

### Fact Pattern:

Steven Speedy is the sole proprietor of Speedy's delivery. Speedy resides in Johnson County, Iowa. Speedy's delivery guarantees 24-hour delivery throughout the state of Iowa. One of Speedy's full-time employees is Flash. Flash resides in Linn County, Iowa. One day in the thick of winter, Flash had only 30 minutes left to make a delivery in Linn County, Iowa. Rebecca was driving in front of Flash when she lost control of her car and spun around completely and collided with Flash. Rebecca is a resident of Polk County, Iowa.

Flash injured his right arm in the crash and was furious with Rebecca because he did not want to be late for his delivery. Unfortunately for Flash, one of the tires on his delivery vehicle had gone flat as a result of the accident and he did not have a spare. Fortuitously, he noticed that Rebecca's vehicle had a spare. Flash rushed to Rebecca's vehicle and proceeded to take the spare. Rebecca got out of her vehicle and approached Flash asking him what the heck he thought he was doing. Flash responded, "look, you broke my arm and I'm late for a delivery." As he rushed by Rebecca, he pushed her down causing injuries to her head.

Subsequently, Flash filed a negligence action against Rebecca in the Iowa state court for Linn County. Flash's only cause of action was for negligence for the injuries he suffered in the accident. Judgment was entered in Flash's favor and Rebecca did not appeal. Instead, Rebecca filed a separate action against Flash and Speedy in the Iowa state court for Polk County. Rebecca's Complaint against Flash and Speedy contained the following causes of action: (1) negligence for injuries she sustained as a result of being thrown down to the ground; (2) conversion for the theft of her spare tire. Rebecca alleged that Speedy was vicariously liable for both the personal injury and the conversion under a theory of respondeat superior.

### Questions:

Your law firm represents Speedy. What substantive and procedural defenses should Speedy raise in defending Rebecca's claims against him? (Assume that the State of Iowa has adopted the Federal Rules of Civil Procedure without deviation)

### Example Answer:

#### **Venue**

Venue refers to where a case may be tried. Under the federal rules of civil procedure, venue is proper where either: (1) any Defendant resides, so long as all Defendants reside in the same state; (2) a substantial part of cause of action arose.

Here, Defendant Speedy is a resident of Johnson County. Plaintiff Rebecca is a resident of Polk County. Because Defendant Speedy lives in Johnson County, venue is improper in Polk County where Plaintiff brought suit. Nonetheless, generally courts will not dismiss a case for improper venue. Speedy may object successfully based on improper venue and move to transfer the case to Johnson County.

#### **Compulsory Counterclaim**

A defendant must assert any claim against an opposing party at the time of filing a responsive pleading that arises out of the same transaction or occurrence.

A permissive counterclaim is a claim that the defendant has against the plaintiff that does not derive from the same transaction or occurrence. The defendant has the option of asserting the claim as a counterclaim or waiting to file a separate action later.

A compulsory counterclaim derives from the same transaction or occurrence as plaintiff's claim. If compulsory, the defendant must file the counterclaim to the plaintiff's action or the claim will be barred. If a counterclaim is compulsory, the defendant must join additional necessary parties if relief cannot be accorded among those already subject to the suit.

Here, Flash's earlier action against Rebecca was for negligence related to the auto accident. Rebecca's current claims against Speedy and Flash are for her injuries she sustained when she was thrown to the ground and for the theft of her time, both of which occurred separately from the auto accident. Because neither claim is related to negligence in the auto accident, Rebecca was not required to make a compulsory counterclaim in her response to Flash's original action. Thus, Rebecca's claims are permissive and it is proper for Rebecca to bring those actions now.