

## MIDTERM: CIVIL PROCEDURE

Tuesday, Oct. 6, 2020—2.0 hours

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**Read the instructions carefully. When time is called, all work must cease.**

**Time and length.** This document is seven (7) pages long. The examination has been written as a 75-minute exam, but I am giving you two (2.0) hours to complete it. You may not write anything on, or erase anything from, any examination materials after time runs out.

**Open book.** The examination is open book. You may use, for example, your book, notes, outline, any handouts, and your Statutory supplement. You may not, however, seek or provide any assistance from or to any other person.

**AGN.** Indicate your 4-digit AGN number on this exam as indicated by the instructions you have received from the Registrar. Do not put your real name or any other personally identifying information on the examination except for your AGN.

**Do not contact me.** Do not contact me with any questions about the examination until scores have been released as that may constitute a breach of exam anonymity. If you have any questions or concerns, please contact Dean Hernandez.

**Time and scoring.** The suggested times below add up to 75 minutes. For this first exam, however, I will give you two (2.0) hours.

- *Essay question (one question, 45 minutes total):* I suggest you spend approximately (i.e., at least) 45 minutes on the essay question. Write your answer using **Exam4**. You may not exceed the 2000-word limitation, which should be more than enough words to answer the essay question. Since Exam4 counts all words towards the limitation, I suggest that you do not include your outline in the exam submission. You would be better advised outlining on paper or outlining on computer and then turning your outline into your essay answer.
- *Multiple-choice (10 questions, 30 minutes total):* Answer the questions using **Remark**. Do not enter your multiple-choice answers into Exam4, you will waste words and your multiple-choice answers will not get any credit.

### **Further instructions for multiple-choice questions.**

- You must use **Remark** for your multiple choice. If you enter your multiple choice using Exam4, you will not receive credit.
- If more than one multiple-choice answer seems to be correct, then choose the best answer.
- The multiple-choice questions use the facts from the essay fact pattern and in some cases, build upon or vary those facts.
- I strongly suggest that you finish the essay question first, before turning to the multiple-choice questions. This is because although the multiple-choice questions are based upon the essay fact pattern, no facts added or changed in the multiple-choice questions may be used for the essay.

**Further instructions for essay questions.**

- *Exam4*. You must use **Exam4**.
- *Writing*. Legibility, proper writing, and organization are expected and are part of your score.
- *How to address essays*.
  - Read the call of the question and facts carefully—twice—before you outline and write.
  - Raise, discuss, and decide all issues reasonably raised 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. However, do not engage in negative issue-spotting, which is discussing: 1) issues or parties falling outside of the call of the question, or 2) tangential issues that, although technically falling within the call of the question, are nonetheless frivolous.
  - If you believe you have discovered an error in any essay question, then expressly identify the error in your written answer and resolve it in a reasonable manner.
  - If (and only if) you believe that it is absolutely necessary to assume additional facts, then state what those facts would be and how they would affect your analysis.

***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 any classmates who have not yet completed this exam. Any breach will be considered to be a serious violation of the Code of Academic Integrity and will be addressed accordingly.**

### **ESSAY QUESTION**

Suggested essay time: 45 minutes.

Atticus Dog was born in Antwerp, Belgium to Belgian parents. Although Atticus Dog was a proud Belgian, he and his family moved to Miami Beach, FL in 2010. A few years later, Atticus decided to seek U.S. citizenship, and in 2015, Atticus became a lawful permanent resident of the United States. While living in Miami, Atticus established a security-protection business in his own name as an individual sole proprietor. Atticus' slogan was "Vigilant Atticus: Dogged Protector!" Atticus had many clients in South Florida, and he made a very good living. Atticus was vigilant. Atticus was dogged. Atticus was a very good boy.

In early 2020, for \$10,000, Atticus hired Luci Rabbit to take his photograph and to create a website for Atticus' security business. Luci had been born in Paris, France, and moved to Pittsburgh, PA in 2008. As a photographer, she loved beautiful places, and in 2010, purchased a condo in Miami Beach that she went to during the cold Pittsburgh winters. Luci obtained her lawful permanent resident status in 2013, and in 2019, became a United States citizen. As Luci would say, "Vive la France! Vive les États Unis! Bravo Steelers! Et je déteste vraiment les chiens!" (That's French for "Long live France! Long live the United States! Go Steelers! And I really hate dogs!") Pursuant to their contract, Luci flew to Miami, took a photograph of Atticus at Atticus' place of business in Florida, and then flew back to Pittsburgh to process the photo and create a website for Atticus.

On March 7, 2020, Atticus was horrified when he "googled" himself and saw the new website. It showed Atticus crying and looking sad. The photo and website made Atticus look ridiculous, and in Atticus' line of work, a person cannot afford to be made to look ridiculous! Atticus did not remember having cried when Luci took his photograph, so Atticus concluded that Luci must have "photoshopped" the photos she took of him to make Atticus look pathetic. Many of Atticus' clients saw the website. Subsequently, many of his clients concluded that Atticus had lost his courage, and cancelled their security contracts with Atticus. This time, Atticus cried for real.

On March 13, 2020, Atticus filed a lawsuit in the United States District Court for the Western District of Pennsylvania (where Pittsburgh is located). He sought: 1) return of the \$10,000 he paid Luci for the contract; 2) one billion dollars for defamation and trade libel; 3) two billion dollars for intentional infliction of emotional distress; and 4) many more dollars for tortious interference by Luci with Atticus' business relations with his former clients. A few weeks later, Atticus was able to find some joy and lick his wounds, as he and his family were sworn in on April 1, 2020 as United States citizens (wearing masks, of course, and maintaining proper social distancing).

On May 15, 2020, Luci was personally served with the summons and complaint while eating some healthy greens and sipping cool water from her favorite drinking bottle at her condo in Miami Beach, FL. Luci immediately moved to dismiss as noted below.

**QUESTION:** You are the clerk for the District Judge handling the case. Luci has filed a motion to dismiss arguing that subject-matter jurisdiction is lacking under 28 U.S.C. § 1332. Discuss whether the court has subject-matter jurisdiction under this provision.

## **MULTIPLE-CHOICE QUESTIONS**

Suggested total time for 10 multiple-choice questions: 30 minutes.

Read these rules carefully before proceeding:

- *Choose the best answer:* If more than one multiple-choice answer seems to be correct, then choose the best answer.
- *Changes/additions:* Each multiple-choice question *uses, adds, or changes* facts from the essay fact pattern.
- *Each multiple-choice question stands on its own:* Unless expressly provided otherwise, a fact added or changed from the essay for one multiple-choice question applies to that question only and not to any other question.
- *Finish the essay first:* You may not use any additional or changed multiple-choice facts in answering the essay question, so you are advised to finish the essay question before turning to the multiple-choice questions.
- *Long-arm statute:* Unless a question states to the contrary, assume that the Pennsylvania long-arm statute states: “A court of this state may exercise personal jurisdiction to the full extent permitted by the Constitution of the United States.”

1. Is Luci subject to personal jurisdiction?

- A. Yes, because satisfying any state’s long-arm statute authorizes the exercise of personal jurisdiction.
- B. No, because Luci was not served personally in the forum state.
- C. Yes, because her home is in Pennsylvania.
- D. No, because many of the contacts that gave rise to Atticus’ claim arose in Florida.

2. Suppose the lawsuit was filed in Florida federal court rather than Pennsylvania federal court. Further assume that the Florida long-arm statute is limited to “tortious acts in the state of Florida.” What is Atticus’ best argument that Luci is subject to personal jurisdiction in Florida?

- A. Luci was personally served with process in Miami Beach, so the long-arm statute does not need to be met.
- B. The tortious injury was felt by Atticus in Florida.
- C. The long-arm statute is strong evidence that the state of Florida has a compelling interest in preventing torts from harming Florida residents.
- D. Luci voluntarily and knowingly entered into a contract with a Florida resident.

3. In which districts would venue have been appropriate?
- A. Southern District of Florida.
  - B. Western District of Pennsylvania
  - C. Southern District of Florida and Western District of Pennsylvania.
  - D. Any district in Florida or Pennsylvania.
4. Suppose Atticus had filed his lawsuit in state court in Pennsylvania. Could Luci remove the case to federal court?
- A. No, because Luci is a citizen of Pennsylvania.
  - B. Yes, because Luci is a citizen of Florida.
  - C. No, because a case cannot be removed solely on the basis of diversity jurisdiction.
  - D. Yes, because there is diversity jurisdiction.
5. Assume that Atticus filed his lawsuit in state court in Pennsylvania rather than federal court. Further assume that Luci counterclaimed for copyright infringement based on the additional fact that Atticus reposted the photo Luci took of Atticus to Atticus' Instagram account. Can Atticus remove the lawsuit to federal court?
- A. No, because Atticus' well-pleaded complaint does not include a federal question.
  - B. Yes, because claims involving federal law permit removal.
  - C. No, because plaintiffs may never remove.
  - D. Yes, because cases with copyright claims may be removed by any party.

6. Assume that Atticus obtained U.S. citizenship on Mar. 1, 2020. Further assume that in addition to suing Luci, Atticus joined Shelly Turtle (Pennsylvania citizen) as a second defendant. Assume that Shelly helped Luci process the photo of Atticus using Photoshop. Atticus seeks only \$10,000 against Shelly arising from the money he paid for the photo shoot and website. Does the federal court have subject-matter jurisdiction over the lawsuit?
- A. No, because the amount in controversy sought against Shelly is too low.
  - B. No, because the claim against Shelly is a claim against a defendant joined under FRCP 20.
  - C. No, because Atticus' claim against Shelly is unrelated to his claim against Luci.
  - D. No, because including Shelly would contaminate complete diversity.
7. The same question as question # 6, except assume instead that Shelly is a citizen of Florida.
- A. No, because the amount in controversy sought against Shelly is too low.
  - B. No, because the claim against Shelly is a claim against a defendant joined under FRCP 20.
  - C. No, because Atticus' claim against Shelly is unrelated to his claim against Luci.
  - D. No, because including Shelly would contaminate complete diversity.
8. Suppose Atticus is a citizen of Arkansas and Luci is a citizen of California. In the lawsuit, Atticus joins a claim against Shelly Turtle, a citizen of Denmark (Greenland territory), who is a lawful permanent resident of the United States domiciled in Arkansas. The suit is filed in federal court and the amount in controversy is met for all claims and all parties. Is there subject-matter jurisdiction under 28 U.S.C. § 1332?
- A. Yes, because the suit includes a dispute between citizens of different states.
  - B. No, because the suit includes a dispute between a citizen of a state and a citizen of a foreign state admitted for lawful permanent residence who is domiciled in the same state.
  - C. Yes, because all three persons are of diverse citizenship from one another.
  - D. No, because a plaintiff cannot assert jurisdiction against a Rule 20 defendant.

9. Assume that Atticus and Luci were both citizens of New York. Further assume that in his complaint, Atticus additionally alleged that “Luci cannot rely on the First Amendment to the United States Constitution for her outrageous conduct, because the First Amendment does not give anybody the right to make me cry and ruin my life!” The lawsuit is otherwise the same as described in the essay fact pattern. Could the lawsuit be filed in federal court?
- A. Yes, because the case involves a federal ingredient.
  - B. No, because none of Atticus’ claims arise under federal law.
  - C. Yes, because the issue of the First Amendment is substantial.
  - D. No, because allowing federal-question jurisdiction under such circumstances might open up the floodgates in federal court to tort and contract claims in cases where diversity is lacking.
10. Assume that the contract between Atticus and Luci said that “any claims arising from this contract or the services provided thereto may be brought in any state or federal court in Dade County, Florida.” What is Atticus’ best argument that personal jurisdiction is proper in Pennsylvania despite the contractual language?
- A. He has no argument, because the contract constitutes express consent to litigating in Dade County, Florida.
  - B. Luci waived any objection to personal jurisdiction in Pennsylvania through her breach of contract.
  - C. Luci has impliedly consented to personal jurisdiction in Pennsylvania through her entering into a contract with a Pennsylvania resident.
  - D. The contract does not preclude personal jurisdiction in Pennsylvania.