

ESSAYS FROM SPRING 2012 CIVIL PROCEDURE II EXAM

ESSAY AND SHORT-ANSWER QUESTIONS

(Suggested total time of 120 minutes for all essay & short-answer questions)

Supplemental instructions for essay and short-answer questions.

Write your answers to essay and short-answer 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 or short answers after time runs out.

For both essays and short-answer questions, 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 or short-answer question, identify the error and resolve it in a reasonable manner. If you need to assume additional facts, state what those facts are 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.

For the essays, 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.

For short-answer questions, the allotted time is limited, so you do not need to provide exhaustive analysis on ancillary matters. The questions are more narrowly tailored than one would expect from longer essay questions. Therefore, provide concise analysis on the core issue(s) presented. However, you are still expected to state relevant issues and rules, and to provide analyses and conclusions.

As always, legibility and proper grammar are expected.

[FACT PATTERN BEGINS ON THE NEXT PAGE]

ESSAY AND SHORT-ANSWER QUESTIONS

(Total time allotted for written-answer questions: 120 minutes)

Below is a fact pattern, upon which five (5) questions are based. 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.

Joss “Grrr Woof” Breedon (hereinafter “Joss”) was a very happy man. Joss was a former television writer who was well known among fans of science fiction and fantasy for his animal-focused television shows, which included *Bunny the Carrot Slayer*, *Doghouse*, and *Lightning-Bug*. After years of toiling on second-rate networks, Joss was selected to write and direct a major motion picture based on a comic book. The film, *The Revengers*, was produced by Marvel Dime Studios, Inc. (hereinafter “Marvel”). Marvel was incorporated in Delaware, with its headquarters in Nevada. Marvel shot most of its movies in Los Angeles, California, the center of the movie industry. In fact, all of Joss’ previous television shows had been shot in California, and Joss had an excellent reputation in California among the creative industry in that state.

The Revengers featured a team of superheroes who assemble to battle against the villain *Un-lucki*, a trouble-making god from Norse mythology. Battling against *Un-lucki* was a team of the world’s finest comic-book superheroes:

- *Rick Furious*, the leader of the mysterious governmental organization *J.U.S.T.I.C.E. F.I.E.L.D.S.*, who assembles *The Revengers*;
- *Tony Spark*, also known as (“a/k/a/”) *Irony Man*, who wears a jet-powered metal suit;
- *Dr. Bruce Beemer*, a/k/a *The Incredible Bulk*, who turns into a large green badger when he gets depressed;
- *Natasha Fatale*, a/k/a *Bleak Widow*, a spy who can kill you in 417 different ways just with her left pinky;
- *Steve Dodgers*, a/k/a *Lieutenant America*, a super-strong soldier who was a Captain before being demoted for being AWOL (absent without leave) for over sixty years; and finally,
- *Bhor* (no known alias), the mythical Norse god of vapidness, who carries a small but powerful tuning fork. *Bhor* is the brother of the villain *Un-Lucki*.

The film was not shot in California, but instead was shot entirely in the small city of Squamish, in the province of British Columbia in Canada. Although Joss was an American citizen born in California, he had previously moved himself and his family permanently to Squamish. Marvel had agreed to allow Joss to shoot *The Revengers* there. Marvel also allowed Joss to keep the copyright in the film and its screenplay in exchange for a waiver of Joss’ writing and directing fee. This made Joss even happier.

The film starred many respected actors, the most well-known of whom was Robert Clowney Jr. (hereinafter “Clowney”). Clowney, who had been born and had forever lived in Las Vegas, Nevada, played *Irony Man*, the superhero who wore a jet-powered metal suit. Clowney

was a popular and accomplished actor who was known for his acting skills and quick wit. Over the past 20 years, Clowney starred in many films made in Los Angeles, California, and had recently used his wealth to buy a vacation home in Hollywood, California for \$25 million.

Advance reviews of *The Revengers* spoke well of the film and predicted that it would be the biggest blockbuster of 2012, possibly earning over \$1 billion worldwide. However, a few days before the May 2012 premiere of the film, Clowney was interviewed in Las Vegas by a reporter for a television station in Las Vegas. Clowney gave an extended interview which was broadcast on local Las Vegas television in its entirety. In the interview, Clowney revealed unknown and important points of the plot of *The Revengers* and recited much of the movie's dialogue. Clowney also told lies. He falsely claimed that Joss had made Clowney spend up to 20 hours a day on the set in his *Irony Man* suit without any opportunity to go to the bathroom. Clowney said: "Joss is an awful man and I hope that after this, he is done in Hollywood."

Unrelated blogs and websites around the country immediately picked up on Clowney's interview and reproduced his plot and dialogue reveals and his false claims in their entirety. In addition, numerous "fan-boys" and "fan-girls" (i.e., fans of *The Revengers* in the comics) posted scurrilous comments to many of those blogs and websites, mocking Joss and further tarnishing Joss' previously excellent reputation. As a result, *The Revengers* failed miserably at the box office, earning only \$27 million instead of the billion-plus dollars previously expected. Joss's reputation in the industry and among fans was forever ruined.

On September 17, 2012, Joss filed suit against Clowney in federal court in Los Angeles, California in the United States District Court for the Central District of California asserting claims for copyright infringement and defamation. Joss sought a preliminary and final injunction to prevent future infringement and defamation, as well as over \$500 million in monetary damages. Joss also used California law to attach Clowney's California house in order to secure payment of the prayed-for judgment. A few days later and prior to any service on Clowney, Joss got cold fingers and unilaterally dismissed the entire action. A few days after that, Joss refiled the same lawsuit in the same court, and again attached Clowney's California house. This time, Clowney was personally served with the summons and complaint while sunning himself on a beach in Southern California. However, a week after that, Joss again voluntarily dismissed the entire action, this time by filing a document signed by Joss and Clowney stating "The action is voluntarily dismissed."

A few days later, Joss *again* refiled the exact same lawsuit, again in the exact same federal court, and again attached Clowney's California house. This time, Joss intended to pursue the action to its completion. Approximately 65 days after Joss filed that complaint, Clowney was served personally with the summons and complaint by a gentleman named "T.L. Jones" in a yacht in international waters 75 miles away from Los Angeles. Twenty days after being served, Clowney served and filed an answer denying liability and asserting the defense of lack of proper venue. Seven days later, Clowney served and filed an amended answer that added the defense of lack of personal jurisdiction. One week after that, Clowney was granted leave to serve and file a second amended answer, which added the defense of lack of subject-matter jurisdiction. Approximately a month later, Clowney moved under Fed. R. Civ. P. 12(i) to ask the court to dismiss the lawsuit based on the three defenses listed in his second amended answer.

QUESTION ONE (short answer of 10 minutes)

A few days after filing the Rule 12(i) motion above, Clowney filed a separate motion seeking dismissal based on the fact that Joss had previously dismissed his lawsuit two times before. Discuss whether the court should dismiss the third suit on this basis. In your discussion, limit your analysis to the Federal Rules of Civil Procedure. Do not discuss res judicata or *Semtek*.

QUESTION TWO (short answer of 10 minutes).

Without discussing the merits of Clowney’s Rule 12 defenses, discuss whether any of the defenses of venue, subject-matter jurisdiction, and personal jurisdiction have been waived.

QUESTION THREE (short answer of 10 minutes).

Assuming that Clowney’s venue defense was not waived, discuss whether the court should dismiss Joss’ lawsuit due to lack of proper venue. Note: the last page of this examination provides a map showing all of the United States’ federal judicial districts.

Extra-credit issue: You may earn up to five (5) extra-credit points by answering the following: assume alternatively and only for this extra-credit issue that suit was filed in state court in Los Angeles and removed to the United States District Court for the Central District of California by Clowney. If Clowney then timely sought dismissal on the basis of improper federal venue, should the court grant the motion?

QUESTION FOUR (essay of 55 minutes).

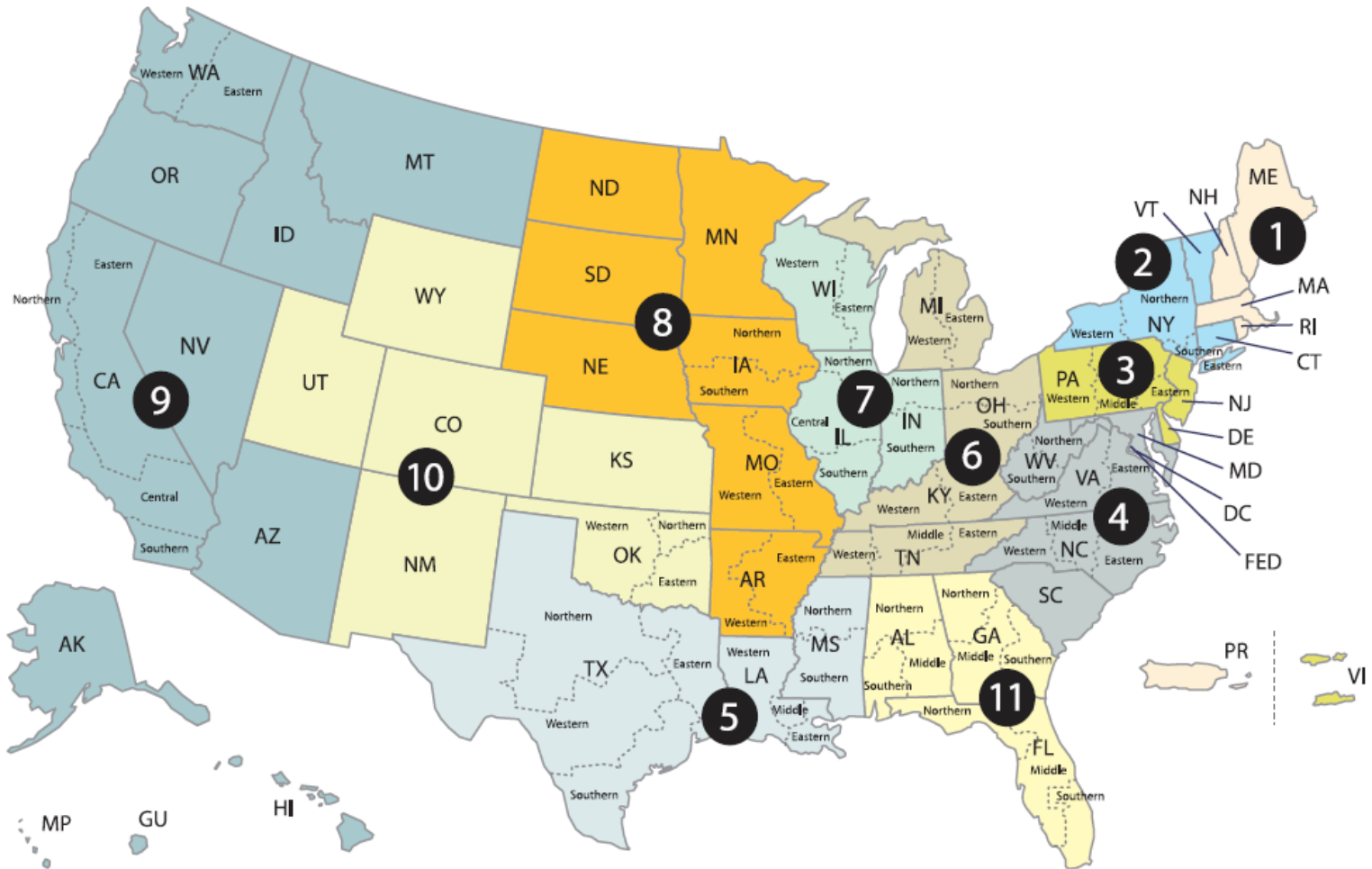
Assuming that the personal jurisdiction defense was not waived, discuss whether the court should grant Clowney’s motion to dismiss for lack of personal jurisdiction. Analyze all bases for personal jurisdiction (whether based on jurisdiction over person or property) that are reasonably raised by the facts, 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, discuss them all. You should also assume that California’s long-arm statute extends to the full extent of due process.

QUESTION FIVE (essay of 35 minutes).

For purposes of this question only, assume that a few days after Joss voluntarily dismissed his second lawsuit, Clowney intentionally rammed his Lamborghini automobile into the rear of Joss’ Toyota Prius while both were driving in Las Vegas. Clowney stated afterwards that he did it “because I can.” Thus, for this question only, assume that Joss’ third lawsuit against Clowney asserted claims for copyright infringement, defamation, and battery. Further assuming that the defense of lack of subject-matter jurisdiction was not waived, discuss whether the court should grant Clowney’s motion to dismiss for lack of subject-matter jurisdiction. Analyze all bases for subject-matter jurisdiction that are reasonably raised by the facts, regardless of your conclusion for any particular basis. Thus, if multiple bases for subject-matter jurisdiction are reasonably raised by the facts but only one of them (or some or none of them) is satisfied, discuss them all.

Geographic Boundaries

of United States Courts of Appeals and United States District Courts



[END OF EXAMINATION]