

Civil Procedure
Professor Sachs
Mid-Term Exam, Summer 2014

The mid-term exam will be on **Monday, June 23**. It will be administered in **Room 304I**, not the regular classroom. Please be there at **1:45 p.m.** The proctor will distribute the exam and record the start time. You should write your answers in the Word template that's been distributed to you, changing the xxx's in the header and in the filename to your Duke Student ID. To preserve anonymity, please *don't* add your name.

The exam is two hours long. Remember to save your work early and often! Before the two hours are up, email your answer to examdeposit@law.duke.edu. You will receive a confirmation email in response. Keep a copy of that email as proof of submission. You should also keep a copy of your finished exam, just in case. Should anything untoward occur—computer malfunction, sudden illness, etc.—alert the proctor, who will direct you to the Registrar's Office.

Feel free to use any print materials you like, including the textbook, the coursepack, your notes, other people's notes, commercial outlines, etc. You can also use any electronic materials you've previously saved to your computer. (This includes an English translation dictionary, whether electronic or on paper.) You shouldn't contact other people or use the Internet for research during the exam, so please make sure you download any relevant materials *in advance*.

The exam has only one question. That question may involve any material that we have studied up to the date of the exam. In general, if a particular legal standard hasn't received any substantial attention either in the book or in my lectures, it's unlikely to be tested. That said, the exam is open-book and could require close parsing of a rule or statute.

I recommend that you take ten minutes at the beginning to read through the whole thing and five minutes at the end for proofreading. Make sure that you read the question carefully, and take a few minutes to outline your answer before beginning to write. If you just dive in, you'll get lost halfway.

Organize your answer clearly. You don't need to follow the IRAC format with rigor, but you should identify an applicable legal standard before applying it. Stating your conclusions upfront will be helpful to me when grading. Mentioning individual rules or statutes can be useful, but chapter-and-verse citations are unnecessary. It's more important to state the substance correctly. The same is true for relevant cases. There are no page or word limits, though brevity is appreciated.

Unless you're given specific details to the contrary, you should assume that every party is properly served with process, that every pleading is properly pleaded, that all filings are timely filed, and that every motion or brief presents the best arguments available. Don't try to invent new and helpful facts not mentioned in the exam. If there are issues that you're not sure of or that require more information than the exam gives, say so. (Some of them are intentional.)

Also, when listing reasons why a particular result would be legally correct, *don't give just one*; give as many as are correct, even if just one of them would be enough to win or lose on that issue. Don't assume that I'll know you know the basics; show me that you do!

In general, please review and follow the advice given in John H. Langbein's *Writing Law Examinations* (available on the course website, under "Resources"). Answers will be graded on your understanding and analysis, as well as on clarity of exposition.

Good luck!

Question 1.

The Treasure State Mining Corporation, a subsidiary of ACME, operates a mine in Billings, Montana. The mine is Treasure State's only operating asset. The company's executives spend approximately two-thirds of their time in rented offices on the fifty-seventh floor of the ACME tower in Manhattan, so that they can plan corporate operations and confer with the ACME executives on the fifty-eighth floor. The other one-third of their time is spent jetting between New York and Montana. Both Treasure State and ACME are incorporated in Delaware.

After a recent meeting with ACME executives, Treasure State decided to expand its mining operations, purchasing a plot of land adjacent to their existing mine. To investigate legal issues relating to the expansion, Treasure State contacted the well-known law firm of Gumpel, Gumpel, Moog & Frink LLP. The law firm is organized under Delaware law as a limited-liability partnership. The firm's main office, run by partners Norris and LuAnn Gumpel, is in Los Angeles. The other two partners, Robert Moog and Tyra Frink, staff the field offices in New York and in Boise, Idaho, respectively. Each partner lives adjacent to his or her office for easy commuting.

Treasure State and Frink negotiated a contract under which Treasure State would send a large advance payment to the law firm's Idaho office. The firm would then perform "all reasonably necessary research, factual and legal, to determine whether federal law permits construction of the new mine." (A local firm in Montana was retained for any state-law issues.) The firm would determine its total bill and retain that amount, while returning the rest of the advance—along with an explanation of the bill—to Treasure State in New York. Treasure State agreed to pay the firm's usual rate, as well as a bonus for employees who billed more than a certain number of hours on the project. Treasure State duly sent the advance payment.

Frink had often done legal work for Treasure State before, and she naturally took the lead in preparing the legal opinion. She assigned much of the grunt work to Charles Hoefnagel, a summer associate at the Boise office and a rising 3L at Duke Law School. Hoefnagel is originally from Los Angeles, and he plans on returning home after finishing law school. Frink explained to Hoefnagel the details of the project and of the firm's contract with Treasure State, and she assigned him to write the first draft.

Treasure State promptly received the firm's opinion, accompanied by a very small return payment—and an eye-popping bill. On scanning the bill more closely, the company's general counsel noticed an unusual line item listed under “reasonably necessary research”: “\$70,000 for Endangered Jackalope Investigation.” Another line item reflected a \$10,000 bonus paid to Hoefnagel.

As it turns out, Hoefnagel is a direct descendant of the sixteenth-century Dutch painter and engraver Joris Hoefnagel, who had famously depicted a jackalope—a mysterious species of antlered rabbit—in his 1575 masterwork, *Animalia Quadrvpedia et Reptilia (Terra)*. (See Fig. 1.) The younger Hoefnagel had made it his life's mission to vindicate his ancestor by discovering an actual jackalope in the American West, and indeed that was the main factor in his choice of a summer job in Idaho. Hoefnagel reasoned that, if any jackalopes were currently living on Treasure State's new parcel in Montana, they might well be considered endangered under the Federal Endangered Species Act, blocking the mine's expansion in their natural habitat. He therefore devoted immense effort to researching federal law on protecting the habitats of endangered species. He also billed many, many hours spent roaming the property in an ultimately unsuccessful search for jackalopes.

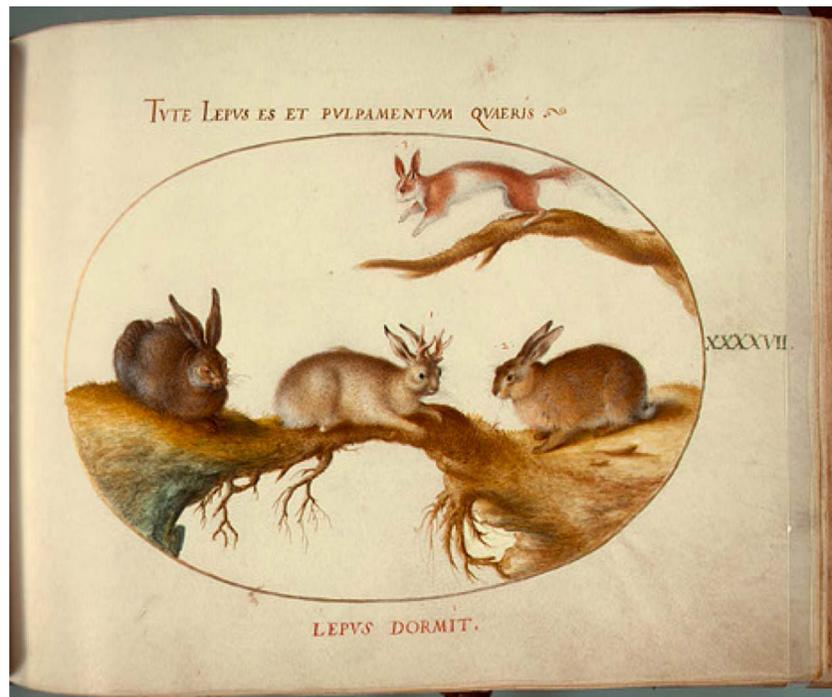


Fig. 1. The jackalope is depicted at center.

After a heated exchange of letters, Treasure State brought an action for breach of contract against the law firm and Hoefnagel in a state court in Manhattan, seeking the return of Hoefnagel's bonus and of any jackalope-related fees. Treasure State's complaint alleged that the jackalope investigation was not "reasonably necessary" to the legality of the mine project, as required by the contract. A copy of the contract was attached as an exhibit. The complaint also noted that, if the money was not returned, the company would be without the use of those funds in planning future operations at its New York headquarters.

Treasure State's process servers reached partner Robert Moog (whom the law firm had previously appointed as a general agent for service of process in New York) at his Manhattan

residence. They caught up with Hoefnagel at a bar in Durham, where he was celebrating his bonus.

Hoefnagel and the law firm would like the case to be removed to the U.S. District Court for the Southern District of New York, which encompasses Manhattan. Assuming that removal is successful, they'd like to get the case dismissed quickly for lack of personal jurisdiction (which, by the way, you can do after removal). Also assuming that removal is successful, they'd like the case to be litigated in North Carolina instead, where Hoefnagel is enrolled in law school. Finally, and again assuming that removal is successful, Hoefnagel would like to have the case against him dismissed quickly on the merits; as he sees things, under the law of every state mentioned above, he's not a party to the law firm's contract with Treasure State and so he can't be sued for breach.

How should the defendants go about pursuing their four goals? How likely are they to succeed at each, and why? (If there are things you'd need to know, but don't, just mention them along the way.)