

Civil Procedure
Fall 2007
Prof. Brill

Quiz # 1

Evaluate the following three examples in light of the principles in personam jurisdiction.

Example #1:

Defendant ABC Corporation is located in Missouri. It builds one small chicken house in Arkansas; the house collapses. The owner of the house sues ABC in Arkansas.

Example #2:

Defendant RST Corporation is a nationwide corporation, it has numerous employees, stores, sales and property in the forum state of Arkansas. The plaintiff was injured by a negligent act of RST, which occurred in the State of Vermont. The plaintiff sues RST in Arkansas.

Example #3:

Defendant XYZ Corporation is located in California; it makes valves and ships them on a regular basis to a manufacturer of water heaters in Texas; the water heaters are shipped to Arkansas. The plaintiff purchases a water heater in Arkansas, and is injured. She sues XYZ in the forum state of Arkansas.

Choose the correct answer from the following:

- A) Example #1 is an illustration of specific jurisdiction; Example #2 is an illustration of general jurisdiction.
- B) Example #1 is an illustration of general jurisdiction; Example #2 is an illustration of specific jurisdiction.
- C) Example #3 is an illustration of the stream of commerce approach; Example #2 is an illustration of specific jurisdiction.
- D) Example #3 is an illustration of the stream of commerce approach; Example #1 is an illustration of general jurisdiction.

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Name

Answer

If you believe this question is vague, ambiguous, misleading or unfair, please explain why.

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Quiz # 2

Does an Arkansas state court have in personam jurisdiction over the defendant in the following instances?

- 1) Arkansas plaintiff is injured by a California driver on a California highway. California driver owns 1000 shares of Wal-Mart stock (an Arkansas corporation). Arkansas plaintiff commences the lawsuit by seizing the Wal-Mart stock.
- 2) Arkansas plaintiff is injured by a Florida defendant. The Florida defendant allegedly caused an accident while driving on a city street in Fayetteville.
- 3) Kentucky defendant reserves by telephone from an Arkansas car dealer and confirms by a written agreement, a rental limousine for the Kentucky football game in Fayetteville. The Kentucky defendant does not come for the game.

Does in personam jurisdiction over the defendant exist in Arkansas?

- A) No, not in any of the three.
- B) Only in (1).
- C) Only in (2).
- D) Only in (3).
- E) Only in (1) and (2).
- F) Only in (2) and (3).
- G) Only in (1) and (3).
- H) Yes, in all three.

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Answer

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Quiz # 3

Betty Borrower lives in Illinois. She finances her new automobile through Larry Lender, Inc, a corporation located in Texas. Although she has never been to Texas, she mails her monthly payments there. The written contract has the following three provisions:

Paragraph 13: "This contract will be interpreted under the laws of Texas."

Paragraph 15: "Any dispute arising under this contract will be commenced in the courts of Texas, and to the exclusion of the courts of any other state."

Paragraph 17: "Betty Borrower acknowledges that she has minimum contacts with Texas, and she consents to personal jurisdiction if sued there."

Betty fails to make the payments, and Larry Lender sues her in Texas. Only one of the following statements is correct. Which one?

- a) Paragraph 13 is a consent clause and is probably valid under Carnival Cruise.
- b) Paragraph 15 is a choice of law clause, and is probably valid in light of Burger King.
- c) Paragraph 17 is a forum selection clause and is probably valid because of her minimum contacts.
- d) Paragraph 13 is a choice of law clause and is probably invalid because of duress or overreaching in signing the contract.
- e) Paragraph 15 is a forum selection clause, and is probably invalid because of reasonableness.
- f) Paragraph 17 is a consent clause and is probably invalid because of reasonableness.

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Answer

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Quiz #4

The Fayetteville plaintiff sues in an Arkansas federal court for patent infringement. The defendant is a resident of Fayetteville. Service is made by Ed, a 22 year old full time employee of the plaintiff's law firm. Ed has not been appointed by the court to serve process. In each instance the defendant receives the papers in a timely fashion. Which of the following methods of service are valid?

- 1) Ed leaves the papers with the defendant, while he is attending church service on Sunday morning.
 - 2) Ed leaves the papers with the mature 13 year old son, while he is enjoying the family swimming pool at the residence of the defendant.
 - 3) Ed leaves the papers with the mature 16 year old daughter while she is mowing the lawn at the family residence.
 - 4) Ed leaves the papers with the spouse, while she is working at the family hardware store.
 - 5) Ed calls the defendant at his house, reads him the summons over the phone, and then faxes the papers to him.
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- a) Only 1, 2 and 3 are valid.
 - b) Only 1, 3 and 4 are valid.
 - c) Only 1, 4 and 5 are valid.
 - d) Only 2, 3 and 5 are valid.
 - e) Only 2, 4 and 5 are valid.
 - f) All 5 methods of service are permissible, because the defendant received the papers.
 - g) None are permissible because Ed has not been appointed by the court.

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Fall 2007
Quiz #4

Name

Answer

If you believe this question is vague, ambiguous, misleading or unfair, please explain why.

Quiz #5

Does the following case go to federal court under diversity jurisdiction? Assume \$100,000 is in controversy.

A citizen of Texas is killed in a motor vehicle accident. His heirs live in Arizona. The personal representative of his estate is an Oklahoma bank. The accident was in Kansas.

The other driver was employed by a Delaware corporation, which has its principal place of business in Oklahoma.

- a) No; the lawsuit may be viewed as Oklahoma vs. Oklahoma.
- b) Yes; the lawsuit may be viewed as Texas vs. Delaware.
- c) Yes; the lawsuit may be viewed as Arizona vs. Oklahoma.
- d) Yes; the lawsuit may be viewed as Oklahoma vs. Delaware.

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Quiz #5

Name

Answer

If you believe this question is vague, ambiguous, misleading or unfair, please explain why.

Quiz #6

Two individuals are injured in a bus accident. One lawyer (the well known Elle Woods) brings a single lawsuit, with Counts #1 and #2. The plaintiffs sue the bus company (a South Carolina corporation) in Georgia state court. Plaintiff #1 (Georgia) sues for \$25,000. Plaintiff #2 Georgia sues for \$85,000. The claims are unrelated. Count #1 is based on common law negligence; Count #2 is common law negligence.

Can the lawsuit, in whole or in part, be removed to federal court by the South Carolina bus company?

- a) Yes. The bus company has a right to remove the entire lawsuit.
- b) No. No part of the lawsuit can be removed.
- c) The bus company has a right to remove Count #1. The trial judge has discretion to take Count #2 under #1441(c).
- d) The bus company has a right to remove Count #1. The trial judge has discretion to take Count #2 under #1367(a and c).
- e) The bus company has a right to remove Count #1. However, the trial judge cannot take Count #2 because #1367 does not apply to removed cases.
- f) The bus company has a right to remove Count #2. The trial judge has discretion to take Count #1 under #1441(c).
- g) The bus company has a right to remove Count #2. The trial judge has discretion to take Count #1 under 1367(a and c).
- h) The bus company has a right to remove Count #2. But the trial judge has no authority to take Count #1.

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Quiz #6

Name

Answer

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Quiz #7

Plaintiff Paula is a citizen of Arkansas, and she resides in Washington County. Defendant Dan is a citizen of Delaware. They have a car accident in the western portion of Missouri, and Paula suffers approximately \$100,000 in damages.

Assuming that Paula sues Dan, where is venue proper? Select the correct statements.

- 1) If Paula sues in federal court, venue is proper in the Western District of Arkansas (which includes Washington County).
- 2) If Paula sues in federal court, venue is proper in either the Eastern or Western District of Arkansas.
- 3) If Paula sues in federal court, venue is proper in the federal court for the western district of Missouri.
- 4) If Paula sues in Arkansas state court, venue is proper in Washington County.
- 5) If Paula sues in Arkansas state court, venue is proper in any Arkansas county because the defendant is a non-resident.
- 6) Venue is not proper in any Arkansas state court. The defendant is a non-resident and the accident took place outside Arkansas.
 - A) Only statements 1 and 4 are correct.
 - B) Only statements 2 and 5 are correct.
 - C) Only statements 3 and 6 are correct.
 - D) Only statements 3 and 4 are correct.
 - E) Only statements 1 and 5 are correct.
 - F) Only statements 2 and 6 are correct.

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Name

Answer

If you believe this question is vague, ambiguous, misleading or unfair, please explain why.

Quiz #8

The Nebraska Court of Appeals handed down a decision in 1955 that interpreted the Statute of Frauds in Nebraska. The Nebraska Court of Appeals has state wide appellate jurisdiction, and its decisions are reviewable only by the Nebraskas Supreme Court.

The same legal issue has never been decided by the Kansas courts.

In 2007 a dispute arises concerning a contract between a citizen of Nebraska and a citizen of Kansas. The lawsuit is brought in Kansas federal court under diversity jurisdiction. The resolution of the Statute of Frauds issues is crucial to the determination of the dispute.

How should the federal trial judge in Kansas resolve the issue?

- A) She should apply federal common law because citizens of different states are involved.
- B) She should borrow the law of Kansas because she is in Kansas.
- C) She should use the law of Nebraska because only it has spoken on the issue.
- D) She should use whatever law a Kansas state judge would use to resolve the Statute of Frauds dispute.
- E) Under "the best law" principle, she may ignore both states because their law is unclear or out-dated.

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Name

Answer

If you believe this question is vague, ambiguous, misleading or unfair, please explain why.