

Booklet control
number:

Write your exam
number here:

Civil Procedure II
The University of Oklahoma College of Law
Course 5203-603; Spring 2015
Professor Kit Johnson

FINAL EXAMINATION: PART TWO

Notes and Instructions

1. The duration of Part Two of this exam is two and one-half hours.
2. The first half-hour of the exam period is a reading period only. This is your time to carefully read the question(s) and organize your thoughts about how to respond. **You may not begin typing or entering into bluebooks any response during these first 30 minutes**. You may, however, make notes on this exam sheet or scratch paper and are encouraged to outline during this time.
3. Part Two is an open-book exam. You may use any printed material including, but not limited to, books, commercial outlines, group outlines, and your own notes. You cannot use electronic or interactive resources during the exam, including, but not limited to, the internet and your cell phone.
4. There is no word, page, or line limit on responses.
5. Do not turn the page until instructed to begin.
6. You will not receive credit unless you return this booklet at the end of the period with your exam number written above.
7. You may write anywhere on the examination materials – e.g., for use as scratch paper. Only answers and material recorded in the proper places, however, will be graded.
8. 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.
9. During the exam: You may not consult with anyone – necessary communications with the College of Law staff being the exception. You may not view, attempt to view, or use information obtained from viewing other student examinations or from viewing materials other than your own.
10. After the exam: You may not communicate regarding the exam with any enrolled member of the class who has not yet taken the exam, and you must take reasonable precautions to prevent disclosure of exam information to the same.
11. Base your exam answer on the general state of U.S. law, including all rules, procedures, statutes, and cases discussed in class.
12. Assume every state has a statutory long-arm provision that reaches to the furthest extent permitted under federal constitutional due process.
13. Keep in mind: The weight given to each part is specified, but not all issues within each part will be given equal weight. Thus, it may be entirely appropriate for one issue to be dispensed with considerable brevity, while another might require very detailed analysis. You should divide your time according to which issues require the most discussion and analysis.
14. Organization counts.
15. **Bluebooks**: Make sure your handwriting is legible. I cannot grade what I cannot read. Skip lines and write on only on one side of the page. Please put answers to each section in a separate blue book and label the blue books accordingly. Please write in pen using blue or black ink.
16. **Computers**: Please clearly label your answers to each section, starting a new "question" in ExamSoft for each subpart.
17. Do not write your name on any part of the exam response or identify yourself in any way, other than to use your examination I.D. number appropriately. Self-identification on the exam will, at a minimum, result in a lower grade, and may result in disciplinary action.
18. Good luck.

Dierks Dentley was tired of working 18-hour days as a junior partner at Bigg & Billem LLP, a Los Angeles-based law firm. Dentley was the sole lawyer in Bigg & Billem's Denver, Colorado office. Most of his practice was advising L.A.-based clients about Colorado's marijuana laws.

But Dentley dreamed of bigger things, like being a country-music singer/songwriter. He had just received his partnership distribution for the year (\$800,000!) and thought right now just might be the time to make his move.

Dentley knew he couldn't stay in Denver. It was too expensive and offered too many distractions. He needed a new scene.

One day, on his way into the office, Dentley heard an ad on his favorite station - Denver's own KPTT-FM, 95.7 The Party. The ad was for the Crystal Co-Op in Cheyenne, Wyoming. "Where luxury living meets rustic beauty," the sexy voice of the announcer purred, "a Foxclore Framing Company development."

Dentley was in. He called in sick, gassed up his truck, and, just an hour-and-a-half later, was in Cheyenne, "The Magic City of the Plains."

The Crystal Co-Op was just what Dentley had been hoping for. It was in a sparsely populated area on the north side of Cheyenne, so it had the requisite songwriter solitude. And the units had soaring windows with stunning views of Crow Creek and Table Mountain. Dentley signed on the spot, paying \$500,000 in cash for Unit 2A.

Dentley drove back to Denver with a song in his heart. (One he just might put to guitar tablature and turn into Billboard gold.)

Dentley gave Bigg & Billem LLP two weeks notice. He also called movers who were incredibly efficient and managed to pack and move all his worldly possessions in just two days. Dentley spent the rest of his time sleeping on an air mattress in his Denver apartment, which was on the market and, Dentley hoped, would sell soon.

Dentley's last day of work was a beast. The higher-ups at Bigg & Billem were trying to get their money's worth from him. He spent the day tying up every conceivable loose end related to the closure of the firm's Colorado office.

The weather outside seemed like a bad omen. Severe gusts rocked his truck as he drove home, and sheets of rain were interspersed with pockets of hail. Dentley told himself to face the storm like a songwriter: *What rhymes with interspersed?* And soon he was back in his apartment, kicking back with his guitar and a glass of Glenfiddich.



FIG. 1: The Crystal Co-Op in Cheyenne, Wyoming, before the storm. Residences featured copious natural light that would have provided an inspirational setting for composing music.

Photo: Eric E. Johnson

At 6 a.m. the next morning, Dentley was awoken by a phone call. “Mr. Dentley? Hi – this is Erica Erolts? From Crystal Co-Op? I’m calling to let you know a storm hit Cheyenne last night and, well, your Crystal Co-Op unit has been damaged. We wanted to make sure you were aware of the situation?”

Dentley was not. He hopped in the truck and drove straight to Cheyenne. Unit 2A was destroyed. He was devastated to discover that grapefruit-size hail had blown out the skylights. Worse yet, much of the lower level was burned. It seemed that the rain pouring through the broken skylights shorted the unit’s not-up-to-code electrical outlets, sparking a fire.

Dentley poked around the ruins. What was salvageable? Precious little.

Stunned and defeated, Dentley headed back to his apartment in Denver, which, *thankfully*, hadn’t yet sold. As a lawyer, Dentley knew what he had to do. He wasn’t looking forward to it, but he’d get it done: He had to sue.

Dentley filed suit in the U.S. District Court for the District of Colorado against Foxclore Framing Co., the builders and developers behind the Crystal Co-Op. Foxclore is a Delaware Corporation with its principal place of business in Wyoming – just down the road in central Cheyenne, actually. Dentley sued for negligence and sought \$2 million in damages. The lawsuit ended up in front of Judge Jimmy Jagerson.

The first thing Foxclore did upon receiving notice of Dentley’s suit was to move to dismiss for lack of personal jurisdiction, lack of subject matter jurisdiction, and improper venue.

Judge Jimmy Jagerson denied all three motions, but he did transfer the suit to the U.S. District Court for the District of Wyoming, where the case ended up in front of Judge Lonnie Landers.

At this point, Foxclore joined Singlewave Skylights Corp., a Delaware Corporation with its principal place of business in Colorado, which made and installed the skylights at Crystal Co-Op. Foxclore suspected that a manufacturing or installation defect with the skylights was the real cause of the damage to Unit 2A. Moreover, as a Foxclore subcontractor, Singlewave had contracted to indemnify Foxclore for any lawsuits relating to the skylights.

Once Singlewave was joined, it, in turn, joined Halstead Hinges, the maker of the hinges used on all of Singlewave’s skylights. Singlewave’s preliminary investigation suggested that the thickness of the hinges was not up to specifications. And Singlewave’s contract with Halstead likewise called for Halstead to indemnify Singlewave in case of a lawsuit.

Halstead appeared specially to contest personal jurisdiction. Halstead noted that it was a Kansas corporation that sold its Kansas-made hinges to a variety of manufacturers who made everything from doors to cabinets to appliances. But Halstead did not have any customers in the state of Wyoming. Judge Landers granted Halstead’s motion.

Thereafter, Singlewave filed a claim against Dentley – arguing that his negligence (failure to check that the skylights were securely closed) caused the damage. Dentley tried

to counterclaim against Singlewave to bring a product defect cause-of-action concerning the skylights, but Judge Landers denied leave to add this claim for lack of subject matter jurisdiction.

The Crystal Co-Op lawsuit was a major drain on Dentley. But Dentley's singing career was taking off. In fact, he'd turned his litigation blues into a toe-tapping track titled "Big Bills & Pain." It was about a group of unscrupulous lawyers who screwed their clients by unnecessarily prolonging litigation while charging big bucks. It included the line: "Big & Bill 'em, that's their name / Clients get nothing / except pain." The song caught the attention of an executive at Atlantic Records and, in no time at all, had been released as a single. Next thing he knew, Dentley was in a studio in Denver, day and night, trying to put together a full album.

Bigg & Billem was not pleased. The firm brought suit against Dentley in Los Angeles Superior Court for defamation, seeking \$1 million in damages. Dentley sought to remove the case to the U.S. District Court for the Central District of California. The removal petition landed in front of Judge Mandy Mueller, who granted the petition.

Thereafter, Dentley moved to strike the defamation claim, citing California's Curbing Hellacious and Insane Libel Liability Act (a/k/a "CHILL," California Civil Code § 48A & California Code of Civil Procedure § 425A), which provides a special motion to strike defamation suits arising out of "song or music, whether professionally recorded or not, whether published by radio, television, or internet." Judge Mueller denied the motion, noting that CHILL conflicts with FRCP 12(f).¹



FIG. 4: "Big Bills & Pain" entered the scene with a splash, quickly becoming the most downloaded country song on iTunes. It outperformed "Let's Get it Started," by the Black Eyed Peas, which had been the previous record-holder for most iTunes-downloads.

¹ FRCP 12(f) says: "(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act: (1) on its own; or (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading."

QUESTION

Did the judges make the right calls?

In assessing the legal issues that arise from the above facts, organize your response as follows, clearly labeling the subparts:

Subpart A: Discuss any issues concerning Foxclore's motion to dismiss for lack of personal jurisdiction.

Subpart B: Discuss any issues concerning Foxclore's motion to dismiss for lack of subject matter jurisdiction.

Subpart C: Discuss any issues concerning Foxclore's motion to dismiss for improper venue and Judge Jagerson's transfer.

Subpart D: Discuss any issues concerning Foxclore's joinder of Singlewave Skylights.

Subpart E: Discuss any issues concerning Singlewave's joinder of Halstead Hinges and Halstead's motion to dismiss for lack of personal jurisdiction.

Subpart F: Discuss any issues concerning Dentley's counterclaim against Singlewave.

Subpart G: Discuss any issues concerning removal of Bigg & Billem's lawsuit against Dentley.

Subpart H: Discuss any issues concerning CHILL.

Subpart I: If there is anything else you wish to discuss, which does not belong in any of subparts A through H, please put it under this Subpart I.

Keep in mind the subparts will not be given equal weight. The subpart structure is provided for organizational purposes only. It may be entirely appropriate for one subpart to be answered with considerable brevity, while other subparts 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: Bigg & Billem, LLP
CC: Crystal Co-Op
DD: Dierks Dentley
FF: Foxclore Framing
HH: Halstead Hinges

JJ: Judge Jimmy Jagerson
LL: Judge Lonnie Landerson
MM: Judge Mandy Mueller
SS: Singlewave Skylights

END OF EXAMINATION