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Second Edition

# THE GLANNON GUIDE TO CIVIL PROCEDURE

Learning Civil Procedure Through  
Multiple-Choice Questions and Analysis

Joseph W. Glannon



Wolters Kluwer

Law & Business



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# The Glannon Guide to Civil Procedure

Learning Civil Procedure  
Through Multiple-Choice  
Questions and Analysis  
Second Edition

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**Joseph W. Glannon**

*Professor of Law*

*Suffolk University Law School*



**Wolters Kluwer**  
Law & Business

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Thanks, too, to those benumbed students from law schools across the country who took a much needed break from studying Civil Procedure to compose limericks for my amusement and yours.

# 1

## A Very Short Introduction

---



*While studying the Glannon guide,  
It's best to keep it at your side.  
The procedure is civil,  
Over details they quibble,  
Professor—you've saved my hide.*

*S.K. Suffolk University Law School*



**T**his book provides a short, clear, efficient review of basic topics in Civil Procedure, organized around the theme of multiple-choice questions. In each chapter, the individual sections explain fundamental principles of a topic—such as stream-of-commerce jurisdiction, joinder under Rule 14, or the requirements for res judicata—and illustrate them with one or two multiple-choice questions. After each question, I explain which answer is right, and why the wrong answers are wrong. These short explanations allow me to discuss the black letter rules in the context of the questions. Hopefully, this format will engage you in the study process, so you'll develop a stronger understanding of the basics of procedure. That will pay dividends at the end of the course, whether your exam includes multiple-choice questions or not.

So, the book provides a topically organized review of basic Civil Procedure issues, and clear explanations tying that review to the questions in between. It will be useful either in conjunction with your class study of each topic, or for review toward the end of the course. Even if you just read it to get ready for the final, even if you don't *want* to learn the first year's most

mysterious course, working through this short book is going to make some lights go on about some complicated concepts.

Don't expect any magic formulas for Mastering the Multiple-Choice Question in the pages that follow. I don't have any. I don't think there are any. That's why multiple-choice questions are a legitimate testing format: You can't "psych out" a good multiple-choice question, you have to *analyze* it. My students routinely implore me to tell them the secret to improving their performance on multiple-choice exams. All I can tell them is that they need to understand the underlying legal rules, and articulate in their heads the problem with each answer until they find one that's unassailable. That may be good advice, but it never makes them feel much better. But *practice* on good questions, with a clear accompanying explanations of the law, will help. I think you will find that this book provides an intelligent, slightly seductive vehicle for learning a complex subject.

Drafting multiple-choice questions for practice can be dicey. There is a risk that the questions will be too complex, or too ambiguous. Fairness demands that a multiple-choice question have one clearly preferable answer. The questions in this book are fair—if you think any are not, please let me know for the next edition—and the explanations explain why. I've also included brief explanations of the law relevant to the questions right along with them, to assist in learning the doctrine and answering the questions. Glannon's Picks at the end of each chapter, recaps the answers to all questions for quick reference.

There are several ways to use this book. The first is to read each introduction, then work through the question, make a considered choice of the right answer, and then read my analysis. This is the best approach, because reading the introductions will provide you with the substantive background to address the question, and reinforce your understanding of it.

Another way to use the book is to read the question, choose the best answer, and then look at Glannon's Picks at the end of the chapter. If you got it wrong, go back and read my analysis of the various choices. This has the advantage that, if you really know the point, you don't have to read about it. But a quick recap of the law will usually be worth the extra time to read the introductions. The advantage over the first approach is meager.

The third way to use the book is to read the question, guess the answer, compare my answer at the end, and shrug your shoulders if you missed it. Not much value here; you might be better advised to save yourself the cost of the book.

Oh, one more thing. Just to lighten things up a little, I've started off each chapter with a limerick. Admittedly, some of them are pretty bad. If you can write a better one, e-mail it to me at [jglannon@suffolk.edu](mailto:jglannon@suffolk.edu) and I'll consider it for the next edition. For some other students' offerings, see Closing Openers, the second-to-last chapter in the book.

# Diversity Jurisdiction: The Basic Rules



*It may seem like a lot of falarfel  
To claim the state court stands impartial,  
But though it's perverse,  
Opponents must be diverse  
'Cause that's the holding . . . from Chief Justice Marshall.*



## CHAPTER OVERVIEW

- A. State citizenship in diversity cases: The domicile test
- B. The difference between intent and evidence: Proof of domicile
- C. Chief Justice Marshall's *Strawbridge* rule: The requirement of complete diversity
- D. Determining a corporation's principal place of business
- E. Diversity in cases involving foreign citizens
- F. The relation between statutory diversity jurisdiction and the constitutional grant
- G. The amount-in-controversy requirement
- H. Aggregation of damages in diversity cases
- I. The Closer: Another shot at the domicile test
- ✿ Glannon's Picks

**W**e have to start somewhere, so let's start with federal court jurisdiction over diversity cases, a fairly straightforward topic to get us going. As I promised in the first chapter, for each topic

my introductions will explain the basic doctrine, followed by a multiple-choice question and my analysis of the choices. Perhaps you already know the doctrine. If so, the introductions will provide a quick run-up to the questions. If you don't, it will supply an efficient infusion of black letter law.

## A. State citizenship in diversity cases: The domicile test

---

Under federal diversity jurisdiction a citizen of one state may sue a citizen of another in federal court, even though her claim arises under state law, if she has a colorable claim for more than \$75,000. The state citizenship of a person—as opposed to that of a corporation—is determined by her domicile, that is, the most recent state where she has (1) resided with (2) the intent to remain indefinitely. The “residence” requirement is easily satisfied. Staying overnight in a hotel or a tent will establish “residence” in a state. It is the intent-to-remain-indefinitely prong that gives students problems.

A person intends to remain indefinitely in a state if she is residing in the state on an open-ended basis, without the intent to leave at a definite time or on the occurrence of a definite event. You don't have to swear allegiance forever to a state to acquire domicile there; you only need to reside there “indefinitely,” that is, on an open-ended basis. If a party is living in a state without definite plans to leave, the domicile test regards that state as her “home.” She is there, not as a visitor, but as a citizen. She is, psychologically speaking, at home there, rather than passing through. She may choose to move on, as we all may, but at the moment she has no plans to do so.

Remember that, until the two prongs coincide in a new state, your old domicile continues, whether you plan to return to that state or not. If Acari, from Hawaii, leaves for a one-year job acting in a play in California, planning to go to New York afterwards, he remains domiciled in Hawaii, even if he swears that he will never return to Hawaii. He hasn't acquired a domicile in California, because he doesn't plan to stay there indefinitely. He hasn't acquired one in New York either, since he doesn't reside there yet. Domicile doctrine abhors a vacuum, so it holds that Acari keeps his Hawaii domicile until the two prerequisites come together in another state.

In analyzing the question below, assume that the court applies the reside-with-intent-to-remain-indefinitely test, and consider where Marla has established a residence with the requisite “indefinite” intent.

**QUESTION 1. Moving Marla.** Marla, who grew up in Montana, moved to Colorado after high school to enter a two-year program for hair stylists at the Denver Beauty School. She wasn't sure if she really wanted to be a stylist, but she was anxious to get away from home, and her parents agreed to foot the bill, so off she went. She figured she'd stay if she liked it, and get a job as a stylist afterwards, in Denver or elsewhere in the West (including Montana). Or she would leave the program if she didn't like it and look for work, hopefully in Denver. She took an apartment on a six-month lease. After moving to Denver, Marla

- A. remains domiciled in Montana, because the program is only for two years.
- B. remains domiciled in Montana, because she may return there to work as a stylist.
- C. remains domiciled in Montana, because she was domiciled there before she left for Denver.
- D. is domiciled in Colorado, because she resides there with the intent to remain indefinitely.

**ANALYSIS.** Don't be fooled by A. Although Marla's program is for two years, that doesn't mean that Marla will be there *only* for two years. The question indicates that she might stay in Denver after finishing the program, or she might leave for a job in some other Western state. Or, she might leave the program if she doesn't like it and stay in Denver. Thus, she may leave Colorado, or she may not. Since she is not definitely planning to leave Colorado at the end of the program, her stay is not clearly limited to the two years of her academic program.

How about B? It sounds seductively reasonable. But the test for domicile isn't whether you might someday go back to the state from which you came. The test is your attitude toward the state where you are. If you live in a state indefinitely, you acquire domicile there, even if you think you might go somewhere else, or back where you came from, at some point in the future. Here, Marla's state of mind is that, whether she finishes the program or not, she may stay in Colorado, or she may leave. That certainly does not show an intent to leave at a definite time. She is in the state with no definite plans to leave. The possibility that Marla might move on at some time in the future does not make her current stay a "definite" one. She might leave Colorado, or she might not. That's "indefinite" intent.

C would only be right if Marla has not established a new domicile in Colorado. If she went to Denver for a fixed period, she would retain her Montana domicile. However, if she's in Denver without definite plans to leave, she establishes a new domicile there. The facts suggest that her stay is open-ended, so she has established a Colorado domicile. D takes the prize.

## B. The difference between intent and evidence: Proof of domicile

---

Cases analyzing domicile for purposes of diversity frequently cite evidence about the person's practical affairs, in order to establish a party's intent. The court may rely on facts such as where the party votes, has health insurance, has a driver's license, rents an apartment, has a bank account, registers her car, and so forth. Certainly, such facts are relevant evidence of a person's intent to remain in a state, or not to. But keep in mind that the *test itself* is the person's intent. Evidence about her practical affairs may help to demonstrate her subjective intent, but a person is not automatically domiciled where she has an apartment, or votes, or maintains her health insurance. If she were, *that would be the test*, rather than her subjective intent.

Parties introduce such practical evidence about a person's conduct to prove the ultimately relevant fact: her intent. But a person could be domiciled in Wisconsin, even though most of these practical factors point to Illinois. It's all a matter of trying to ascertain a subjective fact based on all the evidence. A court will certainly look at the party's testimony in assessing intent, but will also consider whether her practical conduct corroborates or refutes that testimony.

Consider this example.

**QUESTION 2. Wedding plans.** Rossi grew up in Erie, Pennsylvania. In August 2002, she departed for college in Idaho. After starting school in Idaho, she registered her car there and established a bank account there. She gets health coverage through the college. She has an apartment there, which she has taken on a one-year lease. She has a part-time job in Idaho, and has Idaho state taxes taken out of her check. On her application for the job she listed her Idaho address and telephone number. Her plan is to complete a two-year computer technician degree, and then return to Pennsylvania, where her fiancée has just taken over his family's construction business in Erie. (They have reserved a hall for their wedding in June 2004.) However, she may need a bit more than two years to finish the degree, if tuition goes up too much.

Three months after arriving in Idaho, Rossi brings suit against a Pennsylvania surgeon, for an injury suffered in an operation performed in Pennsylvania a year before. She sues in federal court on the basis of diversity. The court will probably conclude that Rossi is domiciled in

- A. Pennsylvania, since she is only in Idaho as a student.
- B. Pennsylvania, since she intends to return to Pennsylvania when she finishes her degree.

- C. Idaho, since she has an apartment there, goes to school there, has a job there, has health coverage there and pays Idaho state taxes on her income.
- D. Idaho, since she doesn't know when she will finish the college program.
- E. Idaho if she testifies in her deposition that she plans to remain there indefinitely.

**ANALYSIS.** Let's start with C, which suggests that the court will find Rossi domiciled in Idaho because she has an apartment there, an Idaho job, health insurance there, and so on. The example illustrates a situation in which most of these practical facts suggest that one state is the domicile, but it probably isn't. Here, there are good reasons for Rossi to arrange her practical affairs as she has, even if she plans to leave Idaho. If you went to school in a state, wouldn't you need a place to live? Wouldn't you get a job if you needed money? Wouldn't you give your local address so the employer could get in touch with you? Wouldn't you join the college health plan? Very likely, you would do all of these things, whether you intended to leave the state when you finished the degree or not. In this case, there's a perfectly good explanation for all these practical choices, even if Rossi has definite plans to leave the state. So, these facts do not themselves establish that Rossi has an open-ended commitment to living in Idaho. So C is wrong.

D suggests that Rossi is domiciled in Idaho, because she doesn't know exactly when she will finish her degree. However, while Rossi doesn't know when she will finish, she does have definite plans to leave Idaho when she does. Since she plans to leave upon the occurrence of a particular event, her stay is not open-ended. She's a Idaho visitor, not a domiciliary, under domicile analysis.

But A isn't right either. It implies that you can never establish a domicile by going to a state as a student. That isn't so. If you go to a state to attend school, without definite plans beyond your studies, you can establish a domicile there. Many students do satisfy the reside-with-intent-to-remain-indefinitely test by going to school. A case in point, on which this example is very loosely based, is *Gordon v. Steele*, 376 F. Supp. 575 (W.D. Pa. 1974).

How about E, which takes the position that the court will find Rossi domiciled in Idaho if she testifies that she plans to remain there indefinitely? Would this be dispositive? Surely not. People do sometimes lie. More often, some motive, such as access to federal court, may color their view of a subjective fact. In determining Rossi's domicile, the court would look at all the evidence, not just her testimony. Here, the facts pointing to Idaho are easily explained on another basis. And the fact that her fiancée has taken over the family business and they plan to marry at the time she will likely complete her studies very strongly suggests that she intends to return. Her testimony is important evidence about her intent, but not solely dispositive.



So **B** is the best answer. Rossi has not established a domicile in Idaho, because she went there with clear plans to leave when she finished her degree. The question *tells you* that she plans to leave, and her engagement clearly corroborates her intent to go back to Erie.

So the point is that the practical factors may be of value in evaluating a person's subjective intent. But the ultimate fact to be proved, under the domicile test, is the intent itself.

## C. Chief Justice Marshall's *Strawbridge* Rule: The requirement of complete diversity

---

Very early on, the Supreme Court held that diversity jurisdiction is only proper if all plaintiffs are citizens of different states from all defendants. *Strawbridge v. Curtiss*, 7 U.S. 267 (1806). You can have multiple defendants from the same state, and multiple plaintiffs from the same state, but no plaintiff can be from the same state as any defendant or her presence will "destroy diversity." (In the real world, of course, a plaintiff can cure the defect by dropping the nondiverse plaintiff, or a defendant from the plaintiff's state, to "perfect diversity.")

A twist in applying the *Strawbridge* rule arises in cases involving corporations. The Supreme Court has held that corporations are state "citizens," but courts cannot determine their citizenship by the domicile test, since a corporation can't have "intent" the way a person can. Consequently, Congress has defined the "state citizenship" of a corporation in the diversity statute itself. 28 U.S.C. §1332(c)(1) provides that a corporation is a citizen of the state in which it is incorporated, and also the state in which it has its principal place of business.

I find that my students resist looking at statutes and rules to the death. They will go to almost any lengths to avoid consulting the governing provisions of law! That's a shame, because the statutes and rules that establish procedural lore answer a lot of questions. I always let my students bring the federal rules pamphlet into the exam, since I want them to focus on applying the rules and statutes, rather than memorizing them. My questions in this book *assume that you have the relevant rule or statute in front of you* to help in analyzing the question. However, it's essential to find out your professor's policy on bringing the rules book into the exam. If she doesn't allow you to, you will obviously need to spend more time absorbing the details of the rules likely to be tested.

Here's a straightforward question—more straightforward than my usual fare—that probes the complete diversity requirement.