

Civil Procedure I

Professor Oppenheimer

Fall 2006

Final Exam Essay Question

Paula Pearson was born in Houston Texas. She has lived in several states, including California and New York, and has never felt entirely at home anywhere she has lived. Drip-Drop Inc. is a manufacturer of plumbing fixtures. Drip-Drop is a Delaware corporation, with its headquarters, its computer operations, and its manufacturing plants in New York. Drip-Drop makes all of its sales over the internet. It has very substantial sales to customers in every State in the United States.

While attending medical school in New York, Pearson ordered a Drip-Drop faucet, using the Drip-Drop website, which she accessed from her computer in her New York apartment. As she was installing it, she was seriously injured when it disintegrated in her hand. She returned to her parent's current home in Houston for reconstructive surgery, where she brought an action against Drip-Drop in the Texas state court, seeking damages of \$500,000. Drip-Drop was properly served under the Texas long-arm statute, which has the same provisions for service and jurisdiction as the California long-arm statute.

Drip-Drop removed the action to the United States District Court for the Southern District of Texas, which has its headquarters in Houston. In its first responsive pleading, Drip-Drop moved to dismiss for lack of personal jurisdiction. The motion was denied.

Pearson then moved to remand the case to the Texas State court, arguing that the case was not properly removable because Drip-Drop had substantial sales in Houston, and thus resided there under federal law. The motion was denied.

Drip-Drop then brought a counter-claim against Pearson for \$24.99, alleging that when she was an undergraduate student in California she had ordered a shower curtain over the Drip-Drop website for which she had never paid. Pearson moved to dismiss, arguing that the court lacked subject matter jurisdiction over the counter-claim. The motion was denied.

Drip-Drop then moved to transfer venue from the Southern District of Texas to the Southern District of New York, where the accident occurred. The Drip-Drop website has a box which must be checked in order to place an order. The text next to the box reads: by checking this box and placing this order I agree that any dispute between me and Drip-Drop Inc shall be resolved in the courts of New York.

Texas has a statute that provides: Forum selection clauses violate the public policy of Texas, and shall not be enforced by any court in this State. Explaining that it was

compelled to comply with the Texas statute, the court denied Drip-Drop's motion to transfer venue.

Please discuss whether the court ruled correctly on:

1. Drip-Drop's motion to dismiss;
2. Pearson's motion to remand;
3. Pearson's motion to dismiss Drip-Drop's counter-claim; and
4. Drip-Drop's motion to transfer venue.