
Jurisdiction and Venue

1. Should the court grant the entrepreneur's motion?

A company incorporated in State B and headquartered in State C sued the entrepreneur in federal court in State C. The complaint sought $50,000 in damages and alleged that the entrepreneur's use of the name "Best Hot Sauce" infringed the company's federal trademark. The entrepreneur filed an answer denying the allegations, and the parties began discovery. Six months later, the entrepreneur moved to dismiss for lack of subject-matter jurisdiction. An entrepreneur from State A decided to sell hot sauce to the public, labeling it "Best Hot Sauce."

- **No, because the company's claim arises under federal law**
- No, because the entrepreneur waived the right to challenge subject-matter jurisdiction by not raising the issue initially by motion or in the answer
- Yes, because although the claim arises under federal law, the amount in controversy is not satisfied
- Yes, because although there is diversity, the amount in controversy is not satisfied

Note:
A is correct. The claim asserts federal trademark infringement, and therefore it arises under federal law. Subject-matter jurisdiction is proper under 28 U.S.C. § 1331 as a general federal-question action. That statute requires no minimum amount in controversy, so the amount the company seeks is irrelevant.

B is incorrect. Under Federal Rule 12(h)(3), subject-matter jurisdiction cannot be waived and the court can determine at any time that it lacks subject-matter jurisdiction. Therefore, the fact that the entrepreneur delayed six months before raising the lack of subject-matter jurisdiction is immaterial, and the court will not deny his motion on that basis.

C is incorrect. There is no amount-in-controversy requirement for actions that arise under federal law.

D is incorrect. Although diversity jurisdiction requires an amount in controversy in excess of $75,000, when diverse parties are litigating a federal claim, the action is treated for jurisdictional purposes as a federal-question action, not a diversity action. The claim here asserts federal trademark infringement, and therefore it arises under federal law. The fact that the action does not meet all the requirements for diversity jurisdiction is irrelevant.

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2. Is the court likely to dismiss the action for improper service of process?

The stockbroker has answered the complaint, asserting the defense of improper service of process. Assume that both states' requirements for service of process are identical to the requirements of the Federal Rules of Civil Procedure. An investor from State A filed an action against his State B stockbroker in federal court in State A. The summons and complaint were served at the stockbroker's office in State B, where the process server handed the documents to the stockbroker's administrative assistant.

- No, because service was made on a person of suitable age found at the stockbroker's place of employment
- No, because the stockbroker waived her claim for improper service of process by asserting it in her answer
- **Yes, because an individual defendant may not be served by delivering process to a third party found at the defendant's place of employment**
- Yes, because the process of State A courts is not effective in State B

Note:
To determine whether a federal court has personal jurisdiction over the defendant, three requirements must be met: (i) service must take place in the appropriate territory, (ii) the service must be carried out in the correct manner, and (iii) the defendant must be "amenable" to the suit.

Federal Rule of Civil Procedure (FRCP) 4(k) states that service of process may be made only within the territorial limits of the state in which the district court sits or anywhere else that the long-arm of the state where the district court sits permits. FRCP 4(k)(1)(B) also provides a special 100-mile bulge provision that allows for out-of-state service even if the local law does not permit this. When the provision applies, it allows service anywhere, even across a state boundary, within a 100-mile radius of the federal courthouse where the suit is pending. The bulge provision applies only where out-of-staters will be brought in as additional parties to an already-pending action.

FRCP 4(e) outlines the manner for serving an individual defendant. Service may be made (i) by personally serving the party, (ii) by leaving the summons and complaint at the defendant's residence with a person of suitable age and discretion, (iii) by serving an agent appointed or designated by law to receive process, or (iv) by serving the party in the manner provided by either the law of the state where the district court sits or in the manner provided by the law of the state where the person is being served.

C is correct. Federal Rule of Civil Procedure 4(e)(2) provides that an individual defendant may be served by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process on behalf of the defendant. No facts suggest that the administrative assistant was a designated agent of the stockbroker, and the Rules provide no general authority to serve process on third parties at a defendant's place of employment. A designated agent may be an officer, a managing or general agent, or someone specifically labeled an authorized agent. In this fact pattern, none of these apply to the administrative assistant.

A is incorrect. FRCP 4(e)(2) governs service on individual defendants and authorizes service on a person of "suitable age and discretion" only when service is made at the defendant's "dwelling or usual place of abode," not at the defendant's workplace.

B is incorrect. FRCP 12(b) provides that every defense to a claim for relief, including insufficient service of process, must be asserted either in the responsive pleading (answer) or by motion. Therefore, the stockbroker did not waive her claim for improper service by asserting it in her answer.

D is incorrect. FRCP 4(k)(1)(A) makes clear that the process of the federal courts may exceed state boundaries. Therefore, the process of the federal courts in State A can be effective in State B so long as the stockbroker is subject to jurisdiction in State A.

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3. Which of the following motions is most likely to accomplish the airline's goal?

One day before the statute of limitations on their claims would have run, the estates of the pilot and each of the passengers filed a wrongful death action against the airline in federal court in State A. The airline was served one week later and wants to prevent the State A federal court from hearing the action. A small commercial airplane crashed in State A. The passengers and pilot, all citizens of State B, were killed in the crash. The airline that owned and operated the airplane is incorporated and has its maintenance facilities and principal place of business in State C.

- A motion to dismiss the action for improper venue
- A motion to dismiss the action for lack of personal jurisdiction
- A motion to dismiss the action under the doctrine of forum non conveniens
- **A motion to transfer the action to a federal court in State C**

Note:
Venue refers to the place within a sovereign jurisdiction in which a given action is to be brought. In federal cases, venue is controlled by 28 U.S.C. §1391. It allows for venue based on the defendant's residence, the place where a substantial part of the relevant events occurred, or the place where the defendant can be made subject to personal jurisdiction. 28 U.S.C. §1404(a) authorizes court-to-court transfers of federal cases from one federal district to another for the convenience of parties and witnesses.

A district court may transfer any civil action to any other district or division where the action might have been brought, or to any district or division to which all parties have consented. However, this transfer provision only applies when the initial venue was proper. If an action is filed by the plaintiff in a district that is not a district in which venue is proper, the district judge may not use §1404(a) as authority for transferring to a district where venue is correct. When the original venue is improper, the court must use 28 U.S.C. §1406(a), which provides that when a case is brought with improper venue, the district shall either dismiss the case or transfer the case to any district or division in which it could have been brought (if this transfer is in the interest of justice).

D is correct. Venue is proper in State A because a substantial part of the events or omissions giving rise to the claim occurred there: the plane crash. When a case is originally filed in a proper venue, the Federal Rules allow the case to be transferred to another district where the action could have originally been brought or to which all parties have consented. By balancing the convenience of an alternative proper forum, the court has the discretion to transfer the case if allowed under the rules governing both jurisdiction and venue.

A is incorrect. Venue is proper in any judicial district in which any defendant resides or a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred. In this case, the plane crash, which gave rise to the claim, occurred in State A. Therefore, State A is a proper venue.

B is incorrect. Federal courts must apply the rules of personal jurisdiction as if they are the state in which they sit geographically. There are not enough facts to know the extent of the federal court's personal jurisdiction here without knowing the reach of State A's long-arm statute. However, most states grant their courts personal jurisdiction over non-residents who perform or cause to be performed certain acts within the state. When a "tort" occurs within the state, there will likely be a grant of specific jurisdiction under the state's long-arm statute. In this case, because the plane crash occurred in State A, it is likely that the federal court in State A would have personal jurisdiction over the airline.

C is incorrect. A motion to dismiss for forum non conveniens is a discretionary power that allows a court to dismiss a case if another court or forum is better suited to hear the case. This choice is incorrect because the question asks for the most likely motion to prevent State A from hearing the case. A motion to transfer venue is more likely to be granted than a dismissal for forum non conveniens. A transfer is more appropriate than a dismissal except in extraordinary circumstances.

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4. Should the motion to dismiss be granted?

The wholesaler has asserted a $60,000 counterclaim against the distributor for payment for the goods at issue, and the distributor has moved to dismiss the counterclaim for lack of subject-matter jurisdiction. A shop owner domiciled in State A sued a distributor in a federal district court in State A for breach of a contract. The shop owner sought $100,000 in damages for allegedly defective goods that the distributor had provided under the contract. The distributor is incorporated in State B, with its principal place of business in State C. The distributor brought in as a third-party defendant the wholesaler that had provided the goods to the distributor, alleging that the wholesaler had a duty to indemnify the distributor for any damages recovered by the shop owner. The wholesaler is incorporated in State B, with its principal place of business in State A.

- No, because the wholesaler's and the distributor's principal places of business are diverse
- **No, because there is supplemental jurisdiction over the wholesaler's counterclaim**
- Yes, because there is no diversity of citizenship between the distributor and the wholesaler
- Yes, because there is no diversity of citizenship between the shop owner and the wholesaler

Note:
The power to adjudicate a certain kind of controversy is known as subject-matter jurisdiction. In the federal courts, there are two basic kinds of cases where federal subject-matter jurisdiction applies: suits between citizens of different states, and suits involving a federal question. The party seeking to invoke the jurisdiction of a federal court must affirmatively show that the case is within the jurisdiction of that court.

Supplemental jurisdiction is the legal mechanism that allows additional claims and parties to be brought into a federal case without independently satisfying subject-matter jurisdiction, once there is a basic controversy that does have subject-matter jurisdiction. 28 U.S.C. §1367 states that in any civil action which the federal district court has original jurisdiction, the district court will have supplemental jurisdiction over all other claims that are so related to the claims in the action that they form part of the same case or controversy.

When the core claim is based solely on diversity, the statute is less generous. It eliminates the requirement for diversity and amount-in-controversy for supplemental claims. However, this grant of jurisdiction only covers (i) compulsory counterclaims, (ii) joinder of additional parties to compulsory counterclaims, (iii) cross-claims, (iv) joinder of multiple plaintiffs under FRCP 20, (v) and FRCP 23 joinder of plaintiffs.

B is correct. In an action in federal court, brought under diversity jurisdiction, a defendant may implead a third-party defendant who may be liable to the original defendant for all or part of the plaintiff's claim. Impleader allows the defendant to join a third-party defendant, as long as there is a basis of subject-matter jurisdiction for the claim. Here, the distributor and the wholesaler are not diverse and the amount in controversy does not exceed $75,000. However, the claim can still be added through supplemental jurisdiction because the claim arises from the same common nucleus of operative fact as the underlying case.

The wholesaler, a co-defendant, can add a counterclaim against the original defendant as long as the claim also has a basis for subject-matter jurisdiction. The wholesaler's counterclaim would also meet supplemental jurisdiction because it concerns payment for the goods at issue and so arises out of the same nucleus of operative fact.

A is incorrect. This is the correct conclusion, but incorrect reasoning. Although the wholesaler's and the distributor's principal places of business are diverse, they are both incorporated in the same state. Therefore, there is not complete diversity between the parties. However, the claim can still be added through supplemental jurisdiction.

C is incorrect. Although there is not complete diversity between the distributor and the wholesaler, the claim can still be brought as long as there is a basis for the claim in subject-matter jurisdiction. Here, the claim can be brought under supplemental jurisdiction because it arises out of the same common nucleus of operative fact.

D is incorrect. The FRCP limits the use of supplemental jurisdiction to join parties when a case is solely based on diversity jurisdiction. However, these rules apply to plaintiffs, not defendants. Although a plaintiff cannot use supplemental jurisdiction to overcome a lack of diversity, a defendant may through impleader. Therefore, it does not matter that the shop owner and the wholesaler are not completely diverse.

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5. Is the court likely to grant the mill's motion?

The mill has moved to transfer the case to a federal court in State B, citing the forum-selection clause in the parties' contract and asserting the facts that the flour was produced in State B and that the majority of likely witnesses are in State B. The contract between the bakery and the mill contained a clause designating State B courts as the sole venue for litigating disputes arising under the contract. Under precedent of the highest court in State A, forum-selection clauses are unenforceable as against public policy; under U.S. Supreme Court precedent, such clauses are enforceable. A bakery incorporated and headquartered in State A had a dispute with a mill incorporated and headquartered in State B over the quality of the flour the mill had delivered to the bakery. The bakery sued the mill in a federal court in State A for breach of contract, seeking $100,000 in damages.

- No, because State A law treats forum- selection clauses as unenforceable
- No, because the mill should have instead filed a motion to dismiss for improper venue
- Yes, because federal common law makes the forum-selection clause controlling
- **Yes, because federal law governs transfers of venue, and it would be more convenient for the witnesses and parties to litigate the claim in State B**

Note:
Venue refers to the place within a sovereign jurisdiction in which a given action is to be brought. In federal cases, venue is controlled by 28 U.S.C. § 1391. It allows for venue based on the defendant's residence, the place where a substantial part of the relevant events occurred, or the place where the defendant can be made subject to personal jurisdiction.

28 U.S.C. § 1404(a) authorizes court-to-court transfers of federal cases from one federal district to another for the convenience of parties and witnesses. A district court may transfer any civil action to any other district or division where the action might have been brought, or to any district or division to which all parties have consented. However, this transfer provision only applies when the initial venue was proper. If an action is filed by the plaintiff in a district that is not a district in which venue is proper, the district judge may not use § 1404(a) as authority for transferring to a district where venue is correct.

When the original venue is improper, the court must use 28 U.S.C. § 1406(a), which provides that when a case is brought with improper venue, the district shall either dismiss the case or transfer the case to any district or division in which it could have been brought (if this transfer is in the interest of justice).

Parties to a contract are free to designate the forum in which any litigation must occur. This language is referred to as a "forum-selection clause." When a party to the contract that has a forum-selection clause later sues another party to that contract in a federal court where venue is proper, but the "wrong" venue, defendants do not generally have the right to use § 1406(a) to demand a dismissal or transfer to the forum specified by the clause. However, the defendant that wishes to enforce the forum-selection clause can move under § 1404 to give the trial judge discretion to transfer the case for convenience.

D is correct. A forum-selection clause represents the parties' agreement as to the most proper forum, and it will be enforced by means of a motion to transfer "in the interest of justice" under § 1404. A court may also transfer a case for the convenience of parties and witnesses. In this case, the flour was produced in State B, the mill is in State B, and likely most of the witnesses and evidence are in State B. Thus, the court will weigh these factors and the existence of the forum-selection clause and will likely grant a transfer of convenience.

A is incorrect. Under Erie, a federal court sitting in diversity may apply federal procedural law. Transfer of venue is a federal procedural issue, so any state procedural laws are not relevant. Although State A law states forum-selection clauses are unenforceable, federal procedural law will allow the case to be transferred.

B is incorrect. Based on the facts given, it is unclear if State A would be a proper or improper venue. A motion to dismiss is not the proper motion; a motion to transfer venue is. Additionally, courts disfavor dismissals even when venue is improper, and prefer to transfer a case to a proper venue over dismissal.

C is incorrect. Forum selection is governed under federal statute, not federal common law. Under an Erie analysis here, the court would apply the federal procedural law and transfer the case under § 1404.

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6. How is the federal court likely to proceed?

A woman sued her former employer in state court, asserting age and sex discrimination claims under both state and federal law. The woman's attorney had recently been embarrassed in court by the judge to whom the case was assigned. Wishing to avoid difficulties with the judge, the woman's attorney promptly removed the case to federal court on the basis of federal-question jurisdiction. The employer's attorney has timely moved to remand.

- **Remand the entire case**
- Remand the state claims but keep the federal claims
- Retain the case to avoid the risk of bias and impropriety in having it proceed before a judge who has shown clear hostility toward the woman's attorney
- Retain the case, because it was timely removed and the woman alleges federal claims

Note:
A is correct. To remove a claim to federal court, several requirements must be met. First, the federal court must have subject-matter jurisdiction over the claim such as diversity or federal question jurisdiction. Additionally, a defendant seeking to remove to federal court must file, within thirty days of receipt of the initial pleading/summons, a notice of removal in the district court where the state action is pending. As that rule suggests, removal is a right exercised by the defendant—plaintiffs may not remove to federal court. Here, the plaintiff's attorney sought removal, which is improper, and the federal court should remand the entire case as improperly removed

B is incorrect. Although a federal court can remand claims based on state law, here, the federal claims should also be remanded because removal was improper, to begin with.

C is incorrect. Although it is true that removal is intended to protect against bias that would be present in a state court, that is not a sufficient reason to remove to federal court, nor does it override the removal requirements. One such requirement is that only the defendant may remove to federal court. Here, the plaintiff removed to federal court, and thus a remand is proper.

D is incorrect. This answer correctly notes that the woman is asserting federal claims, but it was the woman (the plaintiff) who removed, and removal is a right that only the defendant may exercise. Thus, this answer choice misapplies the law.

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7. Should the court grant the subsidiary's motion?

The parent corporation does significant business throughout the United States, including in State A. The subsidiary conducts no business and has no employees or bank accounts in State A. The subsidiary manufactures its tires for the European market, but 2% of its tires are distributed in State A by the parent corporation. The subsidiary has moved to dismiss for lack of personal jurisdiction. A plaintiff domiciled in State A brought a wrongful death action in a federal court in State A against a State B parent corporation and one of its foreign subsidiaries. The plaintiff alleged that a tire manufactured by the subsidiary in Europe had caused his wife's death in an automobile accident in Europe.

- No, because 2% of the subsidiary's tires entered State A through the stream of commerce
- No, because of the general personal jurisdiction established over the parent corporation
- Yes, because the accident did not occur in the United States
- **Yes, because the subsidiary lacks continuous, systematic, and substantial contacts with State A**

Note:
To have personal jurisdiction over parties in a federal lawsuit, two distinct requirements must be met: (i) the court must have the power to act on a given person so as to subject him to personal liability (substantive due process), and (ii) the court must have given the defendant adequate notice of the action against him and an opportunity to be heard (procedural due process). A court may not exercise jurisdiction over a defendant unless minimum contacts with the state in which the court sits have been established. The defendant must have taken actions that were purposefully directed towards the forum state to create these contacts.

Minimum contacts to the forum state can be established in a variety of ways. The applicable test for determining whether a corporation has sufficient minimum contacts with a forum state for that state to assert personal jurisdiction was codified in International Shoe. In order to subject a defendant to a judgment, that defendant must have minimum contacts with that state such that the maintenance of the lawsuit does not offend traditional notions of fair play and substantial justice.

The mere fact alone that a product finds its way into a state and causes injury there is not enough to subject an out of state manufacturer or vendor to jurisdiction there. Instead, the defendant must have made some sort of intentional effort to market in the forum state, either directly or indirectly, in order for personal jurisdiction over the defendant to meet the requirements of due process (World-Wide Volkswagen).

D is correct. Here, the subsidiary did have contact: it put tires into the stream of commerce knowing they would end up in State A. The cause of action, however, is not related to the activity in the state because the accident occurred in Europe, not in State A. Additionally, defending a lawsuit in a foreign legal system would be a severe burden on the subsidiary that would not be outweighed by the small interest State A has in exercising jurisdiction. Thus, although a few of the subsidiary's tires ended up in State A, there are not sufficient minimum contacts to force the foreign subsidiary to defend a lawsuit there.

A is incorrect. Even though the subsidiary put tires into the stream of commerce knowing they would end up in State A, the claim is still not related to the contact, and the burden placed on the subsidiary is not outweighed by the forum's interest.

B is incorrect. The court does not have jurisdiction over the subsidiary just because it has jurisdiction over the parent corporation.

C is incorrect. Proving sufficient contact with the forum is an analysis of the contact, relatedness, and fairness. Where the accident occurred is not a determinative factor in determining if the subsidiary had sufficient contacts for State A to have personal jurisdiction over it.

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8. Is removal proper?

Two ranchers, both citizens of State A, brought an action in a state court in State A against a developer, a citizen of State B. The ranchers alleged a state-law tort claim for water runoff damage to their properties caused by construction on the developer's neighboring property. The first rancher claimed $250,000 in damages and the second rancher claimed $50,000. In their complaint, the ranchers cited federal law regarding the calculation of damages due to water runoff. The developer timely removed the action to federal court.

- No, because the ranchers are not diverse from each other
- No, because the second rancher's claim does not meet the amount-in-controversy requirement
- Yes, because the complaint includes a federal question
- **Yes, because the ranchers are diverse from the developer and both ranchers' claims arise from the same facts**

Note:
D is correct. Although the second rancher's claim does not meet the amount-in-controversy minimum for federal diversity jurisdiction, supplemental jurisdiction authorizes jurisdiction over claims that otherwise would not meet the amount-in-controversy requirement. See 28 U.S.C. § 1367; Exxon Mobil Corp. v. Allapattah Services, 545 U.S. 546 (2005). To establish supplemental jurisdiction, the insufficient claims must be so related to claims in the action that are within the court's original jurisdiction that they form part of the "same case or controversy." Here, both ranchers' claims arise from water runoff caused by the same construction on the neighboring property and thus meet that standard.

A is incorrect. The two rancher plaintiffs are not diverse, but complete diversity is not required between parties aligned in interest, only those opposed in interest. See 28 U.S.C. § 1332(a)(1); Strawbridge v. Curtiss, 7 U.S. 267 (1806). There is complete diversity between the ranchers and the developer. Thus, the fact that the two ranchers are both citizens of State A is irrelevant.

B is incorrect. The second rancher's $50,000 claim qualifies for supplemental jurisdiction because it arises from the same controversy over the construction on the neighboring property as the first rancher's $250,000 claim. See 28 U.S.C. § 1367; Exxon Mobil Corp. v. Allapattah Services, 545 U.S. 546 (2005). Thus, the fact that the second rancher's claim does not satisfy the amount-in-controversy requirement does not make removal improper.

C is incorrect. This answer reaches the correct result with incorrect legal reasoning. The ranchers' tort claim arises under state law. For federal question jurisdiction to exist, however, the underlying claim for relief must arise under federal law. See 28 U.S.C. § 1331. Federal question jurisdiction does not exist merely because federal law is cited solely for the purpose of calculating damages.

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9. What is the trustee's best response to the complaint?

A beneficiary of a trust, who is a citizen of State A, has sued the trustee in federal court in State A for failing to correctly distribute the income from the trust, seeking an accounting. The trustee was personally served with process and the complaint by the beneficiary's attorney while the trustee was vacationing in State A. The trustee is a citizen of State B, and the accounts that are the subject of the trust are located in State B.

- Answer the complaint and counterclaim for abuse of process
- File an action in a State B court and move to enjoin the State A action
- Move to dismiss for improper service by the attorney
- **Move to dismiss for lack of personal jurisdiction**

Note:
Generally, if a defendant voluntarily travels to the forum state and is served while physically present there, the state has proper personal jurisdiction over that defendant, even if the defendant has no other contacts with the state. The general rule is that due process is satisfied by mere service of process in this scenario and personal jurisdiction will be proper.

Here, however, even though the trustee was physically present and served in State A, this type of transient personal jurisdiction does not apply. The trustee is being sued in his professional capacity as a trustee, not himself personally, and he was in State A on a personal vacation. As a result, the trustee's best response is to argue that personal jurisdiction over him as a trustee was not obtained by the attorney's service. Further, the trustee has no minimum contacts as a trustee with State A to satisfy the requirements of fair play and substantial justice. See Hanson v. Denkla, 78 S.Ct. 1228 (1958). Therefore, although the trustee was physically in State A, he may argue that there is no personal jurisdiction because he was vacationing in a personal capacity.

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10. Is the court likely to grant the seller's motion to dismiss?

The following week, the seller's attorney moved to dismiss the complaint for failure to effect timely service of process. Four months later, the buyer's attorney received a voicemail from the seller's attorney asking whether she had ever filed the buyer's complaint. The buyer's attorney immediately mailed a copy of the complaint to the seller's attorney. Before filing a federal civil action against a seller, a buyer's attorney unsuccessfully tried to settle with the seller's attorney. Three days before the limitations period on the buyer's claim expired, the buyer's attorney told the seller's attorney that she would file a complaint that day and asked the seller's attorney whether he would accept service of the summons and complaint. The seller's attorney agreed to do so. The buyer's attorney promptly filed the complaint but forgot to serve the seller's attorney.

- No, because under the Federal Rules of Civil Procedure, the filing of the complaint commences an action and the buyer's complaint was timely filed
- No, because the seller's attorney had notice of the complaint and agreed to accept service
- **Yes, because the buyer's attorney did not show good cause for her failure to effect timely service**
- Yes, because the limitations period expired without timely service

Note:
C is correct. Federal Rule of Civil Procedure (FRCP) 4(m) requires that service be made within 90 days after the complaint is filed with the court. Because the buyer's attorney did not effect timely service, the only way to survive the seller's motion to dismiss is for the buyer to demonstrate good cause for failing to do so. Fed. R. Civ. P. 4(m). "Good cause" is typically something beyond the party's control. Forgetting to effect service does not constitute good cause.

A is incorrect. A statute of limitations is a matter of state law, not federal law. Although FRCP 3 states that an action is commenced when a complaint is filed, the Supreme Court has held that state law governs how and when a statute of limitations runs. See Walker v. Armco Steel Corp., 100 S. Ct. 1978 (1980); Ragan v. Merchants Transfer & Warehouse Co., 69 S. Ct. 1233 (1949).

B is incorrect. As a general rule, a statute of limitations does not stop running until the formal commencement of an action. Thus, informal notice of a possible complaint is insufficient. The seller's attorney agreed to accept service but did not agree to accept untimely service. Further, the buyer's attorney said the complaint would be filed "that day." That statement suggested that service would be made promptly, and certainly within the 90-day window authorized by FRCP 4(m). Additionally, the seller's attorney asking, 120 days later, whether the complaint had been filed underscores the seller's lack of notice that the buyer had decided to go forward with the action.

D is incorrect. The fact that the statute of limitations expired before the seller's attorney was served would not require dismissal because the complaint was filed before the expiration of the limitations period.
