

Fact Pattern:

Dr. Muerte, a citizen of California, is a board-certified plastic surgeon. Muerte has practiced medicine in Los Angeles, California, for twenty years. He is licensed to practice in California and Nevada. Dr. Muerte specializes in breast augmentations and is regularly featured on the television shows, Entertainment Tonight! and Extra. Dr. Muerte maintains a listing in the Yellow Pages of the Los Angeles phonebook. He also has a web site which describes his educational qualifications and the nature of his specialty. The web site includes testimonials from former patients and also includes a phone number, a facsimile number and a general e-mail address.

Dr. Muerte's records show that he has operated on several hundred patients from Arizona during his twenty years of practice. These patients were referred to him by doctors practicing in Arizona, or the patients themselves had scheduled the appointments.

Samantha Star, an aspiring actress who resided in Phoenix, Arizona, wanted a breast augmentation and went to see her primary care physician, Dr. Dogood in Phoenix. Dr. Dogood referred Samantha to Dr. Muerte. In fact, Dr. Dogood's office assistant called Dr. Muerte's office and made an appointment for Samantha with Dr. Muerte. Prior to the day set for the appointment, however, Samantha called Dr. Muerte's office and rescheduled his appointment for another day.

Samantha drove to Los Angeles from Phoenix and ate nothing but fast food on the drive. When she was initially examined by Dr. Muerte, Samantha complained of stomach pains and cramps. Dr. Muerte concluded that Samantha's condition was heartburn caused by a "reflux" condition in her esophagus and that he could not perform any plastic surgery for at least 3 months. Dr. Muerte wrote a prescription for Tagamet and Samantha returned to Phoenix.

Back home in Phoenix, Samantha filled her Tagamet prescription, took the recommended dosage and two months later experienced a massive heart attack and died.

Samantha's next of kin, Sally Star, filed a malpractice action against Dr. Muerte in the Arizona Federal District Court claiming \$5,000,000.00 in compensatory damages. Dr. Muerte's attorney has responded to the complaint with a motion to dismiss.

Questions:

How should the judge rule? Explain.

Example Answer:

Personal Jurisdiction

In evaluating such a problem, we must see if there is appropriate personal jurisdiction over the defendant, Dr. Muerte. **Personal Jurisdiction** refers to a court's power to bring parties before it and bind them to its judgment. There are three primary types of personal jurisdiction: (1) in personam (power of court over Defendant); (2) in rem (power of court over a thing); (3) quasi in rem (power of court to attach or garnish property to gain jurisdiction over Defendant).

If jurisdiction in the case is in personam or quasi in rem, the court may not exercise that jurisdiction unless Dr. Muerte has "minimum contacts" with the state and the suit does not offend traditional notions of fair play and substantial justice. Succinctly, the requirement of minimum contacts means that Dr. Muerte has to have taken actions that were purposefully directed towards the forum state.

Plaintiff is likely to argue that Dr. Muerte's web site is directed toward the entire world and that Dr. Muerte is actively soliciting clients from other states. Dr. Muerte is likely to counter that it is not foreseeable that he would have clients from other states and that his website is directed toward residents of California only.

There are three primary bases for personal jurisdiction: (1) consent; (2) presence; (3) long-arm statutes. As an individual, Dr. Muerte never expressly nor implying consented to suit in Arizona's Federal Court. Defendant is domiciled in California because it is assumed that he resides there and has all intentions of remaining there indefinitely. Additionally, it does not appear that Defendant was present and served in Arizona because otherwise we would stop the analysis here and say that the court has a per jurisdiction over defendant.

Subject Matter Jurisdiction

It is said that Sally resided in Arizona. If we assume that she resided there with all intentions of remaining indefinitely, we would say that Sally is domiciled in Arizona. If these above points are true, then plaintiff does have a diversity action which she properly brought to federal court under its subject matter jurisdiction because the claim asserts damages exceeding the required \$75,000.00 minimum. If it were found that Sally was really domiciled in the same state as the defendant, the case would have to be dismissed for lack of subject matter jurisdiction. The court then would not have the competence to hear plaintiffs claim even if she said that she was an adverse party because the domicile of the person that the agent represents is what counts.

Assuming that there is proper diversity and that defendant does not fall under any categories that would automatically give the court per jurisdiction, we must evaluate these circumstances under an applicable long arm statute. No mention of one was made, so we shall assume that it meets the boundaries of due process of the Fourteenth Amendment. We still must proceed with the analysis to see if there are minimum contacts to pull defendant under the Arizona Federal Court's jurisdiction.

The facts indicate that Dr. Muerte's records indicate that he has treated several hundred patients from Arizona over 20 years of practice, but he may have treated thousands over those years. If defendant's main business connection were with Arizona it might be questionable as to whether he has systematic and continuous contacts with that state so that he has general jurisdiction there. Chances are he does not because his practice is so expansive that it is likely that Arizona comprises only a small portion of his practice. Also, general jurisdiction is usually applied with corporations, not with individuals.

Defendant's practice only extends to California. Defendant may advertise elsewhere via the worldwide web which anyone in the world could access, but the likelihood is that he is attempting to reach those future patients residing in the state of his practice.

The plaintiff will argue that displaying such advertisement across the US, especially when he is a specialist to persons in need would be willing to travel for a visit, that defendant has purposefully awaited himself of the benefits and protections of the states within which he has contacts. And, it was, therefore, foreseeable that he would be dragged into court in Arizona where a former patient resided and received "tortuous injury" from his Arizona contact with the defendant.

Now we must look at the interests of all, because the court may somehow find that defendant had minimum contacts with Arizona. Defendant would be greatly inconvenienced if he were forced to leave his mainstay in California to defend an action in Arizona. He likely has the money to support such a venture, but it would keep him from his practice in California.

In balancing defendant's inconvenience with other factors, it is obvious that plaintiff would not be inconvenience to prosecute elsewhere because it is her duty as plaintiff to fully and fairly have her claim litigated, no matter where the location. Her interest is just adjudication, so as next to kin, she has obligations to adjudicate the issue where justice will prevail. The forum in Arizona has no special interest in adjudicating this matter because it rests on an issue that mainly deals with California connections. Yes, a forum wants to protect its citizens and yes, its citizen died in its state, but is citizens sought out another citizen of another state to do business there.