

Part

2

Write your exam  
number here:

**Civil Procedure II: Spring 2019**  
The University of Oklahoma College of Law  
Kit Johnson, Associate Professor of Law  
**FINAL EXAMINATION: PART TWO**

**General Notes and Instructions:**

1. Do not turn the page until instructed.
2. Failure to follow these instructions, including without limitation instructions 3 through 7 and 12 through 14, are academic misconduct issues, and violations will be treated as such even if inadvertent.
3. All exam materials (including this booklet) 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 any credit unless you return this booklet with your exam number written above.**
4. Do not disassemble this booklet, remove the staple, or tear pages.
5. You may not waive anonymity. Use only your exam ID number on your response.
6. During the exam: You may not consult with anyone – necessary communications with the administrators/proctors being the exception. You may not view or attempt to view materials other than your own. Do nothing that would distract other students.
7. After the exam: Communicate nothing about the exam, including even vague impressions or characterizations, to any member of the class who has not yet taken it.
8. Food and drink are permitted during final exams, but only on the following conditions: (a) Drinks must be open and drinkable before the exam starts. No popping cans or opening soda bottles during the examination period; (b) Food cannot smell. No sandwiches, condiments, or odors stronger than a cup of unflavored coffee permitted; (c) Food cannot be noisy. No chips, carrots, or hard granola bars are permitted. In addition, food in wrappers must be unwrapped before the exam begins. For example, if you bring a package of M&Ms into the examination, the candy should be removed from the wrapper and poured onto a paper towel for eating during the examination. Please chew with your mouth closed.
9. Minimize your own noise (toe tapping, pen clicking, etc.).
10. Minimize your smells (no perfume, cologne, perfumed lotions, etc.).

**Do not turn any page until instructed.**

**When instructed, flip this exam booklet over  
To look at the back page of this examination  
booklet for additional instructions.**



Beth Beacham was stoked. She'd taken a week's vacation from her job as a paralegal at Qantwell & Quinn in Denver, Colorado, just for this moment. She was in San Diego, California, at Comic Con, wearing her best Zoe Zellburne outfit, about to meet her hero, Major Malcolm Mendel from the cult show *Fire Flies*.

She stepped onto the stage. As part of her "VIP Level 1 All Access Pass" (cost: \$5,000) she was about to have her carefully-timed 60 seconds on stage with Mathon Million, the actor who played Malcolm. They would take a photo together. They'd recreate the iconic pose from the DVD cover. They'd shake hands. *And they'd be best friends forever*, thought Beth.

As Beth walked across the stage towards the outstretched hand and smiling face of Malcolm/Mathon, it felt like she was having an out-of-body experience. She was practically floating across the stage. And then it hit her. She wasn't floating at all. She was falling. The stage was collapsing under her feet just as she was inches away from meeting her hero.

When the dust settled, literally, she found herself face to face with Mathon. Their bodies were contorted unnaturally. Beth's ankle was throbbing. Mathon was cradling his arm, which seemed to be broken. He had multiple lacerations to his face. And those were just the injuries she could see. Both of them were pinned by stage debris.

Mathon looked Beth right in the eye and uttered one of Major Malcolm's most famous lines: "Well, you were right about this being a bad idea." Beth responded in true Zoe form: "Thanks for saying, sir."

Just then, a group of EMTs reached the pair and began extracting them from the wreckage. They were both transported to San Diego County General for emergency surgery.

Beth and Mathon met again the next day as they were waiting for x-rays. After discussing their respective injuries and long-term prognoses, Mathon said to Beth: "Look, I've already spoken to my lawyer. It's clear that we've got to sue Comic Con Corporation. They're in charge, and they're responsible for that stage. You and I are going to need a lot of medical care. They should pay. Are you in?" To which Beth responded, "Gorram, yeah. I mean, heck yeah."

Mathon Million and Beth Beacham filed suit against Comic Con Corporation, a Delaware corporation with its principal place of business in San Diego, California, in the U.S. District Court for the Central District of California. They claimed that Comic Con's negligence was responsible for their injuries. Both sought damages. Mathon sought \$1 million for his medical bills, pain and suffering, and lost income due to the extended leave of absence he



**FIG. 1:** Mathon Million, one day before the accident, speaking on a *Fire Flies* panel.

Photo: Gage Skidmore, [Nathan Fillion](#), CC BY-SA 2.0, via Wikimedia Commons

needed to take from his new hit show, *The Private*, which was all about a late-in-life enlistee in the U.S. Marine Corps. *The Private* was filmed in and around Los Angeles. Mathon had an apartment in Los Angeles where he stayed during shooting. Los Angeles was also where both his talent agent and his attorney lived and worked.

Mathon returned to his private estate in Idaho Falls, Idaho, for his extended recovery. Although Mathon only spent a few weeks at his estate each year, given that his acting work called him to different shooting locations around the U.S. and Canada, it was where he called home, filing part-year resident Idaho tax returns annually since 1994 when he landed his first television gig on a popular soap opera.

Beth also returned home, to Denver. She sought only \$74,000 in damages. Her medical bills were much smaller and did not affect her work as a paralegal.

Comic Con Corporation promptly responded to the Mathon/Beth suit by moving to dismiss the entire suit for lack of subject matter jurisdiction. Comic Con also moved, in the alternative, to dismiss Beth's claims lack of subject matter jurisdiction. And the company moved to dismiss for lack of personal jurisdiction, improper venue, and failure to join a necessary party. As to that last issue, Comic Con Corporation argued that the party most responsible for the stage collapse was Runway Rental, a Colorado company that built stages nationwide for large events like Comic Con. Had Runway Rental been more careful, Comic Con argued, Mathon and Beth would never have been hurt. Judge Jimmy Jagerson, to whom the lawsuit was assigned, denied all three motions.

Discovery came and went. The parties were one week away from the deadline for filing motions for summary judgment when Comic Con Corporation filed an emergency motion to modify the scheduling order to squeeze in one last depo before summary judgment motions were due. The company wanted to depose Timothy Teerand, who Comic Con just learned had videotaped the collapse. Judge Jimmy Jagerson denied the motion, noting that Timothy had posted his video of the incident to YouTube months before and could have been discovered through reasonable diligence during the scheduled discovery period. Comic Con made a second motion, asking the court to reconsider its denial in light of California's *Needing Or Taking Lawful Access To Evidence (NOT LATE)*, which requires courts to grant motions modify scheduling orders so long as such motions are made before



**FIG. 2:** The Central District of California, which encompasses Los Angeles, is identified in pink. The Southern District of California, which encompasses San Diego, is identified in yellow.

Image: [Jurisdiction and Venue](#), U.S. District Court for the Eastern District of California, Public Domain

motions for summary judgment have been filed. Judge Jimmy Jagerson denied the motion to reconsider, citing FRCP 16(b)(4).<sup>1</sup>

## QUESTIONS

Provide legal analysis for the following:

- Question 1: Did Judge Jagerson correctly deny Comic Con Corporation's motion to dismiss the entire suit for lack of subject matter jurisdiction?
- Question 2: Did Judge Jagerson correctly deny Comic Con Corporation's motion to dismiss Beth's claims for lack of subject matter jurisdiction?
- Question 3: Did Judge Jagerson correctly deny Comic Con Corporation's motion to dismiss for lack of personal jurisdiction?
- Question 4: Did Judge Jagerson correctly deny Comic Con Corporation's motion to dismiss for improper venue?
- Question 5: Did Judge Jagerson correctly deny Comic Con Corporation's motion to dismiss for failure to join a necessary party?
- Question 6: Did Judge Jagerson correctly deny Comic Con Corporation's motion to modify the scheduling order?

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:**

BB:	Beth Beacham	QQ:	Qantwell & Quinn
CC:	Comic Con Corporation	RR:	Runway Rental
FF:	Fire Flies	TT:	Timothy Teerand
JJ:	Judge Jimmy Jagerson	ZZ:	Zoe Zellburne
MM:	Major Malcolm Mendel/Mathon Million		

## END OF EXAMINATION

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<sup>1</sup> FRCP 16(b)(4) reads: "A schedule may be modified only for good cause and with the judge's consent."





### Specific Instructions for Part 2 (Essay):

11. The total duration of this portion of the exam is one-and-a-half hours (90 minutes).
12. 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.
13. At the end of the thirty-minute reading period, you may begin recording your exam response in your bluebook or ExamSoft.
14. 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.
15. Note that only your response recorded in the proper place (ExamSoft or bluebooks) will be graded.
16. 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.
17. Base your answer on the general state of U.S. law, including statutes and cases discussed in class.
18. Organization counts.
19. 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.
20. **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.
21. **Computers:** Please clearly label your answers to each question.

**Wait. Do not begin the exam until instructed.**