

nondisclosure agreement. The basis for personal jurisdiction over Geometric, according to CEC, was that it falls under the “effects test.” The effects test has three prongs that must be shown: (1) that the defendant committed an intentional tort, (2) the brunt of the harm was felt by the plaintiff in the forum state, making the forum state the focal point of the harm, and (3) the defendant aimed the tort at the forum state. *Should the court of appeals affirm or reverse the district court’s dismissal of the case for lack of personal jurisdiction? Why or why not?*<sup>66</sup>

#### 4.

The new age of technology presents much opportunity for litigation. The Internet is no exception. When operating Internet websites, an important part of it is owning the domain name ([www.example.com](http://www.example.com)). Anyone in the world can own any domain name that is available and the facts of this case arise from this concept.

The plaintiff in this case, Weather Underground Corporation (Weather Underground), a Michigan corporation, is a commercial weather service. It owns and operates several domain names so that people can access their company through their websites. Defendants in this case, Navigation Catalyst Systems, Incorporated (“NCS”), a Delaware corporation, owns many domain names that are similar to the plaintiff’s company name (some would result from people misspelling the correct domain name for Weather Underground). NCS profits from consumers going to one of these websites and clicking on links that are on them.

Plaintiff filed suit against NCS and several of its companies in the District Court for the Eastern District of Michigan. As defendants were not incorporated in Michigan, the issue of personal jurisdiction arise. The courts of appeals have held that in order to establish specific personal jurisdiction (showing that this company has established contacts with the forum state), one must show three things: (1) the defendant purposefully availed himself of the privilege of acting in the forum state, (2) the cause of action arises from the defendant’s activities there, and (3) the defendant’s acts were so substantial as to make the exercise of personal jurisdiction there reasonable.

The district court is considering whether the exercise of personal jurisdiction is proper.

*What should it decide and why?*<sup>67</sup>

5.

The plaintiff in this case is Best Van Lines, Inc., (“BVL”), a New York based moving company, which claims to have been defamed by Tim Walker (“Walker”), a resident of Iowa, who runs a website that is exclusively meant to provide information and opinions about household movers. Walker allegedly posted statements on his website claiming that BVL had just received its license and it should not be used for moving purposes. These postings were made from Iowa and, of course, were viewable by people around the world including in New York, where the company is based.

BVL filed suit against Walker in the United States District Court for the Southern District of New York. The action was dismissed because of lack of personal jurisdiction. *Decide whether or not jurisdiction is proper based on purposeful availment in the forum state and whether the court of appeals should affirm or reverse the district court’s ruling.*<sup>68</sup>

## Additional Resources

- American Arbitration Association (AAA), available at: [www.adr.org](http://www.adr.org)
- Ethan Katsh & Leah Wing, *Ten Years of Online Dispute Resolution (ODR): Looking at the Past and Constructing The Future*, 38 U. Tol. L. Rev. 41 (2006).
- CyberSettle, available at: [www.cybersettle.com](http://www.cybersettle.com)

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