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======== Start of Answer #1 (1986 words) ========

QC9 Civ. Pro Final exam Seeger

Question 1

1. Did US District Court have jurisdiction over David?

For a court to have jurisdiction over a party, there needs to be statutory authority and also comply with the Due Process of the US constitution 14th amendment, they must have personal jurisdiction, subject matter jurisdiction have adequate notice and proper service.

Personal jurisdiction, which has three types, IN personam, in rem and quasi in rem has several methods of obtaining jurisdiction. In personam is over parties, while the other two are over property. IN personam traditionally was obtained by process of service in the forum under Pennoyer, by agent or being domiciled in the forum or by consent. None of these apply to this case because David was not domiciled in the State of Arizona as he was domiciled and conducted his busienss primarily in California. The court will next look at the quality and quantify of the contacts David(defendant had with the forum of Arizona). Looking at International shoe, there is a requirement of sufficient minimum contacts with the forum of (Arizona) that it would not offend the traditional notions of fair play and substantial justice. However David's only contacts with the forum constituted his advertisement of his business. This requires minimum contacts adn did the party purposely avail himself to the forum under Hanson v. Deckla. It appears that David did purposefully avail himself throught he advertisement to solicite business from residents in the forum state of Arizona.

The courts can also look at the foreseeability of the defendant David being haled into court in the forsum state under the WWV case. Is it foreseeable that if he advertised for

business in the forum state, the answer to this is yes it is foreseeable that if he advertised for business in Arizona that one could reasonably foresee having to defend a lawsuit in that forum state. The defendants activities in teh forum state were directly related to the injury of the plaintiff Peter, therefore this is a specific jurisdiction situation and less contacts are required to meet the stanard of finding personal jurisdiction to a non resident defendant. To have found general jurisdiction, there would have needed more contacts under Goodyear it would have required in additino to soliciting business, but to be "essentially at home in the forum." David did not meet this standard under goodyear. However there appears to be sufficient contacts under the other cases to justify or grant personal jurisdiction in the forum of Arizona because he solicited business there by doing advertisment and that those ads would likely result in getting business and it would be foreseeable that he would need to defend himself in a fourm there.

The court must also have subject matter jurisdiction, because there is no federal question at issue, must look at diversity of citizenship which requires the parties to be citizens of different states and the amount in controversy is greater than $75,000. The parties were domiciled is separate states, so that element is met and the amount incontroversy was for $100,000 which meets that requirement as well. Therefore there is sufficient evidence to support personal and subject matter jurisdiction over the defendant David to have case heard in District Court in Arizona.

Was there proper Noitce and service of process? It doesn't state how David was served, but it states he was served at his office. Under FRCP 4 service of process can either be done by personal service, substitute service by nonparty over 18 at usual abode. It can also be done in accordance with the state law where the service is affected, ie California law. Under CCP 413.10 service and personal service 415.10 it was given to David directly at his office. This is sufficient notice that there is a case filed against him and of service of the summons and complaint. David did not object to service of by motion or in his first answer therefore he waived that right under Rule 12 (b)(4 &5).

The defendant filed a Rule 12 motion objecting to the jurisdiction, which is an affirmative defense which is required in a responsive pleading or by motion. Lack of personal jurisdiction is required to be ojected to in the first motion or responive pleading the answer or it is waived, but the subject matter jurisdiciton objection can be raised at any point even on appeal. So David's objection was considered timely even though the facts don't state when or how he raised it but appears to be shortly after he received the complaint. His motion will likely be denied by the court based on previous arguements I have already stated granting Arizona District Court jurisdiction over David. However, David will try to argue that his contacts with the forum state were not sufficient and was not foreseeable that he would be haled into court there to defend a lawsuit. And according to the facts he only had one potential client as a result.

He could also argue forum nonconveniens under 1404 and ask that the venue be transferred to a California Distirct court, but these are not granted just for minor inconvenience of the defendant. The plaintiff will argue that the state of ARizona has an interest in having the case heard in Arizona court to protect its residents from harm by a nonresident defendant. (Piper case)

2.How should the court have ruled on the motion to amend the complaint?

Under FRCP 15 the pleadings could be amended anytime before a response is served by the defendant as a matter of right or if no response is required within 20 days after it was served. The facts state that it was several months after David(defendant was served), so it woudl then require leave of court to amend the pleadings to add a new party. Peter wanted to add Peter's company Tax King because it had the assests to attach if he won the case. Under Rule 15(c) the relation back doctrine an amendment is allowed to add a party if it was left off due to a genuien mistake concerning the identity and therefore the statute of limitations would not have run out because of the relation back doctrine.

Peter will argue that he didn't know it until he saw the ads in the newspaper several months later. Therefore according to rule 15 if it arises out of the same transaction or occurrence as the original filing it should be allowed, but only if within 120 days of initial filing. It appears that Peter missed the filing deadline without good cause if he waited several months. But because the facts aren't clear as to how long it was, it could be aruged that he was within the 120 days for filing an amendment. Also if he were to amend the pleading it coudl have also been done within 21 days after the defendant filed the motion 12, but it does not appear that Peter did it in that time frame.

I think the court may have erred on this, but again the facts don't state when he filed the motion to amend the pleadings, but under FRCP it seems that if he did the amendment in the proper time frame it should have been granted because Peter could say that it was a genuine mistake that he didn't name the company name of Tax King. Inc. But he would have had to serve it and provide notice as well and meet personal and subject matter jurisdiction, all of which seem plausible, but facts aren't clear.

Peter could have tried to join Tax King company as another party under rule 20 permissive joinder of party, as it arised out of the same transaction or occurrence and a common question of law or fact existed and to not do so would require another separate lawsuit against the company itself. Adding the party wouldn't not destroy diversity of citizenship because teh corporation is considered to be where the state that they are incorproated or principal place of busienss which both appearl to be in Califronia. So Subject mater jurisdiction is preserved. But then David could have argued as a defense that it would be barred under res judicata and Peter already received a final judgment against David for the same issue and you can't sue on the same issue twice.

3. Should the discovery be allowed?

The discovery Peter requested included summaries from a previous lawsuit. David will

argue that it was work product and therefore protected however the information was as a result of the judges order in the previous case. Therefore under rule 26 where discovery of any nonprivilged relevant material is admissible if it is likely to lead to admissible evidence. It won't be considered work product ecause it was't created under Rule 16(b) leading up to the original lawsuit, rather it was a court order by the judge in the previous lawsuit and as long as Peter can show there was a substantial need and that it would be a harship to obtain that information otherwise it should be granted.

Under rule 26, David had a duty to disclose information that is in his custody or control information that may be used to support the claims. Therefore David did have duty to disclose the information from the previous lawsuit since it is likely in his control or custody and may be relevant to support Peter's claim. It must be "reasonably calculated to lead to admissible evidence."

4. How should the court rule on the motion for summary judgment?

Peter one the case against David, on the theory of negligence and is now suing the Tax King, inc on the same claim for negligence, but also for fraud. It can be argued that becasue Peter already recovered in the first case it may be barred by res judicata because you can't sue the same claim more than once. The three elements are both cases were brought by the same party against the same defendant. This element is met, Peter is bringing a lawsuit against David for the claim of negligence arising out of the same transaction or occurrence, which is the same as in the first case. However the claim for fruad will not likely be allowed to move forward as it was not a claim in the first lawsuit, and it should have been because it was arising from the same transaction or occurence, so because he didn't raise it in the first lawsuit it woudl be barred by res judicata as Peter already has a final judgment on the first lawsuit arising from teh same transaction or occurrence. majority view is that you only get one chance to sue on the matter arising from the transaction or occurrence on the mertis of the case. The second element requries that the first case ended in a final judgment. Peter received a $50,000

judgement, so this element is met. The third element requires that the judgment was on the merits under rule 41. It was a judgment on the claim of negligence so it was on the merit.

Peter will aruge that res judicata will not apply since technicay the corporation Tax King is not the same defendant therefore not meeting the requriement of res judicata having the same parties in the second lawsuit.

Even without res judicata barring the second lawsuit, the second case will be invalid because he would have missed the statute of limitations for fling the case. Even if this were not true

The motion for summary judgment should be denied because there is a genuine dispute of material facts becasue the second lawsuit had a new claim of fruad which was not litigated in the first case so there is no way to show if there was or was not liability on the part of the defendant. Therefore summary judgment would be denied.

======== End of Answer #1 ========

======== End of Answer #1 ========
2)

======== Start of Answer #2 (1336 words) ========

Question 1: (85)

Subject matter jurisdiction is the power of a court to hear a particular kind of case, and a certain case in particular. State courts are general juridiction courts, so they may hear all kinds of cases except those which the feds retain for themselves, like bankrupcy, patent, and admiraly. Federal courts are courts of limited jurisdicion, so they can only hear certain types of cases: those which they preempt [bankrupcy, etc], those which arise under federal law [28 USC 1331] and those which are heard in diversity [1332]. 1331 states that 'the federal courts have original jurisdicion over cases arising under federal law, or the Consitution and treaties of the United States'. There is no federal question in this fact pattern. 1332 states that 'the federal

courts have original jurisdiction over civil cases where the amount in controversy exceeds $75,000, and the parties have diverse citizenship.' This fact pattern is brought under federal diversity subject matter jurisdiction.

To begin an analysis of diversity jurisdiction, first we can look to the amount in controversy. Peter's orignal claim is for $80,000. It appears that he has met the amount in controversy. Monica's claim, however, is only for $50,000. Plaintiffs who join together in suit cannot conslidate their claims to meet the amount in controversy. Therefore, Monica's claim is not properly in federal court.

We then go on to analyize the citizenship of the parties to see if there is complete diversity between plaintiffs and defendants. An individual's citizenship for diversity purposes is their citizenship as a United States citizen, as well as their domicile. A person's domicile is where they reside and intend to stay permanently, and an individual may have only one domicile, as stated in *Mas.* Patrick is from Wyoming, and there is no indication that he is moving, as he is only on vacation. Patrick is a citizen of

Wyoming for diversity analysis. The facts do not state where Monica is domiciled, but this is irellevant as her claim does not meet the amount in controversy. Donald lives in Reno, and there is no indication that he is moving, so he is a citizen of Nevada.

A corporation can have more than one domicile as per *Hertz*: the state of their incorporation, and the 'nerve center' of their business dealings. It appears in this fact pattern that Fast and Loose only has one shop in California, and does not advertise outside that immediate area [assuming the brother's raidio station is in Sacramento]. There are no corporate headquarters outside California, and although Donald the owner lives in Nevada, there are no facts here to support the idea that he conducts the business from there. Fast and Loose is a citizen of California for these purposes.

There is complete diversity between Peter the plaintiff, and the defendants, Donald and Fast and Loose. David's claim is over $75,000 and meets the amount in controversy. Donald's claim is properly in federal court. As previously

stated, Monica's is not.

Question 2: 90

Under rule 13a and b, a party may bring a counter claim against an opposing party. Counter claims can be compusory or permissive. A compulsory counter claim is a claim arising out of the same transaction or occurence which gave rise to the plaintiff's cause of action, and if it is not brought in this case, will be precluded from being raised again unless it could not have been brought in the first action. A compulsory counter claim will be covered under the supplemental jurisdiction of 1367. 137 states, in part, that the federal court will have suplemental jurisdiction over claims which are so related to the original claim as to be 'the same case or controversy.' A permissive counter claim is a claim not arising from the same transaction or occurence, and must meet its own subject matter jurisdiction.

Donald is asserting a claim that Patrick still owes him for the car, as well as a claim for a battery when they met at

the hospital. Under rule 18, a party may join all their claims against an opposing party, but each must meet subject matter jurisdiction. The first claim, for the price of the car, is a compulsory counter claim because it arose out of the same transaction or occurence: Patrick is suing Donald for selling him a defective car. This claim will be included under supplemental jurisdiction [1367], and indeed must be brought or Donald will not be able to bring it later under the theory of res judicata.

The second claim, for the battery, seems to be a separate occurence. It would not have occured 'but for' the original sale of the car, but it happened at a different time and in a different place. As a permissive counter claim, it must meet federal subject matter jurisdicion, which it does not here beacuase the amount in controversy is not met.

Question 3:

Patrick is attempting to join the Reno Repair Shop as a defendant. Under rule 20, permissive joinder of parties, parties may be joined as defendants if they may be jointly

or serverally or otherwise liable for the same transaction or occurence or series of transactions or occurences. Here, Patrick originally left his first car at the Reno Repair Shop. He then went on bus, and eventually bought the second car from Patrick at Fast and Loose. This is not the same transaction or occurence, or series of transactions or occurences. There is no indication that Patrick or Fast and Loose has anything to do with the Reno Repair Shop. Patrick may maintain his calim against ther Reno Repair Shop, because the amount in controversy is met, and the parties have diversity, but NOT in this same action against David and Fast and Loose.

Question 4:

Patrick is awarded 'costs of suit' which the federal rules allow. However, in a federal court sitting in diversity, the court must apply substantive state law, and procedural federal law as per *Erie*. The court has struggled with which laws are procedural and which are substantive. In *Guaranty v York*, the court held that a law is substantive if it changes the outcome of the suit. So, if applying a

federal law would change the outcome, the state law shoudl be applied instead. This is called the outcome determinitive test. Then in *Byrd*, the court held that if there is a federal interest in applying the federal law [such as right to a jury trial] then then federal law should be applied. That case also held that a state law is only substantive if it is certain to change the outcome. This is the federal issue/certainly outcome determinitive test. Then *Hannah* was decided, where the court made two rules: if there is a federal procedural rule on point, use the federal rule; and remember to look to the twin aims of *Erie*: avoid discrimination against non-diverse claimants, and prevent forum shopping. A federal court sitting in diversity uses the state substantive law of the state in which they sit.

Here, Patrick will bet recovery of all of his expert's fees if the federal law is applied. But if the state law is applied, he will only get recovery of the fee to testify. It appears that there is no looming federal issue in this case. Looking at the twin aims of *Erie,* it appears that there would be an advantage to diverse claimants to file in federal court to

allow recovery of more fees. Would this lead to forum-shopping? Perhaps, if it would lead plaintiffs to file in federal court so they could retain more expensive experts and have the costs covered. There is a federal rule on point, but it is a substantive law because it would certainly change the outcome of the recovery. Becuase this is a diversity case, and applying the federal rule may lead to fourm shopping, the court will probably only allow the state rule of recovery: Patrick will only be able to recover the fee of the expert to testify.

======== End of Answer #2 ========

3)

======== Start of Answer #3 (1037 words) ========

1. Does the court have SMJ over the case?

SMJ is the power of the court to hear the case. Where the federal court does not have exclusive J, state and federal courts have concurrent J. To get into federal court, however, the claim must arise under 28 U.S.C. Secton 1331, a federal questons arising under the laws, constitution, treaties of the U.S. or Secton 1332, diversity. In a diversity case there must be complete diversity that is no P and D are from the same state at the commencement of the action. This is based on domicile. Domicile is physical residence and intent to remain indefinetly. Corporations can have dual citizenship that is where they are incorporated and where there principal place of business is that is the place of all direction, coordinationa nd control. There must also be a good faith allegation of an amount in controversy of **at least** 75K including costs and interest.

Here, P is a resident of SF. The question is whether D's PPB/'nerve center' - the center of all direction, coordination (Hertz) and control is located in CA (which would destroy diversity), where the manufacturing plant is, or in NV, where the chief executive is located. It appears that with the corporating being in NV and the chief executive being in NV, this is where the nerve center is. The manufacturaing plant simply is a place where parts are made. Thus, complete diversity exists and the amount in controversy is met w/the claim for 100K. Thus, the case is properly before the court. If the question turns on PJ over SOC, the minimum contacts analysis would turn on whether D had purposfully availed themeselves of the forum state and whether they could reasonably have anticipated to be hauled into court there. With the manufacturing plant in CA, it can be said that the D does avail themselves of the forum state and while the claim might not have neccessarily arisen out of the presence of the plant in CA, the

equipment may have been very well been made there, so arguably, there are sufficient minimum contacts and the court would have PJ over the D. If they did not have PJ, the D might have waived it if they did not object to PJ.

2. SOC's motion for change of venue

Venue in a civil acton is proper in a district where a D resides, if all the D's reside in the state where the district court is located, where a substantial part of the actions arose, and if neither where any D is subject to PJ. In a state with multiple districts, a corporation is deemed to reside in any district where they are subject to PJ and if no such district where the most significant contacts are. Here, a substantial part of the action arose in CA namely in the Northern District, because that's where the fire and damage/harm occurued that was caused by their equipment. the Rule says that a coproation is deemed to reside in the district where they are subject to PJ or if no such district, where have the most significant contacts are, if there is no district where they are subject to PJ. Arguably, on the minimum contacts analysis above, they are subject to PJ in CA, because of the purposeful availment of CA's resources due to the manufacturing plant located there. Thus, they would be subject to PJ in the Northern District. In arguendo, if the minimum contacts where not sufficient, and the analysis turned on their most significant contacts where, then that would be Stockton, where the manufacturing plant is located. If Stockton is in the Northern District, then would be proper . If not, the court under Section 1406 woulld have to either transfer or dismiss the case. Under Section 1404, the court may transfer even if venue is proper, for the convenience of the parties, W's and evidence if justice so requrires and if there is an alternate forum available. This wouldnt be applicable here, if venue ws proper in the Northern District, because, the D is just a short distance from the Norther District in the age of public transportation. Forum non-convenience is not applicable here (mostly applies in cases where the events occured in a foreign country).

3. Banks' premptory challenges

Each party gets 3 preemportory challenges and a limited amount of challenges for cause. Preemptory challenges may not be race or gender based or systimatically

discriminate against any other categorized group (Batson/Edmundson),People with bank accounts are no such categorized group, thus, while this seems an irrational basis, it would be allowed, but may not exceed 3 preemptory challenges.

4. Was the motion for JMOL properly granted?

A motion for JMOL may be made during trial and basically asserts that there is no legally sufficient evidentiary basis for the jury to decide for the other party. The D may make this motion either at the close of P's evidence or at the close of all evidence. A renewed motion for JMOL basicailly is asking the judge to nullify the jury's verdict, becasue no reasonable jury could have found for the other party. It takes the verdict away from the prevailing party and enters J for the loosing party making them the prevailing party. This is much harsher than a motino for a new trial as it is an adjudication on the merits and has res judicata effect. A new trial may be granted if there was error that was not harmless or the judgment amount is either way to high/low. To have a motion for renewed JMOL considered, one must have made a motion for JMOL during trial, which was the case here. However, the moving party does not make a suffieient argument. Only because an expert is young and trying his first case does not mean he is not qualified. Expert are considered qualified on other evidentiary basis not on their age or trial experience. Further, the jury decides questions of credibility and fact, the judge decides questons of law. The question of the experts age and trial experience is not a queton of law. Thus the courts rulling on the motion for JMOL was improper.

======== End of Answer #3 ========
END OF EXAM