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=====**Start of Answer #1 (1839 words)**=====

Issue 1: Does the Court have personal jurisdiction over the local airport and Flight•

Personal Jurisdiction is the power that a Court may hold to engage in abiding adjudication over a person or a thing.

absent
In re International Shoe, the Court set forth that if a Defendant has not consented to jurisdiction, Due Process requires that the Defendants have certain minimum contacts in the forum state in order to exercise personal jurisdiction so as to not to offend traditional notions fair play and substantial justice. Generally, minimum contacts has been looked at by viewing any of the Defendant's actions which are personally directed towards the forum state so that the nature and quality of such contacts should rightfully permit a Court to exercise personal jurisdiction.

Such considerations of contacts call into question the manner in which the Defendant's contacts relate to the claim. A claim that arises from the Defendant's contacts is considered specific jurisdiction and less contacts are necessary to establish personal jurisdiction. A claim that does not arise from the Defendant's contacts is considered general jurisdiction and greater contacts are required to establish personal jurisdiction.

good

First, in determining whether or not the Court has in personam jurisdiction over Flight, we must determine whether or not the action arises out of Flights contacts with the forum state of Oregon. The facts set forth Flight's contacts with Oregon are installing signaling equipment in Oregon, upon request of the local airport. The reason for the suit, however, appears to be related to different faulty equipment and not the signaling equipment made in Oregon; thus, it is likely a court will determine this as general jurisdiction, in which the claim does not arise out of contacts and more contacts are usually required. Furthermore, Flights president and staff are also located in Oregon, even though Flight's place of incorporation is not in Oregon. As such, due to the minor manufacturing and location of its primary staff, it would appear that Flight likely has sufficient contacts with the forum state even in considering this is a matter of general jurisdiction. *W.W. Volkswagen* set forth that a Defendant who may determine that his actions in the forum state and availment to the local law could one day result in going to Court there is likely to have purposefully availed him/itself to personal jurisdiction of the forum.

good!

Secondly, in determining whether or not the Court has personal jurisdiction of the local airport, we must consider that the also look to its contacts with the forum state. Here it is stated the Colorado local airport

Colorado local airport

requested that Flight prepare certain signaling equipment in Oregon. Additionally, because the suit arises out of radar equipment (not signaling equipment), it would appear that Airport's contacts with the forum state do not arise out of the current suit and thus there is general jurisdiction. Generally, purposefully directing some kind of action with the forum state may be sufficient to establish contacts with the forum state; however, here because such actions do not arise out of the suit, it is unlikely that the Court should determine that the nature and quality of Airport's contacts should result in Oregon having personal jurisdiction over it.

Therefore, the Court was correct in denying the Rule 12(b)(2) motions for lack of personal jurisdiction as to Flight; however, the Court erred in denying Airport's Rule 12(b)(2) Motion as its contacts do not seem so sufficient that Oregon can maintain personal jurisdiction with regards to the suit brought by Paul.

Issue 2: Does the Court have personal jurisdiction over Titan?

With regards to Titan, and in applying *International Shoe*, etc., it appears that Titan's only contacts with Oregon are its selling of radar equipment to Flight, which Flight uses in its landing equipment. Generally, merely creating goods and placing them into the **stream of commerce** will not subject a Defendant to personal jurisdiction of the forum unless something further such as **purposeful availment** in the forum state exists. **Purposeful availment** requires that Titan had intentionally and knowingly placed their goods into the market in Oregon--which it did not. At a minimum, it would appear that the Court does not have personal jurisdiction given that Titan merely placed its goods into the stream of commerce, without any further purposeful direction, actions, or availment with the state of Oregon.

Additionally, the Court might determine that specific jurisdiction was established because Paul's claim arises from the defect of the goods, specifically radar equipment, which is also the basis for Titan's contacts in Oregon as that is where the defective merchandise was located. If then the Court determined that the need for lesser in quality and quantify of contacts was met by the mere stream of commerce argument (unlikely), Titan could rely on *Burger King* to rebut the finding of contacts with the forum state. *Burger King* permits the forum state to choose not to exercise personal jurisdiction when the traditional interests of fair play and substantial justice cause the Defendant's defending of the suit in the forum state to be unreasonably hindered. Therefore, even if the Court determines that the need for fewer contacts, due to specific jurisdiction, has been met, Titan is likely able to successfully rely on *Burger King* so that the Court will not choose to exercise personal jurisdiction over it.

Therefore, the Court erred in finding personal jurisdiction over Titan and should have granted Titan's Rule

12(b)(2) motion.

Issue 3: Was the Court correct in refusing to transfer the case to Colorado?

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At the same time as Titan's Rule 12(b)(2) Motion, Titan also requested a change in venue to Colorado, where its president lives, etc. Generally, a Defendant may file a Motion to Change/Transfer Venue through Rules 1404 and 1406. The Court may, at its discretion, change venue to any place in which the case may have originally been filed, which also considers the Defendants' contacts with the requested forum in determining where the suit may have been brought.

Generally, a request to change venue is separate from a Motion Showing Improper Venue. Had there been improper venue in the outset, Titan had the ability to raise/join this Rule 12(b)(3) issue with its Rule 12(b)(2) motion. Likely due to the fact that personal jurisdiction with the forum had already been determined (although wrongfully), an alternative request for a change of venue is the most reasonable request. Given that, however, a request for change of venue is discretionary and a Court may consider such things as locations of the witnesses, burden on all Defendant's, etc. And in so likely considering such things for this request, the Court denied Titan's motion to transfer. I, as well, believe the Motion should have been denied (despite personal jurisdiction issues), due to the fact that the witnesses are likely located in the present forum with regards to the defective equipment in question, etc.

Thus, I believe the Court was correct in refusing to transfer the case to Colorado.

Another consideration is if the parties had stipulated to transferring the case. Because Venue is a waivable defense under Rule 12, a stipulation to venue between all parties may have allowed the Court transfer the case to Colorado. That, however, is not the case here.

Issue 4: How should the Court rule on the motions filed by Flight and Airport regarding subject matter jurisdiction and venue? What would be the result if the parties stipulated to the Motion?

Subject Matter Jurisdiction is power of the Court to hear a particular type of case/matter through either a suit involving a federal question (Section 1331) or through diversity of the parties (Section 1332). Subject matter jurisdiction may be raised with a Rule 12(b)(1) Motion and is not waivable.

With regards to Airport, the facts set forth that, at least to Airport, there is a federal question (Section

1331) which gets Paul through the front door, specifically because the Constitutional provides matters of federal question may be brought before a federal court.

Therefore, Airport's Rule 12(b)(1) motion was properly denied because the Court had subject matter jurisdiction regarding a matter of federal question.

Additionally, a court may exercise **supplemental jurisdiction** regarding on state-related claims that are of the **common nucleus of operative fact**, which is to say that the state court claims must arise from, or be of similar nature, fact, and/or law, as the matter of federal question. Because the personal injuries directly stem from a violation of federal law (Federal flight safety statute), it appears that the related injuries, even only as to the other Defendants, may be properly covered by Supplemental jurisdiction. ✓

Furthermore, we must look at diversity of citizenship in regards to Flight, as, at a minimum, even though the Court may exercise supplemental jurisdiction those matters, supplemental jurisdiction, unlike a Federal question, is not sufficient to allow the Court to decide on such matters with regards to Defendants which are still unrelated from the claims regarding federal law. Diversity of citizenship must still be found as ancillary jurisdiction may not be held over other Defendant's with regards to a claim of federal question only applying to a different Defendant.

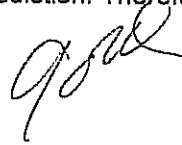
Here, it appears that Paul's domiciliary, which is in question with regards to subject matter jurisdiction, is Oregon, which is the place of his apparant fixed residence where he intends to return. Corporations, however, have dual domiciliaries, which include its place of incorporation and principle place of business. Principle place of business has been closely associated with the Nerve Test, as set forth in Hertz. The nerve test sets forth that the place in which a business's CEOs, etc., conduct business is considered its domiciliary--which replaces other tests, such as the muscle test. *With* regards to Flight, it appears that is domiciliaries are Illinois and Oregon--where Flight's president and staff were located.

Because Paul's domiciliary is the same as Flight's, the Court should have granted the Rule 12(b)(1) motion for lack of diversity between the two, particularly noting that supplemental jurisdiction does not intend to replace a showing of diversity merely because claims only relating to other defendants are similar to federal claims only applying to another Defendant in the same action.

With regards to stipulating to this matter, parties may not waive subject matter jurisdiction and it may be brought up at any time; therefore, the case against Flight should be remanded to state court or dismissed due to lack of subject matter jurisdiction.

With regards to Airport's Motion for Improper Venue (Rule 12(b)(3), as stated above in Issue 3, Motion for Improper Venue is waived if not joined with another Rule 12(b) Motion. Because Airport already filed a Motion for Lack of Personal Jurisdiction (Rule 12(b)(2)), Airport's Motion for Improper Venue was properly denied as a matter of procedure and due to its waiver of venue.

This same Rule applies to Titan. Titan waived its defense to improper venue when it did not join its subsequent motion with it's prior Motion for Lack of Personal Jurisdiction. Therefore, both Motions should be denied as the defense was waived by the Defendants.



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=====**Start of Answer #2 (1233 words)**=====

only for diversity

1. Under 28 USC 1441, removal from state court to federal court is proper if the case could have originally been brought in federal court, and the defendant is not a citizen of the state in which the action was brought in state court. The basis for federal subject matter jurisdiction is USC 1331 [federal question] or UCS 1332 [diversity]. It does not appear that there is any federal question in this case. For a federal court to hear a case in diversity, there needs to be an amount in controversy that exceeds \$75,000, and there needs to be diversity of citizenship. There is diversity in this case because Paula is apparently a citizen of California [US citizen and domiciliary of California] and David is a citizen of New York [US citizen and domiciliary of NY]. The facts do not state how much the claim is for. If the claim exceeds \$75,000 then the case was properly removed. Paula then submitted a petition to remand to the state court, or to change venue. If the amount in controversy was not met, then the court was wrong to deny Paula's motion. If the amount was met, then it was correct. As far as the venue change is concerned, it appears that the case was removed to another district in California. If that is the case [Stockton is in the Eastern District, and LA is in the southern district?] then the court was incorrect to remove the case to San Francisco [in the northern district]. The proper venue in removal cases is to the district court in the same district where the case was originally filed in state court. If the amount in controversy was not met, then the federal court did not have

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subject matter jurisdiction, and because this is never waived,

2. Under Rule 12b, a defendant can submit a pre-answer motion to raise certain defenses, some of which are not waivable [lack of subject matter jurisdiction] and others which are automatically waived if not asserted prior to making a responsive pleading [lack of personal jurisdiction, improper venue, insufficient service, insufficient process of service] as well as some which can be asserted later [failure to state a claim upon which relief can be granted, failure to join a party under rule 19].

It appears that David first tried to get the case kicked out on a 12b4 or 12b5 motion, which was denied by the court. Because he did not state an improper venue claim at that time, that waivable defense is no longer available to him. The court was correct in denying the second motion which asserted the claim of improper venue. L

It does appear that Paula did state a claim upon which relief can be granted. In state courts, which use code pleading, the plaintiff has to assert a cause of action, along with facts which fulfill each element of that cause of action. Federal court uses notice pleading, which must just state a short statement of the claim, the basis for jurisdiction, and a prayer for relief. Because this is a state law claim [breach of contract] it appears that there is a claim which Paula could recover for under the law. Therefore, the court was correct in striking that part of David's second motion as well. -

3. This question brings us to a state law versus federal law question. In Erie, the court stated that federal courts sitting in diversity must apply state substantive law and federal procedural law. The rationale was to prevent discrimination against non-diverse parties and to discourage forum shopping. The effect of Erie was to create the same outcome in a state court as in a federal court sitting in diversity

on the same case. The question remained- what is substantive and what is procedural? The courts then decided York to clarify which was which. York created the 'outcome determinative test' which states that a federal law is substantive if the outcome would be changed by applying that law, therefore the state law must be applied. Subsequent to that decision, the court decided Byrd, which gave us a 'balancing test.' Byrd stated that the courts should look to two issues when deciding what is substantive and what is procedural. First, we should look to see whether there is a substantial federal interest in applying the federal law instead of the state law, even if it would affect the outcome. In Byrd, applying state law would preclude the plaintiff from being able to have their case heard by a jury. The court decided that because the right to a jury trial is a constitutional right, the federal court had a substantial interest in applying the federal law to allow a jury trial. The second part of Byrd states that a law is only substantive if it would 'certainly determine the outcome.' Then the court came to Hannah, which developed two rules to tie all the previous together. Hannah one states that courts should look to the twin aims of Erie: to prevent discrimination and to discourage forum shopping. But, Hannah two made specifically clear that Erie was never meant to preclude the federal procedural laws, so if there is a federal procedural law on point, or no state law on point, then the federal law would prevail, even if it would affect the outcome of the case.

In the facts of the present case, applying state law would allow David to call the mediator to testify against Paula. Applying federal rules of evidence would preclude him from doing so. It appears that the federal court applied the state law, and admitted the evidence. Because the Federal Rules of Evidence are procedural rules, on point, and directly conflict with the California Evidence Code, under Hannah two it appears that the court erred in applying the state rule. They should not have admitted the evidence. Even if the federal evidence code was not inherently procedural, under Byrd it could not be considered substantive unless it 'certainly' would change the outcome. It is rarely certain that an
