

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
JULY 2021**

QUESTION 1 (100 POINTS)

Lonnie, a citizen of Louisiana, purchased a replacement roll-up door for his moving truck from Marty Movers (“Movers”), a Mississippi citizen doing business as a sole proprietor. The door was manufactured by Rollie Door Company (“Rollie”), a citizen of Texas, and installed by Movers in MS.

After Lonnie picked up his moving truck from Movers, Lonnie stopped to buy a large load of antique furniture with the intent to then deliver the furniture to his home in New Orleans. Lonnie was driving on the highway in Tangipahoa Parish, when one of the springs on the newly installed roll-up door suddenly popped, causing a loud sound. Lonnie pulled to the shoulder of the highway to make sure the roll-up door had not opened. Once Lonnie confirmed the roll-up door was closed, he got back into the cab of the truck. Before he drove off, his moving truck was struck by a large pickup truck driven by Albert, a citizen of Alabama. Lonnie suffered more than \$150,000 in property and personal injury damages.

Lonnie filed a suit in state court in Tangipahoa Parish on January 4, 2021, against Rollie, Movers, and Albert. Long arm service was made on Rollie on February 10, 2021 and on Movers on March 16, 2021. Lonnie’s initial attempts to serve Albert were unsuccessful, but Lonnie continued his efforts. Rollie and Movers discussed the matter and decided that they would prefer the case be heard in a federal court. Rollie and Movers were nervous that a deadline might be missed if they waited to hear from Albert, so Rollie and Movers took action on April 9, 2021 to remove the case to federal court.

- 1.1 What procedure and requirements should Movers and Rollie have followed to remove the case to federal court? To which federal court may the case be removed? Explain fully. (20 pts)**
- 1.2 Lonnie believes there are procedural defects in the removal. What must Lonnie file to seek a return of the case to state court? What time limits, if any, does Lonnie face? Explain fully. (7 pts)**
- 1.3 Lonnie timely submitted a proper filing to raise objections to the removal. Lonnie claims that the removal was defective because (1) Albert did not join in the removal, (2) the removal was untimely, and (3) the removal was improper because the plaintiff is a citizen of the forum state. Is each of these objections valid? Explain fully. (30 pts)**

TEST CONTINUES ON NEXT PAGE

For the remaining questions 1.4 – 1.7, assume the case remains in federal court.

- 1.4** Lonnie learned that Marty, the sole proprietor of Movers, purchased a new home in Louisiana shortly before Lonnie filed suit. Lonnie believes that this means there is a lack of complete diversity among the parties. On June 15, 2021, Lonnie filed a motion to challenge the removal for lack of complete diversity. The defendants contend that Lonnie’s arguments are untimely. How should the court rule on the defendants’ argument that Lonnie’s motion is untimely? Explain fully. (10 pts)
- 1.5** A Louisiana statute provides that a party in possession of audio or video recordings of another party, such as made by an investigator, must provide them to the recorded party before taking a deposition of the recorded party. A second Louisiana statute provides that a plaintiff seeking to recover damages for antique furniture damaged by another party may not recover more than the “Kovels’ Antiques and Collectibles Price Guide” value of the furniture, even if the plaintiff can prove that the furniture is more valuable. No federal law includes any such discovery requirements or damage limitations.
- Lonnie believes that the defendants have video surveillance of him and that his newly purchased furniture was much more valuable than the Kovels’ listing. Should the federal court apply either of the two state statutes in Lonnie’s case? Explain fully. (15 pts)
- 1.6** Albert believes that the only reason his truck struck Lonnie’s was that Albert was forced to the shoulder of the highway by an 18-wheeler owned and operated by Cajun Transportation, Inc. (CTI), a Louisiana corporation. What pleading should Albert file to assert a claim against CTI, and would the federal court have subject-matter jurisdiction over the claim? Explain fully. (10 pts)
- 1.7** Lonnie, on learning from Albert that CTI may have contributed to his damages, would like to assert his own claims against CTI. May Lonnie amend his complaint to add CTI as a defendant? Explain fully. (8 pts)

[End of Federal Jurisdiction and Procedure Test]

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
FEBRUARY 2021**

QUESTION 1 (100 POINTS)

**PART A
(70 Points)**

Fun Stuff, Inc. (FSI) develops and brings to market creative consumer products. FSI is incorporated in New York (NY) and registered to do business in Texas (TX), Louisiana (LA), and Mississippi (MS). Ann, who lives in LA, owns 75% of FSI stock. One minority shareholder owns the other 25%, and he lives in California (CA).

FSI's manufacturing facilities are in MS, and they generate about 80% of the company's revenues. The facilities employ more than 50 workers. An accountant and her assistant handle payroll, taxes, and personnel matters from an office in Bentonville, Arkansas (AR). They occasionally encounter a difficult issue and look to Ann for guidance to resolve it.

FSI's latest invention is a new process for coating silk neckties with a material that does not affect their appearance or feel but makes them repel food and water so that they will not stain. FSI's facility is not equipped to produce ties with the new process, so FSI contracted with Klutzy, LLC (Klutzy) to produce the ties, and distribute them to retailers.

All of Klutzy's management team and manufacturing facility are located in AR, and it is licensed to do business in TX, LA and MS, where it also distributes products. Klutzy is a limited liability company organized under Delaware (DE) law and has two members. Tim, who lives in TX, owns a 90% interest in Klutzy. Pete, who owns the remaining 10%, has lived in Georgia (GA) his entire life but moved to Florida (FL) eight months ago to care for his ailing father. Pete decided not to sell his home in GA but leased it to a friend for one year, subject to possible renewal. He returns every six weeks or so to check on things, but he has registered his automobile in FL and votes in FL. He is not sure whether he will return to GA, and he is undecided whether he will continue to live in FL after his father recovers or passes away. Physicians say it will be several more months before his father's health matter is resolved, and Pete is determined to stay at least until that resolution.

The contract between FSI and Klutzy requires that Klutzy keep the coating process confidential and not use it on any other line of neckties. FSI learned that Klutzy was nonetheless using the process on a line of ties that it marketed under the name Hipster Neckwear. FSI demanded that Klutzy cease production of the Hipster Neckwear, and Klutzy did so because it did not want to disrupt its otherwise profitable contractual arrangement with FSI.

TEST CONTINUES ON NEXT PAGE

FSI was not satisfied and filed suit in LA federal district court against Klutzy and prayed for recovery of the \$73,000 in profits Klutzy earned from sales of the Hipster Neckwear plus attorney fees under a Louisiana statute that allows an award of reasonable fees to the prevailing party in a case where a trade secret has been misappropriated.

Questions 1.1 – 1.3 are based on the facts set forth above.

1.1 Does the federal district court have subject-matter jurisdiction over FSI's claims against Klutzy? Explain fully. (40 points)

FOR QUESTIONS 1.2-1.3, ASSUME THAT THE FEDERAL COURT HAS SUBJECT-MATTER JURISDICTION OVER FSI'S CLAIMS AGAINST KLUTZY.

1.2 Klutzy, in the course of investigating its relationship with FSI, determined that Klutzy had inadvertently overpaid FSI \$25,000 in royalties on tie sales. Klutzy wants to attempt to recover that amount from FSI without having to file a separate suit.

What procedural device should Klutzy use to assert its claim against FSI in the federal suit? Explain fully. (12 points)

1.3 Tess, a citizen of Texas, is a former employee of FSI who was primarily responsible for inventing the silk coating process. As part of her severance package, FSI gave Tess a 10% interest in FSI's profits from the use of the silk coating process on neckties. Tess would like to assert a claim against Klutzy for her share of proceeds from the Hipster Neckwear sales.

What procedural device should Tess use to assert her claim against Klutzy in the federal suit? Explain fully. (18 points)

TEST CONTINUES ON NEXT PAGE

PART B
(30 points)

Tabitha, a citizen of Tennessee, opened a needlepoint supply store in a Louisiana (LA) town where there were three competing stores. The other stores began holding frequent sales, which caused Tabitha's store to struggle. She believed the other owners, all LA citizens, had conspired against her in violation of the Louisiana Unfair Trade Practices Act (LUTPA). She filed suit against the three competing owners in LA federal court based on diversity jurisdiction.

In addition to containing sufficient allegations as to subject-matter jurisdiction and venue, Tabitha's complaint alleged:

- (1) Plaintiff opened a needlepoint supply store and priced her goods at a fair markup.
- (2) Competing stores in town began holding sales, one after the other, so that one of them always offered the same goods for a lower price.
- (3) Plaintiff is of the belief that the three defendant owners conspired to structure their sales in the manner most harmful to Plaintiff's business, in violation of LUTPA.

The defendants' lawyers filed a motion to dismiss pursuant to Rule 12(b)(6) on the grounds that the complaint failed to state a claim on which relief may be granted. The defendants acknowledged that a person may state an actionable claim under the LUTPA based on an unfair conspiracy to restrain trade, but they argued that Tabitha's complaint was too conclusory to plead such a claim.

Question 1.4 is based on the facts set forth above.

1.4 What legal standards should the court apply when assessing defendants' motion? Should the court grant or deny defendants' motion? Discuss. (30 points)

[End of Federal Jurisdiction and Procedure Test]

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
OCTOBER 2020**

QUESTION 1 (100 POINTS)

PART A (40 POINTS)

Todd who lives in Austin, Texas (TX), and Luke, who lives in Houma, Louisiana (LA), are artists who jointly design and create paintings and sculptures with a Louisiana theme. They sell the items to stores and galleries.

When the two artists began their business relationship, they talked to Todd's sister, a Delaware (DE) lawyer, and she organized for them a DE limited partnership named ToLu, LP, with Todd and Luke as limited partners. Todd's sister is listed as the agent for service, and her DE law office address is listed as the partnership's registered office. The general partner is Everyday Art, Inc., a New York (NY) corporation, the shares of which are owned 50/50 by Todd and Luke. The corporation engaged in no activity except to hold the general partnership interest in ToLu, LP. Todd takes care of Everyday Art's few tax records and corporate records from his home office in Austin.

Todd and Luke, operating as ToLu, LP, were approached by Gabby, the owner of Bizart, Inc. (Bizart) about a large purchase of their artwork. Bizart is a DE corporation that operates a chain of stores in LA, Mississippi (MS), and Alabama (AL). Gabby, who lives in Lafayette, LA, owns 100% of the stock in Bizart, and she makes all the important decisions. She commutes three times a week to Bizart's office in Bay St. Louis, MS. The office has three employees who handle payroll, taxes, and the general business operations of the three-state chain of stores. Five of Bizart's nine stores are in LA, and the LA stores account for about 75% of sales.

ToLu, LP and Bizart, Inc. entered into a contract that calls for Bizart to purchase from ToLu a large quantity of artworks, for which Bizart is to pay \$2,000 per month for 60 months. During that five-year period, the contract prohibits ToLu from selling any similar artworks to another dealer.

Soon after the contract was signed, Luke had a stroke. He was hospitalized in Houma for a week, then transferred to a Jackson, MS rehabilitation facility, where he has been for the past several months. Luke's physicians say his recovery is uncertain, but Luke says he is determined to make a comeback, and he has continued to pay the mortgage on his Houma home so that it is ready for him when he is well.

TEST CONTINUES ON NEXT PAGE

Bizart made timely payments of \$2,000 a month for 12 months, but the payments stopped and Bizart became three months in arrears. When ToLu made demand for payment, Bizart responded through its attorney that similar pieces of art produced by ToLu had been seen in competing galleries and thus that Bizart considered ToLu to be in breach of the contract and thus did not intend to make any additional payments to ToLu.

ToLu has just filed a complaint against Bizart in a Louisiana federal district court for damages from a breach of contract by Bizart and for a declaration that the contract continues to be in effect.

Bizart has filed a proper objection to the court's diversity subject matter jurisdiction.

- 1.1 Is Bizart's objection to diversity subject matter jurisdiction likely to succeed? Explain fully. (40 points)**

PART B (30 POINTS)

Missy, a Mississippi (MS) citizen, purchased a prescription drug from Magnolia Pharmacy, Inc., a MS corporation. Missy soon suffered liver damage, which she blamed on the drug. Two weeks ago, she filed suit in a MS state court against both Magnolia Pharmacy and Pharma, Inc., the New Jersey (NJ) manufacturer of the drug. Missy's state court petition alleges a claim against Pharma under MS's products liability act on the grounds that the drug was unreasonably dangerous in composition. The petition alleges that the unreasonableness is demonstrated by the fact that the manufacturing tolerances allowed by Pharma did not comply with federal drug safety regulations.

Missy's petition was just served on Pharma. Pharma's attorney has reviewed MS law and finds that it provides that a retailer may not be liable unless it knew or should have known of the dangerous potential of a product. Missy's petition does not include any such allegations against Magnolia Pharmacy.

- 1.2 Does Pharma have a basis to remove the case to federal court under diversity jurisdiction? Explain fully. Set forth the applicable standard the federal court is to apply in determining whether to permit the removal. (18 points)**
- 1.3 Does Pharma have a basis to remove the case to federal court under federal question jurisdiction? Explain fully. (12 points)**

TEST CONTINUES ON NEXT PAGE

PART C (30 POINTS)

Pam has filed a complaint in federal court alleging that defendant, Dan, ran a red-light traffic signal, crashed into Pam's car, and caused more than \$200,000 in property and personal injury damages. Pam and Dan are citizens of different states.

Dan has filed a motion for summary judgment. The motion is supported by Dan's affidavit, in which Dan testifies that he was watching the traffic signal and saw that he had a green light when he entered the intersection. Dan asks for summary judgment on the grounds that the evidence shows he was not at fault in causing the accident.

Pam, in turn, filed a memorandum in opposition to Dan's motion for summary judgment. In support, Pam also filed her own affidavit testimony. Pam testified that she had no recollection of the accident, but that her passenger, Will, was by Pam's bedside when Pam awoke in the hospital, and that Will immediately told Pam that Will distinctly saw that Pam had a green light at the intersection.

1.4 Should the court grant the motion for summary judgment? Set forth the applicable standard for assessing a motion for summary judgment and analyze the submissions of both Pam and Dan under the applicable rules in coming to your conclusion. (30 points)

[End of Federal Jurisdiction and Procedure Exam]

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
AUGUST 2020**

QUESTION 1 (100 POINTS)

Sturdy Sheds, LLC (Sturdy Sheds) is a Louisiana limited liability company that specializes in the design, manufacturing and sales of packages for assemble-yourself, unconstructed sheds for residential use. A Sturdy Sheds shed package contains all the parts for the shed and detailed instructions for assembling and erecting the shed, but the purchaser is responsible for assembling and erecting the shed.

Fifty percent (50%) of Sturdy Sheds is owned by Barn Doors, Inc. (Barn Doors), which is incorporated in Delaware (DE). All shares of Barn Doors are owned by Joseph, an individual who lives in New York (NY). Barn Doors' executive office is located in NY, but Barn Doors' vice presidents who oversee all daily operations are in Barn Doors' Florida (FL) office. Barn Doors has manufacturing facilities in FL, Alabama (AL) and Mississippi (MS).

The other 50% of Sturdy Sheds is owned by Bucks, L.P., a limited partnership organized under Louisiana law. Its sole general partner is Tex, who has always lived in Houston, Texas (TX); its sole limited partner is Cal, who has always lived in San Diego, California (CA).

Plaintiff, a long-time resident of Lafayette, Louisiana (LA), recently decided to purchase and construct a Sturdy Sheds shed in his back yard to protect his five-year old tractor, which he had personally customized over the past several years with various improvements. Plaintiff ordered a shed package from Sturdy Sheds over the internet for \$10,000, and Sturdy Sheds then had a common carrier deliver the shed package to Plaintiff's home. Plaintiff promptly assembled and erected the shed. Shortly thereafter, while Plaintiff was sitting on his tractor in his new shed, heavy winds caused the roof to cave in and severely injure Plaintiff. The shed was completely destroyed. The damage to Plaintiff's tractor is estimated at \$45,000. His medical bills will total \$15,000. Plaintiff has also suffered several months of serious pain during his recovery, and his doctors say he will have lifelong knee pain because of the accident.

Following the accident, Plaintiff moved in with his son in FL so that his son could look after him during his recovery. Plaintiff let a friend look after his home in LA. Plaintiff was able to work from his son's home, so he did not suffer any lost wages. Plaintiff found prospects for a great job in FL and has enjoyed having his son care for him during the first six months of recovery. Doctors state that Plaintiff will be recovered enough to care for himself soon, but Plaintiff is undecided where he will live after that.

TEST CONTINUES ON NEXT PAGE

Plaintiff has filed a complaint against Sturdy Sheds in a Louisiana federal district court. The complaint identifies the cost of the shed, the estimated dollar amount of the damage to Plaintiff's tractor and the amount of his medical bills, but it does not describe the nature or extent of his personal injuries. The complaint prays for an award of all damages to which Plaintiff is entitled.

Answer the following questions; a correct answer without an explanation or discussion will not be awarded any points.

- 1.1 Does the federal district court in Louisiana have subject matter jurisdiction over Plaintiff's complaint? Explain fully. (25 points)
- 1.2 Does the federal court in Louisiana have personal jurisdiction over Sturdy Sheds? Would your answer change if Plaintiff, rather than accepting delivery of the shed package at his home in LA, drove to Sturdy Sheds' facility in MS to select and purchase the shed package and then personally drove it back to his home? Explain fully. (15 points)

FOR ALL OF THE REMAINING QUESTIONS, ASSUME THAT THE LOUISIANA FEDERAL DISTRICT COURT HAS SUBJECT MATTER JURISDICTION OVER PLAINTIFF'S COMPLAINT AND PERSONAL JURISDICTION OVER STURDY SHEDS.

- 1.3 *For question 1.3 only*, assume that a Louisiana statute provides that a plaintiff may not recover more than the "Agricultural Blue Book" value of a destroyed tractor even if the plaintiff can prove that the tractor was more valuable; that federal law does not include any such damage limitations; and that Plaintiff believes that modifications to his tractor made it much more valuable than the Agricultural Blue Book listing. Should the federal court apply the Louisiana statute in Plaintiff's case? Explain fully. (10 points)
- 1.4 *For question 1.4 only*, assume that more than a year after the suit was filed and after an answer has been filed and much discovery has been conducted, Barn Doors moved both its executive office and its vice presidents to LA and that Sturdy Sheds promptly then filed a motion to dismiss for lack of subject matter jurisdiction. Should the court grant Sturdy Sheds' motion to dismiss? Explain fully. (10 points)
- 1.5 *For questions 1.5 and 1.6 only*, assume that the suit was originally filed by Plaintiff in Louisiana state court. What procedure and requirements must Sturdy Sheds follow to remove the case to federal court; and to which federal court may the case be removed? Explain fully. (25 points)

TEST CONTINUES ON NEXT PAGE

1.6 *For question 1.6 only, assume that the case is removed as described in question 1.5 above, but that the removal occurred within thirty days after Plaintiff answered discovery which first disclosed that his damages would exceed \$75,000, but these discovery answers were provided after much delay by Plaintiff, more than a year after the suit was filed.*

- a) What steps must Plaintiff take to seek a return of the case to state court?
- b) What effect, if any, would the delay of Plaintiff in answering discovery have on the removability of the case?
- c) What is the effect, if any, on Plaintiff's action if he takes steps to return the case to state court 40 days after the removal?

Explain fully. (15 points)

[End of Federal Jurisdiction and Procedure Test]

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
FEBRUARY 2020**

QUESTION 1 – 36 POINTS

Larry, a lifelong resident of Louisiana, owns a facility in Baton Rouge to produce and sell hot sauce. Four years ago, while on vacation in Florida, he met Adam, who also lived in Louisiana. Larry learned that Adam owned Umbrella Corp. (UC), which had an interest in GlassCo LLC (GlassCo), which manufactured glass bottles for food products. Larry was looking for a reliable supplier of glass bottles for his hot sauce business. Although Adam lived in Louisiana, none of his companies did any business in Louisiana, so Adam was interested in a new business prospect in Louisiana. The next week, Larry and GlassCo signed a five-year contract for GlassCo to supply all the glass bottles Larry would need for his hot sauce business.

The relationship went well until a few months ago, when a GlassCo delivery driver damaged Larry's loading dock and caused \$50,000 in property damage. Larry attempted to get GlassCo to pay for the damage, but GlassCo suddenly stopped communicating with him and stopped its deliveries to him even though over a year remained on its supply contract with Larry. Larry calculated that his damages in lost sales and increased expenses to obtain glass bottles elsewhere will amount to \$60,000.

GlassCo is a limited liability company organized under Louisiana law that operates manufacturing facilities in Alabama and Mississippi. It is licensed to do business in those two states as well as in Florida and Georgia.

The sole member of GlassCo is Bottles-R-Us, LP (Bottles), a partnership in commendam organized under Louisiana law. Its general partner is UC, which is incorporated in Delaware. Adam is the president of UC and owns 100% of its stock. UC also owns shopping centers in Florida and Texas. The other two officers of UC handle the daily affairs of the business of both UC and GlassCo from an office in Gulfport, Mississippi, which Adam calls daily from his home in Louisiana and visits twice a month to go over reports. GlassCo was never able to develop any other customers in Louisiana besides Larry.

The limited partner in Bottles is Billy, Adam's younger brother. Billy lived with his parents in Jackson, Mississippi all of his life. But for the past three years, he has been living in Baton Rouge, where he attends Louisiana State University as an undergraduate student. Billy still goes home to visit his parents for every holiday. He plans to graduate in one year. He is undecided what career he will pursue, but he is giving a strong consideration to staying in Louisiana to attend graduate school.

Larry filed a complaint against GlassCo in Louisiana federal court. The complaint prays for a jury and alleges two claims under Louisiana law: a tort claim for \$50,000 for damage to the loading dock and a breach of contract claim for \$60,000 in damages. Promptly after it was served with Larry's complaint, GlassCo filed a motion to dismiss both for lack of subject matter jurisdiction and for lack of personal jurisdiction over GlassCo.

Questions 1.1 to 1.3 are based on the facts above. Please use paragraph breaks to separate the major components of each answer to the following questions:

- 1.1 Does the federal court have diversity subject-matter jurisdiction over Larry's case against GlassCo? Explain fully. (25 points)**
- 1.2 Does the Louisiana federal court have general personal jurisdiction or specific personal jurisdiction over GlassCo for Larry's case against GlassCo? Explain fully. (6 points)**

- 1.3** *Assume for Question 1.3 that the federal court denied GlassCo’s motion to dismiss. A Louisiana statute requires a party who requests a jury to post \$2,500 security to cover the cost of summoning and paying the expenses of the jurors. Another Louisiana statute provides that a person who breaches a written contract to provide components to a company that fits the definition of a small manufacturer is subject to an additional 10% damages payable as a civil penalty. Larry meets the definition of a small manufacturer and properly amended his complaint to assert a claim for the 10% penalty.*

Should the federal court apply to Larry’s case:

- (a) the Louisiana statute that requires a party who requests a jury to post security?**
- (b) the Louisiana statute that provides for an additional 10% damages?**

Explain each answer fully. (5 points)

[End of Question 1]

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
FEBRUARY 2020**

QUESTION 2 – 44 POINTS

Brian, a citizen of Arkansas (AR), was shopping at Food Mart in Shreveport, Louisiana (LA) on April 12, 2015 when he slipped on a puddle of water near the restroom and fell. On May 1, 2015, Brian filed a petition against Food Mart, a LA corporation with stores only in LA, in LA state court in Shreveport. His petition, consistent with LA law, did not demand a particular amount of damages, and the petition offered no greater description of Brian's injuries than to state that he had "suffered physical injuries as a result of the fall."

Brian delayed serving his petition on Food Mart until August 3, 2015. Food Mart promptly served discovery requests on Brian to learn the details about his injuries, but he requested several extensions of time and in answers to interrogatories stated only that he had suffered back injuries for which he continued to receive treatment. After additional delay, Brian eventually produced his medical records to Food Mart on June 1, 2016. The records showed that Brian suffered two ruptured discs and that his treating physician told him soon after the accident that he would need expensive surgery and lengthy rehabilitation. The production of the medical records was accompanied by Brian's settlement demand for \$450,000. Food Mart, receiving this first indication that the amount in controversy would support diversity jurisdiction, removed the case to federal court 27 days later on June 28, 2016.

Questions 2.1 to 2.8 are based on the facts above. Please use paragraph breaks to separate the major components of each answer to the following questions:

- 2.1 What procedure and requirements must counsel for Food Mart follow to remove the case to federal court? Explain fully, and indicate the federal court to which the case may be removed. (8 points)**
- 2.2 What objections might Brian reasonably raise to the removal, and is he likely to succeed? Explain fully. (8 points)**
- 2.3 If Brian wants the case returned to state court, what must Brian file in the federal court? (2 points)**
- 2.4 Describe the effect, if any, if Brian makes his filing on August 5, 2016. (4 points)**
- 2.5 Assume for this question only that Brian filed a timely motion to object to the removal and that the only objection Brian raised was the timeliness of the removal. What is Food Mart's best argument to overcome that objection? (4 points)**

Assume for Questions 2.6 to 2.8 that the case remains in federal court.

- 2.6 The owner of Food Mart met with an attorney to discuss a defense to the lawsuit. The attorney asked the owner to gather up all paperwork and records Food Mart had relating to the store's maintenance and clean-up procedures and send them to the attorney. Food Mart's owner later delivered the business records to the attorney along with a letter in which the owner explained what was included in the business records and why he believed Food Mart did not follow proper procedures the day of the accident. The attorney reviewed the records and determined that they would not be useful to a defense of the lawsuit.

Brian served Food Mart with a request for production of documents that asked for "all correspondence, emails, and business records of any kind that reference or are related to maintenance and clean-up procedures implemented by Food Mart."

In response to Brian's request, must Food Mart produce:

- (a) the letter from Food Mart's owner?
- (b) the business records Food Mart delivered to its attorney?

Explain each fully. (6 points)

- 2.7 Food Mart filed a summary judgment motion supported by an affidavit from a Food Mart employee, who stated that he saw Brian near the restroom and that Brian never slipped or fell. Food Mart also submitted an affidavit from Brian's former parole officer, who stated that Brian had been convicted three years earlier for perjury after Brian offered false alibi testimony at a friend's burglary trial.

Brian opposed the motion. Although he submitted no affidavit of his own, his attorney's opposition memorandum pointed to the allegations in Brian's original petition and surmised that the employee must have looked away before Brian fell.

- (a) What is the applicable standard for assessing Food Mart's motion for summary judgment?
- (b) How should the submissions of the parties be analyzed under the applicable standard?
- (c) How should the court rule on the motion?

Explain each answer fully. (8 points)

- 2.8 Assume that Brian's opposition to Food Mart's motion for summary judgment included his own affidavit in which he stated that he did slip and fall in the puddle of water, just as alleged in his complaint. Should this additional item affect how the court should rule on Food Mart's motion? Explain fully. (4 points)

[End of Question 2]

**LOUISIANA BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
FEBRUARY 2020**

QUESTION 3 – 20 POINTS

The following subject matters were tested in this multiple choice section:

Amendments to pleadings; supplemental jurisdiction
Discovery
Initial disclosures under FRCP 26
Interpleader
Removal; joining of defendants
Res judicata
Timing of appeals; interlocutory dismissals
Subject matter jurisdiction (2 questions)
Venue

[End of Question 3]

END OF FEDERAL JURISDICTION AND PROCEDURE TEST

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
JULY 2019**

QUESTION 1 – 40 POINTS

Florence, a long-time resident of Jacksonville, Florida (FL), decided that after many years of saving, she was going to build a swimming pool at her home. She hired PoolCo, LLC (“*PoolCo*”) to build the pool. PoolCo is a Florida limited liability company with two members: Pool Builder, Inc. and Extra Capital Investments, L.P.

Pool Builder, Inc. (“*Builder*”) is a corporation organized in Delaware (DE). All shares of Builder are owned by Al, who lives in Alabama (AL). Builder’s executive office is in FL, but Builder’s four senior vice presidents who oversee all daily operations are in Builder’s AL office. Builder also has manufacturing facilities in three states: AL, FL and Mississippi (MS).

Extra Capital Investments, L.P. (“*Extra Capital*”) is a partnership organized under FL law. Extra Capital’s general partner is Easy Money, LLC (“*Easy Money*”), also a FL limited liability company. Tex, who lives in Texas (TX), is Easy Money’s sole member. The sole limited partner of Extra Capital is Gigabucks, Inc. (“*Gigabucks*”), a Georgia corporation with its principal place of business in Savannah, GA.

PoolCo completed Florence’s pool on December 1, 2017. Later that day, she turned on the pool’s heater. Unfortunately, the heater exploded, injuring Florence. Florence has had to miss work and has experienced several months of serious pain and suffering during her recovery.

Following the accident, Florence moved in with her boyfriend in GA so that he could look after her during her recovery. Florence let her neighbor look after her FL home while she was away. Florence misses her friends in FL but has enjoyed seeing her boyfriend every day. Florence is undecided whether she will stay in GA.

Florence filed a complaint against PoolCo on March 1, 2018, in AL state court in Mobile, Alabama. Consistent with AL law, her complaint did not demand a particular amount of damages and offered no greater description of her injuries than to state that she “sustained damages and physical injuries as a result of the explosion.”

Florence delayed service on PoolCo until August 1, 2018. PoolCo attempted to conduct discovery to learn the details about Florence’s damages and injuries, but Florence requested several extensions of time and said in answers to interrogatories only that she had suffered skin damage for which she continued to receive treatment. Florence eventually produced her medical records to PoolCo on March 1, 2019. The records showed that Florence suffered severe burns and damage to her eyes and that her treating physician told her soon after the accident that she would need expensive surgery and lengthy rehabilitation. The production of the medical records was accompanied by Florence’s settlement demand for \$375,000. PoolCo, receiving this first indication that the amount in controversy would support removal, wants to remove the case to federal court.

- 1.1. Does the federal court have subject matter jurisdiction over Florence’s complaint? Discuss. (15 points)**
- 1.2. Describe in detail the procedure and requirements PoolCo must follow to remove the case to federal court. To which federal court may the case be removed? (5 points)**

Solely for questions 1.3.–1.6. below, assume that PoolCo removed the case to federal court on March 26, 2019 and that PoolCo is an Alabama corporation with its principal place of business in Alabama.

- 1.3. What objections, if any, might Florence raise to the removal? Discuss. (5 points)**
- 1.4. What must Florence file to seek a return of the case to state court? What time limits, if any, does she face? Discuss. (5 points)**

TEST CONTINUES ON NEXT PAGE

Solely for questions 1.5. and 1.6. below, assume that Florence did not seek a return of the case to state court.

Shortly after the case was removed to federal court, PoolCo's risk manager met with an attorney to discuss a defense to the lawsuit. The attorney asked that the relevant PoolCo personnel gather up all paperwork and records PoolCo had related to the pool heater and send them to the attorney. This risk manager later delivered the business records to the attorney along with a letter in which the risk manager explained why he believed PoolCo did not properly install the heater and explained what was included in the business records.

Florence served PoolCo with a request for production of documents that asked for "all correspondence, emails, or business records of any kind that reference or are related to the heater installed by PoolCo."

- 1.5. In response to Florence's request for document production, must PoolCo produce either (1) the letter from PoolCo's risk manager or (2) the business records PoolCo's risk manager delivered to PoolCo's attorney? Discuss. (5 points)**

- 1.6. More than a year after the suit was filed, and after an answer was filed and discovery conducted, PoolCo moved its principal place of business to FL. PoolCo then filed a motion to dismiss for lack of subject matter jurisdiction arguing that Florence and PoolCo are now non-diverse. Should the court grant PoolCo's motion to dismiss? Discuss. (5 points)**

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
JULY 2019**

QUESTION 2 – 40 POINTS

Plaintiff, a Louisiana (LA) resident, recently started a health-conscious, prepared-meals service for his customers. Each prepared meal contains at least two vegetables and is guaranteed to contain organic ingredients only. Plaintiff always buys his vegetables from Defendant, a Colorado (CO) citizen who certifies that all his vegetables are organic and pesticide-free. The two have never spoken to one another and the transactions have been done entirely online. Defendant sells his vegetables to customers in all fifty states, with no particular focus on any state. Defendant advertises his vegetable business in national food and health publications.

Plaintiff purchased a large order of kale to complete meals for several clients in LA. Two days after one client ate the meal containing the kale, the client became severely ill. The client remained in the hospital for over a week and suffered damage to his kidneys due to severe dehydration. The client asserted that the kale was contaminated with a pathogen and also contained a type of non-organic fertilizer used to increase the shelf-life of the kale.

Plaintiff promptly settled a claim with the client for \$200,000 with an arrangement that, in an effort for Plaintiff to obtain reimbursement for this payment, allowed Plaintiff to pursue the client's claim directly against Defendant. Plaintiff filed a diversity jurisdiction complaint against Defendant in LA federal court and alleged that Defendant was responsible for his client's illness due to the pathogen and for falsely advertising the vegetables as being organic.

Defendant lived in LA from 2005-2012, before he moved to CO to start his vegetable business. He still visits relatives in LA several times a year and has attended a week-long vegetable seminar in LA each of the last four years. Defendant has informed his relatives on multiple occasions that he plans to retire back to LA in a couple of years.

Research revealed that the fertilizer used on the kale was FDA approved, and zero cases of food poisoning were reported during testing. Defendant's lawyer also discovered that, under relevant federal law, a farmer may claim that a product is organic if the fertilizer used is FDA approved. With this information, Defendant's attorney believed that the complaint has no basis in fact and thus filed a motion for sanctions under Rule 11. Defendant's lawyer also filed a motion to dismiss pursuant to Rule 12(b)(6). But the federal court denied both motions and ruled that it could exercise both general and specific personal jurisdiction over Defendant.

It took two more years to complete discovery, which also suggested that Rancher, a CO citizen, actually caused approximately \$10,000 of the damages. Rancher supplied horse manure used by Defendant as fertilizer on one of Defendant's kale patches. Discovery suggested the fertilizer may have been tainted and may have caused the illness at the genesis of this dispute. With leave of court, Defendant filed a third-party complaint against Rancher for the \$10,000, and Plaintiff filed an amended complaint that added Rancher as an additional defendant on the same basis. Rancher moved to dismiss both Defendant's third-party complaint and Plaintiff's amended complaint for lack of subject-matter jurisdiction, but the federal court denied Rancher's motions.

After Plaintiff was fully heard, Defendant's attorney made a motion pursuant to Rule 50 for judgment as a matter of law. The federal court also denied this motion. On April 10th, the jury later returned a verdict that found that neither Defendant nor Rancher was liable. On April 11th, the clerk of court docketed and filed the verdict into the record for the case. On April 15th, the judge signed a judgment of dismissal. On April 16th, the clerk of court entered the judgment in the docket for the case.

- 2.1. a. Was the federal court correct in exercising general personal jurisdiction over Defendant? Discuss.**
- b. Was the federal court correct in exercising specific personal jurisdiction over Defendant? Discuss.**

(15 points)

TEST CONTINUES ON NEXT PAGE

- 2.2. What legal standards should the court have applied when assessing Defendant's motion to dismiss pursuant to Rule 12(b)(6)? Discuss. (5 points)
- 2.3. Defendant's attorney recalls that with regard to the motion for sanctions, Rule 11 includes what is commonly known as the "21 day safe harbor provision." Explain what Defendant's attorney must do to comply with the Rule 11 safe harbor provision. (7 points)
- 2.4. a. Was the federal court correct in exercising subject-matter jurisdiction over Defendant's third-party complaint against Rancher? Discuss.
- b. Was the federal court correct in exercising subject-matter jurisdiction over Plaintiff's amended complaint adding Rancher as a defendant? Discuss.
- (5 points)
- 2.5. What legal standard should the federal court have applied when assessing Defendant's motion for judgment as a matter of law pursuant to Rule 50? Discuss. (5 points)
- 2.6. What is the latest date for Plaintiff to file a timely notice of appeal? Discuss. (3 points)

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
JULY 2019**

QUESTION 3 – 20 POINTS

For each of the following ten multiple choice items, select the letter that corresponds to the correct answer.

- 3.1. Interpleader
- 3.2. Improper joinder to defeat diversity
- 3.3. Joinder of non-diverse party
- 3.4. Initial disclosures under FRCP 26
- 3.5. Scope of discovery
- 3.6. Removal
- 3.7. 11th Amendment immunity
- 3.8. Appeal
- 3.9. Personal jurisdiction; timing of raising objections
- 3.10. Venue

[End of Question 3]

END OF FEDERAL JURISDICTION AND PROCEDURE TEST