

## CIVIL PROCEDURE

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### FINAL EXAMINATION, FALL 2016

Monday, Nov. 28, 2016—4.0 hours

**You must read the instructions below carefully before beginning.**

**When time is called, all work must cease.**

**Time and length.** This document has thirty-four (34) pages (including this cover). The examination is four (4.0) hours long. Once the proctor indicates that time has started, make sure that you have all of the pages. If you do not, alert the proctor immediately.

**Supplement.** Included is a Supplement with relevant current sections of the Constitution, statutes, and sections of the Federal Rules of Civil Procedure (“FRCP”). The Supplement also includes a district court map on the last page.

**Exam materials & AGN.** Indicate your AGN number on this exam, the Supplement, your scantron sheet, any laptop-written answer, and on any bluebook(s). Do not include your name or student ID, and do not include any other information that may reveal your identity. At the end of the exam, you must turn in all materials. You may not write anything on, or erase anything from, any examination materials after time runs out.

**This is a closed-book exam.** With the exception of the Supplement and Exam materials described above, you may not refer to any other materials during this exam.

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

- The examination begins with fifty (50) multiple-choice questions with a suggested time of one hundred (100) minutes. [These are not available online.]
- Then there is a fact pattern with two (2) essay questions. Each essay question has a suggestion time of forty-five minutes with a total time of ninety (90) minutes.
- Following the fact pattern, there are an additional ten (10) multiple-choice questions with a suggested time of twenty (20) minutes. These multiple-choice questions build upon or vary from the facts found in the essay fact pattern.
- That adds up to 210 minutes, or three and one-half (3.5) hours. An additional thirty (30) minutes have been added as padding, so the total time provided 240 minutes, or four (4.0) hours.

**Relevant law.** Apply the law as it exists today.

**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. If more than one answer seems to be correct, then choose the best answer.

**Essay questions.**

- *Writing.* Write your answers to essay questions using bluebook(s) or a computer. (Computer use is subject to STU computer examination guidelines.) Legibility, proper writing, and good organization are expected and are part of your score.
- *Bluebooks.* If you use bluebooks, write in pen. Write on every other line and, except where needed to make an addition or clarification, on only one side of each page. If you use more than one bluebook, please number your bluebooks (e.g., “1 of 2,” “2 of 2”).
- *How to address essays.*
  - Read the fact patterns and calls of the question carefully 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 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.

***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 this class 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.*

## ESSAY FACT PATTERN: *THE CASE OF THE ABSENT PROFESSOR*

**Atticus Dog**  
*Professor of Oenology*



**Shelly Turtle**  
*Carroty Champagne bottler*



**Luci Rabbit**  
*Carroty Champagne maker*



Atticus Dog knew his wines. He was also a world-famous sommelier, which is a person who recommends wines for people to drink. He was also an expert in the field of oenology, the study of wines and wine-making. One of the reasons Atticus was an expert at oenology and sommelier-ology was due to his keen sense of smell, a talent he possessed ever since he was a young lad in Belgium. After getting his Ph.D, he moved to California in 2012 to join the faculty of the Napa Valley Institute of Technology in Napa Valley, California, as a Professor of Oenology. He bought a house and enjoyed his life as a professor. Soon after, he became a lawful permanent resident of the United States. He also did sommelier consulting work for local restaurants, helping the restaurants and their customers select wines. The sommelier work was part-time, but Atticus made very good money doing it.

Professor Atticus was always searching for wonderful new wines. On Nov. 2, 2014, Atticus was browsing the wine racks at his favorite store, the local *Total Wino* store, and found an interesting bubbly called “Shelly’s Carroty Champagne.” The bottle said “organic carrot champagne, sturdily bottled in sunny Florida, brought to you by *Shelly’s Wine Shells*.” Wondering what “Carroty Champagne” might be, Atticus bought a 1-liter bottle for \$30. Later that day, Atticus used the Carroty Champagne to teach his Oenology class how to open Champagne using the ancient “sabrage” method. Sabrage is a method of opening champagne that uses a saber (a type of sword) to open the bottle. Atticus told his students to stand back. Atticus lifted his saber and brought the blade towards the bottle. Unfortunately, before his saber hit the bottle, the bottle EXPLODED!



*Carroty Champagne purchased by Professor Atticus, bottled by Shelly Turtle, and containing champagne made by Luci Rabbit.*



*Professor Atticus, shortly before the tragic Sabrage accident that led to a temporary loss of Professor Atticus’ sense of smell.*

The explosion forced small pieces of shattered glass into Atticus' nose. Atticus thought that the cuts were minor so he never sought medical attention. However, the next day, Atticus could smell nothing. He was very depressed. As a result, Professor Atticus missed a whole week of his Oenology class. Also, for the next six weeks, he had to teach his classes online, which made him and his students very sad. Plus, sometimes his online technology worked and sometimes it didn't. Annoying! In addition, Professor Atticus did not regain his sense of smell during those six weeks and for that period was unable to work as a sommelier for local restaurants.

Atticus hired Attorney Nat Henson to be his lawyer, and asked him to file a lawsuit against Shelly's Wine Shells. Henson promised to file a complaint right away, but his dog ate the complaint, so Henson did not remember to file a complaint until November 1, 2016, the day before the two-year California statute of limitations for products liability expired. The complaint was filed the United States District Court for the Northern District of California. It stated a single claim for products liability against Mr. Shelly Turtle, the owner and sole proprietor of Shelly's Wine Shells. Shelly was based in Key Largo, FL (south of Miami), where Shelly was born and lived his entire life. Shelly shipped his wine and champagne products to wine stores all over the country, including *Total Wino*. The complaint alleged that Shelly's bottles were made of "turtle glass," a type of glass poorly suited to wine and champagne bottles. The complaint demanded \$80,000 for pain and suffering and the loss of smelling and part-time sommelier jobs over a six-month period.

Approximately three weeks after the complaint was filed, Shelly was served. Three days later, Shelly sent an email to his suppliers telling them that he had been sued for products liability because a bottle of his "Carroty Champagne" had unexpectedly exploded, leading to a lawsuit in California federal court. One of the recipients of Shelly's email was Luci Rabbit, a citizen of the Champagne region of France who grew "champagne carrots," a genetically engineered type of carrots suitable for fermentation and champagne-making. Her carrots were also organic so as to appeal to wine and champagne snobs who liked organic ingredients.

Luci started her company in 2014: *Luci's Bonne Fur-Mentation des Carottes Biologiques* (translated: "Luci's Good Organic Carrot Fur-Mentation"). In that year, Luci sold barrels of her carrot champagne worldwide to companies that bottled her champagne and put their own labels on it. In 2014, she sold 1 million liters of champagne at \$10 per liter. Luci sold approximately 20% of her carrot champagne to Shelly, who bottled and sold Luci's carrot champagne as "Shelly's Carroty Champagne." Luci was proud that half the bottles of Shelly's Carroty Champagne were sold in wine- and champagne-obsessed California. It should be noted that the only bottle of Shelly's Carroty Champagne ever known to explode was the one purchased by Professor Atticus.

Luci was very concerned about Shelly's email. She had specifically engineered her organic carrots to be suitable for champagne. Upon reading Shelly's email about the lawsuit filed by Atticus, Luci remembered that a recent batch of her carrots had contained extremely high concentrations of methane, which made any wine- or champagne-related products unstable, volatile, and likely to explode. Luci had told her employees (Katie and Jenny) to throw those carrots away, but Luci began to worry that Katie and Jenny did not listen to her. Perhaps some of the explosive carrots had found their way into the champagne that she had sold to Shelly Turtle. Immediately after receiving the email, Luci decided it was time to get out of the carrot champagne

business. She sold all her equipment and destroyed all her remaining carrots and champagne. She also fired all her employees, especially Katie and Jenny who had—as Luci told them—trapped her “in a cage!”

In July of 2017, Shelly was asked during a deposition whether he made his own Carroty Champagne. Shelly said “No, I only bottle the carrot champagne, but I purchased that champagne from Luci Rabbit in France.” Up until this point, Atticus and his lawyer Nat Henson had never heard of Luci Rabbit. Henson did some research and found an article in the French newspaper *Le Monde* and discovered that Luci Rabbit’s carrot vineyard had recently been investigated by French authorities for producing carrots with potentially explosive levels of methane.

Several weeks after, on August 1, 2017, Atticus’s lawyer Nat Henson sought and was granted leave by the district court to amend his complaint. The amended complaint added a second defendant, Luci Rabbit, and alleged products liability against her due to the alleged presence of explosive organic genetically engineered carrot champagne in the bottle of Carroty Champagne purchased by Atticus. The claim against Luci Rabbit again demanded \$80,000 for pain and suffering and the loss of smelling and part-time sommelier jobs over a six-month period.

Additional relevant information:

- Regardless of the photos and story, assume that Atticus, Shelly, and Luci are human.
- The facts and questions may posit information about the law of various states of the United States. The law provided here may not be the actual law of any of the states in question, but you must assume that the law provided is the relevant law for purposes of these essay questions.
- None of the parties is a corporation or business entity. Shelly runs a sole proprietorship; Luci runs an “entreprise individuelle,” which is French for sole proprietorship.
- California’s long-arm statute states: “A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of . . . the United States.” Calif. CCP § 410.10.

### **ESSAY QUESTION ONE (45 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. 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.

### **ESSAY QUESTION TWO (45 minutes)**

Discuss whether Atticus Dog’s amended complaint against Luci Rabbit relates back to the filing of his complaint against Shelly Turtle.

## **MULTIPLE-CHOICE QUESTIONS 51-60**

*(10 questions, suggested total time of 20 minutes)*

### **Questions 51 to 60 are based on the essay fact pattern**

The main facts needed to answer multiple-choice questions 51 through 60 can be found in the essay fact pattern. Additionally:

- Some of the multiple-choice questions below provide additional facts or change facts.
- Any additional or changed 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.

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

1. Regardless of your conclusion to essay question # 1 (on personal jurisdiction), assume that the court finds that it has personal jurisdiction over Luci. Luci believes that it is absurd to litigate the safety of a Champagne made in France in a federal court in California. What should she do?
  - A. Nothing. She had her shot in court and lost.
  - B. She should move for a convenience transfer to a court in France.
  - C. She should move for a forum non conveniens transfer to a court in France.
  - D. She should move for a forum non conveniens dismissal.
2. In the case of *Atticus v. Shelly and Luci*, is the amount in controversy satisfied?
  - A. Yes, because Atticus' medical expenses may be aggregated with his loss of wages.
  - B. No, because it is not certain that the loss of six weeks pay from Atticus' part-time job will exceed \$75,000.
  - C. No, because it is certain that Atticus' damages will exceed \$75,000.
  - D. Yes, because it is possible that Atticus' damages will exceed \$75,000.

3. Regardless of your answer to the previous question, assume the amount in controversy is satisfied. Will the court have subject matter jurisdiction over all claims?
- A. The court will have original jurisdiction over the claim against Shelly and supplemental jurisdiction over the claim against Luci.
  - B. The court will have original jurisdiction over both claims.
  - C. The court can exercise jurisdiction if the civil actions are severed and joined together for trial.
  - D. The court can exercise jurisdiction if it dismisses one of the defendants.
4. Assume that the amount in controversy is met. Further assume that after Atticus' injury and before the complaint is filed, Luci permanently moves to a retirement village in Florida and becomes a citizen of the United States. Will the court have subject matter jurisdiction over all claims?
- A. The court will have original jurisdiction over the claim against Shelly and supplemental jurisdiction over the claim against Luci.
  - B. The court will have original jurisdiction over both claims.
  - C. The court can exercise jurisdiction if the civil actions are severed and joined together for trial.
  - D. The court can exercise jurisdiction if it dismisses one of the defendants.
5. Assume that the amount in controversy is met. Further assume that after Atticus' injury and before the complaint is filed, Luci permanently moves to a retirement village in San Francisco, California and becomes a lawful permanent resident of the United States. Will the court have subject matter jurisdiction over all claims?
- A. The court will have original jurisdiction over the claim against Shelly and supplemental jurisdiction over the claim against Luci.
  - B. The court will have original jurisdiction over both claims.
  - C. Jurisdiction over Luci will be divested because she is a lawful permanent resident domiciled in the same state as Atticus.
  - D. The court can exercise jurisdiction if it dismisses one of the defendants.

6. Assume that the amount in controversy is met. Further assume that after Atticus' injury and before the complaint is filed, Atticus becomes a citizen of the United States. Will the court have subject matter jurisdiction over all claims?
- A. The court will have original jurisdiction over the claim against Shelly and supplemental jurisdiction over the claim against Luci.
  - B. The court will have original jurisdiction over both claims.
  - C. It is impossible for the court to exercise original jurisdiction over both parties, even if the claims are presented in separate federal lawsuits.
  - D. The court can exercise jurisdiction if it dismisses one of the defendants.
7. In which of the district(s) listed below does venue lie under 28 U.S.C. § 1391(b)(1) in the case of *Atticus v. Luci and Shelly*?
- A. The Northern District of California because Atticus is domiciled there.
  - B. Any district, because Luci is domiciled in France.
  - C. The Southern District of Florida because Shelly is domiciled in Key Largo, south of Miami.
  - D. Any district where any defendant is subject to the court's personal jurisdiction.
8. In which of the district(s) below does venue lie under 28 U.S.C. § 1391(b)(2) in the case of *Atticus v. Luci and Shelly*?
- A. The Northern District of California because Atticus was injured there.
  - B. The Southern District of Florida, because that's where Shelly bottled the champagne.
  - C. Any district, because Luci is domiciled in France where the carrots grew and the champagne was made.
  - D. A and B.
  - E. A, B, and C.



9. Suppose Shelly was personally served with process while voluntarily at home in Key Largo, Florida. Further assume that Shelly timely objected to personal jurisdiction. Would the district court have personal jurisdiction?
- A. Yes, because Shelly has contacts with the forum state.
  - B. No, because personal service outside the state is insufficient to establish personal jurisdiction.
  - C. Yes, because personal service while voluntarily present in the state permits “general in personam” jurisdiction.
  - D. No, because the exercise of jurisdiction would be burdensome on Shelly, who lives in Florida, not California.
10. Suppose Atticus filed his lawsuit against Luci Rabbit and Shelly Turtle in state court in Miami, Florida. Both are properly served with process. Can Luci and Shelly remove the action to a federal court in Miami?
- A. Yes and no: Luci can but Shelly cannot.
  - B. Yes, the defendants can remove the civil action so long as the district court will have subject-matter jurisdiction over all claims.
  - C. No, removal should be to the place of injury, the Northern District of Florida, and not to the Southern District of Florida.
  - D. No, the civil action may not be removed by either of these defendants.

*END OF EXAMINATION—BEST OF LUCK ON YOUR OTHER EXAMS!  
THANK YOU ALL FOR MAKING THE BEST OUT OF A “FRACTURED” SEMESTER!  
HAVE GREAT HOLIDAY BREAK!!*

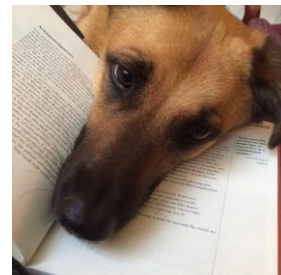
*MY PETS ALSO WISH YOU A HAPPY AND HEALTHY HOLIDAY!!*



*Luci, enjoying Carroty Champagne.*



*Shelly, taking a swim in the Florida Keys.*



*Atticus, taking a break from sniffing things.*