

Multiple Choice / Short Answer Sheet

ANSWER THE MULTIPLE CHOICE QUESTIONS BY CIRCLING THE APPROPRIATE LETTER IMMEDIATELY TO THE RIGHT OF EACH NUMBER. ANSWER THE SHORT ANSWER QUESTIONS IN THE LINES PROVIDED ON THIS SHEET.

Question No. Alternative Answers (circle the correct answer)

- | | | | | | |
|-----|----------|---|---|---|---|
| 1. | A | B | C | D | E |
| 2. | A | B | C | D | E |
| 3. | A | B | C | D | E |
| 4. | A: _____ | | | | |
| | B: _____ | | | | |
| 5. | A | B | C | D | E |
| 6. | A | B | C | D | E |
| 7. | A | B | C | D | E |
| 8. | A | B | C | D | E |
| 9. | A | B | C | D | E |
| 10. | A | B | C | D | E |
| 11. | A | B | C | D | E |
| 12. | A | B | C | D | E |
| 13. | A | B | C | D | E |
| 14. | A | B | C | D | E |
| 15. | A | B | C | D | E |
| 16. | A | B | C | D | E |
| 17. | A | B | C | D | E |
| 18. | A: _____ | | | | |
| | B: _____ | | | | |
| 19. | A | B | C | D | E |
| 20. | A | B | C | D | E |
| 21. | A | B | C | D | E |
| 22. | A | B | C | D | E |
| 23. | A | B | C | D | E |
| 24. | A | B | C | D | E |
| 25. | A | B | C | D | E |

DO NOT DETACH THIS ANSWER SHEET FROM THE REMAINDER OF THE EXAM BOOKLET. THE ENTIRE EXAM BOOKLET -- THE ANSWER SHEET AND THE QUESTIONS -- MUST BE RETURNED TO THE INSTRUCTOR.

CIVIL PROCEDURE I

PART ONE – MULTIPLE CHOICE / SHORT ANSWER (ONE HOUR)

INSTRUCTIONS:

1. Part One consists of a series of 25 multiple choice and short answer questions. It counts for one third of your grade.
2. Make sure that your examination number appears in the upper right-hand corner of every page (there are 18 pages).
3. DO NOT SEPARATE the pages – leave them stapled together.
4. It is recommended that you use a pencil for this part of the examination in case you want to change an answer.
5. Each multiple choice question is followed by a number of alternative answers. Select the best of the stated alternatives. Answer each question by circling the appropriate letter on the answer sheet. Select only one of the stated alternatives.
6. Each short answer question must be answered in the space provided on the answer sheet. Write only in the lines provided.
7. Do not qualify your answer in any way. If you think that an entire question is inherently misleading or contains an internal inconsistency, you may so state on the reverse side of the answer sheet. Identify the question by number and give you reasons. If I agree with you, I will discard the question completely for the entire class. Even if you feel that a question should be discarded, answer it anyway.
8. Scores on this part of the examination will be determined by the total number of correct answers, not “right minus wrong”.
9. Do not assume facts not presented. Decide the questions solely on the basis of the facts as given. Facts in each question within a series, however, are cumulative: for example, the facts in Question 6 should be considered in answering Question 7.
10. Any reference to a “Rule” is a reference to a rule of the Federal Rules of Civil Procedure as in force, today, December 12, 1991.

MULTIPLE CHOICE / SHORT ANSWER QUESTIONS

1. When interpreting Article III of the United States Constitution the Supreme Court has construed “arising under” to mean:
- A: the same as the phrase means in 28 USC 1331.
 - B: “every case in which federal law furnishes a necessary ingredient of the claim even though this is antecedent and uncontested”.
 - C: “every case in which the cause of action asserted is created by federal law”.
 - D: “every case where the complaint discloses a need to determine the meaning or application of federal law”.
 - E: both C and D.

[questions 2 and 3 are based on the same fact pattern]

2. ERIE
A sues B in federal district court in California on diversity jurisdiction concerning a cause of action that arose in Montana. B moves to transfer the case to Ohio federal district court under 28 USC 1404. In deciding whether the case should be transferred to Ohio, the California federal district court should apply:
- A: California law, because it is the state in which the court is sitting.
 - B: Ohio law, because it is the state to which transfer is being requested.
 - C: Montana law, because the cause of action arose there.
 - D: Federal law.
 - E: There are insufficient facts to answer this question.
3. The California federal district court grants the motion to transfer and the case is transferred to district court in Ohio. To determine which law should govern the merits the Ohio federal district court should look to:
- A: California’s choice of law rules, because that is the state where the case originated.
 - B: Ohio’s choice of law rules, because that is where the court now sits.

- C: Montana law, because that is where the cause of action arose.
 - D: Federal choice of law rules.
 - E: There are insufficient facts to answer this question.
4. In the post Pennoyer era (prior to International Shoe) the states used three theories to attempt to assert personal jurisdiction over out of state corporations. Name two of these theories.

STATE YOUR ANSWERS ON THE ANSWER SHEET.

5. Which of the following is a false statement concerning a Rule 12(e) Motion for More Definite Statement?
- A: A Motion for More Definite Statement must point out the defects complained of and the details desired.
 - B: A Motion for More Definite Statement is appropriate where the pleading is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading.
 - C: When a Motion for More Definite Statement is granted the amended pleading must be filed within 10 days of notice of the court's order or within such other time as the court may fix.
 - D: When a Motion for More Definite Statement is denied a responsive pleading must be filed within 10 days of notice of the court's order or within such other time as the court may fix.
 - E: A Motion for More Definite Statement can be made at any time after a responsive pleading to the vague or ambiguous pleading is filed.

[questions 6 and 7 are based on the same fact pattern]

6. At the end of the summer, Mr. Fire blew all his summer earnings on a very expensive "Firedemon" car, which he purchased from Toyso Distributors of Ohio. Toyso Distributors is the retailing arm of Toyso Motors. Toyso Distributors is incorporated and does business only in Ohio. Toyso Motors is a major car manufacturer. It is incorporated in both Ohio and South Carolina and has its headquarters and major manufacturing plants in South Carolina. It ships cars to all the states, except Minnesota, New Mexico and New York.

Mr. Fire is 27 years old. He was raised in Minnesota where his parents still maintain a room for him in their house. He left Minnesota to go to law school in 1987 and is now a third year law student at Capital. He rents an apartment in German Village, and this past summer he worked for the firm of Covetous & Greedy. He has no real idea as to where he will end up after law school, but has always hated Ohio, and is currently interviewing for jobs in Minnesota, Washington D.C., and New York.

One day Mr. Fire is driving his Firedemon to his favorite class (civil procedure), when a truck, owned by Tony's Builders illegally turns in front of him. Mr. Fire puts his foot on the brake, but the brake pedal snaps. Mr. Fire hits the truck and suffers terrible injuries. Mr. Fire wishes to file suit for 1 million dollars against Toyso Distributors and Toyso Motors in federal court. Is there diversity jurisdiction?

- A: Mr. Fire can sue in federal court because there is diversity.
- B: Mr. Fire cannot sue in federal court because there is no diversity since both of the defendants are incorporated in the same state.
- C: It is impossible to determine if there is diversity until the court determines which of the two states in which Toyso Motors is incorporated is the correct state of incorporation, since a corporation can have only one state of incorporation.
- D: Mr. Fire cannot sue in federal court because there is no diversity as he works and resides in Ohio and therefore is domiciled there for diversity purposes.
- E: Mr. Fire can sue in federal court as a Minnesota citizen, because Toyso Motors does not do any business in Minnesota, and therefore there is diversity.

7. After the suit is filed in federal court, the plaintiff moves to add as a defendant Tony's Builders. Tony's Builders is a partnership. The five general partners are all from Ohio, but two of the limited partners (Tony's grandparents) are domiciled in Minnesota. The court should find that:

- A: there is no jurisdiction because the court did not have jurisdiction over the original claim and therefore cannot under 28 USC 1367 add any claim to it.

- B: there is no jurisdiction because 28 USC 1367 does not allow the plaintiff to add non diverse parties and plaintiff and the general partners are both citizens of Ohio.
- C: there is no jurisdiction because 28 USC 1367 does not allow the plaintiff to add non diverse parties and plaintiff and the limited partners are both citizens of Minnesota.
- D: there is jurisdiction because 28 USC 1367 allows the joinder of additional parties.
- E: there is jurisdiction because 28 USC 1367 overrules the decision in Owen Equipment & Erection Co. v. Kroger, holding that complete diversity is required when parties are added.

[questions 8 and 9 are based on the same fact pattern]

8. Dan is old and tired. He spent his life building up a pizza chain in Cleveland, Ohio. He sells his house in Ohio and moves to Florida where he takes up permanent residence. After two months of trying to supervise his business from Florida he decides to sell his pizza chain to Jeff, a Cleveland businessman for \$60,000. The negotiations were conducted in Cleveland by Jeff and Stan (Dan's attorney), and Stan mailed the final contract to Florida where Dan signed it and mailed it back. The contract does not provide for any on going involvement of Dan in the business. The contract provides for three payments of \$20,000 dollars each to be delivered to Stan. Stan forwards them to Dan.

The pizza business starts to fail and Jeff fails to make the second and third payments. Dan files suit for breach of contract in Florida state court. Jeff moves to dismiss claiming that the Florida court lacks jurisdiction over him. The only relevant portion of Florida's long arm statute permits the Florida courts to exercise jurisdiction over "any person who is a party to a contract of which a Florida citizen is also a party". The court should:

- A: Deny the motion to dismiss as Jeff comes within the class of persons over whom the Florida long arm statute permits Florida courts to exercise personal jurisdiction.
- B: Deny the motion because the Due Process Clause and Florida's Long Arm Statute permit the Florida court to exercise jurisdiction over Jeff.
- C: Deny the motion because Jeff chose to contract with a Florida party and therefore is subject to the jurisdiction of the Florida court under the long arm statute and the Due Process Clause.

- D: Deny the motion because Jeff chose to contract with a Florida party, the contract was executed there and the payments are mailed there, and therefore Jeff is subject to the jurisdiction of the Florida court under the long arm statute and the Due Process Clause.
- E: Grant the motion because although Jeff comes within the class of persons over whom the Florida long arm statute permits the Florida court to exercise personal jurisdiction, the statute is unconstitutional.
9. Presume the facts above with one change. Jeff sues first in Ohio in federal court on diversity grounds alleging that Dan (through his attorney Stan) made fraudulent representations to Jeff during the negotiations. The relevant part of the complaint states, “Dan, by and through his authorized agent Stan, make certain false and fraudulent representations of material facts during the sale negotiations”. Four days after being served, Dan moves to dismiss under Rule 12(b)(6) for failure to state a claim in that the plaintiff Jeff has failed to state the “circumstances constituting the fraud...with particularity” as required by Rule 9(b). The court denied the motion that same day. Ten days later Dan then moved to dismiss the complaint under Rule 12(b)(2) for lack of personal jurisdiction. Presume that Ohio’s long arm statute grants personal jurisdiction over Dan. The court should:
- A: grant the Rule 12(b)(1) motion as Dan does not have minimum contacts with Ohio.
- B: deny the Rule 12(b)(1) motion as Dan does have minimum contacts with Ohio.
- C: deny the Rule 12(b)(1) motion as it is waived.
- D: grant the Rule 12(b)(1) motion as it has not been waived.
- E: deny the motion as filed beyond the time allowed by Rule 12(b).
10. Lance is the trustee for a 23 million dollar trust whose beneficiaries are specified to be “any person who did any act of kindness for Mrs. Rich during her lifetime, including but not limited to my personal staff..”. The trust then lists the names and addresses of fourteen employees. The Rich kids challenge the trust as vague in state court. They serve notice of the action on Lance and place a newspaper advertisement in **U.S.A. Today**. The advertisement purports to give notice to all persons having any claim to the funds of the trust and restates the language of the bequest quoted above. Lance files a challenge to the constitutional sufficiency of the notice on behalf of all known or unknown beneficiaries. The relevant state

statute permits service by publication, mail or personal service in “any trust dispute”. The court should:

- A: deny Lance’s motion because personal service is not required by the state statute.
- B: grant Lance’s motion because the method selected for service was not the best possible method permitted by the state statute.
- C: deny Lance’s motion because the method selected for service was the best possible method
- D: grant Lance’s motion because the method selected was not a method reasonably certain to inform those affected, and there was a better method.
- E: deny Lance’s motion because the method selected was not a method reasonably certain to inform those affected, and no better method existed.

11. Where a defendant is asserting that she is not subject to the personal jurisdiction of a state court because of the limits imposed by the due process clause, the current test of the constitutionality of the state’s assertion of personal jurisdiction is:

- A: plaintiff must prove that defendant has minimum contacts and the burden is then on the defendant to prove that the assertion of jurisdiction would be unfair and contrary to substantial justice.
- B: plaintiff must prove that the defendant has minimum contacts and that the assertion of justice is not unfair and contrary to substantial justice.
- C: plaintiff must prove that the defendant has minimum contacts or that the assertion of jurisdiction is not unfair and contrary to substantial justice.
- D: plaintiff must prove that plaintiff has minimum contacts and the burden is then on the defendant to prove that the assertion of jurisdiction would be unfair and contrary to substantial justice.
- E: plaintiff must prove that the plaintiff has minimum contacts and that the assertion of justice is not unfair and contrary to substantial justice.

12. Brian files a complaint against Susan for libel in federal court. Brian attempts to serve Susan himself. He personally takes the complaint to Susan’s home and leaves it with Mrs. Brit a nanny who has resided with Susan for five years and cares for her thirteen kids. Susan returns home, is infuriated that Mrs. Brit has

accepted service and fires her. Susan files a motion to dismiss for insufficiency of service of process under Rule 12(b)(5). The court should:

- A: grant the motion to dismiss because service can only be made on Susan personally.
- B: deny the motion to dismiss because service was made by leaving copies with some person of suitable age and discretion then residing at Susan's dwelling house.
- C: grant the motion to dismiss because service was made by leaving copies with a person of suitable age and discretion, but who was not a permanent resident of Susan's home.
- D: grant the motion to dismiss because it was served by Brian.
- E: deny the motion to dismiss because it does not need to be served by a marshall.

13. AMENDED BY 1992, RULE CHANGES

Under Rule 15(c)(3) an amendment which changes the name of a party to an action, relates back to the date of the original pleading when (1) the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading; (2) the party to be brought in has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits; (3) the party to be brought in knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party; and (4) both (2) and (3) must be accomplished within:

- A: the time set out in the application statute of limitations.
- B: the time set out in section 4(m).
- C: twenty days.
- D: thirty days.
- E: presumably the 120 days after the filing of the complaint as set out in Rule 4(j).

14. Kent signs a copyright contract with Richard for exclusive rights to record the song "I've got an Erie feeling today". However, Kent discovers that the copyright maybe invalid as Richard allegedly committed fraud on the Copyright Office in

violation of the Federal Copyright Act. Kent refuses to pay. Richard sues in federal court alleging breach of contract and asking for a declaratory judgment of the validity of the copyright under federal law. The court:

- A: has jurisdiction because the complaint on its face states a federal question.
 - B: has jurisdiction because an issue of federal law is necessarily involved in the litigation.
 - C: lacks jurisdiction because when the claim for declaratory relief is recast as a coercive claim, it raises no federal question.
 - D: has jurisdiction because when the claim for declaratory relief is recast as a coercive claim, it raises no federal question.
 - E: lacks jurisdiction because any claim for declaratory relief must be ignored in determining if federal question jurisdiction exists.
15. Jean, a citizen of Ohio, and Fred, also a citizen of Ohio, are both crossing High Street when Brad, a citizen of Texas, runs a red light and hits them. Jean sues Brad in federal court for \$30,000 and Fred sues Brad in the same court for \$50,000. Jean and Fred contend that their claims taken together give the court diversity jurisdiction. The court should:
- A: assert diversity jurisdiction because the parties are diverse and their claims together meet the jurisdictional amount.
 - B: dismiss both claims because although the parties are diverse, neither claim meets the jurisdictional amount.
 - C: dismiss Jean's claim but assert jurisdiction over Fred's claim, because Fred's claim meets the jurisdictional amount and the parties are diverse.
 - D: dismiss Fred's claim but assert jurisdiction over Jean's claim, because Jean's claim meets the jurisdictional amount and the parties are diverse.
 - E: the court has discretion as to whether to exercise jurisdiction.
16. ERIE
The Rules Decision Act is a federal statute which:
- A: delimits the personal jurisdiction of the federal courts.

- B: indicates the law to be applied by federal courts in diversity cases.
 - C: defines the subject matter of the federal courts.
 - D: authorizes the Supreme Court to promulgate the Federal Rules of Civil Procedure.
 - E: sets out a test to distinguish between substantive and procedural law.
17. Scarlett, a citizen of Georgia, is hit by a truck driven by Rhett, a resident of New Jersey, while she is vacationing in New York. Scarlett wishes to sue Rhett in federal court for \$600,000. Where is venue proper?
- A: Only in Georgia.
 - B: Only in New Jersey.
 - C: Only in New York.
 - D: In Georgia, New Jersey and New York.
 - E: In New Jersey and New York.
18. Name two areas in which federal courts still apply federal common law:
STATE YOUR ANSWERS ON THE ANSWER SHEET PROVIDED.
19. Julia, a citizen of Ohio, is crossing Low Street in Powell, Ohio, when Bud, a citizen of Texas runs a stop sign and hits her. Julia files suit in state court in Texas for \$100,000. Bud seeks to remove under 28 USC 1441 to federal court in Texas.
- A: the state court should grant removal because the action is one over which the district court would have original jurisdiction.
 - B: the state court deny removal because defendant Bud is a citizen of Texas.
 - C: the federal court should remand the action because Bud is a citizen of Texas.
 - D: the federal court should remand the action because the cause of action arose in Ohio.

- E: the federal court should exercise jurisdiction because the action is one over which the district court would have had original jurisdiction.
20. Where one of the Federal Rules of Civil Procedure is sufficiently broad that it is in direct conflict with a state procedural rule, a federal court sitting in diversity must:
- A: apply the state procedural rule if its application would result in a substantial change in outcome as measured by its impact on forum shopping and equitable administration of justice.
- B: apply the federal procedural rule if its application would result in a substantial change in outcome as measured by its impact on forum shopping and equitable administration of justice.
- C: apply the federal rule so long as it is arguably procedural and is within the scope of the Rules Enabling Act.
- D: apply the state rule so long as it is arguably procedural and is within the scope of the Rules Enabling Act.
- E: apply the federal rule so long as it is arguably procedural and is not outcome determinative.
21. Duncan sued Macbeth for a federal antitrust violation in federal court in Ohio. The Ohio federal court lacked both personal jurisdiction over Macbeth and venue was not proper in Ohio. Pursuant to the appropriate federal provision, the Ohio court transferred the case to federal court in New York where Macbeth was subject to personal jurisdiction and venue was proper. The New York court dismissed the transferred case, jurisdiction and venue was citing to the transferring court's lack of personal jurisdiction and venue. This dismissal is appealed. The court of appeals should:
- A: uphold the dismissal because the transferring court under 28 USC 1404 must have personal jurisdiction and venue.
- B: uphold the dismissal because the transferring court under 28 USC 1406 must have personal jurisdiction and venue.
- C: reverse the dismissal because the transferring court under 28 USC 1404 need not have venue or personal jurisdiction.
- D: reverse the dismissal because the transferring court under 28 USC 1406 need not have venue or personal jurisdiction.

- E: uphold the dismissal as a transfer cannot cure a lack of personal jurisdiction.

[questions 22 and 23 are based on the same fact pattern]

22. Rebecca Sunnybrook, a citizen of Ohio, sold Mathew Blythe, a citizen of Texas, a painting for \$63,000. When Mathew does not pay Rebecca files suit in federal court. Her complaint is served on Mathew on June 1, 1991. After the requisite caption listing all the parties, the complaint states as follows:

1. Plaintiff Rebecca Sunnybrook is a citizen of the State of Ohio and defendant Mathew Blythe is a citizen of the State of Texas. The matter in controversy exceeds, exclusive of interest and costs, the sum of fifty thousand dollars.
2. Defendant owes plaintiff \$63,000 for the goods sold and delivered by plaintiff to defendant on May 31, 1991.

Wherefore, plaintiff demands judgment against the defendant for the sum of \$63,000, interest and costs.

Signed: Rebecca Sunnybrook
Sunnybrook Farm
Ohio

The complaint is:

- A: defective as it fails to comply with Rule 8(a)(1).
 - B: defective as it fails to comply with Rule 8(a)(2).
 - C: defective as it fails to comply with Rule 8(a)(3).
 - D: defective as it fails to set forth the facts constituting a cause of action.
 - E: sufficient under Rule 8(a).
23. On June 16, 1991 (fifteen days after Rebecca's complaint is served on him and before he has a chance to answer) Rebecca files and serves an amended complaint on Mathew. Mathew files and serves his answer fifteen days later on June 31, 1991.
- A: The amended complaint was filed without the consent of Mathew or leave of court and must be dismissed.

- B: The amended complaint was properly filed, but the answer is untimely because it was not filed within the 20 days required in Rule 12(a).
 - C: The amended complaint was properly filed, but the answer is untimely because it was not filed within 10 days after service of the amended complaint or within the time remaining for response to the original complaint as required by Rule 15(a).
 - D: Both the amended complaint and the answer are proper and timely under Rule 15 and Rule 12.
 - E: Neither the amended complaint nor the answer are proper and timely under Rule 15.
24. The principle that “every state possesses exclusive jurisdiction and sovereignty over persons and property within its territory [and] no state can exercise direct jurisdiction and authority over persons or property without its territory” was enunciated in:
- A: Erie R. Co. v. Tompkins
 - B: United Mine Workers of America v. Gibb
 - C: International Shoe Co. v. Washington
 - D: Pennoyer v. Neff
 - E: Swift v. Tyson
25. A direct challenge to the subject matter jurisdiction of a federal court must be raised:
- A: at or before an answer is filed as it is a Rule 8(c) affirmative defense.
 - B: at any time prior to trial.
 - C: at any time prior to judgment.
 - D: at any time prior to appeal.
 - E: at any time.

**PART TWO – ISSUE SPOTTER QUESTION
(ONE HOUR)**

INSTRUCTIONS:

1. Part two consists of one issue spotter. It counts for one third of your grade.
2. Be sure that your examination number appears on all bluebooks, which you use.
3. Please do not use pencil to write the examination.
4. Write your answer in the bluebooks provided. Write on only one side of each sheet of paper in the bluebook.
5. Leave a margin on the left-hand side of each page for me to use in grading.
6. Do not take the bluebooks or the examination copy out of the room in which you are writing.
7. Do not assume facts not given, and do not change the facts. However, if you are convinced that a question cannot be answered completely without making certain assumptions, please state clearly the nature of any assumptions on which you are relying.
8. Discuss each issue fairly raised by a fact pattern, even if your conclusion on one issue within the fact pattern seems to make discussion of another issue unnecessary.
9. In answering the question, please discuss each issue raised by the question separately. Complete in full your discussion of one issue before discussing another issue.
10. Write legibly. If I cannot read it, it will not get points.

PART TWO – ISSUE SPOTTER QUESTION (ONE HOUR)

Kermit, a citizen of Kentucky, was traveling through Kentucky at the start of a cross country tour when he lost control of his brand new motorbike, a Byko Super XL-2, after the front tire exploded. Kermit was seriously injured.

Kermit had purchased the motor bike from a specialty store, “Frogg’s Bike Store”, which sells motorbikes specifically designed for long road trips and cross country

tours. The store is owned by the famous Ms. Frogg and is located in Piggyton, Ohio. Frogg owns only the one store. Although Frogg advertises her store in USA Today, Frogg has no agents or employees outside Ohio and will not ship bikes to customers outside of Ohio.

Kermit had gone to Frogg's store because he heard of its fine reputation and wanted to get expert advice on which bike he should purchase for his cross country tour. Kermit explained to Frogg, who personally advised Kermit on his purchase, that he intended to begin a cross country tour that week leaving from his home town of Cookie, Kentucky. He even showed her the route he was going to take on a map. Frogg recommended Kermit purchase the Byko Super XL-2 because the route he intended to take involved rather mountainous terrain.

Kermit left the store with his bike, returned home to Kentucky and the next week started his cross country trip. He exactly followed the route he had discussed with Frogg, but was only two days into his trip when the tragic accident occurred on a deserted road in the western part of Kentucky.

The Byko Super XL-2 is manufactured by McByko International, a Scottish corporation, which sells over \$200 million of motorbikes in the United States each year. The sales are roughly divided between its two models, the Boyko Super XL-1 and XL-2. Both models were designed exclusively for the United States market. McBoyko International has no manufacturing plants or outlet stores in the United States, but it does have a national sales force (at least one sales agent is assigned to each state). McByko spends \$5 million dollars on national advertising in the United States each year.

The tires on Kermit's bike were made in Taiwan by Taiwan Tires, a corporation incorporated and doing business in Taiwan. Taiwan Tires ships some of the tires it manufactures to McBoyko's plants in Scotland. None of Taiwan Tires tires are sold directly in the United States. However, Taiwan Tires knew that the tires it shipped to McBoyko were used on bikes that were sent to the United States.

Kermit files a products liability claim in Kentucky state court alleging that the tire and/or the bike were defective. He names Frogg (as owner of Frogg's Bike Store), McBoyko International, and Taiwan Tires. Discuss whether the Kentucky court has personal jurisdiction over any of these defendants.

Would your answer change if the claim against Frogg was dismissed on the merits, McBoyko International settled with Kermit and the only remaining claim before the Kentucky court was a cross-claim by McBoyko against Taiwan Tires for indemnification, a claim that was subject to either Scottish or Taiwanese law?

For your information, Kentucky's long arm jurisdiction statute is set out on the next page.

KENTUCKY REVISED STATUTE, SECTION 108

“Every foreign corporation, every individual not a resident of this state of his executor or administrator, and every partnership or association, composed of any person or persons, not such residents, that shall have the necessary minimum contacts with the state of Kentucky, shall be subject to the jurisdiction of the state of Kentucky, and the courts of this state shall hold such foreign corporations and such nonresident individuals or their executors or administrators, and such partnerships or associations amendable to suit in Kentucky in every case not contrary to the provisions of the constitution or laws of the United States.”

**PART THREE – POLICY QUESTION
(ONE HOUR)**

INSTRUCTIONS:

1. Part three consists of two policy questions. You can answer either question, not both. This section counts for one third of your grade.
2. Comply with the instructions set out for Part two set out above.
3. When you are finished with the examination, please place your bluebooks on the instructor’s table at the front of the room. If you use more than one bluebook, place one inside the other and number each bluebook. Sign the sheet provided indicating you have turned in your examination.

POLICY QUESTION

ANSWER QUESTION ONE OR TWO

QUESTION ONE

“Swift v. Tyson was correctly decided and should never have been overruled in Eric R. Co. v. Tompkins. Erie forces the court into a pointless game of distinguishing procedure from substantive law and defeats the ends of federalism.”

DISCUSS. In your answer explain the rule in Swift v. Tyson and the case of Erie as elaborated on by the Supreme Court.

OR

QUESTION TWO

“The Supreme Court’s decision in Burnham v. Superior Court signals the demise of the minimum contacts analysis which has long haunted the law of personal jurisdiction. It is a death which cannot come too soon.”

DISCUSS. In your answer explain the minimum contacts test and the ruling of Burnham. Discuss if the opinion of Justice Scalia or of Justice Brennan is the most threatening to the continued viability the minimum contacts test.

HAVE A NICE HOLIDAY