

ESSAYS FROM FALL 2013 CIVIL PROCEDURE I EXAM

ESSAY QUESTIONS

(Suggested total time of 110 minutes for essay questions)

Supplemental instructions for essay questions.

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.

Within a question, 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.

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.

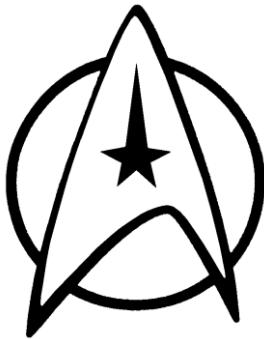
Read the facts and questions carefully before you begin to outline and write your answers. Pay close attention to the suggested completion times because the points allotted for each question generally correspond to the suggested time for that question. Note that facts stated in multiple-choice questions 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.

As always, legibility and proper grammar are expected.

FACTS—THE CASE OF THE BAD SLICE: *KIRK v. SPOCK & MCCOY*

Kirk was the owner of *Buffalo Pizza Trek*, a restaurant located in Niagara Falls in Ontario, Canada. Although Kirk's restaurant included the word "Buffalo," Kirk only did local business. His restaurant was at the top of a hill, requiring a long "trek" to his restaurant. A life-long citizen of Canada (Kirk had been born and still lived in a small apartment above his restaurant), Kirk preferred to do business north of the border, advertising only in local Canadian newspapers and radio stations. To keep the quality of his food high, Kirk refused to deliver his pizzas, selling only to people picking up food or eating at his restaurant. Below is a sample advertisement run in a Niagara Falls, Canada newspaper, with a link to the restaurant's website at the .CA (Canadian) domain.



Enjoy the best pizza in the Galaxy at *Buffalo Pizza Trek!*

This is the emblem of Buffalo Pizza Trek pizza. The circle is a pizza pie. A slice rests on top, steaming and delicious, a bite already taken. The "star" represents just one of our many awards for # 1 best pizza in The Canadian Falls. So next time you are in Niagara Falls, Canada, *beam on up* and "trek" up the hill for a tasty hot slice.

Order online: <http://www.buffalopizzatrek.ca>

Pay online: (Canadian dollars only)

Pick-up or in-restaurant only. No deliveries.

One day, McCoy showed up in the restaurant and ordered a dozen pizzas. He said "I tried to order from your website, but all the prices were in Canadian dollars." After McCoy paid Kirk for the pizzas (in Canadian money), McCoy said that he bought the pizzas to deliver to his clients in the Buffalo, NY area as part of his delivery service, *Dr. McCoy's Speedy Food Deliveries*. McCoy explained to Kirk that people could order food through *Dr. McCoy's Speedy Food Deliveries*, and that McCoy would then pick up the food from a variety of Buffalo and Niagara Falls restaurants for deliveries around the area. He said "I get a lot of requests for your pizzas because they are so good," and said that he had actually picked up and delivered over 50 pizzas from Kirk's restaurant for delivery into Buffalo over the past month.

McCoy asked Kirk if he would be interested in doing more business with him. Kirk said "I don't know, this is the first I've heard of your service, but I'd love to expand into the United States." McCoy said, truthfully, that although most people assumed that McCoy was a life-long resident of the southern U.S., it was a little-known fact that he been born in the Australian outback. In 2002, McCoy had become a naturalized U.S. citizen and since then had lived in a beautiful condominium in Manhattan, NY (located in the Eastern District of New York). Regarding McCoy's offer of doing business, Kirk said, "Maybe. My concern is that you must deliver the pizzas quickly so they stay hot. Can you do that?" In response, McCoy said "Quicker than you can say 'beam me up Captain!'" Before Kirk could consider the matter further, McCoy ran out with the pizzas.

Unfortunately for McCoy and his delivery plans, the traffic was heavy at the Canadian/American border that afternoon, and it took hours for McCoy to deliver all of Kirk's pizzas. The very last pizza McCoy delivered that day was to Spock, a scientist who had ordered a triple-meat, quadruple-cheese pizza with pepperoni, sausages, Canadian bacon, and four kinds of artisanal cheeses. Although Spock was normally a vegetarian, his work in advanced warp theory—a theory that might permit faster-than-light travel by warping space-time—gave him a hunger for high-protein food. Spock had been born in California and had until recently lived there with his parents while pursuing a PhD in theoretical physics from the University of California-Berkeley. He had rented an apartment in Buffalo, NY for the past ten months and thought he might stay there a while longer while he finished his post-doctoral work on warp theory. He hoped that his work on warp theory would permit him to stay in New York longer-term; accordingly, he had recently renewed his lease for another year. If his theoretical calculations worked out as he hoped, he would be able to buy a house in suburban Buffalo that he had kept his eyes on for some months. Although his bank accounts and driver's registration were still from California, he hoped that his studies would permit him to stay in Buffalo as long as possible. (Despite being a vegetarian, Spock was particularly fond of Buffalo hot wings.)

Although the pizza was cold, Spock was hungry and devoured the entire pie in one sitting. Unfortunately, the meat had spoiled and Spock ended up with a debilitating case of food poisoning, requiring a lengthy two-week stay at a local hospital, Buffalo Memorial Sickbay. As a result, Spock was unable to finish working out the mathematics underlying warp theory. As a result, another physicist, a man named Zephram Cochrane, beat Spock to the punch and solved the theoretical problems underlying warp theory before Spock could complete his work. News articles quickly made it clear that Cochrane would become internationally famous and likely earn a Nobel Prize in physics, fame that might otherwise have gone to Spock. As a result of his anger over the damage to his future caused by the bad pizza, Spock logged onto an interactive review website, *ReportRipoffs.com*, and posted a scathing review of the spoiled pizza from Buffalo Pizza Trek that had ruined his life. He falsely claimed that the pizza was intentionally poisoned.

In the meantime, Kirk was not yet aware of the wrath of Spock because he had no idea that Spock was one of McCoy's clients. Instead, Kirk started to think about expanding his business to the United States. He purchased an empty lot in Buffalo, NY for \$50,000, where he hoped to open a second location and his first American pizza restaurant. Kirk posted a sign to the empty lot saying: "Coming Soon: *Buffalo Pizza Trek*, America's Newest Canadian Pizza Sensation!" Kirk hoped to eventually retire in New York. In fact, Kirk loved New York so much that he spent several weeks every summer vacationing in the Hamptons in New York state, trips which he had planned out carefully and taken regularly over the past twenty years.

A few weeks after Kirk purchased the lot in Buffalo, NY, Spock filed a lawsuit against McCoy and Kirk alleging negligence regarding the pizza pie that made Spock sick, due to spoiled ingredients, faulty cooking, late delivery, or a combination. The lawsuit was filed in state court in Buffalo, New York. Spock demanded damages in the amount of "at least \$100,000 plus any additional relief the court finds to be just." At the time he filed the lawsuit, Spock also attached Kirk's empty Buffalo, NY lot to the lawsuit pursuant to New York state law that permits the attachment of property to lawsuits.

At this time, Kirk was still unaware that he and McCoy had been sued. Instead, he was in a mood to celebrate his plans to expand his business with his new location. He therefore decided to indulge his life-long dream of going down the Canadian Niagara Falls in a barrel. (For those of you unfamiliar with the Niagara Falls, a photo is attached below.) He hired Uhura—an

experienced Niagara Falls barrel-jumper—to take him in a barrel over the Niagara Falls. While Kirk and Uhura were in the barrel, and right before they went over the Canadian Niagara Falls, Uhura said, “Kirk, you seem like a really nice guy. But I’m a process server for Spock, and you’ve been served.” She handed Kirk a copy of the complaint and summons for Spock’s lawsuit, just before the barrel plunged over the edge of the Canadian Niagara Falls.



Niagara Falls, Canadian side (taken from Niagara Falls, ON, Canada).
The barrel containing Kirk and Uhura can be seen near the bottom
of the white-water, shortly after service of process.

Devastated by the lawsuit, Kirk decided to go on a hike to clear his mind. He hired a guide named Scotty to guide him on a hike in Ontario near the New York border. Kirk told Scotty, “Can we please stay on the Canadian side? I don’t want any more trouble.” Scotty said “Aye, Captain.” Unfortunately, Kirk was so focused on the lawsuit that he did not pay attention to where Scotty took him. After hiking for an hour or two, Scotty said, “I’m sorry to break this to you, but we’ve crossed the border into New York. By the way, you’ve been served again.” Scotty handed Kirk a second copy of the complaint and summons. In the meantime, McCoy had also been served at his Manhattan condominium. Two months after Kirk and McCoy were served with process, they removed the state-court lawsuit to the United States District Court for the Western District of New York (which is the federal district that includes Buffalo, NY).

ESSAY QUESTIONS:

ESSAY QUESTION ONE (70 MINUTES):

Kirk timely moved to dismiss for lack of personal jurisdiction. Discuss whether the federal district court should grant Kirk's motion. Additional instructions:

- Assume that the motion to dismiss for lack of personal jurisdiction is timely.
- Niagara Falls, Ontario, Canada is located at the United States/Canadian border, across the river from New York and the United States. It is approximately 25 miles from Buffalo, NY.
- 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. 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.
- The New York long-arm statute, NY CPLR § 302(a), states:

As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary [who]:

1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or
2. commits a tortious act within the state . . . ; or
3. commits a tortious act without the state causing injury to person or property within the state, . . . if he
 - (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or
 - (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or
4. owns, uses or possesses any real property situated within the state.

ESSAY QUESTION TWO (40 MINUTES):

Regardless of your answer to Essay Question One, assume that the federal district court denied Kirk's motion to dismiss for lack of personal jurisdiction. Two months after Kirk's motion to dismiss was denied, Spock filed a motion with the federal district court requesting remand to the state court in Buffalo, NY. Discuss whether the district court should grant Spock's motion to remand, using the majority approach for domicile.