

## Civil Procedure I Multiple-Choice Review Exercises

The National Conference of Bar Examiners released the first 4 of these sample questions as an educational tool. They are very similar in format (including typeface) to the Multistate Bar Examination (MBE) and are intended to familiarize examinees with MBE-style questions on the topic of Civil Procedure, which was added to the exam beginning in February 2015. [The first 4 questions are subject to copyright by the NCBE, and I reproduce them here under the “fair use” doctrine, with gratitude to the NCBE for sharing them publicly. The remaining 6 questions I made up, trying to follow the NCBE’s model. Please do not disseminate these questions or their answers outside our class.]

This is just as much an exercise in multiple-choice exam strategy as it is a review of substantive law, so as you approach these questions, please proceed as follows:

- (1) Read the call of the question quickly first, and then the facts, *carefully*. Close enough is not close enough—you must understand the facts and the question precisely. Do not be distracted by ancillary issues that are not raised in the call of the question.
- (2) Read all of the options *carefully* with an eye toward accomplishing the next step (identifying clearly wrong answers) as quickly as possible.
  - Note: you will often not have to deal with issues you *thought would be* raised!
- (3) Identify *at least two* of the options that are *clearly wrong* for any reason—you can rest assured that at least one, and more likely two, of the options are obviously wrong.
  - sometimes the reason can be one word; *e.g.*, “never” or “always”
  - often the wrong answer will contain correct statements of law that simply do not apply to the given facts
  - sometimes the wrong answer will misstate the given facts
- (4) If more than one option remains, identify as clearly as possible how they differ, and choose the *better* one. There is no penalty on the MBE (or my exam) for guessing, so never, ever leave a question blank. Much of human decision-making is subconscious, so choose an answer before moving on, and if you come back to a question, apply a strong presumption that your initial answer was right—change it only if you can clearly identify an error in that answer or a very powerful reason to choose another answer.

To simulate exam conditions, I suggest that you *first* try to answer these questions quickly, without looking anything up. You should spend no more than an average of about 2 minutes per question—though some questions are more/less complex than others and should be allotted more/less time, accordingly. Remember: this is a game—collect as many points as you can by following the game’s internal rules, recognizing that these rules often do not reflect actual law practice or even good legal analysis.

1. An entrepreneur from State A decided to sell hot sauce to the public, labeling it "Best Hot Sauce." A company incorporated in State B and headquartered in State C sued the entrepreneur in federal court in State C. The complaint sought \$50,000 in damages and alleged that the entrepreneur's use of the name "Best Hot Sauce" infringed the company's federal trademark. The entrepreneur filed an answer denying the allegations, and the parties began discovery. Six months later, the entrepreneur moved to dismiss for lack of subject-matter jurisdiction.

Should the court grant the entrepreneur's motion?

- (A) No, because the company's claim arises under federal law.
- (B) No, because the entrepreneur waived the right to challenge subject-matter jurisdiction by not raising the issue initially by motion or in the answer.
- (C) Yes, because although the claim arises under federal law, the amount in controversy is not satisfied.
- (D) Yes, because although there is diversity, the amount in controversy is not satisfied.

2. An investor from State A filed an action against his State B stockbroker in federal court in State A. The summons and complaint were served at the stockbroker's office in State B, where the process server handed the documents to the stockbroker's administrative assistant.

The stockbroker has answered the complaint, asserting the defense of improper service of process. Assume that both states' requirements for service of process are identical to the requirements of the Federal Rules of Civil Procedure.

Is the court likely to dismiss the action for improper service of process?

- (A) No, because service was made on a person of suitable age found at the stockbroker's place of employment.
- (B) No, because the stockbroker waived her claim for improper service of process by asserting it in her answer.
- (C) Yes, because an individual defendant may not be served by delivering process to a third party found at the defendant's place of employment.
- (D) Yes, because the process of State A courts is not effective in State B.

3. A truck driver from State A and a bus driver from State B were involved in a collision in State B that injured the truck driver. The truck driver filed a federal diversity action in State B based on negligence, seeking \$100,000 in damages from the bus driver.

What law of negligence should the court apply?

- (A) The court should apply the federal common law of negligence.
- (B) The court should apply the negligence law of State A, the truck driver's state of citizenship.
- (C) The court should consider the negligence law of both State A and State B and apply the law that the court believes most appropriately governs negligence in this action.
- (D) The court should determine which state's negligence law a state court in State B would apply and apply that law in this action.

4. A consumer from State A filed a \$100,000 products liability action in federal court against a manufacturer incorporated and with its principal place of business in State B. The consumer claimed that a flaw in the manufacturer's product had resulted in severe injuries to the consumer. In its answer, the manufacturer asserted a third-party complaint against the product designer, also incorporated and with its principal place of business in State B. Believing that the consumer had sued the wrong defendant, the manufacturer claimed both that the designer was solely responsible for the flaw that had led to the consumer's injuries and that the manufacturer was not at fault.

The designer is aware that the manufacturer did not follow all of the designer's specifications when making the product.

Which of the following arguments is most likely to achieve the designer's goal of dismissal of the third-party complaint?

- (A) The court does not have subject-matter jurisdiction over the third-party complaint, because both the manufacturer and the designer are citizens of State B.
- (B) The manufacturer failed to obtain the court's leave to file the third-party complaint.
- (C) The manufacturer's failure to follow the designer's specifications caused the flaw that resulted in the consumer's injuries.
- (D) The manufacturer's third-party complaint failed to state a proper third-party claim.

5. A pedestrian from State A was struck by a car driven by a driver from State B. The collision occurred in State A, while the driver was temporarily passing through State A. The driver had never been in State A before, and after the collision, the driver returned home to State B and had no further contact of any kind with State A. The pedestrian was admitted to a hospital in State A, but since she had no internal damage, she was immediately released. The pedestrian filed suit against the driver in federal court in State A, seeking \$100,000 in damages under state tort law. One month later, pedestrian decided that the constant reminder of the trauma of the collision made it impossible for her to remain in State A, so she packed up her belongings and moved to State B, with the intent to remain there. The driver filed a motion to dismiss the pedestrian's lawsuit for lack of jurisdiction.

Which of the following is the correct analysis of the court's most likely ruling?

- (A) The court should not dismiss the case because it has both personal and subject matter jurisdiction here.
- (B) The court should dismiss the case for lack of subject matter jurisdiction, as the parties are no longer of diverse citizenship.
- (C) The court should dismiss the case for lack of subject matter jurisdiction, as the pedestrian's claim for \$100,000 was advanced in bad faith, and it is legally certain that she will not recover a sufficient amount based on her minor injuries that did not even require hospitalization.
- (D) The court should dismiss the case for lack of personal jurisdiction over the driver, who is neither domiciled in nor has sufficient contacts with State A.

6. A swimmer, a biker, and a runner travelled to State A to compete in a triathlon. The swimmer is a resident of State B, the biker is a resident of State C, and the runner is a Japanese citizen admitted for permanent US residency in State D. During the event in State A, the three athletes were involved in a bike crash that badly injured the swimmer. After the athletes had returned home from the event, the swimmer sued the biker and the runner in federal court in State C (which has only one federal district), seeking \$100,000 in damages for negligence.

The runner moved to dismiss the suit for improper venue.

Should the court grant the runner's motion?

- (A) No, venue is proper in a district where any defendant resides, and the biker is a resident of State C.
- (B) No, even if venue is improper, the court may refuse to dismiss and instead transfer the case to a district where venue is proper, and such a district is available here.
- (C) No, venue is proper in a district in which any defendant is subject to personal jurisdiction, and the biker is "at home" in State C.
- (D) Yes, venue is not proper in a district in State C in light of the runner's presence, and the law directs that the court "shall dismiss" the case for improper venue.

7. A consumer sued a manufacturer in state court in State A for \$100,000 in damages for personal injuries caused by a defectively assembled machine. The consumer is a citizen of State B, but she initiated the suit in State A court because that court is famous for producing large verdicts in favor of injured consumers. Manufacturer is a corporation incorporated State A, but it has no physical contact with State A. Its only office, where its officers make all decisions for the corporation, is located in State C, as are its only production plant and all of its employees. It has no customers, conducts no advertising, and sells no products in State A.

The manufacturer filed a timely notice of removal in the federal court in State A, and the consumer has responded with a timely motion to have the case remanded back to state court.

Should the federal court grant the consumer's motion and remand the case to state court?

- (A) Yes, the court should remand the case, because it lacks personal jurisdiction over the manufacturer.
- (B) Yes, the court should remand the case, because the manufacturer is not allowed to file a notice of removal in this case.
- (C) No, the court should not remand the case, because it has original jurisdiction over the case based on diversity of citizenship.
- (D) No, the court should not remand the case, because remand is discretionary, and there is no basis for discretionary remand here other than the plaintiff's desire for a home forum unfavorable to the defendant.

8. A journalist from State B wrote a story about a celebrity from State A, making various assertions about the celebrity that later turned out to be untrue. The celebrity sued the journalist in federal court in State A for defamation under state law, seeking \$1 million in damages. The journalist moved to dismiss the case on the basis that the untruthful comments were innocuous and could not possibly support a damage award of more than \$75,000. The court denied that motion, but after trial, while the jury agreed that the celebrity had been defamed, it awarded him damages of only \$1000.

Which of the following accurately describes the court's appropriate next action(s)?

- (A) The court must dismiss the case for lack of subject matter jurisdiction, as the amount in controversy has been shown to have been clearly less than \$75,000, and it may in its discretion award costs to the journalist.
- (B) The court may in its discretion dismiss the case for lack of subject matter jurisdiction, as the amount in controversy has been shown to have been clearly less than \$75,000, and it may in its discretion award costs to the journalist.
- (C) The court may not dismiss the case for lack of subject matter jurisdiction, but it may in its discretion award costs to the journalist.
- (D) The court may not dismiss the case for lack of subject matter jurisdiction, and it may not award costs to the journalist.

9. A homeowner and a landowner contracted with a builder for the construction of garages on their separate properties. Both the homeowner and the landowner were unhappy with the construction. Though they did not know each other before these events, the homeowner and the landowner came into contact when they noticed each other's critical reviews of the builder on an internet site. The homeowner suggested to the landowner that they conserve resources and strengthen their case by suing the builder together for breach of contract.

After the homeowner and the landowner filed and served their joint complaint for breach of their respective contracts, the builder moved to dismiss the complaint for improper joinder or, in the alternative, to state a counterclaim against the homeowner for property damage caused when the homeowner's car inadvertently collided with the builder's truck in the local supermarket parking lot. The homeowner filed a motion to dismiss the builder's counterclaim for improper joinder.

Which of the following is the proper analysis of the builder's and the homeowner's motions?

- (A) Joinder of the two plaintiffs' claims was proper, even though their claims are unrelated, and the builder's counterclaim is proper, even though it is unrelated to the homeowner's claim.
- (B) Joinder of the two plaintiffs' claims was proper, even though their claims are unrelated, but the builder's counterclaim is improper, because it is unrelated to the homeowner's claim.
- (C) Joinder of the two plaintiffs' claims was improper, because their claims are unrelated, but the builder's counterclaim is proper, even though it is unrelated to the homeowner's claim.
- (D) Joinder of the two plaintiffs' claims was improper, because their claims are unrelated, and the builder's counterclaim is also improper, because it is unrelated to the homeowner's claim.

10. A professor from State A was involved in a bar fight in State B involving several other patrons, including a student from State C. The professor filed suit against the student in state court in State A seeking \$100,000 in damages for bodily injury. The student had never visited State A before very recently, when he was called to an admissions interview for a graduate school in State A. After leaving the interview at the graduate school, while waiting for his flight home in an airport in State A, a private process server handed the student the summons and complaint in the professor's State A lawsuit.

The student made a special appearance in the State A court, as allowed by State A law, for the limited purpose of moving to dismiss on the basis of lack of personal jurisdiction.

How should the State A court rule on the student's motion to dismiss?

- (A) The court should not dismiss the case, because the student was properly served with process in State A.
- (B) The court should not dismiss the case, because the student purposefully availed himself of the benefits of State A law by visiting the state for the graduate school interview and thus has the requisite minimum contacts with State A to support fair exercise of personal jurisdiction.
- (C) The court should dismiss the case, because the student's single contact with State A in attending the graduate school interview is an insufficient contact to support fair exercise of personal jurisdiction over him.
- (D) The court should dismiss the case, because even if the single visit to State A is a sufficient minimum contact, that contact has no connection to the professor's claim and thus would not lead the student to fairly expect to be haled before the State A courts.