

Empire College School of Law  
Professor Wheeldin  
Civil Procedure – Fall 2009 Mid-term  
Monday, December 14, 2009

QUESTION ONE – 90 MINUTES

Robert Wave, a Sonoma County resident, is an avid surfer and collector of surfboards. When he is not surfing the waves at Salmon Creek, he is surfing the internet for rare surfboards to add to his growing collection.

While surfing the internet he comes across a web site “Best Boards Ever.com” The site is owned and operated by King Kam’s Surf Shop, a Hawaiian corporation with its principal place of business in Hilo, Hawaii.

The web site contains photographs of lots of surfboards for sale from the inventory of King Kam’s Surf Shops on both Hawaii, Kauai, and Oahu. The web site does not allow for direct purchase of the surfboards but encourages browsers to contact the shops directly listing phone numbers for each shop.

The web site also contains various links including one called “DreamBoards.com”. Robert visits that web site and sees listed for sale a surfboard reportedly used by Elvis Presley in the movie “Blue Hawaii”. Robert Wave wanted this board for his collection but was concerned about authenticity. Robert Wave called the phone number at DreamBoards.com and when there was no response, he called the phone number at BestBoards.com and was pleasantly surprised to learn the “Elvis Board” was owned by King Kam’s surf shop, which also owned the website DreamBoards.com.

The “Elvis Board” was listed for sale at \$90,000 but after the exchange of various offers and counteroffers, the bargain was struck and Robert Wave agreed to the purchase at \$75,000 and was to also pay \$2,500 upon receipt for shipping and handling.

Robert Wave sent a check for \$75,000 and the Elvis Board arrived 7 days later. Robert Wave had the board examined by a San Francisco expert who opined “Sure it is old and a rare surfboard but no way was it in “Blue Hawaii”. Fearing he had been a fraud victim, Robert Wave conducted a search on Craig’s list Hawaii, Rants and Raves, only to find a San Diego businessman who complained King Kam’s Surf Shop had sold him a surfboard reported to have been used in an old T.V. show, I Magnum, but the board was a fake.

Fearing Fraud, Robert Wave files suit in Federal District Court for the Northern District of California against King Kam’s Surf Shop. The suit is served on King Kam’s

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Surf Shop in Hilo, Hawaii, by a registered process server pursuant to the California Long Arm Statute.

In its answer, Defendant denies the Elvis Board is not authentic and counterclaims for the \$2,500 shipping and handling fee never paid by Plaintiff.

QUESTION 1 CONTINUED

Please Discuss:

1. Defendant's Motion to Dismiss for lack of Subject Matter Jurisdiction. (30 pts.)
2. Defendant's Motion to Dismiss for lack of Personal Jurisdiction. (50 pts.)
3. Plaintiff's Motion to Dismiss Defendant's Counterclaim (10 pts.)
4. Can the matter be transferred to the Federal District Cour in Hawaii under U.S.C 1404(a) (10) pts.

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QUESTION 2 – 90 MINUTES

Flyhigh Inc. is the leading civilian manufacturer of parachutes and related skydiving equipment. Flyhigh, Inc. is incorporated in Nevada but has its principal office in California and its sole manufacturing plant in California.

Flyhigh, Inc. uses a special nylon slip joint manufactured by Highest Tech, Inc. which is also incorporated in California but has its manufacturing facility in Soochow, China. Highest Tech sells its product only to California manufacturers.

The nylon slip joint is used by Flyhigh, Inc. to secure the rip cord to the parachute. Flyhigh, Inc. sells its parachutes throughout the United States and through its internet site "SoftLandings.com"

Rosa Sanchez and Henry Cho are novice skydivers but own their own Flyhigh, Inc. parachutes. Both Rosa and Henry are residents of Hawaii. The purchase agreements contain a forum selection clause requiring all litigation regarding the parachutes to be filed in U.S. District Court for the Southern District of California.

Rosa and Henry fly to the Big Island for recreational skydiving. While on their second "drop" over the Parker Ranch, both slip joints malfunction causing both parachutes to only partially deploy.

Rosa suffers a broken leg and a fractured ankle while Henry sustains serious injuries to his spinal cord.

Rosa and Henry file an action against Flyhigh, Inc. in the U.S. District Court in Hilo, Hawaii, alleging negligence in the design and manufacture of Flyhigh, Inc. parachutes.

1. May Flyhigh, Inc. object to the failure by Rosa and Henry to join Highest Tech, Inc. as a defendant? (25 pts.)
2. May Flyhigh, Inc. bring Highest Tech, Inc. into the case? (25 pts.)

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3. Relying on the forum selection clause, defendant Flyhigh, Inc. moved the Court to transfer the case to U.S. District Court in California pursuant to 28 USC 1404(a). The Hawaii District Court denied the motion on the grounds forum selection clauses always disfavor Hawaiian residents and as a matter of statutory state law are not recognized in Hawaii, and thus 28 USC 1404(a) did not apply. Was the District Court's ruling correct? (50 pts.)