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===== Start of Answer #1 (952 words) =====

(1) F's M2D

Pursuant to §1332 subject matter jurisdiction can be found when the parties have complete diversity, meaning that no party on one side may reside in the same state as a party on the other side; and the amount in controversy exceeds \$75,000. A party must be a citizen of the U.S. and have its domiciliary in the state in order to be said to reside in that state. Where an individual is concerned, domiciliary is the person's true, fixed, and permanent home or place of establishment and is the place the person intends to return to when he is away therefrom. The facts state that S lives in Sacramento. Sacramento is in California, therefore S is a California resident. In the case of a corporation, domiciliary is two-fold, the place where it is incorporated, and, according to the *Hertz* court, the place where it's "nerve center" is, meaning the its headquarters. The facts only state that F is a Nevada e-cig retailer and has several stores in Nevada. Therefore, it seems reasonable to assume that F is a Nevada "resident". *Should include E-cig + Cal. incorporat. status*

good law

The amount in controversy is \$80,000, which is in excess of the minimum amount of \$75,000. Therefore, SMJ can be found under §1332.

Needs "good" facts and analysis

SMJ can also be found under §1331 which states that District Courts shall have original jurisdiction over matters that arise under the Constitution, laws, and treaties of the U.S. Since, the action is brought under the U.S. Dept of Agriculture regulations, this matter arises under the laws of the U.S. and SMJ is found.

Not necessarily - must be substantial or "predominate"

good law

F brings its motion under Rule 12(b)(1) which defends on the grounds that the court lacks SMJ. This is not a waivable assertion, meaning that the assertion can be brought at any time, and is not waived for failing to raise it upon F's initial defensive pleading. Since SMJ is found under both §§ 1331 and 1332, the court correctly denied F's motion.

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(2) E's M2D o/G Lack of PJ

good law
E brings its motion under Rule 12(b)(2), asserting the defense that the court lacks personal jurisdiction. Such an assertion is waivable, meaning that if not asserted in the initial responsive pleading, the right to do so is waived.

good work
Due Process avoids distant forum abuse by requiring forum states to have personal jurisdiction over defendants. *Pennoyer* held that states have exclusive and sovereign jurisdiction over persons and property within the state's territory. Since the facts show that E is a resident of Colorado, and not of California, another way will have to exist before California may exert jurisdiction over E.

only good law
International Shoe held that PJ can be found where a defendant's systematic and continual contacts with the forum state exist such that do not offend traditional notions of fair play and substantial justice. When an issue arises as a result of the contacts, it is considered "specific" jurisdiction and less contacts with the forum state is required. But, when the issue does not arise from the contacts, it is considered a "general jurisdiction" and a greater showing of systematic and continual contacts is required. Since S's purchase of the tainted tobacco was made via a Nevada corporation, and not directly from E, the issue arises not from the contacts with the forum state and is, therefore, a general jurisdiction matter. Under the minimum contacts test, a greater showing is required.

The *Hanson v. Denckla* court clarified that when a defendant purposefully avails itself to the privilege of conducting activities within the forum state, PJ can be found. And, the *WWVW* court found that when a defendant's contacts are such that it enables the defendant to reasonably anticipate being haled into court in the forum state than jurisdiction exists. The *Calder* court found that when a D targets the state so that its effects are felt within the state, jurisdiction exists. None of these cases, or tests help S. There is no showing that E availed itself, would anticipate being haled into court in CA, or targeted its effects in CA. Even the "stream of commerce" theory requires something

more than simply placing a product into the stream of commerce. The *Nicastro* court held that targeting a state along with placing the product in the stream is required. The state can impose jurisdiction via its own long arm statute, but there must be nexus between the matter, and the contact, and the statute cannot violate Due Process.

ETS
good
law &
analysis
HO

There might be a finding of jurisdiction using the keystrokes test which utilizes a sliding scale between active and passive internet activity. However, this test has been rejected in some circuits. Even if it would be used in the 9th Circuit, there's no facts stating whether E actively pursued customers in CA via the internet. The court incorrectly ruled on this motion and should have granted E's motion.

*Nationwide Distribution is probably enough BUT your conclusion is amply supported by law & analysis
GOOD JOB*

(3). E's claim against F

Pursuant to § 1367, District Courts that have original jurisdiction over actions have supplemental jurisdiction over matters that are so related that they form part of the same case or controversy. The problem here is that E's unpaid invoice claim against F is not "so related" to the injury that S suffered.

Rule 13 allows for E to cross-claim against F so long as the issue stems from the same transaction or occurrence and doing so does not require adding an additional party which the court would not have personal jurisdiction over. An argument could be made that unpaid invoices for the product that injured S might well be part of the same transaction, but there would also have to be a showing that the unpaid invoices were for the same batch of product that was defective? rdy in E's interest to produce such a showing.

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Doesn't really answer the question

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End of Answer #1
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1. Should New Tech's Motion to Dismiss on the ground Jerry has failed to add Reliable Products, Inc. a necessary party to the suit be granted?

Here, NewTech is arguing that Jerry is a required party and that he should be joined under the Compulsory joinder Rule 19. Under Rule 19, a party who is required to be joined, shall be joined if feasible. If it is not feasible, the court shall consider whether in the interest of law an equity, the matter should be dismissed. The courts lean away from dismissal as it goes against the interest of justice, and prefer to find another way to cure the issue, such as shaping relief or issuing a protective order.

my well written

Here, as Reliable Products is a California company, the main question in issue is whether the *can* be joined. In order to be joined, the party must meet the jurisdictional requirements. Here, Reliable Products is subject to Personal Jurisdiction in that the principal place of business, and thereby presence (under Pennoyer) in CA. Subject Matter Jurisdiction is the ability of the court to hear a certain type of case. Subject matter jurisdiction is never waived and lack of such will result in a dismissal, if asserted at any time during the judicial process. Subject matter jurisdiction requirement for federal courts may be found under 28 USC 1331 (Arising Under) and 1332 (Diversity). Arising under does not apply as there is no federal law at issue. In diversity jurisdiction, complete diversity of the parties is required, and the amount in controversy must exceed \$75,000 exclusive of interest and costs. However, under diversity jurisdiction (1332) there must be complete diversity between the parties, meaning that no plaintiff can be from the same state as any defendant. Here, Jerry is a citizen of CA in that he is a "lifelong" resident, indicating it is his permanent home and he intends to remain there. For a corporation, domicile established citizenship and is determined either by (1) where they are incorporated, or (2) there principal place of business. The principal place of business can be determine by the Muscle test (where the bulk of the business activity occurs, or (2) by the nerve center test, where the majority of command decisions, etc. are made. Bringing in Reliable Products would destroy diversity jurisdiction in that they are a California corporation.

good use of facts

As joining them would destroy diversity, it is not feasible they be joined under Rule 19. Therefore, the question on the motion to dismiss (under Rule 12) now becomes whether Reliable Products is actually a "required" party. If they are required, the motion to dismiss should be granted. NewTech will likely argue that their sliders did not solely cause the injury, as the reserve chute does not rely on the sliders, only the main chute. Had the reserve chute worked, there would have been no injuries, therefore, Reliable Products should be partially liable for the claim against them therefore, complete relief cannot be granted without their representation. They may further argue that including Reliable Products will help to protect their interest, in that the claims can all be heard at once possibly resulting in a smaller amount of damages (not likely this will be

good analysis

successful). However, nothing prohibits NewTech from suing Reliable Products in a separate case, or from gathering relief from an alternative judicial process. There does not seem to be any reason why Jerry will not be able to receive complete relief in his suit against NewTech as their product failed, resulting in his injury.

The motion should not be granted.

very good work
(40)

2. Should the Motion to Strike Punitive Damages under California Law be granted, even though the case is being heard in a district court.

Originally, the Rules of Decision Act held that any state law should be followed over federal law in a federal case. However, the Swift court then held that statutory law only applied, and that any rule arising from case law should be disregarded with the courts taking case law all courts nationwide, to determine the rules to be followed. The Rules Enabling Act, and the Erie case (establishing the Erie) doctrine then came into play. The Rules Enabling act allowed for the supreme court to establish federal rules of procedure to follow in federal courts. Erie held that in the case of substantive law, the courts should follow the state courts, while in the case of procedural law, the courts should follow the federal rules. However, the courts continued to have issues in determining which law to follow, the the York case issued the "outcome determinative" test to help figure out which law was applicable. If the outcome of the case would likely have been different had state law been followed, than the law was held to be substantive. Here, it is unlikely that the outcome would be changed, as the damages are the damages, no matter when they are stated. Therefore, the outcome determinative test is of little help.

good analysis

The Byrd case next came out with a balancing of interest test where the court must weight the interest of the state court versus the interest of the federal court in applying the applicable law. Here, there may be some guidance, as the federal courts likely have a strong interest in keeping therefore pleadings regulated, thereby limiting confusion by having multiple forms of pleadings filed in their courts. A uniform pleading weighs heavily in the federal courts favor. Also, in order to establish jurisdiction in a federal court, the amount in controversy must be determined, the statement of damages assists in this determination. Indeed, the federal interest in a statement of damages is high.

seems out of place

After Byrd, the courts issued the Hanna decision, which reiterated the twin purposes of Erie: (1) to avoid forum shopping, and to prevent inequitable results. Here neither of those really effect the decision as there are not two competing state laws. However, Hanna also held the unless a federal rule is in direct controversy with a state law, the federal rule trumps. New Tech will likely argue that the CA rule is in direct controversy with the federal rule, in that one Rule 8 says that a statement of damages may be included, while the California Rule expressly forbids it until after hearing. However, the Rules Enabling Act gave the federal court the power to establish Rule 8(a), which list the requirements of a federal complaint. Rule 8(a) clearly states that a plaintiff must state the relief sought, which may include punitive damages. Based on Byrd, in that the federal interest in keeping uniform pleadings is high, and Hanna, in that the federal rule trumps, and the fact that the form of pleadings is almost entirely procedural as the difference will not change the outcome of the case, the motion to strike should be dismissed. Under Erie, York, and Hanna, pleadings are procedural.

same

and analysis

denied

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3. Should NewTechs Motion to add Valco Metals be granted.

Under Rule 14 a party may implead a third party who may be partially, or entirely liable

for the action against them. Under Rule 20, a party may join a claim where there is a common question of law or fact, or the claim arises out of the same transaction or occurrence. Here, the claims arise out of the same occurrence, the injury of Jerry via a failed parachute composed of their respective parts. There can be no question that the issues are likely very similar for both claims (the failure of their products and the safety of parachutes). Therefore, NewTech should be allowed to join ValcoMetals as a third party defendant under Rule 14 and 20. However, in order to implead a party, jurisdiction must still be satisfied, either through SMJ, supra, or via the discretionary doctrine of Supplemental jurisdiction (1367). Under 1367 a federal court may join a party, so long as complete diversity is not destroyed. Here, Valco does not reside in CA, they reside in AZ. Defendant's may be citizens of the same state. therefore, as 1332 is not violated Supplemental Jurisdiction may apply, and Valco may be impleaded in the claim.

good
law

good
approach

EW

NewTech may also argue that Valco should be joined under Rule 19, supra, in that they are necessary defendants. This argument will likely fail for the same reason it failed with Reliable Products, in that they are not required for just adjudication. However, as they may be joined under Rule 14, it is not an issue.

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NewTech's motion to add Valco should be granted.

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End of Answer #3
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END OF EXAM