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===== Start of Answer #1 (1538 words) =====

1. Personal Jurisdiction over Jaws Inc. (J) , Debbie (D) and David (A)

Personal jurisdiction (PJ) is the power over an individual. Historically, **Pennoyer** told us that there are three ways to gain this power: personam, when the person is within the territorial boundaries of the state, in rem, when the property at issue is within the state, or quasi in rem, when property is seized prior to the action, within the state. This strict requirement of being within the territorial jurisdiction was changed in **International Shoe**, which stated that if an absentee defendant has established minimum contacts with the forum state, they may be held to be within that state's PJ, unless doing so would violate our traditional notion of fair play and substantial justice.

The number of minimum contacts required for PJ is not concrete, and depends upon if it is based on general or specific jurisdiction. General jurisdiction requires more contacts, since it is a continual relationship with the forum state, and the cause of action in this case does not stem from those contacts. (**Perkins**) Contrasting that is specific jurisdiction, which might be founded on only one contact, is where that one contact brings forth the issue in this case. (**McGee**)

This case is a specific jurisdiction case. That is due to the fact that the implant gives rise to the action.

Hanson tells us that in order to gain PJ over a defendant, they have to purposefully avail themselves to the forum state, and **WWV** tells us that that mere stream of commerce isn't enough. The defendant must be on notice that they might be held to answer in the forum.

Jaws Inc. is a Nevada Corporation. However, it shipped a product to California. That is one contact. That might be enough for **McGee**, but there is more here. Subsequently we find out that it shipped another implant, which subsequently infected T as well. Debbie specifically gave business cards to Dentists from California, this since she was acting in her capacity as owner, shows that Debby was targeting California, and establishes another contact. Further, if **McGee** was allowed because people felt sorry for the old lady, there is a strong policy consideration here, as Jaws is spreading serious injuries across California. **Burger King** was established based on a sole contract, the sole contact, between two states, and I believe Brennan would agree that it is more than fair to allow Jaws to be held to answer in California.

Debbie, lives in California. The district court in her home town has PJ over her. The issue of destroying diversity is outside this question.

David is merely the individual who produced the implant for his employer. His sole contact is the product he created was sent to California. The issue here appears to be a **WWV stream of commerce** issue coupled with the most recent case **Damlier AG**, where we consider agency actions for the purpose of PJ. In **Damlier**, the fact that a subsidiary did something in Argentina was not enough to get PJ over the parent company in California. However, the 9th Circuit attempted to use an agency theory in order to hold them accountable. SCOTUS unanimously overturned that decision, distinguishing the fact that you cannot use agency when the subsidiary is a completely separate corporate entity. Here, the agency theory should work, as David is an employee of the company.

Interestingly, If the Court did not find PJ over David initially, it might argue the company would want to use R14 to implead him. The company might argue that he was fully or partially responsible. This would then open the door to another

possible way to gain PJ over David, through rule 4.

Rule 4(K) can be used by the court if the party is joined in under rule 14 / 19. This 100 mile bulge rule might swallow up David. We dont know where david lives, just that its just over the line. I am unaware of the exact mileage between Sacramento, where the summons was filed, and where david lives, but if it is under 100 miles, the court could make a creative argument that they have PJ over him this way.

2.) Second R12 motion by David

Under R12(b), any affirmative defense or challenge motion, must be brought in the first motion by that party. David initially filed a R(12)(b)(2) motion challenging personal jurisdiction, along with the other defendants. He subsequently files a R12(b)(5) (venue) and (6) (failure to state a claim). These motions are treated very differently however. Pursuant to R12(h), by not bringing the R12(b)(5) motion for a change of venue, Davide has waived his ability to bring it later. Under another portion of R12(c) however, David would be allows to still bring his claim that there was a failure to state a claim. The time persiod that hte facts indicate, shortly after, would allow this subsequent motion.

Knowing that Federal rules state that a complaint must only have a short description of the claim, it seems unlikely that David as the technition would win on this motion, but he would be allowed to argue it.

3.) Tammies R56 Motion for Summary Judgment

After the first trial, T, another patient, sues the three defendants in San Francisco Superior Court. She moves for summary judgment, where she would need to show the court that there is no triable issue of fact, and that as a matter of law, they should find for her. This is weighed against her as the moving party.

The key here is her claim of collateral estoppel. T will argue that since the federal court in sacramento already decided that Jaws, Debbie and David were liable in the first case, and she is claiming that the same batch also caused her illness, there is no triable issue of fact. In order for collateral estoppel to apply, it must be the exact same claim, it must be a final decision on the merits, the issue must have been required for that judgment, and there must of been procedural safeguards in the initial proceeding. Here, the element that is not satisfied is that the judgment was not final. This was merely a trial level. The time period shortly thereafter, does not take into account or allow us to comment on whether the 28 day period for filing R59 new trial motions or the time period for appeals has expired. SHowld the parties have decided not to appeal, or not request a new trial, etc, then this would be final.

If it was final, then we would need to examine if this is the exact same issue. This would appear so, since its the same batch of equipment, and the same defendant. **Parklane** tells us that mutuality is no longer required, and T could assert this collateral estoppel offensively, potentially.

The fact that now she is suing in State court, does not preclude her from using the previous federal trial level decision should it get this far.

4.) Jaws and Debbie Attempt to move the Lawsuit to LA

The lawsuit was originally filed in Federal Court in Sacramento.

Venue is generally defined within 42 U.S. 1391, which states that venue may be proper in any district where any defendant resides, if all defendants live within the same state, any place where a substantial part of the action giving rise to the issue occurred, or in any other district that has PJ if (1) and (2) fail.

Here, Jaws and D would first attempt to use 1404 to move venue, but the court in that case would need to find that it was in the interests of justice and for the convenience of the parties to move. Since the plaintiff is in SF, and Debbie is in Sacramento, the other two in Nevada, there seemingly would be no reason to go to LA. The court would not move it on these grounds.

Secondly, the court might determine that venue is improper initially, and 42 U.S. 1406 should be used to move it somewhere proper, or dismiss the action.

Sacramento is where Debbie lives, but the Jaws corporation and David do not live in California, so 1391(1) is not satisfied. Proper venue could have been brought presumably in SF or in the district within Nevada that Jaws has its offices/manufacturing in (Since that is where it is domiciled). Proper venue being those two places, Under 1406, it could be moved to only those two based on the facts. Jaws and D would obviously prefer that it be moved to Nevada, but that would not be allowed, as this would be presumably in diversity, and you cannot move it to your home district. That would be a remnant policy issue relating to home town prejudice, but still applies. Thus P should request it be transferred to SF, rather than dismiss it, as it is his lawsuit, and I have no idea why he filed in Sacramento to begin with.

Forum Non Conv. is sometimes argued by parties, however, Jaws and D would have the impossible task of convincing a judge that D's hometown, near Jaws state line is somehow as remote as them being asked to litigate in Scotland.

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===== Start of Answer #2 (1364 words) =====

1. Dan and Deadly Truck's motion challenging subject matter jurisdiction (SMJ)

SMJ is the power of the court to hear certain types of cases. State courts are courts of general or concurrent jurisdiction meaning they can hear cases arising out of state or federal law, with the exception of a few areas that are reserved by

federal law. Federal courts are courts of limited jurisdiction and can only hear cases that originally arise in two situations. They may here cases arising out of federal questions, meaning based on the federal constitution, federal statutes or treaties, as provided by section 1331. Under section 1332 they may also hear cases arising out of diversity of citizenship, that is where the parties are citizens of different states. Under section 1367, in claims arising under 1331 or 1332 the court may also apply supplemental jurisdiction to other claims that arise out of the same case or controversy (or common nucleus of operative facts- *Gibb*).

Here there is no federal question so any SMJ must be based on diversity. Thus no plaintiff may be a citizen of the same state as any defendant. Here, the sole plaintiff is Pam, a citizen of California. An individual is a citizen of the state which she is domiciled in, and intends to reside in indefinitely. Dan is also a domiciliary and citizen of California, as he lives in Stockton. While he does intend to move to Nevada, and was on his way, he never reached Nevada. One's domicile does not change until the person physically reaches the new state. Further, the facts don't indicate whether Dan intended to stay in Nevada or return to California at some point down the line. As Pam and Dan are not diverse citizens the court does not have SMJ over Dan.

The facts are silent as to Deadly Trucks citizenship, although the truck is registered in California, indicating that it may be California citizen. A corporation's citizenship is the state that it is incorporated in, as well as its principal place of business, which was defined in *Hertz* as its nerve center. Again there are not sufficient facts to assume that this is anywhere but California, so it would seem that there is no diversity between Pam and Deadly either, and thus the court does not have SMJ. If however, Deadly is not incorporated or operates as an LLC, its citizenship can be anywhere that its owners reside, but again there is not enough information to come to any other conclusions.

2. Pam's motion to amend

Under Rule 15 a claimant may amend their complaint once as a matter of right within 21 days of service of the original complaint, or within 21 days of service of a responsive pleading. When these are not met, the party may move for leave to amend and the court should freely give leave to amend if justice would be served. It is unclear when Pam moves to amend the complaint but even if she failed to beat the 21 day time limit, the court should grant leave as justice would be served in doing so.

More of a problem for Pam is the fact that the statute of limitations has expired. Fortunately for her, Rule 15 also allows that when the plaintiff's amendment to her claim is based on the same transaction or occurrence as the original complaint it relates back in time to the original complaint. Thus, it is as if she asserted the amendment in the original complaint and prevents her from being barred by the statute running.

Another section of Rule 15 specifically deals with changing the name's of parties, and allows it as long as it is done within 120 days of the original complaint, so long as the added defendant would not be unfairly burdened by being added later, and should have known that they would have been included originally if not for a mistake on the plaintiff's part. Here, Dan knew that there was an action against him and that Pam had merely misspelled his name. The court should grant Pam's motion to amend.

3. Discovery

Rule 26 allows for the discovery of any non-privileged materials reasonably related to the requesting party's claim or defense. The materials need not be admissible so long as they are reasonably calculated to the discovery of admissible material. Here the report of the study undertaken by Deadly is related to Pam's claim and the material may be admissible or lead to admissible

material.

Deadly will claim that the report is privileged under the attorney work product doctrine. The doctrine allows that materials that are prepared in anticipation of litigation are privileged and do not need to be disclosed. The materials are absolutely privileged and the court cannot compel the party to disclose if they contain the attorney's theories, notes, plans, and such. However, all other materials are only subject to a conditional privilege and will not be subject to discovery unless the propounding party can show that they are unable to obtain the information or material on their own without undue hardship. Here, the notes that Deadly's attorney wrote on the report are absolutely privileged as he made the notes after he heard about the accident with Pam. The rest of the contents of the report may subject to discovery as they were not prepared in anticipation of litigation. Pam must show that she made a good faith effort to obtain the material on her own. It is possible that Pam's investigator could obtain the information regarding Deadly's accident rate, but it would probably be extremely difficult and rise to the level of undue hardship.

Pam may therefore move the court to order Deadly to comply with discovery or face sanctions.

4. Dan and Deadly's motion for new trial and motion for judgment as a matter of law (JMOL)

Under Rule 50(b) a party may make a renewed motion for judgment as a matter of law (RJMOL) after a verdict has been reached up until 28 days after the delivery of the verdict. RJMOL is the equivalent of judgement NOV, and may be granted when the court determines that a reasonable jury could not have delivered a verdict for the party the motion is directed against, or basically the jury totally screwed up.

A Rule 50(b) RJMOL, however, is waived if the party does not initially move for a Rule 50(a) JMOL. A Rule 50(a) motion can be brought after the plaintiff has rested her case or after completion of the evidence. It appears that Deadly has and DAN have waived their JMOL as they did not first make a Rule 50(a) motion. The court must therefore deny the motion for JMOL.

Rule 59 allows for a motion for a new trial within 21 days after the delivery of a verdict. The court can grant a new trial on any grounds that have previously been grounds for a dismissal in federal court. One such ground is jury misconduct, and a particularly common form of jury misconduct is receiving outside influence. While the court may not receive testimony from jurors regarding deliberations in the jury room, it can hear evidence regarding outside influence. Jurors are barred from speaking to anyone outside of the jury about the case, and this was clearly violated here. This would generally be sufficient grounds for granting a new trial. However, the court must also determine if the misconduct was material to the outcome of the case. The judge should not grant a new trial, unless he determines that the jury's decision goes against the "great weight of the evidence." Here, it seems that Deadly's liability was pretty clearly established as Dan's truck crossed the center line. However, the jury may have been affected by hearing about Deadly's reputation when it was assessing damages. Given the misconduct and the danger of prejudice, the court should grant the motion for the new trial.

As a final matter, when the court receives motions for a new trial and for JMOL it must rule on both of them at the same time, to prevent the case from being remanded in case the appeals court reverses the JMOL decision.

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1. David's Subject Matter Jurisdiction Challenge

SMJ is the power of the court to hear certain types of cases. State courts are courts of general or concurrent jurisdiction meaning they can hear cases arising out of state or federal law, with the exception of a few areas that are reserved by federal law (ie bankruptcy). Federal courts are courts of limited jurisdiction and can only hear cases that originally arise in two situations. First, section 1331 allows them to hear cases arising under a federal question, meaning based on the federal constitution, federal statutes or treaties. Under section 1332 they may also hear cases arising out of diversity of citizenship, when the court has original jurisdiction in claims arising under 1331 or 1332 the court may also apply supplemental jurisdiction to other claims that arise out of the same case or controversy (or common nucleus of operative facts- *Gibb*).

Here we have a state law claim, arising out of personal injuries suffered by Peggy (P) when David (D) crashed into the bus she was riding in, and another state law claim for defamation. (FRCP Rule 18 allows a plaintiff to join multiple claims against a defendant, regardless of whether the claims are otherwise related.) There is no federal question presented, so the court will only have SMJ over the claims if these are diverse citizens. Individuals citizenship is based on the state in which they are domiciled. D is a domiciliary and citizen of California. Peggy is a domiciliary and therefore citizen of Washington. While she is currently living in California, indications are that this was temporary and that she intended to return to Washington rather than stay in SF indefinitely. To become a California domiciliary she would have to intend to stay in California. Until that time she remains a Washington citizen. As D and P are diverse citizens and the amount in controversy for her injuries stemming from the accident exceeds \$75,000, the federal court has subject matter jurisdiction over the claim for injuries.

We can assume that the claim for defamation does not exceed the jurisdictional

minimum. If this is the case, then the court will not have SMJ over this claim unless it finds supplemental jurisdiction. The question then is whether it arises out of the same nucleus of common facts, and in fact it does not. The injuries are a result of a bus crash, and the defamation suit arises from a TV interview. The court should dismiss the defamation claim.

2. David's Interpleader Complaint

Interpleader is a form of action in which a stakeholder, in this case David, files a complaint against various parties who have an interest in property in the stakeholder's possession. The goal is to prevent the stakeholder from being exposed to multiple litigation and multiple exposure, that is having to pay out to more than one party for the same injury.

There are two methods by which a claimant may interplead parties. The first is provided by FRCP Rule 22. However, this method requires complete diversity amongst all of the parties and the claims of each party must exceed \$75,000. Here it is almost guaranteed that the parties are not all diverse as they likely are mostly California citizens (unless this was a cable car full of tourists, or a double decker, or one of those amphibious things, and not a regular bus.) Further, the facts indicate that some only suffered minor injuries.

D may still interplead all of the parties under 28 USC 1336, which only requires that two of the parties are diverse and has a minimum amount of controversy of \$500. He will be required to deposit the extent of his insurance policy with the court prior to the adjudication.

3. David's Motion to Dismiss/ Choice of Law

David may bring a motion to dismiss under various theories depending on the timing of the motion.

Here, this appears to be an affirmative defense and is probably a motion to

dismiss on the pleadings, 12(c), or a motion for summary judgment, Rule 56. Either way, the court will first have to determine if California's ADR law should apply.

When cases are in federal court based upon diversity jurisdiction the courts are to apply federal procedural and state substantive law, as decided by the Supreme Court in *Erie*. The difficulty is in determining what laws are procedural and what laws are substantive. Subsequent cases have helped to delineate the difference. First, *York* instituted an outcome determinative test, meaning if applying a certain law would determine the outcome of the case, then the law is substantive. *Byrd*, followed this up by holding that a law is only outcome determinative if it will absolutely determine the outcome of the case. More importantly *Byrd* held that the court should weigh the state and federal interests in having their laws applied. Finally, the *Hanna* court came up with a two part test. First, where there is a gray area and there is a federal directive on point, the federal law should be applied. If there is no federal directive, the court should look to the twin aims of *Erie*: (1) to prevent forum shopping, and (2) to prevent the inequitable administration of justice.

Applying the foregoing rules to the present case, receiving the ADR information would definitely not be absolutely determinative of the resolution of the case. While California has expressed an interest in keeping its courts from being overburdened by providing alternative proceedings, this interest is not harmed by allowing the case in federal court without such preliminary information. Lastly, allowing the case to proceed without the service of the ADR papers will not cause a rush to bring cases in district court rather than state courts, nor will it result in the inequitable administration of justice. Therefore, the court should apply the federal law, as California's ADR requirement is procedural and not substantive.

4. Demands for mental exams

Rule 26 which provides guidelines for discovery allows that a party is entitled to have the opposing party undergo one medical or psychological examination. However, this is limited to situations where the party has put their physical or psychological condition at issue. Here, D mental well being has not been put at issue, unless he has claimed that he is incompetent to stand trial, which the facts have not eluded to. Therefore, P's demand should be denied.

Peggy on the other hand apparently has put her mental condition at issue as she is seeking damages for emotional distress. The court can compel her to undergo the exam.

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