

# **Civil Procedure - Hybrid**

## **Midterm Exam**

**Fall 2023**

**Prof. Siobhan Kelley**

### *Instructions:*

*The final exam is composed of three essay questions. Each is intended to take approximately one hour to complete.*

*For each call, your answer should clearly state the issue and the applicable rule. Then apply the law to the facts and analyze how the rule applies to those facts. Come to a clear conclusion that directly answers the call of the question.*

*While perfect spelling and grammar is not required, each rule must be stated accurately and use the correct terms.*

*You may find it helpful to sketch out the fact pattern to keep track of the details.*

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**Question One**

Phoebe, a citizen of State A, was driving her car to the Taylor Swift concert in State X. David, a citizen of State B, was also driving to the same concert. A few blocks away from the concert, David rear-ended Phoebe. Phoebe sustained significant injuries in the car accident and had to be taken by ambulance to a local hospital where she was kept overnight for observation.

David owned a car wash business in State B. Phoebe was furious that she had missed the concert as a result of the accident and decided to get revenge on David. Pretending to be disgruntled customers, Phoebe wrote dozens of fake reviews for David's car wash business. The reviews falsely claimed that the car wash did not properly pay its employees, that it regularly damaged its customers cars, and that "the owner hates Taylor Swift." The car wash lost significant business as a result of the poor reviews. David found out that Phoebe was responsible for the fake reviews.

A month after the accident, Phoebe sued David in federal court in State A for \$40k in property damage and \$45k in medical bills and lost wages. State A has a valid long-arm statute.

Phoebe hired a process server who went to David's house in State B with the complaint and summons. The process server knocked on the door of David's house and yelled "pizza delivery!" David opened the door and, seeing the process server holding papers but no pizza, immediately tried to shut the door. As the door was closing the process server threw the papers inside.

David timely filed a motion to dismiss for improper service, which the court denied.

David then timely filed an answer, denying responsibility for the accident. The answer also contained a counterclaim against Phoebe for defamation for the fake reviews of his car wash.

Defamation is easier to prove under the law of State B law than the law of State A.

Answer the following questions:

1. Was the court correct to deny the motion to dismiss for improper service?
2. Discuss the likelihood that Phoebe will be able to have the counterclaim against her dismissed.
3. What are David's options to change venue, and would that help his case?

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**Question Two**

Pinky's Golf Course (Pinky's) is located and incorporated in State A. Pinky's is a popular course well known for its vibrant green grass.

Pinky's hired Dirty Dan's Lawn Care (Dan's) to maintain the grass on the golf course. One of Dan's employees decided to try a new grass care product from a company called Donsanto. He sprayed the Donsanto product all over the grass on Pinky's golf course. Within a week, almost the grass on the golf course had died. Pinky's had to close the golf course for two months while new sod was put in to replace the dead grass.

Dan only does business in State B.

Pinky's filed a lawsuit for negligence against Dan in federal court in State A, claiming \$100k in damages. Dan timely filed an answer.

Dan's lawyer told her client, "If you join Donsanto to the lawsuit you can get the case heard in state court."

Donsanto is incorporated and has its principal place of business in State X. Donsanto also has a warehouse in State A where it stores its products. It does shipping in and out of the state from the warehouse, makes local deliveries and employs about half a dozen employees working at the warehouse.

Answer the following questions:

1. Can Dan join Donsanto to the lawsuit and if so, what is the correct procedure for doing so?
2. Will Donsanto be able to successfully challenge the court's exercise of personal jurisdiction over it?
3. Is Dan's lawyer correct about the case being heard in state court?

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**Question Three**

Peyton, a citizen of State A, had recently become interested in rare foreign cars. PEYTON saw an advertisement for a car he was interested in. The car was an “IKCO Samand” manufactured in Iran. The ad said the car had “all manufacturer parts” and had been appraised for \$90k. Peyton arranged to see the car, which was being sold by Declan. P traveled to State B where Declan lived and was selling the car. Declan told Peyton it was one of less than 50 cars by this manufacturer in the United States. Peyton asked how the car had been maintained, and Declan told him all the parts were from the car’s manufacturer in Iran. Peyton was pleased with the car and bought it from Declan for \$80k.

A year after the purchase, Peyton took it the car to be appraised by a specialty foreign car dealer. The dealer told Peyton that there were thousands of these cars in the U.S. He also told Peyton that the car had many components made by American car part companies and was only worth about \$10,000.

Peyton sued Declan in state court in State A for the amount he paid for the car. In the complaint, Peyton wrote “Declan sold the car knowing it was not worth what he charged” and for “lying about the condition of the car.” The complaint otherwise contained all the required elements. The complaint also contains a request for an order to freeze Declan’s bank account until the case has concluded.

Declan then timely filed an answer, denying Peyton’s allegations that he had lied about the car. As an affirmative defense, he included that federal law prohibits trade with Iran, and therefore it would have been illegal to import replacement parts for the car from Iran.

Declan then timely filed a motion to remove the case to federal court, which was granted.

Now in federal court, Declan filed a motion for more definite statement, which was denied.

Answer the following questions:

1. Was the court correct to grant removal of the case?
2. Was the court correct to deny the motion for a more definite statement?
3. How should the court decide Peyton’s request for an order to freeze Declan’s bank account?

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***ANSWER OUTLINES***

***Issues covered:***

*Personal jurisdiction  
Service under FRCP  
Prejudgment seizure  
Subject Matter Jurisdiction – diversity  
Subject Matter Jurisdiction – federal question  
Venue  
Pleadings/Pleading Special Matters  
Permissive/Compulsory Counterclaim  
Joinder of Parties/Impleader*

***Question One***

- 1. Was the court correct to deny the motion to dismiss for improper service?  
Discuss personal service under FRCP 4 – permitted at home – and that the notice was effectively delivered.*
- 2. Discuss the likelihood that P will be able to have the counterclaim against her dismissed.  
Permissive/Compulsory counterclaims – describe the same transaction/occurrence with the reviews – are they truly related? Analysis of the facts is more important than the conclusion.*
- 3. What are David's options to change venue?  
Answer must explain the rule of venue under 28 USC 1391(b) and that the law of state A will follow the case to State B.*

***Question Two***

- 1. Can Dan join Donsanto to the lawsuit and if so, what is the correct mechanism for doing so?  
Answer must discuss compulsory vs permissive joinder of parties.  
Answer should identify and define impleader.*
- 2. Will Donsanto be able to successfully challenge the court's personal jurisdiction?*

*Answer should define personal jurisdiction generally (traditional bases not required).  
International Shoe rule on minimum contacts.  
Analyze purposeful availment.  
Answer should distinguish between specific and general jurisdiction.*

3. *Is Dan's lawyer correct about the case being heard in state court?*

*Answer should define the rule for SMJ under diversity with full rule "no plaintiff may be from the same state as any defendant and the amount in controversy must exceed \$75k exclusive of interest and costs.*

*Answer should explain how the joinder of Donsanto will destroy diversity and result in remand to state court.*

### ***Question Three***

1. *Was the court correct to deny the motion for a more definite statement?*

*Answer must refer to the FRCP 8 "short and plain statement of the claim" rule, the Twiqbal plausibility standard and the rules for special pleading for fraud under FRCP 9.*

2. *How should the court decide P's request for an order to seize D's bank account?*

*The answer should state the three-part rule for prejudgment seizures, and analyze D's bank account in light of the requested damages.*

3. *How should the court decide D's motion to dismiss for lack of subject matter jurisdiction?*

*SMJ/Diversity – state full rule and analyze the facts*

*SMJ/Federal question – cannot be based on a defense (Mullane)*

1)

### DENIAL OF MOTION FOR IMPROPER SERVICE.

**Long Arm Statute:** A state with a long-arm statute can exercise jurisdiction over a defendant from another state if there is proper service.

Here, State A has a valid long-arm statute, meaning state A can exercise jurisdiction over the defendant of State B if the defendant is properly served. Because the long-arm statute is valid, David can be subject to the jurisdiction of State A.

*Mullane*

**Mulane Test for Service:** Under Mulane, notice of service must be reasonably calculated under the circumstances, must apprise the defendant of the pendency of litigation, and must give the defendant an opportunity to be heard. *excellent*

Here, Phoebe hired a third party process server to serve David personally in his home.

It is not relevant that the process server pretended to be a pizza delivery driver in order to get David to answer the door. A person cannot commit fraud to lead a defendant to a different state in order to serve the defendant, however it is not illegal for the process server to pretend to be a pizza man in order to get David to open the door. Because

Phoebe knew David's name and address, David must have been served personally, which he was. Therefore the notice was reasonably calculated. David was clearly apprised of the pendency of litigation, as he filed an answer where he denied responsibility for the accident. Because he knew the cause of action, he clearly received the service. David also had an opportunity to be heard, because he filed an answer which contained a counterclaim.

**Objecting to Service:** Service is deemed proper and effective if the defendant responds to the service. The defendant must timely file a motion to dismiss.

good  
Here, David timely filed a motion to dismiss for improper service. Because David timely filed the motion, his defense to the service was not waived. However, although his objection was timely and valid, because service was proper under the Mulane test, the court has the discretion to deny the motion.

**Fair Notice:** Service must be actual, meaning served to the party or their agent personally, or constructive, meaning reasonably calculated under the circumstances. A party to a suit cannot be the person to serve the defendant.

how is this different from Mulane rule?

Here, Phoebe served the defendant with actual notice, as according to the facts, a process server went to David's house in State B with the complaint and service. David opened the door and saw the process server. Although David attempted to avoid the process server, the service was reasonably calculated under the circumstances, as the process server insured that David was the party who answered the door, and ensured that the papers were in his possession. Although David attempted to avoid the service, the processor ensured that he received the service. Phoebe was not the party who served David, as she hired a third party processor. Because David was served with actual notice and because he was served by someone other than a party to the claim, David was given fair notice.

*In conclusion, because the service was reasonably calculated under the circumstances, and because David was made aware of the service and had an opportunity to be heard, and because the notice was fair through actual notice, the court was correct in denying David's motion to dismiss for improper service.*

### LIKELIHOOD THAT PHOEBE WILL BE ABLE TO HAVE COUNTERCLAIM DISMISSED

**Counterclaim:** A counterclaim is a defendant's claim against the plaintiff.

for section 1, would like to see a reference to the standard required by the FRCP. You discuss Mulane, which is the due process standard, but should reference the procedural reqts for the litigation.



Here, Phoebe is the plaintiff who sued David for rear ending her. David is counterclaiming that Phoebe defamed him for the fake reviews of his car wash. David's defamation claim is a counterclaim to Phoebe's negligence claim.

*great w/e*  
**Compulsory Counterclaim:** If a counterclaim is compulsory, that means the defendant must bring up the counterclaim in the suit that the plaintiff raised, otherwise the defendant will be barred from recovery after the suit. In order for a counterclaim to be compulsory it must (1) arise from the same transaction or occurrence, and (2) not require to add another party to the claim for which the court would not have jurisdiction over.

*excellent*  
**Compulsory Counterclaim Test:** In order to test if a claim is compulsory, the court will look at (1) whether the claim has the same statement of fact and law, (2) if trying the claim separately will essentially be trying the same case twice, (3) if the same evidence will be used in both, and (4) if there is a logical relationship between the claim and counterclaim.

Here, the original claim that Phoebe has against David is that David was negligent and caused an accident by rear ending Phoebe with his car. David's counterclaim is that Phoebe defamed David by writing negative reviews for his car wash business and falsely claiming that he did not pay his employees, regularly damaged customers cars and hates Taylor Swift. Because David's counterclaim does not involve adding another party, and is only a suit between David and Phoebe, we can conclude that the second element for a compulsory counterclaim has been met, as there is no requirement to add another party that the court will not have jurisdiction over. In analyzing the first element of if the counterclaim arises from the same action or occurrence, we will look at the four questions of the compulsory counterclaim test. The first element is whether the claim has the same statement of fact and law. Here, Phoebe's facts will be that David rear ended Phoebe while on her way to the concert, and the medical bills and damages that she incurred from the instance. The question of law will be the negligence of the tort that David committed by hitting her car. David's counterclaim will use the facts of defamation including all of

*this would be better broken out + not in a single paragraph*

the reviews that Phoebe wrote. The question of law will be if Phoebe satisfied the elements of defamation. Here, the fact and laws are different. Secondly we will look at if trying the case separately will constitute trying the case twice. Here, Phoebe's claim will involve a personal injury claim for negligence of a car accident. David's claim will be based on defamation of character. Here, these cases differ and would not be similar cases. *good* Thirdly, in analyzing the same evidence, Phoebe's evidence will be what occurred the night of the accident. David's evidence will be of the reviews left on his page. Different evidence is necessary for both cases. Lastly, the logical relationship between the claims. Although if not for David hitting Phoebe's car, Phoebe would not have written the negative reviews, the "but for" reasoning is not conclusive to determine logical relationship. It is not logical that when a person accidentally rear ends another person, that that person would write negative reviews and make up lies about the person who hit their car. That is not a natural occurrence that follows the event of a car accident. When analyzing the elements of a compulsory counterclaim, the events do not relate to the same transaction or occurrence. *hard to tackle this entire analysis - very good job!*

**Permissive Counterclaim:** A permissive counterclaim is one that arises from a single transaction against the plaintiff, where the court can decide at their discretion if they would like to hear the case at the same time.

Here, the claim does occur from a single transaction, as it is not the same transaction or occurrence of the negligence claim.

*In conclusion, because the counterclaim does not arise out of the same transaction or occurrence, the counterclaim is permissive rather than compulsory, and the court can exercise its discretion as to whether to hear the counterclaim along with the original claim. Phoebe will likely be able to have the counterclaim against her dismissed, and David can decide to try his claim of defamation separately and will not be barred from recovery.* *great conclusion*

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## DAVIDS OPTIONS TO CHANGE VENUE

**Subject Matter Jurisdiction:** SMJ is the court's jurisdiction of the subject matter and their ability to adjudicate a particular kind of case.

Here, Phoebe is suing David in federal court, so the federal court must determine if they have SMJ though diversity or a federal question of law.

**Diversity Jurisdiction:** A federal court can exercise jurisdiction over a suit when neither party is domiciled in the same state, and when the amount in controversy exceeds \$75,000 excluding costs and interest. A person's domicile is where they are fixed and permanently live and where they intend to return when they are absent therefrom.

Here, Phoebe is a citizen of State A and David is a citizen of State B, therefore they are not from the same state. Phoebe is suing David for a total of \$85,000, which meets the amount in controversy. Because both the plaintiff and defendant are domiciled in different states, and because the amount in controversy exceeds \$75k, diversity is met and a federal court can hear the claim.

**Venue:** Under the laws of venue a plaintiff can bring a claim either, (1) in the district in which the defendant lives, or (2) where a substantial part of the events took place. #3?

Here, David is a citizen of in State B. The accident took place a few blocks away from the concert which was located in state X. Therefore, under the laws of venue, venue is only proper in State B or State X. Here, Phoebe attempted to sue David in State A. Because David is not a resident of State A and because the substantial part of the accident did not take place in State A, state A's venue is not proper.

*In Conclusion, David has the option to change the venue to either State B or State X. The facts state that Defamation is easier to prove in State B. In federal court, states will follow state substantive law,*

*→ you're applying Erie here, which is not correct. In a change of venue, state law goes with the case to the new venue so it does not help his case b/c State A law will apply*

*therefore, for David's suit against Phoebe for defamation, it would be advantageous for David to have the case heard in state B. However, because his counterclaim is not compulsory, this would only be advantageous to David if the court granted the permissive counterclaim of defamation to be heard with the original claim for negligence.*

*excellent work*  
*85*

2)

1. Can Dan join Donsanto to the lawsuit and if so, what is the correct procedure for doing so?

### Impleader

Impleader is the process of joining a 3rd party defendant to a suit. This is done when a defendant shows that a 3rd party is liable to them in part (not solely liable to the plaintiff) and it would be more efficient for the court to bring in the 3rd party now rather than continue without them and then a another litigation between the 2 defendants. The 3rd party must be impleaded via a motion 21 days after receiving the complaint. Here, Dan's has used the Donsanto grass care product all over the golf course which killed the grass. Dan's has relied on Donsanto's product to keep the golf course the pristine green that it is known for. Dan's will definitely want Donsanto to be impleaded to help carry the burden of the defense against the golf course. 100K is a large sum of money that Dan's lawn care is most likely not ready to payout and may ruin his business. If Dan's goes to court without Donsanto then Dan's will eventually bring suit against Donsanto in a separate litigation proceeding. Donsanto is liable to Dan's as it is their product that was used on the Pinky's golf course and without that product, Dan's would not be hailed into court. Because, Donsanto is liable to Dan's in the suit of Pinky's v Dan's, Dan's can implead Donsanto 21 days after the complaint via a motion.

2. Will Donsanto be able to successfully challenge the court's exercise of personal jurisdiction over it?

### Personal Jurisdiction

Personal jurisdiction can be had via common law rules In personam, In rem (forum state control over personal and real property), Quasi in rem (forum states control over person

good rule

avoid repeating the facts

it's not necessary to prove that D is liable but that they could be.



due to real or personal property in the forum state), or modernly through long arm statutes.

### In personam

*traditional*

If a defendant is located in the forum state then the state has classic PJ over them. This can be through domicile, consent, or transient presence. Individual Domicile is had through physically living in the State with the intent to stay and corporate domicile is had through 1. the states in which it is incorporated and 2. one place that is their principal place of business. Consent can be had if the defendant is served and they show up to court without stating they are specially there to tell the court they do not have PJ over them. Lastly, if the defendant is there with transient presence, that was not there through force, fraud, or legal reasons outside of the notice claim, they can be served. Here,

*your analysis really only begins here* ↓ Donsanto is incorporated in State X and also has its principal place of business in State X. The fact that it does its shipping, holds a warehouse, and employs people at the warehouse has no effect on State A being their principal place of business because the facts state that its principal place of business is State X and they cannot have more than one. Thus, State A does not have PJ over Donsanto.

*what about specific + gen'l jx?*

Donsanto has yet to be impleaded into the suit. They have no reason to consent to the suit in court as they are not a party to it yet. Thus, there is no consent.

Donsanto is not a transient in State A as the officers of the company would need to come into the State in order to be served. Their principal place of business is in State X and unless one of the officers of the company is personally served there, no PJ will be had over them.

In conclusion, there is no common law personal jurisdiction over Donsanto.

### Long arm statutes

*nice to have but not a major issue*

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no, due process  
Long arm statutes are permitted as long as they are not in conflict with the constitution and follow the notions of fair play and substantial justice. Fair play and substantial justice are analyzed by 5 factors: 1. the burden on the defendant to be haled into court, 2. the interests in the plaintiff in gaining relief, 3. the States interest in protecting it's citizens, 4. the judicial systems need for efficiency, and 5. the involved states interest in their own policies. Long arm statutes fall under 2 categories; general jurisdiction and specific jurisdiction. These require minimum contacts that in which the defendant has availed themselves of the benefits and protections of the forum states laws.

### General jurisdiction

systemic  
General jurisdiction is where a defendants minimum contacts are so (word) and continuous that they are considered "at home" in the forum state. Any claims against them can be had even it does not arise out of those contacts. Here, Donsanto has sold their product to Dan's in order to help keep the grass green at Pinky's. Donsanto has done something to get the attention of Dan's employee in order to entice him to purchase the product. If Donsanto is shipping within State A then they are selling their products in State A and thus are availing them selves of the protections of State A law and State A will have PJ over them.

### Specific Jurisdiction

not quite an accurate note  
Specific jurisdiction is where a defendants minimum contacts are so sporadic and isolated that the claim against them must come from those minimum contacts. Here, Donsanto has sold a product that was assumed to help keep grass green. Dan's is using the Donsanto product to keep grass green on a golf course which is acres of grass and would require an abnormal amount, in comparison to home use, of product. Donsanto would be well aware of the amount of product they are sending to Dan's if for any other reason

why does this matter?

they would need to keep track of it for Hazardous materials requirements. Thus, State A would have PJ over Donsanto via specific jurisdiction.

In conclusion, Donsanto will not be able to successfully challenge the court's exercise of personal jurisdiction over it.

*Missing minimum contacts rule*

3. Is Dan's lawyer correct about the case being heard in state court?

Remand *good issue spotting*

A suit can be remanded to State court if the federal court does not have subject matter jurisdiction. Subject matter jurisdiction is appropriate here as there is diversity of plaintiffs and defendants in which they have different citizenship via domicile (see above) and the amount in controversy is over \$75K. Pinky's is a State A plaintiff and Dan's is a State B defendant and the amount in controversy is 100K which is over the necessary amount needed to proceed to federal court under diversity jurisdiction. Thus the court appropriately has SMJ and would not be remanded back to state court.

*what about if  
Donsanto is joined*

Impleader

(supra) If a defendant impleads a 3rd party defendant and SMJ is destroyed by the 3rd party, the suit may continue in federal court. Here, because Donsanto is from State X and would even still maintain diversity jx the suit will continue in federal court.

In conclusion, there is no reason for the suit to be remanded to State court, even with the impleading of Donsanto. Dan's lawyer is incorrect.

*75*

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3)

GRANTING REMOVAL OF THE CASE:

**Subject Matter Jurisdiction:** SMJ is a court's jurisdiction over subject matter and its jurisdiction to adjudicate a certain type of case.

*good intro*

Here, the case is being moved to Federal Court, so there must be analysis on whether the court can hear the case based on Diversity or a federal law jurisdiction.

*good rule - can compact it* **Diversity/Domicile/Strawbridge Rule:** A federal court can exercise jurisdiction over a suit when neither party is domiciled in the same state, and when the amount in controversy exceeds \$75,000 excluding costs and interest. A person's domicile is where they are fixed and permanently live and where they intend to return when they are absent therefrom. Under the Strawbridge rule, no defendant or plaintiff can be from the same state.

*good* Here, the domicile of the plaintiff, Peyton is State A, as that is where he is a citizen of. The domicile of Declan is state B as that is where Declan lived and was selling the car. Because the plaintiff and defendants are from different states, they satisfy this element. The second element is that the amount in controversy be over \$75,000. Here, Peyton is suing Declan for the amount he paid for the car. Peyton paid \$80,000 for the car, which exceeds the minimum requirement of \$75,001. Because both Peyton and Declan are citizens of different states, and because Peyton is suing Declan for an amount greater than \$75,000, diversity has been met and the court can hear the case.

**Federal Law Jurisdiction:** When diversity is not met, a federal court can still hear a case if the cause of action of the claim is based on a federal law, however under Mottley, the federal question must be well pleaded.

*arise under a well-pleaded complaint*

Here, Peyton is suing Declan for "knowing it was not worth what he charged" and for "lying about the condition of the car." The claim of action is based on breach of contract, and does not involve any federal law, because the claim of action is not related to federal law, but to contract law, which is a state issue. Declan used an affirmative defense that stated that federal law prohibits trade with Iran, and therefore it would be illegal to import replacement parts for the car from Iran. While the affirmative defense does raise an issue of federal law, the federal law must arise from the plaintiff's claim and cannot arise from the defendant's defense. Because there is not a question of federal law in the plaintiff's claim, the court will not have SMJ over the case based on a federal law question.

*In conclusion, the court was correct to grant removal of the case to federal court, because the case satisfied the rules of diversity, as the plaintiff and the defendant were from different states and the amount in controversy was over \$75,000.*

DENY MOTION FOR MORE DEFINITIVE STATEMENT:

**Pleading:** A pleading must include a plausible "short and plain" statement of the plaintiff's claims along with a demand for relief sought.

Here, Peyton wrote a complaint that alleged that Declan sold the car knowing it was not worth what he charged, and lied about the condition of the car. It states that the complaint included all other required elements. We can assume that the complaint included a demand for relief sought. Here, the statement was short and plain, and stated the claim of the plaintiff, which was that the defendant lied about the value of the car and the condition of the car. Under the pleading requirements, all elements are satisfied.

**Plausibility Standard:** A statement from a plaintiff must be plausible, meaning the factual allegations must either directly or with reasonably infer that the defendant conspired. The court will assume that the facts of the plaintiff are true.

Here, Peyton is claiming that he was sold a car and that the seller, the defendant lied about the condition of the car, and sold it knowing it was not worth what it was worth. If the court assumes the facts are true, it is plausible that someone could have sold a car and lied about the worth of the car, as this is an occurrence that happens often and is not far fetched. The plausibility standard is above the standard of "possibility." And it is very plausible that someone would lie about the value of a car to receive more money for the car and deceit an unknowing seller. Because this is an occurrence that can be very plausible, the plausibility standard is met.

*"Pleading Special Matters"*

*excellent* **Complaint Constituting Fraud:** When a plaintiff is alleging that a defendant has committed fraud, the complaint must give the defendant sufficient notice of the particular misconduct so that the defendant can defend themselves from the claim specifically and not just deny that they did anything wrong.

Here, Peyton is accusing Declan of fraud as he is accusing him of lying about the condition of the car and knowingly representing that the car is worth more than it is. When a person lies intentionally, that is fraudulent. Because this is an issue of fraud, the pleading standard is higher and the complaint must be specific enough for Declan to directly respond to the allegations against him. The standard for pleadings for frauds is higher because the damage it can do on one's reputation if they are accused of fraud. Here, Peyton only says that he sold the car knowing it was worth less than what he charged and that he lied about the condition of the car. Peyton did not include any details of what he lied about. He did not include details that Declan represented that the car was manufactured in Iran, or that less than 50 of the cars was made. He did not include the  
✓ amount the car was actually worth, and that the car parts were actually manufactured in  
✓ America where there were thousands of these cars in the United States. The fact that  
✓ Declan lied about the value of the car in itself is not specific enough for the defendant to

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be able to defend himself with specificity in order to avoid harm to his reputation if the claims were false.

*Very nice*  
*In conclusion, although the requirements for a pleading would have been met, because the pleading involved a complaint constituting fraud, the complaint had to be more specific, and under the requirements for complaints constituting fraud, the complaint was not specific enough. When a complaint is not specific enough the defendant has the right to file a motion for a more definite statement. In this instance, the court erred in denying Declan's motion for a more definite statement.*

*Note: the motion was filed after the answer, so it is untimely.*

#### REQUEST FOR ORDER TO FREEZE DECLAN'S BANK ACCOUNT

*rule not quite correct*  
**Prejudgement Relief:** A court will approve relief prior to a judgement on very rare occurrences. The court will look at factors such as how the asset is related to the case at hand, and whether the asset would be necessary to collect a judgement, the level of deprivation that the defendant would incur if the asset was seized and the the risk of erroneous seizure.

*helpful to number the elements*

*great analysis*  
Here, Peyton is looking to freeze Declan's bank account. When weighing the level of deprivation a defendant would incur if the asset is seized, a person's bank account has a high level of deprivation. Most people keep a significant amount of their money in a bank account and use their account daily for necessities such as food and for paying important bills such as rent and mortgage and car payments. There is a high level of deprivation of the defendant if the defendant were to be deprived of access to his bank account. When weighing the relation of the asset to the case, if a judgment is entered in favor of Peyton, it is likely that a monetary award will be granted and those damages will likely come from the defendant's bank account and therefore there is a close relation to the case and the defendant's bank account. When analyzing the risk of erroneous seizure, the claim the plaintiff made must be proven or disproven with factual analysis from both parties. It is

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possible that Peyton is lying about the claims and that Declan was not fraudulent in his representations.

*In conclusion, because seizing Declan's bank account will have an extremely high level of depravation and because there is a possibility that there could be error and that Peyton could be dishonest in his claims, it is unlikely that the court will offer prejudgment relief. It is not enough that if a judgment would be entered in favor of Peyton that the funds would come from Declan, otherwise anyone who is seeking monetary damages would be awarded Prejudgment relief. The court must look at and consider all factors, and here the deprivation of Declan's bank account is outweighed by the benefit of Peyton seizing his bank account.*

**END OF EXAM**

great work! you do a good job in the analysis  
methodically working through deductions  
and arriving at a conclusion.

If you find yourself pressed for time, you can shorten  
the conclusions. I like the way you have them here,  
but they are typically shorter on the bar exam.