

Fall 1999 Midterm (Civil Procedure A)

Civil Procedure A
Fall Semester 1999
Mid-Term Examination

Higgins Firearms, Inc. is an Oklahoma corporation; it is not registered in Arkansas; it has no Arkansas agent and no employees in Arkansas. It has never done business in Arkansas, owned land in Arkansas, or advertised in any magazine within Arkansas. It has not initiated any calls to people within Arkansas. However, it has shipped products to Arkansas via the mail and UPS, and derived \$5000 a year in income from buyers in Arkansas (its annual gross income is \$150,000).

Two disputes have arisen over guns sold by Higgins. In an Oklahoma court Higgins won a judgment for \$97,000 against one Thomas Smith in a dispute over 300 guns. Higgins brought that judgment to Eureka Springs, Arkansas and registered it under the Full Faith and Credit clause. (Tom Smith is a citizen of Arkansas). The Arkansas court issued a writ of execution to aid Higgins in collecting the judgment.

The second dispute involves Norrell Arms Corp.(NAC), an Arkansas corporation located in Little Rock. It has sued Higgins in Little Rock, seeking either the 60 guns that it allegedly purchased or the `return` of its \$18,500. None of the guns (in either lawsuit) are located in Arkansas. 36 of the 60 guns were also involved in the first lawsuit against Smith. (Note: The first and second lawsuits are otherwise unrelated).

Higgins has been notified of the lawsuit by first class mail. The president received the notice. In response, the corporation has filed Rule 12(b)(2,5) motions in the Arkansas state court, arguing that the lawsuit against it be dismissed. The defendant corporation has relied heavily on cases and other authority, including such cases as *Helicopteros*, *Hanson*, *Worldwide*.

You represent NAC. You are standing in front of the Arkansas trial court judge in *NAC v. Higgins*. Make the best argument you can that the lawsuit has been properly brought and commenced. Be organized, creative, thorough. Use authority. Refute the opposing arguments of the defendant. Be an advocate.

Note: This question is generally based on *John Norrell Arms, Inc. v. Higgins*, 332 Ark. 24, 962 S.W.2d 801 (1998).