

# Fall 2013 Exam

**Question 1 (worth one-third of final exam grade). Your answer should not exceed 1500 words.**

Paul (a citizen of Texas) and David (a citizen of Ohio) entered into an agreement for David to supply valves to Paul. Paul intended to incorporate the valves into water heaters he manufactures. David failed to deliver the valves on time, however, and Paul was forced to find another valve supplier at the last minute. Paul ended up paying much more for the valves.

Paul sued David in federal court asserting a state law cause of action for breach of contract. He sought \$100,000 for damages he claimed he suffered as a result of David's breach. David filed a timely answer and, at the same time, also impleaded Tim, a citizen of Texas. David alleged that he gave the valves to Tim with directions to deliver them to Paul on time. David alleged that he had a contract with Tim and that an express term of their contract was that Tim would indemnify David for any losses David might suffer, up to \$50,000, in the event that Tim failed to adequately and timely deliver the valves.

Tim, in response, timely filed an answer to David's claim against him and also asserted a claim against Paul. He alleged that his failure to deliver the valves on time was actually Paul's fault (he alleges Paul gave him erroneous delivery directions) and asserted a state common law contribution claim against Paul.

At a routine conference with the court six weeks later, Paul orally (not in a written motion) raised concern that the court lacks subject matter jurisdiction over David's claim against Tim, and over Tim's claim against him (Paul). Immediately after the conference, the judge turned to you, her law clerk, and asked you to research whether subject matter jurisdiction exists over these two claims. What will you tell the judge?

**Question 2 (worth one-third of final exam grade). Your answer should not exceed 1500 words.**

Modern Motion Pictures (MMP) is a California company that produced a motion picture titled "Dreamer." MMP alleged that a number of individuals were sharing the movie using an internet protocol called BitTorrent and that this sharing violated federal copyright laws. MMP made the following allegations:

¶ With the file distribution process known as BitTorrent, an individual initially obtains a copy of a movie or song (which he might have obtained legally or illegally). This person is known as the "initial seeder."

¶ The initial seeder uses the BitTorrent software, which takes the original large digital file and divides the large file into thousands of smaller digital files. The initial seeder then posts these thousands of smaller .torrent files to one of various websites on the internet that host .torrent files.

¶ When someone else is interested in obtaining a copy of the movie, he or she can search the internet to find a .torrent file associated with it and then is able to download one of the smaller pieces of the entire digital file. Once a user downloads this single .torrent file piece, the BitTorrent software automatically locates the computers of other people from whom the remaining pieces of the same file can be downloaded. This is possible because the BitTorrent software, by default, offers for download any piece of a digital file that it has previously downloaded.

¶ Thus, everyone who downloads a piece of the digital file using the BitTorrent software becomes a part of an interacting network of users, known as a "swarm." Anyone in the swarm is able to download the entire movie because the BitTorrent software re-assembles all of the small bits from various sources to a single large file. Thus, everyone who participates in the swarm commits copyright infringement.

MMP was able to obtain 50 IP addresses that were being used to share and download the movie file without permission. Subsequent research confirmed that all of these addresses belonged to individuals located in California. MMP filed suit against all 50 individual defendants in federal court in California alleging violation of federal copyright laws. One of the defendants moved for dismissal or severance of the action under Fed. R. Civ. P. 21, arguing that under Fed. R. Civ. P. 20 the joinder of the 50 individual defendants was improper. How should the court rule? If you think that you cannot definitely rule on the motion, based on the plaintiff's current allegations, what additional allegations would you require be made before you would be able to rule?

**Question 3 (worth one-third of final exam grade). Your answer should not exceed 1500 words.**

There was a plane crash in Greece. All of the decedents' survivors were residents of Greece. The plane had been permanently based, maintained and serviced in Greece. It was operated by a Greek company. It was not designed or manufactured in Texas. It was never owned by a Texas resident. It had never been repaired or serviced in Texas. The plane's manufacturer, Learjet, is a Delaware corporation with its principal place of business in Kansas, where it designed, manufactured and sold its products.

At the time, a relevant state law in Texas read:

Each foreign corporation authorized to transact business in this State shall have and continuously maintain in this State . . . a registered agent [for service of process and if] a foreign corporation authorized to transact business in this State shall fail to appoint or maintain a registered agent in this State, . . . then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served.

In compliance with state law, Learjet had a duly registered agent for service in Dallas. This gave it the right to do business in Texas. However, Learjet has done very little business in the state. They have never had an employee, officer or director, an interest in real property, a deposit in any financial institution, or a facility or office located within the state. All sales were made from products warehoused in Kansas or Arizona. In total, only slightly over 1% of Learjet's sales, consisting of spare parts, have gone to buyers with Texas addresses.

Plaintiffs, the Greek survivors of those who died in the crash in Greece, brought suit against Learjet in state court in Dallas, Texas. They contend that Learjet is subject to general jurisdiction in Texas for one reason and one reason only: because process was served in Texas on the company's designated corporate agent for service. Learjet files a special appearance, asking the court to dismiss the case for lack of personal jurisdiction. How should it rule?