

Jurisdiction, Venue, and Choice of Law Assessment Exercises

I. The owner of a rare antique tapestry worth more than \$1 million is a citizen of State A. The owner contacted a restorer, a citizen of State B, to restore the tapestry for \$100,000. The owner and the restorer met in State A and negotiated a contract, but the final documents, prepared by the parties' respective attorneys, were drafted and signed in State B. The contract has a forum-selection clause that specifies that any litigation arising out of or relating to the contract must be pursued in State B.

The restorer repaired the tapestry in State B and then informed the owner that the restoration was complete. The owner picked up the tapestry and paid the restorer \$100,000. Subsequently, the owner discovered that the restorer had done hardly any work on the tapestry.

Despite the forum-selection clause in the contract, the owner filed suit against the restorer in a state court in State A, claiming breach of contract. The owner's suit sought rescission of the contract and a return of the full contract price—\$100,000.

The laws of State A and State B are different on two relevant points. First, State A courts do not enforce forum-selection clauses that would oust the jurisdiction of State A courts, regarding such clauses as against public policy; State B courts always enforce forum-selection clauses. Second, State A would allow contract rescission on these facts; State B would not allow rescission but would allow recovery of damages.

Under the conflict-of-laws rules of both State A and State B, a state court would apply its own law to resolve both the forum-selection clause issue and the rescission issue.

After the owner filed suit in State A court, the restorer removed the case to the United States District Court for the District of State A and then moved for a change of venue to the United States District Court for the District of State B, citing the contractual forum-selection clause in support of the motion. (There is only one United States District Court in each state.) The owner moved for remand on the ground that the federal court did not have removal jurisdiction over the action. Alternatively, the owner argued against the motion to transfer on the basis that the forum-selection clause was invalid under State A law.

- 1. Does the federal court in State A have removal jurisdiction over the case? Explain.**
- 2. Should the change-of-venue motion, seeking transfer of the case to the federal court in State B, be granted? Explain.**
- 3. Would a change of venue affect the law to be applied in resolving the rescission issue? Explain.**

II. MedForms Inc. processes claims for medical insurers. Last year, MedForms contracted with a data entry company (“the company”) to enter information from claims into MedForms’s database. MedForms hired a woman to manage the contract with the company from one of its smaller offices in State A, which manages accounts representing only 10% of MedForms’ total clients and revenue.

A few months after entering into the contract with the company, MedForms began receiving complaints from insurers regarding data-entry errors. On behalf of MedForms, the woman conducted a limited audit of the company’s work and discovered that its employees had been making errors in transferring data from insurance claims forms to the MedForms database.

The woman immediately reported her findings to her MedForms supervisor and told him that fixing the problems caused by the company’s errors would require a review of millions of forms, costing millions of dollars. In response to her report, the supervisor said, “I knew we never should have hired a woman to oversee this contract,” and he fired her on the spot.

The woman properly initiated suit against MedForms in the United States District Court for the District of State A. She had MedForms served with process by hiring an adult process server who personally delivered a copy of the summons and complaint to the company’s chief executive officer at its headquarters. Her complaint alleged that she had been subjected to repeated sexual harassment by her supervisor throughout her employment at MedForms and that he had fired her because of his bias against women. Her complaint sought \$50,000 in damages from MedForms for sexual harassment and sex discrimination in violation of federal civil rights law and \$50,000 under state tort law.

MedForms is incorporated in State B, where it also has its headquarters and most of its document processing facilities. The woman is a citizen of State A. The company’s document processing facility is located in State C, and its headquarters are located in State D, where it is incorporated.

State A and State B each authorize service of process on corporations only by personal delivery of a summons and complaint by the local sheriff, not by a private process server.

MedForms has moved to dismiss the woman’s complaint for (a) insufficient service of process, (b) lack of subject-matter jurisdiction, and (c) improper venue.

How should the District Court rule on each of the grounds asserted in the company’s motion to dismiss? Explain.