

UNIVERSITY OF HOUSTON LAW CENTER

Final Examination - Procedure I

Professor Lonny Hoffman Fall Semester 2023

Time: Tuesday, December 12, 2023

Location: Room 310 (from 12:00-10:00 pm) and Room 312 (from 4:00-10:00 pm)

Instructions

Rules. The exam is an open book exam, meaning that you may bring with you to the exam any written materials that you want. You may not be online during the exam and must use Electronic Blue Book to take your exam. And you must take the exam, in person, in one of the designated exam classrooms. You may not communicate with anyone about the exam until after you have turned in your exam and your answers must be entirely your own work. Any student found to have violated these restrictions will receive an “F” for the course. You may also be subject to discipline under the UHLC Honor Code. By submitting your final examination answers, you are affirming that you have abided by all University of Houston and UHLC honor system rules, including the UHLC Honor Code, which can be found here: <https://www.law.uh.edu/student/HONOR-CODE-AND-PROCEDURES.pdf>

Time. You have a six-hour block of time to complete the exam, but the exact window of time that you take the exam is flexible. Once you start your exam, you must complete it within six hours. An exam submitted more than six hours after you began it will receive no points. Three illustrations may be useful to show how you might engage with the flexible time window.

- A student who begins the exam at 12:00 pm must submit their exam no later than 6:00 pm.
- A student who begins the exam at 4:00 pm must submit their exam no later than 10:00 pm.
- A student who begins the exam at 7:00 pm must submit their exam no later than 10:00 pm.

Starting/Ending. When you are ready to start the exam, you will go to my office (340M) to pick up a hard copy of the exam from my assistant (Myriah Howard) or me. Once you have the exam, go directly to the exam classroom and log into EBB—that will begin your six-hour window to complete it. When complete, you submit your exam answers through the EBB system.

Electronic Bluebook (EBB). The link to EBB is here: <https://ebb.law.uh.edu/EBBLogon.aspx>. Familiarize yourself with EBB beforehand; instructions are available here: https://youtu.be/hPD_-qw2HP8If. If you need help with EBB before the exam, contact Law IT at lawcomputerhelp@central.uh.edu. Finally, it is a good idea wait for your grade before deleting or erasing anything from your computer.

Format. The exam consists of two parts. The first part, worth 70% of your final grade in this course, contains two essay questions: Q1 is worth 45%; Q2 is worth 25%. There’s no word limit for the essay questions, but I’ve included suggested target ranges: for Q1, 1,750 words or less; for Q2, 750 words or less. The exam’s second part has ten multiple-choice questions, each worth two points (for a total of 20% of your final grade in this course). The remaining 10% of your final grade is based on the mid-semester graded assignment (or assignments, if you elected to turn in a second assignment for a grade).

Questions during exam. If you have any questions during the exam, contact Shah Daram in the Office of Student Affairs; (713) 743-8093 or sdaram@cougarnet.uh.edu. You can also contact my assistant, Myriah Howard; (713) 743-1895 or mdhowar4@central.uh.edu. Other than picking up your exam from me, you should not otherwise contact me during the exam to minimize risk of breaking anonymity.

Part I: Essay Questions

This first part of the exam contains two essay questions.

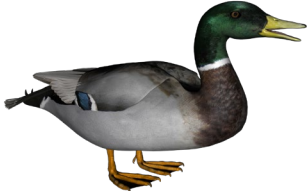
Question 1 (worth 50% of your final grade)

There is no word limit for this question, but a suggested target range is 1,750 words or less

Don, a retired guy in a small town in Maine, carves decoys and uses a site on the internet to sell them. His website is pretty rudimentary. Here's a screenshot of his website's home page:

Retired Guy's Ducks

[Home](#) [About Us](#) [Products](#) [Contact](#)



We ship anywhere in the United States.
Call or email us to order your duck decoy.
Our phone is (xxx) xxx-xxxx. Our email is
retiredguyducks@gmail.com.

Don's business is all word-of-mouth; he does not advertise (other than by having a website). Paula hears about Don's ducks from a friend. She goes online to his website and then emails Don. After some back-and-forth exchanges, she agrees to buy a "Mischievous Mallard Duck" from Don for \$45.00, plus shipping. He asks her to mail him a check, which she does. After the money is received and deposited in his bank account, he mails the duck to the home address Paula provided to him, which is located in Houston, Texas.

The duck arrives. Without closely inspecting it, she puts it on her mantle. About a week later, Paula's toddler son gets badly injured when a sharp splinter from the duck's underside goes into his hand. The splinter is deep and she has to go to take him to the emergency room. Paula does not have health insurance and the visit to the emergency room costs her \$1,200.

Paula brings suit against Don in state court in Houston, alleging that the duck was improperly designed and that his negligence was the cause of her son's medical injuries. She says that Don was negligent in failing to properly use a hand scraper to smooth the wood. Don hires a lawyer who files a special appearance on his behalf, alleging that it would violate his constitutional due process rights for a court to exercise personal jurisdiction over him in this case. [As a reminder, a special appearance is the Texas state law procedural equivalent of filing a FRCP 12(b)(2) motion to dismiss for lack of personal jurisdiction.] Don does not contest that the state's long arm statute authorizes her to sue, nor does he challenge the adequacy of service or notice. How should the court rule on his special appearance? As always, if you think that the answer depends, in whole or in part, on information that you were not given, you should discuss what missing information would be helpful to have—and why.

Question 2 (worth 20% of your final grade)

There is no word limit for this question, but a suggested target range is 750 words or less

P (a Texas citizen for purposes of this question) sues D in the United States District Court for the Northern District of Texas. The suit alleges that D is incorporated and has its principal place of business in New York. P asserts a state law negligence claim for \$100,000 against D, alleging that D is a retailer that negligently sold a defective product that injured P.

In its answer, D brings a third-party complaint under Rule 14 against M. D alleges that M, which is incorporated and has its principal place of business in New York, is the manufacturer of the product that injured P. D acknowledges that it made alterations to the product before selling it to P but that M nevertheless owes D indemnity based on a provision in a contract between D and M. The contract provides that M is liable to D for up to \$50,000 for any damages that D might be found to owe to someone else resulting from D's sale of a product made by M.

After M's joinder as a third-party defendant, P amends her complaint to add a negligence claim against M for selling a faulty product. P's claim against M only seeks the recovery of \$50,000 in damages from M. (Although her amended complaint doesn't explain why she only is seeking \$50,000 in damages against M, you should know that her lawyers concluded that this was likely the extent of M's liability to P—given that D had made material alterations to M's product. Whatever the reason, P is clear in her complaint that she is only seeking \$50,000 in damages from M.)

M moves to dismiss both D's claim against it and P's claim against it on the basis that the court lacks subject matter jurisdiction over either claim. Analyze whether the United States District Court for the Northern District of Texas has subject matter jurisdiction over (1) D's claim against M and (2) P's claim against M.

Part II: Multiple Choice Questions

This second section, worth 20% of your final course grade, contains ten multiple-choice questions. Each multiple-choice question is worth two points. Mark and then submit your answers on the separate multiple-choice tab provided through EBB.

1. P (Texas) filed a state law breach of contract suit in the United States District Court for the Northern District of Texas against D (New York). D is employed by Donald Dack Enterprises. P hired a private process server who served process on D at D's office building in New York City by handing the papers to R, a 50-year-old receptionist working in the lobby of the building's first floor. R works for the building, not for Donald Dack Enterprises, which is located on the 35th floor. You should assume that the relevant state law does not authorize a defendant to be served at their place of employment by leaving process with someone other than the defendant. If D files a motion to dismiss for improper service of process, what answer below reflects the best reasoning for the court to follow?

- A. Because process was delivered to a person over 18 years old who was not a party to the case, as required by Rule 4(c)(2), the court should deny the motion to dismiss.
- B. The court should grant the motion to dismiss because P did not first request that D waive service under Rule 4(e).
- C. The court should grant the motion to dismiss because the method of service was not authorized by state law and is not otherwise authorized by Rule 4.
- D. The court should grant the motion to dismiss because service of process for a lawsuit filed in Texas will not be effective if it is accomplished in New York.

2. On November 1, 2019, P sues D in federal court. On Nov 11, D files an answer in which she admits or denies every allegation, but she does not include in her answer any defenses or affirmative defenses. On December 20, D realizes that she has a strong argument that venue is improper. D moves to amend her original answer. What is the best answer choice below?

- A. The court should rule that D has not waived the argument that venue was improper because, under Rule 12(h)(2)(B) she can raise it in a motion under Rule 12(c).
- B. The court should rule that D has not waived the argument that venue was improper because, unlike personal jurisdiction, improper venue can be challenged either under Rule 12 or by statute under 28 U.S.C. §1406.
- C. The court should rule that D has waived the argument that venue was improper because she did not include the defense in a pre-answer motion before filing her answer.
- D. The court should rule that D has waived the argument that venue was improper because she did not include the defense in her answer.

3. P, Inc. is incorporated in Georgia. Until 2019, it conducted all business out of its Georgia office. In 2019, it moved its headquarters to Florida, where it now directs, controls, and coordinates all of the company's business. That same year, it entered into a contract with S, a company entirely based in Florida. When S failed to satisfy its contractual obligations, P sued S in state court in Georgia, alleging breach of contract. S timely filed a notice of removal in the Northern District of Georgia. Was the action properly removed?

- A. No because P will be deemed to be a citizen of both Georgia and Florida.
- B. Yes because P will be deemed to be a citizen of Georgia or Florida, but not both.
- C. Yes because P will be deemed to be only a citizen of Georgia.
- D. The question cannot be answered until we have additional facts regarding how much business P still conducts in Georgia.

4. In a suit filed in federal court, P1 (Texas) asserts two state law claims against D (New York). The first claim is for \$50,000; the second claim is for \$30,000. In the same action, P2, also from Texas, asserts a state law claim against D for \$20,000. Which of the following is true?

- A. The court lacks power to hear all claims in the same case.
- B. The court has power to hear all claims but must try the cases separately under Rule 42(b).
- C. The court only has power to hear the two claims by P1 against D.
- D. The court has power to hear all the claims if at least one of the claims by P1 is so related, within the meaning of 28 U.S.C §1367(a), as P2's claim against D.

5. Identify the statement below that is most accurate.

- A. If P sues D for breach of contract, D must assert all counterclaims that arise out of the transaction or occurrence of P's claim, whether the counterclaims are for breach of contract or for some other cause of action.
- B. If P sues D for breach of contract, D must assert any transactionally related breach of contract counterclaims against P but need not assert any transactionally related counterclaims based on other causes of action.
- C. If P sues D for breach of contract, D must assert all counterclaims that D has against P.
- D. If P sues D for breach of contract, D must assert a counterclaim that arises out of the transaction or occurrence of P's claim only if both the claim and counterclaim arise under the same law (federal-federal; or state-state).

6. Among the choices below, what answer is not correct?
- A. The Supreme Court's construction of Rule 8 in *Ashcroft v. Iqbal* would no longer control if Rule 8 were amended.
 - B. The Supreme Court's construction of Rule 8 in *Ashcroft v. Iqbal* can be overridden by Congress.
 - C. The Supreme Court's construction of Rule 8 in *Ashcroft v. Iqbal* cannot be overruled by rule amendment or statute because the Court's decision was based on an interpretation of the U.S. Constitution.
 - D. The Supreme Court's construction of Rule 8 in *Ashcroft v. Iqbal* is subject to future interpretation by the Supreme Court in another case.
7. Identify the statement below that is most accurate regarding the substantial federal question doctrine.
- A. It is a constitutional limit on federal subject matter jurisdiction.
 - B. It is a common law interpretation of 28 U.S.C. §1331.
 - C. It is a common law interpretation of the federal question grant of jurisdiction in Article III, Section 2 of the United States Constitution.
 - D. It is a common law test that recognizes the existence of subject matter jurisdiction unless a claim "clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous."
8. Identify the statement below that is most accurate regarding diversity jurisdiction.
- A. Congress can authorize the federal courts to hear non-federal claims asserted by one foreign citizen solely against another foreign citizen, without regard to where those citizens currently reside.
 - B. Congress cannot authorize the federal courts to hear non-federal claims asserted by one foreign citizen solely against another foreign citizen.
 - C. The Supreme Court, but not Congress, can authorize the federal courts to hear non-federal claims asserted by one foreign citizen solely against another foreign citizen, but only if the foreign citizens are not from the same country.
 - D. Congress can authorize the federal courts to hear non-federal claims asserted by one foreign citizen solely against another foreign citizen, but only if the foreign citizens are not from the same country.

9. P, alleging she is a citizen of Texas for subject matter jurisdiction purposes, files suit in New York state court against D1 (whom P alleges is a citizen of New York) and D2 (whom P alleges is a citizen of Texas). P's claims are based on state law and exceed \$100,000 against each defendant. Which of the following statements is most accurate?

- A. D1 may remove this case only if D1 asserts that D2 was fraudulently joined.
- B. D1 may not remove this case.
- C. D1 may remove just the claims against it, leaving the claims against D2 in state court.
- D. D2 can remove the case even if D1 does not consent to removal.

10. What movie did Professor Hoffman quote more than any other this semester?

- A. Death and the Maiden
- B. Schindler's List
- C. Apocalypse Now
- D. My Cousin Vinny (hint, hint)

END OF EXAM