

MONTEREY COLLEGE OF LAW

CIVIL PROCEDURE
MID-TERM EXAMINATION
FALL 2019

Professors J. Martin

Instructions:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

**CIVIL PROCEDURE -- FALL SEMESTER MIDTERM EXAM, 2019
QUESTION ONE**

PAM, an Oregon resident, worked for DIGIT, a California technology company. Prior to working for DIGIT, PAM invented a new method of transferring data, for which she received a patent. She shared that information with DIGIT when applying for a position and subsequently discovered that DIGIT misappropriated her patented method, contrary to their agreement when the information was shared.

PAM sues under a California law that provides a cause of action for misappropriation of information by an employer from a potential employee during any job application. Additionally, PAM sues under a federal patent claim and both claims are based on the same facts.

PAM seeks \$50,000 for her federal patent claim and \$10,000 for her California claim. She files in a California state court. DIGIT seeks to remove the action to federal court.

DISCUSS whether a federal court may exercise jurisdiction over both claims, and why.

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**CIVIL PROCEDURE -- FALL SEMESTER MIDTERM EXAM, 2019
QUESTION TWO**

DOKE, a citizen of California, owns a small California corporation whose business is manufacturing and selling camping tents. DOKE's sales are limited to the western United States. Because he considers expanding his sales region, he makes his first and only business trip to Alabama where he attends the "Southern U.S. Outdoor & Camping Expo". There, DOKE meets PECK, an Alabama citizen.

PECK's business is in Alabama and it is a small corporation whose business is manufacturing and selling inflatable rafts used by southern campers. His sales are limited to four of the deep-south states -- Louisiana, Mississippi, Alabama, and Georgia.

While at the Southern Expo, PECK and DOKE enter into a written contract for a custom, \$10,000 inflatable raft that DOKE intends to use as a promotional prop. The raft will bear the logo of DOKE's business. DOKE pays a deposit of \$1,000 and promises to pay the \$9,000 balance when he picks up the finished product at PECK's Alabama business location. DOKE does not mind returning to Alabama because he attended the University of Alabama over twenty years ago and, in the last decade, he has returned there five times for football games and alumni functions.

After DOKE returns to California, he is pushed downstairs by his girlfriend who attended the University of Southern California and who is furious that DOKE's alma mater has the better football team. DOKE is badly injured and he is informed by his doctors that he will be unable to handle a raft for several months. Hearing that news, DOKE cancels the contract with PECK for the custom raft. PECK replies that the raft's construction is complete and because it includes DOKE's business logo, it cannot be resold.

PECK sues DOKE in Alabama state court for the \$9,000 contract balance. DOKE is personally served with process in California per Alabama's long-arm statute that authorizes personal jurisdiction, as long as it is constitutionally valid.

DISCUSS whether the Alabama state court has personal jurisdiction over DOKE, regarding PECK's breach of contract action.

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CIVIL PROCEDURE -- FALL SEMESTER MIDTERM EXAM, 2019 QUESTION THREE

DAVID is a California resident who owns a company that was incorporated in Delaware and which has both executive offices and a manufacturing plant in California, as well as a storage facility in Oregon. DAVID's company was incorporated under the name "Kool Korvette, Inc.", and it supplies auto accessories for Chevrolet Corvette drivers who wish to customize their automobiles.

In July, 2019, a revolutionary new Corvette model was displayed to the American public and DAVID decided he must have one. While at his Oregon storage facility in July, DAVID visited PAUL, an Oregon automobile dealer who had allocations for the new car. DAVID paid a \$10,000 deposit on a sales price of \$80,000 for the 2020 car and he instructed that it be painted a special purple color that matched the color of the Kool Korvette logo.

In October, 2019, DAVID was arrested for tax fraud and he had to retain a very expensive defense attorney. That same day, DAVID notified PAUL by both post and email that he wished to cancel the contract for the new automobile. PAUL immediately replied that the automobile had been completed, including its special color paint, and it was ready for pick up in Oregon. DAVID refused to communicate further with PAUL.

In November, 2019, PAUL files suit in federal District Court in Oregon asking for either specific performance or money damages. PAUL's Complaint names DAVID personally but does not name Kool Korvette, Inc., as a party. The process papers were served on a Kool Korvette, Inc., employee at the Oregon storage facility. PAUL's Complaint merely states, "David ordered a new Corvette from me and said it had to be painted a stupid color of purple. He should pay up because I can't sell it to anyone else".

1. DAVID wants to file a Motion to Dismiss based on Federal Rule 12(b)(1) and 12(b)(5). Thoroughly discuss those rules and how the District Court should rule on that motion.
2. DAVID wants to file an additional Motion to Dismiss based on Federal Rule 12(b)(6) and 12(e). Thoroughly discuss those rules and how the District Court should rule on that motion.

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CIVIL PROCEDURE -- FALL SEMESTER MIDTERM EXAM, 2019
QUESTION ONE -- MODEL ANSWER

1. A federal court will have Subject Matter Jurisdiction (SMJ) over PAM's federal patent claim as it arises under federal law -- it asks a "federal question" -- and is a matter resolved solely by federal courts.

"Red Herrings"

- A. While there is diversity of the parties (PAM is an Oregon resident; DIGIT is a California corporation) that is irrelevant as federal SMJ is obtained via the federal question. Diversity need not be considered.
 - B. While the amount in controversy is less than \$75,000 (\$50,000 & \$10,000), that is also irrelevant for the same reason.
2. The federal court may also have SMJ over the state law claim via supplemental subject matter jurisdiction as both claims "are based on the same facts" and, presumably, are derived from a common nucleus of operative fact.
 - A. The federal claim is the "anchor" claim and the state law claim is a "pendant" claim.
 - B. The goals of economy, convenience, and fairness may thus be met when both claims are tried at the same time.
 3. Removal is a defendant's procedure allowing a suit filed in state court to be transferred to a federal court.
 - A. A requirement of Removal is that the federal court must have originally had SMJ and that is present here with the federal question.
 - B. Removal is discretionary and a federal court could decline to hear both cases. However, the question is whether a federal court may exercise jurisdiction and the conclusion is yes.

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(2) Contractual Contacts

- a. DOKE enters into a contract in Alabama that relates to the lawsuit.
(McGee)
- b. DOKE's agreement with PECK involves performance in Alabama
(manufacturing a raft; picking up the finished product)
- c. Negotiations for and the creation of the contract take place in Alabama.
Payment for the final product was supposed to take place in Alabama.
- d. Conclusion: The contract seems to reflect sufficient minimum contacts.

(3) FPSJ -- Is it "fair" to require DOKE to defend the lawsuit in Alabama?

- a. Alabama has an interest in adjudicating the disputes of its citizens.
- b. PECK has an interest in obtaining convenient relief.
- c. There is an interest in supporting positive social policies -- the integrity and predictability of contracts, as well as facilitating commerce with Alabama.
- d. The completed product is present in Alabama. Any witnesses (PECK's employees?) are present in Alabama.
- e. DOKE having to defend in Alabama is inconvenient.
- f. Conclusion: DOKE's inconvenience seems to be outweighed by the other social interests listed and FPSJ does not seem to be offended by requiring DOKE to defend in Alabama.

4. "RED HERRINGS"

- A. The diversity of DOKE and PECK, as well as the amount in controversy being less than \$75,000, are both irrelevant.
 - (1) The facts describe a state law claim.
 - (2) Diversity and Amount in Controversy involve Subject Matter Jurisdiction.

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CIVIL PROCEDURE -- FALL SEMESTER MIDTERM EXAM, 2019
QUESTION TWO -- MODEL ANSWER

PECK vs. DOKE

Issue: Whether Alabama has personal jurisdiction over DOKE, a California citizen, for Breach of Contract

1. ALABAMA LONG-ARM STATUE
 - A. The L-A Statute in the fact pattern is a far-reaching ("max") statute, meaning any claim of jurisdiction by Alabama is permitted -- as long as it passes Constitutional scrutiny.
 - (1) Discussed below in "Minimum Contacts".
2. TRADITIONAL BASIS (AKA: PHYSICAL or TERRITORIAL)
 - A. Residence/Domicile is not a basis as DOKE is a California citizen.
 - B. Property is not a basis as the facts do not indicate that DOKE owns real property in Alabama.
 - (1) If DOKE's partial interest/equity in the raft in Alabama is considered "property", that attempt at jurisdiction still must meet Constitutional scrutiny. (Shaffer vs. Heitner)
 - C. Physically present in Alabama when served is also not a basis as DOKE is served in California.
 - D. Consent to jurisdiction is not apparent from the facts.
 - (1) Note: it is possible to consent to jurisdiction (Bremen)(Rest. of Conflicts 2nd, s.80) but those facts are also not apparent in the present facts.
 - E. Conclusion: Personal jurisdiction is not likely due to any traditional (Pennoyer) bases.
3. MINIMUM CONTACTS (Constitutional Scrutiny -- I. Shoe)
 - A. Doctrine: DOKE's contacts with the forum state are considered and the analysis involves whether the level of contacts do not offend traditional notions of fair play and substantial justice (FPSJ).
 - (1) Physical Contacts
 - a. Did DOKE purposefully avail himself of the privileges & benefits of Alabama to the extent that it was foreseeable he could be haled into court there?
 - b. His contacts were not "systematic & continuous" as the facts say he makes his first and only trip to Alabama.
 - c. The trip could be significant, however, as the purpose related to DOKE's business, as did the purposes of the raft.
 - d. The five trips for university reunions and football are completely unrelated to "doing business" in Alabama by manufacturing & selling camping tents.
 - e. Conclusion: DOKE's physical appearances/contacts in Alabama do not make a strong argument for personal jurisdiction, after analysis for minimum contacts & FPSJ.

CIVIL PROCEDURE -- FALL SEMESTER MIDTERM EXAM, 2019
QUESTION THREE -- MODEL ANSWER

Rule 12(b)(1) -- Lack of Subject Matter Jurisdiction

- A. The facts shows no federal question but posit a state law claim in Contract for the sale/purchase of an automobile. SMJ will therefore require Diversity of Citizenship (DOC) between parties and a sufficient Amount in Controversy (AIC).
- B. In the present facts, diversity is satisfied as there is an Oregon Plaintiff who is presumably a resident there, and a California Defendant who is a Calif. resident.
- C. As AIC is required to be > \$75K, if the money damages are alleged to be the entire price of \$80K, AIC is sufficient. If the money damages are \$80K, minus the \$10K deposit, AIC is lacking as the money damages would be under \$75K.
- D. Conclusion: The deposit will have to be credited and damages will be < \$75K, so the court will likely grant the 12(b)(1) motion as no SMJ, due to deficient AIC.

Rule 12(b)(5) -- Insufficient Service of Process (per Rule 4)

- A. If personal service is not possible, substitute service can occur by leaving a copy of the process papers at Defendant's dwelling/abode with someone of suitable age & discretion.
 - 1. The facts show sub. service was attempted by serving papers to an "employee" at Defendant's Oregon storage facility, not Defendant's California residence.
 - 2. Also, the facts do not indicate that the employee was a certain age or status that was capable of accepting service. In fact, Kool Korvette was not a named party so the employee cannot be an agent for receipt of process.
- B. Conclusion: The court will likely grant the 12(b)(5) motion as there were both technical and material faults in service.

Rule 12(b)(6) -- Failure to State a Claim (Common Law Demurrer)

- A. On a reading of Plaintiff's Complaint, there is an assertion of liability, but only a few facts and not a plausible "story" told in numbered paragraphs that each describe a set of circumstances.
 - 1. The Complaint may therefore fail the plausible pleading requirement of "Twiqbal" as many facts (price, dates, conditions, etc.) are omitted.
 - 2. It is noted that this motion must be filed before any responsive pleading.
- B. Conclusion: The court will likely grand the 12(b)(6) motion as the Complaint appears to fail to give adequate notice of the claim.

Rule 12(e) -- Motion for More Definite Statement

- A. This motion requests additional information in order to give adequate notice of the nature and extent of the claim.
 - 1. It is noted that this motion must be filed before any responsive pleading.
- B. Conclusion: The court will likely grant this motion as the Complaint is brief and likely confusing. The court will also likely give leave to amend.

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Question 1

Prof. Martin

MCL226210

Whether a Federal Court may Exercise Jurisdiction over Both Claims.

Personal Jurisdiction

Courts must have personal jurisdiction over a party in order to have authority over that party in court. In personam is the authority over a person; in rem is authority over property, and quasi in rem is authority over the person and their specific property

Traditional

Traditionally we look to Pennoyer to assess personal jurisdiction over a party. There, a court may have in personam jurisdiction if the party was domiciled in the forum state; if the party gave consent to the court's authority, or the party was served process in the forum state.

Domicile

One way to establish personal jurisdiction is through the party's domicile.

For a person, we look to the intent of the person to be permanently domiciled in a state. States have authority over their domiciliaries.

For a corporation, we look to the place the business is Incorporated and the Principle Place of Business. For the latter, we are concerned about the location of the company's "nerve center"; where direction, control, and coordination occur. We evaluate where the business has ongoing and pervasive business dealings in the forum state.

Here, we have Pam as an Oregon Resident. With no additional facts otherwise, it appears that Pam is domiciled with intent in Oregon. DIGIT is a California technology company. Again we have no other indication of DIGIT working in Oregon to concern ourselves with the company's incorporation or principle place of business in Oregon. So it appears that DIGIT has domicile in California. This would be that Complete Diversity is met if we are considering the case for subject matter jurisdiction in California.

Consent and Served Process in Forum State.

We could also determine personal jurisdiction if the party consented to the court's jurisdiction. Another way to determine personal jurisdiction is if the party was served process while in the forum state. There does not appear to be an issue with consent. We don't have facts stating that DIGIT was served process. However, PAM is stated to seek a Federal and California claim. So, the analysis of whether DIGIT Consented or was Served Process is not an issue here.

Modern

Modernly, we look to International Shoe to assess personal jurisdiction through the minimum contacts test. Here, we evaluated whether the party had significant minimum contacts that were continuous and pervasive within the forum state. We look at whether the cause arose from the acts within the state. Additionally, if the defendant were to defend within the forum, would it not offend the traditional notion of fair play and substantial justice.

This is not an issue to evaluate. Pam is seeking claims in California State Court where Digit is a resident.

Long Arm Statute

The long arm statute is a state enactment that authorizes a state authority over a non-resident party that is consistent with constitutional rights. We consider whether the party purposefully availed itself to the privileges, protections, and benefits of the forum state. We also evaluate whether relatedness of the acts within the state to the cause of action.

This is not an issue to evaluate. Pam is seeking claims in California State Court where DIGIT is a resident.

Subject Matter Jurisdiction

Courts

State courts can hear general claims, state issues, and federal issues. Federal courts can hear claims associated with Federal Questions or claims where Diversity in Citizenship and Amount in Controversy has been met.

Federal Question

Federal Questions arise from the U.S. Constitution or are founded in Federal Law. The amount in controversy is not an issue.

Pam's first claim is a Federal Question under Federal Patent Law. So, it appears on this claim alone, the Federal District could have Subject Matter Jurisdiction. While this claim has an amount in controversy of \$50,000, it is not an issue for a Federal Question. The second claim is a California claim involving misappropriation of information by an

employer from a potential employee during any job application. This is a California law. So there is no Federal Question for this claim.

Diversity and Amount in Controversy

Another way for a Federal Court to hear a case is if there is Complete Diversity between the plaintiffs and the defendants at the time of filing. This means that they have domicile in different states, or one may have domicile in a state and the other party has alienage. Additionally the requirement of Amount in Controversy must be met. The claim must be greater than \$75,000 and made in good faith claim and with a well-pleaded complaint. A single plaintiff can aggregate against a single defendant. However a single defendant cannot aggregate against multiple defendants. Nor can multiple plaintiffs aggregate against a single defendant.

While one of Pam's claims is a Federal Question claim (above), we may also evaluate Diversity of Citizenship and Amount in Controversy. Here, both Pam and DIGIT have Complete Diversity (above). Additionally, one of Pam's claim's is for \$50,000 (Federal Question Patent Law Claim) and the other claim is for \$10,000 (California Law Claim). Pam could aggregate these claims since it is against a single defendant (DIGIT). So the total amount in controversy is \$60,000. Therefore, the amount in controversy is not met (less than \$75,000). So, while the Federal Court could hear the Patent Claim (Federal Question), the Federal Court can not hear the claims based on Diversity and Amount in Controversy. However, Supplemental Jurisdiction may be appropriate.

Supplemental Jurisdiction

A Federal Court can use supplemental jurisdiction when it has a Federal Claim (anchor) claim and join it with a State Claim (pendant claim). Both claims must share a common

nucleus of operative facts. The value in Supplemental Jurisdiction is one of judicial economy, fairness to litigants, and convenience.

Here, the Federal Court could hear the Claim 1, the patent law claim (anchor claim) and join it with the California State law claim (pedant claim). Both claims are "based on the same facts" so we have a common nucleus of operative facts for the supplemental jurisdiction. The California claim does not appear to be overly complex or unique; misappropriation of information seems straight forward for the Federal Court to apply. So, Supplemental Jurisdiction may be appropriate in this case.

Declining Supplemental Jurisdiction

A Federal Court may decline Supplemental Jurisdiction if the State Claim is too unique or complex. It may also be declined if the Federal Claim is dismissed.

Here, as discussed above, Supplemental Jurisdiction seems appropriate for the Federal Court to exercise. There does not appear to be a reason to decline. By joining both claims, this would meet the policy of judicial economy, convenience, and fairness to the litigants.

Removal

A defendant may remove a state claim to a federal district court. A plaintiff cannot obstruct removal through "artful pleadings". A case can be removed if it could have been originally filed at the Federal Court due to a Federal Question, or if Diversity existed at the time of filing; unless the defendant is a resident of the state where the district court is at. Removable and Non-Removable claims may be heard by the Federal Court (even if they are independent). A federal court also have the discretion to remand non-removable claims back down to the state court.

Here, DIGIT seeks to remove the action to federal court. This can be done if the claims could have been filed in the Federal Court originally. However, DIGIT is a resident of California which is the same state as the Federal District Court. So, for those purposes, the removal to the Federal District Court would be problematic. However, both claims could be heard under Supplemental Jurisdiction at the Federal Court (as above).

END OF EXAM

Blue Book

NAME _____

SUBJECT Civ. Pro

INSTRUCTOR J. Martin

EXAM SEAT NO. _____ SECTION Question 2

DATE _____ GRADE _____

Question 2

Personal Jurisdiction

Traditional Basis (Penneyer v. Welff)

To determine where to file a case, Plaintiff must first find a court that has power over defendant. Exercise of personal jurisdiction (ix) under traditional basis was territorially limited. Under traditional basis, a state can exercise personal ix whenever defendant is served with process within the forum state (Penneyer v. Welff). The court later expanded this power to any defendant who consented to state power and who domiciled in the forum state in state where they were served.

Here, Duke (D) is being sued in Alabama by Duke (P) for breaching contract which took place in Alabama. D was personally served process in California. D is not domiciled in Alabama since D is a citizen of CA and it is not clear or stated in the fact if he consented to the state power. Therefore, under traditional basis the exercise of personal jurisdiction is not proper.

Long-Arm Statute

~~Long-Arm Statute~~ is imposed by law. A state can exercise long arm statute over a non-resident from act arising from the

forum state. Under traditional basis, personal jurisdiction was territorial basis therefore long-arm statute was not allowed. However in 20th century, there are changes in society when people are more mobile and move from one place to another easily, therefore long-arm statute is allowed as long as it is constitutionally permissible.

Since exercise of personal jurisdiction is not allowed by under traditional basis, let's look at personal jurisdiction under modern days.

Personal Jurisdiction (Z-shoe)

Modernly, personal jurisdiction is based on minimum contact with the forum state.

Minimum contact requires a showing that

D purposefully availed himself to the benefit and privilege of the forum state.

That exercise of jurisdiction is fair proper.

(Hess v. Perry). Here, D who has small

corporation, manufacturing and selling tents

from California met Peck in Alabama.

Who manufacture and sell inflatable

tents in Alabama. D entered into a

written contract with P for inflatable

tent that bears D's business logo.

D was intended to use it as a promotional prop

which is for his benefit. D paid \$1000 and
promise to pay balance when he picks up
the finish product at P's Alabama business
location. Here, most of the business transactions
took place in Alabama. The contract was
signed in Alabama, money transaction to pay
\$1000 first and rest \$9000 later took place
in Alabama. D also willingly and did
not mind returning to Alabama since he
attended University of Alabama 20 years
ago and he has returned there 5 times
for football games and church function.
He has driven on Alabama road many times
probably implicitly consent to Alabama
state agent under non-resident vehicle act.
Looking at all the transactions and business
dealings including negotiations that
probably might have taken place
while discussing the inflatable raft
that D intend to use that leaves his
finger here all more than numerous
contacts with the state.

Intention

D also had an intention to expand his
business trip. Therefore, he took the business
trip to Alabama with a purpose to expand
his business in Alabama by using the

~~XXXXXXXXXXXXXXXXXXXX~~

11. Plaintiff met as his promotional prep.
This act further confirms that he intentionally
by purposefully availed himself in Alabama's
jurisdiction.

Forseeability

Forseeability for the purpose of this analysis
means that it was foreseeable Defendant
would be "haled" to the forum state
court for activities arise in forum state
that, signing of the contract, money transaction,
maintenance to expand business, willingness
to return to Alabama, travelling to Alabama.
It was foreseeable that he would
be "haled" to the forum state's court

Systematic and continuous

Systematic and Continuous means, D has
been in business in forum state for
minimum period of time, long enough
that operate of Personal Jx is acceptable.
Here, I can argue that his business
activity was not systematic and
continuous and has contact with Alabama,
was not systematic and continuous since
1. D only went to Alabama with an
intention to start a business but did not
really start one, and was not ⁱⁿ a situation

to start in business after he was pushed down
by his gym friends and getting badly injured.
I would also argue that travelling to Alabama
for football games does not give Alabama
the right to \approx ^{defendant} ^{forum} _{court} ⁱⁿ ^{the} ^{state} ^{of} ^{Alabama}.
I would argue that D has a systematic
and continuous relationship with Alabama
since D attended University of Alabama
over 20 years ago and has travelled
5 times for football games and alumni
functions in the last decades. This
argument by P will not likely prevail
since D only travelled occasionally and
attended University Alabama long time ago.

"At home"

A corporation is a citizen of every state
where it is incorporated or has principal
place of business and a person is
a citizen of a state where he/she
domiciled meaning physical presence and
intention to live there. Here, I would
argue that D has a strong connection
with Alabama. D went to university of
Alabama, D had willingly agreed to return
to Alabama to pick up the finished raft
without hesitation, substantially part of
the business transaction took place in Alabama.

and being a CA citizen D chose Alabama as a place to expand his business because he feels "at home" and sense strong connection with Alabama. D would argue that Alabama is not his principal place of business since he runs a business in CA and his sales are limited to western United States. D never expressly mentioned that he would want to make Alabama his principal place of business nor did he expressly mention he would like to be domiciled in Alabama. However, court will likely find that D has a strong connection with Alabama since he travelled all the way from CA to Alabama with an intention to expand his business and substantial part of business dealing took place in Alabama.

Fairness

Exercise of jurisdiction must not offend the traditional notion of fair play and substantial justice. Here, the court will look if all party are convenient in forum state and state interest in providing redress to its

Resident here, Alabama has a strong interest
in providing redress to P since the cost
injury is substantially huge given P
had small business and Alabama is
committed to both party given that
it has previously willingly wanted to
travel to Alabama to pick up the
franchise product and ~~had~~ did not
mind doing so since he attended university
of Alabama 20 years ago and constantly
traveling to Alabama.

Conclusion

Even all the reason stated above
Alabama State Court has personal
jurisdiction over D.

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Rule 8

A pleading submitted to the court that is to be served to the D requires a statement of why that court has jurisdiction (PJ & SMJ), a statement of why P is entitled to remedies, and an actual demand for remedies.

Rule 4

When P files a pleading and serves D with the complaint. D has 2 options under rule 4. D can either sign the waiver of service, which extends the length in time required for D to reply to the complaint to 60 days (or 90 if out of state), or D cannot sign the waiver of service. If D does not sign the waiver of service, D is required to respond to the complaint within 21 days, otherwise a judgement in favor of P can be filed against D, and D will have to pay the fees associated with service of process.

Service of Process requires the recipient to be over the age of 18 and can be completed in 1 of 3 ways, personal service (in hand), service to an agent, or by means of state or federal statutes (such as by mail, if allowed). Service by agent requires the service of process to be delivered to a domicile of the D, to a person over the age of 18, who is a regular occupant of the domicile (a babysitter would not count for example).

Service of process to a business requires Personal Jurisdiction, and that the service be delivered to an employee who has a proper relationship with the company (such as an executive) and who is familiar with and understanding of the service of process rules, to be qualified to legally be able to sign for and take personal service properly on behalf of the business.

1. D file motion to Dismiss based on 12(b)(1) and 12(b)(5).

Motion to Dismiss based on 12(b)(1) - Subject Matter Jurisdiction

A motion to dismiss based on 12(b)(1) - subject matter jurisdiction is a motion to dismiss based on lack of SMJ. A 12b1 SMJ motion can be brought at any time, SMJ cannot be waived and there is no time constraint on a timeline for bringing a 12b1 motion. It can be brought before or during the proceeding, or after at the first appeal. By filing a 12b1 motion, D is stating that the court does not have proper SMJ to hear the case, and should therefore be dismissed.

Here, D is claiming that the Federal District court of Oregon (OR) does not have subject matter jurisdiction (SMJ) and is therefore unable to hear, and bring, such a case against D.

Subject Matter Jurisdiction is defined as being either a matter of Federal Question (FQ) or one of Diversity. A federal question is when the P asserts a federal right, or the cause of action is governed solely by federal law.

Here, FQ does not apply, there is no reason to believe, given that facts, that the sale of a vehicle is governed by Federal law, or that P is asserting a federal (or constitutional right).

Therefore, the court would then look to Diversity. Diversity consists of complete diversity and the amount in controversy to be over \$75,000.

Complete diversity occurs when D and P are not domiciled in the same state. With relation to a business, a business is considered to be domiciled in the state in which it is incorporated, and the state of its principle place of business. Meaning, P cannot be domiciled in the same place of incorporation and/or PPB of D.

single D, aggregation could possibly be used to get the total over \$75k, if there were more than one claim, and a single claim did not reach \$75k, however it does not apply here. Given that the amount stated is for an \$80,000 vehicle, however, D placed a deposit of \$10,000, meaning the actual amount in controversy, meaning the amount that would be allowed as damages, would only be for \$70,000, legal fees cannot be added to get past \$75k.

Therefore, Diversity fails by reason on amount in controversy not being over \$75k.

Therefore, given that diversity fails, and there is no FQ involved in the claim, D would be correct in his 12b1 motion and the court would most likely accept such motion and dismiss the case on grounds of no SMJ. Given that there is no time constraint, time is not a factor as to when D filed such a 12b1 motion, and would have no bearing on whether or not the court would accept it.

Motion to Dismiss based on 12(b)(5) - Service of Process

A 12b5 motion to dismiss based on service of process is a motion to dismiss based on a faulty or illegitimate means of service of process. As stated above under Rule 4, service of process for a business needs to be delivered to a business in a state in which there is PJ, and to an employee who is allowed to receive service of process, based on their involvement in the business (i.e. like an executive) and their understanding of the rules of service of process.

Here, as established above, OR does not have PJ over D because D's business state of incorporation and PPB is in CA, meaning that CA is the state that has PJ over D, not OR. Given that the OR storage facility for D is not in D's domiciled state, and it was given to mere employee does not meet the requirements. There are no facts that state the

employee served was legally capable of being served, and OR is not the place of incorp. or PPB.

Therefore, given that D was not properly served process, It is likely that the court would find Ds motion to dismiss based on 12b5 service of process acceptable, and dismiss the case for such reasons.

2. D file a motion to Dismiss based on 12(b)(6) and 12(e).

Motion to Dismiss based on 12(b)(6) - failure to state a claim

A motion to dismiss based on Rule 12b6 is a motion to dismiss based on a failure to state a claim. This motion needs to be filed as the response against the complaint. As stated above in Rule 4, if a rule 4 waiver is not signed, after being served the complaint, D is required to respond within 21 days. If rule 4 waiver of service is signed and returned, D would then have 60 days (or 90 if out of state). However, given that there are no facts to suggest such a waiver was signed and returned, the 21 day standard will apply. Will cost of service being applied to D.

When stating a claim, as stated above in rule 8, a claim needs to consist of a statement of jurisdiction, a statement of why P is entitled to remedies, and a demand for remedies. There needs to be a legal cause of action for remedies in the complaint.

Here, D is filing a 12b6 motion, stating that in Ps complaint, P failed to state an appropriate claim. In Ps complaint, there was no statement of why OR had jurisdiction, Personal Jurisdiction or Subject matter Jurisdiction. P would argue that his statement implies that D never paid for the rest fo the vehicle, and thus breached the contract, however in the actual complain, P merely states that D ordered a new corvette from P

and had it painted a stupid color and cant sell it to anyone else. P does not state that D did not pay the rest, or that a K existed, or that D breached the K, or that P is entitled to remedies (damages) due to Ds breach of K. P also doesn't state how much P is actually owed in damages. D would argue that P is also making a conclusory statement by stating that he cant sell it to anyone else. 12b6 also states that P cannot make emotional, non factual statements, and D would argue that the car being a stupid color would qualify as such.

Therefore, it is likely that the court would find Ds 12b6 motion appropate, and that P failed to state a proper claim, and the court would therefore dismiss under rule 12b6.

12(e) - Request a restatement of cause of action

A 12(e) motion to request a restatement of the cause of action, is a response to the complaint from the D that requests P to make a correction, or to further explain or elaborate upon the cause of action. Reasons for this could include vague or unclear claims, incorrectly stated parties or names, ambiguous statements, etc. A 12e request must be returned within the 21 days for the response to the complaint.

Here, D would file such a motion to state that P is bringing such a claim against D as a person, rather that against D as owner of his company, Kool Korevette, Inc. The proper claim should be against Kool Korvette Inc., because, if facts assumed are correct, D purchased the corvette from P as owner of his business, and not as a private citizen. Therefore, the business would be responsible as a party. If D was named as a private citizen, then P would have no legal claim to serve Ds employee in OR (even though that is likely improper method of service as stated above).

Here, D could also claim that the cause of action was too vague or unclear, however, given the above 12b6 motion stated above. the level of ambiguity would most likely

result in a 12b6 motion. However, D could still claim under a 12e motion that P needs to clear up and restate his cause of action to properly name parties, jurisdiction, remedies entitled to, and demanded remedies.

Therefore, it is likely that the court would find the 12e motion applicable

END OF EXAM