

PART I (1 hour)**[THIS PART CONTAINS ONE ESSAY QUESTION]**

Kuckuck Co. is a corporation incorporated in Delaware but with its principal place of business in Germantown, Maryland. The corporation is a small enterprise owned by the Kuckuck family and prides itself on building “Kuckuck Cuckoo Clocks” based on centuries-old Bavarian traditions handed down from generation to generation. Not only are all the clocks individually produced by hand, but the company also makes all of the component parts, including the decorations of a tiny village that sits on top, the cuckoo bird, clock face and internal clock mechanisms. Because of this care and attention to detail, Kuckuck can only produce about 100 such clocks per year. These clocks are highly valued by collectors and are considered to be the most reliable. The clocks routinely win first place in International Cuckoo Clock Competitions, putting those made in Germany to shame.

All the clocks are made at the corporation’s factory in Germantown. Kuckuck Co. sells its clocks in only two ways. The first is direct sales at its factory outlet store in Germantown; the second is over its web site www.kuckuckco.com. Kuckuck Co. advertises extensively in newspapers that circulate in Germantown and neighboring Maryland cities to entice customers to its outlet store. The advertisements boast that the company accepts advance orders that might take years to fill and that payment is due when the clock is finished.

The web site contains various pictures of the clocks, including a “streaming video” showing happy people admiring the clocks and testifying as to their worth and versatility. Internet users who wish to purchase the product can fill out a form on the internet indicating their intention to purchase a clock and their willingness to wait for the clock to be built. There are areas on the form for name, address and what method of payment they will be using when the clock is ready. Kuckuck Co. then sends a confirmation by mail to the internet user, including an estimation of how many people are waiting in front of the user and when to expect the completed clock. Approximately 80% of the clocks are sold at the outlet store; business for the other 20% comes from the internet site by people located all over the world, although records for the past few years show that the majority of those sales are to people who live in California.

Arnold and Betty are old friends, platonic roommates and life long residents of Oakland, California. Arnold is a fan of clocks in general and has dreamed of someday owning his own Kuckuck clock. Arnold and Betty were recently on a vacation in Maryland, when Arnold noticed Kuckuck’s “Oktoberfest Special” for clocks in a local newspaper. He and Betty rushed to the outlet store. Helga Kuckuck, the president of the company was working at the outlet store. She informed the two Californians that they were the luckiest people in the world. By a strange quirk of fate, her uncle had just put the finishing touches on a clock destined for a purchaser in Minnesota; five minutes earlier, that purchaser had called to say that with the recent economic turmoil he had to cancel his order. Therefore, the clock was available now. Arnold was ecstatic and quickly paid the asking price of \$10,000 for the clock. Arnold then filled out a form with his name and address in order to be apprised of future products and the two friends thanked Helga profusely.

Arnold and Betty returned to Oakland and spent considerable time deciding where they would mount the clock. Before they could do anything, the next day Arnold received a package from Kuckuck Co. The package contained a spring mechanism and a letter signed by Helga Kuckuck. The letter read in part “We are so embarrassed. We just discovered this spring mechanism that somehow was inadvertently omitted from the clock you just purchased. This spring needs to be inserted into the clock to guarantee that it will function properly.” The letter went on to give instructions for removing the back panel of the clock and how to insert the mechanism.

Arnold asked Betty to insert the mechanism while he read the instructions out loud to her. Betty followed the instructions, but when she removed the back panel, part of the clock mechanism suddenly flew out of its container, and in a bizarre incident, hit her left inner ear, causing a permanent loss of hearing in that ear.

Arnold has just consulted a partner at the law firm where you work. The partner believes that all of the above facts can be proven by credible evidence. The partner also spoke by telephone to Betty, who is currently staying at her sister’s home in Delaware to recuperate and start hearing therapy at the world famous Delaware Hearing Hospital. The partner believes that Betty can allege a cause of action against Kuckuck Co. for extensive personal injury damages from a negligently manufactured product. The partner also believes that Arnold can rescind his contract of sale due to the defective merchandise and obtain the return of the \$10,000 he paid.

Based on the foregoing, please discuss:

1. Whether Betty can assert appropriate personal and subject matter jurisdiction in federal district court here in California for her cause of action.
2. Whether Arnold can persuade the court to exercise supplemental jurisdiction and, if so, whether he could assert subject matter jurisdiction and pursue his cause of action in Betty's lawsuit.

[END OF ESSAY QUESTION]