

ESSAYS FROM FALL 2012 CIVIL PROCEDURE I EXAM

ESSAY QUESTIONS

(Suggested total time of 120 minutes for essay questions)

Supplemental instructions for essay questions.

On the next page is a partner-to-associate memo providing a fact pattern, followed by two essay questions. Another partner-to-associate memo follows with facts that expand on the initial fact pattern, followed by a third and final essay question.

Use your time wisely:

Question One (venue): 25 minutes

Question Two (subject-matter jurisdiction): 25 minutes

Question Three (personal jurisdiction): 70 minutes

Be sure to write an answer for each question, even if you believe that the answer to one question would make analysis of another question technically unnecessary.

Write your answers to essay questions using a laptop or bluebook(s). If you use more than one bluebook, please number your bluebooks (e.g., "1 of 2," "2 of 2"). When using bluebooks, write on every other line and, except where you need to make an addition or clarification, on only one side of each page. Computer files and bluebooks should include your AGN number, but not your name or your student ID. You may not write anything on, or erase anything from, your essays after time runs out.

Read the facts and questions carefully before you begin to outline and write your answers. Pay close attention to the suggested completion times because the points allotted for each question generally correspond to the suggested time for that question. Note that facts stated in multiple-choice questions have no relevance to essay questions, and facts stated in essay questions have no relevance to multiple-choice questions.

If you believe you have discovered an error in an essay question, identify the error and resolve it in a reasonable manner. If you need to assume additional facts, state what those facts would be and how they would affect your analysis. But do not construe that as an invitation to change facts. Analyze matters under the facts presented and assume additional facts only where you believe them to be necessary.

Please raise, discuss, and decide all issues presented by the call of the question, whether or not they are dispositive, and whether or not resolution of one issue makes discussion of other issues technically unnecessary.

As always, legibility and proper grammar are expected.

MEMORANDUM I

From: The Senior Partners
To: Junior Associate
Re: **Procedural issues regarding suit against “The Revengers”**
Date: June 14, 2012

This is a strange story involving superheroes and an invasion from outer space. It is also a story concerning your duties as an attorney in our firm. Thus, you should consider yourself an aspiring superhero of the bar. Details are provided below.

Our firm’s client, Eric Lenchner, was born in Germany in the 1920s. After surviving the horrors of a concentration camp and World War II, he emigrated to the United States. He obtained U.S. citizenship and moved in 1948 to Brooklyn, New York where he worked in the metals industry. After years of hard work, he bought a vacation home in Tucson, Arizona in 1989. It was a modest villa within a short walk of Saguaro National Park, the home of America’s largest cacti. It is a place that is hot, barren, and devoid of any technology or humanity. Until recently, Lenchner went to the house when he sought peace and quiet, at most two or three months out of any year. Otherwise, he lived in Brooklyn where he worked.

A genius at all things metal, Lenchner invented a device for moving metal objects remotely without touching them. He was awarded United States Patent Number X-7,900,874, *Device for Remotely Moving Metal through Manipulation of Electromagnetism*. He also trademarked his invention as the MAGNETO® Remote Metal Moving machine.

One day, he was in Tucson at his vacation home and was thinking about his retirement. Aware of the potential for commercial exploitation of his patent, he thought about finding a suitable business partner. He therefore visited the website of Spark Industries, Inc., the world’s largest defense contractor, at <http://www.sparkindustries.com>. According to Lenchner, the website was dull and uninviting. There was little information, except for a few pages that described Spark Industries’ publicly acknowledged products and a notice stating “This site designed and maintained by Tony Spark.” The site also indicated that Spark Industries was incorporated and headquartered in New York.

On the site, Lenchner found a form that he could use to write directly to Tony Spark, the billionaire CEO and owner of Spark Industries. Before Lenchner could send the email, he had to click on a button agreeing to the Terms and Conditions of the website, which included a statement that “any dispute arising from the use of this website will be litigated under the laws of the State of New York.” Clicking on the button, Lenchner sent an email to Tony Spark proposing that they do business together. He included copies of his patent and trademark registrations. A few days later, Lenchner received a reply from Spark, inviting Lenchner to New York City to discuss a possible joint venture.

A week later, Lenchner flew to New York City (in the Southern District of New York) to meet with Spark, who had been born in the city and lived there his entire life. This is where

things started to get very strange indeed. Spark, a self-described “genius billionaire playboy philanthropist,” was also well-known for wearing a jet-powered suit of metal that provides him with super-human strength. He called himself “Irony Man” and fancied himself as some sort of “superhero.” Filled with hubris, he worked with similarly minded individuals:

- Dr. Bruce Banter, a/k/a *The Incredible Bulk*, who turns into an enormous green badger when he gets grumpy. Banter was born and had once lived in Buffalo, New York (located in the Western District of New York), but had not been there for ten years and had no intention of ever going back. Since leaving Buffalo in the early 2000s, Banter stayed on the road, never spending more than 24 hours in any one place, because he was terrified of “losing control and turning into an enormous green rage badger.”
- Natasha Fatale, a/k/a *Bleak Widow*, a spy and martial-arts expert who can kill you in 417 different ways with her left pinky. Fatale is from Stalingrad, Russia (now known as Volgograd).
- Steve Dodgers, a/k/a *Lieutenant Antarctica*, a super-strong soldier who was a Captain before being demoted for being absent without leave for over sixty years. Dodgers was also a lifetime resident of New York City.
- Clint Barfon, a/k/a *Hawkear*, who insists on playing with bows and arrows. Barfon is a citizen of Iowa, born in Waverly (in the Northern District of Iowa). Since the time of the battle with Looki, Barfon moved to Iceland, never to return.
- Bhor (from the realm of Asgard in outer space), the mythical Norse god of vapidness and really big hair, who carries a small but powerful tuning fork.



Bleak Widow, Bhor, Lieutenant Antarctica, Hawkear, Irony Man, and The Incredible Bulk during the Battle of Looki. Image courtesy Disassociated Press.

The group called itself “The Revengers.” To turn a long and strange story into something short and simple, Bhor’s “very troubled” brother Looki (also of the realm of Asgard) came to New York through an inter-dimensional portal in outer space and engaged in a huge battle with The Revengers, which caused significant damage to the city. The battle raged for hours all over Manhattan Island (in the Southern District of New York) and spilled over into parts of Brooklyn, New York (in the Eastern District of New York). Doubtlessly, you’ve read the news reports and this memorandum won’t repeat them here; instead, it will focus on the material details.

During the fight—which the press later called the “Battle of Looki”—our client Lenchner was in the front yard of his Brooklyn home, about to depart for his meeting later that day with Spark. Despite the battle raging around him, Lenchner was so focused on his meeting with Spark that he did not realize that a battle was raging before him. Suddenly, a large piece of metal debris from the battle flew through the sky and nearly crushed Lenchner. Fortunately, Lenchner was able to use his MAGNETO® Remote Metal Moving machine at the last moment to deflect the debris and avoid being crushed. Unfortunately, the debris instead crushed Lenchner’s prized 2012 Lamborghini, valued at over \$250,000. Disgusted with life in New York, Lenchner subsequently sold his Brooklyn home and retired to his villa in Tucson.

After investigating the matter, Lenchner found video and forensic evidence that the debris that nearly hit him originated in Manhattan due to the careless actions of three of The Revengers, namely, Tony Spark (Irony Man), Bruce Banter (The Incredible Bulk), and Natasha Fatale (Bleak Widow). The other members of The Revengers were not responsible. Lenchner believes that Spark, Banter, and Fatale, through a lack of reasonable care, caused metal debris from the Battle of Looki to soar miles through the sky where it nearly killed our client and ultimately destroyed his prized sports car. We have independently reviewed this evidence and are confident in our ability to prove in court that these so-called “superheroes” negligently caused the damages described above.

QUESTION ONE (essay of 25 minutes).

Our client Lenchner is considering filing a lawsuit in federal district court alleging negligence against Tony Spark (Irony Man), Bruce Banter (The Incredible Bulk), and Natasha Fatale (Bleak Widow) for negligently causing the destruction of his Lamborghini. The Senior Partners request that you write an objective memorandum that analyzes which federal judicial districts might have **venue** of Lenchner’s negligence suit.

QUESTION TWO (essay of 25 minutes).

Regardless of your conclusion for Question One, write an additional objective memorandum for the Senior Partners that addresses whether a federal district court would have **subject-matter jurisdiction** over a negligence lawsuit against Spark, Banter, and Fatale. Assume for purposes of this question only that Banter became disgusted with civilization after the Battle of Looki and moved to Siberia, Russia, a desolate and isolated place in which he built a log cabin where he intended to spend rest of his life.

MEMORANDUM II

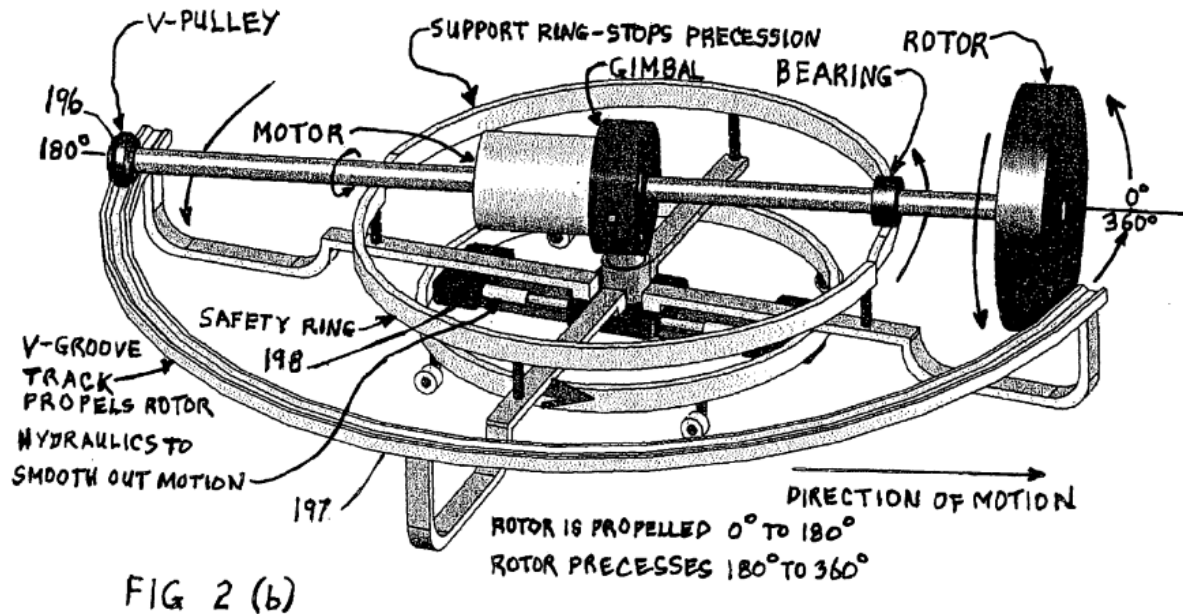
From: The Senior Partners
To: Junior Associate
Re: **Personal jurisdiction against Tony Spark for patent infringement**
Date: Dec. 3, 2012

Thank you for your two earlier memos. The Senior Partners found them to be very helpful. Fortunately, Mr. Lenchner was able to use his MAGNETO® device to repair the damages to his vehicle, and he therefore chose not to pursue his negligence claim. However, he has recently turned to us regarding a different legal matter. It appears that Tony Spark has intentionally infringed on Lenchner's patent for the *Device for Remotely Moving Metal through Manipulation of Electromagnetism*. As you may recall, Lenchner emailed his patent to Tony Spark to propose a business venture with the man. Tony Spark invited Lenchner to meet to discuss the proposal. Due to the battle between Looki and The Revengers, however, Lenchner and Spark never met personally. Despite Spark's personal invitation to Lenchner, Spark subsequently ignored all of Lenchner's phone calls and emails.

Lenchner concluded that Spark had lost interest in the invention. The truth, however, was much worse. Recently, Lenchner was horrified to turn on the television and see Spark—all dolled up in his "Irony Man" suit, which permits Spark to fly—moving large metal items in New York City using Lenchner's patented MAGNETO® Remote Metal Moving machine. Later that day, Lenchner read a statement Spark made during a news conference in New York City:

I am happy to report that I have incorporated a device into my Irony Man suit that permits me to move large metal items without even touching them. This device, details of which were emailed to me by a very special person, is ingenious. It's so good, I wish I had thought of it myself. This device will help me to quickly clean up the debris in New York from our costly victory earlier this year over Looki and his villainous hordes. Although the technology is supposedly covered by a U.S. Patent, I will use it anyway, without permission, and I don't care. Some things are just more important, like cleaning up our town from the battle with Looki. If the owner of this patent chooses to sue me, I say, "*Go for it, buddy. Give me your best shot.*" But to be clear, these actions are mine and mine alone, courtesy of your friendly neighborhood Irony Man—*i.e.*, me, Tony Spark—and not my company Spark Industries. The company has no connection with any of this patent nonsense. Now if you'll excuse me, Irony Man has work to do.

An image from the patent is provided below.



After investigation and legal analysis, the Senior Partners believe Lenchner has a strong case for patent infringement against Spark. However, we have further concluded that Spark Industries is not at fault. It appears that Tony Spark learned of Lenchner's patent from the email Lenchner sent through the website, and that Spark thereafter acted on his own.

Accordingly, we filed a patent-infringement lawsuit against Tony Spark last week in the United States District Court for the District of Arizona, specifically, in Tucson, Arizona. The complaint demands \$1 billion as well as an injunction to prevent further infringement. Additionally, we attached a vacation home that Spark owns on a 50-acre estate in Tucson, Arizona with an estimated worth of \$50 million. Ironically, Spark is using his Tucson estate to store debris from the Battle of Looki, providing further evidence of his patent infringement. The debris—which Spark gathered in New York using Lenchner's MAGNETO® device—was shipped by Tony from New York to Tucson on a train he owns. Spark says he will later have the debris melted down and sold to raise money for additional repairs in New York.

The only other potentially relevant fact of which we are currently aware is a small factory belonging to Spark Industries that is located in Phoenix, Arizona. The factory was built in 1963 by Spark's father, Howard Spark. Although the factory was formerly used to manufacture small munitions, we have learned that since 2008, Tony Spark has co-opted it for his own purposes, to manufacture spare parts for his Irony Man suit. The factory has employed between 12-20 workers for decades.

After filing the complaint, we had a process server track down Tony Spark while he was visiting Mexico. Spark was personally served with the complaint and summons in the Municipality of Nogales in the Mexican State of Sonora (72 miles away from Tucson). Additionally, we obtained the services of James “Jimmy” Rhodes, a part-time process server who owns a metal flying suit similar to the one used by Spark. A few days ago, Rhodes flew up to Spark while Spark was flying over Nevada near Las Vegas. Rhodes pulled Sparks into the airspace 30,000 feet over Arizona, where Rhodes handed Spark another copy of the summons and complaint.

QUESTION THREE (essay of 70 minutes).

Tony Spark has timely moved to dismiss for lack of personal jurisdiction. Assuming that Spark’s personal jurisdiction defense has not been not waived, discuss whether the district court should grant Spark’s motion. Analyze all bases for **personal jurisdiction** (whether based on jurisdiction over person or property) that are reasonably raised by the facts, regardless of your conclusion for any particular basis. Thus, if multiple bases for personal jurisdiction are reasonably raised by the facts but only one of them (or some or none of them) is satisfied, still discuss them all. Here are some additional pertinent considerations:

- The Arizona long-arm statute states: “A court of this state may exercise personal jurisdiction over parties, whether found within or outside the state, to the maximum extent permitted by . . . the Constitution of the United States.” 16 A.R.S. Rules of Civil Procedure, Rule 4.2(a).
- Our earlier memo (“Memorandum I”) to you dated June 14, 2012—regarding Lenchner’s potential negligence suit—may contain additional relevant facts.