

## MIDTERM: CIVIL PROCEDURE

Tuesday, Oct. 8, 2019—1.5 hours

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***Read the instructions carefully. When time is called, all work must cease.***

**Time and length.** This document has seven (7) pages (including the instructions). The examination is 90 minutes, or 1.5 hours long. Once the proctor indicates that time has started, make sure that you have all of the pages. If you do not, alert the proctor immediately.

**Supplement.** Also provided to you is a 12-page, double-sided Supplement with relevant sections of the Constitution, federal and state statutes, and sections of the Federal Rules of Civil Procedure (“FRCP”). The Supplement includes a federal district court map.

**Exam materials & AGN.** Indicate your 4-digit AGN number on this exam, the Supplement, your scantron sheet, any Exam4 laptop-written answer, and on any bluebook(s). Do not include your name or student ID, and do not include any other information that may reveal your identity. At the end of the exam, you must turn in all materials. You may not write anything on, or erase anything from, any examination materials after time runs out.

**This is a closed-book exam.** With the exception of the Supplement and Exam materials described above, you may not refer to any other materials during this exam.

**Time and scoring.** Budget your time and use it carefully. The suggested times below add up to 75 minutes; I’ve added 15 minutes of additional time as padding for a total of 90 minutes that you can use as you wish to help complete the exam.

- *Essay questions (one question, 45 minutes total):* Write your answer in a bluebook or on a computer with Exam4. You may also use the bluebook to outline.
- *Multiple-choice (10 questions, 30 minutes total):* Write your answers on a scantron using a # 2 pencil. The only answers that count are those on the scantron.

**Instructions specific to multiple-choice questions.** 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. If more than one answer seems to be correct, then choose the best answer. Except where otherwise expressly stated, the facts of each multiple-choice question stand on their own.

### Instructions specific to essay questions.

- *Writing.* Write your answers to essay questions using bluebook(s) or a computer with Exam4. (Computer use is subject to STU computer examination guidelines.) Legibility, proper writing, and good organization are expected and are part of your score.
- *Bluebooks.* If you use bluebooks, write in pen. Write on every other line and, except where needed to make an addition or clarification, on only one side of each page. If you use more than one bluebook, please number your bluebooks (e.g., “1 of 2,” “2 of 2”).
- *How to address essays.*
  - Read the call of the question and facts carefully—twice—before you outline and write.
  - Raise, discuss, and decide all issues reasonably raised by the call of the question, whether or not they are dispositive, and whether or not resolution of one issue makes discussion of other issues technically unnecessary. However, do not engage in negative issue-spotting, which is discussing: 1) issues or parties falling outside of the call of the question, or 2) tangential issues that, although technically falling within the call of the question, are nonetheless frivolous.
  - If you believe you have discovered an error in any essay question, then expressly identify the error in your written answer and resolve it in a reasonable manner.
  - If (and only if) you believe that it is absolutely necessary to assume additional facts, then state what those facts would be and how they would affect your analysis.

### ***THIS EXAM IS CONFIDENTIAL***

**As a St. Thomas Law student, you are bound by the St. Thomas University School of Law Code of Academic Integrity. In addition, you may not discuss this examination with anyone from this class who has not yet taken this exam. Unless you have written authorization from the Professor, you may not retain or reproduce any part of this examination or related materials. Any breach will be considered to be a serious violation of the Code of Academic Integrity and will be addressed accordingly.**

## **ESSAY QUESTION**

Suggested essay time: 45 minutes.

*See essay exam instructions on page two of this exam booklet.*

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.

**QUESTION:** You are the clerk for the judge handling the case. Dion has filed a motion to dismiss for lack of subject-matter jurisdiction. Discuss whether the court has subject-matter jurisdiction.

### **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.
  
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.

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.
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.
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.

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 Stones* 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.
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.
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.

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.
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.