Instructions

This final examination is a 3-hour, open-book, in-class test. It consists of 15 multiple-choice questions and 10 short answer questions. It is worth a total of 100 points. Each multiple-choice question is worth 2 points. Each short answer question is worth 5-10 points.

Your answer to each multiple-choice question should consist of a number and a letter. Please carefully read each short answer question before answering. Each question can be answered in 1 or 2 paragraphs. You may record your answers to this examination via computer or bluebook. I encourage you to use a computer, as typed answers are easier to read and to grade.

This examination is anonymous. Please do not write your name anywhere on your answer form or bluebook.

Part I - Multiple Choice (30 points)

1. John Doe, a citizen of New York, injures Richard Roe, a citizen of New Jersey, during an automobile accident in Connecticut. Mr. Roe files a complaint against Mr. Doe in the United States District Court for the District of New Jersey, alleging damages of more than $75,000. The court applies the choice of law rules of:

   b. New Jersey.
   c. Connecticut.
   d. Federal common law.

   Answer: b.

2. John Doe, a citizen of New York, injures Richard Roe, a citizen of New York, during an automobile accident in New Jersey. Mr. Roe files a complaint against Mr. Doe in the United States District Court for the District of Connecticut, alleging a claim for negligence and requesting damages of more than $75,000. Neither Mr. Doe nor Mr. Roe has any contacts with Connecticut. The court has:

   a. Diversity jurisdiction
   b. Federal question jurisdiction
   c. Personal jurisdiction
3. John Doe, a citizen of New York, injures Richard Roe, a citizen of New York, during an automobile accident in New Jersey. Mr. Roe files a complaint against Mr. Doe in the United States District Court for the District of New Jersey, alleging a violation of the Bad Driver Act of 2010, which creates a federal cause of action for anyone injured by a person operating an automobile in interstate commerce, and claiming $1 million in damages. The court has:

   a. Diversity jurisdiction
   b. Federal question jurisdiction
   c. Personal jurisdiction
   d. b and c.
   e. None of the above

Answer: d.

4. John Doe, a citizen of New York, is injured by Richard Roe, a citizen of Pennsylvania, and Samuel Soe, a citizen of Ohio, during an automobile accident in New Jersey. Mr. Doe is a resident of the Southern District of New York, Mr. Roe is a citizen of the Eastern District of Pennsylvania, and Mr. Soe is a citizen of the Northern District of Ohio. Mr. Doe files a diversity action in federal court against Mr. Roe and Mr. Soe. Venue is proper in the:

   a. Southern District of New York
   b. Eastern District of Pennsylvania
   c. Northern District of Ohio
   d. District of New Jersey
   e. All of the above

Answer: d.

5. John Doe, a citizen of New York, is injured by Richard Roe, a citizen of Pennsylvania, and Samuel Soe, a citizen of Ohio, during an automobile accident in Mexico City, Mexico. Mr. Doe is a resident of the Southern District of New York, Mr. Roe is a citizen of the Eastern District of Pennsylvania, and Mr. Soe is a citizen of the Northern District of Ohio. Mr. Doe files a diversity action in federal court against Mr. Roe and Mr. Soe. Venue is proper in the:

   a. Southern District of New York
   b. Eastern District of Pennsylvania
   c. Northern District of Ohio
   d. All of the above
   e. None of the above

Answer: e.
d. District of New Jersey

e. b. and c.

Answer: e.

6. John Doe, a citizen of New York, is injured by Richard Roe, a citizen of Pennsylvania, and Samuel Soe, a citizen of Ohio, during an automobile accident in New York. Mr. Doe is a resident of the Southern District of New York, Mr. Roe is a citizen of the Eastern District of Pennsylvania, and Mr. Soe is a citizen of the Northern District of Ohio. Mr. Doe files an action for $1 million in the New York County Supreme Court, which is located in the Southern District of New York. Mr. Roe and Mr. Soe may remove the action to the:

a. Southern District of New York
b. Eastern District of Pennsylvania
c. Northern District of Ohio
d. District of New Jersey
e. b. and c.

Answer: a.

7. John Doe, a citizen of New York, is injured by Richard Roe, a citizen of Pennsylvania, and Samuel Soe, a citizen of Ohio, during an automobile accident in Pennsylvania. Mr. Doe files a diversity action in the Pennsylvania Court of Common Pleas for Philadelphia County, alleging claims for negligence against Mr. Roe and Mr. Soe and requesting $1 million damages. Mr. Soe removes the action to the United States District Court for the Eastern District of Pennsylvania, the district in which Philadelphia is located. The district court should:

a. Dismiss the action for lack of subject matter jurisdiction
b. Dismiss the action for lack of personal jurisdiction
c. Remand the action to state court
d. Transfer the action to the Southern District of New York
e. None of the above

Answer: c.

8. John Doe, a citizen of New York, agrees to sell 100 widgets worth $1 million to Richard Roe, a citizen of Jefferson. Mr. Doe fails to perform the agreement and Mr. Roe files a diversity action in the United States District Court for the District of Jefferson, alleging a breach of contract claim and requesting $1 million damages. The agreement is Mr. Doe’s only contact with Jefferson. The Jefferson long arm statute provides that Jefferson courts may exercise personal jurisdiction over a non-resident defendant in a breach of contract
action only if the value of the contract exceeds $2 million. Mr. Doe files a motion to dismiss. The Court should:

a. Grant the motion to dismiss because it lacks subject matter jurisdiction
b. Grant the motion to dismiss because it lacks personal jurisdiction
c. Deny the motion to dismiss because it has diversity jurisdiction
d. Deny the motion to dismiss because it has personal jurisdiction
e. c. and d.

Answer: b.

9. A federal court has subject matter jurisdiction under 28 U.S.C. § 1331 when:

a. Plaintiff alleges a cause of action created by federal law
b. Plaintiff alleges a cause of action created state law
c. Defendant alleges a counterclaim created by federal law
d. Plaintiff and Defendant are diverse and plaintiff alleges damages in excess of $75,000
e. a. and c.

Answer: a.

10. John Doe, a citizen of New York, has continuous and systematic contact with the state of New Jersey. Mr. Roe files a complaint against Mr. Doe in a New Jersey state court. Due process permits the court to exercise personal jurisdiction over Mr. Doe if:

a. Mr. Roe’s action arises out of Mr. Doe’s contacts with New Jersey
b. Mr. Roe’s action does not arise out of Mr. Doe’s contacts with New Jersey
c. Mr. Doe was personally served in New Jersey
d. Mr. Doe consents to personal jurisdiction in New Jersey
e. All of the above

Answer: e.

11. Federal Rule of Civil Procedure 3 provides, “A civil action is commenced by filing a complaint with the court.” Jefferson Rule of Civil Procedure 3 provides “A civil action is commenced by filing a complaint with the court within 5 years from the accrual of the action.” On January 1, 2000, while visiting the State of Jefferson, Mr. Doe, a citizen of New York, injures Mr. Roe, a citizen of Jefferson. On January 1, 2010, Mr. Roe files a diversity complaint against Mr. Doe in the United States District Court for the District of Jefferson, claiming $1 million in damages. Mr. Doe files a motion to dismiss. The Court should:
a. Deny the motion to dismiss
b. Grant the motion to dismiss for lack of personal jurisdiction
c. Grant the motion to dismiss for lack of subject matter jurisdiction
d. Grant the motion to dismiss because the action is time-barred
e. Remand the action to Jefferson state court

Answer: d.

12. John Doe, a citizen of New York, licenses a patent to Richard Roe, a citizen of Jefferson. Mr. Doe files a claim in Jefferson state court, alleging that Mr. Roe breached the agreement and claiming $1 million in damages. Mr. Roe removes the action to the United States District Court for the District of Jefferson. Mr. Doe files a motion to remand. The court should:

a. Remand the action to Jefferson state court
b. Deny the motion to remand because it has diversity jurisdiction
c. Deny the motion to remand because it has federal question jurisdiction
d. Grant the motion to dismiss because the action is time-barred

Answer: a.

13. Acme, Inc. is a California corporation that distributes widgets. Acme’s headquarters are in San Clemente, California. Acme stores its widgets in warehouses located in Reno, Nevada and Portland, Oregon. About 90% of Acme customers are located in Arizona. For the purpose of 28 U.S.C. § 1332, Acme is a citizen of:

a. California
b. Nevada
c. Oregon
d. Arizona
e. a., b., and c.

Answer: a.

14. John Doe, a citizen of New York, hires Acme, Inc. to repair his wedding ring, which is worth $50,000. Acme is a New Jersey corporation that only operates in New Jersey. Acme mistakenly gives the wedding ring to another customer. Mr. Doe files a complaint in the United States District Court for the District New Jersey, alleging a claim for conversion of the ring and a claim for negligent infliction of emotional distress, and requesting damages in excess of $75,000. New Jersey does not recognize the tort of negligent infliction of emotional distress. Acme files a motion to dismiss. The court should:
a. Deny the motion to dismiss because it has federal question jurisdiction
b. Deny the motion to dismiss because it has diversity jurisdiction
c. Deny the motion to dismiss because it has personal jurisdiction
d. Grant the motion to dismiss because it lacks personal jurisdiction
e. Grant the motion to dismiss because it lacks subject matter jurisdiction

Answer: e.

15. John Doe, a citizen of New York, and Richard Roe, a citizen of New York, each invest $50,000 in Acme, Inc., a New Jersey corporation. Mr. Doe and Mr. Roe ask Acme to return their respective investments. Acme refuses, so Mr. Doe and Mr. Roe file a complaint in the United States District Court for the District of New Jersey, each alleging a breach of contract claim and requesting $50,000 in damages. Acme files a motion to dismiss. The court should:

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

Answer: e.
Part II - Short Answers

Fact Pattern # 1

Peter Potter is a lawyer who lives in Eureka, New York with his wife Polly Potter. Mr. Potter’s loves beer and reads beerworld.com, a website that reviews new and unusual beers. Daniel Davis owns beerworld.com and operates it from his home in Newark, New Jersey. Beerworld.com does not publish advertisements, does not sell beer, and has no interactive features. Mr. Davis writes all of the reviews featured on beerworld.com.

On April 1, 2010, beerworld.com featured a review recommending Great Gruit, a beer made by Donald Dugan. Great Gruit is an historical style of beer that uses bog myrtle, yarrow, and marsh rosemary, instead of hops. Mr. Dugan makes Great Gruit at his home in Essex, Connecticut, using wild herbs collected nearby. Mr. Dugan sells Great Gruit from his home or by mail order. He does not advertise Great Gruit. Mr. Dugan has mailed Great Gruit to customers in all 50 states and in Canada. In 2009, Mr. Dugan mailed 150 bottles of Great Gruit to customers in New York and 10 bottles to Larry’s Liquors in Toronto. Mr. Potter read the review of Great Gruit featured on beerworld.com, but did not order a bottle from Mr. Dugan.

On Friday, April 2, 2010, Mr. Potter drove to Toronto, Ontario, Canada for the weekend. The next day, Mr. Potter purchased a bottle of April 2010 Great Gruit at Larry’s Liquors, which he drank with dinner at Ivan’s Indian Restaurant next door. After drinking the beer, Mr. Potter felt a burning sensation in his mouth, which he attributed to the lamb vindaloo. A few minutes later, he stopped breathing, and soon he was dead. Unfortunately, when Mr. Dugan made the April 2010 Great Gruit, he accidentally used poison hemlock, instead of yarrow.

On May 3, 2010, Mrs. Potter filed a complaint against Mr. Davis and Mr. Dugan in the United States District Court for the Northern District of New York, alleging negligence and claiming damages of $2 million. Mrs. Potter is a resident of the Northern District of New York, Mr. Davis is a resident of the District of New Jersey, and Mr. Dugan is a resident of the District of Connecticut. Mr. Davis and Mr. Dugan were both personally served with the summons and complaint at their respective homes.

1. Is Mr. Davis subject to personal jurisdiction in the Northern District of New York? (5 points)

Answer: Possibly. The Northern District of New York has personal jurisdiction over Mr. Davis if it is consistent with New York law and due process. Mr. Davis is a nonresident of New York, so personal jurisdiction must be authorized by the New York long arm statute, NYCPL § 302. NYCPL § 302(1) is satisfied if Mr. Davis’s reviews are services supplied in New York. Personal jurisdiction may be consistent with due process. Mr. Davis’s only contact with
New York is his website. Specific jurisdiction is probably sufficient because Mrs. Potter’s claim arises out of or relates to Mr. Davis’s contact with New York. It is unclear whether Mr. Davis has minimum contacts with New York for fair play and substantial justice because the fact pattern does not specify how frequently residents of New York visit beerworld.com. The fact pattern also does not specify whether Mr. Davis purposefully directs beerworld.com to New York. Under the Zippo test, beerworld.com does not create minimum contacts because it is a passive website.

2. Is Mr. Dugan subject to personal jurisdiction in the Northern District of New York? (5 points)

Answer: Probably. The Northern District of New York has personal jurisdiction over Mr. Dugan if it is consistent with New York law and due process. Mr. Dugan is a nonresident of New York, so personal jurisdiction must be authorized by the New York long arm statute, NYCPL § 302. Under NYCPL § 302(1) is satisfied because Mr. Dugan contracts to provide goods in New York. Personal jurisdiction may be consistent with due process. Mr. Dugan’s only contact with New York is the beer he mails to residents on New York. Specific jurisdiction is probably sufficient because Mrs. Potter’s claim arises out of or relates to Mr. Dugan’s sales of beer in New York. Mr. Dugan probably has minimum contacts with New York for fair play and substantial justice because Mr. Dugan purposefully directs a substantial quantity of beer to New York. New York may have general jurisdiction over Mr. Dugan if the court finds that his beer sales in New York are continuous and systematic.

3. Does the Northern District of New York have subject matter jurisdiction? (5 points)

Answer: Yes. Complete diversity exists between plaintiffs and defendants because Mrs. Potter is a resident of New York, Mr. Davis is a resident of New Jersey, and Mr. Dugan is a resident of Connecticut. Mrs. Potter’s action satisfies the amount in controversy requirement because she is claiming $2 million in damages and a recovery in excess of $75,000 is certainly possible.

4. Where is venue proper? (5 points)

Answer: Venue may be proper in Connecticut, New Jersey, and New York. Venue is determined by 28 U.S.C. § 1391(a) because this is a diversity action. Section 1391(a)(1) does not apply because Mr. Davis and Mr. Dugan are not residents of the same state. Under Section 1391(a)(2), venue may be proper in Connecticut, where Mr. Dugan made Great Gruit, in New Jersey, where Mr. Davis published his review of Great Gruit, and in New York, where Mr. Potter read Mr. Davis’s review of Great Gruit. Section 1391(a)(3) does not apply because venue is proper under Section 1391(a)(2).
Fact Pattern # 2

John Doe was a citizen of the State of Jefferson. On January 1, 1995, Mr. Doe purchased a 10-year term life insurance policy for $200,000 from Acme, Inc., a Delaware corporation headquartered in New York, with branch offices in Arkansas, Jefferson, and Rhode Island. Mr. Doe’s policy listed the following beneficiaries: His wife, Dorothy Doe, a citizen of Jefferson (50%); his uncle, Richard Roe, a citizen of Arkansas (25%); and his nephew Peter Poe, a citizen of Rhode Island (25%).

On December 31, 2005, Mr. Doe died. On December 1, 2006, Acme refused to honor Mr. Doe’s life insurance policy. On December 15, 2007, Mrs. Doe, Mr. Roe, and Mr. Poe filed a complaint against Acme in the United States District Court for the District of Jefferson, alleging breach of contract. Mrs. Doe claimed damages of $100,000, Mr. Roe claimed damages of $50,000, and Mr. Poe claimed damages of $50,000. Mr. Poe personally served a summons and complaint on the manager of Acme’s branch office in Jefferson.

On January 15, 2008, Mr. Doe’s niece Sally Soe, a citizen of New York, filed a motion to intervene pursuant to Federal Rule of Civil Procedure 24. Ms. Soe claimed that Mr. Doe had intended to name her sole beneficiary of his life insurance policy. On January 31, 2008, Acme filed a motion to dismiss the complaint for improper service of process and a motion to dismiss the claims of Mr. Roe and Mr. Poe for lack of subject matter jurisdiction.

5. Should the district court grant Ms. Soe’s motion to intervene? (5 points)

Answer: No. The district court lacks subject matter jurisdiction over Ms. Soe’s motion to intervene. Under 28 U.S.C. § 1367(a), a district court may exercise supplemental jurisdiction over a state law claim related to a federal claim. Ms. Soe’s claim is related to plaintiffs’ diversity claim. However, under 28 U.S.C. § 1367(b), a district court may not exercise supplemental jurisdiction over an intervenor’s claim if it would destroy diversity. Ms. Soe is a citizen of New York. Acme’s headquarters are in New York, so it is also a citizen of New York. Accordingly, Ms. Soe’s claim would destroy diversity. 28 U.S.C. § 1332(c) does not apply because this action does not concern a liability insurance policy or the representative of an estate. The probate exception does not apply because this action does not concern a will.

6. Should the district court grant Acme’s motion to dismiss the complaint for improper service of process? (5 points)

Answer: Yes. FRCP 4 states that any person may serve process. JRCP 4 states that any citizen of Jefferson may serve process. FRCP 4 and JRCP 4 appear to directly collide, so FRCP 4 applies unless it violates the Rules Enabling Act. If FRCP 4 and JRCP 4 do not directly collide, the court should consider whether applying FRCP 4 would be outcome determinative or
encourage forum shopping. It would not because FRCP 4 and JRCP 4 both state that a party to an action may not serve process. The fact pattern states that Mr. Poe personally served process on Acme. Mr. Poe is a party to the action, so service is improper.

7. Should the district court grant Acme’s motion to dismiss the claims of Mr. Roe and Mr. Poe for lack of subject matter jurisdiction? (10 points)

Answer: No. The district court can exercise supplemental jurisdiction over Mr. Roe and Mr. Poe’s claims. Complete diversity exists between plaintiffs and defendant because Mrs. Doe is a citizen of Jefferson, Mr. Roe is a citizen of Arkansas, Mr. Poe is a citizen of Rhode Island, and Acme is a citizen of Delaware and New York. The district court has original diversity jurisdiction over Mrs. Doe’s claim because the amount in controversy is in excess of $75,000, lacks original jurisdiction over Mr. Roe and Poe’s claims because the amount in controversy in each is not in excess of $75,000. The district court should exercise supplemental jurisdiction over Mr. Roe and Mr. Poe’s claims because they are related to claim over which it has original jurisdiction, none of the 28 U.S.C. § 1367(b) exceptions apply, and there is no basis for the court to decline to exercise jurisdiction under 28 U.S.C. § 1367(c). The court cannot aggregate plaintiffs’ claims because they are divisible.

Fact Pattern # 3

John Doe is a citizen of New York. On January 1, 2000, Mr. Doe drove to Jamestown, North Dakota to see the World’s Largest Buffalo. After looking at the Buffalo, Mr. Doe purchased a corndog from a concession stand owned and operated by Mr. Roe, a citizen of North Dakota. Unfortunately, the corndog was infected with salmonella bacteria. Mr. Doe contracted salmonellosis and was hospitalized for 2 weeks.

On January 15, 2000, Mr. Doe filed a complaint against Mr. Roe in the New York County Supreme Court, alleging that Mr. Roe negligently stored his corndogs at 45°F in violation of the Federal Prepared Food Act and claiming damages of $75,000.

On April 1, 2000, Mr. Doe sent a letter to Mr. Roe, stating that he was interested in investing in Mr. Roe’s concession stand. On April 2, 2000, Mr. Roe drove to New York, in order to meet with Mr. Doe. When Mr. Roe arrived at Mr. Doe’s home in New York, Mr. Doe served Mr. Roe with a summons and complaint.

On May 1, 2000, Mr. Roe filed a notice of removal and Mr. Doe’s action was removed to the United States District Court for the Southern District of New York. On May 15, 2000, Mr. Doe filed a motion to remand his action to the New York County Supreme Court.

8. Can the New York County Supreme Court or the Southern District of New York exercise personal jurisdiction over Mr. Roe? (5 points)
Both courts can exercise personal jurisdiction over Mr. Roe because he was personally served in New York. Personal service in the forum state is a traditional basis for personal jurisdiction and satisfies due process under *Burnham v. Superior Court*.

9. Should either court exercise personal jurisdiction over Mr. Roe? (5 points)

Answer: Neither court should exercise personal jurisdiction over Mr. Roe unless he consents to personal jurisdiction. A court has discretion not to exercise personal jurisdiction. Mr. Doe used deceit to induce Mr. Roe to travel to New York. If a party is brought within the jurisdiction of a court by deceit, the court should refuse to exercise jurisdiction.

10. Should the Southern District of New York grant Mr. Doe’s motion to remand? (10 points)

Answer: Yes. The district court should remand Mr. Doe’s claim because it lacks subject matter jurisdiction.

The district court lacks diversity jurisdiction. Complete diversity exists between plaintiff and defendant because Mr. Doe is a citizen of New York and Mr. Roe is a citizen of North Dakota, but Mr. Doe’s claim does not satisfy the amount in controversy requirement because it is not in excess of $75,000.

The district court also lacks federal question jurisdiction. Mr. Doe’s claim does not arise under federal law. The Federal Prepared Food Act § 1 states that it does not create a private right of action, so Mr. Doe’s action arises under the New York Prepared Food Act. Under the centrality test, a cause of action created by state law that incorporates arises under federal law arises under federal law if the federal issue is necessary, actually disputed, and substantial, and if accepting jurisdiction would not be disruptive. The New York Prepared Food Act incorporates federal law, but does not require its application or interpretation.

**Statutes & Rules**

The following statutes and rules apply to all of the short answer questions in this examination:

**New York Civil Practice Law § 302** provides, “As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent: 1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or 2. commits a tortious act within the state,
except as to a cause of action for defamation of character arising from the act; or 3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or 4. owns, uses or possesses any real property situated within the state.”

**Jefferson Rule of Civil Procedure 4** provides: “Any citizen of the State of Jefferson who is at least 18 years old and not a party may serve a summons and complaint.”

**Jefferson Rule of Civil Procedure 10** provides: “An action for the breach of an life insurance contract must be commenced within 3 years of the death of the policy holder.”

**Federal Rule of Civil Procedure 4(c)(2)** provides: “Any person who is at least 18 years old and not a party may serve a summons and complaint.”

**Federal Rule of Civil Procedure 4(k)(1)** provides, “Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant: (A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located; (B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or (C) when authorized by a federal statute.”

**Federal Prepared Food Act § 1** provides, “Nothing in this Act shall be construed as creating a private right of action.”

**Federal Prepared Food Act § 2** provides, “All prepared food shall be stored at 40° F or colder.”

**New York Prepared Food Act § 10** provides, “A vendor of prepared food who violates any New York or federal standard governing the sale of prepared food is presumed negligent under this Act.”