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**Exam Name:** CivPro\_LS2\_(Zamperini)\_Final\_F08

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**Grade:** \_\_\_\_\_

1)

In order to determine if personal jurisdiction (jx) may be exercised over Kuckuck (K) by Betty (B), a three prong test including (1) an evaluation of the applicable long-arm statute, (2) whether there are minimum contacts, and (3) whether the exercise of jx would be reasonable must be conducted. First of all, California (CA) does have a long-arm statute that would allow for jurisdiction on any basis not inconsistent with the Constitution of CA or of the United States (CA Code of Civil Procedure Sec. 410.10); therefore, we may move immediately toward an analysis of whether K's contacts are substantial enough to warrant jurisdiction (jx) in CA. Under the traditional test of Pennoyer, K would have to be a resident of CA, own property within CA, consent to jx in CA or be present in CA when service was provided in order for jx to be asserted. Since none of these situations are present, personal jx under Pennoyer would fail. Fortunately, a more recent decision under International Shoe has granted personal jx over an absent defendant when the defendant has minimum contacts with the forum and the exercise of jx. would not offend traditional notions of fair play and substantial justice. K's website provides a basis from which to start our minimum contacts analysis. If K's website may only be categorized as interactive under the Zippo test, it would be subject to the Calder Effects test. Under the Calder-Effects Test, K's website would have to contain an intentional act targeting the forum state causing harm, the brunt of which was foreseeably suffered within the forum state. Under the Calder Effects Test, K's contacts would probably fail to meet the minimum contacts standard. K's website, as far as we know, provides nothing that specifically targets Californians. However, because the website provides a place where customers who wish to purchase a product can indicate that willingness, I believe that the website may be considered active. An active website, like K's provides a point of contact between customer and business. It appears that K gets nearly 20% of their business from their website, and most of that business is from Californians; since K is actively obtaining business from CA residents, under McGee, K could probably be said to have purposefully availed himself of CA jx. K's situation is unlike the situation in WWVW, where the defendant merely placed his product in the stream of commerce, and it ended up in the forum state through no action of the defendant. Here, K was actually aware that their product would end up in CA (Asahi - Brennan).

Although the action of K toward CA was purposeful, no action that we know of by K toward CA was actually wrongful. No claim that we know of has arisen from the sales where K has shipped their product to a CA resident. B's claim comes from a

purchase made in Maryland (MA). Since the contacts K had with CA did not actually give rise to B's cause of action, B may not exert specific jx over K. B may be able to exert general jx over K if K's contacts with CA are substantial enough to subject him to jx as, for all practical purposes, a resident of CA (Helico). Most of K's business is done in MA, however, it appears that nearly 20% of his business is derived from CA. There is certainly an argument, and very potentially a successful argument, for B to exert general jx over K.

Finally, if B is able to exert personal jx over K, the action will have to be reasonable (Asahi). To determine the reasonableness of the action, we must consider the burden on the defendant, the interest of the plaintiff in having the action held in the forum state, the interest of the forum state and any trumping interest of another state. The burden on the defendant appears to be relatively high. K is a very small business that only produces about 100 clocks each year. It would impose substantial costs on K to force him to defend in CA. B, the plaintiff, may have had a very strong interest in having the case heard in CA if she was recovering in CA; however, B is recovering in Delaware (DE). Since B is not actually in CA, it does not appear that she has a very strong interest in having her case heard there. CA's interest in the case might be relatively high because CA is interested in defending its citizens from foreign corporations. DE, however, might have a stronger, trumping interest in the case. DE's interest would be strong because it has both B, who is recovering there, and K, who is incorporated there. Although it appears that K's contacts with CA might be substantial enough to subject him to general personal jx in CA, I believe that personal jx might not be granted because it would be unreasonable under the factors asserted in ASahi.

B would also have to persuade the court that subject matter jx (smjx) would be appropriate over K in federal court. The ways that B could get her claim into federal court are under diversity jx (sec. 1332) or federal question jx (sec. 1331). Under sec. 1332, complete diversity and a minimum amount in controversy requirement (\$75,000) would be necessary. Complete diversity means that none of the plaintiffs are from the same location as any of the defendants; it appears that B has met that requirement in her suit. B, although maintaining her current residence in DE, is still domiciled in CA. B's domicile is her true home and the place that she intends to stay or return to (Mas v. Perry). Domicile and not residence is used to determine citizenship for purposes of diversity. Corporations, like K, have dual citizenship in both their principle place of business and the place in which they are headquartered. K is headquartered in DE and has his principle place of business in MA. Therefore, since the plaintiff in this case is from CA, and the defendant is from DE and MA, there is complete diversity for federal jx. It also appears that B will be able to meet the amount in controversy requirement. Under AFA Tours, in order for a court to dismiss an action based on the claim being for less than the amount in controversy, there must be a legal certainty that the claim is actually for less than that amount. Since B has medical expenses, it is highly likely that she will be able to meet the \$75,000 requirement for her amount in controversy. Since B has met both the requirement for complete diversity and amount in controversy, there is appropriate smjx over K in federal district court.

It is a good thing that B is able to assert federal jx over K because of diversity,

because she would fail in her claim of smjx under federal question jx (Sec. 1331). B is suing for negligence, which is a purely state claim and does not arise out of or turn on any construction of federal law.

2)

Supplemental jx is the trying of two cases together for purposes of judicial efficiency, even though only one of the cases has an independent basis for federal jx. In order for the court to exercise supplemental jx over Arnold's (A) claim under sec. 1367 and attach it to B's claim, the two claims must arise out of a common nucleus of operative fact (Gibbs). A's claim is that K should return the \$10,000 A paid for the clock because the clock was defective. B's claim is for personal injuries sustained by the defective clock. It appears, since both A & B's claims arise out of the same factual situation, that they can be said to arise from the a common nucleus of operative fact. The exercise of supplemental jx by a court, however, is discretionary. Under 1367(c), a court may decline supplemental jx if there is a complex or novel state issue, if the federal court has already dismissed all claims over which it had original jx, if the state claim clearly predominates over the federal claim, or for other extraordinary reasons. It does not appear that A's action raises any complex or novel issue of state law that should be worked out by state courts before being adjudicated by a federal court. It also doesn't appear that the court has dismissed B's claim over which it had original diversity jx (sec. 1332). Although both B & A's claims are inherently state claims, they are justifiably in federal court under diversity jx, which A's claim would not disrupt. Therefore, unless there is an additional extraordinary circumstance that would warrant the district court's refusal to take supplemental jx over A's claim (which there doesn't appear to be), A should have no problem obtaining supplemental jx to attach his claim to B's.

The exercise of smjx over K by A would also be justified because of federal diversity jx. A, who is domiciled in CA, is completely diverse from K, who is a resident of DE & MA. A's claim will only be for \$10,000 and will not meet the amount in controversy under the diversity requirement by itself; however, under Exxon & Starkist, so long as one plaintiff meets the amount in controversy requirement, the court may exercise supplemental jx over parties that would not independently meet the amount in controversy requirement. A's exercise of smjx over K is appropriate.

**END OF EXAM**