

Scott Pearce's  
Master Essay Method

Civil Procedure

# ***CIVIL PROCEDURE APPROACH***

## I. Jurisdiction

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**CIVIL PROCEDURE**  
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Pam, a resident of State X, brought suit in state court in State X against Danco, a corporation with its principal place of business in State Y. The suit was for damages of \$90,000 alleging that Danco breached a contract to supply Pam with paper goods for which she paid \$90,000 in advance. In her complaint, Pam requested a jury trial. State X law provides that contract disputes for less than \$200,000 must be tried to a judge.

Danco removed the case to federal court in State X. Danco moved to strike the request for a jury trial. The federal court denied the motion.

A few days before trial, Pam learned for the first time that Danco was incorporated in State X. She moved to have the case remanded to state court on this ground. The federal court denied the motion.

At trial, Pam testified that she paid for the goods but never received them. Danco admitted receiving Pam's payment and then presented evidence from its dispatcher that it had sent a truck to Pam's office with the paper goods. Danco also called as a witness Rafe, who works in a building next to Pam's office. Rafe testified he saw a truck stop at Pam's office on the day Danco claimed it delivered the goods. Rafe also testified he saw the truck driver take boxes marked "paper goods" into Pam's office that same day.

At the close of all the evidence, Pam moved for judgment as a matter of law. Danco opposed the motion, and the court denied the motion. The jury returned a verdict in favor of Pam.

Danco then moved for judgment as a matter of law, which Pam opposed. The court denied Danco's motion.

Did the court rule correctly on:

1. Danco's motion to strike the request for a jury trial? Discuss.
2. Pam's motion to have the case remanded to state court? Discuss.
3. Pam's and Danco's motions for judgment as a matter of law? Discuss.

**CIVIL PROCEDURE**  
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**Outline**

- I. Danco's motion to strike Pam's request for a jury trial was properly denied.
  - A. State X law would not allow Pam's case to be heard by a jury.
  - B. The U.S. Constitution guarantees jury trials for federal lawsuits for damages.
    - 1. The federal court has diversity jurisdiction.
    - 2. *Erie* requires federal procedural law and state substantive law.
  - C. Conclusion: The federal court properly denied Danco's motion to strike Pam's request for a jury trial.
  
- II. Pam's motion to remand the case to state court should have been granted.
  - A. The federal court's jurisdiction is based on diversity.
  - B. Danco's state of incorporation destroys diversity.
  - C. Conclusion: The federal court had to remand the case when diversity was destroyed.
  
- III. The motions for judgment as a matter of law both were denied properly.
  - A. Pam's motion for judgment as a matter of law
  - B. Danco's motion for judgment as a matter of law
  - C. Conclusion: Both motions were denied properly.

**CIVIL PROCEDURE**  
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Pam took an indefinite leave of absence from her job, sublet her apartment in State A, and went to care for her elderly mother in State B. Approximately six months later, while Pam was walking to her car in the parking lot of Don's Market in State B, Rita, a resident of State C, struck Pam with her car. In Rita's car were three friends from State C who were traveling through State B with Rita. The friends told the police officer called to the scene of the accident that Pam was reading a magazine as she walked across the parking lot and was therefore not watching where she was going. Pam told the police officer that she had just walked out from behind a large concrete column in the parking lot when Rita's car struck her.

Pam sued Rita and Don's Market in federal court in State B. Pam's complaint sought \$60,000 in damages against each defendant. It also asked the court for an injunction ordering Don's Market to tear down the concrete column in the parking lot.

Don's Market moved to dismiss Pam's complaint on the ground that the court lacked subject matter jurisdiction. The court denied the motion.

Rita then moved for a change of venue of the action to federal court in State C on the grounds that she is a citizen of State C and that it would be a hardship for her and her witnesses to travel to State B for trial. The court denied Rita's motion for a change in venue

Rita then filed a notice of appeal of the court's denial of her venue motion. The appellate court dismissed Rita's appeal.

1. Was the trial court correct in denying the motion of Don's Market to dismiss the complaint on the ground that the court lacked subject matter jurisdiction? Discuss.
2. Was the trial court correct in denying Rita's motion for change of venue? Discuss.
3. Was the appellate court correct in dismissing Rita's appeal? Discuss.

**CIVIL PROCEDURE**  
**Outline**  
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- I. The Trial Court was correct in denying Dan's motion to dismiss.
  - A. Pam's Tort Claim is not a Federal Question
  - B. Diversity Jurisdiction
    - 1. Diversity of Parties
    - 2. Amount in Controversy
  - C. Conclusion: Trial Court's Denial Correct
  
- II. The Trial Court was correct in denying Rita's motion for a change of venue.
  - A. Venue in State B Federal Court
  - B. Venue may not be proper in State C
  - C. Conclusion: Trial Court's Denial Correct
  
- III. The Appellate Court was correct in dismissing Rita's appeal.
  - A. Final Judgment Rule
  - B. Interlocutory Appeal
  - C. Conclusion: Appellate Court's Dismissal Correct

**CIVIL PROCEDURE**  
**Answer**  
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I. The Trial Court was correct in denying Dan's motion to dismiss.

Pam sued Rita and Don's Market in federal court as a result of an accident in the parking lot of Don's Market. Don's Market moved to dismiss Pam's complaint on the ground that the court lacked subjectmatter jurisdiction.

A. Pam's Tort Claim

Pam was walking to her parked car when Rita hit Pam with her car. Pam apparently alleges that Rita drove carelessly and that the design of Don's Market parking lot was another cause of her injuries. Pam's case is a relatively uncomplicated torts matter, which would arise out of the law of State B, where the accident occurred. No federal claims are present in Pam's case.

B. Diversity Jurisdiction

To win entry to federal court based on diversity jurisdiction, Pam would have to show diversity of citizenship between herself and the defendants. Pam also would have to satisfy the \$75,000 amount in controversy requirement to obtain federal diversity jurisdiction.

1. Diversity of Parties

Pam is a citizen of State A, where her permanent home and job are located. Although she has sublet her apartment and taken an indefinite leave of absence from work in order to care for her elderly mother in State B, Pam remains a citizen of State A.

Rita is a resident of State C. Her citizenship is diverse from Pam's.

Don's Market is located in State B. No facts are present to suggest it is not a citizen of State B. Don's Market also has citizenship diverse from Pam's.

2. Amount in Controversy

Pam seeks \$60,000 from each of the two defendants. She will be allowed to aggregate these claims; the resulting \$120,000 damages claim satisfies the amount in controversy requirement. Furthermore, Pam seeks a court order in equity requiring Don's Market to tear down the concrete column in its parking lot. Even if Pam's damage claims were not aggregated, it seems certain that the cost to remove the column would be more than \$15,000, which would push the amount in controversy to the required level.



C. Conclusion: Trial Court's Denial Correct

The trial court correctly denied Don's Market's motion to dismiss Pam's complaint on subjectmatter jurisdiction grounds.

II. The Trial Court was correct in denying Rita's motion for a change of venue.

Rita, the driver who struck Pam, is a resident of State C. Rita moved for a change of venue to federal court in State C because it would be a hardship for Rita and her witnesses to come to State B for trial. The court denied Rita's motion.

A. Venue in State B Federal Court

The accident happened in State B. Don's Market is located in State B. Pam is caring for her elderly mother in State B. All these facts suggest that federal court venue in State B is proper.

B. Venue may not be proper in State C

A court has broad discretion to transfer venue where it would serve the interests of justice. Here, the fact that Rita and her three passengers are all from State C is relevant. For Rita properly to defend herself, she needs to be able to present the testimony of her passengers, who claim Pam was reading a magazine and was not watching where she was going.

The problem with Rita's attempt to transfer venue to State C is that there does not appear to be a way for State C to exercise jurisdiction over Don's Market. Although Pam could have brought an action against Rita in State C, she would not have been able to sue Don's Market there. The only fact that suggests Don's Market has any connection at all with State C is that Rita and her three friends from State C shopped there. This certainly would not be enough to allow Pam to sue Don's Market in State C.

C. Conclusion: Trial Court's Denial Correct

The court correctly denied Rita's motion for a change of venue. State C would not be a proper forum to hear this case because it could not exercise personal jurisdiction over Don's Market.

III. The Appellate Court was correct in dismissing Rita's appeal.

Rita filed a notice of appeal when the federal court in State B denied her venue motion. The appellate court dismissed Rita's appeal.

#### A. Final Judgment Rule

Typically, appellate courts only consider appeals from final judgments. Here, the case has not been tried and there is no final judgment from which to appeal.

#### B. Interlocutory Appeal

Appellate courts may consider interlocutory appeals from cases which have not been concluded, where a specific issue has been finally adjudicated that materially affects the remaining issues. Jurisdiction issues sometimes are considered appropriate for interlocutory appeals.

The appellate court did not hear Rita's appeal, dismissing it instead. This was appropriate because, as discussed above, the State C court lacked personal jurisdiction over Doc's Market. The State C court could not adjudicate Pam's case under any circumstances.

#### C. Conclusion

Rita's appeal of the federal court's denial of her venue motion had no merit. The appellate court was correct in dismissing Rita's appeal.

## CIVIL PROCEDURE

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Bigcorp is incorporated and headquartered in State B. While in State B, Paul, a citizen of State A, was severely injured by a defective power saw at a store owned by Bigcorp in State B. Paul brought a products liability action for \$100,000 against Bigcorp in a federal district court in State B, based on diversity of citizenship. As discovery proceeded, Bigcorp disclosed that, although it manufactures its own power saws, the particular power saw that allegedly injured Paul had been manufactured in State A by Amcorp, which is incorporated and headquartered in State A. Amcorp and Bigcorp generally conduct business solely in their respective states, but sell surplus goods to each other twice a year.

Paul sought leave to amend his federal court complaint to name Amcorp as a defendant. Bigcorp opposed the motion, claiming that such a joinder would defeat diversity, and moved for the dismissal of the action because of the impossibility of proper joinder of Amcorp. The federal court dismissed Paul's complaint. Paul then filed suit against Bigcorp and Amcorp in state court in State B. Amcorp filed a motion to quash service of summons, contesting personal jurisdiction over it. The State B court determined that it lacked personal jurisdiction over Amcorp and dismissed it from the action.

Paul voluntarily dismissed his action against Bigcorp without prejudice. Paul then brought his products liability action in state court in State A, naming Amcorp and Bigcorp as defendants. Bigcorp moved for dismissal of Bigcorp from the action on the ground of res judicata, and the State A court granted the motion.

1. Was the federal court correct in dismissing the action on the ground of the impossibility of proper joinder of Amcorp? Discuss.
2. Was the state court in State B correct in dismissing Amcorp from the action on the ground that it lacked personal jurisdiction over Amcorp? Discuss.
3. Was the state court in State A correct in dismissing Bigcorp from the State A action on the ground of res judicata? Discuss.

**CIVIL PROCEDURE**  
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**Outline**

- I. The Federal Court's Dismissal Re: Impossibility of Joinder of Amcorp
  - A. Diversity Jurisdiction
    - 1. Diversity of the Parties
    - 2. Amount in Controversy
  - B. Paul cannot join Amcorp.
    - 1. Joinder
    - 2. Amcorp is neither necessary nor indispensable.
  - C. Supplemental Jurisdiction would allow Indemnity actions between defendants.
  - D. The Federal Court Erred in Dismissing the Whole Action.
- II. The State B Court's Dismissal of Amcorp Re: Personal Jurisdiction
  - A. Minimum Contacts
    - 1. Purposeful Availment
    - 2. Foreseeability
    - 3. Fairness
  - B. Conclusion: The State B Court Erred.
- III. The State A Court's Dismissal of BigCorp Re: Res Judicata
  - A. Former Party or Privy: Yes
  - B. Claim Fully Litigated: No
  - C. Conclusion: The State A Court Erred.

**CIVIL PROCEDURE**  
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In 1998, the Park Company (Park), a State X importer of art objects, contracted with Wholesale (W), a wholesaler based in Italy, to purchase a shipping container of vases for \$800,000. The agreement, which was negotiated entirely in Italy, specified that “disputes concerning this contract shall be subject to non-binding arbitration in State X prior to the commencement of any action on the contract.”

Before entering into this contract, W had never done business with Park. W sells most of its goods to buyers in Spain. However, in 1996 W had sold to a State X company three shipping containers of vases worth \$700,000 per container. These sales had been negotiated during a month-long sales trip to State X by W’s president.

Park rejected the 1998 container of vases on the ground that over half the shipment did not conform to contract specifications. Two months following an unsuccessful private arbitration in State X, Park sued W in federal court in State X alleging \$100,000 in lost profits. W timely moved to dismiss the complaint on the ground that the court lacked jurisdiction and on the alternative ground of *forum non conveniens*. The court denied W’s motion in its entirety.

All of W’s witnesses to its design and manufacturing process are located in Italy. Italian courts provide a forum for Park’s claim; however, Italian law recognizes fewer theories for recovery than State X law and imposes a limitation on damages, which State X does not.

Did the court correctly decide W’s motion to:

1. Dismiss for lack of jurisdiction? Discuss.
2. Dismiss on the ground of *forum non conveniens*? Discuss.

**CIVIL PROCEDURE**  
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**Outline**

- I. The court correctly denied W's motion to dismiss for lack of jurisdiction.
  - A. Federal court jurisdiction is based on diversity of citizenship
    - 1. Diversity is present.
    - 2. Amount in controversy.
  - B. Personal jurisdiction requires minimum contacts and must be reasonable.
    - 1. Contract provided for non binding arbitration in State X court
    - 2. W had never dealt with P before.
    - 3. W had a prior multi-million dollar deal in State X.
    - 4. W's president had been in State X for one month.
    - 5. The exercise of jurisdiction is reasonable.
  - C. Conclusion
- II The court correctly denied W's motion to dismiss on the ground of *forum non conveniens*.
  - A. *Forum Non Conveniens*
  - B. The federal court has the authority to shift venue.
  - C. Plaintiff's choice of venue is deferred to.
  - D. Conclusion

**CIVIL PROCEDURE**  
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Nearby residents were evacuated because of dangerous fumes released by a fire and explosion at an oil refinery owned by Danco in State A. Five of the evacuees, all of whom were residents of State A, filed a joint civil action in state court in State A against Danco based upon State A tort theories. Each plaintiff is seeking compensatory and punitive damages. Plaintiffs' compensatory damage claims, based on the injuries allegedly suffered distinctly by each plaintiff, range from \$30,000 to \$35,000 for each plaintiff. Their claims for punitive damages are for "amounts to be determined according to proof."

Danco is a State B corporation, with its corporate headquarters located in State C. Danco's day-to-day operations are run from its several regional offices in states where it operates refineries, the largest of which is located in State A. Danco's oil-refining activities in State A are extensively regulated by a public regulatory agency. The regulatory agency is conducting an ongoing hearing to determine whether the fire and explosion were the result of any violations of the agency's safety orders.

Danco removed the action to federal district court in State A. The plaintiffs moved to remand the lawsuit to state court on the grounds that Danco's largest refinery is in State A and that there is an ongoing state regulatory hearing. The motion was denied.

Danco then filed its answer. Plaintiffs then moved to file an amended complaint naming Tom, a State A contractor, as a defendant, alleging that Tom had built the refinery and that Danco and Tom are jointly and severally liable for plaintiffs' damages. The court granted the motion to amend the complaint over Danco's objection. Plaintiffs then renewed their motion to remand, and, over Danco's objection, the renewed motion was granted.

Did the federal district court rule correctly on:

1. The plaintiffs' first motion to remand the lawsuit to state court? Discuss.
2. The plaintiffs' motion to amend the complaint to name Tom as a defendant? Discuss.
3. Plaintiffs' renewed motion to remand the lawsuit to the state court? Discuss.

**CIVIL PROCEDURE**  
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**Outline**

- I. Plaintiffs' first motion to remand to state court
  - A. Danco's removal of the case to federal court
    - 1. No federal question is present
    - 2. Diversity
      - a. Diversity of the Parties
      - b. Amount in Controversy
  - B. The ongoing state regulatory hearing
  - C. Conclusion - denying the motion was not an abuse of discretion.
  
- II. Plaintiffs' motion to amend the complaint to add Tom as a defendant
  - A. Plaintiffs' motion came after Danco filed its answer.
  - B. Permissive Joinder
  - C. Necessary Joinder
  - D. Conclusion
  
- III. Plaintiffs' renewed motion to remand the case to state court
  - A. The case must go to state court if Tom is necessary or indispensable.
  - B. Possible bad faith by the Plaintiffs



**CIVIL PROCEDURE**  
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Danco is a manufacturer incorporated and headquartered in State Y. Pat, a state X resident, has been employed as Danco's State X salesperson from 1985 to 1995. In 1994 Tom, a State Y resident, was hired as Danco's sales manager. Tom works at the Danco headquarters in State Y.

In 1995, Tom increased sales quotas and exerted pressure to reduce lead-times from initial contact to final sale. Pat's protests that this would ruin long-standing customer relations were ignored. Despite several warnings to increase sales, Pat failed to meet the new quota and was fired on his 50th birthday.

At the time of his termination, Paul had several large deals pending and Tom promised Pat he would receive his standard commission for those sales if they were completed. Danco, however, ceased doing business in State X due to that state's unfavorable business climate, and the sales were never completed.

After fruitless attempts to find another job, Pat sued Danco in State X federal district court for breach of a federal age discrimination statute and breach of contract based on failure to pay \$30,000 of anticipated commissions. The district court granted Danco's motion for summary judgment on the age discrimination claim and dismissed the breach-of-contract claim for lack of subject matter jurisdiction.

Pat then learned that two prospective State X employers had refused to hire him because of negative references provided by Tom. Pat sued both Danco and Tom in an appropriate State X court for age discrimination under State X law, breach of contract (unpaid anticipated commissions), and defamation.

Both Tom and Danco appeared specially and moved to quash service. The court denied the motions. The defendants answered and filed motions for summary judgment, claiming the federal judgment was a bar to Pat's claim. The court denied these motions.

State X law provides that its courts may exercise jurisdiction over nonresidents "on any basis not inconsistent with the Constitution of the United States."

1. Assuming the defendants were properly served, did the state court properly assert personal jurisdiction over each defendant? Discuss.
2. Is the federal court judgment a bar to any of Pat's claims against either defendant? Discuss

**CIVIL PROCEDURE**  
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**Outline**

- I. Did the state court properly assert personal jurisdiction over each defendant?
  - A. Danco
    - 1. Long Arm Statute - Notice
    - 2. Minimum Contacts
      - a. Purposeful Availment
      - b. Foreseeability
      - c. Fairness
    - 3. Conclusion
  - B. Tom
    - 1. Long Arm Statute - Notice
    - 2. Minimum Contacts
      - a. Purposeful Availment
      - b. Foreseeability
      - c. Fairness
    - 3. Conclusion
- II. Is the federal court judgment a bar to Pat's claims? (Res Judicata / Collateral Estoppel)
  - A. Danco
    - 1. State X age discrimination claim is not barred. (Different law is the basis.)
    - 2. Breach of contract claim is not barred. (No final judgment.)
    - 3. Defamation claim is not barred. (New claim, arose after end of federal case.)
  - B. Tom - Similar analysis, but Tom was not a party to the federal litigation.

**CIVIL PROCEDURE**  
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Pat, a resident of State A, purchased an indoor hot tub from Leisure, a State B mail order house that often advertises in State A newspapers. In the past year, Leisure has sold a dozen hot tubs to residents of State A. Dee, a corporation having its only place of business in State C, supplies pumps and heating elements for Leisure products, and occasionally fills parts replacement orders for individual tub owners, some residing in State A.

A few months after Pat's purchase, his hot tub overheated, burning Pat when he entered it and cracking the tub's shell. Water poured throughout the house, damaging hardwood floors, oriental rugs, artwork, and the ceiling in the room beneath the tub's location.

Pat brought a diversity suit in Federal District Court in State A against Leisure and Dee, claiming \$55,000 damages. The complaint was filed two weeks before the applicable State A statute of limitations lapsed. Service of process by mail in accord with State A's long-arm statute, which extends jurisdiction "on any basis not inconsistent with the Federal Constitution," reached Dee in six days. Because of delays caused by the Post Office, service did not reach Leisure for three weeks.

Dee moved for dismissal of the complaint as to it, on the ground that the court lacked personal jurisdiction over Dee. The motion was denied.

Leisure moved for summary judgment on the ground that the claim against it was barred by the statute of limitations. The motion was denied. The applicable State A statute tolls the statute of limitations on the date service is received. Rule 3 of the Federal Rules of Civil Procedure provides that an action "is commenced by filing a complaint with the court."

Dee next sought to implead Imco Instruments, Inc., a State A firm that supplies thermostats to Dee. Dee alleged that the Imco-supplied thermostat in Pat's tub failed to regulate the water temperature properly. Over Imco's objection, the motion to implead was granted.

Pat then amended his complaint by adding Imco as a defendant. Imco moved to dismiss the entire action or, in the alternative, to dismiss Pat's claim as to Imco, contending that the court lacked subject matter jurisdiction because of Pat's amendment. The court refused to dismiss the entire action but dismissed Pat's claim against Imco.

The jury returned a verdict for \$45,000 in damages against Leisure and Dee. Immediately after the verdict, Leisure and Dee moved to dismiss Pat's suit, contending that the court lacked subject matter jurisdiction because of the amount awarded did not exceed \$50,000. The motion was granted.

Were the court's rulings correct as to:

1. Dee's pre-trial motion to dismiss? Discuss.
2. Leisure's pre-trial motion to dismiss? Discuss.
3. Dee's motion to implead Imco? Discuss.
4. Imco's pre-trial motion to dismiss? Discuss.
5. The post-trial motions to dismiss? Discuss.

**CIVIL PROCEDURE**  
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**Outline**

- I. Dee's Pretrial Motion To Dismiss
  - A. Did the court have personal jurisdiction over Dee?
  - B. Minimum Contacts
  - C. Conclusion
  
- II. Leisure's Pretrial Motion For Summary Judgment
  - A. Summary Judgment Requirements
  - B. Erie: The state statute is substantive law.
  - C. Conclusion
  
- III. Dee's Motion To Implead Imco
  - A. Supplemental Jurisdiction
  - B. Conclusion
  
- IV. Imco's Pre-Trial Motion To Dismiss
  - A. Motion to dismiss the entire action:
  - B. Motion to dismiss Pat's claim as to Imco
  
- V. The Post-Trial Motions To Dismiss
  - A. The amount in controversy was stated in the complaint.

**CIVIL PROCEDURE**  
**Copyright July 1988 - State Bar of California**

Dan was flying his small airplane through the dark of night from his home in State X to a resort in State Y. Before he could reach his destination, he made a forced landing on a highway in State Z and hit a truck driven by Price, a resident of State Y. The truck was demolished, and Price sustained personal injuries resulting in medical expenses in excess of \$10,000. Although a State Z statute required the use of headlights after sunset, the truck's headlights were not on at the time of the accident and Dan did not see the truck.

Price sued Dan in the Federal District Court of State Z, basing jurisdiction on diversity of citizenship. The complaint stated in relevant part, "Defendant negligently failed to operate his plane in a safe manner including, specifically, failure to use carburetor heat, causing his engine to fail and causing him to crash into plaintiff."

Dan filed an answer denying negligence on his part. Neither the complaint nor the answer made any allegations of contributory negligence or the lack thereof.

Prior to trial, Dan filed a timely motion requesting that the owner of the truck, Truckco, be made a party on the ground that Truckco is indispensable to the full and final resolution of the dispute. Truckco is incorporated in State X. Truckco conducts no business in State Z, but its trucks occasionally, though not regularly, use State Z highways on trips between State X and State Y. The court denied the motion on the grounds that it had no jurisdiction over Truckco and that, even if it had jurisdiction, service of process would be difficult.

Price moved for the examination of Dan by a physician to determine whether Dan's eyesight, hearing, and physical dexterity were adequate for piloting an airplane. Over Dan's opposition, the motion was granted.

At a pretrial conference, the court entered an order stating that the case would be tried on the issue of Dan's negligence. The issue of contributory negligence was not discussed.

At the trial, evidence was introduced for Dan, without objection, showing that the engine had failed without any known cause, that this presented a sudden emergency, and that Dan could not see Price's truck because of the lack of lights on the truck.

Over the timely objection of Price, the court instructed the jury that it could consider the issue of possible contributory negligence on the part of Price.

Was the court correct in:

1. Denying Dan's motion to make Truckco a party and allowing the case to go forward without the presence of Truckco? Discuss.
2. Granting Price's motion for a physical examination of Dan? Discuss.
3. Allowing the jury to consider the issue of contributory negligence? Discuss.

**CIVIL PROCEDURE**  
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**Outline**

- I. Was the Court Correct in Denying Dan's Motion to Make Truckco a Party and Allowing the Case to go Forward Without the Presence of Truckco?
  - A. Is Truckco an Indispensable Party?
    - 1. Price can get complete relief without Truckco being joined as a co-defendant.
    - 2. Truckco as a plaintiff: helpful but not necessary.
    - 3. Joining Truckco as an indispensable party plaintiff would destroy diversity.
  - B. The Court Has Jurisdiction Over Truckco.
    - 1. Territorial jurisdiction is present, because Truckco has sufficient "minimum contacts" with State Z.
    - 2. Subject matter jurisdiction would survive if Truckco were joined as a defendant.
  - C. Service of Process of Truckco is not a Serious Problem.
    - 1. Assume a coextensive long arm statute;
    - 2. Serve Truckco at its State X place of business.
  
- II. Was the Court Correct in Granting Price's Motion For a Physical Examination of Dan?
  - A. Price's complaint alleged mechanical error.
  - B. Dan claimed he could not see Price's truck.
  - C. Conclusion
  
- III. Was the Court Correct In Allowing the Jury to Consider the Issue of Contributory Negligence?
  - A. Driving Without Headlights is Negligence Per Se.
  - B. The Court Has the Authority to Revise the Issues Presented to the Jury.
  - C. Conclusion