Below please find a sample answer for the fall 2009 final exam. Since you were not permitted to remove it from the test room, I am also providing a copy of the exam.

This sample is an actual student answer and thus is not meant as a model (i.e. perfect) answer, but instead as an example of a successful answer (as you will see, unedited). I hope it will be helpful in identifying your strengths and weaknesses on this exam in particular and in exam-taking in general.

In addition to the sample, I have included some general comments for each of the required questions based on the exams as a whole (I did not include comments on the extra credit question in Part II). These are not meant to be exhaustive, but should help to fill in many of the gaps in the sample answer. The fact that a particular point is not mentioned in the sample or my comments does not mean that a student including that information in their answer did not receive credit for it; where answers included information that was relevant and instructive in answering the question, credit was awarded accordingly. Finally, as I explained earlier, you are welcome to schedule a meeting with me to discuss your exam, but I strongly encourage you to review this material prior to scheduling such a meeting.

PART I

QUESTION 1

Comments for Question 1:

This question was a straightforward personal jurisdiction question. The traditional bases (consent, domicile, in-state service) were not available, so the Florida long-arm statute became relevant. Section 1(f)(2) of the long-arm statute covers suits resulting from injury by products used in the state, which was what occurred here with the boat being damaged in Tampa harbor. Once the long-arm statute is satisfied, the inquiry moves to the constitutional grounds for long-arm jurisdiction: purposeful availment, relatedness and reasonableness. The most pervasive problem in exam answers to Question 1 was a failure to apply the facts provided in the fact
pattern. The discussion below identifies specific facts that were relevant to each part of the question, but is not necessarily meant to be exhaustive. In reality, few exam answers dealt with as many as half of the facts listed below for any specific question.

A. Purposeful Availment

Purposeful availment could have been analyzed in two separate contexts based on Catfish John (CJ) interacting with Florida in two different ways, his contract with and sale of the boat to August, and his sculpture business that relied on annual trips to Florida to purchase cypress. Neither of these contexts implicated the effects test, nor did either involve property ownership by CJ in Florida, so those two means of purposeful availment will not be discussed further here.

1. Catfish John’s Sale of the Boat to August

CJ’s sale of the boat to August is relevant for purposeful availment purposes. This could have amounted to purposeful availment under a “stream of commerce” (SoC), a “stream of commerce plus” (SoC+) or a contract analysis. Under the SoC analysis, the question would have been whether CJ had an expectation that the boat was being purchased by a consumer in FL, based on the following facts: (1) CJ knew August was a FL resident, (2) CJ agreed to be paid for ½ of the boat from FL, (3) CJ provided August with charts to get to FL, (4) CJ also suggested August go to Cancun instead of FL, and (5) CJ delivered the boat to New Orleans, not FL. Facts 1-3 support the conclusion that the SoC test is met in FL, and facts 4 and 5 oppose such a conclusion. The SoC+ test incorporates everything mentioned above in the SoC test, but also includes the question whether CJ showed an intent to serve the FL market. The only fact that supports this argument is a weak one, namely CJ’s involvement in the Southeastern Boatmakers Guild (SBG). Note: a common mistake on the exam was confusing CJ’s membership in the SBG as support for personal jurisdiction under the SoC test; CJ’s membership in this organization has absolutely nothing to do with whether he has an expectation that his sale of the Pearly Baker is to a Florida consumer.

The contract analysis is another basis for arguing that CJ purposefully availed himself of FL. This analysis should have been done in line with the factors outlined in Burger King. Personal jurisdiction appears unlikely as demonstrated by the following important facts from the question: (1) CJ and August met and negotiated the contract in TN, (2) the boat was delivered in LA (New Orleans), and (3) CJ has no future obligations under the contract (such as an obligation
to service the boat) in FL. As a counter-argument, you could cite the fact that half of the payment for the contract was to come from FL, but that is unlikely to outweigh the remaining facts supporting purposeful availment elsewhere.

2. *Catfish John’s Sculpture Business in FL*

   The other basis for finding that CJ purposefully availed himself of FL was his annual trip to FL to buy wood for his sculpture business. This absolutely constitutes purposeful availment on the grounds that CJ annually entered the state (thereby purposefully availing himself of its jurisdiction). Moreover, his internet sales of sculpture are likely to meet the SoC test as his website’s national marketing and commercial activity create the expectation of interaction with FL. The SoC+ test would not likely be satisfied based on his internet business, however, as there is no specific intention manifest to serve FL. Regardless of your specific conclusion as to the outcome of the SoC or SoC+ analysis, however, each should have been raised as relevant to CJ’s sculpture business.

B. **Relatedness and Reasonableness**

   The relatedness test is straightforward. CJ’s activities in making and selling the boat to August are related to the lawsuit, while his sculpture business is not. There is also no ground for general jurisdiction over CJ in FL. The reasonableness inquiry is equally straightforward. Applying the five factors from *Burger King*, there is no real basis to assume that it would be unreasonable to require CJ to appear as a defendant in FL.

**Sample Answer to Question 1:**

A motion under Rule 12(b)(2) is for lack of personal jurisdiction (PJ). PJ is the power of courts to bind the defendant to a judgment. The purpose of PJ is to protect the liberty interest of due process.

**Traditional Bases**

There is no PJ under the traditional bases of jurisdiction. The 3 traditional bases are consent, domicile, and served within the state. If a defendant does meet one of these bases of PJ, the court has general jurisdiction - meaning that the defendant can be sued for anything, related or unrelated. A defendant consents PJ when he shows up in court or files an answer - basically, when he defends himself against suit. Catfish has not done this because he has not filed any
answers or showed up in court— he has only filed a 12(b)(2) motion to argue there is no PJ— which does not count as consent to PJ. There is also PJ if the forum state is the defendant’s domicile. A domicile is where the defendant lives and intends to permanently stay. Catfish’s domicile is in Tennessee because that’s where he lives and there is no evidence that he plans on changing his domicile. The final traditional basis is being served in the state. This requires that the defendant is physically handed a copy of the complaint and summons while he is in the forum state. There is no evidence that Catfish was served with process in Florida and therefore, service in the state is not met.

**Minimum Contacts**

Since there is no PJ under the traditional bases, it must be determined whether Catfish had minimum contacts with Florida so that he could be bound to judgment there. First, the contacts that the defendant had with the forum state must fall within a state’s Long Arm Statute. Catfish’s activity of doing business with a Florida resident, by selling him a boat, meets Florida’s Long Arm Statute under 1(). Next it must be decided whether this part of the statute comports with Due Process. To do that, the defendant must have minimum contacts as required in International Shoe. Minimum contacts requires purposeful availment, relatedness, and reasonableness. If the minimum contacts test is met then there will be specific jurisdiction over the defendant meaning that the case must relate only to the contacts in that state.

**Purposeful Availment**

The first requirement of minimum contacts that must be met is whether the defendant purposely availed himself of the forum state so that the defendant enjoyed the benefits and protections of the state’s laws. There are 5 ways for a defendant to meet minimum contacts: 1. entering the state/doing business 2. Entering into a contract with a resident of the forum 3. By placing a product in the stream of commerce that meets either the stream of commerce or stream of commerce plus tests 4. By causing effects in the forum state, or 5. Property Ownership. The defendant must meet one of these to satisfy the first requirement of purposeful availment.

1. Entering the State/Doing Business

Entering the State/Doing business requires that the defendant actually entered the state and conducted activity or business there, or the defendant’s employees entered the state to conduct business activities there. Catfish John did enter Florida every year when he went to Ocala to
purchase cypress trees from a tree farm, therefore, Catfish entered the state and purposefully availed himself of Florida.

2. Entering into a Contract with a resident of the forum
A defendant purposefully avails himself of a forum state when he enters into contractual agreements with it’s residents However the mere existence of a contract is not enough to satisfy this requirement. The court in Burger King stated that there are factors a court must consider when deciding if a defendant purposefully availed himself of a state by contract. The court must look at the prior negotiations between the parties, the contemplated future consequences, the terms of the contract, and the parties actual course of dealing. While there was a contract for sale and delivery of the boat between Catfish and August, it was not enough to satisfy purposeful availment under this test. Looking at the prior negotiations of the parties, it was August, the plaintiff, who actually contacted Catfish about buying the boat, Catfish did not reach out to August. Also, looking at the terms of the contract, the boat wasn’t even being delivered to the forum state of Florida, it was being delivered to Louisiana so August could sail it home- the boat wouldn’t even reach the forum state until after it was already in the hands of August. Therefore, the existence of a contract between the two was not enough to say the defendant purposefully availed himself of Florida by entering into a contract with a resident of the forum.

A defendant can be subject to PJ in the forum state if he satisfies the stream of commerce or the stream of commerce plus tests The stream of commerce test is met when the defendant puts a product into the stream of commerce with the expectation that it will be purchased by consumers in the forum state The stream of commerce plus test is met when the stream of commerce test is met, PLUS some other action by the defendant in the forum state, such as advertising in the forum state, marketing to distributors in the forum state, etc. The stream of commerce covers the entire chain of events from production to distribution to the consumer- once the consumer gets it, the stream of commerce ends. Here, the stream of commerce test is met. Catfish put his boat into the stream of commerce when he built and sold it to August, and he had the expectation that it would be in Florida because picking up the boat in New Orleans, Louisiana, he was sailing it back to Tampa. The stream of commerce plus test is also likely met because Catfish was a member of the Southeastern Boatmakers Guild, an organization that was founded in Florida and
had its largest membership in Florida. It would have been obvious to Catfish that the Southeastern Boatmakers Guild would advertise in their home state of Florida since it had so many members from Florida, and that as a member of this Guild, he too would be advertising in Florida. Because this advertisement through the the Guild was an additional act by Catfish, the stream of commerce plus test was also likely met and Catfish purposefully availed himself of Florida.

4. Effects Test
A defendant can be subject to PJ if they meet the effects test. The requirements to meet this test are that the defendant 1. did some out of state conduct, 2. the conduct was an intentional tort that was AIMED AT THE FORUM STATE and the defendant had knowledge that the intentional conduct would cause harm. Catfish’s conduct does not meet the effects test Even though Cathsh made the boat of of the state Catfish’s conduct was not an intentional tort- he is being sued for negligence in the manufacture of his boat. The conduct that causes the effects cannot be negligence, it has to be an INTENTIONAL conduct. Because Catfish is being charged with negligence, he could not have knowledge that the conduct would cause harm.

5. Property Ownership
property ownership is no longer an automatic way to get PJ, it does constitute purposeful availment and can get PJ if relatedness and reasonableness are met. However, catfish does not own any property in Florida and therefore does not meet this form of purposeful availment

Relatedness
The second requirement under minimum contacts is that the defendant’s contacts are related to the suit- that the suit arises from or relates to the defendant’s contacts with the forum state. If the defendant’s contacts with the state are systematic and continuous, or if they are only isolated, as long as the suit is related to the contacts, then there will be specific jurisdiction. While Catfish met purposeful availment by entering the state when he drove there to buy cypress trees this is not related to the suit of negligence in his boat manufacture, and therefore, there is no jurisdiction by entering the state. The other way purposeful availment was met was the stream of commerce/stream of commerce plus tests. Because the suit is about the negligence in the manufacture of the boat and this is relatedto the boat that was put in the stream of commerce, the relatedness prong of PJ is met.
Reasonableness

The last requirement of PJ is that suit is reasonable—that the assertion of PJ comports with fair play and substantial justice. Once the purposeful availment and relatedness prongs are met, there is a presumption of reasonableness and the DEFENDANT must show that jurisdiction is unreasonable and overcome the presumption. This is a high threshold that is not often met. The court looks at factors to determine whether the case would be reasonable. The factors are the: 1. The burden on the defendant (basically, is it hard for the defendant to get there and litigate there?), 2. The forum in adjudicating the dispute (basically does the state have some strong interest in the dispute), 3. The plaintiff's interest in obtaining convenient and effective relief, 4. The interstate judicial system’s interest in obtaining the most efficient resolution of controversies (is the forum the best place for the dispute), and 5. The shared interest of the several states in furthering fundamental substantive social policies (is there social policy for the state hearing the case). Looking at these factors, it is reasonable for the defendant to have to defend his case in Florida. The burden on him is not that great because he goes to Florida often on his own, the state of Florida has a strong interest in his dispute because it has an interest in protecting its residents from getting bad products from out of state sellers, Florida is the best place to resolve the dispute because that is where the evidence such as eye witnesses would be. Also, because Catfish sold a boat to a resident of Florida, he should foresee that he would be haled into court there if something went wrong.

Therefore, because Catfish met the purposeful availment prong, the suit was related, and was reasonable—PJ was good and Catfish’s 12(b)(2) motion should be denied.
**QUESTION 2**

**Comments for Question 2:**

Part A was a straightforward test of your knowledge of counterclaim joinder and supplemental jurisdiction. CJ’s counterclaim is compulsory under FRCP 13(a) because it arises out of the same transaction and occurrence as August’s original claim. As to whether CJ’s counterclaim may be heard in federal court, it is not a federal question under § 1331, nor does it meet the criteria for § 1332 diversity jurisdiction because it fails to satisfy the amount in controversy requirement. The claim does, however, meet the criteria for supplemental jurisdiction under § 1367 because it has a federal hook (August’s original diversity claim), it shares a common nucleus of operative fact with the original claim, and although there is a diversity hook, the exceptions to supplemental jurisdiction outlined in § 1367(b) do not apply because the claimant, CJ, is not a plaintiff. Finally, complete answers discussed the discretionary aspect of supplemental jurisdiction under § 1367(c).

Part B asks whether CJ’s motion to transfer the case to the W.D. Tenn. should be granted. The first question is which transfer provision is applicable. In this case, venue is good in the M.D. Fla. because a substantial portion of the events (the boat accident, medical bills, etc.) giving rise to the cause of action occurred there. See 28 U.S.C. § 1391. Since venue is good in FL, § 1404 transfer applies here. Besides discussing the potential impact of the convenience and interests of justice analyses required by § 1404, the transfer motion may only be granted if the M.D. Tenn. is a venue where the case “might have been brought.” In this case it is, because both venue and personal jurisdiction over CJ exist in the M.D. Tenn. (Note: whether there is PJ over August is not relevant to the transfer analysis.) Venue is good in the district under § 1391 because the defendant (CJ) resides in the district, which the facts make clear includes Nashville, and a substantial portion of the events giving rise to the suit occurred in that district (e.g. the contract and actual manufacturing of the boat). Personal jurisdiction is good over CJ in the M.D. Tenn. because he is domiciled there.
Sample Answer to Question 2:

(A)

Joinder

This counterclaim is allowed in federal court under the joinder rules. Counterclaim is the joinder of a claim to an existing party. Under Rule 18 a party may join as many claims as it has against an opposing party. This counterclaim may be joined under Also, to have a counterclaim, the claim must be between opposing parties. This claim is between opposing parties - it is a claim filed by the defendant Catfish, against the opposing party plaintiff, August. Next, under Rule 13 is whether this is a compulsory counterclaim or a permissive counterclaim. A compulsory counterclaim must be filed in the answer or it is waived. Any counterclaim that is not compulsory is a permissive counterclaim. Under Rules 43(a) and (e), a compulsory counterclaim must be available at the time of the answer (must have matured by the answer) and arise out of the same transaction or occurrence that is the subject matter of the opposing party’s claim and that the counterclaim does not require adding another party over whom the court cannot acquire jurisdiction. To determine whether a counterclaim arises out of the same transaction or occurrence, courts must use the logical relationship test. This test should be interpreted liberally and states that a transaction may mean a series of many occurrences, not depending on the immediateness of their connection, but upon their logical relationship. Court should consider the nature of claims, the legal basis for recovery, the law involved and the respective factual backgrounds. Here, the counterclaim is most likely not part of the same transaction or occurrence because it meets the logical relationship test. The counterclaim is for breach of contract for the $75,000 that August did not pay Catfish. Looking at the nature of the claims - one is a negligence claim about the manufacture of the boat, while the other is a breach of contract claim that the seller was not paid and rests on the interpretation of a contract. The legal basis for recovery is founded on two different types of laws - negligence tort law and contract law. While the factual backgrounds may have similarities - August’s negligence suit is about the construction of the boat and how the boat held up in an accident, and the in the breach of contract claim, Catfish was not paid because the boat was destroyed. While these both involve the same accident, the law is different and the reasons for the claims may be someone different, so the counterclaim is likely
compulsory. However, because any counterclaims that are not compulsory are permitted as permissive counterclaims under Rule 13(b), Catfish’s counterclaim is permissive and therefore good under the rules of joinder. Besides meeting the joinder rules, the court must have subject matter jurisdiction over the counterclaim. A court must have subject matter jurisdiction because it keeps federal courts in the balance prescribed by Congress and the Constitution for the courts.

Federal Question
One way a court gets jurisdiction is by federal question jurisdiction. Federal Question jurisdiction gives courts the power to hear cases that arise under the Constitution, laws, or treaties of the United States. The constitution says that “arising under” is satisfied by any case with any potential federal ingredient may be heard in federal court. 28 U.S.C. 1331 is interpreted to limit what the Constitution allows. Under 1331, a case may be heard in federal court if it is created by federal law or has an essential federal ingredient. First, the court must look at the right claims. The Well Pleaded Complaint rule tells the court that it must look at the claims in the well pleaded complaint- not at any defenses that may be brought against those claims. Here, the court would look at Catfish’s counterclaim in his answer to determine if there is federal question jurisdiction. Next, the court must determine whether the claims meet the creation test or the essential federal ingredient test. A claim is allowed in federal court if it meets the creation test. Under this test, a claim arises under federal law if federal law creates the cause of action. Also, the federal claim must be substantial. A claim is substantial if there is any plausible foundation for the claim. Here, Catfish’s claim does not meet this test because it is a breach of contract claim, which is a state law claim that is not created by federal law. Therefore, the creation test is not met. A claim is also allowed in federal court if it meets the essential federal ingredient test. This test has four elements that must be met. 1. The right to a non federal claim depends on construction or application of federal law, 2. the federal ingredient must be disputed, 3. the federal ingredient must be substantial, and 4. the allocation of jurisdiction between state and federal courts must not be upset. Here, Catfish’s breach of contract claim does not depend on any kind of federal law to get relief, therefore, the essential federal ingredient test is not met.

Diversity
Diversity jurisdiction is codified under 28 U.S.C. 1332. Diversity jurisdiction has two requirements- complete diversity and the amount in controversy. Complete diversity under
1332(a) is met when a case is between citizens of different states, a citizen of a state and a citizen of a foreign state, or citizens of different states in which citizens of foreign states are additional parties. Complete diversity is based on each party’s domicile. Catfish and August are completely diverse because August is from Florida and Catfish is from Tennessee. However, 1332(a) also requires that the amount in controversy exceed $75,000. Catfish is suing for exactly $75,000 and therefore, he does not exceed $75,000 and he does not meet the amount in controversy, so there is no subject matter jurisdiction under diversity

Supplemental

1367(a)
Fed hook (court has original jurisdiction)- yes- the claim by August against Catfish was diverse and more than 75,900(75,000 he paid plus medical expenses more than the amount in controversy)
same case/controversy- one is breach of contract, while the other is negligence about a boat accident
don’t need to get to the 1367(b) exceptions that apply to diversity federal hooks or the judicial discretion of 1367(c)

claim not permitted in federal court

(B)
For a defendant to transfer a case, he must transfer under 1404 or 1406. However, to determine which statute to use, the court must first determine whether venue was good in the original district. The venue statute is 28 U S C 1391, For both diversity claims and federal question claims, a plaintiff may bring suit in (1) a district where any defendant resides if all defendants reside in the same state or (2) in a judicial district where a substantial part of the events giving rise to the claim occurred. This case does not meet the first one because the defendant does not reside in Florida, he resides in Tennessee, and the case is being brought in the Middle District of Florida. Venue is good however under the second way. Venue is good in a judicial district where a substantial part of the events giving to the claim occurred. This does not required that the MOST substantial part of the events occurred there, as long as a substantial part of the events
occurred there. Also, substantial means that the district does not have only a tangential
connection with the dispute. Here, the Middle District of Florida where a substantial part of the
events occurred. That is where the boat crash occurred that gave rise to the negligence suit.
Therefore, because venue is good in the Middle District of Florida, we use 1404 when deciding
transfer of venue. Under 1404 transfer of venue may only happen it is for the convenience of the
parties and witnesses it is in the interest of justice, and it is to a division or district in which the
suit eight have been brought Deciding to transfer under 1404 i5 n the complete discretion of the
court. In deciding whether to transfer, courts look factors that help determine the interest of
justice and the convenience of parties and witnesses. These factors are the availability and
convenience of witnesses and parties, the location of counsel, the location of books and records,
the cost of obtaining witnesses and other trial expenses, the place of the alleged wrong, the
possibility of prejudice and delay if the transfer is granted, preference to the plaintiff’s choice of
forum, and choice of law considerations. While Catfish and his lawyer are in Tennessee, the
plaintiff and his lawyer are in Florida. Preference to the plaintiff’s choice of forum is given, and
that is Florida. The majority of the witnesses to the ship going down would be in Florida. The
courts would likely look at these factors and more likely want to keep the case in Florida. Also,
the district must be one in which the case might have been brought. This means that both PJ and
venue have to be good. Venue would be good because the defendant resides in that state and
district in which the defendant wants transfer. PJ would also be good because the defendant
meets the traditional base of jurisdiction of dbrnkile because he lives in Tennessee. Therefore,
the case could be transferred if the judge chooses- however, in light of the factors, the judge
would likely not transfer.
**QUESTION 3**

**Comments for Question 3:**

Part A asks which choice of law doctrine will apply in the event of a transfer to the M.D. Tenn. This really boils down to an analysis of whether personal jurisdiction and venue are valid over the case in FL. Venue is good in the M.D. Fla. because a substantial portion of the events giving rise to the cause of action occurred there. Therefore, if you thought CJ was subject to personal jurisdiction in Florida from Question 1, you should have concluded that FL choice of law would apply post-transfer, and if you thought CJ was not subject to personal jurisdiction in Florida, then TN choice of law would govern.

Part B asks about the timing of discovery. The latest start date for discovery was 21 days before the 16(b) conference, which was scheduled for November 28. This is November 7.

Part C involves August’s motion to amend to add another claim against CJ. Responses were to be limited to the specific objections raised by CJ. The first of these was that the amendment was improper. Under FRCP 15, the amendment would not have been as of right because more than 10 days had elapsed since the original filing, but it still should have been freely granted provided there was no bad faith, prejudice, or undue delay on the part of August. The second issue asks whether August’s new claim is valid under the FRCP. Note that by limiting the objection to the FRCP, any subject matter concerns are excluded, as they would be statutory, not rules-based. Joinder of August’s claim is permissible under either FRCP 18 or FRCP 13(a) as a compulsory counterclaim. Finally, the third objection raised the timing of the amendment because the statute of limitations on August’s new claim had expired. Despite being late if filed on its own, this claim is valid because it relates back under FRCP 15(c)(2), as it is part of an amendment and arises out of the same conduct, transaction or occurrence as the original.
Sample Answer to Question 3:

(A) Florida’s “choice of law” law must be used. Choice of Law is a state doctrine that tells the state which state’s law to use. When transferring a case, you can’t change the substantive state law just by transfer, Which state’s “choice of law” law is used depends on venue and PJ. If venue and PJ are good in the original state and district, then the original state’s “choice of law” law is used. However if venue or PJ are no good in the original state and district, then the new state’s “choice of law” law is used because something was bad in the old state and the case could not have been heard there, and transferring it to a new state where PJ and venue are good requires us to use the “choice of law” law from the state where PJ and venue are met. Here, as seen above in questions I and 2, venue and PJ were both good in the original state of Florida and district of Middle District of Florida, and therefore, we must use Florida’s “choice of law” law.

(B) Formal discovery is started with a 26(f) conference in which the attorneys get together, unsupervised by a judge, and make up a discovery plan, talk about the nature and defenses of the case and issues about preserving discoverable information. If a 16(b) conference is set for November 28 2008, the latest discovery could have begun would be November 7, 2008. This is because according to Rule 26(f)(1) a 26(f) conference must be at least 21 days before the 16(b) conference, and therefore, November 7 would be the last day discovery could be held so that the 26(f) conference would be 21 days prior to the 16(b) conference.

(C) 1. Catfish’s objection that the amendment is improper at this juncture of the suit
   Rule 15 governs amendments. Rule 15(a)(1) allows amendments as a matter of course. This is an amendment that a plaintiff gets before trial, without leave of the court. The plaintiff may only get one of these, and it must be done before the responsive pleading. August does not get an amendment as a matter of course because he did not do it before Catfish’s responsive pleading-Catfish already filed his answer. Under Rule 15(b)(2), a plaintiff may only make an amendment to his complaint if he has the opposing party’s written consent or leave from the court According to Rule 15 the court should freely give leave when justice requires This is a low threshold. As
long as the plaintiff is not trying to amend in bad faith or to cause undue delay, etc., the court should grant leave to amend. Here, there is no evidence that August is trying to amend in bad faith or to cause undue delay, it seems he is simply trying to add another claim to his suit. Therefore, because August is not trying to amend in bad faith, the court should grant leave for him to amend. The court will likely rule against Catfish’s objection that amendment is improper at this junction.

2. Catfish’s objection that the inclusion of August’s new claim is impermissible under the Federal Rules of Civil Procedure.

The addition of August’s new claim is permissible under the Federal Rules of Civil Procedure. As seen above Rule 15 allows the addition of this claim. Also Rule 18 allows a party to join as many claims as it has against an opposing party, and August is just adding a claim against an opposing party. A subject matter jurisdiction analysis is not required here because it is not one of the Federal Rules of Civil Procedure, they are statutory rules.

3. Catfish’s objection that August’s new claim is untimely due to the expiration of the two year statute of limitations for negligence claims on June 30, 2008.

Rule 15(c) allows for the relation back of amendments. An amendment relates back to the date of the original pleading when 1. the law that provides the applicable statute of limitations allows relation back, 2. the amendment asserts a claim or defense that arose out of the conduct, transaction or occurrence set out, or attempted to be set out, in the original pleading, or 3. the amendment changes the party against whom a claim is asserted. Here, the amendment by August of negligence in giving him the outdated charts that Catfish should have known were likely to be inaccurate or cause an accident, is part of the same conduct, transaction or occurrence because again looking at the factors in the logical relationship test the charts were part of the sale of the boat, August used them to navigate back and because they did not show the sandbar, he ended up hitting the sandbar. Also, both claims are resolved by negligence law. Also, for an amendment to relate back, the original complaint must be timely. The original complaint was timely because it was filed on June 15, 2008, about two weeks before the statute of limitations expired on June 30, 2008.
QUESTION 4

Comments for Question 4:

Part A of this question involves questions of joinder, while Part B focuses on issues relating to subject matter jurisdiction (SMJ). Each part can be further divided to deal with the specific claims at issue in the question, namely (1) August’s claims against Lost Sailor (LS), (2) CJ’s claim against LS, and (3) CJ’s claim against Casey Jones (Jones).

A. Joinder

1. August’s claims against LS

August’s claims against LS fall under two joinder rules, FRCP 20 and 18. Under FRCP 20, August can join a claim against LS as a new party because the claim arises from the same transaction or occurrence and shares a common question of law or fact with the original. Once one claim is valid under FRCP 20, the other is valid under FRCP 18.

2. CJ’s claim against LS

CJ’s claim against LS is a valid cross-claim under FRCP 13(g) because it is between co-parties and arises from the same transaction and occurrence as the original. Note: this claim cannot be brought under FRCP 14 because it does not add a new party.

3. CJ’s claim against Jones

This claim is able to be joined under FRCP 13(h) because although it adds a new party in Jones, there is a cross- or counter-claim to which it can be joined and it satisfies FRCP 20’s requirements with regard to that cross- or counter-claim (i.e. it arises out of the same transaction or occurrence and shares a common question of law or fact with the cross- or counter-claim).

B. Subject Matter Jurisdiction (SMJ)

1. August’s claims against LS

There are two claims by August against LS that need to be considered for SMJ purposes. First is the negligence per se claim. This claim is not created by federal law because it is a negligence claim, nor does it satisfy the requirements for diversity jurisdiction because the
parties are not diverse from one another (LS is incorporated in FL). It likely does, however, constitute a federal question under § 1331 because it meets the criteria for an essential federal ingredient outlined in Grable.

August’s negligence claim is neither a federal question nor a diversity claim. As for supplemental jurisdiction, it fails on this ground because although the negligence per se claim is a federal hook and the two claims arise from a common nucleus of operative fact, the exception to supplemental jurisdiction in § 1367(b) applies because the negligence claim is a claim by a plaintiff against a party joined under Rule 20.

2. CJ’s claim against LS

CJ’s claim against LS is neither a federal question nor a diversity claim; it is not created by federal law, it does not contain an essential federal ingredient, and the parties are not diverse from one another. It does, however, satisfy the supplemental jurisdiction requirements of § 1367. Either August’s original diversity claim against CJ or his negligence per se claim against LS act as federal hooks under § 1367(a) because they each have an independent basis for SMJ. Moreover, CJ’s claim has a common nucleus of operative fact with both of these federal hooks. Finally, if you use the diversity claim as a federal hook, the § 1367(b) exception to supplemental jurisdiction does not apply because CJ is a defendant, and if you use the federal question claim as a hook, § 1367(b) does not apply because it is limited to supplemental claims based on diversity jurisdiction.

3. CJ’s claim against Jones

This claim fails to satisfy federal question jurisdiction but meets the criteria for diversity jurisdiction under § 1332 because the parties are completely diverse (TN and FL) and the amount in controversy ($150,000) exceeds $75,000.
Sample Answer to Question 4:

Augusts claims against Lost Sailor for mishandling the Pearly Baker and for violation of the federal regulation

Joinder of parties by plaintiffs are governed by either Rule 20 or Rule 19. Under Rule 20 the claim against the joined party must be part of the same transaction or occurrence as the plaintiffs original claim. This is determined by using the factors of the logical relationship test: the nature of the claims, the law involved, and the factual backgrounds. Here, although both claims use negligence law, the original claim involves the manufacture of the boat and how Catfish built the boat, while the claims against the Lost Sailor deal with facts about how the boat was shipped to New Orleans. Both of these claims would look at entirely different facts in determining their recovery on the shipment of the boat than would be looked at for the claims against Catfish in building the boat, therefore they are not part of the same transaction or occurrence. The claims also don’t have a common question of law or fact because [exam ended]

Catfish claim against Lost Sailor

The claim by Catfish against Lost Sailor is allowed under joinder. The joinder of parties by a defendant is only allowed by Rules 13(h) and Rule 14. Rule 13(h) allows a defendant to join a claim to a counterclaim or cross claim, using Rules 19 and 20. Rule 14 allows a defendant to bring in a third party for indemnity. Indemnity is when a person is only liable to a party to pay if a judgment is rendered. Here, Catfish’s claim against Lost Sailor is an indemnity claim good under Rule 14. Catfish had a contract with Lost Sailor that stated that Lost Sailor must compensate Catfish for any judgments against him. This is an indemnity agreement that Lost Sailor is only liable to Catfish if Catfish is liable to someone else. Lost Sailor will only have to pay Catfish if he is liable to August.

Catfish claim against Casey Jones

This again is the joinder of a party by a defendant. Here, there is no indemnity under Rule 14 between Casey Jones and Catfish. There is no evidence that Casey Jones only pays if Catfish is liable to August. This joinder is not good under Rule 13(h). Rule 13(h) first requires that there is a counterclaim or a cross claim to attach the third party claim to. Here, Catfish has a counterclaim against August. Next, we must do a Rule 20 or a Rule 19 analysis. Under Rule 20,
a party may be joined if the claim against them is part of the same transaction or occurrence as the counterclaim. To determine this we must again use the logical relationship test and consider the nature of the claims, the legal basis for recovery, the law involved, and the respective factual background. Here, the claim for Jones failing to properly mark the sandbar while related to the claim by August about the charts not marking the sandbar is not part of the same transaction or occurrence as the breach of contract counterclaim. The claim against Jones uses negligence law, while the counterclaim is resolved under contract law. One involves the interpretation of the contract in determining whether August must pay the remainder of the cost of the boat, while the other involves Jones’ fault in the boat accident. Rule 20 also requires that the claims have a common question of law or fact and here they do not. One claim is about contract law and interpretation while the other is about a boat accident and his negligence in marking the sandbar. We must also see if the Rule 19 analysis works. Under Rule 19, the party must be a required party, that is feasible. A party is required when the plaintiff cannot get adequate relief, the party cannot protect his interest, or the party would get sued again for the same thing. Also, to be feasible, the party must be subject to service and the court must be able to get subject matter jurisdiction. However, joint tortfeasors are not required parties under this rule. Here, Jones may likely be a joint tortfeasor, with his negligence contributing to the accident along with Catfish’s possible negligence in the boat’s construction. Jones does not have to get sued by August at the same time he sues Catfish. Therefore, because neither Rule 20 or 19 are satisfied, Rule 13(h) is not satisfied and joinder is no good.

(B)

Subject Matter Jurisdiction

Federal Question - 1331

August against Lost Sailor

Must look at August’s complaint under the well pleaded complaint rule to determine subject matter, not to Lost Sailor’s defenses

Creation Test- cause of action created by federal law
Neither are created by federal law because negligence and negligence per se are state claims, not federal

Essential Federal Ingredient Test
1. Right to relief on a non federal claim depends on construction or application of federal law
2. Federal ingredient must be disputed
3. Federal ingredient must be substantial
4. Must not upset allocation of jurisdiction between federal and state

Here, August’s negligence per se claim meets the essential federal ingredient test
1. The right to relief on his negligence per se claim depended on the construction/application of the federal regulation about land transportation of boats
2. Whether Lost Sailor violated the statute is what is disputed
3. August’s whole argument is that the statute was violated and that is what made Lost Sailor negligent, therefore it is substantial
4. The allocation of jurisdiction would likely not be upset because there are not many cases about the shipment of wooden boats over land that would all of a sudden flood into federal court if this case were allowed in federal court

August’s negligence claim for mishandling does not meet the essential federal ingredient test
The right to relief of this claim does not depend on the construction or application of any federal statute

Diversity 1332
Complete diversity and amount in controversy
Complete diversity
Based on domicile
Citizens of different states, citizen of U.S. vs. an alien, or citizens of U.S. with aliens as additional parties
Corporations- 2 domiciles- state of incorporation and principal place of business
Here, Lost Sailor is incorporated in Florida, therefore one of its domiciles is Florida, and the parties are not completely diverse
amount in controversy- over $75,000 and can’t aggregate across parties

Supplemental 1367
1. federal hook (case that court has original jurisdiction over)
2. related- same case or controversy- common nucleus of operative fact
3. includes joinder and intervention

here- federal hook- the claim against Lost Sailor for negligence per se
related, same case or controversy- part of the same nucleus of operative fact
because both the claim for negligence per Se and the claim for negligence involve the moving
of the boat by Lost Sailor

Good under 1367(a)
1367(b)- only if federal hook is diversity- here it is not, it is a federal question hook
1367(c) judicial discretion

if claim is novel or complex issue of state law
state claim substantially predominate over fed claim
district court has dismissed all claims
any other compelling reasons
judge would most likely say supplemental is good- not a novel/complex issue of state law and
the state claim does not substantially predominate

Catfish’s claims against Lost Sailor
Fed Question 1331
creation test- no, not created by federal law- it is indemnity
essential federal ingredient test- no, didn’t depend on any federal law
diversity 1332
complete diversity- no- Catfish TN resident, Lost Sailor principal place of business in TN don’t
need to go to amount in controversy- that would be ok- $150,000
supplemental 1367
fed hook- yes- the original claim against him by August
diversity
Catfish’s claims against Jones
fed quest- no not created by fed law, no essential fed question
diversity- yes- one florida, one tennesse- amt in controversy exceeds 75K- Catfish sued for $150,000

**QUESTION 5**

**Comments for Question 5:**

Part A asks to identify which discovery devices should be used to obtain the information listed in the question. The first is an existing document, and should therefore be pursued through a Rule 34 document request. The second is sworn testimony from someone who could speak on behalf of the corporation, and is thus a Rule 30(b)(6) deposition. The third is an existing document from a third party, and should therefore be requested through a Rule 45 subpoena. The fourth is sworn testimony of someone’s personal knowledge, and as such is the product of a Rule 30 oral deposition. The fifth is a sworn “response” to a question, which is best obtained through a rule 33 interrogatory, although credit was given for answers of an oral deposition. Finally, the last piece of information is a written denial, which is most likely found in a request for admission, where the available responses are limited to admissions and denials. Credit was also given here for an answer of “interrogatory.”

Part B asks for a ruling on a summary judgment motion on either of August’s two claims against LS. The answer to both was that they would be denied due to the presence of a genuine issue of material fact. For the negligence claim, a genuine issue was raised by the information in # 1, 5, and 6 from the Question. For the negligence per se claim, a genuine issue was raised by the information in # 2, 3, and 4.
Sample Answer to Question 5:

(A)
1. Document request (Rule 24- need tangible information, no limit on how many- here they need parperwork/Tangible evidence
2. deposition- Rule 30- sworn statement under oath, of parties or non-parties transcript of depo taken by court reporter only 10 for each side, length of 7 hours in one day (for a corporation, must pick one person to depose who must testify about the things they know or that are reasonably available to them- must tell them w/ particularity the things you will depose them about- here, if it is a transcript of a sworn statement, it is a deposition
3. document request- an invoice is a tangible item of paperwork
4. deposition
5. Interrogatories Rule 33- written sworn answers only allowed to give to the other party only get 25 including discrete subparts
6. Could be an interrogotory or deposition- sworn answers- doesn’t say whether they are written or if it is a transcript- both can be by the parties
Request for admission Rule 3&- ask for the other party to admit something they can either deny or admit within 30 days or Interrogatory

(B)
Summary judgment
Rule 56
No genuine sue of material fact
facts support conclusion for your side, a reasonably jury could not find any other way, must be an important fact, must prove what you would have to prove at trial- same standard of proof plaintiff must prove every element at summary judgment. Here, most likely August would lose- evidence shows the boat was only 3,000 pounds, not over 10,000, and the boat was intact when it got to New Orleans- can’t prove that there is no genuine issue of material fact that the boats weighed more than 10,000 pounds and that they were damaged upon arrival to New Orleans Movant is entitled to judgment as a matter of law- not here