

Empire College School of Law  
Professor Martin L. Seeger, IV Esq.  
Civil Procedure - Midterm  
December 14, 2016

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

### **QUESTION ONE**

David graduated from podiatry school in New York and moved to Los Angeles to start his practice. He signed a real estate agreement to purchase a house. David applied for a home loan from "We Got the money" loan company in Reno. This was a subsidiary of a nation wide credit lending corporation. David called an 800 number, provided his social security information and got the loan. Unfortunately, David could not make his practice make money and, stressed out, he temporarily went back to his parents' house in San Francisco.

A few months later, David learned that his lender filed suit in the U. S. District Court in Nevada. The summons and complaint was left with his parents' gardener and he saw it a few days later. The lender was suing for \$60,000 in unpaid mortgage payments and \$20,000 for fraud damages claiming David was not honest in his application.

David filed a Rule 12 motion challenging personal jurisdiction and this was denied. David then answered the complaint and added, as an affirmative defense, his claim of improper service. The loan company seeks to strike the affirmative defense.

David would like to move the trial of the case from the court in Reno to Los Angeles, thinking it would be better for him to have the case heard there.

ANSWER THE QUESTIONS ON THE NEXT PAGE

**QUESTION ONE**

Fully answer the following questions:

1. Does the U.S. District Court have personal jurisdiction over David?
2. Does the U.S. District Court have subject matter jurisdiction over David?
3. May David plead the affirmative defense of improper service?
4. May David move the case to Los Angeles?

**QUESTION TWO**

Paula, a California resident, was injured when her softball bat snapped during a game. She sued, in Sonoma County Superior Court, the manufacturer, Ralston, and Dan's Sports, where she bought the bat. Both Ralston and Dan are located in Oregon. Ralston sold bats in many western states, but 90% of its sales were in California. Her claim is for \$100,000. Ralston seeks to remove the case to a U.S. District Court in Oregon. Dan doesn't agree.

Assuming the case remains in a U.S. District Court, Dan files a counter claim against Paula for defamation, since she took out ads in sports magazines criticizing Dan. He asks for \$50,000 in damages. Paula files a Rule 12(b) motion challenging subject matter jurisdiction.

The federal court has a Rule of Civil Procedure that requires the parties to a new lawsuit to participate in mediation, before the case is set for trial. The state court rules do not make mediation mandatory, but rather voluntary and Dan refuses to attend any mediation.

The parties to the lawsuit all agree that the case should be tried in San Francisco.

ANSWER THE QUESTIONS ON THE NEXT PAGE

**QUESTION TWO**

Answer the following questions:

1. Will Paula's case remain in state court or be tried in federal court?
2. What will happen to the counter-claim filed by Dan?
3. Does Dan have to participate in mediation before the case is tried?
4. Where will the case be tried?