

PROFESSOR NATHENSON
MIDTERM: CIVIL PROCEDURE
Fall 2025—90 minutes

Instructions: address all issues *reasonably raised* by the facts and the questions, even if your conclusion on any subissue arguably makes addressing other parts of the analysis technically unnecessary.

Ginger was a proud Canadian. She loved Canada, and she loved money even more. Ginger made cat treats that were so good, her slogan was “Made for cats, good enough for people.” She sold her cat treats directly to cat-loving people all over North America through mail-order. People sent her orders via mail, and she shipped the goods through standard means (mail, UPS, DHL, etc.). She also had a store below her Vancouver apartment where people could buy fresh treats directly from her.

Ozzy and Hank were best buds. They shared an apartment in Denver, Colorado with a wonderful view of trees, dogs, and cats. Ozzy had been born in Denver, whereas Hank was in the process of becoming a U.S. citizen and had recently obtained his green card. Hank had been born in the Yukon territory of Canada and his favorite hobby (besides barking at birds) was howling at moose.

The two buds traveled to Vancouver, British Columbia, Canada for several days for a vacation. While walking through an overpriced shopping district, they came upon Ginger’s store. They were intrigued by the sign outside that said, “Homemade treats, made for cats, good enough for people!” They went inside and asked Ginger, “Can people really eat these?” After Ginger assured them that the treats were safe and delicious, they bought a bag, gobbling down several as they toured the area. The bag they bought was labeled “G’O CAT-ANADA!! G’O CAT TREATS!!”

Several nights later, Ozzy and Hank started to develop itchy rashes but thought little of it and flew back to Denver. Once home, they continued to snack from the bag, but their rashes soon spread all over their bodies. They read online that Ginger’s treats were being recalled by authorities in Canada, Mexico, the United States, and every other country where Ginger shipped her goods, due to high levels of a previously unknown and dangerous variety of catnip, one that turned out to cause severe rashes, potential scarring, and for some people—particularly hairy ones—significant pain.

Despondent, itchy, sad, and howling in discomfort, Ozzy and Hank hired a lawyer, who learned that Ginger’s American cat treats were the same as her Canadian-sold treats, but labeled differently with the legend “GO AMERICATS!! GO CAT TREATS!!” The American treats were smaller, apparently to compensate for the economic effects of American tariffs on all Canadian cat treats. The American-destined cat treats had also been shipped by Ginger to several dozen purchasers living in Colorado.

Ozzy and Hank’s lawyer filed a lawsuit in federal court in Denver against Ginger for products liability under Colorado state law, i.e., making and selling cat treats that had undisclosed and dangerous catnip-related health risks that caused both of them substantial and ongoing pain and suffering. The summons and complaint, which sought damages “in great excess of \$75,000 apiece,” were served on Ginger personally at her Vancouver shop in a manner consistent with Canadian law.

Question One: Does the court have subject-matter jurisdiction?

Question Two: Does the court have personal jurisdiction over Ginger? Assume for this examination that the Colorado long-arm statute extends to the full scope permitted by Due Process.

MULTIPLE CHOICE

Each question stands on its own unless indicated otherwise. Choose the best answer.

1. Based on the essay fact pattern, assume that Ginger answers the plaintiffs' complaint and alleges that she has fully complied with all Canadian and United States labeling requirements and that her packages fully disclose any and all risks associated with humans eating her cat treats. Does the court have federal question jurisdiction?
- A. Yes, because the civil action includes a federal ingredient.
 - B. No, because the civil action does not include a federal ingredient.
 - C. No, even though the civil action includes a federal ingredient.**
 - D. Yes, even though the civil action does not include a federal ingredient.

EXPLANATION: There is a federal ingredient, which is Ginger's federal defense. So B and D are incorrect. This question is like *Mottley*. The "well-pleaded complaint" rule requires the federal question to be in the plaintiff's complaint, so A is also incorrect. **The answer is C:** there is a federal ingredient, it is an affirmative defense asserted in the answer. This is like *Mottley* if the only place federal law was asserted was by the railroad in defense.

2. Willow and Oswald (a different Oz from the one in the essay fact pattern) sue Angel, a vampire, for biting them in the neck and turning them into vampires. They allege: 1) battery, seeking \$75,000 each; 2) assault, seeking \$75,000 each; and 3) intentional infliction of emotional distress, seeking \$75,000 each. Does the court have subject matter jurisdiction?
- A. No, because each plaintiff individually fails to meet or exceed the amount in controversy.**
 - B. Yes, because the plaintiffs' aggregated damages meet or exceed the amount in controversy.
 - C. No, because the plaintiffs' aggregated damages do not meet or exceed the amount in controversy.
 - D. Yes, because each plaintiff individually meets or exceeds the amount in controversy.

EXPLANATION: This is an aggregation fact pattern. Remember that normally, parties cannot aggregate their amounts in controversy (barring a "joint and undivided interest"). So B is incorrect. Also, even though a single claimant can aggregate all their own damages, they have to be separate damages. Here, the three stated legal theories are all alternative theories to recover the same amount in controversy. Since each P's

AIC is exactly \$75,000, neither P independently meets the AIC (so D is also incorrect), and since they cannot aggregate, the AIC is met for no one. **The answer is A.** C is wrong because the plaintiffs cannot pool their amounts together.

3. Jim, Spock, and Bones are all co-workers. Jim is from Iowa. Bones is a citizen of Georgia. Spock is a citizen of a foreign country. Jim and Bones trade jokes about Spock, but forget that Spock has excellent hearing and on occasion, is not amused by either Jim or Bones. Spock sues Jim and Bones in Wyoming state court seeking \$1 nominal damages for defamation of character (a common law claim; you may assume that the relevant law does not permit any punitive damages). Jim and Bones timely remove the case to the U.S. District Court for the District of Wyoming. The case drags on for several years—so long, in fact, that it feels like several centuries—and finally goes to trial. During the trial, Spock sees that the jury regularly laughs and smiles at Jim and Bones. Realizing he is likely to lose the case, Spock moves to remand the case to Wyoming state court. Should the court grant Spock’s motion to remand?
- A. No, because Spock waited too long to move to remand.
 - B. No, because Spock has waived his right to seek remand under these circumstances.
 - C. Yes, because the plaintiff remains master of their complaint.
 - D. Yes, because the case should never have been removed in the first place.**

EXPLANATION: The parties are diverse (1332(a)(2) to be exact), but the amount in controversy is far too low and there is no federal question. A is wrong because under section 1447, the civil action *must* be remanded if SMJ is discovered to be lacking at any time before final judgment. Here, the trial (or if you prefer the *Star Trek* scenario, the “voyage”) continues. For similar reasons, B is wrong: Spock cannot waive or consent to SMJ, and the fact that he waited so long is entirely irrelevant to remand under these circumstances (though we can be suspicious about the litigant not bothering to assert an obvious lack of SMJ until the trial seems to be going badly for him). C is wrong because it is word salad: the admonition that a P is the “master of their complaint” has so many exceptions that it is more like moldy Swiss cheese than a rule of law, and in any case, the plaintiff’s preferences are irrelevant—and even *illogical*—here. **The answer is D.**

4. Tony, from New York, sues Steve, who lives in Columbia Heights, Washington, DC with his wife Peggy. The suit is filed in federal court in the U.S. District Court for the Southern District of New York. Tony has a process server, a man named Jarvis, serve the summons and complaint. Afraid to come too close to Steve’s house, Jarvis uses a Stark Industries™ drone operated by him from his car outside Steve’s house. The drone carries the papers to Steve’s door, leaves them by the door, and knocks on the door. Nobody answers, apparently as nobody was home at the time. Five minutes after Jarvis leaves, Steve and Peggy arrive home from a *Jitter & Jive* ballroom dance and find

the complaint. Steve picks up the papers, skims them, and shakes his head and smiles. Assume for this question that New York law permits service by leaving documents at the door of the defendant's usual abode, whether by person or by drone, and that Washington, D.C. local law requires service to be in person. Was service proper?

- A. Yes, because federal service may be made using modes of service allowed by the state in which the federal court is located.
- B. No, because service violated Due Process even though it complied with Rule 4.**
- C. No, because service was made in Washington, DC, which does not permit service by drone.
- D. Yes, because service satisfied both Due Process and Rule 4.

EXPLANATION: The answer is B. Answer A is true as a matter of law under Rule 4; however, the state rule or its application must still comport with Due Process, which it has not. Leaving papers at the door, personally, via drone, is not a method reasonably calculated to give actual knowledge, and the fact that Steve actually received and read the papers is irrelevant to whether *service* was proper under the Due Process clause. Most likely, Tony will have to have Steve served again, which may be a problem if the limitations period has since expired, the claim arose under state law, and the relevant state law requires service to take place *within* the limitations period. C is wrong because Rule 4, when incorporating state law by reference, allows use of the state law where the suit was filed (New York) *or* where service takes place (Washington, D.C.). D is wrong for the same reasons that B is correct.

5. John and Paul, lads from Liverpool, Ohio and naturalized American citizens, traveled to Hamburg, Germany to check out the local music scene. While at a rather shady club in the Reeperbahn district of Hamburg, the lads ran into their old mates, George and Ringo. George once played guitar with them in a band, *The Quarrymen*. Ringo also formerly played drums with the group. However, George and Ringo had recently quit the band, accusing John and Paul of not paying them music royalties due from their most recent and now final album, *Crabby Road*. The boys exchanged initial pleasantries, where John and Paul learned that Ringo now lived in New York City because he was cool, and George lived in Los Angeles where he hung out with his “new and better buds,” *The Traveling Bumbleberries*. Both had also become naturalized American citizens. Finally getting to the “fly on the wall,” George and Ringo asked John and Paul “when the heck are the checks coming, lads?” John told George and Ringo to “p**s off and find out!”, so George and Ringo smacked John and Paul in the head with a silver hammer that just happened to be lying around and which belonged to the bartender, Maxwell. Smarting from some pretty bad injuries after being bang-banged by Maxwell’s silver hammer, John and Paul decided to sue George and Ringo for battery,

in federal court, of course. What federal judicial districts have venue over such a lawsuit?

- A. The Central District of California, where George lives.
- B. The Southern District of New York, where Ringo lives.
- C. Either the Central District of California or the Southern District of New York.**
- D. No district, because the defendants do not reside in the same state and the events giving rise to the claim happened outside the United States.

EXPLANATION: This is an example of fallback venue under 1391(b)(3), because venue is not available under the other bases. Section 1391(b)(1) won't work, because the Ds reside in different states. Section 1391(b)(2) won't work because the claim arose in Germany. (PS, The Beatles' earlier name was indeed "The Quarrymen," and they did indeed perform in the early 1960s in the Reeperbahn District of Hamburg. And if you recognized the *Maxwell's Silver Hammer* jokes, I'd love to give you extra credit, but I can't, sorry.) So we turn to the fallback, which will allow venue in any *district* in which *any* D is subject to PJ regarding the action. As George resides in the Central District of California, and Ringo the Southern District of New York, venue in either district is appropriate. Whether PJ might also be available against both Ds in one suit is at best doubtful based on the limited facts of the question.