

FALL 2018 FINAL: MULTIPLE-CHOICE QUESTIONS

Facts needed to answer multiple-choice questions 1 through 10 can be found in the essay facts. Additionally:

- Some of the multiple-choice questions below provide additional facts or change facts.
- Any additional or changed facts are relevant to that question only.
- Although facts of multiple-choice questions might build on the essay fact pattern, the converse is not true: additional or altered facts found in multiple-choice questions may not be used to answer essay questions.

Thus: Because some of these questions add or change facts from the essay facts, you are strongly encouraged to complete the essays before turning to these multiple-choice questions.

1. Was service of process over Shelly appropriate?
- A. No, because he was not formally served in California.
 - B. Yes, because his corporation was served in Hawaii.
 - C. No, because he was not served at home.
 - D. Yes, because he was personally served.**

EXPLANATION: D is correct because Shelly was personally served at his offices in Hawaii. Personal service on the defendant is permitted by FRCP 4(e). A is wrong because service in the forum state is not required by Rule 4. B is wrong because there is no corporation involved in the fact pattern and none of the defendants are a corporation. C is wrong because at-home service is permitted but is not required.

2. Assuming Shelly timely objects to venue, is venue appropriate over the original claims of Atticus v. Shelly? (For this question, ignore the later claims against Luci.)
- A. No, because the claims do not arise from substantial events in the district where the suit was filed.**
 - B. Yes, because Atticus lives in the district where the suit was filed.
 - C. No, because Shelly lacks contacts in the district where the suit was filed.
 - D. Yes.

EXPLANATION: A is the best answer because Shelly's activities in California did not give rise to Atticus' claim against him (and the facts tell you to ignore Luci). B is wrong: Atticus' residence is irrelevant to venue and Shelly is domiciled (and thus resident) in the D. of Hawaii. C is wrong for many reasons: it misstates the law, because 1391(b)(2) does not look to contacts, and in fact, Shelly probably does have some contacts in C.D. Cal., such as sending ads to California residents and making limited sales to people in California (some of which may be in C.D. Cal.). D is appealing *if you look to Luci's activities*, but the question tells you to ignore claims involving Luci.

3. For purposes of this question only, assume that Atticus' complaint against Shelly was originally filed in California state court and then removed by Shelly to the U.S. District for the Central District of California. Would venue be appropriate over the case of Atticus v. Shelly? (For this question, ignore the later claims against Luci.)
- A. No, because the claim did not arise from substantial events in the district where the suit was filed.
 - B. Yes, because Atticus lives in the district where the suit was filed.
 - C. No, because Shelly lacks contacts in the district where the suit was filed.
 - D. Yes.**

EXPLANATION: D is correct because proper venue for a *removed* case is the district corresponding to the state court. See section 1441(a). In contrast, section 1391 is inapplicable to venue for removal. Facts regarding events or residence are irrelevant.

4. Does the court have subject matter jurisdiction over Shelly's claim against Luci?
- A. No, because the amount in controversy is too low.
 - B. Yes, even though the amount in controversy is too low.**
 - C. No, because joinder of the claim of Shelly v. Luci would destroy complete diversity.
 - D. Yes, because Shelly's claim against Luci is authorized by Rule 14.

EXPLANATION: B is correct: even though Shelly's indemnification claim is only \$50,000, there is supplemental jurisdiction. First, the indemnification claim is dependent on Atticus' tort and warranty claims against Shelly, so it rises from a "common nucleus," satisfying 1367(a) and granting supplemental jurisdiction. Second, Shelly's supplemental claim is not by a plaintiff, but by a third-party plaintiff, meaning that 1367(b) does not divest jurisdiction. A is wrong because the AIC is

irrelevant if there is supplemental jurisdiction. C is wrong because Shelly vs. Luci is a separate “v.” from the “v.” in Atticus v. Shelly, and thus, there is no “contamination” of complete diversity. D is wrong because the existence of proper joinder (and Luci is properly joined by Shelly under Rule 14) is not determinative of whether there is SMJ.

5. Does the court have subject matter jurisdiction over Atticus’ claims for hacking and negligence against Luci?
- A. Yes, because an original plaintiff is not a “plaintiff” for purposes of third-party complaints (which treat the defendant as the third-party “plaintiff”).
 - B. No, because the claims of Atticus v. Luci are not authorized by Rule 14.
 - C. **No, because the claims are by a plaintiff against a third-party defendant.**
 - D. Yes, because Atticus’ claims against Luci are authorized by Rule 14.

EXPLANATION: C is correct. There is no diversity SMJ over Atti’s state claims because Atticus and Luci are both California citizens. 1367(a) would grant supplemental jurisdiction over the hacking claim because of a CNOF in core facts in Atticus’ claims against both Luci and Shelly (both led to the loss of Atticus’ \$\$). But 1376(b) divests. First, original jurisdiction (Atti v. Shelly) is diversity only. Second, the supplemental claim is by a plaintiff. Third, the supplemental claim is against a Rule 14 third-party defendant (Luci). The negligence claim would also fail for additional reasons not noted in the ABCD answers, namely, a lack of diversity (so no 1332(a) SMJ), and no CNOF (so no 1367). A is wrong because it is nonsense: Atticus was and remains a plaintiff. B is wrong because joinder is not determinative of SMJ, and in any case, Atticus’ claims against Luci are properly joined under Rules 14(a)(3) and 18(a). D is wrong because proper joinder does not by itself grant SMJ.

6. Suppose Luci counterclaims against Atticus seeking \$100,000 for negligence arising from the car crash between Atticus and Luci. Does the court have subject matter jurisdiction over Luci’s counterclaim against Atticus?
- A. Yes, because there is a common nucleus of operative fact between Luci’s counterclaim against Atticus for negligence and Atticus’ claim against Luci for negligence.
 - B. No, because the original jurisdiction of Atticus v. Shelly is based solely in diversity.
 - C. **No, even though there is a common nucleus of operative fact between Luci’s counterclaim against Atticus for negligence and Atticus’ claim against Luci for negligence.**

D. Yes, because Atticus' claim against Luci is authorized by Rule 14.

EXPLANATION: C is correct. Even though Luci's counterclaim for negligence arises from a CNOF as Atticus' claim for a car crash, there is no original jurisdiction over Atticus' car crash claim against Luci (because Atticus' car crash negligence claim against Luci lacks diversity [non-diverse parties] and supplemental jurisdiction [because Atticus' car-crash claim lacks a CNOF with any claim having original jurisdiction: see explanation for question 6.] Answer A is incorrect for the same reason that C is correct, it merely flips the yes and no. B is irrelevant for several reasons, the most important of which is this: the diversity claim of Atti v. Shelly is irrelevant to determining supplemental jurisdiction of Luci v. Atticus negligence due to the lack of CNOF. D is wrong because proper joinder does not by itself grant SMJ.

7. For purposes of this question only, assume that Luci was a citizen of Hawaii rather than California and that she ran her software/hacking business out of Honolulu, Hawaii. What is Atticus' best argument that there would be personal jurisdiction against Luci in California?
- A. There is no good argument that there is personal jurisdiction against Luci in California.
 - B. Luci had systematic and continuous contacts with California.
 - C. Luci engaged in tortious conduct aimed at California.
 - D. Luci provided software for a product that she knew would go through the stream of commerce to California.

EXPLANATION: Note that the question doesn't ask whether Atticus has a *winning* argument, but rather, what might be his *best* argument, making D the best answer. Luci's software was a component of Shelly's SHELLPHONE. Atticus would have a reasonable argument (at least under Justice Brennan) that Luci was aware that her phones would be sold all over the country, including California, thus constituting "purposeful availment" of California. A is wrong because there is a plausible argument for PJ to be made. B is wrong because under these facts, Luci lacked extensive contacts with California. C is not the *best* argument for PJ because under *Walden* and *Calder*, the facts would need to show that Luci was *targeting California*. Instead, she seemed to aim her tortious hacking conduct anywhere and everywhere without singling out California. So D is a stronger argument for PJ than C.

8. Suppose that for Atticus to use his SHELLPHONE, he had to “click through” a required “user terms of service,” which included the following language: “Any claims arising from the use of this SHELLPHONE device must be litigated solely in the state or federal courts of Hawaii.” What is Shelly’s best argument that personal jurisdiction is lacking over him in California?
- A. The SHELLPHONE terms of use establish personal jurisdiction in Hawaii.
 - B. The SHELLPHONE terms of use prohibit personal jurisdiction in California.**
 - C. Minimum contacts are absent in California.
 - D. Shelly has timely objected to personal jurisdiction, therefore preserving the defense of lack of personal jurisdiction.

EXPLANATION: The contract’s forum selection clause does two things: it establishes PJ in Hawaii, and it prohibits PJ anywhere else. Therefore, B is the better answer because it *prohibits* jurisdiction in any state but Hawaii. A is therefore not the best answer because *establishing* jurisdiction in one state (Hawaii) is not by itself sufficient to *defeat* jurisdiction in another state. Remember, sometimes PJ is ok in multiple places, so establishing PJ in Hawaii is *not by itself enough* to prevent PJ elsewhere. C is not the best argument because arguments arising from the contract are stronger, and in fact, Shelly does have some contacts in California. D is wrong because a timely objection to PJ is irrelevant to the merits of an objection to PJ.

9. Suppose that the California federal court concludes that personal jurisdiction is lacking over Shelly. What should the court do next? (For this question, assume that Luci is never brought into the suit.)
- A. Dismiss the lawsuit because personal jurisdiction is lacking and Shelly moved for dismissal on that very basis.
 - B. Transfer the lawsuit to the United States District Court for the District of Hawaii, because that is a place where both personal jurisdiction and venue would be proper.**
 - C. Dismiss the lawsuit on the basis of forum non conveniens, as the suit can and should be heard by Hawaii state courts.
 - D. Remand the case to the state trial court in California for further proceedings.

EXPLANATION: A is appealing to Shelly but the better answer is B. Federal courts have the power to transfer a case to where jurisdiction and venue would be proper, as they would in the District of Hawaii, where Shelly is domiciled. C is wrong because forum non conveniens is not proper where the case can be transferred to the more

convenient court within the same court system. D is wrong because a case cannot be remanded to state court when it was never removed from state to federal court. Here, the case was originally filed in federal court.