades’ failure to maintain the ivy)