

ESSAYS FROM SPRING 2014 CIVIL PROCEDURE II EXAM

ESSAY QUESTIONS

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.

ESSAY FACT PATTERN (FOLLOWED BY THREE (3) QUESTIONS)

TOTAL TIME FOR ESSAYS IS 120 MINUTES

Note: regardless of the photos, assume that: 1) all three parties are human beings; and 2) the State of Thomas is a State of the U.S. with one federal judicial district.

Luci Rabbit
The Driver



Atticus Dog
The Victim



Shelly Turtle
The Grillmaster



Luci Rabbit (citizen of the State of Thomas) loved to drive fast. On July 4, 2011, Rabbit's friend Atticus Dog (citizen of Florida) asked Rabbit if she could give him a ride to a Fourth of July picnic in Thomas City Beach in the State of Thomas. Rabbit picked up Dog while driving her brand-new red Furrari 485 automobile. Rabbit drove very fast, prompting Dog to complaint to Rabbit "If you drive too fast, I might get nauseous." Rabbit ignored Dog's complaints, and 20 minutes later they arrived at the picnic safely.

After arriving at the picnic, Dog was angry at Rabbit, and refused to talk to her. Because he did not know anybody at the picnic besides Rabbit, he sat alone and sulked. Rabbit decided to let Dog cool off and went to get some food for them both. Rabbit was happy to see her friend Shelly Turtle handling the grill. (Turtle was also a citizen of the State of Thomas.) Rabbit went up to Turtle to say hello, and Turtle told Rabbit that he had made a variety of delicious foods, such as hamburgers, hot dogs, chicken, portabella mushrooms, and more. Rabbit chose a variety of foods and brought food back to Dog.

By this time, Dog calmed down a bit, although he still looked unwell. But once Dog saw the food that Rabbit brought, he smiled. Dog and Rabbit both ate a lot of food, and each commented that the food was delicious. After they finished their food, Rabbit drove Dog home. Once again, Rabbit drove extremely fast, and Dog again complained that Rabbit's driving would make him nauseous. Rabbit laughed and said, "Atticus, my friend, you worry too much. Live a little!" However, after Rabbit dropped off Dog at his house, even Rabbit felt a bit uneasy and her stomach was unsettled. Rabbit assumed that this was due to the tension between Dog are herself over her fast driving.

After arriving home, Dog was upset. About an hour later, he got extremely nauseous. He suffered extreme abdominal pain and threw up all night. Things got so bad that he had to check into the hospital for medical care due to dehydration and stomach problems. He was in the hospital for several days, and afterwards was so weak that he

missed two weeks of work. (Dog worked part-time in the security industry.) After Dog returned to work, he was fired for missing too much work, and his boss Maximus Retriever told him that “I’ll make sure you never work in security again.” Dog was so upset that he decided never to talk to Rabbit again.

Although Dog wanted to put the incident behind him, things went poorly for him. Because of his medical bills, missed time at work, lost job, and meager future prospects, Dog felt that he had no choice but to sue Rabbit for negligently causing his illness and all his resulting damages by driving at an excessive rate of speed. Unfortunately, Dog waited a long, long time to file his complaint. On Dec. 1, 2012, he filed a lawsuit against Rabbit for negligence in the United States District Court for the District of Thomas, seeking damages of at least \$100,000 arising from negligent fast driving that led to his illness and resulting damages.

On Dec. 31, 2012, Rabbit was attending (ironically!) a New Year’s Eve party at Turtle’s house. Rabbit and Turtle were still good friends, and she spent a lot of time at Turtle’s house. During the party, a process server (an older gentleman named T.L. Jones) showed up and left the complaint and summons for Dog’s lawsuit propped up by Turtle’s front door. A few minutes later, Rabbit found the papers sitting near the front door. Rabbit quickly looked at the complaint and exclaimed to Turtle: “I can’t believe it! I was sued!” Turtle said, “For what?” Rabbit said, “You remember that Fourth of July picnic you had a summer or two ago? I drove this Atticus Dog fellow to your picnic, and all he did was complain, complain, complain that I drove too fast. Now he’s suing me for making him sick by driving too fast both before and after the picnic!”

As Rabbit told him about the complaint, Turtle started to feel extremely uncomfortable even though he didn’t read the complaint. Turtle admitted to Rabbit that in the days after the 2011 Fourth of July picnic, several people came down with food poisoning. Rabbit asked Turtle whether he thought that his cooking might have caused Dog’s illness. Turtle said, “I have no idea. Maybe. Some of those burgers were sitting in the sun for a while. Everybody ate the food, so it’s obviously long gone. I remember that the butcher at my local SuperMart grocery store told me a week after the picnic that they had recently had a bad batch of hamburger meat. But this SuperMart location closed a year ago and I don’t know the butcher’s name. Maybe he works at a different SuperMart location for all I know.” Rabbit gave Turtle a dirty look and left the party.

On Jan. 21, 2013, Rabbit served and filed an answer to Dog’s complaint. She included the defenses of failure to state a claim and failure to join a required party. Seven days later, she served and filed an amended answer adding the defense of improper service of process. That same day, she filed a third-party complaint against Turtle for all or part of the claim Dog filed against her, and additionally asserted a claim against Turtle for \$1 in nominal damages for giving her food poisoning at the 2011 July Fourth picnic. The third-party complaint was served personally on Turtle the very same day.

Question 1 (20 minutes)

Discuss Rabbit's defense of improper service of process. The State of Thomas' law permits service of process by leaving the complaint and summons in an area known to be frequented by the defendant. (Note: do not discuss any *Erie*, *Hanna I*, *Hanna II*, Rules of Decision Act, or Rules Enabling Act issues, or any of the related cases we studied in that portion of the course. They are not relevant to this question.)

Question 2 (50 minutes)

Once again, Dog dragged his feet on his case, and did not realize until the summer of 2013 that Turtle may have been partially or fully responsible for Dog's damages. On July 8, 2013, Dog sought leave to amend his complaint to add a claim against Turtle for negligence regarding the food he prepared at the Fourth of July picnic in 2011. The claim against Turtle sought relief only for Dog's \$25,000 in hospital bills. The court granted leave and Dog served the amended complaint on July 28, 2013. Discuss whether Dog's amended complaint adding a claim against Turtle relates back to Dog's original complaint against Rabbit. The statute of limitations for negligence in the State of Thomas is two (2) years.

Question 3 (50 minutes)

The federal judge assigned to the case is concerned that the court may lack subject-matter jurisdiction over one or more claims in the case involving Dog, Rabbit, and Turtle. Write a memorandum to the judge discussing whether the court has subject-matter jurisdiction over the claims in the lawsuit. Note: For Essay Question No. 3, the relevant claims are those found in the essay fact pattern as well as in Essay Question No. 2.