Exam Question 1

4 Example Student Answers
Question 1

The main issue in this case is whether or not removal to the federal court was proper. Removal is a creature of statute and is governed by 28 USC 1441 and 1446. 28 USC 1441 states that any civil action brought in a state court may be removed to the U.S. district court, for the district and division embracing the place where such action is pending, by the defendant if the district court would have had original jurisdiction. 28 USC 1446 deals with the actual procedural process of removing a case. In order to remove a case the defendant must submit a notice of removal to the courts. He doesn't have to ask for permission before he files the notice, he just has to do it. After a case is removed the state court can no longer do anything with the case unless it is remanded back to them pursuant to 1447(d). Disaster removed the case within 30 days of service and they removed it to the correct court. This case appears to have been originally removed correctly pursuant to rule 1446 and 1441. There is still a question as to whether this case could be removed to federal court at all.

"Section 1441 requires that a federal court have original jurisdiction over an action in order for it to be removed from a state court." (Syngenta) The defendant in this case claims that original jurisdiction would have been proper under 28 USC 1331, saying that the fact that the plaintiffs traveled
interstate to get to the airport and because the airport is subject to regulation by the Federal Aviation Administration. 1331 states that the district courts shall have original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the United States. In cases involving a federal question diversity of citizenship is not important. The defendant is arguing that since the airport is subject to regulation by the F.A.A. then the case involves a federal question so 1331 jurisdiction is proper.

The plaintiffs could fight this argument by saying that the complaint must be clear on its face that a fed. law created the cause of action, not just a right under federal law, is an essential element of the state law claim (Merrell Dow). The plaintiffs can make the argument that this claim is nothing more then a state negligence claim. The claim was based off of an automobile accident that occurred in Indiana. The fact that it happened on airport grounds had nothing to do with the claim itself. Plaintiffs can say that the airport is governed by the F.A.A. and it is not an essential element of the state law claim. In fact it has nothing to do with it. We can use the Right of Action test put forth in Merrell Dow to decide if congress intended the F.A.A. to allow federal protection for individuals injured in automobile accidents outside of the airport. The first factor in the test asks whether the plaintiffs are part of the class for whose special benefit the statute was passed. In this case plaintiffs can argue that congress created the F.A.A. to protect passengers of the airlines while actually flying and not while driving on the premises. The second factor asks if the indicia of legislative intent reveal any congressional purpose to provide a private cause of action. It can
be argued that congress didn't even create the F.A.A. in order to protect individuals rights to sue. It was probably created to allow the government to regulate air travel. The third factor asks if the federal cause of action would further the underlying purposes of the legislative scheme. In this case since I feel the F.A.A. was created to regulate the airlines and not to grant rights to sue to individuals the legislative scheme would not be furthered. The final factor asks if the cause of action is a subject traditionally relegated to state law. Negligence in automobile accidents definitly is normally regulated through state courts and not federal courts.

The defense could try to counter this argument by using Grable. Grable states that when the meaning of a statute is actually in dispute then 1331 is proper. Defendant could say that whether or not the F.A.A. was created to protect individuals driving around the airport is what this claim is dependent on. Plaintiffs should easily be able to contend this argument by saying that the claim has nothing to do with the F.A.A. In Grable the whole case depended on how a statute was interpreted. In this case the claim arose from negligence in an automobile accident. The questions at issue in the trial should depend solely on who was negligent, and not the F.A.A.

The defendant also argued that since the plaintiffs traveled interstate that created a federal question. That should be quickly rejected because just driving in another state does not create a federal question. The fact that they traveled interstate did not create the cause of action, the negligent driving of the defendant did.
If the court decides that the F.A.A. doesn't create a federal question
then Subject Matter Jurisdiction should not be proper for this case based on
1331 jurisdiction.

The court should next look at whether SMJ was proper under 1332. 1332
states that district courts have original jurisdiction over claims between
citizens of different states where the amount in controversy is in excess of
$75,000. Article III sec. 2 of the constitution only requires minimum
diversity between the plaintiffs and defendants, but common law requires there
be complete diversity between the plaintiffs and defendants. If any plaintiff
is from the same state as any defendant then 1332 is not proper.

In this case we will first look at whether there was complete diversity
between the parties. For diversity purposes a person's state depends on where
they are domiciled. Domicile is a two part test that asks where does the
person live now, and where do they intend to stay. For this case we will
assume that Preston is domiciled in Ohio and Elvis is domiciled in Texas.
Because, Disaster Trucks is a corporation their domicile is determined by 1332
(c)(1) which states that a corporation shall be deemed to be a citizen of any
State by which it has been incorporated and of the State where it has its
principal place of business. In this case Disaster is incorporated in
Delaware and their principal place of business is in Texas. For complete
diversity to be proper none of the defendants can be from the same state as
any of the plaintiffs. In this case diversity is proper between Preston and
Disaster, but not between Elvis and Disaster since they are both considered
citizens of Texas. 1332 jurisdiction would automaticall be considered
improper because there is not complete diversity between the parties. The
defendant could try to have Elvis dropped from the case to create complete
diversity, but that shouldn't work since Elvis brought the suit in state court
and it wouldn't be fair to drop his claim just because Disaster wanted to be
in federal court.

If the courts somehow were to rule that complete diversity was proper
then we would next need to look at whether the $75,000 minimum requirement for
diversity cases is met. In this case both plaintiffs claim damages of $60,000
each. Clearly neither claim meets the $75,000 minimum requirement. The
defendant could try to argue to the court that they should aggregate the two
plaintiffs claims because then damages would be $120,000, which satisfies the
requirement. Common law states that multiple plaintiff's claims can't be
aggregated in order to meet the minimum requirement. The defendant could also
argue that the plaintiffs were just using artful pleading in order to stay out
of federal court. He could argue that their damages should have been more
then $60,000 but they claimed that in order to stay out of fed. court. This
defense shouldn't work though because the plaintiffs have the right to claim
whatever damages they would like. At least one of the plaintiffs claims must
be at least greater then $75,000 in order to satisfy 1332. The court in
Allapattah said that if one plaintiff's claim is for more then $75,000 and the
other plaintiff's claim doesn't meet the requirement, that claim can be joined
via supplemental jurisdiction. However, in this case neither plaintiff claims
damages in excess of $75,000 so Allapattah can't be applied.

In this case I do not believe that Subject Matter Jurisdiction is proper
under 1332 diversity jurisdiction.

This case should be remanded back to state court since subject matter jurisdiction is not proper therefore the court couldn't have had original jurisdiction over the claims.

If the case is remanded the plaintiffs could try to get the court to sanction Disaster for removing a case when they shouldn't have. The plaintiffs could even try to get the court to force Disaster to pay their attorneys fees. *Martin v. Franklin* states that attorneys fees can't be awarded against a defendant if upon seeking removal they had an objectively reasonable basis for removal. The defense could argue that they sincerely believed that the F.A.A. should create grounds for a federal question claim. If the court agreed with them that they believed in good faith that removal was proper then the plaintiffs shouldn't be awarded attorneys fees.

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The district court of Ohio is likely to remand this case. Remand is proper if the plaintiff files a motion to remand on the basis of any defect other than the lack of subject matter jurisdiction within 30 days after the defendant files a notice of removal. If the district court finds that it lacks subject matter jurisdiction, the court will remand the case without regard to the 30 day time limit. Under Sec 1441, removal is proper only if the district court to which the case is being removed has original jurisdiction.

Disaster Trucks (D) is attempting to remove this case on the basis that the district court has subject matter jurisdiction. In its notice of removal, D averred that federal question jurisdiction exists because the plaintiffs traveled interstate and the airport in which the accident occurred is regulated by the FAA. However, this is insufficient to invoke original jurisdiction under 28 USC 1331. The federal court is granted judicial power over cases arising under the Constitution, federal law, or treaties. Congress conferred the power to exercise original jurisdiction via sec 1331. The Court in Mottley held that in order to invoke Federal Question jurisdiction, the federal issue must appear in the Plaintiff's well pleaded complaint. Raising a federal issue as a defense is insufficient to invoke federal question jurisdiction. Here, the plaintiffs have only claimed state law negligence, so it is unlikely that the court will find an issue of federal law necessary to meet the requirement of 1331. Remand is thus proper based on a lack of original jurisdiction provided by 1331.
D would have to establish the state law negligence claim raises issues of Federal Law. D must show that the statute governing interstate travel, as well as the statute granting the FAA regulatory control over provides a grant of original jurisdiction to the federal courts or provided a private right of action. In the absence a private right of action, the court can determine whether Congress intended to open the federal court for claims involving these issues. The court uses the test set forth in Grable to determine whether the state law claim raises a substantial issue of federal law that is necessary to the disposition of the case and is actually in dispute. The court then must determine whether the exercise of jurisdiction in this case would upset the balance between the federal and state courts. Here, the Grable test is unlikely to find that the plaintiffs claims pose a substantial issue of federal law. The plaintiffs have allged state law claims of negligence. The fact that they were engaged in interstate travel is not necessary in disposing the suit. Rather, the court need only to find that D breached his duty of due care. It is unlikely that Congress intended claims arising from interstate travel to be heard in federal court considering the amount of interstate travel conducted daily. Requiring that the federal court adjudicate all claims arising form interstate travel would severely burden the court. Further, these cases will involve mainly state law claims. State courts have better resources available, along with a better knowledge of state common law, which would allow for more efficient adjudication of claims relating to interstate travel.

D's argument that the airport is governed by the FAA, thus presenting an issue of federal law, is also unpersuasive. Governmental regulatory bodies definately have an interest in trying matters related to their regulatory duties in federal court. Here, however, the dispute does not concern the FAA
and only concerns the airport because the crash occurred on airport property. As above, a determination regarding the FAA regulations concerning vehicles located in the airport is at best incidental to the actual negligence claim. State courts are also competent in making determinations concerning a regulatory body's policy. Here, however, a determination of FAA regulations is unnecessary to a finding of negligence because the court can find that D either was or was not negligent according to common law principles. The court will likely find that Congress did not intend to open the federal courts to all state law claims arising from events occurring in an airport, as it would overburden federal courts in the same manner as claims relating to interstate travel.

D may try to argue that the plaintiffs have artfully pled, meaning that they intentionally left out of their complaint an issue of federal law that is necessary to the disposition of the case in an attempt to remain in state court. Assuming there is no private right of action or original grant of jurisdiction in either statute, and the state law claims do not present a substantial issue as argued above, the court is unlikely to find that the plaintiffs have intentionally omitted from their pleading a necessary federal issue. Thus, the court is likely to find that there is no basis for federal question subject matter jurisdiction because there is no issue of federal law contained in the well pleaded complaint and that the plaintiffs did not attempt to artfully plead in an effort to remain in state court.

D also cites that removal is proper based on diversity jurisdiction. Art. III sec 2 grants the federal court power over controversies between citizens of the various states. Congress conferred this power to the court in the passing of 28 USC 1332, which gives the federal courts the power to exercise
jurisdiction over claims between diverse parties when the amount in controversy exceeds $75,000. While the Constitution only requires minimal diversity, the Court in Strawbridge held that complete diversity (each plaintiff must be diverse from each defendant) is required in the exercise of jurisdiction under 1332. Here, there is no complete diversity because Elvis, plaintiff, is a resident of Texas and D, defendant, is also a resident of Texas. 1332(c)(1) defines the residence of a corporation as any state in which it is incorporated and as the state where the corporation has its principal place of business. Therefore, because complete diversity does not exist, the district court does not have original jurisdiction under 1332 and removal is improper due to a lack of subject matter.

D could argue that Elvis was fraudulently joined in an attempt to defeat complete diversity, allowing the case to remain in state court. If it appears that a party has been joined improperly under rule 20, which states that joinder of parties requires that the party to be joined has a right of action arising from the same conduct, occurrence, or transaction as the original claim, or that the joined party's claim is frivolous and for the purpose of defeating diversity, the court can dismiss that party in order to properly exercise diversity jurisdiction. Here, it is unlikely that Elvis was fraudulently joined because both plaintiff's claims arose from the same conduct, occurrence or transaction (the accident caused by D's negligence). However, if Elvis only suffered minor injuries so grossly out of proportion with those suffered by Preston, the court may find that Elvis was improperly or fraudulently joined and dismiss him from the case.

However, 1332 is not satisfied because the minimum amount in controversy has not been met. Only multiple claims by a single plaintiff can
be aggregated in order to meet the minimum amount in controversy. Multiple plaintiffs are barred from aggregating their claims with those of another plaintiff. In order to confer diversity jurisdiction, one of the plaintiff's claims would need to exceed 75,000. The court could then exercise supplemental jurisdiction pursuant to 1367 over the second claim. The court in Exxon v. Allapatah held that only a single plaintiff needs to meet the Min. amount in controversy, allowing supplemental jurisdiction over the other plaintiffs' related claims. Therefore, the district court should also find that it lacks diversity jurisdiction because the plaintiffs have not met the minimum amount in controversy required by sec 1332.

Preston and Elvis should also file for sanctions under Rule 11 if it appears that D filed for his notice of removal for the purpose of harassing the plaintiffs or to cause any undue delay. Sanctions may also be appropriate if the removal is not warranted by existing law. Here, removal is improper because the district court lacks original jurisdiction under both 1331 and 1332. The plaintiffs need to try to obtain a ruling on their Rule 11 motion prior to any determination regarding remand. Sanctions only apply to documents presented to the court, and the party against whom sanctions are made has 21 days to withdraw their motion pursuant to 11(c)(1)(A). However, because removal is automatic, the defendant may not be able to withdraw his notice of removal. The court has discretion in issuing sanctions and may not choose to award them in this case. Sec. 1447(c) the court can, after a remand, still require the removing party to pay for the just cost and actual expenses incurred as a result of the removal. This is a more likely outcome considering that there was no indication that this case was removable in the first place, unlike Martin v. Franklin Capital, a case was removed on the basis of
diversity and later remanded after evidence pointing out that the minimum amount in controversy was not met.

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The court should grant the plaintiffs motion to remand because the court lacks original subject matter jurisdiction over the case necessary for removal to federal district court.

A defendant can remove a civil action to federal district court using 28 USC 1441, provided the federal court has original jurisdiction over the claim. In order to fulfill this original jurisdiction requirement, Disaster Trucks must prove the federal court has subject matter jurisdiction over the claim, granted by the U.S. Constitution, Article III, Sec. 2, and either 28 USC 1331 or 1332, something it cannot likely do.

Since the case was heard in state court, and has reached the stage of removal, we will assume that Ohio is subject to personal jurisdiction in Ohio state court.

Diversity jurisdiction

Disaster trucks cited the existence of diversity jurisdiction in support of its removal, however, no such diversity jurisdiction exists. Establishing subject matter jurisdiction based on diversity is a two part test, requiring both a constitutional basis and a statutory basis under 28 USC 1332. Under Article III, Sec. 2, the federal courts have original jurisdiction over claims arising between citizens of different states. This is broad grant, and at first sight, Disaster trucks may have met this basis, as this case does involve a claim arising between a citizen of Ohio and a corporation that is a citizen of several places. Subject matter jurisdiction, however, also has a statutory basis that must be fulfilled. According to 1332, the federal district court would have original jurisdiction over claims between citizens of different states where the amount in controversy alleged by the plaintiff exceeds $60,000. The plaintiffs' claims in this case do not meet several of the criteria of this statutory grant.
The amount in controversy is not met and the amounts between multiple defendants are not aggregated. Under 1332(c) corporations are deemed to be citizens of any state in which they are incorporated as well as their principal place of business, so Disaster would be a citizen of both Delaware and Texas. So you have an Ohio plaintiff and a Texas plaintiff suing a citizen of both Delaware and Ohio. Complete diversity is required under the common law, according to Strawbridge, and it does not exist. This is moot, however, as the amount in controversy is not met.

Federal question jurisdiction

Disaster also argues that the federal court has original jurisdiction because plaintiffs traveled interstate and the accident occurred on airport grounds, which are subject to federal regulation. This is wrong. In order for a

The constitutional basis for this is that Federal courts have original jurisdiction claims arising under federal laws and treaties. It is not likely that the district judge would deem this negligence claim to be arising under federal laws and treaties. Federal question jurisdiction must also be granted under 28 USC 1331, which grants federal district courts original jurisdiction over claims "arising under" federal law. Under the artful pleading doctrine, set forth in Mottley, it is up to the plaintiff to allege a federal claim or issue of federal law in the complaint. The federal issue must appear as part of the plaintiff's well pleaded complaint. The issue cannot be raised by a defendant, as generally, this is seen as the plaintiff's choice. The plaintiffs in our case have not raised any federal claim or statute, so it is unlikely a judge would continue the analysis. For a federal court to have subject matter jurisdiction over a state based claim, that claim must have both a federal issue and either a right of action or a federal issue that meets the Grable test. It is unlikely that any federal aviation statute that may arise in this case creates a private right of action, express or implied. Assuming there is no express private right to action extended to interstate travellers en route to a
federally regulated site, it is also not likely that congress meant to protect interstate travellers, or those at airports when.

A judge may then apply the doctrine of Hopkins v. Walker, which grants courts subject matter jurisdiction over state claims that turn on substantial questions of federal law, like the case in Smith. The modern test to establish federal question jurisdiction over a state claim is the Grable test, under which there must be a substantial question of federal law that is necessary to determine the case and the question is one that a federal forum may entertain the state based claim without disturbing any congressionally approved balance of federal and state judicial responsibilities, (will it affect the normal currents of litigation? burden placed on federal system). While it is unknown what federal issue Disaster Truck may argue, it will be one most likely concerning interstate travel in a non-commercial context or one concerning transportation to a federally regulated airport. Proving a federal issue as substantial and necessary to determine the case in a state based negligence claim may prove to be very difficult. However, should Disaster prove that a federal issue regarding interstate travel is substantial in negligence cases such as the one at hand, the judge would then evaluate whether entertaining the claim would disturb the balance of federal and judicial responsibilities. The court in Grable found that the issue in the case did not upset the balance of responsibilities because it applied only in rare cases and it would not significantly shift the load onto the federal courts. At its narrowest, if federal courts were to grant original jurisdiction to state based negligence claims that involved a federal question, in this case interstate travel or transportation to or from, the number of claims would be so great as to place an extremely high, unmanageable, number of cases under the federal district courts. Under this analysis, the judge would find that no right to action is created expressly or implicitly, as the court held Merrel Dow, and the federal issue, whatever it may be, is most likely not substantial, not necessary for the outcome of the case and would shift too great
a load onto the federal district courts if such claims were heard. Disaster may point to some federal statute regulating airports as being substantial, however, such a violation of a statute constituting negligence per se or having other similar relevance would not be entertained because of the caseload such jurisdiction would bring with it, as the court said in Grable.

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Essay I

If the plaintiffs move to remand (for lack of subject matter jurisdiction under 1447c), the Ohio federal district court should grant their motion. Alternatively, if the plaintiffs do NOT move to remand, the Ohio federal court should make an order for summary remand under 28 USC 1446(c)(4).

Article III, section 1 gives Congress the power to ordain and establish federal courts. The American state and federal court systems are designed to have concurrent jurisdiction in many cases -- meaning that, where both a state court (pursuant to state law) and federal court (pursuant to 28 USC 1331/1332) would have original jurisdiction, the plaintiff can choose to bring his suit in either place.

Removal is a creation of statute, intended to help defendants protect themselves from bias or prejudice. The federal removal statutes (28 USC 1441, 1446) allow a defendant to remove a case filed in state court to the federal district court, IF the federal court would also have original jurisdiction over the action. 1441a. A defendant may not attempt to remove a claim based solely on supplemental (1367) jurisdiction.

The removed case is then adjudicated by the federal district court for the district "embracing the place where the action is pending" -- this time, from
Ohio's Hamilton County court to the S.D. Ohio court. If federal original jurisdiction is founded on 1331 (federal question), then the action is removable without regard to the residence of the parties (or any amount in controversy). 1441b. Otherwise, the action is NOT removable if any defendant is a citizen of the state where the action is pending, 1441b, because it is presumed that defendants already being sued in their home state (in a diversity case) experience no bias/disadvantage from that choice of forum.

However, that is not the problem in this case. For federal jurisdiction purposes, according to 1332c1, a corporation is deemed to be a citizen of any state by which it has been incorporated (Delaware, in this case) and the state where it has its principal place of business (Texas, in this case). Therefore, Disaster Trucks is not an Ohio citizen and is not prevented from removing for that reason.

The issue that determines whether Disaster Trucks' removal is proper is whether the Ohio federal court would properly have original jurisdiction over Preston and Elvis' claim.

First, we can easily establish that the federal court would NOT have had original jurisdiction over this action on a 1332 diversity basis. 1332a (and accompanying case law such as Strawbridge v. Curtiss) requires complete diversity as well as an amount in controversy of $75,000 or more. This case fails on both of those requirements. First, there is not complete diversity between the parties, as Elvis is a Texas resident and Disaster Trucks is a citizen of Texas -- under 1332c1, as discussed above, corporations are citizens of the state where they are incorporated AND where they have their
principal place of business. Second, both plaintiffs pleaded only $60,000 in
damages, well under the AIC requirement of $75,000. We do not aggregate
separate plaintiffs' claims to reach the AIC amount; each plaintiff must
satisfy it on his own (for ORIGINAL jurisdiction purposes).

A federal court may dismiss a joined plaintiff for collusive joinder to defeat
diversity. But, assuming Ohio law is similar to the FRCP Rule 20, both
plaintiffs are properly joined as they are asserting a right to relief from
the same transaction or occurrence, and a common question of law or fact will
arise in the action. (In fact, if either plaintiff did NOT join in this suit,
they would likely be unable to use any type of issue preclusion later against
Disaster -- courts frown on a wait-and-see approach to see if the first
plaintiff wins his case.) Additionally, no court can force a plaintiff to
plead more in damages than he wants to. Pleading under the federal AIC amount
is a perfectly valid way for plaintiffs to keep a case in state court.
Therefore, 1332 original jurisdiction will not lie.

Second, we must determine the validity of Disaster Trucks' assertion that
there is 1331 federal question jurisdiction. Article III, Section 2 of the
Constitution gives federal courts the power to hear cases arising under the
Constitution and federal law. 28 USC 1331 says that the federal district
courts have original jurisdiction over all civil actions "arising under the
Constitution, laws, or treaties" of the U.S. Osborn determined that all that
is needed to meet "Constitutionality" is a "federal ingredient" in the case.
However, subsequent case law has tightened up this requirement. To meet 1331
and common law standards for federal question jurisdiction, a case must arise
under a federal law that creates the cause of action, or implicate a substantial federal question.

Additionally, the federal question (of either type) must arise in a plaintiff's "well-pleaded complaint," per Mottley; she cannot anticipate defenses by the defendant that will be grounded in federal law to circumvent the requirement. This rule asks whether the plaintiff would HAVE to raise this issue in a complaint to prove all of the elements he needs to establish his claim. In this case, the plaintiffs' claim is a state law claim for negligence; the plaintiffs (presumably) have not included any type of federal question whatsoever. This would defeat federal question jurisdiction unless the judge finds the plaintiffs have artfully pled -- purposely downplayed the presence of a federal question to keep the case in state court. To see if an allegation of that nature would have any basis, we must evaluate whether the case does arise under a federal law that creates a cause of action, or if a substantial federal question is presented.

Here, Disaster Trucks claims that federal question jurisdiction exists because the plaintiffs "traveled interstate" and because the airport is subject to FAA regulations. The usual test for "general federal question" jurisdiction is whether there is express or implied original jurisdiction of federal courts by statute (or Constitution), and/or an express or implied private right of action to the plaintiffs. As to the defendant's first line of argument, that the plaintiffs "traveled interstate," he may be trying to assert that they are conducting interstate commerce and invoke some sort of Constitutional interstate commerce protection (perhaps that this suit burdens interstate
commerce somehow?). This argument is unlikely to hold water; while the Constitution does grant original jurisdiction to the federal courts to hear disputes on it, and there would generally be a right to sue for a violation of a plaintiff's Constitutional right, it is highly unlikely that this situation (or lawsuit) actually violated Disaster Trucks' Constitutional rights in any way.

The defendant's second argument, that a federal question exists because "the airport is subject to FAA regulations," also probably will not qualify as a general, "arising under" federal question; even if FAA regulations did grant original jurisdiction to federal courts, it is highly unlikely that they give plaintiffs a private right of action. Unless the FAA exclusively governs all lawsuits pertaining to any incidents that happen between any parties in an airport (unlikely that it would, on these facts), and requires them to be pursued in federal court, this won't pass. (Perhaps it might apply if a PLANE had hit their car, but that is not the case here.)

Thus we must turn to substantial federal question (SFQ) doctrine to evaluate this point. SFQ doctrine, established by Merrell Dow and Grable, requires more than the simple presence of a federal issue in a state law claim -- the issue must be substantial, actually in dispute, and necessary to the determination of the case. If it is simply an ingredient of plaintiff's case, but an unnecessary one (plaintiff could prove elements of case without it), then it is not sufficient to confer SFQ jurisdiction. Merrell Dow. Also, the federal court's taking over of the case must not violate the balance of power between state and federal courts. Grable.
This case is somewhat analogous to *Merrell Dow*, in which SFQ jurisdiction was not conferred because the plaintiffs' allegation that defendants violated FDCA labeling standards was only one part of their products liability suit, and they could win the case without that aspect. This case is even less of a good fit for SFQ. There is serious doubt whether this possible SFQ is substantial, necessary to the disposition of the case, or actually in dispute. About the only way that an FAA regulation would be relevant to the current case is if plaintiffs were trying to assert a VIOLATION of that regulation as evidence of negligence on Disaster's part (perhaps as negligence per se). Disaster is a truck company; while it might have to obey any FAA regulations on trucks in the airport, plaintiffs could certainly assert a negligence case WITHOUT using that violation as evidence. And, let's not forget, plaintiffs actually never DID assert a violation, so the FAA regulation is also not actually in dispute. Further, the court is unlikely to find that they "artfully" left a federal ingredient out.

Therefore, as the federal court would not have original jurisdiction under 1331 or 1332, plaintiffs' 1447c remand motion should be granted (regardless of when it is made, as SMJ remand motions are not limited by time). The order may require payment of costs and attorney fees incurred by plaintiffs as a result of the removal, 1447c, and will not be reviewable on appeal, 1447d.

(Side note -- Disaster might have a valid venue or personal jurisdiction objection, but he'll have to handle that after the remand, in state court.)
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