Civil Procedure I - Fall, 1996 - Post-exam memo

Because the exam was open book, there was a tendency for people to list the black letter law without trying to apply it to the facts. Indeed, analysis was generally slighted in favor of description of the substantive law. Points were allocated in accord with the time allotted.

1. Some explanations were at variance with the true/false designation.
   a. False - recently increased to greater than $75,000.
   b. False - discovery rules vary from court to court - which the 1993 amendments expressly allowed, by making mandatory disclosure an opt-out provision.
   c. False - different kinds of remedies, some of which attempt to have this purpose, but still fall short, while others have no connection with restoration of original position.
   d. False - Enabling statute has been interpreted to require complete diversity.
   e. False - John is an ordinary witness.
   f. False - probably sufficient to place nonexistence of contract in issue, but waiver is an affirmative defense which must be specifically plead.
   g. False - complaint format not affected by kind of claim, unless Federal Rules expressly say so (e.g., fraud must be plead with particularity)
   h. False - see 15(c).
   i. False - only if raised by well pleaded complaint
   j. False - so long as likely to have evidentiary support after investigation, if identified as such, no Rule 11 violation.
   k. False - 1367 supplemental jurisdiction
   l. False - due process limits on both (some people simply reproduced the answer from last year's exam, in which it was noted the S.Ct. has never struck down an award on this ground - but BMW did so last term.
   m. False - freely granted only when justice so requires; pleadings do serve some purpose in focusing scope of trial.
   n. True - not required to go to boundary of due process clause (Compare Massachusetts and California)
   o. False - Interrogatories only against parties.

2. For some reason, people felt compelled to address long-arm problems, subject matter jurisdiction, and personal jurisdiction based on things that were not present in the facts (consent). Even if the analysis is correct (which it was not always), such efforts distract from the time and effort you have to devote to the question that was asked. Second, don't assume that where the paper is read is dispositive of where the injury occurred - let alone that this fact automatically makes a difference as to where one can sue. For many people, a preliminary discussion based on Int'l Shoe/Asahi and Hanson helped set the stage for the analysis.

   a. Newark Times - Some contacts - circulation of small number, ongoing contacts with freelance photographers - the former more connected with the lawsuit than the latter. Traditional notions probably satisfied by nationwide circulation, willingness to seek business in California; interest of forum state in resolving controversy (high - to protect reputation of stars). Likely to get P.J.

   Silly Sam - never been to California; Only injury in which he was involved took place in Illinois. QIR jurisdiction must still be judged by Int'l Shoe standards (Shaffer v. Heitner) - Ownership of stock in a company which owns property in California tenuous,
especially if prospectus does not make clear degree of involvement in California market and nature/volume of dealings. Extremely unlikely to get P.J.

b. Newark Times - Exceedingly minimal contacts, albeit with some connection with suit. Independent contractor called sources in Illinois - but no indication as to whether their statements gave rise to defamatory claims in article. Newspaper finding itself in Illinois was maybe foreseeable (?), but independent action of third party insufficient (Worldwide VW; Hanson v. Denckla). Unlikely to get P.J.

Silly Sam - went to Illinois once; unclear where his business dealings were. Single contact was source of injury. Private party, which makes it harder to hail into far-away forum. Close question, but unlikely to satisfy P.J. - unless you can tag him again when he's in the state - but then it may not matter what the connection of contact was.

c. Tag jurisdiction works on individuals (Burnham), but should it work on corporations? High level executive - but in-state presence unconnected with injury - and some evidence they were tricked into coming to Connecticut. However, trickery did not really rise to level of fraud. Lots of potential purposeful availment of Connecticut - use of roads, ski resorts, bars, hospital facilities. Newark Times' business also based on East Coast - despite no circulation or mail sales in Connecticut. Traditional notions not likely to be compelling for Court. Very close question.

d. General jurisdiction for all purposes - require continuous and systematic (Helicopteros). Easily N.J.; unlikely for California; no way for Illinois; issue for Ct will turn on whether being tagged in state counts.

e. Classic Erie problem - but with some red herrings. Existence of statute on arbitration clauses in contracts completely irrelevant. Statute on ADR also not necessarily applicable (Courts are experimenting with), although it does suggest some enthusiasm for ADR like the task force. More basically, the issue is should this case go through the usual federal court stuff (pretrial preparation and trial by jury - or perhaps by court annexed ADR/mediation) or should it go to the task force first. Necessary to work through Erie framework (Is there a conflict? Is there a Federal Rule on point? Is the state provision outcome determinative? Is there an important federal interest at stake? Risk of forum shopping and inequitable administration?) and then apply. Likely result is that friendliness of Fed'l procedure to ADR-type arrangements can allow some leeway for judge. Since state is trying to control out of court conduct and remedies available through task force that are not available to Court, this should probably go to task force.

f. i. Clearly discoverable by 26(a)- no relevance analysis required
ii. Probably non-discoverable - but have to explain why (past conduct irrelevant, unless seeking punitives)
iii. Clearly discoverable - defamation places truth in issue, and privilege/privacy waived by filing suit.
iv. Probably discoverable - consorting with mob not same as sending them Christmas card, but likely to lead to relevant evidence - which is all that is required.