

UNIVERSITY OF HOUSTON LAW CENTER
Final Examination - Procedure I
Professor Lonny Hoffman Fall Semester 2024
Time: Saturday, December 7, 2024 from 9:00am – 1:00pm
Location: Room 311 and Room 312

Instructions

Rules. This is an open book exam, meaning that you may bring any written materials that you want. However, you may not be online—using any device—during the exam and you must use Electronic Blue Book to take your exam, which blocks you from using your computer to go online or access any other files on your computer during the exam. You will 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. After the exam, you can talk about the exam with students who have already taken it but may not communicate with any student who has not yet taken the exam because of an accommodation they have been given. Any student found to have violated any of these rules will receive an “F” for the course and 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>

Electronic Bluebook (EBB). Here’s the link with instructions for learning how to obtain and use EBB on the final: <https://uhlcithelp.zendesk.com/hc/en-us/sections/206601768-Electronic-Bluebook-EBB>. If you need help with EBB before the exam, contact Law IT at lawcomputerhelp@central.uh.edu. Finally, one last suggestion: it is a good idea wait for your grade before deleting or erasing anything from your computer.

Format. The exam consists of two parts, worth collectively 85% of your final grade in the course. As you know, the remaining 15% of your grade is based on two mid-semester graded writing assignments that I’ve already returned to you.

Short Answer Essay Questions. This first part of the exam contains three essay questions. Collectively, they are worth 40% of your final grade in the course. There’s no time or word limit for this part but I’d suggest that you spend roughly half of your time (~two hours) answering these three questions. Individually, I’d suggest that you spend roughly 40 minutes/1,000 words answering each question.

Multiple Choice Questions. The exam’s second part, worth 45% of your final grade in the course, has fifteen multiple-choice questions. Collectively, they are worth 45% of your final grade in the course. There’s no time limit for this part but I’d suggest that you spend roughly half of your time (~two hours) answering the multiple-choice questions. You will mark and then submit your answers on the separate multiple-choice tab provided through EBB.

Questions during exam. I will be in the exam rooms to start and end the exam but to protect anonymity you should direct any substantive exam questions to either Shah Daram in the Office of Student Affairs [(713) 743-8093 or sdaram@cougarnet.uh.edu], my assistant, Myriah Howard [(713) 743-1895 or mdhowar4@central.uh.edu], or Fariba Pouraryan [(903) 215-0621 or fpourary@central.uh.edu]. IT will be available during the exam in the following ways:

In person: Student Help Desk (located 3rd floor next to terrace.)

Email: lawcomputerhelp@central.uh.edu

Phone: (713) 743-2260

Part I: Short Answer Essay Questions

This first part of the exam contains three essay questions. Collectively, they are worth 40% of your final grade in the course. There's no time or word limit on individual questions but I'd suggest that you spend roughly half of your time (~two hours) answering these three questions. Individually, I'd suggest that you spend roughly 40 minutes/1,000 words answering each question.

1. Describe your understanding of how pleading sufficiency standards have evolved since 1938. After doing so, discuss what proponents like about the changes and what critics find concerning.
2. Dusty lives in Dallas, Texas. One Saturday during football season, Dusty drove to Oklahoma to watch a game. This was the first time Dusty went to Oklahoma on a personal trip, although Dusty makes regular trips to Oklahoma to manage multiple rental properties in the state. (During the football trip, Dusty didn't conduct any business.) After the game, Dusty got into a car accident with an Oklahoma resident. If the Oklahoma resident sues Dusty in an Oklahoma state court, how would the court analyze whether it has personal jurisdiction over Dusty?
3. What is your understanding of the substantial federal question doctrine? As part of your answer, what is your assessment of whether the Court should overrule this century-old doctrine by adopting the "creation rule" test Justice Oliver Wendell Holmes articulated in several cases that were referenced in the reading (such as *American Well Works* and in his dissent in *Smith*)? In other words, what would you think of the Court replacing the presumption that the creation rule creates with a new test that would limit the "arising under" jurisdiction to cases pleading a cause of action created by federal law?

Part II: Multiple-Choice Questions

This second part of the exam contains fifteen multiple-choice questions. Collectively, they are worth 45% of your final grade in the course. There's no time limit on individual questions but I'd suggest that you spend roughly half of your time (~two hours) answering the multiple-choice questions. You will mark and then submit your answers on the separate multiple-choice tab provided through EBB.

The following fact pattern applies to questions 1-4:

Daisy (Texas citizen) and Tulip (Texas citizen) were driving together in Daisy's car. Daisy owns the car but let Tulip drive after Tulip agreed that they would pay to repair any damage to the car and would indemnify Daisy if Daisy were ever held liable for an accident caused by Tulip. Tulip crashed Daisy's car into Petunia (Louisiana citizen). The following claims were then brought:

Claim I. Petunia brought suit in federal court in Texas against Daisy, alleging a Louisiana state law claim for \$100,000—representing the cost to repair her car and medical expenses she alleges to have incurred from the accident. She alleges that under Louisiana law, as the car's owner, Daisy is vicariously liable for any damages caused by Tulip's negligent driving.

Claim II. Daisy then impleaded Tulip under Rule 14, citing their agreement as the basis for her indemnity claim. She brought two claims against Tulip: one for \$100,000 in indemnity in the event she is held liable to Petunia [we'll call this **Claim II(A)**] and a second claim for \$30,000, representing the cost it would take to repair her car [we'll call this **Claim II(B)**].

Claim III. Tulip brought a claim against Petunia, alleging that the accident was Petunia's fault and seeking \$30,000 in damages—the cost for repairing Daisy's car.

Claim IV. Finally, after Tulip brought the claim against her, Petunia asserted a state law claim for negligence against Tulip seeking the same damages she seeks against Daisy (for damage to her car and for her medical expenses)—so the alleged amount in controversy of her claim against Tulip is also \$100,000.

1. For **Claim II**, which of the following statements is most accurate:
 - A. Daisy can bring **Claim II(A)** against Tulip but not **Claim II(B)** because the latter claim doesn't satisfy Rule 14's "is or may be liable" requirement.
 - B. Daisy can bring both claims against Tulip as long as both arise out of the same transaction or occurrence.
 - C. Daisy can bring both claims against Tulip as long as **Claim II(B)** arises out of the same transaction or occurrence as Petunia's claim against Daisy (i.e., **Claim I**).
 - D. Daisy can bring both claims against Tulip regardless of whether the \$30,000 car damages claim is related to any other claim in the case—though she may later face a motion to sever that claim from the case.

2. For **Claim II**, which of the following statements is most accurate:
- A. Assuming the rules would allow the joinder of both claims, there would be supplemental jurisdiction over both of Daisy's claims against Tulip.
 - B. Assuming the rules would allow the joinder of both claims, there would be supplemental jurisdiction over **Claim II(A)** but not **Claim II(B)**.
 - C. Assuming the rules would allow the joinder of both claims, there would not be supplemental jurisdiction over either claim because there is no diversity of citizenship between Daisy and Tulip.
3. For **Claim III**, which of the following statements is most accurate:
- A. Section 1367(b) definitely prohibits the exercise of supplemental jurisdiction over **Claim III**.
 - B. Section 1367(b) definitely permits the exercise of supplemental jurisdiction over **Claim III**.
 - C. Section 1367(b) permits the exercise of supplemental jurisdiction over **Claim III** if a court were to read the last proviso of 1367(b) as withholding the exercise of supplemental jurisdiction solely over claims between parties who are not diverse.
4. For **Claim IV**, which of the following statements is most accurate:
- A. Section 1367(b) definitely prohibits the exercise of supplemental jurisdiction over **Claim IV**.
 - B. Section 1367(b) definitely permits the exercise of supplemental jurisdiction over **Claim IV**.
 - C. Section 1367(b) permits the exercise of supplemental jurisdiction over **Claim IV** if a court were to read the last proviso of 1367(b) as withholding the exercise of supplemental jurisdiction solely over claims between parties who are not diverse.

5. On March 1, 2024, P asserts a claim for relief under federal law against D. On March 3, P moved to amend her complaint to add a second claim against D. D urged the court to deny the amendment on the ground that it would be futile to allow it, arguing that the statute of limitations on the second claim expired on March 2. Identify the statement below that is most accurate.
- A. Although part of the analysis will necessarily involve other portions of Rule 15, how the court resolves the motion will principally turn on Rule 15(a)(1).
 - B. Although part of the analysis will necessarily involve other portions of Rule 15, how the court resolves the motion will principally turn on Rule 15(a)(2).
 - C. Although part of the analysis will necessarily involve other portions of Rule 15, how the court resolves the motion will principally turn on Rule 15(c)(1)(B).
 - D. Although part of the analysis will necessarily involve other portions of Rule 15, how the court resolves the motion will principally turn on Rule 15(c)(1)(C).
6. P brings suit in state court. What if D asserts that in calculating the amount in controversy the court should include punitive damages but the law in the state is clear that P is not entitled to punitive damages in this type of case?
- A. The case should be remanded and P has a strong argument for being awarded costs, including fees that she paid to her attorney, incurred as a result of the removal.
 - B. The case should be remanded but P has only a weak argument for being awarded costs, including fees that she paid to her attorney, incurred as a result of the removal or less.
 - C. The case should be remanded because punitive damages should usually not be included in calculating the amount in controversy for purposes of 28 U.S.C. 1441.
 - D. The case should be remanded because punitive damages should usually not be included in calculating the amount in controversy for purposes of 28 U.S.C. 1332.

7. 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. 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. As long as D moves to amend her answer and the court finds that leave to amend would be in the interest of justice, then D will not have waived the argument that venue was improper.
 - 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.
 - D. The court should rule that D waived the argument that venue was improper as soon as she did not include the defense in her answer filed on November 11.
8. 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.

9. 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).
10. Among the choices below, what answer is not correct?
- A. The Supreme Court's construction of Rule 8 in *Ashcroft v. Iqbal* may 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.

11. 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.”
12. Identify the statement below that is most accurate regarding diversity jurisdiction.
- A. Congress, but not the Supreme Court, can authorize the federal courts to hear non-federal claims asserted by one foreign citizen solely against another foreign citizen.
 - B. 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.
 - C. Neither Congress nor the Supreme Court can authorize the federal courts to hear non-federal claims asserted by one foreign citizen solely against another foreign citizen.
 - D. Both Congress and the Supreme Court can authorize the federal courts to hear non-federal claims asserted by one foreign citizen solely against another foreign citizen.
13. 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.

14. Assume that a plaintiff brings suit in a federal court in Texas and that that court has personal jurisdiction over the defendant and that venue is proper there under federal law. Also assume, though, that the plaintiff had previously signed a valid forum selection clause requiring that any dispute between the parties be resolved in an Oklahoma state court. If the defendant wants to enforce the forum selection clause, what is the most appropriate procedural means it would use to enforce the clause?
- A. A motion to dismiss for failure to state a claim under Rule 12(b)(6).
 - B. A forum non conveniens motion to dismiss.
 - C. A motion to dismiss for improper venue under Rule 12(b)(3).
 - D. A motion to transfer under 28 U.S.C. §1404.
15. P brings suit in state court but does not plead an amount in controversy because the state's procedural rules do not require him to plead a specific sum of damages. If D removes the case to federal court, what's the best answer from among the choices below.
- A. The case should be remanded unless the defendant can meet its burden of proving to a legal certainty that the amount in dispute is more than \$75,000.
 - B. The case should be remanded unless the defendant can meet its burden of proving by a preponderance of the evidence that the amount in dispute is more than \$75,000.
 - C. The case should remain in federal court unless the plaintiff can meet his burden of proving to a legal certainty that the amount in dispute is \$75,000 or less.
 - D. The case should remain in federal court unless the plaintiff can meet his burden of proving by a preponderance of the evidence that the amount in dispute is \$75,000 or less.

END OF EXAM