

Essay Question

1. Plaintiff Tom Tennessee lives in Memphis, which is in the Western District of Tennessee. Plaintiff Tom sues Defendant Vince Virginia, who lives (and has an office) in Richmond in the Eastern District of Virginia, for breach of a contract for architectural work. The negotiations for the contract occurred primarily in Memphis. The contract called for Defendant Vince to design a building to be built in Nashville, Tennessee, which is in the Middle District of Tennessee. Allegedly Defendant Vince refused to follow through and complete the contract. Plaintiff Tom sues in federal court based on diversity jurisdiction and seeks \$500,000.

Answer each part briefly. Each part is to be answered independently.

- (A) The action is filed in the Middle District of Tennessee. Is venue proper? **(2 points)**
- (B) Plaintiff Tom's lawyers reside in Little Rock, Arkansas. Plaintiff Tom sues in the Eastern District of Arkansas. Defendant Vince is served with a summons while attending the dog races at the track in West Memphis, Arkansas (Eastern District). Personal jurisdiction is not disputed. Is venue proper? **(3 points)**
- (C) Plaintiff Tom brings the action in the Western District of North Carolina. Defendant Vince has an office in North Carolina. Because the negotiations occurred in Tennessee and Virginia and the witnesses are located in Tennessee and Virginia, the defendant files a Section 1404 motion to transfer the case to the Middle District of Tennessee. Does the court have the power to grant the 1404 motion? **(3 points)**
- (D) The contract between plaintiff and defendant provides that "Both parties consent and agree that any dispute involving this contract shall be litigated in the federal courts of New York." Tennessee law looks unfavorably on forum selection clauses. A series of recent decisions from the Tennessee appellate courts has held that parties may not appreciate or understand forum selection clauses, that the forum selected may be inappropriate or distant, and that the trial judge's power should not be undermined. Plaintiff Tom sues in the Middle District of Tennessee. Defendant Vince objects and moves to transfer to New York. How is the court likely to rule? Why? **(3 points)**
- (E) Plaintiff Tom sues Defendant Vince and Pete Partner. Pete Partner resides and works in the Western District of Virginia. The action is filed in the Western District of Virginia. Is venue proper? **(2 points)**
- (F) Defendant Vince is a corporation, Vince Architectural Services, Inc. It is incorporated in Virginia and has its only office in the Eastern District of Virginia. With the exception of the Nashville, Tennessee project, it does no business outside the Eastern District of Virginia. Plaintiff Tom sues in the Western District of Virginia. Personal jurisdiction is not disputed. Is venue proper in the Western District? **(3 points)**
- (G) The complaint states that the alleged breach of contract took place in 2000.

Tennessee has a three year statute of limitation for breach of contract. Tom filed the lawsuit in Tennessee in 2004. How should Vince respond to the lawsuit? Why? **(2 points)**

- (H) The complaint is filed on November 25th. In response to apparent flaws in the commencement of the lawsuit, Vince files a consolidated motion raising arguments under Rules 12(b) (2), 12(b) (3) and 12(b) (5). That motion is filed on December 7.

On December 10, Vince files a consolidated motion attacking flaws in the complaint itself. He raises arguments under Rules 12(b) (6), 12(e), and 12(f).

How should the judge rule on the December 10th consolidated motion. Why? **(2 points)**