

Question MEE 6 – July 2021 – Selected Answer 1

1. Should the federal court grant the attorney's motion to dismiss the woman's defamation claim on the ground that the federal court lacks jurisdiction over that claim because it is based entirely on state law?

Federal courts are courts of limited jurisdiction. To hear a claim, a federal court must have subject matter jurisdiction. Subject matter jurisdiction consists of federal-question, diversity, supplemental, and removal jurisdiction. Federal question exists when the claim arises under the federal laws, treaties, or Constitution. To exercise supplemental jurisdiction, there must be (1) one claim with subject-matter jurisdiction, and (2) the second claim must arise out of the common nucleus of operative fact. A claim arises out of a common nucleus of operative fact if it arises out of the same transaction or occurrence as the other claim.

The woman has filed two claims: an Age Discrimination in Employment Act (ADEA) claim and a state law claim of defamation. As the attorney conceded, the court has federal question jurisdiction because the ADEA claim arises under federal law, the ADEA. The court may not exercise diversity jurisdiction because the man and woman are citizens of the same state. The court may exercise supplement jurisdiction over the defamation claim because it arises out of the same common nucleus of operative fact. In the ADEA claim, the court will have to determine whether the attorney fired the woman because she was, in fact, stealing from the firm and was neither honest or untrustworthy, or if she was fired because of her age. In making this determination, the court will be determining the truth of the statement about theft and, in effect, the court will be determining whether the defamation claim fails or survives (because truth is a defense to defamation). Thus, both claims arise out of the common nucleus of operative fact, and the court has supplemental jurisdiction over the state law claim. The court should deny the motion to dismiss.

Even if a court has subject matter jurisdiction, it may abstain from hearing a case when the claim implicates complex state law or regulatory scheme. This is rare.

The claim is defamation, and it does not involve complex state law or regulatory scheme. Thus, the court should not abstain.

2. Should the federal court grant the attorney's motion to dismiss the woman's defamation claim on the ground that the woman did not allege the "particular words constituting defamation" as required by state law?

The federal court generally applied the federal rules of civil procedure. Under the federal rules of civil procedure and accompanying case law, a party must sufficiently

plead a claim to put the other party on notice of the claim and facts supporting the claim and to support a finding that the claim is plausible rather than possible. Conclusory statements are insufficient. Pleading with particularity is required in federal courts only in cases of fraud or mistake. However, when a state court law differs, and the claim is a state law claim, the court must determine which law to apply. Generally, federal procedural law applies in federal court and state substantive law applies in federal court when there is a state law claim. Only if there is no federal law on point, must the court determine whether they should apply state law, if the issue is outcome determinative, or fashion their own rule.

In this case, there is a federal procedural rule on point. As noted above, federal procedural law requires only that a plaintiff plead with sufficiency. Thus, the federal court will apply federal law. When there is a federal law on point, the court's analysis need not proceed further, even when applying state law would be outcome determinative in this case.

A party may move for a motion to dismiss for failure to state a claim when the plaintiff has failed to plead sufficiently. In determining whether the plaintiff has sufficiently stated a claim, the court must engage in a two step analysis: first, strike any conclusory statements, and second, determine whether the remaining statements sufficiently plead a claim. A plaintiff has not sufficiently plead a claim only when the claim is not recognized by law or would not put the defendant on notice as to what plaintiff is claiming.

The facts as Plaintiff pleaded them are sufficient and plausibly state a claim. The woman stated that the attorney was, in effect, calling her a thief, named the parties to whom the man stated it to, and stated the dates as to when the man stated it. This pleads a claim that is recognized by law, defamation, and puts the defendant on notice of the claim and facts supporting it.

Thus the court should deny the attorney's motion to dismiss.

Question MEE 6 – July 2021 – Selected Answer 2

1. The issue is whether the state law claim arises out of a common nucleus of operative fact.

A federal district court has jurisdiction over claims arising out of federal law. A claim arises out of federal law if federal law provides the cause of action or if it the federal question is apparent from the well-pleaded complaint. A court has diversity jurisdiction when all of the plaintiffs and all of the defendants are domiciles of different states and the amount in controversy is over \$75,000. Further, a district court has supplemental jurisdiction over a state law claim when the court has proper

jurisdiction over a federal claim and the state law claim arises out of a common nucleus of operative facts. A common nucleus of operative facts means that the facts giving rise to both claims are sufficiently identical that proceeding with the cases together would promote the administration of justice, increase the efficiency of the judicial process, and avoid the risk of conflicting factual determinations.

Here, the federal claim is about age discrimination in violation of federal law. The claim ostensibly is based on the fact that she was fired under pretense, but in actuality for her age, and replaced by a younger employee. The defamatory statements concern the attorney's allegedly pretextual reasons for firing the paralegal. He justified her firing to coworkers as being for theft and dishonesty, and the defamation claim is based on those words.

The court does not have federal question or diversity jurisdiction over the defamation claim. The parties are domiciles of State A, and the claim is entirely based on state law and not federal law.

The court does have subject-matter jurisdiction under supplemental jurisdiction. The ADEA claim arises from a pretextual firing. The woman will allege that the justifications and thus the statements were false, and thus are both (1) evidence that the firing was discriminatory and in violation of federal law, and (2) defamatory and recoverable under state law. The two claims arise out of a common nucleus of operative fact. While the firing itself does not include evidence of his defamatory comments, the two claims will be based on the same facts. Thus, consolidating the litigation of the two claims will promote efficiency and avoid the risk that the state court comes to a conflicting result.

2. The issue is whether State A's pleading rules are substantive or procedural.

Federal courts sitting in diversity jurisdiction apply the substantive law of the state court in which they sit (including choice of law rules) and federal procedural law. Here, there is no diversity jurisdiction. Federal courts with federal question jurisdiction exercising jurisdiction over a state law claim will apply the substantive law of the state in which they sit with respect to the state law claim, and federal law with respect to the federal law claim. Federal procedural rules apply to these cases.

A rule is substantive if it affects the rights of the parties or is outcome determinative. Courts look to whether there would be an incentive to forum shop and whether it determines ex ante who wins the suit. First, courts decide whether there is a conflict, and if there is a conflict, whether the federal law is substantive or procedural. If it is procedural, then the state rule will apply.

Here, there is a conflict because the Federal Rules (rule 8) only require notice pleading--a short plain statement of the facts. And the heightened pleading standards in rule 8 are not applicable to defamation. The woman's complaint sufficiently alleges defamation under the federal rules, but not under state rules. Under the Rules Enabling Act, the Supreme Court (with the supervision of Congress) can pass rules to govern the procedure of the federal courts. If a rule is substantive, then it is likely not allowed under the REA. But if a rule is procedural, then it is permitted and governs.

Here, FRCP 8 is a procedural rule. The rule is not outcome determinative--the woman can just amend and specifically plead the statements. It does not affect the rights of the parties because the statements are either defamatory or not, and the pleading requirement does not change that. Further, there is no forum shopping incentive because a plaintiff can easily conform to either requirement. Thus, the pleading rules in conflict here are procedural, and the court should deny the attorney's motion.

Question MEE 6 – July 2021 – Selected Answer 3

(1) The federal court should not grant the attorney's motion to dismiss the woman's defamation claim on the ground that the federal court lacks jurisdiction over the claim because it is based entirely on state law.

Under the Federal Rules of Civil Procedure, a federal court has subject-matter jurisdiction over federal question claims when the federal question is pleaded on the face of the complaint, in accordance with the well-pleaded complaint rule. A plaintiff can join claims when the joinder of the claims does not violate the Federal Rules of Civil Procedure and if the court does not have subject-matter jurisdiction over the claim through either federal question or diversity, the claim can still be brought in when it arises from the same transaction or occurrence through supplemental jurisdiction and would not destroy diversity. In cases where a federal question is at issue, additional claims by a single plaintiff can be brought in so long as the federal question is well-pleaded on the face of the complaint and the additional claim can be brought in through supplemental jurisdiction arising from the same transaction or occurrence.

In this case, the federal court has subject-matter jurisdiction over the woman's federal question claim, the claim arising under the Federal Age Discrimination in Employment Act of 1967 (ADEA) because she pleads this complaint on its face and asserts the attorney fired her because of her age. The federal court also has jurisdiction over her claim even though it is based entirely under state law under supplemental

jurisdiction. In this case, the subject-matter jurisdiction in federal court arises from the federal question issue. For the court to have subject-matter over additional claims from the plaintiff, the additional claim would have to arise from the same transaction or occurrence, or have a common nucleus of fact. In this case, the defamation claim the woman alleges arose from the same transaction or occurrence because the claim still arises from the attorney firing the woman due to her age which is at issue in the case. The woman alleges that the attorney was criticizing her work and berating her, making derogatory comments about her and her work to others at the firm, and had nicknamed her grandma and told people that "it's time for a new generation to take its place here," which all goes to the issue that the attorney fired her due to her age and made derogatory remarks berating her. The defamatory remarks stem from the common nucleus of fact and same transaction or occurrence because they further show the attorney made defamatory remarks when he attempted to cover up his firing of the woman for her age, as he then told her coworkers she was fired because she had stolen valuable supplies from the firm and was neither honest or trustworthy. These remarks stem from the same transaction or occurrence, his age discrimination of the woman, and would best be heard in federal court because they arise from the same transaction or occurrence. Thus, the federal court has supplemental jurisdiction over them.

(2) The federal court should not grant the attorney's motion to dismiss the woman's defamation claim on the ground that the woman did not allege the particular words constituting defamation.

Under the Federal Rules of Civil Procedure, a complaint usually does not need to specify exact or particular words or facts so long as there are some facts plead that provide a basis for the claim. Sometimes, when a state claim is heard in federal court, the federal court will look to the state law, which in this case is State A's pleading rules require a plaintiff's defamation claim to "allege the time and place where the allegedly false statement was made, the persons to whom it was made, and the particular words constituting defamation." When a federal court and a state court are at issue, the courts will tend to apply the federal law for procedural issues and state law for substantive issues. In this case, the pleading rules are a procedural issue and because the case is being heard in federal court, the federal court will likely look to federal law to determine the pleading requirements. As stated prior, under the Federal Rules of Civil Procedure, a complaint usually does not need to specify exact or particular words or facts so long as there are some facts plead that provide a sufficient basis for the claim.

In this case, the court will apply Federal Rules of Civil Procedure because the courts tend to apply Federal Law for procedural issues and State Law for Substantive issues.

The issue of the complaint alleging sufficient facts or particular words constituting defamation is a procedural issue and thus will be governed by federal law. The woman has plead in the complaint that the attorney made such comments to others "to the effect that the woman was dishonest and a thief," and that such comments were false and defamatory. Further, the woman's allegations include the approximate dates of the comments and the identity of the persons to whom they were made. Even though the complaint does not recite the exact allegedly defamatory language used by the woman, it does not need to because the issue is governed by the Federal Rules of Civil Procedure and the complaint has plead sufficient facts. Further, the plaintiff would be able to amend her complaint under the Federal Rules of Civil Procedure to add more specific facts if needed because the defendant has not answered yet but has only made a motion to dismiss the defamation claim. Because he has not answered, the woman would be allowed 14 days to amend her complaint or could order the court if justice so entailed, which it would for a speedy trial, to allow her to amend her complaint rather than dismissing it.