EMPIRE COLLEGE OF LAW

CIVIL PROCEDURE MIDTERM EXAM

FALL 2025

PROFESSOR MARTIN SEEGER

Instructions:

Answer two (2) Essay Questions.

Answer fifteen (15) Multi Choice Questions in Examplify. To select the answer you believe is correct, click on that answer. Use the 'Next' and ‘Previous' buttons to navigate between questions. Read each question carefully and choose the best answer. Review your answers for accuracy before you finish.

Time Allotted: Three (3) Hours.

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# QUESTION ONE

Peter is a citizen of California who was visiting his brother in Seattle, Washington. On his way home, his old car died and he literally rolled into Dan's Use Car lot in Salem, Oregon. Peter told Dan that he needed a car to get home and was sold an old Jeep. Unfortunately, the Jeep burst into flames in the mountains just north of the California border and burned Peter. When he recovered, Peter sued Dan for personal injuries in the U.S. District Court in San Francisco. Dan challenged the personal jurisdiction of the court in a Rule 12 motion.

Assume the case remains in the U.S. District Court. Peter added, as a defendant, Jeep USA, a US importer of jeeps all over the country, alleging a violation of the Federal Automobile Safety Act. Jeep USA is incorporated in New Jersey and has a large assembly plant in Los Angeles. Jeep USA filed its own Rule 12 motion challenging venue.

Peter adds, as a second cause of action, a claim for recovery of his $5,000 payment for the jeep. Dan files a second Rule 12 motion to challenge the court's jurisdiction over that claim.

Dan seeks to discover Peter's prior work history, thinking that there may be evidence that he had pre-existing injuries. Peter is not, however, seeking recovery of lost wages and objects to providing this information. The federal court would not allow this discovery, under these circumstances, but the state discovery statues would.

## ANSWER FULLY THE FOLLOWING QUESTIONS

1. How should the Court rule on Dan's Rule 12 motion to challenge personal jurisdiction?
2. How should the Court rule on Jeep USA's Rule 12 motion challenging venue?
3. How should the Court rule on Dan's second Rule 12 motion challenging the jurisdiction of the Court over the refund claim?
4. How should the Court rule on Dan's request for information about Peter's work history, as it relates to the application of the Erie doctrine?

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# QUESTION TWO

Paula is an independent saleswoman for a number of pharmaceutical companies in the western United States. She had a one-year contract with “Don’t Forget to Take It” drug company that manufactured pills used by many athletes for performance enhancement. Paula lived in Washington State but traveled up and down the west coast on business. Don’t Forget to Take It is a California corporation with its sole large manufacturing plant and shipping facility in Los Angeles. The corporate President Dan has houses in Washington State, as well as in California and Hawaii. He does much of his work over the internet and phone.

Paula is fired by Dan and his corporation allegedly due to slow sales. Paula believes that she had a one-year contract and Dan claims she is an “at will” employee and could be fired at any time. Paula files suit in the United States District Court located in Seattle, Washington seeking damages for breach of contract. She includes in her complaint the claim that Dan had improperly withheld commissions from her and a third claim that he slandered her to another drug company about six months before she was fired. The breach of contract claim was worth over $100,000. The wrongful withholding of commissions claim was worth $25,000 and the slander claim had a very low value since she didn’t work for the other company.

After service of the Complaint, Dan and his company filed a Motion under Rule 12 claiming that the USDC did not have jurisdiction over the claims of Paula. Dan and his company included in the Rule 12 motion a claim that the venue was wrong and, in the alternative, that all of the witnesses were in southern California and the matter should be moved there. After these motions were denied, Dan and Don’t Forget to Take It filed an Answer to the Complaint and asserted as affirmative defenses a claim that the court lacked personal jurisdiction over them. Paula challenged this affirmative defense by filing her own Rule 12 motion.

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## ANSWER FULLY THE FOLLOWING QUESTIONS

1. How should the United States District Court rule on the question of jurisdiction raised by Dan and Don't Forget to Take It?
2. How should the Court rule on the venue issues raised by defendants?
3. How should the Court rule on the Rule 12 motion filed by Paula challenging the affirmative defense raised by Dan and Don't Forget to Take It?
4. How should the Court rule on the Rule 12 motion filed by Paula challenging the affirmative defense raised by Dan and his company?

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1)

**How should the Court rule on Dan's Rule 12 motion to challenge personal jurisdiction?**

**Applicable Rules**

Personal jurisdiction ("PJ"): is the court's ability to exercise judicial power over the defendant's person or property. It is first limited by state long-arm statutes, and second by the Due Process Clause. The constitutional provision was established in *Pennoyer v. Neff*, which limited a court's PJ to the defendants (or their property) that were physically located in the forum state. *International Shoe* modified this rule, requiring sufficient minimum contacts in the forum state so the lawsuit does not offend "traditional notions of fair play and substantial justice."

General Jurisdiction ("general jx"): Allows a court to hear any claim, even if it is unrelated to the defendant's in-state activities. It requires that the contacts that are so "continuous and systematic" *(International Shoe)* that the defendant essentially is "at home there." In individuals, "at home" means their domicile (the permanent place the person intends to reside); while for corporations, it is their state of incorporation or their principal place of business ("nerve center"). This creates *in personam* over the defendants.

Specific Jurisdiction (specific jx"): Applies when a lawsuit arises out of or relates to, the defendant's purposeful contacts within the forum state (*International Shoe*). The *International Shoe* test requires: (1) the defendant's purposeful availment of the protections and benefits of the forum state (*Hansen v. Denckla*). Unilateral acts by the plaintiff or third-party alone is not sufficient for jurisdiction (*World Wide Volkswagon Corp*); (2) the claim must arise out of or related to the defendant's contacts; and (3) jurisdiction must be reasonable as to not offend traditional notions of fair play and substantial justice.

Long-arm statutes: A state long-arm statute allows a court to exercise PJ over out-of-state defendants.

Rule 12(b) Motion: Rule 12(b) is the way in which a defendant may request a dismissal if any of the following are met: (1) lack of subject matter jurisdiction (SMJ), (2) lack of PJ, (3) improper venue, (4)insufficient process, (5) insufficient service of process, (5) failure to state a claim in which damages may be received or requested, and (6) failure to join an indispensable party as outlined in Rule 19.

**Analysis**

Here, Dan is challenging the PJ of the court to hear the case in California. The facts are silent as to whether Dan's domicile is Oregon, but it can be assumed that since he own's the used car lot in Salem, that his domicile is also in Salem, Oregon. Since Dan is not domiciled in California due to him not intending to reside and live in California, the court would have to determine if his contacts are so sufficient and systematic that he is considered to be domiciled there. Under *International Shoe*, Dan must have sufficient minimum contacts in order for the court to have PJ over Dan. Dan likely does not have sufficient minimum contacts because he is not domiciled nor is his business incorporated/principal place of business located in California. Since Dan challenged the court with a 12(b) motion with a lack of PJ, for the reasons stated above and for the fact that a substantial amount of the activities took place in

Oregon, unless there is a long-arm statute that would allow for California courts to have PJ over Dan (which the facts are silent on), it is likely that the court will find that the court does not have PJ over Dan and grant the motion.

**How should the Court rule on Jeep USA's Rule 12 motion challenging venue?**

**Applicable Rules**

Venue: Venue is the geographic location of the court(s) in which a claim may properly be filed and heard. Under 1391, venue is proper: (1) in the district the defendant resides, if all defendants reside in the same state; (2) in the district a substantial amount of the activities occurred or where the property at issue is located; or (3) the district in which a court has proper jurisdiction over any defendant.

General jx: supra.

Rule 12(b): supra.

**Analysis**

Here, Jeep USA has filed a Rule 12(b)(3) motion citing improper venue as to why the claim against them should be dismissed. Even though Jeep USA's state of incorporation is in New Jersey, the company imports jeeps all over the country and also has a large assembly plant in Los Angels. This establishes that Jeep USA has enough sufficient minimum contacts in the state of California to have proper personal jurisdiction over Jeep USA because their company imports jeeps all over the country and it can be assumed that California is one of those states. 1391(3) states the venue is proper is a court has proper jurisdiction over any defendant. Since the court has proper PJ over Jeep USA, it is likely that the court will deny Jeep USA's Rule 12 motion challenging venue.

**How should the Court rule on Dan's second Rule 12 motion challenging the jurisdiction of the Court over the refund claim?**

**Applicable Rules**

Subject matter jurisdiction ("SMJ"): SMJ is the way in which the court system decides which court can hear a case. Federal courts have a limited jurisdiction meaning they can only hear cases involving a federal question or issues of diversity of citizenship with an amount in controversy exceeding $75,000. A complete diversity of citizenship occurs when the defendant and plaintiff reside in different states.

Supplemental jurisdiction: Supplemental jurisdiction allows a party to tack on another claim in a case that is already properly seated in a federal district court so long as it arise out of a common nucleus of operative fact.

Rule 12(b): supra.

Rule 15(a): Rule 15 allows newly added claims of amended pleading to relate back to the date of the

original pleading if it arises from the same conduct, occasion, or transaction. When there is a change of party, it relates back when the party was served during the Rule 4 period and the party knew or should've known that but for the mistake concerning identity, the action would have been brought against them.

**Analysis**

Here, Dan has filed a Rule 12 motion to dismiss Peter's claim of $5,000. First the court is going to need to determine if this claim can be heard in the federal district court. In order for the court to hear this claim, it has to have SMJ, the original claim, which was a diversity of citizenship claim because the defendant and plaintiff reside in different states. The facts are silent as to whether the amount in controversy exceed $75,000. Dan did, however, add a claim involving Jeep USA that alleged there was a violation of the Federal Automobile Safety Act, in doing so this creates proper SMJ because it is arising out of a federal question due to the claim coming out of a federal statute, this allows Dan to tack this $5,000 claim on because the original claim is already properly seated in federal district court, and it arises out of a common nucleus of operative fact in that it is coming from the same car fire. Therefore, it is likely that the court will deny Dan's Rule 12 motion challenging the jurisdiction of the Court over the refund claim.

**How should the Court rule on Dan's request for information about peter's work history, as it relates to the application of the Erie doctrine?**

**Applicable Rules**

Erie Doctrine: In federal cases involving diversity of citizenship, the rules of Erie apply. Historically, under *Swift v. Tyson*, the court would create their own federal common law. Erie overruled this, instead finding that state court governed cases where there was a substantive issue. *Guaranty Trust Co.* clarified that substantive issues are outcome determinative meaning that if the outcome depended on whether federal law or state law governed, it is a substantive issue. An example of a substantive issue is statute of frauds. *Byrd v. Blue Ridge* created a balancing test that would weight federal court's interests and substantive facts. Lastly, *Hanna v. Plummer* established that if a federal statute is on point, then it would govern over state law.

Rule 12: supra.

**Analysis**

Here, this is a federal case involving diversity of citizenship because the case is in federal district court, and both parties reside in different states, meaning the rules of Erie would apply. Usually, under *Erie*, state law would govern substantive issues, however, the federal court has its own rules stating that it does not allow discovery which contradicts the state court statute that allows discovery. So, using the test created in *Hanna,* if there is a federal statute that is on point, the federal rule would govern over the state rule. So since the federal court does not allow the discovery of Peter's work history, that is the rule that the court would apply. Therefore, it is likely that the court would deny Dan's request for information about Peter's work history.

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1)

How should the Court rule on Dan's Rule 12 motion to challenge personal jurisdiction?

**Personal jurisdiction (PJ)** is a court's authority to exercise power over the defendant's person. Under *Pennoyer v Neff*, PJ could be exercised over a defendant based upon domicile within the forum state, personal service while in the forum, or consent. *International Shoe Co. v Washington* modified the traditional rules and set the standard that a defendant must have sufficient "minimum contacts" with the forum so the exercise of PJ does not offend "traditional notions of fair play and substantial justice." PJ can be exercised by general or specific jurisdiction.

A court has **general jurisdiction** over a defendant whose contacts with the forum state are so "continuous and systematic" that they are essentially "at home" there (*Daimler AG*). For individuals, at home is their domicile (permanent home where they intend to remain indefinitely); for corporations, it is their state of incorporation or principal place of business (PPB) ("nerve center" where the corporations high level officers direct, coordinate, and control on a regular basis).

A court has **specific jurisdiction** over a defendant who (1) purposefully avails themselves of the privileges of conducting activities within the forum, thereby invoking its benefits and protections (*Hanson v Denckla*), such that they could reasonably foresee themselves being "haled into court" there *(World-Wide Volkswagen);* (2) the claim arises from the defendant's activities within the state; and (3) jurisdiction is fair and reasonable and based on factors like the burden on the defendant, the state's interest, and the plaintiff's interest in convenient relief.

A defendant may file a **Rule 12 motion** to dismiss a plaintiff's complaint based on: (1) lacks of subject matter jurisdiction, (2) lack of PJ, (3) insufficient process, (4) insufficient service of process, (5) failure to state a claim for which relief can be granted, or (6) failure to join an indispensable party. (1) cannot be waived, (2) to (5) are waived if they are not raised in the defendant's initial response, and (6) and (7) may be raised at any time.

General jurisdiction: Peter (P) purchased a car from Dan (D) in Salem, Oregon. D is domiciled in Oregon, where his used car lot business is also located. However, P filed the lawsuit in the San Francisco, California District Court. D is not a domiciliary of the state of California. The federal court in SF does not have general jurisdiction over D.

Specific jurisdiction: D sells used cars out of Salem, Oregon. Based on the facts, it does not appear that he advertises to California residents or makes sales in California. Because he does not conduct business in California, he could not reasonably expect to be sued there. Because he has not purposeful contacts with California, jurisdiction there would not be fair. D's only connection to California is having sold a car to P there, but the unilateral acts of a plaintiff cannot create the sufficient minimum contacts required to establish specific jurisdiction. The federal court in SF does not have specific jurisdiction over D.

Lack of PJ is one of the bases for dismissal of a plaintiff's complaint. Therefore, the Court should grant D's Rule 12 motion.

How should the Court rule on Jeep USA's Rule 12 motion challenging venue?

**Subject matter jurisdiction (SMJ)** is a court's authority to adjudicate a particular type of case. Federal courts have SMJ over cases that arise under federal law (federal question jurisdiction) and diversity jurisdiction. Diversity jurisdiction requires that no plaintiff share citizenship with any defendant (complete diversity) and an amount in controversy (AIC) that exceeds $75,000. A single plaintiff can aggregate multiple claims against a single defendant, even if unrelated.

**Venue** is proper in (1) a district where all defendants reside, (2) a district where a substantial part of the events occurred, or if neither of these is available, (3) a district where the court can exercise PJ over the defendant.

A case may be **transferred** from one federal district court to another district. If venue was proper, the case can be transferred to another district where the case may have been filed, for the convenience of the parties and witnesses and in the interest of justice (the laws of the transferror state apply). If venue was improper, the court may dismiss the case or transfer to a proper district in the interest of justice (the laws of the transferee state apply).

Because P filed the case in federal district court, the case would have to meet the federal question jurisdiction or diversity jurisdiction criteria. P sued D for personal injuries and no federal law question was raised against him. However, P later added Jeep USA (J) as a defendant, alleging a violation of a federal law (Federal Automobile Safety Act). Because the claim now arises under federal law, the court has SMJ.

There would be no diversity jurisdiction because P is a citizen of California and J is a citizen of New Jersey and California, assuming its assembly plant in Los Angeles is its PPB. Even if it was not and there was complete diversity, there is already a question of federal law so the Court has SMJ.

However, for venue purposes, the defendants in the case (D and J) reside in different states. D resides in Oregon and J in NJ and CA. Therefore, not all defendants reside in the same state. The events that led to the lawsuit (Jeep car bursting into flames) occurred in Oregon, just north of the California border. Therefore, a substantial part of the events did not occur in California.

The court should grant J's Rule 12 motion challenging venue and dismiss the case or, alternatively, transfer the case to a proper district where the claim could have been filed, in the interest of justice.

How should the court rule on Dan's second Rule 12 motion challenging the jurisdiction of the Court over the refund claim?

A federal court may exercise **supplemental jurisdiction** (SJ) to add a claim that arises from a "common nucleus of operative fact," forming part of the same case or controversy. A court may decline SJ in a diversity jurisdiction case if it woud destroy complete diversity.

A party may **amend** their original pleading once as a matter of course. A defendant must then timely file a response or motion. For statute of limitation purposes, an amendment to a pleading is deemed to have been filed on the date of the original pleading and **relate back** if it concerns the same conduct, transaction, or occurrence as the original.

P added a second cause of action to recover $5,000 for the jeep he purchased from D. The payment is connected to the car which caused the accident that led to the lawsuit. As such, the two claims form part of the same case or controversy and the Court may exercise SJ to add

the second claim.

P had already amended his pleading by adding J as a defendant. However, the relate back doctrine may allow P to amend the pleading to recover the $5,000 payment, and it would be considered to have been filed on the date of the original pleading.

Because the court has jurisdiction over the new claim through supplemental jurisdiction and because it may be considered timely, the court should deny D's second Rule 12 motion.

How should the Court rule on Dan's request for information about Peter's work history, as it relates to the application of the Erie doctrine?

If a federal court sitting in diversity is adjudicating a state law claim, *Erie* requires that the court apply state substantive law and federal procedural law. Historically, under *Swift v Tyson*, federal courts applied "general federal common law," but Erie overruled this, requiring application of state law on substantive issues. *Guaranty Trust Co.* established the outcome-determinative test, defining a substantive issue as one where applying federal law instead of state law would substantially alter the case outcome. *Byrd v. Blue Ridge* introduced a balancing test to weigh strong countervailing federal interests against state interests, even if the choice of law would change the outcome of the case. Under *Hanna v Plumer*, it was established that a valid federal rule on point that conflicts with state law will govern. *Hanna* reaffirmed Erie's twin aims of preventing forum shopping and inequitable administration of the laws.

D wants information about P's work history and seeks to obtain it through discovery. P had sued D for personal injuries and D wants evidence that P had pre-existing injuries. The first test to apply is that established in *Guaranty*. Here, federal court would not allow this discovery but the state court would. If D is not allowed to obtain this information through discovery, it may affect the outcome of the case. If P had pre-existing injuries, they may affect his personal injury claim. The next test is the Byrd balancing test. Here, the federal court does not have a strong countervailing interest. If the federal court applies the state law, it would discourage forum shopping, thereby preserving the administration of the laws.

The federal court should therefore grant D's request for information about P's work history.

2)

How should the United States District Court rule on the question of jurisdiction raised by Dan and Don't Forget It?

**Subject matter jurisdiction (SMJ)** is a court's authority to adjudicate a particular type of case. Federal courts have SMJ over cases that arise under federal law (federal question jurisdiction) and diversity jurisdiction. Diversity jurisdiction requires that no plaintiff share citizenship with any defendant (complete diversity) and an amount in controversy (AIC) that exceeds $75,000. A single plaintiff can aggregate multiple claims against a single defendant, even if unrelated.

A defendant may file a **Rule 12 motion** to dismiss a plaintiff's complaint based on: (1) lacks of subject matter jurisdiction, (2) lack of PJ, (3) insufficient process, (4) insufficient service of process, (5) failure to state a claim for which relief can be granted, or (6) failure to join an indispensable party. (1) cannot be waived, (2) to (5) are waived if they are not raised in the defendant's initial response, and (6) and (7) may be raised at any time.

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| File Name: | _CivPro-ECL-F25-Seeger-os_20251210_final.xmdx 181 minutes |
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when there is a substantive issue. *Guaranty Trust Co.*, further clarified that a substantive issue is one that is outcome determinative, meaning the results would change depending on whether federal or state law was applied. Courts have typically held that issues like the statute of limitations are substantive issues. *Byrd v. Blue Ridge Electric Co.* also added a balancing test, whereby federal courts can weigh personal interests, typically for public policy reasons, when a substantive issue is present. To date, *Byrd* has not been resisted. Lastly, under *Hanna v. Plummer*, the supremacy clause requires that federal law be applied when there is a federal rule on point that contradicts state law. *Hanna* further confirmed *Erie's* twin aims to prevent forum shopping and to avoid the inequitable administration of the laws.

Here, the facts indicate that this matter is not in federal court under diversity jurisdiction, meaning *Erie* would not apply. The claim against D for personal injuries is silent as to an amount in controversy and the claim against Jeep USA is one that arises out of federal question, violation of a Federal Automobile Safety Act.

However, assuming that there was diversity jurisdiction, state law would be applied if it is determined that this discovery issue is substantive. Here, seeking discovery of P's work history is not an issue that would be outcome determinative because finding out whether P had pre-existing injuries does not automatically shift the outcome of the case, it is just one piece of evidence that can play a role in the outcome, but it would not be the sole outcome determinator. Further, under Erie, federal procedural law should be applied, and since this is a procedure that the federal court would not allow under the circumstances, the procedure of the federal court should be followed and not the state law. Assuming Erie would apply, the court would reject D's request for information because they would have to follow federal procedural law.

2)

**1. How should the United States District Court rule on the question of jurisdiction raised by Dan and Don't Forget to Take it?**

**Subject matter jurisdiction (SMJ)** is the way in which the court system determines where a matter may be heard. Federal courts are courts of limited jurisdiction, meaning the claim must be one that arises out of federal question, or based on diversity with an amount in controversy exceeding $75,000. A single defendant may aggregate multiple claims against a single defendant to satisfy the amount in controversy. Complete diversity of citizenship exists when the plaintiff and the defendant are both residents of different states. State courts are courts of unlimited jurisdiction.

The absence or presence of federal question jurisdiction is governed by the **well-pleaded complaint rule**, which provides that federal question jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint. Federal question jurisdiction cannot arise based out of an anticipated defense.

**Rule 12**, specifically subsection b, allows a defendant to request dismissal of a case for one or more of the following reasons: (1) lack of subject matter jurisdiction; (2) lack of personal jurisdiction; (3) improper venue; (4) insufficient process; (5) insufficient service of process; (6) failure to state a claim for which damages can be received; and (7) failure to join an

indispensable party as outlined in Rule 19. When filing a 12b motion or answer, the defendant must make sure to assert any and all of the affirmative defenses between 12(b)(2) through 12(b)(5) in the very first reply, otherwise the defendant waives their right to assert any of those defenses in the future. Subject matter jurisdiction, however, can be challenged at any time and cannot be waived.

Here, the facts tell us that Paula's ("P") claims are for breach of contract, improper withholding of commissions, and slander. None of these claims appear to be a claim of federal question, unless there is a federal law regarding withholding of commissions, which the facts are silent about. In which case, if there were such a federal law, and P properly pleaded the federal question in her complaint, then there would be SMJ under federal question jurisdiction and the court then should deny a 12b motion for lack of SMJ.

However, the facts lean more towards diversity of citizenship. Here, P lives in Washington, making her more likely than not a resident of Washington. Don't Forget to Take It ("DFTI") is a California ("CA") corporation with it's sole manufacturing plant in LA. The nuance here is the fact that the President, Dan ("D") has a house in Washington, which is where P lives and presumably resides, and D also has a home in California, with most of his work done remote. However, the facts despite the facts referring to "Dan and his company," the facts seem to demonstrate that D is acting as an agent for DFTI, and makes it seem as though DFTI is the sole defendant, with D being President, it makes sense why he would be the one to terminate the employment, but that does not necessarily make him a defendant. If DFTI is the sole defendant, it is highly likely that diversity of citizenship applies because P and DFTI are residents of different states, one is Washington and one is CA, and the amount in controversy exceeds $75,000 ($100,000 for breach of contract, $25,000 for the commissions, and an unknown amount for the slander). In this case, the court should deny DFTI's 12(b)(1) motion for lack of subject matter jurisdiction, since there is diversity of citizenship and an amount in controversy exceeding $75,000.

If it is determined that D and DFTI are two separate defendants, this might present an issue for P as the court could find that no SMJ exists under diversity of citizenship. If D is a separate defendant, an argument can be made that D is a resident of Washington, in which case the plaintiff and one of the defendants would be residents of the same state, which defeats diversity of citizenship. In this scenario, it is likely that the court grants the 12(b)(1) motion for lack of subject matter jurisdiction due to the plaintiff and defendant being residents of the same state.

**2. How should the Court rule on the venue issue raised by defendants?**

**Venue** is the geographical location of the specific court hearing the matter. Under section 1391, venue is proper in (1) a judicial district where all defendants reside, if all defendants are residents of the state in which the district is located; (2) a district in which a substantial part of the events underlying the claims occurred or where a substantial part of the property is located; or (3) in a district where the defendant would appropriately be subject to the Court's PJ over them. Venue can be waived unless timely objected to in a Rule 12(b)(3) motion.

**Transfer** involves the process of moving cases between federal districts using two principal statutes. **1404(a)** allows for transfer from one proper venue to another proper venue if the case could have been filed there to begin with, or with the consent of the parties, for the benefit of the parties and witnesses and in the interest of justice. The transferee court must apply the choice of law of the transferor court. **1406(a)** allows for the transfer of case from an improper venue to a proper district, whereby the transferee court may apply it's own choice of law or dismiss the

case.

**Forum Non Conveniens** allows a federal court with proper jurisdiction and venue to dismiss a case if an alternative and more appropriate venue exists that is substantially more convenient.

**Rule 12** supra.

Here, P filed her claim in the US District Court in Seattle Washington. Washington is not a district in which DFTI resides, and therefore would not be proper venue under 1391(1). The facts are silent as to whether a substantial part of the events underlying the claims occurred in Washington. The facts are vague and say business was done "up and down the west coast" but this alone does not indicate that a substantial part of the events specifically occurred in Washington. Most of P's business could have been in California, or elsewhere. The facts tell us that D owns a house in Washington, but DFTI's sole manufacturing plant is in CA, so a substantial part of the property would not be located in Washington. Thus, this would not be proper venue under 1391(2). The strongest argument falls under 1391 (3). An argument could be made the DFTI, through it's activities conducting business in the forum state of Washington, would be subject to Court's PJ as a business. If it is established their contacts are so continuous and systematic that failure to exert PJ over them would offend traditional notions of substantial justice and fair play, it could be argued that Venue is proper in Washington.

Nonetheless, venue could be transferred to California under **1404(a)** because since DFTI is a resident of CA, the action could have been filed there to begin with. The parties could also consent to the transfer for the benefit of the witnesses and in the interest of justice since the majority of the witnesses are in California. If venue in Washington was deemed improper, the court would most certainly transfer the case to a proper district, such as CA.

**3. How should the Court rule on the Rule 12 motion filed by Paula challenging the affirmative defense raised by Dan and Don't Forget to Take It?**

**Personal Jurisdiction ("PJ")** is the courts ability to exercise power over a person or property. There are three types: (1) **in personam**, which is PJ over the person; (2) **in rem**, which is PJ over property; and (3) **quasi in rem**, which is PJ over a person through their property. Courts rarely utilize quasi in rem since they now apply the minimum contacts test established in *International Shoe* (infra). PJ is limited by both state statutes (long arm statutes) which regulate who the state can exert PJ over, and the constitution (due process) which protects defendants from being sued in a forum that lacks PJ over them.

**General Jurisdiction** is the Court's ability to exert power and control over a person or property within the state. A state has general jurisdiction over defendants that are **domiciled** within the state. **Domicile** is where a person resides and where they intend to remain for the foreseeable future.

The states ability to exert PJ was established in *Pennoyer v. Neff*, which established that states have **general jurisdiction** over a defendant and that PJ is established when the defendant is served in the forum state. The **forum state** is the state in which the litigation is commenced. *International Shoe* asserted that PJ can be established where there are **sufficient minimum contacts within the forum state so as to not offend traditional notions of fair play and substantial justice**. Courts have had difficulty discerning what exactly constitutes "traditional notions of fair play and substantial justice." However, *Hansel v. Deckla* elaborated that PJ can

be established when a defendant **purposefully avails themselves of the privilege of conducting activities within the forum state**. Under *McIntyre*, purposeful availment is satisfied when a defendant, through their activities with the forum state, **invokes the benefits and protections of the laws of the forum state**.

*International shoe* also established that PJ can be established via **specific jurisdiction**, whereby a substantial part of the claim arises from the contacts within the forum and are related to the dispute sought to be adjudicated. While there are no specific number of contacts, a defendant's minimum contacts must be **purposeful** (meaning not random, isolated or accidental), **related** (meaning giving rise to or related to the cause of action), and **reasonable** (meaning consistent with traditional notions of fair play and substantial justice).

**Personal jurisdiction over a business** can be asserted where a business is incorporated or where their principal place of business is. A business can be incorporated in many states, but only has one principle place of business, which tends to be where the nerve center of operations is (*Hertz*). Under the minimum contacts test, a businesses contacts must be continuous and systematic, isolated contacts are insufficient to establish PJ over a business.

**Rule 12 supra.**

Here, DFTI and D waived their rights to challenge personal jurisdiction because they did not include this affirmative defense in their original 12b motion. Asserting it now in their answer is not appropriate as they missed their opportunity to do it the first go around and thus waived their right to challenge personal jurisdiction. The court should deny this affirmative defense since it was waived.

Even assuming that personal jurisdiction was properly raised in the first 12b motion, the court should grant Paula's12 motion because DFTI, through it's activities conducting business in the forum state of Washington, would be subject to Court's PJ as a business. If it is established their contacts are so continuous and systematic that failure to exert PJ over them would offend traditional notions of substantial justice and fair play, it could be argued that Venue is proper in Washington.

**4. How should the Court rule on the Rule 12 Motion filed by Paula challenging the affirmative defense raised by Dan and his Company?**

Rule 4 involves service of process, consisting of the summons and complaint, and must be carried out by a non-party over the age of 18. Personal service is personal delivery. Under Burnham, personal service establishes PJ if the defendant is served in the forum state. Constructive service is by mail, publication, or leaving the summons and complaint with someone of suitable age and discretion who resides there. Under Mullane, service must be sufficiently reasonable as to give notice and an opportunity to be heard.

PJ supra.

12b supra.

Here, if Dan is a separate defendant, he may not likely have a successful argument for lack of PJ. Assuming D is a resident of Washington, the court would have proper jurisdiction over him because P filed her claim in Washington, where D arguably could be a resident of given it's the location of his home, and if he intends to reside there in the foreseeable future, then he is likely

domiciled in Washington. The court should grant Paula's motion as to D because personal jurisdiction exists.

**END OF EXAM**