

ESSAYS FROM SPRING 2013 CIVIL PROCEDURE II EXAM

SUPPLEMENTAL INSTRUCTIONS FOR ESSAY QUESTIONS:

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.

For essay questions, read the fact patterns 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.

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 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. Legibility and proper grammar are expected.

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.

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FACT PATTERN FOR ESSAY QUESTIONS

Below is a fact pattern relevant to all three essay questions. Additional facts are provided for question 3. Assume that the state of Petland and the state of Zooland are both states of the United States. They share a common border. Each state has one (1) federal judicial district. Also assume that all the parties are human beings.

You are a highly regarded law clerk to Chief Judge Ariel Nosnehtan of the United States District Court for the District of Petland. Judge Nosnehtan has told you that on Feb. 1, 2013, Plaintiff Luci Rabbit filed a diversity lawsuit against defendant Atticus Dog, alleging conversion of property, namely, an expensive sports car. The relevant allegations in the complaint in the case of *Rabbit v. Dog* state:

COUNT I: CONVERSION

10. Plaintiff Luci Rabbit is the true and lawful owner of record of a red 2011 Furrari 485 automobile valued at \$250,000 or more, VIN # 1HGCM82633A004352. This vehicle is rare in the State of Petland and the State of Zooland, with no more than 50 of them ever having been sold in either state.

11. On Feb. 14, 2011, plaintiff took her 2011 Furrari 485 to the automotive repair shop *Dog & Dog Rare Sports Car Repairs* located in Zooland Beach in the State of Zooland for an oil change. She took her vehicle to *Dog & Dog* due to newspaper advertisements claiming “We are experts in maintenance and repairs to expensive, rare, and vintage automobiles.”

12. The owner of *Dog & Dog* is defendant Atticus Dog.

13. Upon arriving at *Dog & Dog*, plaintiff asked defendant to change the oil in her vehicle and to rotate the tires. Defendant asked the plaintiff to fill out a form with her name, address, and telephone number. While plaintiff filled out the form, defendant said to plaintiff, “Boy, I wish I had your car!”

14. Defendant also asked plaintiff for the keys to her car, saying he would “need them for a little while to service the car.” Defendant gave plaintiff a smile that the plaintiff found to be “weird.”

15. Plaintiff was unhappy that she had to wait over an hour to get her vehicle back. After getting back her keys, she drove away in her vehicle and drove to her home in Petland City, Petland, parking her vehicle on the street.

16. On Feb. 15, 2011, plaintiff went outside and saw that her Furrari 485 was missing. She filed a report with the Petland City police along with proof of ownership and registration, but the police never found her vehicle. The vehicle is still missing.

17. On Mar. 7, 2011, plaintiff was driving past *Dog & Dog* in a rental vehicle, and saw somebody at a distance pull up to *Dog & Dog* driving a vehicle that looked like it might be a red Ferrari 485.

18. Thinking that the red vehicle might be her stolen car, plaintiff yelled at the driver of the vehicle. This person drove away moments later. Plaintiff pulled up to *Dog & Dog*, but the business was closed.

19. The next day, plaintiff went to the defendant's place of business and demanded return of her Ferrari vehicle. The defendant acted surprised and denied any involvement in any theft.

20. For the reasons stated in ¶¶ 10-19, plaintiff concludes that defendant has wrongfully converted her red 2011 Ferrari 485 automobile by making an unauthorized duplicate of her car keys that he later used to steal the vehicle while it was parked outside the plaintiff's house.

WHEREFORE, plaintiff requests damages for the value of her converted Ferrari vehicle in an amount to be determined at trial, but not less than \$250,000 as actual damages, along with attorney's fees, costs, and such other and further relief that the court deems just and proper.

Judge Nosnehtan tells you that defendant Dog was served with the complaint and a summons on Mar. 7, 2013, and that Dog served and filed an answer to the complaint on Mar. 17, 2013. The answer included the defense of lack of personal jurisdiction. On Mar. 27, 2013, Dog served and filed an amended answer adding the defense of lack of venue. On Mar. 29, 2013, Dog moved for leave to again amend, to add the further defenses of abandonment of chattels, failure to state a claim, and insufficient service of process. Judge Nosnehtan granted Dog's motion over Rabbit's opposition on Apr. 1, 2013, and Dog's second amended answer was served on Rabbit on April 2, 2013.

Question 1 (20 minutes)

Judge Nosnehtan has asked you to write a memorandum regarding the defenses asserted by defendant Dog. Which, if any, have been waived? Which, if any, remain in the case? She has warned you that you should not discuss the merits of any of these defenses. Instead, only discuss which defenses have been waived and which remain.

Question 2 (45 minutes)

Regardless of your answer to Question 1, Judge Nosnehtan anticipates that defendant Dog will soon move to dismiss the plaintiff's complaint for failure to state a claim. She has therefore asked you to analyze whether the plaintiff's complaint states a claim for conversion. Under the applicable law, "a conversion is an unauthorized act which deprives another of his or her property permanently or for an indefinite time." (Note to students: consider this to be the law of conversion for purposes of this examination without regard to what you might have covered in your Torts class.)

Question 3 (45 minutes):

Some time later, Judge Nosnehtan has another assignment. She tells you that Dog never moved to dismiss for failure to state a claim. Instead, the case moved into discovery. During his deposition, Dog broke down in tears and admitted that he stole Rabbit's car. Dog stated that he was able to accomplish his act through the unwitting assistance of one of his *Dog & Dog* employees, Shelly Turtle, who made a copy of the key to Rabbit's Ferrari vehicle at Dog's request during Rabbit's visit to *Dog & Dog* in Feb. 2011.

Below are excerpts from a deposition taken of Dog in August 2013:

QUESTION: What was Turtle's involvement in the theft of the Ferrari?

DOG: It's not Turtle's fault, ok? When Rabbit brought her car in to the shop, I just had to get the car for myself. I could never afford such a yummy treat on *Dog's* profits! So while I had the key to Rabbit's car, I told Turtle to make a copy of the key. I said "Ms. Rabbit asked for a duplicate key." That was a lie, but Turtle didn't know. What can I say? Turtle screwed up, he trusted me.

QUESTION: Did Turtle know that you were sued for stealing the car?

DOG: I don't know. Turtle's a good guy. He quit about a year ago when he went back to college. He left on good terms and was always friendly when we bumped into each other. In fact, I think Turtle's in law school now, in his first year. I do know that a local TV station, Channel Six, ran a news story about the lawsuit in early March of this year, claiming that I had made a duplicate key to Ms. Rabbit's car in 2011, and that I used it to steal her Ferrari. A few days after the broadcast, I saw Turtle heading towards me on the street. Turtle gave me a funny look and crossed the street.

On Sept. 3, 2013, Rabbit moved for leave to amend her complaint to add Shelly Turtle as a second defendant. The amended complaint would assert a claim against Turtle for negligence arising from his act of making duplicate keys to her Ferrari vehicle without first obtaining Rabbit's express permission. Judge Nosnehtan plans to grant Rabbit leave to amend her complaint, but only if the claim of negligence against Turtle relates back to the date of the original complaint. To guide you in writing your memorandum, Judge Nosnehtan informs you of the following additional pertinent facts:

- The statute of limitations for both conversion and negligence is two (2) years.
- State law requires keymakers to obtain proof of ownership and written permission before making duplicate keys for any motor vehicle.

Write a memorandum to Judge Nosnehtan discussing only whether the amended complaint—adding Turtle and alleging negligence—would relate back.