

MBE Subject Matter Outline: Civil Procedure

NOTE: Examinees are to assume the application of 1) the amendments to the Federal Rules of Civil Procedure as currently in effect; and 2) the sections of Title 28 to the U.S. Code pertaining to trial and appellate jurisdiction, venue, and transfer. Approximately two-thirds of the Civil Procedure questions on the MBE will be based on categories I, III, and V, and approximately one-third will be based on the remaining categories II, IV, VI, and VII.

MBE Subject Matter Outline: Civil Procedure

I. Jurisdiction and venue

- A. Federal subject matter jurisdiction (federal question, diversity, supplemental, and removal)
- B. Personal jurisdiction
- C. Service of process and notice
- D. Venue, forum non conveniens, and transfer



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II. Law applied by federal courts

A. State law in federal court

B. Federal common law



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III. Pretrial procedures

- A. Preliminary injunctions and temporary restraining orders
- B. Pleadings and amended and supplemental pleadings
- C. Rule 11
- D. Joinder of parties and claims (including class actions)



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III. Pretrial procedures

- A. E Discovery (including e-discovery), disclosure, and sanctions
- B. Adjudication without a trial
- C. Pretrial conference and order



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IV. Jury trials

- A. Right to jury trial
- B. Selection and composition of juries
- C. Requests for and objections to jury instructions



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V. Motions

- A. Pretrial motions, including motions addressed to face of pleadings, motions to dismiss, and summary judgment motions

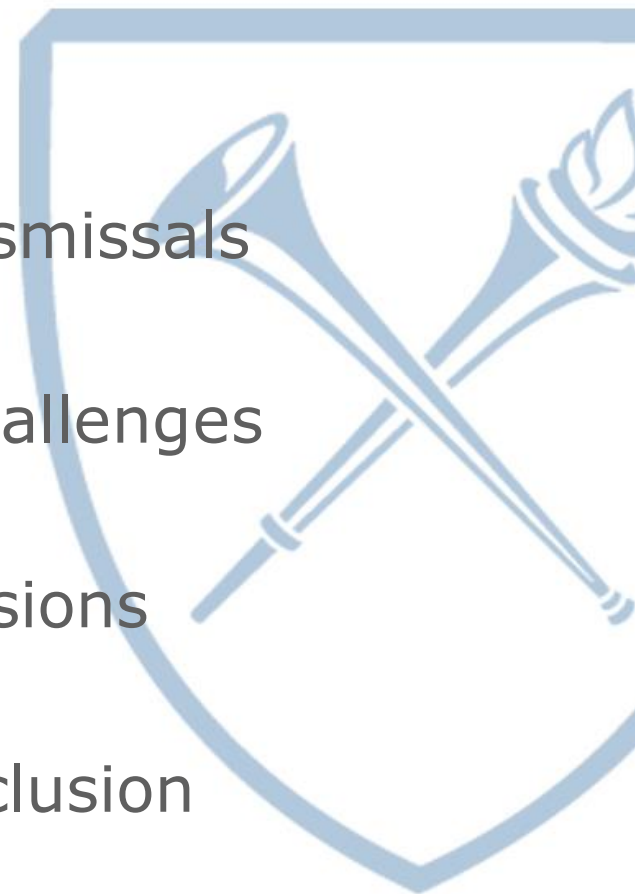
- B. Motions for judgments as a matter of law (directed verdicts and judgments notwithstanding the verdict)

- C. Post-trial motions, including motions for relief from judgment and for new trial

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VI. Verdicts and judgments

- A. Defaults and involuntary dismissals
- B. Jury verdicts—types and challenges
- C. Judicial findings and conclusions
- D. Effect; claim and issue preclusion



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VII. Appealability and review

- A. Availability of interlocutory review
- B. Final judgment rule
- C. Scope of review for judge and jury



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MBE Civil Procedure Sample Questions are available online at www.ncbex.org; some are also included in the MBE Study Aid which you can buy at the same website (the National Conference of Bar Examiners, authors of the MBE and other standardized parts of the bar).

MBE Sample Question: Civil Procedure

- An entrepreneur from State A decided to sell hot sauce to the public, labeling it “Best Hot Sauce.”
- A company incorporated in State B and headquartered in State C sued the entrepreneur in federal court in State C. The complaint sought \$50,000 in damages and alleged that the entrepreneur’s use of the name “Best Hot Sauce” infringed the company’s federal trademark. The entrepreneur filed an answer denying the allegations, and the parties began discovery. Six months later, the entrepreneur moved to dismiss for lack of subject-matter jurisdiction.

MBE Sample Question: Civil Procedure

- Should the court grant the entrepreneur's motion?
 - A. No, because the company's claim arises under federal law.
 - B. No, because the entrepreneur waived the right to challenge subject-matter jurisdiction by not raising the issue initially by motion or in the answer.
 - C. Yes, because although the claim arises under federal law, the amount in controversy is not satisfied.
 - D. Yes, because although there is diversity, the amount in controversy is not satisfied.

MBE Sample Question: Civil Procedure

- Should the court grant the entrepreneur's motion?
(A) No, because the company's claim arises under federal law.

Correct. The claim asserts federal trademark infringement, and therefore it arises under federal law. Subject matter jurisdiction is proper under 28 U.S.C. § 1331 as a general federal question action. That statute requires no minimum amount in controversy, so the amount the company seeks is irrelevant.

MBE Sample Question: Civil Procedure

- (B) No, because the entrepreneur waived the right to challenge subject matter jurisdiction by not raising the issue initially by motion or in the answer.

Incorrect. Under Federal Rule 12(h)(3), subject matter jurisdiction cannot be waived and the court can determine at any time that it lacks subject matter jurisdiction. Therefore, the fact that the entrepreneur delayed six months before raising the lack of subject matter jurisdiction is immaterial and the court will not deny his motion on that basis.

MBE Sample Question: Civil Procedure

- (C) Yes, because although the claim arises under federal law, the amount in controversy is not satisfied.

Incorrect. There is no amount-in-controversy requirement for actions that arise under federal law.

MBE Sample Question: Civil Procedure

- (D) Yes, because although there is diversity, the amount in controversy is not satisfied.
Incorrect. Although diversity jurisdiction requires an amount in controversy of \$75,000 or more, when diverse parties are litigating a federal claim, the action is treated for jurisdictional purposes as a federal question action, not a diversity action. The claim here asserts federal trademark infringement and therefore it arises under federal law. The fact that the action does not meet all the requirements for diversity jurisdiction is irrelevant.