

**CIVIL PROCEDURE II, SECTION 2**

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**ESSAY PORTION OF FINAL EXAMINATION, SPRING 2015**

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**FOUR (4) ESSAY QUESTIONS: TOTAL TIME OF 120 MINUTES**

**THE CASE OF THE “MAD PETS”**

**Luci Rabbit**



**Atticus Dog**



**Shelly Turtle**



Luci Rabbit (born in New York but now a citizen of the State of Thomas) and Atticus Dog (citizen of New York) were once friends and colleagues. They had worked together in an advertising agency owned by Atticus in New York City. Atticus was once Luci’s boss, but Atticus had a terrible drinking problem that caused him to slobber on the floor and to bark at Luci. Because Luci was disgusted with Atticus’ drunken slobbery yapping, Luci changed jobs: she hopped away from her job with Atticus and started her own advertising agency in the State of Thomas.

Luci worked very hard in her new advertising agency, always keeping her “ears close to the ground” in her search for new clients. Accordingly, New Year’s Eve 2014 (Dec. 31, 2014) was a late night of work for Luci. She worked well into the evening refining a presentation scheduled for the very next day, New Year’s Day 2015, with the General Mills Co. for its famous TRIX® brand of breakfast cereal. Her idea was that although the mascot of TRIX® cereal was a *cartoon* rabbit, that it was time to use a picture of a *real* rabbit. Luci had come up with this idea earlier while working for Atticus. Months earlier while still employed by Atticus, Luci had told Atticus about her idea, but Atticus had been drunk and ignored her. Now working in the City of Thomas on her upcoming presentation, Luci polished her idea. Now the cute little ad-rabbit would be seen eating cereal out of a dog bowl! She planned to call this the “Smart Rabbit Eats TRIX® from under Dog’s Nose” campaign. She thought this would give her some revenge on Atticus for being such a lousy boss.

**Original TRIX® cereal Rabbit**



**Luci’s plan for new TRIX® cereal Rabbit**



Satisfied that she was well-prepared, Luci left work around 11:30 PM to take the subway home. The streets of the City of Thomas were very busy with New Year's Eve celebrations. While walking to the subway, Luci saw her old boss Atticus staggering nearby wearing a red scarf and a silly party hat. Realizing that Atticus was drunk again, Luci pretended not to see him. But Atticus saw Luci and drunkenly trotted over to say hello. When Atticus got closer to Luci, he passed out and accidentally knocked Luci over. As a result, Luci fell down and injured both of her velvety ears. This caused Luci to miss her meeting the next day, and as a result, General Mills did not hire Luci to create a new advertising campaign for TRIX® cereal. Luci was devastated. Because she did not obtain General Mills as a client, Luci had to go out of business. Later, nobody would hire Luci because she had quit one agency and lost another agency in less than one year.

On Apr. 13, 2015 (and long prior to the expiration of the two-year statute of limitations for negligence), Luci filed a lawsuit against Atticus in federal court in the State of Thomas, alleging that Atticus' negligence caused Luci to injure her ears, miss an important meeting with General Mills, lose the client, lose her agency, and destroy her reputation in the advertising industry. She sought actual, consequential, and punitive damages, as well as damages for pain and suffering, in the amount of at least \$150,000, or more as the jury might see fit.

Atticus had been quietly angry at Luci for quitting his advertising agency, and was even angrier that Luci sued him. On April 27, 2015, Atticus filed an answer to Luci's complaint, and included a counterclaim against Luci alleging that Luci had infringed copyrights by basing her TRIX® advertising proposal—the "Smart Rabbit Eats TRIX® from under Dog's Nose" campaign—on a concept that had been developed by Luci while she was employed by Atticus. As a result, alleged Atticus, any presentation based on Luci's idea belonged solely to Atticus. Atticus did not believe Luci's idea was very good, however, so he sought only \$1 nominal damages. Luci timely denied Atticus' allegations of copyright infringement.

The same day he filed his answer with counterclaim (April 27, 2015), Atticus also filed a third-party complaint against Shelly Turtle (citizen of New York). Shelly was a bartender who had served drinks to Atticus while Shelly was helping out at a bar owned by a friend of Shelly in the State of Thomas on New Year's Eve 2014, the night Atticus passed out and fell on Luci. The third-party complaint, which was served that same day, alleged that Shelly knew of Atticus' drinking problems from bars in New York, that Shelly knew Atticus was drunk on New Year's Eve 2014, that Shelly knowingly continued serving Atticus alcohol, and as a result, Atticus damaged Luci, causing Luci to sue Atticus for negligence. In his third-party claim, Atticus sought contribution from Shelly for \$50,000, the maximum permitted under the State of Thomas BAR ACT, a law that allows bartenders to be sued for overserving drunks. In his third-party complaint, Atticus joined a second claim against Shelly for \$100, alleging that Shelly had failed to pay Atticus on a bet he and Shelly made in November 2014 about a televised sporting event they were watching at another bar in New York City.

After receiving a copy of Atticus' third-party complaint, Luci realized that Shelly might be liable in part or in whole for her damages. Before this date, Luci had never heard of Shelly or his possible actions leading to her injury. Accordingly, Luci filed an amendment to her complaint as a matter of course on May 4, 2015. In her amended complaint, Luci restated her claim against Atticus without change, and added a claim against Shelly for knowingly overserving alcohol to Atticus, thus causing Luci damages. The basis for Luci's claim against Shelly was the BAR ACT, so Luci limited her damages claim against Shelly to \$50,000.

***Additional relevant information:***

- Regardless of the photos and story, assume that Luci, Atticus, and Shelly are human.
- All pleadings were served on the same day they were filed.
- The State of Thomas is a State of the U.S. and has one (1) federal judicial district (not shown on the map in the Supplement). It is located between Pennsylvania and New York State in the eastern United States. The City of Thomas is the largest city in the State of Thomas. It is lovely, especially on New Year's Eve. You should visit it.
- When the questions refer to "claims," this term includes claims of any type, including but not limited to claims, counterclaims, crossclaims, and third-party claims.
- The State of Thomas bartender statute is known as the BARTENDERS AGAINST ROWDINESS ACT ("BAR ACT"). The BAR ACT permits suits against bartenders for "up to \$50,000 in direct liability to injured third persons when a bartender knowingly overserves a visibly intoxicated person who causes harm to a third person; and up to an additional \$50,000 in contribution to a visibly intoxicated person who is sued for causing harm to a third person after a bartender knowingly overserves the visibly intoxicated person." THOMAS STAT. ANN. § 722.248(a).
- The BAR ACT statute of limitations is one hundred twenty (120) days, running from the date when the bartender overserves the visibly intoxicated person. *Id.* § 722.248(e).
- One hundred and twenty (120) days from New Year's Eve 2014 is April 30, 2015.

**QUESTION ONE (20 minutes):** Discuss whether the claims and parties were properly joined under the rules of joinder. Address all parties and all claims.

**QUESTION TWO (45 minutes):** Discuss whether the district court has subject matter jurisdiction over the civil action. Discuss all claims by all parties.

**QUESTION THREE (45 minutes):** Discuss whether Luci's claim against Shelly relates back to the filing of her complaint against Atticus.

[LAST QUESTION ON NEXT PAGE]

**QUESTION FOUR (10 minutes):** You represent Shelly. Paragraph 45 of Atticus' third-party complaint against your client alleges:

45. On November 1, 2014, third-party defendant Shelly Turtle made a \$100 bet with third-party plaintiff Atticus Dog that the Miami Dolphins would beat the Pittsburgh Steelers in a professional football game played in Miami on November 1, 2014. The Steelers won the game, and therefore, Shelly lost the bet. Shelly never paid Atticus the \$100, causing Atticus to go home and be very, very sad.

*Your investigation:* Your investigation reveals that Shelly and Atticus made a bet on a Nov. 2, 2014 regarding a Nov. 2, 2014 professional football game between the Pittsburgh Steelers and Baltimore Ravens played in Pittsburgh. Shelly had bet that the Ravens would beat the Steelers. The bet was for \$200 and Shelly did lose the bet when the Steelers won the game. Shelly was very drunk that night and cannot remember whether or not he paid Atticus on the bet. Shelly also has no idea whether or not Atticus was sad but tells you that Atticus was "a very moody Dawg."

*Your assignment:* This is a drafting assignment. Draft language that responds to paragraph 45. You should only provide the response that will go into Shelly's responsive pleading (i.e., his answer to paragraph 45 of Atticus' third-party complaint). Do not justify or explain your language. Do not discuss law. Instead, just provide a draft of language to be used to respond to Atticus' allegations in paragraph 45.