

Civil Procedure A
Fall 2006
Prof. Brill

MID-TERM EXAM

While riding his all terrain vehicle in the mountains around Mena, Arkansas, Ricky Gaines was thrown from the ATV and seriously injured. He has filed a lawsuit for personal injuries in the Circuit Court of Polk County, Arkansas. He has alleged causes of action for negligence, breach of express and implied warranties, and strict products liability.

The ATV was manufactured by Kawasaki in California; it was transferred to Mike's Cycles in Louisiana, then sold as a new vehicle to Bill Booth. He subsequently transferred it to Lakeside Ford, Inc, which sold the used ATV to Ricky.

Lakeside Ford, Inc. (LFI) is a Louisiana corporation, with its only place of business in Fairday, Louisiana. Fairday is across the river from Natchez, Mississippi; Fairday is approximately 100 miles from the Arkansas border and approximately 350 miles from the site of the accident. LFI is a family owned corporation; all of the owners are residents of Louisiana, except Aunt Sophia who owns 1% of the stock and moved last year to a retirement community in Hot Springs, Arkansas.

LFI sells its products almost entirely to customers in Louisiana and Mississippi, but each year approximately 5 citizens of Arkansas come south to Fairday to make a purchase. They are attracted by the good reputation and the quality service of LFI. These sales amount to less than 1% of gross revenues of LFI. Its advertisements are entirely placed in Louisiana media. Upon request from Arkansas citizens, it ships catalogues to Arkansas.

While Ricky was working in Fairday, he purchased the used ATV from Lakeside. Subsequently he was transferred by his employer to Mena, and he became a permanent resident of Arkansas. He moved all his possessions, including his ATV with him to Arkansas.

Since moving to Mena, Ricky has stayed in touch with Lakeside. He is on its periodic mailing list; he has called the service department with questions; and he called the parts department and purchased a \$100 piece of optional equipment, which LFI mailed to Mena. Ricky installed it on his ATV.

Lakeside has a web page. It provides information about the dealership, allows customers to schedule appointments, and gives details over the products offered for sale. The web page is accessible nation-wide. Ricky is not technologically advanced and has never looked at it.

LFI employees come to Little Rock, Arkansas for an annual training session with Kawasaki officials. Most of its new Kawasaki vehicles are obtained through a wholesaler in Arkansas.

LFI also sells the products of other manufacturers at its Fairday locations.

After the complaint was filed, the clerk issued a proper summons. The plaintiff's attorney delivered it to a deputy sheriff in Polk County. The president of Lakeside Ford, Inc. is Jacques Delhomme. For more than 20 years, he and his family have spent a leisurely week of vacation in the spectacular Ouachita Mountains of Arkansas. On this occasion the family was enjoying a wonderful dinner at the Queen Wilhelmina lodge. The deputy sheriff approached Jacques, and put the summons into his hands. Until then Jacques knew nothing of the lawsuit or of the accident. He would not have come to Arkansas if he had known. It ruined his dinner; and he and his family shortened their family holiday and headed to Louisiana.

LFI has filed Rule 12(b)(2) and 12(b)(5) motions. Ricky has responded in writing; his arguments in support of jurisdiction are based in part on the cases of International Shoe, Hess, Keeton, and Burnham,

You represent LFI. You are standing in front of Circuit Judge Jake Looney. Make the best argument that you can on behalf of your client. Be organized, be logical, be creative. Be sure to refute the obvious arguments of the plaintiff Ricky.

NOTE:

- 1) Ignore the merits of the lawsuit.
- 2) Ignore other possible defendants.
- 3) The exam is based generally on Ganey v. Kawasaki Motors and Lakeside Ford, Inc. (Arkansas Supreme Court, May 4, 2006; 2006 Ark. Lexis 294)