

Part

2

Write your exam
number here:

Civil Procedure I: Fall 2018
The University of Oklahoma College of Law
Kit Johnson, Associate Professor of Law
FINAL EXAMINATION: PART TWO

Notes and Instructions

1. Do not turn the page until instructed.
2. Failure to follow these instructions, including without limitation, instructions 3-9 & 17-18, are academic misconduct issues, and violations will be treated as such even if inadvertent.
3. All exam materials (including this booklet, your response, and scratch paper) must be turned in at the conclusion of the exam period, with your exam ID number written in the upper right box on this page. You will not receive credit unless you return this booklet with your exam ID written above.
4. You may not waive anonymity. Use only your exam ID number on this booklet and your response.
5. You may not copy, transcribe, or distribute the material in this booklet or attempt to do the same.
6. The total duration of this portion of the exam is one-and-a-half hours (90 minutes).
7. The first 30 minutes of this portion of the exam is a reading period. **You may not begin typing or entering into bluebooks any response during this first half hour.** This is your time to carefully read the questions and organize your thoughts about how to respond. During the reading period you may: make notes on this exam sheet and/or scratch paper; reference notes and materials and make notes thereon; outline your response on scratch paper (which I encourage). Marks or notes made during the reading period will not be evaluated or counted for your grade.
8. At the end of the thirty-minute reading period, you may begin recording your exam response.
9. This is an open-book exam. You may use any paper-based notes and books you like. No electronic or interactive resources may be used or referenced. You may use a computer (including a keyboard-configured tablet) to write your exam, provided it is running the required exam-taking software and is used pursuant to applicable policies. But you may not reference files stored thereon during the exam sessions. You may wear a regular watch. Otherwise, any touching, using, accessing, wearing, viewing, or listening to any electronic device is prohibited. No smart watches. No phones.
10. Note that only your response recorded in the proper place (ExamSoft or bluebooks) will be graded.
11. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems within the scope of the course's subject matter. It is upon these bases that you will be graded.
12. Base your answer on the general state of U.S. law, including statutes and cases discussed in class.
13. Organization counts.
14. Keep in mind: Not all questions will be given equal weight. It may be appropriate for one issue to be dispensed with brevity, while another might require detailed analysis. Divide your time according to those issues that require the most discussion and analysis.
15. **Bluebooks:** Make sure your handwriting is legible. Skip lines and write on only on one side of the page in blue or black ink. Please put answers to each question in a separate blue book.
16. **Computers:** Please clearly label your answers to each question.
17. During the exam: Do not consult with anyone – necessary communications with administrators/proctors being the exception. You may not view or attempt to view materials other than your own. No materials may be shared during the exam. Do nothing to distract other students.
18. After the exam: Communicate nothing about the exam, including even vague impressions or characterizations, to any enrolled member of the class who has not yet taken it.

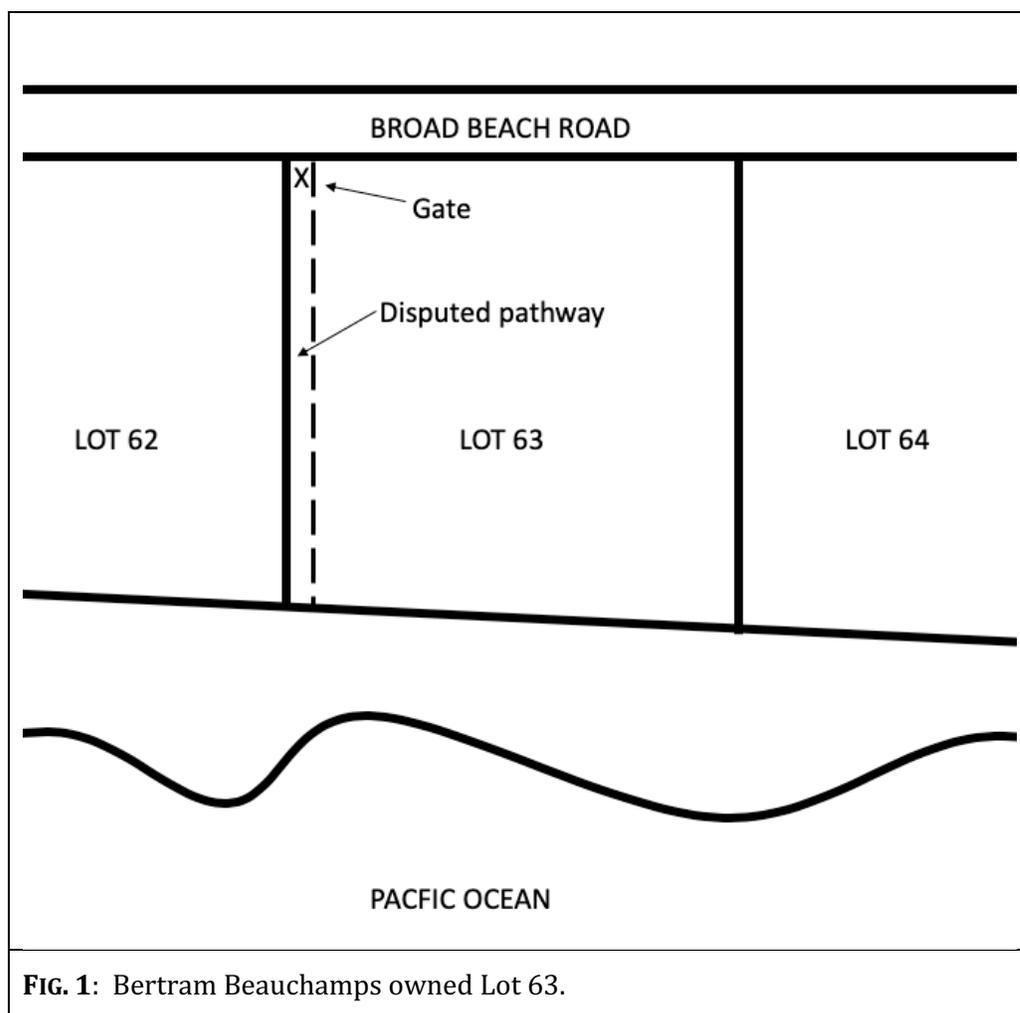
Bertram Beauchamps worked hard for his beachfront Malibu, California home. He didn't grow up with money. He earned it: show by show, movie by movie. Beauchamps spent years cutting his teeth on best-friend roles until leaping into leading-man parts and, eventually, finding runaway success. He didn't spend much time in Malibu, living most of the year on a sprawling ranch in his home state of Wyoming. But when he needed to come to Southern California to meet with his agent or audition for a new role, it was a welcome sanctuary. More than anything, he loved sitting on his ocean-facing balcony, emailing with friends, family, and colleagues alike – discussing his Malibu home decorating projects with his grandma, planning his yearly open house for California friends with the help of his personal assistant, and suggesting new succulents to his gardener.

Lately, Beauchamps has found sanctuary harder to come by. Specifically, he's become increasingly bothered by the local surfers who cross his property at all hours to reach the beach in front of his home. They pass annoyingly close to his bedroom, often waking him up with the sunrise as they chat on their way to the ocean. At night, he finds the sound of their ukulele music a constant irritation and hates that they don't clean up after their bonfires.

Early on January 1, 2018 Beauchamps calls a contractor who, the very next day, builds a locked gate to cut off the access surfers had been using to cross

Beauchamps' property and posts a "Private Property: Do Not Enter" sign on the gate.

The surfers do not take Beauchamps' actions with the lackadaisical attitude frequently attributed to them in popular movies and TV shows. To the contrary, they mobilize, largely in response to the efforts of Larry Locknore – an avid surfer and attorney specializing in property law.



Locknore brings suit against Beauchamps in the U.S. District Court for the Central District of California, which is in the Ninth Circuit, on behalf of himself and the Sidepath Surfers Society, an association of surfers who use Beauchamps' pathway. They allege that Beauchamps' gate violates a prescriptive easement the surfers developed across Beauchamps' property. This suit seeks an injunction to remove the gate.

Service of process, however, proves daunting for Locknore. Beauchamps isn't in California often, and, when he is, he travels with security who keep the public 10-feet away at all times. He never answers the door to his house. His home in Wyoming is equally impregnable. Locknore serves papers on Aaron Arthursen, the agent who *Variety* magazine¹ indicates as representing Beauchamps; but Arthursen tells Locknore he is not authorized to accept service of process on behalf of Beauchamps.

Locknore goes to court, appearing before Judge Jimmy Jagerson. Locknore details his difficulties in serving Beauchamps and asks the court for permission to effect service by Instagram². Beauchamps is an Instagram sensation, with over 1,000,000 followers and near-daily posts. The court grants Locknore's motion.

Beauchamps is served by Instagram. In his first appearance in court following service, Beauchamps' counsel, Ruth Renitar, moves to dismiss for insufficient service of process. Her motion is denied.

When the case proceeds to discovery, Locknore propounds a request for production seeking "any and all of Beauchamps' emails pertaining to the Malibu property." Renitar objects to the request on the following grounds: (1) relevance, (2) proportionality, and (3) accessibility. As to that last point, Renitar notes that ever since Beauchamps' email was hacked by a crazed fan a few years ago, his emails have been stored on a private server and that server purges and writes over the email files on an

Property  *Princess*

Prescriptive Easements

Do kids cross your yard every day to get to school?

Beware the prescriptive easement!

A user of land may establish a prescriptive easement by proving that his/her use of your land was: (1) continuous and uninterrupted for five years; (2) open and notorious; and (3) hostile. That first element can be met by any use that is "necessary for the convenience of the user." It doesn't have to be daily and can even be seasonal! That second element can be met by conduct that isn't hidden or concealed from the property owner. And the last can be established by showing the conduct was done without the permission of the owner.

The consequences of a prescriptive easement can be severe. You might just be prohibited from re-landscaping your yard if it interferes with the route the kids have always taken.

Take it from this Property Princess, keep an eye on your property, and your property rights!

FIG. 2: A post from propertyprincess.com, an authority on property law.

¹ According to Wikipedia, *Variety* is a "weekly American entertainment trade magazine."

² According to Wikipedia, Instagram is a "photo and video-sharing social networking service."

annual basis. Based on information from an IT expert, it would cost an estimated \$1,000,000 to recover emails more than a year old. Ultimately, Locknore files a motion to compel the information, which Judge Jagerson denies.

At the trial, several surfers take the stand to talk about their use of the Beauchamps property over the past few years. Eleanor Erstead testifies that she began using “the pass” as her fellow surfers now call the narrow strip of land next to Beachamps’ home, sometime around New Years in either 2013 or 2014. When pressed to be more exact on the timing, Erstead says she thinks it was 2013. Zeke Zavral, another surfer, testified that use of the path grew over time, “I remember in the beginning, it was, like, a total secret, man. But then, you know, word started to spread, and now, it’s the main drag.”

At the close of plaintiffs’ case, Renitar moved for judgment as a matter of law, arguing that (1) plaintiffs failed to establish the requisite period of use of the so-called easement, and (2) increased traffic on the path “substantially increased the burden” placed by Beauchamps and thereby restarted the tolling period, as held in *Michaels v. Monroe*, a Fifth Circuit decision. Locknore responded by arguing the sufficiency of his evidence and pointing to *Davis v. Davis*, a Second Circuit decision, which held that increased use of an easement doesn’t restart the tolling period as long as it is “a normal development, reasonably foretold, and consistent with the pattern formed by the adverse use by which the prescriptive easement was created.” Judge Jagerson denies the motion for judgment as a matter of law and the case proceeds to trial. The plaintiffs prevail.

Beauchamps decides to find a new sanctuary – perhaps in the mountains of Malibu – far from surfers. He puts his home on the market and sells to up-and-comer Qiana Quern, an actor who, like Beauchamps, spends most of her time out-of-state at her home in Arizona.

Quern loves the Malibu home, but she finds the surfers to be a problem. Quern immediately brings suit in federal court against Sidepath Surfers Society on the basis of private nuisance, arguing that the surfers unreasonably interfere with her property interests by: (1) leaving trash on her property after bonfires and (2) utilizing the easement at all hours. She asks the court to enjoin the surfers to pick up their garbage and restrict their use of the path to the hours between sunrise and sunset. Sidepath Surfers Society, represented by Locknore, moves to dismiss Qiana’s suit on the basis of preclusion.

QUESTIONS

Provide legal analysis for the following:

Question 1: Did Judge Jagerson correctly deny Beauchamps’ motion to dismiss?

Question 2: Did Judge Jagerson correctly deny Locknore’s motion to compel?

Question 3: Did Judge Jagerson correctly deny Renitar’s motion for judgment as a matter of law?

Question 4: What should come of Locknore’s motion to dismiss Qiana’s suit?

Keep in mind the questions will not be given equal weight. The questions are provided for organizational purposes only. It may be entirely appropriate for one question to be answered with considerable brevity, while other questions might require very detailed analysis. Pace yourself appropriately, and plan ahead to put information where it belongs.

Finally, avoid needless repetition. Do not repeat the exact same analysis with substituted parties. You may incorporate analysis by reference to another portion of your exam answer to the extent appropriate.

Some suggested abbreviations for your answer:

AA:	Aaron Arthursen	MM:	Michaels v. Monroe
BB:	Bertram Beauchamps	SS:	Sidepath Surfers Society
DD:	Davis v. Davis	PP:	Property Princess
EE:	Eleanor Erstead	QQ:	Qiana Quern
JJ:	Judge Jimmy Jagerson	RR:	Ruth Renitar
LL:	Larry Locknore	ZZ:	Zeke Zavral

END OF EXAMINATION