

**QUESTION 1**  
**(One Hour)**

Peter is an antique dealer. He has spent the last few years traveling across the country looking for antiques and buying and selling them. He lives in Santa Rosa. One day when visiting an estate sale in Marin County, he met Dan, an antique dealer who was showing a series of vases which, although old, seemed to be in perfect shape. Peter liked Dan and found out that he lived in Eugene, OR. Several weeks later, Peter traveled to Dan's home in Eugene and bought an antique vase priced at \$80,000. Some weeks after Peter had the vase shipped to his home in Santa Rosa, it fell apart.

Peter filed suit against Dan in the U. S. District Court in San Francisco asserting jurisdiction on the basis that the defendant would claim that the deal violated the federal statute which required an antique dealer to disclose that he was a wholesale dealer. If the transaction violated the Dealer Act, there could be no recovery for Peter. Dan moved to dismiss claiming the Court had no subject matter jurisdiction. How should the court rule? (Assume for the rest of the question that the case remains in federal court.)

Shortly after the vase fell apart, Peter sees an article in an Oregon trade magazine where Dan had called him a "thief" because of the dispute over the broken vase. As a result, Peter included, in the complaint, a separate cause of action for libel. Dan also moved to strike this cause of action on the grounds that the court lacked subject matter jurisdiction to hear it. Peter admits that this is not a "serious" claim since nobody really knew him in Oregon and the article was rather small. The court denies the Motion to Dismiss the libel cause of action. Was this ruling correct?

Included in his Rule 12 motions (above), Dan moved to quash service of the summons and complaint which had been served in Eugene claiming that the District Court had no personal jurisdiction over him. The summons had been delivered to Dan's 17 year old son when Dan was out of town. Dan had never sold antiques to a California resident before. Dan thought that Peter came to visit him for personal reasons, not to buy from him. How should the court rule on this motion?

Shortly after filing the Complaint, Dan's lawyer interviewed two witnesses who claimed to have previously owned the vase. They told him that the vase had previously been broken and repaired. If true, this would seriously reduce its value. Since the previous owners can't be found, Peter sent a Request for Production of Documents to Dan seeking the interview notes. Dan is worried that his lawyer will have to produce the notes since they contain some derogatory comments about him and comments about his lawyer's theories and research. Dan sought a protective order to prevent this discovery. How should the court rule?

**ANSWER THE QUESTIONS ON THE NEXT PAGE**

**How should the court rule on the following motions?**

1. Dan's motion to dismiss for lack of subject matter jurisdiction.
2. Dan's motion to dismiss the libel claim.
3. Dan's motion to quash the service of the summons and complaint.
4. Dan's motion for a protective order.

**QUESTION 2  
(One Hour)**

Ears R Us, Inc. is a Nevada corporation with all of its corporate offices in the State of Nevada. The company manufactures custom hearing aids for elderly and hard of hearing patients most of whom live in Nevada. The manufacturing is done in Los Angeles. The company is owned by Darlene who lives in Sacramento. While attending a hearing aid convention in Chicago, Darlene introduced herself to some California audiologists (hearing doctors). Not long after that, a San Francisco hearing doctor orders some of Ear's hearing aids and prescribed a set to Paul, a resident of San Francisco. Regrettably, the hearing devices were too loud and further damaged the users' hearing, causing many to become deaf. This happened to Paul.

Paul filed a complaint for personal injuries in the U.S. District court in Sacramento. He named and served Ears R Us, Darlene and David, the technician who made the hearing aids and who lives in Nevada, just over the state line, as defendants. All three defendants file a Rule 12 motion to challenge personal jurisdiction. How should the court rule on the three motions?

Paul wanted the court to instruct the jury that a California statute stated that the benefit of any doubt should be given to consumers injured by defective products. Since there was no such federal statute, the judge rejected this request. Was this ruling correct?

During the jury selection process, Paul moved to peremptorily dismiss the only three jurors who owned small businesses, thinking they might be prejudiced against him. Darlene objected to these disqualifications. How should the court rule?

The case against the defendants goes to trial in Sacramento and there is a verdict for the plaintiff. The following year, Pattie, another San Francisco user of the Ears hearing aid, files suit against Ears R Us, in San Francisco Superior court, for injuries she suffered from use of the same type of hearing aid. After the defendants appear in the action, she moves for summary judgment against them on the issue of liability. How should the court rule?

**ANSWER THE QUESTIONS ON THE NEXT PAGE**

**How should the court rule on the following motions?**

1. The three defendants' motions to dismiss for lack of personal jurisdiction.
2. Paul's request for a "consumer" jury instruction.
3. Darlene's objection to the prospective jurors.
4. Patties' motion for summary judgment.