

CIVIL PROCEDURE – MULTIPLE-CHOICE EXPLANATIONS: FALL 2019

Professor Ira Steven Nathenson, St. Thomas University School of Law

Examination review is an excellent way to learn from your mistakes as well as from your successes. After all, how do you know why you got something wrong – or for that matter, right – without reviewing your work? I therefore highly encourage you to read over these answers and explanations.

ESSAY FACT PATTERN (USED FOR MC QUESTION ONE)

Pierre was born in Paris, France in 1967. He loved the food and culture of France but hated the noise and crowding. To escape, Pierre moved to New York City, NY in 1989. He later became a lawful permanent resident of the United States and eventually obtained U.S. Citizenship in 1998.

Pierre loved the food and culture of New York but again, hated the noise and crowding. He especially hated the noise coming from his apartment neighbor, Dion, who liked to play loud heavy metal music on his electric guitar at 2AM. Dion was also born in France (in 1970) and moved to New York City as a toddler with his parents. He later became a lawful permanent resident of the United States and subsequently obtained U.S. Citizenship in 1990. He has lived in New York City since the age of two.

To escape Dion, Pierre decided to move to Arizona. Since Pierre worked as a blogger, he could work from any place he wanted to live. In January of 2019, Pierre used the online website QUIETHOUSES.COM to purchase a home in an isolated neighborhood in Supai, Arizona, far away from other people. (Supai was named one of the most isolated towns in the world.) In February, Pierre packed his belongings, got into his vintage 1976 Audi 100 vehicle and drove. Having never been in Arizona before, Pierre was excited at the new chapter in his life in Supai.

While on the trip, driving through Oklahoma, it started to rain, so Pierre checked into a motel for the night. At 3AM, Pierre was woken up by . . . familiar, annoying, and very loud heavy-metal guitar playing from the next room. Pierre instantly knew who it was: believe it or not, *Dion was in the next room*, having taken a road trip. (Dion had always wanted to drive to the Grand Canyon on vacation, and had strangely checked in the same motel that same night.) Standing outside in the rain, Pierre banged on Dion's motel-room door, demanding that Dion stop playing. Dion recognized the banging as Pierre and came outside. He refused to stop playing, instead boosting the volume of a "Quiet Riot" song.

Pierre tried to grab the guitar out of Dion's hands, and in response, Dion beat Pierre with his guitar. The guitar then flew out of Dion's hands, tumbled through the air, and lightly grazed Pierre's 1976 Audi 100. Pierre was badly injured by the beating, suffering a broken arm that required hospitalization in Oklahoma, but his Audi 100 only suffered a small and nearly unnoticeable scratch that could be repaired in a few minutes with a buffer.

After being discharged from the Oklahoma hospital, Pierre drove one-armed and finished his move to Arizona. As soon as he arrived at his new home (traveling the last eight miles by mule, since cars cannot get to Supai, AZ), Pierre filed a battery lawsuit against Dion in the United States District Court for the Southern District of New York seeking \$100,000 damages consisting of 1) \$50,000 in hospital bills, and 2) \$50,000 for the scratch to his Audi. He asked for no other damages or relief.

MULTIPLE-CHOICE QUESTIONS

Suggested total time for 10 multiple-choice questions: 30 minutes.

See multiple-choice instructions on page one of this exam booklet.

1. Using the facts of the essay fact pattern, in which states would the assertion of personal jurisdiction be appropriate under Due Process?
- A. Oklahoma has general jurisdiction over Dion, and New York has specific jurisdiction over him.
 - B. Oklahoma has specific jurisdiction over Dion, and New York has general jurisdiction over him.**
 - C. Oklahoma because Dion's actions in that state gave rise to the suit.
 - D. New York, because Dion is domiciled there.

Difficulty of question: Moderate

<p>A is incorrect. 9 people chose this.</p> <p>A gets the conclusions backwards. See B for correct analysis.</p> <p>If you got this wrong, you likely either don't understand the difference between general and specific jurisdiction or you read too quickly.</p>	<p>B is correct and the best answer. 55 people chose this.</p> <p>Oklahoma is where D battered P. Thus, D's OK contacts constituted purposeful availment that gave rise to P's claim. Since D lives in New York, can take a plane, and has even traveled to OK, PJ is reasonable. That means there is specific jurisdiction in OK. There is also general jurisdiction over D in New York because D is domiciled there.</p>
<p>C is true but not the best answer. 6 people chose this.</p> <p>C is right that there is specific jurisdiction in OK, but it is not the best answer because there is also general jurisdiction over D in New York (answer D).</p> <p>Did you read all the answers before choosing this?</p>	<p>D is true but not the best answer. 14 people chose this.</p> <p>D is also true, but not the best answer because there is also specific jurisdiction (answer C). Therefore B is the best answer.</p> <p>Did you read all the answers before choosing this?</p>

2. Sergei was a Russian citizen who obtained lawful permanent residence in the United States. He moved to Brooklyn, New York and opened a successful pizza shop. One of Sergei's customers at the pizza shop, Paul, sued Sergei in federal court after Paul got sick eating a slice of Sergei's pizza, requiring a lengthy hospitalization. Paul, a citizen of New York, sought \$100,000 in damages on the basis of a "negligently made pizza." Does the federal court have subject-matter jurisdiction?
- A. Yes, because the amount in controversy was pleaded in good faith.
- B. No, even though this is a suit between a citizen of a state and a citizen of a foreign state.**
- C. Yes, because this is a suit between a citizen of a state and a citizen of a foreign state.
- D. No, because the amount in controversy was not pleaded in good faith.

Difficulty of question: Easy. This involves the "except" clause of 1332(b)(2). If you got this wrong, this may suggest that you need to take more time reading and parsing out statutes and rules.

<p>A is incorrect. 3 people chose this.</p> <p>A has a true statement (AIC in good faith) and a wrong conclusion (Yes.). The AIC might have been pleaded in good faith. I've seen short hospitalizations cost over \$100K, so a lengthy one could easily cost that much, and we cannot say based on these facts that > \$75K would be impossible. Regardless, SMJ is divested because of the reasons given for answer B.</p> <p>Did you read the question carefully? If so, are you taking enough care in reading your statutes? If not, improve that skill now because a lawyer must be adept in reading statutory materials, and the final exam will contain many such questions.</p>	<p>B is correct. 64 people chose this.</p> <p>Under the first clause of 1332(a)(2), this is a proper alienage claim between a foreigner and a citizen of a state. However, the after-comma language divests that grant because Sergei is an LPR domiciled in New York and Paul is a citizen of New York.</p>
<p>C is incorrect. 10 people chose this.</p> <p>C again has a true statement (suit between citizen of state and a citizen of a foreign state), but the after-comma clause divests SMJ. See explanation to B.</p>	<p>D is incorrect. 7 people chose this.</p> <p>D has the correct conclusion (no SMJ), but gives an incorrect reason. The AIC was pleaded in good faith. See explanation for A, which discusses why the AIC was in good faith.</p>

3. *The National Requirer*, a supermarket tabloid, published a story claiming that Brad and Angie’s marriage was falling apart. Brad and Angie—famous movie stars—filed a libel suit against *The National Requirer* in federal court seeking millions of dollars. Brad is a citizen of California. Angie is a citizen of France. *The National Requirer* is a citizen of the United Kingdom. *The National Requirer* answers the complaint, asserting that the First Amendment provides justification for its story. Does the federal court have subject-matter jurisdiction?
- A. Yes, because the First Amendment is a federal issue.
 - B. No, because foreign citizens cannot sue one another in federal court.
 - C. Yes, because foreign citizens can file suit in federal court so long as the requirements are met, and here, the requirements are met.
 - D. No, because the lawsuit does not include a dispute between citizens of different states.**

Difficulty of question: Difficult

<p>A is incorrect. 10 people chose this.</p> <p>The First Amendment is a federal issue, but only as a defense, which cannot serve as a basis for federal question jurisdiction under the <i>Mottley</i> well-pleaded complaint rule.</p> <p>The only other possible basis for SMJ is therefore 1332 jurisdiction, which also does not exist. See answer D.</p> <p>If you chose this, you may need to take another look at federal-question analysis and diversity analysis.</p>	<p>B is incorrect. Only 2 people chose this.</p> <p>B is an incorrect statement of law because it incorrectly claims that foreigners cannot sue one another in federal court. As a categorical statement, this is untrue. First, a foreigner can sue a foreigner if the plaintiff’s complaint contains a well-pleaded federal question (such as copyright infringement, 1331 and 1338). Second, a foreigner can sue a foreigner if the suit also includes a dispute between citizens of different states (1332(a)(3)).</p> <p>Hint: be cautious about MC answers with absolute statements (such as “never,” “always,” or ones like answer B), because the law is rarely absolute. Absolute rules are rarities, and the law gleefully abounds in exceptions and qualifications.</p>
<p>C is closer but still wrong. 48 people chose this, making it a popular incorrect answer.</p> <p>It correctly asserts that sometimes foreigners can sue foreigners, but incorrectly claims that such requirements are met here. See D for explanation why.</p>	<p>D is correct. 18 people chose this.</p> <p>Since there is no federal question in this fact pattern, we’d have to have 1332 jurisdiction. Section 1332(a)(1) is not met because this is not a suit between citizens of different states. Section</p>

	1332(a)(2) is similarly unmet because this is a suit between foreigners, and not between citizens of a state and citizens of a foreign state. Section 1332(a)(3) would permit foreigner vs foreigner, but if an only if the suit <i>also</i> contains a dispute between citizens of different states. Therefore, no SMJ.
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4. Which of the following is a “state-law claim with an embedded federal issue?”
- A. **A negligence claim that asserts the violation of a federal safety standard as the element of breach.**
 - B. A breach of contract complaint, to which the defendant responds with a copyright counterclaim.
 - C. A complaint asserting an age discrimination cause of action created by the United States Congress.
 - D. A complaint that asserts two claims: one for state-law employment discrimination, and the other for federal-law employment discrimination.

Difficulty of question: Easy. Note that this question is simply aimed at determining whether you understand the concept. It’s a MC equivalent of a fill-in-the-blank question. If you got this wrong, then you may have some deeper knowledge gaps regarding federal question jurisdiction.

A is correct. 61 people chose this. The state-law claim is negligence. It contains a federal issue (federal safety standard) as the breach element.	B is incorrect. 6 people chose this. The D’s copyright counterclaim is a federal cause of action, but it is not an element of P’s breach of contract claim.
C is incorrect. 9 people chose this. This is not even close to being correct as a cause of action created by Congress is not a state-law claim at all.	D is incorrect. 8 people chose this. This answer includes two claims, one created by state law and the other by federal law. The state claim does not contain any element or issue of federal law.

5. Laverne and Shirley (citizens of New York) were driving in Laverne's brand-new 2020 Lexus vehicle across the Brooklyn Bridge when they were rear-ended by Squiggy, a citizen of New Jersey driving a 1994 Chrysler K-Car. Laverne's car was destroyed, and Shirley suffered back and neck injuries requiring hospitalization and rehabilitation. Laverne and Shirley filed suit against Squiggy in federal court seeking \$50,000 each. Does the court have subject-matter jurisdiction?
- A. Yes, because the aggregated amount in controversy exceeds \$75,000.
 - B. No, because Squiggy's total possible legal liability is only \$50,000.
 - C. Yes, because the claims share a common nucleus of operative fact.
 - D. No, because aggregation is not possible here.**

Difficulty of question: Easy

<p>A is incorrect. 13 people chose this.</p> <p>Aggregation is not allowed here. See D.</p> <p>If you got this wrong, re-study aggregation.</p>	<p>B is incorrect. 0 people chose this.</p> <p>B is factually incorrect. If Squiggy loses, he'll owe \$50K to Laverne and \$50K to Shirley. According to my vintage HP-41CV calculator, that adds up to \$100K.</p> <p>Thankfully, nobody chose this one!</p>
<p>C is incorrect. 4 people chose this.</p> <p>Is there a CNOF? Sure, but so what? CNOF is part of 1367 analysis, not 1332 analysis. Supplemental jurisdiction under 1367 is not possible here because no claim has <i>original</i> jurisdiction, a threshold requirement of supplemental jurisdiction. No original, no supplemental.</p> <p>If you chose this, re-study supplemental jurisdiction.</p>	<p>D is correct. 67 people chose this.</p> <p>Barring a "joint and undivided interest" exception we haven't discussed, aggregation is only possible for one claimant against one defending party. Here, each P has a separate claim for \$50,000, neither of which is over \$75,000 (preventing diversity jurisdiction). Aggregation is not possible. Since there is no original jurisdiction, there can't be supplemental either.</p>

6. Dave (a citizen of New York and a famous musician), sued James and Lars (citizens of California and also famous musicians) in federal court for defamation arising from statements James and Lars made in a joint interview they made with *Rolling Scones* magazine. The interview with James and Lars was about Dave, who had formerly been the lead singer and guitar player for James' and Lars' band *Meatallica*, but who had been fired by James and Lars. Dave sought \$100,000 against James, who said that Dave was a bad guitar player, and \$10 against Lars, who said that Dave was a bad singer. Dave properly joined James and Lars as defendants using FRCP 20. Does the court have subject-matter jurisdiction?
- A. Yes, because there is diversity jurisdiction over both of Dave's claims.
 - B. No, because the two claims lack a common nucleus of operative fact.
 - C. Yes, because the two claims share a common nucleus of operative fact.
 - D. No, because James and Lars were joined as defendants under Rule 20.**

Difficulty of question: Easy. This question had a high statistical separation (point biserial of over 0.5) from students who did well and students who did not.

<p>A is incorrect. 1 people chose this.</p> <p>There is 1332 OJ over Dave v. James, but the AIC is \$74,990.01 too low for Lars. So no diversity over the claim against Lars.</p>	<p>B is incorrect. 2 people chose this.</p> <p>Both claims involve common core facts (the interview) and are central to Dave's claims (lies constituting defamation). So CNOF exists.</p>
<p>C is incorrect. 20 people chose this.</p> <p>Closer because there is a CNOF (see B), but still wrong because 1367(b) divests supplemental jurisdiction (see D).</p>	<p>D is correct. 61 people chose this.</p> <p>I'm pleased that so many got this correct. Dave's claim against James has OJ (diversity), and shares a CNOF with his claim against Lars, so 1367(a) grants supplemental J (see B). But OJ is diversity only, Dave's supplemental claim against Lars is by a P (Dave), and Lars was joined as a second D under R20 as posited in the facts. 1367(b) therefore divests supplemental jur.</p>

7. In compliance with FRCP 20, Penny and Paul joined as plaintiffs and filed a lawsuit in federal court against Diane for a car accident. Penny's car was destroyed and Paul (a passenger in Penny's car) bumped his head. Penny sought \$100,000 and Paul sought \$1. Penny and Paul are citizens of New York and Diane is a citizen of Delaware. Does the court have subject-matter jurisdiction over Paul's claim?
- A. Yes, because the aggregated amount in controversy exceeds \$75,000.
 - B. No, Paul's amount in controversy cannot be aggregated with Penny's.
 - C. Yes, because 28 U.S.C. § 1367(a) grants supplemental jurisdiction over Paul's claim and 28 U.S.C. § 1367(b) does not divest that grant.**
 - D. No, because even though 28 U.S.C. § 1367(a) grants supplemental jurisdiction over Paul's claim, 28 U.S.C. § 1367(b) divests that grant.

Difficulty of question: Moderate.

<p>A is incorrect. 1 person chose this.</p> <p>Restudy aggregation if you chose this.</p>	<p>B is incorrect. 7 people chose this.</p> <p>Factually true (no aggregation allowed), but nevertheless wrong because 1367 supplemental J exists.</p>
<p>C is correct. 48 people chose this.</p> <p>This is essentially the reverse of the fact pattern of question 6, and it's an <i>Allapattah</i> scenario, where OJ is based on diversity and the second claim lacks a sufficient AIC. Since both claims involve the same car accident, we have a CNOF and 1367(a) grants supplement J. Section 1367(b) does not divest. Here the supplemental claim is by <i>an additional P joined under FRCP 20</i>, and not by a <i>single P against an additional D joined under FRCP 20</i>. No divestment.</p>	<p>D is incorrect. 28 people chose this.</p> <p>Incorrect because of reasons given in C (and in the <i>Allapattah</i> case.)</p>

8. Use the facts of the previous question, but now assume that Paul is a citizen of Delaware. Does the federal court have subject-matter jurisdiction over all claims?
- A. The court has diversity jurisdiction over both claims.
 - B. The court has no subject-matter jurisdiction at all.**
 - C. The court has diversity jurisdiction over Penny's claim and supplemental jurisdiction over Paul's claim.
 - D. The court has diversity jurisdiction over Paul's claim and supplemental jurisdiction over Penny's claim.

Difficulty of question: Moderate. This question had a high statistical separation (point biserial of over 0.5) from students who did well and students who did not.

<p>A is incorrect. 0 persons chose this.</p> <p>Good!</p>	<p>B is correct. 49 people chose this.</p> <p>This is a hard question, and the fact that 49 got it correct shows the benefits of studying hard, doing CALI lessons and problem sets, etc.</p> <p>Here, making Paul a citizen of Delaware "contaminates" the diversity jurisdiction of Penny vs. Diane. Without any 1332 OJ of Penny's claim, there can be no supplemental over Paul's.</p> <p>No SMJ at all.</p>
<p>C is incorrect. 35 people chose this.</p> <p>No diversity here because of contamination. See B.</p>	<p>D is incorrect. 0 people chose this.</p> <p>Good!</p>

9. Pascal (citizen of Florida) sued Evil, Inc. for firing him, alleging causes of action for violations of state and federal discrimination laws. Pascal seeks reinstatement to his old job, back pay, and \$100,000 damages. Evil, Inc. is a Delaware Corporation with its principal place of business in Florida. Pascal files his lawsuit in Florida state trial court in Dade County. Can Evil, Inc. remove the case to the United States District Court for the Southern District of Florida?
- A. Yes, because the suit is between a citizen of Florida and a citizen of Delaware.
 - B. No, because the defendant is a citizen of the state where the state-court lawsuit was filed.
 - C. Yes, because the case is removable.**
 - D. No, because the suit is between a citizen of Florida and a citizen of Florida.

Difficulty of question: Difficult

<p>A is incorrect. 3 people chose this.</p> <p>The case can be removed but not for the reason given. D is a citizen of <i>both</i> Florida and Delaware (so diversity jurisdiction cannot be a basis for removal at all).</p>	<p>B is incorrect. 43 people chose this.</p> <p>It is true that D is a citizen of Florida (as well as Delaware), but the in-state defendant rule does not prevent removal when the suit includes a federal question.</p>
<p>C is correct. 29 people chose this.</p> <p>Diversity is not possible but the suit includes a federal question and a supplemental state claim that arose from same CNOF. So removal is ok. The in-state defendant rule does not apply because it is inapplicable in cases where OJ includes a federal question.</p>	<p>D is incorrect. 9 people chose this.</p> <p>True that D is a citizen of Florida (as well as Delaware) but irrelevant. See answer C.</p>

10. Paul (citizen of Florida) gets into an accident with Devlin (citizen of Florida) on the Palmetto Expressway in Miami Gardens, FL. After the accident, Paul moves to California “to escape Florida.” Paul files suit against Devlin in state court in California, alleging negligence. Paul’s lawyer sends Devlin a fake letter saying that Devlin has won a contest, entitling him to a free trip to Disneyland in California. Devlin lands at the Orange County Airport in California and walks to meet his Uber driver, who turns out to be a process server. The process server hands Devlin a copy of the complaint and summons and says, “you’ve been served, sucker.” What is Devlin’s best argument that the California state court lacks personal jurisdiction over him?
- A. **Devlin was lured into California by fraud.**
 - B. Devlin has no argument, because he is subject to personal jurisdiction pursuant to the “tag” rule, having been personally served while voluntarily present in the State of California.
 - C. Devlin is domiciled in Florida, not California.
 - D. The lawsuit arose from events in Florida, not California.

Difficulty of question: Moderate

<p>A is correct. 54 people chose this.</p> <p>Tag jurisdiction would exist here. Devlin was served personally while voluntarily present in the forum state of California. But courts often hold that tag jurisdiction is ineffective when the D was lured into the state by force or fraud. So this is D’s best argument of no PJ.</p>	<p>B is incorrect. 15 people chose this.</p> <p>D does have an argument. See A.</p>
<p>C is incorrect. 2 people chose this.</p> <p>Just because D is domiciled in Florida (and thus subject to general jurisdiction there) does not prevent him from being subject to jurisdiction in other states.</p>	<p>D is incorrect. 13 people chose this.</p> <p>True that the lawsuit arose from events in Florida but this is not D’s best argument because “tag” jurisdiction (at least Scalia’s version) does not hinge upon whether the D has any contacts with the state besides the tag.</p>