

**UNIVERSITY OF HOUSTON
LAW CENTER**

Fall, Semester, 2006

Procedure I

Monday, December 11, 2006
Professor Hoffman

Time: 9:00 a.m. - 1:00 p.m.
Hours: 4

GENERAL INSTRUCTIONS

All checked (✓) items apply to this exam:

<input type="checkbox"/> Open Book <input type="checkbox"/> Closed Book <input checked="" type="checkbox"/> Partial Open Book <i>(see specific instructions)</i> <input checked="" type="checkbox"/> Scantron needed <input type="checkbox"/> Bluebooks needed <input type="checkbox"/> Supplemental Materials <i>(separate from exam)</i> <input type="checkbox"/> TURN INTO REGISTRAR when finished <input checked="" type="checkbox"/> Collected by Proctor	<u>DO NOT WRITE YOUR NAME ANYWHERE ON THE EXAM.</u>
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If you have any questions during the exam, see Catherine Wright in 40 TUIL.

**IT IS A VIOLATION OF THE HONOR CODE TO WRITE YOUR NAME
OR ANY OTHER IDENTIFYING INFORMATION ON THIS EXAM**

**In the Space Below, by writing your exam number and placing the mark "/s/"
next to it you acknowledge that you attended at least 80% of the scheduled
classes this semester for this course. DO NOT WRITE OR SIGN YOUR
NAME IN THIS SPACE.**

PROCEDURE I**Professor Hoffman**

Monday, December 11, 2006

Time: 9:00 a.m. - 1:00 p.m. (4 hours.)

Instructions

This examination is open book, provided that the materials you bring into the exam with you are your own. You may not use anyone else's notes. You may not use any commercial outlines, hornbooks, treatises, articles, or anything else that you did not produce yourself. Of course, you are free to bring in your course materials, your federal rules book, and any other materials I handed out to you during the semester.

The examination is worth a total of one hundred points. The first section contains two essay questions. Each question is worth a total of 38 points out of 100 (that is, collectively, the essay portion of the test is worth roughly three-quarters of the exam). You will not need any bluebooks for the examination as you will write (if you don't type) on—and only on—the exam pages that I give to you. You must only write on the lines that I have given. Write on every line (do not skip lines) but do not write on the back, between the lines, on the side or any place else. For students who type, you must limit your answer to each essay question to 1600 words.

The second section contains 12 multiple choice questions. Each multiple choice question is worth 2 points (making the multiple choice section worth roughly a quarter of the exam). You should mark your answers on the scantron answer sheet provided.

A few last, important reminders. First, write as legibly as you can. Second, remember to write your examination number on the copy of your examination which you turn in. Third, the amount of time you spend on any question is entirely up to you, but I would strongly suggest that you allocate your time to correlate with the relative values of the questions.

I have handed out this instruction page to you before the date of the final examination and encourage you to read this page over carefully before the test. Make certain that when you finally sit down to take the examination, you have already familiarized yourself fully with all of these instructions so that you do not have to spend any time re-reading them on exam day. Good luck.

Part I
Essay Questions

Essay Question #1 (total – 38 points)

Preston, a resident of Cincinnati (Hamilton County), Ohio, drove his friend Elvis to the airport after a nice Thanksgiving visit. Elvis was visiting from his home in Texas. His flight was out of Indianapolis, Indiana because, thanks to Southwest Airlines, fares were much lower in and out of that neighboring airport. On the airport premises in Indiana, Parker's car was hit by a truck owned and operated by Disaster Trucks, Inc., a Delaware corporation with its principal place of business in Texas. Both Preston and Elvis were injured in the accident.

Preston and Elvis brought suit against Disaster Trucks for negligence in state court in Ohio seeking compensatory damages of \$60,000 each as a result of the accident. Disaster Trucks immediately removed the case to the United States District Court for the Southern District of Ohio. In its notice of removal, Disaster Trucks averred that federal question jurisdiction existed because plaintiffs traveled interstate (from Ohio to Indiana) to get to the airport and because the airport is subject to regulation by the Federal Aviation Administration. Disaster Trucks also cited the existence of diversity jurisdiction in support of its removal.

If plaintiffs move to remand, how should the Court rule?

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Essay Question No. 2 (also worth 38 total points)

Assume that before Preston and Elvis file their suit, Disaster Trucks first files a declaratory judgment action in Texas state court against Preston and Elvis, which asks the court to declare that it was not negligent in connection with the accident at the airport. Preston and Elvis don't want to litigate this case in state court in Texas. They have come to see you to ask what they should do. What do you recommend? Be sure to fully explain and analyze for Preston and Elvis all of the procedural options available to them to avoid litigating the suit in state court in Texas.

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Exam Number _____

Lined writing area consisting of 21 horizontal lines.

Exam Number _____

Exam Number _____

Exam Number _____

Part II
Multiple Choice Questions

(This Part is worth, in total, 24 points. Each question is worth 2 points)

Blacken the circle on the scantron sheet that corresponds to the correct answer.

1. On May 1, 2005, Plaintiff, from Connecticut, was injured in a car accident in New York City, in a three car collision with D1 and D2. On this date, D1 was a resident of Houston, Texas and D2 was a resident of Los Angeles, California. A couple of months later, D1 moved to Maine. On December 1, 2005, Plaintiff hires a lawyer who drafts a complaint to file in federal court. In what venue(s) is suit proper?

- A. Either the Southern District of Texas or Central District of California.
- B. The Southern District of New York, only.
- C. The District of Connecticut, only.
- D. Either the District of Maine or Southern District of New York.
- E. Either the District of Connecticut, Southern District of Texas or Central District of California.

2. Plaintiff filed a suit based on federal law against defendant in federal district court in Oklahoma, alleging that he was wrongfully discriminated against while employed for defendant in Florida. Defendant is a citizen of Texas. All witnesses in the case, except for Defendant, live in Florida. Plaintiff is a citizen of Oklahoma. Defendant moves to change the venue to Texas, or alternatively, to Florida. ***What is the most likely result?***

- A. Pursuant to 28 U.S.C. §1404, the action may be transferred to Florida, only.
- B. Pursuant to 28 U.S.C. §1404, the action may be transferred to Texas or Florida.
- C. The court has discretion under 28 U.S.C. §1404 to retain the action or transfer it to Texas or Florida.
- D. Pursuant to 28 U.S.C. §1406, the action may be transferred to Texas or Florida.
- E. The court has discretion under 28 U.S.C. §1406 to retain the action or transfer it to Texas or Florida.

3. P (Texas) brings suit against D (Oklahoma) in federal court in Texas. D moves to dismiss for improper venue in a pre-answer motion. One month later, D realizes she should also have sought dismissal on personal jurisdiction grounds. ***Which of the following statements is true?***

- A. D has forever waived only her statutory objections to jurisdiction (i.e., with regard to the state long arm statute); her constitutional objections to the exercise of jurisdiction are not waived, however, since the Federal Rules of Civil Procedure cannot trump a federal constitutional protection.
- B. D has forever waived all objections to the exercise of personal jurisdiction.
- C. D has waived only her federal constitutional objections to the exercise of jurisdiction; whether D has waived any state statutory objections (with regard to the state long arm statute) depends upon state law, not Fed. R. Civ. P. 12.
- D. D has waived neither her statutory nor constitutional objections since personal jurisdiction defenses cannot be waived.

4. P (Texas) was in a car accident with D1 (Oklahoma). On the way to the hospital, P's ambulance was struck by D2 (Mississippi). ***Which of the following statements is correct?***

- A. Whether P can sue both defendants in one suit in federal court depends on whether the two wrongs arose out of the same accident.
- B. Whether P can sue both defendants in one suit in federal court depends on whether the court finds that the two wrongs occurred close enough in time to be temporally related, applying *Mayle v. Felix*.
- C. P can sue both defendants, but only if D1 and D2 consent to be joined in the same case.
- D. Whether P can sue both defendants in federal court depends on whether the two wrongs arose out of the same accident or series of accidents; and furthermore, only if the court finds that P's injuries raise a question the jury can answer as to both defendants.

5. P, from Texas, brings a lawsuit against D, from California, in the United States District Court for the Southern District of Texas. His sole claim against D in the original complaint is that D breached a written contract between them. He alleges damages resulting from this breach exceed \$75,000. One week later, D sees P driving home and, acting maliciously, causes P to have an accident. The next day, P wishes to amend his complaint to add an additional claim against D for negligence. **Which of the following statements is correct?**

- A. The additional claim should not be allowed unless P obtains leave of court to amend his complaint.
- B. The additional claim should not be allowed because it does not arise out of the same transaction or occurrence as P's original claim against D.
- C. The additional claim should be allowed, without regard to whether it arises out of the same transaction or occurrence as P's original claim against D, and without regard to whether P obtains leave of court.
- D. The additional claim should be allowed, without regard to whether it arises out of the same transaction or occurrence as P's original claim against D, but only if P obtains leave of court to amend his complaint.

6. Plaintiff sues defendant in Oregon federal court for violation of the Occupational Safety and Health Act, 29 U.S.C. §655. Plaintiff is a citizen of Washington; Defendant is incorporated in Delaware with principal place of Chicago, Illinois. The violations are alleged to have occurred in Oregon. **The court is most likely to apply:**

- A. Federal law, as Erie Railroad v. Tompkins is inapplicable to this situation.
- B. Oregon choice of law rules, as Erie Railroad v. Tompkins requires that the federal district court apply the forum state's choice of law rules (provided that the suit was properly brought in Oregon federal court).
- C. Oregon substantive law, as Erie Railroad v. Tompkins requires that the federal district court apply this state's substantive law since the alleged wrongful acts occurred there.
- D. Washington substantive law, pursuant to International Shoe v. Washington because defendant is subject to general jurisdiction in Washington, whether or not the claim is related to her activities in the state.

7. P, a citizen of Texas, brings a diversity action for negligence in the federal district court against Casino, the owner of a gambling house in Louisiana. Casino is incorporated in and has its principal place of business in Louisiana. P alleges Casino negligently maintained the casino entryway stairs, which caused him to fall. Casino seeks to assert a claim in the same action against Contractor, a Texas corporation with its principal place of business in Texas. Contractor built the casino, and Casino alleges it was Contractor's negligent workmanship that produced a defective condition in the stairs. ***Should Casino's third-party claim against Contractor be allowed?***

- A. Yes, because the claim by Casino against Contractor is "so related" to the claim by P against Casino.
- B. No, because even if the claims are "so related", Contractor is not an indispensable party and P has discretion to frame his complaint, in terms of parties, as he sees fit.
- C. Yes, because even if the claims are not "so related" it better to bring into one suit everyone who is potentially liable for the negligently built house.
- D. No, because even if the claims are "so related", Casino's claim against Contractor is not derivative of P's claim against Casino.

8. Assume that before the Court rules on whether Casino's claim against Contractor should be allowed, P seeks leave to amend his complaint to assert a new claim against Contractor for negligent construction. ***Should the Court grant leave to plaintiff to add this new claim?***

- A. Leave should be granted because the court will have supplemental jurisdiction over P's claim against Contractor, provided it is "so related" to P's claim against Casino.
- B. Leave should be granted because the court will have supplemental jurisdiction over P's claim against Contractor, provided it is "so related" to Casino's claim against Contractor.
- C. Leave should be granted because the court will have supplemental jurisdiction without regard to whether the claim against Contractor is "so related" to any other claim in the litigation.
- D. Leave should be denied because the court does not have supplemental jurisdiction over P's proposed claim against Contractor.
- E. Leave should be denied because although the Court has supplemental jurisdiction over P's proposed claim against Contractor, a strong argument can be made it should decline to exercise its jurisdiction, pursuant to its authority in 28 U.S.C. §1367(c).

9. Varying the facts yet again, assume now that P was walking with his friend, F, and they both tripped in the stairs and both were injured. Assume P and F (both from Texas) jointly bring suit against Casino (Louisiana) in federal district court and that no one tries to add Contractor into the case. If the claim by P is for more than \$75,000 and the claim by F is for less than \$75,000, **which of the following statements is correct?**

- A. The two plaintiffs can only join in the same suit in federal court suit if their claims are “so related” to one another and if each meet the minimum amount in controversy of \$75,000.
- B. The two plaintiffs can join in the same suit in federal court suit without regard to whether their claims are “so related” provided that each meet the minimum amount in controversy of \$75,000.
- C. The two plaintiffs can join in the same suit in federal court if their claims are “so related” to one another and if at least one of them asserts a claim for more than \$75,000.
- D. The two plaintiffs can join in the same suit in federal court suit without regard to whether their claims are “so related” provided that, in the aggregate, their claims total more than \$75,000.

10. Last variation on this hypothetical: now assume that P is the only plaintiff and that he decides to sue Casino and Contractor. Further assume that P is a citizen of Texas and that Casino and Contractor are both Louisiana citizens only. If P’s claim against Casino is for more than \$75,00 and his claim against Contractor is for less than \$75,000, **which of the following statements is correct?**

- A. A literal reading of 28 U.S.C. §1367(b) would permit the exercise of supplemental jurisdiction over the claim by P against Casino.
- B. A literal reading of 28 U.S.C. §1367(b) would permit the exercise of supplemental jurisdiction over the claim by P against Contractor.
- C. The language of §1367(b) is ambiguous but the Court’s decision in *Allapattah Services v. Exxon* can be read so as not to proscribe the exercise of supplemental jurisdiction over P’s claim against Contractor , if P’s claim against Casino establishes an independent basis of subject matter jurisdiction.
- D. P may assert his claim against Contractor without regard to the existence of supplemental jurisdiction.

11. P, from Texas, was rear-ended by D, a citizen of Oklahoma. Assume the Texas long arm statute permits a plaintiff to bring suit against a nonresident who commits a tortious act within the state and that, on this basis, P sues D in Texas state court, claiming injuries of at least \$100,000. Assume that P also names D's insurer as a second defendant in the suit because under Texas law a plaintiff can directly sue an insurer. Insurer is incorporated in Delaware and has its principal place of business in Texas. ***If D files a notice of removal and P seeks to remand, the court should:***

- A. Grant remand, because Insurer is a Texas citizen for diversity purposes.
- B. Deny remand, because D is not a citizen of Texas and, as a nonresident, is entitled to the protections against bias that diversity jurisdiction affords.
- C. Deny remand if both defendants consented to the removal.
- D. Deny remand because there is diversity (and a sufficient amount-in-controversy) between the plaintiff and at least one named defendant

12. P is injured while working at a job site. He hires lawyer to represent him and on his behalf files a state law negligence suit, based on diversity jurisdiction, in the United States District Court for the Central District of California. Thereafter, P's lawyer talks to a witness about the case. ***Which of the following statements is true?***

- A. The defendant may obtain a copy of any notes prepared by the lawyer after talking to the witness only upon a showing that it has substantial need of the materials in the preparation of its case and that it will be unable without undue hardship to obtain the substantial equivalent of the notes by other means.
- B. Under no circumstances can the defendant obtain a copy of any notes prepared by the lawyer after talking to the witness.
- C. Under no circumstances can the defendant obtain a copy of any notes prepared by the lawyer after talking to the witness, but the defendant may ask the lawyer to recall, at his deposition, the substance of the conversation.
- D. Whether the defendant can obtain a copy of any notes prepared by the lawyer after talking to the witness likely depends on whether California state law is more or less protective of this material than federal law.

END OF EXAMINATION