Part I

Multiple Choice Questions
(4 points for each question)

Smith is domiciled in the Eastern District of Kentucky. Acme, Inc. is a Delaware corporation that manufactures widgets at its headquarters in the Middle District of Tennessee. On June 1, 2010, Smith purchased an Acme widget in the Western District of Kentucky. On August 1, 2010, the widget exploded at Smith’s home and injured him. September 1, 2012, Smith filed an action against Acme in the Fayette County Circuit Court, alleging a claim under the Federal Defective Widgets Act and an unrelated state law libel claim, and demanding $70,000 damages.

1. Acme removes the action to the United States District Court for the Eastern District of Kentucky and Smith files a motion to remand. How should the court decide the motion?

a. The court should grant the motion because it lacks subject matter jurisdiction.
b. The court should grant the motion because it lacks personal jurisdiction.
c. The court should remand the Federal Defective Widgets Act claim and retain the libel claim.
d. The court should remand the libel claim and retain the Federal Defective Widgets Act claim.
e. The court should deny the motion.

Answer: d.

2. Acme files a motion to transfer, which Smith opposes. Where can the court transfer the action?

a. The Middle District of Tennessee.
b. The Western District of Kentucky.
c. The District of Delaware.
d. None of the above.
e. All of the above.

Answer: e.

Smith is domiciled in the Middle District of Tennessee, Jones is domiciled in the Southern District of Ohio, and Wilson is domiciled in the Eastern District of Kentucky. Smith and Jones form a partnership to provide consulting services. On January 1, 2009, Smith, Jones, and Wilson met in the Western District of Kentucky and formed a contract, in which Smith and Jones agreed to pay Wilson $80,000 for consulting services. Wilson provided the services, but Smith and Jones refused to pay. On December 15, 2010, Wilson filed an action against Smith and Jones in the Fayette County Circuit Court, alleging breach of contract claims and demanding $40,000 damages from Smith and $40,000 damages from Jones. Kentucky law provides that business partners are subject to joint and several liability for breach of contract.
3. Smith and Jones remove the action to the United States District Court for the Eastern District of Kentucky and file a motion to transfer. Where can the court transfer the action?

a. The court can transfer the action to the Middle District of Tennessee.
b. The court can transfer the action to the Southern District of Ohio.
c. The court can transfer the action to the Western District of Kentucky.
d. The court can transfer the action to the Middle District of Tennessee and the Southern District of Ohio.
e. The court cannot transfer the action.

Answer: c.

4. Smith and Jones remove the action to the United States District Court for the Eastern District of Kentucky and file a motion to dismiss. How should the court decide the motion?

a. The court should grant the motion for lack of personal jurisdiction.
b. The court should grant the motion for lack of subject matter jurisdiction.
c. The court should grant the motion for improper venue.
d. The court should grant the motion for improper service of process.
e. The court should deny the motion.

Answer: e.

Acme, Inc. is a Delaware corporation that manufactures widgets at its headquarters in the District of New Jersey. Beta, Inc. is a Delaware corporation that manufactures gadgets at its headquarters in the Southern District of New York. Acme sells its widgets to Beta, which uses Acme widgets in its gadgets. Acme sells all of its widgets to Beta and does not advertise. Beta only sells its gadgets in the Southern District of New York and does not advertise. Smith is domiciled in the Eastern District of Kentucky. On January 15, 2009, Smith visits the Southern District of New York and purchases a Beta gadget. On January 30, 2009, the gadget explodes at Smith’s home, injuring him.

5. For the purpose of this question only, Smith files an action against Acme and Beta in the United States District Court for the Eastern District of Kentucky, alleging state law product liability claims and demanding $200,000. Acme and Beta file a motion to dismiss. How should the court decide the motion?

a. The court should grant the motion for lack of personal jurisdiction.
b. The court should grant the motion for lack of subject matter jurisdiction.
c. The court should grant the motion for improper venue.
d. The court should grant the motion for failure to state a claim.
e. The court should deny the motion.
Answer: a.

6. For the purpose of this question only, Smith files an action against Acme and Beta in the Superior Court of the State of Delaware, alleging state law product liability claims and demanding $200,000. Acme and Beta remove the action to the United States District Court for the District of Delaware and file a motion to dismiss. Smith files a motion to remand. How should the court decide the motions?

   a. The court should grant the motion to dismiss for lack of personal jurisdiction.
   b. The court should grant the motion to dismiss for lack of subject matter jurisdiction.
   c. The court should grant the motion to dismiss for improper venue.
   d. The court should deny the motion to dismiss and grant the motion to remand.
   e. The court should deny both motions.

Answer: d.

7. For the purpose of this question only, Smith files an action against Acme and Beta in the United States District Court for the Northern District of New York, alleging state law product liability claims and demanding $100,000. Acme and Beta file a motion to dismiss. How should the court decide the motion?

   a. The court should grant the motion to dismiss for lack of personal jurisdiction.
   b. The court should grant the motion to dismiss for lack of subject matter jurisdiction.
   c. The court should grant the motion to dismiss for improper venue.
   d. The court should grant Acme’s motion to dismiss for lack of personal jurisdiction, but deny Beta’s motion to dismiss.
   e. The court should deny the motion to dismiss.

Answer: c.

8. For the purpose of this question only, Smith files an action against Acme and Beta in the United States District Court for the Southern District of New York, alleging state law product liability claims and demanding $75,000. Acme and Beta file a motion to dismiss. How should the court decide the motion?

   a. The court should grant the motion to dismiss for lack of personal jurisdiction.
   b. The court should grant the motion to dismiss for lack of subject matter jurisdiction.
   c. The court should grant the motion to dismiss for improper venue.
   d. The court should grant Acme’s motion to dismiss for lack of personal jurisdiction, but deny Beta’s motion to dismiss.
   e. The court should deny the motion to dismiss.
Acme, Inc. is a Delaware corporation headquartered in the Southern District of New York, with branch offices nationwide. Smith is domiciled in the District of New Jersey and is an employee of Acme. Jones is domiciled in the Southern District of New York. On January 1, 2009, Jones visited the District of New Jersey and Smith injured him in an automobile accident. On January 15, 2011, Jones filed an action against Acme and Smith in the United States District Court for the Southern District of New York, alleging a negligence claim and demanding $100,000 damages.

9. Acme and Smith file a motion to dismiss. How should the court decide the motion?
   a. The court should grant the motion to dismiss for lack of personal jurisdiction.
   b. The court should grant the motion to dismiss for lack of subject matter jurisdiction.
   c. The court should grant the motion to dismiss for improper venue.
   d. The court should grant the motion to dismiss for improper service of process.
   e. The court should deny the motion to dismiss.

   Answer: b or c.


10. For the purpose of this question only, Smith visits New York City on January 20, 2011. Jones goes to Smith’s hotel room and personally serves process on him. Smith files a motion to dismiss. How should the court decide the motion?
   a. The court should grant the motion to dismiss for lack of personal jurisdiction.
   b. The court should grant the motion to dismiss for lack of subject matter jurisdiction.
   c. The court should grant the motion to dismiss for improper venue.
   d. The court should grant the motion for improper service of process.
   e. The court should deny the motion to dismiss.

   Answer: b or d.

11. For the purpose of this question only, New York Rule of Civil Procedure 4.1 provides, “Notice of a tort action may be accomplished by publication in the New York Post.” On January 20,
2011, publishes a notice of the action in the New York Post. Acme files a motion to dismiss. How should the court decide the motion?

a. The court should grant the motion to dismiss for lack of personal jurisdiction.
b. The court should grant the motion to dismiss for lack of subject matter jurisdiction.
c. The court should grant the motion to dismiss for improper venue.
d. The court should grant the motion for insufficient process.
e. The court should deny the motion to dismiss.

Answer: b or d.

12. For the purpose of this question only, Smith visits New York City on January 20, 2011 and is served with process by a process server. Federal Rule of Civil Procedure 4.2 provides that the statute of limitations on a negligence claim is 3 years. New York Rule of Civil Procedure 4.2 provides that the statute of limitation on a negligence claim is 2 years. Smith files a motion to dismiss. How should the court decide the motion?

a. The court should grant the motion to dismiss for lack of personal jurisdiction.
b. The court should grant the motion to dismiss for lack of subject matter jurisdiction.
c. The court should grant the motion to dismiss for failure to state a claim.
d. The court should grant the motion for improper service of process.
e. The court should deny the motion to dismiss.

Answer: c.

Acme is a Delaware corporation that manufactures widgets at its headquarters in the District of New Jersey. Acme advertises and distributes its widgets in all 50 states. Smith is domiciled in the Eastern District of Kentucky. On January 15, 2009, Smith purchased an Acme widget in the Western District of Kentucky. Smith took the widget to his cabin in the Central District of Tennessee. On April 1, 2009, the widget exploded, injuring Smith. The Kentucky long-arm statute provides that courts may exercise personal jurisdiction over non-resident defendants to the extent permitted by due process. The Tennessee long-arm statute provides that courts may exercise personal jurisdiction over contract claims against non-resident defendants.

13. For the purpose of this question only, Smith files an action against Acme in the Central District of Tennessee, alleging a state law product liability claim and demanding $100,000 damages, and Acme files a motion to dismiss. How should the court decide the motion?

a. The court should grant the motion to dismiss for lack of personal jurisdiction.
b. The court should grant the motion to dismiss for lack of subject matter jurisdiction.
c. The court should grant the motion to dismiss for failure to state a claim.
d. The court should grant the motion for improper venue.
e. The court should deny the motion to dismiss.
14. For the purpose of this question only, Smith files an action against Acme in the Eastern District of Kentucky, alleging a state law product liability claim and demanding $100,000 damages, and Acme files a motion to dismiss. How should the court decide the motion?

a. The court should grant the motion to dismiss for lack of personal jurisdiction.
b. The court should grant the motion to dismiss for lack of subject matter jurisdiction.
c. The court should grant the motion to dismiss for failure to state a claim.
d. The court should grant the motion for improper venue.
e. The court should deny the motion to dismiss.

Answer: d.

15. For the purpose of this question only, Smith files an action against Acme in the Western District of Kentucky, alleging a state law product liability claim and demanding $100,000 damages, and Acme files a motion to dismiss. How should the court decide the motion?

a. The court should grant the motion to dismiss for lack of personal jurisdiction.
b. The court should grant the motion to dismiss for lack of subject matter jurisdiction.
c. The court should grant the motion to dismiss for failure to state a claim.
d. The court should grant the motion for improper venue.
e. The court should deny the motion to dismiss.

Answer: e.

Part II

Short Answer Questions

Acme, Inc. is a Delaware corporation headquartered in the Southern District of New York. Acme manufactures widgets at its factory in the District of New Jersey. All of Acme’s executives and board members have offices in its New Jersey factory and all of Acme’s board meetings are held in a conference room at its New Jersey factory. Acme manufactures 100 million widgets each year. Acme sells its widgets for $1 each to widget wholesalers in all 50 states and internationally.

Beta, Inc. is a Canadian corporation headquartered in Toronto, Canada. Beta is a widget wholesaler that distributes widgets to widget retailers in Canada and the United States. Beta has no offices or employees in the United States and does not advertise in any way. Each year,
Beta purchases 100,000 Acme widgets, which it sells to widget retailers for $2 each. In 2005, Beta sold 5,000 Acme widgets to widget retailers in New Jersey.

Jones is a citizen of Canada, who resides in Toronto. Jones is the owner and operator of Jones Widgets, a widget retailer with a storefront in Toronto. Jones Widgets also has a website that allows customers to order widgets. Each year, Jones purchases 100 Acme widgets from Beta, which it sells to the public for $4 each. In 2005, Jones Widgets sold 80 Acme widgets from its storefront and 20 Acme widgets from its website.

Smith grew up in San Francisco, California, which is in the Northern District of California, and attended the University of California at Berkeley. On August 1, 2005, Smith moved from San Francisco to the Southern District of New York, to attend New York University Law School. Smith intends to practice law in Kentucky.

On December 20, 2005, Smith flew to Toronto, Canada to visit a friend for the holiday break. Smith collects widgets. While in Toronto, he visited Jones Widgets and purchased an Acme widget. As Smith left the store, he placed the widget in his pocket and it promptly exploded, seriously injuring him. Smith eventually incurs $500,000 in hospital bills.

On December 1, 2007, Smith filed an action against Acme, Beta, and Jones in the United States District Court for the District of New Jersey, alleging a product liability claim against Acme, demanding $50,000, and negligence claims against Acme, Beta, and Jones, demanding $50,000 each. On December 5, 2007, Smith served Acme and Jones via registered mail. On December 27, Smith served Beta via registered mail.

On January 20, Acme, Beta, and Jones filed a motion to transfer the action to the Southern District of New York and a motion to dismiss the action for lack of personal jurisdiction, lack of subject matter jurisdiction, improper venue, insufficient service of process, and failure to state a claim. Smith opposes both motions.

New Jersey Civil Code § 101 provides, “An action alleging a tort claim shall be commenced no more than 2 years after the allegedly tortious act.” New Jersey Civil Code § 102 provides, “An action is commenced by service of process on the defendant.” New Jersey Civil Code § 103 provides, “New Jersey courts shall have jurisdiction over non-resident defendants in any action alleging a tortious act.”

Federal common law provides that the statute of limitations for a tort claim is 3 years. The Federal Widget Protection Act, 10 U.S.C. § 1, provides, “It shall be a complete defense to any product liability claim alleging that a widget is defective that the widget was at any time placed in the plaintiff's pocket.”

1. How should the court rule on the motion to dismiss for lack of personal jurisdiction? (10 points)
ANSWER: The court should deny Acme’s motion to dismiss for lack of personal jurisdiction and grant Beta and Jones’s motions to dismiss for lack of personal jurisdiction. The New Jersey long-arm statute allows the court to exercise personal jurisdiction over all 3 defendants, as they are all defendants in a tort action. However, due process probably does not allow the court to exercise personal jurisdiction over Beta and Jones.

The court probably has personal jurisdiction over Acme because Acme has continuous and systematic contact with New Jersey: its factory is in New Jersey and its executives have offices and board meetings there. Accordingly, the court has general jurisdiction and due process allows the court to exercise personal jurisdiction over any claim against Acme.

The court probably lacks personal jurisdiction over Beta because Smith’s claim probably does not arise out of Beta’s contacts with New Jersey and Beta has not purposefully directed itself toward New Jersey and. The court probably needs general jurisdiction, rather than specific jurisdiction, because Smith’s claim probably does not arise out of Beta’s contacts with New Jersey. While Beta’s contacts with New Jersey include the Acme widgets it sells there, the widget that injured Smith was sold in Toronto. In any case, the Supreme Court has held that contact through the stream of commerce alone is insufficient for specific jurisdiction, because due process requires some form of purposeful direction. Beta sells widgets in New Jersey through the stream of commerce, it has no physical presence in New Jersey and there is no evidence that it affirmatively reaches out to New Jersey in any way. However, some Justices have held that contact through the stream of commerce is sufficient to satisfy due process and others have held that the sufficiency of contacts through the stream of commerce should depend on the volume, value, and dangerousness of the goods in question. In 2005, Beta sold 5,000 widgets in New Jersey for a total of $10,000, which could be construed as sufficient contact to satisfy due process. Arguably, it is fair to exercise personal jurisdiction over Beta because Acme widgets are manufactured there, and it is hard to see where else in the United States it would be more fair to exercise personal jurisdiction over Beta.

The court probably lacks personal jurisdiction over Jones because he has no substantial contact with New Jersey. There is no evidence that Jones has reached out to New Jersey in any way. Jones’s only potential contact with New Jersey is the Jones Widgets website, which is an “active” website under the Zippo test because it allows the public to make purchases. However, Smith did not purchase his widget from the website. Moreover, the amount of commerce through the website seems insufficiently substantial to satisfy minimum contact. Lastly, it would be quite unfair to force Jones to defend himself in New Jersey.

2. How should the court rule on the motions to dismiss for lack of subject matter
jurisdiction? (10 points)

**ANSWER:** The court should probably deny the motions to dismiss for lack of subject matter jurisdiction because it has diversity jurisdiction over all three defendants.

Complete diversity probably exists because the Smith is probably a citizen of California, Acme is probably a citizen of Delaware and New Jersey, and Beta and Jones are citizens of Canada. Smith is probably a citizen of California because he had not exhibited an intention to remain in New York when he was injured. Acme is a citizen of Delaware, where it is incorporated, but its primary place of business is unclear. Normally, Acme’s primary place of business would be its headquarters in New York, but the fact that Acme’s board members and executives have offices and hold board meetings in New Jersey suggests that its primary place of business is New Jersey. Beta is a citizen of a foreign state because it is a Canadian corporation with no primary place of business in the United States. Likewise, Jones is a citizen of a foreign state because he is a citizen of Canada.

Assuming that complete diversity exists, the court has original jurisdiction over Smith’s claim against Acme because it can aggregate his product liability and negligence claims for a total amount in controversy of $100,000, well in excess of $75,000. However, it is possible that the court could find that it lacks diversity jurisdiction if it finds that Smith is a citizen of New York, where he is attending school, and that Acme is a citizen of New York, where its headquarters are located.

The court can exercise supplemental jurisdiction over Smith’s claims against Beta and Jones because they arise from the same nucleus of operative fact as his claim against Acme and neither party would destroy diversity. The factors authorizing the court to decline to exercise supplemental jurisdiction do not appear to apply, unless the court determines that a claim against a Canadian corporation and Canadian citizen are sufficiently exception to compel it to decline to exercise jurisdiction.

The court cannot exercise federal question jurisdiction because none of Smith’s claims arise under federal law and no federal issues appear on the fact of the complaint. The Federal Widget Protection Act provides a federal defense, but under the well-pled complaint rule that is not sufficient for federal question jurisdiction.

3. How should the court rule on the motions to dismiss for improper venue? (5 points)

**ANSWER:** The court should deny the motions to dismiss for improper venue because a substantial part of the events or omissions giving rise to the claim occurred in the District of New Jersey. Under the federal venue statute, venue is proper in “a judicial district in which any defendant resides, if (1) all defendants are residents of the State in which the district is located” and (2) “a judicial district in which a substantial part of the
events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.” In this case, the defendants are not all residents of the New Jersey. However, under the venue statute, the residence of foreign defendants is disregarded for venue purposes, and a corporation is deemed to reside in any district in which it is subject to personal jurisdiction. Acme is subject to personal jurisdiction in New Jersey, so venue is proper in New Jersey. Moreover, Acme manufactured the allegedly defective widget in New Jersey, so venue is also proper in New Jersey under section 2.

4. How should the court rule on the motions to dismiss for failure to state a claim? (10 points)

ANSWER: The court should deny Acme’s and Jones’s motions to dismiss for failure to state a claim, but should grant Beta’s motion to dismiss for failure to state a claim because the statute of limitations has passed.

The court should apply the 2-year New Jersey statute of limitations, rather than the federal common law 3-year statute of limitations, because the Supreme Court has held that a statute of limitations is a substantive rule under the Erie Doctrine.

The court’s decision depends on whether it applies the federal or New Jersey tolling provision. Under Federal Rule of Civil Procedure 4, the statute of limitations is tolled when an action is filed. Under New Jersey Civil Code § 102, the statute of limitations is tolled when process is served on the defendant. The last tortious event occurred when the widget exploded on December 20, 2005. Smith served Acme and Jones on December 5, 2007, so his claims against them satisfied both tolling provisions. But Smith served Beta on December 27, so his claim against Beta satisfied only the federal tolling provision.

Therefore, whether Smith has stated a claim against Beta depends on whether the federal or state tolling provision applies. Under the Erie Doctrine, if a federal statute or rule conflicts with a state statute or rule, the federal statute or rule applies, if it is valid. However, the Supreme Court has held that a state tolling provision does not conflict with Federal Rule of Civil Procedure 4, so the court should probably apply the New Jersey tolling statute and find that Smith has failed to state a claim against Beta.

5. Can the court grant the motion to transfer? (5 points)

ANSWER: The court can grant the motion to transfer. A federal court can transfer an action to any district where it might have been brought or to any district to which all parties have consented. Smith has not consented to transfer, so the court can only transfer the action to a district where venue would have been proper when the action was filed. Under the venue statute, the residence of Beta and Jones is disregarded because
they are foreign defendants, so venue is proper wherever Acme would be subject to personal jurisdiction. Acme is subject to personal jurisdiction in the Southern District of New York because its headquarters are located there, so the court could transfer the action to the Southern District of New York.

END OF THE EXAM