

UNIVERSITY OF HOUSTON LAW CENTER
Final Examination Instruction - Procedure I
Professor Lonny Hoffman
Fall Semester 2020

Exam Timing and Submission

This is a six-hour take-home examination. The exam will be available for download via the Electronic Blue Book (EBB) portal beginning at 12:01 am on Wednesday, December 9. You will have six hours to upload your answers to the EBB portal. Your time period begins when you download the exam. At latest, you must upload your answers before 11:59 pm on December 9; absent extreme extenuating circumstances, answers submitted after 11:59 pm will not be accepted. [Just in case you do run into any upload problems, you can always email your answers to my executive assistant, Lillian White. Her email is at lawwhite@central.uh.edu. Of course, do not copy me on your email to Lillian. To be accepted, your email must be sent before 11:59 pm.]

The link to EBB is here: <https://ebb.law.uh.edu/EBBLogon.aspx>. Familiarize yourself with EBB before the exam; instructions are available here: <https://uhlcithelp.zendesk.com/hc/en-us/articles/360047218193-EBB-Portal-Take-Home-with-Multiple-Choice>. If you need help before the exam or have questions before the exam about EBB, contact Chad Kitko in our IT office. His email is ckitko@central.uh.edu; phone is (713) 743-2260. If you have technical difficulty or problems with EBB during the exam, contact Derrick Gabriel. His email is dgabriel@central.uh.edu; phone is (713) 743-2189. Finally, it is a good idea to keep a copy of your answers on your personal computer just in case there is any problem with your EBB submission.

Exam Format

The exam consists of two parts. The first part, worth 70% of your final grade in this course, contains two essay questions, equally weighted. There is no word limit for the essay questions, but I have included the following suggested target ranges: Q1-3,000 words; Q2-2,500 words. The second part of the exam contains ten multiple-choice questions, each worth two points (for a total of 20% of your final grade in this course).

Do not write your name anywhere in what you submit; only include your numerical exam ID.

The exam is entirely open book. However, you may not communicate with anyone about the exam until after you have turned in your exam. Your answers must be entirely your own work. Any student deemed to have violated this requirement will receive an “F” on the final examination and for the course. By submitting your final examination answers, you are affirming that in taking the final exam, 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>

Part I
Essay Questions

This first part of the exam contains two essay questions.

Question 1 (worth 35% of your final grade)

There is no word limit for this question, but a suggested target range is 3,000 words

Since 2015, Wilfred Pauley has owned and operated Pauley's Special Gloves, Inc., which is incorporated and has its principal place of business in Nebraska. Pauley's Special Gloves is a small business that Pauley operates. The business handcrafts custom gloves for children in wheelchairs. The gloves help prevent skin abrasions and provide protection for wheelchair-bound children. She makes about 1000 pairs each year, most of which are sold in Nebraska. (Her second biggest market is in Colorado.) Pauley started the business after her twin boys, now age 10, were confined to wheelchairs as a result of a school bus accident that left them paralyzed. When she is not working on her business, Pauley is the sole caregiver for her two boys. She earns \$20,000/year in net profit from the business. She has no other sources of business income.

To finance her business, Pauley executed a promissory note with KS-NE Bank. KS-NE Bank is incorporated and has its principal place of business in Kansas. As its name suggests, it only does business in two states: Kansas and Nebraska. Since she executed the first note, Pauley and KS-NE Bank have entered into additional agreements that extended the maturity date for the promissory note. In early 2018, an individual working for KS-NE Bank negotiated with Pauley for another extension of the note's maturity date. While Pauley was recovering from surgery and under the influence of sedatives, the KS-NE Bank representative visited her at a hospital where she signed the new note. The 2018 Extension Agreement contained the following forum-selection clause, which had not appeared in the original 2015 promissory note or in any of the extensions she previously signed:

AS A MATERIAL INDUCEMENT FOR KS-NE BANK TO MAKE LOANS, WILLFRED PAULEY AND PAULEY'S SPECIAL GLOVES, INC. AGREES TO THE EXCLUSIVE JURISDICTION AND VENUE OF ANY COURT LOCATED IN A STATE COURT IN JUNEAU, ALASKA REGARDING ANY DISPUTE RELATING TO OR ARISING UNDER THIS AGREEMENT.

The 2018 Extension Agreement did not contain a choice of law clause. You should assume that any court applying Nebraska's choice of law rules would conclude that Nebraska substantive law should govern in this case. You should also assume that any court applying Alaska's choice of law rules would also conclude that Nebraska substantive law should govern in this case.

In June 2018, Pauley's Special Gloves, Inc. brought an action against KS-NE Bank in the United States District Court for the District of Nebraska. The sole claim is that the loan was usurious under Nebraska law because the interest and other fees collected by the bank are in excess of the amount allowed by law. KS-NE Bank comes to you asking for advice about enforcing the forum selection clause. If you were to try to enforce the forum selection clause by filing a motion to dismiss on forum non conveniens grounds, what is the likelihood that the motion would be granted?

Question 2 (worth 35% of your final grade)

There is no word limit for this question, but a suggested target range is 2,500 words

In 2017, Big Ton Haulers, Inc. specializes in transporting oversized loads. Big Ton is incorporated in New York. It has four C-level executives, all of whom live and work full time in Oklahoma City, Oklahoma. (*C-level* is a term used to describe a corporation's most important senior executives whose titles all start with the letter C, as in the *Chief Executive Officer*, *Chief Financial Officer*, *Chief Operating Officer*, *Chief Information Officer*, etc.) Big Ton also has a board of directors that meets twice a year for an all-day meeting in Houston, Texas.

Big Ton does business in seven different states, but Texas is Big Ton's largest market, as measured both by the number of trips that it makes and total revenue that it earns. Between 2010 and 2017, Big Ton completed over more deliveries and pick-ups in Texas than in any other state. Big Ton also earned \$1,000,000 in revenue in Texas between 2010-2017, which was its largest source of revenue (representing 25% of its total revenue for these years), as the chart below reflects:

State	Big Ton Total Revenue between 2010-2017	Percentage of Big Ton's revenue between 2010-2017
Texas	\$1,000,000	25%
Oklahoma	\$800,000	20%
Arkansas	\$700,000	17.5%
Kansas	\$500,000	12.5%
New Mexico	\$500,000	12.5%
Colorado	\$250,000	6.25%
Missouri	\$250,000	6.25%

In 2017, one of Big Ton's trucks collided with Plaintiff Bob Perkins just outside of Oklahoma City, Oklahoma. Perkins, who lives in Houston, Texas, was visiting his sister in Oklahoma when the accident occurred. Perkins brought suit against Big Ton in federal court in the U.S. District Court for the Southern District of Texas, alleging negligence.

Big Ton timely moved to dismiss for lack of personal jurisdiction under Rule 12(b)(2), arguing that the exercise of jurisdiction over it in Texas would violate its constitutional rights. (Big Ton conceded that the Texas long arm statute reaches to the full extent of due process and so did not challenge statutory amenability. It also did not lodge any objections as to notice.) Perkins concedes that he cannot exercise jurisdiction over Big Ton in Texas on any traditional basis. Perkins also concedes that, under modern jurisdictional doctrine, he does not have a basis for exercising specific jurisdiction over Big Ton in Texas. His sole argument is that Big Ton is amenable to general jurisdiction in Texas.

How should the court rule on Big Ton's motion?

Part II
Multiple Choice Questions

This second section, worth 20% of the exam grade, contains 10 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. Supplier, from Texas, filed an action against Fishing, Inc., a small local retail fishing store in Tulsa, Oklahoma. Fishing is incorporated in Louisiana. The action was filed in Oklahoma state court. The complaint alleged that Fishing had not paid for \$100,000 worth of goods that Fishing had ordered and received from Supplier. Twenty days after being served, Fishing filed a notice of removal in the Northern District of Oklahoma. Was the action properly removed?

- A. No, because the notice of removal was not timely filed.
- B. No, because Fishing is a citizen of Oklahoma for subject matter jurisdiction purposes.
- C. Yes, because Fishing is a citizen of both Oklahoma and Louisiana.
- D. Yes, because Supplier and Fishing are completely diverse from each other.

2. A 50-year-old nurse who had been fired from his job at a hospital told his attorney, "I was fired because of my age, and I want to sue the hospital." Based solely on this information from her client, the attorney filed an age discrimination complaint against the hospital in federal court. As it turned out, the hospital had hired a 52-year-old man as the nurse's replacement, a fact that would make it very difficult to recover under federal law for age discrimination. The hospital responded to the complaint by filing a motion for sanctions against the nurse and his attorney. Is the court likely to grant the hospital's motion?

- A. No, because sanctions would not be proper against the nurse's attorney.
- B. No, because the hospital failed to give the attorney the chance to withdraw the complaint in advance of filing the motion with the court.
- C. Yes, because the nurse's attorney failed to conduct a reasonable pre-filing inquiry.
- D. Yes, because the nurse's complaint contained legal contentions that were not warranted by existing law based on the facts in this case.

3. Plaintiff, a Texas citizen, brings suit against D1 and D2, both of whom are New York citizens, in the Southern District of Texas. Plaintiff's first claim, brought against both defendants, is a Title VII claim. Title VII is a federal statute that provides a private right of action for damages. Plaintiff also asserts a second claim under state law against both defendants. Assume that the court concludes the federal and state claims are "so related" within the meaning 28 U.S.C §1367(a). Identify the statement below that is most accurate.

- A. The state law claims cannot proceed in the same federal case because under §1367(b) they are claims by a plaintiff against persons made parties under Rule 20.
- B. The state law claims can proceed in the same federal case, assuming that the state law claims necessarily raise a state federal issue, are actually disputed, and substantial, provided that it would not disturb any congressionally approved balance of federal and state judicial responsibilities.
- C. The state law claims cannot proceed in the same federal case unless the plaintiff can show that exercising supplemental jurisdiction over such claims would not be inconsistent with the jurisdictional requirements of §1332.
- D. The state law claims can proceed in the same federal case, assuming that the court concludes that it should not decline to exercise jurisdiction under 1367(c).

4. Plaintiff sues defendant in federal court on May 1, 2018. The defendant files a Rule 12(b)(3) motion to dismiss on the ground that venue is improper in the district in which plaintiff brought suit. Sixty days later (during which time the court has not yet ruled on the motion), defendant files a second motion to dismiss on the ground that the plaintiff failed to join an indispensable party. Identify the statement below that is most accurate.

- A. The motion is untimely.
- B. The motion is untimely, unless the defendant can show that the ground for making the argument was not known at the time he filed his Rule 12(b)(3) motion.
- C. The motion is timely.
- D. The motion is timely only if the defendant can show that it relates back to the filing date of the Rule 12(b)(3) motion under Rule 15(c).

5. In a suit filed in federal court based on diversity jurisdiction, P1, from Texas, asserts two state law claims against D, from 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 of the claims, provided that at least one of the claims by P1 arises out of the same transaction or occurrence as P2's claim against D.

6. Plaintiff filed suit in state court. Defendant first removed the action to federal court on the basis of diversity jurisdiction and then moved to dismiss under Rule 12(b)(6). Identify the statement below that is most accurate.

- A. The motion should be granted if some of the state law allegations are conclusory, whether or not they are implausible.
- B. The motion should be granted if there are non-conclusory allegations that state a claim for relief that is plausible on their face.
- C. Under the borrowing rule of Rule 15(c)(1)(A), the motion should be denied if the state court in which the action was filed would have denied the motion to dismiss.
- D. Defendant would have had a better chance at prevailing if it had first taken the Plaintiff's deposition and then attached excerpts from the deposition in support of its Rule 12(b)(6) motion.

7. P1, from Texas, asserts a state law claim against D, from New York, for \$100,000 in the United States District Court for the Southern District of Texas. D asserts a Rule 14 claim against TPD, from New York, for \$100,000. Which of the following is true?

- A. The court does not have power to hear D's claim against TPD because in 28 U.S.C. §1367(b) Congress has withheld supplemental jurisdiction over claims against persons made party under Rule 14.
- B. The court does not have power to hear D's claim against TPD because TPD's joinder would destroy complete diversity.
- C. The court has power to hear D's claim against TPD under 28 U.S.C. §1332(a).
- D. The court has power to hear D's claim against TPD under 28 U.S.C. §1367(a).

8. Identify the statement below that is most accurate.

- A. If P brings suit against D for a state law breach of contract claim, D must assert all counterclaims that arise out of the transaction or occurrence of P's claim, whether the counterclaim is for breach of contract or for some other cause of action.
- B. If P brings suit against D for a state law breach of contract claim, D must assert all counterclaims that arise out of the transaction or occurrence of P's claim, but only if the counterclaim is also a claim for breach of contract.
- C. If P brings suit against D for breach of contract, D must assert all counterclaims that D has against P.
- D. If P brings suit against 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).

9. On March 1, 2019, P asserts a claim for relief under federal law against D. On March 10, P moved to amend her complaint to add a second claim against D. D moved to dismiss the second claim on the ground that the statute of limitations expired on March 2. Identify the statement below that is most accurate.

- A. The court should deny the motion to dismiss if the law of the state in which the action was filed allows relation back, pursuant to Rule 15(c)(1)(A).
- B. The court should deny the motion to dismiss if the second claim arose out of the conduct, transaction, or occurrence set out in the original claim that P filed on March 1.
- C. The court should deny the motion to dismiss because P's amendment was filed nine days after her original complaint and so she was allowed to amend as a matter of course under Rule 15(a)(1)(B).
- D. The court should deny the motion to dismiss under Rule 15(a)(2) because a court is likely to find that there was no undue delay or undue prejudice to D.

10. What movie does your professor think is the funniest law movie of all time? (Hint: the first three are all heavy dramas—and none have anything to do with law.)

- A. Schindler's List
- B. The Boy in the Striped Pajamas
- C. Requiem for a Dream
- D. My Cousin Vinny

END OF EXAM