

**Civil Procedure A**  
**Fall 2008**

**Mid-Term Examination**

Larry Miller was born and lived his entire life in Arkansas. While working in Memphis, Tennessee, and adjacent to the borders of Arkansas, he was killed while attempting to unload a shipment of electrodes (heavy columns weighing approximately 4800 pounds). They were to be used in the production of steel at the NuCor plant in Northeast Arkansas.

His estate has brought a wrongful death action in Arkansas state court against Nippon and other corporate defendants. Nippon manufactured the electrodes at its plant in Japan. A second corporation packed and loaded the electrodes into cargo containers; a third corporation made the arrangements to ship the products to their ultimate destination in Arkansas; a fourth corporation transported the cargo containers by ocean freighter to Long Beach, California, and then by rail to Tennessee.

Nippon is a Japanese corporation and does business world wide. Nippon is not registered to do business in Arkansas and does not have a registered agent. It does not have a bank account, office or manufacturing plant in Arkansas. It has no employees in the state. It does not advertise in the state. For the past five years, Nippon has sent two representatives each year to Arkansas to visit the steel plant. It has sold and does sell electrotypes to be used in the Arkansas steel plant. It has met with local and state officials in regard to the equipment it has supplied.

Nippon is registered to do business in Tennessee. Its agent is Alan Agent, who resides at 612 Elm Street in Nashville. The Arkansas complaint and summons were delivered to Tennessee deputy sheriff Dan. On Monday the deputy sheriff (driving his official vehicle) went to the residence, but discovered that it was within a gated community. The gated community has six private residences, all of which are visible from the gate. The guard at the community telephoned Alan, but received no response. Deputy Dan left his business card with the guard, and asked the guard to have Alan call him to arrange for delivery of legal documents.

On Tuesday Deputy Dan called Alan at the office and asked to set up an appointment so that he could deliver the documents. They conferred briefly on the phone, and Alan promised to call back, but he never did. On Wednesday and Thursday Dan returned to the gated community and again left his business card requesting that Alan contact him. Friday Dan went to a work address for Alan, but was told that Alan no longer worked there. That afternoon Deputy Dan mailed the papers by first class mail to Alan at 612 Elm Street. Dan subsequently submitted an affidavit to the court, explaining the steps he had taken to serve Alan.

Three weeks later Defendant Nippon filed a Rule 12(b)(2) motion and Rule 12(b)(5) motion to dismiss. Nippon has relied on Helicol, Hanson and Worldwide.

You represent the plaintiff, the estate of Larry Miller. You are standing in front of the Arkansas state trial judge in Circuit Court in Crittenden County, Arkansas. Make the best argument that you can on behalf of your client.

Notes:

- 1) Your answer will be based on your knowledge of the law, your presentation of the law, your responsiveness to the assigned task, your organization, your thoroughness, your creativity and similar factors.
- 2) This question is based in part on Miller v. Nippon Carbon Co., 528 F. 3d 1087 (8th Cir. 2008) and Connally v. Connally, 95 Ark. App. 42 (2006).
- 3) You may keep this essay question.