

## **PART I: SHORT ESSAY ANSWERS**

Boyle and Gamble Inc., (B&G) is a manufacturer of fine leather goods and traditionally has had significant sales throughout the United States, England and France. However, as of last year, B&G has permanently closed all its sales offices in Texas, Oklahoma and France. B&G is incorporated in Alabama with its principal manufacturing operations in Mississippi and executive headquarters in Atlanta, Georgia. On November 1, 2002, a truck loaded with B&G leather items, owned by B&G and driven by one of its employees, traveled from Mississippi on Interstate I-10 on its way to New Mexico. While in Houston, Texas, the truck collided with an F-150 Ford pickup truck driven by a local farmer and resident of Houston named John B. Gordon. Mr. Gordon suffered severe injuries to his back and head and was hospitalized for three months. John Gordon hired a lawyer in Dallas, Texas, and filed suit against B&G in the United States Federal District Court for the Northern District of Texas alleging negligence by the B&G driver.

B&G does not file a pre-answer motion. In its answer B&G raises two objections under Federal Rules of Civil Procedure (FRCP) 12(b): (1) lack of subject matter jurisdiction over the claim and (2) lack of personal jurisdiction. Furthermore, B&G asserts a counterclaim against Gordon in the amount of \$125,000 for Gordon's negligence associated with the subject accident.

Texas' long-arm statute provides:

*A court of this State may exercise jurisdiction over a party on any basis not inconsistent with the United States Constitution.*









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**PART II: MULTIPLE CHOICE & SHORTER ANSWERS**

6. (5 points) An Air Spain jetliner crashed in Spain injuring numerous Spanish passengers. Air Spain and many of the injured passengers contend that the crash was caused by the negligent operation of a TT Inc. (Timmy Toy) aircraft, which strayed from its course to Madrid, Spain, into the flight path of the Air Spain jetliner. Air Spain and a number of the injured Spanish passengers thus filed a civil action against TT in the United States Federal District Court for the Southern District of Georgia. Each plaintiff's claim exceeds \$75,000. TT is a Georgia corporation based in Georgia. Which of the following might be an appropriate action for the district court to take?

- a. Dismiss the action because of the court's lack of personal jurisdiction over the Spanish plaintiffs.
- b. Dismiss the action under the common law doctrine of forum nonconveniens.
- c. Transfer the case to an appropriate Spanish court under 28 U.S.C. § 1404.
- d. Dismiss the action for lack of subject matter jurisdiction.
- e. Dismiss the action because of the court's lack of personal jurisdiction over Timmy Toy, Inc.

7. (5 points) A lawyer signs and files a complaint. If the opposing counsel believes that the complaint is being presented for an improper purpose, such as to "harass or to cause unnecessary delay," can she immediately make a motion to the court for sanctions under FRCP 11? Second, if the judge denies her Rule 11 motion can she immediately appeal to the appropriate appellate court? Briefly explain your answers.

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11. (5 points) Which of the following create possible violations of the Seventh Amendment?

- a. Congress passes a statute creating a private cause of action for sexual harassment which authorizes both injunctive relief and damages. The statute provides that all issues of fact shall be tried by a jury, regardless of the remedies sought.
- b. Congress passes the same statute authorizing both injunctive relief and damages; but it provides that all issues of fact will be tried by a judge, regardless of the remedies sought.
- c. Congress passes the same statute but it authorizes injunctive relief only (no damages) and it provides that all issues of fact will be tried by a judge.
- d. Both a and b.
- e. Both b and c.

12. (Five points) Ford and Lincoln are running for a local elective office in San Antonio, Texas. On television, Ford says that Lincoln has a loathsome disease. Lincoln sues Ford for defamation in a federal district court, and the case is tried to a jury. Which of the following is not accurate.

- a. After Lincoln presents her case to the jury, Ford moves for a directed verdict. The verdict may be granted by the judge if, viewing the evidence in the light most favorable to Lincoln, a reasonable jury could not find in Lincoln's favor.
- b. Even if Ford moves for a directed verdict at the close of Lincoln's evidence and again at the close of all the evidence, Ford still can move for a judgment notwithstanding the verdict (jnov) if the jury returns a verdict in Lincoln's favor.
- c. If at the close of all the evidence, the judge believes that Ford should prevail, the judge may then direct a verdict in favor of Ford.
- d. If the jury returns a verdict in Lincoln's favor and if the judge denies Ford's motions for a jnov, the judge still can order a new trial if he finds that a significant error in law occurred during the trial.

13. (Five points) A and B were in an automobile accident in a State that has no compulsory counterclaim rule. A sued B for negligence in State court alleging injuries to his person. B defended the action by denying negligence and contending that A was contributorily negligent. The jury returned a general verdict in favor of B, and the court entered judgment on the verdict. Two months later A again sues B for damages to his car sustained in the same accident. What preclusive effect, if any, does the first case (instituted by A) have on the second case (instituted by A).

- a. There is no preclusive effect because of the doctrine of mutuality of preclusion.
- b. Although B might be able to use res judicata to stop A from relitigating the case in other circumstances, B cannot use res judicata in this case because it can only be asserted by the plaintiff.
- c. B cannot use res judicata in the second suit because it is unclear what issue was decided in the first case.

- d. Under the doctrine of stare decisis, the court in the second action would be reluctant to disturb the first court's conclusion that A was contributorily negligent.
- e. The doctrine of claim preclusion or res judicata bars A from asserting his claim in the second case.

14. (Five points) Paul Plaintiff is a citizen and resident of Pensacola, Florida (which is in the Northern District of Florida). Paul intends to sue the Mobile News Corporation and its owner/publisher, Mike Defendant, in federal court. Paul's claims are based on State libel law, and the cause of action arose in the Southern District of Alabama. Mobile News Corporation is incorporated in Delaware, and its principal place of business is in Mobile, Alabama. It does business, solicits subscriptions and advertisements, and distributes its newspapers only in the Mobile area, which covers part of the Southern District of Alabama, part of the Northern District of Florida, and part of the Southern District of Mississippi. Mike Defendant lives in Birmingham, Alabama (which is in the Northern District of Alabama). In which of the following districts is venue proper?

- (I) the Northern District of Florida
- (II) the Southern District of Alabama
- (III) the Southern District of Mississippi
- (IV) the Northern District of Alabama
- (V) the District of Delaware

- a. (I) only.
- b. (II) only.
- c. both (I) and (II).
- d. (I), (II), (IV) and (V).
- e. (I), (II), (III), (IV) and (V).

15. (Five points) Eric Employee, a citizen of South Carolina, drives a truck for his employer, Southeastern Haulers, Inc. (SEI). SEI is a Delaware corporation, but its principal place of business is in Atlanta, Georgia. While delivering a shipment in Tennessee for SEI, Eric negligently backed his truck into a building owned by Leech & Rigdon Inc., causing \$77,000 of damage. Leech & Rigdon is incorporated in Delaware, but its principal place of business is in Tennessee. Leech & Rigdon filed a negligence action in the United States Federal District Court for the Northern District of Georgia against both Eric and SEI. Eric and SEI file a motion to dismiss the action for lack of subject matter jurisdiction. The motion should be:

- a. denied because the parties are citizens of different States.
- b. granted with respect to Eric because he lacks sufficient contacts with Georgia.
- c. granted because SEI is a citizen of the forum State.
- d. granted because Leech & Rigdon's claim does not arise from the Constitution, laws, or treaties of the United States.
- e. granted because diversity is not complete per *Strawbridge*.

16. (Five points) Each of the following are examples of federal subject matter jurisdiction, Except:

- a. diversity of citizenship jurisdiction.
- b. federal question jurisdiction.
- c. removal jurisdiction.
- d. supplemental jurisdiction (pendant jurisdiction and ancillary jurisdiction).
- e. stream of commerce jurisdiction.

17. (Five points) Acme Corporation filed a \$156,000 contract claim against Omega Corporation in the United States Federal District Court for the District of South Carolina. Acme is a Georgia corporation, and its principal place of business is in Alabama. It does business exclusively in Alabama, Georgia and South Carolina. Omega is a Delaware corporation, and its principal place of business is in Georgia. Omega does substantial business and maintains offices in all 50 States. Omega filed a motion to dismiss the action for lack of subject matter jurisdiction. Does the United States Federal District Court for the District of South Carolina have subject matter jurisdiction?

- a. Yes, a corporation is a citizen of the State in which it is incorporated, and these corporations were incorporated in different States; the court thus has jurisdiction on the basis of diversity of citizenship.
- b. Yes, since Omega does business in every State, it is subject to jurisdiction in every State.
- c. Yes, any federal district court is proper since Omega is a citizen of every State.
- d. No, Acme's claim does not arise under federal law, and the two corporations are citizens of the same State.
- e. Since neither Acme nor Omega is a citizen of South Carolina, the court has subject matter jurisdiction only if the cause of action arose in South Carolina.

18. (Five points) Jill and John are involved in an automobile collision. Jill sues John for damages. John tells his attorney that he intentionally hit Jill's car and even has a video tape (John had set up the video camera in his car) which captures the entire incident on film. Pursuant to FRCP 26, Jill seeks discovery of the statement by John to his attorney as well as the video tape citing "undue hardship to obtain the substantial equivalent" and the fact that such information is extremely "relevant" to her claim. John refuses to comply with the request and Jill seeks enforcement from the judge. What result?

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**PART III: TRUE OR FALSE** (Three points each). Please CIRCLE the correct response.

20. True or False: The United States Constitution requires complete diversity of citizenship.
21. True or False: The FRCP mandate that affirmative defenses be set out in the pleadings.
22. True or False: Removal is available to the Plaintiff as well as the Defendant.
23. True or False: Under *Klaxon Co. v. Stentor*, the Supreme Court applied *Erie* principles to conflicts rules and decided that a federal court sitting in diversity must apply the conflicts principles of the forum State.
24. True or False: Under *Helicopteros Nacionales de Colombia v. Hall*, the Supreme Court held that extensive, continuous and systematic contacts may subject a non-resident defendant to general in personam jurisdiction.
25. True or False: The federal court sitting in diversity jurisdiction need not apply the State long arm statute of the forum State.
26. True or False: A defendant, as a third party plaintiff, may not implead a person not a party to the action unless the third party plaintiff asserts that the third party defendant is liable to the third party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff.
27. True or False: The requirement that the defendant be given "notice" is a statutory requirement that is not subject to waiver.