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CIVIL PROCEDURE I, SECTION 1

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MIDTERM PRACTICE EXAMINATION, FALL 2015

Monday, Oct. 26, 2015 – 75 minutes

You must read the instructions below carefully before beginning.
When time is called, all work must cease.

Time and length. The examination is seventy-five (75) minutes long. This document has ten (10) pages (including this cover). Once the proctor indicates that time for the exam has started, make sure that you have all of the pages. If you do not, please alert the proctor immediately.

Supplement. You may use your Glannon statutory supplement if you brought it. You may not use anyone else's book. You may not consult any other materials during this exam. Your work must be your own.

AGN; return of all exam materials. Please indicate your four-digit midterm AGN number (but not your name or student ID) on this exam, your scantron sheet, and on all bluebook(s). At the conclusion of the exam, you must turn in all examination materials. You may not write anything on, or erase anything from, any examination materials after time runs out.

Time and scoring. Budget your time and use it carefully. Points will be accorded in general proportion to the suggested times.

- There is one essay question with a suggested time of 45 minutes.
- There are fifteen (15) multiple questions with a suggested total time of 30 minutes.

Relevant law. Apply the law as it exists today.

Essay questions. For essays, use pen to write your answers in bluebooks. 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). Legibility, proper writing, and good organization are expected. 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 needed to make an addition or clarification, on only one side of each page. For essay questions, read the fact patterns and questions carefully before you begin to outline and write your answers. If you believe you have discovered an error in an essay question, identify the error and resolve it in a reasonable manner. If you believe that it is necessary to assume additional facts, state what those facts would be and how they would affect your analysis.

Multiple-choice questions. Use a # 2 pencil to enter answers on your scantron sheet. Make your marks on the scantron sheet clear. If you change an answer, be sure to erase any marks you intend to remove. The only document relevant to scoring multiple-choice questions is your scantron sheet, so make sure you enter things correctly on the scantron sheet before time runs out. In analyzing the multiple-choice questions, make the following assumptions:

- If more than one answer seems to be correct, choose the best answer.
- Unless a question states otherwise:
 - Every multiple-choice question stands on its own.
 - All suits take place in federal court.
 - The long-arm statutes of all states of the United States permit personal jurisdiction to be exercised to the full extent of Fourteenth Amendment Due Process.

THIS EXAM IS CONFIDENTIAL

As a St. Thomas Law student, you are bound by the St. Thomas University School of Law Code of Academic Integrity. In addition, you may not discuss this examination with anyone from our section or from my other Civil Procedure section who has not yet taken this exam. Also, unless you have written authorization from the Professor, you may not retain or reproduce any part of this examination or related materials. Any breach will be considered to be a serious violation of the Code of Academic Integrity and will be addressed accordingly.

Luci Rabbit



Atticus Dog



Shelly Turtle



FACT PATTERN FOR ESSAY AND FOR MULTIPLE CHOICE QUESTIONS 1-10

The fact pattern applies to the essay question as well as to multiple choice questions 1-10. However, the only facts relevant to the essay are those in the fact pattern. Additional facts found in a multiple-choice question are relevant only to that multiple-choice question. Despite the fact that the photos are of animals, assume that all parties are human.

Luci Rabbit—a French-speaking Canadian who lives in Lapin City in Quebec, Canada—was a successful carrot farmer whose products were sold throughout Canada. Unfortunately, a Canadian newspaper published a story saying that Luci’s farm used dangerous pesticides such as Wolfimide, which causes gastrointestinal distress. As a result, Luci’s carrot sales plummeted and she went bankrupt. Luci decided to switch to organic farming techniques. She calling her organic carrots “Veganic,” because they could be used for a vegan-friendly diet. (A “vegan” diet is a strict vegetarian diet that does not include animal or dairy products.) Luci was interested in finding new markets in Canada and abroad for her new carrots and she contacted Shelly Turtle, who manufactured food products.

Shelly Turtle, who was born and lived in Miami, Florida, was very interested in using Luci’s carrots. He correctly thought that he could buy Luci’s carrots cheaply since she was desperate to make money. He ordered ten metric tons of Luci’s carrots for the ridiculously low price of \$5000 American. Shelly told Luci that he would use her carrots to make carrot biscuits, using the slogan, “*Once you’ve had Shelly’s Carroty Vegan Biscuits®, you’ll beg for more! Now with Luci’s Veganic Carrots for a healthy West-Coast lifestyle!*” Luci asked Shelly where the biscuits might sell the best, and Shelly said, “All over the U.S. and Canada, but especially in the west coast of the United States because those folks loooooove organic and vegan food!”

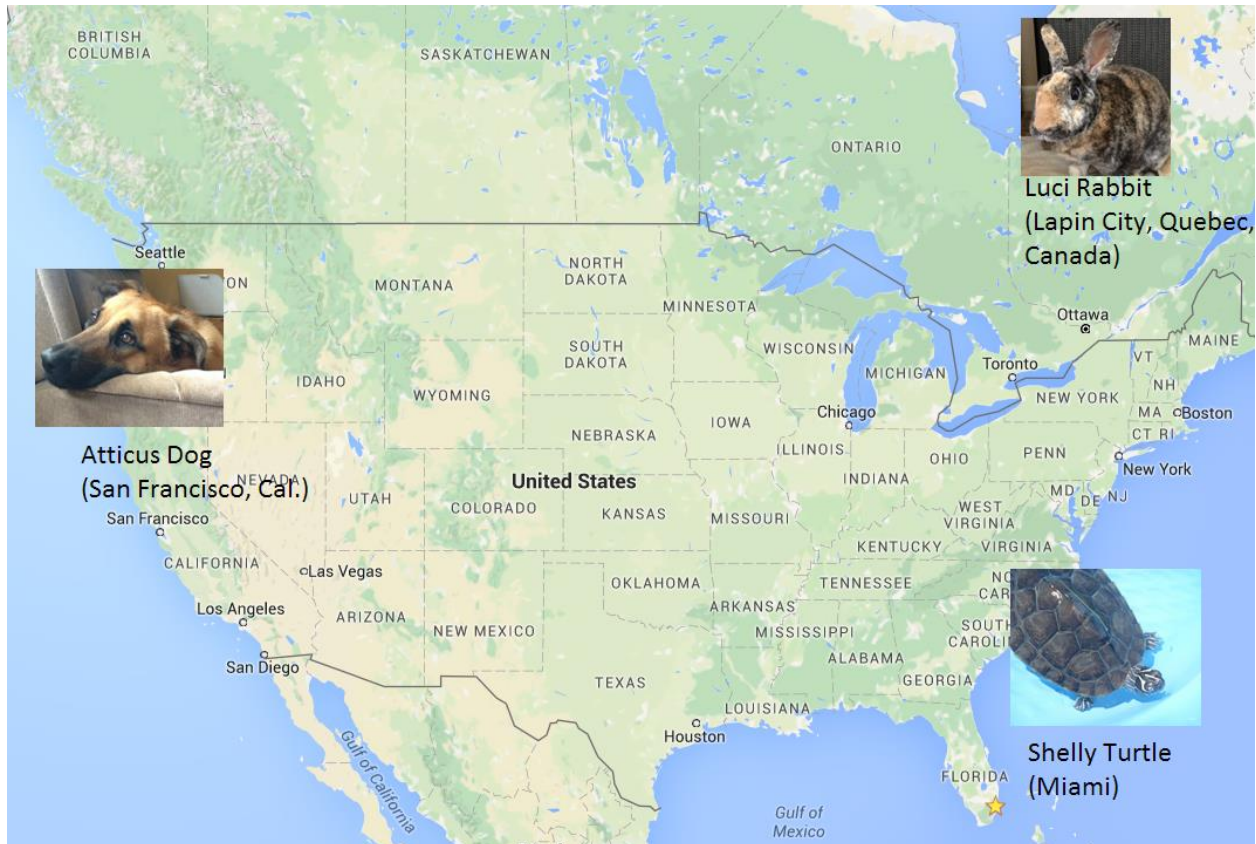
Luci shipped ten tons of carrots to Shelly in Florida, and Shelly made his carroty biscuits. Unfortunately, Luci sent the wrong carrots to Shelly. Instead of sending Shelly organic/vegan carrots, Luci accidentally sent Shelly carrots grown with the dangerous Wolfimide pesticide. Not knowing how dangerous the carrots were, Shelly manufactured and shipped 10,000 boxes of Shelly’s Carroty Vegan Biscuits® to grocery and health-food stores all over the United States and Canada for \$5.00 each. Approximately 20% of the boxes were shipped to retailers in California.

One of the boxes of Shelly’s Carroty Vegan Biscuits® was bought in a San Francisco health food store by Atticus Dog, who had been born in Belgium, but who became a United States citizen in 2011 after he moved to San Francisco, California, where he now lived with his loving mommy Helen. After eating a biscuit, Atticus got a terrible tummy ache that lasted only five minutes. But during those five minutes, Atticus crashed and totaled his expensive Furrari vehicle (worth \$200,000). Wanting to know if the biscuits were unsafe, Atticus sent one to a laboratory. His friend Dr. M. Grey told him the biscuits contained dangerous levels of the pesticide Wolfimide.

Atticus filed suit against Shelly and Luci in the United States District Court for the Northern District of California (which includes San Francisco), alleging tort claims for strict liability, arising from the fact that the biscuits contained dangerous quantities of Wolfimide. He sought “any and all damages available under the law.” Luci and Shelly were timely served with process.

ESSAY QUESTION (45 minutes):

Luci Rabbit filed a timely motion to dismiss, arguing that the court lacked personal jurisdiction against her. Discuss whether the court should grant Luci's motion. The California long-arm statute states: "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of . . . the United States." Cal. Code Civ. Proc. § 410.10. Discuss any and all bases for personal jurisdiction that are reasonably raised by the facts, regardless of your conclusion for any particular basis.



Extra fact not relevant to the essay question or to the exam: The lawsuit made Luci so upset that she developed a drinking problem:



MULTIPLE-CHOICE QUESTIONS

(15 questions, suggested total time of 30 minutes)

The main facts needed to answer multiple-choice questions 1 through 10 are found in the fact pattern on pages 3-4. 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.

1. Does the district court have subject matter jurisdiction over Atticus' lawsuit?
 - A. Yes, because there is subject matter jurisdiction.
 - B. No, because the amount in controversy was not met since Atticus only had a tummy ache for a few minutes and got better.
 - C. Yes, because the federal government has the power to regulate interstate commerce.
 - D. No, because the Constitution does not permit a suit between foreign citizens without a federal question.

2. Suppose Shelly timely objected to personal jurisdiction. Would the district court have personal jurisdiction?
 - A. Yes, because Shelly sent his biscuits through the stream of commerce.
 - B. No, because personal service outside the state is insufficient to establish personal jurisdiction.
 - C. Yes, because Shelly purposefully availed himself of the forum state.
 - D. No, because he was not served within 100 miles of the place from where the summons issued.

3. Suppose California's long-arm statute limited personal jurisdiction to "tortious acts within the state." What would be Luci's best argument that there is no personal jurisdiction?
 - A. The burden on Luci would be tremendous in light of the distance between Quebec and California.
 - B. Any negligent conduct by Luci took place in Quebec and not in California.
 - C. The biscuits were shipped into California by Shelly and not Luci.
 - D. Luci could not reasonably anticipated being haled into a California court.

4. Suppose Shelly owned a warehouse in California where he kept a supply of chocolate biscuits and blueberry biscuits to ship to retailers in that state. Assuming that Atticus timely attaches the warehouse to the suit, what is the strongest argument Atticus might make if he wants to exercise jurisdiction (in rem or quasi in rem) over Shelly's warehouse?
- A. The court has in rem jurisdiction over the warehouse because it is located in the state of California.
 - B. The court has quasi in rem jurisdiction over the warehouse because it is the subject matter of the suit.
 - C. The court has quasi in rem jurisdiction over the warehouse because it is related to the suit.
 - D. The court has quasi in rem jurisdiction over the warehouse because Shelly has sufficient minimum contacts with the forum state.
5. In which judicial district or districts would venue be appropriate?
- A. The Northern District of California or the Southern District of Florida.
 - B. Any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.
 - C. The Northern District of California.
 - D. Any judicial district because Luci is not resident in the United States.
6. Suppose Atticus filed his lawsuit against Luci Rabbit and Shelly Turtle in state court in Dade County, Florida. Can Luci and Shelly remove the action to federal court?
- A. No, they can't, even though the federal court would have original subject-matter jurisdiction.
 - B. No, they can't, unless both Luci and Shelly both agree to remove.
 - C. Yes, so long as the federal court would have original subject-matter jurisdiction.
 - D. Yes, unless they wait more than 30 days to remove the case.

7. Suppose that service of process was made on Luci as follows: after Atticus' suit was filed, Luci was enjoying a long-overdue vacation on a cruise ship. She was personally served on the cruise ship by a process server named Tommy Lee while the ship was sailing a mere 50 miles away from the San Francisco courthouse in international waters. Will service establish personal jurisdiction over Luci?
- A. Yes, because she was served within 100 miles of the district courthouse in San Francisco.
 - B. No, because she was not served with process while voluntarily present in the forum state.
 - C. Yes, so long as California state courts permit service on the ocean.
 - D. No, because she was not served within a judicial district.
8. Suppose Shelly was served with process as follows: a process server named T.L. Jones came to Shelly's home in Miami, FL and knocked on Shelly's door. Nobody was home, so the process server left the summons and complaint outside Shelly's front door. To make sure Shelly got the complaint, T.L. Jones put a few rocks on top of the papers. Unfortunately, a stray dog named Maxie came by later and took the papers away from Shelly's front door. When Shelly got home, the complaint and summons were sitting in the middle of the road. The papers were a bit soggy from dog drool but were otherwise intact. Shelly saw that the documents on the road were addressed to him, so he picked up the envelope, read the complaint, and called his lawyer. Assume that California law allows service of process by "leaving a copy of the summons and complaint at the individual's dwelling or usual place of abode." Was service proper?
- A. No, because service was made in Florida, so California rules of service cannot be used.
 - B. No, because the method of service was not reasonably calculated to apprise Shelly of the lawsuit against him.
 - C. Yes, because the method of service led to Shelly obtaining knowledge of the pendency of the action, affording him an opportunity to formulate a defense.
 - D. Yes, because service in federal courts can be done using state-law methods of service.

9. Suppose that Atticus never obtained his American citizenship and was instead a citizen of Belgium who was a lawful permanent resident domiciled in California. Does the federal district court have subject-matter jurisdiction?
- A. No, because the amount in controversy is not met.
 - B. Yes, because Atticus is a citizen of California.
 - C. Yes, because the Constitution permits minimal diversity.
 - D. No, because the suit lacks diversity between Citizens of Different States.
10. Suppose that before Atticus filed his lawsuit, he bought a retirement home in Miami Beach, Florida. Before filing the lawsuit, he visited his retirement home from time to time, usually no more than a few days at a time. After returning to his home in California to file suit against Shelly and Luci, Atticus sold his California home and moved permanently to Florida. Does the court have diversity jurisdiction?
- A. No, because Atticus destroyed diversity jurisdiction once he became a co-citizen with Shelly.
 - B. Yes, because Atticus has the intention of retiring in Florida.
 - C. Yes, because the parties are completely diverse.
 - D. No, because Atticus has not yet resided in Florida.
11. Which of the following is the best statement of the *St. Paul Mercury* test for amount in controversy?
- A. The amount in controversy is met so long as the plaintiff has pleaded in good faith, and so long as the court is legally certain that the amount in controversy exceeds \$75,000.
 - B. The amount in controversy is met unless it appears that the plaintiff has pleaded in bad faith or if the court is legally certain that the amount in controversy cannot exceed \$75,000.
 - C. The amount in controversy is met if the plaintiff has pleaded in good faith, unless the court is legally certain that the amount in controversy exceeds \$75,000.
 - D. The amount in controversy is met unless it appears that the plaintiff has pleaded in good faith or if the court is legally certain that the amount in controversy cannot exceed \$75,000.

12. Mall-Mart Inc. is a Delaware corporation with its principal place of business in Arkansas. Mall-Mart is a nationwide retailer with thousands of stores nationwide, including 250 stores in the state of California. Mall-Mart has operated its California stores for decades and 18% of its world-wide business is from its stores in California. Paul, from California, is driving across the country and gets into an automobile accident in Oklahoma with a Mall-Mart delivery truck. When Paul gets home, he files suit against Mall-Mart in California state court. Does the court have personal jurisdiction over Mall-Mart?
- A. No, because Mall-Mart's California contacts did not give raise to Paul's claim.
 - B. Yes, because Mall-Mart is "at home" in California.
 - C. No, because Mall-Mart lacks systematic and continuous contacts in California.
 - D. Yes, because Mall-Mart has systematic and continuous contacts in California.
13. Paul (citizen of California) gets into a three-car accident with Deborah and Daniel (both citizens of Florida). Deborah's negligent driving causes \$50,000 worth of damage to Paul's sports car, and Daniel's negligent driving causes \$50,000 worth of personal injuries to Paul. As a result, Paul files suit in federal court against Deborah (for car damages) and Daniel (for personal injuries). Does the court have subject-matter jurisdiction?
- A. Yes, because Paul can add together his personal and property damages to meet the amount in controversy.
 - B. No, because plaintiffs cannot aggregate separate damages to meet the amount in controversy.
 - C. Yes, because Deborah's and Daniel's conduct aggregate together into one undivided injury.
 - D. No, because Paul cannot add together his personal and property damages to meet the amount in controversy.

14. Penny (citizen of California) sues Sheldon (citizen of California) in California state court for breach of contract relating to an apartment lease. Sheldon serves Penny with a counterclaim for patent infringement relating to Sheldon's invention of a real, functioning time machine. Can Penny remove the entire case to federal court?
- A. No, because the well-pleaded complaint does not include a federal question.
 - B. Yes, because the case is removable even though it includes a non-removable claim.
 - C. Yes, because there is a federal counterclaim.
 - D. No, because only defendants can remove cases to federal court.
15. Penny was a doctor who worked in a hospital. One day, a man named Derek was rushed to Penny's hospital after a car accident. Although Penny tried her best to save Derek, Penny did not order a CT examination of Derek's head, and as a result, Derek died. Later on, Derek's spouse Meredith filed a medical malpractice lawsuit against Penny and Penny's hospital. Meredith's complaint alleged medical malpractice, and further alleged that the defendants' negligence would be irrefutably proven by Penny's failure to follow federal trauma regulations. All parties are citizens of the state of Washington. Does the court have subject-matter jurisdiction?
- A. No, because federal question jurisdiction requires a cause of action that was created by federal law.
 - B. Yes, because Meredith's claim includes an issue of federal law.
 - C. No, because the federal issue is not substantial.
 - D. Yes, because hospitals are regulated by federal law.