

### **QUESTION ONE – 1 Hour**

Donna Devine is a real estate broker who lives and works in Reno, Nevada. Her practice is mostly in Nevada, but, over the years, she has sold a few properties in Sacramento, to some of her Nevada clients, and continued a small advertisement in the Sacramento newspaper. Paula had, from time to time, occasion to visit an orthopedic specialist for an old ski injury. The doctor's name is Paul Plenty. Although Dr. Plenty lived in Los Angeles, he occasionally traveled to Reno, where he had a small practice to handle ski injuries. On the way out of his Reno office, a bizarre accident occurred when Donna shut the door on the doctor's hand, breaking two of the bones in his hand.

Dr. Plenty timely sued Ms. Devine in the United States District Court in the Southern District of California (Los Angeles) because that is where he lived, most of the time. Dr. Plenty's monetary claim exceeded the jurisdictional minimum for subject matter jurisdiction. Ms. Devine was personally served at her home in Reno with the summons and complaint.

The first thing that Ms. Devine did was to hire a lawyer who immediately filed a motion challenging personal jurisdiction, assuming that was the quickest way to obtain a dismissal. That motion was denied.

Immediately after receiving the denial of her motion, Ms. Devine's attorney filed a motion to change venue to Sacramento, since that was closer to her home. That motion was likewise denied by the Court.

Following the filings of these motions and after the statute of limitations had expired, Dr. Plenty sought leave of the court to add to his complaint, a claim against Ms. Devine for recovery of an old and unpaid bill in the amount of \$3,500.

Finally, the attorney for Ms. Devine filed another motion, this time trying to have the case dismissed as being in the wrong forum. In the alternative, Donna now wanted the case transferred to Reno for trial.

**ANSWER FULLY THE FOLLOWING QUESTIONS:**

**QUESTION ONE**

**ANSWER THE FOLLOWING QUESTIONS:**

1. Was the Court's ruling on Donna Devine's challenge to personal jurisdiction correct?
2. Was the Court's ruling on Ms. Devine's motion to change venue correct?  
Discuss all applicable factors.
3. How should the Court rule on the motion filed by Dr. Devine regarding the old bill?
4. How should the Court rule on the motion by Ms. Devine to dismiss the case as being in the wrong forum or, in the alternative, to transfer the case to Reno?

**QUESTION TWO – 1 Hour**

Adam lived and ran a small spa and resort in Santa Rosa. He needed some replacement hot water valves for one of his spas and ordered several from Titan Valve Co. Titan is an Illinois corporation whose factory is located in Oregon. The owners of the company, however, and the CEO live in California, where they take the orders.

After Adam received the replacement valves, he installed one at his spa. It promptly failed, causing \$60,000 in property damage. He also wanted to recover the \$20,000 he had earlier paid to Titan for refurbishing a hot tub and filed suit against it in Sonoma County Superior Court. Titan promptly removed the case to the United States District Court in San Francisco. Adam sought to remand claiming there was no jurisdiction. The motion to remand was denied and the case remained in District Court.

Titan moved to dismiss the Complaint alleging that it did not state facts sufficient to state a cause of action. That motion was denied.

Sonoma County had a rule requiring non-binding arbitration of “consumer” disputes such as this one. There was no such requirement in federal court. When Titan sought to compel arbitration, Adam objected and the Court denied Titan’s request.

After filing the lawsuit, Adam learned that the real name of the defendant was Titan Valve and Pipe Co. There was no entity known as just “Titan Valve Co.” Adams sought to amend the Complaint, although the statute of limitations had expired to correct the name of the defendant. The original summons had been served on the President of Titan Valve and Pipe Co., who thought he could avoid liability because the name of the defendant was wrong.

ANSWER FULLY THE FOLLOWING QUESTIONS:

Empire College School of Law  
Professor Martin Seeger, IV  
Civil Procedure – Fall Mid-term  
Tuesday, December 14, 2010

Student ID# \_\_\_\_\_

## **QUESTION TWO**

### **ANSWER THE FOLLOWING QUESTIONS:**

1. Was the Court correct in denying the Motion to Remand?
2. Was the Court correct in denying the Motion to Dismiss?
3. How should the Court rule on Titan's Demand for Arbitration?
4. How should the Court rule on Adam's request to amend the Complaint?