

FALL 2016 FINAL: MULTIPLE-CHOICE QUESTIONS

Questions 1 to 10 are based on the essay fact pattern

1. Regardless of your conclusion to essay question # 1 (on personal jurisdiction), assume that the court finds that it has personal jurisdiction over Luci. Luci believes that it is absurd to litigate the safety of a Champagne made in France in a federal court in California. What should she do?
- A. Nothing. She had her shot in court and lost.
 - B. She should move for a convenience transfer to a court in France.
 - C. She should move for a forum non conveniens transfer to a court in France.
 - D. She should move for a forum non conveniens dismissal.

EXPLANATION: D is correct. If Luci believes the public and private interest factors show that France is a more convenient place to litigate, then she can seek a *dismissal* under forum non conveniens (FNC). A is wrong because even if PJ, venue, and SMJ are all satisfied, she can still seek a dismissal under FNC. B and C are wrong because an American court cannot transfer a civil action to France.

2. In the case of *Atticus v. Shelly and Luci*, is the amount in controversy satisfied?
- A. Yes, because Atticus' medical expenses may be aggregated with his loss of wages.
 - B. No, because it is not certain that the loss of six weeks pay from Atticus' part-time job will exceed \$75,000.
 - C. No, because it is certain that Atticus' damages will exceed \$75,000.
 - D. Yes, because it is possible that Atticus' damages will exceed \$75,000.

EXPLANATION: D is correct. The *St. Paul Mercury* standard says that the AIC is satisfied if sought in good faith, *unless* the court has "legal certainty" that the damages will not exceed \$75K. Put differently, so long as it is possible that Atticus can recover > \$75K, the AIC is satisfied. Here, one might have some doubts that the temporary loss of Atticus' sense of smell and his temporary loss of part-time sommelier jobs may amount to more than \$75K. However, the court cannot be *certain* that the AIC will not exceed \$75K. Therefore, the AIC is satisfied. A is wrong because it misstates the facts: Atticus did not seek medical attention. B is wrong because the court need not be certain that the damages *will* exceed \$75K; as such, answer B misstates the law. C is wrong because: 1) it is not certain that the damages will exceed \$75K; and 2) the court need not be certain that it will.

3. Regardless of your answer to the previous question, assume the amount in controversy is satisfied. Will the court have subject matter jurisdiction over all claims?
- A. The court will have original jurisdiction over the claim against Shelly and supplemental jurisdiction over the claim against Luci.
 - B. The court will have original jurisdiction over both claims.
 - C. The court can exercise jurisdiction if the civil actions are severed and joined together for trial.
 - D. The court can exercise jurisdiction if it dismisses one of the defendants.**

EXPLANATION: D is correct. There is original 1332(a)(2) alienage jurisdiction of Atticus (Belgium) vs. Shelly (Florida). Atticus may be a lawful permanent resident living in California, but he is still a foreign citizen. And since Atticus is not domiciled in Florida, 1332(a)(2) would be ok for Atticus vs. Shelly, *if Luci were dropped from the suit*. Why does Luci need to be dropped? Both Atticus and Luci are foreigners, so there is no 1332(a) jurisdiction. Also, you can't use 1332(a)(3) for jurisdiction of Atticus vs. Luci, because 1332(a)(3) requires *as a threshold* that the case have a dispute between citizens of different states. But this suit does not involve citizens of different states: Atticus is a citizen of a foreign state. A is wrong: supplemental jurisdiction cannot be used because the presence of Luci in the suit would violate the complete diversity rule, thus contaminating the original jurisdiction of Atticus vs. Shelly. B is wrong because original jurisdiction does not exist over both claims. C is wrong because severance under Rule 21 would still leave the problem of Atticus (foreigner) vs. Luci (foreigner) in the severed civil action, which lacks SMJ. Therefore, D is correct: the court can hear Atticus' claim against Shelly but only if the court dismisses Luci.

4. Assume that the amount in controversy is met. Further assume that after Atticus' injury and before the complaint is filed, Luci permanently moves to a retirement village in Florida and becomes a citizen of the United States. Will the court have subject matter jurisdiction over all claims?
- A. The court will have original jurisdiction over the claim against Shelly and supplemental jurisdiction over the claim against Luci.
 - B. The court will have original jurisdiction over both claims.**
 - C. The court can exercise jurisdiction if the civil actions are severed and joined together for trial.
 - D. The court can exercise jurisdiction if it dismisses one of the defendants.

EXPLANATION: B is correct. Remember that citizenship is measured as of the date the lawsuit is filed. Even though Luci was a French citizen at the time the claim arose, she was a U.S. citizen domiciled in Florida at the time suit is filed. Therefore the claim is Atti (Bel.) vs. Shelly and Luci (both Fla.). A is wrong because both claims satisfy 1332(a)(2) alienage. C and D are wrong because severance or dismissal are unneeded.

5. Assume that the amount in controversy is met. Further assume that after Atticus' injury and before the complaint is filed, Luci permanently moves to a retirement village in San Francisco, California and becomes a lawful permanent resident of the United States. Will the court have subject matter jurisdiction over all claims?
- A. The court will have original jurisdiction over the claim against Shelly and supplemental jurisdiction over the claim against Luci.
 - B. The court will have original jurisdiction over both claims.
 - C. Jurisdiction over Luci will be divested because she is a lawful permanent resident domiciled in the same state as Atticus.
 - D. The court can exercise jurisdiction if it dismisses one of the defendants.**

EXPLANATION: The correct answer is D. Atti (Bel.) vs. Shelly (Fla.) satisfies 1332(a)(2) alienage. But Atti's claim against Luci is still a claim by a foreigner against a foreigner. You might think that the "after-comma" language in 1332(a)(2) is relevant, but it is not, because that language kicks in *only* when you first have an alienage claim by a "citizen of a state" against a foreigner. But neither Atti nor Luci is a citizen of a state. A is wrong because there is no supplemental jurisdiction over Luci (see explanation to question 53 re contamination). B is wrong for similar reasons: there is no SMJ over Luci. C is wrong because the "lawful permanent resident" facts are irrelevant when neither Atti or Luci are a citizen of a state.

6. Assume that the amount in controversy is met. Further assume that after Atticus' injury and before the complaint is filed, Atticus becomes a citizen of the United States. Will the court have subject matter jurisdiction over all claims?
- A. The court will have original jurisdiction over the claim against Shelly and supplemental jurisdiction over the claim against Luci.
 - B. The court will have original jurisdiction over both claims.**
 - C. It is impossible for the court to exercise original jurisdiction over both parties, even if the claims are presented in separate federal lawsuits.
 - D. The court can exercise jurisdiction if it dismisses one of the defendants.

EXPLANATION: B is correct. There would be basic 1332(a)(1) original diversity of Atti (Cal.) vs. Shelly (Fla.), and 1332(a)(2) alienage of Atti (Cal.) vs. Luci (France). A and C are incorrect because original jurisdiction would exist over both claims. D is wrong because dismissal is not required.

7. In which of the district(s) listed below does venue lie under 28 U.S.C. § 1391(b)(1) in the case of *Atticus v. Luci and Shelly*?
- A. The Northern District of California because Atticus is domiciled there.
 - B. Any district, because Luci is domiciled in France.
 - C. **The Southern District of Florida because Shelly is domiciled in Key Largo, south of Miami.**
 - D. Any district where any defendant is subject to the court's personal jurisdiction.

EXPLANATION: C is correct. Remember that 1391(b)(1) asks if all Ds reside in the same state. At first glance, neither D resides in the same state: Florida and France. But 1391(c)(3) says a person not resident in the US "shall be disregarded in determining where the action may be brought with respect to other defendants." Therefore, only Shelly counts for purposes of 1391(b)(1), allowing venue in the S.D. Fla. Therefore, C is correct. A is wrong because the plaintiff's residence is irrelevant to 1391(b)(1). B is wrong: even though *Luci* is subject to venue in any district (1391(c)(3)), the same is not true of Shelly. D is wrong because it alludes to the fallback under 1391(b)(3), which is: 1) not at issue in this question; 2) unavailable because districts are available under 1391(b)(1) and (2), rendering 1391(b)(3) fallback venue unavailable.

8. In which of the district(s) below does venue lie under 28 U.S.C. § 1391(b)(2) in the case of *Atticus v. Luci and Shelly*?
- A. The Northern District of California because Atticus was injured there.
 - B. The Southern District of Florida, because that's where Shelly bottled the champagne.
 - C. Any district, because Luci is domiciled in France where the carrots grew and the champagne was made.
 - D. **A and B.**
 - E. A, B, and C.

EXPLANATION: D is correct because both A and B are correct. A is correct because substantial errors or omissions occurred in the N.D. of Cal. where Atticus bought and opened the bottle of carrot champagne. B is also correct because Atticus sued Shelly

for using unsafe turtle glass, which Shelly used while bottling the champagne in the S.D. Fla. Remember, multiple districts may be appropriate under 1391(b)(2). C and E are incorrect because the “any judicial district” language applies only to Luci and not to Shelly.

9. Suppose Shelly was personally served with process while voluntarily at home in Key Largo, Florida. Further assume that Shelly timely objected to personal jurisdiction. Would the district court have personal jurisdiction?
- A. Yes, because Shelly has contacts with the forum state.
 - B. No, because personal service outside the state is insufficient to establish personal jurisdiction.
 - C. Yes, because personal service while voluntarily present in the state permits “general in personam” jurisdiction.
 - D. No, because the exercise of jurisdiction would be burdensome on Shelly, who lives in Florida, not California.

EXPLANATION: A is correct. Shelly is subject to specific jurisdiction in California because he shipped 100,000 liters of \$30 carrotty champagne to the *Total Wino* store where Atticus bought the champagne that gave rise to his “bad glass” claim against Shelly. The California long-arm statute extends to the full extent of Due Process, so there is PJ over Shelly. B is wrong: after *International Shoe*, service outside of the state may be enough for PJ, so long as due process and any applicable long-arm are satisfied. C is wrong because the “tag” rule does not permit PJ in a different state: here Shelly was sued *in California* and personally served *in Florida*. D is incorrect because once purposeful availment exists, reasonableness is presumed, and Shelly will have a difficult and likely impossible burden of showing “compelling” unreasonableness, in light of the 100,000 liters of carrotty champagne he shipped to California, with a retail value of \$3,000,000; the fact that Atticus lives and was hurt in California; the state of California wants to protect its citizens; and so on.

10. Suppose Atticus filed his lawsuit against Luci Rabbit and Shelly Turtle in state court in Miami, Florida. Both are properly served with process. Can Luci and Shelly remove the action to a federal court in Miami?
- A. Yes and no: Luci can but Shelly cannot.
 - B. Yes, the defendants can remove the civil action so long as the district court will have subject-matter jurisdiction over all claims.
 - C. No, removal should be to the place of injury, the Northern District of Florida, and not to the Southern District of Florida.

D. No, the civil action may not be removed by either of these defendants.

EXPLANATION: D is correct because of the forum defendant rule (FDR). Original jurisdiction would be premised solely on diversity, and Shelly is a citizen of Florida, the state where the action was filed in state court. So there is no removal possible by either defendant. A is wrong because a FDR problem prevents removal by *any* defendant. B is true but incomplete: subject to an odd exception in 1441(c), removal requires SMJ over the entire civil action. However, the FDR further limits removal, meaning that some cases cannot be *removed* to federal court even if those cases could have originally been *filed* in federal court. C is incorrect because the proper venue for a removed case is not measured by 1391 but instead by 1441(a), which requires removal to the district corresponding to the state court. Here, that would be the S.D. Fla.