Chapter 2
Courts and Jurisdiction

Answers to Critical Legal Thinking Cases

2.1 Personal Jurisdiction

No, defendants Live Siri Art, Inc. and Siri Galliano are not subject to lawsuit in New York pursuant to New York's long-arm statute. This is because defendant Live Siri Art, Inc, a California corporation, and defendant Siri Galliano, a California resident, did not have the requisite minimum contacts with the state of New York to make them subject to a lawsuit brought by plaintiff Richtone Design Group LLC (Richtone), a New York LLC, in a New York court pursuant to the New York long-arm statute. Assuming that the defendants did violate the plaintiff's copyright by selling Richtone's pilates manuals in New York using a website and made $1,000 in more than a decade doing so, this is but de minimis contact that does not arise to the minimum contact required by due process to subject them to a lawsuit in New York. The U.S. district court dismissed plaintiff Richtone's New York lawsuit against the California defendants for lack of personal jurisdiction. *Richtone Design Group, LLC v. Live Art, Inc.*, 2013 U.S. Dist. Lexis 157781 (United States District Court for the Southern District of New York, 2013)

2.2 Service of Process

Yes, May Facebook, Inc. may use alternative service of process by sending email notices to the defendants' websites. Facebook sued the defendants for trademark infringement, cybersquatting,

and false designation of origin by their use of typosquatting schemes whereby the defendants register internet domain names that are confusingly similar to facebook.com (e.g., facebock.com) so that potential users of Facebook's website who enter a typographical error are diverted to the typesquatter's website, which is designed to look strikingly similar in appearance to Facebook's website, to trick users into thinking that they are using Facebook's website. Facebook has introduced evidence that it has not been able to serve the defendants personally, by mail, or by telephone. The U.S. district court granted Facebook's motion to be permitted to serve these defendants by sending an email notice to the defendants' websites. The U.S. district court stated "Here, service by email is reasonably calculated to provide actual notice." The U.S. district court issued an order permitting Facebook to serve the defendants by email. *Facebook, Inc. v. Banana Ads LLC.* 2012 U.S. Dist. Lexis 65834 (United States District Court for the Northern District of California, 2012)

2.3 Standing to Sue

Michigan law, and not Ohio law, applies in this case. The court noted that because the accident took place in Michigan, there is a presumption that Michigan law applies absent any other jurisdiction having more substantial contacts. Plaintiff Bertram, however, contended that Ohio law should apply, because all of the parties were residents of Ohio at the time of the accident and all consequences flowing from his injury occurred in Ohio. The court disagreed. The court stated, "Because the snowmobiling accident took place in Michigan, the place where the conduct causing Bertram's injury occurred in Michigan and Michigan has enacted specific legislation involving the risks of snowmobiling, we find that Michigan law clearly controls in this case. While all parties are residents of and have their relationships in the State of Ohio, we are not

persuaded by Bertram's argument that this issue should control." The Court of Appeals of Ohio held that the law of the state of Michigan, where the accident occurred, and not the law of the state of Ohio, the state of the residence of the parties, applied. The court applied the Michigan assumption of the risk statute and granted summary judgment to the three defendant friends of plaintiff Bertram. *Bertram v. Norden, et al.,* 823 N.E.2d 478, 2004 Ohio App. Lexis 550 (Court of Appeals of Ohio, 2004)

2.4 Long-Arm Statute

Yes, the Missouri court has personal jurisdiction over the Illinois casino based on Missouri's long-arm statute. Although the Casino Queen casino is located in Illinois, it could reasonably foresee its pervasive advertising directed at Missouri residents would entice those residents, such a Mark Myers, to cross the state line into Illinois to participate in gambling at the Illinois casino. If an Illinois defendant can reasonably foresee that his or her negligent actions have consequences felt in Missouri, personal jurisdiction is authorized under the Missouri long-arm statute. The U.S. court of appeals held that Casino Queen, which operated a casino in Illinois, is subject to personal jurisdiction in courts in Missouri under Missouri's long-arm statute. The court of appeals stated, "While Myers's injuries did not arise out of Casino Queen's advertising in a strict proximate cause sense, his injuries are nonetheless related to Casino Queen's advertising activities because he was injured after responding to the solicitation." The court of appeals ruled that Casino Queen must stand trial in a Missouri court and defend the charges brought against it by Myers. *Myers v. Casino Queen, Inc.,* 689 F.3d 904, (United States Court of Appeals for the Eighth Circuit, 2012)

2.5 Standing to Sue

No. The U.S. District Court held that Phoenix of Broward, Inc. (Phoenix), a franchisee of Burger King did not have standing to sue McDonald's and dismissed the case. In deciding the case the court noted that the goal of standing is to determine whether the plaintiff is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers. It was Simon Marketing, Inc. (Simon), who McDonald's hired to operate the promotional games, who committed fraud by steering cash prizes of up to $1 million to its conspirators. McDonald's may have been negligent in allowing this to happen. Thus, McDonald's customers who did not have a chance to win the cash prizes because of the fraud would have standing to sue Simon and McDonald's. However, the court held that Phoenix of Broward, Inc. (Phoenix), a franchisee of Burger King, did not have standing to sue McDonald's. The court stated, "In this case, the harm caused by McDonald's allegedly false advertisements more directly affects the customers who were denied the opportunity to compete for the high-value prizes criminally co-opted by Jacobson. While these customers do not have standing to sue under the Lanham Act, they could and did vindicate the public interest by suing McDonald's for fraud. Thus, there is no need to empower Phoenix to act as a private attorney general in this case." *Phoenix of Broward, Inc. v. McDonald's Corporation,* 441 F.Supp.2d 1241, 2006 U.S. Dist. Lexis 55112 (United States District Court for the Northern District of Georgia, 2006)

2.6 U.S. Supreme Court Decision

This is a plurality decision of the U.S. Supreme Court and does not create precedent for further cases. This is because although 5 justices upheld the Salinas's verdict of guilty, 3 did so for one reason and 2 did so for a different reason. If the 5 justices would have agreed to the verdict of

guilty based on the same reason as to why the evidence of the defendant's silence at the precustodical hearing could be admitted at trial, then it would have been a majority opinion, and a majority opinion would have become precedent. However, in this case, 5 justices upheld the guilty verdict, but 3 for one reason and 2 justices for another reason, with 4 justices dissenting, created a plurality decision that does not create precedent. *Salinas v. Texas,* 133 S.Ct. 2174, 2012 U.S. Lexis 4697 (Supreme Court of the United States, 2012)

Answers to Ethics Cases

2.7 Ethics Case

Yes, the Maryland court has personal jurisdiction over the Florida defendant Ladawn Banks. Chanel is engaged in the business of manufacturing and distributing throughout the world various luxury goods, including handbags, wallets, and numerous other products under the federally registered trademark "Chanel" and monogram marks. Chanel alleged that Banks owned and operated the fully interactive website www.lovenamebrands.com, through which she sold handbags and wallets bearing counterfeit trademarks identical to the registered Chanel marks. According to Chanel, although defendant Banks is a resident of Florida, she conducted business in Maryland via several interactive websites. The *Zippo* court distinction between interactive, semi-interactive, and passive websites is particularly relevant. Defendant's website at issue in this case was highly interactive and provided a platform for the commercial exchange of information, goods, and funds. Thus, the Maryland court, under its long-arm statute, has personal jurisdiction over the Florida defendant Banks in this matter. The court granted default judgment

to Chanel, assessed damages of $133,712 against Banks, and issued a permanent injunction prohibiting Banks from infringing on Chanel's trademarks.

Regarding the issue of ethics, if defendant Ladawn Banks operated the website www.lovenamebrands.com and sold knock-off handbags and wallets bearing counterfeit trademarks identical to the registered Chanel marks, she has acted unethically. Stealing another party's rightful trademarks and selling knock-off goods bearing those trademarks is not only unethical but it also constitutes illegal trademark infringement. *Chanel, Inc. v. Banks,* 2010 U.S. Dist. Lexis 135374 (United States District Court for Maryland, 2010)

2.8 Ethics Case

No, Hertz Corporation is not a citizen of California and therefore is not subject to plaintiff Melinda Friend's—a California citizen—suit in California state court. A corporation is a citizen of the state in which it is incorporated and in which it has its principal place of business. Hertz Corporation is incorporated in the state of Delaware and has its headquarters office in the state of New Jersey. Hertz is not incorporated in California nor does it have its principal place of business in California. The U.S. Supreme Court stated, "We conclude that the phrase 'principal place of business' refers to the place where the corporation's high level officers direct, control, and coordinate the corporation's activities. We believe that the 'nerve center' will typically be found at a corporation's headquarters. The metaphor of a corporate 'brain,' while not precise, suggests a single location." Here, that location for Hertz was Hertz's headquarters office in New Jersey. Because Hertz was not a citizen of California, and plaintiff Friend was a resident of California, there was diversity of citizenship and Hertz can legally have Friend's lawsuit moved from California state court to the U.S. district court in California.

It was probably not unethical for Hertz to deny citizenship in California even though it has

such a large presence in California with its 270 rental car locations and more than 2,000 employees in California. Finding diversity in this case does not mean that Friend cannot sue Hertz in California. Friend will get her day in court against Hertz, but it will be in a U.S. district court in California and not in a California state court. *Hertz Corporation v. Friend*, 130 S.Ct. 1181, 2010 U.S. Lexis 1897 (Supreme Court of the United States, 2010)