FALL 2019 FINAL: MULTIPLE-CHOICE QUESTIONS

(30 multiple-choice questions; suggested total time of 90 minutes)

Instructions: Use a # 2 pencil to enter answers on your scantron sheet. Make your marks on the scantron sheet clear. If you change an answer, be sure to erase any marks you intend to remove. The only document relevant to scoring multiple-choice questions is your scantron sheet, so make sure you enter things correctly on the scantron sheet before time runs out. Markings in your examination book do not count. Except where otherwise expressly stated, the facts of each multiple-choice question stand on their own. If more than one answer seems to be correct, then choose the best answer.

Note re multiple-choice questions 1-10: Facts needed to answer multiple-choice questions 1 through 10 can be found in the essay fact pattern and in the text of essay questions one through three. Additionally:

- Some of multiple-choice questions 1-10 below provide additional facts or change facts. But any additional or changed facts are relevant to that question only.
- Although the facts of multiple-choice questions 1-10 might build upon or change essay facts, the converse is not true: additional or altered facts found in multiple-choice questions 1-10 may not be used to answer any of the essay questions. Because some of multiple-choice questions 1-10 add or change facts from the essay facts, you are strongly encouraged to complete the essays before turning to multiple-choice questions 1-10.
- The remaining multiple-choice questions (11-30) are independent of the essay facts.

1. Was the summons given to Luci sufficient?

A. Yes, because Luci never raised any objection to the form or content of the summons, and any objection of insufficient process was therefore waived.

B. No, because the summons is the modern equivalent of the *capias ad respondendum*, and crucial to the exercise of court power, any defect in the summons must be strictly construed in favor of a defendant haled before a court.

C. Yes, because the complaint and summons were left at Luci's usual place of abode, where a person of usual age and discretion resides.

D. No, because service of process must be done via personal service.

EXPLANATION: A is correct. The defense of insufficient process (12(b)(4)) refers to the summons served with the complaint under FRCP 4. A defect in the summons can be a basis for a motion to dismiss, but the defense is waived if not asserted in compliance with the initial response rule. Luci never made any such objection, let

alone a timely one, and therefore, any defects in the summons have been waived. The first clause in B about the *capias* is true, but any defects in the summons are waivable as noted above. C and D refer to the defense of insufficient *service* of process (the manner of service, not the summons). By the way, the service of process itself was technically deficient (see essay one), but any such objection was again waived because it was not raised by Luci until the third version of her complaint.

2. Does the United States District Court for the Middle District of Georgia have venue over the amended complaint of Atticus v. Luci and Shelly?

A. No, because neither defendant resides in Georgia, let alone in the Middle District of Georgia.

B. Yes, because at least one defendant is subject to personal jurisdiction in the Middle District of Georgia, supplying "fallback" venue.

C. No, because the golf ball was launched from the Northern District of Florida.

D. Yes, because the golf ball hit Atticus' nose in the Middle District of Georgia.

EXPLANATION: D is correct. A substantial part of the battery and negligence claims (the damages) arose in the MD of GA. See 28 USC 1391(b)(2). A is wrong; even though no D resides in Georgia (meaning no venue under 1391(b)(1)), there is still venue in MD GA under 1391(b)(2). C is wrong; although the N.D. FL is another place with substantial events (hitting the ball, lending the club), it is not the *only* district with venue. B is wrong because "fallback" venue under 1391(b)(3) can only exist if there is *no other* district with venue under (b)(1) and (b)(2). There are several such districts as noted above.

3. If Shelly Turtle timely objects to personal jurisdiction, should the court grant her motion to dismiss?

A. No, because she has sufficient contacts with Georgia.

B. Yes, because she lacks any contacts with Georgia.

C. No, because she was served within 100 miles of the Georgia federal court, which is about 75 miles from the Florida golf course where she was served.

D. Yes, because she was joined as a party by Atticus and not by Luci

EXPLANATION: The correct answer is D. This question requires you to understand the bulge rule and why it doesn't apply. The bulge rule allows a federal district to extend beyond the borders of a state so long as: 1) the person is serviced within 100 miles of the courthouse (which Shelly was at the golf course); and 2) the person was joined under Rule 14 or 19 (which she wasn't, since she was joined by Atticus as a

R20 D, not by Luci as a Rule 14 TPD). A is wrong because Shelly's only contact with Georgia is a business trip totally unrelated to the suit. B is wrong as well: Shelly *does* have contacts with Georgia but they are insufficient for general or specific jurisdiction. C is wrong for the reasons given for A, namely, service within 100 miles is only one of two required conditions, the second of which was not met here.

4. Did Atticus properly join Luci and Shelly as co-defendants?

A. No, because the legal theories differ (one is an intentional tort, the other is a negligent tort).

B. Yes, because once a party asserts a proper claim against one party, they can "pile on" as many additional claims as they may have against any party.

C. Yes, even though the legal theories differ.

D. No, because evidence of Shelly's entrustment of her golf club to Luci is not relevant to proving Luci's intent to batter Atticus.

EXPLANATION: The answer is C because the two Ds are joined permissively under FRCP 20(a)(2), which requires at least one common Q of fact or law between the two claims (there are many), and a common T/O or series (here, the ball that hurt Dog). A is wrong; the legal theories don't have to be identical. B is wrong because you can't "pile on" under 18(a) until a claimant has at least one proper claim against the opposing party. D is wrong because for T/O to be met, the two claims do not have to share 100% of the same evidence.

5. Assume that Shelly's answer to Atticus' amended complaint against her includes a crossclaim by Shelly against Luci, seeking $50 for breach of contract. Shelly alleges that on Feb. 14, 2019 (the date of Luci's battering Atticus), Luci asked Shelly to borrow $50 for lunch after they played golf, and that Luci never paid Shelly back. Is Shelly's crossclaim against Luci properly joined?

A. No, it does not arise from the same transaction or occurrence underlying Atticus' claims against Luci and Shelly.

B. Yes, it's a proper third-party claim seeking indemnification.

C. No, it does not arise from a common nucleus of operative fact as Atticus' claims against Luci and Shelly.

D. Yes, it's a proper Rule 18(a) "pile it on" claim.

EXPLANATION: A is correct. Crossclaims must arise from the same T or O as a claim or counterclaim (or other circumstances not at issue here). Although the breach of contract crossclaim involves the same parties and day, it involves a different set of

facts and a different legal theory. Wherever the line is between T&O and not-T&O, this is on the not-same-T&O side. B is wrong; this is not a third party claim and Shelly seeks reimbursement, not indemnification for an amount she owes somebody else. C is wrong for lots of reasons, including the fact that CNOF is not the standard used for crossclaims. D is wrong because a crossclaimant can't pile on unrelated claims until they've joined at least one proper crossclaim.

6. As noted in question 5, Shelly's answer included a crossclaim against Luci for $50 for the unpaid lunch money. Does the court have subject-matter jurisdiction over the crossclaim?

A. No, because Shelly's claim against Luci is not a proper crossclaim.

B. Yes, because Shelly is not a plaintiff suing a third-party defendant, but a co-defendant suing another defendant.

C. No, because the facts that are central and material to Shelly's lunch money claim lack a sufficient overlap with the tort claims Atticus made against Luci and Shelly for his nose.

D. Yes, because the addition of Shelly's breach of contract claim would not "contaminate" diversity jurisdiction.

EXPLANATION: C is correct. A CNOF is lacking between claims with original diversity jurisdiction (A vs L for battery and A vs S for negligence) and the claim for breach of contract. A is wrong because the propriety of joinder is not itself determinative of SMJ. B is wrong; this answer suggests there is no 1367(b) divestment (which is true), but ignores the fact that 1367(a) never granted supplemental jurisdiction to start with. D is wrong; even though the crossclaim does not destroy complete diversity, the amount in controversy is still lacking, and the crossclaim lacks supplemental jurisdiction.

7. Suppose Atticus's complaint was instead filed in Florida state court, and asserted claims against both Luci (battery) and Shelly (negligent entrustment). Can the defendants remove the civil action to federal court?

A. Yes, because the federal court would have subject-matter jurisdiction over all claims and parties.

B. No, because the claims are based solely on state law.

C. Yes, because federal courts and state courts have "concurrent" jurisdiction over most types of civil actions, except for specialized matters, such as copyright, patents, and plant variety protection.

D. No, because removal can never be done if any defendant is a citizen of the state where the state-court lawsuit was filed.

EXPLANATION: B is correct. Because the claims are based solely on state law and thus SMJ would lie solely in diversity, and because one of the defendants is a citizen of the forum state, removal is not permitted. A is wrong because the in-state defendant rule can prevent removal of diversity cases that could have been, but were not, filed in federal court. C is nonsense, having nothing to do with whether removal is proper here. D seems correct, but speaks too broadly, preventing removal in *all* cases, including cases where SMJ would not be based solely in diversity (such as federal question cases).

8. During discovery, Luci and Shelly wrote Atticus to demand that he undergo a medical examination to prove the extent of the alleged injuries to his nose. Must Atticus undergo the demanded medical examination?

A. Yes, but only if Luci and Shelly agree to undergo medical examinations as well.

B. No, because Luci and Shelly didn't bother to read the FRCP.

C. No, because medical examinations are not permitted under the FRCP.

D. Yes, because Atticus put his medical condition "at issue" by alleging that Luci and Shelly are responsible for his injured "nosey posey."

EXPLANATION: B is correct. Medical exams *can* be done under the FRCP when a medical (or psychiatric) condition is at issue (so C is incorrect), but only against a party or a person in their custody or control, and even then, only by court order (so D is wrong). Here, Atti is a party and he put his medical condition at issue by suing for a broken nose, but the defendants never sought a court order. So B is the right answer. A is wrong because there is no "quid pro quo" requirement for medical exams.

9. Luci refuses to provide initial disclosures to Atticus of the names of any of her witnesses. In response, may Atticus also refuse to provide names of his witnesses until Luci provides hers?

A. No, because Atticus must comply with the disclosure rules even if Luci does not.

B. Yes, because in court, two wrongs do make a right!

C. No, because attorneys must produce their work product upon timely demand, and Atticus' list of useful witnesses is work product.

D. Yes, the rules allow a party to temporarily delay its own disclosure or discovery as a means to ensure that the other side complies with its own obligations under the rules.

EXPLANATION: A is correct. Each party must do initial disclosures even if the other side refuses to do so (so B is wrong). Atticus must disclose witnesses that he may use in support of his claims, unless for impeachment purposes. He can and should meet and confer with Luci and if she still refuses to provide disclosures, he should move under FRCP 37(a) for an order compelling Luci's disclosures (so D is wrong). C is incorrect as overly broad. Being forced to give up a list of your witnesses is in a sense a requirement to share part of your trial plans, but that is exactly the purpose of initial disclosures. C nevertheless sweeps far too broadly because work product does still have strong protections: barring FRCP 26(a) disclosures, attorney work product is still protected (to a degree) under *Hickman* and under FRCP 26(b)(3).

10. Suppose that all persons playing golf at the golf club used by Shelly and Luci on Feb. 14, 2019, are required to sign a contract, which includes the following clause; "Any disputes arising from the use of this golf course must be litigated solely in state or federal courts located in Tallahassee, Florida." Would such a contractual clause, if enforceable, divest the United States District Court for the Middle District of Georgia of personal jurisdiction over Atticus' amended complaint against Luci and Shelly?

A. Yes, because the forum selection clause establishes personal jurisdiction in Florida.

B. No, because contracts cannot substitute for Due Process analysis.

C. No, because the forum selection clause is irrelevant to this lawsuit.

D. Yes, because the forum selection clause divests personal jurisdiction in Georgia.

EXPLANATION: C is correct. Even if the forum selection clause (FSC) is binding, it is binding only on people using the golf course, namely, Luci and Shelly. Atticus was not on the golf course and wasn't playing golf; he was the victim of two other persons playing golf. It is true that a FSC can establish (answer A), and even divest (answer D) PJ, but only if it applies to the plaintiff. Here, the FSC has not application to Atticus' claims. B is nonsense: a valid FSC can indeed establish PJ and as such, can satisfy Due Process.