## Civil Procedure I Exam ID:

## Fall 2015

## Elon University School of Law

## Professor Fink

## Final Examination

### Instructions:

This is a closed-book examination. You may not use any material other than what is provided to you by the proctor.

You will have three (3) hours to complete this exam. This exam consists of two (2) parts. Part 1 consists of NUMBER multiple choice questions. Part 2 consists of NUMBER short essay questions. You must answer each part of each question.

You must write your Exam ID number in the space provided above. You must also write out the Honor Pledge in the space below, and sign with your Exam ID number. Do not write your name anywhere on the exam or in your answers.

#### Honor Pledge

“On my honor, I will uphold the values of Elon University School of Law: honesty, integrity, responsibility, and respect.”

Exam ID:

## Part 1: Multiple Choice Questions

This part consists of twenty (20) multiple-choice questions. You must answer each question. For each question, select the best response based on the information presented. You should base your responses on the current state of the law as presented in the assigned material and discussed in class.

1. Pearl & Perry Parker (citizens of North Carolina) buy a new bicycle for their daughter, Peg. While Peg is riding the bicycle, the handlebars come loose because of a defect in the materials. As a result, Peg loses control of the bicycle and crashes into a stone wall, causing serious injuries. The Parkers file a state law tort claim on Peg's behalf against Cyclo, Inc. (a citizen of South Carolina), which manufactured the bicycle. The suit seeks $20,000 in damages for Peg’s medical expenses, and $60,000 in punitive damages (as permitted under state law). The applicable state law limits punitive damages to an amount no greater than twice the amount of compensatory sought. The Parkers file their suit in **North Carolina state court**. May Cyclo remove the case to federal court?

A. Yes, because the Parkers could have filed the suit in federal court.

B. Yes, if Cyclo defends on the grounds that the bicycle complied with federal consumer product safety regulations.

C. No, because the plaintiff, as master of the complaint, is entitled to its choice of forum.

D. No, because the amount in controversy requirement for diversity jurisdiction is not satisfied.

2. Pearl & Perry Parker (citizens of NC) buy a new bicycle for their daughter, Peg. While Peg is riding the bicycle, the handlebars come loose because of a defect in the materials. As a result, Peg loses control of the bicycle and crashes into a stone wall, causing serious injuries. The Parkers file suit on Peg's behalf against Cyclo, Inc. (a citizen of SC), which manufactured the bicycle.

The suit asserts two claims on behalf of Peg against Cyclo: (1) a state-law tort claim, seeking $20,000 for Peg’s medical expenses, and $40,000 for emotional distress (the maximum amount allowed under the applicable state law), and (2) a claim under the federal Child Safety Protection Act, while allows suits against a manufacturer whose defective product causes injury to a child. The federal statute permits recovery only for medical costs, so the Parkers seek only $20,000 in damages. The Parkers file their suit in **South Carolina state court**. May Cyclo remove the case to federal court?

A. Yes, because state courts lack jurisdiction over claims arising under federal law.

B. Yes, provided Cycle files its notice of removal within 30 days of service of the complaint or summons in the state court action.

C. No, because Cyclo is a citizen of South Carolina.

D. No, because the suit does not seek more than $75,000 in damages.

3. Pandora (a citizen of NC) worked for Demeter (a citizen of SC) as a salesclerk. Under the terms of Pandora’s contract, she was supposed to be paid a 15% commission on each sale she made. However, Demeter refused to pay commissions on three sales, claiming that the buyers were longtime customers who would have made those purchases anyway. The commission on each disputed sale would be $25,000. May Pandora file her suit in federal court?

A. Yes, because a plaintiff may aggregate the amount of all claims to reach the requisite jurisdictional amount for diversity jurisdiction.

B. No, because each disputed sale is a separate controversy, and the plaintiff must satisfy the requisite jurisdictional amount for each distinct claim.

C. Yes, but only if Pandora also has a legally plausible claim for additional damages beyond the disputed commissions.

d. No, unless Demeter asserts a counterclaim against Pandora related to the disputed sales.

4. Paco (a citizen of NC), sued D Corp. (which has its principal place of business in SC) in SC federal court, seeking $100,000 in damages for breach of contract under state law. When Paco filed the lawsuit, he assumed that D Corp. was incorporated in DE. However, while the case was pending, P learned that D Corp. was in fact incorporated in NC. Although the incorporation records were open to the public, Paco had simply never checked. The jury concluded that D Corp. did not breach the contract, and the court entered judgment against Paco. On appeal, Paco argues that the judgment should be vacated, because the trial court lacked subject-matter jurisdiction. Should the Court of Appeals rule in Paco’s favor?

A. No, because it would be unfair to let Paco get a new trial based on his own failure to ascertain D. Corp.'s state of incorporation before filing suit.

B. Yes, because there is no diversity of citizenship between the parties.

C. No, because a corporation is considered to be diverse from an opposing party in a lawsuit if the corporation is either incorporated or has its principal place of business in a state other than the state of which the other party is a citizen.

D. Yes, because Paco did not recover more than $75,000 and the case thus did not satisfy the amount in controversy requirement.

5. Harmer Meat, Inc. (incorporated and having its sole place of business in Arizona) manufactures various meat products, including generic private-label “Spam.” Harmer sells its products through a distributor, Meatco (incorporated in Dalaware and having its headquarters in Indiana), which ships them to supermarkets in 35 states, including North Carolina. Pursuant to North Carolina state law, Harmer periodically submits samples of its products to the North Carolina Department of Agriculture for health inspection. Daisy Duke, who broke a tooth on a foreign object in a can of generic Spam she purchased at her local Higgledy Piggledy supermarket in North Carolina, sues Higgledy Piggledy, Meatco, and Harmer in North Carolina court. Which of the defendants, if any, are subject to personal jurisdiction in North Carolina?

A. Only Higgledy Piggledy.

B. Higgledy Piggledy and Meatco, but not Harmer.

C. Higgledy Piggledy, Meatco, and Harmer.

D. Higgledy Piggledy and Harmer, but not Meatco.

##### Questions 6 & 7 are based on the following scenario:

Danville Motors (“Danville”) is a car rental business in Danville, Virginia. Penelope Pitstop, a North Carolina resident, rented a car from Danville. Pitstop immediately headed north on U.S. Highway 220 headed toward Altoona, Pennsylvania. As Pitstop crossed the state line into Pennsylvania, a tire came loose, the car ran off the road into a tree, and Pitstop sustained multiple injuries.

6. Pitstop sues Danville in Pennsylvania state court, alleging that the loose tire resulted from negligence by Danville’s mechanic. May the Pennsylvania court exercise personal jurisdiction over Danville?

A. Yes, if the Pennsylvania long-arm statute would permit jurisdiction under these facts.

B. Yes, because it was forseeable that Pitstop would have driven the car out of state.

C. No, because Pitstop rented the car from Danville in Virginia.

D. No, because Pitstop unilaterally decided to drive the car from Virginia into North Carolina.

7. Danville sues Pitstop in Virginia, alleging that her negligence caused the accident and damage to Danville’s car. Assuming the Virgnia long-arm statute permits the exercise of personal jurisdiction to the fullest extent permitted under the U.S. Constitution, may the Virginia court exercise personal jurisdiction over Pitstop?

A. Yes, because Danville is a Virginia-based corporation.

B. Yes, because Pitstop rented the car from Danville in Virginia.

C. No, unless Pitstop owns property in Virginia.

D. No, because the accident occurred in Pennsylvania.

8. Neff, who lives in Idaho, contracts to buy some beaver pelts from Pennoyer, an Oregon resident with a seasonal fur trapping operation in Alaska. The pelts are from beavers Pennoyer traps in Alaska, and shipped directly from Alaska to Neff in Idaho. After Neff fails to pay for a shipment of pelts, Pennoyer sues in Oregon court for breach of contract. Neff has never been to Oregon, owns no property there, and has no other business or dealings there. If an agent hired by Pennoyer serves Neff with a summons and a copy of the complaint while Neff is riding in a train passing through Oregon en route from Idaho to California, may the Oregon court exercise personal jurisdiction over Neff?

A. Yes, because a defendant is always subject to jurisdiction if he is served while present in the forum state.

B. Yes, because Neff is subject to jurisdiction in Oregon by virtue of having entered into a contract with an Oregon resident.

C. No, because Neff’s travel through Oregon was unrelated to his contract with Pennoyer.

D. No, because Pennoyer’s performance under the contract was in Alaska, not Oregon.

##### Questions 9 & 10 are based on the following scenario:

Dave’s Delicacies, a Delaware business, makes exotic prepared foods. The company sells directly to consumers at its retail store, located in Wilmington, Delaware. Dave’s regularly advertises its products in various newspapers, including local papers in southeastern the Pennsylvania, and through its catalog, which it distributes by mail to addresses in Delaware & Pennsylvania.

Peter Piper, a Pennsylvania resident, receives a copy of the Dave’s Delicacies catalog in the mail at his Pennsylvania home. Peter orders a peck of pickled peppers as a gift for his sister, Penny Piper, who lives in North Carolina. He places the order by telephone, requesting Dave’s ship the peppers to Penny in North Carolina, which Dave’s agrees to do.

9. When the peppers arrive at Penny’s, she calls Peter to thank him, but tells him she only received a pint instead of a full peck. Peter sues Dave’s in Pennsylvania court, for breach of contract, based on Dave’s charging Peter for a full peck of peppers but only delivering a pint to Penny. May the Pennsylvania court exercise personal jurisdiction over Dave’s?

A. Yes, because Dave’s is subject to general jurisdiction in Pennsylvania based on its advertising in Pennsylvania.

B. Yes, because Peter’s claim arises out of Dave’s activity aimed at Pennsylvania.

C. No, because the peppers were not shipped to Pennsylvania.

D. No, because Dave’s is not based in Pennsylvania.

10. Meanwhile, Penny, who consumed the entire pint of peppers in a single sitting, grows violently ill. She is diagnosed with botulism, and suspects that the peppers were the culprit. Penny sues Dave’s in North Carolina court, alleging that the peppers were defective. She also sues Fannie Farmer, a New Jersey resident who grew the peppers. Dave’s bought the peppers from a wholesaler to whom Fannie sells her crop. Fannie has no idea who buys the peppers from the wholesaler or where they end up. Which of the following is correct:

A.The North Carolina court may exercise personal jurisdiction over both Dave’s and Fannie.

B. The North Carolina court may exercise personal jurisdiction over Dave’s but not Fannie.

C. The North Carolina court may exercise personal jurisdiction over Fannie but not Dave’s.

D. The North Carolina court may not exercise personal jurisdiction over either defendant.

11. Peter, who is a columnist for the Philadelphia Inquirer (published in Pennsylvania), writes a column about his and his sister’s unhappy experience with Dave’s Delicacies, calling the company “dishonest” and describing its peppers as “pickled poison”. The column appears in both the Inquirer’s print edition (about 15% of which is typically sold in Delaware) and on its website (which includes local news about northern Delaware and ads for businesses there). Peter has never been to Delaware, and has no other contacts there. If Dave’s wishes to sue Peter for defamation, where will Peter be subject to personal jurisdiction:

A. Pennsylvania only

B. Pennsylvania, North Carolina, and Delaware

C. Delaware only

D. Pennsylvania and Delaware

##### QUESTIONS 12 & 13 ARE BASED ON THE FOLLOWING FACTS:

Andrea, a citizen of New York, and Bart, a citizen of New Jersey, own neighboring country homes in Pennsylvania. There is a gap in the fence separating their property. Bart's pet pig has repeatedly slipped through the gap and bathed in a creek that runs through Andrea's property, fouling the creek with its droppings. After this happens for the tenth time, an enraged Andrea shoots and kills the pig. Hearing the shots, Bart rushes into Andrea's yard, tackles Andrea, and clobbers Andrea over the head with a garden shovel.

12. Andrea sues Bart, seeking $75,000 for the injuries resulting from the assault by Bart. Andrea also wishes to sue Bart for the cost of cleaning up the mess that Bart's pig left in the creek. May Andrea include that claim in the same suit?

A. Yes, because joinder is proper and the requirements of diversity jurisdiction are satisfied.

B. Yes, but only if the court agrees that the two claims arise from the same transaction or occurrence.

C. No, because a plaintiff may not join claims for personal injuries and property damage in the same lawsuit.

D. No, unless Andrea's claim for the cost of cleaning up the creek is based on the federal Clean Water Act.

13. Assume that Andrea sues Bart only for the injuries resulting from the assault by Bart, and that Andrea seeks more than $75,000 in damages. Bart wishes to assert two claims against Andrea: a claim for the loss of Bart's pig (“Claim 1”), and a claim for damage to Bart's house that resulted when a tree in Andrea's yard fell and landed on Bart's roof (“Claim 2”). Which of the following is correct:

A. Bart must assert Claim 1 as a counterclaim in Andrea's suit, and Bart may either assert Claim 2 as a counterclaim in Andrea's suit or assert it as a claim in a separate suit.

B. Bart may assert Claim 1 as a counterclaim in Andrea's suit, but Bart may not assert Claim 2 as a counterclaim in Andrea's suit.

C. Bart must assert both claims as counterclaims in Andrea's suit.

D. Bart may not assert either claim as a counterclaim in Andrea's suit.

14. Anton sues Beverly for breach of contract. Anton also has an unrelated claim against Claire, Beverly's spouse, for defamation. Anton wants to sue Beverly & Claire together in the same suit. Would joinder of Beverly & Claire as co-defendants in the same action be proper? (Assume that the federal court would have subject matter jurisdiction over each claim.)

A. Yes, because as a married couple Beverly & Claire have common interests in any claims in which they are parties.

B. Yes, if the court concludes that the interests of judicial economy and convenience to the parties would be served by deciding the claims together.

C. No, because the claims against Beverly & Claire arise from different transactions and occurrences.

D. No, because a plaintiff may not join co-defendants where the plaintiff asserts a contract claim against one defendant and a tort claim against the other defendant.

15. Alice hires Carpenter and Electrician to perform the remodeling work. Under state law, each contractor has a mechanic’s lien on the property, meaning that, if Alice fails to pay them for the work, they may foreclose on the property and recover the unpaid amount from the proceeds of the foreclosure sale.

Carpenter and Electrician complete their work, but Alice, who has spent the loan funds on a lavish vacation, has no money left to pay either of them. If Carpenter and Electrician decide to enforce their liens through a foreclosure action, may they do so together as co-plaintiffs? (Assume the court would have subject matter jurisdiction.)

A. No, because their claims are based on different contracts and liens.

B. No, because their interests are adverse to one another.

C. Yes, because their claims arise out of the same series of transactions and involve common questions of law and fact.

D. Yes, but only if they do not have any potential claims against one another arising from their work on Alice's house.

##### QUESTIONS 16-17 ARE BASED ON THE FOLLOWING FACTS

Agnes (a citizen of Tennessee) buys a new boat, and hires Belinda (a citizen of North Carolina) to transport it to a lake house that Agnes owns in North Carolina. While Belinda is en route, she in involved in a collision with Craig (a citizen of North Carolina), who is driving a brand new Cadillac. Craig and Belinda both sustain serious injuries in the collision, and both of their vehicles, along with the boat, are totaled.

Under the applicable state law, if Belinda's negligence was responsible (solely or in part) for the accident, she would be liable both to Craig for his injuries and the damage to his car, and to Agnes for the damage to her boat. Agnes would also be vicariously liable to Craig for Belinda's negligence, because Belinda was acting as an agent for Agnes at the time of the accident. If Craig's negligence was responsible (solely or in part) for the accident, he would be liable to Belinda for her injuries and the damage to her vehicle, and to Agnes for the damage to her boat. The law also provides for a right of contribution among joint tortfeasors in proportion to their respective degrees of fault.

16. Agnes sues Craig, seeking $100,000 for the damage to her boat, which she alleges was caused by Craig's negligence. Craig denies that he was negligent, and alleges that the accident was caused instead by Belinda's negligence. Craig impleads Belinda as a third-party defendant, seeking $70,000 for his personal injuries and the damage to his car. Is joinder of Belinda proper?

A. No, because Craig does not seek more than $75,000 in damages from Belinda.

B. No, because Craig and Belinda are both citizens of North Carolina.

C. No, because Craig's claim is not a proper basis for impleader under the Federal Rules of Civil Procedure.

D. Yes, because Craig's claim arises from the same occurrence as the underlying claim by Agnes.

17. Assume instead that when Craig impleads Belinda, he asserts two claims against her: the first for contribution for Belinda's share of liability to Agnes for the damage to her boat, and the second for Craig's own injuries and the damage to his car. Which of the following is correct?

A. Joinder of Belinda for the contribution claim is proper, but joinder of the claim for Craig's own injuries and the damage to his car is improper.

B. Joinder of both claims is proper, but the court would lack subject matter jurisdiction over both claims, because Craig & Belinda are both citizens of North Carolina.

C. Joinder of both claims is proper, but the court would have subject matter jurisdiction only over the contribution claim, not the claim for Craig's own injuries and the damage to his car.

D. Joinder of both claims is proper, and the court would have subject matter jurisdiction over both claims.

18. Assume that Craig does not implead Belinda at all. The case of Agnes v. Craig proceeds to trial, and the jury returns a judgment in favor of Craig, finding that he was not negligent. Craig then brings his own suit against Belinda and Agnes as co-defendants for the damage to his car and his personal injuries. Both defendants move to dismiss, asserting that Craig’s claims are barred because he should have asserted them in the prior suit. What should the court do?

A. Dismiss the claims against both defendants.

B. Dismiss the claim against Agnes, but not the claim against Belinda.

C. Dismiss the claim against Belinda, but not the claim against Agnes.

D. Dismiss neither claim.

##### QUESTIONS 19 & 20 ARE BASED ON THE FOLLOWING FACTS:

Arnold (a citizen of California) visits his primary care physician, Dr. Bonebreaker (also a citizen of California) for a routine checkup. Dr. Bonebreaker is concerned that a growth on Arnold's shoulder may be cancerous. She refers Arnold to the Cancer Clinic, located in Nevada, for a consultation with Dr. Derma, a prominent skin cancer specialist employed by the Clinic. Dr. Derma performs a biopsy, which reveals that the growth is benign. A very relieved Arnold returns home to California. A few days later, he develops a noticeable and painful inflammation in his shoulder, and a high fever. He again visits Dr. Bonebreaker, who determines that the sit of the biopsy has become infected. Prescribing an antibiotic, Dr. Bonebreaker assures Arnold that this is not uncommon after a biopsy, and that the problem should subside in a few days. Two weeks later, the swelling and fever having grown worse, Arnold is rushed to the hospital where he is treated for a nearly-fatal staph infection that has spread to his heart and lungs.

19. Arnold brings a medical malpractice suit against the Cancer Clinic (incorporated and having its sole place of business in Nevada), alleging that the infection resulted from negligent treatment by the Clinic's employee, Dr. Derma. Arnold seeks a total of $1 million in compensatory and punitive damages. The Clinic contends that Dr. Bonebreaker was negligent in misdiagnosing the infection and failing to prescribe a more aggressive treatment, and that Bonebreaker was thus to blame for the harm Arnold suffered. The Clinic impleads Dr. Bonebreaker, asserting a claim for contribution in the event that the Clinic is found liable. Does the court have jurisdiction over the claims against the Clinic and Dr. Bonebreaker?

A. No, because Arnold and Bonebreaker are both citizens of California.

B. No, because supplemental jurisdiction is not available over a third-party claim.

C. Yes, regardless of the amount the Clinic seeks in contribution from Bonebreaker.

D. Yes, but only if the Clinic seeks more than $75,000 in contribution from Bonebreaker.

20. Arnold owes Dr. Bonebreaker $5000 for past medical treatment unrelated to the growth and infection. Arnold has refused to pay that bill, because he believes Dr. Bonebreaker was partly responsible for the infection. Assume that the Clinic has properly impleaded Bonebreaker as a third-party defendant in Arnold's suit. May Dr. Bonebreaker assert a claim against Arnold for the unpaid medical bill (assume that Bonebreaker has no other claim against Arnold)?

A. Yes, because a third-party defendant may assert any claim it has against the plaintiff, and the court may exercise supplemental jurisdiction over all such claims.

B. Yes, but only if Arnold asserts a claim in the same action against Bonebreaker for malpractice related to the infection.

C. No, because even though the joinder rules permit Bonebreaker to assert the claim, the court would lack subject matter jurisdiction.

D. No, because the joinder rules do not permit Bonebreaker to assert the claim, and because the court would lack subject matter jurisdiction.

## Part 2: Short Essay Questions

If your answer depends on any factual assumption(s) beyond what is stated in the question, be sure to identify, and explain the relevance of, your assumption(s).

Your answers will be graded based on (1) your identification of the relevant issues, (2) your identification and explanation of the applicable rules, and (3) your analysis of how those rules apply to the stated facts. You should strive to present concise, well-organized answers that respond to the specific question prompts. As a rough guideline, you should be able to answer each of the questions within about 4-6 typed pages. But there is no formal limit on the length of your answers.