Part I
Multiple Choice Questions
(4 points for each question)

1. Smith is a citizen of New Jersey and Jones is a citizen of New York. Smith drives to New York in order to visit the Museum of Modern Art. While driving on 6th Avenue, Smith collides with Jones, who is crossing the street. Jones files an action against Smith in the United States District Court for the Southern District of New York, alleging negligence and requesting $75,000 in damages. Smith files a motion to dismiss for lack of personal jurisdiction and lack of subject matter jurisdiction. The district court should:

a. Deny the motion to dismiss
b. Remand the action to the New York County Supreme Court
c. Grant the motion to dismiss for lack of personal jurisdiction
d. Grant the motion to dismiss for lack of subject matter jurisdiction
e. None of the above

Answer: d.

2. Smith is a citizen of New York and Jones is a citizen of New York. Smith is driving in New York when he collides with Jones, who is jaywalking. Jones files an action in the New York County Supreme Court, alleging negligence and requesting $100,000 in damages. Smith removes the action to the United States District Court for the Southern District of New York. Jones files a motion to remand. The district court should:

a. Deny the motion to remand because it has diversity jurisdiction
b. Deny the motion to remand because it has federal question jurisdiction
c. Grant the motion to remand because it lacks personal jurisdiction
d. Grant the motion to remand because it lacks subject matter jurisdiction
e. Dismiss the action

Answer: d.

3. Smith is domiciled in the District of New Jersey. Jones is domiciled in the Eastern District of New York. Wilson is domiciled in the Northern District of New York. Taylor is domiciled in the District of Connecticut. Smith owns a widget factory in Juarez, Mexico. Jones, Wilson, and Taylor own an investment company in the Southern District of New York. All four parties travel to the factory, where they form an agreement that Smith will sell the factory to Jones, Wilson, and Taylor for $1 million. Jones, Wilson, and Taylor breach the agreement. Smith decides to file a breach of contract action
against Jones, Wilson, and Taylor in federal court. He can file the action in the:

a. District of Connecticut
b. Eastern District of New York, Northern District of New York, and District of New Jersey
c. Eastern District of New York, Northern District of New York, and Southern District of New York
d. Eastern District of New York, Northern District of New York, Southern District of New York, and District of New Jersey
e. None of the above

Answer: c.

4. Smith is a citizen of New York. Jones is a citizen of California. Smith has an account containing $100,000 at Acme Bank in California, but has no other contacts with California. Smith and Jones travel to Mexico on vacation. Smith is driving in Mexico City, when he hits Jones, who is jaywalking. Jones returns to California and files an action against Smith in the United States District Court for the Northern District of California, alleging negligence, requesting $100,000 damages, and attaching Smith’s Acme Bank account. Smith files a motion to dismiss. The district court should:

a. Grant the motion to dismiss for improper venue
b. Grant the motion to dismiss for lack of personal jurisdiction
c. Grant the motion to dismiss for lack of subject matter jurisdiction
d. Deny the motion to dismiss
e. Remand the action to California state court

Answer: b.

5. Acme Inc. is a Delaware corporation that manufactures widgets. Acme’s headquarters are in the Southern District of New York and its widget factory is in New Jersey. Smith is a citizen of Connecticut and the CEO of Acme. Jones is a resident of the Northern District of New York. Smith calls Jones and offers to sell him 100 Acme widgets for $1000 each. Jones agrees, but discovers that the widgets are fakes. Jones files an action against Acme and Smith in the United States District Court for the Northern District of New York, alleging a breach of contract claim and a wire fraud claim under 18 U.S.C. § 1341, and requesting $100,000 damages. Acme and Smith file a motion to dismiss. The district court should:

a. Grant the motion to dismiss for improper venue
b. Grant the motion to dismiss for lack of subject matter jurisdiction
c. Grant the motion to dismiss for lack of personal jurisdiction
d. Remand the action to the New York County Supreme Court
e. Deny the motion to dismiss

Answer: e.

6. New York law provides that tort claims must be filed within 3 years of the injury. New York law also provides that the court should apply the tort law of the state where the plaintiff resides. New Jersey law provides that tort claims must be filed within 4 years of the injury. New Jersey law also provides that the court should apply the tort law of the state where the injury occurred. Smith is a citizen of New York. Jones is a citizen of New Jersey. On January 1, 2000, Smith is driving in New York when he hits Jones, who is jaywalking. On June 10, 2003, Jones files an action in the United States District Court for the District of New Jersey, alleging negligence and requesting $100,000 damages. Smith files a motion to transfer venue to the Southern District of New York, which is granted, and files a motion to dismiss. The district court should:
   a. Grant the motion to dismiss for lack of personal jurisdiction
   b. Grant the motion to dismiss for lack of subject matter jurisdiction
   c. Grant the motion to dismiss because the statute of limitations has run
   d. Remand the action to the District of New Jersey
   e. Deny the motion to dismiss

Answer: c.

7. Smith is a citizen of New York. Jones is a citizen of New Jersey. Smith is driving in Manhattan when he hits Jones, who is jaywalking. Jones files an action against Smith in the United States District Court for the Southern District of New York. Jones alleges a negligence claim and requests $40,000 damages. Jones also alleges an unrelated breach of contract claim and requests $40,000 damages. Smith files a motion to dismiss. The district court should:
   a. Grant the motion to dismiss for lack of personal jurisdiction
   b. Grant the motion to dismiss for lack of subject matter jurisdiction
   c. Grant the motion to dismiss because the statute of limitations has run
   d. Remand the action to the New York County Supreme Court
   e. Deny the motion to dismiss

Answer: e.

8. Smith is a citizen of New York. Jones is a citizen of New York. Wilson is a citizen of New Jersey. Smith owns a widget company located in Brooklyn. Smith, Jones, and Wilson meet at the widget company. Smith offers to sell the company to Jones and Wilson for $75,001 and they accept. Smith breaches the agreement. Jones and Wilson file an action in the Eastern District of New
York, alleging a violation of the Federal Cheaters Act, 18 U.S.C. § 5555, which provides that a person may bring an action for a breach of contract in interstate commerce, and requesting damages of $75,001. Smith files a motion to dismiss. The district court should:

a. Grant the motion to dismiss for lack of personal jurisdiction
b. Grant the motion to dismiss for lack of subject matter jurisdiction
c. Grant the motion to dismiss for improper venue
d. Remand the action to the Kings County Supreme Court
e. Deny the motion to dismiss

Answer: e.

9. Smith is a citizen of New York. Jones is a citizen of New Jersey. Smith is driving in Manhattan when he hits Jones, who is jaywalking. Jones files an action against Smith in the New York County Supreme Court, alleging negligence and requesting $100,000 damages. Smith removes the action to the United States District Court for the Southern District of New York. Jones files a motion to remand. The district court should:

a. Dismiss the action for lack of personal jurisdiction
b. Dismiss the action for lack of subject matter jurisdiction
c. Remand the action to the New York County Supreme Court
d. Remand the action to the United States District Court for the District of New Jersey
e. Deny the motion to remand

Answer: c.

10. Smith is a citizen of New York. Jones is a citizen of New Jersey. Smith operates a website that sells widgets. On January 1, 2000, Jones uses the website to purchase 50 widgets for $100 each, but the widgets are fake. Jones files an action against Smith in New Jersey state court, alleging a wire fraud claim under 18 U.S.C. § 1341 and requesting $50,000 damages. Jones also alleges an unrelated battery claim, stating that on January 5, 1999, Smith injured him in a New York bar fight, and requesting $10,000 damages. Smith removes the action to the United States District Court for the District of New Jersey. Jones files a motion to remand. The district court should:

a. Remand the action to the New Jersey state court
b. Remand the battery claim to the New Jersey state court.
c. Remand the wire fraud claim to the New Jersey state court
d. Remand the action to the New York County Supreme Court
e. Deny the motion to remand

Answer: b.
11. Smith is a citizen of New York. Jones is a citizen of New Jersey. Wilson is a citizen of California. Smith agrees to sell a widget factory to Jones and Wilson for $1 million, but Jones and Wilson breach the agreement. Smith files an action against Jones and Wilson in the New York County Supreme Court, alleging a breach of contract claim and requesting $1 million damages. Jones files a notice of removal and removes the action to the United States District Court for the Southern District of New York. Wilson does not join the notice of removal. Smith files a motion to remand. The district court should:

a. Dismiss the action for lack of subject matter jurisdiction  
b. Transfer the action to the United States District Court for the District of New Jersey  
c. Remand the action to the New York County Supreme Court  
d. Deny the motion to remand  
e. None of the above

Answer: c.

12. Smith is a citizen of New York. On November 17, 2011, Smith participates in a political protest and is maced by Jones, a New York City police officer, who is a citizen of New York. Smith files an action against Jones in the New York County Supreme Court, alleging a battery claim and a claim under 42 U.S.C. § 1983, and requesting damages of $1 million. Jones removes the action to the United States District Court for the Southern District of New York. Smith files a motion to remand. The district court should:

a. Dismiss the action for lack of subject matter jurisdiction  
b. Remand the battery claim to the New York County Supreme Court  
c. Remand the action to the New York County Supreme Court  
d. Deny the motion to remand  
e. None of the above

Answer: d.

13. Smith is a resident of the Southern District of New York. Jones is a resident of the Central District of California. Smith agrees to sell Jones a widget factory for $1 million. Jones breaches the agreement. Smith files an action against Jones in the New York County Supreme Court, alleging a breach of contract claim and requesting $1 million damages. Jones removes the action to the United States District Court for the Southern District of New York and files a motion to transfer the action to the Eastern District of New York. The district court should:

a. Deny the motion to transfer  
b. Transfer the action to the Central District of California  
c. Remand the action to the New York County Supreme Court
d. Dismiss the action for lack of subject matter jurisdiction  
e. Dismiss the action for lack of personal jurisdiction

**Answer: a.**

14. Smith is a resident of the Southern District of New York. Acme Inc. is a Canadian corporation, with its headquarters and factory in Toronto. Acme manufactures widgets, which it markets in Canada and the United States. Smith purchases a widget from Acme and is injured. Smith files an action against Acme in the United States District Court for the Eastern District of New York, alleging a product liability claim and requesting $1 million damages. Acme files a motion to dismiss. The district court should:

a. Deny the motion to dismiss  
b. Grant the motion to dismiss for improper venue  
c. Grant the motion to dismiss for lack of subject matter jurisdiction  
d. Grant the motion to dismiss for lack of personal jurisdiction  
e. Transfer the action to the Southern District of New York

**Answer: a.**

15. Smith is a resident of the Southern District of New York. Acme Inc. is a Delaware corporation with its office and factory in the Central District of California. Acme manufactures widgets, which it sells exclusively to a California distributor. Jones is a resident of the Central District of California and the CEO of Acme. Smith purchases an Acme widget from a New Jersey retailer and is injured. Smith files an action in the United States District Court for the District of Delaware, alleging a product liability claim and requesting $1 million damages. Smith serves the complaint on Jones when Jones is visiting a friend in New Jersey. Acme files a motion to dismiss. The district court should:

f. Deny the motion to dismiss  
g. Grant the motion to dismiss for improper venue  
h. Grant the motion to dismiss for lack of subject matter jurisdiction  
i. Grant the motion to dismiss for lack of personal jurisdiction  
j. Transfer the action to the Southern District of New York

**Answer: a.**
Part II
Short Answer Questions


Federal Rule of Civil Procedure 3 provides, “A civil action is commenced by filing a complaint with the court.” Delaware law provides, “Delaware corporations must designate the Delaware Secretary of State as their agent for service of process and a civil action against a Delaware corporation is commenced by filing a complaint with the court and serving the complaint on the Delaware secretary of state.” New York law provides, “A civil action against a corporation is commenced by filing a complaint with the court and serving it on the corporation at its office.”

The Delaware and New York long arm statutes provide that courts may exercise personal jurisdiction to the extent permitted by due process. The Delaware choice of law rule provides that courts shall apply Delaware law and the New York choice of law rule provides that courts shall apply New York law. The Delaware statute of limitations for civil actions is 3 years. The New York statute of limitations for civil actions is 4 years.

1. Does the district court have personal jurisdiction over Acme? (5 points)

Yes. Acme is a Delaware corporation, so it is a citizen of Delaware subject to general jurisdiction in Delaware.

2. Does the district court have subject matter jurisdiction over the action? (5 points)

Maybe. The court lacks federal question jurisdiction because none of Smith’s claims arise under federal law. However, the court may have diversity jurisdiction, if Smith and Acme are diverse. A corporation is a citizen of its state of incorporation and its primary place of business. Under Hertz, a corporation’s primary place of business is its “nerve center,” or place of control. If Acme’s nerve center is its New Jersey factory, diversity exists; if
Acme’s nerve center is its New York offices, diversity does not exist. Smith’s action satisfies the amount in controversy requirement because a plaintiff can aggregate claims against a single defendant.

3. Is venue proper in the District of Delaware? (5 points)

Yes. This is a diversity action, so 28 U.S.C. § 1391(a) applies. Under 28 U.S.C. § 1391(a)(1), venue is proper in “a judicial district where any defendant resides, if all defendants reside in the same State.” Acme resides in Delaware because it is a Delaware corporation, and Acme is the only defendant, so venue is proper in Delaware.

4. Acme files a motion to transfer the action to the Northern District of New York. Can the district court grant the motion? (5 points)

Yes. Under 28 U.S.C. § 1404(a), “For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” This has been interpreted to mean that a district court can only transfer an action to a district in which the plaintiff could have filed the action. Smith could have filed his action in the Northern District of New York. The Northern District of New York has personal jurisdiction over Acme because Acme has offices in New York. Venue is proper because Smith purchased the defective widget in the Northern District of New York, and under 28 U.S.C. § 1391(a)(2), venue is proper in “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.”

5. Acme files a motion to dismiss. Should the district court grant the motion? (10 points)

Yes. Even if personal and subject matter jurisdiction exist, and venue is proper, the court should grant Acme’s motion to dismiss Smith’s action is time-barred. Under Erie, a federal court sitting in diversity must apply federal procedural law and state substantive law. Statutes of limitations are substantive, so a federal court must apply the state statute of limitations. Under Klaxon, a federal court must apply the choice of law rules of the state in which it sits. Smith’s action was filed in New York, so the court must apply Delaware choice of law rules, which provide that the court must apply Delaware law. Under Delaware law, the statute of limitations is 3 years.

Whether Smith satisfied the Delaware statute of limitations depends on when the statute of limitations was tolled. Under FRCP 3, the statute of limitations was tolled in less than 3 years, when Smith filed the action. Under Delaware law, the statute of limitations was tolled in more than 3 years, when Smith served the Delaware Secretary of State.
Under *Shady Grove*, the court should apply FRCP 3 if it is valid and it conflicts with Delaware law. However, under *Walker v. Armco*, FRCP 3 does not conflict with state laws governing the tolling of statutes of limitations. Accordingly, the court should probably apply Delaware law, because Delaware law expresses a policy on tolling, federal law does not, and applying federal law would encourage forum shopping. And under Delaware law, the statute of limitations has run.

6. The district court transfers the motion to the Southern District of New York. Acme files a motion to dismiss. Should the district court grant the motion? (10 points)

Yes. When a district court transfers an action, the transferee court must apply the same choice of law rules as the transferor court. Accordingly, the Southern District of New York must apply Delaware choice of law rules, which require it to apply Delaware law. As a result, the outcome is identical to that of question 5.

END OF THE EXAM