

QUESTION ONE

“Daredevil” Dan runs an extreme hiking business in eastern Oregon. His company is incorporated in Oregon where it has its principal place of business. In order to keep a steady supply of clients, Dan advertised in the Santa Rosa Press Democrat newspaper and offered discounts to California clients. Patrick, a resident of Santa Rosa, saw the ad and signed up for a trip in the Oregon mountains, paying in full by credit card over the internet. Susan, a resident of Oregon, also had signed up for the same trip.

On the first day of the tour in the Oregon mountain range, Dan led his clients up a slippery trail with poor footing. Susan lost her balance and started to fall over the edge of a steep cliff. She reached out for help to Patrick, but ended up pulling him over with her. They both suffered significant injuries in the fall and had to be airlifted to a hospital in Portland, Oregon.

After returning to Santa Rosa, Patrick filed a lawsuit for his injuries in the San Francisco County Superior Court claiming damages of more than one million dollars. “Daredevil” Dan has an agent for service of process who was served with the proper paperwork. Patrick served Susan at her house in Eugene, Oregon by leaving the paper work with her gardener, since she was not home at the time. “Daredevil” Dan intends to remove the case to the United States District Court in Los Angeles, where his brother in law practices law. He would like the case tried in Oregon, however, where he lives.

ANSWER FULLY THE QUESTIONS ON THE NEXT PAGE

QUESTION ONE

1. Was Susan properly served with the summons and complaint?
2. Does the San Francisco County Superior Court have personal jurisdiction over the defendants?
3. Is the San Francisco County Superior Court the proper venue for this case?
4. May the case be removed and where should it be tried?

QUESTION TWO

Paula is a computer software designer in Nevada. She contracted with David to repair a computer hard drive for which contained proprietary software she was working on. She sent her hard drive to David at his shop in Sacramento. While he worked on it, David stole the experimental software and began marketing it as his. When Paula learned of this, she immediately confronted David at his shop. David denied stealing the software and accused Paula of being a “liar” and a “thief”.

Paula filed a complaint in the U.S. District Court in Nevada seeking treble damages for violation of federal copyright laws. She included a tort claim for defamation against David, although she knew that it wasn’t worth very much. She also included a claim for breach of contract to recover fees she paid David for work he did on another computer several months before.

David files a Rule 12 motion to dismiss the complaint for lack of subject matter jurisdiction. The motion is denied. He then files an answer and adds as an affirmative defense the claim that the venue for the case was wrong. Paula seeks to have this defense stricken. This motion is denied as well.

David now seeks to have the case moved to San Francisco, where his office is located and where all of his witnesses live. That motion is denied as well.

Nevada law requires parties to engage in mediation before they file a lawsuit. There is no such law in the federal system. Nevada law also allows a plaintiff to immediately question the defendant under oath, but federal law prohibits such questioning until the judge authorizes it.

ANSWER FULLY THE QUESTIONS ON THE NEXT PAGE

QUESTION TWO

1. Was the court's ruling on the Rule 12 motion challenging subject matter jurisdiction correct?
2. Was the court's ruling on Paula's motion to strike the affirmative defense raised in the answer correct?
3. Will the case be transferred to San Francisco?
4. What law should the District Court apply regarding mediation and questioning the defendant?