

CIVIL PROCEDURE I, SECTIONS 1 AND 2
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EXCERPTS FROM FINAL EXAMINATION, FALL 2015

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FACT PATTERN FOR ESSAYS AND FOR MULTIPLE CHOICE QUESTIONS 31-40

This fact pattern applies to both essay questions as well as to multiple choice questions 31-40. However, the only facts relevant to the essay questions are those found in this fact pattern and the essay questions. Any additional facts in multiple-choice questions 31-40 are relevant only to those questions. Although the three photos below are of animals, assume that all parties stated in the fact pattern are human beings.

Luci Rabbit



Atticus Dog



Shelly Turtle



Luci Rabbit was born in Paris, France. As a child, she and her parents moved to Honolulu, Hawaii and she eventually obtained her United States citizenship. When she was a child, she and her parents visited Ōkunoshima (大久野島), also known as Usagi Jima (うさぎ島) or Rabbit Island. Luci was fascinated by Rabbit Island and for years afterwards, she dreamed of creating a safe haven for rabbits in the United States, a place where beautiful rabbits of every variety could live their lives freely and happily, without any fear of predators such as cats, dogs, or wolves.

In college, Luci studied genetics and fine arts and obtained a PhD in creating genetically modified organisms (GMOs). Unfortunately, after college Luci could not find a job in genetics. She moved to Anchorage, Alaska and worked for several years as a professional ice carver. But in the cold Alaskan climate, the pineapples at the grocery store were not as good as they had been in Hawaii, and Luci missed the high-quality pineapples that she ate as a young girl in Hawaii.

Luci's luck soon changed for the better. In 2013, Luci won the PoweredBall lottery, and won \$42 million dollars. Luci decided to fulfill her dream of helping rabbits. She bought a small island that was part of the state of Hawaii and which was only a few miles off the coast of the main Hawaiian island, O'ahu.¹ She called her island *Rabbity Island*. Luci moved to Rabbity Island and built a house and a rabbit sanctuary. She removed all cats, dogs, and predators from the island, and filled the island with hundreds of beautiful baby bunnies. Unsurprisingly, the population exploded and Rabbity Island was soon filled with thousands of happy little rabbits.

Luci soon realized that the costs of maintaining Rabbity Island would be high, so she established several businesses on the island. First, she built a resort hotel on Rabbity Island, so that people who loved rabbits, or the tropics, or both, could visit her island. Second, she created a state-of-the-art fruit farm so that she could grow genetically modified tropical fruits. Through her

¹ As stated above, Rabbity Island is part of the State of Hawaii. Hawaii became a state in 1959. The State of Hawaii includes more than 130 islands, including O'ahu, Maui, and Rabbity Island.

scientific knowledge as a geneticist, Luci created genetically modified pineapples. Remembering how awful the fruit in Alaska was, she decided to create genetically modified pineapples that would retain their flavor while being shipped to cold climates anywhere in the world.

To test her market, Luci sent a test shipment of her GMO pineapples to a distributor in California, who in turn shipped Luci's pineapples to grocery chains throughout the United States, Canada, and Mexico. Luci's pineapples sold especially well in cold climates. Every pineapple included a label that said: "*Come on out of the cold, and visit the Farm and Resort at Rabbit Island, Hawaii®. Enjoy a Mai Tai made with Luci's Fresh GMO Pineapples®, and Run with the Rabbits!®*" She also inserted "golden tickets" with free trips to her resort into three pineapples.

Atticus Dog was a young man who was born in Belgium. In 2012, he moved to Anchorage Alaska to take a job in the oil industry. Atticus came from a family of sommeliers (people who select wine), and as a result had an extremely good sense of smell. Because of his excellent sense of smell, Atticus got a job with an oil company using his nose to smell for places that might have oil. In the summer of 2015, Atticus became a lawful permanent resident of the United States and looked forward to eventually becoming a United States citizen. At the grocery store in Anchorage, he bought one of Luci's GMO pineapples. Atticus loved chasing rabbits and read the information on the pineapple label with great interest. Atticus's pineapple also contained a golden ticket! Having won a free trip, Atticus flew to Hawaii to spend a vacation at Luci's Farm and Resort at Rabbit Island. He arrived November 1, 2015, planning to spend a week.

Shelly Turtle was another winner and guest at the resort at the same time as Atticus. Shelly was born and lived most of his life in Berlin, Germany. He did not care about rabbits, but he loved tropical vacations and pineapples. In October, 2015, he retired from his job in Berlin and moved to a condominium in Miami Beach, Florida. He wanted to become a U.S. citizen, but kept forgetting to file the paperwork to become a lawful permanent resident. In a local grocery store in Miami Beach, Shelly bought one of Luci's GMO pineapples. After cutting open his pineapple, Shelly found his golden ticket and booked his free vacation to Rabbit Island.²

While at Rabbit Island, Shelly drank many, many Mai Tais and ate many bananas.³ Shelly was so drunk that he dropped banana peels everywhere he went. Unfortunately, Luci was too busy feeding bunnies to notice that Shelly was dropping banana peels, and many of them remained on the ground where somebody might slip and fall. Eventually, golden ticket winner Atticus slipped and fell on one of the banana peels that Shelly dropped. As a result, Atticus fractured his nose, incurring \$10,000 in medical bills, and permanently lost his sense of smell. Atticus also lost his job smelling out oil fields for the oil company. Since then Atticus has been unemployed.

Atticus filed suit against Luci and Shelly in the United States District Court for the District of Alaska, alleging claims for negligence. He sought \$1 million in damages, as well as additional damages for pain and suffering. Luci and Shelly were timely served with process.

² Reportedly, the third ticket was found by an unknown law professor from South Florida.

³ A Mai Tai is an alcoholic beverage made with rum, grenadine syrup, pineapple juice, and orange juice.



Above: Bunnies from *Rabbit Island* rush to Atticus' rescue after Atticus fell and broke his nose.⁴



Above: A map illustrates the rough distances between Hawaii, Alaska, and Florida.

Additional assumptions:

- None of the parties is a corporation or business entity. Luci never bothered to incorporate.
- Luci's test shipment of pineapples was ten tons, which she sold to the distributor at \$1000 per ton. Each pineapple weighed roughly two pounds, and sold at retail for \$3. About 1/2 ton, approximately 500 pineapples, were sold at retail in Alaska for \$3 each.
- The long-arm statute states: "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of . . . the United States." Alaska Fictional CCP § 410.10.⁵

⁴ (Students: This comment falls outside the fact pattern.) I would like to express thanks to merec0 from Flickr for this photo, *available at* <https://www.flickr.com/photos/merec0/2705950165>. License via CC Attribution 2.0 Generic license at <https://creativecommons.org/licenses/by/2.0/>. Photo unchanged, caption added by Professor Nathenson.

⁵ This statute is made up for purposes of the exam and does not reflect actual Alaskan law.

ESSAY QUESTION ONE (60 minutes):

Luci Rabbit has filed a timely motion to dismiss, arguing that the court lacks personal jurisdiction over her. You work for the district court judge. She has asked you to tell her whether she should grant Luci's motion. Objectively discuss any and all bases for personal jurisdiction that are reasonably raised by the facts, regardless of your conclusion for any particular basis. Do not negative issue spot or discuss bases that are frivolous under the facts or the law. However, I will give you one hint: stream of commerce is one of the issues, and be sure to discuss it fully.

ESSAY QUESTION TWO (40 minutes):

You did a good job on essay one and you still work for the district court judge. Although no party has objected to subject-matter jurisdiction, the judge has asked you whether the court has subject-matter jurisdiction over the civil action. Objectively discuss any and all bases for subject-matter jurisdiction that are reasonably raised by the facts, regardless of your conclusion for any particular basis. But do not negative issue spot or discuss bases that are frivolous under the facts or the law. If domicile is an issue, use the majority approach. I will give you another hint: don't bother discussing federal-question jurisdiction.

Although the following information is irrelevant to the essays or multiple-choice questions (so don't use these facts in the exam!), you might want to know that Atticus' lawsuit stressed poor little Luci out. As a result, she is taking the day off to enjoy a refreshing Mai-Tai at her home on Rabbit Island. After that, she will have a refreshing snack of her trademarked Carrotty Biscuits®.

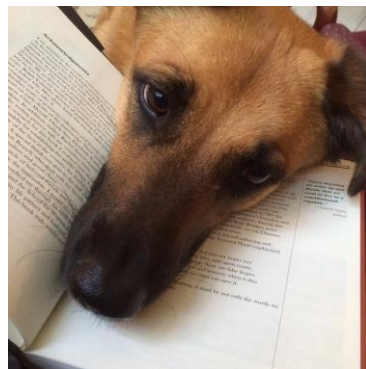
For Atti's part, he is resting his broken nosie-posie. Poor little puff!

After you finish this exam, you too should enjoy a refreshing Mai-Tai on Rabbit Island.

But skip the Carrotty Biscuits!!



Luci, enjoying a Mai Tai.



Atticus, resting his sore nosie-posie.

MULTIPLE-CHOICE QUESTIONS 31-40

(10 questions, suggested total time of 20 minutes)

Questions 31 to 40 are based on the facts of the essay fact pattern

The main facts needed to answer multiple-choice questions 31 through 40 can be found in the essay fact pattern. Additionally:

- Some of the multiple-choice questions below provide additional facts.
- Any additional facts found in a multiple-choice question are relevant to that question only.
- Although facts of multiple-choice questions might build on the essay fact pattern, the converse is not true: additional facts found in multiple-choice questions may not be used to answer essay questions. (This is another reason why I want you to answer the essay questions before answering the remaining multiple-choice questions.)

Because some of these questions add or change facts from the essay fact pattern, you are strongly encouraged to complete the essays before turning to these multiple-choice questions.

- 31.** In which district(s), if any, does venue lie in the case of *Atticus v. Luci and Shelly* under 28 U.S.C. § 1391(b)(1)?
- A. District of Hawaii because that is where substantial events or omissions giving rise to the claim took place.
 - B. District of Hawaii because Luci resides in Hawaii.
 - C. Any judicial district because Shelly is not a U.S. citizen.
 - D. District of Hawaii and Southern District of Florida, because at least one defendant resides in those two districts.
- 32.** In which district(s), if any, does venue lie in the case of *Atticus v. Luci and Shelly* under 28 U.S.C. § 1391(b)(2)?
- A. District of Hawaii because that is where substantial events or omissions giving rise to the claim took place.
 - B. District of Alaska because that is where substantial events or omissions giving rise to the claim took place.
 - C. Both A and C.
 - D. District of Hawaii and Southern District of Florida, because at least one defendant resides in those two districts.

33. Suppose that before moving to Hawaii, Luci owned a house in Alaska. Further assume that she still owns the house and spends two months a year in her Alaskan home during the summer because she “likes Alaska in the summer.” She makes plans every year to spend the summer months in Alaska and has done so continuously since moving to Hawaii. Is Luci subject to general jurisdiction in Alaska?
- A. Yes, because she is domiciled in Alaska.
 - B. No, because there is nothing extraordinary about spending two months a year in a vacation home.
 - C. No, because Alaska is not her principal place of business.
 - D. Yes, because Luci has continuous and systematic contacts with Alaska.
34. Suppose Shelly timely objected to personal jurisdiction. Would the district court have personal jurisdiction?
- A. Yes, because Shelly caused harm to Atticus in the forum state by dropping banana peels.
 - B. No, because personal service outside the state is insufficient to establish personal jurisdiction.
 - C. Yes, because Shelly dropping banana peels “gave rise” to Atticus’ claim.
 - D. No, because Shelly lacks sufficient contacts with the forum state.
35. Shelly timely served a pre-answer motion asserting the defenses of failure to state a claim and lack of venue. The motion was denied. Shelly then included the defense of lack of personal jurisdiction in his answer and moved for judgment on the pleadings based on a lack of personal jurisdiction. Will his personal jurisdiction defense succeed?
- A. Yes, because Shelly lacks personal jurisdiction with the State of Alaska.
 - B. No, because the defense of personal jurisdiction was waived.
 - C. Yes, because it would be compellingly unreasonable to subject Shelly to in personam jurisdiction in the State of Alaska.
 - D. No, because personal jurisdiction existed over Shelly in the State of Alaska.

- 36.** Suppose Alaska’s long-arm statute limited personal jurisdiction to “an action claiming injury to person or property in or out of this state arising out of an act or omission in this state by the defendant.” What would be Luci’s best argument that there is no personal jurisdiction?
- A. Luci does not have a good argument, because the long-arm statute is satisfied.
 - B. The relevant “act” occurred due to the fault of Shelly, not Luci.
 - C. Any negligent conduct by Luci took place in Hawaii and not in Alaska.
 - D. Atticus’ injury occurred in Hawaii and not Alaska.
- 37.** Remember that Luci once lived in Alaska. Suppose Luci still owned a house in Alaska, and still visits the house a few times a year to “get away from it all.” Assuming that Atticus timely attaches Luci’s Alaska house to the suit, what is the strongest due process argument Atticus might make if he wants to exercise jurisdiction (in rem or quasi in rem) over Luci’s house?
- A. The court has in rem jurisdiction over the house because it is located in the state of California.
 - B. The court has quasi in rem jurisdiction over the house because Luci has sufficient minimum contacts with the forum state.
 - C. The court has quasi in rem jurisdiction over the house because it is related to the suit.
 - D. Real property remains subject to in rem and quasi in rem jurisdiction even without a showing of minimum contacts.
- 38.** Suppose Atticus filed his lawsuit against Luci Rabbit and Shelly Turtle in state court in Hawaii. Can Luci and Shelly remove the action to federal court?
- A. Yes, because Luci was a lawful permanent resident and thus not a citizen of Hawaii.
 - B. Yes, so long as Luci and Shelly both agree to remove.
 - C. No, unless they remove within 30 days of being served by Atticus.
 - D. No, even though Shelly is not a citizen of Florida.

39. Suppose that after Atticus filed his lawsuit, Shelly took a cruise on a ship to see the glaciers of Alaska before the glaciers all melt and flood Shelly's new condominium in Miami Beach. Shelly leaves the ship to take a hike on a large glacier. While on the glacier, Shelly is personally served with the summons and complaint by a process server named Tommy Lee. What is Shelly's best argument that there is no personal jurisdiction over him in Alaska?
- A. "Tag" jurisdiction is not a form of personal jurisdiction traditionally recognized by the courts.
 - B. Shelly was not in Alaska very long at it would be grossly unreasonable to require him to defend in that state.
 - C. Shelly did not purposefully avail himself of Alaska.
 - D. Shelly has no room to argue, and it is indisputable that he is subject to personal jurisdiction.
40. Suppose that Luci never obtained her American citizenship and instead remained a citizen of France who was a lawful permanent resident of the United States. Would the federal district court have subject-matter jurisdiction over the suit of *Atticus v. Luci and Shelly*?
- A. No, because the amount in controversy is not met.
 - B. Yes, because the Constitution permits minimal diversity.
 - C. No, because the Constitution does not permit a diversity suit that is solely between aliens.
 - D. Yes, so long as Luci obtains her citizenship after the lawsuit is filed.

[END OF EXAMINATION—HAVE A GREAT BREAK, EVERYONE!]