

**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]

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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
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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]

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**LOUISIANA STATE BAR EXAMINATION
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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]

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**LOUISIANA STATE BAR EXAMINATION
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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

**LOUISIANA BAR EXAMINATION
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FEBRUARY 2019**

QUESTION 1 – 40 POINTS

Molly lives with her family on a farm in central Mississippi (MS). The farm keeps Molly and her family close to home most of the time, but once a year they travel across Louisiana (LA) to Texas (TX), where the family takes in a weekend of auto racing. The family usually stops for the night in Shreveport, LA. Molly and her husband also make a trip every two years to the French Quarter in New Orleans, LA. The only other time the family ventures from the farm is the annual Thanksgiving dinner at Molly's brother's home in Monroe, LA.

While returning from a race weekend, Molly saw a sign advertising farm equipment for sale in Monroe, LA. She stopped in Monroe and inspected three tractors. She tried to negotiate price and terms with Jim, who represented Tractor Town LLC (Tractor Town), the owner of the equipment but they did not reach an agreement. After Molly got home she continued to communicate with Jim by text message and email until Tractor Town agreed to sell Molly the three tractors for \$100,000, payable in ten monthly installments of \$10,000. The terms of the agreement included an acceleration clause if a payment was missed. Molly drove to Monroe, signed the final papers, had the tractors shipped to her MS farm, and began sending installment payments to Tractor Town's office in Monroe.

The Tractor Town business had started three years earlier. Jim, until then a lifelong resident of MS, believed that he could use his farming talents to successfully operate a farm equipment business that was for sale in LA. He convinced Delta Digging, Inc. to join him as the second member of Tractor Town and provide the startup capital for the LLC, which they organized under MS law. Tractor Town bought the LA farm equipment business, and Jim moved to LA to run its operation.

Delta Digging, Inc., a Delaware (DE) corporation, manufactures shovels. All of its shareholders are farmers in MS. Nancy, a resident of Natchez, MS, is Delta Digging's business manager and handles all the payroll, billing, and administrative tasks out of Delta Digging's office in Natchez. She frequently travels across the Mississippi River bridge to nearby Vidalia, LA, where Delta Digging's records storage facility is located.

The Tractor Town operation in LA, after three years of effort, did not prove to be profitable, so Jim and Delta Digging are liquidating the LA farm equipment business. Jim, as both a member and manager of Tractor Town, had been happy to make the sale of the tractors to Molly as part of the liquidation. After Tractor Town ceases business, Jim is considering going to work for Delta Digging at its office in Natchez.

Shortly after the tractors were delivered to Molly's farm, she and her family ran into financial difficulties, causing her to default after making only two payments to Tractor Town on the installment agreement. After Molly was three months in arrears, Tractor Town filed suit on the \$80,000 balance due in the federal district court in Monroe, LA.

Please answer the three subquestions which follow on the next page. Your ability to demonstrate knowledge of how to properly analyze the issues is more important than your conclusion, so conclusory answers will receive little, if any, credit.

TEST CONTINUES ON NEXT PAGE

- 1.1. Would the federal district court in Monroe, LA have subject matter jurisdiction over the case if Tractor Town chooses to file suit there? Explain. (20 Points)**

For subquestions 1.2.-1.3. below, assume that Tractor Town LLC has no members, employees or offices in MS and instead that they are located solely in Louisiana.

- 1.2. Molly timely filed a motion to dismiss for lack of personal jurisdiction. May the LA federal court properly exercise either general or specific personal jurisdiction over Molly in the case? (15 Points)**

- 1.3. Assume for this question that the federal district court in LA has denied Molly's motion to dismiss for lack of personal jurisdiction, and cross-motions for summary judgment are now pending. Jim now sells his membership interest in Tractor Town to Fred, a MS farmer who believes he can make Tractor Town succeed in MS where Jim failed in LA. Fred is accepted as a member of the company. (5 Points)**

- A. What effect, if any, does Fred's becoming a member of Tractor Town have on subject-matter jurisdiction over the federal suit? Explain.**
- B. Would your answer or analysis change if Fred had become a member of Tractor Town before Tractor Town filed suit? Explain.**

[End of Question 1]

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**LOUISIANA BAR EXAMINATION
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QUESTION 2 – 40 POINTS

A Louisiana statute makes it a crime to willfully violate a health or safety regulation established by the Commissioner of Agriculture. Angel operates a crop dusting company, and she has supplemented her income by having her planes pull advertising banners during the course of their crop dusting. The low-flying, brightly colored planes always draw attention from passing motorists, and advertising sales for the banners have been significant, especially during election season.

The Commissioner of Agriculture passed a regulation that bans crop dusters and other agricultural planes from pulling banners, for the stated reason that the banners are a safety hazard to both the pilot and distracted motorists. Angel believes the regulation is unconstitutional as an undue restriction on her First Amendment rights. After she continued to pull the banners, a local sheriff's deputy recently arrested her for violating this regulation.

Angel strongly objected to her arrest and stated that the regulation was not constitutional. She then refused the deputy's request to get in his car. The deputy, small in stature, was intimidated by the irate crop duster and elected to draw his Taser to help ensure that he had the upper hand in the arrest. Angel's husband, Bob, witnessed the deputy's arrest of his wife and suffered his own form of shock. A felony bill of information was filed against Angel in state court.

Angel and Bob hired an attorney, who has filed suit in federal court in connection to the arrest. The complaint asserts claims on behalf of Angel for excessive force against the deputy under both 42 U.S.C. § 1983 for civil rights violations, and Louisiana tort law; the attorney estimates that Angel's claims have a settlement value of \$50,000. Bob required two therapy sessions to overcome his shock. The complaint also asserts state law tort and loss of consortium claims on behalf of Bob; the attorney estimates that Bob's claims have a combined fair value of no more than \$30,000. Angel, Bob, and the sheriff's deputy are all Louisiana citizens.

Answer the seven subquestions below. Your ability to demonstrate knowledge of how to properly analyze the issues is more important than your conclusion, so conclusory answers will receive little, if any, credit.

- 2.1. Does the federal court have the authority to hear Angel's claims under 42 U.S.C. § 1983? Explain. (5 Points)**
- 2.2. To what extent, if any, does the federal court have authority and discretion to hear (i) Angel's Louisiana tort claims and (ii) Bob's Louisiana tort claims? Explain each. (5 Points)**
- 2.3. As part of their federal-court complaint, can Angel and Bob include a claim to declare the Commissioner's regulation unconstitutional without running afoul of the Eleventh Amendment to the U.S. Constitution, and if so, how? Explain. (5 Points)**
- 2.4. The deputy's attorney, when she first reviewed the complaint against his client, considered filing a motion for Rule 11 sanctions on the grounds that some of the claims were wholly unfounded. She recalled that Rule 11 requires some preliminary action on her part. What must she do to ask the court to impose sanctions for a Rule 11 violation? (5 Points)**
- 2.5. Angel's criminal trial date in the state court is fast approaching, so she has filed a motion requesting that the federal court issue an injunction staying the state-court criminal matter until the federal litigation has been resolved. Should the federal judge issue such an injunction against the state court prosecution? Explain. (5 Points)**

TEST CONTINUES ON NEXT PAGE

For subquestions 2.6.-2.7. below, assume that Angel and Bob have asserted no claim to have the regulation at issue declared unconstitutional and that Angel never moved the federal court to stay the state court prosecution against her.

- 2.6. During the federal court proceeding against the deputy for excessive force, the sheriff's deputy testified at a deposition that he drew his Taser but never triggered or activated it and that Angel's injuries were caused by her hysterical overreaction to the mere sight of the Taser. At another deposition, a technician who reviewed the stored memory in the Taser device testified that the sheriff's deputy was correct that the device had not been activated on the day of the arrest.**

The deputy's attorney believes that she can use the testimony from the two depositions to defeat Angel's excessive force claims. To achieve that goal, which form of motion should the deputy's attorney file: a motion to dismiss for failure to state a claim under Fed. R. Civ. Proc. 12(b)(6) or instead a motion for summary judgment under Fed. R. Civ. Proc. 56?

Explain the differences between the two motions, including (i) what documents or materials (if any) may be used to support each motion and (ii) the general standards the court is to apply in deciding each motion. (10 Points)

- 2.7. Assume that the deputy filed a Motion to Dismiss and that the federal judge entered an order on March 1 granting the deputy's motion in part by dismissing Angel's § 1983 claims. Angel and Bob's state law claims then proceeded to trial.**

A jury addressed all of the remaining claims and, on May 30, returned a verdict in favor of Angel and Bob for \$25,000 in damages. The judge approved the form of final judgment on May 31, and the clerk entered the judgment on June 1.

Angel believes the judge was wrong to grant the deputy's motion to dismiss her § 1983 claim before trial. She wants the appellate court to reverse that decision and reinstate the § 1983 claim (which, unlike the state-law claims, has the potential for punitive damages and attorney fees).

What is the latest date for Angel to file a timely notice of appeal to contest the May 31 order dismissing her federal claim against the sheriff's deputy? Explain. (5 Points)

[End of Question 2]

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QUESTION 3 – 20 POINTS

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

- 3.1. Res judicata
- 3.2. Amended claims and third-party claims; diversity jurisdiction
- 3.3. Grounds for judgment as a matter of law
- 3.4. Joinder of non-diverse party
- 3.5. Rule 20
- 3.6. Removal
- 3.7. Waiver of defenses
- 3.8. Removal
- 3.9. Discovery
- 3.10. Venue

[End of Question 3]

END OF FEDERAL JURISDICTION AND PROCEDURE TEST

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
JULY 2018**

QUESTION 1 — 40 POINTS

Flo, a long-time resident of Florida (FL), decided to buy a motor home and travel during her retirement. On December 1, 2015, she purchased a Mammoth Road Warrior manufactured by Wide Load, LLC (“Wide Load”) from Don’s Dealership, which is a Louisiana (LA) corporation with its sole place of business in LA. Wide Load is a California (CA) limited liability company with two members: Leisure Rides, Inc. (“Leisure Rides”) and Capital Investments, L.P. (“Capital”).

Leisure Rides is a corporation incorporated in Delaware (DE). All shares of Leisure Rides are owned by Ted, who lives in Texas (TX). Leisure Rides’ main executive office is located in TX, but Leisure Rides’ four senior vice presidents who oversee all daily operations and sales are in Leisure Rides’ office in California (CA). Leisure Rides has manufacturing facilities in CA, FL and LA, with its largest being in FL.

Capital is a limited partnership organized under LA law. Capital’s general partner is Easy Money, LLC (“Money”), a LA limited liability company. Gabrielle, who lives in Georgia (GA), is Money’s sole member. The sole limited partner of Capital is Big Bucks, Inc. (“Big Bucks”), a Georgia corporation with its principal place of business in GA.

The day after she purchased her motor home, the generator malfunctioned and severely shocked and burned Flo as she turned it on. Flo has had to miss work and has experienced several months of serious pain and suffering during her recovery.

Following the accident, Flo moved in with her sister in Georgia so that she could look after her during her recovery. Flo let her neighbor look after her home in FL while she was away. Flo has enjoyed seeing her sister every day but misses her friends in FL. Flo does not plan to stay in GA.

After meeting with an attorney, Flo filed a petition against Wide Load and Don’s Dealership on March 1, 2016, in LA state court in the parish where both Don’s Dealership and Wide Load’s LA plant are located. Consistent with LA law, Flo’s petition did not demand a particular amount of damages, and the petition offered no greater description of Flo’s injuries than to state that she “sustained damages and physical injuries as a result of the malfunction.”

Flo delayed service on Wide Load and Don’s Dealership until August 1, 2016, when both were duly served. Wide Load and Don’s Dealership both attempted to conduct discovery to learn the details about Flo’s injuries, but Flo requested several extensions of time and said in answers to interrogatories only that she had suffered damage for which she continued to receive treatment. After additional delay, Flo eventually produced her medical records on March 5, 2017. The records showed that Flo suffered severe burns and damage to her hands, face and 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 Flo’s settlement demand for \$975,000. Wide Load, receiving this first indication that the amount in controversy would support removal, desired to remove the case to federal court.

Please answer the five subquestions on the next page. The subquestions in Question 1 are not weighted equally. Explain each answer; an answer without an explanation will receive no credit.

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- 1.1. (a) Describe in detail the procedure and requirements Wide Load must follow to remove the case to federal court.
- (b) To which federal court may the case be moved?

Discuss both subparts. (5 points)

For subquestions 1.2 to 1.5 below, assume that Wide Load removed the case to federal court.

- 1.2. Does the federal court have subject matter jurisdiction over Flo's lawsuit upon removal? Discuss. (18 points)

- 1.3. (a) What procedural objections, if any, might Flo raise to the removal?
- (b) What must Flo file to seek a return of the case to state court?
- (c) What time limits, if any, does Flo face?

Discuss all subparts. (10 points)

Solely for subquestions 1.4 and 1.5 below, assume that Flo never objected to Wide Load's removal of the case to federal court.

Solely for subquestion 1.4 below, also assume the following additional facts:

A Wide Load representative met with an attorney to discuss a defense to the lawsuit. The attorney asked the representative to gather up all paperwork and records Wide Load had related to the generator and send them to the attorney. The representative later delivered the business records to the attorney along with a letter in which the representative explained why he believed Wide Load did not properly install the generator and explained what was included in the business records. Flo later served Wide Load 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 generator installed by Wide Load."

- 1.4. In response to Flo's request for document production, must Wide Load produce either (1) the letter from Wide Load's representative to Wide Load's attorney or (2) the business records Wide Load's representative delivered to Wide Load's attorney? Discuss. (4 points)

Solely for subquestion 1.5 below, also assume the following additional facts:

Don's Dealership filed a motion for summary judgment seeking to dismiss itself from the lawsuit. On November 1, 2017, over Flo's objection, the court entered an order granting this motion and dismissing Don's Dealership with prejudice. At a status conference held on April 5, 2018, the two remaining parties (Flo and Wide Load) dictated on the court record a settlement by which Wide Load would pay a specified sum of money to Flo and she would then file a motion to dismiss Wide Load with prejudice. On June 5, 2018, Flo filed her voluntary motion to dismiss Wide Load. On June 6, 2018, the court granted Flo's motion and entered a judgment dismissing all claims against Wide Load with prejudice.

- 1.5. What is the latest date for Flo to file a timely notice of appeal for the dismissal of Don's Dealership? Discuss. (3 points)

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
JULY 2018**

QUESTION 2 — 40 POINTS

Larry, a Louisiana (LA) resident, owned a string of swimming pool supply stores throughout the state of Louisiana, selling pool supplies and pool related merchandise. For many years, Larry has bought his foam pool toys from Dan, a Delaware (DE) citizen, who manufactures the pool toys in his garage in DE. The two have never spoken to one another, and the transactions have been done entirely online. Dan sells his pool toys to customers in all fifty states, with no particular focus on any state. Dan advertises his pool toys in national publications.

In 2015, Larry purchased a large order of pool toys to supply his several stores in LA. Two weeks after the pool toys had been delivered to the stores, several customers in south Louisiana returned them, alleging that the pool toys caused severe skin irritation, blistering and rashes when exposed to suntan lotion. One customer had a particularly severe reaction to the pool toy and remained in the hospital for over a week, having suffered damage to his entire body. A doctor in the hospital advised the customer of the doctor's suspicion that the dye used in the pool toy caused customer's adverse skin reactions.

The customer filed a claim against Larry and immediately settled his claim against Larry for \$200,000 with an arrangement that allowed Larry to pursue the customer's claim directly against Dan. Larry filed a diversity jurisdiction complaint against Dan in LA federal court and alleged that Dan was responsible for his customer's injuries and for false advertising.

Dan was a life-long resident of LA before he moved to DE in 2013 to start his pool toy business. He still visits relatives in LA about twice per year to visit friends and family and has attended a week-long pool supply convention in New Orleans the last four years. Dan has informed his Louisiana relatives on multiple occasions that he plans to retire in Louisiana in a couple of years.

Research revealed that the dye used in the pool toys Dan made was approved by the Federal Consumer Product Safety Commission, and zero cases of rashes or adverse reaction were reported during testing. Dan's lawyer also discovered that under relevant federal law, a manufacturer faces no liability for use of the dye so approved. Using this information and believing that the complaint has no basis in fact, Dan's attorney filed a motion for sanctions under Rule 11. Dan's lawyer also filed a motion to dismiss pursuant to Rule 12(b)(6). The federal court denied both motions.

Please answer the six subquestions on the next page. The subquestions in Question 2 are not weighted equally. Explain each answer; an answer without an explanation will receive no credit.

- 2.1. (a) Should the LA federal court be able to exercise general personal jurisdiction over Dan?
- (b) Should the LA federal court be able to exercise specific personal jurisdiction over Dan?

Discuss both subparts. (10 points)

Solely for subquestions 2.2 to 2.6 below, assume that Dan never raised any defense of lack of personal jurisdiction.

- 2.2. What legal standards should the court apply when assessing Dan's motion to dismiss pursuant to Rule 12(b)(6)? Discuss. (5 points)
- 2.3. What steps, if any, was Dan's attorney required to take before filing the motion for sanctions under Rule 11? Discuss. (5 points)

Solely for subquestion 2.4 below, also assume the following additional facts:

Early discovery suggested that a dye supplier named Paul, a LA citizen, was actually the cause of some or all of the customer's damage. Dan filed a motion for leave to file a third-party complaint against Paul, and Larry filed a motion to file an amended complaint adding Paul as a defendant.

- 2.4. (a) Would the federal court still have jurisdiction if it grants Dan's motion?
- (b) Would the federal court still have jurisdiction if it grants Larry's motion?

Discuss both subparts. (10 points)

Solely for subquestions 2.5 and 2.6 below, also assume the following additional facts:

On Monday, April 9, 2018, after Larry was fully heard at a trial on the merits, Dan made an oral motion for judgment in Dan's favor as a matter of law. The judge denied this motion in open court that same day. On Tuesday, April 10, 2018, the jury returned a verdict against Larry. On Wednesday, April 11, 2018, the clerk filed the jury verdict into the record. On Monday, April 16, 2018, the judge signed, and the clerk entered, a take-nothing judgment.

- 2.5. What legal standard should the court apply when assessing Dan's motion for judgment as a matter of law? Discuss. (5 points)
- 2.6. What is the latest date for Larry to file a timely notice of appeal? Discuss. (5 points)

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
JULY 2018**

QUESTION 3 – 20 POINTS

Each of the following ten multiple-choice items counts for two points. Select the letter that corresponds to the correct answer.

- 3.1. Removal Procedures — Jones Act Claims**

- 3.2. Discovery; Work Product Privilege**

- 3.3. Rule 20 Permissive Party Joinder**

- 3.4. Removal Procedures — Multiple Defendants**

- 3.5. Subject Matter Jurisdiction — Multiple Plaintiffs; Aggregation of Claims**

- 3.6. Subject Matter Jurisdiction — Timing of Raising Objections**

- 3.7. Sovereign Immunity — Types of Actions Allowed**

- 3.8. Personal Jurisdiction — Timing of Raising Objections**

- 3.9. Joinder of Claims**

- 3.10. Subject Matter Jurisdiction — Federal Question**

[End of Question 3]

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
FEBRUARY 2018**

QUESTION 1 — 40 POINTS

Plaintiff, a long-time resident of Louisiana (LA), hired Garages, LLC (Garages) to build the garage to protect his newly purchased car. Garages is a Louisiana limited liability company which specializes in the design, manufacturing and sales of stand-alone residential parking garages. Fifty percent (50%) of Garages is owned by Roofing, Inc. (Roofing), a corporation organized in Delaware (DE). All shares of Roofing are owned by Donald, an individual who lives in New York (NY). Roofing's main executive office is located in NY, but Roofing's vice presidents who oversee all daily operations are in Roofing's Oklahoma (OK) office. Roofing also has manufacturing facilities in ten states, with its two largest being in OK and LA.

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

Garages completed the garage for Plaintiff several months ago. Shortly thereafter, while Plaintiff was sitting in his car in his new garage, heavy winds caused the roof to cave in and severely injure Plaintiff. The damage to Plaintiff's car is estimated at \$20,000. His medical bills will total \$25,000, and he will have \$25,000 in lost wages. Plaintiff has also experienced several months of serious pain during his recovery, and his doctors say he will have a lifelong knee pain because of the accident.

Following the accident, Plaintiff moved in with his son in OK so that his son could care for him during his recovery. Plaintiff asked a friend to house sit for him while he was away. Plaintiff misses his friends in LA, but he met a new girlfriend and has enjoyed having his son care for him during the first six months of recovery. Doctors state that Plaintiff will be fully recovered soon, but Plaintiff is undecided where he will live after that.

Plaintiff's attorney has now drafted a complaint to file against Garages in a federal court. The complaint prays for an award of the property damage, medical bills and lost wages as well as all other damages to which Plaintiff is entitled.

- 1.1. Will a federal court have subject matter jurisdiction over Plaintiff's complaint? Explain fully. (25 points)**
- 1.2. Because Plaintiff is recuperating in OK where his son lives, he wishes to file his suit there for his convenience. Should that be permitted under this fact scenario? In what State or States might Plaintiff be permitted to file his suit? Explain fully. (5 points)**
- 1.3. For question 1.3 only, assume that the case is filed in Louisiana federal court; that a Louisiana statute provides that a plaintiff may not recover more than the "Blue Book" value of a destroyed car even if the plaintiff can prove that the car was more valuable; that federal law does not include any such discovery requirements or damage limitations; and that Plaintiff believes that modifications to his car made it much more valuable than the Blue Book listing. Should the federal court apply this statute in Plaintiff's case? Explain fully. (5 points)**
- 1.4. For question 1.4 only, assume that the case is filed in Louisiana federal court; that more than a year after the suit is filed and after an answer has been filed and much discovery has been conducted, Roofing moved both its executive offices and its vice presidents to LA; and that Garages promptly then filed a motion to dismiss for lack of subject matter jurisdiction arguing that Plaintiff and Roofing are now non-diverse. Should the court grant Garages' motion to dismiss? Explain fully. (5 points)**

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
FEBRUARY 2018**

QUESTION 2 — 40 POINTS

A citizen of Texas (TX) was shopping at Food Store in Louisiana (LA) and claimed that he slipped on a frozen patch of ice in Food Store’s parking lot and fell. He filed a petition in LA state court against Food Store, which is a LA corporation with just a single store. His petition, consistent with LA law, did not demand a particular amount of damages and the petition offered no greater description of his injuries other than to state that he had “suffered physical injuries as a result of the fall.”

Plaintiff delayed service on Food Store for two months, as permitted by Louisiana law. After it was served, Food Store attempted to conduct discovery to learn the details about Plaintiff’s injuries, but Plaintiff requested several extensions of time and said in answers to interrogatories only that he had suffered back injuries for which he continued to receive treatment. After additional delay, Plaintiff eventually produced his medical records to Food Store, 13 months after suit was filed. The records showed that Plaintiff 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 Plaintiff’s settlement demand for \$450,000. Food Store, receiving this first indication that the amount in controversy would support diversity jurisdiction, now wants to remove the case to federal court 27 days after the medical records were produced.

Questions 2.1. through 2.4. are based on the above facts.

- 2.1. What procedure and requirements must Food Store follow to remove the case to federal court; and to which federal court may the case be removed? Explain fully. (5 points)**
- 2.2. If the case is removed: a) What steps must Plaintiff take to seek a return of the case to state court? b) What time limits, if any, does he face? c) What effect, if any, will there be if Plaintiff takes those steps 40 days after the removal? Explain fully. (10 points)**

Assume for questions 2.3. and 2.4. that the case was removed and remains in federal court.

- 2.3. Assume the following additional facts for question 2.3 only, Food Store filed a motion for summary judgment and in support submitted an affidavit from a Food Store employee, who testified that she saw Plaintiff as he drove into the parking lot, got out of his car and then walked into the store and that Plaintiff did not fall outside of the store. Food Store also submitted an affidavit from Plaintiff’s former parole officer. The officer testified that, three years earlier, Plaintiff was convicted of perjury for offering false testimony at a friend’s trial. Plaintiff opposed the motion and offered his own affidavit in which he testified that he did slip and fall on the ice, just as alleged in his petition. Plaintiff offered that the employee must have looked away before he fell.**
- (a) Set forth the applicable standard for assessing Food Store’s motion for summary judgment and analyze the submissions of the parties under the applicable standard.**
- (b) How should the court rule on Food Store’s motion for summary judgment? Explain fully.**
- (20 points)**

TEST CONTINUES ON NEXT PAGE

- 2.4. *Assume the following additional facts for question 2.4 only.* The owner of Food Store met with an attorney to discuss a defense to the lawsuit. The attorney asked the owner to gather up all paperwork and records Food Store had related to the store's parking lot maintenance and send them to the attorney. Food Store'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 Store did not follow proper procedures the day of the accident. Food Store's attorney reviewed the records and determined that they would not be useful to a defense of the lawsuit. Plaintiff served Food Store 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 maintenance and cleanup procedures implemented by Food Store."

Must Food Store, in response to the request, produce either:

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

Explain both fully. (5 points)

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
FEBRUARY 2018**

QUESTION 3 – 20 POINTS

Ten multiple choice questions, each worth 2 points, tested the following areas of law:

- 3.1. Substitution of parties; amending pleadings
- 3.2. Venue
- 3.3. Personal Jurisdiction; Waiver on Appeal
- 3.4. Supplemental Jurisdiction
- 3.5. Compulsory Counterclaim
- 3.6. Interpleader
- 3.7. Waiver of Defenses
- 3.8. Joinder of Non-Diverse Party
- 3.9. Discovery
- 3.10. Supplemental Jurisdiction; Subject Matter Jurisdiction

[End of Question 3]

END OF FEDERAL JURISDICTION AND PROCEDURE TEST